

HKEx LISTING DECISION

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Summary	
Name of Party	Company A - a Main Board listed company Parent Company – the holding company of Company A Parent Group – Parent Company and its subsidiaries (excluding Company A and its subsidiaries)
Subject	Whether Company A would be required to aggregate the proposed Transactions under Main Board Listing Rule <u>14A.81</u> 14A.25
Listing Rules	Main Board Listing Rules <u>14A.81, 14A.82 and 14A.83</u> 14A.25, 14A.26, 14A.27
Decision	The Exchange determined that the Transactions should be aggregated under Main Board Listing Rule <u>14A.81</u> 14A.25 .

SUMMARY OF FACTS

1. Company A and its subsidiaries (the “**Group**”) were principally engaged in the business of providing mobile telecommunications services to retail customers in Hong Kong.
2. The Parent Group was a major provider of telecommunications services in Hong Kong.
3. After the Parent Company acquired a controlling interest in Company A, Company A’s board of directors had conducted a review of the Group’s business model and the viability of various alternative options available to Company A.
4. Company A proposed to enter into a variety of transactions with the Parent Group in relation to various aspects of its business (the “**Transactions**”), each constituting a continuing connected transaction. The Transactions served to facilitate the Group to adopt a new business model in wholesaling products and services to the Parent Group and outsourcing material business functions to the Parent Group.

THE ISSUE RAISED FOR CONSIDERATION

5. Whether Company A would be required to aggregate the proposed Transactions under Rule ~~14A.81~~14A.25.

APPLICABLE LISTING RULE OR PRINCIPLE

6. Main Board Listing Rule ~~14A.81~~14A.25 provides that:

The Exchange will aggregate a series of connected transactions and treat them as if they were one transaction if they were all completed within a 12-month period or are otherwise related. ...

7. Main Board Listing Rule ~~14A.82~~14A.26 provides that:

Factors ~~that which~~ the Exchange ~~will consider may take into account in determining whether for aggregation of a series of connected transactions will be aggregated~~ include whether ~~the transactions~~:

- (1) ~~they~~ are entered into by the listed issuer's group with the same party, or ~~with parties who are connected or otherwise associated~~ with one another;
- ~~(2)~~ ~~involve the acquisition or disposal of securities or an interest in one particular company or group of companies;~~
- ~~(3)~~(2) ~~they~~ involve the acquisition or disposal of parts of one assets, or securities or interests in a company or group of companies; or
- ~~(4)~~(3) ~~they~~ together lead to substantial involvement by the listed issuer's group in a new business activity ~~which did not previously form a part of the listed issuer's principal business activities~~.

8. Main Board Listing Rule ~~14A.83~~14A.27 provides that:

The Exchange may ~~aggregate consider aggregating~~ all continuing connected transactions with a ~~single~~ connected person ~~to determine in which category the aggregated transaction falls~~.

ANALYSIS

9. The connected transaction rules seek to ensure that the interests of shareholders as a whole are taken into account by a listed issuer when it enters into transactions with connected persons, in particular to safeguard against connected persons (such as the listed issuer's directors, chief executives or substantial shareholders or their associates) taking advantage of their positions to the detriment of minority shareholders of an issuer. This is achieved by the general requirement for connected transactions to be disclosed and subject to independent shareholders' approval.
10. The purpose of aggregation is to prevent a listed issuer from "splitting" an otherwise large connected transaction into two or more smaller transactions so that, when percentage ratios are applied to each smaller transaction, it does not reach the de minimis thresholds for requiring disclosure and/or shareholders' approval under Chapter 14A. Pursuant to Rule ~~14A.81~~~~14A.25~~, the Exchange may require a listed issuer to aggregate a series of connected transaction if they are all completed within a 12 month period or are otherwise related.
11. Rule ~~14A.82~~~~14A.26~~ sets out a non-exhaustive list of factors which the Exchange will take into account in applying the aggregation rule. The rule intends to provide guidance on the circumstances where the Exchange may require aggregation of transactions of a listed issuer. When determining whether aggregation of transactions is required in a particular case, the Exchange will consider all relevant facts and circumstances of the case.
12. The aggregation rules apply to both one-off connected transactions and continuing connected transactions that generally involve provision of goods and/or services. When determining whether a series of continuing connected transactions should be aggregated, the Exchange will also consider where whether they are of a similar nature as this may indicate "splitting" of a transaction. Rule ~~14A.83~~~~14A.27~~ provides that the Exchange may consider aggregating all continuing connected transactions with a single connected person.
13. In the present case, the Transactions were proposed to be made at the same time and they fell within the circumstances described in Rule ~~14A.82(1)~~~~14A.26(1)~~ as the Transactions were entered into by Group A with members of the Parent Group which, the Exchange considered, were "*parties who are connected-or-otherwise associated with each other*" under Rule ~~14A.82(1)~~~~14A.26(1)~~.
14. The Transactions were proposed to facilitate the implementation of a new business model for the Group. While the Group's retail business would continue, the Group would commence a new line of business in wholesaling products and services to the Parent Group and would outsource certain material business functions to the Parent Group. The Exchange considered that the Transactions would lead to a substantial change to the business model of the Group and they

“together lead to substantial involvement by the listed issuer’s group in a new business activity ~~which did not previously form a part of the listed issuer’s principal activities~~” described in Rule ~~14A.82(3)~~14A.26(4).

15. There were a variety of Transactions relating to various aspects of the Group’s telecommunication business and Company A originally proposed to aggregate the Transactions based on product/service types. Given the special circumstances of the case, in particular the parties’ intention to effect a substantial change to the business activities of the Group through the Transactions, the Exchange determined to aggregate the Transactions under three major categories: (i) provision of services and products by the Group to the Parent Group; (ii) purchases made by the Group from the Parent Group; and (iii) provision of outsourcing services by the Parent Group to the Group. The Transactions, when aggregated on such basis, would require independent shareholders’ approval under Chapter 14A.
16. While the Exchange considered it possible to, in appropriate circumstances, aggregate revenue and expenditure items, it was of the view that the purpose of the aggregation rules was achieved in the present scenario in the manner described in paragraph 15. Accordingly, the question of whether all the Transactions needed to be aggregated as if there were one transaction became irrelevant in this case.

DECISION

17. The Exchange determined that the Transactions should be aggregated under Rule ~~14A.81~~14A.25.