

**REPORT OF THE INSIDER DEALING TRIBUNAL  
OF HONG KONG**

on whether insider dealing took place  
in relation to the listed securities of

**TINGYI (CAYMAN ISLANDS) HOLDING CORP.**

between

12<sup>th</sup> July 2000 and 28<sup>th</sup> July 2000 (inclusive)

and on other related questions



The Chairman of a division of the  
Insider Dealing Tribunal  
Established under section 15 of the  
Securities (Insider Dealing) Ordinance  
Cap. 395 of the Laws of Hong Kong

**Section 16(2) of the  
Securities (Insider Dealing) Ordinance Cap. 395**

Whereas it appears to me that insider dealing (as that term is defined in the Ordinance) in relation to the listed securities of a corporation, namely, Tingyi (Cayman Islands) Holdings Corp. ("the company"), has taken place or may have taken place, the Tribunal is hereby required to inquire into and determine -

- (a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of -

Anna Ho Kwok Wing during the period from 12 July 2000 to 28 July 2000 (both dates inclusive);

- (b) in the event of there having been insider dealing as described in paragraph (a) above, the identity of each and every insider dealer; and  
(c) the amount of any profit gained or loss avoided as a result of such insider dealing.

Dated this 18th day of March 2004.

( Henry Tang )  
Financial Secretary



**The Chairman of a division of the  
Insider Dealing Tribunal  
Established under section 15 of the  
Securities (Insider Dealing) Ordinance  
Cap.395 of the Laws of Hong Kong**

**Amendment to Notice dated 18 March 2004  
Under Section 16(2) of the  
Securities (Insider Dealing) Ordinance Cap. 395**

Whereas it appears to me that insider dealing (as that term is defined in the Ordinance) in relation to the listed securities of a corporation, namely, Tingyi (Cayman Islands) Holding Corp. ("the company"), has taken place or may have taken place, the Tribunal is hereby required to inquire into and determine –

- (a) whether there has been insider dealing in relation to the company connected with or arising out of the dealings in the listed securities of the company by or on behalf of –


Anna Ho Kwok Wing during the period from 12 July 2000 to 28 July 2000 (both dates inclusive);

- (b) in the event of there having been insider dealing as described in paragraph (a) above, the identity of each and every insider dealer; and
- (c) the amount of any profit gained or loss avoided as a result of such insider dealing.

This Notice issued under my hand pursuant to section 16(2) of the Securities (Insider Dealing) Ordinance, Cap 395 amends the Section 16(2) Notice dated 18 March 2004 (copy attached) by correcting the name of the company (previously incorrectly stated as Tingyi (Cayman Islands) Holdings Corp.). There has been no other change to the terms and effect of the original Notice for the purposes of this inquiry.

Dated this 6<sup>th</sup> day of July 2005.

(ii)



( Henry Tang )  
Financial Secretary

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## **ABBREVIATIONS**

Deutsche Bank	—	Deutsche Bank AG
HSBC	—	The Hongkong & Shanghai Banking Corporation Ltd.
SEHK	—	The Stock Exchange of Hong Kong Ltd.
SFC	—	Securities and Futures Commission
Skandia	—	Royal Skandia Asset Management
The Ordinance	—	The Securities (Insider Dealing) Ordinance Cap. 395
The Tribunal	—	Insider Dealing Tribunal
Tingyi	—	Tingyi (Cayman Islands) Holding Corp.
TW	—	Tribunal Witness

## ANNEXURES

- Annexure A — HISTORY OF TINGYI'S SHARE TRADING PRICE AND  
TURNOVER
- Annexure B — JIM LAM'S REPORT BY E-MAIL DATED 13<sup>TH</sup> JULY  
2000 FOLLOWING HIS FIRST VISIT TO TINGYI
- Annexure C — JIM LAM'S FURTHER REPORT DATED 17<sup>TH</sup> JULY 2000  
ON TINGYI
- Annexure D — JIM LAM'S FURTHER REPORT DATED 25<sup>TH</sup> JULY 2000  
FOLLOWING HIS SECOND VISIT TO TINGYI
- Annexure E — TINGYI'S ANNOUNCEMENT ON INTERIM RESULTS  
FOR THE SIX MONTHS ENDED 30<sup>TH</sup> JUNE 2000  
PUBLISHED ON HONG KONG IMAIL DATED  
3<sup>RD</sup> AUGUST 2000
- Annexure F — SAMPLE COPY OF TYPE "A" SALMON LETTER

## **CHAPTER 1**

### **INTRODUCTION**

Tingyi (Cayman Islands) Holding Corp. (“Tingyi”) as of July 2000 had been listed on the Stock Exchange of Hong Kong Limited (“SEHK”) since 7<sup>th</sup> February 1996. Its business concerned primarily the manufacture and distribution of foodstuffs and beverages in Mainland China.

In the mid-1990s Tingyi had recorded regular and substantial net profits averaging over US\$60 million annually. But in 1998 and 1999 it recorded net losses. The loss for 1999 was quite heavy, being in excess of US\$35 million.

But in the year 2000 Tingyi successfully turned its business around and on the 3<sup>rd</sup> August 2000 made an announcement that it had recorded a net profit of US\$17.16 million for the first half of that year. On the day following that announcement Tingyi’s share price rose by about 25.37% over its previous closing price and its turnover rose by some 20 million shares over its previous average daily turnover of only 1 to 2 million shares for the month of July. Tingyi’s share history is at Annexure A hereto.

Prior to its announcement in August Tingyi had employed Debbie Ho Ho Yee (“Debbie Ho”) in its Hong Kong office as an Investment Relations Manager.

In July of 2000 Jim Lam a research analyst of Deutsche Bank AG (“Deutsche Bank”) in Hong Kong together with his supervisor at Deutsche Bank Lawrence Ang Siu Lun (“Lawrence Ang”) had gone to Tingyi on a company visit to obtain information about its operations. This visit had been prompted by an inquiry from a fund manager of Royal Skandia Asset Management (“Skandia”) Anna Ho Kwok Wing (“Anna Ho”) as to, inter alia, whether Tingyi’s shares were worth buying.

Accordingly on the 11<sup>th</sup> July Jim Lam and Lawrence Ang met with Debbie Ho and were given information about Tingyi's business operations. Debbie Ho had been provided with this information in the course of her duties. Part of her job was to meet with and answer the inquiries of investment analysts.

The information she provided to Jim Lam included:-

- (a) Total sales growth for Tingyi products for the first 5 months of 2000.
- (b) Profit margins for some of Tingyi's more important products.
- (c) The year on year decline in operating costs (which may have been a "target" rather than an actual figure).
- (d) Cash on hand and debts at the end of the first half of 2000.
- (e) Information concerning the restructuring of Tingyi's distribution system.
- (f) Information concerning increasing consumer demand on the Mainland.
- (g) Information that Tingyi's major competitor had ceased a price war in the mainland market.

On the basis of that information Jim Lam contacted Anna Ho in the afternoon of the 11<sup>th</sup> July 2000 and spoke to her about Tingyi. The information he provided her with was based at least to some extent on the information he had been provided with by Debbie Ho.

The following day 12<sup>th</sup> July 2000 Anna Ho bought 3 million Tingyi shares for funds under her management.

The next day, 13<sup>th</sup> July 2000, Jim Lam issued by e-mail a report on his visit to Tingyi to the equity sales staff of Deutsche Bank and to over 100 of its clients (including Anna Ho) providing a composite set of information and predictions about Tingyi partially based on what he had been told by Debbie Ho and partially on his own knowledge and conclusions. The e-mail is at Annexure B hereto.



On that day 13<sup>th</sup> July 2000 Anna Ho purchased a further 21 million Tingyi shares for her funds.

On 17<sup>th</sup> July 2000 Jim Lam through Deutsche Bank issued a further and more detailed report on Tingyi containing more detailed analysis and forecasting a US\$32 million net annual profit for Tingyi. It recommended Tingyi as a “Buy”. The report is at Annexure C hereto.

On 18<sup>th</sup> July Anna Ho purchased a further 2.4 million Tingyi shares for her funds.

On the following day 19<sup>th</sup> July there was another “company visit” to Tingyi. On this occasion Jim Lam, Anna Ho and Qian Mingjin a fund manager from AIG Investment Corporation (Asia) Ltd. went to the offices of Tingyi and met with Debbie Ho. She provided them with some updated financial information for the first half of 2000. That information comprised inter alia updated details of Tingyi’s sales growth in specific products for the first six months of 2000 and the profit margins achieved for product categories and updated cash on hand and debt figures.

Following that visit, on the 27<sup>th</sup> July Jim Lam through Deutsche Bank issued a further report on Tingyi. It is at Annexure D hereto. It repeated the “Buy” recommendation of the earlier report and elaborated somewhat on the information and opinions provided in the first report of 17<sup>th</sup> July 2000.

Between 20<sup>th</sup> to 28<sup>th</sup> July 2000 Anna Ho purchased 15 million Tingyi shares for her funds making a total of more than 42 million shares in total she had purchased since first obtaining information about Tingyi at a cost of about \$25 million.

On 3<sup>rd</sup> August 2000 Tingyi announced an interim net profit for the first half of 2000 of US\$17.1 million, thereby disclosing its significant turnaround from the losses of the two preceding years. That announcement is at Annexure E hereto. On the 3<sup>rd</sup> August its share price rose to close at \$0.84 from the 2<sup>nd</sup> August closing price of \$0.67. Turnover also increased from the previous day’s 662,000 shares to

23,717,710 shares. On the 4<sup>th</sup> August turnover increased again to 30,152,800 shares and the closing price rose to \$0.93, which represented a net increase of 36% from the closing price of 2<sup>nd</sup> August.

The Securities and Futures Commission (“SFC”) commenced investigations into Anna Ho’s purchases of Tingyi shares during the period 12<sup>th</sup> to 28<sup>th</sup> July 2000, and as the result of that investigation a notice pursuant to section 16(2) of the Securities (Insider Dealing) Ordinance Cap. 395 (“the Ordinance”) was issued by the Financial Secretary on the 18<sup>th</sup> March 2004 directed to the Chairman of a division of this Tribunal. That notice was amended to incorporate the correct name of the company on the 6<sup>th</sup> July 2005. Both the original notice and the amendment are set out at page (i) and (ii) of this report.

## **CHAPTER 2**

### **PROCEDURE**

By that notice pursuant to section 16(2) of the Ordinance dated 18<sup>th</sup> March 2004 (as amended on 6<sup>th</sup> July 2005) the Financial Secretary required this Tribunal to inquire into and determine:

- (a) whether there has been insider dealing in relation to Tingyi (Cayman Islands) Holding Corp. (“the company”) connected with or arising out of the dealings in the listed securities of the company by or on behalf of -

Anna Ho Kwok Wing during the period from 12 July 2000 to 28 July 2000 (both dates inclusive);

- (b) in the event of there having been insider dealing as described in paragraph (a) above, the identity of each and every insider dealer; and
- (c) the amount of any profit gained or loss avoided as a result of such insider dealing.

On the 6<sup>th</sup> July 2005 two lay members were appointed to the Tribunal by the Financial Secretary and the Tribunal was constituted, pursuant to section 15(2) of the Ordinance, as follows:

The Hon Mr. Justice McMahon (as Chairman)

Mr. Paul Tong Hin Sum, Master of St. John’s College, University of Hong Kong and also until recently a practicing barrister at the Hong Kong Bar; and

Mr. Jean Paul Wou, a presently practising barrister at the Hong Kong Bar and a chartered accountant by training. He was until recently a director of UBS AG and UBS Investment Bank.

On that same day the Tribunal received a corrigendum to the existing section 16(2) notice reflecting the correct name of Tingyi as Tingyi (Cayman Islands) Holding Corp.

On the 2<sup>nd</sup> September 2005, the Tribunal appointed Mr. Peter Ip and Mr. Edwin Choy of the Hong Kong Bar to act as counsel assisting the Tribunal.

Meetings were held between the members of the Tribunal and counsel assisting on the 7<sup>th</sup> September 2005 and 17<sup>th</sup> February 2006 concerning:

- (1) Advice sought by the Tribunal as to the liability of professional individuals under section 9(1) of the Ordinance in circumstances where that individual may be going about their usual course of business; and
- (2) The issuance of Salmon letters and determination of dates for the preliminary hearing.

The advice provided by counsel was that the inquiry continue though there was no suggestion of dishonesty on the part of the potential implicated parties. We accepted that advice and will come back to that issue at the end of this report.

Salmon<sup>1</sup> letters were issued to three persons the Tribunal decided were at risk of being found to be insider dealers notifying them of that fact. Those persons were:

Debbie Ho Ho Yee (“Debbie Ho”)

Jim Lam

Anna Ho Kwok Wing (“Anna Ho”).

They received their Salmon letters on 28<sup>th</sup> February, 27<sup>th</sup> February and 1<sup>st</sup> March respectively. A copy of the section 16(2) notice was provided

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<sup>1</sup> Salmon letters are so called after Lord Salmon who reported on the procedures to be used in inquiries such as the present, and advised that letters of notification be sent to persons at risk of an adverse finding by a Tribunal of inquiry.

with those Salmon letters as well as a synopsis of the factual background of the inquiry. A copy of a sample Salmon letter is at Annexure F hereto.

The three implicated parties also received the various bundles of statements and documents, comprising the evidence to be produced in the inquiry, prior to the holding of the first preliminary hearing.

On the 6<sup>th</sup> March 2006 the first preliminary hearing in this inquiry was held. Legal representation was approved for all three implicated parties as follows:

Debbie Ho	—	Messrs. Herbert Smith (appearance by Mr. Tim Mak)
Jim Lam	—	Messrs. Clifford Chance (appearance by Mr. Martin Rogers)
Anna Ho	—	Messrs. Richards Butler (appearance by Mr. David Morrison)

The Chairman delivered a statement of the Tribunal explaining the procedures which would be adopted for the purposes of the inquiry and the nature of the hearing.

Mr. Rogers for Jim Lam intimated that he may wish to make certain submissions as to the conduct of the inquiry and to be served with copies of assisting counsel's advice to the Tribunal referred to above. The hearing was adjourned to a mention date to allow Mr. Rogers' position to be clarified.

On that mention date of 3<sup>rd</sup> April 2006 Mr. Jonathan Harris SC was instructed by Richards Butler to appear for Anna Ho and his representation was approved by the Tribunal.

Mr. Rogers on that day made certain suggestions as to the order of dealing with aspects of the evidence and the timing of arguments on the law whereby "split" hearings be conducted in respect of particular

issues which would arise for consideration by the Tribunal during the course of the inquiry. Mr. Rogers' motivation in suggesting this somewhat innovative procedure was, commendably, to save time and costs. There were no other applications to be made and the Tribunal adjourned to another mention date for the purpose of considering those matters. Additionally it set the date for the hearing to commence at 26<sup>th</sup> June 2006.

The further mention date was held on the 12<sup>th</sup> May 2006. On that day the Tribunal informed the parties that the inquiry would proceed in the usual way, though with witnesses called so far as possible in chronological order and, so far as possible, in close nexus so far as their evidence dealt with a particular aspect of the inquiry. Counsel for the implicated parties and counsel assisting the Tribunal indicated they were attempting to agree many of the facts relevant to the inquiry prior to the commencement of the hearing. Much of the facts were eventually not in dispute.

The hearing commenced on the 26<sup>th</sup> June 2006.

Counsel assisting made an opening statement and following that witnesses were called. The Tribunal determined what witnesses it wished to hear.

A total of 25 witnesses were called. They were:

<b>Name</b>		<b>Present Occupation</b>	<b>General relevance to the inquiry</b>
TW 1 <sup>2</sup>	Madam Angela Moh Jen Yin ("Angela Moh")	Equity Analyst, Morgan Stanley	Reported on Tingyi for Morgan Stanley in 2000. Contact with Tingyi in Hong Kong was Debbie Ho. Provided with Tingyi information by Debbie Ho.

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<sup>2</sup> "TW" refers to "Tribunal Witness".

<b>Name</b>		<b>Present Occupation</b>	<b>General relevance to the inquiry</b>
TW 2	Andrew Kuet Shun Cheong ("Andrew Kuet")	Analyst at Axix Capital Ltd., an investment company	In 2000 worked for SG Securities as analyst. He researched Tingyi at that time, and he also was provided with information by Debbie Ho.
TW 3	Loke Meng Chong	Senior Trader for hedge fund, Avenue Capital Group LLC based in New York	Vice President of G.K. Goh Securities. Looked at Tingyi at request of client, and was provided with information by Debbie Ho.
TW 4	Frank Lai Fu Hing ("Frank Lai")	Vice-President, Bank of China Research. Chartered Financial Analyst	Research Manager at Kleinwort Benson. Did research analysis of Tingyi and was provided with information by Debbie Ho.
TW 5	Madam Linda Marie Csellak ("Linda Csellak")	Fund Manager, Kasagi Fund [Dort Capital Corporation]. Chartered Financial Analyst	Gave evidence as to a profit forecast she could make concerning Tingyi based on the information provided to Jim Lam by Debbie Ho.
TW 6	Mark S Rosenfeld	Head of Research for Macquarie Securities Asia Ltd.	Analyst with Salomon Smith Barney HK Ltd. in 2000. Responsible for Tingyi at that time. Given information by

<b>Name</b>		<b>Present Occupation</b>	<b>General relevance to the inquiry</b>
			Debbie Ho.
TW 7	Viktor Ma Xiang ("Viktor Ma")	Equity Analyst, Morgan Stanley since September 2000.	Fund Manager and a client of Deutsche Securities. Also gave evidence as to a profit forecast he could make for Tingyi on the basis of information provided to Jim Lam to Debbie Ho.
TW 8	Madam Bonnie Lai Siu Ha ("Bonnie Lai")	Senior Research Analyst, CCB International Securities Ltd. (China Construction Bank)	Worked for Core Pacific-Yamaichi International (HK) Ltd. as an analyst in 2000. Provided with information concerning Tingyi by Debbie Ho.
TW 9	Madam Belle Liang	Investment Advisor, Hang Seng Bank	Worked for Credit Suisse First Boston as an analyst in 2000. Provided with information concerning Tingyi by Debbie Ho.
TW 10	Madam Irene Chow	Investment Advisor with Societe General Bank & Trust	Portfolio Manager with Citibank Global Asset Management (Asia) Ltd. in 2000. Provided with information concerning Tingyi by Debbie Ho.
TW 11	Henry Tse	Analyst at Merrill Lynch Asia Pacific	Employed by Hong Kong China Gas in 2000 as



<b>Name</b>		<b>Present Occupation</b>	<b>General relevance to the inquiry</b>
			investment manager. Provided with information concerning Tingyi by Debbie Ho.
TW 12	Geoffrey Cheng Bik Hoi ("Geoffrey Cheng")	Director, Equity Research Daiwa Institute of Research (HK) Ltd.	Analyst at HSBC in 2000. Provided with information concerning Tingyi by Debbie Ho.
TW 13	Lawrence Ang Siu Lun ("Lawrence Ang")	Liaison Director for a listed company.	Director, Head of China Research at Deutsche Bank. Jim Lam's supervisor at Deutsche Bank. Attended meeting on 11 <sup>th</sup> July with Debbie Ho.
TW 14	Ying Kwok Keung	Investor	Mail Supervisor in Economist Group. He was also an investor in 2000. Traded in Tingyi shares.
TW 15	Madam Qian Mingjin	Account Executive with CAF Securities Ltd.	Fund Manager at AIG (Asia) Investments Ltd. Was provided with information about Tingyi by Debbie Ho. Attended the 19 <sup>th</sup> July meeting.
TW 16	Madam Huang Chia-joo	Not given as did not give oral	Fund Manager for Comgest (Far East) Ltd. in

<b>Name</b>		<b>Present Occupation</b>	<b>General relevance to the inquiry</b>
		evidence.	2000. Provided with information about Tingyi by Debbie Ho.
TW 17	Madam Queenie Cheung Sau Lin	Not given as did not give oral evidence.	Analyst at Kleinwort Benson. Provided with information about Tingyi by Debbie Ho.
TW 18	Madam Cynthia Lam Kit Lan	Compliance Officer of Bloomberg LP., Hong Kong	Gave evidence as to analyst reports available on Tingyi through Bloomberg service in early 2000.
TW 19	Madam Karen Ngai	Director, Enforcement Division, SFC	Interviewed Jim Lam and other witnesses.
TW 20	Madam Stella Fung Sau Hong ("Stella Fung")	Associate Director, Enforcement Division, SFC	Expert Witness
TW 21	Richard Arthur Witts ("Richard Witts")	Director-Equity Sales, CLSA Limited	Expert Witness for Anna Ho
TW 22	Brian Leung Yiu Man ("Brian Leung")	Managing Director of the Research Department of China International Capital Corporation	Expert Witness for Jim Lam

<b>Name</b>		<b>Present Occupation</b>	<b>General relevance to the inquiry</b>
TW 23	Madam Debbie Ho Ho Yee ("Debbie Ho")	Tingyi Investor Relations Manager. Responsible also for Sales Department in Hong Kong	Implicated Party
TW 24	Jim Lam	Executive Director, China Research at Morgan Stanley	Implicated Party
TW 25	Madam Anna Ho Kwok Wing ("Anna Ho")	Portfolio Manager, DNB (Nor.) Asset Management.	Implicated Party

At the end of the evidence the Tribunal heard submissions on 28<sup>th</sup> September 2006 from counsel assisting and from the counsel and legal representatives appearing for the implicated parties. We then retired to consider the questions posed by paragraphs (a) and (b) of our Terms of Reference.

On the 11<sup>th</sup> December 2006 we issued an Interim Report to the Financial Secretary, and subsequently to counsel assisting and the three implicated parties.

On the 13<sup>th</sup> December 2006 we heard submissions from counsel as to costs for Jim Lam and Anna Ho. Debbie Ho also applied for costs, though she was still unrepresented. We then made the orders as to costs set out in Chapter 7 of this report and sent the final report to the Financial Secretary.

## **CHAPTER 3**

### **THE LAW**

In this chapter we do not set out every principle of law which became relevant and was applied to our considerations and findings during this inquiry. We set out the more important.

#### **1. The Statutory Provisions contained in the Securities (Insider Dealing) Ordinance Cap. 395**

Insider dealing is defined by section 9(1) of the Ordinance. It is as follows so far as it is relevant to this inquiry:

#### **Section 9**

##### **"9. When insider dealing takes place**

- (1) Insider dealing in relation to a listed corporation takes place –
  - (a) when a person connected with that corporation who is in possession of information which he knows is relevant information in relation to that corporation deals in any listed securities of that corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) or counsels or procures another person to deal in such listed securities knowing or having reasonable cause to believe that such person would deal in them;
  - (b) ...
  - (c) when relevant information in relation to that corporation is disclosed directly or indirectly, by a person connected with that corporation, to another person and the first-mentioned person

knows that the information is relevant information in relation to the corporation and knows or has reasonable cause for believing that the other person will make use of the information for the purpose of dealing, or counselling or procuring another to deal, in the listed securities of that corporation or their derivatives (or in the listed securities of a related corporation or their derivatives);

- (d) ...;
- (e) when a person who has information which he knows is relevant information in relation to that corporation which he received (directly or indirectly) from a person –
  - (i) whom he knows is connected with that corporation; and
  - (ii) whom he knows or has reasonable cause to believe held that information by virtue of being so connected,deals in the listed securities of that corporation or their derivatives (or in the listed securities of a related corporation or their derivatives) or counsels or procures another person to deal in those listed securities or their derivatives;"

Sub-section (a), (c) and (e) of the section 9(1) incorporate into the prohibited insider dealing the concepts of “counseling or procuring”. Neither is defined in the Ordinance. In our view to “counsel” means to advise, encourage or persuade. To “procure” means to take steps to bring about the stated activity, i.e. dealing in the corporation’s securities.

Sub-sections (a), (c) and (e) of section 9(1) also require that the information possessed, disclosed or received is relevant information. Relevant information is defined by section 8 of the Ordinance as follows:

### **Section 8**

#### **“8. “Relevant information”**

In this Ordinance “relevant information” (有關消息) in relation to a corporation means specific information about that corporation which is not generally known to those persons who are accustomed or would be likely to deal in the listed securities of that corporation but which would if it were generally known to them be likely materially to affect the price of those securities.”

A further common element of sub-sections (a), (c) and (e) of section 9(1) is that the relevant information be possessed by or emanate from a person connected with the corporation. A connected person is defined by section 4 as follows:

#### **Section 4**

##### **“4. “Connected with a corporation”**

- (1) A person is connected with a corporation for the purposes of section 9 if, being an individual –
- (a) he is a director or employee of that corporation or a related corporation; or
  - (b) he is a substantial shareholder in the corporation or a related corporation; or
  - (c) he occupies a position which may reasonably be expected to give him access to relevant information concerning the corporation by virtue of –
    - (i) any professional or business relationship existing between himself (or his employer or a corporation of which he is a director or a firm of which he is a partner) and that corporation, a related corporation or an officer or substantial shareholder in either of such corporations; or
    - (ii) his being a director, employee or partner of a substantial shareholder in the corporation or a related corporation; or

- (d) he has access to relevant information in relation to the corporation by virtue of his being connected (within the meaning of paragraph (a), (b) or (c)) with another corporation, being information which relates to any transaction (actual or contemplated) involving both those corporations or involving one of them and the listed securities of the other or their derivatives or to the fact that such transaction is no longer contemplated; or (*Amended 29 of 1994 s. 4*)
- (e) he was at any time within the 6 months preceding any insider dealing in relation to the corporation a person connected with the corporation within the meaning of paragraph (a), (b), (c) or (d). (*Amended 29 of 1994 s. 4*)”

Also relevant to our considerations in this inquiry was section 6 of the Ordinance which defines dealing in securities as follows:

### **Section 6**

#### **“6. "Dealing in securities or their derivatives"**

For the purposes of this Ordinance, a person deals in securities or their derivatives if (whether as principal or agent) he buys, sells, exchanges or subscribes for, or agrees to buy, sell, exchange or subscribe for, any securities or their derivatives or acquires or disposes of, or agrees to acquire or dispose of, the right to buy, sell, exchange or subscribe for, any securities or their derivatives. (*Amended 29 of 1994 s. 5*)”

A further provision relevant to these proceedings is that contained in paragraph 13 of the Schedule to the Ordinance. It is as follows:

"13. Every question before the Tribunal shall be determined by the opinion of the majority of the members except a question of law which shall be determined by the chairman."

Accordingly while references to the Tribunal may be in general terms so far as expressions of the law which we applied are concerned questions of law were determined by the Chairman alone and then applied by the Tribunal as a whole. Questions of fact were decided by all of the members. All such findings of fact were unanimous except where stated to be by a majority.

## **2. General Principles of Law**

### **Standard of Proof**

In all previous inquiries under the provisions of the Ordinance the standard of proof adopted has been a high degree of probability.

That was the standard that we stated we would apply at the preliminary hearing during the course of the Chairman's opening statement. We said we would apply that standard subject to any submission to the contrary.

No such submission has been made. And in our view that standard is the correct standard. In coming to that conclusion we adopt the comments of the Tribunal as made in the Parkview Report:

"The standard of proof should be simply stated and remain the same throughout. It is a high standard of proof – not the highest reserved for criminal allegations – but nonetheless high. It is not appropriate to say that within a given inquiry the more serious the allegation the



higher the standard should be. The standard at all times is high. “A high degree of probability” refers to the top end of the civil standard. It is set high because the issues are serious. A finding of insider dealing against an individual is a finding of wrongdoing which will adversely affect his or her reputation. It carries with it penal sanctions and public obloquy.”<sup>3</sup>

### **Inferences**

While perhaps the facts of the present case provided a greater degree of direct evidence than is usual in these inquiries we nevertheless on occasion were concerned with the drawing of inferences. We proceeded on the basis that an inference adverse to an implicated party could only be drawn by us if it was compelling and was the only reasonable inference which could be drawn from the facts otherwise proven to our satisfaction. In acting on that principle we bore in mind the words of Lord Wright in *Caswell – v- Powell Duffryn Associated Collieries Ltd.* [1940] AC 152:

“Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases, the inference does not go beyond reasonable probability. But if there are no positive proven facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.”

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<sup>3</sup> Report of the Insider Dealing Tribunal of Hong Kong in the Hong Kong Parkview Group Limited inquiry.

### **Members' expertise**

Lay members of a Tribunal such as the present often bring with them considerable expertise in areas touched upon by the inquiry. We directed ourselves in terms of the comments of Lord Widgery C.J. in *Wetherall - v - Harrison* (1976) QB 773:-

“it is not improper for a justice who has special knowledge of the circumstances forming the background to a particular case to draw on that special knowledge in interpretation of the evidence which he has heard. I stress that last sentence, because it would be quite wrong if the magistrate went on, as it were, to give evidence to himself in contradiction of that which has been heard in court. He is not there to give evidence to himself, still more is he not there to give evidence to other justices; but that he can employ his basic knowledge in considering, weighing up and assessing the evidence given before the court is I think beyond doubt.”

Members were therefore alert that they should not provide themselves or other members with “evidence” from their own knowledge or experience, but could only use their expertise in assessing the evidence of witnesses.

### **The cases of each implicated party considered separately**

The Tribunal directed itself that the role of each implicated party should be considered separately and that a finding of culpability or an exoneration so far as one was concerned did not necessarily mean the same finding would be arrived at in the case of another. The role of each implicated party was considered separately.

### **The statements of witnesses and implicated parties**

All witnesses, including the implicated parties, had made written and signed statements or had signed the records of their interviews by SFC officers. All such statements and records of interview were accepted before the Tribunal as evidence for all purposes in addition to any oral evidence given by those witnesses and implicated parties.

The weight we attached to the contents of the statements and records of interview depended on the circumstances. Obviously that fundamentally depended on the ultimate credibility we attached to the witness or implicated party. We generally attached less weight to matters of hearsay than to matters directly within the witnesses or implicated parties' direct knowledge.

In our view in taking this approach we were acting in accordance with section 17(1)(a) of the Ordinance:

#### **"17. Powers of Tribunal**

The Tribunal may, for the purpose of an inquiry under this Ordinance –

- (a) receive and consider any material whether by way of oral evidence, written statements, documents or otherwise, notwithstanding that such material would not be admissible in evidence in civil or criminal proceedings in a court of law;"

### **Experts**

Expert witnesses gave evidence before us as to the question of the price sensitivity of the information we were concerned with in the inquiry.

In approaching their evidence we bore in mind that they had undoubted expertise in their field but that, as with any other witness, we were entitled to accept or reject their evidence in part or in whole and that their evidence should be considered in the context of all the evidence before the Tribunal.

### **The lapse of time**

We appreciated that nearly six years had elapsed from the time of the events we were concerned with and the commencement of this inquiry. We therefore bore in mind that memories of witnesses would perhaps have faded considerably over that period of time and that a witness's failure to remember an event or details of a conversation, or inconsistencies between witnesses evidence could well have been due to that time lapse. As it transpired witnesses remembered the important aspects of the events remarkably well.

## **CHAPTER 4**

### **THE ISSUES AND THE EVIDENCE**

The purpose of this chapter is to summarise the issues which arose during the course of the hearing and the evidence relating to those issues sufficiently so that a preliminary overview of the matters which the Tribunal had to determine in answering the questions raised by the section 16(2) notice can be achieved. We herein set out the important issues raised during the inquiry regarding each implicated party, though as will be seen in the next chapter our conclusion that there was no relevant information provided by Debbie Ho to Jim Lam or Anna Ho effectively made the balance of the issues which arose academic.

The Tribunal had to determine whether there was insider dealing arising out of Anna Ho's purchase of 42,200,000 Tingyi shares over the period 12<sup>th</sup> July 2000 to 28<sup>th</sup> July 2000.

The only involvement in insider dealing realistically possible for each implicated party was as follows:-

#### **Debbie Ho**

It was common ground during the course of this inquiry that Debbie Ho was one of the liaison officers of Tingyi who was responsible for meeting with company analysts and fund managers, amongst others, and dealing with their enquiries about the company.

She was plainly a person connected with Tingyi for the purposes of section 9 of the Ordinance, as that term is defined by section 4. Accordingly we considered her role in these events from the perspective of sections 9(1)(a) and 9(1)(c) of the Ordinance. Those provisions are set out in Chapter 3 above.

So far as the provisions of section 9(1)(a) are concerned, the issues were whether Debbie Ho as a connected person and if knowingly

in possession of relevant information counselled or procured Anna Ho to deal in Tingyi shares. So far as the provisions of section 9(1)(c) are concerned, the issues were whether Debbie Ho as a connected person and if knowingly in possession of relevant information disclosed that information to Jim Lam or Anna Ho and knew or had reasonable cause to believe they would use the information to deal or counsel or procure others to deal in Tingyi shares.

On the 11<sup>th</sup> July Debbie Ho met in her office in Hong Kong with Jim Lam and Lawrence Ang (Jim Lam's supervisor at Deutsche Bank) and answered various questions asked of her by both of them. Jim Lam communicated with Anna Ho at Skandia after that meeting and on the next day the 12<sup>th</sup> July Anna Ho started her purchases of Tingyi shares. Debbie Ho met again with Jim Lam and Anna Ho (and another fund manager Qian Mingjin of AIG Investment Corporation (Asia) Ltd.) on the 19<sup>th</sup> July and again provided information to them in response to their questions. Anna Ho continued purchasing Tingyi shares.

The first issue concerning Debbie Ho was as to the nature of the information concerning Tingyi which she divulged during the course of the two meetings on the 11<sup>th</sup> and 19<sup>th</sup> July. The importance of this issue was quite simply whether the information divulged by Debbie Ho at either or both of those meetings could have amounted to relevant information. We therefore had to determine what information Debbie Ho had given out at the meetings.

The evidence relating to that matter comprised the evidence of Debbie Ho, Jim Lam and Lawrence Ang as to what was said at the meeting of 11<sup>th</sup> July, together with the notes taken by Jim Lam at that meeting, a copy of which were exhibited before us.

Similarly at the meeting of the 19<sup>th</sup> July we had the evidence of the participants as to what information was provided by Debbie Ho. On that occasion the participants were again Debbie Ho and Jim Lam as well as Anna Ho and Qian Mingjin. Jim Lam's notes of that meeting were also available to us as were the notes of Anna Ho and Qian Mingjin.

From all that evidence we were able to arrive at a reasonable determination of what information was provided by Debbie Ho. We then had to consider whether that information amounted to relevant information as defined by section 8 of the Ordinance. We have also set out that section in full in Chapter 3.

That section, paraphrased, requires relevant information to be specific, unknown to the market and price sensitive to a material extent.

While, as it eventuated, there was no great issue as to the information provided by Debbie Ho being specific (with one exception which we will deal with later) there was considerable argument as to it being both known to the market and price sensitive.

As to the former we had a considerable volume of evidence demonstrating in broad terms that by the time Jim Lam and Lawrence Ang met with Debbie Ho on the 11<sup>th</sup> of July a substantial portion of the information she gave them at that meeting had already been circulated amongst the financial community in Hong Kong in the form of analysts reports and had also to a lesser extent been circulated more generally in some newspaper articles.

We heard evidence from a number of witnesses, mostly analysts and fund managers, who described how analysts reports would be sent to fund manager clients of the analysts company whether solicited or not. We heard also from particular witnesses as to how those reports could (with some restrictions as to access) be made available in the records of financial media companies such as Bloomberg and Reuters.

In dealing with this issue as to whether the information provided by Debbie Ho to Jim Lam and Anna Ho at their meetings was already in the market we had also to consider the nature of the market for Tingyi shares. It was common ground that Tingyi was a relatively small capital and thinly traded stock but there was no real issue that some funds which dealt in the stock of small-capital corporations formed at least part of its market. The nature of the remaining market was, however, the subject of argument and was one of the issues we had to resolve. Tingyi was a thinly traded stock as we have said. There was therefore, at least

initially, little information as to the nature of those accustomed or likely to deal in its securities.

As matters transpired the major issue we had before us in determining whether what Debbie Ho told Jim Lam and Anna Ho was relevant information for the purposes of section 8 of the Ordinance was whether that information was price sensitive in the terms of section 8.

Once the market for Tingyi shares was determined the fundamental issue was whether the information provided by Debbie Ho was price sensitive in that, if it were known to that market, it was likely to affect the price of the shares of Tingyi.

The question of pre-existing information in the market was germane to this issue as well. Obviously if the thrust of what Debbie Ho had divulged was already known to the market then the price sensitivity of her information had to be assessed in that light. Obviously this was a matter of degree. If nearly all or a large part of the “good news” about a particular company has already been digested by the market so as to influence its expectations so far as that company’s performance is concerned, then that may well lessen the future price sensitivity of the information comprising that good news. In short, the more of the information which was in and had been digested by the market, then the less price sensitive it was when divulged by Debbie Ho to Jim Lam and Anna Ho.

The evidence before the Tribunal as to the price sensitivity of Debbie Ho’s information was provided by three expert witnesses. The first was Stella Fung Director of the Enforcement Division of the SFC. The others were Richard Arthur Witts Director of CLSA Ltd. and Brian Leung of China International Capital Corporation.

All gave their views on the price sensitivity of Debbie Ho’s information and were of assistance also in bringing to the Tribunal’s attention various newspaper articles and analysts’ reports which provided insight into what degree of knowledge the market had as to that information.



A remaining important issue so far as the implicated parties were concerned was whether they knew that the information Debbie Ho divulged was relevant information, i.e. whether they were aware of the price sensitivity of the information and were aware it was not generally known to the market at the time Debbie Ho divulged it to Jim Lam and Anna Ho on the 11<sup>th</sup> and 19<sup>th</sup> July 2000.

This issue arose during the inquiry because all insider dealing contrary to the provisions of section 9 of the Ordinance requires that before a person is found to be an insider dealer contrary to any provision of that section he must be shown to have known that the information possessed, disclosed or received was relevant information.

If an individual pays no heed to the nature of the information and does not consider at all as to whether it is relevant in the terms of section 8 of the Ordinance then he or she has not breached any of the provisions of section 9 and is not an insider dealer. “Knowledge” is a subjective concept and the legislation, in our view, requires actual knowledge of the relevance of the information to be established.

It seemed to us during the course of the inquiry that this issue would have arisen for determination in respect of all implicated parties but particularly in the circumstances of Debbie Ho who, it was common ground, was a paid employee of Tingyi whose duty it was to answer questions concerning the company which were asked by visiting analysts and fund managers.

### **Jim Lam**

The issues we have set out as arising in respect of our consideration of the role of Debbie Ho, that is of what information was in fact divulged by Debbie Ho, whether in whole or in part it was known to the market, the nature of that market and the price sensitivity of the information and knowledge of the information being “relevant”, arose also in similar form concerning Jim Lam.

But additional issues arose concerning Jim Lam. He was not a person connected with Tingyi and accordingly, we considered his role

from the perspective of section 9(1)(e) of the Ordinance. That provision is set out in full in Chapter 3. Section 4(1)(c)(i) (also set out in Chapter 3) does not, in our view apply. Neither Jim Lam nor Anna Ho, although analysts, could really be said to occupy positions which “may reasonably be expected” to give them access to relevant information of Tingyi. Analysts are supposedly in no better position than ordinary citizens in this regard. Tingyi (or any other company) is not expected to divulge relevant information to them.

As it was never suggested that Jim Lam himself purchased Tingyi shares the only possible issue was whether he counseled or procured Anna Ho to purchase the Tingyi shares, or any of them, which she acquired during the period 12<sup>th</sup> – 28<sup>th</sup> July 2000 contrary to section 9(1)(e) of the Ordinance. In determining this we had to take into account firstly that he spoke to Anna Ho after his visit to Tingyi on 11<sup>th</sup> July and secondly, the terms of the various e-mails and reports provided by Jim Lam to Anna Ho from the 13<sup>th</sup> July onwards which were the only directly evidenced communications between them.

Further, we had to consider in addition to whether Jim Lam had disclosed to Anna Ho any relevant information he had received from Debbie Ho, whether in disclosing that information he had contributed so much of his own opinion and conclusions i.e. his expertise as an analyst, so as to have changed the nature of the information he gave to Anna Ho from that which he was originally provided by Debbie Ho.

### **Anna Ho**

Her role also fell to be considered under the provisions of section 9(1)(e) of the Ordinance. That provision is set out in full in Chapter 3.

The issues to be considered were, so far as the period of her purchases from 12<sup>th</sup> July to 18<sup>th</sup> July was concerned, substantially the same as those to be considered in regard to Jim Lam. That is what information was disclosed to her by Jim Lam and whether the information disclosed to her was relevant, and whether she knew it to be such.

An additional matter however concerned whether she knew, prior to her visit to Tingyi on 19<sup>th</sup> July, that the information she had been provided with by Jim Lam had come originally from a person “connected” with Tingyi (that is, Debbie Ho).

So far as her Tingyi share purchases after her meeting with Debbie Ho on the 19<sup>th</sup> July were concerned, the issue which arose was whether that information provided “new” relevant information to her. Obviously at that stage she was aware of the source of the information and that it came from a person connected to Tingyi whose employment gave her access to that information.

## **CHAPTER 5**

### **RELEVANT INFORMATION**

As will be seen the question as to whether the information provided to Jim Lam (and Lawrence Ang) on the 11<sup>th</sup> July 2000, and to Jim Lam and Anna Ho on the 19<sup>th</sup> July amounted to relevant information was central to the answers provided by this Tribunal to the Financial Secretary's notice of 6<sup>th</sup> July 2005 and its corrigendum of 18<sup>th</sup> March 2004.

We will not repeat the definition of relevant information pursuant to section 8 of the Ordinance as set out in Chapter 3 above.

But it will be recalled there are three requirements which have to be satisfied before information falls within the definition of relevant information in section 8.

Those requirements are (paraphrased):

- (1) The information must be specific.
- (2) The information must not be generally known to the actual or potential market for Tingyi shares; and
- (3) The information must be price sensitive in that if it were known to that market, it would likely affect the price of Tingyi shares.

We will deal with each of the requirements in turn.

**(1) The information must be specific**

There was never any substantive issue raised before us about the information provided by Debbie Ho during either the 11<sup>th</sup> July or 19<sup>th</sup> July meetings being specific.

That information comprised what has been referred to throughout the evidence in this inquiry as the First Financial Data (from the meeting of 11<sup>th</sup> July) and Second Financial Data (from the meeting of 19<sup>th</sup> July). We might add for clarity that the term “financial data” we refer to in this chapter is a distillation of the information from the first meeting (of 11<sup>th</sup> July 2000). The meeting of the 19<sup>th</sup> July did not, we are satisfied, add significantly to the information provided during the meeting of 11<sup>th</sup> July. It repeated and on occasion updated aspects of the previous information and provided some greater detail. We, in the balance of this chapter, in using the term “financial data” are referring to the data disclosed on the 11<sup>th</sup> July (unless we specifically incorporate or refer to the 19<sup>th</sup> July data).

We are satisfied that of the large body of information provided by Debbie Ho to Jim Lam on the 11<sup>th</sup> July that the financial data referred to in due course is in fact an accurate reflection of the only possible points from that body of information which could be capable of being relevant information.

We now summarize the evidence as to the background of the meetings and what information was provided by Debbie Ho on the occasion of both meetings.

### *The meeting of 11<sup>th</sup> July*

On the occasion of this meeting Debbie Ho met with Jim Lam and Lawrence Ang who was his supervisor within Deutsche Bank at about 4:00 p.m. at the offices of Tingyi in Hong Kong. It was a formal meeting requested by Lawrence Ang who told us in his evidence that he had requested the meeting as he was responsible for research on Tingyi within Deutsche Bank and he wanted to introduce Jim Lam to the company. He said Jim Lam took notes throughout the meeting and so he did not.

Jim Lam and Debbie Ho also gave evidence about this meeting. Jim Lam confirmed that he had taken notes at the meeting and identified copies of those notes to the Tribunal. They were extensive, comprising four pages of closely written information and had been voluntarily provided by him to the SFC when attending their offices for interview.

In summary, the potentially price sensitive information provided by Debbie Ho during the meeting of 11<sup>th</sup> July was:-

- “— Total sales for the first five months of 2000 amounted to US\$285 million, which was an increase of 19% year-on-year;
- Between January and May 2000, sales for noodle products amounted to \$214 million, which accounted for 75% of total sales;
- Sales for noodles increased by 15% year-on-year;
- Sales for bakery items amounted to \$29 million, which accounted for 10% of total sales;
- Sales for bakery items increased by 17% year-on-year;
- Sales for beverages amounted to \$34 million, which accounted for 12% of total sales;

- Sales for beverages increased by 78% year-on-year;
- Full year gross margin would increase to 30.5% in 2000;
- Gross margin for noodle division was 30%;
- There was double-digit cost savings estimated for the year;
- Capital expenditure would be less than US\$10 million;
- Effective tax rate was 5%
- The price war with its major competitor in China Uni-President was over;
- Tingyi was restructuring its distribution system in China.”

In arriving at our view of what information was divulged during that meeting we took into account primarily the contents of Jim Lam’s notes, together with some of the information contained in his subsequent e-mail of 13<sup>th</sup> July to various financial institutions and individuals reporting on his visit to Tingyi on the 11<sup>th</sup> July. We allowed for the fact that Jim Lam’s notes were obviously not verbatim notes and may have in part incorporated his own interpretation of what Debbie Ho told him and that his later e-mail contents may have had sources other than Debbie Ho’s information.

Following that meeting which lasted for an hour or so Jim Lam returned to his office at Deutsche Bank. At 5:30 p.m. that day he telephoned Anna Ho and gave her some sort of briefing on what he had learnt during the meeting at Tingyi with Debbie Ho. Precisely what information was passed between them was in issue during the inquiry but as will be seen we did not need to particularly concern ourselves with that at the end of the day.

Anna Ho on the following day commenced to purchase Tingyi shares in significant amounts. She did so on the days and in the amounts shown in the schedule below:

<b>Date</b>	<b>Amount of Tingyi's shares purchased</b>	<b>Approximate % of the Day's Turnover</b>
12 July	3,000,000	63%
13 July	6,200,000	97%
14 July	2,000,000	95%
17 July	13,586,000	93%
18 July	2,414,000	60%
20 July	2,100,000	62%
21 July	2,900,000	92%
24 July	2,300,000	62%
25 July	1,784,000	31%
26 July	3,916,000	63%
28 July	2,000,000	64%

In total she purchased 42.2 million shares at a cost of approximately \$25 million.

On the 17<sup>th</sup> July Jim Lam had published by Deutsche Bank his first formal report (see Annexure C). In that report he estimated that net profit for Tingyi for the full year 2000 would be US\$32 million. That (if simply divided in half) was quite close to Tingyi's actual first half profit of US\$17.1 million. That forecast was maintained in a more elaborate report published under Jim Lam's name on 25<sup>th</sup> July. We might comment here that Jim Lam's profit forecasts for Tingyi were (as with all other analysts) for the full year 2000. It was not market practice for half-yearly profit forecasts to be made. To simply halve the full-year forecast published under Jim Lam's name of US\$32 million to arrive at a first half net profit forecast of US\$16 million is an artificial and over-simplistic approach particularly when dealing with a company such as Tingyi which we accept had a significant seasonality to its results.

On the 19<sup>th</sup> July another meeting took place with Debbie Ho at Tingyi at Anna Ho's request. On this occasion three persons met with Debbie Ho. They were Jim Lam, Anna Ho and Qian Mingjin



a fund manager at AIG. Both Anna Ho and Qian Mingjin in addition to Jim Lam made notes at this meeting. These sets of notes were provided to the SFC and became exhibits before the Tribunal. They were copious and detailed.

During the course of the meeting considerable information was again provided by Debbie Ho. It was however largely repetitive of what had been said at the meeting of 11<sup>th</sup> July except that it was updated for the first six months of 2000 and some further concrete numbers were given.

A summary of that information in its potentially price sensitive aspects as gleaned from the notes of Jim Lam, Anna Ho and Qian Mingjin is as follows:-

“For the first six months of 2000

- Total actual sales amounted to US\$342 million, which represented an increase of 21% year-on-year;
- Actual sales for noodles amounted to US\$250 million, which represented an increase of 15% year-on-year;
- Actual sales for bakery items amounted to US\$43 million, which represented an increase by 12% year-on-year;
- Actual sales for beverages amounted to US\$49 million, which represented an increase of 83% year-on-year;
- Gross margin for noodles was 30%;
- Gross margin for bakery items was 32%;
- Gross margin for beverages was 28%;
- Overall cost-cutting of over 10% during first half of 2000;
- Net gearing of the company stood at 55%;
- At the end of May, the company had long-term debts of US\$118 million and short-term debts of US\$289 million;

- There was cash on hand of US\$130 million.”

Whilst the information provided on the occasion of the 19<sup>th</sup> July meeting varied in content and form somewhat from that provided during the 11<sup>th</sup> July meeting we are, as we have said, satisfied that the only meaningful difference was that the 19<sup>th</sup> July figures were updated for the first six months of 2000 and included more detail on Tingyi’s cash and debt position but otherwise reflected broadly the same categories of content as the 11<sup>th</sup> July figures. A working summary of the financial data divulged during the meetings of the 11<sup>th</sup> and 19<sup>th</sup> of July is as follows:

- “(i) total sales grew 19% year-on-year in the first five months of 2000 to US\$285 million (11<sup>th</sup> July)/total sales grew 21% year-on-year in the first six months of 2000 to US\$342 million (19<sup>th</sup> July);
- (ii) the year-on-year percentage changes and profit margins of major product lines as follows:-

	Sales Year-on-Year % change		Gross Profit Margin	
	11 <sup>th</sup> July	19 <sup>th</sup> July	11 <sup>th</sup> July	19 <sup>th</sup> July
Instant Noodles	+15%	+15%	30%	30%
Baked Products	+17%	+12%	-	32%
Beverages	+78%	+83%	-	28%

- (iii) a double-digit decline in operating costs estimated for the whole of 2000 (11<sup>th</sup> July); overall cost-cutting of over 10% for first six months of 2000 (19<sup>th</sup> July);
- (iv) estimated cash-on-hand of US\$120 million, and estimated debt positions of US\$405 million (comprised of short-term debts of US\$289 million and long-term debts of US\$116 million) as at 30 June 2000, and that net

gearing ratio would be reduced to 56% by the end of 2000 (effectively the same information at both meetings);

- (v) the operating environment becoming more friendly due to improved consumer sentiment in China and because its major competitor had withdrawn from its previous destructive price-cutting strategy; and
- (vi) the company was building up its own distribution network in China to enhance its operational efficiency.”

We are perfectly satisfied that the information provided by Debbie Ho on both occasions was specific (subject to the important exception we mention below). That is because it comprehensively falls within the concept of information which is capable of “being pointed to, identified and unequivocally expressed”.<sup>4</sup>

For the purposes of this case that legal concept meant we were concerned with whether the information provided by Debbie Ho on the 11<sup>th</sup> and 19<sup>th</sup> July carried such particularity about aspects of Tingyi’s financial and economic functioning so as to allow those matters to be identified and coherently described and the information about them to be understood. On the basis of that test we were of the view that the information provided at each of the meetings was very specific. Indeed as can be seen from that information as set out above, even in its summary form it can be described as precise.

The important exception we mentioned above is this: Before information can qualify as being specific information about a

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<sup>4</sup> *Ryan – v – Triguboff* [1976]1 NSWLR 588 per Lee J. As adopted in *Public Prosecutor – v – GCK Choudhury* (1980-81) SLR 146.

company it must be real information. If it is misinformation it cannot be real information. To describe a company as prosperous and stable when it is in the throes of a financial crisis is to provide no information about that company at all. To describe Hong Kong as a large state in the middle of Europe is to provide no information about Hong Kong. To describe Tingyi as having experienced a double-digit decline in operating costs for the first half of 2000 (or the first five months) is to provide no real information as to the extent of Tingyi's cost reduction for that period if in fact that was far from the reality. Tingyi in fact experienced a cost reduction of only 0.9% for 2000 and of 4.3% for the first half of 2000. Accordingly, one of the fundamental items of information provided to Jim Lam and Anna Ho by Debbie Ho and the item most important in calculating net profit from gross profit was so misleading that it could not, if it was a statement of fact, amount to specific information. That item was, as we have said, the assertion that there would be an overall reduction of over 10% in Tingyi's operating expenses for 2000 and for the first half of 2000.

There was some argument as to whether this was a statement of historic fact as to the year to date, or whether it was merely a target. The latter, in our view, is also capable of being specific information. The fact that a company intends to achieve some particular goal is capable of being specific information because it is a statement of fact about a company's intentions. In the present case the evidence is ambiguous as to whether the "double digit" reduction in costs was stated by Debbie Ho as an historic fact or as a target of Tingyi. Given the lapse of time and the lack of conciseness and inconsistencies within the notes of this conversation we can conclude only that a "double digit" reduction in operating costs was

mentioned which may have been likely stated as a target or less likely as an historic fact.

In short, if Debbie Ho had told Jim Lam or Anna Ho that Tingyi had achieved “a double digit reduction in costs” that was so far from the reality, in our view, as to not amount to specific information. On the other hand, if Debbie Ho had simply told Jim Lam or Anna Ho that Tingyi aspired to a target of “a double digit reduction in costs”, that in our view was specific information but only insofar as it was an accurate expression of Tingyi’s intentions at the time.

In any event it will be seen from our findings as to the price sensitivity of the information provided by Debbie Ho set out later in this chapter that this particular question is academic. That is because the information concerning a “double digit” reduction in costs on either view, that is, whether it was a stated fact which was wrong or merely an aspirational target, detracted from the reliability of any profit forecast able to be made on the basis of the information provided by Debbie Ho so as undermine the price sensitivity of the information as a whole. One thing however is certain the figure given by Debbie Ho (as provided to her by her company) differed dramatically from the reality to such a degree that we regard it as being misleading. Accordingly, we will return to the matter of Tingyi’s “double digit” cost reduction for the first half of 2000 at a later point in this chapter.

One small issue which separately arose is whether the information provided by Debbie Ho included the unspoken but obvious particular that the information came from the company Tingyi itself.

In our view this particular was inherent in the information Jim Lam (and subsequently Anna Ho) carried away from their meetings with

Debbie Ho and formed a part of the overall information they had received from her.

It was quite obvious that the information Debbie Ho gave to Jim Lam and Anna Ho on the occasions of the two meetings was information sanctioned by the management and therefore by Tingyi itself.

We therefore considered the implicit fact that the information was sanctioned by Tingyi as forming part of the specific information provided by Debbie Ho to Jim Lam and Anna Ho on the occasions of each meeting.

In short, even allowing for the possibility that the item of information concerning Tingyi's "double digit" cost reduction for 2000 (and for the first half of 2000), even if a statement of fact, was so inaccurate as to be no information at all we nevertheless regard the balance of the information provided on the 11<sup>th</sup> and 19<sup>th</sup> July as being specific. It is true that there were other small inaccuracies in that information (for example the profit margin figures given for various product lines) but those inaccuracies were not so great as to render the information no real information at all. It is, when the accuracy of statements concerning financial figures is involved, a matter of degree.

(2) **The information must not be generally known to the actual or potential market for Tingyi shares**

A question arose at an early stage of the inquiry as to what the nature of the market was so far as Tingyi's shares were concerned.

The make-up of the market for Tingyi shares became of some relevance as, prior to Debbie Ho having met with Jim Lam and Anna Ho and providing financial data to them, there had been a series of analysts' reports issued or published concerning Tingyi which incorporated information about Tingyi's financial circumstances. The analysts who wrote those reports were, in the main, employed by merchant banks or financial institutions such as HSBC Securities (Asia) Ltd., SG Securities (HK) Ltd., Morgan Stanley Dean Witter, Core Pacific-Yamaichi and Credit Suisse First Boston (HK) Ltd. and their reports were provided by the banks and institutions to their customers. That customer base was large. For example the e-mail which Jim Lam sent to clients of Deutsche Bank on the 13<sup>th</sup> July went to over 100 individuals and institutions, many of the latter which in turn would have had the opportunity to further pass on the information to other individuals or institutions. Some though not many of the analysts' reports concerning Tingyi in turn became the basis of newspaper articles concerning the company. There were fewer independent newspaper articles which dealt with the same subject matter.

On the basis of this material it became clear to the Tribunal that quite a considerable amount of information was already within the knowledge of financial institutions and their clients concerning Tingyi's financial position. But there was less information in the more public domain of the retail investor. In most inquiries of this sort this issue does not arise quite so clearly and a Tribunal could well be entitled to proceed on the basis that, unless the particular company whose shares were involved was of a somewhat obviously specialized or esoteric nature the market for a listed company's shares was "general". But in the present case the large part of any information flow concerning Tingyi's financial position apparently

remained largely within the “loop” of the financial institutions and their clients. That meant the Tribunal had to consider quite carefully whether the information had become sufficiently known to the market even though the primary flow of information may not have extended to the level of retail investors.

The initial question here was whether the market for Tingyi shares was at that time primarily institutional or primarily retail or a combination of both. In that regard, we were satisfied that retail investors did in fact form a material part of the potential market for Tingyi shares. We came to that conclusion after an examination of records provided by the SFC recording the quantities of Tingyi shares purchased and by which brokers. As a result of a number of notices issued by the Tribunal to those brokers pursuant to section 18 of Cap. 395 we were given some information by a quite large random sample of the brokers who had purchased Tingyi shares for their clients during the relevant period as to the nature of those clients. From that we were satisfied that Tingyi, perhaps unsurprisingly, was a share which was generally of interest to the market and capable of attracting the attention of both institutional and retail investors.

Accordingly, with the general nature of the Tingyi market in mind, we considered whether the information divulged by Debbie Ho to Jim Lam and Anna Ho during the 11<sup>th</sup> and 19<sup>th</sup> July meetings was already known to the market. That there was significant financial and economic information concerning Tingyi in the market before the 11<sup>th</sup> and 19<sup>th</sup> July meetings was not surprising. That is because Debbie Ho in performing her duties as corporate liaison officer for Tingyi in Hong Kong had a large number of meetings with analysts and fund managers on a continuing basis in those years. We



accept from the information she provided to us that she would have a number of such meetings every week and those meetings on occasion comprised multiple individuals. Tingyi's financial position therefore was continuously updated before market professionals and became relatively frequently the subject matter of analysts' reports.

So as a starting point, under the following headings, we considered whether the financial data had become wholly or partly the subject of the various published analysts' reports and other materials. We then went on to consider whether that information had become known in the general market for Tingyi shares.

**Had the information already been published before the meetings of 11<sup>th</sup> and 19<sup>th</sup> July?**

Quite helpfully we were provided by counsel assisting with a list of the known analysts' reports and newspaper articles concerning Tingyi's financial prospects published in the period late 1999 to July 2000, that is during the months and days leading up to the meetings of 11<sup>th</sup> and 19<sup>th</sup> July 2000. We set out a summary of those reports and their contents below:

Date	Item
14 December 1999	<p><b><u>HSBC Research Report</u></b></p> <p>“Too early to jump into</p> <p><b>Beginning to recover, albeit slowly.</b> Although most of Tingyi's divisions continue to recover after the initial turnaround in August and September 1999, based on our earnings forecast, it is too early to jump into the stock in a big way. This is because valuations for 2000 remain unattractive: ROE is disappointing, pedestrian growth for its core noodle business and more evidence of a</p>

Date	Item
	<p>sustainable turnaround for its beverage divisions is needed. Selling and promotional expenses will continue to rise to maintain brand equity, albeit at a slower rate. Financial leverage remains a concern with a year-end net debt-to-equity ratio estimated at 64%.”</p>
<p><b>January 2000</b></p>	<p><b><u>HSBC Research Report</u></b></p> <p>“A waiting game</p> <p><b>Financial position remains a key concern</b>  Tingyi raised about US\$100m last November via a rights issue. Proceeds will be mainly used to repay US\$130m in FRNs. Currently, outstanding debt amounts to US\$391m, with the net debt-to-equity ratio estimated at 64% for end-FY99. Out of about US\$391m in debt, US\$226m is short-term and US\$116m in convertible bonds that will mature in 2002 (redemption premium 32%, conversion price HK\$2.35). Although we do not expect Tingyi to face a major liquidity risk due to its strong product brandname and improving business performance, financial resources remain tight and its financial position precarious.”</p>
<p><b>12 May 2000</b></p>	<p><b><u>C-P Yamaichi Research Report</u></b></p> <p>“In 1H1999, Tingyi suffered a net loss of US\$24mn due to severe competition. We expect earnings to return to black in 2H1999, and as such, we expect Tingyi to post a net loss of US\$17.3mn for the year in its 1999 final results announcement on 19 May 2000.</p> <p>We recommend HoLD for the following reasons:</p> <p>Tingyi will continue to focus on its recovering food business. Sales turnover achieved a double-digit growth in 1Q2000 and profit margin improved due to improved market conditions, expanded distribution network and launching of new products.</p> <p>Tingyi’s financial position improved after making a rights issue to raise US\$100mn in November 1999. Total debts amount to US\$409mn while the</p>

Date	Item
	<p>company has US\$107mn cash on hand. We estimate Tingyi's net debt-to-equity ratio has been reduced from 104% a year ago to 67%. The company should have no difficulty in rolling over the short-term loans."</p>
<p><b>15 May 2000</b></p>	<p><b><u>HSBC Research Report</u></b></p> <p>"Brighter future</p> <p><b>Slowly recovering.</b> In line with the expected recovery of private consumption in China, Tingyi's performance improved in 1Q00. All three divisions posted growth and the company's turnover was up about 20% y-o-y. Management hinted that profitability has been restored to the company as a whole. Nevertheless, the beverage division remains the sore spot as it was still in the red in 1Q. Overall, we expect a profit of US\$13m for FY00."</p>
<p><b>15 May 2000</b></p>	<p><b><u>SG Research Report</u></b></p> <p>"After the acquisition of Sanyo Foods of Japan, Tingyi has stabilized its financial condition, thanks to tighter control over capital expenditure and cost cutting, including reducing the number of Taiwanese management in China. We do not expect a turnaround over the next six months."</p>
<p><b>17 May 2000</b></p>	<p><b><u>Morgan Stanley Research Report</u></b></p> <p>"Operational trends in recent months have been quite positive, however, with sales up over 25% during the first two months of the year. All the major product groups – noodles, bakery and beverages – are showing positive growth. Post the entry of Sanyo, the company has also been cutting costs through reduction of 2,500 staff. The company's financial health is also improving following the rights issue in late 1999 that helped relieve the cash crunch. At the end of February, Tingyi had US\$100 million of cash on hand and US\$415 million in debt (US\$261m short term)."</p>
<p><b>18 May 2000</b></p>	<p><b><u>Credit Suisse First Boston Research Report</u></b></p> <p>"Although we believe that operations have</p>

Date	Item
	<p>improved since the interim, we expect Tingyi to continue to be loss-making for some time yet, owing to the heavy losses it is incurring at its beverage division, coupled with an intense competitive environment in its core noodle and baked goods operations.”</p>
22 May 2000	<p><b><u>Morgan Stanley Research Report</u></b></p> <p>“<b>The outlook is improving:</b> Operations appear to have improved recently, with sales up 19% in the first quarter of the year. Also, Tingyi has been restructuring since the entry of Sanyo, with cost reductions of US\$2.6 million achieved.”</p>
23 May 2000	<p><b><u>Morgan Stanley Research Report</u></b></p> <p>“<b>Results for 1999 were poor</b> Tingyi reported a loss of US\$36 million for 1999 because of weak sales, high distribution costs and a reduction in investment grants.</p> <p><b>But we think the worst is probably over</b> Sales are recovering thanks to improving consumer sentiment and a restructured distribution channel.”</p>
23 May 2000	<p><b><u>Morgan Stanley Research Report</u></b></p> <p>“<b>Outlook Is Improving</b></p> <p>We think the company’s prospects are improving and that the difficult times are over. Sales are recovering – up 3.84% to US\$609 million in 1999, slightly above our forecast – and with further efforts in cost-cutting and efficiency improvements. Tingyi should soon return to profitability. The strategic focus has changed from a drive for market share to an emphasis on the bottom line. Cost-cutting measures have been put in place to reduce staff and localize management. More stringent financial controls have been put in place to ensure careful use of cash. Sales were up more than 20% during first-quarter 2000, and gross margins have also improved.</p> <p>We expect Tingyi’s cash balance to exceed US\$145 million by the end of 2000.”</p>

Date	Item
23 May 2000	<p><b><u>Credit Suisse First Boston Research Report</u></b></p> <p>“Tingyi – Maintain SELL</p> <p><b>Outlook</b> For FY2000, we have increased our turnover estimate by 6%, to US\$647 mn, as we believe that the company’s promotional efforts and new product introductions should help top-line growth, particularly for baked goods and beverages.”</p>
24 May 2000	<p><b><u>C-P Yamaichi Research Report</u></b></p> <p>“Tingyi believes the worst is over and expects double-digit revenue growth in 2000. A higher gross margin will be achieved by launching new products targeting customers with higher living standards and because of higher capital utilization of its beverage production lines.”</p>
1 June 2000	<p><b><u>Credit Suisse First Boston Research Report</u></b></p> <p>“Overall, we expect that turnover will grow 6% in FY00, to US\$647 mn (HK\$5.0 bn), but we believe that the profitability of the company’s growth is questionable.</p> <p>Nevertheless, Tingyi could surprise us on the upside if its turnover growth exceeds our forecasts. As it stands, we expect that a turnaround at Tingyi will be slow in coming.”</p>
15 June 2000	<p><b><u>HSBC Research Report (e-mail)</u></b></p> <p>“Tingyi Holdings – Update</p> <ul style="list-style-type: none"> <li>- revenue up 18% yoy for first four months: noodles up 18%, beverage up 60%, bakery up 22%</li> <li>- margin expansion: gross margin improved during first four months, notably from beverage division; full year forecast 28.5% from 28%</li> <li>- expenses being controlled: operating expenses, particularly distribution expenses, being reduced first four months, full year forecast to decline by 5% (reducing from 30% of turnover to 25%)</li> <li>- earnings forecast: FY00 US\$7.4m</li> </ul>

Date	Item
	<p>- financial position – no major debt falling due (US\$269m O/S) but with cash about US\$100m end of April, will continue to buy back shares.</p> <p>Still a HoLD but looks increasingly interesting.”</p>
15 June 2000	<p><b><u>HSBC Research Report</u></b></p> <p>“<b>Recovering.</b> Tingyi Holdings continues to recover from its earnings trough. For the first four months of the year, the company’s revenue increased by about 18% y-o-y. The beverage division, which has benefited from a shift in strategy since 3Q99 to focus on bottled drinks rather than tetra-packs, has posted 60% y-o-y revenue growth. Instant noodle sales, down 1.5% y-o-y in 1999, have started to pick up, posting 18% y-o-y growth in turnover in the year to April. The bakery division also posted 22% y-o-y sales growth in the same period.</p> <p><b>Gross margin set to expand.</b> Due to increased sales, we expect Tingyi’s forecast FY00 gross margin will rise to 28.5%, up from 28% in FY99. We expect a full-year FY00 gross margin of 30% for the beverage division due to the increased sales of higher-margin bottled drinks. We believe the instant noodle division’s gross margin will remain stable at 27.5%.</p> <p>In the year to April, Tingyi has been able to reduce the total operating expenses. For the full year, we expect operating expenses will fall by about 5%, accounting for only 25% of turnover. Distribution expenses are forecast to decline by 3.4% to US\$109m.”</p>
27 June 2000	<p><b><u>C-P Yamaichi Research Report</u></b></p> <p>“Tingyi’s performance improved considerably in the first five months of 2000 after suffering heavy losses because of poor economic conditions, and higher selling and distribution costs as the company pursued an aggressive marketing strategy. We upgrade our profit forecasts from US\$8.5mn net loss to US\$22.4mn net profit for 2000 after taking into account strong revenue growth and effective cost control.</p>

Date	Item
	<p>Tingyi's revenue grew 17% y-o-y in the first five months, boosted by China's recovering economy. Revenue from beverages increased 78%, because of a small comparison base and the hot weather, followed by bakery products and instant noodles, from where revenue rose 17% and 15% respectively. While the gross margin could remain at the 1999 level, the EBIT margin has improved because of higher machinery utilization, economies of scale in its bakery and beverage operations, and lower selling and distribution costs after Tingyi set up its logistics infrastructure in 1999. Tingyi also streamlined production and cut its workforce 15% in 1999.</p> <p>Tingyi has US\$405mn debt and US\$120mn cash on hand. We expect Tingyi's net debt-equity ratio to fall to 60% by the end of 2000 from 81% as at the end of 1999."</p>

In our view, the above brief excerpts sufficiently point out that there was considerable information concerning Tingyi's estimated sales growth and margin improvements as contained in analysts' reports out in the market before the 11<sup>th</sup> and 19<sup>th</sup> July meetings. In brief there was multiple reference to Tingyi's Revenue increasing. Those estimates ranged from 17% to 25% (becoming more optimistic as time went by). Its profit margins were reported to be improving. Its costs reported to be reducing by 5%. It was reported that Tingyi had returned briefly to profit in August and September of 1999 and that management was hinting that by May 2000 the company was profitable.

Additionally, there was information published in various newspapers in Hong Kong which emanated directly from Tingyi.

Those newspaper reports can be summarized as follows:

Date	Source of Information	
27 October 1999	Tai Kung Pao	<p>Overall turnover of the company increased 15% YoY in 3Q99. Turnover of the instant noodle, beverage and bakery divisions grew 4%, 79% and 60% YoY in 3Q99.</p> <p>The company expects its gearing ratio to fall to 65% after the rights issue. The company's target is to reduce its gearing ratio to 30-40% in the next two years.</p> <p>The business of the company had returned to profit in 3Q99.</p>
27 October 1999	Ming Pao	<p>Overall turnover of the company increased 15% YoY in August and September 1999. Turnover of the instant noodle grew 4-5% while that for bakery increased 60% YoY in those months.</p> <p>The company expects its gearing ratio to fall to 65% after the rights issue. The company's target is to reduce its gearing ratio to 30-40% in the next two years.</p> <p>The business of the company had returned to profit in August and September 1999.</p>
22 May 2000	Oriental Daily	<p>Overall sales grew by 19% YoY in 1Q00.</p> <p>According to company Chairman Mr. Wei Ing-Chou, 1999 was the worst year for Tingyi, but the situation has continued to improve since 2H99.</p>
1 June 2000	Oriental Daily	<p>According to company management, Tingyi achieved 19% YoY in overall sales growth in 1Q00.</p>



Though not as voluminous as the analysts' reports (there were only two substantive articles in the first six months of 2000) the newspaper articles reported sales growth of 19% for the first quarter of 2000 and that the company's situation was improving.

Those reports were in part based on company announcements which can be summarized as follows:

Date	Source of Information	
27 October 1999	Company Announcement	<p>Overall turnover of the company increased 15% YoY in August and September 1999. Turnover of the beverage division grew 79% YoY in 3Q99.</p> <p>The business of the company had returned to profit in the months of August and September 1999.</p>
22 May 2000	Tingyi 1999 Annual Report	<p>Overall sales growth accelerated from 5.4% YoY decline in 1H99 to 13.5% YoY growth in 2H99.</p> <p>Gross margin improved from 26.1% in 1H99 to 29.4% in 2H99, an increase of 3.3 percentage point.</p> <p>Sanyo also sent product development and manufacturing experts to assist the Group in improving overall productivity and reducing costs.</p> <p>Total debt balance decreased from US\$545.2 million at the end of 1998 to US\$414.6 million at the end of 1999.</p> <p>Since Sanyo's participation, the Group's performance improved greatly through corporate restructuring. The Group has achieved significant improvement in the first quarter of 2000. The Group will be able to turn around its business in the new century.</p>

It is quite obvious that there was considerable information concerning Tingyi already available to the market prior to the 11<sup>th</sup> July 2000.

That information in summary concerned, inter alia, Tingyi's year-on-year sales growth in the early months of 2000; its reduction in costs and the fact that there was an upward trend in its gross margins.

But after considering all of the published research reports, company announcements and newspaper articles provided to us, in our view, while significant portions of the financial data were more or less known to the institutional portion of the market for Tingyi shares the financial data was less well known to the retail investors who made up the other portion of that market. The question as to whether information about a company is "generally known" to the market for its shares (i.e. those persons who are accustomed to or be likely to deal in its shares) can only be resolved objectively. In most cases, an understanding of the market's knowledge of a company's affairs is obtainable only by considering what has been said or published in the media, or in other materials which are readily accessible by the market. An assessment must be made of the completeness of the information released into the market and the degree of its penetration of the market.

In the present case, while institutional investors were well served with the analysts' reports we have summarized above, there were significant hurdles in the way of retail investors having access to that same information.

Generally speaking from the evidence we heard from various analysts and fund managers, a retail investor would have considerable difficulty in accessing the body of the reports provided by financial institutions to clients, fund managers or reporting institutions such as Reuters or Bloomberg. A witness from Bloomberg Lam Kit Lan confirmed that there were restrictions on the general public's access to analysts' reports and other source materials through that service.

Further as Richard Witts said in his evidence:

“I do note, however, that there is comparatively little comment on Tingyi in the press during June and July of 2000 and I would also acknowledge that six years ago the press would almost certainly have been the major provider of information to retail investors. I contrast this lack of press comment with the quite considerable amount of attention that Tingyi is receiving from investment houses for a company whose market capitalization at US\$400 million is not at all large.”

Even though we accept that some retail brokers and banks may have organized access to their data base so as to make the research of some of the investment houses available to retail investors we are of the view that the information contained in the various analysts' reports we have referred to above had not penetrated the whole of the market for Tingyi shares to the degree that it could be said to be “generally known”.

Additionally, we do not think in any event that the whole of the information contained in the financial data we are concerned with was reported by analysts or the media prior to the 11<sup>th</sup> July.

That is firstly because the financial data provided by Debbie Ho on the 11<sup>th</sup> July and the 19<sup>th</sup> July was for a period of five months and six months respectively. No newspaper article or company announcement was so up-to-date in its information concerning Tingyi. Few analyst reports contained 5-month information and, prior to the 19<sup>th</sup> July 2000 no analysts' reports contained 6-monthly information.

Secondly most, though not all, analysts' reports, newspaper articles and certainly company announcements provided information which comprised in the main references to trends or generalities, though we accept some of the analysts' reports did include specific references to year-on-year increments (e.g. the HSBC report of 15<sup>th</sup> June 2000) and on occasion detailed figures appeared in newspaper articles (e.g. the Oriental Daily article of 1<sup>st</sup> June 2000).

But, in our view, the detail of information provided by Debbie Ho to Jim Lam and Anna Ho on the 11<sup>th</sup> (so far as five-monthly figures were concerned) and 19<sup>th</sup> July (so far as six-monthly figures and additional information were concerned) exceeded by a significant margin the information which had been provided by most analysts' reports and certainly newspaper articles and company announcements.

Without being trite, that is not unexpected. It is difficult to imagine Jim Lam and Anna Ho going to Tingyi and taking the detailed notes they did on those occasions if the information they sought and were provided with was generally known in the market or even easily accessible to them.

It is even truer to say that the five-monthly figures given by Debbie Ho on the 11<sup>th</sup> July and the six-monthly figures and additional information provided by her on the 19<sup>th</sup> July was certainly information which had had no real chance of penetrating into the realm of retail investors at the time that information was given to Jim Lam and Anna Ho.

In short, we are satisfied that even though there was very considerable information concerning Tingyi and its financial affairs in the market as of 11<sup>th</sup> July 2000 the information provided by Debbie Ho to Jim Lam and Anna Ho on the 11<sup>th</sup> July and 19<sup>th</sup> July 2000 was only partially and not generally known to those persons who were accustomed to or were likely to invest in Tingyi shares.

**(3) Was the information represented by the Financial Data price sensitive?**

Before we are able to answer that question there are some preliminary matters that must be dealt with.

Firstly even though we have found that the financial data provided to Jim Lam and Anna Ho was not generally known to the market it must be appreciated, as we have emphasized that there was considerable information about Tingyi's financial state in that market already. That is obvious from the excerpts from the various analysts' reports, newspaper articles and references to company announcements set out above.

Quite a lot was known or becoming known about Tingyi in the market in the weeks prior to 11<sup>th</sup> July.

The significant (though not general) penetration of information concerning Tingyi into the market, particularly that part which was served by analysts' reports went far in forming expectations about Tingyi's profitability amongst institutional investors.

That quite simply means this. Though the information concerning Tingyi which was in the market place prior to the 11<sup>th</sup> July 2000 was not so complete or updated as that provided by Debbie Ho on the 11<sup>th</sup> and 19<sup>th</sup> July, it was still a significant body of information which had gone some considerable way to enhancing market expectations concerning Tingyi returning to profitability.

The price sensitivity of the information provided by Debbie Ho must therefore be measured against the background of market expectations concerning Tingyi which, by the 11<sup>th</sup> July, had risen considerably from a few months previously.

In our view, market expectations for Tingyi which had risen on the basis of similar, though less detailed, information of the sort provided to Jim Lam and Anna Ho would lessen considerably the impact the latter information would have on the price of Tingyi shares were it to become generally known.

A second preliminary matter should be addressed: we considered that the information comprising the financial data provided to Jim Lam and Anna Ho by itself was possibly meaningless to retail and even some institutional investors in its raw form. It was only the conclusion which could be drawn from that financial data which was capable of affecting Tingyi's share price. In this regard, during the course of the hearing there was some suggestion that the price sensitivity of the raw data could only be measured by inferring

its direct effect upon investors and there was argument that the financial data provided by Debbie Ho to Jim Lam and Anna Ho would have been meaningless to the average retail investor who is neither a trained analyst or accountant. We do not think that is the right approach. The question is really whether the financial data, if generally known, was able to be reduced by the mechanisms serving the market into an understandable form. We have no doubt that items from a company's income statement are generally capable of being reduced to conclusions which are understandable by the investing public. That task is performed by analysts and the financial media on a regular basis. If the market carries within itself the ability to reduce complex bits of information to a form which is readily understood by the market as a whole so as to materially affect the price of a company's shares, then that information, even if comprehensible only to experts in its raw form, is potentially price sensitive.

Thirdly, it is usually a company's bottom line results which are important to its share price so far as its financial data is concerned (though other aspects of a company's performance or circumstances could equally be price sensitive). There was nothing in the circumstances of this case which differed from that general principle.

For example the bare information that Tingyi's revenue had grown year on year by 19% by itself, we are satisfied, would not have affected Tingyi's share price. That is because that item of data standing alone could not give any meaningful understanding of Tingyi's "bottom line".

In the present case it was generally accepted by all three expert witnesses Stella Fung, Richard Witts and Brian Leung, that the potential price sensitivity of the financial data provided to Jim Lam and Anna Ho by Debbie Ho was restricted to any conclusion which could be drawn from that information as to Tingyi's bottom line proceeding from a loss of US\$35.8 million in 1999 to a profit in the first half of 2000, i.e. that there had been a "turnaround" in its overall financial position.

We accept that the provision of one item of information, such as an increase in revenue, which on the face of it may be good news, does not give any reliable indication of a company's overall financial position. Gross revenue says little about a company's bottom line. In 1999, for example, Tingyi's total revenue increased significantly to US\$608.5 million from US\$586.04 million in 1998, yet Tingyi in 1999 experienced a record loss of US\$35.8 million up from \$2.8 million in 1998. That was because other items within its financial data wholly negated that increase in revenue, notably an increase in operating costs and distribution costs and a reduction in income from other sources.

What we were therefore concerned with in this inquiry was whether the financial data provided by Debbie Ho as a whole or in some combination of items allowed any reliable forecast to be drawn about Tingyi's bottom line (i.e. its net profit) for the first half of 2000, and whether, if so, that conclusion was price sensitive.

Before we go further it is appropriate to summarize briefly the evidence of the three experts who gave evidence in this regard.



### **The expert evidence**

#### **Stella Fung**

Stella Fung is a highly qualified financial analyst employed by the SFC. In Stella Fung's opinion the significant price sensitive factor concerning Tingyi's financial position was simply whether it had been able to turn from loss to net profit in the first half of 2000. In her view the financial data provided by Debbie Ho on the 11<sup>th</sup> and 19<sup>th</sup> July was price sensitive only because it could be used to allow an accurate forecast to be made that in the first half of 2000 Tingyi had turned from a large loss in 1999 to profit. The fact that Tingyi was a "turnaround story" was, in Stella Fung's opinion, what made the information divulged by Debbie Ho price sensitive as it could be used to forecast that turnaround. Stella Fung was of the view that the sets of financial data provided by Debbie Ho on the 11<sup>th</sup> July and 19<sup>th</sup> July allowed the net profit of Tingyi for the first half of 2000 to be forecast with a high degree of accuracy, as that data provided sufficiently detailed sales and profit margins and cost reductions so as to allow Tingyi's net profit for the first half of 2000 to be sufficiently accurately estimated so as to allow for a reliable conclusion that Tingyi had "turned around".

Stella Fung agreed that to go from gross profit and arrive at a forecast of net profit required certain assumptions to be made. One of the most important of those assumptions was Tingyi's operating costs which she estimated to be \$90.5 million for the first half of 2000. That was based on the financial data provided by Debbie Ho as to a "double-digit" reduction in operating costs calculated as an assumed 10% reduction in operating costs over the first half of 2000. But there are, as we have said, certain problems with that assumption. One problem, as we have said, is that we

accept that this item of information provided by Debbie Ho was not necessarily a concrete figure for the first half of 2000 or even for the full year 2000 but was as likely a “target” figure which Tingyi hoped to achieve. That, in our view, is suggested by a proper reading of the notes of Qian Mingjin made on the 19<sup>th</sup> July during the meeting with Debbie Ho which record “Cost cutting this year, y-o-y will have a 2 digit decline”. There is an opposing version given in the evidence of Angela Moh and Geoffrey Cheng. Angela Moh said she was told by Debbie Ho that operating costs had been reduced by 10% year on year for the first quarter of 2000. Geoffrey Cheng said in his evidence that he had been told there had been a small double-digit reduction up to April 2000.

We incline to the view that the cost figure provided by Debbie Ho was an aspirational target rather than a statement of historic fact. That is because it seems unlikely to us that Debbie Ho, who had access to the actual hard figures by the 19<sup>th</sup> of July would state a figure which she knew to be wrong. It is more likely in our view that she was simply repeating information provided to her by her company that the “double digit” reduction in costs was a target for the whole year.

But whatever doubts exist as to whether Debbie Ho provided only a “target” figure for cost reduction or an approximation of an actual historical figure, one thing is clear: The actual reduction in costs achieved by Tingyi for 2000 (from its 2000 annual report) was in fact a reduction of only 0.9% for the full year and 4.3% for the first half of 2000.

In other words, one of the most fundamental items of information provided by Debbie Ho i.e. that Tingyi would achieve a

“double-digit” reduction in costs, even if it were not a mere “target” but given as an item of factual information, was wrong.

Stella Fung was unaware of this at the time she prepared her report. That was no fault of hers. She had been asked to prepare her expert’s opinion on the basis of certain items of information being provided by Debbie Ho to Jim Lam and Anna Ho which were assumed to be correct. As it transpired this particular item of information she was provided with was wrong.

Stella Fung in the formulation of her opinion had set out a “model” of a conservative forecast as to Tingyi’s net profit based on the information provided by Debbie Ho (including the wrong information concerning a double-digit reduction in operating costs). That model is set out hereunder. It is based on the information provided on the 11<sup>th</sup> July. She provided a separate model for the information provided on the 19<sup>th</sup> July, but we do not set it out as it arrived at a net profit forecast varying only by US\$0.07 million from the forecast based on the 11<sup>th</sup> July financial data:

**Tingyi Forecast of Earnings for the first six months of 2000 based on the 11-July Financial Data**

<b>(Six months ending 30 June)</b>	<b>Actual 1999 US\$ mn <sup>(a)</sup></b>	<b>2000 US\$ mn</b>	<b>YoY % Chg</b>
<b>Turnover</b>			
Instant noodles	219.79	252.76	15.0%
Bakery	29.85	34.92	17.0%
Beverages	27.15	48.33	78.0%
Others	5.91	0.41	0.0%
<b>Total</b>	<b>282.70</b>	<b>336.41</b>	<b>19.0%</b>
<b>Gross Profit Margins</b>			
Instant noodles	26.2%	30.0%	
Bakery	35.5%		
Beverages	14.4%		

<b>(Six months ending 30 June)</b>	<b>Actual 1999 US\$ mn <sup>(a)</sup></b>	<b>2000 US\$ mn</b>	<b>YoY % Chg</b>
Others	10.0%		
<b>Gross Profit</b>			
Instant noodles	57.61		
Bakery	10.61		
Beverages	3.91		
Others	0.59		
<b>Total</b>	<b>72.72</b>	<b>102.61</b>	41.1%
Overall Gross Profit Margin (%)	25.7%	30.5%	
<b>Other Revenue &amp; Net income</b>			
Interest income	1.20	1.20	0.0%
Dividend income from unlisted investment	0.31	-	
Investment grants	3.27	3.93	20.0%
Net income from sales of raw materials and sundry items	2.00	-	
Others	1.22	-	
<b>Total</b>	<b>8.00</b>	<b>5.13</b>	-35.9%
<b>Operating Expenses</b>	<b>(90.50)</b>	<b>(81.45)</b>	-10.0%
<b>Operating Profit (Loss)</b>	<b>(9.78)</b>	<b>26.28</b>	n.a.
Finance costs	(11.00)	(11.00)	0.0%
Share of profits (loss) of associates	(0.26)	(0.26)	n.a.
<b>Profit before taxation</b>	<b>(21.04)</b>	<b>15.02</b>	n.a.
Taxation	(0.95)	(0.75)	-21.1%
<b>Profit (Loss) from ordinary activities after taxation</b>	<b>(21.99)</b>	<b>14.27</b>	n.a.
Minority interests	(2.00)	(2.00)	0.1%
<b>Profit/(loss) attributable to shareholders</b>	<b>(23.99)</b>	<b>12.27</b>	n.a.

Note:

- (a) As provided in Tingyi's 1999 Interim Results Announcement and 1999 Annual Report.

Stella Fung's evidence therefore was that, based on the financial data she understood to have been provided by Debbie Ho on the 11<sup>th</sup> July to Jim Lam, a net profit forecast for Tingyi for the first half of 2000 of US\$12.27 million could be arrived at.

It is apparent from Stella Fung's model that a number of assumptions had to be made by her to go from her calculation of gross profit (about which there was little dispute) to her figure for net profit (which was heavily in dispute).

Those assumptions, and there were some seven of them, were significant. The most important (apart from operating costs) related to other revenue and net income (particularly investment grants), finance costs, taxation and minority interests.

Stella Fung's evidence was to the effect that each of the assumptions could be made with a reasonable degree of reliability so that the profit forecast arrived at by her model was reliable, if conservative.

Her point at the end of the day was that the information provided by Debbie Ho taken together with reasonable assumptions allowed a reasonably reliable forecast to be made that Tingyi would "turnaround" from its loss of 1999 and record a profit in the first half of 2000.

She pointed to the 36% upward re-rating of Tingyi's share price following the publication of the 2<sup>nd</sup> August announcement (on the 3<sup>rd</sup> August 2000) as supporting her view that the "turnaround" conclusion which could be drawn from the information disclosed on

the 11<sup>th</sup> and 19<sup>th</sup> July was price sensitive. That is because the most important aspect of that announcement was that Tingyi had made a profit for the first half of 2000 of US\$17.1 million and had accordingly “turned around” from its loss of US\$35 million in 1999. She accepted, however, that a factor in the rise in Tingyi’s share price following that announcement was that the profit announced of US\$17.1 million exceeded market expectations.

### **Richard Witts**

Richard Witts was an expert called by Anna Ho. He was a person with very considerable experience in the securities industry in Hong Kong and with the SEHK.

He was of the view that the information provided to Jim Lam and Anna Ho on the 11<sup>th</sup> and 19<sup>th</sup> July was not price sensitive. That was because firstly, much of the information was already in the market which, as a result, had an expectation that Tingyi would return to profit in the year 2000. He demonstrated this by taking the average earnings forecast for Tingyi for 2000 from the four most recent research reports as of the end of July 2000, being Core-Pacific Yamaichi, Deutsche Bank, Morgan Stanley Dean Witter and SG Securities. From those reports the average full-year profit forecast was a figure of US\$23.6 million. By simply halving that figure he suggested the market anticipated a first half profit of US\$11.8 million, which was not much different to Stella Fung’s own forecast of US\$12.27 million based on the 11<sup>th</sup> July financial data.

In other words, Mr. Witts was of the opinion that there was sufficient information in the market concerning Tingyi’s financial

position so as to allow the market to have anticipated Tingyi's return to a profit of about the same magnitude as that forecast from the financial data provided to Jim Lam and Anna Ho so as to make that financial data not materially price sensitive.

The full range of profit forecasts for Tingyi following the publication of its 1999 results on 22<sup>nd</sup> May up to the publication of its half-yearly results for 2000 on 3<sup>rd</sup> August is as follows:

<b>Name of Brokerage Firm</b>	<b>Date of Report</b>	<b>Forecast of Tingyi's Net Profit/(Loss) in 2000</b>
Morgan Stanley Dean Witter	23 May 2000	US\$2 million
Credit Suisse First Boston	23 May 2000	(US\$29 million)
Core Pacific-Yamaichi	24 May 2000	(US\$8.5 million)
HSBC Securities	15 June 2000	US\$7.4 million
Core Pacific-Yamaichi	27 June 2000	US\$22.4 million
Deutsche Bank	17 July 2000	US\$32 million
Morgan Stanley Dean Witter	24 July 2000	US\$19 million
SC Securities	31 July 2000	US\$21 million

We note that two of the reports Mr. Witts relied upon were published after Jim Lam had received information from Debbie Ho on 11<sup>th</sup> July and circulated it by e-mail on 13<sup>th</sup> July to a large number of individuals and financial institutions, and that Mr. Witts included Jim Lam's own Deutsche Bank report in that calculation. But removing both the Deutsche Bank report and the two post 11<sup>th</sup> July reports still leaves the HSBC Securities and Core-Pacific Yamachi reports. In June 2000 they anticipated a full year net profit of between US\$7.4 million and US\$22.4 million for Tingyi.

The second point Mr. Witts made was that in any event the information provided by Debbie Ho on the 11<sup>th</sup> and 19<sup>th</sup> July was insufficient to allow an accurate forecast of Tingyi's first half of 2000 results to be made.

In his written report, adopted by him in his evidence before the Tribunal he said:

“Should these same items of data plus Tingyi’s 1999 results be given to a research analyst then I can have sympathy with an argument that he or she might be able to produce a more accurate profit forecast for the calendar year 2000 than an analyst who had not been provided with any or all such data items. The data would, however, need work done on it and estimates needed on figures that had featured significantly in Tingyi’s previous results such as distribution costs, finance costs, investment grants and net income from sales of raw materials and sundry items. The forecast, therefore, is unlikely to be close to the actual results. Whether it would be sufficiently more accurate, than a forecast prepared without the raw data itemized above, to result in a material move in the share price is questionable. Comparison with published research by leading investment houses such as Core-Pacific Yamaichi, Deutsche, Morgan Stanley and SG leads me to the opinion that this is almost certainly not the case.”

Mr. Witts’ opinion in short was that the more information an analyst had about Tingyi then the more reliable would the analyst be able to forecast Tingyi’s financial performance, but that even accepting that Debbie Ho had provided the information in the financial data, there remained too many variables for any net profit forecast based only upon the financial data to be particularly reliable. Taken against the background of much of that financial data already being known to the institutional market for Tingyi shares, the information was not price sensitive.

Mr. Witts made one further point in this regard. He was of the opinion that for a retail investor the financial data provided by



Debbie Ho would have been relatively meaningless. That is because in Mr. Witts' view only a trained analyst would be able to convert the raw data into something approaching a reliable net profit forecast. We have already addressed that matter and concluded that if the market possessed, in its normal operation, the machinery to convert the raw data into a conclusion which was understandable to the market as a whole, then financial data, even in its raw form, could be price sensitive. Financial data is regularly transformed into generally understandable information by the financial media and market professionals in Hong Kong.

Finally, Mr. Witts addressed the 36% price surge in Tingyi shares in the days following the publication of its half-yearly results on the 3<sup>rd</sup> August 2000. In his view the primary reasons for that price increase were firstly, that the half-yearly profit of US\$17 million was well above market expectations. Indeed some 60% above the average pre-announcement forecast mean. Secondly, Anna Ho's purchases of the thinly traded Tingyi shares commencing on 12<sup>th</sup> July had created some momentum which, together with growing enthusiasm for "red chip" shares at that time caused investors to join in, and thirdly, that the contents of the 3<sup>rd</sup> August announcement suggested strongly that Tingyi's return to profitability was sustainable.

### **Brian Leung**

Brian Leung agreed with much that Mr. Witts had to say. He did not think that the financial data provided by Debbie Ho on the 11<sup>th</sup> and 19<sup>th</sup> July was price sensitive.

He illustrated this by using his own “model” incorporating the 11<sup>th</sup> July financial data together with assumed values for other variables, much as Stella Fung had done, to arrive at a net forecast for Tingyi’s first half results for 2000.

On the basis of that financial data and using his own various assumptions he arrived at a forecast loss of US\$1.6 million.<sup>5</sup> In arriving at this forecast loss he obviously assigned different values to variables than had Stella Fung. He, in our view, was generally able to demonstrate that, although sometimes those values departed by a considerable margin from those assigned by Stella Fung they were still based on a reasoned and logical approach. For example, he gave a “nil” value to the category of “investment grants” for the simple reason that these grants are a form of local government subsidy on the mainland and during the Asian financial crisis (as was current at the time) many local governments cancelled such grants. He also estimated higher finance costs for Tingyi in 2000 because of increases in US bank interest rates.

These, and estimates in other categories, may have seemed relatively trivial but both he and Stella Fung agreed in their evidence that net profit forecasts for Tingyi were very sensitive to small changes in values attributed to such estimates below the gross profit line. That that is so can easily be seen when placed in the context of Tingyi’s 2000 turnover totalling US\$608,561,000. A small movement only is required to convert the US\$11.8 million loss suffered in the second half of 1999 to a US\$17.1 million profit for the first half of 2000.

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<sup>5</sup> When he incorporated the 19<sup>th</sup> July financial data he arrived at a net loss of US\$0.4 million

Indeed the only real difference to values assumed by Stella Fung and Mr. Leung came in the categories of non-core income (i.e. other revenue and other net income), finance costs, taxation and minority interests. That was sufficient to account for the difference in their forecasts of net profit (on the one hand) and net loss (on the other).

A large part of the difference in their forecasts is that Mr. Leung assumed operating expenses to have reduced but not to as great a degree as Stella Fung. His assumed level of a reduction in those expenses was quite close to the 4.3% actual reduction, whereas Stella Fung had been given the false figure of “double digit” reduction (i.e. 10%) to use in her calculations.

Mr. Leung also performed a profit forecast based on information he obtained from analysts’ reports, newspaper articles and company announcements which were available in July 2000. Based on that information only he forecast a net loss for Tingyi’s first half of 2000 of US\$1.8 million (insignificantly different from the US\$1.6 million loss he forecast using the financial data provided by Debbie Ho).

Mr. Leung’s point in this regard was that if the financial data provided by Debbie Ho was unable to be used to generate a profit/loss forecast significantly more reliable than that generated on the basis of information concerning Tingyi already in the market, then that financial data could not be price sensitive.

In a somewhat pragmatic way, he referred to the effect of Jim Lam’s publishing of the 11<sup>th</sup> July financial data on the 13<sup>th</sup> July. Although that information went to something in the vicinity of one hundred financial institutions and individuals, no one except Anna Ho was sufficiently impressed by it so as to invest in Tingyi shares.

Finally, Mr. Leung's views as to the reasons for Tingyi's share price rising significantly after the 3<sup>rd</sup> August announcement accorded with those of Mr. Witts. He thought the primary reason was that market expectations had been for a full year profit of only US\$10 million so the half-yearly profit of US\$17 million greatly exceeded expectations. He agreed also that the increased turnover and price in Tingyi's shares (generated mostly by Anna Ho's own purchases) prior to the announcement also encouraged interest and speculation in Tingyi's shares. He thought other information in the announcement may also have contributed to upward pressure on Tingyi shares, such as reference to the company's improvement in inventory turnover times. He thought also that by the nature of the 3<sup>rd</sup> August announcement with all financial data set out and the profit of US\$17.1 million announced formally by the Board the added factor of certainty, as opposed to the inherent uncertainty in analyst's estimates, would encourage investment.

### **Other evidence**

Two more witnesses were particularly relevant to the issue as to whether the financial data provided to Jim Lam and Anna Ho was capable of generating an accurate net profit forecast for Tingyi for the first half of 2000.

They were Linda Csellak and Viktor Ma Xiang ("Viktor Ma"). Both were fund managers in Hong Kong in 2000 and had purchased Tingyi shares after Tingyi announced its half yearly results on 3<sup>rd</sup> August 2000. They were interviewed by Karen Ngai of the SFC as to whether, if they had been provided with the financial data disclosed to Jim Lam and Anna Ho, they would have been able to

arrive at a reliable net profit forecast for Tingyi (though Linda Csellak was never interviewed in person but over the telephone). Both, apparently independently, in their witness statements arrived at a forecast of US\$12.89 million as Tingyi's first half profit.

In her evidence, however, Linda Csellak said the figure of US\$12.89 million was provided to her by Karen Ngai and she simply adopted it in her witness statement as she thought it was accurate. She said it was not her figure and that, as a fund manager, she did not have a forecasting model. She said Karen Ngai had simply included the forecast of US\$12.89 million in a draft statement she had been sent by fax and she had adopted that figure. Viktor Ma in his evidence said he did not know how the figure of US\$12.89 million came to be in his witness statement. He said he could not remember if he had any input into his draft statement. He said, if provided with the financial data, he could make a net profit forecast, but it was hard to say how accurate it would be.

Karen Ngai was called by the Tribunal to give evidence. We had been initially concerned at the coincidence of exactly the same net profit forecast for first half 2000 being arrived at by two independent fund managers where both of necessity had to make significant assumptions in arriving at their forecast. Karen Ngai in evidence (she had not made a witness statement) initially said the profit forecasts provided by Linda Csellak and Viktor Ma were their own calculations, but later agreed she may have given one or both of the witnesses the profit forecast figure and asked if they would adopt that figure.

We are satisfied that the statements of the witnesses, taken together, fell far short of reflecting the truth of the situation. We wish to express our opprobrium of any method of interviewing witnesses which puts words in a witness's mouth. In the present case, the two witnesses' statements when taken at face value gave the wholly misleading impression that they were *ad idem* that an exact calculation could be arrived at by using the financial data. Taken in conjunction with Stella Fung's net profit forecast of US\$12.27 million for first half of 2000 based on the same figures the strong suggestion was that any rational analyst provided with the financial data would come to a net profit forecast of US\$12 million or so for the period.

Linda Csellak in her oral evidence when asked to perform the same task came to a result of "US\$6-7 million" and agreed "estimates of net profit can never be accurate", and said it was "difficult to forecast net profit if there had been a loss in the previous year" (as was the case with Tingyi).

Viktor Ma was vague as to how reliable a net profit forecast could be generated by the financial data. Accordingly, we ignored the "forecasts" of Linda Csellak and Viktor Ma as evidence in any way supporting the proposition that the financial data allowed an accurate or reliable net profit forecast to be made in respect of Tingyi's first half 2000 performance.

Other analysts called before us were of the general view that they would require information additional to the financial data before being able to arrive at a reliable bottom line (Angela Moh) or that it was necessary to make other significant assumptions (Andrew Kuet) or that the financial data would allow a rough estimate only of the

profitability of Tingyi (Loke Meng Chong), or that it would “not give you a very accurate forecast” (Mark Rosenfeld). Some analysts, on the other hand, thought the financial data would allow them to estimate Tingyi’s first half 2000 net profit “with reasonable accuracy” (Bonnie Lai) or that the financial data “helped a lot in estimating profit” (Geoffrey Cheng). But generally speaking, the consensus of evidence from these professional witnesses was that while the financial data would increase the reliability of any net profit forecast for first half 2000, a significant number of assumptions had to be made on the way to that forecast.

## **Findings**

As we have said previously, there are two fundamental issues to address concerning the price sensitivity of the financial data provided by Debbie Ho to Jim Lam and Anna Ho. Firstly to be price sensitive, that data must have been capable of leading to a sufficiently accurate net profit forecast so as to reliably indicate that Tingyi was no longer operating at a loss and had “turned around” during the first half of 2000 so as to make a significant net profit.

Secondly, that information, if known to the market generally, must have been such as to materially affect the price of Tingyi’s shares.

### ***Was the financial data provided by Debbie Ho capable of providing a reliable forecast as to Tingyi’s net profit for the first half of 2000?***

We cannot be satisfied to a high degree of probability that the information provided by Debbie Ho to Jim Lam and Anna Ho on the 11<sup>th</sup> and 19<sup>th</sup> July 2000 was of a nature which allowed a forecast as to Tingyi’s

net profit to be made which was sufficiently reliable so as to be regarded as an accurate forecast of Tingyi's first half net profits for 2000.

There are a number of reasons for this:-

The financial data was only usable in conjunction with significant assumptions which had to be made, particularly as to items making up the bulk of bottom half of Tingyi's income statement. The more important of those were operating expenses, investment grants, finance costs, taxation and minority interests.

As to operating expenses we are satisfied that the information provided by Debbie Ho (as provided to her by her company) whether it was a statement of historical fact or a statement of Tingyi's "target" cost reduction, was wrong. Instead of the assumed 10% reduction in operating costs in the first six months of 2000 Tingyi achieved less than half of that (i.e. 4.3%). That was a significant percentage difference. It meant that the profit forecast of Stella Fung of US\$12.27 million based on what she had been told was the financial data provided by Debbie Ho was immediately over-inflated by US\$5.4 million. That by itself considerably lessens the potential reliability and price sensitivity of any net profit forecast based on Debbie Ho's disclosed information.

In this regard, it should be borne in mind that if Debbie Ho's information (as provided to her by her company) was to the effect that a "double digit" reduction in operating costs had in fact occurred then, as we have said previously, this was misleading information and no real information about the extent of Tingyi's cost reduction at all. On that basis it could not be specific information and should be ignored for the purposes of calculating a net profit forecast based on Debbie Ho's information. That would mean the most significant item (i.e. operating



costs) reducing gross profit to net profit could only be guessed at from the previous year's figure and perhaps the general information provided by Debbie Ho that costs had been reduced. That, it is plain, would lead to a reduced net profit forecast which was in no way more accurate than any other analysts' forecast. Even if the "double digit" cost reduction information was simply the stating of a hoped for target which we accept as the most likely scenario the situation is not significantly improved. A very significant assumption would still have to be made as to operating costs. By itself, in our view, this single factor renders any net profit forecast based on the financial data provided by Debbie Ho insufficiently certain so as to allow a reliable prediction of Tingyi's first half net profit. As Mr. Harris on behalf of Anna Ho in his closing submissions said:

"As the Tribunal will appreciate the main thrust of the case against Jim Lam and Anna Ho is that the Financial Data allowed them to calculate accurately and confidently the net profit of Tingyi for the 1<sup>st</sup> 6 months of 2000. If they were provided with false information in respect of a critical element of the Financial Data, they could not do this (even if at the time they did not appreciate it). The variance between the actual figures and "a double digit decline" are simply too great that they can be dismissed as *de minimis*."

The other assumptions we will not deal with in detail. It is sufficient to say this. Assumptions as to finance costs, taxation, investment grants and minority interests were subject to necessarily flexible ranges in the first half of 2000. We illustrate with this small schedule of actual results:-

	(US\$,000's)	
	1H99	1H00
Taxation	-952	-2,664
Finance costs	-16,296	-10,284
Minority interests	-1,999	-889
Investment grants	3,273	Not available

It can be seen that there was significant variation in the actual results for these items between the first half of 1999 and the first half of 2000. Assumptions as to the first half of 2000 figures, quite reasonably, could vary significantly from analyst to analyst. Finally, we note that in order to make many of these assumptions, the full year figure from the 1999 annual results was simply divided in half. As Mr. Wong persuasively argued before us this approach was fundamentally flawed because it did not sufficiently allow for the difference between first half and second half figures for a company such as Tingyi which was significantly affected by a “seasonality” factor in its operations. Mr. Wong also pointed out that in respect of those parts of the financial data provided by Debbie Ho to Jim Lam and Anna Ho which gave trends in the form of year-on-year percentage increases or decreases from 1999 figures, that many of the corresponding figures for Tingyi’s first half of 1999 were not available at that time and accordingly there was no base for the calculation of those figures for the first half of 2000.

Accordingly, taking all these things together, we agree with Mr. Leung’s opinion that given the uncertainty involved in making the necessary assumptions to use in conjunction with the financial data disclosed to Jim Lam and Anna Ho by Debbie Ho on the 11<sup>th</sup> and 19<sup>th</sup> July 2000, no particularly reliable estimate of Tingyi’s net first half profit for 2000 could be arrived at. By that we mean no estimate could be arrived at which was materially more reliable than any other in the market place.

We note also that there is considerable doubt on the evidence as to whether Jim Lam or Anna Ho were provided with Tingyi’s gross profit margin at either the 11<sup>th</sup> July or 19<sup>th</sup> July meetings with Debbie Ho. This is an item which is fundamental to the calculation of gross profit,

and although a reasonable estimate of it can be obtained from the profit margin figures which were provided by Debbie Ho in respect of Tingyi's major product lines, we further note that those latter figures were themselves inaccurate to a degree and the estimate of Tingyi's gross profit margin utilized by Jim Lam in his later report based on those figures was 30.5% which differed from the actual first half gross profit margin of 30.17%. Whilst not in itself significant this difference further reduces the accuracy of any net profit calculation by approximately US\$1 million at the end of the day.

We mention also that we accepted Brian Leung's evidence that a great difference in Tingyi's "bottom line" forecast occurs depending on what assumptions are made. Both experts (i.e. Stella Fung and Brian Leung) were able to give a rational basis for their differing assumed values and in our view, their differing forecasts of Tingyi's first half net profit simply pointed to the fact the financial data provided by Debbie Ho did not lead to any certain understanding of what Tingyi's profit would be.

If the information had been released to the investing public in the form in which it was provided, we cannot be satisfied to a high degree of probability that the investing public would have regarded any conclusion as to Tingyi's net profit based upon it to be sufficiently reliable so as to be the basis for a decision to invest in Tingyi. We cannot be satisfied therefore to the requisite standard that if the information had been released to the general market on the 11<sup>th</sup> July (or the 19<sup>th</sup> July) that would have resulted in a material change in the price of Tingyi's shares.

**In any event even if a reliable net profit forecast could be made, would a forecast based on the financial data provided by Debbie Ho have been price sensitive?**

Assuming for the sake of argument that the financial data provided by Debbie Ho on the 11<sup>th</sup> July and 19<sup>th</sup> July allowed a sufficiently certain estimate of Tingyi's first half net profit for 2000 to be made, we are of the view in any event that any such forecast would not have been price sensitive.

The particular significance of the financial data according to Stella Fung was that it allowed a firm conclusion to be arrived at that Tingyi was a "turnaround" company in the sense it had overcome its loss-making years of 1998 and 1999 and was now profitable. When that information was known to the market (as it would be when Tingyi's interim results were released on 3<sup>rd</sup> August 2000) its price would rise. With respect, we think that scenario does not sufficiently take into account the fact that a significant body of information concerning Tingyi's journey from loss-making to profitability was already in the market.

We will not set out again the analysts' reports, newspaper articles and company announcements scheduled in the preceding section of this chapter. It is sufficient to say that we agree with both Mr. Leung and Mr. Witts that by July 2000 the market's view of Tingyi had improved to a degree that it now expected it to make a significant profit for the year 2000. Those market expectations were summarised in the Barra Report (a financial report which summarises analysts' predictions). In its May 2000 report that publication arrived at a consensus view that for the full year 2000 Tingyi would make a net profit of HK\$79.1 million (US\$10.14 million).

That consensus took into account the net profit forecasts of ABN Amro Securities, Credit Suisse First Boston, HSBC Securities, Jardine Fleming, Morgan Stanley Dean Witter, SG Securities and Salomon Smith Barney.

As Mr. Leung pointed out as of May 2000 (some two months before Debbie Ho met with Jim Lam and Anna Ho) the Hong Kong market expected a “turnaround” from Tingyi.

Further, it is common sense that the market’s expectations of Tingyi continued to improve after May 2000. By 27<sup>th</sup> June Core Pacific Yamaichi in a research report upgraded its net profit forecast for Tingyi for the full year 2000 to US\$22.4 million. That is a figure which does not differ dramatically from Stella Fung’s half-yearly estimate of US\$12.27 million.

By the 24<sup>th</sup> July 2000 Morgan Stanley Dean Witter estimated Tingyi would achieve a net profit of US\$18.5 million for the full year 2000 (though that report was written after Jim Lam had published his own Deutsche Bank report it was compiled by Angela Moh who did her own research). There was obviously increasing optimism about Tingyi.

We appreciate that there were other investment houses which were less optimistic about Tingyi. For example HSBC in a 15<sup>th</sup> June research report gave Tingyi an earnings forecast of US\$7.4 million net profit for full year 2000. That had been revised downwards from an earlier net profit forecast by HSBC contained in a 15<sup>th</sup> May 2000 report of US\$13.3 million for full year 2000. That revision was made “as our previous forecast (was) a bit high, forecast sensitive to small change in assumptions as company coming out of a huge loss”. Other investment

houses were still uncertain whether Tingyi would return to profit by full year 2000.

Nevertheless, one thing is quite plain. By July 2000 there was a general view that Tingyi's financial position had improved and that it was a "turnaround" story.

This view had been expressed not only in analysts' reports but also in newspaper articles (though to a lesser extent). On the 1<sup>st</sup> June 2000 the Oriental Daily news published a fairly lengthy article which quoted significant parts of an earlier Angela Moh research report and which expressed the view that:

"The report believes that 1999 was the most difficult year for the company's operations. But the situation was improving gradually. According to the company's management, Tingyi's sales turnover in the first quarter this year was up by 19% compared to the same period last year. HSBC Brokers believe that Tingyi would be able to get out of the red this year with an expected net profit of \$13 million, which would go up to \$45 million next year."

The reason there was a growing consensus that Tingyi was returning to profitability was quite simply that much of the Tingyi financial data was known to investment houses, analysts (and their clients) and had been published in the media. Such things as the 19% (or thereabouts) increase in turnover, its estimated 30% (or thereabouts) gross profit margin, reduced costs (though the amount of the reduction was uncertain) had already been published in one form or another.

It is not to be underestimated that Tingyi had returned briefly to profit in August and September 1999 and this fact had received some

press coverage at the time and was the subject of a company announcement.

All in all it is quite fair to say that:

- (a) much (though not all) of the information provided by Debbie Ho to Jim Lam and Anna Ho was already known to investment analysts in Hong Kong and had been reported upon.
- (b) That information had resulted in rising expectations that Tingyi would return to substantial profit in 2000.

Against that background we cannot be satisfied to a high degree of probability that the information provided to Jim Lam and Anna Ho on the 11<sup>th</sup> and 19<sup>th</sup> July was a substantive advance on the quantity and quality of information already possessed by the investment community already in Hong Kong, though it was updated to a five-month and six-month period respectively, and different in detail though not in category from pre-existing information.

For that reason we cannot be satisfied that the financial data provided by Debbie Ho to Jim Lam and Anna Ho, even if it were capable of allowing an accurate and reliable net profit forecast for Tingyi for the first half of 2000, was price sensitive.

One practical matter which very much supports this conclusion is that on the 13<sup>th</sup> July 2000 Jim Lam issued an e-mail to over 100 investment houses, clients and other individuals and companies which reported substantially all of what he had been told by Debbie Ho. Tingyi's price did not go up at all as a result of that but remained at 55

cents, where it had closed on the 12<sup>th</sup> July. That strongly suggests that the quite broad range of companies and individuals who received that e-mail did not perceive anything of great interest in it. That must be so because although turnover in Tingyi's shares rose from 12<sup>th</sup> July onwards more than half of that turnover between 12<sup>th</sup> July and 28<sup>th</sup> July (just prior to the 3<sup>rd</sup> August announcement) was accounted for by Anna Ho's purchases. Of the 100 odd companies and individuals who received Jim Lam's 13<sup>th</sup> July e-mail apparently none (apart from Anna Ho) became purchasers of Tingyi shares prior to the August announcement. Equally the two reports published by Deutsche Bank (written by Jim Lam) on the 17<sup>th</sup> and 25<sup>th</sup> July had little apparent effect on the Tingyi share price which in any event had been steadily rising since Anna Ho had commenced her purchases. Tingyi share price rises in the days following the publishing of those reports were all less than 10%.

What then of the 25.3% increase in the price of Tingyi shares on 3<sup>rd</sup> August, the day it published its interim results, and the 10.7% increase on the following day 4<sup>th</sup> August (a total of 36% increase in Tingyi's share price in the two trading days following the results being published)?

In Stella Fung's view that was an important indicator of the price sensitivity of the information provided to Jim Lam and Anna Ho on the 11<sup>th</sup> and 19<sup>th</sup> July because it effectively demonstrated that the fact Tingyi was a "turnaround" story was price sensitive.

We disagree. We are satisfied that the fundamental reason there was a considerable upswing in Tingyi's share price following the 3<sup>rd</sup> August announcement was simply that the actual net profit announced exceeded market expectations for Tingyi's performance in the first half of 2000. The announced actual net profit was US\$17.1 million for the first



half of 2000. That considerably exceeded the market expectation of about US\$10 million for full year 2000 and in our view, was the primary reason for the surge in Tingyi's price following that announcement. Tingyi's recent history supports that conclusion. On the 15<sup>th</sup> August this year, Tingyi's management released its first half 2006 results. These results reported its half yearly net profit increased by 18% over first half 2005 (being US\$66.5 million in 1H2006 and US\$56.3 million in 1H2005). But following that announcement its share price dropped 0.4%. The South China Morning Post reported this in an article of the 16<sup>th</sup> August 2006 and commented "Net profit, which was announced before the market closed, was less than the 24% estimate by JP Morgan and Deutsche Bank's 22% estimate."

We also are of the view that the announcement of the Interim Results on the 3<sup>rd</sup> August 2000 was qualitatively of a different nature to the information provided to Jim Lam and Anna Ho. The information they received, as we have said, was flawed with inaccuracies and in any event required considerable assumptions to be made to arrive at a forecast of net profit. From the analysts' reports we have excerpted above, it is obvious that there were a quite wide range of predictions generated by the market as to Tingyi's expected 2000 performance. Jim Lam's forecast, though at the top of the range, was not quantitatively so different from the developing expectations for Tingyi so as to make it highly likely that the conclusions it drew were materially price sensitive. As we have said his reports and e-mail which contained the information he had been provided with did not, when published, affect the price of Tingyi's shares materially. His forecast of profit was based on considerable assumptions. It was simply not so reliable an indicator of net profits as the company's own announced interim results.

## **Conclusion**

For these reasons we are not satisfied that the information provided to Jim Lam and Anna Ho on the 11<sup>th</sup> and 19<sup>th</sup> July 2000 by Debbie Ho was relevant information.

For that reason there was no insider dealing in the shares of Tingyi arising out of the purchases by Anna Ho and consequently there were no insider dealers.

That conclusion answers paragraphs (a) and (b) of our Terms of Reference. Paragraph (c) becomes irrelevant.

## **CHAPTER 6**

### **THE ROLE OF DEBBIE HO, JIM LAM AND ANNA HO**

There was no evidence before us to suggest anything other than that the three implicated parties acted honestly and wholly within the parameters of their employment.

Debbie Ho, we are satisfied, acted entirely in accordance with written instructions provided to her by Tingyi as to what information she could provide to analysts and their clients and the media. It was quite plain from the evidence before us that she treated Jim Lam and Anna Ho in exactly the same terms as she treated many other analysts who requested information from her. She provided them in large part with information she had in fact provided other analysts. The slight differences in what information was provided to what individual was simply due to the question and answer format in which Debbie Ho conducted her meeting with analysts. It is quite plain that she did not regard the information she provided as being relevant information and regardless of our finding that the information she provided not being relevant information we would not have found her to have knowingly possessed or disclosed relevant information so as to be in breach of any provision of section 9 of the Ordinance. We would not have been satisfied she even considered the question of any information she dispensed being relevant information. We therefore could not have been satisfied she knew it to be such. We might add though that her company Tingyi in providing her with the detailed figures it did for the purposes of disclosure flirted dangerously with what was proper information to disclose and what was not. A listed company would be well advised to restrict the information disclosed to analysts to trends rather than hard figures.

So far as Jim Lam and Anna Ho are concerned, we were initially a little worried by two matters: Firstly that they were related, being first cousins, and secondly that although Jim Lam had acted promptly in circulating details of his visit to Tingyi in his 13<sup>th</sup> July e-mail

he had personally phoned Anna Ho on the evening of 11<sup>th</sup> July to inform her of his visit to Tingyi.

There was no evidence, apart from that of Jim Lam and Anna Ho, as to what was said during that telephone call. Both denied that any particular detail concerning Tingyi was discussed, but that its general prospects were, and matters concerning its structure. No concrete numbers were discussed. According to both of them Anna Ho had for some time been interested in Tingyi as a “China play” but was worried about its debt gearing. She was not particularly interested in other figures and was just generally concerned with Tingyi’s direction. Lawrence Ang in his evidence confirmed this as being her approach to assessing companies. Had matters in this inquiry gone further we would have had some difficulty in deciding that Jim Lam and Anna Ho were aware that the information they received was not generally known. That is because it was Debbie Ho’s job to dispense information to visiting analysts/fund managers such as Jim Lam and Anna Ho and they must have been aware of this. It may well be in those circumstances, given the volume of reports already in circulation concerning Tingyi, that a strong argument could have been made that they were unaware the information they had been given had not been given to other analysts/fund managers.

At the end of the day we found Jim Lam and Anna Ho (as well as Debbie Ho) to be truthful witnesses. Lawrence Ang, Jim Lam’s superior at Deutsche Bank, confirmed that he had given Jim Lam responsibility for Tingyi. He had gone to the meeting of 11<sup>th</sup> July to introduce Jim Lam to Tingyi. He said he encouraged Deutsche Bank staff to talk to clients especially priority clients like Skandia where Anna Ho worked and that there was nothing unusual in Jim Lam speaking to Anna Ho. Anna Ho (i.e. her company Skandia) had been a relatively long term client of Deutsche Bank. Both Anna Ho and Jim Lam confirmed it was at Anna Ho’s request that the 11<sup>th</sup> July visit by Deutsche Bank to Tingyi was arranged. In those circumstances we could not find there was anything unusual in Jim Lam informing Anna Ho of the visit in the afternoon of 11<sup>th</sup> July. We note Anna Ho did not dispose of the 42 million Tingyi shares she had purchased immediately after the interim

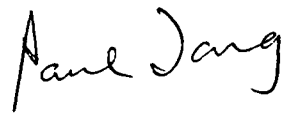
results for Tingyi were announced on 3<sup>rd</sup> August. Rather she held them for the longer term. That suggests she was trading normally.

We might add that both Jim Lam and Anna Ho cooperated fully with the SFC investigation (as did Debbie Ho) and both provided to the SFC their notes of their visits to Tingyi. Without those notes there would have been considerably less evidence of what each had been told by Debbie Ho and less basis for the launching of this inquiry.

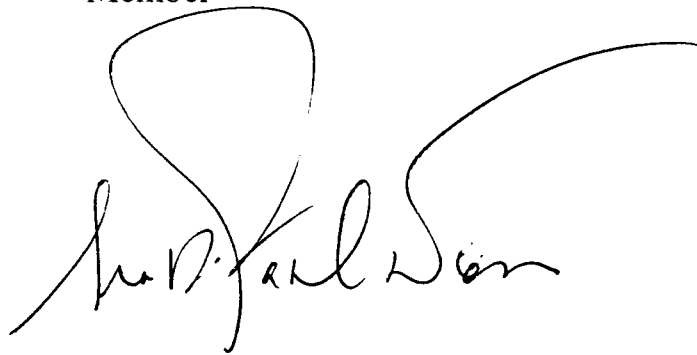
Finally both Jim Lam and Anna Ho, as with Debbie Ho acted wholly within the parameters of their employment duties.

A stylized, cursive handwritten signature in black ink, featuring a large, looping initial 'M' followed by the name 'McMahon'.

The Honourable Mr. Justice McMahon  
Chairman

A handwritten signature in black ink that reads 'Paul Tong' in a cursive script.

Mr. Tong Hin Sum, Paul  
Member

A handwritten signature in black ink that reads 'Mr. Jean-Paul Wou' in a cursive script, with a large, sweeping initial 'W'.

Mr. Jean-Paul Wou  
Member

Dated: 8<sup>th</sup> December 2006

## **CHAPTER 7**

### **THE COSTS AND FURTHER COMMENTS**

#### **Costs**

In our view, there is no reason for any implicated party to be denied their full costs. There is no suggestion that anyone of the implicated parties brought the investigation or this inquiry upon themselves. As we have said in our view each of the implicated parties acted in accordance with their employment responsibilities in respect of the matters we were inquiring into and cooperated fully with the SFC investigation.

Accordingly, pursuant to section 26A of the Ordinance we award each implicated party, namely Jim Lam, Debbie Ho and Anna Ho, their costs incurred by them in relation to this inquiry. Those costs are on a party/party basis and are to be taxed if not agreed.

#### **Further comments**

We would like to conclude this report with the following comments.

It was brought to our attention on occasion during the course of this inquiry that the matters we had to decide amounted to something of a “test case” of the parameters applying to analysts and listed company staff in the private dissemination by a listed company of information to analysts and its onward dissemination by analysts in the course of both the companies and analysts usual course of business.

We want to emphasise that the “usual course of business” is a concept which is generally irrelevant as to whether insider dealing as defined in the terms of the Ordinance has occurred. Insider dealing is defined by section 9 of the Ordinance. When any of the six sub-provisions of that section are breached then insider dealing has

occurred. It does not matter whether those in breach are clothed with the occupations of stock analyst or the position of corporate liaison officer. Nor does it matter that they are simply doing what they have been instructed to do by an employer.

Very relevantly to the issues we have touched upon in this inquiry it does not matter if the individual concerned has acted wholly honestly and with no intention to enter into an insider dealing transaction. If the transaction falls within the definitions of insider dealing as set out in section 9 of the Ordinance then that individual, if they have done what is prohibited with the knowledge which is required, is an insider dealer for the purposes of the Ordinance.

Having said that we appreciate that listed companies and the analysts who report on them perform a valuable role in disseminating information about the particular company into the market. It is in the interests of the investing community whether domestic or international that information about Hong Kong listed corporations should be readily available.

In the present case information was released by Tingyi in response to questions and enquiries of analysts at meetings between two or three individual analysts (or fund managers) and Tingyi's liaison officer.

In those circumstances no matter that parameters are provided to the liaison officer as to what information may be disclosed to the analysts, or that parameters are provided to an analyst as to what can or cannot be reported judgments must be made by both on an ongoing basis as to the specificity of the information, whether it is generally known to the market, and most germanely to the present case, whether the information is materially price sensitive. In other words both the corporation's liaison officer and the analyst or fund manager may be at risk of transgressing into an insider dealing transaction while acting in good faith.

At the present moment there is little specific guidance provided to either analysts or company staff as to what information can



properly be disclosed and what cannot. Counsel assisting the Tribunal provided us with a copy of the 2002 “Guide on disclosure of price-sensitive information” (“the Guide”) issued by Hong Kong Exchanges and Clearing Limited.

In dealing with what information may be price-sensitive information and not properly disclosable the Guide provides some helpful general principles and examples, but concedes that “deciding on what information is price-sensitive is a matter of judgment”.

Regarding the provision of corporate information to analysts the Guide says:-

“Issuers should have their own policy on the extent to which analysts’ questions should be answered. Issuers should decline to answer analysts’ questions where individually or cumulatively the answers would provide unpublished price-sensitive information. Directors should resist pressure from analysts to provide or comment on data that may involve the dissemination of unpublished price-sensitive information.”

It is understandable that such general guidance leaves a considerable “grey area” as to what information can properly be provided to analysts. The Guide goes on to observe:-

“Some issuers are concerned that they may be misinterpreted or mistakenly accused of providing price-sensitive information following meetings with analysts. Such risk can be reduced by having appropriate internal procedures. These procedures could, for example, include ensuring that more than one company representative and the compliance officer, if any, are present during these meetings and that accurate records of all discussions are kept. Alternatively, issuers could consider opening up such meetings to the press and the public, or announcing in advance the fact of an analysts’ meeting and, where price-sensitive information is to be made public, publishing at the same time the information to be disclosed as required by the Listing Rules.”

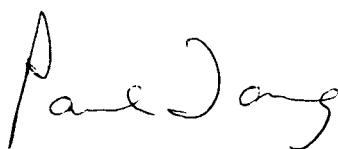
It must be said in passing that there is an obvious and ongoing conflict between the interests of an analyst in obtaining information from a listed company and the restrictions imposed upon the company preventing it disclosing price-sensitive information to a particular analyst rather than to the market as a whole.

Day-to-day decisions about what is disclosable and what is not are made by the staff of the company and by the analyst or his firm. It is conceivable that given the necessity of a regular exercise of judgment by the parties involved decisions as to disclosure made in good faith will be occasionally in error. The provisions creating insider dealing offences contained in the Securities & Futures Ordinance echo the terms of section 9 of the present Ordinance. Additionally insider dealing (along with other forms of market misconduct) is now rendered a criminal offence by the Securities and Futures Ordinance which came into effect on 1<sup>st</sup> April 2003. That, on its face, would mean an individual acting in his own mind quite properly and honestly could nevertheless find himself in the position of having committed a criminal offence.

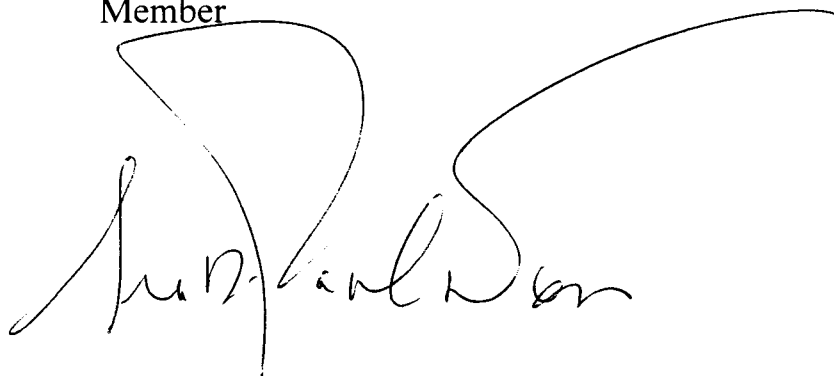
In our view it should perhaps be considered whether more concrete guidelines should be provided to listed companies and investment professionals, and whether the present legislation (i.e. the Securities & Futures Ordinance Cap. 571) should make provision for the protection of these parties who, though intending to act within the proper scope of their obligations and duties, unintentionally offend the provisions of that Ordinance.



The Honourable Mr. Justice McMahon  
Chairman



Mr. Tong Hin Sum, Paul  
Member



Mr. Jean-Paul Wou  
Member

Dated: 11<sup>th</sup> January 2007