

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

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

VANDA SYSTEMS AND COMMUNICATIONS HOLDINGS LIMITED
(renamed as Hutchison Global Communications Holdings Limited)

between

14th and 17th February 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, Vanda Systems and Communications Holdings Limited ("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 -

Chan Yuk, Chan Lai King, Wong Cheung Hung, Fong Long, Chung Sau Wai, Chong Wai Lee and Chong Bun Bun between 14 and 17 February 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 28th day of October 2003.

(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

**Corrigendum to Notice dated 28 October 2003
under Section 16(2) of the
Securities (Insider Dealing) Ordinance Cap. 395**

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- (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 replaces the former Section 16(2) Notice dated 28 October 2003 (copy attached) issued under my hand to correct the name of Chung Sau Wei (previously incorrectly stated as Chung Sau Wai). There has been no other change to the terms and effect of the former Notice for the purposes of this inquiry.

Dated this 29th day of June 2005.

(Henry Tang)
Financial Secretary

CONTENTS

	<u>Page</u>
CHAPTER 1 INTRODUCTION	1
CHAPTER 2 PROCEDURE	7
CHAPTER 3 THE LAW	22
CHAPTER 4 THE PRIMARY ISSUES AND THE EVIDENCE RELEVANT TO THEM	37
CHAPTER 5 RELEVANT INFORMATION	46
CHAPTER 6 THE ROLE OF LAM HON NAM AND SILVIA CHAN	80
CHAPTER 7 THE ROLE OF ERNEST CHOY AND BECKY CHAN	98
CHAPTER 8 THE HARBOUR RING PURCHASES	117
CHAPTER 9 THE ROLE OF CHRIS WONG	121
CHAPTER 10 THE ROLE OF CHRISTIE WO	131
CHAPTER 11 THE ROLE OF CHARLES CHONG AND CHONG BUN BUN	145
CHAPTER 12 THE ROLE OF SAMMY TSE, DENNIS LI AND DEBBIE NG	163
CHAPTER 13 SUMMARY OF FINDINGS	200
CHAPTER 14 ORDERS	203

ABBREVIATIONS

American Phil	— American Phil International Ltd.
APC Securities	— APC Securities Co. Ltd.
B2B	— Business to Business
BVI	— British Virgin Islands
China Southern	— China Southern Finance Holding Ltd.
Christfund	— Chrisfund Finance Ltd.
Computer and Technologies	— Computer and Technologies Holdings Ltd.
Crown Regent	— Crown Regent Property Ltd.
E-Commerce	— E-Commerce Resources Ltd.
Friendly Earth	— Friendly Earth Investment Ltd.
GEM	— Growth Enterprise Market
GLS	— GLS Securities Ltd.
Great China	— Great China Brokerage Ltd.
Hang Seng Bank	— Hang Seng Bank Ltd.
Harbour Ring	— Harbour Ring International Holdings Ltd.
HSBC	— The Hongkong & Shanghai Banking Corporation Ltd.

Hutchison	— Hutchison Whampoa Ltd.
ICG	— International Capital Group
KGI Securities	— KGI Securities Co. Ltd.
Legend	— Legend Holdings Ltd.
Pacific Challenge	— Pacific Challenge Finance Ltd.
Penax	— Penax Investments Co. Ltd./ Pun Lik Investment Co. Ltd.
Peregrine	— BNP Paribas Peregrine Ltd.
Po Sang	— Po Sang Bank Ltd.
PRC	— People's Republic of China
SEHK	— The Stock Exchange of Hong Kong Ltd.
SFC	— Securities and Futures Commission
SmarTone	— SmarTone Mobile Communications Ltd.
South Capital	— South Capital Securities Ltd.
Taiwan Concord	— Taiwan Concord Capital Ltd.
The Ordinance	— The Securities (Insider Dealing) Ordinance Cap. 395
The Tribunal	— Insider Dealing Tribunal
Time Concepts	— Time Concepts Ltd.
TW	— Tribunal Witness

Vanda	— Vanda Systems and Communications Holdings Ltd.
Well State	— Well State Enterprise Ltd.
Winsome	— Winsome Stock Co. Ltd.
Xin Waitan	— Nanging Xin Waitan Development Co. Ltd.
Yien Yieh Bank	— Yien Yieh Commercial Bank Ltd.

ANNEXURES

- Annexure A — HISTORY OF VANDA'S SHARE TRADING PRICE AND
TURNOVER
- Annexure B — (i) SAMPLE COPY OF TYPE "A" SALMON LETTER
(ii) SAMPLE COPY OF TYPE "B" SALMON LETTER
- Annexure C — FULL CHRONOLOGY OF THE REPRESENTATION
OF THE IMPLICATED PARTIES
- Annexure D — TRIBUNAL'S RULING DELIVERED ON 9TH AUGUST
2005
RE: THE APPLICATIONS MADE ON BEHALF OF
CHARLES CHONG & CHONG BUN BUN BETWEEN
28TH JULY AND 2ND AUGUST 2005
- Annexure E — JUDICIAL REVIEW JUDGMENT
RE: INTERIM STAY OF PROCEEDINGS APPLICATION
MADE BY CHARLES CHONG & CHONG BUN BUN
- Annexure F — TRIBUNAL'S RULING DELIVERED ON 4TH MAY 2006
AS TO THE ADMISSIBILITY OF EVIDENCE
CONCERNING THE HARBOUR RING PURCHASES
- Annexure G — ANNOUNCEMENT OF VANDA DATED 21ST FEBRUARY
PUBLISHED IN THE 22ND FEBRUARY 2000 ISSUE OF
SOUTH CHINA MORNING POST

CHAPTER 1

INTRODUCTION

Vanda Systems and Communications Holdings Ltd. (“Vanda”) was a company listed on the Stock Exchange of Hong Kong (“SEHK”) since April 1995. Its main business activities revolved around the development and marketing of computer software and systems, the distribution of computer products and trading in telecommunications equipment.

At the beginning of 2000 the largest shareholder in Vanda was Lam Ma & Wai Ltd. It held 38.1% of Vanda and was in turn controlled by LAM Hon Nam who held 45.94% of its issued shares.

At that time Vanda's software business was conducted mainly through a subsidiary. The senior management of Vanda were interested in spinning off the subsidiary and perhaps seeking a listing for it on the Growth Enterprise Market (“GEM”) stock board.

To this end in late 1999 and early 2000 Vanda approached BNP Paribas Peregrine Limited (“Peregrine”).

Peregrine in turn arranged a meeting between the management of Vanda and that of Hutchison Whampoa Ltd. (“Hutchison”) which it knew was interested in investing in “high tech” companies.

On Saturday morning the 12th February a meeting took place between the senior management of the two companies. The persons present were LAM Hon Nam Chairman of Vanda and Edmund MA its

Group Managing Director; Canning FOK the Group Managing Director of Hutchison and Peter WONG a chief executive within the Hutchison Group. Francis LEUNG a director of Peregrine was also present.

As a result of that meeting the original idea of Vanda attracting an investor into its software subsidiary fell by the way side and was replaced by a new proposal that Hutchison have an opportunity to subscribe in Vanda itself to the extent of at least 20% of its issued share capital by way of an initial issue of convertible bonds and share options and that the two groups explore the feasibility of an e-commerce joint venture.

Further meetings relating to the contemplated joint venture occurred on Monday the 14th February at 4:30 p.m. and Wednesday the 16th February at 10:00 a.m.

On 17th February the Board of Vanda announced it was engaged “in meaningful discussions with an independent third party for the purpose of obtaining funding to finance new ventures”.

At Vanda's request trading in its shares was suspended on Friday 18th February.

On Tuesday 22nd February Vanda made an announcement (see Annexure G) concerning an agreement it had reached with Hutchison to the effect that Hutchison and Li Ka Shing Foundations Ltd. would have an opportunity to together acquire 28% of Vanda's enlarged share capital, by way of an issue of convertible bonds and share options and that, additionally, Vanda and a subsidiary of Hutchison intended to enter into an equal joint venture to provide an on line payment system for business.

Vanda's shares resumed trading on that same day 22nd February and achieved a considerable premium on their closing price when suspended on 18th February 2000.

Prior to the meetings between Vanda and Hutchison, Vanda's share price history had been relatively unsurprising. A history of Vanda's share trading price and turnover is at Annexure A.

During January 2000 the closing price of its shares had moved in a relatively tight range from about \$1.87 to \$2.80. Turnover was between 3 to 22 million shares. The same unremarkable trading history applied to earlier months although November and December had seen steady price increases at higher turnover levels. January could be described as a plateau in price and turnover.

As of 1st February 2000 Vanda's closing price was \$2.575 with turnover of 5,026,000. The next few days brought no change. But in the week after the Chinese New Year Vanda prices and turnover started to rise. By Friday 11th February turnover was 44,300,000 shares at a closing price of \$3.175.

The following day Saturday 12th February was the day of the first meeting between Vanda and Hutchison management.

On Tuesday 15th February the day after the 2nd meeting between the two companies, Vanda shares had a turnover of 27,534,000 and a closing price of \$3.725.

Turnover and price over the next two days both steadily rose and on Thursday 17th February (the day after the 16th February meeting between Vanda and Hutchison) the share price closed at \$5.70 with

turnover of 37,638,000. On Friday 18th February trading in Vanda shares was suspended.

On the 22nd February, following Vanda's announcement of its agreement with Hutchison and the recommencement of trading the share price rose to a high of \$8.60 before closing at \$7.95. Turnover was 81,546,000.

Following these events it became clear that certain individuals who were associated with the executives of Vanda and Hutchison present at the various meetings, had made significant purchases of Vanda shares between 14th-17th February.

The Vanda executives involved in meetings whose family members purchased Vanda shares were LAM Hon Nam the Chairman of Vanda (who was present at the meeting of the 12th February) and Ernest CHOY Ming Yan ("Ernest CHOY") a General Manager of Vanda (who was present at the meetings of 14th and 16th February).

LAM Hon Nam's sister-in-law Silvia CHAN Yuk ("Silvia CHAN"), who at that time ran her own accounting and services company, but who had once been employed by Vanda as an accountant, had purchased a total of 710,000 Vanda shares between 14th-17th February at a total cost of \$2.95 million.

Becky CHAN Lai King ("Becky CHAN") was the wife of Ernest CHOY. Between 14th and 16th February she purchased a total of 830,000 Vanda shares at a total cost of \$3.1 million.¹

¹ She claimed she had purchased 300,000 of those shares for her sister, CHAN Lai Mui.

An executive from Hutchison who was involved in taking the agreement forward with Vanda and who had been present at the 14th and 16th February meetings was Sammy TSE Kwok Fai (“Sammy TSE”) the Chief Executive Officer of Hutchison E-Commerce Ltd., a wholly owned subsidiary of Hutchison. He had a group of friends or acquaintances who themselves, and on occasions persons associated with them, purchased significant quantities of Vanda shares.

Debbie NG Kit Ying (“Debbie NG”) at the material time was aged 17 and unemployed. She was a friend of Sammy TSE at the time he participated in the negotiations between Vanda and Hutchison. Debbie NG purchased through her mother’s accounts a total of 634,000 Vanda shares between 15th and 17th February 2000 at a total cost of about \$2.6 million. Dennis LI Yat Tung (“Dennis LI”) was a friend of both Sammy TSE and Debbie NG. Debbie NG alleged during her interview with the SFC that 300,000 of the Vanda shares she had purchased through her mother’s accounts had been purchased on behalf of Dennis LI.

Christie WO Man Shan (“Christie WO”) was another friend of Sammy TSE. She traded through the account of her boyfriend and business partner’s secretary CHUNG Sau Wei, Olivia (“Olivia CHUNG”) and between 15th and 17th February 2000 purchased 550,000 Vanda shares at a total cost of over \$2.2 million.²

Chris WONG Cheung Hung (“Chris WONG”) was a friend of Debbie NG. On 16th February 2000 he purchased 630,000 Vanda shares at a cost of about \$2.6 million.³

² Both Christie WO and Olivia CHUNG claimed that 30-60,000 of those shares had been purchased by Olivia CHUNG on her own behalf.

³ Both Chris WONG and Debbie NG claimed that 30,000 of those shares were purchased by Debbie NG on her own behalf.

Charles CHONG Wai Lee (“Charles CHONG”) was an associate of Sammy TSE. Between 15th to 17th February 2000 his trading accounts purchased 650,000 Vanda shares at a total cost of about \$3 million.⁴

Becky CHONG Bun Bun (“CHONG Bun Bun”) was the sister of Charles CHONG. Between 15th to 17th February 2000 she purchased on her account 1.1 million Vanda shares at a total cost of over \$4.8 million.

As a result of these transactions coming to the attention of the Securities & Futures Commission (“SFC”) an investigation took place and in due course the Financial Secretary issued a notice⁵ pursuant to section 16(2) of the Securities (Insider Dealing) Ordinance Cap 395 (“the Ordinance”) to this Tribunal requiring it to inquire into the above transactions and to determine whether insider dealing had taken place and, if so, the identity of the insider dealers and what profits if any had been gained as a result of the insider dealing.

⁴ Both Charles CHONG and CHONG Bun Bun claimed she had purchased some of these shares in his account.

⁵ The section 16(2) notice dated 28th October 2003 is at page (i) of this Report, together with a corrigendum dated 29th June 2005.

CHAPTER 2

PROCEDURE

Following the receipt on 6th November 2003 of the Financial Secretary's notice under section 16(2) of the Ordinance dated 28th October 2003 this Tribunal was constituted. The Chairman was the Honourable Mr. Justice McMahon. Its lay members were appointed by the Financial Secretary on the 18th March 2005. They were Professor LAM Kin, Chair Professor of the Department of Finance and Decision Sciences at Hong Kong Baptist University and Mr. David NG Tze Kin, Managing Director of Hong Kong Great Wall Certified Public Accountants Ltd.

Subsequently on the 30th March 2005 counsel assisting the Tribunal were appointed. They were initially Mr. Peter DUNCAN, SC and Mr. Dick HO, Government Counsel.

Following meetings between the members of the Tribunal and counsel assisting the Tribunal decided to send Salmon letters⁶ to eleven persons it thought may be at risk of being found to be insider dealers. Those persons were:-

- (1) LAM Hon Nam
- (2) Madam CHAN Yuk, Silvia
- (3) CHOY Ming Yan, Ernest
- (4) Madam CHAN Lai King, Becky

⁶ A Salmon letter is so called after Lord Salmon who originally advised that persons at risk of an adverse finding against them in an inquiry of this sort be notified to that effect and be allowed legal representation.

- (5) TSE Kwok Fai, Sammy
- (6) Madam NG Kit Ying, Debbie
- (7) LI Yat Tung, Dennis
- (8) Madam WO Man Shan, Christie
- (9) WONG Cheung Hung, Chris
- (10) CHONG Wai Lee, Charles
- (11) Madam CHONG Bun Bun.

Those letters were issued to the implicated parties on the 11th April 2005, and notified them that a preliminary hearing would be held on 17th May 2005. A sample of such a Salmon letter is at Annexure B.

On the 17th May the first Preliminary Hearing was held. The parties who had been served with Salmon letters had been notified of the hearing. All attended either personally or by way of a legal representative. The chairman made an introductory statement which in essence stated the terms of reference of the inquiry and explained the procedures which would be adopted throughout the inquiry. Implicated parties who sought to be represented by counsel or solicitors made applications to that effect and those applications were granted. Not all implicated parties sought legal representation, and many that did sought leave to be represented for a particular day's hearing. Many implicated parties subsequently changed their representation either before or during the substantive hearing and a full chronology of the representation of the implicated parties is at Annexure C.

During that first preliminary hearing on the 17th May 2005 Mr. Patterson who then represented Charles CHONG and CHONG Bun Bun told the Tribunal that certain interlocutory arguments concerning objections to the constitution of the Tribunal and the continuation of the hearing may be raised as well as an application for a

stay of proceedings based on the time that had elapsed since the events the subject of the inquiry had occurred.

Over various hearing days between 31st May and 15th July 2005 the Tribunal dealt with various matters relating to the disclosure of documents and the provision of other information sought by Mr. Patterson for the purpose of his applications, as well as preliminary matters of law concerning the applications. On the 9th June 2005 Mr. Daniel MARASH SC was appointed as counsel assisting in the place of Mr. Duncan SC.

The applications made on behalf of Charles CHONG and CHONG Bun Bun were heard between 28th July and 2nd August 2005. On the 9th August 2005 the Tribunal delivered its ruling dismissing the various complaints made in respect of Charles CHONG and CHONG Bun Bun's applications. A copy of that ruling is at Annexure D.

On the 7th September 2005 the Tribunal appointed Mr. Jonathan KWAN as counsel assisting in the place of Mr. Dick HO, and the substantive hearing began on that same date.

The hearing proceeded until 13th September 2005 by which time some seven witnesses had given evidence when, as the result of an application being made to the High Court for a review of the Tribunal's Ruling of 9th August 2005 a stay of the Tribunal's proceedings against Charles CHONG and CHONG Bun Bun was ordered.

On the 14th September 2005 other implicated parties sought an adjournment of the inquiry so far as they were concerned and all parties consented to such an adjournment pending the outcome of the judicial review.

On the 4th January 2006 the High Court comprising Mr. Justice Lam and Mr. Justice Reyes handed down judgment on the judicial review dismissing it and lifting the interim stay of proceedings. A copy of that judgment is at Annexure E.

Following that Charles CHONG and CHONG Bun Bun appealed the outcome of the judicial review by Civil Appeal No. 59 of 2006 in the Court of Appeal. However that appeal was dismissed by consent on the 24th March 2006.

On the 6th April 2006 this inquiry continued.

A total of 54 witnesses were eventually called, including the implicated parties.

Those witnesses were:-

	Name	Present Occupation	General relevance to the inquiry
TW 1 ⁷	WONG King Fai, Peter ("Peter WONG")	CEO of Hutchison Global Crossing Limited, Hutchison World Communications Limited, and Hutchison Telecom (Hong Kong) Limited	CEO, Hutchison Global Crossing Limited in February 2000.
TW 2	FUNG Yu Kwan, Bernard ("Bernard FUNG")	CEO of DTTN Limited	General Manager, E-commerce Resources Ltd. in

⁷ "TW" refers to "Tribunal Witness".

Name		Present Occupation	General relevance to the inquiry
			February 2000.
TW 3	HO Tak Kay ("T.K. HO")	Accountant, China Fermentation Technology Group Company Limited	Chief Financial Officer, Vanda Systems & Communications Limited in February 2000.
TW 4	LEUNG Chun Pong, Paul	Securities Broker with Quam Securities Limited	Silvia CHAN's broker at APC (Securities) Ltd. in February 2000.
TW 5	KWONG Man Bun, Ben ("Ben KWONG")	Chief Operating Officer of KGI Asia Limited	Silvia CHAN's broker. Director, KGI Asia Ltd. in February 2000.
TW 6	LEUNG Pak To, Francis ("Francis LEUNG")	Director, Citigroup Global Markets	Chief Executive Officer of BNP Paribas Peregrine Group in February 2000.
TW 7	Madam LI Yuk Wah, Isadora ("Isadora LI")	Director, BNP Paribas Peregrine Capital Ltd.	Investment banker with BNP Paribas Peregrine Capital Limited in February 2000.
TW 8	Madam LEE Sung Kit, Karen ("Karen LEE")	Group Financial Controller, Vanda	Group Financial Controller, Vanda Systems & Communications Limited in February 2000.

Name		Present Occupation	General relevance to the inquiry
TW 9	MA Chun Kwong, Edmund ("Edmund MA")	Unemployed	Group Managing Director of Vanda Systems & Communications Limited in February 2000.
TW 10	Madam CHAN Yuk Mee	Solicitor, Tam & Partners Solicitors	Wife of LAM Hon Nam. Silvia CHAN Yuk's younger sister.
TW 11	CHAN Kee Ming	CEO of DigiLogistics Ltd.	Brother of Silvia CHAN Yuk. CEO of DigiLogistics Ltd. since 1999. In February 2000 DigiLogistics was a subsidiary of Vanda.
TW 12	Madam CHENG Choi Chun	Unemployed	Mother of Silvia CHAN Yuk.
TW 13	Madam CHEN Hung Ka	Air hostess	Wife of Silvia CHAN Yuk's brother, CHAN Kee Ming.
TW 14	SHEK Siu Yin, Tony ("Tony SHEK")	Working in a coffee shop at Chengdu, PRC Mainland.	Stockbroker with South Capital Brokerage in 2000. Debbie NG's mother's account at South Capital was used to purchase Vanda shares.

Name		Present Occupation	General relevance to the inquiry
TW 15	SZE Shing Yee	Stockbroker, Christfund Securities	<p>Stockbroker, Christfund Securities in February 2000.</p> <p>Charles CHONG's account executive. Charles CHONG purchased Vanda shares on the account he held at Christfund.</p>
TW 16	CHUNG Sau Wei, Olivia ("Olivia CHUNG")	Accountant, Time Concept Holdings Limited	<p>Secretary at Time Concepts Limited in February 2000. Her trading account was used to purchase Vanda shares for Christie WO.</p>
TW 17	FOK Kin Ning, Canning ("Canning FOK")	Group Managing Director, Hutchison Whampoa Limited	<p>Group Managing Director of Hutchison Whampoa Ltd. in February 2000.</p>
TW 18	WU Chi Chiu	CEO of China Motion Ltd.	<p>Stockbroker with Taiwan Concord Capital Ltd. in February 2000. Stockbroker for Debbie NG who purchased Vanda shares on her mother's account there.</p>

	Name	Present Occupation	General relevance to the inquiry
TW 19	LAM Hon Yuen	Director, Hon Wah Chemical Products Company (English name: Honourchem Production Company Ltd.)	Brother of LAM Hon Nam. Husband of Silvia CHAN Yuk.
TW 20	Madam CHAN Sui Kei	Housewife	Underground remittance agent re HK\$2.3 million funds sent from the Mainland to Silvia CHAN Yuk in February 2000.
TW 21	Madam FONG Long	Housewife	Mother of Debbie NG Kit Ying. Debbie NG used her trading accounts at Taiwan Concord and South Capital to purchase Vanda shares.
TW 22	CHEUNG Chi Kwan, Gordon ("Gordon CHEUNG")	Employed by IBM. Sales executive of global technology services.	Director of Vanda in February 2000.
TW 23	TSE Chi Yan, Danny	Stockbroker, Winsome Stock Company Limited	Stockbroker with Winsome Securities Ltd. in February 2000. He was Becky CHAN's account executive when she purchased Vanda shares.

	Name	Present Occupation	General relevance to the inquiry
TW 24	SHUEN Wai, James ("James SHUEN")	Managing Director of Asia Port Services Ltd.	General Manager of Mid-Stream Holdings Ltd. (Hutchison subsidiary) in February 2000.
TW 25	CHUI Tin Yam, Johnny ("Johnny CHUI")	Stockbroker, Getnice Investments Ltd.	Stockbroker, Pacific Challenge Securities Ltd. in February 2000. He was the account executive of Charles CHONG and CHONG Bun Bun when Vanda shares were purchased on their accounts.
TW 26	LAI Kai Ming, Dominic ("Dominic LAI")	Director of Hutchison Whampoa Ltd.	Executive Director of Hutchison. He worked directly under Canning FOK in February 2000.
TW 27	TONG Hon Fai	Senior Manager, Enforcement Division of SFC during inquiry	Assigned to contact witnesses.
TW 28	Madam MAN Man Wah, Jenny	Manager, Enforcement Division of SFC during inquiry	Assigned to contact witnesses.
TW 29	Madam Shirley FUNG	Housewife	Managing Director, Goldman Sachs

Name		Present Occupation	General relevance to the inquiry
			Asia Ltd. in February 2000. Dealt with Hutchison deal relating to International Capital Group and Harbour Ring Ltd.
TW 30	Madam LO Luk Chun, Perla	Senior Billing Officer, Hong Kong CSL Limited	Produced documents regarding subscribers' details and call records of mobile numbers generated from CSL's computer records.
TW 31	Madam CHENG Chor Kuen, Ellen	Senior Manager of Enforcement Division, SFC	Obtained telephone records of the 11 implicated parties during SFC investigation.
TW 32	Madam LAW Wai Ling	Assistant Analyst, SmarTone Mobile Communications Ltd.	Produced subscriber's details and calls records of mobile numbers generated from SmarTone's computer.
TW 33	LEUNG Wai Hong	Chief Investigation Officer, Hutchison Telecommunications Security Department.	Produced subscriber's details and call records of mobile numbers generated from Hutchison's

Name		Present Occupation	General relevance to the inquiry
			computer.
TW 34	Madam LIU LAI Man Lar	Manager, Enforcement Division, SFC	Dealt with location of witnesses during the inquiry.
TW 35	Madam CHAN Wai Mong, Artamis	Analyst, SmarTone Vodafone	Produced subscriber's details and call records of mobile numbers and produced a cell site location of mobile number 98590016 registered in name of Silvia CHAN on 15 th and 16 th February 2000.
TW 36	MAO Chi Fai	Director, Delvitt Asia Pacific Ltd.	A director of Dot & Co. and Time Concept Holdings Ltd. in 2000. Boyfriend of Christie WO in February 2000. Employer of Olivia CHUNG.
TW 37	WOO Mo Fong, Susan ("Susan CHOW")	Deputy Managing Director, Hutchison Whampoa Ltd.	Deputy Managing Director of Hutchison under Canning FOK in February 2000.
TW 38	Madam FUNG Sau Hong, Stella ("Stella FUNG")	Associate Director, SFC	Expert Witness

	Name	Present Occupation	General relevance to the inquiry
TW 39	Clive Derek Conway RIGBY ("Clive RIGBY")	Managing Director, Lippo Securities Limited	Expert Witness for LAM Hon Nam and Silvia CHAN Yuk.
TW 40	SHUM Chun Ying, Louie ("Louie SHUM")	Managing Director, Sincere Securities Limited	Expert Witness for Charles CHONG and CHONG Bun Bun
TW 41	LAM Hon Nam ("H.N. LAM")	Executive Director, Vanda	Implicated Party. Chairman of Vanda in February 2000.
TW 42	CHAN Yuk, Silvia ("Silvia CHAN")	Self-employed. Accounting Secretary, Apex Accounting and Secretarial Company	Implicated Party. Sister-in-law of LAM Hon Nam.
TW 43	CHOY Ming Yan, Ernest ("Ernest CHOY")	Senior Vice President, Vanda, China Operations	Implicated Party. General Manager of Vanda operations in Hong Kong and South East Asia in February 2000.
TW 44	Madam CHAN Lai King, Becky ("Becky CHAN")	Housewife	Implicated Party. Wife of Ernest CHOY.
TW 45	TSE Kwok Fai, Sammy ("Sammy TSE")	Personal Assistant, South China Holdings Company Limited	Implicated Party. In February 2000, a CEO of Hutchison E-Commerce

Name		Present Occupation	General relevance to the inquiry
			Resources Ltd.
TW 46	Madam NG Kit Ying, Debbie ("Debbie NG")	Part-time fashion trader in PRC	Implicated Party.
TW 47	Madam WO Man Shan, Christie ("Christie WO")	President and CEO, Charmonde Luxury Limited	Implicated Party. In 2000, worked with MAO Chi Fai in Time Concept Holdings Ltd. and Dot & Co.
TW 48	LI Yat Tung, Dennis ("Dennis LI")	Merchant, Mondi Distribution Limited	Implicated Party. Director of sales and marketing in Maxifirm Hong Kong Limited in February 2000.
TW 49	WONG Cheung Hung, Chris ("Chris WONG")	General Manager, Orchid Computer Garment Manufacturing Company Limited.	Implicated Party.
TW 50	CHONG Wai Lee ("Charles CHONG")	Director of American Phil International Company Limited	Implicated Party. Brother of CHONG Bun Bun.
TW 51	Madam CHONG Bun Bun	Proprietor, Eve Boutique and Intimate Floral Shop	Implicated Party. Sister of Charles CHONG.

Name		Present Occupation	General relevance to the inquiry
TW 52	LAM Wai Biu	Investigation Officer, PCCW	Produced subscriber's details of telephone numbers generated from PCCW's computer.
TW 53	Madam YEUNG Siu Ling	Human Resources Manager of China Southern Securities (HK) Ltd.	Provided business registration certificates of South Capital Brokerage Limited and China Southern Finance Holding Limited and subscriber's details of a facsimile number 22131700 and its service address.
TW 54	Madam CHEUNG Ming Shun	Clerk of China Southern Securities (Hong Kong) Limited	Produced a deposit slip paid into South Capital HSBC account.

At the conclusion of the evidence the Tribunal heard submissions from counsel assisting and from or on behalf of the implicated parties and adjourned to deliberate. Following that the Tribunal issued an interim report to the Financial Secretary and to counsel and parties involved in the inquiry so as to inform them of matters relevant to the final stage of these proceedings, that is the determination of the profits of those found to be insider dealers and the appropriate

penalties to be imposed and orders made. This final report incorporating those matters was then made.

CHAPTER 3

THE LAW

We set out below the important statutory provisions and general principles of law which governed the inquiry. What we set out of those provisions and principles is not intended to be exhaustive, other aspects of the law applied by the Tribunal will be dealt with in the context in which they arise in later chapters.

The Statutory Provisions

The subject matter of the inquiry concerned information arising out of negotiations between Vanda and Hutchison concerning the latter taking a significant interest in and cooperating with the former. The implicated parties who were the subject of the inquiry were potentially involved as insider dealers either as persons connected to either Vanda or Hutchison and who possessed information concerning the negotiations between Vanda and Hutchison as a result of their involvement in the negotiations between those two companies, or as persons who either directly or indirectly received information from those persons involved with the negotiations.

Accordingly we considered the following provisions of the Ordinance:

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;”

In considering those provisions, it was necessary to determine whether any persons were "connected" with Vanda. The relevant provisions of the Ordinance in that regard are contained in section 4:

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)"*

What “dealing in listed securities” comprises for the purposes of section 9(1)(a), (c), or (e) is contained in section 6 of the Ordinance:

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)”*

What is “relevant information” for the purposes of section 9(1)(a), (c) or (e) is set out in section 8 of the Ordinance:

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.”

Further and detailed consideration of the terms of section 8 will be given in Chapter 5 below.

All matters of law were determined by the Chairman and the Tribunal followed such directions of law. All other matters including matters of fact were determined by a majority of the members of the

Tribunal. That was in accordance with the provisions of paragraph 13 of the Schedule to the Ordinance:

Paragraph 13

“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.”

The admissibility of evidence before a Tribunal is not determined by the principles of common law. We admitted evidence if it was relevant to our determination of the matters raised by our terms of reference and if its admission was fair to the implicated parties. The admissibility of evidence is governed by section 17(a) of the Ordinance.

Section 17(a)

“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;”

General Principles of Law

Standard of Proof

The standard of proof adopted in this inquiry as in all other inquiries since the Success Holdings inquiry⁸ was that to "a high degree of probability".

⁸ Report of the Insider Dealing Tribunal of Hong Kong in the Success Holdings Limited inquiry.

Considerable argument was directed to us by Mr. CHIU on behalf of Charles CHONG and CHONG Bun Bun during the course of his submissions to the effect that we should adopt a standard of proof indistinguishable from the criminal standard of “beyond reasonable doubt”.

While Mr. CHIU accepts that we are bound by higher authority in regarding these proceedings as being civil in nature (see *R – v – Securities and Futures Commission, ex parte LEE Kwok-hung* (1993) 3 HKPLR 1 and *Ex parte LEE Kwok-hung* (1993) 2 HKLR 51) he argued that the nature of the proceedings and their potential consequences for those found to be insider dealers warranted a standard of proof so high so as to be equivalent to the criminal standard.

In that regard he cites certain English decisions where he says the courts have expressed opinions supporting this proposition. Those cases were best illustrated by *R (McCann) – v – Crown Court at Manchester* (2003) 1 AC 787 where the House of Lords considered the applicable standard of proof under the English Crime and Disorder Act 1998 when an application was made pursuant to section 1 of that Act for an anti-social behaviour order. Lord Steyn said:

“Having concluded that the relevant proceedings are civil, in principle it follows that the standard proof ordinarily applicable in civil proceedings, namely the balance of probabilities, should apply. However, I agree that, given the seriousness of matters involved, at least some reference to the heightened civil standard would usually be necessary: In *re H (Minors)(Sexual Abuse: Standard of Proof)* [1996] AC 563, 586D-H, per Lord Nicholls of Birkenhead. For essentially practical reasons, the Recorder of Manchester decided to apply the criminal standard. The

Court of Appeal said that would usually be the right course to adopt. Lord Bingham of Cornhill has observed that the heightened civil standard and the criminal standard are virtually indistinguishable. I do not disagree with any of these views.”

Lord Hope said:

“I think that there are good reasons, in the interests of fairness, for applying the higher standard when allegations are made of criminal or quasi-criminal conduct which, if proved, would have serious consequences for the person against whom they are made.

This, as I have already mentioned, was the view which the Court of Session took in *Constanda v M* 1997 SC 217 when it decided that proof to the criminal standard was required of allegations that a child had engaged in criminal conduct although the ground of referral to a children’s hearing was not that he had committed an offence but that he was exposed to moral danger. There is now a substantial body of opinion that, if the case for an order such as a banning order or a sex offender order is to be made out, account should be taken of the seriousness of the matters to be proved and the implications of proving them. It has also been recognised that if this is done the civil standard of proof will for all practical purposes be indistinguishable from the criminal standard.”

But those cases and the cases referred to by Lord Hope and Lord Steyn deal in the main with banning orders, or supervision orders which require the tribunal to be satisfied before making the order that a criminal offence or offences had been committed. In other words underlying the civil proceedings was a requirement that there be a finding of criminality. That is not the case so far as the present Ordinance is concerned.

Further in our view the decision in *A Solicitor – v – The Law Society of Hong Kong CACV 107/2005* applies. That was an appeal against the findings of a tribunal set up by the Law Society of Hong Kong in respect of various complaints concerning a solicitor improperly publicising his practice. He was found to have done so and was censured, suspended from practice and fined \$50,000. The court of appeal by a majority decision refused to impart into disciplinary proceedings, which were plainly civil in nature, the criminal standard of proof. Ma CJ and Stock JA both regarded the Tribunals adopting a “civil standard of proof albeit with a higher degree of probability commensurate with the gravity of the allegations” as being a proper approach. They rejected the contention that a standard akin to the criminal standard should have been adopted. As Stock JA said in the course of his judgment:

“The approach hitherto adopted in Hong Kong (the flexible civil standard) is one that is consistent with principle and authority, and one that can be practically applied. I see no reason to change it. I recognize of course the attraction of simply having a single standard in disciplinary proceedings, namely beyond a reasonable doubt but this is not one that in my view can ultimately be justified either as a matter of principle or on the authorities. There is also no necessity for it since the civil standard is adequate to meet the requirements of justice in any given case.”

It seems to this Tribunal that it is not particularly helpful to compare standards of proof and the expressions describing them which have evolved in civil law over a great many years, with the formulation of the criminal standard of proof which has separately developed over as long a period. The important thing is to apply an appropriate standard in

those civil proceedings, such as proceedings before this Tribunal, where it has been recognised the usual civil standard of bare probabilities may not be appropriate to the nature and consequences of the allegations involved. To say that acknowledges that the civil standard of proof is one which may change depending on the particular case or issue under trial. We think that is a correct statement of the law based upon a long line of authority: *Tarnesby – v – General Medical Council*, Privy Council Appeal No. 21 of 1969, *Khawaja – v – Secretary of State for the Home Department* (1984) AC 74, *Attorney General – v – Tsui Kwok Leung* (1991) 1 HKLR 40, *Tse Lo Hong – v – Attorney General* (1995) 3 HKC 428, *Re H (A Minor)* (1996) AC 563, though we appreciate there exist strong judgments to the contrary effect that there are only in practice two standards of proof; the balance of probabilities and the criminal standard.

So in Hong Kong it is recognised that in certain circumstances the general civil standard of balance of probabilities may be departed from and a higher standard imposed where it is appropriate to do so. Different terminology has been adopted to describe that higher standard (or standards). But it seems to this Tribunal that the standard warranted by the nature of the allegations involved in an insider dealing inquiry, and in the present inquiry, is that of “high probability”.

These proceedings are not properly describable as criminal in nature, they do not have the potential consequences on liberty which serious criminal prosecutions do. They do not result in a criminal record coming into being. They do however result in a potential fine and disentitlement from acting as a director in listed and other companies. We accept that some social stigma comes with a finding that an individual is an insider dealer. We accept that insider dealing and particularly the penalty provision contained in section 23(1)(c) while not criminal have

quasi-criminal elements (see *Report of the Insider Dealing Tribunal on insider dealing in the securities of Easy Concepts International Holdings Ltd.* at page 185-191). But we do not think that means the standard of proof has to be the criminal standard. The standard of “high probability” is a genuinely high standard and, in our view, is commensurate with the serious allegations and consequences faced by implicated persons.

In the present case we have been required by the Financial Secretary to report to him as to whether insider dealing has occurred in Vanda’s shares and, if so, by whom. The proceedings are directed to uncovering the facts of persons dealings in those shares so as to enable the Tribunal to inform the Financial Secretary of, quite simply, what happened. The proceedings, unlike disciplinary proceedings or applications for specific orders are not directed against particular individuals, although it is recognised that some individuals are at risk of findings being arrived at which are adverse to them.

The purposes of such an inquiry are best served, bearing in mind also the consequences for those found to be insider dealers, by the application of a standard of proof to a high degree of probability. The present inquiry had no special attributes to it which would require any other standard and it is the standard we adopted. We should emphasise that our views as expressed above are intended to apply only to the provisions of the Securities (Insider Dealing) Ordinance Cap. 395.

Inferences

In determining the issues raised by the present inquiry the Tribunal on a large number of occasions had to consider whether to draw inferences adverse to an implicated party. This was particularly so in

determining what a person's knowledge or intention was at a material time. In approaching that question the Tribunal reminded itself that before drawing any inference from proven facts which was adverse to an implicated party it had to be satisfied that it was a compelling inference and the only reasonable inference which could be drawn from those proven facts.

Lies

So far as on occasion the Tribunal found that implicated persons had told lies (whether in evidence before the Tribunal or to the SFC during the course of its investigation) it directed itself in terms of the observations contained in the *Public International Investments Limited Report*⁹ as follows:-

“To the extent that we may decide that lies have been told to the SFC or to this Tribunal we are conscious of the fact that there may be reasons for lies consistent with absence of any wrongdoing, or of the particular wrongdoing alleged, and that it is only if we exclude such reasons that lies may support the allegation of that particular wrongdoing. We are also conscious of the fact that although a lie of itself proves nothing, save that the lie has been told, “lies can in conjunction with other evidence tend to support an inference of guilt in the sense that they can confirm or tend to support other evidence which of itself is indicative of guilt. ... we have ... borne well in mind the question whether a lie may have been motivated not by a realization of guilt of insider dealing, but by a realization of guilt of some other wrongdoing or by a conclusion or fear (whether justified or not) that certain conduct would be viewed by others as improper, or by a feeling that the truth was unlikely to be believed ... also that before a lie may be used to support a particular

⁹ Report of the Insider Dealing Tribunal of Hong Kong in the Public International Investments Limited inquiry.

allegation, we have first to be satisfied that the lie was deliberate, and that it is material to the issue we have to decide”.

The members' own knowledge

The two lay members of the Tribunal were highly qualified in matters pertaining to the Hong Kong financial market. Accordingly the Tribunal was alert to the danger of becoming its own witness.

As Lord Widgery C.J. said 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.”

The lay members were directed that they could use their experience of Hong Kong's financial and stock market only in assessing what weight to give to the evidence called before the Tribunal.

The cases of the implicated parties considered separately

In this inquiry as in many others the evidence and the issues relating to the case of one implicated party was common to the case or cases of another implicated party or parties.

The Tribunal directed itself as to the necessity of considering the case of each implicated party separately and reminded itself that a finding of culpability so far as one implicated party was concerned did not necessarily mean that another was culpable.

The statements of witnesses

Bearing in mind the provisions of section 17(a) of the Ordinance, we accepted the prior statements of witnesses, whether in the form of interviews with the SFC or otherwise as evidence for all purposes.

What weight we attached to those statements varied.

Where the witness adopted his earlier statement as being true we simply regarded it as part of his evidence.

Where he denied the truth of the earlier statement or it was in conflict with the evidence he gave before the Tribunal we nevertheless regarded the earlier statement as part of the evidence of that witness and additionally took that conflict into account in assessing the credibility of the witness.

On occasion we gave more weight to the contents of a witness's previous statement where it was made closer in time to the events it dealt with than to the witness's oral evidence before us.

So far as any implicated party made admissions against their own interest in a prior statement we generally placed a higher evidential value on that admission.

Where statements or affirmations were placed before the Tribunal by persons who did not give oral evidence we took into account in deciding what weight to place upon that statement that the maker had not been subjected to cross-examinations.

Where statements admitted as evidence before the Tribunal contained assertions based on hearsay we approached that evidence with caution and generally placed a reduced weight upon it, depending on the circumstances and context of that assertion.

Delay

These proceedings eventually started some 5½ years after the events in question. After a further delay of 8 months caused by the review proceedings some witnesses, including the implicated parties, gave evidence over 6 years after the events in question.

We were very alert to the likely deterioration of a witness's memory of the events over that period of time. We reminded ourselves that inconsistencies in a witness's evidence (including that of the implicated parties) or omissions in a witness's recollection did not necessarily go to the question of a witness's truthfulness. The same applied as between witnesses. We also bore in mind that some

documentary material may have been mislaid or lost during that period of time.

It is right to say that no implicated party was found to be culpable of insider dealing solely on the individually remembered contents of isolated conversations. We looked always for supporting evidence in the form of proximate or near-proximate documents or statements or other records or evidence in respect of important questions of fact. Having said that it was obvious that most witnesses called before the Tribunal had surprisingly good recollections of the events we were dealing with, at least as to material matters.

Character

We took into account the previous good character of the implicated parties in their favour both in terms of their enhanced credibility and their lesser propensity to act unlawfully.

“Counsel” and “Procure”

We took “counsel” to mean advise or encourage the purchase of Vanda shares and “procure” to mean the taking of a step or steps so as to achieve the purchase of Vanda shares.

CHAPTER 4

THE PRIMARY ISSUES AND THE EVIDENCE RELEVANT TO THEM

The present chapter has as its purpose a general description of the important issues which arose in the course of our answering the questions raised by the Tribunal's terms of reference. We will briefly describe those issues, or at least the primary ones which arose, and attempt to broadly place them in the context of the events the subject of the inquiry. The nature of the evidence relevant to those issues will also be set out in general terms.

The first important issue which arose for our consideration was determining whether there had been brought into existence any relevant information as defined in section 8 of the Ordinance.

That evidence concerned the contents of meetings which occurred between Vanda directors and staff and Hutchison group directors and staff on the 12th, 14th and (to a lesser extent) 16th February 2000. At those meetings possible cooperation between Vanda and Hutchison was discussed for the first time. That cooperation comprised two aspects. The first was the proposal that Hutchison take an interest in Vanda by way of the issue of convertible bonds and share options. The second aspect was a proposed joint venture between the two groups in the e-commerce field, being a "B2B" project.

Witnesses who were not implicated parties who gave evidence in regard to these meetings were, from the Hutchison group of companies: Peter WONG (CEO of Hutchison Global Crossing), Bernard FUNG

(General Manager at E-Commerce Resources Ltd.) and Canning FOK (Hutchison Whampoa Ltd. Group Managing Director).

From the Vanda group were Edmund MA (Vanda Group Managing Director) and Gordon CHEUNG (Director of the Business Division of Vanda). From Peregrine was Francis LEUNG (CEO of Peregrine).

Additionally other witnesses gave evidence of their involvement in handling and preparing documentation generated by the first 12 February 2000 meeting. They were from Vanda; T.K. HO (Chief Financial Officer) and his subordinate Karen LEE (Group Financial Controller), and from Peregrine Isadora LI (Deputy Managing Director of Peregrine).

Other witnesses were asked as to their more peripheral knowledge of the Hutchison proposal to Vanda, such as Susan CHOW Deputy Managing Director of Hutchison Whampoa Ltd.

Additionally the implicated parties LAM Hon Nam and Ernest CHOY from Vanda and Sammy TSE from Hutchison gave evidence as to what was discussed in those meetings.

That was the scope of the evidence involving the contents of the meetings which occurred between Vanda and Hutchison in mid-February 2000 prior to the announcement of 22nd February as to Hutchison taking an interest in Vanda.

From the evidence of those witnesses and the documents produced through them the Tribunal had to consider two important questions:

- (1) Was relevant information generated by the discussions which took place at those meetings?
- (2) If so, at what stage did the relevant information come into being?

The importance of the first matter is obvious. Without the Tribunal being satisfied that relevant information came into being the inquiry need go no further. Of course the evidence of the above witnesses was primarily concerned with only one component of that which makes up relevant information within the terms of section 8 of the Ordinance, namely the component of “specific” information.

As to the second question above, as the various share purchases were made by or on behalf of implicated parties over the period of time 14th-17th February 2000, it was important to determine, if relevant information did come into existence during the course of the various meetings, when that information became sufficiently specific so as to be capable of being relevant information for the purposes of section 8 of the Ordinance. Obviously any share purchase made before that point in time could not constitute insider dealing for the purposes of any of the provisions of section 9 of the Ordinance.

The remaining important question to be determined in deciding whether the information generated by the meetings held between Vanda and Hutchison from the 12th to 16th February 2000 was whether that information was price sensitive in the terms of section 8 of the Ordinance. Two of the expert witnesses gave substantial evidence in this regard. The first was Stella FUNG a Chartered Financial Analyst employed by the SFC. The second was Clive RIGBY who had many years’ working

experience in the Hong Kong market and is presently Managing Director of Lippo Securities Ltd. A third expert witness Louie SHUM Managing Director of Sincere Securities also gave evidence on this matter, but also gave more general evidence as to the behaviour of retail investors during the “high tech” frenzy in early 2000.

Following upon its eventual conclusion that relevant information had come into existence during the course of the meetings held between Vanda and Hutchison the Tribunal then had to determine whether any of the individual implicated parties had received that information or sufficient of it to be relevant information for the purposes of section 8.

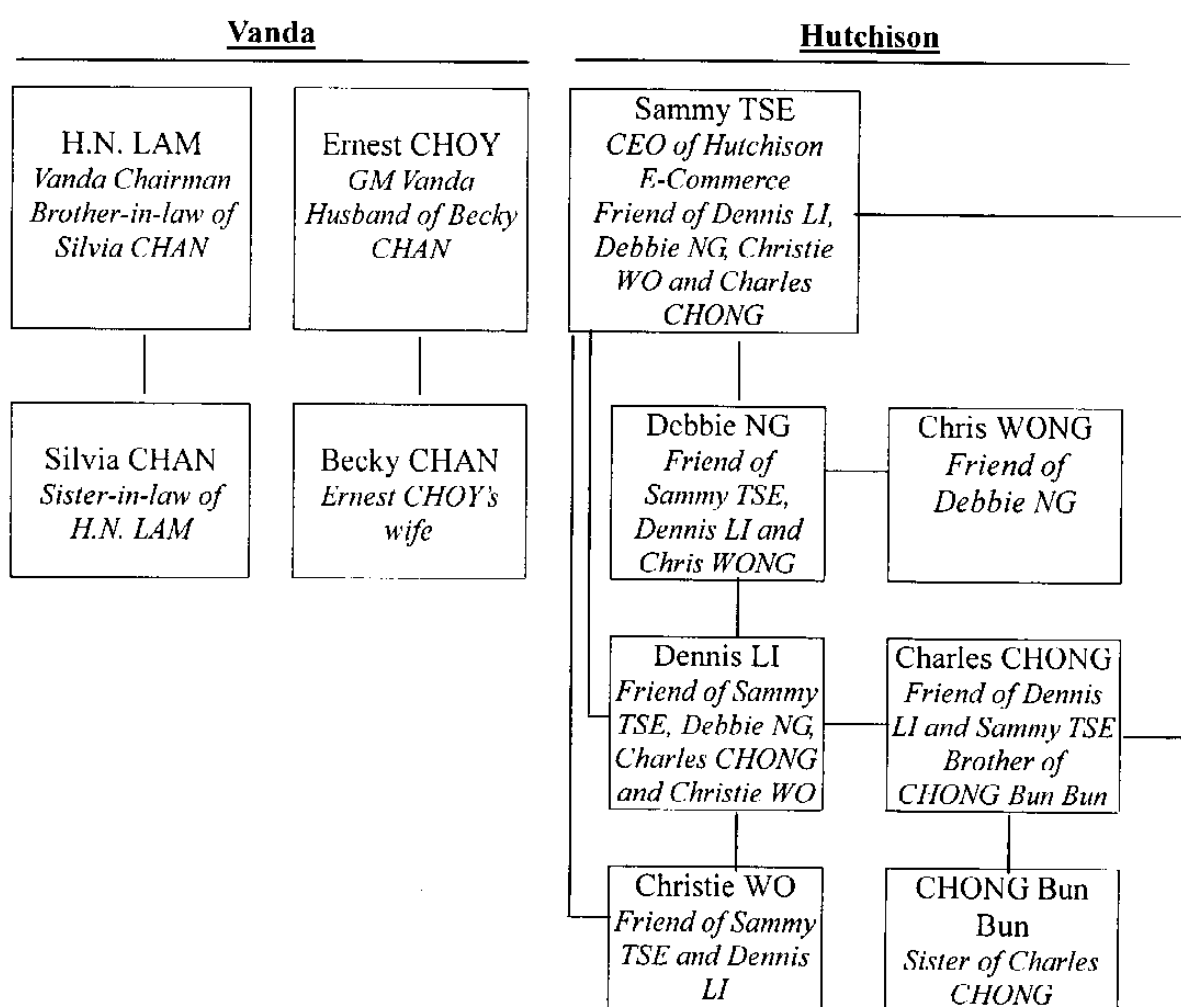
It was quite obvious on the evidence before the Tribunal that any relevant information generated by the mid-February meetings was known to those individuals who had attended those meetings.

As will be seen we concluded that the only realistic possible sources of information which found its way out to the various implicated parties were LAM Hon Nam of Vanda, Ernest CHOY of Vanda and Sammy TSE of Hutchison. Each of those three individuals were, as will be seen, “connected persons” for the purposes of section 9(1) of the Ordinance by way of section 4. Each of the three therefore as potential insider dealers were considered from the perspective of section 9(1)(a) and 9(1)(c) of the Ordinance. They were the only provisions which could apply to them.

It was quite clear as will be seen on the evidence that each of the three sources operated within their own social and family spheres wholly separately from each other.

Implicated parties who were within the social or family sphere of one of the connected persons who were possible sources of the relevant information were, as possible insider dealers, considered from the perspective of section 9(1)(e) of the Ordinance which was the only provision which could apply to them.

A schematic summary of the connections amongst the implicated parties is set out below:



Accordingly we at the end of the day had to consider so far as LAM Hon Nam was concerned whether he had received relevant information from the 12th February meeting he had attended and then either encouraged the only implicated party within his social or family

sphere Silvia CHAN his sister-in-law to purchase Vanda shares and/or disclosed the relevant information to her.

So far as Ernest CHOY was concerned who only attended meetings on the 14th and 16th February between Vanda and Hutchison (where the subject matter was concerned with a possible joint venture between the two companies rather than with the possible acquisition by Hutchison of an interest in Vanda) we had to consider whether even though he had not attended the meeting on the 12th of February he may have been informed of the Hutchison proposal to take an interest in Vanda made at that meeting prior to his wife's purchase of Vanda shares on the 14th February, or whether he may have only had knowledge of the proposed joint venture gained from the meetings of 14th and 16th February. If either was the case we had to further consider whether he had encouraged the only implicated party within his social/family sphere, his wife Becky CHAN, to purchase Vanda shares and/or disclosed that information to her.

And the same fundamental considerations applied to the third possible source of any relevant information, Sammy TSE. His social sphere as seen from the above chart included either directly or indirectly the balance of the implicated parties. He was a friend of Debbie NG, Dennis LI, Christie WO, and Charles CHONG.

Beyond that group of individuals there were additional relationships. Debbie NG was a friend of Chris WONG, and Charles CHONG was the brother of CHONG Bun Bun.

In considering any transfer of relevant information within Sammy TSE "group" we had to consider the possibility of alternative

sources of that information so far as some of the implicated parties were concerned.

Some of the implicated parties in that group could only realistically have gotten any relevant information from a person other than Sammy TSE. Chris WONG for example could only have gotten any relevant information from his friend Debbie NG as he did not know Sammy TSE. CHONG Bun Bun could only realistically have received any relevant information from her brother Charles CHONG.

The role of each individual implicated party had to be assessed separately on the evidence and quite obviously different considerations applied to each, but there were some recurrent issues which arose as we considered their roles.

In the case of the “sources” of any possible relevant information, i.e. LAM Hon Nam, Ernest CHOY and Sammy TSE the issue was whether they disclosed any relevant information to the implicated person or persons in their family or social sphere, and whether they had urged or encouraged any such implicated person or persons to purchase Vanda shares.

The primary issue which was common to the balance of the implicated parties was whether they had had any relevant information disclosed to them, or whether what they had been told fell short of relevant information.

In determining the questions of what information if any was transferred by or to any implicated party and the role of any implicated party in the purchase of Vanda shares the Tribunal on many occasions had only circumstantial evidence to consider. For example the question

whether the purchase of Vanda shares by an implicated party was because that individual had received relevant information or not was considered in the context of that person's previous trading history; whether the purchase was the first time Vanda shares had been bought, whether the size of the investment was unusual or disproportionate both regarding the assets of the individual and their previous trading history.

For that reason we had before us in evidence the trading accounts of the implicated parties who had purchased Vanda shares and, where relevant, their bank accounts also. Overlying that evidence we had the evidence of the implicated parties themselves concerning their purchase or their involvement in the purchase of Vanda shares.

An area of evidence which came to be of importance during the course of the inquiry concerned the mobile telephone records of the implicated parties. Those records enabled the Tribunal to assess the degree of telephone contact between various implicated parties, the timing of that contact (particularly on occasion in relation to share purchases) and the duration of contact.

We should point out however that informative though these records often were they were subject to certain limitations. The first of course was that the contents of the calls were unknown. The records went little further than showing contact between telephones and the time and duration of each contact. Secondly the records related only to mobile telephones. Landline to landline telephone records were not available to the Tribunal. It was only when a landline telephone number was used to contact a mobile phone or vice versa that the mobile phone record would display information as to the landline telephone call.

We had one other area of evidence before us which was admitted after legal argument.

Four of the implicated parties Debbie NG, Chris WONG, Charles CHONG and CHONG Bun Bun had purchased shares in a company Harbour Ring International Holdings Limited (“Harbour Ring”) at a time when Sammy TSE for Hutchison was involved in negotiations concerning a large investment in that company though the investing company was proposed to be an American corporation International Capital Group.

This had occurred less than two weeks after the purchase of Vanda shares we are concerned with. Evidence concerning the Harbour Ring purchases was admitted before the Tribunal on the narrow basis that it was relevant to the defence raised by those implicated parties to the effect that their purchases of Vanda shares was wholly unconnected with Sammy TSE and had only coincidentally taken place at the time he was involved in negotiations concerning Vanda. The Tribunal’s ruling as to the admissibility of that evidence is at Annexure F. It will be further dealt with in Chapter 8.

The above is a very brief overview of the primary issues and related evidence which fell for the consideration of the Tribunal in answering the matters raised by its terms of reference. Those issues and the evidence relevant to them will be dealt with in greater detail in the chapters which follow.

CHAPTER 5

RELEVANT INFORMATION

Before there can be any insider dealing under the provisions of the Ordinance there must come into being relevant information as defined in section 8.

It is worth setting out that section:-

“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.”

It can be seen that relevant information concerning a listed company consists of three separate facets.

Firstly, the information must be specific.

Secondly, that information must not be generally known to persons who deal or are likely to deal in the company's shares.

Thirdly, the information must be likely to materially affect the price of the company's shares.

Background

The only information which could conceivably qualify as relevant information concerning Vanda in the present inquiry is that which was generated by a series of meetings between Vanda group executives and Hutchison group executives between the 12th February and 16th February 2000.

Those meetings concerned a possible issue of convertible bonds and share options to Hutchison by Vanda and both companies' participation in a joint venture involving an e-commerce project consisting of a business to business ("B2B") payment gateway.

The meetings commenced on the 12th February 2000. On that day, a Saturday, Canning FOK the Group Managing Director of Hutchison, together with Peter WONG, the Chief Executive Officer of a Hutchison subsidiary Hutchison Global Crossing Ltd. represented the Hutchison group. They met with LAM Hon Nam, the Chairman of Vanda and Edmund MA, the Vanda Group Managing Director at Hutchison's offices in Central.

This meeting had come about against the background of previous approaches by Vanda to Hutchison for the purpose of Vanda attempting to interest Hutchison in its software services and projects. Those earlier approaches had resulted in Hutchison having some degree of familiarity with Vanda. Peter WONG said in his witness statement of 6th February 2001 that he first had contact with Vanda in October 1999 when they wished to introduce certain Vanda projects to Hutchison, and again in November 1999. Nothing came of these approaches but he did instruct Sammy TSE to keep in touch with Vanda.

But the direct cause of the meeting of 12th February had been Vanda's approach in late 1999 to Francis LEUNG at BNP Prime Peregrine ("Peregrine") about spinning off its software subsidiary and seeking a listing for it on the board of the Growth Enterprise Market. According to Francis LEUNG's statement of 5th March 2001 to achieve that he had in mind to introduce Vanda to Hutchison. He eventually phoned Canning FOK of Hutchison and arranged a meeting for Saturday 12th February 2000 at 9:15 a.m. in Canning FOK's office in Hutchison House.

The evidence

With that background in mind, which is uncontroversial, we now turn to the general evidence relating to the various meetings between Vanda and Hutchison.

The 12th February meeting

Peter WONG

Peter WONG in his recorded interview with the SFC of 6th February 2001 said that there were five persons present at the Saturday morning meeting at Hutchison House; himself and Canning FOK for Hutchison, H.N. LAM and Edmund MA for Vanda and Francis LEUNG of Peregrine.

He said initially Edmund MA and H.N. LAM explained Vanda. He said it was a brief meeting and he did not remember if anything concerning convertible bonds was mentioned, though Hutchison buying Vanda shares had been mentioned. But he did not think anything would happen. His own responsibility was "on the technical side" and he

thought there was a greater chance of cooperation between Vanda and Sammy TSE's subsidiary, E-commerce Resources Ltd., within the Hutchison group than between Vanda and his own subsidiary Hutchison Global Crossing Ltd.

In his oral evidence he said to his recollection it was possible it was mentioned at the Saturday 12th February meeting that Hutchison might take a stake in Vanda, but that the main focus of the meeting was a discussion as to whether Hutchison could cooperate operationally with Vanda, i.e. whether Hutchison could use Vanda's software products. He said that he told Canning FOK at the end of the meeting or towards the end of the meeting that his own company would not be able to cooperate with Vanda and Canning FOK instructed him to get Sammy TSE and his company involved instead. He said that while he thought Hutchison buying into Vanda was mentioned at the 12th February meeting any proposed joint venture between the two companies was not mentioned until later meetings on the 14th February or 16th February. He agreed that at the 12th February meeting Canning FOK had suggested exploring the possibility of strengthening the relationship between the two companies but he did not remember well what was said in this regard.

Canning FOK

Canning FOK in his statement to the SFC of 1st March 2001 as confirmed in his oral evidence said that the Saturday 12th February meeting was held in his office with Peter WONG of Hutchison and Francis LEUNG of Peregrine and representatives from Vanda whose names he did not recall but who were the chairman (i.e. LAM Hon Nam) and managing director (i.e. Edmund MA) of the Vanda group. He said that at one stage in the meeting Vanda invited Hutchison to be a strategic investor in its subsidiary for which it was intended to seek a spin off

listing. But he thought the subsidiary was too small and proposed instead an investment in the parent itself, that is Vanda. In his evidence he said he felt the proposal was well received. He gave what he described as the “green light” to the proposal. He said that he thought the idea of involving the Li Ka Shing Foundation Limited as one of the parties to the proposed agreement was suggested by Francis LEUNG. The Foundation had surplus cash and it would also “look good” in the market place. He said that he mentioned during the meeting that the investment was to be by way of convertible bonds and that the conversion price was to be the closing price of Vanda’s shares on the previous day (i.e. Friday 11th February).

He recollected a joint venture had also been mentioned during the meeting but had not paid much attention to that. He said the whole proposal was a small business deal from Hutchison’s viewpoint and that he was not further involved. Peter WONG was responsible for following up on the transaction. He understood Sammy TSE became involved as the chief negotiator for both the investment in Vanda and the joint venture.

Edmund MA

Edmund MA in his recorded interview with the SFC of 15th November 2000 said that on Friday 11th February at about 5:00 p.m. LAM Hon Nam had come to his office and told him that there was to be a meeting with Hutchison the next day. On Saturday 12th February he and LAM went to Hutchison House for the meeting. Present were Canning FOK and Peter WONG of Hutchison and Francis LEUNG of Peregrine. MA said he introduced Vanda to the meeting and subsequently Francis LEUNG suggested Hutchison buy a stake in Vanda. Canning FOK said it was a good idea and should be considered. LAM Hon Nam and MA

agreed and at the end of the meeting Canning FOK said Hutchison would consider the proposal and would deliver a “term sheet” to Vanda if the proposal was feasible. During the meeting it had been agreed that if the deal went ahead it would be similar to the previous deal Hutchison had conducted when it obtained an interest in Computer and Technologies Holdings Ltd. Canning FOK had also mentioned that Hutchison wanted no less than 20% of Vanda’s issued shares after any subscription. He said that the proposal was not mentioned to anyone at Vanda until T.K. HO (Vanda’s financial officer) became involved after the Term Sheet arrived at Vanda on the 16th February. He said that he discussed the term sheet with LAM Hon Nam on Wednesday 16th February and it was then decided that Vanda’s lawyers should also become involved.

In his oral evidence MA said that either Canning FOK or Francis LEUNG may have been the first to mention Hutchison taking a share in Vanda and that convertible bonds were mentioned as the vehicle whereby that was to be made possible. He said LAM Hon Nam was not keen on proceeding by way of convertible bonds but Canning FOK wanted to use the same method as had been adopted in the Computer and Technologies Holdings Ltd. transaction which had been conducted by way of a convertible bond issue and joint venture. MA said Vanda had had a bad experience previously in respect of issuing convertible bonds and had lost a subsidiary as a result. But at the meeting neither he nor LAM Hon Nam objected to the convertible bond suggestion though they did not like it.

Francis LEUNG

Francis LEUNG in his statement to the SFC of 5th March 2001 said that in the latter part of 1999 when Vanda began to discuss with Peregrine the idea of spinning off a software subsidiary and listing it on

the board of the Growth Enterprise Market he had eventually thought of introducing Vanda to Hutchison and had phoned Canning FOK to this effect. A meeting was arranged on Saturday 12th February at 9:15 a.m. at Canning FOK's office in Central. He said five people attended that meeting; Canning FOK and Peter WONG of Hutchison, H.N. LAM and Edmund MA of Vanda and himself. He said H.N. LAM and Edmund MA gave a brief presentation to Canning FOK concerning Vanda. Canning FOK's response was to the effect that there could be cooperation between Hutchison and Vanda but that the software subsidiary was too small, and that if Hutchison were to become a strategic investor it would prefer to invest in Vanda itself. Canning FOK said he was interested in a similar transaction with Vanda as Hutchison had conducted with Computer and Technologies Holdings Ltd. H.N. LAM and Edmund MA reacted positively to this and Canning FOK asked that Peregrine formulate a proposal based on the structure of the Computer and Technologies Holdings Ltd. transaction and prepare a term sheet to that effect. It was mentioned that under the terms of the Computer and Technologies Holdings Ltd. transaction Hutchison held about 20% of the enlarged issued share capital of that company following conversion of convertible bonds which had been issued. Canning FOK suggested that the conversion price should be based on the previous day's close of Vanda's share price of \$3.175 per share. Francis LEUNG thought that there was no mention of Li Ka Shing Foundation Ltd. being involved during the 12th February meeting and that occurred upon Hutchison's subsequent request.

After the meeting had concluded, Francis LEUNG contacted Isadora LI of his company and asked her to prepare a term sheet for the transaction and thereafter handed the matter over to her. In his oral evidence he remembered nothing of a joint venture being discussed during the meeting, though he did remember that Canning FOK briefly

described the Computer and Technologies Holdings Ltd. deal for the benefit of H.N. LAM and Edmund MA who had not understood that deal before it was explained by Canning FOK. He recollected that H.N. LAM's and Edmund MA's reaction was quite positive. He agreed that the 12th February meeting would not necessarily bear fruit.

H.N. LAM

In his recorded interview with the SFC on 16th November 2000 said that Francis LEUNG arranged the meeting on the 12th February. He and Edmund MA attended. Hutchison was represented by Canning FOK and Peter WONG. Francis LEUNG was also present. He said he thought the meeting concerned Hutchison possibly taking some strategic interest in the Vanda group and so during the meeting he told Canning FOK that Vanda was looking for a strategic investor in its software subsidiary. Canning FOK said Hutchison was not interested in investing in the subsidiary but suggested Hutchison take an interest in Vanda itself by way of convertible bonds in the same way as the Computer and Technologies Holdings Ltd. deal had taken place. Canning FOK asked about the current share price and capitalization of Vanda and said Hutchison wanted 20% of Vanda's enlarged share capital and also asked Francis LEUNG to take charge of the project.

He said after the meeting he had not decided whether to accept the proposal. While a partnership with Hutchison would benefit Vanda, he did not like the idea of convertible bonds. Subsequently after he saw the Term Sheet sent from Peregrine on Wednesday 16th February he decided to accept the proposal.

He was not involved in the meetings concerning the joint venture proposed between Vanda and Hutchison e-commerce.

He told no-one about the contents of the 12th February meeting other than the company's lawyers.

In his witness statement provided to the Tribunal dated 19th June 2006 and his oral evidence he repeated that he was reluctant to enter into a deal involving convertible bonds but eventually decided to proceed as cooperating with Hutchison in e-commerce and business generally he thought would benefit Vanda in the long run. He said he had never told anyone, including his family members, about the meeting with Hutchison and what was under consideration. But he said prior to receiving the term sheet from Peregrine the deal with Hutchison was just a possibility and even after receiving that document the deal may still not have gone through.

The 14th February meeting

Peter WONG

Peter WONG in his recorded interview with the SFC on 6th February 2001 says that on Monday 14th February he spoke to Sammy TSE and asked him to think of a way to cooperate with Vanda. He told him that Canning FOK wanted to strengthen the cooperation between the two companies. They arranged a meeting for that day and he, Sammy TSE and Bernard FUNG of the Hutchison group met with Ernest CHOY and Gordon CHEUNG of the Vanda group. During the meeting Sammy TSE proposed a joint venture with Vanda and Hutchison companies as equal partners involving a "B2B" payment gateway. Ernest CHOY and Gordon CHEUNG said they would study the matter and prepare a proposal. Peter WONG, at the end of that meeting said he thought there

was a 50/50 chance of cooperation. He stated he did not think there was any mention of convertible bonds at this meeting.

In his oral evidence Peter WONG said that mainly technical matters were discussed during the 14th February meeting. In his oral evidence he thought in retrospect that after the meeting the chances of cooperation were a “possibility”.

Bernard FUNG

Bernard FUNG in his recorded interviews with the SFC on 1st March 2001 and 11th May 2001 said that he was working under Sammy TSE in Hutchison’s subsidiary E-commerce Resources Ltd. He was the General Manager of Business Development. He stated that on 14th February 2000 at about 4:30 p.m. he and Sammy TSE and Peter WONG, as representatives of Hutchison met with Vanda’s Edmund MA, Ernest CHOY and perhaps Gordon CHEUNG. He attended the meeting at Sammy TSE’s instigation. He said the purpose of the meeting was mainly technical and was to see whether a “B2B” payment gateway joint venture was feasible. It was concluded that it was feasible. During the meeting someone had probably mentioned something like “we are in one family now”, which he took to mean Hutchison would buy a stake in Vanda.

In his oral evidence he stated that Sammy TSE was responsible for coordinating the joint venture and the subscription agreement and would give him directions concerning those matters. Both Sammy TSE and he had eventually been sent the subscription agreement by the lawyers of Hutchison because they were indirectly involved. He said in his oral evidence he was sure someone had mentioned “we are one

family” at the 14th February meeting though he agreed it was possible he had misunderstood this.

Sammy TSE

Sammy TSE in his recorded interviews with the SFC on 15th March 2001, 31st March 2001 and 12th April 2001 said that in February 2000 he had been CEO of Hutchison’s e-commerce subsidiary and a Director of Hutchison Telecom. He stated he had been on leave from Chinese New Year in 2000 and had returned to his office on the 14th February. Peter WONG had contacted him that day and had told him of the meeting on the 12th February involving Vanda representatives and Canning FOK, and that during that meeting potential cooperation between the two groups had been discussed, that it was possible Hutchison would invest in Vanda, and that it would not just be an injection of capital but that areas of concrete business cooperation had to be identified. A meeting had been arranged for 4:30 p.m. that afternoon with Vanda. He and Peter WONG attended together with Bernard FUNG and met with Vanda’s Edmund MA, Ernest CHOY and Gordon CHEUNG (though he could not remember the surnames of the latter two persons).

He stated that at that meeting two matters were discussed. The first was the project concerning the two companies entering into a joint venture to provide a “B2B” payment gateway service. Both sides exchanged views and eventually agreed on the feasibility of this project. Bernard FUNG was to be responsible for working on it with Vanda.

The second matter discussed was the stake to be bought in Vanda by Hutchison. It was said at the meeting that it had been discussed on 12th February that Hutchison would take an interest in Vanda

in the manner in which it had cooperated with other companies, that is by way of convertible bonds. He had also been involved in the earlier Hutchison transaction with Computer and Technologies Holdings Ltd. in January of 2000 and Edmund MA had told him at the meeting that the cooperation with Vanda was to be in the same form, i.e. a convertible bond and a joint venture. He stated that he had become involved in the convertible bond (i.e. subscription) matter because his boss Susan CHOW on behalf of Canning FOK had asked him to do so, but the work was done mostly by the lawyers.

In his witness statement provided to the Tribunal dated 10th July 2006 and his oral evidence he resciled from his statements to the SFC that it had been mentioned at the 14th February meeting that Hutchison would take an interest in Vanda by convertible bonds and said that he did not think this had been mentioned at that time. He thought he had remembered everything “in a block” and that he would himself not have known of the convertible bond issue until he was sent a copy of the Peregrine Term Sheet relating to the transaction on the 16th February. He said at the time he attended the 14th February meeting he thought it was just another attempt by Vanda to seek cooperation.

Gordon CHEUNG

Gordon CHEUNG in February 2000 was the director of the Business Division of Vanda Systems in mainland China. According to his recorded interview with the SFC on 30th January 2001 he was in Hong Kong between the 10th -17th February 2000 and went to the meeting of 14th February. At the meeting, which according to his recollection commenced at about 2:30 p.m., were himself, Edmund MA and Ernest CHOY for Vanda and Sammy TSE and Peter WONG for Hutchison. There was a general discussion and a “B2B” project was eventually

decided to be feasible. Vanda had to prepare a written proposal as soon as possible. His own responsibilities were on the technical aspects of the proposal.

In his oral evidence he said the meeting lasted only 45 minutes. Nothing was mentioned about convertible bonds or of Hutchison taking up shares in Vanda. He did not find out about the convertible bond deal between Hutchison and Vanda until several days later.

Ernest CHOY

Ernest CHOY in his record of interview with the SFC dated 28th March 2001 stated that in February 2000 he was the General Manager for Vanda's Hong Kong and South East Asian operations. He said in February 2000 he was involved in Vanda's e-commerce payment gateway project with Hutchison but that he had nothing to do with any discussions involving Hutchison taking a stake in Vanda and knew nothing about that. He said at Edmund MA's request he attended two to three meetings between Vanda and Hutchison in February 2000 together with Edmund MA and Gordon CHEUNG of Vanda and Sammy TSE, Bernard FUNG and others from Hutchison.

A proposal about electronic payment by businesses was prepared by Vanda at the request of Sammy TSE and after a few days was submitted to Hutchison and presented at a further meeting on 16th February. He and Gordon CHEUNG prepared the proposal. He stated that during these meetings there was absolutely no mention of Hutchison buying a stake in Vanda, and that the first time he knew of this was when the announcement was made following the trading suspension of Vanda shares. He said he did not pay attention to Vanda's corporate activities unless they related to his sphere of responsibility. He stated he

did not pay attention to Vanda's share price and did not disclose the discussions which had been held with Hutchison concerning the payment gateway to anyone.

In his witness statement dated 28th June 2006 and in his oral evidence he said that he regarded the 14th and 16th February meetings with Hutchison as similar to previous attempts by Vanda to co-operate with Hutchison. He said at those meetings there was no mention or hint of Hutchison taking up shares or convertible bonds in Vanda. He said the potential joint venture with Hutchison was small and there was nothing special about it. He said he was not informed of corporate matters involving Vanda and was involved mainly in operational matters. He said before going to the 14th February meeting with Edmund MA and Gordon CHEUNG he had not even been told about the joint venture project, but thought they were going to discuss more general matters with Hutchison.

Edmund MA

In his statement of the 27th November 2000 said that at the 14th February meeting both sides felt there was feasibility for their cooperation in e-commerce and that Sammy TSE asked Vanda to submit a proposal. He said the Vanda staff had to work till late at night to get the proposal ready and that it was presented on the 15th or 16th February to Hutchison at a further meeting.

He said in his oral evidence that at the 14th February meeting the Vanda executives had presented a lot of detail to Hutchison in respect of an e-commerce payment proposal and Sammy TSE had acknowledged they were good ideas and had asked for a formal proposal to be presented. But he thought that even after the proposal had been presented on the

16th February there were still a lot of matters to be ironed out. The general view to his understanding was that after the presentation of Vanda's proposal the proposal was thought to be feasible though not concluded. It was not until April 2000 that the joint venture agreement between Vanda and Hutchison was concluded.

Meeting of 16th February

We will not summarize the evidence of the participants in this meeting in any detail. Much of it has already been referred to. It was common ground that the meeting of 16th February arose out of and was a continuation of the meeting of the 14th February which had closed with Vanda being required to prepare a business and technical proposal concerning the "B2B" payment gateway project.

The participants at the 16th February meeting were again Peter WONG, Bernard FUNG and Sammy TSE of Hutchison and Edmund MA, Ernest CHOY and Gordon CHEUNG of Vanda. All agree in their statements and oral evidence that the meeting on the 16th February was wholly taken up with discussions concerning the proposal prepared by Vanda for the "B2B" payment gateway venture.

Edmund MA in his statement to the SFC thought the 16th February meeting occurred on 15th February. We are satisfied he was mistaken as to this date. The meeting from all the evidence presented to us plainly took place on the 16th February, and in his oral evidence Edmund MA agreed he may have been mistaken about the date of this meeting when he referred to it having occurred on the 15th February.

It was common ground however that by the end of the 16th February meeting it was agreed the Vanda proposal for a “B2B” payment gateway project was feasible and that both companies would continue their cooperation with a view to its implementation.

“Specific Information”

The first question we have to determine is whether specific information was generated by any or all of the three meetings we are concerned with.

“Specific information” has no definition in the Ordinance but has been subjected to various attempts at analysis by text writers, courts and Tribunals over the years. We adopt what was said in the Chinney Alliance Group Ltd. inquiry:

“... information concerning a company’s affairs is sufficiently specific if it carries with it such particulars as to a ... proposed transaction, event or matter so as to allow (it) to be identified and its nature to be coherently described and understood.”

As was said by the Tribunal in the report of its inquiry into the purchase of shares of Firststone International Holdings Ltd. “the fact that a transaction is only contemplated or under negotiation and has not yet been subjected to any formal or informal final agreement does not necessarily cause the information concerning that contemplated course of action or negotiation to be non-specific.”¹⁰

¹⁰ Report of Insider Dealing Tribunal of Hong Kong in the Firststone International Holdings Ltd. inquiry, page 59.

For the purposes of this inquiry we further adopt what was said in the Firstone inquiry report to the effect that for a potential commercial transaction or event to generate specific information “whether described as under contemplation or at a preliminary stage of negotiation (it) must, in our view, have more substance than merely being at the stage of a vague exchange of ideas or a ‘fishing expedition’. Where negotiations or contacts have occurred, ... there must be a substantial commercial reality to such negotiations which goes beyond a merely exploratory testing of the waters and which is at a more concrete stage where the parties have an interest to negotiate with a realistic view to achieving an identifiable goal.”¹¹

It should be borne in mind that in the present inquiry we were dealing with two informational streams, each concerned with a separate aspect of the potential cooperation between Vanda and Hutchison.

The first is that concerned with negotiations about Hutchison taking a right to a shareholding of some 20% in Vanda by way of convertible bonds and an option to take up shares. The second concerns the two companies simultaneously negotiating about cooperating as equal partners in an e-commerce joint venture.

Because of our findings which will be explained in due course concerning Ernest CHOY that we can be sure to a high degree of probability only that he was aware of the information concerning the joint venture and that we were not able to be satisfied to the same high standard that he was aware of the information concerning Hutchison’s taking of an interest in Vanda (whether by convertible bonds or other means) it was necessary for us to consider whether possession only of information concerning the joint venture was sufficient to amount to

¹¹ Firstone Report pages 60-61.

possession of relevant information. The first step therefore was to determine whether the information generated as to Hutchison and Vanda negotiating an agreement involving both the issue of convertible bonds, share options and their participation in a joint venture was specific and secondly whether the information generated as to Hutchison and Vanda negotiating a joint venture by itself was specific for the purposes of section 8 of the Ordinance.

Firstly, we are satisfied that the meeting which took place on the 12th February 2000 between Vanda and Hutchison executives in Hutchison's offices in Central generated specific information.

That information in a nutshell was that Hutchison put forward a proposal that it take an interest in Vanda along the lines of the agreement it had earlier entered into with Computer and Technologies Holdings Ltd. That meant that Hutchison had proposed to Vanda that it purchase convertible bonds at a stated share price (\$3.175) giving it an interest in any enlarged share issue of Vanda of about 20% when taken in conjunction with a share option also to be taken up by Hutchison. In parallel with that a joint venture was to be explored between the two companies in the area of e-commerce. We accepted as reliable witnesses both Canning FOK and Francis LEUNG in this regard. Their evidence that such a proposal was made is supported by subsequent events, including the provision of a term sheet containing terms similar to those of the eventual agreement on the 16th February. Other witnesses such as Edmund MA generally agreed with Canning FOK and Francis LEUNG as did, on this aspect of the case, LAM Hon Nam. Accordingly we proceed on the basis that a proposal was advanced by Canning FOK on behalf of Hutchison that Hutchison take an interest in Vanda in similar terms to its taking of an interest in Computer and Technologies Holdings

Ltd. only a few weeks before, and that what that meant was explained at the meeting.

We are satisfied that both companies treated the overall proposal seriously. That is evidenced by the follow-through meetings which took place concerning the joint venture negotiations on the 14th and 16th February. That the proposal was seriously under contemplation by both Vanda and Hutchison is evidenced also by the rapid preparation of a Term Sheet relating to the convertible bond and option proposal by Peregrine and its provision to LAM Hon Nam by the 16th February and its immediate forwarding by him to Vanda's solicitors.

It is quite obvious from the evidence that at the conclusion of the 12th February meeting a quite definite proposal by Hutchison to take a very significant interest in Vanda in conjunction with an offer to cooperate in the field of e-commerce in the future was under serious contemplation by both parties. In our view that contemplated transaction based, as it was said to be, on a previous deal Hutchison had negotiated with a competitor of Vanda was plainly a defined commercial proposal which comfortably satisfied the test for specificity of information (subject to what follows concerning the joint venture) outlined by us earlier in this chapter. In this regard we might add that the information concerning the convertible bond and share option proposal went beyond specific and was precise. In coming chapters we consider whether relevant information was passed on to various implicated parties. It should not be thought that to receive relevant information any individual had to be told all of the details of the Hutchison proposal. The salient point of Hutchison potentially acquiring a substantial shareholding in Vanda in our view by itself is sufficiently specific information to satisfy the test with which we have directed ourselves.

Accordingly specific information was generated by the meeting of 12th February 2000 so far as Hutchison proposing to take a right to an interest of approximately 20% in Vanda by way of convertible bonds and share options.

One further matter arose as the result of our finding (as set out in Chapter 7) that Ernest CHOY may only have been aware of the joint venture component of the Hutchison proposal during the period of his wife's purchasing of Vanda shares. We had therefore to consider whether that joint venture component was of itself relevant information. As to its specificity the meeting of 12th February concluded with an understanding that Vanda and Hutchison would explore cooperation in an e-commerce joint venture. At that stage in our view there was insufficient definition to the concept of any e-commerce project to be undertaken so as to give that information by itself sufficient specificity. But following the meeting on 14th February when it was resolved the e-commerce project to be pursued would in fact be a "B2B" payment gateway we were satisfied the joint venture by then under contemplation had sufficient specificity.

Accordingly, we are satisfied also that an agreement arrived at during the 14th February meeting for both companies to consider cooperation in a "B2B" e-commerce joint venture was, by itself, specific information. Whilst the issue here is perhaps not so clear-cut once the negotiations concerning the joint venture are removed from the context of the convertible bond and share option proposal, we have concluded that a serious commercial proposal to cooperate within the reasonably defined field of "B2B" e-commerce so that negotiations were to be organized to that end takes the matter beyond a mere testing of the waters and sufficiently evidences a contemplated matter which is able to be

described and understood. It may be that the information concerning the exact nature of the “B2B” joint venture under contemplation is not precise, but it does not have to be.

Accordingly, the information concerning Vanda and Hutchison having negotiations with a view to setting up a joint venture in the field of “B2B” e-commerce is specific information.

“Not Generally Known”

Given that the meetings of the 12th February and 14th February took place amongst relatively few high ranking executives of Vanda, Peregrine and Hutchison there was little opportunity for there to have been any significant leakage of information from that source into the market in the short term.

The market for Vanda shares, at the most a third line company on the SEHK, was primarily retail investors though we accept the possibility some smaller and higher risk funds may have been interested in Vanda’s shares.

Having said that however we further accept that the retail market for Vanda shares was quite widely based given the market’s broad interest in hi-tech stocks at that time.

We are satisfied from the newspaper reports provided to us in evidence that there was no general dissemination of the information concerning the proposed taking of an interest in Vanda by Hutchison during the period of the share purchases we are concerned with.

Given the primarily retail market for Vanda shares the main source of information for that market at that time would have been newspaper and journalistic reports, with some “to air” reports.

Prior to the 18th February there were no newspaper or known media reports concerning the proposed link between Hutchison and Vanda. Indeed most reports at that time were, in speculating about Vanda’s possible connections with other companies or intentions in that regard, plainly wrong or misleading.

For example as late as the 17th February the Tin Tin Daily reported a rumour that a United States company was going to acquire an interest in Vanda by way of a share swap, and that Vanda would spin off its software subsidiary.

It was not until the 18th February that both Sing Pao and Sun Pao (Hong Kong Daily News) reported any link between Vanda and Hutchison. The Sing Pao reported an accurate rumour that Hutchison would take a strategic interest in Vanda as well as participate in cooperative projects between the two companies, and Sun Pao reported two conflicting rumours, that of a US company taking an interest in Vanda and the correct rumour that Hutchison was to be “the strategic partner” of Vanda.

But we fail to see how it could be said from the fact that there may well have been various rumours circulating in the market concerning Vanda on the 18th February or even the days before, one of which more or less accurately reflected the contents of the 12th February meeting, that the information generated by that meeting was “generally known” to the market. Knowledge is quite a different thing from rumour. Rumours

are often wrong. That is an everyday fact of life. Individual investors as well as a market generally are well aware of that possibility.

It may be that a rumour becomes so well known and so widely accepted within the investing community that over time it becomes accepted as fact. In those circumstances it could be said that the information contained in the rumour was “generally known” to the market or segment of the market interested in a particular company’s shares. But in the circumstances of the reports concerning Vanda’s shares during the week 14th – 18th February we are satisfied that any rumour concerning a link between Vanda and Hutchison remained nothing but that and cannot be said to have amounted to anything approaching knowledge in the minds of “those persons who are accustomed or would be likely to deal” in Vanda’s shares.

Accordingly, we are satisfied that the information generated by the meetings of the 12th February and 14th February 2000 was not generally known for the purposes of section 8 of the Ordinance.

In dealing with this question we have taken into account the views of the three expert witnesses who gave evidence before us, namely Stella FUNG, Clive RIGBY and Louie SHUM. Their evidence was by way of written statement and oral evidence.

Stella FUNG in her evidence stated, after considerable analysis of the newspaper articles relating to Vanda during the relevant period from the 12th February meeting to the suspension of Vanda shares on the 18th February 2000, that “the investing public appeared to have not been aware of any of the information possessed by the suspected traders or contained in the Vanda-Hutchison announcement”.

Mr. RIGBY, who was called as a witness at the request of LAM Hon Nam and Silvia CHAN, stated that he agreed with Stella FUNG's observations in that regard and in cross-examination by Mr. CHIU on behalf of the CHONGs said further that the information concerning Hutchison's proposed linkage with Vanda was "information not easily available to the public" though it may have been available to persons connected with those companies. Mr. RIGBY did agree with Mr. CHIU that newspaper reports did not really help as to whether the information was available to the market sector likely to invest in Vanda shares. With respect to that view we disagree. As demonstrated by Stella FUNG's collected range of newspaper reports concerning Vanda in the week 14th-18th February 2000 the Hong Kong financial press is more than willing to report on rumours in the market. In our view in February 2000 during the "hi-tech frenzy" it is highly probable that if there had been any substantial rumour in the market involving a linkage between Vanda and Hutchison that would have been generally reported in the press, regardless of whether or not it was also reported on the internet or in other forms of media. That is particularly so in the heightened market interest in companies such as Vanda following the dramatic increase in Computer and Technologies' share price following its announced association with Hutchison only a few weeks before.

Mr. Louie SHUM was an expert on the securities industry called at the request of the CHONGs. He gave evidence particularly in regard to "the thinking and behaviour of the local investor". He agreed with Mr. RIGBY that in 2000 during the relevant period there were a lot of rumours in the market generally, a lot of which were false and all of which were unconfirmed.

For the reasons we have set out above we do not equate rumours with knowledge. We accept Stella FUNG's views as supported

by Mr. RIGBY and not in our view contradicted by Mr. SHUM that the information we are concerned with was not generally known to that segment of the market which had or which was likely to trade in Vanda's shares. What we have said in this regard applies equally to both Hutchison's proposal to take an interest in Vanda by way of convertible bonds, and to the proposal that the companies explore the possibility of entering into a joint venture in the field of "B2B" e-commerce.

"Materially affect the price"

Stella FUNG was of the view that the information contained in the announcement of 22nd February 2000 (see Annexure G) was price sensitive. Her witness statement was provided to the Tribunal on the assumption of persons possessing knowledge of the Vanda-Hutchison agreement in terms of that announcement.

As she said in that statement of 11th July 2002:

"As the information possessed by the suspected traders was almost identical to, or contained all the essences of, the information contained in the Vanda-(Hutchison) Announcement published on 22 February 2000. ... the information possessed by the suspected traders should have the same effect on Vanda's share price, as was the effect of the Vanda-(Hutchison) Announcement on the share price."

Her conclusions as outlined in her statement were accordingly reached on the basis that the specific information under consideration was that of the concluded transaction, whereas our conclusion, as set out above, was to the effect that the specific information was not of a "done deal" but of a proposal under consideration.

During the course of the hearing, given the thrust of the evidence in this regard, we asked Stella FUNG for her opinion on the price sensitivity of information generated by the meeting of the 12th February in terms approximate to our eventual findings as to the specific nature of that information as set out above. We presented to her a number of scenarios. She was of the view that the mere proposal put forward by Hutchison on the morning of 12th February was price sensitive. In this regard, she said:

“So under this scenario, then there will be a strategic linkage between Hutchison and also Vanda because of the convertible bond issue. And if the proposal is proposed by Hutchison, then it seems that it will benefit Vanda more than Hutchison because comparatively Vanda is a small company. And in view of the price performance of Computer & Technology after the announcement, then share price of Vanda also goes up if the deal can be concluded. So the knowledge about this proposal would be price-sensitive information.”

She took into account that the proposal to buy convertible bonds did not mean that Hutchison would take up Vanda shares at the end of the day. Of that, she said:

“Well, the main issue is that it is Hutchison that subscribes to the convertible bonds. Because Hutchison is such a large company and also a well-managed company, if it doesn't think that the company is good, it will not invest in it, or even subscribe, take up the convertible bond. So every company in which it invests, it shows that the management of Hutchison had already looked into that company and it's worth investing. So it's the effect of Hutchison's name.”

Finally, she was of the view, quite separately, that the proposal to start negotiations with the aim of establishing a joint venture in e-commerce was of itself price sensitive. In this regard, she said:

“Then on the fourth scenario, it’s about the meeting that Vanda and Hutchison would explore the joint venture in the field of e-commerce. As I’ve already mentioned in my statement that at that time there’s a high-tech fever. So any company that will take on additional projects or new projects in the e-commerce will also be price sensitive because people will, well, the investor will also chase after the stocks once that news was released to the market.

So if there’s exploring the joint venture in the field of e-commerce, when this news made public, then this will be price sensitive, especially with the name of Hutchison, then it will further enhance the share price performance.

Although it is only exploring the opportunity, it is not a done deal or a concluded agreement. But at that time because of the high-tech fever, every company that only announced some discussion about some project in the high-tech area, especially in the internet field, the share price also goes up.”

Stella FUNG was of the opinion that this was all price sensitive information, even though matters were at an early stage of negotiation.

We generally accept Stella FUNG’s opinion in that regard though we have found that the joint venture proposal did not qualify as specific information until the meeting of 14th February. In our view the twin phenomena of the “hi-tech frenzy” and the “Hutchison effect” she relied upon in arriving at that opinion would have ensured that the price

of Vanda would materially rise had information concerning either of the two limbs of the Hutchison proposal been generally known in the market, although we think it quite obvious that the effect upon price from information concerning the convertible bond and option negotiations would have been much greater than that arising from the joint venture negotiations. We are satisfied however that the latter negotiations would also have been likely to have had a material effect upon the price of Vanda shares had it been known to the market for Vanda shares. That is particularly so had it been known that the joint venture negotiations had on 14th February progressed to the point where a “B2B” project was being contemplated. That is because of the combined effect of the “hi-tech frenzy” and the involvement of Hutchison.

It may well be that for the persons present at the meeting of 12th February the joint venture component of the proposal was overshadowed by the larger component of convertible bonds and share options, but nevertheless in our judgment Stella FUNG is correct when she said that the “B2B” joint venture was of itself likely to be material to the price of Vanda’s shares had that item of information alone been released. It may well be that the news media concentrated its reportage, following the announcement of 22nd February, on the convertible bond and share option components of the agreement, but again in our view that is because the “B2B” joint venture component was simply overshadowed, not because it was not price sensitive. Nor do we think it relevant that the price of Vanda went down after the eventual announcement of the joint venture in April 2000. By that time the market had already discounted the news of Vanda’s and Hutchison’s cooperation and the “high-tech frenzy” was at its tail end.

As to the “hi-tech frenzy” factor we generally accept Stella FUNG’s evidence when she stated:-

“I would like to comment on an interesting phenomenon in the local stock market in early 2000. I observed that share price performances of second/third liners that announced investment, or intentions to invest, in projects involving the technology, telecommunication or Internet businesses (i.e. the so-called “high-tech” business), or issued new shares to companies involved in the high-tech business generally out-performed that of the stock market as a whole. 27 second/third liners published announcements in January and February 2000 (prior to 18 February 2000) regarding the proposed investment projects or establishment of joint ventures that would involve the high-tech business. The average increase in share price for all the 27 companies was 113.1%.”

We appreciate some arguments can be mounted to undermine her mathematical conclusions on a company by company basis, but as we say we generally accept the thrust of her conclusion in this regard.

We accept also her evidence as to the “Hutchison effect” when she stated:-

“(Hutchison) was the third largest listed company in the Hong Kong stock market. It was also perceived to be one of the best-managed companies in Hong Kong. The market believed that any entity that was strategically connected to (Hutchison) would benefit from the quality management and strong financial backing... Therefore, the share price of the entity would be re-rated upward.”

and her comments on the combined effect of the two phenomena:-

“If an entity were about to be strategically linked to (Hutchison) and to be involved in the high-tech business, its share price would most likely be

re-rated upward due to both the “high-tech euphoria” and the “Hutchison effect”.”

and

“if there were a whiff of information that a listed entity was about to be strategically connected with (Hutchison) and/or about to invest in the high-tech business, the investing public would chase the stock in frenzy, resulting in sharp increase in the stock price.”

Mr. RIGBY agreed in general with Stella FUNG’s conclusions concerning the price sensitivity of the information the subject matter of the announcement of 22nd February and of her analysis of the “hi-tech frenzy” and “Hutchison effect” factors. Mr. SHUM did not dispute her opinion in this regard.

It was put to Stella FUNG in cross-examination that if one of the parties was reluctant to enter into the deal it would undermine the price sensitivity of the meeting of 12th February. With that proposition she agreed to the extent that “it depended upon the degree” of reluctance. We think that is common sense. Obviously if one party is less than eager to enter into a commercial transaction then the smaller the chance is of that transaction coming to fruition, and the lower the chance of commercial negotiations arriving at a final agreement, then the less price sensitive is the fact of the negotiations taking place.

LAM Hon Nam and Edmund MA both gave evidence of an earlier experience Vanda had of issuing convertible bonds to Barings ING in raising funds for Vanda. That experience had turned out badly for Vanda when Barings ING had elected not to convert the bonds and to

have repayment of the debt instead. To do so Vanda had had to dispose of its controlling interest in one of its subsidiaries.

But in the present case we are satisfied that while LAM Hon Nam may well have had unhappy memories of Vanda's earlier convertible bonds experience he was pulled heavily towards the transaction as well. That is because as he said in his evidence he was well aware of the potential benefits an alliance with Hutchison offered Vanda. We are satisfied on the evidence that regardless of the distaste both LAM Hon Nam and Edmund MA had for convertible bonds LAM Hon Nam on balance was disposed in favour of the Hutchison proposal. That was so because of the extraordinary speed with which the eventual transaction was agreed, and because after the 12th February meeting there were no, or extremely few further negotiations about the convertible bond and option aspects of the eventual agreement. Indeed the evidence before us was that there were no further substantive negotiations involving either LAM Hon Nam or Edmund MA concerning any aspect of the convertible bond and option components of the agreement eventually arrived at before the agreement itself was signed. It is noteworthy also in this regard that upon his receipt of the Term Sheet from Peregrine on the 16th February which outlined the convertible bond and share option agreement terms (which were in essence the same proposed at the 12th February meeting) LAM Hon Nam after discussing its contents with Edmund MA and T.K. HO simply referred the matter on to Vanda's solicitors for the preparation of the required documents. There were no further substantive negotiations with Hutchison.

It is plain to us therefore that while LAM Hon Nam may have had some reservations about the convertible bond aspect of the deal, on balance his desire to enter into some form of cooperation with Hutchison

comfortably outweighed his reluctance in this regard and disposed him to be in favour of the 12th February proposal.

That is why on the following Monday 14th February meetings began between Vanda and Hutchison to bring into effect the joint venture portion of the overall proposal put forward in the 12th February meeting.

LAM Hon Nam was the decision maker so far as Vanda went. He was the majority partner in the controlling shareholder of Vanda. We are satisfied that on the morning of the 14th February it was understood by LAM Hon Nam, and it was a fact, that the 12th February proposal had good prospects of reaching eventual agreement.

While we appreciate that as of the morning of 14th February negotiations between Vanda and Hutchison were still in one sense at an early stage, in another sense they had already concluded. We accept from the evidence that Canning FOK had presented Vanda with a “take it or leave it” proposal and that further negotiations were (apart from the joint venture aspect) not required, merely a decision by, effectively, LAM Hon Nam as to acceptance of the proposal. Because of LAM Hon Nam’s desire to join forces with Hutchison there were, even as at 12th February, good reasons why his dislike of convertible bonds would not prevent him from agreeing to Hutchison’s proposal. We concluded therefore that even at that early date Hutchison’s proposal had a good chance of acceptance by Vanda.

One final matter was put to us by Mr. CHAIN on behalf of Dennis LI. That was the proposition that because convertible bonds allow the holder to “back out” of taking a shareholding interest in the issuer of the bonds they cannot be said to represent, before conversion,

the taking of a strategic and price sensitive interest in the issuing company.

Stella FUNG was cross-examined to this effect and said that in her opinion Hutchison taking an interest in the form of convertible bonds in Vanda was price sensitive. She said both the issuance of convertible bonds and the taking of an option to purchase shares in Vanda by Hutchison would have been regarded by the market in the circumstances of the time as “good news”. She pointed to the fact that the announcement published by Vanda on the 22nd February to this effect provoked an immediate surge in Vanda’s share price. We accept her opinion in that regard and note also that the similar announcement made in the same terms by Computer and Technologies Holdings Ltd. a few weeks before had resulted in a massive increase in that company’s share price.

Conclusion

For these reasons we are satisfied that the information generated in the meeting of 12th February was price sensitive and that was so for both that part of the information relating to Hutchison’s proposal to take up convertible bonds and a share option in Vanda (as with the Computer and Technologies Holdings Ltd. deal) and independently also so far as the joint venture aspect of the proposal was concerned. In this latter regard, we are perfectly satisfied that by the evening of the 14th February when Vanda and Hutchison executives had decided that a “B2B” payment gateway project was feasible, the information concerning the joint venture proposal was, regardless of the larger negotiations between the two companies, price sensitive in its own right.

We might again emphasise one final thing. It may well be that an individual may not have been told of the details of the proposal made by Hutchison, or may only have been aware of the general outline of the Computer and Technologies Holdings Ltd. deal which was to be followed by Vanda. In our view that does not matter so long as the individual was aware that Hutchison had proposed taking a substantial interest in Vanda's share capital and/or the two companies were contemplating a joint venture in "B2B" e-commerce and that either or both matters were under serious negotiation, then that would be sufficient to amount to relevant information.

CHAPTER 6

THE ROLE OF LAM HON NAM AND SILVIA CHAN

LAM Hon Nam at all material times was the controlling mind of Vanda. He was its Chairman and was in charge of the group as a whole. He described his duties as head of the “development strategies” of the companies and in charge of acquisitions and mergers.

Silvia CHAN was at all material times a self-employed accountant who in February 2000 provided secretarial and accounting services. Prior to that, up to late 1998 she had worked at Vanda as an accounting manager and then as the financial controller. She had joined Vanda in about 1985 and had worked there for 13 years before leaving in 1998. When employed at Vanda she had worked under LAM Hon Nam.

Background

LAM Hon Nam did not trade in Vanda shares himself. But Silvia CHAN purchased the following quantities of Vanda shares on the dates and times shown:

Date	Time*	Quantity	Cost of Purchase	Broker
14/2/2000	15:56	30,000	97,879.48	KGI Asia
15/2/2000	15:15-15:27	50,000 50,000 100,000 100,000	1,130,621.05	KGI Asia
16/2/2000	10:35 15:51 15:57	100,000 50,000 10,000	702,214.69	KGI Asia
	10:42 10:53	50,000 100,000	650,065.73	APC Securities

Date	Time*	Quantity	Cost of Purchase	Broker
17/2/2000	12:18	10,000	55,214.55	KGI Asia
	12:21	30,000	317,754.72	APC Securities
	13:31	30,000		

* Time of execution according to MSS record.

In addition to their earlier working relationship LAM Hon Nam was married to Silvia CHAN's younger sister CHAN Yuk Mee and Silvia CHAN was herself married to LAM Hon Nam's younger brother LAM Hon Yuen.

It can be seen from the above schedule that Silvia CHAN began to purchase Vanda shares over a four-day period on the 14th February and continued until the 17th February. The eventual total purchased was 710,000 shares at a total expenditure of \$2.95 million dollars. That four-day period fell within the period of negotiations between Vanda and Hutchison concerning the convertible bond issue by Vanda to Hutchison and the possible joint venture between the two companies.

What this Tribunal was concerned with was whether LAM Hon Nam had counseled or procured Silvia CHAN to purchase Vanda shares during the period 14th-17th February 2000 inclusive, and/or whether he had disclosed relevant information to her knowing or having reasonable cause for believing she would make use of that information by purchasing Vanda shares.

Accordingly in examining the role of LAM Hon Nam we considered whether he had acted in breach of either section 9(1)(a) of the Ordinance or section 9(1)(c) or both.

And in examining the role of Silvia CHAN we were concerned whether she had received relevant information from LAM Hon Nam in breach of the provisions of section 9(1)(e) of the Ordinance.

The evidence

We have already determined that relevant information came into being on the 12th February 2000. There is no doubt that LAM Hon Nam

was aware of that information. He had been involved personally in the meeting of that day and had appraised the Term Sheet provided by Isadora LI on the 16th February. He had discussed that Term Sheet and its contents with Edmund MA and T.K. HO and had decided to take matters further by forwarding it to Vanda's solicitors. In our view, it is highly unlikely that LAM Hon Nam as the Chairman of Vanda was not aware on the most up-to-date basis of the state of the negotiations between Vanda and Hutchison. He was at all times aware of the relevant information.

LAM Hon Nam in his witness statement of 19th June 2006 and his oral evidence said that he did not disclose the contents of the meetings between Vanda and Hutchison to anyone, and particularly not to his family members or the family members of Silvia CHAN. He said he did not know that Silvia CHAN had purchased Vanda shares in February 2000.

He was not able to recall a 9-second telephone call which had taken place on the 16th February 2000 at 3:49 p.m. between his mobile and Silvia CHAN's mobile though he said Silvia CHAN would normally ring him in the evening at home. He said that it was difficult to see how a telephone call at that time in the afternoon of 16th February could have influenced Silvia CHAN to purchase the Vanda shares she had bought between 10:41 a.m. and 11:40 a.m. that day. In his view her Vanda share purchases could more readily be explained by the fact that Vanda's share price was going up at that time and that it was still lagging behind the share price rises that other high-tech companies had experienced.

He said in February 2000 he owned more than 62 million Vanda shares and it was an affront to common sense to suggest he would use Silvia CHAN to purchase even several hundred thousand Vanda shares for him.

LAM Hon Nam said he had only one previous business relationship with Silvia CHAN (apart from her employment by Vanda between 1984 and 1998) when she, her mother and he had joined together to purchase an office in the Hunghom Commercial Centre i.e. the same building where Vanda's offices were located. That took place in about

1991. A company Well State Enterprise Ltd. ("Well State") was set up to hold the investment and he held 50% of the shares in Well State. Subsequently the property was re-mortgaged to provide funds for Silvia CHAN and LAM Hon Yuen to invest in Nanjing real estate. Later he was told that the development had been postponed and Silvia CHAN subsequently repaid the Well State mortgage.

In his statement to the SFC of 5th June 2001 he had also told of the purchase by Well State of the Hunghom Commercial Centre office. He had at that time said he had "no impression" of the company Pan Lik Investment Co. Ltd. (which we accept is the same as the alliterative Penax Investment Co. Ltd. which was Silvia CHAN and LAM Hon Yuen's investment vehicle), though he said he knew LAM Hon Yuen engaged in property development in Nanjing. He said he had no financial interest in that development.

In his oral evidence he said the purpose of Well State buying the office in Hunghom was to give Silvia CHAN's mother (who was about 60 years old at that time) an income in the future. He said he had told the SFC in his interview on 5th June 2001 that he had no idea why Silvia CHAN's mother was a partner in Well State because he was not properly prepared at that time to answer questions about events which had taken place 10 years earlier.

He said that after he had consented to the re-mortgage of the Hunghom office it was up to his brother and sister-in-law how the money was used in the investment on the mainland.

He emphasized that he had never discussed Vanda's shares over the phone with anyone and that was not done in any telephone conversation between him and Silvia CHAN on the 16th February.

He said so far as a telephone number 27166411, which he had contacted on the 15th and 16th February was concerned, that it was Silvia CHAN's mother's landline at her ancestral home in Kowloon City and that she would ring him at work on domestic matters and her illness. He would also ring her on that number.

Silvia CHAN's evidence comprised her statements to the SFC on 19th January and 20th April 2001, her witness statement of 15th June 2006 and her oral evidence.

She said that she had purchased the 710,000 Vanda shares during the period 14th-17th February 2000 for four fundamental reasons:-

- (1) It was a high technology stock and there was a "hi-tech" fever moving the market at that time.
- (2) The price and turnover of Vanda had started to rise.
- (3) The price of Vanda had lagged behind the price rises in similar stocks such as Legend Holdings Ltd. and Computer and Technologies Holdings Ltd.
- (4) She thought that Vanda may have been looking for a strategic partner.

The monies Silvia CHAN used to purchase the 710,000 Vanda shares came substantially from a sum of \$2.3 million remitted into her bank account on 16th February. That sum was transferred from the bank account of CHAN Sui Kei a housewife who acted as a transferor of mainland money to other bank accounts in Hong Kong. CHAN Sui Kei said that a person NGAI, who she was told was a mainland businessman and who had no account in Hong Kong, had transferred money through her account on several occasions. He deposited \$2.3 million into her Hong Kong account after Chinese New Year in 2000. He then gave her instructions over the phone to transfer the money to Silvia CHAN's account at Yien Yieh Bank. He gave her the details of the account, and she transferred the money. She had no idea who Silvia CHAN was.

Silvia CHAN said she had already been told by her husband LAM Hon Yuen on about 8th February that this sum of money would be remitted to her account "several days later". And for that reason had it in mind she would be able to purchase \$2-3 million worth of Vanda shares. She said even if the money did not arrive she would have been

able to convert her cash trading account at KGI Securities into a margin account. She said this would only take a day or so to do.

The \$2.3 million however arrived on the 16th February and there was no need to do so.

The background of this remittance of \$2.3 million was explained by her in her evidence.

She said she and her husband had invested in a joint venture property development project in Nanjing in 1994. Their partner in the project was a Chinese governmental entity. Their own vehicle was the company Penax Investments Ltd. ("Penax") which they jointly owned. Penax provided US\$1 million to the joint venture company which was called Nanjing Xin Waitan ("Xin Waitan").

In 1995, she and her husband obtained the US\$1 million representing Penax's share of the investment from a variety of sources including a further mortgage on property held by the company Well State in which LAM Hon Nam was the major shareholder. LAM Hon Nam consented to this, although he had no interest in the Nanjing project, and signed the mortgage documents. She and LAM Hon Yuen serviced the mortgage.

In about November 1999 a person NGAI in the mainland had asked her husband to sell 30% of Penax's interest in the Nanjing development to him, and he had done so. The agreed price was \$2.3 million. NGAI wanted the deal kept a secret, so there was no record of it and the joint venture company Xin Waitan was never told of this sale by Penax of part of its interest in the project though it should have been. Silvia CHAN said that she had never told the SFC of the sale of part of Penax's interest in the joint venture company when she had explained the origin of the \$2.3 million as the sale was effectively in breach of Penax's agreement with Xin Waitan. She had simply told the SFC that the \$2.3 million was a return on the investment project in China.

When the money arrived in her bank account on the 16th February it enabled her to make further purchases of Vanda shares and that is what she used it for.

She said that the \$2.3 million was supposed to be used to help her and LAM Hon Yuen purchase a new residential flat but, without telling him, she invested in Vanda shares instead. She did not tell him about this because she knew he would object.

On the 16th February there was a 9-second telephone call from her mobile phone to LAM Hon Nam's mobile phone at 3:49:01 p.m. That phone call was followed immediately afterwards by phone calls from her to her broker at KGI Securities at 3:49:39 p.m. and 3:55:57 p.m. (following which calls KGI Securities purchased 60,000 Vanda shares between 3:51 p.m. and 3:57 p.m.).

She said that she may have simply spoken to LAM Hon Nam on that day in respect of household or family matters but that she could not remember the call. She said the phone call to her broker following immediately was simple coincidence.

She said when questioned about another telephone number which was in contact with LAM Hon Nam more frequently, i.e. 27166411, that it was a landline at her mother's flat in Nga Tsin Wai Road Kowloon City where she occasionally visited and where her mother (sometimes) and her brother and his family lived. That telephone had been used to contact LAM Hon Nam on 5 occasions on the 15th and 16th February 2000.

LAM Hon Yuen, the husband of Silvia CHAN and brother of LAM Hon Nam, gave evidence comprising two statements he made to the SFC on 1st June and 20th June 2001 as well as his oral testimony.

His evidence was mostly concerned with the origin of the \$2.3 million which was deposited into his wife's bank account on the 16th February 2000.

He confirmed Silvia CHAN's evidence in this regard and said they had sold 30% of their company's joint venture investment to the person NGAI. He said NGAI was a person who sometimes traveled in military vehicles and he felt he was a person of substance. So when NGAI had asked for a 30% share of Penax's share in the joint venture he had agreed.

He said NGAI wanted the deal kept secret and only he, his wife and NGAI knew about it. There were no records of the transaction and that was true of Penax's books of account also, even though it was Penax's asset which was sold.

He said NGAI bought into the Nanjing project at the end of 1999, however the \$2.3 million was not received from NGAI until after Chinese New Year in 2000.

He said LAM Hon Nam had no interest in the Nanjing project and that he did not see LAM Hon Nam often. He had no impression of the company Well State and did not know his wife and LAM Hon Nam were shareholders of Well State.

He said the reason for LAM Hon Nam's name being initially written on the Nanjing joint venture company's List of Directors, but then crossed out, and his own name and particulars then been written was unknown to him.

The Tribunal heard also from CILAN Yuk Mee, the younger sister of Silvia CHAN who is married to LAM Hon Nam. She is a solicitor in Hong Kong and gave evidence in similar terms to that of LAM Hon Nam to the effect that her husband seldom talked about his business and that there was little direct communication between her husband and Silvia CHAN. She did say however that her family often gathered at her house.

Findings and Conclusion

The role of Silvia CHAN

It is convenient to start with the role of Silvia CHAN. We rejected her as a witness of truth; we concluded that her, and her husband's, version of the origin of the \$2.3 million used to settle the substantial part of the purchase price of Silvia CHAN's Vanda shares simply was not the whole truth. Whilst we were satisfied that a Mr. NGAI had transferred \$2.3 million from the mainland to Silvia CHAN's bank account in Hong Kong via CHAN Siu Kei we found Silvia CHAN's and her husband's evidence that the funds came from an unrecorded and secret transaction with the man NGAI, neither knew much about, to be unbelievable. The evidence of LAM Hon Yuen that the transaction was not recorded in the financial records of Penax and that, in breach of the agreement between Penax and the joint venture company, was not communicated to that company made little sense.

Further Silvia CHAN's claimed appropriation of the \$2.3 million to purchase Vanda shares without her husband's knowledge equally made little sense, and particularly their common evidence that she had not told him of the share purchase even when the price of Vanda's shares escalated in the aftermath of the 22nd February announcement. It being their joint funds earmarked for a real estate investment according to their evidence, it is difficult to find any rationality for LAM Hon Yuen to know nothing of Silvia CHAN's initially successful investment.

There were basic contradictions between Silvia CHAN's evidence to this Tribunal and what she had told the SFC in her interview statements. She had, for example during those interviews maintained that she and her husband had little or no contact with their family members and particularly LAM Hon Nam and CHAN Yuk Mee. That differed substantially from her evidence before the Tribunal as to her contacting LAM Hon Nam about family matters and having contacts with her mother at the Kowloon City flat, and other financial relations with other family members. We did not accept her or her husband as witnesses of truth.

Silvia CHAN's knowledge of the Relevant Information

We concluded that the evidence which was accepted by us proved, to a high degree of probability, the simple fact that Silvia CHAN had been told sufficient information concerning Hutchison's proposal to Vanda so as for that information to be relevant information.

We are satisfied that was the only realistic explanation for her purchase of a total of 710,000 Vanda shares between the 14th-17th February 2000 at a total consideration of \$2.95 million.

This purchase was quite simply the largest share purchase she had ever made. She and her husband, while reasonably comfortable in their incomes, could not be described as well off. The amount of \$2.95 million was an unprecedented investment in a single share according to what we have seen of Silvia CHAN's trading accounts.

While she had on previous occasions purchased Vanda shares (not unusually considering her previous connections with that company) those purchases were moderate and intermittent. The largest previous such purchase had been \$128,749 on 25th January 2000.

Not only the quantity, but also her singular purchasing of Vanda shares during the week commencing 14th February (except for a small purchase of Wai Kee Holdings on 14th February) speaks of an unusual and urgent reason to do so. As does her use of a very large sum of money remitted to her account from the mainland just in time to fund her Vanda share purchases. We emphasise these purchases occurred from the first trading day after the meeting which LAM Hon Nam had attended on the 12th February and continued over the available share trading period during which further meetings were held and the Hutchison proposal was under contemplation. This by itself is a remarkable coincidence but in our view there is more.

We took into account also the fact that there was a certain symmetry between her share purchases and contacts with LAM Hon Nam. Those contacts were with either her mobile phone or with the landline at

the Kowloon City flat. We are satisfied she had access to that landline, though it is quite possible others did as well. She provided that landline number 27166411 as a contact number both to SmarTone when she applied for her mobile phone 98590016 and to KGI Securities when she opened her trading account there. Additionally Ben KWONG her broker at KGI Securities said he rang her on that number to contact her when he could not reach her on her mobile phone number. We are satisfied that she habitually used that landline and was contactable there. We note also that her mobile phone record shows she was not a particularly frequent user of her mobile phone. She carried on her own business at that time and in our view that points to her using means of communication other than her mobile phone. We noticed that she did not use her mobile phone to place her stock orders. The call records of landline telephones are not available to us but relevantly it was accepted by Silvia CHAN that on the morning of 16th February she may have been in the Kowloon City area (as established also by the cell site location obtained from a call she made on her mobile phone) and may have gone to the flat to deliver some medicine to her mother.

We set out a schedule showing the juxtaposition of Silvia CHAN's Vanda share trading during the period 14th-17th February and phone calls made between LAM Hon Nam and either her mobile number 98590016 or the Kowloon City landline 27166411:

Date	Phone Calls	Quantity Purchased	Time Order Executed	Broker
14/2/2000		30,000	15:56	KGI
15/2/2000	14:53:38 LAM Hon Nam calls Kowloon City landline no. (43 sec)			
	15:01:36 LAM Hon Nam calls Kowloon City landline no. (3 sec)			
		50,000	15:15-15:27	KGI
		50,000		

Date	Phone Calls	Quantity Purchased	Time Order Executed	Broker
		100,000		
		100,000		
	18:43:57 Kowloon City landline no. called LAM Hon Nam (27 sec)			
	18:47:00 Kowloon City landline no. called LAM Hon Nam (12 sec)			
16/2/2000	10:18:20 Kowloon City landline no. called LAM Hon Nam (8 sec)			
		100,000	10:35	KGI
		50,000	10:42	APC
		100,000	10:53	APC
	15:25:21 KGI called S. Chan (19 sec)			
	15:49:00 S. Chan called LAM Hon Nam (9 sec)			
	15:49:39 S. Chan called KGI (20 sec)			
		50,000	15:51	KGI
	15:55:57 S. Chan called KGI			
		10,000	15:57	KGI
17/2/2000		10,000	12:18	KGI
		30,000	12:21	APC
		30,000	13:31	APC

We will deal in more detail with those telephone contacts when we consider the role of LAM Hon Nam. But for present purposes we should say that we regarded these contacts as evidence of Silvia CHAN purchasing Vanda shares between 14th-17th February on the basis of relevant information provided to her by LAM Hon Nam. There is a chronological symmetry in the telephone contacts between LAM Hon Nam and either the Kowloon City landline or, at 15:49 on 16th February, Silvia CHAN's mobile number, and Silvia CHAN's accounts purchasing Vanda shares.

We are satisfied she had this information on the 14th February when she commenced her purchases. Although there were no telephone contacts between her and LAM Hon Nam in evidence before us prior to her purchasing a small amount of Vanda shares on that day, we are satisfied that those purchases formed part of the same series of purchases of Vanda shares which Silvia CHAN conducted from 14th February to 17th February (the shares being suspended from trading on 18th February) and that she purchased them on the 14th February with relevant information in mind. The absence of evidence of direct telephone communication between her and LAM Hon Nam is not determinative in that regard. We did not have access to landline records for the purposes of this inquiry, but we are satisfied that personal contact between family members in LAM Hon Nam and Silvia CHAN's families was much closer than Silvia CHAN was at first prepared to admit.

Her reason for purchasing Vanda shares at that time we are convinced was not, as she claimed in her evidence, that her appraisal of the market led her to conclude that Vanda's price was about to increase. There had been some upward movement in Vanda's price late in the week ending 11th February. But such price movements in Vanda's shares (as in many companies shares) were not unusual and, relevantly, when they had occurred in Vanda's share price previously had failed to attract Silvia CHAN's interest to anything approaching the degree of her very substantial investment during the 14th - 17th February.

We are satisfied that Silvia CHAN received relevant information and made her Vanda share purchases on that basis. She was an experienced enough share investor to realise the market effect such

information would have should it become generally known that Hutchison had made such a proposal to Vanda.

She must have been aware, considering our conclusions set out below, that the information was not known to the market and that she had the inside running in this regard.

In deciding where Silvia CHAN got the relevant information we must consider the involvement of LAM Hon Nam.

The role of LAM Hon Nam

As we have said there is no doubt that LAM Hon Nam possessed the relevant information. He must have known it to be such. He was present at the Saturday 12th February meeting with Canning FOK. He was the Chairman of Vanda and responsible for its corporate strategy. We are satisfied that he must have been aware of the relevant information's potential to materially affect the price of Vanda shares should it become generally known. There was in fact no real issue raised before us in that regard.

What was fundamentally in issue was whether he had passed that information on to Silvia CHAN. At the end of the day, though LAM Hon Nam (as with all other implicated parties) was a person of good character, we disbelieved his evidence that he had not.

There was no substantive connection between Silvia CHAN and any other person who had been involved in the meetings of 12th (and 14th and 16th) February. Nevertheless we took into account Silvia CHAN had family members who were still working within the Vanda group (e.g. her brother CHAN Kee Ming) and that she had family connections with LAM Hon Nam through her sister and husband. We had then to consider whether Silvia CHAN had received the relevant information provided to her directly from LAM Hon Nam, or possibly indirectly, perhaps through another family member without LAM Hon Nam being aware of this.

On the 16th February there was a direct telephone contact between Silvia CHAN's mobile phone and that of LAM Hon Nam.

That telephone contact occurred as we have said at 3:49 p.m. after Silvia CHAN had purchased 250,000 Vanda shares on that day, and about 30 seconds before she rang KGI and commenced to order another 60,000 shares.

By itself that single telephone contact does not go further than to establish that Silvia CHAN did have personal contact with LAM Hon Nam on one occasion at a time very proximate to when she was purchasing Vanda shares.

But additionally to that LAM Hon Nam had contact on four occasions on 15th and one occasion on the 16th February with the Kowloon City landline telephone number 27166411.

On two occasions these contacts occurred before Silvia CHAN purchased Vanda shares. On each such occasion there was contact with the landline number about 15 minutes before the first share purchases of the 15th February and the 16th February.

Accordingly, to summarise, LAM Hon Nam contacted the Kowloon City landline at 2:53 p.m. and 3:01 p.m. on 15th February. Silvia CHAN purchased Vanda shares on her KGI account between 3:15 and 3:27 p.m. (and we might add we are satisfied the dealing tickets show orders placed at about those times). On the 16th February LAM Hon Nam was contacted by the Kowloon City landline at 10:18 a.m. At 10:35 a.m. Silvia CHAN's KGI Securities account purchased 100,000 Vanda shares and between 10:42 a.m. and 10:53 a.m. her APC account purchased 150,000 shares. At 3:49 p.m. on the same day Silvia CHAN used her mobile to contact LAM Hon Nam. 30 seconds or less after that call she telephoned Ben KWONG at KGI and purchased a further 50,000 Vanda shares (the order being executed at 3:57 p.m.). She rang Ben KWONG again at 3:55 and purchased another 10,000 shares.

We might add also that the Kowloon City landline contacted LAM Hon Nam at 6:43 and 6:47 p.m. on the evening of 15th February,

and that Silvia CHAN commenced her trading quite early on the morning of 16th February after a further brief Kowloon City landline contact with LAM Hon Nam.

Though the cases of LAM Hon Nam and Silvia CHAN were presented on a “stand or fall together” basis, we considered their cases separately.

We particularly considered whether LAM Hon Nam may have contacted other persons at the flat rather than Silvia CHAN. According to the evidence of LAM Hon Nam and Silvia CHAN apart from her mother, her brother and his wife also lived there, and according to LAM Hon Nam that brother worked for Vanda or one of its related companies. We bore in mind also that others of Silvia CHAN’s family, apparently including that brother, had on occasion purchased Vanda shares. But at the end of the day, given the circumstances of Silvia CHAN’s share purchases including the very large amounts of the purchases and the timing of the telephone calls both on the flat landline and between their mobile phones in relation to those purchases, we were satisfied that LAM Hon Nam had directly spoken to Silvia CHAN.

We also took into account that during the period 8th February to 22nd February 2000 which is the whole of the period the records produced before us covered there were no other contacts between LAM Hon Nam’s mobile phone and the Kowloon City landline, except for a ten-second contact on 19th February. In other words, contacts between LAM Hon Nam’s mobile telephone and the Kowloon City landline were disproportionately high during the period Silvia CHAN was purchasing Vanda shares.

In our judgment the unusual buying activities in Vanda shares of Silvia CHAN from 14th February onwards together with her connection with the Kowloon City landline number which together with her mobile was in contact with LAM Hon Nam shortly prior to her largest purchases of Vanda shares on the 15th and 16th February, established to a high degree of probability that LAM Hon Nam had provided her with relevant information concerning Vanda.

We might add further that both LAM Hon Nam and particularly Silvia CHAN were alleged to have lied to the SFC in their recorded interviews (in the case of Silvia CHAN) or at least to have been less than forthcoming with the truth (in the case of LAM Hon Nam). But we placed no probative value on these matters. In Silvia CHAN's case we merely took into account her admitted failings in this regard so far as her credibility was concerned.

Finally, at the end of the day, we placed no probative weight on the evidence concerning the remittance of \$2.3 million from the mainland to Silvia CHAN's account in Hong Kong so far as LAM Hon Nam was concerned. The evidence tending to connect him with that transaction, or with Penax, the company of LAM Hon Yuen and Silvia CHAN which was the origin of those funds, was too tenuous to amount to any form of proof concerning LAM Hon Nam's role in Silvia CHAN's share purchases.

Accordingly, in our judgment the nature of Silvia CHAN's Vanda share buying combined with LAM Hon Nam's telephone contacts with her, or a number which she had given as her contact number and was used by her broker to contact her, and the timing of LAM Hon Nam's contacts was sufficient to satisfy us that it was highly probable he had provided her with relevant information knowing she would use it to purchase Vanda shares. We are satisfied he provided that information to her before she commenced buying Vanda on the 14th February and continued to provide it to her as it was updated prior to her purchases on the 15th and 16th February. She still possessed that information when she purchased her last 70,000 Vanda shares on the 17th February.

LAM Hon Nam in our view had taken no steps to procure Silvia CHAN's purchases of Vanda shares. As we say we ignored evidence of the \$2.3 million remittance to Silvia CHAN being in any way connected to him. Nor were we satisfied to a high degree of probability that he counselled her in her purchases though there remains a considerable suspicion that he did so given the telephone contacts between them. However we are satisfied to a high degree of probability that in providing relevant information to her LAM Hon Nam knew and had reasonable

grounds to believe she would act on that information and purchase Vanda shares.

We say that because of the nature of LAM's phone calls to the landline at the Kowloon City flat. Those phone calls occurred prior to Silvia CHAN's dealings and as we have said occurred at a disproportionately high frequency during the period of Silvia CHAN's dealings in Vanda shares. We are satisfied those calls related to Silvia CHAN's Vanda share dealings. He knew of her financial background. We think it highly probable LAM Hon Nam in providing relevant information to her knew she would act on that information to purchase Vanda shares.

Given LAM's experience and position within Vanda he must have known the information was relevant information.

Accordingly, we find LAM Hon Nam to have been an insider dealer within the terms of section 9(1)(c) of the Ordinance in respect of all Vanda share purchases made by Silvia CHAN between 14th to 17th February 2000 inclusive. Silvia CHAN was aware of LAM Hon Nam's connection with Vanda. She must have been aware he possessed the relevant information as a result of that connection. We are satisfied that she was aware of the value of that information, given her experience as a share trader and as an accountant. We find Silvia CHAN to have been an insider dealer within the terms of section 9(1)(e) of the Ordinance in respect of all Vanda share purchases made by her between 14th to 17th February 2000 inclusive.

CHAPTER 7

THE ROLE OF ERNEST CHOY AND BECKY CHAN

Background

Ernest CHOY in February 2000 was the General Manager of Vanda's operations in Hong Kong and South East Asia. He was married to Becky CHAN.

Ernest CHOY, it was common ground, had attended the 14th and 16th February 2000 meetings with Hutchison staff, including Sammy TSE, but it was in issue whether or, if so, how much he had been told of the Hutchison proposal to buy convertible bonds in Vanda. During the week 14th-18th February Becky CHAN purchased the following amounts of Vanda shares on the dates shown on her accounts at Winsome Stock Co. Ltd. ("Winsome") and Po Sang Bank ("Po Sang"):

Date	Time	Quantity ⁽³⁾	Broker
14/2/2000	11:45	50,000	Po Sang ⁽¹⁾
15/2/2000	11:02-14:58	300,000 200,000	Winsome ⁽²⁾
15/2/2000	10:40 11:44	36,000 78,000	Po Sang
16/2/2000	10:07-11:12	44,000 100,000 22,000	Winsome

Note:

- (1) The account opened with Po Sang was in the sole name of CHAN Lai King, Becky.
- (2) The account opened with Winsome was in the joint names of CHOY Ming Yan, Ernest and CHAN Lai King, Becky.
- (3) The total cost of the Vanda share purchases was \$3,092,956.

It was common ground that these dealings were all conducted by Becky CHAN, even those at Winsome where the account was in the joint names of herself and Ernest CHOY. That was admitted by her and was confirmed also by Danny TSE, her account executive at Winsome. If those purchases had been made while Becky CHAN had been in possession of relevant information then the only realistic source of such information, on the evidence before the Tribunal, was her husband Ernest CHOY.

There was absolutely no suggestion that Becky CHAN had any but the most fleeting and formal contact with any other executives or their wives at Vanda. She had no contact at all with Hutchison executives.

Accordingly the Tribunal had to consider whether Ernest CHOY possessed relevant information and if so, whether he counselled or procured Becky CHAN to purchase Vanda shares in breach of section 9(1)(a) of the Ordinance, and/or whether he disclosed that information to her knowing or having reasonable cause to believe that she would purchase Vanda shares in breach of section 9(1)(c) of the Ordinance.

So far as Becky CHAN was concerned we had to consider whether she had learnt of relevant information from Ernest CHOY at the time she made her Vanda share purchases and was in breach of section 9(1)(e) of the Ordinance.

The evidence

The primary evidence concerning Ernest CHOY and Becky CHAN comprised the records of Becky CHAN's share trading, which were not in dispute; evidence as to what Ernest CHOY was told of Vanda's proposed relationship with Hutchison when he returned to work on the 14th February 2000 (which came primarily from individuals present at the meeting at 4:30 p.m. that day including Ernest CHOY himself) and finally, evidence relevant to the issue as to whether he imparted any such information to his wife. Evidence relevant to that last issue came from various telephone calls between Ernest CHOY and Becky CHAN during the material period when she was purchasing Vanda shares.

We will summarise firstly the evidence of the witnesses before the Tribunal which was material to our considerations.

Ernest CHOY

Ernest CHOY made one recorded interview with the SFC on 28th March 2001 and provided also a witness statement dated 28th June 2006. He gave oral evidence.

He said his duties as a general manager made him responsible for administration, sales and services for Vanda in Hong Kong and South East Asia. He said he had acted as something of a “company doctor” for Vanda during the Asian financial crisis and had managed to turn things around. But his involvement was primarily in operational matters and he was not concerned with corporate matters such as Hutchison’s proposal to take up convertible bonds. He said though he had known (as it was referred to in Vanda’s 1999 Annual Report) that Vanda wished to “spin off its software side”, he had not known of the meeting which took place on the 12th February or of the proposal made by Hutchison at that meeting.

He said he had been on leave on Friday 11th February and he and his wife had gone to Macau. At about 4:00 p.m. on that day his wife went into a bank in Macau to check share prices. He had given her his mobile phone which had a “roaming” facility and which his company paid for. He did not know what she had done while she was in the bank. He had waited for her in a nearby teahouse. They stayed in Macau until returning to Hong Kong on Sunday night.

When he returned to work on Monday 14th February Edmund MA informed him of the meeting with Hutchison that afternoon. He did not know the agenda of the meeting. He thought it was just a general meeting with Hutchison on the subject of e-commerce. He was never told that the meeting was to explore cooperation with Hutchison in a joint venture. He was not told of anything relating to the 12th February meeting.

He, Edmund MA and Gordon CHEUNG went to Hutchison's Hunghom offices at 4:30 p.m. for the purposes of the meeting. They travelled by taxi. Nothing was said during the 10-minute taxi ride as to the Hutchison proposal, including the fact that the meeting was to follow up on the joint venture proposal which had also been mentioned at the 12th February meeting.

He said at the meeting no one to his recollection mentioned the convertible bond proposal or said anything about Hutchison or Francis LEUNG having been involved in discussions with Vanda. His understanding was that the 14th February meeting was just a normal business meeting and that he had been merely a participant. Edmund MA had not at any stage briefed him on the reason for or the subject matter of the meeting. No one to his recollection suggested during the meeting that Vanda and Hutchison were "all one family".

He said after the meeting he and his team had to work late as they had to prepare a business proposal for a "B2B" payment gateway which it had been decided would be explored as a possible subject of a joint venture between Hutchison and Vanda.

Because he worked late he was unable to go to dinner as he and Becky CHAN had planned to do to celebrate Valentine's Day. And when he returned home that night she was angry with him. Consequently the next day, 15th February, he phoned her a number of times so as to calm her down and apologise to her. She eventually rang him and accepted his apology.

On the 16th February he attended the meeting with Hutchison at their offices at 10:30 a.m. and presented Vanda's proposed "B2B" business plan. That evening he flew to Singapore on business and did not return to Hong Kong until 19th February.

He said his wife was of an independent mind and did not discuss her share trading with him. She was the only one to operate the joint trading account at Winsome. She was responsible for handling the family finances and because of his work he spent a substantial portion of his time out of Hong Kong.

He said in cross-examination he knew nothing about the Hutchison proposal regarding Vanda until the announcement was made on the 22nd February. He had earlier been asked by his wife why Vanda shares had been suspended from trading. He said he did not know, did not make any enquiries, and did not suspect his wife had purchased Vanda shares.

He agreed he had rung his wife a number of times on the 15th February just before she had rung her broker at Winsome but said he was merely trying to mend their relationship as a result of missing their Valentine's dinner the evening before.

Becky CHAN

Becky CHAN participated in one recorded interview with the SFC on 14th March 2001. She provided a witness statement to the Tribunal dated 28th June 2006 and gave oral evidence.

She said she was a trained accountant and after marrying Ernest CHOY in 1988 had taken full control of their family finances. She had started to trade in shares sometime before 1996. Once her husband had given her bad advice about a particular stock and subsequently she had not discussed stocks with him again. She had started buying Vanda shares in about 1996 and had asked Ernest CHOY whether this was all-right and he had told her it was as there was no conflict. Subsequently she had traded in Vanda shares and had not discussed her dealings with him.

She said in December 1999 and January 2000 she had sold her Vanda shares. But she had noticed that its price lagged behind other similar hi-tech companies share prices and thought its price would potentially go up. So she kept an eye on it and thought that if Vanda's price (which was trading in the range of about \$1.80 to \$2.97 during 1st January to 10th February) broke \$3.50 she would buy it. She noticed its price started to rise on the 9th February. On the 11th February she and her husband were in Macau. She had gone into a bank to check on

Vanda's price. She saw its price was still rising, though it had not sustained a breakthrough of the \$3.50 point.

She then phoned her brokers Winsome in Hong Kong using Ernest CHOY's mobile phone as its roaming calls were paid for by Vanda, and ordered them to start selling her current share portfolio as she wished to prepare the way for doing a "share swap", i.e. to replace her "old technology" stock with Vanda.

On the 14th February she started to buy Vanda. She said she was cautious at first as the price was still under \$3.50 which made her a bit hesitant.

But on the 15th February Vanda's price surged and so she started buying in large amounts. On the 16th February she bought more, but was unable to buy all she had wanted. She bought none on the 17th February and on the 18th February trading in Vanda's shares was suspended.

In total she purchased 830,000 Vanda shares (of which 300,000 she said she purchased for her sister) at a cost of \$1,987,950 (in respect of the 530,000 shares she purchased for herself). She had to contribute an amount of \$750,000 cash in addition to the proceeds of sale of her "old technology" portfolio in order to pay for the 530,000 shares.

She said at that time she had cash assets of about \$5.4 million and was well able to afford the purchase of the Vanda shares.

She said during her Vanda share buying exercise Ernest CHOY had kept ringing her. This was because of his late arrival home the night before and their missing their Valentine's dinner. He had been trying to apologise to her.

She subsequently on 30th June 2000 transferred 300,000 of the Vanda shares she had purchased to an account her sister opened in Hong Kong. She had never asked her sister to pay for them as she felt badly about her sister eventually losing money on the shares, though eventually her sister had paid her.

In addition to the evidence of Ernest CHOY and Becky CHAN material evidence particular to Becky CHAN's share trading came from their telephone records showing the degree and timing of contacts between them during Becky CHAN's purchasing of Vanda shares from 14th to 16th February. Those telephone contacts will be set out below in due course.

Other evidence

Other evidence concerning the issues we had to determine in regard to the roles of Ernest CHOY and Becky CHAN came from other Vanda executives who were present at the 14th and 16th February meetings with Hutchison, that is Edmund MA and Gordon CHEUNG, as to Ernest CHOY being told or not told about the Hutchison proposal to Vanda made at the 12th February meeting. Edmund MA said that after the 12th February meeting he had not mentioned it to anyone. He said that the "convertible bond proposal" had not been mentioned to the Vanda staff involved in the 14th and 16th February meetings. Gordon CHEUNG, Vanda's director of business sales and marketing, who attended both the 14th and 16th February meetings with Edmund MA and Ernest CHOY and whose involvement in those meetings according to his evidence was purely from the software and sales point of view, said that although Edmund MA had told him on the 12th February about the 14th February meeting and that Vanda might cooperate with Hutchison on e-commerce business, he had not known about the proposal concerning convertible bonds until after Vanda's shares had been suspended from trading.

Hutchison's executives present at the 14th and 16th February meetings were Peter WONG, Bernard FUNG and Sammy TSE.

As will be seen later we gave no credibility to the evidence of Sammy TSE and placed no weight on his evidence as to what was said at the 14th and 16th February meetings. Peter WONG who struck us as a cautious and reluctant witness said that during the 12th February meeting he did not remember whether convertible bonds were mentioned. We found that somewhat surprising given all others present at the meeting took some interest in the proposal made by Hutchison in this regard and

did remember it being mentioned. Peter WONG simply remembered the proposal being that Hutchison buy Vanda shares and that there be cooperation with Vanda. He said that at the 14th February meeting, which he remembered as coming about as a result of the 12th February meeting, Sammy TSE suggested a 50/50 joint venture between Hutchison and Vanda as to a payment gateway. He did not think convertible bonds were mentioned at that meeting either. He however thought it possible that he had told Sammy TSE about Hutchison buying into Vanda prior to their attending the meeting in the afternoon of 14th February. He said the possible joint venture which was raised at the 12th February meeting was mentioned during the 14th or 16th February meeting, though he had no particular intention to discuss it at those meetings.

Bernard FUNG worked under Sammy TSE in Hutchison's subsidiary E-Commerce Resources Ltd. where he was the General Manager of its Business Development Section. He said his principal involvement in Hutchison's dealings with Vanda was in respect of the joint venture, though he knew of the "subscription agreement". He was not present at the 12th February meeting but was present at the 14th and 16th February meetings. He had been told to attend the first meeting by Sammy TSE either in the morning or the early afternoon of the 14th February. At that meeting a joint venture was discussed concerning the feasibility of a "B2B" payment gateway. He thought it possible that someone had mentioned Hutchison buying a stake in Vanda and also thought something like "we are in one family" was said. He initially said he was not mistaken about this and that it was said, and that he understood it to mean Hutchison was buying into Vanda. Later in cross-examination he said while it was possible he misremembered this being said at the 14th February meeting, he doubted that he had misremembered. He said it was probable also that the fact that Hutchison would buy a stake in Vanda was expressly mentioned at the 14th February meeting. He did not recall who may have mentioned it.

At the 10:00 a.m. 16th February meeting there was a discussion as to the sales and marketing strategy of the joint venture.

He said that at some stage Sammy TSE involved him in discussions with Vanda not just about the joint venture but also the

“subscription agreement”. He said he was not experienced in corporate finance so Sammy TSE gave him the required instructions and he would then liaise with Vanda. The person he initially liaised with was Ernest CHOY. He said the joint venture was a serious business proposal and Hutchison was keen to do it.

Sammy TSE also gave evidence of what transpired at the 14th and 16th February meetings. We have referred to that evidence previously but it is convenient to set it out briefly again. In that regard Sammy TSE said in his statement to the SFC dated 15th March 2001 that in the 14th February meeting two issues were discussed:-

“The first issue was about a business cooperation project. Regarding the second issue they said that the stake in Vanda would be bought the same as the manner in which Hutchison cooperated with other companies previously in the form of convertible bonds.”

and later

“In the 4:30 pm meeting on 14th February Edmund MA told me that the conditions which they had agreed to on 12th February with Canning Fok and Peregrine were the same as those of Computer and Technologies.”

In his witness statement to the Tribunal dated 10th July 2006 he said:

“In my statements to the SFC I mentioned that the use of convertible bond was discussed in the February 14 meeting. Now in the year of 2006 I cannot recall whether the use of convertible bonds was really mentioned. But it is highly probable that we did not mention convertible bonds because we were focusing on the technical aspect of the potential cooperation between Vanda and Hutchison and I was not responsible for investment matters.”

In his oral evidence he said he was probably confused when he gave his answers in the SFC interview of 15th March 2001. He said that occurred a year or so after the 14th February 2000 meeting and that he

may have confused things with his involvement in the similar Computer and Technologies deal which had occurred shortly before the Vanda deal and upon which the Vanda deal was based. He said he was confused and may have remembered things “all in a block”.

Conclusions

We generally rejected Sammy TSE as a witness of truth. We gave no weight to his unsupported evidence to the SFC concerning what was discussed at the 14th February 2000 meeting concerning Hutchison’s proposal to take an interest in Vanda by way of convertible bonds. Accordingly we did not take into account what Sammy TSE said to the SFC in this regard as evidence against Ernest CHOY. In terms of the issue as to what Ernest CHOY would have learnt of the Hutchison proposal at the meeting of 14th February, that leaves the evidence of Bernard FUNG.

Bernard FUNG was a reliable witness. He gave his evidence in a straightforward manner. But we bore in mind that his evidence was given some five years after the events in question and concerned his recollection of somewhat fleeting and vague mentions by a person (who he understandably could not remember) of Hutchison and Vanda “being in one family”. He could not recall the context in which that was said. Accordingly, in relation to this particular aspect of Bernard FUNG’s evidence we do not find it sufficiently probative to support Sammy TSE’s evidence in this regard or to establish that Ernest CHOY learnt of Hutchison’s proposal to take an interest in Vanda at the 14th February meeting. Indeed other evidence supports the fact that no mention of Hutchison taking an interest in Vanda’s share capital was made at that meeting. Gordon CHEUNG and Edmund MA who we found to be credible witnesses had no recollection of any such matter being mentioned. Gordon CHEUNG who was generally an impressive witness said he had not learnt of the convertible bond proposal until after the public announcement to that effect on 22nd February 2000.

However we are satisfied at that meeting on 14th February that Ernest CHOY must have become aware that Vanda and Hutchison were seeking ways to establish a joint venture in the realm of e-commerce.

We are indeed quite satisfied that he would have at least been aware before the meeting that Hutchison and Vanda were to negotiate in the meeting some form of joint venture in e-commerce. We cannot accept that there is any real possibility of him attending that meeting in effectively complete ignorance as to what the meeting was to be about. Ernest CHOY was a very high ranking executive in Vanda in 2000. The concept of him going to a meeting with Hutchison which was a follow-up meeting from that of 12th February (as we are satisfied it was) without knowing what it concerned seems far fetched, particularly given his eventual responsibility for preparing the business plan for the “B2B” joint venture proposal presented by him at the 16th February meeting. We cannot accept as he suggested before the Tribunal that the joint venture was an “impromptu” development at the 14th February meeting. The joint venture was plainly mentioned at the 12th February meeting and indeed Gordon CHEUNG was aware that was the reason for the meeting of the 14th February.

We are satisfied that Ernest CHOY prior to attending the 14th February meeting was aware that it involved Hutchison and Vanda pursuing ways to participate in a joint venture in e-commerce.

Obviously by the conclusion of that meeting Ernest CHOY was well aware that the joint venture under consideration was one relating to a “B2B” payment gateway. He must have been aware of considerable detail as to the scope and nature of that proposed joint venture as by 10:00 a.m. on Wednesday 16th February he was able to present a detailed and comprehensive business plan for the joint venture (Gordon CHEUNG being responsible for presenting the technical proposal).

Accordingly while we are not satisfied to the standard of a high probability that Ernest CHOY was, on the 14th February, aware of Hutchison’s proposal to take an interest in Vanda’s share capital by way of convertible bonds and share options, we are satisfied he learnt, when he returned to work on the morning of the 14th February, of Hutchison and Vanda having agreed to explore ways of entering into a joint venture in the area of e-commerce. We are satisfied he would have known of this at or shortly after his return to work. Gordon CHEUNG told the Tribunal, and we accept, that he was told of the 4:30 p.m. meeting to be

held on Monday 14th February, on Saturday 12th February by Edmund MA, and that it related to cooperation with Hutchison in the area of e-commerce. We cannot accept Ernest CHOY's evidence that he knew less than Gordon CHEUNG about what the 14th February meeting concerned.

Accordingly we are satisfied he was aware soon after he attended work on Monday 14th February that there would be a meeting that afternoon with Hutchison executives about Hutchison and Vanda developing a joint venture project in e-commerce. We are not satisfied however that Ernest CHOY was in possession of relevant information at that point of time. That is because we accept from the evidence of Edmund MA and Gordon CHEUNG that the meeting was for the purpose of exploring areas of possible cooperation in the e-commerce area which would allow a joint venture between the two companies. As we have said in Chapter 5, we do not think that a merely exploratory meeting, where no sufficient narrowing of definition of the contemplated joint venture had occurred, beyond reference to the field of "e-commerce" generally, was specific enough, though we can appreciate arguments to the contrary. In any event we consider that specific information relating to the joint venture did not come into existence until the conclusion of the 4:30 p.m. meeting on the 14th February by which time discussion between the parties had narrowed down the field of contemplated cooperation to a "B2B" payment gateway, and had resolved that Vanda would prepare an operational and financial plan to that effect.

There is no evidence that Ernest CHOY prior to the 4:30 p.m. meeting had told Becky CHAN of the proposed joint venture with Hutchison. Becky CHAN purchased Vanda shares at 11:45 a.m. that morning when she purchased 50,000 on her Po Sang account. No further Vanda shares were purchased by her on the 14th February. And we bore in mind in regard to this purchase that Becky CHAN had previously purchased Vanda shares on seven occasions from 1st January 1999. The average cost of each purchase was about \$118,000. The purchase she made on 14th February taken by itself was consistent with her previous pattern of Vanda purchases. Whilst there must be some suspicion as to this share purchase, we cannot be satisfied to a high degree of probability that it was made on the basis of information

provided to her by her husband. Also, as we have said no relevant information came into being regarding the joint venture until the conclusion of the meeting.

The next day however, 15th February, Becky CHAN started purchasing Vanda in earnest. Between 10:40 a.m. and 2:58 p.m. she purchased 614,000 Vanda shares for a total outlay of \$2,251,076. The following day she purchased an additional 166,000 Vanda shares for \$679,380.

During the course of her purchases of Vanda on the 15th February, the day when the great majority of her purchases were made she was in continual telephone contact with Ernest CHOY.

A summary of her times of purchase on that day placed in juxtaposition with the times of her telephone conversations with Ernest CHOY and her brokers at Winsome (and Po Sang) is as follows:

Date	Mobile Phone Calls	Quantity Purchased	Time Order Executed	Broker
14/2/2000	11:23 B. Chan called Winsome (1.5 min)			
	11:25 B. Chan called Winsome (2 min)			
	11:42 B. Chan called Po Sang (1.7 min)			
		50,000	11:45	Po Sang
	11:49 B. Chan called Po Sang (0.3 min)			
	18:06 Vanda called B. Chan (1.2 min)			
	19:03 B. Chan called E. Choy (1.9 min)			
	19:25 B. Chan called E. Choy (1.6 min)			
	20:23 B. Chan called E. Choy (0.4 min)			

Date	Mobile Phone Calls	Quantity Purchased	Time Order Executed	Broker
15/2/2000		36,000	10:40-10:42	Po Sang
		100,000	11:02	Winsome
		78,000	11:17-11:44	Po Sang
	12:04:24 Vanda called B. Chan (2.4 min)			
	12:07:49 B. Chan called Winsome (1.9 min)			
		200,000	12:08-12:10	Winsome
	12:19:26 Vanda called B. Chan (3.2 min)			
	12:24:56 B. Chan called Winsome (1.1 min)			
	12:50:15 Vanda called B. Chan (4 min)			
	14:47:09 B. Chan called Winsome (0.2 min)			
	14:51:04 Vanda called B. Chan (2.2 min)			
	14:56:37 B. Chan called Winsome (1.6 min)			
		200,000	14:57-14:58	Winsome
	15:05:35 Winsome called B. Chan (2.1 min)			
	15:08:03 B. Chan called E. Choy (0.2 min)			
	15:12:43 Winsome called B. Chan (2.1 min)			
	15:15:01 B. Chan called E. Choy (0.2 min)			
	15:16:13 B. Chan called E. Choy (0.1 min)			
	15:17:22 E. Choy called B. Chan (0.9 min)			
	15:32:28 B. Chan called Po Sang (0.5 min)			

Date	Mobile Phone Calls	Quantity Purchased	Time Order Executed	Broker
	15:35:35 E. Choy called B. Chan (1.6 min)			
	15:50:24 E. Choy called B. Chan (1.6 min)			
	15:54:34 B. Chan called E. Choy (5.3 min)			
16/2/2000		166,000	10:07-11:12	Winsome
	12:25:39 B. Chan called E. Choy (0.2 min)			
	12:32:16 B. Chan called E. Choy (0.3 min)			

We were quite satisfied that the Vanda landline telephone number used to contact Becky CHAN's mobile was a landline used by Ernest CHOY. This was never in issue and indeed it was common ground that no-one else at Vanda would have had any reason to phone Becky CHAN. Accordingly, it can be seen particularly from the first call from Ernest CHOY to Becky CHAN on 15th February at 12:04 p.m. through to Becky CHAN calling Winsome at 2:56 p.m. that there is a remarkable symmetry between calls from Ernest CHOY to Becky CHAN being immediately followed by calls from Becky CHAN to Winsome and of the latter calls those made at 12:07 p.m. and 2:56 p.m. being calls which resulted in the purchase of 200,000 Vanda shares on each occasion.

In our judgment the explanation put before the Tribunal for these calls by Ernest CHOY and Becky CHAN quite simply does not bear water. Both said that as a result of Ernest CHOY working late at Vanda the previous evening 14th February, he had missed a Valentine's Day dinner they had arranged. As a result when he returned home on the night of the 14th February Becky CHAN had refused to talk to him. The next day he made a series of telephone calls to her attempting to apologise to her. It was mere coincidence that those calls were made at a time when she was in the process of ringing her brokers to order Vanda shares. Both said there was more than one call made because initially she refused to accept his apology.

We do not place any weight on their evidence in this regard. Even if the frequency of telephone calls could be explained by a domestic tiff over a missed or cancelled Valentine's Day dinner, the pattern of calls remains compelling. There is just too great a symmetry between Ernest CHOY's phone calls during this period to Becky CHAN and her almost immediate calls to her broker, and between her broker's calls to her and her calls to Ernest CHOY. We might add that the length of the phone calls between Ernest CHOY and his wife during this period seems too long to be consistent with the one way and unsuccessful attempt at apology that their evidence suggested.

We are satisfied from the context of these telephone calls between Ernest CHOY and his wife that they were relevant to the same subject matter about which she spoke to her broker at Winsome i.e. the purchase of Vanda shares. Given the marital relationship between them and the number of contacts they had there is no doubt that Ernest CHOY imparted to Becky CHAN relevant information. We are also satisfied that because the Vanda share purchases were prompted by Ernest CHOY's knowledge of the joint venture being contemplated by Vanda and Hutchison, and given the volume of those purchases both he and Becky CHAN were aware that the information they held as to Vanda and Hutchison possibly cooperating in a "B2B" joint venture was likely to be price sensitive. That likelihood of price sensitivity was in any event a matter of common sense given the "hi-tech" euphoria existing at that time and Hutchison's reputation.

We did not accept Becky CHAN's explanation for buying the Vanda shares. She said she had been keeping an eye on the performance of the shares for some time, and that she had an idea that if and when they broke through a resistance level she thought was significant, i.e. \$3.50, she would purchase them. She said she noticed they had done so while she was in Macau on 11th February with Ernest CHOY and decided to prepare to purchase Vanda shares. There are some flaws in her reasons advanced in this regard. While it is true Vanda reached \$3.675 as a high on Friday 11th February, it closed that day at \$3.175. On Monday 14th February its highest price was only \$3.40. Becky CHAN commenced to purchase Vanda shares on 14th February at \$3.25 before

Vanda had achieved any sustained breakthrough at \$3.50 and on 15th February she made her first (and quite substantial purchase) at \$3.30. Whilst we appreciate that a breakthrough can be a “signal”, even if not sustained, in our view Becky CHAN’s evidence had more than a little post-rationalization in it concerning the reasons for her purchase of Vanda.

She said also she had not used all her available liquid assets to purchase Vanda. There is no doubt her existing assets were reasonably substantial at the time as her husband was in the habit of giving her his salary. But in our estimation of what “liquid” means she had in fact used virtually all of the “ready cash” assets available to her; that is those monies in her sole and joint bank accounts and readily convertible forex accounts and funds available in her trading accounts. We discount from the concept of “ready cash” those assets held in time deposit accounts.

One point she raised did cause us some concern. On 11th February while in Macau she apparently used her husband’s phone to instruct Winsome to sell most of the existing portfolio in her trading account. She said she did this when she noticed that Vanda had broken the \$3.50 barrier and wanted to clear the “old technology” stock from her share holdings to allow her to purchase Vanda. The funds she obtained from the sale of the shares generated most of the approximately \$3.1 million used to fund her Vanda purchases. Assuming that Ernest CHOY first heard of any part of the Hutchison proposal when he returned to work on the 14th February there seems no apparent reason for Becky CHAN to have sold most of her share portfolio on the 11th February. The meeting of 12th February had not yet been held. There is no evidence Ernest CHOY learnt in advance of that meeting.

Becky CHAN’s clearing out of most of her existing portfolio on 11th February is consistent with her own version as to why she purchased Vanda shares. Nevertheless at the end of the day, after taking this evidence carefully into account we are of the view that she purchased Vanda shares not because of their penetration of any \$3.50 breakthrough point but because her husband Ernest CHOY had provided her with relevant information.

To summarise, we find the following conclusive in that regard.

Firstly, the coincidence of her commencing to buy Vanda in large quantity on the 15th February, the day after her husband became aware of a potential joint venture between Vanda and Hutchison in “B2B” e-commerce during the evening of 14th February.

Secondly, the very large amount that she invested in Vanda, some \$3.1 million dollars. It was the largest amount she had ever invested in a single share. It represented all of her ready cash.

Thirdly and most importantly, the symmetry in the telephone calls between herself, her husband and her brokers at the time she was purchasing the largest amounts of Vanda shares on the 15th February.

We accept that Becky CHAN may well have purchased 300,000 of the Vanda shares for her sister. Those shares we are satisfied were transferred to her sister’s trading account before Becky CHAN would have been aware of the SFC investigation. That does not support her own case in any way. Rather it supports the proposition that she had such uniquely “good news” about Vanda that she was prepared to use her own monies to buy some shares for her sister.

We are satisfied to a high degree of probability that Ernest CHOY and his wife Becky CHAN were acting together in the purchase of Vanda shares. They shared Ernest CHOY’s finances. They, on their own evidence, were a close couple. The volume of phone calls in evidence between them shows conclusively that they worked hand in glove during the course of Becky CHAN’s major trading in Vanda.

Both were experienced in the commercial field. Becky CHAN had additionally been an active share trader for many years. We are satisfied they must have been aware that the information that Hutchison and Vanda were negotiating to set up a “B2B” joint venture would likely cause a material rise in Vanda’s share price. They were aware of the nature of those negotiations and must have been aware this was information unknown to the market.

So far as Ernest CHOY is concerned we are satisfied he, while in possession of relevant information he knew to be such, counselled his wife to deal in Vanda shares and further disclosed relevant information to her knowing or having reasonable grounds to believe she would deal in Vanda shares. We find him to be in breach of section 9(1)(a) and section 9(1)(c) of the Ordinance.

So far as Becky CHAN is concerned we are satisfied she, in purchasing Vanda shares on the 15th and 16th February 2000 did so whilst in possession of relevant information she knew to be such and which she had received from her husband knowing he was a director of Vanda and possessed it as a result of his work at Vanda. We find her to be in breach of section 9(1)(e) of the Ordinance.

CHAPTER 8

THE HARBOUR RING PURCHASES

In the following chapters in the course of considering the role of various implicated parties who were associates or friends of associates of Sammy TSE we took into account that some of those individuals had purchased shares also in a company called Harbour Ring International Holdings Ltd. ("Harbour Ring") at a time when Sammy TSE had been involved in negotiations concerning that company on behalf of Hutchison. The evidential background was as follows:-

Following shortly upon the commencement of its negotiations with Vanda, Hutchison embarked on negotiations with a large and well-known American internet oriented company International Capital Group ("ICG") whereby ICG was to obtain a backdoor listing in Hong Kong using a listed company (i.e. Harbour Ring) which Hutchison already had an interest in. It was envisaged that Harbour Ring would re-orient its business from toy manufacturing to internet related ventures. By 10:00 a.m. on the 29th February negotiations between Hutchison and ICG were well under way and Sammy TSE became seriously involved in those negotiations at some time during the morning of 29th February.

On the 1st March 2000 in the early afternoon Harbour Ring's shares were suspended from trading.

On 10th March the three companies (i.e. ICG, Hutchison and Harbour Ring) announced an agreement whereby ICG would subscribe to a majority of Harbour Ring shares. Following that announcement Harbour Ring shares resumed trading and skyrocketed in price by some 500%.

Before the suspension of trading in Harbour Ring shares on the 1st March, a number of the implicated parties in the present inquiry had, on the 29th February and 1st March, purchased large quantities of Harbour Ring shares. Those implicated parties were Debbie NG, Chris WONG, Charles CHONG and CHONG Bun Bun.

In other words, with the exception of Christie WO and Dennis LI the same individuals who were friends or associated with friends of Sammy TSE who purchased Vanda shares on trading accounts controlled by them, had also purchased Harbour Ring shares.

During the course of the present inquiry counsel assisting, Mr. Marash SC, sought to call evidence of these individuals Harbour Ring shares purchases as evidence supporting the proposition that Sammy TSE's knowledge of Hutchison's dealings with Harbour Ring was passed on to these individuals also, so strengthening the inference that Sammy TSE was directly or indirectly the source of relevant information concerning the Hutchison proposal to Vanda. Mr. Marash suggested that "the evidence tends to rebut innocent dealing based upon information available to the general public and the explanations advanced by the implicated parties in the Vanda inquiry".

The admission of this evidence was objected to by counsel representing Sammy TSE, Chris WONG and Charles CHONG and CHONG Bun Bun. It obviously had nothing to do with the implicated parties who were executives or relatives of executives of Vanda namely, LAM Hon Nam, Silvia CHAN, Ernest CHOY and Becky CHAN. Nor did it concern Dennis LI. There was no evidence before us of any involvement by him in the Harbour Ring dealings. Nor did it concern Christie WO. She did not buy any Harbour Ring shares prior to the publishing of the announcement on 10th March 2000.

The Tribunal heard submissions on the admissibility of this evidence and subsequently ruled it admissible within certain parameters. That is that the evidence was admissible for the purpose of rebutting mere innocent coincidence in the implicated parties purchase of Vanda shares; that is that it was a mere coincidence that the implicated parties who knew and had contact with Sammy TSE or in the case of Chris WONG knew and had contact with Debbie NG a friend of Sammy TSE bought Vanda shares while he was engaged in the Vanda negotiations on behalf of Hutchison. The Tribunal's ruling was to the following effect:

“Counsel assisting suggested evidence of the specified implicated parties in the present inquiry purchasing shares in Harbour Ring only after Sammy TSE had become involved in negotiations which provided him with information concerning that company’s affairs, goes to negative mere coincidence in the same implicated parties purchasing Vanda shares in the present inquiry only after Sammy TSE had become involved in negotiations which provided him with information concerning Vanda’s affairs, and would tend to prove that the purchases were connected with Sammy TSE having received such information.

The Tribunal sees the merit in that argument. From the materials before the Tribunal and the evidence heard to date, it appears likely that the implicated parties affected by this application will indeed be arguing that their purchases of Vanda shares were independent of any contact they may have had with Sammy TSE, and conversely Sammy TSE’s case is, or may be, that any purchases of shares by the present implicated parties had nothing to do with any contact those parties had with him.

It seems plain that one factor which would be relevant to the Tribunal’s determination of that issue is quite simply whether there was any other history of Sammy TSE’s associates purchasing shares of companies which were the subject of negotiations involving Hutchison and particularly Sammy TSE.

What is admissible is as follows: firstly, evidence that Sammy TSE attended meetings concerning a proposal to have investment funds injected into Harbour Ring; secondly, evidence of the purchase of Harbour Ring shares by or on behalf of the other five implicated parties; and thirdly, evidence of any telephone communications between the six specified implicated parties at or about the time of the Harbour Ring meetings attended by Sammy TSE and the purchase of shares.

The Tribunal wishes to emphasize that this evidence is admissible into the present proceedings for the limited purpose of negating coincidence, if it can be expressed in that way. There is no question of the Tribunal embarking upon a hearing of the Harbour Ring issues generally or particularly determining whether information the subject of that

forthcoming inquiry was specific or price sensitive or otherwise fulfilled any criteria which will have to be determined by another Tribunal in the future.”

The full ruling is at Annexure F.

In short, the Tribunal regarded the evidence of implicated parties purchasing Harbour Ring shares at the time Sammy TSE was involved in negotiations on behalf of Hutchison concerning Harbour Ring as being relevant to the issue as to whether those implicated parties may have purchased Vanda shares at a time when Sammy TSE was involved in similar negotiations involving Vanda only as a matter of innocent coincidence. Quite bluntly the Harbour Ring evidence would tend to support the proposition that these individuals purchased Vanda shares as a result of their connection, direct or indirect with Sammy TSE, and not as a matter of mere coincidence.

We will deal with the Harbour Ring evidence as it was presented to the Tribunal during this inquiry so far as it is relevant to the roles of the implicated parties who were connected with, directly or indirectly, Sammy TSE in the following chapters.

CHAPTER 9

THE ROLE OF CHRIS WONG

Background

Chris WONG in February 2000 was a director of Orchid Computerised Embroidery Company Ltd. and a friend of Debbie NG. He was not acquainted with either Sammy TSE or Dennis LI or any other implicated party.

He on occasion traded in shares in a number of accounts he held in his own name. He traded also in accounts held in the names of two British Virgin Island ("BVI") registered companies Friendly Earth Investments Ltd. ("Friendly Earth") and Crown Regent Property Ltd. ("Crown Regent"). One of the accounts held in his own name was with South Capital Brokerage Ltd. ("South Capital") which was opened on the 15th February. Debbie NG introduced him to South Capital for the purpose of opening that account. On 16th February those three accounts in the name of or controlled by Chris WONG made the following purchases of Vanda shares:

Date	Time	Average Price Per Share	Quantity	Cost of Purchase	Proceeds of Sale	Broker
16/2/2000		\$4.166	500,000	2,096,450.15		HSBC Singapore
16/2/2000	10:22	\$4.200	30,000	126,486.86		South Capital
16/2/2000		\$4.000	100,000	403,602.96		Dao Heng Bank

That was the first time Chris WONG had purchased Vanda shares.

We accept that Chris WONG did not operate the account in his name at South Capital which purchased 30,000 Vanda shares on 16th February. We accept that Debbie NG operated that account as both she and Chris WONG said she did. This was very much the usual course of business for Debbie NG. As will be seen in Chapter 12, while she was only a 17-year-old girl at that time she was an experienced share

trader (she traded through her mother's and others' trading accounts) and was worldly for her years.

The evidence

Chris WONG's evidence before the Tribunal comprised two recorded interviews with the SFC on the 10th January and 19th June 2001, a witness statement dated 28th July 2006 and his oral testimony.

In that evidence he said he had met Debbie NG around the end of 1999 to early 2000. He "wished to court her". He heard that she was interested in shares and spent time at South Capital. On the 15th February he went with her to South Capital and opened an account there. Over the next few days he deposited \$500,000 in the account. He said he allowed Debbie NG to use this account at South Capital as he wished to impress her. He had not given any formal authorisation to the effect that she could do so. But he understood he was to be responsible for any losses and had not realised it was a margin account. He was aware Debbie NG was only 17 years old at that time but she said she was learning and he wanted to impress her so he allowed her to operate the account.

After opening the account he stayed a while at South Capital Brokerage and saw that Debbie NG was checking information relating to Vanda shares on a computer terminal. He asked her if they were worth buying and she replied he could buy some if he felt like it.

He thought about it overnight and as he had previously noticed the price of Vanda shares had started to rise he decided to buy some the next day, 16th February. He purchased a total of 600,000 shares in the Dao Heng Bank account held in the name of Crown Regent and the account of Friendly Earth with HSBC in Singapore. The aggregate cost of the shares was \$2,500,053.

He agreed that this was the first time he had used Friendly Earth's account at HSBC Singapore to trade in shares and said he had done so because it had funds in it.

He had nothing to do with the purchase of 30,000 Vanda shares in his newly opened South Capital account and assumed they were purchased by Debbie NG. He said it was a mere coincidence that Debbie NG was purchasing Vanda shares on the South Capital account within minutes of him purchasing Vanda shares on the HSBC Singapore account.

The Vanda share purchases by Chris WONG on his HSBC Singapore and Dao Heng Bank trading accounts occurred between 10:14 and 10:41 on the 16th February. The previous afternoon and evening of 15th February there had been three telephone contacts between Debbie NG and Chris WONG. Earlier that same day the 15th February there had been 4 telephone contacts between them. These telephone contacts had occurred amidst telephone calls between Debbie NG and Sammy TSE. Chris WONG said in his evidence the telephone contacts between him and Debbie NG were simply social and so far as he knew it was merely a coincidence that she had been in telephone contact with Sammy TSE at about the same time.

On the 22nd February following the publishing of Vanda's announcement as to its involvement with Hutchison its share price surged and Chris WONG sold most of the Vanda shares he had purchased, some 400,000 shares. He said he decided to take his profit.

On 1st March 2000 he purchased 2,600,000 Harbour Ring shares for over \$2 million a few minutes after he had been in telephone contact with Debbie NG that morning. Again he used the HSBC Singapore trading account and the Dao Heng Bank trading account in Hong Kong. He said the telephone call with Debbie NG that morning was made to arrange to meet for tea, but later changed his mind and said he could not remember what the call concerned when he was shown a copy of the Immigration Department's record of his movements showing that he returned to Hong Kong only later that day from China.

He said he and Debbie NG did not discuss Harbour Ring shares and as far as he knew it was a mere coincidence Debbie NG had also purchased Harbour Ring shares that day.

He agreed that in April 2000 he had transferred \$1 million to the bank account of Debbie NG's mother, FONG Long. He said that this was because Debbie NG wished to buy a flat and he had lent her the money to make the downpayment. He did not receive any repayment of that loan from her and was surprised to hear in her evidence she had used the money for other purposes. He was adamant he had not received any advice from Debbie NG or anyone else concerning his Vanda share purchases.

Debbie NG's evidence will be more fully dealt with later in this report when her role is examined in detail. For present purposes we set out that part of it which touches upon Chris WONG's purchase of Vanda shares.

She initially denied knowing Chris WONG when interviewed by the SFC but eventually remembered she had dated him when he was courting her in February 2000. She agreed she had suggested to Chris WONG that he open an account at South Capital and introduced him to that firm. She agreed she used to operate his account at South Capital and that he had deposited money into that account and into her mother's account which she also operated in South Capital. She agreed he had given her \$1 million to buy a flat but she had used the money for other purposes. She said he had not requested the return of the money.

She agreed also that Chris WONG did not know Sammy TSE or Dennis LI and that she was unaware that he had bought Vanda shares in the HSBC Singapore and Dao Heng Bank accounts on 16th February. She said she had coincidentally bought 30,000 Vanda shares for him in the South Capital account on the 16th February. She was not sure whether she had told him this but thought not.

She disagreed that she had "tipped off" Chris WONG about Vanda and its involvement with Hutchison and said she had never strongly recommended a share to anyone. She did not know he had traded in Harbour Ring shares.

Conclusions

For reasons we will go into in greater detail later in this report we did not regard Debbie NG as a credible witness. In our view she misled the SFC concerning her role and others' roles in her Vanda share trading, and also this Tribunal.

Nor did we accept Chris WONG as having any credit so far as the reasons he gave for purchasing Vanda shares.

The only real issues concerning Chris WONG were firstly, whether he had learnt of Hutchison's proposal regarding Vanda and, if so, secondly, whether he was aware that information came from a person who had the information as a result of being connected with Vanda. We will deal with those matters in turn.

Had Chris WONG received relevant information?

In our view, Chris WONG purchased Vanda shares on the 16th February because he had been told sufficient of Hutchison's interest in Vanda so as qualify that information as relevant information and was therefore aware Hutchison had proposed to take an interest in Vanda and of what that carried with it by necessary implication as to an increase in Vanda's share price. We say that for the following reasons:-

Firstly, Chris WONG had never purchased Vanda shares previously. Nor had he previously used the HSBC Singapore account for share purchases. Nor had he ever made such a large purchase of one single share before (though his later purchase of Harbour Ring shares was to eclipse that record within two weeks). In short, Chris WONG's purchase of Vanda shares departed significantly from his previous share trading habits and showed an unusual degree of urgency on his part to invest heavily in Vanda. We do not accept that this sudden and dramatic plunge into Vanda shares was because he had noticed its share price rising in the preceding few days.

We do not think it was necessarily a matter of mere coincidence that the largest part of his purchases of Vanda shares were in an offshore

trading account (i.e. the HSBC Singapore account) and that both accounts involved in these purchases were held in the name of companies registered in the British Virgin Islands.

Chris WONG said he used the offshore account simply because it was in funds. But the South Capital account, which he agreed in his evidence he had sometimes used was a margin account and was available for his use on 16th February. He said also in his evidence he had many other accounts.

The use of accounts held in the names of BVI companies lent a cloak of anonymity to the transactions in those accounts and by disguising the identity of the true operator distanced the account somewhat from any connection to Debbie NG, an associate of Sammy TSE. We don't place any disproportionate importance on that state of affairs but as will be seen the use of accounts held in the name of another to deal in Vanda shares was a frequent occurrence amongst Sammy TSE's associates or their friends and we note the effect of that was to separate any use of the accounts from Sammy TSE and his associates.

Chris WONG's urgent and heavy purchases of Vanda shares on the 16th February speak strongly of a reason other than his observing a price increase in Vanda's shares for those purchases. He most certainly was in contact with Debbie NG at the time and she was in contact with Sammy TSE.

On the basis of their mobile phone records Chris WONG and Debbie NG were in contact 7 times on the 15th February between 9:45 a.m. and 7:43 p.m.

Those calls were made in groups or clusters. On either side of the calls involving Chris WONG, Debbie NG would usually be in contact with Sammy TSE.

We set out a schedule of the relevant calls below to illustrate that:

09:42:55	Sammy TSE called Debbie NG	(88 sec)
09:45:17	Chris Wong called Debbie NG	(1.3 min)
09:47:48	Debbie NG called Chris WONG	(2.1 min)
09:50:48	Chris WONG called Debbie NG	(1.2 min)
09:52:25	Chris WONG called Debbie NG	(1.8 min)
09:57:52	Debbie NG called Sammy TSE	(7 sec)
15:21:52	China S. called Sammy TSE	(22 sec)
15:38:11	Chris Wong called Debbie NG	(0.4 min)
15:42:27	Debbie NG called Chris WONG	(0.3 min)
16:49:59	Sammy TSE called Debbie Ng	(105 sec)

The contact at 15:21:52 referring to a 22 seconds' telephone call was between Sammy TSE and China Southern Finance Ltd. ("China Southern") a company related to South Capital and which had an administrative address at the offices of South Capital in World Wide House. The landline at those premises was registered in the name of China Southern but was in the premises of South Capital, which landline fax/telephone we are satisfied Debbie NG had access to and used. There was realistically no one else at China Southern or South Capital who knew of or would contact Sammy TSE other than Debbie NG who spent considerable time at the premises of South Capital in World Wide House.

Chris WONG purchased all his Vanda shares the next day, 16th February. He had left Hong Kong for the mainland in the evening of the 15th February and returned to Hong Kong on the evening of 16th February. He made all his share purchases while in the mainland.

On the evening of the 16th February there was another telephone call between Chris WONG and Debbie NG. He contacted her at 6:24 p.m., about thirty seconds after he had contacted the Dao Heng Bank (where he had purchased and sold 100,000 Vanda shares earlier that day).

In our view, there was ample opportunity for Debbie NG to have provided Chris WONG with any information she possessed concerning Hutchison's proposal to Vanda. As will be seen in due course we are satisfied she did possess such information and had received that information from both Sammy TSE and Dennis LI. We are satisfied

Debbie NG did provide Chris WONG with sufficient of the information concerning Hutchison's proposal to Vanda as to amount to relevant information.

We arrive at that conclusion not only from a consideration of the size and urgency of Chris WONG's purchases of Vanda shares in the context of the telephone contacts he had with Debbie NG, but also having taken into account his purchases of Harbour Ring shares.

Before we deal with that aspect of the case we should briefly summarise the evidence relating to Chris WONG's Harbour Ring share purchases so far as we took it into account.

Chris WONG traded in the following Harbour Ring shares again in accounts in the name of Friendly Earth and Crown Regent:

Trading of Harbour Ring shares by Chris WONG in names of
Friendly Earth Investments Ltd. and Crown Regent Property Ltd.

Date	Bought	Total Investment	Broker
1.3.2000	100,000		HSBC Singapore
1.3.2000	500,000		HSBC Singapore
1.3.2000	1,000,000		HSBC Singapore
1.3.2000	500,000	\$1,993,741.63	HSBC Singapore
1.3.2000	400,000	\$414,002.32	Dao Heng Hong Kong
1.3.2000	100,000	\$74,360.14	Dao Heng Hong Kong
TOTAL	2,600,000	\$2,482,104.09	

It can be seen that Chris WONG's investment in Harbour Ring was substantial. It surpassed his previous largest investment in a single share, namely Vanda.

On the morning these purchases occurred (i.e. 1st March) Chris WONG called Debbie NG at 9:57 a.m. That phone call occurred immediately prior to the opening of the market, and immediately prior to

Chris WONG calling his brokers at Dao Heng Bank and HSBC Singapore.

Once again, Chris WONG was trading in a very large volume of shares in a way which departed from his usual approach to share trading which, from his trading account in Dao Heng Bank appeared more measured and in far more moderate amounts. We are satisfied his trading in Harbour Ring shares together with the other evidence negatives any possibility that his purchase of Vanda shares at that time was mere coincidence.

Taking all this evidence together Chris WONG, in our view, was highly probably trading in Vanda shares on the basis of relevant information provided to him by Debbie NG when he purchased his Vanda shares.

Did Chris WONG know the relevant information came from a connected person?

The question which remains is whether he was aware that the information came from a person connected with Vanda.

We are satisfied he must have known of the source of the information. As will be seen we are sure that Debbie NG received the information from both Dennis LI and Sammy TSE and was aware of Sammy TSE being a high ranking executive within Hutchison who was involved with the negotiations concerning Vanda.

Chris WONG's Vanda share dealings were dramatically large compared to his previous trading history and had some of the indicia of secrecy attached to them, that is they were mostly offshore and all were done in accounts in the name of BVI companies. The amount of money he invested in Vanda and the urgency of that investment, in our view, by itself makes it highly probable he knew the source of the information was an executive of Hutchison known by Debbie NG who was involved in negotiating the deal between Hutchison and Vanda. Debbie NG was obviously the source of Chris WONG's information but she was at the time only a 17-year-old girl. Chris WONG was a businessman and no

doubt would wish, so far as possible, to find out as much as he could about the reliability of the information she gave him. The Tribunal bore in mind in considering this aspect of Chris WONG's Vanda purchases that he, at this time, was quite close to Debbie NG and had provided her with considerable sums of money. On the evidence there was no issue but that he allowed her to operate the trading account in his name at South Capital. We are completely satisfied that she provided him not only with relevant information but also with sufficient detail about the source of her information for him to be assured that it was reliable and was from an executive of Hutchison involved in the negotiations with Vanda. There is no doubt he would have realised the information was price sensitive and on 16th February unknown to the market.

For those reasons we are satisfied that in making his purchases of Vanda shares on 16th February Chris WONG was in breach of section 9(1)(e) of the Ordinance. Our findings are restricted to his purchases of Vanda shares on the accounts of Crown Regent at Dao Heng Bank and Friendly Earth at HSBC Singapore.

CHAPTER 10

THE ROLE OF CHRISTIE WO

Background

Christie WO was at all material times a friend of Sammy TSE. She was aware he was a Hutchison executive. She was a friend also of Dennis LI. In February 2000 she and her boyfriend MAO Chi Fai were involved in business together in a company called Time Concepts Ltd. and another company called Dot & Co. Both companies were watch retailers.

Christie WO in her evidence claimed to be a regular share trader and to have, together with MAO Chi Fai, used the trading account of their secretary Olivia CHUNG at GLS Securities Ltd. ("GLS") to do so.

During the relevant period in February 2000 it was common ground that account was used to purchase the following Vanda shares:

Date	Time	Quantity	Cost of Purchase	Proceeds of Sale	Buy/Sell
15/2/2000	10:56	8,000	1,488,541.72		B
	10:58-10:59	192,000			B
	12:15-12:16	110,000			B
	15:26	100,000			B
16/2/2000	11:07	54,000	281,697.00		B
	11:39	10,000			B
17/2/2000	10:21	50,000	447,642.92		B
	10:45	10,000			B
	14:36	16,000			B

It was Olivia CHUNG's evidence that these Vanda share transactions were done according to Christie WO's instructions (with the exception of 30-40,000 shares which she had purchased for herself in order to "follow" Christie WO). Christie WO did not dispute she had ordered the

purchase by Olivia CHUNG of these shares, though she thought Olivia CHUNG may have purchased 60,000 of the shares for herself. On all of the evidence we were satisfied Olivia CHUNG had dealt in these Vanda shares under the direction of Christie WO (with the exception of those shares she had purchased on her own behalf).

From telephone records produced as evidence in the course of the inquiry as well as evidence from witnesses it was plain that the Tribunal had to determine whether Christie WO had received relevant information from Sammy TSE or Dennis LI or both as to Hutchison's proposal to Vanda and so consider whether she had been in breach of the provisions of section 9(1)(e) of the Ordinance at the time she made any or all of the Vanda share purchases.

The evidence

We will briefly set out the evidence of the witnesses which is relevant to Christie WO's Vanda share dealing. The summary is of course not intended to be a complete recitation of the evidence given.

Christie WO participated in two recorded interviews with the SFC on the 7th May 2001 and the 17th August 2001. She also provided a witness statement to the Tribunal dated 14th July 2006 and she gave evidence.

Taken as a whole her evidence was to the effect that she was a business partner and girlfriend of MAO Chi Fai in February 2000 and that they used the spare funds of their businesses (i.e. Time Concepts Ltd. and Dot & Co.) to invest in shares using their secretary Olivia CHUNG's account at GLS to do so. She said they used this account rather than one she had in her own name at Great China Brokerage Ltd. ("Great China") because the proprietor of Great China was also a business partner of theirs and they did not want him to know they were using the watch companies' money to invest in shares.

She said that she and MAO Chi Fai knew Sammy TSE and Dennis LI. They were simply social friends. On the evening of 14th February 2000 she had met Sammy TSE and Dennis LI at a karaoke

in Wanchai to celebrate Valentine's Day with a group of other friends. She did not know Debbie NG or any other implicated party. During the evening Dennis LI had mentioned to her that Vanda (which he referred to by its listing number "757") may be a profitable buy. She had already heard and read something of the share, so the next morning she had asked some of her friends about Vanda, and had drawn some lucky sticks, as she was a follower of traditional Chinese supernatural beliefs, and as a result of the information and results being positive had with MAO Chi Fai's agreement decided to purchase Vanda. She instructed Olivia CHUNG to do so. She only bought a few at first, but as the price kept rising decided to tell Olivia CHUNG to buy more shares. Over the 15th to 17th February she purchased 550,000 shares for \$2,217,880 (though during the same period she sold 110,000 of those shares for proceeds of \$511,492).

She had never been given any information concerning Hutchison's proposal to Vanda and had never discussed any purchase of Vanda shares with Sammy TSE.

After trading in Vanda shares resumed on 22nd February following its suspension she instructed Olivia CHUNG to sell most of the shares. The proceeds were dealt with by Olivia CHUNG and MAO Chi Fai. MAO was the person responsible for organising their finances at the time. She agreed those proceeds as of 24th February totalled some \$3 million. She did not know what was actually done with the proceeds of sale of the Vanda shares. She agreed from the documents provided to her that they had been transferred from Olivia CHUNG's GLS trading account to Olivia CHUNG's Hang Seng Bank account. She assumed the money then went back to their companies' bank account but she was not really sure. We should point out that withdrawals from Olivia CHUNG's Hang Seng Bank account were mainly in cash except for \$929,001.63 paid by cheque to MAO Chi Fai.

She said she also borrowed \$600,000 from Dennis LI at this time as she had run out of money and wanted to be able to pay for share trading she conducted after 24th February. She did not bother to find out about the whereabouts of the \$3 million proceeds of the Vanda share sale so as to use it instead.

The money she borrowed from Dennis LI was not repaid by her until during the course of the Tribunal hearing. That is because she had initially been told he had left Hong Kong and had lost her mobile with his phone number recorded in it and so was unable to locate him earlier. She could not explain why he had drawn a cheque payable to Great China as she had simply given him an account number to pay the money into.

She agreed that over the period 15th to 17th February when she had been purchasing Vanda shares she had numerous telephone calls with Sammy TSE. She said these calls concerned Sammy TSE discussing girls he knew with her and discussing watches. They did not have any relationship to her Vanda share purchases.

She agreed this was the first time she had ever traded in Vanda shares.

MAO Chi Fai gave a somewhat different version of events to the Tribunal. He had never been interviewed by the SFC. That is perhaps not as surprising as it seems for the simple reason that in Christie WO's interviews with the SFC she had quite simply not referred to his involvement at all. As a result of hearing Olivia CHUNG's evidence which we will come to in a moment the Tribunal decided to call MAO Chi Fai as a witness. For that purpose he made witness statements dated 2nd June 2006 and 16th June 2006.

He said in 2000 he was a director of Time Concepts. He said Christie WO was his girlfriend in 2000. They broke up in 2003. Between February and March 2000 she had borrowed money from him for share purchases. She did not say which shares she intended to purchase. He denied pooling funds with her to purchase shares and specifically denied having purchased Vanda shares. He said he was unsure as to whether Christie WO traded shares through Olivia CHUNG's trading account. He said he could not remember why, on the 26th February 2000, \$929,001.63 was transferred from Olivia CHUNG's bank account to his bank account, though Olivia CHUNG had told him it was because of share trading involving himself, herself and Christie WO. He therefore believed the \$929,001.63 represented his share of share

trading proceeds. He thought it may also partly or wholly represent a loan repayment by Christie WO.

He said he often traded in Olivia CHUNG's GLS account (although he had his own HSBC trading account) because it was convenient to do so when he was out of Hong Kong. He said he had never traded in Vanda shares however, and had never discussed share purchases with Christie WO. He said he did not know what had been done with any proceeds of sale of Vanda shares. He did not remember why \$500,000 and \$420,000 was transferred from his bank account to Christie WO's bank account on 25th and 29th February 2000.

He said he did not know Dennis LI at all, but had heard mention of Sammy TSE, though he was not sure if he had met him.

When cross-examined on behalf of Christie WO he was less sure of events in February 2000. He said that he did not remember Christie WO speaking to him about Vanda shares, and he was not sure if he was the joint owner of the Vanda shares purchased in Olivia CHUNG's trading account. He was not sure if the \$929,001.63 paid into his bank account on the 26th February represented the proceeds of sale of the Vanda shares. He then agreed that after the Vanda shares were sold some of the proceeds of sale according to the documents produced to the Tribunal were handled by his HSBC bank account. He made two payments from his HSBC account on 25th and 29th February totaling \$920,000 and those payments represented Christie WO's share of the Vanda profits. Subsequently in re-examination he said he was not exactly sure that these monies represented proceeds from the sale of Vanda shares. He continued to contradict himself in the remainder of his evidence saying alternately that he had funded the purchase of Vanda shares and not agreeing he was joint owner of the shares. He agreed that he had instructed Olivia CHUNG to sell existing shares in the GLS account so as to fund the purchase of Vanda shares. He said Christie WO instructed Olivia CHUNG when to sell the shares, though he was not in partnership with Christie WO. He agreed Christie WO was influenced by supernatural matters.

Olivia CHUNG made a statement to the SFC on 22nd January 2001. She gave evidence before the Tribunal in a relatively straightforward manner to the effect that in 2000 she had been the secretary of MAO Chi Fai who was the “boss” of Time Concepts Ltd. and then boyfriend of Christie WO who was the marketing director at Time Concepts Ltd.

She said both MAO Chi Fai and Christie WO had asked her to buy shares for them in her account at GLS. She said this happened several times a month. They gave her no reason for requesting to do so. Christie WO phoned and gave her orders to purchase Vanda shares in February 2000. She purchased Vanda for Christie WO over several days. She decided to “follow” Christie WO’s purchases and bought 30-40,000 Vanda shares herself. Christie WO had not given her any information about Vanda.

Subsequently Christie WO gave her instructions to sell the shares and she did. The proceeds of sale were not kept by her except for that part representing her own profits. She was not sure how she paid out the proceeds. She thought she paid the money to MAO Chi Fai, at least some of it in cash, or to Christie WO. But she agreed MAO Chi Fai usually dealt with financial matters.

She agreed Christie WO was interested in supernatural matters and was somewhat superstitious. She agreed “757” (i.e. Vanda’s listing number) would have been a lucky number for Christie WO.

She agreed that she also knew Sammy TSE through Christie WO and knew he worked at Hutchison. He had never suggested to her she purchase Vanda.

Sammy TSE in his evidence, which comprised two recorded interviews with the SFC on 15th March and 12th April 2001 and a witness statement provided to the Tribunal dated 10th July 2006 as well as his oral testimony, denied that he had told any of Christie WO, MAO Chi Fai or Olivia CHUNG of the Hutchison deal concerning Vanda. He described himself as a congenial friend of Christie WO.

He said telephone contacts between himself and Christie WO concerned social matters, arranging to go out in the evening, or just to chat. By 2000 he had known Christie WO for about 1 year. They shared a mutual interest in fortune telling and feng shui. He liked to discuss other women with her.

Dennis LI participated in three recorded interviews with the SFC on the 5th March, 30th May and 15th June 2001 and provided a witness statement to the Tribunal dated 22nd July 2006 as well as giving oral evidence.

His evidence concerning Christie WO was to the effect they were just ordinary friends and had met in 1999. He said he had made a \$600,000 loan to her in February 2000 and had paid that money by cheque to an account name provided to her. The money came from part of the proceeds he received from his dealings in Vanda. Christie WO had told him she needed the money for her business. He did not remember recommending Vanda shares to Christie WO. He thought it possible he may have done so on the basis of what he knew about Vanda.

He said he did not chase her to repay the \$600,000 loan, but that she repaid it to him during the course of the inquiry.

Conclusions

For reasons we will go into in more detail in a later chapter we did not accept Sammy TSE or Dennis LI as witnesses of truth. Nor did we accept MAO Chi Fai as such. His evidence had no semblance of reliability. We bore in mind that he was giving evidence six years after these events and had, unlike most other witnesses, never been interviewed by the SFC closer to the time of these events. Nevertheless even taking that into account we were satisfied he avoided the truth and conveniently lost his memory when it suited him. One example will suffice. He claimed initially to not remember what the sum of \$929,001.63 (which represented part of the proceeds of the sale of Vanda shares) which he had received represented. It was only subsequently during further cross-examination that he somewhat reluctantly agreed it may have represented Vanda share sale proceeds.

Nor did we accept Christie WO as a witness of truth. Much of our reasons for our rejection of her as a witness of truth will be apparent from what follows. We did not accept that her reasons for buying so many Vanda shares were based solely on a vague recommendation of the stock by Dennis LI and a friend “Eric” who she could no longer contact and her drawing lucky sticks and throwing lucky cups. Something more substantial lay behind her purchase of the shares.

Other areas of her evidence threw a poor light on her credibility as a witness. Her inability to explain why she borrowed \$600,000 from Dennis LI to pay for further purchases of Vanda after 22nd February when she had by then made sufficient profits from her earlier purchases and sales of Vanda shares so as to pay for the subsequent purchases without any necessity for borrowing, and the fact that she did not repay that \$600,000 loan until during the course of this inquiry significantly reduced her credibility.

But independently from her lack of credibility, there are a number of matters related to Christie WO’s share trading which drew us to the conclusion that she purchased Vanda shares through Olivia CHUNG’s account on the basis of relevant information she had received.

Firstly, we took into account the size of her Vanda purchases. Christie WO was not a particularly wealthy woman. Her boyfriend MAO Chi Fai was plainly the holder of the major financial interest in the companies they ran and his income was modest. We believe Christie WO’s to have been no greater.

Her first-time purchase of Vanda shares totalled (even allowing for the sales) \$1,706,388. That was a very significant outlay for a person such as Christie WO. It suggests something more than a passing comment made to her by a friend to the effect the share was “good” or may be “profitable” or that “it could go up”, which are the various versions she gave as to what she was told of Vanda by Dennis LI on the 14th February in a Wanchai Karaoke.

The amount of her first-time purchase of Vanda was the largest single share buying exercise the evidence suggests she had ever undertaken. In our view that strongly suggests she was purchasing Vanda shares for reasons other than that a friend had suggested it might be a good buy or that she had noticed its share price rising. From the perspective of Christie WO this was a quite massive purchase. Additionally, virtually all the shares in the Olivia CHUNG account were sold to help pay for the Vanda purchase. That also suggests a commitment and enthusiasm for Vanda shares which was disproportionate to Dennis LI's comments and a rise in price in Vanda shares.

Secondly, and against that background, we took into account the juxtaposition of contacts between her and Sammy TSE and the timing of her Vanda share buying. It is true to say that even before the 14th February there were normally a number of telephone contacts between Sammy TSE and Christie WO each day, ranging from one or two to occasionally a dozen or more. From their telephone contacts frequency and duration one could be forgiven for concluding they were close friends. The contacts ranged usually from the afternoon to late at night.

But we were concerned with telephone and other contacts between them commencing on the afternoon of the 14th February when Sammy TSE, at the latest, was aware of the meeting that afternoon with representatives of Vanda. At about 2:43 p.m. by which time we are of the view Sammy TSE would have known of Hutchison's proposal to Vanda, Sammy TSE called Christie WO. That call lasted for nearly 3 minutes. There were three other shorter calls at 5:54 p.m., 6:51 p.m. and 7:02 p.m. Eventually on the evening of the 14th February Christie WO and Sammy TSE were at the same Karaoke in Wanchai.

According to their evidence that would have been late in the evening of the 14th February. We accept from their evidence and that of Dennis LI that both were present at the Karaoke. At 9:50 p.m. and 10:50 p.m. Christie WO contacted Olivia CHUNG's mobile phone. At 11:41 p.m. Olivia CHUNG rang Christie WO. Each of these phone calls lasted for 30 seconds or more.

The following morning 15th February Olivia CHUNG started to sell the major part of her accounts existing share portfolio and purchase Vanda shares. The first such purchase occurred at 10:56 a.m. According to Christie WO's phone records, which of course relate only to the use of her mobile phone, landline to landline records not being available to the Tribunal, she made no contact with Olivia CHUNG after 11:41 p.m. on the 14th February before Olivia CHUNG started purchasing Vanda shares on the instructions of Christie WO. It is highly probable, in our view, that Olivia CHUNG received at least some of her instructions from Christie WO to sell the existing portfolio and to purchase Vanda shares during the phone calls from Christie WO to her which were made at around the time Christie WO was with Sammy TSE and other people in the Wanchai Karaoke.

In the afternoon and evening of the 15th February Christie WO and Sammy TSE were in telephone contact on seven occasions. And at 6:00 p.m. Christie WO spoke to Olivia CHUNG for 13 minutes.

On the 16th February commencing in the mid-afternoon Sammy TSE and Christie WO were in contact on five occasions. The first of those occasions was at 1:53 p.m. That call lasted for about 108 seconds. About a minute or so later at 1:56 p.m. Christie WO contacted Olivia CHUNG.

On the 17th February they were in contact on eight occasions. The earliest were at 1:50 a.m. and at 2:23 a.m. At 10:22 a.m. Christie WO rang Olivia CHUNG.

In short, there were many telephone contacts between Sammy TSE and Christie WO during the time that Olivia CHUNG was purchasing Vanda shares on Christie WO's instructions.

We highlight some aspects of those telephone contacts. On the 14th February Sammy TSE rang Christie WO at 5:54 p.m. for 71 seconds. That would have been very shortly after the meeting commencing at 4:30 p.m. had finished. On the 15th February Christie WO spoke to Sammy TSE for 22 seconds at 10:13 a.m. Shares commenced to be purchased at

10:56 a.m. on Olivia CHUNG's GLS account. At 3:07 p.m. Sammy TSE rang Christie WO and they spoke for 218 seconds. Almost immediately afterwards at 3:13 p.m. they spoke for 344 seconds. At 3:24 p.m. they spoke for a further 65 seconds. At 3:26 p.m. Olivia CHUNG ordered 100,000 Vanda shares on her GLS account and at 3:29 p.m. Christie WO again spoke to Sammy TSE. On the 17th February at 2:30 p.m. Sammy TSE spoke to Christie WO for 236 seconds. Shares were purchased on Olivia CHUNG's GLS account at 2:36 p.m.

Whilst we appreciate that there were a number of share purchases made without any evidence of a telephone contact between Sammy TSE and Christie WO, and that it was quite normal for Sammy TSE and Christie WO to be in telephone contact on a regular basis during the course of a day (though not usually in the morning), it seems to stretch the concept of coincidence considerably when it is remembered that at the time of these telephone calls with Sammy TSE, who was at that time representing Hutchison in the Vanda negotiations, Christie WO was purchasing Vanda shares in large numbers and for the first time in her trading history.

We might add that on two important days, the 18th February (when trading in Vanda shares was suspended) and the 22nd February (when the announcement concerning cooperation with Hutchison was made and trading resumed) phone calls between Christie WO and Sammy TSE virtually doubled in daily frequency.

But in addition to that aspect of matters, once again, the Tribunal was confronted with a purchaser of Vanda shares who was a friend (or in Chris WONG's case a mutual friend) of Sammy TSE using an account in someone else's name to purchase Vanda shares. There was no need for Christie WO to use Olivia CHUNG's account for her Vanda share purchasing. She had an account in her own name at Great China. Her explanation that the proprietor of that firm Mr. TANG was a partner in Time Concepts and Dot & Co. and she did not wish him to know funds of their companies were being used to pay for her share trading was unconvincing. For one thing the source of the funds would not have needed to have been directly from the companies accounts, for another Christie WO had no apparent reluctance in purchasing more

Vanda shares in her Great China account on 24th February after Vanda had announced its cooperation with Hutchison on the 22nd February.

For the above reasons, we are satisfied that it is highly probable that Christie WO's purchases of Vanda shares in Olivia CHUNG's trading account at GLS were made after Christie WO had received relevant information. We took into account that she sold some Vanda shares before the announcement of 22nd February, and that on 15th February she purchased \$97,000 worth of RNA Holdings shares. While we accept that this suggests a normal trading pattern to some extent inconsistent with insider dealing these trades were considerably less in quantity and value than her purchases of Vanda during the same period. We might add that there may be a variety of reasons why she decided to sell some of her Vanda share holding on the 15th and 17th February, but that the evidence nevertheless satisfies us that she traded in Vanda shares whilst in possession of relevant information.

We are satisfied also that her investment in Vanda shares was not inspired by her supernatural beliefs. It may well be that she holds such beliefs, but she is a businesswoman. There is a considerable difference between taking "feng shui" considerations into account when opening a new shop, and spending nearly \$2,000,000 on shares because the company had a lucky number, or a lucky stick was favourable. If Christie WO had purchased shares in such amounts on that basis her trading account (and Olivia CHUNG's) would not have had the moderate and conservative appearance they had outside the purchase of the Vanda shares.

We should mention one further thing. We carefully took into account that she did not purchase Harbour Ring shares until after the fact that ICG was to take an interest in Harbour Ring was made public. Whilst it is somewhat of a coincidence that she bought Harbour Ring we accept that she did so without relevant information. We took that into account in her favour in considering her role in the purchase of Vanda shares, but nevertheless were still satisfied she had traded in Vanda shares with relevant information.

We should go on to mention that we have grave suspicions concerning MAO Chi Fai's role and think it probable that he also was involved in the Vanda share trading whilst in possession of relevant information. That is because he was heavily involved in the distribution of the proceeds of the sale of the Vanda shares. But we note that telephone communication between him and Sammy TSE or Dennis LI did not occur and that it was plain that Christie WO was responsible for placing orders for the shares and not him. In that regard all of Christie WO, MAO Chi Fai and importantly Olivia CHUNG agreed. Though there was evidence of him being involved in the distribution of the proceeds of sale of the Vanda shares, there was no evidence of him having anything to do with receiving information concerning Hutchison's proposal to Vanda or of procuring or counseling the purchase of Vanda shares. For that reason we do not propose to make any recommendation as to any further steps being taken concerning MAO Chi Fai.

We should also add that whilst it was common ground that Christie WO directed Olivia CHUNG to place orders for Vanda shares on the latter's GLS account we were concerned that she, Olivia CHUNG, may have had some greater interest in the shares purchased than was apparent on the evidence before us. At the end of the day, however, we accepted she had only the interest she claimed, i.e. some 30-40,000 shares, and that she had not received any relevant information, but had simply "followed" Christie WO as she had said in evidence.

There remains one final consideration. Who did Christie WO receive the relevant information from? The answer to that is obvious from the volume of telephone contacts Christie WO had with Sammy TSE. It is plain to us that the source of the information was Sammy TSE. It may well be that Dennis LI had also given her relevant information concerning Hutchison's proposal to Vanda at the Karaoke on the night of 14th February. As we will see we are satisfied Dennis LI also had that information. But the primary source of information was Sammy TSE. Christie WO knew who Sammy TSE was and where he worked and we are satisfied that she was aware that the information she received came from Sammy TSE and that he had received the information as a result of being involved in the negotiations concerning Vanda. We are satisfied she would not have bought the volume of Vanda shares that

she did and with the urgency she displayed without knowing not only the relevant information, but what the source of it was and that it was reliable information. She was a sufficiently experienced share trader and businesswoman to know that the information was price sensitive. Given the source of the information and the nature of it she must have been aware that it was not generally known. She knew she was in possession of relevant information.

Accordingly, we are satisfied that Christie WO was an insider dealer in Vanda shares to the extent that she had, in breach of section 9(1)(e) of the Ordinance, procured Olivia CHUNG to purchase those shares on the 15th, 16th and 17th February 2000 while she, Christie WO, was in possession of relevant information which she knew to be such. The quantity of shares Olivia CHUNG traded in on her own behalf do not form part of Christie WO's insider dealing. We accept Olivia CHUNG's evidence as to the quantity of shares she had purchased for herself and deduct that quantity of 40,000 shares from the totality of shares purchased by Christie WO. The totality of Vanda shares purchased by Christie WO therefore is 510,000.

CHAPTER 11

THE ROLE OF CHARLES CHONG AND CHONG BUN BUN

Background

In February 2000 Charles CHONG was the director of a garment manufacturing company American Phil International Ltd. ("American Phil"). He was a trained accountant. He was the brother of CHONG Bun Bun who was the widow of the late proprietor of American Phil. She owned a clothes boutique and a florist shop. Both operated share trading accounts at Pacific Challenge Securities Ltd. ("Pacific Challenge"). Charles CHONG also had an account at Christfund Securities Ltd. ("Christfund").

Charles CHONG knew Sammy TSE and Dennis LI though the nature of their acquaintance was one of the issues we had to resolve. CHONG Bun Bun, it was common ground did not have any relationship or dealings with Sammy TSE, but she knew Dennis LI and had some contact with him.

Charles CHONG and CHONG Bun Bun's trading accounts bought Vanda shares on the dates and in the amounts summarised below:

Summary of Trading in Vanda Shares on Chong Wai Lee, Charles accounts

Date	Time	Quantity	Cost of Purchase	Buy/Sell	Broker
15/2/2000	14:39	50,000	185,835.10	B	Christfund Securities
16/2/2000	10:14	150,000	606,473.27	B	Christfund Securities
	14:31	250,000	1,085,446.70	B	Pacific Challenge
17/2/2000	10:32	50,000	1,017,433.51	B	Pacific Challenge
	10:33	50,000		B	Pacific Challenge
	10:34	50,000		B	Pacific Challenge
	10:43	20,000		B	Pacific Challenge
	10:46	30,000	186,722.18	B	Pacific Challenge

Charles CHONG purchased a total of 650,000 shares for \$3.08 million.

Summary of Trading in Vanda Shares by Chong Bun Bun

Date	Time	Quantity	Cost of Purchase	Buy/Sell	Broker
15/2/2000	15:01	150,000	575,976.97	B	Pacific Challenge
16/2/2000	10:04	100,000	1,612,483.45	B	Pacific Challenge
	10:05	200,000		B	
	10:08	50,000		B	
	10:22	50,000		B	
	11:00	200,000	1,788,413.35	B	Pacific Challenge
	15:19	50,000		B	
	15:23	50,000		B	
	15:29	10,000		B	
	15:33	50,000		B	
	15:39	40,000		B	
	15:22	50,000	229,638.62	B	Pacific Challenge
17/2/2000	11:17	50,000	609,857.73	B	Pacific Challenge
	11:19	50,000		B	

CHONG Bun Bun purchased a total of 1.1 million shares at a cost of \$4.8 million.

The matters we had to determine concerning Charles CHONG's trading in Vanda shares was firstly whether he did so while in possession of relevant information and whether that information was to his knowledge from a person connected to Vanda. We had to determine also whether he had passed that information on to his sister CHONG Bun Bun.

The only realistic sources of any relevant information Charles CHONG possessed were either Sammy TSE or Dennis LI or both of them. Charles CHONG was not affiliated to or acquainted with any other implicated party or possible source of relevant information.

CHONG Bun Bun had substantial contact with one potential source of relevant information, that was her brother Charles CHONG. While she knew Dennis LI there was nothing in the evidence before us to suggest there was any close contact between them during the relevant

period. Significantly there were no mobile telephone contacts. Any relevant information possessed by CHONG Bun Bun must have been provided to her by her brother. In considering her case we had to determine whether she had been provided with relevant information and whether she was aware that the ultimate source of any such information was a person connected with Vanda.

The evidence

Charles CHONG participated in a recorded interview with the SFC on the 14th August 2001. He provided a witness statement to the Tribunal dated 29th July 2006. He also gave oral evidence to the Tribunal.

He said Dennis LI was a former colleague of his at American Phil International Ltd. After Dennis LI left the company they did not maintain a particularly close relationship but in about 2000 Dennis LI had contacted him and said that a friend of his, Sammy TSE, would be moving to the same residential estate where he, Charles CHONG, lived and that Sammy TSE needed a part-time domestic helper. Subsequently Sammy TSE rang him on a number of occasions to see if a helper had been found. He was unable to help Sammy TSE in that regard and apart from occasionally running into Sammy TSE on social occasions, that was the only contact he had with him. He had however a closer relationship with Dennis LI. On occasion he had lent money to Dennis LI and in about March of 2000 Dennis LI had acted as his representative when he had purchased a 10% interest in an online securities trading company called Trading Guru.

Neither Sammy TSE nor Dennis LI had ever advised him to purchase Vanda shares. He told the SFC during his interview that he had began to have an impression of “tech” stocks in 1999 and had read some newspapers or books about them though he did not recall which ones. He told the SFC he discussed shares with his sister CHONG Bun Bun, but so far as Vanda was concerned he was not sure whether he had discussed that particular share with her. Nor did he recall seeing any reports on Vanda in the press. He told the SFC that as Vanda was a high-tech share it was “just the turn” of Vanda to be purchased.

In his witness statement and oral evidence he said he could not remember any particular reason why he bought Vanda but believed he must have perceived Vanda as a good chance to become a “treasure pot” at the time he purchased the shares.

In his oral evidence he said that he had been on holidays with his family in Japan between 11th February and 15th February 2000 returning to Hong Kong in the evening of that day. His sister CHONG Bun Bun was with them. He explained his (and his sister’s) purchases of Vanda shares on the 15th February as being likely made by public telephone to their respective brokers while they waited at the airport in Japan for their flight to Hong Kong. He thinks he and CHONG Bun Bun may have discussed shares at that time.

When he returned to Hong Kong he again purchased Vanda shares on his Christfund account. In addition his sister CHONG Bun Bun purchased Vanda shares for him on a new account he had opened at Pacific Challenge. That account had apparently been opened on the 16th February. It was his sister’s idea that he open the account at Pacific Challenge. Johnny CHUI (his sister’s account executive at Pacific Challenge) caused someone to deliver the pre-filled forms to him for his signature. He was not sure when this was or whether all the documents were signed by him on only one occasion. He did not read the documents but just signed the forms. He did not know whether it was a margin or cash account. He said that from the opening of that account onwards virtually all orders made on the account were made by CHONG Bun Bun. The Vanda shares purchased on the account over the 16th and 17th February were purchased by his sister. She had complete discretion as to its operation. She told him of her purchases after she had made the purchases, she did not discuss her purchases with him beforehand. She could decide how many shares to buy. But she traded on his behalf and he would retain the profits and pay for any losses.

He said that the various telephone calls he received from Sammy TSE whilst trading was proceeding on his accounts were mere coincidence and had nothing to do with his (or his sister’s) purchases of Vanda shares. Phone conversations he had with his sister while she was

trading Vanda shares on his behalf were probably about social or family matters.

CHONG Bun Bun made a recorded interview with the SFC on 26th July 2001 and provided the Tribunal with a witness statement dated 29th July 2006. She also gave oral evidence.

She had been married to the proprietor of American Phil where her brother Charles CHONG still worked and where Dennis LI had once worked. When her husband died she had speculated in shares as a diversion.

She said she operated only one trading account in her own name, that was at Pacific Challenge where her broker was Johnny CHUI. She said her brother Charles CHONG also had an account at Pacific Challenge opened at her suggestion which she operated. It was opened in early 2000. She did not know of any special reason why it was opened apparently on the 16th February, though some of the documents were dated 18th February.

She was unable to tell the SFC during her interview any reason whatsoever as to why she had purchased such a large volume of Vanda shares over the 15th to 17th February. In her witness statement provided to the Tribunal she could not remember why she purchased Vanda but then gave a very detailed guess that she discussed Vanda with Charles CHONG at the airport in Japan and then rang Johnny CHUI who advised her the share had a positive price movement, so decided to buy it.

In her oral evidence she repeated that she did not remember the reason why she bought Vanda shares at that time. She regarded speculating in shares as a game. She did no technical analysis on the shares, nor did she try to get information concerning the background of the companies she invested in. She discussed shares with her friends and with Charles CHONG. At the end of 1999 and early 2000 she became interested in “high tech” shares. She simply opened newspapers and picked out numbers and asked Johnny CHUI for his comments. The reason she had her brother open an account at Pacific Challenge was simply to give Johnny CHUI more business.

Johnny CHUI participated in a recorded interview with the SFC on the 5th May 2001 and gave oral evidence to the Tribunal. He was in February 2000 the account executive of CHONG Bun Bun's account at Pacific Challenge. He said she generally bought penny stocks, followed rumours and newspaper articles and asked his advice about stocks. She often used her account to trade for family members. Charles CHONG opened an account with Pacific Challenge on 16th February 2000. This was done as a result of his, Johnny CHUI's urging. However, Charles CHONG was tardy and so he took the documents to Charles CHONG's company for signing on the 16th February. The Vanda shares purchased subsequently on that account were purchased as a result of orders placed by CHONG Bun Bun. She would order a number of Vanda shares and would then instruct him how they were to be allocated between her and her brother's accounts. Charles CHONG did not order any Vanda shares on the account. He said it was not unusual for CHONG Bun Bun to place orders of \$2 million or more. He said Charles CHONG's Pacific Challenge account was mostly used to purchase Vanda and Harbour Ring shares in February 2000 and after that did not trade much. On occasions, CHONG Bun Bun had rung from overseas, once she was in Japan and said she was using a landline.

We were cautious when approaching Johnny CHUI's evidence. He had in our view been "rat trading" on CHONG Bun Bun's account. In other words when she placed an order with him he would on occasion buy the shares on his own account and very shortly afterwards sell them to her account at a slight profit.

Sammy TSE and Dennis LI also gave evidence concerning their dealings with Charles CHONG and (in Dennis LI's case) with CHONG Bun Bun. We will not go into their evidence in detail. We do this in the next chapter and it will be seen we rejected them as witnesses of truth. We will only briefly summarise their evidence here so far as it related to Charles CHONG and CHONG Bun Bun.

Sammy TSE said that he had not provided any information concerning Vanda to Charles CHONG and that the telephone calls between them concerned the matter of Charles CHONG helping find a

domestic helper for him. He did not meet Charles CHONG often and had no money dealings with him.

Dennis LI said he had known Charles CHONG for about ten years when he was interviewed by the SFC in 2001. They were friends who had once worked together in American Phil. In 2000 he acted as Charles CHONG's agent when CHONG invested in a company "Trading Guru". He said however he did not know Charles CHONG very well although in early 2000 he had borrowed \$100,000 from him. He knew CHONG Bun Bun. They also had once worked together in the direct marketing of health products in 1999 and 2000. But he said his contact with both the Chongs was otherwise limited and he never spoke about shares to them.

Conclusions

One thing stands out in the Chongs' Vanda share dealings. It was at that time the largest investment in a single share ever made on their accounts except for a purchase by CHONG Bun Bun of Pearl Orient Ltd. shares for \$6 million odd in 1997. But neither could give any really rational reason for their interest in Vanda. It is true that Vanda's price was steadily increasing but that had been so for a day or so before they left Hong Kong on the 11th February. And the price increases were not such as to inspire the amount of purchases nor the urgency with which they were conducted. There was indeed considerable urgency in their trading. That was evidenced by the opening of a margin account for Charles CHONG at Pacific Challenge on the 16th February and the purchase of 250,000 Vanda shares totalling \$1,085,000 at 2:30 p.m. that day. It is also reflected in the long distance placing of orders from Japan by landline by both Charles CHONG and CHONG Bun Bun within twenty minutes of each other in the early afternoon of 15th February.

Both thought they may have discussed the purchase of Vanda while waiting at the airport for their return flight home. If so, there was not much to discuss. According to their evidence neither knew very much at all about Vanda and the contents of any such discussion could have no apparent relationship to the quantity and urgency of the Vanda purchases which followed on that day or from early morning on the

16th February. That is particularly so when it is remembered that the evidence of both Charles CHONG and CHONG Bun Bun was that on the 16th February both had travelled to various temples in Kowloon for worship together with other members of their family and colleagues at American Phil. It was during this that the orders for the purchase of Vanda shares had been made.

In our view this pattern of purchasing of Vanda shares is entirely inconsistent with the absence of any particular or substantial reason they were able to give for the volume and urgency of their trading.

In her recorded interview of 26th July 2001, only 17 months after these events CHONG Bun Bun was asked why she had purchased Vanda shares:

“Q: When did you become interested in #757 (Vanda) so that you invested in it?

A: In fact, I started dealing in shares in February 2000. I mainly purchase hi-tech stocks. I purchase different stocks every day. If you ask me when I became interested, and if I made the purchase on 15 February, I became interested on 15 February.

Q: You said you became interested on 15 February, does it mean that you didn't keep an eye on #757 until 15 February?

A: Since it's so long ago, if you ask me when I began keeping an eye on it, I really can't remember.

Q: Would you do some research on a stock several days before you decide to purchase it?

A: No.

Q: Then what makes you purchase #757?

A: Usually, I would refer to financial and stocks pages to see if any stock is mentioned. This is the general situation. I can't recall what makes me purchase #757. I only recall that I purchased many hi-tech stocks during the period.

Q: Had you heard of the number #757 before you purchased #757 on 15 February 2000?

A: I don't remember.

Q: Is it your first time to purchase #757 on 15 February 2000?

A: Probably yes.

Q: On 15 February 2000, did you know which company #757 represents?

A: I didn't know.

Q: When did you know #757 represents Vanda?

A: I didn't know that until today.

Q: When you purchased #757 on 15 February, did you know what kind of business the company #757 runs?

A: I didn't know.

Q: Do you know today what kind of business #757 runs?

A: I don't know. Today, I only know that it's called Vanda. I don't know what business it runs.

Q: When you purchased #757, did you know the board lot of \$757?

A: I didn't know. I would not ask the board lot when buying shares. I don't know these things.

Q: In other words, when you purchased #757, you had no idea about the background of the company #757, right?

A: I had no idea."

That shows a remarkable lack of knowledge in a company in which she was to invest over \$7 million dollars (if one accepts her evidence she operated her brother's Pacific Challenge account) over a period of three days. Given the very large profit made when she sold the shares between the 22nd February and 1st March 2000 one would have expected her to remember any reason she purchased Vanda. That point is not reduced by her losses on Vanda when she continued trading in it over the

following months. CHONG Bun Bun's investment in Vanda was, in the initial weeks following, proven to be at that time the most successful of her life, yet she could offer, only 17 months later, no reason for her purchase.

The explanation given by Charles CHONG to the SFC as to his reasons for purchasing Vanda shares in February 2000 when he was interviewed 18 months later in August 2001 was little better:

“Q: Why did you buy Vanda shares on these days?

A: I continued to make share purchases between 1999 and 2000. The stocks which I have bought during that period of time were tech stocks or computer-related stocks. Vanda is one of this kind of stocks.

Q: Do you know the business nature of Vanda?

A: I only know that its business operation relates to system solution of computer system.

Q: When did you begin to notice this stock Vanda?

A: I didn't pay special attention to this stock. At that time, there were only 8 or 10 genuine tech stocks. I have bought a lot of them. It was just the turn to buy Vanda when I continued to make purchases.

Q: When did you begin to notice the movement of tech stocks?

A: I began to have some impression of tech stocks in the end of 1999. Although I didn't try to study it in detail, I recall that I have read certain publications which classified some companies as tech stocks while Vanda was one of them.

.....

Q: Have you read over the business results of this company or conducted a research before deciding to buy Vanda shares?

A: No. I buy a stock if I believe that it would rise. I wouldn't try to study its background.

.....

Q: From your recollection, as far as your trading in Vanda shares is concerned, did you make the decision to do so or did your elder sister suggest you to do so?

A: I don't recall.

Q: As far as you can recall, prior to buying Vanda shares on 15 February 2000, have you seen any reports in relation to Vanda in newspapers?

A: I am not sure because I don't remember.

Q: You have spent more than HK\$3 million on buying 650,000 Vanda shares during the period between 15 and 17 February. This isn't a small amount. Why were you so confident that you spent \$3 million on buying one stock?

A: First of all, its price continued to rise, as a result, I continued to make purchases. What's more, I didn't use any cash. I just used the margin facility. At that time, the stock market was bullish, the share price of all stocks increased. I didn't intend to hold onto Vanda shares as a long term investment. I just wanted to buy and sell them quickly."

The two fundamental explanations given by Charles CHONG for his Vanda purchases when those events were relatively fresh in his mind were therefore that he was purchasing tech-stocks and "It was just the turn to buy Vanda" and that as its price rose he continued to purchase the stock. As to the latter reason it was contradicted by his evidence before the Tribunal that he intended to stop purchasing Vanda after his purchase of 150,000 shares in his Christfund account at \$4.025 each at 10:14 a.m. on 16th February. If his evidence is to be believed that would mean he stopped purchasing Vanda before the time of its greatest price increase (and it was mere coincidence his sister kept purchasing Vanda on his Pacific Challenge account).

But both Charles CHONG and CHONG Bun Bun suggested, if not expressly at least obliquely, that they purchased Vanda shares in February 2000 because they were to some extent swept up in the "high tech" share fever of the time.

In this regard the expert witness Mr. Louis SHUM called on behalf of CHONG Bun Bun and her brother suggested both may have been victims of “high tech fever”.

We accept the existence of such a phenomenon at that time, and that CHONG Bun Bun did purchase high tech stocks in the late 1999 to early 2000 period. She did so consistently and over a broad spectrum of stocks as is apparent from a perusal of her own Pacific Challenge account. But there was no equivalent purchase (i.e. in size or urgency) of any other high tech share made by CHONG Bun Bun or Charles CHONG at that time.

An analysis of Charles CHONG’s Pacific Challenge account over the period of February and March 2000 which CHONG Bun Bun says she operated shows that the purchases in it were restricted to Vanda and Harbour Ring, except for two purchases of Culture.Com Holdings Ltd. shares totalling nearly \$900,000 in early March 2000. That account displayed a surprisingly narrow interest in the two stocks Vanda and Harbour Ring which Sammy TSE had a connection with. The account in our view displayed a methodology in its purchasing inconsistent with a generalized “high tech” fever motivation for buying and is consistent only with a particular reason existing for the purchase of Vanda and Harbour Ring shares.

In this regard although both CHONG Bun Bun and Charles CHONG said they were swept up in the “tech” fever prevailing at the time, when they purchased Harbour Ring shares it was simply a toy company. No information had yet been released to the market that it was to be absorbed by ICG and converted to an internet company.

In our judgment these purchases of Vanda shares were for a reason not disclosed by either CHONG Bun Bun or Charles CHONG during their evidence.

Over the period of these purchases there had been some contact between Sammy TSE and Charles CHONG. On the 15th February (while the Chongs were in Japan) Sammy TSE called Charles CHONG’s mobile number at 11:24 a.m. for a short period of 3 seconds. This phone

call was made while the Chongs were outside of Hong Kong and we accept from the evidence we heard that their mobile telephones would not have worked in Japan. But we also accept that while direct conversations could not therefore be held other methods existed from the evidence before us which would have allowed for the storage and retrieval of mobile messages. Even if the 3-second contact at 11:24 a.m. suggests no direct contact, the time being too short for any substantive message, that contact at least demonstrates an intention by Sammy TSE at that time to speak to Charles CHONG.

The next day 16th February Sammy TSE called Charles CHONG at 9:57 a.m. for 9 seconds. It is true that by this time CHONG Bun Bun had already contacted Johnny CHUI her broker at Pacific Challenge five minutes earlier, but about 14 minutes later Charles CHONG placed an order for 150,000 Vanda shares with Christfund. The juxtaposition of these calls suggests very strongly to us that the call Sammy TSE made, and we think the earlier one made on the 15th February were not about hiring a domestic helper but were related to Charles CHONG's share dealings. The same morning 16th February Sammy TSE rang Charles CHONG's mobile again at 11:11:07 a.m., 11:11:50 a.m. and 11:13:49 a.m. It may well be that these three calls in quick succession represent one interrupted call, but in total they lasted for about 1 minute. Later that evening Dennis LI called Charles CHONG between 7:00 p.m. and 8:48 p.m. on four occasions. The last conversation lasted fifteen minutes. It must be said this seems an awful lot of conversation about the hiring of a part-time helper. On the 17th February between 3:24 p.m. and 11:11 p.m. Dennis LI called Charles CHONG four times and at 10:19 p.m. and 10:20 p.m. Sammy TSE called Charles CHONG again. Even allowing for interrupted calls the volume of these telephone calls cannot be explained by Sammy TSE's hope that Charles CHONG may be able to find him a part-time helper.

Following the suspension of trading in Vanda's shares the volume of telephone calls between Charles CHONG and both of Dennis LI and Sammy TSE declined considerably. Over the next twelve days, up to and including the 29th February there was one contact only between Charles CHONG and Sammy TSE and ten contacts between Charles CHONG and Dennis LI. We might add that the frequency of telephone

calls between Charles CHONG and CHONG Bun Bun seemed also proportional to the trading activity on the two Pacific Challenge accounts and declined to virtually nothing after the 18th February (the day of suspension of trading in Vanda shares). Their contacts sprang to life again at the commencement of their purchasing of Harbour Ring shares on 29th February.

One further matter of note is that the telephone contacts between Sammy TSE and Charles CHONG were made in the context of (in the sense of chronological proximity to) phone contacts between Sammy TSE and others of the implicated parties, particularly Dennis LI but also Christie WO and Debbie NG. That suggested to the Tribunal some support for the notion that the subject matter was common to all and was not concerning Sammy TSE's helper search.

To put this all in context; Charles CHONG and CHONG Bun Bun were purchasing Vanda shares for the first time in their lives. It was, taken as a whole, the largest single share purchase they had together made up to that point in time (other than possibly the Pearl Orient purchase in 1997). During this period of time the Hutchison executive Sammy TSE who was heavily involved in negotiations with Vanda concerning Hutchison's proposing to take an interest in Vanda was in contact with Charles CHONG on an unusually (for them) frequent basis. At the same time Charles CHONG was in frequent contact with a mutual friend of his and Sammy TSE, namely Dennis LI, who, it will be seen, was also in possession of relevant information. No real explanation was able to be offered by either Charles CHONG or CHONG Bun Bun when they were first asked why they had purchased Vanda shares only 18 months after these events and nor were they able to offer any real explanation in their oral evidence to the Tribunal other than that they had possibly been swept up with "high tech" fever existing in the market at the time.

In addition to those matters both the accounts of Charles CHONG and CHONG Bun Bun were used on the 29th February and 1st March to purchase a total of 14 million Harbour Ring shares at a cost of just under \$14 million. These purchases were spread as to 1 million shares in Charles CHONG's Christfund account and 4 million in his Pacific Challenge account. The balance of 9 million shares were

purchased in CHONG Bun Bun's Pacific Challenge account. This later involvement in Harbour Ring share purchases at the same time Sammy TSE was involved in the Harbour Ring negotiations with ICG on behalf of Hutchison negates, in our view, any possibility that the purchase of Vanda shares by the Chongs while Charles CHONG was in contact with Sammy TSE was mere coincidence.

We found the above matters, to a high degree of probability, led us to the conclusion that the Vanda shares had been purchased on the basis of relevant information provided to Charles CHONG by Sammy TSE with perhaps the assistance of Dennis LI. It does not matter which of them, if not both, provided Charles CHONG with the relevant information. Charles CHONG must have known the source of the information was Sammy TSE. Charles CHONG was an accountant and a professional businessman. It is inconceivable that he would have invested, and allowed his sister to invest such substantial sums of money in a company we accept he knew little about without being sure both of the information and its source. To put that point into perspective, Charles CHONG told us he had a net worth of about HK\$15-20 million. His investment in Vanda was a substantial portion of that. It should be remembered he was in contact with his source i.e. Sammy TSE and lived within the same housing complex. Even if the relevant information was initially disclosed to him by Dennis LI we have no doubt that Charles CHONG would have verified that information directly with Sammy TSE. Indeed as we have concluded the contacts between Sammy TSE and Charles CHONG were concerned with that same subject matter.

Charles CHONG was an astute enough businessman to know the information he received was likely to be price sensitive. Given its source and the nature of the information he must have been aware it was not generally known. In short, he must have known it was relevant information.

We are satisfied Charles CHONG dealt in the Christfund account on his own behalf. That leaves the question as to his role in the dealings in the Pacific Challenge account in his name and the Pacific Challenge account in his sister's name. To answer that question we must examine the role of CHONG Bun Bun.

What remains is to look at the particular role of CHONG Bun Bun

We considered whether it was possible that she had been a mere “dummy” placing orders on the instructions of Charles CHONG. We concluded that she was not. She was an experienced (though previously unsuccessful) share trader in her own right. She was quite obviously close to her brother. She had been married to the proprietor of his employing company. She was obviously quite influential in her brother’s life and was a businesswoman in her own right. We concluded that the volume of telephone calls between her and her brother at the time of the Vanda share trading showed something more passing between them than mere instructions. We were satisfied to a high degree of probability that Charles CHONG passed on the relevant information he possessed and its provenance to his sister. In that regard we are satisfied that Charles CHONG would have told his sister whom the information came from and what its background was. We are satisfied she knew it came from a Hutchison executive engaged in the negotiations with Vanda. Charles CHONG knew this and most certainly would not have withheld it from his sister. Accordingly they both knew the information came from a connected person. We are also satisfied to the same high standard that at least in respect of Charles CHONG’s Pacific Challenge account they acted together. That was an account they both established for the purpose of dealing in Vanda and Harbour Ring shares. They performed closely connected roles in the opening and operation of that account. In regard to that account we are satisfied Charles CHONG counselled and procured CHONG Bun Bun to deal in that account.

We say “counselled” because we have no doubt that the account was set up to enable Vanda shares to be purchased on margin and that Charles CHONG and CHONG Bun Bun discussed and advised each other upon the purchase of Vanda shares in that account. The urgency of the setting up of the account is evidence of that, as is its exclusive use to purchase Vanda shares during the first days of its operation. And we say “procured” because Charles CHONG’s acts in setting up the account in our judgment were intended as steps to facilitate the purchase by CHONG Bun Bun of Vanda shares on that account. That CHONG Bun Bun in fact dealt on this account was confirmed by the evidence of her

account executive at Pacific Challenge Johnny CHUI, whose evidence we accept in this regard, as it was in any event common ground.

CHONG Bun Bun was a very experienced share trader and businesswoman. We are sure she must have been aware that the information she received was likely price sensitive and that given what she knew of its source and nature, was not generally known. She knew it was relevant information.

There was no evidence before us that Charles CHONG was as directly involved in the purchases made by CHONG Bun Bun on her own account, but as we have said both were acting together. That is plain from the point of their first purchases of Vanda shares on the 15th February whilst both were in Japan. They bought Vanda shares within about twenty minutes of each other. The following morning, 16th February, both commenced buying Vanda shares shortly after 10:00 a.m.

These may be small indicators but taken in conjunction with the urgent setting up and operation of the account at Pacific Challenge in Charles CHONG's name, and the volume of phone calls between them during the share buying period, we are satisfied they were acting together and in doing so counselled and advised each other on these share purchases. It may be that Charles CHONG did not know how many shares CHONG Bun Bun would buy or even on which account she would buy them, but we are sure he intended her to buy Vanda shares generally and he is liable for the purchases she made on her own account at Pacific Challenge by way of his "counselling" generally her purchases of Vanda shares.

Accordingly Charles CHONG is in breach of section 9(1)(e) of the Ordinance as a dealer in respect of the purchases by himself of Vanda shares on his Christfund account. He is also in breach of section 9(1)(e) in respect of his sister's purchases of Vanda shares on the Pacific Challenge account in his name as a counsellor and procurer, and he is in breach of the same section as a counsellor in respect of his sister's purchases of Vanda shares on the Pacific Challenge account in her own name.

CHONG Bun Bun is in breach of section 9(1)(e) of the Ordinance in respect of her purchases on her own account at Pacific Challenge and also the purchases on the account in her brother's name at the same stockbrokers.

CHAPTER 12

THE ROLE OF SAMMY TSE, DENNIS LI AND DEBBIE NG

Background

We deal with the above three individuals together because, as will be seen, we have concluded that their roles were closely connected.

Neither Sammy TSE or Dennis LI purchased Vanda shares at any material time. But Debbie NG did, though not in her own name. She purchased Vanda shares primarily in an account held at South Capital Securities Ltd. ("South Capital") in her mother FONG Long's name but operated by her. We say "primarily" because Debbie NG also purchased Vanda shares at South Capital in an account opened in the name of Chris WONG whose role we have dealt with in Chapter 9 and in her mother's other account at Taiwan Concord Securities Ltd. ("Taiwan Concord"). It was not in issue that Debbie NG operated the accounts of her mother at Taiwan Concord and South Capital. Both Debbie NG and her mother FONG Long said so in their evidence. The account executives WU Chi Chiu (Taiwan Concord) and Tony SHEK Siu Yin (South Capital) confirmed Debbie NG's purchases of Vanda shares on those accounts. Tony SHEK also confirmed Debbie NG operated Chris WONG's account at South Capital. A schedule of Debbie NG's share purchases is as follows:

Date	Time	Quantity	Cost of Purchase	Broker
15/2/2000	14:48	50,000	185,718.55	Taiwan Concord ⁽¹⁾
	14:34	34,000 ⁽²⁾	1,448,018.80	South Capital ⁽³⁾
	14:34	100,000		
	14:51	50,000		
	15:00	100,000		
	15:00	50,000		
	15:51	50,000		

Date	Time	Quantity	Cost of Purchase	Broker
16/2/2000	10:22	30,000 ⁽⁴⁾	126,486.86	South Capital
	14:42	50,000	671,332.44	
	15:10	50,000		
	15:12	50,000		
17/2/2000	12:27	50,000	296,144.85	Taiwan Concord

Note:

- (1) The account opened with Taiwan Concord was in the name of FONG Long.
- (2) A bid order for 100,000 shares was placed. Only 34,000 shares were executed and the remaining order for 66,000 shares was cancelled at 15:11.
- (3) The account opened with South Capital was in the name of FONG Long.
- (4) The first trade on 16th February (i.e. the purchase of 30,000 shares) was conducted on Chris WONG's account by Debbie NG.
- (5) The total purchase price of the 664,000 shares was \$2.72 million.

Debbie NG's share purchases on her mother's trading accounts over those days were funded by available cash in the accounts generated by the sale of existing shares, by the margin operating in the South Capital account and by \$500,000 provided to her on the 15th February by Dennis LI who had received that sum on the same day from Sammy TSE. She had also been given \$200,000 by Chris WONG which she deposited in the South Capital account.

On the 22nd February, following the announcement of that date Debbie NG had purchased an additional 290,000 Vanda shares and then sold 740,000 shares. The proceeds of that sale of Vanda shares were \$5,361,209. She spent \$2,097,566 on her purchases that day. Over the next few days she bought and sold Vanda shares making a small further profit, though we accept in the long run she made a loss. Of the

\$5,361,209 proceeds of sales she, apart from purchasing a further \$2,097,566 worth of Vanda shares transferred \$1,480,000 to Dennis LI.

We find trading on this scale, by a then 17-year-old girl, on her mother's margin account at South Capital and Taiwan Concord account without a formal authorization extremely surprising. The conduct of the brokerages is inexplicable.

Nevertheless we accept that it was in fact Debbie NG conducting these trades and also the trades on the Chris WONG margin account at the same brokerage South Capital, again without proper written authorisation. On the 22nd February Debbie NG sold the 30,000 Vanda shares she had purchased in that account for \$213,671, bringing the total proceeds of her trading to \$5,574,880.

The fundamental issues which arose in considering the role of Sammy TSE, Dennis LI and Debbie NG may be summarised as follows:

So far as Sammy TSE was concerned we firstly had to decide whether he possessed relevant information and if so, at what point of time. We then had to determine whether as a connected person he had advised or directed any other individual to deal in Vanda shares so as to be in breach of section 9(1)(a) of the Ordinance, or whether he had disclosed the information to any individual knowing or having reasonable grounds to believe they would deal, or counsel or procure someone else to deal, so as to be in breach of section 9(1)(c) of the Ordinance.

Sammy TSE was the only possible ultimate source of relevant information for Debbie NG, Dennis LI, Christie WO, Charles CHONG, CHONG Bun Bun or Chris WONG.

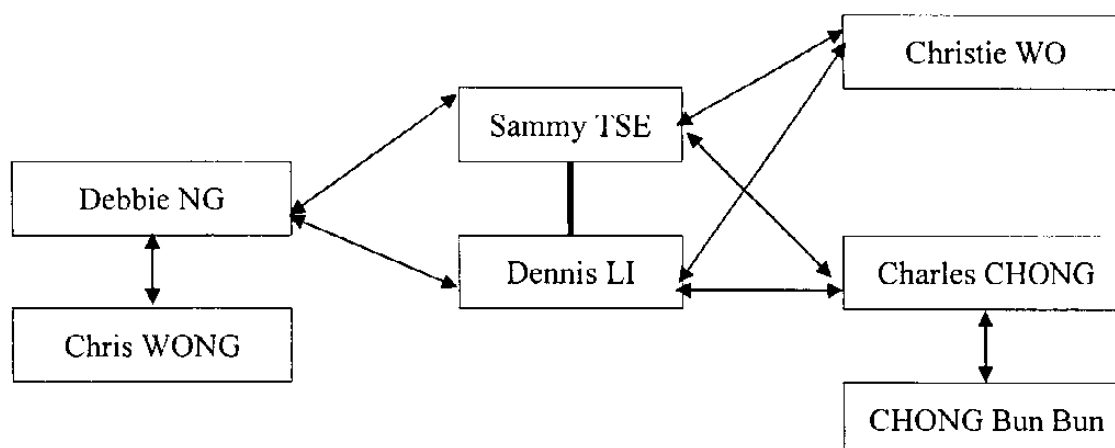
So far as Debbie NG was concerned we had to determine whether when she made her purchases of Vanda shares she had received relevant information from either Sammy TSE or Dennis LI or both of them.

That is, we had to determine whether her role was that of a person dealing in Vanda shares while in possession of relevant

information. If so we then had to determine whether she knew the source of that information was a person connected with Vanda i.e. Sammy TSE so as to render her dealing in those shares a breach of the provisions of section 9(1)(e) of the Ordinance. We also had to determine whether she had counselled or procured Chris WONG to deal in Vanda shares so as to have further been in breach of section 9(1)(e).

So far as Dennis LI was concerned we had to fundamentally determine what the nature of his role was. There were a number of options. One was that he was simply a messenger for Sammy TSE delivering money and instructions to Debbie NG and perhaps also Charles CHONG and Christie WO. Another was that he was an independent operator who borrowed money on his own behalf from Sammy TSE and instructed Debbie NG to invest it in Vanda shares. Whatever his role we also had to determine whether he had been provided with relevant information. The only person realistically who could have done so was again Sammy TSE. We had to finally consider whether Dennis LI had passed on that information to any other persons. The only other persons he realistically could have passed relevant information on to were Debbie NG, Christie WO, and Charles CHONG. We do not think there was any real possibility of him passing relevant information to CHONG Bun Bun because, although he knew her and they had some business relationship in about February 2000, there is no evidence of any telephone or other contacts between them at that time.

The relationships between Sammy TSE, Dennis LI, Debbie NG, Christie WO, Chris WONG, Charles CHONG and CHONG Bun Bun were controversial simply so far as the nature and degree of their acquaintances were concerned. Their relationships, based upon the simple facts of regular telephone contacts amongst them as established by their telephone records and their social contacts with each other, from that which was common ground in the evidence before the Tribunal, can be summarised as follows:



These connections amongst the various individuals represent the only realistically possible paths of information flow amongst them. It can be seen that none of Christie WO, Charles CHONG or Debbie NG had contact with each other, and that Chris WONG and CHONG Bun Bun had contact only with, respectively Debbie NG and Charles CHONG.

The evidence

Sammy TSE

Sammy TSE participated in three interviews with the SFC on 15th March, 31st March and 12th April 2001. Additionally he provided a witness statement dated 10th July 2006 to the Tribunal and gave oral evidence.

Sammy TSE had not attended the meeting of 12th February 2000 at which Hutchison had made its proposal to Vanda.

In his 15th March statement to the SFC, he said that he had returned from leave on Monday 14th February and had been informed by Peter WONG (his boss at Hutchison) of the 4:30 p.m. meeting with Vanda executives arranged for that afternoon and was informed also of the general contents of the meeting which had occurred on Saturday 12th February and that while he could not remember exactly what Peter WONG had told him ...

“It was roughly about our possible investment in this company, but business opportunities had to be identified. There would be concrete

business cooperation, not just injection of capital. Hence both parties had to identify the areas of cooperation. It's roughly about this."

In his witness statement he resciled from this considerably and said that he thought that the 14th February meeting was simply "another attempt by Vanda to seek cooperation" and in his oral evidence said that Peter WONG had simply told him before they both attended that 4:30 p.m. meeting "Let's see if there are any business opportunities". He said that was all the briefing Peter WONG gave him for that meeting and that he may have been confused when he made his SFC statements.

His diary entry for the 14th February recorded that he was to have an 11:30 a.m. meeting with Canning FOK, though as Canning FOK had left Hong Kong (as he indeed had) did not think this meeting took place. His diary also recorded a lunch meeting with "PW" which he accepted may well have been Peter WONG, though he was not sure.

Peter WONG in his statement to the SFC was quite vague as to the contents of the meeting of 12th February and what he had told Sammy TSE about it. In his oral evidence he said that he thought any planned cooperation with Vanda was more a matter for Sammy TSE's side at Hutchison than his own. He agreed that the "PW" reference in Sammy TSE's diary appeared to refer to him and that he may have told Sammy TSE about the Hutchison offer to Vanda at lunch on the 14th February.

Sammy TSE said in his 15th March statement to the SFC that at 4:30 p.m. on the 14th February he, Peter WONG and Bernard FUNG had met with Vanda's Edmund MA, Ernest CHOY and Gordon CHEUNG in the hope of finding a business cooperation project. He said during the meeting Edmund MA told him the conditions which had been agreed upon during the 12th February meeting with Canning FOK and Peregrine "were the same as those for Computer and Technology". He further told the SFC that:

"In the 4:30 p.m. meeting on 14 Feb., 2 issues were discussed. The first issue was about a business cooperation project. Regarding the second issue, they said that the stake in Vanda would be bought ((the same) as the manner in which Hutchison cooperated with other companies previously,

in the form of convertible bonds) had been discussed in the meeting on 12 Feb. The joint venture concept was derived from this meeting.”

In his witness statement provided to the Tribunal he resciled from this earlier statement and said:

“In my statements to the SFC, I mentioned that the use of convertible bonds was discussed in the February 14 meeting. Now in the year of 2006, I cannot recall whether the use of convertible bonds was really mentioned. But it is highly probable that we did not mention convertible bonds because we were focusing on the technical aspect of the potential cooperation between Vanda and Hutchison and I was not responsible for investment matters. My SFC statements were made in March, 2001, over a year after the meeting. I could have confused about the sequence of events because of lapse of time.”

In his oral evidence he said on this subject that when he was interviewed by the SFC that he “was confused and remembered things collectively all in a block”. He said he did not think he had been told of the Hutchison proposal concerning Vanda until 16th February.

He agreed he had been involved in the earlier Hutchison negotiations with Computer & Technologies Holdings Ltd. but said Peter WONG had no reason to inform him of the similar Vanda proposal.

He told the SFC in his statements of 15th and 31st March that after the 4:30 p.m. meeting on the 14th February he went to a nearby hotel to meet Dennis LI for a drink. While they were there Bernard FUNG rang him about a matter relating to Vanda and so he asked Bernard FUNG to join them at the hotel. When Bernard FUNG arrived and when Dennis LI went to the washroom he and FUNG had a brief discussion about the e-commerce project that had been discussed earlier in the 4:30 p.m. meeting. When Dennis LI returned he, Sammy TSE, told FUNG that they would stop discussing business and they did. He could not be sure whether Dennis LI had overheard his conversation with Bernard FUNG. Bernard FUNG in his evidence had no recollection of having met Sammy TSE and Dennis LI at the Park Lane Hotel in the evening of 14th February.

Later that evening Sammy TSE said he, Dennis LI, Christie WO and her boyfriend MAO Chi Fai met at a Karaoke in Wanchai to celebrate Valentine's Day. During the evening Dennis LI asked to borrow \$500,000 from him and he agreed. He was not aware that Dennis LI was to use that money, when he transferred it to him the next day, to purchase Vanda shares.

On the 16th February at 10:00 a.m. there was another meeting with Vanda where Vanda presented its proposal for a "B2B" payment gateway. It seemed feasible and he got approval for the project to proceed from Susan CHOW who acted for Canning FOK in his absence. Subsequently that afternoon he received a term sheet from Peregrine relating to the Hutchison proposal and in his oral evidence said this was the first time he had learnt of Hutchison's proposal to take an interest in Vanda.

Subsequently he became involved in Hutchison's negotiations concerning ICG's taking of an interest in Harbour Ring. He agreed he had attended a meeting with McKinsey & Co. who were acting as Hutchison's consultants in that transaction on the 16th February. He also attended a breakfast meeting on the 28th February. He said both of these meetings were very preliminary and no one mentioned Harbour Ring. He attended another meeting on the 29th February at about 11:15 and later attended a dinner party at Canning FOK's residence at which Harbour Ring people attended, though he was still unaware of the involvement of Harbour Ring.

He said all of the many telephone calls he had made during the relevant period to Debbie NG, Dennis LI, and Christie WO were social in nature. He liked talking about girls he was interested in and about watches to Christie WO; he telephoned Debbie NG particularly often on 15th February to find out why she had not been at the Karaoke for Valentine's Day the evening before. He was merely an acquaintance of Charles CHONG and telephoned him because he had just moved into a residential estate where Charles CHONG lived and Dennis LI had suggested Charles CHONG may have been able to find him a part-time helper. He had never "tipped off" anyone about Hutchison's proposed

deal with Vanda and had no idea why his friends and acquaintances coincidentally purchased Vanda shares at the time the Vanda negotiations were proceeding.

Dennis LI

Dennis LI was at the relevant time a director of a garment company Maxifirm Ltd. He participated in three recorded interviews with the SFC on the 5th March, 30th May and 15th June 2001. He provided a witness statement dated 24th July 2006 to the Tribunal and gave oral evidence. He said he was good friends with Sammy TSE, Debbie NG and Christie WO. He also knew Charles CHONG and his sister CHONG Bun Bun. He said he got interested in Vanda shares when people mentioned the company to him when he was in the mainland in early 2000. He read about it in newspapers, so he asked Debbie NG about it as he knew she engaged in share trading. She told him it was worth buying and he asked her to buy as many shares as possible for him and told her he would give her \$500,000. He had his own cash share trading account at Goodview Securities Ltd., but asked Debbie NG to purchase shares for him on her account as her account was a margin account. On a day prior to the 15th February he asked Sammy TSE for a loan of \$500,000 and when he received it on the 15th February he paid it to Debbie NG's brokers South Capital.

Debbie NG subsequently gave him \$1.48 million in proceeds from the sale of his Vanda shares. He repaid Sammy TSE \$500,000 from those proceeds and paid \$300,000 to his employer company Maxifirm Ltd. as a "cheque exchange" or repayment of a loan. He also lent Christie WO \$600,000. He also gave \$80,000 to Sammy TSE as payment for a plasma TV which he and others had given to Sammy TSE as a gift. That accounted exactly for the \$1,480,000 proceeds. Debbie NG had decided how many Vanda shares to buy for him and had decided when to sell them. The \$600,000 he had lent to Christie WO was never repaid to him until during the course of this inquiry.

Debbie NG

Debbie NG in February 2000 made her living by “people giving me money and I traded in shares”. She was 17 years old at that time. She participated in six recorded interviews with the SFC on the 3rd and 24th April, and the 4th, 11th, 21st and 27th June 2001. She was not represented during the course of the inquiry and provided no witness statement to the Tribunal, but did give oral evidence. She said she started trading in shares while she was a singer in a karaoke where she met a rich “uncle” who gave her sums amounting to about \$1,000,000. That “rich uncle” was James SHUEN. We might add this in regard to James SHUEN: Because the evidence of the Harbour Ring share purchases was admitted before us only during the course of this inquiry and the Tribunal was provided with no Harbour Ring materials before the issuance of Salmon letters, we were unaware at that stage that James SHUEN, a Hutchison group director, had purchased not only a relatively small amount of Vanda shares but also as he admitted in evidence Harbour Ring shares. We did not have his trading accounts before us in evidence. Had we been aware of this fact prior to the first hearing day of this inquiry we would have considered whether to recommend our terms of reference should have been amended to include his Vanda share dealings and whether he should have been dealt with as an implicated party. In our view the 2003 amendment to paragraph 17 of the Schedule to the Ordinance brought about by section 80 of the Securities & Futures Ordinance prevented our doing so after the first sitting of the inquiry. Nevertheless we recommend that the Financial Secretary consider instituting an inquiry into James SHUEN’s Vanda and Harbour Ring share purchases. We place matters no higher than that as we do not have documentary materials relating to James SHUEN.

Debbie NG also got money from other boyfriends. She used her mother’s accounts at South Capital and Taiwan Concord. She met Dennis LI while she was at a karaoke and they became good friends.

She knew Sammy TSE, though not as well as she knew Dennis LI. She purchased Vanda shares because Dennis LI had mentioned them to her, though she initially said she did not remember whether he had asked her opinion about them, she later said he asked her which of two

shares mainlanders had mentioned to him was the better, Vanda or China Aerospace. She said Vanda was better, as the newspapers mentioned it more often. She again initially said Dennis LI also told her there would be a matter following up from Vanda's deal with Datang Telecom, a Shanghai mobile phone operator which had a joint venture with Vanda in early 2000, but later she said she was unsure whether she or Dennis LI had raised Datang Telecom as a subject of conversation. She said Dennis LI also mentioned Harbour Ring to her and that was one of the reasons she later purchased it.

She said she did not know Sammy TSE particularly well. She described him as an ordinary friend. She knew he was interested in her but did not find him particularly attractive. She thought the volume of telephone calls between herself and Sammy TSE over the period she was purchasing Vanda shares had something to do with Valentine's Day. She had no money dealings with Sammy TSE and he had never given her any information about Vanda or Harbour Ring. She said during her SFC interviews that she knew Sammy TSE worked at Hutchison but resciled from this in her oral evidence and said she did not know where he worked.

Chris WONG was another friend who she said was courting her. She met him in about early 2000. He was not an associate of Dennis LI or Sammy TSE. He started to court her and by March 2000 they were good friends. At about that time he gave her \$1,000,000 to purchase a flat. She had told him she wanted to buy a flat but she did not do so. She kept the \$1,000,000.

In February 2000 she had suggested to him that he also open a trading account at South Capital. He did so and allowed her to trade on that account. He put money into the account but all the transactions in it were conducted by her. She purchased 30,000 Vanda shares on the account. Her understanding was that she would get any profits the account made but Chris WONG would pay for the losses. We have dealt with Chris WONG's evidence in Chapter 9.

FONG Long was Debbie NG's mother. She gave evidence and said she had opened her accounts at South Capital and Taiwan Concord at

her daughter's urging when Debbie NG was about 17 years old. Both accounts were traded by her daughter although she had initially provided her daughter with money to commence trading. Subsequently when money was deposited into her bank account from her share trading accounts, she dealt with the money in accordance with her daughter's instructions. She was not aware which shares Debbie NG had purchased on the accounts at South Capital and Taiwan Concord and had not been aware her daughter had purchased Vanda shares.

Tony SHEK gave evidence. At the relevant time he said he was a broker at South Capital. In his initial interviews with the SFC he said that FONG Long, Debbie NG's mother, had operated her own account there. In a later interview he said he had lied about this as he was afraid of losing his job and that Debbie NG had in fact operated the FONG Long account. She had purchased both the Vanda and Harbour Ring shares on the FONG Long account and had told him she had received a "tip" about Vanda in the sense someone had "asked her to buy the stock".

Tony SHEK said he had lent money to Debbie NG to settle her account and also to allow her to rent a flat. He said Debbie NG used to sit next to him at South Capital and trade. She received a lot of phone calls while she was there. He said she seemed to have a lot of boyfriends. She placed orders on Chris WONG's account at South Capital. He allowed her to do so even though there was no written authorization.

That is the substantial evidence concerning Sammy TSE, Dennis LI and Debbie NG's roles in the trading in Vanda shares which we are concerned with.

Conclusion

At the end of the day we rejected Debbie NG, Dennis LI and Sammy TSE as witnesses of truth. Their evidence was inherently unbelievable in many respects. We will deal with those matters when we consider their roles.

Debbie NG

As we say we did not accept Debbie NG as a witness of truth. She admitted in her oral testimony that she had not told the SFC “straightforwardly” about her relationship with other people when she was interviewed. Perhaps the most obvious example of this was her response when asked whether she knew Chris WONG. She attempted to distance herself from him:-

“Q.: Do you know Chris Wong Cheung-hung?

A.: No.

Q.: Do you know the phone number 90314365?

A.: I have no impression of it.

Q.: You said that you didn’t know Wong Cheung-hung, and you also ... But according to the SFC’s findings, the deposit of \$200,000 on DN-4 was made by Wong Cheung-hung into South Capital’s account at Hang Seng Bank. According to South Capital’s record, this sum was deposited by Fong Long. Are you actually concealing Wong Cheung-hung’s identity, or simply because Fong Long’s account belongs to someone else?

A.: I have no impression.

Q.: Actually do you know Chris Wong, Wong Cheung-hung?

A.: I know many people with the name Chris. I have no impression now.

Q.: Who are those Chris’s whom you know? What is their occupation?

A.: I have a broker called Chris Wu, and also 2 boy friends. One deals in business (but I don’t know what business he is in), and the other one goes to South Capital occasionally. For these 2 Chris’s whom I mentioned, I don’t know their surnames. I’ve a terrible headache, I request that this interview be adjourned.

Q.: Please refer to above record of interview to see if any addition or amendment has to be made.

A.: None.”

It was her evidence before the Tribunal that Chris WONG had courted her and eventually given her \$1 million dollars to purchase a flat which she had retained even though she had not purchased a flat. She said also that he had opened a trading account in his name at South Capital and allowed her to use it. He funded her trading in that account. Chris WONG confirmed that in his own testimony as we have set out in Chapter 9. Debbie NG said the reason she denied knowing Chris WONG when spoken to by the SFC was that she did not want to be embarrassed by telling the SFC about her boyfriends. That however had not stopped her telling the SFC about her relationship with “uncle” SHUEN Wai (i.e. James SHUEN) who had also given her and her mother \$1 million odd. We concluded she lied about her relationship with Chris WONG out of an awareness he had traded in Vanda shares on the basis of information she gave him. In our view her specific lies in this regard supported the case against her.

Her evidence before the Tribunal was somewhat more straightforward but was still in our view deliberately vague and evasive even allowing that the events occurred six years ago. She was adamant that she had received no information about Vanda from Sammy TSE and had acted only on the basis of Dennis LI’s recounted conversation with “mainlanders” and her own checking when she started to buy Vanda in bulk.

Did Debbie NG receive the relevant information?

Her purchase of Vanda shares was the largest single share purchase she had made up to that point of time on her mother’s trading accounts. It was also the first time she had purchased Vanda shares. Her reasons given before the Tribunal as to why she purchased such a large amount of Vanda shares simply did not withstand close scrutiny. Her recounting of Dennis LI’s informing her that some mainlanders had informed him that Vanda would do a deal with Datang Telecom or some other deal made little sense. Not only was Vanda’s deal with Datang Telecom old news by the time she commenced buying Vanda shares on the 15th February, but she agreed in cross-examination that she was already aware of this. Newspapers in Hong Kong had reported the

proposed Vanda and Datang Telecom joint venture in telecommunications in late January 2000. Under cross-examination to that effect the terms of the conversation she remembered having with Dennis LI altered so as to suggest that another deal concerning Vanda may have been in the offing in the future. It is true there were other favourable reports about Vanda before 15th February but those reports were general in nature and spoke favourably of Vanda primarily because it was regarded as a hi-tech company with good future prospects on the mainland. Nevertheless even allowing for the price of Vanda rising from about 9th February, the occasional favourable report in newspapers about Vanda and Dennis LI's reported conversation with mainlanders (whatever the contents of that conversation may have been) the amount of Vanda shares purchased by Debbie NG seems wholly disproportionate to the generalities of those newspaper reports and Dennis LI's conversations with unknown mainlanders. The upward movement in Vanda's share price by 15th February was not so extreme as to justify the level of her investment. Against what could only be described as uncertain and minor "good news" concerning the company Debbie NG purchased 634,000 shares (664,000 including the 30,000 purchased on Chris WONG's account at South Capital for \$126,486.86) for a total of over \$2.7 million (though she also sold 100,000 of them on the 16th February). Even allowing for the \$500,000 she received from Dennis LI on 15th February that is a remarkably large investment.

As will be seen in the subsequent section of this chapter during the course of her trading in Vanda shares from 15th to 22nd February Debbie NG was in telephone contact with Sammy TSE. That contact frequency had increased dramatically on the day of her commencing to trade in Vanda shares (15th February) then on the suspension of trading (18th February) dropped off significantly.

During the course of her telephone contacts with Sammy TSE and trading in Vanda shares she was often in the premises of South Capital (where the fax/telephone registered in the name of China South Finance Ltd. ("China South") was for all practical purposes located). It is a significant combination of events that while Sammy TSE was involved with the negotiations concerning the Vanda deal (both the convertible bond and option limb as well as the joint venture) he was in

frequent phone contact with Debbie NG who was often physically at South Capital purchasing Vanda shares on her mother's and Chris WONG's accounts there, as well as phoning her mother's broker at Taiwan Concord.

Additionally as we have said for the reasons set out in Chapter 9, we are satisfied Chris WONG purchased Vanda shares whilst in possession of relevant information. The only person from whom he could have received that information was Debbie NG. He knew no-one else who possessed that information. That necessarily means that Debbie NG told him that information and was able to do so because she possessed it herself.

If things had remained there we would have been entirely satisfied that Debbie NG was trading in Vanda shares as a result of her connection with Sammy TSE.

But in addition to what we have set out above Debbie NG, again on her mother's accounts began to purchase Harbour Ring shares from 29th February 2000. Again this was for the first time and in large amounts. She eventually purchased over the 29th February and 1st March 2000 a total of \$2,937,314 worth of Harbour Ring shares.

On 28th February, the evening prior to the commencement of those purchases, there were two telephone contacts between Sammy TSE and Debbie NG at 11:24 p.m. and 11:53 p.m. for 1½ minutes and 5.8 minutes respectively. There had been little telephone contact between them since 25th February.

On the 29th February between 2:34 p.m. and 15:56 p.m. Debbie NG bought 2,392,000 Harbour Ring shares for a total cost of \$1.65 million. Before those purchases commenced she spoke to Sammy TSE briefly at 11:43 a.m. and 1:20 a.m. On the 1st March Debbie NG purchased a further 1.5 million Harbour Ring shares at a cost of \$1.28 million.

These telephone contacts and share purchases occurred at a time when Sammy TSE on behalf of Hutchison was already involved in

meetings and events relating to ICG's eventual investment in Harbour Ring.

She explained these purchases as being as a result of Dennis LI "mentioning" Harbour Ring to her and her noticing its trading volume increasing and some newspaper articles concerning it. Whatever the truth of those matters it still strikes us as extraordinary that she would purchase nearly \$3 million dollars worth of Harbour Ring shares at a time when Sammy TSE and she were in contact and he was involved in some way in matters pertaining to Harbour Ring. It must be borne in mind as Canning FOK, whose evidence we accept said, that at this time Harbour Ring was a toy company and in our view there seemed little reason for "hi-tech" euphoria to attach to it. So we reject Debbie NG's evidence that the explanation for her buying Harbour Ring shares was partly because of "hi-tech" euphoria. In our view her purchase of Harbour Ring shares tends to negate any explanation of mere coincidence as to her purchasing Vanda shares at the same time as she was in contact with Sammy TSE and he was involved in the Vanda and Hutchison negotiations.

An important question which we considered on the way to concluding that Debbie NG possessed relevant information however was whether Debbie NG was possibly acting as a mere "dummy" in buying Vanda shares, or whether she was a recipient of relevant information. She was 17 years old and, as young persons are perhaps more easily manipulated than adults, we gave this careful consideration during our deliberations.

We are satisfied she received relevant information. Although only 17 years old she was already an experienced share trader. Although young, she struck us as having a surprisingly mature personality. She would most certainly have been interested in obtaining any relevant information Sammy TSE had. She extended the margin facility on her mother's South Capital account to its limit. (The Taiwan Concord account was a cash account). We think it highly unlikely she would do so without receiving sufficient information as to be relevant information. We regarded as highly probative also the telephone contacts between her and Sammy TSE we refer to later in this chapter. Further as we have

said Chris WONG received relevant information from Debbie NG. The necessary corollary, as we have said, is that Debbie NG had the relevant information to give to Chris WONG. He could have gotten it from no one else.

Is it possible that Debbie NG received the relevant information from Dennis LI?

There were only two sources realistically she could have received the relevant information from, Sammy TSE or Dennis LI or both. She was in telephone contact with both of them during and before the relevant period though it is fair to say her contacts with Dennis LI were relatively few, she having contacted him (or he her) between 1st February and 22nd February on only nine or so occasions. Immediately prior to and on the day of her commencing to purchase Vanda shares on 15th February, through to her last purchase of Vanda shares on 17th February, Debbie NG was in mobile telephone contact with Dennis LI on only two occasions; at 2:58 p.m. and 3:18 p.m. on 15th February. The point is that at the crucial time of Debbie NG commencing her very large purchases of Vanda shares she had had only minimal mobile phone contact with Dennis LI.

During that same time however, as we have said, she had considerable telephone contact with Sammy TSE. During the first half of February 2000 Debbie NG and Sammy TSE were in telephone contact two to three times a day. That was not a huge volume of calls but was much more than contacts between her and Dennis LI during the same period. Then on the 15th February, the day that Debbie NG started buying Vanda shares on her mother's accounts at Taiwan Concord and South Capital Sammy TSE called Debbie NG some sixteen times. That was a huge increase in the volume of phone calls between them. We include in that number contacts with the telephone/fax of China South Finance Ltd. (which was located in the premises of South Capital, the two companies being related) and which we are satisfied Debbie NG used and where, as was common ground, she spent a considerable part of her time. No one else at that address had any apparent reason to contact Sammy TSE and Sammy TSE on his evidence had no reason to contact anyone at that address.

Debbie NG started her purchases of Vanda shares at 2:30 p.m. on the afternoon of 15th February. The phone calls (of which twelve were before Debbie NG's share purchases, two during and two after) commenced at 9:42 a.m. and concluded at 4:54 p.m. Some were quite brief and may well have been only "message" calls, but the majority were substantial in length.

Telephone contact between Debbie NG and Sammy TSE resumed on the 16th February when there were seven contacts between them (five of which were before she commenced purchasing Vanda shares at 2:42 p.m.) and on the 17th February when there were eight telephone contacts between them (six of which were before she purchased Vanda shares at 12:27 a.m.).

On the 18th February, the day that trading in Vanda shares was suspended, there were only two contacts between them and over the following days the frequency of telephone contacts between them dropped.

On the basis of the above evidence, we are satisfied that Debbie NG received the relevant information she acted upon primarily from Sammy TSE, though as will be seen in following sections of this chapter we are satisfied also that Dennis LI was in possession of the same information and indeed provided or helped in providing funds to Debbie NG to have her purchase Vanda shares and may also have provided relevant information to her. But so far as determining Debbie NG's role is concerned it is sufficient that we are satisfied that Debbie NG received the relevant information she acted upon from Sammy TSE.

As we have said in Chapter 9, we are further satisfied she passed on that information to Chris WONG. Obviously Debbie NG, though only 17 years old but a regular trader knew it was valuable information and price sensitive and, because of its nature and her obtaining it from Sammy TSE knew it was not widely known to the investing public who were likely to invest in Vanda shares. She was aware it was relevant information within the terms of section 8 of the Ordinance. There is no doubt she was quite familiar with Sammy TSE,

even if not his confidante. She told the SFC during her interview of 4th June 2001 that she knew Sammy TSE worked at Hutchison (though in her evidence she denied she knew where he worked). Given the general frequency of contacts between them we are satisfied they were quite good friends and that she was aware of Sammy TSE's position in Hutchison. We are satisfied she would have made herself aware of how Sammy TSE came by the relevant information she was given and acted upon before she exposed herself (and her mother) to trading on margin at the South China account.

Accordingly, we are satisfied that Debbie NG was in breach of section 9(1)(e) in her trading in Vanda shares on her mother FONG Long's accounts at Taiwan Concord, and South Capital. We are satisfied also that she traded in Vanda shares on Chris WONG's account at South Capital and she is in breach of section 9(1)(e) in regard to her trading in Vanda shares on that account also.

We are satisfied that she disclosed relevant information to Chris WONG. As we say in Chapter 9, she was obligated to Chris WONG for the money he had given her (being the money that was deposited into his account and the account of her mother at South Capital and which effectively provided her with part of the funds to trade in Vanda shares on those accounts during 15th-17th February). In our view the relevant information she provided to Chris WONG was at least partly a quid pro quo for the financial contributions he had given her. In providing that information to him she would likely, if not procure his purchasing of Vanda shares, at least have encouraged or advised him to do so. It was in her interests for Chris WONG to make a profit out of his Vanda share trading, given the financial obligation she had towards him. But in the absence of any substantive evidence of Debbie NG acting together with or encouraging Chris WONG in his purchases of Vanda shares we are not prepared to infer she did and accordingly are not satisfied to the requisite high standard that she counselled or procured his purchases. The \$1 million dollars he provided to her in about April 2000 is too far separated in time to be taken into account in regard to her Vanda share trading.

Accordingly, she is not in breach of section 9(1)(e) by way of her counselling or procuring Chris WONG to purchase Vanda shares at

the relevant time. She may simply have provided him with the relevant information and no more.

Dennis LI

Dennis LI, as we have said, purchased no Vanda shares in his own name. It was his evidence and that of Debbie NG that he provided her with \$500,000 to purchase Vanda shares for him. That sum of money was deposited into her mother's margin account at South Capital.

Dennis LI said that he had borrowed the \$500,000 from Sammy TSE. Sammy TSE in his evidence confirmed this. The banking records relating to their accounts at HSBC showed the money had been transferred from Sammy TSE's account on 15th February to that of Dennis LI and then from Dennis LI's account to that of South Capital on the same day. It was quite plain on the evidence that this \$500,000 had been used by Debbie NG to purchase Vanda shares. It formed part of the funds, whether by way of creating additional margin or otherwise, available in her mother's account she used to make her purchases. According to both, Dennis LI had also asked Debbie NG to buy as many Vanda shares as possible for him on margin.

Was Dennis LI a middleman or an investor in his own right?

We had considerable difficulty in determining Dennis LI's precise role in these matters. There seemed to us to be two somewhat differing scenarios. If he had indeed borrowed \$500,000 from Sammy TSE to invest in Vanda shares, then he was an investor in his own right. If this were so then in determining whether or not he possessed relevant information we could take into account matters such as the size of the investment, the urgency with which it was made, his expressed reasons for the share purchase and any pattern of communication between himself and Debbie NG at the time she made Vanda share purchases. On the other hand, if he had not borrowed the \$500,000 from Sammy TSE but simply acted as the middleman in passing funds from Sammy TSE to Debbie NG then these considerations in large part became less relevant to determining whether he possessed relevant information.

Both Dennis LI and Sammy TSE said the money was a loan. Their evidence in this regard was not entirely consistent but given the lapse of six years since these events those inconsistencies were of no great import.

There were indeed certain aspects to the evidence which were superficially consistent with the transfer of the \$500,000 being a loan. The primary aspect was that the profits from the sale of the shares purchased as a result of the provision of the \$500,000 went apparently to Dennis LI. The sale of those shares realised \$1,480,000 (or at least that was the sum returned to Dennis LI by Debbie NG as the proceeds of the sale). From that sum Dennis LI between 24th-29th February paid \$500,000 to Sammy TSE, transferred \$600,000 to Christie WO (although he did not know her particularly well and as we pointed out in Chapter 10 there was no need for her to borrow this money) then paid \$300,000 to Maxifirm Ltd., his employer (which we are satisfied was the repayment of monies he owed that company) and some two weeks later on 13th March paid another \$80,000 to Sammy TSE. That accounted for the whole of the \$1,480,000. The point is that so far as the evidence goes Sammy TSE received only \$580,000 from the proceeds of sale of the shares purchased by way of the original sum of \$500,000 provided by him to Dennis LI. That sum of \$580,000 seems unlikely to represent any significant share of the profits made from the purchase of the Vanda shares and is consistent with him merely being paid back the original loan perhaps with an interest or other reward component.

On the other hand, if the money were a true borrowing by Dennis LI from Sammy TSE which Dennis LI provided to Debbie NG to purchase Vanda shares on his behalf then one would expect Dennis LI to have had significant contact with Debbie NG as the price of Vanda shares surged between 15th February (when the money was provided to her) and the 18th February (when trading in Vanda was suspended). But there was a complete paucity of communication between them. We appreciate our records do not cover any landline contacts, but Dennis LI was an active user of his mobile phone during the same period and he called Debbie NG only two times. Those occasions were on the 15th February at 2:58 p.m. and 3:18 p.m. for a total time of less than a minute.

On the 18th February when the shares were suspended and one would have expected Dennis LI to have been very interested in how many shares Debbie NG had purchased for him and what his paper profits were at that time, he did not contact her at all.

This is odd behaviour and seems even odder when one remembers Dennis LI according to his evidence had expected Debbie NG, a 17-year-old girl to purchase an unknown number of shares for him on margin. Even if his family in Taiwan were wealthy as he asserted in evidence, he was in a precarious financial state at that time as he admitted. He owed money to his employer and had a large bank overdraft. He owed money to Charles CHONG (for reasons separate to share dealing). His lack of communication with Debbie NG once he had provided her with the purchase money seems quite inconsistent with that money representing his own investment in Vanda shares.

As against that, Sammy TSE was in virtually continuous contact with Debbie NG during the period when she was purchasing Vanda shares. We will not set out the history of those contacts again, having done so in the previous section of this chapter. But those contacts show, as we have said, a pattern consistent only with communications relating to Debbie NG's purchase of the Vanda shares.

That evidence would suggest Sammy TSE kept a close and continuing interest in Debbie NG's share trading consistent with the \$500,000 remaining his property and not being lent to Dennis LI.

Additionally, Dennis LI's disposal of \$600,000 of the proceeds of the sale of the shares attributable to the \$500,000 investment as a loan to Christie WO makes no sense. He did not know her well, he still had other debts to discharge (his bank overdraft for example) and she, having just profited substantially from her own insider dealing had no real need of the funds. In short, this aspect of the evidence is less than consistent with Dennis LI treating the funds as his own to dispose of and more consistent with him providing the funds to Christie WO for some other reason. We note that not only was that "loan" not repaid to Dennis LI by Christie WO until well after the commencement of this hearing, but that Dennis LI on his own evidence had done little to seek its repayment.

We do not think the \$600,000 provided to Christie WO was a genuine loan and the transaction suggests Dennis LI in fact did not have control over a large part of the \$1.48 million in proceeds provided to him by Debbie NG. That undermines quite seriously the concept of the \$500,000 provided to Dennis LI by Sammy TSE being a genuine loan. The nature of the “loan” transaction itself suggests it was something other than a genuine personal loan. The transfer of the \$500,000 from Sammy TSE’s bank account to that of Dennis LI was effected by way of a paper transfer. This required Sammy TSE to personally attend at the bank. If this were a genuine loan and Sammy TSE had no knowledge of or interest in what the funds were to be used for and simply thought, as he said, that the money was “to go round” it’s difficult to see why the transaction could not have been effected by cheque, and why such urgency was involved.

Further, if the \$500,000 transfer from Sammy TSE to Dennis LI were a genuine loan then Dennis LI could have quite easily have purchased Vanda shares on his own account which he held at Goodwill Investment Services Ltd. It is true that account was apparently not a margin account but we reject Dennis LI’s evidence that a reason he asked Debbie NG to trade for him was that she had a margin account.

His evidence in this regard was less than convincing. At one stage he said that he did not know Debbie NG had a margin account at South Capital until after he had asked her to purchase Vanda shares for him. That being so her possession of a margin account cannot have been the reason he asked her to do so. It is also difficult to credit his explanation that he thought she was an employee of South Capital and could earn some commission if he bought shares through her. She was 17 years old at this time. It seems unlikely a person such as Dennis LI who had considerable business experience would simply assume a person as young as Debbie NG worked at a stockbroker’s firm in a commission earning capacity of some description.

We might add that it seems an enormous coincidence that Dennis LI who infrequently traded in shares would independently conclude that he wished to invest in Vanda shares just at the moment when Sammy TSE, his friend, was involved in the Vanda negotiations;

then, to pile coincidence upon coincidence, borrow \$500,000 from Sammy TSE without telling him what the money was for and then decide to ask Debbie NG to use her trading accounts to purchase the Vanda shares at a point in time when she was in close contact with Sammy TSE and had received relevant information from him concerning Vanda. We do not credit this possibly having happened.

In short, the explanations given by Dennis LI as to why he had asked a 17-year-old friend to trade for him (and on margin) simply do not add up. There was no good reason given by him consistent with him investing his own (though borrowed) money and we concluded for all the above reasons that he was not doing so and was simply acting as a middleman in handing on Sammy TSE's funds to Debbie NG to trade in Vanda shares.

We should add Dennis LI's evidence as to why he wished to purchase Vanda shares also did not make sense. He said that the reason he wished to purchase Vanda shares was because of the conversation he had had in Guangzhou with people who he assumed were mainlanders. We have already commented on the vagueness and "staleness" of the information he received during that dinner conversation and how it fell far short of sensibly explaining why he would suddenly wish to invest in Vanda and therefore borrowed \$500,000 to do so.

We are satisfied Dennis LI did not borrow \$500,000 from Sammy TSE but was instrumental simply in acting as a middleman in transferring that money to South Capital for the use of Debbie NG. In doing so, Dennis LI was bringing about Debbie NG's trading in Vanda shares. He was thereby procuring her dealing.

Did Dennis LI possess relevant information?

Dennis LI was a very good friend of both Sammy TSE and Debbie NG. We have concluded that Sammy TSE provided Debbie NG with relevant information for the purpose of her purchases of Vanda shares. We have concluded that Dennis LI assisted Sammy TSE to transfer \$500,000 to South Capital for the use of Debbie NG. It seems unlikely in those circumstances that Sammy TSE would not share

relevant information with Dennis LI also. Sammy TSE was effectively using Dennis LI's bank account (and Dennis LI as a middleman) so as to "put distance" between himself and Debbie NG's purchasing of Vanda shares. That is the only explanation for the procedure which was adopted once the "loan" explanation for the transfer of funds to Dennis LI is rejected.

If Dennis LI was allowing his bank account to be used in this way some explanation no doubt had to be given to him. We do not see how Sammy TSE could avoid telling him what he had told Debbie NG. He knew Dennis LI and Debbie NG were close friends. In the circumstances Sammy TSE must have been constrained to tell Dennis LI of what was transpiring in the Vanda share purchase. There was no other sensible alternative. Debbie NG knew what the truth of the matter was. It was useless to attempt to keep Dennis LI in the dark.

Perhaps the best proof of this is Dennis LI's receipt of \$300,000 for his own use. As we say we are satisfied he genuinely owed \$300,000 to his employer Maxifirm Ltd. That debt was paid out of profits of the Vanda share dealing and Dennis LI got the benefit of that sum of money. That was a significant sum of money and seems to represent more than Dennis LI simply effecting a transfer of funds for Sammy TSE without knowing why.

Further, from the telephone records in evidence before us it is obvious that Sammy TSE was in contact with Dennis LI almost always at the time, or near the times that he was in contact with the persons we are satisfied he, Sammy TSE, personally provided relevant information to. That is, Debbie NG Christie WO and Charles CHONG. The proximity of the telephone contacts between Sammy TSE and Dennis LI at the time Sammy TSE was in the course of communicating with these individuals who we are satisfied he had personally told of the relevant information suggests strongly that Dennis LI and Sammy TSE were discussing the same subject matter.

For all of these reasons we are satisfied that Dennis LI was told of the relevant information by Sammy TSE. We are satisfied he knew of the relevant information at the time he provided the funds of \$500,000 to

Debbie NG. That was done with a degree of urgency which would have required him to know at that point of time what was going on. He certainly had to know the money was to be transferred to South Capital quickly. He did so the same morning Sammy TSE deposited the money in his account.

Accordingly, we are satisfied to a high degree of probability that Dennis LI by providing \$500,000 from his account to South Capital for the use of Debbie NG procured her purchase of Vanda shares represented by the proceeds of \$1,480,000 upon their eventual sale and that at the time of this procuring he was in possession of relevant information provided to him by Sammy TSE.

There is no doubt he was aware of Sammy TSE's position in Hutchison, given their close friendship, and knew that Sammy TSE was a connected person who had received the relevant information as a result of his involvement in negotiations with Vanda. Any suggestion he would not have known these things, considering his continuous personal contacts with Sammy TSE and the closeness of their relationship is facile.

Accordingly, we find Dennis LI to be in breach of section 9(1)(e) of the Ordinance in that he received relevant information from Sammy TSE, knowing him to be a connected person and possessing the information because of that and then procuring Debbie NG's purchase of Vanda shares by the provision of \$500,000 to her on 15th February 2000.

We might add that while given the volume of telephone calls all originating from Dennis LI to Charles CHONG there is cause for considerable suspicion that Dennis LI counselled Charles CHONG on the Vanda purchases, we are unable to be sure to a high degree of probability that Dennis LI advised Charles CHONG or CHONG Bun Bun or in any way counselled them to purchase Vanda shares and we make no finding against him in that regard.

We conclude by saying that we did not use any aspect of evidence relating to the subsequent Harbour Ring share transactions against Dennis LI.

Sammy TSE

Was Sammy TSE a connected person?

We will not set out the provisions of section 4 of the Ordinance again. They are set out in Chapter 3.

It is quite plain Sammy TSE, though he was employed within the Hutchison group was connected to Vanda during the relevant period. He was involved in the negotiations with Vanda on behalf of Hutchison and came to know of the relevant information because of that involvement. He is connected to Vanda by way of the operation of section 4(1)(c)(i) and section 4(1)(d) of the Ordinance.

Did Sammy TSE know of the relevant information?

So far as Sammy TSE was concerned his evidence given before the Tribunal in large part contradicted important aspects of what he had told the SFC when interviewed by them in March and April 2001. Perhaps one of the most important of those contradictions was his evidence that he was mistaken when he told the SFC that the Hutchison convertible bond proposal to Vanda had been mentioned at the 14th February meeting. In his later witness statement provided to the Tribunal and his oral testimony he ranged from uncertain to fairly positive as to this answer being incorrect because he had “remembered things in a block” and/or had confused the earlier Computer and Technologies deal he had been involved in with the Vanda proposal. Contrary to his quite definite statement to the SFC that he had been told on the 14th February about Hutchison possibly investing in Vanda, in his evidence before us he said he may not have known of this at all. But we placed no reliance on his evidence in that regard. It is difficult to see how he could have answered specific questions concerning this matter in the detail he did if he were confused. He had been notified of the general subject matter of the interview in advance and had his lawyer present at the time.

We thought it fair, as we have said, as a matter of proper caution on this occasion not to use what Sammy TSE said to the SFC during his

interviews as evidence of what the other implicated party Ernest CHOY was told during that meeting, as we thought Sammy TSE to be inherently unreliable so far as both his evidence before the Tribunal and what he told the SFC was concerned.

But so far as Sammy TSE's knowledge of the contents of the 12th February meeting was concerned, from all the evidence before us we are satisfied that as of 14th February he would have been aware of sufficient of the details of the Hutchison proposal to Vanda concerning Hutchison taking a large potential share holding in Vanda and both companies endeavouring to participate in a joint venture in e-commerce as to be in possession of relevant information.

Bernard FUNG who we accepted as a reliable witness said that Sammy TSE was responsible for and gave him instructions concerning the convertible bond aspect of the deal. He said when interviewed by the SFC that "there were only Sammy TSE and I from E-Commerce Resources Ltd." (the Hutchison subsidiary Sammy TSE ran) who were responsible for the "subscription agreement" and joint venture. He said Sammy TSE was his supervisor in this regard and responsible for coordinating the two transactions. We took into account also that on the 16th February Sammy TSE was the person at Hutchison who received the draft Term Sheet relating to the proposed convertible bond/share option deal. He was the contact person at Hutchison so far as Peregrine was concerned.

Canning FOK in his evidence before the Tribunal said that Sammy TSE was to "follow up" on both the joint venture and convertible bond transaction along the lines of the Computer and Technologies Ltd. transaction. In his statement to the SFC he had said that Sammy TSE was the "chief negotiator" for both the proposed convertible bond transaction and the joint venture. He said it was his understanding that after the 12th February meeting Peter WONG was to refer the matter to Sammy TSE.

Accordingly we are satisfied that at some time during the 14th February Sammy TSE was informed of what had transpired at the 12th February meeting. There is no doubt also that by the conclusion of

the 4:30 p.m. meeting on 14th February he would have been aware of the nature of the joint venture under consideration by Hutchison and Vanda. By the evening of the 14th February Sammy TSE knew of the relevant information. His familiarity with the Computer and Technologies Ltd. deal which he had also been involved in would have led him to know the information was price sensitive. In his statement to the SFC dated 31st March 2001 he said regarding the Hutchison/Vanda negotiations: "Although not yet finalized if the news came out it would be very sensitive because technology and net-related stocks were hot picks in the market at that time." He knew it was not widely known. He knew the information was relevant information.

Did Sammy TSE disclose the relevant information?

We have already given detailed reasons as to why we concluded that Sammy TSE disclosed the relevant information to Dennis LI, Debbie NG, Christie WO and Charles CHONG. But we wish to make a few further general comments.

Sammy TSE gave explanations for telephone calls between himself, Christie WO, Charles CHONG and Debbie NG which were simply unbelievable given the volume and/or timing of those calls and their claimed subject matter. For example, he explained the very large volume of phone calls he had with Christie WO during the relevant period as being about girls he was interested in, socialising and watches. Those calls occurred occasionally very late at night, and were frequent and lengthy. He made the calls on occasion en route to important business meetings. He knew Christie WO had a boyfriend and even allowing for the fact he was an incessant mobile telephone user who had an interest in socialising with women and in watches we were unable to give credence to his explanation to this effect as to why there were so many calls to Christie WO. Nor did we accept that he telephoned Charles CHONG at the times and as frequently as he did during the relevant period simply because he had asked Charles CHONG to find him a domestic helper when he moved into the Deerhill Bay housing estate where Charles CHONG lived. There were simply too many calls at particular times for that to be so. We will not again set out the details of all these various telephone calls. We have done that already in previous

chapters and our reasoning as to why we concluded that those telephone calls were not wholly social or domestic in nature but that they also related to the transferring of relevant information and the purchasing of Vanda shares by the other individuals is fully set out there. In now considering the role of Sammy TSE, we adopt our findings and reasoning set out in those previous chapters and previously in this chapter concerning the receipt by other individuals, namely Debbie NG, Dennis LI, Christie WO and Charles CHONG of relevant information from Sammy TSE.

Fundamentally we rejected Sammy TSE's evidence that he had not provided information to these individuals about the Vanda deal because the evidence as a whole pointed overwhelmingly to the fact that he had. He said effectively that it was mere coincidence that persons in his group of friends he had spoken to frequently over the telephone and met between 14th and 18th February 2000 had purchased Vanda shares for the first time and in very large amounts. He said he had no idea why they had made such purchases and that he had told them nothing.

Regarding any possible coincidence of this nature we also took into account that Sammy TSE became involved with McKinsey and Company who were consultants to Hutchison concerning ICG's potential involvement with Harbour Ring in Hong Kong at a very early stage of ICG's involvement, that is on the 16th February 2000 and he remained involved in Hutchison's negotiations with ICG which eventually resulted in ICG taking an interest in Harbour Ring. It is true he did not go to all meetings in this regard but he did attend a meeting on the 28th February and dinner (with Harbour Ring executives) at Canning FOK's premises in the evening of 29th February. He said even then he had no idea Harbour Ring was involved in the ICG negotiations. But we think it far more than mere coincidence that once again, Debbie NG and Charles CHONG and persons associated with them (i.e. Chris WONG and CHONG Bun Bun) purchased very large amounts of Harbour Ring shares from the 29th February onwards. Those purchases were again conducted in the context of recent phone calls between them and Sammy TSE or Dennis LI.

In our judgment the coincidence of Debbie NG (and her friend Chris WONG) and Charles CHONG (through his sister CHONG Bun Bun) purchasing Harbour Ring shares as well as Vanda shares at the same time that Sammy TSE was involved in negotiations concerning his company Hutchison and those two companies suggests very strongly that the purchases of Vanda shares we are concerned with in this inquiry occurred not as the result of mere coincidence, but as a result of the purchaser's association with Sammy TSE.

Sammy TSE was the only source of the relevant information relating to Vanda though as we have said we accept Dennis LI may also have been involved in its transfer. But regardless of whether Dennis LI, who as we have said was also told of the relevant information by Sammy TSE, further discussed it with or imparted it to Debbie NG, Christie WO or Charles CHONG, we have no doubt that the primary source of those individuals receipt of relevant information was Sammy TSE.

We will deal with Sammy TSE's role relating to each of the individual implicated parties to whom we are satisfied he disclosed relevant information.

Dennis LI

We have dealt with the role of Dennis LI in a previous part of this chapter. We concluded, for the reasons given there, that Sammy TSE had provided Dennis LI with \$500,000 for him to provide it in turn to Debbie NG for the purpose of purchasing Vanda shares. We concluded that when he did so Dennis LI was in possession of relevant information provided to him by Sammy TSE. In that latter regard we dismissed as fanciful Sammy TSE's suggestion that Dennis LI may have learnt of the Hutchison proposal to Vanda by overhearing a conversation between Sammy TSE and Bernard FUNG at the Park Lane Hotel in the evening of 14th February. Bernard FUNG had no recollection of any such occasion, and the concept of Dennis LI managing to be present and overhear any such conversation without either Sammy TSE or Bernard FUNG noticing simply makes no sense.

It goes without saying that in channeling the \$500,000 through to Debbie NG, Sammy TSE and Dennis LI were acting together; that is why Dennis LI retained \$300,000 of the eventual profits of the share dealing.

But for the reasons we have given we concluded that the money was not genuinely lent to Dennis LI as both he and Sammy TSE claimed but was merely handled by Dennis LI in the role of a middleman in passing the money on to Debbie NG for the purpose of her purchasing Vanda shares.

Debbie NG

It was then effectively Sammy TSE who procured through Dennis LI the purchase by Debbie NG of the Vanda shares by way of the provision of the \$500,000. Accordingly Sammy TSE is in breach of the provisions of section 9(1)(a) of the Ordinance by at least procuring Debbie NG to purchase Vanda shares. There is no doubt that by providing that sum of money Sammy TSE took a step to bring about Debbie NG's purchase of Vanda shares. What then of the balance of Vanda shares purchased by Debbie NG? We do not think the evidence goes far enough to suggest that Sammy TSE counselled or procured Debbie NG's purchase of Vanda shares beyond those purchased by way of the \$500,000 provided by Sammy TSE.

But Sammy TSE must have known or had reasonable grounds to believe that Debbie NG would purchase Vanda shares on her own behalf, beyond those purchased by way of his \$500,000. He knew her well enough to know she was a regular trader. She rang him, and on occasion he rang her at the landline number at South Capital. As he told the SFC investigators in an interview on 12th April 2001 one thing he knew about Debbie NG at that time was that "she likes to trade in securities very much" and that he "heard her talking about securities when she talked to other people over the phone". Sammy TSE would have no reason to lie about his knowledge of this aspect of Debbie NG's character during that interview, and as the evidence has disclosed in this inquiry what he said about Debbie NG in this regard was in fact correct.

We are satisfied that Sammy TSE at the very least had reasonable grounds to believe that Debbie NG would, in addition to purchasing Vanda shares with the \$500,000 he gave her, also purchase Vanda shares on her own behalf.

Accordingly, we find he is in breach of section 9(1)(a) by procuring Debbie NG's purchase of Vanda shares by providing her with \$500,000; and in breach of section 9(1)(c) by disclosing relevant information to her having reasonable grounds to believe she would buy Vanda shares. He knew nothing of Chris WONG and there was nothing in the evidence before us to suggest that he had any connection with Chris WONG's trading or was aware of it or had any reason to be aware of it. We make no finding against him in relation to Chris WONG's trading in Vanda shares.

Christie WO

As we have said in Chapter 10 for the reasons set out there, we are satisfied Sammy TSE told Christie WO of the relevant information. It may well be that additionally Dennis LI also discussed the relevant information with Christie WO. As we have said Sammy TSE and Dennis LI were acting together so far as their roles in Debbie NG's Vanda share purchases were concerned and it may well be that this continued with other implicated parties as well. But from the frequency and timing of the telephone calls between Sammy TSE and Christie WO it is obvious that Sammy TSE was the primary source of the relevant information she received.

There is nothing to suggest that Sammy TSE provided any of the funds used by Christie WO to purchase Vanda shares. Nor is there any direct evidence that he advised her in any way as to her purchases. While as a matter of common sense, given the volume of telephone calls between them and the use by Christie WO of another person's account to trade, there is considerable suspicion this must have been so we are not prepared to find to a high degree of probability that Sammy TSE procured or counselled her to do so.

We are satisfied however to a high degree of probability that he had reasonable grounds to believe she would use the relevant information he imparted to her to trade in Vanda shares.

Firstly, he obviously told her of the information. There seems little reason for him to tell a close friend who he knew to be a businesswoman of such information which, as he told the SFC, he knew to be price sensitive, other than to do that friend a favour.

Additionally, we have pointed out in Chapter 10 that the frequency of telephone calls between Christie WO and Sammy TSE increased very substantially on 18th February (when trading in Vanda shares was suspended) and on the 22nd February (when the announcement concerning Vanda and Hutchison's cooperation was made and trading resumed). On those two days there were ten telephone contacts between them on each day. That is twice their usual volume of phone calls. As we also pointed out in Chapter 10 there were occasions when almost immediately after a phone contact with Sammy TSE, Christie WO would buy Vanda shares through Olivia CHUNG's account. Sammy TSE obviously kept in close contact with Christie WO during her share trading and spoke to her about it.

For those reasons we conclude that Sammy TSE was aware of Christie WO's Vanda share trading and had disclosed the relevant information to her knowing or having reasonable grounds to believe she would trade in Vanda shares.

While these matters also point strongly to Sammy TSE counselling Christie WO in relation to the Vanda share purchases on Olivia CHUNG's account, we are not satisfied to the high degree of proof necessary on this occasion that he did counsel her in her purchases of Vanda shares. But we are satisfied that he knew or at least had reasonable grounds to believe that she would purchase Vanda shares on the basis of the information he provided her with so as to breach the provisions of section 9(1)(c) of the Ordinance.

Charles CHONG

For the reasons we have set out in the previous chapter we have concluded that Sammy TSE provided relevant information to Charles CHONG.

There is no direct evidence that Sammy TSE counselled or procured Charles CHONG's purchases of Vanda shares or those of CHONG Bun Bun. But, as with Christie WO, Sammy TSE knew Charles CHONG was a businessman. Dennis LI was a good friend of Sammy TSE and was an ex-colleague of Charles CHONG. Dennis LI was at about this time or shortly after also involved in a business project with Charles CHONG involving the purchase by Charles CHONG of an interest in an internet trading company "Trading Guru".

Dennis LI was quite familiar with Charles CHONG and his background and we are satisfied that it was he who introduced Charles CHONG to Sammy TSE. Having dismissed Sammy TSE's telephone calls made to Charles CHONG during the period of Charles CHONG purchasing Vanda shares as relating to a search for a part-time domestic helper for the reasons set out in the previous chapter, we were satisfied that those telephone calls were, at least in large part, related to Charles CHONG's purchasing of Vanda shares and that Charles CHONG received relevant information from Sammy TSE.

Sammy TSE was not a close friend of Charles CHONG. That was common ground. They had no business association. There was no reason for Sammy TSE to disclose the relevant information, which he knew to be sensitive, to Charles CHONG other than for Charles CHONG to purchase Vanda shares.

As with Christie WO we strongly suspect that in doing so Sammy TSE, or Dennis LI who we think to have been likely acting together with Sammy TSE in this regard, counselled Charles CHONG in the latter's purchasing of Vanda shares. But, perhaps over cautiously, we are not prepared to go so far.

We are however satisfied that the only purpose Sammy TSE had in disclosing relevant information to Charles CHONG was to enable him to profit by trading in Vanda shares. We are satisfied that when disclosing the relevant information to Charles CHONG Sammy TSE knew or had reasonable grounds to believe that Charles CHONG would deal in Vanda shares. We find Sammy TSE to be in breach of section 9(1)(c) of the Ordinance in this regard.

There was no evidence suggesting that Sammy TSE had any contact with CHONG Bun Bun, or knew that Charles CHONG would pass on the relevant information to her, or would counsel or procure CHONG Bun Bun to deal in Vanda shares.

We make no finding against Sammy TSE in relation to CHONG Bun Bun's dealings in Vanda shares.

CHAPTER 13

SUMMARY OF FINDINGS

For the reasons given in previous chapters of this report, we respond to the section 16(2) notice dated 28th October 2003, and its corrigendum dated 29th June 2005 as follows:

- (a) There was insider dealing in relation to the shares of Vanda Systems and Communications Holdings Ltd.
- (b) The identity of the insider dealers were:

LAM Hon Nam: whom we find to have been in breach of the terms of section 9(1)(c) of the Ordinance in disclosing relevant information to Silvia CHAN Yuk.

Silvia CHAN Yuk: whom we found to be in breach of the terms of section 9(1)(e) of the Ordinance by receiving relevant information from LAM Hon Nam and dealing in Vanda shares.

Ernest CHOY Ming Yan: whom we found to be in breach of the terms of section 9(1)(a) and 9(1)(c) of the Ordinance by counselling his wife Becky CHAN Lai King to purchase Vanda shares and disclosing relevant information to her knowing she would use it to purchase Vanda shares.

Becky CHAN Lai King: whom we found to be in breach of the terms of section 9(1)(e) of the Ordinance by receiving relevant information from her husband Ernest CHOY Ming Yan and dealing in Vanda shares.

Chris WONG Cheung Hung: whom we found to be in breach of the terms of section 9(1)(e) of the Ordinance by receiving relevant information from Debbie NG Kit Ying knowing it came from a connected person and dealing in Vanda shares.

Christie WO Man Shan: whom we found to be in breach of the terms of section 9(1)(e) of the Ordinance by receiving relevant information from Sammy TSE Kwok Fai and procuring dealing in Vanda shares.

Charles CHONG Wai Lee: whom we found to be in breach of the terms of section 9(1)(e) of the Ordinance by receiving relevant information from Sammy TSE Kwok Fai and dealing in Vanda shares and counselling and procuring his sister CHONG Bun Bun to purchase Vanda shares.

CHONG Bun Bun: whom we found to be in breach of the terms of section 9(1)(e) of the Ordinance by receiving relevant information from her brother Charles CHONG knowing it came from a connected person and dealing in Vanda shares.

Debbie NG Kit Ying: whom we found to be in breach of the terms of section 9(1)(e) of the Ordinance by receiving relevant information from Sammy TSE Kwok Fai and trading in Vanda shares on her mother FONG Long's accounts at Taiwan Concord and South Capital and on Chris WONG Cheung Hung's account at South Capital.

Dennis LI Yat Tung: whom we found to be in breach of the terms of section 9(1)(e) of the Ordinance by procuring the purchase by Debbie NG Kit Ying of Vanda shares whilst he was in possession of relevant information.

Sammy TSE Kwok Fai: whom we found to be in breach of the terms of section 9(1)(a) of the Ordinance by procuring the purchase by Debbie NG Kit Ying of Vanda shares whilst he was a connected person in possession of relevant information.

We found him also to be in breach of the terms of section 9(1)(c) of the Ordinance by, while a connected person, disclosing relevant information to Debbie NG, Christie WO and Charles CHONG having reasonable grounds to believe they would purchase Vanda shares.

Recommendation

We recommend the Financial Secretary consider whether an inquiry under section 16 of the Ordinance concerning James SHUEN Wai's purchase of Vanda and Harbour Ring shares in February 2000 is merited. We make this recommendation without having seen any documentary evidence of his purchases, as no such documentary evidence was relevant to the present inquiry. Accordingly, we make our recommendation in the above terms only.

CHAPTER 14

ORDERS

Preliminary

Before we turn to the specific orders made by us in respect of the individual insider dealers, there are some general matters which can be dealt with.

Calculation of Profit

In *Insider Dealing Tribunal – v – Shek Mei Ling* (1999)2 HKC 1 the Court of Final Appeal approved the statements of principle by the Court of Appeal in the same case as to the calculation of the profit to be attributed to an insider dealer. Those principles can be summarised as follows:

- (i) if sale was before publication of relevant information, actual realised profit;
- (ii) if sale was after publication of relevant information but before full dissemination, actual realised profit; and
- (iii) if there is no sale and/or sale after full dissemination of published relevant information, notional profit. Notional profit is the difference between the purchase price of a security and the value of the security as measured by the re-rated trading price of the security for a reasonable period after public dissemination of relevant information.
- (iv) Transaction costs, if any, are deducted from the gross profit gained.

Those general principles apply quite readily to insider dealers who had no existing holding of the company's shares, and who while possessing relevant information purchased the shares at the same time.

But during the course of the Tribunal's hearing of evidence as to the profit to be attributed to the individual insider dealers an issue arose as to the principle to apply when shares had been purchased at different times previously, (perhaps some being purchased prior to the existence or possession of relevant information) and then being sold wholly or partly at different times before the re-rating period ended.

If the first shares sold were taken to be those first purchased at an earlier time i.e. "first in first out" rather than those later purchased i.e. "last in first out", then a different profit could sometimes be attributed to the insider dealer as the sale price of shares actually sold before the conclusion of the re-rating period would quite often differ from the re-rated sale price, and which shares (with their different purchase prices) were counted as actually sold or retained would differ.

The problem arises only where there is an actual sale of shares. If no insider purchased shares are sold until well after the relevant information has been made public and a new price level attained after the relevant information has been digested by the market (the re-rated price and the re-rating period respectively which we took to be the three-day period from 22nd-24th February 2000), then a notional sale of the shares purchased with relevant information is deemed to have occurred at the re-rated price. It is where there has been an actual sale of the company's shares before or during the re-rating period that the problem arises.

There is often no way of ascertaining as a matter of fact what shares were actually sold. That is usually so where the same trading account has been used to purchase the company's shares on different occasions and sell them on different occasions.

How then to calculate the insider dealer's profits?

It seems to us that in determining profit the benefit of the probabilities involved should go to the insider dealer, and the calculation of the profit made by the individual insider dealer should, where the probabilities are equal so that the Tribunal cannot be satisfied which of the shares were actually sold and retained, be the lesser of the two alternative calculations of profit.

In other words, where the Tribunal cannot be satisfied to a high degree of probability which shares were actually sold, and therefore necessarily cannot be sure which shares were retained after the re-rating period, then the calculation of the two alternative sums of profit (that is “last in first out” or “first in first out”) which the Tribunal accepts, should be that calculation which results in the lesser profit being attributed to the insider dealer.

In the present case though the “last in last out” calculation was generally the basis of calculation in respect of some insider dealers the “first in first out” calculation arrived on occasion at a lesser profit figure and we adopted that figure.

The averaging method

A second matter which arose so far as the calculation of profit is concerned related to the “averaging” method adopted by Stella FUNG in calculating the price of shares dealt with on a particular day. That averaging method was effectively an approximation of the total expenditure or proceeds as it was not based on individual dealing slips (most of which were not adduced in evidence). In our view, this was an appropriate method to use, the costs involved in attempting to recover and then, if the slips were obtained, calculating sums from individual slips would likely have outweighed any benefit to most individuals. Further, the averaging method was to a large degree self-compensating and over a series of calculations would arrive at a sufficiently certain profit figure. Where counsel for an implicated party did indeed go to available dealing slips as did Mr. Bernard MAK for Debbie NG and calculate precise figures we adopted those calculations if they were the lesser. This applied only to the calculation of profit for Debbie NG.

Delay

This inquiry commenced on 17th May 2005 more than five years after the events in questions. That was in itself a significant delay. The inquiry was further delayed by a series of preliminary applications, rulings and appeals which resulted in the proceedings being stayed and

adjourned on the 13th and 14th September 2005 (see Chapter 2 above). Proceedings did not recommence until 6th April 2006.

Those preliminary applications were made on behalf of Charles CHONG and CHONG Bun Bun. The result of those interlocutory proceedings were that the final orders of this Tribunal were not able to be made until some 7 years had elapsed from the date of the events. That delay in our view is considerable and went to mitigate the disqualification, financial and costs orders we imposed on the insider dealers pursuant to section 23(1)(a), (b), (c) and section 27 of the Ordinance.

So far as disqualification orders were concerned we took into account in each insider dealer's case that the events occurred some 7 years ago and that in our view wide-ranging disqualification orders were unnecessary. As will be seen hereunder we restricted our disqualification orders in the main to the insider dealer acting in a director's or management capacity in a listed company.

So far as financial orders pursuant to section 23(1)(b) and (c) were concerned we reduced those orders by 25% and so far as costs orders pursuant to section 27 were concerned by 10%.

General principles of mitigation

We accept that the proper approach to the imposition of orders pursuant to section 23 of the Ordinance is as approved by the Court of Appeal in *Shek Mei Ling – v – The Insider Dealing Tribunal* CACV No. 41 of 1998 except that we do not increase the penalty due to the substantial wealth of any insider dealer. (In our view a typographical error occurred at page 16 para. 4 of that judgment.)

In the present case many insider dealers had similar roles, or if their roles differed their culpability was similar, and they were accordingly dealt with in similar manner by the orders we imposed. But each was considered individually and what each put before us in mitigation was taken into account.

Section 27 Costs

In regard to costs we accept that the total costs of the inquiry (after recalculating the costs of junior counsel assisting, Mr. Dick HO, to a rate of \$2,500 per hour which we regard as being fair and proportionate to his experience and the nature of the Tribunal's work he was required to do at the time he was acting as junior counsel assisting the Tribunal) were made up as follows:

Department of Justice

Costs in relation to the application by the Chongs:	\$326,524	
(less 10%):		\$293,872
Costs in relation to the balance of the inquiry:	\$4,652,946	
(less 10%):		\$4,187,651
		<hr/>
	<i>Sub-total:</i>	\$4,481,523

Tribunal (including SFC expenses during inquiry)

Costs in relation to the application by the Chongs:	\$679,511	
(less 10%):		\$611,560
Costs in relation to the balance of the inquiry:	\$3,412,182	
(less 10%)		\$3,070,963
		<hr/>
	<i>Sub-total:</i>	\$3,682,523
	Total Costs:	<hr/> \$8,164,046

Total costs in relation to the application by the Chongs:	\$905,432
Total costs in relation to balance of inquiry:	\$7,258,614

So far as the costs to be paid by the persons found to be insider dealers are concerned, we assess them as a percentage of the costs of the substantive inquiry (excluding the costs of the Chongs' application). That, less the 10% discount we have allowed, is the figure of \$7,258,614.

So far as the costs of Charles CHONG and CHONG Bun Bun are concerned we will assess them on the basis of their share of the costs of the substantive inquiry (less 10%). That is, upon the sum of \$7,258,614. Additionally they will between them share the costs of the

preliminary applications made on their behalf. Those costs totalled \$905,432.

We now turn to the orders we impose in respect of the individual insider dealers.

LAM Hon Nam

We accept counsel's mitigation on behalf of LAM Hon Nam that he was well regarded in the business world in Hong Kong as an honest and hard-working chief executive officer of Vanda.

We have considerable sympathy for Mr. LAM who by dint of hard work and foresight set up Vanda in 1982 and expanded it into a leading company in the high-tech sector of Hong Kong's industry by the time of these events. We accept that as a result of the convertible bond transaction with Hutchison he eventually, by 2003, lost control of Vanda. We are told that he now intends to retire having reached the age of 65.

Section 23(1)(a)

Although Mr. LAM presently intends to retire we think a limited disqualification order is appropriate. We say "limited" in the sense we do not believe that he should be disqualified generally. He performed the role of Chief Executive Officer of the Vanda group with integrity and ability for many years and the order we make taking into account the loss of his company and intention to retire is less severe than would normally be the case when a CEO of a listed company disclosed relevant information to a relative so as to allow them to profit.

Order: LAM Hon Nam is disqualified from being a director of a listed company for a period of 2 years.

Section 23(1)(b)

Mr. LAM made no profit from his insider dealing which was contrary to section 9(1)(c) of the Ordinance only. Accordingly we make no order under section 23(1)(b) of the Ordinance.

Section 23(1)(c)

It was accepted that Mr. LAM was in a position to pay any penalty imposed upon him under the provisions of this sub-section. We accept the meaning of the sub-section to be that a fine of up to three times the profit made by Silvia CHAN may be imposed. Taking into account however the matters we have already mentioned including the matter of delay and accepting that Mr. LAM's transgression was a misguided attempt to help a family member, we also bear in mind that Mr. LAM was in breach of his fiduciary duty to his company and of his duty and responsibilities as Chairman of Vanda. Our "starting point" for Mr. LAM's penalty was \$1,600,000, but allowing for the 25% discount we make the following order:

Order: LAM Hon Nam is to pay a penalty of \$1,200,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

We agree that no part of the jurisdictional argument costs should be attributed to Mr. LAM but simply the costs of the hearing proper. Those costs as we have said total \$7,258,614 (incorporating the general 10% reduction in costs, we think, appropriate for the matter of delay). Bearing in mind the amount of time taken up before and by the Tribunal in hearing evidence, submissions and considering Mr. LAM's case we think an appropriate share of the costs to be borne by Mr. LAM is 10%.

Order: LAM Hon Nam is to pay the sum of \$725,861 to the Government of the Hong Kong Special Administrative Region as his share of the expenses of and incidental to the inquiry.

Silvia CHAN Yuk

Allowing for a three-day re-rating period the evidence of Stella FUNG as contained in her statement of 18th January 2007 was that Silvia CHAN's profit from her insider dealings in Vanda shares can be

calculated at \$2,337,417. However by further applying the principle of “first in first out” rather than “last in first out” upon which her profit was originally calculated we have arrived at a lesser figure of \$2,331,275 as representing her actual profits.

Silvia CHAN, we accept, did not abuse any position of trust. She was simply an opportunistic relative of LAM Hon Nam who took advantage of the information he gave her.

Section 23(1)(a)

Silvia CHAN had been a businesswoman for some years and we think it appropriate to disqualify her for a period of time from acting in the capacity of a director or manager of a listed company. Having considered her role in the insider dealing transaction she was involved in we make the following orders:

Order: Silvia CHAN Yuk is disqualified from being a director of or a manager in a listed company for a period of 1 year.

We might add that it seems to us necessary that a management role be included in the order as in the event Silvia CHAN were to obtain employment in a listed company that is the most likely position of authority she would obtain, and in our view a period of disqualification from any such position is desirable.

Section 23(1)(b)

We think it appropriate that she repay the profits she gained from her insider dealing less 25% to reflect the delay which has occurred in this matter.

Order: Silvia CHAN Yuk is ordered to pay to the Government of the Hong Kong Special Administrative Region the amount of \$1,748,456.

Section 23(1)(c)

We accept that Silvia CHAN is not a particularly wealthy woman. In imposing a penalty upon her we take into account the other financial orders we have imposed against her. The penalty imposed is one we are satisfied she can pay without undue hardship. Our starting point of penalty was \$1,000,000 but allowing for a 25% discount we make the following order:

Order: Silvia CHAN Yuk is to pay a penalty of \$750,000 to the Hong Kong Government of the Special Administrative Region.

Section 27

We accept no part of the jurisdictional argument costs should be attributed to Silvia CHAN. Her costs are calculated by reference to the costs of the substantive hearing. Those costs are \$7,258,614 which as we have said incorporates a 10% reduction to reflect the delay in this case. Taking into account the time taken up before the Tribunal in dealing with evidential matters concerning her and the proportion of the Tribunal's time and expenses attributable to her we think her fair share of the costs is also 10%.

Order: Silvia CHAN Yuk is to pay the sum of \$725,861 to the Hong Kong Government of the Special Administrative Region as her share of the expenses of and incidental to the inquiry.

Ernest CHOY Ming Yan

Similarly to LAM Hon Nam, Ernest CHOY was a high-ranking executive in Vanda at the material times (he was a general manager) and had a hitherto unblemished business record. He urged upon us in mitigation the recent loss of his job which he asserted was due to these proceedings and the finding of the Tribunal that he was an insider dealer. He is concerned that he will have difficulty in finding employment in the future. He said that the physical and mental stress of these proceedings, contributed to by the delay, had been very difficult for him. He expressed remorse about the incident and reminded the Tribunal that the

relevant information he held had concerned the lesser aspect of the Vanda Hutchison arrangement, i.e. the joint venture.

As to that latter matter we do not regard that as mitigation. The joint venture side of the agreement was still relevant information and known to be so by Ernest CHOY. We do not think because it differed in content from the convertible bond aspect of the agreement that Mr. CHOY's use of that information was less serious than otherwise. We do however take into account the other matters he has placed before us.

We accept, on the basis we have already referred to (i.e. averaging of price, a three-day re-rating period and the lesser of "first in first out" and "last in first out"), the profit calculations of Stella FUNG. We accept in this regard as we have mentioned in Chapter 7 that 300,000 Vanda shares purchased by Becky CHAN were purchased for her sister and do not enter into the profit calculations regarding Becky CHAN and Ernest CHOY. We accept also that the 50,000 Vanda shares purchased by Becky CHAN on the 14th February 2000 may well have been purchased before Ernest CHOY possessed and passed on any relevant information and that purchase also does not enter into the profit we attribute to them.

Having taken those matters into account the joint profit made by Ernest CHOY and Becky CHAN was \$1,709,093. They, as we have found in Chapter 7, were acting together in their insider dealing and we are satisfied that the profit should be apportioned equally between them.

Ernest CHOY therefore made a profit of \$854,546.

We turn to the orders we make.

Section 23(1)(a)

Bearing in mind the mitigation advanced on behalf of Ernest CHOY and his prior reputation as a businessman we think that, as with LAM Hon Nam, a limited disqualification order is sufficient so that Ernest CHOY may continue to be employed within the computer industry and have a

management role even in listed companies. He is the breadwinner of his family and to do otherwise we think would be too harsh.

Order: Ernest CHOY Ming Yan is disqualified from being a director of a listed company for a period of 2 years.

Section 23(1)(b)

Ernest CHOY's profit was \$854,546 we reduce that by 25% to reflect the period of delay which results in a sum of \$640,909. We think it appropriate that he repay that sum.

Order: Ernest CHOY Ming Yan is ordered to pay to the Government of Hong Kong Special Administrative Region the amount of \$640,909.

Section 23(1)(c)

We accept that Ernest CHOY has suffered substantially already by the findings we have made against him, but in our view a penalty should be imposed upon him particularly to reflect the breach of his duty regarding Vanda. Our starting point of penalty was \$1,200,000 but allowing for a 25% discount we make the following order:

Order: Ernest CHOY Ming Yan is to pay a penalty of \$900,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

We take into account the submissions made by Ernest CHOY (adopted by Becky CHAN) that the evidence and issues relating to each were similar. But we do not regard that as justifying treating them as a single entity for the purpose of costs as was urged upon us. In our view we assess their costs as we did the other implicated parties by again simply looking at the relative time taken by evidence, submissions and the considerations of the Tribunal in respect of each of them, bearing in mind that evidence common to them naturally meant a sharing of the costs in that regard. We attribute to each of them a share of 8% of the Tribunal's expenses.

Order: Ernest CHOY Ming Yan is to pay the sum of \$580,689 to the Government of the Hong Kong Special Administrative Region as his share of the expenses of and incidental to the inquiry.

Becky CHAN Lai King

Becky CHAN, like her husband Ernest CHOY, urged upon us the psychological anxiety and stress these proceedings have had upon her. She points out that her husband's recent loss of his job has added to her difficulties in that regard. She said that she did not realise her share trading "breached the insider dealing rule" and now feels deeply sorry about her actions.

We find that her profit, calculated on the same basis as that of her husband Ernest CHOY was \$854,546.

Section 23(1)(a)

Although Becky CHAN has been a housewife since 1988 she is a person who has commercial qualifications and who may well return to employment. For that reason we think an order under the provisions of section 23(1)(a) is desirable. The order will be limited in its effect. We accept that Becky CHAN, like her husband, apart from this incident of insider dealing is a respectable and worthwhile member of the community.

Order: Becky CHAN Lai King is disqualified from being a director of or a manager in a listed company for a period of 1 year.

Our considerations in extending the disqualification order to a management role are the same we have set out concerning Silvia CHAN.

Section 23(1)(b)

Becky CHAN's profit was, as we say, equal to that of Ernest CHOY, i.e. \$854,546. We reduce that on the same basis for the purposes of this order to \$640,909. We think it appropriate she repay all that sum.

Order: Becky CHAN Lai King is ordered to pay to the Government of the Hong Kong Special Administrative Region the amount of \$640,909.

Section 23(1)(c)

We accept that these proceedings have caused considerable stress to Becky CHAN, not the least of those matters being the loss of her husband's employment. Nevertheless, though she was not in a position of trust as was her husband she was an active participant in the trading of Vanda shares on the basis of the information provided by her husband, and marshalled their liquid assets so as to maximize her purchases of Vanda shares. She was the one who actually traded in the shares. But we think on balance she should pay a lesser penalty. Our starting point of penalty is \$1,000,000 but we reduce that by 25% because of the factor of delay and make the following order:

Order: Becky CHAN Lai King is to pay a penalty of \$750,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

We are of the view, adopting the reasoning we have set out in respect of Ernest CHOY, that Becky CHAN should pay a share of the expenses of the inquiry equal to that of her husband, i.e. 8% of the expenses.

Order: Becky CHAN Lai King is to pay the sum of \$580,689 to the Government of the Hong Kong Special Administrative Region as her share of the expenses of and incidental to the inquiry.

Sammy TSE Kwok Fai

We have given our reasons in Chapter 12 for finding that Sammy TSE procured the purchase by Debbie NG of Vanda shares whilst he was a connected person in possession of relevant information in breach of section 9(1)(a) of the Ordinance as well as having been in breach of section 9(1)(c) of the Ordinance by disclosing relevant information to Debbie NG, Christie WO and Charles CHONG. We are satisfied he also disclosed relevant information to Dennis LI.

He was central to the dissemination of the relevant information to those individuals. However, we accept that apart from the \$80,000 which Mr. HO on his behalf conceded he had received as part of the profits from the proceeds of sale of Vanda shares from accounts controlled by Debbie NG provided to Dennis LI (totalling \$1.48 million) he received no other profits. It will be recalled that apart from that \$80,000 the only other sum paid to Sammy TSE from the proceeds of sale of Vanda shares was the repayment of his loan of \$500,000 which was repaid by Debbie NG through Dennis LI. We accept Mr. HO's submission that there is insufficient evidence showing that the \$600,000 paid by Dennis LI to Christie WO came back to the benefit of Sammy TSE. Nor was there any evidence that he shared in any of the considerable profits made by Charles CHONG and CHONG Bun Bun.

We proceed on the basis that the phrase "gained ... by that person" in section 23(1)(b) means profits actually gained by the insider dealer. Accordingly we find that the only profit gained by Sammy TSE was \$80,000.

That finding seems also to us to accord with our assessment of Sammy TSE. In our view he was possibly motivated by a desire to impress his acquaintances and friends rather than by any wish to personally enrich himself.

Mitigation on his behalf by Mr. HO concerned his present bankrupt state (which we understand will expire in February 2008) and, after the loss of his job with Hutchison, his presently reduced circumstances whereby he earns \$10,000 per month.

Section 23(1)(a)

Sammy TSE's breach of his position of trust was considerable. He disclosed relevant information not just to a single person but to a group of people. That breach of trust was in the context of him being one of the persons primarily responsible for the negotiation of the agreement between Vanda and Hutchison. We note also that there was an element of "central planning" in the manner in which his friends and associates traded in Vanda shares on the basis of the information he provided. Debbie NG and Christie WO traded through other peoples' accounts and therefore under their names. So did Chris WONG though we accept this was not directly at Sammy TSE's behest.

In short, therefore Sammy TSE's breach of trust was significant and trading on the basis of information provided by him was done in a well-disguised and in our view planned manner. We think Sammy TSE was at least partly responsible for that planning.

We think a greater period of disqualification should be applied to Sammy TSE than to the other implicated parties simply because his breach of trust was the greater. Nevertheless we accept he is now a bankrupt and we do not wish to cut him off from potential areas of employment. We recognise also that these events occurred nearly seven years ago. Again, we impose a limited disqualification order.

Order: Sammy TSE Kwok Fai is disqualified from being a director of or a manager in a listed company for a period of 3 years.

Section 23(1)(b)

We attribute the profit of only \$80,000 to Sammy TSE. Nevertheless he is in our view entitled to the same 25% discount as other insider dealers on account of the delay in these proceedings so far as payment of that profit is concerned.

Order: Sammy TSE Kwok Fai is ordered to pay to the Government of the Hong Kong Special Administrative Region the sum of \$60,000.

Section 23(1)(c)

We appreciate that Sammy TSE is now a bankrupt, and that in his present circumstances he is unable to pay any fine. We appreciate that there are difficulties in proving debts such as this, owed to the Government, in Bankruptcy.

Nevertheless, the insider dealing transactions Sammy TSE entered into were of such a magnitude, even in the absence of any great profit being made by him, that a deterrent penalty must in our view be imposed. Our starting point of penalty was \$2,000,000. Allowing for a 25% discount we make the following order:

Order: Sammy TSE Kwok Fai is to pay a penalty of \$1,500,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

Again, even bearing in mind Sammy TSE's bankrupt status we nevertheless do not see why he should not be ordered to pay his share of the costs of these proceedings. It would not be fair to other implicated parties or to the Hong Kong community, for them to shoulder Sammy TSE's share of these costs. We assess that share on the same basis as with the other insider dealers and consider that 13% of the Tribunal's expenses should be attributed to him.

Order: Sammy TSE Kwok Fai is to pay the sum of \$943,619 to the Government of the Hong Kong Special Administrative Region as his share of the expenses of and incidental to the inquiry.

Dennis LI Yat Tung

As we have set out in Chapter 12 we found Dennis LI to be an informed middleman in handing on money from Sammy TSE to Debbie

NG for the purpose of investment in Vanda shares. He was rewarded well for doing so, receiving \$300,000 of the profits of Debbie NG's Vanda share dealing. Although he received \$1,480,000 from Debbie NG out of the proceeds of sale of Vanda shares she had purchased with relevant information we do not count the \$580,000 (\$500,000 and \$80,000 in separate payments) he returned to Sammy TSE or the \$600,000 he paid on to Christie WO as forming part of the profits gained by him. We are not satisfied he at any time had the beneficial use or control of those monies. It appears more likely to us that he was simply distributing those monies to others. Accordingly, the profit he made was \$300,000 only. Dennis LI was a close friend of Sammy TSE and was in possession of relevant information when he participated in this insider dealing transaction. In our view his participation was motivated by a mixture of anticipated financial reward and his friendship with Sammy TSE. As we have said in that earlier chapter we have suspicions that Dennis LI's participation as a go-between for Sammy TSE extended also to Charles CHONG, but there was insufficient evidence of that for us to be satisfied in that regard and we do not take that possibility into account in arriving at the following orders:

Section 23(1)(a)

Dennis LI assisted Sammy TSE to transfer \$500,000 to Debbie NG knowing that she would trade on relevant information in Vanda shares and for the purpose of her doing so. He knew he would receive a share of the profits from that dealing.

We accept that he has moved on in the past seven years and is now involved in a new business. We have no wish to impose an order which would disqualify him from operating that business. Nevertheless, in our view, a limited disqualification order is appropriate. His involvement in this dealing was disguised and calculated. We have no doubt that he was aware that by using accounts Debbie NG controlled both his and Sammy TSE's identities would be protected.

Order: Dennis LI Yat Tung is disqualified from being a director of or a manager in a listed company for a period of two years.

Section 23(1)(b)

Dennis LI, as we say, received a profit of \$300,000. We see no reason why he should not be ordered to pay that profit (less the 25% discount we have allowed all insider dealers who gained a profit).

Order: Dennis LI Yat Tung is ordered to pay to the Government of the Hong Kong Special Administrative Region the amount of \$225,000.

Section 23(1)(c)

Dennis LI's role was central to Debbie NG's considerable insider dealing. It may well be that he was not the individual who primarily briefed Debbie NG on the relevant information. We are satisfied Sammy TSE did that. But we are satisfied that Dennis LI had received that information and was aware Debbie NG also had the information. As we have said he was the middleman between her and Sammy TSE. We have no doubt that his role was to distance Sammy TSE from the dealings of Debbie NG so that the \$500,000 provided by Sammy TSE and deposited into the accounts Debbie NG controlled could not be directly traced to Sammy TSE. This was a cynical and relatively sophisticated exercise. Our starting point of penalty was \$1,000,000. Allowing for a 25% discount we make the following order:

Order: Dennis LI Yat Tung is to pay a penalty of \$750,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

We accept Dennis LI played a lesser role in these events than Sammy TSE. But the evidence concerning him in this inquiry was wide ranging. In addition to his role concerning Debbie NG receiving \$500,000 from Sammy TSE we had to consider also his potential involvement with Charles CHONG and Christie WO. That took considerable time.

At the end of the day we assess his share of the expenses of the inquiry to be equal to that of Debbie NG and to be 10%.

Order: Dennis LI Yat Tung is to pay the sum of \$725,861 to the Government of the Hong Kong Special Administrative Region as his share of the expenses of and incidental to the inquiry.

Debbie NG Kit Ying

Debbie NG played an important role in providing the use of the accounts in her mother's name to Sammy TSE and Dennis LI so far as the investment of the \$500,000 provided by Sammy TSE was concerned. She additionally used those accounts for her own purposes in purchasing Vanda shares on the basis of the relevant information provided to her by Sammy TSE. Additionally, she used the account at South Capital in Chris WONG's name for those purposes and finally she provided the relevant information to Chris WONG but not so as to breach the provisions of section 9(1)(e) of the Ordinance. Her profits from her insider dealing totalled \$763,060. We do not include in her profits the \$1,480,000 she returned to Dennis LI as we are not satisfied he had the beneficial use or control of that sum so that it was "profits gained by her".

Section 23(1)(a)

Debbie NG, though she involved herself as a 17-year-old girl in a cynical scheme of insider dealing whereby her mother's accounts we are satisfied were used to distance the trading in Vanda shares from the source of the relevant information, did not in the course of her insider dealing abuse any corporate position or responsibility for the simple reason she had none.

Nevertheless she was perfectly aware not only that she was in receipt of relevant information from Sammy TSE who was a high-ranking director within the Hutchison group but that she was assisting him in disguising his involvement in the purchase of Vanda shares on the basis of the relevant information provided by him. Given her overall role and even allowing for her youth at the time of these events now some seven years in the past we think it appropriate nevertheless to make the following order:

Order: Debbie NG Kit Ying is disqualified from being a director of or a manager in a listed company for a period of two years.

Section 23(1)(b)

We accept in respect of Debbie NG that a calculation of her profits on a “first in first out” basis is beneficial to her and is the appropriate basis for calculation. That is because in her case no Vanda shares were retained by her after the announcement, all were sold on the 22nd February 2000, and accordingly there is no need to apply a notional re-rated price to her sales.

Further a “first in first out” calculation can accurately be made and has been made by those instructing Mr. Bernard MAK (who appeared for her only on mitigation she having been unrepresented as we have said during the substantive inquiry). We accept the figures provided in that regard as resulting in a profit attributable to her of \$763,060. That sum does not include the \$500,000 paid by and subsequently returned to Sammy TSE or the balance of \$980,000 (of the total of \$1,480,000) paid to Dennis LI.

We allow her the benefit of a 25% reduction in all financial orders we make against her including her payment of profit and so order as follows:

Order: Debbie NG Kit Ying is ordered to pay to the Government of the Hong Kong Special Administrative Region the amount of \$572,295.

Section 23(1)(c)

We take into account the role she played in providing accounts for the purpose of enabling Sammy TSE and Dennis LI to profit as well as herself from trading in Vanda shares. We do not take into account that she divulged relevant information to Chris WONG for her own purposes because as we have said we do not regard that as having amounted to an insider dealing. But we do take into account (as we have with other insider dealers) the profits made by others in transactions where she was

involved as an insider dealer. Having said that we certainly take into account her age at the time of her insider dealing.

We have considered carefully her claim that she presently has no money but we reject that claim. She gave as her address a well-known luxury block of residential units in Kowloon. She presented before us as an exceptionally well-dressed young lady. While she is not the sort of person who we would expect to provide documentary evidence of her income, and she provided no affidavit of means to assist us, we are satisfied from her past financial activities as well as the above that she is able to pay the somewhat lenient penalty we impose. Our starting point of penalty is \$800,000. Allowing a 25% discount we impose the following order:

Order: Debbie NG Kit Ying is to pay a penalty of \$600,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

Like Dennis LI we accept she played a lesser part in these proceedings than Sammy TSE. The evidence concerning her was as wide ranging as that concerning Dennis LI. We are satisfied a fair share of the costs of these proceedings would be 10%.

Order: Debbie NG Kit Ying is to pay the sum of \$725,861 to the Government of the Hong Kong Special Administrative Region as her share of the expenses of and incidental to the inquiry.

Chris WONG Cheung Hung

Chris WONG's insider dealing was relatively straight-forward, given some degree of sophistication by his using accounts in the name of BVI registered companies one of which (involved in the purchase of the majority of his Vanda shares) was an offshore account.

It was accepted on his behalf that the profit he realised from his insider trading totalled \$1,594,006.

Section 23(1)(a)

Chris WONG was not an executive director of either of the companies whose trading accounts he used. His corporate responsibilities lay with his family company Orchid Computer Ltd. of which he was an executive director. We accept he did not abuse his position regarding that company in any way in the course of his insider trading. Nevertheless we think it appropriate that he be placed under a limited disqualification pursuant to the provisions of the above section, and we make the following order:

Order: Chris WONG Cheung Hung is disqualified from being a director of or a manager in a listed company for a period of two years.

Section 23(1)(b)

As we say there is no issue concerning Chris WONG's profit being \$1,594,006. We allow the deduction of 25% for delay and, as with the other implicated parties see no reason not to order he pay the whole of his profits less that discount to the Government of the Hong Kong Special Administrative Region.

Order: Chris WONG Cheung Hung is ordered to pay the amount of \$1,195,504 to the Government of the Hong Kong Special Administrative Region.

Section 23(1)(c)

We accept that Chris WONG's role in the insider dealing transactions he conducted was relatively unsophisticated compared to Dennis LI or even Debbie NG. Nevertheless he made a significant profit and we take that into account also. At the end of the day he should in our view pay a penalty in line with those we have ordered be paid by other tippees such as Becky CHAN and Silvia CHAN. Before any discount we think a penalty of \$1,000,000 to be appropriate. Allowing for that 25% discount we make the following order:

Order: Chris WONG Cheung Hung is ordered to pay a penalty of \$750,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

We accept the submission made on behalf of Chris WONG that his evidential involvement in the inquiry was less than other implicated parties. He, through his counsel Mr. LI, cross-examined few witnesses and disputed little of the evidence called during the proceedings and called no evidence of his own (other than he himself being called as a witness before the Tribunal). We assess his share of the costs at 7% and make the following order:

Order: Chris WONG Cheung Hung is to pay the sum of \$508,102 to the Government of the Hong Kong Special Administrative Region as his share of the expenses of and incidental to the inquiry.

Christie WO Man Shan

Christie WO, as with Debbie NG and Chris WONG, used an account not in her own name to trade in Vanda shares. Additionally the flow of funds from the profits of her trading was circulated through the bank account of a company she played at least a managerial role in.

We accept however that some part of the profits generated by the purchase of Vanda shares in Olivia CHUNG's trading account went to Olivia CHUNG and that it is likely that some part of the remainder was beneficially gained by Alan MAO. In our view at the very least Christie WO and Alan MAO were equal partners in the share of the profits attributable to them. We therefore assess Christie WO's profit as being half of the balance of profit earned by the Olivia CHUNG trading account (after removing Olivia CHUNG's share of that profit).

The profit balance was \$1,256,414. Less Alan MAO's half share that leaves a share of \$628,207 attributable to Christie WO.

We should add that we calculate the profit balance at \$1,256,414 by taking the total profit made in the account by the purchase and sale of Vanda shares of \$1,418,841 and deducting the profit of \$162,427 we calculate as attributable to Olivia CHUNG from her trading in 40,000 Vanda shares.

Section 23(1)(a)

It is true that Christie WO did use the bank accounts of active companies she was involved with to hold proceeds of the sale of the Vanda shares. It is true also she used the trading account of an employee of that company to purchase the shares.

We take into account that which has been advanced on her behalf to the effect that she now owns a large group of successful companies and may in a few years wish to list her holding company (or at least one of the companies). Given that seven years has passed since she offended the provisions of the Ordinance and that she was a tippee we think on balance she also should be disqualified but for no longer period than 2 years.

Order: Christie WO Man Shan is disqualified from being a director of or a manager in a listed company for a period of two years.

Section 23(1)(b)

As we say we calculate Christie WO's profit as \$628,207. We see no reason why she should not pay that sum to the Government of the Hong Kong Special Administrative Region less the 25% discount we have decided should be given to reflect the period of time which has elapsed since these events.

Order: Christie WO Man Shan is ordered to pay the Government of the Hong Kong Special Administrative Region the amount of \$471,155.

Section 23(1)(c)

We take into account the role that Christie WO played in her insider dealing. She was a “tippee” who used an employee’s bank account to distance herself (and in our view Sammy TSE) from her insider dealing.

We take into account however that she made at the end of the day for herself a relatively small profit it is appropriate to consider her penalty from the point of view of the totality of profit shared between herself and Alan MAO. We think the latter factor together with her role as a tippee would have led us to adopt a penalty, before discount, of \$1,000,000 and make the following order:

Order: Christie WO Man Shan is ordered to pay a penalty of \$750,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

Christie WO presented us with a relatively complex case, although she cross-examined relatively few witnesses through counsel. Her case necessitated the calling of Alan MAO as a witness and the consideration of the relationships amongst various bank accounts. We assess her share of the expenses of the inquiry as being equal to those of Ernest CHOY and Becky CHAN i.e. falling between Chris WONG and Debbie NG. We think a share of 8% of the expenses to be appropriate.

Order: Christie WO Man Shan is to pay the sum of \$580,689 to the Government of the Hong Kong Special Administrative Region as her share of the expenses of and incidental to the inquiry.

Charles CHONG Wai Lee

Charles CHONG was a tippee. He received relevant information from Sammy TSE. Additionally he passed that information on to his sister CHONG Bun Bun and counselled and procured her to deal in Vanda shares. As we have said Charles CHONG and his sister acted together in this regard. We accept Stella FUNG’s calculation of profit in respect

of the three accounts relevant to Charles CHONG and his sister. While we are satisfied they acted together we are also satisfied that they had the beneficial ownership of the accounts held in their own names. There was no flow of funds which suggested a “pooling” and division of profits from the three accounts.

Accordingly, the profits made by Charles CHONG from the two accounts in his name at Christfund and Pacific Challenge totalled \$1,697,418.

Section 23(1)(a)

Charles CHONG is an executive director with his family garment making company American Phil and was so at the relevant time. However we accept that in the course of his insider dealing he did not breach any duty or responsibility towards that company. We accept also that he was primarily a “tippee” though he also counselled and procured his sister’s insider dealings.

Nevertheless his insider dealing was significant and conducted with considerable vigour by him, given the pattern of telephone contacts between him and his sister. In our view, given his role as a high-ranking director in a large company operating in Hong Kong a period of limited disqualification is appropriate.

Order: Charles CHONG Wai Lee is disqualified from being a director of or a manager in a listed company for a period of two years and six months.

Section 23(1)(b)

We accept the amount of profit made by Charles CHONG was \$1,697,418. We see no reason (subject to the discount of 25%) he should not pay that to the Government of the Hong Kong Special Administrative Region.

Order: Charles CHONG Wai Lee is ordered to pay the Government of the Hong Kong Special Administrative Region the amount of \$1,273,063.

Section 23(1)(c)

Charles CHONG while a “tippee” nevertheless passed the relevant information on to his sister knowing she would utilise it to trade in Vanda shares. They made considerable profits from their insider dealing and we think an appropriate starting point of penalty to be \$1,100,000. Allowing him the 25% discount we have allowed all the insider dealers for our financial orders under section 23(1) we reduce that as follows:

Order: Charles CHONG Wai Lee is ordered to pay a penalty of \$825,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

As we stated at the beginning of this chapter Charles CHONG and his sister are to share the costs of the Tribunal occasioned by the interlocutory “constitutional” argument (or stay application) referred to in Chapter 2 of the report made on their behalf by counsel then representing them.

Those costs are assessed (less 10%) as being \$905,432 and may be apportioned as follows.

In our view these costs were jointly and equally occasioned by Charles CHONG and his sister and we apportion \$452,716 to Charles CHONG. Additionally we assess Charles CHONG and his sister to have contributed to the costs of the substantive hearing, on an individual basis, at a level equivalent to that of Ernest CHOY, Becky CHAN and Christie WO. That is at a level of 8% for each of them. That is a figure of \$580,689. Accordingly, we order that Charles CHONG pay the following total costs:

Order: Charles CHONG Wai Lee is to pay the sum of \$1,033,405 to the Government of the Hong Kong Special Administrative Region as his share of the expenses of and incidental to the inquiry.

Becky CHONG Bun Bun

CHONG Bun Bun was purely a “tippee”. However the trading in Vanda shares she conducted on behalf of her brother and herself was extensive.

We assess her profits on the same basis as that of her brother. Her Pacific Challenge account we accept profited from her Vanda trading in an amount of \$3,610,081.

Section 23(1)(a)

CHONG Bun Bun is a businesswoman in her own right and we think it proper to make the following order against her:

Order: Becky CHONG Bun Bun is disqualified from being a director of or a manager in a listed company for a period of one year.

Section 23(1)(b)

We see no reason not to order CHONG Bun Bun to pay the whole of her profits to the Government of Hong Kong (less the 25% discount we allow for delay in this case).

Order: Becky CHONG Bun Bun is ordered to pay the Government of the Hong Kong Special Administrative Region the amount of \$2,707,560.

Section 23(1)(c)

CHONG Bun Bun, like her brother, was a tippee. However her role was the smaller as she did not pass the information she received from him on to anyone else. Her culpability was on a level with that of Silvia CHAN

and Becky CHAN. We think (before discount) a penalty of \$1,000,000 would have been appropriate. We therefore make the following order:

Order: Becky CHONG Bun Bun is ordered to pay a penalty of \$750,000 to the Government of the Hong Kong Special Administrative Region.

Section 27

CHONG Bun Bun's share of costs is equal to that of her brother and is calculated in the same way. We therefore order as follows:

Order: Becky CHONG Bun Bun is to pay the sum of \$1,033,405 to the Government of the Hong Kong Special Administrative Region as her share of the expenses of and incidental to the inquiry.

Time to pay

Given the period of time which has elapsed since these events and the protracted period of these proceedings we order that so far as the financial orders made by us pursuant to section 23(1)(b) and (c) and the costs orders made pursuant to section 27 of the Ordinance are concerned each insider dealer is allowed six months to pay those orders subject to any further extension of time allowed them by the Government of the Special Administrative Region, except that Sammy TSE is allowed 12 months to pay subject to any such extension of time.

Summary of Profits made by insider dealers

LAM Hon Nam	: None
Silvia CHAN Yuk	: \$2,331,275
Ernest CHOY Ming Yan	: \$854,546
Becky CHAN Lai King	: \$854,546
Sammy TSE Kwok Fai	: \$80,000
Dennis LI Yat Tung	: \$300,000
Debbie NG Kit Ying	: \$763,060
Chris WONG Cheung Hung	: \$1,594,006
Christie WO Man Shan	: \$628,207

Charles CHONG Wai Lee : \$1,697,418
 CHONG Bun Bun : \$3,610,081.

Summary of Orders under sections 23(1) and 27 of the Ordinance

Implicated parties	S. 23(1)(a) Disqualification	S. 23(1)(b) Payment	S. 23(1)(c) Penalty	S. 27 Expenses
LAM Hon Nam	Being a director of a listed company for a period of 2 years.	No order	\$1,200,000	\$725,861
Silvia CHAN Yuk	Being a director of or a manager in a listed company for a period of 1 year.	\$1,748,456	\$750,000	\$725,861
Ernest CHOY Ming Yan	Being a director of a listed company for a period of 2 years.	\$640,909	\$900,000	\$580,689
Becky CHAN Lai King	Being a director of or a manager in a listed company for a period of 1 year.	\$640,909	\$750,000	\$580,689
Sammy TSE Kwok Fai	Being a director of or a manager in a listed company for a period of 3 years.	\$60,000	\$1,500,000	\$943,619
Dennis LI Yat Tung	Being a director of or a manager in a listed company for a period of 2 years.	\$225,000	\$750,000	\$725,861

Implicated parties	S. 23(1)(a) Disqualification	S. 23(1)(b) Payment	S. 23(1)(c) Penalty	S. 27 Expenses
Debbie NG Kit Ying	Being a director of or a manager in a listed company for a period of 2 years.	\$572,295	\$600,000	\$725,861
Chris WONG Cheung Hung	Being a director of or a manager in a listed company for a period of 2 years.	\$1,195,504	\$750,000	\$508,102
Christie WO Man Shan	Being a director of or a manager in a listed company for a period of 2 years.	\$471,155	\$750,000	\$580,689
Charles CHONG Wai Lee	Being a director of or a manager in a listed company for a period of 2 years and 6 months.	\$1,273,063	\$825,000	\$1,033,405
CHONG Bun Bun	Being a director of or a manager in a listed company for a period of 1 year.	\$2,707,560	\$750,000	\$1,033,405

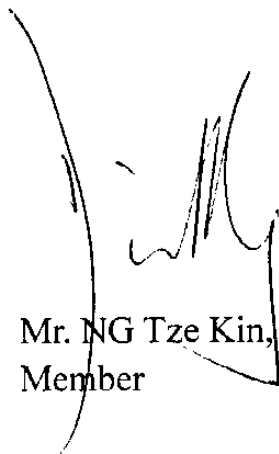


The Honourable Mr. Justice McMahon
Chairman

1



Professor LAM Kin
Member



Mr. NG Tze Kin, David
Member

Dated: ^{7th}26 March 2007