



Market Misconduct Tribunal
In the Matter of
China Investment Fund Company Limited (Stock Code: 612) and
Smartac Group China Holdings Limited (Stock Code: 395)

Ruling as to the consolidation of the two actions

Introduction

1. This is an application by the Securities and Futures Commission ('the SFC') to consolidate two sets of market misconduct proceedings, the first being instituted by it in mid-August 2023 and the second being instituted approximately a year later, in early September 2024.

2. In the first set of proceedings, the SFC specified that 21 persons may have engaged in market misconduct. In the second - later - set of proceedings, the SFC specified that 31 persons may have engaged in such misconduct. A substantial number of the Specified Persons have been cited in both sets of proceedings. In this regard, I have been informed by counsel for the SFC that 16 of the persons specified in the first set of proceedings have also been specified in the second set of proceedings.

3. The persons cited in both sets of proceedings include Mr Sui Guangyi, effectively the central figure alleged by the SFC to be culpable in respect of the two schemes of market misconduct.

4. I am aware, of course, that not all of the Specified Persons in the two sets of proceedings have, as yet, been successfully served with copies of the necessary procedural documents. But that number remains uncertain. A clearer

understanding of the nexus between the two sets of proceedings for the purpose of this application for consolidation lies, I believe, in considering the number of Specified Persons not necessarily already served but cited in each set of proceedings.

5. On the papers as issued, some 75% of the persons specified in the first set of proceedings have also been specified in the second. While, in respect of the second set of proceedings, in which a greater number of persons have been specified - 31 in number - on the papers as issued, the percentage is just over 50%, there being just 15 persons who do not overlap.

6. As to the conduct of the application for consolidation, as I was at the time of the hearing outside of Hong Kong, it was heard - by consent - by way of electronic (that is, 'Zoom') proceedings.

Legal principles

7. That this Tribunal has an unfettered discretion to consolidate proceedings is not disputed. In this regard, s.40 of Schedule 9 to the Securities and Futures Ordinance, Cap 571, permits the Tribunal to consolidate proceedings or order that they be heard together. There are no provisions fettering that discretion.

8. Of course, in determining questions of consolidation, understanding the nature of the proceedings to be brought together is fundamental. It is to be remembered that the proceedings under consideration in this ruling are not criminal proceedings and are not marked by the formality of such proceedings. The proceedings are civil - disciplinary - in nature.

9. Expressed broadly, both sets of proceedings allege what was

fundamentally a continuing course of stock market manipulation, the First Specified Person in both sets of proceedings being at the centre of that continuing manipulation and working with a substantial number of other Specified Persons throughout, recruiting some for the first course of misconduct only and some for the second course only.

10. Concerning consolidation, clearly the basic question to be determined is whether there is sufficient commonality binding the two schemes of market manipulation. But ‘commonality’ covers a broad range of circumstances and in the present case must be considered in the context of the following question, namely, is it appropriate for this Tribunal, considering the links between the two schemes, to make the order for consolidation and thereby achieve an efficient and just resolution of the matters falling for determination?

11. Accordingly, each application for consolidation falls to be determined according to its own facts. There is no rule that, just because the parties are identical or some common issue of fact or law falls for resolution, that consolidation must be ordered. All relevant factors must be considered, the interests of all parties - including the SFC - being taken into account.

12. This Tribunal must adopt a practical and common sense approach, a principal objective being the avoidance of unnecessary delay and cost in achieving proceedings that, in so far as possible, are fair to all parties. In short, the Tribunal should seek to meet the justice of the matter.

The two sets of proceedings

13. What then of the two matters that the SFC seeks to consolidate in these disciplinary proceedings? By way of a broad overview, the following may be said.

A. Proceedings in respect of China Investment Fund Company Limited (Stock Code 612)

14. In terms of a notice dated 16 August 2023, the SFC instructed this Tribunal to determine whether market misconduct had taken place in relation to the securities of a company listed on the Stock Exchange, the company being the China Investment Fund Company Limited ('CIFC'); earlier known as China Ding Yi Feng Holdings.

15. At all relevant times, CIFC was an investment-holding company, listed as such under Chapter 21 of the Stock Exchange Listing Rules. Broadly, it can be said that the business of such companies is to invest in securities.

16. As mentioned earlier, the SFC notice instructing this Tribunal to conduct its enquiry listed 21 persons who may have engaged in market misconduct: the Specified Persons.

17. The first Specified Person was Sui Guangyi ('SP1') who - at the relevant time, that is, between 1 March 2018 and 14 September 2018, was the Chairman and non-executive director of CIFC. SP1 at that time held some 12% of the shares in CIFC and further held a deemed interest (by way of his control of intermediate companies) of some 16%. This made for an interest of some 28% of the issued share capital.

18. SP1, who effectively controlled a 'group of corporations', was also the Chairman of two other companies, their shortened names being: Shenzhen Qirisheng Enterprise Consulting and HK DYF Int'l Holding Group.

19. In addition to SP1, the SFC notice listed 20 other Specified Persons, the assertion being that each of these Specified Persons (who held trading

accounts), in one way or another, worked with SP1 and with one or more of the other Specified Persons to further a scheme of market manipulation.

20. It was the SFC case that, as a result of the nature of Chapter 21 companies, their share price should normally bear a strong correlation to their net asset value. However, over the relevant period of some six and a half months, the CIFIC share price had traded at excessively high premiums to the company's published net asset value. It was the SFC case that this excessively high premium was attained by way of the scheme of market manipulation managed by SP1 in collusion with the other 20 Specified Persons.

21. More specifically, it was the SFC case that this scheme of manipulation was contrary to the following provisions of the Securities and Futures Ordinance, Cap 571 ('the Ordinance') governing false trading, price rigging and stock market manipulation. The actions of all the Specified Persons, therefore, had resulted in contraventions of –

- a. Section 274(1)(a) and 274(1)(b) of the Ordinance, false trading;
- b. Section 275(1)(b) of the Ordinance, price rigging, and
- c. Section 278(1) of the Ordinance, stock market manipulation.

B. Proceedings in respect of Smartac Group China Holdings Limited (Stock Code 395)

22. Approximately a year after the SFC had instructed this Tribunal in respect of the CIFIC proceedings, that is, in early September 2024, it gave further instructions to this Tribunal to conduct market misconduct enquiries, this new set of proceedings bearing a number of close similarities to the CIFIC proceedings.

23. This time the instructions were to determine whether market misconduct had taken place in relation to the securities of a further company listed on the Hong Kong Exchange, this company being called the Smartac Group China Holdings Limited ('Smartac'). Smartac was an investment holding company.

24. Proceedings in respect of the CIFIC (detailed above) had focused on a period of time from March to September 2018. Proceedings in respect of the Smartac matter were focused on a period of time that followed directly, that is, from October 2018 to March 2019.

25. During that relevant time, that is, from October 2018 to March 2019, Smartac had effectively been controlled by SP1.

26. For most of 2018, the records show that Smartac had severe cash flow problems. In the result, in August 2018, it reported a net loss for the first six months of the year, this being contrasted with a net profit of some RMB26 million for the same period in 2017.

27. However, during the relevant period, that is, from October 2018 through until March of the following year, there was, as the SFC expressed it, a remarkable increase in the share value. Initially the share price increased by some 650% and, although there were significant drops thereafter, by the end of the relevant period the share price was still 220% higher than the share price at the beginning of the relevant period.

28. This increase was occasioned during the relevant period by active and substantial trading in Smartac shares, the trading being conducted through securities accounts held in the names of the 30 Persons specified by the SFC.

Hearing dates in respect of the CIFIC proceedings.

29. The CIFIC proceedings have already been set down for hearing - for a period of three weeks - in May of this year, commencing on Monday, 12 May 2025. Those dates¹ are not in dispute. The SFC seeks to consolidate proceedings by extending the May dates by a further five days which would extend the hearing into the first day or so of June.

30. I am of the view that four days extra would suffice.

31. As to time for preparation, in my view, there can be no real complaint as to lack of time on the part of the Specified Persons in the CIFIC matter. In respect of the Smartac matter, the result of this ruling was made known to the parties (by email) on 24 January 2025, giving them close to three and a half months to prepare for the hearing. That is not an overly long time but, bearing in mind, of course, that the parties (who have been served) will have full knowledge of the case against them since late 2024, I consider it sufficient.

The Specified Parties represented at the hearing for consolidation

32. Three persons specified in *both* sets of proceedings were legally represented at the hearing –

33. SP1 in both sets of proceedings (Sui Guangyi) was legally represented at the hearing, at least in respect of the first set of proceedings. It is the SFC position that he has been served with relevant papers in respect of both sets of proceedings although, whether that would be subject to later challenge in respect of the Smartac matter remained unclear. There was no stated objection as such to the application for consolidation; SP1 is after all the central Specified

¹ The dates set for the CIFIC hearing are scheduled to run for three weeks, commencing on Monday 12 May 2025 with the last day for hearing being Friday, 26 May 2025.

Person in both sets of proceedings. The difficulty, it appears, lies in the fact that SP1 was arrested by the Mainland authorities in or about early November 2024 and at this time remains *incommunicado*. If and when he will be given access to his legal counsel remains uncertain. On this basis, his counsel was concerned that he may not be free in time to give adequate instructions and, whether there is a consolidation or not, that, concerning SP1, there may therefore have to be an adjournment.

34. Of course, all interlocutory matters, that is, matters leading to trial, are inherently uncertain. I do not see that at this juncture, with SP1's circumstances being so uncertain, I can do anything more than take notice of that fact. The issue at hand, of course, is the issue of consolidation, and although SP1's counsel did not submit one way or the other, I am satisfied that I can take note of the fact that, in principle, as he is involved in both sets of proceedings, consolidation must - on balance - be to his advantage.

35. SP2 in both sets of proceedings (Chen Daijun) was legally represented and no objection to consolidation was taken.

36. SP20 in the CIFC proceedings and SP29 in the Smartac proceedings (Zhao Weifen) was also legally represented but raised no objection to consolidation.

37. In respect of persons cited only in respect of the CIFC proceedings, one Specified Person was represented, that was, Madam He Jiao: SP4 in that set of proceedings.

38. On behalf of SP4, it was argued that the case against her was in any event misconceived and that in all the circumstances it would be unfair to burden her with the inevitable extra costs of extended litigation.

39. I accept, of course, that not all parties will appear to benefit from consolidation and that is a matter that has caused me concern. But, in the final analysis, I am looking to the overall benefit (or lack of it) in ordering consolidation and with the potential of such a large number of specified persons being involved, I accept that, in the present case, consolidation may not be to the advantage of all.

Submissions in support of consolidation.

40. Counsel for the SFC emphasised a number of matters which, it was argued, spoke strongly to consolidation as being the most efficient and just way forward. They are as follows -

A. Both sets of proceedings are focused on schemes of continuing market manipulation.

41. It was emphasised that both sets of proceedings are focused not only on what were continuing and linked courses of market manipulation but, in the result, on contraventions of the same provisions of the Ordinance; namely, sections 274, 275 and/or 278 of the Ordinance.

42. In light of this, of course, expert evidence in both proceedings would be directly related to the same provisions of the Ordinance and arguments as to the factual issues would be grounded in those same provisions.

43. In this regard, counsel for the SFC pointed to the fact that the SFC's two intended expert witnesses in the CIFIC proceedings are the same expert witnesses to be called in the Smartac proceedings. In addition, a number of witnesses of fact are scheduled to testify in respect of both sets of proceedings.

B. There is a substantial overlap of the Specified Persons.

44. As earlier detailed, there is a significant overlap of Specified Persons, that is, persons whose conduct falls for examination in both sets of proceedings. Clearly, for those persons, provided the consolidated proceedings were not overly drawn out, a single set of proceedings should be advantageous.

C. The relevant periods are directly sequential.

45. In addition to the factual issues in both sets of proceedings being founded on the same provisions of the Ordinance, the relevant periods of time over which it was alleged that market manipulation had taken place were essentially immediately sequential, running over a period of approximately a year from March 2018 to March 2019: the first relevant period being from March 2018 to September 2018 and the second period being from October 2018 to March 2019.

D. The nexus of Smartac shares.

46. CIFIC, the focus of the first set of proceedings, is said to have directly benefitted from the alleged market manipulation in respect of Smartac shares that is said to have taken place in the second set of proceedings. During the relevant periods, CIFIC held some 197 million Smartac shares; the value of these shares constituting some 21.68% of its gross assets.

Conclusion

47. At the outset I should emphasise that, on the SFC papers, there is clearly an evidential basis for consolidation. In light of this, having taken all submissions into account, I am satisfied that consolidation will serve the

interests of the clear majority of parties and will meet the justice of the matter.
The order is therefore made.

48. It is to be noted that the Tribunal's directions, attached to this ruling, are a little different from those prepared on behalf of the SFC. There is of course liberty to apply.

49. The issue of costs is reserved.




Mr. Michael Hartmann, GBS
(Chairman of Market Misconduct Tribunal)

Dated 28 January 2025



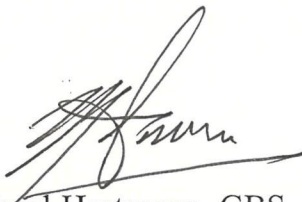
Market Misconduct Tribunal
In the Matter of
China Investment Fund Company Limited (Stock Code: 612) and
Smartac Group China Holdings Limited (Stock Code: 395)

Directions

1. The proceedings against China Investment International Financial Services Limited (the 4th Specified Person) be stayed until further order of the Tribunal.
2. The present market misconduct proceedings, and the market misconduct proceedings in the matter of the listed securities of China Investment Fund Company Limited (Stock Code: 612) (the “**CIFC Proceedings**”), shall be consolidated into one set of proceedings (the “**Consolidated Proceedings**”).
3. The directions handed down by the Chairman Mr. Michael Hartmann, GBS dated 6 August 2024 in the CIFC Proceedings, shall apply *mutatis mutandis* to the Consolidated Proceedings, as set out in paragraph 4 and onwards below.
4. The Consolidated Proceedings be set down for substantive hearing at 10:00 a.m. on 12th, 14th to 16th, 19th to 23rd and 26th May 2025, with 4 further hearing days set down on 27th to 30th May 2025.
5. The Specified Persons do file and serve any witness statement(s) and expert report(s) for the Consolidated Proceedings by 4 p.m. on 14 March 2025 (Friday).
6. The Commission do file and serve any witness statement(s) and expert report(s) in reply for the Consolidated Proceedings 40 days before the substantive hearing, i.e. by 2 April 2025.
7. No further witness statement for the Consolidated Proceedings be filed without leave of the Chairman of the Tribunal.

8. The parties do make any application (if any) for directions on witness(es) giving evidence by way of video-link for the Consolidated Proceedings at least 8 weeks before the substantive hearing, i.e. by 17 March 2025.
9. The Commission do file and serve its (i) opening submissions, list of authorities, chronology of events and dramatis personae; and (ii) electronic copies of the hearing bundles, for the Consolidated Proceedings at least 4 weeks before the substantive hearing, i.e. by 14 April 2025.
10. The Specified Persons do file and serve their opening submissions and list of authorities for the Consolidated Proceedings at least 2 weeks before the substantive hearing, i.e. by 28 April 2025.
11. LiveNotes be arranged by the Commission for each day of the substantive hearing of the Consolidated Proceedings, costs of which be shared equally amongst the Commission and the Specified Persons who attend the substantive hearing.
12. Interpreter of Cantonese / Punti and Mandarin be arranged by the Tribunal (for any witnesses who give evidence in Cantonese / Punti and Mandarin) at the substantive hearing of the Consolidated Proceedings.
13. Liberty to apply for further directions.
14. Costs be in the cause.




Mr. Michael Hartmann, GBS
(Chairman of Market Misconduct Tribunal)

Dated 28 January 2025