

Significant uplift for dissenting shareholders in the Sina Corporation merger appraisal litigation

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The Grand Court of the Cayman Islands' (the **Court**) fair value ruling in Re Sina Corporation (FSD 128 of 2021 (RPJ)) was released today. Collas Crill represents a group of dissenting shareholders in the proceeding (**Dissenters**).

In a decisive ruling, the Court accepted the Dissenters' argument that no reliance could be placed on market-based valuation methodologies, assigning zero weight to both the merger price and Sina Corporation's (Sina) adjusted market trading price (**AMTP**). Fair value was determined solely using a sum-of-the-parts (**SOTP**) methodology, under which Sina's assets were valued individually and aggregated to determine fair value.

Fair value was set at US\$105.26 per share – an increase from the US\$43.30 merger price and the largest uplift in Cayman Islands merger appraisal history.

A unique feature of this case was Sina's attempt to apply a 42.5% 'holding company discount' (HoldCo Discount) on the basis that it reflected the gap between Sina's trading price and the value of its assets. This was the first time a **HoldCo Discount** was considered in a Cayman section 238 appraisal and the largest issue in the case by value. The Court ultimately rejected the discount, holding that any gap could reflect issues such as control, transparency and corporate mismanagement, and that a company cannot rely on its own shortcomings to reduce value payable to minority shareholders.

Background

Sina, a PRC online media company listed on the NASDAQ, was taken private in March 2021 (**Merger**) via a management buyout led by chairman, CEO and controlling shareholder Mr Charles Chao, who controlled approximately 61% of voting power. Shareholders were offered US\$43.30 per share (**Merger Price**).

Sina's major assets included a controlling interest in Weibo Corporation (**Weibo**) (China's equivalent to X/Twitter, also listed on the NASDAQ), a substantial stake in TuSimple Holdings Inc. (**TuSimple**) (an early stage autonomous trucking company) and various long-term investments (**LTIs**).

On 6 July 2020 (the **Announcement Date**), Mr Chao offered to buy all of Sina's shares not already owned or controlled by him, for US\$41.00 per share, with a view to delisting the Company from the NASDAQ and taking it private. Mr Chao made it clear that he was not prepared for Sina to do a deal with anyone else. As this deal was a management buyout, and therefore a conflict transaction, a special committee was formed to negotiate on behalf of Sina's unaffiliated shareholders.

Following negotiations, the special committee negotiated a modest price increase to US\$43.30 per share. As Mr Chao controlled approximately 61% of the shareholder voting power, the approval of the Merger by the requisite two-thirds of the

Company's shareholders was essentially a foregone conclusion, and the Merger was approved at an extraordinary general meeting on 23 December 2020 (**EGM**).

A large number of minority shareholders, who together held over US\$700 million of Sina's shares (based on the Merger Price) dissented from the Merger (**Dissenters**).

The valuation dispute

Sina's valuation expert, Mr Sid Jaishankar, opined that fair value was US\$40.15 per share using a blended approach: 45% AMTP (US\$37.20), 10% Merger Price (US\$43.30), and 45% SOTP (US\$42.41).

The Dissenters' expert, Professor Bilge Yilmaz, valued the shares at US\$137.42 based solely on SOTP, rejecting i) the Merger Price for lack of a robust process and ii) the AMTP due to market inefficiency and material non-public information (**MNPI**).

The Court's decision

The Court, agreeing with the Dissenters, declined to place any reliance on the Merger Price or the AMTP methodology, and determined that a SOTP valuation was the best methodology for assessing fair value.

Merger Price

The Court held that the Merger Price did not provide a reliable indicator of fair value because the transaction process lacked meaningful price discovery. There was no pre signing market check or 'go shop' period, which Sina contended would have been futile given Mr Chao's refusal to sell his stake and his ability, through approximately 61% voting control, to block alternative transactions. No alternative transactions were pursued for regulatory reasons advanced by Sina, and no third party bidder emerged.

The Court found that the special committee's negotiating flexibility was materially constrained, resulting in the absence of a robust sale mechanism. The decision also noted the absence of a 'majority of the minority' condition, which had been relinquished for a modest price increase. Taken together, these features meant the process was not capable of discovering an arm's length price, and the Merger Price was therefore given no weight.

AMTP

The Court also agreed with the Dissenters' position and determined that Sina's AMTP was not a reliable proxy for fair value as at the Announcement Date.

On market efficiency, the Court preferred Professor Yilmaz's event study approach, which aligned with conventional methodology and tested both the direction and magnitude of price reactions to news. By contrast, Mr Jaishankar's study did

not adequately demonstrate how an efficient market would be expected to react to specified disclosures and relied in part on trading volume inferences unsupported by the literature.

The Court further found that MNPI existed at the Announcement Date, including information about the size and value of Sina's TuSimple stake and Weibo's positive Q2 2020 results, which were only disclosed later on the day the Merger Agreement was executed. In addition, COVID 19 continued to affect Sina's trading price over the relevant period. As reliable adjustments could not be made to strip out MNPI and pandemic effects, a credible 'walk forward' to the Valuation Date was not feasible. As a result, the AMTP was given no weight.

SOTP and HoldCo Discount

The Court therefore relied entirely on a SOTP valuation to determine fair value, requiring an assessment of Sina's various assets, subject to any applicable discounts. Several aspects of the Court's SOTP valuation are of particular interest:

- **HoldCo Discount:** The Court rejected Sina's proposed 42.5% holding company discount. It found no principled basis in financial or economic theory for a blanket discount of this kind and noted the risk that such a discount could be used to reverse engineer a target price. The Court accepted that any historical trading discount could reflect multiple factors, including market inefficiency, mispricing, and concerns arising from the presence of a controlling shareholder. Importantly, the Court held that value gaps attributable to governance shortcomings, opacity, or potential mismanagement cannot be deployed to reduce the consideration payable to minority shareholders. The suggestion that disallowing the discount would confer a 'windfall' on Dissenters was rejected.
- **Minority discount:** The Court rejected the proposition that, absent a HoldCo Discount, an equivalent minority discount of 42.5% should be applied. It described that approach as unprincipled and instead accepted a 2% minority discount.
- **Weibo:** While it was common ground between the experts that the market for Weibo's shares was efficient prior to the Announcement Date, the Court determined that it could not rely on Weibo's trading price after the Announcement Date because it had been affected by the announcement of the Merger and was no longer trading solely on fundamentals as at the Valuation Date.
- **TuSimple valuation:** The experts took different approaches to valuing Sina's 29.8% shareholding in TuSimple. Mr Jaishankar valued TuSimple based on the most recent (Series E) financing round which valued TuSimple in excess of US\$2 billion. Professor Yilmaz also relied on the Series E valuation but gave significant weighting to the high likelihood of TuSimple's imminent IPO, which was known or knowable as at the Valuation Date **[1]**, to which he assigned a 90% probability and an IPO valuation in excess of US\$6 billion. In response to Professor Yilmaz's approach, Mr Jaishankar relied on an IPO report indicating a 50% likelihood of completion and an IPO value of US\$3 billion. The Court declined to place any weight on the IPO report relied upon by Mr Jaishankar. The Court ultimately determined that there was an 80% likelihood of the IPO completing and accepted Professor Yilmaz's approach to valuing TuSimple in both an IPO and non-IPO scenario, weighted 80:20 to determine the value of Sina's interest in TuSimple as at the Valuation Date.

- **Discount for lack of marketability (DLOM) for LTIs:** The Court declined to adopt Sina's broad application of substantial DLOMs to LTIs. It accepted that only a subset of LTIs warranted a DLOM and that an appropriate discount in those instances was 6%.

Conclusion

This latest Cayman Islands fair value determination is a further example of the Cayman Islands courts applying heightened scrutiny to management-led buyouts and stepping in to protect the interests of minority shareholders where it is clear that inadequate safeguards have been put in place during the merger process and where other market-based indicators of value are found to be unreliable.

In rejecting the HoldCo Discount, the Court made clear that where the gap between trading price and net asset value reflects value destruction arising from factors such as poor corporate governance, opaque corporate structure or market concerns about potential mismanagement, the Court will not permit companies to benefit from the gap. It is clear, therefore, that the Court views governance and control concerns as reasons to protect minority shareholders, not to penalise them.

As has become a common feature in these types of cases, Sina sought to place importance on the fact that some of the Dissenters had been involved in previous fair value appraisals. These attempts were again emphatically rejected by the Court. The Court reaffirmed that the motivations and characteristics of dissenting shareholders are irrelevant to the determination of fair value and that short-term shareholders 'are no less deserving of protection'.

Collas Crill is the leading offshore law firm for representing minority shareholders in merger appraisal disputes. Please get in touch with a member of the team highlighted to the right of this page you would like to discuss any aspect of this decision or the merger appraisal landscape in the Cayman Islands, or other offshore jurisdictions, more generally.

[1] TuSimple had confidentially filed its draft Form S-1 relating to its proposed IPO with the SEC on the same day as the EGM / Valuation Date and publicly filed its Form S-1 on 23 March 2021, very shortly after the completion of the Merger. The IPO was launched and completed on 15 April 2021 at a valuation of nearly US\$8.5 billion.

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