

Edgar Filing: China Netcom Group CORP (Hong Kong) LTD - Form 6-K

CNC
CHINA NETCOM GROUP CORPORATION (HONG KONG) LIMITED
(incorporated in Hong Kong with limited liability under the Companies Ordinance)
(Stock Code: 906)

ANNOUNCEMENT STRATEGIC ALLIANCE AGREEMENT WITH TELEFONICA INTERNACIONAL S.A.

The Company has entered into a Strategic Alliance Agreement with Telefonica Internacional S.A. on 14 November 2005, pursuant to which the Company and Telefonica agreed to use reasonable efforts to negotiate in good faith a strategic relationship for co-operation in a broad range of areas and agreed, subject to compliance with applicable laws, to enter into separate definitive agreements within six months (or such longer period as may be mutually agreed by the parties) in certain areas of co-operation to supplement the terms of the Strategic Alliance Agreement.

Except for those provisions which are expressly stated to come into effect after the signing of the Strategic Alliance Agreement, the Strategic Alliance Agreement shall only become effective upon the completion of acquisition of the Additional Portion by Telefonica, which may be purchased principally from one or more existing non-public minority domestic PRC beneficial shareholders of the Company, the obtaining of all necessary PRC governmental, regulatory or similar consents and board approvals required by each of the Company and Telefonica to perform its obligations under the Strategic Alliance Agreement, and none of the undertakings, representations and warranties thereto being found to be untrue or incorrect in any material respect.

The Strategic Alliance Agreement may or may not become effective. Investors are advised to exercise caution in dealing in the securities of the Company.

Strategic Alliance Agreement

The Company is pleased to announce that the Company has entered into a SAA with Telefonica on 14 November 2005. Pursuant to the terms of the SAA, the Company and Telefonica shall build on the memorandum of understanding signed between them on 21 July 2005 to negotiate in good faith a strategic relationship for co-operation in a broad range of areas.

Areas of strategic co-operation

Subject to Telefonica becoming the beneficial owner of not less than the Threshold Percentage and compliance with applicable laws, the Company and Telefonica will, for a period of 6 months from the date of this Agreement, use reasonable efforts to negotiate in good faith a strategic relationship for cooperation in the following areas.

The possible areas of co-operation between the parties include: (a) international business area (including voice and IP Peering and IP MPLS); (b) the existing overseas business of the Company and its parent company subject to due diligence, agreeing on valuation and obtaining necessary approvals; (c) subject to due diligence, agreeing on valuation and obtaining necessary approvals, the provision of telecommunication businesses and services in the southern provinces in the PRC; (d) call center business (including worldwide call center services for Beijing Olympics 2008 and joint call center for outsourcing services); (e) management exchange involving senior managers from each of Telefonica and the Company for every six months during the term of the SAA; (f) co-operation and sharing in the areas of business development,

Edgar Filing: China Netcom Group CORP (Hong Kong) LTD - Form 6-K

network operations, customer acquisition and management, technology implementation, sales, marketing and branding in the PRC; (g) co-operation in the purchasing of technology, end-user equipment, infrastructure, distribution or usage rights and other components required to provide both fixed-line, broadband and wireless communications services; (h) technological assistance and knowledge transfer provided by Telefonica in the areas of value-added services, business solutions for small-and-medium-sized enterprises, IPTV solutions, mobile content services and other related areas; (i) the provision of mobile service, including, but not limited to, infrastructure, distribution or usage rights and other components required within the PRC when any mobile service licence has been issued in favour of the Company or its parent company; and (j) other forms of co-operation as may be mutually agreed by Telefonica and the Company (other than the areas set out in (a) to (i) above).

Sole Partner Status

Telefonica shall ensure that the Company will be selected as its sole partner within the PRC for any form of co-operation in the telecommunications business. Without prejudice to the foregoing obligation of Telefonica, in the event that the Company wishes to engage an international telecommunications operator in the areas referred to in:

- o (a) to (i) above, but the Company decides not to co-operate with Telefonica, the Company and Telefonica shall enter into good faith discussions to explore the possibility of Telefonica co-operating with another third party in the relevant telecommunications business within the PRC in such an event; and
- o (j) above, but the Company decides not to cooperate with Telefonica, the Company shall inform Telefonica of its intention to engage or cooperate with another international telecommunications operator but is not bound to enter into any good faith discussions with Telefonica.

Telefonica also acknowledges and agrees that the provisions of the SAA shall not affect, directly or indirectly, any existing agreements, arrangements or memoranda of understandings currently under discussion between the Company, its parent company any of their respective Affiliates with any third parties, including but not limited to PCCW Limited.

Exclusivity

The Company has undertaken to Telefonica that, for a period of 6 months from the date of the SAA, it will not and its Affiliates will not enter into any advanced discussion, negotiation or enter into any agreement or arrangement with any person other than Telefonica relating to possible cooperation in the existing overseas business of the Company and its parent company, and the possible provision of telecommunication businesses and services in the southern provinces in the PRC.

Board representation

Telefonica shall be entitled to nominate a representative to the Board when it holds 5% of the equity interest of the Company, and being the beneficial owner of not less than the Threshold Percentage, Telefonica is entitled to nominate a second director to the Board. The number of representatives that Telefonica is entitled to appoint to the Board shall be increased if its shareholding interest in the Company increases. In addition, subject to Board approval, directors nominated by Telefonica shall be entitled to sit on the strategic planning committee or other committees of the Company. The nomination and the appointment of the directors nominated by Telefonica shall be in compliance with the articles of association of the Company, and shall be subject to compliance with qualification requirements under the Listing Rules and

Edgar Filing: China Netcom Group CORP (Hong Kong) LTD - Form 6-K

applicable laws.

Lock-up of Shares

Subject to certain exceptions, Telefonica has agreed that it shall not, and shall procure that none of its Affiliates shall, transfer any portion or all of the Additional Portion to any third party during the Lock-up Period. After expiry of the Lock-up Period, Telefonica has agreed that it shall not, and shall procure that none of its Affiliates shall (a) transfer more than 25% of its Shares or such number of Shares comprising more than 2.5% of the total issued and outstanding Shares, whichever is the greater, in any calendar quarter; or (b) effect any transfer which might result in a disorderly market in respect of the price or trading volume of the Shares.

Non-Competition

At any time during the term of the SAA, or for as long as the Company continues to be the sole partner of Telefonica pursuant thereto, whichever is the longer period, Telefonica shall not, and shall procure that its Affiliates shall not, without the prior written consent of the Company (except through the strategic alliance with the Company) either alone or jointly with any person, through or on behalf of itself or any person, directly or indirectly in the PRC carry on or be interested in any business in competition with the business of the Company.

Anti-dilution

Subject to Telefonica being the beneficial owner of not less than 9.9% of the entire issued share capital of the Company outstanding from time to time, compliance with applicable laws and certain exceptions described in the SAA, in the event that the Board resolves to issue any new Shares, or any securities convertible into or exchangeable into Shares or any warrants or other rights to subscribe for Shares ("Securities Issuance"), the Company shall treat Telefonica equally with the other public shareholders of the Company and will give Telefonica an equal opportunity as other public shareholders to subscribe for such number of new Shares or any securities convertible into or exchangeable into Shares or any warrants or other rights to subscribe for Shares on the same terms and conditions as such Securities Issuance are issued to the other public shareholders so as to maintain Telefonica's proportionate interest in the Company immediately prior to the Securities Issuance. Such Securities Issuance will be made in compliance with the requirements under the Listing Rules.

Effectiveness of the SAA

Except for those provisions which are expressly stated to come into effect after the signing of the SAA, the SAA will only become effective upon the satisfaction of the following conditions precedent:

- (a) the completion of acquisition of the Additional Portion by Telefonica;
- (b) all necessary PRC governmental, regulatory or similar consents and board approvals required by each party to perform its obligations under the SAA having been obtained;
- (c) none of the undertakings, representations and warranties being found to be, or no event occurring or matter arising which renders any of the undertakings, representations and warranties, untrue or incorrect in any material respect.

Termination of SAA

Edgar Filing: China Netcom Group CORP (Hong Kong) LTD - Form 6-K

Unless agreed otherwise between the parties, the SAA will terminate with immediate effect upon the occurrence of (a) a change of Control of the Company; or (b) if the Company or its parent company acquires or is acquired by or merged with a Chinese telecommunications operator or a restructuring of the PRC telecommunications industry occurs; or (c) if any international telecommunications operator (other than Telefonica) makes an equity investment in 5 per cent. or more of the outstanding issued Shares or if any representative of any international telecommunications operator (other than Telefonica) is appointed as a director of the Company without the prior written agreement between the Company and Telefonica; or (d) if Telefonica's or the Company's rights under the SAA do not prevail following a material breach thereof by the other party. The SAA may be terminated by the non-defaulting party by giving not less than 60 days' notice to the other party.

Public float

Telefonica agrees that without the prior written consent of the Company, it will not subscribe or purchase, whether directly or indirectly through any associate (as defined in the Listing Rules), any additional Shares or any securities convertible or exchangeable into Shares or any rights to subscribe for Shares of the Company which would result in the Company not being able to maintain its minimum public float.

Information on the Company

The Company is incorporated in, and its shares are listed on the Stock Exchange and its ADSs are listed on the New York Stock Exchange. The Company is a leading fixed-line telecommunications operator in China and a leading international data communications operator in the Asia-Pacific region.

Information on Telefonica

Telefonica is an independent third party not connected with the Directors, chief executive or substantial shareholders of the Company or any of its subsidiaries or any of their respective associates. Telefonica is one of the largest telecommunications operators in the world with a strong track record of developing and operating across 18 countries in Europe, Latin America and Africa. Telefonica currently manages approximately 140 million customers in its operations worldwide.

General

The Company will negotiate in good faith with Telefonica as to the form and the terms of co-operation to be set out in separate definitive agreements and such agreements may or may not ultimately be entered into. No further indication can be given by the Company of the timing and details of the co-operation at this stage. Further announcements will be made by the Company when the terms of the separate definitive agreements are finalised and a director nominated by Telefonica is appointed to the Board.

The SAA may or may not become effective. In the meantime, investors are advised to exercise caution in dealing in the securities of the Company.

Definitions

In this announcement, the following capitalised terms have the meanings as ascribed to them:

"Additional Portion"	any additional Shares to be acquired by Telefonica after the date of this Agreement, which may be purchased principally from one
----------------------	--

Edgar Filing: China Netcom Group CORP (Hong Kong) LTD - Form 6-K

"Affiliate"	or more existing non-public minority domestic PRC beneficial shareholders of the Company, representing the difference between the existing stake of 5 per cent. of the outstanding issued Shares held by Telefonica and 9.9% of the entire issued share capital of the Company outstanding from time to time with respect to any person, any third party that directly or indirectly through one or more intermediaries, Controls or is Controlled by such person or is under direct or indirect common Control with such person
"Board"	the board of directors of the Company
"Company"	China Netcom Group Corporation (Hong Kong) Limited, a company incorporated in Hong Kong with limited liability and whose shares are listed on the Stock Exchange and whose ADSs are listed on the New York Stock Exchange
"Control"	directly or indirectly entitled to exercise or control the exercise of 30 per cent of the voting power of a company at general meetings, or the possession of the power to control the composition of a majority of the board of directors of a company and "Controlled" and "Controls" shall be construed accordingly
"IP MPLS"	Internet Protocol Multi Protocol Label Switching
"IP Peering"	the act of one national Internet backbone provider accepting and passing traffic from another national provider
"Listing Rules"	The Rules Governing the Listing of Securities on the Stock Exchange
"Lock-up Period"	the period from the date which Telefonica first acquired any Additional Portion after the date of this Agreement and until the third anniversary thereof
"PRC"	the People's Republic of China, but for the purposes of the SAA excludes Taiwan and the special administrative regions of Hong Kong and Macau
"SAA"	the Strategic Alliance Agreement dated 14 November, 2005 entered into between the Company and Telefonica
"Shares"	ordinary shares of US dollar 0.04 each in the share capital of the Company
"Stock Exchange"	The Stock Exchange of Hong Kong Limited
"Telefonica"	Telefonica Internacional S.A., a company incorporated in Spain
"Threshold Percentage"	means a minimum threshold ownership of 9.9 per cent. in the entire issued share capital of the Company outstanding from time to time

For and on behalf of
CHINA NETCOM GROUP CORPORATION (HONG KONG) LIMITED
Zhang Chunjiang
Chairman

Hong Kong, 14 November 2005

On the date of this announcement, the Board comprises Mr. Zhang Chunjiang, Dr. Tian Suning, Mr. Zhang Xiaotie and Mr. Miao Jianhua as executive Directors, Mr. Jiang Weiping, Ms. Li Liming, Mr. Jose Maria Alvarez-Pallete, Mr. Yan

Edgar Filing: China Netcom Group CORP (Hong Kong) LTD - Form 6-K

Yixun as non-executive Directors, and Mr. John Lawson Thornton, Mr. Victor Cha Mou Zing, Dr. Qian Yingyi, Mr. Hou Ziqiang and Mr. Timpson Chung Shui Ming as independent non-executive Directors.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the under-signed, thereunto duly authorized.

CHINA NETCOM GROUP CORPORATION (HONG KONG) LIMITED

By /s/ Zhang Xiaotie

By /s/ Mok Kam Wan

Name: Zhang Xiaotie and Mok Kam Wan

Title: Joint Company Secretaries

Date: November 14, 2005