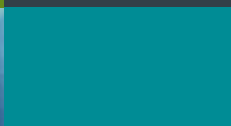




ashurst



UK Public M&A Review
Q1 2022



Overview

12 firm offers were announced in Q1 2022 (compared to 13 in Q1 2021), with a combined offer value of approximately £4 billion (representing a decrease from £10.09 billion in Q4 2021). Of those 12 offers, seven were solely for cash.

In the last quarter, Ashurst's UK public M&A mandates included advising:

- **Air Partner plc** on its £84.8m recommended offer from Wheels Up Experience Inc
- **J.P. Morgan** on the £272m recommended offer by Workspace Group for McKay Securities Plc
- **Rothschild & Co** on the £965m recommended cash and share offer by GXO Logistics, Inc. for Clipper Logistics plc.

2022 began with a reasonable degree of optimism as a result of post-Brexit and post-pandemic market confidence. This is evidenced by a number of the firm offers announced in Q1 2022 being in January. However, this optimism dissipated in subsequent weeks, notably following the ongoing Russian invasion of Ukraine, which has resulted in significant shockwaves being felt throughout the financial markets and a significantly heightened level of uncertainty for economic growth, particularly in Europe.

As a result, until late March only five firm offers had been announced in February and March of this year, and there was evidence of bidders adopting a 'wait-and-see' approach in relation to the various unannounced bid situations – or even walking away entirely, as was the case with the possible offer by Spectris for Oxford Instruments, with the Russian invasion of Ukraine explicitly cited by Spectris as a reason for not proceeding with its offer.

That said, activity picked up in the final days of March with three firm offers announced, two of which with a deal value of at least £500 million, as well as a possible competing proposal for McKay Securities Plc.

From a regulatory perspective, Q1 has seen some important developments. This includes the publication of public consultation paper 2022/1 ("PCP 2022/1") and a revision to Practice Statement No. 20.

12

ANNOUNCED BIDS

10

RECOMMENDED ON
ANNOUNCEMENT

8

SCHEMES OF
ARRANGEMENT

48.69%

AVERAGE OF BID PREMIA
(% UNWEIGHTED)

73.24%

AVERAGE OF BID PREMIA
(% WEIGHTED)

A summary of the key features of each announced offer is set out in a table in the Appendix.

News digest

The Panel publishes Amendments to Practice Statement No. 20

The proposed amendments to Practice Statement No. 20 were published by the Panel on 9 February 2022. The main amendment intends to clarify the application of the requirement to consult the Executive, under Rule 2.2 of the Code, where the share price of a potential offeree company moves 10% or more above the lowest share price since:

- i. the first active consideration of an offer by a potential offeror;
- ii. the receipt by the offeree company of an approach by a potential offeror in relation to a possible offer; or
- iii. the time at which a potential offeror is first sought.

The Amendment also seeks to clarify how the Executive normally interprets Note 1 on Rule 2.2 of the Code. In respect of Notes 1(b) and 1(c) on Rule 2.2, the Executive's policy is to treat a 10% share price movement as being relevant for determining the latest time by which it should first be notified by either a potential offeror or the offeree company, or by its financial adviser, of a possible offer. Accordingly, if the relevant party has already notified the Executive of the possible offer prior to the occurrence of a 10% share price movement, the Executive will not expect to be consulted again solely because of the 10% share price movement.

However, the Executive's expectations remain that it should be consulted each time the offeree company is the subject of rumour and speculation or there is a 5% share price movement in the course of a single day.

The Panel publishes Public Consultation Paper (PCP 2022/1)

The Panel published PCP 2022/1 on 7 February 2022, which proposes the removal of the restriction in Rule 4.2(b) of the Code which prevents an offeror purchasing shares in the offeree company through the anonymous order book.

On 18 March 2022, the consultation closed and the Panel intends to publish a Response Statement setting out the final amendments to the Code in Spring 2022 (at the same time as it publishes its response to the consultation PCP 2021/1. The Panel expects that the amendments will come into effect approximately one month after the publication of the Response Statement.

Closed: invitation for Comments on Public Consultation Paper 2021/1

The Public Consultation Paper 2021/1 ("PCP 2021/1"), which was published, on 2 December 2021 closed for comments on 18 February 2022. The Code Committee is now in the process of considering the responses to PCP 2021/1 and expects to publish a Response Statement containing the final amendments to the Code in Spring 2022.

Panel News

On 27 January 2022, the Panel appointed Chris Saul to succeed Philip Remnant as a Deputy Chair of the Panel, with effect from 1 May 2022. Chris will also continue to be the Chair of the Code Committee.

Contacts

| | | | | |
|----------------------------|-------------------------------|-----------|--------------------|---------------------------------------|
| Rob Aird | Partner | London | +44 20 7859 1726 | rob.aird@ashurst.com |
| Simon Bullock | Partner | London | +44 20 7859 3115 | simon.bullock@ashurst.com |
| Michael Burns | Partner | London | +44 20 7859 2089 | michael.burns@ashurst.com |
| David Carter | Partner | London | +44 20 7859 1012 | david.carter@ashurst.com |
| Will Chalk | Partner | London | +44 20 7859 3066 | will.chalk@ashurst.com |
| Nick Cheshire | Partner | London | +44 20 7859 1811 | nick.cheshire@ashurst.com |
| Karen Davies | Global Chair | London | +44 20 7859 3667 | karen.davies@ashurst.com |
| Braeden Donnelly | Partner | London | +44 20 7859 2691 | braeden.donnelly@ashurst.com |
| James Fletcher | Partner | London | +44 20 7859 3156 | james.fletcher@ashurst.com |
| Bruce Hanton | Partner | London | +44 20 7859 1738 | bruce.hanton@ashurst.com |
| Nicholas Holmes | Partner | London | +44 20 7859 2058 | nicholas.holmes@ashurst.com |
| Hiroyuki Iwamura | Partner | London | +44 20 7859 3244 | hiroyuki.iwamura@ashurst.com |
| Gaby Jones | Partner | London | +44 20 7859 3661 | gaby.jones@ashurst.com |
| Adam Levitt | Partner | London | +44 20 7859 1633 | adam.levitt@ashurst.com |
| Tom Mercer | Partner | London | +44 20 7859 2988 | tom.mercer@ashurst.com |
| David Page | Senior Consultant | London | +44 20 7859 1908 | david.page@ashurst.com |
| Jason Radford | Global Division Co-head | London | +44 20 7859 1145 | jason.radford@ashurst.com |
| Michael Robins | Partner | London | +44 20 7859 1473 | michael.robins@ashurst.com |
| Aaron Shute | Partner | London | +44 20 7859 2411 | aaron.shute@ashurst.com |
| Markjan van Schaardenburgh | Partner | London | +44 20 7859 3877 | markjan.vanschaardenburgh@ashurst.com |
| Harry Thimont | Partner | London | +44 20 7859 2408 | harry.thimont@ashurst.com |
| Tara Waters | Partner | London | +44 20 7859 2755 | tara.waters@ashurst.com |
| Nick Williamson | Partner, Head of Corporate UK | London | +44 20 7859 1894 | nick.williamson@ashurst.com |
| Jorge Vázquez | Global Division Co-head | Madrid | +34 91 364 9899 | jorge.vazquez@ashurst.com |
| María José Menéndez | Managing Partner | Madrid | +34 91 364 9867 | mariajose.menendez@ashurst.com |
| Reinhard Eyring | Partner, Head of Germany | Germany | +49 69 97 11 27 08 | reinhard.eyring@ashurst.com |
| Arnaud Wtterwulghe | Managing Partner, Brussels | Belgium | +32 2 626 1914 | arnaud.wtterwulghe@ashurst.com |
| Nick Terry | Partner | Australia | +61 3 9679 3483 | nick.terry@ashurst.com |



“Partners display ‘great commercial acumen’ and ‘very high commitment’.”

LEGAL 500

Announced* UK takeover bids

(1 January 2022 to 31 March 2022)

| Target (Market) | Bidder(s) | Bid value | Bid premium** | Recommended | Recommendation | Rule 9 offer | Cash | Shares (L/U/A) | Other consideration | Mix and match | Offer*** | Partial Offer | Scheme | Offer-related arrangements: □ | Formal sale process | Non-solicit/undertaking of bid in shareholder | Matching/Topping rights**** | Shareholder vote | Profit forecast/Q/FBS |
|---|---|-----------|---------------|-------------|----------------|--------------|------|----------------|---------------------|---------------|----------|---------------|--------|-------------------------------|---------------------|---|-----------------------------|------------------|-----------------------|
| InnovaDerma plc (Main Market) | Brand Achitekts Group plc | £13.6m | 70.4 | • | | | | •L | | | | | • | | | | • | | |
| Brewin Dolphin Holdings PLC (Main Market) | Royal Bank of Canada | £1.6bn | 62% | • | | | • | | | | | | • | •C | | | | | |
| John Menzies plc (Main Market) | Agility Public Warehouseing Company K.S.C.P | £571m | 81% | • | | | • | | | | | | • | •C | | | • | | |
| Tungsten Corporation plc (AIM) | Kofax Parent Limited | £53.7m | 44.8% | • | | | • | | | | | | • | | | | • | | |
| Stagecoach Group plc (Main Market) | DWS Group GmBH & Co. KGaA | £594.9m | 54.3% | • | | | • | | | | | | • | •C | | | | | |
| Workspace Group PLC (Main Market) | McKay Securities Plc | £272m | 36.2% | • | | | • | •L | | | | | • | •C | | | • | | |
| Clipper Logistics plc (Main Market) | GXO Logistics, Inc. | £965m | 49.1% | • | | | • | •L | • | | | | • | •C | | | | | • |
| Filta Group Holdings plc (AIM) | Franchise Brands plc | £49.8m | NP | • | | | | •A | | | • | | | | | | | •B | |
| Air Partner plc (Main Market) | Wheels Up Experience Inc. | £84.8m | 54.3% | • | | | • | | | | | | • | •C | | | • | | • |
| River and Mercantile Group PLC (Main Market) | AssetCo plc | £95.3m | NP | • | | | | •L | | | • | | • | •C | | | • | •B | • |
| Photo-Me International plc (Main Market) (Lapsed) | Mr. Serge Crasnianski | £284.5m | NP | | | • | • | | | | • | | | | | | | | • |
| CIP Merchant Capital Limited (AIM) | Corporation Financiere Europeenne S.A. | £30.3m | 7.8% | | | •A | • | | | | • | | | | | | | | |

Key

- * This table includes details of takeovers, set out in chronological order, in respect of which a firm intention to make an offer has been announced under Rule 2.7 of the Code during the period under review (including any offers which subsequently lapsed or were withdrawn). It excludes offers by existing majority shareholders for minority positions.
- ** Premium of the offer price over the target's share price immediately prior to the commencement of the relevant offer period
- *** Standard 90% (waivable) acceptance condition, unless otherwise stated
- **** In shareholders' irrevocables (unless indicated otherwise)
- Permitted agreements under Rule 21.2 of the Code
- A AIM traded shares
- C Co-operation agreement/bid conduct agreement
- F Break fee given under formal sale process or white knight dispensation
- L Listed/traded shares
- NP No premium given in offer documentation or nil premium
- R Reverse break fee
- S Standstill agreement
- U Untraded shares
- B Bidder shareholder approval
- T Target shareholder approval

1. The irrevocable undertakings will remain binding in the event of a higher competing offer and will cease to be binding: (i) if Brand Architekts announces, with the consent of the Panel, that it does not intend to proceed with the merger; (ii) if any competing offer for InnovaDerma becomes or is declared unconditional in all respects or otherwise becoming effective; (iii) on and from the earlier of (a) the Long Stop Date or (b) the time and date on which the merger is withdrawn, lapses or otherwise terminates in accordance with its terms (provided that the reason is not because Brand Architekts has elected to proceed by way of a takeover offer rather than by way of a scheme or vice versa).
2. The irrevocable undertakings will cease to be binding if: (i) Bidco announces, with the consent of the Takeover Panel and before the scheme document or offer document (as applicable) is published, that it does not intend to proceed with the acquisition and no new, revised or replacement scheme or takeover offer to implement the acquisition is announced in accordance with Rule 2.7 of the Code within 10 business days of such announcement; (ii) the scheme (or takeover offer, as applicable) lapses or is withdrawn in accordance with its terms and no new, revised or replacement scheme or takeover offer to implement the acquisition has been announced in accordance with Rule 2.7 of the Code within 10 business days of such lapse or withdrawal; (iii) a third party announces a firm intention to make an offer to acquire the entire issued and to be issued ordinary share capital of Menzies in accordance with Rule 2.7 of the Code on terms which represent an improvement of no less than 15% of the value of the consideration offered under the acquisition (competing offer) and Bidco does not increase the consideration offered under the acquisition to an amount which is greater than the value of consideration offered pursuant to the competing offer within ten business days of the date of the announcement of such competing offer.
3. The irrevocable undertakings will cease to be binding if (i) an announcement (including a press announcement) is not made in respect of the acquisition at 40 pence per share by the later of 11 January 2022, such later date as the Panel may agree as being the last date for Kofax to make a formal offer for Tunstgen under Rule 2.6 of the Takeover Code or such later time as may be agreed between Kofax and Tunstgen; (ii) Bidco announces publicly, with the consent of the Panel, that it does not intend to make or proceed with the acquisition and no new, revised or replacement offer or scheme is announced at the same time; (iii) Bidco informs Truell Associates in writing that it does not intend to make or proceed with the acquisition or to implement the acquisition by way of takeover offer or otherwise; (iv) the scheme lapses or is withdrawn in accordance with its terms and Bidco has publicly confirmed that it does not intend to proceed with the acquisition or to implement the acquisition by way of an offer or otherwise; (v) the scheme has not become effective by 30 August 2022, or if later, the Long Stop Date (or such other time and date as agreed between Bidco and Tunstgen, with the approval of the court and/or the Panel, if required (other than in circumstances where Bidco has, prior to such date, elected to exercise its right to proceed by way of an offer and announced the same in accordance with the requirements of paragraph 8 of Appendix 7 to the Takeover Code, and such offer has not lapsed or been withdrawn)); (vi) any third party announces, in accordance with the Takeover Code, a firm intention to make a general offer (whether made by way of an offer or a scheme of arrangement) for the entire issued share capital of Tunstgen not already owned by such third party at an offer price that is above 49.9 pence per Tunstgen share and Bidco has not announced a further offer at an offer price at least equal to the offer price of the competing offer within 28 days of the announcement of the competing offer; (vii) the date on which any competing offer for the entire issued and to be issued share capital of Tunstgen is declared wholly unconditional or, if proceeding by way of a scheme of arrangement, becomes effective.
4. In the event of a higher competing offer being announced which represents not less than 327 pence per McKay share, the irrevocable undertakings given by the McKay shareholders other than TR Property Investment Trust will not lapse unless Workspace fails to announce, within 15 business days of such higher competing offer being announced, a revised offer for McKay which is at least as favourable as the value of the competing offer.
5. Statements from Clipper set an expectation for EBIT for FY22 of £37.0 million and £46.2 million on an IAS 17 and IFRS 16 basis respectively (FY22 Clipper Profit Forecast) and EBIT for FY23 of £39.3 million and £47.6 million on an IAS 17 and IFRS 16 basis respectively (FY23 Clipper Profit Forecast), each of which constitutes a profit forecast for the purposes of Rule 28 of the Code. The Rule 2.7 announcement includes the Clipper directors confirmations as set out in Rule 28.1(c) of the Code that the FY22 Clipper Profit Forecast remains valid but that the FY23 Clipper Profit Forecast is no longer valid. It was noted that, at the time the FY23 Clipper Profit Forecast was made on 7 June 2021, it was 22 months away from the period ending 30 April 2023 to which the profit forecast related. Since then, the market and the circumstances in which Clipper operates in, including the COVID 19 pandemic, have changed.
6. In the event of a higher competing offer being announced of at least 140 pence per Air Partner share, the irrevocable undertaking will not lapse unless Bidco fails to announce, within three business days of such competing offer being announced, a revised offer for Air Partner which is at least as favourable as the value of the competing offer (a matching offer). Following the announcement of a matching offer, in the event that a competing offer is announced that is higher than the matching offer, the irrevocable undertaking will not lapse unless Bidco fails to announce, within three business days of the announcement of such higher competing offer, an increase to the consideration offered under the terms of the matching offer which exceeds the value of such higher competing offer.
7. The scheme document includes a profit estimate by Air Partner for the year ended 31 January 2022. This was reported on by PricewaterhouseCoopers LLP and Canaccord Genuity Limited in accordance with Rule 28.1(a) of the Takeover Code.
8. Semi-hard irrevocable undertakings given by non-director shareholders, save James Barham, will cease to be binding if in various circumstances, for example: (i) the acquisition has not become effective by 6.00 p.m. (London time) on the Long Stop Date (or such later time and/or date as agreed between AssetCo and RMG, with the approval of the court and/or the Panel if required); (ii) AssetCo announces, with the consent of the Panel, that it does not intend to proceed with the acquisition and no new, revised or replacement offer or scheme (to which this undertaking applies) is announced in accordance with Rule 2.7 of the Code at the same time; (iii) the takeover offer or scheme lapses or is withdrawn and no new, revised or replacement acquisition (to which the undertakings apply) is announced in accordance with Rule 2.7 of the Code at the same time; or (iv) save in respect of the irrevocable undertakings given by Punter Southall and Mike Faulkner, where a competing offer has released a firm offer announcement under Rule 2.7 of Code announcing a firm offer for the entire issued, and to be issued, ordinary share capital of RMG at a price which values each RMG Share at 126.06 pence or more as at the latest practicable date prior to such announcement.
9. Certain AssetCo directors have given irrevocable undertakings to vote in favour of the resolutions, representing approximately 15.86% of the issued share capital of AssetCo. AssetCo shareholders, being Harwood Capital LLP, Toscafund Asset Management LLP and Gordon Neilly, have given irrevocable undertakings to vote in favour of the resolutions, representing approximately 36.14% of the issued share capital of AssetCo.
10. A statement contained in the announcement by RMG on 26 October 2021 of the signing of the Solutions SPA included regarding the financial effects of the Solutions Sale on RMG constitutes a profit forecast for the purposes of Rule 28 of the Code. The profit forecast was first published before RMG received an approach with regard to a possible offer and therefore falls within Rule 28.1(c) of the Code.
11. Guidance provided in Photo-Me's trading update issued on 2 August 2021 and refined by Photo-Me in a trading update issued on 10 October 2021 relating to the financial year ended 31 October 2021 and repeated in the offer document constitutes a profit estimate. On the basis that the guidance was originally published before Mr. Serge Crasnianski requested formal clearance pursuant to Photo-Me's dealing code, to acquire 29,111,186 Photo-Me shares, the requirements of Rule 28.1(c)(i) of the Takeover Code apply in relation to the FY21 profit estimate.