



# Public M&A Review

Q2 2023

**Ashurst**

# Overview

## Interest rates at highest since 2008

In the UK, the Bank of England doubled down on its fight to bring inflation to target, raising its base rate by 0.5 percentage points in June to 5%, the highest level since 2008. The somewhat surprising decision by the BoE was in response to inflation remaining at a higher than expected 8.7% in May and in light of stronger resilience in the UK economy. Evidence in the currency markets suggests that investors remain focused on the potentially damaging effects that higher borrowing costs could have on the UK economy.

## Execution remains a challenge for leveraged M&A

Against this uncertain outlook, the second quarter of 2023 saw a slight uptick in UK public M&A activity with 15 firm offers announced during the quarter. However, there was a noticeable drop in high value (over £1 billion) offers when compared to either 2022 or 2021. EQT/ADIA's £4.5 billion offer for Dechra Pharmaceuticals was the highest value deal in the quarter and, excluding the Schneider Electric/AVEVA takeover, represents the highest value UK takeover in the last 12 months.

Whilst we are seeing PE return to the public markets, we are not seeing the same large scale leveraged M&A. Traditional banks remain constrained and so bidders are looking at smaller deals and alternative sources of financing. In light of this, it is noteworthy that a syndicate of banks (including Standard Chartered) provided funding for Brookfield's takeover of Network International and a syndicate of Canadian banks provided funding to Alpha Auto Group on the Lookers bid. Early syndication is becoming more common, despite restrictions under the Code.

Cash was the most common form of consideration offered to shareholders in this quarter, with the only share deal being LondonMetric Property's all-share offer for CT Property Trust. In the broader UK listed company space, we have recently seen listed companies offer consideration shares on other transactions, including by Rathbones on its proposed acquisition of Investec's UK wealth management business. It will be interesting to see whether the proposed loosening of the UK's prospectus rules will encourage more strategic M&A and share-for-share offers.

With ongoing market uncertainty and increased levels of shareholder engagement, we expect bidders to continue to offer innovative consideration structures to bridge valuation gaps such as deferred consideration (as with Prax's offer for Hurricane Energy) and unlisted or listed share alternatives (as with the consortia offer for Dignity).

Should you have any questions following this publication, please feel free to reach out to one of our team members.

**The Ashurst UK Public M&A Team**

15

ANNOUNCED BIDS

14

RECOMMENDED ON  
ANNOUNCEMENT

12

SCHEMES OF  
ARRANGEMENT

43.6%

AVERAGE OF BID PREMIA  
(% UNWEIGHTED)

49.3%

AVERAGE OF BID PREMIA  
(% WEIGHTED)

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

**Click here to jump to the Appendix.**

# Key contacts



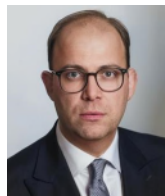
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*“Partners display ‘great commercial acumen’  
and ‘very high commitment.’”*

Legal 500 UK

## Ashurst's UK public M&A mandates in the last quarter

### Lazard & Co

£410 million takeover of Numis  
Corporation by Deutsche Bank

### Peel Hunt

£93.4 million takeover of The Fulham  
Shore by TORIDOLL

### Jefferies

£269 million takeover of Medica Group by  
IK Partners

### Morgan Stanley and Bank of America

£4.5 billion takeover of Dechra  
Pharmaceuticals by a consortium  
comprising EQT and ADIA

### Rothschild & Co

£48 million takeover of National Milk  
Records by Associated British Foods

£511.2 million takeover of Industrials  
REIT by Blackstone

£62.3 million takeover of Xpediator by a  
consortium comprising BaltCap, Cogels  
Investments and Nuoma IR Kapitalas

# News digest

## **Publication of revised Takeover Code**

On 22 May 2023, a revised version of the Code was published to take account of the implementation of changes which relate to the offer timetable in a competitive situation and certain miscellaneous changes. The changes were initially proposed in PCP 2022/3 and PCP 2022/4 and set out in RS 2022/3 and RS 2022/4, which were both published on 4 April 2023. Details of matters of which readers should be aware can be found in our Corporate Update on the topic [here](#).

## **PCP 2023/1**

On 15 May 2023, the Panel published PCP 2023/1: Review of Rule 21 (Restrictions on frustrating action) and other matters. The PCP focused primarily on Rule 21.1, which restricts the board of a target company, without approval of the target shareholders, from taking any action which may result in an offer or possible offer being frustrated, and from taking certain other specified actions which might lead to a bidder either no longer being willing to make, or proceed with, an offer, or only being willing to do so on less favourable terms.

The Code Committee's view was that, for the most part, Rule 21.1 operates satisfactorily and accordingly the PCP does not propose any fundamental changes to the rules. It does, however, look at ways to increase flexibility for target companies to carry on ordinary course activities during the course of an offer and provides greater clarity as to the actions that will and will not be restricted.

Under the proposed new rules, Rule 21.1(a) would be amended so that a target board would no longer be restricted from taking an action that either is not material or is in the ordinary course, on the basis that such an action is not likely to frustrate an offer or possible offer, and it is inappropriate for the Code to prevent a target company from carrying on ordinary course business.

The time period under which Rule 21.1 restrictions would apply would be clearly defined, and run from the earlier of (i) the target board receiving an approach regarding a possible offer and (ii) the beginning of the offer period, until the end of the offer period, or, where no offer period has begun, 5.00 pm on the seventh day following the date on which the latest approach was unequivocally rejected by the target board. In the context of a target-run sale process, Rule 21.1 would not apply until the target has received at least one indicative proposal.

The rules also seek to address the inequitable application of Rule 21 in the context of a reverse takeover. The proposals provide that, where an offer or possible offer is a reverse takeover, Rule 21.1 will also apply to the board of the bidder as if the bidder were a target company and vice versa.

In addition, the PCP proposes that, other than in exceptional circumstances, the Panel would consent to the restrictions in Rule 21.1(a) not being applied where a target board seeks to sanction a scheme of arrangement in a competitive situation. This was an issue raised in PCP 2022/3 which has been revisited here.

# News digest

## **PCP 2023/1 (cont'd)**

Rules 21.3 and 21.4, which require information provided to one bidder to be provided on request to another bidder, would also be amended to ensure that a bidder or potential bidder is not denied access to a target company's information on a technicality and to reduce the administrative burden on parties to an offer. Competing bidders would no longer be required to make specific or daily information requests. Instead, all information that has been provided to one party would, on request, need to be provided in full to the competing bidder. Such requests would be deemed to remain open for seven days. Similarly, an MBO management team would be required to provide all information given to external financiers to the independent directors on a rolling basis.

The consultation period runs until 21 July 2023. The Panel expects to publish its Response Statement in Autumn 2023 and for the amendments to come into effect approximately one month after the publication. Further details of matters of which readers should be aware can also be found in our Corporate Update on the topic [here](#).

## **National Security and Investment Act updated market guidance notes**

The National Security and Investment Act 2021 (the **NSI Act**) came into force on 4 January 2022. It gives the UK government powers to assess and intervene in investments and other acquisitions of control that may give rise to national security risks, and has a broad scope.

On 27 April 2023, the government published the second edition of its market guidance on the operation of the NSI Act. The updated guidance focused on predictability and transparency in relation to the transaction notification and call-in regime.

## **FCA publishes engagement papers relating to the new public offers and admissions to trading regime**

On 18 May 2023, the FCA published certain engagement papers relating to four key areas currently under review:

- (a) Admission to trading on a regulated market;
- (b) Further issuances of equity on regulated markets;
- (c) Protected forward-looking statements; and
- (d) Non-equity securities.

The consultation period on the engagement papers will run until 29 September 2023. Following the engagement process, the FCA intends to provide feedback on significant points raised and to develop its rule proposals which it is looking to consult on next year.

A key area on which the FCA is seeking views is when a prospectus should be required for admission to regulated markets and where exemptions should apply, particularly those related to takeovers. As part of this, the FCA is also seeking input on percentage thresholds (i.e. the size of a further issuance as a percentage of existing share capital) above which a prospectus would be required. This will be of particular note to bidders looking to offer securities as consideration.

# News digest

## **Climate change and directors' duties: ClientEarth v Shell**

On 12 May 2023, the High Court rejected ClientEarth's application for permission to bring a derivative claim against the directors of Shell plc under the Companies Act 2006. ClientEarth, which had acquired a small number of shares in Shell, had alleged breach of directors' duties relating to Shell's climate change risk management strategy. Our six key takeaways from the High Court's approach to this claim can be found in our Legal Update on the topic [here](#).

## **Panel personnel update**

On 21 April 2023, the Panel announced the appointment of Richard Iferenta (Partner and Vice Chair, KPMG UK) as a member of the Panel designated to sit on the Hearings Committee. This appointment will be with effect from 1 May 2023. On 6 June 2023, the Panel announced the appointment of Hemita Sumanasuriya as Secretary to the Panel. He joins on a two year secondment from Slaughter and May which will commence on 25 September 2023.



# Appendix

Key features of firm offer  
announcements

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# Announced UK takeover bids

(1 April to 30 June 2023)

Target (Market)	Bidder(s)	Bid value	Bid premium**	Recommended	Hostile/No 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/QFBS
Lookers plc (Main Market)	Alpha Auto Group Holdings LP	£465.4m	35.3 %	•			•						•	N/C					
Best of the Best plc (AIM)	Teddy Sagi	£45.3m	-3.6 %	•1		•2	•				•3			N		•4			
Network International Holdings plc (Main Market)	Brookfield Business Partners L.P. and Brookfield Asset Management Ltd.	£2.2bn	64 %	•			•						•	N/C 5					
National Milk Records plc (AQSE Growth Market)	Associated British Foods plc	£48m	87 %	•			•						•	N/C					
Dechra Pharmaceuticals plc (Main Market)	EQT Fund Management S.à r.l. and Abu Dhabi Investment Authority	£4.5bn	44 %	•			•						•	N/C 6					•7
CT Property Trust Limited (Main Market)	LondonMetric Property plc	£198.6m	34.3 %	•				•L	•8				•	N			•		
Egdon Resources plc (AIM)	HEYCO Energy Group, Inc.	£26.64m	96 %	•			•						•	N/C 9					
Civitas Social Housing plc (Main Market)	CK Asset Holdings Limited	£485m	44.4 %	•			•		•10		•11			N					
Shield Therapeutics plc (AIM) (Lapsed)	AOP Health International Management AG	£46.1m	-13.3 %		•12	•	•				•13		•14						•15
Numis Corporation plc (AIM)	Deutsche Bank AG	£410m	72 %	•			•		•16				•	N/C		•17			
Medica Group plc (Main Market)	IK Investment Partners Limited	£269m	32.5 %	•			•						•	N/C					•18
Sureserve Group plc (AIM)	Cap10 Partners LLP	£214.1m	38.9 %	•			•						•	N19		•20			
Industrials REIT Limited (Main Market)	Blackstone Inc.	£511.2m	42.4 %	•			•						•	N/C					
Xpediator plc (AIM)	Funds advised by BaltCap, Cogels Investments Limited and Nuoma IR Kapitalas	£62.34m	45.5 %	•			•		•21				•	N/C 22		•23			•24
The Fulham Shore plc (AIM)	TORIDOLL Holdings Corporation	£93.4m	34.8 %	•			•		•25				•						•T 26



# Announced UK takeover bids

## Key and footnotes

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' irrevocable undertakings (unless indicated otherwise)
□	Permitted agreements under Rule 21.2 of the Code
A	AIM traded shares
C	Co-operation agreement
F	Break fee given under formal sale process or white knight dispensation
L	Listed/traded shares
N	Confidentiality agreement
NP	No premium given in offer documentation or nil premium
R	Reverse break fee
U	Untraded shares
B	Bidder shareholder approval
T	Target shareholder approval

1. Recommended offer even though financial terms deemed not fair and reasonable.
2. Rule 9 offer triggered by market purchases subsequent to Rule 2.7 announcement.
3. 50% +1 mandatory offer condition.
4. Non-solicitation undertaking in respect of other offers for all or a majority of shares or any competing transaction.
5. + Reverse confidentiality agreement and joint defence agreement. Bid parties also entered into bid conduct and interim combination agreements.
6. + Joint defence agreement and commercial clean team agreement. Bid parties also entered into exclusivity and standstill agreement, and bid conduct agreement.
7. Profit forecast.
8. Dividend payment.
9. + Cost coverage agreement.
10. Dividend payment.
11. 75% (waivable to not less than 50% + 1). Waived down to 50% + 1 and declared unconditional.
12. Shareholders recommended not to accept but not hostile. Mandatory offer was triggered by conversion of convertible shareholder loan facility.
13. 50% + 1.
14. Relationship agreement.
15. Profit forecast.
16. Dividend payment.
17. Non-solicitation undertaking in respect of other offers for any shares or other securities.
18. Profit forecast.
19. + Share schemes side letter.
20. Non-solicitation undertaking in respect of other offers/schemes.
21. Dividend payment and loan note alternative.
22. + Bid parties entered into subscription and rollover agreement and bid conduct agreement.
23. Non-solicitation and notification undertaking in respect of other offers.
24. Profit estimate.
25. Deferment note in place for a director shareholder.
26. Retention arrangements for a director-shareholder.

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