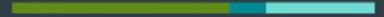




ashurst



Public M&A Review

Q1 2023

A graphic consisting of two overlapping rectangles. The top rectangle is green and the bottom rectangle is teal, both positioned on the right side of the page.

Overview

Consistent with Q1 2022, 12 firm offers were announced in Q1 2023. However, the combined offer value of approximately £2.56bn represents a decrease from approximately £4bn for the same period in 2022.

As expected, the first quarter of 2023 was relatively subdued and, although 12 firm offers were announced during this period, nine were in the sub-£250m category (and the vast majority of those nine had a sub-£100m deal value). There was a single announced offer with a value of over £1bn, being Teddy Sagi's offer for Kape Technologies plc (a company in which he already held a 54.8% interest through his vehicle Unikmind Holdings).

As was anticipated in our annual review of 2022, investor confidence in the debt markets remained challenging through the first quarter of this year, evidenced by the fact that only four of the 12 bids announced in the quarter were funded with debt financing. The prognosis for confidence returning to the debt markets was also not helped by the events involving Silicon Valley Bank in March. However, the lack of availability of debt financing did not act as a significant deterrent for some private equity/privately-owned bidders as over half of the announced bids during this period were from bidders within that category.

Looking ahead, Q2 has commenced with a small flurry of activity with a number of P2P firm offers being announced in April, as well as sponsors such as Blackstone, Apollo and EQT all being named as possible offerors for UK listed companies.

The Ashurst UK Public M&A team remained active during the first quarter of the year, with roles that include advising:

- **Evercore** on the recommended cash acquisition of Curtis Banks Group plc by Nucleus Financial Platforms
- **HSBC** on the cash offer for Kape Technologies plc by Unikmind, a company controlled by Teddy Sagi

Finally, we are delighted to welcome **Jade Jack**, who joined us as a Senior Adviser in our Public M&A team in February. As many readers will know, Jade has extensive takeovers and mergers experience, including a secondment to the Takeover Panel. Her arrival strengthens our public M&A capability and our position as a leading adviser on some of the most high-profile transactions in the market.

12

ANNOUNCED BIDS

10

RECOMMENDED ON
ANNOUNCEMENT

10

SCHEMES OF
ARRANGEMENT

85.1%

AVERAGE OF BID PREMIA
(% UNWEIGHTED)

30.7%

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

Publication of revised Takeover Code

On 20 February 2023, a revised version of the Code was published to take account of the implementation of changes which relate to the presumptions in the definition of 'acting in concert'. The changes were initially proposed in PCP 2022/2 and set out in RS 2022/2, which was published on 14 December 2022. Full details of these changes can be found in one of our previously published Public M&A Quarterly updates ([link here](#)).

As a result of these changes, Practice Statement No. 12 has been withdrawn and minor amendments have been made to Practice Statements Nos. 22 and 33.

Response Statements to PCP 2022/3 and PCP 2022/4

Shortly after the end of the quarter, on 4 April 2023, the Panel published its responses to these consultations (RS 2022/3 and RS 2022/4), adopting the proposed amendments with certain modifications. RS 2022/3 relates to the offer timetable in competitive situations while RS 2022/4 contains a series of miscellaneous and unrelated changes. Details of matters of which readers should be aware can be found in our Corporate Update on the topic ([link here](#)).

The changes will come into effect on 22 May 2023.

FCA Primary Market Bulletin 44

PMB 44 was published by the FCA on 20 March 2023 and considers (among other matters) when a prospectus is required in connection with the issue of shares pursuant to a scheme of arrangement. As readers will know, under the current regulations, there are two triggers for the requirement to publish a prospectus: (1) an offer of transferable securities to the public in the UK; and (2) the admission of securities to trading on a regulated market in the UK.

Prior to PMB 44, the FCA had been consulting on a new technical note on whether the issue of securities pursuant to a scheme of arrangement constituted an offer to the public, specifically in the context of a 'mix and match' facility. However, having considered the responses to the consultation, the FCA has elected not to publish the proposed technical note. In making this decision, the FCA noted that respondents disagreed with the FCA's view that it is reasonable to conclude that a prospectus ought to be produced in circumstances where investors are making an investment decision over whether to purchase/subscribe for the securities.

Readers will also no doubt be aware of the ongoing legislative reform process in relation to the UK prospectus regime which may result in securities issued pursuant to a scheme of arrangement being excluded from the 'offer to the public' concept.

Panel personnel update

On 26 January 2023, the Panel announced that Ian Hart, the current Director General of the Panel, had accepted an invitation to extend his secondment from UBS to 30 April 2024. The Panel also announced the appointment of Moni Mannings (Chair of the Remuneration Committee at Hargreaves Lansdown plc) to join the Code Committee with effect from 1 May 2023.

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
Francesca Downes	Partner	London	+44 20 7859 2615	francesca.downes@ashurst.com
James Fletcher	Partner	London	+44 20 7859 3156	james.fletcher@ashurst.com
Jacob Gold	Partner	London	+44 20 7859 2396	jacob.gold@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
Jade Jack	Senior Adviser – Public M&A	London	+44 20 7859 1183	jade.jack@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
Dallan Pitman	Partner	London	+44 20 7859 2190	dallan.pitman@ashurst.com
Jason Radford	Global Division Co-Head	London	+44 20 7859 1145	jason.radford@ashurst.com
Michael Robins	Senior Consultant	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	Head of Corporate UK	London	+44 20 7859 1894	nick.williamson@ashurst.com
Molly Woods	Partner	London	+44 20 7859 2253	molly.woods@ashurst.com
Jorge Vázquez	Global Division Co-Head	Madrid	+34 91 364 9899	jorge.vazquez@ashurst.com
Maria José Menéndez	Managing Partner	Madrid	+34 91 364 9867	mariajose.menendez@ashurst.com
Joshua Cole	Practice Group Head, Asia	Hong Kong	+852 2846 8905	joshua.cole@ashurst.com
John Brewster	Practice Group Co-Head , Australia	Australia	+61 3 9679 3370	john.brewster@ashurst.com
Anton Harris	Practice Group Co-Head , Australia	Australia	+61 2 9258 6371	anton.harris@ashurst.com



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

LEGAL 500

Announced UK takeover bids

(1 January 2023 to 31 March 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/Q:FS
ECSC Group plc (AIM)	Daisy Corporate Services Trading Limited	£5.4m	170.1%	•			•						•	•1			•2		•3
Amicrest Holdings plc (Unquoted)	Gerard Lee	£3.37m	NP		•	•5	•				•6								
Centos Securities plc (AIM)	finnCap Group plc	£21.1m	NP	•				•A	•7				•	•C				•B,8	
Hurricane Energy plc (AIM)	Prax Exploration & Production PLC	Up to £249m	84% (assuming maximum bid value)	•			•		•9				•	•10	•11				
Hyve Group plc (Main Market)	Providence Equity Partners L.L.C. Searchlight Capital Partners UK LLP	£320m	40.8%	•			•						•	•C					
Redx Pharma plc (AIM) (Lapsed)	Jounce Therapeutics, Inc.	Approximately US\$101.7m (£84.4m)	NP	•12				•13	•14				•	•C, 15				•16	
Kape Technologies plc (AIM)	Teddy Sagi	US\$1.58bn (£1.27bn) (increased and final offer)	14.7% (based on announcement exchange rate)		•		•				•17			•18					
AdEPT Technology Group plc (AIM)	Macquarie Group Limited	£50.3m	74.8%	•			•						•	•C					
7digital Group plc (AIM)	Songtradr, Inc.	£19.4m	114%	•			•						•	•C,19					

Announced UK takeover bids

(1 January 2023 to 31 March 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[1]	Formal sale process	Non-solicit undertaking of bid in shareholder	Matching/Topping rights****	Shareholder vote	Profit forecasts/QIBS
Dignity plc (Main Market)	SPWOne V Ltd, Castelnau Group Limited and Phoenix Asset Management Partners Limited	£281m	29.3%	•		•20	•	•L,U		•21			•	•22					•23
Seraphine Group plc (Main Market)	Mayfair Equity Partners LLP	£19.4m	114%	•			•				•		•						•24
Curtis Banks Group plc (AIM)	Nucleus Financial Platforms Limited	£242m	32.1%	•			•						•	•C			•25		

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).

**** 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. Service agreement bonus: Under the terms of his service contract, Matthew Briggs (CEO of ECSC) is contractually entitled to a cash bonus of £167,143 upon the sale of ECSC which is calculated as follows: (i) 50% of his base salary plus car allowance; and (ii) 1.5% of the purchase price payable on the sale of ECSC. This bonus would be payable to Matthew Briggs upon the scheme becoming effective, which is expected in early June 2023.
2. The irrevocable undertaking given by Ian Castle will remain binding in the event of a higher competing offer and cease to be binding in the same circumstances as the directors' irrevocable undertakings, and in addition, will lapse and cease to be binding if, before 3.00 p.m. on 16 May 2023, any third party announces a firm intention (in accordance with Rule 2.7 of the Code) to make an offer to acquire all of the equity share capital of ECSC: (a) which is recommended by the board of ECSC; (b) the making of which is not subject to any condition precedent; and (c) which in the opinion of Allenby Capital Limited values each ECSC share at more than 10% higher than 54.02 pence, provided that in the event of any such third party offer, Ian Castle had agreed not to commit to sell any shares and/or grant an irrevocable undertaking in favour of the third party offer until the expiry of 48 hours from the time of the announcement of such third party offer.
3. Statements contained in ECSC's trading update of 28 February 2023 and restated in the Rule 2.7 announcement constitute a profit forecast for the purposes of Rule 28 of the Code. The Rule 2.7 announcement includes the ECSC directors' confirmations in relation to the profit forecast, as set out in Rule 28.1(c)(i) of the Code.
4. No recommendation.
5. The mandatory offer announced by Longfield Investments Limited, a company controlled by Gerard Lee, was made following a ruling by the Hearings Committee of the Takeover Panel issued on 16 November 2022. A Rule 9 offer obligation was initially triggered back in March 2013 when Longfield acquired Amicrest shares which, when taken together with the other interests in Amicrest shares held by Gerard Lee, carried 30% or more of Amicrest's voting rights. Subsequent to the purchase in March 2013 and before the application of the Takeover Code was established, Gerard Lee, through Longfield, acquired further Amicrest shares which increased his interest to approximately 41% of the voting rights in Amicrest, so triggering an obligation under Rule 9.
6. 50%+1.
7. Cenkos shareholders will be entitled to receive and retain the 0.5 pence cash dividend for each Cenkos share held on the 2022 Dividend Record Date (the "2022 Dividend") which was announced on 10 March 2023 and is to be paid in respect of the financial year ended 31 December 2022 to Cenkos shareholders without any reduction in their entitlements under the exchange ratio under the scheme. The 2022 Dividend is due to be paid on 22 June 2023 to those Cenkos shareholders who are on Cenkos's register of members at close of business on 26 May 2023 (the "2022 Dividend Record Date"). The Cenkos board intends to declare an interim dividend of 3 pence per Cenkos share, which is intended to be formally declared after 30 June 2023 and paid before the effective date (the "Interim Dividend"). The timetable relating to the proposed Interim Dividend will be notified in due course. Holders of Cenkos shares as at the record date for the Interim Dividend shall be entitled to receive the Interim Dividend without any reduction in their entitlements under the exchange ratio pursuant to the scheme. Cenkos reserves the right to bring forward the declaration, vary or even cancel the Interim Dividend at any time prior to its payment.
8. Bidder shareholder approval required for the allotment and issue of new finnCap shares. The finnCap directors have given irrevocable undertakings to vote in favour of the resolution, representing 5.62% of the issued share capital of finnCap. finnCap shareholders: Jon Moulton, Vin Murria, Sam Smith, Lord Leigh, Mark Tubby, Peter Gray, and Rhys Williams have irrevocably undertaken to vote or procure the vote in favour of the resolution in respect of 83,860,205 finnCap shares, representing 46.31% of the issued share capital of finnCap.
9. As total consideration, 4.15 pence for each Hurricane share comprising cash consideration of 0.83 pence per share in cash and an interim dividend declared by Hurricane on or about the date of the Rule 2.7 announcement of 3.32 pence per share, conditional on (i) shareholder approval by way of ordinary resolution, the passing of such resolution being conditional on the passing of the resolutions to approve the scheme and related matters; and (ii) the scheme becoming effective. In addition, each Hurricane shareholder will be entitled to receive: (1) a further interim dividend that may be declared by Hurricane on or prior to the effective date of up to 1.87 pence per share, conditional on the scheme becoming effective (the "Supplementary Dividend"); and (2) a Deferred Consideration Unit comprising the Class I and Class II Deferred Consideration Units (Class I and Class II DCUs) to be issued by Prax, which may deliver up to 6.48 pence per share in cash, plus such amount of the Supplementary Dividend amount which is not declared as a dividend prior to the scheme effective date.
10. Parent company guarantee: on 16 March 2023, State Oil Limited, as the immediate parent company of Prax, entered into a parent company guarantee with Hurricane (the "State Oil PCG"). Under the terms of the State Oil PCG, subject to and conditional upon the scheme becoming effective, State Oil Limited guarantees all monies, debts and liabilities of any nature from time to time due, owing or incurred by Hurricane excluding any such monies, debts and liabilities in relation to the special dividends.
11. Crystal Amber Fund, which had built a stake of 28.9% in Hurricane to become the company's largest shareholder, was seeking to monetise its shareholding in the company. This led to the Hurricane board launching a formal sale process in November 2022 to determine whether there was a bidder prepared to offer an acceptable value for the company, having already rejected an unsolicited potential bid from a possible bidder.
12. The scheme lapsed on 3 April 2023.
13. It is intended that applications will be made for the new shares to be admitted to Nasdaq.
14. Upon completion of the combination: (1) Jounce shareholders that held shares in Jounce immediately prior to completion of the combination (including any shares received in respect of Jounce restricted stock units that vest in connection with the combination) shall receive one contractual contingent value right relating to certain existing clinical and non-clinical stage programmes of Jounce (CVR) for each outstanding share of Jounce held by such Jounce shareholder immediately prior to the combination; and (2) holders of Jounce share awards immediately prior to completion of the combination comprising vested options (eligible Jounce awardholders) shall receive one CVR for each outstanding share of Jounce common stock subject to such options immediately prior to the combination. The CVRs shall entitle the relevant Jounce shareholders and eligible Jounce awardholders to receive, on a pro rata basis, subject to certain terms and conditions, 80% of the net proceeds resulting from any sale, transfer, disposition, spin-off, or license of certain assets relating to such programmes that is consummated within one year following the completion of the combination, subject to one six-month extension term in certain limited circumstances, as set forth in the CVR agreement.
15. Joint defense agreement: on 19 February 2023, in connection with the combination, Redx, Jounce and Redmile (and their respective legal counsel) executed a joint defense agreement. Under the joint defense agreement, Redx, Jounce and Redmile have concluded that they share certain common interests in connection with assessing and undertaking any regulatory obligations, including the preparation of merger notification filings or notifications with antitrust regulatory authorities. Each party to the joint defense agreement may withdraw on notice to the other parties, or on termination or on conclusion of the combination.

Key

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16. A resolution of Jounce shareholders regarding the issuance of new shares being duly passed by a simple majority of the votes cast by Jounce shareholders represented in-person or by proxy at the Jounce special meeting and such Jounce resolution remaining valid. The Jounce directors and certain other Jounce shareholders gave voting and support agreements to vote in favour of the resolutions, representing approximately 21.3% of the issued share capital of Jounce. On 27 March 2023, Jounce announced that it had entered into a definitive merger agreement under which Concentra would acquire Jounce. Accordingly, Jounce's board of directors was no longer recommending the proposed all-share merger with Redx. The Jounce board notified Redx of the withdrawal of its recommendation in favour of the Redx business combination.
17. 70 per cent. of the voting rights then exercisable at a general meeting of Kape (or such lesser percentage as Unikmind may decide, with the consent of Kape, provided that Unikmind together with its wholly-owned subsidiaries shall hold or have acquired or agreed to acquire (whether pursuant to the offer or otherwise), directly or indirectly, Kape shares carrying in aggregate more than 50 per cent. of the voting rights then normally exercisable at a general meeting of Kape).
18. On 10 February 2023, the Kape board released Unikmind from certain of the provisions of the Kape NDA in order to allow it to make the offer by way of the partial standstill release. Under the partial standstill release, Kape has agreed to use reasonable endeavours, except to the extent that to do so is prohibited by applicable law, to provide Unikmind and its legal advisers, in a timely manner all such information and reasonable assistance within Kape's power or control as may be reasonably required by Unikmind for the purpose of any filings, notifications or submissions required under applicable law or regulation to be made to or with a relevant authority in order for the offer to be completed or which would, if not satisfied or made, result in a criminal or material regulatory sanction for a member of the Unikmind group or any of their respective directors or officers as a result of a completion of the offer. Under the partial standstill release, Kape has agreed that Unikmind may make the offer provided that the offer is subject to a minimum acceptance condition set at 70%, not to be waived by Unikmind without the consent of the Kape board. Without this minimum acceptance condition imposed by the partial standstill release, under the Code, Unikmind would have the ability, as Kape's major shareholder, to waive the acceptance condition of the offer down to below the 70% threshold level.
19. Repayment agreement: on 28 February 2023, under the relevant provision of the co-operation agreement, Songtradr and 7digital entered into an agreement with Magic such that, conditional on the occurrence of the effective date, the Magic shareholder loans will be repaid by Songtradr to Magic on behalf of 7digital within five business days of the effective date.
20. On 14 April, the consortium bidco announced that it made, through market purchases, acquired further Dignity shares at between 537p and 545p per Dignity share, and as a result is required to make a mandatory offer for the remaining Dignity shares in accordance with Rule 9.
21. The acceptance condition shall be satisfied once valid acceptances of the offer have been received in respect of 75% (or such lesser percentage as Bidco may decide) of the Dignity shares to which the offer relates and of the voting rights attached to those shares.
22. Share schemes letter: on 23 January 2023, Bidco, Valderrama, the members of the Consortium and Dignity signed a share schemes letter under which, among other things, the parties agreed and acknowledged: (i) certain arrangements related to the Dignity share schemes; and (ii) certain arrangements which will apply to current and prospective employees of the Dignity group and/or the Dignity directors in certain circumstances.
23. The offer document includes statements by Dignity regarding its underlying operating profit and underlying operating profit before depreciation and amortisation (pre-IFRS 16), in each case for the 52 weeks ended 30 December 2022 which are profit estimates for the purposes of Rule 28 of the Takeover Code. These profit estimates, and the reports required by Rule 28.1 of the Takeover Code in respect of them, are set out in Parts 2 to 4 of Appendix K of the offer document.
24. The following statements contained in Seraphine's interim results for the 26 weeks ended 2 October 2022 constitute profit forecasts for the purposes of Rule 28 of the Code: "Trading for the first 9 weeks of H2 has been in line with management's expectations, with own Digital Platform sales improving to broadly flat YoY (CCY), versus -12.2 per cent. (CCY) in H1, helped by a better-than-expected Black Friday period; (1) The profit contribution from Digital Partners is broadly in line with last year but on significantly reduced sales volumes, as a result of our plan to focus on profitability over growth in this channel. (2) Our Retail Stores continue to trade behind pre-pandemic levels and trading in the first 9 weeks of H2 has been softer than H1. (3) Net debt continues to be consistent with the position at H1, with the benefit of the stock unwind expected to reduce net debt during FY24. We have also agreed revised debt covenants with our lender, who continues to be supportive of the business. (4) Overall the group has traded in line with management's expectations for the first 9 weeks of H2; however we continue to be mindful of the challenging economic environment"; and "We expect volatility in trading to continue throughout FY23 but believe H2 will be an improvement on H1 as we start to annualise against normalised returns rates and higher marketing costs and take benefit from seasonally higher basket sizes and lower return rates. As a result, we expect H2 to be profitable on a post-IFRS 16 Adjusted EBITDA basis. However, we are mindful of the challenging economic environment and the impact on consumer confidence and disposable incomes." The offer document includes the Seraphine independent directors' confirmations in relation to the profit forecasts, as set out in Rule 28.1(c)(i) of the Code.
25. In the event of a higher competing offer being announced which represents an improvement of 10% or more on the value of Nucleus's offer, the irrevocable undertaking given by Odyssean will not lapse unless Nucleus fails to announce, within five business days of such higher competing offer being announced, a revised offer for Curtis Banks which is at least as favourable as the value of the competing offer.