

ashurst

UK Public M&A Update

Q3 2016



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Overview

13 firm offers were announced in Q3 2016 (10 in Q2 2016) with a combined offer value of £27.5bn (a significant increase compared to just £1.6bn in Q2 2016). Taking out the £24.4bn SoftBank/ARM mega deal, deal value in Q3 was still nearly double that of Q2 2016. All of these offers were in cash with two deals including a stub equity alternative.

Public M&A activity in the UK has picked up significantly following the UK referendum in June. As mentioned in our UK Public M&A Update – Q2 2016, the re-calibration of the pound in the aftermath of the Brexit vote has left UK companies more exposed to takeover by overseas bidders looking to pick up strongly performing companies at comparatively lower prices. That being said, the inexorable rise of the stock market in the UK is likely to have a counterbalancing effect.

In the last quarter, Ashurst advised J.P. Morgan Cazenove in connection with Micro Focus International's \$8.8bn merger with the Software Business Segment of Hewlett Packard Enterprise which constitutes a reverse takeover. Ashurst is also advising Wells Fargo Securities and PJT Partners, joint financial advisers to Verizon on its recommended US\$2.4bn cash offer for Fleetmatics Group, an Irish Code company.

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

Announced bids	13
Recommended on announcement	12
Schemes of arrangement	7
Average of bid premia (unweighted)	38.69%
Average of bid premia (weighted)	41.99%

During Q3, the Panel agreed the first post-offer undertakings on SoftBank's £24.4bn bid for ARM Holdings, the Code Committee of the Panel published response statement RS 2016/1 (The communication and distribution of information during an offer) and the Panel published its 2016 Annual Report. Further details of these developments are set out in the News Digest on pages 2 to 5 of this publication.

News digest

Response Statement RS 2016/1 (The communication and distribution of information during an offer)

On 14 July 2016, the Code Committee of the Panel published RS 2016/1 in relation to the communication and distribution of information during an offer following its consultation in PCP 2016/1 (see UK Public M&A Update – Q1 2016). The Code Committee's proposed amendments to the Code were generally supported by respondents and have been introduced with only minor modifications.

The amendments took effect on 12 September 2016 at the same time that the Panel re-published a number of Practice Statements incorporating consequential amendments and withdrew Practice Statement No.1 (Rule 20.1 – Equality of information to shareholders and the policing of meetings) which has been superseded by the Code changes.

In addition to the key amendments described in UK Public M&A Update – Q1 2016, other changes to note include:

- Rule 2.9 on the publication of certain announcements has been deleted (with the substance being moved to Rule 30.1) and consequential rule reference changes have been made for the remainder of Rule 2;
- It is no longer necessary to send any public Rule 8 disclosures to the Panel in electronic form;
- The post-offer undertakings and post-offer intention statements regime is now located in Rules 19.5 and 19.6 respectively;
- The new dispensations in Rule 20.2 (Meetings and telephone calls with shareholders and others) which no longer require chaperoning in certain meetings require financial advisers to provide a briefing as to the requirements of Rule 20.2 – please speak to your usual Ashurst contact if you would like assistance in preparing the required documentation;
- The equality of information to competing bidders provisions have moved to Rule 21.3 and information to independent directors in MBOs has moved to Rule 21.4.

Given the significant rule references changes that have resulted from this consultation process, the Panel has helpfully prepared Tables of origins and destinations in Appendix C of RS 2016/1 (see link below).

The full response statement can be viewed at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/RS201601.pdf>

2016 Panel's Annual Report

On 20 July 2016, the Panel published its Annual Report for the year to 31 March 2016.

Brexit

The Chairman of the Panel, Sir Gordon Langley, made the following observations on the impact of Brexit on takeover regulation in the UK:

"The impact of Brexit on the framework of takeover regulation will depend upon the form of exit that the UK negotiates. If the UK becomes a member of the European Economic Area, the Takeovers Directive would continue to apply. If it does not, the Panel will seek to discuss with Government the extent to which Chapter 1 of Part 28 of the Companies Act 2006, which implemented the Directive in the UK, should be amended. Other than in certain limited respects, for example in the provisions for regulating "shared jurisdiction" cases with takeover regulators in other EEA member states, there are likely to be relatively few direct consequences for the Rules of the Code."

Disciplinary action by the Panel

During the year to 31 March 2016, the Panel Executive issued two letters of private censure and 26 educational/warning letters.

Pre-conditional offers

In conjunction with the increasing size and cross border nature of many of the transactions announced in 2015-16, the Panel noted the rise both in the number of competition and regulatory clearances that bidders require and the considerable time many of them take to be obtained. Clearance periods often extend significantly beyond those envisaged by the Code timetable for contractual offers. In these circumstances, the Panel considers that, in the majority of cases, it is preferable for bidders to proceed either by way of a pre-conditional offer or scheme of arrangement. The Panel must be consulted in advance if bidders wish to proceed by way of a pre-conditional offer.

The full annual report can be viewed at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/2016-Annual-Report.pdf>

Post-offer undertakings on SoftBank's £24.4bn bid for ARM Holdings

On 18 July 2016, SoftBank Group launched a recommended £24.4bn cash offer for ARM Holdings. This is the first bid on which post-offer undertakings were agreed by the bid parties.

Background

In January 2015, the Panel introduced the post-offer undertaking regime. The Panel must be consulted if a bid party intends to make a commitment to take, or not take, a particular course of action after the end of the offer period (a **post-offer undertaking**). Strict disclosure requirements apply and the party that makes the undertaking is normally bound by its terms (unless an express and specific qualification or condition set out in the undertaking applies, as determined by the Panel). The Panel also has powers to monitor compliance with, and enforce, post-offer undertakings including the ability to require (i) periodic written reports; and (ii) the appointment of an independent supervisor to monitor compliance. The rules on post-offer undertakings appear in Rule 19.5 of the Code.

The Panel's (unpublished) practice requires that whenever an offer or scheme document is published, the advisers must prepare a schedule of all post-offer undertakings and intention statements made in the offer/scheme document (or, where applicable; the target response circular) along with the names and telephone numbers of those persons whom the Panel should contact if it wishes to check whether the post-offer undertaking/intention statements have been adhered to in the relevant period.

Softbank post-offer undertakings

SoftBank made various statements of intention in its firm offer announcement that, over a five year period from completion, in order to enable ARM to continue to develop leading-edge technology in the UK, it would double ARM's UK employee headcount and increase overseas employee headcount whilst maintaining the ratio of technical to non-technical staff members in line with historical trends experienced by ARM. SoftBank also gave a statement of intention to convert these intentions into post-offer undertakings (without qualifications or conditions) with the consent of the Panel.

In the scheme document, SoftBank made the post-offer undertakings as to employee headcount (as referred to above) as well as giving post-offer undertakings to (i) maintain ARM's global headquarters in Cambridge; and (ii) procure, as soon as reasonably practicable following completion (and, in any event, within 45 days of completion) that ARM makes equivalent post-offer undertakings as to employee headcount and ARM's HQ.

The acquisition of ARM completed on 5 September 2016.

ARM post-offer undertakings

On 8 September 2016, ARM announced that it had made post-offer undertakings as to employee headcount and ARM's HQ.

Compliance and monitoring

SoftBank and ARM must now comply with the terms of these post-offer undertakings, for the periods of time specified and complete any actions committed to by the dates specified in the undertakings. Grant Thornton was appointed to act as the independent supervisor to monitor the parties' compliance with the post-offer undertakings.

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Appendix: Announced* UK takeover bids (1 July to 30 September 2016)

Target (Market)	Bidder	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 undertakings****	Matching/Topping rights****	Shareholder vote	Profit forecast/Q:FB5
Poundland Group plc	Steinhoff International Holdings N.V.	£610.4m ¹	15.8%	•			•						•	• C		• 2	• 3		
ARM Holdings plc	SoftBank Group Corp.	£24.4bn	43%	•			•						•	• C					
Superglass Holdings plc	Mr. Sergey Kolesnikov	£8.7m	114%	•			•				•					•	• 4		• 5
DRS Data & Research Services plc	AQA Education	£6.54m	14.29%	•			•				•					• 6	• 7		• 8

Key

- A revised offer was made by Steinhoff on 11 August 2016; the original offer had a value of £597m at a premium of 13.3%.
 - Canada Life Investments has undertaken not to, directly or indirectly, solicit, accept or agree any other offer in respect of all or any of its Poundland shares.
 - Topping right (with a 20% improvement threshold).
 - Topping right (with a 10% improvement threshold).
 - The announcement of Superglass's interim results (for the six months ended 30 February 2016) released on 29 April 2016 contained a profit forecast for the purposes of Rule 28 of the Takeover Code. The Rule 2.7 announcement includes the directors' confirmations as set out in Rule 28.1(c)(i) of the Code.
 - In addition to non-solicitation undertakings made by DRS shareholders, a number of DRS shareholders gave notification undertakings in favour of AQA.
 - Topping right (with a 5% and 10% improvement threshold as applicable to different DRS shareholders respectively).
 - A statement made at DRS's 2016 annual general meeting, on 20 June 2016, constituted a profit forecast for the purposes of Rule 28 of the Takeover Code. The Rule 2.7 announcement and the offer document include the directors' confirmations as set out in Rule 28.1(c)(i) of the Code.
- * 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. 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
- △ AIM traded shares
- C Co-operation agreement/bid conduct agreement
- F Break fee given under formal sale process
- L Listed/traded shares
- NP No premium given in offer documentation or nil premium
- R Reverse break fee
- U Untraded shares

Appendix: Announced* UK takeover bids (1 July to 30 September 2016) Continued

Target (Market)	Bidder	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 undertakings****	Matching/Topping rights****	Shareholder vote	Profit forecast/QfBS
Premier Farnell plc ⁹	Avnet, Inc.	£691m	69.3%	•			•						•	• C ¹⁰		• ¹¹	• ¹²		
Source BioScience plc	Continental Investment Partners S.A. and Harwood Capital LLP	£62.87m	21%	•			•		• ¹³				•						
Private Equity Investor plc	KHP Fund GP LLC	£19.95m	10.6%	•			•				•					•	• ¹⁴		
Pinewood Group plc	PW Real Estate Fund III LP	£323.3m	50.2% ¹⁵	•			•						•		•	•			

9. Premier Farnell was also the subject of a firm offer by Dätwyler Holding AG which announced on 14 June 2016 – see UK Public M&A Update – Q2 2016.

10. In addition to a bid conduct agreement, Avnet and Premier Farnell entered into clean team arrangements setting out how certain commercially/competitively confidential information can be disclosed, used or shared. Avnet also entered into a memorandum of understanding with the trustees of the Premier Farnell UK Pension Scheme on 25 July 2016 as to the funding and operation of the Premier Farnell UK Pension Scheme following the acquisition.

11. Certain Premier Farnell shareholders have undertaken not to, directly or indirectly, solicit, accept or agree any other offer in respect of all or any of its Premier Farnell shares.

12. Topping right (any improvement on Avnet's offer).

13. Under an unlisted securities alternative, Source BioScience shareholders will be entitled to elect to receive Sherwood Share Units in lieu of cash consideration. Each Sherwood Share Unit comprises one Sherwood ordinary share of 1 pence each and one 10% fixed rate unsecured loan note, with a nominal amount of 17 pence each.

14. Topping right (with a 10%, 12% and 15% improvement threshold applicable to different PEI shareholders).

15. This premium reflects the offer price over the price of the share placing by Pinewood which completed on 17 April 2015.

Appendix: Announced* UK takeover bids (1 July to 30 September 2016) Continued

Target (Market)	Bidder	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 undertakings****	Matching/Topping rights****	Shareholder vote	Profit forecast/Q&BS
Trucost plc	S&P Global Indices UK Limited	£14.213m	NP	•			•				•				•				
SVG Capital plc	HarbourVest Partners, LLC	£1.015bn	14.7%		• ¹⁶		•				•								
Journey Group plc	Harwood Capital LLP	£28.4m	18.23%	•			•		• ¹⁷				•						
SWP Group plc	Friars 716 Limited	£18.3m	50%	•			•				•								
UK Mail Group plc	Deutsche Post AG	£242.7m	43.1%	•			•						•				• ¹⁸		

16. At the time of writing the offer does not have the recommendation of the board of SVG Capital.

17. Under an unlisted securities alternative, Journey shareholders will be entitled to elect to receive Jaguar Share Units in lieu of cash consideration. Each Jaguar Share Unit comprises one Jaguar ordinary share and one Jaguar preference share.

18. Topping right in institutional shareholder irrevocables (any improvement on Deutsche Post's offer).

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