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UK Public M&A Update

Q2 2017

Contents

Overview

18 firm offers were announced in Q2 2017 (compared to 19 in Q4 2016 and nine in Q1 2017) with a combined offer value of £8.68bn (a decrease compared to nearly £15bn in Q4 2016 and £10.75bn in Q1 2017). Of those 18 offers, 11 were in cash, three were cash and shares, with two of those three containing a mix and match facility (Kennedy-Wilson Holding/Kennedy Wilson Europe Real Estate and Elis/Berendsen) and four were all-share mergers.

In the last quarter, Ashurst mandates have included advising: (i) Berendsen plc on its recommended £2.17bn acquisition by Elis SA; (ii) J.P. Morgan as financial adviser to Fiserv on its £70m recommended cash offer for Monitise plc; and (iii) Waterman Group plc on its recommended £43m acquisition by Tokyo Stock Exchange-listed CTI Engineering Co. Limited.

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

Announced bids	18
Recommended	13
Schemes of arrangement	9
Average of bid premia (unweighted)	35.86%
Average of bid premia (weighted)	30.17%

During Q2, there were no significant regulatory developments. That said, the Takeover Panel (the **Panel**) did make a number of detail changes to the Takeover Code (the **Code**) and announced several decisions that are worth noting. Further details of these developments are set out in the News Digest on pages 2 and 3 of this publication.

News digest

Requirement for Mr King to announce a mandatory offer for Rangers International Football Club Plc

In March 2017, the Panel published Panel Statement 2017/4 and the TAB published Statement 2017/1 setting out their decisions to dismiss appeals by Mr King and requiring him to launch a Rule 9 mandatory bid for Rangers International Football Club Plc (**Rangers**) by 12 April 2017. Please see the Ashurst Q1 2017 Public M&A Update for further details of these decisions.

Background

In January 2015, Mr King acquired shares representing 14.57% of Rangers share capital from three institutional investors via a family trust vehicle, New Oasis Asset Limited (NOAL), at a price of 20 pence per share two days after his alleged concert party (Mr Letham and his associates) acquired a 19.48% stake. The acquisitions produced an aggregate holding of 34.05%, exceeding the 30% control threshold and thereby triggering a Rule 9 mandatory bid obligation.

After the purchase of the shares in Rangers, the existing directors of Rangers were removed by shareholder vote at a general meeting in March 2015 and Mr King's nominees were appointed as directors of Rangers. In May 2015 Mr King was appointed chairman of Rangers.

During 2014, Mr King and Mr Letham had acted together on two unsuccessful proposals, one to acquire control through an equity fundraising and the other to acquire a blocking stake. Emails in December 2014 between Mr King and Mr Letham evidenced that each was aware of the other's intention to acquire Rangers shares at the same time and that the purchases had been co-ordinated.

Proceedings

On 13 April 2017, the Panel announced that, Mr King having failed to make a Rule 9 mandatory bid by the 12 April deadline, it had initiated proceedings in the Court of Session, Edinburgh (under section 955 of the Companies Act 2006) seeking an order requiring Mr King to comply with the Panel's rulings.

Comment

It is understood to be the first time that the Panel has exercised its power to bring Court action to secure compliance with a ruling pursuant to the Companies Act 2006.

The Panel's announcement can be viewed at:

www.thetakeoverpanel.org.uk/wp-content/uploads/2017/04/2017_8.pdf

Amendments to the Code

On 13 April, the Panel announced a number of amendments to the Code, each effective as of 2 May 2017, pursuant to Instrument 2017/1 and Instrument 2017/2. On the same day, the Panel amended Practice Statement No 20 (Rule 2 – Secrecy, possible offer announcements and pre-announcement responsibilities).

Those amendments do not reflect material changes to the Code. Instead, they represent consequential changes, changes to clarify certain provisions or tidying changes to the Code. For example, Appendix 7 has been amended to reflect the change in law in 2015 to prohibit cancellation schemes of arrangement and Practice Statement No 20 has been updated to clarify that the "Rule of Six" continues to apply during an offer period in relation to a possible offer by any potential bidder who has not been publicly identified.

Petropavlovsk plc - acting in concert ruling

Background

A number of shareholders in Petropavlovsk plc (Petropavlovsk), Renova Asset Holding Limited (Renova), M&G Debt Opportunities Fund II Limited (M&G) and Sothic European Master Fund Limited (Sothic), submitted resolutions to Petropavlovsk, to be voted on by shareholders at the AGM of Petropavlovsk, proposing changes to the board of Petropavlovsk.

Subsequently, Petropavlovsk asked the Panel Executive (the **Executive**) to confirm whether (1) Renova, M&G and Sothic, and the proposed new directors, should be considered to be acting in concert under Note 2 to Rule 9.1 of the Code and (2) if those persons were considered to be acting in concert, whether they had acquired any interests in shares since the date on which they came into concert, thus triggering a mandatory bid obligation under Rule 9.1 of the Code.

Panel decision

The Executive concluded that three of the four proposed directors (Bruce Buck, Ian Ashby and Garrett Soden) were independent of Renova, M&G and Sothic. The fourth (Vladislav Egorov) was not considered independent because he is employed by Renova. On that basis, the Executive confirmed that the resolutions proposed by Renova, M&G and Sothic were not "board control-seeking" under Note 2 on Rule 9.1. Therefore, Renova, M&G and Sothic, and the proposed directors, were not acting in concert and there was no requirement for a mandatory bid to be made.

Outcome

At the AGM of Petropavlovsk, shareholders approved the appointment of all four of the proposed directors, with Ian Ashby being appointed as the independent Non-Executive Chairman and Bruce Buck being appointed as the Senior Independent Director of the company.

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Appendix: Announced* UK takeover bids (1 April to 30 June 2017)

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
Exova Group plc (Main Market)	Element Materials Technology Group Limited	£620.3m	10.7%	•			•						•	◊C R		•[1]			•[2]
WS Atkins plc (Main Market)	SNC-Lavalin Group Inc.	£2.1b	35%	•			•						•	◊C[3]		•			•[4]
Market Tech Holdings Limited (Main Market)	LabTech Investments Ltd	£892.3m	29.66%	•			•				•			◊C					
Kennedy Wilson Europe Real Estate PLC (Main Market)	Kennedy-Wilson Holdings, Inc	£1.3b (original offer) £1.44b (new offer)	20%	•[5]			•	•L		•			•	◊C[6]		•[7]	•	•[8]	

1. Clayton, Dubilier & Rice Fund VII, LP has undertaken not to solicit, directly or indirectly, any other offer in competition with the acquisition and not to enter into any related negotiations.
2. Statements made in the financial year ended 31 December 2016 are considered to be a profit forecast for the purposes of Rule 28 of the Code. The Rule 2.7 announcement includes the directors' confirmations required by Rule 28.1(c)(i) of the Code.
3. Atkins and SNC-Lavalin agreed to arrangements to allow holders of Atkins ADRs to participate. On 18 April 2017, SNC-Lavalin and Atkins entered into a joint defence agreement to disclose and exchange certain information for the purposes of the antitrust work stream. SNC-Lavalin also agreed to pay Atkins a break fee of £50m if a regulatory condition is either invoked by or has not been satisfied or waived by SNC-Lavalin on 31 July 2017.
4. A profit forecast included in Atkins third quarter trading update constitutes a profit forecast for the purposes of Rule 28 of the Code. The Rule 2.7 announcement includes the directors' confirmations as required by Rule 28.1(c)(i) of the Code.
5. On 13 June 2017, the board of KW Holdings and the independent committee of KW Europe announced that KW Holdings agreed to make available a new offer, which includes a partial cash entitlement and amends the exchange ratio. The new offer includes consideration by way of a special dividend.
6. On 10 April 2017, KW Europe and the Manager entered into a separate manager's power agreement under which the Manager will make arrangements to allow certain named executives to make all payments out of KW Europe Group bank accounts, as requested by an independent board committee. On 24 April 2017, KW Holdings and KW Europe entered into a transaction agreement under which the parties agreed to regulate the implementation of the merger.
7. Each of Franklin and Quantum has undertaken that it will not solicit, directly or indirectly, or initiate discussions with a third party.
8. The offer is subject to bidder approval under the rules of the New York Stock Exchange.

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. 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

L Listed shares

NP No premium given in offer documentation or nil premium

R Reverse break fee

S Standstill agreement

U Untraded shares

Appendix: Announced* UK takeover bids (1 April to 30 June 2017) 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
Mariana Resources Limited (AIM)	Sandstrom Gold Ltd	£153.5m	84.38%	•			•	•L					•	◊C[9]					•[10]
Waterman Group plc (Main Market)	CIT Engineering Co. Limited	£43m	83.01%	•		•	•							[11]					•[12]
InterQuest Group plc (AIM)	Management team (Gary Ashworth, Chris Eldridge, David Bygrave, Clare Ashworth and Luke Johnson)	£15.8m	9.37%		•		•		•[13]		•								
Gemfields plc (AIM)	Pallinghurst Resources Limited[14]	£227.2m	NP		•[15]			•L			•						•[16]	•[17]	
The Prospect Japan Fund Limited (Main Market)	Prospect, Co. Ltd	$146.6m (approx. £114m)	67.98%	•				•L					•	◊C R[18]				•[19]	
Dragon-Ukrainian Properties and Development plc (AIM)	Dragon Capital Holding Limited	£14.22m (original offer) £16.4m (revised offer)	NP		•[20]	•	•				•								

9. Sandstorm signed up to retention agreements with Glen Parsons and Eric Roth requiring independent shareholder approval in accordance with Rule 16.2 of the Code.
10. Statements made in the Sandstorm investor presentation prepared on 1 April 2017 are considered to be a profit forecast for the purposes of Rule 28 of the Code. The Rule 2.7 announcement includes the directors' confirmations as required by Rule 28.1(c)(i) of the Code.
11. CTI entered into a conditional sale agreement under which it agreed to purchase, in aggregate, 8,131,419 Waterman shares at the offer price, representing approximately 26.44% of the share capital of Waterman in issue on 8 May 2017 and this agreement also allows the Waterman management team the opportunity to exercise their LTIP options and acquire Waterman shares.
12. Statements made in Waterman's interim results are considered to be a profit forecast for the purposes of Rule 28 of the Code. The Rule 2.7 announcement includes the directors' confirmations as required by Rule 28.1(c)(i) of the Code.
13. InterQuest shareholders will be entitled to elect to receive loan notes as an alternative to cash consideration.
14. On 20 June 2017 Fosun International Limited announced a firm offer valuing Gemfields at £256m (see bid table). However, this offer lapsed on 26 June 2017.
15. On 27 June 2017, the independent board confirmed that it would not recommend the offer from a value perspective but that shareholders should seriously consider whether to accept the offer, despite the independent board's firm view that the offer significantly undervalued Gemfields.
16. Topping right in shareholder irrevocables (with a 10% improvement threshold).
17. The offer is subject to bidder approval as a Category 1 transaction under the JSE listings requirements.
18. On 31 May 2017, Prospect entered into a deed poll under which it undertook to certain categories of TPJF shareholders to take various actions in order to provide information to new shareholders following the issue of the new Prospect shares. On the same date, Prospect, TPJF, Equiniti Limited, Equiniti Financial Services Limited, Prospect Asset Management, Inc. and Mizuho Trust & Banking (Luxembourg) S.A. entered into a master custody agreement to implement the arrangements necessary to facilitate the settlement of the new Prospect shares.
19. The offer is subject to bidder shareholder approval.
20. On 8 June 2017, the independent directors of the target confirmed that they are considering the terms of the offer and advised shareholders to take no action at that stage.

Appendix: Announced* UK takeover bids (1 April to 30 June 2017) 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
Berendsen plc (Main Market)	Elis SA	£2.17 bn	44%	•			•	•L		•			•	◊				•[21]	•[22]
Kalibrate Technologies plc (AIM)	Hanover Active Equity Fund LP	£29m	50%	•			•				•			◊			•[23]		
Monitise plc (AIM)	Fiserv Inc	£70m	26.1%	•			•						•	◊					
Touchstone Innovations plc (AIM)	IP Group plc	£466m	NP		•			•L			•			◊				•[24]	
Gemfields plc	Fosun International Limited[25]	£256m	10.8%	•			•				•			◊[26]			•		
Hornby PLC (AIM)	Phoenix Fund Ltd	£27.4m	NP		•	•	•				•								
Electric Word plc (AIM)	Riccardo Silva and Marco Auletta	£16.58m	16.3%	•			•						•	◊			•[27]		
Hayward Tyler Group plc (AIM)	Avingtrans plc	£28.3m	14.7%	•				•L					•	◊			•[28]	•[29]	

21. The offer is subject to bidder shareholder approval.
22. Statements made in the accounts of the financial year ended 31 December 2016 are considered to be a profit forecast for the purposes of Rule 28 of the Code. The Rule 2.7 announcement includes the directors' confirmations as required by Rule 28.1(c)(i) of the Code. The Panel also granted Berendsen a dispensation from the requirement to include reports from reporting accountants in relation to 2018 profit forecasts because the financial period ends more than 15 months from the date of the announcement. The Rule 2.7 announcement also includes a QFBS on cost synergies reported on by Deloitte LLP, Lazard & Co., Limited and Zaoui & Co Ltd as required by Rule 28.1(a) of the Code.
23. Topping right in shareholder irrevocables (with an offer of 135 pence per share improvement threshold).
24. The offer is subject to bidder shareholder approval as it constitutes a Class 1 transaction under the Listing Rules.
25. This offer lapsed on 20 June 2017.
26. On 3 February 2017 Fosun Gold and Gemfields entered into a break fee agreement pursuant to Note 1, Rule 21.2 of the Code (white knight dispensation).
27. Topping right in shareholder irrecovables (with a 15% improvement threshold).
28. Topping right in shareholder irrecovables (with a 10% improvement threshold).
29. The offer is subject to bidder shareholder approval as it constitutes a reverse takeover under the AIM Rules.

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