

ashurst

UK Public M&A Update

Q1 2018



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Overview

13 firm offers were announced in Q1 2018 (compared to 9 in Q4 2017 and 10 in Q3 2017), with a combined offer value of £20.13 billion (a significant increase compared to £11.32 billion in Q4 2017 and £13.53 billion in Q3 2017). Of those 13 offers, nine were all cash, one was all shares and three were in cash and shares.

In the last quarter, Ashurst mandates have included advising: (i) Centerview Partners as financial adviser to Informa PLC in relation to its £3.9 billion recommended cash and shares offer for UBM plc; (ii) Rothschild as financial adviser to TT Electronics plc in relation to its £46 million recommended cash offer for Stadium Group plc; and (iii) Bank of America Merrill Lynch as financial adviser to RBS in relation to its £53 million recommended cash offer for FreeAgent Holdings plc.

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	12
Average of bid premia (% unweighted)	74.33%
Average of bid premia (% weighted)	40.30%

During Q1 2018, there were a number of regulatory developments, including an amendment to Practice Statement No 28, the publication of new Practice Statement No 32 and an update on the UK Government's proposals to introduce new rules to protect the UK's national security (in particular in the context of foreign investment). Further details of these developments are set out in the News Digest on pages 2 to 4 of this publication.

News digest

Amendments to the Code

During Q1 2018, The Takeover Panel (the Panel) made a number of amendments to the Takeover Code (the Code).

Practice Statement No 28

On 8 January, the Panel made changes to Practice Statement No 28 (Rules 2.8 and 35.1 – Entering into talks during a restricted period) to cater for the changes to Rules 2.8 and 35.1 that came into effect on 8 January. The key points to highlight are as follows:

- the Panel Executive (the Executive) will normally consent to a relaxation of Rule 2.8(e) in order to enable a bidder to make a single confidential approach to the target board in the restricted period in circumstances where the bidder has made a “no intention to bid” statement which may be set aside with the agreement of the target board;
- the Executive will not consent to the bidder making a single confidential approach during the restricted period under Rule 2.8 where the bidder is not permitted to rely on the agreement of the target board as a reason to set aside its “no intention to bid” statement; and
- save in certain circumstances, the Panel will normally consent to setting aside the restrictions in Rule 35.1 if the target board so agrees, as opposed to previously where the normal practice was to set aside the restriction only where the target board recommended the new offer.

Practice Statement No 28 contains further detail on the above points and can be viewed in full at: <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2018/01/PS28-only.pdf>

Practice Statement No 32

On 8 January, the Panel published Practice Statement No 32 (Rule 21.1 – Application following the unequivocal rejection of an approach). Practice Statement No 32 provides that the Executive usually considers that a target board will have reason to believe that a bona fide offer may be imminent, and that, therefore, Rule 21.1(a) regarding frustrating action will apply after the target board has received an approach regarding a possible offer. Practice Statement 32 provides that:

- in circumstances where the target board has received, and subsequently unequivocally rejected, an approach, the Executive normally considers that Rule 21.1(a) will continue to apply until 5.00 pm on the second business day following the date on which the approach was unequivocally rejected, unless the rejected potential bidder has given the target board reason to believe that it continues to be interested in making an offer before that time; and
- the Executive should be consulted if a target board intends to take any action set out in Rule 21.1(a) following the unequivocal rejection of an approach.

Practice Statement No 32 contains further detail on the above points and can be viewed in full at: <http://www.thetakeoverpanel.org.uk/wp-content/uploads/2018/01/PS32-only.pdf>

New and Updated Checklists

On 8 January, the Panel published a new checklist to be completed and submitted to the Executive by the financial adviser to an offeree company which publishes a circular or announcement under the new Rule 21.1(d)(iii) or Rule 21.1(e). The Panel has also updated certain of the other checklists.

The new checklists should be used with immediate effect from their date of publication. They can be downloaded from the Checklists page of the Panel's website at: <http://www.thetakeoverpanel.org.uk/checklists>

The Panel's website also contains information on how to complete the checklists and submit them to the Panel, which can be found at: <http://www.thetakeoverpanel.org.uk/checklists/how-to-complete>

Other Panel News

On 18 January, the Panel announced the appointment of:

- Justin Dowley to succeed David Challen as a Deputy Chairman of the Panel;
- Lord Monks to be a member of the Panel designated to sit on its Hearings Committee; and
- Mark Armour, Tim Waddell and John Reizenstein to be members of the Panel designated to sit on its Code Committee.

Proposed UK Government Measures to Protect National Security in the Context of Foreign Investment

As we reported in our [2017 Review](#), on 17 October 2017, the UK Government announced proposals to introduce new rules to protect the UK's national security, in particular in the context of foreign investment.

On 15 March 2018, the Government confirmed that it intended to proceed with the first part of its proposals, involving amendments to the current UK merger control regime to lower the thresholds for review of mergers in the military and dual-use sector, and parts of the computing hardware and advanced technology sectors.

The Government is still considering how it should proceed with the "long-term" proposals it announced in its October 2017 Green Paper. The Government is expected to publish a White Paper setting out its position on the long-term proposals, together with draft legislation, later in 2018.

In the meantime, on 15 March, the Government published draft legislation to bring into effect some of the proposed short-term changes, together with a response to the consultation and draft guidance explaining the changes.

The Government highlights that "advances in technology now mean that there are ubiquitous goods with the potential to be directed remotely should a hostile actor obtain access or control". The Government considers that such advances have often been driven by small businesses, with the result that mergers involving such businesses run a real risk of prejudicing national security.

The Government therefore intends to lower the thresholds under the existing merger control regime contained in the Enterprise Act 2002 (EA02):

- in the military and dual use sector – covering the design and production of military items and dual-use items (i.e. products which have both military and civilian uses); and
- for companies whose business involves certain activities relating to computer processing units (CPUs) or quantum-based technology.

In these sectors, the Secretary of State would be able to intervene (and potentially prohibit the merger) on national security grounds if either:

- the UK turnover of the target exceeds £1m (reduced from the normal £70m); or
- the target has an existing UK share of supply of 25 per cent or more (this would remove the need for an increase in market share); or
- the transaction will create or enhance a UK share of supply of 25 per cent or more (i.e. the existing “share of supply test”).

Pending any wider reforms under the long-term proposals, the existing thresholds will continue to apply in all other sectors.

The draft legislation provides significantly greater clarity on the scope of activities covered by the expanded provisions. This includes:

- a) businesses which develop or produce goods, software or information, the export of which is controlled under specified export control legislation. These provisions cover military and dual-use items;
- b) owning, creating or supplying intellectual property relating to computer processing units, and designing, maintaining or providing support for the secure provisioning or management of “roots of trust” of CPUs. Roots of trust means hardware, firmware or software components that are inherently trusted to perform critical security functions, such as cryptographic key material that can identify a device or verify a digital signature; and
- c) research into, developing or producing anything designed for use in, various forms of quantum technology, specifically quantum computing, simulation, imaging, sensing, timing, navigation and communications, and quantum resistant cryptography. The draft guidance notes that quantum technology has the potential to break currently secure computer and telecommunications systems and could give military weapons substantial additional abilities.

If the Secretary of State intervenes under the expanded powers, the existing public interest process under EAO2 would be followed. Thus, he or she would become the final decision-maker as to whether the deal should be cleared or prohibited, provided he or she continues to think the public interest consideration remains relevant.

An impact assessment published as part of the consultation response sets out that the Government estimates that it will issue an intervention notice on national security grounds in 1 to 6 cases per year as a result of the new regime. Given that the Government has only intervened on national security grounds in seven transactions in the last 15 years (0.5 interventions per year) under the existing provisions, this is perhaps a surprisingly large number.

The way in which the Government has chosen to implement the changes means that the new regime would technically allow the Secretary of State to intervene on any of the currently specified public interest grounds in any deal where the target is active in a specified sector and the new, lower thresholds are met. However, the Government states that it cannot foresee any circumstances in which transactions involving firms in the specified sectors would give rise to media plurality or financial stability concerns. National security should be the only relevant consideration.

The reduced thresholds also apply to the Competition and Markets Authority's (CMA) power to conduct competition assessments under EAO2. However, the CMA has published draft guidance on the new rules in which it states that it does not expect the changes to bring about a material change in its approach.

The intended expanded regime is not premised on there being any foreign investment element: the powers would apply equally to UK acquirers. However, the Government indicates that in practice foreign investment is more likely to raise national security concerns.

The draft legislation published thus far does not cover the reduced turnover test. But this is expected to be published shortly. The Government intends that all the "short-term" changes will be introduced simultaneously and has stated that the new rules will not have retrospective application.

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Appendix: Announced* UK takeover bids (1 January to 31 March 2018)

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/QoFB5
Lombard Risk Management plc (AIM)	Vermeg Group N.V.	£52.08m	98.5%	•			•						•	•S			•2		
GKN plc (Main Market)	Melrose Industries PLC	£8.1b ³	40%	•	•		•	•L		•	•4							•5	•6
MayAir Group plc (AIM)	Mr Jlang Li	£50.35m	25%	•			•						•	•R				•7	

- The existence of a confidentiality agreement is not included in this analysis.
- In the event of a higher competing offer being made which represents an improvement of 10% or more on the value of Vermeg's offer, the irrevocable undertakings given by John Wisbey, RBC Trustees, Hargreave and Ruffer will lapse unless, within ten business days of such higher competing offer, Vermeg announces a revised offer which equals or exceeds the value of the competing offer.
- On 12 March 2018, Melrose announced an increased and final offer of £8.1 billion (from £7.4 billion).
- On 19 March 2018, Melrose lowered the acceptance condition from 90% to 50% plus one share.
- The offer is subject to bidder shareholder approval as it constitutes a Class 1 transaction under the Listing Rules.
- In accordance with Rule 28.2 of the Code, the Panel granted GKN a dispensation from the requirement to include reports from reporting accountants and financial advisers for a cash flow estimate relating to a financial period ending more than 15 months from the date the estimate was first published. GKN's public documents in connection with the offer also contain statements of estimated cost savings, a profit estimate and a profit forecast, each of which have been reported on as required by Rule 28.1(a) of the Code. Melrose's original offer document contains a profit estimate, which has been reported on as required by Rule 28.1(a) of the Code.
- Certain members of MayAir management and the employee benefits trust will receive shares in the bidder vehicle as consideration for their existing shareholding in MayAir, in accordance with Rule 16.2 of the Code, such consideration arrangements require approval of the independent Shareholders of MayAir.

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 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

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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/QIBS
UBM plc (Main Market)	Informa PLC	£3.9b	29.9%	•			•	•L		•			•	•C				• ⁸	•
Hogg Robinson Group plc (Main Market)	GBT III BV	£410.5m (max value) £376.3m (min value)	53.85% (max) 41.03% (min)	•			•		• ⁹				•C, S ¹⁰	•C, S ¹⁰		•	• ¹¹		•
Stadium Group plc (AIM)	TT Electronics plc	£45.8m	43.7%	•			•						•	•			• ¹²		•
Plant Impact plc (AIM)	Croda International plc	£10m	79.9%	•			•						•						
Fidessa Group plc (Main Market)	Temenos Group AG	£1.4b	22.4%	•			•						•	C					
Laird PLC (Main Market)	Advent International Corporation	£1b	72.6%	•			•						•	•CS			• ¹³		

8. The offer is subject to bidder shareholder approval as it constitutes a Class 1 transaction under the Listing Rules.

9. Hogg Robinson shareholders may receive a contingent consideration of up to a further 10 pence per share in cash if the disposal of Hogg Robinson's Fraedom SaaS business completes prior to the scheme court hearing. The amount of additional consideration payable is dependent on the consideration received under the Fraedom disposal.

10. Joint defence agreement and memorandum of understanding relating to the future funding of the Hogg Robinson UK pension scheme.

11. In the event of a higher competing offer being announced which represents an improvement of 5% or more (in the case of Boron) or 10% or more (in the case of dnata) on the value of GBT's offer, the irrevocable undertakings given by Boron and dnata will lapse

unless, within two business days of such higher competing offer, GBT announces a revised offer which is at least as favourable as the value of the competing offer.

12. In the event of a higher competing offer being announced which represents an improvement of 10% or more (in the case of Lombard) or 15% or more (in the case of AXA) on the value of TT's offer, the irrevocable undertakings given by Lombard and AXA will lapse unless, within five days of such higher competing offer, TT announces a revised offer which exceeds (in the case of Lombard) or equals or exceeds (in the case of AXA) the value of the competing offer.

13. In the event of a competing offer is announced, Franklin's obligations under its irrevocable undertaking will be suspended. If the bidder announces a revised offer within seven days of the competing offer on terms no less favourable than the competing offer (in Franklin's reasonable opinion), the suspension will fall away.

Appendix: Announced* UK takeover bids (1 January to 31 March 2018)

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/QB5
Stellar Diamonds plc (AIM)	Newfield Resources Limited	£6.2m	334.6%	•				• L					•	• 14					
Fenner plc (Main Market)	Compagnie Générale des Établissements Michelin SCA	£1.2b	30.7%	•			•						•	• CS					
FreeAgent Holdings plc (AIM)	The Royal Bank of Scotland Group plc	£53m	86%	•			•						•	• C15					
NEX Group plc (Main Market)	CME Group Inc.	£3.9b	49.2%	•			•	• L					•	• CS					•

14. Certain of the parties who have provided irrevocable undertakings have entered into voluntary lock-in agreements with NWF in respect of the new NWF shares to be issued to these parties subject to the scheme becoming effective. Under the terms of these lock-in agreements, the parties have agreed not to dispose of the new NWF shares held for a period of six months, subject to customary exemptions.

15. On 27 March 2018, RBS Bidco, National Westminster Bank plc and the Founders entered into a shareholders' agreement under which they have agreed the terms upon which the management arrangements with the Founders will be implemented. Pursuant to the management arrangements, the Founders will be issued RBS Bidco shares which carry no voting and dividend rights, but allow the Founders to require such shares be acquired by NatWest at a price calculated by reference to performance metrics, provided certain requirements are met. In accordance with Rule 16 of the Code, the Panel has consented to these management arrangements.

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