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UK Public M&A Update

Q1 2019



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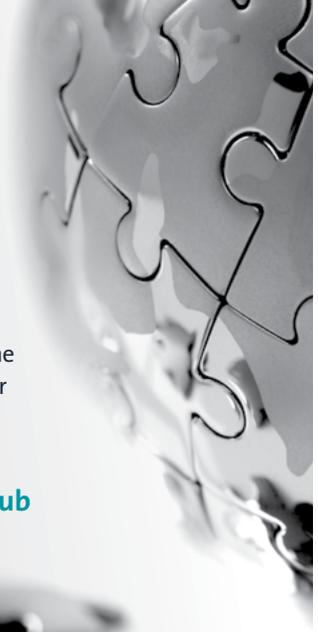
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Overview

17 firm offers were announced in Q1 2019 (compared to 8 in Q4 2018 and 13 in Q3 2018), with a combined offer value of £14.06 billion (representing an increase compared to £4.6 billion in Q4 2018 and £12.7 billion in Q3 2018). Of those 17 offers, 12 were all cash, 4 were all shares and 1 was in cash and shares (with a mix and match facility).

In the last quarter, Ashurst mandates have included advising: (i) MedicX Fund Limited in relation to Primary Health Properties PLC's £392.9 million all share offer for it; (ii) Lazard as financial adviser to Saputo, Inc. in relation to its £975 million cash offer for Dairy Crest Group plc; (iii) Goldman Sachs and Wells Fargo as joint financial advisers to Berry Global in relation to its £3.3 billion cash offer for RPC Group plc; and (iv) Rothschild as financial adviser to JD Sports in relation to its £90 million cash offer for Footasylum.

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

Announced bids	17
Recommended on announcement	14*
Schemes of arrangement	11
Average of bid premia (% unweighted)	58.2%
Average of bid premia (% weighted)	22.7%

* The target board on 2 of these 14 offers withdrew its recommendation following the announcement of a higher competing offer.

During Q1 2019, there were a number of newsworthy items, including the response statement RS 2018/1 (Asset Valuations) and the response statement RS 2018/2 (The United Kingdom's Withdrawal from the European Union) published by the Code Committee of the Takeover Panel and separately the decision of the court in *Vernalis plc*, which concerned a scheme of arrangement being approved by a low turnout of shareholders.

Further details of these developments are set out in the News Digest on pages 2 to 4 of this publication.

News digest

Response Statement RS 2018/1 (Asset Valuations)

On 6 March 2019, the Code Committee of the Takeover Panel (the **Panel**) published RS 2018/1 in relation to the proposed amendments to Rule 29 of the Takeover Code (the **Code**) on asset valuations following its consultation in PCP 2018/1 (please see our [2018 Review](#) for a summary of the consultation). The proposed amendments were generally supported by respondents and were adopted with minor modifications, being:

- *type of assets*: Rule 29 applies to a valuation of unquoted investments representing in aggregate 10% or more of the gross asset value of the party to the offer which published the valuation, and not only an investment company;
- *net asset values and adjusted net asset values*: the requirements of the new Rule 29.1(d) apply in respect of underlying assets falling within new Rules 29.1(b) or (c) only rather than all underlying assets;
- *valuer*: the removal of the proposed requirement for the valuer to satisfy any relevant legal or regulatory requirements;
- *valuation report*: the inclusion of clarificatory language as to what is meant by a valuation report that is not subject to special assumptions; and
- *potential tax liability*: drafting changes to clarify that where an estimate of the tax liability cannot be given, the document or announcement in which a valuation report is published must explain why an estimate cannot be given and provide a description of the tax consequences of a sale of the assets.

The amendments took effect on 1 April 2019.

The full response statement can be viewed at:

<http://www.thetakeoverpanel.org.uk/wp-content/uploads/2019/03/RS-2018-1-Asset-valuations.pdf>

Response Statement RS 2018/2 (The United Kingdom’s Withdrawal from the European Union)

On 6 March 2019, the Code Committee of the Panel also published RS 2018/2 in relation to the proposed amendments to the Code in connection with the withdrawal of the UK from the EU following its consultation in PCP 2018/2 (please see our [2018 Review](#) for a summary of the consultation). The Code Committee received responses from five respondents, who were generally supportive of the proposals. The Code Committee intends to adopt the amendments proposed in PCP 2018/2. In addition, the Code Committee proposes to amend section 3(b) of the Introduction to the Code to clarify that the General Principles of the Code apply to all transactions to which the Code applies and not only to transactions within the definition of “takeover bid” in schedule 1C of the Companies Act 2006 (as amended).

On 4 April 2019, the Code Committee published the relevant instrument to effect the proposed amendments, which will take effect on exit day.

The full response statement can be viewed at:

http://www.thetakeoverpanel.org.uk/wp-content/uploads/2019/03/RS-2018_2.pdf

Other Panel News

On 24 January 2019, the Panel announced the appointment of Rosemary Martin and Emma Watford to the Panel, to be members designated to sit on its Code Committee. The appointments took effect on 1 February 2019.

Schemes of arrangement: the court's approach to missing shareholders

Vernalis plc

On the Vernalis scheme, the notice of the court meeting had been returned undelivered in respect of 1,636 of 14,784 target shareholders. The court considered the arrangements to be put in place to allow missing target shareholders to claim their unpaid consideration for a period of time following the scheme taking effect. The arrangements included an undertaking to the court to put the unpaid consideration into a designated bank account to be held for the sole purpose of paying the missing shareholders for a period of 12 years (or a lesser period that the court may, in the future, permit). The court was satisfied that the proposed arrangements adequately protect the interests of those missing shareholders.

Abzena plc

The Abzena scheme was decided at around the same time as the Vernalis scheme and was heard before the same judge. In contrast with the facts of the Vernalis scheme, in Abzena, it appeared to the court that there were no missing shareholders. Arrangements similar to that in Vernalis were put in place with a third party paying agent. In this case, however, the court sanctioned the scheme without any undertakings to the court such as those in the Vernalis scheme.

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Appendix: Announced* UK takeover bids (1 January to 31 March 2019)

Target (Market)	Bidder	Bid value	Bid premium**	Recommended	Hostile / No	Rule 9 offer	Cash	Shares (L/U/A)	Other consideration	Mix and match	Offer***	Partial Offer	Scheme	Offer-related arrangements ^o	Formal sale process	Non-solicit undertaking of bid in shareholder irrevocable	Matchng/Topping rights****	Shareholder vote	Profit forecast/Q/FBS
Flybe Group plc (Main Market)	Stobart Group Limited; Virgin Atlantic Limited; Cyrus Capital Partners LP	£2.2m	NP	•			•						•	•	•				
Nature Group plc (Unquoted)	Port Invest B.V.	£4.21m	NP	•			•				•								
RPC Group Plc (Main Market)	Apollo Global Management, LLC	£3323b	15.6%	• ¹			•						•	•	•				•
MediX Fund Limited (Main Market)	Primary Health Properties PLC	£392.9m	14.3%	•				•					•	• ²					•

- Initially recommended. The board of RPC subsequently withdrew its recommendation following the announcement by Berry Global of a higher competing offer.
- On 24 January 2019, MediX, Octopus Healthcare Adviser Limited, Octopus AFM Management Limited and Nexus Tradeo Limited entered into a transitional services agreement, under which, among other matters, MediX's existing investment manager would provide such transitional services as the parties may agree on arm's length terms following completion.

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. The existence of a confidentiality agreement is not included in this analysis.
- 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
- Co-operation agreement/bid conduct agreement
- Break fee given under formal sale process or white knight dispensation
- Listed/traded shares
- No premium given in offer documentation or nil premium
- Reverse break fee
- Standstill agreement
- Untraded shares

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Earthport plc (AIM)	Mastercard Incorporated	£233m	343%	• 3			•				•			C					
Ophir Energy plc (Main Market)	PT Medco Energi Internasional Tbk	£408.4m	73.2%	•			•						•	• C					
RhythmOne plc (AIM)	Taptica International Ltd	£135m	NP	•				• A					•	C				•	
The Local Shopping REIT plc (Main Market)	Thalassa Holdings Ltd	£27.1m	171%		•		•	• L		•	• 4							• 5	
Tax Systems plc (AIM)	Bowmark Capital LLP	£102.3m	14.4%	•			•						•	S				• 6	
Dairy Crest Group plc (Main Market)	Saputo Inc.	£975m	11.7%	•			•						•						
Provident Financial plc (Main Market)	Non-Standard Finance plc	£1.3b	NP		•			• L			•							•	
Findel plc (Main Market)	Sports Direct International plc	£139.2m	NP		•	•	•				• 7								•

- Initially recommended. The board of Earthport subsequently withdrew its recommendation following the announcement by Visa Inc. of a revised offer.
- Acceptance condition of 50% plus one share.
- The board of The Local Shopping REIT plc convened a general meeting to seek shareholder approval for the directors to take appropriate action to liquidate the company in the event Thalassa's offer lapses or is withdrawn.
- Arrangements agreed with certain of Tax System's management required the approval of independent shareholders in accordance with Rule 16.2 of the Code.
- Acceptance condition of 50% plus one share, in line with Rule 9 of the Code.

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RPC Group Plc (Main Market)	Berry Global Group, Inc.	£3.34b	16%	•			•						•	• C					•
Manx Telecom Plc (AIM)	Basalt Infrastructure Partners II GP Limited	£255.9m	30.5%	•			•						•	S					
Charter Court Financial Services Group plc (Main Market)	OneSavings Bank plc	£730m	NP	•				• L					•	• CS				•	•
Footasylum plc (AIM)	JD Sports Fashion Plc	£90.0m	77.4%	•			•				•			C					
Immarisat plc (Main Market)	Apax Partners LLP, Warburg Pincus International LLC, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board	US\$3.4b	27%	•			•						•	• C			•		

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