

ashurst

UK Public M&A Update

2018 REVIEW



Contents

Introduction	1
Overview	2
Practice & Panel Statements	14
Contacts	15
Appendix: Announced UK takeover bids (1 January to 31 December 2018)	16

ASHURST GLOBAL M&A HUB

Seamless navigation through the complex world of cross-border M&A

The Ashurst Global M&A Hub provides expert analysis, insight and commentary on trends and practice in global M&A. Resources on the Hub include videos on M&A trends, client guides covering a number of jurisdictions and topical client briefings.

ashurst.com/globalmandahub



Introduction

Happy New Year and welcome to Ashurst's annual Public M&A Update – 2018 Review.

As with our previous Updates, the overview provides an analysis of trends in the public M&A market in the UK during the year. Appendix 1 contains a summary of the key features of the firm offer announcements we have reviewed in 2018.

The Q4 2018 Digest summarises recent news and developments from the UK Takeover Panel (the **Panel**) and any relevant court cases.

In the last quarter, Ashurst mandates have included advising (i) Faroe Petroleum plc on the £607.8 million hostile cash offer made by DNO ASA; (ii) Netscientific plc on its formal sale process; and (iii) Goldman Sachs as financial adviser to Visa in relation to its £198 million recommended offer for Earthport plc.

We hope you enjoy reading this Update and, as always, we would welcome your feedback.

Best wishes

The Ashurst Public M&A Team

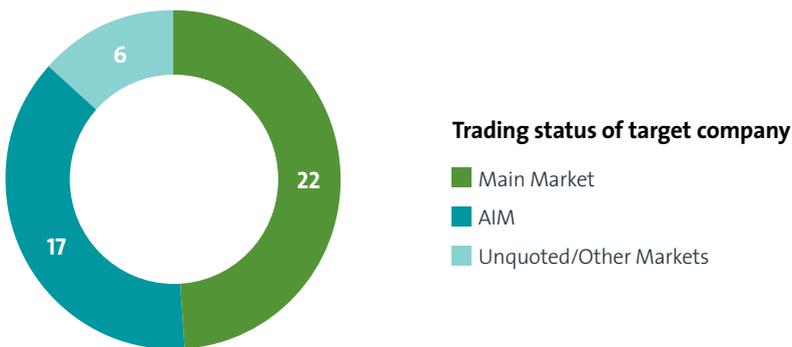
Overview

	2018	2017	2016
Announced bids ¹	45	46	53
Recommended	38	39	44
Schemes of arrangement	33	29	30
Average of bid premia (% unweighted)	57.0	33.3	52.5

1. This includes takeovers in respect of which a firm intention to make an offer has been announced under Rule 2.7 of the Code. It excludes offers by existing majority shareholders for minority positions.

Deal volume

Of the deals we review (which excludes minority offers by existing majority shareholders), 2018 saw a small reduction in the level of UK public bid activity in terms of deal volume as compared to 2017 with 45 firm offers (in excess of £1m) having been announced. There were 22 firm offers for Main Market targets (a 12% reduction on the 25 Main Market bids in 2017), 17 firm bids for AIM targets (a 19% decrease compared to 21 in 2017). There were also five firm bids for unquoted targets and one firm bid for a target quoted on Euronext Brussels.



A summary of the key features of these announced offers in 2018 is set out in the table in the Appendix.

Deal values

In contrast to deal volumes, deal values significantly increased from a total of £44.3bn in 2017 to a total of £120.4bn in 2018. This is explicable in part by the increased number of offers which exceeded £1bn and two “mega deals” which were announced in Q2 2018: Takeda Pharmaceutical Company Limited’s £46bn acquisition of Shire plc and Comcast Corporation’s £30.6bn acquisition of Sky plc. This is in contrast to 2017, during which the highest value bid was Vantiv, Inc.’s £8bn acquisition of Worldpay Group.

27 (29) firm offers had a deal value in excess of £100m, of which 16 (12) offers exceeded £1bn, representing an increase from 2017.

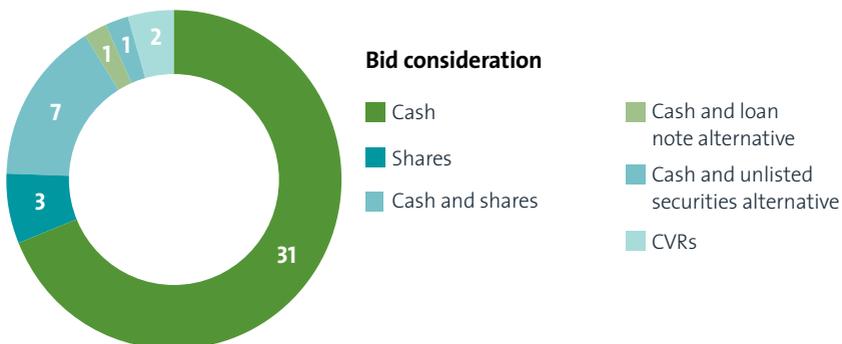
Bid consideration

Again, cash was king in 2018, reflecting healthy cash balances held by corporate buyers and the availability of relatively strong credit lines for debt financing. 31 of the 45 firm offers announced were solely in cash. One bid offered an alternative comprising cash, shares and loan notes consideration to the full cash consideration (Promethean Investments’ acquisition of Produce Investments plc), and one bid offered an interest in the limited partnership bidding entity as an alternative to the cash consideration (Further Global Capital Management’s offer for GBGI Limited). Several bids saw a special dividend in respect of the financial year form part of the offer (for example, Informa PLC’s offer for UBM plc and ION Investment Group Limited’s offer for Fidessa Group plc).

11 bids included a share component, with two offering a mix and match facility.

Two bids included a CVR (GBT III B.V.’s acquisition of Hogg Robinson Group plc and Business Control Solutions Group Trustees Limited’s acquisition of Business Control Solutions Limited).

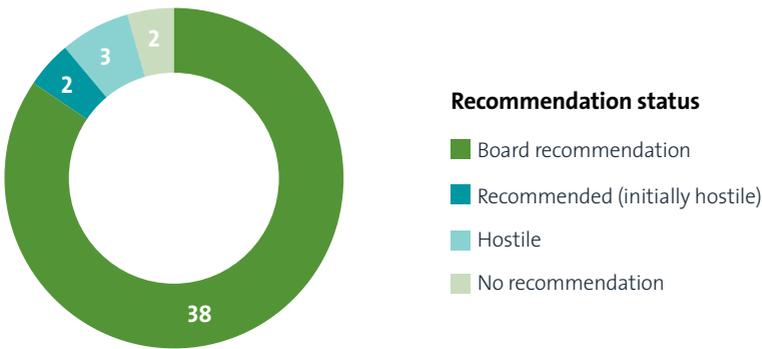
The table below sets out the composition of bid consideration.



Board recommendation

38 of the 45 offers were recommended by the target board at the time of the initial Rule 2.7 announcement (as compared to 39 of the 46 offers in 2017).

Seven bids were announced without the recommendation of the target board. These were DNO ASA's hostile offer for Faroe Petroleum plc, Congra Software Sàrl's mandatory offer for Global Graphics plc, Stafford Capital Partners Limited's offer for Phaunos Timber Fund Limited, Comcast Corporation's offer for Sky plc, David King's mandatory offer for Rangers International Football Club plc, M&G Investment Management's offer for Giggaclear plc and Melrose Industries PLC's hostile offer for GKN plc.



Bid premia

Bid premia (on an unweighted basis) on all announced deals was up in 2018 to 57% from 33% in 2017. Unweighted premia for bids in excess of £250m was also up in 2018 to 46% from 27% in 2017.

Bid structure

Schemes of arrangement have remained the structure of choice for recommended bids in 2018. 33 of the firm offers announced in 2018 were structured as schemes of arrangement and 12 as contractual takeover offers, compared to 29 schemes and 16 offers in 2017.

This underlines the view that there are still significant benefits to using a scheme, for example, the greater certainty of obtaining 100% control.

Competing bids

We have seen two competing bid in 2018 (as compared to one in 2017):

- ION Investment Group succeeded in its offer for Fidessa, whilst Temenos Group's offer lapsed.
- Following the conclusion of the auction process conducted by the Panel, Comcast Corporation succeeded in its revised offer for Sky, whilst Twenty-First Century Fox announced it intended to lapse its offer.

Private-equity backed bids

There was a slight increase in the number of private-equity backed bids (10) in 2018 compared to 2017 (7). Notably, three of private-equity backed bids had a deal value of £1bn or more (Silver Lake Management's £2.2bn bid for ZPG, Advent International Corporation's £1bn bid for Laird PLC, and Dalmore Capital and Equitix Investment Management's £1.45bn bid for John Laing Infrastructure Fund).

Break fees

Break fees

2018 saw the Panel consent to a target break fee in relation to Ligand Pharmaceutical's offer for Vernalis as part of Vernalis' formal sale process.

Reverse break fees

In contrast to six bids with an agreed reverse break fee in 2017, in 2018 we saw five bids which included reverse break fees. For example, in relation to Takeda's bid for Shire plc, Takeda entered into a reverse break fee arrangement under which, among other things, if the Takeda board withdrew its recommendation to its shareholders, it would be required to pay to Shire the US dollar equivalent of approximately £903 million.

Irrevocable undertakings

Irrevocable commitments were obtained on 37 bids. On 28 of those deals, the bidder obtained irrevocable undertakings from non-director shareholders.

Matching or topping rights: non-director shareholders

Matching and/or topping rights were included in 12 of the 28 bids with irrevocables sought from non-director shareholders. This equates to approximately 26.7% of all firm offers announced in 2018, similar to the 27.5% in 2017.

Non-solicitation and notification undertakings: non-director shareholders

Of the 24 deals on which non-director shareholder irrevocables were obtained, three included a non-solicitation undertaking (12.5%). Of these three deals, only two contained notification undertakings. Before agreeing notification undertakings, shareholders would be well advised to consider whether the information required to be notified constitutes inside information and therefore whether such an undertaking can be given in practice.

Formal sale processes

In 2018, of the 11 companies which announced formal sale processes, to date, three (27%) subsequently resulted in firm offers being made (Kerridge Commercial Systems Group Limited's offer for Electronic Data Processing PLC, Ligand Pharmaceuticals Incorporated's offer for Vernalis plc and Stobart Group, Virgin Atlantic and Cyrus Capital Partners offer for Flybe Group plc). This represents an increase from the 11 companies which announced formal sale processes in 2017 of which two (18%) subsequently resulted in a firm offer.

News digest

During Q4 2018, the Code Committee published two Panel Consultation Papers (**PCP**):

- PCP 2018/1 (“Asset Valuations”); and
- PCP 2018/2 (“The United Kingdom’s Withdrawal from the European Union”).

Both consultations closed in December 2018 and no response statement has yet been published.

Asset Valuations

On 17 October 2018, the Code Committee published PCP 2018/1 regarding asset valuations following a review of the purpose and operation of Rule 29 of the Takeover Code (the **Code**). As PCP 2018/1 says, the principle underlying Rule 29 is that, if a valuation of assets is provided in connection with an offer, it is likely to be of such fundamental importance to target shareholders’ decision on whether to accept the offer that they should have the benefit of an opinion on the valuation from an expert of appropriate independence and competence. Prior to publication of PCP 2018/1, the Panel Executive (the **Executive**) undertook an informal pre-consultation on a confidential basis to ascertain their views on Rule 29 and current market practice. The Code Committee proposes to replace the current Rule 29 with a new Rule 29, which is intended to reflect better current practice and provide more clarity on specific requirements.

Key Proposals

- *Applicable Valuations*: Rule 29 currently applies when a valuation of assets is given “in connection with an offer”. The Code Committee proposes to clarify that Rule 29 should apply to an asset valuation published by an offeree or a securities exchange offeror (a) during the offer period; (b) in the 12 months prior to the commencement of the offer period; or (c) more than 12 months prior to the commencement of the offer period, but only if attention is drawn to that valuation in the context of the offer. The proposed new Rule 29.1(a) will not apply to a valuation which is not considered by the Panel to be material to the offeree shareholders in making a properly informed decision regarding the offer.
- *Types of assets*: the proposed new Rule 29.1(b) codifies the specific types of assets to which Rule 29 has principally been applied to date, being valuations of (a) land, buildings, plant or equipment; (b) mineral, oil or gas reserves; and (c) unquoted investments. The Panel will also have discretion to apply Rule 29 to valuations of other assets or liabilities and the Panel would continue to need to be consulted.
- *Net asset values and adjusted net asset values*: the proposed new Rule 29.1(d) provides that where an offeree or a securities exchange offeror publishes, or has published, a NAV or adjusted NAV figure in circumstances where Rule 29 would apply if a valuation had been published in respect of the underlying assets, it must

publish a valuation of the underlying assets and set out any adjustments which have been made to allow offeree shareholders to reconcile differences between the underlying assets and the NAV or adjusted NAV figure.

- *Requirement for valuation report*: the proposed new Rule 29.2 provides that a valuation published during the offer period should be in the form of, or accompanied by, a valuation report. Historical valuations to which Rule 29 applies must either be confirmed in, or updated by, a valuation report contained in the offer document (or defence circular) or, if earlier, the first announcement or document published during the offer period that refers to the valuation.
- *Valuer*: the proposed new Rule 29.3 sets out the requirements as to a valuer's independence and qualifications. It also seeks to remove the current emphasis on property valuations and property valuation practices.
- *No material difference statement*: the proposed new Rule 29.5 removes the current requirement for a valuation to be "current" and introduces a requirement that if the date of valuation of the assets is different from the date of the announcement or document in which the valuation report is published, the directors must make a statement that the valuer has confirmed that an updated valuation would not be materially different. An updated valuation will need to be published if such statement cannot be made.
- *Profit forecasts*: the proposed new Rule 29.7 introduces a requirement to consult the Panel in advance if information in a valuation report could constitute a profit forecast for the purposes of Rule 28.
- *Other proposals*: PCP 2018/1 also proposes to retain the current requirement to include in a valuation report a statement as to the tax consequences of a sale of assets and clarifies that, in line with current practice, an estimate of any potential tax liability should be included. PCP 2018/1 also retains the current Rule 29.1(d) that a party to an offer is not normally permitted to publish a valuation of assets of another party unless supported by an unqualified valuation report. However, the Code Committee proposes to remove the wording which provides that comments by one party about another party's valuation may be permitted in exceptional circumstances.

The deadline for responses was 7 December 2018. We will report on the Code Committee's Response Statement once published.

The full PCP can be viewed at:

www.thetakeoverpanel.org.uk/wp-content/uploads/2018/10/PCP2018-1.pdf

The United Kingdom's Withdrawal from the European Union

On 5 November 2018, the Code Committee published PCP 2018/2 proposing amendments to the Code in relation to the UK's withdrawal from the European Union.

A draft of The Takeovers (Amendment) (EU Exit) Regulations 2019, which proposes certain changes to Part 28 of the Companies Act 2006 has also been published and is discussed in further detail below.

Implementation

The draft withdrawal agreement sets out the basis on which UK will leave the EU, including a transition period until 31 December 2020 during which EU law would continue to be applicable to and in the UK. If, ultimately, the withdrawal agreement (or something equivalent) and transition period receives the necessary Parliamentary approvals, then the amendments to the Code set out in PCP 2018/2 will come into effect following the end of the transition period (subject to any other arrangements agreed between the EU and the UK during the transition period).

However, if the UK leaves the EU with "no deal", then the proposed amendments will come into effect at 11.00 p.m. on 29 March 2019. The Code Committee intends to publish the final amendments to the Code ahead of that date.

Overall, the proposed changes are not material, save for the removal of the shared jurisdiction regime.

Key Proposals

- *Shared Jurisdiction:* The Code Committee proposes to delete Section 3(a)(iii) of the Introduction to the Code, which sets out the rules in respect of the shared jurisdiction regime. As a result, the Code would no longer apply to an offer for:
 - a company with its registered office in the UK and whose securities are admitted to trading on a regulated market in an EEA Member State (but not in the UK) and which does not satisfy the "residency test"; or
 - a company with its registered office in an EEA Member State and whose securities are admitted to trading on a regulated market in the UK but not in that EEA Member State.

The Code would, however, apply in full to an offer for a company which has its registered office in the UK and whose securities are admitted to trading on a regulated market in an EEA Member State (but not in the UK) and which satisfies the "residency test".

In the case of offers for shared jurisdiction companies which straddle the implementation date, the Code Committee expects that the changes will take place immediately following the implementation date and that the position should be made clear in the relevant offer documentation. In respect of offers to which the Code will apply in full following the implementation date, the requirements in respect of disclosure of interests and dealings in securities under Rule 8 will also apply as from the implementation date.

- *Introduction to the Code:* PCP 2018/2 also sets out various other consequential amendments to the Introduction to the Code and certain definitions as a result of the Takeovers Directive ceasing to apply in the UK. In addition, the Executive will withdraw Practice Statement No 18 (Cross-Border Mergers) once it will no longer be possible to effect a statutory merger between a UK company and an EEA Member State company under the Cross-Border Mergers Regulations 2007.
- *General Principles:* It is expected that the general principles will remain substantially the same and the PCP 2018/2 sets out some minor drafting and formatting changes.
- *Rules and Appendices:* PCP 2018/2 confirms that certain rules and practices currently applied will be retained following the UK's withdrawal from the EU, including:
 - references in the Code to “Phase 2 European Commission proceedings”, although the Code Committee intends to keep this under review; and
 - the bid documentation offences set out in section 953 of the Companies Act 2006.

In addition, it is proposed that references to the EEA in Rule 30.4 (*Making Documents, Announcements and Information Available to Shareholders, Persons with Information Rights and Employee Representatives (or Employees)*) will be amended to refer to the UK, the Channel Islands and the Isle of Man only. Accordingly, it will be possible to seek dispensation from the requirements of Rule 20.4 in respect of shareholders located in the EEA. However, the Code Committee considers that it is unlikely in the short term. However, the Code Committee commented that, following the amendment and the UK's withdrawal from the EU and if law in the UK and law in the EEA diverges, it may become more likely over time for a dispensation to be granted.

The deadline for responses was 17 December 2018. We will report on the Code Committee's Response Statement once published.

The full PCP can be viewed at:

www.thetakeoverpanel.org.uk/wp-content/uploads/2018/11/BREXIT-PCP-5-November-2018.pdf.

Draft Takeovers (Amendment) (EU Exit) Regulations 2019

On 5 November 2018, a revised version of the draft Takeovers (Amendment) (EU Exit) Regulations 2019 was published. The draft regulation seeks to transpose articles of the Takeovers Directive (other than provisions relating to the shared jurisdiction regime) into a new Schedule 1C of the Companies Act 2006 with necessary drafting changes to cater for UK legislation and other minor drafting changes.

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

Background

We previously reported on the various developments relating to Mr King's offer for Rangers International Football Club Plc (**Rangers**). Please see our Public M&A Update for Q1 2017, Q2 2018 and Q3 2018 and our 2017 Review for further details of these updates. By way of reminder, the latest background to the offer is as follows:

- On 28 April 2018, the Panel obtained an interim interdict from the Court of Session preventing Mr King from publishing an offer document that did not contain a cash confirmation in accordance with Rule 24.8 of the Code.
- On 4 July 2018, the Panel published Panel Statement 2018/8, setting out the Committee's ruling rejecting a request by Mr King (made on 11 June 2018) that the Committee be convened to review the refusal by the Executive to grant Mr King an extension of time to send the offer document.

Latest Developments

In the most recent developments:

- The Outer House of the Court of Session rejected a challenge brought by Mr King against the contempt of court proceedings issued against him by the Panel.
- The Hearings Committee of the Panel (the **Committee**) rejected Mr King's request that the Committee be convened to review the Executive's ruling that Mr King's obligation to procure a mandatory bid for Rangers should extend to the holders of new shares issued pursuant to a placing.
- Mr King gave an undertaking to the Court of Session that he would take certain actions, including ensuring Mr King's bid vehicle, Laird Investments (Pty) Limited (**Laird**), makes an offer for Rangers in full compliance with the Code by 25 January 2019.

Contempt of court proceedings

Mr King challenged the Panel's application for contempt of court on grounds of procedural irregularities. On 14 November 2018, the Outer House rejected Mr King's challenge as without merit.

It is understood that the contempt proceedings have been suspended, but would resume in the event that Mr King did not make an offer for Rangers in compliance with the Code by 25 January 2019.

Panel Statement 2018/19

On 29 November 2018, the Panel issued Panel Statement 2018/19 setting out the ruling of the Chairman of the Committee in respect of Mr King's request for the Committee to review a ruling of the Executive made on 2 October 2018. The Executive had confirmed

that Mr King's mandatory bid for Rangers should extend to the holders of new shares issued pursuant to a non-pre-emptive placing which had received the consent of Rangers shareholders in August 2018.

The request was rejected by the Chairman of the Committee on the basis that any attempt to persuade the Committee to waive the obligation to procure a Rule 9 offer to the holders of the new shares acquired in the placing would have no reasonable prospect of success:

- The Code is clear that an offer must extend to new shares issued during the relevant offer period. The Code provides that the acquisition of statutory control as the only condition which a Rule 9 offer may be subject. If the offer did not extend to holders of new shares issued during an offer period, this would mean that an offer could become unconditional without statutory control passing to the offeror, and the Committee commented that this is something which Rules 9 and 10 of the Code seek to avoid. In addition, in order to offer equivalent treatment to all shareholders of the same class (in line with General Principle 1 of the Code) a Rule 9 offer would be required to be extended to holders of new shares of the same class issued during an offer period.
- Laird's Rule 2.7 announcement stated that the offer would extend to any further Rangers shares issued or allotted while the offer remained open for acceptance.
- Mr King and the board of Rangers were made aware of this on several occasions before the new shares were issued and allotted. The Panel agreed to disapply Rule 21.1 of the Code, which would otherwise prevent Rangers from issuing new shares during an offer period, provided that, among other conditions, holders of shares carrying at least 50% of the voting rights approved the proposed placing and the shareholder circular should set out an explanation that (a) Mr King's mandatory offer obligation will extend to the enlarged share capital and (b) the placing would substantially increase the number of acceptances required and as such make the offer less likely to succeed.
- NOAL, the vehicle by which Mr King procured the purchase of Rangers shares, voted in favour of the relevant resolution, suggesting that the placing had proceeded with Mr King's consent. The Chairman of the Committee also noted that Mr King's concert parties were allotted a proportion of the new shares similar to the percentage of their shareholdings prior to the placing.

The Executive notes that placees who subscribed for the new Ranger Shares at 20 pence per share are unlikely to accept Mr King's offer at 20 pence per share and that, as a result of the increased share capital, the Rule 9 offer exceeds the cash resources currently at Laird's disposal. In view of this, the Executive has suggested to Mr King that if such placees were to give irrevocable undertakings that they would not accept Mr King's offer, then for the purposes of the cash confirmation under Rule 24.8 of the Code, the

Executive may explore with the cash confirming party ways in which it could discharge its cash confirmation responsibilities by relying on the irrevocable undertakings.

Mr King's undertaking to the Court of Session

On 30 November 2018, Mr King gave an undertaking to the Court of Session to take or procure the certain actions, including to:

- instruct a third party cash confirming party considered appropriate by the Panel;
- obtain all consents and approvals necessary in South Africa to transfer the necessary funds for the offer to the United Kingdom;
- instruct the cash confirming party to provide advice as to how Laird/Mr King must comply with obligations under the Code and for the cash confirming party to liaise with the Panel on behalf of Laird/Mr King;
- ensure that Mr King's bid vehicle, Laird, makes an offer for Rangers in full compliance with the Code by no later than 17:30 GMT on 25 January 2019; and
- appoint a legal advisor to ensure that all necessary documentation complies with the Code and to liaise with the Panel in this respect.

The full text of the undertaking can be viewed at:

media.rangers.co.uk/uploads/2018/12/20181130-King-Undertaking.pdf.

Practice & Panel Statements

The following Practice and Panel Statements were issued by the Panel during 2018 – in reverse chronological order:

Practice Statements		
32	08/01/18	Rule 21.1 – Application following the unequivocal rejection of an approach
Panel Statements		
2018/19	29/11/18	Rangers Ruling of the Chairman of the Hearings Committee
2018/18	05/11/18	Issue of Public Consultation Paper 2018/2
2018/17	17/10/18	Issue of Public Consultation Paper 2018/1
2018/16	22/09/18	Result of auction
2018/15	20/09/18	Auction procedure under Rule 32.5
2018/14	29/08/18	Disney chain principle offer price
	29/08/18	Statement 2018/4 issued by the Takeover Appeal Board
	15/08/18	Statement 2018/3 issued by the Takeover Appeal Board
	09/08/18	Statement 2018/2 issued by the Takeover Appeal Board
	08/08/18	Statement 2018/1 issued by the Takeover Appeal Board
2018/13	03/08/18	Chain Principle Offer Price
2018/12	27/07/18	Holding announcement of the Hearings Committee
2018/11	23/07/18	Publication of the Panel's Annual Report
2018/10	18/07/18	Notification of Hearing Date
2018/9	13/07/18	Panel Statement regarding requirement for a chain principle offer
2018/8	04/07/18	Rejection by the Chairman of the Hearings Committee of request to convene the Committee
2018/7	28/06/18	Panel Statement regarding requirement for a chain principle offer
2018/6	26/04/18	Panel Executive Appointment
2018/5	23/04/18	Requirement for potential offeror to make Rule 2.7 announcement or announce no intention to bid
2018/4	12/04/18	Panel Statement regarding requirement for a chain principle offer
2018/3	10/04/18	Requirement for potential offerors to make Rule 2.7 announcement or announce no intention to bid by 20 April 2018
2018/2	18/01/18	Panel Appointments
2018/1	08/01/18	Revised Takeover Code, Practice Statement No 32, amended Practice Statement No 28 and new checklists

Contacts

For more information about any of the issues raised in this update please contact:

Rob Aird	Partner	London	+44 (0)20 7859 1726	rob.aird@ashurst.com
Adrian Clark	Senior Consultant	London	+44 (0)20 7859 1767	adrian.clark@ashurst.com
Simon Beddow	Managing Partner, London	London	+44 (0)20 7859 1937	simon.beddow@ashurst.com
Nick Bryans	Partner	London	+44 (0)20 7859 1504	nick.bryans@ashurst.com
Simon Bullock	Partner	London	+44 (0)20 7859 3115	simon.bullock@ashurst.com
David Carter	Partner	London	+44 (0)20 7859 1012	david.carter@ashurst.com
Nick Cheshire	Partner	London	+44 (0)20 7859 1811	nick.cheshire@ashurst.com
Karen Davies	Partner, Head Corporate UK	London	+44 (0)20 7859 3667	karen.davies@ashurst.com
James Fletcher	Partner	London	+44 (0)20 7859 3156	james.fletcher@ashurst.com
Bruce Hanton	Partner	London	+44 (0)20 7859 1738	bruce.hanton@ashurst.com
Nicholas Holmes	Partner	London	+44 (0)20 7859 2058	nicholas.holmes@ashurst.com
Hiroyuki Iwamura	Partner	London	+44 (0)20 7859 3244	hiroyuki.iwamura@ashurst.com
Adam Levitt	Partner	London	+44 (0)20 7859 1633	adam.levitt@ashurst.com
Tom Mercer	Partner	London	+44 (0)20 7859 2988	tom.mercer@ashurst.com
Robert Ogilvy Watson	Partner	London	+44 (0)20 7859 1960	robert.ogilvywatson@ashurst.com
David Page	Senior Consultant	London	+44 (0)20 7859 1908	david.page@ashurst.com
Nick Rainsford	Partner	London	+44 (0)20 7859 2914	nick.rainsford@ashurst.com
Michael Robins	Partner	London	+44 (0)20 7859 1473	michael.robins@ashurst.com
Tara Waters	Partner	London	+44 (0)20 7859 2755	tara.waters@ashurst.com
Nick Williamson	Partner	London	+44 (0)20 7859 1894	nick.williamson@ashurst.com
María José Menéndez	Managing Partner, Madrid	Spain	+34 91 364 9867	mariajose.menendez@ashurst.com
Reinhard Eyring	Partner, Head of Germany	Germany	+49 (0)69 97 11 27 08	reinhard.eyring@ashurst.com
Arnaud Wtterwulghé	Partner	Belgium	+32 2 626 1914	arnaud.wtterwulghé@ashurst.com
Renad Younes	Partner	Abu Dhabi/ Middle East	+971 (0)2 406 7217	renad.younes@ashurst.com
Nick Terry	Partner	Australia	+61 3 9679 3483	nick.terry@ashurst.com

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

Target (Market)	Bidder	Bid value	Bid premium**	Recommended	Hostile	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
Q4 2018																			
Earthport plc (AIM)	Visa Inc	£198m	NP	•			•					•	CS				•		
Freshwater UK plc (Unquoted)	Raglan House Holdings Limited	£2.4m	NP	• ¹			•	•U ²			•							• ³	
Bloquel plc (Main Market)	Ecolab Inc.	£140.43m	40.48%	•			•					•							•
Faroe Petroleum plc (AIM)	DNO ASA	£609.6m	20.8%	•			•				• ⁴								•
BTC plc (Main Market)	Boston Scientific Corporation	£3.3bn	36.6%	•			•					•	C						
Global Graphics plc (Euronext Brussels)	Congra Software Sàrl	EUR 50.3m	NP	•			•				•								
GBGI Limited (AIM)	Further Global Capital Management, LP.	US\$131.8m	38.2%	•			•		• ⁶			•	C					• ⁷	
Communis PLC (Main Market)	OSG Group Holdings, Inc.	£153.8m	39.8%	•			•					•	S						

1. As all of the Freshwater directors were also directors of Raglan, the Freshwater board was conflicted from offering a recommendation to Freshwater shareholders. The independent financial adviser to Freshwater provided the recommendation on the offer to Freshwater shareholders.

2. As an alternative to the cash consideration, Freshwater shareholders may elect to receive an unlisted share alternative of 1 Raglan share for each Freshwater share.

3. The Freshwater management team agreed to subscribe for approximately 5.36 million Raglan shares at a price of 12 pence per share. These arrangements were subject to the approval of Freshwater independent shareholders in accordance with Rule 16 of the Code.

4. Following the publication of its offer document, DNO, through market purchases, increased its holding to 30.6% of Faroe's shares in issue. DNO's offer was subsequently revised in accordance with Rule 9 of the Code.

5. Global Graphics is a company with its registered office in England and Wales and is only admitted to trading on Euronext Brussels. As such, the shared jurisdiction rules apply and the mandatory offer falls under the shared jurisdiction of the Panel and the FSMA in Belgium.

6. As an alternative to the cash consideration, GBGI shareholders may elect to receive an interest in the bidder (a limited partnership). In connection with the offer, GBGI proposed to pay change of control bonuses to its executive directors, which required the approval of GBGI shareholders under Guernsey company law.

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 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 January to 31 December 2018)

Target (Market)	Bidder	Bid value	Bid premium**	Recommended	Hostile	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
Q3 2018																			
Randgold Resources Limited (Main Market)	Barrick Gold Corporation	US\$6.06bn	NP	•				• L					•	CR				•	
Sinclair Pharma plc (AIM)	Huadong Medicine Co., Limited	£166.6m	74.9%	•		•	•						•	• R ⁸				• ⁹	•
Jardine Lloyd Thompson Group plc (Main Market)	Marsh & McLennan Companies, Inc.	£4.3bn	33.7%	•			•						•	CS					•
Albion Community Power plc (Unquoted)	GCP Infrastructure Investments Limited	£5.8m	NP	•			•						•			•			
Produce Investments plc (AIM)	Promethean Investments LLP	£55.29m	35.44%	•		•	•	• U	• ¹⁰		•								
Cambian Group plc (Main Market)	CareTech Holdings PLC	£377m/ £354m ¹¹	37%/ 28% ¹¹	•		•	•	• A					•	• CSR		•		• ¹³	•
Abzena plc (AIM)	Welsh, Carson, Anderson & Stowe	£34.4m	167%	•		•	•					•	• S ¹⁴						
esure Group plc (Main Market)	Bain Capital Private Equity, LP and its affiliates	£1.207bn	37%	•		•	•						•	• CS				• ¹⁵	
Vernalis plc (AIM)	Ligand Pharmaceuticals incorporated	£32.67m	45.7%	•		•	•						•	CFS					
Harvey Nash Group plc (AIM)	DBAY Advisors Limited	£98.6m	-16.6%	•		•	•						•						•

8. Sinclair and Huadong entered into an offer agreement which contained certain pre-conditions required to be satisfied prior to the release of the Rule 2.7 announcement. Huadong also entered into a term sheet setting out key terms of the proposed management incentive plan with the proposed management incentive plan participants.

9. As the value of the management incentive plan was significant, it was subject to the approval of independent shareholders of Sinclair pursuant to Rule 16 of the Code.

10. Produce Investments shareholders may elect to receive as an alternative to the full cash consideration an alternative, comprising cash, shares and loan notes consideration.

11. The offer included a cash and shares offer and a full cash alternative under which Cambian shareholders may elect to receive cash only in respect of any of their shares. The bid value of £377 million relates to the cash and shares offer and the bid value of £354 million relates to the full cash alternative.

12. The bid premium of 35% relates to the cash and shares offer and the bid premium of 28% relates to the full cash alternative.

13. The offer was subject to the approval of CareTech shareholders as the offer constitutes a reverse takeover under the AIM Rule for Companies.

14. Abzena and WCS entered into a facility letter under which WCS agreed to provide to Abzena a £2 million term loan facility. The Executive agreed to disapply Rule 21(a) of the Code on the basis that Abzena shareholders holding shares carrying more than 50% of voting rights have stated in writing they approved the term loan facility and would vote in favour of any resolution to that effect proposed at a general meeting.

15. Sir Peter Wood agreed (a) to re-invest £50 million (represented by esure shares) in the scope of the post-completion group (b) to provide advisory services to the post-completion group (c) to act as a director or chairman of the group (d) to provide advisory services to the post-completion group (e) to act as a director pursuant to Rule 16.2 of the Code.

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

Target (Market)	Bidder	Bid value	Bid premium**	Recommended	Hostile	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
John Laing Infrastructure Fund Limited (Main Market)	Dalmore Capital Limited and Equitix Investment Management Limited	£1.448bn	23.6%	•		•	•						•	CS					
Electronic Data Processing PLC (Main Market)	Kerridge Commercial Systems Group Limited	£11.85m	36.8%	•			•						•						
Phaunos Timber Fund Limited (Main Market)	Stafford Capital Partners Limited	US\$259.1m	18%		•		•				• ¹⁶								
Q2 2018																			
Virgin Money Holdings (UK) plc (Main Market)	CYBG PLC	£1.8bn	31%	•				•L					•	C				• ¹⁷	•
Business Control Solutions Limited (Unquoted)	Business Control Solutions Group Trustees Limited	£52.03m	NP	•			•		• ¹⁸		•								
Artillum plc (AIM)	Pareteum Corporation	£78m	35%	•			•	•L					•	•C			•	• ¹⁹	•
ZPG Plc (Main Market)	Silver Lake Management Company V, LLC	£2.2bn	31%	•			•						•	CS					•
Shire plc (Main Market)	Takeda Pharmaceutical Company Limited	£46bn	64.4%	•			•	•L ²⁰					•	CR				•	•
Sky plc (Main Market)	Comcast Corporation	£30.6bn	118.9%		• ²¹		•				• ²²								
CityFibre Infrastructure Holdings plc (AIM)	Antin and West Street Infrastructure Partners consortium	£537.8m	92.9%	•			•						•	CS ²³					•

16. Stafford lowered the acceptance condition from not less than 90% to more than 50% in value of the relevant Phaunos shares.

17. The transaction was subject to the approval of CYBG shareholders, as it constituted a Class 1 transaction under the Listing Rules. In addition, in accordance with Rule 10 of the Code, the approval of independent financial advisers on the proposed transaction was required. The acquisition was subject to the grant of CYBG rights in the UK to use the "Virgin Money" names and logos and the "Virgin" trademarks.

18. The cash consideration comprises an initial consideration of £751 million and a future consideration depending on the future trading of the target. The future consideration is not guaranteed.

19. The acquisition was subject to approval of Pareteum shareholders. In addition, the management arrangement (including incentivisation arrangements) to be put in place between Pareteum and the CEO of Artillum required the approval of the independent shareholders of Artillum in accordance with Rule 16.2 of the Code.

20. Shares, shareholders and ADS holders may elect to receive Takeda shares or Takeda ADSs.

21. Initially no recommendation. The transaction was recommended by the Sky Independent Committee on the announcement by Comcast of an increased offer.

22. Conditional upon valid acceptances received in respect of more than 50% of voting rights. Following the announcement of its initial offer, Comcast, through market purchases, acquired an interest in Sky shares carrying 30% or more of the voting rights in Sky. Comcast subsequently revised the terms and conditions of its offer and announced a mandatory offer in accordance with Rule 9 of the Code.

23. The Antin and West Street Infrastructure Partners consortium entered into a consortium bid agreement in respect of certain matters relating to the offer.

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

Target (Market)	Bidder	Bid value	Bid premium**	Recommended	Hostile	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
Fidessa Group plc (Main Market)	ION Investment Group Limited	£1.5bn	48.6%	•			•				•		C						
Vipera plc (AIM)	Banca Sella Holding S.p.A.	£24.03m	20%	•			•				•						•	• ²⁴	
Q1 2018																			
NEX Group plc (Main Market)	CME Group Inc.	£3.9bn	49.2%	•			•	• L					• CS						•
Rangers International Football Club Plc (Unquoted)	David King	£16.3m	NP		•	•	•				•								
FreeAgent Holdings plc (AIM)	The Royal Bank of Scotland Group plc	£53m	86%	•			•						• CS					• ²⁵	
Fenner plc (Main Market)	Compagnie Générale des Etablissements Michelin SCA	£1.2bn	30.7%	•			•						• CS						
Stellar Diamonds plc (AIM)	Newfield Resources Limited	£6.2m	334.6%	•				• L					•						
Gigaclear plc (Unquoted)	M&G Investment Management Ltd	£270m	NP			• ²⁷	•				•								
Laird PLC (Main Market)	Advent International Corporation	£1bn	72.6%	•			•						• CS						•

24. Sella Open Fintech Platform S.p.A. ("SOFPT"), Banca Sella's bidding entity, entered into a Management Share Exchange Agreement with certain Vipera directors and managers pursuant to which SOFP agreed to issue new SOFP shares in exchange for a substantial proportion of Vipera shares held by them. The Management Share Exchange Agreement required the approval of the independent Vipera shareholders in accordance with Rule 16.2 of the Code.

25. RBS agreed with the founders of FreeAgent, among other matters, to issue new B ordinary shares in the bidding entity to the founders. These management arrangements required the approval of independent FreeAgent shareholders pursuant to Rule 16 of the Code.

26. Gigaclear's shares have never been publicly traded. However, the Code applies as if it is a public company with its registered office and place of central management and control in the UK.

27. Initially not recommended. The independent Gigaclear directors considered the offer undervalued Gigaclear. However, given M&G's existing interest in the company and the letter of intent received by M&G, the independent Gigaclear directors recommended its shareholders to accept M&G's offer.

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

Target (Market)	Bidder	Bid value	Bid premium**	Recommended	Hostile	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
Fidesa Group plc (Main Market)	Temenos Group AG	£1.4bn	22.4%	• ²⁸			•						• C						
Plant Impact plc (AIM)	Crodia International plc	£10m	79.9%	•			•						• S	•					
Stadium Group plc (AIM)	TT Electronics plc	£45.8m	437%	•			•						•	•		•			•
Hogg Robinson Group plc (Main Market)	GBT III BV.	£410.5m (max value); £376.3m (min value)	53.85% (max); 41.03% (min)	•			•		• ²⁹				• CS		•	•		• ³⁰	•
UBM plc (Main Market)	Infirma PLC	£3.9bn	29.9%	•			•	• L		•			• C					• ³¹	•
MayAir Group plc (AIM)	Mr Jiang Li	£50.35m	35%	•			•						• R		•			• ³²	
GKN plc (Main Market)	Melrose Industries PLC	£8.1bn	40%	•	•		•	• L		•	• ³³							• ³⁴	•
Lombard Risk Management plc (AIM)	Vermeg Group N.V.	£52.08m	98.5%	•			•						• S						

28. Fidesa subsequently withdrew its recommendation following the announcement of an increased firm offer by ION Investment and of the intention of the Fidesa directors to recommend the offer by ION investment.

29. 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 Freedom SaaS business completed prior to the scheme court hearing. The amount of additional consideration payable was dependent on the consideration received under the Freedom disposal.

30. Approval of Hogg Robinson shareholders was required in respect of an amendment to the CFO's service contract to include a "liquidated damages" clause, which provided for the payment of certain benefits to the CFO in the event of the termination of her service contract within 12 months of the effective date of the offer.

31. The offer was subject to the approval of Infirma shareholders as it constituted a Class 1 transaction under the Listing Rules.

32. Certain members of MayAir management and the employee benefits trust were offered shares in the bidder vehicle as consideration for their existing shareholding in MayAir in accordance with Rule 16.2 of the Code. The arrangements required the approval of the independent shareholders of MayAir.

33. Melrose lowered the acceptance condition from 90% to 50% plus one share.

34. The offer was subject to approval by Melrose shareholders as it constituted a Class 1 transaction under the Listing Rules.

ashurst

www.ashurst.com

Broadwalk House, 5 Appold Street, London EC2A 2AG T: +44 (0)20 7638 1111 F: +44 (0)20 7638 1112 www.ashurst.com. Ashurst LLP and its affiliates operate under the name Ashurst. Ashurst LLP is a limited liability partnership registered in England and Wales under number OC330252. It is a law firm authorised and regulated by the Solicitors Regulation Authority of England and Wales under number 468653. The term "partner" is used to refer to a member of Ashurst LLP or to an employee or consultant with equivalent standing and qualifications or to an individual with equivalent status in one of Ashurst LLP's affiliates. Further details about Ashurst can be found at www.ashurst.com. © Ashurst LLP 2019 Ref D/7712