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Market Tracker Trend Report
Trends in UK public M&A deals in 2017

Contents

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Background and approach

This report aims to provide an insight into the current dynamics of UK public M&A activity in 2017 and what we can expect to see in 2018.

LexisNexis Market Tracker has conducted research to examine current market trends in respect of UK public M&A deals announced in 2017. We reviewed a total of 90 transactions that were subject to the Takeover Code (the Code): 47 firm offers (25 for Main Market companies, 22 for AIM companies) and 43 possible offers[1] (26 for Main Market companies and 17 for AIM companies) which were announced between 1 January 2017 and 31 December 2017.

The percentages included in this report have been rounded up or down to whole numbers, as appropriate. References to 'Rules' are references to the Rules of the City Code on Takeovers and Mergers (the Code).

The final date for inclusion of developments in this report is 31 December 2017. Reference has been made to deal developments after this date if considered noteworthy.

This report augments and updates our report in respect of the first half of 2017 which is available here.

[1] Comprising 34 possible offers subject to a PUSU deadline, 8 formal sales process announcements and one commencement of offer period initiated by a target's strategic review announcement confirming that it was exploring its options including a sale of the company.

Executive summary

The number of firm offers announced in 2017 was slightly lower than the number of firm offers announced in 2016 (2017: 47, 2016: 51) but deal value has fallen more significantly by just over a third (2017: £45 billion, 2016: £67.3 billion), even though we have seen more than doubling of the number of deals announced valued above £1 billion (2017: 12 deals, 2017: 5 deals). The largest deal of 2017 was the £8 billion offer for Worldpay Group plc by US's Vantiv, Inc., while the smallest deal of the year was the £15.5 million offer for Panmure Gordon & Co. plc by Qatar's QInvest LLC and US's Atlas Merchant Capital LLC. In contrast with previous years, UK bidders accounted for 36% of aggregate deal value (in 2016, UK bidders accounted for 4% of aggregate deal value).

In the first half of 2017 we saw the use of the offer structure to implement a takeover increase so that there was almost an even split between the number of offers and schemes of arrangement announced. This may be attributable to the increase in the number of hostile offers and mandatory offers made during that period. However, by the end of 2017, we saw a return to normality, with the scheme structure being used in 62% of deals announced. Schemes remained the preferred structure on the larger deals with a scheme structure being used in 9 out of 10 of the largest deals.

2017 saw a continuance of certain trends observed in recent years, including the popularity of the use of the scheme structure (particularly among the larger deals) and the continued popularity of cash consideration. However, we have seen an increase in the use of shares only consideration. There has been a five-fold increase (compared with 2016) in the number of deals featuring a 'mix and match' facility where consideration offered comprised cash and shares. Every firm offer announced in 2017 featuring a 'mix and match' facility was for over £1 billion. We have also seen one deal entitling target shareholders, in addition to cash and share consideration, to contingent value rights (CVRs) subject to certain conditions.

We have seen deal activity across several different sectors in 2017, with no one sector being targeted specifically unlike in 2016, which saw a strong interest in the technology, media & telecommunications (TMT) and support services sector. In 2017, firm offers were announced for targets operating in financial services (13%), professional services (13%), computing & IT (10%), engineering and manufacturing (10%), mining, metals & extractions (10%) and property (10%) sectors (among other sectors).

2017 was also the year where the Panel sought and obtained a court order requiring Mr David Cunnigham King to comply with the ruling of the Takeover Appeal Board and make a Rule 9 compliant mandatory offer for Rangers International Football Club plc. We have also seen Government proposals for greater scrutiny of foreign ownership of UK businesses and assets in key sectors such as civil nuclear, defence, energy and telecoms and transport, for the introduction of mandatory and voluntary notification obligations and for the power to intervene in transactions involving smaller businesses in certain industries.

'Despite the backdrop of wider political uncertainty created by the UK's impending exit from the EU, public M&A activity remained surprisingly buoyant in 2017 as market participants adjust to what is perhaps the new normal. Clearly opportunities in the sphere of public M&A have been created by the current market conditions and those bidders that have identified strategic acquisition opportunities have not been deterred by the wider economic and geopolitical outlook. Although there was a slight decline in the number of bids announced in 2017 when compared to 2016, deal pipelines look healthy for the second quarter of 2018, which bodes well for increased public M&A activity in the latter part of 2018.'

Adam Cain, Senior Associate, Pinsent Masons LLP

'Expectations of a relatively buoyant start to H1 2018 at least as comparable as 2017 have already borne out (based on the number of offers announced). The outlook for H2 2018 is, however, much more uncertain — Brexit will have a greater (negative) impact on deal activity as the lack of clarity on a transitional deal, trade deals and indeed on Brexit itself continues to persist the closer we near the deal "deadline".'

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

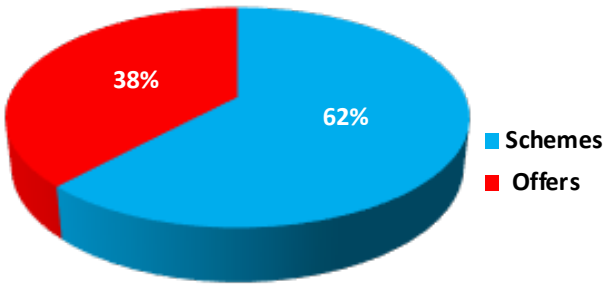
1 Deal structure

Structuring the deal to suit the circumstances

Schemes of arrangement remain the deal structure of choice among bidders: of the 47 firm offers announced in 2017 (25 for Main Market companies and 22 for AIM companies), 29 (62%) were structured as a scheme and 18 (38%) were structured by way of an offer. These figures are broadly in line with figures for firm offers announced in 2016: of the 51 firm offers announced in 2016 (26 for Main Market companies and 25 for AIM companies), 61% were structured as schemes and 39% were structured as contractual offers.

In 2017, no bidders made an announcement that they were switching deal structure from an offer to a scheme (or vice versa).

Firm offers: Structure by number of deals



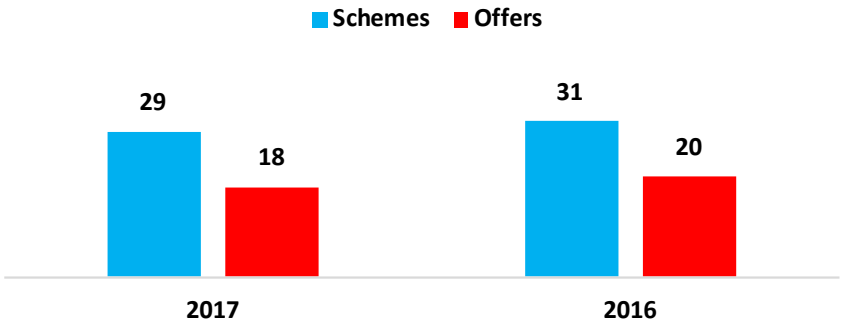
There have been no instances of deal structures being switched from an offer to a scheme or vice versa in 2017

Interestingly, the first half of 2017 saw a marked, albeit short-lived, shift in the preference for using a scheme to structure a takeover: 52% of firm offers were structured as schemes and 48% were structured as offers. This temporary blip can be explained by the surge in the number of hostile bids (5 deals during H1 2017 and 1 deal during H2 2017) and mandatory offers (3) (all during H1 2017: mandatory offers for Hornby plc, Dragon-Ukranian Properties and Development plc and Waterman Group plc) that were made during that period. As to hostile offers, although technically possible, there has never been a hostile bid implemented by a scheme and, as to mandatory offers, under the Code, a bidder requires Panel consent if it wishes to make a Rule 9 offer for an offeree by way of a scheme of arrangement and therefore Rule 9 offers, generally are structured as offers.

'When looking at the deal structure split between schemes and contractual offers we need to remind ourselves of the following: contractual offers are best suited to situations where there is greater deal certainty, less competitive tension and/or a board recommendation; and significant and substantive (in terms of identity but more importantly size of shareholding) undertakings or commitments in favour of the offer. Schemes of arrangement on the other hand are ideal for complex, recommended mergers where there is less certainty on the level of shareholder support. Whilst the changes in shape and identity of shareholder registers of UK corporates have meant that contractual offers have not always been the best route in order to secure 100% control, they continue to be the most appropriate form of deal structure in competitive and hostile situations. This accounts for the change in split between schemes and offers in H1 2017 which goes against the long-term trend of circa 60% plus of takeovers being structured as schemes of arrangement.'

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

Firm offers by deal structure: 2017 vs 2016



Schemes of arrangement are popular amongst bidders for a number of reasons, including certainty of obtaining 100% control: a scheme, if approved by a majority in number representing 75% (in value) present and voting at the relevant meeting(s) and sanctioned by the court, will be binding on all a target's shareholders, giving the bidder full control at an earlier stage than an offer, with no possibility of minority shareholdings.

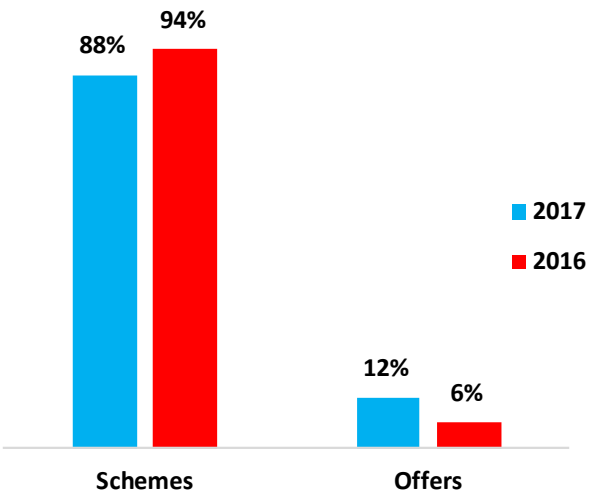
Schemes generally remain the preferred structure on the larger deals

Deal size affects structure

In 2017, as in 2016, a scheme structure was used where the deal value was larger in size. 9 of the 10 largest deals firmly announced in 2017 (ranging between £8b and £2.01b) were structured as schemes. The sole deal structured as an offer was the offer for Millennium & Copthorne Hotels plc by City Developments Limited for £2.01 billion. See table entitled 'Top 10 largest deals in 2017' in Section 2: Deal value below for further information.

Conversely, an offer structure tended to be used when the deal value was smaller in size: of the 10 smallest deals (ranging between £15.5m and £27.4m) firmly announced in 2017, 6 were structured as offers and 4 were structured as schemes.

Firm offers by aggregate deal value: 2017 vs 2016



'Generally schemes are the preferred and most practicable route for larger, complex friendly deals and have accounted for a significant number of main market transactions. On AIM - we tend to see a relatively equal split between offers and schemes. In terms of what 2018 will bring, this will be driven by deal sizes and recommendations. Whilst there is some expectation of fewer larger deals (note also the bid activity in the AIM market already seen this year), the increasingly more challenging dynamic for hostile bidders will result in less of a necessity for offer strictures.'

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

'Schemes of arrangement remain the deal structure of choice for bidders in the context of recommended acquisitions. This is clearly attributable to the fact that a bidder which elects to implement a transaction by way of scheme of arrangement can obtain 100% control of the target company despite only having received 75% approval from the target company's shareholders. Proceeding down the scheme route also obviates the need to undertake a squeeze-out procedure, which leads to a lengthening of the timetable in the context of a contractual offer and can result in dissenting shareholders holding an acquisition up even further.'

Adam Cain, Senior Associate, Pinsent Masons LLP

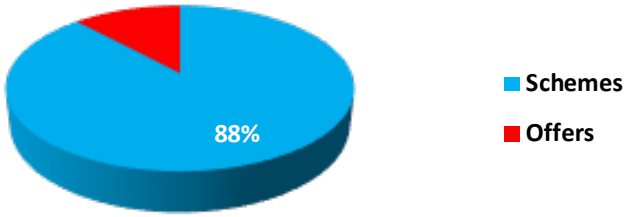
2 Deal value and volume

Deal volume in 2017 (47 firm offers) was slightly lower than in 2016 (51 firm offers). The aggregate value of deals firmly announced in 2017 was £45 billion, down by approximately a third compared with 2016 (just over £67.3 billion). This continues the trend from 2016, which saw aggregate deal value down by 61% compared with the same period in 2015 (around £163 billion). It should be noted, however, that 2015 saw numerous mega-deals being announced which has not been replicated to date.

The financial services industry saw both the highest and the lowest value deals: the £8 billion offer for Worldpay Group plc by Vantiv, Inc. being the highest and the £15.5 million offer for Panmure Gordon & Co. plc by QInvest LLC and Atlas Merchant Capital LLC being the lowest (the initial offer for Dragon-Ukrainian Properties and Development plc by Dragon Capital Investments Limited was lower, at £14.22 million, but the offer was increased on 27 June 2017 to £16.4 million).

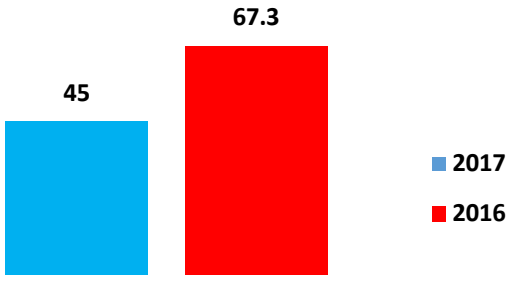
In 2016 the biggest deal was the £24.4 billion offer for ARM Holdings plc by Softbank Group Corp. which represented 36.2% of the aggregate deal value for 2016. 2016 also saw the £20.3 billion offer for London Stock Exchange Group plc by Deutsche Börse AG, which accounted for 30.1% of the aggregate deal value in 2016. Excluding these two 'tent pole' deals, the total deal value for 2016 was £22.66 billion. The joint smallest deals of 2016 were the £8.75 million offers for Ludgate Environmental Fund Limited by Headway Investment Partners III LP and for Superglass Holdings plc by Sergey Kolesnikov.

Firm offers: Structure by deal value



Of the 47 firm offers announced in 2017, 12 (26%) had a deal value of over £1 billion compared to 5 (10%) in 2016. The average deal value for 2017 was £959.5 million compared with £1.3 billion in 2016 (note, however, excluding the Softbank/ARM Holdings and LSE/Deutsche Börse deals, the average deal value for 2016 was £444 million). Accordingly, although we have not seen any 'tent pole' deals in 2017, we have seen a number of large deals despite the current climate of both political and economic uncertainty following the Brexit vote and more recently the 8 June election result and resultant minority Conservative Government.

2017 vs 2016: Deal value (£billions)



'I expect to see a handful of the mega-value or tent poke deals in 2018. There were a couple of such possible deals which failed to progress in 2017 (not all publicised) which is reflective of market appetite. That having been said, it is becoming increasingly difficult to pull off the larger deals, which typically involve targets with more complex international operations — thereby attracting and/or triggering regulatory scrutiny, review or intervention. The time, cost and transaction risk of these deals — some of which continue to be played out in the public markets — will inevitably have an impact on the appetite of bidders for these targets. The smaller to mid-market sector, however, will probably see the greatest activity in 2018.'

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

'Given the wider economic and geopolitical uncertainty, it may not be hugely surprising to note that overall deal values fell in 2017, although this is in part also attributable to the fact that there was an absence of gigantic M&A deals to rival the acquisition of ARM Holdings by SoftBank. The current hostile takeover bid by Melrose for GKN clearly indicates however that there is still an appetite for complex, high-value public acquisitions in the London market.'

Adam Cain, Senior Associate, Pinsent Masons LLP

Every one of the 10 largest deals was recommended by the target boards: all 10 were for Main Market companies, 9 were structured as schemes, 4 were made by UK bidders, and 1 was a P2P deal. Deal value among the 10 largest deals ranged from £8 billion to £2.01 billion. There was a variety of consideration structures used in the top 10 deals: cash only, shares only, cash and shares and cash, shares and contingent value rights.

Top 10 largest deals in 2017

Deal	Deal value	Deal structure	Industry sector (target)	Consideration structure	Bidder nationality	Market for target's shares
Worldpay Group plc by Vantiv, Inc	£8 billion	Scheme	Financial services	Cash and shares	United States	Main
Ladbrokes Coral Group plc by GVC Holdings plc	£4 billion*	Scheme	Travel, hospitality, leisure & tourism	Cash, shares and CVRs	Isle of Man	Main
Intu Properties plc by Hammerson plc	£3.9 billion	Scheme	Investment	Shares only	England & Wales	Main
Aberdeen Asset Management plc by Standard Life plc	£3.8 billion	Scheme	Financial services	Shares only	Scotland	Main
Booker Group plc by Tesco plc	£3.7 billion	Scheme	Retail & wholesale trade	Cash and shares	England & Wales	Main
Paysafe Group plc by Blackstone Management Partners LLC and CVC Capital Partners Limited	£2.96 billion	Scheme	Financial services	Cash only	United States and Luxembourg	Main
Amec Foster Wheeler plc by John Wood Group plc	£2.31 billion	Scheme	Engineering & manufacturing	Shares only	Scotland	Main
Berendsen plc by Elis SA	£2.17 billion	Scheme	Professional services	Cash and shares	France	Main
WS Atkins plc by SNC-Lavalin Group Inc.	£2.1 billion	Scheme	Engineering & manufacturing	Cash only	Canada	Main
Millennium & Copthorne Hotels plc by City Developments Limited	£2. 01 billion	Offer	Travel, hospitality, leisure & tourism	Cash only	Singapore	Main

* The offer price in the offer for Ladbrokes Coral/GVC could be as low as £3.2 billion or as high as £4 billion depending on the value of contingent value rights. See further Section 6: Nature of consideration.

3 Target response: recommended or hostile?

Firm offers

Of the 47 firm offers announced in 2017, 85% (40) began with a recommendation, 2% (1) received no definitive recommendation (Dragon-Ukrainian Properties and Development plc by Dragon Capital Investments Limited) and 13% (6) were hostile (unsurprisingly, structured as contractual offers rather than schemes). In 2016, 76% (39) were recommended at the outset, 12% (6) received no definitive recommendations, 4% (2) were recommended after revision, 6% (3) were hostile and 2% (1) became hostile after losing their recommendation. Accordingly, there was a 50% increase in hostile offers in 2017 compared with 2016.

Recommended

In one recommended offer (Panmure Gordon & Co. plc by QInvest LLC and Atlas Merchant Capital LLC), the cash consideration offer was recommended only, with the financial advisers being unable to advise the independent directors of the target board whether or not the terms of the Bidco unlisted share alternative were fair and reasonable. Accordingly, the independent directors were not able to form an opinion on whether the terms of the unlisted securities alternative were fair and reasonable and therefore could not recommend whether or not the target shareholders should elect for the unlisted securities alternative. For the purposes of this report, we have noted this as an offer 'recommended' by the board, but there was in fact a split (recommendation in relation to the cash offer and no definitive recommendation for the unlisted securities alternative).

There was a competing recommended offer for Gemfields plc by Fosun Gold Holdings Limited (which lapsed after the hostile offer by Pallinghurst became wholly unconditional). Gemfields' independent committee of the board recommended the competing offer by Fosun Gold even though it considered that financial terms of the offer were not 'fair and reasonable'. Rather, the committee recommended the Fosun Gold offer because it believed that the certain cash exit on offer made the offer materially more attractive than the unsolicited all-share nil-premium offer from Pallinghurst and that the Fosun Gold offer was at an 18.2% premium to the implied value of the Pallinghurst offer. The independent committee further highlighted its belief that the Pallinghurst offer would dilute Gemfields shareholders with inferior assets that offered exposure to more volatile commodities and with less attractive prospects.

This is a rare example of a target board recommending an offer even though it considers the financial terms to be otherwise than 'fair and reasonable'. Although Fosun Gold's offer was not 'fair and reasonable', the terms of its offer were preferable to those offered by Pallinghurst.

Other instances where a target board has recommended that shareholders accept an offer which the target board considers the bidder to have undervalued the target is where the offer has become unconditional in all respects (eg, Shawbrook Group plc by Pollen Street Capital Limited and BC Partners LLP).

Hostile offers

83% (5) of the hostile firm offers announced in 2017 were for AIM companies and varied in size from £15.8 million and £466 million. One (17%) hostile offer was announced in relation to a Main Market company for £842.4 million (increased to £868 million). 33% (2) of hostile offers featured shares only consideration (Touchstone Innovations plc by IP Group plc and Gemfields plc by Pallinghurst Limited), 50% (3) of hostile offers (ASA Resource Group plc by Rich Pro Investments Limited, Hornby plc by Phoenix UK Ltd and Shawbrook Group plc by Pollen Street Capital Limited and BC Partners LLP) offered cash only consideration while one (17%) hostile offer (InterQuest Group plc by Chisbridge Limited) offered cash and loan note alternative consideration. Half (50%) of hostile bidders were UK bidders and half (50%) were foreign bidders. Industry sectors which saw hostile offers in 2017 were mining, metals and extractions, consumer products, financial services, professional services and banking and finance.

5 out of 6 target boards published a defence circular in compliance with Rule 25.1. Reasons target boards have given for rejecting offers include:

- the target has been undervalued
- the offer does not reflect the future potential of the target's assets/business
- on share for share deals, that the financial terms are dilutive (based on recent NAVs)
- the use of offer caps
- the exclusive use of one form of consideration / lack of cash alternative
- lack of premium for control (especially when compared with shareholder value expected to be created in the medium term)
- risks for employees, location and integration
- strategic differences

ASA Resource Group plc, the only target that failed to produce a defence circular, was embroiled in solvency issues during the offer period, its shares had been suspended from AIM and joint administrators had been appointed. Accordingly, the administrators announced that the board did not have executive authority to form an opinion or publish a defence circular. Further, the joint administrators refused to consent to any share transfers during administration.

Six hostile bids were announced during 2017

It is thought to be the first time a UK company has opted to go into administration rather than accept a cash-only takeover offer from one of its minority shareholders, Rich Pro Investments Limited (RPI). RPI announced a firm offer for ASA on 12 July 2017 at a significant premium to the trading price of ASA shares. On the same day, ASA's board announced that it intended to continue its discussions with RPI in seeking various assurances from RPI about its intentions regarding ASA, that shareholders were advised to take no action in relation to the offer and that the board would make another announcement in due course. ASA published its offer document on 25 July 2017 setting out its intentions in relation to ASA's employees, management, places of business and fixed assets and that it will attempt to obtain a greater understanding of ongoing disputes between ASA and its management (among other disputes) and endeavor to resolve such disputes in the best interests of ASA. Trading of ASA's shares on AIM was suspended on 28 July pending clarification on ASA's financial position.

Possible offers (excluding FSPs and strategic reviews)

As with firm offers, 2017 has seen a number of possible offers being rejected by the target's board. The usual reason for rejecting an offer is that the target has been undervalued but we saw one possible offer (possible offer for FIH Group plc by Dolphin Fund Limited) being rejected for political reasons (see Deals in focus: FIH Group plc, below).

Of the 18 possible offers which progressed a firm offer in 2017:

- 4 (22%) were rejected by the target board (possible offers for InterQuest Group plc, Touchstone Innovations plc, Shawbrook Group plc, Berendsen plc (which became recommended at the firm offer stage)
- 10 (56%) were recommended by the target board (possible offers for Ladbrokes Coral Group plc, Aldermore Group plc, Millenium & Copthorne Hotels plc, Revolution Bars Group plc (by Stonegate Pub Company Limited), Gordon Dadds Group Limited, Paysafe Group plc, Imagination Technologies plc, WS Atkins plc, Aberdeen Asset Management plc and The Prospect Japan Fund Limited)
- 4 (22%) received no definitive recommendation (possible offers for Quantum Pharma plc, Gemfields plc (by Fosun Gold Holdings Limited), Hayward Tyler Group plc and Exova Group plc (by Element Materials Technology Limited) — these 4 possible offers became recommended offers at the firm offer stage

Of the 15 possible offers which terminated in 2017:

- 9 (60%) was rejected by the target board (the potential competing offers for Bovis Homes Group plc by Galliford Try plc and by Redrow plc, possible offers for Unilever plc and Unilever N.V., FIH Group plc, Revolution Bars Group plc, RedstoneConnect plc, The Property Franchise Group plc, Spire Healthcare Group plc and Gocompare.com Group plc)
- 6 (40%) were met with no definitive recommendation (the potential competing offers for Exova Group plc by Jacobs Holding AG and by PAI Partners SAS, possible offers for Brave Bison Group plc, The Stanley Gibbons Group plc (although this possible offer was noted by the board as being unsolicited), Rurelec plc and the potential competing offer for Worldpay Group by JP Morgan Chase Bank)

The sole remaining possible offer which neither terminated nor progressed to the firm offer stage by the end of 2017 was the possible offer for IWG plc by affiliates of Brookfield Asset Management, Inc. and Onex Corporation or its affiliates (announced on 23 December 2017). As at 31 December 2017, IWG's board has made no definitive recommendation for this possible offer. This deal terminated on 1 February 2018.

Globally, there have not been many (high deal value) hostile bids in 2017, save for a few exceptions (eg, American PPG Industries failed hostile offer for €26.9 billion for Dutch Akzo Nobel). One reason for this is that there may be a greater risk of failure and public embarrassment, for example, Kraft Heinz's offer for Unilever.

With a proposed offer value of US $143 billion (£114.5 billion), the widely reported possible offer for Unilever plc and Unilever N.V. by The Kraft Heinz Company would have been the biggest deal of the year had it progressed to the firm offer stage. However, the possible offer — which was spearheaded by 3G Capital (a significant Kraft Heinz shareholder) and backed by Warren Buffett (another significant Kraft Heinz shareholder) — announced on 17 February 2017 and hastily withdrawn on 20 February 2017, was an unwelcome approach, and Unilever released a statement on the same day as the announcement of the possible offer that the possible offer fundamentally undervalued Unilever and Unilever rejected the proposal as it saw 'no merit, either financial or strategic, for Unilever's shareholders' and that it did not 'see the basis for any further discussions'.

For information about global M&A trends in 2017 discussed at the Lex Mundi Global Seminar on Cross-Border Transactions in November 2017, and reported by LexisNexis, see News Analysis: The global M&A marketplace.

'The Gemfields case is an acute and illustrative example of the nuanced and many stranded elements that go behind the recommendation by a board as to whether to accept an offer in contrast to the narrow opinion as to whether the *financial terms* only are considered to be fair and reasonable.'

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

Drafting Examples

Gemfields plc by Fosun Gold Holding Limited (lapsed)

Target board recommendation despite offer not being fair and reasonable

'The Independent Committee of Gemfields, who have been so advised by J.P. Morgan Cazenove as to the financial terms of the Fosun Offer, consider that the financial terms of the Fosun Offer are not fair and reasonable. In providing its advice, J.P. Morgan Cazenove has taken into account the commercial assessments of the Independent Committee.

Notwithstanding the above, the Independent Committee are of the belief that the certain cash exit on offer from Fosun Gold is materially more attractive than the unsolicited all-share nil-premium offer from Pallinghurst Resources Limited ("Pallinghurst") announced on 19 May 2017 (the "Unsolicited Pallinghurst Offer"), and would note that the Fosun Offer is at a 18.2 per cent. premium to the implied value of the Unsolicited Pallinghurst Offer. The Independent Committee also reiterate their belief that the Unsolicited Pallinghurst Offer would dilute Gemfields shareholders with inferior assets that offer exposure to more volatile commodities and with less attractive prospects.

… Consequently, given the challenges that the Unsolicited Pallinghurst Offer poses to the independent future of the Company, and given the derisory nature of the Unsolicited Pallinghurst Offer, the Independent Committee intend to recommend that shareholders accept the Fosun Offer so as to secure a relatively more attractive outcome for their investment, as the Independent Committee, Ian Harebottle (Chief Executive Officer of Gemfields) and Janet Boyce (Chief Financial Officer of Gemfields) have irrevocably undertaken to do in respect of their own shares (representing approximately 0.08 per cent. of the issued ordinary share capital of Gemfields) and/or, as applicable, share options (representing approximately 1.61 per cent. of the issued ordinary share capital of Gemfields on a fully diluted basis), absent a higher offer for Gemfields emerging.'

Shawbrook Group plc by Pollen Street Capital Limited and BC Partners LLP

Target board recommendation following offer becoming unconditional

'The Independent Directors continue to believe that the Final Offer undervalues Shawbrook and its prospects. However, the Independent Directors also recognise that, in the event the Final Offer is declared wholly unconditional, Marlin Bidco will have obtained a very significant level of control of Shawbrook. This level of control will enable Marlin Bidco to implement its stated intention to procure that Shawbrook applies to the UK Listing Authority for the cancellation of its listing on the Official List and to the London Stock Exchange for the cancellation of its admission to trading. Consequently, it is likely that Shawbrook shareholders who do not accept the Final Offer could, as a result, own a minority interest in an unlisted company. This would significantly reduce the liquidity of Shawbrook Shares.

Accordingly, the Independent Directors, who have been so advised by BofA Merrill Lynch and Goldman Sachs

International, now recommend that shareholders accept the Final Offer, as the Independent Directors will now be doing in respect of their own beneficial shareholdings.'

Deals in Focus

FIH Group plc by The Rowland Purpose Trust 2001 (lapsed)
Possible offer for FIH Group plc by Dolphin Fund Limited (terminated)

10 February 2017—Offer for FIH

The Rowland Purpose Trust 2001 (RPT) announces through its bid vehicle Staunton Holdings Limited (Staunton), a recommended all-cash offer for FIH, structured as a contractual offer.

15 March 2017—Possible competing offer by Dolphin

Bermuda-incorporated Dolphin Fund Limited (Dolphin) announces that it has written to FIH's board requesting information to enable Dolphin to evaluate making a cash offer. This is a possible competing offer.

The 'put up or shut up' deadline was 17 April 2017.

16 March 2017—Revised acceptance condition

On the first closing date (16 March 2017), Staunton holds and receives acceptances in respect of 33.72% of FIH's issued share capital.

In response to poor acceptance levels Staunton lowers acceptance condition threshold from not less than 90% of the FIH shares to which the offer relates to more than 50% of the voting rights normally exercisable at an FIH general meeting.

The closing date is extended to 5 April 2017.

20 March 2017—Politically charged rejection

FIH's board announces that it is rejecting Dolphin's possible offer approach, stating that:

- the approach by Dolphin and its beneficial owner Eduardo Elsztain, an Argentinian citizen was causing 'consternation in the Falkland Islands';
- the prospect of Argentinian-related control of the Falkland Islands Company (FIC) a subsidiary of FIH with operations based solely in the Falkland Islands, in FIH's view 'seriously threatens to undermine the FIC business and interests of its employees'; and
- the Falkland Islands Government (FIG) has the power to grant or withhold licences to own assets and land in the Falkland Islands, including the licences that FIC currently holds. FIG has stated that it is closely monitoring the situation and will scrutinise any proposed change of ownership for compliance with Falkland Islands Law

23 March 2017—Dolphin responds to rejection

Dolphin responds confirming that it had sought information from FIH under Rule 21.3 of the Code to help with its evaluation of FIH and reiterates its desire to enter into a constructive dialogue with FIH with a view to making an offer at a premium to Staunton's offer.

30 March 2017—No increase statement

Staunton announces that its offer is final and would not be increased.

31 March 2017—Dolphin considers increasing possible offer value

Dolphin announces that it was considering making a possible cash offer at an 11% premium to the consideration value offered by Staunton.

FIH reiterates its rejection of Dolphin's possible offer approach on 3 April 2017.

6 April 2017—The Rowland Purpose Trust 2001 offer lapses

Staunton announces that on the extended closing date (5 April 2017), it held and had received acceptances in respect of 34.74% of FIH's issued share capital.

As the revised acceptance condition was not satisfied the offer lapses, bringing the offer period to an end.

10 April 2017—Letter from the Falkland Islands Government

FIH announces that it has received a letter from the Chief Executive of the FIG in the context of any change in the beneficial ownership of FIC, which read:

'The Falkland Islands Government has been informed that you have received a proposal which may result in the transfer of the beneficial interest in your company.

Your company is a 'specified company' for the purposes of the Land (Non-Residents) Ordinance 1999 Section 3. Upon any change of beneficial ownership, it is necessary for the Government of the Falkland Islands to consider whether the company should remain a 'specified company', which permits it to acquire land in the Falkland Islands without obtaining a licence.

If Falkland Islands Company's current 'specified company' status was considered to no longer be in the general interests of the country, you may lose this status, and would then require a licence from the government to obtain any qualifying interest in land.

In the event there is a change in beneficial ownership, I request that you inform me as soon as reasonably practicable, to ensure that the Government can review the company's ongoing status without delay.'

13 April 2017—Dolphin withdraws

Dolphin, noting FIG's announcement, confirms that it had sought an extension to its PUSU deadline; however the Takeover Panel confirmed that no extension was possible without the consent of FIH. As a result, Dolphin confirms that it is no longer intending to make an offer for FIH, bringing the offer period to an end.

Negative responses by shareholders to target board recommendations

In 2017, we have seen target shareholders vocalising their opinions on board-recommended takeover transactions which have on occasion resulted in an increased offer price or alternate forms of consideration.

Offer for Industrial Multi Property Trust plc by Hansteen Holdings plc

While the £25.23 million cash only offer for Industrial Multi Property Trust plc by Hansteen Holdings plc received a recommendation from the target's board, the approach was not welcomed by all shareholders. One significant minority shareholder of IMPT, Alpha Trust Limited (which held 18.7% of the share capital of IMPT and £10.3 million of IMPT's unsecured subordinated debt), opposed the offer as in its view the offer failed to achieve maximum shareholder value. It continued to voice its opposition throughout the offer period, for example, in response to IMPT's financial year end results for 2016, Alpha stated that 'the offer by Hansteen continues to grossly undervalue IMPT and [the board of Alpha] have resolved to reject the offer'. Subsequently, Hansteen revised its offer upwards by 10%, to £27.75 million and it received irrevocable undertakings from Alpha and Antler Investment Holdings Limited (another significant minority shareholder) to sell their shares to Hansteen on or before 3 May 2017 so that they would no longer be shareholders of IMPT at its next general meeting.

Offer for Kennedy Wilson Europe Real Estate plc by Kennedy Wilson Holdings, Inc.

On 24 April 2017, the board of Kennedy Wilson Europe Real Estate plc (KWE) recommended the £1.5 billion proposed all share merger with Kennedy Wilson Holdings, Inc. (KW). The consideration payable under the offer was for each KWE Scheme Share a KWE shareholder would receive 0.667 New KW Shares.

However, one of KWE's largest shareholders voiced its concerns over the transaction. On 2 May 2017, Soros Fund Management LLC as the investment manager of private investment fund Quantum Partners LP sent to the KWE board a letter regarding the proposed transaction and stated that it was disappointed with the terms of the transaction as well as its understanding of the process leading to the agreement:

'We agree that there is meaningful value that should be extracted from KWE and would welcome a sale if priced and structured appropriately.

We urge the Board of Directors to hono[u]r their fiduciary duties and conduct a strategic review of all alternatives available to KWE, including a cash sale to unaffiliated third parties and an orderly liquidation of the Company over time. A more robust strategic review has the potential to attract additional value-enhancing offers and thus allow KWE shareholders to make a more informed decision as to the intrinsic value of their shares.'

On 13 June 2017, the KW board and the independent committee of KWE announced that KW has agreed to make available a new alternative proposal (the New Offer), which would be available alongside the original offer. Under the New Offer, the consideration payable for each KWE Scheme Share is made up of shares, cash and a special dividend.

Offer for Novae Group plc by Axis Capital Holdings Limited

The board of Novae recommended the initial offer made by Axis on 5 July 2017 of £467.6 million, but the offer price led to dissent among some shareholders, who believed that the offer undervalued the company. One shareholder (Neptune UK Mid Cap Fund) reduced its shareholding in Novae from 16% to 5% following Axis's offer and a number of hedge funds (Sand Grove Capital, MVN Asset Management and Kite Lake Capital) bought shares in Novae (presumably) expecting an uplift in the offer price and to give them voting rights.

On 25 August, Axis announced a final increased offer price of £477.6 million (ie, a 2% increase), stating that it had done so to bring certainty to the transaction. The resolutions approving the scheme were passed and the scheme became effective on 2 October 2017.

Shareholder support in hostile offers

By their very nature, we have seen target shareholders lend support to bidders in successful hostile bid situations. In some cases, shareholders with substantial holdings in targets have been the initial instigators of an offer being made (as was the case in Touchstone Innovations plc by IP Group plc) or a large shareholder could be the one making an offer (as was the case in Shawbrook Group plc by Pollen Street Capital Limited and BC Partners LLP where Pollen Street Capital already held a 40% stake in the offeree). Conversely, we have also seen shareholders supporting the opinion of the board rejecting an offer (as was the case in InterQuest Group plc by Chisbridge Limited).

Offer for Touchstone Innovations plc by IP Group plc

On 4 April 2017, IP Group plc (IPG) made an indicative proposal to the board of Touchstone Innovations plc (Touchstone). The indicative proposal envisaged an offer comprising 2.1490 IP Group shares for each of the issued and to be issued shares of Touchstone (such terms, according to the Chairman of Touchstone, implying an at-market combination with no premium to the prior day close). The proposal was unanimously rejected by the Touchstone board who stated that they could not see any basis for further discussion.

Following the rejection, Touchstone's board learned that three of Touchstone's largest shareholders (Invesco Asset Management Limited ('Invesco'), Woodford Investment Management LLP ('Woodford') and Lansdowne Developed Markets Master Fund Ltd (Lansdowne) — who also together held almost 51% of the ordinary share capital of IP Group —were keen for Touchstone to engage with IP Group to see if a merger could be agreed. Subsequently, Touchstone's board engaged in meetings with IP Group ultimately rejected the proposal as (among other things) a resolution could not be found in relation to the relative valuations of the companies or the wider strategic objectives of the enlarged group, including establishing a clear understanding of future corporate governance arrangements.

IP Group subsequently announced a possible offer for Touchstone on 23 May 2017 on the basis indicated to Touchstone's board on 4 April 2017 (to be adjusted for IP Group capital raising), as well as a proposed equity raise. The possible offer announcement stated that a hard irrevocable undertaking in favour of the possible offer had been received from Woodford, along with letters of intent from Woodford and Invesco, which, when combined, represented approximately 51.8% of Touchstone's issued share capital.

In addition, further hard irrevocable undertakings were obtained from each of Invesco and Lansdowne later in the day on which the Rule 2.4 announcement was made. A further letter of intent was also received from Lansdowne. By the close of business on May 23 2017, IP Group had hard irrevocable undertakings covering 29.9995% of Touchstone's issued share capital and letters of intent covering 44.346% of Touchstone's issued share capital. Total support in favour of any offer to be made by IP Group therefore represented a little over 74% of Touchstone's issued share capital.

On 20 June 2017, IP Group announced a firm offer for Touchstone on the basis of 2.1575 IP Group shares for every Touchstone share (adjusted by the IP Group's capital raising). Touchstone's board announced on 28 June 2017 that after consideration of the offer, it rejected the offer because it concluded the offer fundamentally undervalued Touchstone.

On 18 July 2017, IP Group announced an improved offer for Touchstone — 2.2178 IP Group shares for every Touchstone share (which represented a 2.8% uplift on the original offer price), adjusted for IP Group's capital raising. The announcement also disclosed that IP Group had received a non-binding letter of intent from Imperial College in favour of the improved offer price, which represented approximately 15.3% of Touchstone's issued share capital. Accordingly, IP Group had received support for the improved offer from Touchstone shareholders representing, in aggregate, 89.7% of Touchstone's issued share capital.

'Obtaining irrevocable undertakings and letters of intent from key institutional shareholders at the date of the Rule 2.4 announcement was crucial in ensuring that this bid was successful. More generally, winning the support of strategically significant shareholders is key when launching a possible offer on a unilateral basis.'

Adam Cain, Senior Associate at Pinsent Masons LLP, the firm which advised IP Group on the successful acquisition of Touchstone

Offer for InterQuest Group plc by Chisbridge Limited

On 18 May 2017, Chisbridge Limited (Chisbridge) announced a hostile cash offer (with loan note alternative) for AIM-listed InterQuest plc (InterQuest), structured by way of a contractual offer. Chisbridge was a newly-incorporated company formed at the direction of InterQuest directors Gary Ashworth, Chris Eldridge and David Bygrave (who were directors of InterQuest).

InterQuest's independent directors announced that they were unable to recommend the offer, on the basis that it materially undervalued the company and its prospects, and advised that shareholders take no action in respect of the offer.

On 6 June 2017, Chisbridge announced that it had received non-binding letters of support from certain InterQuest shareholders holding approximately 20.1% of InterQuest's issued share capital. The announcement stated that these shareholders believed that the offer significantly undervalued InterQuest. InterQuest announced on 27 July 2017 that the level of shareholder support had dropped to shareholders holding approximately 18.9% of the issued share capital following a sale of one of the supporting shareholder's holdings. On 28 July, shareholder support fell further (to 17.9%) with two additional shareholders who had originally supported the board notified InterQuest that they had accepted Chisbridge's offer. InterQuest announced on 7 August that shareholder support had fallen to 15%, with one shareholder selling its shares and another accepting Chisbridge's offer.

The offer closed on 8 August 2017, with Chisbridge receiving acceptances in respect of shares representing 58.32% of InterQuest's issued share capital.

'Shareholder activism in its more traditional forms and the new form of engaged responsible stewardship is certainly going to have an impact on public M&A activity. Some of it will not be easy to track as in the past much engagement still goes on behind the scenes. A recent case however which demonstrated this in the public space was the engagement of the investor forum in the Worldpay bid situation. Although the success of the forum has been limited in the context of corporate actions this case was indicative of the ability of a group of shareholders to be able to successfully negotiate better terms from Vantiv on its bid (principally a secondary London listing) and set the tone for future successful engagement of this nature.'

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

4 Competing and potential competing bids

In 2017, there was 1 actual competing bid (2016: 7) (Gemfields plc by Fosun Gold Holdings Limited, competing with Pallinghurst's unsolicited offer) and 10 potential competing bid scenarios (2016: 9), namely possible offers for Exova Group plc, Bovis Homes Group plc, Worldpay Group plc, FIH Group plc, Gemfields plc and Revolution Bars Group plc. Despite this competitive landscape, firm offers were made by potential competitive bidders for only 50% (3 of the 6) of the targets the subject of the potential competing offers.

On 13 June 2017, Gemfields plc announced that it had received an approach from, and was in active possible offer negotiations with Fosun Gold Holdings Limited. This was a potential competing offer to Pallinghurst Resources Limited's hostile firm offer for Gemfields, announced on 19 May 2017. On 20 June 2017 Fosun announced a firm offer for Gemfields, however, on 26 June 2017, Pallinghurst announced that its offer for Gemfields had become wholly unconditional, as a result, Fosun's offer lapsed in accordance with its terms.

There was one instance of multiple competing bidders for a transaction. Exova Group plc was subject to competing bids from 3 bidders and made one Rule 2.4 announcement in relation to all of them on 27 March 2017. On 19 April 2017, (within the initial PUSU deadline) Element Materials Technology Group Limited announced a recommended all-cash offer for Exova. The Panel ruled that pursuant to Rule 2.6(d) and Section 4 of Appendix 7 of the Code, each of the remaining bidders must by 5.00pm on 2 June 2017 either announce a firm offer or a no intention to bid statement. Both remaining bidders subsequently announced that they did not intend to make an offer.

On 31 July 2017, Revolution Bars plc announced that it has received an approach from Stonegate Pub Company Limited. On 15 August 2017, Deltic Group plc announced a potential competing offer for Revolution Bars. Stonegate subsequently announced (on 24 August 2017) a firm offer for Revolution Bars and the Panel announced that pursuant to Rule 2.6(d) and Section 4 of Appendix 7 of the Code Deltic's parent company (Ranimil 1 Limited) must by 5.00pm on 10 October 2017 either announce a firm offer or a no intention to bid statement. On 10 October 2017, Deltic announced a statement of intention to not make an Offer.

The largest (to the extent the offer value was specified in announcements made by bidders) potential competing bids were for the Main Market construction company, Bovis Homes Group plc, coming in at £1.19 billion and £1.1 billion. On 13 March 2017, Bovis made a Rule 2.4 announcement on 13 March 2017 stating it was in possible offer discussions with each of Galliford Try plc and Redrow plc. The Bovis board rejected both possible offers as it believed neither reflected the underlying value of the Bovis business. The board also concluded that the Redrow proposal was not in the interests of Bovis shareholders as the cash element of the offer would require shareholders to crystallise value at the current Bovis valuation. Redrow's bid terminated on 13 March and Galliford Try's terminated on 5 April.

The target subject to potential competing offers which ended up securing the largest deal (of 2017) at the firm offer stage was Worldpay Group plc. On 4 July 2017, Worldpay received potential competing offers from each of JP Morgan Chase Bank and Vantiv, Inc. On 5 July 2017, JP Morgan Chase announced that it did not intend to make a firm offer for Worldpay. Following two PUSU extensions, Vantiv announced a firm offer for Worldpay for £8 billion structured by way of a scheme of arrangement.

The occurrence of potential and actual competing bid scenarios indicates a competitive landscape for UK M&A in 2017. However, there has been a significant reduction in the number of actual competing offers compared with 2016. Further, being in an actual competing bid scenario or a potential competing bid scenario did not generally result in an increase in offer value for the targets, the exception being Dolphin Fund Limited's competing offer (£41.41 million) for FIH Group plc (compared with the possible offer of £37.3 million by The Rowland Purpose Trust 2001 (lapsed)) which was rejected for political reasons (see Deals in Focus—FIH Group plc).

'Participating in a competitive bid process is increasingly the reserve of the most robust. If the target is of particular strategic value or offers a real opportunistic steal, competitive tension may not deter some. The dynamic however for the hostile bidder has and continues to become more challenging, the latest changes to the Code timetable effective 8 January 2018 being the latest change and this has and is expected to have an impact on the prevalence of competing bids. Even for the friendly bidder, the level of diligence and clarity/preparedness regarding intentions with respect to the target and the combined group required to get to a firm intention offer position has weighted the balance further against participation in competing bids.'

Selina Sagayam, Head of UK Practice Transactional Development, Gibson Dunn

Post 31 December 2017 update

On 27 February 2018, US's Comcast Corporation announced a possible all-cash offer for Sky plc, which is a possible competing offer to 21st Century Fox's offer. Comcast's possible offer, at £12.50 per share (implying a deal value of approximately £22.1 billion), represents a premium of 16% to 21st Century Fox's offer of £10.75 per share. Comcast's possible offer announcement states that if the deal proceeds to the firm offer stage, it will be structured as a contractual offer and will be conditional on valid acceptances of shares carrying in aggregate more than 50% of the voting rights in Sky.

The announcement of this potential competing bid adds another dimension to 21st Century Fox's bid for Sky. In November 2017, Comcast reportedly approached 21st Century Fox in relation to a possible acquisition, but 21st Century Fox agreed to a sale (after a spin-off of certain businesses) to Comcast's rival, the Disney Corporation in December 2017.

'Even and despite the sterling efforts of Fox to satisfy the regulators, the Comcast possible competing bid at circa 16% more than what Fox has tabled will be difficult to beat. Whilst Fox has a significant stake in Sky it now may well be time to relinquish.'

Selina Sagayam, Head of UK Practice Transactional Development, Gibson Dunn

Deals in Focus

Gemfields plc by Pallinghurst Resources Limited

Gemfields plc by Fosun Gold Holdings Limited (lapsed)

A competing bid situation emerged between two foreign bidders. On 19 May 2017, South African-incorporated Pallinghurst announced a hostile all-share offer for Gemfields, structured by way of a contractual offer.

Pallinghurst has a listing on the Johannesburg Stock Exchange (JSE). Gemfields shareholders are set to receive, for each share held, 1.91 Pallinghurst shares. The offer values the entire issued share capital of Gemfields at approximately £211.45 million. Gemfields announced, on the same date, confirming that it was considering the 'unsolicited' offer and advised that its shareholders take no action in respect of the offer. At the date of the announcement the Pallinghurst Group held 47.09% of Gemfields' issued share capital.

31 May 2017—hostile opinion

Gemfields reiterates its rejection of the possible offer approach, stating that it is derisory and undervalued the company, and recommends that shareholders take no action in respect of the hostile offer.

20 June 2017—Fosun competing offer

Fosun announces an actual competing offer for Gemfields valued at £256 million. The competing offer is a recommended all cash offer.

26 June 2017—Pallinghurst offer becomes wholly unconditional and Fosun offer lapses

Pallinghurst announces that the offer is wholly unconditional in all respects, and as a result, Fosun's offer has now lapsed in accordance with its terms.

Gemfields notes that the ordinary resolution required to approve the Pallinghurst offer was passed by the requisite majority of Pallinghurst's shareholders, making the offer to be wholly unconditional. Gemfields reiterates the rejection of the offer on the grounds that it undervalues Gemfields and its prospects.

27 June 2017—Gemfields tells shareholders to seriously consider Pallinghurst's offer

Gemfields announces (in its response document) that Fosun's offer has lapsed and therefore Gemfields concludes that independent shareholders should 'seriously consider' whether to accept the Pallinghurst offer despite the board's view that it significantly undervalues Gemfields.

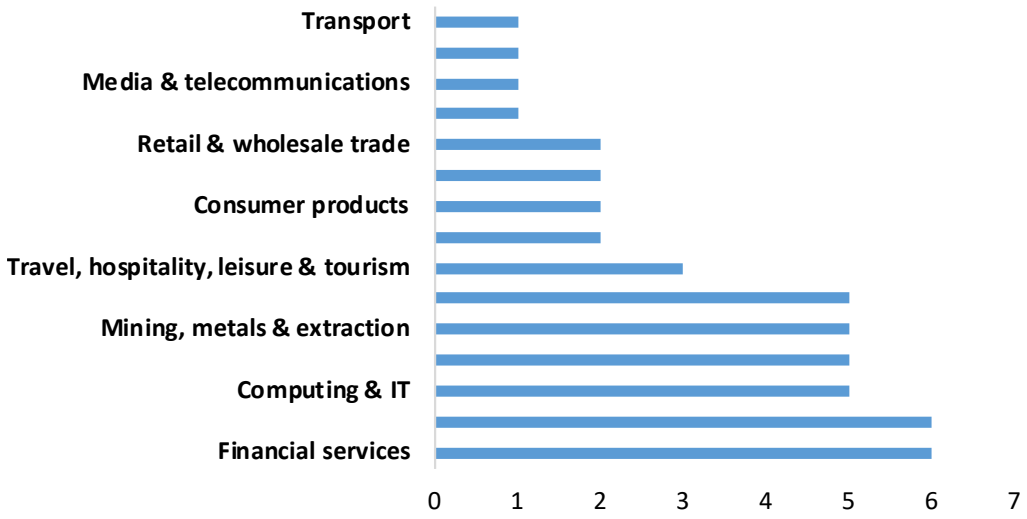
30 June 2017—valid acceptances and offer extended

Pallinghurst holds and has received valid acceptances in respect of 75.18% of the existing issued share capital of Gemfields. The offer is extended until 18 July 2017.

5 Industry focus

Unlike in previous review periods, public M&A activity in 2017 has not centred around one or two sectors, but across several different industries. Firm offers were made for targets operating in financial services (13%), professional services (13%), computing & IT (10%), engineering and manufacturing (10%), mining, metals & extractions (10%) and property (10%) sectors (among other sectors). By contrast, the majority (60%) of bidder activity in 2016 occurred in the TMT sector and the support services sector.

Firm offer by industry type



The financial services industry saw the highest value deal (Worldpay Group plc by Vantiv, Inc.) at £8 billion, and the lowest value deal (Panmure Gordon & Co. plc by QInvest LLC and Atlas Merchant Capital LLC). Another two £1 billion plus value deals were made for targets operating in the financial services industry (Aberdeen Asset Management plc by Standard Life plc, and Paysafe Group plc by Blackstone Management Partners LLC and CVC Capital Partners Limited).

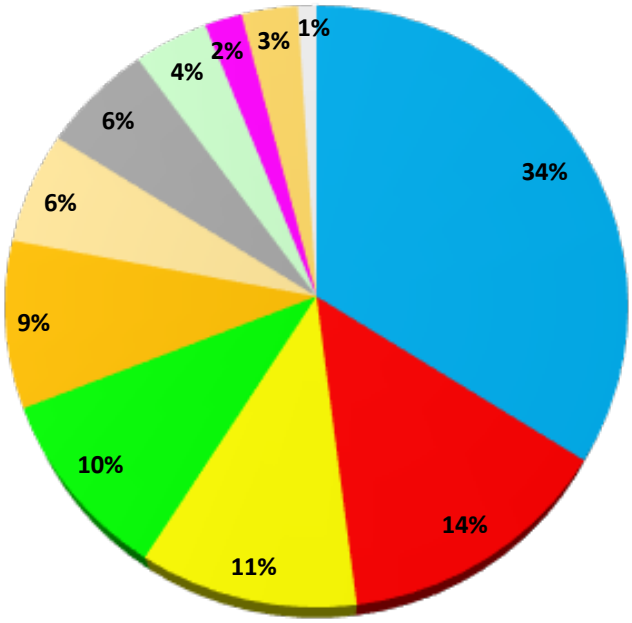
Deals in the financial services industry totalled just over £15.35 billion and accounted for just under 35% of aggregate deal value whereas the sole deal in the TMT industry (the £16.58 million offer for Electric Word plc by Riccardo Silva and Marco Auletta) accounted for less than 0.04%.

Other sectors which saw £1 billion plus individual deal values were: travel, hospitality, leisure & tourism, engineering & manufacturing, retail & wholesale trade, investment, professional services, and property.

Top 10 sectors by aggregate deal value

Sector	Total sector deal value	As a % of aggregate deal value
Financial services	£15.35 billion	35%
Travel, hospitality, leisure & tourism	£6.1 billion	14%
Engineering & manufacturing	£4.8 billion	11%
Retail & wholesale trade	£4.6 billion	10.7%
Investment	£4.1 billion	9.9%
Professional services	£2.9billion	7%
Property	£2.81 billion	6%
Banking & finance	£1.97 billion	4.7%
Mining, metals & extraction	£955 million	2%
Computing & IT	£904.2 million	2%

Deal value by industry type



- Financial services (£15.4 billion)
- Travel, hospitality, leisure & tourism (£6.1 billion)
- Engineering and manufacturing (£4.8 billion)
- Retail & wholesale trade (£4.6 billion)
- Investments (£4.13 billion)
- Professional services (£2.91 billion)
- Property (£2.81 billion)
- Banking and finance (£1.97 billion)
- Computing & IT (£904.2 million)
- Mining, metals & extraction (£954.8 million)
- Other (£315.4 million)

'Expect to see more in the mid-term (as targets mature, and traditional corporates hunt for strategic growth partners) for growth and defensive M&A activity in the bouyant Fintech and tech space.'

Selina Sagayam, Head of UK Practice Transactional Development, Gibson Dunn

6 Nature of consideration

Firm offers

Of the 47 firm offers announced in 2017:

- 9 (19%) involved a combination of consideration types
- 38 (81%) offered one form of consideration only, and of these 38:
  - 38 (76%) were all-cash offers
  - 9 (24%) were all-share offers

In summary 38 of the 47 firm offers had a cash element, either solely, in combination or as an alternative, accounting in total for 81% of firm offers announced in 2017, and it was the exclusive form of consideration in 62% of deals. This is down from 2016, where cash featured in 96% of all deals and was the exclusive form of consideration in 80% of deals.

Although cash only consideration was the most frequently used consideration type by bidders in 2017 (continuing the trend from 2016 as the most popular consideration structure), use of shares only consideration increased from 2% (1 deal) in 2016 to 19% (9 deals) in 2017, which represents a 900% increase. This may indicate that although the UK is in a period of political and economic uncertainty, there is confidence in some of our strongest listed companies. The FTSE 100 breaking record highs in May 2017 and the growing strength of other major indices may be another factor behind this rise. However, it is interesting to note that of the 9 firm offers announced featuring shares only consideration:

- 6 (67%) were made by UK bidders (2 incorporated in Scotland (and listed on the Main Market) and 4 in England and Wales (of which 1 is listed on the Main Market and the other 3 on AIM)
- 3 (33%) were made by foreign bidders (1 (Prospect Co., Ltd) incorporated in Japan and listed on the Tokyo Stock Exchange and 2 (Pallinghurst Resources Ltd and Sibanye Gold Ltd) incorporated in South Africa and listed on the Johannesburg Stock Exchange)

'The short to mid-term (at least) negative impact on UK plc and the UK economic outlook generally provides an opportunity for foreign bidders deploying share or a cash/share mixed consideration, as the UK plc shareholders look to diversify their investment risk and bidder shareholders look to expand their stock of international company investments.'

Selina Sagayam, Head of UK Practice Transactional Development, Gibson Dunn

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As a proportion of consideration, there was a slightly higher percentage of firm offers in 2017 which featured cash and shares consideration (13%) compared with 2016 (8%).

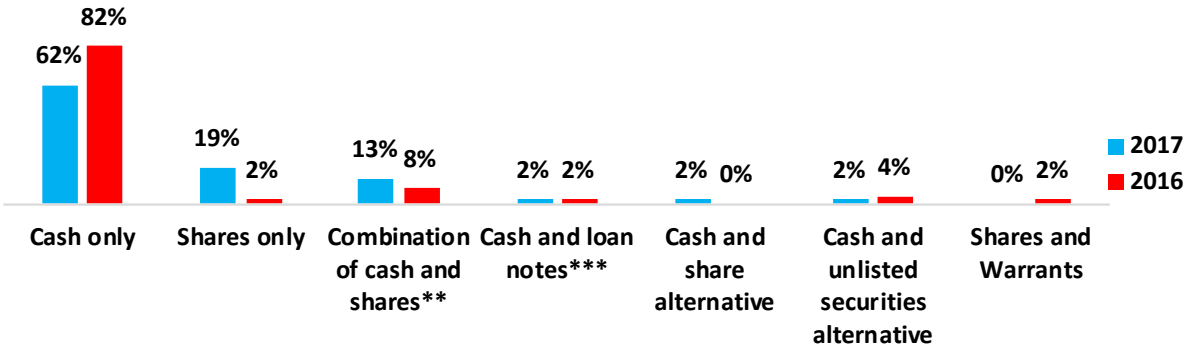
2017 saw deals with consideration comprised of:

- cash, shares and contingent value rights (CVRs) (Ladbrokes Coral Group plc by GVC Holdings plc),
- cash and a loan note alternative (InterQuest Group plc by Chisbridge Limited), and
- cash and an unlisted securities alternative (Panmure Gordon & Co. plc by QInvest LLC and Atlas Merchant Capital LLC)

The UK FTSE 100 and equity prices more widely have reacted positively post-Brexit. This may be a result of the weakening of the British pound and continuing low interest rates. As a direct result, we may see a rise in shares being offered alone or in combination with other consideration types. We will monitor developments and report on this in future trend reports.

Cash continues to be the consideration of choice in UK public M&A

Firm offers in 2017 & 2016*: Nature of Consideration



* Based on a total of 47 firm offers announced in 2017, 51 in 2016

** Includes, for 2016, a transaction where shares and a partial cash alternative were offered (Skyepharma plc by Vectura Group plc)

***Includes, for 2016, 2 transactions where a loan note alternative was offered (Hydro International plc by Hanover Investors Management LLP and Dee Valley Group plc offer by Severn Trent Water Limited)

Consideration structures involving shares have become more popular

Possible offers

Of the 34 possible offers subject to a PUSU deadline announced (ie, excluding FSPs and strategic reviews) in 2017:

- 26 specified the likely form of consideration (11 cash only, 3 shares only, 9 cash and shares, 1 cash, shares and CVRs, 1 cash and share alternative and 1 cash and loan note alternative), and
- 15 specified the likely level of consideration (ranging from £15.8 million (possible offer for InterQuest Group plc by Chisbridge Limited) to £114.5 billion (possible offer for Unilever plc and Unilever N.V. by The Kraft Heinz Company (terminated))

Of the 15 possible offers subject to a PUSU deadline announced and terminated in 2017:

- 10 specified the likely form of consideration (3 cash only, 6 cash and shares and 1 shares only), and
- 5 specified the likely level of consideration (ranging from £33.7 million to £114.5 billion)

Of the 18 possible offers subject to a PUSU deadline announced which progressed to the firm offer stage in 2017:

- 14 specified the likely form of consideration (7 cash only, 3 cash and shares, 2 shares only, 1 cash and share alternative and 1 cash, shares and CVRs)
- 4 did not specify the likely form of consideration

As at 31 December 2017, there was one possible offer which neither terminated nor progressed to the firm offer stage (possible offer for IWG plc by affiliates of Brookfield Asset Management Inc. and Onex Corporation or its affiliates) (this possible offer terminated on 1 February 2018). The possible offer announcement specified the likely form of consideration (cash only) but not the likely amount of consideration.

Alternatives to all-cash and all-share offers

Contingent value rights

In the offer for Ladbrokes Coral Group plc by GVC Holdings plc, Ladbrokes Coral shareholders would be entitled to 32.7 pence in cash and 0.141 new GVC shares for each Ladbrokes Coral share, and a potential further value of up to 42.8 pence per share structured as a CVR.

The value of the CVRs, which would be satisfied by the issue of loan notes by GVC (the 'Loan Notes'), would be determined by reference to the outcome of the Department of Digital, Culture, Media and Sport's current 'Review of Gaming Machines and Social Responsibility Measures' (the 'Triennial Review') relating to the regulation of fixed-odds betting terminals and its estimated impact on the run-rate profitability of Ladbrokes Coral's UK business, after giving effect to any mitigations.

The total value of the contingent consideration, if paid, is up to £0.8 billion in total (therefore giving a consideration range of £3.2 to £4 billion). For the purposes of this report, we have calculated our statistics and data analysis on the assumption that the CVRs will be of zero value and that no contingent consideration will be payable.

Loan notes alternative

Usage of loan note alternatives in 2017 (1 deal) was 50% lower than usage in 2016 (2 deals).

A loan note alternative was offered by Chisbridge Limited in respect of its cash offer for InterQuest Group plc. InterQuest shareholders were given the option of electing to receive loan notes as an alternative to all of the cash consideration they would be entitled to under the offer. The loan notes had a nominal value of 42 pence, were interest bearing, and non-transferable.

Mix & match

Usage of mix and match facilities in 2017 (5 deals) has increased five-fold compared with 2016 (1 deal). This surpasses the number of deals featuring a mix and match facility in 2015 (4 deals) also. Interestingly, the 5 deals featuring mix and match facilities in 2017 were all for over £1 billion.

Each of the £8 billion offer for Worldpay Group plc by Vantiv, Inc., £3.7 billion offer for Booker Group plc by Tesco plc, £3.2 billion offer for Ladbrokes Coral Group plc by GVC Holdings plc, £2.17 billion offer for Berendsen plc by Elis SA and £1.5 billion offer for Kennedy Wilson Europe Real Estate plc by Kennedy-Wilson Holdings, Inc. included a 'mix and match facility', giving target shareholders the option of varying the proportions of new bidder shares and cash receivable in respect of their holding of target shares.

This method of giving target shareholders a choice of consideration, subject to the elections of other target shareholders, made the offers more attractive in terms of taxation and investment options. Where shareholder elections could not be satisfied in full, they were scaled down on a pro-rata basis.

Unlisted securities alternative

2017 saw one instance of unlisted securities alternative consideration (which is in line with what we saw in 2016 (Journey Group plc by Harwood Capital LLP)). An unlisted securities alternative was offered as an alternative to cash consideration by QInvest LLC and Atlas Merchant Capital LLC's in their £15.5 million offer for Panmure Gordon & Co. plc (which coincidentally was the smallest deal of 2017). The acquisition was effected through Ellsworthy Limited (Bidco), a company owned and controlled by QInvest and by a wholly-owned subsidiary of a fund managed by Atlas.

Panmure Gordon shareholders were entitled to elect, in respect of all of their shares, to receive Bidco shares. Bidco shares will be unlisted and not admitted to trading on any stock exchange and will be subject to restrictions on transfer.

Drafting Examples

Ladbrokes Coral Group plc by GVC Holdings plc
Contingent value rights

'Under the terms of the Acquisition, for each Ladbrokes Coral Share that they hold, Ladbrokes Coral Shareholders will be entitled to receive (in addition to the cash and GVC Shares offered) a contingent entitlement of up to 42.8 pence in principal value of Loan Note plus an upward adjustment for the time value of money by way of a contingent value right ('CVR').

The CVRs have been constituted by a deed poll entered into by GVC on the date of this Announcement ('CVR Instrument'). Under the terms of the CVR Instrument, the principal value of each Loan Note that the CVR Holder is entitled to ('Loan Note Principal Value'), and therefore the amount of cash ultimately payable to a Loan Note holder upon redemption of their Loan Notes, will be (i) if Triennial Measures are Enacted, determined by means of an assessment process set out in the CVR Instrument and summarised below or (ii) if no Maximum Stakes Measures are Enacted by the first anniversary of the Effective Date, 35 pence for each CVR held by such CVR Holder. The assessment process referred to in (i) will evaluate the potential impact (if any) of certain measures arising from the Triennial Review on the profitability of the Ladbrokes Coral UK Business taking into account the estimated effect of any mitigating circumstances in the UK businesses carried on by the Wider Ladbrokes Coral Group. The Loan Note Principal Value is capped at a maximum of 42.8 pence plus an upward adjustment for the time value of money. If the results of the

assessment process are such that the Loan Note Principal Value is agreed or determined to be zero, no Loan Notes will be issued, and in these circumstances the Ladbrokes Coral Shareholders will not receive any additional consideration

under the terms of the CVR Instrument. In these circumstances, the value of each CVR would be zero. There will be no interest conferred by a CVR on the economic activities of Ladbrokes Coral, GVC or the Enlarged Group generally.

The Takeover Panel has determined that an estimate of the value of a CVR in accordance with Rule 24.11 of the Code is not required to be included in the Scheme Document.'

InterQuest Group plc by Chisbridge Limited
Loan note alternative

'As an alternative to the cash consideration which they would otherwise be entitled to receive, InterQuest Shareholders can elect to receive Offer Loan Notes, which will be issued on the basis of 42 pence in nominal value of Offer Loan Notes for each InterQuest Share.

InterQuest Shareholders must elect to receive either cash or Offer Loan Notes for their entire holding of InterQuest Shares. There is no option for InterQuest Shareholders to accept the Offer and elect to receive partly cash and partly Offer Loan Notes.

The Offer Loan Notes have been created by a resolution of the Board of Chisbridge on 31 May 2017 and are constituted by the Offer Loan Note Instrument executed as a deed by Chisbridge.

The issue of the Offer Loan Notes will be conditional on the Offer being declared wholly unconditional. The Offer Loan Notes will not be transferable.

No application will be made for the Offer Loan Notes to be listed or dealt in on any stock exchange.

The Offer Loan Notes will not be qualifying corporate bonds for United Kingdom taxation purposes for InterQuest Shareholders who are individuals.

The Offer Loan Notes will bear interest at 3 per cent. per annum above the Bank of England base lending rate from time to time but this interest will be accrued and only paid when the Offer Loan Notes are redeemed. The Offer Loan Notes are, on the face of the Offer Loan Note Instrument, redeemable on 30 September 2027, save in the event of an earlier sale of all the interests of the Offer Loan Note Holders in Chisbridge to an unconnected third party. However, payments under the Offer Loan Notes are subject to the terms of the Subordination Deed and it cannot be guaranteed that redemption will occur on that date. InterQuest Shareholders who elect to receive Offer Loan Notes must accede to the terms of the Subordination Deed. A summary of the terms of the Subordination Deed is set out in Part B of Appendix IV.

The form of undertaking to accede to the Subordination Deed forms part of the Form of Acceptance. Shareholders holding InterQuest Shares in uncertificated form may obtain such form on request from Neville Registrars in the manner set out in paragraph 12 below. Chisbridge may (subject to the terms of the Subordination Deed), at any time after the tenth anniversary of the date of issue of such Loan Notes, elect to redeem all or any part of the Offer Loan Notes (or any Offer Loan Notes or part of any Offer Loan Notes held by certain of the Offer Loan Noteholders as the board of Chisbridge may elect).

InterQuest Shareholders should consider carefully, in light of their own investment objectives and tax position, whether they wish to elect for the Offer Loan Notes under the Loan Note Alternative and are strongly advised to seek their own independent financial advice before making any such election.'

Tesco plc by Booker Group plc

Mix and match facility

'Booker Shareholders (other than certain Overseas Shareholders) will be entitled to elect to vary the proportions in which they receive New Tesco Shares and cash in respect of their holdings of Booker Shares. However, the total number of New Tesco Shares that will be issued and the maximum amount of cash that will be paid under the terms of the Merger will not be varied as a result of elections made under the Mix and Match Facility. In connection with the Mix and Match Facility, Charles Wilson, the Chief Executive Officer of Booker has irrevocably undertaken to elect to receive 100 per cent. New Tesco Shares in respect of his entire holding of Booker Shares, subject to the elections of other Booker Shareholders.

Elections made by Booker Shareholders under the Mix and Match Facility will be satisfied only to the extent that other Booker Shareholders make off-setting elections. To the extent that elections cannot be satisfied in full, they will be scaled down on a pro rata basis. As a result, Booker Shareholders who make an election under the Mix and Match Facility will not know the exact number of New Tesco Shares or the amount of cash they will receive until settlement of the Merger Consideration due to them, although an announcement will be made of the approximate extent to which elections under the Mix and Match Facility will be satisfied.

The Mix and Match Facility will not affect the entitlement of any Booker Shareholder who does not make an election under the Mix and Match Facility. Any such Booker Shareholder will receive 0.861 New Tesco Shares and 42.6 pence in cash for each Booker Share it holds.

Further details of the Mix and Match Facility (including the action to take in order to make a valid election, the deadline for making elections, and the basis on which entitlement to receive cash may be exchanged for an entitlement to additional New Tesco Shares (or vice versa)) for Booker Shareholders will be included in the Scheme Document.

The Mix and Match Facility is conditional upon the Merger becoming effective.'

Panmure Gordon & Co. plc by QInvest LLC and Atlas Merchant Capital LLC

Unlisted securities alternative

'Under the Bidco Unlisted Share Alternative, Scheme Shareholders (other than Scheme Shareholders resident or located in a Restricted Jurisdiction) may elect, in respect of all (but not some only) of their Scheme Shares, to receive Bidco Shares in lieu of the Cash Consideration to which they are entitled in respect of such Scheme Shares under the terms of the Acquisition on the following basis:

for each Scheme Share 0.518411 Bidco Shares

subject to any scaling down as described below. If the Bidco Unlisted Share Alternative is implemented, fractional entitlements to Bidco Shares will be rounded down to the nearest whole number of Bidco Shares and will be disregarded.

Scheme Shareholders will be required to elect for the Bidco Unlisted Share Alternative in respect of all (and not just some only) of their holding of Panmure Gordon Shares.

The Bidco Unlisted Share Alternative is conditional on the Scheme becoming effective. The number of Bidco Shares to be issued pursuant to the Bidco Unlisted Share Alternative will be limited to a maximum number of Bidco Shares representing 12.5 per cent. of the total number of Bidco Shares expected to be in issue immediately following the Effective Date. To the extent that valid elections are received in respect of a higher number of Bidco Shares, the number of Bidco Shares to which each validly electing eligible Scheme Shareholder is entitled shall be reduced pro rata to all valid elections received.

If elections have to be scaled down, those Scheme Shareholders who validly elect for the Bidco Unlisted Share Alternative will instead receive additional Cash Consideration in lieu of the Bidco Shares they would have received had such elections not been scaled down.

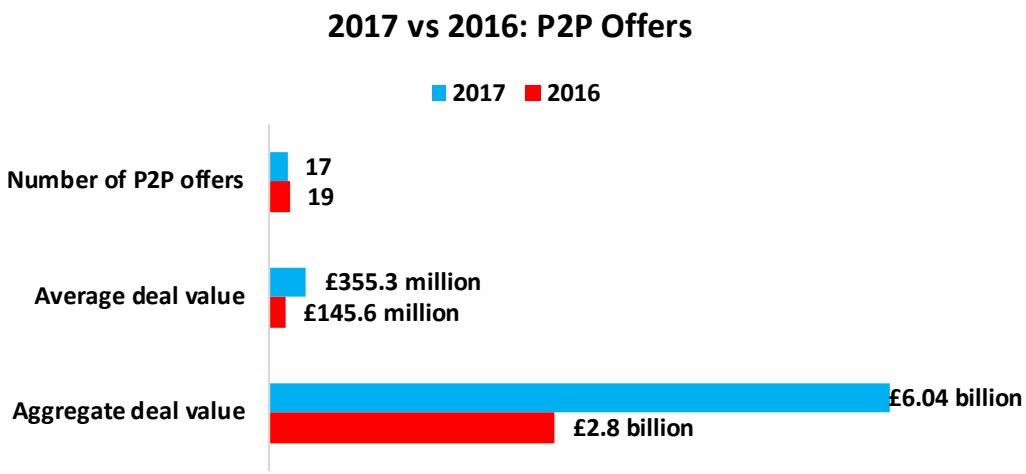
The Bidco Unlisted Share Alternative will only be made available and implemented as part of the Acquisition if valid elections for the Bidco Unlisted Share Alternative are received in respect of, in aggregate, Bidco Shares representing at least 2.5 per cent. of the total number of Bidco Shares expected to be in issue immediately following the Effective Date. If elections below this amount are received, all such elections shall be deemed to be invalid and Scheme Shareholders who validly elected for the Bidco Unlisted Share Alternative will instead receive Cash Consideration in respect of the Scheme Shares which were subject to such an election in accordance with the terms of the Acquisition.'

7 Public-to-private transactions

2017 saw a steady flow of P2P takeover activity. Of the 47 firm offers announced, 17 (36%) were private-equity or investment backed bids (including management buyouts) (11 AIM companies and 6 Main Market companies), and included one partial offer. This is slightly lower than the number of P2P announced in 2016 (19 deals: 37% of firm offers announced in 2016). However, the aggregate and average deal value for P2P deals in 2017 is higher than for those in 2016.

The aggregate deal value of P2P deals in 2017 was just over £6 billion (£6.07 billion), giving an average deal value of £357 million. This represents a more than doubling of deal value compared with 2016 (aggregate deal value being £2.8 billion, with an average deal value of £145.6 million), demonstrating that PE activity continues to move towards the larger deals. This increase in aggregate deal values follows on from the second half of 2016, which saw 14 P2P deals announced with an aggregate value of £2.35 billion, giving an average deal value of around £168 million.

Accordingly, while there appears to have been a slight slowdown in 2017 in the volume of P2P transactions compared to 2016, the deals being announced are significantly larger in value.



We anticipate this trend in P2P activity to continue into 2018, despite the continuing political and economic uncertainties that exist in the UK. Possible reasons for the increased level of P2P activity may include historically low interest rates and PE funds seeking to make use of the UK PE funding from Europe (through the Regional Development Fund and European Investment Fund) before the UK's exit from EU membership. However, uncertainty remains as to what form Brexit will take and whether access to the Single Market and Customs Union will be maintained.

Of note:

- 6 out 17 17 (35%) were UK bidders, and these deals amounted to £1.85 billion and accounted for less than a third (31%) of aggregate P2P deal value,
- 11 out of 17 (65%) were non-UK bidders, and these deals amounted to £4.22 billion accounted for over two thirds (69%) of aggregate P2P deal value
- 9 deals were structured as schemes and 8 were structured as offers (including one partial offer)industries that saw P2P activity were professional services (2 deals), computing & IT, banking & finance and healthcare
- 13 out of 17 (76.5%) were recommended by the target board at the outset (the remaining 4 offers (23.5%) being hostile)
- 14 offers (82%) were on a cash only consideration basis, one deal offered cash and unlisted securities alternative, one deal offered cash and a loan note alternative and one offered shares only
- offer values ranged from £2.96 billion to £15.5 million
- more than half of P2P deals occurred in the professional services (4), financial services (2) and computing and IT (3) sectors

Top 10 P2P deals in 2017

Deal	Deal value	Deal structure	Industry sector (target)	Consideration structure	Market for target's shares
Paysafe Group plc by Blackstone Management Partners LLC and CVC Capital Partners Limited	£2.96 billion	Scheme	Financial services	Cash only	Main
Shawbrook Group plc by Pollen Street Capital Limited and BC Partners LLP (hostile)	£868 million	Offer	Banking & finance	Cash only	Main
Exova Group plcby Element Materials Technology Group Limited	£620.3 million	Scheme	Support services	Cash only	Main
Imagination Technologies Group plc by Canyon Bridge Capital Partners, LLC	£550 million	Scheme	Computing & IT	Cash only	Main
Taliesin Property Fund Limited Wren Bidco Limited and Canary Bidco Limited	£230.4 million	Scheme	Investment	Cash only	AIM
Servelec Group plc by Montagu Funds	£223.9 million	Scheme	Computing & IT	Cash only	Main
Gemfields plc by Pallinghurst Resources Limited	£211.45 million	Offer	Mining, metals & extraction	Shares only	AIM
Revolution Bars Group plc by Stonegate Pub Company Limited (lapsed)	£101.5 million	Scheme	Travel, hospitality, leisure & tourism	Cash only	Main
Circle Holdings plcby Toscafund Asset Management LLP and Penta Capital LLP	£75.2 million	Offer	Healthcare	Cash only	AIM

'We have seen and expect to continue to see strong growth in P2P/ PE backed M&A activity globally — the UK however is seeing slightly muted levels of this activity in relative terms compared to the continent but activity is expected to persist into 2018, with international PE buyers on their own and in consortia with other investors.'

Selina Sagayam, Head of UK Practice Transactional Development, Gibson Dunn

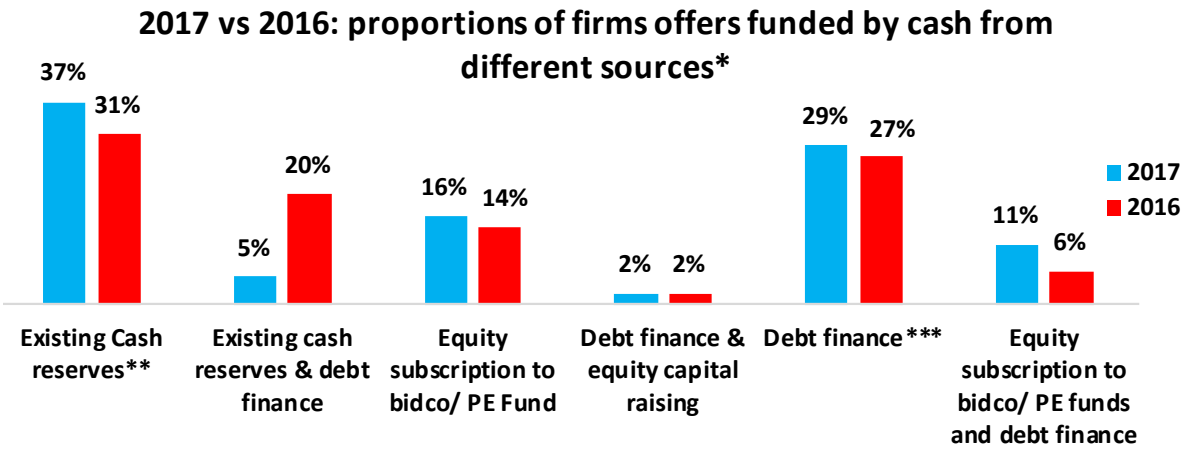
8 Financing the offer

There has been a variety of funding structures in 2017.

9 out of 47 deals (19%) offered shares only consideration and accordingly were financed by consideration shares. 38 out of 47 firm offers (81%) involved cash consideration in some form and were funded by cash, debt, consideration shares, and equity subscriptions/PE funding (or a combination of two or more of these).

Of the 38 firm offers that involved a cash consideration element (accounting for 81% of all firm offers in 2017):

- 12 were funded by existing cash reserves only (but note that one bidder reserved the right to switch to debt finance if market conditions were favourable (Novae Group plc by AXIS Capital Holdings Group Limited)),
- 8 were financed by debt only (including by way of shareholder loans)
- 6 equity subscription to bidco/PE funds
- 4 were funded by debt and equity subscription to bidco/PE funds
- 3 debt finance and consideration shares
- 2 existing cash resources and consideration shares
- 1 debt and equity capital raising
- 1 existing cash resources and debt finance
- 1 debt finance, existing cash resources and consideration shares



* Based on 38 firm offers involving a cash element in 2017; 49 in 2016

** Existing cash reserves includes funds made available under intra group loan arrangements

*** Debt finance includes two deals financed by shareholder loans (InterQuest Group plc by Chisbridge Limited and Electric Word plc by Riccardo Silva and Marco Auletta)

16 out of 47 of these deals (34%) were financed in whole or in part by existing cash reserves (compared with 25 out of 51 (49%) of such deals in 2016), representing a decrease in the use of cash reserves. 18 out of 38 deals (47%) (compared to 27 out of 49 deals (55%) in 2016) were financed in whole or in part by debt (including by way of shareholder loans). This represents a slight decline in the use of debt facilities to finance deals.

We saw one deal in 2017 (WS Atkins plc by SNC-Lavalin Group, Inc.) where in addition to using debt facilities to fund the acquisition, the bidder offered subscription receipts and a private placement of subscription receipts.

Debt continues to be used to fund transaction, but with the risk of a possible rise in interest rates to counter raising inflation, bidders appear to be more willing to use up cash reserves to finance (in whole or in part) acquisitions.

The Panel has continued its practice of granting limited dispensations from the requirement under Rule 26.2(b) to disclose market flex terms in facilities agreements until the offer or scheme document is posted. This delay gives the lead arranger an opportunity to syndicate the debt in for up to 28 days before the offer document is published and the loan documents need to go on display.

Deals in Focus

Novae Group plc by Axis Capital Holdings Limited

The consideration will be funded from AXIS's existing cash resources or, if market conditions are favourable, from new borrowings.

Electric Word plc by Riccardo Silva and Marco Auletta

The offer is being financed by loans to be provided by each of Riccardo Silva and Marco Auletta to Bidco to Bidco, pursuant to loan agreements entered into between each of them on 26 June 2017 for £17,231,345 and £619,354 respectively (£17,850,699 in aggregate).

Paysafe Group plc by Blackstone Management Partners LLC and CVC Capital Partners Limited

The consideration payable to Paysafe shareholders will be financed by a combination of equity to be invested by the Blackstone Funds and CVC Funds and debt to be provided under an interim facilities agreement arranged by Credit Suisse AG, London Branch, Jefferies and Morgan Stanley Bank International Limited.

The equity funding of Bidco is being provided by the Blackstone Funds and the CVC Funds on a 50:50 basis. Each of the Blackstone Funds and the CVC Funds expects to discuss potential equity syndication during the offer period with a very limited number of selected minority investors, including their respective limited partners, who may directly contribute a minority of Bidco's equity funding of the offer.

InterQuest Group plc by Chisbridge Limited

Gary and Clare Ashworth have irrevocably undertaken to accept the loan note alternative. On that basis, full acceptance of the offer will result in the payment by Chisbridge of approximately £10.54 million in cash to InterQuest shareholders. The cash consideration provided by Chisbridge in support of the Cash offer is being financed by loan facilities provided by each of Luke Johnson and Gary Ashworth.

'The continued use of cash to fund acquisitions reflects that corporates and funds have ready access to enormous cash piles and reserves and that in light of the deadlines under the PUSU regime it can be particularly challenging (notwithstanding the buoyant debt markets) to get a facility in place in a tight timeframe.'

Selina Sagayam, Head of UK Practice Transactional Development, Gibson Dunn

9 UK and international bidders

Non-UK bidders continued to feature most frequently in public M&A transactions in 2017 — 32 out of 47 firm offers were made by foreign bidders —2017 has seen UK bidders being involved in a significant number of the largest deals (4 of the 10 (40%) largest deals by deal size). This is in stark contrast to 2016, where foreign bidders were involved in 9 of the 10 (90%) largest deals. Of the 47 firm offers announced in 2017:

- 15 (32%) were made by UK bidders — which is a slight proportional increase when compared with 2016, where 29% of firm offers (15 deals) were made by UK bidder
- 32 (68%) were made by non-UK bidders — which is a slight decrease when compared with 2016, where 71% of firm offers (36 deals) were made by non-UK bidders

Firm offers by UK bidders accounted for almost £16.25 billion (36%) of the aggregate deal value in 2017 and foreign bidders accounted £28.64 billion (64%). This is in stark contrast with the comparable period in 2016, where non-UK bidders accounted for £64.53 billion (96%) of aggregate deal value. Accordingly, there has been a considerable decline in the number of large deals being made by foreign bidders. This is a little surprising given the recent currency fluctuations and a historically low UK sterling value which we would expect foreign bidders would use to their advantage.

Of the deals made by a non-UK bidder, US's Vantiv, Inc.'s offer for Worldpay Group plc had the highest deal value (£8 billion). A US bidder featured most frequently in bids made by non-UK bidders: 8 deals (ie, accounting for 25% of deals made by foreign bidders) featured US bidders (1 of which also featured a Qatari bidder and another of which featured a bidder from Luxembourg), a decrease from 2016 where a US bidder featured in 13 deals. The total value of US deals amounted to just over £13.23 billion in aggregate, which is lower than the aggregate deal value for US deals in 2016 (£15.12 billion). Although the number of deals featuring US bidders has decreased, average deal value has increased (slightly) in 2017. US bidders continue to seek international growth, viewing UK companies as a tool for financial and geographical expansion and we expect to see further activity in 2018.

In contrast with previous years, UK bidders accounted for 36% of aggregate deal value

'The weakened dollar and US businesses' sentiment (from despair at the one end to real concerns at the other) with the Trump administration has had an impact on some US buyers.

There is no reason to assume that US buyers will continue to dominate the foreign bidders league table. The fundamentals are still strong in the US (US corporates with weighty balance sheets and US PE bidders with large amounts of dry-powder). We expect to see more activity from North Asian (Japanese and Chinese buyers).

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

Table of origin–non-UK bidders

Bidder country*	Number of bidders**	Total deal value
United States	6	£10.28 billion
Canada	3	£2.29 billion
France	2	£2.5 billion
British Virgin Islands	2	£1.79 billion
South Africa	2	£1.38 billion
Japan	2	£157.87 million
Cayman Islands	2	£130.5 million
Isle of Man	1	£4 billion***
United States & Luxembourg	1	£2.96 billion
Bermuda	1	£477.6 million
Hong Kong	1	£256 million
Guernsey	1	£227.2 million
Jersey	1	£37.3 million
China	1	£35.5 million
Bahamas	1	£27.4 million
Sweden	1	£26.4 million
Italy	1	£16.58 million
Cyprus	1	£16.4 million
US and Qatar	1	£15.5million

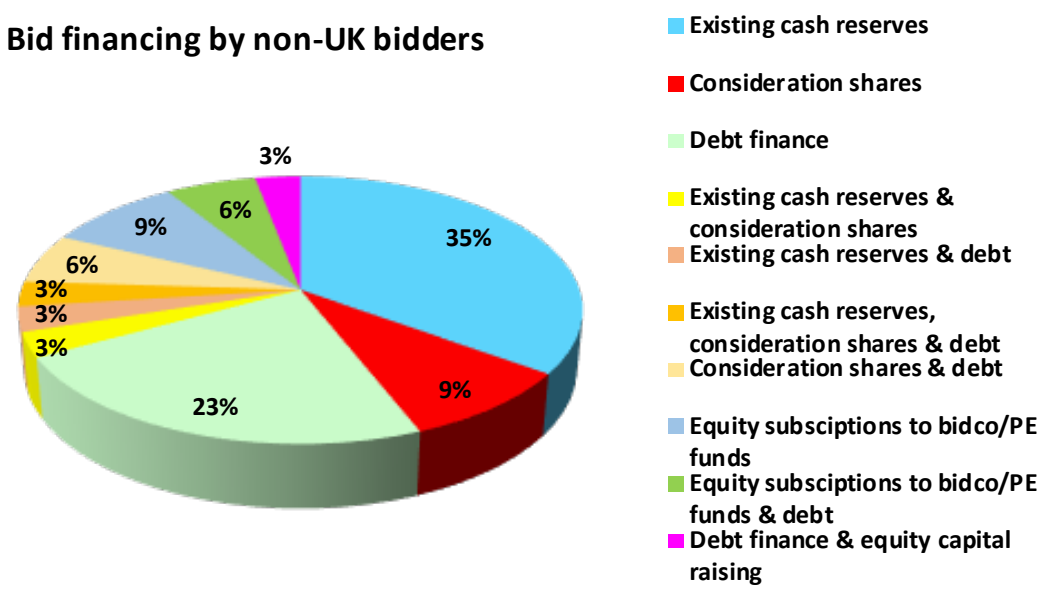
* Where a bid vehicle was used, this table refers to the country of incorporation of the ultimate bidder, or, where the ultimate bidder is an individual, the nationality of the ultimate bidder
** This table includes all firm offers made by non-UK bidders that were analysed (whether they completed, lapsed or remained ongoing as at 31 December 2017)
*** This deal (GVC's offer for Ladbrokes Coral) has a deal value range of £3.2 billion to £4billion dependant on the value of contingent value rights

Financing non-UK bids

Cash formed an element of the consideration in 29 of the 32 deals made by non-UK bidders. Of these 29:

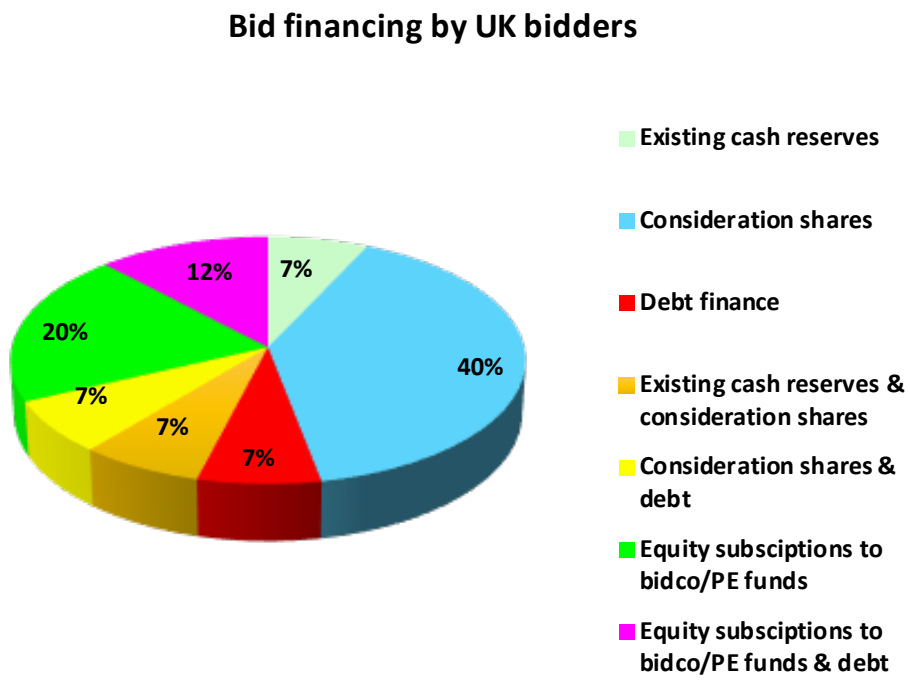
- 11 (35%) were financed solely by existing cash reserves,
- 7 (23%) were financed solely by debt,
- 3 (9%) was financed by equity subscription to bidco/PE funding,
- 2 (6%) was financed by equity subscription to bidco/PE funding and debt,
- 2 (6%) was financed by debt and shares,
- 1 (3%) was financed by debt and cash,
- 1 (3%) was financed by cash and shares,
- 1 (3%) was financed by debt, shares and cash, and
- 1 (3%) was financed by debt and capital raising

Accordingly, cash reserves were used to fund (in whole or in part) 14 (44%) deals by foreign bidders and debt funding was used (in whole or in part) in 14 (44%) deals.



Financing UK bids

Cash formed an element of consideration in 9 of the 15 deals made by UK bidders. See pie chart below for a break down of funding arrangements.



UK bidders relied more on existing cash reserves to fund acquisitions.

10 Regulatory and political issues

Takeover Panel sanctions and enforcement

In 2017, the Takeover Panel, Hearings Committee and Takeover Appeal Board have made several public sanctions for Code breaches, including commencing proceedings against (and obtaining a court order against) a person (Mr King) for failing to make a Rule 9 offer and imposing the cold-shouldering sanction on two individuals (Mr Morton and Mr Garner) for breaches of section 9(a) of the Introduction of the Code.

Takeover Panel seeks court order to enforce its rulings

On 13 March 2017, the Takeover Appeal Board (Board) published its decision upholding the decision of the Panel Executive and of the Hearings Committee that Mr King acted in concert with Messrs George Letham, George Taylor and Douglas Park to acquire more than 30% of the voting rights in Rangers and in consequence had incurred an obligation under the Takeover Code to make a mandatory offer at a price of 20 pence per Rangers share for all of the Rangers shares not already held by Mr King and members of his concert party. The Board directed that Mr King should announce a Rule 9 compliant offer for all of the Rangers shares not already held by him and members of his concert party by 12 April 2017.

Mr King failed to comply and on 13 April 2017 the Takeover Panel announced that it commenced proceedings in the Court of Session, Edinburgh under section 955 of the Companies Act 2006 (CA 2006) seeking an order requiring Mr King to comply with its rulings.

CA 2006, s 955 provides, among other things, that if on the application of the Panel, the court is satisfied of the below the court may make any order it thinks fit to secure compliance with the requirement:

- that there is a reasonable likelihood that a person will contravene a rule-based requirement, or
- that a person has contravened a rule-based requirement or a disclosure requirement

This is the first time the Takeover Panel has used its powers under CA 2006, s 955 to enforce its rulings, and it is unlikely that it will exercise this power frequently, given that it has several other enforcement options available to it.

The court heard the case in October 2017 and on 22 December 2017 it granted the order sought by the Takeover Panel.

Among other things, the court had to determine what, on a proper construction of CA 2006, s 955, was the ambit of the court's discretion and determined that the court did have discretion to refuse to grant an order in terms of CA 2006, s 955. Among other things, the court considered that:

- CA 2006, s 955 provides that the court may make an order—where a provision is worded in this way the court has a discretion whether to pronounce or not pronounce the order sought
- if Parliament had intended that the court should not have such a discretion, it would have expressed that intention clearly
- the intent of CA 2006, s 955 is clearly to provide a means whereby the Takeover Panel can seek to have its decisions enforced—however, that does not mean that the court's function is to act as a rubberstamp

For further details on the case, see Case Analysis: Court grants an Order requiring Mr King to make a mandatory offer under the Takeover Code (Panel on Takeovers and Mergers v King).

'The King Rule 9 enforcement case is of particular interest as it is the first time the Panel has sought to rely on its powers to seek a court enforcement order. The backdrop to this is the increased public scrutiny and comment with respect to the effectiveness of the disciplinary functions of the key regulator on public takeovers. We saw this following the disciplinary actions following the various breaches arising on the Bumi case.

The King case demonstrates that the Panel will not hold back from going into places that it has not ventured before if it is the appropriate course of action notwithstanding its preference for agreed mediated approaches even in the context of disciplinary actions.'

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

Misleading the Panel Executive – Messrs Morton and Garner in relation to Hubco Investments plc

In January 2017, the Takeover Panel issued a statement following a ruling by its Hearings Committee relating to a breach of the Code. The ruling found that Bob Morton and John Garner had committed serious breaches of section 9(a) of the Introduction to the Code (which sets out the rules according to which persons dealing with the Panel must provide information and assistance to the Panel).

The Hearings Committee found that Mr Morton and Mr Garner had provided false information to the Executive in the course of its investigation into a potential breach by Mr Morton of an obligation to announce a mandatory offer under Rule 9 of the Code. This false information had been provided with the intention of deceiving the Executive into believing that a purchase of shares in Hubco Investments plc by Groundlinks Limited, a company owned by the trustees of a Morton family trust, had actually been made on behalf of Mr Garner as beneficiary.

As a result of their prolonged and serious attempted deception of the Panel during the course of its investigation, the Hearings Committee imposed the cold-shouldering sanction effective for six years in relation to Mr Morton, and effective for two years in relation to Mr Garner.

Cold-shouldering a person is the most serious disciplinary power exercisable by the Panel – the sanction has only ever been used twice before and in both instances was applied in relation to breaches of an obligation to make a mandatory offer pursuant to Rule 9. See further, LNB News: Takeover Panel gives pair the cold shoulder.

Competition issues in deals

The regulatory landscape and competition issues have led to the delay in completing and even lapsing of some of the biggest offers in 2017.

The snap general election called by Theresa May on 18 April 2017, the surprise result that culminated in a hung Parliament (and the subsequent minority Conservative and DUP alliance Government) and the continuing uncertainties around the mechanics of Brexit have all contributed to an increasingly testy political and economic climate.

Deals announced H1 2017 facing regulatory challenges

Deals in Focus

FIH Group plc by The Rowland Purpose Trust 2001 (lapsed)

FIH Group, an AIM-listed company with operations in the Falkland Islands and the UK, is subject to a firm and possible competing offer in the first half of 2017. These terminate following poor shareholder acceptance for The Rowland Purpose Trust's offer and in the case of the competing offer, politically charged issues surrounding Dolphin and its beneficial owner Eduardo Elsztain, an Argentinian citizen – see further Deals in Focus: FIH Group plc in section 3: Target response: recommended or hostile?

Booker Group plc by Tesco plc

27 January 2017—recommended cash and share offer

Tesco makes a recommended cash and share offer for Booker, structured as a scheme of arrangement. Tesco and Booker Group both operate within the retail & wholesale trade industry, and their combination raised anti-trust issues and requires regulatory clearances.

30 May 2017—CMA launches Phase 1 investigation

The CMA launches a Phase 1 investigation, issuing its invitation to comment on the same day.

29 June 2017—fast track referral requested

The CMA receives a 'fast-track' referral from Tesco and Booker Group to accelerate the case to Phase 2 (ie, an in-depth investigation).

In its Phase 1 investigation, the CMA does not reach a conclusion in relation to other concerns raised about the transaction as the concerns about local markets for grocery retailing were sufficient to meet the test to fast-track the transaction to Phase 2.

12 July 2017—referral for Phase 2 investigation

The CMA refers the transaction for a Phase 2 investigation after the parties requested a fast-track reference. The CMA's Phase 2 deadline is 27 December 2017.

14 November 2017

The CMA publishes its provisional findings report and provisionally concludes that Tesco's acquisition of Booker does not raise competition concerns.

The CMA found that Tesco as a retailer and Booker as a wholesaler do not compete head-to-head in most of their activities. In particular, Tesco does not supply the catering sector to which Booker makes over 30% of its sales.

Nonetheless, the CMA considered the impact of the deal in every local area where a Tesco and Booker-supplied shop were present to examine whether in any of these areas it might be profitable for the merged company to raise prices or reduce service levels either in retail or wholesale. The CMA provisionally concluded that the level of competition in the grocery wholesale and retail markets would be sufficient to defeat such a strategy.

20 December 2017

The CMA concludes that Tesco's purchase of Booker does not raise competition concerns. Among other things, the CMA found that existing strong competition in wholesale and retail made it unlikely that:

- the merged company would be able to raise prices or reduce service quality at either wholesale or retail levels
- Booker would be able to use Tesco's buying power to purchase groceries from suppliers at lower prices and that other wholesalers might not be able to compete (with the result that Booker could raise its prices)

Deals announced in 2016 facing regulatory challenges

Although outside our review period, it is worth considering briefly a couple of deals announced in 2016 but that were blocked or delayed by competition regulators or by public interest reviews under the Enterprise Act 2002.

Deals in Focus

London Stock Exchange Group plc by Deutsche Börse AG

Deutsche Börse AG's £20 billion all-share offer for the London Stock Exchange Group plc lapses following the European Commission's decision to prohibit the merger.

In a statement on the decision to block the proposed merger, Competition Commissioner, Margerethe Vestager said:

'Commission cannot allow the creation of monopolies. That is what would have happened in this case. That is why we have prohibited this merger, for the benefit of competition in European financial markets. The merger between Deutsche Börse and the London Stock Exchange would have significantly reduced competition by creating a de facto monopoly in the crucial area of clearing of fixed income instruments. As the parties failed to offer the remedies required to address our competition concerns, the Commission has decided to prohibit the merger.'

Although the Commission stated, in the LSE/Deustsche Börse matter, that it was blocking the merger to avoid the creation of a monopoly, it is important to consider the political backdrop to the proposed merger, ie, the UK's referendum vote to leave the EU. Were it not for the Brexit vote, perhaps the European competition authority may have taken a different approach.

Sky plc by Twenty-First Century Fox, Inc.

Twenty-First Century Fox, Inc.'s £11.7 billion pre-conditional cash offer for Sky plc announced on 15 December 2016 has also been subject to regulatory hurdles and political intervention. The offer was announced as being subject to satisfaction (or waiver) of (among other things) pre-conditions relating to the receipt of EU competition clearance (which it obtained on 7 April 2017) and, if either a European intervention notice (EIN) or an intervention notice has been issued under sections 67 and 42 of the Enterprise Act 2002 (EA 2002) respectively, approval of the Secretary of State. The Secretary of State did indeed refer the matter on for investigation by Ofcom and the CMA.

An additional dimension to this deal is the announcement on 14 December 2017 that Disney has agreed to acquire 21st Century Fox (after a spin-off of certain businesses), and the Takeover Panel is considering whether the 'chain principle' under Note 8 on Rule 9.1 of the Code applies.

16 March 2017—Secretary of State intervenes on public interest grounds

Secretary of State for Culture, Media and Sport intervenes in the acquisition on media public interest grounds of media plurality and commitment to broadcasting standards by issuing a European Intervention Notice (EIN). The EIN triggers the requirement for Ofcom to report on the effects of the proposed transaction on the public interest grounds and the CMA on jurisdictional matters, namely whether arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a European relevant merger situation. The reports are due by 16 May 2017.

21 April 2017—extension of deadline for CMA and Ofcom report

The SoS announces that, in light of the General Election on 8 June 2017, the deadline for submission of the public interest report by the CMA and Ofcom into the proposed acquisition is extended from 16 May 2017 until 20 June 2017.

20 June 2017—Ofcom and CMA reports

SoS confirms receipt of Ofcom and CMA reports but remains unable to comment substantively on the matter of the merger.

29 June 2017—SoS minded to refer merger for Phase 2 investigation on media plurality grounds

SoS confirms in a statement to Parliament that she was minded-to refer the merger for a further, more detailed, Phase 2 investigation by the CMA on media plurality grounds.

12 September 2017—SoS minded to refer merger for Phase 2 investigation on commitment to broadcasting standards ground

After further consideration of representations received and having considered further advice that she had requested from Ofcom, the SoS announces that she was now also minded to refer the bid to the CMA on commitment to broadcasting standards grounds.

20 September 2017—SoS refers deal to CMA for Phase 2 investigation

SoS reaches final decision and refers on both grounds to the CMA for a Phase 2 investigation. CMA has 24 weeks to investigate the proposed transaction and provide advice to the SoS, who will then come to a final decision on whether or not the merger can proceed, including any conditions that will apply. The statutory deadline is 1 May 2018 (with 8 week extension).

14 December 2017—Disney's to acquire 21st Century Fox

21st Century Fox and Disney announce that they have entered into an agreement, under which Disney will acquire 21st Century Fox (after a spin-off of certain businesses) (Disney Transaction). Under the Disney Transaction, Disney would acquire 21st Century Fox's 39% shareholding in Sky, and that it was anticipated that 21st Century Fox would seek to complete its planned acquisition of the 61% of Sky it does not already own.

The Takeover Panel, in response, announced that the Disney Transaction does not alter 21st Century Fox's obligations under the Code with respect to its pre-conditional offer for Sky. The Takeover Panel further stated that it will seek the views of the independent directors of Sky before determining whether the Disney Transaction will trigger a mandatory bid obligation under Note 8 on Rule 9.1 of the Code (ie, under the chain principle) upon Disney as a result of 21st Century Fox's 39% stake in Sky.

Post 31 December 2017 update

23 January 2018—CMA publishes provisional findings report

The CMA provisionally finds that Fox's anticipated acquisition is not in the public interest. The provisional finding is due to media plurality concerns, but not because of a lack of a genuine commitment to broadcasting standards in the UK.

Sepura plc by Hytera Communications Corporation Limited

Hytera's £74 million recommended cash offer for Sepura was the subject of a public interest intervention (on grounds of national security) by the Secretary of State for the Department for Business, Energy & Industrial Strategy (BEIS) after Sepura shareholders had approved the scheme of arrangement (on 9 February 2017).

27 and 28 March 2017—notification of possible intervention by SoS on national security grounds

BEIS writes to Sepura and Hytera respectively confirming that the SoS was minded to intervene on national security public interest grounds and invites representations for consideration before coming to a final decision.

10 April 2017—SoS issues PIIN

SoS issues a public interest intervention notice (PIIN) confirming that he is intervening in the deal on national security grounds (in accordance with EA 2002, ss 42(2) and 58(1)). The CMA will prepare a report on the competition and national security aspects of the proposed transaction and has until midnight on Thursday 4 May 2017 to complete and submit this report to the SoS (in accordance with EA 2002, s 44).

4 May 2017—CMA reports to SoS

CMA reports to SoS. The report contains the CMA's decisions on the jurisdictional and competition aspects and summaries of representations received. SoS also receives representation from the Home Office.

8 May 2017—SoS proposes to accept undertakings instead of referring to the CMA

SoS announces that in line with advice from the Home Office, he was proposing to accept draft undertakings from Hytera and Sepura instead of making a reference to the CMA for a more detailed (Phase 2) investigation.

The undertakings provide assurance that sensitive information and technology is protected and ensure the maintenance of UK capabilities in servicing and maintaining radio devices used by emergency services in the UK. The undertakings require Hytera and Sepura to implement enhanced controls to protect sensitive information and technology from unauthorised access and to provide rights of access to premises and information so that relevant agencies including the Home Office can audit compliance with the security measures. Hytera and Sepura have also undertaken to continue the UK repair and maintenance service for the relevant radio devices for as long as is required by the Home Office.

12 May 2017—SoS accepts undertakings

SoS announces that he has accepted statutory undertakings from the parties and that the deal will therefore not be referred to the CMA for further assessment. The scheme became effective on 24 May 2017.

'In the 12 instances of intervention since the introduction of the Enterprise Act, none have resulted in a deal being blocked; instead, the deals have gone through following concessions. This appears to be the way that the Sky/Fox merger will pan out. As for 2018 — yes we can expect to see more interactions. We have already seen this in the Melrose bid for GKN. It is evident that an increased focus on the UK public interest and securing more comprehensive grounds to review and block bids is on the Government's agenda, as clearly set out in the BEIS's National Security and Infrastructure Review consultation paper, but what is important to bear in mind is the clear recognition that the existing framework does not offer the tools and triggers that the Government is seeking — so what we can expect to see unless and until the proposed reforms take effect in legislation (which in turn are likely to be impacted by Brexit as a number of the proposed changes will require EC assessment and approval) will be threats of intervention, pressures from the sidelines and back-room negotiations to allay any scent of public interest concerns.'

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

Further Government powers to intervene in mergers raising national security concerns and scrutinise foreign investment

Recently, there has been an increase in protectionist sentiments globally, typified by the Brexit vote in the UK and the rhetoric of President Donald Trump in relation to the building of a wall along the Mexican border in the US. However, many countries (the US, Canada, Australia, China, India, Japan) have been screening foreign investment for decades.

In Europe, there have been instances of political interventions in takeovers. The UK (along with the Nordic countries), however, has traditionally been open to foreign investment. In the last 18 months, the rhetoric has changed and foreign ownership of UK companies has become (re-)politicised in the UK. As noted in our Market Tracker Trend Report—Trends in UK public M&A deals in 2016, the process commenced with Theresa May's campaign speech (in her bid for leadership of the Conservative Party and Prime Minister) confirming her willingness to introduce new powers for the government to intervene in UK public M&A and be capable of 'stepping in to defend a sector', making express reference to US-bidder Pfizer's failed approach. As a further example of political intervention in 2016, the Hinkley Point C nuclear power plant project was subject to substantial scrutiny. Further, the Conservative Party's manifesto published ahead of the 8 June 2017 general election, stated that, in relation to reforming rules on takeovers and mergers: 'We shall also take action to protect our critical infrastructure. We will ensure that foreign ownership of companies controlling important infrastructure does not undermine British security or essential services. We have already strengthened ministerial scrutiny in respect of civil nuclear power and will take a similarly robust approach across a limited range of other sectors, such as telecoms, defence and energy'.

In October 2017, BEIS launched a consultation in relation to the Government's review of the national security implications of foreign ownership or control, proposing new powers to intervene in mergers which raise national security concerns, including those involving smaller businesses.

Under the current regime, the Government is only able to intervene in mergers involving companies with a UK turnover of more than £70 million where the share of UK supply increases to 25% or over.

As part of short-term reforms, the Government has proposed amending the Enterprise Act 2002 (by way of passing secondary legislation) in relation to businesses operating in (i) the dual use and military use sector and (ii) parts of the advanced technology sector to:

- lower the threshold whereby ministers can scrutinise investment to businesses with a UK turnover of over £1 million
- remove the requirement for a merger to increase a business's share of supply of, or over, 25%

The consultation also focuses on longer term reforms, with the Government intending to follow the examples of other developed, open countries and make more substantive changes to how it scrutinises the national security implications of foreign investment. The reforms would focus on adequate scrutiny of whether significant foreign investment in the UK's most critical businesses raises any national security concerns and providing the ability to act in circumstances where this might be the case.

Such reforms may include:

- an expanded version of the 'call-in' power (modelled on the existing power within the Enterprise Act 2002) to allow Government to scrutinise a broader range of transactions for national security concerns within a voluntary notification regime, including projects and asset sales
- a mandatory notification regime for foreign investment in areas which are critical to national security (eg civil nuclear, defence, energy, transport, telecommunications sectors)

See LNB News: Government proposals to increase powers to intervene in mergers which raise national security concerns.

Separately, the European Commission unveiled proposals to set up a European legal framework for screening foreign direct investments (FDIs) into the EU. The proposed legal framework introduces the possibility for the European Commission to screen on grounds of public order and national security for cases in which FDIs may affect projects or programmes of EU interest (this includes projects and programmes in the areas of research, space, transport), energy and telecommunications) and a co-operation mechanism between Member States and the Commission which can be activated when a specific FDI in one or several Member States may affect the security or public order of another.

For information about foreign investment restriction regimes discussed at the Lex Mundi Global Seminar on Cross-Border Transactions in November 2017, and reported by LexisNexis, see News analysis: Protectionism and investment restrictions in the US and Germany.

Takeover Code changes

The Takeover Panel issued consultation papers in July and in September setting out proposed changes to the Code in relation to (i) asset sales in competition with an offer (PCP2017/1) and (ii) bidder statements of intention (PCP 2017/2) respectively. On 11 December 2017, the Panel published its response statements in relation to these consultations which have resulted in changes to the Code (effective 8 January 2017).

Asset sales

The Code changes in relation to asset sales have been made following two cases in late 2016 (SVG Capital plc by HarbourVest Partners, LLC and Bond International Software plc by Constellation Software Inc.) in which the offeree board in receipt of a takeover offer decided that better value could be delivered to shareholders through the company selling all of its assets to a third party, returning the proceeds to shareholders and winding up the company (ie, effectively enabling a bidder to circumvent key provisions of the Code by purchasing assets of the target instead).

Among other things, the amendments to the Code prevent a bidder from purchasing 'significant assets' of the target:

- for six months following a statement of intention not to make an offer (Rule 2.8)
- during the competition reference where an offer period ends as a result of a reference to a competition authority (Rule 12.1(b)(i)), and
- for the 12 month period following a withdrawn or lapsed offer (Rule 35.1)

The Panel will normally regard relative values of more than 75% as being 'significant'. Also of note, Rule 2.8 has been amended so as to enable a bidder to specify the circumstances in which a no intention statement may be set aside.

See further LNB News: Takeover Panel consults on proposed amendments to Takeover Code and Proposed Takeover Code amendments on asset sales and other matters.

Bidder intention statements

The Code changes in relation to bidder statements appear to have been made pursuant to policy proposals on takeovers and mergers highlighted in the Conservative Party manifesto which (among other things) called for reforms including a requirement for bidders to be clear about their intentions from the outset of the bid process and ensuring all promises and undertakings made in the course of takeover bids can be legally enforced afterwards.

Key changes to the Code include:

- the expansion of content requirements for bidder statements of intention with regard to the target's business, employees and pension schemes, which require the bidder to state its intentions regarding:
  - the target's research and development functions,
  - the balance of the skills and functions of the target's employees and management, and
  - the location of the offeree's headquarters and headquarters functions
- a new requirement for a bidder to make statements of intention at the time of its Rule 2.7 firm intention announcement (in addition to including statements in the offer/scheme document)
- the requirement for bidders and targets to publish reports on post-offer undertakings and intention statements given during the course of an offer, and where the post-offer undertaking has a duration of longer than a year, such reports are to be published at least annually
- the prohibition on a bidder from publishing an offer document for 14 days from the announcement of its firm intention to make an offer without the consent of the target board

See further LNB News: Takeover Panel proposes requiring bidders to make fuller disclosure of takeover plans and Takeover Panel responds to proposals requiring bidders to make fuller disclosure of takeover plans.

'Recently discussions have centered around the effectiveness of the Panel with respect to the enforcement of bidder commitments or undertakings which resulted in a change to its rules but it is evident from the statement emanating from Theresa May's Government in 2017 and in 2016 that it continues to be a concern apparently — at least for some stakeholders.'

Selina Sagayam, Head of UK Transactional Practice Development, Gibson Dunn

Commentary from Adam Cain of Pinsent Masons LLP on the 2018 Code changes in relation to statements of intention

An end to generic statements of intention?

Under Rule 24.2 of the Code, an offer document must set out the bidder's position on a number of proscribed matters. There is an expectation from the Panel that these intention statements are targeted and relevant for shareholders and not therefore general in nature.

Market practice has evolved in such a way that it is common for a bidder to state that it intends to undertake a general review of the target's business once control has been obtained, without giving particular detail as to the nature and extent of that review. This approach has been seen in the context of hostile offers, where a bidder is by definition unable to conduct detailed due diligence and therefore state any specific intentions for the target's business.

It is clear however that in recent years, the Panel has increased its focus on intention statements made by a bidder, culminating in certain targeted changes that were introduced to the Code on 8 January 2018. A bidder is now required to set out:

- its intentions for any research and development functions of the target;
- its intentions to make any material change in the balance of the skills or functions of the target's employees and management; and
- any likely repercussions of the bidder's strategic plans on the location of the target's headquarters and the functions of its headquarters.

What intention statements are required to be made

By virtue of the amendments to Rule 2.7, intention statements are now required to be made in the Rule 2.7 announcement, as well as in the offer document. The stated rationale for these changes is to allow the target company's pension fund trustees and employee representatives to form an opinion as to the relative merits of the offer and give their views on the offeror's proposals in sufficient in time for those opinions to be included in the offer documentation. By virtue of the changes introduced on 8 January 2018, a bidder is now required to state its intentions again in the offer document that it produces and such statements are required to cover the same items.

Publication and timing of offer documents

Rule 24.1 of the Code now prevents a bidder from publishing an offer document less than 14 days following the publication of the Rule 2.7 announcement unless the target board consents to a shorter period.

The rationale in PCP 2017/2 for this proposal was that the board of the target would have greater time to produce its response document.

The changes introduced to the Code on 8 January 2018 now mean a target company has at least 28 days to formulate its response, whereas if the Rule 2.7 announcement and the offer document were published on the same day, it would only have 14 days. As a consequence of the amendments to the Code, the minimum time period available for the board of the target to prepare its last response circular on "Day 39" has been increased.

Post-offer intention statements and post-offer undertakings: a new regime

The changes introduced on 8 January 2018 mean that a target company and a bidder are now required to publish reports on any post-offer intention statements and post-offer undertakings that are provided during the offer period. This contrasts with the previous practice of providing private reports to the Panel on such matters.

Interestingly, PCP 2017/2 also stated that bidders should take care to avoid attempting to qualify intention statements by the usage of words such as "present" or "current" intentions and that the usage of such terms by the bidder would not be considered as qualifying the intention statements.

The proposals that have been transplanted into the Code by virtue of RS 2017/2 appear to be driven by the policy proposals relating to public M&A activity put forward by the Conservative government. Indeed, PCP 2017/2 makes reference to the fact those proposals take into account both "recent commentary and public discussion in relation to takeovers and mergers".

Arguably, the change which is likely to have the most profound and long-lasting impact is the restriction on hostile bidders publishing offer documents less than 14 days after the Rule 2.7 announcement. This will clearly result in a hostile bidder being placed in a disadvantageous position from a tactical perspective as it will reduce the pressure on the board of a target to expedite their response. This change appears to make the difficult prospect of making a hostile takeover bid, even more challenging, particularly with the added risk of interlopers entering the bid process.

The moves to bring forward the timing of the intention statements are unlikely to have much impact on prevailing market practice, given bidders (other than possibly in a hostile situation) are typically clear on the manner and form of their intention statements at the time of the Rule 2.7 announcement and the prevailing orthodoxy has been for bidders to include such statements in that announcement, notwithstanding the fact that the Code only required them to be referenced in the offer document. Furthermore, the requirements to make additional intention statements and to make public reports on any post-offer undertakings and intentions statements are unlikely to be viewed as particularly onerous or revolutionary by market participants.

11 Possible offers and the put up or shut up ('PUSU') regime

Firm offers

In 2017 an offer period began with a firm offer announcement under Rule 2.7 of the Code in relation to 25 companies (11 Main Market and 14 AIM companies). Accordingly, 25 (53%) of the 47 firm offers were not subject to the automatic 'put up or shut up' deadline (PUSU) regime. 19 (41%) firm offers (which had progressed from possible offers identifying a bidder) were subject to a PUSU deadline and a further 3 (6%) offers (which had progressed from formal sale process to the firm offer stage (offers for Jimmy Choo plc, Imagination Technologies Group plc and Sutton Harbour Holdings plc) and, accordingly, were not subject to the PUSU deadline due to dispensation from the Takeover Panel. The percentage of firm offers beginning without a PUSU deadline in 2017 was lower compared to 2016 (32 deals or 63%).

Possible offers

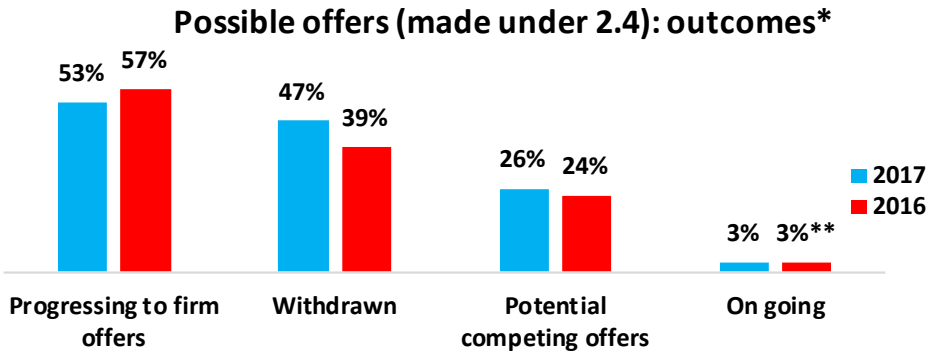
There were 34 possible offers made under Rule 2.4 in 2017 identifying a potential bidder in relation to 30 targets. There were three possible offer announcements identifying multiple bidders (three potential competing bidders in relation to Exova Group plc, two potential competing bidders in relation to Bovis Homes Group plc and two potential competing bidder in relation to Worldpay Group plc).

There was a slight decline in the number of possible offers progressing to firm offers in 2017 when compared with 2016. 18 out of 34 (53%) possible offers resulted in a firm offer during 2017, whereas in 2016, 19 out of 33 possible offers (57%) progressed to the firm offer stage.

In 2017, one possible offer (possible offer for IWG plc by affiliates of Brookfield Asset Management, Inc. and Onex Corporations or its affiliates) (3%) was ongoing as at 31 December 2017 but terminated in 2018. In 2016, there was also one possible offer which was ongoing as at 31 December 2016 (possible offer for Punch Taverns plc by Emerald Investment Partners Limited) but terminated in 2017.

There was an increase in the number of possible offers being withdrawn in 2017 compared with 2016. 15 (44%) possible offers were withdrawn during 2017 whereas only 13 possible offers (39%) were withdrawn in 2016.

Of the 34 possible offers, there were 10 (29%) potential competing bidders with three potential competing bidders progressing to a firm offer (Vantiv, Inc.'s offer for Worldpay Group plc, Element Materials Technology Limited's offer for Exova Group plc and Fosun Gold Holding Limited's offer for Gemfields) and one of which became an actual competing bid. For further details on potential and actual competing bids, see Section 4: Competing and potential competing bids.



* Based on 34 transactions in 2017 and 33 transactions in 2016.

** The possible offer for IWG plc by affiliates of Brookfield Asset Management and Onex Corporation or its affiliates was ongoing as at 31 December 2017 but terminated on 1 February 2018 and the possible offer for Punch Taverns plc by Emerald Investment Partners Limited was ongoing as at 31 December 2016 but terminated on 1 February 2017.

Formal sale processes

For a further 8 targets, an offer period began in 2017 with an announcement that it was commencing a formal sale process, a slight decrease from the same period in 2016 (10 targets). In each case, the Panel granted dispensations from the Code requirements for any interested party participating in that process (i) to be publicly identified and (ii) to be subject to the compulsory 28-day PUSU deadline. None of the targets sought a dispensation from the prohibition on inducement fees or other offer related arrangements.

As at 31 December 2017, 2 out 8 of the formal sales processes are ongoing, 4 have terminated and 2 have progressed to the firm offer stage.

The offer period in relation to one target (which progressed to the firm offer stage in 2017) commenced in 2016 as a formal sale process (Sutton Harbour Holdings plc).

Strategic reviews

For one target (Bowleven plc), an offer period commenced with an announcement that it had initiated a strategic review of its options, including a sale of the company. The target announced termination of its strategic review and offer period on 4 April 2017.

'We might well expect to see more offers falling on their feet before they have fully taken form due to global or domestic political pressures. The Government has not given up on the possibility of introducing a new or enhanced form of bid-blocking powers for targets in significant or material sectors.'

Selina Sagayam, Head of UK Practice Transactional Development, Gibson Dunn

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PUSU Extensions

PUSU extensions in possible offers progressing to firm offers

In 2017, 14 out of the 18 possible offers (78%) which progressed to the firm offer stage did so within their initial 28-day PUSU periods.

PUSU extensions were granted in relation to 4 targets that progressed to firm offers (compared with six in 2016). One or more PUSU extensions was granted in relation to possible offers for Millennium & Copthorne Hotels plc, Worldpay Group plc, Hayward Tyler Group plc, and The Prospect Japan Fund Limited. The latter 3 targets were subject to multiple PUSU extensions. The length of extensions granted in 2017 varied between 1 and 28 days (in 2016, they varied between 7 and 28 days). See table below in relation to PUSU extensions for details.

One possible offer remained ongoing within its initial PUSU period as at 31 December 2017 (possible offer for IWG plc by affiliates of Brookfield Asset Management, Inc. and Onex Corporation or its affiliates).

In the possible offer for The Prospect Japan Fund Limited by Prospect, Co. Ltd, 5 PUSU extensions were granted – the first 4 extensions granted were for further periods of 28 days each, and the fifth extension was for 1 day (and a firm offer was announced on that day).

In the possible offer for Hayward Tyler Group plc by Avingtrans plc, 3 PUSU extensions were granted (the first 2 extensions for further periods of 28 days each and the last extension being for 7 days), with a firm offer being announced on the last day of the final PUSU extension.

In the possible offer for Worldpay Group plc by Vantiv, Inc., 2 PUSU extensions were granted the first extension granted was for 7 days and the second extension was for 3 days with a firm offer being announced on the final day of the second PUSU extension period.

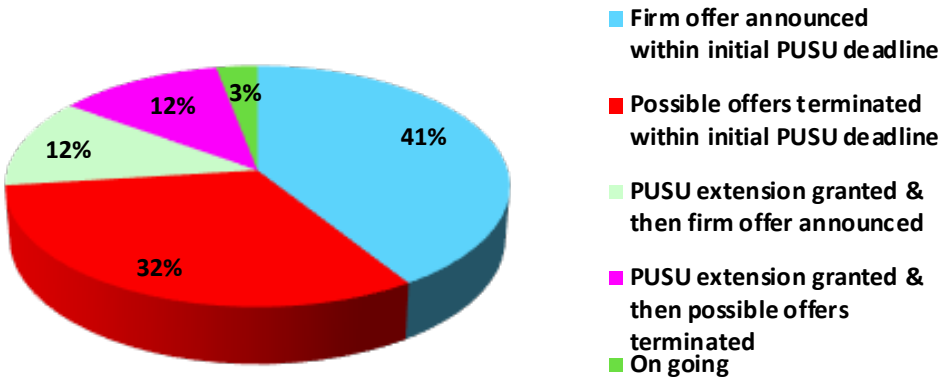
PUSU extensions in possible offers that were withdrawn

11 out of the 15 possible offers (73%) withdrawn in 2017 terminated within their 28-day PUSU deadline.

In one potential competing offer (possible offer for FIH Group plc by Dolphin Fund Limited), the potential competing bidder (Dolphin) had to announce a no intention to make a firm offer statement because the target refused to consent to a PUSU extension (as the potential competing offer was unwelcome and a firm offer had previously been made by The Rowland Purpose Trust 2001). The Takeover Panel confirmed to Dolphin that it would not be able to grant an extension without the consent of the target.

The bidders in 3 other possible offers that were potential competing offers (possible offer by the Deltic Group Limited for Revolution Bars Group plc, possible offer by Jacobs Holding AG for Exova Group plc and possible offer by PAI Partners SAS for Exova Group plc) had to clarify their positions in accordance with Rule 2.6(d), and section 4 of Appendix 7 following a firm offer being made for the same relevant target (Revolution Bars Group plc by Stonegate Pub Company Limited and Exova Group plc by Element Materials Technology Limited).

Possible offers and PUSU deadlines



PUSU extensions

Deal	Description
Possible offer for Worldpay Group plc by Vantiv, Inc. (firm offer announced)	A potential competing offer for Worldpay was made by Vantiv on 4 July 2017. The PUSU was subject to two extensions (the first for 7 days and the second for 3 days). The possible offer progressed to a firm offer on 9 August 2017.
Possible offer for Hayward Tyler Group plc by Avingtrans plc (firm offer announced)	A possible offer for Hayward Tyler by Avingtrans was made on 31 March 2017. The PUSU was subject to 3 separate extensions (the first two of 28 days each and the final extension of 7 days) at Hayward Tyler's request. The possible offer progressed to a firm offer on 30 June 2017.
Possible offers for Revolution Bars Group plc by The Deltic Group Limited (terminated, and by Stonegate Pub Company Limited (firm offer announced)	Possible offers for Revolution Bars were made by Stonegate on 31 July 2017 and by Deltic on 15 August 2017. A PUSU deadline of 28 August 2017 applied to Stonegate and a PUSU deadline of 12 September 2017 applied to Deltic. Stonegate offered a recommended all cash-offer for Revolution, structured by way of a scheme of arrangement on 24 August 2017. As a result of this firm offer, Rule 2.6(d) and (as the deal structure was a scheme of arrangement) section 4 of Appendix 7 applied, giving Deltic 53 days from the firm offer announcement to clarify its intentions. The deadline was accordingly extended under Rule 2.6(d) until 10 October 2017 by the Panel as set out in Panel Statement 2017/18. Deltic announced on 10 October 2017 that it did not intend to make a firm offer for Revolution Bars.
Possible offers for Exova Group plc by Jacobs Holding AG (terminated), by PAI Partners SAS(terminated) and by Element Materials Technology Group Limited (firm offer announced)	Possible offers for Exova by Jacobs, by PAI PAI Partners and by Element were made on 27 March 2017. A PUSU deadline of 24 April 2017 was imposed. Element announced a recommended all-cash offer for Exova on 19 April 2017 (ie, within the initial PUSU deadline). As a result of the firm offer announcement, Rule 2.6(d) and (as the firm offer was a bid structed as a scheme of arrangement) section 4 of Appendix 7 applied giving each of PAI and Jacobs 53 days from the firm offer announcement to clarify their intentions. The deadline was accordingly extended under Rule 2.6(d) until 2 June 2017 by the Panel as set out in Panel Statement 2017/9 for both Jacobs and PAI Partners. On 22 May 2017, Jacobs announced that it did not intend to make an offer for Exova, bringing the offer period to a close. On 26 May 2017, PAI announced that it did not intend to make an offer for Exova, bringing the offer period to a close.
Possible offer for The Prospect Japan Fund Limited by Prospect, Co. Ltd (firm offer announced)	A possible offer of TPJF by Prospect was made on 10 January 2017. The PUSU was subjected to 5 separate extensions before a firm offer was made. 4 of the 5 PUSU extensions granted by the Panel were each of 28 days respectively at TPFJ's request. The 5th PUSU extension was granted by the Panel of 1 day to allow the parties to conclude their ongoing discussions. The possible offer progressed to a firm offer on 31 May 2017.

12 Formal sale processes (FSPs)

Rule 21.2

Rule 21.2 prohibits a target, a bidder or any of their respective concert parties from entering into deal protection measures, such as an inducement fee or other offer-related arrangement, without Panel consent, subject to certain limited exceptions.

Where, prior to an offeror having announced a firm intention to make an offer, the offeree announces an FSP, the Panel will normally permit dispensations under the Code from:

- the requirement to publicly identify prospective bidders,
- the PUSU requirements, and
- the prohibition on a preferred bidder benefiting from a break fee agreement.

In 2017, 8 companies announced FSPs (4 AIM, 4 Main Market), compared to 10 FSPs announced in 2016 (8 AIM, 2 Main Market) (ie, a decrease of about 20%). In 6 out of 8 FSPs, the announcement was made in the wider context of a strategic review of the company's options.

Of the 8 FSPs announced in 2017, 2 (25%) were ongoing as at 31 December 2017, and 4 (50%) terminated, and 2 (25%) resulted in firm offers being announced. In 2016, 30% of FSPs were ongoing as at 31 December 2016.

2 (25%) FSPs were made by targets operating in the computing & IT industry (Imagination Technologies Group plc (firm offer announced) and Pebble Beach Systems Group plc (terminated)), 2 (25%) were made by targets operating in the retail & wholesale trade industry (The Stanley Gibbons Group plc (terminated) and Jimmy Choo plc (firm offer announced)), one was made by a target operating in the chemicals sector (Plant Impact plc (ongoing)) and one was made by a target operating in the travel, hospitality, leisure and tourism industry (Sportech plc (ongoing)). The remaining FSPs were made for targets operating in financial services industry (Frenkel Topping Group plc (terminated)) and banking & finance industry (The Co-Operative Bank plc (terminated)).

The Co-Operative Bank plc announced on 26 June 2017 that it was in advanced discussion with some of its existing investors about a prospective equity capital raise and recapitalisation, and given the advanced nature of the proposal, it was discontinuing its FSP.

Frenkel Topping Group plc announced on 27 June 2017 that although the strategic review had identified potential acquirers, the Frenkel's board believed that none of the proposals appropriately reflected the organic growth potential of the group and that it was in the best interests of the shareholders, employees and clients to continue as an independent company, pursuing its existing business plan.

The Stanley Gibbons Group plc announced on 21 November 2017 that it had become clear from discussions with numerous interested parties that an offer for the company as a whole was unlikely to be favourable to shareholders whilst the legacy contingent liabilities remained, and therefore it was terminating the FSP. It should be noted that administrators had been appointed by this stage.

Pebble Beach Systems plc announced on 1 December 2017 that although it had received approaches from several entities, none had made an offer which reflected the value of the company (whose financial prospects were improving) and therefore it decided to terminate the FSP.

Firm offers were made for both Jimmy Choo plc (by Michael Kors Holdings Limited) and Imagination Technologies Group plc (by Canyon Bridge Capital Partners LLC).

'The use of FSPs has been lacklustre from the start but perhaps with the recent Practice Statement setting out the framework a bit more clearly we will see more.'

Selina Sagayam, Head of UK Practice Transactional Development, Gibson Dunn

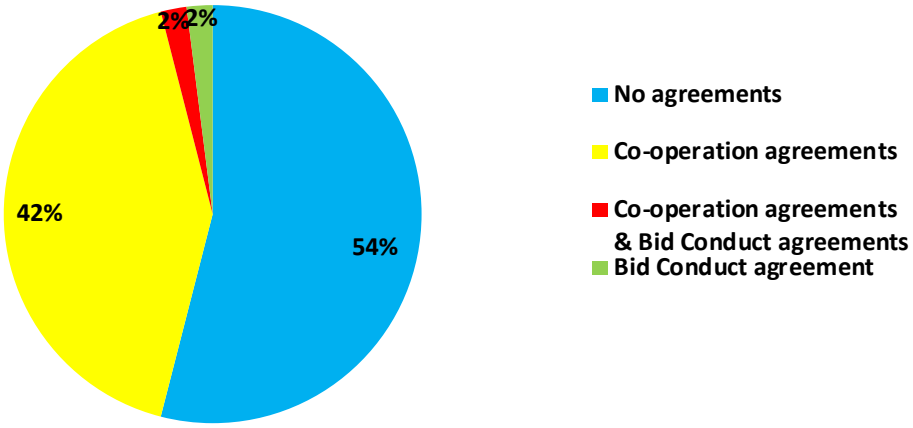
13 Offer-related arrangements

Cooperation arrangements and other permitted arrangements

Cooperation agreements have grown in popularity, driven by the exclusion in Rule 21.2(b)(iii) which allows offer parties to agree to cooperate and commit to providing assistance and information to obtain necessary official authorisations and bid clearances.

Of the 47 firm offers announced in 2017, 21 (45%) involved the bidder and target entering into a cooperation agreement and one deal (Panmure Gordon & Co. plc by QInvest LLC and Atlas Merchant Capital LLC) featured a 'Bid Conduct Agreement' in addition to a cooperation agreement. Note that for the purposes of this report, we have included the Transaction Agreement entered into between Kennedy Wilson Europe Real Estate plc and Kennedy Wilson Holdings, Inc. on 24 April 2017 as a cooperation agreement.

Usage of co-operation and bid conduct agreements



18 out of 21 of the cooperation agreements were entered into with targets with a Main Market listing, and usage was not limited to the largest deals: although 8 of the 10 largest deals (by aggregate deal value) featured such agreements, cooperation agreements were also used in the smallest deal (Panmure Gordon & Co. plc by QInvest LLC and Atlas Merchant Capital LLC (£15.5 million)) and two other small deals (The Japan Prospect Fund Limited by Prospect Co. Ltd (£114.87) Mariana Resources Limited by Sandstorm Gold Limited (£166.85 million)).

Usage of cooperation agreements has increased significantly in 2017

18 deals featuring cooperation agreements were structured as schemes, and 3 deals were structured as offers (offers for Millenium & Copthorne Hotels plc by City Developments Limited, Cape plc by Altrad Investments SAS, Market Tech Holdings Limited by LabTech Investments Ltd which was structured as a contractual offer. Cooperation agreements were more common where the target operated in the financial services industry (5 instances) and the engineering & manufacturing industry (3 instances). Cooperation agreements were also entered into in relation to targets operating in the computing & IT, investment, mining, metals & extraction, property, retail & wholesale trade, travel, hospitality, leisure & tourism sectors (2 instances across each industry) and banking & finance and professional services (1 instance each).

Usage of cooperation agreements has increased significantly compared with usage in 2016, where 14 (27%) of deals featured such agreements. As would be expected, these agreements also included reciprocal obligations on the part of bidder and target to use their reasonable endeavours to provide each other with information or assistance for the purposes of obtaining any authorisations and clearances.

Drafting Examples

Aberdeen Asset Management plc by Standard Life plc Summary of Cooperation Agreement

'Standard Life and Aberdeen have entered into a cooperation agreement dated 6 March 2017 with respect to conduct of the Merger. Under the terms of the Cooperation Agreement, Standard Life and Aberdeen have agreed, among other things, that (in summary):

- Standard Life and Aberdeen will cooperate with each other in order to assist in obtaining clearance from competition and other regulatory bodies in order to satisfy the Conditions relating to such clearances;
- Standard Life and Aberdeen will provide each other with certain information and assistance in the preparation of the Scheme Document, the Circular and the Prospectus;
- Standard Life will convene the Standard Life General Meeting so that it is held on the same date as the Court Meeting;
- Standard Life will be subject to certain customary restrictions on the conduct of its business during the period prior to completion of the Merger, which prohibit, among other things: (a) the payment by Standard Life of dividends (other than in the ordinary course or by reference to a record date after the Effective Date); (b) the allotment of further shares (or rights or options in respect of shares) (other than pursuant to its existing share incentive schemes or in order to settle options or awards vesting under its existing incentive schemes); or (c) amendment to its constitutional documents in any manner that would have an adverse impact on the value of, or rights attaching to, the New Shares;
- Standard Life and Aberdeen will cooperate to write to participants in the Aberdeen Share Schemes and to inform them of the impact of the Scheme on their awards; and
- Standard Life and Aberdeen intend to implement the Merger by way of the Scheme, subject to the ability of Standard Life with the consent of the Panel and Aberdeen or, in certain circumstances, without the consent of Aberdeen, to proceed by way of an Offer in the circumstances described in paragraph 26 below.'

Panmure Gordon & co. plc by QInvest LLC and Atlas Merchant Capital LLC

Bid conduct agreement (cash consideration funding)

'Subject to and conditional upon the Scheme becoming effective, AMC undertakes to Bidco and QInvest with effect from the Closing Date to comply with its obligations under [the next paragraph] to procure payment of an amount equal to the Cash Consideration Subscription Amount. In consideration of such undertaking Bidco shall on the Closing Date, simultaneously with the issue of the QInvest Bidco Shares pursuant to the Share Exchange Agreement, issue to AMC the AMC Bidco Shares.

On or before the Funding Date, AMC shall procure payment to the Bidco Nominated Account of an amount equal to the Cash Consideration Subscription Amount plus the Option Costs Facility Amount. Such payment of the Cash Consideration Subscription Amount shall discharge the undertaking given by AMC pursuant to [the paragraph above]. AMC will keep QInvest informed as regards its funding process and provide relevant documentation if requested by QInvest (subject to such documentation being redacted by AMC where required for confidentiality reasons). With the consent in writing of QInvest, the Funding Date may be extended to a date not later than seven days after the Closing Date. Such consent shall be given by QInvest where AMC provides evidence, to the reasonable satisfaction of QInvest, that the full amount of the Cash Consideration will be paid by AMC to the Bidco Nominated Account within seven days of the Closing Date.'

Bid conduct agreements remain unpopular; the same number of bid conduct agreements were recorded in 2017 as 2016 (2 deals).

The bid conduct agreement in the offer for Paysafe Group set out the undertakings between the target and the bidder, including that Paysafe has undertaken to 'co-operate with Bidco to ensure satisfaction of the Regulatory and Anti-trust Approvals and to assist Bidco in communicating with any regulatory authority for the purposes of obtaining all clearances and to promptly provide such information and assistance to Bidco as Bidco may reasonably require for the purposes of obtaining any clearance and making a submission, filing or notification to any relevant regulatory authority (including for the purposes of responding to requests for additional information) as soon as practicable' and that both parties have 'agreed to provide each other with necessary information and assistance in relation to the filings, submissions and notifications to be made in relation to such regulatory clearances and authorisations'.

The bid conduct agreement in the offer for Panmure Gordon set out, among other things, obligations on Atlas to procure, by way of a subscription for bidco shares, the provision of the cash funding that was required to satisfy the cash consideration payable to target shareholders in connection with the scheme.

Note 1 to Rule 21.2

Where an offeror has announced a firm intention to make an offer which was not recommended by the board of the offeree company at the time of that announcement and remains not recommended, the Panel will normally consent to the offeree company entering into an inducement fee arrangement with a competing offeror at the time of the announcement of its firm intention to make a competing offer, provided that:

(a) the aggregate value of the inducement fee or fees that may be payable by the offeree company is de minimis, ie normally no more than 1% of the value of the offeree company calculated by reference to the price of the competing offer (or, if there are two or more competing offerors, the first competing offer) at the time of the announcement made under Rule 2.7; and

(b) any inducement fee is capable of becoming payable only if an offer becomes or is declared wholly unconditional.

Break fees

In 2017, there was one instance of the Panel granting a dispensation from the prohibition on break fees under Note 1 on Rule 21.2 (Competing offerors dispensation). In Gemfields plc by Fosun Gold Holdings Limited, Gemfields undertook to pay Fosun Gold USD $2 million, or such lesser amount as is determined in accordance with the terms of the agreement, by way of compensation, if following the release of the Rule 2.7 announcement a competing offer for Gemfields (which includes the Pallinghurst offer) becomes or is declared wholly unconditional.

There were two instances of the Takeover Panel granting a dispensation from the prohibition on break fees under Note 2 on Rule 21.2 (formal sale process dispensation). There were no instances of this type of dispensation in 2016.

Following an FSP initiated by Jimmy Choo plc, Michael Kors Holdings Limited announced a firm offer. The parties were granted dispensation to enable Jimmy Choo plc to pay Michael Kors an inducement fee of £8.96 million if a competing proposal completes, becomes effective or is declared or becomes unconditional in all respects.

Following an FSP initiated by Imagination Technologies Group plc, Canyon Bridge Capital Partners, LLC announced a firm offer. The parties were granted dispensation to enable Imagination to enter into a break fee arrangement and pay Canyon Bridge (CFBI) £5.5 million on the occurrence of a break fee event (for wording, see 'Drafting Examples, Imagination Technologies Group plc by Canyon Bridge Capital Partners, LLC—Break fee where FSP dispensation has been granted' below.

Drafting Examples

Gemfields plc by Fosun Gold Holdings Limited
Break fee in recommended competing offer

'Fosun Gold and Gemfields have entered into a break payment agreement dated 20 June 2017 pursuant to which Gemfields has undertaken to pay to Fosun Gold or to any subsidiary of Fosun (at Fosun's sole election) a sum that is equal to $2m, or such lesser amount as is determined in accordance with the terms of the agreement, by way of compensation, if following the release of this Announcement a competing offer for Gemfields (which will include the Pallinghurst Offer) becomes or is declared wholly unconditional. In addition, Gemfields will provide Fosun Gold with all relevant information and assistance reasonably necessary or requested to identify and/or satisfy any regulatory or competition conditions to the Fosun Offer.'

Imagination Technologies Group plc by Canyon Bridge Capital Partners, LLC
Break fee where FSP dispensation has been granted

'CBFI, Canyon Bridge and Imagination have entered into a cooperation agreement dated 22 September 2017 as amended on 26 September 2017 (the "Cooperation Agreement"), the key terms of which are summarised below. The Cooperation Agreement sets out (among other things):

……

the circumstances in which Imagination is required to make a payment of up to £5,504,943 to CBFI where the Acquisition lapses or is withdrawn or (with the consent of the Panel) is not made, and at any time before such lapse or withdrawal an

independent third party announces a competing transaction or makes an approach to Imagination in respect of a competing transaction and such transaction subsequently completes, becomes effective or is declared or becomes unconditional in all respects.'

Break fees between the bidder and shareholders

While the Code prohibits a target or any of its respective concert parties from entering into deal protection measures, including break fees, without the Panel's consent, there is no prohibition on the shareholders of a target paying break fees to the bidder. While unusual, target shareholders may be motivated to agree to a break fee where they are eager to dispose of their shareholdings in a target. There was one instance (Kalibrate Technologies plc by Hanover Investors Management LLP) of a target shareholder, Eurovestech plc, agreeing (in an irrevocable undertaking) to pay a break fee of £126,000 to the bidder on the occurrence of certain events, including where Eurovestech revoked acceptance of the offer due to a third party making a Rule 2.7 announcement for the target at a price that was 135 pence or higher. Of particular interest, the obligation to pay a break fee extended to cover the actions of another shareholder, Invesco Asset Management Limited, where Invesco revoked its acceptance of the offer in similar circumstances.

Drafting Examples

Kalibrate Technologies plc by Hanover Investors Management LLP

Break fee from offeree shareholder

'In the event that:

(a) Invesco revokes its acceptance of the Offer due to a third party announcing a firm intention to bid for Kalibrate in accordance with Rule 2.7 of the Code at a price that is 135 pence or higher;

(b) Invesco fails to accept or procure acceptance of the Offer in respect of all of the Kalibrate Shares subject to the irrevocable undertakings given by Invesco to Hanover Bidco in accordance with the procedure for acceptance of the Offer due to a third party announcing a firm intention to bid for Kalibrate in accordance with Rule 2.7 of the Code at a price that is 135 pence or higher;

(c) Eurovestech revokes its acceptance of the Offer due to a third party announcing a firm intention to bid for Kalibrate in accordance with Rule 2.7 of the Code at a price that is 135 pence or higher; or

(d) Eurovestech fails to accept or procure acceptance of the Offer in respect of all of the Kalibrate Shares subject to its irrevocable undertaking in accordance with the procedure for acceptance of the Offer due to a third party announcing a firm intention to bid for Kalibrate in accordance with Rule 2.7 of the Code at a price that is 135 pence or higher,

Eurovestech will pay Hanover Bidco a sum of £126,000 (plus VAT if any) to compensate Hanover Bidco for its abortive costs (as long as the payment of such fee is not determined by the Panel to be prohibited by the Code) (the "Break Fee"). The Break Fee will not, however, be payable in the event that the Offer is declared wholly unconditional in all respects.'

Reverse break fees

Agreements which impose obligations only on the bidder are not offer-related arrangements (except in the case of a reverse takeover) under the exclusion in Rule 21.2(b)(v). Co-operation agreements may include a reverse break fee on the occurrence of certain specified events.

In 2017 there were 6 instances of a bidder agreeing to pay a reverse break fee to the target if the transaction failed to complete: Amec Foster Wheeler plc by John Wood Group plc (£25 million reverse break fee, deal value £2.2 billion), WS Atkins by SNC-Lavalin Group Inc. (reverse break fee of £50 million, deal value £2.1 billion), Jimmy Choo plc by Michael Kors Holdings Limited (reverse break fee of £17.92 million, deal value £896 million), Imagination Technologies Group plc by Canyon Bridge Capital Partners, LLC (reverse break fee of £13.76 million, deal value £550 million), Exova Group plc by Element Materials Technology Group Limited (reverse break fee of £6.203 million, deal value £620.3 million) and The Prospect Japan Fund Limited by Prospect Co., Ltd (reverse break fee US $2 million, deal value £114.87 million).

This contrasts with the equivalent period in 2016 where only one reverse break fee was recorded (Sky plc by Twenty-First Century Fox, Inc.).

Reverse break fees are more common on the larger offers: 5 out of 6 (83% of) deals which featured reverse break fees were for deals with a value upwards of £500 million in 2017.

Deals in Focus

WS Atkins by SNC-Lavalin Group Inc.

Lavalin agreed to pay Atkins a reverse break fee of £50 million way of compensation for any loss or damage that may be suffered by Atkins if SNC-Lavalin or Bidco invokes (and is permitted by the Takeover Panel to invoke) any Regulatory Condition on or prior to 31 July 2017, or any Regulatory Condition has not been satisfied or waived by SNC-Lavalin or Bidco by 11.59 pm on 31 July 2017.

Exova Group plc by Element Materials Technology Group Limited

The bidder agreed to pay a reverse break fee of £6.203 million if, on or prior to the long-stop date:

- bidder invokes any of the Regulatory Conditions so as to cause the acquisition not to proceed, lapse or be withdrawn;
- a Rule 12 Event takes place on or prior to the Longstop Date; or
- any Regulatory Condition has not been satisfied or waived by the bidder by 11.59 pm on the date which is 14 days prior to the long-stop date

Drafting Examples

Amec Foster Wheeler plc by John Wood Group plc
Reverse break fee

'By way of compensation for any loss or damage that may be suffered by Amec Foster Wheeler in connection with the Combination, Wood Group has agreed to pay, or procure the payment of, a break fee of £25,000,000 if:

(i) the Wood Group Resolutions are not passed at the Wood Group General Meeting;;

(ii) as at 5:00 p.m. on 15 June 2017 (or such other date as may be agreed in writing between Wood Group and Amec Foster Wheeler), no vote has been held on the Wood Group Resolutions;;

(iii) Wood Group does not include the unanimous and unconditional recommendation of the Wood Group Directors to Wood Group Shareholders to vote in favour of the Combination in the Circular or withdraws, qualifies or modifies such recommendation in any adverse manner or fails to reaffirm such recommendation (when requested by Amec Foster Wheeler to do so);;

(iv) on or before the Long Stop Date, Wood Group invokes (with the permission of the Panel) any of the Conditions set out in paragraphs 2 to 15 (in the case of paragraphs 12—15, the relevant "Third Party" being a regulatory authority) of Part A of Appendix 1 to this Announcement or such conditions have not been satisfied or waived by the Long Stop Date and as a result, in each case, the Combination lapses or terminates; or

(v) the CMA refers the Combination to a second phase review with the effect that the Combination lapses or terminates in accordance with Rule 12 of the Code.

No break fee will be payable if:

(i) certain termination events have already occurred prior to the relevant break fee trigger;;

(ii) the relevant break fee trigger was caused to a material extent by Amec Foster Wheeler's breach of its cooperation and assistance obligations in connection with merger control and regulatory clearances and authorisations or key shareholder documentation;;

(iii) Wood Group has exercised its right to implement the Combination as an Offer in accordance with the Cooperation Agreement in circumstances where a third party's firm intention to make an offer for Amec Foster Wheeler has been recommended by the Amec Foster Wheeler Directors or the Amec Foster Wheeler Directors have withdrawn their recommendation of the Scheme;;

(iv) prior to the relevant break fee trigger, the Amec Foster Wheeler Directors have withdrawn, qualified or adversely modified, or they have failed to reaffirm (when requested by Wood Group to do so), their unanimous and unconditional recommendation that the Amec Foster Wheeler Shareholders vote in favour of the Scheme; or

(v) following the break fee trigger in paragraph (ii) or (iii) above but prior to any lapse or termination of the Scheme, the Wood Group Resolutions are passed at the Wood Group General Meeting.'

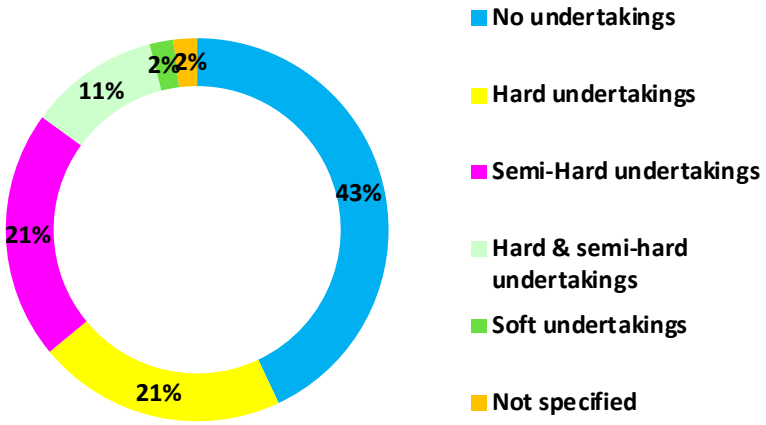
14 Irrevocable undertakings

The prohibition on break fees and other offer-related arrangements has seen other forms of deal protection, such as irrevocable undertakings, gain greater prominence.

Hard and semi-hard undertakings (non-director shareholders)

In a number of deals in 2017, irrevocable undertakings were given by non-director shareholders in favour of bidders covering a variety of matters. Non-director shareholders provided bidders with traditional irrevocable undertakings in 27 (57%) deals. Of these 27 deals, 10 deals (37%) featured hard undertakings only, 10 deals (37%) featured semi-hard undertakings only, one deal (3%) featured soft undertakings only, 5 deals (18%) featured both hard and semi-hard undertakings and one deal (3%) did not specify the type of undertakings given.

Non-director shareholder undertakings*



* Irrevocables in the offer for Waterman Group pc by CTI Engineering Co. Limited did not specify their type of undertaking. Further, the undertaking was from Neil Humphrey who was not a director of Waterman Group plc at the time, but who was a director of other companies within the Waterman corporate group. We have, however, classified this as an undertaking from a non-director shareholder (as he was not at the time a director of the target).

Hard undertakings will remain binding if a third party makes a competing offer whereas a semi-hard undertaking will cease to be binding if a higher competing offer is made at or above a specified price, or at a price in excess of a certain percentage of the original offer price (eg, in Circle Holdings plc by Tosca Fund Asset Management LLP and Penta Capital LLP, Circle Trustee, Lansdowne Partners, Richard Griffiths and Balderton Capital provided semi-hard undertakings which would lapse on the making of a higher competing offer by another bidder at a value which is equal to or exceeds Tosca Fund's offer price by 110% or more than 30 pence per share).

One deal (offer for Waterman Group plc by CTI Engineering Co. Limited) featured target shareholders (AB Traction and Hargreave Hale Limited) entering into conditional sale agreements with the bidder in respect of their target shareholdings. Completions of the sale agreements were conditional on release of the Rule 2.7 announcement by CTI in relation to the offer for the Waterman Group.

Under the conditional sales agreements:

- CTI agreed to purchase and AB Traction agreed to sell to CTI 5,295,000 Waterman Shares in aggregate at 140 pence per share, representing approximately 17.22 per cent. of the share capital of Waterman in issue on 8 May 2017, and
- CTI agreed to purchase and Hargreave Hale Limited agreed to sell to CTI 2,575,000 Waterman Shares in aggregate at 140 pence per share, representing approximately 8.37 per cent. of the share capital of Waterman in issue on 8 May 2017

Matching or topping rights (non-director shareholders)

Matching or topping rights allow the original bidder a limited period of time in which to match or improve on a higher competing offer before the undertaking lapses.

Of the 47 firm offers announced in 2017, in 9 instances one or more irrevocable undertakings given by non-director shareholders contained matching or topping rights in the event of a competing bid. Of these 9 deals, two deals (Gemfields plc by Pallinghurst Resources Limited and Kalibrate Technologies plc by Hanover Investors Management LLP) provided solely for a matching right, one deal (Styles & Wood Group plc by Central Square Holdings Limited) provided solely for a topping right and 6 provided for both matching and topping rights (Servelec Group plc by Montagu Funds, Circle Holdings plc by Toscafund Asset Management LLP and Penta Capital LLP, Hayward Tyler Group plc by Avingtrans plc, NetPlay plc by Betsson AB (Publ) and Electric Word plc by Riccardo Silva and Marco Auletta and Revolution Bars Group plc by Stonegate Pub Company Limited). There has been a significant decrease in the number of non-director shareholders containing matching or topping rights compared with 2016 (18 deals). However, we have seen a greater number of hard undertakings from non-director shareholder in 2017, which may explain why there has been a decline in matching or topping rights.

Non-solicitation and notification undertakings (non-director shareholders)

Irrevocables from non-director shareholders to bidders in 3 deals (Revolution Bars Group plc by Stonegate Pub Company Limited, Kennedy Wilson Europe Real Estate plc by Kennedy Wilson Holdings, Inc. and Exova Group plc by Element Materials Technology Group Limited), included commitments pursuant to which the target shareholder agreed that it would not solicit or encourage third parties to make a competing offer for the target and a further obligation on the shareholder to notify the bidder if third parties indicated an interest that could lead to an offer for the company. Non-director shareholders have also given non-solicitation undertakings in irrevocables in relation to two other deals (Servelec Group plc by Montagu Funds and ASA Resource Group plc by Rich Pro Investments Ltd).

Break fees (non-director shareholders)

2017 saw one instance of a target shareholder agreeing, in an irrevocable undertaking, to pay a break fee on the occurrence of certain break fee events. The obligation to pay a break fee extended to actions by another target shareholder. See further discussion in Section 13: Offer related arrangements, subsection Break fees between the bidder and shareholders in relation to the offer for Kalibrate Technologies plc.

Drafting Examples

Kennedy Wilson Europe Real Estate plc by Kennedy-Wilson Holdings, Inc.

Non-solicitation and notification undertakings in shareholder irrevocable undertakings (Quantum Strategic Partners Ltd and Franklin Templeton Institutional, LLC)

'"Third Party Proposal" means (a) any offer, scheme of arrangement, share issue or other transaction which would involve any person or group of persons acting in concert (other than the Bidder and persons acting in concert with it) acquiring control (as defined in the Code) of the Target; (b) any arrangement or transaction for the transfer of any interest in all or substantially all of the business and assets of the Target Group or in any part thereof which is material in the context of the Target Group, taken as a whole or (c) any other transaction which under Rule 21.1 of the Code would require approval by shareholders of the Target and to which the Bidder has not given its prior written consent…

[We] further irrevocably undertake to the Bidder:…

that we shall not, directly or indirectly, solicit or initiate discussions with a view to any Third Party Proposal and shall notify the Bidder or the Bidder Financial Adviser in writing immediately upon receipt of any such approach.'

Revolution Bars Group plc by Stonegate Pub Company Limited

Non-solicitation and notification undertakings in shareholder irrevocable undertakings (Castlefield Fund Partners Ltd)

'2.4 We agree:

…..

2.4.2 (i) not to solicit or enter into discussions regarding any general offer for the Company's ordinary shares or any other class of its shares from any third party or any proposal for a merger of the Company with any other entity; and

2.4.2 (ii) to notify you the details of any approach by any third party made with a view to the making of such an offer or such a merger and also of any such solicitation or discussions (whether or not in breach of the obligations set out in this deed) immediately we become aware of the relevant matter...'

Exova Group plc by Element Materials Technology Group Limited

Non-solicitation and notification undertakings in shareholder irrevocable undertakings and hard undertaking (TABASCO B.V.)

'(2) We undertake to Bidder that before this undertaking lapses in accordance with paragraph 14 below, we shall not:

…

(e) solicit, directly or indirectly, any other offer in competition with the Acquisition, whether conditionally or unconditionally (by whatever means the same is to be implemented) nor enter into any negotiation to such effect or fail to inform you promptly of any approach by a third party which would reasonably be expected to lead to an offer for Exova;

…

14. This undertaking shall lapse and our obligations under this undertaking will cease to have effect:

(a) if the Press Announcement, subject to such modifications and amendments, as do not adversely affect the terms and conditions of the Acquisition as they relate to us, in our capacity as a holder of Exova Shares, as may be required or agreed between the board of Bidder and Exova (but in any event on such terms that entitle each Exova shareholder (i) to receive not less than 240 pence in cash for each Exova Share they hold and (ii) conditional on approval by Exova shareholders at a general meeting of Exova, to receive and retain the proposed final dividend for the period to 31 December 2016 of 2.35 pence per share), is not released by noon (London time) on 19 April 2017 (or such later date as the parties to this undertaking may agree);

(b) if Bidder announces that it does not intend to make or proceed with the Acquisition;

(c) if the Offer or the Scheme lapses or is withdrawn and Bidder announces that it does not intend to proceed with the Acquisition; or

(d) if the Offer or the Scheme lapses or is withdrawn (which, for the avoidance of doubt, shall not include any suspension of the timetable applicable to any Scheme) and no new, revised or replacement Scheme or Offer has been announced by Bidder, in accordance with Rule 2.7 of the Code, in its place or is announced by Bidder, in accordance with Rule 2.7 of the Code, within 10 Business Days of such lapsing or withdrawal.'

Circle Holdings plc by Tosca Fund Asset Management LLP

Semi-hard undertakings and matching / topping rights (Circle Trustee, Richard Griffiths and Balderton Capital)

'The undertaking shall lapse on the same basis as the Circle Directors' irrevocable undertakings save that, in respect of the Circle Trustee, in the event of:

(a) prior to the Offer becoming, or being declared, unconditional as to acceptances, an announcement is made by a third party in accordance with Rule 2.7 of the Code of a competing offer which is a general offer for all of the issued and to be issued shares of the Company which includes cash consideration equal to or exceeding 110 per cent. of the value of the cash consideration per Ordinary Share available under the terms of the Offer and which the Circle Trustee determines is more attractive than the overall value attributable under the Offer having regard to the total consideration of the Offer and the competing offer and

(b) Bidco does not, within ten days of such announcement of such competing offer referred to in (a), announce a revised offer which the Circle Trustee determines values each Ordinary Share at a price equal to or greater than the value of consideration per Ordinary Share under the relevant competing offer,

then the Circle Trustee may notify Bidco in writing within two days of the expiry of such ten day period referred to in (b) that the terms of the irrevocable undertaking will lapse (which will allow the Circle Trustee to accept the competing offer).'

15 Disclosure of bidder's intentions - business, employees and pensions

Under Rule 24.2(a) of the Code, a formal offer should set out the bidder's intentions as regards continued employment of the target's employees, including any material change to the conditions of employment, as well as the likely impact of strategic plans for the target on employment, place of business and any fixed assets.

Under the Code, bidders are also required to consider the effects of an offer on a target's pension scheme and to disclose in the offer document its intentions with regard to such scheme and the likely repercussions on those schemes of its strategic plans, or to make an appropriate negative statement. These provisions do not apply to a pension scheme which provides pension benefits only on a 'defined contribution' basis.

Under Rule 24.2(b), the bidder must make a negative statement where it has no intention to make any such changes, or considers its strategic plans for the target will have no repercussions on such matters.

Code changes

Following changes to the Code effective 8 January 2018 (ie, after the end of this review period) in relation to bidder statements of intentions, bidders are required to:

- disclose their intentions earlier on in the process, in their Rule 2.7 firm offer announcements (in addition to setting out their intentions in the offer or scheme document), and
- be more specific about their intentions such that they are required to make specific statements of intention in relation to any R&D functions of the target, any changes to the balance of the skills and functions of the target's employees and management and the likely repercussions of the bidder's strategic plans on the location of the target's headquarters and headquarter functions

We will monitor compliance with these new/revised requirements in our future public M&A trend reports.

We reviewed 41 offer or scheme documents that had been published by 31 December 2017 in relation to bidder intention statements.

In 11 offer or scheme documents the bidder issued a generic statement that it would initiate some form of post-acquisition strategic review to identify future operational improvements where synergies and efficiencies could be achieved across the enlarged group or that it had not made any decisions (and would not do so until after the review). In some instances, these generic statements were qualified, for example, that the existing board of the target would resign following the acquisition and/or that as a result of delisting of the target's shares on the Main Market or AIM, certain functions may no longer be required/will be reduced in size.

In 15 offer or scheme documents, bidders made definitive statements that they had no intention (or at least no current intention) to make any material post-acquisition changes. Despite such assurances, many bidders still stated that where synergies could be identified changes would be inevitable. A number of negative statements were qualified, eg, other than the potential relocation of the target's head office (and accordingly head office employees), or the target directors ceasing to be directors of the target, the bidder had no intention to make any material post-acquisition changes.

Where bidders were in a position to disclose more detailed information, their plans usually related to the likely reduction in the target's head count, the relocation of its headquarters, the combining of administrative and operational functions and the resignation of the target board. We have, however, seen bidders set out their plans more comprehensively.

2017 also saw a number of bidders stating that existing employment rights of all management and employees would be honoured and pension obligations complied with.

Drafting Examples

Novae Group plc by Axis Capital Holdings Limited

Details of intentions

'AXIS expects that Novae will operate within the international division of AXIS' insurance segment and that, as part of the process, Novae will adopt the AXIS Insurance International brand. Additionally, it is expected that Novae and AXIS will transition to a single managing agency and syndicate. It is envisaged that the integration process will take approximately one year to complete and will eventually lead to the relocation of Novae personnel to a single location in London alongside the current AXIS team.

AXIS attaches great importance to the skills and experience of the existing management and employees of the Novae Group.

AXIS confirms, that the existing contractual and statutory employment rights of, and pension obligations owed to, existing management and employees of the Novae Group will be fully safeguarded.

Novae operates a defined contribution plan (specifically, a group personal pension plan) for UK employees. Novae previously participated in a defined benefit plan for Swiss employees, however, when Novae closed its office in Zurich, Switzerland, this plan was closed and the related assets and liabilities transferred with the employees. There is no intention to make any changes in relation to the Novae Group's current pension schemes, including in relation to employer contributions, the accrual of benefits for existing members, or the admission of new members. All applicable laws will be observed in respect of any future proposals on pensions.

Management
Following completion of the Acquisition, it is AXIS' expectation that Matthew Fosh (Chief Executive Officer of Novae) will be appointed as AXIS' Executive Chair, Europe. Among his responsibilities in his new role, Matthew Fosh will help guide the integration of the two businesses and will report to Albert Benchimol (President and Chief Executive Officer of AXIS). Additionally, it is expected that Robert Forster (Chief Underwriting Officer of Novae) will be appointed to a senior underwriting management role on the leadership team of AXIS Insurance's International Division.

Employees
It is AXIS' intention to consider employees of both AXIS and Novae to fill roles within the Enlarged Group, based on a meritocratic approach. The synergy work conducted to date has confirmed the potential to generate cost savings for the Enlarged Group primarily through corporate, functional and administrative efficiencies, including reducing headcount, in those areas as well as indirect cost savings. However, as at the date of this Scheme Document, proposals remain in development as to how and where such headcount reductions will be implemented. Further detailed analysis will need to be undertaken by the AXIS Directors. AXIS expects that, as part of his role described above, Matthew Fosh will assist with the integration of the two businesses.

Until the integration planning and organisational design is complete and AXIS has engaged with the appropriate stakeholders (including, if applicable, having consulted with employee representative bodies), the detailed steps and outcomes of corporate, operational and administrative integration will not be certain and the impact they will have on the Enlarged Group is not yet known.

Save in respect of any redeployment of fixed assets in connection with the envisaged relocation of Novae personnel to shared office space in London alongside the current AXIS team as described above, AXIS has no intention to redeploy any fixed assets of Novae as a result of the Acquisition.

View of the Novae Board
The Novae Board is pleased to note the statements made by AXIS in this section 6 that the existing contractual and statutory employment rights of, and pension obligations owed to, existing management and employees of the Novae Group will be fully safeguarded. Whilst the Novae Board notes that that there is likely to be a reduction in headcount in the Enlarged Group, it is pleased to note that it is AXIS' intention to consider employees of both AXIS and Novae to fill roles, based on a meritocratic approach..'

WS Atkins plc by SNC-Lavalin Group Inc.

Offeror intentions—strategic review to be undertaken

'Existing employment rights of all management and employees will be honoured and pension obligations complied with.

SNC-Lavalin has an integration plan in place, which follows the successful roadmap laid out in the Kentz acquisition, and a management team with significant experience and expertise to deliver an effective integration of Atkins and SNC-Lavalin. The current Atkins brand, including Faithful+Gould and Atkins Acuity, will remain in place during this integration period.

Following completion of the acquisition, SNC-Lavalin will undertake a group wide exercise to review the SNC-Lavalin positioning strategy and part of this will involve an assessment of client feedback once Atkins is integrated with the SNC-Lavalin business. Atkins will remain as a separate business reporting line within SNC-Lavalin through the integration period.

Bidco has agreed in the Cooperation Agreement that for at least two full financial years following the effective date, it: (i) shall not reduce any terms relating to notice periods or pension accrual or contributions; (ii) shall fully observe the existing contractual and statutory employment rights of the Atkins' Group's management and employees in accordance with applicable law, local custom and practice; and (iii) shall ensure that the remuneration terms for Atkins management and employees are no worse in aggregate.

As part of the integration process, a review of the Atkins' businesses will be completed with the Atkins leadership team to determine any organisational and structural changes that should be implemented to benefit the Combined Entity. SNC-Lavalin does not expect this integration review to have a material impact on the continued employment of Atkins' employees.

The board of SNC-Lavalin recognises, however, that in order to achieve the expected benefits of the acquisition, some operational and administrative restructuring will be required across both legacy organisations following completion of the acquisition. The synergy work carried out to date has confirmed the potential to generate cost savings for

the Combined Entity through corporate, functional and administration efficiencies, including reducing headcount in those areas as well as indirect cost savings.

The Combined Entity will continue to have its head office in Montreal, Canada.'

Aberdeen Asset Management plc offer by Standard Life plc

Offeror intentions to reduce employee numbers

'Aberdeen and Standard Life attach great importance to the skills and experience of Aberdeen's and Standard Life's management and employees. The Combined Group will offer significant opportunities for employees in a business of greater size and scope incorporating the skills and talent present in both companies.

Standard Life and Aberdeen recognise, however, that in order to achieve the expected benefits of the merger, there will be a need to maximise operational efficiencies and cost synergies.

Aberdeen and Standard Life expect to achieve cost synergies where duplication exists and by taking advantage of opportunities to leverage the additional scale of the Combined Group. At this time it is estimated that the integration and restructuring will result in a phased reduction of approximately 800 roles from the total global headcount of the Combined Group as at 31 December 2016 of approximately 9,000 over the three year integration period. Synergies will come in part from employee departures arising from natural turnover. Other appropriate steps will be taken to minimise the number of compulsory redundancies, including the active management of Aberdeen's and Standard Life's recruitment and vacancies.

As part of the planning process Aberdeen and Standard Life will look to maximise operational efficiencies including the rationalisation and consolidation of premises where Aberdeen and Standard Life already operate from multiple locations in a close geographic proximity.

Aberdeen and Standard Life will engage and consult with employees and their representative bodies in accordance with their respective legal obligations with regard to any impacts on employment or the location of places of business once integration planning is complete and detailed restructuring proposals and potential impacts are known. Finalisation of the proposed integration plan will be subject to engagement with appropriate stakeholders, including management and employee representative bodies.

Aberdeen and Standard Life have each confirmed that the existing statutory and contractual employment rights, including accrued pension rights of all Standard Life and Aberdeen employees, will be fully safeguarded upon and following completion of the Merger.

Both Aberdeen and Standard Life are signatories to the HMT Women in Finance Charter and the Combined Group will set a single target to reflect both companies' commitment to the importance of diversity.'

Berendsen plc by Elis SA

Offeror intentions—to create a stable working environment

'Elis attaches great importance to the skills and experience of the existing employees of Berendsen. Elis intends to approach the integration of the broader management team in an open and transparent manner with the aim of retaining and motivating the best talent across the Combined Group. Once integration is completed, Elis aims to create a stable working environment across the Combined Group to facilitate employee development.

Elis confirms that it intends to safeguard the existing employment and pension rights of all existing management and employees of Berendsen in accordance with applicable law.'

16 Employee representatives' and pension schemes trustees' opinions

Under Rule 25.9 of the Code, the target board is under an obligation to append to its response circular (or, where the offer is recommended, the offer document itself) any (a) opinion prepared by the target's employee representatives on the effect of the offer on employment and (b) any opinion prepared by the pension scheme trustees on the effect of the offer on the pension scheme(s), if received before the circular/offer document is published. If the employee representatives /pension scheme trustees miss this deadline, their opinions must be published on the target's website. Representatives and trustees also have a right to publish further opinions if an offer is revised.

Disengagement by employee trustee representatives and pension scheme trustees continued in 2017. However, we will monitor whether engagement increases and a greater number of opinions are appended to offer and scheme documents in 2018 following the recent Code changes (effective 8 January 2018) requiring bidders to provide information on their intentions for the targets' business, employees and pension schemes earlier on in the offer timetable, when they make their firm offer announcements.

Employee representatives' opinion

Engagement by employee representatives in UK M&A improved slightly in 2017. Of the 47 offers firmly announced in 2017, there were only two instances of the target's employee representatives giving an opinion (Amec Foster Wheeler plc by John Wood Group plc and Berendsen plc by Elis SA). This is in line with what we saw in 2016 (opinions in Dee Valley Group plc by Severn Trent Water Limited and UK Mail Group plc by Deutsche Post AG).

The 'union directorate' (which appears to cover both employee representative and pension trustee roles) of Amec Foster Wheeler gave an opinion on the proposed deal and stated that it was not possible to ascertain the consequences relating to employment and pension benefits and considered the statement of intention to be insufficient and incomplete, and posed numerous questions.

The employee representative of Berendsen's EEA workforce consented to the acquisition by Elis and stated that the acquisition would acquisition will strengthen the market position of Berendsen plc. and Elis SA, which will be complementary to one another and that there was an expectation that former Berendsen's employees will have equal rights, and are given equal opportunities, as current Elis' employees, after the acquisition.

Pension schemes trustees' opinion

There were two instances of pension scheme trustees providing an opinion in 2017 (Amec Foster Wheeler plc by John Wood Group plc and WS Atkins plc by SNC-Lavalin Group, Inc.). In 2016, there was only one pension scheme trustee's opinion (British Polythene Industries plc by RPC Group plc).

Disengagement by employee representatives and pension scheme trustees in UK M&A continued in 2017

Deals included in the report

2017: Firm offer announcements

Aberdeen Asset Management plc by Standard Life plc
Aldermore Group plc by FirstRand Limited
Amec Foster Wheeler plc by John Wood Group plc
ASA Resource Group plc by Rich Pro Investments Limited
Berendsen plc by Elis SA
Booker Group plc by Tesco plc
Cape plc by Altrad Investment Authority SAS
Circle Holdings plc by Toscafund Asset Management LLP and Penta Capital LLP
Dragon-Ukrainian Properties and Development plc by Dragon Capital Investments Limited
EG Solutions plc offer by Verint WS Holdings Limited
Electric Word plc by Riccardo Silva and Marco Auletta
Exova Group plc by Element Materials Technology Group Limited
FIH Group plc by The Rowland Purpose Trust 2001 (lapsed)
Gemfields plc by Fosun Gold Holdings Limited
Gemfields plc by Pallinghurst Resources Limited
Gordon Dadds Group Limited by Work Group plc
Hayward Tyler Group plc by Avingtrans plc
Hornby plc by Phoenix UK Fund Ltd
Imagination Technologies Group plc by Canyon Bridge Capital Partners, LLC
Industrial Multi Property Trust plc by Hansteen Holdings plc
InterQuest Group plc by Chisbridge Limited
Intu Properties plc by Hammerson plc
Jimmy Choo plc by Michael Kors Holdings Limited
Kalibrate Technologies plc by Hanover Investors Management LLP
Kennedy Wilson Europe Real Estate plc by Kennedy-Wilson Holdings, Inc.
Ladbrokes Coral Group plc by GVC Holdings plc
Lonmin plc by Sibanye Gold Limited
Mariana Resources Limited by Sandstorm Gold Ltd
Market Tech Holdings Limited by LabTech Investments Ltd
Millennium & Copthorne Hotels plc by City Developments Limited (lapsed)
Monitise plc by Fiserv, Inc.
NetPlay plc by Betsson AB (publ)
Novae Group plc by AXIS Capital Holdings Limited
Panmure Gordon & Co. plc by QInvest LLC and Atlas Merchant Capital LLC
Paysafe Group plc by Blackstone Management Partners LLC and CVC Capital Partners Limited
Quantum Pharma plc by Clinigen Group plc
Revolution Bars Group plc by Stonegate Pub Company Limited (lapsed)
Servelec Group plc by Montagu Funds
Shawbrook Group plc by Pollen Street Capital Limited and BC Partners LLP
Styles & Wood Group plc by Central Square Holdings Limited
Sutton Harbour Holdings plc by FB Investors LLP
Taliesin Property Fund Limited by Wren Bidco Limited and Canary Bidco Limited
The Prospect Japan Fund Limited by Prospect Co., Ltd.
Touchstone Innovations plc by IP Group plc
Waterman Group plc by CTI Engineering Co. Limited
Worldpay Group plc by Vantiv, Inc
WS Atkins plc by SNC-Lavalin Group Inc.

2017: Possible offer announcements

Aberdeen Asset Management plc by Standard Life plc (firm offer announced)
Aldermore Group plc by FirstRand Limited (firm offer announced)
Berendsen plc by Elis SA (firm offer announced)
Bovis Homes Group plc by Galliford Try plc (terminated)
Bovis Homes Group plc by Redrow plc (terminated)
Brave Bison Group plc by Zinc Media Group plc (terminated)
Exova Group plc by Element Materials Technology (firm offer announced)
Exova Group plc by Jacobs Holding AG (terminated)
Exova Group plc by PAI Partners SAS (terminated)
FIH Group plc by Dolphin Fund Limited (terminated)
Gemfields plc by Fosun Gold Holdings Limited (firm offer announced)
Gocompare.com Group plc by ZPG plc (terminated)
Gordon Dadds Group Limited by Work Group plc (firm offer announced)
Hayward Tyler Group plc by Avingtrans plc (firm offer announced)
InterQuest Group plc by Chisbridge Limited (firm offer announced)
IWG plc by affiliates of Brookfield Asset Management, Inc. and Onex Corporation or its affiliates (terminated)
Ladbrokes Coral Group plc by GVC Holdings plc (firm offer announced)
Millennium & Copthorne Hotels plc by City Developments Limited (firm offer announced)
Paysafe Group plc by Funds managed by Blackstone and CVC Capital Partners (firm offer announced)
Quantum Pharma plc by Clinigen Group plc (firm offer announced)
RedstoneConnect plc by A P Systems Holding Limited (terminated)
Revolution Bars Group plc by Stonegate Pub Company Limited (firm offer announced)
Revolution Bars Group plc by The Deltic Group Limited (terminated)
Rurelec plc by Patagonia Energy Limited (terminated)
Shawbrook Group plc by Pollen Street Capital Limited and BC Partners LLP (firm offer announced)
Spire Healthcare Group plc by Mediclinic International plc (terminated)
The Property Franchise Group plc by Belvoir Lettings plc (terminated)
The Prospect Japan Fund Limited by Prospect, Co. Ltd (firm offer announced)
The Stanley Gibbons Group plc by Disruptive Capital Finance LLP (terminated)
Touchstone Innovations plc by IP Group plc (firm offer announced)
Unilever plc and Unilever N.V. by The Kraft Heinz Company (terminated)
Worldpay Group plc by JPMorgan Chase Bank (terminated)
Worldpay Group plc by Vantiv, Inc (firm offer announced)
WS Atkins plc by SNC-Lavalin Group plc (firm offer announced)

Formal sale processes and strategic reviews

Bowleven plc – strategic review (terminated)
Frenkel Topping Group plc – formal sale process (terminated)
Imagination Technologies Group plc – formal sale process (firm offer announced)
Jimmy Choo plc – formal sale process (firm offer announced)
Pebble Beach Systems Group plc – formal sale process (terminated)
Plant Impact plc – formal sale process
Sportech plc – formal sale process
The Co-operative Bank p.l.c – formal sale process (terminated)
The Stanley Gibbons Group plc – formal sale process (terminated)

The Lexis®PSL Corporate team

James Hayden
Solicitor
Head of Corporate and Competition Group

Ed Davies
Solicitor
Head of Market Tracker

Kavita Bassan
Solicitor

Maria Delyfer
Solicitor

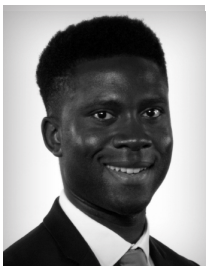
Tunji Emanuel
Solicitor

Claudia Gizejewski
Solicitor

Tara Hogg
Solicitor

Eleanor Kelly
Solicitor

Darius Lewington
Solicitor



Daniel Okusaga
Solicitor

Anna-Maria Agbebi
Paralegal

Camilla Grierson
Paralegal

Hana Abboud
Market Tracker Analyst

Jenisa Altink-Thumbadoo
Market Tracker Analyst

Andrea Constantine
Market Tracker Analyst

Michael Urie
Market Tracker Analyst

With thanks to our valued contributors:

Selina Sagayam
Head of UK Transactional Practice Development
Gibson Dunn

Adam Cain
Senior Associate
Pinsent Masons LLP

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Market Tracker Trend Report – AGM season 2017

AGM season 2017 analyses the latest market practice and trends emerging from the FTSE 350 annual general meeting (AGM) season 2017. The report takes an in-depth look at: the latest developments in, and levels of compliance with requirements for, narrative reporting in the annual reports and accounts; AGM notices, analysing recent developments and practice regarding the resolutions proposed this season; and voting results and interesting trends emerging from AGMs held between October 2016 and November 2017.

Market Tracker Trend Report: Trends in UK public M&A deals in H1 2017

Trends in UK public M&A deals in H1 2017, provides in-depth analysis of the 52 firm and possible offer announcements made for companies subject to the Takeover Code in H1 2017. It includes insight into public M&A trends and what we might expect to see in the rest of 2017 and beyond.