Mergers and Acquisitions Report **2015**

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Section 1: REGULATORY FRAMEWORK

1.1 What legislation and regulatory bodies govern public M&A activity in your jurisdiction?

The City Code on Takeovers and Mergers (the Code) governs the conduct of public M&A in the UK. It applies where there is an acquisition or consolidation of control of:

- a public company incorporated in the UK, Channel Islands or Isle of Man which has any securities admitted to a regulated market in the UK, to a multilateral trading facility in the UK or to any stock exchange in the Channel Islands or Isle of Man; or
- any other public company which is incorporated in the UK, Channel Islands or Isle of Man and which also has its place of central management and control in the UK.

It is the status of the company that is proposed to be acquired (the target) that determines whether or not the Code applies, rather than that of the proposed acquiring company (the bidder).

The Code is administered by the Takeover Panel (the Panel).

1.2 How, by whom, and by what measures, are takeover regulations (or equivalent) enforced?

The Panel has statutory powers to regulate and supervise takeover bids. It can impose sanctions including private censure; public criticism; compensation orders; restraining directions; reporting a party to another regulator; or a so-called cold shoulder ruling. The Panel can apply to the courts to enforce any of its rulings.

Section 2: STRUCTURAL CONSIDERATIONS

2.1 What are the basic structures for friendly and hostile acquisitions?

There are two principal ways to effect a takeover of a UK public company: (i) a contractual takeover offer (offer or takeover offer) by the bidder for the shares of the target; or (ii) a court-led scheme of arrangement (scheme).

2.2 What determines the choice of structure, including in the case of a cross-border deal?

The bidder must decide whether to proceed with an offer or a scheme. As described below each route has its advantages and disadvantages.

2.3 How quickly can a bidder complete an acquisition? How long is the deal open to competing bids?

All offers must be open for acceptance for at least 21 days (and the acceptance condition satisfied within 60 days) from posting of the offer document. A scheme will typically take around eight weeks to complete given the requirement for court and shareholder meetings.

Competing offers adopt the timetable of the new bidder and on a scheme the Panel will decide on an appropriate timetable.

2.4 Are there restrictions on the price offered or its form (cash or shares)?

The Code contains rules which provide that acquisitions of interests in target shares either prior to or during the offer period may put a floor under the amount of consideration per share being offered and may determine the form of consideration.

2.5 What level of acceptance/ownership and other conditions determine whether the acquisition proceeds and can satisfactorily squeeze out or otherwise eliminate minority shareholders?

The Code prohibits an offer from being declared unconditional as to acceptances unless the bidder has acquired over 50% of the voting rights in the target. Acceptances in respect of at least 90% of the target's voting share capital not already owned by the bidder enable the squeeze-out procedure to be used.

For a scheme these thresholds are not relevant. A scheme must be approved at a meeting of the target shareholders by a majority in number, representing 75% in value, of those voting.

2.6 Do minority shareholders enjoy protections against the payment of control premiums, other preferential pricing for selected shareholders, and partial acquisitions, for example by mandatory offer requirements, ownership disclosure obligations and a best price/all holders rule?

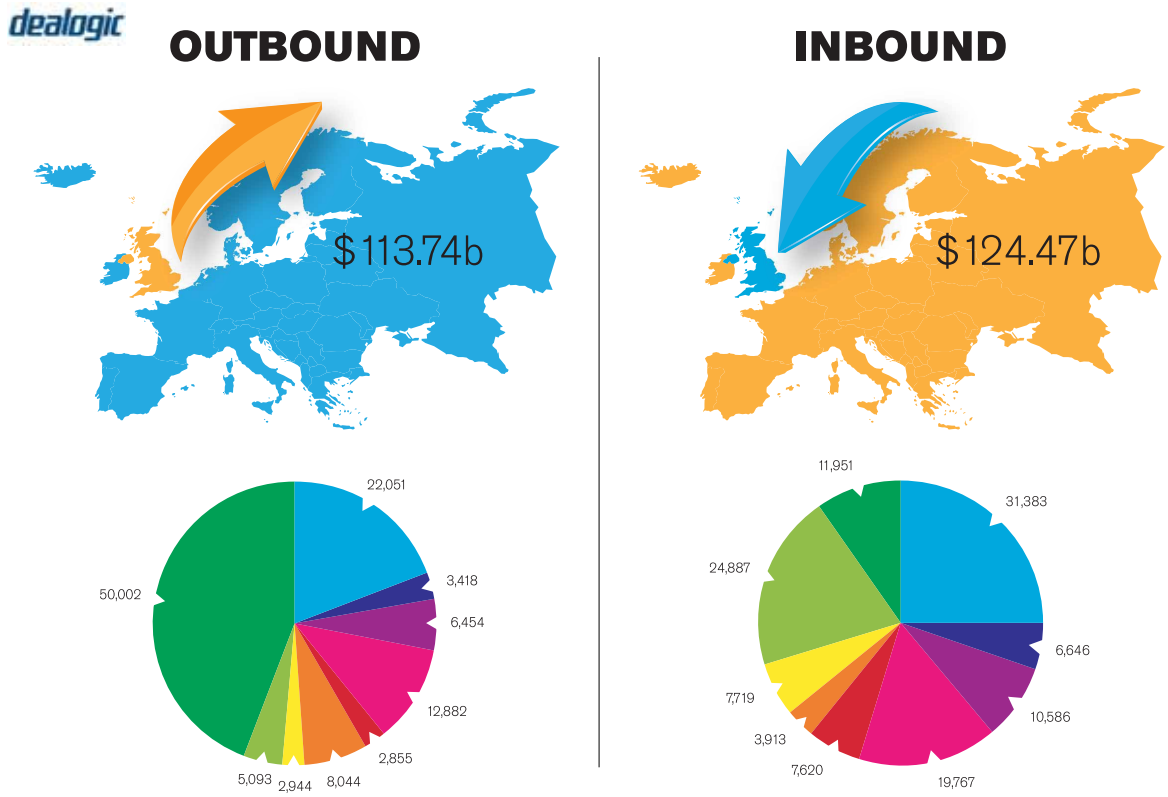
All shareholders must be treated equally in relation to the consideration being offered and the compulsory acquisition procedure to squeeze out minority shareholders (see 2.5) is only available where the same offer is made to all shareholders. The bidder cannot make special deals with certain target shareholders, including the target directors, unless it has Panel consent and target shareholder approval.

Where a person acquires an interest in shares carrying 30% or more of the voting rights, it will trigger an obligation to make a general offer to acquire the remainder of the shares, known as a mandatory offer or a Rule 9 offer.

2.7 To what extent can buyers make conditional offers, for example subject to financing, absence of material adverse changes or truth of representations? Are bank guarantees or certain funding of the purchase price required?

The Code does not permit subjective conditions or those whose fulfilment is in the hands of the bidder. Once an offer is formally announced, the bidder is committed to proceed. Scope to withdraw by invoking the conditions to the offer is limited. The only exceptions are the failure to satisfy UK or EU merger clearance conditions or the acceptance condition (or to obtain the approval of target shareholders in the case of a scheme).

The financing for the offer must be fully committed when the announcement of the firm intention to make an offer is made.



Section 3: TAX CONSIDERATIONS

3.1 What are the basic tax considerations and trade-offs?
To the extent that shares in the bidder are offered as consideration, the target shareholders will generally be entitled to exchange their shares for consideration shares in the bidder on a tax-neutral 'roll over' basis both in an offer and also for a scheme where certain conditions are met. Stamp duty at a cost of 0.5% of the consideration will arise for an offer for shares in a UK company, as well as for a transfer scheme.

The UK government has proposed that the use of cancellation schemes for takeovers be prohibited.

3.2 Are there special considerations in cross-border deals?
Cross-border deals raise numerous special tax considerations. For example there may be a need to manage the availability of roll over and similar reliefs for shareholders in multiple jurisdictions as well as considering withholding tax risks.

Section 4: ANTI-TAKEOVER DEFENCES

4.1 What are the most important forms of anti-takeover defences and are there any restrictions on their use?
Takeover defences range from withholding due diligence, seeking an alternative friendly bidder and announcing proposals such as disposals and returns of value to shareholders, should the takeover fail. However, from the time when it has reason to believe that a bona fide offer may be imminent, the target may (subject to limited exceptions) not take any action which could result in that offer being frustrated.

4.2 How do targets use anti-takeover defences?
Most bidders will wish to seek the agreement and recommendation of the target board to the offer. The ability of the target's board to withhold its recommendation and encourage shareholders not to accept the offer is used as an anti-takeover defence.

4.3 Is a target required to provide due diligence information to a potential bidder?
No, however where a target's board chooses to disclose information or grant access to management to a potential or actual bidder, it must, on request, disclose or grant the same to other rival or potential bidders.

4.4 How do bidders overcome anti-takeover defences?
Where the target's board refuses to recommend an offer or engage with a potential bidder, a bidder may announce that without access to due diligence or the satisfaction of other pre-conditions it will be unable to increase the price it can offer to encourage target shareholders to engage with the target's board.

4.5 Are there many examples of successful hostile acquisitions?
Yes, but recommended acquisitions are much more common.

Section 5: DEAL PROTECTIONS

5.1 What are the main ways for a friendly bidder and target to protect a friendly deal from a hostile interloper?
Subject to certain limited exceptions, the Code prohibits any 'offer-related arrangements' between the bidder and any of its concert parties and the target and any of its concert parties.

5.2 To what extent are deal protections prevented, for example by restrictions on impediments to competing bidders, break fees or lock-up agreements?
As stated above, the Code prohibits any 'offer-related arrangements' between the bidder and any of its concert parties and the target and any of its concert parties. This includes break fees, implementation agreements and any deal protection measures, such as exclusivity agreements. There are limited exceptions.

Section 6: ANTITRUST/REGULATORY REVIEW

6.1 What are the merger control notification thresholds in your jurisdiction?
The Competition and Markets Authority (CMA) has jurisdiction to review any transaction that results in two or more enterprises ceasing to be distinct and in which either:

- the UK turnover of the target exceeds £70 million ($104 million); or,
- the transaction creates or enhances a 25% share of supply of goods or services in the UK (or in a substantial part of it).

In principle, however, the CMA will not have jurisdiction to review a transaction that meets the thresholds for review at EU level by the European Commission (EC). These are met most commonly where both:

- the combined worldwide turnover of the parties exceeds €5 billion ($5.36 billion); and
- the EU-wide turnover of at least two of the parties exceeds €250 million.

A transaction meeting the thresholds for review at EU level will nonetheless fall to be reviewed at a member state level if each of the parties generates more than two-thirds of its EU-wide revenues in one and the same member state.

6.2 When will transactions falling below those thresholds be investigated?
If a transaction does not meet the thresholds for review in the UK, the CMA will not have jurisdiction to review it.

6.3 Is a merger control notification filing mandatory or voluntary?
Notification at a UK level is voluntary. Notification at EU level is mandatory prior to completion.

6.4 What are the deadlines for filing, and what are the penalties for not filing?
As notification in the UK is voluntary, there are no deadlines for filing and no penalties for failing to file. At an EU level, there are no deadlines for filing but transactions cannot be closed without prior approval.

6.5 How long are the merger control review periods?
The CMA has an initial 40 working day period from the date of submission of a final notification to come to a phase one decision or where a more detailed investigation is necessary, a further 24 weeks for a phase two decision.

Phase one review at EU level takes 25 working days from the date of submission of a final notification. The EC can open a more detailed phase two investigation, which can last a further 90 working days (or more).

6.6 At what level does your merger control authority have jurisdiction to review and impose penalties for failure to notify deals that do not have local competition effect?
As there is no requirement to notify transactions in the UK, there are no penalties for failing to notify. At an EU level, the EC has powers to impose fines of up to 10% of the parties' aggregate worldwide turnover if they intentionally or negligently fail to notify a transaction meeting the relevant thresholds.

6.7 What other regulatory or related obstacles do bidders face, including national security or protected industry review, foreign ownership restrictions, employment regulation and other governmental regulation?
In the UK, the Secretary of State for Trade and Industry may intervene in mergers which raise certain public interest grounds. There are also specialist merger control regimes in force in respect of certain industries.

Section 7: ANTI-CORRUPTION REGIMES

7.1 What is the applicable anti-corruption legislation in your jurisdiction?
The Bribery Act 2010 (the Act).

7.2 What are the potential sanctions and how stringently have they been enforced?
Unlimited fines (or up to 10 years' imprisonment for individuals) and under new sentencing guidelines corporates could be fined up to four times the amount of the anticipated gross gain or 10-20% of the company's worldwide revenue from the product or business line to which the offence relates for the period in question. There has not yet been a prosecution of a corporate under the Act.

Section 8: OTHER MATTERS

8.1 Are there any other material issues in your jurisdiction that might affect a public M&A transaction?
No.

8.2 What are the key recent developments in your jurisdiction?
As well as the proposals to prohibit takeovers by way of cancellation scheme, a new framework governing statements of intention made by the parties recently came into force.

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Ben Ward specialises in corporate, corporate finance and mergers and acquisitions and advises a range of major listed and other international companies. He also advises on large debt and corporate restructurings. His broad experience encompasses public and private M&A transactions, joint ventures, demergers and debt and equity financing across a range of sectors including transport, water, retail, real estate and insurance. Key matters include advising on the sale of Saga Limited for £1.35 billion and Stagecoach on numerous matters, including its bid approach to National Express, and the £265 million disposal of its London bus business to Macquarie and subsequent reacquisition. He also advised Yell/hibu on its £2.3 billion debt restructuring.

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Robert Moore advises on general corporate matters and mergers and acquisitions. His experience includes recommended and hostile public company takeovers, private company acquisitions and disposals, distressed M&A, demergers and innovative returns of value to shareholders. Some of his high-profile matters include advising Severn Trent on the defense of a £5.3 billion unsolicited proposed offer by an international consortium; Strides Arcolab on the disposal of its injectables business to Mylan for up to $1.75 billion; Virgin Atlantic on the sale of a 49% interest to, and joint venture with, Delta Air Lines; and Ernst & Young (as administrators of Nortel's EMEA entities) on the $4.5 billion Chapter 11 bankruptcy sale of Nortel's residual patents to the Rockstar consortium led by Apple, Microsoft, RIM, Sony and Ericsson.