

A photograph of the London skyline featuring several prominent skyscrapers, including the Shard, the Gherkin, and the Walkie-Talkie. A red banner is overlaid across the middle of the image, containing the title text. In the foreground, there are older, classical-style buildings.

Market Tracker Trend Report

Trends in UK public M&A deals in H1 2016

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Background and approach

This report aims to provide an insight into the current dynamics of public M&A activity within the UK and what we can expect to see in the 6 months ahead.

LexisNexis Market Tracker has conducted research to examine current market trends in respect of UK public M&A deals announced in the first half of 2016. We reviewed a total of 42 transactions that were subject to the Takeover Code (the **Code**): 20 firm offers (8 for Main Market companies, 12 for AIM) and 22 which were at the possible offer stage¹ as at 30 June 2016 (10 for Main Market companies, 12 for AIM).

The percentages included in this report have been rounded up or down to whole numbers, as appropriate.

The final date for inclusion of developments in this report is 30 June 2016. Reference has been made to deals announced after this date if considered noteworthy.

“For me, the overriding themes that come through from these H1 2016 statistics are (a) UK companies are more popular than ever as targets for overseas buyers but (b) there was a substantial “Brexit effect” leading up to the referendum. With certainty returning to the market post-Brexit, the delay in the triggering of Article 50 by the UK Government and a significant decline in the value of sterling, H2 2016 promises to be very busy in the UK public M&A market.”

Julian Henwood, Partner, Gowling WLG

“Whilst the weaker sterling post the Brexit vote may have been a (tipping) factor in relation to new offers announced post the Brexit vote (and indeed will no doubt be a factor that possible buyers consider), ultimately however “cheap” a UK target may be, buyers will need to be satisfied with the commercial rationale for any acquisition.”

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



1. Comprising 17 possible offers made under a Rule 2.4 announcement and 5 formal sale process announcements

Executive summary

The UK public M&A market suffered a slowdown during the 6-month period running up to the UK referendum on EU membership. Compared with the first half of 2015, 13% fewer firm offers were announced, 14% more possible offers announced under Rule 2.4 terminated without progressing to a firm offer, aggregate deal values were 92% lower with 71% fewer deals announced which had a value over £1 billion.

We expect that the fresh uncertainties which have now arisen as a result of the 'leave' vote, including what form the withdrawal from the European Union will take, and if and to what extent access to the Single Market will be maintained, will significantly impact on UK public M&A activity in the second half of the year.

The first half of 2016 saw a continuance of a number of trends observed in recent years, amongst them the continued preference for schemes of arrangement on larger deals (despite the removal of the previous stamp duty advantages of a cancellation scheme), the popularity of cash consideration and a predominance of non-UK bidders.

Continuing the trend from last year we have also seen strong interest in the technology, media & telecommunications (TMT) sector, continued popularity of co-operation agreements and green shoots of recovery in private equity backed bidder activity. The first half of 2016 also saw an increase in the number of competing bids. While cash remains king in the present market, we have seen increased uptake in deals financed entirely with third-party debt and other forms of consideration including loan notes and a combination of cash and shares. Bidders appear to be more willing to use third-party debt (wholly or in part) to finance the acquisition.

"The mid to longer term impact of the Brexit vote will very much depend on the target and sector. Consumer/retail was a fairly 'hot' sector pre-vote – whether it continues to see activity in the public M&A context will depend on the target and its customer base. Remaining concerns of the UK entering into a recession will naturally dampen appetite for UK domestic driven businesses. Other sectors (financial services being most impacted) where the substantive impact of Brexit is hugely uncertain but greatly important are likely to see a slowdown. UK public M&A is not a sector which is going to see legal/regulatory arbitrage as the rules themselves are unlikely to materially change (save with respect to the so-called "shared jurisdiction" and mergers implemented pursuant to the European Cross-Border Mergers Directive) given the relevant EU legislation was largely based on the pre-existing UK regime and the UK rules since implementation of the EU directive have been developed since then (although we may see the re-politicisation of public M&A in light of comments made by Theresa May in her bid for the premiership)."

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

"It seems likely, given the currency effects of the leave vote and the subsequent BoE interest rate reduction, that in the short to medium term, the trend for cash bidders being from outside the UK will continue, as they take advantage of the weak pound coupled with low costs of borrowing. These effects create real opportunities for foreign bidders."

Jeremy Kutner, Partner, Shearman & Sterling

Merger of London Stock Exchange Group plc and Deutsche Börse AG

The outcome of the vote on the UK's European Union membership was not a condition of the merger although both parties established a Referendum Committee to assess the potential implications of a 'leave' vote. The Referendum Committee was set to be dissolved in the event of a vote in favour of the UK remaining.

After news that the 'leave' vote had won, both parties confirmed that the outcome did not impact the strategic rationale of the merger and they remained fully committed to the agreed and binding merger terms, and would continue the process of obtaining necessary approvals.

At the London Stock Exchange court and general meetings held on 4 July 2016, the overwhelming majority of shareholders voted in favour of the merger and all resolutions were passed.

The Referendum Committee took a reassuring tone in its announcement on 4 July 2016:

'whether the UK is just European or a member of the EU, the Merger will create a globally competitive, industry defining market infrastructure group at the service of European industry. It is clear that the agreed Merger of Deutsche Börse and LSEG will deliver value to both shareholders and customers independently of the resolution of these uncertainties.'

It is interesting to note that the CEO of Intercontinental Exchange, Inc. stated at ICE's Q2 2016 Earnings Conference Call that ICE was "fortunate" to have decided not to counterbid for the LSEG, in light of the risks posed by Brexit (see further: [Intercontinental Exchange, Inc. transcript of Q2 2016 Earnings Call](#).)

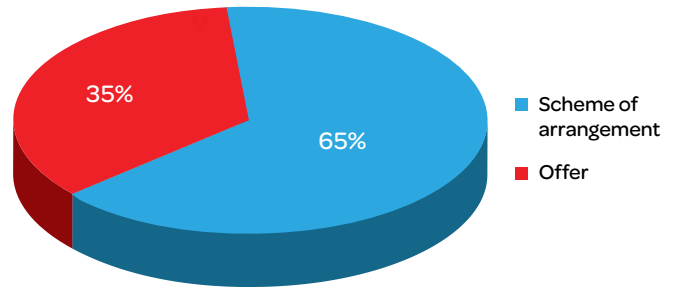
We will continue to monitor the impact of the referendum vote on this merger through the second half of the year.

1 Deal structure

Structuring the deal to suit the circumstances

Schemes of arrangement remain the deal structure of choice among bidders: of the 20 firm offers announced in the first half of 2016 (12 for AIM companies, 8 for Main Market), 13 were by way of scheme and 7 structured by way of an offer.

Firm offers in H1 2016: Structure by number of deals (20 transactions)



Schemes of arrangement generally remain the preferred structure on the larger deals

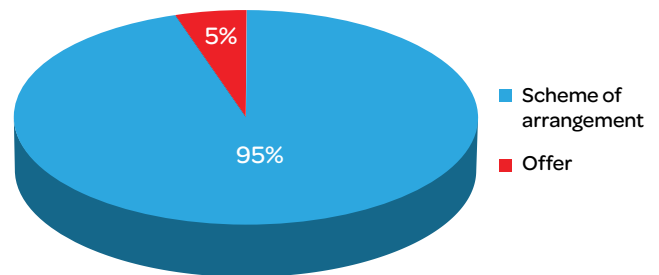
Schemes of arrangement are popular amongst bidders for a number of reasons, including certainty of obtaining 100% control: a scheme, if approved by a majority in number representing 75% (in value) present and voting at the relevant meeting(s) and sanctioned by the court, will be binding on all a target's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

Deal size affects structure

In the first half of 2016, as in the equivalent period in 2015, a scheme was more often agreed where the deal was larger in size. 8 of the 10 largest deals firmly announced in the first half of the year were structured as schemes.

The remaining 2 deals were structured as offers; both were made by foreign bidders, with targets operating in the retail & wholesale trade (*Darty plc* by *Steinhoff International Holdings N.V. (lapsed)*) and the TMT industry (*Wireless Group plc* by *News Corporation*).

Firm offers in H1 2016: Structure by deal value



Of the 8 smallest deals, ranging between £8.75 million and £72.2 million in value, only 3 were structured as a scheme, with the remaining 5 deals structured as an offer.

2 Deal value

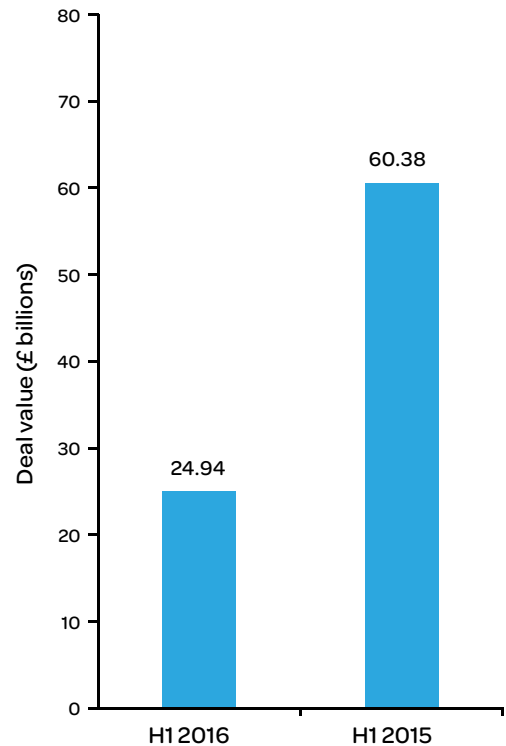
The aggregate value of deals firmly announced in the first half of 2016 was £24.94 billion, down 59% compared with the same period in 2015 (£60.38 billion).

The financial services industry saw the highest value deal: the £20.3 billion all-share merger of the London Stock Exchange Group plc and Deutsche Börse AG. It should be noted that this merger accounted for 81% of the total value of deals announced in the first half of 2016; excluding this deal, the total deal value for the period was £4.63 billion, a significant decrease (92%) on the first half of 2015. In H1 2015 the biggest deal was the offer for BG Group plc by Royal Dutch Shell plc which represented 78% of the £60.38 billion deal value, however even excluding this deal, the deal value in H1 2015 was £13.38 billion.

The competing offer for *Tangent Communications plc* by *Writtle Holdings Limited*, valued at £8.75 million, had the lowest deal value.

Of the 20 firm offers announced in the first half of 2016, 2 (10%) had a deal value of over £1 billion, compared to 7 (30%) in H1 2015¹. The average deal value was £1.25 billion (H1 2015: £2.63 billion) and the median deal value was £158 million (H1 2015: £111.9 million).

H1 2016 v H1 2015: Deal values



“My suspicion is that the decline in the number of mega deals is more a reflection of global uncertainties (terrorism, Russian sanctions, pending US presidential election) than an indicator of the attractiveness of UK businesses.”

Julian Henwood, Partner, Gowling WLG

“2015 was definitely the year of the mega deals. The after-effects and impact of “lessons learned” from the various high profile deals which have faced substantive anti-trust or competition obstacles may be partially responsible for the lack of mega deals in H1 2016. Parties have tried to “protect” themselves through pre-conditional offer structures (which require Panel consent). However the lengthy offer period and consequential uncertainty for shareholders may be something the Panel is less willing to tolerate going forward when deciding whether or not to grant its consent to such bid structures particularly in the case of non-UK or EU merger clearance requirements.”

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

1. Based on 23 firm offers announced in H1 2015.

3 Target response: recommended or hostile?

Firm offers

Of the 20 firm offers, 19 (95%) began with a recommendation but only 14 (70%) remained recommended as at 30 June 2016. This is compared to the equivalent period in 2015, when all offers which were recommended at the outset had either completed or were in progress.

Of the (19 initially) recommended offers, one deal (*Tangent Communications plc by Portland Asset Management (UK) Limited*) was initially recommended; the recommendation was lost with the announcement of a competing offer by Writtle Holdings, but regained after Portland made a revised mandatory offer for Tangent which represented a 77% uplift on the consideration it had initially offered.

4 (20%) offers were initially recommended, but these recommendations were lost in competing scenarios and subsequently the target boards have given no definitive recommendations for these offers (see 4. *Competing and potential competing bids*).

One deal, *Bond International Software plc by Constellation Software Inc.* was met with no definitive recommendation one way or the other and was still in progress as of 30 June 2016.

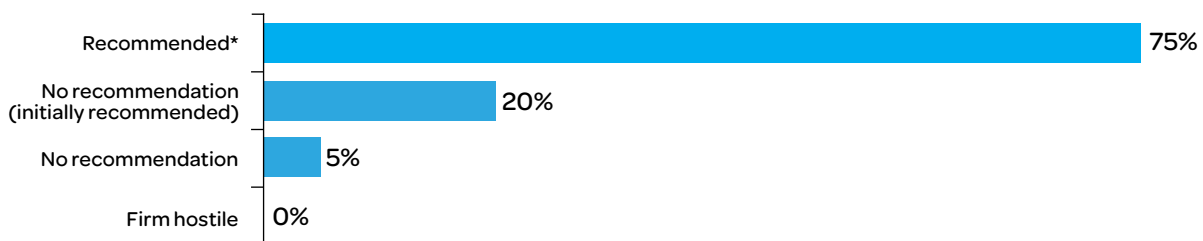
No firm hostile bids were announced during the first half of 2016.

Possible offers

Of the 6 possible offers which failed to progress to either a firm or mandatory offer by 30 June 2016, 2 were expressly hostile (possible offers for *Alliance Trust plc by RIT Capital Partners* and *Premier Foods plc by McCormick & Company, Inc.*); the boards of the other 4 targets did not give a definitive response either way. The most common reasons for rejection were undervaluation of the target, its underlying assets and growth prospects and offers being either opportunistic or highly conditional.

Of the 8 possible offers which progressed to a firm offer in the first half of 2016, 7 (87%) were initially met with no definitive response and there was only one instance of an initial hostile opinion being given in *possible offer for Bond International Software plc by Constellation Software Inc.*; Constellation's approach was rejected on the grounds that it 'failed fully to reflect the fair value of Bond'.

H1 2016: Target response to firm offers



*including offer for *Tangent Communications plc by Portland Asset Management (UK) Limited*, which was initially recommended, then lost and later regained after it made a revised offer.

No firm hostile bids were announced during the first half of 2016

4 Competing and potential competing bids

There were 4 actual competing bids (H1 2015: 0) and 4 potential competing bid scenarios (H1 2015: 2) of which 2 progressed to an actual competing bid; the remaining 2 possible offers terminated without an offer being made.

The significant rise in actual and possible competing bid scenarios indicates an improving competitive landscape for UK M&A in the first half of 2016. However there are signs competing bid activity was limited to the smaller and mid-size deals; aggregate deal value for the 4 actual competing bids was £269 million. Potential competing bids were not limited to small and medium sized deals, as seen with the *possible offer for the London Stock Exchange Group plc by Intercontinental Exchange*.

Of the 4 competing bids, 2 lapsed after a higher competing offer was made by the initial bidder; one completed after the initial bidder pulled out confirming that it had no intention of increasing its offer (*KBC Advanced Technologies plc by Aspen Technology, Inc. (lapsed)*); the remaining deal was recommended and remains ongoing as at 30 June 2016 (*Sweett Group plc by Dar Al-Handasah Consultants Shair And Partners Holdings Limited*).

There were no instances of multiple competing bidders for a transaction. Although beyond scope, in the second half of 2015, Xchanging plc was subject to possible and actual competing bids from 5 separate bidders.

The offer for *Darty plc by Steinhoff International Holdings N.V. (lapsed)*, announced in March 2016 was a competing offer to French-incorporated Groupe Fnac SA's offer announced in November 2015, which is outside of our review period. Steinhoff's offer lapsed after a bidding war emerged with Fnac.

3 (75%) of the 4 actual competing bids in the first half of 2016 were made by non-UK bidders from a broad spread of countries (Netherlands, Japan, Lebanon). The interest of non-UK bidders in competitive bid scenarios, coupled with the post-Brexit weakening of the British pound against the US Dollar, Euro and other major currencies, may result in the second half of 2016 holding further competitive activity by non-UK bidders.

The London Stock Exchange was subject to a possible competing bid (by Intercontinental Exchange, Inc.) which was later withdrawn after the initial possible bidder (Deutsche Börse AG) announced a recommended merger with the London Stock Exchange. It is interesting to note that the CEO of Intercontinental Exchange, Inc. (Jeffrey Craig Sprecher) stated at ICE's Q2 2016 Earnings Conference Call that ICE was "fortunate" to have decided not to counterbid for the LSEG, in light of the risks posed by Brexit (see further: [Intercontinental Exchange, Inc. transcript of Q2 2016 Earnings Call](#).)

The CEO stated that management formed the view that the UK was probably going to leave and so decided "given that we didn't have good information and given that we thought the landscape was going to change that it was not an appropriate time for us to do a transaction".

Steinhoff's possible competing offer for Home Retail Group plc was also terminated after the initial bidder (J Sainsbury plc) announced a firm offer.

"Competing bids always increase the odds against the successful conclusion of an acquisition (as well as potentially adding significant extra cost), so it's not a surprise to see competitive bid activity gravitating towards the lower end of the value spectrum."

Julian Henwood, Partner, Gowling WLG

Deals in Focus

KBC Advanced Technologies plc by Aspen Technology, Inc. (lapsed) ***KBC Advanced Technologies plc by Yokogawa Electric Corporation***

A competing bid situation emerged between two foreign bidders. On 12 January 2016, US-incorporated Aspen Technology announced a £158 million recommended offer for KBC. This recommendation was lost 36 days later with Japan-incorporated Yokogawa Electric's competing and recommended offer, which valued KBC at £180.3 million, representing a 14% uplift on the aggregate deal value represented by Aspen Technology's offer.

Aspen Technology responded by reassuring its shareholders that it did not intend to pursue a bidding war, stating that it did not intend to increase its offer and that its offer had '*represented full and fair value*'; Aspen Technology's offer lapsed on 12 May 2016.

Darty plc by Groupe Fnac SA

Darty plc by Steinhoff International Holdings N.V. Group (lapsed)

Darty recommended the offer by French-incorporated Fnac, announced in the second half of 2015. A competing bid scenario emerged in the first half of 2016 with the announcement of a recommended offer by Netherlands-incorporated Steinhoff. In recommending Steinhoff's offer, the recommendation for Fnac's offer was withdrawn.

Subsequent market purchases of Darty shares and an increased offer by Steinhoff sparked a bidding war with Fnac.

After further market purchases of Darty shares and multiple (increased) offers by both bidders, Fnac's increased third and final offer led to Steinhoff dropping out of the bidding war, and succeeded in securing a recommendation from Darty.

The bidding war resulted in Fnac agreeing to a 60% uplift in the consideration offered per Darty share and a 63% increase in total deal value.

20 November 2015 – Fnac makes an offer for Darty

Fnac announces a recommended share offer (with partial cash alternative) offer for Darty.

2 March 2016 – Steinhoff makes potential competing bid

Steinhoff makes possible offer approach for Darty.

18 March 2016 – Steinhoff makes actual competing bid

Steinhoff announces a recommended all-cash offer for Darty. In recommending Steinhoff's offer, Darty withdrew its recommendation for Fnac's offer.

20 April 2016 – Steinhoff makes first move

Steinhoff conducts market purchases increasing its holding to 19.7% of Darty's issued share capital and announces an increased all-cash offer at 138 pence per share.

21 April 2016 – Bidding war

- Fnac announces an increased all-cash offer (with a partial share alternative) at 145 pence per share;
- Steinhoff announces a **second** increased all-cash offer at 150 pence per share;
- Fnac responds announcing that it had acquired Darty shares from institutional investors, representing 5.59% of Darty's issued share capital; the highest price paid per share was 153 pence;
- Steinhoff announces a **third** increased all-cash offer at 160 pence per share; and
- Fnac announces the terms of a **second** increased all-cash offer (with a partial share alternative) at 153 pence per share

22 April 2016 – Steinhoff increases its stake in Darty to 20.4%

Steinhoff announces that it has acquired further Darty shares at 160 pence per share, increasing its holding to 20.4% of Darty's issued share capital.

25 April 2016 – Fnac makes 3rd increased and final offer

Fnac announces the terms of a third increased and final all-cash offer (with a partial share alternative) at 170 pence per share and that it has acquired further Darty shares, increasing its holding to 18.27% of Darty's issued share capital; the highest price paid was 170 pence.

26 April 2016 – Fnac increases stake in Darty to 29.73%

Fnac announces that it had acquired further Darty shares at 170 pence per share, increasing its holding to 29.73% of Darty's issued share capital.

27 April 2016 – Steinhoff makes no increase to 3rd offer

Steinhoff announces that its third increased all-cash offer at 160 pence per share was final and would not be increased.

31 May 2016 – Darty recommends Fnac's 3rd and final offer

Darty announced in its response document that it had withdrawn its recommendation for Steinhoff's offer and was unanimously recommending Fnac's final offer which, in its view represented a '*superior offer for Darty shareholders, as compared to other offers*'.

1 June 2016 – Steinhoff's offer lapses

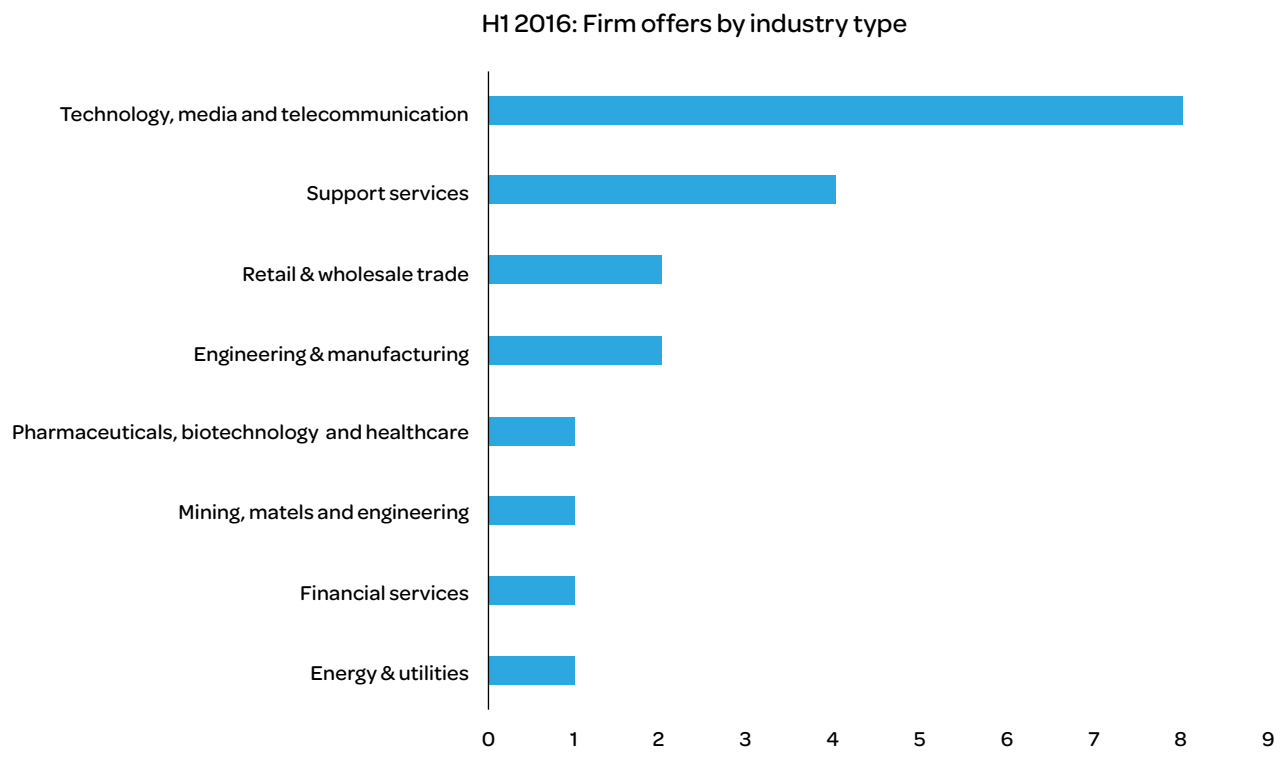
Steinhoff announces that it would not extend its final offer and that its offer had now lapsed.



5 Industry focus

The majority (60%) of bidder activity seen in the first half of 2016 occurred in the TMT and Support Services industries. The TMT industry saw the highest deal volume, 63% of which involved foreign bidders (also operating within this industry) using the UK public M&A market to consolidate their global positions.

The global surge in the TMT industry identified in the first half of 2015 has continued. In the US, May 2016 saw the \$8.5 billion acquisition of HP's Enterprise Services business by Computer Sciences Corporation, followed by the \$26.2 billion acquisition of LinkedIn by Microsoft Corporation in June 2016. Private M&A activity in the TMT industry also grew during the first half of 2016, with sizable deals including Telefonica's sale of its O2 UK mobile network to Three for £10.25 billion (although this was stopped by the European Commission due to antitrust issues). Further bidder activity in this sector in the private and public M&A spheres is expected in 2016.



The first half of 2016 saw fewer deals in the financial services industry (H1 2015: 4), but the largest deal (£20.3 billion) in our review period was recorded in this industry (*merger of London Stock Exchange Group plc and Deutsche Börse AG*).

6 Nature of consideration

Of the 20 firm offers announced:

- 6 (30%) involved a combination of consideration types
- 14 (70%) offered one form of consideration only, and of these 14:
 - » 13 (93%) were all-cash offers
 - » 1 deal (7%) was an all-share offer.

In summary 18 of the 20 firm offers had a cash element, either solely, in combination or as an alternative, accounting in total for 90% of firm offers announced in the first half of 2016.

Cash only consideration was more frequently used by bidders in the first half of 2016, continuing the trend from the equivalent period of 2015 as the most popular consideration structure.

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

There was a notable 5% decline in the combination of cash and shares. Consideration structures involving a shares element have proved unpopular. During a period of instability of global financial markets, with the looming spectre of the UK referendum on EU membership, weakening of confidence in China's economy and poor growth of Eurozone economies, bidders were acknowledging that target shareholders were more likely to accept offers if made (wholly or in part) in cash.

Usage of other forms of consideration in the first half of the year remained broadly comparable against the same period in 2015.

"In the longer term, if Brexit actually occurs, it will be interesting to see whether share for share offers by EU bidders decline due to the increased regulatory burden of gaining approval for securities offering documentation for EU: UK securities offers."

Julian Henwood, Partner, Gowling WLG

"The expectation is for "cash to be king" and to continue to feature in bids by non-UK bidders – debt financing is still very affordable and generally is much simpler to put in a place than an all or part share alternative structure. With many international bids facing other complexities (ie, compliance with multiple legal and regulatory regimes or anti-trust issues), the simpler cash consideration structure (involving fewer disclosure requirements under the Code) is given serious weight by bidders."

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

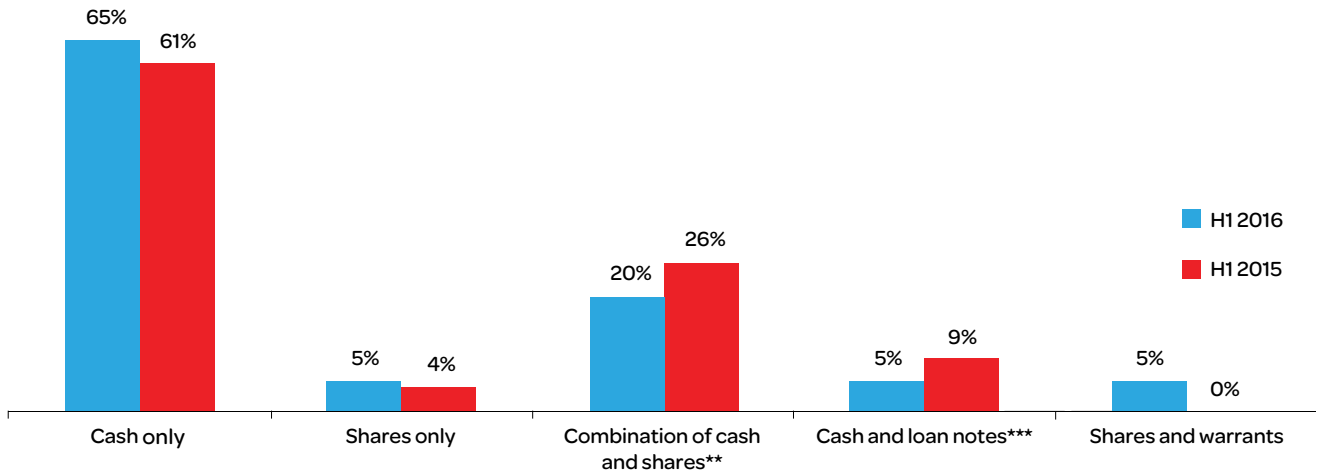
"Post Brexit, the weak pound is likely to lead to an increase in non-UK bidders. Non-UK bidders will tend to offer cash (especially in an era of record-low costs of borrowing), so cash is likely to remain king for UK public M&A. This is even more likely where there are competing bids."

Jeremy Kutner, Partner, Shearman & Sterling

Possible offers

Of the 6 possible offers announced in the first half of 2016 which failed to progress to a firm (or mandatory) offer within our review period, 3 did not specify the likely form or level of consideration (given that the bids were still in the early stages). Of the remaining 3, 2 offered cash only and the remaining deal offered cash and shares, and / or convertible loan notes in the bidder (*possible offer for Lighthouse Group plc by AFH Financial Group plc*).

Firm offers in H1 2016 & H1 2015*: Nature of consideration



* Based on a total of 20 firm offers announced in H1 2016, 23 in H1 2015

** includes transactions where shares and a partial cash alternative were offered

*** includes transactions where a loan note alternative was offered, only one such transaction was announced in H1 2016 (*Hydro International plc by Hanover Investors Management LLP*)

Consideration structures involving shares have proved unpopular

Alternatives to all-cash and all-share offers

Shares and warrants

Shares and warrants were offered by Perseus Mining in respect of its offer for Amara Mining (*Amara Mining plc by Perseus Mining Limited*). 0.68 new Perseus shares and 0.34 warrants were offered for each Amara Mining share. The warrants were transferable but unlisted and each warrant entitled the holder to subscribe for one new Perseus share at an exercise price of AUD\$0.44 at any time during the 36 month period after their issue. Fractions of new Perseus shares and warrants, instead of being allotted, were rounded down to the nearest whole number.

Loan note alternative

An unsecured loan note alternative was offered by Hanover Investors in respect of its cash offer for Hydro International (*Hydro International plc by Hanover Investors Management LLP*). Hydro International shareholders were given the option of electing to receive loan notes as an alternative to all-or-part of the cash consideration they would be entitled to under the offer. The loan notes had a nominal value of £1, were interest bearing, unsecured and non-transferable.

Mix & match

The £1.2 billion offer for *Home Retail Group plc* by *J Sainsbury plc* included a 'mix and match facility', giving Home Retail shareholders the option of varying the proportions of new Sainsbury's shares and cash receivable in respect of their holding of Home Retail shares. This method of giving Home Retail shareholders a choice of consideration, subject to the elections of other target shareholders, made the offer 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.

Usage of mix and match facilities fell in the first half of 2016: only one instance was recorded compared with the same period in 2015, where 4 deals provided shareholders with this facility.

Drafting Examples

Loan note alternative *Hydro International plc* by *Hanover Investors* *Management LLP*

As an alternative to receiving some or all of the Cash Consideration, Scheme Shareholders (other than certain overseas shareholders) will, subject to certain conditions and terms, be able to elect to receive Loan Notes to be issued by Hanover Bidco on the following basis:

for each £1 of Cash Consideration £1 nominal of Loan Notes

The Loan Notes will be issued, credited as fully paid, in amounts and integral multiples of £1 nominal value. Any fractional entitlements will be disregarded.

The Loan Notes will bear interest (from the date of issue to the relevant holder of Loan Notes) payable six months in arrears at the rate of the higher of 0.25% below LIBOR and 0% Interest will be payable (less any tax required by law to be deducted) in arrears on 1 January and 1 July in each year. The first payment will be made on 1 January 2017 in respect of the period from and including the date of issue of the Loan Notes.

Holders of the Loan Notes will have the right (subject to certain restrictions) to redeem them for cash at par on 1 July 2017 or on any subsequent interest payment dates. The Loan Notes may be redeemed by Hanover Bidco on or after 1 July 2017, if (i) more than 50 per cent. of the nominal amount of all of the Loan Notes has been redeemed or the aggregate nominal amount of the Loan Notes outstanding is less than £1.5 million; or (ii) if there has been a change of control of Hanover Bidco. Unless previously redeemed or repurchased, the Loan Notes will be repaid at par on 1 July 2019. The Loan Notes will not be transferable other than to certain permitted transferees. No application is intended to be made for the Loan Notes to be listed or dealt in on any stock exchange.

No Loan Notes will be issued unless valid elections for the Loan Note Alternative will result in the issue of at least £1.5 million in nominal value of Loan Notes, or such smaller amount as Hanover Bidco may decide. If the Loan Notes are not issued for this reason, Hydro Shareholders who elect for the Loan Note Alternative will instead receive cash in accordance with the terms of the Scheme.

The Loan Note Alternative is conditional upon the Scheme becoming Effective.

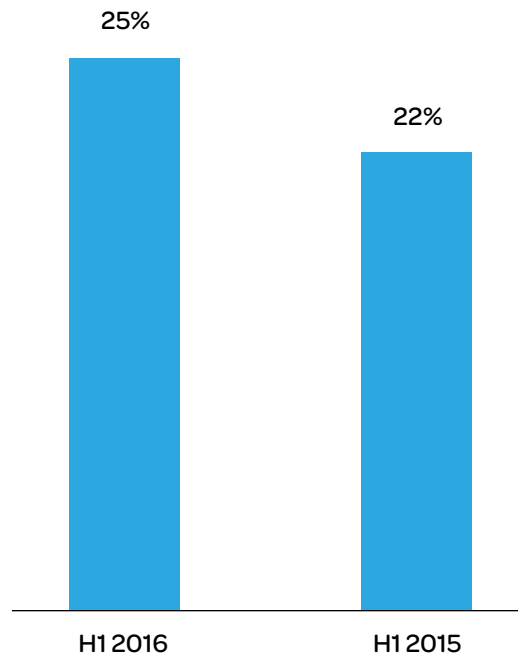
7 Public-to-private transactions

The first half of 2016 saw a steady flow of P2P takeover activity. Of the 20 firm offers announced, 5 (25%) were private-equity backed bids. The same number of P2P deals was announced during the same period in 2015. These comprised 4 offers for AIM companies and 1 for a Main Market company.

There are signs that PE activity may be slowly moving towards the larger deals. The aggregate deal value of these 5 transactions was £420 million, 24% higher compared to the deal value of P2P transactions in the comparable period in 2015.

However, we anticipate P2P activity to decline as a follow on from the referendum's 'leave' vote, with more uncertainties emerging, as to what form an exit will take and if access to the Single Market will be maintained. In assessing the potential impact of the referendum the British Private Equity & Venture Capital Association (BVCA) has highlighted that the €2.3 billion UK PE funding from Europe (through the European Regional Development Fund and European Investment Fund) may be at risk, which if lost 'could prove damaging for the industry'.¹

H1 2016 v H1 2015: P2P offers*



* Based on 20 firm offers in H1 2016, 23 in H1 2015

"Uncertainty is the enemy of (particularly PE) investment, but as more decisions about Brexit are made during the second half of 2016 (and beyond), PE funds are likely to return to the P2P market. Some may even see opportunities in the uncertainty."

Jeremy Kutner, Partner, Shearman & Sterling

Deals in Focus

Energy Assets Group plc by Alinda Capital Partners LLC
Hydro International plc by Hanover Investors Management LLP
InternetQ plc by Toscafund Asset Management LLP, Penta Capital LLP and Mr. Panagiotis Dimitropoulos
Tangent Communications plc by Portland Asset Management (UK) Limited
TLA Worldwide plc by Atlantic Alliance Partnership Corp.

Of these 5 deals, 2 (40%) were made by US-incorporated private equity backed bidders (offers for Energy Assets and TLA Worldwide) and these accounted for 73% of the total deal value of P2P transactions.

Alinda Capital's offer for Energy Assets was the highest valued deal at £209 million; Hanover Investors' offer for Hydro International had the lowest deal value, £28 million.

The TMT industry remains popular for private equity bidders, making up 60% of P2P transactions.

1. BVCA Guide to Brexit (News & Public Policy) - www.bvca.co.uk/NewsPublicPolicy/BVCAGuidetoBrexit.aspx

8 Financing the offer

Of the 18 firm offers that involved a cash element (accounting for 90% of all firm offers in the first half of 2016), 5 were funded by existing cash resources only and 6 were financed with a combination of existing cash resources and debt facilities. 3 deals were funded by debt alone. See chart 'H1 2016 v H1 2015: Proportion of firm offers funded by cash from different sources' for details of the financing in the other 4 bids.

Use of existing cash reserves was 12% lower, whereas use of debt financing in combination with existing cash reserves grew by 6%. Debt finance was used wholly or in part in 11 (61%) of the 18 transactions which involved a cash element. Of the 8 largest transactions which included a cash element, 7 (86%) were funded (wholly or in part) with debt finance.

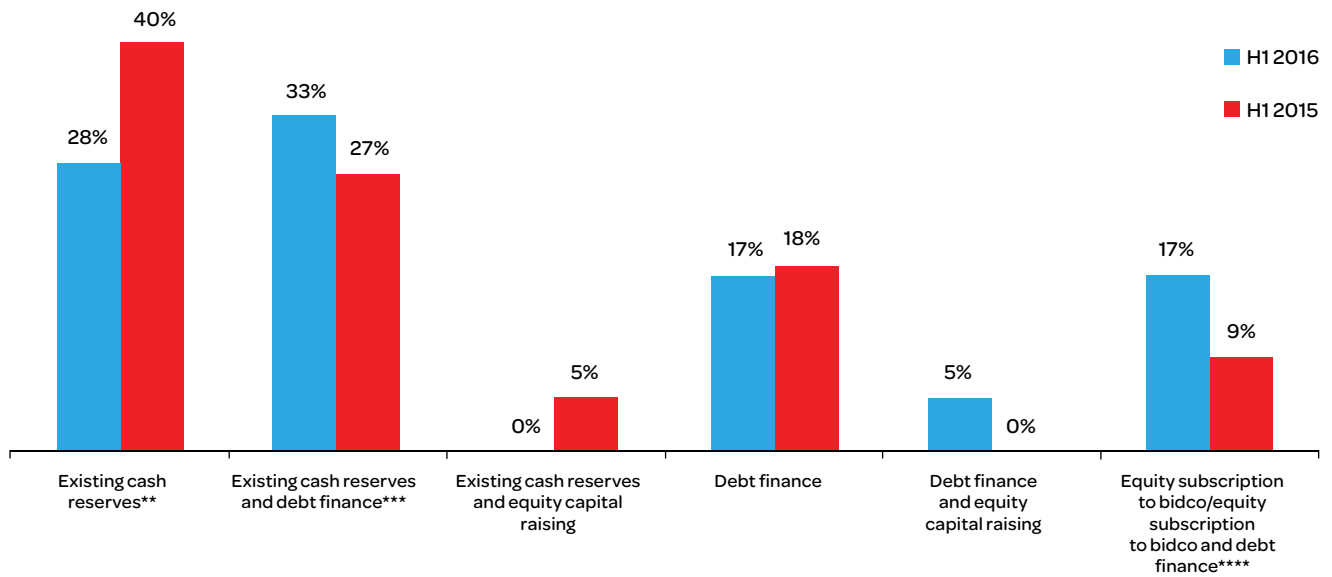
The rising popularity of debt financing has caused the decline in usage of existing cash reserves only to finance deals. With interest rates being kept low (on the whole) globally, lending markets are continuing to improve, leading to increasing use of debt finance to fund acquisitions. The UK Brexit vote will have a direct impact on use of debt financing in the second half of the year. On 4 August 2016, the Bank of England lowered interest rates from 0.5% to 0.25% to boost the UK economy, increasing the affordability of debt financing. We will follow up developments in this area in our 2016 full-year public M&A trend report.

How an offer is financed may depend (among other things) on the location of bidders or bid vehicles, particularly if they are part of a multinational group of companies. Given that the Bank of England has reduced interest rates to 0.25% and has not ruled out reducing rates further, we may see even more acquisitions being financed by:

- cash reserves held by companies, as companies may effectively be subject to negative interest rates on cash held in bank accounts (when considering account fees) in the UK and other low interest bearing jurisdictions, and/or
- debt finance, as it may be cheaper to borrow funds to finance an acquisition

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 for up to 28 days (or longer where that period is extended by the Panel) before the offer document is published and the (unredacted) loan documents need to go on display.

H1 2016 v H1 2015: Proportion of firm offers funded by cash from different sources*



* Based on 18 firm offers involving a cash element in H1 2016, 22 in H1 2015.

** Existing cash reserves includes funds made available under inter-company loan arrangements.

*** Percentage for H1 2016 includes a deal financed by existing cash reserves, debt finance and shareholder loans (*Tangent Communications plc by Writtle Holdings Limited (lapsed)*)

**** Percentage for H1 2016 includes 2 deals financed by an equity and loan note subscription to bidco (*InternetQ plc by Toscafund Asset Management LLP, Penta Capital LLP and Mr. Panagiotis Dimitropoulos and Hydro International plc by Hanover Investors Management LLP*)

“It seems likely that, in an era of record low costs of borrowing globally, use of debt financing for UK public M&A will increase, irrespective of which jurisdiction the bidder is from.”

Jeremy Kutner, Partner, Shearman & Sterling

Deals in Focus

British Polythene Industries plc offer by RPC Group plc

Financed through a fully underwritten placing to raise £90 million (gross) and a £70 million revolving credit facility entered into by RPC with lenders including Barclays Bank plc, BNP Paribas Fortis SA/NV, Commerzbank Aktiengesellschaft, Danske Bank A/S, HSBC Bank plc, ING Bank N.V. and the Royal Bank of Scotland plc.

Premier Farnell plc by Dätwyler Holding AG

Dätwyler’s all-cash offer was funded with its existing cash resources and entered into a facilities agreement with UBS Switzerland AG for an aggregate amount of £530 million of term loan facilities, comprising a £290 million one year bridge facility and a fully committed 5-year acquisition financing facility of £240 million.

Energy Assets Group plc offer by Alinda Capital Partners LLC

Acquisition funded through a combination of monies invested by the Alinda Funds pursuant to a Subscription Agreement and debt financing provided by Lloyds Bank plc with a £110 million term loan facility.

9 International bidders

Non-UK bidders continued to dominate the public M&A market in the first half of 2016, being involved in 7 of the 10 largest deals. Of the 20 firm offers announced, 13 were made by non-UK bidders (65%), matching the same period in 2015(65%)¹. Only 7 (35%) firm offers were therefore made by a bidder incorporated in the UK.

Non-UK bidders accounted for almost £23.83 billion (96%) of the aggregate deal value in the first half of the year. This is in line with the same period in 2015, where non-UK bidders accounted for 97% of aggregate deal value².

Of the offers made by a non-UK bidder, German-incorporated Deutsche Börse AG's merger with the London Stock Exchange Group plc had the highest deal value (£20.3 billion). US incorporated bidders accounted for the majority of all deals involving foreign bidders (4 or 31%), a marginal decrease on the same period in 2015 (40%)³. Total value of deals involving US-bidders accounted for only £685.8 million in aggregate, a significant decline on the same period in 2015, where such activity accounted for £8.48 billion; an indication that US-bidders are opting for smaller and mid-sized deals instead of the largest deals.

Predominance of US-bidders in the UK public M&A market is a continuing trend from the first half of 2015, when US bidders also accounted for the majority of deals involving a foreign bidder. This is an indication that 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 the second half of 2016.

"The most interesting aspect of this table is the absence of Chinese bidders. That seems likely to change over time, though maybe not in the short term."

Jeremy Kutner, Partner, Shearman & Sterling

Country of incorporation of bidder*	Number of bidders**	Total deal value (approx.)
United States	4	£685.8 million
Switzerland	2	£720.3 million
Canada	2	£68.2 million
Germany	1	£20.3 billion
Netherlands	1	£860 million
Japan	1	£180.2 million
Australia	1	£68.3 million
Lebanon	1	£29 million

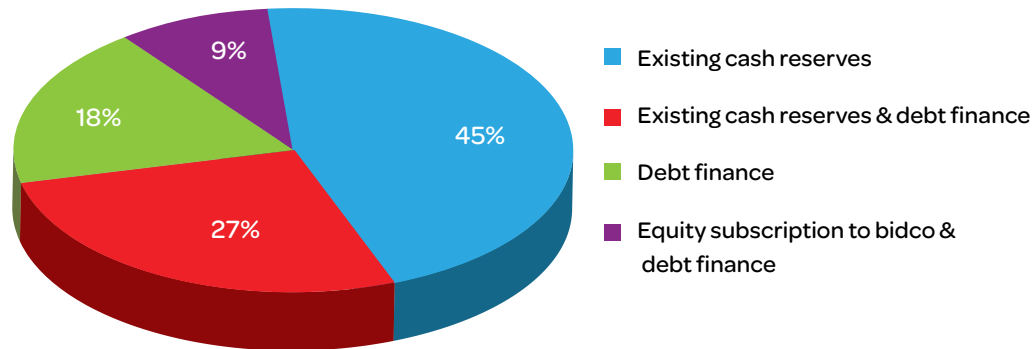
* Where a bid vehicle was used, this table refers to the country of incorporation of the ultimate bidder.

** This table includes all firm offers made by non-UK bidders that were analysed (whether they completed or remained ongoing as at 30 June 2016).

1. H1 2015: 23 firm offers announced, 15 (65%) by non-UK bidders
2. BG Group plc by Royal Dutch Shell plc (which did not involve a non-UK bidder) itself accounted for 78% of the total value of deals announced in the first half of 2015; excluding this deal, non-UK bidders accounted for 97% of aggregate deal value in the first 6 months.
3. H1 2015: 15 firm offers made by non UK bidders, 6 by US incorporated bidders.

Financing non-UK bids

H1 2016: Bid financing by non-UK bidders



Cash formed an element of the consideration in 11 of the 13 deals made by non-UK bidders. Of these 11, 5 (45%) were financed by existing cash reserves, 3 (27%) were financed with a combination of existing cash reserves and debt finance, 2 (18%) were solely financed by debt facilities and one deal (9%) with a combination of debt facilities and equity subscription to bidco. The proportion of firm offers made by non-UK bidders and financed with debt facilities (wholly or in part) and use of cash reserves to fund the acquisition remained broadly in line with the same period in 2015.

“Strong interest from US buyers is being fuelled by a combination of factors including a strong US economy, strong US dollar, weak sterling and US dominance in the TMT and Support Services sectors.”

Julian Henwood, Partner, Gowling WLG

ARM Holdings plc offer by SoftBank Group Corp

Although beyond our review period, it is interesting to note Softbank Group Corp’s offer for ARM Holdings plc for £24.3bn less than a month after the Brexit vote. The offer, which is structured as a scheme, is being financed by a mixture of cash reserves and debt (over £7bn from Mizuho Bank, Ltd). Interestingly, in its firm offer announcement, SoftBank signalled its intention to give binding post-offer undertakings in accordance with Rule 19.7 of the Code. Since post-offer undertakings were introduced after the fall out from Pfizer Inc’s failed possible offer for AstraZeneca plc in 2014, there have been no instances of bidders giving post offer-undertakings with bidders understandably choosing not to be bound by their commitments and potentially risking Panel sanction for non-compliance. For further analysis on the deal, see News Analysis: [ARM Holdings plc in £24.3bn takeover by Japanese bidder](#).

“In launching her bid for the premiership, Theresa May voiced concerns about foreign bidders swiping up British treasures and set out her plans for an industrial policy that would allow the UK to oppose foreign takeovers in strategically important sectors. If the new PM is indeed really intent on pursuing this strategy, there will of course be an adverse impact on UK public M&A and one we can ill afford at this stage given the pressures on foreign investment into the UK post-Brexit. The hope is that these populist statements were simply just that in her bid for premiership and we should take comfort from her support of Japanese Softbank’s offer for UK chip-maker ARM Holdings. The fact that there have been a number of failed attempts recently to curb foreign bids citing some form of “public interest” test offers some comfort. However, once relieved from the “shackles of EU merger rules”, there may be more scope for intervention and broadening the concept of “public interest” (now tightly defined under the Enterprise Act).”

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

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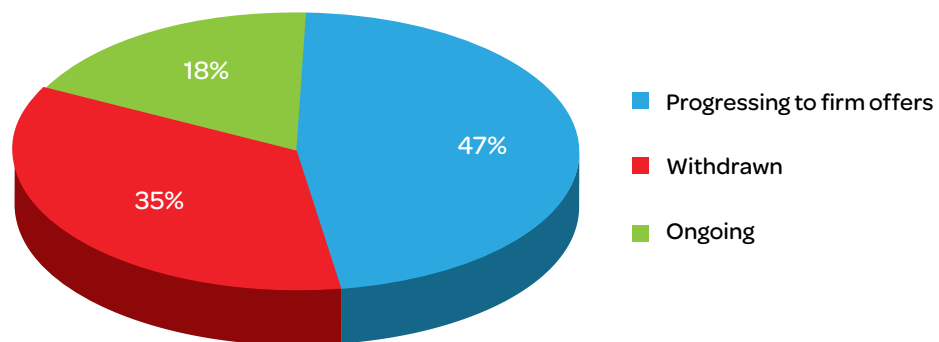
Possible offer outcomes: announcements vs withdrawals

We reviewed a total of 17 possible offer announcements made under Rule 2.4 in the first half of the year which identified a potential bidder. Of these 17, 8 (47%) resulted in a firm offer during the review period, and 3 (18%) were ongoing as at 30 June 2016. 6 possible offers (35%) were withdrawn during the first half of 2016, significantly greater than the same period in 2015 where only 3 deals were withdrawn.

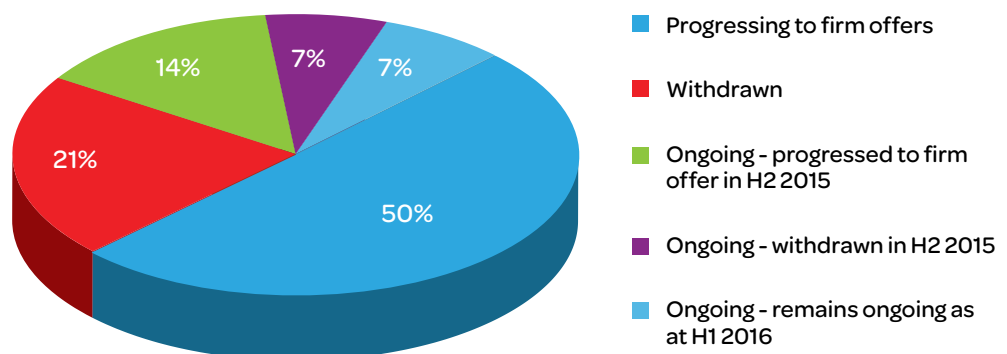
The likelihood of possible offers progressing to firm remained broadly the same compared with the equivalent period in 2015, but there was a greater chance of possible offers being withdrawn in the first half of 2016. However, a more accurate comparison can be made when the outcome of the 3 possible offers which remain ongoing as at 30 June 2016 is determined.

It should be noted that all the possible offers announced under Rule 2.4 in the first half of 2015 either progressed to a firm offer or terminated in the second half of 2015, except for the possible offer for Worthington Group plc which remained active as at H1 2016 and which had the benefit of multiple PUSU extensions.

H1 2016*: Possible offers (made under 2.4) - outcomes



H1 2015**: Possible offers (made under 2.4) - outcomes



* Based on 17 transactions in H1 2016.

** Based on 14 transactions in H1 2015.

11 Put up or shut up regime

Firm offers

In the first half of 2016 an offer period began with a firm offer announcement under Rule 2.7 of the Code in relation to 5 Main Market companies and 6 AIM companies. Accordingly, 11 (55%) of the 20 firm offers were not subject to the automatic 'put up or shut up' deadline (PUSU) regime and only 9 (45%) were. The percentage of firm offers beginning without a PUSU deadline in the first half of the year declined compared to the same period in 2015 (70%)¹.

Possible offers

An offer period for 16 of 17 targets began with a possible offer announcement identifying a potential bidder and stating a PUSU deadline as required by Rule 2.4(c) of the Code; a 21% increase on the comparable period in 2015².

The remaining deal identified a bidder, but was a possible competing offer and the PUSU deadline was 'to be determined' under Rule 2.6(d) of the Code (*possible offer for Tangent Communications plc by Writtle Holdings Limited*).

A number of possible offer announcements referred to potential joint bidders or consortiums but there were none which identified more than one potential bidder. The London Stock Exchange Group plc was subject to two separate Rule 2.4 announcements by different bidders within a 7 day period (*see: 4. Competing and potential competing bids*).

Formal sale processes

For a further 5 targets, an offer period began with an announcement that it was commencing a formal sale process, a 60% decrease compared to the same period in 2015³. 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.



1. H1 2015: 16 (70%) of the 23 firm offers announced were not subject to the automatic PUSU regime and only 7 (30%) were.
2. 14 possible offer announcements made under Rule 2.4 of the Code in H1 2015.
3. 8 formal sale processes recorded in H1 2015.

PUSU Extensions

In the first half of 2016, firm offers were made for 5 (31%) of the 16 targets subject to ongoing possible offers during their initial 28-day PUSU periods. Offers for 5 targets did not proceed beyond their initial deadline.

Offers for 3 (19%) targets were subject to multiple PUSU extensions (for SyQic plc, TLA Worldwide plc and Home Retail Group plc) as at 30 June 2016. The length of PUSU extensions granted in the first half of 2016 varied widely, with extensions ranging from 7 to 24 days.

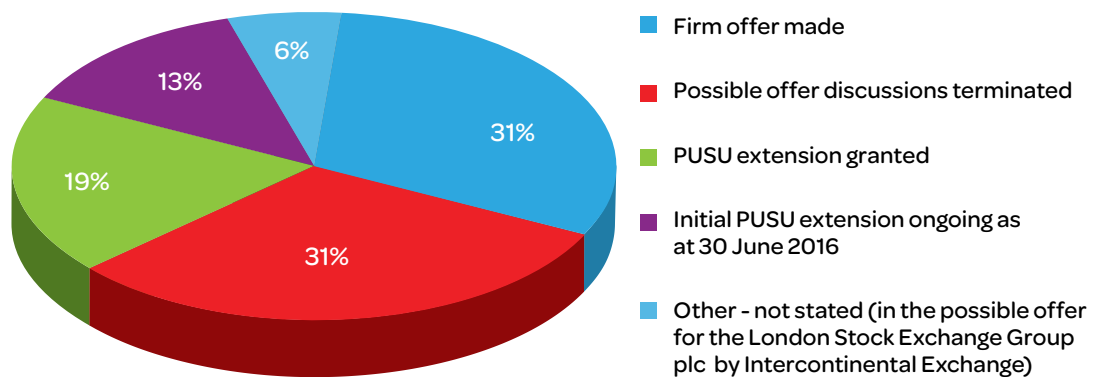
2 (13%) possible offers (for Poundland Group plc and Source BioScience plc) were still within their initial PUSU periods as at 30 June 2016. It is worth noting that on 1 July 2016, outside of the period covered in this report, a 28-day extension to the PUSU deadline was set for the potential joint bidders in the possible offer for Source BioScience.

The remaining possible offer (for the London Stock Exchange Group plc by Intercontinental Exchange, Inc.) was a possible competing offer and subject to an initial PUSU deadline; Deutsche Börse AG announced a recommended merger with the London Stock Exchange Group plc which changed the status of Intercontinental's PUSU deadline 'to be determined' under Rule 2.6(d) of the Code.

There was a fair split of firm offers being announced within the initial 28-day PUSU deadlines, however there was also a 12% decline in the likelihood of a firm offer being announced within the initial PUSU period than in the comparable period in 2015¹. This may be an indicator of reduced bidder certainty in the UK public M&A market.

All possible offers announced under Rule 2.4 in the comparable period in 2015 either progressed to a firm offer or terminated in the second half of 2015, except for the possible offer for Worthington Group plc which has been subject to 13 separate PUSU extensions, the most recent being a 56-day extension to 22 July 2016. The unusual nature of this possible offer may be why the Panel has consented to these extensions; Worthington remains in discussions with Greenland Mining Management Limited which is proposing to invest in a rescue refinancing of NunaMinerals, with a view to NunaMinerals subsequently making an offer for Worthington.

H1 2016: Possible offers subject to an initial PUSU deadline - outcomes



1. Of the possible offers subject to a PUSU deadline in H1 2015, 43% had a firm offer announced within the initial deadline.

Deals in Focus

Possible offer for SyQic plc by Mr. Jamal Hassim and MMV Investments (HK) Limited

A possible offer by SyQic CEO Jamal Hassim and MMV Investments (HK) Limited was made on 20 April 2016. The PUSU was subject to 3 separate extensions (of 7, 14 and 21 days respectively) at SyQic's request, the most recent being to 12 July 2016. The possible offer was active as at 30 June 2016.

Possible offer for TLA Worldwide plc by Atlantic Alliance Partnership Corp.

TLA announced that it had reached agreement on the terms of a possible offer for the company by US-incorporated Atlantic Alliance on 24 March 2016 and the PUSU deadline was set at 21 April 2016.

After 2 separate 7-day extensions to the PUSU deadline were granted by the Panel, Atlantic Alliance announced a recommended all-share offer for TLA on 3 May 2016.

Possible offer for London Stock Exchange Group plc by Intercontinental Exchange, Inc.

Intercontinental made a possible offer announcement for the LSE on 1 March 2016; the PUSU deadline was set for 29 March 2016. This was a potential competing offer to Deutsche Börse's possible offer for the LSE announced 7 days earlier.

13 days prior to the expiration of ICE's PUSU deadline, the LSE and Deutsche Börse announced the terms of a recommended all-share merger, which changed the status of ICE's PUSU deadline 'to be determined' under Rule 2.6(d) of the Code. On 4 May 2016, ICE announced that it did not intend to make an offer for the LSE.

Possible offer for Home Retail Group plc by J Sainsbury plc

An offer period for Home Retail began on 5 January 2016 with the announcement that Sainsbury's had made a possible offer approach, the PUSU deadline was set at 2 February 2016; the PUSU deadline was initially subject to a 21-day extension.

A potential competing offer was announced by Steinhoff International Holdings NV (Steinhoff) on 19 February 2016 and Sainsbury's PUSU deadline was subject to a second PUSU extension of 24 days to 18 March 2016 (the same date as the initial PUSU which had been set for Steinhoff).

Panel Statement 2016/4 was released on 17 March 2016, in which the Panel Executive announced:

- if Sainsbury's or Steinhoff announced a firm intention to make an offer for Home Retail by 18 March 2016, then the other potential offeror shall continue to be treated as a potential competing offeror for Home Retail for the purposes of the Code, and shall be required to clarify its position by not later than 5pm on the 53rd day following the publication of the firm offeror's initial offer document by announcing either a firm intention to make an offer for Home Retail or that it does not intend to make an offer for Home Retail; and
- Home Retail can request the Panel's consent to extend the existing PUSU deadlines of 18 March 2016 in respect of one or both of Sainsbury's or Steinhoff. If an extension is granted, the Executive will make a further announcement

On 18 March 2016, Home Retail's second extended PUSU deadline, Sainsbury's announced a £1.2 billion offer. In contrast, Steinhoff announced on its PUSU deadline that it did not intend to make an offer.

"In general terms, after an initial "settling in" period, the PUSU regime has seemingly worked quite well and has proved to be much more "navigable" than many thought it would be. Whilst there continues to be an "educational hurdle" that bidders need to pass, the regime has now become much better understood and less daunting. The ability to obtain extensions (and in many case multiple extensions) notwithstanding the dual-consent process of target and Panel has comforted bidders and the hoped-for impact of fewer leaks and tighter secrecy protocols has come to fruition."

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

12 Formal sale processes (FSPs)

In the first half of 2016, 5 companies announced FSPs (4 AIM, 1 Main Market). In each of these cases the announcement was made in the wider context of a strategic review of the company's options.

Of these 5 FSPs, 4 (80%) of FSPs announced in the first half of 2016 were ongoing as at 30 June 2016 and only one concluded without an offer being made, after it decided that it was in the best prospects of the business and shareholder value would be maximised through remaining an independent company (XLMedia plc).

2 (40%) of the 5 FSPs were announced by targets operating in the TMT industry (Pinewood Group plc and XLMedia plc). The remaining targets operated in the transport, healthcare and computing & IT industry (Sutton Harbour Holdings plc, Cyprotex plc and Electronic Data Processing plc, respectively).

None of the FSPs resulted in a firm offer being announced and their usage declined in our review period, with 60% fewer FSPs announced compared to the same period in 2015, indicating a downward trend in the use of FSPs as a mechanism for the possible sale of UK public companies.

One FSP announced in the first half of 2015 (Bond International Software plc) terminated in March 2016 without an offer being made and was followed by, in June 2016, a possible offer which progressed to a firm offer (by Constellation Software Inc.). This may indicate that FSPs are effective at attracting bidder interest, which may not have occurred without the FSP having been initiated. However, a greater sample size is needed to reach any definitive conclusions.

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.

“Formal sale processes are not proving to be as popular as perhaps some thought they would be. They are generally perceived as distress signals, the effect of which is not necessarily a higher or better price for the target (indeed, possibly the opposite) and if a more discrete process can be run with a selective number of buyers resulting in a recommended offer (without the company entering into an offer period) this will generally be the preferred route.”

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

13 Offer-related arrangements

Cooperation arrangements and other permitted arrangements

Cooperation agreements allow offer parties to agree to cooperate and commit to providing assistance and information to obtain necessary official authorisations and bid clearances.

Of the 20 firm offers announced in the first half of 2016, 7 involved the bidder and target entering into a cooperation agreement and one deal (*Premier Farnell plc by Dätwyler Holding AG*) featured a 'Bid Conduct Agreement', making 40% in all. All of the cooperation agreements were entered into with targets with a Main Market listing, except for one deal (*Amara Mining plc by Perseus Mining Limited*), and were commonly used in the largest deals; 6 of the 10 largest deals (by aggregate deal value) featured such agreements.

Usage of cooperation agreements was broadly in line with the equivalent period in 2015, where 8 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.

Bid conduct agreements remain unpopular; the same number of bid conduct agreements were recorded in the first half of 2016. The bid conduct agreement in the offer for Premier Farnell set out obligations on both parties to co-operate to ensure that the competition conditions and all clearances were met. Dätwyler also undertook to notify Premier Farnell if it sought Panel permission to invoke any of the firm offer conditions.

Break fees

There were no instances of the Panel granting a dispensation from the prohibition on break fees under Note 2 on Rule 21.2 (formal sale process dispensation) as there were no firm offers announced following an FSP initiated by a target company.

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).

In the first half of 2016 there were no instances of a bidder agreeing to pay a reverse break fee to the target if the transaction failed to complete. This is in contrast to the equivalent period in 2015 where 4 reverse break fees were recorded. Reverse break fees are more common on the larger offers, only 2 deals that were announced in the first half of 2016 had a value of over £1 billion (H1 2015: 7 deals).

"The practice of paying break fees has always been trend driven. Prior to the amendment to the Code which largely prohibited target break fees, targets had increasingly frequently demanded such a fee where they saw others demanding them. Similarly, as fewer bidders agree to a reverse break fee, I feel their use will be in steady decline."

Julian Henwood, Partner, Gowling WLG

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. In a number of deals in the first half of 2016, irrevocable undertakings were given by non-director shareholders in favour of bidders covering a variety of matters.

Matching or topping rights (non-director shareholders)

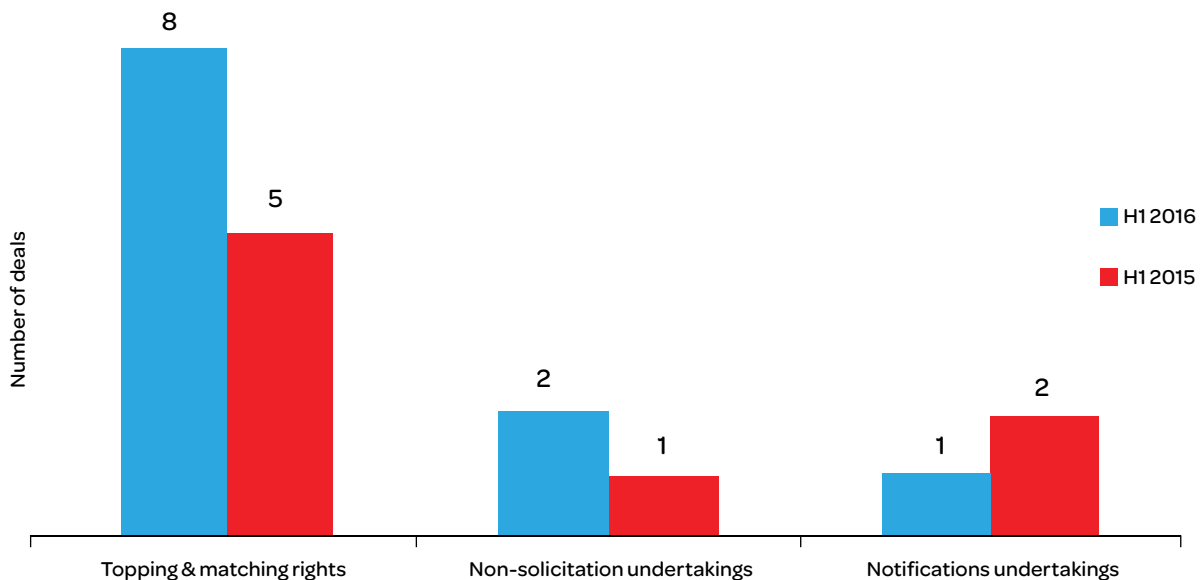
Of the 20 firm offers announced in the first half of 2016, in 8 instances (40%) one or multiple irrevocable undertakings given by non-director shareholders contained matching or topping rights in the event of a competing bid. Of these 8, one provided solely for a matching right, 3 (38%) solely for a topping right and the remaining 4 deals (50%) provided for both matching and topping rights (offers for Penna Consulting plc, Wireless Group plc, Premier Farnell plc and British Polythene Industries plc).

These 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.

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

In 2 cases (10%), irrevocable undertakings 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. There was only one instance of an undertaking which included 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.

H1 2016 v H1 2015: Comparison of non-director shareholder irrevocable undertakings



In the first half of 2016 we saw instances of matching rights and topping rights being used alone, as well as matching rights being used in conjunction with topping rights in non-director shareholders' undertakings. Usage of non-solicitation and notification undertakings remained at broadly the same low levels, indicating that non-director shareholders have maintained their bargaining strength with the ability to solicit a competing offer and avoid having to notify the bidder if a third-party has indicated interest in an offer.

Plans for target's employees and business

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.

In 15 (75%) of the firm offers announced in the first half of 2016 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.

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. In 3 of the 20 firm offers (15%), 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.

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.

"I can foresee that the Panel will in future be taking an increasingly critical look at bidders making statements of intention that are heavily caveated – eg, by use of the diluted words 'it is not our current intention'."

Julian Henwood, Partner, Gowling WLG

Drafting Examples

Tangent Communications plc by Writtle Holdings Limited (lapsed)

'Writtle has no current intention to make any changes to the staffing levels of the business or any material changes in the conditions of employment of the employees of the Tangent Group as a result of the Offer. Writtle also confirms that it has no intention of making any material changes to Tangent's ongoing pension contribution obligations for existing employees and members of Tangent's pension schemes. Writtle has not come to a conclusion in respect of the continued employment of the directors of Tangent.

Writtle has no current intention to make any change to Tangent's principal place of business or to redeploy any of its fixed assets. If the Offer becomes, or is declared, unconditional in all respects, Writtle would expect to nominate new directors to the board of Tangent.'

InternetQ plc offer by Toscafund Asset Management LLP, Penta Capital LLP and Panagiotis Dimitropoulos

'Bidco [the Consortium's bid vehicle] does not anticipate carrying out any material restructuring of InternetQ's business

or relocation of its personnel or other significant cost saving exercise, nor any changes to the principal locations of the InternetQ Group's business or any redeployment of its fixed assets.

Bidco confirms that if the Offer is declared unconditional in all respects, it intends to safeguard fully the existing employment and pension rights of all InternetQ's management and employees in accordance with applicable law and to comply with the InternetQ Group's pension obligations for existing employees and members of InternetQ's pension schemes. Bidco's current plans for InternetQ do not involve any material change in the conditions of employment of its employees.'

Wireless Group plc by News Corporation

'Whilst there are no immediate plans for any material changes in locations or personnel or any redeployment of assets following the Offer becoming or being declared unconditional in all respects, there may be duplication of some corporate and support functions which could involve minor headcount reductions in Wireless' operations going forward (although News Corp has not yet developed any proposals as to if and when such headcount reductions might be implemented).'

Sweett Group plc by Dar Al-Handasah Consultants Shair And Partners Holdings Limited

'Currie & Brown [bid vehicle] also recognises that, in order to achieve certain of the expected benefits of the Acquisition, a detailed review of the Sweett business will be required. Until such review occurs, Currie & Brown is unable to assess the impact that the Acquisition will have on the employees of the Combined Entity, the location of their place of business or any redeployment of assets. Although no firm decision has been made, Currie & Brown currently expects to generate cost-savings through:

- the delisting of Sweett given that certain functions associated with Sweett's status as a listed company may be reduced or no longer required; and
- the rationalisation of property, back office and other shared services in order to remove duplication and optimise these functions.

It is intended that, as soon as practicable following completion of the Acquisition, Sweett will cease to operate under the Sweett brand, and will instead trade under the Currie & Brown brand.'

"The new and rather elaborate split regime of post-offer undertakings and post offer statements of intent, introduced in the wake of Pfizer's possible offer for Astra Zeneca is being tested now for the first time in the bid for ARM Holdings – it will be interesting to see how the POUs made by Softbank are finally presented and what monitoring and enforcement approach is taken by the Panel."

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



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Employee representatives' opinions

Under Rule 25.9 of the Code the target is required to publish any opinion prepared by the target's employee representatives on the effect of the offer (or any subsequent revised offer) on employment.

Engagement by employee representatives in UK M&A worsened in the first half of 2016. Of the 20 offers firmly announced in the first half of 2016, there were no instances of the target's employee representatives giving an opinion.

In the corresponding period in 2015, there was one employee representatives' opinion issued (*TSB Banking Group plc by Banco de Sabadell S.A.*).

Disengagement by employee representatives in UK M&A continued in the first half of 2016



Under the Code bidders are 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.

Of the 20 firm offers made in the first half of 2016, bidders disclosed their intentions (or made a negative statement) in 5 (25%) cases, reflecting the reduction in the number of defined benefit schemes in existence. Varying levels of information were provided in these disclosures, with some opting for shorter negative statements and others providing detailed information. Some examples are set out on this page.

The Code, Rule 24.2(a)(iv)

In the offer document, the offeror must state... its intentions with regard to employer contributions into the offeree company's pension scheme(s) (including with regard to current arrangements for the funding of any scheme deficit), the accrual of benefits for existing members, and the admission of new members.

The Code, Rule 24.2(b)

If the offeror has no intention to make any changes...it must make a statement to that effect.

Drafting Examples

Premier Farnell plc by Dätwyler Holding AG

'Premier Farnell participates in a number of pension schemes, including the Premier Farnell UK Pension Scheme. Dätwyler intends that, following completion of the Acquisition, Premier Farnell will comply with its current obligations in relation to all its pension schemes. Dätwyler envisages that current contributions to fund the existing deficit in the Premier Farnell UK Pension Scheme will continue to be paid following completion of the Acquisition.

Dätwyler's intention is that, after completion of the Acquisition, there will be no change to the current arrangements under which new UK Premier Farnell employees are admitted to the auto-enrolment section of the existing Premier Farnell UK Pension Scheme.'

Merger of London Stock Exchange Group plc and Deutsche Börse AG

'In relation to defined benefit pension arrangements in the UK, Deutsche Börse AG and HoldCo note that the LSEG Defined Benefit Schemes are closed to new members and to the future accrual of benefits and Deutsche Börse AG and HoldCo have confirmed that they do not intend to make any changes to these arrangements. The LSEG Defined Benefit Schemes are in the process of being merged into one sectionalised pension scheme.

Deutsche Börse AG and HoldCo have further confirmed they note the content of the most recent triennial valuations for the LSEG Defined Benefit Schemes and agree with LSEG plc's position in relation to the deficit funding for those schemes.'

British Polythene Industries plc by RPC Group plc

'RPC has given assurances to the BPI Directors that...the rates of BPI's contributions into its defined contribution benefit pension plans will be maintained. BPI's pre-existing commitments to fund the deficit in BPI's defined benefit pension scheme will be honoured and the accrued benefits for existing members of BPI's defined benefit pension scheme will not be affected.'

Under Rule 25.9, the target board is under an obligation to append to its response circular (or, where the offer is recommended, the offer document itself) any opinion of the pension scheme trustees on the likely effects of the acquisition on the scheme, if received before the circular/offer document is published. If the trustees miss this deadline, the trustees' opinion must be published on the target's website. Trustees also have a right to publish further opinions if an offer is revised. Like the requirement for bidders disclose their intentions in respect of target pension schemes, this only applies to defined benefit schemes.

There was only one instance of an opinion given by a pension scheme trustee in the first half of the year (offer for British Polythene Industries plc), a significant decrease over the same period in 2015 where 3 such opinions were given. This may indicate a downward trend of pension scheme trustees providing their opinions, although the numbers are still too small to make any definitive calls.

The only pension scheme trustee opinion was preliminary in nature, setting out that the offer was unlikely to have a material adverse impact on the target's pension scheme but stating that the trustee was seeking to further investigate the impact (if any) the offer may have.

There has been a notable fall in the number of pension scheme trustees' opinions provided

Drafting Examples

British Polythene Industries plc by RPC Group plc

'The Trustee is at an early stage in its assessment of the impact of the Offer on the Pension Scheme and the employer covenant. Whilst it is not yet possible to form a conclusion, it appears at this stage that the proposed transaction is unlikely to have a material adverse impact on the Pension Scheme.

The Trustee is seeking to further investigate and understand the position with the assistance of its advisers. The Trustee looks forward to continuing dialogue with BPI and RPC to understand more about the proposed transaction and to reach a definitive conclusion on the impact of the Offer on the Pension Scheme.

The Trustee Directors only intend to issue a further statement regarding this matter if the outcome of their assessment (as described above) results in them concluding, at their sole discretion, that this is appropriate or necessary.'

19 Dividends

Changes to the Code were introduced on 23 November 2015 requiring bidders which had specified the form of consideration as per Rule 2.5(a)(i), to either:

- reserve the right to reduce the offer consideration by the amount of all or part of a dividend (or other distribution) subsequently paid by the target to its shareholders; or
- expressly state that target shareholders will be entitled to retain all or part of a specified dividend (or other distribution) which is subsequently paid or payable by the target in addition to the offer consideration

Possible offer announcements

The Code, Note 4(a) to Rule 2.5

When an offeror makes a statement to which Rule 2.5(a)(i) applies, the offeror must state that it will have the right to reduce the offer consideration by the amount of any dividend (or other distribution) which is paid or becomes payable by the offeree company to offeree company shareholders, unless, and to the extent that, the statement provides that offeree company shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.

Firm offer announcements

The Code, Rule 2.7(c)(xii)

When a firm intention to make an offer is announced, the announcement must include:

a statement that the offeror will have the right to reduce the offer consideration by the amount of any dividend (or other distribution) which is paid or becomes payable by the offeree company to offeree company shareholders, unless, and to the extent that, the announcement provides that offeree company shareholders will be entitled to receive and retain all or part of a specified dividend (or other distribution) in addition to the offer consideration.

Possible offers

Of the 17 possible offers made under Rule 2.4 in our review period:

- 7 (42%) did not specify the price of consideration offered; and
- 10 (58%) did, and of these 10:
 - » 9 (90%) contained statements by bidders reserving the right to reduce the consideration by the amount of any dividend (or distribution) which is paid or becomes payable following the possible offer announcement; and
 - » 1 (10%) possible offer, a potential competing offer, made no statement either way (*possible offer for Tangent Communications plc by Writtle Holdings Limited*)

Although this is a small sample size, 90% compliance amongst deals required to make such statements is a positive sign that Panel attempts at increasing transparency and consideration certainty appears to have been successful.

Firm offers

All 20 firm offers during the first half of 2016 had some form of statement where the bidder reserved the right to make a reduction in its offer price if the target declares or pays any dividend (or distribution) to shareholders.

Of these 20, 7 (35%) involved transactions where the bidder had reached agreement with the target which dividends it would permit to be paid to shareholders, and the right to alter consideration levels was reserved for those not falling within this category.

The statements typically made reference to a period of time where these new dividends (or distributions) may be declared or paid by the bidder, which was either on or after the date of the firm offer (Rule 2.7) announcement and/or prior to the scheme becoming effective.

Drafting Examples (possible offers)

Possible offer for Bond International Software plc by Constellation Software Inc.

'Constellation reserves the right, pursuant to Note 4(a) on Rule 2.5 of the Code, to make an equivalent reduction in its offer price if Bond announces, declares or pays any dividend or any other distribution to shareholders on or after the date of this announcement.'

Possible offer for Home Retail Group plc by J Sainsbury plc

'Sainsbury's also reserves the right to make an offer at any time on reduced terms than 0.321 New Sainsbury's shares and 55 pence in cash for each Home Retail Group share if Home Retail Group announces, declares or pays any dividend or any other distribution to shareholders (other than the Proposed Capital Returns), in which case Sainsbury's reserves the right to make an equivalent reduction in its offer price.'

Drafting Examples (firm offers)

TLA Worldwide plc by Atlantic Alliance Partnership Corp

'Apart from the final dividend of 0.8 pence per TLA Share in respect of the financial year ended 31 December 2015 which TLA Shareholders have the right to receive and retain, AAPC has the right to reduce the offer consideration by the amount of any dividend (or other distribution) which is paid or becomes payable by TLA following the date of this announcement.'

Skyepharmaceutical offer by Vectura Group plc

'If any Skyepharmaceutical dividend, distribution or return of value is declared, announced, made or paid after the date of the Press Announcement and to which Vectura alone is not entitled, Vectura reserves the right to reduce the value implied under the terms of the Merger based on the Closing Price of 146.60 pence per Vectura Share on 15 March 2016 (being the last Business Day prior to the date of the Press Announcement) by an amount equal to the amount of such dividend, distribution or return of value. In such circumstances, to the extent possible, the maximum amount available under the Partial Cash Alternative would be reduced by the amount of such excess.

If any Vectura dividend, distribution or return of value is declared, announced, made or paid after the date of the Press Announcement, the exchange ratio will be adjusted accordingly by reference to the aggregate amount of such dividend, distribution or return of value that has been declared, made, paid or is payable.'

Merger of London Stock Exchange Group plc and Deutsche Börse AG

'If either the Company or Deutsche Börse AG announces, declares, makes or pays any dividend or other distribution on or after the date of this Scheme and prior to the Effective Date, other than:

(a) as set out in clause 2(b), or in excess of such dividends, HoldCo reserves the right to reduce the number of HoldCo Shares to be allotted and issued pursuant to clause 2(a) so as to reflect the value attributable to any such dividend or such excess; and

(b) as set out in Recital (D), or in excess of such dividend the Company shall be entitled to declare and pay an equalising dividend to LSEG Shareholders so as to reflect the value attributable to any such dividend or such excess adjusted by multiplying by the sum of 45.6 divided by 54.4 to reflect the pro rata share of the Combined Group that LSEG Shareholders are expected to hold at Completion, without any consequential change to the number of HoldCo Shares to be allotted and issued pursuant to clause 2(a).'

Wireless Group plc by News Corporation

'News Corp (UK & Ireland) reserves the right to reduce the Offer consideration by the amount of any dividend (or other distribution), other than the Announced Dividends [the Special Dividend and the 2015 Final Dividend], which is paid or becomes payable by Wireless to the Wireless Shareholders after the date of this announcement.'

Deals included in the report

H1 2016: Firm offer announcements

Amara Mining plc by Perseus Mining Limited
 Bond International Software plc by Constellation Software Inc.
 British Polythene Industries plc by RPC Group plc
 Darty plc by Steinhoff International Holdings N.V. (lapsed)
 Energy Assets Group plc by Alinda Capital Partners LLC
 Home Retail Group plc by J Sainsbury plc
 Hydro International plc by Hanover Investors Management LLP
 InternetQ plc by Toscafund Asset Management LLP, Penta Capital LLP and Mr. Panagiotis Dimitropoulos
 KBC Advanced Technologies plc by Aspen Technology, Inc. (lapsed)
 KBC Advanced Technologies plc by Yokogawa Electric Corporation
 London Stock Exchange Group plc and Deutsche Börse AG (merger)
 Penna Consulting plc by Adecco S.A.
 Premier Farnell plc by Dätwyler Holding AG
 Skyepharmaceutical offer by Vectura Group plc
 Sweett Group plc by WSP Global Inc.
 Sweett Group plc by Dar Al-Handasah Consultants Shair And Partners Holdings Limited
 Tangent Communications plc by Portland Asset Management (UK) Limited
 Tangent Communications plc by Writtle Holdings Limited (lapsed)
 TLA Worldwide plc by Atlantic Alliance Partnership Corp.
 Wireless Group plc by News Corporation

H1 2016: Possible offer announcements

Alliance Trust plc by RIT Capital Partners plc
 Ascent Resources plc by Cadogan Petroleum plc
 Bond International Software plc by Constellation Software Inc.
 Darty plc by Steinhoff International Holdings N.V.
 Home Retail Group plc by J Sainsbury plc
 Home Retail Group plc by Steinhoff International Holdings NV
 Hydro International plc by Hanover Investors Management LLP
 InternetQ plc by Toscafund Asset Management LLP, Penta Capital LLP and Mr. Panagiotis Dimitropoulos
 Lighthouse Group plc by AFH Financial Group plc
 London Stock Exchange Group plc by Deutsche Börse AG
 London Stock Exchange Group plc by Intercontinental Exchange, Inc.
 Poundland Group plc by Steinhoff International Holdings N.V.
 Premier Foods plc by McCormick & Company, Inc.
 Source BioScience plc by Continental Investment Partners SA and Harwood Capital LLP
 SyQic plc by Mr. Jamal Hassim and MMV Investments (HK) Limited
 Tangent Communications plc by Writtle Holdings Limited
 TLA Worldwide plc by Atlantic Alliance Partnership Corp.

H1 2016: Formal sale processes

Cyprotex plc
 Electronic Data Processing plc
 Pinewood Group plc
 Sutton Harbour Holdings plc
 XLMedia plc

The Lexis®PSL Corporate team



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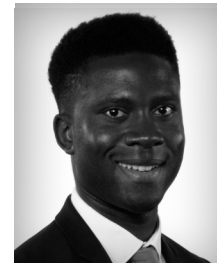
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Trends in Equity Capital Markets 2016

An analysis of current dynamics of equity capital market activity within the United Kingdom and what we can expect to see in the 6 months ahead. The report features expert commentary from Simon Witty, Partner, and Dan Hirschovits, Associate, at Davis Polk & Wardwell LLP.

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Looking at latest trends in narrative reporting, notice of AGM and shareholder voting in 2016 season.

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