



Market Tracker Trend Report  
Trends in UK Public  
M&A deals in H1 2022

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## Background and approach

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This report provides an insight into UK public M&A activity in the first half of 2022 and what we expect to see for the rest of the year.

LexisNexis Market Tracker has conducted research to examine market trends in respect of UK public M&A deals announced in the first half of 2022. We reviewed a total of 68 transactions involving Main Market and AIM companies that were subject to the Takeover Code (the Code): 27 firm offers, 31 possible offers and ten announcements of formal sale processes and/or strategic reviews, which were announced between 1 January 2022 and 30 June 2022.

The percentages included in this report have been rounded up or down to whole numbers, as appropriate. Accordingly, the percentages may not in aggregate add up to 100%. Deal values have been rounded to the nearest million (where expressed in millions) and have been rounded to the nearest hundred million (where expressed in billions).

The final date for inclusion of developments in this report is 30 June 2022. Reference has been made to deal developments after this date if considered noteworthy.



## Highlights H1 2022

**27**  
**FIRM ▲**  
**OFFERS**

(H1 2021: 22 FIRM OFFERS  
H2 2021: 31 FIRM OFFERS)

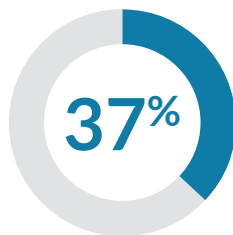
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**£19.1bn**

aggregate deal value

(H1 2021: £17.9bn;  
H2 2020: £47.3bn)

££££££££££££££££  
££££££££££££££££



Fewer P2P transactions  
37% of all firm offers  
(H1 2021: 73%;  
H2 2021: 65%)



**£9.6bn**

Aggregate value  
of P2P transactions

(H1 2021: £12.9bn;  
H2 2021: £31.1bn)



**£13.1bn**

Aggregate deal value of  
16 firm offers involving  
overseas bidders

(69% OF AGGREGATE DEAL VALUE  
FOR ALL FIRM OFFERS)



Industrial Support Services,  
Real Estate and TMT sectors  
most active sectors  
(four firm offers each)

## Executive Summary

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### Takeover activity

Deal volumes were at similar levels to those seen in 2021 with 27 firm offers announced in H1 2022. This was a 23% increase compared to H1 2021 (22 firm offers), but a 15% decline compared to H2 2021 (31 firm offers).

However, having seen large numbers of high value deals announced in H2 2021, there was a marked decline in deal values with aggregate deal value of £19.1bn and average deal value was £709m. This compares with aggregate deal values of £17.9bn and £47.3bn and average deal values of £811m and £1.5bn in H1 2021 and H2 2021 respectively.

Seven transactions had a deal value over £1bn (H1 2021: 6; H2 2021: 13) and the largest transaction was the £4.1bn offer for Homeserve by Brookfield Infrastructure Funds.

Average bid premium (measured by comparing the offer price with the target's share price immediately before the start of the offer period) was 38% (2021: 42%), with the highest bid premium being 90% (2021: 129%) and the lowest being a 6% discount (2021: 4% discount).

### P2P activity continues to grow

Public to private takeover activity was more subdued compared with recent review periods, with ten (37%) of the 27 firm offers involving private equity, family offices or individuals (H1 2021: 73%; H2 2021: 65%).

Aggregate deal value of P2P transactions was £9.6bn (H1 2021: £12.9bn; H2 2021: £31.1bn) and average deal value was £964m (H1 2021: £807m; H2 2021: £1.6bn). However, private capital continued to play an active role on the largest transactions with three (43%) of the seven £1bn plus takeovers announced in H1 2022 being P2P transactions.

### Newly-listed target companies

Eleven (44%) of the 25 companies that were the subject of firm offers in H1 2022 were admitted to trading on the London Stock Exchange within the last ten years, with four companies (Altus Strategies, CIP Merchant, ContourGlobal and SDX Energy) being admitted to trading in the last five years. In addition THG, which came to the market in September 2020, announced in May 2022 that it had received separate approaches from Nick Candy's, Candy Ventures, and a consortium comprising Belerion Capital Group and King Street Capital. Belerion Capital and Candy Ventures each subsequently announced that neither intended to make a firm offer, in advance of the 'put up or shut up' deadline of 16 June 2022.



*The prospect of recession has been rising for months and has recently heightened. Last summer the view was that interest rates would stay at ultra-low levels – that too has changed, with markets expecting UK rates to rise to around 3% by the end of 2022. Inflation is rising faster than expected. The combination of higher inflation and higher interest rates spells slower growth, with the Bank of England forecasting that the UK will show virtually no growth in the next 18 months. These pressures are coming to bear across the UK economy and public M&A is one of the areas we are starting to see the impact.*

Selina Sagayam  
Partner, Gibson Dunn

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*In recent years, P2P activity has accounted for the majority of successful UK public bids over £1 billion and financial investors still retain significant sums to deploy. The rise in competitive situations involving one or more financial investors over the last few years is symptomatic of a continued sparring for quality or undervalued assets and with financial investors as a key driving factor behind market activity. With the potential for further market volatility going forward and the likelihood of struggling targets as macro-economic factors take their toll, we could see more opportunity for P2P activity.*

James Bole  
Partner, Clifford Chance

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## SPAC bidders

Two takeovers involved special purpose acquisition company (SPAC) bidders whose shares were admitted to trading in the last 18 months:

- the £85m offer for Air Partner by Wheels Up UK (a subsidiary of NYSE-listed Wheels Up Experience)
- the £254m offer for M&C Saatchi by AdvancedAdvT

Online private jet booking platform, Wheels Up, made its market debut in July 2021 via a merger with a US SPAC, Aspirational Consumer Lifestyle Corp.

AdvancedAdvT is an acquisition vehicle listed on the standard segment of the London Stock Exchange, run by tech entrepreneur, Vin Murria. Cash shell specialist Marwyn floated AdvancedAdvT in December 2020 and then raised £130m through an institutional fundraising in March 2021 to pursue its stated investment strategy of seeking mid-cap acquisition opportunities in the software sector. However, AdvT appeared to have departed from its stated investment strategy following its purchase of a 10% shareholding in advertising company M&C Saatchi in January 2022 prior to its formal offer in May 2022 for the company, which AdvancedAdvT described as a 'good investment opportunity'.

## Bidder jurisdiction

Overseas bidders were involved in firm offers with an aggregate deal value of £13.1bn, which represented 69% of aggregate deal value for all firm offers during H1 2022. US bidders were less active than in recent review periods, being involved in six firm offers with an aggregate deal value of £5.2bn. This represented 27% of aggregate deal value in H1 2022.

## Industry

Public M&A activity was spread across a range of sectors in H1 2022 with the most active sectors being Industrial Support Services, Real Estate and Technology, Media and Telecommunications (TMT), which each saw four firm offers and collectively accounted for 44% of all firm offers. However, the largest transaction was in the Financial Services sector (the £4.1bn offer for Homeserve by Brookfield Asset Management).

The public transport sector was active with three of the UK's leading bus and train operators being the subject of firm and/or possible offers. Despite passenger numbers remaining below pre-pandemic levels, the combination of a weak sterling, government policy to award longer contracts to train operators and an anticipation that higher fuel costs and environmental concerns may persuade more commuters to use public transport, has resulted in the sector attracting interest from a range of overseas buyers.



## Deal structure

21 (78%) of the 27 firm offers announced in H1 2022 were structured as schemes of arrangement. Where an offer structure was utilised, the drivers for this were usually the existence of a competing offer, the mandatory offer requirements under the Code and/or the bidder holding a significant interest in the offeree.

78% of the firm offers announced in H1 2022 had some form of cash element and it was the exclusive form of consideration in 48% of deals. By comparison in 2021, cash featured in 94% of all deals and was the exclusive form of consideration in 75% of deals. SDX's offer for Tenaz Energy was originally structured as an all-share offer. However, five weeks after publishing its firm offer announcement, SDX announced that it would be introducing a cash alternative under which Tenaz shareholders could elect to receive cash instead of some or all of the shares that they would otherwise be entitled to receive under the merger.

## Hostile takeover

Three of the firm offers announced in H1 2022 were hostile from the outset:

- Photo-Me International was the subject of a £285m hostile bid from a company wholly-owned by its chief executive and largest shareholder, Serge Crasnianski
- M&C Saatchi received a £254m unsolicited offer on 17 May 2022 from a company connected with its deputy chair, Vinodka (Vin) Murria
- CIP Merchant Capital was the subject of a £33m hostile offer from its largest shareholder, Corporation Financiere Europeenne

Kofax's offer for Tungsten Corporation was initially recommended, but the recommendation was withdrawn when a higher competing offer emerged from Pagero Group. Kofax subsequently increased its offer, following which the Tungsten board switched its recommendation back to the Kofax offer.

Next Fifteen Communication's all-share offer for M&C Saatchi was initially recommended, but the recommendation was withdrawn after a steep decline in Next Fifteen's share price resulted in the value of its offer reducing significantly.

## Competing bids

Three companies (M&C Saatchi, Stagecoach and Tungsten Corporation) received firm offers from rival bidders.

In addition to these actual competing offers, four companies (Go-Ahead Group, Ideagen, McKay Securities and River and Mercantile Group), that were the subject of firm offers in H1 2022, attracted potential competing offers.

## Mandatory offers

There were two mandatory offers in H1 2022:

- the £285m offer for Photo-Me International by Tibergest PTE (a company owned by Serge Crasnianski)
- the £33m offer for CIP Merchant Capital by Corporation Financiere Europeenne

In both cases the bidders and their concert parties were the largest shareholders in the target company before the mandatory offers were announced, holding over 30% of the share capital.

## Shareholder engagement

There were fewer examples of institutional shareholders being vocal in their opposition or support for transactions compared with 2021. However, these were features on three all-share mergers that were announced in H1 2022:

- Capital & Counties Properties all-share merger with Shaftesbury attracted opposition from Royal London Asset Management and Investec who questioned whether a merger was in the best interests of Shaftesbury shareholders. However, Norwegian sovereign wealth fund, Norge Bank, has committed to vote in favour of the transaction in respect of its 26% interest in Shaftesbury and its 15% interest in Capco
- Legal and General Investment Management (LGIM) questioned the rationale for Tullow's all-share merger with Capricorn Energy. LGIM has a 4% shareholding in Capricorn and a 2% interest in Tullow and believes there are not "material synergies between the two companies, their strategies or their business models". Hedge fund, Kite Capital, described the deal as a solution to a problem that only existed for shareholders in debt-laden, Tullow Oil, and argued that "the underlying value of Capricorn far exceeds any value offered in the proposed Tullow combination"
- Egyptian billionaire, Naguib Sawiris's, La Mancha Fund is thought to have been influential on Elemental Royalties' £56m offer for mining company, Altus Strategies. La Mancha holds a 35% interest in Altus and a 9% interest in Elemental

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*With underlying valuation metrics supporting public M&A, activists will look to agitate for strategic share-for-share mergers, pre-empt bids and break-ups, and encourage competition for prize assets. As structures have become more flexible, activists are also now starting to compete in take privates. Whilst the threat of activist 'bumptrage' is now an established feature of the market, we also anticipate that traditional active fund managers will look to engage with and challenge both boards and bidders more, particularly around transaction value.*

Tom Matthews  
Partner and Head of EMEA  
Shareholder Activism Practice,  
White & Case

*ESG continued to embed itself into the public M&A agenda in H1 2022. The importance of ESG-related due diligence (and careful tailoring/focus for each deal) will increase further in H2. ESG obviously permeates all sectors, but the financial services, real estate, energy, industrials and transport sectors are particularly 'feeling the heat'. ESG is fundamentally about doing business the right way, and being transparent. We're increasingly seeing bidders favouring targets already ahead of legislation in their decision-making - the goalposts are not only set by law and regulation, but also by the social and moral values of companies' stakeholders, and the fast-changing geopolitical landscape*

Patrick Sarch  
Partner and Co-head of UK M&A,  
Hogan Lovells





### Post-offer statements of intention: compliance statements

25 takeovers closed during H1 2021 and the offer parties on these transactions were required to publish updates during H1 2022 on their compliance with statements of intention made during the course of their offers. All of the bidders reported compliance with their POI statements.

This 100% level of compliance is markedly different to the position seen in 2021 when only 68% of bidders reported compliance with earlier POI statements, with over half of these bidders attributing their divergence to the economic uncertainty caused by the coronavirus (COVID-19) pandemic.

### Possible offers

There were 31 possible offers announced in H1 2022 in respect of 26 companies. Nine (29%) of these progressed to firm offers during the review period, 11 (35%) terminated and 11 (35%) were ongoing as at 30 June 2022. This is the same conversion rate as that seen in H1 2021 when 29% of the 24 possible offers progressed to firm offers, but is a lower conversion rate compared to H2 2021 when 39% of the 28 possible offers progressed to firm offers during these review periods.



## Legal and regulatory developments

Legal and regulatory developments in H1 2022 included:

- the Takeover Panel (Panel) consulting on proposed changes to the presumptions contained in the definition of 'acting in concert' in the Code
- the publication of a new Code in June 2022 by the Panel following consultation papers published in December 2021 and January 2022
- the Panel publishing a new Practice Statement 33, which describes the way in which the Panel interprets and applies certain provisions of the Code in relation to the purchasing of shares in the offeree by an offeror during an offer
- the Panel updating Practice Statement 20, which deals with the obligation under Rule 2.2 of the Code to make an announcement where an offeree is the subject of rumour or speculation or there is an untoward movement in its share price
- the Panel releasing two new notes to advisers, one on the disclosure of information on Rule 9 of the Code and the other on Rule 2.8 statements. The Panel also updated its note to advisers on re-registering a public company as a private company
- the Panel publishing a new Panel Bulletin, which deals with the calculation of the value of a takeover offer
- the UK government announcing wide-ranging changes to the competition and consumer law regimes, which include significant changes to the UK merger control regime. Such reforms followed a consultation exercise launched by the government in July 2021
- the Competition and Markets Authority (CMA) imposing three record fines for breaches of initial enforcement orders in relation to the Facebook (now Meta Platforms)/Giphy and JD Sports/Footasylum acquisitions
- the CMA and the European Commission (Commission) reaching diverging conclusions on certain parallel merger reviews, including on the proposed merger of Cargotec and Konecranes
- the EU General Court (General Court) dismissing Canon's gun-jumping appeal
- the National Security and Investment Act 2021 coming into force on 4 January 2022 and the CMA updating its guidance on jurisdiction and procedure under the UK merger control regime to reflect this
- the UK government publishing its first report on the implementation of the National Security and Investment Act 2021 covering the period 4 January 2022 to 31 March 2022

These and other developments are dealt with in more detail in this report.



*For transactions that do not raise substantive national security concerns, notifications have generally been 'accepted' for review rapidly (within a week) by the Investment Security Unit (ISU). Similarly, information requests are typically proportionate for no-issues cases and non-problematic cases are usually cleared comfortably within the initial 30 working-day NSIA review period. We have generally seen investors taking the NSIA in their stride, particularly for big M&A deals. However, the past months have also shed light on some potential issues, such as the NSIA's broad scope driving a significant number of precautionary notifications, where pending market guidance from the ISU would be very welcome.*

Nicole Kar

Partner and Global Practice Head Antitrust and Foreign Investment Group, Linklaters

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## Outlook for H2 2022

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*There's still value and opportunity to be found in the UK market. Absent other factors, I would have expected it to have remained busy into 2023, with corporates looking to pursue deal opportunities after a couple of years of largely lying low and addressing more immediate challenges. The impact of the continuing conflict in Ukraine, the onset of macro-economic headwinds and more challenging debt markets are likely to put something of a brake on that. However, over the medium to longer term, I expect to see some resilience in activity levels given the continued appetite for strategically motivated, international purchases of UK plcs and the dry powder that remains available to private equity bidders.*

David Pudge  
Partner, Clifford Chance

*The M&A environment is likely to continue to be softer than 2020/21, particularly in light of significant challenges around valuation and debt financing as a result of interest rate hikes, surging inflation, the conflict in Ukraine, continuing supply chain issues, and the increasing likelihood of a recession.*

Katherine Moir  
Partner, Clifford Chance

*Equity markets have been shocked by recent news with a number of IPOs being postponed or pulled. Whilst this has had an impact of course on share prices of potential targets, we have seen in this period boards still (successfully) pushing back against 'undervalued bids'. These robust rejections however may have a short spell given the trajectory of equity capital markets and the increasing pricing squeeze caused by interest rate hikes and dampening valuations in the light of expectations of slower growth. It is clear that last year's stellar performance is not going to be matched this year. We may start to see towards the end of the year more distressed deals as these macro pressures play out.*

Selina Sagayam  
Partner, Gibson Dunn

*As previously predicted, shareholder pressure to do deals continues to feature prominently. Greater public activity of more traditional institutional investors shows an increasing acceptance of activism. In H2, we're expecting listed companies will further refine their 'identify, engage and prepare' strategy with potential activists in bid situations, to ensure there's an effective (and as constructive as possible) strategy in place to manage their demands, and any consequent public messaging/PR.*

Nicola Evans  
Partner, Hogan Lovells

*Deal activity within the pharmaceutical and life sciences sector is expected to continue throughout 2022, prompted by a significant amount of capital allocation available for M&A as well as the need for scale. Potential headwinds however include the ever-changing regulatory landscape, potential tax reform, increasing interest rates and the focus on drug affordability. Keep an eye on the energy sector too - recent geopolitics have highlighted the importance of energy security, including counterparty risk (financial, reputational, political and otherwise), price hedging, and balancing with ESG commitments. Keeping agile and adaptive to fast-moving market and broader (including regulatory) conditions, and tailoring offer tactics and documentation accordingly, is key.*

Tom Brassington  
Partner, Hogan Lovells



## Outlook for H2 2022

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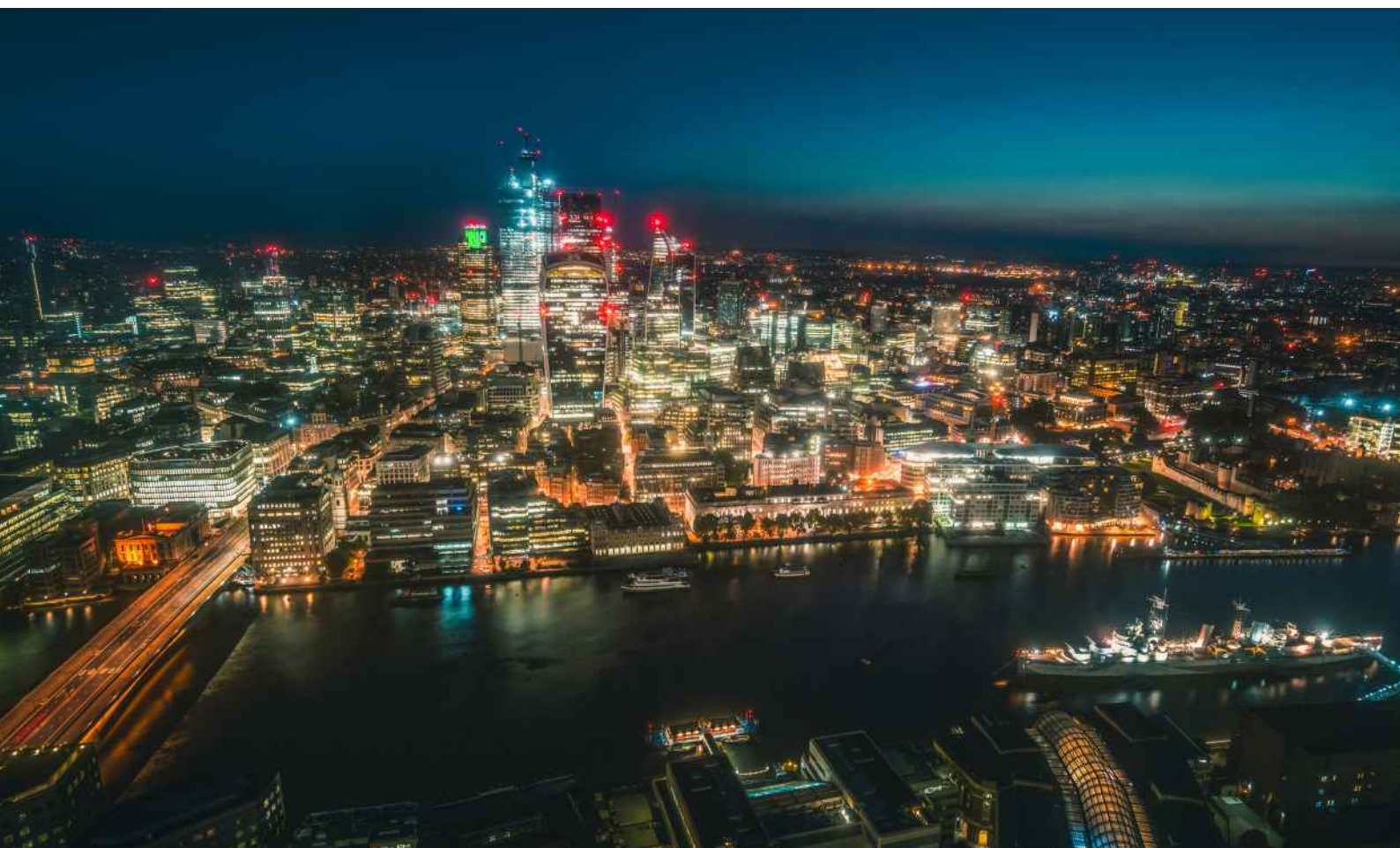
*“There are a number of factors that will affect activity over the next twelve months. They do not all point to one direction of travel. Debt financing markets are cooling and becoming less permissive than they have been in recent years and interest rates are rising, which one would suspect would suppress activity. At the same time there remain record levels of private equity and other private capital to be deployed and the share prices of listed companies remain depressed presenting real opportunities.*

*On the back of this mixed picture we expect to see a continuation of P2P activity by financial buyers. We expect less activity by strategic buyers, but where they are active we anticipate that a trend towards share offers or at least a share component in offers will continue and potentially accelerate as companies seek to hold on to cash and avoid high interest costs. With the recent deterioration in share prices, agreement of a recommended deal with targets will continue to be a lengthy and involved negotiation process as the delta between the expectations of buyers and sellers will continue to be difficult to bridge. We anticipate that recent increases on the premium paid to the unaffected price will continue until there is a period of price stability.*

*Increasing inflation and interest rates are expected to drive increased activity in the refinancing and restructuring space, which in turn may lead to M&A activity. This is likely to include an increase in the number of formal sale processes commencing, although we do not anticipate the percentage of successful outcomes of these processes will increase. We anticipate that activity will generally be across multiple sectors with the focus on ‘value’ opportunities although there may be some emphasis towards those sectors most affected by ‘cost of living’ type issues such as energy, retail etc. We expect continuing foreign interest in UK public companies, particularly from the USA and Canada.”*

Iain Fenn and Dan Schuster-Woldan  
Partners, Linklaters

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## 01 Deal value and volume

Deal volumes were at similar levels to those seen in 2021 with 27 firm offers announced in H1 2022. This was an 23% increase compared to H1 2021 (22 firm offers), but a 15% decline compared to H2 2021 (31 firm offers).



However, having seen large numbers of high value deals announced in H2 2021, there was a marked decline in deal values with aggregate deal value of £19.1bn and average deal value was £709m. This compares with aggregate deal values of £17.9bn and £47.3bn and average deal values of £811m and £1.5bn in H1 2021 and H2 2021 respectively.

Seven transactions had a deal value over £1bn with the largest transaction being the £4.1bn offer for Homeserve by Brookfield Infrastructure.

Average bid premium (measured by comparing the offer price with the target's share price immediately before the start of the offer period) was 38%, with the highest bid premium being 90% and the lowest being a 6% discount. This is not markedly different to 2021 when average bid premium was 42%, with the highest bid premium being 129% and the lowest being a 4% discount to the target's share price immediately before the start of the offer period.

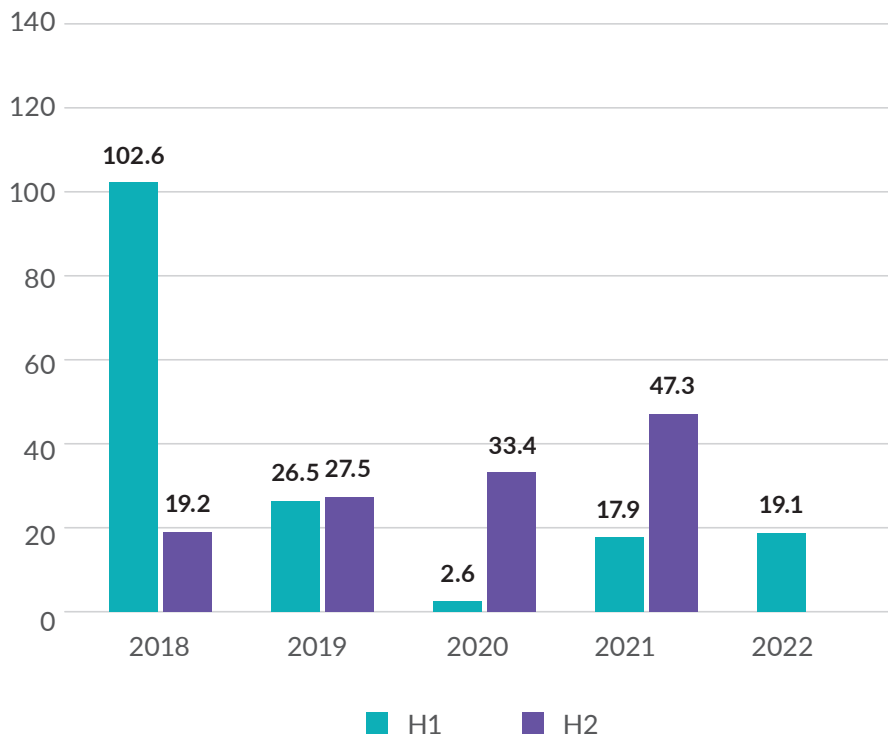


*Mounting concerns on inflation and rising interest rates had already slowed M&A in 2022, with the war in Ukraine, supply chain disruption and increased energy prices further causing pause for thought. On the plus side, previous COVID disruption seems to be past its peak. We are however seeing very resilient appetite for public M&A from domestic and international, but especially US, bidders. Large-cap deals are still hitting the front pages, including the Shaftesbury/Capital & Counties £5bn merger (where we're acting for Shaftesbury). M&A pipelines look surprisingly strong, with many waiting for the right time to execute carefully selected strategic investments or 'bargain-hunting' for undervalued assets, particularly where recent levels of competitive bidding tension are subdued.*

Patrick Sarch  
Partner and Co-head of UK M&A,  
Hogan Lovells



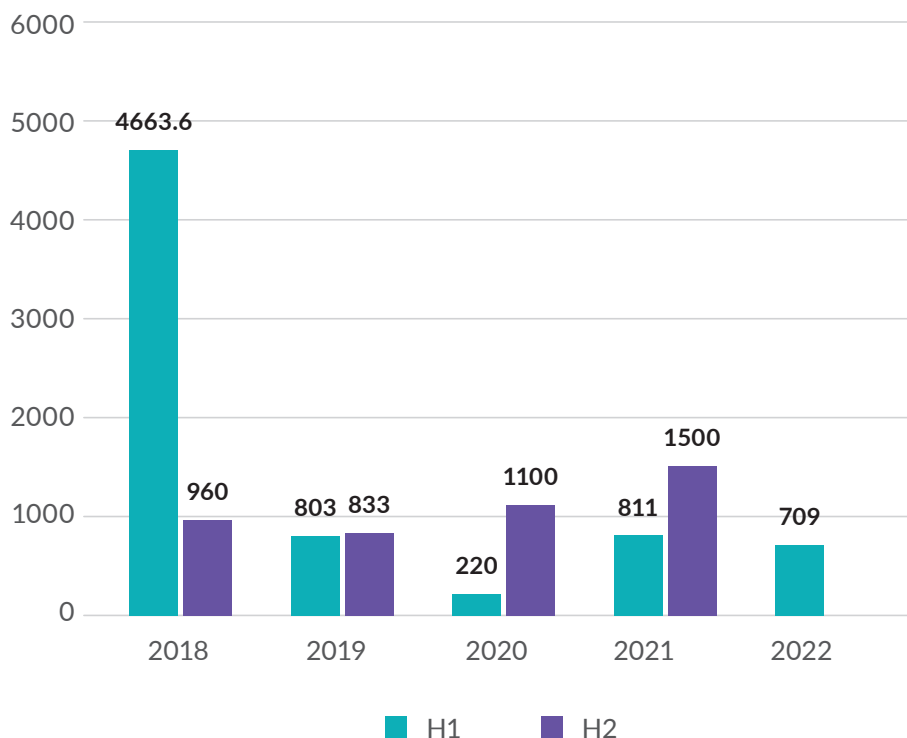
### Aggregate deal values (£bn)



There was always an expectation that M&A would fall back slightly from the highs of 2021. This has been exacerbated by the onset of the Russia/ Ukraine conflict, which sent shockwaves across the global markets at the start of the year and has since led to significant business disruption and amplified issues such as high inflation and strain on supply chains. The uncertainty surrounding the conflict is still being felt by the markets and has led to a degree of caution being applied by buyers and lenders. Saying that, we are still seeing a significant amount of activity, both with deals announcing and behind the scenes, and competition for assets continues apace. We expect bidders, in particular PE, to take advantage of the market conditions and larger P2P transactions to come back with financing still available for the right targets.

Allan Taylor  
Partner, White & Case

### Average deal values (£m)



## 02 Deal structure

21 (78%) of the 27 firm offers announced in H1 2022 were structured as schemes of arrangement. Where an offer structure was utilised, there were usually compelling reasons for this:

- the offers for Photo-Me International and CIP Merchant Capital were hostile and mandatory offers
- the offers for M&C Saatchi, Stagecoach and Tungsten each took place against the backdrop of a competing bid
- on the offer for Filta Group Holdings certain directors who were deemed to be acting in concert with the bidder held approximately 40% of the target's share capital

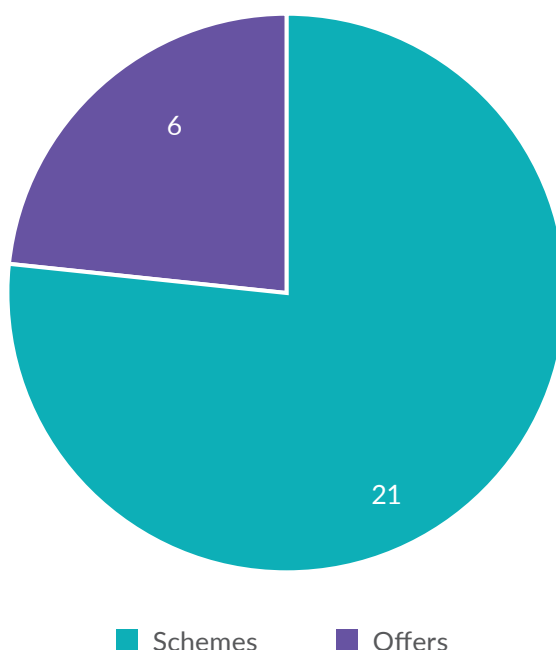
National Aviation Service (NAS), a subsidiary of Kuwait-listed Agility Public Warehousing Company, structured its offer for John Menzies as a scheme despite it acquiring a 19% stake in the airline services provider shortly before making its firm offer announcement. These shares were not eligible to vote at the court meeting to approve the scheme, but the NAS offer represented a 76% premium to Menzies share price at the start of the offer period and shareholders voted to approve the scheme at the shareholder meetings held in June 2022.



*Whilst stakebuilding is typically on the menu of options that potential bidders will give early consideration to, in practice in a UK public M&A context, it is used sparingly and modestly. This is due to the practical implications of stakebuilding (from impacting the ability of shares held by a bidder to be counted towards the voting threshold on a scheme and (if acquired prior to an offer period) counting towards the 90% squeeze-out level, to potentially setting a minimum price or floor on the offer consideration price). The offer by way of a scheme of arrangement for John Menzies was therefore unusual as a 19% stakebuilding initiative by the bidder National Aviation Service or NAS did not impact NAS' ability to secure the vote of shareholders on the scheme.*

Selina Sagayam  
Partner, Gibson Dunn

Firm offers by deal structure



### 03 Hostile, competing and mandatory offers

#### Hostile offers

Three of the firm offers announced in H1 2022 were hostile from the outset:

- Photo-Me International was the subject of a £285m hostile bid from Tibergest, a company wholly-owned by Photo-Me's chief executive and largest shareholder, Serge Crasnianski. The bid lapsed in March 2022 after failing to achieve the required level of acceptances
- CIP Merchant Capital was the subject of a £33m hostile offer from Corporation Financiere Europeenne's (CFE). CFE held just under 30% of CIP's issued share capital at the time of the firm offer announcement and its offer became unconditional in April 2022
- M&C Saatchi received a £254m unsolicited offer on 17 May 2022 from a company connected with its deputy chair, Vin Murria. The independent directors rejected the offer and recommended a £310m offer made on 20 May by Next Fifteen Communications.

Next Fifteen Communication's all-share offer for M&C Saatchi was initially recommended, but the recommendation was withdrawn after Next Fifteen's share price fell more than 30%, thereby reducing the value of its bid to £234m. Both sets of offers for M&C Saatchi are ongoing.

Kofax's offer for Tungsten Corporation was initially recommended, but the recommendation was withdrawn when a higher competing offer emerged from Pagero Group. Kofax subsequently increased its offer, following which the Tungsten board switched its recommendation back to the Kofax offer.

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*Last year we predicted more bidders would take negotiations directly to shareholders and the recent Countryside process is a good example of this. Following Inclusive Capital Partners' 'bear hug' announcement, the company faced pressure from shareholders to engage, which ultimately concluded in the board initiating a formal sale process. We expect this sort of active engagement with and by shareholders to continue, leading to more hostile and competitive processes in 2022.*

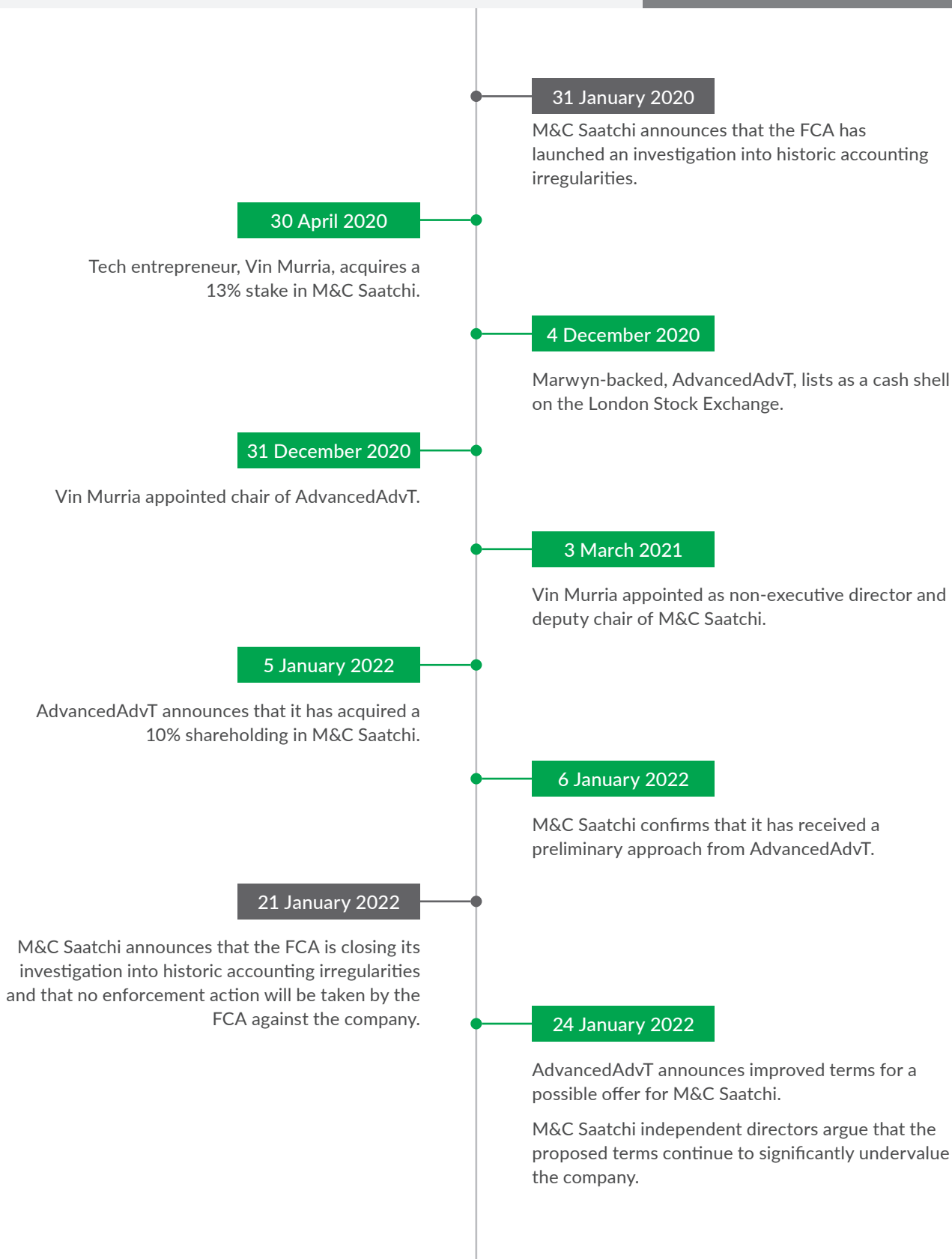
Dominic Ross  
Partner, White & Case

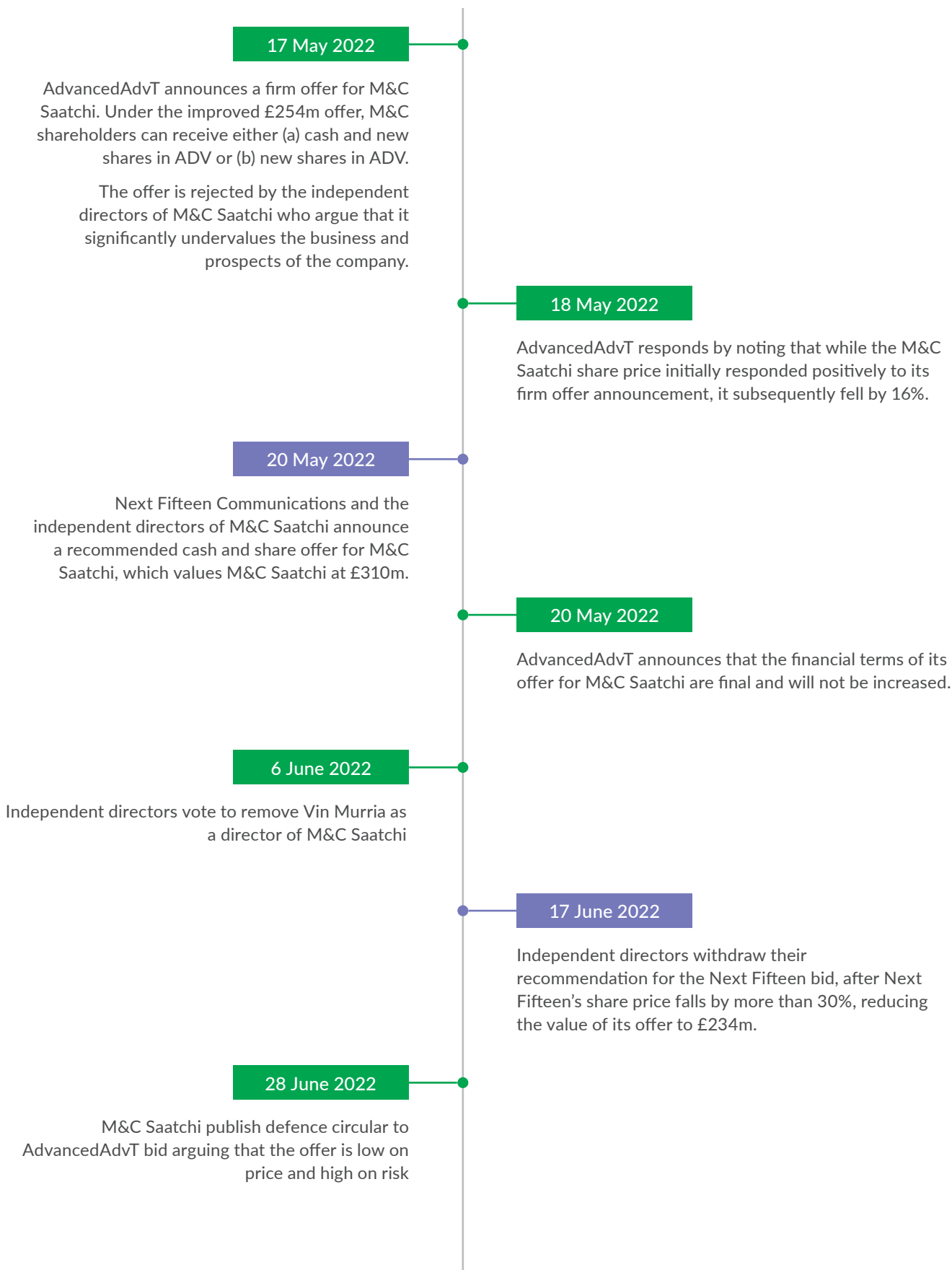




## Deal in focus

### Competing offers for M&C Saatchi by AdvancedAdvT and Next Fifteen Communications Group





## Competing offers

Three companies (M&C Saatchi, Stagecoach and Tungsten Corporation) received firm offers from rival bidders.

### *M&C Saatchi*

M&C Saatchi announced in January 2022 that it was in discussions with AdvancedAdvT, a company connected with one of its directors, Vin Murria. After several extensions to its put-up or shut-up (PUSU) deadline, AdvancedAdv T announced a £254m bid for the company on 17 May 2022, which was rejected by the independent directors. On 20 May 2022 M&C Saatchi announced that the directors were recommending a £310m cash and share offer from Next Fifteen Communications. However, this recommendation was withdrawn after a decline in Next Fifteen's share price significantly reduced the value of its offer. In June 2022 the independent directors voted to remove Vin Murria as a director of the company. Both sets of offers are ongoing.

### *Stagecoach*

Stagecoach Group and National Express announced a £481m recommended all-share merger with National Express on 14 December 2021. As part of its consideration of the merger, the CMA issued an interim enforcement order (IEO) in January 2022, which prevents the transaction from completing until the CMA has completed its own investigation into the Stagecoach/National Express proposed merger. In March 2022 the boards of Stagecoach and German asset manager, DWS Infrastructure, announced that they had reached agreement on the terms of £595m cash offer. The Stagecoach directors withdrew their recommendation of the National Express offer in favour of the DWS offer. The DWS offer became unconditional on 20 May 2022.

### *Tungsten Corporation*

In December 2021 Tungsten announced that it was in preliminary discussions with three separate parties regarding possible offers for the company. Two of these parties, Accel-KKR and Jaggaer, subsequently announced that they had no intention to bid, but in March 2022 the third bidder, Kofax, announced a £54m recommended cash offer for the company.

On the same day as the Kofax firm offer announcement, Pagero Group, announced that it was in the advanced stages of preparing a possible cash offer for Tungsten.

On 9 May 2022 the Tungsten and Pagero boards announced the terms of a £61m cash offer for Tungsten, which resulted in the Tungsten board withdrawing its recommendation of the Kofax offer. Kofax increased its offer on 20 May, which resulted in the Tungsten board switching its recommendation back to the Kofax offer. The Kofax scheme became effective on 17 June 2022.



### Potential competing offers

In addition to the above transactions, the following companies that were the subject of firm offers received potential competing bids in H1 2022:

- Go-Ahead Group was the subject of a firm offer from a consortium comprising Kinetic Holding Company and Globalvia Inversiones and a possible offer from Kelsian Group
- Ideagen was the subject of a firm offer from Hg Pooled Management and also received separate possible offers from Astorg Asset Management and Cinven
- McKay Securities received a firm offer from Workspace Group and a possible offer from State Asset Management
- River and Mercantile Group received a firm offer from AssetCo and a possible offer Premier Miton Group

### Mandatory offer

There was two mandatory offers in H1 2022:

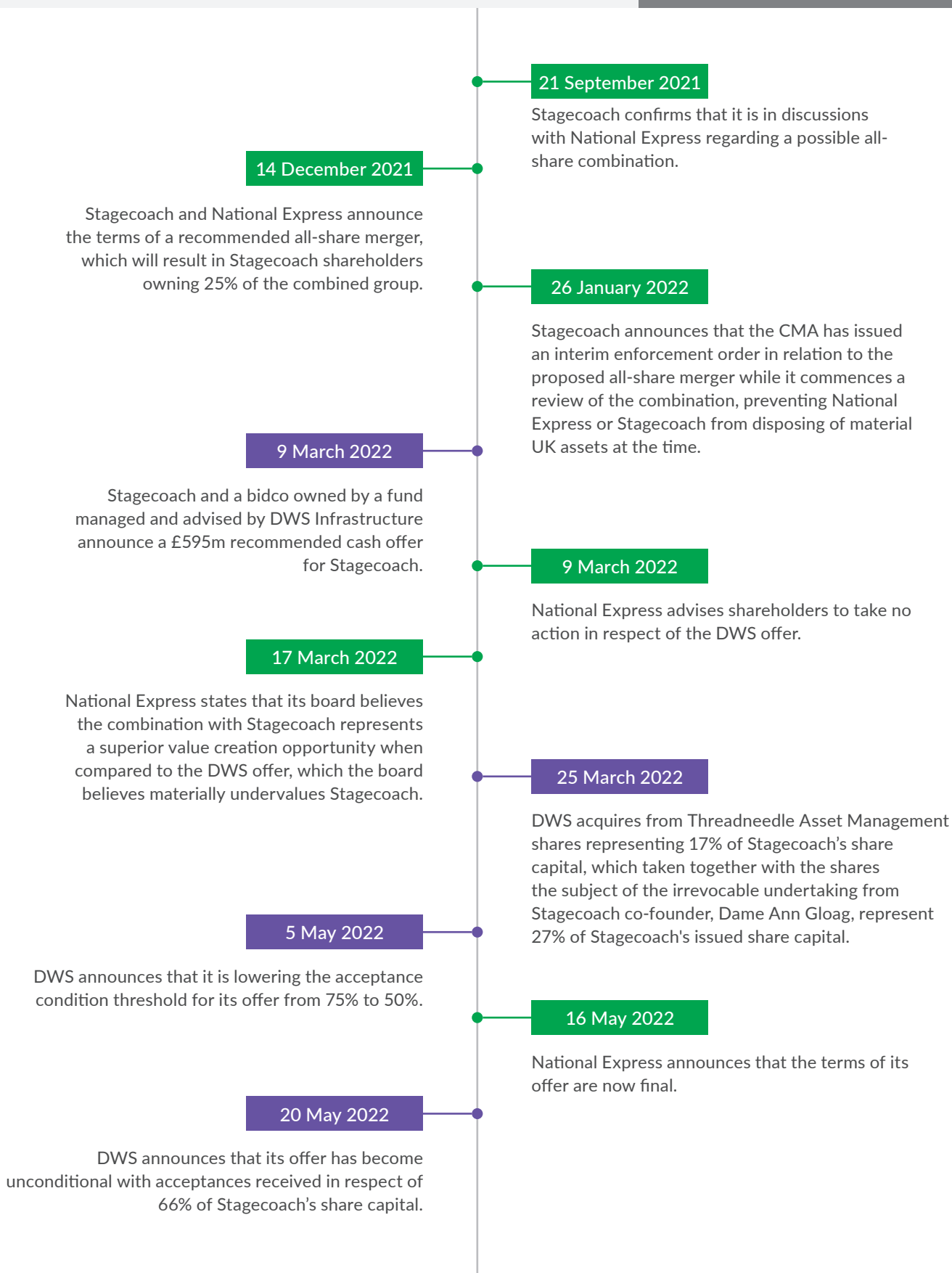
- the £285m offer for Photo-Me International by Tibergeest PTE (a company owned by Serge Crasnianski)
- the £33m offer for CIP Merchant Capital by Corporation Financiere Europeenne

In both cases the bidders and their concert parties were the largest shareholders in the target company before the mandatory offers were announced, holding over 30% of the share capital. These transactions are discussed in more detail under 'Hostile offers' above.



## Deal in focus

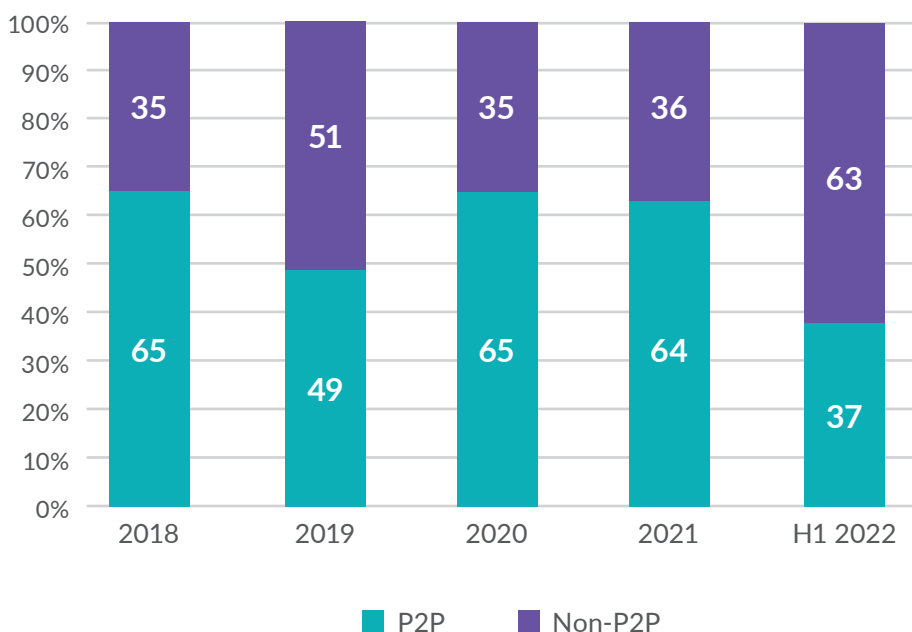
### Competing offers for Stagecoach by National Express and DWS Infrastructure



## 04 Public to private transactions

There were ten P2P transactions in H1 2022 (H1 2021: 16; H2 2021: 20) which represented 37% of all firm offers announced during the period. This is significantly lower proportion than in H1 2021 and H2 2021 when firm offers that involved private equity, financial investors and individuals/family offices accounted for 73% and 65% of all firm offers respectively.

P2P transactions as a proportion of all firm offers



Aggregate deal value of P2P transactions was £9.6bn (H1 2021: £12.9bn; H2 2021: £30.5bn) and average deal value was £964m (H1 2021: £807m; H2 2021: £1.5bn).

Eight (80%) of the nine P2P transactions were cash offers, one (10%) was a cash and share offer with an all-share alternative and one (10%) was a cash offer with a partial share alternative.

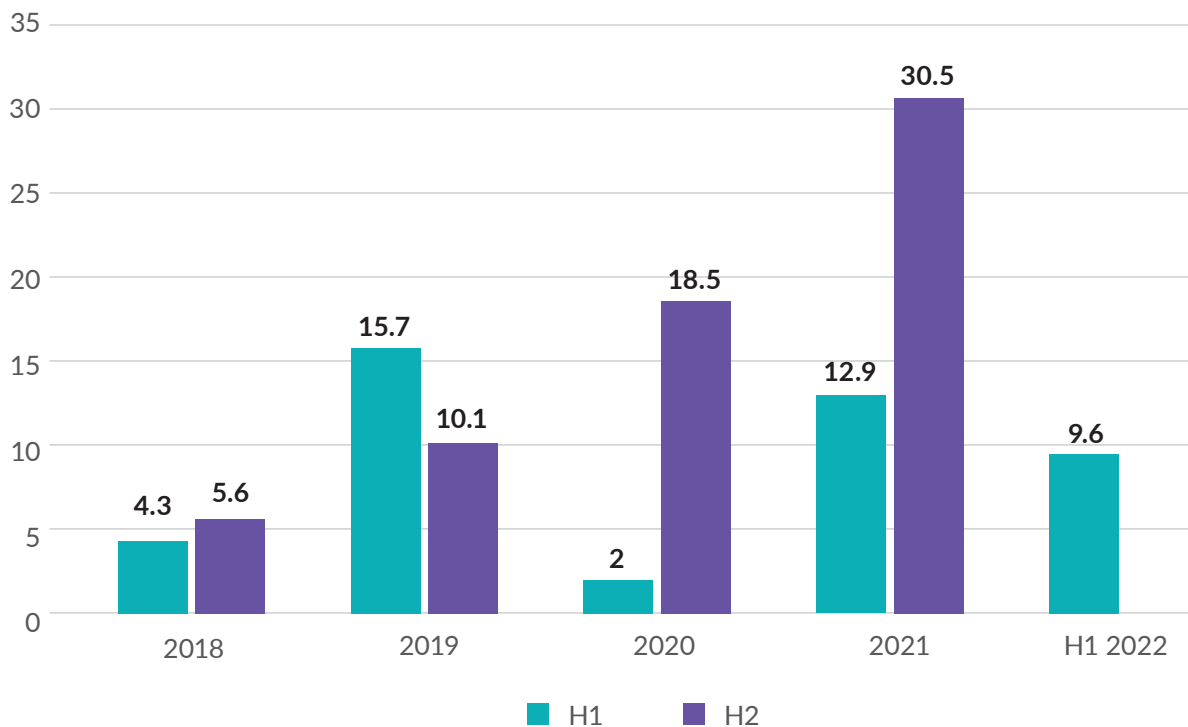


*PE gained first mover advantage in 2021, acting on a historically high proportion of UK public company takeovers, as businesses and the markets struggled to correct following the pandemic. Despite ongoing geo-political issues, economic headwinds and the increased regulatory scrutiny being faced by PE, particularly in the US, PE bidders are still very active and we expect PE interest to continue into H2 2022. In particular, we expect PE to continue to engage on larger, more significant transactions, increasingly as part of consortium bids, although this will be dependent on the strength of the debt markets. We also anticipate boards in particular sectors hit hardest by the disruption may start to see the benefit of moving away from the scrutiny of public markets, leading to the return of management buyouts.*

Tom Matthews  
Partner and Head of EMEA  
Shareholder Activism Practice,  
White & Case



### Aggregate deal value of P2P transactions (£bn)

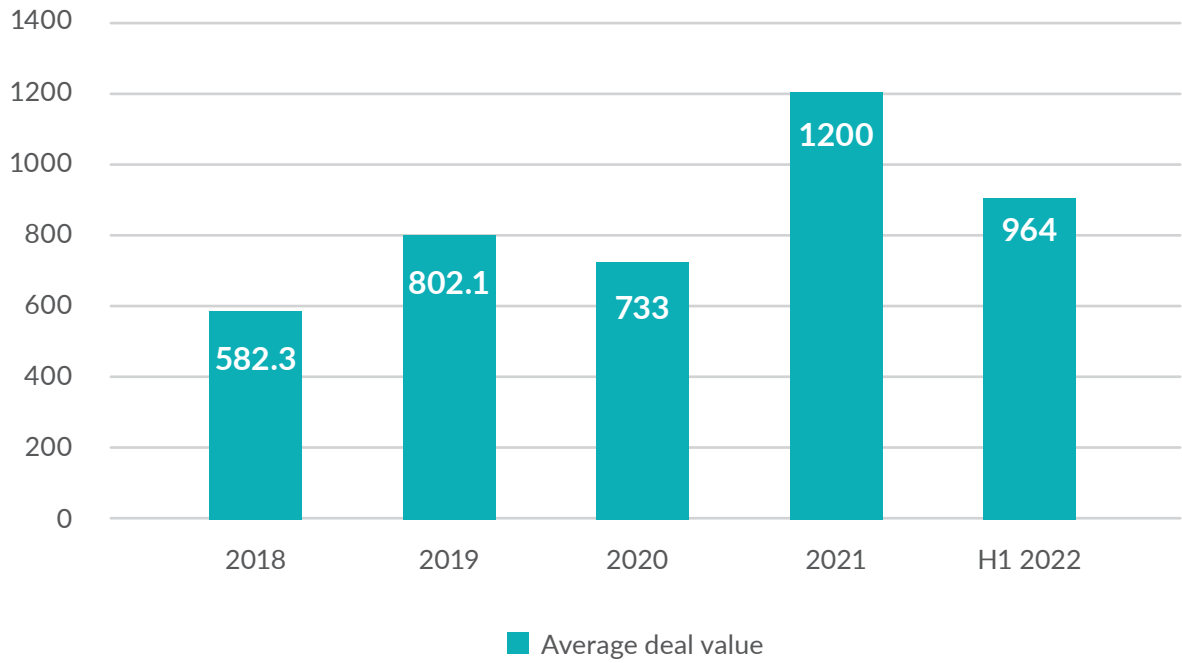


The voracious appetite of PE buyers seems to be abating with H1 2022 seeing a sharp dip in P2P activity. P2P accounted for around 37% of all firm offers – in sharp comparison to three of the last four years where we have seen P2Ps accounting for circa 65% of firm offer takeover activity. PE and other sources of private capital are still however writing the ‘bigger cheques’ with average deal values still exceeding non-P2P bids. We are likely to see similar moderation in P2P activity levels in H2 2022 both in terms of volumes and pricing.

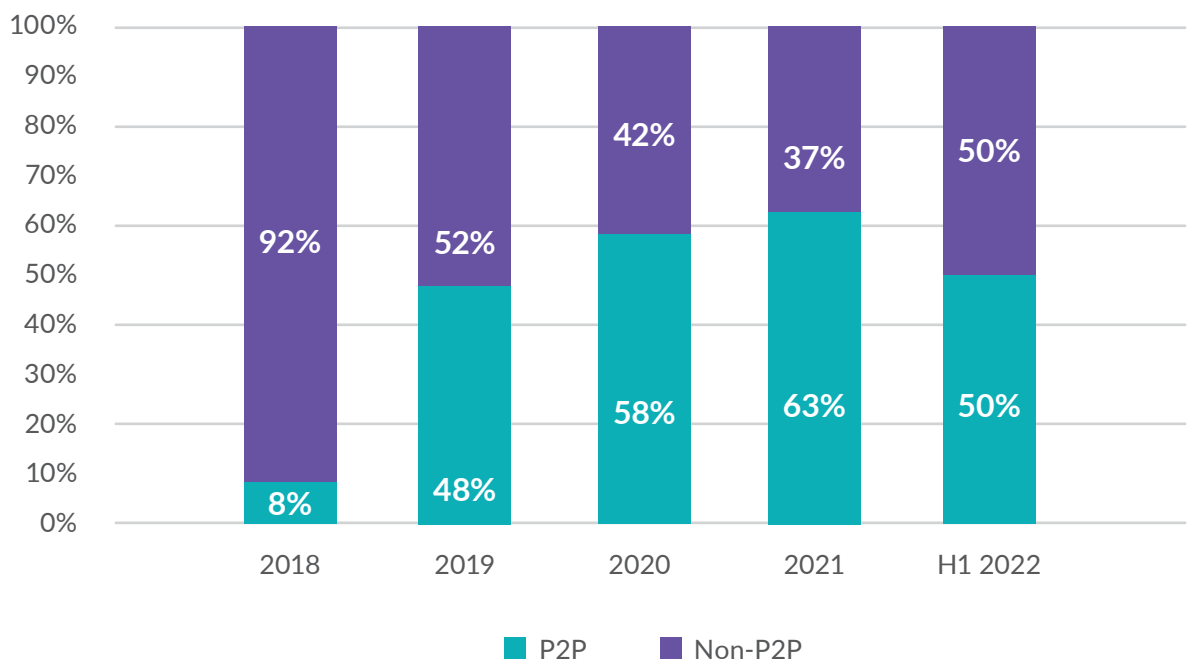
Selina Sagayam  
Partner, Gibson Dunn



Average deal value for P2P transactions (£m)



Aggregate value of P2P transactions as a proportion of all firm offers





## 05 Bidder jurisdiction

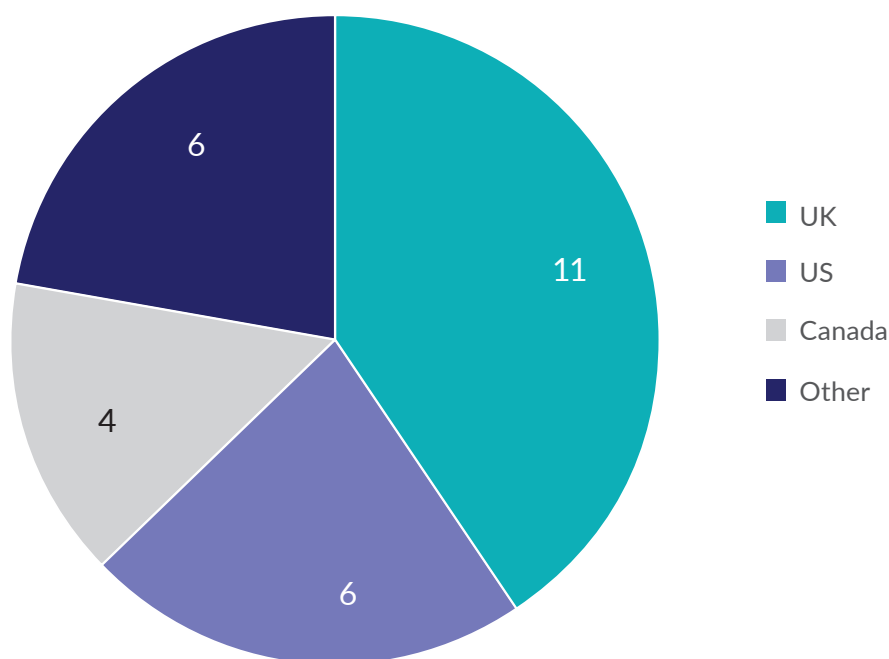
There were fewer takeovers in H1 2022 involving overseas bidders compared with recent review periods. Of the 27 firm offers announced in H1 2022:

- eleven (41%) were made by UK bidders<sup>1</sup>
- six (22%) were made by US bidders
- four (15%) were made by Canadian bidders
- six (22%) were made by bidders from other jurisdictions

Overseas bidders were involved in firm offers with an aggregate deal value of £13.1bn (H1 2021: £16.6m; H2 2021: £42.4bn), which represented 69% of aggregate deal value for all firm offers during H1 2022 (H1 2021: 93%; H2 2021: 92%).

US bidders were less active than in recent review periods, being involved in six firm offers with an aggregate deal value of £5.2bn, which represented 27% of aggregate deal value in H1 2022.

Bidder jurisdiction (firm offers)

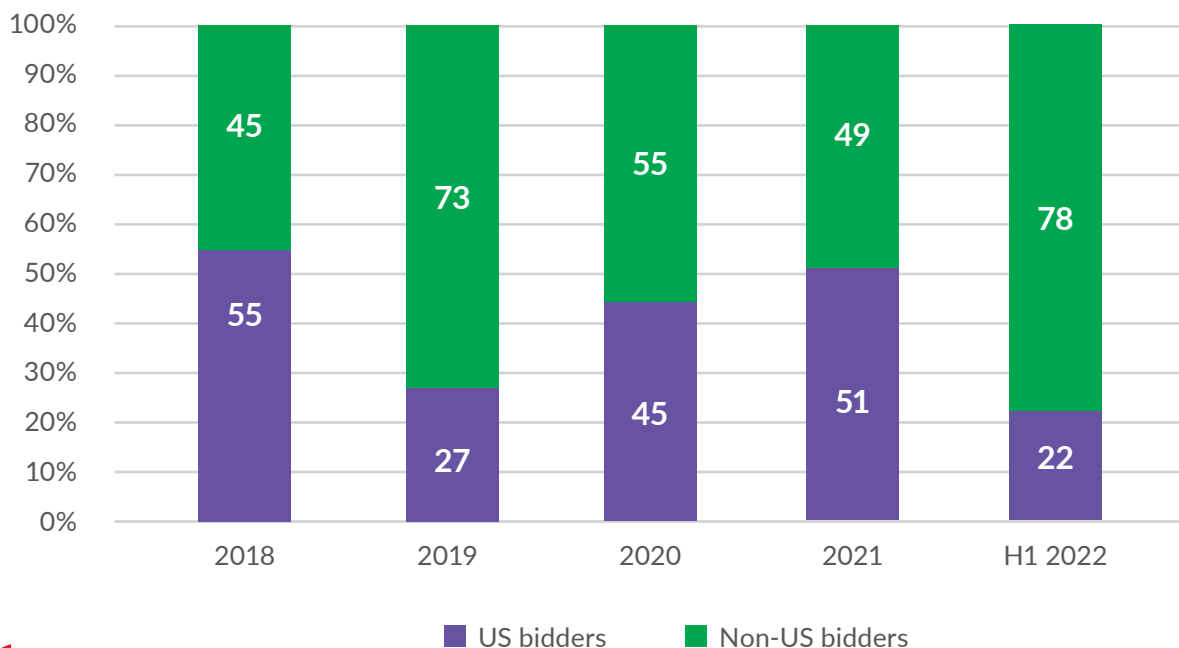


*We saw a sharp drop in non-UK bidders with US bidder appetite noticeably impacted. With US inflation hitting a 40-year peak of 8.6%, the Wall Street Journal predicting that the US will fall into recession in the next 12 months and other surveys of US boards reinforcing the expectation and impact of recession on their businesses, it is not so surprising that US buyers have started to show caution and reserve in their global acquisition strategies.*

Selina Sagayam  
Partner, Gibson Dunn

<sup>1</sup> For these purposes we have treated AdvancedAdvT, which is incorporated in the BVI and headquartered in London, as a UK bidder.

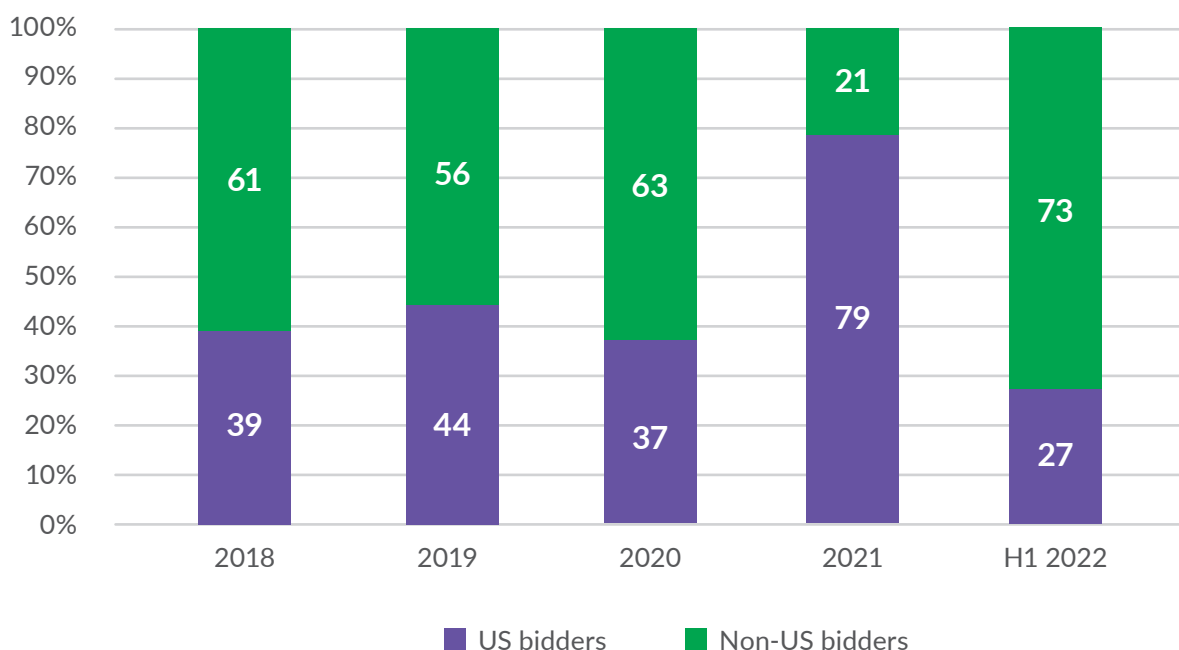
### US bidders as a proportion of all firm offers



The US has dominated the market in recent years and it is not unsurprising that it has fallen back slightly from the highs of 2021 in the wake of geo-political instability. However, we continue to see high levels of interest from non-UK bidders, particularly from across the Atlantic.

Dominic Ross  
Partner, White & Case

### Aggregate deal value of US bids as a proportion of all firm offers



## Analysis of deal volume and deal value by bidder jurisdiction

Bidder Jurisdiction	Number of bidders	Aggregate deal value
UK	11	£6bn
US	6	£5.2bn
Canada	4	£5.8bn
Australia and Spain	1	£648m
France	1	£285m
Germany	1	£595m
Kuwait	1	£571m
Luxembourg	1	£33m
Sweden	1	£61m



## 06 Industry

Public M&A activity was spread across a range of sectors in H1 2022 with the most active sectors being Industrial Support Services, Real Estate and TMT which each saw four firm offers, which accounted for 44% of all firm offers during H1 2022.



### Financial Services

The Financial Services sector saw the largest transaction with the £4.1bn offer for home repairs and emergency services group, Homeserve, by Canada's Brookfield Asset Management. Before Brookfield's approach, Homeserve's share price was at a five-year low and the Brookfield offer represented a 71% premium to the Homeserve share price at the time of Brookfield's possible offer announcement.

The Financial Services sector also saw the £1.6bn offer for Brewin Dolphin by Royal Bank of Canada. RBC plans to combine Brewin with its existing UK wealth management business, with the combined group having £64bn assets under management. The acquisition of Brewin follows the £279m takeover last year of UK wealth manager, Charles Stanley by US financial group, Raymond James.

### Real Estate

There were four firm offers in the Real Estate sector, two of which were structured as all-share mergers, one as an all-share merger with a partial cash alternative and one as a cash and shares offer. Two of these were £1bn plus transactions: Capital & Counties Properties' £2bn offer for Shaftesbury, which will create a mixed-use central London REIT with a portfolio valued at approximately £5bn and LXi REIT's £1.5bn offer for Secure Income REIT, which will see the combined group having a portfolio of properties valued at approximately £3.9bn.

### Aviation Services

One of the largest transactions in 2021 was the £3.5bn takeover bid for private jet services company, Signature Aviation, by Blackstone, Global Infrastructure Partners and Cascade in 2021. H1 2022 saw two transactions in the aviation services sector:

- the £571m offer for airline services provider, John Menzies, by National Aviation Services, a subsidiary of Kuwait-listed, Agility Public Warehousing Company
- the £85m offer for Air Partner by Wheels Up, a start-up aviation business which went public in 2021 through a merger with a US SPAC

National Aviation Services' offer for John Menzies was initially hostile after the board of John Menzies rejected two preliminary approaches on the basis that they undervalued the company (see: [John Menzies continuously rejects Kuwait rival's 'opportunistic' takeover bid](#)). However, after receiving a third and final revised proposal, Menzies provided its unanimous recommendation to shareholders.

## Public transport

Train and bus companies struggled during the coronavirus pandemic as people were instructed to avoid non-essential travel. Passenger numbers have since recovered, but are still below pre-pandemic levels with revenues expected to be further hit by national rail strikes. However, despite these financial headwinds some analysts have speculated that rising fuel costs and environmental considerations will encourage more commuters to take public transport. In addition, the government's decision to award longer contracts for train operators is believed to make the sector more attractive to longer-term investors, such as infrastructure funds.

This has been reflected in H1 2022 by heightened interest from overseas bidders in bus and train operators:

- German infrastructure fund, DWS Infrastructure, successfully completed a £595m takeover of Stagecoach trumping an offer from Stagecoach rival, National Express
- Go-Ahead Group was the subject of a £650m offer by a consortium consisting of Australian bus operator Kinetic Holding and Spain's Globalvia Inversiones. The consortium is backed by Canadian pension fund, OPTrust
- Go-Ahead Group received a separate approach from Australian-headquartered, Kelsian Group
- FirstGroup was the subject of a possible offer from I Squared Capital, a private equity group headquartered in Miami

The approaches to Go-Ahead Group come after a turbulent year for the company following an accounting scandal which resulted in Go-Ahead being fined £23.5m by the UK government and stripped of its Southeastern rail franchise after failing to declare £25m of taxpayer funding that should have been returned by Southeastern. Earlier this year, Go-Ahead delayed the publication of its 2021 financial results and its shares were temporarily suspended from trading.

For further details, see: [Australian-Spanish consortium set to go ahead with £650m takeover of UK transport company.](#)

## Mining

Toronto-listed, Elemental Royalties', all-share offer for mining company, Altus Strategies, is backed by La Mancha Fund and other institutional investors. La Mancha Fund was set up by Egyptian billionaire, Naguib Sawiris, last year to hold his family's gold mining investments. The fund holds a 35% interest in Altus and a 9% interest in Elemental. One of the funds stated aims is to support external growth opportunities through bolt-on acquisitions, regional consolidation, and exploring mergers with larger players.



## Aggregate deal value by sectors (H1 2022)

Sector	Aggregate deal value	As a % of aggregate deal value	Number of transactions
Financial Services	£5.8bn	30%	3
Real Estate	£3.8bn	20%	4
TMT	£2.9bn	15%	4
Energy & Utilities	£1.8bn	9%	1
Travel, Hospitality, Leisure & Tourism	£1.3bn	7%	3
Industrial Support Services	£1.1bn	6%	4
Healthcare	£870m	5%	1
Natural Resources	£743m	4%	3
Transportation Services	£571m	3%	1
Consumer Products	£298m	2%	2
Investment (non-Real Estate)	£33m	0%	1



## 07 Nature of consideration

Of the 27 firm offers announced in H1 2022:

- 13 (48%) were cash only offers
- four (15%) were cash and share offers
- six (22%) were all-share offers
- one (4%) was an all-share offer with a cash alternative
- one (4%) was an all-share offer with a partial cash alternative
- one (4%) was a cash and shares offer with an all-share alternative
- one (4%) was a cash offer with a partial share alternative

78% of the firm offers announced in H1 2022 had some form of cash element and it was the exclusive form of consideration in 48% of deals. By comparison in 2021, cash featured in 94% of all deals and was the exclusive form of consideration in 75% of deals.

SDX's offer for Tenaz Energy was originally structured as an all-share offer. However, five weeks after publishing its firm offer announcement, SDX announced that it would be introducing a cash alternative under which Tenaz shareholders could elect to receive cash instead of some or all of the shares that they would otherwise be entitled to receive under the merger.

### Overseas-listed bidders issuing paper

The consideration on GXO Logistic's offer for Clipper Logistics comprised cash and shares in New York-listed GXO Logistics. GXO has said it will provide a dealing facility to Clipper shareholders who held their Clipper shares in certificated form or in uncertificated form through the Clipper Corporate Sponsored Nominee, under which they may sell all (but not some) of their GXO depositary interests free of dealing costs and commissions for an eight-month period following completion of the takeover.

The consideration on Elemental Royalties' £56m offer for Altus Strategies comprised shares in Toronto-listed Elemental. Altus is dual-listed in London and Toronto and its shares also trade on the OTCQX in the United States. These factors may have made Altus shareholders more receptive to holding equity in a Toronto-listed company.

### B Share scheme

Martin Gilbert's AssetCo agreed a takeover of investment group, River and Mercantile Group (RMG), in H1 2022. The deal was structured as an all share offer with RMG shareholders also receiving £190m in cash from the sale of RMB's solutions business to Schroders. The return of cash to the RMG Shareholders was effected by way of a B Share scheme.

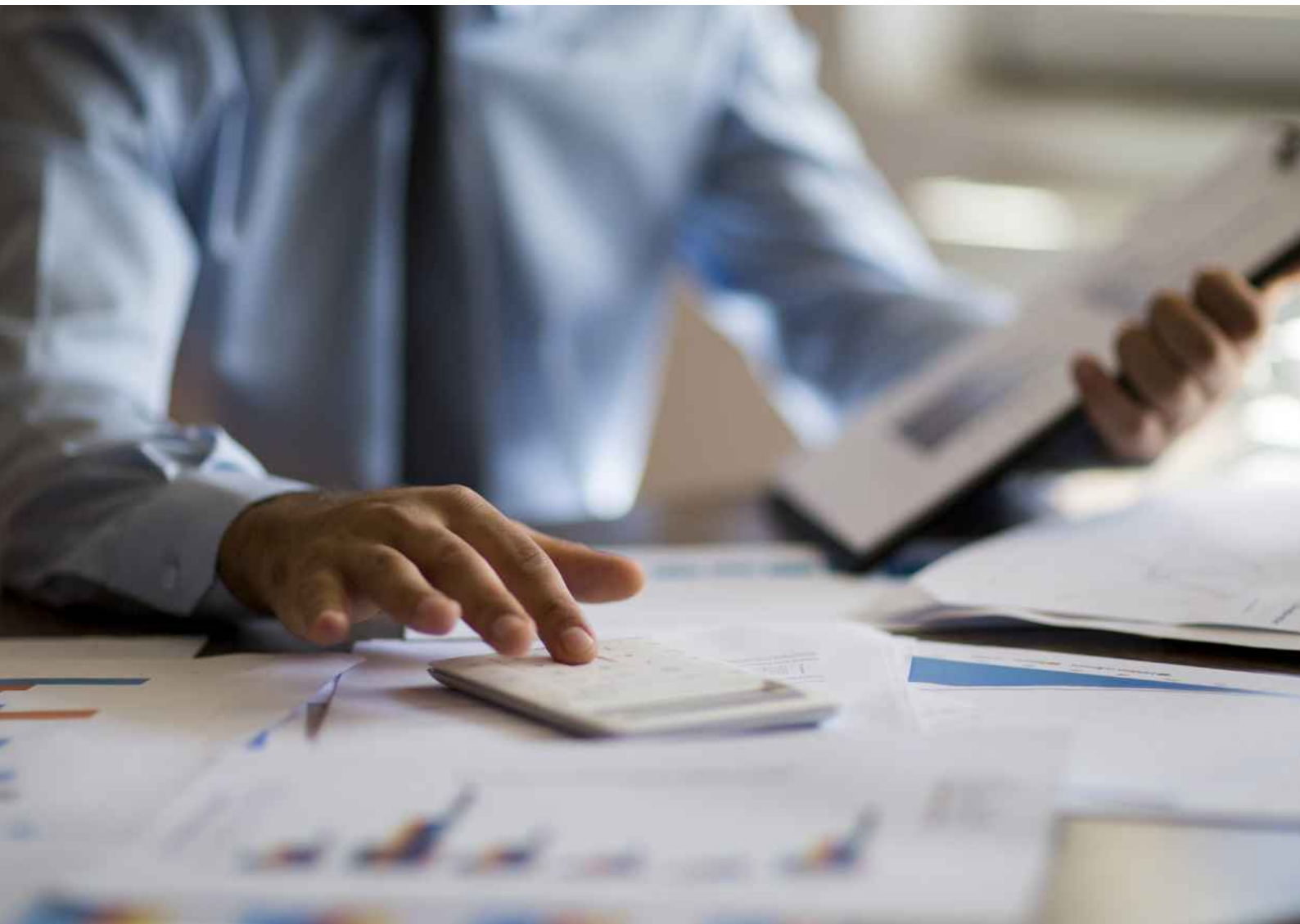
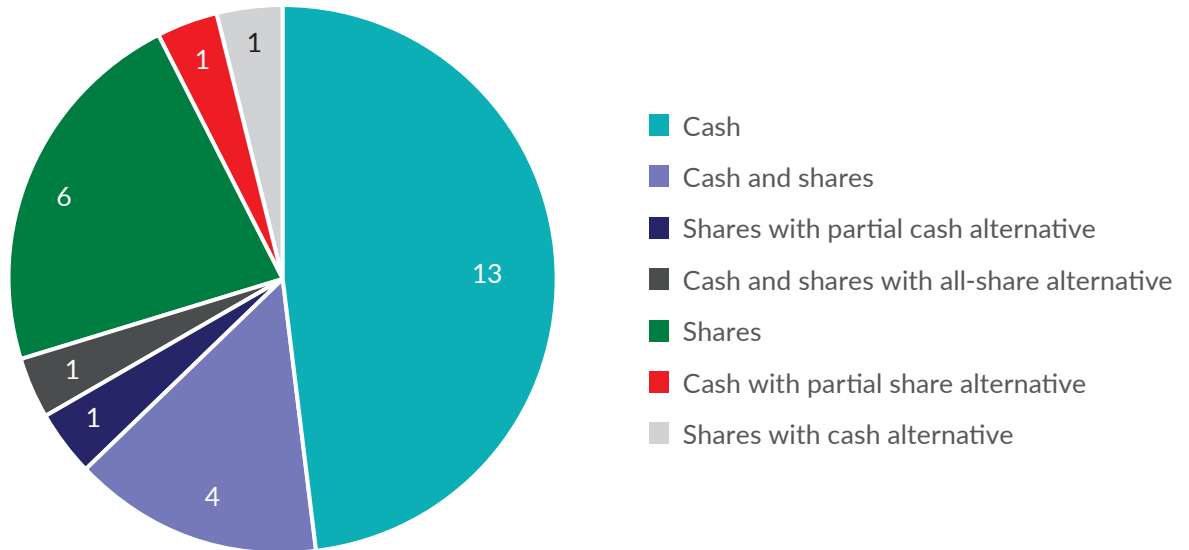


*We expect listed bidders to increasingly table their own equity as consideration, with targets tending to instead insist that 'cash remains king'. There will be pressure for cash to constitute a large portion (if not all) of the deal, with any listed equity making up the remainder - coupled with 'mix and match' and dealing facilities to enhance attractiveness to shareholders. Getting these parameters right from an early stage is key, as shown on Clipper Logistics' £1bn takeover by GXO (where we acted for Clipper). We are seeing strong interest in that sector, in terms of consolidation but also financial investors - the pandemic, increasing digitalisation, and supply chain challenges have enhanced the value of resilient logistics, with competition and valuations increasing due to the relatively scarce number of these businesses.*

Daniel Simons  
Partner, Hogan Lovells



### Nature of consideration



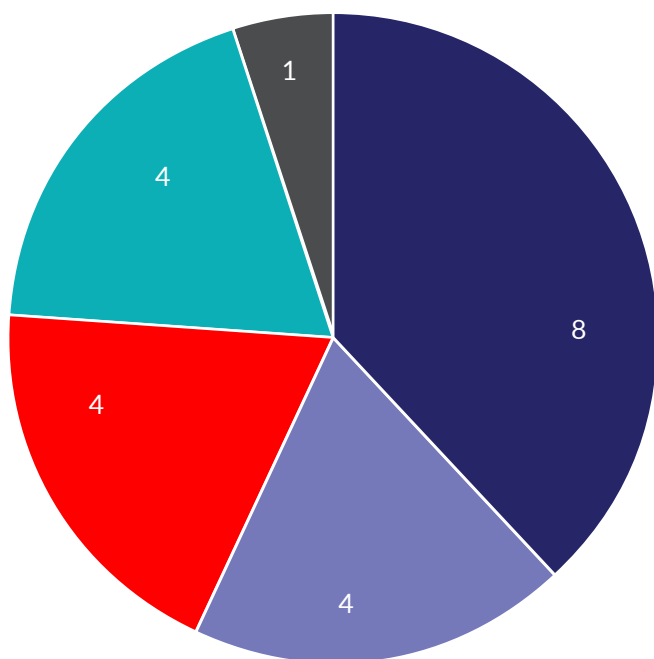


## 08 Financing

Of the 21 firm offers announced in H1 2022 that involved a cash consideration element:

- 12 (57%) were funded wholly or partly from existing cash resources
- eight (38%) were funded wholly or partly from debt finance
- five (24%) were funded by equity subscriptions to bidco/PE funds

Source of finance for cash element of offer



- Existing cash resources
- Existing cash resources and debt finance
- Debt finance
- Debt finance and equity capital raising
- Debt finance and equity subscriptions
- Equity subscriptions



With the dampening of P2P activity, it was not surprising that debt finance only featured in 38% of firm offers in H1 2022 compared to 66% in 2021. With the volatility in equity markets, we can also expect to see a move towards cash deals as boards and shareholders become increasingly cautious about stock deals. The changing fortunes of competing bidder Next Fifteen Communications in their cash and shares bid for M&C Saatchi (whose board withdrew their recommendation following a fall in Next Fifteen's share price) and Stagecoach's withdrawal of their recommendation of the all-share merger with National Express in favour of the all-cash offer by DWS, exemplifies the increasing challenge that stock bidders will face.

Selina Sagayam  
Partner, Gibson Dunn



## 09 Possible offers, formal sale processes and strategic reviews

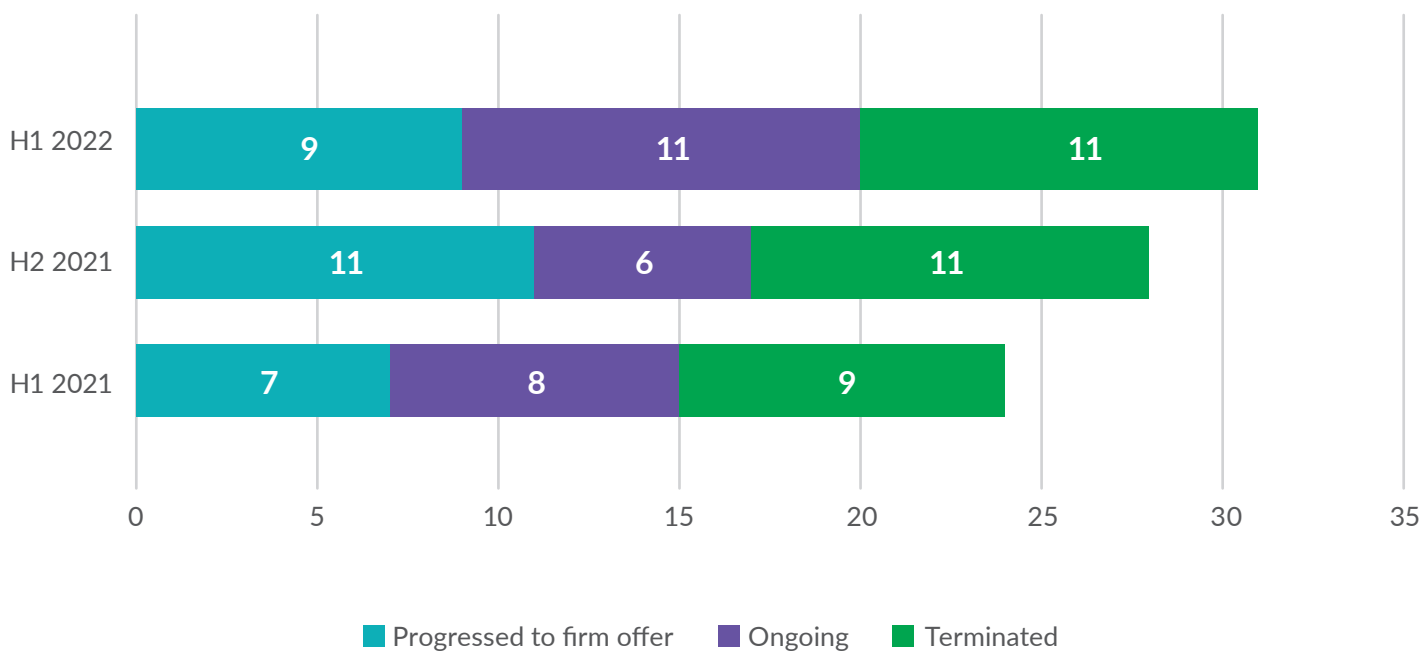
### Firm offers

19 (70%) of the 27 firm offer announcements made in H1 2022 were made without any prior possible offer, formal sale process and/or strategic review announcement. The remaining offers involved either a possible offer announcement and/or the announcement of a formal sale process/strategic review.

### Possible offers

There were 31 possible offers announced in H1 2022 in respect of 26 companies. Nine (29%) of these progressed to firm offers during the review period, 11 (35%) terminated and 11 (35%) were ongoing as at 30 June 2022. This is the same conversion rate as that seen in H1 2021 when 29% of the 24 possible offers progressed to firm offers, but is a lower conversion rate compared to H2 2021 when 39% of the 28 possible offers progressed to firm offers during these review periods.

Possible offers progressing to firm offers



One of the companies that received expressions of interest from rival bidders was THG, which announced in May 2022 that it had received separate approaches from Nick Candy’s, Candy Ventures, and a consortium comprising Belerion Capital Group and King Street Capital. Any takeover would need the backing of THG’s founder and CEO, Matthew Moulding, who holds 15% of the company’s issued share capital and a special share that provides him with enhanced voting rights on a change of control. THG had announced in October 2021 its intention to cancel the special share rights in order to facilitate the group’s application to transition from a standard listing to a premium listing, but the special share rights currently remain in place. One of the consortium bidders, Belerion Capital, has ties to THG through its founder and chief investment officer, Iain McDonald, who is also a non-executive director of THG.

Belerion Capital and Candy Ventures each subsequently announced that neither intended to make a firm offer, in advance of the ‘put up or shut up’ deadline of 16 June 2022.

## Formal sale processes and strategic reviews

A formal sale process (FSP) is a mechanism available under the Code for a company to seek one or more potential buyers for the company. Where an FSP commences, an offeree will be able to seek dispensation from:

- the requirements to identify publicly all offerors that have approached the offeree
- the automatic put up or shut up (PUSU) deadline
- the general prohibition of deal protection measures

Ten companies announced FSPs and/or strategic reviews during H1 2022. Eight were ongoing and two had terminated as at 30 June 2022.

## “

*It is of note that in H1 2022, ten companies announced a formal stage process – which is already double the number of FSPs announced during the whole of 2021. With companies coming under increasing inflationary and growth pressures, we may see more distressed deals and FSPs as companies choose to put themselves on the block. Over 1,800 registered company insolvencies were recorded in the UK in May alone, up 79% from the same month last year.*

Selina Sagayam  
Partner, Gibson Dunn

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## 10 Reverse break fees and offer-related arrangements

Break fees payable by the offeree to the offeror are prohibited under the Code unless the Panel's consent is obtained. The Panel will only consent to a break fee being payable in limited circumstances, including:

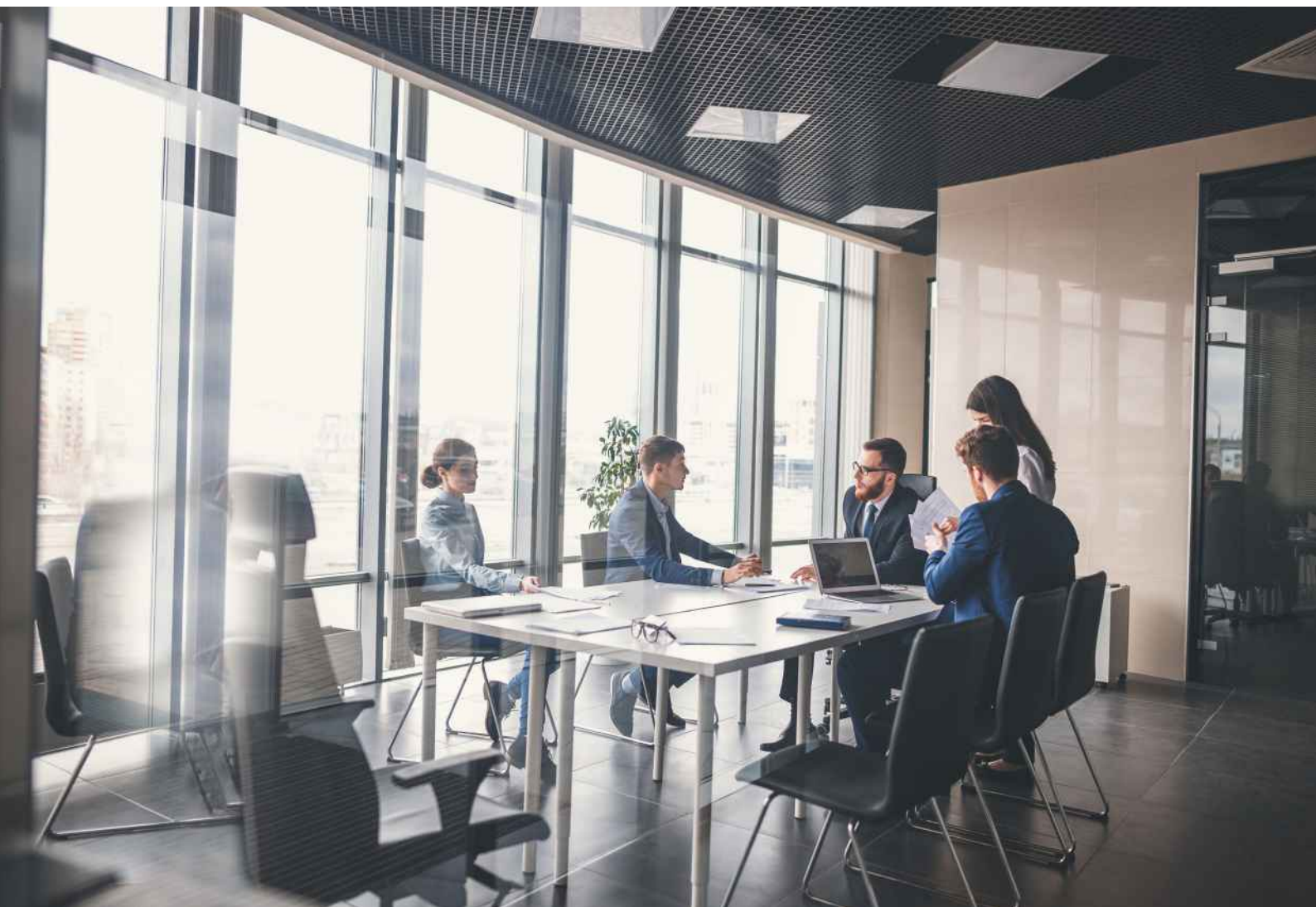
- where, before an offeror announcing a firm offer, the offeree announces an FSP
- where an offeror has announced a firm offer which is not recommended by the offeree board and the offeree wishes to agree a break fee with a 'white knight' competing offeror

By contrast reverse break fees payable by an offeror are generally permitted under the Code and H1 2022 saw Toronto-listed Elemental agree a US\$2m reverse break fee in connection with its £56m takeover of Altus Strategies. The reverse break fee became payable in the following circumstances:

- the Elemental board changing its recommendation of the transaction
- a competing proposal being made for Elemental or Elemental breaching certain undertakings relating to the solicitation of such a proposal
- the Elemental shareholders not approving the transaction

Elemental and Altus also separately undertook to each other not to acquire shares in the other without their consent for a period of 24 months from the date of the undertaking.

Altus's insistence on a reverse break fee becoming payable in the event of a competing proposal for Elemental is likely to have been motivated by the fact that Elemental was itself the subject of a hostile bid earlier this year from Gold Royalty, which lapsed in May.



## 11 Irrevocable undertakings

Irrevocable undertakings to accept an offer are normally sought by an offeror from significant offeree shareholders immediately before the announcement of a firm offer, so as to secure as much comfort as possible that the offer will be successful. They enable the offeror to show it has substantial support for its offer as soon as it is announced and may also assist the offeror in obtaining the recommendation of the offeree board.

### Undertakings from non-director shareholders

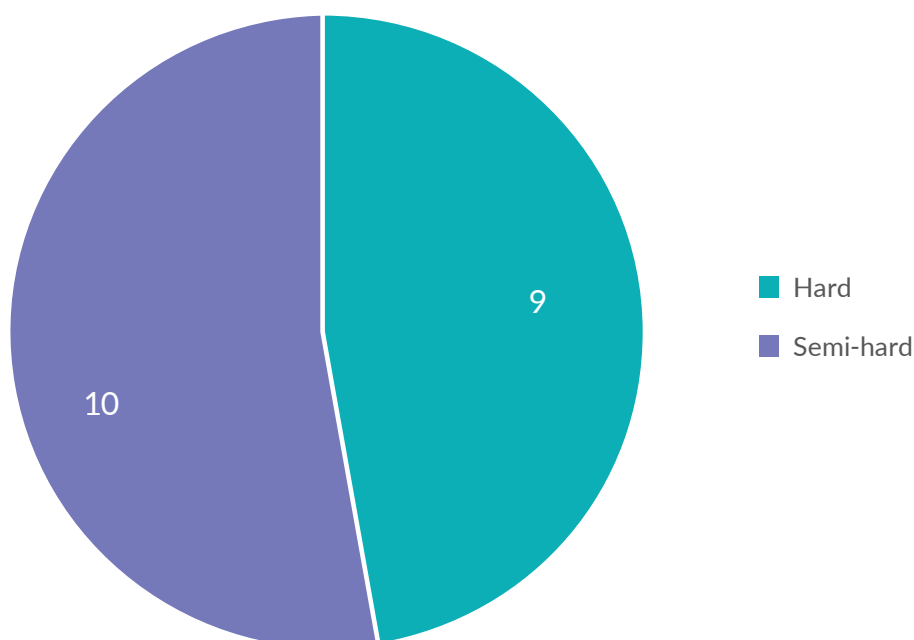
Non-director shareholders provided bidders with irrevocable undertakings in 19 (70%) of the 27 firm offers announced in H1 2022. By comparison, in H1 2021 and H2 2021 non-director shareholders provided irrevocable undertakings on 67% and 47% of the firm offers announced in those periods.

Of the 19 firm offers where non-director shareholders provided irrevocable undertakings, nine were hard undertakings and ten were semi-hard undertakings.

Hard undertakings will remain binding if a third party makes a competing offer (even at a higher price) whereas a semi-hard undertaking will cease to be binding if a higher competing offer is made at or above a specified price, or at a price in excess of a certain percentage of the original offer price.

On the offer for CareTech by Sheikh Holdings, irrevocable undertakings were given by one of the independent directors and one of the non-independent directors of CareTech. These undertakings cease to be binding if the independent directors withdraw their recommendation of the offer. It is relatively unusual for irrevocable undertakings given by target company directors to be 'soft' undertakings. However, the offeror had already received hard undertakings from other shareholders in respect of 25% of CareTech's share capital and was therefore willing to take a more relaxed position on the directors' irrevocable undertakings, particularly given the small number of shares held by them.

Type of irrevocable undertaking from institutions (H1 2022)



### Matching or topping rights in irrevocable undertakings

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

Of the 19 firm offers where non-directors provided irrevocable undertakings, eight (42%) featured matching rights and one (5%) featured topping rights.

## 12 Shareholder engagement

There were fewer examples of institutional shareholders being vocal in their opposition or support for transactions compared with 2021. However, these were features on three all-share mergers that were announced in H1 2022

### Capital & Counties Properties/Shafesbury all-share merger

Capital & Counties Properties all-share merger with Shafesbury attracted opposition from Royal London Asset Management and Investec. Royal London questioned whether a merger was in the best interests of Shafesbury shareholders and argued that the merger terms failed to reflect the inherent value of the Shafesbury estate.

However, Norwegian sovereign wealth fund, Norge Bank, has for some time advocated a merger between the two property groups and has provided irrevocable undertakings to vote in favour of the transaction in respect of its 26% interest in Shafesbury and its 15% interest in Capco.

Under the terms of the merger, Shafesbury shareholders (other than Capco which has a 25% stake in Shafesbury) will own 53% of the combined group and Capco shareholders will own 47%. Shafesbury's shares traded at a 9% discount to its EPRA NTA (net tangible assets) while Capco's shares traded at a 19% discount to its EPRA NTA as at 31 March 2022. Shafesbury's fell 8% after the merger was announced while Capco's shares remained broadly level.

The Merger constitutes a reverse takeover by Capco of Shafesbury for the purposes of the Code. It also constitutes a Class 1 transaction and a related party transaction for Capco for the purposes of the Listing Rules. The transaction will therefore require the approval of both sets of shareholders. Capco already holds a 25% stake in Shafesbury, which it acquired from Hong Kong real estate tycoon, Samuel Tak Lee, in the early months of the coronavirus pandemic in 2020. These shares will be ineligible to vote at the court meeting to approve the Shafesbury scheme.

### Tullow/Capricorn Energy all-share merger

Legal and General Investment Management (LGIM) questioned the rationale for Tullow's all-share merger with Capricorn Energy. Under the transaction, Capricorn shareholders are due to receive 47% of the combined group, but LGIM has highlighted that the transaction will increase gas producer Capricorn's exposure to oil assets. LGIM has a 4% shareholding in Capricorn and a 2% interest in Tullow and believes there are not "material synergies between the two companies, their strategies or their business models".

Hedge fund, Kite Capital, was also critical of the deal, which it described as a solution to a problem that only existed for shareholders in debt-laden, Tullow Oil. Kite Capital argued that "the underlying value of Capricorn far exceeds any value offered in the proposed Tullow combination".

### Altus Strategies/Elemental Royalties all-share merger

Shareholder engagement may also have been a factor on Elemental Royalties' £56m offer for mining company, Altus Strategies, which was supported by La Mancha Fund and other institutional investors. La Mancha Fund was set up by Egyptian billionaire, Naguib Sawiris, last year to hold his family's gold mining investments. The fund holds a 35% interest in Altus and a 9% interest in Elemental. One of the funds stated aims is to support external growth opportunities through bolt-on acquisitions, regional consolidation, and exploring mergers with larger players.



### 13 Post-offer statements of intention: compliance statements

The Code requires an offeror to include a statement in the offer/scheme document setting out its intentions for the offeree's business, employees and pension schemes. Any post-offer intention statement must be an accurate statement of that party's intention at the time that it is made and be made on reasonable grounds. If a party to an offer has made a POI statement and during the period of 12 months from the date on which the offer period ended, or such other period of time as was specified in the statement publish an announcement confirming whether it has taken, or not taken, the course of action described in the POI statement.

25 takeovers closed during H1 2021 and the offer parties on these transactions were required to publish compliance statements during H1 2022 in relation to the POI statements made during the course of their offers. All of the bidders reported compliance with their POI statements.

This 100% level of compliance is markedly different to the position seen in 2021 when only 68% of bidders reported compliance with earlier POI statements, with over half of these bidders attributing their divergence to the economic uncertainty caused by the coronavirus (COVID-19) pandemic.

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*It was not surprising, given the buoyant market conditions in 2021, that the post offer intention statement reports published in H1 2022 showed 100% compliance i.e. no divergence from the specific statements of intent made in H2 2021. We may not however see this 100% compliance rate in H2 2023 if the markets continue to turn and material operational and financial challenges present themselves requiring bidders to change their plans for the target companies acquired during rosier times.*

Selina Sagayam  
Partner, Gibson Dunn

*We expect heightened focus (from the Takeover Panel, targets, shareholders and other stakeholders (eg. employees, politicians, customers) and the broader market) on post-offer intention statements (and any undertakings) made by bidders and targets alike – ensuring they are sufficiently detailed and useful, and how they hold true subsequently – particularly on the higher profile and politically sensitive bids, and with ESG featuring increasingly heavily.*

Daniel Simons  
Partner, Hogan Lovells



## 14 Legal and regulatory developments

### Panel consults on changes to definition of acting in concert

In May 2022 the Panel published a consultation paper, [PCP 2022/2](#), which proposed various changes to the presumptions contained in the definition of acting in concert in the Code. The proposed amendments are partly a codification of existing Panel practice and include:

- raising the threshold for establishing ‘associated company status’ in what is currently presumption (1) of the definition of ‘acting in concert’ from 20% to 30%, so as to align it with the Code’s definition of control
- explicitly stating that presumption (1) applies to interests in both (a) equity share capital and (b) shares carrying voting rights
- clarifying that the proposed 30% threshold does not apply in the same way to interests in voting share capital on the one hand and (voting or non-voting) equity share capital on the other hand. In particular, clarifying that voting control does not dilute through a chain of ownership, but does normally dilute equity investment
- addressing these points by replacing the current presumption (1) with a new presumption (1) and a new presumption (2)
- applying the new presumptions (1) and (2) to funds in the same way as to companies; thereby, in effect, treating an investment in a fund as equivalent to an investment in a company’s equity share capital
- a new presumption (5) which will provide that an investment manager of, or investment adviser to, a bidder, an investor in a bidder consortium, or a target, together with any person controlling, controlled by or under the same control as that investment manager or adviser, will be presumed to be acting in concert with the bidder or target (as applicable)
- clarifying that where a fund is managed by an independent discretionary fund manager, the fund manager (but not the investors in the fund) will, in general be treated as interested in any securities held by the fund

The consultation closes on 23 September 2022 and the Panel envisages publishing a response statement in late 2022.

For further details, see News Analysis: [Takeover Panel consults on proposed changes to concert party definition](#).



*The Code Committee’s proposed changes to the definition of acting in concert, in particular its proposal to raise the threshold for presumed concertedness for companies under presumption (1) from a 20% to a 30% interest in the equity share capital of the offeree, will be regarded as a welcome change which will finally align the presumption with the general Code “control” definition.*

Selina Sagayam  
Partner, Gibson Dunn

*Whilst we welcome the Panel’s review of the presumptions of acting in concert, we note that certain of the proposals made in the recent consultation paper go beyond the existing position on “control”, extending this to economic interest. This would seem to be a departure from the Code’s existing principles and raises a number of issues as to how this can be effectively monitored and applied by market participants.*

Allan Taylor  
Partner, White & Case

*The proposal by the Panel to formalise the increase in the threshold at which companies and other parties involved in a UK public takeover are presumed to be ‘acting in concert’ from 20% to 30% represents a material change. It is likely to have particular impact for financial sponsors, investment funds and certain financial sponsor groups involved in UK bids after the rules come into place and following the closing of the Panel’s consultation, in September 2022.*

Rui Huo  
Director, Clifford Chance





## June 2022 Code changes

In May 2022 the Panel published two response statements, [RS 2021/1](#) and [RS 2022/1](#), following consultation papers published in December 2021 and January 2022, which confirmed various changes to the Code. The revised Code came into effect on 13 June 2022 and key changes include:

- introducing a requirement for a potential offeror to disclose whether any offer which it might make would be required to be for a minimum level, or in a particular form, of consideration
- introducing a restriction on mandatory offerors from acquiring additional interests in shares in the 14 days up to and including the unconditional date of the offer (one example of disclosure under this new requirement to date is the announcement made by Kelsian on 14 June 2022 with respect to its offer for Go-Ahead Group)
- making minor changes to the 'look-back period' for determining the price of a mandatory offer
- removing the 'significant purpose test' for determining whether a mandatory offer is required under the 'chain principle' and reducing the threshold for the 'significant interest' test from 50% to 30%
- amending Rules 2.8 and Rules 35.1 (which deal with restrictions following the lapsing of an offer or a statement of no intention to bid) to address certain concerns of the Panel relating to the operation of these rules in the context of a competitive situation
- removing the restriction on an offeror purchasing offeree shares through an anonymous order book
- removal of the requirement for the parties to an offer to send documents to the Panel and advisers in hard copy form

For further details, see News Analysis: [Panel confirms Code changes for 2022](#).

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*It will be worth keeping tabs on some of the recent changes to the Takeover Code – although these principally clarify/codify existing practice, there are some important underlying themes, including (a) to carefully check 'price or consideration-setting' obligations under Rules 6 and 11; (b) when and how to best implement any bidder 'stakebuilding' (on which the Panel has just published a helpful Practice Statement); (c) to ensure that any key 'reservations' (e.g. to set aside with target board consent) in key public statements (e.g. 'no increase', 'no intention to bid', 'possible offer terms' statements or similar) are clear and carefully considered/drafted; (d) a simpler and more objective 'chain principle' test; and (e) getting to grips with the upcoming refined 'concert party' regime, including whether in practice this reduces the associated compliance burden.*

Nicola Evans  
Partner, Hogan Lovells



### Takeover Panel published new Practice Statement 33

In June 2022 the Panel published a new Practice Statement 33, which describes the way in which the Panel interprets and applies certain provisions of the Code in relation to the purchasing of shares in the offeree by an offeror during an offer period and explains certain practical steps that should be taken in order to comply with those provisions. The Practice Statement deals with a number of issues, including:

- the requirement to attribute shares to an offeror when an offeror uses a financial services firm to purchase offeree shares on its behalf as a 'broker'
- the restriction under Rule 38.2 on an offeror purchasing offeree shares during an offer period from an exempt principal trader connected with the offeror
- methods by which an offeror or its broker may identify potential sellers and/or purchase offeree shares
- purchases of shares by an exempt principal trader connected with an offeror on a 'matched principal' basis
- an offeror or its broker issuing an 'all or none' or 'fill or kill' purchase order in respect of offeree shares
- the application of Rule 20.6 (telephone campaigns) to communications between a broker and institutional investors
- stakebuilding by consortium members
- the requirement for an offeror to make a separate announcement when, before an offer is unconditional, it purchases sufficient shares that the acceptance condition will be satisfied upon settlement

### Takeover Panel updates Practice Statement 20

On 9 February 2022, the Panel updated Practice Statement 20 (Rule 2—Secrecy, possible offer announcements and pre-announcement responsibilities), which deals with the obligation under Rule 2.2 of the Code to make an announcement where an offeree is the subject of rumour or speculation or there is a material or abrupt in its share price.

The Code states that the Panel should be consulted at the latest when:

- there is a price movement of 10% or more above the lowest share price since the time of the approach or when an offer is first actively considered by a potential offeror, or
- an abrupt price rise of a smaller percentage (eg, a price rise of 5% in the course of a single day)

In the updated Practice Statement the Panel clarified that the 10% share price movement test is relevant for determining the latest time by which the Panel should be notified by a potential offeror or offeree of a possible offer. If, before such a 10% share price movement, the potential offeror or offeree, or its financial adviser, has previously notified the Panel of the possible offer, the Panel will not expect to be consulted solely because of the 10% share price movement. However, the Panel should continue to be consulted each time the offeree is the subject of rumour and speculation or there is a 5% share price movement in the course of a single day.

For further details, see: [Panel updates Practice Statement 20](#).



## Takeover Panel publishes new and revised note to advisers

On 25 March 2022, the Panel released two new notes to advisers, one on the disclosure of information on Rule 9 of the Code and the other on Rule 2.8 statements. It has also updated its note to advisers on re-registering a public company as a private company.

For further details, see: [Takeover Panel publishes new and revised notes to advisers](#).

## New Takeover Panel Bulletin

On 13 June 2022, the Takeover Panel published [Panel Bulletin 4](#), which deals with the calculation of the value of a takeover offer. The financial adviser is required to include the calculation of the value of an offer subject to the Code, when sending the offer document checklist to the Panel. The Bulletin reminds financial advisers that the calculation of the value of the offer should:

- include only the shares in the offeree in issue as at the date of the offer document or Rule 9 waiver circular (and not shares 'to be issued')
- exclude any shares in the offeree which are already held by the offeror and which are not being offered for

Panel Bulletins are indicative of areas of focus and do not entail any changes to the interpretation or application of the Code.

## Reforms to the UK's merger control regime

On 20 April 2022, the UK government announced wide-ranging changes to the UK's competition and consumer law regimes. Such reforms follow a consultation exercise launched by the government in July 2021.

Some of the most significant of the proposed changes will apply to the UK's merger control regime. The key proposed reforms include:

- raising the UK turnover threshold from £70m to £100m
- the introduction of a 'safe harbour' for small mergers to exclude the CMA from reviewing transactions where each party's UK turnover is less than £10m
- the introduction of a new jurisdictional threshold in order to improve the CMA's ability to scrutinise a wider range of transactions – in particular, 'killer acquisitions'. Under this reform, the CMA will have the ability to review mergers where one of the parties to the transaction has: (i) an existing share of supply of goods and services of 33% or more in the UK or a substantial part of the UK; and (ii) UK turnover of over £350m
- changes to enable the CMA to deliver more effective and efficient merger investigations, such as enhancing and streamlining the merger 'fast track' procedure and allowing the CMA to accept commitments earlier during a Phase 2 review
- increased fines on companies and individuals for any failures to comply with information requests or providing false or misleading information

The proposed reforms will require legislation and the timing of implementation is therefore currently uncertain. Legislation and further guidance will also provide more detail on the precise scope of some of the proposed reforms. Further reforms are also possible as the government identified a number of areas, including the operation of the share of supply test in merger control, where it is not currently proposing to make changes, but where it intends to monitor future developments and may enact reforms.

## CMA imposes record fines for breaches of IEOs

In the past year, the CMA issued its three largest fines for breaches of the UK's merger control rules – all of which involved penalties for failure to comply with initial enforcement orders (IEOs). An IEO is a feature of the UK's voluntary merger control regime and is typically imposed by the CMA to prevent in consummated deals (further) integration between merging entities while the CMA completes its investigation. IEOs allow the CMA to prevent 'pre-emptive action' by the parties which might prejudice the CMA's assessment of a merger or which might impede remedial action by the CMA.

### *JD Sports/Footasylum*

The first (and most recent) of these record-breaking fines concerned the CMA's decision to fine JD Sports Fashion and Footasylum £4.7m for breaching an IEO and a formal information request issued to the parties during its remitted Phase 2 investigation into the completed acquisition by JD Sports of Footasylum – a transaction which the CMA ultimately blocked in November 2021. The IEO prohibited the parties from exchanging commercially sensitive information (CSI) without the CMA's prior consent and required the parties to immediately alert the CMA when CSI may have been shared. It also required the parties to put in place robust safeguards to prevent such breaches and ensure compliance with the IEO. The CMA found that the parties had failed to put safeguards in place, had shared CSI and then failed to alert the CMA accordingly. Moreover, the CMA concluded that the parties failed to respond correctly to an information request about a meeting they attended. This case represents the second highest fine imposed by the CMA for a breach of the UK's merger rules. For further details, see: [JD Sports Fashion plc/Footasylum plc \(remittal investigation\)](#).

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*The CMA has been super-charged by these reforms, both in merger control and other areas of competition and consumer law. This follows a trajectory of increasing interventionism by the CMA, which has been compounded by the addition of EU-sized cases to its docket following Brexit. These reforms will certainly increase the CMA's system power and battery life, but they make the regime too hot to handle. Especially given that additional powers have not come together with additional judicial scrutiny.*

Nicole Kar  
Partner and Global Practice  
Head Antitrust and Foreign  
Investment Group, Linklaters



## Meta/Giphy

The CMA's other two record-breaking fines both arose in the context of Meta Platforms' completed acquisition of Giphy – a transaction which the CMA also blocked in November 2021 (but which Meta is currently appealing before the Competition Appeals Tribunal). On 4 February 2022, the CMA announced that it had fined Meta £1.5m for a second breach of the requirements of an IEO that the CMA imposed on Meta on 9 June 2020. Under the terms of the IEO, Meta was required to actively inform the CMA in advance of any 'material changes' to its business, including the resignation of key staff on a list drawn up by the CMA. Meta was also required to seek the prior consent of the CMA before rehiring or redistributing responsibilities. The CMA concluded that Meta failed to comply with these requirements after three 'key employees' resigned and the company reallocated their roles. As noted previously, the above was the second time the CMA issued a penalty to Meta for breach of the IEO. A first penalty of £50.5m was imposed by the CMA in October 2021 after the CMA claimed that the scope of the compliance updates that Meta was providing in respect of the IEO were "significantly limited", despite repeated warnings. This is the largest fine ever imposed by the CMA for a breach of the UK's merger control rules (for further details, see: [Facebook, Inc \(now Meta Platform, Inc\)/Giphy, Inc](#)).

The level of fines imposed by the CMA in the above cases is evidence of the CMA's increasingly aggressive approach to the enforcement of the UK's merger control rules. For example, prior to Meta's fine, the highest penalty for a breach of an IEO was imposed in August 2021 on ION Trading Technologies and its parent totalling £325,000. The fines described above can be seen in light of recent updates to the CMA's guidance on interim measures published in December 2021, which now sets out the minimum steps that the CMA expects from merging parties to ensure effective compliance with IEOs.

### CMA prohibits Cargotec/Konecranes merger; UK/EU divergence

On 29 March 2022, the CMA prohibited the anticipated merger of Cargotec and Konecranes after its in-depth Phase 2 investigation identified substantial competition concerns in a number of markets for the supply of container and cargo handling equipment. Following the CMA's decision, the parties decided to abandon the merger (for further details, see: [Cargotec Corporation/Konecranes Plc](#)).

This case is notable as it highlights the increasing divergence between the approach adopted by the CMA and the Commission during parallel reviews. Indeed, the Commission conditionally approved the above merger on the basis of the same remedy package as rejected by the CMA (for further details, see: [Cargotec/Konecranes \(M.10078\)](#)). The Commission gave a conditional greenlight to the deal following multiple market tests which confirmed that the divested assets constituted viable businesses and would enable suitable buyers to compete effectively with the merged entity.

During the past 12 months of parallel Commission and CMA merger reviews, there have been other cases where the authorities' conclusions have diverged. For example, in September 2021, Meta's acquisition of Kustomer was cleared unconditionally at Phase 1 in the UK, but conditionally cleared following a Phase II review by the Commission in January 2022. Moreover, in December 2021, the Commission conditionally cleared Veolia's acquisition of Suez after a Phase I investigation. However, in May 2022, the CMA published



*IEOs are often a major friction in the UK merger review process, they have global application and are incredibly far-reaching, arguably imposing obligations on companies (in particular in relation to the flow of information) that go beyond what we would typically deem the 'rules of the road' governing information exchange between a trade bidder and target for anticipated deals, including in mandatory and suspensory merger regimes. However, if the alternative would be a hybrid mandatory/suspensory regime with a voluntary element (the CMA would not want to lose its wide discretion in the current enforcement climate), then one must learn to live with IEOs. They are only applied to a small proportion of overall UK M&A activity (but by default, all completed deals which the CMA opens a review on). For deals that don't raise any material concerns, there is no obligation to file. And that is a key benefit of the UK regime compared to its Brussels counterpart and most international regimes.*

Nicole Kar  
Partner and Global Practice  
Head Antitrust and Foreign  
Investment Group, Linklaters

its provisional report, concluding that the transaction has resulted in a substantial lessening of competition in seven markets within the waste and water management services sector in the UK. In each of these markets, the CMA's provisional view is that a full divestiture of the entire UK waste business of either Veolia or Suez represents the only effective remedy that can address the competition issues identified by the CMA (for further details, see: [Veolia/Suez](#)).

Ultimately, even before Brexit, the CMA was signalling its conceptual divergence with the Commission's approach to remedies. However, the Cargotec/Konecranes merger is the latest example of that divergence and shows that, even where the remedy packages are the same, the regulators may reach different conclusions.



*While the CMA has formally reviewed fewer EU/UK parallel cases than originally predicted following Brexit, no sensible adviser would have been brave enough to predict in advance these divergent outcomes. Early experience on divergence ratios suggests that parallel outcomes should never be taken for granted and divergent outcomes may not be as 'relatively rare' as logic might suggest given the common analytical frameworks (given, in particular, divergent philosophies on remedies in digital deals).*

Nicole Kar

Partner and Global Practice Head Antitrust and Foreign Investment Group, Linklaters

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### General Court dismisses Canon's gun-jumping appeal

On 18 May 2022, the General Court upheld the Commission's decision to fine Canon €28m for gun-jumping in respect of its acquisition of Toshiba Medical Systems Corporation (TMSC) through the use of a two-step 'warehousing' deal structure. The General Court concluded that, in order to establish a gun-jumping infringement, it is not necessary to find that there has been an acquisition of control of a target company prior to notification and clearance. Instead, the finding of an infringement is based on whether a transaction contributed, even partially, to the change of control of that undertaking (see further, [Case T- 609/19](#)).

There are a number of notable points about this judgment from an M&A perspective. First, it is the latest in a series of judgments endorsing the Commission's underlying enforcement practice against premature implementation of transactions prior to notification and approval, including its €124.5m fine against Altice Europe in 2018 (see further, [Case T- 425/18](#)) and two separate €10m fines against Marine Harvest (see further, [Case C- 10/18](#)). Second, this is important as it confirms that the notion of partial implementation can include steps which do not necessarily involve, in themselves, a change of control over the target, and therefore do not imply the premature exercise of control prior to receiving EU clearance. Third, this case serves as a reminder of the significance of complainants in the Commission's approach to gun-jumping investigations; the Commission was approached by an "anonymous complainant" prior to opening its gun-jumping investigation in this matter.

In an ongoing gun-jumping investigation, the Commission has ordered Illumina (a US-based life science company) to hold GRAIL (a US-based cancer detection test maker) as a separate company after the transaction closed prior to receiving clearance from the Commission (for further details, see: [Illumina/GRAIL \(gun-jumping\) \(M.10493\)](#)). This will likely be the next high-profile test of these rules.



*If there was any remaining doubt, it is clear as a result of Canon that warehouse arrangements will be treated with hostility by the EC. And that the General Court shares the same view. However, Canon does not mean, as some have interpreted it, the death of two-step structures (specifically, the purchase of a minority stake with an option to acquire a majority). The EC makes this plain at paragraphs 139-141. Provided the option is not certain to be exercised, and the full value of the majority stake is not paid for when the option rights are acquired, then options will continue to be treated as relevant to control only when exercised and not when the right is acquired. It will be interesting to see what developments the decision on Illumina/GRAIL will bring in July.*

Nicole Kar

Partner and Global Practice Head Antitrust and Foreign Investment Group, Linklaters

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## National Security and Investment Act 2021 comes into force and update to CMA guidance

As covered in previous M&A trend reports, on 4 January 2022, the UK's National Security and Investment Act 2021 (NSI Act) came into force. On the same day, the CMA updated its guidance on jurisdiction and procedure under the UK merger control regime to reflect the NSI Act coming into force.

The NSI Act introduces mandatory filings for transactions in 17 key sectors, grants the UK government extensive call-in powers for up to five years for completed transactions, and has retrospective application for transactions closing between 12 November 2020 and 3 January 2022. The new regime replaces the existing public interest merger regime provisions of the Enterprise Act 2002 insofar as a transaction involves national security considerations. On public M&A deals, it is important to bear the NSI Act in mind when conducting stakebuilding as well as when considering whether a bid should be made conditional on clearance under the Act. The regime can be triggered on the acquisition of 'material influence' in an entity, which may arise in relation to a relatively low shareholding.

Since the NSI entered into force, the CMA has called-in two transactions for full national security assessments (both of which are currently ongoing (for further details, see: [Government interventions on national security grounds—case tracker](#)). One of these is Altice's acquisition of an 18% stake in BT (a potential material influence).

## Government publishes first report on the NSI regime

On 16 June 2022, the government published its first report on the implementation of the NSI Act covering the period 4 January 2022 to 31 March 2022.

The report discloses the following key information:

- the Investment Security Unit received 222 notifications. Breaking down this figure by type, 196 were mandatory and 25 were voluntary with one being retrospective validation application.
- the average time to confirm acceptance of a mandatory notification was three working days (four for voluntary notifications). Eight notifications were rejected during the reporting period (seven mandatory; one voluntary). The average time taken to reject a notification was longer (five and 12 working days respectively for mandatory and voluntary notifications)
- mandatory notifications were received for acquisitions taking place in all 17 in-scope sectors, with notifications arising most commonly in the defence, military and dual use, critical suppliers to government, artificial intelligence and data infrastructure sectors. The most common areas giving rise to voluntary notifications were professional, scientific, and technical activities, data infrastructure, other service activities, energy and computing hardware
- 17 notified transactions were called-in for further review (13 mandatory and four voluntary), three of which were cleared (within the initial 30-day assessment period), with the remainder still being assessed at the end of the reporting period. All called-in transactions had been notified. The sectors within the mandatory notification regime that generated the most call-in notices were military and dual use, defence, critical suppliers to government, data infrastructure and critical suppliers to emergency services
- the average time taken to decide whether to call-in a transaction notified under the mandatory regime was 24 working days (23 for voluntary notifications). The quickest decision took 11 working days. All decisions were taken within the applicable 30-day statutory period
- no final orders were issued, nor were any penalties imposed or criminal prosecutions pursued under the NSI Act. There were no judicial reviews of decisions taken during the reporting period



Although long-term trends cannot be identified in such a short period of time, the data still shows some interesting nuggets:

- there were fewer notifications than originally anticipated. As mentioned above, out of the 222 notifications, 17 were 'called-in' for further assessment. If this trend continues, it means that notifications will reach approximately 900 per year, lower than the 1,000 to 1,830 originally estimated. The 'call-in' numbers will be around 68 per year, which is running at approximately the anticipated rate of 70 to 95 per year. The report suggests that the figures may be lower than estimated due to a general decline in M&A activity towards the end of last year, which may have continued into the first part of this year. However, the report notes that it only covers the first three months of operation, so limited trends or patterns can be inferred from the data
- the government is responding quickly to notifications and keeping to the statutory timeframes, which is good news for business
- the government has not shied away from using its 'call-in' powers. While no specific deals have been disclosed in the report, two 'call-ins' were publicly announced in May 2022 in the microchip and telecommunications sectors. Businesses should expect the government to continue to use these powers to scrutinise and intervene in transactions on national security grounds
- for the relevant period, the government has not blocked any deal on national security concerns nor has it imposed any conditions to mitigate such concerns. It is too early to draw any conclusions here, but it will be interesting to see how the situations evolves in the coming months

A copy of the report is available to download [here](#).



*The UK government's first annual report on the new NSIA regime was just published and whilst the regime is only three months old, the headline figures are encouraging for investment and M&A activity in the UK. The numbers of notifications are more modest than predicted as are the number of transactions which have been called-in – x17 call-ins in respect of 222 notifications. Further, the time frames within which the new unit (ISU) has been operating against are also particularly encouraging with an average of 4 or 5 working days from receipt of a mandatory or voluntary notification (respectively) for the ISU to inform parties of a decision to accept the notification. The ISU has taken an average of 24 working days between calling in a notification and issuing a final notification and in no situations has the Secretary of State required an 'additional period' (which can be up to a further 45 working days) to continue to evaluate a matter which has been called in. This is an encouraging start but as noted it is early days and the figures limited – it will be a question of wait and see.*

Selina Sagayam  
Partner, Gibson, Dunn & Crutcher LLP

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*With the NSI regime now live, and the CMA toughening up on enforcement, bidders in particular need to drill down (and targets need to engage) on NSI, competition and broader regulatory analysis as soon in the deal timetable as possible. Recent changes are still bedding down, and it's worth keeping a particularly close eye on how these affect the way in which a transaction is structured, implemented and executed, as well as timelines. Some overseas bidders remain concerned as to whether their deals face an unacceptably high risk of hitting roadblocks, although in practice the ride can be smoother with the right steer. Focussed tailoring of related offer conditionality, and updating the Panel (and market) on progress where relevant, remains important. That said, it's only a matter of time before we see a bidder attempt to invoke a key regulatory condition, and in turn test the Panel's latest thinking in this area.*

Tom Brassington  
Partner, Hogan Lovells

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## Firm offers included in this report

Target	Bidder	Deal value	Bid premium <sup>2</sup>	Industry (target)	Bidder Jurisdiction <sup>3</sup>
Homeserve	Brookfield Asset Management	£4.1bn	71%	Financial Services	Canada
Shaftesbury	Capital & Counties Properties	£2bn <sup>4</sup>	6% discount	Real Estate	UK
Contour	KKR	£1.8bn	36%	Energy & Utilities	US
Brewin Dolphin	Royal Bank of Canada	£1.6bn	62%	Financial Services	Canada
Secure Income REIT	LXi REIT	£1.5bn	15%	Real Estate	UK
Emis Group	UnitedHealth Group	£1.2bn	49%	TMT	US
Ideagen	Hg Pooled Management	£1.1bn	41%	TMT	US

<sup>2</sup> Bid premium is calculated by reference to the target's share price immediately before the start of the offer period.

<sup>3</sup> Where a newco bid vehicle was used, this table refers to the country of incorporation of the ultimate parent or tax residence of the ultimate shareholder.

<sup>4</sup> This value is based on the entire issued share capital of Shaftesbury, including the 25% interest already held by Capital & Counties Properties.

## Firm offers included in this report

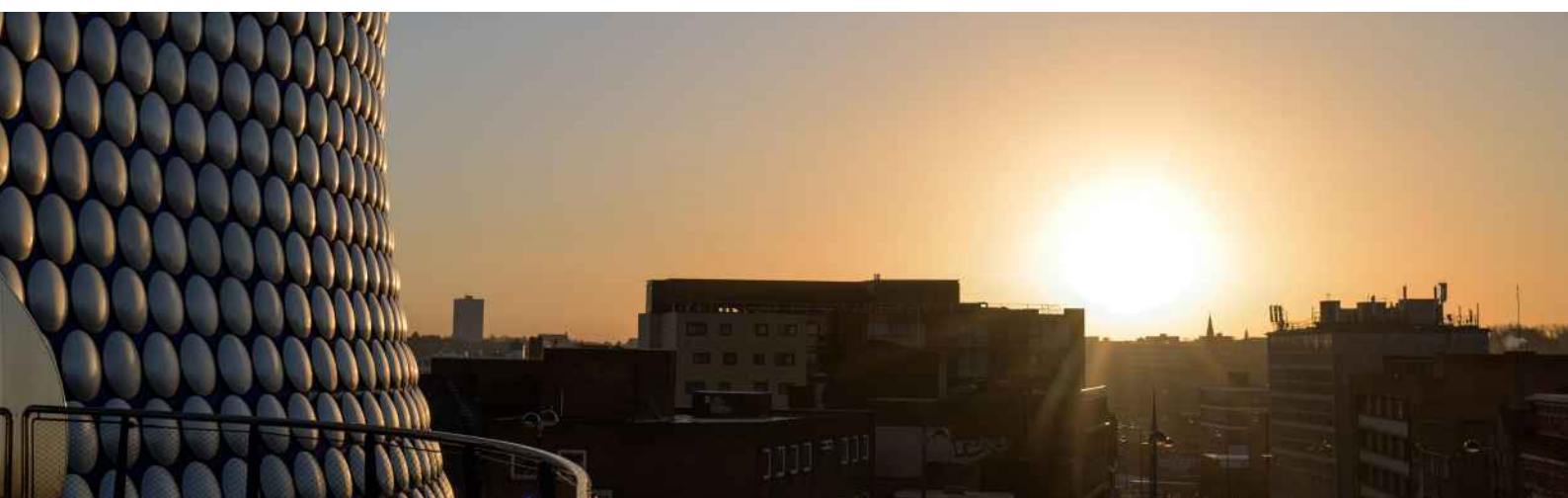
Target	Bidder	Deal value	Bid premium <sup>2</sup>	Industry (target)	Bidder Jurisdiction <sup>3</sup>
Clipper Logistics	GXO Logistics	£965m	49%	Industrial Support Services	US
CareTech Holdings	Sheikh Holdings Group (Investments), Belgravia Investments and Kensington Capital, THCP Advisory	£870m	28%	Healthcare	UK
Capricorn Energy	Tullow Oil	£666m	6%	Natural Resources	UK
Go-Ahead Group	Kinetic Holding Company and Globalvia Inversiones	£648m	24%	Travel, Hospitality, Leisure & Tourism	Australia and Spain
Stagecoach Group	DWS Infrastructure	£595m	54%	Travel, Hospitality, Leisure & Tourism	Germany
John Menzies	Agility Public Warehousing Company	£571m	81%	Transportation Services	Kuwait
M&C Saatchi	Next Fifteen Communications	£310m	50%	TMT	UK
Photo-Me International	Tibergest	£285m	1%	Consumer Products	France <sup>5</sup>
McKay Securities	Workspace Group	£272m	36%	Real Estate	UK
M&C Saatchi	AdvancedAdvT	£254m	27%	TMT	UK <sup>6</sup>
River and Mercantile Group	AssetCo	£95m	16%	Financial Services	UK

<sup>5</sup> For these purposes we have treated Tibergest, which is incorporated in Singapore and is wholly-owned by French national, Serge Crasnianski, as a French bidder.

<sup>6</sup> For these purposes we have treated AdvancedAdvT, which is incorporated in the BVI and headquartered in London, as a UK bidder.

## Firm offers included in this report

Target	Bidder	Deal value	Bid premium <sup>2</sup>	Industry (target)	Bidder Jurisdiction <sup>3</sup>
Air Partner	Wheels Up Experience	£85m	54%	Travel, Hospitality, Leisure & Tourism	US
Tungsten Corporation	Kofax Holdings	£71m	90%	Industrial Support Services	US
Tungsten Corporation	Pagero Group	£61m	66%	Industrial Support Services	Sweden
Altus Strategies	Elemental Royalties	£56m	4%	Natural Resources	Canada
Filta Group Holdings	Franchise Brands	£49m	8%	Industrial Support Services	UK
CIP Merchant Capital	Corporation Financiere Europeenne	£33m	8%	Investment (non-real estate)	Luxembourg
SDX Energy	Tenaz Energy	£21m	24%	Natural Resources	Canada
Pires Investments	Tern	£15m	54%	Real Estate	UK
InnovaDerma	Brand Architekts	£14m	70%	Consumer Products	UK



## Further reading

Our LexisNexis Market Tracker blog posts focus on news and analysis related to public company transactions and corporate governance, tailored for Corporate lawyers. The following news items are relevant to the topics covered in this report. To review our entire archive, visit the Market Tracker page of the LexisNexis blog.

Title
<a href="#">Australian-Spanish consortium set to go ahead with £650m takeover of UK transport company</a>
<a href="#">UK private equity buying spree continues as KKR launches ContourGlobal takeover</a>
<a href="#">Sweetened competing offer by Pagero wins Tungsten recommendation</a>
<a href="#">Trends in Public M&amp;A in Q1 2022—Market Tracker Trend Report</a>
<a href="#">Private equity group Slate withdraws from McKay Securities bid</a>
<a href="#">DBAY's possible offer sparks race to take CareTech Holdings plc private</a>
<a href="#">Private equity pounces on UK companies in recent takeover bids</a>
<a href="#">Spectris terminates takeover bid for Oxford Instruments due to Ukraine conflict</a>
<a href="#">Takeover approach for Oxford Instruments from rival Spectris sends shares surging</a>
<a href="#">Playtech CEO teams up with TTB to bid for control</a>
<a href="#">John Menzies continuously rejects Kuwait rival's 'opportunistic' takeover bid</a>
<a href="#">Aristocrat's £2.7bn Playtech takeover bid blocked by activist shareholders</a>
<a href="#">Photo-Me unimpressed by CEO's discounted mandatory takeover bid</a>
<a href="#">M&amp;C Saatchi snubs initial reverse takeover approach from tech magnate Vin Murria</a>

# Public company takeovers quiz



We have prepared a public company takeovers quiz, which is intended to reinforce corporate practitioners' knowledge and recall of key aspects of the UK takeover regime. The quiz is intended for use by private practice lawyers, in-house counsel, corporate finance professionals and other parties engaged on takeover transactions.

The quiz is in multiple choice format and at the end of each question the correct answer is displayed together with feedback and links to relevant materials.

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For further details, see Practice Note:  
**Public company takeovers quiz.**



The **National Security and Investment Act 2021** introduces a mandatory foreign direct investment (FDI) notification regime in the UK for transactions in certain sectors to protect national security, as well as an option to ‘call-in’ other transactions for review (for up to five years after completion).

This new regime sits alongside the existing merger control regime and replaces the powers for the government to intervene in merger investigations on national security grounds.

The Act received royal assent on 29 April 2021 and comes into effect fully on 4 January 2022.

Our **National Security and Investment regime—market practice tracker** contains examples of how companies are addressing the NS&I Act 2021 in takeover documentation

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## With thanks to our valued contributors:



**James Bole,**  
**Partner, Clifford Chance LLP**

James is a partner in our corporate team, specialising in advising UK-listed and international corporate clients on the full range of corporate transactions, but with a particular focus on public M&A. James was recently seconded for two years as Secretary to the Takeover Panel, the independent regulator of UK takeovers, returning to the Firm in January 2020. During his secondment, he acted as a senior regulator on many of the highest profile takeovers in the UK market, including the contested £25 billion takeover battle for Sky, and in formulating Takeover Panel policy.



**Tom Brassington,**  
**Partner, Hogan Lovells**

Tom is a leading partner in the London Corporate & Finance practice at Hogan Lovells. He combines commercial acumen with transaction efficiency to ensure the best possible outcome for his clients.

Tom has experience across a wide variety of work including public and private M&A, joint ventures, restructurings, private equity, and equity capital markets. While Tom is a generalist M&A practitioner, he regularly acts for clients in the life sciences and technology, media & telecoms sectors. Much of Tom's work has a cross-border or international focus. While Tom is based in London, he has also practiced in both Dubai and Hong Kong.



**Nicola Evans,**  
**Partner, Hogan Lovells**

Nicola is a senior partner in the London Corporate & Finance practice of Hogan Lovells. Nicola's broad experience is international and extends to corporate transactions, domestic and cross-border M&A, joint ventures, the Takeover Code, disclosure and governance issues, securities law and the Listing Rules as well as secondary capital raising and restructurings. Nicola is Leader of Hogan Lovells' Insurance Sector, the first woman in the firm to be appointed to this role.



**Iain Fenn,**  
**Partner, Linklaters LLP**

Iain advises London listed and international companies on their most significant issues including public and private M&A, corporate restructurings and public offerings. He has acted as lead counsel to clients on many of the market's most significant public company transactions, including hostile public offers and many large and complex demergers. As well as an in depth knowledge of the UK public offer regime, Iain's experience includes public transactions in all European jurisdictions, North America, the Middle East and Asia.

Iain also regularly advises the boards of a number of London listed companies on strategic and governance issues and has considerable experience in activist as well as defence situations. Clients report that they "benefit from his insight and ability to take a view on topics as they come up" and that "his gravitas and experience give us confidence."

Iain's expertise spans many sectors. He has particular knowledge of the telecoms, technology, construction, business services and retail sectors.





**Rui Huo,**  
**Director, Clifford Chance LLP**

Rui is a Director, Public M&A in the Corporate practice, specialising in public takeovers. Her recent experience includes advising Vectura on the competitive cash offers from Philip Morris and Carlyle, a consortium comprising BlackRock and Goldman Sachs on their £1.4 billion cash offer for Calisen, Intact Financial on its £7.2 billion cash offer (in partnership with Tryg) for RSA Insurance, and Provident Financial on its successful defence against the hostile offer from Non-Standard Finance. Rui spent six months as a secondee to Morgan Stanley's UK Investment Banking Team in 2017.



**Nicole Kar,**  
**Partner and Global Head of Antitrust and Foreign Investment, Linklaters LLP**

Nicole is Global Head of the Antitrust and Foreign Investment Group and is based in London and Dublin. She has led on over 40 significant merger and competition investigations in her over 20 years of European competition experience. She has extensive experience in advising on a wide range of regulatory and competition law issues in addition to maintaining a busy investigations and litigation practice. She has expertise in antitrust and regulatory issues spanning tech, financial services, retail, mining and healthcare sectors.

Nicole advised the Foreign Affairs Committee of the UK Parliament on the passage of the National Security and Investment Act 2022 and on its report "Sovereignty not for Sale".

Nicole is ranked in Tier 1 of Chambers and peers and clients alike hold her in high regard as a top regulatory lawyer. She attracts particular attention for her work on high-profile Phase II domestic merger control investigations. Clients describe her as having "her finger on the pulse in terms of what is going on in the competition law world," being "to the point, really on it and very good with clients".



**Tom Matthews,**  
**Partner and Head of EMEA Shareholder Activism Practice, White & Case LLP**

Tom is a partner in White & Case's global M&A and Corporate practice based in London. Tom is also Head of White & Case's EMEA Shareholder Activism practice.

Tom has over 18 years' experience advising corporates, investment banks, private equity and hedge funds and family offices on international public and private M&A transactions, primary and secondary equity raisings and sell-downs, joint ventures and listed company advisory and corporate governance matters.

Tom also advises a number of companies, activist funds, founder shareholders and other active shareholders on their shareholder engagement campaigns and responses.



**Katherine Moir,**  
**Partner, Clifford Chance LLP**

Katherine is a Partner in the Corporate practice and specialises in advising clients on public takeovers, private acquisitions and disposals, cross-border mergers, and other general corporate matters. Katherine is a ranked lawyer by Chambers UK for Corporate/M&A. She was featured in The Lawyer's Hot 100 Dealmakers of 2018, which celebrates the UK's top lawyers. She was also named by Legal Business as a rising star in their 'Women Deal Stars' feature in 2018, and as a Next Generation Lawyer by Legal 500.



**David Pudge,**  
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David is a partner in Clifford Chance's Corporate practice, specialising in domestic and crossborder M&A, public takeover offers, Stock Exchange matters and general corporate and corporate governance advisory work. He acts for a broad range of clients, including large listed corporates and financial institutions. David is also Chairman of the City of London Law Society's Company Law Committee.



**Dominic Ross,**  
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Dominic is a partner in White & Case's M&A and Corporate Practice based in the London office

Dominic regularly advises both corporate clients, financial sponsors and investment banks on a wide variety of M&A, Takeover Code, Listing Rule and equity capital market transactions, as well as corporate governance matters.

Dominic has a particular focus on large, complex, cross border M&A transactions involving UK public companies. Dominic also has sector expertise in the healthcare, gaming and consumer and retail industries.



**Selina Sagayam,**  
Partner, Gibson, Dunn & Crutcher LLP

Selina is an English qualified partner in the London office of Gibson, Dunn & Crutcher. She is a member of the firm's international Mergers and Acquisitions, Hostile M&A and Shareholder Activism, Capital Markets and Securities Regulation and Corporate Governance groups and one of the leaders of the firms' global ESG practice.

She was seconded for two years as Secretary to the Takeover Panel and is regularly called upon as a key adviser and commentator on UK and European takeovers. She is a regular speaker at conferences in the UK and Europe on takeovers, cross-border M&A and stewardship, and has authored numerous articles on corporate finance and corporate governance issues. She is regularly interviewed and quoted in the financial press and media for her insights and views on M&A and related FDI developments, capital markets and corporate governance developments. She has recent experience serving as a NED on the boards of a FTSE 250 group and is a member of the board of the Corporate Finance Faculty of the ICAEW.



**Patrick Sarch,**  
Partner and Co-head of UK M&A, Hogan Lovells

Patrick is a senior partner in the London Corporate & Finance practice at Hogan Lovells and is co-head of the firm's UK M&A practice. He has more than 25 years' experience advising clients on corporate finance, domestic, and cross-border public company M&A (with extensive experience in competitive and hostile situations), innovative structuring, the Takeover Code, disclosure issues, securities law and the Listing Rules, as well as secondary issues and capital restructuring. In recent years, he has developed a strong 'activism' practice, having advised both companies and activist shareholders on a number of leading ESG, strategic, and M&A-related campaigns and disputes.

Patrick has very broad experience of advising businesses and investors through their full life cycle, from start-up to wind-up, via strategic investment, IPO, merger and redomiciliation and has helped rescue many from near death situations. Patrick has a particular focus on financial services but is also active in a number of other sectors, including retail, technology, and consumer businesses. He has advised on a number of global and UK 'firsts' and record-breaking deals.



**Dan Schuster-Woldan,**  
**Partner, Linklaters LLP**

Dan is a corporate partner based in Linklaters' London office. He focuses on the financial services sector, with a particular emphasis on insurance, and has wide-ranging experience in public and private M&A, joint ventures, equity capital markets transactions and corporate restructuring work.

Clients have turned to Dan for M&A advice on projects across Europe, Latin America, Asia and Africa, giving him extensive cross-border expertise. Dan has experience of working on deals that have high levels of public, political and market scrutiny.

Dan has spent time in the firm's offices in Germany as well as on secondment to Goldman Sachs and RBS. He is a fluent German speaker.

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**Daniel Simons,**  
**Partner, Hogan Lovells**

Daniel focuses his practice on corporate finance transactions, in particular on domestic and crossborder mergers and acquisitions and equity capital markets. Daniel also has particular focus on public M&A transactions, including P2Ps, and he has advised numerous companies, private equity houses and financial institutions in the context of these transactions.

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**Allan Taylor,**  
**Partner, White & Case LLP**

Allan Taylor is a partner in White & Case's global M&A and Corporate practice based in London.

Allan's practice focuses on complex international transactions. He is adept at steering cross-border, multi-disciplinary teams to provide innovative solutions to his clients' business needs.

As well as his extensive track-record in international mergers and acquisitions, equity capital markets, joint ventures and restructurings, Allan has experience advising on UK corporate governance matters. He also advises both issuers and underwriters on initial public offerings, including London and dual exchange listings.

Allan's practice has a focus on the natural resources sector, including and oil and gas and mining and metals, with a broad mix of international corporate and financial institution clients.

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## Market Tracker

Market Tracker is a unique service for corporate lawyers housed within Lexis®PSL Corporate. Key features include:

- a transaction data analysis tool for accessing, analysing and comparing the specific features of various listed company transactions including takeovers, initial public offerings and secondary offers
- detailed, searchable summaries of listed company deals and AGMs
- a comprehensive and searchable library of deal documentation such as announcements, circulars, offer documents and prospectuses
- news and analysis of key corporate deals and activity, and
- in-depth analysis of recent trends and developments in corporate practice

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### Previous trend reports

#### Trends in UK Public M&A 2021

This Market Tracker Trend Report examines the current trends in UK public mergers and acquisitions, looking at the 53 firm offers, 52 possible offers and five formal sale processes and/or strategic reviews announced by Main Market and AIM companies subject to the Takeover Code in 2021.

### Forthcoming Trend Reports

#### AGM mid season update

This Market Tracker trend report looks at voting patterns and the evolving format of AGMs in the first half of 2022.

#### Equity Capital Markets update H1 2022

This Market Tracker Trend Report is the latest addition to our Equity Capital Market trend report series, which looks at current trends and developments across the UK capital markets. The report provides in-depth analysis of the IPOs and secondary offerings admitted to trading in the first six months of 2022.

#### Trends in UK Public M&A 2022

This Market Tracker Trend Report provides a full year update on the current trends in UK public mergers and acquisitions, looking at the firm offers, possible offers and formal sale processes and/or strategic reviews announced by Main Market and AIM companies subject to the Takeover Code in 2022.

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