LexisNexis®

Market Tracker Trend Report:

Trends in UK Public M&A deals in H1 2023

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Background and approach

This report provides an insight into UK public M&A activity in the first half of 2023 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 2023. We reviewed a total of 48 transactions involving Main Market and AIM companies that were subject to the Takeover Code (the Code): 25 firm offers, 16 possible offers and seven announcements of formal sale processes and/or strategic reviews, which were announced between 1 January 2023 and 30 June 2023.

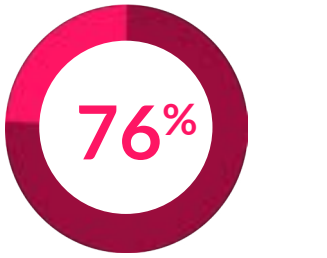
The percentages included in this report have been rounded up or down to whole numbers, as appropriate. Accordingly, the percentages may not in aggregate add up to 100%. Deal values have been rounded to the nearest million (where expressed in millions) and have been rounded to the nearest hundred million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

The final date for inclusion of developments in this report is 30 June 2023. Reference has been made to deal developments after this date if considered noteworthy.

Highlights H1 2023

25
FIRM ▲ OFFERS
(H1 2022: 27 FIRM OFFERS:
H2 2022: 19 FIRM OFFERS)

£12.2bn
aggregate deal value
(H1 2022: £19.1bn; H2 2022: £22.2bn)



Increase in P2P activity
76% of all firm offers
(H1 2022: 33%; H2 2022: 47%)

£10.8bn
Aggregate value
of P2P transactions
(H1 2022: £9.4bn; H2 2022: £7.9bn)

Overseas bidders involved in 16 firm offers with an aggregate deal value of
£10.7bn
(88% OF AGGREGATE DEAL VALUE FOR ALL FIRM OFFERS)

Healthcare, Pharma & Biotech most active sector with four firm offers and aggregate deal value of £5bn

Executive Summary

Takeover activity

Public M&A deal flows continued at more subdued levels in 2023 with 25 firm offers announced in H1 2023 (H1 2022: 27 firm offers; H2 2022: 19 firm offers).

There were fewer high value transactions with aggregate deal value of £12.2bn and average deal value of £489m in H1 2023. This compares with aggregate deal values of £19.1bn and £22.2bn and average deal values of £709m and £1.2bn in H1 2022 and H2 2022 respectively.

Three transactions had deal values exceeding £1bn (H1 2022: seven; H2 2022: six) and the largest transaction was EQT and the Abu Dhabi Investment Authority's £4.5bn offer for Dechra Pharmaceuticals.

Average bid premium (measured by comparing the offer price with the target's share price immediately before the start of the offer period) was 53%, with the highest bid premium being 206% and the lowest being a 24% discount.

P2Ps account for majority of deal activity

In 2022 we saw a drop in public to private transactions as a proportion of all firm offers. H1 2023 saw a reversal of this trend with 19 P2P transactions, which represented 76% of all firm offers (H1 2022: 33%; H2 2022: 47%).

However, deals were generally smaller with an aggregate deal value of £10.8bn (H1 2022: £9.4bn; H2 2022: £7.9bn) and an average deal value of £568m (H1 2022: £1bn; H2 2022: £873m) for P2P transactions announced in H1 2023. Nevertheless P2P transactions still represented 88% of aggregate deal value in H1 2023.

Bidder jurisdiction

Overseas bidders were involved in firm offers with an aggregate deal value of £10.7bn, which represented 88% of aggregate deal value for all firm offers during H1 2023. US bidders were less active than in recent review periods, being involved in five firm offers with an aggregate deal value of £1.1bn. This represented 9% of aggregate deal value in H1 2023 88%.

> *Whilst the quantity of public M&A deals has increased in H1 2023 (as against H2 2022), cumulative deal value has decreased, evidencing continued consolidation in struggling sectors, such as financial services, in 2023. The second half of 2023 looks to be an optimal time for strategic buyers to move quickly, take advantage of market conditions and look to upscale their business before an anticipated return of a 'bull' market, expected by the end of 2023.*
>
> Patrick Sarch,
> Partner, Hogan Lovells

> *We anticipate activity and transaction size will begin to increase in H2 with significant change by Q4. We also expect consortium bids on larger transactions to remain popular, with potential buyers seeking to share risk and financing costs.*
>
> Iain Fenn and Dan Schuster-Woldan
> Partners, Linklaters

> *Whilst US bidders were involved in few firm offers in the review period, in fact, as a proportion of total bids, the percentage of US bidders for this review period has been comparable to past periods being in the range of circa 23%-27%.*
>
> Selina Sagayam,
> Senior of Counsel, Gibson Dunn

Industry

Public M&A activity was spread across a range of sectors in H1 2023 with the most active sector being Healthcare, Pharma & Biotech which saw four firm offers with an aggregate deal value of £5bn. This represented 16% of total deal volume and 41% of aggregate deal value in H1 2023.

Deal structure

20 (80%) of the 25 firm offers announced in H1 2023 were structured as schemes of arrangement. Where an offer structure was utilised, the drivers for this were usually the mandatory offer requirements under the Code, the bidder holding a significant interest in the offeree and/or the offer being initially unrecommended by the target board.

22 (88%) of the 25 firm offers announced in H1 2023 had some form of cash element and it was the exclusive form of consideration in 20 (80%) of deals. By comparison in 2022, cash featured in 87% of all deals and was the exclusive form of consideration in 71% of deals.

Unrecommended offers

All but two of the firm offers announced in H1 2023 were recommended from the outset.

The initial offer for Kape Technologies by Teddy Sagi's Unikmind valued the target company at £1.25bn and was met with opposition by Kape's independent directors. 55% shareholder, Unikmind, subsequently increased its offer to £1.27bn. The independent directors continued to argue that this materially undervalued the business and its prospects, but recommended that shareholders consider accepting the offer given that Unikmind had sufficient acceptances and irrevocable undertakings to declare the offer unconditional and to force a delisting of the company.

All but one of the directors of Shield Therapeutics recommended that shareholders reject AOP Health's £46m mandatory offer, but did not view the offer as hostile. The mandatory offer was triggered by AOP exercising conversion rights in respect of a convertible shareholder loan and the conversion price (and resultant mandatory offer price) represented a 13% discount to Shield's share price at the time of the firm offer announcement.

Competing offers

Network International Holdings was initially approached by a consortium comprising CVC Advisers and Francisco Partners Management regarding a possible offer for the company. Network International subsequently announced that it had received a separate approach from Canadian investment manager, Brookfield Asset Management. In June 2023 the Network International board and Brookfield agreed terms for a £2.2bn offer and shortly thereafter the consortium issued a statement of no intention to bid.

There were no other actual or potential competing offers during the review period which resulted in a firm offer for a target company.

In terms of deal activity in H1 2023, we have seen interest in a number of public bids by, or for, listed real estate vehicles, with financial sponsors featuring strongly as interested buyers. There remains a strong level of demand for competitively priced real estate assets, and with many listed REITs trading at very significant discounts to NAV, and access to debt finance remaining constrained, we expect such levels of interest to continue in 2023. REIT takeovers increasingly present a significant value proposition for prospective bidders, as well as opportunities for incumbent management and shareholders, as the real estate sector continues to emerge from, and adjust to, the long-term impact of the pandemic and now to the current macro environment. We expect private equity bidders to continue to feature as they retain significant sums to deploy, and even more so as and when debt markets loosen.

James Bole, Partner,
Clifford Chance

Mandatory offers

Three companies were the subject of mandatory offers:

- Dignity was the subject of a voluntary offer from a consortium of investors, which became mandatory after the consortium increased its shareholding in the funeral provider to 30%
- Shield Therapeutics was the subject of a £46m mandatory offer from AOP Health International Management that was triggered by AOP exercising conversion rights that increased its shareholding in Shield to 42%
- Allergy Therapeutics was the subject of a pre-conditional mandatory offer from funds managed by ZQ Capital that controlled 26% of the target company's share capital. The offer was pre-conditional upon various regulatory and other conditions being satisfied in respect of an equity financing that would see the ZQ Capital funds' shareholding in Allergy Therapeutics increase to at least 30%

Newly-listed target companies

15 (60%) of the 25 companies that were the subject of firm offers in H1 2023 were admitted to trading on the London Stock Exchange within the last ten years, with three companies (Industrials REIT, Network International Holdings and Seraphine Group) being admitted to trading in the last five years.

Online maternity retailer, Seraphine, joined the Main Market in July 2021 with a market value of £150m. The offer from its majority shareholder, Mayfair Equity Partners, valued the company at £15m which represented a 206% premium to Seraphine's share price immediately before the start of the offer period but of note, at only 10% of the original IPO value.

Possible offers

There were 16 possible offers announced in H1 2023 in respect of 14 companies. Five (31%) of these progressed to firm offers during the review period, eight (50%) terminated and three (19%) were ongoing as of 30 June 2023. This is a similar conversion rate to that seen in H1 2022 when 29% of the 31 possible offers progressed to firm offers and a higher rate to that seen in H2 2022 when 19% of the 16 possible offers progressed to firm offers.

The UK equities market has had a turbulent few years and it is not altogether surprising that we are seeing companies and boards seeking to return to the private markets. Global instability, weak trading conditions and subdued valuations have all contributed to a dampening appetite to remain in the public spotlight. Time will tell whether the UK listing reforms can reverse this trend. Short term, if interest rates stabilise there should be more M&A. Longer term, reforms and recovery of the UK equity market may result in boards being less willing to entertain take private approaches.

Tom Mercer,
Partner, Ashurst

The 'phenomena' of recently IPO-ed companies being in receipt of possible or firm take private interest is not one which the UK is alone in experiencing. This trend has also been witnessed in other major regions and jurisdictions including the EU and US – with it being reported that 2023 has thus far featured more take private announcements than IPOs. This seems to suggest a more fundamental failing of public or capital markets – whether through over-pricing of IPOs, the changing shape of shareholder registers in particular the paucity of long-only investors or investors failing to properly value these companies – leading in many cases to thinly traded and illiquid stock – and consequently these companies craving to escape the harsh, 'unreasonable' and unforgiving scrutiny of public markets.

Selina Sagayam,
Senior of Counsel, Gibson Dunn

Legal and regulatory developments

Legal and regulatory developments in H1 2023 included:

- a revised version of the Code coming into effect in February 2023, which included amendments to the definition of acting in concert in the Code
- a further revised version of the Code coming into effect in May 2023, which related to the operation of the offer timetable in competitive situations and included other miscellaneous Code changes
- the Takeover Panel (Panel) publishing a consultation paper, which proposes amendments to Rule 21 (Restrictions on frustrating action) of the Code
- the Financial Conduct Authority (FCA) publishing a Primary Market Bulletin in which it confirmed that it would not be issuing a Technical Note dealing with when a prospectus is required where securities are issued pursuant to a scheme of arrangement
- the FCA's publishing a consultation on changes to its Listing Rules, which includes changes regarding large corporate transactions by listed companies
- the UK government (Government) introducing the Digital Markets, Competition and Consumers Bill into Parliament
- the Competition and Markets Authority (CMA) publishing its final report in relation to Microsoft's proposed acquisition of Activision; the CMA prohibited the transaction—a divergence from the European Commission (Commission)'s conditional clearance of the transaction
- the CMA ordering the unwinding of Cérélia Group's completed acquisition of the Jus-Rol business of General Mills
- the Cabinet Office publishing the second edition of its Market Guidance Notes on the National Security and Investment Act 2021 (NSI Act)
- the Commission adopting a package of measures aimed at simplifying its merger control review
- the Commission publishing a Q&A document to assist companies in understanding their duties under the new EU Foreign Subsidies Regulation
- the European Court of Justice confirming that below-threshold mergers can be assessed under abuse of dominance rules

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

Outlook for H2 2023

The FCA's consultation on the UK public markets is welcome – and will likely remove a lot of friction that acts as a drag on the competitiveness of Main Market companies. But what of AIM? If the FCA's changes are implemented, the light-touch growth market may have the more onerous obligations. This will lead to an existential crisis, as AIM companies consider their listing status, which will shake loose a swathe of M&A (and other) opportunities.

Simon Wood,
Partner, Addleshaw Goddard

As expected in a rising interest rate environment, bidders are adapting how they finance transactions, which can have implications for the form of offer consideration. We are seeing an increasing number of bidders consider a listed or unlisted equity component in their offer terms (or both, in the case of the consortium offer for Dignity) which, as well as reducing the overall cost of the deal for the bidder, allows existing target shareholders not wishing to exit at this point in the cycle the opportunity to rollover into the new ownership structure. Bidders are also exploring other forms of consideration, such as deferred consideration units (on Prax Exploration & Production's Offer for Hurricane Energy) or contingent value rights.

Katherine Moir,
Partner, Clifford Chance

There remains significant interest in UK public companies as well as significant pools of available capital. That interest is coming from strategic and financial buyers many of whom are not UK based. Notwithstanding plenty of interest, current activity and, in particular transactions in excess of £1bn, are generally being constrained by the cost of finance, market uncertainty and a gulf between sellers and buyers on valuation. As the year progresses, we expect financing constraints to begin to ease and valuation expectations equalise. Assuming no additional macro shocks to compromise confidence we believe these factors will be key to a changing picture on both activity and deal size.

Iain Fenn and Dan Schuster-Woldan,
Partners, Linklaters

We are seeing activity from corporates looking to pursue strategic deal opportunities despite the impact of the ongoing weakness of the pound, the recession, the threat of further escalation in the continuing conflict in Ukraine, the energy crisis and challenging debt markets. Financial sponsor bidders are also adapting to the new environment, with private equity deal activity having been impacted by the rise in interest rates. In particular, we are seeing sovereign wealth funds take increasingly prominent roles on takeovers – as equity syndicatees on P2Ps (which has been a trend for some time), but also as joint offerors from the outset. Financial sponsors are also turning increasingly to private capital for larger tranches of debt financing – for example, the lenders on the recently announced £4.45bn offer for Dechra Pharmaceuticals PLC (announced June 2023) comprised private credit funds (or the private credit arms of financial sponsors).

Dominic Ross,
Partner, Clifford Chance

Outlook for H2 2023

As we predicted in the 2022 public M&A trend report, stubbornly high inflation and rising interest rates mean fears of global recession have persisted through the first half of 2023 and show no signs of abating. Also, many of the wider geopolitical and macroeconomic factors that affected M&A activity in the second half of 2022 have continued to have a dampening effect on equity and debt markets and M&A activity in many sectors.

Tom Matthews,
Partner, White & Case

Whilst overall deal flow has been slow, we expect that ESG considerations will continue to be a key driver in public M&A activity and process. Businesses with robust ESG credentials should remain attractive targets for bidders looking to boost their own credentials or indeed, 'positively' diversify their asset portfolios, particularly in the energy sector. On the flip side, sellers will continue to consider divestments of assets which are no longer compatible with their group's ESG strategy – whether instigated by the board or, increasingly, by ESG activist campaigns. We have also seen the buy-side placing greater importance on 'double materiality' – valuing both financial and non-financial considerations in diligence exercises, with many not willing to risk reputational damage in pursuit of growth. Boards will therefore be under pressure to produce more meaningful data to properly evidence the target's 'ESG story' and induce competitive bids. With this in mind, we see ESG as an area that is only going to become more pervasive in all aspects of deal execution going forwards.

Nicola Evans,
Partner, Hogan Lovells

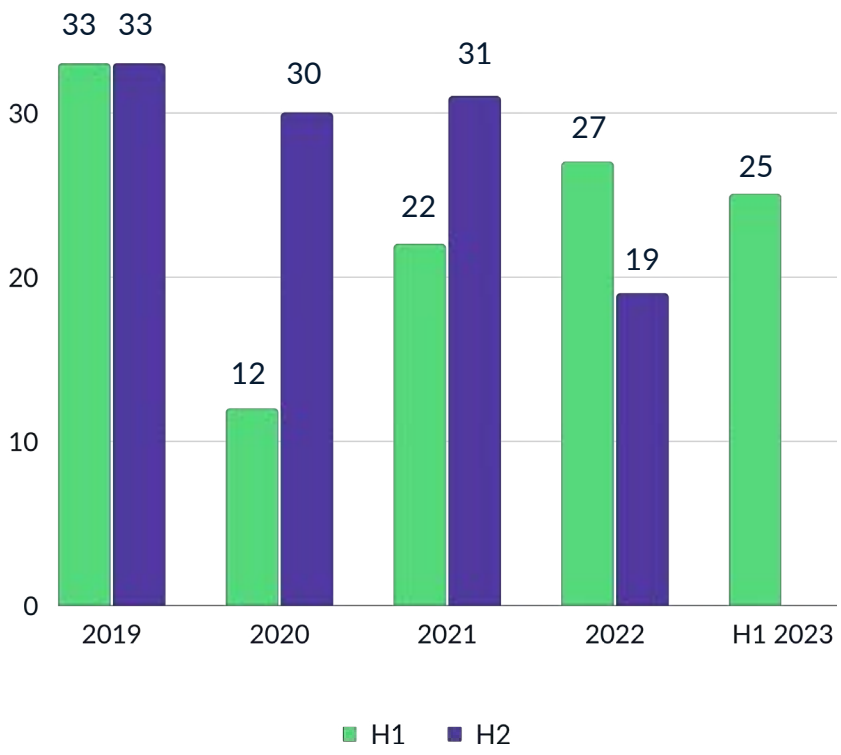
Whilst public M&A activity has picked up since H2 2022, we have seen both trade buyers and private equity adopting a more cautious approach to M&A in H1 2023, preferring to wait and see how the various different macroeconomic factors, including inflation, rising interests rates and other geopolitical tensions, play out. Acquisition financing has been increasingly costly and a major stumbling block, meaning that trade buyers have increasingly turned to offering shares as consideration in order to give them a competitive advantage over private equity - who have been sitting on the sidelines for much of H1 2023. So, although these trends look like continuing in the near term, private equity have been returning to the pitch towards the end of H1 2023 and so expect an uptick in P2Ps during the second half of this year.

Daniel Simons,
Partner, Hogan Lovells

01 Deal value and deal volume

Takeover activity remained subdued in H1 2023 with 25 firm offers announced in H1 2023. This was a 7% decrease compared to H1 2022, but a 32% increase compared to H2 2022, which saw 27 and 19 firm offers respectively announced during those periods.

Deal volume (firm offers)



Aggregate deal value for all firm offers announced in H1 2023 was £12.2bn (H1 2022: £19.1bn; H2 2022: £22.2bn) and average deal value was £489m (H1 2022: £709m; H2 2022: £1.2bn). The last time that deal values were at these low levels was during the first lockdown periods in H1 2020 resulting from the coronavirus (COVID-19) pandemic. Three transactions had deal values exceeding £1bn and the largest transaction was EQT and the Abu Dhabi Investment Authority's £4.5bn offer for veterinary pharmaceutical company, Dechra Pharmaceuticals.

Average bid premium (measured by comparing the offer price with the target's share price immediately before the start of the offer period) was 53%, with the highest bid premium being 206% and the lowest being a 24% discount.

We expected to see a decline in public M&A activity following the post-pandemic highs of 2021. Whilst we expect activity to remain relatively subdued in 2023 there are some positive indicators as we move into H2.

Longer term, it will be interesting to see whether tighter credit conditions and the proposed loosening of the Prospectus Regulation will pave the way for more strategic M&A and share for share deals. If so, we expect competition and FDI clearances will become gating items.

Tom Mercer,
Partner, Ashurst

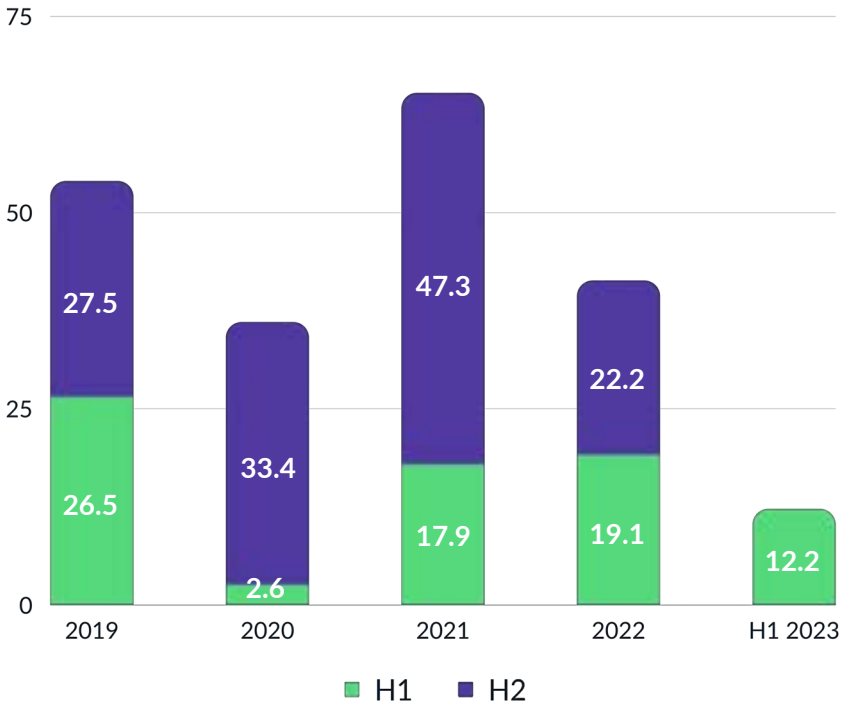
Whilst public M&A activity has been down in 2023, PE and strategic buyers are keen to seize opportunities to acquire good businesses on attractive terms, particularly in the life sciences and tech sectors. PE buyers continue to have a considerable amount of capital to deploy and have been prepared to finance acquisitions with more equity than usual with the expectation that they will be able to refinance further down the line once conditions have improved.

John Livesey,
Partner, Hogan Lovells

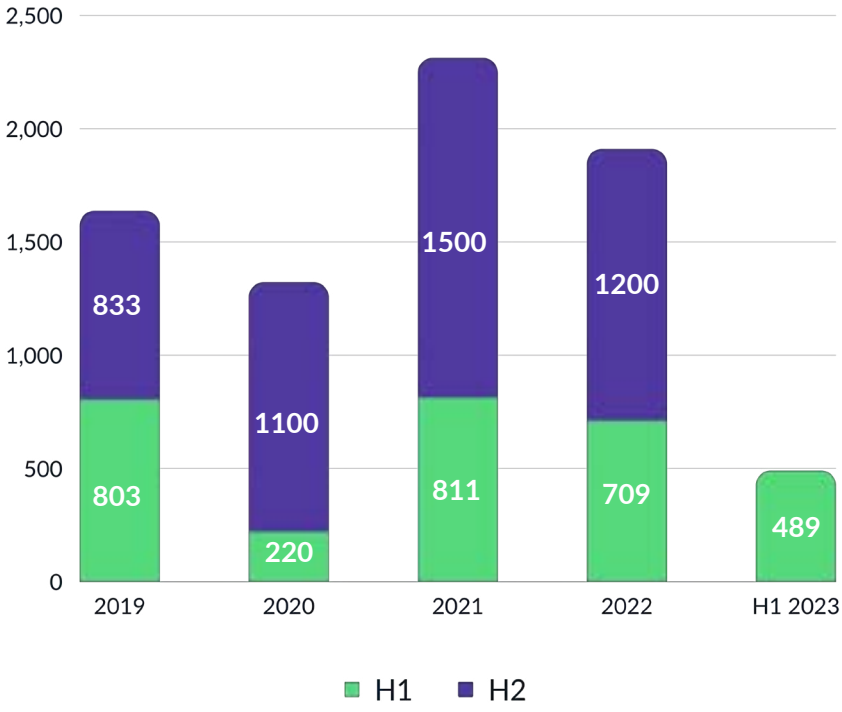
Whilst middle market activity has remained relatively stable during the period we have seen a decline in larger deals and volumes are subdued as sellers hold off on approaching markets in the wake of the current economic outlook.

Selina Sagayam,
Senior of Counsel, Gibson Dunn

Aggregate deal values (£bn)



Average deal values (£m)

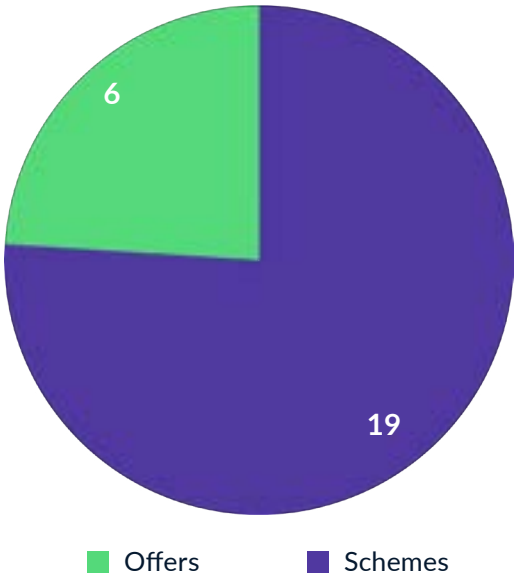


02 Deal structure

19 (76%) of the 25 firm offers announced in H1 2023 were structured as schemes of arrangement. Where an offer structure was utilised, there were usually compelling reasons such for this:

- AOP's Health International Management's offer for Shield Therapeutics was a mandatory offer
- Mayfair Equity Partners held a 43% stake in Seraphine at the time of posting its offer document
- Unikmind's offer for Kape Technologies was initially unrecommended with Unikmind holding 55% of Kape's share capital at the time of posting its offer document
- members of the consortium on the offer for Dignity held 29.7% of Dignity's share capital

Firm offers by deal structure (H1 2023)



We anticipate schemes will remain the usual structure to execute recommended takeovers with only hostile, competing or mandatory bids being by way of offer.

Iain Fenn and Dan Schuster-Woldan,
Partners, Linklaters

03 Unrecommended, competing and mandatory offers

Unrecommended offers

All but two of the firm offers announced in H1 2023 were recommended from the outset.

Kape Technologies

Unikmind's initial offer for Kape Technologies valued the target company at £1.25bn and was met with opposition by Kape's independent directors.

Unikmind Holdings is a vehicle for Israeli tech billionaire, Teddy Sagi, who founded betting software group Playtech. Unikmind already held 55% of Kape's equity when it announced its firm offer and Sagi cited 'thin stock market trading' as the reason he saw AIM-listed Kape's future as private, re-igniting concerns regarding the UK's ability to retain high-growth public technology companies.

Unikmind subsequently increased its US dollar cash offer to a value of £1.27bn and announced that it was interested in 63% of Kape's issued share capital and had received irrevocable undertakings in respect of a further 13%. Despite concerns about the offer undervaluing Kape's business and prospects, the independent directors recommended that shareholders consider accepting the offer given that Unikmind had sufficient acceptances and irrevocables to declare the offer unconditional and to force a delisting of the company's shares.

The offer was declared unconditional in April 2023, with Unikmind increasing its shareholding in Kape to 80%.

Shield Therapeutics

The directors of Shield Therapeutics (other than co-founder Charles Schweiger) recommended that shareholders reject AOP Health's £46m mandatory offer, but did not view the offer as hostile. The mandatory offer was triggered by AOP exercising conversion rights in respect of a convertible shareholder loan, which increased its shareholding in Shield from 27% to 42%.

The directors were supportive of the conversion, but recommended that shareholders reject the mandatory offer as the conversion price (and resultant mandatory offer price) represented a 13% discount to Shield's share price at the time of the 2.7 announcement. The offer lapsed in June 2023 leaving AOP Health with a 42% interest in Shield's issued share capital.

> *The Unikmind bid scenario certainly did have a number of interesting twists and turns with the independent board of Kape Technologies ultimately reaching the conclusion to "seriously" recommend shareholders to accept the undervalue offer. Shareholders found themselves with limited options given that Unikmind had stated its intention of requisitioning a general meeting to delist Kape (regardless of whether its offer went through). The prospect of this outcome was highly likely given the size of its interest and the board were compelled to draw the attention of minority shareholders of the risk of being left with little liquidity and protections in a potentially highly levered unlisted company where cash was being upstreamed out to its new controlling shareholder. … It came as no surprise to the market that Unikmind ultimately managed to secure well in excess of the minimum acceptance condition imposed by the Kape board of 70% securing over 98% of offer acceptances by the time it closed its offer.*
>
> Selina Sagayam,
> Senior of Counsel, Gibson Dunn

Deal in focus: Kape Technologies

15 September 2022

Unikmind participates in an equity fundraising, which results in it holding 55% of the total voting rights in Kape

9 December 2022

Unikmind approaches the Kape independent board with a non-binding offer proposal valuing Kape at 265p per share. The offer was in US dollars with shareholders having the right to elect for the consideration to be paid in sterling.

13 January 2023

Unikmind submits an improved non-binding proposal at 285p per share

13 February 2023

Unikmind makes a firm offer announcement at the US dollar equivalent of 285p per share. The offer values Kape at £1.25bn

6 March 2023

Unikmind publishes its offer document

20 March 2023

The Kape independent directors publish their response document. They argue that the offer materially undervalues Kape and is, therefore, not capable of recommendation. However, the independent directors highlight various risks associated with not accepting the offer (including delisting of Kape's shares)

20 April 2023

Unikmind makes increased final cash offer. The revised offer price values Kape at £1.27bn

21 April 2023

Unikmind announces that it is interested in 63% of Kape's issued share capital and has received irrevocable undertakings in respect of a further 13%

25 April 2023

The Kape independent directors publish a revised response document. Despite believing that the revised offer still undervalues Kape's business and prospects, the independent directors advise shareholders to seriously consider accepting the offer given the absence of an alternative offer and the fact that Unikmind has sufficient acceptances and irrevocable undertakings to declare its offer unconditional and delist Kape without a shareholder meeting

28 April 2023

Offer declared unconditional

Bumpitrage – a form of activism in takeovers

'Bumpitrage' occurs where shareholders of a company subject to a takeover bid threaten to vote down or reject the deal, with a view to getting the bidder to 'bump' up the offer price. These attacks often prolong the offer timeline, resulting in more uncertainty and increased costs, but are often successful in raising the offer price.

In recent years, bumpitrage frequency has increased in the UK, particularly driven by valuation gaps in a UK market characterised by depressed share prices. In 2021/22 we saw seven cases of bumpitrage leading to an increased offer. An example from H1 2023 is the offer price increase in the successful bid by SARIA Nederland BV for Devro; this arose from shareholder intervention following the announcement of a recommended offer in November 2022.

It is common for share registers of UK listed targets to change very rapidly after the 'firm intention' announcement which launches the bid (absent a leak), as event-driven hedge funds and other opportunistic investors seize the potential to create value.

While bumpitrage that results in an increase in the offer price is beneficial for target shareholders, it can also bring risks which boards need to carefully assess in any given situation. In 2021 and 2022, four recommended transactions were voted down following shareholder agitation.

In any case, a board should articulate clearly the reasons for its recommendation of the offer, engage with key investors both before the offer is launched (while being mindful of the regulatory constraints) and following launch, and monitor the shareholder register before and during a bid.

> *We have seen increasing levels of so-called 'bumpitrage'. Whilst this often results in an increase in the offer price which is beneficial for target shareholders, it can also bring execution risks which bidders and target boards need to carefully assess in any given situation. In any event, a target board should articulate clearly the reasons for its recommendation of the offer, engage with key investors throughout the course of the offer in order to gauge sentiment towards the offer terms, and monitor changes to the shareholder register as there will often be a significant shift in the composition of the register following the announcement of an agreed offer.*
>
> David Pudge,
> Partner, Clifford Chance

Bumpitrage case study: Saria's offer for Devro

On 25 November 2022, Devro and SARIA Nederland (Bidco), an indirect subsidiary undertaking of SARIA SE & Co, announced a recommended offer for Devro by SARIA. The original offer was 316.1p per Devro share and valued the entire issued share capital of Devro at approximately £540m.

The shareholder meeting to approve the scheme was scheduled to take place at 10.45am on 16 February 2023. However, on at 9.30 am on 16 February 2023, Devro and SARIA announced an increased and final recommended offer at 320p per share in cash plus a second permitted interim dividend of 10p per share. This followed discussions between SARIA, Devro and three of Devro's largest shareholders (NN Investment Partners, M&G and Blackmoor Investment Partners) who collectively held 24% of Devro's issued share capital. The increased offer valued Devro at £564m (on a diluted basis) and represented a 4.4% increase over the original offer and a 72% premium to the pre-offer period share price.

The second interim dividend had been approved by the board of Devro (Devro's latest accounts showed sufficient distributable reserves) and was conditional upon the scheme to effect the takeover becoming effective. The dividend record date was set at 6 pm on the business day prior to the scheme effective date.

The increased offer was final, but SARIA reserved the right to increase the offer in the event of a firm or possible offer for Devro by a third party. The three shareholders (NN Investment Partners, M&G and Blackmoor Investment Partners) gave letters of intent to vote in favour of the increased offer. The shareholder meetings were duly adjourned from 16 February 2023 to 3 March 2023.

Further, the board of Devro had given its consent pursuant to the co-operation agreement to SARIA switching to a takeover offer, if it so decided. If SARIA had exercised this right, then such takeover offer would have an acceptance condition of 50% plus one share (or such higher percentage as Bidco might decide after, to the extent necessary, consultation with the Panel, and in any case not exceeding 75% of the Devro Shares to which the offer related).

The scheme of Devro subsequently became effective on 14 April 2023.

Competing offers

Network International Holdings was initially approached by a consortium comprising CVC Advisers and Francisco Partners Management regarding a possible offer for the company. Network International subsequently announced that it had received a separate approach from Canadian investment manager, Brookfield Asset Management. In June 2023 the Network International board and Brookfield agreed terms for a £2.2bn offer and shortly thereafter the consortium issued a statement of no intention to bid.

There were no other actual or potential competing offers during the review period which resulted in a firm offer for a target company.

Mandatory offers

Three companies were the subject of mandatory offers:

- the consortium offer for funeral provider, Dignity, was announced as a voluntary offer, but became mandatory after the consortium increased its shareholding in Dignity to 30%
- AOP Health International Management's mandatory offer for Shield Therapeutics was triggered by AOP exercising conversion rights in respect of a shareholder loan, which increased its shareholding in Shield to 42%
- Allergy Therapeutics was the subject of a conditional mandatory offer from funds managed by ZQ Capital Management which already held a 26% stake in the target company. The offer was conditional upon various regulatory and other conditions being satisfied in respect of an equity financing that would see the funds' shareholding in Allergy Therapeutics increase to at least 30%

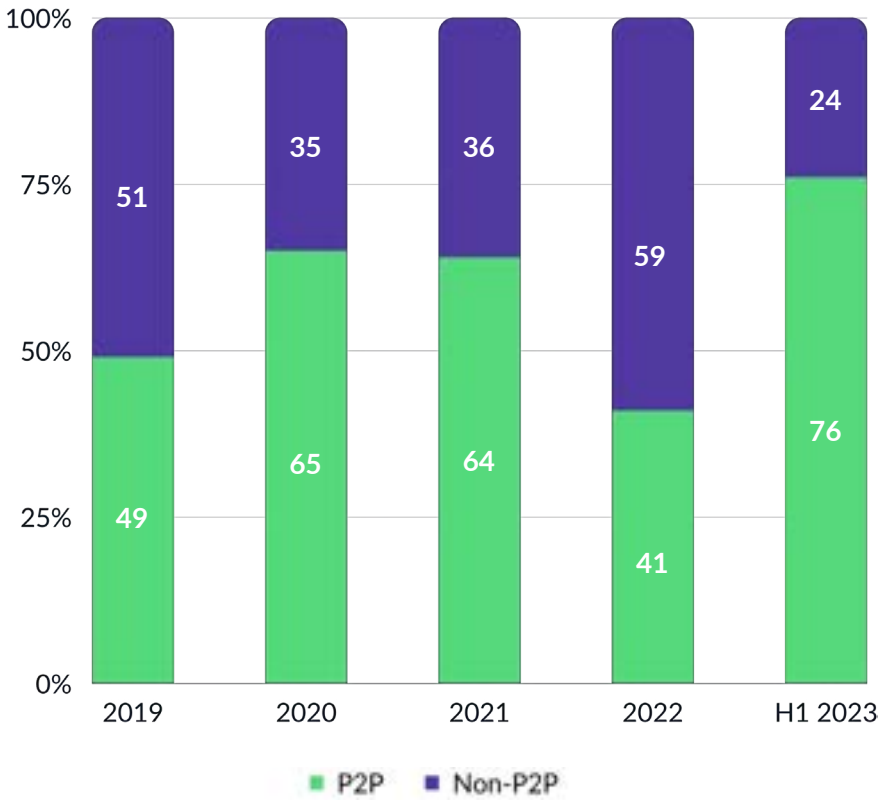
Shareholder activism continues to drive more public M&A than may be apparent and is increasingly common in the UK. Activists can also deploy a range of options to 'disrupt' companies' M&A strategy, including 'bumpitrage', stake building and holding out (or 'bumping and grinding') and pressuring for divestments of non-performing assets. We expect to see greater activism continue in future years; it's proven to be an effective means to drive or disrupt corporates' strategy in order to pursue both the financial and non-financial agendas of increasingly engaged shareholders.

Patrick Sarch,
Partner, Hogan Lovells

04 Public to private transactions

In our 2022 public M&A report we noted a reduction in the number of public to private transactions as a proportion of all firm offers, with P2P transactions accounting for 41% of all firm offers. H1 2023 saw a reversal of this trend with 19 firm offers announced by private equity, financial investors and individuals/family offices, which accounted for 76% of all firm offers.

P2P transactions as a proportion of all firm offers



P2P transactions were, however, generally smaller with aggregate deal value of £10.8bn (H1 2022: £9.4bn; H2 2022: £7.9bn) and average deal value of £568m (H1 2022: £1bn; H2 2022: £873m).

17 (89%) of the 19 P2P transactions were cash only offers, one (5%) was a cash offer with an unlisted share alternative and one (5%) was a cash offer with a listed share alternative and an unlisted share alternative.

The surge in P2P transactions in the first quarter of this period reflects the recovery in confidence of financial sponsors in UK M&A opportunities following a slump towards the end of last year as rising inflation, increasing interest rates and forecasts of possible deep recession in the UK cast a dark shadow on public M&A.

Selina Sagayam,
Senior of Counsel, Gibson Dunn

Despite the economic headwinds mentioned previously, private equity investors have navigated the constraints of the high cost of borrowing and, in 2023, we have seen a significant increase in interest in P2Ps in the UK, albeit with lower-than-average deal values. Even if interest rates remain high we expect to see a further resurgence in larger P2Ps as soon as there is more stability in the markets and, medium-to-longer term, a return to form in the traditional debt markets.

On larger take-privates we expect to see sponsors bringing in their limited partners as co-investors. PE funds have limits on the deals that they can make relative to the size of their vehicles; a co-investor mitigates against concentration risk. These co-investor arrangements also give fund managers extra firepower to allow them to execute larger P2P deals, which is vital given the continued high cost of debt financing.

Sonica Tolani,
Partner, White & Case

Consortium offers

There were four consortium offers announced in H1 2023 (H1 2022: two; H2 2022: three consortium offers):

- the £4.5bn offer for Dechra Pharmaceuticals by EQT and the Abu Dhabi Investment Authority
- the £281m offer for Dignity by a consortium comprising funds established by entrepreneur, Sir Peter Wood, and Dignity's former CEO, Gary Channon
- the £93m offer for restaurant operator, Fulham Shore, by TORIDOLL Holdings
- the £62m offer for Xpediator was made by a consortium comprising funds advised by BaltCap, Cogels Investments and Nuoma IR Kapitalas

Tokyo Stock Exchange-listed TORIDOLL is partnering with restaurant sector specialist fund, Capdesia, to grow Fulham Shore's Franco Manca and The Real Greek brands across the UK and internationally. Capdesia plans to introduce investors to Bidco, which will see TORIDOLL's ownership reduce to no less than 51% of Bidco.

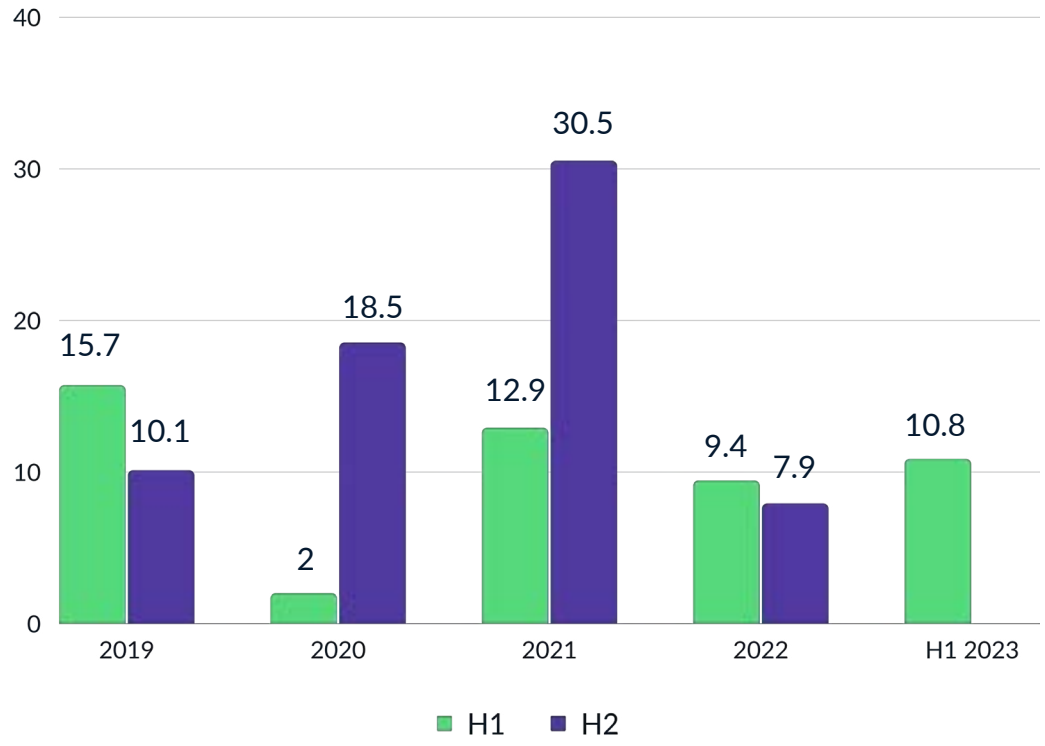
> *As debt markets remain challenging and interest rates continue to rise, we expect to see further consortium bids in H2, as bidders collaborate in pursuit of quality assets.*
>
> Lucy Robson,
> Legal Director, Addleshaw Goddard

Individuals/family offices

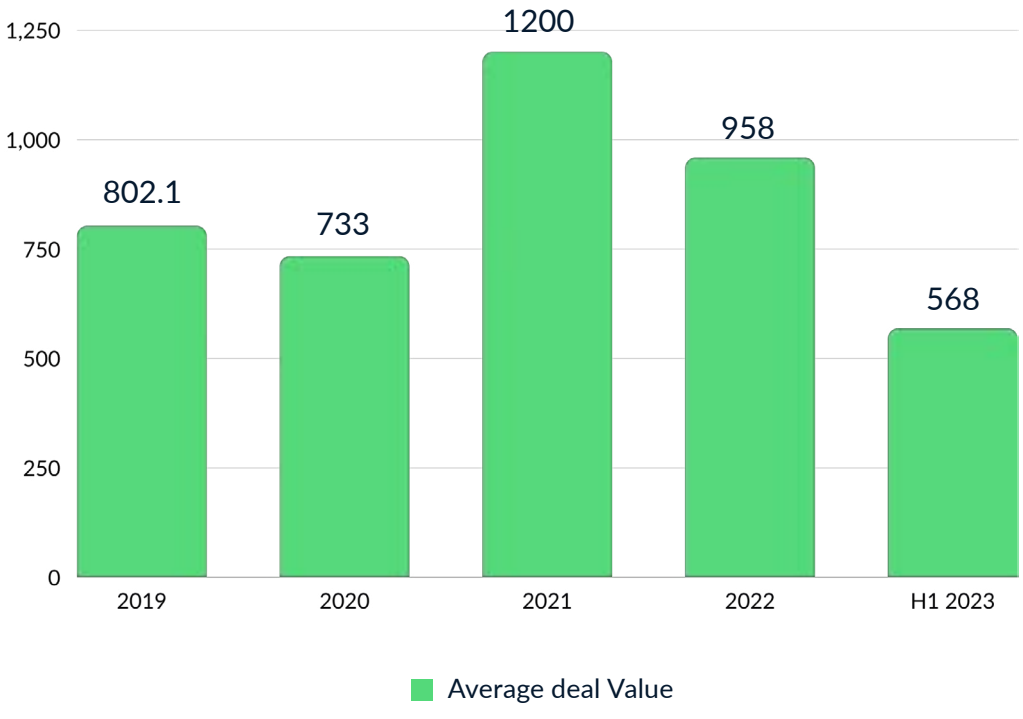
There were several offers made by bidders controlled by individuals or family offices:

- the £1.3bn offer for Kape Technologies was made by 54% shareholder, Unikmind. Unikmind is wholly-owned by Israeli entrepreneur, Teddy Sagi, who founded online gaming software company, Playtech
- the £281m offer for Dignity was made by a consortium comprising funds established by entrepreneur, Sir Peter Wood, and Dignity's former CEO, Gary Channon. Sir Peter Wood founded insurance companies Direct Line and esure Group and was a founding investor in Go Compare
- the £249m offer for Hurricane Energy was made by a subsidiary of Prax Group, which is wholly owned by Sanjeev Soosaipillai and Arani Soosaipillai and their family trusts. The diversified midstream and downstream energy group generated revenues of US$10bn and adjusted EBITDA of US$127m for the year ended 28 February 2022
- the £62m offer for Xpediator was made by a consortium, which included the private investment vehicle of Justas Veršnickas, the managing director of one of Xpediator's subsidiaries
- Teddy Sagi's family office and investment company, Globe Invest, was also the bidder on the £45m offer for Best of the Best

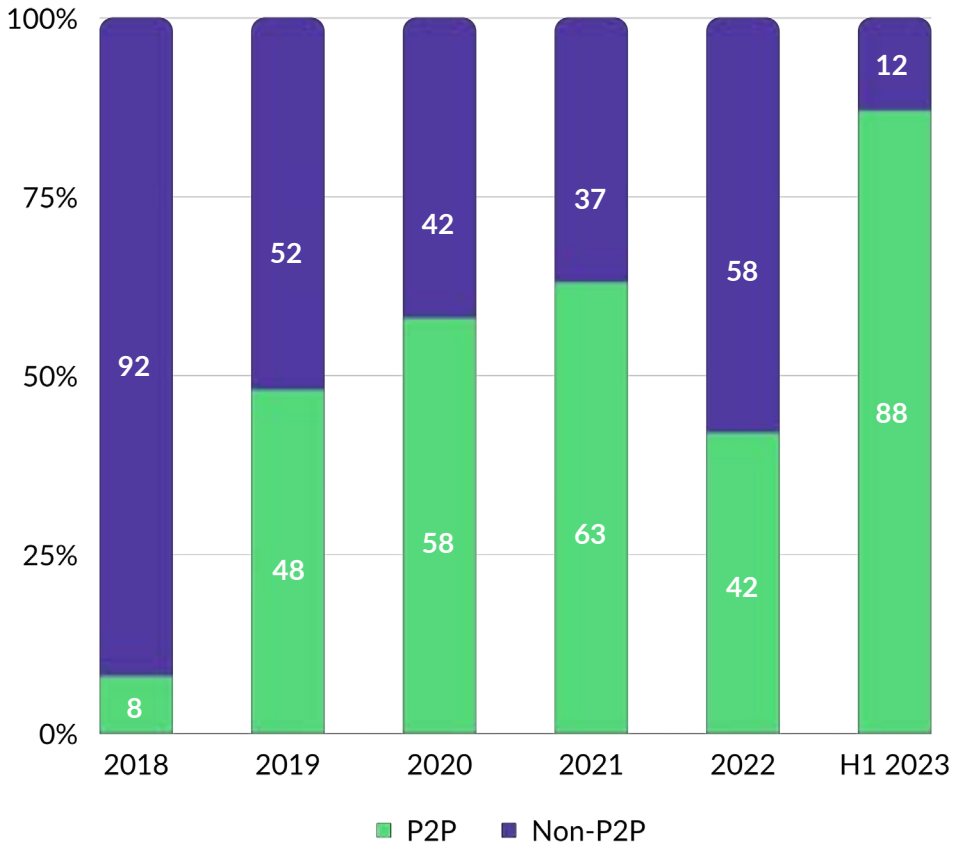
Aggregate deal value for P2P transactions (£bn)



Average deal value for P2P transactions (£m)



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



05 Bidder jurisdiction

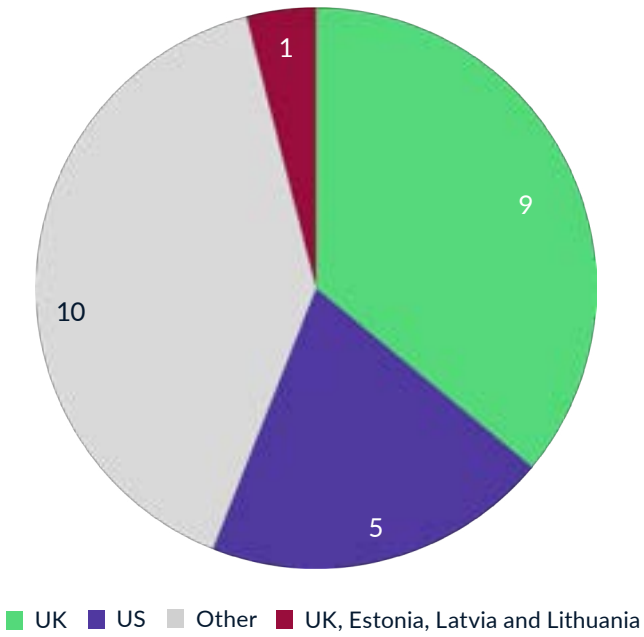
Interest from overseas bidders in UK targets remained high. Of the 25 firm offers announced in H1 2023:

- nine were made by UK bidders
- five were made by US bidders
- one was made by bidders in the UK, Estonia, Latvia and Lithuania
- ten were made by bidders in other jurisdictions

Overseas bidders were involved in firm offers with an aggregate deal value of £10.7bn (H1 2022: £13.1bn; H2 2022: £20.5bn), which represented 88% of aggregate deal value for all firm offers during H1 2023 (H1 2022: 69%; H2 2022: 92%). The most popular sectors for overseas bidders to target were Healthcare, Pharma & Biotech (three firm offers), Real Estate (two firm offers) and Technology (two firm offers).

US bidders were less active than in recent review periods, being involved in five (20%) of the 25 firm offers with an aggregate deal value of £1.1bn, which represented 9% of aggregate deal value in H1 2023.

Bidder jurisdiction (firm offers)



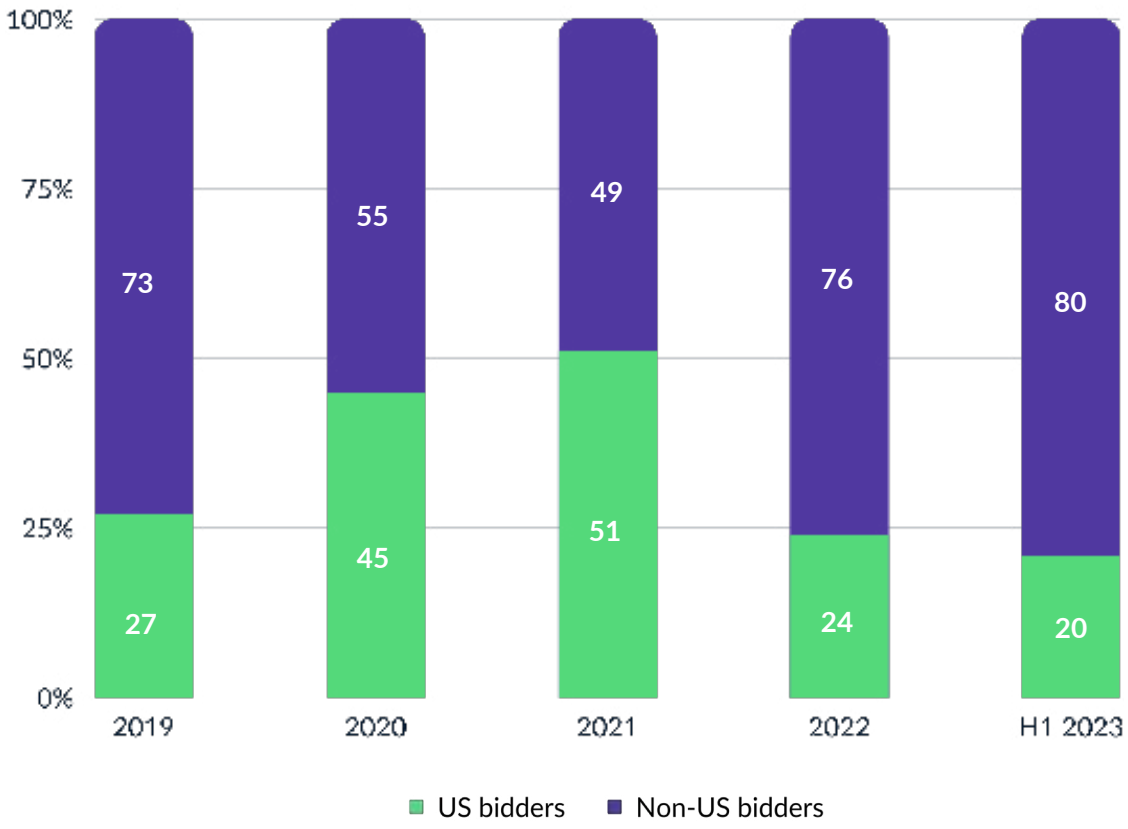
We have continued to see high levels of interest from non-UK bidders, with overseas bidders being involved in firm offers representing 88% of aggregate deal value for all firm offers during H1 2023. Sterling and the euro have strengthened slightly from their lows of September 2022 but remain comparatively weak against the US dollar. UK and EU assets therefore look cheap to prospective US buyers who, we predict, will be making a comeback having had a quieter run in 2022.

Tom Matthews,
Partner, White & Case

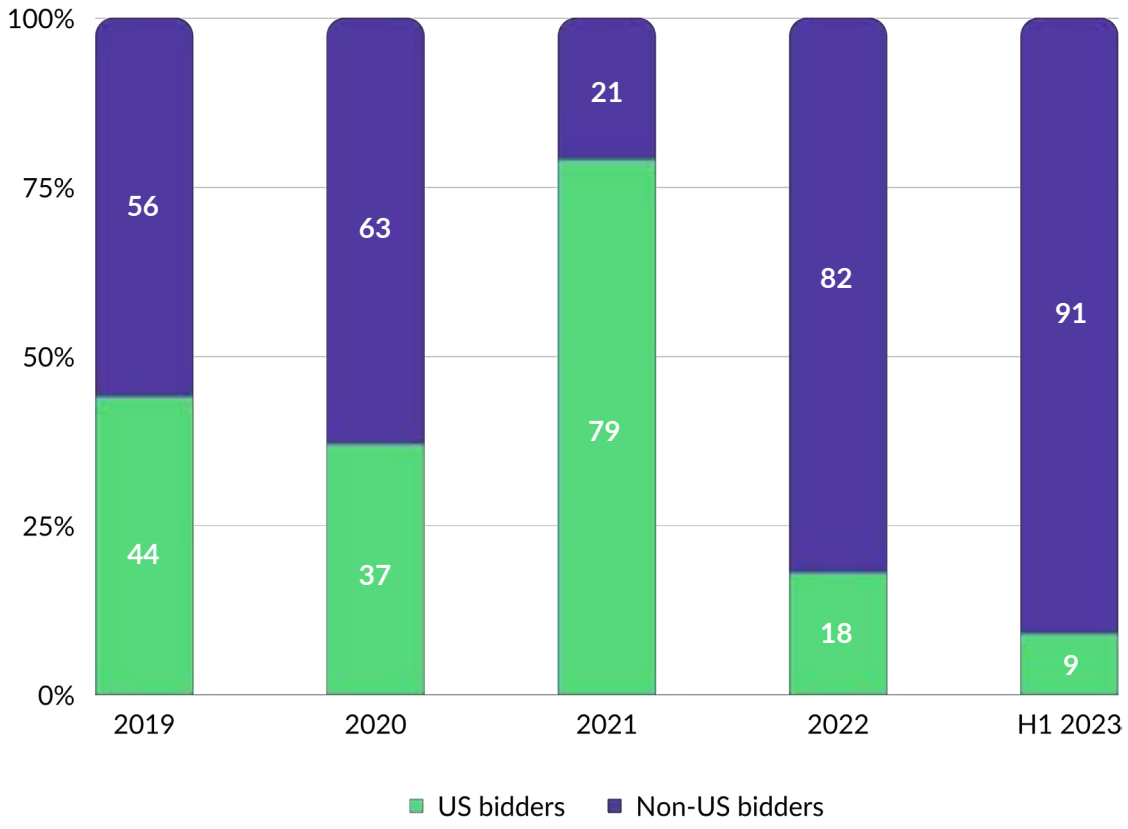
UK plc continues to attract overseas interest with 64% of all firm offers involving non-UK bidders. Whilst US bidders marginally dropped off in numbers within this cohort and indeed have been spending less on average on UK targets, they continue to surpass all overseas bidders and accounted for nearly a quarter of all firm offers during the period.

Selina Sagayam,
Senior of Counsel, Gibson Dunn

US bidders as a proportion of all firm offers



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



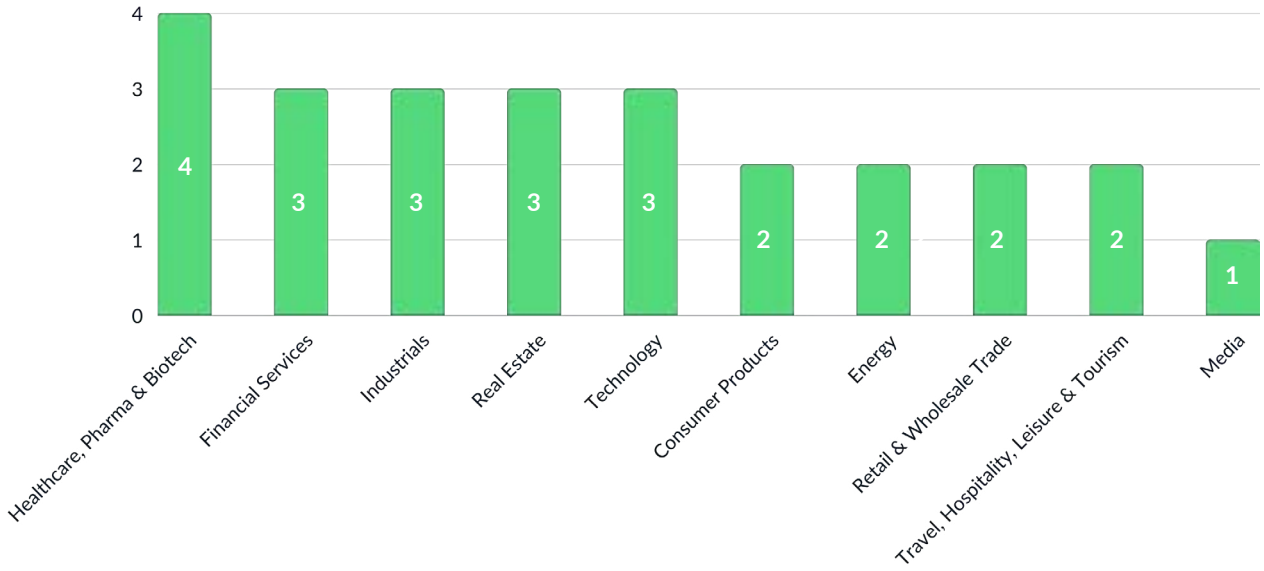
Analysis of deal volume and deal value by bidder jurisdiction

Bidder Jurisdiction	Number of bidders	Aggregate deal value
UK	9	£1.5bn
US	5	£1.1bn
Canada	2	£2.7bn
Cyprus	2	£1.3bn
Sweden and Abu Dhabi	1	£4.5bn
UK, Estonia, Latvia and Lithuania	1	£62m
Australia	1	£50m
Austria	1	£46m
Germany	1	£410m
Hong Kong	1	£485m
Japan	1	£93m

06 Industry

Public M&A activity was spread across a range of sectors in H1 2023 with the most active sector being Healthcare, Pharma & Biotech which saw four firm offers with an aggregate deal value of £5bn. This represented 16% of total deal volume and 41% of aggregate deal value in H1 2023.

Industry sectors by deal volume (firm offers H1 2023)



Despite many predicting UK tech assets to continue to be among the most prized in 2023, appetite for M&A opportunities has been largely sector agnostic. The first six months of 2023 have instead been characterised by much smaller-than-average deal sizes across a wide range of industries. This suggests that where there is a deal to be done, many bidders are willing to snap up assets regardless of sector, no longer insisting upon 'big ticket' or high profile investments.

Philip Broke,
Partner, White & Case

We expect to see continued growth and investment across the energy/renewables sector on the back of record profits for a number of entities last year. In particular, the oil and gas space has seen ongoing consolidation in recent times. In addition we expect activity in this sector to continue to be driven by a desire on the part of various major energy entities to secure additional sources of renewable energy, given its appeal to shareholders and the continued development of ESG regulations and requirements.

Sarah Shaw,
Partner, Hogan Lovells

Healthcare, Pharma & Biotech

The most active sector for both deal volume and deal value was Healthcare, Pharma & Biotech, which saw four firm offers announced in H1 2023 with an aggregate deal value of £5bn:

- the £4.5bn offer for Dechra Pharmaceuticals by EQT and the Abu Dhabi Investment Authority
- the £269m offer for Medica Group by UK Investment Partners
- the £222m offer for Redx Pharma by Jounce Therapeutics
- the £46m offer for Shield Therapeutics by AOP Health International

Veterinary pharma company, Dechra, first listed on the London Stock Exchange in 2000 and since that time has been one of the strongest performers in the UK pharma & biotech sector. The transaction is likely to attract the attention of competition regulators, given EQT's other interests in the pet and veterinary sector, including leading veterinary services provider, IVC Evidensia.

Redx's proposed tie-up with Jounce Therapeutics lapsed in April 2023 following Jounce's decision to pursue a merger with Concentra Biosciences following an unsolicited approach from the Massachusetts-headquartered company.

AOP Health's £46m offer for Shield Therapeutics was a mandatory offer, which was triggered by AOP exercising conversion rights in respect of a convertible shareholder loan. The conversion price (and resultant mandatory offer price) represented a 13% discount to Shield's share price at the time of the firm offer announcement and the offer lapsed with AOP increasing its shareholding in Shield to 42%.

Real Estate

There were three firm offers in the Real Estate sector:

- the £511m offer offer for Industrials REIT by Blackstone
- the £485m offer for Civitas Social Housing by CK Asset Holdings
- the £199m offer for CT Property Trust by LondonMetric Property

All three target companies had sustained sharp falls in their shares prices in the 12 months preceding the offers being announced. This was reflective of the wider Real Estate market with rising interest rates and tighter credit conditions - exacerbated by the failure of Silicon Valley Bank and the forced sale of Credit Suisse to rival UBS in March 2023 – raising investors' concerns about the outlook for the sector.

Blackstone's offer for Industrials REIT is the third public takeover that it has made for a Real Estate business in the previous two years:

- in July 2021 it formed part of the consortium on the £969m bid for GCP Student Living, a REIT focused on the student residential market
- in May 2021 it bid on the £1.3bn takeover of real estate developer and investor, St Modwen Properties

> *The global commercial real estate sector which reached some heady heights in 2021 started to see a material drop off in the second half of 2022. With interest rate and inflationary pressure featuring in 2023, we are not expecting a major turnaround in the second half of 2023.*
>
> *There continues to be activity in the REIT sector however - including at a global level - with a number of factors driving deals including ESG drivers and some RE sectors performing better and generating more interest than others.*
>
> Selina Sagayam,
> Senior of Counsel, Gibson Dunn

Financial Services

Two of the firm offers in the Financial Services sector involved UK corporate brokers

- the £410m offer for Numis by Deutsche Bank
- the £43m all-share merger between Cenkos and FinnCap

The UK corporate broking market has been hit hard by the sharp decline in IPOs and secondary fundraisings, with only 45 IPOs in 2022 (a 64% decrease compared with 2021) and gross proceeds raised from IPOs on the Main Market and AIM falling by 78% and 92% respectively.

Both Cenkos and FinnCap reported a pre-tax loss in 2022 and Numis saw revenue decline by 33%. The Cenkos/ FinnCap all-share merger follows the collapse in talks last year about a possible combination between FinnCap and rival Panmure Gordon.

The idiosyncratic UK corporate broking sector has withstood the test of time and whilst the two recent offers for Numis and the Cenkos/ FinnCap come off the back of reports and rumours in the last year or so involving other mid-cap UK investment and broking houses, the financial insititutions sector more broadly in the UK has seen a fair bit of activity in the recent years with the pressures of Brexit, amongst other things, driving consolidation in the sector.

Selina Sagayam,
Senior of Counsel, Gibson Dunn

Automotive

UK car dealership, Lookers, was the subject of a £465m offer from Kuldeep Billan, the founder and executive chairman of Alpha Auto Group (AAG). Privately-held AAG operates 15 large car dealerships in Canada and the US and is one of the largest auto retailers based in Canada. Shareholders controlling 42% of Lookers have provided letters of intent in support of the deal, including 19% shareholder, Cinch Holdco UK, a subsidiary of TDR-backed Constellation Automotive Group. Constellation owns the car buying platforms Webuyanycar, Cinch and British Car Auctions (BCA) and has a 3% stake in AIM listed Vertu Motors. In 2022 it completed its £323m takeover of car dealership, Marshalls Motors.

In recent years UK car dealerships have benefited from higher prices for new and used cars attributable to global supply chain shortages, but some analysts view the sector as being ripe for consolidation given the fragmented market, the pressure from rising costs and the increase in direct sales to consumers by car manufacturers. Other examples of consolidation in the UK car dealership market include the £82.5m takeover of Cambria Automobiles by its CEO and founder, Mark Lavery in 2021 and the aborted offer for Pendragon by US-listed dealer, Lithia, in 2022.

Funerals

The consortium bid for Dignity took place during a challenging period for the funeral services sector.

In 2021, the CMA intervened to require all funeral directors to display a standardised price list at their premises and on their website. The CMA also introduced measures to prevent funeral directors from soliciting business through coroner and police contracts and from making payments to incentive hospitals, care homes and similar institutions to refer customers to a particular funeral director.

In addition to these regulatory headwinds, social distancing restrictions introduced during the COVID-19 lockdown are believed to have resulted in an increase in budget funerals, which are less profitable for providers such as Dignity.

Aggregate deal value by sectors (H1 2023)

Sector	Aggregate deal value (ADV)	ADV as a % of ADV across all sectors	Average bid premium	Number of transactions
Healthcare, Pharma & Biotech	£5bn	41%	10%	4
Industrials	£2.5bn	20%	49%	3
Technology	£1.3bn	11%	85%	3
Real Estate	£1.2bn	10%	40%	3
Financial Services	£673m	6%	33%	3
Retail & Wholesale Trade	£485m	4%	75%	2
Media	£363m	3%	58%	1
Consumer products	£296m	2%	118%	2
Energy	£276m	2%	90%	2
Travel, Hospitality, Leisure & Tourism	£139m	1%	16%	2

07 Nature of consideration

Of the 25 firm offers announced in H1 2023:

- 20 (80%) were cash only offers
- three (12%) were share only offers
- one (4%) was a cash offer with an unlisted share alternative
- one (4%) was a cash offer with a listed share alternative and an unlisted share alternative

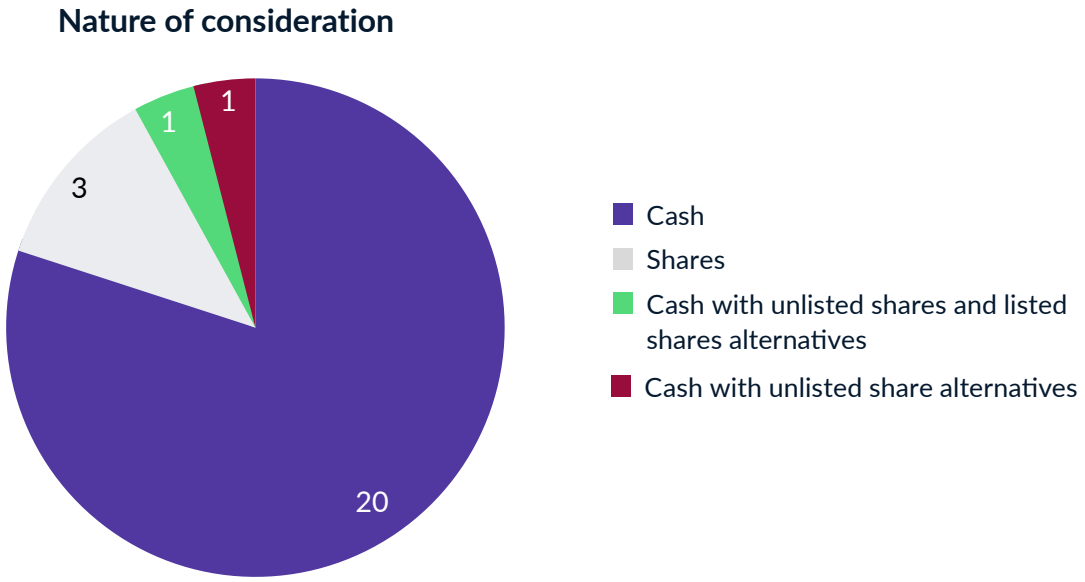
88% of the firm offers announced in H1 2023 had some form of cash element and it was the exclusive form of consideration in 80% of deals. This is not markedly different to 2022, when cash featured in 87% of all deals and was the exclusive form of consideration in 65% of deals.

> *Cash offers continue to be prevalent in 2023. However, with rising interest rates making acquisition financing less appealing, some bidders are including an equity element in their offer terms. This helps to preserve cash and gives offeree shareholders the opportunity to share in value created after the deal has completed.*
>
> Tom Brassington,
> Partner, Hogan Lovells

Brookfield's £2.2bn offer for Network International Holdings was originally structured as a cash only offer. However, on 6 July 2023 (four weeks after its firm offer announcement) Brookfield announced that it would be introducing an alternative offer under which shareholders could elect for an alternative non-cash offer, pursuant to which they would receive unlisted securities in an Abu Dhabi company. At the same time Brookfield announced that it had received an irrevocable undertaking to vote in favour of the scheme, and elect for the alternative consideration, from Mastercard in respect of 9% of Network International's issued share capital. The introduction of the alternative offer is likely to have been required under Rule 16.1 of the Code, which generally prohibits, without prior consent from the Panel, any arrangement relating to offeree shares with favourable conditions attached that are not being extended to all offeree shareholders.

Although the vast majority of firm offers were cash only offers, several contained unconventional features:

- the consideration on Prax Exploration & Production's offer for Hurricane Energy comprised cash, a transaction dividend, a special dividend and deferred consideration units (DCUs) which incorporated a loan note alternative. The DCUs would not be listed or dealt on any stock exchange, but would be transferable by way of a matched bargaining facility set up by Prax. The DCUs would entitle the holders to a portion of net revenues generated by Hurricane up to a cap and to other payments linked to production targets
- the consideration on Unikmind's bid for Kape Technologies was denominated in US dollars
- the consideration on the consortium bid for Dignity comprised a cash offer with an unlisted share alternative and listed share alternative. Subject to the scale back arrangements, Dignity shareholders could elect for the different forms of consideration and specify the proportions in which they wished to receive these. The cash offer was unanimously recommended by the board of Dignity who were unable to give a recommendation (given the complexity and differential implications for individual shareholders) on the two alternative share offers.

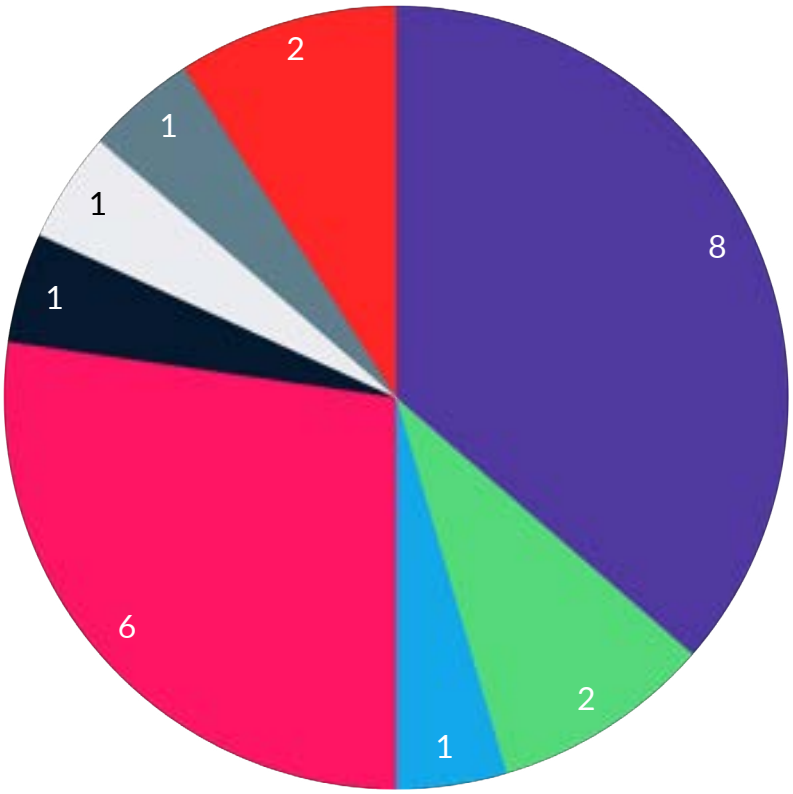


08 Financing

Of the 22 firm offers announced in H1 2023 that involved a cash consideration element:

- ten (45%) were funded wholly or partly by equity subscriptions to bidco/PE funds
- eight (36%) were funded wholly or partly from existing cash resources
- ten (45%) were funded wholly or partly by debt finance
- three (14%) were funded wholly or partly by an equity capital raising
- one (5%) was funded partly by the issue of convertible bonds

Source of finance for cash element of offer



- Existing cash resources
- Equity subscriptions to bidco/PE funds
- Debt finance, equity subscriptions and equity capital raise
- Debt finance and equity subscriptions to bidco/PE funds
- Debt finance and equity capital raise
- Equity capital raise
- Equity subscriptions to bidco/PE funds and convertible bond
- Debt Finance

A key question persisting in 2023 is the availability of debt to acquirers to finance cash deals. There is a widespread acknowledgment that, currently, debt is less generally available and, against the backdrop of rising interest rates, more expensive. Whether that impacts the premia payable on deals or the number of recommendable cash deals capable of being announced remains to be seen. There isn't clear evidence of this, with a buoyant takeovers market in H1 and with UK Plc often still seen to represent good value. The appetite for non-bank lenders to play in the UK takeovers space, however, may be important to the health of the market.

Giles Distin,
Partner, Addleshaw Goddard

The drop in high value deals in 2023 is notable. Large scale financing remains restricted and PE is refocusing after an initial land grab in 2021. Whilst subdued markets mean value opportunities still exist, inflation and interest rates need to stabilise before deals can be properly priced.

However, innovative structures are being introduced which are allowing bidders to share risk with both shareholders (through deferred consideration and contingent payments) and third parties (through consortia bids and partnering). We expect similar innovation to take place in the debt markets, with new participants providing alternative sources of financing to the traditional lending banks.

Jade Jack,
Senior Adviser, Public M&A, Ashurst

09 Offer period length

22 offers completed in H1 2023, 18 of which were structured as schemes and four as offers.

Of the 18 takeovers structured as schemes:

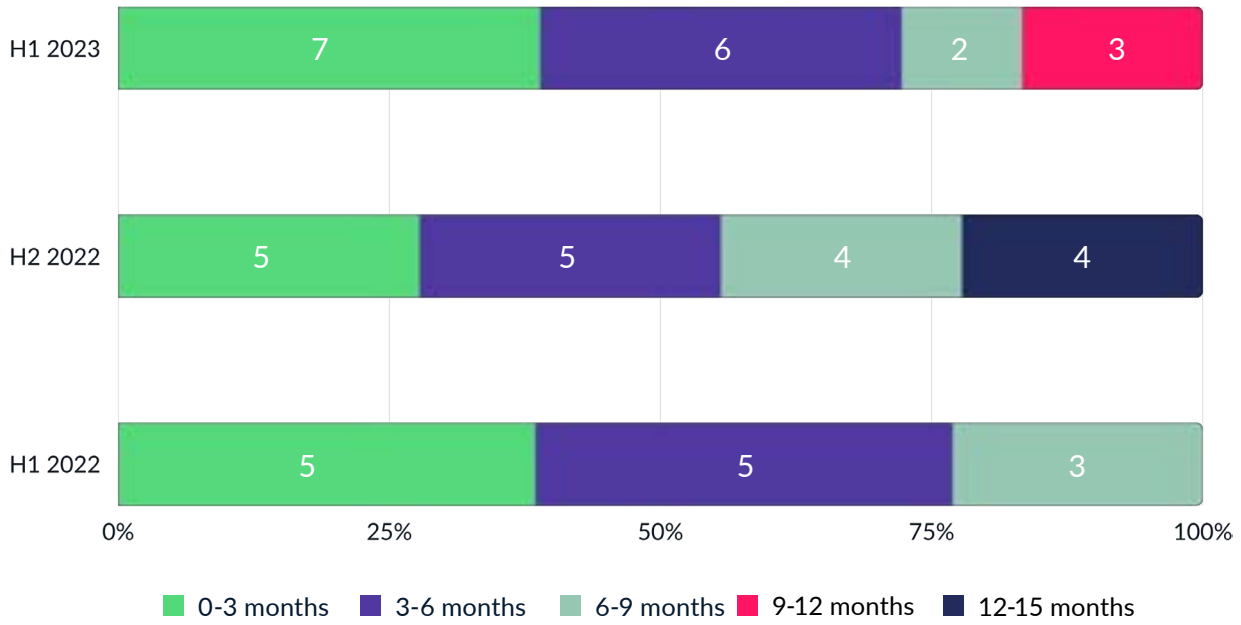
- seven (39%) completed within 0-3 months from the start of the offer period (H1 2022: 38%; H2 2022: 28%)
- six (33%) completed within 3-6 months from the start of the offer period (H1 2022: 38%; H2 2022: 28%) two (11%) completed within 6-9 months (H1 2022: 18%; H2 2022: 20%)
- two (11%) completed within 6-9 months from the start of the offer period (H1 2022: 18%; H2 2022: 22%)
- three (17%) completed within 9-12 months from the start of the offer period of the commencement of the offer period (H1 2022 and H2 2022: 0%)

Of the four takeovers structured as offers:

- three (75%) completed within 0-3 months from the start of the offer period (H1 2022: 75%; H2 2022: 100%)
- one (25%) completed within 3-6 months from the start of the offer period (H1 2022: 25%; H2 2022: 0%)

Where offer periods were prolonged, this was typically attributable to merger control/anti-trust timetables.

Offer period length (schemes)




Offer period length (offers)
H1 2023
3
1
H2 2022
2
H1 2022
3
1
0%
25%
50%
75%
100%
0-3 months
3-6 months

In public M&A, there is a tension between relatively low valuations of UK listed companies and tightness of debt funding to take them private. Where that gap can be bridged, there are attractive opportunities for would-be bidders. Founders and management, in particular, are often willing sellers – keen to explore a process, but at the right price. One solution, which many bidders are considering, is the use of equity roll-over structures – reducing funding requirements and giving sellers the opportunity to share in future upside. Non-bank lending is now very normal. The tightness of the market is enticing new private capital players to enter the market.

Regulatory scrutiny is par for the course – particularly, but not just, in those sectors of obvious political and geopolitical sensitivity. For deals between strategic parties, parties need to plan for a long drawn-out timetable, even before they go into phase 2 review. The UK's CMA has continued to live up to its reputation as one of the most robust antitrust regulators globally. But these are navigable waters and outright prohibitions of deals remain rare. Well advised and well-prepared parties continue to get their deals through.

Anthony Doolittle
Partner, Hogan Lovells

NSI Act conditions have now become a standard feature of deals within sensitive sectors even when a mandatory filing is not required. This is because many purchasers seek the comfort of an approval given that the Government can review any transaction, whether or not the triggers for a mandatory filing are met. The vast majority of reviews are being conducted within the 30 working day review period, although clearance will typically be towards the end of the full 30 working day review period. After initial teething problems with the operation of the online portal, the system now appears to be working well. However, whilst it is still too early to discern any significant trends, the impact on notified (and unnotified) transactions is becoming clear. There have been several conditional decisions (typically relating to organisational and behavioural commitments), rather than divestment or structural conditions. There have also been a small number of outright prohibitions, including two unwinding orders for transactions that had already completed before the NSIA came into force.

In terms of sectoral focus, some sensitive sectors are more prevalent than others when it comes to such decisions, with military and dual use goods, satellite and space technology, energy and advanced materials featuring most commonly among the conditional decisions.

Marc Israel,
Partner, White & Case

With antitrust regulators increasingly taking strident positions, and takeover offers being subject to more clearances than ever, conditionality will remain a key focus. The universal materiality test for all conditions will continue to bed down and be tested by novel situations that the market always seems to throw up. Will this coming year see the Panel rule that an regulatory condition hits the high bar for materiality and allow a successful invocation?

Simon Wood,
Partner, Addleshaw Goddard

Transaction	Value	Deal Structure	Offer period duration	Duration of period between firm intention announcement and completion	Duration of long stop date from firm intention announcement	Principal regulatory conditions that delayed completion
AVEVA Group offer by Schneider Electric	£9.9bn	Scheme	3-6 months	3-6 months	12 months	NSIA clearance
HomeServe offer by Brookfield Asset Management	£4.1bn	Scheme	9-12 months	6-9 months	9 months	Merger control and other regulatory approvals
Mediclinic International offer by a consortium comprising Remgro and MSC Mediterranean Shipping Company	£3.7bn	Scheme	9-12 months	9-12 months	11 months	South African Reserve Bank approval
Shaftesbury offer by Capital & Counties Properties	£2bn	Scheme	9-12 months	9-12 months	11 months	CMA and other regulatory approvals
Micro Focus International offer by Open Text Corporation	£1.8bn	Scheme	3-6 months	3-6 months	9 months	Regulatory conditions
Biffa offer by Energy Capital Partners	£1.3bn	Scheme	6-9 months	3-6 months	7 Months	Gibraltar Financial Services Commission approval and other regulatory conditions
Kape Technologies offer by Unikmind Holdings	£1.25bn	Offer	0-3 months	0-3 months	6 months	N/A
RPS Group offer by Tetra Tech	£636m	Scheme	3-6 months	3-6 months	11 months	Australian foreign investment clearance
Devro offer by Saria	£564m	Scheme	3-6 months	3-6 months	12 months	N/A
Industrials REIT Limited offer by Blackstone Inc.	£511m	Scheme	0-3 months	0-3 months	8 months	N/A
Civitas Social Housing plc offer by CK Asset Holdings Limited	£485m	Offer	0-3 months	0-3 months	12 months	N/A

Transaction	Value	Deal Structure	Offer period duration	Duration of period between firm intention announcement and completion	Duration of long stop date from firm intention announcement	Principal regulatory conditions that delayed completion
Hyve Group offer by Providence Equity Partners	£363m	Scheme	3-6 months	0-3 months	6 months	N/A
Dignity offer by a consortium comprising SPWOne V, Castelnau Group and Phoenix Asset Management Partners	£281m	Offer	3-6 months	0-3 months	12 months	FCA approval
K3 Capital Group offer by Sun European Partners	£272m	Scheme	0-3 months	0-3 months	6 months	Cancellation of certain FCA conditions
Hurricane Energy offer by Prax Exploration & Production	£249m	Scheme	6-9 months	0-3 months	9 months	N/A
Crestchic offer by Aggreko	£122m	Scheme	0-3 months	0-3 months	6 months	NSIA
Appreciate Group offer by PayPoint	£83m	Scheme	3-6 months	3-6 months	7 months	FCA approval and other conditions
AdEPT Technology Group offer by Wavenet	£50m	Scheme	0-3 months	0-3 months	5 months	NSIA and other conditions
7digital Group offer by Songtradr	£19m	Scheme	0-3 months	0-3 months	6 months	N/A
TP Group offer by Science Group	£18m	Scheme	0-3 months	0-3 months	6 months	NSIA and Australian foreign investment clearance
Seraphine Group offer by Mayfair Equity Partners	£15m	Offer	0-3 months	0-3 months	4 months	N/A
ECSC Group plc offer by Daisy Corporate Services Trading Limited	£5m	Scheme	0-3 months	0-3 months	4 months	NSIA clearance

10 Possible offers, formal sale processes and strategic reviews

Firm offers

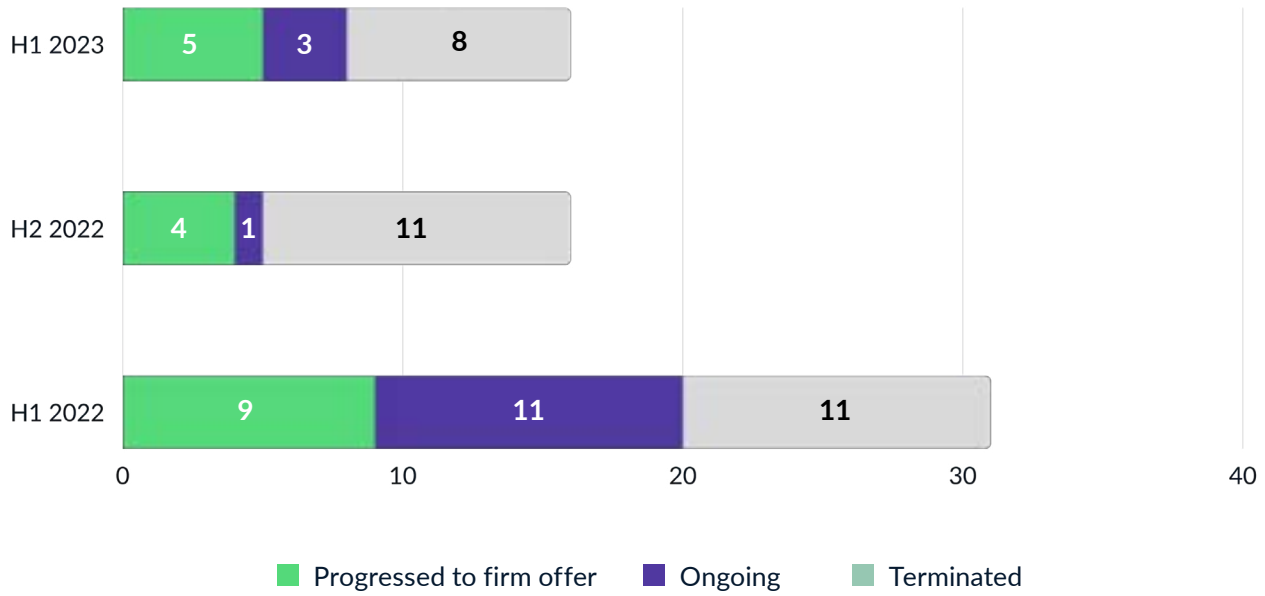
17 (68%) of the 25 firm offer announcements made in H1 2023 were made without any prior possible offer, formal sale process and/or strategic review announcement. The remaining offers involved either a possible offer announcement and/or the announcement of a formal sale process/strategic review.

Possible offers

There were 16 possible offers announced in H1 2023 in respect of 14 companies. Five (31%) of these progressed to firm offers during the review period, eight (50%) terminated and three (19%) were ongoing as of 30 June 2023.

This is a similar conversion rate to that seen in H1 2022 when 29% of the 31 possible offers progressed to firm offers and a higher rate to that seen in H2 2022 when 19% of the 16 possible offers progressed to firm offers.

Possible offers progressing to firm offers



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

Seven companies announced FSPs and/or strategic reviews during H1 2023. Four were ongoing and three had terminated as of 30 June 2023.

We anticipate an increased number of FSPs as financial difficulties for some companies increase. Given that we anticipate that these processes will commence in distress situations we do not believe that the percentage of successful FSPs will increase. In such context, we may start to see the Panel use the greater flexibility introduced in May 2023 to grant a derogation from the requirements of the Takeover Code to rescue a company which is in serious financial difficulty.

Iain Fenn and Dan Schuster-Woldan,
Partners, Linklaters

Despite a steady stream of FSPs and strategic reviews announced in H1, very few have resulted in firm offers or transactions. Success unfortunately remains the exception rather than the rule, and FSPs continue to be viewed as a near last-resort.

Lucy Robson,
Legal Director, Addleshaw Goddard

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, 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 17 (68%) of the 25 firm offers announced in H1 2023. This is a similar rate to that seen in H1 2022 and H2 2022 when non-director shareholders provided irrevocable undertakings on 70% and 68% of the firm offers announced during those periods.

Of the 17 firm offers where non-director shareholders provided irrevocable undertakings, 11 featured hard undertakings, five featured semi-hard undertakings and one that featured both hard and semi-hard undertakings from non-director shareholders.

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.

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 17 firm offers where non-directors provided irrevocable undertakings, four (24%) featured matching rights and none featured topping rights.

12 Legal and regulatory developments

Panel's review of Rule 21 (Restrictions on frustrating action)

In May 2023 the Panel published a consultation paper, PCP 2023/1, which proposes certain amendments to Rule 21 of the Code.

Rule 21 of the Code contains a number of provisions aimed at preventing an offeree board from taking frustrating action in relation to an offer or potential offer:

- Rule 21.1 restricts the offeree board from taking any action which may result in an offer or bona fide possible offer being frustrated and from taking certain other specified actions, without the prior approval of the offeree's shareholders
- Rule 21.2 restricts an offeree board from entering into an inducement fee or other offer-related arrangements
- Rule 21.3 requires any information provided to an offeror to be provided on request to another offeror or bona fide potential offeror
- Rule 21.4 requires any information provided by an offeror or potential offeror to external providers of finance in the context of a management buy-out or similar transaction, to be provided, on request, to the independent directors of the offeree or its advisers

The Panel is not proposing any amendments to Rule 21.2, but considers that it would be helpful for Rule 21.1 to be amended so as to provide increased flexibility for offeree companies to carry on their ordinary course activities, including where these activities involve buying and selling assets, and to provide greater clarity as to the actions that will and will not be restricted.

Rule 21.3 currently provides that any information given to one bidder or potential bidder must, on request, be given to another bidder or potential bidder, even if they are less welcome. The less welcome bidder or potential bidder must ask specific questions rather than requesting, in general terms, all information supplied to other bidder(s).

In the case of a management buy-out or similar transaction, Rule 21.4 requires any information provided to external providers of finance to be provided, on request, to the independent directors of the offeree company or its advisers.

The Panel is proposing a number of amendments to Rules 21.3 and 21.4 to:

- ensure that an offeror or bona fide potential offeror is not denied access to the offeree's information on a technicality, while enhancing the offeree's ability to protect its commercially sensitive information in a proportionate manner
- reduce the administrative burden on the parties to an offer where an offeror or bona fide potential offeror makes, or the independent directors make, a request for information under Rule 21.3 or Rule 21.4

The proposals include removing the prohibition on bidders requesting information in general terms and instead requiring the target to provide all information provided to another bidder at the time of the request (regardless of whether it was specifically requested) and any further information the target provides to another bidder in the seven days following the request.

The Panel's helpful proposals to reduce the burden on the parties to an offer where a request for information is made under Rule 21.3 of the Code (equality of information to competing bidders) would, in practice, permit a bidder to submit a weekly request for information shared by the target with other bidder(s) that is written in general terms, in place of the current need for a daily request, put in specific terms.

Dominic Ross,
Partner, Clifford Chance

The Panel intends to publish a new Practice Statement 34 to provide additional guidance on the application of Rule 21.1.

The Panel also proposes to amend the Code to provide that the restrictions in Rule 21.1(a) apply during the 'relevant period', being the period from the earlier of:

- the offeree board receiving an approach regarding a possible offer by a potential offeror, and
- the beginning of the offer period

until the end of the offer period or, where no offer period has begun, 5pm on the seventh day following the date on which the latest approach is unequivocally rejected by the offeree board.

This is a departure from the existing practice of the Panel (as set out in Practice Statement 32) to allow the restrictions in Rule 21.1(a) to fall away at 5 pm on the second business day following the unequivocal rejection of an approach.

Other changes include:

- introducing a new Note 8 on Rule 21.1 to provide that, where an offer or possible offer is a reverse takeover, Rule 21.1 will also apply to the offeror board as if the offeror were an offeree and vice versa
- amending the Code to make clear that where a competing offeror is proceeding by way of a scheme and the offeree board and the offeror wished to complete the scheme before the Panel introduces an auction procedure under Rule 32.5 of the Code, the Panel will only in exceptional circumstances treat this as frustrating action that is not permitted under Rule 21.1(a)
- amending the Code to permit the 'mini-long-stop dates' on a scheme to be capable of being extended not only with the consent of the parties to the offer (as is currently the case) but also, in a competitive situation, with the consent of the Panel

The consultation closes on 21 July 2023 and the Panel anticipates publishing a response statement in Autumn 2023, with a view to the amendments coming into effect approximately one month after the publication of the response statement.

For further details, see News Analysis: Takeover Panel reviews Rule 21 (Restrictions on frustrating action).

The changes proposed by the Takeover Panel to Rule 21 will be welcomed by offeree companies, who will gain significant flexibility in running their day-to-day operations during the "relevant period" without falling foul of the restrictions on frustrating actions. On the other hand, while this change will limit the ability of a bidder to object to the taking of certain actions, anything that is in the ordinary course of business or is not material is, theoretically at least, unlikely to frustrate an offer. In any event, undue restrictions to carrying on the business of the target are unlikely to be in the best interests of the target shareholders, the target company or indeed the bidder.

Philip Broke,
Partner, White & Case

Changes to the Code relating to the offer timetable in competitive situations

In April 2023 the Panel published a response statement, RS 2022/3, which confirmed the proposals outlined in October 2022 relating to the operation of the offer timetable in competitive situations. The revised Code came into effect on 22 May 2023.

The changes are designed to address certain issues that the Panel has encountered on recent competitive bid situations, since the offer timetable rules were changed on 5 July 2021. Areas of clarification include how the offer timetable operates where:

- both offerors are proceeding by way of a contractual offer
- one or more of the offerors is proceeding by way of a scheme of arrangement
- one offeror issues an acceleration statement
- a contractual offer and a scheme are both submitted to offeree shareholders

For further information, see News Analysis: Takeover Code changes clarify offer timetable treatment in competitive situations.

Extensive changes have been made to the offer timetable in recent years, in particular to reflect the new world of regulatory intervention. 2022 then saw competing bids for M&C Saatchi, with one bidder structuring their bid as an offer and the other as a scheme. The 2022/3 consultation paper was intended to clarify the Panel's approach to the offer timetable in those situations and was broadly welcomed by the market. Whilst the revisions will bind bidders into lengthier offer periods in some circumstances, this was largely already the case because of the increasingly complex and lengthy antitrust and FDI processes. Importantly, it will still be possible for bidders to accelerate their offers to the extent they would like to.

James Fletcher,
Partner, Ashurst

Miscellaneous Code changes

The Panel published a second response statement in April 2023, RS 2022/4, which confirmed miscellaneous changes to the Code that were proposed in October 2022. The changes were included in the revised version of the Code published on 22 May 2023. The Panel also made minor consequential amendments to Practice Statement 20, Practice Statement 22, Practice Statement 28 and Practice Statement 33, which are summarised in this Panel note.

The changes to the Code set out in RS 2022/4 include:

- providing the Panel with greater flexibility to grant a derogation or waiver from the requirements of the Code in exceptional circumstances (eg, a rescue situation)
- removing specific limitations on the Panel's flexibility to waive the requirements of Rule 9 in the case of a rescue situation
- reversing the presumption that a notice of share buying which causes rumour or speculation will not normally require a leak announcement under Rule 2.2(d)
- amending Note 3 on Rule 9.5 to provide that any adjusted mandatory offer price must be 'appropriate' rather than 'fair and reasonable'
- requiring an offer party which procures an irrevocable commitment or letter of intent before the announcement of a firm intention to make an offer, to publish the irrevocable commitment or letter of intent on a website by the current deadline for announcing details of the irrevocable commitment or letter of intent (rather than only following the announcement of a firm intention to make an offer)

For further information, see News Analysis: Takeover Panel confirms miscellaneous Code changes

Code changes to acting in concert definition

In our 2022 public M&A Market Tracker Trend Report we commented on the Panel's response paper, RS 2022/2, in which the Panel confirmed various amendments to the Code relating to the definition of acting in concert.

The revised Code came into effect on 20 February 2023 and at the same time the Panel withdrew Practice Statement 12 (Rule 9 and the interests in shares of clients whose funds are managed on a discretionary basis) and made minor changes to Practice Statement 22 and Practice Statement 33.

For further details, see News Analysis: Takeover Panel confirms changes to concert party presumptions.

FCA Primary Market Bulletin 44: when a prospectus is required where securities are issued pursuant to schemes of arrangement

In August 2020 the FCA published a consultation on a proposed new Technical Note 606.1 in which it expressed the view that if a scheme shareholder is being asked to make a choice about different forms of consideration (eg, where a scheme includes mix and match facilities), an investment decision is being made and so a prospectus would be required unless an exemption applied. This repeated an earlier view stated by the FCA in List!.

In its September 2020 response to the consultation, the Law Society and City of London Law Society disagreed with the FCA's analysis on the basis that there is no underlying contractual offer which is capable of acceptance and therefore no offer to the public within the meaning of FSMA 2000, s 102B. The working group argued that this remains the case where the scheme involves a full or partial share alternative, mix and match or similar structure under which shareholders are offered the ability to choose between different forms of consideration.

In March 2023, the FCA published Primary Market Bulletin 44 in which it confirmed that, after considering the consultation responses, it had decided not to publish the proposed Technical Note. While the FCA's own analysis remained unchanged, the FCA said it recognised that the question of whether a prospectus was required was a question of law and ultimately something for the courts to decide. The FCA also noted there was an ongoing legislative process to reform the UK prospectus regime. Under the draft Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023 published in December 2022, securities allotted under a scheme of arrangement would be excluded from the definition of a public offer. There would also be a new exemption for takeovers and for offers to existing holders of shares. For further details, see Practice Note: UK prospectus regime reform.

The proposed Public Offers statutory instrument contains UK prospectus regime exemptions for public offers, including a new exemption which, in draft, appears intended to make clear that a scheme of arrangement does not constitute an offer to the public - even if shareholders are offered a choice of consideration, for example, under a mix and match facility. Other exemptions proposed are relevant to offers in connection with takeovers or to existing holders of equity securities.

Katherine Moir,
Partner, Clifford Chance

Impact of London Listing Reforms

The FCA's consultation on changes to the FCA's Listing Rules (an outcome of the Lord Hill review) under FCA CP23/10 was published in May 2023. It is expected that the changes will be adopted largely as proposed and will result in a radical shake-up for the listing regime. In summary, the headline points for large listed company transactions would include:

- removing the need for shareholder approval on significant transactions (over 25% on any class test). Instead there will be a requirement to announce key transaction details, largely based around the existing Class 2 requirements. Going forward shareholder approval will only be required under the listing rules for a 'reverse takeover' (ie 100% or more on any class test). A Class 1 circular would also only be required on a reverse takeover
- similarly, independent shareholder approval will no longer be required on related party transactions (where the relevant ratio is 5% or more), and instead a solely disclosure-based approach will continue to apply, based on the Listing Rule, DTR and MAR requirements and sponsor oversight. Companies will still be required to appoint a sponsor to advise on whether transaction terms are fair and reasonable
- the FCA is seeking further views on disclosure enhancements, including to facilitate shareholder engagement on significant or related party transactions, eg whether to require some of the financial and other information currently needed in shareholder circulars. However the need for a clean working capital statement on significant transactions would disappear, other than for a reverse takeover

Investors would no longer have the automatic protection of a vote or a circular, nor any direct enforcement rights for breach of the disclosure obligations. Listed companies that want to keep their shareholders informed and supportive should expect to enhance their investor relations and other communication, particularly around M&A strategies and decision-making.

Government introduces Digital Markets, Competition and Consumers Bill

In April 2023, the UK government (Government) introduced into Parliament the long-awaited Digital Markets, Competition and Consumers Bill (DMCCB). The DMCCB includes significant and wide-ranging reforms to the regulation of digital markets and existing competition and consumer law regimes. The DMCCB follows several consultation processes, the Penrose Report in 2021 and the Furman Report in 2019.

In relation to merger control, the DMCCB casts an even wider net for CMA intervention in M&A transactions. The DMCCB makes several significant changes to jurisdictional thresholds under the UK merger control regime, and to merger investigation procedures. A summary of the key changes is set out below.

This is a huge development for digital markets, but there will be a lengthy period before we see these rules in action. There will no doubt be an impact on both deal timelines and feasibility for those companies subject to the new rules. The draft Strategic Steer from government to the CMA explicitly calls on the CMA to "continue" their leading global role in the digital space so this is an area to watch closely.

Nicole Kar,
Partner, Linklaters

Jurisdictional thresholds

- the turnover-based threshold relating to the target of a merger will be raised from the current £70m to £100m
- a new 'small merger safe harbour' will be introduced exempting transactions from review where each party's UK turnover does not exceed £10m (targeted at reducing the regulatory burden faced by small and micro businesses)
- a new additional merger control threshold will be created, under which the CMA will have jurisdiction where the following conditions are satisfied: (i) at least one party has an existing share of supply of goods or services of at least 33% in the UK or a substantial part of the UK; (ii) that party also has UK turnover exceeding £350m; and (iii) another party has a UK nexus. This threshold is aimed at capturing certain vertical and conglomerate mergers, in particular acquisitions perceived as reducing dynamic competition and risking the development of new products or services

Merger investigation procedures

- the DMCCB introduces a 'fast-track' route for merging parties, allowing parties to request a fast-track referral to Phase 2 at any stage of pre-notification or Phase 1 (with discretion for the CMA regarding whether to accept the fast-track referral request). Where such requests are accepted, the CMA will be able to extend the statutory timetable for up to 11 weeks (as opposed to the usual 8-week extension applicable to a normal Phase 2 investigation) – this is aimed at ensuring there is sufficient time for a full Phase 2 investigation in fast-track cases
- the DMCCB also provides for a mechanism to extend time limits in Phase 2 merger investigations by mutual consent (with the length of an extension as agreed between the CMA and merger parties). The Explanatory Notes to the DMCCB suggest that this is most likely to be helpful in support of early consideration of remedies, or in multi-jurisdictional mergers that are being reviewed in other countries in parallel to the UK

New ex-ante regulatory regime for digital markets

The DMCCB also establishes an ex ante regulatory framework for digital markets. The CMA's Digital Markets Unit (DMU) will be granted powers to enforce a new ex ante regulatory regime for firms in digital markets that have 'strategic market status' (SMS), with three key pillars: (i) enforceable conduct requirements based on the objectives of fair trading, open choice, and trust and transparency; (ii) targeted pro-competitive interventions to get to the heart of (SMS firms' perceived) market power; and (iii) a mandatory and suspensory merger reporting requirement applying to SMS firms for all deals meeting certain (lower) thresholds.

As mentioned above, a new mandatory reporting requirement to the CMA, prior to completion, is being introduced for the most significant transactions by undertakings designated with SMS status. This will be the case where:

- the merger results in the designated undertaking having 'qualifying status' in respect of shares or voting rights in a target that carries out activities in the UK, or supplies goods or services to a person in the UK, and
- the value of all consideration provided by the designated undertaking for the shares or voting rights in the UK connected body corporate is at least £25m

The 'qualifying status' condition is met where the transaction results in an increase in the shares or voting rights in relation to a UK connected body corporate:

- from a less than 15% to 15% or more
- from 25% or less to more than 25%, or
- from 50% or less to more than 50%

The mandatory reporting requirement will also be met where:

- the designated undertaking enters a joint venture that will be a UK-connected body corporate in which it will hold at least 15% of the shares or voting rights, and
- the total value of its consideration provided to the joint venture is at least £25m

The CMA will then undertake an initial assessment of the merger to determine whether the transaction warrants further investigation before it can be completed.

The DMCCB now starts its legislative process, and is subject to parliamentary timetable, is expected to receive Royal Assent next Spring and come into force in Autumn 2024.

Comment: These reforms have been anticipated for several years. The expansion of the CMA's jurisdictional merger review thresholds further strengthens the CMA's ability to review and intervene in global deals, particularly transactions involving parties with no horizontal overlap and cases potentially giving rise to innovation competition concerns based on flywheel or ecosystems theories of harm.

The DMCCB has been introduced at a point in time in which the CMA has already demonstrated that it is willing to intervene and challenge large digital companies under its merger control powers. For example, on the same day as the DMCCB was introduced, the CMA announced that it had decided to prohibit Microsoft's proposed acquisition of Activision Blizzard (Activision) (see below).

CMA prohibits Microsoft/Activision; a divergence from the Commission's conditional clearance

In April 2023, the CMA issued its final report in relation to Microsoft's proposed acquisition of Activision, prohibiting the proposed transaction over concerns that it '*would alter the future of the fast-growing cloud gaming market, leading to reduced innovation and less choice*'.

The CMA concluded that the merger may be expected to result in an SLC in the supply of cloud gaming services in the UK due to vertical effects resulting from input foreclosure. According to the CMA, Microsoft already has a strong position in this market as it owns gaming platform Xbox and leading PC operating systems, and the transaction would make it even stronger. In addition, the CMA considered that Microsoft would find it beneficial to make Activision titles (including Call of Duty and World of Warcraft) exclusive to its own cloud services.

The CMA concluded that the remedies proposed by Microsoft for a 10-year period were behavioural in nature, and that they required Microsoft to behave in a way which (the CMA found) may be contrary to its commercial incentives. They would also require ongoing regulatory oversight. The CMA further found that the proposed remedies package had significant shortcomings in the context of what the CMA sees as the growing and fast-moving nature of cloud gaming services.

Microsoft had also entered into agreements with Nintendo and three cloud gaming service providers to allow certain Activision content to be made available on their platforms. However, the CMA found that the impact of these agreements was uncertain, and it could not be confident that they would lead to material benefits for customers. The CMA also considered other factors such as the broader international context and the extra-territorial impact of a prohibition, but found no effective remedy that would address the SLC in the UK without having an impact outside of the UK.

The Commission also conducted a phase II investigation in relation to this proposed transaction. On 15 May 2023, the Commission conditionally approved the proposed transaction after the CMA prohibited the deal in April.

The two authorities were fairly aligned in terms of the impact that the proposed transaction is expected to have on competition. Following in-depth investigations, they both raised foreclosure concerns in relation to Microsoft's strong position in the nascent rapidly evolving gaming market, concluding that it would be detrimental to competition if Microsoft made Activision's games (such as Call of Duty) exclusive to its own cloud game streaming service.

However, the two authorities took diverging positions when assessing the behavioural remedies offered by Microsoft (outlined above). The Commission stated that, based on 'hard evidence' and 'extensive information and feedback' from rivals and customers, including game developers and distributors and cloud gaming platforms, Micorosft's licensing offer would 'fully address' the Commission's competition concerns. In an official statement, the CMA said that it recognised and respected the verdict of the Commission, but that it stood by its decision to prohibit the proposed transaction.

The proceedings are not over in the UK: on 24 May 2023, Microsoft lodged its appeal against the CMA's decision at the Competition Appeal Tribunal (CAT). It remains to be seen whether the CAT will affirm the CMA's current opposition to the transaction, or if it will indirectly endorse the pattern of approval seen in the EU, China (receiving unconditional approval on 19 May 2023) and other jurisdictions where the proposed transaction has been cleared. A final decision has not been reached in the US, where an evidentiary hearing is scheduled for 2 August 2023.

Comment: Several points can be made. First, it was clear from the outset that this case, a high-profile technology acquisition with a strong consumer element, an outspoken competitor/customer in Sony, and vocal consumers, would be subject to significant scrutiny. Indeed, it provides a prominent example of the trend towards greater scrutiny of the actions of the largest digital firms by competition authorities across the world. Second, it is the second time in recent months that the CMA has intervened in relation to a global merger in the technology sector. In October 2022, it ordered Meta to sell Giphy amidst concerns over the merger's impact on access to GIFs across social media platforms and around competition in display advertising. Third, unlike the Commission, the CMA was not persuaded by the behavioural remedies, which shows that it continues to be reluctant to accept behavioural remedies other than in very specific circumstances. Fourth, it highlights that the CMA will not hesitate to prohibit deals even where they have an extra-territorial impact.

The two prohibitions, coming within only a few months of each other, show the CMA's willingness to exercise its powers using traditional merger analysis (as in Cerelia/Jus-Rol) and more innovative theories of harm in digital markets (Microsoft/Activision). It underscores the importance of early analysis to allocate risk and give deals the best chance of surviving the review process.

Nicole Kar,
Partner, Linklaters

CMA unwinds dough deal between Cérélia and Jus-Rol

In January 2023, the CMA published its final report in relation to the completed acquisition by Cérélia Group of the Jus-Rol business of General Mills, in which it prohibited the transaction.

Jus-Rol is the largest supplier of branded dough-to-bake (DTB) products to grocery retailers in the UK, while Cérélia is the largest supplier of own brand DTB products (making these items on behalf of some of the UK's largest grocery retailers).

The CMA found that the merger involves the two largest suppliers in the market by a considerable margin, with DTB products supplied by Cérélia and Jus-Rol accounting for nearly two-thirds of all such products sold to grocery retailers in the UK. In addition, the CMA concluded that the two businesses face very limited competition, with all other market suppliers being substantially smaller, and many lacking the capabilities held by the merging businesses. Furthermore, the CMA considered it unlikely that any supplier would enter the market, or expand its existing activities, to address the loss of competition brought about by the merger.

According to the CMA, its findings were based on evidence which showed that Jus-Rol products compete with grocery retailers' own-brand products (supplied by Cérélia) for the same space on many supermarket shelves. Also, evidence from grocery retailers showed that retailers view the companies' products as important alternatives to one another (in particular, because there are few alternative suppliers of either branded or own-brand products). According to the CMA, grocery retailers' ability to trade off Jus-Rol and Cérélia when purchasing DTB products enables them to obtain a better deal for customers. The CMA therefore concluded that the merger gave rise to an SLC in the market for the supply of DTB products to grocery retailers in the UK. The CMA concluded that the only acceptable remedy was an asset divestment involving the sale of the entire Jus-Rol business to an independent buyer, akin to an entire unwinding of the merger.

Comment: This decision illustrates the risk of closing transactions without first notifying and receiving CMA clearance. Indeed, despite the voluntary nature of the UK regime, there will always be material risk in proceeding without notifying the CMA (particularly where the merging parties are competitors on UK markets, and/or where the transaction would result in the parties having a high combined market share).

This unwinding follows a series of CMA decisions requiring the unwinding of a merger/acquisition. The CMA's ability (and willingness) to investigate, and ultimately unwind, an already completed merger highlights the need for merging parties to carefully consider merger control issues at the outset of a transaction. In particular, this should include an assessment of the risk of completing a merger without approval from the CMA, and how the parties can manage and allocate this risk.

More broadly, this case sits within the wider context of the ongoing cost-of-living crisis. Margot Daly, chair of the independent panel of experts conducting the Phase 2 investigation, stated: "*As living costs continue to rise, it's our responsibility to make sure that competition can play its part in delivering the best possible deals for customers*". Parties may wish to consider the potential for wider scrutiny in consumer-facing sectors when deciding whether to seek merger control clearance in the UK.

Cabinet Office publishes second edition of the NSI Act market guidance

In July 2022, the Government published the first edition of its Market Guidance Notes on the NSI Act, as part of its commitment to offer practical support to businesses navigating the regime. In April 2023, building on insights from key stakeholders, the Government published the second edition. The second edition provides guidance on how the Government uses certain powers, how businesses can interact with the Investment Security Unit (ISU) most effectively and the time at which a notification should be made. The key updates are summarised below.

> *Whilst this guidance gives a helpful steer on the procedure for NSI Act notifications, further clarifications on the substantive issues, such as the broad scope of the NSI Act and lack of transparency in the review process would also be welcome.*

Nicole Kar,
Partner, Linklaters

Uncertainty as to whether an acquisition is notifiable

One of the challenges faced by parties has been making an assessment as to whether the acquisition is notifiable under the mandatory regime. An acquisition of a target operating in one of 17 high risk sectors of the economy triggers a mandatory notification. Interpreting the detailed definitions of the 17 sectors and applying them to a target's business can be tricky and sometimes buyers and sellers will come to different conclusions as to whether a notification is required.

The new edition of the Market Guidance Notes helpfully confirms that, if there is significant uncertainty about whether an acquisition is notifiable, the Government may be contacted by email to seek a view. Although any response is not legal advice, for some transactions it should be useful to have a steer as to whether the interpretation of the relevant sector definitions by the parties and their advisers aligns with the views of the ISU.

Timing of notifications

The NSI Act does not require the parties to have executed a legal agreement in order to submit a notification, but the new guidance makes clear that transactions should not be notified prematurely. Rather, notifications should only be made at the point at which the terms of the transaction are sufficiently stable to enable the Government to assess whether it could lead to national security risks. The Government would generally consider it appropriate to notify when there is 'good faith intention to proceed', which notifying parties should evidence in the notification by referencing, for example, the existence of agreed heads of terms, financing arrangements having been put in place, board level approval of the transaction or, for public bids, a public announcement of a firm intention to make an offer or the announcement of a possible offer.

Financial distress transactions

The new guidance provides clarification on the Government's approach to parties facing material financial distress and the evidence that should be provided to the ISU to seek to expedite their review. In particular, parties subject to the regime who are facing financial distress should notify the ISU as soon as possible, especially where the statutory timelines of the regime could exacerbate financial problems. While the ISU will consider what evidence of 'material financial distress' is appropriate on a case-by-case basis, it will typically request evidence from external legal, restructuring and insolvency advisers, as well as external auditors, to substantiate the position.

The new guidance further clarifies that if the company in distress is part of a larger corporate group, the Government will also consider the parent company's ability to provide continued financial support. Parties also can provide evidence that funding options other than a sale or merger are not feasible or available.

In exceptional circumstances, where evidence of material financial distress gives rise to genuine urgency, it may be possible to expedite the process. The guidance contains helpful direction regarding evidence of 'urgent financial distress', but does not, unfortunately, introduce a truncated time line or other explicit deadline for expedited review.

Guidance on stages of NSI assessment process

The new guidance provides further explanation on the various aspects of the NSI assessment process, including the use of interim orders, the process of issuing final orders and withdrawing applications.

The new guidance provides insights into the ISU's engagement with third parties and clarifies that this can be done both through information requests and attendance notices (ie in-person or virtual meeting requests), although the former remains the default position in practice. Where the transaction has been 'called-in' for an 'in-depth' assessment, the issue of both information requests and attendance notices 'stop the clock', even when issued to third parties (with the timeline only restarting when the Government is satisfied that the information provided has appropriately answered the questions posed).

The new guidance also provides further details on when the ISU will engage and seek representations from the parties directly, including when the Government is considering imposing a final order and when the Government is considering imposing remedies. Parties may proactively approach the Government about potential remedies, if they believe that a remedy may mitigate any potential national security concerns. Parties should also note that where a call-in notice is issued they retain the ability to make representations to the Secretary of State unprompted, which the Secretary of State is obliged to take into account during his assessment.

Guidance for completing a notification form

The new guidance provides provide additional guidance on completing the notification form to ensure that a transaction is assessed without delay. Guidance includes, for example, ensuring the correct economic areas under the NSI Act have been selected and ensuring that each response box in the form can be read as a standalone response (with limited cross-referencing where possible). The guidance could act as a helpful checklist to run through before submitting the notification form.

Comment: the new guidance provides valuable updates that offer businesses greater clarity, understanding and assurance regarding the Government's approach to NSI Act notifications and the functioning of the NSI regime, which is to be welcomed.

While the new market guidance is to be welcomed, the NSI decision-making regime remains something of a black box for parties navigating call-in review and discussions about potential conditions. Secretary of State in the Cabinet Office, Oliver Dowden MP, has acknowledged that the NSI regime needs to be more open and transparent if government is to demonstrate that Britain is truly open for business and investment.

In terms of deal impact, NSI Act review is now a standard feature of UK M&A transactions, even in deals that may only qualify for voluntary rather than mandatory notification. It is notable, for example, that of the 11 decisions imposing conditions on transactions under the NSI Act to date, 4 have been imposed on transactions that were voluntarily notified. In terms of sectoral focus, decisions in the advanced military & dual-use, defence and advanced materials sectors continue to be a notable trend, although the NSI Annual Report, due for publication shortly, should make clear whether this a function of the number of notifications in these sectors or because they represent a particular focus area for government.

Marc Israel,
Partner, White & Case

European Commission streamlines merger review process

In April 2023, the Commission adopted a package of measures aimed at simplifying its merger control review. It consists of a:

- revised Implementing Regulation
- revised Notice on simplified procedure
- communication on the transaction of documents

The measures are intended to contribute to the Commission's objective to reduce reporting requirements by 25%. Also, the package is aimed at making the process for transactions that do not raise competition concerns easier and faster, and to enable the Commission to focus its resources on those transactions that may raise competition concerns. The new package will be applicable as of 1 September 2023.

The changes will significantly affect both the simplified and normal merger review procedures. One of the key changes is that the revised simplified procedure notice expands and clarifies which cases can be treated under the simplified procedure. This is achieved by introducing two new categories of transactions that can fall within the simplified procedures:

- some vertical transactions benefit from simplified treatment by default, provided that certain conditions are met
- the Commission can use its discretion to treat additional cases under this procedure by using newly introduced 'flexibility clauses'
- the package also clarifies when the Commission can review a case under the normal procedure which technically qualifies for the simplified procedure

The new rules also affect the notification templates. With respect to simplified procedure cases, the Implementing Regulation provides for a 'tick-the-box' Short Form CO which includes multiple choice questions and tables for the jurisdictional and competitive assessment. The new Notice distinguishes cases eligible for a 'super-simplified' treatment whereby the parties are encouraged to immediately notify the Commission without pre-notification contacts. The Implementing Regulation also amends the normal review by reducing and clarifying the information required by the Form CO. This includes limiting the information requirements for markets that benefit from the flexibility clauses; introducing overview tables facilitating the submission of the required information on potential horizontal overlaps; and identifying certain sections suitable for waivers requests.

Comment: Any revisions to the merger control rules that are designed to streamline the review process and reduce the burden on the merging parties are welcome. However, it is not clear that all the revised rules will help to achieve that objective. Indeed, some new sections (such as 'safeguarding and exclusion') may trigger additional information requests and raise further issues for the Commission to consider. In addition, the reform does not take any steps to improve the most burdensome requirements, such as the provision of relevant information under all plausible market definitions and internal documents. Only time and use will show the extent to which the revisions facilitate the merger review process. In the meantime, parties to a merger should prepare for these new rules and for the potential information requests that may be triggered.

European Commission publishes Q&A on the EU Foreign Subsidies Regulation

In June 2023, the Commission published a Q&A document to assist companies in understanding their duties under the new EU Foreign Subsidies Regulation (the FSR). The FSR, which will start to apply on 12 July 2023, gives the Commission the power to investigate financial contributions granted by non-EU countries to undertakings active in the EU and to impose measures to redress distortive effects created by foreign subsidies. Under the FSR, parties will have to notify financial contributions received from non-EU countries prior to concluding a concentration or a public procurement procedure that satisfies certain thresholds.

The Q&A document answers practical questions such as when and how parties can pre-notify a concentration, the treatment afforded to certain types of financial contributions, and practical information on the process for submissions and waiver requests. However, the Commission explains that the answers are not binding and that the text of the Q&A document may "*evolve from time to time*".

Further clarity on the application of the FSR will be provided by the publication of the final version of the Implementing Regulation, which will include the notification forms for concentrations and public procurement. These documents are currently in draft form, the final versions will be published before the Regulation comes into effect in July. Recent press reports suggest that the Commission is examining ways to reduce the administrative burden of the notification forms, which has been welcomed by several international trade associations.

The Commission has also said that all necessary practical information for pre-notification contacts and notifications, as well as the necessary templates (including powers of attorney), will be published on the Commission's website prior to application of the FSR in July.

Comment: it is important for companies that are active in the EU (or plan to invest in the EU or participate in EU public tenders) and that have received 'financial contributions' form non-EU countries to prepare quickly for the application of the FSR. This includes setting up robust processes to tackle the information collection, processing and reporting requirements, managing cost allocation, transfer pricing and governance issues, and preparing justifications.

Court of Justice confirms that below-threshold mergers can be assessed under abuse of dominance rules

In March 2023, the European Court of Justice (ECJ) issued its judgment in Case C- 449/21 Towercast, a national reference from France seeking clarification on the applicability of Article 102 TFEU to a merger, lacking an EU dimension, not meeting the thresholds for compulsory ex ante control provided for by national law and not having given rise to a referral to the Commission under Article 22 EUMR. The ECJ held that such transactions can be assessed by national competition authorities (NCAs) under EU rules on abuse of dominance.

The case stems from a complaint by broadcaster Towercast to the French Competition Authority (FCA). Towercast alleged that the acquisition by TDF Infrastructure (TDF) of Itas amounted to an abuse of dominance by TDF on the markets for digital terrestrial television.

The transaction did not trigger a review under EU or French merger control rules, and was not referred to the Commission. After the FCA ruled that no abuse was committed, Towercast appealed to the Paris Court of Appeal, which asked the ECJ to rule on whether NCAs can apply abuse of dominance rules to below-threshold transactions.

The ECJ's affirmative answer is significant. It means that merging parties, despite concluding that EU antitrust authorities do not have jurisdiction to review their transaction under merger control rules, cannot rule out the possibility that the deal will face an antitrust assessment. The risk remains even after the deal completes.

Merging parties must now consider the Commission's revised Article 22 policy, which encourages Member States to refer transactions (including completed deals) to it for review even where EU and national merger control thresholds are not met. Parties must navigate evolving rules in several Member States that enable NCAs to review transactions falling below their own filing thresholds.

The judgment will no doubt prompt a significant uptick in abuse complaints against dominant companies engaging in acquisitions that are not caught by merger control rules. Indeed, it has already prompted the Belgian Competition Authority to open an own initiative abuse of dominance investigation into Proximus's takeover of rival broadband provider edpnet, which did not meet the country's merger control thresholds. The extent to which other NCAs will pursue these complaints, however, remains to be seen.

If any such case results in a finding of abuse, all eyes will be on the nature of any sanction imposed. In her opinion on the Towercast case, Advocate General Kokott stated that the imposition of fines would be a more appropriate sanction than blocking or unwinding the transaction. Notably, the ECJ does not make a similar statement. This suggests that, depending on national procedural rules, prohibition could be a possibility.

The position of the ECJ is also left open. The ECJ's ruling considers only NCAs and does not rule on whether the Commission itself can apply EU abuse of dominance rules to below-threshold deals. Given its continuing desire to ensure that potentially anti-competitive transactions (and in particular 'killer acquisitions') do not escape scrutiny, the Commission may take an expansive approach to the judgment.

Comment: The ECJ's judgment subjects merger parties to yet another layer of post-closing uncertainty. However, the judgment does set some limitations on the application of abuse of dominance rules to transactions. First, the rules can clearly only apply where the acquisition involves a company holding a dominant position. This will take many below-threshold transactions out of scope. Second, NCAs in the EU must show that, by making the acquisition, the dominant purchaser has substantially impeded competition on the market on which it is dominant. It is not enough for the national authority to merely find that the dominant company's position has been strengthened. This may prove a difficult bar for NCAs to meet.

“

The Towercast ruling provides another weapon in the arsenal of competition authorities to review deals that fall outside merger control thresholds. Sitting alongside the EC's Article 22 powers, the CMA's elastic jurisdictional thresholds and recent practice in a number of jurisdictions of calling in bolt-on deals, deal-makers need to consider antitrust risk from every angle.

Nicole Kar,
Partner, Linklaters

Firm offers included in this report

Target	Bidder	Deal value	Bid premium[1]	Industry (target)	Bidder Jurisdiction[2]
Dechra Pharmaceuticals	EQT and the Abu Dhabi Investment Authority	£4.5bn	44%	Healthcare, pharma & biotech	Sweden and Abu Dhabi
Network International Holdings	Brookfield Asset Management	£2.2bn	64%	Industrials	Canada
Kape Technologies	Unikmind Holdings	£1.3bn	11%	Technology	Cyprus[3]
Industrials REIT	Blackstone	£511m	42%	Real Estate	United States
Civitas Social Housing	CK Asset Holding	£485m	44%	Real Estate	Hong Kong
Lookers	Alpha Auto Group	£465m	35%	Retail & wholesale trade	Canada
Numis Corporation	Deutsche Bank	£410m	72%	Financial services	Germany
Hyve Group	Providence Equity Partners	£363m	58%	Media	United States
Dignity	Valderrama (a consortium comprising SPWOne V, Castelnau Group and Phoenix Asset Management Partners	£281m	29%	Consumer products and services	UK
Medica Group	IK Investment Partners	£269m	32.5%	Healthcare, pharma & biotech	UK

[1] Bid premium is calculated by reference to the target's share price immediately before the start of the offer period.

[2] 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.

[3] We have treated Unikmind as a Cyprus entity given that it is ultimately owned by Teddy Sagi whose principal family office and investment company is registered in Cyprus.

Firm offers included in this report

Target	Bidder	Deal value	Bid premium[1]	Industry (target)	Bidder Jurisdiction[2]
Hurricane Energy	Prax Exploration & Production	£249m	84%	Energy	UK
Curtis Banks Group	Nucleus Financial Platforms	£242m	32%	Financial services	UK
Redx Pharma	Jounce Therapeutics	£222m	24% discount	Healthcare, pharma & biotech	United States
Sureserve Group	Cap10 Partners	£214m	39%	Industrials	UK
CT Property Trust	Londonmetric Property	£199m	34%	Real Estate	UK
The Fulham Shore	TORIDOLL Holdings Corporation	£93m	35%	Travel, hospitality, leisure & tourism	Japan
Xpediator	Cogels Investments, funds managed by Baltcap and Nuoma IR Kapitalas	£62m	45.5%	Industrials	UK; Baltic States
AdEPT Technology Group	Wavenet	£50m	75%	Technology	Australia[4]
Shield Therapeutics	AOP Health International Management	£46m	13% discount	Healthcare, pharma & biotech	Austria
Best of the Best	Globe Invest Limited	£45m	4% discount	Travel, hospitality, leisure & tourism	Cyprus
Egdon Resources	Petrichor Partners	£27m	96%	Energy	United States

[4] For the purposes of this report we have treated UK-incorporated Wavenet as an Australian bidder as its ultimate parent is incorporated in Australia.

Firm offers included in this report

Target	Bidder	Deal value	Bid premium[1]	Industry (target)	Bidder Jurisdiction[2]
Cenkos Securities	finnCap Group	£21m	5% discount	Financial services	UK
7digital Group	Songtradr	£19m	114%	Retail & wholesale trade	United States
Seraphine Group	Mayfair Equity Partners	£15m	206%	Consumer products and services	UK
ECSC Group	Daisy Corporate Services Trading	£5m	170%	Technology	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
Market Tracker trend report—trends in UK public M&A in 2022
Market Tracker trend report—trends in UK public M&A in Q1 2023
CK Asset Holdings accelerates takeover of Civitas Social Housing
Alpha Auto Group revs up to acquire Lookers plc
Brookfield wins bid for Network International Holdings for £2.2bn
Private Equity giant Apollo once again fails to secure UK-listed buyouts
Credit Suisse and UBS merger—exploring the 'emergency rescue'
Hurricane Energy to be swept away by Prax following extensive formal sale process
HSBC's £1 rescue acquisition of Silicon Valley Bank
PurpleBricks comes up 'for sale'
Kape Technologies considers leaving the London Stock Exchange following £1.25bn takeover offer
Take private offer set to breathe new life into funeral provider Dignity plc

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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 in a career of over 30 years, 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.

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His recent experience includes advising: Wm Morrison Supermarkets PLC in relation to its £7bn takeover by Clayton, Dubillier & Rice; Next Fifteen Communications Group Plc on its attempted £310m cash and shares takeover of M&C Saatchi Plc; Bosch on its acquisition of FIVE AI; Augean Plc on its £390m takeover by Ancala Partners LLP and Fiera Infrastructure Inc; and Deutsche Bank on the £4bn takeover of HomeServe Plc by Brookfield.

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She was seconded for two years as Secretary to the Takeover Panel in a senior role and has deep experience and involvement in UK Takeover Panel advice, hearings/ investigations and regulatory developments. Selina is regularly called upon as a key adviser (to bidders, targets, investors, regulators and industry bodies) and commentator on UK and European takeovers. She is a regular speaker at conferences 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.

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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.

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Simon is a corporate finance partner with Addleshaw Goddard and regularly advises listed companies on the full range of corporate finance transactions. He has particular expertise in public M&A, having previously spent a two-year secondment as Secretary to the Takeover Panel.

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.

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

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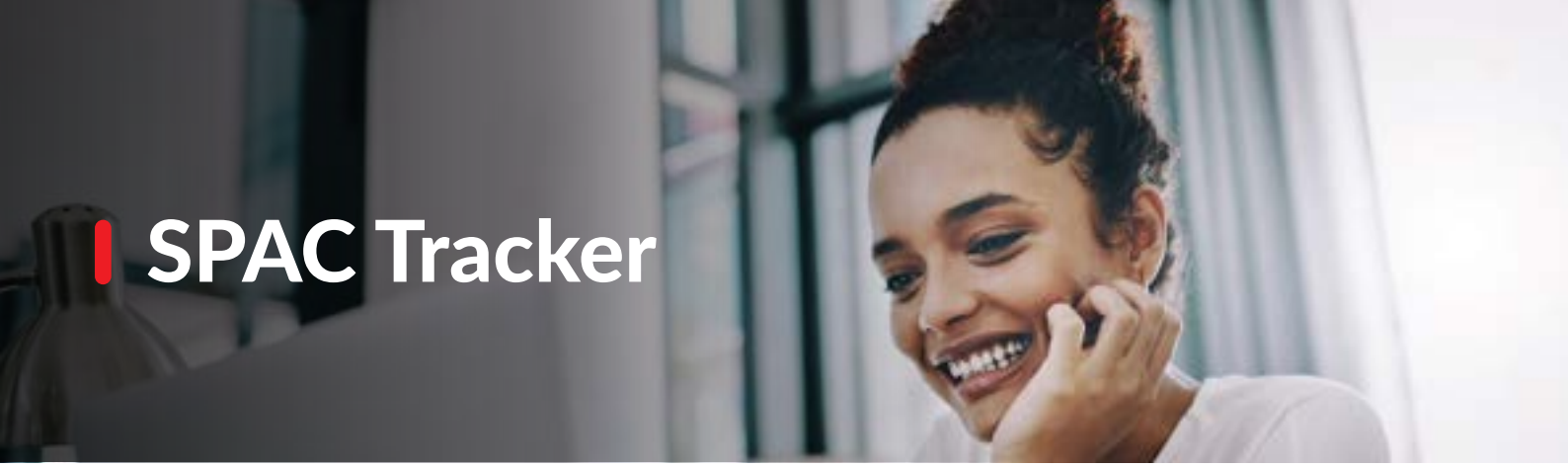

SPAC Tracker

Our SPAC tracker tracks all SPACs which have been admitted to trading on the Main Market or AIM since 2019. It also tracks their further fundraisings, acquisitions, de-listings and transfers between markets until completion of their investment

Dual class share structure tracker

Our Dual class share structure tracker looks at commercial companies listing on the London Stock Exchange's Main Market with a dual class share structure (DCSS) with one class of share having weighted voting rights and includes a summary of the rights attached to the special weighted voting rights shares. A DCSS allows a founder shareholder to retain voting control over a listed company where one class of unlisted share or a special 'golden share' is given enhanced or weighted voting rights.

UK Listing Review progress tracker

Our UK Listing Review progress tracker This Practice Note tracks the progress of the UK Listing Review, the implementation of its recommendations and related developments.

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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

Previous Trend Reports

AGM update 2022/23

This Market Tracker Trend Report reviews AGM voting and formats throughout the 2022 season. Drawing on the information contained in the Market Tracker database, this report provides analysis of last year's shareholder voting patterns, including trends within failed resolutions, significant no votes, and shareholder dissent. The report also reviews the impact of the COVID-19 pandemic on AGM format and reflects on the continuity of these changes. It concludes with some final thoughts on trending issues for practitioners to watch out for during the 2023 season.

Analysis of TCFD reporting by premium listed companies in 2022

This Market Tracker Trend Report looks at reporting by premium listed commercial companies in 2022 on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). The report provides an overview of the regulatory regime, examines how FTSE 350 companies have responded to the new reporting requirements and includes examples of best practice reporting. The report also includes commentary and practical guidance from leading practitioners in this area.

Trends in Equity Capital Markets in 2022

This Market Tracker trend report examines the current dynamics of equity capital market (ECM) within the UK in 2022. The report provides analysis and commentary on current and emerging trends in this area and includes insight into what we might expect to seein 2023.

Trends in UK public M&A in 2022

This Market Tracker trend report provides in-depth analysis of the 46 firm offers, 47 possible offers and 17 formal sale processes and/or strategic reviews, which were announced by Main Market and AIM companies subject to the Takeover Code (the Code) in 2022. It includes insight into public M&A trends and what we and our contributors expect to see in 2023 and beyond.

Forthcoming Trend Reports

Ethnicity Pay Gap 2023

This Market Tracker Trend Report explores company reporting on the ethnicity pay gap in light of government guidance published for employers in 2023. The report examines the history of the ethnicity pay gap and provides expert commentary on best practice in this area.

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