

Insights

TAKEOVER PANEL CONSULTATION – CONDITIONS TO OFFERS AND THE OFFER TIMETABLE

27 October 2020

SUMMARY

This consultation paper proposes a number of amendments to (i) simplify the offer timetable under the Code (ii) provide certainty that once a firm offer has been announced it will not lapse or be withdrawn without good reason and (iii) apply consistent treatment to any official authorisation or regulatory clearance.

The consultation closes on 15 January 2021 and a Response Statement with final amendments is expected in Spring 2021.

KEY PROPOSALS

The offer timetable

- **Single date for satisfaction of the conditions** - there would no longer be a distinction between the date by which the acceptance condition needs to be satisfied and the date by which the other conditions to the offer need to be satisfied or waived.
- **Acceptance condition last to be satisfied** - subject to certain exceptions, the acceptance condition would only be capable of being satisfied once all of the other conditions to the offer had been satisfied or waived.
- **“Day 60”** - the Code would stipulate that all of the conditions to an offer must be satisfied by no later than “Day 60” which would be defined as the 60th day following the publication of the initial offer document or any later date set by the Panel pursuant to an extension of the offer timetable. There would no longer be a “Day 81” of the offer timetable and Days 39, 46 and 53 would be set by counting back from Day 60 and would be automatically extended (or re-set) if Day 60 is extended.

- **Withdrawal rights** - offeree company shareholders who have accepted an offer would be able to withdraw their acceptance at any time prior to the satisfaction of the acceptance condition.

Suspending the offer timetable for official authorisations and regulatory clearances

The Code Committee considers that the Code should apply consistent treatment to any official authorisation or regulatory clearance to which an offer is subject and not only to conditions relating to there being no Phase 2 CMA reference or Phase 2 European Commission proceedings. The Code Committee therefore proposes that an offeror or the offeree company would only be able to request that the offer timetable be suspended in relation to a condition relating to **any** official authorisation or regulatory clearance, provided that, if only one of the parties wishes to suspend the timetable, the condition must relate to a “material” authorisation or clearance.

An official authorisation or regulatory clearance would be treated as “material” if the Panel is satisfied that the failure to obtain the authorisation or clearance could give rise to circumstances which are of material significance to the offeror in the context of the offer.

Currently if an offeror wished to invoke a condition or pre-condition relating to a Phase 2 CMA reference or initiation of Phase 2 European Commission proceedings, it would not need to demonstrate that the circumstances that have arisen are of material significance to it in the context of the offer. However, this exemption does not extend to **any** other official authorisation or regulatory clearance. Applying the principle of consistent treatment, the Code Committee is proposing to remove the exemption from the “material significance” requirement in Rule 13.5(a) for CMA and European Commission clearance conditions.

Longstop dates for contractual offer

The Code Committee is seeking views on whether the offeror should be required to set a “longstop date” for a contractual offer. This would address concerns that an offer might become open-ended if it were possible for the timetable to be suspended pending the satisfaction/waiver of conditions relating to an official authorisation or regulatory clearance.

Mandatory offers

The Panel is considering granting a dispensation from the restriction in Rule 9.3 on a person triggering a mandatory offer where the triggering share purchase would itself be subject to a condition relating to a material official authorisation or regulatory clearance.

PCP 2020/1

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MEET THE TEAM



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