

The Panel on Takeovers and Mergers

Noel Hinton
Deputy Director General

Who are we and how long have we been around

- Panel set up in 1968
- Has regulated over 7,000 bids
- Not part of DBERR, LSE, Competition Commission or FSA
- Broad membership from:
 - investor community
 - City practitioners
 - business

Panel split into two parts:-

- (i) the Code Committee
- (ii) the Hearings Committee
 - the Code Committee is responsible for all changes to the Rules
 - changes are made after a consultation and review process
 - the Hearings Committee sits when parties ask for a review of a decision by the Executive
 - it is possible for parties to go to the Takeover Appeal Board after the decision of the Hearings Committee is known.

What does the Panel do?

- Function: regulation of conduct during takeovers, mergers and other transactions where effective control of companies may change
- Purpose: to ensure good business standards and fair treatment of shareholders. No role in judging commercial/financial merits of bids or wider issues of public interest
- Scope: UK incorporated, either resident or traded on a regulated market, or shared European jurisdiction

What is our approach?

- Requirement to observe the highest standards (legalistic box-ticking is not sufficient)
- Takeover Code is applied in accordance with its spirit and to achieve its underlying purpose, not just the letter
- Flexibility: the Panel has discretion to dispense with requirements and to extend them to deal with new techniques and unexpected circumstances
- Other key words are speed, certainty and consultation

Panel requirements

- 6 General Principles
- 38 Rules
- 4 fundamental objectives
 - equality of treatment for shareholders
 - sufficient advice and information, of a high standard, to be made available to shareholders in a timely manner
 - preservation of fair markets
 - prevention of frustrating action

Timetable

Possible offer announcement – no timetable by PUSU regime

PUSU – offeree request which leads to a timetable for statements by the offeror

Firm offer announcement (Rule 2.5) (D-28)

Offer document posted within 28 days
(calendar days) (D-day)

Minimum time for an offer to be open is 21 days

Maximum time for an offer to be open is 60 days (normally)

Timetable (cont'd)

Day 39: normally final “fresh information” from
might influence share price (D+39)

Day 46: normally, final revised offer from offeror (D+46)

Day 60: win or lose! (D+60)

If successful, offer must normally remain open for at least a further 14 days.

Acting in concert

“Persons acting in concert comprise persons who, pursuant to an agreement or understanding (whether formal or informal), co-operates to obtain or consolidate control (as defined below) of a company or to frustrate the successful outcome of an offer for a company. A person and each of its affiliated persons will be deemed to be acting in concert all with each other (see Note 2 below)”

Acting in concert (cont'd)

- Presumption
onus is on parties to establish why they are not in concert
- Investigations
Executive will examine
 - (i) informal understandings
 - (ii) business relationship
 - (iii) personal relationship
 - (iv) share buying history

Acting in concert (cont'd)

- Other concerns
 - (i) should the whole investment bank be in concert?
 - (ii) consortium offers
 - (iii) dealings by concert parties

small market place leads to greater concerns

Hostile offers: Defensive Tactics

Article 9 (Takeovers Directive) implemented through Rule 21.1 of the UK Code.

The board of the target company must not:

- issue shares, including out of treasury
- issue or grant options
- issue securities convertible into shares
- sell or acquire assets of a material amount
- enter into contracts other than in the ordinary course

but exceptions apply

NB not the full definition

Hostile offers: Defensive Tactics (cont'd)

- (i) If offeror (or potential offeror) agrees; or
- (ii) If shareholders agree; or
- (iii) Earlier board decisions are being implemented
- (iv) Normal course for share option schemes

Purpose of Rule

- Shareholders, rather than the board, determine the future of the company
 - Shareholders role is therefore more significant during an offer
- Other points
- Poison pills not prohibited: UK shareholders do not like them!
 - Board may make statements about what it will do if the offer fails

Takeover Panel – FSA relationship

- Panel has specific responsibilities in takeovers for market abuse.
- FSA has general responsibilities for market abuse.
- Panel liaises closely with FSA on insider dealing matters.
- Panel is not a prosecuting authority: the FSA is.
- Possible for both FSA and Panel rules to have been broken so both would act.
- Panel knows about most offers prior to announcement monitoring starts immediately Panel knows about possibility of offer

Dealing disclosures

Rule 8 of the Code

- Beneficial owner must be named
- All dealings by offerors/offerees and associates must be disclosed in both offeror and offeree company (in cash offer, only dealings in offeree company)
- Dealings in relevant company by holders of 1% or more

Dealings

- in interests in shares
 - (i) if shares are owned
 - (ii) if the right to vote is held, even when shares not owned
 - (iii) if an option over shares is held (including put option)
 - (iv) if party to a derivative where value is referenced to share price or which results or may result
- NB not the full definition