LexisNexis

Market Tracker Trend Report:

UK Public M&A report in 2019

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Contents

Background and approach 1
Highlights 2019 2
Executive summary 3

01 **Deal structure** 7
02 **Deal value and volume** 9
03 **Target response: recommended or hostile** 13
04 **Mandatory offers** 17
05 **Competing bids** 19
06 **Industry focus** 24
07 **Public to private transactions** 27
08 **Nature of consideration** 32
09 **Financing the offer** 35
10 **UK and international bidders** 36
11 **Possible offers and formal sale processes** 38
12 **Break fees and reverse break fees** 39
13 **Irrevocable undertakings** 40
14 **Shareholder activism** 41
15 **Post-offer undertakings and national security undertakings** 45
16 **Employee representative and pension scheme trustees opinions** 47
17 **Legal and regulatory developments** 48

Background and approach

This report aims to provide an insight into the dynamics of UK public M&A activity in 2019 and what we expect to see in 2020.

LexisNexis Market Tracker has conducted research to examine current market trends in respect of UK public M&A deals announced in 2019. We reviewed a total of 111 transactions involving quoted companies that were subject to the Takeover Code (the Code): 66 firm offers (35 for Main Market companies and 31 for AIM companies) and 45 possible offers[1] (24 Main Market companies and 21 AIM companies) which were announced between 1 January 2019 and 31 December 2019.

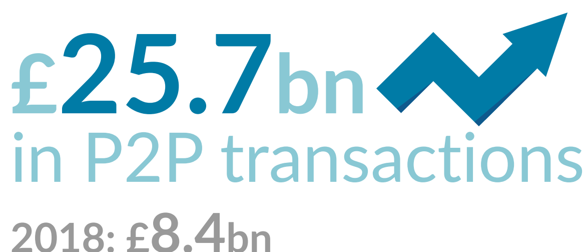
The percentages included in this report have been rounded up or down to whole numbers, as appropriate. Accordingly, the percentages may not in aggregate add up to 100%.

The final date for inclusion of developments in this report is 31 December 2019. Reference has been made to deal developments after this date if considered noteworthy.

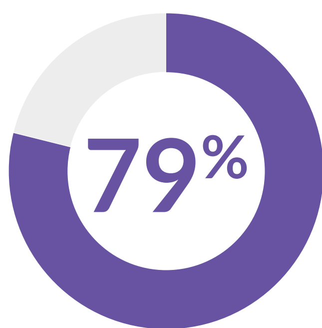
[1] The 45 possible offers announced in 2019, includes 10 formal sale process announcements and two strategic review announcements.

Highlights 2019

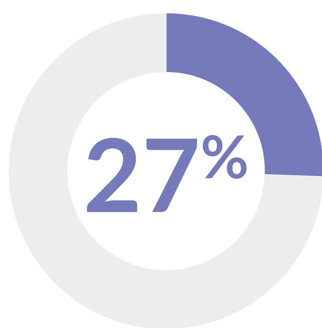
FIRM OFFERS



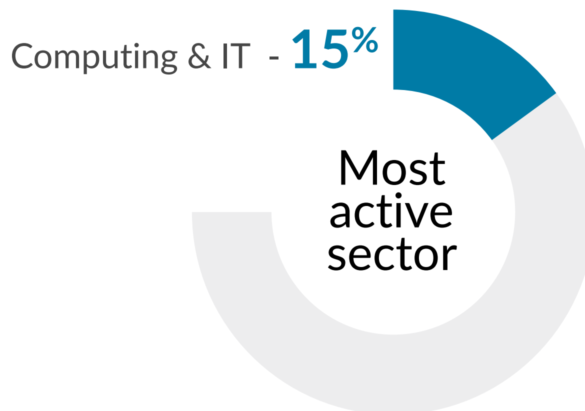
Government intervention and provision of post-offer undertakings on Cobham and Inmarsat bids



of all firm offers were cash offers



of all firm offers made by US bidders



Executive summary

Large increase in deal volume but reduced deal value

Public M&A deal volume increased significantly in 2019 (66 firm offers) compared with 2018 (42 firm offers). However, this was offset by a decline in deal value, with aggregate deal value of £53.6bn in 2019 (2018: £122.1bn) and average deal value of £812m (2018: £2.9bn). Of the 66 firm offers announced in 2019, 13 (20%) had a deal value over £1bn compared with 17 (40%) in 2018. The four largest deals were the two competing bids for Just Eat by Takeaway.com and Prosus (£6.3bn and £5.5bn), the offer for Merlin Entertainments by KIRKBI and Blackstone (£4.8bn) and the offer for Cobham by Advent International with Blackstone as co-investor (£4bn).

> *2019 has been busier than expected and busier than 2018, with good activity levels throughout the year. Political uncertainties were offset by bidders having cash to invest, debt remaining relatively cheap, GBP exchange rate weakness and structural changes (in particular technology disruption) driving a strategic need for transactions.*
>
> *For the coming year, lessening political uncertainty (subject to Brexit developments) when combined with continued high levels of investable cash, particularly in funds, and debt that remains cheap are expected to drive further activity levels particularly for UK to UK deals. Strengthening UK GDP may reduce non-UK bidder interest. The current approach of the CMA in relation to digital or consumer businesses with an increased likelihood of expensive and time-consuming Phase 2 investigations will deter some potential consolidators.*

Iain Fenn,
Partner, Linklaters

Record levels of P2P activity

Private equity buyers were active, being involved in 48% of firm offers announced during the period. Private equity buyers are also appearing on increasingly large transactions and were involved in transactions with an aggregate deal value of £25.7bn (2018: £8.4bn) and average deal value of £802.1m (2018: £524.7m).

> *The scale of the opportunities, coupled with record levels of uncalled capital and the continued availability of cheap debt, has made the public markets an attractive value proposition for PE and other sponsors. Diversification of the types of sponsors willing to participate in or finance P2Ps has also supported club deals, enabling PE firms to look at larger strategic targets.*
>
> *We expect the rise in private capital hitting public markets and de-equitisation of PLCs to continue, as sponsor funds engage with the public markets more regularly, and overcome concerns over complexity and exposure.*

Patrick Sarch,
Partner, White & Case

In four cases (offers for Merlin Entertainments, Inmarsat, easyHotel and Flybe) the offer was made by a consortium of investors and Blackstone was also a co-investor on Advent International's £4bn offer for Cobham.

> *Private equity will continue to extend their reach in the sphere of public M&A, as is evidenced by activity to date as well as the flexibility shown by financial buyers in forming consortia to bid.*

Gillian Fairfield,
Senior Consultant, Slaughter and May

Pension funds involved on bids

Pension funds were involved as bidders on some high-profile transactions. Canadian Pension Plan Investment Board was a member of the consortium that bid on the £2.6bn offer for Inmarsat and was a co-investor on the £4.8bn joint offer by KIRKBI and Blackstone for Merlin Entertainments. Ontario Teachers' Pension Plan Board was part of the consortium on the Inmarsat offer and the University Superannuation Scheme was engaged in a takeover battle with Macquarie for KCOM Group.

Industry sectors

The five most active sectors by deal volume were Computing & IT (15%), Investment (11%), Media & Telecommunications (11%), Travel, Hospitality, Leisure & Tourism (11%) and Engineering & Manufacturing (9%). The largest deal was in the Food & Beverages sector – Takeaway.com's £6.3bn offer for Just Eat – and this sector also saw a £5.5bn competing bid for Just Eat from Prosus and a £2.7bn bid from CK Holdings for Greene King.

Schemes remain the structure of choice

Schemes of arrangement remain a popular choice of structure with bidders, accounting for 71% of all firm offers announced in 2019. If hostile offers, mandatory offers, partial offers and competing offers (which are traditionally structured as contractual offers) are excluded, the proportion of transactions structured as schemes is even more pronounced with 94% of such transactions being structured as schemes.

> *Schemes of arrangement remained the deal structure of choice in 2019. This reinforces the strong view amongst market participants that there are numerous benefits to using a scheme, such as the greater certainty of obtaining 100% control of the target company. We predict that this will continue in 2020 due to the scheme's predictability, its flexibility, and the commercial attitude of English and Welsh judges.*
>
> Adam Cain,
> Legal Director, Pinsent Masons

Cash is king

The combination of cheap debt and healthy balance sheets helped to fuel M&A activity in 2019, evidenced by the number of offers involving cash. In 2019 79% of all firm offers were cash only offers and 83% included a cash element. However, there were also instances of non-UK quoted bidders offering share consideration (notably Toronto Stock Exchange-listed Barrick Gold and Hunt Mining on their offers for Acacia Mining and Patagonia Gold). Takeaway.com's offer for Just Eat was also an all-share merger with the consideration shares being dual-listed on Euronext Amsterdam and the London Stock Exchange.

The consideration payable on Barrick Gold's offer for Acacia Mining also included contingent value rights in the form of special dividends which might become payable upon the sale of certain exploration properties. These special dividends would be payable in cash out of the net proceeds of sale of the exploration properties.

Two bidders (Thoma Bravo on its offer for Sophos and the consortium on the offer for Inmarsat) provided cash consideration in dollars to target shareholders with shareholders having the option to take the cash consideration in sterling under a currency conversion facility.

Increased hostile activity

There were five hostile takeovers announced in 2019 (compared with three in 2018) and two takeovers that were announced without any definitive recommendation from the target board. One of these hostile offers (Spectre Holdings' offer for Bonmarché) became recommended following the target board reporting a deterioration in its financial position. All but one of the hostile offers was unsuccessful, including Non-Standard Finance's offer for Provident Financial which had been announced with the support of shareholders holding a majority of the voting rights of Provident Financial.

> *It is noteworthy that all of the unsolicited offers that remained unrecommended throughout the offer period lapsed. This serves as a reminder of how difficult it is for an offer to succeed without the target board's recommendation, even though, as was the case with NSF's offer for Provident Financial, it might have significant support from target shareholders.*
>
> Leon Ferera,
> Partner, Jones Day

Competing bids

Eight companies were the subject of actual or potential competing bids in 2019, including Eddie Stobart which received approaches from three separate bidders. Four companies were the subject of firm offers from competing bidders. On the competing bids for KCOM Group by Macquarie and the Universities Superannuation Scheme, the Takeover Panel (Panel) implemented an auction procedure in accordance with the Code to resolve the competitive situation. This was the first occasion on which the Panel's default auction rules were applied.

Mandatory offers

There were seven mandatory offers in 2019, two of which involved the same bidder – Sports Direct. This was an increase on 2018 which saw three mandatory offers. The motivating factors for doing this varied in each deal and included a large pre-existing shareholding in the target company, opposition to the bid from the offeree board and/or key shareholders and the presence of a rival bidder.

Partial offers

There were two partial offers in 2019 (Growthpoint Properties' £72.5m offer for Capital & Regional and Investindustrial Advisors' £68.4m offer for Aston Martin) both of which were successful. The Capital & Regional offer was recommended, but no definitive recommendation was received on the Aston Martin offer.

As part of the Capital & Regional transaction Growthpoint also subscribed for new Capital & Regional shares, thereby obtaining a majority stake in Capital & Regional through a combination of the partial offer and subscription. This required the approval of independent shareholders of Capital & Regional under the whitewash provisions in the Code in order to avoid Growthpoint having to make a mandatory offer.

Continued interest from overseas bidders

A weak sterling contributed to continued interest from non-UK bidders, in particular from US buyers. Of the 66 firm offers announced in 2019, 73% involved a non-UK bidder. US bidders took advantage of a strong dollar and were involved in 18 (27%) of the firm offers announced in 2019 with an aggregate deal value of over £22.9bn (43.5%). Canadian bidders were also active, being involved in seven firm offers with an aggregate deal value of £10.2bn.

Shareholder activism

Shareholder activism continued to be a feature of M&A activity in 2019. This took several different forms, including shareholders urging boards to seek merger partners (Just Eat and Merlin Entertainments), being vocal in their opposition to a takeover bid (Provident Financial and Just Eat), agitating for government intervention on takeovers (Cobham) and engaging in 'bumpitrage' (Ophir Energy and Tax Systems). On the consortium bid for Inmarsat, activist shareholders sought to frustrate the transaction by challenging the scheme in the High Court.

> *Shareholder activism has become a common feature of the larger deals and has impacted the public M&A dynamic in different ways. Activism has been classically deployed to extract maximum value from a deal by pressuring bidders to increase their offer (eg Ophir and Tax Systems). Key target shareholders have also supported target boards where they are the subject of a hostile offer by very publicly rebuffing hostile offers (e.g. Non-Standard Finance's offer for Provident). Shareholder activists have not always had it their own way (e.g. Inmarsat). However, shareholder activism — in its many forms and with its diverse aims — has become an entrenched feature of UK public M&A deals and, as far as we can tell, it is here to stay.*
>
> James Bole,
> Partner, Clifford Chance

Post-offer undertakings and national security undertakings

2019 saw two instances of bidders providing legally binding post-offer undertakings: the offer for Cobham by Advent International and the offer for Inmarsat by Apax Partners, Warburg Pincus International, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board. Both transactions attracted considerable media and political attention and the provision of POUs appears to have been driven by a desire to avoid government intervention.

In addition to the POUs agreed with the Panel, both bidders on the Cobham and Inmarsat offers provided undertakings to the UK government to avoid further CMA review.

Directors' duties: Lloyds HBOS litigation

In November 2019 the High Court dismissed a class action brought by a group of Lloyds shareholders against the bank's chairman and executive directors in connection with its purchase of HBOS in 2008/09. The decision (Sharp v Blank [2019] EWHC 3078 (Ch)) raises some interesting legal issues around directors' recommendations and the standards of disclosure required in shareholder circulars.

For further details, see the legal and regulatory section of the report.

Legal and regulatory

Other legal and regulatory developments in 2019 included:

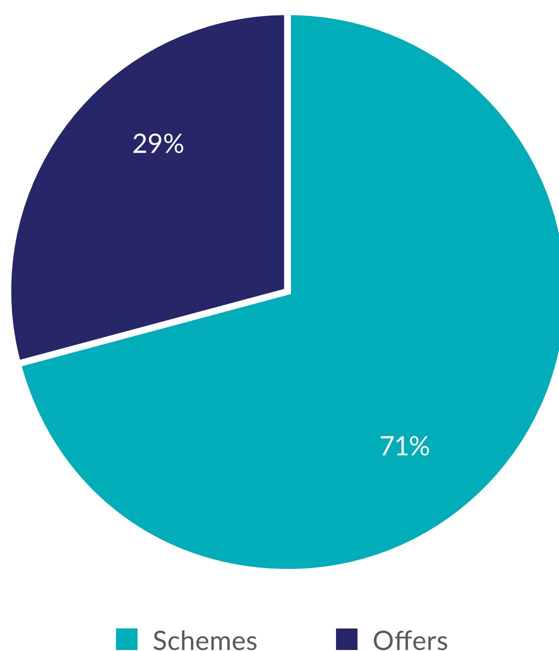
- the coming into force of the Prospectus Regulation (EU) 2017/1129 and related changes to the FCA Handbook and the Financial Services and Markets Act 2000
- the Financial Conduct Authority (FCA) publishing guidance on insider lists and the control of access to inside information
- the FCA publishing guidance on the approaches issuers may take for transactions implemented by way of a scheme of arrangement
- the Panel issuing a cold shoulder ruling against Mr David King in relation to his mandatory offer for Rangers Football Club
- various competition/anti-trust developments, including record fines imposed by the Competition and Markets Authority (CMA) for merger control breaches, the increasing importance of internal documents as sources of evidence on CMA investigations, the impact of amended merger thresholds for transactions impacting national security and the CMA's proposals for a mandatory merger control regime
- the adoption by the European Council of new directive, which is intended to make it easier for companies to merge, be divided or (using a cross-border conversion) transfer their registered seat within the Single Market
- the approval by Parliament of secondary legislation to deal with the UK's withdrawal from the EU (Brexit)
- the publication by the Panel of a response statement confirming its proposed changes to the Code to deal with Brexit

These are dealt with in more detail in this report.

01 Deal structure

Schemes of arrangement remain the deal structure of choice among bidders: of the 66 firm offers announced in 2019, 47 (71%) were structured as schemes and 19 (29%) were structured as offers. This is a similar level to 2018, where 76% of firm offers announced were structured as schemes and 24% were structured as contractual offers. If hostile offers, mandatory offers, partial offers and competing offers (which are traditionally structured as offers) are excluded, the proportion of transactions structured as schemes is even more pronounced with 94% of such transactions being structured as schemes. This suggests that unless there is a compelling reason to structure a transaction as a contractual offer, the default position across all deal sizes is to structure transactions as schemes.

Firm offers by deal structure



Schemes of arrangement are popular amongst bidders for several reasons, including certainty of obtaining 100% control: a scheme, if approved by the requisite majority will be binding on all a target's shareholders, giving the bidder full control at an earlier stage than an offer, with no possibility of minority shareholdings. However, an offer structure can be attractive where a bidder wishes to have the greatest flexibility to amend the offer terms (particularly useful on hostile bids or where there is a risk of competing bidders).

The emergence of a competing bid for Just Eat from Prosus was likely to be the motivating factor in Takeaway.com's decision to switch the structure of its offer from a scheme to a contractual offer. Takeaway.com stated that it believed that the revised structure provided Just Eat shareholders with increased deal certainty. Here the flexibility and lower threshold for achieving de facto control afforded by an offer structure outweighed the benefits of the scheme structure.

Bidders appreciate the flexibility inherent in the scheme timetable which can be extended to accommodate even challenging anti-trust and regulatory clearance conditions; this position cannot (for now, with the Code rules as they currently stand) easily be replicated in a contractual offer timetable, unless a pre-conditional route is adopted.

Gillian Fairfield,
Senior Consultant, Slaughter and May

The vast majority of recommended bids are implemented by way of a scheme and we expect this trend to continue. However, we are beginning to see late stage disruption by shareholders and activists, with both the Ophir and Inmarsat schemes challenged shortly prior to the final court hearing. As in the Lloyds/HBOS class action suit, challenges focus on adequacy of disclosure. Bidders and targets need to be aware of this issue and to consider disclosure carefully to avoid any last-minute upsets.

Tom Matthews,
Partner, White & Case

Competitive and unsolicited offers are exceptions to the current preference of bidders to structure their offers as schemes of arrangement. A contractual offer structure can offer more flexibility to a bidder than a scheme, and it is for this reason that, for example, Takeaway.com's offer for Just Eat, which was initially structured as a scheme, was switched to an offer when a competing bid from Prosus emerged. The offers for both Just Eat and Earthport saw the offerors taking advantage of this flexibility by waiving down their acceptance conditions in order to try to increase the likelihood of their offers succeeding.

Leon Ferera,
Partner, Jones Day

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The report rightly confirms that schemes remain the implementation structure of choice, other than where eg competing interest pushes one towards a contractual offer. The report also highlights shareholder activism as being on the rise, including in particular activist shareholders seeking to use the scheme process and the court hearing at the end of a scheme process to put pressure on bidders to improve their terms (Ophir and Inmarsat being good examples). It remains to be seen whether this over time drives an increase in the proportion of takeovers being implemented by way of contractual offer again. If so, one might expect that the Panel may need to reconsider the contractual offer timetable under the Code at some stage, given the time it often takes to get through regulatory approval processes (another factor that can drive decisions to go for a scheme over a contractual offer).

Dan Schuster-Woldan,
Partner, Linklaters

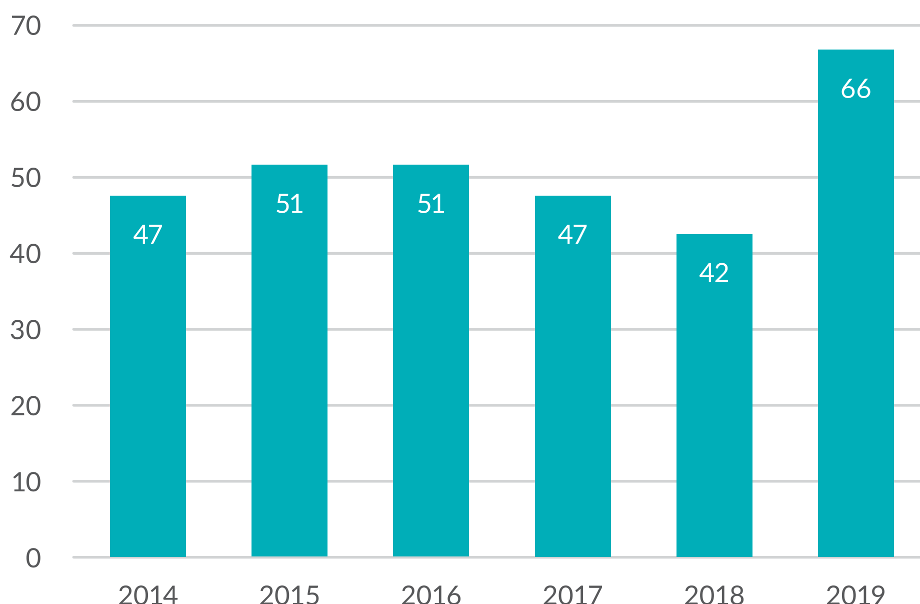
Whilst schemes of arrangement remain the preferred structure for recommended offers, there has been an increasing number of challenges to schemes brought by active target shareholders. For example, on the takeover of Dee Valley in 2017, an employee shareholder tried to defeat the scheme vote on the basis of the "majority in number" test by splitting his shareholding; on the takeover of Ophir Energy in 2019, an institutional shareholder threatened to make objections in Court on grounds of inadequate disclosure in the scheme document (although the shareholder did not attend the sanction hearing in the end); and most recently, on the takeover of Inmarsat, a number of institutional shareholders publicly voiced their objections to the scheme on various grounds (including material change of circumstances since the shareholder vote and inadequate disclosure) and appointed counsel to make representations at the Court sanction hearing. Even though the objections were withdrawn shortly before the sanction hearing after the consortium bidder made a "no increase and no extension" statement, the judge nonetheless considered all the arguments made by the shareholders, Inmarsat and the bidder during the two-day sanction hearing and eventually sanctioned the scheme. It would be interesting to see whether more shareholders, in particular institutional shareholders with financial capability and access to expert legal advice, would be more willing to use the Court process to challenge schemes of arrangement and the target board's actions.

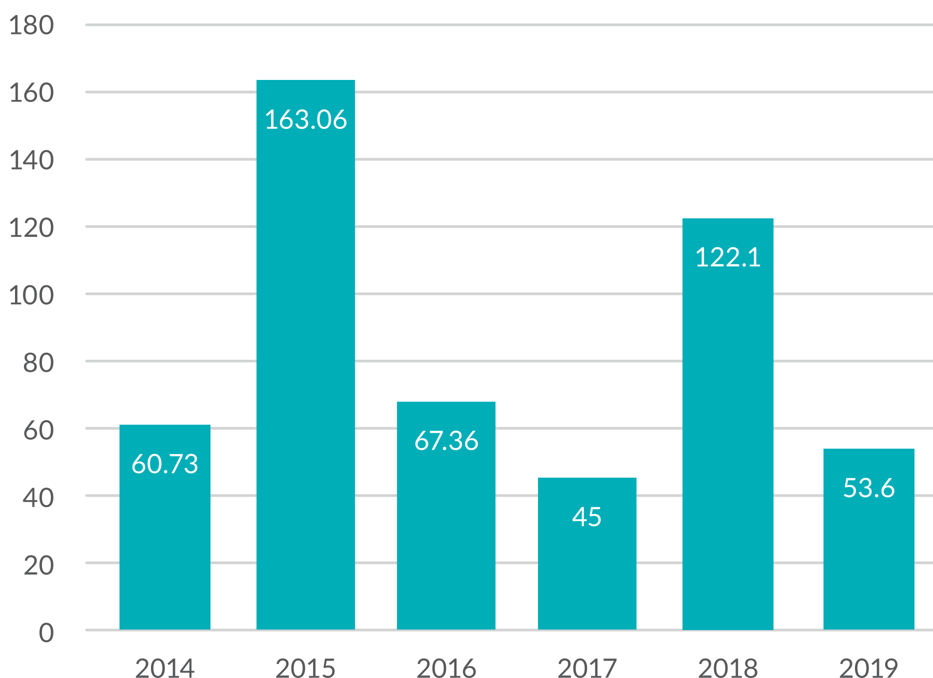
Rui Huo,
Senior Associate, Clifford Chance

02 Deal value and volume

Deal volume in 2019 (66 firm offers) was significantly higher than in 2018 (42 firm offers). However, this was offset by a decline in deal value with aggregate deal value of £53.6bn (2018: £122.1bn) and average deal value of £812m (2018: £2.9bn). This decline in deal value is largely attributable to the absence of 'blockbuster' transactions of the type seen in 2018 (ie, Takeda Pharmaceutical's offer for Shire and Comcast's offer for Sky, which between them accounted for over £75bn of deal value).

Of the 66 firm offers announced in 2019, 13 (20%) had a deal value of over £1bn compared to 17 (40%) in 2018. The two most active sectors for £1bn plus transactions were the Food & Beverage and Travel, Hospitality, Leisure & Tourism sectors, which each saw three £1bn plus transactions. The largest deal was Takeaway.com's £6.3bn offer for Just Eat.





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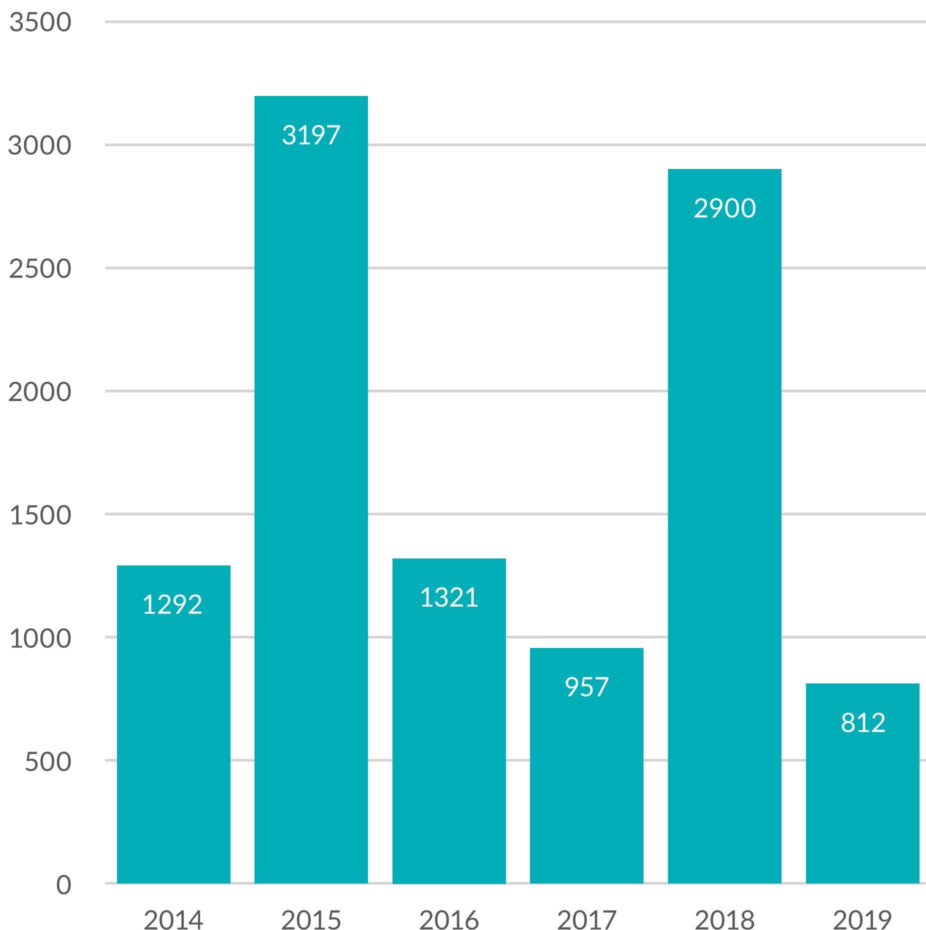
The significant increase in deal volume (representing an increase of over 50% on firm offers announced in 2018) may indicate that bidders had been holding fire on announcing deals because of political and economic uncertainty (Brexit, changes in PM/general election) but have grown tired of waiting for resolution and are willing to take those risks on board as part and parcel of the reality of UK public M&A. It will be interesting to see whether 2020 will see an equally high number of deals being announced given there is still much uncertainty over the form that Brexit will take. Cheap debt remains freely available and many companies have very strong existing cash balances which they may be willing to deploy for the right target. Private equity houses have also been particularly active in public M&A in 2019 – a significant proportion of the increased deal volume will be down to active PE bidders.

James Bole,
Partner, Clifford Chance

The statistics relating to deals by value often produce a misleading view of activity levels, as they can be skewed by a couple of significant transactions. However, the increased volume of deals in 2019, together with the involvement of significant number of overseas bidders supports our view that many overseas businesses (particular in the US) perceive UK companies to represent attractive investment propositions, notwithstanding Brexit uncertainty. Even if the departure of the UK from the EU at the end of January is clearly not the end point of the Brexit process, we would expect the increased appetite for doing deals in the UK to continue into 2020.

Simon Allport,
Partner, Bird & Bird



Although deal values have fallen from 2018 which saw the two blockbuster offers for Shire and Sky, we are encouraged by the substantial increase in deal volumes, which continued into H2 2019.

One of the key developments in 2019 was the entrance of new participants to the P2P market. We have seen, both in the market and behind the scenes, a major diversification of the types of sponsors willing to lead, participate in or to finance P2Ps (with debt, equity and/or hybrid funding). As well as traditional buyout PE funds, we have seen activity from sovereign wealth funds, credit funds, alternative capital providers and hedge funds, infrastructure funds and pension funds (especially the huge North American pension managers), often in club deals which drive bigger transaction sizes. Of the 11 companies that were subject to offers at levels above £1bn in 2019, eight involved PE and/or other fund interest.

With activist investors continuing to expand their horizons, it will only be a matter of time before minority stake building in UK public companies changes to outright takeovers.

Patrick Sarch,
Partner, White & Case

£1bn plus transactions

Target	Bidder	Deal value	Industry sector (target)	Consideration structure	Bidder nationality[2]
Just Eat	Takeaway.com	£6.3bn	Food & Beverages	Shares only	Netherlands
Just Eat	Prosus	£5.5bn	Food & Beverages	Cash only	Netherlands, South Africa[3]
Merlin Entertainments	KIRKBI and Blackstone Core Equity Partners (with Canadian Pension Plan Investment Board as co-investor)	£4.8bn	Travel, Hospitality, Leisure & Tourism	Cash only	Denmark, United States, Canada
Cobham	Advent International (with Blackstone as co-investor)	£4bn	Aerospace & Defence	Cash only	United States
RPC Group	Berry Global	£3.3bn	Engineering & Manufacturing	Cash only	United States
RPC Group	Apollo Global Management	£3.3bn	Engineering & Manufacturing	Cash only	United States
Sophos Group	Thoma Bravo	£3bn	Computing & IT	Cash only	United States
Greene King	CK Asset Holdings	£2.7bn	Food & Beverages	Cash only	Hong Kong[4]
Inmarsat	Apax Partners, Warburg Pincus International, Canadian Pension Plan Investment Board and Ontario Teachers' Pension Plan Board	£2.6bn	Media & Telecommunications	Cash only	United States, England and Wales, Canada
Millennium Copthorne Hotels	City Developments	£2.2bn	Travel, Hospitality, Leisure & Tourism	Cash only	Singapore
BCA Marketplace	TDR Capital	£1.9bn	Business & Professional Services	Cash only	England and Wales
Provident Financial	Non-Standard Finance	£1.3bn	Financial Services	Shares only	England and Wales
Ei Group	Stonegate Pub Company	£1.3bn	Travel, Hospitality, Leisure & Tourism	Cash only	England and Wales

[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] Prosus is incorporated in the Netherlands and its shares are quoted on Euronext Amsterdam. 73.84% of its share capital is owned by Naspers, a South African company. Naspers has a primary listing on the Johannesburg Stock Exchange and depositary receipts listed on the London Stock Exchange.

[4] CK Asset Holdings is incorporated in the Cayman Islands and registered in Hong Kong. Its shares are listed on the Main Board of the Hong Kong Stock Exchange. 31% of CKA's share capital is held by trustees of the Li Ka-shing family trusts

03 Target response: recommended or hostile

Of the 66 firm offers announced in 2019, 56 were recommended throughout the process. Of the remaining ten firm offers, two initially received no definitive recommendation (offer for Hardy Oil & Gas by Blake Holdings and partial offer for Aston Martin by Investindustrial Advisors), one became recommended after the target board reported a deterioration in its current trading and financial position (offer for Bonmarché by Spectre Holdings), three were initially recommended but the recommendations were withdrawn following the emergence of higher competing offers and four were hostile throughout the process. This is similar to the level of hostile takeover activity in 2018, which saw three hostile offers. None of the takeovers that were hostile throughout the process were successful, which underlines the difficulty of bidders acquiring control without the target board's recommendation.

Hostile takeovers

Deal	Deal Value	Industry sector (target)	Consideration structure	Transaction status
Just Eat by Prosus	£5.5bn	Food & Beverages	Cash only	Lapsed having received insufficient acceptances and after higher competing offer from Takeaway.com was declared unconditional as to acceptances
Provident Financial by Non-Standard Finance	£1.3bn	Financial Services	Shares only	Lapsed
Findel by Sports Direct	£139.2m	Retail & Wholesale Trade	Cash only	Lapsed
The Local Shopping REIT by Thalassa Holdings	£9m	Investment	Cash and shares	Lapsed
Bonmarché by Spectre Holdings	£5.7m	Retail & Wholesale Trade	Cash only	Completed

Spectre's offer for Bonmarché was initially hostile, but became recommended with the offeree board citing the uncertain trading and financial position of the business as reasons for its decision to recommend the offer. Following the Bonmarché board's announcement, Spectre expressed concern that the passage of time, and a further decline in the performance of Bonmarché, had eroded Spectre's ability to provide the advice, guidance and support needed to secure the long-term future of the Bonmarché business, its stores and employees. In light of this information, Spectre announced that the offer would close on 12 July 2019. The offer was unconditional from the outset, Spectre having acquired 52% of Bonmarché's issued share capital from its majority shareholder, BM Holdings, thereby triggering a mandatory offer.

On Blake Holdings' mandatory offer for Hardy Oil & Gas, the target board stated that the offer materially undervalued the company, but in view of the risks associated with Blake's position as a controlling shareholder along with the limited liquidity in the company's shares anticipated following the delisting, the board did not provide any definitive recommendation to accept or reject the offer.

Thalassa's offer for The Local Shopping REIT (LSR) and Sports Direct's mandatory offer for Findel both lapsed after the bidders failed to satisfy the acceptance conditions. However, one month following the lapsing of Thalassa's offer, Thalassa and the LSR board agreed terms for a court-approved reduction of capital and tender offer which ultimately resulted in Thalassa holding 96.25% of the LSR shares in issue.

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Although still only representing a fraction of total bids, bidders have shown an increased willingness to go hostile in 2018 and 2019. We have also seen more bidders announcing unsolicited approaches (for example, Hong Kong Exchanges' approach to the LSE), indicating an increasing appetite by bidders to put offers to shareholders without a recommendation. We think this trend will continue.

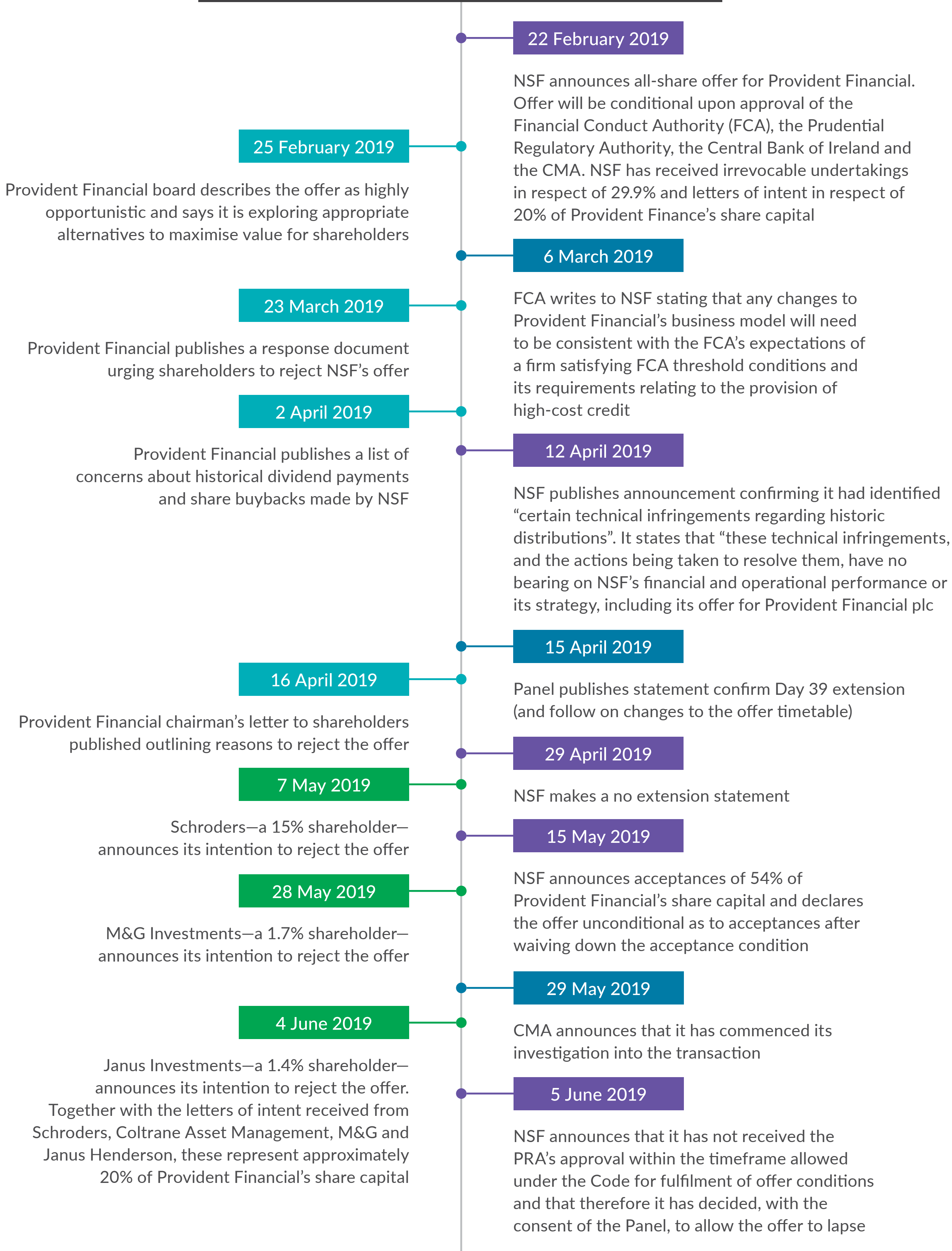
However, the statistics remain firmly in favour of recommended deals, with high profile deals such as NSF's bid for Provident lapsing despite having satisfied the acceptance condition and Hong Kong Exchanges' possible offer ultimately being timed out. We therefore expect the majority of bidders to continue to seek a recommendation.

Dominic Ross,
Partner, White & Case

This year saw a number of high-profile competitive situations which in part reflects the strong competition for the best assets and in part the willingness of bidders to take offers directly to shareholders without a recommendation. We expect the same trend to continue in the year ahead.

Iain Fenn,
Partner, Linklaters

Deal in focus



A hostile offeror who manages to reach 50% plus acceptances and declares its offer unconditional as to acceptances would traditionally expect non-accepting shareholders then to tender their shares and the target board to recommend acceptance, resulting in a successful outcome. The Provident Financial bid proved to be the exception to the rule in this sense, with no recommendation forthcoming and significant institutional investors publicly stating their intention not to accept NSF's offer, notwithstanding satisfaction of the acceptance condition. Non-satisfaction of regulatory conditions appear to have afforded NSF to lapse its offer gracefully, but had those regulatory conditions been satisfied prior to the relevant deadline, it would have been interesting to have seen how NSF would have fared as a controller of a company that would have remained listed and with significant institutional shareholders still on board.

Simon Allport,
Partner, Bird & Bird

04 Mandatory offers

Rule 9 of the Code requires a person (or persons acting in concert) to make a takeover offer for a company subject to the Code once that person's shareholding (or those persons' combined shareholdings) in that company cross certain thresholds.

Mandatory offers are in practice uncommon, as they are generally considered as something to avoid owing to the limited conditionality and restrictive terms which mandatory offers can be subject to. However, in 2019 there were seven mandatory offers, two of which involved the same bidder – Sports Direct. This was an increase on 2018 which saw three mandatory offers.

The first mandatory offer involving Sports Direct was its hostile offer for Findel, which was triggered after Sports Direct acquired shares from City Financial Absolute Equity Fund thereby increasing its stake in the target business from 29.9% to 37%. The Findel board described the offer as opportunistic and fundamentally undervaluing the business. This view appears to have been shared by the majority of shareholders, with Sports Direct only receiving acceptances in respect of an additional 1% of Findel's share capital. The offer lapsed on 3 May 2019 due to insufficient acceptances.

The second mandatory offer involving Sports Direct was its offer for Game Digital, which was triggered after Sports Direct acquired shares from Marlborough UK Micro-Cap Growth Fund thereby increasing its stake in the target business to 39%. The offer was recommended by the Game Digital board and went unconditional on 9 July 2019.

The two mandatory offers involving Sports Direct share some common features. In both cases, Sports Direct was the largest shareholder prior to the purchase that triggered the mandatory offer, holding approximately 29% of the target share capital. It was also an important commercial partner for both businesses. In the case of Findel, this involved the supply of Sports Direct-licensed clothing brands on one of its internet platforms. In the case of Game Digital, this involved a collaboration agreement covering the rollout of BELONG and GAME retail stores, including the entering into of concession agreements regarding the siting of BELONG arenas and/or GAME retail stores in Sports Direct locations.

Two mandatory offers started as voluntary recommended offers, but became mandatory after the bidders acquired shares in the target companies. The first of these was the offer for easyHotel by Ivanhoé Cambridge and ICAMAP Investments where the offeror carried out market purchases which increased its stake in the target company from 39% to 44% 10 days following the initial firm offer announcement. The second transaction was the offer for Brady by Hanover Active Equity Fund II. On this transaction Hanover had received a very low level of acceptances (1.37%) as at the first closing date and on the same date Brady announced that it had received a possible offer from an unnamed party. Following the announcement of the potential competing offer, Hanover increased its offer from 10p per share to 18p per share and subsequently acquired additional shares from Kestrel Partners and Coltrane Master Fund resulting in it holding 46% of Brady's issued share capital, thereby triggering a mandatory offer.

Several of 2019's Rule 9 offers arose due to the offeror's strategy of seeking to increase its influence in the target, whilst being agnostic as to the ultimate success of a consequential mandatory bid. The increased number of Rule 9 bids appears to have been driven by a number of specific commercial circumstances, and isn't something which should necessarily be seen as a long-term trend.

Giles Distin,
Partner, Addleshaw Goddard

Most share buyers and their advisers are acutely aware of the implications of triggering a mandatory bid obligation. However, for a substantial shareholder sitting just below the 30% threshold, or between 30% and 50%, there are very few options available if it wishes to increase its stake, particularly where its relationship with the company and its directors has broken down. 2019 saw an unusually high volume of mandatory bids (seven), five of which were made by large existing shareholders.

Partial offers are an alternative and, despite being very rare to date, 2019 saw two partial offers complete. Like mandatory bids, partial offers are subject to the full jurisdiction of the Code and can therefore be very involved. However, they have the benefit of enabling a shareholder to increase its holding through the 30% threshold without requiring it to make an offer for the whole. Growthpoint Properties' partial offer for Capital & Regional combined a partial offer with a subscription of new shares, which enabled Growthpoint Properties to go through 50%, whilst Investindustrial's partial offer for Aston Martin allowed the controlling shareholder to increase its stake through 30%, in each case without triggering an obligation to make an offer for the whole.

Tom Matthews,
Partner, White & Case

Mandatory offers

Deal	Deal value	Industry sector (target)	Recommended or hostile	Stake in target company prior to and immediately following mandatory offer announcement	Transaction status
Findel by Sports Direct	£139.2m	Retail & Wholesale Trade	Hostile	29.9% increasing to 37% following acquisition from City Financial Absolute Equity Fund	Lapsed
easyHotel by Ivanhoé Cambridge and ICAMAP Investments	£138.7m	Travel, Hospitality, Leisure & Tourism	Recommended	39% increasing to 44% following market purchases during the offer period	Completed
Game Digital by Sports Direct International	£51.9m	Computing & IT	Recommended	29.9% increasing to 39% following acquisitions from Marlborough UK Micro-Cap Growth Fund	Completed
FFI Holdings by 777 Group	£39.5m	Media & Telecommunications	Recommended	38% increasing to 68% following acquisitions from FFI's CEO and his family trusts	Completed
Brady by Hanover Active Equity Fund II	£15m	Computing & IT	Recommended	0% increasing to 46% following acquisitions from Kestrel Partners and Coltrane Master Fund during the offer period	Completed
Bonmarché by Spectre Holdings	£5.7m	Retail & Wholesale Trade	Hostile becoming recommended	0% increasing to 52.4% following acquisitions from BM Holdings	Completed
Hardy Oil & Gas by Blake Holdings	£3.7m	Oil & Gas	No definitive recommendation	29.9% increasing to 42% following acquisitions from the Universities Superannuation Scheme	Completed

05 Competing bids

Eight companies were the subject of actual or potential competing bids in 2019, including Eddie Stobart Logistics (Eddie Stobart) which received approaches from three separate bidders, and four companies were the subject of firm offers from rival bidders. These were: (i) Just Eat, which was subject to competing bids from Prosus and Takeaway.com, (ii) RPC Group which was subject to competing bids from Berry Global Group and Apollo Global Management, (iii) KCOM Group which was subject to competing bids from Macquarie and the Universities Superannuation Scheme and (iv) Earthport, which was subject to competing bids from Mastercard and Visa.

Two of the four sets of competing firm offers were structured as offers (offers for Earthport and Just Eat). In addition to the timing and flexibility advantages that an offer structure provides, a bidder in a competitive situation may be attracted to the lower threshold at which an offer can be declared unconditional as to acceptances compared with the corresponding thresholds for a scheme. This appears to have been the case on Takeaway.com's offer for Just Eat, which was initially structured as a scheme, but the bidder switched to an offer with a 75% acceptance condition when Prosus emerged as a rival bidder. This resulted in Prosus reducing the acceptance condition for its own offer from 90% to 75%. Takeaway.com subsequently reduced its acceptance condition to 50% plus one share when announcing its final offer. Visa and Mastercard's offers for Earthport both had 75% acceptance conditions with Visa waiving down the acceptance condition when it received acceptances in respect of 70% of Earthport's share capital.

The KCOM offers saw the Panel establish an auction procedure in accordance with the Code, which completed on 12 July with Macquarie emerging as the highest bidder.

A perception that there are value opportunities in the UK public markets has driven competition for attractive assets. In particular, the re-emergence of PE bidders, coupled with the rise in activist interest, has led to increasing competition.

Dominic Ross,
Partner, White & Case

The competing bids by Macquarie and USS for KCOM (advised by Addleshaw Goddard) was the first example of a takeover where the Panel's default auction rules were applied. Previously, competing offerors and the target have agreed bespoke auction procedures, which auctions typically conclude outside of market hours. No such agreement was reached between the parties in KCOM, and the auction played out over five days. The early stages were rather uneventful, with both parties only raising their existing bids in small increments until the best and final bids were announced on the final day. A bespoke auction process agreed with the Panel operates more efficiently and parties should strive to agree such a process where possible.

Simon Wood,
Partner, Addleshaw Goddard

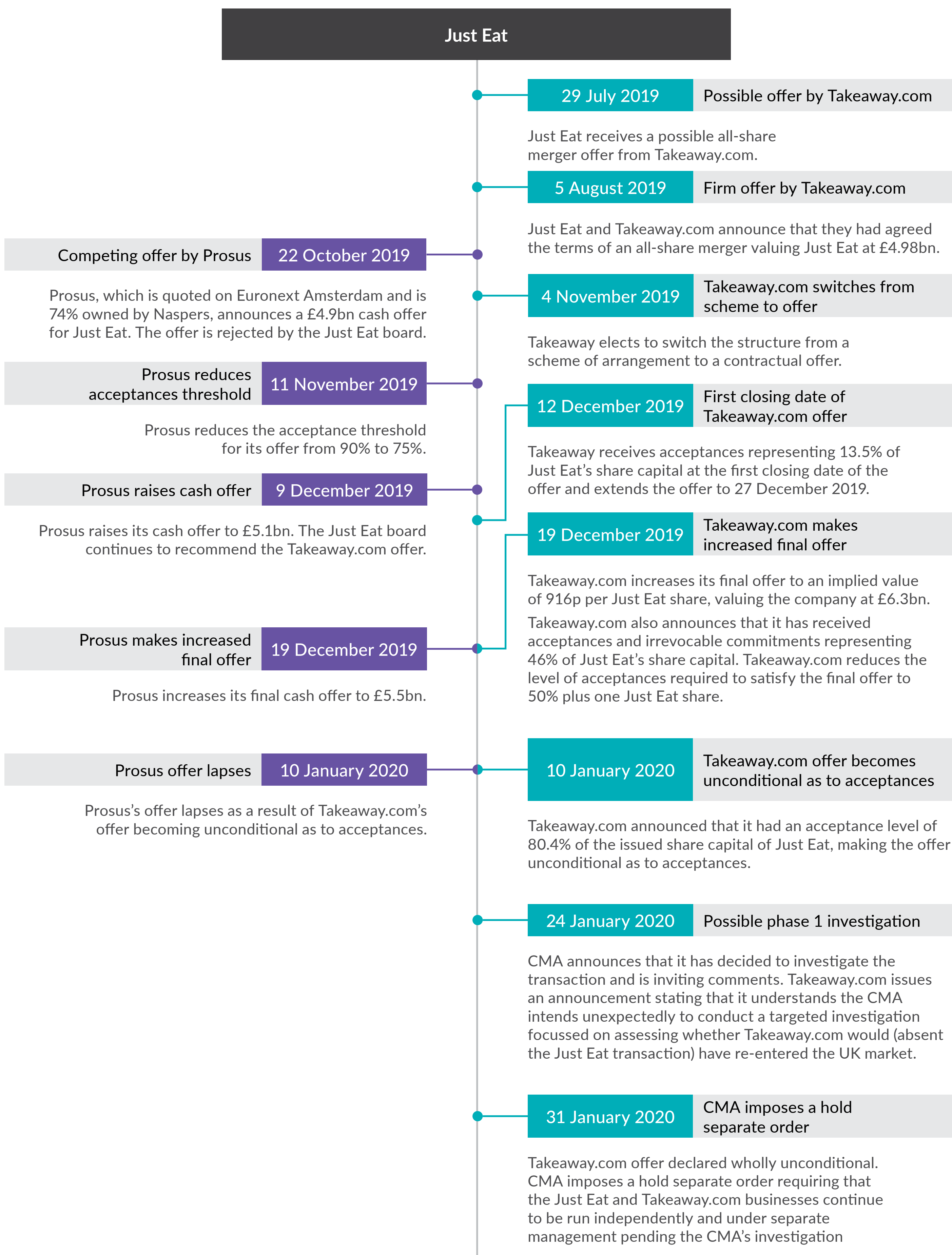
The number of hostile bids increased over the last few years, which partly led to the rule change in 2018 to give the target board more time to prepare their defence document in a hostile situation. NSF's hostile bid for Provident was an example of a high profile hostile bid that looked on paper as if "it was in the bag": NSF had obtained irrevocables and letters of support from Provident shareholders holding over 50% of Provident's share capital by the time it made its firm offer announcement. However, defence tactics deployed by Provident, together with very public support from key shareholders who, together, held shares representing over 20% of Provident's share capital, made life for NSF very difficult and arguably gave Provident a fighting chance to see off the unwanted bidder. Ultimately, NSF announced that it was lapsing its offer on Day 81 because of non-satisfaction of a regulatory condition. This transaction also highlighted the difficulties a bidder could face when considering making a hostile offer for a regulated entity.

Rui Huo,
Senior Associate, Clifford Chance

Competing bids

Target company	Competing bidders	Deal value	Comment	Status
Brady	Hanover Active Equity Fund II (1) and unnamed potential offeror (2)	£15m	Hanover increased its offer following the announcement of an unnamed possible offeror. Hanover also acquired additional Brady shares, thereby triggering a mandatory offer	Hanover offer completed
Charles Taylor	Lovell Minnick Partners (1) and unnamed potential offeror	£285m	Lovell Minnick increased its offer following Charles Taylors' announcement of an unnamed potential offeror	Lovell Minnick offer completed
Earthport	Visa International (1) and Mastercard International (2)	£247m (1) and £233m (2)	Competing firm offers	Mastercard offer lapsed owing to insufficient acceptances Visa offer completed
Eddie Stobart	DBAY Advisors (1), Andrew Tinkler (2) and Wincanton (3)	n/a		Andrew Tinkler and Wincanton each issued announcements that they did not intend to make an offer for Eddie Stobart. DBAY Advisors did not make an offer for Eddie Stobart, but instead acquired a 51% stake in the trading entities of the Eddie Stobart Group and agreed to inject £55m under a PIK facility.
Just Eat	Takeaway.com (1) and Prosus (2)	£6.3bn (1) and £5.5bn (2)		Takeaway.com offer completed, but the CMA has imposed a hold separate order requiring that the Just Eat and Takeaway.com businesses continue to be run independently and under separate management pending the CMA's investigation
KCOM	Universities Superannuation Scheme (1) and Macquarie Infrastructure and Real Assets (Europe) (2)	£589m (1) and £627m (2)	Panel established auction process with Macquarie emerging as successful bidder	Macquarie offer completed
Ophir	PT Medco Energy Internasional (1) Coro Energy (2)	£408.4m (1)	PT Medco Energy increased its offer following the announcement of a possible offer by Coro Energy	PT Medco Energy offer completed
RPC Group	Apollo Global Management (1) and Berry Global Group (2)	£3.32bn (1) and £3.34bn (2)		Berry Global Group offer completed

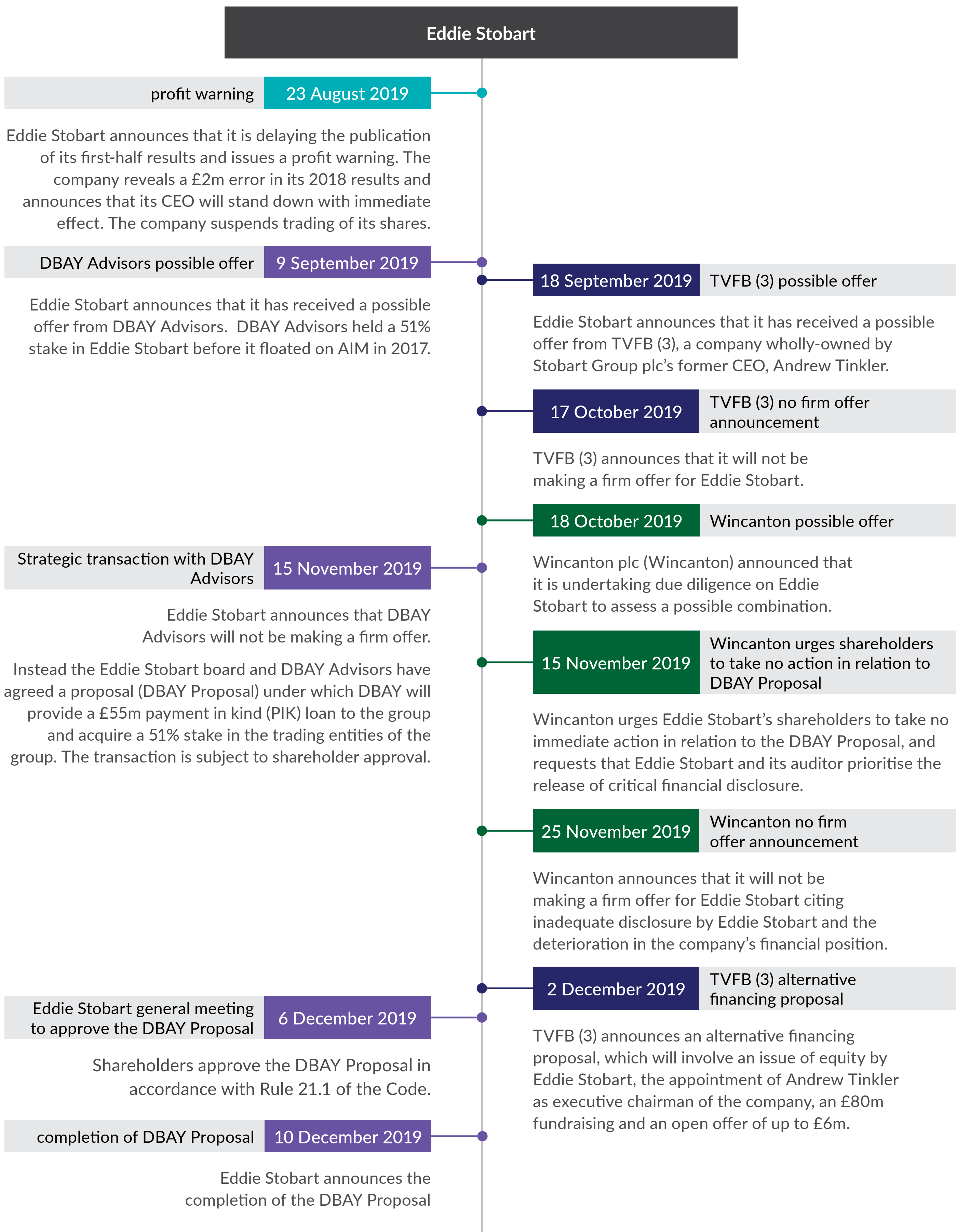
Deal in focus



How the two competing offers for Just Eat evolved is a clear illustration of the advantages and disadvantages of different deal structures. Whilst statistics elsewhere in this report support the proposition that schemes of arrangement are the structure of choice in most circumstances, the added flexibility that a conventional offer structure provides proved essential in the Just Eat case. Although Takeaway.com's initial recommended deal was to be implemented by way of a scheme, as soon as the prospect of a competing bidder emerged, Takeway.com switched to a conventional structure and this allowed it to react swiftly to changing circumstances towards the end of the offer process (including reducing its acceptance threshold to 50%). A bidder's flexibility to convert structures will therefore continue to be an important feature of all bids, even on the seemingly most straight forward of deals.

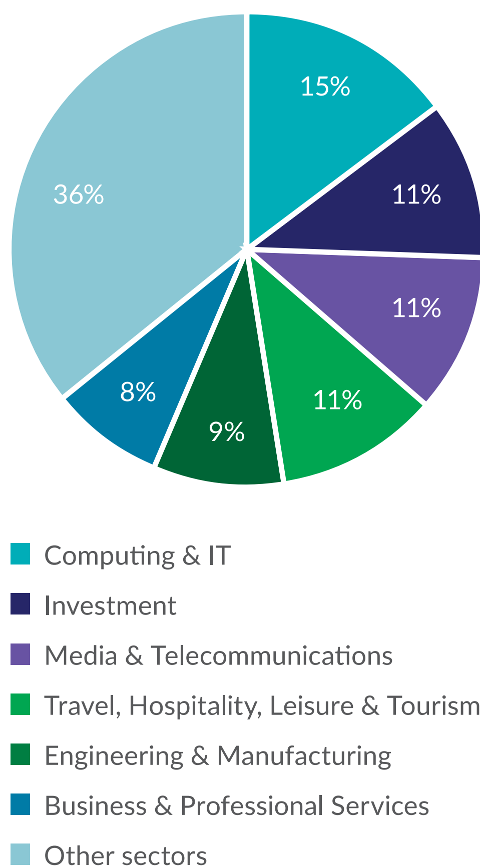
Simon Allport,
Partner, Bird & Bird

Deal in focus



06 Industry focus

As in 2018, public M&A activity in 2019 was not centred around one or two sectors, but across several different industries. Firm offers were made for targets operating in the Computing & IT (15% of deal volume), Investment (11%), Media & Telecommunications (11%), Travel, Hospitality, Leisure & Tourism (11%), Engineering & Manufacturing (9%), Business & Professional Services (8%), Food & Beverages (6%), Oil & Gas (6%) and 12 other sectors (24%).



The largest deal was in the Food & Beverages sector – Takeaway.com's £6.3bn offer for Just Eat – and this sector also saw a £5.5bn competing bid for Just Eat from Prosus and a £2.7bn bid from CK Holdings for Greene King.

Other sectors which saw £1bn plus individual deal values were: Aerospace & Defence (1), Computing & IT (1), Engineering & Manufacturing (2), Financial Services (1), Media & Telecommunications (1), Business & Professional Services (1), Travel, Hospitality, Leisure & Tourism (3).

An interesting development were five offers involving real estate investment trusts (REITs). These were LondonMetric Property's £415m offer for A&J Mucklow Group, Growthpoint Properties' £72.5m partial offer for Capital & Regional, Blackstone's £500m offer for Hansteen Holdings, Primary Health Properties' £393m offer for MedicX Fund and Thalassa Holdings' hostile offer for The Local Shopping REIT. This contrasts with 2018, which saw no publicly announced firm offers involving REITs.

We expect activity across a wide range of sectors as nearly all sectors contain opportunities or are confronting immediate disruptor challenges and the challenges of big data that will drive activity. Where consolidation doesn't make sense or isn't possible, we expect to see continued interest in demergers which has been a particularly active area in the last two years. This itself can lead to takeover interest in the medium term.

Dan Schuster-Woldan,
Partner, Linklaters

It is no coincidence that the increased level of activity in the real estate sector has occurred at a time when there have been so many significant casualties in the retail sector. With landlords bearing the brunt of widespread store closures, real estate companies with a focus on the high street are undoubtedly having to look closely at their business models. We would expect this to result in further consolidation in this sector, as competing businesses adjust to the new reality.

Simon Allport,
Partner, Bird & Bird

Overseas interest in some parts of the UK real estate sector looks set to continue although UK retail looks very challenging as household debt levels, consumer confidence and a seismic change in consumer behaviour continue to affect that sector in particular. We expect continued interest and activity in the UK and other markets in infrastructure focussed entities and particularly in areas such as renewable power and technology related assets such as data centres and fibre.

Iain Fenn,
Partner, Linklaters

Top 7 most active sectors by deal volume (2017-2019)

Computing & IT

Travel, Hospitality, Leisure & Tourism

Media & Telecommunications

Investment

Engineering & Manufacturing

Business & Professional Services

Financial Services

0 2 4 6 8 10

2019 2018 2017

As might be expected given the recent political uncertainties, we saw consolidation in certain challenging consumer-facing sectors in 2019, such as retail, travel and leisure. In 2020, we believe that various parts of the financial services sector will see a return of major M&A activity after some years of being limited to disposals of non-core assets, while technology will remain a very attractive sector for M&A.

Patrick Sarch,
Partner, White & Case

Top 10 sectors by aggregate deal value

Sector	Total Sector Deal Value	As a % of aggregate deal value	Number of transactions
Food & Beverages	£15.4bn[5]	29%	4
Travel, Hospitality, Leisure & Tourism	£8.6n	16%	7
Engineering & Manufacturing	£7.1bn[6]	13%	6
Media & Telecommunications	£4.7bn[7]	9%	7
Aerospace & Defence	£4bn	7%	1
Computing & IT	£3.9bn	7%	10
Business & Professional Services	£3bn	6%	5
Financial Services	£2.1bn	4%	3
Investment	£1.6bn	3%	7
Oil & Gas	£1bn	2%	4

[5] Includes the £6.3bn and £5.5bn competing bids for Just Eat.
[6] Includes the £3.34bn and £3.32 competing offers for RPC Group.
[7] Includes the £627m and £589m competing offers for KCOM.

07 Public to private transactions

Cheap debt and high levels of private equity funding helped to drive public to private activity in 2019. Of the 66 firm offers announced, 32 (48%) were made by bidcos backed by private equity, financial investors or individuals/family offices (17 Main Market and 15 AIM target companies). This is an increase on 2018 which saw 17 firm offers made by private equity-backed bidcos/financial investors which equated to 40% of all firm offers in 2018. This increase in public to private activity contrasts with the decline in new listings in 2019 and the increasing number of public companies choosing to delist.

Private equity investors were also involved on increasingly larger transactions. In 2019 aggregate deal value for P2P transactions was £25.7bn (2018: £8.4bn) and average deal value was £802m (2018: £525m). This builds on the trend we saw in 2018 of private equity's increasing appetite to engage on larger value transactions.

All but one of the transactions were cash offers, with Carlyle Group's cash offer for Harwood Wealth Management including two alternative offers pursuant to which Harwood shareholders could elect to receive a combination of cash and unlisted securities in the bidder.

30 (94%) of the 32 P2Ps were recommended by the target board at the outset (although in two cases the recommendation was withdrawn when a higher competing offer emerged). This, together with the fact that 29 (88%) of P2Ps did not involve an actual or potential competing offer, indicates a reluctance on the part of financial buyers to engage in takeover activity where there is increased deal risk.

There were four firm offers involving private equity consortiums: (i) the £4.8bn offer for Merlin Entertainments by KIRKBI and Blackstone (with Canadian Pension Plan Investment Board (CPPIB) as co-investor), (ii) the £2.6bn offer for Inmarsat by Apax Partners, Warburg Pincus International, CPPIB and Ontario Teachers' Pension Plan Board, (iii) the £138.7m offer for easyHotel plc by Ivanhoé Cambridge and ICAMAP Investments and (iv) the £2.2m offer for Flybe by Virgin Travel Group, Stobart Aviation and Cyrus Capital Partners. Blackstone was also a co-investor on Advent International's £4bn offer for Cobham. 'Club deals' such as these have historically enabled investors to reduce their risk exposure on M&A transactions and engage in increasingly larger deals.

Pension funds

Pension funds were also active and were involved as bidders on four transactions:

- the £2.6bn offer for Inmarsat which was made by a consortium comprising Apax Partners, Warburg Pincus, Canadian Pension Plan Investment Board (CPPIB) and Ontario Teachers' Pension Plan Board
- the £4.85bn offer for Merlin Entertainments by KIRKBI and Blackstone (with CPPIB as co-investor)
- the £504m offer for KCOM Group by Universities Superannuation Scheme's £504m offer for KCOM Group
- the £699m offer for Safecharge International Group by Nuvei Corporation[8]

As predicted, private equity played a substantial role in public takeover activity in 2019 (fuelled by favourable market conditions), and we see this trend continuing in 2020. Sponsors have shown themselves willing to engage with the risks associated with public M&A, with deals such as the Inmarsat takeover involving both opposition from activist shareholders and negotiations with governments and regulators over national security and public interest issues. A further trend to emerge is the increase in consortium or 'club' deals, which allow sponsors to bid for larger cap companies, often with pension funds as co-investors.

Alison Smith,
Partner, Freshfields
Bruckhaus Deringer

Market conditions have provided opportunities for private equity bidders that have simply been too good to ignore. The drop in the value of sterling has made UK targets increasingly attractive, particularly to US bidders. With the wider political uncertainty temporarily lifted following the recent General Election, we see the trend of P2Ps continuing.

Julian Stanier,
Partner, Pinsent Masons

[8] Nuvei is 22.9% held indirectly by Caisse de dépôt et placement du Quebec (CDPQ), a long-term institutional investor that manages funds primarily for public and para-public pension and insurance plans.

“

The last few years has seen a noticeable increase in consortium bids in the UK public M&A arena. Benefits of bidding as part of a consortium include the ability to pool resources and spread investment risk and cost between consortium members, which may enable bidders — who would not have been motivated to make a bid alone — to make offers for large targets. It is no surprise that, traditionally, consortium bids were favoured by private equity houses, and the increasing familiarity of these bidders with public opportunities suggests the continuing popularity of these structures going forward.

James Bole,
Partner, Clifford Chance

The significant involvement of private equity and family office money, as well as the willingness of pension funds to engage in public M&A illustrates a recognition that such investments can represent an important element in seeking a balanced approach to longer term investment portfolios. So, even in sectors where trade buyers may be cautious, there is likely to be continued appetite amongst financial buyers when the right opportunity comes along.

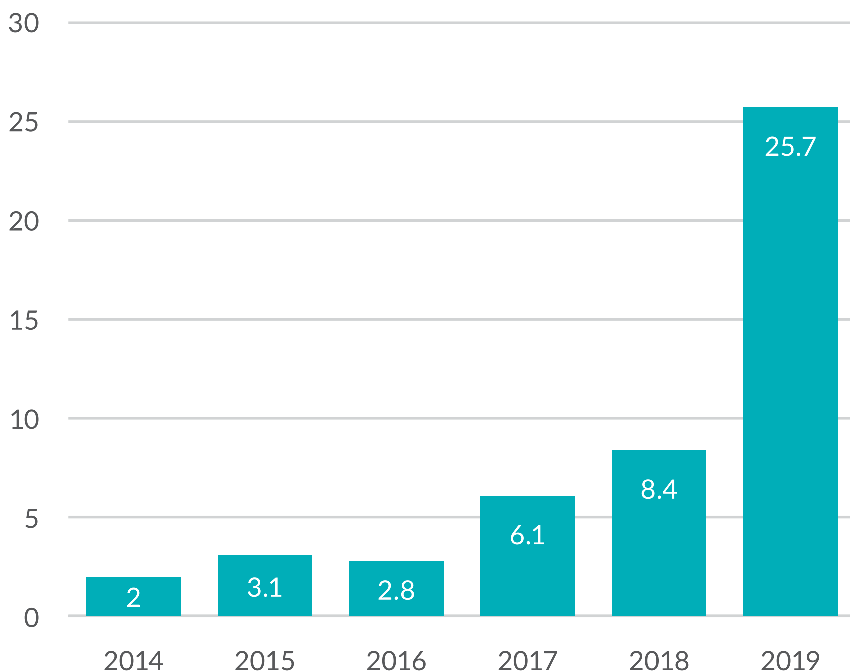
Simon Allport,
Partner, Bird & Bird

The most notable feature of public M&A in 2019 was the increased interest from private equity in pursuing public-to-private transactions. The acute competition for quality privately held assets combined with the significant cash reserves within PE funds has made the public markets more attractive - the right deal provides private equity an undervalued listed business with less competition. The historic deterrents to P2P deals of deliverability and deal costs seem to be becoming less of a dissuasive factor for PE funds, particularly when a PE fund these days may run up significant abort costs if it loses out in a private auction process.

Simon Wood,
Partner, Addleshaw Goddard

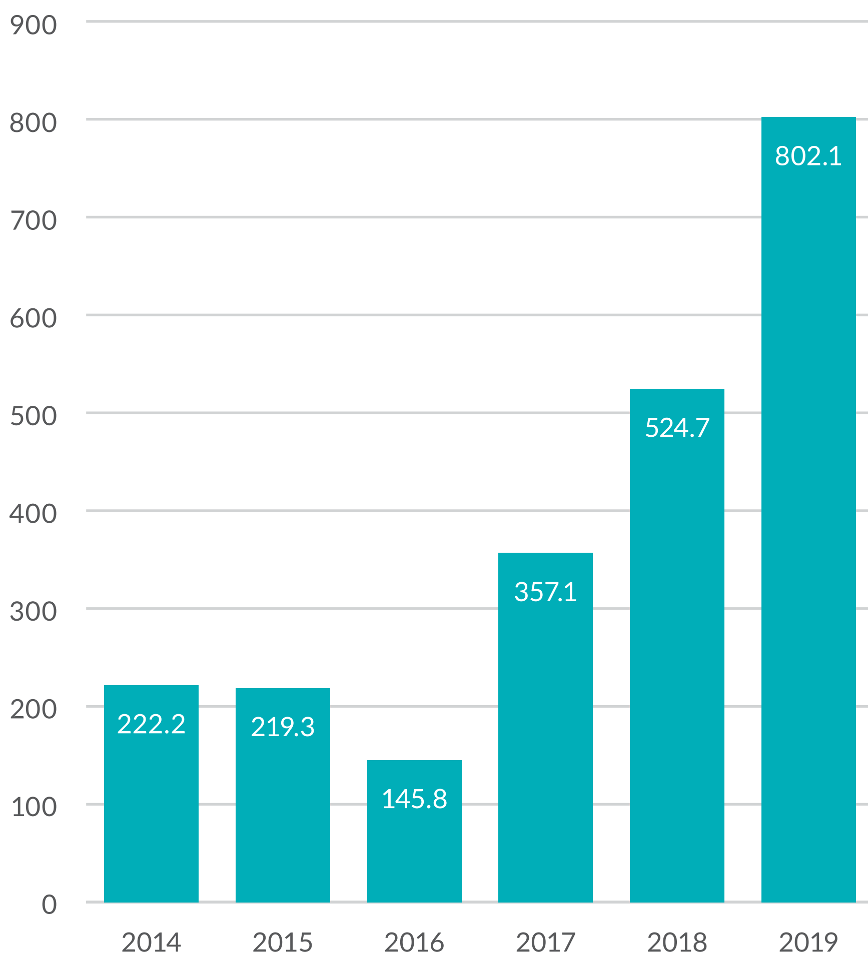
2019 saw the continuing surge in take private activity – PE bidders feature in almost half of all public M&A activity in 2019 which represents a sea change from the position a mere four years ago where PE-backed deals had become a bit of a rarity. Access to cheap debt, forming consortium structures and relying on record levels of undeployed capital have all helped facilitate PE-backed deals. Whether take privates will dominate the UK public M&A landscape over the next few years remains to be seen but an increasing familiarity with the public M&A process suggests that PE bidders will remain an important driver of public M&A activity.

James Bole,
Partner, Clifford Chance



2019 saw a very strong performance by PE-backed bidders coming in at recent record of 48% of firm offers announced – possibly heralding the long-awaited and anticipated "return" of PE- backed bids. While a number of the bids were club-deals or consortium bids (inevitably involving some spreading of risk), the nature of the targets, the size of the bids (the aggregate and average deal values substantially surpassing numbers in the past 4/5 years) and complexity of the transactions does not diminish the confidence shown by this category of bidders.

Selina Sagayam,
Partner, Gibson Dunn



Public to private transactions 2019

Target	Bidder	Deal value	Deal structure	Industry sector (target)	Consideration structure	Market for target's shares
Merlin Entertainments	KIRKBI and Blackstone Core Equity Partners (with Canadian Pension Plan Investment Board as co-investor)	£4.8bn	Scheme	Travel, Hospitality, Leisure & Tourism	Cash only	Main
Cobham	Advent International (with Blackstone as co-investor)	£4bn	Scheme	Aerospace & Defence	Cash only	Main
RPC Group	Apollo Global Management	£3.3bn	Scheme	Engineering & Manufacturing	Cash only	Main
Sophos Group	Thoma Bravo	£3bn	Scheme	Computing & IT	Cash only	Main
Inmarsat	Apax Partners, Warburg Pincus International, Canadian Pension Plan Investment Board and Ontario Teachers' Pension Plan Board	£2.6bn	Scheme	Media & Telecommunications	Cash only	Main
BCA Marketplace	TDR Capital	£1.9bn	Scheme	Business & Professional Services	Cash only	Main
Ei Group	Stonegate Pub Company	£1.3bn	Scheme	Travel, Hospitality, Leisure & Tourism	Cash only	Main
SafeCharge International Group	Nuvei	£699m	Scheme	Business & Professional Services	Cash only	AIM
KCOM Group	Macquarie Infrastructure and Real Assets (Europe)	£627m	Scheme	Media & Telecommunications	Cash only	Main
KCOM Group	Universities Superannuation Scheme	£589m	Scheme	Media & Telecommunications	Cash only	Main
Tarsus Group offer	Charterhouse Capital Partners	£561m	Scheme	Media & Telecommunications	Cash only	Main
Hansteen Holdings	The Blackstone Group	£500m	Scheme	Investment	Cash only	Main
Charles Taylor	Lovell Minnick Partners	£285m	Scheme	Business & Professional Services	Cash only	Main
Premier Technical Services Group	Macquarie Group	£265m	Scheme	Engineering & Manufacturing	Cash only	AIM
Manx Telecom	Basalt Infrastructure Partners II GP	£256m	Scheme	Media & Telecommunications	Cash only	AIM

Target	Bidder	Deal value	Deal structure	Industry sector (target)	Consideration structure	Market for target's shares
StatPro Group	Confluence Technologies	£161m	Scheme	Computing & IT	Cash only	AIM
easyHotel	Ivanhoe Cambridge and ICAMAP Investments	£139m	Offer	Travel, Hospitality, Leisure & Tourism	Cash only	AIM
Tax Systems	Bowmark Capital	£102m	Scheme	Computing & IT	Cash only	AIM
Harwood Wealth Management	The Carlyle Group	£91m	Scheme	Investment	Cash and unlisted securities alternative	AIM
Sanderson Group	Aptean	£90m	Scheme	Computing & IT	Cash only	AIM
Nasstar	Mayfair Equity Partners	£79m	Scheme	Computing & IT	Cash only	AIM
Aston Martin Lagonda Global Holdings	Investindustrial Advisors	£68.4m	Partial offer	Automotive	Cash only	Main Market
Aggregated Micro Power Holdings	Asterion Industrial Infra Fund I, FCR	£63.1m	Scheme	Energy & Utilities	Cash only	AIM
Murgitroyd Group	Sovereign Capital Partners	£62.8m	Scheme	Business & Professional Services	Cash only	AIM
Synnovia	Camelot Capital Partners	£48.8m	Offer	Engineering & Manufacturing	Cash only	AIM
FFI Holdings	777 Group	£39.5m	Offer	Media & Telecommunications	Cash only	AIM
APC Technology	Harwood Capital	£18.26m	Scheme	Engineering & Manufacturing	Cash only	AIM
Carpetright	Meditor European Master Fund	£15.19m	Scheme	Consumer Products	Cash only	Main
Brady	Hanover Active Equity Fund II	£15m	Offer	Computing & IT	Cash only	AIM
Bonmarché Holdings	Spectre Holdings	£5.7m	Offer	Retail & Wholesale Trade	Cash only	Main
Hardy Oil & Gas	Blake Holdings	£3.69m	Offer	Oil & Gas	Cash only	Main
Flybe Group	Connect Airways[9]	£2.2m	Scheme	Travel, Hospitality, Leisure & Tourism	Cash only	Main

[9] Connect Airways is a bidco owned by funds managed by Cyrus Capital Partners, Stobart Aviation and Virgin Travel Group

08 Nature of consideration

2019 saw bidders adopting more simple consideration structures. Of the 66 firm offers announced in 2019:

- 52 (79%) were cash only offers
- 10 (15%) were shares only offers
- 2 (3%) were structured as cash and shares offers
- 1 (1%) was structured as a cash and unlisted securities alternative offer
- 1 (1%) was structured as a shares offer with a contingent value right

55 (83%) of the 66 firm offers announced in 2019 had some form of cash element and it was the exclusive form of consideration in 79% of deals. By contrast in 2018 cash featured in 93% of all deals and was the exclusive form of consideration in 76% of deals. Interestingly, Takeaway.com's £6.3bn offer for Just Eat was an all-share offer and prevailed over the £5.5bn cash offer by Prosus.

While there will always be instances where non-cash consideration may have a role to play (either because of the constraints on the bidder or because of some other deal-specific imperative), the high proportion of deals that comprise cash only or include a cash component confirms the view that "cash continues to be king" in most instances. As the cost of cash continues to be relatively low, we do not expect this to change significantly in 2020.

Simon Allport,
Partner, Bird & Bird

Overseas bidders

Given this trend for cash offers, it is interesting to see several offers from overseas bidders where the consideration included shares, namely:

- Euronext Amsterdam-listed Takeaway.com on its all-share offer for Just Eat
- Toronto Stock Exchange and New York Stock Exchange-listed Barrick Gold on its offer for Acacia Mining (shares and CVRs)
- Toronto Stock Exchange-listed Hunt Mining on its all-share offer for Patagonia Gold

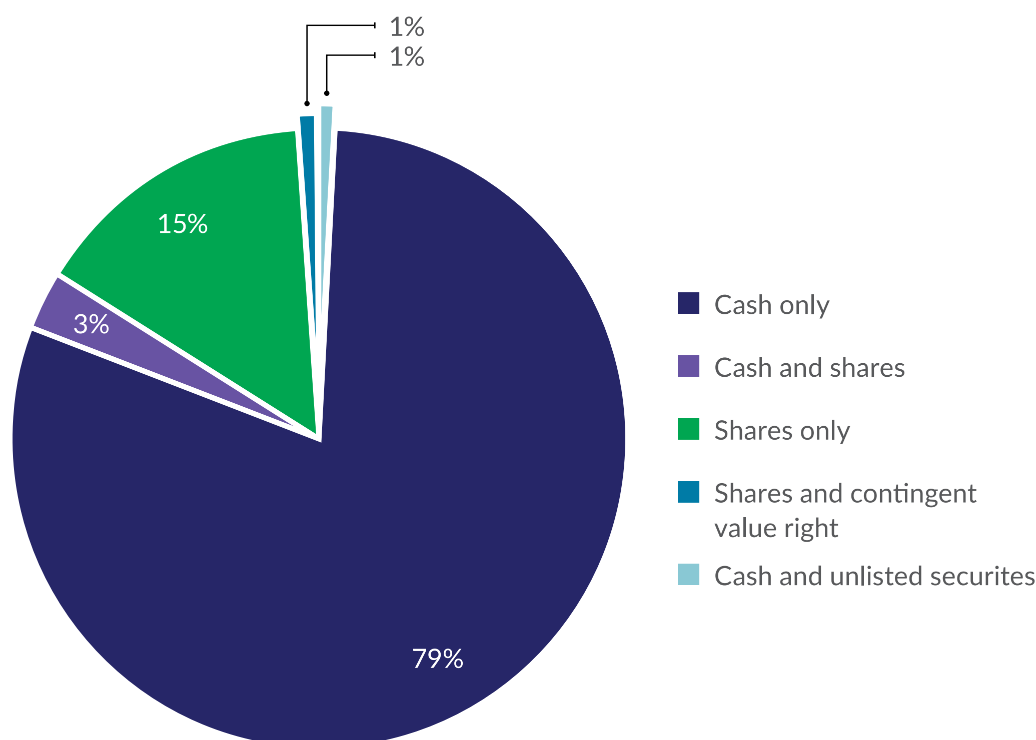
This is a continuation of a trend we identified in 2018, but bidders need to research the shareholder profile before structuring an offer in this way.

On Takeaway.com's offer for Just Eat, the consideration shares were listed on both the London Stock Exchange and Euronext Amsterdam, presumably to facilitate shareholders with a preference for a London listing.

Barrick Gold and Hunt Mining were both listed on the Toronto Stock Exchange (TSE), which is home to a large number of companies in the Natural Resources sector. Here the bid teams may have concluded that Resources investors would be comfortable holding shares in TSE-listed companies. In addition, before announcing its firm offer for Patagonia Gold, Hunt Mining secured irrevocable undertakings to vote in favour of the scheme from the Patagonia directors. The level of undertakings – over 54% of Patagonia's share capital - made it very likely that the scheme would be approved by shareholders.

A further interesting development were two examples of overseas bidders offering cash consideration in US dollars. This occurred on the consortium bid for Inmarsat and Thoma Bravo's bid for Sophos where the cash consideration was in dollars, with shareholders having the option to take sterling under a currency conversion facility. Both of these transactions involved US private equity groups and the decision to structure the takeovers in this way appears to have been motivated by a desire to protect the bidders from Brexit-related currency swings.

Nature of consideration[10]



Cash and unlisted securities alternative

Carlyle Group's offer for Harwood Wealth Management was a cash only offer, but as an alternative, Harwood shareholders could elect to receive a combination of cash and unlisted securities in bidco under two alternative offers.

It is relatively unusual for unlisted securities to be offered on takeovers owing to their lack of liquidity and the alternative offers appear to be primarily incentive arrangements offered to the management team. These arrangements were required to be extended to all shareholders to address the Code restrictions on an offeror entering into special deals with management.

Shares and contingent value right

The consideration payable on Barrick Gold's offer for Acacia Mining comprised a combination of new Barrick Gold shares and special dividends which might become payable upon the sale of certain exploration properties (Sale Exploration Properties).

Under the terms of the acquisition, Barrick Gold agreed, for the benefit of Acacia Shareholders, to undertake a sale process in relation to the Sale Exploration Properties with a view to disposing of them within a two-year timeframe. The net proceeds of sale, including any deferred consideration, would then be distributed to former Acacia shareholders in the form of special dividends. The scheme document clarified that the statements made regarding the disposal of the Sale Exploration Properties did not constitute a post-offer undertaking for the purposes of the Code.

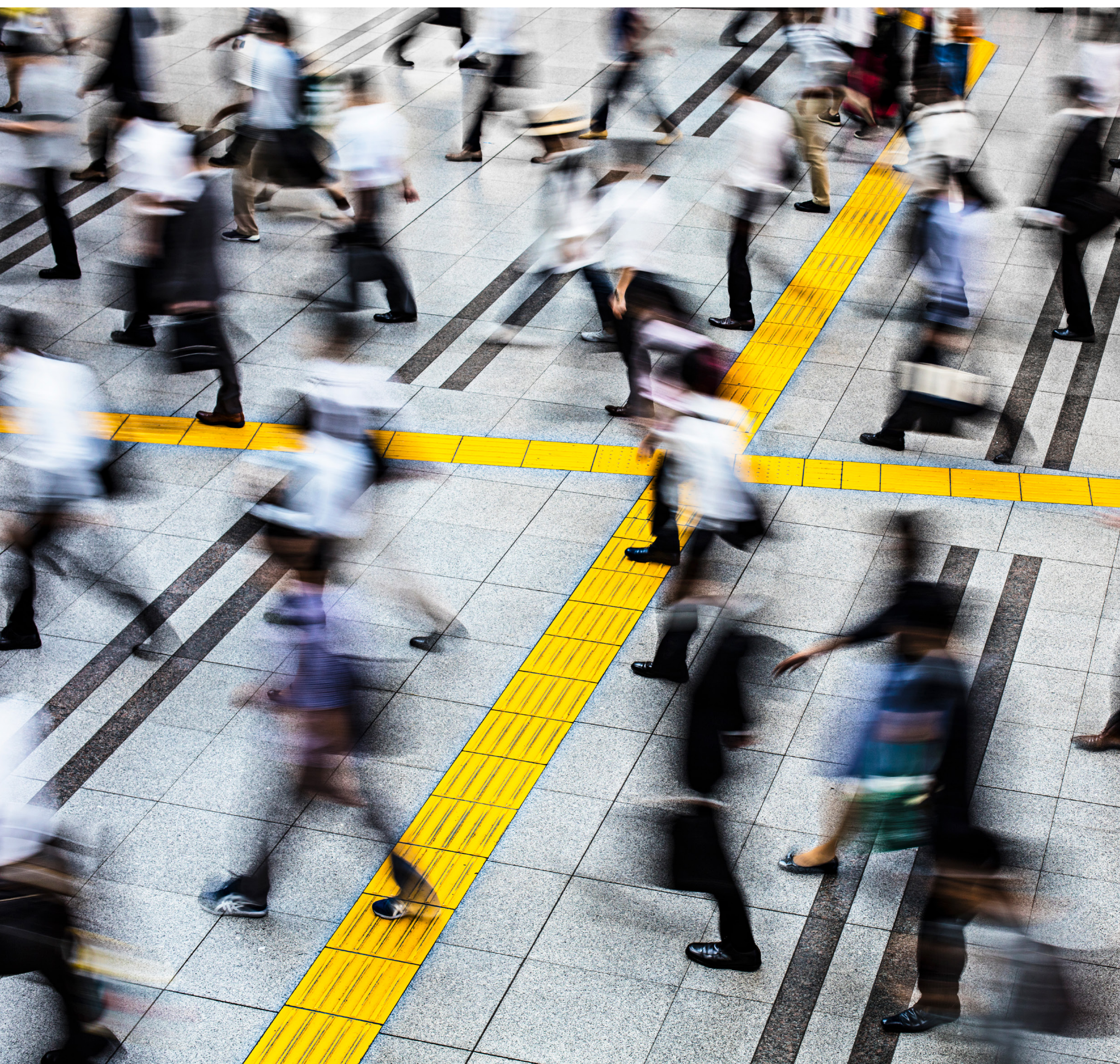
Contingent value rights such as the special dividends seen on the Acacia Mining offer are relatively rare, but can be a means of bridging the gap between the offeror and the offeree's board on the value of an uncommercialised asset. Here sale processes in respect of the Sale Exploration Properties were well-advanced, but there was no guarantee that the sales would occur or the value that would be achieved. The special dividends allowed Acacia Mining shareholders to receive value for the Sale Exploration Properties while protecting Barrick Gold against the risk of the sales not proceeding or the value achieved on the sales being below expectations.

[10] percentages have been rounded up and do not total 100%

Mix & match facilities

Where the consideration offered to the offeree's shareholders in a takeover bid is a mixture of securities and cash, an offeror may sometimes make available a mix and match election facility, whereby an accepting shareholder may elect for more consideration in one form than the shareholder would otherwise be entitled to, to the extent that other accepting shareholders have not taken up their full entitlement to that form of consideration.

2019 saw mix and match facilities provided on two takeovers: LondonMetric Property's £414.7m recommended offer for A&J Mucklow Group and Thalassa Holdings' unsuccessful £9m hostile offer for The Local Shopping REIT. This is the same level as 2018 which also saw two transactions with mix and match facilities.



09 Financing the offer

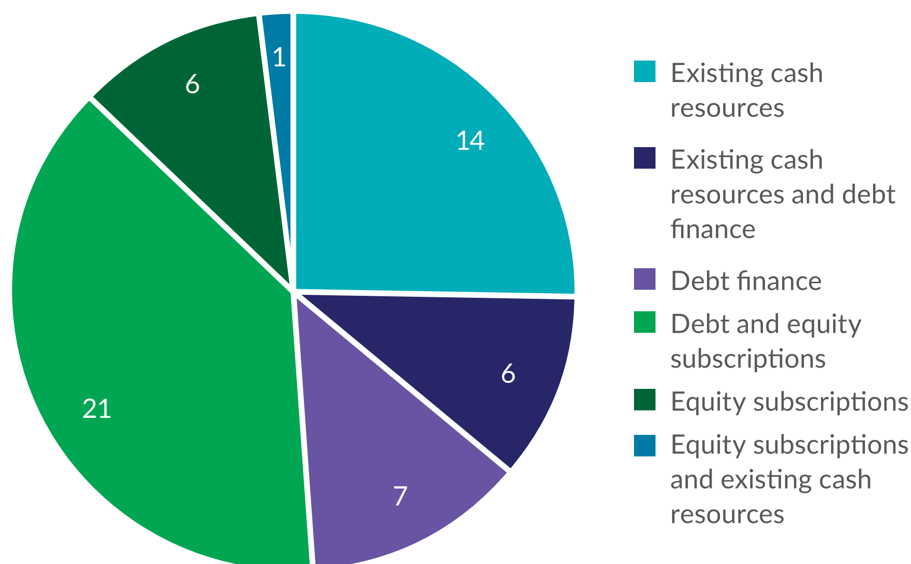
Of the 55 firm offers that involved a cash consideration element:

- 14 were funded solely by existing cash resources
- 7 were funded solely by debt finance
- 6 were funded solely by equity subscriptions to bidco/PE funds
- 21 were funded by a combination of debt and equity subscription to bidco/PE funds
- 6 were funded by a combination of existing cash resources and debt finance
- 1 was funded by a combination of equity subscriptions and existing cash resources

38% of firm offers that involved a cash element were financed in whole or in part by existing cash reserves (2018: 40%) and 62% involved some form of debt financing (2018: 55%). This suggests that the combination of cheap debt and healthy balance sheets has helped fuel M&A activity. Debt finance became increasingly important on larger deals, featuring in all but one of the £1bn plus firm offers announced in 2019. The £1bn plus transaction that was not financed by debt finance was CK Asset Holdings' £2.7bn offer for Greene King, which was funded solely from existing cash resources.

An interesting feature of 2019 was the number (6) (11%) of the 55 cash offers that were funded solely by equity subscriptions to bidco/private equity funds, which may reflect high levels of private equity fundraising. This is a similar level to 2018, which saw 5 (13%) of the 39 cash offers being funded solely by equity subscriptions. This choice of structure featured predominantly on mid-market P2P transactions, with the largest transaction funded in this way being Blackstone's £500m offer for Hansteen Holdings.

Source of finance for cash element of offer



We are seeing an increase in the complexity of funding structures, particularly in larger deals. More sophisticated bidders are looking to a range of financing techniques to balance risk and reward, with combinations of debt, equity and hybrid funding becoming increasingly common.

As the public market environment becomes more attractive to different participants, more is being expected of lenders and consortium bids are driving more competitive funding arrangements.

Patrick Sarch,
Partner, White & Case

10 UK and international bidders

Non-UK bidders continued to dominate M&A activity in 2019, albeit at lower levels than seen in 2018. Of the 66 firm offers announced in 2019:

- 47 (71%[11]) involved a non-UK bidder (2018: 74%)
- 25 (38%[12]) involved a UK bidder (2018: 26%)

Overseas bidders were also active on the largest transactions, being involved in transactions with an aggregate deal value of £44bn. This represented 82% of the aggregate deal value in 2019 and was a decrease on 2018 where overseas bidders accounted for £104.4bn (87%) of aggregate deal value.

US bidders were involved in 18 (27%) of the firm offers announced in 2019 with an aggregate deal value of over £22.9bn (43.5%). By comparison in 2018 US bidders were involved in 17 (40%) firm offers with an aggregate deal value of £48bn (39%). Deal activity was spread across a range of sectors with Computing & IT and Engineering & Manufacturing being the most popular industries for US bidders.

Canadian bidders were also active, being involved in seven firm offers with an aggregate deal value of £10.15bn. The two largest transactions involving Canadian bidders were the £4.8bn offer for Merlin Entertainments and the £2.6bn offer for Inmarsat, where Canadian pension funds formed part of the consortia on these deals.

The report flags strong levels of overseas interest in 2019. Some of this may have been driven by exchange rates, but we expect continued overseas interest in UK listed companies.

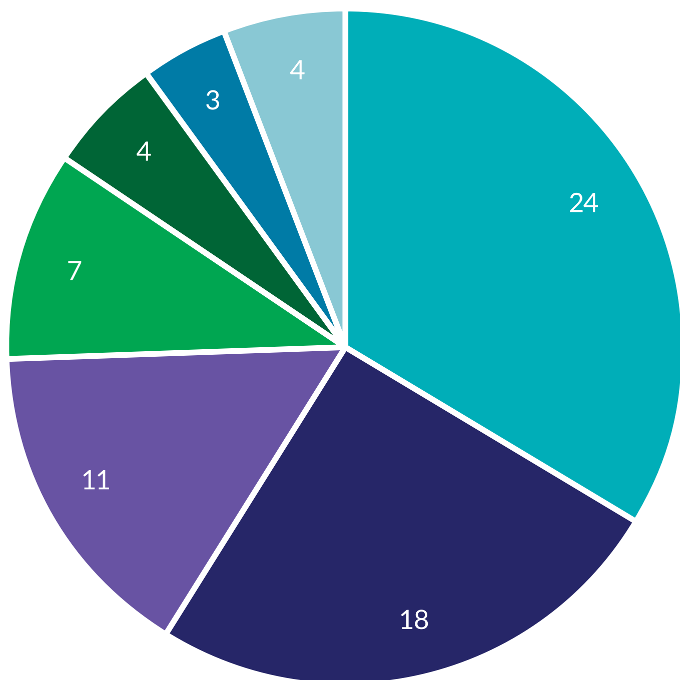
Dan Schuster-Woldan,
Partner, Linklaters

Consolidation amongst UK players in sectors facing competitive challenges continues, as businesses seek to scale up or diversify. However, we are still seeing high levels of interest from non-UK bidders, particularly from across the Atlantic, and expect this to continue.

Dominic Ross,
Partner, White & Case

[11] These percentages exceed 100% to reflect a number of consortium bids that took place during the review period.
[12] For these purposes we have included one Jersey bidder in these figures.

UK and international bidders



Bidder Country[13]	Number of bidders[14]
England and Wales	23
United States	18
Canada	7
Luxembourg	4
South Africa	2
Australia	1
Bermuda	2
BVI	1
Cayman Islands	1
Denmark	1
Germany	1
Hong Kong[15]	1
Indonesia	1
Israel	1
Italy	1
Jersey	1
Netherlands	1
Norway	1
Singapore	1
Spain	1
Sweden	1
UAE	1

[13] Where a bid vehicle was used, this table refers to the country of incorporation of the ultimate parent or tax residence of the ultimate shareholder.

[14] This table includes all firm offers that were analysed (whether they completed, lapsed or remained ongo¬ing as at 31 December 2019). The number of jurisdictions exceeds the number of firm offers owing to the presence of consortium bids.

[15] CK Asset Holdings is incorporated in the Cayman Islands and registered in Hong Kong. Its shares are listed on the Main Board of the Hong Kong Stock Exchange. 31% of CKA's share capital is held by trustees of the Li Ka-shing family trusts.

11 Possible offers and Formal Sale Processes

Firm offers

49 (74%) of the firm offer announcements made in 2019 were made without any prior possible offer, formal sale process or strategic review announcement.

Possible offers

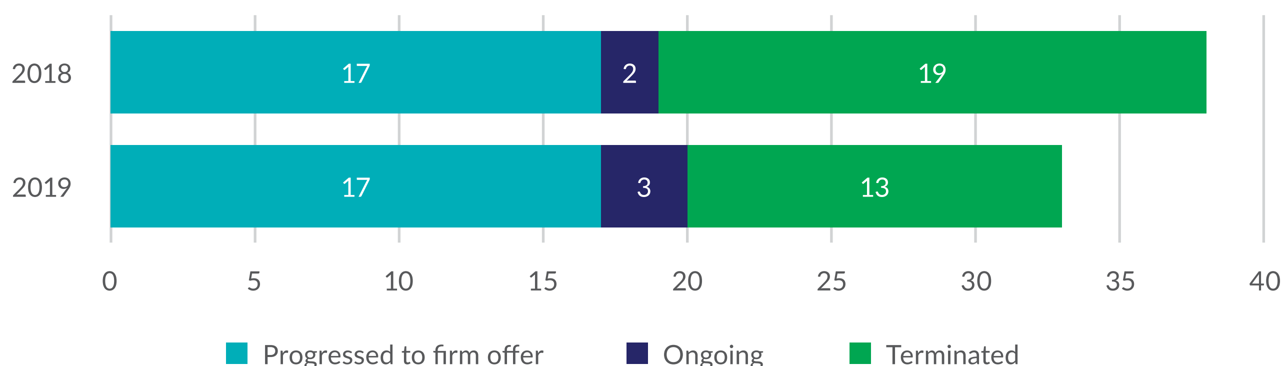
There were 33 possible offers in 2019 identifying potential bidders in relation to 30 targets (2018: 38 possible offers in relation to 27 targets).

17 of the 33 (52%) possible offers in 2019 progressed to firm offers, 13 lapsed and three were ongoing as at 31 December 2019. This is similar to the activity seen in 2018 where 17 out of 38 (45%) possible offers resulted in a firm offer during 2018.

The largest potential transaction was the Hong Kong Stock Exchange's £31.6bn cash and shares offer for the London Stock Exchange. This possible offer was withdrawn on 8 October after HKSE failed to secure the recommendation of the LSE board. For further details, see Hong Kong Stock Exchange in unexpected £31.6bn bid for LSE and Hong Kong Stock Exchange withdraws bid for the LSE.

Eddie Stobart was the subject of possible offers from three separate bidders, one of which resulted in the prospective bidder, DBAY Advisors, acquiring a majority stake in Eddie Stobart's trading subsidiary and agreeing to inject £55m under a PIK facility. Ophir Energy was the subject of possible offers from two prospective bidders, one of which (PT Medco Energi) resulted in a successful offer.

Possible offers progresing to firm offers in review period



Formal sale processes and strategic reviews

Rather than being a passive participant in any potential offer process, an offeree may actively search for suitable offerors by putting itself up for sale publicly, by embarking on a formal sale process (FSP). Where an FSP has commenced, an offeree may approach the Panel for dispensations from:

- the requirements to identify publicly all offerors that have approached the offeree
- the automatic put up or shut up (PUSU) regime
- the prohibition of break fees

In 2019, 10 companies announced FSPs (seven AIM, four Main Market), which is the same number of FSPs as were announced in 2018. In addition, two companies (AEW UK Long Lease REIT and Stride Gaming) announced strategic reviews of their businesses. The announcements were made by companies across a broad range of industry sectors.

Of the 12 FSPs and strategic reviews announced in 2019, two (17%) resulted in firm offers, four (33%) terminated and six (50%) were ongoing as at 31 December 2019.

12 Break fees and reverse break fees

Break fees

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

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

On GeoPark's £242 offer for Amerisur Resources, Amerisur agreed to pay a break fee equal to 1% of the value of its offer if a successful competing offer was made for it. As Amerisur had announced an FSP, the Panel agreed to grant a dispensation from the prohibition on offer-related arrangements under the Code.

This contrasts with 2018 where there were two break fees agreed after a similar dispensation was obtained from the Panel.

Reverse break fees

On CK Asset Holdings' £2.7bn offer for Greene King, CK Asset Holdings agreed to pay a reverse break fee of £53.1m in the following circumstances:

- CKA failing to secure irrevocable undertakings from the Li Ka-shing family trusts to approve the transaction and not obtaining shareholder approval to the transaction
- the offeror board not recommending the transaction to shareholders
- any offeror directors or Mr Li Ka-shing making any statement which is reasonably likely to have an adverse effect on obtaining shareholder approval of the transaction

Freudenberg also agreed to pay a break fee to Low & Bonar on its £107m offer in the following circumstances:

- a payment of £1.5m if the transaction lapsed or was withdrawn as a result of Freudenberg invoking certain anti-trust conditions to the offer
- a payment of £750,000 if the transaction lapsed or was withdrawn as a result of Freudenberg invoking other anti-trust conditions to the offer
- a payment of £1.5m or £750,000 if the applicable anti-trust conditions were not satisfied prior to an agreed long stop date

This contrasts with 2018 where there were four instances of bidders agreeing to pay reverse break fees, with break fees ranging from approximately 0.4%-5% of the deal value.

> *Reverse break fees are sought by target companies to mitigate the risk that a recommended offer may nevertheless fail because it fails to win clearance from antitrust or regulatory authorities or fails to secure approval from the bidder's shareholders. Despite the dip in use last year, they continue to be an important mechanism to increase deal certainty and whether they are employed will depend on the risks inherent in the transaction and the deal dynamics.*
>
> Alison Smith, Partner,
> Freshfields Bruckhaus Deringer

> *The reverse fee payable on CK Asset Holdings' offer for Greene King was an interesting development. It was not a competitive situation and the pub sector generally has been in a long-term decline in the UK. The bigger picture context suggests, however, that the bidder was particularly keen to secure the assets for strategic reasons including capitalising on the popularity of the brewer's flagship beer in mainland China.*
>
> Selina Sagayam,
> Partner, Gibson Dunn

13 Irrevocable undertakings

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

Hard and semi-hard undertakings (non-director shareholders)

In a number of deals in 2019, irrevocable undertakings were given by non-director shareholders in favour of bidders covering a variety of matters. Non-director shareholders provided bidders with traditional irrevocable undertakings in 35 (60%) deals. Of these 35 deals, 13 deals (37%) featured hard undertakings only, 16 deals (46%) featured semi-hard undertakings only, 5 deals (14%) featured both hard and semi-hard undertakings and 1 deal (3%) featured, soft, hard and semi-hard undertakings.

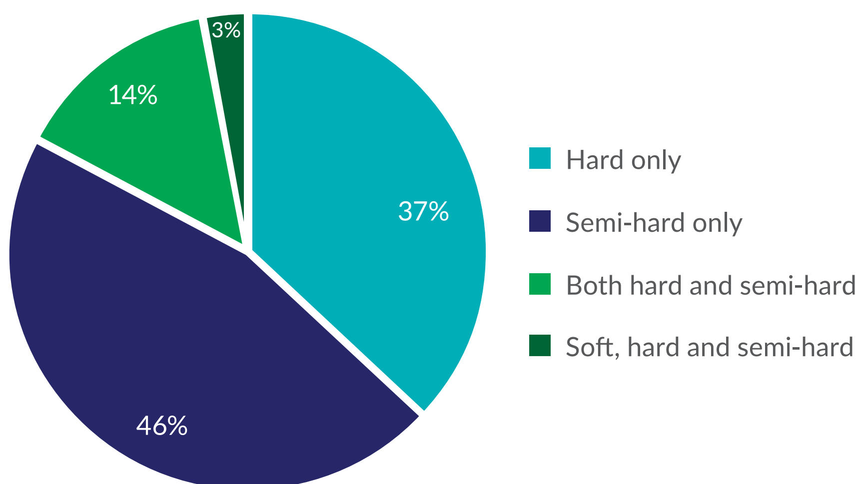
Hard undertakings will remain binding if a third party makes a competing offer whereas a semi-hard undertaking will cease to be binding if a higher competing offer is made at or above a specified price, or at a price in excess of a certain percentage of the original offer price (eg, on Thoma Bravo's offer for Sophos Group, certain shareholders provided semi-hard undertakings which would lapse if a competing offer emerged that exceeded the original Thoma Bravo offer by 7.5% or more).

Matching or topping rights (non-director shareholders)

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

Matching or topping rights in irrevocable undertakings featured on thirteen deals in 2019. Three deals provided solely for a matching right, three deals provided solely for a topping right and seven deals provided for both matching and topping rights.

Non-director shareholder undertakings



We are seeing an increase in the complexity of the provisions in irrevocable undertakings, with a greater willingness on the part of some larger shareholders to offer semi-hard undertakings combined with matching/top-up rights as a means of getting a deal off the ground, whilst seeking to preserve the scope for a competitive situation to emerge. In our experience, there seem to be more institutional investors willing to break from the traditional stance of refusing to give anything other than non-binding letters of intent.

Simon Allport,
Partner, Bird & Bird

Both active and passive investors are becoming increasingly independent and vocal. Whether supporting or opposing a possible offer, key shareholders can have a significant, sometimes even determinative, influence early on in a bid situation. It therefore remains vitally important, particularly on the larger deals, which tend to attract more activist activity, for bidders to secure as much support as possible upfront.

As offer timetables extend and liquidity becomes an increasingly relevant factor for funds, we are seeing irrevocable undertakings developing to enable shareholders giving irrevocable undertakings to transfer those obligations to third parties on the sale of the shares.

Tom Matthews,
Partner, White & Case

14 Shareholder activism

2019 saw several instances of shareholders actively seeking to influence the outcome of takeovers or in some cases exerting pressure on the target board to enter into discussions with potential merger partners.

Inmarsat

On the consortium bid for Inmarsat three activist shareholders (Oaktree Capital, Kite Lake Capital Management and Rubric Capital Management) were very public in their opposition to the deal and argued that the court should not sanction the scheme of arrangement. At the court sanction stage, objections were filed that: (i) there had been insufficient disclosure in the explanatory statement in relation to a key contract under which Inmarsat had granted options in 2007 to Ligado to use some of its radio frequencies (the Ligado contract); (ii) Inmarsat's directors should have sought further consideration for the scheme in the form of a contingent value right; and (iii) there had been a material change of circumstance after the scheme meeting (which has been held in May 2019), but before the sanction hearing.

The court sanction hearing was adjourned until 3 December 2019 and on 2 December the consortium confirmed that it would neither increase its offer for Inmarsat nor would it extend the long stop date. Following this announcement, the shareholders withdrew their objections. However, the court nevertheless took these into account at the sanction hearing, noting that it was obliged to undertake independent scrutiny of the scheme and was not relieved of that obligation by the fact that there was no opposition to the scheme.

Inadequacy of the explanatory statement

At the sanction hearing, the court was satisfied that the explanatory statement fulfilled the statutory test that it 'explain the effect of the compromise or arrangement' and did not consider that there was anything further that could have been included in the explanatory statement in relation to the Ligado contract. The judge found that "the Explanatory Statement was clear, fair and sufficient" based on the fact that information concerning the Ligado contract — including the fact that payments under it had been subject to commercial contingencies and that Ligado was relying on a licence modification by the US Federal Communications Commission (FCC) (which had been objected to by the global positioning systems community and therefore not forthcoming) — had been set out in Inmarsat's annual reports and accounts for the financial years ending 31 December 2014 to 2018, which were in the public domain and the last two of which were incorporated by reference into the explanatory statement. Among other things, the court determined that none of the objectors were able to identify something in particular that ought to have been explained about the Ligado contract, over and above what was made public in the 2018 annual report and accounts. There was no need for the explanatory statement to go into detail about prospective payment flows from Inmarsat various contracts.

At the moment, most "activism" in the sphere of public M&A takes the form of shareholders agitating for a higher price to be offered. However, as we see activism morph beyond its usual presentation into actively engaged investors seeking to drive value creation through greater engagement with the company in question, we should expect them to take a more proactive role in deal-doing as well.

Gillian Fairfield,
Senior Consultant, Slaughter and May

US activists (and their home-grown counterparts) continued to look at European companies for opportunities during 2019 and UK companies remained the most targeted. As we expected, shareholder activism played a significant role in UK public M&A in 2019, sometimes in the form of a shareholder agitating for an M&A deal, sometimes opposing it entirely or in other cases demanding a price increase (so called 'bumpitrage'). In the latter scenario, bidders can consider using 'no increase statements' to shut down the debate – this was the case for example in Berry's bid for RPC and the consortium bid for Inmarsat. The strategy is not without risk - once the bidder has made a statement that it will not increase its bid, Takeover Code rules prevent any further increase for a prescribed period – but it sends a clear signal to the activist that there is no more 'fuel in the tank'.

Alison Smith, Partner,
Freshfields Bruckhaus Deringer

Failure of the Inmarsat board to negotiate a contingent value right

The objectors had also argued that the Inmarsat board should have negotiated a better deal, including a contingent value right to reflect the potential value of the Ligado licence following licence modification by the FCC. The court dismissed these arguments and said that its role at the sanction hearing was not to see whether a better deal might be negotiated, but rather to consider whether the scheme was one which might reasonably be approved by an honest and intelligent shareholder.

Material change of circumstance

The court considered whether it could properly rely on the result of the court meeting in light of the events which had transpired since the vote in May 2019 (namely the publication of a press article in October 2019 claiming that the Ligado licence modification was being progressed by the FCC (implying that a licence modification might be forthcoming)). The court categorised the allegation of a material change of circumstance as pure press speculation and found there was no material change since the date of the court meeting which would cause it to review the decision taken at that meeting.

Having satisfied itself that the statutory requirements had been met and that there was no blot on the scheme, the court sanctioned the scheme.

Provident Financial

Non-Standard Finance's (NSF) hostile offer for Provident Financial was declared unconditional as to acceptances on 15 May 2019. However, the offer remained subject to a number of anti-trust and regulatory conditions, one of which was the approval by the Prudential Regulatory Authority (PRA) of the change of control of Provident Financial's subsidiary, Vanquis Bank, which would arise as a result of the transaction (the PRA Regulatory Condition).

On 5 June 2019 NSF announced that after discussions with the regulatory authorities, it understood that the PRA Regulatory Condition would not be obtained by midnight on 5 June, the last time by which all conditions to the offer had to be satisfied or waived. Accordingly, NSF decided, with the consent of the Panel, to lapse the offer as of midnight on 5 June.

A number of shareholders (including Schroders, M&G Investments and Janus Investments) who between them held approximately 20% of Provident Financial's equity had been vocal in their opposition to the deal.

NSF cited the principal reason for the failure to obtain PRA approval as being the fact that the enlarged group would not have sufficient regulatory capital on a consolidated basis at completion. While NSF's and Provident Financial's groups were each appropriately capitalised on an individual basis and the enlarged NSF group would have been appropriately capitalised once Provident Financial became a wholly-owned subsidiary of NSF, as a result of the level of acceptances received, the enlarged NSF group would not have sufficient regulatory capital on a consolidated basis at completion, owing to the expected level of minority interests at that point.

There has been a noticeable increase in the level of shareholder activism that the UK public M&A market has experienced over the course of the last five years. A wider number of market participants are engaging in investor activism, with the weak pound, Brexit uncertainty and the wider domestic political uncertainty in 2019 providing favourable conditions for activist shareholders to articulate their strategies. The UK now represents perhaps the most fertile territory for activists outside of the US market.

Adam Cain,
Legal Director, Pinsent Masons

The Inmarsat takeover may mark something of a turning point for schemes of arrangement, with bidders and targets perhaps no longer harboring significant worries of activist shareholders successfully raising objections to a scheme with the Court and winning those arguments. As seen in previous instances, such as AB InBev's takeover of SABMiller, bidders have typically increased the value of their offer to avert activist shareholders from pursuing their objections. In this instance, however, the Inmarsat board's firm stance in rejecting the activists' objections together with the bidder's 'no increase' statement sent a clear message that neither target nor bidder were willing to give in to activist pressure and were willing to defend their actions in Court. Following the earlier judgment in Ophir Energy Plc (March 2019), where the Court determined that shareholders need to raise their objections at the earliest opportunity and directly with the Court, it is possible that targets and bidders will feel emboldened to justify their actions in Court rather than giving way to activist investors.

Louise Pritchard,
Managing Associate,
Addleshaw Goddard

There continues to be a blurring of lines between traditional categories of investor and activists. Hedge fund structures are becoming more flexible, with some permitting 'take private' transactions, enabling activist funds to launch offers for listed companies. On the flip side, more and more PE firms and traditional investors are now adopting activist techniques.

In the UK, the number of M&A situations affected by activist engagement is on the rise as activists continue to view break-ups, transaction disruptions or strategic realignments as favourable routes to generating value. Just Eat is an example where activists pressed for management change, a strategic review and, following that, a merger. This ultimately generated a competitive bid situation. Offers for Just Eat and Ophir were successfully 'bumped' following activist pressure and bidders used 'final' and 'no increase' statements in RPC and Inmarsat as a defensive tactic."

Tom Matthews,
Partner, White & Case

Just Eat

Shareholders were also active in seeking to influence the outcome of the competing offers for Just Eat from Takeaway.com and Prosus.

US hedge fund, Cat Rock Capital Management, had been agitating for Just Eat to merge with an industry peer in the months leading up to the Takeaway.com firm offer announcement and had set up a website "Justeatmustdeliver.com" to express its views on how the business should be run. Cat Rock was a significant shareholder in both companies and was an early advocate of the merger with Takeaway.com while being critical of the competing offer from Prosus.

Other Just Eat shareholders (eg, Aberdeen Asset Management and Eminence Capital) were less supportive of the deals and argued that both offers materially undervalued Just Eat. This opposition from shareholders, together with the competition created by the rival bids, resulted in both Takeaway.com and Just Eat putting forward improved bids.

Cobham

Advent's takeover of Cobham was initially opposed by a number of shareholders, including Lady Nadine Cobham, the widow of the former chairman Sir Michael Cobham. Lady Cobham described the offer as opportunistic and requested that the merger be investigated on national security grounds. The transaction was subsequently reviewed by the government and allowed to proceed, but only after Advent agreed to provide legally binding undertakings. For further details, see: post offer undertakings and national security undertakings.

Merlin Entertainments

In May 2019, US activist ValueAct Capital, which held a 9% stake in Merlin Entertainments, published an open letter to the company's chairman, urging him to seek a buyer to take the company private, following a series of earnings downgrades. Merlin subsequently issued an announcement stating that it considered all options for driving shareholder value and had concluded that it remained in the best interests of all its shareholders to continue to pursue its current strategy. However, the following month a recommended offer was announced by a consortium comprising KIRKBI (a 29.6% shareholder in Merlin) and Blackstone (with Canadian Pension Plan Investment Board as co-investor).

Bumpitrage: Ophir Energy and Tax Systems offers

Bumpitrage continued to feature on takeover transactions in 2019. Bumpitrage is where a shareholder increases its shareholding in a target company and seeks to use this as leverage to persuade the bidder to improve its offer terms.

An example of this was PT Medco Energi International's offer for Ophir Energy. Here Sand Grove Capital Management built a 6.4% stake in Ophir Energy at the time of the firm offer announcement and increased its shareholding to 19% during the course of the offer, but refused to support the deal unless the offer price was improved. PT Medco agreed to increase its offer from 55p per share to 57.5p per share and Sand Grove then provided an irrevocable undertaking to vote in favour of the scheme.

Bumpitrage was also employed successfully by Weiss Asset Management on Bowmark Capital's offer for Tax Systems. Here Weiss Asset Management built up a 24% stake in Tax Systems and provided an irrevocable undertaking to vote in favour of the scheme after Bowmark Capital increased its offer from 110p per share to 115p per share.

Although on an aggregate global level, the number of companies publicly subject to activist demands fell to a four-year low in 2019, reflected also in regional lows for the US, Canada, Europe and Asia – on a standalone basis, the UK saw the largest number of targets subject to activist demands in 2019. On a regional basis, Europe sees the highest number of M&A and Breakup demand types from activist (accounting for circa 21% of all demands in 2019, a significant increase from 2018 which stood at 8%). This was also notably higher than the US and Canada. At a UK level, we saw some very high profile situations involving activist initiation and/or intervention in the likes of NSF, Cobham and Just Eat.

Selina Sagayam,
Partner, Gibson Dunn

Over the years, there has been many a besieged target board on the receiving end of a hostile bid which has bemoaned that the outcome of the bid has been determined by the short term interests of hedge funds and arbitrageurs, motivated solely by the desire to make their money from the corporate event in question, rather than shareholders who have a longer term view of the target's business. Whilst Bumpitrage is doubtless similarly motivated by the potential short-term gain, at least it operates for the benefit of all shareholders and tends to carry with it greater visibility than the murky dealing desks of Arbs.

Simon Allport,
Partner, Bird & Bird

15 Post-offer undertakings and national security undertakings

Post-offer undertakings

2019 saw two instances of bidders providing legally binding post-offer undertakings (POUs): the offer for Cobham by Advent International and the offer for Inmarsat by Apax Partners, Warburg Pincus International, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board. Both transactions attracted considerable media and political attention and the provision of POUs appears to have been driven by a desire to avoid government intervention.

On the Inmarsat takeover, the consortium bidco (Inmarsat Bidco) and Inmarsat agreed the following POUs with the Panel:

- that the Inmarsat Group would maintain a physical headquarters in the UK
- that Inmarsat Bidco would not permit any transaction to occur that would result in it ceasing to control the Inmarsat Group in circumstances where the Inmarsat Group would, immediately following such cessation of control, continue to be under the control of the consortium and/or their affiliates

The obligations on Inmarsat Bidco and Inmarsat in respect of the Inmarsat Group apply for a period of three years so long as Inmarsat Bidco, the consortium, any consortium member and/or any of their affiliates retains control of the Inmarsat Group.

On the Cobham takeover, the bidco (Cobham Bidco), its holding company (Topco) and Cobham agreed the following POUs with the Panel:

- that for a period of five years from the scheme effective date, the Communications & Connectivity, Aviation Services UK and Mission Systems UK divisions would maintain physical headquarters in the UK
- that research and development spend (R&D spend) of the UK Cobham Group would be maintained at certain levels for three years, with an obligation to make up any shortfall in subsequent years if these targets are not met
- that financial records would be maintained containing and recording all items necessary to assess progress towards compliance with the POUs relating to R&D spend
- until the fifth anniversary of the scheme effective date, the Cobham name would continue to be included in the registered names of those members of the UK Cobham Group which include Cobham in their name as at the scheme effective date
- until the fifth anniversary of the scheme effective date, Topco would not permit any transaction that would result in it ceasing to control any undertaking or business of the Cobham Group to which the POUs apply in circumstances where that undertaking or business would, immediately following such cessation of control, continue to be under the control of Advent and/or its affiliates

The obligations on Topco, Cobham Bidco and Cobham shall continue as long as Advent and/or its affiliates retain control of the relevant undertaking or business.

“

Whilst relatively infrequent and requiring detailed negotiation between the Panel and the parties to the offer, post-offer undertakings may in time become a more prominent feature of the UK public M&A landscape to ensure transactions such as the Cobham acquisition proceed, particularly when considered against the current backdrop of wider public sensitivity about the potential economic and national security implications of certain large public takeovers in strategically significant sectors.

Julian Stanier,
Partner, Pinsent Masons

National security undertakings

In addition to the POUs agreed with the Panel, both bidders on the Cobham and Inmarsat offers provided undertakings to the Secretary of State for Business, Energy & Industrial Strategy (BEIS) and the Secretary of State for Digital, Culture, Media & Sport (DCMS) to avoid further CMA review.

On the Inmarsat takeover, the undertakings:

- required the offeror and Inmarsat to maintain existing security measures and implement enhanced controls to protect sensitive information and technology from unauthorised access
- required the offeror and Inmarsat to continue the provision of certain capabilities and to maintain a UK registered company to ensure that services remain under the UK's jurisdiction
- provided rights of access to premises and information to enable the Ministry of Defence to audit compliance with the security measures
- included provisions to enable the CMA and the Secretary of State to carry out their statutory functions of monitoring and review of undertakings

The undertakings continue in force until they are released by the Secretary of State or the specified services have ceased to be provided. The undertakings also cease to apply to the offeror upon an exit-event.

On the Cobham takeover, the undertakings required:

- that certain security arrangements which currently apply to Cobham and protect sensitive government information be continued and strengthened
- Advent to honour the terms of existing contracts, to notify the Ministry of Defence in advance if there is a material change to Cobham's ability to supply key services, and to refrain from withdrawing from any specified service for a set period
- Advent to give the Ministry of Defence prior notice of plans to sell the whole, or elements of, Cobham's business in order to inform the exercise of Enterprise Act powers designed to protect national security interests in the context of any future transactions

The undertakings continue in force until they are released by the Secretary of State or when the Cobham Group ceases to be controlled by Advent.

It is still relatively early days since the introduction of the post-offer undertaking regime in 2015. The use of them as a means of preventing greater governmental intervention in both the Inmarsat and Cobham takeovers comes at a time when there has been much talk of the existing powers under the Enterprise Act being extended so as to give the government greater powers to intervene in the acquisition of businesses that are considered to be of national importance (on security grounds or otherwise) by foreign acquirers. Placing restrictions on foreign ownership is inevitably a highly political issue which is inconsistent with the broad concept of a free market. In the public M&A arena, the post-offer undertaking regime and its perceived effectiveness could have a significant role to play in any political decision to adopt a more interventionist approach.

Simon Allport,
Partner, Bird & Bird

The post-offer undertakings that we saw in 2019 demonstrate increasing levels of stakeholder focus coupled with UK government intervention relating to public interest and national security concerns. As well as undertakings pursuant to Rule 19.5 of the Code, parallel undertakings were given to government departments dealing with both national security concerns and wider public interest issues such as maintaining a UK workforce. Bidders should not under-estimate the time needed to negotiate and document these undertakings, and they will need structures in place to monitor and report on them after the bid is implemented.

Alison Smith, Partner,
Freshfields Bruckhaus Deringer

16 Employee representative and pension scheme trustees opinions

Rule 25.9 of the Code entitles the offeree's employee representatives and pension scheme trustees to require the offeree to publish their opinion on the effects of the offer on employment and on the pension scheme. To address a lack of engagement by employee representatives and pension scheme, the Panel amended the Code so that from 8 January 2018, bidders are required to include in the firm offer announcement details of their intentions regarding the offeree's business, employees and pension schemes. Previously this information was only required to be included in the offer document and the Panel hoped that by requiring this information at an earlier stage, this would assist the target company's employee representatives and pension scheme trustees in formulating their opinions on the offer.

The Panel also expanded the matters to be included in the offeror's statement of intentions to cover:

- the offeree's research and development functions
- any change in the balance of the skills and functions of the offeree's employees and management
- the location of the offeree's headquarters and headquarters functions

These amendments also introduced from 8 January 2018 sought to address a lack of specificity of certain statements of intention made by offerors under Rule 24.2(a).

In 2019 there was one instance of an employee representative publishing its opinion on an offer. This was on Recipharm's £505m offer for Consort Medical where the employee representatives of one of Consort Medical's divisions (Bespak) published an opinion after the publication of the offer document. The employee representatives were supportive of the transaction and cited the following factors that informed their opinion:

- the constructive and productive relationship between the employee representatives and the Bespak senior leadership team
- the Bespak company culture
- the bidder's statement that there was no expectation of any material change in the balance of skills and functions of staff at Bespak manufacturing and development sites
- the employee representatives' understanding that the bidder was not going to make any material changes to any of the employee incentive schemes

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The report rightly identifies relatively few examples of formal employee representative/pension scheme trustee statements in offer documents. That does not however mean that things have been quiet on this front. We have seen target companies continuing to increase their focus on issues beyond offer price and we expect this trend to continue. Boards are very focussed on the need to consider all stakeholders and recent high profile situations and heightened reporting requirements on how directors discharge their duties have led to an increased focus on the bona fides, long term financial viability and track record post acquisition of potential bidders for both cash and equity bids. These issues have mostly been addressed with post-offer intentions and through the terms of co-operation agreements.

The use of post offer undertakings has so far been limited to those deals where it has been part of seeking wider approval for the deal from governments in sensitive sectors; we expect that to continue.

In 2019 we have also seen a number of transactions where the pension trustees have been much more involved behind the scenes than in previous deals. In the light of recent high profile situations/failures and the proposed stronger pensions regulator powers that are expected in the coming year, we think that this trend will continue and bidders will need to engage with pension trustees at a much earlier stage of a takeover than they have done to date. This trend has applied not only in situations where one could say that objectively there are issues to focus on – trustees have been far more activist even where purchasers are financially strong/reputable and there is no increase in debt leverage being proposed at all.

Dan Schuster-Woldan,
Partner, Linklaters

17 Legal and regulatory developments

EU Prospectus Regulation

The Prospectus Regulation (EU) 2017/1129 came fully into force on 20 July 2019. Its provisions together with the related delegated acts and guidance issued by the European Securities and Markets Authority (ESMA) constitute the new prospectus regime and lay down the requirements for the drawing up, approval and distribution of a prospectus where securities are offered to the public or admitted to trading on a regulated market in an EU member state.

From a takeovers perspective one of the key changes is the replacement of the 'equivalent document' exemption with an exemption that requires an issuer to publish a document (exempt document) containing information describing the transaction and its impact on the issuer.

The content requirements for a document published under this exemption are slightly less than those for a prospectus. However, an exempt document cannot be passported like a prospectus and as such any 'host' competent authority may challenge the document as not being equivalent even where it has been approved by the FCA.

On a takeover, the prospectus or exempt document may be a separate document or be incorporated into the offer document. If the document is not required to be published elsewhere in the EU subject to passporting arrangements, it will normally be beneficial to have it treated as an exempt document rather than an actual prospectus, since this avoids any subsequent requirement to publish a supplementary prospectus. The publication of such a supplementary prospectus could in turn raise the possibility of offeree shareholders receiving additional withdrawal rights in an offer.

For further details on when a prospectus may be required, see Practice Note: The Prospectus Regulation—is a prospectus required? and News Analysis: Content changes to prospectuses under the Prospectus Regulation.

Insider lists and inside information

In August 2019 the Financial Conduct Authority (FCA) published Market Watch 60, in which it shared its concerns and findings about control of access to inside information. This follows the conviction for insider dealing of a former compliance officer at a major investment bank and the FCA's recent review of the systems and controls used by a sample of market participants to manage access to inside information.

The requirement to keep insider lists is provided for at article 18(1)(a) of the Market Abuse Regulation (EU) 596/2014. The FCA states that when investigating suspected insider dealing cases, it is crucial to establish who had access to inside information at particular points in time. Its investigations are hindered when insider lists omit the names of people who had access to inside information.

> *So far, there is only one example of an "exempted document" having been produced, in accordance with the Prospectus Regulation, in connection with a UK takeover bid – in the case of the offer for Catalis plc. Question whether a paper-offeror may prefer the comfort of relying on a full form prospectus, which has been approved by the FCA, rather than run the risk of market criticism for not including disclosure which, with hindsight, the market would have liked to see (which disclosure would not have been included in an exempted document). It is also still unclear as to the extent to which bidders will in the future, where it is available, utilise the exempted document route or whether they will seek to find other ways to avoid the need to issue a prospectus or exempted document, particularly for small and midcap deals where the time and cost required to prepare either document is unpalatable.*
>
> Giles Distin,
> Partner, Addleshaw Goddard

The FCA's findings of its review of the systems and controls used by a sample of investment banks, legal advisers and other consultancies to manage access to inside information included:

- instances of large numbers of support staff having access to inside information
- failures to restrict access to inside information to those who need it for the proper fulfilment of their role, eg support staff having the same access rights as the deal team, regardless of the differing needs of those roles
- no regular reviews of access rights
- insider lists containing very generic description of the functions of non-deal team staff
- insider lists including individuals who do not have access to inside information
- electronic files containing deal-specific inside information stored in general team folders
- non-deal team staff in multiple unconnected jurisdictions having access to inside information
- differing levels and methods of monitoring of insider lists
- varying ability by firms to provide audit trails of who accessed inside information

FCA procedural note on schemes of arrangement

In October 2019 the FCA published a procedural note, which set out potential approaches issuers may take for transactions implemented by way of a scheme of arrangement in the content of listing and cancellation of securities from the Official List.

The FCA commented that usually transactions are structured so that the transaction as a whole completes simultaneously upon a scheme of arrangement becoming effective. In the case of a scheme involving the insertion of new holding company, this means the listing of the shares in the existing issuer is cancelled simultaneously with admission to listing of the shares in the new holding company.

One approach that issuers have taken is to request that the FCA suspends the listing of the existing issuer at 7.30 am on the morning of the day on which the scheme of arrangement court hearing takes place. The issuer then delivers the court order sanctioning the scheme of arrangement to Companies House during trading hours. Simultaneous admission of the new shares to listing and cancellation of the existing issuer's listing at 8am on the next business day.

An alternative approach to avoid the loss of trading that such a suspension creates, is for issuers not to ask for suspension, but to submit documents to the FCA by 3pm on the business day before the day on which the transaction is to become effective, confirming that the scheme has been sanctioned by the court, all conditions have been satisfied or waived and the scheme is irreversible.

Whatever approach an issuer decides to take it should engage with the FCA as early as possible, providing a draft timetable.

Lloyds HBOS shareholder litigation

In November 2019 the High Court dismissed a class action brought by a group of Lloyds shareholders against the bank's chairman and executive directors in connection with its purchase of HBOS in 2008/09. The decision (Sharp v Blank [2019] EWHC 3078 (Ch)) raises some interesting legal issues around directors' recommendations and the standards of disclosure required in shareholder circulars.

The claims were brought on two principal grounds:

- that the Lloyds directors had failed to exercise reasonable skill and care when recommending the acquisition (recommendation case)
- that the Lloyds directors should have provided further information about Lloyds and about HBOS, in particular about a funding crisis faced by HBOS and the related vulnerability of HBOS's assets (disclosure case)

In relation to the recommendation case, the claimants failed to show that the directors had been negligent in recommending the bid. The court said to do this it was necessary to establish that no reasonably competent director could have shared the view of the Lloyds board.

In relation to the disclosure case, the court held that the directors should have disclosed in the circular details of an emergency liquidity assistance provided by the Bank of England and a £10bn facility provided by Lloyds to HBOS. However, the court held that the failure to include these disclosures did not cause the claimants any loss. In addition, even if causation was established, the claimants would not have been able to recover their loss under the reflective loss principle (ie, the principle that where an actionable wrong has been done to a company, it is usually the company rather than its shareholders or creditors that has the right to recover any loss resulting from such wrong).

Other points of interest from an M&A perspective arising from the case include:

- directors who take and then act upon expert advice have gone a long way to performing their duties with reasonable skill and care. But the taking and acceptance of advice is not a substitute for the exercise of reasonable skill and care—it is only part of the discharge of that duty
- although the success fee payable to the financial advisers on a takeover may create a potential conflict of interest in giving their advice to the offeror board, this does not necessarily mean that the investment bankers are not professionally objective. Indeed a board which did not seriously consider the advice of an investment banker on a significant takeover would almost certainly be negligent
- the duty of care in relation to misstatements in the circular and the duty to make sufficient disclosure of information to shareholders in the circular does not extend to management presentations made to the media and analysts. To extend the duty in this way would run counter to the principle that the directors owe their duties to the company rather than individual shareholders. In addition, the announcements that were made around the time of the management presentations included health warnings alerting shareholders to read the circular before taking any action, so it was not right for shareholders to base their vote decision on information provided during these management presentations

For further details, see: Lloyds—HBOS litigation—a death knell to shareholder class actions?

Cold shoulder ruling against Mr David King relating to Rangers mandatory offer

In October 2019 the Panel's Hearings Committee issued a 'cold shoulder' ruling that Mr David King was someone who, in the Committee's opinion, was not likely to comply with the Code. The ruling related to various breaches of the Code by Mr King in relation to events surrounding his mandatory offer for Rangers International Football Club PLC (Rangers).

The ruling, known as 'cold-shouldering', is one of the most serious sanctions available to the Panel for breaches of the Code and is only the fourth occasion on which it has been used. Where the Panel has made such a ruling, the rules of the Financial Conduct Authority and certain professional bodies oblige their members, in certain circumstances, not to act for a person so named in a transaction to which the Code applies. For further details, see Practice Note: The Panel and the regulatory framework of takeovers—Sanctions and enforcement.

The ruling followed the Panel successfully obtaining an order in the Court of Session in Edinburgh for an order compelling Mr King to make a Rule 9 offer and subsequent contempt of court proceedings when Mr King failed to comply with the court order. This was the Panel's first use of its powers under section 955 of the Companies Act 2006 to enforce its rulings in the courts. For further details on the Scottish courts' decisions in these cases, see News Analyses: Court grants an Order requiring Mr King to make a mandatory offer under the Takeover Code (Panel on Takeovers and Mergers v King) and Scottish appeal court upholds decision requiring King to make Rule 9 offer for Rangers.

Investigation into JD Sports/Footasylum transaction

It is interesting to note that, in October 2019, the CMA decided to refer the completed acquisition by JD Sports Fashion of Footasylum for an in-depth investigation. This is the first time the CMA has referred to phase 2 a completed transaction subject to the Code since its formation in April 2014.

Fines for merger control breaches

In the UK, 2019 has seen the CMA impose record fines (in terms of both the number of fines issued and the level of penalties imposed) for infringements of the UK's merger control regime.

In short, the CMA imposed four fines for breaches of hold separate orders (ie orders which require the parties to hold the merging parties' businesses separate pending merger control approval); resulting in fines totaling £716,000 being imposed (including a £250,000 penalty on Paypal – the largest ever for a single merger control infringement – in the context of its acquisition of iZettle). In addition, the CMA also issued three fines for parties failing to respond fully to information requests; resulting in fines totaling £62,000 being imposed. To put these figures into context, the CMA issued two fines in 2018 and only one fine in 2017 (its first ever fine for a breach of the UK's merger control regime).

For further detail and commentary regarding UK merger enforcement actions in 2019, see further: UK mergers enforcement actions—closed cases tracker.

Whilst the increase in the number of fines issued in the UK in 2019 highlights the CMA's commitment to enforcement of the UK's merger control rules, it is important to note that this follows a more general global trend which has seen an increasingly strict approach adopted to merger control enforcement by other competition authorities around the world. More specifically, over 60 penalties around the world were imposed in 2019, principally for failure to file/gun-jumping.

For information on publicised penalties imposed around the world for breaches of merger control rules in 2019, see our MJ merger control infringement penalties-database.

Internal documents an increasing source of evidence for the CMA

2019 is also a year that highlights the growing importance of internal documents under UK merger control. Internal business documents from merging parties have long been an important source of evidence for competition authorities investigating mergers. In particular, it helps them to assess who the merging parties view as their main competitors and evaluate the consistency of the arguments that have been put forward by the merging parties. For example, it has been estimated that internal documents have provided a key source evidence in just over 40% of phase 1 cases. That figure rises to 75% in relation to phase 2 cases.

A good example of the CMA adopting a tough stance over information requests in 2019 is illustrated by its £20,000 penalty on Sabre for failing 'without reasonable excuse' to comply with two compulsory information notices which it had issued under s109 Enterprise Act 2002 as part of its investigation into Sabre's acquisition of Farelogix (see further, Sabre Holdings Corporation/Farelogix Inc). The European Commission is also taking a tougher line in relation to parties that submit 'misleading' information, for example the €52m fine imposed in April 2019 on General Electric for providing incorrect information during the Commission's 2017 merger investigation into the acquisition of LM Wind.

The increase in the number of fines indicates a zero tolerance policy from the CMA in relation to procedural breaches. It is crucial that companies and their advisers fully understand their legal obligations and put in place the necessary reporting structures and methodology statements to explain how document searches have been conducted to ensure to the letter compliance.

Nicole Kar,
Partner, Linklaters

US-style document production requests are now a standard part of UK (and EU) merger review. Transaction parties need to implement document retention and creation guidelines not only for deal-specific documents but also ordinary course of business documents.

Authorities will continue to focus heavily on internal documents showing the acquirer's intent and the expected effect on competition – even though internal materials can be prone to exaggerate a nascent competitor's potential and can be used selectively by authorities cherry-picking documents that support a particular theory. The CMA has sometimes relied on simple competitor reference counts to support its findings on the closeness of competition: see for example ElectroRent.

Internal documents have been used particularly by the CMA to evidence counterfactuals other than the status quo ex ante (and therefore justify intervention) in incumbent-challenger mergers. An example of this is Illumina / PacBio where the CMA found documents that undermined the parties' position that their respective short read and native long read technologies do not compete, with "a significant number" of documents mentioning the complementarity of the technologies and some Illumina documents apparently charting the impact that certain competitive scenarios concerning PacBio would have on Illumina's revenue and considering the resulting pricing pressure.

Nicole Kar,
Partner, Linklaters

Impact of amended merger thresholds for transactions impacting national security

In our 2018 public M&A trend report, we reported on amendments that were made to the UK merger control regime's notification thresholds for the following sectors related to national security:

- military or dual-use goods which are subject to export control
- quantum technology
- computing processing units

With effect from 10 June 2018, the UK turnover threshold for transactions in these sectors was reduced from £70m to £1m. In addition, the UK share of supply test was amended so that it can be met if the target has an existing UK share of at least 25% (regardless of whether that share of supply would increase as a result of the merger). The government intended that these changes would allow it to intervene in smaller mergers in those sectors which might give rise to national security implications (see further, UK mergers: Amended merger thresholds for certain transactions impacting national security now in force). In addition to these lower thresholds for the specified sectors, there has been growing willingness for the UK government to intervene on public interest grounds in mergers impacting national security.

Since the new reforms came into force, five transactions have been (or are being) the subject of PIINs on national security grounds (four of which concluded/were opened in 2019; only one of which was triggered by the new lower threshold):

- the first transaction caught by the amended thresholds concerned the anticipated acquisition of Northern Aerospace (a UK-based supplier of aircraft components which was majority owned by Better Capital) by Gardner Aerospace Holdings (a wholly-owned subsidiary of Chinese-based Ligeance Aerospace Technology). This transaction was unconditionally cleared on 20 July 2018
- on 29 October 2019, Secretary of State for DCMS conditionally cleared the anticipated acquisition of Inmarsat (a UK-based satellite telecommunications company) by Connect Bidco Ltd (a private equity-led consortium). The Secretary of State concluded that the undertakings offered by the parties mitigated the national security risks identified to an acceptable level (see: post offer undertakings and national security undertakings)
- on 20 December 2019, the Secretary of State for BEIS also conditionally cleared the anticipated acquisition by Advent International (a US private equity firm) of Cobham PLC (a UK aerospace and defence supplier) for the same reasons noted above (see: post offer undertakings and national security undertakings)
- finally, in December 2019, the Secretary of State for BEIS issued public interest intervention notices on national security grounds in relation to two further transactions; both of which are still ongoing. These include:
    - the anticipated acquisition by Aerostar (a fund established in China, either directly or through Ligeance Aerospace Technology) of Mettis Aerospace (a UK-based company which designs, manufactures and assembles precision forged and machined components)

There is concern amongst businesses and stakeholders that the merger regime rules allowing for government intervention on national security grounds are being increasingly used in a political context and that the term "national security", already ill-defined, is really being used to review deals raising "economic security" considerations.

Advisers and companies are currently attempting to apply the principles of the Government's July 2018 White Paper given that its principles are already understood to be informing current enforcement priorities, but there is a pressing need for clarity on how and when government intervention in transactions will happen.

It is clear that greater government intervention in M&A is inevitable. This is in line with a global trend of legislative reforms aimed at enabling greater government interventions following reforms to CFIUS in the U.S., and German legislation including a proposal for the German Government to temporarily take stakes in tech companies, to prevent them from being sold to non-EU investors.

Nicole Kar,
Partner, Linklaters

Enforcement of national security issues under the existing rules was directed for the first time at acquisitions by private equity and pension funds – including the take-private of Inmarsat by a consortium of US, Canadian and UK funds. Bidders should anticipate detailed questioning on ownership structures, transaction rationale and target activities beyond the information typically requested by antitrust authorities. This needs to be factored into timetables and deal planning.

Alison Smith, Partner,
Freshfields Bruckhaus Deringer

- the anticipated acquisition by Gardner Aerospace Holdings (a wholly-owned subsidiary of Chinese-based Shaanxi Ligeance Aerospace Technology Co. Ltd) of Impcross Limited (a UK-based military aerospace parts company)

There are two points to note in relation to the number of transactions investigated by the government in 2019. The first (and obvious) point concerns the increased propensity of the UK government to call deals in for "national security" review. However, whether or not the UK government is intervening in such transactions on purely "national security" grounds is subject to debate. Some commentators suggest that, in reality, such reviews really relate to other considerations and concerns of the UK government; eg economic security. The second point to note is that only one transaction has been reviewed by the government as a direct result of changes to the merger control thresholds (ie one that could not have been reviewed under previous thresholds but became reviewable under the new thresholds); suggesting that, so far, these new thresholds have only had a negligible impact.

In addition to the above changes, the UK government has proposed further reforms in order to increase its powers to scrutinise and intervene in business transactions to protect national security. This development has been in the pipeline for some time, being initially announced in September 2016, followed by consultations in 2017 and 2018; more recently though, it was announced in the Queen's Speech in December 2019 that a National Security and Investment Bill is to be introduced at some point in 2020. The proposals are expected to strengthen the government's existing powers to protect national security in the context of business transactions, and to provide investors with certainty and transparency, and will also bring the UK regime in line with those enjoyed by other major jurisdictions, such as the US.

CMA proposes mandatory merger control regime

On 21 February 2019, the CMA (at the government's request) published a letter setting out 'wide ranging and radical' proposals to re-shape the UK's competition enforcement and consumer protection regime. Some of the most eye-catching include proposals relating to the merger control process. Most significantly (and for the first time), the CMA proposes mandatory merger control filings for 'larger' transactions, together with a 'standstill provision' aimed at preventing parties from proceeding with a transaction prior to CMA approval (as per the majority of other jurisdictions such as the US, the EU and most Member States). This is a sea-change from the current voluntary, non-suspensory regime.

For further details, see News Analysis: UK competition policy: CMA proposes major reforms to UK competition law and procedure.

The uncertain political environment in the UK in 2019 prevented any further developments in relation to the above; however, the potential for reform of the UK merger control regime is still very much on the government's agenda, and further developments (eg white papers and consultations) can be expected during 2020.

The political environment impacting M&A in the UK is one which is seeing increasing government and regulatory intervention – in many instances the risk and nature of the intervention or review surprising parties involved and taking an unprecedented approach. Note for example the CMA's review of various mergers and the public consultation undertaken on the Advent bid for Cobham (and related undertakings which had been endorsed by the CMA and been through comprehensive discussions with the Government.) This shift in approach potentially foretells the future in a post-Brexit, protectionist world and one which parties will need to actively consider when assessing transaction risk.

Selina Sagayam,
Partner, Gibson Dunn

2019 saw the CMA taking jurisdiction over increasingly small stakes (16% in Amazon / Deliveroo) and stretching the concept of share of supply further than ever (while the CMA's decision is yet to be published, it is understood that in Roche/Spark jurisdiction was established based on the share of supply test, but in relation to a pipeline (and therefore non-revenue generating) drug). We would expect the CMA will want to safeguard its current ability to review these global deals and any reform to introduce a mandatory merger control review process will need to factor this in.

Nicole Kar,
Partner, Linklaters

Pensions issues

In March 2019 the Pensions Regulator (TPR) published a regulatory intervention report under section 89 of the Pensions Act 2004 in relation to the GKN pension schemes. The purpose of the report, which concerned the takeover of GKN by Melrose, was to highlight to trustees, employers and advisers how TPR expects to work with parties where there is a takeover or acquisition and a defined benefit pension scheme involved.

TPR argued that the robust approach taken by the trustees of the GKN pension schemes, supported by prompt engagement by TPR, meant that both GKN and Melrose provided details of their plans and engaged with the pension scheme trustees to agree mitigation for the changes in covenant resulting from the acquisition. TPR continued to discuss the implementation of the agreed plans for the schemes with the trustees and with Melrose following completion of the transaction.

TPR said it expects to be notified as soon as practicably possible about any potential transaction affecting a company or group that has a defined benefit scheme attached. It is aware of the restrictions imposed by the Code for transactions which fall within its scope, but would expect offerors to give careful consideration to whether the pension issues are sufficiently material to require early involvement of the pension trustees and the regulator.

In terms of other pensions issues, the Pension Schemes Bill currently making its way through Parliament seeks to introduce new criminal offences which corporate planners will have to be wary of in circumstances where their M&A activity puts a defined benefit scheme at risk. These new criminal offences, which include the offence of avoidance of employer debt and the offence of conduct risking accrued scheme benefits, will be punishable by up to seven years' imprisonment and/or an unlimited fine. While no offence will be committed if there is a 'reasonable excuse', there are concerns that these criminal offences have been drafted so widely that could impact on legitimate corporate activity. For further details, see News Analysis: The Pension Schemes Bill 2020 (Part 1)_strengthening TPR powers and sanctions.

EU Cross-border mergers

In November 2019 the European Council adopted a new directive (Amending Directive) amending Directive (EU) 2017/1132, which is intended to make it easier for companies to merge, be divided or (using a cross-border conversion) transfer their registered seat within the Single Market. The Amending Directive is also intended to ensure that when these operations are carried out, the rights of a company's employees, creditors and minority shareholders are well protected and tax abuse is prevented.

The Amending Directive entered into force on 1 January 2020 and Member States have until 1 January 2023 to adopt the measures necessary for its implementation. The withdrawal agreement between the UK and the EU includes a transition period from exit day until 31 December 2020 during which the UK would generally remain subject to EU law. As the UK will not be an EU member state on 1 January 2023, it will not be required to transpose the requirements of the Amending Directive into UK law unless the transition period is extended beyond 1 January 2023.

Brexit

As part of its preparations for the UK's exit from the EU, the government has published several pieces of secondary legislation, which are intended to facilitate the effective functioning of the UK's company law framework and to facilitate the effective operation of the UK takeovers regime on a freestanding basis outside the EU framework post-Brexit. The Panel also published proposed changes to the Code in light of Brexit. We reported in detail on the proposals that impact on the UK takeover regime in our 2018 public M&A trend report and the summary below is limited to any developments that took place in 2019.

Proposed revocation of the Companies (Cross-Border Mergers) Regulations

In November 2018 the government published the draft Companies, Liability Partnerships and Partnerships (Amendment etc) (EU Exit) Regulations 2018. These were replaced in January 2019 by the Companies, Liability Partnerships and Partnerships (Amendment etc) (EU Exit) Regulations 2019. The draft instrument revokes the Companies (Cross-Border Mergers) Regulations 2007 as after exit day the UK will no longer have access for this regime, which is designed for mergers to occur between companies established in different EEA member states.

For further details, see News Analysis: Government publishes instrument to amend Companies Act regime post-Brexit

Takeovers (Amendment) (EU Exit) Regulations 2019

In October 2018 the government published the draft Takeovers (Amendment) (EU Exit) Regulations 2019 (Takeovers (EU Exit) Regulations), which propose a number of amendments to Part 28 of the Companies Act 2006 to facilitate the effective operation of the UK takeovers regime on a freestanding basis outside the EU framework post-Brexit. The draft regulations also proposes the removal of the shared jurisdiction regime from the Code.

For further details, see News Analysis: Government publishes amending regulation to address UK takeover regime post-Brexit.

Proposed amendments to the Code

Following the government's publication of the Takeovers (EU Exit) Regulations, the Panel published PCP 2018/2, which proposed a number of changes to the Code arising from the UK's withdrawal from the EU. In a response statement (RS 2018/2) published in March 2019, the Panel stated that it intended to adopt these proposals subject to some minor amendments.

For further details, see News Analysis: Analysing the proposed amendments to the Takeover Code arising from Brexit.

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While the year ended off on a very strong quarter (bolstered by the election results), Brexit inevitably continues to have its impact particularly when analysing the sectors and targets in play. Sectors particularly vulnerable to Brexit uncertainties (recently exacerbated by recent comments of the Chancellor of the Exchequer) including agriculture, automotive, food and drink – whether reliant on European supplies and/or distribution channels – have seen dampened interest, save for targets with a strong international footprint.

Selina Sagayam,
Partner, Gibson Dunn

Firm offers included in the report:

1. A&J Mucklow Group plc offer by Londonmetric Property plc
2. Acacia Mining plc offer by Barrick Gold Corporation
3. Aggregated Micro Power Holdings plc offer by Asterion Industrial Infra Fund I, FCR
4. Amerisur Resources plc offer by GeoPark Limited
5. APC Technology Group plc offer by Harwood Capital LLP
6. Aston Martin Lagonda Global Holdings plc partial offer by Investindustrial Advisors Limited
7. BCA Marketplace plc offer by TDR Capital LLP
8. Bonmarché Holdings plc offer by Spectre Holdings Limited
9. Brady plc offer by Hanover Active Equity Fund II, S.C.A SICAV-RAIF
10. Capital & Regional plc partial offer by Growthpoint Properties Limited
11. Carpetright plc offer by Meditor European Master Fund Limited
12. Charles Taylor plc offer by Lovell Minnick Partners LLC
13. Charter Court Financial Services Group plc offer by OneSavings Bank plc
14. Cobham plc offer by Advent International Corporation
15. Consort Medical plc offer by Recipharm AB
16. Dairy Crest Group plc offer by Saputo Inc.
17. Earthport plc offer by Mastercard International, Inc. (lapsed)
18. easyHotel plc offer by Ivanhoé Cambridge and ICAMAP Investments S.à r.l.
19. Ei Group plc offer by Stonegate Pub Company Limited
20. Eland Oil & Gas plc offer by SEPLAT Petroleum Development Company plc
21. Elegant Hotels Group plc offer by Marriott International Inc.
22. EU Supply plc offer by Mercell Holding AS
23. FFI Holdings plc offer by 777 Group
24. Findel plc offer by Sports Direct International plc (offer lapsed)
25. Flybe Group plc offer by Connect Airways Limited
26. Footasylum plc offer by JD Sports Fashion plc
27. Game Digital plc offer by Sports Direct International plc
28. Greene King plc offer by CK Asset Holdings Limited
29. Hansteen Holdings plc offer by The Blackstone Group, Inc.
30. Hardy Oil & Gas plc Mandatory offer by Blake Holdings Limited
31. Harwood Wealth Management Group plc offer by The Carlyle Group
32. hVIVO plc offer by Open Orphan plc
33. Inmarsat plc offer by Apax Partners LLP, Warburg Pincus International LLC, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board
34. Just Eat plc offer by Prosus N.V.
35. Just Eat plc offer by Takeaway.com N.V.
36. KCOM Group plc offer by Macquarie Infrastructure and Real Assets (Europe) Limited
37. KCOM Group plc offer by Universities Superannuation Scheme (offer lapsed)
38. Lighthouse Group plc offer by Quilter plc
39. Low & Bonar plc offer by Freudenberg SE
40. Manx Telecom plc offer by Basalt Infrastructure Partners II GP Limited
41. MedicX Fund Limited offer by Primary Health Properties plc
42. Merlin Entertainments plc offer by KIRKBI and Blackstone Core Equity Partners
43. Millennium & Copthorne Hotels plc offer by City Developments Limited
44. Miton Group plc offer by Premier Asset Management Group plc
45. Murgitroyd Group plc offer by Sovereign Capital Partners LLP
46. Nasstar plc offer by Mayfair Equity Partners LLP
47. Ophir Energy plc offer by PT Medco Energi Internasional Tbk
48. Patagonia Gold plc offer by Hunt Mining Corp.
49. Porta Communications plc offer by SEC S.p.A
50. Premier Technical Services Group plc offer by Macquarie Group Limited
51. Provident Financial plc offer by Non-Standard Finance plc v)
52. Redde plc offer by Northgate plc
53. RhythmOne plc offer by Taptica International Limited
54. RPC Group plc offer by Apollo Global Management, LLC (offer lapsed)
55. RPC Group plc offer by Berry Global Group, Inc.
56. SafeCharge International Group Limited offer by Nuvei Corporation
57. Sanderson Group plc offer by Aptean Limited
58. Sophos Group plc offer by Thoma Bravo LLC
59. StatPro Group plc offer by Confluence Technologies Inc
60. Stride Gaming plc offer by The Rank Group plc
61. Synnovia plc offer by Camelot Capital Partners LLC
62. Tarsus Group plc offer by Charterhouse Capital Partners LLP
63. Tax Systems plc offer by Bowmark Capital LLP
64. Telford Homes plc offer by CBRE Group, Inc.
65. The Local Shopping REIT plc offer by Thalassa Holdings Limited (offer lapsed)
66. WYG plc offer by Tetra Tech, Inc.

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Simon is a partner in Bird & Bird's international corporate group. Based in London, he advises on a wide range of public and private M&A transactions and equity capital markets transactions. Simon has an intimate knowledge of the UK's Takeover Code, having been seconded to the Takeover Panel earlier in his career and has advised numerous clients in a variety of sectors over the years on both hostile and recommended deals. Simon also advises both corporates and financial advisers on a wide range of general corporate, company law and regulatory matters across the financial services, aviation, life sciences and media sectors. Simon is consistently ranked as a leading individual for Corporate Finance work by Chambers & Partners and the Legal 500.

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James is a partner in the Clifford Chance corporate practice and has recently returned to the Firm following two years as the Takeover Panel's seconded Secretary, during which time he participated in all major case decisions and helped to formulate Panel policy. James has more than 15 years' experience in advising corporate and private equity clients across a broad range of transactions and advisory matters, but with a particular focus on public M&A.

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Adam Cain is a Legal Director in the corporate finance team at Pinsent Masons and specialises in public M&A and equity capital markets matters. He has broad experience across a number of industry sectors and jurisdictions, with a particular focus on the Advanced Manufacturing and Technology sector and the energy sector. Adam has advised corporates on a wide range of corporate and corporate finance transactions and has a particular focus on public M&A, having advised on 13 Takeover Code governed transactions since 2017. Adam also authored the response from Pinsent Masons to the Takeover Panel's recent consultation paper on the United Kingdom's withdrawal from the European Union.

Adam also has extensive experience of equity capital markets matters, including advising both issuers and investment banks on a number of initial public offerings, rights issues, placings and other capital raisings. Adam is recommended by Legal 500.

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Giles is a Partner in the Corporate Finance Group of Addleshaw Goddard's London office. He is an expert in advising on UK securities regulation and on UK listed company transactions, including takeovers and other regulated M&A transactions (cross-border and domestic), initial public offerings, reverse takeovers and public equity fundraisings involving companies listed on the Main Market or AIM market of the London Stock Exchange. Giles was seconded for two years to the UK Takeover Panel and is one of a select number of lawyers in the UK with cutting edge experience of takeovers gained both in private practice and at the competent authority for regulating takeovers and mergers in the UK. Whilst in private practice, Giles has advised on over 50 public takeover bids.

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Gillian is a senior consultant and head of corporate knowledge at Slaughter and May. She is a contributor to Butterworths Takeovers: Law and Practice. In 2016, she won Legal Week's Client Partner of the Year. She has been cited in Chambers and Legal 500 as a leading practitioner for public M&A. Her credentials include acting on Takeaway.com's bid for Just Eat, Advent International's bid for Cobham, AbbVie's £32 billion takeover bid by way of inversion for Shire plc, ABInbev's £79 billion takeover bid for SABMiller, Lonmin's virtual hostile bid from Xstrata in 2008 and Xstrata's subsequent reverse takeover proposal.

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Linklaters partner, Iain Fenn, advises international companies and financial institutions on public and private M&A, corporate restructurings, public offerings and joint ventures. He has acted as lead counsel to clients on many of the market's most significant transactions, including acting for the acquirors on, and defenders of, hostile public offers as well as on 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 regularly advises the boards of a number of London listed companies on strategic and governance issues.

Iain's expertise spans many sectors. He has particular knowledge of the telecoms, technology and retail sectors. He is co-head of the telecommunications, media and business services sector at the firm.

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Leon Ferera has more than 20 years' experience advising companies, investors, and financial institutions on corporate transactions and governance matters, including takeover offers, takeover preparedness, private M&A, private equity transactions, and joint ventures. He was seconded for two years to the U.K. Takeover Panel (where he was also secretary to the Code Committee, which carries out the Panel's rulemaking functions) and for one year to Invesco's U.K. equities team. Leon leads Jones Day's London M&A practice.

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Rui is a Senior Associate in the Corporate practice, specialising in public takeovers. Her recent experience includes advising Inmarsat on its $3.4bn contested scheme of arrangement, Provident Financial on its defence against the hostile offer from Non-Standard Finance, CK Asset Holdings on the £2.7bn takeover of Greene King, and Mastercard on its competitive offer for Earthport. Rui spent six months as a secondee to Morgan Stanley's UK Investment Banking Team in 2017.

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Nicole is Head of the UK competition/antitrust group. She has led on over 40 significant merger and competition investigations over her close to 20 years of European competition experience. She has extensive experience in advising on a wide range of regulatory and competition law issues in addition to maintaining a busy investigations and enforcement practice. She has particular expertise in antitrust and regulatory issues in the financial services, retail, mining and healthcare sectors.

Nicole is ranked in Tier 1 of Chambers and peers and clients alike hold her in high regard as a top competition lawyer. She is described by clients as "an absolute star" and someone who understands "our business, understands our approach to risk and the information analysis we need to make decisions and provides very high quality analysis". She "is laser-focused on what the client wants and what needs to be done to get that".

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Tom Matthews is a partner in the Firm's M&A and Corporate Practice in the London Office. He advises corporates, investment banks and private equity and activist funds on international public and private M&A transactions, primary and secondary equity raisings and sell-downs, joint ventures and listed company advisory and corporate governance matters.

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Louise is a managing associate in Addleshaw Goddard's corporate finance team in London. Louise regularly advises on public M&A and equity capital market transactions as well as providing wider corporate advisory work to public companies. Louise also advises the Hearings Committee of the Takeover Panel in relation to appeal hearings in respect of decisions of the Executive of the Takeover Panel.

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

He regularly advises both corporate clients and investment banks on a wide variety of M&A, equity capital markets, Listing Rule and Takeover Code transactions, as well as corporate governance matters. Dominic has spent time on secondment with Citi's ECM legal team.

Dominic has a particular focus on large, complex, cross border M&A transactions involving UK public companies, and has been recommended by the Legal500 for M&A – upper mid-market and premium deals. Dominic also has sector expertise in the healthcare, gaming and consumer and retail industries.

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Selina is an English qualified partner in the London office of Gibson, Dunn & Crutcher. She is a member of the firm's international Mergers and Acquisitions, Hostile M&A and Shareholder Activism, Capital Markets and Securities Regulation and Corporate Governance (including a focus on ESG) Practice Groups.

She was seconded for two years to the Takeover Panel and is regularly called upon as a key adviser and commentator on UK and European takeovers. She is a regular speaker at conferences in the UK and Europe on takeovers and cross-border M&A, 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, capital markets and corporate governance developments. She is a member of the board of the Corporate Finance Faculty of the ICAEW.

Patrick Sarch
Partner, Co-head of UK Corporate Practice and the Financial Institutions Global Industry Group, White & Case LLP

Patrick is co-head of both White & Case's UK Corporate Practice and the Financial Institutions Global Industry Group. As a senior corporate partner, Patrick is valued by his wide range of clients for providing commercial, pragmatic and sound business advice. He is widely viewed as a trusted adviser to the boards of many UK and international listed companies.

Patrick has over 20 years' experience advising clients on corporate finance, domestic and cross-border public company M&A (with extensive expertise in competitive and hostile situations), innovative structuring, the Takeover Code, disclosure issues, securities law and the Listing Rules as well as secondary issues and capital restructuring. In recent years, he has developed a strong "activism" practice, advising both companies and activist shareholders on strategic, governance and M&A-related campaigns and disputes. He has a very broad base of skills and also advises on corporate aspects of investigations and crisis management.

Patrick has advised on a number of global and UK 'firsts' and record-breaking deals. He is a member of the City of London Law Society Company Law Committee.

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

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

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

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Alison is a partner in the corporate group based in London. She advises on a broad range of corporate transactions, including public and private mergers and acquisitions, private equity investments and disposals, joint ventures and restructurings. She has a particular focus on complex cross-border M&A.

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Julian is the head of Corporate Finance at Pinsent Masons. He has over 25 years' experience advising on corporate transactions across a variety of sectors including financial services, food manufacturers and retailers, energy (oil and gas and renewables), real estate, healthcare and pharmaceuticals, technology and gaming. Julian has significant expertise in public company takeovers and cross border and domestic mergers and acquisitions. Julian advises international and UK issuers and investment banks on IPOs and equity fundraisings in London (both on the Main Market and AIM) and internationally. He also provides advice to boards of directors on corporate governance matters and legal and regulatory obligations. Julian is listed in both Chambers UK and Legal 500 UK.

Simon Wood
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Simon is a corporate finance partner with Addleshaw Goddard and regularly advises public companies on the full range of transactions on the Main Market and AIM. He has particular expertise in public M&A, having recently returned from a two year secondment as Secretary to the Takeover Panel, where he was responsible for regulating the most significant recent M&A transactions. He was also involved in all the major decisions and policies made during that time and as a consequence has a unique insight into the manner in which the Takeover Code is applied by the Panel on a day to day basis.

Lexis® PSL Corporate 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

Market Tracker | Forthcoming Trend Reports

Equity Capital Markets Report 2019

Market Tracker's annual report on trends in UK Equity Capital Markets reviews IPOs and secondary fundraisings during 2019 on both the Main Market and AIM.

Public M&A Q1 2020 update

Market Tracker's quarterly review of public M&A transactions between January 1 2020 and March 31 2020, including statistical analysis and an update on developing trends.

We have a wealth of free content available on our Corporate microsite.

Market Tracker | Previous Trend Reports

AGM season 2019

This Market Tracker Trend Report examines the latest market practice and trends emerging from the FTSE 350 annual general meeting (AGM) season 2019. Highlights include:

- A review of board gender and ethnic diversity statistics and disclosures
- an assessment of significant shareholder opposition to resolutions
- a summary of market practice regarding Brexit disclosures
- a first look at the early compliers with new regulations relating to CEO pay ratio reporting, stakeholder engagement and workforce engagement mechanism

With expert commentary from:

- Will Chalk, Jonathan Fletcher Rogers and Richard Preston, Addleshaw Goddard LLP
- Edward Craft, Wedlake Bell LLP
- Martin Webster and Tom Proverbs-Garbett, Pinsent Masons LLP
- Peter Swabey, Policy & Research Director at The Chartered Governance Institute (formerly named ICSA: The Governance Institute)

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