

Market Tracker Trend Report:
**Trends in UK Public M&A
deals in H1 2021**

Our Contributors

 **ADDLESHAW
GODDARD**

Bird & Bird

GIBSON DUNN



Freshfields Bruckhaus Deringer

**Hogan
Lovells**

Linklaters


Pinsent Masons

WHITE & CASE

Contents

Background and approach	1
Highlights H1 2021	2
Executive Summary	3
Outlook for H2 2021	9
01 Deal value and volume	10
02 Deal structure	13
03 Hostile, competing and mandatory offers	14
04 Public to private transactions	17
05 UK and international bidders	21
06 Industry	23
07 Nature of consideration	27
08 Financing the offer	28
09 Possible offers, formal sale processes and strategic reviews	29
10 Irrevocable undertakings	31
11 Post-offer statements of intention: compliance statements	32
12 Shareholder engagement	33
13 Legal and regulatory developments	35
Firm offers included in this report	43
Team page	45
Contributors	46

Background and approach

This report aims to provide an insight into the dynamics of UK public M&A activity in the first half of 2021 and what we expect to see in the rest of the year.

LexisNexis Market Tracker has conducted research to examine current market trends in respect of UK public M&A deals announced in the first half of 2021. We reviewed a total of 48 transactions involving Main Market and AIM companies that were subject to the Takeover Code (the Code): 22 firm offers¹, 24 possible offers and two announcements of formal sale processes and/or strategic reviews, which were announced between 1 January 2021 and 30 June 2021.

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

The final date for inclusion of developments in this report is 30 June 2021. Reference has been made to deal developments after this date if considered noteworthy.



¹ For the purposes of this report we have not included Global Infrastructure's bid for Signature Aviation, which was withdrawn on 5 February 2021, when Global Infrastructure announced a joint offer for Signature Aviation with Blackstone and Cascade. We have also not included the initial offer for Proactis Holding by Pollen Street Capital, which was withdrawn on 11 June following Pollen Street announcing a joint bid for Proactis with DBAY Advisors.

Highlights H1 2021

 **22**
FIRM OFFERS

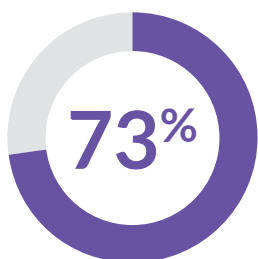
(H1 2020: 12 FIRM OFFERS;
H2 2020: 30 FIRM OFFERS)



£12.9bn
Aggregate value
of P2P transactions

(H1 2020: £2bn; H2 2020: £19.2bn)

£17.9bn
aggregate deal value
(H1 2020: £2.6bn; H2 2020: £33.4bn)



of all firm offers were
P2P transactions
(H1 2020: 67%; H2 2020: 67%)



Healthcare the most
active sector (18% of
all firm offers)

12 
FIRM OFFERS

INVOLVED US BIDDERS WITH AN
AGGREGATE DEAL VALUE OF £14.1bn

Executive Summary

Takeover activity

After a very strong last quarter in 2020, takeover activity returned to more moderate levels in 2021 with 22 firm offers announced in H1 2021. This represented a 27% drop in deal volume compared with H2 2020 (30 firm offers), but an 83% increase compared with H1 2020 (12 firm offers).

Aggregate deal value was £17.9bn and average deal value was £811m. This compares with aggregate deal values of £2.6bn and £33.4bn and average deal values of £220m and £1.1bn in H1 2020 and H2 2020 respectively.

Six transactions had a deal value over £1bn compared with one such offer in H1 2020 and nine in H2 2020. The largest transaction was the £3.5bn offer for Signature Aviation by a consortium comprising Blackstone, Global Infrastructure Partners and Bill Gates's Cascade Investment.

Average bid premium (measured by comparing the offer price with the target's share price immediately before the start of the offer period) was 32%, with the highest bid premium being 79% and the lowest being a 4% discount to the target's share price immediately before the start of the offer period.

P2P activity continues to grow

Public to private transactions remained active, with 16 (73%) of the 22 firm offers involving private equity, family offices or individuals (H1 2020: 67%; H2 2020: 67%).

Aggregate deal value of P2P transactions was £12.9bn (H1 2020: £2bn; H2 2020: £19.2bn) and average deal value was £807m (H1 2020: £253m; H2 2020: £961m). Four (67%) of the six £1bn plus takeovers announced in H1 2021 were P2P transactions.

Four of the P2P transactions were consortium offers and four involved individuals or family offices.

“

We would expect the trend of recent years that has seen strong interest from private equity in P2P transactions and from non-UK strategic bidders in UK companies to continue into the second half of 2021. It will be interesting to see how these ongoing heightened activity levels will interact with the new National Security and Investment Act regime once that comes into force, although we don't expect the new regime to lead to any meaningful reduction in activity levels for the foreseeable future.

Dan Schuster-Woldan
Partner, Linklaters

Within our pipeline we're seeing a range of bidders across sectors genuinely excited about the current relative value metrics of the UK market. PE bidders, with plenty of capital continuing to pour into their funds, are particularly active and remain keen. Trends to watch out for include continued shareholder activism (including on ESG), and increased activity from SPACs (particularly from the US) looking for decent targets on which to spend their ever growing coffers.

Tom Brassington
Partner, Hogan Lovells



US bidders particularly active

Overseas bidders were involved on 15 (68%) of the 22 firm offers announced in H1 2021 with an aggregate deal value of £16.6bn, which represented 93% of aggregate deal value during H1 2021. US bidders were particularly active, being involved on 12 transactions with an aggregate deal value of £14.1bn. This represented 79% of aggregate deal value in H1 2021.

Industry

In recent years the Technology, Media and Telecoms (TMT) sector has been the most active sector, but in H1 2021 the most active sector was Healthcare which saw four (18%) firm offers announced. Financial Services, Investment and Real Estate were also active with three (14%) firm offers announced in each of these sectors during H1 2021.

The Gaming sector saw continued activity with the £2bn recommended offer for Gamesys from its US partner, Bally's. Entain (owner of Ladbrokes and Bwin) received an approach from its US partner, MGM, which did not proceed beyond the possible offer stage. Caesars Entertainment's takeover of William Hill (which was announced in September 2020) also completed in April 2021.

“

In the current environment, it is perhaps not surprising that bids backed by private equity, financial investors or family offices are outstripping industry bidders so significantly. In the same way, it is also not surprising that most bids have a cash element and there have been very few share exchange bids. The impact of the pandemic has made it more difficult than ever for markets to be confident in the true value of a trade bidder's paper. With the current level of private equity's access to capital and its increased willingness to participate in the public takeover scene, it seems highly likely that the resurgent P2P landscape will continue for some time.

Simon Allport
Partner, Bird & Bird

Many businesses are re-shaping themselves and their supply chains, optimising them for a post-COVID and increasingly digitised market, and enabling them to meet the market demands placed on businesses by the growing focus of investors and global governments on ESG and net zero targets. Whatever the economic and political conditions, there is a drive for consolidation and bolt-on M&A activity in many sectors as businesses need to achieve scale efficiencies and address competitive pressures – and we tend to find that 'fear of missing out' (for bidders and targets alike) is a phenomenon even in public M&A.

Patrick Sarch
Partner, Hogan Lovells



Deal structure

Schemes of arrangement remain popular with 19 (86%) of the 22 firm offers announced in H1 2021 being structured as schemes of arrangement.

All of the firm offers announced in H1 2021 had some form of cash element and it was the exclusive form of consideration in 16 (73%) of the 22 firm offers. The consideration on the consortium offer for Signature Aviation was in US dollars with a sterling currency conversion facility.

One transaction (the offer for Hunters Property by The Property Franchise Group) was structured as a cash and share alternative and six transactions were structured as cash with unlisted share alternatives. One of the transactions which included an unlisted share alternative (DBAY Advisors' offer for Telit Communications) attracted criticism from one of Telit's shareholders, Berry Street Capital. The hedge fund argued that this form of consideration was unable to be held by most independent minority shareholders.

One hostile takeover

The only hostile offer announced in H1 2021 was the £1.4bn offer for Globalworth Real Estate Investments made by CPI Property Group and Aroundtown, who between them hold 52% of Globalworth's share capital. The offer attracted criticism from Growthpoint Properties, Oak Hill Advisors and the European Bank for Reconstruction and Development, who argued that the offer significantly undervalued the company. The three dissenting shareholders hold 40% of the issued share capital of the company.

“

A record 86% of firm offers were structured as schemes of arrangement in H1 2021. Notwithstanding the fact that control and direction is relinquished in many respects to the target company and transactional risks arise in other shapes (including uncertainty right up until the sanction hearing), bidders continue to favour this court-approved route. With the recent timetable changes to the Code, we expect this push towards the use of schemes to continue.

Selina Sagayam
Partner, Gibson Dunn

The recent public spat over shadow bids will pass – the Code puts great store in a target board's assessment of the merits of any proposal, who rightly remain the gatekeepers to any approach – particularly given the continued focus on enlightened shareholder value, which we hope will increasingly be a feature of UK M&A.

Simon Wood
Partner, Addleshaw Goddard

The markets continue to be volatile and we are seeing more opportunistic bid processes, particularly from international and private equity bidders, even if they are not ultimately leading to hostile bids. We expect this to continue, and to see shareholders engaging and contesting valuations. We also expect to see more bidders taking negotiations directly to shareholders through 'bear hug' announcements, as valuations remain challenging and parties look to find common ground.

Dominic Ross
Partner, White & Case



Competing bids

Two companies were the subject of potential competing bids in H1 2021:

- Signature Aviation received separate approaches from Blackstone, Global Infrastructure Partners and Carlyle between December 2020 and January 2021
- Nucleus Financial Group received approaches from Aquiline Capital Partners, Allfunds (UK) and Integrafin Holdings before James Hay Partnership and its private equity owner, Epiris, announced a firm offer for Nucleus in February 2021

In addition, in July 2021, Clayton, Dubilier & Rice (CDR)'s possible offer for supermarkets group, Morrisons, entered a competitive phase with a consortium led by Fortress announcing a £6.3bn recommended offer for Morrisons and US private equity house, Apollo, announcing that it was considering a possible offer for the company.

The competing offers for G4S from GardaWorld and Allied Universal that were announced in H2 2020 were determined by the Panel initiating an auction process under the Code. Allied Universal emerged as the highest bidder with its offer going unconditional in March 2021.

Mandatory offers

There was one mandatory offer in H1 2021: the £108m offer for Trans-Siberian Gold by Vladislav Sviblov's Horvik. This was triggered by Horvik acquiring shares representing 51% of Trans-Siberian Gold's share capital from various UFG funds and connected persons.

Post-offer statements of intention: compliance statements

22 takeovers closed during H1 2020 and the offer parties on these transactions were therefore required to publish updates during H1 2021 on their compliance with statements of intention made during the course of their offers. Of these 22 transactions:

- ten bidders reported compliance with their POI statements
- eight bidders reported divergence from their POI statements
- four bidders' compliance statements were outstanding

The coronavirus (COVID-19) pandemic continued to cause economic uncertainty and, unsurprisingly, bidders that acquired targets in the sectors most affected by lockdown restrictions (retail, transport, hospitality and insurance) made announcements of divergence from their original statements of intention.

“

It is perhaps unsurprising that there has been a degree of divergence from the stated intentions of a number of bidders as they seek to adjust to the 'new normal' and are finding trading conditions more challenging than they initially envisaged. It will be intriguing to see whether the Panel continues to show flexibility on this divergence during the next 12 months. We may see increased focus on intention statements from key stakeholders such as employee representatives who may seek to make them as specific as possible to safeguard the interests of employees. We may also see more opinions from employee representatives setting out their views on the merits of particular offers as they scrutinise bidders' statements of intention in bid documentation.

Adam Cain
Legal Director, Pinsent Masons



All but three of the eight divergence statements cited COVID-19 as the reason for departing from the original POI statement. Where COVID-19 was cited in the divergence statement, the most common action related to furloughing of employees and/or reduction in headcount, but office closures, reduced marketing spend and other restructuring measures were also cited.

Possible offers

In our [full year trend report for 2020](#) we noted considerable competition for assets during the second half of the year with 36 possible offers under consideration in relation to 21 targets. H1 2021 saw less competition at the possible offer stage with 24 possible offer announcements identifying potential bidders in relation to 23 targets.

Seven of these possible offers (29%) progressed to firm offers, which is a similar conversion rate to that seen in H1 2020 and H2 2020 when 30% and 19% of possible offers progressed to firm offers during the respective review periods.

Shareholder engagement

H1 2021 saw shareholders becoming increasingly vocal in their opposition to bids where they felt that the offer undervalued the target company. On Caesars Entertainment's takeover of William Hill, investors unsuccessfully sought to persuade the court not to sanction the scheme on the grounds that key information had been omitted in the scheme document. Shareholders also voiced opposition to the takeovers of Globalworth Real Estate Investments, St Modwen Properties and Telit Communications, on the grounds that the offers materially undervalued the companies.

“

One interesting global trend that we have observed in recent months is activist opposition to deals increasing and in fact exceeding demands pushing for M&A. We have certainly seen this being played out in the UK market in a number of recent takeovers. Rather than opposing the deal in principle, activists are questioning the timing of some deals and pushing for better terms, claiming that UK plc is being acquired on the cheap by opportunistic funds – and traditional fund managers are adding their voice to the mix. We are also seeing the scheme of arrangement hearing being used as a forum for shareholder dissent.

Kate Cooper
Partner, Freshfields Bruckhaus
Deringer

The post-pandemic world provides fertile ground for activists to propose M&A solutions, be it a take private, a spin-off of a non-core division or a strategic acquisition. Activists will be able to generate value from transaction promotion or disruption or 'bumpitriage'. Whilst valuations remain opaque, we expect M&A opposition to increase, with minority shareholders exercising the full spectrum of tools at their disposal to engage with bidders.

Tom Matthews
Partner, White & Case



Legal and regulatory developments

Legal and regulatory developments in H1 2021 included:

- the Takeover Panel announcing that it would be proceeding with the amendments to the Code, which were outlined in its October 2020 consultation paper. The amended Code applies to firm offers announced on or after 5 July 2021 and makes substantial changes to the treatment of offer conditions and the timetable for takeovers structured as contractual offers
- the High Court clarifying how shares held by certain nominee shareholders, including holders of American Depositary Receipts, should be treated for the purpose of the headcount test on a scheme of arrangement
- publication of new guidance by the European Commission (Commission) on Article 22 EU Merger Regulation referrals for transactions falling below national thresholds
- publication of new EU foreign and direct investment (FDI) proposals to address the potential distortive effects of foreign subsidies in the single market
- UK legislation to introduce a mandatory FDI screening receiving Royal Assent
- the Competition Appeal Tribunal (CAT) judgment upholding the Competition and Markets Authority (CMA)'s decision concerning its finding of jurisdiction in Sabre/Farelogix

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

“

The Code changes introduced in July 2021 reflect the Panel's understandable desire to simplify the process and treat regulatory conditions consistently. The outcome is likely to be more hard negotiated conditionality to enable offerors to avoid Phase II references in the EU and UK and for more pre-conditional bids.

Nicole Kar
Partner, Linklaters

We are now seeing requests being made to BEIS for informal guidance under the new National Security & Investment regime, predominantly in relation to deals which feature one of the 17 sensitive sectors but in other sectors too - clients are understandably taking a cautious approach. We expect informal notifications to continue over the coming months. It is still too early to predict the impact of the new regime - the message from government is that the legislation is not intended to result in a fundamental change in the landscape in terms of deals being blocked.

Kate Cooper
Partner, Freshfields Bruckhaus
Deringer

The longer term impact of the enactment into law of the National Security and Investment Act on UK takeover activity remains to be seen. It is too early to accurately assess whether the UK's new national security vetting regime will deter certain foreign based would-be bidders for UK PLCs. UK PLCs have, however, been attractive targets for foreign acquirers for many years and recent activity would suggest they remain so. Bidders are, in these early days, in certain circumstances including generic national security conditionality in their offers.

Giles Distin
Partner, Addleshaw Goddard



Outlook for 2021



Private equity has been the story of the year. AG's "To P2P or not P2P" research predicted this surge, the driver of which is the competition for a limited number of quality private sale mandates leading PE firms to look for better value in UK plc. The volume of private equity's dry powder mean this will be a systemic issue of the public M&A landscape for the foreseeable future.

Simon Wood
Partner, Addleshaw Goddard

There are no signs that the current level of interest shown by cash-rich PE funds and other bidders for UK listed companies will wane, so we expect another busy six months ahead. However, valuation remains a key challenge in the wake of Brexit and the pandemic. Following vocal criticism from shareholders on recent bids, target boards will be particularly mindful of the need to drive a hard bargain to address the perception that listed companies are being sold too cheaply and that offer prices are not reflective of longer term growth potential.

Kate Cooper
Partner, Freshfields Bruckhaus Deringer

M&A activity should remain buoyant through H2, particularly given the improved outlook on the COVID-19 pandemic, a more settled UK and US political environment (in particular post-Brexit and US elections), and continued ready availability of cash and debt. One potential buffer to watch out for though is the crystallisation of any inflationary shock (and expectations of an interest rate rise). We also expect a new era of activism to kick-off.

Potential inhibitors to transactions include another twist on the COVID-19 road, the ever-present risk of military tensions (in the Middle East and other sensitive areas) causing broader geopolitical fallout, or simply over-heating/competition in a particular sector or the wider market causing valuation gaps between buyers and sellers to widen. That said any downturn can still present opportunities for well-prepared bidders and targets alike, particularly where they're aligned in terms of pricing that risk or scenario, including share exchange deals and mergers of equals.

Patrick Sarch
Partner, Hogan Lovells

Given the depressed market price of many UK companies, the diminishing of post Brexit uncertainties and availability of cheap debt we would expect the trend of strong interest from private equity/financial investors in P2P transactions in UK companies to continue into the second half of 2021 with continued interest also coming from non-UK strategic bidders. We anticipate that a significant proportion of private equity interest will continue to come from US investors. We think this will be true across all sectors. Consequently, we anticipate a continuing preponderance of cash offers, many with a significant debt component.

It is possible that the groundswell of discomfort with private equity/financial buyers that is currently being expressed in parts of the press will affect political attitudes to some bids. It will be interesting to see how this activity and media coverage interact with the application of the new National Security and Investment Act regime in certain sectors and how wide its net is cast, although we don't expect the new regime to lead to any meaningful reduction in overall activity levels for the foreseeable future.

Iain Fenn
Partner, Linklaters

As the current level of public M&A activity in the UK market shows no sign of abating, it is likely that we will see an increased number of hostile approaches, particularly for companies with an attractive asset base that are perceived to be significantly undervalued. If initial approaches are rejected and differences in valuation cannot be reconciled, we may see hostile bidders electing to bypass target company boards and discuss the strategic rationale for their bid directly with institutional shareholders. Sophisticated prospective bidders that are well-versed in the requirements of the Code could launch hostile bids if the right circumstances arise, as they seek to control the investment narrative with shareholders and use their first-mover advantage to try and dispel any potential interloper risk.

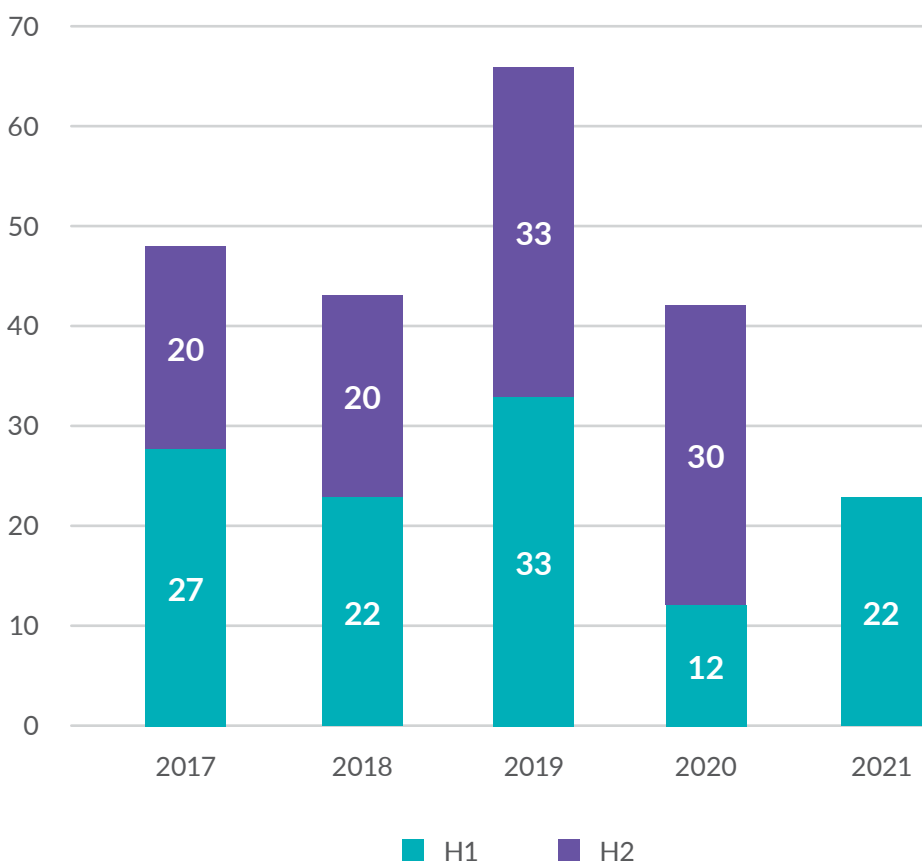
Adam Cain
Legal Director, Pinsent Masons

01 Deal value and volume

After a very strong last quarter in 2020, takeover activity returned to more moderate levels in 2021 with 22 firm offers announced in H1 2021. This represented a 27% drop in deal volume compared with H2 2020 (30 firm offers), but an 83% increase compared with H1 2020 (12 firm offers).

Aggregate deal value for all firm offers announced in H1 2021 was £17.9bn (H1 2020: £2.6bn; H2 2020: £33.4bn) and average deal value was £811m (H1 2020: £220m; H2 2020: £1.1bn).

Deal volume (firm offers)



Six transactions had a deal value over £1bn with the largest transaction being the £3.5bn offer for Signature Aviation by a consortium comprising Blackstone, Global Infrastructure Partners and Bill Gates’s Cascade Investment.

Average bid premium (measured by comparing the offer price with the target’s share price immediately before the start of the offer period) was 32%, with the highest bid premium being 79% and the lowest being a 4% discount to the target’s share price immediately before the start of the offer period.

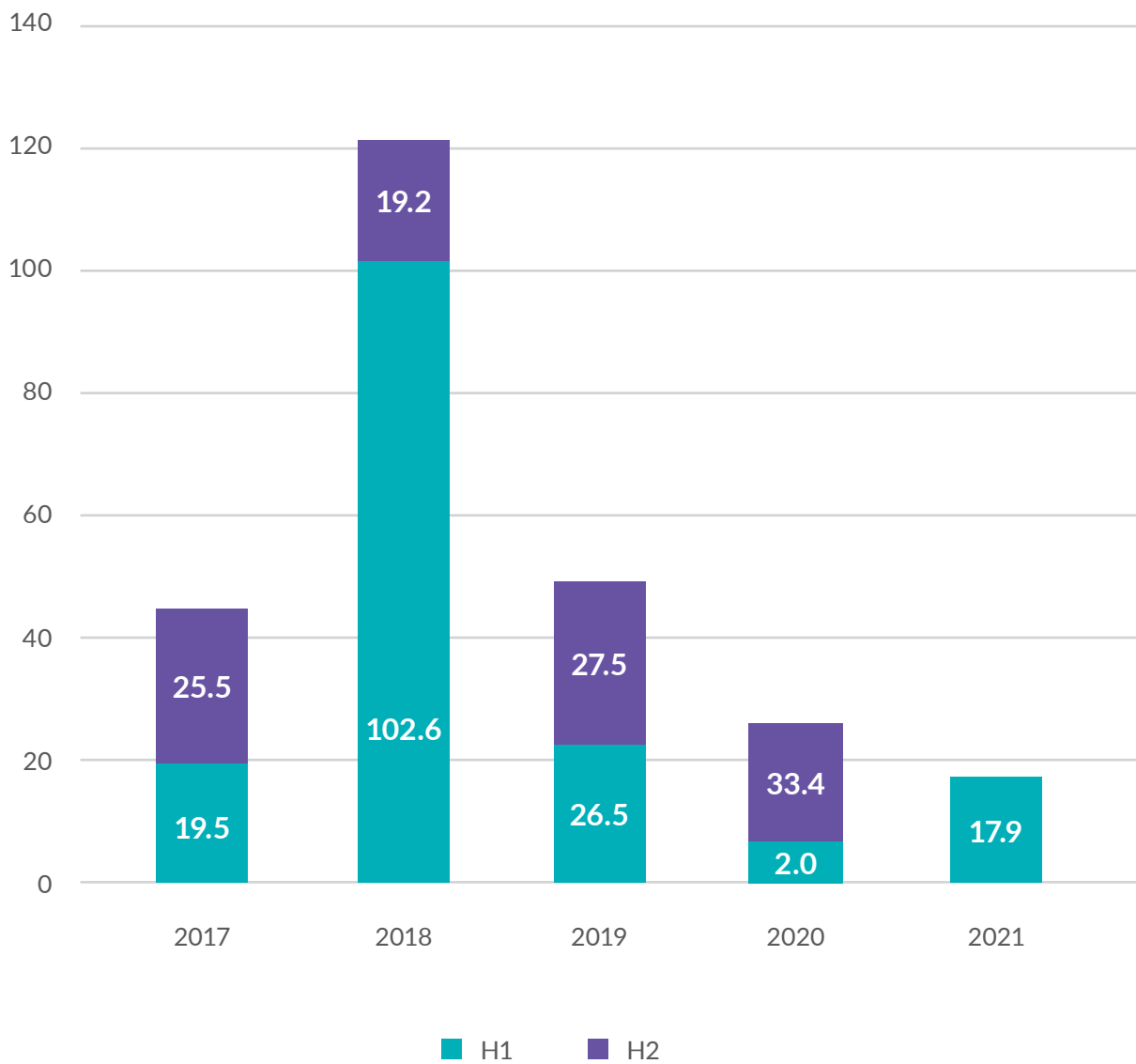


The strong first half performance this year is not such a surprise given the global (private and public) M&A backdrop. As at May 2021, M&A volumes globally were the most active ever and on track for a new record with announced volumes up 181% year-over-year and the proportion of mega deals (in excess of US\$500m) showing a 156% year-over-year. The US market has been particularly busy with US targets being the subject of more than half global M&A and US buyers also being involved in over half of bids for UK quoted targets in H1 2021. Globally P2Ps have held steady compared to previous years accounting for circa 5% of all global M&A. The picture in the UK for P2Ps, however, this year has been starkly different with P2Ps accounting for nearly three-quarters of all firm offers announced in H1 2021.

Selina Sagayam
Partner, Gibson Dunn



Aggregate deal values (£bn)

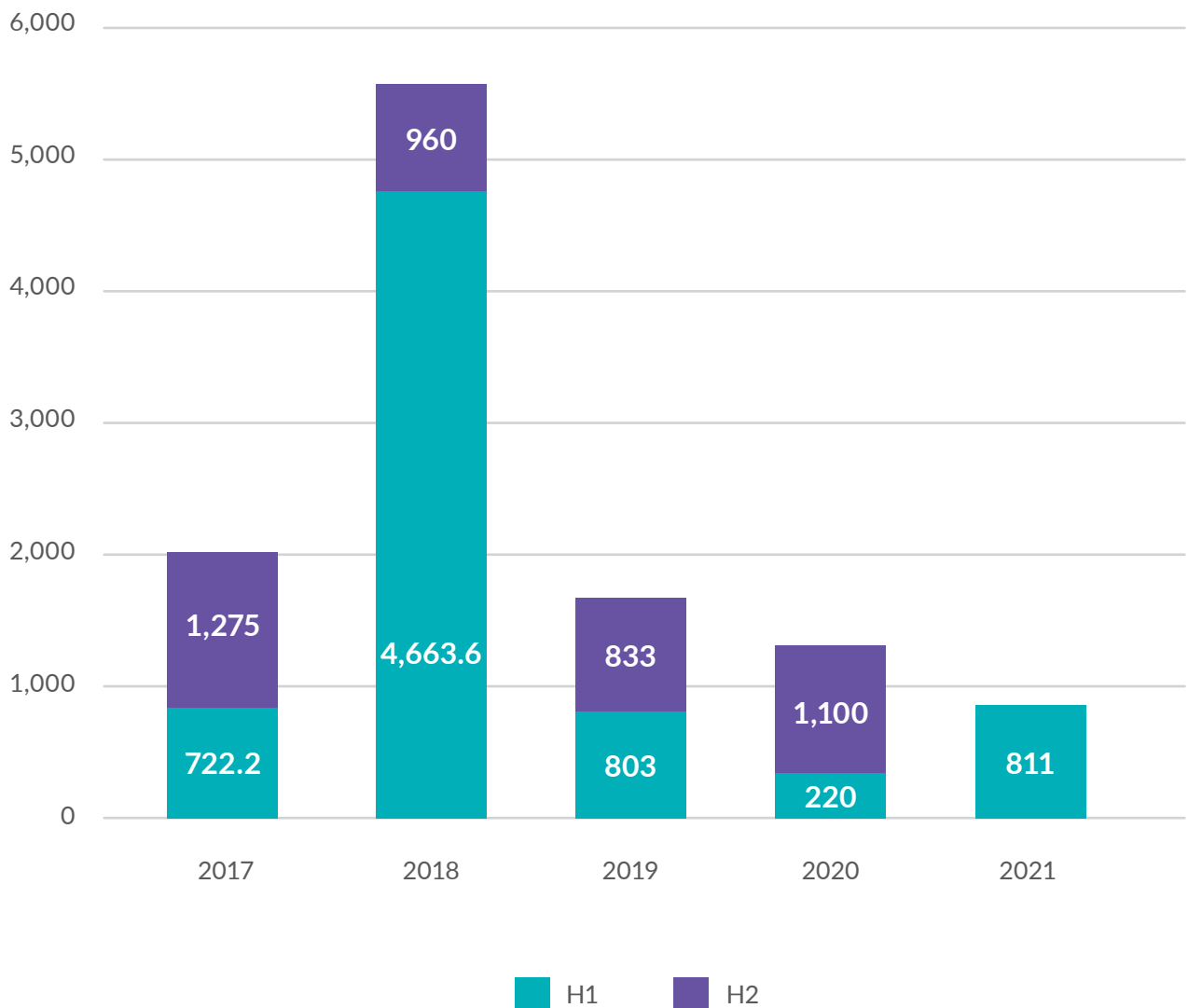




We saw a significant uptick in the number of deals announced at the back end of 2020 and this momentum has continued into 2021 with global M&A reaching record highs. This is in no small part due to the SPAC boom in the US, which has generated a significant bank of capital that needs to be spent. As competition for assets increases in private markets, we expect interest to turn to public M&A, particularly in the UK where the public markets continue to trade at a discount to their international peers.

Allan Taylor
Partner, White & Case

Average deal values (£m)



02 Deal structure

19 (86%) of the 22 firm offers announced in H1 2021 were structured as schemes of arrangement. The three takeovers that were structured as offers were CPI and Aroundtown’s £1.4bn offer for Globalworth Real Estate Investments, Epiris and James Hay Partnership’s £145m offer for Nucleus Financial and Horvik’s £108m offer for Trans-Siberian Gold.

Offer for Globalworth Real Estate Investments by CPI and Aroundtown

CPI and Aroundtown were interested in shares representing approximately 53% of Globalworth’s share capital. As they would not have been entitled to vote these shares on a scheme of arrangement, an offer structure provided a more predictable route to increase their control of the company. This was underlined when three of Globalworth’s largest shareholders voiced their opposition to the deal.

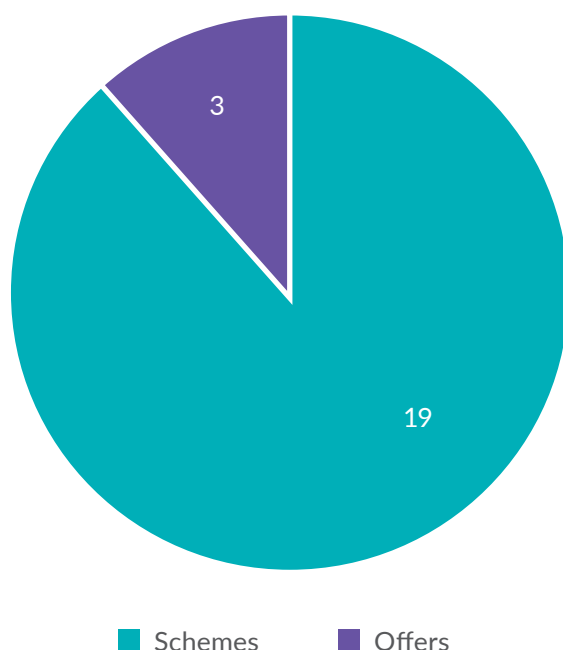
Offer for Nucleus Financial by Epiris and James Hay Partnership

The offer for Nucleus Financial by James Hay Partnership and private equity house, Epiris, which owns James Hay, was originally structured as a scheme. However, this was changed to a contractual offer with the bidders citing a desire ‘to increase certainty of execution’ as the reason for the change in structure. The offer went unconditional as to acceptances on 5 May with the bidders achieving 92% of acceptances as at that date.

Offer for Trans-Siberian Gold by Horvik

Horvik’s offer for Trans-Siberian Gold was a mandatory offer. Implementation of a mandatory offer by way of a scheme of arrangement is only possible with the prior consent of the Panel, which will take into account the views of the offeree board and its financial adviser. In practice it is rare for a mandatory offer to be structured as a scheme.

Firm offers by deal structure



86% of offers this year were by way of scheme – the recent changes to the contractual offer regime will be of limited practical impact, and don’t represent seismic change – market practice will quickly adapt.

Simon Wood
Partner, Addleshaw Goddard

When extensive changes to the Code were introduced in 2010 placing significant restrictions on offer-related arrangement (and seemingly outlawing the implementation agreements that had evolved as the tool with which bidders could protect themselves), there was a feeling that this could result in the conventional offer structure making a comeback. However, the statistics since indicate that schemes are still very much the preferred structure unless there are other compelling reasons to go the offer route. Bidders recognise that even if they cannot have all of the contractual protections they would ideally want when undertaking a public M&A transaction, in practice it is relatively difficult for a target board to recommend an offer to be implemented by way of a scheme and then withdraw it without good reason.

Simon Allport
Partner, Bird & Bird

Although schemes of arrangement remain the structure of choice for a large majority of public takeovers, late challenges (notably William Hill in H1 2021) mean bidders need to be vigilant. In a number of recent cases, shareholders have challenged schemes on the basis of sufficiency and/or accuracy of information. To date, the courts have found in favour of target companies, with the William Hill judgment highlighting that the court has the right to sanction a scheme notwithstanding an inaccuracy or omission where such inaccuracy or omission is not judged to be material. However, while we do not expect bidders to move away from using schemes for recommended offers, both targets and bidders should have an eye on disclosure when drafting scheme documentation.

Tom Matthews
Partner, White & Case

03 Hostile, competing and mandatory offers

Hostile offers

CPI Property Group and Aroundtown's £1.4bn bid for Globalworth Real Estate Investments was the only hostile offer in H1 2021. CPI and Aroundtown held shares representing 53% of the target company at the time of the firm offer announcement. This level of activity is similar to 2020 where only one takeover was hostile (GardaWorld's offer for G4S). The CPI and Aroundtown offer for Globalworth drew criticism from three of the target company's largest shareholders, who agreed with the independent directors' opinion that the offer materially undervalued the company, its assets and its prospects (see: [Shareholder engagement below](#)).

Competing offers

Two of the firm offers announced in H1 2021 took place against the backdrop of potential competing offers: the consortium offer for Signature Aviation and the consortium offer for Nucleus Financial Group.

Nucleus Financial Group

Investment platform provider, Nucleus Financial Group, announced on 2 December 2020 that it was in discussions with four separate bidders in relation to possible offers for the company (see [Nucleus at the centre of takeover interest](#)). Aquiline Capital Partners and Allfunds (UK) each withdrew from the process in December 2020, and Integragin Holdings withdrew on 4 January 2021. James Hay Partnership and its private equity owner, Epiris, announced a firm offer for Nucleus on 9 February 2021.

Signature Aviation

Signature Aviation attracted separate interest from private equity houses Blackstone, Carlyle and Global Infrastructure Partners (GIP) between December 2020 and January 2021. GIP initially announced a recommended offer in January 2021, but withdrew this to make a consortium bid for Signature with Blackstone and Bill Gates's Cascade Investments. For further details, see '[Deal in focus: Signature Aviation](#)' below.

Wm Morrisons

In July 2021, CDR's possible offer for supermarkets group, Morrisons, attracted rival interest with a consortium comprising Fortress Investment Group, Canada Pension Plan Investment Board and Koch Real Estate Investments announcing a £6.3bn recommended offer for Morrisons. US private equity house, Apollo, also announced on 5 July that it was considering a possible offer for the company.

“

Although hostile bids are relatively rare, we wouldn't be surprised to see an uptick, amid the continued trend of bidders and targets, as well as investors, clashing publicly on valuation expectations. Bid defence preparation by targets is more important now than ever, including to ensure maximum value is extracted from any bidders mounting the barricades.

John Connell
Partner, Hogan Lovells

The rarity of unilateral offers clearly illustrates the difficulty for a hostile bidder to achieve a successful outcome. This is perhaps not just down to offer structures and regulation providing greater tools and protection to target boards, but it is also an indication that the corporate governance of public companies and the interaction between a public company's board and its shareholders in current times makes it less likely that there will be a total disconnect between the board's views and what shareholders actually want. There will always be instances where a hostile approach can be justified, but the days of the serial hostile bidder seem to be numbered.

Simon Allport
Partner, Bird & Bird



G4S

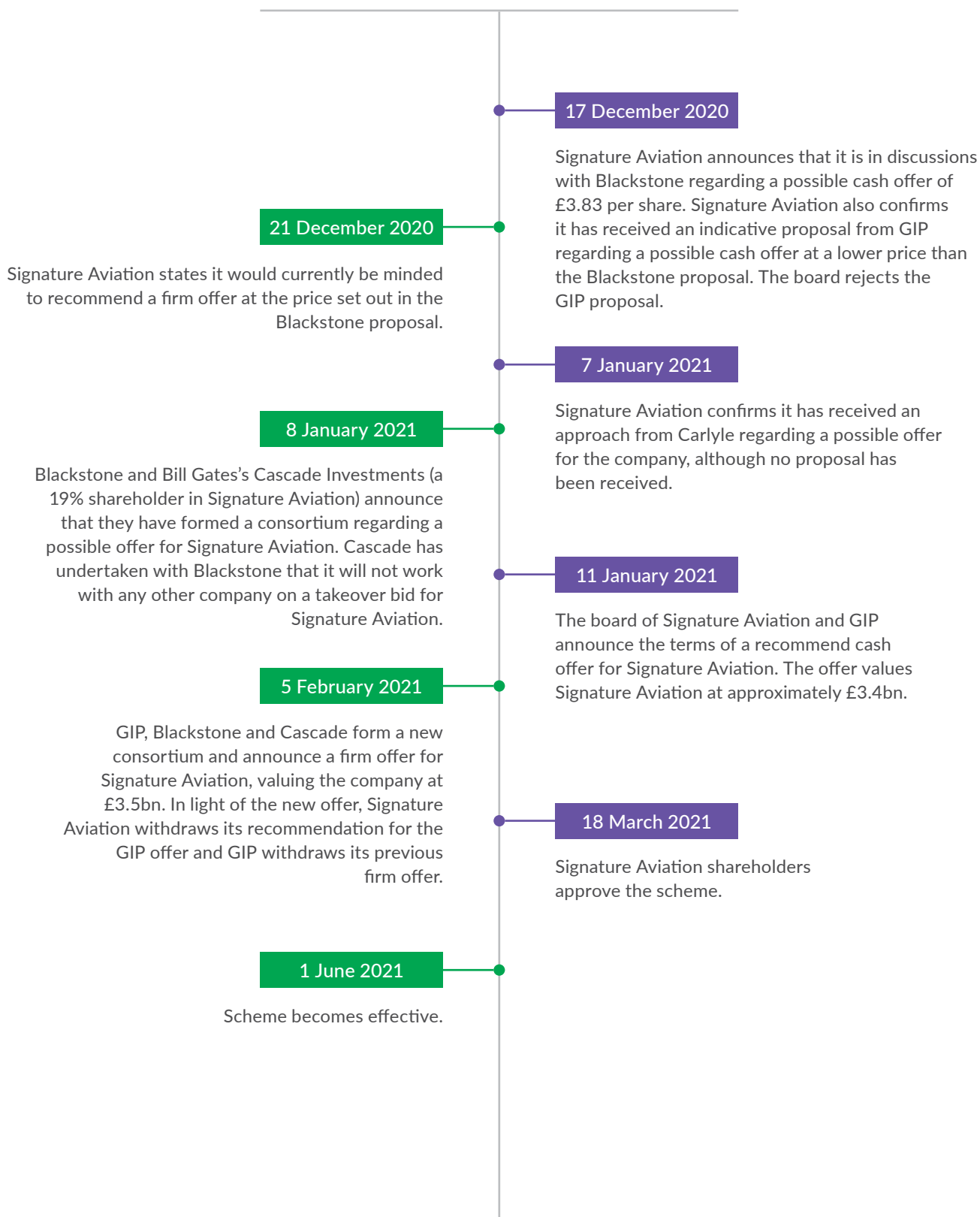
The competing offers for G4S from GardaWorld and Allied Universal that were announced in H2 2020 were determined by the Panel initiating an auction process under the Code. Allied Universal emerged as the highest bidder with its offer going unconditional in March 2021.

Mandatory offer

There was one mandatory offer in H1 2021: the £108m offer for Trans-Siberian Gold by Vladislav Sviblov's Horvik. This was triggered by Horvik acquiring shares representing 51% of Trans-Siberian Gold's share capital from various UFG funds and connected persons. The offer was declared unconditional on 9 July 2021.



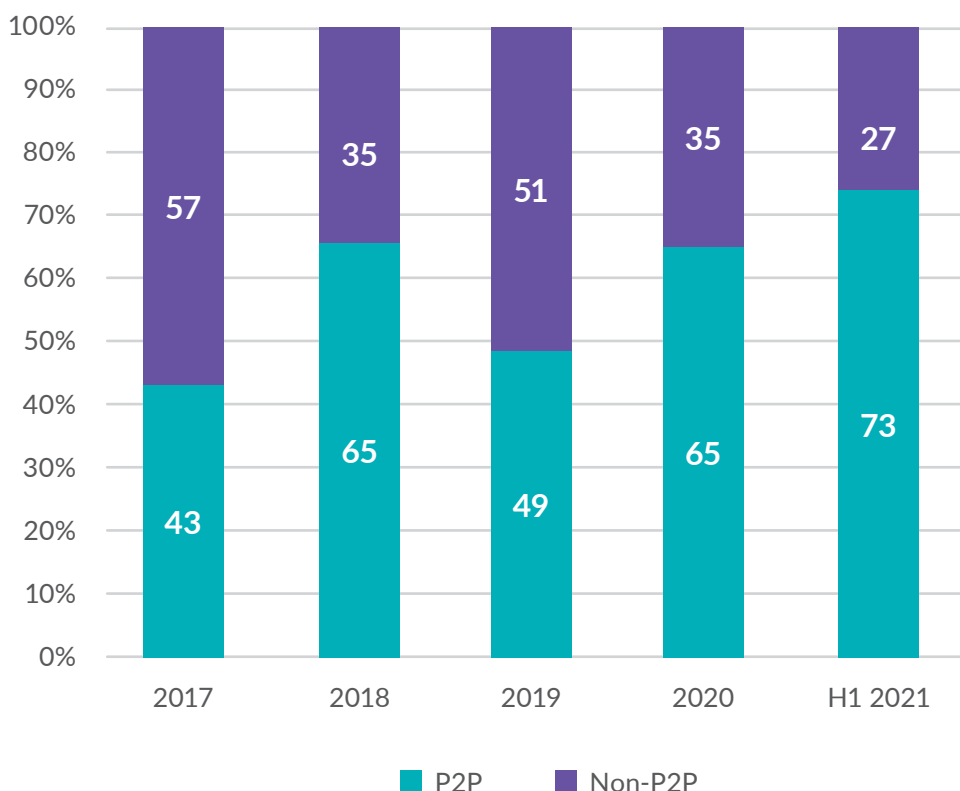
Deal in focus: Signature Aviation



04 Public to private transactions

There were 16 P2P transactions in H1 2021 (H1 2020: 8; H2 2020: 20) which represented 73% of all firm offers announced during the period. This is similar to the level of P2P activity in H1 2020 and H2 2020 when private equity, financial investors and individuals/family offices accounted for 67% of all firm offers in both half-year periods.

P2P transactions as a proportion of all firm offers



Aggregate deal value of P2P transactions was £12.9bn (H1 2020: £2bn; H2 2020: £19.2bn) and average deal value was £807m (H1 2020: £253m; H2 2020: £961m).

12 (75%) of the 16 P2P transactions were cash offers and four (25%) were structured as cash offers with an unlisted shares alternative (see: *Nature of consideration below*).

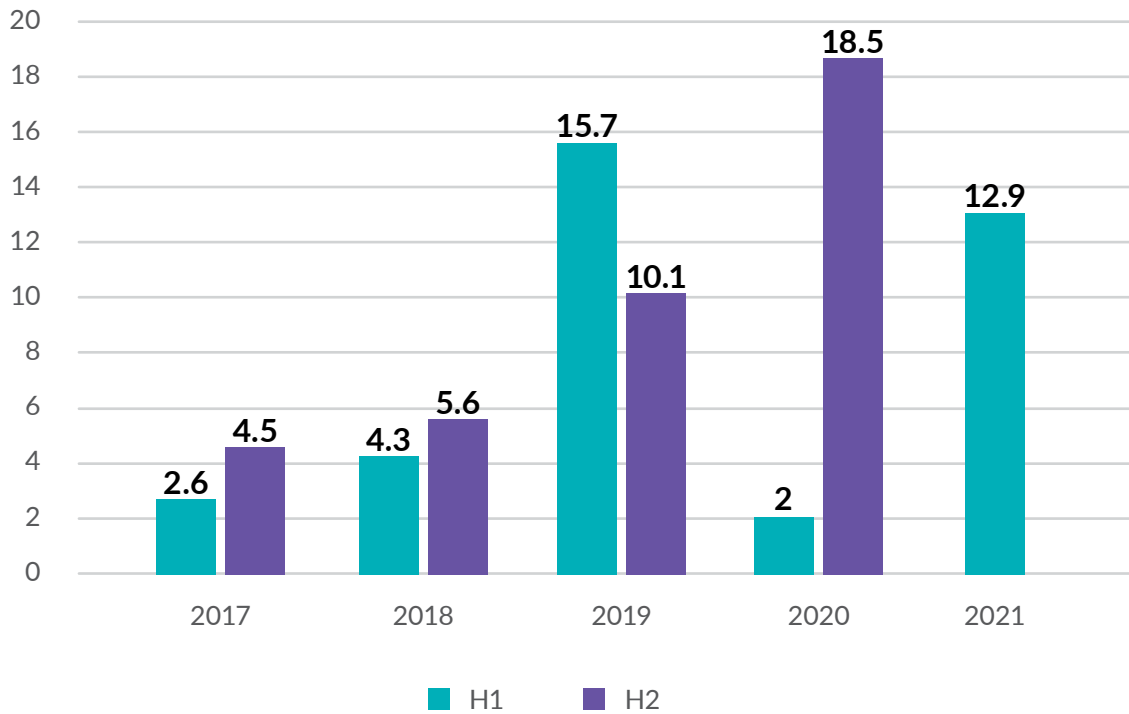


With the ready availability of leverage, and with PE’s growing familiarity with UK takeover bids and their confidence in the space, it is noticeable that PE is increasingly dominating at the upper end of the takeover market place.

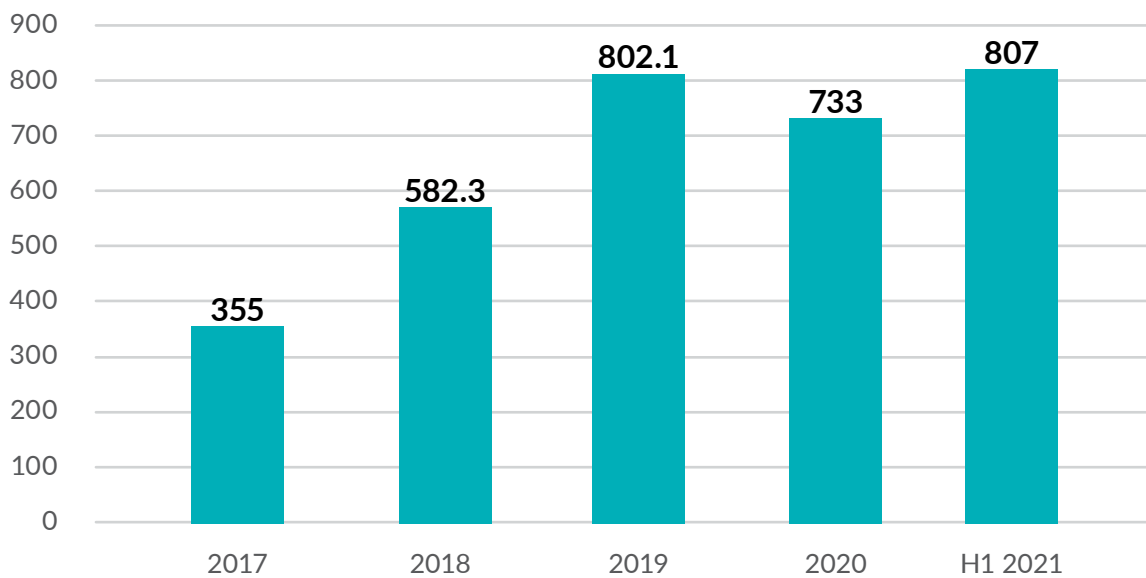
Giles Distin
Partner, Addleshaw Goddard



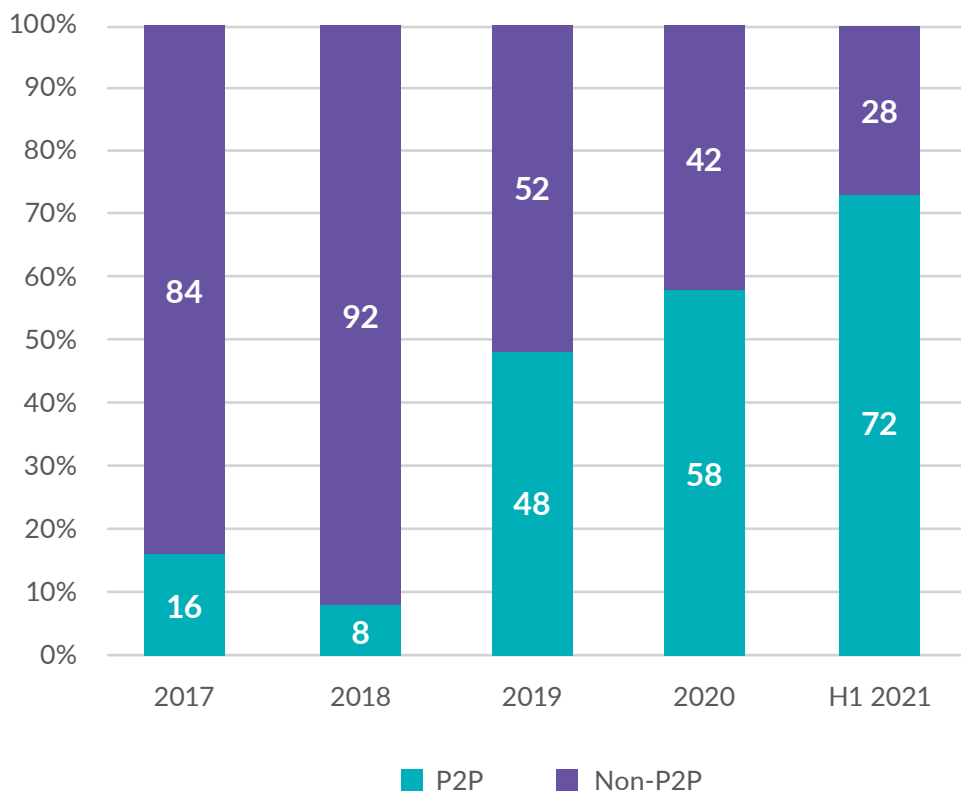
Aggregate deal value of P2P transactions (£bn)



Average deal value for P2P transactions (£m)



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



Record levels of uncalled capital, supportive fiscal policies and subdued markets are delivering real value opportunities for agile investors. Couple this with increased competition for assets in the private markets and we expect the P2P trend to continue strongly into H2 2021.

Allan Taylor
Partner, White & Case

Public-to-private bids saw another strong half, accounting for over 70% of bids, and attracting the inevitable spotlight of the media with 'fearmongering' claims of a 'raid' by PE firms on UK listed targets, with PE firms picking up targets on the cheap and boards selling up too cheaply. However, some of the heftiest premiums in this half (all of those at 50% or in excess) have been backed by asset management bidders. Furthermore, boards continue to face pressure from shareholders to extract maximum value and we have seen (publicly) a number of bids being rebuffed with even more (behind the scenes) being subject of hefty price uplift negotiations. We need to be wary of calls for more target company protection - the Code has seen a series of significant changes over the years to shift the balance considerably in favour of target boards and to 'protect' them from themselves when engaging with bidders through the prohibition on deal protection measures and other timetable changes.

Selina Sagayam
Partner, Gibson Dunn



Consortium bids

Four of the P2P transactions were consortium bids:

- the £3.5bn offer for Signature Aviation made by a consortium comprising Blackrock, Global Infrastructure Partners and Cascade
- the £2.3bn offer for Aggreko by TDR Capital and I Squared Capital
- the £1.4bn offer for Globalworth Real Estate Investments by CPI Property Group and Aroundtown
- the £75m offer for Proactis Holdings by Pollen Street Capital and DBAY Advisors

Consortium bids have proved increasingly attractive in recent years as a means to share deal risk, bid on increasingly larger transactions and allow more passive investors to partner with a more engaged sponsor. On the Signature Aviation and Proactis Holdings bids, the consortium structure enabled existing shareholders, Cascade and DBAY Advisors, to retain an ongoing interest in the target company. On the Globalworth Real Estate Investments bid, the consortium comprised CPI Property Group and Aroundtown who between them held 52% of the equity in the target company.

Individuals/family offices

Four of the P2P transactions in H1 2021 involved individuals or family offices:

- Bill Gates's private investment vehicle, Cascade, formed part of the consortium on the £3.5bn offer for Signature Aviation. Cascade held a 19% stake in Signature Aviation at the time of the firm offer announcement
- the £1.4bn offer for Globalworth Real Estate Investments was made by CPI Property Group and Aroundtown. 94% of CPI's voting rights are controlled by Czech entrepreneur, Radovan Vitek
- the £108m offer for Trans-Siberian Gold was made by Horvik, a company indirectly owned by Vladislav Sviblov. Sviblov was also behind the £1.1bn offer for Highland Gold Mining, which was made by Fortiana Holdings in 2020
- the £80m offer for Cambria Automobiles by its CEO and founder, Mark Lavery



The uptick in consortium bids has been notable. Structuring these sort of bids has historically been difficult, as navigating the Takeover Code where a consortium is involved can be challenging. However, as the structure becomes more used, so the means of addressing regulatory constraints becomes more tried and tested. We see considerable interest from family offices and sovereign wealth funds in teaming up with private equity in particular to share the risk (and reward) in participating in public M&A transactions.

Simon Allport
Partner, Bird & Bird

We've been seeing an uptick in consortium bids, including having acted for CPI Property on its joint bid for Globalworth – and jumping through the various hoops involved in obtaining 'joint offeror' status from the Takeover Panel, for example regarding control, governance, exit horizon, shareholding, financial and other contributions.

John Holme
Counsel, Hogan Lovells

The recent trend for certain P2P transactions being implemented as consortium bids has continued in H1 2021. Although consortium deals pose their own particular challenges in terms of how the acquisition is to be funded and the respective roles of the members of the consortium in terms of the implementation of the proposed bid, private equity funds appear adept at managing these risks. We expect consortium bids to remain a feature of the public M&A market in the medium term particularly because they provide an ideal structure for prospective purchasers to combine their differing capabilities and expertise. Bidders with significant financial resources but which lack the degree of industry specialism to evaluate the merits of a bid independently will continue to work alongside market participants that have the requisite sector knowledge and have a degree of familiarity with the mechanics of the Takeover Code.

Adam Cain
Legal Director, Pinsent Masons

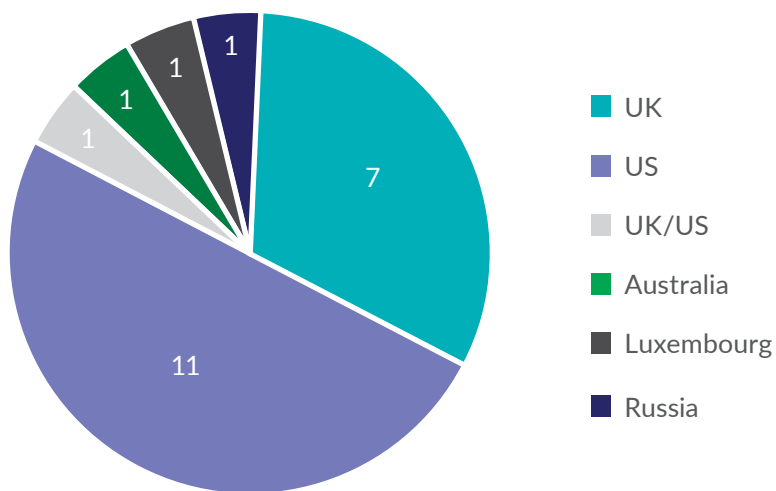
05 UK and international bidders

Of the 22 firm offers announced in H1 2021:

- seven (32%) were made by UK bidders² (H1 2020: 50%; H2 2020: 24%)
- 11 (50%) were made by US bidders (H1 2020: 33%; H2 2020: 29%)
- one (5%) was made by a UK bidder and a US bidder (H1 2020: 8%; H2 2020: 7%)
- one (5%) was made by an Australian bidder
- one (5%) was made by a Luxembourg bidder
- one (5%) was made by a Russian bidder

Overseas bidders were involved in firm offers with an aggregate deal value of £16.6bn (H1 2020: £657m; H2 2020: £29.8bn), which represented 93% of aggregate deal value for all firm offers during H1 2021 (H1 2020: 25%; H2 2020: 89%). US bidders were particularly active, being involved in offers with an aggregate deal value of £14.1bn, which represented 79% of aggregate deal value in H1 2021.

Bidder jurisdiction (firm offers)



The US has dominated the market in H1 2021 and we continue to see high levels of interest from non-UK bidders, particularly from across the Atlantic, going into the second half of the year.

Dominic Ross
Partner, White & Case



² For these purposes we have treated DBAY Advisors, which is incorporated in the Isle of Man, as a UK bidder.

Analysis of deal volume and deal value by bidder jurisdiction



Bidder Jurisdiction	Number of bidders	Aggregate deal value
US	11	£11.8bn
UK	7	£1.3bn
UK and US	1	£2.3bn
Australia	1	£1bn
Luxembourg	1	£1.4bn
Russia	1	£108m

Despite the recent buoyancy in the UK equity markets, it is clear that overseas acquirers consider the UK to be fertile territory for opportunistic acquisitions. We are seeing US bidders that consider UK public companies to be a strong value proposition attempting to take advantage of the perceived dislocation between a company's current share price and its positive long-term trading prospects. The increased degree of unsolicited activity by US bidders is a reflection of the relative cheapness of UK mid-cap stocks in particular. US bidders remain well-placed to take advantage of the relative weakness of sterling and to capitalise on the opportunities that the pandemic has presented, through accelerating their plans for strategic growth and executing transformational deals within the regulatory framework that the UK Takeover Code imposes. The resurgence of SPACs in the US has added an additional degree of competition for high-quality listed assets. This degree of activity has precipitated a renewed focus from companies on implementing the correct defence strategy as they seek to ward off unwelcome approaches.

Adam Cain
Legal Director, Pinsent Masons

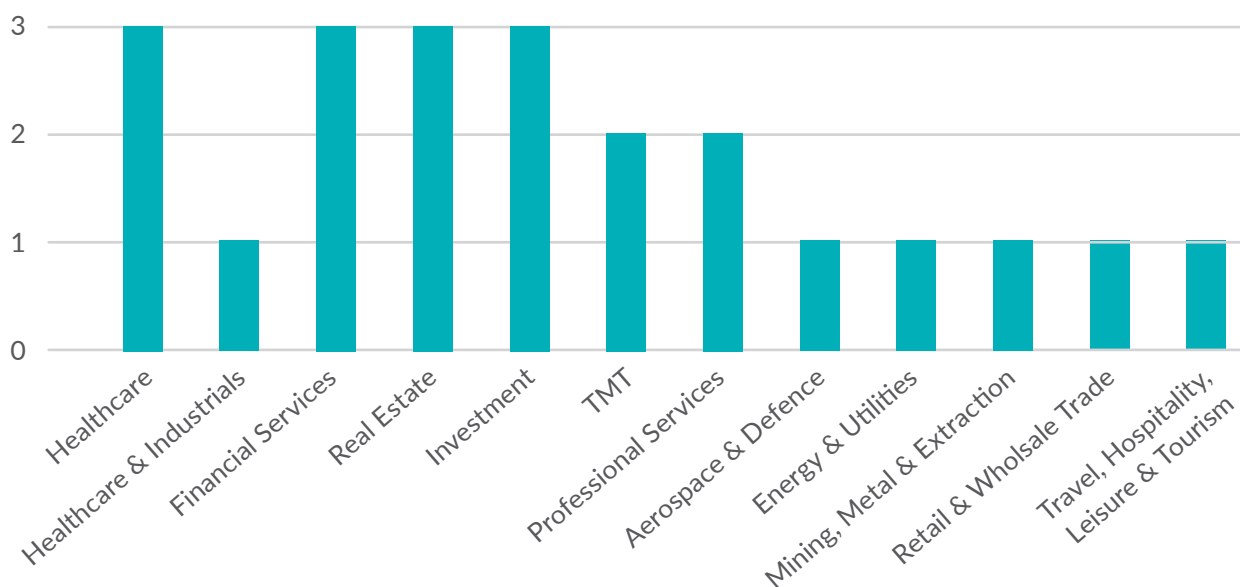


06 Industry

Public M&A activity was spread across a range of sectors in H1 2021 with the most active sectors being Healthcare (18%), Financial Services (14%), Investment (14%) and Real Estate (14%). The largest transaction was in the Aerospace & Defence sector (the £3.5bn consortium offer for Signature Aviation).

One interesting transaction, which was outside the scope of this report³, was the €4.9bn recommended offer for UK chip designer, Dialog Semiconductor, by Japanese chipmaker, Renesas Electronics. Dialog's largest customer is Apple, which accounted for over 60% of Dialog's revenue for 2020. Renesas, is one of the largest chipmakers to the automotive sector and the deal was viewed as offering both companies an opportunity to diversify their product offerings.

Industry sectors by deal volume
(firm offers H1 2021)



It is arguable that the spread of bids across different sectors is not so stark as to be indicative of any one particular industry being more attractive to bidders than another. That the healthcare sector should lead the field in numerical terms is perhaps a recognition that in today's world, this is an increasingly important (and therefore attractive) sector. However, what is not in doubt is the level of interest of US bidders (particularly private equity) in UK public companies. In our experience, US bidders have always been quite sceptical about the UK regulatory regime, but it is clear that there is now a greater understanding of this and therefore a greater willingness to enter the market.

Simon Allport
Partner, Bird & Bird

³ This report reviews public M&A transactions for Main Market and AIM companies that are subject to the Code. While Dialog Semiconductor is subject to the Code, its securities are quoted on the Frankfurt Stock Exchange and therefore the transaction falls outside the scope of this report.

Aggregate deal value of top six sectors by deal volume (H1 2021)

Sector	Aggregate deal value	Aggregate deal value	Number of transactions
Real Estate	£2.7bn	15%	3
Investment	£2.7bn	15%	3
Healthcare	£2.5bn	14%	4
Financial Services	£932m	5%	3
Professional Services	£743m	4%	2
TMT	£382m	2%	2



Particularly hot sectors we're seeing at the moment include life sciences/healthcare (including advising PerkinElmer on its two recent UK public takeovers), TMT (including advising DBAY on its bid for Telit), and real estate (including advising CPI Property on its joint bid for Globalworth). The consumer/retail and travel and leisure sectors, having been particularly hard hit by COVID-19, are now looking to present value opportunities and are attracting significant interest, with a better outlook on the horizon.

Tom Brassington
Partner, Hogan Lovells

Construction and industrial stocks could be given a helping hand by the UK government's ambitions for infrastructure, manufacturing and these sectors more broadly. The FIG sector has also been active, and our team has been guiding clients through some of its trickier regulatory and capital requirements. Sub-sectors to watch include fintech, payment services, loan portfolios, asset/wealth management, and the challenger banks.

John Connell
Partner, Hogan Lovells



Healthcare

Healthcare was the most active sector in H1 2021 seeing four firm offers with an aggregate deal value of £2.5bn. The four transactions were:

- the £1bn offer for independent hospital group, Spire, by Australian healthcare provider, Ramsay Health Care
- the £958m offer for Vectura (a specialist maker of inhalers) by US private equity house, Carlyle
- the £413m offer for Healthcare & Industrials company, Scapa Group, by US corporate, Schweitzer-Maudit International
- the £110m offer for Immunodiagnostic Systems by US healthcare company, PerkinElmer

Gaming

Since the US Supreme Court overturned a federal statute that empowered the US government to order certain states to take actions to ban sports betting, US casino operators have increasingly looked to pursue tie-ups with European gambling companies to help them win market share in the nascent US market. An example of this in H1 2021 was the £2bn offer for online gaming operator, Gamesys, by US casino operator, Bally's.

Two other examples of US companies targeting UK operators are the £2.9bn takeover of William Hill by Caesars Entertainment and the indicative offer put forward by MGM for Entain, the owner of Ladbrokes and Bwin. The William Hill takeover was announced in September 2020 and completed in April 2021. MGM's possible offer for Entain was announced in January 2021, but was subsequently withdrawn after the Entain board described the MGM proposal as significantly undervaluing the company and its prospects. The William Hill and Entain offers shared the common characteristic of both bidders being the US partner of the UK target, which reflects the desire of US companies to draw on the expertise of operators in the long-established UK market.

“

The increased interest in healthcare companies, particularly from cash rich overseas bidders, is not unexpected. Vaccine, medical device and diagnostics companies, particularly those connected to the pandemic response and preparedness for future pandemics, will continue to make attractive targets not least because they offer the real prospect of long-term value creation for bidders. Conversely, those companies with established business models that have performed poorly during the pandemic – often because their businesses were not directly connected with fighting the pandemic – will be seen as undervalued as focus starts to slowly shift away from COVID and back towards more routine therapies.

By the same token, the valuation of private hospitals and clinics which lost out during the pandemic on being able to offer elective procedures to foreign customers after partnering with the NHS, has been negatively impacted during the pandemic, thereby presenting an opportunistic bidder with the chance to acquire a target that is only likely to increase in value as the restrictions imposed during the pandemic begin to ease.

Sunjay Malhotra
Senior Associate, Pinsent Masons

US gaming companies with deep pockets see UK operators with an established presence and expertise in the online sports betting market as a 'must-have' in order to help with their own expansion into the sports betting world as the US liberalises its gambling rules over the next few years. As a result, we can expect to see US bidders offering substantial premiums to super-charge the scaling up of their domestic operations.

Sunjay Malhotra
Senior Associate, Pinsent Masons



Coronavirus pandemic

The economic impact of the coronavirus (COVID-19) pandemic affected target companies in a number of different ways.

Aggreko

Glasgow-headquartered, Aggreko, provides generators and cooling equipment for large-scale events such as the Olympics and Glastonbury, as well as for remote areas and industrial sites. Its markets were severely hit by the restrictions on social gatherings introduced by national governments in response to the coronavirus pandemic. Pre-tax profits before exceptional items almost halved in 2020 to £102m (2019; £199m), although the company said it was 'encouraged' to see its end markets recovering. In March 2021 the company announced a £2.3bn recommended offer from TDR Capital and I Squared Capital in March 2021. TDR Capital and I Squared Capital have said they are supportive of the substantial changes that will be needed to fulfil Aggreko's strategy of transitioning to a net-zero emissions business by 2050.

Arrow Global Group

Arrow Global Group is a specialist investor in non-performing loans and non-core assets. After hitting lows during the height of the pandemic in March 2020, its share price recovered strongly before it received an approach from TDR Capital and I Squared Capital in February 2021. Arrow's most recent annual report estimated that, based on provisions that banks incurred in 2020, the non-performing loans market would increase at least 50% to around €500bn in the coming years.

Immunodiagnostic

Immunodiagnostic reported that its business was adversely impacted by the coronavirus pandemic during the first half of the financial year ending March 2021 as a result of reduced levels of routine diagnostic testing. However, the business recovered strongly in the second half of the 2020/21 financial year and the board anticipated a return to growth once the pandemic has passed. The company announced a recommended offer from PerkinElmer in May 2021.

John Laing

With the UK government announcing the availability of £600bn for investment in infrastructure and other national governments also boosting infrastructure spending following the coronavirus pandemic, the sector has attracted interest from investors. In May 2021, infrastructure investor John Laing Group announced a £2bn recommended offer from US private equity house, KKR. Analysts anticipate that KKR's financial resources could transform the fortunes of FTSE 250 group.

Spire

UK private hospital operator, Spire's, share price had declined steadily since a bid from its largest shareholder, Mediclinic, failed in 2017. However, the share price recovered strongly from the lows in March 2020 and in May 2021 the company announced a £1bn offer from Australian healthcare company, Ramsay Health Care, which had the backing of the Spire board and Mediclinic. The scheme document describes both companies as having played a vital role partnering with the NHS in the efforts against the COVID-19 pandemic, along with the broader UK acute care sector.



07 Nature of consideration

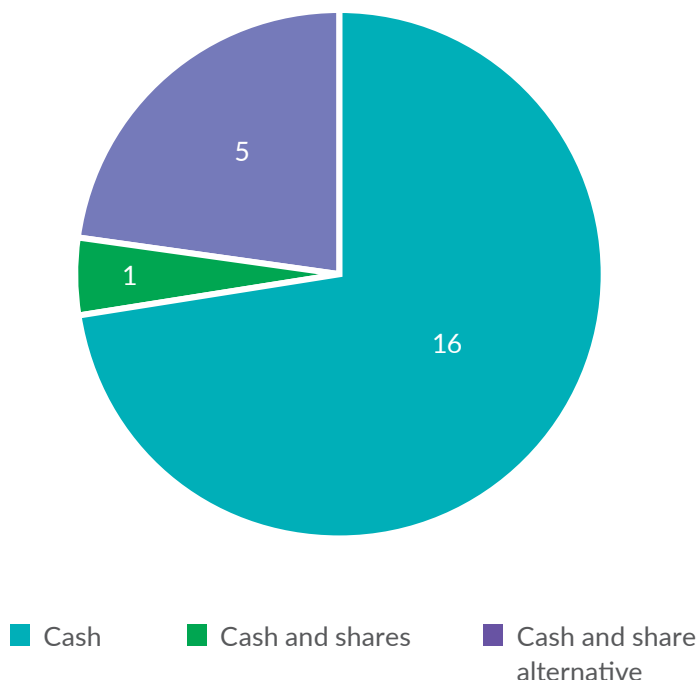
Of the 22 firm offers announced in H1 2021:

- 16 (73%) were cash only offers
- five (23%) were cash offers with a share alternative⁴
- one (5%) was a cash and share offer

All of the firm offers announced in H1 2021 had some form of cash element and it was the exclusive form of consideration in 73% of deals. By comparison in 2020, cash featured in 90% of all deals and was the exclusive form of consideration in 81% of deals.

The cash consideration on Global Infrastructure Partners' initial bid for Signature Aviation (and the subsequent consortium offer for Signature) was denominated in US dollars, with target shareholders having the option to take the cash consideration in sterling under a currency conversion facility. It is relatively unusual for offers for UK-listed targets to be made in foreign currency, although 2019 saw two such offers (Thomas Bravo's US\$3.8bn offer for Sophos and the US\$3.4bn consortium bid for Inmarsat), both of which also featured currency conversion facilities. The decision to structure the takeovers in this way may have been motivated by a desire to protect the bidders from Brexit-related currency swings.

Nature of consideration



We expect the trend of innovative consideration structures (including a mix of shares and cash) to continue. The offer of bidder equity can help compensate for any alleged target valuation shortfall, provided there is a sufficiently compelling argument as to further value growth/synergies going forward. Indeed in many cases the use of a partial share alternative may be essential, in order to win over key shareholders who demand an option for ongoing participation.

Tom Brassington
Partner, Hogan Lovells

UK assets have traded at a discount to global markets since 2016. Opportunistic bidders, particularly PE bidders who are sitting on record-sized pots of cash, see this undervaluation – which has been exacerbated by Brexit and the pandemic – as a low-cost opportunity to deploy the cash sitting on their balance sheet. This is reflected in the pre-dominance of cash only offers in H1 2021. In the longer term however, with the US dollar heading towards bear territory, it will be interesting to see whether US bidders continue to be a dominant force in the UK public M&A market.

Sunjay Malhotra
Senior Associate, Pinsent Masons

⁴ The alternative offer on DBAY Advisors' offer for Telit comprised loan notes, which exchange into unlisted shares within 14 days of the scheme effective date.

08 Financing the offer

The cash consideration on the firm offers announced in H1 2021 were funded from a variety of sources:

- three were funded solely by existing cash resources
- four were funded solely by debt finance
- five were funded solely by equity subscriptions to bidco/PE funds
- eight were funded by a combination of equity subscription to bidco/PE funds and debt finance
- one was funded by a combination of existing cash resources and debt finance
- one was funded by a combination of debt finance and an equity capital raising

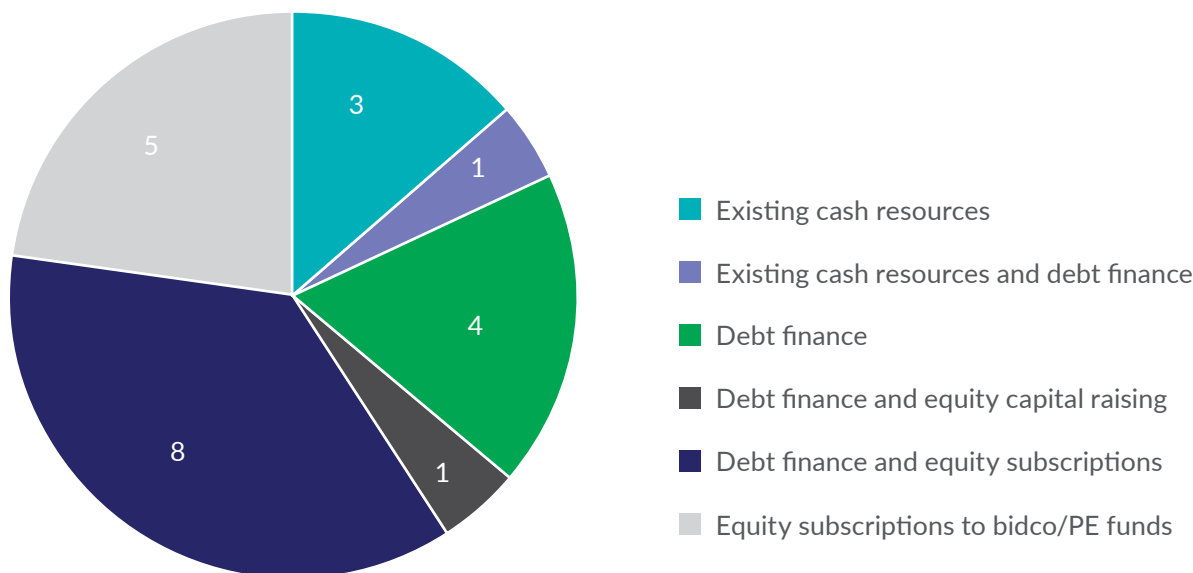
In previous review periods, we have reported on the cash consideration being primarily funded from existing cash resources and debt finance. Although these continued to be important sources of finance, one notable feature of H1 2021 was the number of transactions funded by equity subscriptions to bidco/PE funds. Equity subscriptions featured on 13 (59%) of all firm offers and was the exclusive source of financing of cash consideration on five (23%) of all firm offers. By comparison in 2020 equity subscriptions featured on 24% of firm offers that involved a cash consideration element and was the exclusive source of financing in only 8% of such offers.



It is of note that circa 18% of announced offers this first half have been purely debt financed – with the deals involved ranging in value from a modest £80m to circa £1bn. Whilst we would generally expect to see a significant proportion of M&A including public bids being at least partially debt financed (circa 64% in H1 2021) this pure debt play is of interest and reinforces the abundant availability of debt finance, buoyed by the alternative debt lending market albeit (contrary to popular belief) still selective on borrowers and bids – ie debt is available for the ‘right’ deal.

Selina Sagayam
Partner, Gibson Dunn

Source of finance for cash element of offer



09 Possible offers, formal sale processes and strategic reviews

Firm offers

Eleven (50%) of the 22 firm offer announcements made in H1 2021 were made without any prior possible offer, formal sale process or strategic review announcement. The remaining offers involved either a possible offer announcement and/or the announcement of a formal sale process/strategic review.

Possible offers

In our [full year trend report for 2020](#) we noted considerable competition for assets during the second half of the year with 36 possible offers under consideration in relation to 21 targets. H1 2021 saw less competition at the possible offer stage with 24 possible offer announcements identifying potential bidders in relation to 23 targets.

Seven (29%) of the 24 possible offers announced in H1 2021 progressed to firm offers during the review period, nine terminated (38%) and eight (33%) were ongoing as at 30 June 2021. This is a similar conversion rate to that seen in H1 2020 and H2 2020 when 30% and 19% of possible offers progressed to firm offers during the respective review periods.

Possible offers progressing to firm offers



Formal sale processes and strategic reviews

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

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

In our [2020 public M&A trend report](#) we reported on 13 companies announcing FSPs and/or strategic reviews. Activity was particularly high during H1 2020 with eight companies making FSP and/or strategic review announcements.

H1 2021 saw fewer companies announce these processes, with just two FSPs being announced and no strategic review announcements. The FSPs were initiated by French Connection, which launched its FSP after receiving several possible offers, and Renishaw, which announced a FSP after the founding directors indicated their intentions to sell their 53% stake in the company. Both FSPs were ongoing as at 30 June 2021.



The announcement by Renishaw of its FSP has clearly generated additional interest in the concept from market participants. We are also seeing an increasing number of companies that are willing to conduct an operational review under the auspices of an FSP. In recent years, the UK public M&A market has witnessed a sustained interest in formal sale processes and this may well continue in the medium-term. A number of listed companies have been able to access significant levels of monetary support from both the government and the Bank of England over the course of the last year to address the operational issues arising from the COVID-19 pandemic but once this support ends, it may well lead to a requirement to implement restructuring of a group's balance sheet, which could lead to further announcements of FSPs as companies seek to explore an array of options. We consider that companies will continue to explore the FSP route, as it affords a target company a number of key dispensations from the requirements of the Code.

Adam Cain
Legal Director, Pinsent Masons



10 Irrevocable undertakings

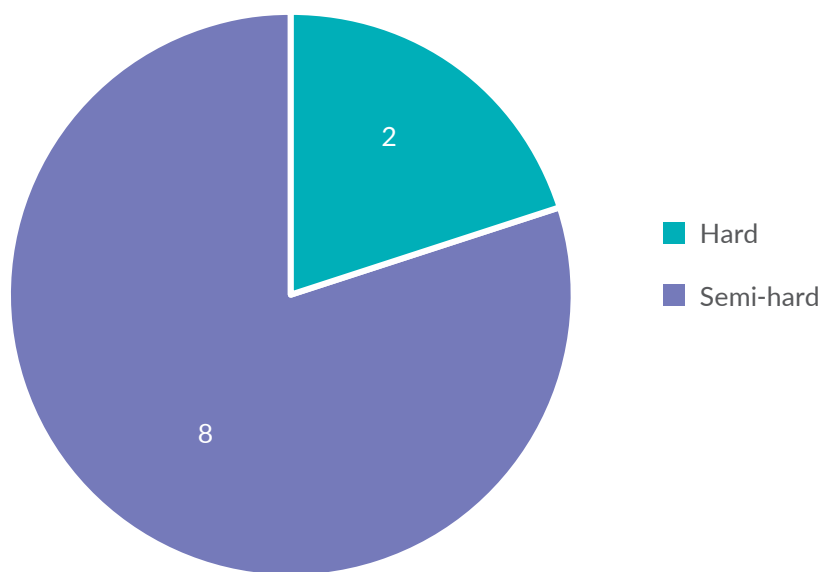
Irrevocable undertakings to accept an offer are normally sought by an offeror from significant offeree shareholders immediately before the announcement of a firm offer, so as to secure as much comfort as possible that the offer will be successful. They enable the offeror to show it has substantial support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

Undertakings from institutional shareholders

Institutional investors provided bidders with irrevocable undertakings in ten (45%) of the 22 firm offers announced in H1 2021. By comparison, in H1 2020 and H2 2020 institutional investors provided irrevocable undertakings on four (33%) and ten (33%) of the firm offers announced in those periods.

Eight (36%) of the 22 firm offers in H1 2021 featured semi-hard undertakings and two (9%) featured hard undertakings from institutional investors. This is a lower proportion of hard undertakings compared with 2020 when institutional investors provided hard irrevocable undertakings on six (14%) of the 42 firm offers announced during this period.

Type of irrevocable undertaking from institutions (H1 2021)



Matching or topping rights in irrevocable undertakings

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

Five (23%) of the 22 firm offers announced in H1 2021 featured matching rights, two (9%) had both matching and topping rights and one (5%) had a topping right.



The increase in the number of irrevocable undertakings during the period correlates with the increasing number of PE bidders, who usually want a level of certainty around deliverability of a takeover as early in the process as possible given their general reluctance to go hostile. The inevitable friction between such bidders and the board of a target company (who, like most fund managers, will not want to be offside for an extended period of time, thereby leading to liquidity issues in the target's shares) is likely to continue for as long as PE bidders are looking at takeovers of UK plcs.

Sunjay Malhotra
Senior Associate, Pinsent Masons

11 Post-offer statements of intention: compliance statements

The Code requires an offeror to include a statement in the offer/scheme document setting out its intentions for the offeree's business, employees and pension schemes. Any post-offer intention statement must be an accurate statement of that party's intention at the time that it is made and be made on reasonable grounds.

Where an offeror or offeree has made a POI statement, it must at the end of the 12 month period from the date on which the offer period ended, or such other period of time as was specified in the statement publish an announcement confirming whether it has taken, or not taken, the course of action described in the POI statement.

22 takeovers closed during H1 2020 and the offer parties on these transactions were therefore required to publish updates during H1 2021 on whether they had complied with these statements. Of these 22 transactions:

- ten bidders reported compliance with their POI statements
- eight bidders reported divergence from their POI statements
- four bidders' compliance statements were outstanding

The COVID-19 pandemic continued to cause economic uncertainty and unsurprisingly, bidders that acquired targets in the sectors most affected by lockdown restrictions (retail, transport, hospitality and insurance) made announcements of divergence from their original statements of intention.

All but three of the eight divergence statements cited COVID-19 as the reason for departing from the original POI statement. Where COVID-19 was cited in the divergence statement, the most common action related to furloughing of employees and/or reduction in headcount, but office closures, reduced marketing spend and other restructuring measures were also cited.

The three divergence statements where COVID-19 was not cited as the reason for taking a different course of action were:

- **Aggregated Micro Power Holdings offer by Asterion Industrial Infra Fund:** Asterion **announced** on 9 March 2020 (two months after the scheme became **effective**) that following a review of operating costs against the backdrop of a challenging energy market and warmer weather experienced in early 2020, the board decided to combine AMP Clean Energy's wood fuel activities alongside its operation and maintenance activities into a single business unit
- **Low & Bonar offer by Freudenberg:** Freudenberg **announced** on 25 June 2020 (one month after the scheme became **effective**) that it had agreed to sell Low & Bonar Dundee to certain members of the management team of Dundee
- **Just Eat offer by Takeaway.com:** Takeaway.com **announced** on 31 January 2020 that in connection with the CMA's investigation of the offer, it had imposed a hold separate order which required the Just Eat and Takeaway.com businesses to continue to run independently and under separate management until conclusion of the investigation or further notice by the CMA



Generally speaking the Takeover Panel is keen to ensure that there are legitimate reasons for a bidder diverging from statements of intent after an offer has closed and the three non-COVID related instances identified in this report clearly reflect an obvious change in circumstances. As regards compliance statements identifying COVID as the primary reason for non-compliance, while it is understandable that the Panel may have accepted that the impact of the pandemic may have been unexpected for bidders launching their offers in the early part of H1 2020, the Panel is unlikely to take this view in relation to bids launched in the second half of 2020. We would therefore expect it to be more difficult for bidders to convince the Panel that non-compliance as a result of the impact of the pandemic is justified as time goes by.

Simon Allport
Partner, Bird & Bird

12 Shareholder engagement

In previous trend reports we have reported on increased shareholder engagement on takeover transactions. In H1 2021 this took a number of different forms:

William Hill

Hedge funds, GWM Asset Management and HBK Capital Management, sought to challenge Caesars' takeover of William Hill ahead of the court hearing to sanction the scheme scheduled for 31 March 2021. In a letter to William Hill's board, the hedge funds reportedly accused the board of failing to disclose potentially material information concerning Caesars' right to terminate its joint venture with William Hill in the US in the event that one or more specified acquirers bought William Hill (see: [Caesars looking to conquer US Sports betting market](#)). According to GWM and HBK (who hold a 1% and 10% stake in William Hill respectively), it was not clarified until after the shareholder vote to approve the scheme that Caesars could only add six names to its 'blocked' list, and that it could only substitute one of these names every six months.

These arguments were rejected by the court at the sanction hearing ([2021] All ER (D) 15 (May), [2021] EWHC 967 (Ch)), which noted that while it might be material to disclose the existence of the termination right, it did not follow that it was necessary to disclose the precise terms. The relevance of the precise terms would vary according to the circumstances of each shareholder.

The court determined that (i) the explanatory statement did contain sufficient information for shareholders to make an informed decision, (ii) if there was a deficiency, it was not one of sufficient materiality to cause a shareholder to change their vote, (iii) there was no evidence that any shareholder had actually been misled and (iv) the court should be reticent about overturning the vote of shareholders at the behest of those who were not shareholders. The court therefore sanctioned the scheme.

Spire Healthcare

Ramsay Health Care increased its offer for hospital group, Spire Healthcare, from 240p per share to 250p per share after two of Spire's largest shareholders, Fidelity International and Toscafund Asset Management, voiced opposition to the deal. This was despite the original offer being recommended by the Spire board and receiving the support from Spire's 30% shareholder, Mediclinic. Fidelity and Toscafund argued that the offer undervalued the business and Toscafund increased its holding in Spire from 5% to 8% in efforts to increase pressure on the Spire board. The shareholder meetings to approve the scheme are scheduled to be held on 19 July.

St Modwen Properties

St Modwen shareholders, J O Hambro Capital Management and Janus Henderson, voiced opposition to Blackstone's £1.2bn offer for St Modwen, which they argued undervalued the company. The offer is recommended by the St Modwen board who together with members of founder Stanley Clarke's family have provided irrevocable undertakings to accept the offer in respect of shares representing 7% of the issued share capital of the company. On 24 June Blackstone responded to shareholders' concerns by announcing an increased and final offer of £1.3bn for St Modwen. The shareholder meetings to approve the scheme are scheduled to take place on 21 July.



Recent adverse media coverage of P2P transactions will affect the behaviour of Boards with extra steps being taken to give reassurance that sales have not been 'on the cheap'. Bidders and targets will also be conscious of recent challenges to takeovers at court meetings and will seek to structure transactions to avoid the risk of late challenges.

Iain Fenn
Partner, Linklaters

The willingness of certain shareholders in William Hill to intervene in the court process for approval of the scheme relating to Caesar's bid is interesting as it re-enforces the point that, as a scheme of arrangements involves an open court process, there is a real forum for intervention by recalcitrant shareholders. If GWM Asset Management and HBK Capital Management had been successful in their argument, this could quite easily have been fatal to the scheme. Equally, the decision of the Court to approve the scheme despite the challenge by GWM and HBK emphasises the importance of ensuring the explanatory statement in support of a scheme properly addresses all salient features of the scheme.

Simon Allport
Partner, Bird & Bird

Globalworth Real Estate Investments

Globalworth shareholders, Growthpoint Properties, Oak Hill Advisors and the European Bank for Reconstruction and Development voiced opposition to CPI and Aroundtown's £1.4bn hostile offer. They agreed with the opinion of the target board's independent committee that the offer 'significantly/materially undervalues the company, its assets and its prospects'. The three shareholders hold 40% of the issued share capital of the company, with 52% held by the bidders. The offer was declared unconditional on 8 July 2021.

Telit Communications

The Telit board recommended a £307m offer from activist investor, DBAY Advisors, despite the board considering that the offer undervalued Telit and its long-term prospects. This drew criticism from Berry Street Capital, a 1% shareholder in Telit, run by former Paulson & Co partner, Orkun Kilic.

Berry Street Capital was particularly critical of the unlisted share alternative structure, which it noted was being taken by the Telit CEO and certain other shareholders. Berry Street Capital argued that the unlisted share alternative offer was unable to be held by most independent minority shareholders. The offer is ongoing.

Wm Morrison

CDR's indicative offer for Morrisons drew criticism from various institutional investors. CDR approached Morrisons with an offer price of 230p per share, which valued the supermarket group at £5.5bn. The Morrisons board rejected the offer on 19 June and on 3 July the board announced that it was recommending a £6.3bn bid made by a consortium led by Softbank-owned, Fortress Group.

Despite the increased offer price and the board's recommendations, shareholders continued to question the deal. Top ten shareholder, Legal & General, argued that shareholders needed more detailed information about the value of Morrisons' properties to "make a considered decision regarding the right future for the company".

UDG Healthcare

CDR offer's for London-listed UDG Healthcare also drew criticism from shareholders. CDR's original offer valued the Dublin-headquartered healthcare company at £2.6bn. The original offer was recommended by the UDG Healthcare board, but following outspoken comments from key shareholders, CDR increased its offer to £2.8bn. A number of shareholders continue to oppose the deal, including top-five shareholder, M&G Investments.



The recent challenge at the sanction hearing on the adequacy of disclosures in the context of scheme of arrangement offer documents, whilst finding no fundamental deficiency, is a salutary reminder to apply a general 'smell test' and threshold analysis (rather than tick the box approach) when assessing the level and quality of disclosures in the explanatory statements to schemes. Whilst engagement by shareholders to 'bid up' bid prices is no new feature in particular with activist investors, what has been telling of these latest engagements, is the more public nature of the long only institutions in voicing their concerns about (under) value on bids.

Selina Sagayam
Partner, Gibson Dunn

PE houses are taking advantage of the fact that it is becoming increasingly difficult to determine the fair value of a target company, with company boards often treading a fine line between not wanting to undervalue a company's assets while at the same time being forced to acknowledge that in many cases the performance of their business has not yet recovered from the dual shock of the pandemic and Brexit. That a number of fund managers (Henderson/JO Hambro - St Modwen; M&G/Allianz - UDG Healthcare; Schroders - First Group) have publicly opposed recent deals because they consider the target to be undervalued, notwithstanding a board recommendation, is indicative of this disconnect.

Sunjay Malhotra
Senior Associate, Pinsent Masons



13 Legal and regulatory developments

Takeover Code changes

On 31 March 2021, the Takeover Panel announced that it would be proceeding with the amendments to the Code, which were outlined in its October consultation paper. The amended Code makes substantial changes to the treatment of offer conditions and the timetable for takeovers structured as contractual offers.

In relation to the treatment of offer conditions, the changes include:

- aligning the treatment under the Code of CMA and Commission regulatory clearances with those that apply to authorisations and clearances required from other regulatory authorities
- amending the Code to clarify that an offeror is restricted from invoking a condition or precondition unless the circumstances which give rise to the right of invocation are of 'material significance' to the offeror in the context of the offer
- updating Practice Statement 5 to set out how the Panel will determine whether the 'material significance' test is met both in relation to regulatory conditions and other conditions and pre-conditions

In relation to the offer timetable, the amendments include:

- removing the concept of declaring an offer unconditional as to acceptances and instead requiring that all of the offer conditions must be satisfied on a single date
- requiring that, subject to certain exceptions, the acceptance condition should only be capable of being satisfied once all of the other conditions to the offer have been satisfied or waived
- requiring all offer conditions to be satisfied by Day 60 (unconditional date) or any earlier date specified by the offeror in an acceleration statement
- requiring offerors to give 14 days' notice if they wish to invoke the acceptance condition before the unconditional date
- allowing offeree shareholders who accept an offer to withdraw their acceptances at any time before satisfaction of the acceptance condition unless the offer is unconditional from the outset

The amended Code applies in relation to all firm offers which are announced on or after the 5 July 2021 (implementation date), except where to do so would give the amendments retroactive effect. Any ongoing firm offers which straddle the implementation date, and any offers announced on or after the implementation date which are in competition with such ongoing offers, will continue to be subject to the unamended provisions of the Code.

For further details, see: [Analysing the Takeover Panel's proposed changes to the offer timetable and offer conditions](#) and [Takeover Panel confirms proposed changes to the offer timetable and offer conditions](#).



The changes to the Takeover Code are the most significant that we have seen since 2011. A consistent approach to the bidder's ability to invoke a condition relating to regulatory clearances and lapse its offer is logical. However, given the extension of the material significance test to all EU and UK antitrust clearance conditions, bidders will need to undertake an even more thorough analysis of the regulatory landscape before launching a bid. The Panel has helpfully confirmed that it will be likely to treat a clearance under the National Security and Investment Act as a 'material official authorization or regulatory clearance' under the new Rules, meaning that contractual offer timetables can be suspended pending the outcome of the review. Despite the new flexibility that the Panel has introduced for contractual offer timetables, we still expect schemes of arrangement to be the structure of choice on most bids.

Kate Cooper
Partner, Freshfields Bruckhaus
Deringer

It will be interesting to see whether anything comes of the recent storm in the press on 'shadow bidding' and certain target shareholders (who sold out prior to announcement of a bid) complaining about approaches to a target not having been publicly announced sooner. We feel the relevant rules in this area (including Rule 2 of the Takeover Code, and the DTRs/ Market Abuse Regulation) are already as sophisticated as any in the world and are strict enough - and that any further tinkering could paradoxically lead to a worse and more uncertain position in terms of information disclosure and proper functioning of the market and public M&A transactions than exists at present.

Patrick Sarch
Partner, Hogan Lovells

High Court clarifies how ADR holders should be treated for purposes of the scheme headcount test

In *Re GW Pharmaceuticals plc* [2021] EWHC 716 (Ch), [2021] All ER (D) 125 (Mar) the High Court clarified how shares held by certain nominee shareholders, including the depository under an American Depositary Receipt programme, should be treated for the purposes of the headcount test in Part 26 of the Companies Act 2006 (CA 2006). It also clarified that excluding the depository from a currency election facility did not by itself result in the creation of a separate class of shareholders and that a single meeting of members could be held.

The court noted that different solutions to the problem created by the headcount test had been made in a number of cases:

- in *Re Equitable Life Assurance Society (No 1)* [2002] BCC 31, the High Court decided that a nominee which split its vote should be regarded as having voted once for and once against the scheme for the purposes of the headcount test. This approach was followed by the Hong Kong Court of Appeal in *Re PCCW Limited* [2009] 3 HKC 292
- in *Re Computer Patent Annuities Holdings Ltd* [2010] JRC 011, the Royal Court of Jersey directed that a single nominee member should be 'split' for headcount purposes according to the proportions in which underlying beneficial holders instructed it to vote on the scheme. If, for example, the voting instructions received were 66.6% for and 33.3% against, the member would be counted as two-thirds for and one-third against for the purposes of the headcount test

On the Headcount Direction, the court considered that it was not right to split-up or fractionalise members of the Company for the purposes of the headcount test as the Royal Court of Jersey had done in *Computer Patent Annuities*. Although it was possible to have joint or multiple members holding a share or shares, such persons were generally regarded as a single member. The court saw no suggestion in the CA 2006 that it was possible to have a fraction of a member.

The court noted that the *Equitable Life* solution had been adopted many times in other scheme cases and, depending on the facts, might be an appropriate solution for a court to adopt in respect of certain court meetings under CA 2006, Pt 26. However, the court decided to give directions to the effect that if the Depository cast more votes for the Scheme than against the Scheme, it should be treated as having voted in favour of the Scheme for the purposes of the headcount test. Otherwise it should be treated as having voted against the Scheme (the Headcount Direction). In reaching this decision, the court gave the following reasons:

- the approach in *Equitable Life* could result in there being more voters for the purpose of the headcount test than there were actually members of the Company. The proposed Headcount Direction would avoid that oddity
- since it was almost inevitable that the Depository would receive some instructions both in favour of and against the Scheme, the approach in *Equitable Life* was likely to result in 97.4% of the Scheme Shares having no effect on the outcome of the headcount test. The Depository would be regarded as having voted once in favour and once against the Scheme, making its overall position neutral. This approach could give the other members a disproportionate influence on the outcome at the Court Meeting
- the Headcount Direction enabled the Depository and other nominee shareholders to have at least some effect on the result of the headcount test, thereby making the result of the headcount more representative of the views of the persons having the overwhelming majority by value of the underlying economic interest in the Scheme

For further details, see News Analysis: [High Court clarifies how ADR depository should be treated for scheme headcount test](#).



Commission's Article 22 EU Merger Regulation Guidance

On 26 March 2021, the Commission issued new guidance on when it will accept referrals of merger control reviews from EU national competition authorities (Article 22 Guidance). Significantly, and in a notable change of policy, the Commission will now accept merger control referrals from a Member State even if the Member State does not have jurisdiction to review the transaction. The change of policy applies (and is being challenged) in Illumina/Grail, a biotech merger.

In order for a transaction to be referred it must: (i) affect trade between Member States; and (ii) threaten to significantly affect competition within the Member State(s) making the request. It should be noted that Member States can refer transactions to the Commission even if they have already closed.

The Commission's Article 22 Guidance raises a number of concerns from an M&A perspective.

The first concerns legal uncertainty. If offerors cannot exclude an EU filing purely on the basis of turnover thresholds at EU or national level, it will be more difficult to predict whether the Commission will review certain transactions, especially since the parameters of the Article 22 Guidance are unclear. Such uncertainty is exacerbated by the possibility of post-closing review. This is clearly problematic from an offeror's perspective given an EU filing is mandatory and suspensory, it is not clear how an offeror can properly exercise governance rights and make decisions in relation to the target in such a situation.

Second, by allowing third party complaints to alert the Commission of transactions (including those that third parties are not involved in), the Article 22 Guidance creates opportunities for corporate rivals to cause uncertainty to transactions.

The third concerns timetable delays. The lengthy wait of 40 working days (eight weeks) for parties to a transaction to hear about whether it would be referred for review by the Commission is burdensome for time-critical transactions.

Finally, conditions precedent in transactional documents (eg SPAs) will require attention as parties will need to consider whether their transaction could be referred to the Commission.

“

The new Article 22 Guidance plugs a perceived gap in European merger control enforcement aimed at capturing tech and pipeline pharmaceutical deals which fall below the thresholds, but with much wider implications for companies. Parties to deals which are not reportable in Europe now need to consider the risk of a referral request to the EC which will impact contractual terms, deal timetable and feasibility.

Nicole Kar
Partner, Linklaters



Draft EU foreign subsidies regulation

On 5 May 2021, the Commission published its proposal for a new regulation to address the potential distortive effects of foreign subsidies in the Single Market (the draft Regulation).

Most significantly from an M&A perspective, under the draft Regulation, takeovers must (if the relevant thresholds are met) be notified to the Commission in advance and cannot be concluded until the Commission has completed its review. As such, one of the novelties of the draft Regulation is that it would create a new mandatory review process.

The draft Regulation sets out the following thresholds triggering notification to the Commission:

- one of the companies (target or one merging undertaking and, in the case of a JV, either the JV or one of its parents companies) is established in the EU and generates an aggregate turnover of at least €500m in the EU, and
- the undertakings concerned (or in the case of a joint venture, the joint venture itself and its parent undertakings) received from third countries an aggregate financial contribution of more than €50m in the last three years

The draft Regulation provides that the Commission may request prior notification of any non-notifiable transaction at any time before its implementation if the Commission 'suspects that the undertakings concerned may have benefitted from foreign subsidies' in the previous three years. Companies that fail to notify a transaction or implement a notified transaction in breach of the draft Regulation could be fined up to 10% of their aggregate worldwide turnover, while providing incorrect or misleading information could lead to fines of up to 1%.

In terms of impact, the draft Regulation is extremely far-reaching and, if adopted, will increase the regulatory risk and burden on companies operating or investing in the EU with support from foreign States. It may also open up new opportunities for strategic complaints by competitors.

In addition, the proposed new measures will add complexity to the regulatory clearance path for M&A transactions. While much of the practice and procedure under this new filing regime will be similar to that of the EU Merger Regulation, there would be separate filing procedures, and it is uncertain how they will inter-relate and affect each other. Investors receiving any financial subsidies from non-EU countries would have to conduct a detailed assessment of the risks that a potential transaction may entail before proceeding with an investment decision. Thorough preparation of the required filings would be key to a successful conclusion of any transaction meeting the thresholds.

“

From the point of view of legal certainty and to avoid the risk of complainant companies using the new rules to skew auction processes, the legal test will need to be very clear on the issue of what constitutes a distortion of the internal market.

Nicole Kar
Partner, Linklaters



Sabre Corporation v CMA

On 21 May 2021, the CAT issued its judgment in *Sabre Corporation v CMA*, a significant case concerning the CMA's jurisdiction over mergers under the Enterprise Act 2002. The case concerned an investigation into the anticipated acquisition by Sabre Holdings (Sabre) of Farelogix, two US companies which provide technology and software to airlines.

The question arose as to whether the CMA had jurisdiction to review the merger. Under UK merger control, the CMA only has jurisdiction where either: (i) the target entity has more than £70m turnover in the UK, or (ii) the transaction gives rise to a combined share of supply of more than 25% of goods or services of a particular description. In this case, Farelogix did not generate any turnover in the UK at all, as it had no UK customers.

However, this did not prevent the CMA asserting jurisdiction. Instead, highlighting that Sabre already had more than 25% share of supply in GDS services in the UK, the CMA found that Farelogix's technology was being used by British Airways through its 'Oneworld Alliance' arrangement with American Airlines. This indirect usage was enough to create a UK nexus, thereby enabling the 'share of supply' test to be satisfied through marginally increasing Sabre's market position. The CMA prohibited the merger (for further details, see: [Sabre Holdings Corporation/Farelogix Inc](#)).

Sabre appealed the CMA's decision on four grounds, which related to the validity of the CMA's assertion of jurisdiction over the merger. The CAT dismissed all of Sabre's arguments that the CMA did not have jurisdiction to review the merger (for further details, see: [Sabre v CMA](#)).

There are a number of notable points for corporate practitioners that arise from the CAT's judgment.

First, the CAT confirmed that the application of the share of supply test is a matter of judgment for the CMA and that it has broad discretion in determining the criteria used.

Second, the judgment can be seen as supporting many practitioners' long-held view that the UK share of supply test is a highly elastic concept that the CMA is willing to further stretch if it wants to review a particular merger. It also reinforces the view that the UK merger control system is 'voluntary' only from the regulator's perspective, making it difficult for practitioners to provide legal certainty to businesses that the CMA will not have jurisdiction over a given transaction.

Third, as things stand, the UK has the dubious distinction of operating one of the most expensive and onerous merger regimes in the world. The inherent uncertainty of the share of supply test, as reinforced by the CAT's judgment, adds to the burden of merging parties. At the same time, the cost and complexity of the notification process, including the CMA's use of hold separate/freezing orders, has in some cases acted as a deterrent to trade sales and led to the UK being carved out of global deals.



The CMA has become one of the world's most interventionist competition agencies in recent years with deal mortality rates in Phase II reviews between January 2019 and June 2021 standing at 69%. The CAT's judgment in Sabre has affirmed the CMA's expansive approach to taking jurisdiction over deals with very limited UK nexus and will encourage a continued elastic interpretation to jurisdiction. In effect the CMA has become the world's policeman: reviewing transactions which many other agencies have considered they lack jurisdiction to review.

Nicole Kar
Partner, Linklaters

The judgment emphasises the need to examine transactions, and in particular the parties' respective businesses, from every angle, in order to determine whether there is any possible way of describing their activities in such a way that they may be considered to overlap – even if it seems entirely unrealistic from the parties' perspective.

Simon Allport
Partner, Bird & Bird

National Security and Investment Bill receives Royal Assent

On 29 April 2021, the National Security and Investment Bill (the Bill) received Royal Assent, becoming the National Security and Investment Act 2021 (the NS&I Act 2021). This follows publication of the Bill on 11 November 2020 and is the culmination of a number of years of discussion of the UK's approach to national security matters, including the White Paper published in 2018. It also reflects a global trend for more intervention in, and scrutiny of, national security issues.

The NS&I Act 2021 introduces a standalone regime for the screening of foreign investments in the UK and significantly upgrades the UK government's powers to 'call-in' transactions across all sectors of the economy on national security grounds. Once in force, transactions in 17 sectors (ranging from synthetic biology to data infrastructure) will be subject to mandatory notification if certain 'trigger events' are met. The Secretary of State will also have the power to 'call-in' transactions across the wider economy that may raise national security concerns; a power which will apply retrospectively to transactions that closed on or after 12 November 2020. Ultimately, the government will be able to scrutinise, impose conditions or, as a last resort, block a deal where there is an unacceptable risk to the UK's national security. For further details, see News Analysis: [New UK FDI screening regime approved](#).

The expectation is that the government will be more likely to intervene under this new regime than has been the case under the national security provisions of the Enterprise Act 2020 (which will remain on foot in relation to deals which engage financial stability, media plurality or capability to combat or mitigate a public health emergency such as COVID-19).

The NS&I Act 2021 is due to commence at the end of the year. Ahead of commencement, the government is working with an expert group to produce guidance for investors and businesses to explain the new rules, in particular in sectors affected by mandatory notification (eg quantum technologies and space and satellite technologies). There will also be significant secondary legislation needed to address aspects of the new regime including the sectors impacted by the mandatory regime.

In terms of the NS&I Act 2021's broader impact, there are two key points for businesses to consider. The first concerns the need to alert the government of any transactions entered into on or after 12 November 2020 (or conditional deals entered into prior to that date but where a 'trigger event' might still occur) to manage the risk of those deals being 'called-in' for retrospective review for up to five years once the NS&I Act 2021 comes into force. If BEIS is notified, this call-in period is reduced to six months. The second concerns how, looking forward, the regime will need to be factored into future deal timelines and documentation to manage the risks of delay or government intervention.

For examples of how companies are addressing the NS&I Act 2021 in takeover documentation, see Practice Note: [National Security and Investment regime—market practice tracker](#).



In our experience, the government appears to be taking a pragmatic and constructive approach to informal requests for comfort/guidance on in-scope transactions before the rules enter fully into force. However, nearly all of the details on procedures, timings, etc are still to be developed and adopted, and it therefore remains to be seen just how burdensome the new regime will in fact be. There are some signs for concern, for example, in the approach to intra-group transactions, which remain caught, in spite of numerous requests that they should be excluded. In the context of public M&A, bidders in the sectors potentially caught by the regime are likely to adopt a cautious approach when it comes to formulating their offer conditions.

Simon Allport
Partner, Bird & Bird

While in many ways the NS&I Act 2021 is a protectionist measure by the UK Government to safeguard British companies, potentially adding an extra hurdle into the takeover process, the reality is that overseas bidders, particularly from the US, will be familiar with such provisions given the ever more prominent role CFIUS plays in the US M&A landscape. As such, it is unlikely to be a barrier to takeover activity in the UK, albeit it could elongate deal timelines and potentially result in parallel regulatory reviews which may impact deal certainty.

Sunjay Malhorta
Senior Associate, Pinsent Masons



The changes to the conditions regime to remove the 'special' treatment for Commission regulatory clearances and to elevate the potential materiality of other global regulatory approvals is a long-awaited change to the Code that is welcome. What is a glaring seemingly missed opportunity, however, is the treatment of NSI related conditions in mandatory and voluntary notification situations. Neither the recent Code changes nor the amended Practice Statement 5 make any direct reference to the NSI regime or the treatment of NSI-related offer conditions (albeit there was some reference in Response Statement (RS 2020/1) as to how the Panel is 'likely' to treat NSI approval requirements and their expectations regarding inclusion of NSI related conditions). This is perhaps not surprising given the regime has yet to enter into full force. The UK government however has also flagged the need to ensure the takeover regime and the NSI regime (and the respective regulators) are 'effectively and efficiently' interacting. Whilst a number of bids (x8) announced in this half year have included NSI related conditions, none of these have been tested both in relation to satisfaction within the Code timetable and the differing (if at all) approach the Panel would take on invocation. We will wait and see the practical outputs of the ongoing government review and whether some of the unanswered questions regarding this interplay will be clarified by the agency and the Panel more comprehensively and formally in due course.

Selina Sagayam
Partner, Gibson Dunn

We have already assisted a number of companies with informal approaches to BEIS which has proven itself highly responsive and rapid thus far. If the newly established ISU can deliver on Government's promises that the NSI regime will be 'quick and slick', there will not be significant disruption to deal timetables given the preponderance of global merger and foreign investment filing requirements applicable to large deals. The NSI Act brings benefits in terms of an identifiable regulator tasked with reviewing deals from a national security perspective against defined timetables: a major improvement on the existing public interest intervention process.

Nicole Kar
Partner, Linklaters

The Takeover Code changes on offer conditionality and timetable are now imminent, but given they are broadly logical and welcome, we expect them to "bed-in" and be accepted by the market quickly and easily. We've been working closely with key stakeholders on implementation of/gearing up for the National Security and Investment Act, and ensuring our clients are best placed to clear the complexities that arise – and one area in particular to watch will be how it interacts in practice with the Takeover Code.

John Connell
Partner, Hogan Lovells

Further reading from LexisNexis blogs

[Daily Mail's controlling shareholder indicates possible bid](#)

[Bidding war expected for Morrisons](#)

[CLLS and Law Society publish specimen documents ahead of takeover and mergers reform](#)

[Clayton, Dubilier & Rice sets out to stock up on UK supermarket Morrisons](#)

[DBAY Advisors encroaches on offer for Proactis Holdings](#)

[Foreign bidders snap up the FTSE Main Market](#)

[Sanne Group rejects £1.35bn offer from Cinven](#)

[Bidders on hunt for possible takeover targets!](#)

[Pollen Street Capital to acquire Proactis Holdings](#)

[Globalworth Real Estate Investments board reject offer from its largest shareholders](#)

[Harwood Capital fails to make a splash with possible GYG offer](#)

[Tavistock not feeling the Team spirit](#)

[Cambria Automobiles faces possible management buy-out](#)

[Sviblov's Midas touch in Trans-Siberian Gold acquisition](#)

[February 2021 public M&A update: PE firms search for their perfect match](#)

[GardaWorld fail to break into world's biggest security company](#)

[Takeover Panel to hold auction for G4S](#)

[New year, new deals as 2021 sees a continued uptick in M&A activity](#)

[Global Infrastructure Partners take the lead on Signature Aviation bid](#)

[MGM approaches business partner Entain with £8bn takeover proposal](#)

For the latest news and insights on market trends, transaction developments, corporate cases, recent deals and corporate law updates, visit our [corporate microsite](#).

Firm offers included in this report

Target	Bidder	Deal value	Bid premium ⁵	Industry (target)	Bidder Jurisdiction ⁶
Signature Aviation	Blackstone, Infrastructure and Blackstone Core Equity, Global Infrastructure Partners and Cascade Investment	£3.5bn	53%	Aerospace & Defence	US
Aggreko	TDR Capital and I Squared Capital	£2.3bn	39%	Energy & Utilities	US and UK
Gamesys Group	Bally's	£2bn	14%	Travel, Hospitality, Leisure & Tourism	US
John Laing Group	KKR	£2bn	27%	Investment	US
Globalworth Real Estate Investments	CPI Property Group and Aroundtown	£1.4bn	20%	Real Estate	Luxembourg ⁷
St. Modwen Properties	Blackstone Group	£1.3bn	25%	Real Estate	US
Spire Healthcare Group	Ramsay Health Care	£1bn	24%	Healthcare	Australia
Vectura Group	Carlyle Group	£958m	32%	Healthcare	US
Equiniti Group	Siris Capital Group	£673m	31%	Professional Services	US
Arrow Global Group	TDR Capital	£563m	33%	Financial Services	UK
RDI REIT	Starwood Capital Group	£468m	33%	Investment	US

⁵ Bid premium is calculated by reference to the target's share price immediately before the start of the offer period.

⁶ 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.

⁷ Both CPI Property Group S.A. and Aroundtown SA are headquartered in Luxembourg but have shares quoted on the Frankfurt Stock Exchange.

Firm offers included in this report

Target	Bidder	Deal value	Bid premium ⁵	Industry (target)	Bidder Jurisdiction ⁶
Scapa Group	Schweitzer-Mauduit International	£413m	19%	Healthcare & Industrial	US
Telit Communications	DBAY Advisors	£307m	59%	TMT	UK ⁸
AFH Financial Group	Flexpoint Ford	£225m	17%	Financial Services	US
Sigma Capital Group	PineBridge Benson Elliot	£188m	36%	Investment	US ⁹
Nucleus Financial Group	Epiris in conjunction with its associate, James Hay Partnership	£145m	42%	Financial Services	UK
Immunodiagnostic Systems Holdings	PerkinElmer	£110m	50%	Healthcare	US
Trans-Siberian Gold	Horvik	£108m	18%	Mining, Metals & Extraction	Russia ¹⁰
Cambria Automobiles	Mark Lavery	£80m	21%	Retail & Wholesale Trade	UK
Proactis Holdings	Pollen Street Capital and DBAY Advisors	£75m	79%	TMT	UK
Wey Education	Inspired Education Online	£70m	46%	Professional Services	UK
Hunters Property	The Property Franchise Group	£24m	-4%	Real Estate	UK

⁸ DBAY Advisors Limited is incorporated in the Isle of Man. The Isle of Man is treated as part of the UK for the purposes of this report.

⁹ PineBridge Benson Elliott was acquired in December 2020 by PineBridge Investments, a private, global asset manager headquartered in the US.

¹⁰ Horvik is a Cyprus registered company, which is wholly owned by Vladislav Sviblov.

Report produced by Lexis®PSL Corporate team members:



**Darius
Lewington,**
Solicitor



Shaukat Ali
Solicitor



William Beasley,
Solicitor



**Jenisa Altink-
Thumbadoo,**
Head of Market
Insights



Michelle Cheng,
Market Tracker
Analyst

The wider Lexis®PSL Corporate team:



James Hayden,
Solicitor, Head
of Lexis®PSL
Corporate



Simon Dodd,
Head of Lexis®PSL
Competition



Edward Davies,
Solicitor



Maria Delyfer,
Solicitor



Tunji Emanuel,
Solicitor



Claudia Gizejewski,
Solicitor



Tara Hogg,
Solicitor



Eleanor Kelly,
Solicitor

With thanks to our valued contributors:



Simon Allport
Partner, Bird & Bird LLP

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.



Tom Brassington,
Partner, Hogan Lovells International LLP

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

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



Adam Cain,
Legal Director, Pinsent Masons LLP

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 Technology, Science and Industry 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 17 Takeover Code governed transactions since 2017. Adam also authored the response from Pinsent Masons to the Takeover Panel's 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.



John Connell,
Partner, Hogan Lovells International LLP

John is a leading partner in the London Corporate & Finance practice at Hogan Lovells. He is a very versatile lawyer and can advise on a wide range of transactions, including public takeovers, private acquisitions and disposals, joint ventures, listings, capital raisings and restructurings.

John has a broad practice and has helped listed and private companies, private equity sponsors, banks, insurers and financial investors with some of their most difficult cross-border mergers, acquisitions and disposals. John's particular focus is acting for clients in the financial services and financial institutions sectors.



Kate Cooper,
Partner, Freshfields Bruckhaus Deringer LLP

Kate Cooper is a partner based in the London Global Transactions Practice.

Kate acts for international corporate and FTSE 100 clients. Her areas of practice include complex public and private M&A, corporate restructurings, as well as general UK listed company advisory matters. Kate's varied experience spans a range of sectors, including TMT, Consumer and Healthcare.

Kate's recent transactions include advising Comcast on its \$39bn public acquisition of Sky plc following a competitive process against 21st Century Fox; advising AstraZeneca on its \$3.5bn equity placing, one of the largest European undocumented equity raisings ever; advising easyJet on its acquisition of assets out of the Thomas Cook liquidation; and advising Macquarie Infrastructure and Real Assets on its acquisition of KCOM Group, a UK broadband provider.

Kate joined Freshfields in 2006 as a trainee, and has been seconded previously to the Tokyo office, the Organising Committee of the London Olympics and, as a senior associate, to Goldman Sachs' European Investment Banking Legal team.

Kate recently co-authored the 2019 UK Chambers guide to shareholder rights and shareholder activism.



Giles Distin,
Partner, Addleshaw Goddard LLP

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.



Iain Fenn,
Partner, Linklaters LLP

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

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

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



John Holme,
Counsel, Hogan Lovells International LLP

John is a Counsel in the London Corporate & Finance practice at Hogan Lovells. He advises UK and overseas corporates and financial institutions on public M&A, ECM, private M&A and other corporate finance matters. John was an assistant secretary at the UK Takeover Panel for over two years, where he regulated transactions governed by the UK Takeover Code. He has worked with a range of clients across many different industries, and also gained significant client secondment experience, including at Barclays and Santander.



Nicole Kar,
Partner and Head of Antitrust and Foreign Investment UK and Ireland, Linklaters LLP

Nicole is Head of the Antitrust and Foreign Investment Group in London and Dublin. 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 tech, 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 regulatory lawyer. She attracts particular attention for her work on high-profile domestic merger control investigations. Clients describe her as having “her finger on the pulse in terms of what is going on in the competition law world,” being “to the point, really on it and very good with clients”. “Her great ability is to understand what we are trying to achieve as a business and to come up with a strategy or a suggestion that achieves our goals.”



Sunjay Malhotra,
Senior Associate, Pinsent Masons LLP

Sunjay Malhotra is a Senior Associate in the Corporate Finance team at Pinsent Masons. He specialises in advising international and UK corporates and investment banks on public M&A and primary and secondary equity fundraisings on AIM and the Main Market. Sunjay also advises boards on corporate governance matters. He has advised on transactions across a number of sectors, with a particular expertise in pharma and healthcare, gaming and technology.



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

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

Tom has over 17 years’ experience advising corporates, investment banks, private equity and hedge funds and family offices on international public and private M&A transactions, primary and secondary equity raisings and sell-downs, joint ventures and listed company advisory and corporate governance matters.

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



Dominic Ross,
Partner, White & Case LLP

Dominic Ross is a partner in White & Case’s global M&A and Corporate practice based in London.

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

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



Selina Sagayam
Partner, Gibson, Dunn & Crutcher LLP

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

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



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

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

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



Dan Schuster-Woldan,
Partner, Linklaters LLP

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

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

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



Allan Taylor,
Partner, White & Case LLP

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

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

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

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



Simon Wood
Partner, Addleshaw Goddard LLP

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[®] Create

The perfect legal
document at your
fingertips.

Find out more ►

lexisnexis.co.uk/lexis-create



Public company takeovers quiz



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

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

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

Market Tracker marketing

Previous Trend Reports

Public M&A Update Q1 2021

Lexis®PSL Corporate and Market Tracker research examining the key transactions and current trends in takeovers subject to the Takeover Code between 1 January 2021 and 31 March 2021.

Trends in UK Equity Capital Markets 2020/21

A review of IPO and secondary offering activity over a three-year period, with insight into current hot topics, legal and regulatory developments, and what we and our contributors expect to see in 2021 and beyond.

Public M&A Report 2020

In-depth analysis of trends in the UK public mergers and acquisitions market. This Market Tracker Trend Report provides in-depth analysis of the firm offer and possible offer announcements made for companies subject to the Takeover Code in 2020.

Ethnicity in Corporate Governance Reporting 2020

This report looks at reporting on ethnicity in the annual reports of 94 FTSE 100 companies, in advance of the 2021 Parker Review target to have at least one minority director on the board. Including practical guidance for companies and commentary from market experts, this comprehensive guide analyses the quality of current reporting and looks at recent and upcoming legal and regulatory developments anticipated to have an impact on this area.

Shareholder Activism

This Market Tracker trend report looks at recent trends in shareholder activism in the UK, including a review of developments in H1 2020 and the outlook and predictions for H2 2020 and beyond. Produced in association with White & Case and Activist Insight, with contributions from UBS Investment Bank, Georgeson and Greenbrook, it also looks at how companies can prepare for an activist approach and provides tips on how activists can run a successful campaign in the UK.

IPOs in Q3 2020

Lexis®PSL Corporate and Market Tracker has conducted research to examine the current trends in IPO activity between 1 July 2020 and 30 September 2020.

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

Market Tracker | Forthcoming Trend Reports

ECM Report H1 2021

This Market Tracker Trend Report looks at emerging trends in IPOs and secondary offerings during the first half of 2021.

Voting at the AGM Season 2021

This Market Tracker update examines shareholder voting patterns at the annual general meetings (AGMs) of FTSE 350 companies during the 2021 AGM season

Existing subscribers can access Lexis®PSL Corporate and Market Tracker at <https://www.lexisnexis.com/uk/lexispsl/corporate/home>

To request a free trial, please visit <https://www.lexisnexis.co.uk/products/lexis-psl.html>

For more information on the latest news and insights on market trends, transaction developments, corporate cases, recent deals and corporate law updates, visit our corporate microsite.