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1 Relevant Authorities and Legislation

1.1 What regulates M&A?

Most of the rules regarding public takeovers are contained in the UK Takeover Code ("**Code**") and enforced by the UK Takeover Panel ("**Panel**"), each having a statutory footing under the Companies Act 2006 ("**CA 2006**"). Their overarching aim is to ensure fairness and equality of treatment for all shareholders of the target company on a takeover, within a framework that provides sufficient flexibility (including in terms of structure and timetable), along with speedy and efficient resolution of any areas of dispute or uncertainty.

The Code imposes responsibilities on the parties involved and their advisers. Non-compliance may result in sanction by the Panel and the Financial Conduct Authority ("**FCA**"), the UK's financial markets regulator. The Code is based on six overarching "General Principles" (essentially statements of good standards of commercial behaviour), developed further in 38 detailed rules; however, the Code emphasises that their spirit must be observed as well as their letter, and should be interpreted to achieve their underlying purpose.

The Panel expects to be consulted on individual cases as necessary, with flexibility to make decisions depending on the particular facts (without the formality or length of a judicial hearing, or risk of material timetable disruption).

Antitrust matters in the UK fall within the jurisdiction of the Competition and Markets Authority, with the key legislation being the Competition Act 1998 and the Enterprise Act 2002.

Other potentially relevant laws and regulations include: the Market Abuse Regulation ("**MAR**") as incorporated into UK law following the UK's withdrawal from the European Union (which covers market abuse and insider dealing); the Companies Act 2006 (the UK's general corporate law, which covers "schemes of arrangement" and "compulsory squeeze-out" of minority shareholders); the Disclosure Guidance and Transparency Rules (which covers disclosure of major shareholdings); the Listing Rules (for UK listed companies, requiring shareholder consent for certain material acquisitions or disposals, and setting out rules and procedures for delisting); the Financial Services Act 2012 (including provisions on misleading statements and market manipulation); the Financial Services and Markets Act 2000 (including provisions on financial promotion); the Prospectus Regulation Rules (for a bidder offering securities as consideration); and other sector/jurisdiction-specific rules (e.g. regulating ownership in certain industries such as financial services, or the media). The National Security and Investment Act 2021 ("**NSI Act**") will also be relevant to some acquisitions (see question 1.3).

1.2 Are there different rules for different types of company?

The Code broadly applies to all offers for (and other transactions that have as their objective or potential effect obtaining or consolidating control of) companies with a registered office (and listed usually on the London Stock Exchange Main Market or Alternative Investment Market) in the UK (including the Channel Islands or Isle of Man). Even if the company is not listed, the Code still applies if the target company is registered as a:

- "public" (as opposed to "private" company and has its "central place of management and control" (determined largely by the residency of its board of directors) in the UK; or
- "private" company that has been listed in the UK in the previous 10 years.

1.3 Are there special rules for foreign buyers?

The NSI Act requires bidders to obtain regulatory clearance for any acquisition where the target is active in 17 key sectors (such as energy, communications, transport and artificial intelligence), but also empowers the regulator to "call in" and, in some circumstances, retroactively prohibit, acquisitions in any sector on national security grounds. Although the NSI Act applies in principle to domestic as well as foreign bidders, the focus of the regime is clearly foreign investment. Notwithstanding, we would generally expect the UK Government to intervene only exceptionally and where there is a clear and objective rationale to do so.

1.4 Are there any special sector-related rules?

The UK Government has powers to intervene on "public interest" grounds in deals in certain "sensitive" sectors, such as the media (e.g. 21st Century Fox's offer for Sky in 2018) (maintaining freedom of expression and "plurality of views"), financial services (maintaining the stability of the UK financial system), certain utilities, and (in light of the COVID-19 pandemic) certain companies that are important in the context of public health emergencies.

There are special regulations for various other sectors, including banking, insurance, financial services, health, aviation, travel, railways, energy and telecommunications. Generally, these require that regulatory approval is required for any change in control of a licenced entity, and in some cases, the regulator is required to consider whether the ultimate controller is a fit and proper person to control a licensed entity.

1.5 What are the principal sources of liability?

The Panel has broad enforcement and disciplinary powers, including the ability to obtain court orders to require compliance with its rulings, requirement to pay compensation to shareholders, sanction/censure powers and the ability to block a party from accessing market services (so-called "cold shouldering").

Criminal liability can potentially arise under the CA 2006 (for a bidder where its offer document fails to comply with relevant Code rules), the Fraud Act 2006, the Financial Services Act 2012 (for misleading statements and market manipulation) and the Criminal Justice Act 1993 (for insider dealing). Under the MAR, the FCA can also impose penalties for market abuse. Particular care is required (to avoid insider dealing/market abuse or otherwise breaching the Code) when stakebuilding.

Civil liability can potentially also arise for parties to a takeover, including under the heads of negligent misstatement, deceit and defamation, as well as for breach of contract (e.g. in the case of a tender offer).

2 Mechanics of Acquisition

2.1 What alternative means of acquisition are there?

UK takeovers are implemented either by way of:

- an Offer to target shareholders ("**Offer**"), where the bidder makes an offer to target shareholders for them each to decide whether to accept or reject, subject to a minimum acceptance condition set by the bidder of at least 50% of the total number of the target's shares (but usually set at 90% of the shares to which the offer relates, to enable the bidder to squeeze out dissenting shareholders if that condition is satisfied); or
- a scheme of arrangement ("**Scheme**") under the Companies Act, which is initiated by the target company itself and requires approval by a majority in a number of the target company's shareholders, representing at least 75% in value of the shares, in each case present and voting in person or by proxy, and the approval of the court, upon which the Scheme becomes binding on all target company shareholders regardless of whether they voted or how they voted.

Schemes are usually favoured by bidders on friendly deals as the fastest way to obtain 100% of the target company's shares. It is important to consider at an early stage in bid planning the pros and cons of each mechanism, also bearing in mind the possibility of "switching" to the other route later down the line if deemed prudent tactically (for example, if difficulties emerge in reaching the 75% threshold for a Scheme, bidders may consider "switching" to an Offer with the lower <50% threshold).

2.2 What advisers do the parties need?

It is crucial to engage legal and financial advisers from an early stage, to ensure compliance with relevant legal and regulatory requirements (particularly in terms of Code obligations and responsibilities; for example, "price and speculation" monitoring of the target, public announcements, maintaining deal confidentiality, "cash confirmation" requirements, liaising with the Panel, and (for a target) provision of independent advice on the offer to the target and its shareholders), and ensure optimum and efficient deal planning, due diligence and execution.

Accountants may also be engaged to assist with financial due diligence and provide any public reports required by the Code in respect of profit forecasts or quantified financial benefits statements. PR advisers are sometimes engaged to assist with media and shareholder liaison. Receiving agents help with certain administrative aspects of the offer, including the counting of acceptances/voting, and settlement of consideration.

2.3 How long does it take?

This depends on a range of factors, including if there are any competing bidders, material regulatory clearances and if the bid is recommended or not.

The timetable on a Scheme (to obtain 100% control) tends to take around two to three months (and sometimes longer).

Technical control of the target (>50%) can be obtained faster (e.g. about a month) on an Offer, although in practice the timetable usually ends up being longer (similar to a Scheme), with the completion of any "squeeze-out" procedure to obtain 100% also adding on at least a couple of months.

2.4 What are the main hurdles?

These are, typically, obtaining:

- a recommendation from the target board (assuming a friendly deal), which will be focused on price and deliverability;
- requisite regulatory and antitrust clearances;
- acceptances from the requisite number of target shareholders (if structured as an Offer) or the requisite number of votes (if structured as a Scheme); and/or
- committed debt and/or equity financing (to pay target shareholders, to refinance the target's existing debt where necessary, and to pay transaction costs).

2.5 How much flexibility is there over deal terms and price?

Although there is a degree of flexibility for a bidder in setting deal terms and price, key limitations include various rules under the Code regarding equality of treatment of shareholders, including:

- a general prohibition on "special deals" with particular shareholders; and
- "price" – and "consideration" – setting rules (broadly requiring a bidder to offer at least the price that it (or its concert party) paid to acquire any target shares in the previous three months (or 12 months, if <10% of the target has been acquired) or during the offer period – further rules may also be relevant in respect of bids where equity or other non-cash instruments are offered as consideration, or in "mandatory" bids triggered by the bidder exceeding the 30% mandatory bid threshold);
- a bidder will normally be held to any previous public statements it has made on deal terms and price (subject to any reservations it has specified) – such statements tend to require close attention and consideration in conjunction with legal and financial advisers;
- from a commercial perspective, shareholders will usually expect a relatively good bid premium (e.g. starting from 20–30% upwards) on the current market price (and indeed market expectations may be based on a higher historic volume weighted average price, as opposed to what might be deemed to be an abnormally low current share price); and
- a limit under the Code on the bidder's ability to invoke any condition to the acquisition so as to cause the Offer or Scheme to lapse (e.g., a condition that there has been no material adverse change in the financial position or

prospects of the target company's group). The Panel will not allow such conditions to be invoked unless the circumstances, evaluated at the time, are of "material significance" to the bidder in the context of the acquisition.

2.6 What differences are there between offering cash and other consideration?

Although cash remains the sole consideration for most UK takeovers, other consideration options are possible, e.g. bidder shares, loan note alternative, or so-called "contingent value rights". Factors that may influence a bidder's thinking include:

- its cash resources and existing gearing;
- preferences of target shareholders;
- whether any collar will be offered to target shareholders (e.g. increasing the number of shares issued as consideration if the bidder's share price falls and *vice versa*);
- effect of different financing options on bidder's financial metrics (e.g. EPS); and/or
- "cash confirmation" requirements (see question 2.16).

Common issues that need to be navigated when offering securities as consideration include:

- the potential (and onerous) requirement for a prospectus;
- the need for any bidder shareholder or regulatory approvals, including to issue the bidder consideration shares, and factoring this into the UK bid timetable and planning process;
- any profit forecasts and "quantified financial beneficial statements" that need to be made by the bidder having to be reported to Code standards;
- setting up a dealing facility for the benefit of target shareholders if the securities will not be listed in the UK;
- depending on the circumstances and the securities offered as consideration, the target will likely want to undertake reverse due diligence on the bidder and potentially include target protection conditions in the offer (usually mirroring the relevant bidder protection conditions) to guard against the risk that the consideration shares to be received by target shareholders materially drop in value after the bid is announced; and
- if the securities offered as consideration are unlisted, the offer documentation must contain an estimate of the value of the shares by the bidder's financial adviser.

2.7 Do the same terms have to be offered to all shareholders?

Generally, yes, including as elaborated at question 2.5 above. Certain exemptions can apply in limited circumstances set out in the Code (or otherwise permitted by the Panel); for example, in respect of target shareholders for whom "joint offeror" status has been granted by the Panel, and certain "management incentivisation" arrangements with target management shareholders (see question 2.9).

2.8 Are there obligations to purchase other classes of target securities?

Yes, there are as follows:

- a comparable offer must be made for any other class of equity share capital in the target (whether they carry voting rights or not); and
- an appropriate offer (to ensure equality of treatment so far as possible with other target shareholders) should also be made for any convertible securities, options, warrants or similar subscription rights over target shares.

2.9 Are there any limits on agreeing terms with employees?

The general prohibition on "special deals" with particular shareholders applies to employee shareholders too, although special rules apply in respect of "management incentivisation" proposals for certain management shareholders. Such proposals generally need to be publicly disclosed in the offer document and opined upon (as being "fair and reasonable") by the target's financial adviser, with Panel consent being required if the arrangements are significant or unusual, and target shareholder approval will sometimes be required.

2.10 What role do employees, pension trustees and other stakeholders play?

Although employees, pension trustees and other stakeholders can have a degree of involvement in a bid, this is limited to the right to receive public information (already provided to shareholders, e.g. relevant announcements and offer documentation) and give a public opinion. They have no right to veto or otherwise affect the terms of the bid – such power rests with target shareholders alone. In cases where the bid would impair the creditworthiness of the target group, the pension trustees could, in principle, seek to invoke the power of the pensions regulator to require the bidder to provide security.

That said, a bidder is required to make significant public disclosure on the effect of the bid on, and its intentions regarding, employees, pension trustees and other stakeholders, which can (to varying degrees) be binding (or at least tricky to alter) through the Code regime on "post-offer intentions and undertakings" (post-offer intention statements, for example, are generally expected to hold true for one year). The influence and pressure exerted by employees, pension trustees and other stakeholders tend to depend in practice on how motivated, well organised and advised they are, including in terms of effectively positioning their arguments with the target, shareholders, bidder and/or the media.

2.11 What documentation is needed?

Key documentation includes:

- possible offer announcement (of the potential bid, without the requisite certainty to announce a "firm intention" to bid);
- firm offer announcement (including the key offer terms and conditions, at which point the bidder is effectively bound to proceed with the offer);
- Offer/Scheme document (containing the full terms and conditions, and all information required by target shareholders to decide whether to accept, and the procedural hoops) and a response document from the target if the offer is not recommended;
- prospectus (if bidder securities are offered as consideration); and
- other ancillary documentation such as irrevocable undertakings from target shareholders (to accept the Offer or vote in favour of the Scheme) and a so-called co-operation agreement (between bidder and target to govern certain aspects of the bid).

2.12 Are there any special disclosure requirements?

Extensive disclosure requirements are set out in the Code, particularly in respect of offer announcements and the Offer/Scheme document. These include detailed information and financial disclosure on both the bidder and target, along with material contracts, bid-financing, fees and expenses, and accountants' reports on any profit forecasts or quantified financial benefits statements. Key offer documentation (including certain material contracts, financing documentation, and shareholder irrevocable undertakings) must be made available on a website. Within the firm offer announcement (and Offer/Scheme document), a bidder must describe in detail its intentions with regard to the target's business, employees and pension schemes. Extensive disclosures are also required of holdings and dealings in target shares (and bidder shares where these are offered as consideration).

2.13 What are the key costs?

Key costs relate to: financial, accountancy, legal and other advisory fees; financing commitment and related expenses; other documentation and administrative costs; and stamp duty (0.5% of deal consideration, although no stamp duty is payable if the target is quoted on the Alternative Investment Market).

2.14 What consents are needed?

An analysis of key consents should be conducted early in the bid planning, and typically include any material regulatory or antitrust consents. Sometimes, Panel consent may be needed for certain aspects of the deal (to the extent they require exemptions from the normal Code rules, or are unusual). Bidder shareholder consent may be needed to the extent required under the bidder's constitution (or listing regime) or for the issue of bidder securities as consideration. Consents may also be needed from certain key stakeholders without which it would be impractical to effect the bid (e.g. from key target customers, pension scheme trustees or financing banks).

2.15 What levels of approval or acceptance are needed?

See question 2.1.

2.16 When does cash consideration need to be committed and available?

The bidder's financial adviser must provide a "cash confirmation" in the firm offer announcement (and again in the Offer/Scheme document) that funding is available to satisfy full acceptance of the offer (otherwise the financial adviser may have to provide the funding itself); this is backed up in practice by a reasonable level of due diligence as evidence, and firm financing commitments must therefore be in place at the time of firm offer announcement.

3 Friendly or Hostile

3.1 Is there a choice?

Most bids proceed on a "friendly" basis (i.e. recommended by the target board), as this tends to make deal execution easier and faster (including through better access to due diligence on the target, which is usually harder when hostile). In practice, a range of tactics can be deployed to turn what might originally be seen as a hostile bid, into a friendly one; occasionally the opposite may occur as set out in question 8.1 below.

3.2 Are there rules about an approach to the target?

A bidder (or its advisers) must notify a firm intention to make an offer initially to the target board (or its advisers).

Strict rules relating to confidentiality and "price and speculation" monitoring apply after a bid is first "actively considered"; consultation with legal and financial advisers from an early stage is therefore extremely important.

After a bidder is publicly identified, it has 28 days to either announce a firm intention to make an offer for target, or that it does not intend to make an offer (the so-called "put up or shut up" period, which can, however, be extended with the target's and the Panel's consent).

3.3 How relevant is the target board?

It usually plays a critical role. In particular:

- the board's recommendation will heavily influence thinking in terms of structure, terms and timetable of the bid; and
- the board must publicly opine in the offer documentation as to whether the offer is "fair and reasonable" (backed up by advice from the target's financial adviser).

Should, however, the target board choose to deploy various defensive tactics (such as those set out in question 8.1), difficulties regarding bid execution commensurately increase. However, the overall framework is designed to facilitate rather than impede hostile offers, on the theory that the target's shareholders are the best judges of their own commercial interests.

3.4 Does the choice affect process?

Yes, the key points being that due diligence access will usually be more limited on a hostile bid, and a Scheme will be impracticable to implement (leaving an Offer as the only realistic route).

4 Information

4.1 What information is available to a buyer?

A bidder will carry out initial due diligence based on publicly available information, before approaching the target with a more detailed information request. Given a general Code requirement that information given to one bidder must be given to all other *bona fide* potential bidders on request, a target will limit information provision initially, and only disclose more commercially sensitive information (on a staggered basis) closer to announcement. The target will usually not permit due diligence to be undertaken unless the bidder has proposed a price that the target's board feels able to recommend to shareholders.

A hostile bidder will only have access to publicly available information, unless further information has been passed to another potential bidder (that must then be shared with other bidders).

4.2 Is negotiation confidential and is access restricted?

Yes, there must be secrecy before announcement of an offer. Insider lists should be maintained, and information should be shared only on a need-to-know basis.

Before announcement of an offer, discussions with a wider group (outside the target, bidder and their immediate advisers) cannot exceed more than six people (or one person, in the context of a target seeking more than one potential bidder in a sale process), unless the Panel consents, in which case an announcement may be required. In practice, the Panel can sometimes be flexible on these numbers, depending on the facts (including timing, status of discussions, nature of the parties involved, and confidentiality protocols).

4.3 When is an announcement required and what will become public?

An announcement is required in a range of circumstances, including when:

- a bidder announces a firm intention to make an offer, or acquires an interest in target shares (>30%) that trigger a "mandatory bid";
- offer-related discussions are extended beyond a very restricted number of people (see question 4.2); or
- after the bidder begins giving "active consideration" to a possible offer, there is an "untoward movement" in the target's share price or it is the subject of rumour and speculation.

Announcements that begin an offer period must identify all potential bidders in talks with the target. A "possible offer" announcement must set out the 28-day "put up or shut up" period (see question 3.2) and is usually relatively short (although can be longer and contain more detailed possible terms and offer arguments, if thought prudent tactically). The contents of a "firm offer" announcement (and subsequent documentation) are far greater, more detailed and prescribed (as summarised at question 2.11).

4.4 What if the information is wrong or changes?

Due diligence information is usually provided by the target on a good-faith-only basis. Civil liability on the part of the individuals responsible for providing it would arise in a claim for fraud, only if those individuals knew or were reckless as to whether that information was untrue or misleading. The confidentiality agreement entered into by the bidder with the target in a friendly deal will normally contain an express waiver of any implied obligation on the part of the target to update information already provided, and of any claim for negligent (but not fraudulent) misstatement or non-disclosure.

Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer, and no relevant information should be withheld. All documents and statements must be prepared with the highest standards of care and accuracy. Information must be fairly and adequately presented. Material changes and new information must be promptly announced. Directors of the bidder and target are required to sign "responsibility statements" in respect of information published.

The provision of incorrect information to shareholders, or a failure to update when required, can trigger a range of civil or criminal liabilities (see, for example, question 1.5).

5 Stakebuilding

5.1 Can shares be bought outside the offer process?

Yes, but a bidder will have to consider various legal and regulatory issues, including disclosure obligations, thresholds (e.g. 30% before triggering a mandatory bid), price- and consideration-setting rules, difficulties in counting towards the relevant shareholder approval and "squeeze-out" thresholds depending on timing and offer structure, and possible insider dealing/market abuse concerns. That said, stakebuilding can sometimes be an effective and prudent tactic, depending on the overall fact pattern, including as a method of "averaging down" the overall bid price, and to deter potential competing bidders.

Stakebuilding can sometimes be restricted by the terms of any confidentiality agreement entered into between the bidder and target in the early stages of a bid, hence close attention to the drafting of this (and relevant carve-outs) is needed.

5.2 Can derivatives be bought outside the offer process?

Yes, derivatives are treated in the same way as shares, hence similar issues apply as summarised at question 5.1.

5.3 What are the disclosure triggers for shares and derivatives stakebuilding before the offer and during the offer period?

Shareholdings exceeding 3% in listed companies (plus any 1% increase or decrease thereafter) must be publicly disclosed. Even if a bidder stays below this 3% threshold, it may nonetheless be forced to disclose that interest on request from the target.

During the offer period, the Code applies additional disclosure obligations on a bidder and target (or any concert parties) to publicly announce their shareholdings (in one another) and then any subsequent dealings. All shareholdings and dealings in the target or bidder (in a securities exchange offer) by any shareholder holding 1% or more must be disclosed.

5.4 What are the limitations and consequences?

See question 5.1.

6 Deal Protection

6.1 Are break fees available?

Break fees and other similar offer-related arrangements between the bidder and target (or their concert parties) are generally prohibited by the Code, on the theory that these are more often detrimental to the interests of target shareholders, including by deterring competing bidders.

There are some exceptions, including in respect of agreements relating to: confidentiality; non-solicitation of employees, customers or suppliers; assistance in obtaining regulatory clearances; obligations that are imposed only on the bidder (e.g. reverse break fees are permitted); existing employee incentive arrangements and pension schemes; a 1% break fee in respect of a formal sale process initiated by a target, or given to a competing "white knight" bidder on a hostile offer. Occasionally, the Panel may allow certain other arrangements, depending on the fact pattern (e.g. temporary financing from a bidder that the target cannot obtain elsewhere and needs to continue to operate).

6.2 Can the target agree not to shop the company or its assets?

No, as this would fall within the scope of the prohibitions outlined at question 6.1.

6.3 Can the target agree to issue shares or sell assets?

Generally no, on the basis that this could be a "frustrating action" (depending on overall quantum and materiality) unless consent has been obtained from any potential bidders, or a majority of the target's shareholders (see question 8.1).

6.4 What commitments are available to tie up a deal?

In practice, these are limited (including as summarised at question 6.1), with the exception of securing irrevocable undertakings to accept the Offer or vote in favour of the Scheme from as many of the target shareholders as possible.

7 Bidder Protection

7.1 What deal conditions are permitted and is their invocation restricted?

Although the firm offer announcement and Offer/Scheme document will contain range of conditions on paper, they are, in practice, difficult to invoke unless the bidder can prove materiality (for which a very high bar is set by the Panel). Other factors that can improve the chances of being able to invoke the condition include if the condition was the subject of detailed negotiation with the target, expressly and clearly drawn to the attention of target shareholders, and included to take into account the target's particular circumstances.

7.2 What control does the bidder have over the target during the process?

The bidder has limited control, save in limited circumstances such as those explained at questions 6.1 (offer-related arrangements) and 8.1 (frustrating actions).

7.3 When does control pass to the bidder?

Control passes when the acceptance condition and all other conditions are satisfied: on an Offer, when it becomes "wholly unconditional"; and on a Scheme, when the court order sanctioning the Scheme is filed with the UK Companies Registrar.

7.4 How can the bidder get 100% control?

On an Offer, the bidder can initiate a "compulsory squeeze-out" procedure once it receives acceptances for at least 90% of target shares to which the offer relates (i.e. excluding shares already held by the bidder before it published the Offer document).

On a Scheme, the bidder automatically obtains 100% control (see question 2.1, point (ii)).

8 Target Defences

8.1 What can the target do to resist change of control?

Defensive tactics are curtailed by the Code as well as the fiduciary duties of the target directors. The Code prohibits a target board from taking action to frustrate a potential bid (e.g. share issues or material transactions), save with the consent of potential bidders, or a majority of the target's shareholders.

It is worth noting that so-called "poison pill" defences (common in the USA) are impracticable in the UK. Otherwise, typical defensive tactics include:

- careful messaging of commercial and other value-based arguments (and possibly releasing new information or profit forecasts/asset valuations) to push a bidder to increase its offer, persuade target shareholders to push a bidder to increase its offer, or persuade target shareholders not to accept the offer;
- lobbying various other stakeholders against the bid, including relevant regulators, politicians, media, target employees and pension schemes; and
- soliciting so-called "white knights" (competing bidders) or "white squires" (new or existing target shareholders to undertake not to accept the offer).

A target should generally pre-prepare its defence arguments and protocol in advance with its legal and financial advisers, including through preparation of a "defence manual".

8.2 Is it a fair fight?

Yes. A target's shareholders have the ultimate say as to whether a bid succeeds and the Code looks to ensure fairness, including through ensuring: equality of treatment of all shareholders; that they have all relevant information to make a decision; and that *bona fide* bids are not unreasonably frustrated. When needed, the Panel will proactively "step in" to police the "fight".

9 Other Useful Facts

9.1 What are the major influences on the success of an acquisition?

Apart from antitrust and regulatory considerations, the most important factor is usually price. Good planning and preparation (including for any unexpected scenario such as competing bidders, defensive tactics, intervention by "merger arbitrage" funds or regulatory delays) is essential.

9.2 What happens if it fails?

A bidder cannot (unless the Panel consents, in certain circumstances, e.g. with target's consent, or if a competing offer is announced), for a period of 12 months after failure of the bid: (i) announce a new offer; (ii) take any steps where knowledge of a possible offer might extend beyond the bidder and its immediate advisers; or (iii) make any statement regarding a possible offer.

10 Updates

10.1 Please provide a summary of any relevant new law or practices in M&A in your jurisdiction.

2021 saw a significant increase in the number of competing bids that ended in an auction procedure supervised by the Panel (most notably, the competing private equity bids for Wm Morrison Supermarkets Plc). For the second time, in the offer by Caesar's Entertainment Inc. for William Hill Plc, activist hedge funds deployed a litigation strategy in an attempt to thwart a friendly deal, arguing (unsuccessfully) that shareholders had voted on the scheme on the basis of inadequate and misleading disclosure in the Scheme document.

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