



Public M&A Review

Q3 2023

Ashurst

Overview

Takeover activity focussed on AIM companies

The UK public M&A market remained subdued in the third quarter. This was particularly true in the large cap space, where no £1bn+ offers were announced (Permira's £703m takeover of Ergomed was the highest value deal announced in the quarter). It is perhaps not surprising therefore that most activity was seen on AIM, with 7 out of the 10 announced firm offers being for companies whose shares are traded on AIM.

Interest rates reaching peak?

A number of the world's central banks signalled that interest rates are at or near their peak and, in late September, on a finely-balanced decision, the Bank of England resolved to maintain the bank interest rate at 5.25%, having earlier in the quarter raised rates by 25 basis points. This decision was largely driven by concerns that prior increases in interest rates were beginning to weigh on the UK economy, as well as lower than expected inflation figures for August. It remains to be seen whether the Bank of England's position offers more clarity on the cost of financing or whether a potentially deteriorating UK economy will continue to restrict the debt markets.

Spotlight on letters on intent

On a more technical note, letters of intent were in the spotlight this quarter following the withdrawal by a major shareholder of its letter of intent to support an offer shortly before the shareholder vote. As readers will know, letters of intent are typically given by institutional shareholders who are unable or unwilling to commit to accept an offer upfront. Whilst letters of intent do not bind shareholders in the same way as an irrevocable undertaking, they have been used to good effect in recent months to demonstrate support for possible offers (for example on the possible offers for DX and STM Group). One of the benefits of an 'early' letter of intent is that it does not count towards the Rule 5 threshold (unlike an irrevocable undertaking). In both examples, offer terms were announced early to allow the target and bidder to engage with shareholders on value outside of the restrictions of the 'Rule of Six'.

Code jurisdiction

The quarter also saw an offer by a Berry Bros/Symington consortium for Hambledon Vineyard, an unlisted PLC. This serves as a useful reminder to practitioners that, even if not listed, an English public company may still be subject to the Takeover Code, and therefore that steps need to be taken at the outset of any acquisition of an unlisted PLC to determine whether the Takeover Code applies.

The Ashurst UK Public M&A Team

10

ANNOUNCED BIDS

10

RECOMMENDED ON
ANNOUNCEMENT

8

SCHEMES OF
ARRANGEMENT

56.4%

AVERAGE OF BID PREMIA
(% UNWEIGHTED)

45.6%

AVERAGE OF BID PREMIA
(% WEIGHTED)

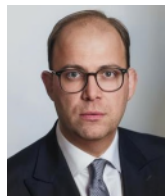
A summary of the key features of each announced offer is set out in a table in the Appendix.

[Click here to jump to the Appendix.](#)

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*“Partners display ‘great commercial acumen’
and very high commitment.”*

Legal 500 UK

Ashurst's UK public M&A mandates in the last quarter

Rothschild & Co

on the take privates of Gresham House,
DWF and Ergomed.

J.P. Morgan

on the acquisition of Round Hill Music by
Concord.

Moelis

on the acquisition of Instem by
ARCHIMED.

Cavendish

on the acquisition of Osirium
Technologies by SailPoint (a Thoma
Bravo portfolio company).

News digest

The Panel's 2023 Annual Report and Accounts

The Panel published its latest Annual Report and Accounts, for the year ended 31 March 2023, on 13 July 2023.

Key points from the latest Annual Report and Accounts include the following:

- Activity levels were high in the first half of the 2022/2023 financial year – there were 29 announced firm offers which totalled £27 billion.
- Activity levels declined significantly in the second half of the year, reflecting the difficult economic environment and challenging debt markets – there were 19 announced firm offers which totalled under £3bn, with no firm offer being announced with a value of over £1bn in this period.
- Of the 48 firm offers, at the time of the firm offer announcement 38 were structured as a scheme of arrangement and ten as a contractual offer (compared to 48 and 12 respectively, in the previous year).
- There was only one offer which was a mandatory offer at the time of the firm offer announcement (compared to four in the previous year).
- 15 "formal sale processes" were announced (compared with seven in 2021/2022 financial year), possibly reflecting the more difficult economic conditions.
- The financial year also saw a significant level of active involvement from shareholders in offer processes including: encouraging boards to seek offers; pushing bidders to offer more value, and opposing transactions.

- The Panel Executive granted 41 Rule 9 waivers and eight Code waivers (compared to 30 and seven respectively, in the previous year).
- The Panel Executive issued six educational/warning letters and no letters of private censure in the past financial year.
- The Panel Executive is working with external consultants on a fully digitised version of the Code.
- The Panel Executive has also been working to reinforce existing and new relationships with takeover regulators around the world and with other regulatory bodies in the UK.

The Public Offers and Admissions to Trading Regulations 2023

On 11 July 2023, the government published a near-final version of the statutory instrument which creates a new regulatory framework for public offers and admissions to trading.

The SI is similar to the illustrative SI published in December 2022 and forms the first part of a fundamental overhaul of the UK's prospectus regime.

The SI will be followed by detailed FCA rules, which together will create the new public offers and admissions to trading regime. The government intends to legislate for the new regime by the end of the year, subject to parliamentary time allowing. This legislation will fully come into effect after the FCA has made the relevant new rules.

News digest

The National Security and Investment Act 2021 Annual Report

On 11 July 2023, the Cabinet Office published the statutory annual report covering the operation of the National Security and Investment Act 2021 between 1 April 2022 and 31 March 2023. This is the first NSIA Annual Report to cover a whole year.

The report's findings include that:

- 866 notifications were received, of which 671 were mandatory notifications, 180 voluntary notifications and 15 retrospective validation applications.
- 47% of the mandatory notifications related to the defence sector.
- The average time taken to accept a notification was 4 working days with 43 notifications rejected.
- Over 90% of the notifications and retrospective validations which were reviewed during the reporting period were notified that there would be no further action.
- All notifications were either called in or cleared within the statutory period of 30 working days after being accepted.
- 65 call-in notices were issued, of which 37% were associated with military and dual use, 29% with defence and 29% with advanced materials.
- 42% of call-ins involved acquirers associated with China, 32% with the UK and 20% with the USA.
- 15 final orders were issued, of which 5 were either blocked or subject to an order to unwind.
- It took on average 81 working days to issue a final order.



Appendix

Key features of firm offer
announcements

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Announced UK takeover bids

(1 July to 30 September 2023)

Target (Market)	Bidder(s)	Bid value	Bid premium**	Recommended	Hostile/No Recommendation	Rule 9 offer	Cash	Shares (L/U/A)	Other consideration	Mix and match	Offer***	Partial Offer	Scheme	Offer-related arrangements□	Formal sale process	Non-solicit undertaking of bid in shareholder	Matching/Topping rights****	Shareholder vote	Profit forecast/QFBS
Hambledon Vineyard plc (Unquoted)	Berry Bros. & Rudd Limited Atlantis Wine Holdings Limited	£22.3m	NP ¹	•			•				•			N ²					
Finsbury Food Group plc (AIM)	DBAY Advisors Limited	£143.4m	23.6%	•			•	•U ³					•	N/C					
Round Hill Music Royalty Fund Limited (Main Market)	Alchemy Copyrights, LLC	US\$468.8 m (approx £375.6m)	67.3%	•			•		• ⁴				•	N ⁵					
Ergomed plc (AIM)	Permira Advisers LLP	£703.1m	28.3%	•			•	•U ⁶					•	N/C					• ⁷
Instem plc (AIM)	ARCHIMED SAS	£203m	41%	•			•						•	N/C ⁸					• ⁹
Osirium Technologies plc (AIM)	Sailpoint Technologies, Inc.	£3.11m	95.83%	•			•						•	C ¹⁰					
Blancco Technology Group plc (AIM)	Francisco Partners Management, L.P.	£175m	24.6 %	•			•				•			N			•		
DWF Group plc (Main Market)	Inflexion Private Equity Partners LLP	£342m	52.7 %	•			•	•U ¹¹ • ¹²					•	N/C					
Gresham House plc (AIM)	Searchlight Capital Partners, L.P.	£469.8m	63%	•			•						•	N/C ¹³			•		
Youngene Health plc (AIM)	Novacyt S.A.	£16.7m	167.7 %	•			•						•	N			•		• ¹⁴

Announced UK takeover bids

Key and footnotes

Key	
*	This table includes details of takeovers, set out in chronological order, in respect of which a firm intention to make an offer has been announced under Rule 2.7 of the Code during the period under review (including any offers which subsequently lapsed or were withdrawn). It excludes offers by existing majority shareholders for minority positions.
**	Premium of the offer price over the target's share price immediately prior to the commencement of the relevant offer period
***	Standard 90% (waivable) acceptance condition, unless otherwise stated
****	In shareholders' irrevocable undertakings (unless indicated otherwise)
□	Permitted agreements under Rule 21.2 of the Code
A	AIM traded shares
C	Co-operation agreement
F	Break fee given under formal sale process or white knight dispensation
L	Listed/traded shares
N	Confidentiality agreement
NP	No premium given in offer documentation or nil premium
R	Reverse break fee
U	Untraded shares
B	Bidder shareholder approval
T	Target shareholder approval

1. Target shares unquoted.
2. + Rule 15 waiver agreement and other transactions linked to the offer.
3. Unlisted securities alternative.
4. Current dividend plus special dividend payment (if declared).
5. + Investment management agreement deed of termination.
6. Unlisted securities alternative.
7. Profit forecast.
8. + Clean team agreement.
9. Profit forecast.
10. + Cost coverage agreement, bridge finance facility and Rule 15 waiver and redemption agreements.
11. Partial securities alternative comprising loan notes or unlisted preference shares.
12. Special dividend payment.
13. + Joint defence agreement.
14. Profit forecast.

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The background of the page is a solid orange-red color. On the right side, there is a large, stylized letter 'A' in a dark red color. A complex, glowing cyan wireframe graphic, resembling a mesh or a series of overlapping lines, flows from the top left towards the center, partially overlapping the 'A'. The overall aesthetic is modern and professional.

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