Takeover Panel Consultation – PCP 2011/1

Dear Sirs,

In relation to the above consultation and having read your proposal, we would like to make you aware of the following concerns and implications for us as a Private Equity buyout business.

In Private Equity, part of our business model is to undertake preliminary examinations of a wide range of potential businesses to invest in. This is essential to ensure that our short list of companies is one that has the most potential for our investors, who are predominately pension funds, charities and university foundations – not speculators – who require a high level of responsibility from their fund managers when placing their money to manage the risk associated with making those investments.

The naming in first announcement clause does not facilitate this important part of our early stage investment sourcing process, indeed it would in some cases prevent us from considering a public company for investment, so will effectively reduce the competitive market for that business and their shareholders' returns by deterring potential bidders.
It would be more sensible to protect the identity of any early stage interested party until they have decided to genuinely commit themselves to the bid process (unless speculation drives the necessity for an announcement), this would then ensure that only those who are genuinely interested are named and also help prevent the market hubris that can be so disruptive to a public company.

The second clause that causes us concern is the **28 day PUSU regime**. Whilst the idea of a PUSU regime is sensible, indeed it exists today by request from the target business, the time period of 28 days is far too short to enable a sufficiently rigorous study of documents to enable a decision to be made about an offer or a withdrawal from the process.
Indeed even if full documentation were available and had been analysed, it would not be possible to put in place the facilities for all the financing normally associated with such transactions, this would prevent any offer from being feasible, as PE firms typically do not bridge unresolved financing commitments with their equity, and if required to do so, would increase the transaction risk and thereby reduce the offer price to take into account the increased risk.
As a result, many fewer bidders would be able to express an interest in the business, which would again skew the genuine market for that business and reduce value to the shareholders.
In our experience, you typically need at least 7weeks for sufficient due diligence and to secure suitable commitments on financing. As an example, we undertook a successful investment in a take-private in 2007. This entire process took even longer than 7 weeks and could not have been concluded if the 28 day PUSU regime would have been in place at the time.

Moving on to your proposal on **Break fees:** The current system, whereby a 1% cap exists on inducement fees to cover the costs of due diligence and work undertaken seems to work effectively. These fees are only used to cover the costs of genuine work undertaken as expected by our Investors. They also serve to demonstrate from the target business that they are fully committed and genuinely plan to go through with the process. The cost of that work would otherwise be borne by our Investors, which would reduce their returns to their pensioners, charities and foundations. As a result in this shift of responsibility and risk, we would be far less inclined to make an offer for a public company. This will again reduce the market for such a business and adversely impact its shareholders in potentially gaining full market value.

A reasonable compromise could be to ensure that break fees are only paid if an alternative offer is successful.

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The final point that concerns us is the **Disclosure of Fees and Finance Arrangements.** If transparency is the objective, we see no particular reason why disclosing fees paid to advisors once the investment is completed would be an issue to us, although the advisor may take a different view.

We do however have some major concerns about making the financial arrangements public. This should certainly not take place during the actual process, as it could severely undermine any competitive advantage we might have negotiated with our prospective financing partners and could ultimately undermine the price in the market. Disclosure could also, both during and afterwards force commercially sensitive, proprietary information into the public domain, which, given the financial nature of our business, could well be part of our intellectual know how and capabilities. We would see that as undermining our ability to compete effectively, this would ultimately reduce the number of potential offers for any business and therefore the value to shareholders.

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