

24 October 2014

The Secretary to the Code Committee  
The Takeover Panel  
10 Paternoster Square  
London  
EC4M 7DY

**CBI response to the Takeover Panel's consultation  
'Post-Offer Undertakings and Intention Statements'**

The CBI welcomes the opportunity to respond to the Takeover Panel's consultation 'Post-Offer Undertakings and Intention Statements'.

Our starting point is that open markets deliver significant net benefits for the UK. Greater openness helps drive productivity by giving domestic firms greater access to markets that allow economies of scale to be exploited; improving the quality of supply chains available; increasing the ability of firms to plug skills shortages and build cross-border workforces; and by boosting access to capital that can be used for investment in jobs and innovation.

The UK has a long history of being open to foreign direct investment, and has benefitted significantly from it. UK company law, including on takeovers, supports this environment, is highly regarded and helps to ensure businesses can invest with confidence.

We would like to make the following points in our response to this consultation:

- **The CBI supports the proposal to introduce a new approach for commitments made during a bid process, subject to clarifying some details**
- **The nature of the relationship the Takeover Panel has with firms is critical and we welcome the introduction of an independent monitoring regime**

**The CBI supports the proposal to introduce a new approach for commitments made during a bid process, subject to clarifying some details**

Much of the debate in recent high profile takeovers has focused on the intentions and commitments made by both parties, especially offeror companies, and whether these can be trusted.

We think it is desirable that companies are encouraged as informative and concrete statements of intention as they feel able to do so. Therefore we support the proposal to introduce either an indicative statement of *intention* or a more concrete voluntary *commitment*. We think this will make it easier for companies to set out the nature of the commitment they are making, and to set out the circumstances under which they could not maintain these commitments. This will help give clarity to investors, the board of the target company and broader stakeholders.

To ensure that this new approach works effectively, we think it is important to get the detail right on:



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- When the new statement of intentions and voluntary commitments regime applies, for example does it apply during “phoney war and so on;
- Most of the debate has focused on the intentions and commitments made by offeror companies, but it is also important to understand how the new approach would impact on target companies who make commitments especially in the event of a formal offer not materializing; and
- Making sure not to “gum up” the reality of real time situations especially in an era of 24 hours news cycles which dictate a need to provide instant responses to evolving takeover situations.

**The nature of the relationship the Takeover Panel has with firms is critical and we welcome the introduction of an independent monitoring regime**

We are particularly pleased to see the introduction of an independent regime to monitor a company’s post-offer undertakings. This will increase transparency around how the company is complying and be a helpful early warning mechanism to the Takeover Panel if a company is not sticking to its promises. We think this approach will be helpful in not diverting the Takeover Panel’s attention or resources away from its core competence.

The CBI would be happy to discuss the comments made in this submission in more detail with the Takeover Panel in more detail should that be of interest.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Matthew Fell', written in a cursive style.

Matthew Fell  
Director | Competitive markets | CBI