
EEF response to the Takeover panel on statements of intention and related matters

Overview

1. EEF welcomes the opportunity to comment on the Takeover Panel's proposed changes to the Takeover Code, given the importance that both play within the UK's framework, specifically with regards to how foreign takeovers are regulated and managed.
2. Foreign investment has, on the whole, been a force for good in the UK, but we know from experience that jobs, investment and the supply chain can be impacted when the intentions of foreign acquirers are not aligned with the UK's wider economic interests. Manufacturers have experienced both the positive and negative effects of our openness to foreign investment and welcome the renewed debate on the UK's current framework.
3. Our engagement with manufacturers has noted an increasing appetite to keep the framework for foreign takeovers under review to ensure that we retain an appropriate balance between openness and retaining the ability to prevent takeovers not in the UK's wider interests from proceeding.
4. This consultation on extending assurances from offerors looking to acquire UK businesses is an important first consideration in this debate. We confine our comments to the proposals on extending the intention statements provided by offerors, as this is the issue that the companies we represent are best able to offer insight.
5. While we support the proposition put forward by the Code Committee of the panel, we nevertheless continue to see limitations with the approach. Taking forward these recommendations within the current remit of the panel should therefore be one of the steps towards ensuring that the UK's takeover framework can best mitigate against the negative effects we have seen in the past.

Consultation questions relating to Rules 2.7 and 24.2 (a)

1. As the "referee of takeovers" the Panel is primarily concerned with ensuring the fair treatment of shareholders during a takeover, as well as providing an orderly framework in which takeovers are conducted. They perform this role perfectly.
2. The proposed changes to the code however, specifically to rule 2.7 and 24.2(a), which will require bidders to make clearer their intentions regarding research and

development facilities, jobs, corporate headquarters and pension schemes in a timely manner, is recognition that when considering a bid, shareholders need to be able to consider the wider macroeconomic effects of the takeover, to make an informed and fair decision. In order to do this, bidders “intention statements” need to be clear, and easily quantified, which up until this point, they have not been.

3. We therefore welcome these changes. While FDI and foreign ownership have greatly benefited the UK, importing not just capital but technology, production skills and better management, raising productivity and wages in the process, the effects have not always been beneficial. Indeed FDI, depending on the investor and situation, can lead to job losses, factory closures and asset stripping, with a number of high profile examples in the UK often cited as prime examples of “bad” FDI. The changes proposed should eliminate the vagueness with regards to acquirers future intentions post takeover, and improve the transparency of the takeover and its wider impacts in the process.
4. The proposed changes are therefore a step in the right direction, to strengthen the UK’s takeover framework, and mitigate against the negative effects we have seen in the past.
5. We do however have some remarks and suggestions which we would like to bring to the Panels attention. While the proposed changes represent a shift to a more holistic framework that takes into account the need for shareholders to be able to consider the wider impacts of a takeover, it needs to go further.
6. Seeking assurances around job losses, headquarters location and the like (as rule 24.2(a) proposes) may prevent headline negative effects at the acquired company, but it fails to take into account the potential negative impacts on the wider supply chain. The hollowing out of domestic supply chains, as a result of acquirers deciding to source products from overseas or consolidating existing domestic suppliers, is a concern for our members, with just under a third of respondents in our recent survey citing reduced UK content in their final product as one of the main negative impacts their business had experienced from foreign takeovers¹.
7. Currently no consideration is given to the impacts on the domestic supply chain by the Takeover Code, or the other bodies involved within the UK’s takeover process. Addressing this gap will be of particular importance to SMEs, who we believe are often overlooked when it comes to assessing the costs and benefits of a takeover.
8. There is however a more fundamental, underlying issue with the current framework that needs to be addressed. This relates to the assurance based approach that underpins the Takeover Panel, and its lack of powers to enforce them.
9. The changes proposed in the consultation document broadly relate to bidders “intention statements” – how and when they are made. While the Takeover Code states that a bidder must make its intentions, with regards to certain aspects of the business, aware to the shareholders of the target company, these assurances can rarely be enforced. If a bidder fails to deliver on its stated intentions, or takes a

¹ EEF Omnibus Survey (2017)

course of action which it had not stated it intended to do, then all it must do is make an announcement describing the course of action it has taken, explaining its reasons for this. If these reasons are deemed acceptable, the Takeover Panel cannot take any further action.

10. We believe this gives acquirers too much room for manoeuvre. Acquirers could point to any number of reasons why they have not fulfilled their assurances and promises, namely Brexit and the terms of the UK's exit from the EU, which remain unclear. These would be legitimate reasons, to for example, relocate headquarters or jobs, and the Panel nor any other body would be able to dispute this. Whether the acquirer had gone back on its assurances due to the reasons given, or had always intended to, would be impossible to determine. Consequentially under the current framework, there remain legitimate mechanisms that could allow bidders to renege on their promises. This risks leaving confidence in the framework open to be undermined.
11. In order to ensure that the UK is a net benefactor from foreign investment, we need to move away from an assurance based approach, which cannot hold acquirers accountable for not delivering on their assurances.
12. A more robust vetting framework is therefore needed, with greater powers to block takeovers which would be of detrimental effect, not just to the acquired firm, but the wider UK economy and supply chain. We stress that we view FDI into the UK as an overall benefit, but would like to see the framework strengthened, in order to bring it in line with other countries of similar standing.

About EEF

EEF, the manufacturers' organisation, is the representative voice of UK manufacturing, with offices in London, Brussels, Wales, and every English region.

Collectively we represent 20,000 companies of all sizes, from start-ups to multinationals, across engineering, manufacturing, technology and the wider industrial sector. We directly represent over 5,000 businesses who are members of EEF. Everything we do – from providing essential business support and training to championing manufacturing industry in the UK and the EU – is designed to help British manufacturers compete, innovate and grow.

From HR and employment law, health and safety to environmental and productivity improvement, our advice, expertise and influence enables businesses to remain safe, compliant and future-focused. More information at www.eef.org.uk

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