



Pinsent Masons

RESPONSE TO THE TAKEOVER PANEL CONSULTATION:

THE UNITED KINGDOM'S WITHDRAWAL FROM THE EUROPEAN UNION

1. INTRODUCTION

- 1.1 Pinsent Masons LLP welcomes the opportunity to comment on the consultation by the Takeover Panel on its proposed reforms to the Takeover Code in light of the United Kingdom's impending withdrawal from the European Union.
- 1.2 As a law firm, Pinsent Masons LLP has substantial experience of advising on UK public takeovers.
- 1.3 The comments made in this response are those of Pinsent Masons LLP and do not necessarily represent the views of any of our individual clients or of individual partners of Pinsent Masons LLP.
- 1.4 This response does not contain any confidential or sensitive information and we are content for it to be published on the Takeover Panel's website.
- 1.5 In our comments below, we have followed the numbering of the questions in the consultation document.

2. QUESTIONS FOR CONSIDERATION

1. Should the shared jurisdiction rules in section 3(a) (iii) of the Introduction to the Code be deleted as proposed?

We have no objection to the removal of the shared jurisdiction rules. We consider this to be a logical extension of the referendum result in June 2016 relating to the United Kingdom's membership of the European Union and the Takeover Panel's jurisdiction should therefore be amended accordingly.

2. Do you have any other comments on the matters discussed in Section 3 of the PCP?

As a general observation, we agree with the approach that the Takeover Panel intends to adopt in light of the United Kingdom's withdrawal from the European Union. We do not consider that the Takeover Panel's proposed approach to the concept of shared jurisdiction will have a material effect on the manner in which takeover offers are conducted in the United Kingdom or the way that the Takeover Panel supervises and regulates takeover activity.

3. Do you have any comments on the amendments to the Introduction to the Code, and the related amendments to other provisions of the Code, proposed in Section 4 of the PCP?

We are in agreement with the proposed amendments set out in Section 4 of the PCP. We welcome the Takeover Panel's approach not to introduce a separate definition of an 'open-ended investment company' into the Takeover Code upon Directive 2004/25/EC on Takeover Bids ceasing to apply in the United Kingdom, as an approach to the contrary could create unnecessary ambiguity for market participants.

4. Do you have any comments on the amendments to the General Principles of the Code proposed in Section 5 of the PCP?

No.

5. Should the references to Phase 2 European Commission proceedings be retained in the Code following the UK's withdrawal from the EU?

In our view these references are not required. Once the UK has withdrawn its membership of the EU, it will not be subject to the competition law framework established by the EU and the Competition and Markets Authority (the "CMA") will be the only authority with jurisdiction to review mergers for the effects on competition in the UK. Whilst we can understand the degree of pragmatism that the Takeover Panel is demonstrating by attributing equivalent status to the CMA and the EU merger regime under the Takeover Code, we feel that this decision is slightly divorced from the political reality facing market participants following the UK's withdrawal from the EU, given that the European Commission will have equivalent status to that of any other non-UK regulatory body examining competition concerns in any other jurisdiction. Our view is that, at the most, it could only be retained in respect of mergers that are subject to parallel merger investigations in the EU and the UK. Logically, we do not consider that the continued exemption in Rule 13.5(a) of the Takeover Code from the application of the materiality test for European Commission antitrust conditions should be retained following the UK's withdrawal from the EU. In the long term, assuming that the UK does actually withdraw from membership of the EU, we see merit in an alignment of the respective competition regimes under the Takeover Code, such that the EU merger regime is given equivalent status to that of such other competition regimes. We consider it would be illogical to single out the EU merger regime over any other competition regime elsewhere in the world.

6. Do you have any comments on the proposed amendments to Rules 12.1 (b) and 12.1(c)?

We consider that these changes flow logically from the changes to the architecture of the antitrust framework applicable to the UK following its withdrawal from the EU.

7. Do you have any comments on the amendments to Note 19 on Rule 9.1, Rule 24.3(d) (xiv), Rule 30.4 and Appendix 6, or the related amendments to other provisions of the Code, proposed in Section 6 of the PCP?

No.

We hope that the Takeover Panel finds this contribution helpful. Please feel free to contact Adam Cain (adam.cain@pinsentmasons.com) or Alan Davis (alan.davis@pinsentmasons.com) if you would like to discuss any aspect of our response.

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Submitted by

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