The Secretary to the Code Committee
The Takeover Panel
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Dear Sir

SABMiller plc: Response to the consultation paper, Review of certain aspects of the regulation of takeover bids: Proposed Amendments To The Takeover Code (PCP 2011/1)

I am writing on behalf of SABMiller in response to this consultation paper. SABMiller plc is one of the world's largest brewers, with brewing interests and distribution agreements in over 75 countries and some 70,000 employees worldwide across six continents. SABMiller plc is listed on the London and Johannesburg stock exchanges with a market capitalisation of approximately US$56 billion, and in the year ended 31 March 2011, the group reported adjusted pre-tax profit of US$4,491 million and group revenue of US$28,311 million.

We welcome this opportunity to respond to the consultation, and set out below our responses to your specific questions.

1. Do you have any comments on the proposed new Rule 2.4 and the proposed new Note 3 on Rule 2.2?

In our view, the proposed new Rule 2.4 is fundamentally flawed, and will not achieve the desired outcome of strengthening the position of the offeree company.

We believe that this change would hamstring or effectively neuter an offeree board, by removing an offeree board's freedom to negotiate a transaction with an offeror who is welcomed by the offeree, but is unwilling to negotiate in the glare of publicity. The offeree board is bound by its fiduciary duties to act in what it believes in good faith to be in the interests of shareholders as a whole, and in our view it is wrong in principle and not in the interests of shareholders to deny the offeree board the ability to manage the process and secure the best result for shareholders.

We strongly urge the Code Committee to think again, and to adopt the alternative approach discussed in paragraphs 2.21 to 2.24 of the consultation paper. Giving the offeree board the power to control the timing of disclosure (assuming disclosure is not required for any other reason) will confer a tactical advantage on the offeree board, not on an offeror, and will materially advance the objective of empowering offeree boards.

We do not accept that protecting an offeree board from having to make "a potentially difficult and contentious decision" (paragraph 2.24(d)) is either a legitimate concern of the Takeover Code, or a real issue in practice. It is

the job of the board, in consultation with its advisers, to make difficult decisions, in the interests of shareholders, and if the default option is to require disclosure unless the offeree board wishes to request confidentiality, we think there is very little likelihood that an offeree board will feel unduly pressurised in making its determination.

The new Note 3 on Rule 2.2 is sensible.

2. Do you have any comments on the proposed new Rule 2.6(a)?

We believe that this is the appropriate approach, as it recognises and is consistent with what we believe is the appropriate approach to the identification of potential offerors, which is that the process is effectively controlled by the offeree board, which can choose whether or not to request an extension of a deadline for an earlier of multiple offerors.

3. Do you have any comments on the possible alternative approach to the identification of potential offerors?

As noted in response to question 1, we strongly urge the Code Committee to reconsider and to adopt the alternative approach set out in paragraph 2.22 of the consultation paper.

4. Do you have any comments on the proposed new Rules 2.6(b), (d) and (e) and Rule 2.3(d)?

No comments.

5. Do you have any comments on the proposed new Note 2 on Rule 2.6?

We are concerned that this Note as worded may be capable of overly restrictive interpretation, which would fetter the ability of the offeree board to conduct whatever process it believes will generate the best outcome for shareholders. Rather than conditioning the exemption on the offeree having said in its announcement that it is seeking potential offerors by means of a formal sale process, it would be preferable if it were made clear that the exemption would also apply (at the discretion of the offeree board) where the board has made a strategic review announcement, which is typically regarded as encompassing a range of options which might include a formal sale process.

6. Do you have any comments on the proposed new Rule 2.6(c) and Note 1 on Rule 2.6?

Again, we believe this is consistent with the empowerment of the offeree board, and is appropriate insofar as it relates to the granting of the extension of the deadline in these circumstances. However:

(i) it is clearly inappropriate that the offeree should be required to disclose publicly the status of the negotiations in these circumstances, especially if there are competing offerors, or competitors of the offeree who might gain advantage from early knowledge of commercial plans, to the detriment of the offeree company; and

(ii) it is neither appropriate nor necessary for the offeree to be required to disclose the anticipated timetable, as well as the new deadline.

All that the market needs to know is that negotiations are continuing, and what the new deadline is. The market will then know that if matters are not resolved by the new deadline, either the offeror will have to put up or shut up, or the offeree will ask for another extension. Of course, if the offeree board believes that it would be tactically

advantaged by disclosing more information, then it is free in the interests of shareholders to do so, but it should not be required to do so.

7. Do you have any comments on the proposed amendments to Rule 2.8 and to the Note on Rules 35.1 and 35.2?

We do not believe that these changes are appropriate or necessary. The current Rule 2.8 works perfectly adequately, and no convincing arguments are advanced in the consultation paper for the changes. In particular, we do not consider it appropriate that the Panel should be able to prevent a Rule 2.8 person from making an offer if the offeree board believes that it is in the interests of offeree shareholders for that offer to be made. That is not in the best interests of offeree shareholders.

8. Do you have any comments on the proposed framework to be applied in circumstances where, following a requirement to make an offer being triggered under Rule 2.2(c) or (d), a potential offeror ceases actively to consider making an offer, or on the proposed new Note 4 on Rule 2.2?

We believe that the proposed framework and the conditions in the new Note 4 are too restrictive, and fail to recognise the very wide range of circumstances in which this may be called into play. For example, there is a world of difference between a potential offeror who "downed tools" several months ago, and one who has only just ceased to be considering an offer. The Note should give the Panel more flexibility in terms of when a dispensation will be granted, depending upon all the circumstances of the case, and the timing of relevant events.

Secondly, we do not think it is appropriate to impose an arbitrary three month shut out for a potential offeror who is welcomed by the offeree board, and so we suggest deleting the proviso at the end of the first paragraph.

9. Do you have any comments on the proposed new Rule 21.2?

While recognising the benefits of certainty that flow from a blanket ban on all offer-related arrangements (other than those in the permitted list), we believe that more flexibility is required and that a blanket ban will not necessarily be to the benefit of offeree companies. We think that it would be more helpful to indicate the circumstances in which the Panel will exercise its discretion to give consent as envisaged by the opening words of the new Rule 21.2(a).

In particular, as is already recognised by the existing Note 4 on Rule 20.2 (Equality of information), there are many occasions on which it is not necessarily obvious which party or parties to a reverse takeover, or a takeover which is characterized as a "merger", should be regarded as the offeree. In the case of an agreed reverse takeover the smaller company may strictly speaking be the offeror, but the substance of the transaction is often very much the opposite, and it would seem appropriate in these circumstances to allow the "offeree" (the larger company, and very possibly the initiator of the transaction) to agree to accept appropriate obligations, such as an inducement fee or standstill. Similarly, in the case of an all-share merger of equals (or near equals) a dispensation may also be appropriate, because such transactions are typically capable of being structured with either party being the offeree, and so mutual inducement or break fees or other obligations may be appropriate.

There may well be other circumstances in which an implementation agreement has value for both parties, with provisions which are clearly offer-related, but which do not involve any of the mischiefs against which this new rule is targeted.

10. Do you have any comments on the proposed new Note 1 on Rule 21.2?

Provided that the total inducement fees payable, or potentially payable, in aggregate do not exceed 1%, we see no reason in principle why only one competing offeror should be eligible for the "white knight exemption". In admittedly rare circumstances, an offeree should have the flexibility in the interests of its shareholders to orchestrate competing white knight offers, and limit them to 0.5% each as an inducement fee, or to structure the inter-conditionality of two or more agreements so that only one fee can ever become payable. This would also be consistent with the aggregation rule in the Listing Rules (LR 10.2.7(1)).

11. Do you have any comments on the proposed new Note 2 on Rule 21.2?

No further comments, but see the observation on the scope of this Note in response to question 5 above.

12. Do you have any comments on the proposed new Note 3 on Rule 21.2?

No further comments beyond the response to question 9.

13. Do you have any comments on the proposed new Note 4 on Rule 21.2?

Rather than requiring "all relevant details" to be "fully disclosed", we suggest that it would be more consistent to follow the normal wording in the Code relating to material contracts (in the current Rule 24.2(a)(xi) and elsewhere) and require an appropriate summary to be contained in the announcement, with the document itself then being on display in the usual way (or in the new way).

14. Do you have any comments on the proposed amendments to Appendix 7?

The new paragraph (d) does not set out an exhaustive list of all the circumstances which could cause a delay in a scheme timetable, such as industrial action in the courts service, or a fire breaking out at the venue of the shareholder meeting that causes it to be postponed (as opposed to adjourned). We suggest that an additional item should be added to the list covering any events outside the control of the offeree which the Panel and the offeror agree justifies a delay (or words to that effect).

Secondly, in the new paragraph (e), it is not at all clear that offeror consent should be required in all circumstances. If an event occurred which was outside the control of the offeree (see example above), an offeror which had simply had a change of heart could frustrate the process by simply refusing to give its consent. We suggest that the circumstances in which the offeror can refuse its consent should therefore be limited in the same way as its ability to invoke offer conditions under Rule 13.4, and be subject to Panel oversight.

15. Do you have any comments on the proposed new Note 1 on Rule 25.2 or the related amendments?

No comments.

16. Do you have any comments on the proposed new Rules 24.16(a) and 25.8?

No comments.

17. Do you have any comments on the proposed new Note 1 on Rule 24.16?

We agree with the conclusion in paragraph 5.9 of the consultation. Any such disclosure would not be practicable or possible in many cases. Otherwise, we have no comment.

18. Do you have any comments on the proposed new Rule 24.16(b) and Note 2 on Rule 24.16?

In relation to the disclosure of the way in which the fee is calculated, we suggest adding in the first paragraph "or relates to the outcome of the offer" (which may be particularly relevant for an offeree disclosure under the new Rule 25.8, into which Rule 24.16 is incorporated by reference) and "or on any other basis" (to catch any other metric not previously thought of).

The second paragraph in Note 2 does not really work when applied to Rule 25.8, if the offeree adviser is incentivised to ensure that the offer is unsuccessful.

19. Do you have any comments on the proposed new Rules 24.16(c) and (d)?

No comments.

20. Do you have any comments on the proposed deletion of Rule 24.2(b) and Note 6 on Rule 24.2 and the related amendments?

No comments.

21. Do you have any comments on the proposed new Rule 24.3(a) and the related amendments?

It does seem rather odd to assume that only UK companies have websites, or that the internet stops at Dover. We suggest that the changes to Rule 24.3(a) (as renumbered) should apply equally to Rule 24.3(b) (as renumbered) provided that the information is available on the relevant website in English. This would also be more consistent with the proposed changes to Rule 26.1, which is not restricted to offerors which are UK companies.

22. Do you have any comments on the decision not to require pro forma balance sheets to be included in offer documents?

No comments.

23. Do you have any comments on the proposed new Rule 24.3(c) regarding the disclosure of ratings and outlooks?

We presume that this is only intended to require publication of "current" ratings and outlooks, or perhaps ratings and outlooks within the twelve months before the commencement of the offer period, and suggest that this be clarified.

24. Do you have any comments on the proposed new Rule 24.3(f)?

No comments.

25. Do you have any comments on the proposed new Rules 26.1 and 26.2 or the related amendments?

We disagree strongly with the statement in paragraph 6.34 of the consultation that all documents relating to the financing arrangements should be put on display "without redaction". This is also inconsistent with the comments in paragraph 6.30 about "commercially sensitive" information not having to be disclosed. We believe that the Panel's discretion in this area should not be fettered, and that financing documents should be treated in the same way as any other categories of material contracts, from which commercially sensitive information may be redacted with the agreement of the Panel.

26. Do you have any comments on the proposed new Rule 24.2?

No comments.

27. Do you have any comments on the proposed new Note 3 on Rule 19.1?

We believe that this is unnecessary, impracticable, and likely to be wholly counter-productive and unenforceable in practice. Imposing a purported requirement to adhere to a statement of intention will result in fewer rather than more statements of intention being made, which is surely an undesirable outcome, or will result in statements of intention being so heavily qualified as to be worthless. It would be preferable and much more sensible if the Note adopted the test set out on the consultation itself, which is "whether, on the basis of the information available to the party and its advisers when the statement was made, it was reasonable for the party to make the statement at that time".

28. Do you have any comments on the proposed new structure for the obligations in relation to the publication, content and display of documents?

On the basis that the current Note on Rule 30.3 is transposed to become a new note on new Rule 23.2, and is applied thereby to, amongst others, the new or newly renumbered Rules 24.1, 25.1, 32.1 and 32.6, with particular reference to the Panel's discretion to apply a test of proportionality as set out in the penultimate paragraph of the current Note on Rule 30.3, we have no comment on the proposed new structure of these Code provisions.

29. Do you have any comments on the proposed new definition of "employee representative"?

This proposed new definition seems potentially to be very wide, but also so vague as to be extremely hard to interpret, particularly when removed from the context of UK domestic offerees. We would prefer that the Panel have discretion to agree with the offeree an appropriate and proportionate categorisation case by case, in keeping with the spirit of the existing Note on Rule 30.3.

30. Do you have any comments on the proposed new Note 6 on Rule 20.1?

No comments.

31. Do you have any comments on the proposed new Rules 2.12(a) and (d) and second sentence of Rule 32.1(b)?

No comments.

32. Do you have any comments on the proposed new Rule 25.9 and amendments to Rule 32.6?

Rule 32.6 is vague. Does it mean 14 days before, or after, the offer becomes or is declared unconditional? If the former, how will the offeree know? The deadline should perhaps be if the opinion is received before the acceptance condition has been satisfied or waived.

33. Do you have any comments on the proposed new Rule 19.2(a)(iii)?

No comments.

34. Do you agree that the suggested amendments to section 2(a) of the Introduction to the Code would be consistent with the amendments to the Code proposed in this PCP?

Yes.

35. Do you have any comments on the proposed new definition of "offer period"?

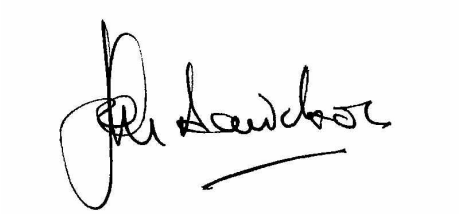
No comments.

36. Do you have any comments on the proposed new Rule 13.4?

No comments.

Finally, I should add that I have had the opportunity to review in draft the response to PCP 2011/1 prepared by Takeovers Joint Working Party of the City of London Law Society's Company Law Sub-Committee and the Law Society of England and Wales' Standing Committee on Company Law, and I endorse the comments made in that response. In particular, the examples appended to the Joint Working Party's letter to illustrate the sort of situations which will arise if the "alternative approach" referred to in question 3 of the Consultation is not adopted are compelling, and reflect real life experiences, and not fanciful or remote hypothetical concerns.

Yours faithfully



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