



## **UNITE RESPONSE TO TAKEOVER PANEL CONSULTATION:**

### **PROFIT FORECASTS, QUANTIFIED FINANCIAL BENEFIT STATEMENTS, MATERIAL CHANGES IN INFORMATION AND OTHER AMENDMENTS TO THE TAKEOVER CODE**

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**This response is submitted by Unite the union. Unite is the UK's largest trade union with over 1.5 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, energy, construction, transport, local government, education, health and not for profit sectors.**

#### **Executive Summary**

Unite believe that the code committee proposals surrounding profit forecast, financial benefit statements and other amendments to the Takeover Code are a move in the right direction and, if properly implemented, can strengthen the position of employees and their representatives during any takeover process.

The key stance of Unite during any takeover is the protection of employees and there should be no detrimental effect on terms and conditions, wages or enforced redundancies when one company is taken over by another. The amendments and changes to the takeover code are therefore welcomed by Unite, as they look to provide more detailed information but there must be guidance as to how this information is provided to employee representatives and what the penalties are for reneging on previously published business plans.

Unite still have concerns around the lack of detail required on the long term plans of the offeror and feel that the amendments to the profit forecast would not provide sufficient information as to the long term impact on employees.

A key point to note is the proposed change to Rule 28.6(b) which is welcomed as it clarifies what information is currently acceptable as a profit forecast.

*"An estimate of profit for a period which has already expired should be treated as a profit forecast"*

Unite welcomes the move to the proposed:

*"A profit estimate is a profit forecast for a period which has expired and for which audited results have not yet been published"*

This can be positively interpreted in that information is to be made available at the earliest possible moment and employee representatives can take a view on the financial position before any takeover has been completed.

Unite has stated in previous consultations that shareholders are not the only stakeholders in a company and that those working in any company have a very important interest in the outcome of a takeover. As such, employees in a company have at least an equal interest in the outcome of any takeover as any other stakeholder.

### **Comments On Questions relating to PCP 2012/1**

***Comments withheld by agreement until the publication of Individual Responses to PCP 2012/1 by the Takeover Panel***

### **Comments on questions relating to PCP 2012/2**

Unite support the general view that pensioners of a company pension scheme should be taken into account in any takeover and the information relating to the offeror company's intentions should be made available to these stakeholders in addition to employee representatives.

**Q1 Do you have any comment on the amendments to rules 24.2(a) and (b) relating to the requirement for an offeror to disclose, among other matters, its intentions with regard to the offeree company's pension scheme(s)?**

Unite in the capacity of representing employees and therefore members of various company pension schemes fully support rule 24.2 but there is no need to amend the title and remove "regarding the offeree company, the offeror company and their employees" as we feel that within the rule it is not made expressly clear that the offeror must state its intentions for these stakeholders.

**Q2 Do you have any comment on the proposed amendments to rule 25.2(a) relating to the requirement for the offeree board to include in the offeree board circular its views on, amongst other matters, the effects of implementation of the offer on the offeree's company's pension scheme(s)?**

Unite Support the proposed amendments.

**Q3 Do you have any comments on the proposed amendments to rules 2.12(a), 2.12(b), 24.1, 25.1, 32.1, 32.6(a) and 27.1(b) and note 6 on rule 20.1 in each case relating to the information to be disclosed to the trustees of an offeree company's pension scheme(s)?**

Unite support the proposed amendments.

**Q4 Do you have any comments on the proposed amendments to rule 25.9(d) and note 1 on that rule and to rule 32.6 regarding the rights of the trustees of an offeree company's pension scheme(s) to make known their views on the effects on the scheme(s)?**

Unite support the proposed amendments.

**Q5 Do you have any comments on the proposed amendments to rule 2.12(d) and to rule 32.1 regarding the requirement for the trustees of the offeree company's pension scheme(s) to be informed of their rights under the code to make known the effects of the offer on the scheme(s)? do you have any comments on the proposed amendment to rule 19.2 relating to directors responsibility statements?**

Unite support the proposed amendments.

**Q6 Do you have any comments on the proposed new rule 24.3(d)(xvi) and new rule 26.2(i) relating to the requirement for the offer document to include a summary of any agreement between the offeror and the offeree company's employee representatives or trustees of the offeree company's pension scheme(s) in relation to any of the matters described in rule 24.2 and to the requirement for any such agreement(s) to be put on display?**

Unit support the proposed new rule 24.3 (xvi) and new rule 26.2(i).

**Comments on questions relating to PCP 2012/3**

***Comments withheld by agreement until the publication of Individual Responses to PCP 2012/3 by the Takeover Panel***

## **Conclusion**

Whilst Unite are generally supportive of the amendments and new rules outlined in PCP 2012/1 and PCP 2012/2 the main areas of concern remain that in any takeover process there should be no detrimental effect on the employees. So there should be no jobs lost, no plant closures and no cuts to the terms and conditions of employee pensions.

Such guarantees are difficult to enforce, using the Takeover Code as a source of guidance, but any parties to an offer must be held to account and made to provide the business proposal that includes 'profit estimates' to all stakeholders involved in the takeover process. As stated within the Takeover Code itself, this should be understandable and reliable so as to promote transparency and build trust between prospective employers and employees, as well as the other stakeholders including pensioners. This is good accounting practice as well as good business conduct.

Unites previous consultation responses contain information still pertinent to the current Takeover code Rules and Notes and so should be taken as part of this response.

[http://www.epolitix.com/fileadmin/epolitix/stakeholders/UNITE\\_RESPONSE\\_TO\\_TAKEOVER\\_PANEL\\_CONSULTATION\\_-\\_SENT\\_270511.pdf](http://www.epolitix.com/fileadmin/epolitix/stakeholders/UNITE_RESPONSE_TO_TAKEOVER_PANEL_CONSULTATION_-_SENT_270511.pdf)

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