

THE TAKEOVER PANEL

CODE COMMITTEE

Instrument 2008/2

Competition reference periods

Pursuant to sections 942, 943 and 944 of the Companies Act 2006, and in exercise of the functions conferred on it by the Panel in paragraph 2 of its Terms of Reference, the Code Committee hereby makes this instrument containing rules.

The Takeover Code is amended, with effect from 29 July 2008, in accordance with the Appendix to this instrument.

In the Appendix, underlining indicates new text and striking through indicates deleted text.

Made by Lindsay Tomlinson, Chairman, acting on behalf of the Code Committee.

15 July 2008

APPENDIX

DEFINITIONS

Competition reference period

Competition reference period means the period from the time when an announcement is made of the referral of an offer or possible offer to the Competition Commission or of the initiation of proceedings by the European Commission under Article 6(1)(c) of Council Regulation 139/2004/EC, until the time of:

(a) an announcement of clearance (including clearance subject to conditions) or prohibition by the Competition Commission or the Secretary of State, as appropriate; or

(b) of the issuance of a decision under Article 8(1), Article 8(2) or Article 8(3) of the said Council Regulation; or

(c) the expiry of the time limits set out in Article 10(3) of the said Council Regulation with no decision having been issued by the European Commission and the offer being deemed compatible with the common market under Article 10(6).

Rule 2.4

2.4 THE ANNOUNCEMENT OF A POSSIBLE OFFER

(a) ...

(b) **At any time during an offer period following the announcement of a possible offer (provided the potential offeror has been publicly named), and before the notification of a firm intention to make an offer, the offeree company may request.....**

Rule 2.8

2.8 STATEMENTS OF INTENTION NOT TO MAKE AN OFFER

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NOTES ON RULE 2.8

1. *Prior consultation*

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2. Rules 2.4(b) and 12.2(b)

Where a statement to which Rule 2.8 applies is made following a time limit being imposed under Rule 2.4(b) or pursuant to Rule 12.2(b)(ii)(A), the only matters that a person will normally be permitted to specify in the statement as matters which would enable it to be set aside are:

...

Rule 2.9

...

NOTES ON RULE 2.9

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2. Rules 6, 7, 9, 11, 12, 17, 30, 31, 32, Appendix 1.6, Appendix 5, and Appendix 7

Announcements made under Rules 6.2(b), 7.1, 9.1 (Note 9), 11.1 (Note 6), 12.2(b)(ii)(A), 17.1.....

Rule 6.1

6.1 ACQUISITIONS BEFORE A RULE 2.5 ANNOUNCEMENT

...

NOTES ON RULE 6

...

10. Competition reference period

When, under Rule 12.2(b)(ii), a new offer period begins...

Rule 11.1

11.1 WHEN A CASH OFFER IS REQUIRED

...

NOTES ON RULE 11.1

...

12. Competition reference period

If an offer is announced ~~in accordance with Note (a)(iii) on Rule 35.1~~ pursuant to Rule 12.2(b)(ii), any acquisitions of interests in offeree company

shares for cash during the competition reference period will be deemed to be acquisitions during the new offer period.

Rule 11.2

11.2 WHEN A SECURITIES OFFER IS REQUIRED

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NOTES ON RULE 11.2

...

7. Applicability of the Notes on Rule 11.1 to Rule 11.2

See Notes 2, 5, 6, 7, 8, 10 and 11 which may be relevant.

In addition, if an offer is announced ~~in accordance with Note (a)(iii) on Rule 35.1~~ pursuant to Rule 12.2(b)(ii), any acquisitions of interests in offeree company shares for securities during the competition reference period will be deemed to be acquisitions during the new offer period for the purposes of this Rule.

Rule 12.2

12.2 OFFER PERIOD CEASES DURING COMPETITION REFERENCE PERIODS

(a) When an offer or possible offer is referred to the Competition Commission or the European Commission initiates proceedings, the offer period will end, except in the following circumstances:-

(i) when the offer was announced subject to a pre-condition as permitted under Rule 13.3(b); or

(ii) in the case of an offer being implemented by way of a scheme of arrangement, where the reference or initiation of proceedings in relation to the offer does not cause it to lapse as a result of a term included pursuant to Rule 12.1(a) or (b) or upon a condition included pursuant to Rule 12.1(c) being invoked.

(b) If the offer period ends in accordance with Rule 12.2(a):-

(i) during the competition reference period, except with the consent of the Panel, neither the offeror, nor any person who acted in concert with the offeror in relation to the referred offer or possible offer, nor any person who is subsequently acting in concert with any of them may:-

(A) announce an offer or possible offer for the offeree company (including a partial offer which could result in the

offeror and persons acting in concert with it being interested in shares carrying 30% or more of the voting rights of the offeree company);

(B) acquire any interest in shares of the offeree company if the offeror or any such person would thereby become obliged under Rule 9 to make an offer;

(C) acquire an interest in, or procure an irrevocable commitment in respect of, shares of the offeree company if the shares in which such person, together with any persons acting in concert with him, would be interested and the shares in respect of which he, or they, had acquired irrevocable commitments would in aggregate carry 30% or more of the voting rights of the offeree company;

(D) make any statement which raises or confirms the possibility that an offer might be made for the offeree company; or

(E) take any steps in connection with a possible offer for the offeree company where knowledge of the possible offer might be extended outside those who need to know in the offeror and its immediate advisers;

(ii) at the end of the competition reference period, if the offer is allowed to proceed (whether conditionally or unconditionally):-

(A) any cleared offeror or potential offeror must, normally within 21 days of its offer's being allowed to proceed, clarify its intentions with regard to the offeree company by making an announcement either of a firm intention to make an offer for the offeree company in accordance with Rule 2.5 or that it does not intend to make an offer for the offeree company, in which latter case the announcement will be treated as a statement to which Rule 2.8 applies; and

(B) a new offer period will begin and, if no announcement of a new offer is made within the 21 day period referred to above, will end when each cleared offeror or potential offeror has announced that it does not intend to make an offer; and

(iii) where the competition reference period ends when either the Competition Commission or the Secretary of State has issued a prohibition decision or when the European Commission has issued a decision under Article 8(3) of Council Regulation 139/2004/EC, no new offer period will begin.

~~A new offer period will be deemed to begin at the time that the competition reference period ends. If there is no announcement of a new offer in accordance with Note (a)(iii) on Rule 35.1, this offer period will last until either the expiry of the 21 day period provided for in that Note or the announcement by all cleared offerors that they do not intend to make an offer, whichever is the earlier.~~

NOTES ON RULE 12.2

1. Schemes of arrangement

~~In the case of an offer being implemented by way of a scheme of arrangement, the offer period will end following a reference or initiation of proceedings only if the offer then lapses as a result of a term included pursuant to Rule 12.1(a) or (b) or upon a condition included pursuant to Rule 12.1(c) being invoked.~~

1. Certain restrictions disapplied while clearance is being sought

The restrictions in Rule 12.2(b)(i)(D) and (E) will not normally apply to the extent that the offeror is continuing to seek clearance or a decision from the relevant authority with a view subsequently to making a new offer in accordance with Rule 12.2(b)(ii)(A).

NB Rule 2.2(e) will continue to apply in these circumstances.

2. After a reference or initiation of proceedings

Following the ending of an offer period on a reference or initiation of proceedings, General Principle 3 and Rule 21.1 will normally continue to apply (see also Rule 19.8 and the Notes on Rules 6.1, 11.1, 11.2, 20.1, 20.2, 35.1 and 35.2 and 38.2).

3. Offers announced subject to a pre-condition as permitted under Rule 13.3(b)

When an offer which was announced subject to a pre-condition as permitted under Rule 13.3(b) is referred to the Competition Commission or the European Commission initiates proceedings, the offer period will not end. However, during the competition reference period, the Panel may grant a dispensation from a particular Rule if it would be proportionate in the circumstances to do so.

Rule 13.2

13.2 THE COMPETITION COMMISSION AND THE EUROPEAN COMMISSION

Neither A a condition or pre-condition included pursuant to Rule 12.1(c) nor a pre-condition included pursuant to Rule 13.3(a) or (b) is will be not subject to the provisions of Rules 13.1 or 13.4(a).

Rule 13.3

13.3 ACCEPTABILITY OF PRE-CONDITIONS

The Panel must be consulted in advance if a person proposes to include in an announcement any pre-condition to which the posting of the offer will be subject.

Except with the consent of the Panel, an offer must not be announced subject to a pre-condition unless the pre-condition: -

(a) ~~is included pursuant to Rule 12.1(c)~~ relates to a decision that there will be no reference to the Competition Commission or initiation of proceedings by the European Commission; or

(b) relates to a decision that there will be no reference to the Competition Commission or initiation of proceedings by the European Commission or, if there is such a reference or initiation of proceedings, a decision by the relevant authority to allow the offer to proceed (the decision may, in each case, be stated to be on terms satisfactory to the offeror); or

~~(b)~~(c) involves another material official authorisation....

Rule 19.8

19.8 INFORMATION RELEASED FOLLOWING THE ENDING OF AN OFFER PERIOD PURSUANT TO RULE 12.2

The requirements of the Code relating to the release of information do not normally apply once an offer period has ended pursuant to Rule 12.2(a).

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Rule 20.1

20.1 EQUALITY OF INFORMATION TO SHAREHOLDERS

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NOTES ON RULE 20.1

4. *Information issued by associates (e.g. brokers)*

...

When an offer or possible offer is referred to the Competition Commission or the European Commission initiates proceedings, the offer period may end in accordance with Rule 12.2(a). ...

Rule 20.2**20.2 EQUALITY OF INFORMATION TO COMPETING OFFERORS**

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NOTES ON RULE 20.2

...

5. *The Competition Commission and the European Commission*

When an offer or possible offer is referred to the Competition Commission or the European Commission initiates proceedings, the offer period may end in accordance with Rule 12.2(a). ...

Rule 21.1**21.1 WHEN SHAREHOLDERS' CONSENT IS REQUIRED**

...

NOTES ON RULE 21.1

...

4. *The Competition Commission and the European Commission*

When an offer or possible offer is referred to the Competition Commission or the European Commission initiates proceedings, the offer period may end in accordance with Rule 12.2(a). ...

Rule 35.1**SECTION N. RESTRICTIONS FOLLOWING OFFERS AND
POSSIBLE OFFERS****35.1 DELAY OF 12 MONTHS**

Except with the consent of the Panel, where an offer has been announced or posted but has not become or been declared wholly unconditional and has been withdrawn or has lapsed otherwise than pursuant to Rule 12.1, neither the offeror....

NOTES ON RULES 35.1 and 35.2(a) *The Panel will normally grant consent under this Rule when:-*

(i).....

(ii).....

(iii) ~~the previous offer period ended in accordance with Rule 12.2 and the new offer follows the giving of clearance by the Competition Commission or the issuing of a decision by the European Commission~~

~~under Article 8(2) of Council Regulation 139/2004/EC. Any such offer must normally be announced within 21 days after the announcement of such clearance or decision; or~~

~~(iv)~~ (iii) the new offer follows.....withdrawn.

(b) ...

(c) The restrictions in Rules 35.1(d) and (e) will not normally apply to the extent that the offer lapsed ~~as a result of being referred to the Competition Commission or the European Commission initiating proceedings, or as a result of the offeror failing to obtain another a~~ a material official authorisation or regulatory clearance relating to the offer within the usual Code timetable, but the offeror is continuing to seek clearance or a decision from the relevant official or regulatory authorities with a view subsequently to making a new offer with the consent of the Panel in accordance with ~~Note (a)(iii) or~~ Note (b) on Rule 35.1.

NB Rule 2.2(e) will continue to apply in these circumstances.