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Dear Sir/Madam

Response on PCP 2021/1

Below are our comments on the changes to the Takeover Code proposed in PCP 2021/1. We have not sought to answer each of the questions posed in the consultation paper but have instead just answered those questions where we have a strong view or substantive comment.

Q2 Should a mandatory offeror, and any person acting in concert with it, be restricted from acquiring additional interests in shares in the offeree company in the 14 days up to and including: (a) the unconditional date; and (b) the expiry of an acceptance condition invocation notice?

We agree this is the correct approach. Whilst it is taking away a freedom for bidders, it allows target shareholders to have a period of stability and certainty in which to decide whether to accept an offer. The size of the interest that the bidder will have if the offer is unsuccessful could be fundamental when making that decision, and is distinguishable from a voluntary offer as a voluntary offeror cannot through share purchases acquire or consolidate control in that period. In our view, as outlined in the consultation paper, it is akin to the prohibition on a bidder triggering a mandatory offer in the final 14 days before the unconditional date.

On a related point, we suggest that Note 4 on Rule 32.1 be amended to make clear that a mandatory offer cannot be triggered "in the 14 days prior to the unconditional date", rather than only "if the offer can remain open for acceptance for a further 14 days following the date on which the amended offer document is published". Offers must remain open for acceptance after they have gone unconditional (Rule 31.2(b)) but under the Note as currently drafted it is not clear that a mandatory offer cannot be triggered in the 14 days before the unconditional date.

Q4 Should the test in limb (b) of Note 8 on Rule 9.1 be deleted such that the test in limb (a) would become the sole test for determining whether a chain principle offer is required, other than in exceptional circumstances?

We strongly support the deletion of the "purpose" test in limb (b) of Note 8 on Rule 9.1. It creates a problem in practice in that it requires evidence of motivation and demands an enquiry into the mind of the executives of the buyer. There is typically no evidence available against which to make the assessment. A subjective test does not allow its applicability to be assessed by the market nor

does it enable advisers to advise reliably as whether the requirement to make an offer will be triggered. In contrast, the value limb in contract is capable of objective measurement against publicly disclosed figures.

Q5 Should the threshold at which relative values would be considered to be "significant" for the purposes of the test currently set out in limb (a) of Note 8 on Rule 9.1 be reduced from 50% to 30%?

On balance, we agree that the threshold should be reduced from 50% to 30%. The mischief behind the chain principle is a bidder taking control of a first company and depriving shareholders in the second company (using the terminology in the consultation paper) of a premium. The bidder would acquire control of the second company without the other shareholders in the second company being protected or given the opportunity to benefit from a premium, which is what the Code is designed to prevent.

Where the second company is not a core part of the first company, it would be disproportionate to require a bid, and so the question is at what point the second company should be viewed as a core part of the first company. We believe a threshold of 50% is too high. The premium offered to shareholders in the first company will, in part at least, be attributable to the value the second company represents to the first company. The higher the value it contributes to the first company, the greater the portion of the premium it represents.

Where the second company is a growth or transitioning company, if its shareholders had to wait until it represented 50% of the value of the first company (at which point the bidder can be pretty confident of its future success) before they received the opportunity for a premium, that seems wrong.

The whole philosophy of the Code is to ensure that minorities are not mistreated and we believe that they should be offered a share in the upside where the value it attributes to the first company is above 30%. Otherwise it is the shareholders in the first company that will benefit (by receiving the premium attributable to the value of the second company) rather than the premium being shared with all the shareholders in the second company.

The second limb of the test has to date afforded shareholders a degree of protection in this situation but with the removal of the purpose test (which we support for the reasons set out above), we believe the threshold needs to be reset.

Whilst a lower threshold does run the risk of potentially deterring some bids, and that overseas bidders in particular will be less likely to spot the issue, as a matter of policy, we believe that the minority investors should be protected and a 30% threshold is proportionate.

Yours faithfully

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