

SLAUGHTER AND MAY /

# TAKEOVERS: SECURING VALUE

Strategic M&A Series



**CAPITAL FLOWS**  
Part of Horizon Scanning

# CONTENTS

TAKEOVERS IN 2024	2
WHAT BID-SIDE TRENDS ARE WE CURRENTLY SEEING?	
Who are the players ... ?	3
... and what are their key tactics, considerations and associated challenges?	4
SPOTLIGHT ON CONSIDERATION	5
WHAT ARE TARGETS THINKING ABOUT?	6
“BE YOUR OWN ACTIVIST”	7
OUR UK TAKEOVERS EXPERIENCE IN 2024	8

## TAKEOVERS IN 2024

### Sharp bounce-back of activity

Takeover activity has returned sharply in the UK in 2024, particularly with the return of higher-value bids. This is in part due to a backlog as interest rates and inflation stabilise, coupled with the oft-quoted undervaluation of UK listed companies, as well as an abundance of PE “dry powder” (albeit less so than in 2021-2022) and - perhaps the key trend of 2024 - corporates seeking strategic acquisition opportunities.

We advise on deals across the value spectrum, from hundreds of millions to multi-billions, for both target and bidder clients, foreign and domestic. We specialise

in takeover defence as well as unlocking complex and contested situations for bidders. We have advised on over half of 2024’s UK takeover situations (£1bn+), more than any other law firm.

In the latest edition of our strategic M&A series, this publication explores key takeover trends and developments. Additionally, we share insights from our recent experiences on the leading deals in the market.

We are keen to support you, whether on target or bidder side, and would be more than happy to arrange a conversation with you.

### THREE KEY TAKEAWAYS

- 1 TAKEOVERS ARE BACK** – corporate-to-corporate activity is a key driver, but PE also remains active behind the scenes
- 2 MORE THAN SIMPLY “PRICE IS KEY”** – bidders are having to work for target board recommendation as the market rebounds; deal certainty and deliverability are at the forefront of those discussions
- 3 “BE YOUR OWN ACTIVIST”** – for potential target companies, advance preparation (before Takeover Code timelines are triggered) is of huge benefit

# WHAT BID-SIDE TRENDS ARE WE CURRENTLY SEEING?

## Who are the players ... ?



### Corporate-to-corporate activity

- 2024 has seen a huge uptick in corporate-to-corporate activity, as corporates continue to search for growth and business confidence returns
- Bidders with strong cash balances and / or the ability to offer their own shares as consideration have been well placed to meet target boards' value expectations
- We have been at the forefront of this uptick, with lead roles on high-profile takeover situations including Barratt / Redrow, International Paper and Mondi / DS Smith, Ageas / Direct Line, Nationwide / Virgin Money, BHP / Anglo American, Bellway / Crest Nicholson, and others



### US bidders?

- There have been some examples of US bidders this year – e.g., International Paper's offer for DS Smith plc (after a contested bid, on which we advised DS Smith) and Keysight Technologies' offer for Spirent Communications plc (again contested)
- However, and despite predictions that the undervaluation of UK businesses compared to their US peers would result in an influx of US bidders for UK targets, the more prominent trend this year has been Europe-UK (e.g., Ageas / Direct Line, Carlsberg / Britvic) and UK-UK offers



### PE remains active in private

- Whilst we have seen the return of some high-value PE bids (e.g., Thoma Bravo / Darktrace and the bid for Hargreaves Lansdown by a CVC-led consortium), the untold stories of 2024 are the private negotiations occurring behind the scenes – PE activity is higher than what is public
- We are seeing bidders talking to targets in private, often downing tools when there is a valuation gap between their offer and target management expectation – albeit with some exceptions, PE remains broadly unable to offer the large premiums we saw when interest rates were at their lowest during the pandemic
- We expect to see an uptick of high-value PE bids as debt conditions are improving and PE is keen to use its “dry powder”

# WHAT BID-SIDE TRENDS ARE WE CURRENTLY SEEING?

... and what are their key tactics, considerations and associated challenges?

## Public “bear hugs”

- A public bear hug is where a bidder publicly puts out an indicative offer and price for the target, without target board consent
- Under the Takeover Code, the bidder then has **28 days to agree a deal with the target or to walk away** (known as the “put up or shut up” / “PUSU” period), unless the target agrees to extend that period



### WHAT WE'RE SEEING

- We are seeing **more deals becoming public** before firm offer announcements are made (e.g., Carlsberg / Britvic, Ageas / Direct Line, BHP / Anglo American and Sidara / John Wood Group)
- Bidders are also increasingly **wall-crossing shareholders** privately before formally approaching target boards
- This is perhaps a sign that, with lower premia, bidders want to put their **price to target shareholders directly**



### DEAL IMPACT

- **Bidder:** Should consider the consequences of proceeding without target board co-operation – e.g., the potential lack of access to due diligence materials and shorter timelines if the target does not agree to PUSU extension
- **Target:** Advance preparation for a possible bear hug is key (see page 7)

## Competitive situations



### WHAT WE'RE SEEING

- We continue to see **interlopers responding** to existing offers announced to the market – for example:
  - **Wincanton plc** - competing offers from CMA CGM S.A. and GXO Logistics, Inc.
  - **DS Smith plc** - competing offers from Mondi plc and International Paper Company
  - **Spirent Communications plc** - competing offers from Viavi Solutions Inc. and Keysight Technologies Inc.
  - **Hipgnosis Songs Fund Limited** - competing offers from Alchemy Copyrights, LLC's bid vehicle, Concord Chorus Limited, and Blackstone Europe LLP



### DEAL IMPACT

- These situations add **considerable deal complexity**. Maintaining competitive tension will be key for the target when running a dual process – **strategic questions**, including around (1) timing, (2) extent (and equality of) information-sharing, and (3) the granting of board recommendation and irrevocable undertakings, are all key to scenario planning and wargaming in these contexts. The ongoing contested bid for Trinity Exploration & Production shows the importance of getting irrevocable undertakings right

## Regulatory considerations



### WHAT WE'RE SEEING

- **Regulatory scrutiny** of deals continues to increase, bringing a focus on deal certainty and deliverability to the forefront



### DEAL IMPACT

- **Strategy for filings:** Bidders need to think carefully about strategy for regulatory filings and engagement with different regulatory bodies (with potentially diverging outcomes) – especially in sensitive industries (e.g., the Royal Mail takeover – see page 6)
- **Deal timeline:** Forethought as to the impact of this on deal timeline is key. We are seeing long-stop dates getting longer as extended regulatory review periods are built in, and examples of long-stop dates being extended due to unexpected regulatory intervention or longer-than-anticipated clearance periods (e.g., Brookfield / Network International) – this is a commercial point to land up-front. This is particularly important to bear in mind for a cash bidder needing to keep their financing in place for the whole period until completion
- **Protection risk:** Target boards are increasingly seeking protection risk as a price for their recommendation, including regulatory undertakings and bidder “hell or high water” commitments to take all necessary steps to obtain regulatory approvals

# SPOTLIGHT ON CONSIDERATION

All-share (or at least part-share) deals take centre stage



## WHAT ARE WE SEEING?

- We have seen an **increase in the number of deals where shares are offered** as part (or all) of the consideration - recent high-profile share-for-share deals we advised on include Barratt / Redrow, Ageas / Direct Line, BHP / Anglo American, International Paper / DS Smith and Bellway / Crest Nicholson



## WHY OFFER SHARES?

- Whilst debt availability has improved, it remains a restraint - including shares as part of the consideration offered **reduces the cost of financing** for the bidder
- Offering shares can also play a **part in “selling” the deal to reluctant target shareholders**, offering shareholders a means of staying in the business under new ownership - in share-for-share deals, bidder and target can present shareholders with an attractive, synergic equity story

## In light of these advantages, how can an equity offering be structured?

- 1 All-share offer** – the entire offer consideration takes the form of shares in the bidder
- 2 “Mix and match” facility** – the offer consideration is made up of both cash and shares, with target shareholders able to elect to vary the proportions of the form of consideration they would like to receive, subject to offsetting elections of other shareholders
- 3 Alternative “stub equity” offer** – starting to see a bit more frequently in PE bids, this involves a default, full cash consideration offer, but with an alternative offer of unlisted securities available for election by eligible target shareholders. Stub equity offers have become increasingly common in recent years, helping to bridge valuation gaps and, whilst offered to all shareholders, incentivising key shareholders to accept an offer and remain invested in the business

Any offer must be made to all target shareholders on equal terms

## STUB EQUITY UNDER SCRUTINY?



- The terms and eligibility criteria of a stub equity offering are traditionally tailored to attract, and address the concerns / demands of, key target shareholder(s) - albeit the offer is made open to all shareholders to accept



- However, when Hargreaves Lansdown confirmed that it was considering a non-binding proposal from a CVC-led consortium, shareholder Lancaster Investment Management questioned the fairness of the stub equity component of the potential offer - given that *“only a small number of shareholders”* would meet the acceptance eligibility criteria

# WHAT ARE TARGETS THINKING ABOUT?

Deal price alone is not a high enough price for target recommendation

## 1 Valuation

- Price / valuation **remains the key focus** of target boards – particularly against the backdrop of the well-publicised undervaluation of UK companies compared to their listed US peers, and the lower premia being offered by sponsors in particular
- In a more promising market, approaches are often appearing **opportunistic**, and bidders are failing to meet target valuation expectations
- The disconnect between the valuation of target boards and strategic bidders has also resulted in **more possible offers** that have been announced but not subsequently translated into firm offers - we have seen target boards **resisting bear hugs** (e.g., Direct Line and Anglo American)
- In a PUSU period defence, the **strategy regarding disclosure of information** (including how much to disclose) is a key part of the defence

## 2 Deliverability

- In a difficult regulatory environment, we are seeing target **readiness to reject proposals** where deliverability is uncertain
- Deal deliverability is increasingly considered as part of the price for securing target recommendation – we are seeing more **up-front negotiation not just of price, but of other key commercial points** - such as level of commitments on regulatory undertakings, and length of long-stop dates
- This was front of mind during the takeover of IDS (formerly Royal Mail) by EP Group, on which we advised IDS - a package of legally binding undertakings and commitments was negotiated to (1) protect the unique role of the Royal Mail as part of the UK's national infrastructure, and (2) improve deal deliverability, particularly with respect to the UK Government and National Security Investment Act approval
- We are also seeing instances of targets asking for **up-front break fees** prior to granting any access to due diligence materials

## 3 Shareholder reaction

- Target boards are often **engaging earlier with shareholders** following receipt of an approach (although the Takeover Code's "Rule of Six" restrictions are a factor here)
- We are also seeing target boards making "**minded to recommend**" announcements before their recommendation appears on the screen – this is a further opportunity to test shareholder reaction
- There have been some examples of **investor discontent towards recommended deals**, which target boards and bidders will be mindful of – shareholders rejected Custodian Property Income REIT plc's recommended offer for abrdn Property Income Trust Limited, and there have been recent instances where the 75% threshold of shareholder votes has been met, but not by huge margins (e.g., Regent Acquisitions Limited's offer for TClarke plc (77.86%) and DBAY Advisors Limited's offer for Finsbury Food Group plc (75.14%))
- We have also seen instances where shareholders are more willing to **publicly oppose** proposed deals (e.g., the bid for Hargreaves Lansdown – see page 5)

Granting (or denial) of (1) due diligence materials, and (2) PUSU deadline extensions are key components to the target board toolbox

# “BE YOUR OWN ACTIVIST”

## How potential targets can prepare for a takeover

### What can companies do to prepare?

- 1 Bid defence manual
- 2 Choose inner circle (and ensure all are well-briefed)
- 3 Monitor share price and know valuation
- 4 Keep record of profit forecasts
- 5 Cultivate shareholder relationships
- 6 Monitor shareholder register
- 7 Consider potential strategies for an approach scenario
- 8 Regulatory / competition analysis
- 9 Maintain board and management consensus on strategy

28-day PUSU period is a short time frame – advance preparation is key

### TARGET-LED SALE PROCESSES

- In April 2024, the Takeover Panel published a revised version of its **Practice Statement 31**, dedicated to formal sale processes, private sale processes, strategic reviews and public searches for potential offerors
- The additions focused on codifying the Takeover Panel’s approach to **private sale processes (“PSPs”)**, including dispensations similar to those already available for formal sale processes - particularly around requirements to identify bidders in leak announcements. Upon a leak of one bidder’s interest, a target would need to announce that the PSP dispensation has been granted and provide subsequent updates to the market (including if it stops searching for potential bidders)
- **Bidders can prefer being party to these processes as it reduces the risk of them being publicly named** – we are seeing PE houses in particular being reluctant to be uncovered for having approached a target and then not making an offer – and they benefit from **more time** to make an offer, as the PUSU period will not run in respect of potential bidders that have not been identified
- Listed companies are often reluctant to be seen to have commenced a sale process (typically linked with financial difficulties) unless necessary or driven by specific circumstances (e.g., a major shareholder driving it), so **we do not anticipate widespread use of the process**
- However, in certain circumstances, a PSP may provide targets with **some flexibility to explore options away from public scrutiny** at the start of a sale process whilst giving potential bidders comfort that they will not be named in the absence of a specific leak about them. For example, the receipt of an unsolicited approach may prompt a target to undertake a competitive private sale process (as was the case in KKR/IQGeo) – the target could proceed in private with the knowledge that, in a leak scenario, they can simply note that they have been / are in talks with several bidders and are availing themselves of the dispensations – without the implication being drawn that they are in financial distress

# OUR UK TAKEOVERS EXPERIENCE IN 2024

We have regularly been the most active law firm in the takeover arena and that has continued in 2024. We are active on nearly all of the leading deals in the market.

We specialise in takeover defence as well as unlocking complex and contested situations for bidders. We are also a longstanding adviser to The Takeover Panel, with several partners seconded to their executive team in recent years.

That experience and insight gives us an edge over other advisers, enabling us to navigate the takeover rules – and regulatory and anti-trust regimes – to deliver our clients' objectives.



## HEADLINE STATISTICS

In 2024 we have advised on:

### Over half

of 2024's UK takeover situations (£1bn+), more than any other law firm

### 3

of the top five deals by value

Total deal value over

**£60 billion**

across all transactions this year



## SOME HIGHLIGHTS OF OUR RECENT EXPERIENCE

We have advised on deals across the value spectrum, from hundreds of millions to multi-billions, including:

- **BHP** on its £38.6 billion approach for Anglo American
- **DS Smith** on the competing offers by International Paper and Mondi which led to an agreed acquisition by International Paper for £7.8 billion
- **IDS** (formerly Royal Mail) on its agreed acquisition by EP Group for £3.5 billion
- **Nationwide** on its acquisition of Virgin Money UK for £2.9 billion
- Successful defence of **Direct Line** against a £3.1 billion takeover offer from Ageas
- **Redrow** on its combination with Barratt Developments via an all-share offer valuing Redrow at over £2.5 billion
- **John Wood Group** on the series of unsolicited proposals from Sidara
- **Ascential** on the recommended £1.2 billion all-cash offer by Informa
- **Bellway** on its £720m approach for Crest Nicholson
- **SEGRO** on its recommended takeover of Tritax EuroBox for £552 million
- **Pollen Street Capital** on its acquisition of Mattioli Woods for £432 million



# SLAUGHTER AND MAY /

© Slaughter and May

This material is for general information only and is not intended to provide legal advice.  
For further information, please speak to your usual Slaughter and May contact.