

Bid timetable should the merger be allowed to proceed

City Code on Takeovers and Mergers

1. The timetable which applies to general offers for shares in any listed or unlisted public company resident in the UK is set out in the City Code on Takeovers and Mergers (City Code) published by the Takeover Panel. The current version of the City Code was published in July 1993. All references to Rules in this appendix are to the Rules of the City Code.

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2. In normal circumstances Rule 35.1 prohibits an offeror from making an offer within 12 months from the date on which an earlier offer by it for the same offeree company lapsed. However, note (a) (iii) on Rules 35.1 and 35.2 states, *inter alia*, that a dispensation to this rule will normally be granted where the reason for the lapsing of the earlier offer was a referral to the MMC and the merger has subsequently been cleared. In this circumstance, any new offer would normally have to be announced within 21 days of the announcement of such clearance.

3. Thereafter the timetable of the new offer would follow the normal rules that apply to any offer. Rule 30.1 states that an offer document should normally be posted by an offeror within 28 days of it announcing a firm intention to make an offer. The offer must remain open for at least 21 days following the date on which the offer document was posted (Rule 31.1) and, except with the consent of the Takeover Panel (which is rarely given), the offer may not become unconditional as to acceptances (ie the condition relating to the minimum level of acceptances may not be fulfilled) after the 60th day following posting (Rule 31.6).

4. A further period of 21 days is allowed from the date on which the offer becomes unconditional as to acceptances, to allow for fulfilment of other conditions (Rule 31.7); this typically applies to regulatory clearance but it would not be likely to apply in the present merger situation where MMC clearance would already have been received.

5. Therefore the latest date that a single offer could normally become unconditional as to acceptances would be 109 days after the announcement by the Secretary of State of the clearance of a merger.

6. There are a number of ways by which the timetable could be shortened:

- (a) an offer could be announced on the same day (or very soon after) the clearance of the merger was announced by the Secretary of State, thus eliminating or reducing the initial 21-day period (see paragraph 2);
- (b) the offer document could be posted immediately or shortly after the offer was announced, thus eliminating or reducing the 28-day period (see paragraph 3);
- (c) the offeror could include a 'no-extension' statement in the offer document, specifying a date by which the offer must either become unconditional as to acceptances or lapse; effectively this statement imposes a deadline which shortens the 60-day limit set by Rule 31.6 (see paragraph 3), but not to less than 21 days (Rule 31.1); and
- (d) the offeror could declare its offer wholly unconditional at the same time as it becomes unconditional as to acceptances, thus eliminating the 21-day period mentioned in paragraph 4.

7. If all these methods were employed by one of the offerors in the present situation the merger could be completed in as little as four weeks from the date of the announcement by the Secretary of State. This would be true irrespective of how many offerors were competing with one another. However, in a situation where there are two or more offerors the timetable effectively restarts each time a new offer is announced (Rule 31.6(a)(i)). The maximum (but not the minimum) offer period is thus extended and the ownership of a company for which competitive offers are made may not be decided for several months. In practice the maximum period could be extended with the consent of the company being acquired.