

THE TAKEOVER PANEL

**THE OFFER TIMETABLE
IN A COMPETITIVE SITUATION**

**PUBLIC CONSULTATION BY
THE CODE COMMITTEE**



The Code Committee of the Takeover Panel (the “**Panel**”) invites comments on this Public Consultation Paper. Comments should reach the Code Committee by Friday, 13 January 2023.

Comments may be sent by email to:

supportgroup@thetakeoverpanel.org.uk

Alternatively, please send comments in writing to:

The Secretary to the Code Committee

The Takeover Panel

One Angel Court

London EC2R 7HJ

Telephone: +44 (0) 20 7382 9026

All responses to formal consultation will be published on the Panel’s website at www.thetakeoverpanel.org.uk unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

Unless the context otherwise requires, words and expressions defined in the Takeover Code have the same meanings when used in this Public Consultation Paper.

CONTENTS

	Page
1. Introduction and summary	1
2. The offer timetable in a competitive situation	3
APPENDIX A Proposed amendments to the Code	9
APPENDIX B Provisions of the Code relating to the timetable for an offer	12

1. Introduction and summary

(a) Introduction

1.1 In this Public Consultation Paper (“**PCP**”), the Code Committee of the Takeover Panel (the “**Code Committee**”) proposes certain amendments to the Takeover Code (the “**Code**”) in relation to the application of the offer timetable prescribed by the Code in a competitive situation.

(b) Summary

1.2 Following [PCP 2020/1](#) (*Conditions to offers and the offer timetable*), a number of amendments were made to the Code to accommodate more readily the potentially lengthy timeframes required in order for an offeror to satisfy the conditions relating to official authorisations and regulatory clearances to which many offers are now increasingly subject.

1.3 Since the implementation of these amendments, the Panel has encountered certain competitive situations in which:

- (a) one or both of the offerors has required one or more official authorisations or regulatory clearances in order to acquire the offeree company which could not be obtained in the normal 60 day timetable for contractual offers; and
- (b) one of the offerors was proceeding by way of a contractual offer and the other offeror was proceeding by way of a scheme of arrangement.

1.4 In the light of these cases, the Code Committee considers that certain amendments should be made to the Code in order to make clearer the manner in which the offer timetable prescribed by the Code applies in a competitive situation. The principal proposed amendment is to **Note 2 on Rule 32.5** to clarify:

- (a) that the Panel will not normally introduce an auction procedure under **Rule 32.5** to bring the competitive bidding dynamic to a conclusion until after the last condition relating to a relevant official authorisation or regulatory clearance has been satisfied or waived by each of the offerors; and
- (b) how the Panel will establish a framework for shareholders in the offeree company to decide between the competing transactions (i.e. the contractual offer and the scheme of arrangement) once each of the offerors has made its final offer (whether as a result of an auction procedure or otherwise).

1.5 **Section 2** of this PCP describes the proposed amendments to the Code, including to **Note 2 on Rule 32.5**, and the rationale for making them. The terms of the proposed

amendments are set out in **Appendix A**.

- 1.6 **Appendix B** sets out a summary of the provisions of the Code which prescribe the timetable for a takeover implemented by way of a contractual offer and the timetable for a takeover implemented by way of a scheme of arrangement. **Appendix B** provides **important context for practitioners and market participants** in relation to the requirements of the Code which relate to the amendments proposed in this PCP. Terms defined in **Appendix B** have the same meaning when used elsewhere in this PCP.

(c) Assessment of the impact of the proposals

- 1.7 The amendments proposed in this PCP are intended to clarify the manner in which a competitive situation will be resolved and to provide greater certainty to parties to an offer and to market participants. The Code Committee considers that the proposed amendments will not place any significant new burdens on parties to offers or have any additional cost implications.
- 1.8 In particular, the Code Committee considers it is important that parties to an offer and their advisers understand how the provisions of the Code will apply in a competitive situation in order that they can make informed decisions in relation to bid tactics and the drafting of offer documentation. Similarly, the Code Committee considers that shareholders and other market participants should have a clear understanding of the Code timetable rules when making decisions as to whether to accept a contractual offer or vote in favour of a resolution to approve a scheme of arrangement.

(d) Invitation to comment

- 1.9 The Code Committee invites comments on the amendments to the Code proposed in this PCP. Comments should reach the Code Committee by Friday, 13 January 2023 and should be sent in the manner set out at the beginning of this PCP.
- 1.10 As mentioned above, the proposed amendments to the Code are set out in **Appendix A**. Where amendments are proposed, underlining indicates proposed new text and striking-through indicates text that is proposed to be deleted.

(e) Implementation

- 1.11 The Code Committee expects to publish a Response Statement setting out the final amendments to the Code in Spring 2023. The Code Committee expects that the amendments would come into effect approximately one month after the publication of the Response Statement.

2. The offer timetable in a competitive situation

(a) *Where both offerors are proceeding by way of a contractual offer*

2.1 As explained in section (a) of **Appendix B**, in the case of **two competing contractual offers**, both offerors are subject to the same offer timetable which, under **Note 1 on Rule 31.3**, is set by reference to the publication of the later offer document. If the timetable is suspended under **Rule 31.4** at the request of either offeror, it will only resume (and Day 60 will only be reset) once the “slower” offeror (in terms of being the last to obtain its official authorisations and regulatory clearances) has satisfied or waived the last outstanding condition relating to a relevant official authorisation or regulatory clearance.

2.2 The Code Committee considers that, subject to certain minor amendments to **Note 1 on Rule 31.3** and to the **Note on Rule 31.4** as proposed in paragraphs 2.18(a) and (b), the application of the offer timetable in the case of two competing contractual offers is clear.

(b) *Where one or more of the offerors is proceeding by way of a scheme of arrangement*

2.3 In the case of a **competitive situation in which one or more of the offerors is proceeding by way of a scheme of arrangement**, the first, and key, date to be established is the latest date on which either competing offeror may announce or make a revised offer. If, on this date, neither offeror has announced that its offer is final, the Panel will introduce an auction procedure under **Rule 32.5**, which will commence thereafter.

2.4 Under **Note 2 on Rule 32.5**, where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable. As explained in **paragraphs 8.9 and 8.13 of PCP 2007/1** (see paragraph 30 of **Appendix B**), the Panel will determine in the light of all the prevailing circumstances the date on which final revisions to the competing offers must be announced and also, if necessary, the date on which an auction procedure will commence.

2.5 In line with the position explained in paragraphs 14 to 17 of **Appendix B** in relation to competing contractual offers, the Code Committee considers that an offeror should not be required to announce a final revision to its offer, or to participate in an auction procedure introduced under **Rule 32.5**, whilst its offer remains subject to a condition, or pre-condition, relating to a relevant official authorisation or regulatory clearance which has not been satisfied or waived. Accordingly, the date set by the Panel for these events will not be until after the last condition relating to a relevant authorisation or clearance has been satisfied or waived by each of the offerors. This will be the case regardless of

whether the “slower” offeror (in terms of the obtaining of official authorisations and regulatory clearances) is proceeding by way of a contractual offer or by way of a scheme of arrangement and, in the case of the latter, of whether the shareholder meetings have or have not already taken place. However, if all the parties to the offer agree that an auction procedure should take place on an earlier date, the Panel will normally consent to this.

2.6 Once:

(a) the latest date on which either competing offeror may announce a revised offer; and

(b) if necessary, the date on which an auction procedure will be introduced,

have been set, the Panel can discuss with the parties whether it should then also set the remaining dates of the offer timetable, in particular Day 60 for any contractual offer. However, in many cases, it may be preferable for these remaining dates to be set only once the auction procedure has concluded. For example, as noted in paragraph 2.11, the offeror with the lower price following the auction procedure may seek a dispensation from the obligation to publish a revised offer document.

(c) ***Where one of the offerors wishes to seek to complete its offer prior to the introduction of an auction procedure***

(i) *Rule 31.5 – if the “faster” offeror is proceeding by way of a contractual offer*

2.7 If the “faster” offeror (in terms of being the first to obtain its official authorisations and regulatory clearances) is proceeding by way of a contractual offer and it wishes to complete its takeover prior to the Panel introducing an auction procedure under **Rule 32.5**, it can seek to do so by making an acceleration statement in accordance with **Rule 31.5**, thereby bringing forward the unconditional date for its offer.

2.8 In accordance with **Rule 31.5**, if the “faster” offeror makes an acceleration statement, it will be required to:

(a) have waived any outstanding conditions relating to any official authorisation or regulatory clearance by the time of the acceleration statement; and

(b) satisfy or waive the remaining conditions (including the acceptance condition) by the new unconditional date, failing which its offer will lapse.

2.9 In a case where Offeror 2 announces a “fast” contractual offer in competition with a “slow” scheme published by Offeror 1, Day 60 will, in effect, be suspended (for the reason given in paragraph 2.5), such that Offeror 2’s offer will not lapse on its acceptance condition on

the 60th day following the publication of its offer document unless it has made an acceleration statement setting that date as the unconditional date for its offer.

(ii) *Rule 21.1 – if the “faster” offeror is proceeding by way of a scheme of arrangement*

2.10 If the “faster” offeror (in terms of being the first to obtain its official authorisations and regulatory clearances) is proceeding by way of a scheme of arrangement (which has been approved by shareholders in the offeree company) and the board of the offeree company, with the agreement of the “faster” offeror, wishes to complete the scheme prior to the Panel introducing an auction procedure under **Rule 32.5** (for example, because a mini-long-stop date is approaching), the Code Committee considers that the board of the offeree company should consult the Panel as to whether the sanction of the scheme would, without an additional shareholder vote, be restricted by **Rule 21.1**. This is on the basis that the sanction of the scheme would result in the competing “slower” offer being frustrated. Depending on the circumstances, the Panel could determine that the board of the offeree company may only proceed to seek the court’s sanction of the scheme if such action has specifically been approved by shareholders in general meeting in accordance with **Rule 21.1**. In considering this issue, the Panel will take account of all relevant factors.

(d) *Framework where a contractual offer and a scheme of arrangement are both submitted to shareholders for acceptance or approval*

2.11 In many cases, the outcome of an auction procedure will be that one offeror has announced an offer which is materially higher than the other offeror and will remain so (for example, where both offers are in cash). In these circumstances, the lower offeror may seek a dispensation under **Note 1 on Rule 32.5** from the obligation to publish a revised offer document in relation to the highest offer it announced in the auction procedure.

2.12 However, in cases where a contractual offer and a scheme of arrangement are both submitted to shareholders in the offeree company for acceptance or approval (whether following an auction procedure introduced under **Rule 32.5** or otherwise), the Code Committee understands that, in terms of sequencing events so as to provide an orderly framework for the resolution of the competing offers, the Executive’s practice is that:

- (a) the date of the shareholder meetings to approve the scheme should normally precede Day 60 of the contractual offer;
- (b) there should be sufficient time between the date of the shareholder meetings and Day 60 for shareholders in the offeree company to make their acceptance

decisions in relation to the contractual offer in the knowledge of the outcome of the shareholder meetings; and

- (c) Day 60 of the contractual offer should normally precede the date of the court sanction hearing.

2.13 This ensures that, in compliance with **General Principle 2(1)**, shareholders in the offeree company have sufficient time to enable them to make an informed decision on each of the offers.

2.14 The Code Committee agrees that the above practice provides an orderly framework for determining the outcome of the competitive situation. This is because it should enable shareholders in the offeree company to decide between the two competing offers by either accepting, or not accepting, the contractual offer in the period between the shareholder meetings and Day 60. This is because:

- (a) if the contractual offer becomes or is declared unconditional on Day 60, the contractual offer will succeed; but
- (b) if the contractual offer does not become or is not declared unconditional on Day 60, the contractual offer will lapse and the board of the offeree company will then be able to seek the sanction of the scheme (provided it was approved at the shareholder meetings) without the need for an additional vote under **Rule 21.1**.

2.15 In addition, the Code Committee considers that if:

- (a) a scheme of arrangement is published in competition with a contractual offer which is not recommended by the board of the offeree company; and
- (b) the Panel introduces an auction procedure,

Day 39 for the offer (i.e. the latest date on which the offeree company may announce material new information) should normally be set for the seventh day prior to the last date on which the final offers may be announced prior to the commencement of the auction procedure. Accordingly, in these circumstances, Day 39 and Day 46 are unlikely to be the 21st day and 14th day respectively prior to Day 60.

2.16 By contrast, the Code Committee considers that if:

- (a) a scheme of arrangement is published in competition with a contractual offer which is not recommended by the board of the offeree company; and

- (b) the Panel does not introduce an auction procedure (because, for example, the offeror proceeding by way of a scheme has made a “no increase” statement subject to **Rule 32.2**),

Days 39 and 46 should continue to be the 21st day and 14th day respectively prior to Day 60 (as that date is determined in accordance with paragraph 2.12).

(e) **Proposed amendments to the Code**

- 2.17 In the light of the above, and in order to make clearer the manner in which the offer timetable prescribed by the Code is applied in a competitive situation where one or more of the offerors is proceeding by way of a scheme of arrangement, the Code Committee proposes to amend **Note 2 on Rule 32.5**, as follows:

“2. Schemes of arrangement

(a) Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable, including:

(i) the latest date on which either competing offeror may announce a revised offer and, if necessary, the date on which the Panel will introduce an auction procedure; and

(ii) the offer timetable thereafter, including, if relevant, Day 60.

(b) Unless otherwise agreed with the Panel, an auction procedure will not be introduced under Rule 32.5 until after the last condition relating to a relevant official authorisation or regulatory clearance has been satisfied or waived by each of the offerors.

(c) Where relevant:

(i) Day 39 will normally be the seventh day prior to the last date on which final offers may be announced prior to the commencement of the auction procedure; and

(ii) Day 60 will normally be set for a date after the shareholder meetings and before the court sanction hearing in relation to the scheme. In setting such a date, the Panel will wish to ensure that shareholders will have sufficient time to make their acceptance decisions in relation to the contractual offer in the knowledge of the outcome of the shareholder meetings.”

- 2.18 In addition, in order to clarify further the application of the Code to competitive situations, the Code Committee proposes to make the following minor amendments:

- (a) to amend **Note 1 on Rule 31.3**, as follows:

“1. Timetable for competing firm offers

(a) If a competing firm offer has been announced, Day 60 for both offerors will normally set by reference to the publication of the later offer document. In addition, the Panel may extend Day 60 to allow for any auction procedure under Rule 32.5.

(b) If the offer timetable is suspended under Rule 31.4, Day 60 will be reset when the timetable is resumed in accordance with ~~see also~~ the Note on Rule 31.4.

(c) If an offeror proceeding by way of a contractual offer is in competition with an offeror proceeding by way of a scheme of arrangement, see Note 2 on Rule 32.5.”;

- (b) to amend the **Note on Rule 31.4** as follows:

“Competing offers

(a) If there are two or more competing offers and the offer timetable is suspended under Rule 31.4(a), the offer timetable will normally be suspended for all the offerors and will normally only resume when it is resumed by the last offeror in accordance with Rule 31.4(b) or (c).

~~Alternatively, a(b) An offeror may bring forward the unconditional date of its offer by making an acceleration statement (see Rule 31.5).”;~~

- (c) to introduce a **new Note on Section 7 of Appendix 7**, as follows:

“Competitive situations

In the case of a competitive situation where one or more of the offerors is proceeding by way of a scheme of arrangement, see Note 2 on Rule 32.5.”; and

- (d) to replace the existing definition of “Day 46” in **Appendix 8** with the following:

“Day 46 means:

(a) in the case of two competing contractual offers, the 14th day prior to Day 60 as determined in accordance with Note 1 on Rule 31.3 and, if relevant, the Note on Rule 31.4; or

(b) if one or more of the offerors is proceeding by way of a scheme of arrangement, such date as the Panel shall determine under Note 2 on Rule 32.5 as being the latest date on which a competing offeror may announce a revised offer prior to the commencement of the auction procedure.”.

Q1 Should Note 2 on Rule 32.5 be amended as proposed?

Q2 Should:

- (a) **Note 1 on Rule 31.3;**
- (b) **the Note on Rule 31.4; and**
- (c) **the definition of “Day 46” in Appendix 8,**

be amended as proposed and the new Note on Section 7 of Appendix 7 be introduced as proposed?

APPENDIX A

Proposed amendments to the Code

Rule 31.3

31.3 EXTENSIONS TO DAY 60

...

NOTES ON RULE 31.3

1. Timetable for competing firm offers

(a) If a competing firm offer has been announced, Day 60 for both offerors will normally set by reference to the publication of the later offer document. In addition, the Panel may extend Day 60 to allow for any auction procedure under Rule 32.5.

(b) If the offer timetable is suspended under Rule 31.4, Day 60 will be reset when the timetable is resumed in accordance with ~~see also the Note on Rule 31.4.~~

(c) If an offeror proceeding by way of a contractual offer is in competition with an offeror proceeding by way of a scheme of arrangement, see Note 2 on Rule 32.5.

Rule 31.4

31.4 SUSPENSION OF OFFER TIMETABLE IF AN OFFICIAL AUTHORISATION OR REGULATORY CLEARANCE REMAINS OUTSTANDING

...

NOTE ON RULE 31.4

Competing offers

(a) If there are two or more competing offers and the offer timetable is suspended under Rule 31.4(a), the offer timetable will normally be suspended for all the offerors and will normally only resume when it is resumed by the last offeror in accordance with Rule 31.4(b) or (c).

~~Alternatively, a~~(b) An offeror may bring forward the unconditional date of its offer by making an acceleration statement (see Rule 31.5).

Rule 32.5

32.5 COMPETITIVE SITUATIONS

...

NOTES ON RULE 32.5

...

2. Schemes of arrangement

(a) Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable, including:

(i) the latest date on which either competing offeror may announce a revised offer and, if necessary, the date on which the Panel will introduce an auction procedure; and

(ii) the offer timetable thereafter, including, if relevant, Day 60.

(b) Unless otherwise agreed with the Panel, an auction procedure will not be introduced under Rule 32.5 until after the last condition relating to a relevant official authorisation or regulatory clearance has been satisfied or waived by each of the offerors.

(c) Where relevant:

(i) Day 39 will normally be the seventh day prior to the last date on which final offers may be announced prior to the commencement of the auction procedure; and

(ii) Day 60 will normally be set for a date after the shareholder meetings and before the court sanction hearing in relation to the scheme. In setting such a date, the Panel will wish to ensure that shareholders will have sufficient time to make their acceptance decisions in relation to the contractual offer in the knowledge of the outcome of the shareholder meetings.

Appendix 7

APPENDIX 7

SCHEMES OF ARRANGEMENT

...

7 REVISION

...

NOTE ON SECTION 7

Competitive situations

In the case of a competitive situation where one or more of the offerors is proceeding by way of a scheme of arrangement, see Note 2 on Rule 32.5.

Appendix 8

APPENDIX 8

AUCTION PROCEDURE FOR THE RESOLUTION OF COMPETITIVE SITUATIONS

DEFINITIONS AND INTERPRETATION

...

Day 46

~~Day 46 (as defined in the Definitions Section of the Code) of the second competing offeror's offer or, if the second competing offeror is proceeding by means of a scheme of arrangement, such date as the Panel shall determine.~~

Day 46 means:

(a) in the case of two competing contractual offers, the 14th day prior to Day 60 as determined in accordance with Note 1 on Rule 31.3 and, if relevant, the Note on Rule 31.4; or

(b) if one or more of the offerors is proceeding by way of a scheme of arrangement, such date as the Panel shall determine under Note 2 on Rule 32.5 as being the latest date on which a competing offeror may announce a revised offer prior to the commencement of the auction procedure.

APPENDIX B

PROVISIONS OF THE CODE RELATING TO THE TIMETABLE FOR AN OFFER

(a) *Contractual offers*

(i) *Introduction*

1. Where a takeover is implemented by way of a **contractual offer** (as opposed to a scheme of arrangement), **Rule 31.1(a)** requires that, except with the consent of the Panel, all of the conditions to the offer must be satisfied or waived, or the offer must lapse, by midnight on "**Day 60**". "Day 60" is defined in the Definitions Section of the Code as:

"the 60th day following the publication of the initial offer document or such later date as is set pursuant to Rule 31.3".

2. In any case in which Day 60 is extended by the Panel under **Rule 31.3** (see further below), Day 60 will fall on a date which is later than the 60th day following the publication of the initial offer document. In other words, Day 60 is not a fixed date but a concept by reference to which certain events in the offer timetable can be established.
3. An offeror proceeding by way of a contractual offer must state in its offer document an "**unconditional date**", which is defined in the Definitions Section of the Code as:

"Day 60 or any earlier date specified by an offeror as being the latest date by which all of the conditions to the offer must be satisfied or waived."

4. In the normal course, an offeror will set the unconditional date for its offer as Day 60 (as defined above). If an offeror does set the unconditional date of its offer as Day 60, and if the Panel extends Day 60 beyond the 60th day following the publication of the initial offer document (see below), the unconditional date will continue to be (the extended) Day 60.
5. If an offeror sets the unconditional date for its offer as Day 60 (as defined above), it can bring forward the unconditional date to a specific date which is earlier than Day 60 by publishing an **acceleration statement** in accordance with **Rule 31.5**. In addition, an offeror may make an acceleration statement at the time that it publishes its offer document by setting the unconditional date for its offer for a specific date rather than Day 60 (which date, by virtue of **Rule 31.1(a)**, can be no later than the 60th day following the publication of the initial offer document).

(ii) Extensions to Day 60

6. Under **Rule 31.3**, the circumstances in which the Panel will extend Day 60 to a date beyond the 60th day following the publication of the initial offer document include:

- (a) if a competing firm offer has been announced; or
- (b) if the offer timetable is suspended in accordance with **Rule 31.4** (on account of one or more conditions relating to an official authorisation or regulatory clearance not having been satisfied or waived by 5.00 pm on “Day 37” – see paragraph 11).

7. Under **Note 1 on Rule 31.3**, if a competing firm (contractual) offer has been announced (such that there are two contractual offers in competition with each other), Day 60 for both offerors “will normally be set by reference to the publication of the later offer document”. **Note 1 on Rule 31.3** provides as follows:

“1. Timetable for competing firm offers

If a competing firm offer has been announced, Day 60 for both offerors will normally be set by reference to the publication of the later offer document. In addition, the Panel may extend Day 60 to allow for any auction procedure under Rule 32.5. See also the Note on Rule 31.4.”

8. A number of important dates in the timetable established by the Code are set by reference to Day 60, including for example:

- (a) “**Day 39**” (being the latest day on which the offeree company may announce material new information – see **Rule 31.8**), which is defined as the 21st day prior to Day 60; and
- (b) “**Day 46**” (being the latest day on which the offeror may publish a revised offer document – see **Rule 32.1(c)**), which is defined as the 14th day prior to Day 60.

9. On the basis that, following the announcement of a competing firm offer, Day 60 for both offerors will be on the same date, the other dates in the Code timetable, including Days 39 and 46, which are set by reference to Day 60, will also be on the same date for both offerors, i.e. the timetable prescribed by the Code will be the same for both (contractual) offerors and will normally be established by reference to the publication of the later offer document.

(iii) Obtaining official authorisations or regulatory clearances

10. An offeror which requires one or more official authorisations or regulatory clearances in order to acquire the offeree company which cannot be obtained within the normal 60 day timetable can either:

- (a) make the authorisations or clearances the subject of pre-conditions to the offer under **Rule 13.3**. In this case:
 - (i) the offer will only be required to be made if; and
 - (ii) the timetable prescribed by the Code will not commence until,
 - each of the pre-conditions is satisfied or waived¹; or
 - (b) make the authorisations or clearances the subject of conditions to the offer and request that the timetable is suspended under **Rule 31.4**.
11. Under **Rule 31.4(a)**, the Panel will normally suspend the offer timetable if one or more conditions relating to an official authorisation or regulatory clearance has not been satisfied or waived by 5.00 pm on the second day prior to Day 39 (i.e. “Day 37”) either:
- (a) at the joint request of the offeror and the offeree company; or
 - (b) at the request of either the offeror or the offeree company, provided that at least one of the outstanding conditions relates to a “**material official authorisation or regulatory clearance**” (as defined in the Definitions Section of the Code).
12. Under **Rule 31.4(b)**, a suspended offer timetable will resume on the date on which the last condition relating to a relevant official authorisation or regulatory clearance is satisfied or waived, which will normally become the 28th day prior to Day 60 (i.e. “Day 32”). Alternatively, with the consent of the offeree company, a suspended offer timetable may be resumed under **Rule 31.4(c)** without the offeror being required to waive any unsatisfied condition relating to an official authorisation or regulatory clearance, in which case the offer timetable will normally resume on Day 32.
13. The **Note on Rule 31.4** provides as follows:

“Competing offers

If there are two or more competing offers and the offer timetable is suspended under Rule 31.4(a), the offer timetable will normally be suspended for all the offerors and will normally only resume when it is resumed by the last offeror in accordance with Rule 31.4(b) or (c). Alternatively, an offeror may bring forward the unconditional date of its offer by making an acceleration statement.”

14. Therefore, if there are two or more competing firm (contractual) offers and the offer timetable is suspended at the request of either offeror, Day 60 will not be capable of

¹ The same position will apply if an offeror announces a firm intention to make an offer and obtains the Panel's consent to an extension to the normal 28 day period prescribed by the Code for the publication of its offer document whilst it seeks to obtain the relevant authorisations or clearances – see paragraph 26.

determination during the timetable suspension and will only be reset (in accordance with paragraph 12) once either:

- (a) the “slower” offeror (in terms of being the last to obtain its official authorisations and regulatory clearances) has satisfied or waived the last outstanding condition relating to a relevant authorisation or clearance (under **Rule 31.4(b)**); or
 - (b) the offer timetable is resumed with the consent of the offeree company (under **Rule 31.4(c)**).
15. This will be the case irrespective of whether the offeror which published the “later” offer document by reference to which Day 60 had initially been set for the competing offerors under **Note 1 on Rule 31.3** is the “faster” or the “slower” offeror (in terms of obtaining its authorisations and clearances) and irrespective of which offeror requested the suspension of the offer timetable under **Rule 31.4**.
16. This approach ensures that neither the offeree company nor an offeror will be required to enter the later stages of the offer timetable, and to become subject to the restrictions imposed on them on Days 39 and 46 respectively, without knowing whether a relevant official authorisation and/or regulatory clearance will be obtained and, if so, on what terms.
17. In the light of the above, where two contractual offerors are in competition with each other:
- (a) if, after Offeror 1 has announced a firm offer and published its offer document, Offeror 2 announces a competing firm offer, Day 60 for both offerors will be set in accordance with **Note 1 on Rule 31.3** by reference to the date on which Offeror 2 publishes its offer document (because Offeror 2’s offer document is the later document);
 - (b) if, after Offeror 1 has announced a firm offer but before it has published its offer document, Offeror 2 announces a competing firm offer and publishes its offer document, Day 60 for both offerors will be set in accordance with **Note 1 on Rule 31.3** by reference to the date on which Offeror 1 publishes its offer document (because Offeror 1’s offer document is the later document). This scenario could arise:
 - (i) where Offeror 1’s offer is subject to one or more pre-conditions relating to official authorisations and/or regulatory clearances; or
 - (ii) where the Panel otherwise agrees to a delay in the publication of Offeror 1’s offer document; or

- (iii) because Offeror 2 publishes its offer document more quickly than Offeror 1; and
 - (b) if, in the case of either (a) or (b) above, the offer timetable is suspended under **Rule 31.4** (whether at the request of Offeror 1 or Offeror 2), Day 60 will be reset in accordance with the **Note on Rule 31.4** upon the resumption of the suspended offer timetable under **Rule 31.4(b)** or **(c)** (which will be determined by the “slower” offeror – i.e. the last offeror to satisfy or waive the last outstanding condition relating to a relevant authorisation or clearance).
- (iv) *Acceleration statements*
18. An offeror which wishes, either at the time it publishes its offer document or subsequently, to set an unconditional date earlier than Day 60 may do so by publishing an “**acceleration statement**” in accordance with **Rule 31.5**. **Rule 31.5** provides, among other matters, that:
- (a) the (new) unconditional date must be not less than 14 days from the date on which the acceleration statement is made (**Rule 31.5(a)**);
 - (b) an acceleration statement must state that the offeror has waived any and all unsatisfied conditions relating to an official authorisation or regulatory clearance (**Rule 31.5(b)**);
 - (c) if an offeror makes an acceleration statement prior to Day 39, **Rule 31.8(a)** will be disapplied and there will therefore be no restriction on the board of the offeree company announcing any material new information at any time it wishes prior to the new unconditional date (**Rule 31.5(c)**); and
 - (d) an offeror which makes an acceleration statement will not be allowed subsequently to set the statement aside except:
 - (i) where the right to do so in the relevant circumstances is specifically reserved at the time that the acceleration statement is made (including, for example, the announcement of a revised offer by an existing firm offeror and/or the announcement of a firm offer by a third party); or
 - (ii) in wholly exceptional circumstances (**Rule 31.5(e)**).
19. If an offeror makes an acceleration statement, the unconditional date of its offer will therefore be brought forward but Day 60 of the offer timetable prescribed by the Code will remain unchanged (and will remain relevant if, for example, the acceleration statement is set aside in accordance with **Rule 31.5(e)**). In addition, under **Rule 32.1(c)**,

an offeror which has made an acceleration statement may not publish a revised offer document in the 14 days prior to the new unconditional date. By contrast, an offeror which has not made an acceleration statement, or which has set its acceleration statement aside, may publish a revised offer document by no later than Day 46.

(b) Schemes of arrangement

20. By comparison with a contractual offer, the Code is much less prescriptive in relation to the timetable of an offer implemented by way of a **scheme of arrangement**.
21. In the case of a scheme of arrangement, the dates for the shareholder meetings and the court sanction hearing are set by the offeree company, with the agreement of the court.
22. Under **Section 3(d)(iii) of Appendix 7**, the shareholder meetings must be convened for a date which is at least 21 days after the date of the scheme circular.
23. Under **Section 3(b) of Appendix 7**, the conditions to the scheme may include separate conditions relating to the dates by which:

- (a) the shareholder meetings; and
- (b) the court sanction hearing,

must be held (unless, in either case, the date is extended with the agreement of the parties to the offer) failing which the offeror will be entitled to invoke the condition and lapse the offer (provided in each case that the date specified must be more than 21 days after the expected date of the shareholder meetings and of the court sanction hearing respectively set out in the scheme circular). These dates are often referred to as “**mini-long-stop dates**”.

24. Under **Section 7 of Appendix 7**, unless the Panel consents otherwise, any revision to a scheme should be made by no later than the date which is 14 days prior to the date of the shareholder meetings.
25. **Section 16(i) of Appendix 7** states that Rule 31 does not apply in the case of a scheme of arrangement. As a result, Day 60 (which applies to a contractual offer by virtue of **Rule 31**) does not apply to an offeror which is seeking to implement a takeover by way of a scheme.

(c) Rules relevant to both a contractual offer and a scheme of arrangement

26. Under **Rule 24.1** and the **Note on Rule 24.1**, an offeror must, unless the Panel agrees otherwise, publish an offer document within 28 days of the announcement of a firm intention to make an offer or, in the case of a pre-conditional offer, within 28 days of the

last pre-condition being satisfied or waived. Similarly, under **Section 3(a) of Appendix 7**, where an offeror announces a firm intention to make an offer to be implemented by means of a scheme of arrangement, the offeree company must, unless the Panel agrees otherwise, ensure that the scheme circular is published within 28 days of the firm offer announcement.

27. Under **Rule 32.5**, the Panel may impose an **auction procedure** when a competitive situation continues to exist in the later stages of the offer period in order to bring the competitive bidding dynamic to a conclusion. If the parties are unable to reach agreement on an alternative procedure, the auction procedure set out in **Appendix 8** will apply. Under **Appendix 8**, that procedure will commence on "**Auction Day 1**" which is defined in **Appendix 8** as:

"the business day immediately following Day 46".

28. In addition to the main definition in the Definitions Section, there is a separate definition of "**Day 46**" in **Appendix 8** (which applies only in relation to **Appendix 8**), as follows:

"Day 46 (as defined in the Definitions Section of the Code) of the second competing offeror's offer or, if the second competing offeror is proceeding by means of a scheme of arrangement, such date as the Panel shall determine."

29. **Note 2 on Rule 32.5** provides as follows:

"2. Schemes of arrangement

Where one or more of the competing offers is being implemented by way of a scheme of arrangement, the parties must consult the Panel as to the applicable timetable."

30. **Note 2 on Rule 32.5** was introduced to the Code following [PCP 2007/1](#) (*Schemes of arrangement*) and the rationale for its introduction was explained as follows:

"8. Competitive situations

...

- 8.3 The Code Committee believes that an auction procedure in accordance with Rule 32.5 will normally be the most appropriate way by which to resolve a competitive situation which continues to exist in the later stages of an offer period involving a scheme. However, the date upon which the auction procedure should commence in a situation involving a scheme of arrangement may not always be obvious

...

- 8.9 The Code Committee ... believes that, where a scheme is proposed in competition with a contractual offer, the Code should not prescribe the precise date on which final revisions to the competing offers must be announced, and on which the auction procedure under Rule 32.5 will

commence, but that the precise date should be left to be determined by the Panel at the relevant time in the light of all the prevailing circumstances.

...

8.13 ... [T]he Code Committee believes that, where a scheme is proposed in competition with an existing scheme, the Code should not prescribe the precise date on which final revisions to the competing schemes must be announced, and on which the auction procedure under Rule 32.5 will commence, but that the precise date should be left to be determined by the Panel at the relevant time in the light of all the prevailing circumstances.”.

31. Accordingly, under **Note 2 on Rule 32.5**, where one or more of the offerors is proceeding by way of a scheme of arrangement, the Panel will determine, in the light of all the prevailing circumstances, the latest date on which final revisions to the competing offers must be announced and, if necessary, when an auction procedure introduced under **Rule 32.5** should take place or commence (which procedure could be that set out in **Appendix 8** or an alternative procedure).
32. Under **Note 1 on Rule 32.5**, the Panel will normally grant a dispensation from the obligation for an offeror to make a revised offer (i.e. to publish a revised offer document) which is lower than the final revised offer announced by a competing offeror (during the course of an auction procedure) when the board of the offeree company consents.

(d) Restrictions on frustrating action

33. Under **Rule 21.1**, during the course of an offer, the board of the offeree company must not take any action which may result in any offer being frustrated without the approval of shareholders in general meeting or otherwise with the consent of the Panel.
34. **Rule 21.1** is underpinned by **General Principle 3** which provides as follows:

“The board of directors of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the takeover bid.”.