

25. Special deals with favourable conditions

Except with the consent of the Executive, neither the offeror nor any person acting in concert with it may make any arrangements with shareholders or enter into arrangements to purchase or sell securities of the offeree company, or ~~to accept which involve acceptance of~~ an offer, either during an offer or when ~~one an offer~~ is reasonably in contemplation or for 6 months after the close of such offer if such arrangements have ~~special~~ favourable conditions which are not to be extended to all shareholders.

Notes to Rule 25:

1. *Top-ups and other arrangements*

An arrangement with special conditions attached includes any arrangement where there is a promise to make good to a vendor of shares any difference between the sale price and the price of any subsequent successful offer or any other price top-up arrangements. An irrevocable commitment to accept an offer combined with an option to put the shares should the offer fail will also be regarded as such an arrangement.

Arrangements made by an offeror with a person acting in concert with it, whereby shares in the offeree company are purchased by the person acting in concert on the basis that the offeror will bear all the risks and receive all the benefits, are not prohibited by this Rule 25. Arrangements which contain a benefit or potential benefit to the person acting in concert (beyond normal expenses and carrying costs) are, however, normally prohibited. In cases of doubt, the Executive must be consulted.

2. Fees Finders' fees

The Rule also covers cases where a shareholder in an offeree company is to be remunerated for playing a part in promoting an offer. The Executive will normally consent to such remuneration, provided that the shareholding is not substantial and it can be demonstrated that a person who had performed the same services, but had not at the same time been a shareholder, would have been entitled to receive no less remuneration.

3. *Management retaining an interest*

~~The Executive should be consulted if the management of the offeree company is to remain financially interested in the business as part of the arrangements for selling its shareholdings.~~

Sometimes an offeror may wish to arrange for the management of the offeree company to remain financially involved in the business. The methods by which this may be achieved vary but the principle which the Executive is concerned to safeguard is that the risks as well as the

rewards associated with an equity shareholding should apply to the management's retained interest. For example, the Executive would not normally find acceptable an option arrangement which guaranteed the original offer price as a minimum. The Executive will normally require, as a condition of its consent, that the independent adviser to the offeree company publicly states that in its opinion the arrangements with the management of the offeree company are fair and reasonable. In addition, where the offeror and the management of the offeree company together hold more than 5% of the equity share capital of the offeree company, the Executive will also normally require such arrangements to be approved at a general meeting of the offeree company's shareholders. At this meeting the vote must be a vote of independent shareholders. Holdings of convertible securities, warrants, options and other subscription rights may also be relevant in determining whether a general meeting is required, particularly where such rights are exercisable during an offer. The Executive must be consulted in all circumstances where this Note may be relevant.

4. *Disposal of offeree company assets*

In some cases, certain assets of the offeree company may be of no interest to the offeror. There is a possibility, if a shareholder in the offeree company seeks to acquire the assets in question, that the terms of the transaction will be such as to confer a special benefit on him; in any event, the arrangement is not capable of being extended to all shareholders. The Executive will normally consent to such a transaction, provided that the independent adviser to the offeree company publicly states that in his opinion the terms of the transaction are fair and reasonable and the transaction is approved at a general meeting of the offeree company's shareholders. At this meeting the vote must be a vote of shareholders who are not involved in or interested in the transaction (otherwise than solely as shareholders of the offeree company) and must be taken on a poll. Where such a sale of assets takes place after the ~~offer has become unconditional~~ relevant period, the Executive will be concerned to see that there was no element of pre-arrangement in the transaction.

The Executive will consider allowing such a procedure in respect of other transactions where the issues are similar, e.g. a transaction with an offeree company shareholder involving offeror assets.