

SELLING OF SECURITIES IN THE OFFEREE COMPANY DURING A TAKEOVER BID

Questions Presented to the CESR Takeover Group

(1) May the offeror or persons acting in concert with the offeror sell any securities under the bid during the offer period in accordance with your national rules? For example, if an offeror has acquired 3 % stake in the company A and then launches a takeover bid regarding both shares and other securities entitling to shares in the company A, may it sell the 3 % stake during the offer period.

(2) Are there any procedures (e.g. prior disclosure, exemption) or special circumstances under which the sale may be accepted?

Answers to the Questions

Country	(1)	(2)	National rule
1. AUSTRIA	No	Yes	Austrian Takeover Law, Sec. 16(3): From the date of disclosure of the intention to make a bid (§ 5 paras. 2 and 3; § 6 para. 2) or of a notification (§ 10 para. 1), the offeror and any parties acting in concert (§ 1 fig.6) shall be prohibited from selling any equities of the offeree company.
2. BELGIUM	N/A ¹	N/A	(No answer)
3. BULGARIA	No rule ²	N/A	(No explicit rule)
4. CYPRUS	No	No	Takeover Bids Law of 2007 (L. 41(I)/2007), Sec. 25(b): It is prohibited for the offeror and the persons acting in concert with him/her to sell securities held in the offeree company during the period for acceptance.
5. CZECH REPUBLIC	N/A	N/A	(No answer)
6. DENMARK	No rule	N/A	(No explicit rule)
7. ESTONIA	N/A	N/A	(No answer)
8. FINLAND	No rule	N/A	(no explicit rule)
9. FRANCE	Partly	Yes	AMF General Rules, Art. 232-16: Between the closing of the offer and either the date of the AMF's announcement, pursuant to Article 232-3, that the offer has succeeded, or the date at which the target securities are returned to the account-keeping institutions, the offeror and persons acting in concert with it may not sell the securities of the target company. Art. 231-3: To allow an offer to be conducted in an orderly fashion in the best interests of investors and the market, the parties concerned shall respect the principles of free interplay of offers and counter-offers, equal treatment and information for all holders of the securities concerned, market transparency and integrity, and fairness of transactions and competition.

¹ "N/A" means that information is not available or it is not relevant.

² See Concluding Remarks below.

10. GERMANY	No rule	N/A	German Securities Acquisition and Takeover Act (Wertpapiererwerbs- und Übernahmegesetz/ WpÜG), Sec. 3 (5): Trading in securities of the target company, the offeror company, or other entities affected by the offer must not result in market distortions. WpÜG, Sec. 4 (1): Within the scope of the tasks assigned to it, the Supervisory Authority shall remedy any grievances which might impair the proper implementation of the procedure or might be materially prejudicial to the securities market. The Supervisory Authority may issue orders that are suitable and necessary to prevent or remove such grievances.
11. GREECE	No	No	(No explicit rule)
12. HUNGARY	No	No	Hungarian Capital Market Act, Sec. 70.7: The offeror and the persons acting in concert - in respect of natural persons, their close relatives holding any participating interest in the offeree company - and their affiliated companies (hereinafter referred to collectively as "affiliated persons") cannot engage in any deal for the transfer, alienation or encumbrance of the shares to which the bid pertains between the day of submission of the takeover to the Commission for approval and the last day of the period within which the declaration of acceptance is to be introduced, with the exception of a share transfer agreement concluded within the framework of the bid. The investment service provider commissioned according to Subsection (4) of Section 68 cannot engage in any deal on his own account concerning the shares to which the bid pertains until the last day of the period within which the declaration of acceptance is to be introduced, with the exception of a share transfer agreement concluded within the framework of the bid.
13. ICELAND	No rule	N/A	(No explicit rule)
14. IRELAND	N/A	N/A	(No answer)
15. ITALY	N/A	N/A	(No answer)
16. LATVIA	No rule	N/A	(No explicit rule)
17. LITHUANIA	No rule	N/A	(No explicit rule)
18. LUXEMBOURG	N/A	N/A	(No answer)
19. MALTA	N/A	N/A	(No answer)
20. NETHERLANDS	No rule	N/A	(No explicit rule)
21. NORWAY	No rule	N/A	(No explicit rule)
22. POLAND	No	No	Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies, dated July 29th 2005, Art. 77.4: In the period between the notification of the offer and the closing of the tender offer, the entity obligated to announce the tender offer and its subsidiary or parent entity, or an entity acting in concert: 1) may acquire shares in the company whose shares are covered by the tender offer only as part of the tender offer and in a manner defined therein; 2) may not dispose of shares in the company whose shares are covered by the tender offer, or enter into any agreement under which they would be obligated to dispose of the shares, during the tender offer.
23. PORTUGAL	Partly	Yes	Securities Code, Art. 180: OTC transactions (buying or selling) are not allowed by the bidder or persons acting in concert unless authorized by the CMVM, regulated market transactions are permitted. The CMVM should be informed on a daily basis about such transactions.
24. ROMANIA	No rule	N/A	CNVM Regulation no. 1/2006 on issuers and operations with securities, Art. 56.5: Starting with the date of submitting to CNVM of the documents mentioned in paragraph (1) and till the date of the initiation of the public offer, the intermediary, the offeror and the persons acting in concert can not perform operations with securities issued by the target company.
25. SLOVAK REPUBLIC	No rule	N/A	(No explicit rule)
26. SLOVENIA	N/A	N/A	(No answer)
27. SPAIN	No	No	Royal Decree 1066/2007, of 27 July, on takeover bids, Art. 32.7: In no event may the offeror or persons acting in concert with it transfer shares in the offeree company until the settlement of the takeover bid.
28. SWEDEN	No rule	N/A	(No explicit rule)

29. UNITED KINGDOM	No	Yes	City Code, Rule 4.2: (a) During an offer period, the offeror and persons acting in concert with it must not sell any securities in the offeree company except with the prior consent of the Panel and following 24 hours public notice that such sales might be made. The Panel will not give consent for sales where a mandatory offer under Rule 9 is being made. Sales below the value of the offer will not be permitted. After there has been an announcement that sales may be made, neither the offeror nor persons acting in concert with it may acquire an interest in any securities of the offeree company and only in exceptional circumstances will the Panel permit the offer to be revised. The Panel should be consulted whenever the offeror or a person acting in concert with it proposes to enter into or close out any type of transaction which may result in securities in the offeree company being sold during the offer period either by that party or by the counterparty to the transaction.
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Concluding Remarks

The questions were presented to CESR Takeover Group Members representing 29 countries in Europe. According to the answers to the first question, selling was prohibited in 7 countries (Austria, Cyprus, Greece, Hungary, Poland, Spain and the United Kingdom) and partly prohibited in 2 (France and Portugal). There was no rule governing this issue in 12 countries (Bulgaria, Denmark, Finland, Germany, Iceland, Latvia, Lithuania, the Netherlands, Norway, Romania, the Slovak Republic and Sweden). 8 countries (Belgium, the Czech Republic, Estonia, Ireland, Italy, Luxembourg, Malta and Slovenia) did not reply.

According to the answers to the second question, from the 9 countries that had prohibitions, 5 countries had prohibited the sale without exceptions (Cyprus, Greece, Hungary, Poland and Spain). There were procedures (e.g. exemption) or special circumstances under which the sale may be accepted in 4 countries (Austria, France, Portugal and the United Kingdom).

In the table above “no rule” means that there is not (1) a specific and explicit prohibition in the respective takeover rules or (2) a clear interpretation that such a prohibition explicitly derives from a general rule. Therefore, “no rule” does not mean that the sale is allowed or that it is prohibited. Despite there is no explicit rule, the sale could be prohibited, for example, pursuant to market abuse rules as mentioned in many answers. In some of the answers, it was also clarified that selling is not possible during a mandatory bid.