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Facilitation of Public Bids as an Instrument of Corporate Governance

How the new 28 days rule helped to facilitate the acquisition of SAB Miller – ABInbev

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The Various Dimensions of M&A

- Management dimension:
  - profit maximization – value creation
  - self-interest of top managers
- **Microeconomic dimension (economic policy):**
  - **re-allocation of production factors**
  - **corporate governance (market for corporate control)**
- Regulatory dimension:
  - corporate and securities law plus regulation
  - self-regulation (Novo Mercado rules; London city code)
  - competition law (merger control)
  - regulated industries (approval of regulatory agencies)

The Market for Corporate Control

- Theoretical precondition for a rationale change of control:

  Expected value of the target (buyer's perspective)

  ./. transaction costs associated with a takeover transaction

  > market value of a public firm (market capitalization)

- Disciplining effect of market for corporate control:
  - Low market capitalization high takeover risk
  - Replacement of management after takeover is likely

- Consequences for legislators and regulators:
  - Low transaction costs are in principle good
  - Frustration of takeover bids (by means of poison pills or other defense measures) is in principle bad

What is Corporate Governance about?

- Institutions of decision making and control in the large public firm:

  Institutions are repeated mechanisms, that allocate authority among the various bodies of the firm and that affect, modulate and control the decisions made at the top of the firm. (Mark J. Roe)

- Competences, obligations and liabilities (compliance) of directors, (independent) board members and shareholders

- Reduce and/or mitigate conflicts of interest and agency costs

Theoretical Approach to Corporate Governance:

- Agency theory:

  Separation of ownership and control leads to an agency relationship where one party, the principal, delegates decision making to another party, the agent. However, the consequences of the decisions taken by the agent are basically a burden (risk) of the principal.

- Agency costs = agent does not act in the very best interest of the principal because of
  - opportunism, self-interest or shirking
  - information asymmetry
  - different attitudes towards risk

- Corporate Governance, and more specifically takeover regulation, as a tool to reduce agency costs.

Two core agency conflicts from a CG perspective

- Diffuse ownership – “vertical” corporate governance:
  - Core agency conflict:

    Senior managers (CEO, CFO, etc.) *versus* shareholders
  - Focus of corporate governance:

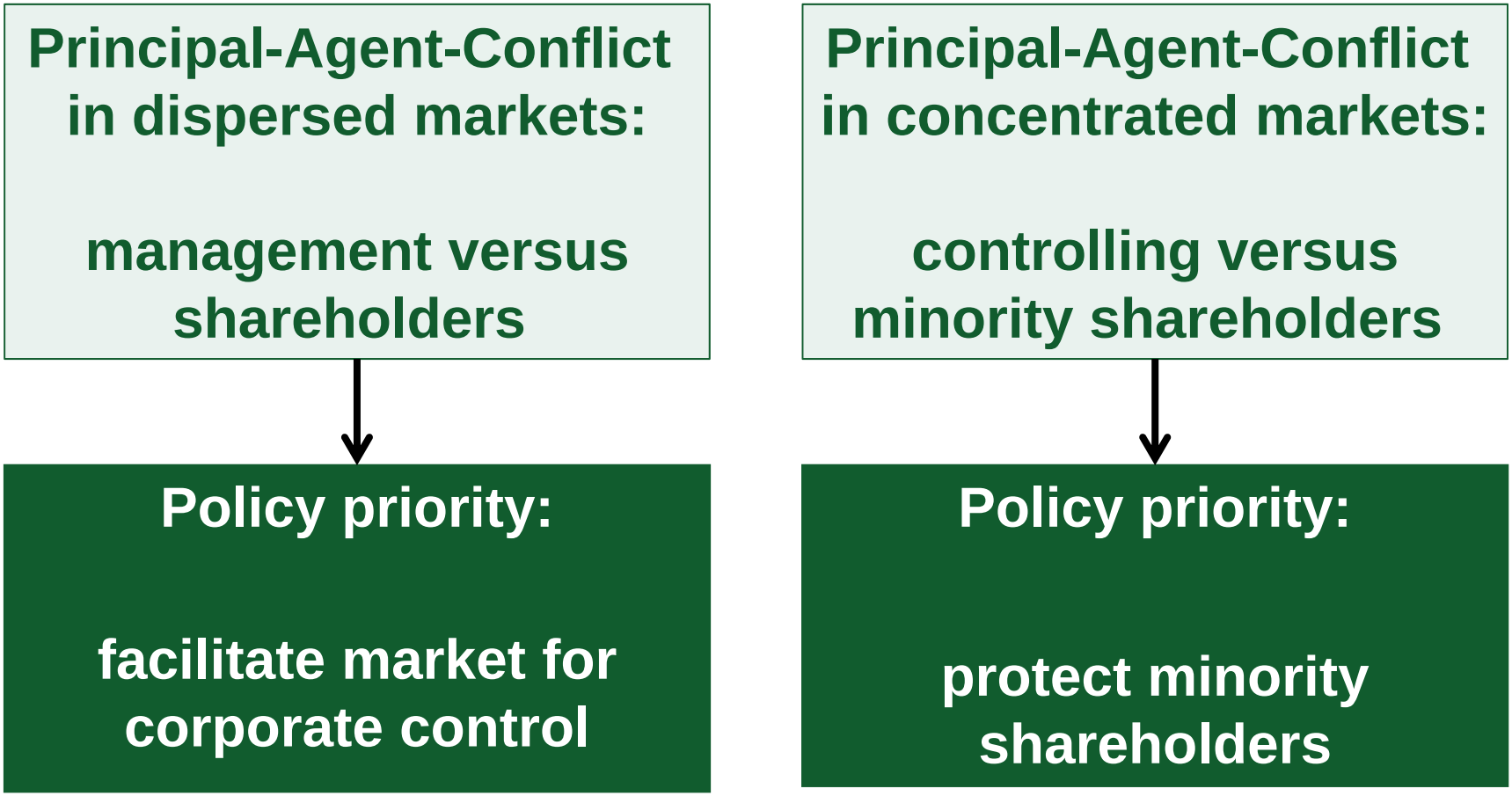
    Keeping senior mangers loyal to shareholders, and competent of managing the firm

- Concentrated ownership – “horizontal” corporate governance:
  - Core agency conflict:

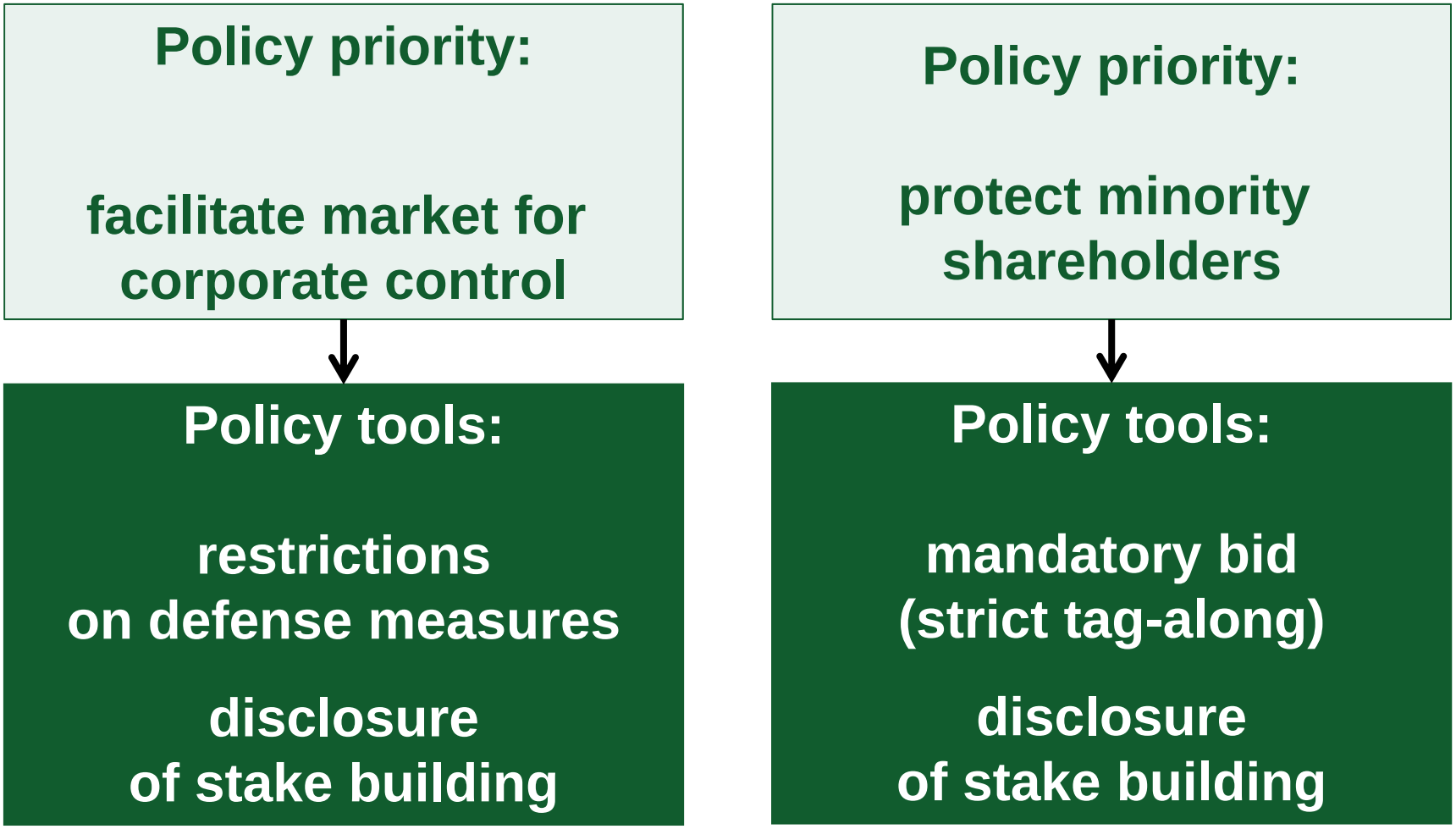
    Dominant shareholders *versus* minority shareholders
  - Focus of corporate governance:

    Preventing or minimizing the shifts in value from dispersed minority shareholders to controlling shareholders

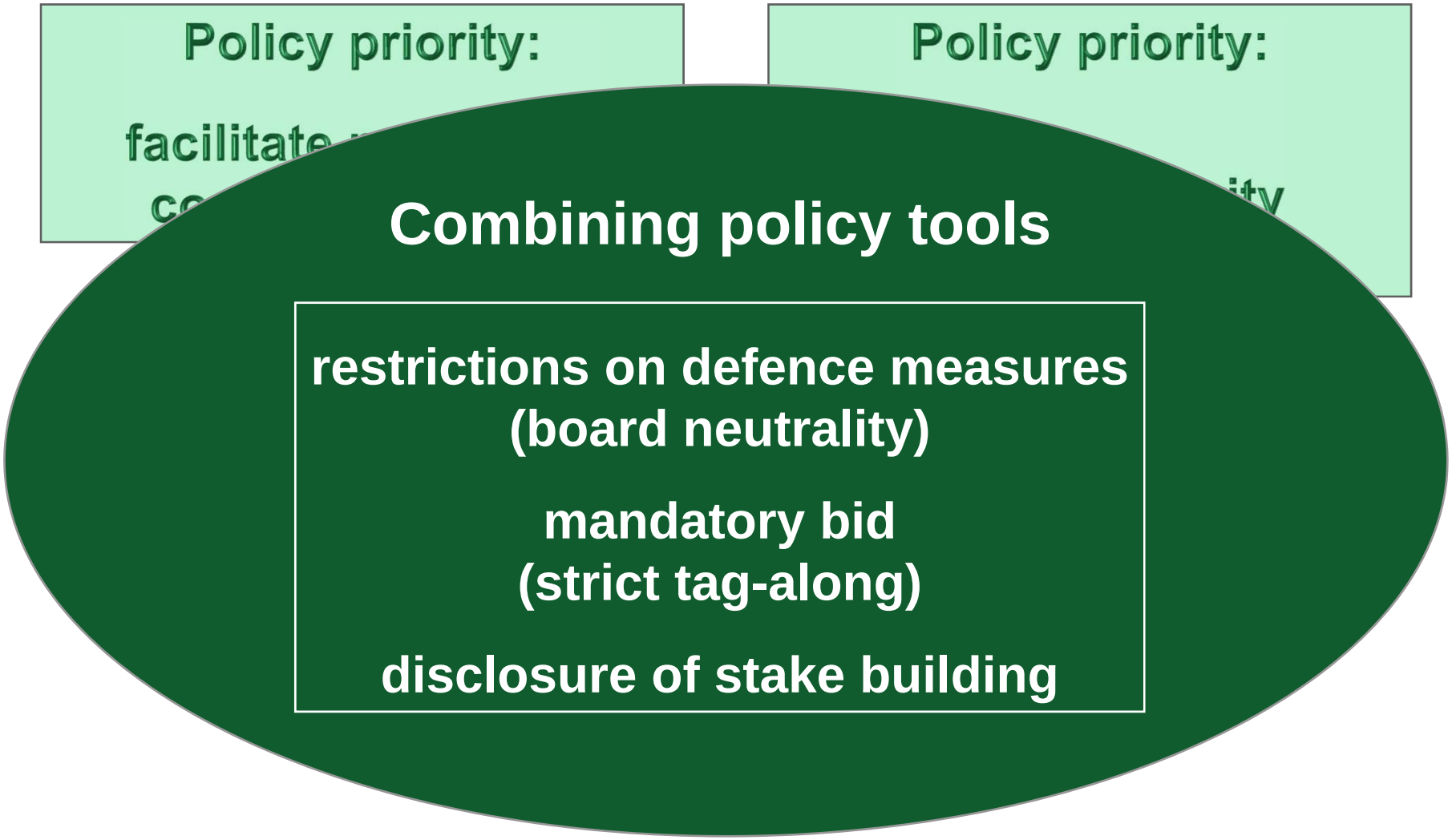
Different Policy Priorities in Different Markets



Policy Tools for Different Policy Priorities:



EU Takeover Directive: Hybrid Markets - Mixed Policy



Regulation versus Self-Regulation

- Regulation:
  - Mandatory Bid Rule (distribution of takeover premium)
  - Stake-building
  - Board neutrality

- Self-Regulation:
  - Facilitating Voluntary Bids
  - Price Formation
  - When do buyers opt for a voluntary bid?
    - existing blockholders
    - aim is to acquire all the shares

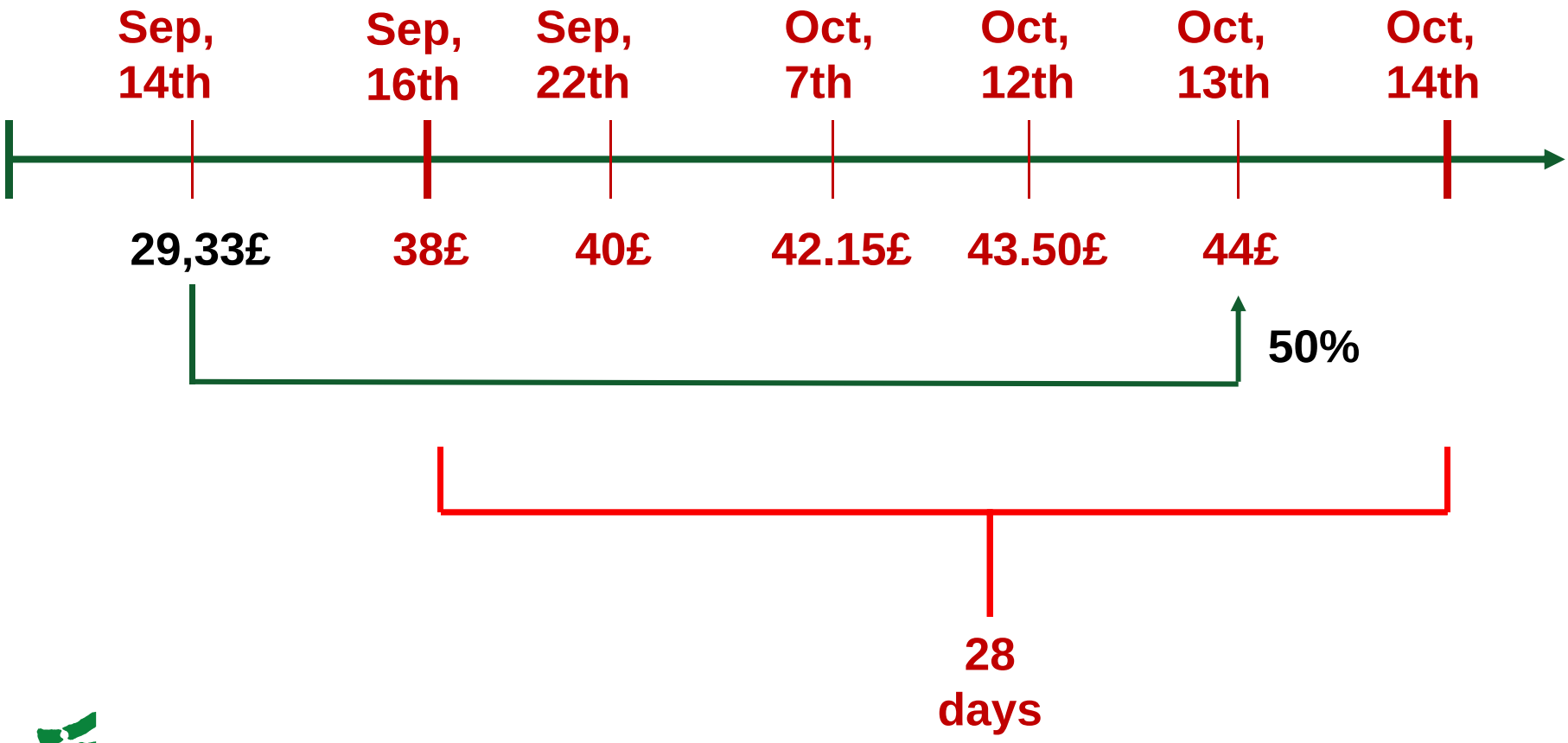
Case Study: ABInbve acquiring SAB Miller

- Shareholder Structure of SAB Miller:
  - Altria 26.6%
  - Bevco 13.9%
  - Norges Bank 4.2%
  - others 55.3%

- Full integration:
  - Cross-Border M&A (typically holding solutions, but here EU cross-border merger directive can be used)
  - Need to re-shape brand-portfolio
  - Strong debt capacity of SBA Miller

Case Study: ABInbev acquiring SAB Miller

Expected offering price (by analysts): 39 - 45£



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Case Study: ABInbev acquiring SAB Miller

2.6 Timing following a possible offer announcement

(a) Subject to Rule 2.6(b), by not later than 5.00 pm on the 28th day following the date of the announcement in which it is first identified, or by not later than any extended deadline, a potential offeror must either:

(i) announce a firm intention to make an offer in accordance with Rule 2.7; or

(ii) announce that it does not intend to make an offer, in which case the announcement will be treated as a statement to which Rule 2.8 applies, unless the Panel has consented to an extension of the deadline.

Case Study: ABInbev acquiring SAB Miller

2.2 When an announcement is required

An announcement is required:

(a) when a firm intention to make an offer is notified to the board of the offeree company by or on behalf of an offeror, irrespective of the attitude of the board to the offer;

(c) when, following an approach by or on behalf of a potential offeror to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price;

(d) when, after a potential offeror first actively considers an offer but before an approach has been made to the board of the offeree company, the offeree company is the subject of rumour and speculation or there is an untoward movement in its share price and there are reasonable grounds for concluding that it is the potential offeror's actions (whether through inadequate security or otherwise) which have led to the situation;

Case Study: ABInbev acquiring SAB Miller

2.7 The announcement of a firm intention to make an offer

An offeror should announce a firm intention to make an offer only after the most careful and responsible consideration and when the offeror has every reason to believe that it can and will continue to be able to implement the offer. Responsibility in this connection also rests on the financial adviser to the offeror.



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Thank you!

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