



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

December 15, 2006

Ms. Sarah Murphy
Freshfields Bruckhaus Deringer
65 Fleet Street
London EC4Y 1HS
United Kingdom

Re: Cash Offer for Gallaher Group plc
File No. TP 07-20

Dear Ms. Murphy:

We are responding to your December 15, 2006 letter to James A. Brigagliano. Our response is attached to the enclosed copy of your letter to avoid having to recite or summarize the facts set forth in your letter. Unless otherwise noted, capitalized terms in this letter have the same meaning as in your letter.

On the basis of your representations and the facts presented, but without necessarily concurring in your analysis, the United States Securities and Exchange Commission ("Commission") hereby grants an exemption from Rule 14e-5 under the Securities Exchange Act of 1934 ("Exchange Act") to permit the Prospective Purchasers to purchase or arrange to purchase Gallaher Group plc ("Gallaher") Ordinary Shares otherwise than pursuant to the possible tender offer ("Offer"), particularly in light of the following facts:

- The Offer is required to be conducted in accordance with the City Code on Takeovers and Mergers ("Code") as well as the rules and regulations of Financial Services Authority ("FSA")
- Gallaher, a public limited company incorporated under the laws of England and Wales, is a "foreign private issuer," as defined in Rule 3b-4(c) under the Exchange Act;
- Any purchases of Ordinary Shares of Gallaher by the Prospective Purchasers will be subject to the Code; and
- The existence of the Memorandum of Understanding on Exchange of Information between the Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures dated September 25, 1991.

The Commission grants this exemption from Rule 14e-5 under the Exchange Act to permit the Prospective Purchasers to purchase or arrange to purchase Ordinary Shares otherwise than pursuant to the Offer, subject to the following conditions:

1. No purchases or arrangements to purchase Ordinary Shares, otherwise than pursuant to the Offer, shall be made in the United States;
2. The Tender Offer Documents shall disclose prominently the possibility of, or the intention to make, purchases of Ordinary Shares by the Prospective Purchasers during the Offer;
3. The Prospective Purchasers shall disclose in the United States information regarding purchases of Ordinary Shares to the extent such information is made public in the United Kingdom pursuant to the Code;
4. The Prospective Purchasers shall comply with any applicable rules under United Kingdom law including the Code and the rules and regulations of the FSA;
5. The Prospective Purchasers shall provide to the Division of Market Regulation ("Division"), upon request, a daily time-sequenced schedule of all purchases of Ordinary Shares made by any of them during the Offer, on a transaction-by-transaction basis, including:
 - a. size, broker (if any), time of execution, and price of purchase; and
 - b. if not executed on the London Stock Exchange, the exchange, quotation system, or other facility through which the purchase occurred;
6. Upon the request of the Division, the Prospective Purchasers shall transmit the information as specified in paragraphs 5.a. and 5.b. above to the Division at its offices in Washington, D.C. within 30 days of its request;
7. The Prospective Purchasers shall retain all documents and other information required to be maintained pursuant to this exemption for a period of not less than two years from the date of the termination of the Offer;
8. Representatives of the Prospective Purchasers shall be made available (in person at the offices of the Division in Washington, D.C. or by telephone) to respond to inquiries of the Division relating to their records; and
9. Except as otherwise exempted herein, the Prospective Purchasers shall comply with Rule 14e-5.

The foregoing exemption from Rule 14e-5 under the Exchange Act expressed above is based solely on your representations and the facts presented, and is strictly limited to the application of this rule to the proposed transactions. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations.

In addition, we direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 10(b) and 14(e) of the Exchange Act and Rule 10b-5 thereunder. The participants in the Offer must comply with these and any other applicable provisions of the federal securities laws. The Division expresses no view with respect to any other questions that the proposed transactions may raise, including, but not limited to, the

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adequacy of disclosure concerning, and the applicability of any other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Market
Regulation pursuant to delegated authority,

A handwritten signature in black ink that reads "James A. Brigagliano". The signature is written in a cursive style with a large initial "J".

James A. Brigagliano
Acting Associate Director
Division of Market Regulation

Attachment

FRESHFIELDS BRUCKHAUS DERINGER

Mr. James A. Brigagliano
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CLIENT MATTER NO. 135597-0001

December 15, 2006

Ladies And Gentlemen:

Re: Cash Offer for Gallaher Group plc

We are writing on a confidential basis on behalf of JTI (UK) Management Ltd. (*BidCo*), a company organized under the laws of England and Wales by our client, Japan Tobacco Inc. (*JTI*) for the purpose of making a bid (the *Bid*) for all of the issued and to be issued ordinary shares (the *Ordinary Shares*) and all American Depositary Shares (the *ADSs*) that represent the stock of Gallaher Group plc (*Gallaher*), a public limited company organized under the laws of England and Wales.

JTI announced today (the *Bid Announcement*) that BidCo intends to make an offer for all of the issued and to be issued share capital of Gallaher.

BidCo currently expects the Bid to be structured as a scheme of arrangement (which is a court based statutory procedure in England and Wales, whereby Gallaher would request its shareholders to approve in court-convened and general meetings various resolutions resulting in, amongst other things, the cancellation of the Ordinary Shares and ADSs, the payment of the cash consideration to holders of the Ordinary Shares and ADSs and the issue of new ordinary shares of Gallaher to BidCo). There is currently no certainty as to whether Bid will be made or the form in which it will be made. The Bid may be structured (or restructured) as a tender offer if circumstances warrant.

As previously discussed with members of the staff (the *Staff*) of the Securities and Exchange Commission (the *Commission*), we, as US counsel to JTI in connection with the Bid and on behalf of JTI and BidCo are requesting exemptive relief from Rule 14e-5 (*Rule 14e-5*) promulgated under the Securities Exchange Act of 1934, as amended (the *Exchange Act*), allowing JTI, BidCo, their affiliates or subsidiaries, and any broker or other financial institution acting as their respective agents (including Merrill Lynch International acting as

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financial advisor to BidCo in connection with the Bid) (collectively, the *Prospective Purchasers*) to purchase Ordinary Shares outside the Bid when otherwise permissible under the City Code on Takeovers and Mergers in the United Kingdom (the *City Code*) and other applicable UK rules and regulations.

BACKGROUND

Gallaher

Gallaher is a foreign private issuer as defined in Rule 3b-4(c) of the Exchange Act and is a reporting company for purposes of the United States federal securities laws. Gallaher's Ordinary Shares are listed on the London Stock Exchange. Gallaher has a sponsored ADS program with The Bank of New York with one ADS representing four Ordinary Shares. The ADSs trade on the New York Stock Exchange.

Gallaher is the world's fifth largest global tobacco company, and the fourth largest in Europe with leading positions in Austria, Kazakhstan, Ireland, Russia, Sweden and the United Kingdom. Gallaher's comprehensive brand portfolio includes Benson & Hedges, Silk Cut, Memphis, Sobranie, LD and Sovereign. Gallaher is also involved in the distribution of tobacco and other products in certain markets in Europe.

For the year ended December 31, 2005, Gallaher reported a consolidated profit on ordinary activities before taxation of £551 million on turnover of £8,214 million and had total assets at that date of £3,874 million. In its unaudited results for the six months ended June 30, 2006, Gallaher reported a consolidated profit on ordinary activities before taxation of £259 million on turnover of £4,028 million. At that date, Gallaher had total assets of £3,941 million.

Given the nature of holdings in ordinary shares of English companies and English law, BidCo does not have access to specific information regarding the beneficial holders of the Ordinary Shares. However, based on public information available from Citywatch (an equity ownership database which identifies the beneficial owners behind nominee shareholdings in UK companies) and information received from Gallaher, BidCo believes that US holders own approximately 32.1% of the Ordinary Shares (although no information is available regarding shareholders who in aggregate hold approximately 3.1% of the Ordinary Shares). Of these, 22.2% are held in a sponsored ADS program with The Bank of New York. There are no shareholders owning more than 10% of the Ordinary Shares.

BidCo

BidCo is a foreign private issuer as defined in Rule 3b-4(c) of the Exchange Act. It is a United Kingdom incorporated private limited liability company and a wholly owned subsidiary of JTI. BidCo was formed at the direction of JTI specifically for the purpose of acquiring Gallaher. BidCo has not traded since its incorporation nor has it entered into any obligation other than in connection with the Bid.

Incorporated under the laws of Japan, JTI is the world's third largest global tobacco company, selling internationally recognized cigarette brands in more than 120 countries. JTI is the leading tobacco company in Japan, having a market share of approximately 66% and selling eight out of the ten top cigarette brands in the country. JTI also operates a pharmaceuticals business, which focuses on the research and development of prescription drugs, and a foods business that principally manufactures and sells beverages, processed foods and seasonings in the domestic market.

For the year ended March 31, 2006, JTI reported a consolidated profit on ordinary activities before taxation and minority expenses of ¥301.0 billion (£1,362 million) on turnover of ¥4,637.7 billion (£21.0 billion). As of that date, it had total assets of ¥3,037.4 billion (£13.7 billion). JTI is listed on the Tokyo Stock Exchange. As of December 11, 2006 JTI had a market capitalization of approximately ¥5,660 billion.

BACKGROUND TO THE BID

As indicated above, the form of the Bid is not yet certain. BidCo currently intends to effect the Bid by means of a scheme of arrangement, to which the requirements of Regulation 14E do not apply. Should, however, BidCo proceed by manner of a tender offer for the Ordinary Shares and ADSs, it expects that the offer would be structured as described below.

If the Bid is conducted by means of a tender offer, BidCo expects it will be made as a single offer under a single document in all jurisdictions in which it is extended. Such documentation would allow for participation by US holders of Ordinary Shares and ADSs in Gallaher. The tender offer would be structured to comply with (i) the rules and regulations of the Financial Services Authority of the United Kingdom, (ii) the City Code and (iii) except as otherwise requested herein or subsequently requested from the Commission, the requirements of Section 14(d), as it applies to offers that satisfy the conditions of Rule 14d-1(d)(1), and Section 14(e) of the Exchange Act and the rules and regulations

promulgated thereunder. The offering documents (the *Tender Offer Documents*) would comply with the rules and regulations of the UK Listing Authority, the City Code and the Exchange Act. In addition, as soon as practicable after the announcement of a tender offer, BidCo would file a Schedule TO with the Commission.

In such circumstances, the Tender Offer Documents would be mailed to all holders of record of the Ordinary Shares and ADSs, as appropriate, including those with addresses in the United States. Language prohibiting the forwarding of the Tender Offer Documents by custodians, nominees, trustees and others to beneficial owners with addresses in the United States would not be included in the Tender Offer Documents. In the absence of such a prohibition, it is expected that the record owner would forward the Tender Offer Documents to the beneficial owner. As a result, we would expect that each beneficial owner of the Ordinary Shares and ADSs that resides in the United States would, if the tender offer were made, receive the Tender Offer Documents and thereby the notice described below with respect to the possibility of purchases of the Ordinary Shares outside of the offer.

The Tender Offer Documents would be mailed to all record holders of the Ordinary Shares and ADSs in the United Kingdom and the United States no later than 28 calendar days after the date of the announcement of the tender offer (the *Announcement Date*), as required by Rule 30.1 of the City Code. The tender offer would remain open for acceptance for not less than 20 US business days after it was made (upon filing of Schedule TO and mailing the Tender Offer Documents) and for such additional period or periods as may be determined by BidCo and as may be mandated by the provisions of Regulations 14D and 14E under the Exchange Act or the City Code. In compliance with Section 14(d)(5) and Rule 14d-7 of the Exchange Act, shareholders will have withdrawal rights during this period. To comply with the City Code, however, a tender offer must lapse unless it becomes or is declared unconditional as to acceptances by midnight on the 60th calendar day after mailing or such later date as to which the Panel on Takeovers and Mergers (the *Panel*), which administers the City Code, may agree.

If the tender offer became or was declared unconditional as to acceptances, the offer would, in order to comply with Rule 31.4 of the City Code, be required to remain open for acceptances for at least 14 calendar days following the date on which it would otherwise have expired and could remain open for such longer period as BidCo deems appropriate. In addition, Rule 31.2 of the City Code requires that notice of the termination of any subsequent offer period must be given not less than 14 calendar days prior to such

termination. An institution operating in the United Kingdom would act as the UK receiving agent to receive tenders of Ordinary Shares pursuant to the tender offer.

Pursuant to Rule 31.7 of the City Code, the tender offer would have to become or be declared wholly unconditional (i.e., all conditions to the offer have been satisfied or, where permissible, waived), no later than 21 calendar days after the date the offer had become or been declared unconditional as to acceptances (unless the Panel agrees to a later date).

If the tender offer becomes or is declared wholly unconditional, all Ordinary Shares and ADSs validly tendered during the offer would be accepted and paid for by BidCo within 14 calendar days of the later of the date when the offer became wholly unconditional and the date of receipt of an acceptance which was complete in all respects.

In accordance with the Commission's interpretation set forth in section II.B of the Cross-Border Release (SEC Release No. 33-7756), the Tender Offer Documents will provide that BidCo will make an announcement five US business days prior to the date on which any reduction in the acceptance condition may be effected, stating the percentage to which the acceptance condition may be reduced. Any such announcement will be made through a press release and by placing an advertisement in a newspaper of national circulation in the United States. Any such announcement will advise shareholders to withdraw their acceptances immediately if their willingness to accept the Bid would be affected by a reduction of the acceptance condition. In addition, disclosure regarding the procedure for reducing the acceptance condition will be included in the Bid documentation.

If the tender offer becomes or is declared unconditional, the tender offer must, in order to comply with Rule 31.4 of the City Code, remain open for acceptances for at least 14 calendar days following the date on which it would otherwise have expired and may remain open for such longer period as BidCo deems appropriate (the Further Offer Period). All Ordinary Shares with respect to which it has received valid acceptances during the Further Offer Period will be acquired upon receipt of the acceptance and paid for within 14 calendar days of the date of the receipt of an acceptance complete in all respects in respect of that security. As permitted by the City Code and in accordance with UK practice, BidCo would intend to keep the Further Offer Period open at least until the compulsory acquisition procedures are completed (normally three months after an offer becomes wholly unconditional). Rule 31.2 of the City Code requires that notice of the termination of the Further Offer Period must be given not less than 14 calendar days prior to such termination.

The tender offer would be subject to several conditions which are generally customary for U.K. offers of this type.

PURCHASES OUTSIDE THE TENDER OFFER AND RULE 14E-5

In the United Kingdom, purchases outside an offer are permitted, subject to certain limitations, and such purchases are quite common in connection with tender offers for UK companies. Under the City Code, the Prospective Purchasers would be permitted to purchase Ordinary Shares in the open market or otherwise before and during the conduct of, but outside, the tender offer, subject to certain limitations including as to price (as described below).

Subject to certain exceptions, Rule 14e-5 prohibits a covered person from directly or indirectly purchasing or arranging to purchase any securities to be acquired in a tender offer for equity securities or any securities immediately convertible into, exchangeable for or exercisable for such securities, except as part of the tender offer. This prohibition applies from the time an offer is publicly announced until it expires. Rule 14e-5 defines a covered person as (i) the offeror, its dealer-managers, and any of their respective affiliates, (ii) any advisors of the foregoing whose compensation is dependent on the completion of the offer and (iii) any person acting in concert either directly or indirectly with any of the foregoing.

As indicated above, BidCo wants to allow US holders of the Ordinary Shares and ADSs to participate in the tender offer. At the same time, in the event that the Bid is conducted by means of a tender offer within the meaning of Rule 14e-5, the Prospective Purchasers want to be in a position to purchase the Ordinary Shares at any time they are permitted to do so under the City Code and other applicable UK rules and regulations.

Purchases of the Ordinary Shares outside the offer by the Prospective Purchasers would not fall within any of the excepted activities specifically outlined in Rule 14e-5. Accordingly, in the absence of exemptive relief, if the Bid is conducted by means of a tender offer, purchases of the Ordinary Shares outside such offer would be prohibited.

Rules 6.1 and 6.2 of the City Code provide protections similar to those provided by Rule 14e-5, making, we believe, exemptive relief appropriate in the circumstances of the tender offer, by requiring that the tender offer's price, if and when the offer is made, be increased to not less than the highest price paid outside the tender offer by BidCo or members of Bidco or their concert parties, as defined in the City Code.

Under Rule 8.1 of the City Code, any purchases by BidCo or any other Prospective Purchaser outside the tender offer would be required to be disclosed on a next-day basis to the public through a Regulatory Information Service and to the Panel. Disclosures of these purchases attract significant publicity by their very nature and they are disseminated on dealers' trading screens throughout the London market.

The Commission has granted a number of exemptions from Rule 14e-5 and Rule 10b-13 (the predecessor to Rule 14e-5) to permit such purchases by offerors and persons acting on behalf of offerors. We believe the exemptive relief requested herein under Rule 14e-5 is consistent with that granted by the Commission in similar situations in the past, including the letter regarding the offer by WPD Limited for Hyder plc (available May 31, 2000), the letter regarding the offer by Schlumberger Limited for Sema Group plc (available February 15, 2001), the letter regarding the offer by Vinci for TBI plc (available August 23, 2001), the letter regarding the offer by Cinven Limited for Fitness First Plc (available April 9, 2003), the letter regarding the offer by Songbird Acquisition Limited for Canary Wharf Group plc (available April 22, 2004) and the letter regarding the offer by Compagnie de Saint-Gobain for BPB plc (available August 8, 2005). Further, we believe exemptive relief in the context of a possible offer is consistent with that granted by the Commission in the letter regarding the possible offer by Bank of Ireland for Abbey National plc (available October 16, 2002), the letter regarding the possible offer by Anheuser-Busch Companies, Inc. for Harbin Brewery Group Limited (available May 7, 2004), the letter regarding the possible offer by Grupo Ferrovial, SA for BAA plc (dated March 23, 2006), the letter regarding the possible consortium offer for Associated British Ports Holdings plc (dated June 8, 2006) and the letter regarding the possible offer by Cinven Limited for Gondola Holdings plc (dated October 2, 2006).

In addition, we note the existence of the Memorandum of Understanding on Exchange of Information between the Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Securities and the United States Commodity Futures Trading Commission and the United Kingdom Department of Trade and Industry in Matters Relating to Futures dated September 25, 1991.

In our view, there are serious doubts as to whether the jurisdictional predicate for the application of the Exchange Act—namely that there be a purchase of a security “by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange”—would be satisfied if the Prospective Purchasers made purchases of, or arrangements to purchase, Ordinary Shares outside the United States. We

nonetheless apply, on behalf of such persons, for exemptive relief for such purchases from the provisions of Rule 14e-5 pursuant to Rule 14e-5, on the conditions set forth below. We have been requested by the Prospective Purchasers to emphasize that this letter does not reflect an admission that Rule 14e-5 would apply to such a purchase of Ordinary Shares outside the United States in the absence of such exemptive relief.

REQUESTED EXEMPTIVE RELIEF

Based on the foregoing, we respectfully request that the Prospective Purchasers be granted exemptive relief from the provisions of Rule 14e-5 in order to permit purchases of Ordinary Shares outside of the possible tender offer by any Prospective Purchaser that would otherwise be prohibited by Rule 14e-5, subject to the following conditions:

- (a) no purchases or arrangements to purchase Ordinary Shares or ADSs, otherwise than pursuant to the tender offer, will be made in the United States;
- (b) disclosure of the possibility of such purchases by the Prospective Purchasers, otherwise than pursuant to the tender offer, will be included prominently in the Tender Offer Documents (when and if distributed);
- (c) the Prospective Purchasers shall disclose in the United States information regarding such purchases by making such information available on the London Stock Exchange website, www.londonstockexchange.com, to the extent such information is required to be made public in the United Kingdom pursuant to the City Code;
- (d) the Prospective Purchasers shall disclose to the Division of Market Regulation of the Commission (the *Division of Market Regulation*) upon request, a daily time-sequenced schedule of all purchases of Ordinary Shares made by any of them during the offer, on a transaction-by-transaction basis, including: (1) size, broker (if any), time of execution, and price of purchase and (2) if not executed on the London Stock Exchange, the exchange, quotation system or other facility through which the purchase occurred;
- (e) upon request of the Division of Market Regulation, the Prospective Purchasers shall transmit the information specified in (d)(1) and (d)(2) above to the Division of Market Regulation at its offices in Washington, D.C. within 30 days of its request;
- (f) the Prospective Purchasers shall comply with any applicable rules of UK organizations, including the City Code and the rules of the London Stock Exchange;

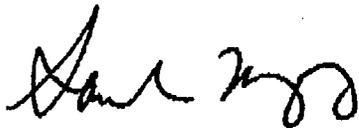
- (g) the Prospective Purchasers shall retain all documents and other information required to be maintained pursuant to this exemption for a period of not less than two years from the date of the termination of the tender offer;
- (h) representatives of the Prospective Purchasers shall be made available (in person at the offices of the Division of Market Regulation in Washington, D.C. or by telephone) to respond to inquiries of the Division of Market Regulation relating to such records; and
- (i) except as otherwise exempted herein, the Prospective Purchasers shall comply with Rule 14c-5.

CONCLUSION

Pursuant to Rule 81 under the Rules of Practice (17 CFR 200.81), we respectfully request on behalf of BidCo that this exemptive request and the response be accorded confidential treatment until 120 days after the date of the response to such request or such earlier date as the Staff is advised that all of the information in this letter has been made public. This request for confidential treatment is made on behalf of BidCo for the reason that certain of the facts set forth in this letter have not been made public.

In view of the short timetable, we respectfully request that the Commission issue the requested exemptive relief as soon as practicable. If you require any further information or have any questions, please contact Sarah Murphy at +44 20 7832 7429 or Andrew Boyer at +44 20 7427 3580.

Yours faithfully



Sarah Murphy