



Media Release

Contact	Tanja Kocher
Phone	+41 31 323 08 57
Fax	+41 31 322 69 26
E-mail	tanja.kocher@ebk.admin.ch
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Takeover Chamber confirms recommendation of Swiss Takeover Board in the Centerpulse case

The Takeover Chamber of the Swiss Federal Banking Commission (hereinafter: Takeover Chamber) confirms the recommendation of the Swiss Takeover Board (hereinafter: TOB) concerning Zimmer Holdings Inc. / InCentive Capital Ltd dated 11 June 2003, which states that the four major shareholders of InCentive are free to accept any competing offer for Centerpulse and/or InCentive – irrespective of the Tender Agreement between Smith & Nephew plc and the major shareholders of InCentive dated 20 March 2003.

July 24, 2003 – Confirming the recommendation of the TOB, the Takeover Chamber ruled (by decision dated 23 July 2003) that the Tender Agreement, by which the major shareholders of InCentive (InCentive has a stake in Centerpulse amounting to approximately 19% of the share capital and voting rights) undertook *inter alia* to accept Smith & Nephew's offer within the first two days of the offer period and to waive the right to revoke their acceptance, is not consistent with Art. 30 para. 1 of the Swiss Stock Exchange Act. The latter states that if competing offers are made, the shareholders of the target company must be free to choose which offer they accept. The Tender Agreement contravenes this principle. In the opinion of the Takeover Chamber, a "lock-up agreement" such as the above protects the initial bidder against competing offers by making it more difficult for other potential bidders to enter the takeover battle. The initial bidder thus restricts competition, as it is not forced to make the best possible offer.

The Takeover Chamber further confirms the recommendation of the TOB in Zimmer / InCentive that no entitlement to the acceptance of an offer can be derived from Swiss takeover law. InCentive Capital Ltd's grounds for contesting the recommendation were, among others, to ensure the possible acceptance of at least one of the two offers. The Takeover Chamber observes in this connection that the present decision grants the major shareholders of InCentive the right to choose whether to accept the Smith & Nephew offer or the Zimmer offer. According to the Takeover Chamber, considerations which lie outside the bounds of Swiss takeover law (for example tax aspects) do not constitute a reason for contravening the principles of takeover law.



Eidgenössische Bankenkommission
Commission fédérale des banques
Commissione federale delle banche
Swiss Federal Banking Commission

For procedural reasons, the Takeover Chamber did not deal in this initial phase with the other objections to individual recommendations of the TOB in the Centerpulse / InCentive case, since the primary consideration at this stage was to clarify a key issue in the takeover battle for Centerpulse. The parties must now decide how they wish to proceed. Within a 30 days period, the parties may lodge an appeal against the Takeover Chamber's decision before the Federal Supreme Court.