
HERBERT SMITH FREEHILLS
AUSTRALIAN PUBLIC M&A REPORT 2019
ELEVENTH EDITION

Contents

FY19 highlights

$45.9bn
TOTAL DEAL VALUE

63
ANNOUNCED DEALS

74%
OVERALL SUCCESS RATE

8
MEGA DEALS (>$1BN)

21%
DEALS INVOLVING A PRIVATE EQUITY BIDDER

10 LARGEST DEALS

	TARGET	BIDDER	DEAL VALUE	SECTOR
1	APA Group	CK Group	$12.98bn	Utilities
2	TPG Telecom	Vodafone Hutchison	$5.40bn	Telecommunications
3	Healthscope	Brookfield	$4.35bn	Health Care
4	DuluxGroup	Nippon Paint	$3.81bn	Materials
5	Investa Office Fund	Oxford Properties Group	$3.35bn	Real Estate
6	Fairfax Media	Nine Entertainment	$2.16bn	Media
7	Navitas	BGH Consortium	$2.09bn	Consumer Discretionary
8	MYOB Group	KKR	$2.01bn	Information Technology
9	Eclipx Group	McMillan Shakespeare	$911m	Financials
10	Kidman Resources	Wesfarmers	$769m	Resources (Lithium)

80%
foreign bidders by value

62%
of takeovers were unsolicited

$109m
median target value

51%
of deals included scrip as consideration

Introduction and key findings

Introduction

This is the eleventh edition of Herbert Smith Freehills' Australian Public M&A Report.

This edition examines the 63 control transactions involving Australian targets listed on the ASX that were conducted by way of takeover or scheme of arrangement in the 2019 financial year.

Activity overview

Public M&A activity continued to grow in FY19. There were 63 deals announced in FY19 compared to 56 in FY18 and 59 in FY17, with total deal value increasing to $45.9bn (up from $40.9bn in FY18 and almost double the $23.4bn seen in FY17).

The Energy and Resources sector accounted for 30% of public M&A activity in FY19 by number of deals. Both the Consumer and Diversified Financial sectors also featured strongly, each representing 16% by number of deals.

The Utilities sector was the highest value sector in FY19, representing 28% of total deal value, with Real Estate some way behind at 11% and Consumer and Health Care each at 10%.

All or nothing as bidders continue to favour certainty of control

FY18 saw schemes being the preferred transaction structure over takeover bids for the first time since the inception of this report. This trend continued in FY19 with 54% of deals in FY19 being schemes (and 100% of deals >$1bn ('mega deals')).

72% of deals that had completed at the time of writing saw the bidder acquire 100% of the target.

Scrip reigns supreme

FY19 saw a significant increase in the number of deals involving scrip as the only form of consideration (37%, compared to just 19% in FY17 and 18% in FY18). Shares or units in ASX listed entities were featured in the vast majority of scrip deals. The remaining scrip deals involved foreign listed scrip (two deals) and stub equity (three deals).

Despite the increased use of scrip, success rates were highest where target shareholders were given a choice of consideration or offered only cash. This suggests that cash is still king for target shareholders.

Process agreements become more popular

Over the last year, we have seen a marked increase in the number of process agreements between bidders and targets being entered into and announced before any binding proposal is made. These process agreements operate at the outset of a potential deal, usually giving the bidder exclusivity and due diligence access, and requiring the parties to negotiate formal transaction documentation. Deals that utilised process agreements in FY19 included Brookfield's acquisition of Healthscope and Wesfarmers' acquisition of Kidman Resources.

Regulators foreshadow changes on the horizon

Consistent with the widely-reported increase of regulatory activity concerning financial institutions following the Hayne Royal Commission, ASIC increased its scrutiny of M&A transactions and transaction documentation in FY19. Specifically, FY19 saw ASIC ramp up its scrutiny of the use of voting intention statements and stub equity structures in Australian public M&A. Updated guidance is expected from ASIC in the coming months and the effect of any change in accepted practice will no doubt be on display in FY20.

The ACCC also had a busy year in FY19, being involved in a number of high profile (and high value) deals. ACCC's most notable involvement was perhaps in the proposed $5.4bn merger of equals between TPG Telecom and Vodafone Hutchison, where ACCC opposed the merger due to competition concerns. This decision is currently being appealed in the Federal Court.

Target creativity

A number of transactions in FY19 saw bidders accumulating significant pre-bid stakes, or entering into exclusive arrangements with target shareholders, before approaching targets with an indicative proposal.

Target companies called upon a number of creative strategies to respond to these arrangements. For example, in FY19's largest successful deal, Healthscope responded to a 19% pre-bid acquisition made by a consortium led by BGH Capital by entering into an agreed scheme and takeover proposal with Brookfield – a scheme proposal at a higher price and a takeover bid at a lower price with a 50% minimum acceptance condition (which therefore could not be blocked by BGH Consortium). Separately, MYOB extracted value from its 19.9% shareholder bidder (KKR) by agreeing to a 'go shop' period, with KKR committing to vote its stake in support of any superior competing proposal that it did not match.

Looking forward

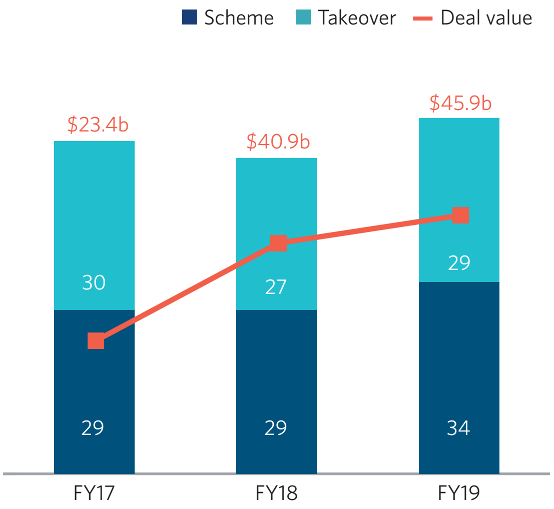
There has been a strong start to public M&A activity in FY20. As at mid-August 2019, 10 deals had been announced, seven of which were schemes.

Deal landscape

Overall volume and value

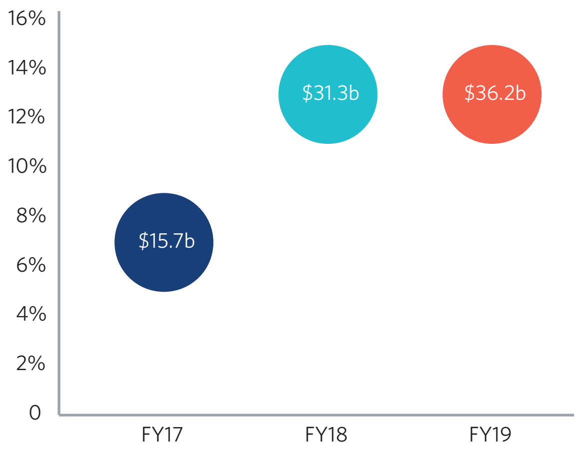
Total number and value of deals per year

FY19 saw an increase in both the total volume and value of deals announced compared to FY17 and FY18.



Percentage and value of deals >$1bn

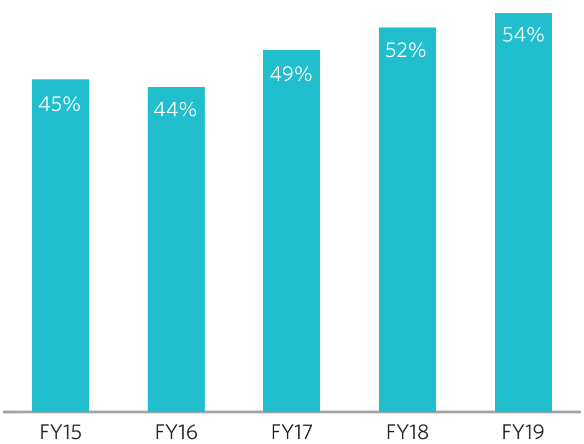
The proportion and value of mega deals (>$1bn) was also higher in FY19 than in FY17 and FY18.



Deal structures

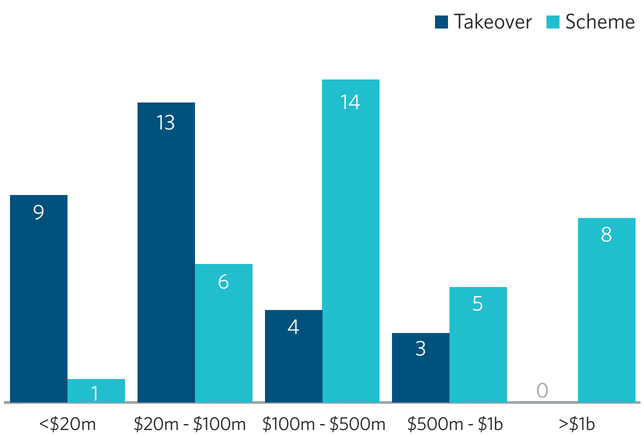
Schemes vs takeovers

There has been an upward trend since FY15 of bidders preferring schemes over takeovers. FY19 saw the use of schemes at a record high, being the preferred structure for 54% of all deals.



Structure of deals by value range

Schemes continued to be the preferred structure for mid and high value deals in FY19, with 27 of the 34 deals valued >$100m being schemes (79%). All mega deals (>$1bn) in FY19 were schemes.



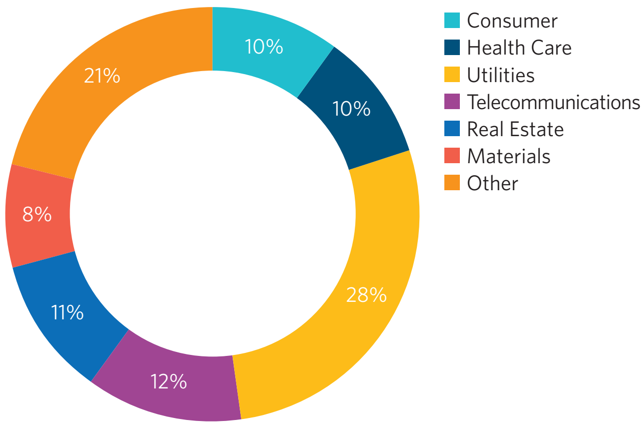
Deal landscape

Industries and competition

Value of deals by sector

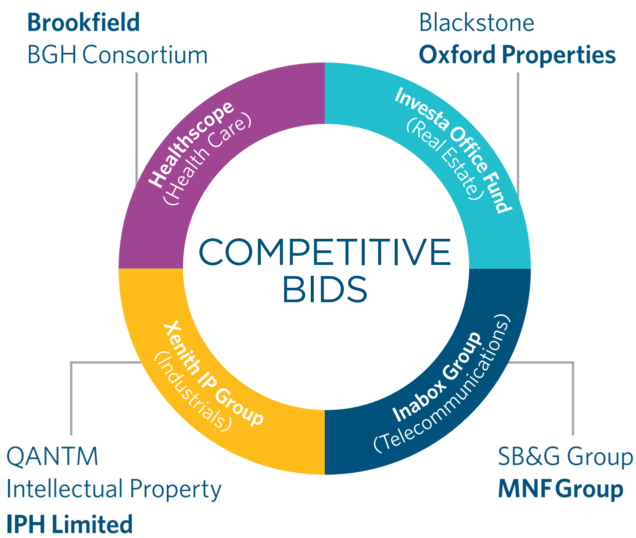
FY19 saw high value targets spread across several sectors, including Telecommunications (TPG Telecom), Real Estate (Investa Office Fund), Health Care (Healthscope) and Consumer (Navitas).

The Utilities sector (representing 28% of total deal value in FY19) was buoyed by CK Group's ultimately unsuccessful $12.98bn bid for APA Group.



Competitive bids

Four targets were subject to competitive bids in FY19 (compared to six in FY18 and three in FY17). Three of these targets involved bids by private equity bidders.



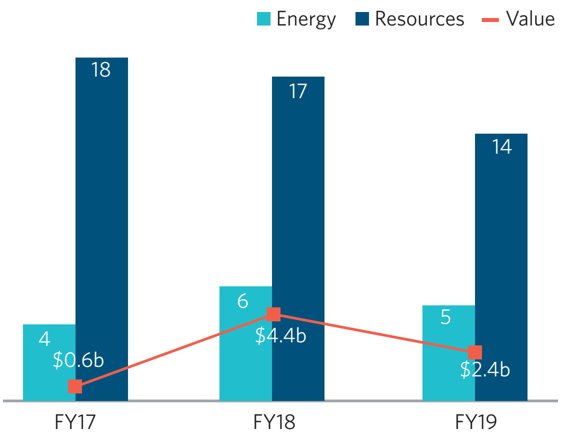
Bold indicates successful bidder

Energy and resources

Number and value of energy and resources deals

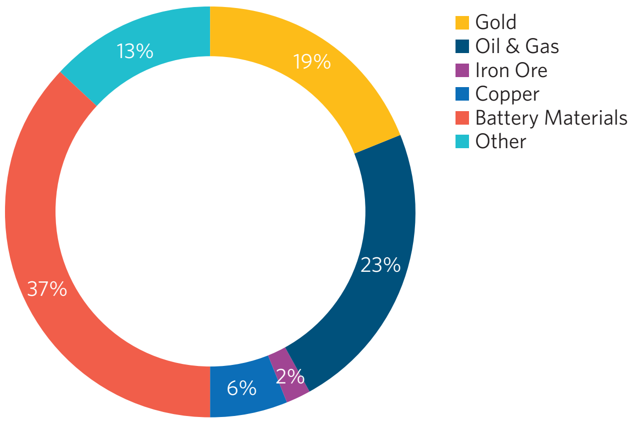
There were fewer energy and resources deals in FY19 by both number and value compared to FY18.

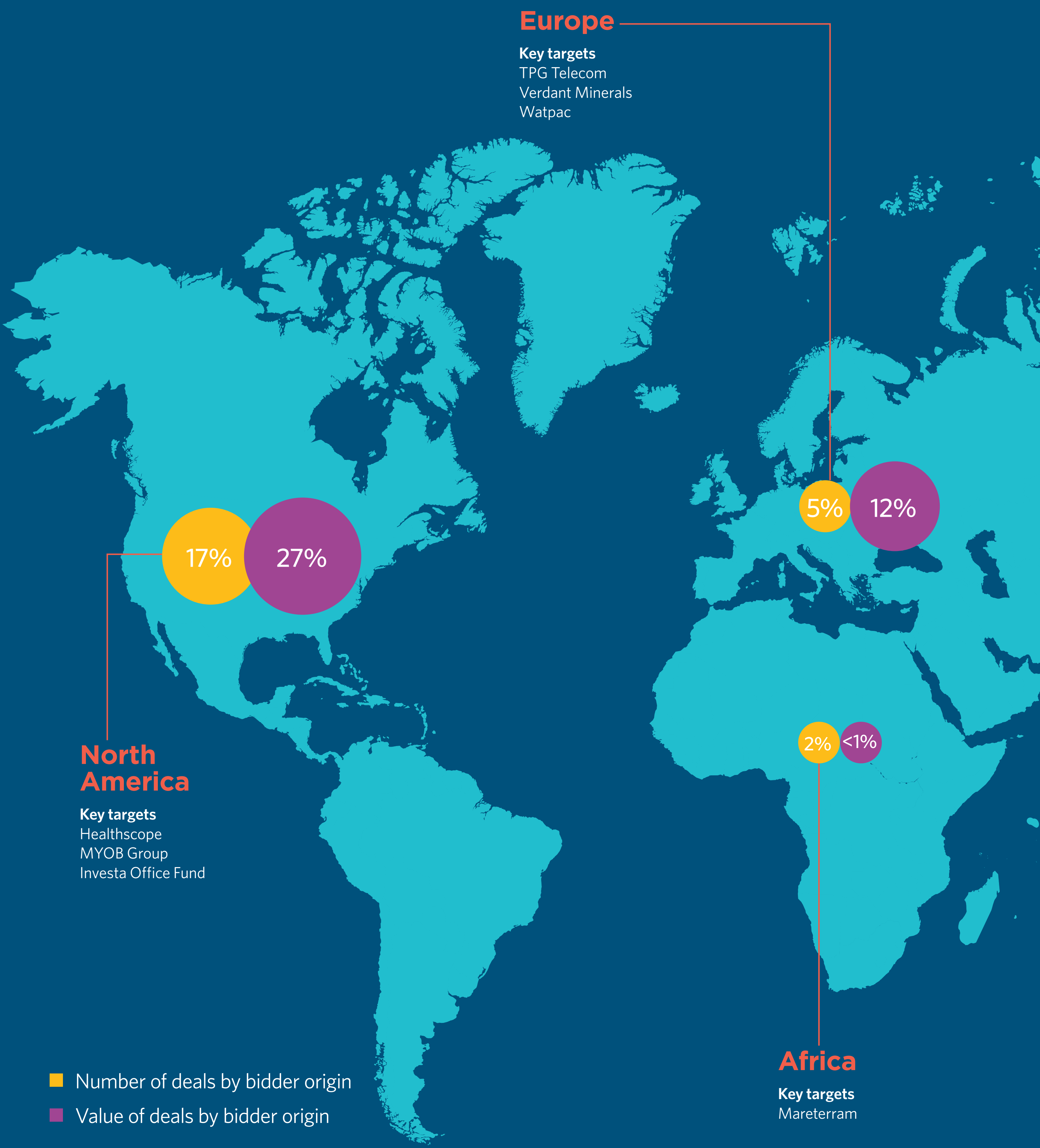
37% of energy and resources deals in FY19 were valued in the $100m - $1bn range (down from 48% in FY18, but up on FY17 where all energy and resources deals were valued <$100m).

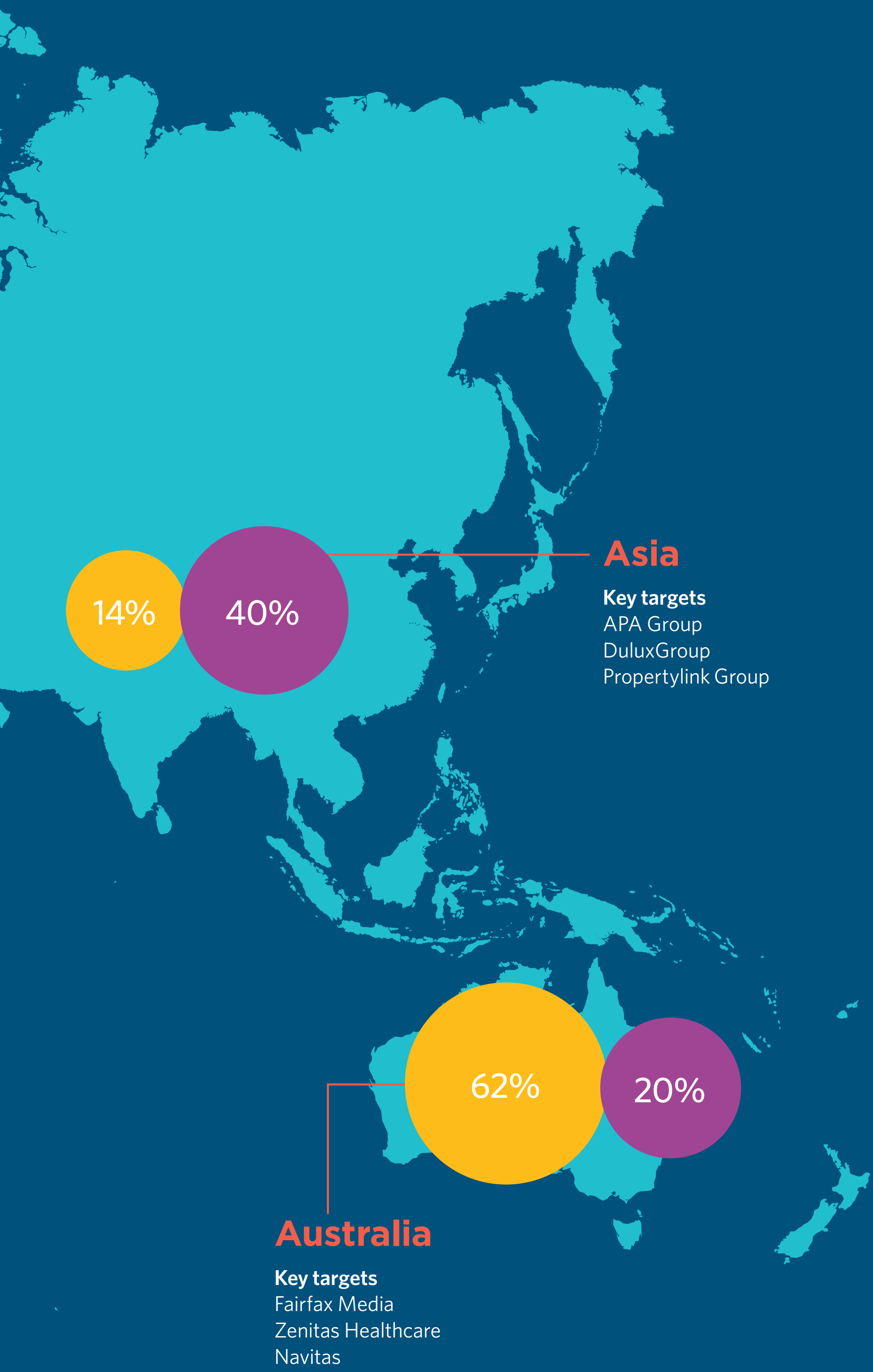


Energy and resources deals by value

19 of the 63 deals announced in FY19 featured targets in the energy and resources sector (30%), with the highest value targets involving battery materials (lithium/cobalt), oil & gas or gold.




Europe
Key targets
TPG Telecom
Verdant Minerals
Watpac
5%
12%
17%
27%
North America
Key targets
Healthscope
MYOB Group
Investa Office Fund
2%
<1%
Africa
Key targets
Mareterram
Number of deals by bidder origin
Value of deals by bidder origin



Deal landscape

Origin of bidders

Percentage of deals by origin of bidder

FY19 saw a slight reduction in foreign bidder activity compared to FY18, both by number (38% in FY19, 52% in FY18) and by value (80% in FY19, 90% in FY18).

Location of targets

Number and value of targets per state

Consistent with previous years, NSW had the most targets in play during FY19 (26 targets, representing 63% of total deal value). Victoria (8 targets, 25% of total deal value) and Western Australia (19 targets, 9% of deal value) were also hubs of activity.

FY19 in focus

Private equity on the hunt?

Over one in five deals announced in FY19 involved a private equity bidder (up from 10% in FY17 and 18% in FY18). This is perhaps a reflection of the current economic climate, with low interest rates and relative political stability in Australia compared to private equity's other hunting grounds (such as Europe and the USA).

PE played across the full value spectrum in FY19, chasing targets at the smaller end of the market as well as in the mega deals space, and across a number of different sectors (including Consumer, Energy and Resources, Health Care and IT/Telecommunications).

Healthscope/Brookfield

FY19 saw a battle for control of Healthscope between two large private equity bidders – Canada's Brookfield and a consortium led by Australia's BGH Capital. The contest culminated with Healthscope shareholders backing a $4.35bn scheme of arrangement with Brookfield. Undeterred, a BGH Capital consortium proceeded to complete a $2bn acquisition of Navitas later in the year.

Anchor Resources/Phoenix Bridge

China's Phoenix Bridge Group announced an unsolicited cash bid for mining explorer Anchor Resources in the second half of FY19. The offer was ultimately successful (Phoenix Bridge offered a 54% premium to Anchor Resources shareholders).

Stanmore Coal/Golden Investments

Stanmore Coal was the target of an unsolicited takeover bid by Golden Investments, a vehicle jointly owned by private equity firm Ascend Global and Indonesian coal producer Golden Energy and Resources. Despite waiving their 50% minimum acceptance condition, the bidders were ultimately unsuccessful with Golden Investments holding only 25.57% of the target (19.9% of which was a pre-bid stake) at the end of the bid.

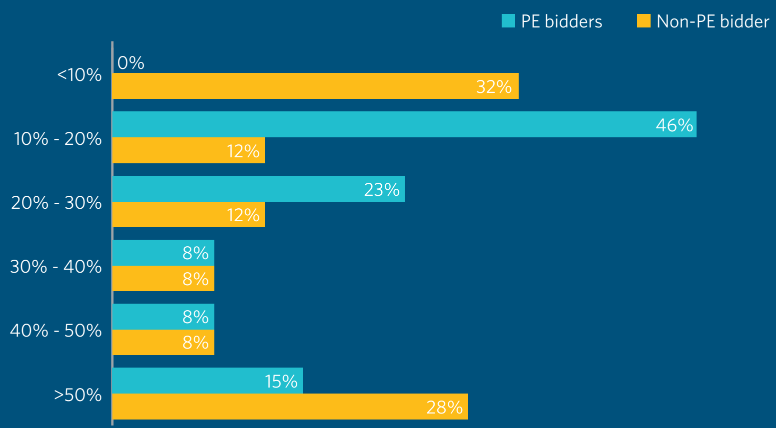
MYOB/KKR

Global private equity firm Bain Capital sold its 17.6% shareholding in MYOB to rival US-based private equity firm KKR. KKR then proposed a $2bn offer to acquire the remaining MYOB shares via scheme of arrangement. The scheme was ultimately successful and became effective in May 2019.

Private equity deals that had completed at the date of writing this report enjoyed a 75% success rate in FY19. This success rate is broadly equivalent to the overall FY19 success rate of 74%.

69% of deals involving a private equity bidder were recommended by the target board at the date of the announcement, which is consistent with the 71% seen for all deals in FY19. Of the four private equity deals that were unsolicited, only Phoenix Bridge's bid for Anchor Resources was successful. This bid offered a >50% premium and involved an independent expert finding that the offer was fair and reasonable.

Initial premium offered by PE bidders v non-PE bidders



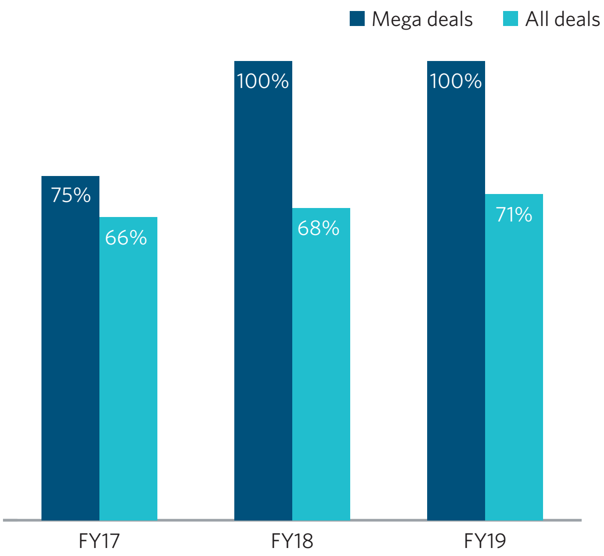
Deal landscape

Friendly vs unsolicited deals

Proportion of deals launched with target support

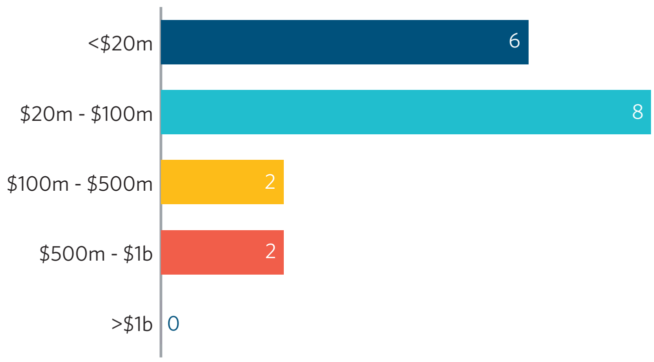
71% of deals in FY19 were launched with target board support ('friendly' deals), broadly consistent with the tendency towards friendly deals seen in previous years.

Consistent with FY18, all mega deals in FY19 were announced with the support of the target board. However, 50% of these deals saw the target announcing the bidder's proposal while it was in its preliminary stages and not yet binding on the bidder.



Value distribution of unsolicited bids

The vast majority of unsolicited deals in FY19 were for lower value targets (valued <$100m). As noted above, all mega deals in FY19 were announced with the support of the target board.



FY19 in focus

Targets announcing non-binding proposals for mega deals

In FY19, 50% of mega deals involved the target announcing receipt of a non-binding proposal from the bidder before the deal became binding. Each of these deals were ultimately successful.

MYOB / KKR

MYOB announced that Bain Capital had sold its 17.6% shareholding to KKR, and that it had received a non-binding offer from KKR. MYOB granted KKR due diligence access, which led to the parties entering into a scheme implementation agreement.

Investa Office Fund / Oxford Properties

Investa Office Fund announced that it had received a non-binding competing offer from Oxford Properties in circumstances where it had already entered into a scheme implementation agreement with Blackstone. Oxford Properties also acquired a 19.9% interest in Investa Office Fund. Investa Office Fund granted Oxford Properties due diligence access, which led to a binding offer being made and the parties entering into a scheme implementation agreement.

Navitas / BGH Consortium

Navitas announced that it had received an unsolicited non-binding offer from BGH Consortium. Navitas engaged with the bidder, which led to an increased offer price and entry into a process agreement, which was followed by entry into a scheme implementation deed and ultimately a successful deal.

Healthscope / Brookfield

Healthscope announced receipt of non-binding offers and engaged with competing bids from both Brookfield and a consortium led by BGH Capital, initially refusing to grant due diligence access. This led to an increased offer from Brookfield and subsequent entry into a process agreement.

FY19 in focus

What drives success of a deal that is announced without the target board's support?

A deal launched in FY19 with the support of the target's board had the highest chance of success (89%), consistent with what we have seen in previous years. But this is not to say that a non-agreed deal announcement was doomed to fail.

18 of the 63 deals announced in FY19 were not recommended at the time of announcement but only 31% (four deals) of those that had completed at the date of writing this report were ultimately successful. So, what drove success in the absence of an initial target board recommendation?

increase in consideration

final premium >50%

independent expert finding that the offer is fair and reasonable

A positive independent expert's finding was the most common path to an unsolicited deal achieving success. In one instance (Ramelius Resources' bid for Explaurum), this finding was only obtained following an increase in consideration by the bidder. In the other three deals, the target board recommended the offer at the time of releasing its target's statement to the market, which included the independent expert's report.

High premiums were also an important factor, with two of the four successful unsolicited deals involving a premium >50%. An increase in consideration was not a big contributor to the success (featuring in just one successful unsolicited deal), but this is likely just a product of the high premiums on offer from the outset.

Deal in focus

Explaurum Mining

In September 2018, Ramelius Resources launched an unsolicited off-market takeover bid for gold exploration and development company, Explaurum. The bid was said to follow a number of unsuccessful attempts to agree a recommended deal with the Explaurum board.

Explaurum's directors resisted the bid, adopting a number of defence tactics including:

- criticising the offer price and labelling the bid as 'wholly inadequate' and 'highly opportunistic';
- announcing that it had entered into an agreement with a white knight, Alkane Resources, to make a strategic investment in Explaurum, subject to shareholder approval;
- announcing positive results and 'setting the record straight' regarding a number of disclosures; and
- engaging an independent expert to assess the offer, who found the offer to be not fair and not reasonable.

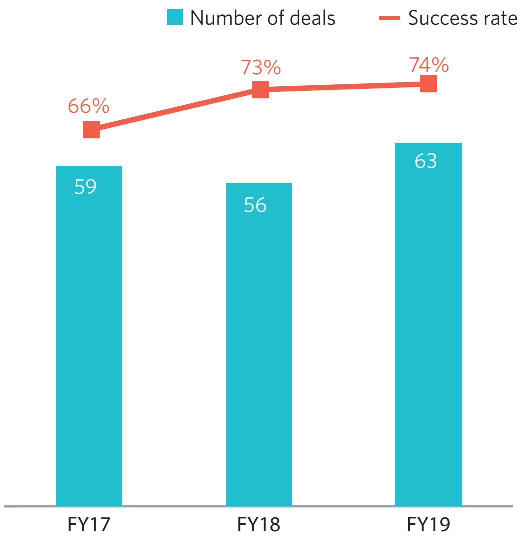
In response, Ramelius announced a best and final offer whereby it increased its offer price and agreed to advance an unsecured and interest free loan to Explaurum. Ramelius also announced that it would make the offer unconditional if the Alkane Resources investment was not approved by shareholders. In light of the improved offer, the Explaurum directors terminated the arrangements with Alkane Resources and recommended that shareholders accept the offer. This led to a successful deal – Ramelius held a relevant interest in 95.58% of Explaurum at the end of the offer period and proceeded to compulsory acquisition.

Outcomes

Overall success rates

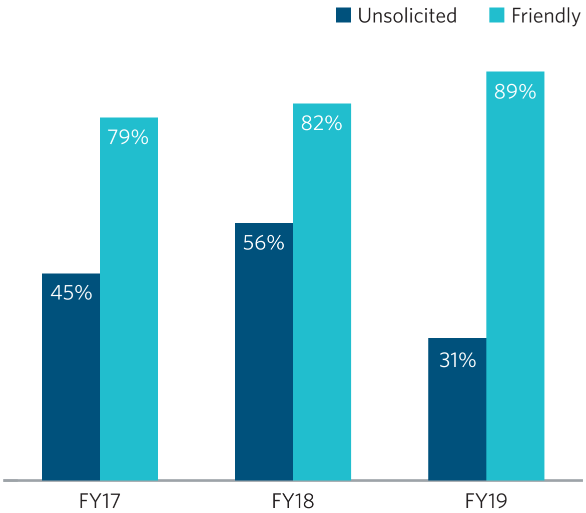
Number of deals and success rates

74% of completed deals were successful in FY19. At the date of writing this report, 13 of the 63 deals were still on foot.



Success rates in completed unsolicited and friendly deals

Friendly deals had the highest chance of success in FY19, reflecting the trust that shareholders place in a target's board to drive value. Deals that were initially launched without target board support only had a 31% chance of success.



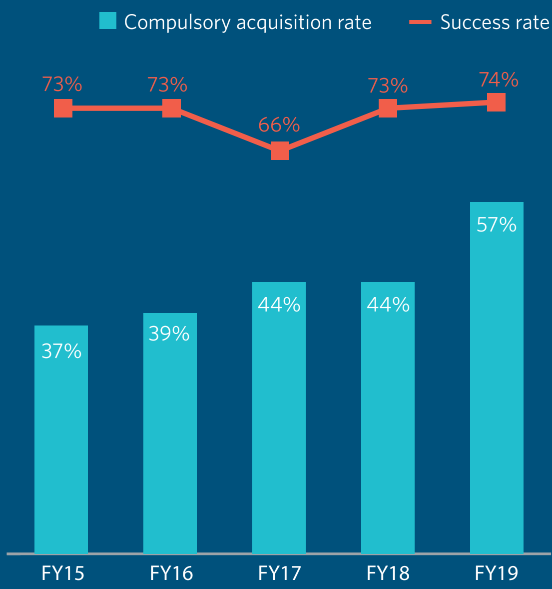
Reaching 100%

57% of completed takeover bids proceeded to compulsory acquisition

72% of completed deals (scheme or takeover) saw the bidder acquire 100% control

Takeover bids proceeding to compulsory acquisition

There has been an upward trend since FY15 of bidders proceeding to compulsory acquisition, while overall deal success rates have remained relatively stable. This is perhaps a consequence of bidders increasingly using minimum acceptance conditions (see page 19 of this report). The significant jump in FY19 (44% in both FY18 and FY17 to 57% in FY19) may also be a consequence of more bidders offering scrip consideration (see page 15 of this report), with target shareholders perhaps more likely to support a bid if they have an ability to retain an economic interest in the target (in addition to, or as a choice over, cash).



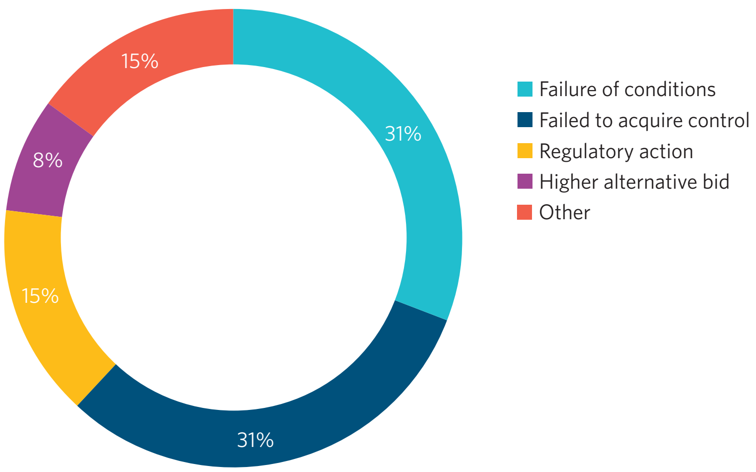
Outcomes

Reasons for failure

Reasons for failure in unsuccessful transactions

At the date of writing this report, 13 deals announced in FY19 had completed without success.

Failure of conditions (four deals) and failure to acquire a controlling stake (four deals) were the most common reasons that bids were unsuccessful in FY19.



BLOCKED BY FIRB

CK Group's $12.98bn bid for APA Group

REGULATORY ACTION

Vodafone Hutchison's $5.40bn bid for TPG Telecom

BLOCKED BY ACCC

Deal in focus

Yowie Group

In March 2019, investment company Keybridge Capital launched an unsolicited off-market takeover bid for Yowie Group. Keybridge offered shareholders a 31.4% premium to Yowie's share price on the date immediately prior to the announcement. The bid included a minimum cash condition, requiring Yowie to hold at least US$17m in cash for the duration of the offer.

Shortly after release of Keybridge's bidder's statement, Yowie released quarterly results which indicated a cash position of US$16.98m. According to Keybridge, the results also reported 'a significant operating loss' and 'a nearly 50% decline in operating revenue from the previous quarter'. Keybridge relied on the minimum cash condition to not proceed with its bid.

A few weeks later, an entity related to Keybridge, Aurora Dividend Income Trust, announced an off-market scrip bid for Yowie. This bid represented a 16.8% premium to Yowie's then share price of 7.7 cents. Aurora's bid did not contain a minimum cash condition, but did contain a broad material adverse change condition.

While Aurora's bid was on foot, Yowie released its next set of quarterly results. According to Aurora, these results reported a US$1.2m EBITDA loss for the quarter which compared to a US$0.3m EBITDA loss for the corresponding quarter in the previous financial year. Aurora considered Yowie's financial performance to amount to a 'material adverse change', triggering the defeating condition and allowing it to not proceed with the bid. Yowie disagreed that the financial performance amounted to a material adverse change, but stated that it welcomed Aurora's decision not to proceed with the 'extremely unattractive unlisted scrip takeover bid'.

FY19 in focus

FIRB, the Critical Infrastructure Centre and the Treasurer

FIRB had a relatively busy year in FY19, with 35% of deals involving FIRB conditions (compared to 39% in FY18 and 22% in FY17).

FIRB's most notable involvement in Australian public M&A during FY19 was in relation to the proposed $12.98bn acquisition of APA Group by Hong Kong-based CK Group. Following a review of the deal, Treasurer Josh Frydenberg concluded that the transaction was contrary to the national interest as it would result in "undue concentration of foreign ownership by a single company group in [Australia's] most significant gas transmission business".

The decision to block this deal (and the considerable public debate surrounding the deal, including vocal political opponents) evidenced the increasing focus on foreign ownership of Australian infrastructure. It also highlights that the 'national interest' factors include the impact on competition in Australia, and that the competition aspects considered by FIRB are potentially broader than the competition aspects considered by the ACCC under the Competition and Consumer Act.

The Treasurer consulted with both FIRB (which was unable to reach a unanimous recommendation) and the Critical Infrastructure Centre (an organisation established in January 2017 to safeguard Australia's critical infrastructure from national security risks). This provides insight into the decision making process and highlights the Treasurer's ultimate discretion in relation to foreign investment applications.

For more information about developments in the foreign investment space, please see our most recent Australian Foreign Investment Review report (available at herbertsmithfreehills.com/latest-thinking/australian-foreign-investment-review-2019).

ACCC

There was a significant level of ACCC activity in the public M&A space in FY19, with the ACCC being involved in a number of high profile (and high value) transactions. These deals included the proposed $5.4bn merger of equals between TPG Telecom and Vodafone Hutchison (where ACCC opposed the deal – see below), the proposed $12.98bn acquisition of APA Group by CK Group (where ACCC stated it would not oppose the deal after accepting a court-enforceable undertaking from CK Group to divest some of its assets) and the $2.16bn merger between Nine Entertainment and Fairfax Media (where ACCC stated it would not oppose the deal after an extensive investigation involving 'contact with hundreds of stakeholders').

In addition to its regulation of takeovers and schemes, the ACCC recently expressed preliminary competition concerns regarding Qantas' $60m acquisition of a 19.9% interest in Alliance Aviation (a Brisbane-based charter air service). ACCC's concerns are of note given that Qantas' acquisition was below the 20% acquisition threshold (and therefore was not subject to Chapter 6 of the Corporations Act). According to the ACCC, the acquisition could potentially lessen competition in the market for the supply of fly-in-fly-out charter airline services and regular passenger services for certain routes. Specifically, the ACCC's concerns included that the acquisition may:

- allow Qantas to limit fundraising by Alliance Aviation and block a complete takeover or scheme of arrangement proposal;
- negatively impact customer perceptions of Alliance Aviation's future as an independent competitor to Qantas;
- position Qantas to seek material influence over Alliance, which it could use to lessen competition; and
- reduce Qantas' incentive to compete with Alliance, which may result in less vigorous competition.

ACCC's involvement in Qantas' acquisition demonstrates that the ACCC is prepared to scrutinise acquisitions of minority stakes in certain circumstances, even where Chapter 6 is not triggered.

Deal in focus

TPG Telecom and Vodafone Hutchison

In August 2018, TPG Telecom and Vodafone Hutchison announced a proposed merger of equals by way of scheme of arrangement. The merger of equals was said to be designed to establish a fully integrated telecommunications operator that could more effectively compete with Telstra and Optus. The proposal implied an equity value of TPG of $5.4bn.

TPG sought informal clearance from the ACCC and, in December 2018, the ACCC published a statement of issues in relation to the deal indicating that its initial view was that the proposed merger resulted in a more concentrated and less competitive market by removing TPG as a strong competitor. The ACCC then invited further submissions. After some delay, the ACCC announced formally in May 2019 that it was opposed to the merger.

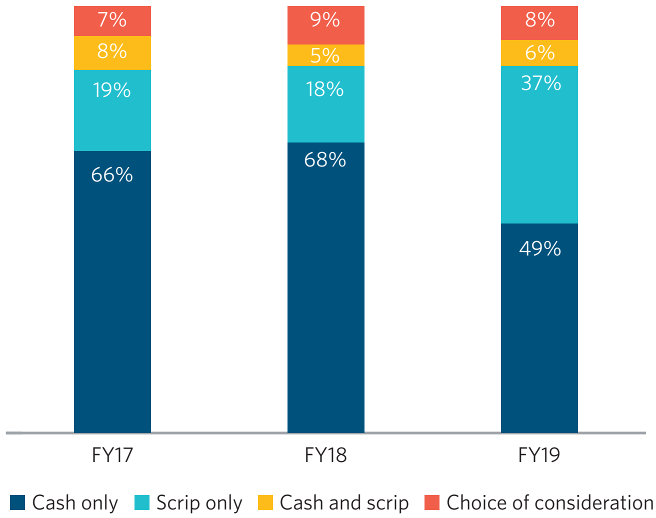
In response, TPG and Vodafone applied to the Federal Court for orders that the proposed merger would not substantially lessen competition, effectively appealing the ACCC's decision. The Court proceedings are still ongoing.

Consideration

Consideration and funding

Types of consideration offered

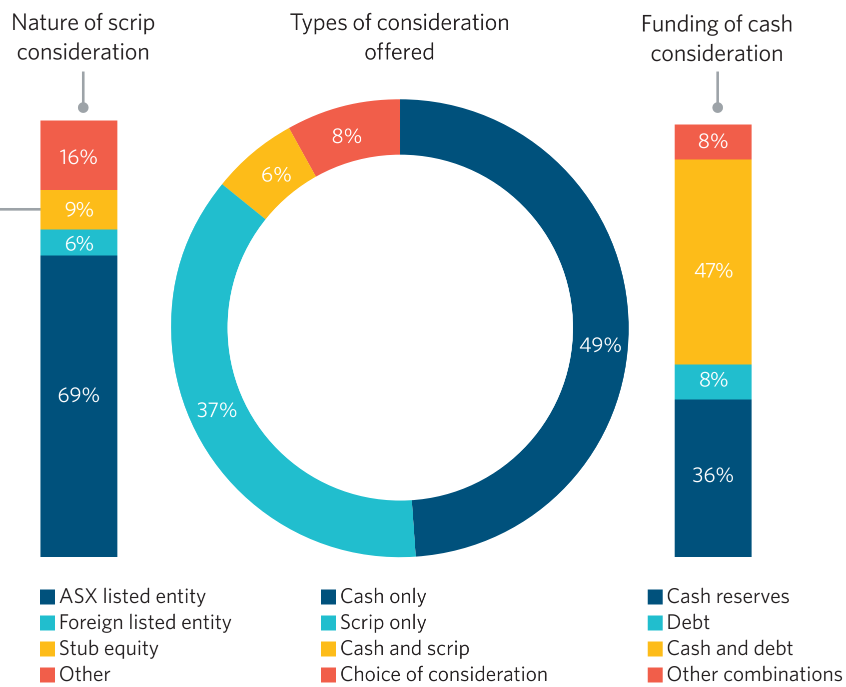
FY19 saw a significant increase in the use of scrip consideration. 37% of deals in FY19 offered scrip as the only form consideration (compared to just 19% in FY17 and 18% in FY18), while 51% of deals featured scrip as a component of the consideration (compared to 34% in FY17 and 32% in FY18).



Sources of cash funding and nature of scrip

Where cash formed part of the deal consideration, the majority of bidders funded the cash out of internal reserves. On the other hand, debt was the sole source of funding in just three deals, two of which involved schemes with Japanese bidders: Kokusai Pulp & Paper Co Ltd's acquisition of Spicers and Nippon Paint's acquisition of DuluxGroup.

The majority of scrip offered involved shares in ASX listed entities. Foreign listed scrip was a feature of just two deals, both of which involved North American bidders (Great Panther's bid for Beadell Resources and PharmaCielo's bid for Creso Pharma). The proposed $5.40bn merger between TPG Telecom and Vodafone Hutchison offered shareholders scrip consideration in a new ASX listed entity. As discussed further on page 16, stub equity was also a feature of several schemes in FY19.



Stub equity deals in FY19

- Healthscope/Brookfield
- Capilano Honey/ Wattle Hill and ROC Partners
- Greencross/TPG Capital

FY19 in focus

Stub equity deal technology under scrutiny

Stub equity structures (where securities in an unlisted vehicle are offered as consideration to target shareholders in a takeover or scheme of arrangement) have been used in Australian public M&A for a number of years. These structures give target shareholders an opportunity to retain economic exposure in the target.

The use of stub equity has come under scrutiny from ASIC in the wake of the Capilano scheme (announced in August 2018). A Wattle Hill / ROC Capital consortium offered Capilano shareholders the choice of cash or scrip in an Australian proprietary company ('HoldCo'). There was also a custodian arrangement that operated to help HoldCo remain below the 50-member threshold and not be required to convert to a public company. 83 shareholders elected to receive scrip (representing less than 1.5% of the Capilano shares on issue).

ASIC raised concerns at the Court hearing for the scheme that the way in which stub equity can currently be offered (in compliance with the Corporations Act) means that certain rights available under the Corporations Act for retail investors of widely held Australian public companies are not available in particular types of stub equity structures.

Despite these concerns, the Court ultimately approved the Capilano scheme. While the Court was troubled by the custodian structure in a scheme where there was the potential for many minority shareholders with relatively little experience in private equity to elect scrip consideration, the Court acknowledged that:

- other schemes involving a stub equity structure had previously been approved by the Courts;
- there was full and frank disclosure in the scheme booklet in relation to the difference between holding shares in a listed entity and holding shares in a proprietary company like HoldCo and the risks associated with holding those shares;
- the public policy basis of ASIC's concerns did not outweigh the fact that Capilano shareholders had made a commercial judgment with the benefit of full disclosure and without oppression; and
- the scheme was approved by a substantial majority and would, in any event, have been approved by more than the requisite majority without votes cast by entities which would become the substantial shareholders of HoldCo.

ASIC released a consultation paper in June 2019 proposing that:

- the unlisted vehicle in which stub equity is offered must not be an Australian proprietary company; and
- the stub equity securities (even in a public company) cannot be required to be issued to a custodian on behalf of investors where it would result in the stub equity vehicle not being subject to the disclosing entity, takeovers or public company provisions of the Corporations Act (where those provisions would have otherwise applied without the custodian arrangement).

Submissions have closed and the outcome of the consultation process is expected to be released in late 2019.

For more information about ASIC's views on stub equity, please see our recent articles:

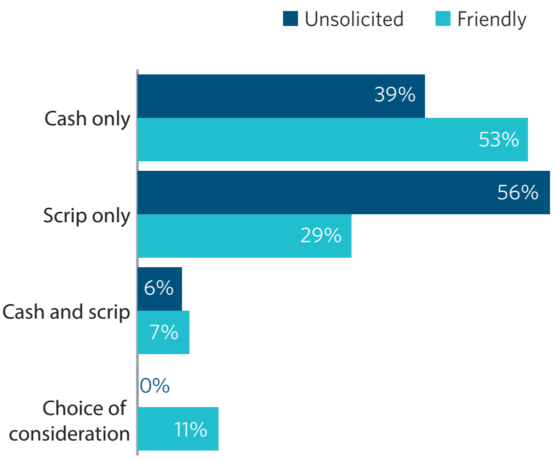
- 'Surveying the Stub Equity Landscape Post-Capilano' (available at herbertsmithfreehills.com/latest-thinking/surveying-the-stub-equity-landscape-post-capilano);
- 'Stub Equity in Control Transactions: ASIC Releases Consultation Paper' (available at herbertsmithfreehills.com/latest-thinking/stub-equity-in-control-transactions-asic-releases-consultation-paper); and
- 'Future of Stub Equity: Back to the Cayman Islands' (available at herbertsmithfreehills.com/latest-thinking/future-of-stub-equity--back-to-the-cayman-islands).

Consideration

Consideration in unsolicited and friendly deals

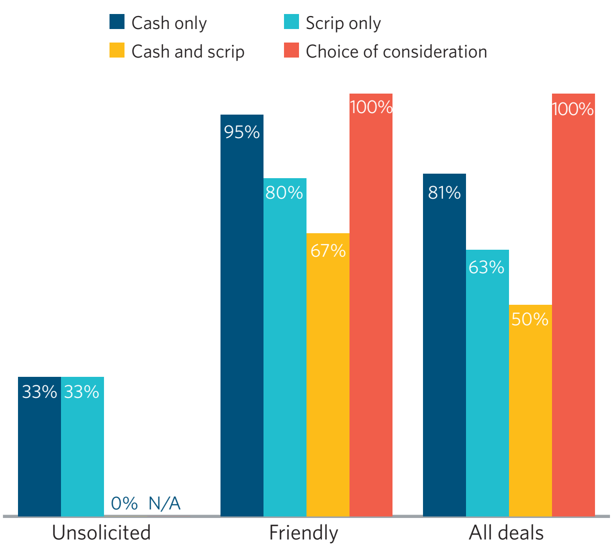
Consideration offered in unsolicited and friendly deals

In FY19, perhaps counterintuitively, cash was preferred to scrip in friendly deals and scrip was more common in unsolicited deals.

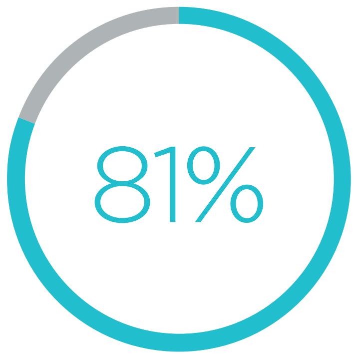


Success rates by consideration offered in unsolicited and friendly deals

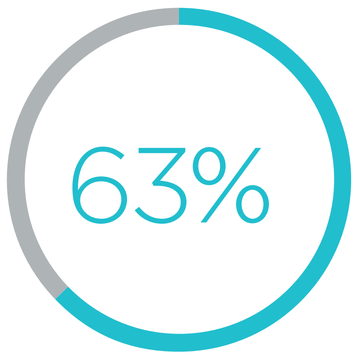
FY19 deals that had completed at the date of writing had the highest chance of success where target shareholders were given a choice of consideration or offered only cash.



Impact of consideration



completed cash only deals were successful



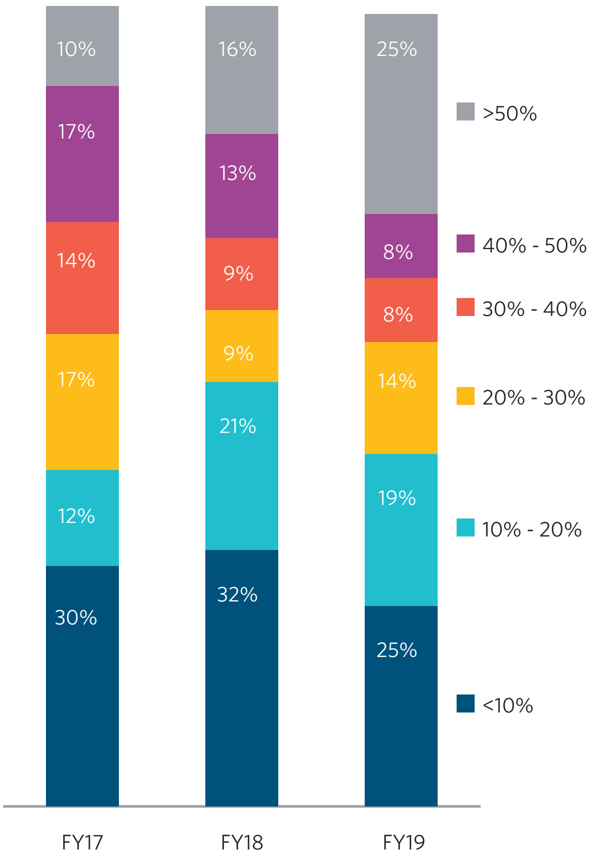
completed scrip only deals were successful

Pricing

Initial share premium

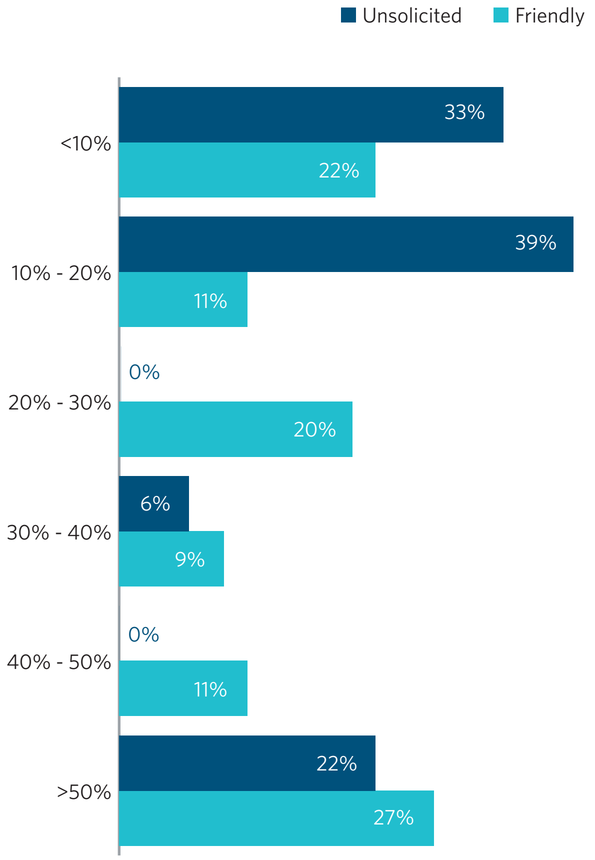
Initial share premium offered in all deals

FY19 saw a quarter of all deals involving an initial premium in the >50% range (16 deals in total, of which 12 deals were in the Energy and Resources sector and the remaining four were in the IT and Industrial sectors). All but one of these deals that had completed at the date of writing this report were successful (Vango Mining's hostile bid for Dampier Gold was unsuccessful). The median initial premium offered in FY19 was 24%.



Initial share premium offered in unsolicited and friendly deals

Almost a quarter of unsolicited deals offered a premium >50%. At the other end of the spectrum, 72% of unsolicited deals offered a premium <20%. Friendly deals saw a more even premium distribution.

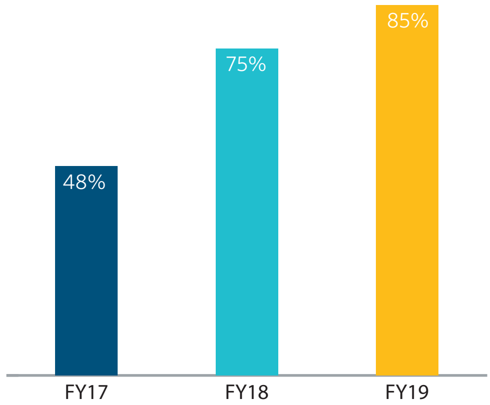


Conditions

Minimum acceptance conditions

Use of minimum acceptance conditions

Bidders in takeovers were increasingly seeking certainty of control in FY19, with 85% of off-market takeovers involving a minimum acceptance condition, significantly higher than seen in previous years.

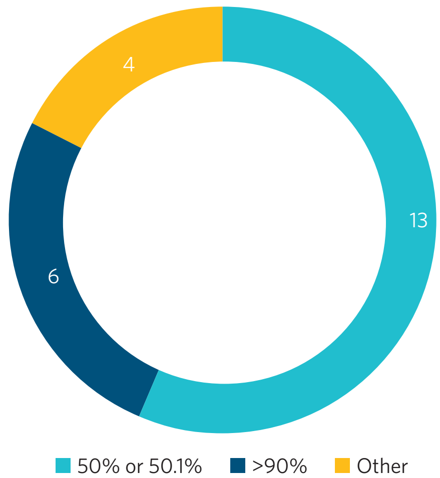


Minimum acceptance threshold

13 of the 23 takeovers in FY19 containing a minimum acceptance condition applied a 50% or 50.1% 'control' threshold. Six takeovers applied a 90% 'compulsory acquisition' threshold.

FY19 also saw bidders apply a 30%, 40% (two deals) and 80% acceptance threshold.

Interestingly, all bids containing a 90% minimum acceptance condition that had completed at the date of writing this report (five of six deals) had satisfied the condition, whereas bids with a 50% or 50.1% threshold were more likely to see that condition waived or defeated.



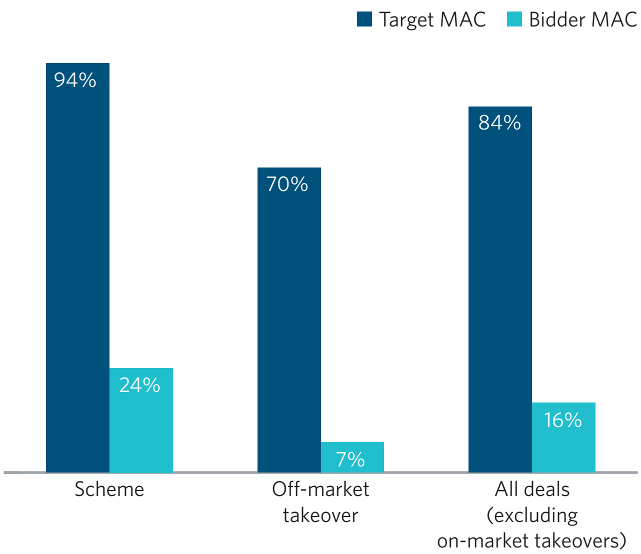
Conditions

Material adverse change

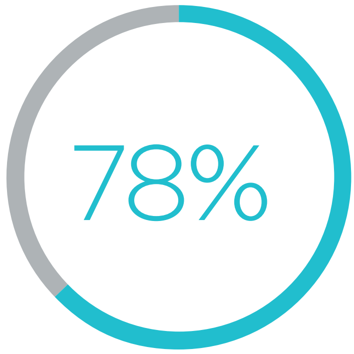
Prevalence of material adverse change conditions

51 deals in FY19 (84% excluding on-market takeovers) included a material adverse change condition relating to the target (19 takeovers and 32 schemes).

10 deals in FY19 (31% of deals that involved scrip consideration) included a material adverse change condition relating to the bidder (two takeovers and eight schemes).



of deals with a material adverse change condition contained a carve-out for changes in general economic or political conditions



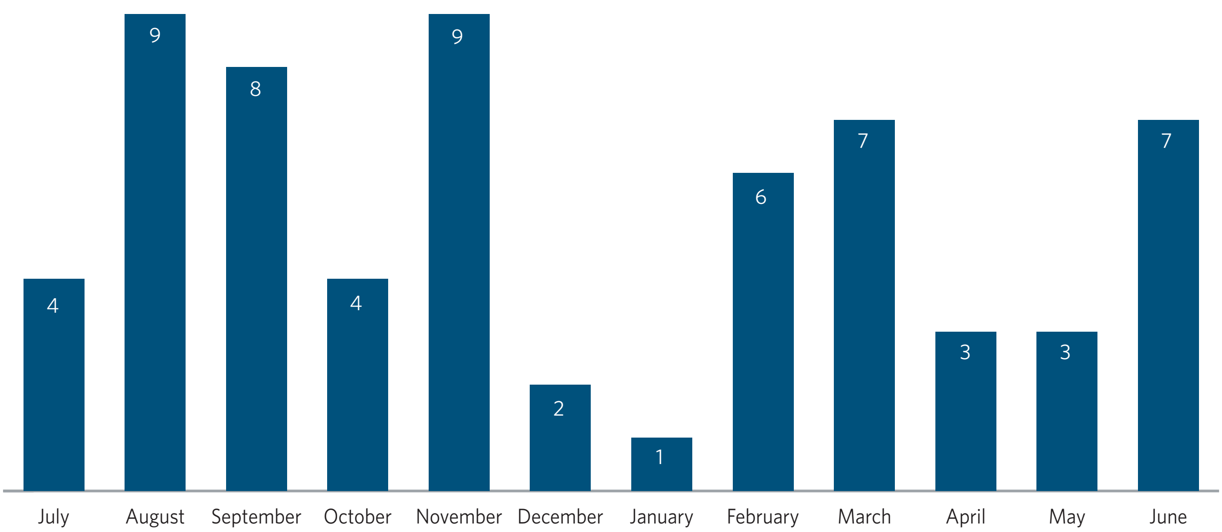
of deals with a material adverse change condition included a quantitative threshold

Timing

Timing of announcement

Number of deals announced per month

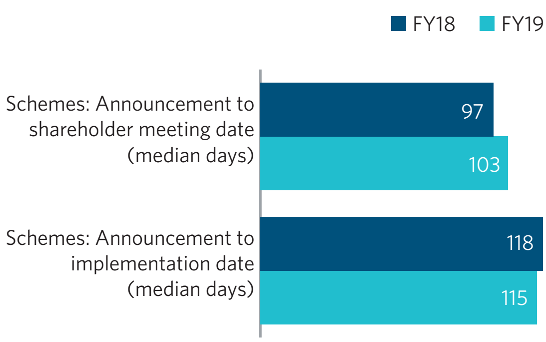
August and November were the busiest months in terms of number of deals announced in FY19 (nine deals in each). September was also busy with eight deals announced.



Critical point

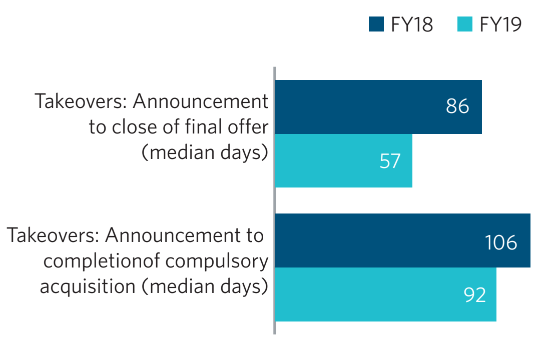
Schemes

The median time from announcement to the scheme meeting date (103 days) and implementation date (115 days) in FY19 was very similar to FY18 (97 days and 118 days, respectively).



Takeovers

The median time for successful takeover bids to close was 57 days in FY19. This was significantly shorter than the 86 days seen in FY18. The median period to get to compulsory acquisition was 92 days, which was also shorter than FY18 (106 days).



Timing

185 days
LONGEST SCHEME

Intermin Resources' acquisition of **MacPhersons Resources** was the longest scheme to complete in FY19, taking 185 days. The transaction was announced in December 2018, after the parties had entered into a scheme implementation agreement. The parties released a merger presentation almost two months later which contained an indicative timetable for the remainder of the deal. This timetable was largely followed for the balance of the deal – the scheme booklet was released in April 2019 and the scheme was implemented in June 2019.

63 days
SHORTEST SCHEME

The battle for control of **Investa Office Fund** began in 2018, with the responsible entity of Investa Office Fund, Investa Listed Funds Management, announcing receipt of an unsolicited non-binding offer from US-based Blackstone Group. By June 2018, Blackstone and Investa Listed Funds Management had entered into a binding scheme implementation agreement to acquire Investa Office Fund for $5.15 per unit. In response to feedback from unitholders, Blackstone increased its offer to $5.35 per unit.

In September 2018, only two days before unitholders were due to vote on the Blackstone scheme, Investa Listed Funds Management announced that it had received an unsolicited non-binding proposal from Canada's Oxford Properties Group to acquire Investa Office Fund for $5.50 per unit. In response, Blackstone increased its offer to $5.52 per unit. A few days later, and prior to Investa Office Fund unitholders even considering Blackstone's improved offer, Oxford responded by increasing its offer to $5.60 per unit. Oxford also advised that it had entered into an agreement with a related entity of Investa Office Fund to acquire 19.9% of the target.

Blackstone announced that it would not match the Oxford proposal; its scheme implementation agreement was terminated and a new implementation agreement was entered into with Oxford. The Investa Office Fund / Oxford scheme completed in December 2018.

Notwithstanding this highly competitive backdrop, the fact that Oxford's offer did not become binding until relatively late in the game (October 2018) made this deal FY19's shortest scheme at 63 days.

223 days
LONGEST TAKEOVER

Intrepid Mines' friendly bid for **AIC Resources** was the longest takeover to complete in FY19, taking 223 days.

Intrepid Mines' 90% minimum acceptance condition in its initial bid was not satisfied (though it had received >80% acceptances). The parties re-engaged, having recognised the merit in combining the two companies, and agreed to merge the companies on revised terms. Intrepid launched a second bid, offering increased consideration of one Intrepid share for every two AIC Resources shares (compared to the previous offer of one Intrepid share for every three AIC Resources shares). This bid successfully closed in April 2019 and Intrepid subsequently proceeded to compulsory acquisition.

34 days
SHORTEST TAKEOVER

Phoenix Bridge International's bid for **Anchor Resources** was the quickest completed deal in FY19, taking just 34 days from announcement to close of the final offer.

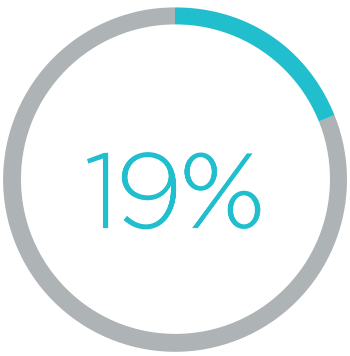
The cash bid represented a sizeable 54% premium to Anchor Resources' share price immediately prior to the announcement.

Independent expert reports

Use of independent expert reports (IERs)

of schemes that reached the scheme meeting date contained an IER

of target boards commissioned an IER



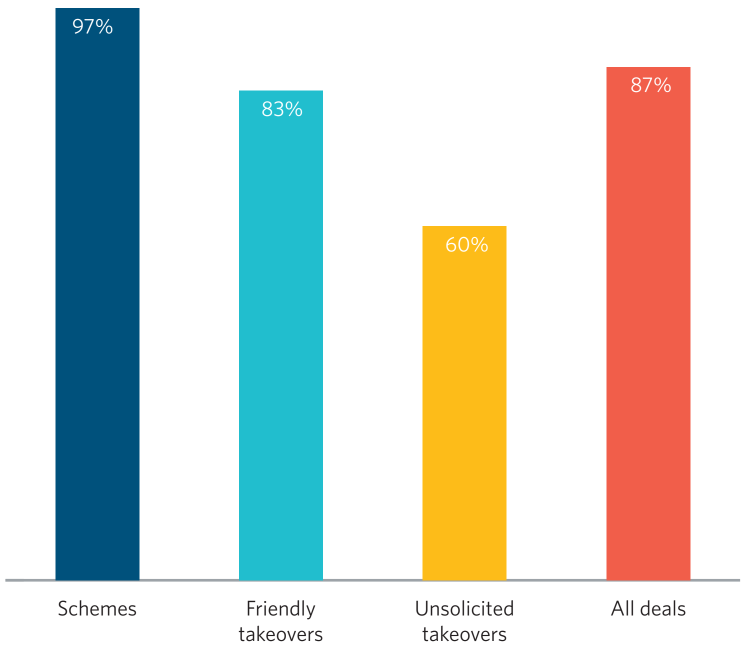
of all deals required an IER at law, either due to common directorship or the bidder's initial shareholding in the target exceeding 30%

Findings of IERs

97% of IERs published in connection with a scheme found the transaction to be fair and reasonable to target shareholders. The remaining 3% (representing one deal) concluded that the transaction was not fair but reasonable – this scheme was ultimately successful. Unsolicited takeovers were less likely to obtain a fair and reasonable finding than friendly takeovers:

- 83% of IERs published in connection with a friendly takeover concluded the deal was fair and reasonable, with the remaining 17% finding the deal to be not fair but reasonable.
- 60% of IERs published in connection with an unsolicited takeover found the transaction to be fair and reasonable, with the remaining 40% being split equally between not fair but reasonable and not fair and not reasonable findings.

Independent expert report finding of 'fair and reasonable'

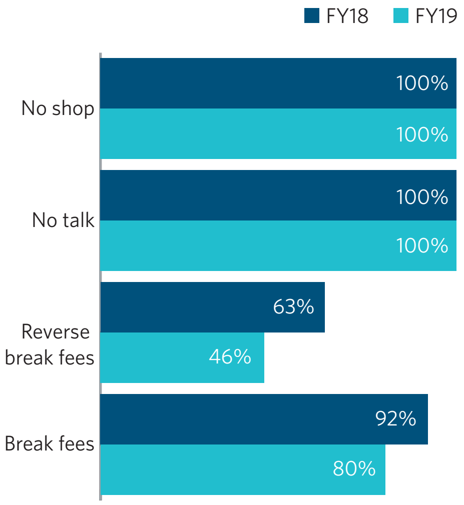


Deal protection

Forms of deal protection

Proportion of negotiated deals with protection

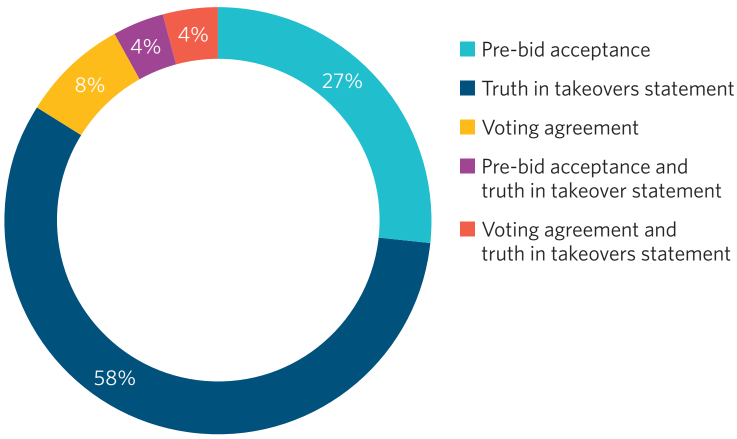
Consistent with FY18, the use of no shop and no talk exclusivity provisions was a feature of all negotiated deals in FY19. Meanwhile, the use of break fees and reverse break fees was less common than the levels seen in FY18.



Use of lock-up devices

Lock-up devices featured in 41% of all deals in FY19, up from 29% in FY18. The use of pre-bid stakes was also high in FY19, featuring in 43% of all deals.

Truth in takeover statements remained the most prevalent form of lock-up in FY19. Pre-bid acceptance agreements were also common.



FY19 in focus

Voting intention statements attract ASIC's attention

The practice of making voting intention statements, where a substantial shareholder of a target publicly states that they intend to vote in favour of a scheme of arrangement (in the absence of a superior proposal), has been a common element of schemes in Australia for several years. This practice has generally been accepted by the Takeovers Panel (subject to compliance with the Panel's Guidance Note 23 (Shareholder intention statements)) and also by the courts (who have accepted that these statements do not create a separate class of shareholders).

However, as set out in ASIC Report 612 dated March 2019, ASIC remains sceptical about the use of voting intention statements. Its view is that a voting intention statement technically breaches the 20% prohibition in the Corporations Act as it gives the bidder a relevant interest in the shares held by the target's shareholder making the statement (though ASIC has not yet enforced this against a bidder in court).

As part of Blackstone's offer for Investa Office Fund, a substantial shareholder of Investa Office Fund made a public statement that it intended to vote all of its units in favour of the scheme (in the absence of a superior proposal) if Blackstone increased its offer price. Blackstone did increase its offer price and ASIC's view was that Blackstone therefore had a relevant interest in those units (even though Blackstone denied there being any conduct which would make it an associate of the shareholder). ASIC required Blackstone to file a substantial shareholder notice though ASIC did not, in this case, object to the units being voted or otherwise seek to discount any of the votes cast.

FY19 saw voting intention statements featuring in 27% of deals. This was consistent with the levels seen in FY18 (25%) and FY17 (24%). However, this may be impacted in the years to come as ASIC is currently reviewing its 'Truth in Takeovers' regulatory guide.

For more information about ASIC's views on voting intention statements, please see our recent article titled 'Voting Intention Statements: ASIC's Suspicion Boils Over' (available at herbertsmithfreehills.com/latest-thinking/voting-intention-statements-asics-suspicion-boils-over).

AUSTRALIAN PUBLIC M&A REPORT 2019

Deal protection

FY19 in focus

Mega deal sees US style reverse break fee

The reverse break fee negotiated in Brookfield's $4.35bn acquisition of Healthscope by way of scheme of arrangement and simultaneous off-market takeover bid was a cutting edge example for the Australian market.

Such a reverse break fee would be fairly standard in the US.

The Healthscope transaction featured a two tiered reverse break fee (itself unusual in our market). The first tier involved a $129m reverse break fee representing 3% of equity value – one of the largest reverse break fees achieved in Australian corporate history. The reverse break fee under the first tier was triggered upon Brookfield's material breach. This was essentially intended to cover financing risk.

The second tier involved a $50m reverse break fee (approximately 1.2% of equity value). The second tier would be triggered if FIRB approval was not obtained by the buyers of the approximately $2.1bn sale of 22 freehold properties that Healthscope had agreed to sell as part of the Brookfield transaction to Medical Properties Trust and NorthWest. To our knowledge, this is one of only three instances where a target has negotiated a reverse break fee payable upon a failure to obtain a regulatory approval since FY16.

The reverse break fees acted as a cap on Brookfield's liability.

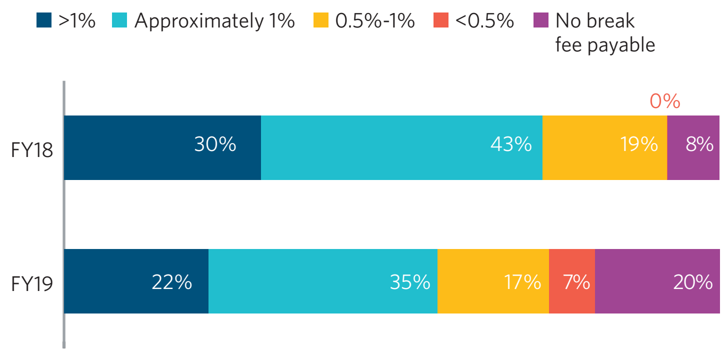
The significance of the reverse break fees negotiated on the Healthscope transaction is that both tiers exceeded the Takeovers Panel's 1% guideline on break fees. The 1% guideline is based on setting a fee which is not going to deter competing bidders. That consideration does not apply when it is the bidder who must pay the fee. Therefore, a reverse break fee is not limited by the Panel's guideline.

For more information about reverse break fee trends, please see our recent article titled 'Reverse Break Fees Under the Microscope' (available at herbertsmithfreehills.com/latest-thinking/reverse-break-fees-under-the-microscope).

Break fees

Quantum of break fees

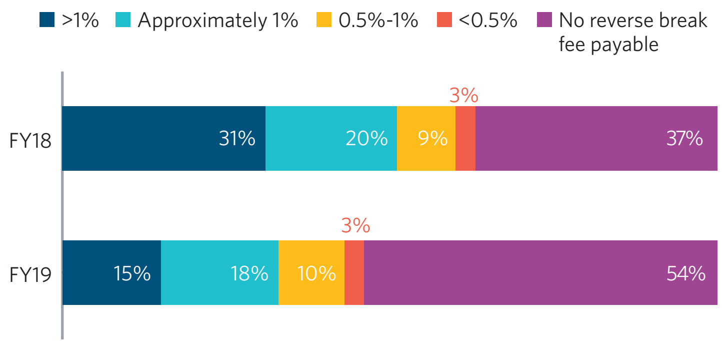
As seen in FY18, a break fee of approximately 1% was the most common form of break fee in FY19. This is consistent with the Takeovers Panel's guidance that a break fee not exceeding 1% of the equity value of the target is generally not unacceptable.



Quantum of reverse break fees

FY19 saw the use of reverse break fees drop back to levels more consistent with those seen in FY16 and FY17 following a spike of usage in FY18.

As with break fees, reverse break fees were most commonly valued at approximately 1% of the target's equity value in FY19 (but see the commentary regarding Healthscope's 3% reverse break fee on the left side of this page).



List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
AIC Resources Ltd	Resources (Gold)	Intrepid Mines Ltd	Australia	$16,020,000	Takeover	Scrip
Alto Metals Ltd	Resources (Gold)	Middle Island Resources Ltd	Australia	$9,323,958	Takeover	Scrip
Anchor Resources Ltd	Resources (Gold)	Phoenix Bridge International Holdings Group Investment Co Ltd (PE)	Asia	$1,050,706	Takeover	Cash
APA Group	Utilities	CKM Australia Bidco Pty Ltd	Asia	$12,978,832,328	Scheme	Cash
Asia Pacific Data Centre Group	Real Estate	NextDC Ltd	Australia	$232,300,202	Takeover	Cash
Automotive Holdings Group Limited	Consumer Discretionary	AP Eagers Limited	Australia	$635,319,879	Takeover	Scrip
Beadell Resources Ltd	Resources (Gold)	Great Panther Silver Ltd	North America	$143,928,241	Scheme	Scrip
Benjamin Hornigold Ltd	Financials	John Bridgeman Ltd	Australia	$13,285,383	Takeover	Scrip
Bligh Resources Ltd	Resources (Gold)	Saracen Minerals Holdings Ltd	Australia	$38,209,581	Takeover	Scrip
Capilano Honey Ltd	Consumer Discretionary	Bravo HoldCo Pty Ltd (PE)	Australia	$189,717,069	Scheme	Cash or Scrip
CBG Capital Ltd	Financials	Clime Capital Ltd	Australia	$26,856,994	Takeover	Scrip
Century Australia Investments Ltd	Financials	WAM Leaders Ltd	Australia	$89,233,894	Scheme	Scrip
Chalmers Ltd	Industrials	Qube Logistics (Aust) Pty Ltd	Australia	$49,491,000	Takeover	Cash or Scrip
Creso Pharma Ltd	Health Care	PharmaCielo Ltd	North America	$84,258,929	Scheme	Scrip
Dampier Gold Ltd	Resources (Gold)	Vango Mining Ltd	Australia	$6,665,665	Takeover	Scrip
Decimal Software Ltd	Information Technology	Sargon Capital Pty Ltd	Australia	$4,452,401	Scheme	Cash
Doray Minerals Ltd	Resources (Gold)	Silver Lake Resources Ltd	Australia	$157,297,597	Scheme	Scrip
DuluxGroup Limited	Materials	Nippon Paint Holdings Co., Ltd	Asia	$3,814,652,470	Scheme	Cash
Eclipx Group Ltd	Financials	McMillan Shakespeare Ltd	Australia	$910,855,899	Scheme	Cash and Scrip

List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Explaurum Ltd	Resources (Gold)	Ramelius Resources Ltd	Australia	$56,565,948	Takeover	Scrip
Fairfax Media Ltd	Media	Nine Entertainment Co Holdings Ltd	Australia	$2,159,216,736	Scheme	Cash and Scrip
Folkestone Ltd	Real Estate	Charter Hall Group	Australia	$205,858,394	Scheme	Cash
Gateway Lifestyle Group	Real Estate	Hometown Bidder Group	North America	$686,118,344	Takeover	Cash
Gazal Corporation Ltd	Consumer Discretionary	Sunshine B Pty Ltd	North America	$268,125,084	Scheme	Cash
Gindalbie Metals Ltd	Resources (Iron Ore)	Angang Group Hong Kong (Holdings) Ltd	Asia	$38,990,564	Scheme	Cash
Greencross Ltd	Consumer Discretionary	Vermont Aus Pty Ltd (PE)	North America	$668,572,148	Scheme	Cash or Scrip
Healthscope Ltd	Health Care	VIG Bidco Pty Ltd (PE)	North America	$4,352,904,488	Scheme and Takeover	Cash or Scrip
Henry Morgan Ltd	Financials	John Bridgeman Ltd	Australia	$20,378,561	Takeover	Scrip
Inabox Group Ltd	Telecom	SB&G Group (Telecoms) Pty Ltd (PE)	Australia	$21,436,316	Takeover	Cash
Investa Office Fund	Real Estate	Oxford Properties Group Inc	North America	$3,351,146,316	Scheme	Cash
Kangaroo Resources Ltd	Energy (Oil and Gas)	PT Bayan Resources TBK	Asia	$515,164,502	Scheme	Cash
Keybridge Capital Ltd	Financials	WAM Active Ltd	Australia	$11,794,048	Takeover	Cash
Kidman Resources Ltd	Resources (Lithium)	Wesfarmers Lithium Pty Ltd	Australia	$769,115,066	Scheme	Cash
Legend Corporation Ltd	Industrials	Greenland BidCo Pty Ltd (PE)	Australia	$79,104,148	Scheme	Cash
MacPhersons Resources Ltd	Resources (Gold)	Intermin Resources Ltd	Australia	$27,924,970	Scheme	Scrip
Mareterram Ltd	Consumer Discretionary	Sea Harvest International Pty Ltd	Africa	$38,633,800	Takeover	Cash
Mercantile Investment Company Ltd	Financials	Sandon Capital Investments Ltd	Australia	$47,311,283	Takeover	Scrip

List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
MOD Resources Ltd	Resources (Copper)	Sandfire Resources NL	Australia	$142,588,763	Scheme	Cash or Scrip
MYOB Group Ltd	Information Technology	ETA Australia Holdings III Pty Ltd (PE)	North America	$2,008,727,470	Scheme	Cash
Navitas Ltd	Consumer Discretionary	BGH Bidco A Pty Ltd (PE)	Australia	$2,086,812,471	Scheme	Cash
NetComm Wireless Ltd	Information Technology	Casa Systems Inc	North America	$160,962,897	Scheme	Cash
Nzuri Copper Ltd	Resources (Copper and Cobalt)	Xuchen International Ltd	Asia	$109,485,032	Scheme	Cash
Propertylink Group	Real Estate	ESR Real Estate (Australia) Pty Ltd	Asia	$723,336,396	Takeover	Cash
Rawson Oil and Gas Ltd	Energy (Oil and Gas)	Lakes Oil NL	Australia	$3,382,627	Takeover	Scrip
Ruralco Holdings Ltd	Consumer Discretionary	Nutrien Ltd	North America	$462,229,887	Scheme	Cash
Scottish Pacific Group Ltd	Financials	SME Capital Investments III Pty Ltd (PE)	Australia	$612,443,044	Scheme	Cash
Spicers Ltd	Industrials	Kokusai Pulp & Paper Co Ltd	Asia	$147,499,985	Scheme	Cash
Spookfish Ltd	Information Technology	Eagle View Technologies Inc	North America	$100,008,842	Scheme	Cash
Stanmore Coal Ltd	Energy (Coal)	Golden Investments (Australia) Pte Ltd (PE)	Asia	$239,210,929	Takeover	Cash
Summit Resources Ltd	Energy (Uranium)	Paladin Energy Ltd	Australia	$43,596,354	Takeover	Scrip
The Reject Shop Ltd	Consumer Discretionary	Allensford Pty Ltd (PE)	Australia	$78,052,000	Takeover	Cash
TPG Telecom Ltd	Telecom	Vodafone Hutchison Australia Pty Ltd	Europe	$5,400,000,000	Scheme	Scrip
UIL Energy Ltd	Energy (Oil and Gas)	Strike West Holdings Pty Ltd	Australia	$16,079,549	Takeover	Scrip
Verdant Minerals Ltd	Resources (Phosphate)	CD Capital Natural Resources Fund 111 LP (PE)	Europe	$35,320,368	Scheme	Cash

List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Watpac Ltd	Industrials	BESIX Group SA	Europe	$168,715,344	Takeover	Cash
Wealth Defender Equities Ltd	Financials	WAM Capital Ltd	Australia	$125,848,649	Takeover	Scrip
Xenith IP Group Limited	Industrials	QANTM Intellectual Property Ltd	Australia	$141,771,254	Scheme	Scrip
Xenith IP Group Limited	Industrials	IPH Limited	Australia	$174,774,324	Scheme	Cash and Scrip
Yellow Brick Road Holdings Ltd	Financials	Mercantile OFM Pty Ltd	Australia	$25,417,785	Takeover	Cash
Yowie Group Ltd	Consumer Discretionary	Keybridge Capital Ltd	Australia	$20,032,907	Takeover	Cash and Scrip
Yowie Group Ltd	Consumer Discretionary	Aurora Dividend Income Trust	Australia	$19,597,409	Takeover	Scrip
Zenitas Healthcare Ltd	Health Care	Guardian Alphabet Pty Ltd (PE)	Australia	$108,567,295	Scheme	Cash
8IP Emerging Companies Limited	Financials	Aurora Dividend Income Trust	Australia	$30,763,581	Takeover	Scrip

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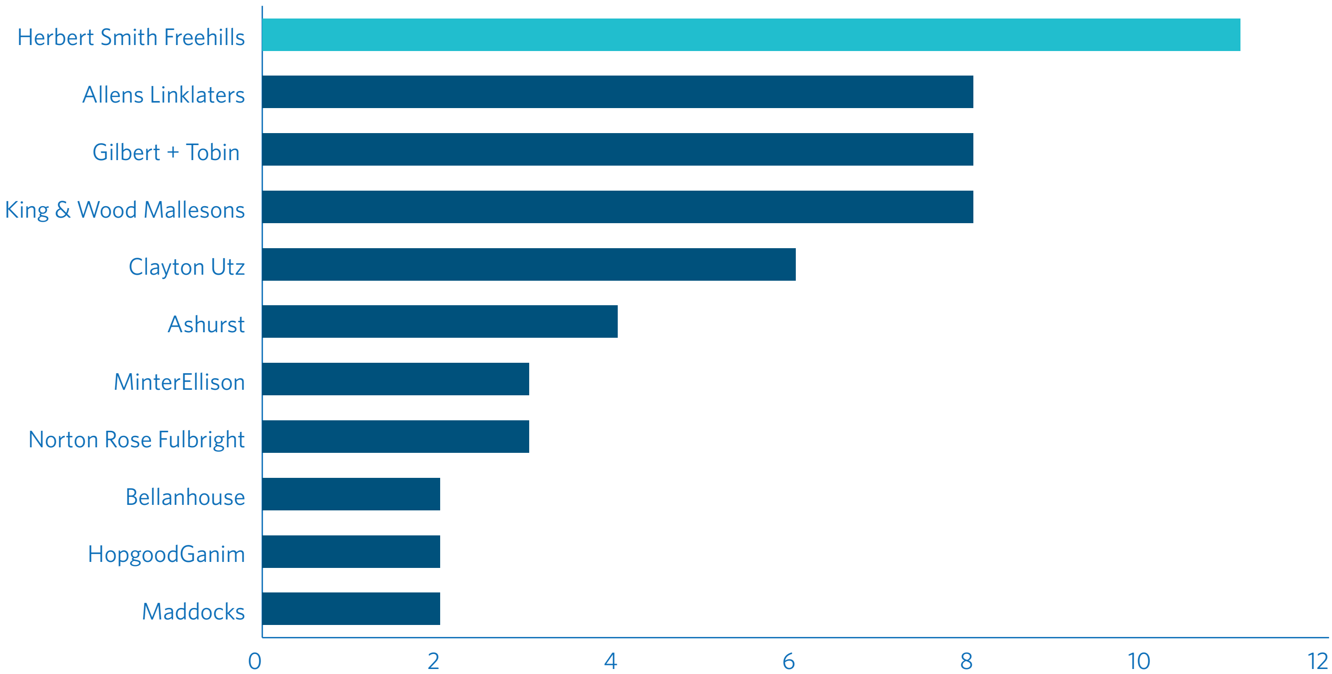
A market leader in M&A

Herbert Smith Freehills is one of the world's leading global law firms, providing an integrated service across 27 offices. Operating as one global team, the firm uses innovative systems and processes to ensure our clients' work is delivered intelligently, efficiently and reliably.

Herbert Smith Freehills is a market leader in mergers and acquisitions, acting on some of the most complex and strategic corporate transactions in Australia and around the world. The volume and quality of transactions in which the firm is involved ensures that our clients have access to the deepest knowledge of market trends and latest issues.

All public M&A deals >$100m: 1 July 2018 to 30 June 2019

Number of bidder and target roles by Australian legal advisers



The Herbert Smith Freehills team in Australia has recently advised:

- Healthscope on its successful $4.35bn dual-track scheme of arrangement and off-market takeover bid with Brookfield
- TPG Telecom on its proposed $5.40bn merger of equals with Vodafone Hutchison by way of scheme of arrangement
- Eclipx Group on its proposed $910m scheme of arrangement with McMillan Shakespeare
- Gateway Lifestyle on its response to Hometown's $686m off-market takeover bid
- NextDC on its successful $232m acquisition of Asia Pacific Data Centre Group by way of on-market takeover bid
- Capilano Honey on its successful $190m scheme of arrangement with a private equity group
- Watpac on its response to BESIX Group's $169m off-market takeover bid
- Kokusai Pulp & Paper on its $147m acquisition Spicers by way of scheme of arrangement

Methodology

This report is a summary of a review of the 63 public transactions that were announced during FY19 (a full listing of deals reviewed can be found on pages 26 to 29) based on public information available up to 12 August 2019.

The transactions reviewed were mergers and acquisitions of Australian companies listed on the ASX, which were conducted by way of takeover or scheme of arrangement pursuant to Australian corporations law, including all announced transactions or proposals irrespective of the size.

Schemes of arrangement which were genuine restructures rather than merger transactions have been disregarded.

Foreign transactions which involved the acquisition of ASX-listed securities have been disregarded (eg CHESS depository interests in a foreign company or transactions governed by or conducted under foreign law).

Where a deal was not initially recommended by the target board on the date of announcement of the transaction, we have referred to that transaction as 'hostile' or 'unsolicited'. 'Friendly' deals were initially recommended by the target board on the date of announcement.

Consistent with the approach taken in previous years, we have considered Brookfield's successful $4.35bn dual-track scheme of arrangement and off-market takeover bid for Healthscope as one deal (a scheme).

An arrangement with, or statements of intention by, target shareholders in respect of their securities is referred to as a 'lock-up device'.

The state-by-state division of targets is based on the location of the target's head office.

Primary sources of data were ASX announcements. Where possible, the data was cross-checked using alternative sources (eg the Takeovers Panel website).

All dollar figures are shown in Australian dollars unless otherwise stated.

Contact us

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If you have any questions relating to mergers and acquisitions or corporations law, please contact one of the partners in the Corporate group at Herbert Smith Freehills.

Details are on our website **www.herbertsmithfreehills.com**.

Disclaimer

All transactions include terms which are particular to the circumstances of that transaction. Accordingly, a direct comparison of terms is not always possible and, in reviewing the data, we have relied on our own judgement to interpret terms in a way which enabled us to categorise them for presentation in this report.

This report does not reflect any views of Herbert Smith Freehills. Each M&A transaction is different and whether any matters or terms discussed in this report are relevant to a particular transaction should be determined in the context of the facts and circumstances of that transaction.

Herbert Smith Freehills thanks Grace Holmes, Linda Nguyen and Nancy Zhao for their significant contribution towards the collection and analysis of the data and preparation of this report.

Notes

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