HERBERT
SMITH
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EIGHTH EDITION

AUSTRALIAN PUBLIC M&A REPORT 2016

CONTENTS

INTRODUCTION

It gives us great pleasure to present the annual Herbert Smith Freehills Australian Public M&A Report 2016.

This edition, our eighth in total, covers the 2016 financial year. Despite a relatively modest level of deal activity during the year, we saw some significant mega deals, continued interest from foreign bidders and a healthy level of competition.

We thank you for your support of the Herbert Smith Freehills Australian Public M&A Report and trust you will find value in this edition.

FY16 – AT A GLANCE

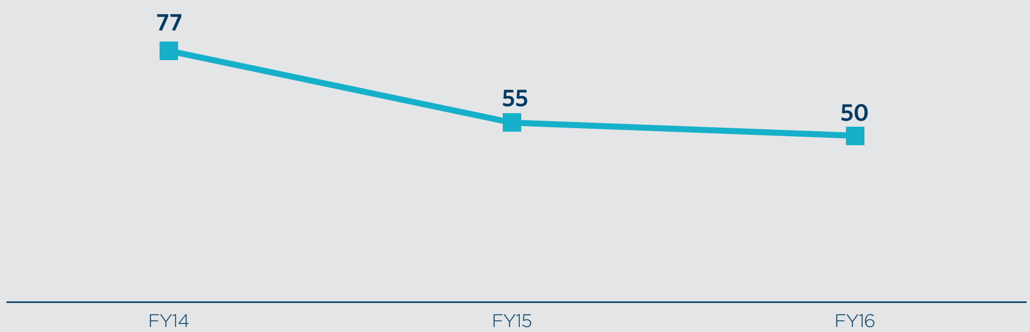
$33.2bn
TOTAL DEAL VALUE

45%
OF DEALS LAUNCHED WITHOUT BOARD SUPPORT

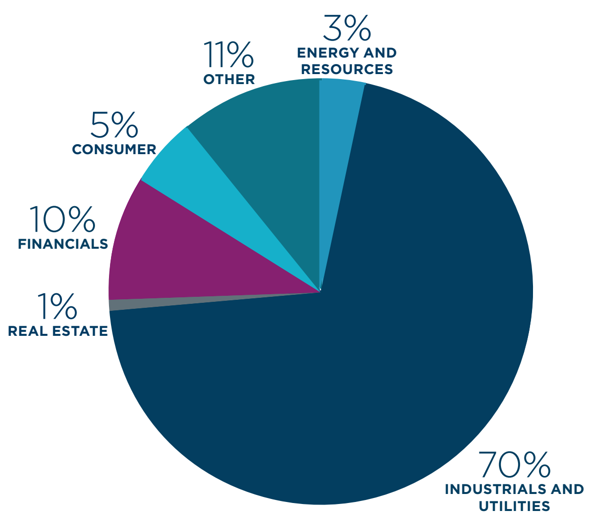
73%
OVERALL SUCCESS RATE

COMPETITIVE SCENARIOS

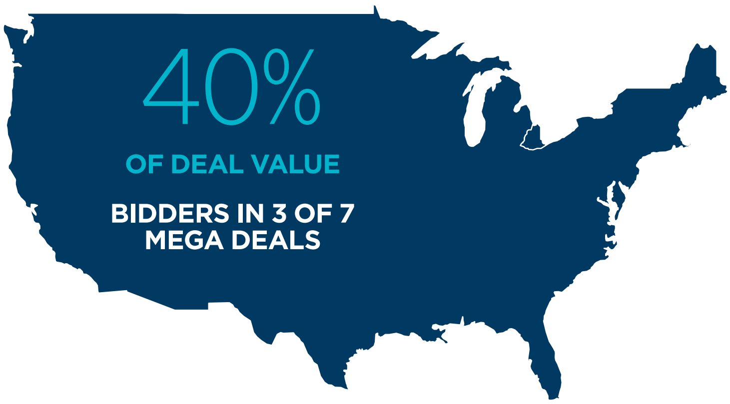
NUMBER OF DEALS ANNOUNCED



VALUE OF SECTORS



NORTH AMERICAN BIDDERS



KEY FINDINGS

ACTIVITY CONTINUES TO RETREAT

In our last report, we predicted that FY16 would see an increase in M&A activity. Low interest rates, low inflation and a soft Australian dollar relative to the US dollar increased Australia's international competitiveness and provided conditions ripe for M&A, with a number of big ticket transactions being announced at the beginning of FY16. Overall however, FY16 saw a further contraction in public M&A activity, with only 50 deals being announced, down from 55 deals in FY15 and 77 deals in FY14.

Total deal value was slightly higher than in FY15 at $33.2bn, however this was largely due to the competing Brookfield and Qube proposals for Asciano, which alone contributed $18bn.

MORE COMPETITION

FY15 saw a low level of competition post-transaction announcement, with only 2 targets the subject of multiple bidders. FY16 however saw a significant rebound in the level of competition in Australian public M&A, with 7 of the 43 targets attracting multiple bidders. Not only is this a positive sign for public M&A activity in Australia, but it allowed target shareholders to reap the benefit of these competitive scenarios, with shareholders on average receiving a 97% premia from successful bidders.

BIG TICKET INDUSTRIALS AND UTILITIES DEALS

The industrials and utilities sectors featured strongly in FY16, contributing $23.3bn to overall deal value. Key targets included Asciano (rail & infrastructure), Energy Developments (power generation) and Broadspectrum (industrial services).

In contrast, FY16 proved to be a very challenging year for the energy and resources sectors, characterised by consistently low prices for commodities such as oil, iron ore and coal, slow growth and uncertainty. These challenging circumstances were reflected in the level of deal activity in the energy and resources sectors, with these sectors contributing only $1.1bn to total deal value, the lowest value we have seen since commencing our Report in FY09.

DOMINANCE OF NORTH AMERICAN BIDDERS

FY16 saw a consistently low Australian dollar against the US dollar relative to previous years and the resurgence of the North American economy. Unsurprisingly, North American bidders were more prominent in FY16 than we've seen in previous years, with 27% of bidders coming from North America (in contrast to only 15% in FY15, 19% in FY14 and 11% in FY13).

North American bidders were also active in the mega deal space, with 3 of the 7 mega deals involving North American bidders.

LOOKING FORWARD

The economic climate remains conducive to M&A in Australia, with modest domestic growth rates driving companies to look to M&A for growth opportunities and the relatively weak Australian dollar increasing the attractiveness of Australian targets for foreign bidders. Equity markets remain volatile and share prices in many cases remain low, which may encourage opportunistic activity.

In the early part of FY17 Australian public M&A activity has continued at a similar rate to that in FY16 (though without the large number of mega deals which featured in early FY16). We believe that there is positive overall sentiment in the Australian market for M&A moving forward (see also the discussion of our separate Beyond Borders report at page 32) and we therefore remain optimistic regarding activity levels for the remainder of FY17.

DEAL LANDSCAPE

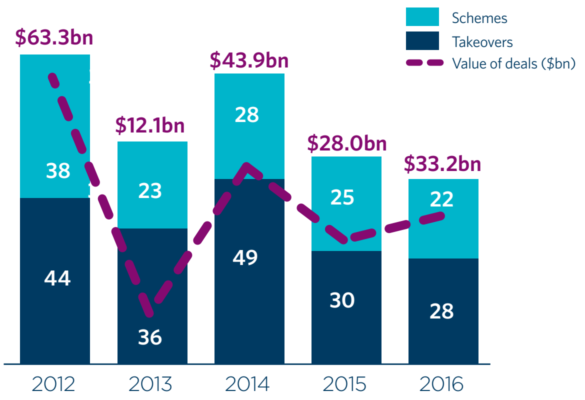
OVERALL DEAL TYPE AND VALUE

Last year, we reported that public M&A activity was at an all-time low, with only 55 deals being announced. FY16 saw a further contraction of public M&A activity, with only 50 deals being announced.

This trend is consistent with a significant reduction in deal volume experienced over the last 4 years. During the 4 years between FY09-12, 356 deals were announced, whereas only 241 deals were announced in the 4 years between FY13-16.

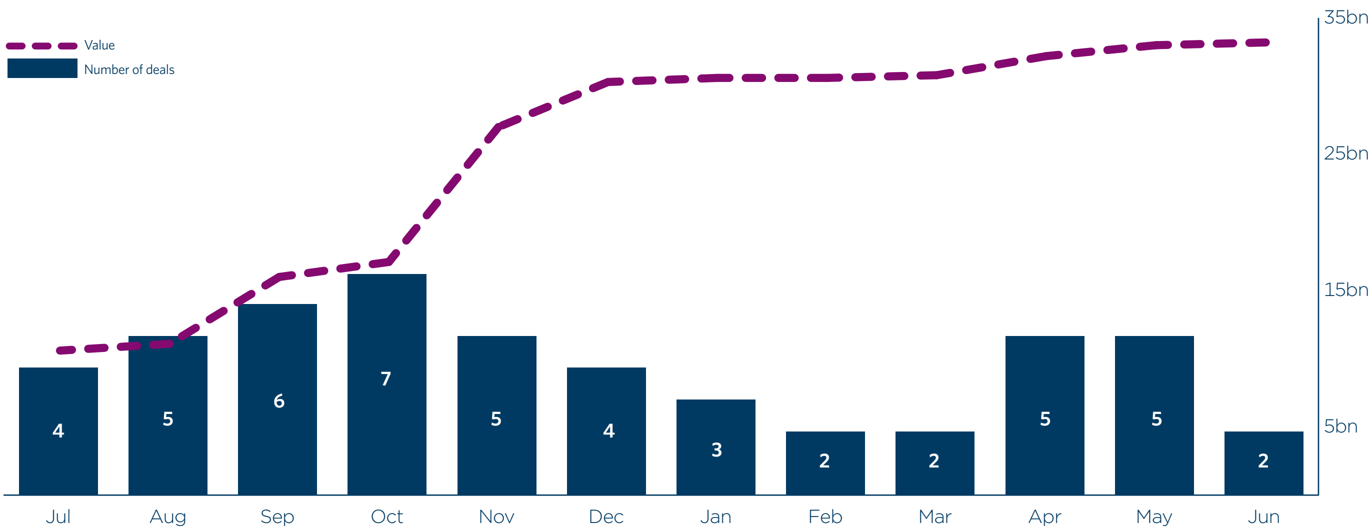
Despite the lower number of deals, total deal value was higher than FY15, at $33.2bn. Significant contributors to this value were the Brookfield and Qube proposals for Asciano, which contributed ~$18 billion to total deal value.[1]

Number of deals per year (by type and value of target)



TOTAL CUMULATIVE VALUE

Total cumulative deal value (and number of deals per month)



1 Asciano was the subject of multiple proposals and deal structures during FY16. For the purposes of this report (and consistent with previous years), we have included the data relating to the Brookfield July 2015 scheme, the November 2015 Qube takeover and the February 2016 joint scheme proposal only (Brookfield changed its deal structure to a takeover in November 2015). However, for the purposes of calculating deal value and number of mega deals, we have also excluded the February 2016 joint proposal.

DEAL LANDSCAPE

MEGA DEALS

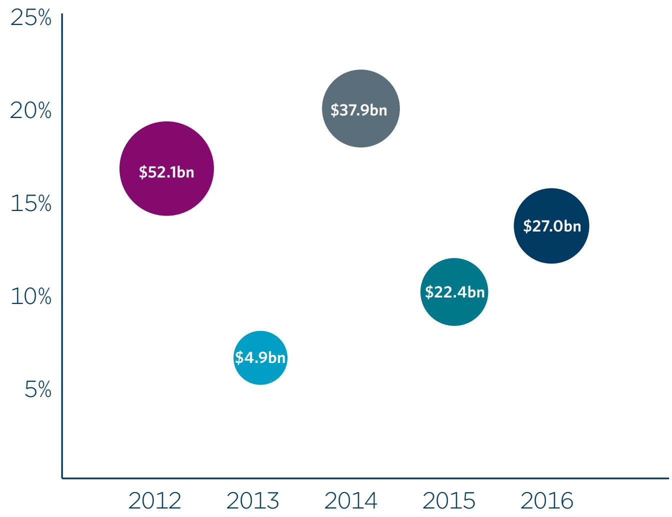
There were 7 mega deals announced in FY16, amounting to a total deal value of $27bn. Mega deals represented 14% of total deals by number and over 80% of total deal value in FY16.

Mega deals in FY16 were from a broad range of sectors, including industrials (Asciano and Veda), consumer discretionary (Pacific Brands), diversified financials (Investa Office Funds), telecommunications (M2 Group) and utilities (Energy Developments).

Competing proposals for Asciano (the only competitive mega deal) valued it at ~$9bn, making it one of Australia's largest M&A deals on record. This significantly boosted FY16 mega deal value.

Outside of Asciano, the largest mega deals were DEXUS' proposal for Investa Office Fund at ~$2.5bn (unsuccessful) followed by Equifax's acquisition of Veda at ~$2.3bn (successful).

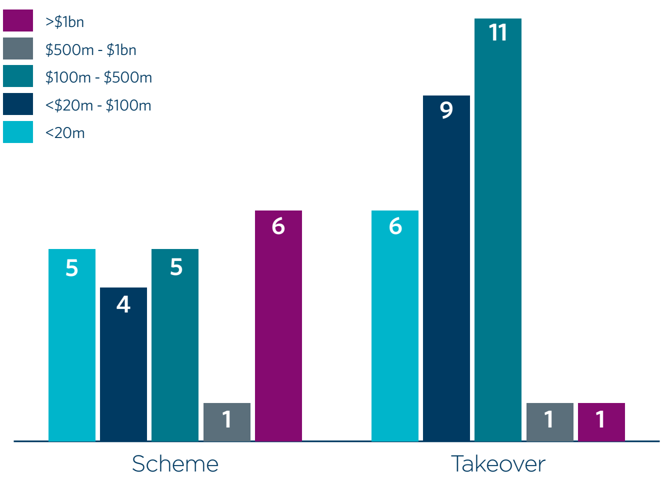
Percentage of deals >$1 billion



DISTRIBUTION OF DEAL VALUES

The largest number of transactions (16, or 33%) were in the $100m – $500m value range, with a small number of deals involving targets valued at more than $500m.

Number of deals by value and type



DEAL LANDSCAPE

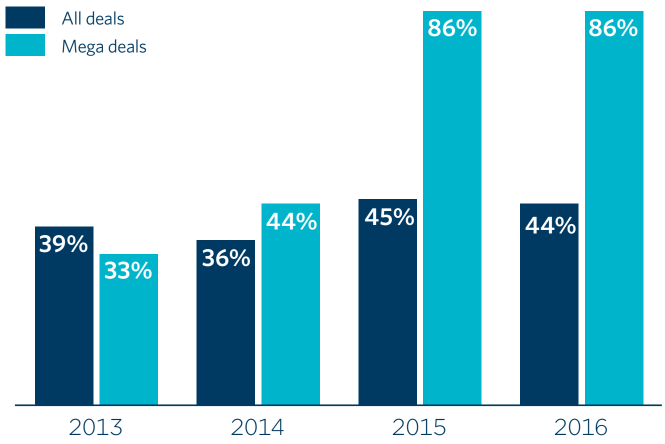
DEAL STRUCTURE - SCHEMES V TAKEOVERS

Schemes accounted for just under half of the deals in FY16.

Consistent with FY15, there was a preference for structuring mega deals as schemes in FY16 (6 of 7). This is in contrast to the low proportion of mega deals structured as schemes in FY13 and FY14, where several hostile takeover bids were launched for companies valued at >$1bn.

FY15 saw schemes employed in favour of takeovers in negotiated transactions (24 v 10). This trend continued, albeit to a lesser extent, in FY16 (20 v 8).

Schemes as a proportion of deals



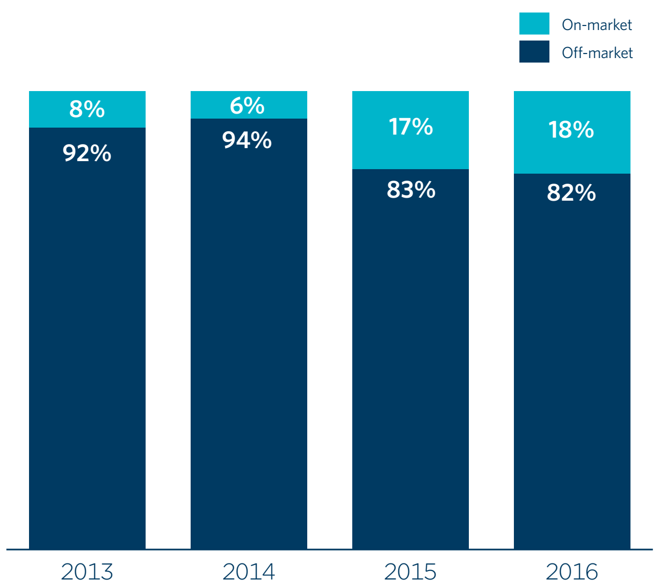
DEAL STRUCTURE - ON MARKET BIDS

In FY15 we reported an increase in the proportion of on-market takeover bids relative to previous years. This trend continued in FY16 with 18% of all takeover bids being on-market.

The 5 on-market bids in FY16 were for targets valued at <$100m, with 2 of the targets being valued at <$20m. All were launched without board support.

Of the 5 on-market bids announced, 3 involved a bidder that held a significant stake in the target company (~19%) prior to launching the bid. Only 2 resulted in the bidder obtaining a relevant interest in the target of more than 50%.

On-market takeover bids as a proportion of takeovers



DEAL LANDSCAPE

INDUSTRIES

In FY16, there was reduced activity in the energy and resources sectors, with both at an all-time low in terms of the proportion of total deals and value since FY12.

These sectors contributed only ~$1bn to overall deal value, with the majority of activity involving relatively low value targets (<$100m).

In contrast, the industrials and utilities sectors featured strongly in FY16, contributing ~$23.3bn to overall deal value. Key targets included Asciano, Energy Developments and Broadspectrum.

Proportion of deals by sector

	Resources	Energy	Industrials and utilities	Real estate	Financials	Consumer	Other
2012	30%	19%	14%	5%	12%	10%	10%
2013	38%	17%	12%	2%	18%	8%	5%
2014	31%	21%	13%	9%	12%	12%	3%
2015	35%	25%	13%	9%	4%	7%	7%
2016	26%	8%	30%	4%	8%	10%	14%

DEAL LANDSCAPE

ENERGY AND RESOURCES

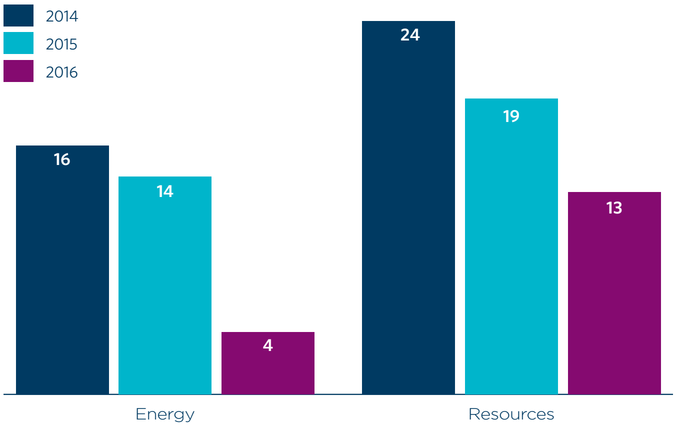
Companies with gold assets (7) and oil and gas assets (4) were the main targets amongst the 17 energy and resources deals in FY16.

There were no coal, coal seam gas or uranium targets in FY16, commodities which had been a recurring feature in public M&A activity in recent years. Instead, the remaining resources targets held primarily iron ore, copper, mineral sands, vanadium, lithium and tungsten.

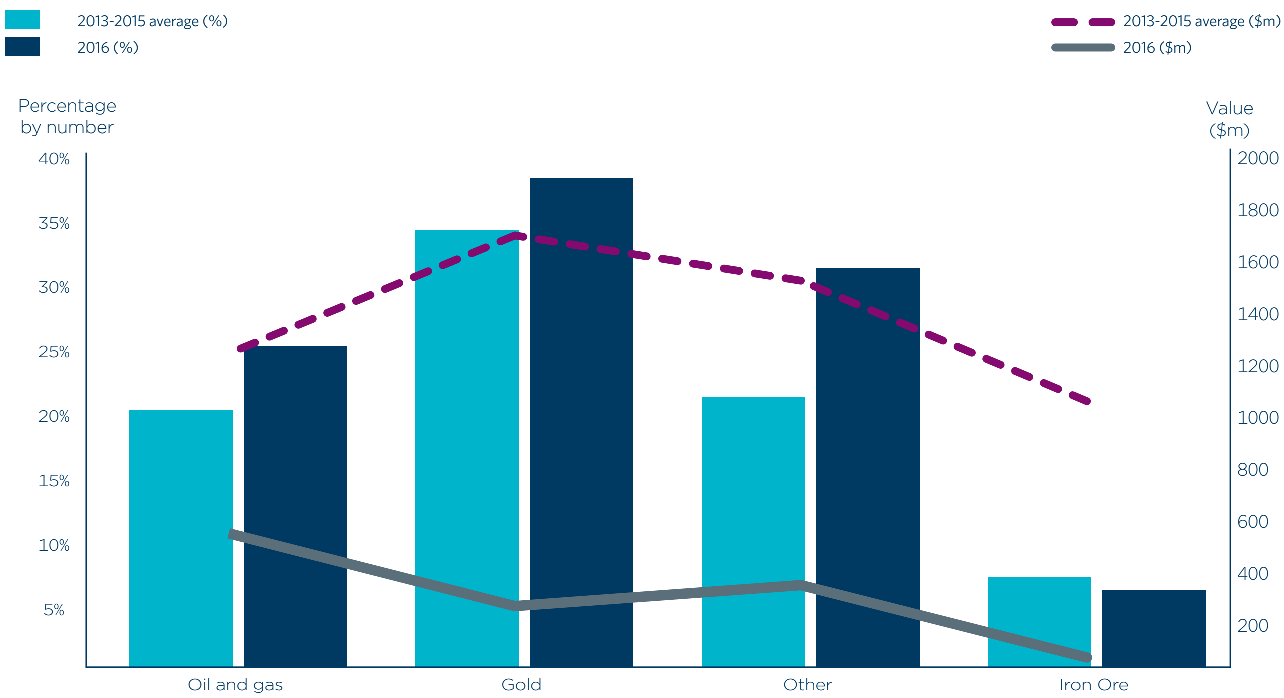
The value of energy and resources deals was low in FY16, totalling just over $1bn (as opposed to $4.9bn in FY15). 88% of energy and resources deals involved targets valued at <$100m. Unlike previous years, there were no mega deals in the energy and resources space.

The only energy deal exceeding $100m was Beach Energy's acquisition of Drillsearch (a producing oil and gas company focused on Qld and SA) and the only mining deal exceeding $100m was Galaxy Resources' acquisition of General Mining (which holds interests in lithium and gold projects).

Number of energy and resources deals



Energy and resources deals (by commodity)



DEAL LANDSCAPE

ORIGIN OF BIDDERS

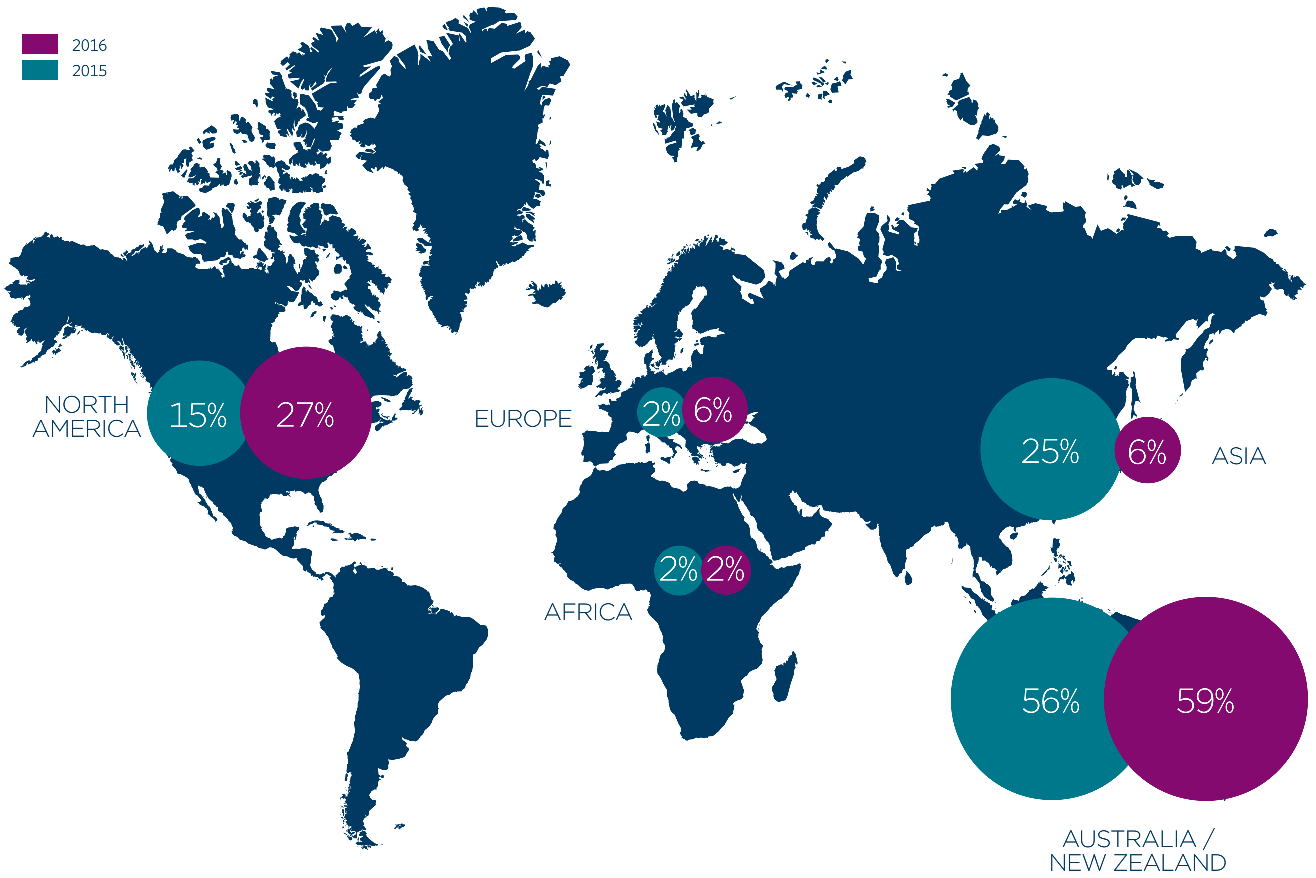
Foreign bidders continue to play a significant role in Australian M&A activity, with 41% of bidders coming from outside of Australia/New Zealand in FY16 and contributing $14.4bn to total deal value.

There was a reduction in bidders from Asia relative to previous years, with Asian bidders representing only 3 of the 20 foreign bids.

The proportion of bidders from North America also increased in FY16 relative to FY15 as the Australian dollar remained at low levels against the US dollar relative to previous years. North American bidders represented 13 of the 20 foreign bids (and 40% of total transaction value).

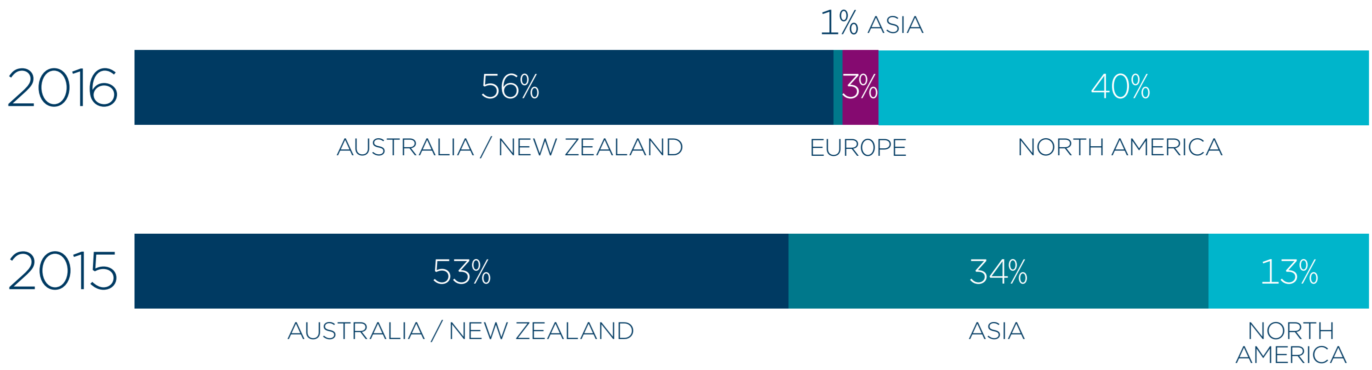
3 of the 7 mega deals involved North American acquirers, being Brookfield's proposal for Asciano, HanesBrand's acquisition of Pacific Brands and Equifax's acquisition of Veda. Local bidders were responsible for the remaining mega deals.

Percentage of deals by origin of bidder



DEAL LANDSCAPE

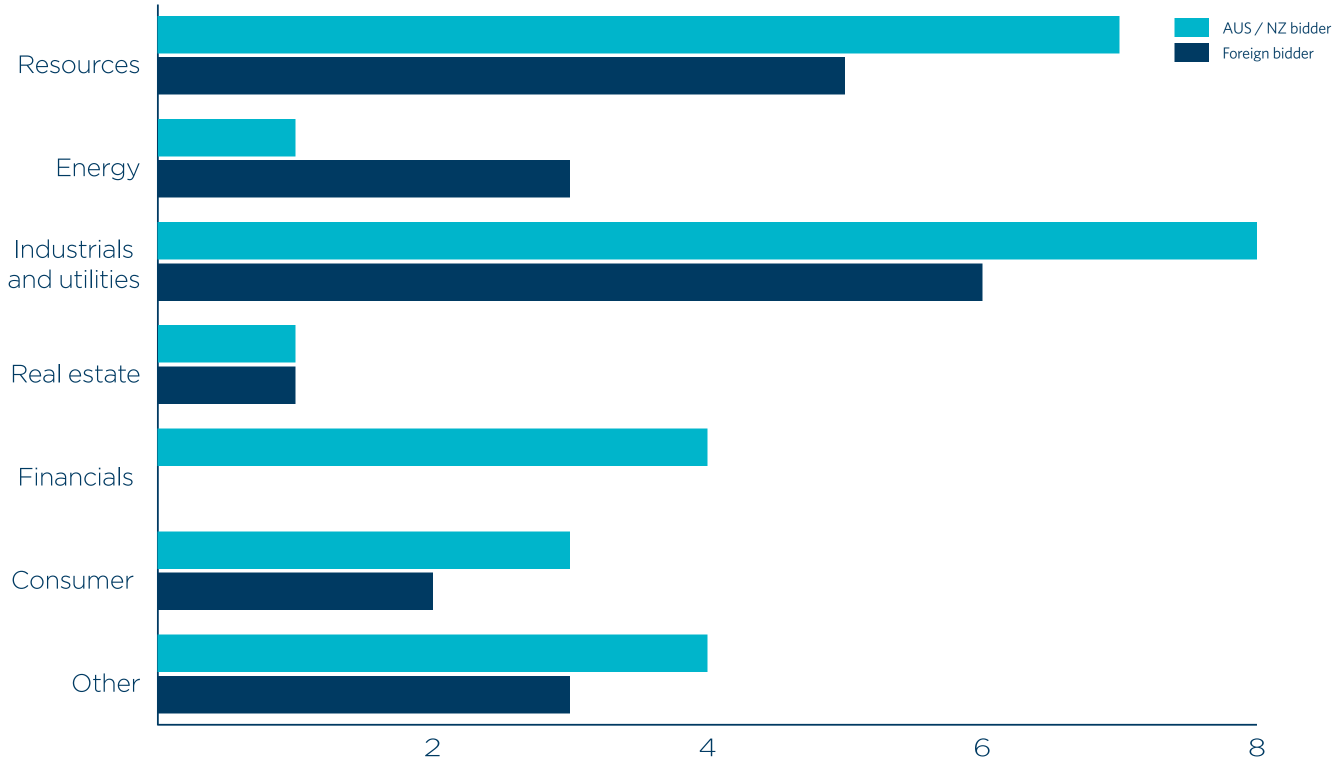
Percentage of deal value by origin of bidder



ORIGIN OF BIDDERS BY SECTOR

Foreign bidders were involved across all sectors and most heavily in industrials and utilities (reflecting the increased activity in that sector in FY16) and energy and resources.

Number of bidders by origin and sector of the target

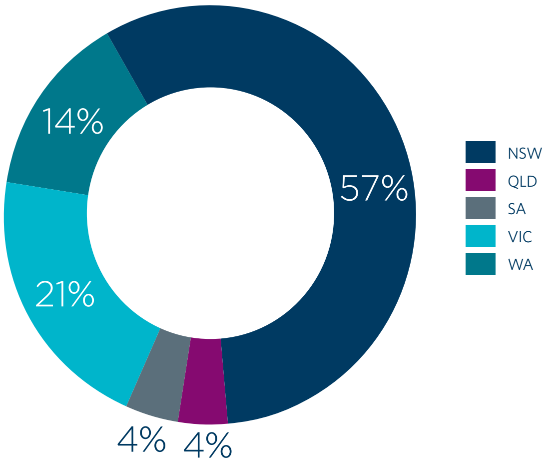


DEAL LANDSCAPE

ORIGIN OF BIDDERS (DOMESTIC)

The majority of Australian bidders originated from New South Wales. These bidders were primarily focused on targets in the industrials and utilities sector, making up 6 out of 16 deals. Other key sectors included financials (3 deals), resources (2 deals) and consumer (2 deals).

Proportion of bidders by state



LOCATION OF TARGETS

Victoria was the location of the largest number of targets, also accounting for the majority of FY16 deal value (55%).

Despite 23% of targets coming from WA, the State only accounted for 2% of total deal value in FY16 ($527.6m). These targets were generally smaller mining and industrial companies.

Number of targets per state

DEAL LANDSCAPE

LEVEL OF COMPETITION

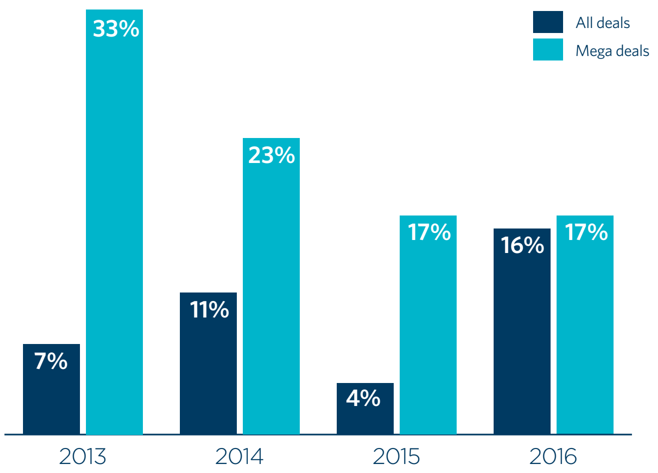
Public M&A activity in FY16 was more competitive than previous years, with 7 of the 43 targets attracting multiple bidders.

These were:

- Affinity Education Group (consumer discretionary)
- Armour Energy (energy)
- Asciano (industrials)
- Devine (real estate)
- GPT Metro Office Fund (diversified financials)
- Phoenix Gold (mining)
- Vision Eye Institute (health care)

In each of the competitive deals that had completed as at the date of writing this Report, the later competing bidder was generally successful.

Proportion of targets subject to multiple bids

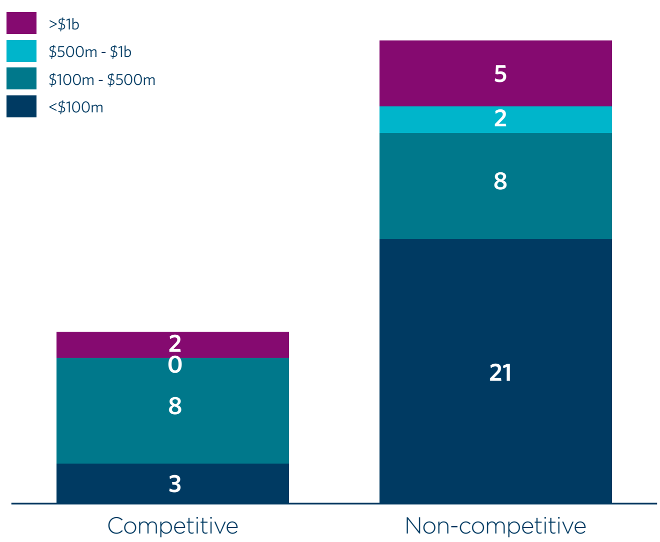


TARGET SIZE IN COMPETITIVE DEALS

Competitive deals predominantly involved targets valued at between $100m to $500m (62%). The bulk of deals with only one bidder were for targets valued at less than $100m.

As would be expected, target shareholders in competitive scenarios often received significant premia from successful bidders, this year averaging 97%.

Value of competitive and non-competitive deals



DEAL LANDSCAPE

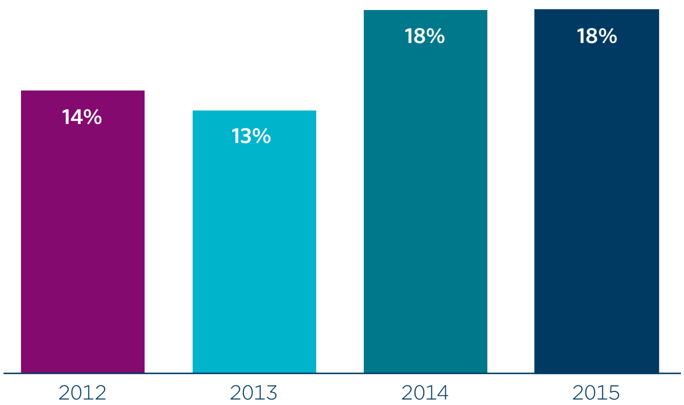
PRIVATE EQUITY ACTIVITY

Private equity activity was on par with FY15, with 18% of all deals involving private equity bidders. Private equity bidders in FY16 were however pursuing larger targets.

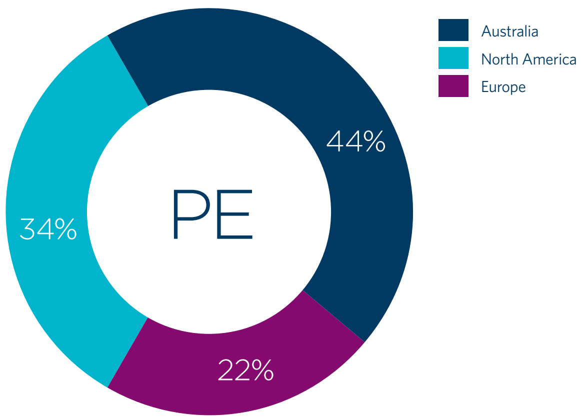
In FY15, we reported that 80% of private equity bidders sought to acquire targets that were valued at <$100m. In FY16, 44% of private equity targets were valued at $100 – $500m and 56% were valued at <$100m.

Private equity bidders were focused on a range of sectors in FY16, including consumer staples, financials, energy and resources and industrials and utilities. This broader sector coverage represents a shift away from what was seen in FY14 and FY15, where private equity bidders were heavily focused on the energy and resources sectors.

Percentage of deals involving private equity bidders



Origin of PE bidders



DEAL LANDSCAPE

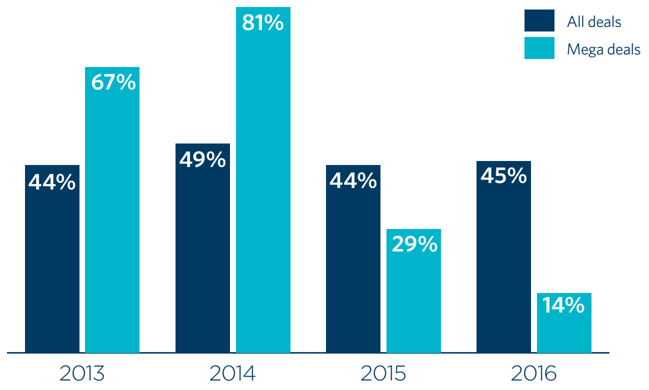
TARGET BOARD SUPPORT

On the whole, the proportion of deals launched without the support of the target board in FY16 (and therefore categorised as hostile deals for the purpose of this Report) was consistent with previous years.

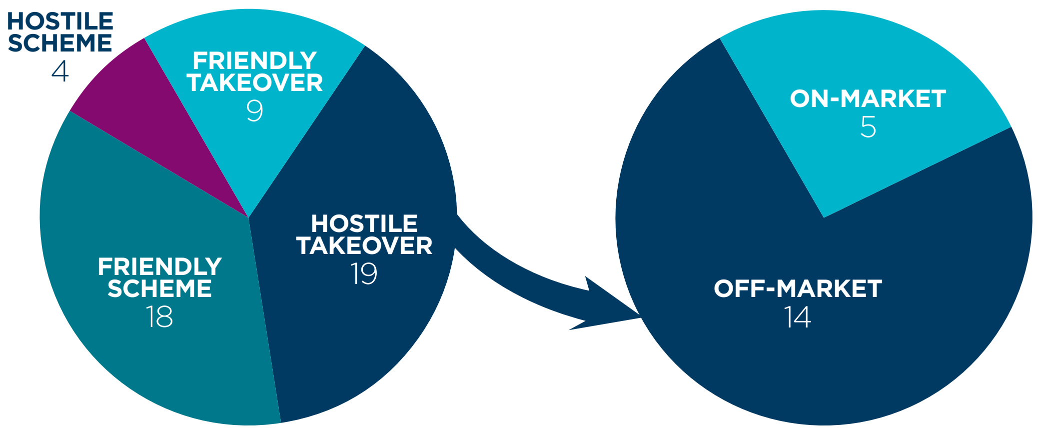
However, the trend for mega deals to be announced on a friendly basis continued in FY16 with only 1 of the 7 mega deals being announced without target board support. This was Equifax's initial proposal to acquire Veda by scheme of arrangement (presented as a non-binding expression of interest). Veda's board later recommended an improved proposal from Equifax.

Of the 50 public M&A transactions announced in Australia in FY16, there were 19 hostile takeover bids.

Proportion of deals launched without target support



Hostile and friendly deals by deal structure



HOSTILE BIDS

Of the hostile bids in FY16, for 65% the first substantive response (ie. other than a take no action type response) was to recommend that shareholders reject the offer.

For those target boards that recommended that shareholders reject the offer, defence tactics varied and included:

- commissioning an independent expert's report – in 7 cases. See the separate section on IERs for further details;
- attracting a rival bidder – in 3 cases;
- using the board recommendation to secure an increase in consideration for target shareholders – in 8 cases; and
- commencing action in the Takeovers Panel – in 1 case.

61% of hostile bids were ultimately successful, with the target board eventually recommending acceptance in all of those bids. No hostile bids were successful where the target directors retained their reject recommendation for the full duration of the bid.

In the 8 cases where target boards used their recommendation to secure an increase in consideration for target shareholders, the boards secured increases ranging from 9.5% to as high as 92.3% (averaging 24.7%) on the initial consideration. In more than half of those cases (5/8), the target board had commissioned an IER.

In 3 hostile bids a rival bidder emerged following a recommendation that shareholders reject the initial offer. The rival bidder was ultimately successful in each of those cases, with shareholders receiving an average increase on the value of the initial proposal of 54.9%.

DEALS IN FOCUS

GROWTHPOINT OUTBIDS CENTURIA

GPT Metro Office Fund/ Growthpoint Properties Australia/ Centuria Metropolitan REIT

In April 2016, Growthpoint Properties launched a $295 million proposal to acquire GPT Metro via a trust scheme. Centuria promptly responded, announcing a competing proposal. A bidding war ensued, with both parties continuing to up their offered prices. Centuria also changed tactics, electing to alter its bid structure from a trust scheme to an off-market takeover bid (a strategy that Growthpoint Properties quickly followed). Ultimately, the price became too high for Centuria (who withdrew in August 2016), paving the way for Growthpoint Properties to successfully acquire GPT Metro.

BOARD RECOMMENDATION FAILS TO GET MEGA DEAL ACROSS THE LINE

Investa Office Fund/ DEXUS Property Group

DEXUS Property Group's $2.5 billion proposal to acquire investment property group Investa Office Fund by way of scheme of arrangement failed despite ongoing support from the target's board throughout the process. The bid, which needed 75% of target shareholders to agree to amendments to Investa's constitution in order to proceed, failed in part due to Cromwell Property Group's acquisition of a 9.83% stake in Investa days before the scheme meeting. Cromwell's decision to vote against the proposal, combined with another no-vote from a major shareholder, made it almost impossible for the deal to get over the line.

TAKEOVERS PANEL INTERVENES IN AFFINITY

Affinity Education Group/ G8 Education Ltd/ Anchorage Childcare Pty Ltd

G8 Education's unsolicited and hostile $160 million takeover bid for childcare operator Affinity Education Group included a range of interesting aspects. The bid, which saw G8 Education run both off-market and on-markets bids concurrently, was not only challenged by a competing scheme proposal by Anchorage Childcare, but was marred by controversy. Soon after G8 Education's bid was launched, Affinity made an application to the Takeover's Panel, questioning the circumstances around oddly timed acquisitions of Affinity shares by three shareholders allegedly associated with the Chairman of the bidder (which were ultimately found by the Takeover's Panel to give rise to unacceptable circumstances). As a result, G8 Education allowed its bid to lapse, and in a surprising move, entered into a voting agreement with rival Anchorage Childcare to vote the majority of its shareholding in Affinity in favour of the Anchorage scheme (which was ultimately successful).

DIRECTORS CHANGE RECOMMENDATION FOLLOWING PNG COURT DECISION

Broadspectrum Ltd/ Ferrovial Services Australia Ltd

In December 2015, Ferrovial Services launched an unsolicited off-market takeover bid for infrastructure, defence and property services provider Broadspectrum. The target's board responded with resistance throughout the process, reiterating the current strength of the company (based in particular on key contracts Broadspectrum held with the Australian government to provide services at the processing centres on Manus Island and Nauru). However, just before the offer was about to close, the Prime Minster of Papua New Guinea announced, following a ruling from PNG's Supreme Court that the detention of asylum seekers on Manus Island was illegal, that the regional processing centre would be closed. In light of this adverse change in circumstances and the effect on Broadspectrum's key contract, the directors changed their recommendation from reject to accept, paving the way for the success of the Ferrovial bid.

BATTLE FOR MEGA TARGET

Asciano Ltd/ Brookfield Infrastructure Partners LP/ Qube Holdings Ltd

FY16 saw an intense battle for Asciano. In July 2015, in response to media speculation, Asciano announced it had received a non-binding indicative proposal from Brookfield to acquire Asciano for a combination of cash and scrip by way by scheme of arrangement. In August, Asciano announced entry into an implementation agreement for the scheme with Brookfield.
In October, the ACCC released a statement of issues in relation to the implications of the proposal for Asciano's rail infrastructure and at the end of the month, rival Qube announced it had purchased a 19.99% stake in Asciano. In response, Brookfield changed its deal structure from a scheme to a takeover and shortly thereafter Qube announced it had provided Asciano with a non-binding takeover proposal subject to due diligence.
Qube formally announced its bid in January, which was deemed by Asciano's board to be superior and recommended, entitling Brookfield to an $88m break fee. Then in March 2016, Asciano announced it had accepted a joint proposal from a Brookfield / Qube consortium to acquire Asciano by way of scheme of arrangement. Despite delays relating to ACCC and FIRB approval, the Brookfield / Qube consortium's scheme ultimately became effective in July 2016.

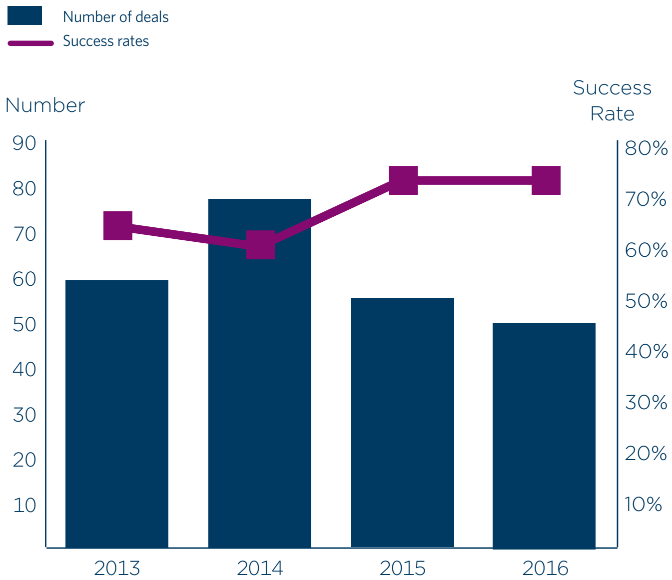
Herbert Smith Freehills acted for Brookfield, Broadspectrum, Investa Office Fund and Growthpoint on the above transactions.

OUTCOMES

OVERALL SUCCESS RATES

Despite being a competitive year by historic standards, 73% of completed deals were successful. At the date of writing this report, 9 of the 50 deals were still current.

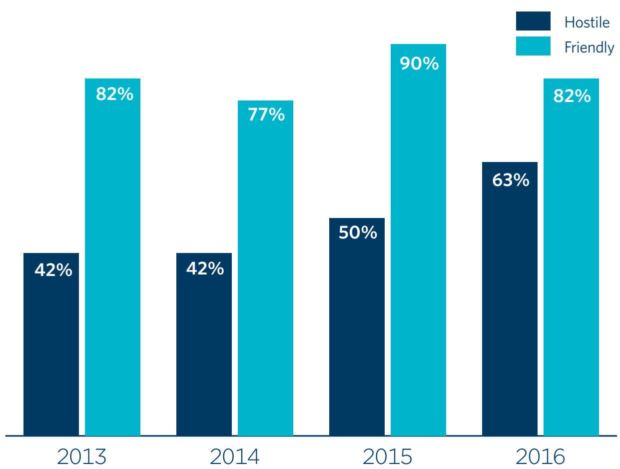
Number of deals and success rates



SUCCESS RATES - HOSTILE V FRIENDLY

Historically, friendly deals (ie. those that are recommended at the time of initial announcement) are far more likely to be successful than hostile deals. In FY16, this gap narrowed, with 82% of completed friendly deals being successful, compared to 63% of hostile deals.

Success rates in hostile and friendly deals



OUTCOMES

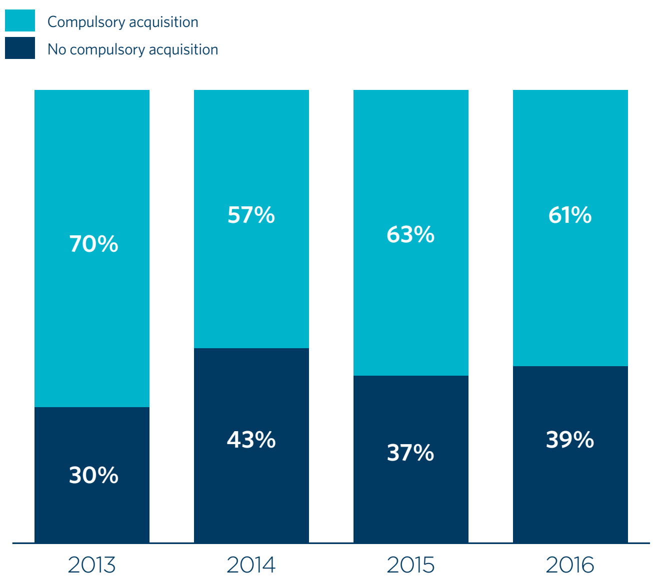
REACHING 100%

Consistent with previous years, the acquirer obtained full ownership of the target in just over half of deals.

59% of deals in which the acquirer obtained 100% of the target were structured as schemes.

39% of takeover bids proceeded to compulsory acquisition, which is consistent with previous years. As at the date of writing this report, 5 takeover bids were still current.

Proportion of takeover bids that proceeded to compulsory acquisition

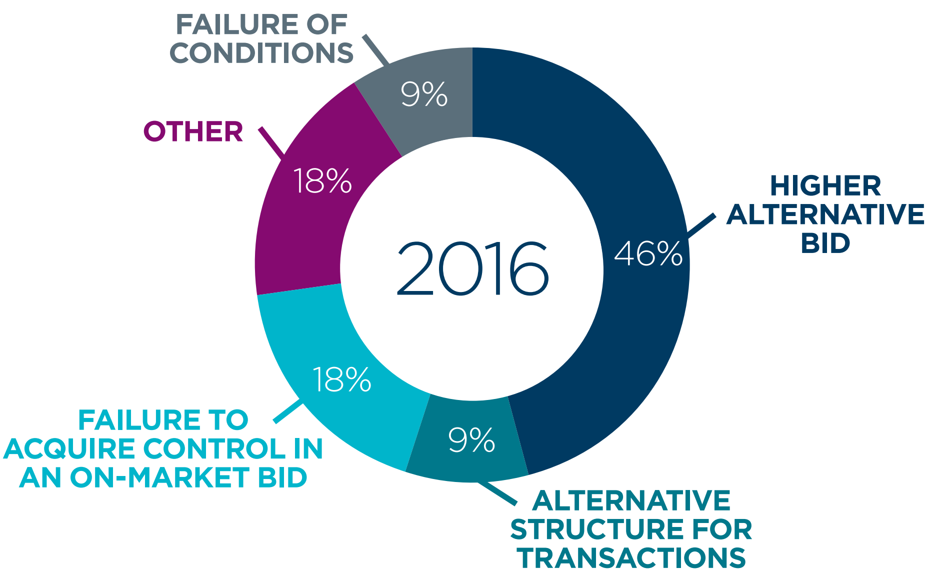


REASON FOR FAILURE

In FY16, 11 of the 41 deals that had concluded as at the date of this report were not successful. This included 4 friendly deals and 7 hostile deals.

The main reason that bids were not successful was the announcement of a higher alternative bid, reflecting the competitive environment this year.

Unsuccessful or withdrawn transactions – reason for failure



CONSIDERATION

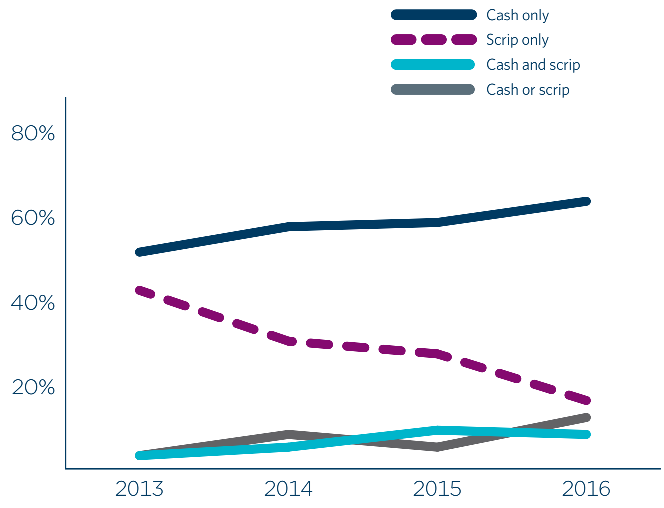
CONSIDERATION OFFERED

Cash consideration featured prominently in FY16 and was the sole form of consideration in 62% of transactions.

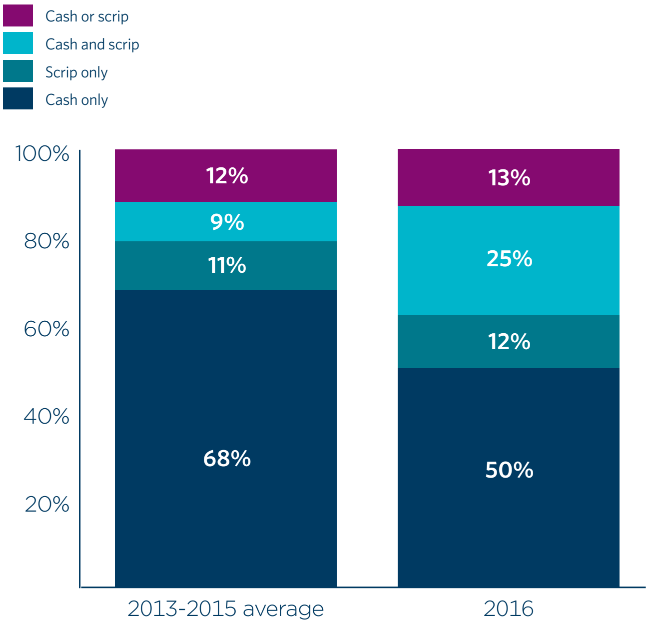
In FY14, we reported that an increase in foreign bidders was partly responsible for a preference for cash. This relationship continued in FY16, with the high numbers of foreign bidders (who elected to offer cash only consideration in 17 of the 20 transactions involving foreign bidders) continuing to boost the prominence of cash.

In the mega deal space, although cash remained the dominant form of consideration, consideration based on a combination of cash and scrip was much more prominent than in previous years, with 25% of bidders electing to offer this type of consideration.

Consideration offered – all deals



Consideration offered – mega deals



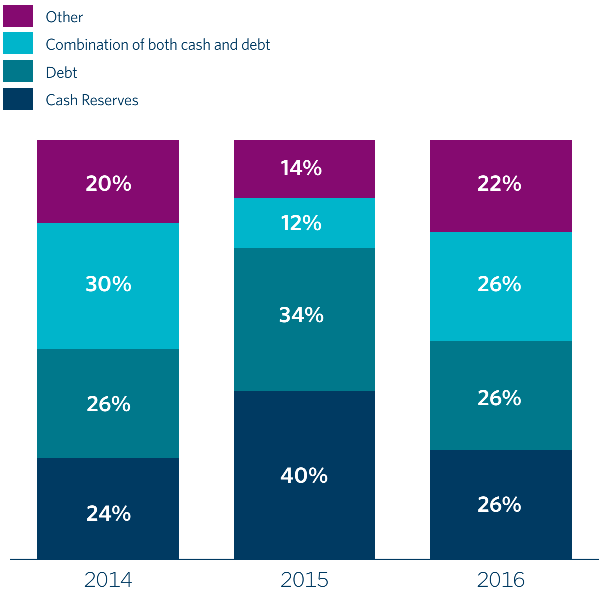
CONSIDERATION

FUNDING OF CASH CONSIDERATION

The use of debt as the primary source of funding for the cash component of consideration in FY16 was generally consistent with FY14 and FY15.

In FY16, a greater proportion of deals were funded by a combination of both cash and debt, replacing the preference for cash reserves observed in FY15. This was more in line with what was experienced in FY14.

Funding source for cash consideration

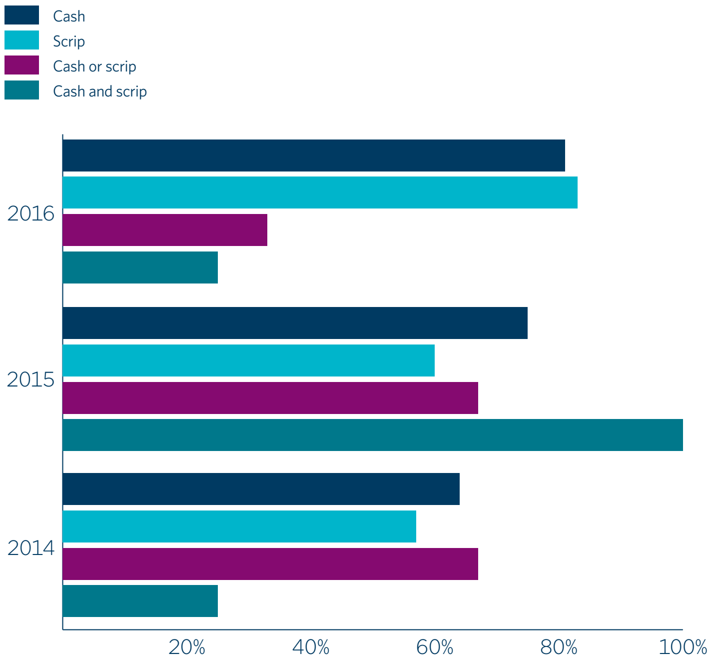


IMPACT OF CONSIDERATION

In FY16, scrip only was the most successful form of consideration, giving the bidder control 83% of the time. This success rate was noticeably higher than the success rates of scrip only consideration in previous years.

Success rates for cash and scrip and cash or scrip were much lower than in FY15. However, given that the vast majority of the unsuccessful bids offering cash and/or scrip failed due to competition (or were withdrawn due to an alternative structure), the lower rate of success in these deals was not linked to the consideration chosen.

Success rates by consideration offered in all deals



CONSIDERATION

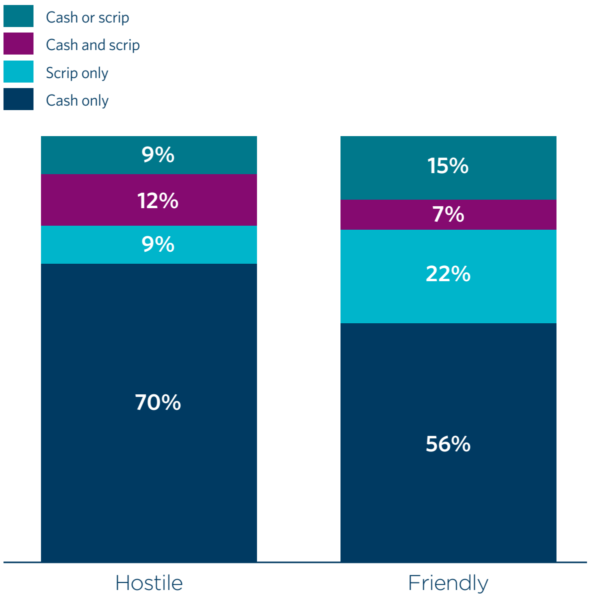
CONSIDERATION – HOSTILE V FRIENDLY DEALS

In FY16, there was a strong preference for consideration in hostile deals to include a cash component, with 91% of hostile transactions involving either cash only or a choice or combination of cash and scrip.

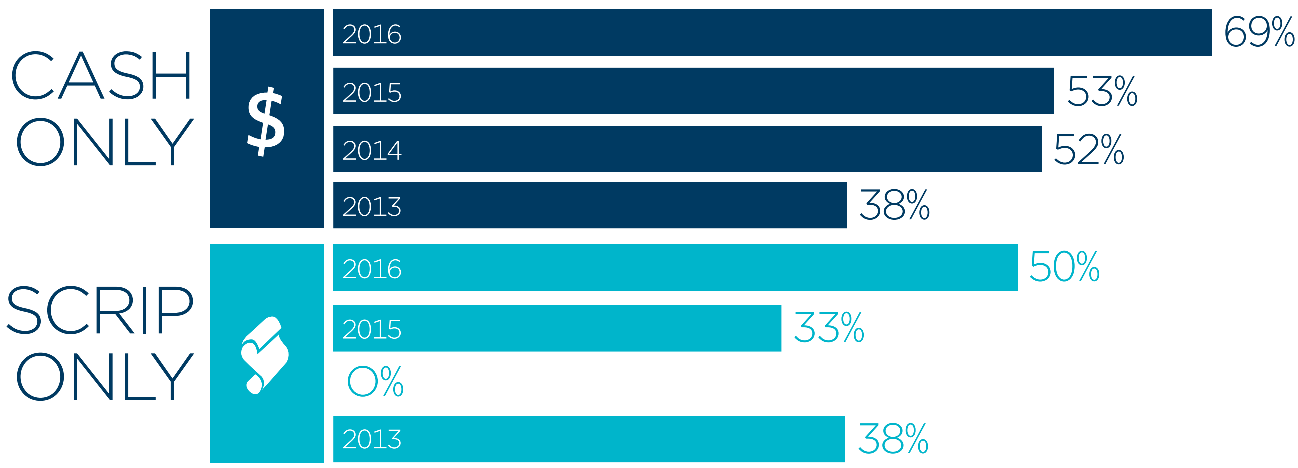
This preference was also apparent in friendly deals in FY16, where cash formed part of the consideration offered in 78% of friendly transactions.

In FY16, hostile all-cash deals were much more likely to succeed than hostile all-scrip deals, with all-cash consideration delivering success in 69% of hostile transactions (as opposed to all-scrip which delivered success in only 50% of hostile transactions).

Consideration offered – hostile v friendly deals



Success rates by consideration offered in hostile deals



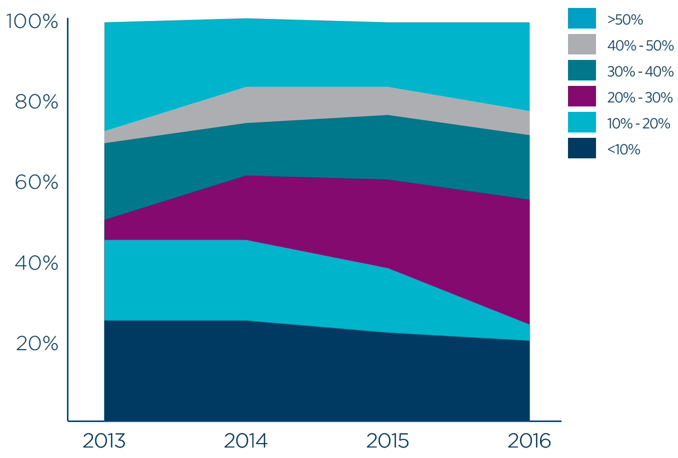
CONSIDERATION

INITIAL SHARE PREMIUM

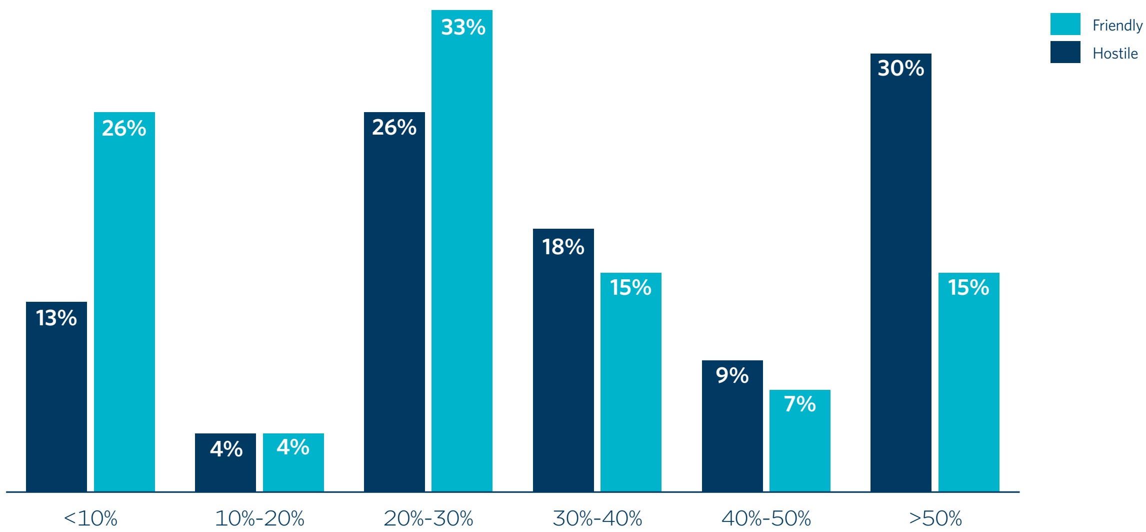
In FY16, we observed an increasing proportion of deals with an initial premium in both the 20% - 30% range (30%) and >50% range (22%) and a reduction in the proportion of deals with an initial premium in the 10% - 20% range (4%).

In friendly deals, an initial premium in the 20% - 30% range was most common and for hostile deals a premium of >50% was most prevalent.

Initial share premium offered - all deals



Initial share premium offered – hostile vs friendly deals

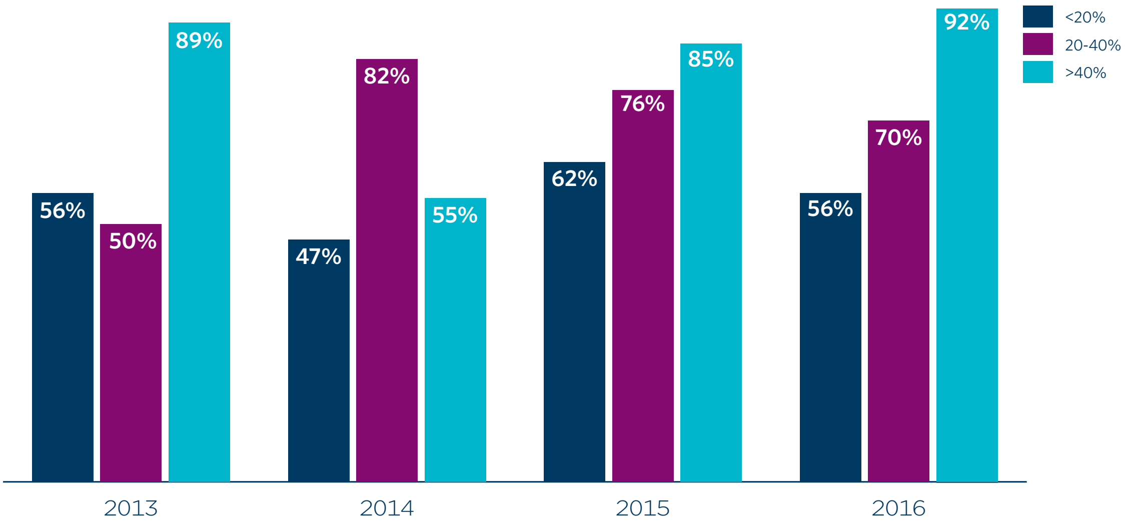


CONSIDERATION

IMPACT OF INITIAL SHARE PREMIUM

In FY16, the higher the premium, the higher the bidder's probability of success (which has not always been the case historically). Bids pitched at a premium of > 40% were successful in 92% of cases.

Success rates of deals based on initial share premium offered



REGULATORY INVOLVEMENT

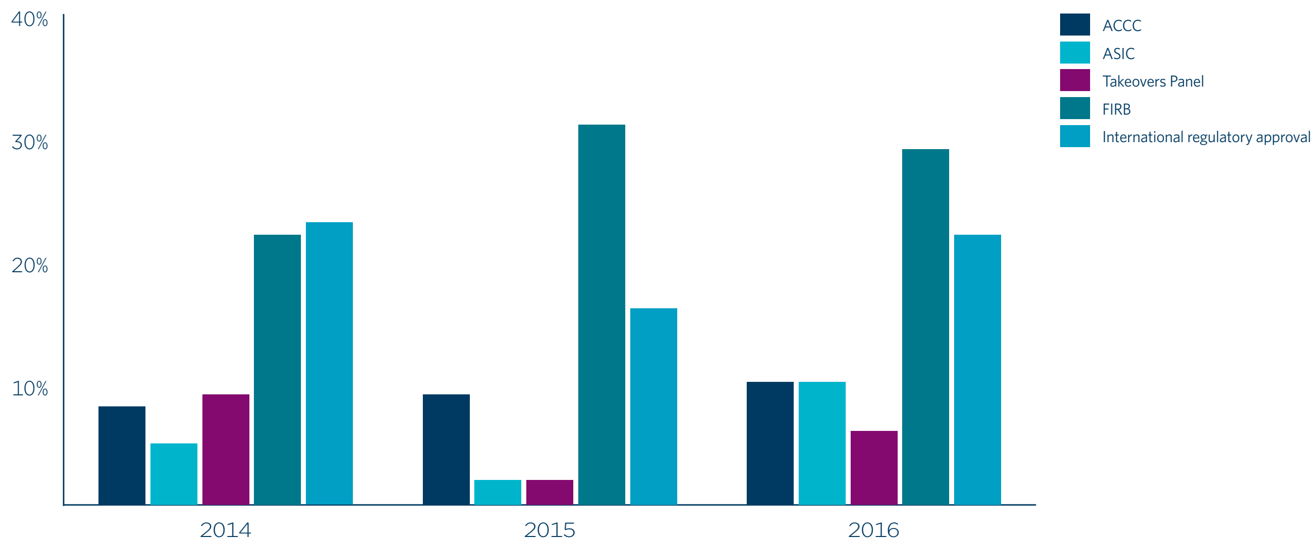
Regulators were active across the board in 2016, with the ACCC in particular having a noteworthy impact on some high profile deals.

The ACCC's year-long involvement in the proposals for Asciano caused significant delays for both Brookfield and Qube.
This involvement, coupled with FIRB's involvement (which, around the relevant time, had entered into 'caretaker mode' pending the outcome of the federal election), ultimately forced Brookfield and Qube to adjourn both the Scheme Meeting and Second Court Hearing for their joint bid (which was ultimately successful).

The ACCC was also heavily involved in Iron Mountain's bid for Recall Holdings which was announced in FY15. The ACCC released a statement of issues relating to the acquisition in November 2015, but after Iron Mountain offered to divest most of its existing Australian assets, the ACCC finally gave the deal the all clear in March 2016.

The time for receiving FIRB approval was consistent with what we have seen in previous years, despite the relevant legislation undergoing significant reform in December 2015.

Proportion of deals with regulatory involvement



CONDITIONS

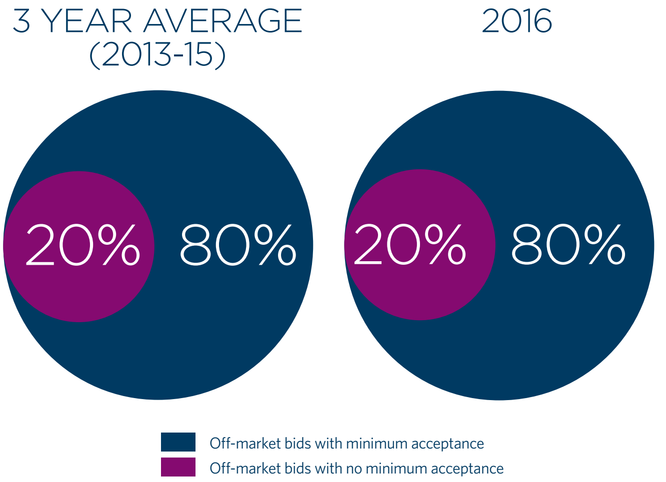
MINIMUM ACCEPTANCE CONDITIONS

In line with previous years, 16 of the 20 off-market takeover bids contained a minimum acceptance condition.

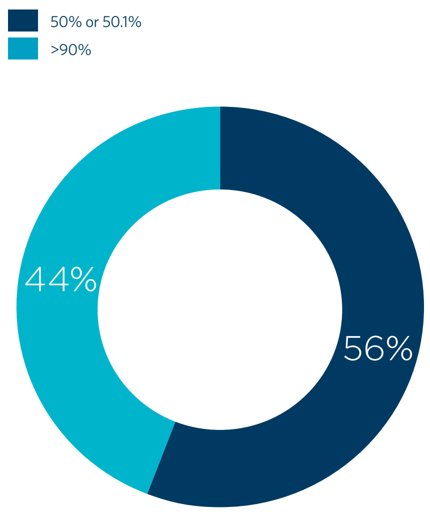
56% of those were 50% or 50.1% minimum acceptance conditions, with the remaining 44% being a >90% threshold.

For completed deals, a 90% minimum acceptance condition was waived in 80% of cases, each at varying levels of acceptances. A 50% or 50.1% minimum acceptance condition was waived in 30% of cases.

Off-market bids with a minimum acceptance condition



Minimum acceptance conditions – 50% vs 90%



CONDITIONS

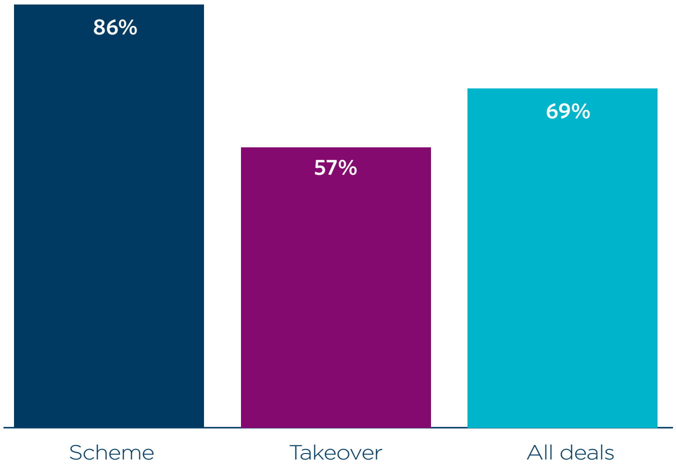
MATERIAL ADVERSE CHANGE

Material adverse change (MAC) conditions relating to the target featured in 69% of all deals, with schemes more likely than takeovers to include a MAC condition.

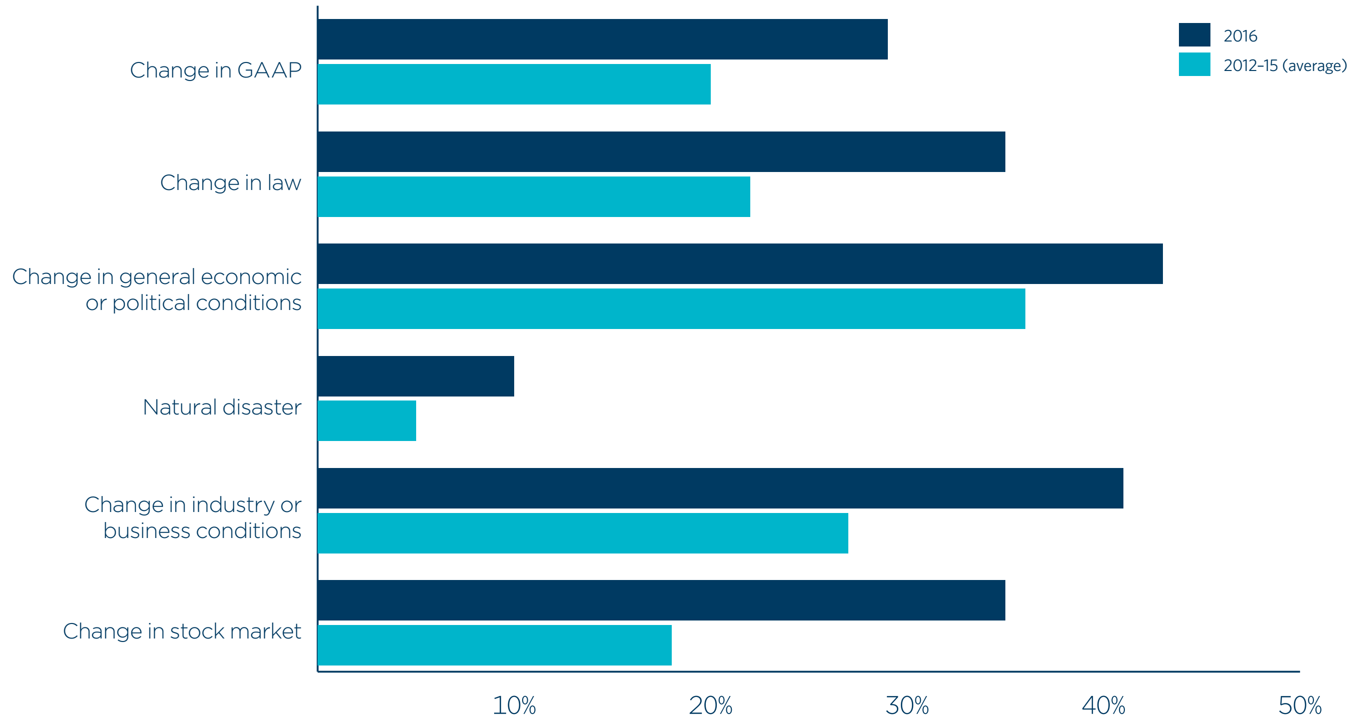
Bidder MAC conditions were included in 44% of all friendly deals.

Consistent with previous years, MAC conditions were subject to an extensive number of express exclusions (thereby narrowing their scope).

Prevalence of target MAC conditions (all deals)



Carve-outs from MAC conditions



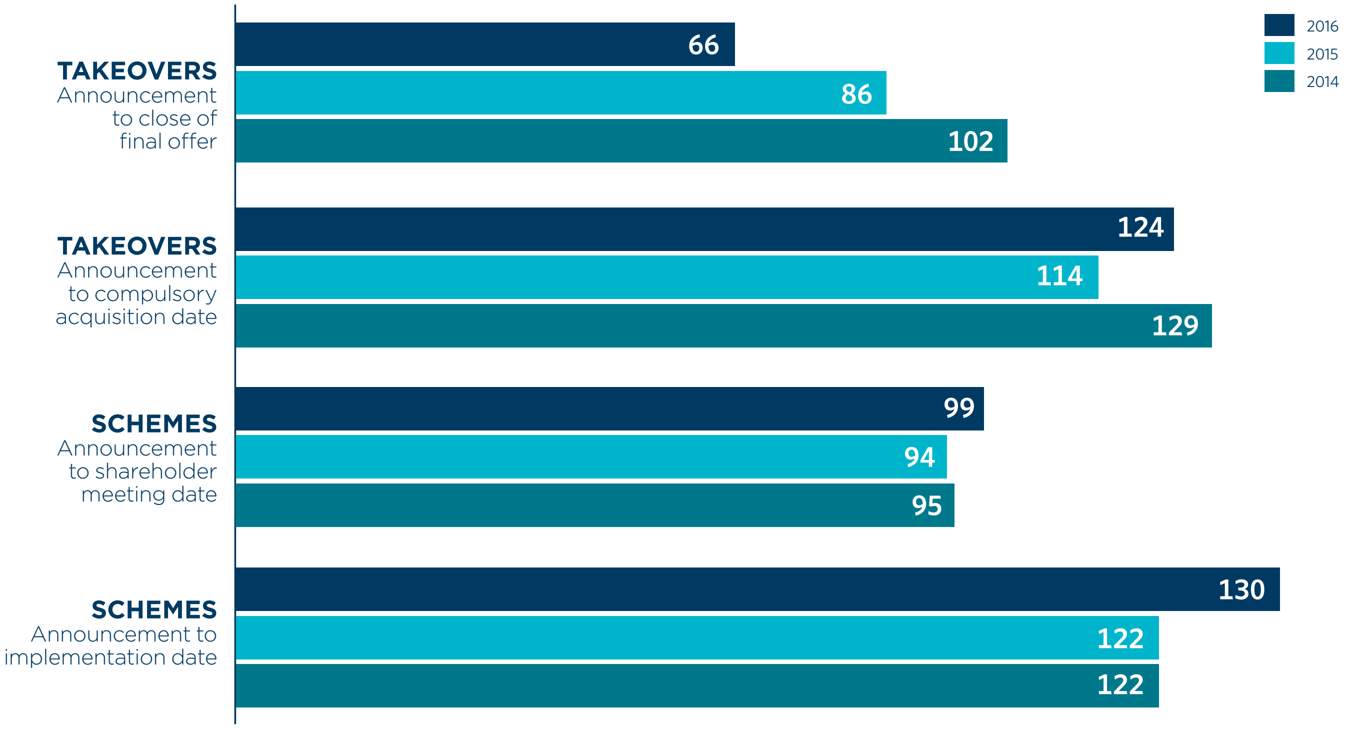
TIMING

CRITICAL POINT

In FY16, takeovers closed, on average, about 2 weeks quicker than experienced in FY15. Metals X's off-market bid for Aditya Birla Minerals was the most protracted takeover in FY16, taking 288 days from announcement to close of the final offer.

Schemes took slightly longer to implement than in previous years, with Redcliffe Resources taking the longest for a completed scheme, at 233 days. Only 1 scheme was implemented in under 100 days, being HanesBrands' acquisition of Pacific Brands.

Median timespan in days to reach critical point



INDEPENDENT EXPERT REPORTS

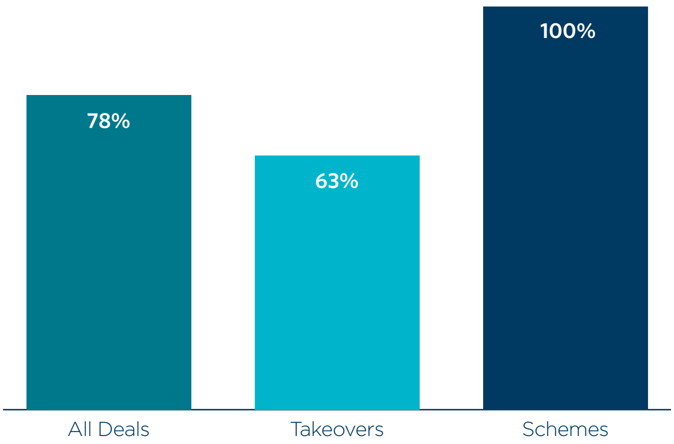
INDEPENDENT EXPERT REPORTS

In FY16, 78% of all deals featured an IER and an IER was commissioned for 63% of takeovers.

A majority of takeovers in which an IER was obtained were hostile (65%), with the remainder (35%) being friendly.

Of the 18 hostile takeovers (that proceeded to a point where a target statement was released), an IER was obtained in 11 cases. In 3 of those cases an IER was required (due to the bidder's initial shareholding exceeding 30% or the bidder and target having a common director). In the remainder the IER was obtained voluntarily to assess the merits of the offer.

Use of Independent Expert Reports



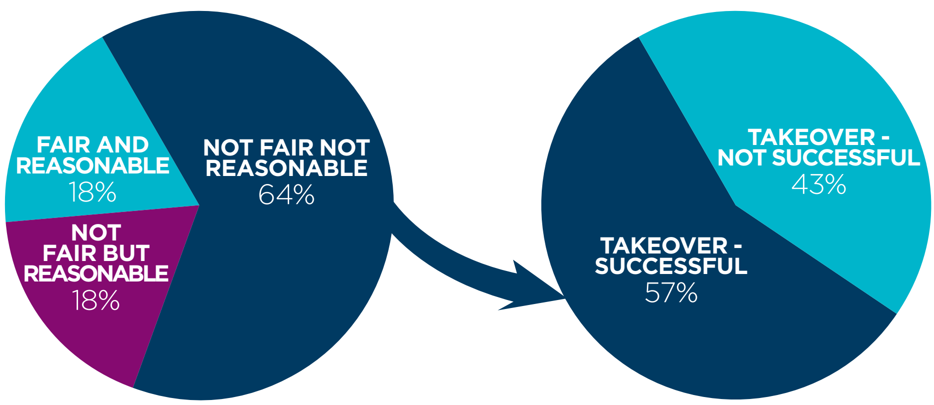
INDEPENDENT EXPERT REPORTS – FINDINGS

As might be expected, all IERs published in connection with a scheme found the transaction was in the best interests of shareholders.

Similarly, all IERs published in relation to a friendly takeover found the offer was fair and reasonable to target shareholders.

In the case of hostile takeovers, a majority of independent experts found the transaction was neither fair nor reasonable to target shareholders. However, in 57% of those cases the bidder was still successful in its hostile bid, only slightly lower than the success rate for all hostile bids (63%).

IER findings – hostile takeovers



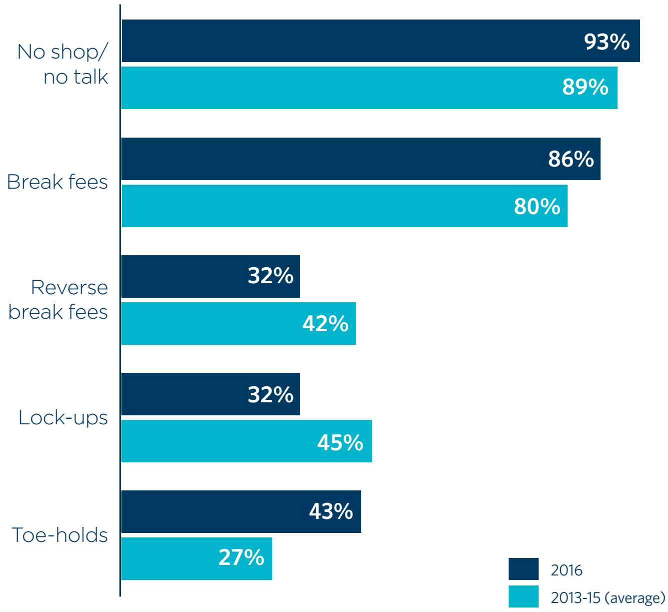
DEAL PROTECTION

FORMS OF DEAL PROTECTION

In FY16, many bidders utilised the broad range of deal protection at their disposal, continuing the trend from previous years.

The use of reverse break fees and lockups was lower than in previous years but more bidders commenced with a toe-hold stake.

Proportion of negotiated deals with protection

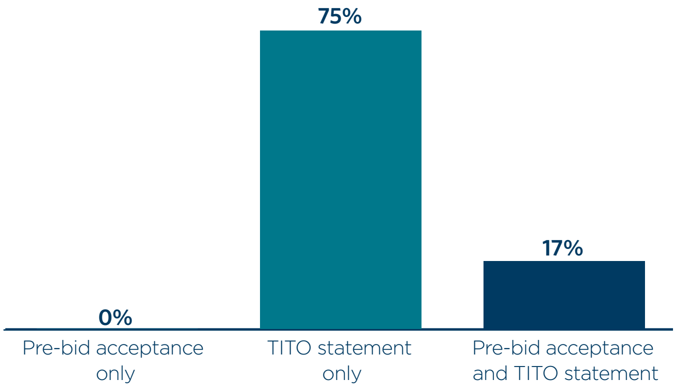


LOCK-UP STRUCTURES

In FY15, we reported that truth in takeover statements were fast becoming the dominant form of lock-up. This preference continued throughout FY16, with 11 of the 12 lock-ups taking the form of a truth in takeovers statement or a combination of a truth in takeovers statement and a pre-bid acceptance agreement.

Only 1 deal was subject to a voting agreement this year, being Anchorage Childcare's bid to acquire Affinity Education by scheme of arrangement (which was ultimately successful).

Lock-up structures – prevalence of pre-bid acceptance or TITO statement



DEAL PROTECTION

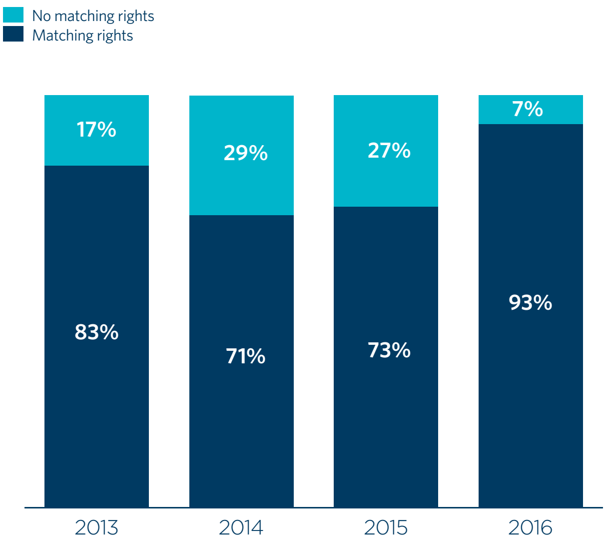
MATCHING RIGHTS

93% of negotiated deals included matching rights. 76% of matching rights required a bidder to match a superior proposal, rather than to beat it, in order to remain the preferred bidder.

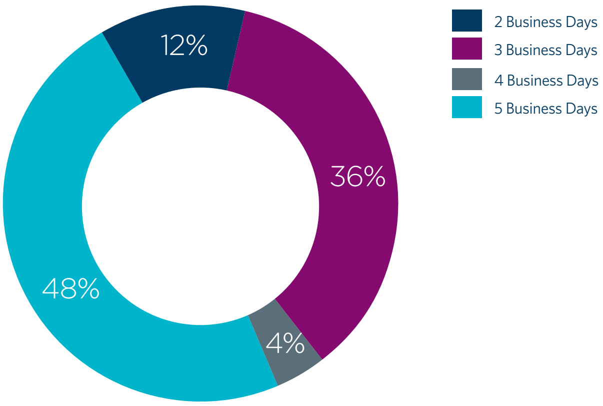
The longest period of time that a bidder had to match a superior proposal was 5 business days, consistent with the Panel's decision in *Ross Human Directions Ltd* [2010] ATP 8.

All of the negotiated transactions included notification rights in FY16, which is consistent with FY15 (100%) and FY14 (98%). The vast majority of these notification rights were not subject to a fiduciary out.

Proportion of deals with exclusivity provisions that also included matching rights



Matching period



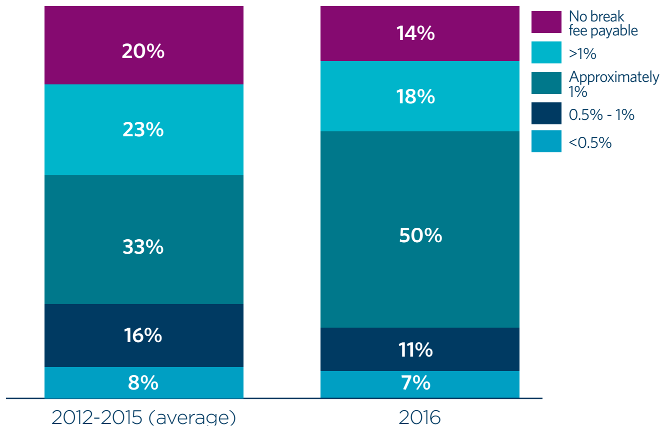
DEAL PROTECTION

BREAK FEES

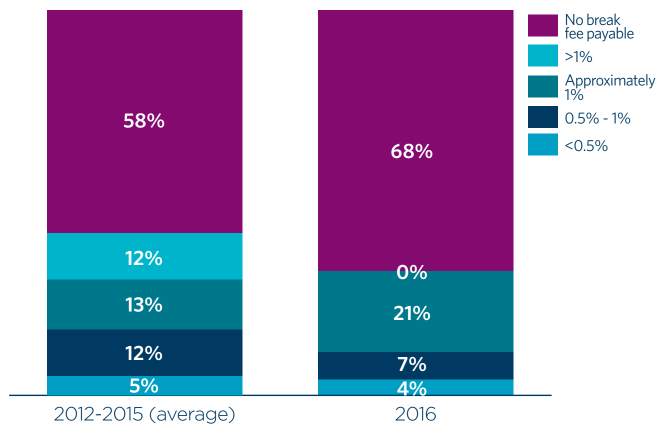
FY16 saw an overall increase in the use of break fees compared to previous years (86% of negotiated transactions), with a break fee of approximately 1% the most common.

This trend was also true for reverse break fees, with a reverse break fee of approximately 1% featuring in 21% of all negotiated transactions.

Break fees



Reverse break fees



BEYOND BORDERS: THE FUTURE OF DEAL MAKING

OVERVIEW

Herbert Smith Freehills, in association with FT Remark (the research division of the FT) recently canvassed the opinions of 700 senior executives at major businesses around the globe on their experiences of cross-border M&A and their views on the outlook for M&A activity over the next three years for the purposes of producing our first edition of Beyond Borders – The Future of Dealmaking report published in April 2016.

The original survey was conducted at the end of 2015 but, in order to capture any change in sentiment due to the market downturn in early 2016, the report also includes a second study of a significant cross section of the same respondents, providing a comprehensive review of the current M&A landscape.

KEY FINDINGS

After a record breaking year for M&A globally last year, the start of calendar 2016 has been more uncertain with the slowdown in the Chinese economy and volatile stock markets contributing to turbulence in the global economy. Although the uncertain macroeconomic environment may have tempered appetites in the very short term, our surveys reveal that attitudes have not changed fundamentally and that the medium-term outlook for M&A globally remains positive.

59% percent of all respondents in our updated 2016 survey said that recent volatility would have no impact on M&A over the next two to three years – indeed, 15% said that it would increase their appetite for deals.

The surveys also identified that globally, geographical expansion is driving deals (although companies are generally looking to do M&A closer to home) and developed markets as well as China and India are key target territories.

AUSTRALIA

This positive M&A sentiment was also reflected in the surveys of Australian-based respondents, which established that:

- 75% of Australian-based respondents are planning to make an acquisition over the next three years, and 57% say they are likely to make 2 or more acquisitions.
- Half of respondents say this represents more deals than in the previous 3 years.
- The majority of respondents (67%) say that it will not likely be a major deal (being those deals with an increase of at least 5% in overall revenue).
- All respondents say at least one acquisition will be a cross-border deal, and 50% say that they are likely to conduct at least 2 or more cross-border deals.
- Australasia is the top target destination for 27% of Australian-based investors, followed by 23% saying their strategy is focused on acquisitions in Southeast Asia.
- The use of capital for investment is a priority for the majority of dealmakers in Australia (55%).
- Increasing market share is the top strategic driver for Australian dealmakers (30%).

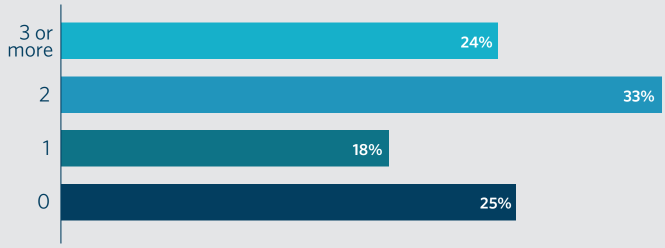
OUTLOOK

While our surveys reveal that there are variations across regions and sectors, the general perception is that the medium-term outlook for the market is still healthy. The fundamentals of M&A are still very much in place – the availability of debt to fund deals, supportive stakeholders and an appetite to grow through acquisition – and the prospects for a robust M&A market over the next three years are more than encouraging.

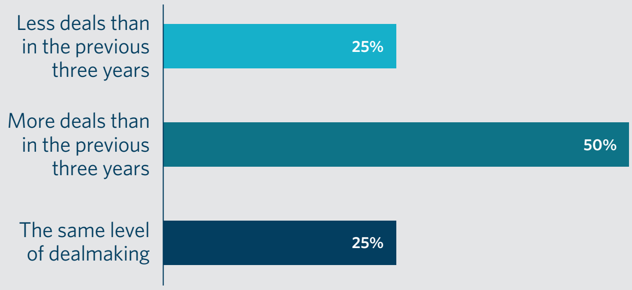
For more information, please review our Beyond Borders – The Future of Deal Making report, which is available on our website or can be provided upon request.

SURVEY RESULTS OF AUSTRALIAN BASED RESPONDENTS

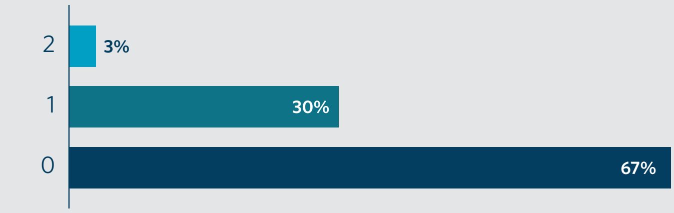
HOW MANY ACQUISITIONS IS YOUR FIRM LIKELY TO MAKE OVER THE NEXT THREE YEARS?



COMPARED TO THE PREVIOUS THREE YEARS, IS THIS...

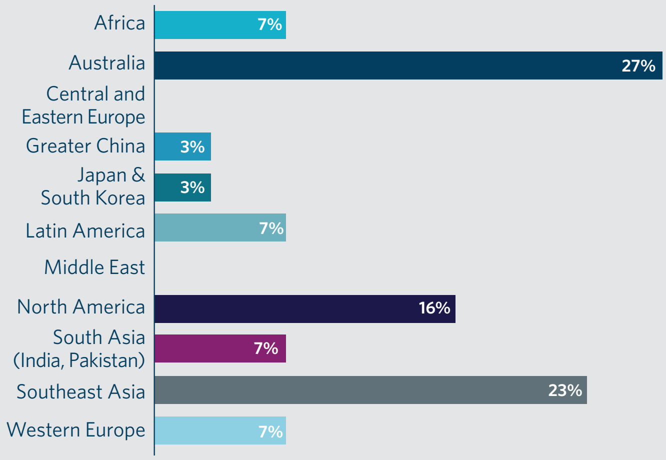


HOW MANY OF YOUR ACQUISITIONS ARE LIKELY TO BE MAJOR DEALS?

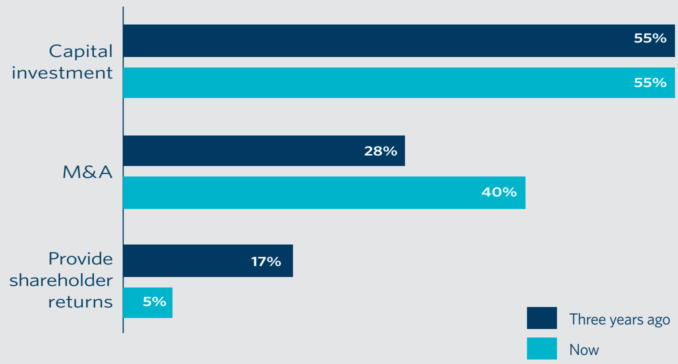


HOW MANY OF YOUR ACQUISITIONS ARE LIKELY TO BE CROSS-BORDER?

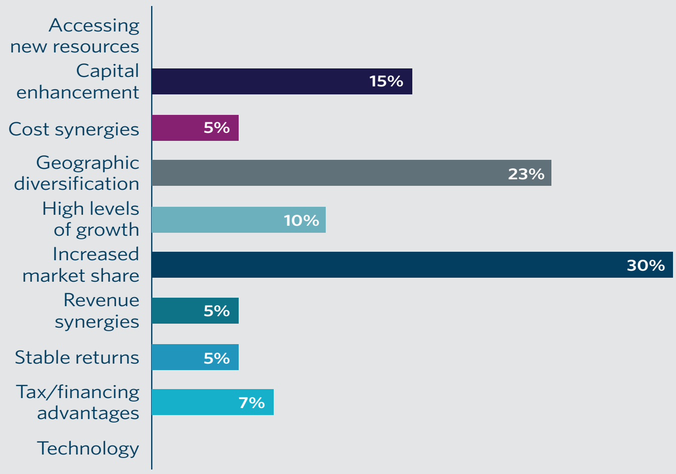
WHICH REGIONS ARE YOUR ACQUISITION STRATEGY LIKELY TO BE FOCUSED ON?



HOW DO YOU PRIORITISE THE USE OF CAPITAL, AND HOW DOES THAT COMPARE TO 3 YEARS AGO?



WHAT WERE THE STRATEGIC DRIVERS OF THIS PARTICULAR DEAL?



TAX CONSIDERATIONS

For the first time in our Report, we are pleased to include some tax analysis – as kindly supplied by our colleagues at Greenwoods & Herbert Smith Freehills.

SCRIP FOR SCRIP ROLL-OVER

38% of deals involved a scrip component, which raised the possibility of a scrip for scrip roll-over under the income tax legislation (subject to reaching the 80% acquisition threshold for the roll-over to apply).

Unless the transaction involves an interim or special distribution (see below), the market standard is clearly not to seek a Class Ruling from the Australian Taxation Office (ATO) confirming the roll-over - only one such deal thought a Class Ruling was necessary to confirm the scrip for scrip treatment for shareholders.

INTERIM DISTRIBUTIONS

22% of deals involved payment of an interim or special dividend. Certain integrity rules mean it is generally desirable to seek a Class Ruling from the ATO confirming:

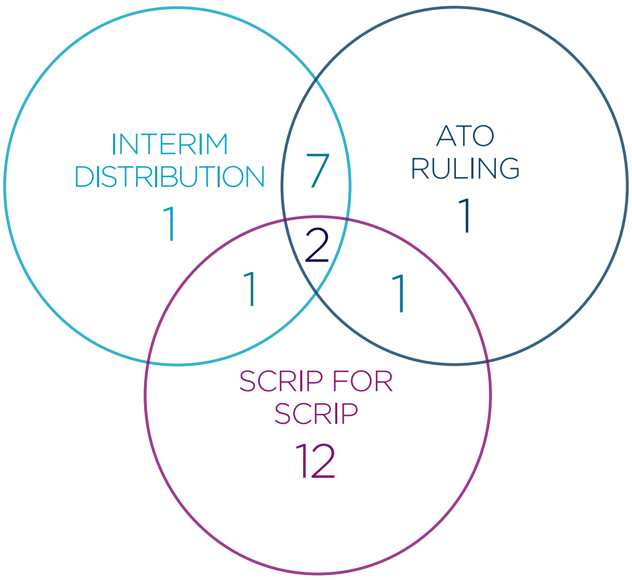
- Target shareholders will be entitled to franking credits on any franked dividends; and
- The dividend(s) will not impact any capital loss otherwise available (whilst interim dividends cannot increase any capital gain on disposal of the target shares they can reduce a capital loss in some cases).

As a result, 82% of the deals involving interim/special dividends flagged receipt of a Class Ruling from the ATO or obtained one subsequently.

The Unity Mining takeover was interesting as it involved a small pre-takeover return of capital as a sweetener to target shareholders. A capital return was also used in the Octagonal Resources takeover as consideration for the cancellation of the target shares. In each case a Class Ruing was sought to confirm the return of capital was not a deemed dividend and in each case the ATO formed a favourable view due to the absence of available profits.

Also of interest was the Cimic Group bid for Sedgman Mining. It went to the Takeovers Panel due to, amongst other things, an adjustment clause that raised the possibility of reducing the bid price for the face value of interim dividends and also the value of associated franking credits. Sedgman Mining challenged the adjustment clause given the uncertainty about how such an adjustment would work (ie how would the franking credits be valued?). Cimic Group subsequently revised its bidder's statement to advise the franking credits would be valued at nil and in light of this the Takeovers Panel did not find unacceptable circumstances (but did sound a word of warning for those that might try to value the credits).

Tax features of deals (by number)



LIST OF DEALS ANNOUNCED

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Aditya Birla Minerals Ltd (ABY)	Metals and Mining (copper)	Metals X Ltd (MLX)	Australia (WA)	$86m	Takeover	Scrip
Affinity Education Group Ltd (AFJ)	Consumer Discretionary	G8 Education Ltd (GEM)	Australia (QLD)	$162m	Takeover	Combination
Affinity Education Group Ltd (AFJ)	Consumer Discretionary	Anchorage Childcare Pty Ltd	Australia (NSW)	$213m	Scheme	Cash
American Patriot Oil & Gas Ltd (AOW)	Energy (oil and gas)	Running Foxes Petroleum Inc	North America	$20m	Takeover	Cash
Armour Energy Ltd (AJQ)	Energy (oil and gas)	Westside Corporation Pty Ltd	Asia	$37m	Takeover	Cash
Armour Energy Ltd (AJQ)	Energy (oil and gas)	AEGP Australia Pty Ltd	North America	$76m	Takeover	Cash
Asciano Ltd (AIO)	Industrials	Brookfield Infrastructure Partners LP	North America	$8,925m	Scheme	Combination
Asciano Ltd (AIO)	Industrials	Qube Holdings Ltd (QUB)	Australia (NSW)	$8,944m	Takeover	Combination
Asciano Ltd (AIO)	Industrials	Rail Consortium	North America/ Australia (NSW)	$8,925m	Scheme	Cash
ATC Alloys Ltd (ATA)	Metals and Mining (tungsten)	Almonty Industries Inc	North America	$4m	Takeover	Scrip
Atherton Resources Ltd (ATE)	Metals and Mining (gold)	Auctus Chillagoe Pty Ltd	North America	$56m	Takeover	Cash
Atlantic Ltd (ATI)	Metals and Mining (vanadium)	Droxford International Ltd	Asia	$0.5m	Scheme	Cash
Ausenco Ltd (AAX)	Industrials	Resource Capital Fund VI LP	North America	$75m	Scheme	Cash
Broadspectrum Ltd (BRS)	Industrials	Ferrovial Services Australia Pty Ltd	Europe	$692m	Takeover	Cash
Cardno Ltd (CDD)	Industrials	Crescent Capital Investments Pty Ltd	Australia (NSW)	$522m	Takeover	Cash
Coffey International Ltd (COF)	Industrials	Tetra Tech Inc	North America	$109m	Takeover	Cash
Colorpak Ltd (CKL)	Materials	Graphic Packaging International Inc	North America	$60m	Scheme	Cash
Devine Ltd (DVN)	Real Estate	CIMIC Residential Investments Pty Ltd	Australia (NSW)	$119m	Takeover	Cash
Devine Ltd (DVN)	Real Estate	Forum Partners	Europe	$143m	Scheme	Cash

LIST OF DEALS ANNOUNCED

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Diploma Group Ltd (DGX)	Industrials	Diploma Investments Pty Ltd	Australia (WA)	$7m	Scheme	Cash
Diversa Ltd (DVA)	Diversified Financials	OneVue Holdings Ltd (OVH)	Australia (NSW)	$49m	Scheme	Combination
Drillsearch Energy Ltd (DLS)	Energy (oil and gas)	Beach Petroleum Ltd (BPT)	Australia (SA)	$384m	Scheme	Scrip
Energy Developments Ltd (ENE)	Utilities	DUET Group (DUE)	Australia (NSW)	$1,363m	Scheme	Cash
Ethane Pipeline Income Fund (EPX)	Utilities	Australian Pipeline Ltd	Australia (NSW)	$130m	Takeover	Cash
Flat Glass Industries Ltd (FGI)	Industrials	MHG Flat Glass Holdings Pty Ltd	Australia (VIC)	$8m	Takeover	Cash
Flinders Mines Ltd (FMS)	Metals and Mining (iron ore)	TIO (NZ) Ltd	New Zealand	$38m	Takeover	Cash
Freshtel Holdings Ltd (FRE)	Telecommunications	Dominet Digital Corporation Pty Ltd	Australia (VIC)	$1m	Takeover	Cash
General Mining Corporation Ltd (GMM)	Metals and Mining (lithium)	Galaxy Resources Ltd (GXY)	Australia (WA)	$203m	Takeover	Scrip
Golden Cross Resources Ltd (GCR)	Metals and Mining (gold)	HQ Mining Resources Holding Pty Ltd	Australia (VIC)	$7m	Takeover	Cash
GPT Metro Office Fund (GMF)	Diversified Financials	Growthpoint Properties Australia (GOZ)	Australia (VIC)	$296m	Takeover	Combination
GPT Metro Office Fund (GMF)	Diversified Financials	Centuria Metropolitan REIT (CMA)	Australia (NSW)	$316m	Takeover	Combination
Gryphon Minerals Ltd (GRY)	Metals and Mining (gold)	Teranga Gold Corporation (TGZ)	North America	$83m	Scheme	Scrip
Investa Office Fund (IOF)	Diversified Financials	DEXUS Property Group (DXS)	Australia (NSW)	$2,496m	Scheme	Combination
Iproperty Group Ltd (IPP)	Information Technology	Realestate.com.au Pty Ltd	Australia (VIC)	$751m	Scheme	Combination
M2 Group Ltd (MTU)	Telecommunications	Vocus Communications Ltd (VOC)	Australia (NSW)	$1,934m	Scheme	Scrip
Mareterram Ltd (MTM)	Industrials	Sea Harvest Holdings Pty Ltd	Africa	$47m	Takeover	Cash
Octagonal Resources Ltd (ORS)	Metals and Mining (Gold)	Abbotsleigh Proprietary Ltd	Australia (VIC)	$5.2m	Scheme	Combination
Pacific Brands Ltd (PBG)	Consumer Discretionary	HanesBrands Inc	North America	$1,055m	Scheme	Cash

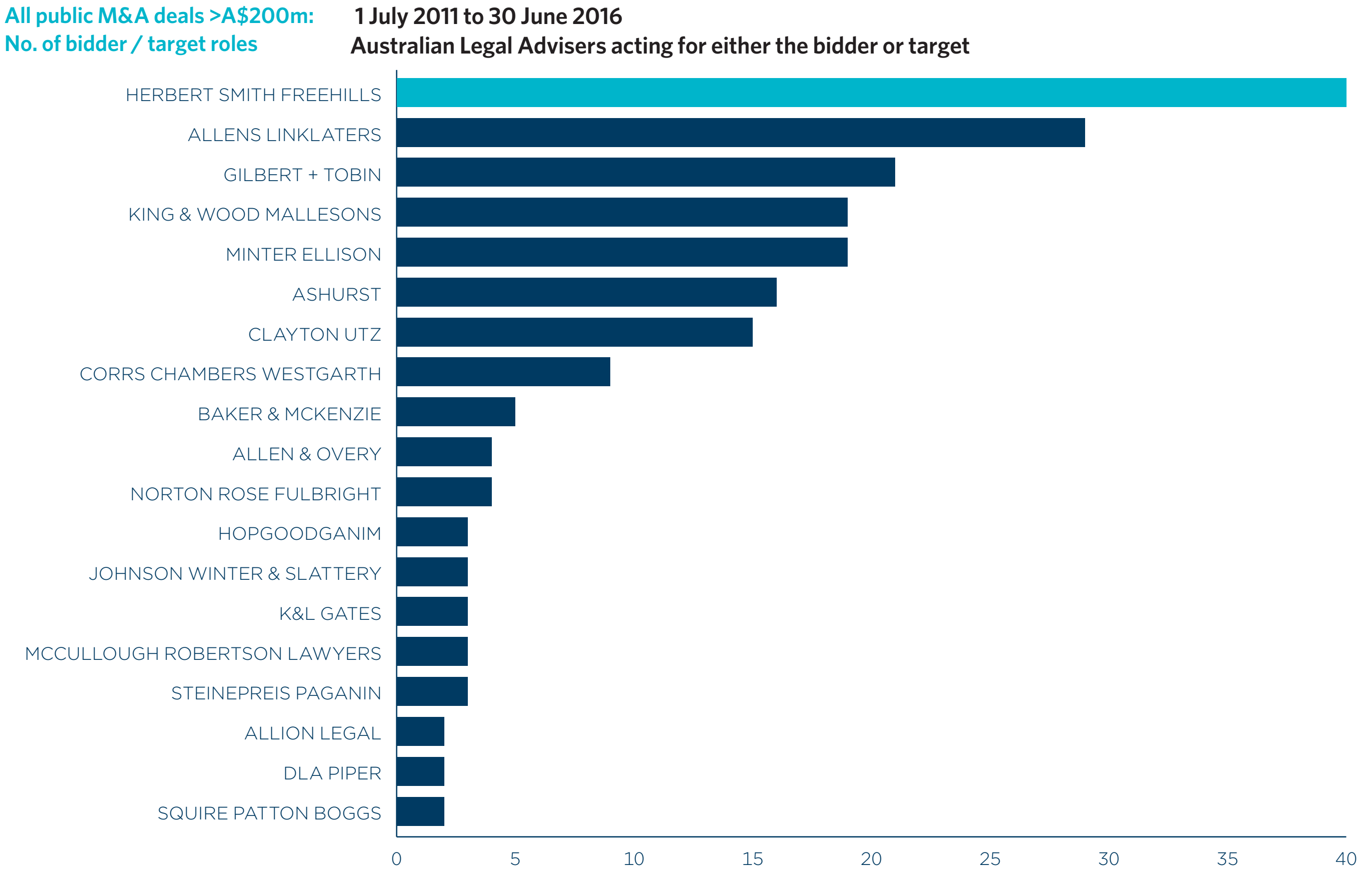
LIST OF DEALS ANNOUNCED

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Patties Foods Ltd (PFL)	Consumer Staples	Australasian Foods BidCo Pty Ltd	Australia (NSW)	$230m	Scheme	Combination
Phoenix Gold Ltd (PXG)	Metals and Mining (gold)	Evolution Mining Ltd (EVN)	Australia (NSW)	$56m	Takeover	Combination
Redcliffe Resources Ltd (RCF)	Metals and Mining (gold)	Northern Manganese Ltd (NTM)	Australia (WA)	$1m	Scheme	Scrip
Richfield International Ltd (RIS)	Industrials	Mercantile OFM Pty Ltd	Australia (NSW)	$13m	Takeover	Cash
Sedgman Ltd (SDM)	Industrials	CIMIC Group Investments Pty Ltd	Australia (NSW)	$243m	Takeover	Cash
The PAS Group Ltd (PGR)	Consumer Discretionary	Australia Brands Investment LLC	North America	$86m	Takeover	Cash
Unity Mining Ltd (UML)	Metals and Mining (gold)	Diversified Minerals Pty Ltd	Australia (NSW)	$33m	Scheme	Cash
UXC Ltd (UXC)	Information Technology	CSC Computer Sciences Australia Holdings Pty Ltd	North America	$429m	Scheme	Cash
Veda Group Ltd (VED)	Industrials	Equifax Inc	North America	$2,277m	Scheme	Cash
Vision Eye Institute Ltd (VEI)	Health Care	Pulse Health Ltd (PHG)	Australia (NSW)	$158m	Takeover	Scrip
Vision Eye Institute Ltd (VEI)	Health Care	Jangho Health Care Australia Pty Ltd	Asia	$198m	Takeover	Cash
World Titanium Resources Ltd (WTR)	Metals and Mining (mineral sands)	African Minerals Exploration & Development Fund II SICAR SCA	Europe	$23m	Takeover	Cash

ABOUT HERBERT SMITH FREEHILLS

CONSISTENTLY RECOGNISED AS A MARKET LEADER IN M&A

Herbert Smith Freehills has cemented its global reputation as the firm of choice for the most complex and difficult deals, with clients being supported by leading experts across Asia, Australasia, Europe, the Middle East and the UK. The firm offers effective commercial outcomes for clients, as well as innovation, technical excellence and clear advice. Acting on some of the most complex and strategic corporate transactions in Australia and around the world means our understanding of the intricacies of M&A in Australia is unparalleled.



Compiled by Herbert Smith Freehills based on publicly available information.

Some of the Herbert Smith Freehills team's recent transactions include:

- advising Brookfield Infrastructure Partners LP on its $8.9 billion joint bid with Qube Holdings Ltd to acquire Asciano Ltd by way of scheme of arrangement
- advising Investa Office Fund on its response to DEXUS Property Group's $2.5 billion scheme proposal
- advising Growthpoint Properties Australia on its $295 million proposal to acquire GPT Metro Office Fund via a trust scheme and subsequently on its successful $331 million off-market takeover bid following a bidding war with Centuria Metropolitan REIT
- advising infrastructure, defence and property services provider Broadspectrum Ltd on its takeover by Ferrovial Services Australia Pty Ltd
- advising Veda Group Ltd on its $2.3 billion acquisition by Equifax Australia Inc by way of scheme of arrangement
- advising Pacific Brands Ltd on its $1.1 billion acquisition by US based and global apparel manufacturer and marketer HanesBrands by way of scheme of arrangement
- advising iProperty Group Ltd on its successful acquisition by Realestate.com.au for $751 million by way of scheme of arrangement

METHODOLOGY

This Report is a summary of a review of 50 transactions which were announced during FY16 (a full listing of deals reviewed can be found on pages 35 - 37) based on public information available up to 12 August 2016. We have also updated our data on the 55 deals which were announced during FY15 to include public information that has become available since 30 June 2015, after publication of our 2015 Public M&A Report.

The transactions reviewed were mergers and acquisitions of Australian companies listed on the ASX, which were conducted by takeover or scheme of arrangement pursuant to Australian corporate law, including all announced transactions or proposals irrespective of the size or whether they ultimately constituted formal, binding offers.

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 the CHESS depository interests in a foreign company or transactions governed by/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 it as "hostile" or "unsolicited." "Friendly" deals were those recommended by the target board on the date of announcement.

The state-by-state division of targets and acquirers is based on the location of the relevant company'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.

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Thank you to Simon Reed for his substantial work in establishing this publication and producing editions one to six.

If you have any questions relating to any other aspect of takeovers and schemes of arrangement, please contact one of the partners in the Corporate group at Herbert Smith Freehills. Details of the partners are on our website at **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. Therefore 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 Jasper Johnson and Salvador Jose for their significant contribution towards collection and analysis of the data and preparation of the Report.

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