HERBERT SMITH FREEHILLS

AUSTRALIAN PUBLIC M&A REPORT 2024

SIXTEENTH EDITION

Contents

FY24 key highlights

TOTAL DEAL VALUE
$49.2 BILLION FY24
FY19-FY23 AVERAGE: $60.6 BILLION

ANNOUNCED DEALS
70 FY24
FY19-FY23 AVERAGE: 58

OVERALL SUCCESS RATE
91% FY24
FY19-FY23 AVERAGE: 75%

MEGA DEALS
14 FY24
FY19-FY23 AVERAGE: 8

DEALS INVOLVING A PRIVATE EQUITY BIDDER
20% FY24
FY19-FY23 AVERAGE: 20%

Top 10 largest deals

Target	Bidder	Deal Value[1]	Sector	Herbert Smith Freehills Advised On
Altium Limited	Renesas Electronics Corporation	$9.1 billion	Software and Services	—
Boral Limited	Seven Group Holdings	$6.7 billion	Materials	✓
CSR Limited	Compagnie de Saint-Gobain	$4.3 billion	Materials	✓
Alumina Limited	Alcoa Corporation	$3.3 billion	Metals & Mining	✓
PSC Insurance Group Limited	The Ardonagh Group	$2.3 billion	Insurance	✓
Adbri Limited	CRH plc	$2.1 billion	Materials	✓
InvoCare Limited	TPG Capital	$1.8 billion	Consumer Discretionary	—
Azure Minerals Limited	SQM and Hancock Prospecting	$1.7 billion	Metals & Mining	✓
United Malt Group Limited	Malteries Soufflet SAS	$1.5 billion	Food, Beverage and Tobacco	—
Costa Group Holdings Limited	Paine Schwartz Partners, British Columbia Investment and Driscoll's	$1.5 billion	Food, Beverage and Tobacco	✓

FOREIGN BIDDERS BY VALUE
77% FY24
FY19-FY23 AVERAGE: 61%

UNSOLICITED TAKEOVERS
60% FY24
FY19-FY23 AVERAGE: 60%

MEDIAN TARGET VALUE
$189 MILLION FY24
FY19-FY23 AVERAGE: $139.5 MILLION

1 This involves the top 10 largest deals for Australian targets listed on the ASX.

Top 10 observations

1 **More mega deals (transactions above $1 billion) than the previous five years,** with 14 relative to the five year average of 8

2 **European and Japanese bidders had a strong presence in public M&A mega deals,** with foreign bidders largely sector agnostic this year relative to previous years

3 **Materials and software sectors shone, particularly in the mega deal segment,** together representing 5 of the top 13 deals, while energy and resources produced another solid result. Activity for gold, copper and nickel companies was strong, comprising 38% of deals within the energy and resources sector

4 **Over 65% of deals had a pre-bid stake or shareholder support on announcement** and over 90% of those deals that had completed at the date of this report have been successful, but pre-bid options were surprisingly sparse

5 **Reverse takeovers entered the medium and large-scale public M&A landscape** with well-planned strategies to navigate regulatory settings

6 **The quantum of reverse break fees built momentum on the back of the Newcrest-Newmont precedent**, being right sized to the risk profile, rather than reciprocating the size of target break fees

7 **The creativity and flexibility of deal structures was in full force**, as bidders became increasingly confident in extracting specific target business lines or assets to be acquired through public deals

8 **Large, longstanding shareholders took action this year to close out minorities,** representing 14 deals relative to the FY20-FY23 average of 4, most of which were structured by way of takeover

9 **An interesting development in stub equity potentially provides an alternate new avenue** to manage small shareholders rolling into the post-acquisition vehicle

10 **Whilst EBITDA and net assets MACs remained firmly in favour, bespoke qualitative MACs featured prominently**, with MACs relating to the class status of vessels, rights to exploit mining tenements, licences to operate and franchise fees making appearances

Top 5 from the charts

1

Schemes continued their rise in popularity, reaching 71% of deals and 93% of mega deals, with a spike in the $20-$100 million and $100-$500 million ranges

See charts 3 and 5 on pages 16 and 17

2

Private equity bids were in line with the five year average by number, but the average value was down to approximately $482 million relative to $1.1 billion for the five year average

See chart 8 on page 17

3

A premium of >50% was most frequent again, but the distribution of premia was relatively even this year compared to previous years

See chart 24 on page 21

4

Takeovers took considerably longer this year to close or reach compulsory acquisition (mainly due to drawn-out, unsolicited processes) while schemes were steady against previous years

See charts 33 and 34 on page 23

5

FIRB approval was a condition to completion in 41% of deals and international regulatory approvals in 26% of deals, each the highest percentage in the last five years

See chart 31 on page 23

Activity overview

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

This edition examines the 70 control transactions involving Australian targets listed on the ASX that were conducted by way of takeover bid or scheme of arrangement in FY24

FY24 saw a total of 70 deals announced, a 25% increase from FY23 and 17% higher than the five year average of 60 deals. The total deal value for FY24 was relatively modest at $49.2 billion, compared to $75.6 billion in FY23 and $123.7 billion in FY22, but was still broadly consistent with a five year average of $60.6 billion.

There were more mega deals announced this year than for any of the past five years, with 14 deals over $1 billion (almost twice the five year average of 8). There were also a sizeable number of mid-market deals announced, with 16 schemes and 9 takeovers in the $100 – $500 million range; broadly consistent with the five year average for mid-market schemes at 15 per year, as well as the average for takeovers at 8 per year. Activity is robust, and the lower deal value only reflects the absence of one or two deals valued at $10 billion plus (such as Newcrest's $25 billion acquisition of Newmont in FY23), which featured more prominently in the preceding three years.

Schemes remained the dominant deal structure, comprising 71% of all deals and 93% of mega deals. This trend is consistent with prior years. There were 20 takeovers announced in FY24, with 67% of those proceeding to compulsory acquisition and 92% of which resulted in a successful outcome.

The bidder landscape was dominated by foreign bidders, with only 2 of 14 mega deals involving an Australian bidder, and 4 of the top 5 largest deals involving foreign bidders. PE bidders were also active and were behind 20% of deals in FY24, which was in line with the five year average of 20%.

Success rates

The success rate of all deals was at a five year high, with 91% of deals achieving success, measured as a change in control, reaching a minimum acceptance condition, or if there was no minimum acceptance condition, a single acceptance.[1] Interestingly, 100% of unsolicited takeovers (i.e. not recommended by the target board at announcement) were successful, while 89% of friendly deals (being schemes and takeovers recommended by the target board at announcement) were successful.[2] The success of hostile takeovers is particularly striking compared to the 67% success rate in FY23, the 40% success rate in FY22, and the 38% success rate in FY21. The high proportion of success rates in FY24 is in part attributable to the rise in major shareholders successfully buying out minorities, as described further on page 10.

1 There was only 1 deal this year marked as successful despite not reaching the control threshold, which was Aspen Group's bid for Eureka Group where the bidder's interest in the target at the close of offer was 35.87%, with the bidder having waived the minimum acceptance condition.

2 These success rates are based on completed deals as at 30 June 2024. Please see our Methodology on page 26 for more information.

In FY24, there were five competitive bid situations. A feature common to the competing bids for both Namoi Cotton and OreCorp was that the target initially agreed a scheme implementation deed (SID) with a bidder, only for a rival bidder to subsequently launch a competing takeover offer. In both cases, the rivals forced the initial bidder to terminate the SID and launch a takeover bid at a price greater than that offered under the SID. The other notable competitive process saw multiple shareholders acquiring blocking stakes to stymie SQM's initial proposed scheme of arrangement with Azure Minerals. However, SQM subsequently announced a revised dual scheme / takeover bid as a joint bidder with Hancock Prospecting, one of the earlier intervening shareholders, which has since completed.

Looking forward

We are bullish on public M&A for the year ahead, expecting it to be driven by:

- Early US rate cuts bringing back North American bidders (who were more subdued this year, with 28% of deals by value relative to the 35% five year average); and
- Renewed appetite for take privates by funds eager to deploy capital.

In times of slower economic growth, corporates focus on portfolio balancing, making sure they are facing into core businesses that align best with strategy. Demergers and divestments tend to increase in these times. This will present a unique opportunity for private capital to pick up quality, established assets and grow their value away from public markets.

On the other side of the coin, with a muted IPO landscape, shareholders (particularly superannuation funds) are assessing bids and related loss of exposure closely. We expect shareholders to react carefully with a bias to backing companies to remain listed, such that dual scheme/takeover structures and pre-bid stakes will be critical to bidders' success.

All in all, conditions are ripe for more excitement in the year ahead.

European and Japanese bidders dominate mega deals

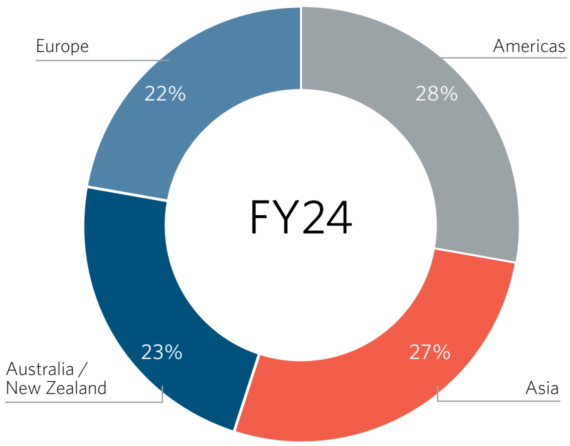
Foreign bidders represented 77% of deals by value, above the five year average of 61% and in line with FY23

While bidders from Australia and New Zealand represented the largest group of bidders as a percentage of total deals by number (46%), foreign bidders dominated the mega deals. Only 2 of 14 mega deals involved an Australian bidder, while four of the five largest deals (Altium / Renesas Electronic Corporation, Alumina / Alcoa, CSR / Compagnie de Saint-Gobain and PSC Insurance / Ardonagh) involved a foreign bidder

Trends in this year's data on bidder geography included:

- **European bidders dominate**: The number of European bidders was at a five year high, comprising 13% of deals announced in FY24. More strikingly, European bidders represented 22% of deals by value (significantly above the 1% in FY23 and double the 11% average for the preceding four years). Of particular note this year was the CSR / Compagnie de Saint-Gobain scheme which involved a French bidder, valued at around $4.3 billion. Herbert Smith Freehills acted for CSR.
- **Increasing Asian involvement**: The number of deals involving an Asian bidder were relatively subdued in the last three years, representing 2% in FY21, 3% in FY22 and 4% in FY23 of deals by value. This figure jumped to 17% in FY24, indicating that investment may be returning to pre-COVID levels, albeit not driven by Chinese bidders this time. As we predicted last year, FY24 saw Japanese bidders emerge as a strong force. The largest deal in FY24, Altium / Renesas Electronic Corporation, was an all-cash scheme valued at approximately $9 billion involving a Japanese company. The $1.2 billion acquisition of Link Administration Holdings by Mitsubishi UFJ Trust & Banking Corporation was another example. We expect more activity from the Japanese this year given the evolving economic factors in that market.
- **Australian bidders subdued**: Activity among Australian bidders was at a five year low as a percentage of total deal count (46%, compared to 64% in FY23), but comparable as a percentage of value (23%, compared to 26% in FY23). We think this reflects a few themes at play this year:
  1. Interest rate uncertainty making valuations harder now and promising better conditions in the future.
  2. Economic uncertainty creating a sense of conservatism. Bidders focused on their own businesses and played wait-and-see on acquisitions.
  3. Commodity price weakness softening the market for resources deals.
- **North American mega deals softer**: North American bidders took a breath on their mega deal frenzy they had instigated over the few years (think Square / Afterpay, Newmont / Newcrest and Alkem / Livent), representing 19% by volume (in line with the preceding four years), but only 21% by value (relative to 70% in FY23 and 54% in FY22).

Origin of bidders as a percentage of value



See page 19 for a five year comparison of deals by number and value.

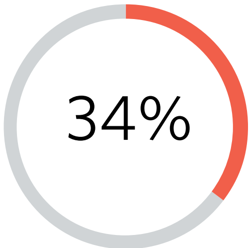
Materials and software fire, energy and resources steady

Energy and resources deals remained strong, contributing the highest proportion of deals by number, while acquisitions in the materials and software sectors surged

At $12.1 billion, the value of energy and resources deals in FY24 was significantly down from last year's deal value of $64 billion and from a five year average deal value of $18 billion. However, the FY23 data and the five year average was skewed by mega deals such as Newcrest / Newmont (valued at $26.2 billion) and Brookfield / EIG / Origin (initially valued at $15.3 billion). Regardless, energy and resources deals continued to make up a large proportion by number (34% of total deals) and by value (25% of total deals). Gold, copper and nickel companies remained in high demand, with 38% of deals within the energy and resources sector attributable to targets with exposure to one or more of those commodities. Energy and resources deals also continued to feature at the top end of the market, with 21% of mega deals coming from the sector, including Alcoa's acquisition of Alumina Ltd as the fifth-largest transaction in FY24.

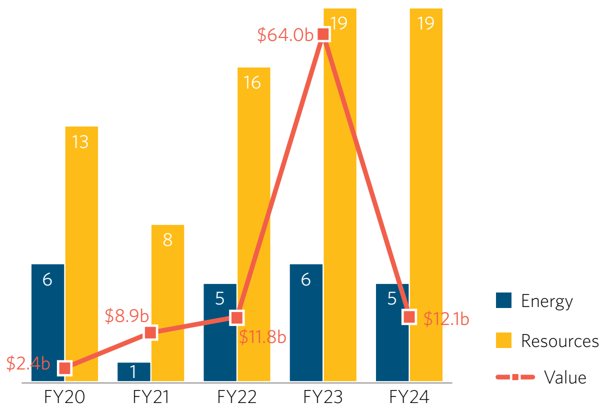
In a departure from previous years, the sector with the highest proportion of mega deals was materials. Despite only five deals in the materials space being announced in FY24, the sector still contributed approximately 27% to total deal value, and 60% of deals in the sector were greater than $1 billion in value. Notable deals in this sector included Seven Group's unsolicited buy-out of the minority shareholders in Boral, CRH's acquisition of Adbri by scheme of arrangement under a joint acquisition agreement with substantial shareholder Barro Group and CSR's scheme of arrangement with Compagnie de Saint-Gobain.

Software and services also had a surging year, contributing 23% to total deals by value and 14% by number. The financial sector also saw solid levels of activity, with prominent deals including PSC Insurance Group's scheme with The Ardonagh Group and Salter Brother's acquisition of Prospa, both of which Herbert Smith Freehills advised on.

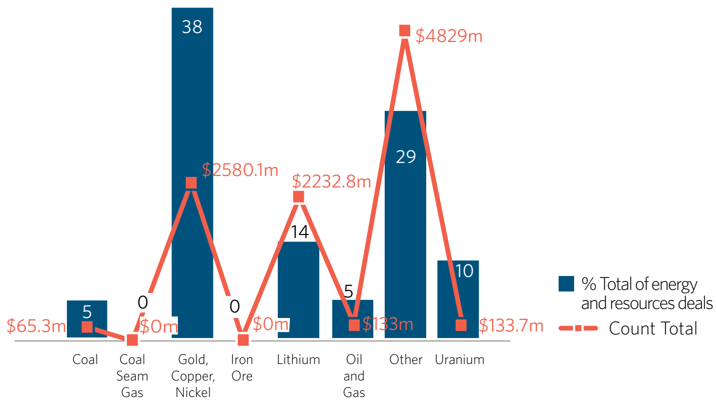


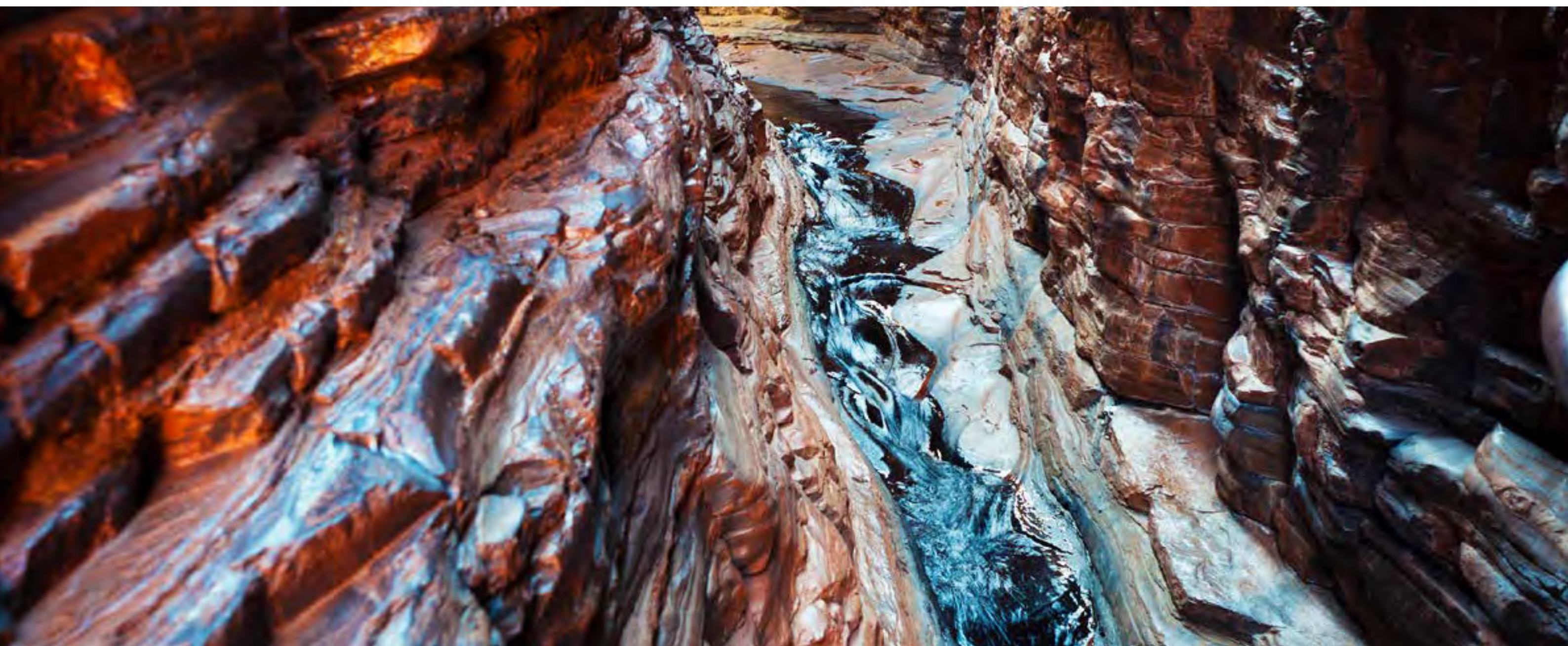
Energy and resources sector make up largest proportion of deals by number

Value of energy and resources deals



Proportion of energy and resources deals (by commodity)





Reverse takeovers

Some innovative reverse takeovers emerged whilst Australian IPO activity was subdued in FY24. The use of reverse takeovers for medium and large-scale M&A marks a shift in market practice compared to previous years, where such interest had declined given regulatory settings

The two prominent examples are described below, both of which Herbert Smith Freehills advised on.

Sigma / Chemist Warehouse

The most significant announced reverse takeover of FY24 (and perhaps ever) was the Sigma / Chemist Warehouse deal, by which Sigma intends to acquire Chemist Warehouse (a public unlisted company) for scrip and cash. This transaction is to take place by way of scheme of arrangement as unlisted Chemist Warehouse has over 50 shareholders, meaning the takeovers laws apply. Under the deal, Chemist Warehouse shareholders will own 85.75% of the merged entity post-transaction. The Chemist Warehouse founders, who will collectively hold 49% of the merged entity post-acquisition, have agreed to escrow arrangements by which shares will be released from escrow in two tranches aligned with the release of financial results for the merged group for FY25 and FY26.

By managing regulatory risks, the listed entity involved in the transaction has been able to continue trading since announcement of the transaction. This included significant market disclosures on announcement and implemented disclosure arrangements between Chemist Warehouse and Sigma (to ensure the market was fully informed at the time of announcement and continues to be fully informed between announcement and completion). The transaction is also subject to a number of conditions, including ACCC approval.

ParagonCare / CH2

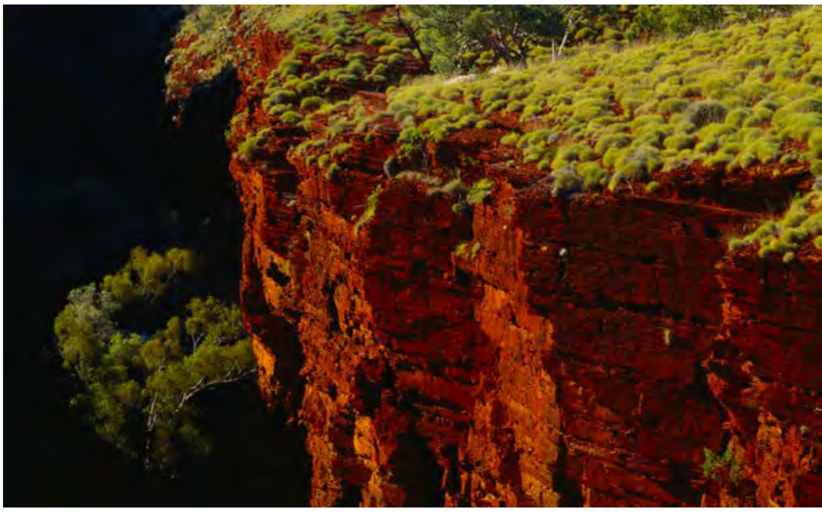
By contrast with the Sigma / Chemist Warehouse deal, ParagonCare acquired CH2 in a private treaty sale that completed on 3 June 2024. ParagonCare shares were issued to the sellers as consideration. Following the acquisition, CH2's shareholders now hold 57% of the merged group, with existing ParagonCare shareholders holding 43%. The shares received as scrip consideration will be subject to escrow in the 2 years following completion.

ParagonCare was not required to re-comply with admission requirements as the merger involved two similarly-sized businesses. However, ParagonCare shareholder approval, including an independent expert's report, was required under item 7 of section 611 of the *Corporations Act*.

While we do not expect to see reverse takeovers becoming an ubiquitous deal structure, in situations where a merger makes sense and the smaller business is ASX listed, the reverse takeover structure can be an attractive path to combining the two businesses while retaining the listing of the smaller entity

Creative break-up bids

In FY24, bidders became increasingly selective towards the target assets being acquired and adopted a variety of structures to suit their selections. There seems to be no singular factor driving this trend, but the market's increasing comfort with complex acquisition structures involving demergers and spin-offs, as well as the high interest rate environment where bidders could not afford to take unaligned assets, were contributing factors



- **Perpetual to become standalone asset management business**: Following a strategic review, Perpetual announced it had entered into a SID with KKR where KKR will acquire 100% of Perpetual's wealth management and corporate trust businesses by way of schemes of arrangement for consideration of $2.175 billion. The transaction involves two schemes of arrangement under which Perpetual will continue as a standalone, global multi-boutique asset management business.
- **Ansarada's founder and CEO buys loss-making divisions**: In Datasite's scheme with Ansarada, the early-stage business divisions, being Ansarada's ESG, governance, risk and compliance, and boardroom products, were not assets which Datasite wished to acquire. The early-stage assets were carved out of the scheme and were sold to Ansarada's founder and CEO for cash consideration of $500,000. This facilitated Datasite's proposed acquisition of the remaining 'core' assets for an implied non-diluted equity value of approximately $233 million. The scheme and carve-out transaction were inter-conditional under the SID.
- **Brookfield / EIG proposal to break-up Origin**: Whilst Origin shareholders ultimately did not approve the 100% acquisition by Brookfield and EIG, the bid structure provided another example of a bidder consortium proposing to break up and share target assets. Using a more traditional approach, the bidder consortium proposed to acquire all the shares in Origin. The assets were to be separated post-acquisition, such that Brookfield would acquire the Origin energy markets business whilst EIG would acquire Origin's upstream gas interests, including its interest in Australia Pacific LNG.
- **BHP battles over Anglo American assets**: In May 2024, BHP proposed three successive all-share takeover non-binding offers for Anglo American, which were subject in each case to the pro-rata distribution by Anglo American of all of its shareholding in South African mines. The parties did not reach a binding deal, with the Anglo American and BHP boards split over the execution risk and value proposition which the South African subsidiaries presented to Anglo American shareholders. On 29 May 2024, BHP announced it would not make a firm offer for Anglo American in accordance with the UK Takeovers Code.

These examples show that deal structures can be flexibly applied to target specified business lines or assets. This may unlock a deal, and value to shareholders, that is otherwise unavailable because a whole of company transaction is not practical or desirable. However, the allocation of execution risk for the relevant business or assets, and the associated costs of doing so, will need to be negotiated on a case by case basis.

Deal structures can be flexibly applied to target specific assets, unlocking value otherwise unavailable in a whole of company transaction

Rise in minority buy-outs – the time is seemingly now

FY24 saw a dramatic increase in long-time major shareholders buying out minorities. Our data identified 14 such buy-outs, relative to 2 in FY23, 3 in FY22 and an average of 4 from FY20–FY23

This uptick was led by Seven Group's acquisition of the remaining shares in Boral and Kin Group's bid for the public shareholdings in Pact Group. Herbert Smith Freehills acted on both transactions

What drove the increase in minority buy-outs this year?

1. **Second opportunity to take private**: In some cases, it was private equity sponsors revisiting a take-private, such as APM Human Services and Costa Group.
2. **Unfinished business**: In other cases, it was finishing off unfinished business from an earlier attempt to acquire the target, as was the case in Dacian Gold, MC Mining and Thorn Group.
3. **Time to exercise the option**: In other cases again, the time was right to exercise the option, as was the case in Pact Group, Best & Less and Azure.

What was consistent across the buy-outs, however, was the preference for the use of a takeover bid as the means to acquire the minority. That is a logical choice, given a large shareholder may be willing to advance their stake even if they achieve less than 100% of the target, support of target directors is not required, and a takeover bid gives the controlling shareholder various levers to pull in enticing acceptances.

This was evidenced by the steps taken by Seven Group's successful bid for Boral. First, there were three tiers of consideration, 0.1116 Seven Group shares and $1.50 per share, increasing to $1.60 if Seven Group acquired 80% or more (or if the Boral board (excluding the Seven Group nominee directors) recommended the transaction) and $1.70 if Seven Group acquired 90.6% or more (in the latter case being able to move to compulsory acquisition). This was similar to the structure used in its 2021 previous tilt for Boral.

Seven Group reached 78.8% before declaring the offer unconditional at the highest consideration in the offer structure. Boral also agreed to pay a special dividend (which was deducted from the cash component of Seven Group's consideration), and Seven Group in turn announced an intention to pay a dividend after completion of the offer, so that accepting shareholders could receive the dividend on the Seven Group shares received as consideration. Boral also conducted an on-market buy-back at up to the implied offer price. With these developments, and following a revision down of the independent expert range, the bid was recommended and Seven Group quickly reached the level required for compulsory acquisition.

From a target's perspective, an offer from an existing major shareholder can be delicate to navigate, particularly in relation to the board's response to the offer. An independent board committee comprised of directors not nominated by the major shareholder will typically assess the offer, but even then it is challenging to determine the interests of shareholders as a whole (especially when control has already passed). In a number of these transactions, the target board did not recommend the initial offer, but did recommend the offer after the bidder increased the offer price and even where the offer price was deemed 'not fair, but reasonable' by the independent expert. This was the case in Boral and Best & Less, whilst the independent board committee in Pact Group recommended the offer price after it was increased but before the independent expert changed their opinion to 'not fair, but reasonable'.

In a further demonstration of the challenges that can arise in these minority buy-outs, statements made by the bidder in the Pact Group transaction were the subject of a Takeovers Panel challenge. The bidder stated that it intended to delist Pact Group if it ended the bid below 90%, which the applicants to the Panel said was misleading and coercive given that it was unlikely that the bidder could effect an imminent delisting of Pact Group. The Panel accepted undertakings from the bidder to provide further disclosure and offer certain Pact shareholders withdrawal rights.

TARGET	BIDDER	STARTING %	ENDING %	STRUCTURE	WAS IT INITIALLY RECOMMENDED BY THE TARGET BOARD?
FY24					
Dacian Gold Ltd	Genesis Minerals	80.08%	100%	Takeover	Yes
MC Mining Limited	Goldway Capital Investment	64.30%	N/A[1]	Takeover	No
Boral Limited	Seven Group Holdings	62.40%[2]	100%	Takeover	No
Advance ZincTek Limited	Ankla	51.36%	63.75%	Takeover	Yes
Pact Group Holdings Ltd	Kin Group	50.00%	88.04%	Takeover	No
Thorn Group Ltd	Somers	49.34%	100%	Scheme	Yes
Azure Minerals Limited	SQM and Hancock Prospecting	37.80%	100%	Scheme/Takeover	Yes
Sihayo Gold Ltd	Provident Group	40.41%	N/A[1]	Takeover	Yes
Yowie Group	Keybridge Capital	35.67%	N/A[1]	Takeover	No
Allegra Medical Technologies Limited	Allegra Innovations	43.69%	N/A[1]	Takeover	Yes
APM Human Services International Ltd	Madison Dearborn Partners	30.36%	N/A[1]	Scheme	Yes
Costa Group Holdings Limited	Paine Schwartz Partners, British Columbia Investment and Driscoll's	19.62%[3]	100%	Scheme	Yes
Best & Less Group Holdings Ltd	BBRC International	57.15%[4]	100%	Takeover	Yes
Adbri Ltd	CRH	42.70%[5]	100%	Scheme	Yes

1 As at 30 June 2024, these deals were still ongoing.

2 Seven held a further economic interest in 9.2% of Boral under a physically settled equity swap.

3 Whilst the consortium's aggregated interest in the target was <30%, the deal has been included because members of the consortium have been long term holders of the target and were involved in the IPO.

4 This interest includes the aggregated 16.45% interest held by the bidder group, 32.43% of shares owned by Allegro and 8.27% of shares owned by Bignor, who were each long term major shareholders in the target. The deal was announced in FY23, but completed in FY24.

5 This interest was acquired by CRH because it entered into a joint acquisition agreement with the major shareholder, Barro Group, after obtaining joint bid relief from ASIC. CRH held a further economic interest in 4.6% of Adbri under a cash settled total return swap.

Pre-bid stakes and other forms of shareholder support

Of the 70 deals announced in FY24:

- 48 deals (or 65% of all deals) involved some form of pre-bid stake or shareholder support on announcement;
- 29 deals involved the bidder having a direct shareholding in the target (41%);
- 3 deals involved a call option over target shares (4%); and
- 2 deals involved the bidder having economic exposure over target shares in the form of an equity swap (3%).

Of the 48 deals with some form of pre-bid stake or shareholder support, this comprised of 27 schemes, 18 takeovers and 3 dual scheme of arrangement and takeover bid structures.

In many cases, the acquisition of a pre-bid stake resulted in a successful outcome – of the 48 deals with shareholder support, 27 have successfully completed. Only 3 bids did not result in a successful transaction outcome, and in each of those cases, the bidder subsequently launched a revised proposal for the target. The remaining deals were ongoing as at 30 June.

In PSC Insurance's scheme with The Ardonagh Group, there are two classes of shareholders: founder / senior management shareholders, who will receive unlisted scrip consideration and cash; and other shareholders, who are to receive cash consideration. The pre-bid stake acquired by the bidder came in the form of a call option granted under co-operation deeds with the founding shareholders, which were exercisable on the announcement of a competing proposal at a price equivalent to the amount of the cash consideration offered under the scheme. This means Ardonagh could exercise the call options and vote against, or not accept, any subsequent competing proposal, whilst in the absence of a competing proposal, still allowing the shareholders granting the call options to vote on the Ardonagh proposal. A similar approach was adopted in Pacific Equity Partners' (PEP) acquisition of Healthia, with certain major shareholders granting options to PEP to acquire 19.9% of Healthia shares if a competing proposal was announced.

Other alternatives to a physical stake, or an option or other synthetic instrument, is for a major shareholder to enter into a voting agreement or provide a voting intention statement that it will vote in favour or accept the bidder's proposal. There were 23 deals (32%) in FY24 which included a voting agreement (3 deals, or 4% of total deals) or intention statement (20 deals, or 26% of total deals) provided by a major shareholder (including directors with substantial interests).

IN FY24 **65%** of all deals involved some form of pre-bid stake or shareholder support, often leading to successful outcomes

Reverse break fees – the rising tide

Newcrest negotiated a US$375 million reverse break fee from Newmont in 2023, being approximately 2% of Newcrest's equity value, the highest reverse break fee recorded at that time

Emboldened by the Newcrest precedent, a few targets in large transactions during FY24 pushed their foreign bidders for higher reverse break fees.

To recap, a reverse break fee is a fee payable by the bidder to the target which is intended to compensate the target for time and resources spent on a deal if it does not proceed at the fault of the bidder.

The common market practice has historically been for reverse break fees to mirror the quantum of the break fee (being a fee payable by target to bidder). This has been driven by negotiating ease, a spirit of reciprocity and the Takeovers Panel guidance effectively capping the quantum of most target payable break fees at 1% of the target's equity value. This remained the case in the majority of deals in FY24, with 64% of negotiated deals having a reverse break fee of approximately 1% of the target's equity value. FY24 also recorded a five year high in the number of deals with target protection, with 76% of negotiated deals including a reverse break fee, compared to the five year average of 60%.

However, following the Newcrest precedent, the following mega deals were examples of reverse break fees exceeding 1% of the target's equity value:

- **Altium/Renesas**: The parties agreed a $410.8 million reverse break fee payable on the event of, amongst other things, a material breach of the implementation deed by the bidder and a failure by the bidder to obtain regulatory approval. This equated to approximately 4.50% of Altium's equity value, roughly 4.5x the quantum of the break fee.
- **Alumina/Alcoa**: The parties agreed to a break fee of US$22 million, and a reverse break fee of up to US$50 million, roughly 2.3x the quantum of the break fee. The reverse break fee was payable for the bidder's material breach, a competing proposal being effected for the bidder or if the directors of the bidder failed to recommend their shareholders vote in favour or if bidder's shareholders did not vote in favour.

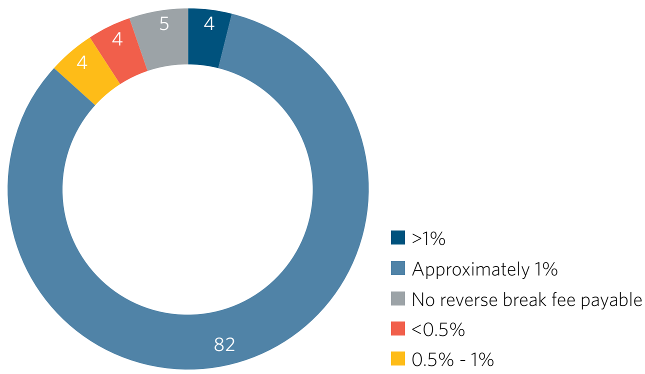
A third example was considered by the Takeovers Panel, but was different in nature (as it involved an offshore target). The Australian listed bidder, Westgold Resources Limited, sought to acquire Karora Resources, a Canadian company. Westgold agreed to pay a reverse break fee of C$40 million (representing 4% of Westgold's equity value) should Westgold terminate the agreement to enter into a binding agreement for a superior takeover proposal. Ramelius Resources objected to the size of the reverse break fee on the basis it exceeded the Takeover Panel's guidance. The Panel determined that the reverse break fee did not have an anti-competitive effect.

The rationale behind a higher reverse break fee is that the costs of an unsuccessful deal generally weigh heavier on a target company, whose board and management have faced the challenge of a change of control proposal (often spanning months) and whose shareholders have lost the opportunity to recognise a value for their

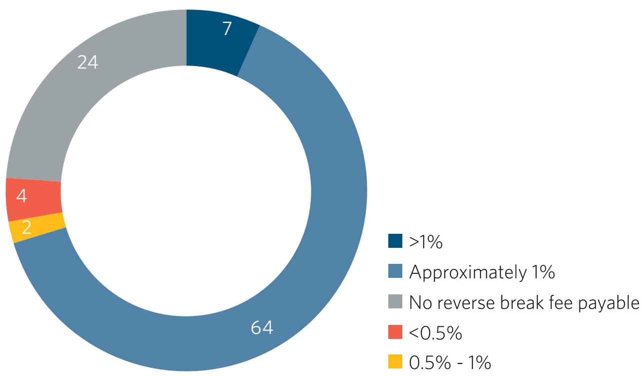
shares at what is typically a sizeable premium. Interestingly, all three instances involved a cross-border element (for example a foreign bidder or target), which often helps in arguing the case for a higher reverse break fee.

The other heavily negotiated aspect of reverse break fees are the circumstances in which payment is triggered. Typical triggers surveyed in FY24 included material breach of the transaction agreement by the bidder (88% of deals with a reverse break fee, compared to the five year average of 85%), a failure by the bidder to obtain regulatory approval (17% of deals with a reverse break fee, compared to the five year average of 10%) and failure to obtain bidder shareholder approval (7% of deals with a reverse break fee, compared to the five year average of 6%).

Break fee – value (%)



Reverse break fee – value (%)



Material adverse change conditions

Of the 55 negotiated transactions announced this year:

- 52 deals contained a target MAC condition;
- 15 deals contained a bidder MAC condition;[1] and
- the most common quantitative MAC triggers were calculated by reference to EBITDA or a diminution of the consolidated net assets of the group.

48 of the 55 surveyed implementation deeds contained a quantitative MAC (87%), while 32 of the 55 surveyed implementation deeds contained a qualitative MAC (58%).

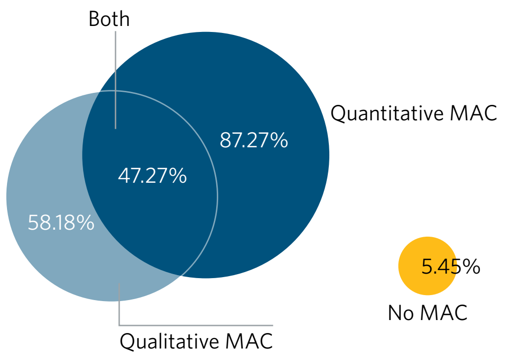
Unsurprisingly, most MAC conditions contained a number of express carve-outs. The most common carve-outs were for changes in general economic and political conditions, including fluctuations in exchange rates or commodity prices (74%), changes in law (65%), and changes in industry or business conditions (65%). This aligns with the theory that MACs generally attempt to isolate material adverse changes particular to the target and do not provide bidders with outs to a deal due to macro factors.

In this vein, FY24 also saw the continued practice of parties utilising bespoke MAC conditions to address company-specific concerns, in order to effectively manage business risks throughout the transaction process:

- **MMA Offshore / Cyan MMA**: 'five or more vessels owned by the MMA Group each have the full class status of the vessel suspended...and each such vessel being deemed by an industry recognised independent expert to be unable to earn revenue for a period of six months or more';
- **Orecorp / Silvercorp, Greenstone Resources / Horizon Minerals and Base Resources / EFR Australia:** each contained a MAC that included the loss of rights to exploit mining tenements or to exploit material projects;
- **TPC Consolidated Group / Wollar Solar Holdings**: 'the Target Group becoming prohibited from operating as an energy retailer... as a result of material enforcement action being taken...or any Material Licence being revoked, cancelled, voided or otherwise terminated';
- **McGrath / Knight Frank**: 'Franchisees that together represent 15% of the aggregate franchise fees of the McGrath Group... terminating...their applicable Franchise Agreement on or after the date of this deed'.

1 All of these deals offered either scrip consideration or a choice between cash and scrip consideration.

Percentage of negotiated deals with a MAC condition



Developments in stub equity

The recent decision in *Re Millennium Services Group Limited* [2024] NSWSC 307 allowed stub equity to be offered on a basis that excluded retail shareholders from participating, without requiring a separate class for such shareholders. If this decision is followed, it would provide another way a bidder can manage the risk of having small shareholders take the stub equity option and becoming shareholders in the bidder or its holding company

Refresher on stub equity

Stub equity refers to unlisted shares issued in the bidder or the bidder's holding company that are offered to target shareholders, typically as an alternative to cash consideration. When the term stub equity is used, it typically means that the entity in which the unlisted scrip is given has no other businesses so the unlisted scrip would only give exposure to the target.

While the take-up of stub equity offers is often not high, a stub equity offer is generally made to all shareholders, with a limited exception for particular foreign shareholders. The rationale for doing so is to avoid creating separate classes of shareholders, which would otherwise create the risk of a disproportionate minority of shareholders voting down the scheme.

Additionally, stub equity creates a risk that some small shareholders may elect the stub equity option and therefore become shareholders in the bidder or its holding company. Their presence on the register may cause complexities for the company.

By way of example, in TPG Capital's acquisition of InvoCare, 111 shareholders collectively representing 1.30% of the InvoCare shares took up the scrip and ended up in the unlisted vehicle. Had the approach under the Millennium scheme been adopted (see below), a large proportion of the InvoCare shareholders electing to receive the scrip would have been ineligible to do so.

Millennium scheme

In the Millennium scheme, shareholders received cash consideration of $1.15 per share or, for 'eligible shareholders', an option to elect all or part stub equity (shares in an unlisted holding company, MXS Ventures Pte Ltd). The offer excluded:

- shareholders outside Australia and New Zealand; and
- 'small shareholders', being shareholders who held (i) fewer than 300,000 Millennium shares or (ii) more than 300,000 Millennium shares, but as a result of an election to receive cash/ stub equity would receive less than 300,000 shares in the bidder's holding company.

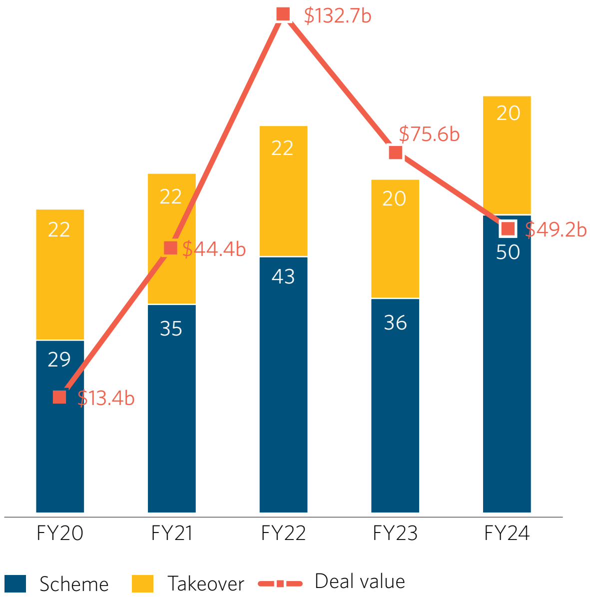
This meant approximately 30 out of more than 1,250 shareholders were eligible to take stub equity.

Counsel for Millennium noted that the scheme booklet included full disclosure of the stub equity offer and also pointed to the fact that Millennium had an 'unusually' large number of small shareholders. These points, presumably in addition to written submissions, gave the court comfort that the scheme did not require separate classes to be established for the vote.

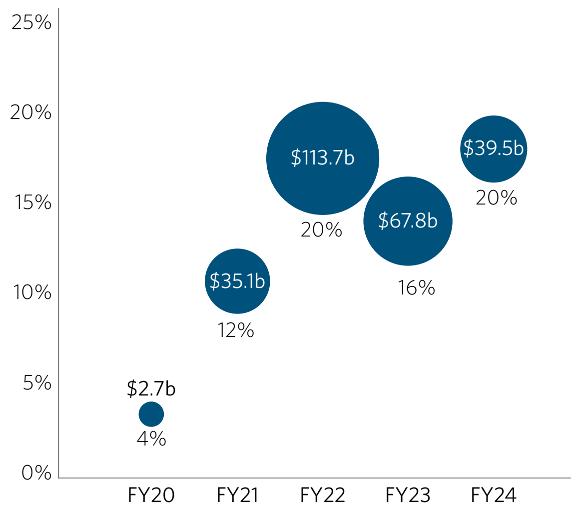
The Millennium decision suggests that a large number of shareholders may be excluded from a stub equity offer without being class-creating. However, it is not clear where the line has been drawn on this issue, and the court's decision may have been factually specific. Accordingly, anyone considering using a similar structure will need to carefully review the eligibility criteria based on the specific circumstances of the deal, including the composition of the target's register

Diving into the data

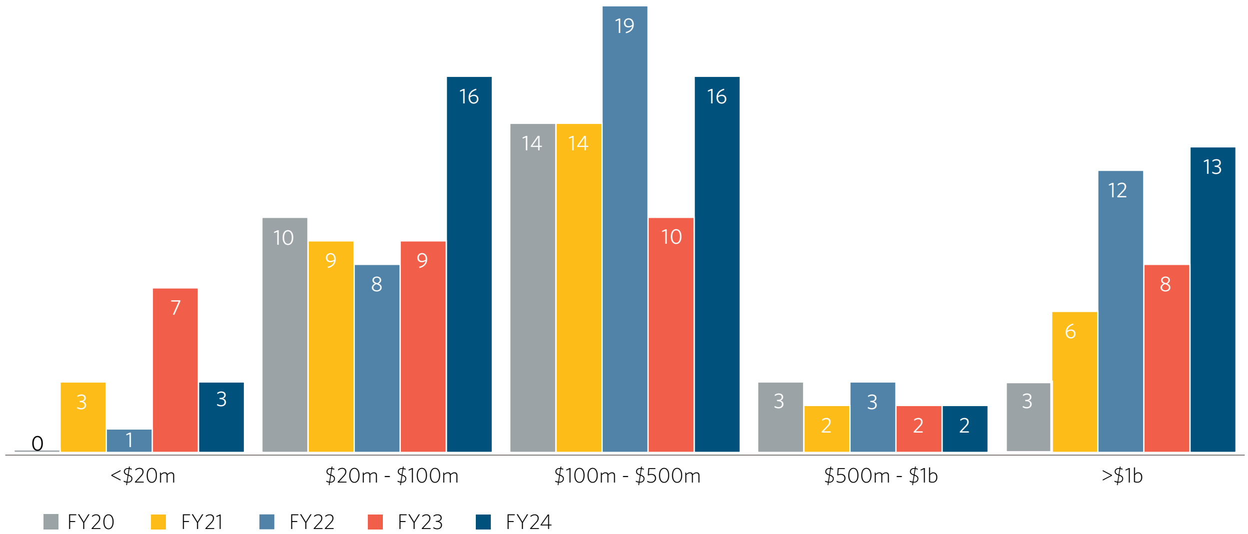
1. Total number and value of deals



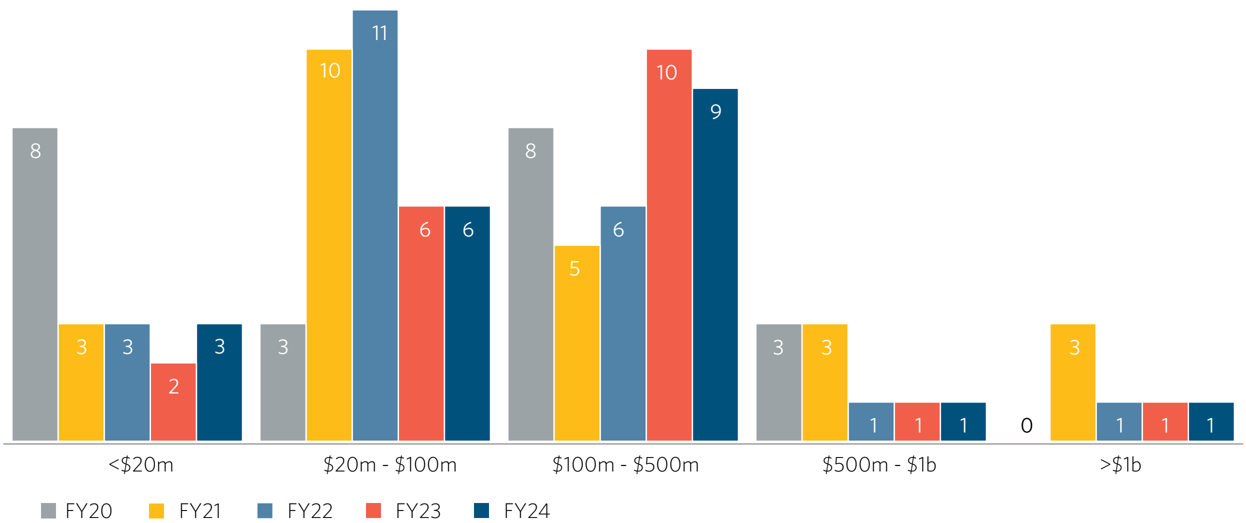
2. Mega deals



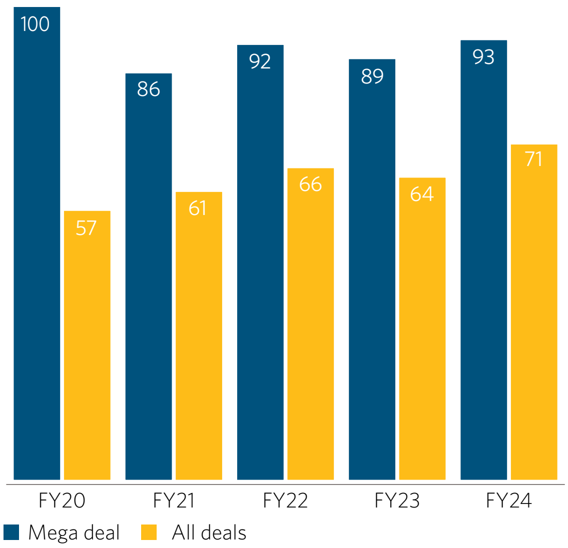
3. Structure of deals by value range - schemes



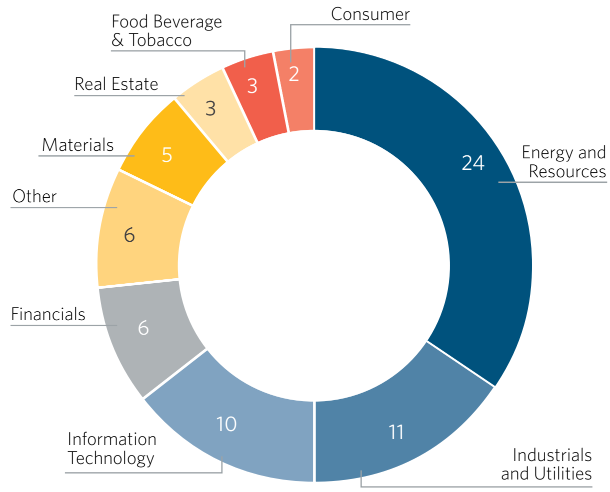
4. Structure of deals by value range - takeovers



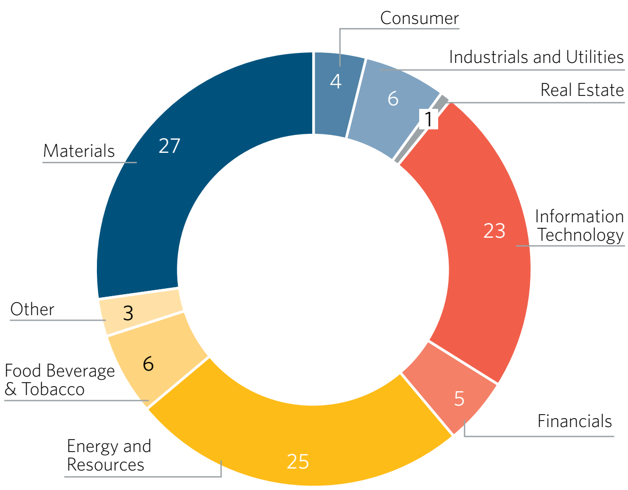
5. Proportion of deals structured as schemes of arrangement (%)



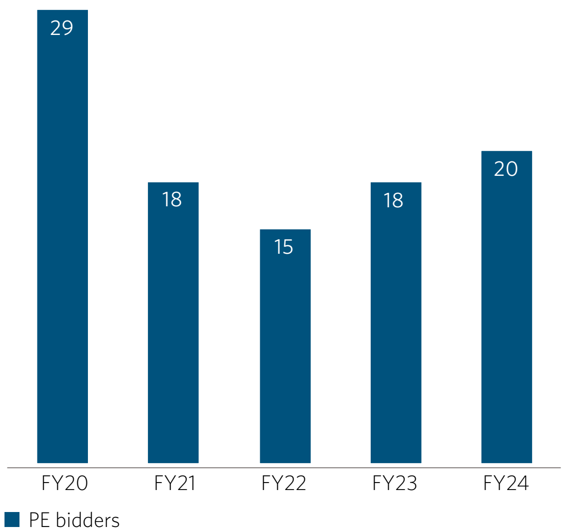
7. Number of deals by sector



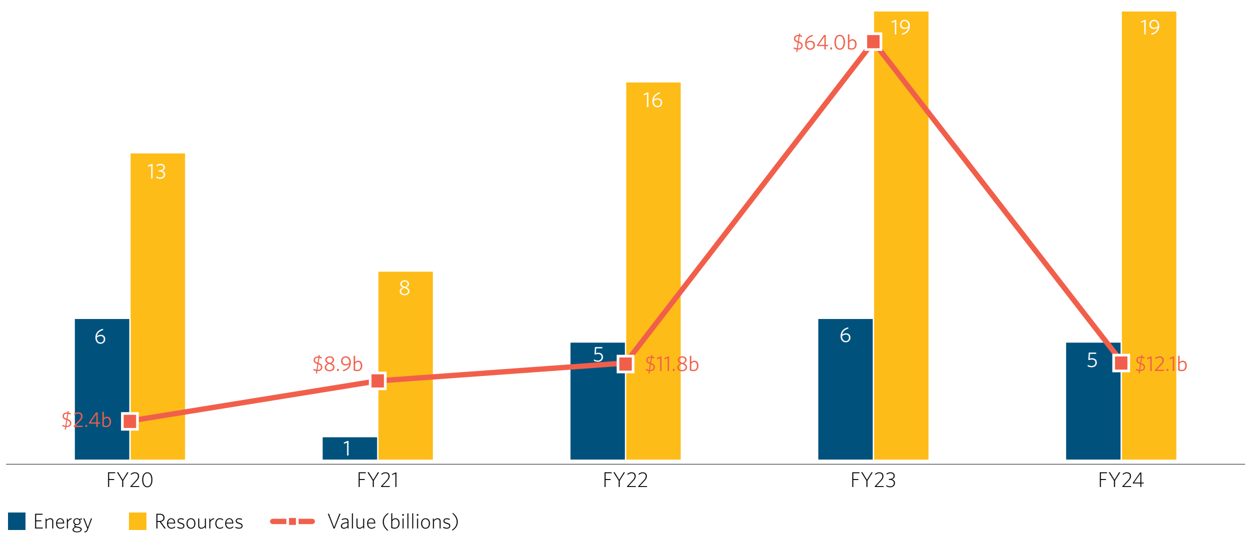
6. Value of deals by sector (%)



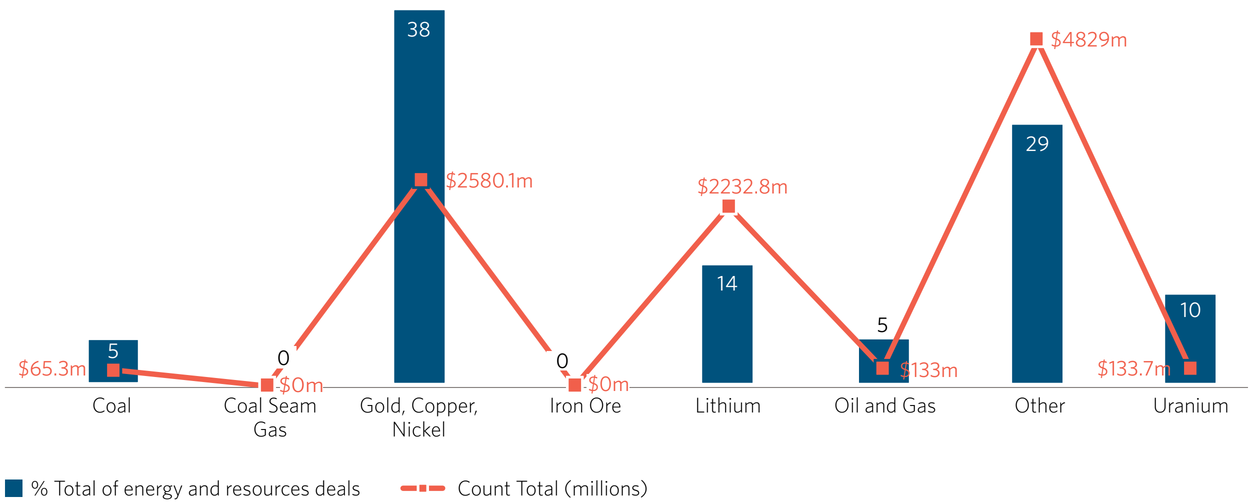
8. Percentage of PE deals (%)



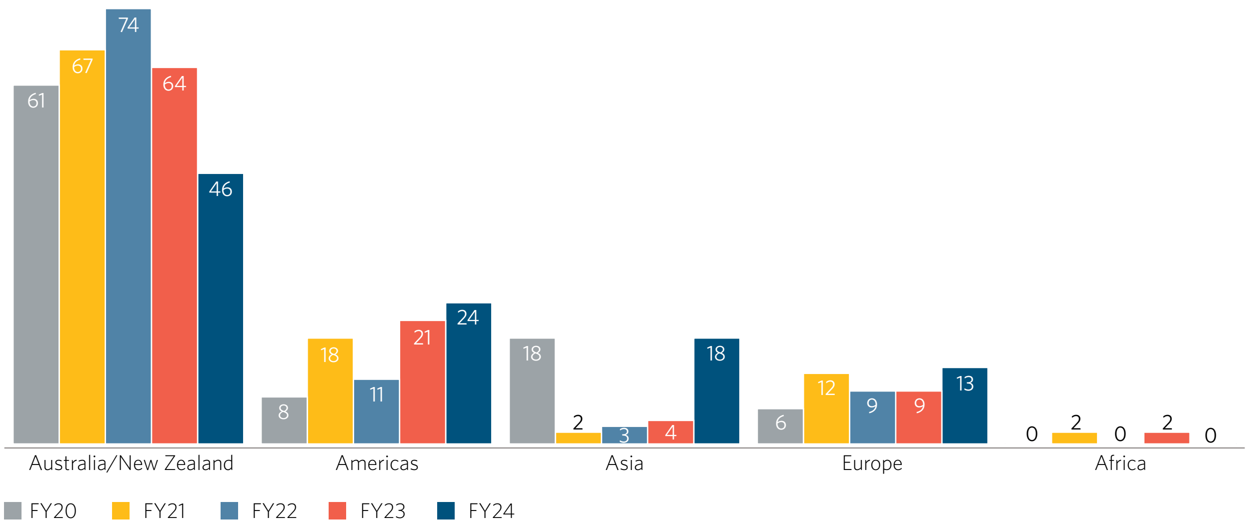
9. Value of energy and resources deals



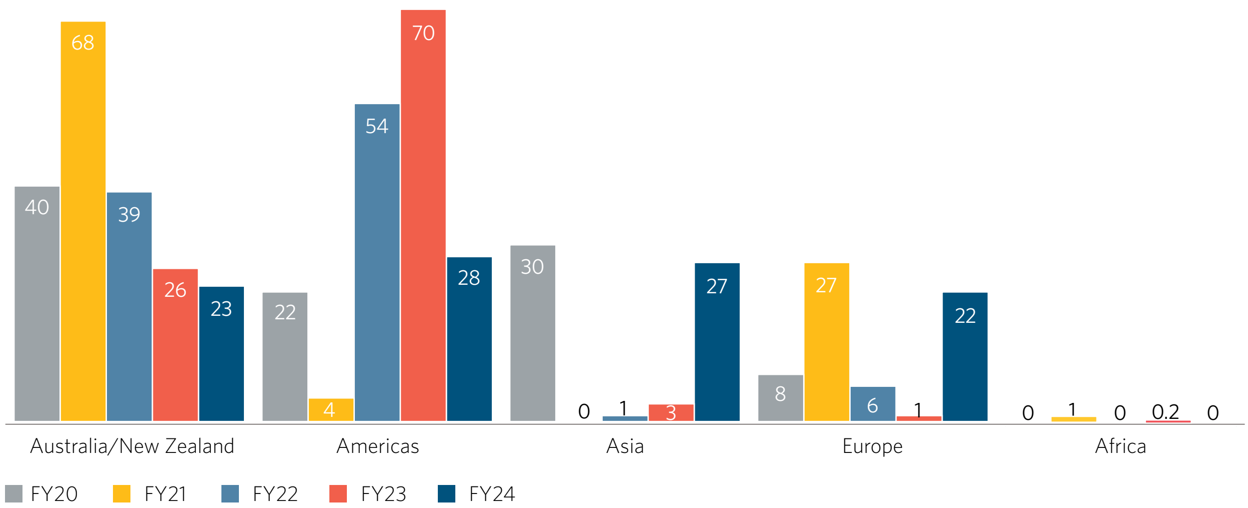
10. Proportion of energy and resources deals (by commodity)



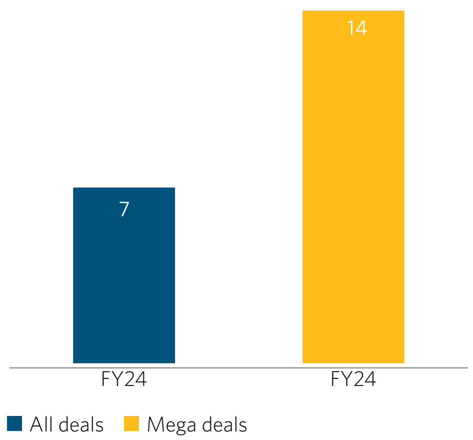
11. Origin of bidders as a percentage of deals (%)



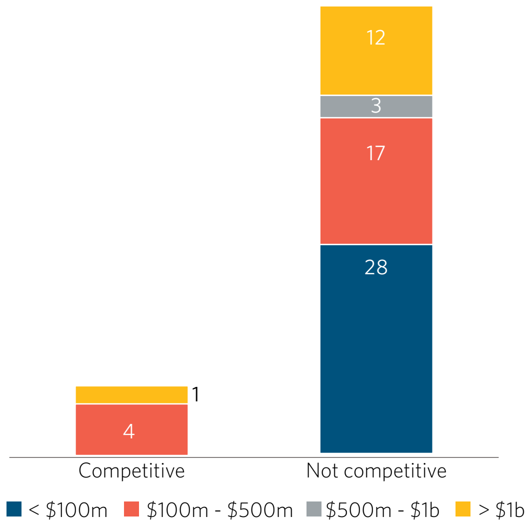
12 Origin of bidders as a percentage of value (%)



13. Competitive deals (%) [1]

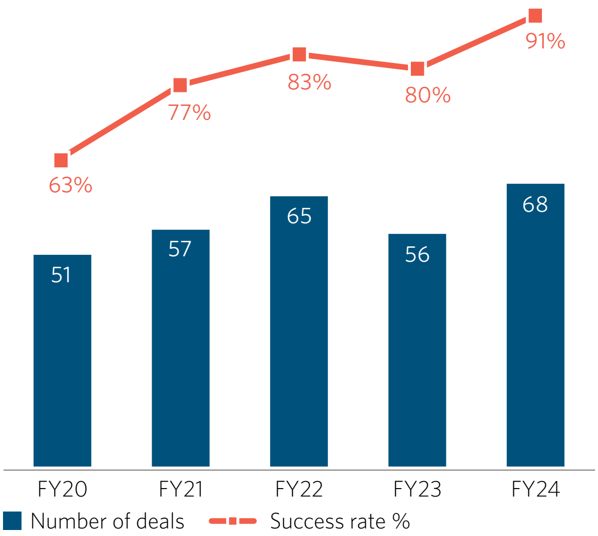


14. Competitiveness by value [1]

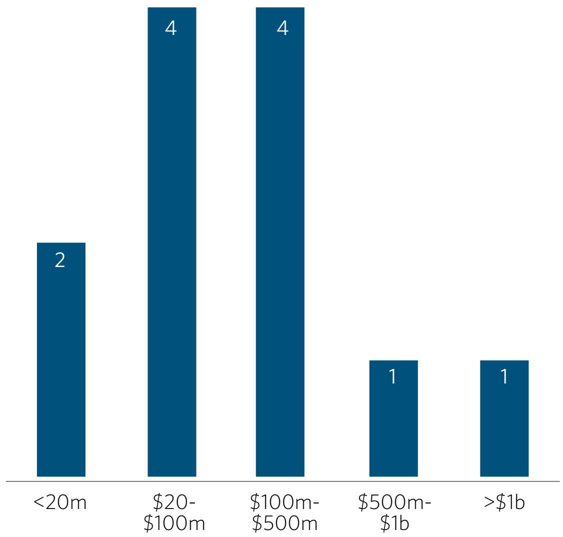


1 A competitive bid is recognised for the purposes of this report upon multiple bidders entering a transaction implementation deed with, or making a formal takeover offer for, a target. This does not include instances where a bidder has submitted a non-binding indicative offer (NBIO) without proceeding to make a formal offer.

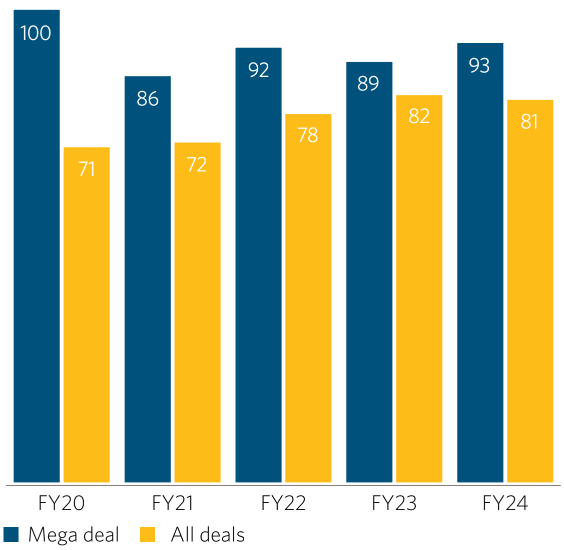
15. Deal success rate



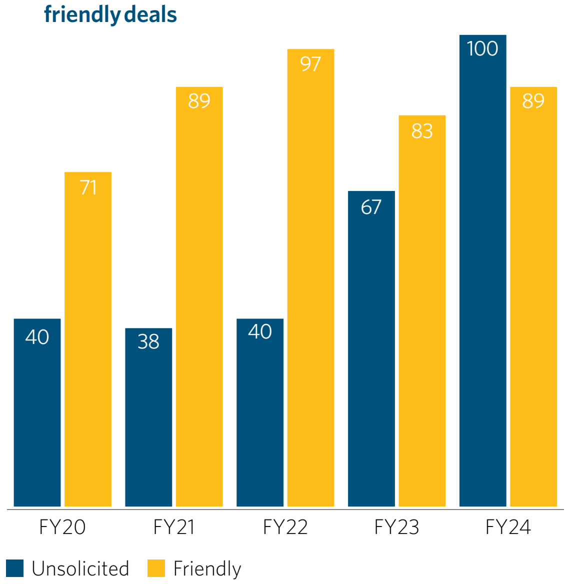
17. Target value in unsolicited deals



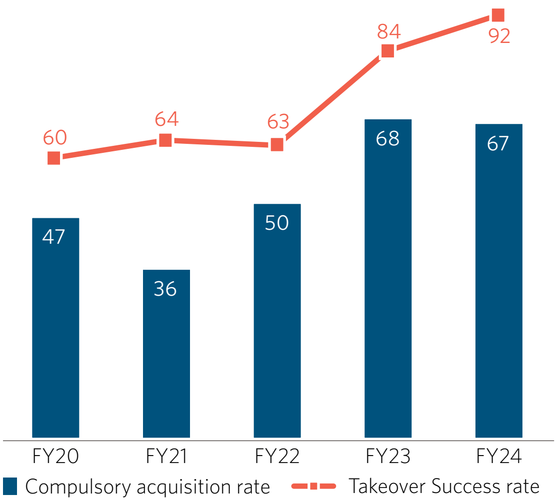
16. Deals with target support (%)



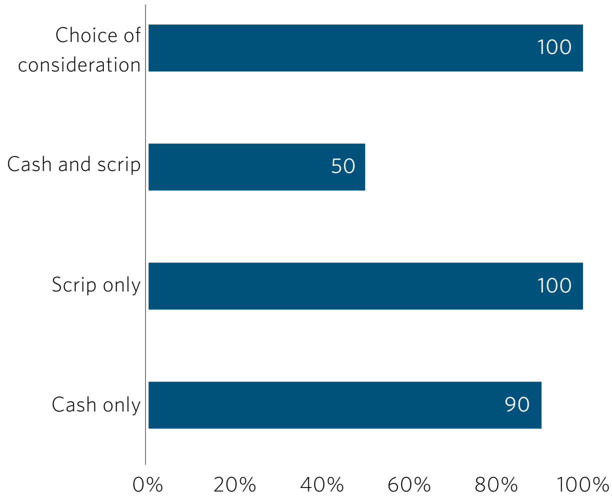
18. Success rates in completed unsolicited and friendly deals



19. Bids proceeding to compulsory acquisition (%)

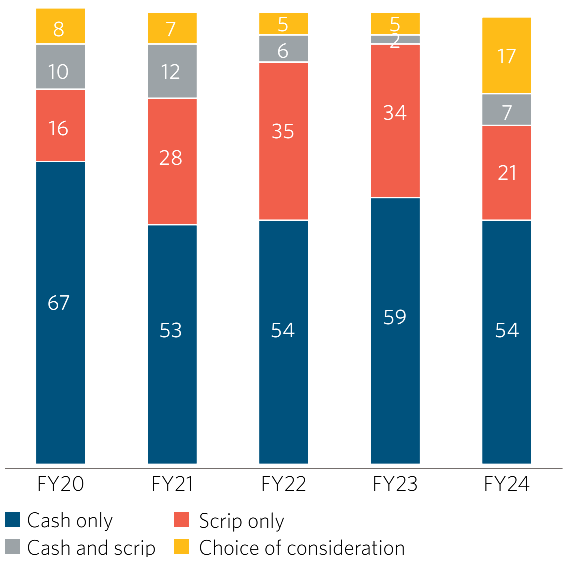


22. Success rates by consideration offered (%)

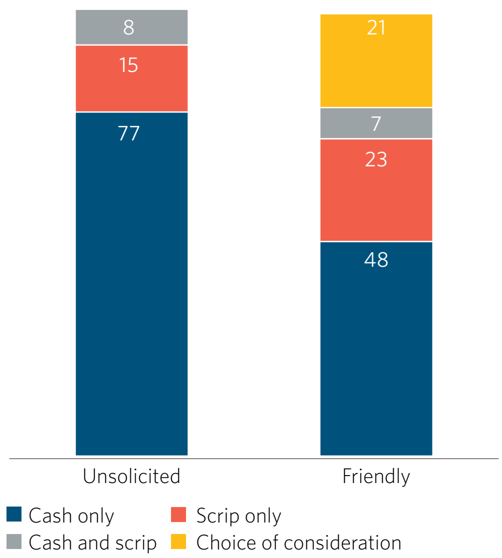


As at 30 June, there were 27 deals announced that remained ongoing and are therefore not represented in this data.

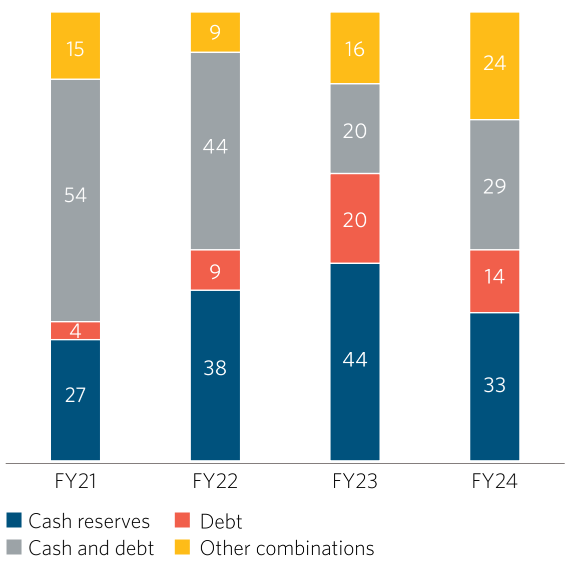
20. Types of consideration offered (%)



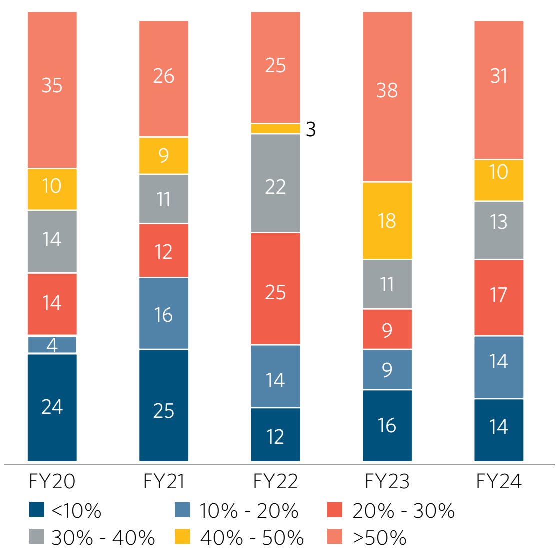
23. Consideration offered in deals (%)



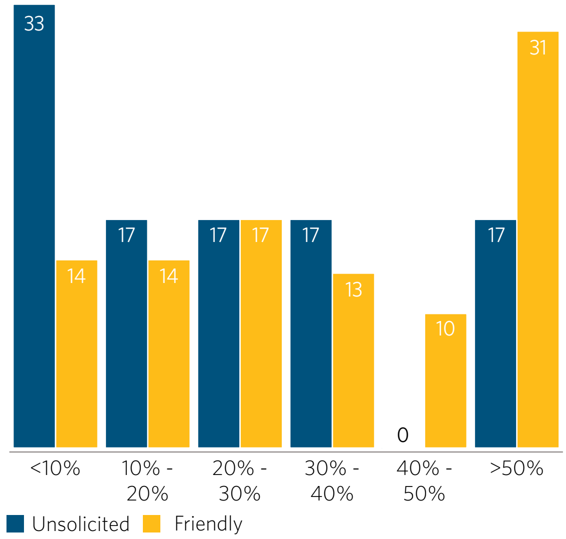
21. Funding deals (%)



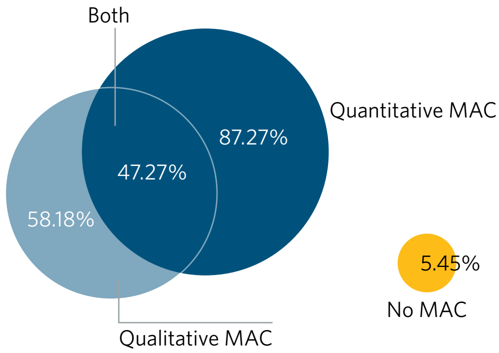
24 Overall percentage of share premium offered (%)



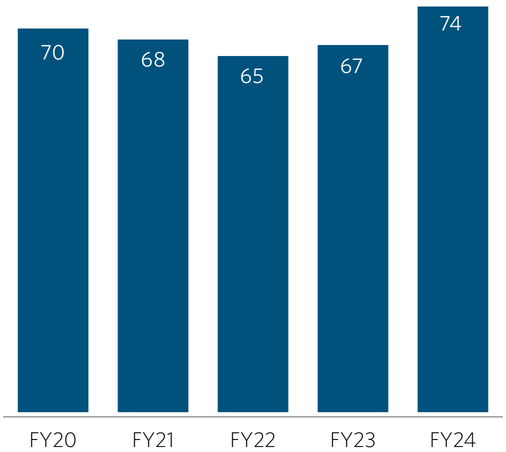
25. Percentage of share premium offered in unsolicited and friendly deals (%)



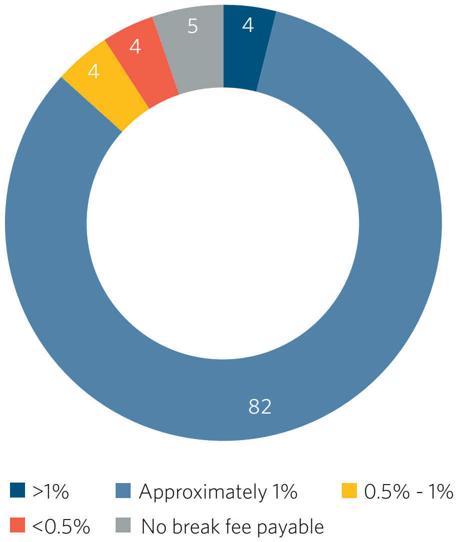
28. Percentage of negotiated deals with a MAC condition



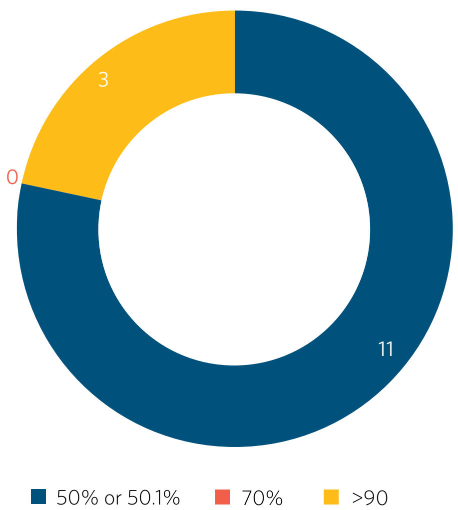
26. Use of minimum acceptance conditions (%)



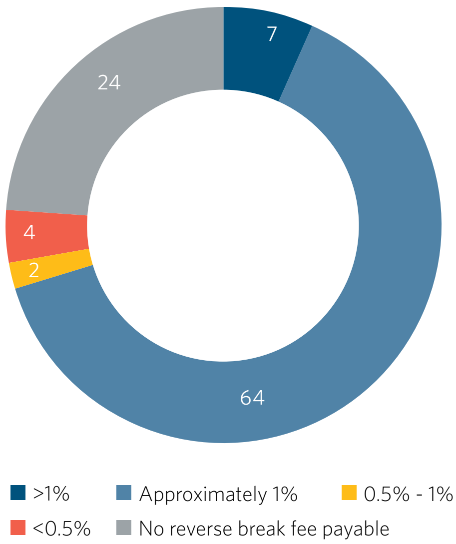
29. Break fee - value (%)



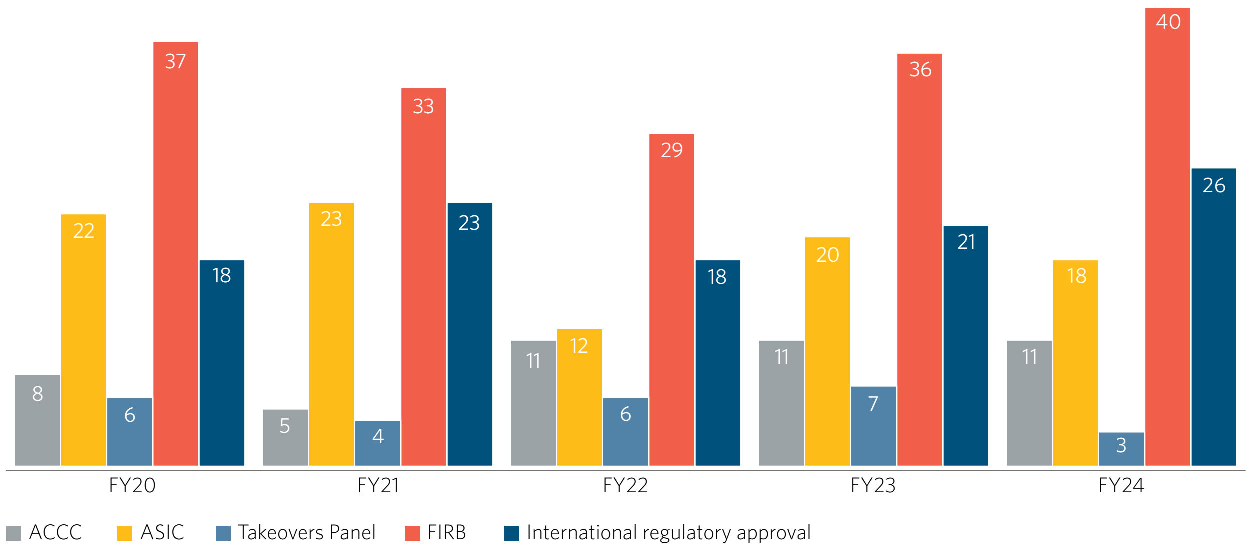
27. Minimum acceptance threshold



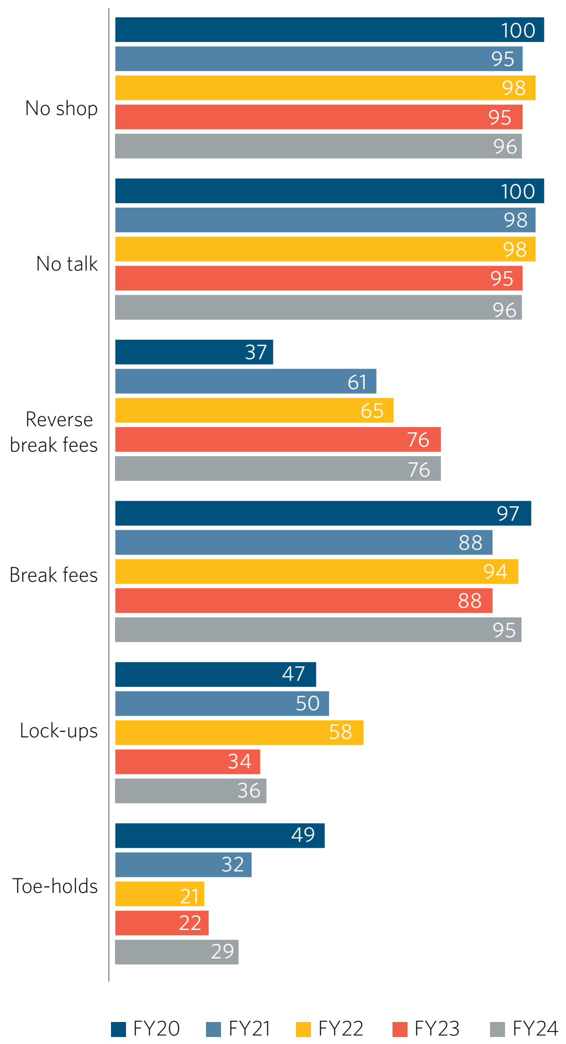
30. Reverse break fee - value (%)



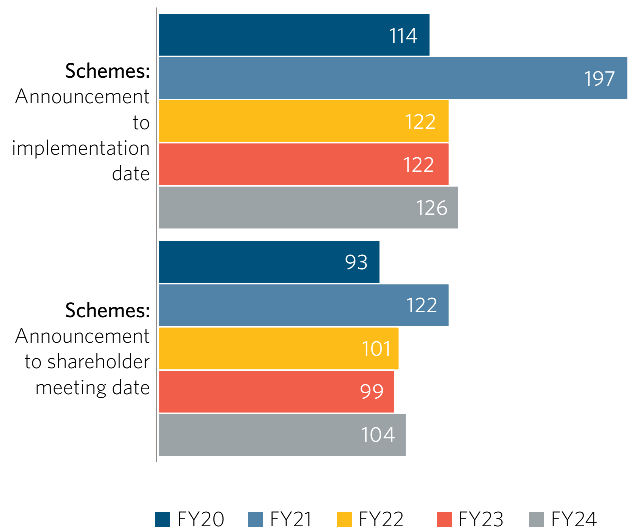
31. Proportion of deals with regulatory involvement (%)



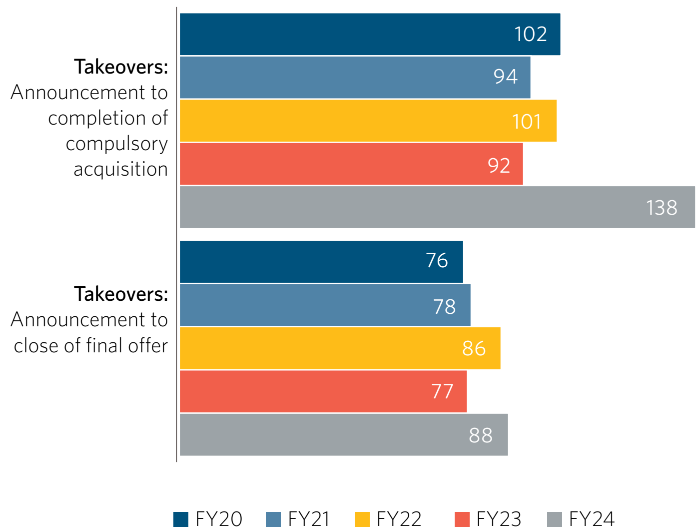
32. Proportion of negotiated deals with protection (%)



33. Critical points for successful schemes (days)



34. Critical points for successful takeovers (days)



About Herbert Smith Freehills

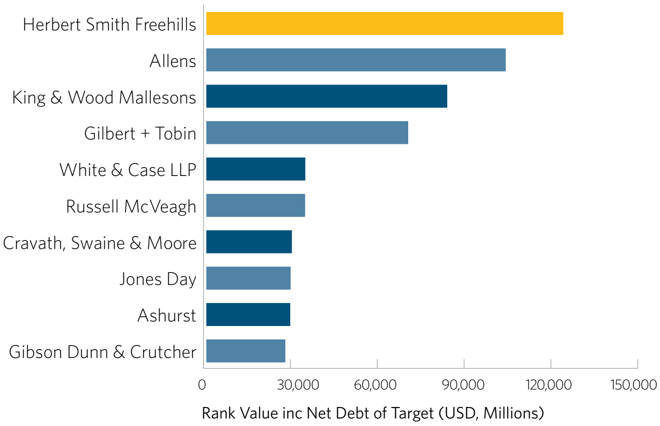
A market leader in M&A

Herbert Smith Freehills is a market leader in mergers and acquisitions, consistently acting on some of the most complex and strategic corporate transactions in Australia and around the world.

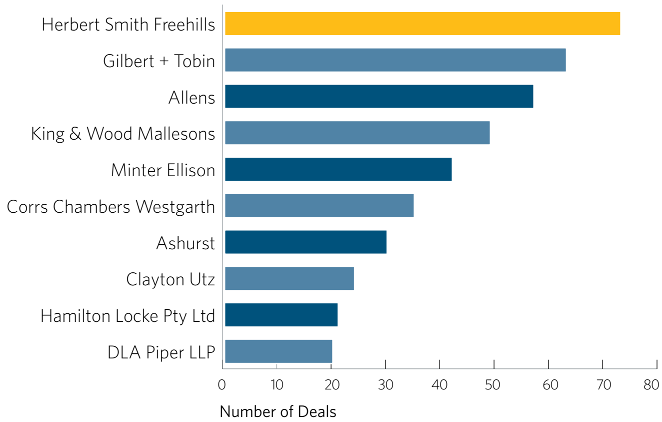
The volume and quality of transactions in which the firm is involved ensures that our clients have access to the deepest knowledge of market trends and M&A deal technology.

Herbert Smith Freehills takes pride in consistently achieving top rankings in the realm of Corporate M&A work, as recognised by the leading industry intelligence platforms. In 2023, our team outperformed all other firms in Australia, advising on over 100 announced deals with a total value of over A$143 billion.

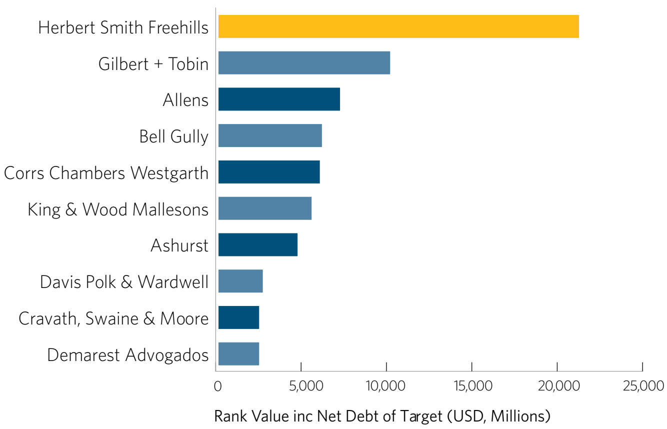
2019 – 2024 Public M&A deals – five years by value



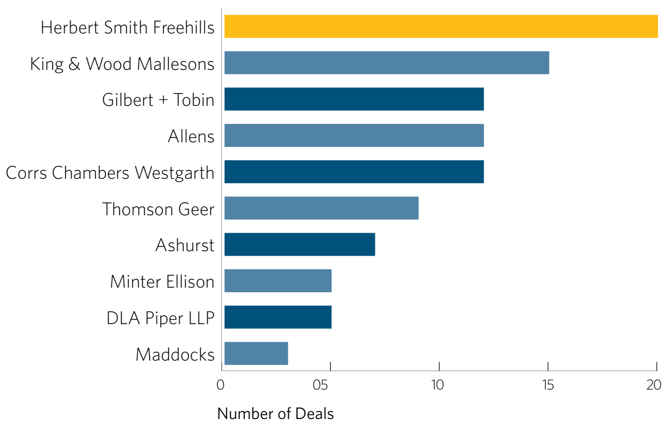
2019 – 2024 Public M&A deals – five years by number of deals



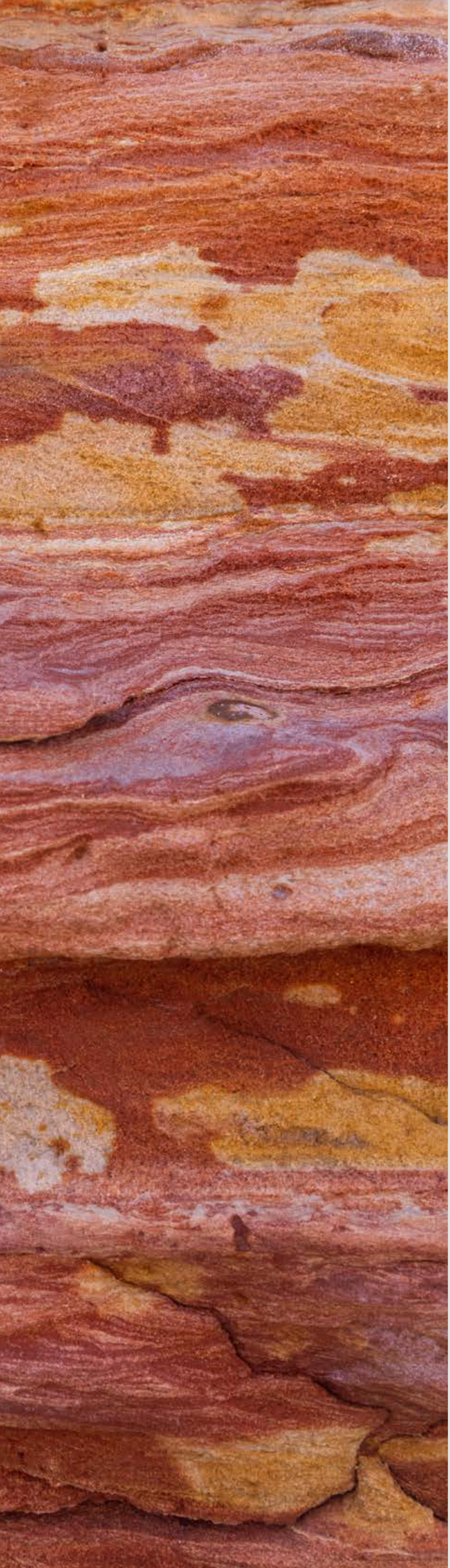
2024 Public M&A deals – one year by value



2024 Public M&A deals – one year by number of deals



Source: LSEG Data & Analytics, formerly Refinitiv



The Herbert Smith Freehills team in Australia has recently advised:

- **Newcrest**, the largest gold producer listed on the ASX, on its proposed ~A$27.16 billion acquisition by Newmont Corporation to create the world's leading gold mining company by way of scheme – the largest completed Australian M&A deal of 2023.
- **Origin Energy**, a leading energy provider in Australia, on its A$18.4 billon proposed acquisition by the Brookfield consortium.
- **Santos**, the ASX-listed global energy company, on its A$80 billion merger discussions with Woodside Energy.
- **Chemist Warehouse**, Australia's No. 1 online pharmacy retailer, on its proposed >A$8.8 billion merger with Sigma Healthcare.
- **CSR Limited**, a major Australian industrial company, on its A$4.3 billion acquisition by Compagnie de Saint-Gobain by way of scheme.
- **Link Group**, one of Australia's leading technology-enabled financial investments administration specialists, on its A$2.1 billion acquisition by Mitsubishi UFJ Trust Bank.
- **Seven Group**, an Australian conglomerate, on its A$2.5 billion off-market takeover bid for the outstanding shares in Boral.
- **Ardonagh Group**, on its proposed A$2.2 billion acquisition of PSC Insurance Group by way of scheme.
- **Adbri**, one of Australia's leading materials companies, on its A$2.1 billion acquisition by CRH.
- **Zhaojin Capital**, on its A$733 million all-cash takeover bid for Tietto Minerals.
- **McGrath**, on its acquisition for A$95.5 million by a consortium of Knight Frank and Bayleys.
- **Newmark Property REIT**, a leading REIT on its A$247 million acquisition by BWP Trust.
- **Pact Group Holdings**, the largest manufacturer of rigid plastic packaging products in Australasia, on its proposed A$234 million acquisition by Bennamon Industries.
- **Prospa**, a leading fintech group, on its proposed A$73 million acquisition by Salter Brothers Tech Fund.
- **Soprano Design**, a global communications intelligence company, on its A$62 million takeover of Whispir.
- **Red 5**, a West Australian gold mining company, on its A$2.2 billion proposed merger of equals with Silver Lake Resources by way of scheme of arrangement.
- **SQM**, on its joint acquisition with Hancock for 100% of the shares in Azure Minerals Limited, by way of a scheme of arrangement and a simultaneous off-market takeover offer.

For further information visit our website.
www.herbertsmithfreehills.com

Methodology

This report is a summary of a review of the 70 public transactions that were announced during FY24 based on public information available up to 30 June 2024.

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. The transactions reviewed did not include non-binding indicative offers or proposals which did not proceed to a takeover or scheme of arrangement being announced.

Schemes of arrangement which were genuine restructures or re-domiciliation have been disregarded.

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

Where a deal was not initially recommended by the target board in its initial public response to the transaction, we have referred to that transaction as 'hostile' or 'unsolicited'. 'Friendly' deals were recommended by the target board from initial response.

Deal value has been calculated on a undiluted equity basis.

Consistent with the approach taken in previous years, we have considered bidders making consecutive bids for the same target as one deal. There were three instances in which a concurrent scheme/takeover transaction was used. In each case, the takeover was structured as being in the alternative, conditional upon the failure of the scheme. For the purposes of this report, we have counted each concurrent scheme/takeover bid as a scheme only. However, where a bidder made separate bids with different transaction structures (i.e. takeover bid followed by a scheme) then we have counted those bids as separate deals.

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

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

Deals which are considered successful either have achieved a change of control, reached a minimum acceptance condition or (if there is no minimum acceptance condition), then a single acceptance. There was only 1 deal this year marked as successful despite not reaching the control threshold, which was Aspen Group's bid for Eureka Group where the bidder's interest in the target at the close of offer was 35.87% with the bidder having waived the minimum acceptance condition.

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

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

The Herbert Smith Freehills team in Australia has recently received the following awards:

- **Transaction team of the year,** Lawyers Weekly Awards 2023
- **M&A legal adviser of the year,** Australian Mergermarket M&A Awards 2023
- **Financial services M&A legal adviser of the year,** Australian Mergermarket M&A Awards 2023
- **Digital infrastructure deal of the year, QIC's 50% acquisition of vector smart metering,** IJ Global Awards 2023
- **M&A deal of the year, Sydney Airport acquisition** by Sydney Aviation Alliance, Australasian Law Awards 2023
- **Equity market deal of the year, BHP and Woodside merger,** Australasian Law Awards 2023
- **Band 1,** Corporate M&A, Chambers Asia Pacific 2024
- **Tier 1,** Corporate M&A, Asia Pacific Legal 500 2024
- **1st by deal volume and deal count**, 2023 Australasia M&A Deals, 2023 Refinitiv
- **1st by deal value and 1st by deal volume** (M&A deals, Announced AUS/NZ), 2024 First Half Year – LSEG Data & Analytics (formerly Refinitiv)
- **1st by deal value** and **1st by deal count** (M&A deals, Australasia), 2024 First Half Year - Mergermarket

Contact us

If you have any questions relating to this report, please contact:

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Herbert Smith Freehills
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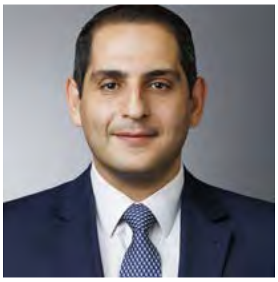

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Disclaimer

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.

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