GILBERT +TOBIN

TAKEOVERS + SCHEMES REVIEW 2021

HAVE THE ROARING 20s COME AGAIN?

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THE GILBERT + TOBIN 2021 TAKEOVERS + SCHEMES REVIEW

From adversity rises opportunity.

Indeed, are we on the cusp of the roaring 20s of mergers and acquisitions?

The onset of the COVID-19 pandemic in March 2020 clearly had an initial chilling effect on M&A. However, the ensuing stock market and asset price falls created opportunities. As the world adapted to new norms, those with financial capacity, including private equity and companies with strong balance sheets, saw it as a time to engage in strategic acquisitions.

The last quarter of 2020, in particular, benefitted from a material increase in deal activity. M&A is growing from a fertile combination of businesses successfully adapted to remote working, cheap debt funding, rallying of financial markets and the development and rollout of multiple vaccines. The ingredients for more M&A continue into 2021, looking set to ignite increased deal activity throughout the year.

Casting an eye back to public company takeovers and schemes of arrangements in 2020, the key themes included:

+ **Activity** - 42 transactions valued over $50 million were announced in 2020, up from 41 transactions in 2019. The aggregate transaction value increased significantly from $24 billion in 2019 to $32.8 billion, driven by two $5 billion plus transactions and a number of competing bids.

+ **Increasing momentum** - The number of deals announced increased each quarter, rising from seven in Q1 to 14 in Q4 reflecting increased confidence and deal activity.

+ **Energy & resources revival** - This sector made the greatest contribution to announced public M&A by both aggregate transaction value and number of deals.

+ **Private equity** - Despite being involved in a similar number of transactions as in 2019, overall private equity investment in public M&A fell from 44% in 2019 to 18% of aggregate transaction value in 2020. Two Australian superannuation funds made take-private offers to ASX listed targets on their own account rather than in consortium with private equity.

+ **Deal structures** - Takeovers, as distinct from schemes of arrangement, had a renaissance. Takeovers amounted to 45% of all deals, the highest percentage since 2015. This was perhaps an output of falling asset prices making agreement on price harder leading to more hostile bids in 2020. Schemes of arrangement continued to be the preferred structure for transactions exceeding $1 billion.

+ **Foreign bids** - Only 45% of transactions in 2020 involved a foreign bidder, the lowest in the last ten years. This was influenced by the tougher approach by FIRB which required all foreign acquisitions to be subject to review no matter the value and involved longer review times. Aggregate deal value for foreign acquirers increased to $21.9 billion, up from $19 billion in 2019. Bidders from Asia (especially Singapore but less so from China) were the most active, followed by acquirers from Europe.

+ **Deal success harder** - 70% of announced M&A transactions over $50 million in 2020 were successful, down significantly from 83% of transactions in 2019. Some transactions were disrupted by the COVID-19 pandemic whereas others failed due to the existence of competing bids.

+ **Regulatory easing** - Regulators generally recalibrated their priorities allowing themselves and the entities they regulate to focus on the impact of the COVID-19 pandemic.

This Review examines 2020's public M&A transactions valued over $50 million and provides our perspective on the trends for Australian public M&A in 2020 and what that might mean for 2021.

We trust you will find this Review to be an interesting read and a useful resource for 2021.

CONTENTS

KEY HIGHLIGHTS

PUBLIC M&A STEADY OVERALL WITH A STRONG UPWARD TRAJECTORY

Despite the seismic impact of the COVID-19 pandemic, there was a slight increase in Australian public M&A activity in 2020. 42 transactions valued over $50 million were announced – up from 41 transactions in 2019 and down from the seven-year high of 49 transactions in 2018.

The aggregate transaction value increased significantly in 2020 to $32.8 billion, up from $24 billion in 2019. However, 48% of the aggregate transaction value in 2020 was attributable to only two transactions, being Coca-Cola European Partners proposed $9.8 billion acquisition of Coca-Cola Amatil and Northern Star Resources' $5.8 billion acquisition of Saracen Mineral Holdings.

The uncertainty caused by the onset of COVID-19 in March resulted in deal activity coming to a halt, with only one deal announced in each of April and May.

THE NUMBER OF DEALS ANNOUNCED INCREASED EACH QUARTER, RISING FROM

7 IN Q1 **TO** **14** IN Q4

This reflected increased confidence and deal activity. M&A is clearly on the rise with a number of potential multi-billion dollar deals already announced in the first six weeks of 2021, involving AMP, Bingo Industries, Vocus, Tilt Renewables and Tabcorp. The ingredients for M&A are present including business confidence, availability of finance and vaccine rollouts in full swing. In this respect, 2021 promises to be a very strong year for M&A.

TAKEOVERS MORE POPULAR AS BID-ASK SPREAD WIDENS AND HOSTILE BIDS INCREASE

2020 saw a renaissance in the use of takeovers for deals over $50 million. Takeovers comprised 45% of all deals, up from 17% in 2019. For the first time since 2015, the takeover / scheme split was close to 50:50.

20% of all deals with a value of over $1 billion (one in five deals) were structured as a takeover. This differs from both 2019 and 2018 where all transactions over $1 billion were done by scheme.

The shift towards takeovers in 2020 is likely, at least in part, to be an output of falling asset prices making agreement on price harder - a widening of the bid-ask spread – leading to more hostile bids (up from 5% of all transactions in 2019 to 26% in 2020).

HOWEVER, AS ECONOMIC UNCERTAINTY LIFTED AND THE MARKET REGAINED ITS CONFIDENCE, THERE WAS A FLURRY OF DEAL ACTIVITY COMMENCING IN JUNE WITH

8 DEALS ANNOUNCED

PRIVATE EQUITY ACTIVITY REMAINS HIGH, BUT INVESTMENT VALUE DROPS

Despite having funds to invest, private equity firms spent less on Australian public M&A in 2020. Private equity backed deals represented only 18% of aggregate transaction value, down from 44% in 2019 and 28% in 2018. That said, private equity remained active from a volume perspective, and were behind 24% of the deals by volume (10 deals), identical to 2019.

ANECDOTALLY, PRIVATE EQUITY ACTIVITY REMAINS HIGH, WITH CONFIDENCE OF GOOD YEARS TO COME: THE ROARING 20s AGAIN?

We expect that private equity investment in Australian public M&A will increase in 2021.

We also expect that private capital will continue to team up with private equity in 2021. To date, we have already seen CPE Capital joining forces with MIRA in a proposed acquisition of Bingo Industries as well as Ares Management agreeing to buy part of AMP's unlisted markets business.

SUPERANNUATION STARTS TO GO IT ALONE

In addition to private equity, there was a notable increase in the involvement of superannuation and pension funds in Australian public company M&A in 2020.

In particular, Aware Super sought to take an ASX listed company private by itself, rather than joining a consortium including private equity, but was ultimately out bid by Uniti in the contested bidding for OptiComm. AustralianSuper also made a non-binding indicative offer for New Zealand infrastructure company Infratil.

With approximately $3 trillion of assets under management and growing via Australia's compulsory saving scheme, superannuation funds will have a greater need to invest (and invest larger amounts per investment). This will inevitably lead them to listed markets. Indeed, as superannuation funds upscale their internal capabilities, we have no doubt that we will see a greater involvement of these investors, both by themselves and as part of consortiums, in Australian public markets in 2021 and beyond.

FOREIGN INVESTMENT DECLINES AS THE GOAL POSTS MOVE

There was a significant decline in announced foreign transactions for ASX listed companies in 2020, with foreign bidders accounting for only 45% of transaction volume in 2020, the lowest in ten years. This outcome is likely attributable to the tougher foreign investment regulatory settings requiring all foreign acquisitions to be subject to review no matter the size and longer review times. It could also be a function of the difficulties of cross-border deals in a pandemic where basic due diligence like site visits can be difficult, if not impossible.

Despite the tougher foreign investment regulatory settings, the aggregate transaction value of foreign investment increased from $19 billion in 2019 to $21.9 billion (the Coca-Cola Amatil / Coca-Cola European Partners deal contributing almost half that amount).

THE SECTORS OF GREATEST INTEREST TO FOREIGN BIDDERS WERE ENERGY & RESOURCES (SEVEN TRANSACTIONS) AND PROFESSIONAL SERVICES (THREE TRANSACTIONS).

Success rates for all announced foreign public deals over $50 million plummeted from 87% in 2019 to 47% in 2020. This was an all-time low in the almost 10 years we have been publishing this Review. This may seem a dire statistic for foreign bids. However, it can be partly attributed to a combination of some contested bidding situations in which foreign bidders were out bid by other foreign bidders (eg UAC Energy missed out on Infigen to Iberdrola and three unsuccessful foreign bidders for Cardinal Resources) and the general lower success rate of all deals. The tougher foreign investment regulation environment also did not help. That said, no listed company M&A deal failed for want of getting FIRB approval (at least not any deals that were announced).

Foreign bids in 2021 will continue to be subject to a more rigorous foreign investment regime and increased FIRB scrutiny on certain types of businesses (more on this in Chapter 4). However, we do not consider that this will impede foreign acquirers from being successful except where issues of national security arise.

4 OF THE 5

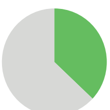
TRANSACTIONS EXCEEDING $1 BILLION INVOLVED A FOREIGN ACQUIRER

RENEWED INTEREST IN ENERGY & RESOURCES

Energy & resources was the dominant sector for both deal activity and aggregate transaction value in 2020, with

14 DEALS

REPRESENTING APPROXIMATELY



37% OF TOTAL DEAL VALUE

The majority of these deals (nine out of 14) involved targets in the gold sub-sector.

The existence of competitive bids also boosted activity in the energy & resources sector, with competing bids for Cardinal Resources from Shandong Gold, Dongshan Investments, Nord Gold and Engineers & Planners Co.

Food, beverage and tobacco came in second by aggregate transaction value (30%), with real estate coming in third (9%). Food, beverage and tobacco, however, saw reduced deal activity with only one high-value target accounting for its strong performance for the year, being Coca-Cola European Partners' proposed $9.8 billion acquisition of Coca-Cola Amatil.

The second most prolific sector by number of deals was financials with eight deals (representing 19% of total volume), followed by the professional services sector.

MOVE AWAY FROM CASH, DESPITE AVAILABILITY OF CHEAP FINANCING

The preference for cash consideration significantly decreased in 2020, with only 62% of transactions offering all cash consideration (down from 83% in 2019, which was the highest percentage identified in the past ten years). Perhaps this was borne of a desire to preserve cash to ensure balance sheet strength.

THE MAJORITY OF BIDDERS CONTINUED TO FUND THEIR ACQUISITIONS USING AT LEAST A PORTION OF EXISTING CAPITAL.

However, the number of transactions which were funded by new acquisition facilities decreased from 62% in 2019 to 27% in 2020. This may have been heavily influenced by the uncertainty present throughout the majority of the year as businesses sought to maintain conservative balance sheets.

In our view, the incidence of more scrip only transactions and fewer leveraged deals in 2020 was an aberration due to natural conservatism arising in uncertain times. However, now that confidence is returning and private equity activity remains high, we expect to see a return to more all cash deals and greater use of debt acquisition funding.

1

MARKET ACTIVITY

Public M&A activity steady in 2020 despite the COVID-19 pandemic Q4 shows strong upward trajectory

Despite the seismic financial implications of the COVID-19 pandemic, the total number of Australian public M&A deals in 2020 was consistent with deal activity in 2019.

The onset of the pandemic in March 2020 clearly had an initial chilling effect on transactions. However, the ensuing stock market and asset price falls created opportunities. As the world adapted to new norms, those with financial capacity including private equity and companies with strong balance sheets saw it as a time to engage in strategic acquisitions.

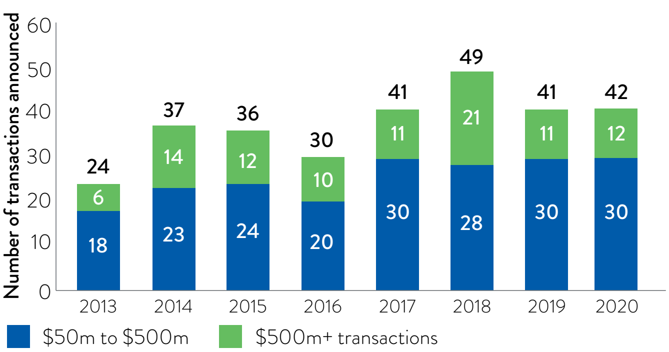
Indeed, it seems that adversity gave rise to opportunities.

The last quarter of 2020, in particular, benefitted from a strong surge in M&A activity. There was a distinct increase in confidence. M&A is growing from a fertile combination of businesses successfully adapted to remote working, cheap debt funding, rallying of financial markets and the development and rollout of multiple vaccines. These ingredients and confidence continue into 2021, which looks set to ignite increased deal activity throughout the year.

Deal numbers

Examining 2020, in total 42 transactions valued at $50 million or more were announced last year. This represented a slight increase from the previous year (41 deals in 2019) but was still well down from 49 deals in 2018.

Transaction announcements per year by number

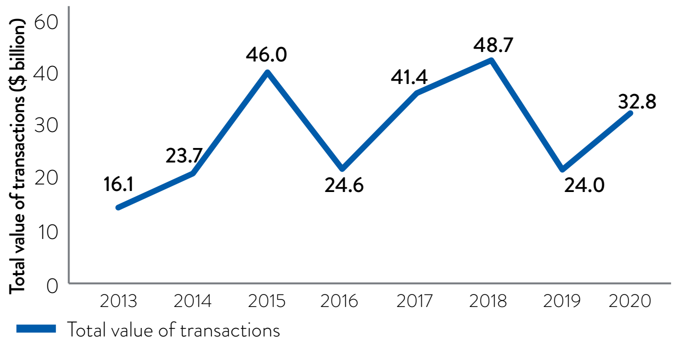


The number of announced transactions with a value over $500 million slightly increased from 11 in 2019 to 12 in 2020. However, this figure is also significantly down from 2018 where there were 21 high-value transactions (an eight-year high). There were 30 deals between $50 and $500 million in 2020, which was consistent with the previous year.

Deal value

There was a substantial rise in the aggregate transaction value in 2020 with approximately $32.8 billion worth of transactions announced, an increase of 37% from 2019 levels.

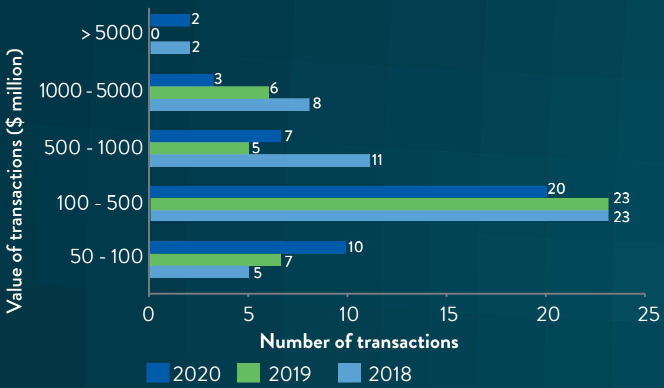
Total transaction value per year



However, this higher total may not be reflective of an overall increase in public M&A activity. Rather this headline was boosted by two transactions exceeding $5 billion (whereas there were no deals over $5 billion in 2019), being:

+ Coca-Cola European Partners proposed $9.8 billion acquisition of Coca-Cola Amatil; and
+ Northern Star Resources' successful $5.8 billion acquisition of Saracen Mineral Holdings.

Distribution of transaction values



In addition, the three competitive bid situations (Infigen, OptiComm and Cardinal Resources) also increased 2020's aggregate transaction value. Cardinal Resources alone had four competing bidders: Shandong Gold (the successful acquirer), Dongshan Investments, Nord Gold and Engineers & Planners Co.

4 OF THE 5 TRANSACTIONS EXCEEDING $1 BILLION INVOLVED A FOREIGN BIDDER

This continues the trend from 2019 of foreign bidders being significant players in the highest value public M&A transactions.

That said, overall, the proportion of foreign bids was lower in 2020 compared to 2019 and 2018, likely due to:

- the tougher foreign investment regulatory settings requiring all foreign acquisitions to be subject to review no matter the size and longer review times (see Chapter 4);
- the challenges of doing cross-border deals in a pandemic where basic due diligence like site visits can be difficult, if not impossible; and
- a risk-averse approach by all bidders, including potential foreign acquirers.

Private equity cautious, but engaged

Private equity firms continued to be key players in public M&A in 2020. That said, there was a significant reduction in the total value of public M&A deals in the Australian market involving this type of acquirer.

While the proportion of private equity transactions by volume remained identical to 2019, at 24% of all deals over $50 million (10 deals in 2020), private equity bidders accounted for 18% of public M&A deals by value, well down from 44% in 2019 and 28% in 2018.

Private equity firms were interested in a diverse number of sectors, including real estate, financials and utilities with each of those sectors accounting for 20% of the number of private equity deals.

On raw statistics, it seemed that private equity's interest in the healthcare sector declined significantly, down from 57% by value of overall private equity investment in 2019 to 21% in 2020. However, we consider that to be an anomaly of our data set which focuses on M&A involving ASX listed companies, as clearly private equity sees opportunities in healthcare. Apart from EQT's acquisition of Metlifecare, private equity activity in this sector is evidenced by BGH Capital's acquisitions of NZX listed dental group, Abano Healthcare, and the medical centres business of ASX-listed Healius, Madison Dearborn's acquisition of Advanced Personnel Management and Crescent Capital's acquisition of PRP Diagnostic Imaging.

Real estate attracted the highest spend from private equity firms with 49% of total investment being in that sector, largely dominated by ARA Asset Management's $2.4 billion proportional takeover bid for Cromwell Property Group.

While we distinguish between traditional private equity firms and private capital, there has also been a notable increase in the involvement of private capital, superannuation and pension funds in public company M&A. Key examples in 2020 included:

+ Aware Super's unsuccessful $676 million proposal for OptiComm; and
+ AustralianSuper's $5.1 billion non-binding and indicative approach for Infratil (noting our Review does not include non-binding indicative proposals).

Further developments which became public in early 2021 included:

+ CPE Capital and Macquarie Infrastructure and Real Assets (MIRA)'s potential $2.3 billion acquisition of Bingo Industries; and
+ MIRA and Aware Super's non-binding indicative proposal for Vocus Group.

As Australia's compulsory superannuation system continues to drive growth in the capital of Australian superannuation funds, there is no doubt we will see increasing involvement of these types of investors in public M&A as they seek to invest this money. Indeed, the greater need for Australian superannuation funds to invest will result in larger investment sizes which will inevitably lead them to listed markets.

49%

REAL ESTATE

Cromwell Property Group
($2.4 billion)

Australian Unity Office Fund
($485 million – withdrawn)

21%

HEALTHCARE

Metlifecare
($1.2 billion)

8%

PROFESSIONAL SERVICES

The Citadel Group
($449 million)

8%

RETAIL & CONSUMER SERVICES

Village Roadshow
($586 million)

5%

FINANCIALS

E&P Financial Group
($162 million – current)

CML Group
($131 million – withdrawn)

5%

ENERGY & RESOURCES

Stanmore Coal
($256 million)

4%

UTILITIES

Zenith Energy
($156 million)

Windlab
($68 million)

Percentage of PE investment across all PE deals, by value

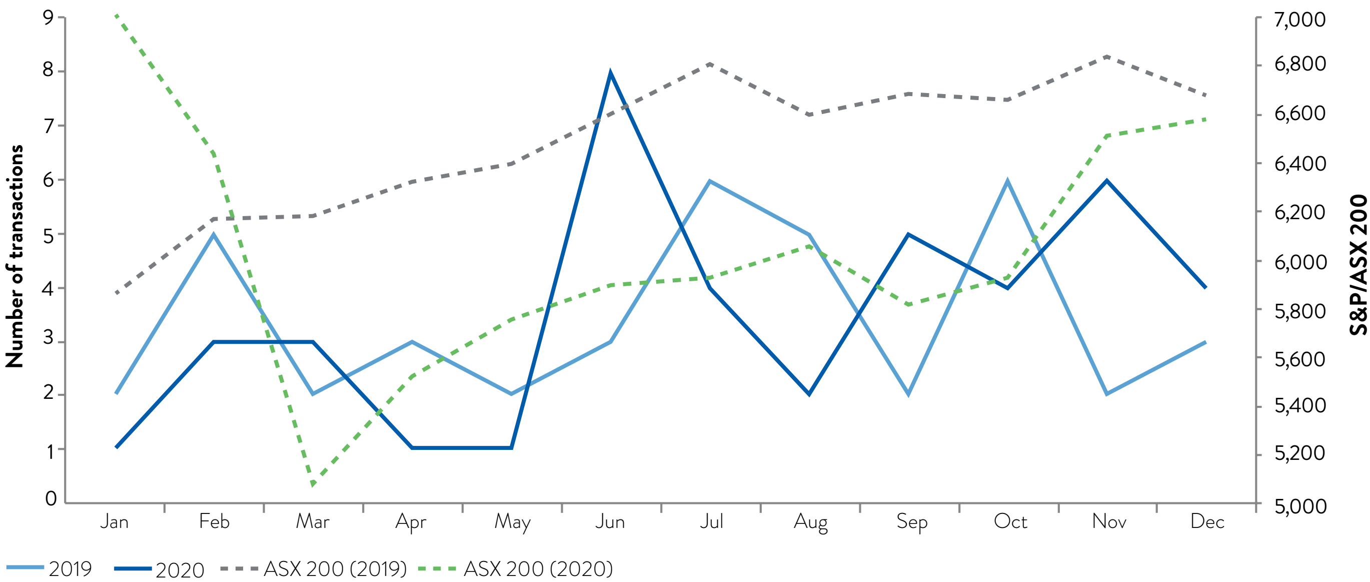
Timing of announcements

There was a significant drop in transaction volume in the beginning of the second quarter of 2020 as the impact of the COVID-19 pandemic was felt in Australia. Only two deals were announced in April and May, being:

+ SSR Mining's $2.7 billion acquisition of Alacer Gold; and
+ Golden Investment's $256 million acquisition of Stanmore Coal.

Deal activity picked up after the first wave of the pandemic in Australia had subsided, particularly in June where eight transactions were announced (the most in any month for the year).

Timing of announcements



Indeed, the number of deals announced increased each quarter,

rising from seven in Q1 to 14 in Q4 reflecting increased confidence and deal activity.

M&A IS CLEARLY ON THE RISE WITH A NUMBER OF POTENTIAL MULTI-BILLION DOLLAR DEALS ALREADY ANNOUNCED IN THE FIRST 6 WEEKS OF 2021 INVOLVING BINGO INDUSTRIES, VOCUS, TILT RENEWABLES AND TABCORP.

TRANSACTION HIGHLIGHTS

$5 BILLION+

+ Coca-Cola European Partners' proposed $9.8 billion acquisition of Coca-Cola Amatil
+ Northern Star Resources' $5.8 billion acquisition of Saracen Mineral Holdings

$1 BILLION+

+ SSR Mining's $2.7 billion acquisition of Alacer Gold
+ ARA Asset Management's $2.4 billion proportional takeover offer for Cromwell Property Group
+ EQT Fund Management's $1.2 billion acquisition of Metlifecare

$500 MILLION+

+ Iberdrola's $893 million takeover of Infigen Energy, defeating the competing $835 million bid by UAC Energy
+ Uniti Group's $694 million acquisition of OptiComm, defeating the competing $676 million proposal by Aware Super
+ Shandong Gold's $565 million takeover of Cardinal Resources, defeating rival offers from Dongshan Investments, Nord Gold and Engineers & Planners Co
+ WPP's proposed $597 million acquisition of WPP AUNZ
+ BGH Capital's $596 million acquisition of Village Roadshow

DEAL INSIGHT:
CARDINAL RESOURCES

The extraordinary four way bidding war for Cardinal Resources between Shandong Gold, Nord Gold, Engineer and Planners Co and Dongshan Investments gave rise to seven Takeovers Panel applications (one of which was also appealed).

Perhaps the most interesting application involved ASIC's Truth in Takeovers policy being put to the test.

Shandong Gold

- **18 June** Off-market takeover bid $0.60
- **22 July** Off-market takeover bid $0.70
- **7 September** Increased offer to $1.00
- **19 October** Lodged second supplementary bidders statement stating $1.00 was best and final in the absence of a higher competing offer

Nord Gold

- **15 July** On-market takeover bid $0.66
- **2 September** Increased offer to $0.90
- **21 October** Increased offer to $1.00
- **26 October** Announced that the offer price of $1.00 was best and final

JUNE JULY AUGUST SEPTEMBER OCTOBER

The takeover battle began in June 2020 when Shandong Gold announced an agreed recommended bid by Shandong Gold at $0.60 per share. Nord Gold made a competing bid and, following a series of bid increases, Shandong Gold made a last and final statement that its bid price of $1 per share was "best and final in the absence of a higher competing offer".

Nord Gold shortly thereafter increased its bid to $1 per share and also made a last and final statement. It asserted that its increased bid was not a competing higher offer and therefore Shandong Gold could not increase its bid. That is, while the Nord Gold bid matched the Shandong Gold bid it was not a higher offer.

Following the last and final statements, the Cardinal share price consistently traded above $1 per share showing that the market did not believe the statements.

Cardinal Resources and Samson Rock, a substantial shareholder of Cardinal, both applied to the Takeovers Panel seeking orders releasing the bidders from their last and final statements.

Samson Rock submitted that with the identical bids there was a real prospect of a stalemate meaning that control of the company would not be resolved and there had ceased to be an efficient, competitive and informed market for control. Cardinal and Samson Rock argued that the Truth in Takeovers policy was being used as a sword against a rival bidder by exploiting a technicality in the Shandong Gold last and final statement and not as a shield for market integrity. They said that allowing both bidders to depart from their last and final statements in "an appropriate and structured manner" would promote a fully informed and competitive market.

Both Cardinal and Samson Rock proposed that any shareholders who had suffered a detriment, for example by selling on-market after the last and final statements, could receive compensation.

The Takeovers Panel declined to conduct proceedings to resolve the deadlock, on the basis that Shandong Gold's qualification that its offer was best and final "in the absence of a higher competing offer" was not ambiguous. Nord Gold matching the Shandong Gold offer and seeking to hold Shandong Gold to its last and final statement was not a misuse of the Truth in Takeovers policy. Notwithstanding that the auction between Shandong Gold and Nord Gold has been stalled, there was no material to suggest that the market was inefficient or uninformed.

However, the debate became academic, as a third party Engineers & Planners Co, a Ghanaian mining company, announced a conditional off-market bid for Cardinal at $1.05 per share. This "higher competing offer" allowed Shandong Gold to increase its bid to $1.05. A fourth party Dongshan Investments, from the UAE, subsequently announced an intention to make a conditional off-market bid for Cardinal at $1.20, however the bid was never made on the basis that Shandong Gold had acquired over 50% of Cardinal, which would have defeated Dongshan Investments' minimum acceptance condition. Shandong Gold ultimately acquired control of Cardinal Resources in January 2021.

2

SECTOR ANALYSIS

ENERGY & RESOURCES

led the way in terms of both aggregate transaction value (37%) and number of deals (33%, which was double the number of transactions in the sector compared with the previous year)

FINANCIALS

saw strong public M&A activity by transaction volume

FOOD BEVERAGE & TOBACCO

stood out as a key contributor to aggregate transaction value, largely due to Coca-Cola European Partners' proposed $9.8 billion acquisition of Coca-Cola Amatil

Energy & resources

The energy & resources sector was the strongest performing sector in 2020 by both aggregate transaction value and number of transactions. This sector contributed to 37% of total deal value (up from 7% in 2019) and 33% of total deal activity.

The sector has been in decline since 2011 when commodity prices peaked, and 2014 was the last time the sector led by both deal value and activity.

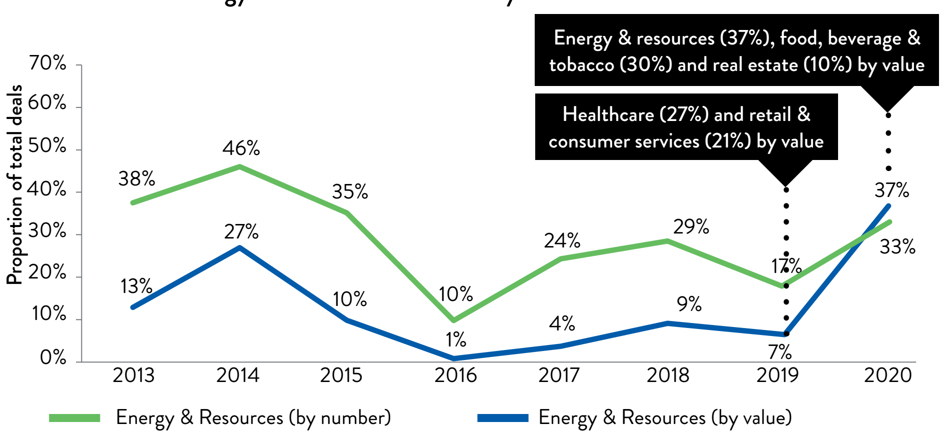
In 2020, there were 14 deals in the energy & resources sector, up from seven in 2019. Significant transactions in the sector included:

+ Northern Star Resources' successful $5.8 billion acquisition of Saracen Mineral Holdings (one of only two transactions in 2020 valued over $5 billion); and
+ SSR Mining's successful $2.7 billion acquisition of Alacer Gold.

The existence of competing bids for Cardinal Resources from Shandong Gold, Dongshan Investments, Nord Gold and Engineers & Planners Co also showed the strength of activity in the sector.

Gold was the standout sub-sector, with nine out of the 14 energy & resources transactions involving targets involved in gold mining or exploration. A surge in gold prices during 2020 was undoubtedly a factor as the uncertainty of the pandemic provided an impetus for investors to move to the safe haven that gold and gold assets provide including a hedge against the prospect of future inflationary pressures.

Transactions in energy & resources and other key sectors



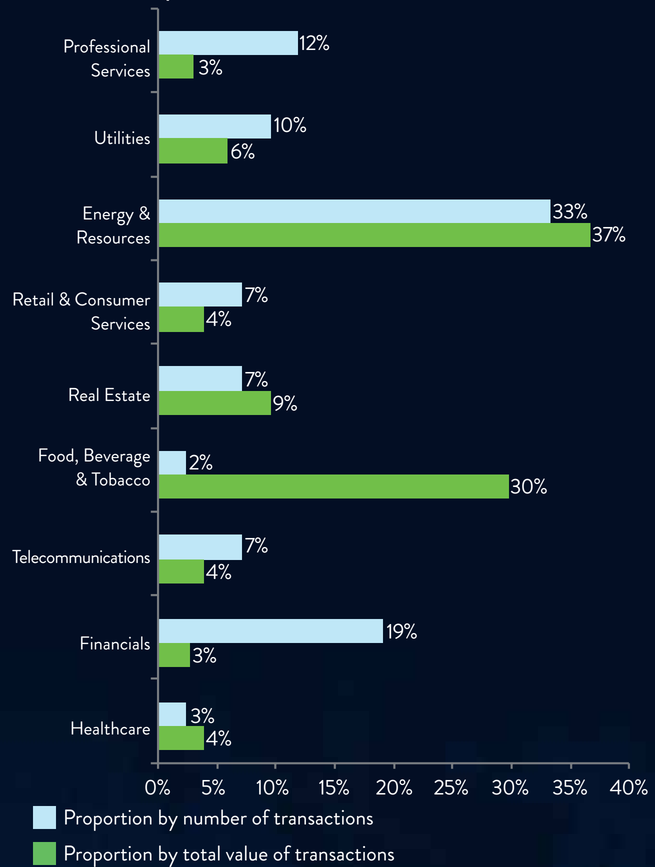
Other key sectors

Food, beverage and tobacco came in second by deal value (30%), with real estate coming in third (10%). Food, beverage and tobacco, however, saw a decline in deal activity with only one high-value transaction accounting for its strong performance by value, being Coca-Cola European Partners' proposed $9.8 billion acquisition of Coca-Cola Amatil.

By number of transactions, the financials sector was the second largest contributor to transaction volume (19%) followed by the professional services sector (12%).

The proportion of deals in the healthcare sector, which in 2019 led the way by aggregate transaction value, fell from 27% of aggregate deal value in 2019 to only 4% in 2020. The number of public M&A transactions in the healthcare sector also declined from six transactions in 2019 to only one in 2020 (being EQT's successful acquisition of Metlifecare by scheme of arrangement, which came after an earlier offer was withdrawn by the same acquirer who blamed the pandemic). COVID-19 undoubtedly had a significant impact on the sector, with hospitals and health systems feeling the brunt, counterintuitively, of diminished patient volumes and revenues, and increased labour and supply costs. We consider the reduced healthcare M&A is an anomaly of our data set which focuses on takeovers and schemes as there were a range of private M&A deals in the healthcare sector. We expect general interest in this sector to remain given the COVID-19 pandemic, advances in healthcare and an ageing population.

Transactions per sector (number vs value)



Top transactions by sector

The top five transactions by value came from four different sectors:

1 FOOD, BEVERAGE & TOBACCO

Coca-Cola European Partners' proposed acquisition of Coca-Cola Amatil

$9.8 BILLION

2 ENERGY & RESOURCES

Northern Star Resources' successful acquisition of Saracen Mineral Holdings

$5.8 BILLION

3 ENERGY & RESOURCES

SSR Mining's successful acquisition of Alacer Gold by scheme of arrangement

$2.7 BILLION

4 REAL ESTATE

ARA' Asset Management's successful off-market proportional takeover bid for Cromwell Property Group

$2.4 BILLION

5 HEALTHCARE

EQT's successful acquisition of Metlifecare by scheme of arrangement

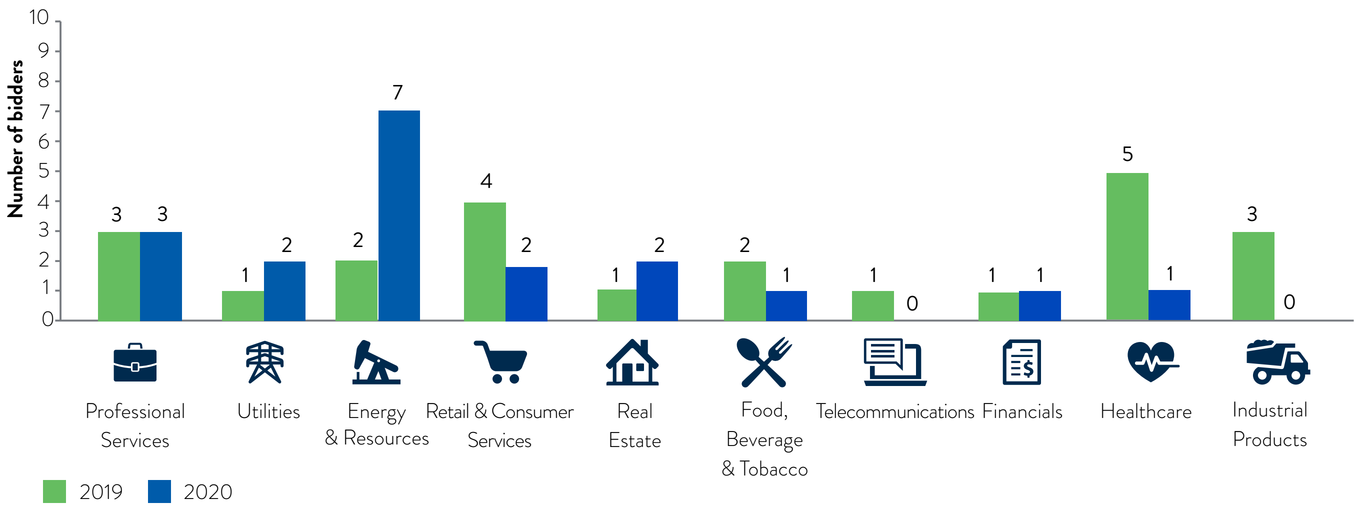
$1.2 BILLION

Sectors of interest for foreign bidders

In 2019, there was significant foreign interest in healthcare, retail & consumer services and industrial products. The sectors of greatest interest to foreign bidders in 2020 were energy & resources (seven deals) and professional services (three deals).

In terms of value, the food, beverages & tobacco sector represented 44% of the total value of foreign bids, solely attributable to Coca-Cola European Partners' proposed $9.8 billion acquisition of Coca-Cola Amatil. This was followed by energy & resources with 23% of foreign bids by aggregate transaction value, with seven out of 14 deals in the sector involving foreign bidders.

Key sectors for foreign bidders



What can we expect in 2021?

- The COVID-19 pandemic has exacerbated economic pressures on the aged care sector, affected short-term demand in private hospitals and elective surgery, and has forced structural changes to the industry with increased home-care and telehealth. These factors as well as other general matters such as an ageing population, the COVID-19 pandemic and a general focus on health will likely see a resurgence of M&A activity in the health, aged care and pharmaceutical related sectors.
- Companies which use and control data can expect to see increased activity, but also greater regulatory scrutiny as evidenced by the digital platforms inquiry and the changes to the *Foreign Acquisitions and Takeovers Act 1975* (more on this in Chapter 4).
- Increased government spending in infrastructure and the move to de-carbonise economies are likely to impact the level of demand for various commodities and renewable energy companies, potentially leading to greater M&A activity in these sectors.
- Financial services may also continue to see significant M&A activity as the large banks seek to divest assets and pressures in the wealth industry remain. The focus on AMP in recent times is a prominent example.
- Industries affected by the pandemic such as leisure and hospitality may become the focus of M&A as economies emerge from the pandemic. This might include distressed M&A opportunities if we face intermittent lockdowns and re-openings.

3

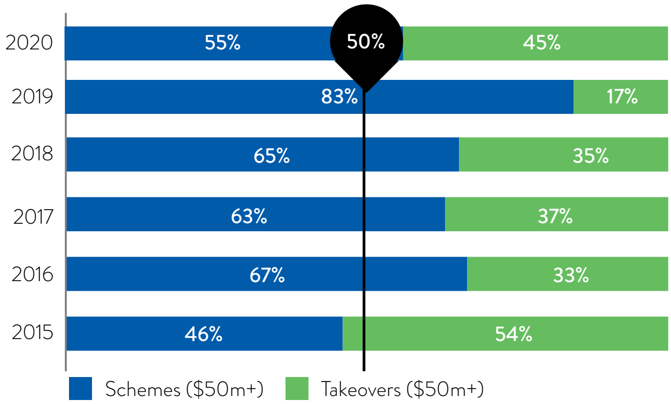
TRANSACTION STRUCTURES

Takeover / scheme split close to 50:50

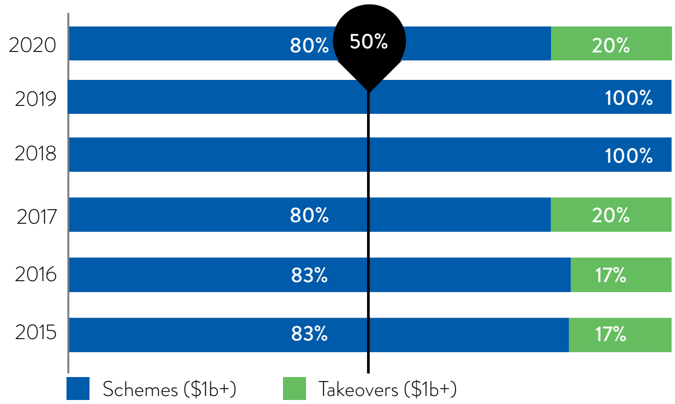
In 2020, 45% of all transactions valued at over $50 million proceeded by way of takeover bid, with that transaction structure achieving near parity with schemes of arrangement. This is a significant increase from 2019 when only 17% of transactions were undertaken by way of takeover bid.

As the graph below reflects, the historical "50:50" nature of the takeover or scheme divide had seemed destined to be confined to the history books, with 83% of deals in 2019 and 65% in 2018 proceeding by way of scheme. The shift towards takeovers in 2020 was likely, at least in part, to be an output of falling asset prices making agreement on price harder - a widening of the bid-ask spread. This led to a substantial increase in the number of hostile transactions, which generally can only be undertaken by takeover bid, with 26% of all transactions in 2020 being hostile in nature as compared to only 5% in 2019.

Schemes v takeovers ($50m+)



Schemes v takeovers ($1b+)



On the other hand, there remained a strong preference for schemes of arrangement over takeover bids for transactions valued over $1 billion in 2020, with four of the five high-valued transactions being structured as schemes. The only high-value transaction which was structured as a takeover was ARA Asset Management's $2.4 billion proportional takeover offer for Cromwell Property Group which was not supported by the target board. This predominant use of schemes to implement large transactions is consistent with market practice over many years and is referrable to a strong desire for transaction certainty in the context of "bet the farm" transactions and the need for due diligence and greater complexity of third party financing for transactions of that size.

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Pre-bid stakes in takeovers and schemes

The preferred form of pre-bid stake used in takeover bids and schemes of arrangement differed markedly in 2020.

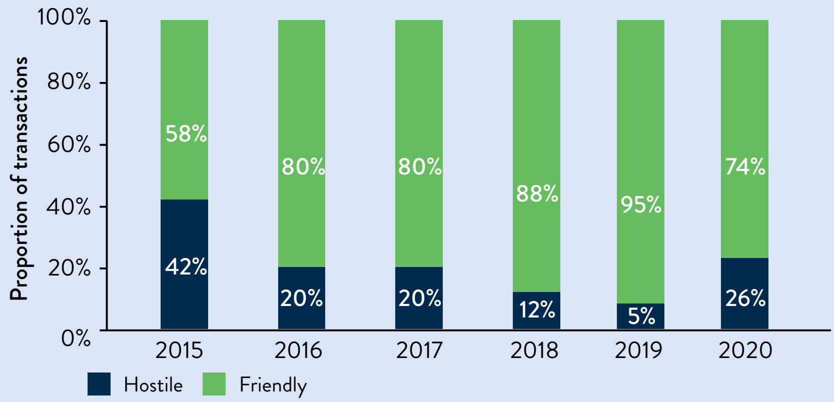
WHILE A PHYSICAL PRE-BID SHAREHOLDING IN THE TARGET FEATURED IN 83% OF TAKEOVER BIDS INVOLVING A PRE-BID STAKE, IT APPEARED IN ONLY 38% OF SCHEMES.

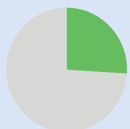
Instead, pre-bid agreements were the most popular form of pre-bid stake in schemes, featuring in 75% of schemes which involved a pre-bid stake.

This divergence reflects the greater degree of flexibility in transaction structuring associated with schemes and also the fact that shares held by a bidder cannot be voted in the same class as other shareholders voting on scheme proposals. A pre-bid agreement structured as an option or a voting commitment ensures the existing shareholder, supportive of the deal, can vote in favour as part of the general class of shareholders. For more on pre-bid stakes, see page 33.

The hostile bid makes a comeback!

Hostile v Friendly





26% OF ALL TRANSACTIONS IN 2020 WERE COMMENCED ON A HOSTILE OR UNSOLICITED BASIS.

This was a marked increase from 5% of transactions in 2019 and 12% in 2018. The increase in hostile bids was accompanied by a significant fall in the success rate of takeovers in 2020, with only 53% of takeover bids achieving success during that year, down from the 86% success rate observed in 2019.

Some of the more notable hostile or unsolicited bids were:

+ ARA Asset Management's successful $2.4 billion proportional off-market takeover offer for Cromwell Property Group;
+ UAC Energy's $835 million unsuccessful takeover bid for Infigen Energy; and
+ Starwood Capital's $485 million withdrawn bid for Australian Unity Office Fund.

The modest levels of success associated with proceeding on a hostile basis (44% versus 81% for friendly transactions in 2020) is to be expected. Obviously, acquirers will continue to have a preference for agreed or recommended transactions provided the bidder considers it possible to agree the price with the target board. That said, continuing uncertainties and the potential for re-emergence of market dislocation may mean we continue to see an elevated number of hostile takeover bids in 2021 as opportunistic bidders seek to capitalise on targets at attractive pricing in real time.

On-market bids remain rare

Of the 42 transactions valued at over $50 million in the Australian market in 2020, only two were on-market takeover bids (being Golden Investment's bid for Stanmore Coal and Nord Gold's bid for Cardinal Resources). This is in-line with 2018 but an increase from 2019 where there were no on-market bids.

4

FOREIGN BIDDERS

2020 saw a continuing trend of increased foreign investment regulation across the globe.

Many nations are placing an increasing emphasis on national sovereignty and seek to protect their country's assets, people and general well-being from a range of threats including geo-political, military, food security, data security and security of energy supplies and key infrastructure. All of these matters heightened a general trend of increased regulation of foreign investment.

Of course, none of this was new in 2020.

However, the general trend collided with the COVID-19 pandemic in 2020 and its threat to life, social well-being, economic security, businesses and supply chains.

The collision intensified the increased regulation of foreign investment, in particular, in Australia. This had a seismic impact on the number of foreign acquisition proposals and their success rates.

Foreign investment regulation and FIRB

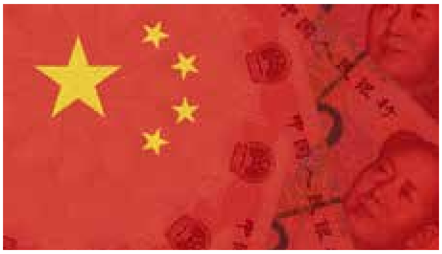
2020 was a watershed year for foreign investment and foreign investment regulation in Australia.

Zero threshold

Review times were already slowing at the start of 2020, as a result of the government's distraction by severe bushfires and its simultaneous increased focus on national security issues.

Then the COVID-19 pandemic hit.

Due to concerns that foreign investors may engage in predatory behaviour in the wake of significant economic uncertainty, the Treasurer announced that, as of 10:30pm on 29 March 2020, all monetary thresholds for all kinds of regulated actions under the *Foreign Acquisitions and Takeovers Act 1975* (**FATA**) would be immediately reduced to zero. This resulted in significant delays as the system became clogged with low value applications. The Treasurer also extended the statutory period for the review of applications and the making of a decision from 30 days to up to six months. While few transactions would take the full six months to review, nevertheless, the review process generally became much slower.



Difficulties for Chinese acquirers

Notably, a number of transactions with Chinese acquirers did not obtain FIRB approval. This included relatively small foreign investments in mining companies such as a proposed $20 million investment by Chinese state owned Baogang Group in Northern Minerals and a $14 million minority investment by Yibin Tianyi Lithium in AVZ Minerals (the main asset of which was not even in Australia but in the Democratic Republic of Congo). The latter deal was restructured to avoid the need for FIRB approval (ie smaller and the acquirer did not gain a board seat).

However, in perhaps a larger surprise, China Mengniu Dairy (a Hong Kong listed company which has Chinese government owned COFCO as a 16% shareholder) was reportedly advised that it was unlikely to gain FIRB approval for its proposed $600 million acquisition of Lion Dairy and Drinks. Following this advice, the parties abandoned the sale and Lion subsequently sold the business to Bega, an ASX listed company, in an auction sale reportedly comprising Australian and Canadian bidders only.

Revamped FIRB processes

In response to the greater demands on the system, the Foreign Investment Review Board (**FIRB**) and its supporting bureaucracy significantly revamped their processes, drafted in extra resources and introduced new streamlined exemption certificates. To FIRB's credit, by the last quarter of the 2020 calendar year, review times for most applications had come down to more normal levels, and the government was responsive in particular on international deals that had hard 31 December closing deadlines.

Notwithstanding this, parties in many global deals took advantage of "warehousing" transactions (where Australian subsidiaries of global targets would be temporarily sold to Australian buyers) in order to ensure their global deals could complete by year end.

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1 January 2021 changes and guidance

The government's increasingly expansive views on national security have been evident for some time through the foreign investment review process. If there was any doubt that national security was the key focus, the government announced midway through 2020 that FATA would receive a significant overhaul. The centrepiece of which was the introduction (effective 1 January 2021) of new regulated actions and new powers on the part of the Treasurer relating to national security risks. While the zero monetary threshold was scrapped as of 1 January 2021 and the thresholds returned to the usual levels, the changes to the law and FIRB focus mean ongoing scrutiny of foreign investment transactions will continue to be intense.

From a national security perspective, these amendments give the Treasurer the power to:

- **block, divest or impose conditions** in relation to "notifiable national security actions" if the Treasurer considers them to be contrary to national security – this broadly covers a foreign person starting a national security business, acquiring an interest of 10% or more (and in some cases less than 10%) of a national security business or acquiring an interest in national security land and can capture offshore entities even when there is no Australian subsidiary;
- **"call in" for review** a broad range of transactions (including ones that are not otherwise caught by FATA) for a period of 10 years after completion, in order to determine if they are contrary to national security; and
- **re-review previously approved transactions**, if the Treasurer becomes aware that the application was misleading or that changed circumstances may give rise to national security risks.

In conjunction with these amendments, the government released a guidance note (available on the FIRB website) relating to national security risks. The note provided detailed and unusually candid sectoral guidance on national security risks across a number of sectors, including banking and financial services, communications, commercial construction, commercial real estate, critical minerals, critical service providers and suppliers, critical technologies, defence providers, education, energy, health, information technology, nuclear power, space and transport.

With the benefit of that guidance, the recent Probuild decision, where the government effectively rejected the acquisition of Probuild by China State Construction Engineering Corporation is perhaps not particularly surprising (noting the transaction will not show up as a rejection in official statistics, as the acquirer withdrew the application before a rejection could be issued). The real question for 2021 will be the extent to which any companies are able to successfully navigate the national security review in these sectors. It is to be expected that some kinds of acquirers are likely to be seen as posing more security risk than others.

Compounding these changes has been the simultaneous introduction into Parliament of new legislation to amend the *Security of Critical Infrastructure Act 2018* (**SOCI Act**). The Government says the objective of the proposed law is

> ***"to amend and build on the existing regulatory regime created by the SOCI Act, to enhance security and resilience of critical infrastructure assets and systems of national significance. Expansion of the concepts to include systems of national significance is intended to widen the regime to address threats such as natural disasters and cyber-attacks."***

That bill has been referred to the parliamentary Joint Committee on Intelligence and Security. It is likely that during 2021, the scope of the SOCI Act will be greatly expanded beyond its current focus (certain ports, water, gas and electricity assets), which will in turn feed back into the definition of "national security business", and therefore the transactions that remain subject to review regardless of value, under FATA.

Public M&A transactions in 2020

Foreign bidder numbers

In light of the intense focus on foreign investment regulation in 2020, it should come as no surprise that foreign bidder activity in Australian public M&A in 2020 was at a low point for this decade at 45% of all announced deals over $50 million (19 of 42 deals).

Indeed, if not for a resurgence of foreign bids in the last quarter, the percentage would have been below 40%.

The decline of foreign bidder activity to 45% continued the downward trend of the last three years: 63% in 2017, 59% in 2018 and 56% in 2019.

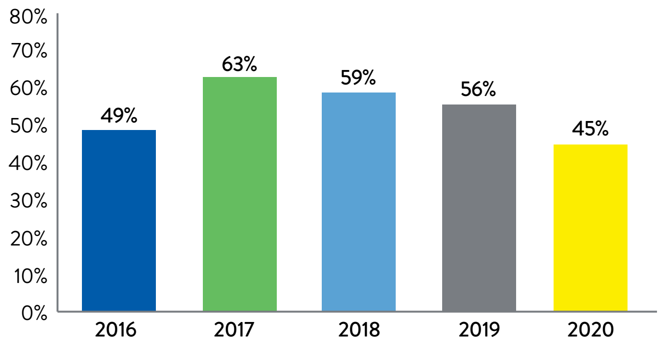
This fall is undoubtedly due to a combination of the COVID-19 pandemic making cross-border M&A more challenging, with the barriers to travel making negotiations, due diligence and site visits all harder as well as the increased regulation of foreign investment (including in Australia, the imposition of zero dollar monetary thresholds).

Foreign bid values

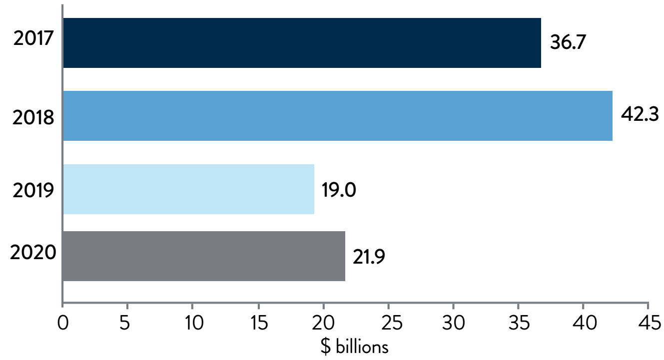
Notwithstanding the tougher foreign investment regulatory settings in 2020 and the decline in the percentage of foreign bidders amongst all bids, the same cannot be said in terms of aggregate transaction value. The value of foreign investment increased from $19 billion in 2019 to $21.9 billion in 2020 (albeit still down on 2016-2018 including $42.3 billion in 2018).

THE VALUE OF FOREIGN INVESTMENT WAS $21.9 BILLION IN 2020, ACCOUNTING FOR APPROXIMATELY 67% OF THE TOTAL VALUE OF PUBLIC COMPANY M&A OVER $50 MILLION.

Foreign bidders by number of transactions



Foreign bidders by value



One might argue, however, that the value of foreign investment in 2020 was largely propped up by Coca-Cola European Partners' proposed $9.8 billion acquisition of Coca-Cola Amatil.

Whatever the case, this continues the trend from 2019 of foreign bidders being significant players in the highest value public M&A transactions in 2020. Indeed, four of the five transactions exceeding $1 billion involved a foreign bidder:

- The United Kingdom's Coca-Cola European Partners' proposed $9.8 billion acquisition of Coca-Cola Amatil
- Singapore's ARA Asset Management's $2.4 billion proportional takeover offer for Cromwell Property Group to consolidate its shareholding and control
- Canada's SSR Mining's $2.7 billion acquisition of Alacer Gold
- European PE firm, EQT's $1.2 billion acquisition of Metlifecare

Where did the bidders come from?

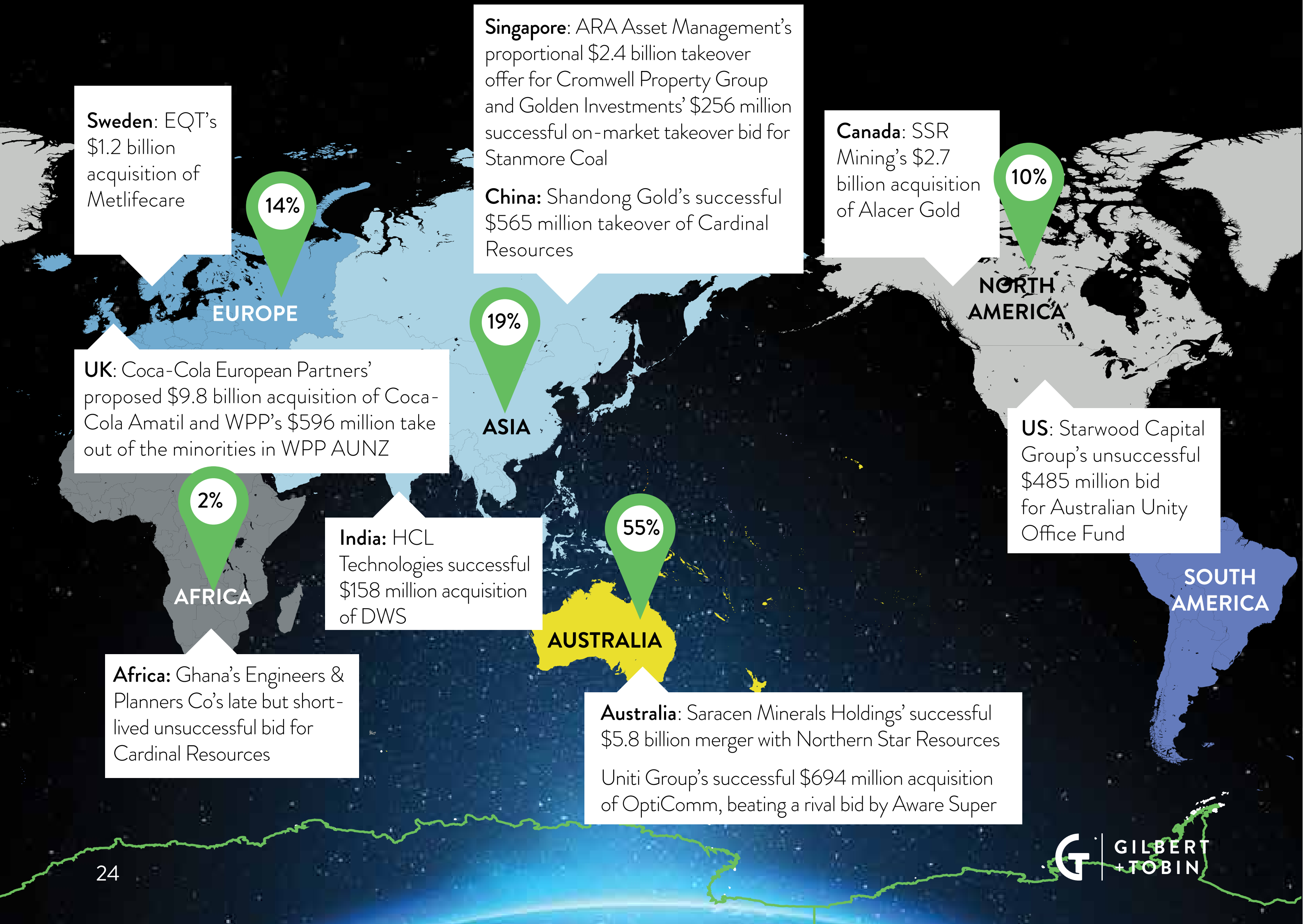
As illustrated in the world map below, in 2020 foreign bidders came from a range of continents and countries including Asia (Singapore, China, India and the Philippines), North America (US and Canada), Europe (including the UK, Sweden, France and Spain) and even Africa (Ghana, albeit that bid was short lived)!

However, when you break it down some more, there are some interesting themes in this:

North America, that is the US and Canada, with only four deals was at a much lower level than one might expect (and two of the three bidders from the US were not successful)

Asian bidders came from a variety of countries including Singapore, China, India and the Philippines albeit Singapore with 4 deals led the region

European investors were behind 6 transactions, with two transactions announced by UK bidders in the last quarter of 2020



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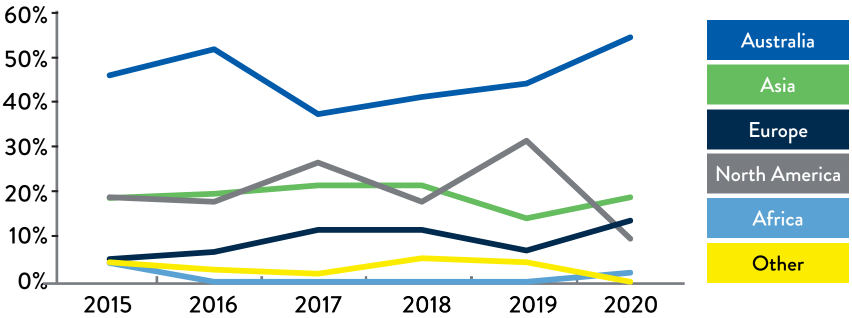
Proportion of bidders by region over time



As was the case in 2019, foreign bidders made up a larger share of the public M&A transactions from a transaction value perspective (compared to transaction number). While European bidders accounted for 14% of transactions by number, they accounted for 41% of aggregate transaction value. While Asian bidders accounted for 19% of transactions by number, they accounted for 16% of aggregate transaction value.

However, it is also interesting to see that Australian bidders accounted for 32% of the aggregate transaction value in 2020, increasing from 21% in 2019 and just 14% in 2018.

The largest number of foreign bidders from individual countries were:

The geo-political tensions with China and the continued (Australian government and media) sensitivity towards Chinese foreign investment, definitely resulted in a decrease in Chinese acquisitions. That said, it was interesting to see other Asian acquirers from Singapore and India fill the void, albeit the large interest from Japanese bidders in 2019 did not materialise in 2020.

European bidders surprised on the upside in 2020 as well. Interestingly, and especially given the large amount of private equity activity, there were few successful public company acquisitions by North American bidders. We would suggest this may prove to be an anomaly over time.

For sectors which were of interest to foreign bidders see Chapter 2.

Foreign bidders' success rates plummet

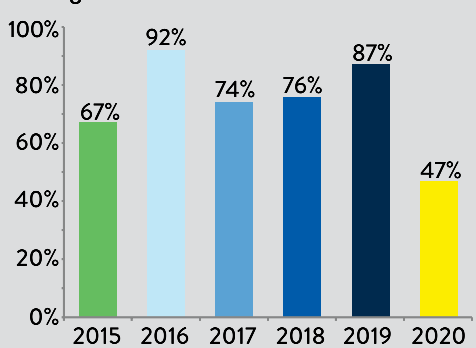
Foreign bidder success rates in public M&A transactions reached a high in 2019 at 87% of all announced public deals over $50 million.

However, the reverse was true in 2020. Only 47% of foreign acquisitions were successful in 2020, the lowest over the last 10 years.

We put this down to a combination of some contested bidding situations in which foreign bidders were unsuccessful (eg UAC Energy missed out on Infigen to Iberdrola and three unsuccessful bidders for Cardinal Resources), the general lower success rate of all deals (see Chapter 6) and the tougher foreign investment regulation environment. That said, no listed company M&A deal failed for want of getting FIRB approval (at least not any ones that were announced).

It should also be noted that this Review does not record confidential non-binding indicative offers which may not become public if rejected. If one takes this into account, the true success rates may be even lower which shows that 2020 was indeed a tough year for deal making.

Foreign bidder success rates



The success rate for 2020 does not include 12 transactions which were current as at 15 February 2021. The success rates for 2015 to 2019 have been updated to reflect the ultimate outcome of all transactions which were analysed in those past Reviews.

5

CONSIDERATION TYPES

Cash is no longer king!

The preference for cash consideration significantly decreased in 2020, with the percentage of transactions comprising all cash consideration falling from 83% in 2019 to 62% in 2020.

THERE WERE

7

TRANSACTIONS

WHICH OFFERED TARGET SHAREHOLDERS A FIXED

COMBINATION OF BOTH

Cash & Scrip

The number of transactions establishing new acquisition facilities (predominantly, secured debt facilities) decreased significantly from 62% in 2019 to 27% in 2020, despite record low interest rates.

Use of cash consideration decreases

Only 62% of public M&A transactions in 2020 gave target shareholders the opportunity to receive all cash consideration. This is a significant fall from 2019, where 83% of transactions offered all cash consideration or an all cash option, which was the highest percentage identified in ten years. In recent times, the only year which saw a lower use of cash consideration was 2015, where only 61% of transactions offered cash.

THIS REDUCTION IN CASH CONSIDERATION IS LIKELY TO HAVE BEEN DRIVEN BY THE COVID-19 PANDEMIC'S ECONOMIC RAMIFICATIONS

which created a preference for many companies to strengthen their balance sheets, retaining cash for liquidity and risk purposes.

Interestingly, schemes and takeover bids had similar percentages where all cash consideration was provided. 61% of schemes involved cash consideration, a substantial decrease from 2019 where 88% of schemes offered all cash. In contrast, use of cash consideration in takeover bids increased slightly to 63%, up from 57% in 2019, although still down from 82% in 2018.

Of the largest five successful transactions announced in 2020, three offered all cash and two offered scrip.

The largest all cash deal announced was Coca-Cola European Partners' proposed

$9.8 BILLION

acquisition of Coca-Cola Amatil by scheme

The largest successful transaction using a scrip consideration structure was Northern Star Resource's

$5.8 BILLION

acquisition of Saracen Mineral Holdings

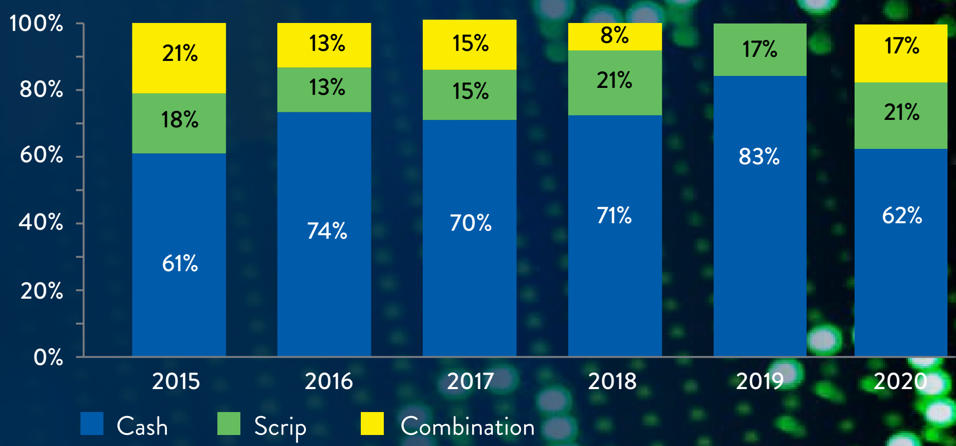
Combination consideration makes a comeback

There were seven transactions which had a consideration structure which offered target shareholders a fixed combination of both cash and scrip with no all cash alternative. This constituted 17% of transactions announced in 2020, which was similar to 2017 but was a significant increase on 2019 where no transactions offered a fixed combination of cash and scrip.

There were five transactions in 2020 which gave shareholders the option to elect either scrip or cash consideration. This included the successful acquisition by Pacific Equity Partners of The Citadel Group by scheme of arrangement, where target shareholders could elect either:

+ cash consideration of $5.70 per Citadel share or 1 Class B Pacific Group Topco Ltd share per Citadel share (subject to scale-back); or
+ a mix of scrip for 50-100% of their Citadel shares and cash for the remainder.

Types of consideration by number of transactions



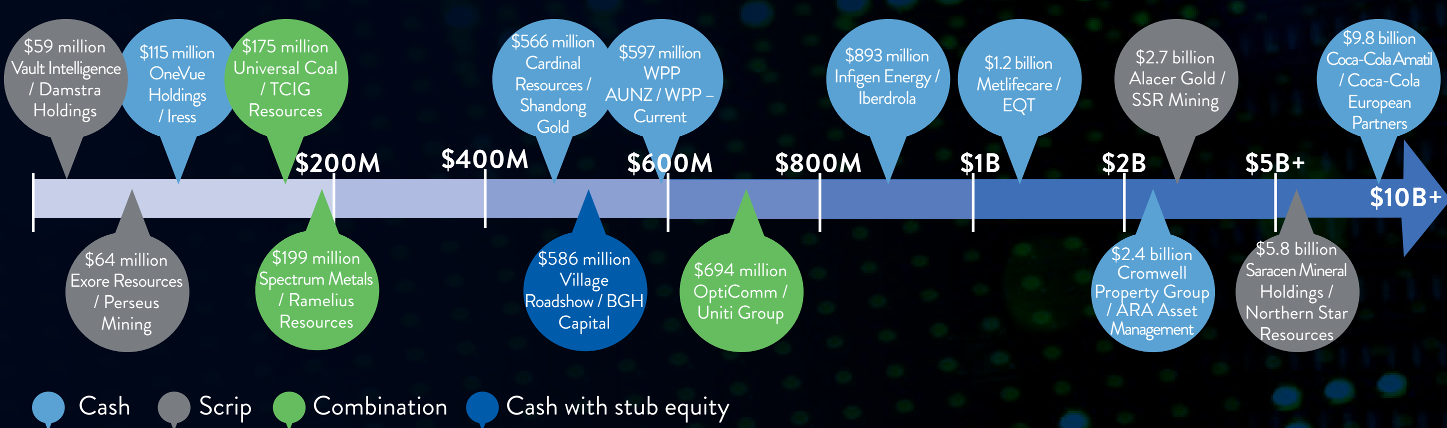
Position on stub equity settled

Two transactions in 2020 involved a stub equity option in the consideration structure, being:

+ BGH Capital's $586 million acquisition of Village Roadshow; and
+ Pacific Equity Partners' $449 million acquisition of The Citadel Group.

In 2020, ASIC released ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734, confirming new restrictions and guidance on the use of stub equity offers in takeovers and schemes. In addition, ASIC confirmed its ban on the use of Australian proprietary companies as stub equity vehicles, however, public companies with compulsory custodian arrangements are still permitted. More on this on page 44.

Consideration structures



Innovative consideration structures

The economic uncertainty resulting from the COVID-19 pandemic led to the creation of innovative consideration structures in a number of transactions during 2020, with BGH Capital leading the charge.

Village Roadshow

The first was the acquisition of Village Roadshow (**VRL**) where instead of reductions in scheme consideration on the occurrence of certain events, BGH Capital proposed contingent consideration uplifts tied to the occurrence of certain pandemic-related events by a specified date. The transaction structure of the BGH / Village deal comprised two structures which proceeded as concurrent transactions (Structure A and Structure B) in order to sure up the transaction certainty (as certain shareholders could not vote on Structure A).

Initial Consideration Structure under Structure A and Structure B

	Structure A	Structure B
Base Amount	Base offer $2.20	Base offer $2.10
Cash / Scrip	**VRC Shareholders** (controlled by / affiliated with the CEO, Chair and proposed Co-Chair, representing approx. 40% of VRL): shares (up to 100%) + cash **Non-VRC shareholders:** + all cash; + 50% cash and 50% shares; or + 100% shares	All shareholders, including VRC Shareholders, having the option to receive all cash or elect to retain their VRL shares
Uplifts	**Theme Parks Uplift** – Additional offer price of $0.12 per share - would be paid if theme parks are open to the public for a period of five Business Days ending at 4pm on the day that is two Business Days prior to the Proxy Cut-Off Date (the last day proxies must be lodged for the Scheme Meeting) **Cinema Uplift** – Additional offer price of $0.08 per share - would be paid if a majority of the Cinemas business locations (representing 75% of Cinemas business revenue in FY19) are open to the public for a period of five Business Days ending at 4pm on the day that is two Business Days prior to the Proxy Cut-Off Date and there are no significant changes to the expected movie slate for the remainder of FY21 **Border Uplift** – Additional offer price of $0.05 per share - would be paid if there are no border control measures imposed by the Queensland Government prohibiting entry from New South Wales as at 12 noon on 15 October 2020 and from Victoria on 31 October 2020	

The three uplifts incorporated into the consideration structure reflect how Village's business was impacted by COVID-19 and the consequential economic downturn. The theme parks uplift was enlivened due to the re-opening of Warner Bros Movie World and SeaWorld on the Gold Coast. As Queensland border restrictions remained in place in October and there had been a deferral of major film releases, the parties agreed that the further potential uplifts would not be payable to Village Roadshow shareholders under the initial consideration structure. Ultimately, that didn't matter as BGH increased its offer to $3.00 in response to some institutional shareholders seeking a higher price. Structure A was approved by shareholders and the Court.

Abano Healthcare

The second transaction offering an innovative consideration structure was the acquisition by BGH Capital (in consortium with OTTP) of Abano Healthcare Group. Although the target was NZX listed (and therefore not part of our data set which focuses on ASX listed targets), the transaction is worth noting briefly as it was put forward after an earlier agreement was terminated through a material adverse change trigger due to the onset of COVID-19 (see further on page 40).

The parties entered into a revised scheme which removed the right (contained in the previous scheme) for BGH Capital to terminate the scheme if a 'material adverse change' occurred.

Instead, the scheme price was subject to specified price reductions, up to a maximum of 75 cents per share, if any one of the following defined adjustment events occurred:

Description of Adjustment Event	Amount of price reduction (per share)
NZ Pandemic Adjustment Event	>30 cents
Queensland Pandemic Adjustment Event	20 cents
NSW Pandemic Adjustment Event	15 cents
One-Off EBITDA MAC Adjustment Event or an Asset MAC Adjustment Event	30 cents
Recurring EBTIDA MAC Adjustment	55 cents
Regulatory Adjustment Event	15 cents

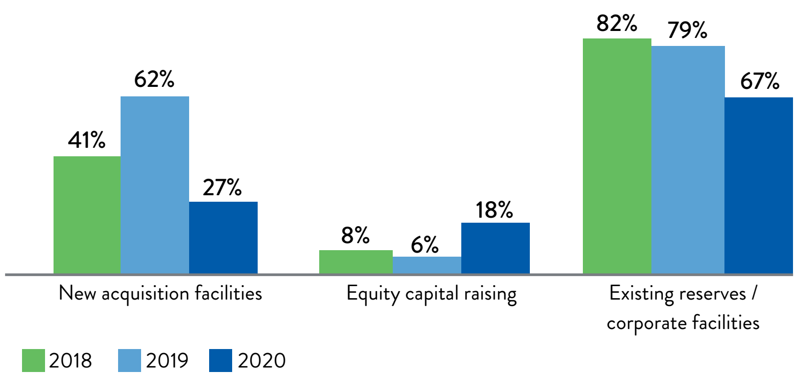
Sources of funding

The chart (right) shows that the cash consideration for public M&A came from a variety of sources.

While the majority of bidders continue to fund their acquisitions using at least a portion of existing capital, the number of transactions establishing new acquisition facilities (predominantly, secured debt facilities) decreased significantly from 62% in 2019 to 27% in 2020. This may have been heavily influenced by the uncertainty present throughout the majority of the year as businesses sought to maintain conservative balance sheets.

Perhaps unsurprisingly, there was an increase in the proportion of bidders undertaking equity capital raisings to fund their acquisitions, up from 6% in 2019 to 18% in 2020. This is likely due to a desire to maintain lower levels of debt, retain a strong balance sheet position in the midst of the COVID-19 pandemic and take advantage of relatively strong share prices. The ability of Australian companies to raise equity funding on accelerated basis in our capital markets regulatory regime undoubtedly helped as well.

Sources of funds



Larger deals continue to use a mix of funding sources. For example:

- **Cromwell Property Group / ARA Asset Management** – $2.4 billion funded from existing cash reserves and debt facilities as well as an equity raising
- **Metlifecare / EQT** – $1.2 billion funded from a drawdown of existing equity commitments
- **Infigen Energy / Iberdrola** – $893 million funded from existing cash reserves
- **OptiComm / Uniti Group** – $694 million funded from existing cash reserves and debt financing

In our view, the incidence of more scrip only transactions and fewer leveraged deals in 2020 was an aberration due to natural conservatism arising in uncertain times combined with relatively strong share prices.

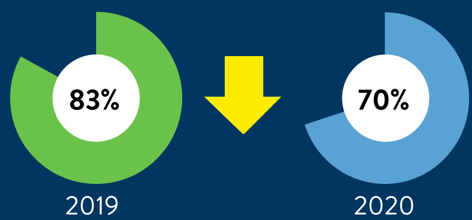
However, now that confidence has returned, together with high private equity activity, we expect to see a return to more all cash deals and greater use of debt acquisition funding.

6

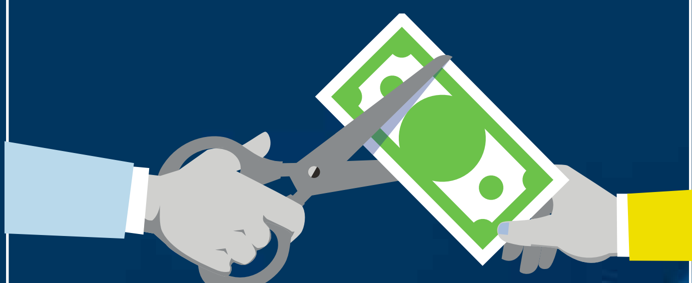
SUCCESS FACTORS

Significant decrease in success rates

70% of all concluded public M&A transactions over $50 million were successful in 2020. This represents a material decrease from the success rate of 83% in 2019. It is perhaps not wholly surprising given the backdrop of the COVID-19 pandemic.



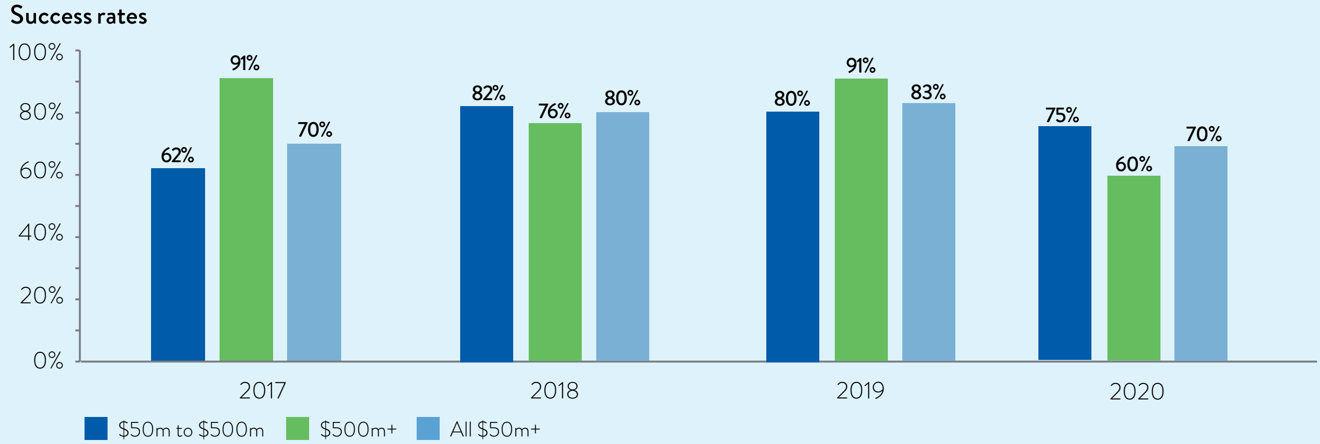
High-value transactions (i.e. those valued above $500 million) had a success rate of 60% in 2020, significantly down from 91% in 2019 (which was the highest we have observed since 2017). Transactions ranging from $50 million to $500 million were more successful than high-value transactions in 2020, despite the success rate dropping marginally from 80% in 2019 to 75% in 2020.



It is interesting to consider the circumstances in which transactions were not successful in 2020:

+ **COVID-19 led MACs:** many public company transactions were disrupted in 2020 by the bidders seeking to withdraw from deals based on material adverse change (MAC) conditions. Scottish Pacific's proposed acquisition of CML Group by scheme and LNG9's takeover bid for Liquefied Natural Gas did not proceed on the basis of MAC conditions which were alleged to have been breached as a result of the impacts of COVID-19 (for further details, see page 40). Metlifecare / EQT and Abano Healthcare / BGH Capital were two other transactions which were terminated due to a MAC condition but were able to be revived when the parties agree to a revised price.
+ **Breach of defeating condition:** in the early days of the COVID-19 outbreak in Australia, Australian Unity Office Fund announced the refinancing of its debt facility, which triggered a defeating condition under Starwood's takeover bid. Starwood relied on this breach to allow its bid to lapse. Notably, the bid was launched pre-COVID. A unitholder holding nearly 15% of the units on issue was also opposed to the transaction, so relying on the defeating condition provided an elegant exit for a deal which would have been unlikely to succeed.
+ **Competing offers:** proposed acquisitions of Infigen Energy, 3P Learning, OptiComm and Cardinal Resources failed due to a competing offer emerging. In the case of 3P Learning, the scheme was voted down despite the recommendation of the target board, largely due to the votes of a major shareholder who had teamed up with one of the competing bidders.

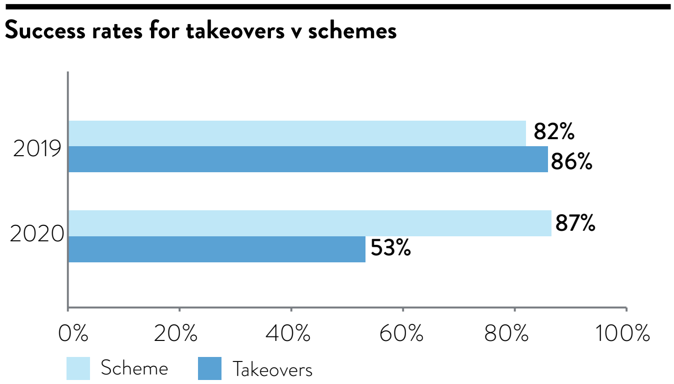
While some deals did not survive the shocks of COVID-19, the data suggests that public M&A transactions proved more resilient than might have been anticipated.



The success rate for 2020 does not include 12 transactions which were current as at 15 February 2021. The success rates for 2015 to 2019 have been updated to reflect the ultimate outcome of all transactions which were analysed in those past Reviews.

Schemes provide a more certain path to success

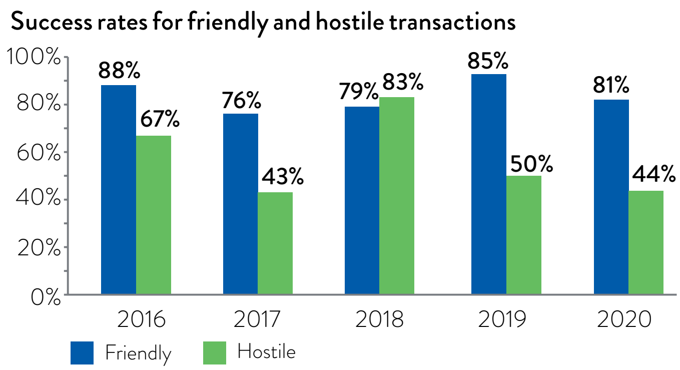
We saw a significant fall in the success rate of takeovers as compared to schemes in 2020, with 87% of schemes delivering a successful outcome compared to only 53% of takeovers (down from 82% and 86% in 2019, respectively). This is partially explained by the bidding war for Cardinal Resources, where three takeover bids lapsed or were withdrawn (including a proposed higher offer from Dongshan Investments) before Shandong Gold ultimately won the day. There were also failed bids by Aware Super for OptiComm and by UAC for Infigen Energy, both of which were contested situations resulting in a competing bidder acquiring the target.



Friendly transactions enjoy significantly higher success rates

AS ONE WOULD EXPECT, FRIENDLY TRANSACTIONS WERE MUCH MORE LIKELY TO SUCCEED THAN HOSTILE TAKEOVERS (81% VS 44%).

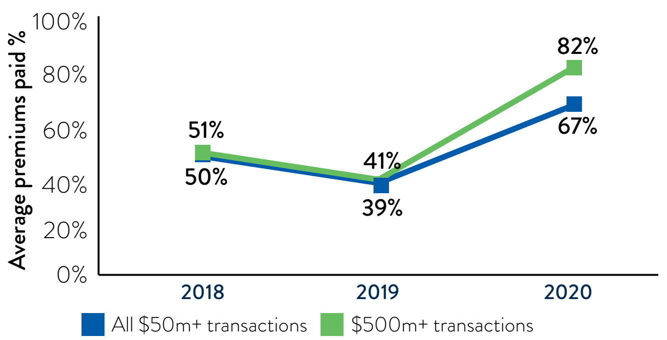
The failed competing bids for Cardinal Resources, OptiComm and Infigen Energy largely contributed to the result for hostile transactions.



Decrease in premiums on larger deals

The average premium offered by bidders for all transactions over $50 million increased from 39% in 2019 to 67% in 2020.

Average premiums – all transactions

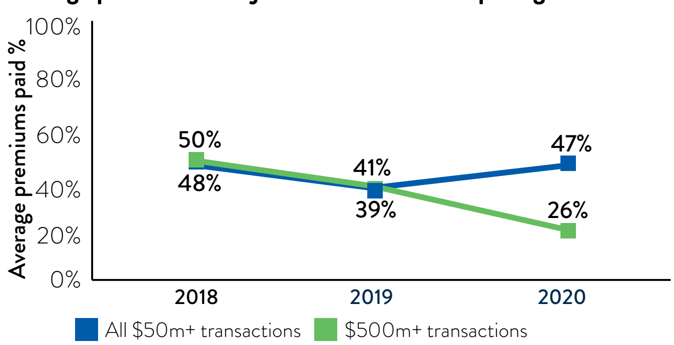


The 67% premium has been calculated based on the final bid price against the share price of the target at the close of trading on the day prior to the bid being announced. In the case of transactions involving multiple bidders, the premium of the second and later bids is measured against the pre-bid closing price referable to the first bid.

It could be argued this inflates the premium analysis.

However, if this data is adjusted to exclude all unsuccessful competing bids from the analysis, the average premium offered for all transactions over $50 million would be 47%.

Average premiums – adjusted to remove competing bids



When considering the adjusted data, the average premium for transactions valued over $500 million continued to trend downwards to 26% in 2020. This compares to 41% and 50% in the previous two years (respectively) and is consistent with the lower success rates observed for transactions of this size in 2020.

The competing bids for Cardinal Resources in 2020 topped the list of the highest 10 premiums offered over the past five years. The proposed takeover bid by Dongshan Investments which would have offered a massive 380% premium to acquire Cardinal Resources was ultimately not made, as the 50% minimum acceptance condition would not have been capable of satisfaction if the bid were to proceed. This cleared the path for Shandong Gold to successfully acquire the target at a slightly lower premium of 330%.

The top 10 transactions by premium offered in the past five years

1. **Over 320%** Competing bids for Cardinal Resources including Dongshan Investments' proposed $665 million takeover bid (380%); Shandong Gold's successful $565 million acquisition (330%); Nord Gold's and Engineers & Planners Co's proposed $552 million takeover bids (each, 320%)
2. **275%** PT Bayan Resources TBK's successful $515 million acquisition of Kangaroo Resources by scheme of arrangement
3. **233%** Zijin Mining Group's proposed $90 million takeover bid for Nkwe Platinum
4. **213%** TIO's successful $73 million takeover bid for Flinders Mines
5. **203%** Hub24's proposed $60 million acquisition of Xplore Wealth
6. **177%** Merck & Co's successful $502 million acquisition of Viralytics by scheme of arrangement
7. **142%** Hancock Prospecting's successful $426 million takeover bid for Atlas Iron
8. **141%** Advanced Personnel Management's successful $74 million acquisition of Konekt by scheme of arrangement
9. **120%** OZ Minerals' successful $418 million takeover bid for Avanco Resources
10. **95%** FNZ Group's successful $268 million acquisition of GBST Holdings by scheme of arrangement

2020 2019 2018 2017 2016

The top five premiums for 2020 were paid in the following successful transactions:

Top five premiums paid in 2020

1

330%
Shandong Gold's successful $565 million acquisition of Cardinal Resources, by takeover

2

79%
Iress' successful $115 million acquisition of OneVue Holdings, by scheme of arrangement

3

70%
BGH Capital's successful $586 million acquisition of Village Roadshow, by scheme of arrangement

4

69%
Perseus Mining's successful $64 million acquisition of Exore Resources, by scheme of arrangement

5

56%
Iberdrola's successful $893 million acquisition of Infigen Energy, by takeover

Pre-bid stakes

The bidder had a pre-bid stake of some kind in 48% of all transactions valued over $50 million in 2020. This was remarkably consistent with the two previous years, with 46% and 49% of transactions in 2019 and 2018 (respectively) involving a pre-bid stake.

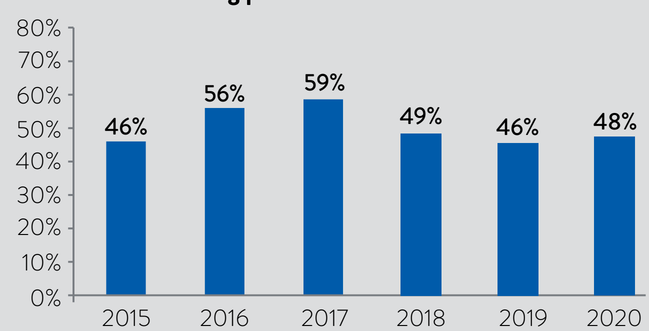
A pre-bid shareholding remained the most common form of pre-bid stake in 2020, being used in 65% of all transactions involving a pre-bid arrangement.

This was followed by pre-bid agreements with shareholders, which were present in 40% of all transactions involving a pre-bid arrangement.

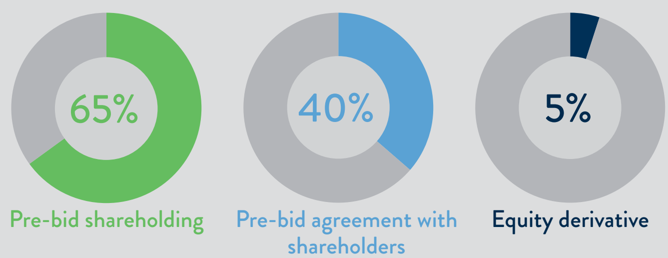
The move away from cash settled equity swaps observed in 2018 has continued, with only one bidder in 2020 using this type of instrument (or at least insofar as is evident from public disclosures), being Starwood Capital in its $485 million withdrawn takeover bid for Australian Unity Office Fund.

Of course, even where there is a compelling strategic rationale for acquiring a pre-bid stake, it is not always feasible to do so. If it was possible to know the proportion of bidders who would have preferred to secure a pre-bid stake, we expect this would represent the overwhelming majority.

Transactions featuring pre-bid stakes



Types of pre-bid arrangements (2020)



DEAL SPOTLIGHT:
INFIGEN ENERGY

From May to October 2020, Infigen Energy (**Infigen**) considered competing off-market takeover bids by Spanish renewables giant Iberdrola, S.A. (**Iberdrola**) and UAC Energy Holdings Pty Ltd (**UAC**) (which is indirectly majority controlled by Philippine based conglomerate Ayala Corporation). The recommended bid from the successful acquirer, Iberdrola, valued Infigen at approximately $1.33 billion (enterprise value) based on the final offer price. Gilbert + Tobin advised Infigen.

Infigen was the largest Australian incorporated listed renewables utility so had been a sought-after asset given the increasing focus on decarbonisation of the Australian energy system. The successful close of the offer followed a contested takeover, where the rival bidders engaged in a series of counteroffers and other tactical manoeuvres to seek to obtain control of Infigen.

- **Early to mid 2020** – Infigen and Iberdrola discuss and negotiate a confidential, non-binding and indicative proposal
- **2 June** – Infigen and Iberdrola become aware of UAC after-market raid for Infigen stapled securities (with Credit Suisse acting as the broker)
- **3 June** – UAC announces takeover bid for Infigen Energy at $0.80 per security. UAC lodges substantial holder notice notifying that its voting power in Infigen is 12.82%
- **9 June** – UAC serves / lodges bidder's statement
- **17 June** – Infigen and Iberdrola enter into bid implementation agreement, with Iberdrola announcing its takeover bid for Infigen at $0.86 per security
- **19 June** – UAC receives FIRB approval
- **23 June** – UAC offer opens. Infigen serves / lodges UAC target's statement
- **24 June** – Iberdrola serves / lodges bidder's statement
- **29 June** – UAC declares its takeover offer wholly unconditional and increases offer price to $0.86 per security. Iberdrola offer opens. Iberdrola increases offer price to $0.89 per security
- **30 June** – Iberdrola declares offer free from all defeating conditions (other than the FIRB and minimum acceptance conditions) and formally increases offer price to $0.89 per security
- **3 July** – Infigen serves / lodges Iberdrola target's statement
- **16 July** – Iberdrola declares its offer unconditional
- **22 July** – Iberdrola increases offer price to $0.92 per security conditional on receiving additional acceptances (which were ultimately received, crystallising the increased offer price)
- **24 July** – UAC offer closes, with UAC holding a relevant interest in over 19.9% of Infigen securities
- **~30 July** – TCI Funds accepts into Iberdrola offer
- **6 Aug** – Iberdrola achieves change in control of Infigen with voting power of 52.75%
- **9 Sept** – UAC accepts into the Iberdrola offer
- **21 Oct** – Iberdrola offer period ends, with Iberdrola holding over 97% of Infigen securities (final offer price of $0.92 per security)
- **26 Oct** – Iberdrola lodges notice of compulsory acquisition
- **2 Nov** – Infigen is suspended from ASX quotation
- **5 Nov** – Infigen is removed from the official list of ASX
- **21 Dec** – Iberdrola completes compulsory acquisition

Pre-bid tactics

Iberdrola and Infigen had been engaged in preliminary discussions since July 2019. In early 2020, Infigen and Iberdrola had focussed discussions and entered into a non-public exclusivity arrangement in order to negotiate the definitive terms of a scheme. During this negotiation period however, UAC launched an after-market raid which saw it accumulate aggregate voting power of 12.82% in Infigen and, the next morning, announced its intention to make a takeover bid for Infigen at $0.80 per security.

In the week following, Iberdrola and Infigen worked to flip the planned scheme into a superior and recommended takeover bid. Infigen and Iberdrola announced entry into a bid implementation agreement on 17 June 2020 with a bid price of $0.86 per security. Under the bid implementation agreement, Infigen directors agreed to recommend the Iberdrola bid in absence of a superior proposal. On the same day, Iberdrola announced that it had entered into a pre-bid agreement with Infigen's two largest securityholders, being funds managed by CIFF UK LP and The Children's Investment Fund (**TCI Funds**) in respect of 20% of the Infigen securities held by TCI Funds.

A series of strategic counteroffers and bid variations ensued.

Ultimately Iberdrola prevailed, acquiring over 90% of the Infigen securities at a final price of $0.92 per security.

Key features of the contested bids

UAC conditionality: initially the UAC bid was subject to a number of relatively unusual and highly prescriptive conditions. Many of these conditions required Iberdrola to make public disclosures, thereby, intending to serve as de facto due diligence. Infigen was also concerned that other conditions could be breached by its business as usual operations.

Change of control and financing: a successful takeover could have resulted in Infigen having to repay its senior debt arrangements. Iberdrola expressly stated in its bidder's statement that if the senior debt arrangements needed to be repaid as a result of the takeover, it would provide the backstop of an unsecured loan on arm's length terms to Infigen to refinance the arrangements, if required.

Momentum and tactics: UAC initially launched its takeover bid at $0.80 per security and then quickly increased its bid price to $0.86 per security to meet Iberdrola's recommended bid. Iberdrola then increased its bid price to $0.89 only 20 minutes after UAC announced its own price increase.

The two bidders also varied the conditionality of the bids regularly during the process. UAC declared its offer to be wholly unconditional after receiving FIRB approval while the Iberdrola bid remained conditional on FIRB and a 50% minimum acceptable condition. Following FIRB approval, Iberdrola then waived its the minimum acceptance condition.

A week out from the close of its offer period, UAC released a supplementary bidder's statement, advising that it would not increase its bid price and the offer would close as planned, but that it reserved the right to vary the terms of its offer if it acquired a relevant interest in at least an additional 5% of the Infigen securities. This tactic to keep alive the contested auction did not prove successful and UAC's offer then closed in accordance with its terms.

After its offer closed, UAC made the unusual move of increasing its holding in Infigen to 19.99%. This gave UAC a significant blocking stake that it held right up until the closing days of the original Iberdrola bid period. However, UAC ultimately did sell its 19.99% stake by accepting into the Iberdrola offer.

Premium delivers positive outcome

The final Iberdrola offer price of $0.92 per security was a significant premium to the historical trading price of Infigen stapled securities. The final offer price represented a premium of 55.9% to the closing price of $0.59 per Infigen security on 2 June 2020, the day before the announcement of the UAC offer. The contested nature of the takeover bid delivered a positive outcome for Infigen securityholders and provided them with certainty of value for their Infigen securities.

7

TRANSACTION TIMING

Takeovers taking longer… but still slightly faster than the scheme route

Schemes of arrangement essentially run to a prescribed standard timetable. The main variable is the time taken to obtain any necessary regulatory approvals. For that reason, the average days taken to implement a scheme of arrangement has remained relatively stable – 115 days in 2017, 126 days in 2018, 129 days in 2019 and 127 days in 2020.

However, the timing required to implement a takeover will depend on the speed of acceptance of the takeover offers. This may be influenced by many factors.

Traditionally, takeovers have taken, on average, less time to implement than a scheme. The extent of this differential has varied, but was never materially significant. However, in 2017, takeovers became significantly quicker to implement than schemes - on average, takeovers were implemented 46 days earlier than a scheme in 2017, 30 days in 2018, and 51 days in 2019. However, in 2020 we saw this differential reduce to only 24 days as takeovers took 103 days on average to implement.

However, it should be noted that the data for takeovers is somewhat skewed by three transactions which took an unusually long time:

+ Shandong Gold's off-market takeover bid for Cardinal Resources, which took 214 days and was in the context of competing bids from three other bidders;
+ WAM Capital's off-market hostile bid for Concentrated Leaders Fund, which took 176 days and was only recommended by the Board once WAM Capital increased its bid price; and
+ ARA Asset Management's unsolicited proportional bid for Cromwell Property Group, which took 160 days given opposition by the target board who regarded it as an opportunistic attempt by the bidder to take control by stealth.

If these three takeovers are excluded from the analysis, the average days taken to implement a takeover in 2020 was 78 days.

Regardless, the experience from 2020 has been that:

+ takeovers took longer than in prior years; and
+ on average, while takeovers were still quicker than schemes, the material advantage in timing we have observed over the last few years has significantly narrowed.

Average days to end of takeover offer vs scheme implementation date

GILBERT + TOBIN

We consider that the increase in time being taken by takeovers is a reflection of other trends we have observed during 2020, including:

+ the increase in the proportion of transactions being undertaken by way of takeover rather than scheme; and
+ the increase in hostile transactions.

Importantly, over the last few years, the emergence of takeovers as a materially shorter process has coincided with the emergence of schemes as being the strategically-preferred method of implementing a control transaction.

Essentially, the trend until 2020 was that takeovers tended only to be used where there was a particular reason why a takeover should be preferred. One reason was if the circumstances of the company (whether that be the bidder starting from a control position, or the composition of the register suggesting a number of significant shareholders being open to accept quickly) created the possibility of the deal being concluded in shorter time.

These trends reversed in 2020.

Takeovers were being used more, driven strongly by the resurgence in hostile transactions. This was indicative of gaps in perceived value between bidders and targets arising from the uncertainty generated by the COVID-19 pandemic (and reflected in decreased takeover premiums, at least in those deals at an initial stage). This in turn explains the lengthening in the time taken to implement takeovers.

Indeed, it is interesting to note that the data in 2020 on timing is consistent with previous years where transaction structures were more equally balanced between takeovers and schemes. In those years there was little material difference between the two from a timing perspective.

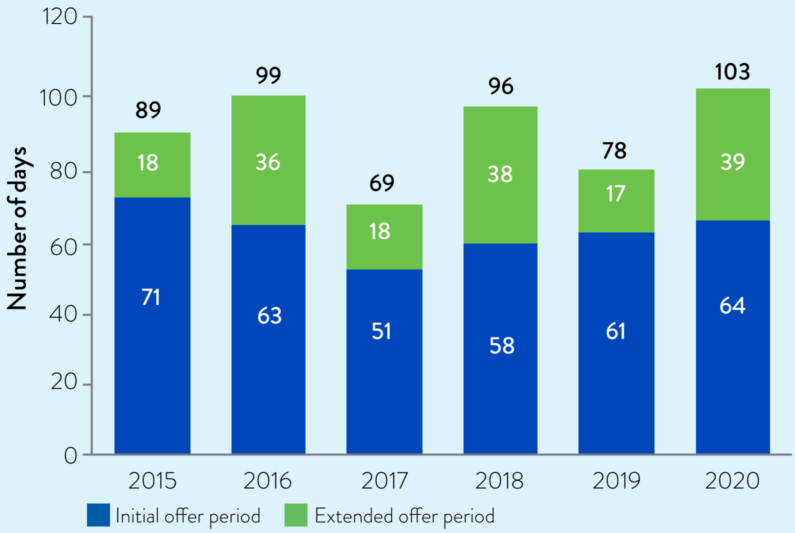
Timing in takeovers

As stated above, in 2020 there was a significant lengthening in the average time taken for a takeover from announcement to close of the offer – from 78 days in 2019 to 103 days in 2020.

Other statistics worth noting are:

+ an immaterial increase in the average length of the period from announcement of the offer to end of the initial offer period in 2020 compared to 2019;
+ the increase in takeover timing being overwhelmingly attributable to extensions in the offer period. Takeovers were extended in 2020, on average, by 39 days, compared to just 17 days in 2019.

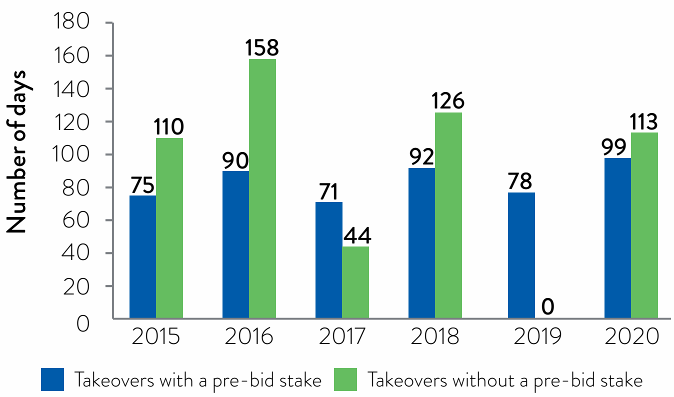
Timing in takeovers



THE LENGTHENING IN TAKEOVER TIMING IS ENTIRELY CONSISTENT WITH THE INCREASED CONTESTABILITY OF TAKEOVERS (INCLUDING THE NUMBER OF HOSTILE TRANSACTIONS) OBSERVED IN 2020.

In previous years, we have assessed the impact of having a pre-bid stake on the time taken to complete a takeover. Generally, other than in 2017 (where the outcome was skewed by there being only one deal that proceeded to completion without a pre-bid stake), deals where the bidder held a pre-bid stake had a distinct advantage in closing more quickly.

Days to close of takeover bid: impact of pre-bid stake

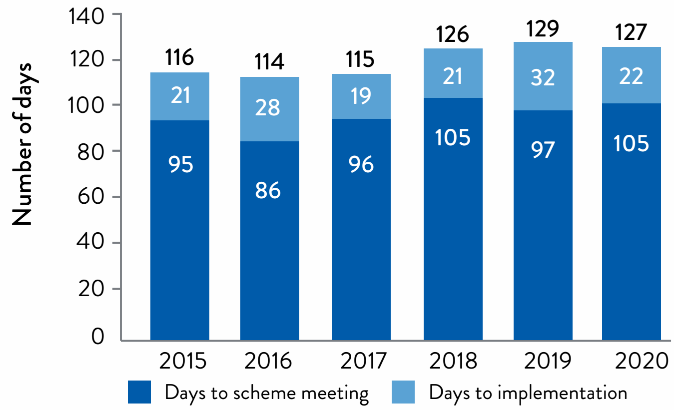


The data from 2020 reflects the fact that bidders without a pre-bid stake generally faced a greater (and more time-consuming) contest for control. The timing advantage of a pre-bid stake was, however, more subdued in 2020 as takeovers without a pre-bid stake only took 14 days longer on average than those with a pre-bid stake. It should be noted that in 2019, no takeover bidders started their bid without a pre-bid stake.

Timing in schemes of arrangement

As shown below, the time period between announcement of a scheme and its implementation date has been relatively stable over the last six years. This is obviously to be expected in the context of such a regulated process.

Timing in schemes



Just over half of all successful schemes announced during 2020 took between 80 – 120 days from announcement to the scheme implementation date.

This reinforces the general timing "rule of thumb" of between three to four months to implement a scheme.

Interestingly, many of the schemes that took longer than this general window in 2020 involved a competitive bidding environment, either through:

+ competing bidders (eg Uniti's acquisition of OptiComm); or
+ a need to sweeten the consideration offered to secure the support of major shareholders (eg IRESS's acquisition of OneVue, Elemental's acquisition of Zenith Energy and BGH Capital's acquisition of Village Roadshow).

In prior years, extended periods for schemes of arrangement were primarily driven by delays in regulatory approvals. Other than in the case of TPG Telecom and Vodafone, a deal which was announced in 2018 but which only closed in 2020 after ACCC objections were overcome in the Federal Court, this was not a significant issue in practice in 2020.

8

IMPLEMENTATION AGREEMENTS AND BID CONDITIONS

Implementation agreements

Implementation agreements continued to be a standard feature of agreed transactions in 2020, present in all 31 recommended transactions.

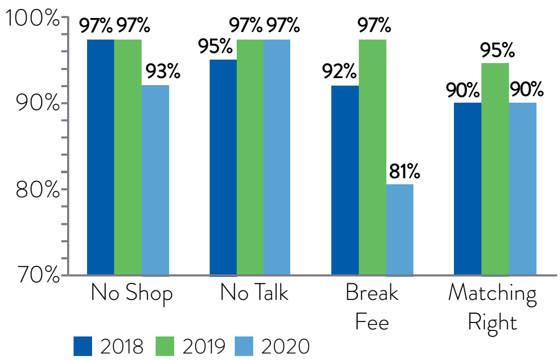
While the form of implementation agreements was largely in line with usual practice, the COVID-19 pandemic led to increased focus on certain terms, in particular material adverse change (**MAC**) conditions (see further on pages 40 to 41).

Deal protection measures

In addition to standard obligations on the target board to recommend the transaction to shareholders (in the absence of a superior proposal and, where applicable, subject to a favourable independent expert's report), implementation agreements in 2020 continued to include the usual exclusivity protections in the vast majority of agreed transactions, namely:

+ restrictions on the target soliciting competing proposals (ie no-shop) and talking to potential competing bidders unless approached with a potentially superior proposal (ie no-talk);
+ obligations on the target to notify the bidder if it receives a competing proposal; and
+ matching rights in favour of the bidder if a superior proposal emerges, giving the bidder an opportunity to match or better the superior proposal before the target board can change its recommendation.

Frequent deal protection mechanisms



Break fees

In 2020, there was a reduction in the proportion of target boards who agreed to pay break fees in recommended transactions on the occurrence of the usual trigger events (including a change in recommendation by the target board or material breach of the implementation agreement by the target).

The percentage of agreed transactions which included break fees fell from 97% of transactions in 2019 to 81% of transactions in 2020. At least part of the decline can be attributed to the particular circumstances of certain deals in 2020. For instance, there was no break fee in WPP plc's bid for the 38.5% of WPP AUNZ which it did not already own, or in two smaller agreed deals (amaysim / WAM Capital and Australian Leaders Fund / Watermark Funds) which had relatively low premiums in the mid-teens.

For the most part, the quantum of break fees stayed within the Takeovers Panel's guidance of 1% of the target's equity value. The acquisition of Alacer Gold by SSR Mining was the only exception, and featured a break fee and reverse break fee of $108 million (4% of the target's equity value). However, although ASX-listed, Alacer Gold is a Canadian company and so the transaction was not within the Takeover Panel's jurisdiction or considered by the Australian courts.

There was a further decline in reverse break fees, with 39% of agreed transactions valued over $50 million including a reverse break fee in 2020. This figure was down on 49% and 54% for 2019 and 2018, respectively.

Reverse break fee triggers included:

+ failure to satisfy conditions relating to regulatory or shareholder approvals required by the bidder; and
+ material breach of the implementation agreement by the bidder.

In nearly all cases, the quantum of the reverse break fee was the same as the break fee payable by the target. The exception was the successful acquisition of DWS by HCL Australia Services, where the reverse break fee was 50% of the break fee payable by the target.

MAC conditions and the COVID-19 pandemic

The sudden and dramatic change in business and market conditions brought about by the COVID-19 pandemic (and the responses of governments to it) put MAC conditions in the spotlight. This led to MAC conditions being invoked in a number of announced transactions in April / May 2020.

The largest transaction where a MAC condition was invoked was EQT's acquisition of ASX-listed Metlifecare by scheme (see right). That deal ultimately proceeded on revised terms, giving credence to the conventional wisdom that, where there is a material change in circumstances (but a deal still makes sense), a MAC condition may be most useful as a starting point for renegotiation.

That said, the outcome for the Pioneer Credit and CML Group implementation agreements, which were both terminated with reluctant agreement of the target, demonstrate that even if there is doubt about whether a MAC condition has been triggered, it can be practically challenging for a target to implement a scheme where the bidder no longer wishes to proceed and is alleging that there has been a MAC.

Australian and New Zealand deals where MAC conditions were invoked in 2020

Target	Bidder	Transaction type	Value	Outcome
Metlifecare*	EQT	Scheme	$1.2 billion	Renegotiated under threats of litigation
CML Group	Affinity owned Scottish Pacific Group	Scheme	$130 million	Terminated by mutual agreement after dispute, with bidder agreeing to pay $1 million of target costs
Abano Healthcare*	BGH Capital	Scheme	$129 milllion	Renegotiated with lower offer price and modified consideration structure
Pioneer Credit*	Carlyle Group	Scheme	$120 million	Terminated by target after dispute
Liquefied Natural Gas	LNG-9	Takeover (off-market)	$115 million	Withdrawn

**These transactions were announced in 2019*

Metlifecare – EQT scheme 2.0

The acquisition of Metlifecare by EQT was first announced in December 2019. The implementation agreement had a standard MAC condition, triggered by a material reduction in net assets and/ or net profit. The impact of changes relating to general economic and market conditions were excluded, unless there was a disproportionate effect on the target group. No break fee was payable if the transaction was terminated due to a MAC.

In April 2020, EQT asserted that the change in circumstances caused by the COVID-19 pandemic had triggered the MAC condition. This was denied by Metlifecare, including on the basis that the pandemic had not had a disproportionate impact on Metlifecare. Metlifecare pursued various ways to require EQT to fulfil its obligations under the implementation agreement, including initiating court proceedings.

On 10 July 2020, it was announced that the parties had entered into a new implementation agreement, without a MAC condition, for a revised recommended transaction at a value of $1.2 billion.

Implications for implementation agreements

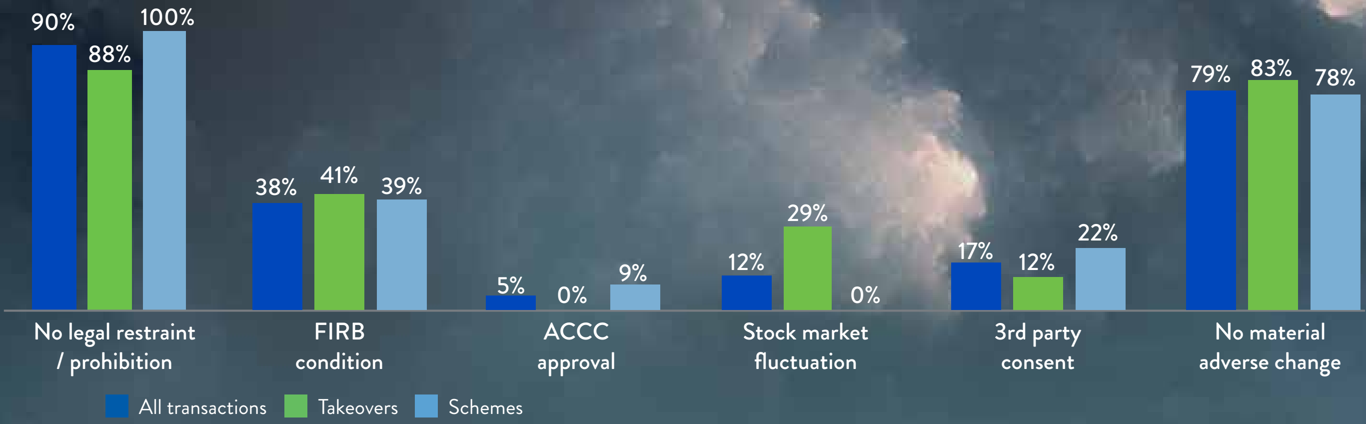
The experience of the COVID-19 pandemic on transactions in 2020 has already led to increased focus on the wording of MAC conditions. In particular, the common carve-outs which provide that the impact of general economic and market conditions will be disregarded in assessing whether a MAC has occurred are being more closely scrutinised.

We also expect that greater time will be spent considering the obligations on the target in relation to conduct of its business in the ordinary course between signing the implementation agreement and transaction completion. The pandemic demonstrated that circumstances can arise where conducting a business in the ordinary course consistent with past practice is impossible. As some bidders in 2020 alleged a material breach of these provisions (which would have given rise to an ability to terminate the implementation agreement), we expect that targets will want to ensure that there are appropriate exceptions for circumstances beyond the target's control (eg compliance with laws including lockdown laws).

Bid conditions

The usual range of bid conditions were included in off-market takeovers and schemes announced last year.

Frequency of conditions



+ **Material adverse change:** 83% of all off-market takeovers, and 78% of schemes, had MAC conditions (down from 86% for off-market takeovers and 100% for schemes compared to 2019). MAC conditions featured in 54% of hostile bids.

  The decline in MAC conditions in schemes can in part be attributed to the particular circumstances of certain transactions, including WPP plc's proposed acquisition of the minorities in WPP AUNZ by scheme and the renegotiated scheme for the acquisition of Metlifecare by EQT, which did not have MAC conditions. In some transactions later in the year, the lack of a MAC condition from the outset was highlighted to target shareholders as one of the virtues of the transaction in uncertain times. In one of these transactions (being Vault Intelligence / Damstra Holdings), although there was no general MAC condition, there were specific more limited conditions related to circumstances which would have had a material adverse effect on the target (an absence of business disruption from cyber incidents and that certain material contracts had not been terminated).

  The triggers for MACs typically include reductions in EBITDA and net assets, although other triggers (including reductions in revenue and increases in net indebtedness) were also used.

+ **Minimum acceptance conditions:** 82% of all off-market takeover bids had a minimum acceptance condition, an increase from 71% in 2019. Four off-market takeover bids had a 90% minimum acceptance condition whereas 10 bids required that the bidder achieve only 50.1% of the target.

+ **Unconditional bids:** Unconditional on-market takeover bids continued to be relatively unusual, with only two announced in 2020 (up from one in 2019). In both cases, there were specific circumstances for the bid being unconditional:

  – Nord Gold's proposed acquisition of Cardinal Resources was unconditional from the outset as the bidder had already received approvals to proceed with the transaction. This was in contrast to the highly conditional competitive bid by Shandong Gold (which required FIRB and a number of other foreign regulatory approvals, although was ultimately recommended by the Cardinal Resources board).

  – The acquisition of Stanmore Coal by Golden Investments Australia (a company owned by Golden Energy and Resources and Ascend Global Investment Fund SPC), where the bidder had a pre-existing shareholding of 31% and was the largest shareholder of the target. FIRB approval was obtained prior to the bid being announced in May 2020, allowing shareholders to receive consideration two business days after acceptance (enhancing the appeal of the offer).

9

THE REGULATORS

TAKEOVERS PANEL

March 2020 marked the 20th anniversary of the Takeovers Panel.

The milestone was cause for reflection to consider if the Takeovers Panel has achieved its objectives of efficient, effective and speedy resolution of takeover disputes. In this respect, almost all commentators regard the Panel as being a tremendous success over its 20 year life with efficient and cost effective decision making. It has also developed policy in a number of areas including frustrating action, 1% break fee, disclosure of derivatives over 5% and enhancing the Truth in Takeovers policy in many respects. These developments have been generally well accepted.

Indeed, the Panel's success is reflected in the ongoing demand for its services!

Application activity at the Takeovers Panel was high in 2020 with over 35 applications being made (the second highest on record). A relatively large number of these applications resulted in proceedings being conducted and declarations being made. This, combined with a number of requests to vary and enforce Panel orders, meant that 2020 was arguably the busiest year in the Panel's history.

Key Takeovers Panel cases and developments

Keybridge Capital

The Takeovers Panel has over its years seen some frequent users of the dispute resolution forum. A few of them collide in Keybridge Capital which has now had 14 Panel matters (11 in 2020). Some of the parties involved in the case relating to this company include Wilson Asset Management, Bentley Capital and Australian Style Group.

This Review clearly cannot do justice to the ins and outs, and strategies involved in the competition for control of Keybridge but, suffice it to say, the 14 matters have covered a lot of territory including in relation to bid conditions, funding arrangements, frustrating action, incorrect acceptances, insider participation, reviews of ASIC decisions and associations. It does show the Takeovers Panel's efficiency in dealing with matters quickly and cost effectively, although with 14 matters, perhaps it is too cost effective!

Cash settled swaps / derivatives disclosure

The Takeovers Panel proposed a revised guidance note 20 on disclosure of equity derivatives, issuing a public consultation paper on the matter in 2019. The policy is in essence similar to the current position for disclosure of substantial shareholdings above 5%. That is, holdings of physical shares and derivative holdings of more than 5% in aggregate need to be disclosed (as do changes of 1% or more).

However, a key change in the proposed revisions to the guidance note is to require this disclosure even where there is no control purpose and no control transaction on foot. This would bring the Australian approach in line with that of many other jurisdictions.

The rewrite of the guidance note was completed in 2020, with only minor changes announced in May 2020. However, given that was in the midst of the first wave of the COVID-19 pandemic, the Panel stated that there would be a transitional period before the new guidance note took effect. As such, the revised guidance note 20 will only come into effect upon the Panel giving market participants three months' notice, which it is still to do.

Cardinal Resources

The extraordinary four way bidding war for Cardinal Resources gave rise to seven Takeovers Panel applications (one of which was also appealed) and put ASIC's Truth in Takeovers Policy to the test. The Takeovers Panel declined to conduct proceedings (see further on page 13).

ASIC

2020 presented challenges to many and it was not smooth sailing for ASIC.

As the nation's corporate, markets, financial services and consumer credit regulator, ASIC played a crucial role in managing Australia's response to the COVID-19 pandemic. ASIC responded rapidly and strategically to the challenges created by COVID-19 and focused on ensuring that the Australian financial system, although under stress, continued to be strong and efficient. In the background, ASIC faced a whirlwind of internal and external pressures. This included public scrutiny of ASIC's remuneration and procurement practices and calls from some quarters for changes to ASIC's governance model in response to the loss of some high-profile litigation (recall the landmark "wagyu and shiraz" responsible lending case against Westpac). We think it's safe to say ASIC has been a rock caught in a hard place in 2020, attempting to uphold its 'why not litigate' approach after being critiqued for not being tough enough in the Royal Commission and then being pilloried throughout the year when it brought unsuccessful actions. The federal government also expressed concerns that ASIC has become a quasi-policymaker through regulatory interventions and speeches by commissioners on areas such as responsible lending, financial services and climate change.

"It is the Parliament who determines who and what should be regulated. It's the role of regulators to deliver on that intent, not to supplement, circumvent or frustrate it." Federal Treasurer, Josh Frydenberg speaking at the AFR Banking and Wealth Summit, 18 November 2020.

ASIC recalibrated its regulatory priorities allowing it and the entities it regulates to focus on the impact of the COVID-19 pandemic. The temporary changes ASIC made to its priorities included the deferral of some activities and the redeployment of staff to address issues of immediate concern, including protecting vulnerable consumers, maintaining the integrity of markets and supporting businesses.

ASIC continued to respond to the impacts of COVID-19 by extending the reach of its existing exemptions and 'no action' positions on AGMs and financial reports, providing new guidance and deferring the commencement of reforms. ASIC also adapted its administrative processes, facilitating electronic signing, lodgement of documents, including shareholder meeting materials and applications for relief, via its online regulatory portal and permitting electronic distribution of takeover documents (such as bidders and targets statements and scheme booklets).

While pursuing pandemic related priorities, ASIC has remained committed to continuing its enforcement work, and in particular its Royal Commission related enforcement work. ASIC recorded 11 criminal and 49 civil financial services actions before the Courts as at 1 July 2020 including four civil penalty cases against large financial institutions. Additionally, in the six months to June 2020, ASIC announced that it was able to enforce a total of $12 million in civil penalties imposed by the courts.

"As the uncertainty around the COVID-19 pandemic eases, we expect M&A activity to increase. We recognise that upcoming deals may incorporate novel structures and terms to deal with the risks of the COVID-19 pandemic so we encourage companies to talk to us early in the planning phase of these deals." M&A activity and ASIC intervention during COVID-19, ASIC, 16 September 2020.

ASIC is due to get a new chair in 2021, and the Treasurer has also foreshadowed that there will be changes to ASIC's governance structure. Whoever is appointed will be taking on a challenging role at a complex time. That said, we do not expect the identity of the new appointment to materially change ASIC's approach to M&A regulation.

The following pages provide a high-level overview of some of the key developments in M&A in 2020.

Stub equity offers restricted by ASIC to maintain investor protection

ASIC has now settled its approach to stub equity offers in takeovers and schemes, releasing formal guidance confirming which Australian companies can be used for stub equity offers. Importantly, ASIC has decided not to ban the use of custodian structures in control transactions.

A stub equity offer is when scrip consideration is offered as an alternative to cash in a transaction that typically involves a private equity bidder. This enables the target shareholders to retain economic exposure to the underlying business of the target company through holding scrip in the bidding or holding vehicle (**HoldCo**). The purpose of stub equity transactions is to take the ownership of the target entity into a private structure, allowing the private equity firm to take advantage of market opportunities for the business, to act swiftly and to have full control over decision-making during the life of the investment and in relation to exit at the same time as giving shareholders the opportunity to participate in future returns from the business.

In mid-2019 ASIC invited submissions on a proposal to modify the *Corporations Act* to:

+ prevent stub equity offers of scrip in a propriety company; and
+ prohibit the use of custodian structures to hold stub equity scrip.

ASIC highlighted that its proposals were not intended to prohibit stub equity arrangements, but were to ensure that if stub equity is offered, it does not involve investors foregoing substantive protections under Australian law. Shareholders of proprietary companies are not entitled to the same level of periodic financial disclosure nor is there any prohibition on "related party transactions", which can have a significant impact on minority holders.

Custodian structures involve the issue of stub equity to a custodian who holds legal title to the stub equity on behalf of the accepting shareholders. This structure ensures that the number of registered shareholders in HoldCo remains below 50, the limit at which the takeovers provisions of the Corporations Act are triggered. ASIC decided not to proceed with its proposal to prohibit the use of custodian structures, which means that it is possible to offer stub equity without exits from the target subsequently being regulated by the takeover laws which apply to ASX-listed companies and companies with more than 50 shareholders. ASIC recognised that additional regulation of custodian structures would likely result in bidders using an offshore vehicle rather than an Australian entity, resulting in less protection for Australian shareholders.

ASIC has pushed ahead with its first proposal, altering the Corporations Act to ban stub equity offers of scrip in a proprietary company being made to a large quantity of retail target holders during schemes of arrangement and takeover bids. The change, instrumented by the ASIC Corporations (Stub Equity in Control Transactions) Instrument 2020/734, responds to concerns that retail investors are not afforded the same rights and protections as shareholders in public companies if the bidder is able to use a proprietary company as the Holdco vehicle to make an offer of stub equity scrip to target shareholders. The new instrument also includes anti-avoidance measures to ensure that public companies do not simply convert to proprietary companies once the takeover has been completed.

We consider that ASIC's approach, and its decision not to ban custodian structures, is measured and appropriate. ASIC's approach is unlikely to result in an increase in the use of foreign company bid vehicles and will not discourage bidders from offering stub equity in control transactions, which is increasingly important in negotiating public to private transactions as some institutional and sophisticated investors are often reluctant to lose their exposure to the target's future success. ASIC's new instrument sufficiently balances the need for investor protection with the ability for retail investors to fully participate in the offer, while ensuring offers of stub equity continue to be a useful transaction structure and feature of the Australian market.

Distressed M&A

Share transfers using section 444GA

ASIC updated its guidance under *Regulatory Guide 6 (Takeovers: Exceptions to the general prohibition).* The update intends to formalise ASIC policy when it comes to providing relief from the operation of the takeover restrictions in the Corporations Act for compulsory share transfers under a deed of company arrangement.

Section 444GA of the *Corporations Act* allows for the transfer of shares in a company that is in administration to be transferred as part of a deed of company arrangement by an administrator.

The updated guidance outlines that before Chapter 6 relief will be provided for share transfers made under section 444GA, ASIC generally requires that:

+ shareholders are to be provided with explanatory materials which include an independent expert report that is prepared on a non-going concern basis in accordance with *Regulatory Guide 111 (Content of expert reports)* and that demonstrates that the shareholders have no residual equity in the company; and
+ the independent expert report is prepared by an independent expert in accordance with *Regulatory Guide 112 (Independence of experts)*.

ASIC's move to require an independent expert's report to be prepared on a non-going concern basis is a welcome development. This is because providing shareholders with a going concern valuation where a company is in administration and subject to a deed of company arrangement takeover is likely to confuse shareholders and increase the risk of shareholders being misinformed. A going concern valuation may also create a false assumption that the company could continue as a going concern and provide ammunition for shareholders to oppose the takeover in court.

Statement of no objection in creditors' schemes

ASIC has emphasised that when creditors' schemes of arrangement are used to affect a control transaction, they must align with the principles and protections underpinning the takeover provisions in the Corporations Act (for example providing shareholders with an opportunity to vote, or participate in, a control transaction). ASIC also reiterated that companies should consider how shareholders are affected during the creditors' scheme.

In the matter of *Tiger Resources Ltd v International Finance Corporation* (2019) 141 AC SR 203, the shareholders' shares were valueless and ASIC therefore accepted that the protections of Chapter 6 of the Corporations Act could be displaced on policy grounds. ASIC accepted that shareholders may not require an opportunity to vote (where such approval is not required for other reason), provided they have enough information about the control proposal and are informed of their rights in relation to the scheme.

ASIC intervention in M&A transactions – some key areas of focus

Consideration on contingent events

ASIC has warned that where an acquisition structure provides that additional consideration becomes payable on a contingency, additional time may need to be built into the transaction timetable.

This was the case in the acquisition of Village Roadshow by BGH Capital via scheme of arrangement where Village Roadshow shareholders were able to elect whether they received cash or scrip consideration depending on scale back arrangements. The scheme also included consideration that was subject to an uplift if certain conditions were satisfied prior to the scheme meeting. These conditions included:

+ the absence of border control measures imposed by the Queensland Government relating to NSW and Victoria (preventing travel to theme parks based in Queensland);
+ a majority of the cinemas business locations (representing 75% of cinemas business revenue in FY19) being open to the public for five business days and there being no significant changes to the expected movie slate for the remainder of FY21; and
+ the Movie World and Sea World theme parks being open to the public for five business days (for further details on this novel consideration structure, see page 28).

ASIC insisted that the scheme timetable be revised so that shareholders were given enough time to submit proxies after the announcement of the indicative consideration election results and the announcement about whether contingent consideration is payable. The scheme timetable was pushed back 11 days as a result. ASIC noted the importance of scheme timetables being structured carefully so that shareholders to have enough time to assess the consideration offered and determine how they will vote.

Material delay in regulatory approvals

COVID-19 has undoubtedly created delays in processing times for regulatory approvals (for example, obtaining FIRB approval of many transactions has taken longer given the removal of monetary thresholds increasing FIRB's workload), making it increasingly difficult to achieve commercial deadlines.

ASIC took action in relation to the Nzuri Copper / Xuchen International scheme of arrangement, where there was delay in receipt of regulatory approvals by Xuchen in China which was a condition precedent to the scheme. This condition precedent was due to be satisfied by 15 July 2019, however it was not satisfied until 20 January 2020, with the second court hearing being adjourned seven times. Xuchen had also informed Nzuri that for commercial reasons, its preference was to at least partially fund the scheme consideration by way of third party loan. ASIC was concerned that the shareholders' vote had become stale because of the delay and adjustments to the funding of the scheme consideration. Addressing this concern, Nzuri reissued its scheme booklet and held a ratification meeting providing shareholders with the opportunity to either ratify their previous approval of the scheme or vote against it.

ASIC has recommended that companies consider whether they should provide supplementary disclosure and seek confirmatory approval where there has been a lengthy delay between the shareholders voting at the scheme meeting and court approval. To alleviate risks associated with such delay, ASIC has suggested that where possible, approvals for conditions precedent to the implementation of the scheme which are dependent on obtaining third party approvals be obtained before commencing the scheme process. We question the practicality of this suggestion given that doing so would add further time to transaction timetables and so would contribute, even further, to the risk of deals not being able to be executed due to the passage of time.

Recommendations from conflicted directors

ASIC has reiterated its expectation that conflicted directors generally refrain from making a recommendation to shareholders.

ASIC flagged to the market in September 2020 that it had intervened in one scheme in 2020 to ensure that the views of an independent board committee were prominent enough relative to a recommendation of conflicted directors. ASIC emphasised that whether conflicted directors make a recommendation is an issue that should be contemplated at the time a scheme implementation agreement is executed and conditions relating to director recommendations should be crafted appropriately. There continues to be a split in judicial approaches to the question, but ASIC remains clearly of the view that conflicted directors should not provide a recommendation and bidders and targets should ensure they are aware of this position.

We continue to believe that the preferable way to manage this is for the director receiving a benefit to still provide a recommendation but with fulsome and prominent disclosure of the benefits to be received so as to put that recommendation into context.

ACCC

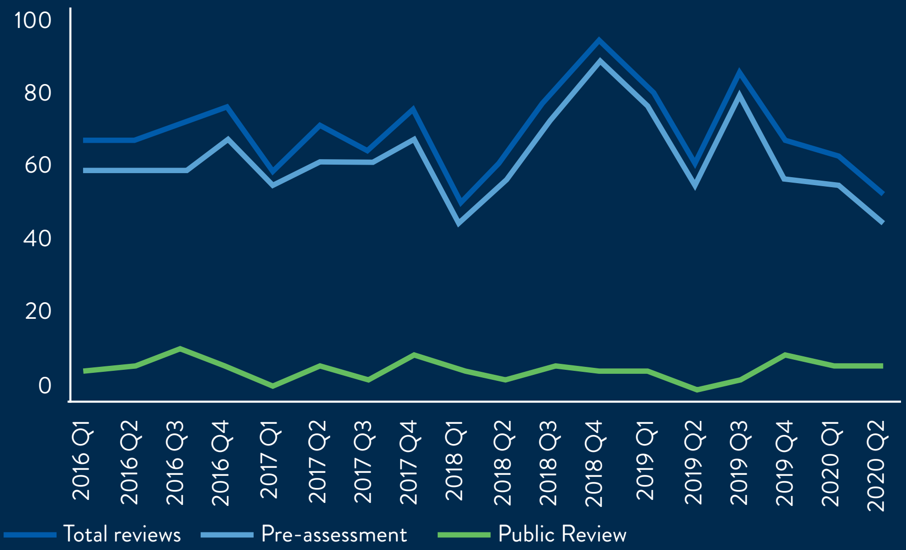
ACCC open for business during COVID-19

2020 was a testing time for all organisations across the private and public sector. In late March 2020, as measures to respond to the pandemic were implemented across the country, the ACCC communicated with the competition law community to reassure practitioners that the ACCC would continue to review existing applications for merger clearance and continue to accept new applications.

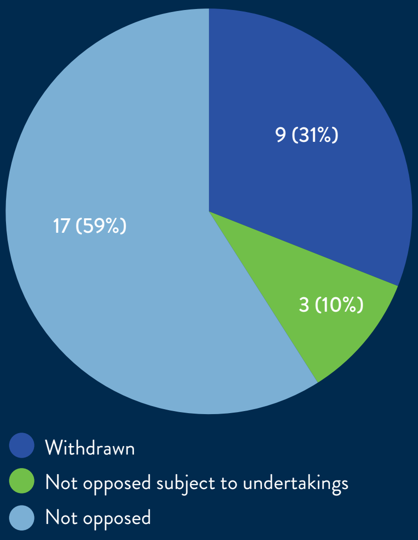
The ACCC's published statistics for merger reviews, including pre-assessments and full public reviews show that there was only a slight drop-off in the number of transactions notified to it in the first half of 2020 compared with previous years and the number of full reviews undertaken by the ACCC was slightly up from the same period the previous year.

The vast majority of reviews conducted by the ACCC (~90%) continue to be cleared through the pre-assessment process. The outcomes of the 29 full public reviews that were completed by the ACCC in 2020 are shown in the following chart. As this shows, of the minority of transactions that progressed to a full review, around 60% were cleared with no conditions, while around 30% were withdrawn (either in the face of ACCC opposition or due to commercial considerations) and the remainder were cleared by the ACCC subject to undertakings to divest specific assets or brands.

ACCC's published statistics for merger reviews (2016 - 2020)



ACCC's merger decision outcomes (2020)



Interestingly, the ACCC had issued a "red light" statement of issues in relation to two of the transactions that it unconditionally cleared in 2020 (Pacific Magazines/ Bauer Media and Connective Group / Australian Finance Group). A "red light" statement of issues is a strong statement of preliminary concerns by the ACCC at the end of its first round of review and the ACCC has generally only cleared transactions with conditions after issuing such a statement. Whether these transactions are an aberration, or an indication of a greater willingness by the ACCC to consider and ultimately accept the arguments of the merger parties after a statement of issues remain to be seen.

ACCC assessment of complex undertakings

Over the course of 2020, the ACCC assessed four complex undertakings that were offered by merger parties to address concerns that were expressed by the ACCC, all of which were in transactions involving parties represented by Gilbert + Tobin. These transactions were:

- Asahi's acquisition of Carlton and United Breweries, which the ACCC cleared after accepting a divestiture package of a number of beer and cider brands (including Stella Artois, Becks and Strongbow);
- Elanco's acquisition of Bayer's animal health business and Mylan's proposed acquisition of Upjohn, both of which were part of broader global transactions resulting in a range of divestments following regulatory scrutiny, including in Australia; and
- Google's acquisition of Fitbit, where the ACCC announced in late December 2020 that it would not accept the behavioural undertaking offered at that time by Google, which broadly reflected the conditions which had been accepted by the European Commission in clearing the transaction.

The ACCC's review of Google's acquisition of Fitbit will now extend into 2021, with a provisional decision date of 25 March. It will be one of the most closely watched transactions of 2021, given the focus of the ACCC and regulators globally on competition and social issues relating to digital platforms and use of data.

ACCC to push for merger law reform in 2020

In our 2020 Review, we noted the significant amount of merger litigation which had played out in the Federal Court over the course of 2019 and 2020.

One high profile merger matter being litigated concluded in February 2020, when the Federal Court rejected the ACCC's position that the proposed merger between TPG Telecom and Vodafone would substantially lessen competition. The Court rejected the ACCC's arguments that the mobile market would be more competitive if possible future competition between TPG and the existing mobile networks operators were given a chance to occur, finding instead that "it is not for the ACCC or this Court to engineer a competitive outcome."

The final chapter of another significant matter concluded in late 2020, with the High Court in December rejecting the ACCC's application for special leave to appeal from the Full Federal Court's decision in May 2020 that Pacific National's acquisition of the Acacia Ridge terminal from Aurizon would not be likely to substantially lessen competition. This represents the conclusion of a process which commenced all the way back in 2017, when the ACCC commenced its review of the transaction.

However, the conclusion of the legal process is unlikely the final word from the ACCC on this subject. These judgments both represented comprehensive losses for the ACCC in contested merger litigation and raised questions about the ACCC's continued willingness to take action on the basis of what courts have ultimately found to be speculative theories of harm. Rod Sims, chair of the ACCC had already started a push for merger law reform before the High Court's decision and he re-iterated his concerns in the ACCC's Media Release 259/20 responding to that decision:

"The ACCC faces challenges in contested merger cases where a forward looking merger test is applied. The nature of the test, and the inherent uncertainties in predicting the future, make it difficult to prove that a change in the market structure after the merger will substantially lessen competition in the future."

"This task is further complicated by the need to prove that competition is likely to be substantially lessened compared to a hypothetical future in which the acquisition did not occur," Mr Sims said.

"These challenges raise important issues for the consideration of whether Australia's current merger laws are fit for purpose."

This followed on from a speech given by Mr Sims at the National Press Club in October 2020 entitled "Tackling market power in the COVID-19 era". In that speech, Mr Sims noted that the ACCC had not won contested merger litigation since a change in law in 1992 and stated that *"We will put forward ideas for changes to our merger laws in 2021. This will trigger an important debate."* Watch this space - the ACCC has a long history of using defeats in hotly contested litigation as the basis of a push for law reform, often successfully.

APRA

Steering the prudential ship through COVID-19

A common theme amongst regulators during 2020, APRA postponed a number of planned activities in 2020 to generate the necessary capacity (both within APRA and regulated entities) to address the challenges arising from COVID-19.

As APRA Chair Wayne Byres noted in his remarks to the Board of the International Banking Federation in May 2020, APRA spent most of the first half of 2020:

+ granting 'operational relief' by easing the operational burden on firms by postponing some activities and granting additional time to satisfy some supervisory requirements;
+ providing selective temporary concessions to assist in facilitating the broader package of economic and financial support being offered by the government, the Reserve Bank of Australia and industry; and
+ making it clear that the industry's financial resilience has been built up to be utilised in times such times of crisis.

With the immediate impact of COVID-19 hopefully behind us, APRA has returned to more BAU matters and has re-engaged on important prudential policy issues.

New powers to oversee changes of control of superannuation trustees

Investors in superannuation businesses will need to add an additional regulatory approval to the list. Prior to July 2019, APRA did not have any ability to prevent entities that it regarded as unsuitable from acquiring stakes in licensed trustees of APRA-regulated superannuation funds.

Under the *Superannuation Industry Supervision Act 1993* (Cth) (**SIS Act**), a person cannot be a trustee of a registrable superannuation entity (**RSE**) (most relevantly, superannuation funds that are not self-managed) unless it has been granted an RSE licence by APRA. APRA will only grant an RSE licence if it is satisfied that the applicant will comply with its various duties and prudential obligations.

Amendments to the SIS Act that commenced in July 2019 have given APRA new powers to supervise changes of control of RSE licensees after an RSE licence is granted. Where the RSE licensee is a body corporate, an investor must now apply to APRA for approval before acquiring a 'controlling stake' in the RSE licensee. A controlling stake is more than 15%, including the acquirer's direct and indirect control interests and the direct control interests held by any 'associates' of the acquirer. Holding a controlling stake in an RSE licensee without APRA approval is a **criminal offence** of strict liability, with a penalty of 400 penalty units (currently $222, so $88,800) for each day on which the person holds the stake without approval.

This brings APRA's powers in relation to superannuation in line with other financial services such as banking and insurance. Under the *Financial Sector (Shareholdings) Act 1998* (Cth) (**FSSA**), APRA has power delegated by the Treasurer to approve stakes of more than 20% (previously also 15%) in a bank or insurer. Failure to seek approval is also an offence with a maximum fine of 400 penalty units (currently $88,800).

Build in time for the change of control approval process

APRA has 90 days to decide an application, unless APRA:

+ requests the applicant provides more information, in which case the clock stops and the 90-day period starts again; or
+ extends the decision period in writing, by up to 30 days.

If APRA has not decided an application by the end of the applicable period, it is taken to have refused the application.

APRA can only approve an application if it has no reason to believe that the proposed ownership structure would mean the RSE licensee may be unable to satisfy one or more of its trustee covenants imposed by the SIS Act. These include covenants that the RSE licensee will:

+ perform its duties and exercise its powers in the best interests of beneficiaries (however, a Bill currently before Parliament proposes to change this to the best *financial* interests of beneficiaries);
+ give priority to the duties to and interests of beneficiaries over the duties to and interests of other persons where there is a conflict; and
+ not enter into any contract or do anything else that would prevent the trustee from properly performing or exercising its trustee functions and powers.

The SIS Act also imposes specific covenants relating to, for example, the entity's risk strategy, investment strategy and insurance arrangements.

One approval so far: IOOF / OnePath

In December 2019, APRA announced that it had approved applications from IOOF Holdings Ltd and a wholly owned subsidiary to hold a controlling stake in OnePath Custodians Pty Limited and Oasis Fund Management Limited (together **One Path**), which were owned by ANZ.

As part of its decision to approve the application, APRA considered the additional RSE licence conditions it had previously imposed on IOOF in relation to its existing RSE licences, and noted that it had made progress in strengthening its governance structures and managing conflicts within its existing RSE licensees since then. In its announcement, APRA noted that IOOF had:

+ "appointed a majority of independent directors to its RSE licensee boards";
+ "moved to legally separate its dual regulated entities"; and
+ "implemented a dedicated business function to support IOOF's APRA-regulated entities".

It considered that these changes would provide IOOF's RSE licensees with "the necessary framework to operate independently within the IOOF group", and that they would enhance the RSE licensees' ability to comply with their obligations.

Superannuation trustees to have no other role

From 1 July 2021, a condition will be imposed on each RSE licence held by a body corporate that the RSE licensee must not have a duty to act in the interests of any other person, other than a duty that arises in the course of performing the RSE licensee's duties or exercising its powers, or providing personal advice.

The effect of this change is that an RSE licensee cannot also be the responsible entity of a managed investment scheme or hold another similar role. Financial services groups with entities holding dual roles will need to significantly restructure their operations in order to comply.

This change was recommended by the Financial Services Royal Commission, which found that a potential conflict of duties arises where the trustee 'wears two hats' in this manner. This is because a dual licensed entity is required to act in the best interests of the beneficiaries of the registrable superannuation fund, and is also required to act in the best interests of the members of the managed investment scheme.

The Commission's purposes behind recommending such a broad prohibition, was for RSE Licensees to avoid the potential for conflicts (by holding both responsibilities), rather than implementing policies which may be ineffective in managing the conflict.

2020 PUBLIC M&A TRANSACTIONS

Target	Bidder	Transaction Type	Status	Bidder Origin	Consideration Type (Cash / Scrip / Combination)	Final Transaction Value A$
Coca-Cola Amatil Ltd	Coca-Cola European Partners plc	Scheme	Current	United Kingdom	Cash	$9.8 billion
Saracen Mineral Holdings Ltd	Northern Star Resources Ltd	Scheme	Successful	Australia	Scrip	$5.8 billion
Alacer Gold Corp	SSR Mining Inc	Scheme	Successful	Canada	Scrip	$2.7 billion
Cromwell Property Group	ARA Real Estate Investors 28 Ltd (ARA Asset Management)	Takeover (off-market proportional)	Successful	Singapore	Cash	$2.4 billion
Metlifecare Ltd	Asia Pacific Village Group Ltd (EQT Partners)	Scheme	Successful	Sweden	Cash	$1.2 billion
Infigen Energy	Iberdrola Renewables Australia Pty Ltd	Takeover (off-market)	Successful	Spain	Cash	$893 million
Infigen Energy	UAC Energy Holdings Pty Ltd	Takeover (off-market)	Unsuccessful	Philippines	Cash	$835 million
OptiComm Ltd	Uniti Group Ltd	Scheme	Successful	Australia	Combination	$694 million
OptiComm Ltd	Aware Super Pty Ltd as trustee of Aware Super	Takeover (off-market)	Unsuccessful	Australia	Cash	$676 million
Cardinal Resources Ltd	Dongshan Investments Ltd	Takeover (off-market)	Withdrawn	UAE	Cash	$665 million
WPP AUNZ Ltd	WPP plc	Scheme	Current	United Kingdom	Cash	$596 million
Village Roadshow Ltd	VRG HoldCo Ltd (BGH Capital)	Scheme	Successful	Australia	Cash	$586 million
Cardinal Resources Ltd	Shandong Gold Mining (Hong Kong) Co, Ltd	Takeover (off-market)	Successful	China	Cash	$565 million
Cardinal Resources Ltd	Engineers & Planners Co Ltd	Takeover (off-market)	Withdrawn	Ghana	Cash	$552 million
Cardinal Resources Ltd	Nord Gold SE	Takeover (on-market)	Withdrawn	Russia	Cash	$552 million

Target	Bidder	Transaction Type	Status	Bidder Origin	Consideration Type (Cash / Scrip / Combination)	Final Transaction Value A$
Australian Unity Office Fund	Legs Bid Co Services Pty Ltd as trustee for Legs Bid Trust (Starwood Capital Group)	Takeover (off-market)	Withdrawn	United States	Cash	$485 million
The Citadel Group Ltd	Pacific Group Bidco Pty Ltd (Pacific Equity Partners)	Scheme	Successful	Australia	Cash	$449 million
Stanmore Coal Ltd	Golden Investments (Australia) Pte Ltd	Takeover (on-market)	Successful	Singapore	Cash	$256 million
amaysim Australia Ltd	WAM Capital Ltd	Takeover (off-market)	Current	Australia	Cash	$253 million
Spectrum Metals Ltd	Ramelius Resources Ltd	Takeover (off-market)	Successful	Australia	Combination	$199 million
Australian Leaders Fund Ltd	Watermark Funds Management Pty Ltd	Scheme	Current	Australia	Scrip	$198 million
3P Learning Ltd	IXL Learning, Inc., IXL Australia Pty Ltd	Scheme	Withdrawn	United States	Scrip	$188 million
Vitalharvest Freehold Trust	Macquarie Agricultural Funds Management Ltd as trustee of Macquarie Agriculture Fund - Crop Australia 2	Scheme	Current	Australia	Cash	$185 million
Universal Coal plc	TCIG Resources Pte Ltd	Takeover (off-market)	Successful	Australia	Combination	$175 million
Wameja Ltd	Burst Acquisition Co. Pty. Ltd.	Scheme	Current	United States	Cash	$173 million
E&P Financial Group Ltd (formerly Evans Dixon Ltd)	360 Capital ED1 Pty Ltd	Takeover (off-market)	Current	Australia	Combination	$162 million
DWS Ltd	HCL Australia Services Pty Ltd	Scheme	Successful	India	Cash	$158 million
Zenith Energy Ltd	Elemental Infrastructure BidCo Pty Ltd, Apex Opportunities Fund Pty Ltd (Pacific Equity Partners)	Scheme	Successful	Australia	Cash	$156 million

Target	Bidder	Transaction Type	Status	Bidder Origin	Consideration Type (Cash / Scrip / Combination)	Final Transaction Value A$
CML Group Ltd	Scottish Pacific Group Ltd	Scheme	Withdrawn	Singapore	Cash	$131 million
OneVue Holdings Ltd	Iress Ltd	Scheme	Successful	Australia	Cash	$115 million
Liquefied Natural Gas Ltd	LNG-9 PTE LTD	Takeover (off-market)	Withdrawn	Singapore	Cash	$115 million
Primero Group Ltd	NRW Holdings Ltd	Takeover (off-market)	Current	Australia	Combination	$100 million
RXP Services Ltd	Capgemini Australia Pty Ltd	Scheme	Current	France	Cash	$95 million
Contango Income Generator Ltd	WAM Capital Ltd	Takeover (off-market)	Successful	Australia	Scrip	$94 million
NTM Gold Ltd	Dacian Gold Ltd	Scheme	Current	Australia	Scrip	$87 million
Concentrated Leaders Fund	WAM Capital Ltd bv	Takeover (off-market)	Current	Australia	Scrip	$72 million
Cassini Resources Ltd	OZ Minerals Ltd	Scheme	Successful	Australia	Combination	$68 million
Windlab Ltd	Wind Acquisition 1 Pty Ltd	Scheme	Successful	Australia	Cash	$68 million
Exore Resources Ltd	Perseus Mining Ltd	Scheme	Successful	Australia	Scrip	$64 million
Xplore Wealth Ltd	Hub24 Ltd	Scheme	Current	Australia	Cash	$60 million
Vault Intelligence Ltd	Damstra Holdings Ltd	Scheme	Successful	Australia	Scrip	$59 million
Powerwrap Ltd	Praemium Ltd	Takeover (off-market)	Successful	Australia	Combination	$55 million

OUR APPROACH

In this Review, we have summarised our key observations of an analysis of the 42 public takeovers and scheme transactions announced during the 2020 calendar year in respect of ASX-listed companies.

We have only analysed transactions which have a market value of over $50 million because they are the transactions of most relevance to our clients and friends in the M&A advisory community. Also, smaller transactions can involve unusual aspects which can skew the analysis.

We have included all transactions where the parties had entered into an agreement or where the bidder had announced an offer or an intention to proceed with a firm offer in 2020. We have traced the progress of these transactions until 15 February 2021.

A full list of transactions analysed is set out on pages 51 to 53.

The primary sources of data used in compiling the Review were bid documents and ASX announcements prepared by the bidder and target and lodged with ASX, which were supplemented by information from websites of regulatory bodies.

We have classified a scheme as "successful" if it has become effective, and a takeover bid as "successful" if it is (or has become) unconditional and the bidder has substantially increased its shareholding in the target having regard to their existing shareholding and objectives.

We have classified a transaction as "hostile" where a firm offer was announced and was not initially recommended by the target board and as "friendly" where the transaction was recommended on its announcement. If the target board says "do nothing" while it considers the offer, we have classified the transaction as "friendly" or "hostile" based on their subsequent initial recommendation to "accept" or "reject".

Where this Review refers to a transaction's value, the reference is to the value of 100% of the target's equity based on the offer price per share (and where the primary consideration was scrip, the offer price per share was based on the bidder's share trading price on the date of the announcement of the offer).

Transactions referred to as providing cash consideration refer to transactions with all cash consideration or the ability for shareholders to elect to receive all cash consideration.

Unless otherwise specified, where this Review refers to the premium offered in a transaction, it refers to the final premium measured against the closing price of the target shares on the day prior to any announcement of the transaction or a potential transaction. In the case of transactions involving multiple bidders, the premium of the second and later bids is measured against the pre-bid closing price referable to the first bid.

Unless otherwise specified, all dollar references in this Review are to the Australian dollar. Transactions announced in a foreign currency have been converted to Australian dollars based on the WM/Reuters historical exchange rate data on the day of announcement.

ABOUT GILBERT + TOBIN

Gilbert + Tobin is the law firm businesses trust to achieve positive outcomes in defining moments. Our people combine exceptional talent, energy and innovative thinking across transactions, regulatory issues and disputes. We aim to deliver outstanding outcomes for our clients. We are proud of the difference we make in our role as a leading employer and corporate citizen.

We provide commercial and innovative legal advice to major corporate and government clients across Australia and internationally. We are a trusted legal adviser for many industry leaders who value our entrepreneurial culture and determination to succeed.

Gilbert + Tobin has a strong emphasis on corporate transactional work. Chambers (the most respected of all legal directories) has given us a Band 1 ranking in each of Corporate/M&A, Equity Capital Markets, Private Equity, Competition & Antitrust and Banking & Finance (Acquisition Finance). We were named 'Law Firm of the Year' for Corporate Law in the 2021 edition of Best Lawyers. Gilbert + Tobin partners were named partners of the year in the fields of M&A and Capital Markets by Lawyers Weekly.

Our M&A team comprises highly experienced partners and lawyers who achieve commercial results through creative solutions and perseverance. We advise on M&A transactions of the highest commercial significance, but are equally able to deliver significant value on smaller deals.

We are regularly retained to assist boards of public and private companies to navigate challenging issues that arise in complex and contested M&A transactions.

We also have a demonstrated track record of assisting listed entities with robust takeover defence strategies. By providing the best available strategic legal advice, we can assist in ensuring unwelcome approaches at inadequate prices do not succeed and, if control is to pass, it does so at the best price possible in the circumstances.

Alternatively, if a friendly and agreed deal is sought, we are well placed with our knowledge of transaction structures and market precedents to ensure a transaction can be agreed in a timely and cost efficient manner.

Gilbert + Tobin's reputation for expert advice extends beyond our M&A team to a broad range of areas including corporate advisory, equity capital markets, competition and regulation, banking and infrastructure, technology and digital, energy and resources, disputes and investigations, real estate and projects and employment.

Ranked tier 1 across multiple areas of law.

TOP RANKED Chambers Asia-Pacific 2021 Gilbert + Tobin

The LEGAL 500 ASIA PACIFIC

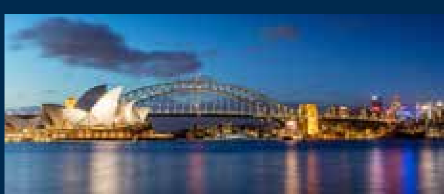
"Best firm I have ever worked with - practical, commercial, innovative and cost conscious."

IFLR 1000 TOP TIER FIRM 2021

We are one of Australia's leading **transactions, regulatory** and **disputes** firms, committed to **outstanding citizenship.**

GILBERT + TOBIN

Gilbert + Tobin is the leading independent Australian commercial law firm.



GILBERT + TOBIN TRANSACTIONS

Gilbert + Tobin has advised our clients on the following significant transactions in recent times:

+ Adamantem Capital on its $155 million acquisition of the Spotless commercial laundries business from Downer
+ Adore Beauty on its IPO and ASX listing giving Adore Beauty a market capitalisation of $635 million
+ Anheuser-Busch InBev on the Australian aspects (CUB/Fosters) of its US$107 billion takeover of SAB Miller, the largest takeover in the world in 2016
+ Anhauser-Busch InBev on the $16 billion sale of Carlton & United Breweries to Asahi Group, the largest M&A transaction in Australia in 2019/20
+ Anthony Eisen and Nicholas Molnar on a partial sell-down of $135 million worth of shares each in Afterpay. Afterpay concurrently launched a $650 million underwritten placement, followed by a non-underwritten SPP to raise an additional $150 million (total of ~$1.07 billion in proceeds from the simultaneous sell-down, placement and SPP)
+ APN Property Group on various successful capital raisings totalling over $100 million
+ ARA Group on its unsolicited $2.3 billion proportional takeover bid for Cromwell Property Group
+ Bank of America and Goldman Sachs as the joint lead managers of Perpetual's $250 million placement to fund the acquisition of Barrow, Hanley, Mewhinney & Strauss
+ Balter Brewing on its acquisition by Carlton & United Breweries
+ Beach Energy on all aspects of its successful $1.585 billion competitive bid to acquire Lattice Energy from Origin Energy and related debt and equity capital raisings
+ BGH Capital led consortium on its $4 billion + takeover proposal for Healthscope
+ BGH Capital led consortium (including BGH Capital, AustralianSuper and Rod Jones) on its $2.1 billion acquisition of Navitas by scheme of arrangement – the largest take private by an Australian PE fund
+ Blackstone (as part of a consortium including Canada Pension Plan Investment Board and GIC) on the acquisition of a controlling interest in a new entity housing the Financial and Risk business in joint venture with the previous owner Thomson Reuters, at an overall valuation of US$20 billion
+ Boardriders, Inc on its $380 million acquisition of Billabong by scheme of arrangement
+ Canaccord Genuity and Bank of America Securities as joint lead managers and underwriters of the $425 million ANREO and institutional placement by Lynas Corporation
+ Citi as lead manager of Appen’s $285 million institutional placement
+ Citi as lead manager of NextDC’s $281 million institutional placement
+ Citi as sole underwriter of NAB's dividend reinvestment plan in respect of its May 2019 dividend, underwriting up to a value of $1 billion
+ Citi as the underwriter of SCA Property Group's $259 million share placement
+ Citigroup as the sole lead manager and underwriter of Shopping Centres Australasia Property Group's $250 million placement and $50 million SPP
+ Citigroup and RBC Capital Markets as joint lead managers and underwriters of NEXTDC's $672 million placement
+ CleanSpace, a leading Australian designer and manufacturer of workplace respiratory protection equipment, on its $550 million IPO and ASX listing
+ CPE Capital on the $1 billion sale of Accolade Wines to The Carlyle Group
+ CPE Capital Consortium on the proposed ~$2.5 billion acquisition of Bingo Industries by scheme of arrangement
+ Credit Suisse, Goldman Sachs and J.P. Morgan as joint lead managers of Home Consortium’s $325 million IPO and ASX listing
+ Credit Suisse, Jarden and Deutsche Bank Craigs as joint lead managers and underwriters of Kathmandu’s NZ$145 million accelerated renounceable entitlement offer to part fund its A$350 million acquisition of Rip Curl Group
+ Credit Suisse and Bell Potter as joint lead managers of Nickel Mines' $350 million ANREO

+ Credit Suisse and Macquarie Capital as joint lead managers and underwriters of the $1.2 billion accelerated non-renounceable entitlement offer by Vicinity Centres
+ Crescent Capital Partners on the $205 million sale of its GroundProbe business to Orica
+ Crescent Capital Partners on the successful fund raise of its sixth fund, securing a firm record $800 million from its investors
+ DuluxGroup on its successful $4.2 billion acquisition by Nippon Paint by scheme of arrangement, the largest trade/strategic takeover in Australia in 2019
+ Exablaze on its acquisition by Cisco Systems
+ Federation Mining on its $100 million convertible notes offering to AustralianSuper
+ Ferrovial S.A on its $485 million sale of Broadspectrum, an Australia-based provider of operations, maintenance and asset management services, to Ventia
+ Five V Capital's portfolio company, The Probe Group, on its joint $300 million (enterprise value) acquisition with Quadrant Private Equity of MicroSourcing International from Salmat
+ FMR, Bremerton & Bartlett on the $271 million sale of their 30% stake in Barminco to Ausdrill
+ Goldman Sachs as the sole lead manager and underwriter of Orica's $500 million placement to fund the acquisition of Exsa, Peru's leading manufacturer and distributor of industrial explosives
+ Goldman Sachs as sale agent for the share sale facility established in connection with the $16 billion demerger of Coles Group from Wesfarmers
+ Goldman Sachs as underwriter of Bank of Queensland's $250 million placement
+ Goldman Sachs, UBS and Macquarie Capital as joint lead managers of Latitude Financial Services Group's proposed IPO and ASX listing
+ Goldman Sachs, UBS, Credit Suisse and Bell Potter as joint lead managers of Coronado Global Resources Inc's $774 million IPO and ASX listing
+ Goldman Sachs and J.P. Morgan as joint lead managers and underwriters of the $1.2 billion placement by QBE Insurance Group
+ Goldman Sachs as the sole lead manager and underwriter of IRESS's $150 million placement
+ Goldman Sachs, Jarden Australia and Jarden Limited as joint lead managers and underwriters of Home Consortium's $140 million placement
+ Goldman Sachs, Credit Suisse, Citi and Bell Potter as underwriters of the $250 million placement and ANREO conducted by Coronado Global Resources Inc
+ Goldman Sachs as joint lead managers of Homeco's $125 million ANREO
+ Goldman Sachs and Macquarie Capital as joint lead managers and underwriters of the $300 million initial public offering and ASX listing of the Daily Needs REIT and in connection with their role as financial advisers to the demerger of the Daily Needs REIT from Home Consortium
+ GrainCorp on its defence of the $3.3 billion takeover bid by Long-Term Asset Partners
+ GrainCorp on the ~$350 million (enterprise value) sale of its Australian Bulk Liquid Terminals business to ANZ Terminals
+ Harbour Energy/EIG Partners consortium on its proposed $14.4 billion bid for Santos
+ ICPF and IOMH on the sale of a 50% interest in the Investa management platform from a Macquarie group entity to Oxford Properties
+ Infigen Energy on the hostile $1.3 billion (enterprise value) takeover approach from UAC and the successful friendly approach from Iberdrola SA
+ Investa Commercial Property Fund on the sale of a 50% interest in the Investa Office Management platform to Macquarie Capital
+ Investa Property Group on its $276 million acquisition of a strategic stake in Investa Office Fund and on the $3.4 billion contested acquisition (by trust scheme) of Investa Office Fund
+ IOOF on its $539 million placement and SPP to fund the acquisition of ANZ's One Path Pensions and investments business
+ IOOF on its $975 million acquisition of ANZ's One Path Pensions and Investments and aligned dealer groups businesses and on its acquisition of Wealth Central as part of IOOF's "Advice 2.0 transformation strategy"
+ Jacobs Engineering on the successful $4.6 billion sale of its energy, chemicals and resources group to WorleyParsons
+ Jadestone Energy on its acquisition of the Montara Oil Field from PTTEP including senior debt facility and equity capital raising
+ J.P. Morgan, Morgan Stanley and China International Capital Corporation Hong Kong Securities as joint lead managers of the US$2.5 billion entitlement offer and placement by Yancoal Australia, to partly fund its acquisition of Coal & Allied from Rio Tinto
+ J.P. Morgan and Macquarie as joint lead managers of Reliance Worldwide Corporation's $1.1 billion ANREO for the transformational acquisition of John Guest Holdings

- J.P. Morgan and Macquarie Capital, the joint lead managers and bookrunners of Investec Australia Property Fund's dual ASX listing and IPO, which also featured a block trade sale by the fund's major securityholder, Investec Property Fund of ~$65 million worth of securities
- J.P. Morgan and Morgan Stanley as joint lead managers of Tyro Payments' $287 million IPO and ASX listing
- J.P. Morgan as lead manager in relation to Growthpoint's $150 million share placement
- J.P. Morgan as underwriter of Charter Hall Education Trust's $120 million institutional placement of fully paid units
- J.P. Morgan and Macquarie Capital as the joint lead managers of Investec Australia Property Fund's placement and capital raising
- J.P. Morgan as the sole lead manager and underwriter of Cochlear's $880 million placement and $50 million SPP
- J.P. Morgan as the sole lead manager and underwriter of the $1.2 billion placement by Ramsay Health Care
- J.P. Morgan as the sole lead manager and underwriter of Charter Hall Social Infrastructure REIT's $100 million institutional placement
- KKR on the proposed acquisition of a 55% interest in Colonial First State (CFS) and establishment of a joint venture with Commonwealth Bank of Australia, with the transaction valuing CFS at $3.4 billion
- KKR on corporate aspects of the $3.2 billion acquisition of Arnott's Biscuits and certain international operations of Campbells Soup
- KKR on its $2 billion acquisition of MYOB Group by scheme of arrangement
- KKR on its major investment in GreenCollar, a leading Australian environmental markets business – the first Australian investment by KKR's US$1.3 billion Global Impact Fund
- KKR's US$1.7 billion Asia Real Estate Fund on multiple investments
- L Catterton on the $210 million sale of RM Williams to Andrew Forrest's private investment group Tattarang
- Lifehealthcare on its $211 million sale to Pacific Equity Partners by scheme of arrangement
- Macquarie Capital and Shaw and Partners as joint lead managers and underwriters of Abacus' $250 million placement and SPP
- Macquarie Capital as the sole lead manager of Magellan Financial Group's $275 million placement
- Macquarie Capital as the sole lead manager and underwriter of IDP Education's $225 million placement
- Macquarie Capital and RBC Capital Markets as joint lead managers and underwriters of the $1 billion placement by Newcrest Mining to fund the acquisition of Orion Co-V Pte Ltd and Gryphus Pte Ltd
- Macquarie Capital as joint lead manager of Abacus Property Group's $420 million placement
- Macquarie and Morgan Stanley as joint lead managers and underwriters of Nuix's $1.8 billion IPO and ASX listing
- Majority shareholders of Bras N Things on the $500 million sale to Hanes Brands
- Mineral Resources on the US$820 million sale of 60% of the Wodgina Lithium Project to Albemarle Corporation
- Mineral Resources on the US$480 million acquisition of 40% (in two modules) of Albemarle's Kemerton hydroxide facility
- Mineral Resources on its proposed $280 million acquisition of Atlas Iron
- Mineral Resources on the sale process for the $2 billion divestment of up to a 49% interest in its Wodgina lithium mine assets
- Morgan Stanley and UBS as joint lead managers of Primary Health Care's $250 million ANREO
- Morgan Stanley and UBS as joint lead managers of Atlas Arteria's $1.35 billion entitlement offer and placement
- Morgan Stanley as the sole lead manager and underwriter of InvoCare's $150 million placement
- Neptune Energy Group (which is backed by funds advised by Carlyle, CVC and a group of co-investors) on the Australian aspects of its €4.7 billion acquisition of a 70% shareholding in ENGIE E&P International S.A. from France's ENGIE Group
- Nitro Software on its $110 million IPO and ASX listing
- Northern Star Resources on its $193 million acquisition of the remaining shares in Echo Resources that it did not already own
- NSW Government in relation to the $2.6 billion concession of Land and Property Information NSW
- Opthea on its US$128.1 million American Deposit Share issue and NASDAQ listing
- Pacific Equity Partners and management shareholders on the $950 million sale of Allied Pinnacle to Nisshin Seifun Group
- Pacific Equity Partners and The Carlyle Group on their $1.23 billion acquisition of iNova Pharmaceuticals from the Valeant Group
- Pacific Equity Partners and the Carlyle Group on the proposed $2.87 billion acquisition of Link Group
- Panoramic Resources on its successful defence of the $312 million hostile takeover bid by Independence Group

- PayPal on its US$400 million acquisition of HyperWallet Inc., and the integration of the Australian Hyperwallet business
- Pemba Capital Partners (and other shareholders) on the $701 million sale of Device Technology Australia (an Australian medical device manufacturer and distributor) to Navis Capital
- Pemba Capital Partners on the $170 million acquisition of a majority stake in ONCALL Group Australia
- Platinum Equity LLC on the Australian law aspects of its US$2.5 billion acquisition of Multi-Color Corporation (a leader in global label solutions)
- Probe Group (backed by Quadrant Private Equity and Five V Capital) on the merger with rival outsourcing outfit Stellar BPO, to create Australia's largest locally-owned outsourcing services business
- Property Guru on its proposed IPO of CDIs and ASX listing
- QuadPay on its $337 million acquisition by Zip Co
- Quadrant Private Equity and the minority owners of the Real Pet Food Co on the $1 billion sale of the Real Pet Food Co to a consortium of investors including New Hope, Hosen and Temasek
- Quadrant Private Equity on its $421 million acquisition of QMS Media by scheme of arrangement
- Quadrant Private Equity's portfolio company, Fitness and Lifestyle Group, on the $200 million acquisition of CMG Asia
- Quadrant Private Equity and APM management on the $1.5 billion (enterprise value) sale of a majority stake in APM to American private equity firm Madison Dearborn Partners
- Quadrant Private Equity on the $100 million investment in My Muscle Chef
- RBC Capital Markets as the sole lead manager and underwriter of The Citadel Group's $127 million placement to fund the acquisition of Wellbeing Software Group Limited
- RBC Capital Marks and Canaccord Genuity as underwriters of Kogan.com's $100 million institutional placement
- Reliance Rail on its $2 billion refinancing including an injection of additional equity from 2 of its 3 existing shareholders
- Ruralco Holdings on its $470 million acquisition by Nutrien by scheme of arrangement
- Sandfire Resources on its $167 million acquisition of MOD Resources by scheme of arrangement
- SG Fleet on its $800 million proposal to acquire Eclipx Group by scheme of arrangement
- Shareholders of Westside Petroleum in relation to their buy-out by Viva Energy
- Sime Darby Berhad on its $US136 million acquisition of the Gough Group
- SiteMinder on its $130 million acquisition by a consortium comprised of BlackRock, Pendal, AustralianSuper, Goldman Sachs and Ellerston Capital
- Siteminder on its $130 million capital raising
- Sonic Healthcare on its $750 million acquisition of Aurora Diagnostics and its $600 million placement and related SPP to part fund that acquisition
- Spotless on the defence of the unsolicited $1.3 billion takeover bid by Downer EDI
- SS&C Technologies on its $244 million proposal to acquire GBST Holdings by scheme of arrangement
- State of NSW as a seller in the $1.6 billion sale of Property Exchange Australia to a consortium comprised of Link, CBA and Morgan Stanley
- Superloop on its proposed $494 million acquisition by QIC by scheme of arrangement
- Syrah Resources on its $112 million convertible note issue to AustralianSuper and non-renounceable entitlement offer
- Telstra in relation to the merger of Fox Sports Australia (owned by News) and Foxtel (owned 50/50 by News Limited and Telstra)
- Telstra in connection with a new US$500 million venture capital fund launched by Telstra Ventures, the venture capital arm of Telstra
- Terex Corporation (NYSE: TEX) on the ~ $215 million (enterprise value) sale of Demag Mobile Cranes business to Tadano
- The Carlyle Group (through its Carlyle International Energy Partners platform) on the Australian aspects of its acquisition of EnerMech Group from Lime Rock Partners
- The Stars Group on its $6 billion merger with Flutter Entertainment, to create the world's biggest online gaming group
- The Stars Group on its acquisition of 80% of CrownBet, and then CrownBet on its acquisition of William Hill (aggregate deal value of $650 million)
- The Stars Group on its $151 million acquisition of the remaining 20% stake in BetEasy
- Tilt Renewables on the $1.07 billion sale of the 270MW Snowtown 2 wind farm to Palisade Investment Partners and First State Super

+ TDM Growth Partners on the $142 million block trade of its 35 million shares in Tyro Payments
+ TPG Capital on its sell-down of a minority stake in Novotech Health Holdings (NHH) pursuant to a competitive sale process, with the transaction valuing NHH at $2.4 billion
+ TPG Capital on its $1 billion (enterprise value) acquisition of Greencross
+ TPG consortium (comprising TPG Capital and the Ontario Teachers' Pension Plan) on the proposed $2.76 billion acquisition of Fairfax
+ Tyson Foods, Inc. on the Australian aspects of its US$2.16 billion acquisition of the Keystone Foods business from Marfrig Global Foods
+ UBS AG and RBC Capital Markets as joint lead managers and underwriters of EML Payments' $250 million ANREO and institutional placement to partially fund the $423 million acquisition of Prepaid Financial Services
+ UBS and Goldman Sachs (as joint lead managers) of Bingo Industries' $425 million ANREO, to fund its acquisition of Dial A Dump Industries
+ UBS as lead manager of Costa Group's $176 million capital raising (PAITREO)
+ UBS as underwriter of EML Payments' $120 million placement
+ UBS and Macquarie as joint lead managers and underwriters of Atlas Arteria's $420 million institutional placement
+ UBS as underwriter of the $600 million PAITREO conducted by Tabcorp Holdings
+ United Malt Group Limited (recently spun out of GrainCorp Limited) on its $140 million institutional placement, which was fully underwritten by Macquarie Capital, and $25 million share purchase plan
+ Universal Store on its ~$300 million IPO and ASX listing
+ Velocity Frequent Flyer on its proposed IPO and ASX listing
+ Viva Energy Australia on its $2.65 billion IPO and ASX listing, the largest ever non-government IPO in Australian corporate history
+ Viva Energy on the $734.3 million sale of its 35% stake in Viva Energy REIT to Charter Hall Group and the Charter Hall Long WALE REIT by way of block trade
+ Web.com on its proposed acquisition of the Webcentral Group by scheme of arrangement
+ Wesfarmers on the sale of its 13.23% stake in Quadrant Energy alongside co-sellers Brookfield, Macquarie and AMB Holdings, valued at US$2.15 billion plus contingent payments related to the Bedout Basin
+ Westpac Group on the sale of its Vendor Finance business to Angle Finance, a portfolio company of Cerberus Capital Management
+ Westpac on the creation of an incorporated joint venture to provide a digital bank guarantee via distributed ledger technology
+ Whitehaven Coal on its US$200 million acquisition of Winchester South from Rio Tinto
+ Xero on its US$300 million convertible note offering and associated call option transactions
+ Xero on its US$700 million convertible note listing on SGX-ST
+ Xuchen International, a subsidiary of Chengtun Mining Group Co, on its $109 million acquisition of Nzuri Copper by scheme of arrangement
+ Yancoal Australia on its US$230 million acquisition of Mitsubishi Development's 28.9% interest in the Warkworth joint venture
+ Yancoal Australia's Independent Board Committee on the US$3.4 billion acquisition of Coal & Allied Industries from Rio Tinto and the associated US$2.5 billion entitlement offer and placement to fund that acquisition
+ Yancoal on the Australian legal aspects of its dual primary listing on the Hong Kong Stock Exchange and the associated HK$1.61 billion IPO. The transaction included a pro-rata AREO in Australia to existing Yancoal shareholders
+ Zomojo on its acquisition by Cisco Systems Inc

ABOUT THE AUTHORS

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Neil is co-head of the Corporate/M&A group and is also a member of Gilbert + Tobin's board of partners. Neil's practice centres on mergers and acquisitions (with particular expertise in listed company takeovers and cross-border acquisitions), Takeovers Panel matters, private sales and disposals, private equity transactions, equity capital raisings and other capital management transactions and corporate governance matters.

Neil is a member of the Australian Government's Takeovers Panel (the Panel is a peer review body that regulates public M&A and is the primary forum for resolving takeover disputes). He is also a Senior Fellow of the University of Melbourne Law School.

Neil is recognised as a leading Australian Corporate and M&A lawyer by leading directories including Best Lawyers, Chambers Global, Chambers Asia-Pacific, The Legal 500, Doyles and International Who's Who of M&A Lawyers. Best Lawyers named him Melbourne's M&A, Corporate or Private Equity Lawyer of the Year in 7 of the last 9 years. Lawyers Weekly named Neil as Australia's M&A Partner of the Year in 2020.

> **"HE WOULD ALMOST WITHOUT HESITATION BE OUR FIRST CALLOUT OF MELBOURNE."**
>
> Chambers Asia-Pacific 2020

> **NEIL IS "A VERY SEASONED CAMPAIGNER AND ONE OF THE BEST M&A LAWYERS IN MELBOURNE" AND "A FANTASTIC PERSON TO WORK WITH ON A LARGE PUBLIC M&A TRANSACTION."**
>
> Chambers Asia-Pacific 2019

In recent years, Neil has advised on the following significant transactions (among other matters):

+ Anheuser-Busch InBev on the $16 billion sale of Carlton & United Breweries to Asahi Group, the largest M&A transaction in Australia in 2019/20;
+ DuluxGroup on its successful $4.2 billion acquisition by Nippon Paint by scheme of arrangement, the largest trade / strategic takeover in Australia in 2019;
+ BGH consortium (including BGH Capital, AustralianSuper and Rod Jones) on its successful $2.1 billion acquisition of Navitas by scheme of arrangement, the largest take private by an Australian PE fund;
+ Tilt Renewables on its successful $1.07 billion sale of Snowtown 2 wind farm (Australia's 2nd largest windfarm) to Palisade Investment Partners and First State Super;
+ Jacobs Engineering on the successful $4.6 billion sale of its energy, chemicals and resources group to WorleyParsons;
+ Federation Mining on its $100 million convertible note capital raising and investment by AustralianSuper;
+ Syrah Resources on its capital raisings involving a convertible note issue to AustralianSuper;
+ Damstra Technology on its successful initial public offering and ASX listing; and
+ APN Property Group and its managed funds on various successful capital raisings.

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Costas is co-head of the Corporate/M&A group and is also a member of Gilbert + Tobin's board of partners. Costas specialises in mergers and acquisitions, takeovers, corporate and securities law, capital markets and corporate governance matters.

Costas is widely recognised as one of Australia's leading strategic M&A and securities lawyers. He is consistently recognised by leading directories for his expertise, including being listed in Chambers Global, Chambers Asia-Pacific, Best Lawyers and The Legal 500 in a variety of practice areas including Corporate and Mergers & Acquisitions. He was also named by Best Lawyers as Lawyer of the Year in various corporate law categories in 5 of the last 8 years.

"A TRULY EXCEPTIONAL CORPORATE LAWYER" WHO ENSURES THAT HIS CLIENTS' "STRATEGICALLY IMPORTANT AND HIGH-VALUE TRANSACTIONS ARE IN THE RIGHT HANDS."

Chambers Asia-Pacific 2021

"HE IS AN EXCEPTIONAL OPERATOR. HE IS BRILLIANT AT DISTILLING AND EXPLAINING COMPLEX LEGAL SCENARIOS FOR BOARD MEMBERS AND EXECUTIVES. HE IS HIGHLY COMMERCIAL, PRAGMATIC AND POSSESSES DEEP TECHNICAL SKILLS."

IFLR1000 2021

Costas recently advised on the following significant transactions:

+ ARA Group on its unsolicited $2.3 billion proportional takeover bid for Cromwell Property Group;
+ Investa Property Group on the $3.4 billion contested acquisition (by trust scheme) of Investa Office Fund between Oxford Properties (OMERS) and Blackstone;
+ GrainCorp on its $3.3 billion approach from Long-Term Asset Partners;
+ Ruralco on its $470 million acquisition by Nutrien by scheme of arrangement;
+ The Stars Group on its $6 billion merger with Flutter Entertainment, to create the world's biggest online gaming group;
+ Adamantem Capital on its take private of ASX-listed Legend Corporation;
+ Superloop on its proposed $494 million acquisition by QIC by scheme of arrangement;
+ Iron Mountain on its innovatively designed $3.8 billion scrip acquisition of Recall Holdings by scheme of arrangement, and its associated dual listing on ASX; and
+ Vocus Communications on its $3 billion merger of equals with M2 Group by way of scheme of arrangement, and on its novel and Court contested $1.2 billion merger of equals with Amcom Limited, the first Australian merger scheme to succeed in the face of a 20% blocking stake.

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Gina is a senior partner in Gilbert + Tobin's competition and regulation practice. Gina has advised on some of the largest, most contentious and complex merger clearance matters for acquisitions and joint ventures in Australia and New Zealand. She is known for achieving commercial results through creative solutions and perseverance even when previous applications for clearance or dispute resolution have been refused.

Gina specialises in financial services regulatory advice and representing financial institutions and their industry associations before the ACCC, APRA, ASIC and AUSTRAC.

Since 2010, Gina has been ranked as a 'Star Individual' for Competition and Antitrust by Chambers Asia Pacific. She was also awarded "Best Lawyer" 2020 in the Beaton Client Choice Awards.

A selection of Gina's experience includes advising:

+ Westpac Banking Corporation as lead adviser on all competition and regulatory approvals (including ACCC and Treasurer's consent) for the $47 billion acquisition of St George Bank and more recently, the $8 billion acquisition of the Lloyds Australia business;
+ SteerCo of 4 major banks in relation to compliance and regulatory engagement to determine enhanced responsible lending practices across industry acceptable to APRA and ASIC;
+ acting for the Australian Banking Association in obtaining ACCC authorisation to enable banks to offer financial relief and support packages to customers impacted by COVID-19;
+ acting for KKR on regulatory aspects of the proposed acquisition of a 55% interest in Colonial First State and establishment of a joint venture with Commonwealth Bank of Australia
+ trade practices and regulatory advice to banking clients in relation to ACCC investigations, entry into credit card issuing relationships and joint ventures, ACMA telemarketing investigations and AML compliance; and
+ Australian Bankers Association on a wide range of regulatory matters covering APRA standards, ASIC regulation, payment systems reform, prudential regulation and trade practices advice on and representing industry in resolution of the proposed Anti-Money Laundering regulatory regime.

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David is a corporate lawyer with considerable experience in large-scale public and private mergers and acquisitions, equity capital markets and corporate restructuring transactions.

David's transactional experience spans a broad range of key industry sectors, including real estate, media, banking and financial services, energy, mining, retail and general industrial. He also regularly assists financial advisory firms and offshore investment funds to structure their most complex corporate transactions.

David has acted on some of Australia's largest and most complex corporate transactions, including advising:

+ Westpac Group on a number of corporate transactions, including the sale of its Vendor Finance business to Angle Finance;
+ Vitol on its $2.9 billion acquisition of Shell's Australian downstream petroleum business, including the Geelong Refinery and 870 retail service station sites across the country, which business was rebranded as Viva Energy;
+ Viva Energy on the establishment and ASX listing of Viva Energy REIT (a multi-billion dollar ASX-listed stapled entity with a portfolio of service station sites), the initial public offering and ASX listing of Viva Energy Group, the renegotiation of complex retail alliance arrangements with Coles Express, the $734.3 million sale of Viva Energy's 35% stake in Viva Energy REIT to Charter Hall Group and the Charter Hall Long WALE REIT by way of Block Trade and a capital management initiative pursuant to which the proceeds of sale were returned to shareholders;
+ Boardriders, Inc. on its $380 million acquisition of ASX-listed Billabong International by scheme of arrangement;
+ GrainCorp in relation to a takeover offer from Archer Daniels Midland Company, which valued GrainCorp at $3.4 billion;
+ Pacific Equity Partners on its $1.1 billion acquisition of Spotless Group by scheme of arrangement;
+ Coal & Allied in relation to a scheme of arrangement under which Coal & Allied was privatised by Rio Tinto and Mitsubishi Development (the transaction valued Coal & Allied at $10.8 billion); and
+ Telstra Corporation, in its capacity as a partner in the FOXTEL partnership, in relation to FOXTEL's $2 billion acquisition of AUSTAR.

ADAM D'ANDRETI

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Adam specialises in acting on equity capital markets transactions and advising on Australian securities law issues, with a focus on assisting clients on their engagement with ASIC and ASX in their corporate transactions. He has extensive experience advising both issuers and lead managers on initial public offerings and secondary raisings in Australia and also regularly acts on public regulated merger and acquisitions transactions. Adam's practice also includes acting on private M&A transactions, advising on the ASX listing rules, executive remuneration, corporate governance and general corporate law issues.

Adam recently advised on the following significant transactions:

+ Web.com and Siris Capital on its acquisition of ASX-listed Dreamscape Networks by scheme of arrangement;
+ Cashrewards on its initial public offering and ASX listing;
+ Credit Suisse and Macquarie Capital as joint lead managers and underwriters of the $1.2 billion accelerated non-renounceable entitlement offer by Vicinity Centres;
+ Goldman Sachs and Macquarie Capital as joint lead managers and underwriters of the $300 million initial public offering and ASX listing of the Daily Needs REIT and in connection with their role as financial advisers to the demerger of the Daily Needs REIT from Home Consortium;
+ United Malt Group (recently spun out of GrainCorp) on its $140 million institutional placement, which was fully underwritten by Macquarie Capital, and $25 million share purchase plan;
+ Westpac on the creation of an incorporated joint venture to provide a digital bank guarantee via distributed ledger technology;
+ PropertyGuru on its proposed initial public offering of CDIs and ASX listing; and
+ Yancoal Australia on the Australian legal aspects of its dual primary listing on the Main Board of the Hong Kong Stock Exchange and associated capital raising.

> **"THE TEAM IS NO NONSENSE, EASY TO APPROACH AND REACH OUT TO, AND THE EXPERIENCE SHINES THROUGH WITH THE WAY THEY GUIDE THE BUSINESS THROUGH ISSUES. I VALUE THEIR TRANSPARENCY ON MATTERS. SPECIFIC MENTION TO ADAM D'ANDRETI."**
>
> The Legal 500 Australia 2020

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Tim advises listed and unlisted companies and Australian and offshore private equity managers in relation to mergers and acquisitions, capital raisings, joint ventures, corporate restructurings and recapitalisations and regulatory investigations. Tim is also a regular commentator in the media on corporate governance.

Best Lawyers 2021 names Tim in the Mergers & Acquisitions, Private Equity and Equity Capital Markets categories. Tim was the winner of the M&A Partner of the Year in the 2018 Lawyers Weekly Partner of the Year Awards.

Tim recently advised on the following transactions:

+ Infigen Energy (Australia's largest listed renewable energy generator) on competing takeover bids from Iberdrola and UAC;
+ eftpos' acquisition of Beem It from CBA, NAB and Westpac;
+ Morrison and Infratil's acquisition of Qscan from Quadrant Private Equity and the Qscan doctor group;
+ Silver Lake and TEG's investment in the Michael Cassel Group;
+ LivingBridge Private Equity's acquisition of Smart Clinics from Genesis Capital;
+ CBA's investment in Slyp;
+ the IPO of CleanSpace Technology and numerous other initial public offerings and secondary raisings on the ASX;
+ GrainCorp on the $3.3 billion approach by Long-Term Asset Partners and GrainCorp's subsequent ~$2 billion ASX demerger of United Malt;
+ various listed ASX200 companies on corporate governance and regulatory issues;
+ Pacific Equity Partners' $211 million acquisition of Lifehealthcare by scheme of arrangement;
+ Zurich's $850 million acquisition of Cover-More by scheme of arrangement;
+ Barings Asia's $1.1 billion acquisition of SAI Global by scheme of arrangement; and
+ the $2.6 billion privatisation of the NSW land titling registry.

DEBORAH JOHNS

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Deborah is an expert in matters relating to the Foreign Acquisitions and Takeovers Act 1975 (Cth) and is a member of the Law Council's Foreign Investment Committee. Deborah has led the firm's participation in the consultation processes in relation to Australia's foreign investment rules. She has assisted a number of private equity funds, foreign government investors and others to obtain foreign investment approvals.

Deborah also edits the firm's Doing Business in Australia guide and Foreign Investment Guide.

In addition, Deborah handles a broad range of corporate and commercial matters, including funds establishment, venture capital and mergers and acquisitions.

Deborah's experience in relation to foreign investment approvals includes advising:

+ numerous Australian, US and European private equity funds (many of which are deemed to be foreign government investors because of their investor bases) in connection with foreign investment approvals required for both direct and indirect acquisitions of Australian businesses - including Pacific Equity Partners, Crescent Capital Partners, Quadrant Private Equity, The Carlyle Group, TPG Capital, Oaktree Capital, Anchorage Capital Partners, CarVal, Rubicon Technology Partners, various Canadian pension funds and others, including in relation to highly sensitive sectors like telecommunications, healthcare, defence and data handling;
+ Anheuser-Busch InBev on the foreign investment approval for the $16 billion sale of Carlton & United Breweries to Asahi (the largest M&A transaction in Australia in 2019) and on the foreign investment approval for its US$107 billion takeover of SAB Miller (the largest takeover in the world in 2016); and
+ Resource Capital Funds Management on the foreign investment approval for a renewable exemption certificate which was the first of its kind in Australia.

DEBORAH JOHNS IS PRAISED FOR HER "DEEP TECHNICAL KNOWLEDGE, COMMERCIAL ACUMEN AND EXCELLENT JUDGEMENT ON THE SCOPE OF ISSUES TO BE COVERED."

Chambers Asia-Pacific 2018

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Alex specialises in mergers and acquisitions and equity capital markets transactions, with particular expertise in private equity.

Alex won the 'New Partner of the Year – 3 Years or Less' category at the 2019 Lawyers Weekly Partner of the Year Awards and was a finalist in the 'Dealmaker of the Year' category at the 2019 Lawyers Weekly Australian Law Awards. He is recognised in Best Lawyers for Equity Capital Markets and by IFLR1000 for M&A.

Alex recently advised on the following significant transactions:

+ TPG on its sell-down of a minority stake in Novotech Health Holdings (NHH) pursuant to a competitive sale process, with the transaction valuing NHH at $2.4 billion;
+ KKR on various transactions, including:
  - the proposed acquisition of a 55% interest in Colonial First State (CFS) and establishment of a joint venture with Commonwealth Bank of Australia, with the transaction valuing CFS at $3.4 billion;
  - the $2 billion acquisition of MYOB by scheme of arrangement;
  - a major investment in GreenCollar, a leading Australian environmental markets business – the first Australian investment by KKR's US$1.3 billion Global Impact Fund;
  - multiple investments by KKR's US$1.7 billion Asia Real Estate Fund;
  - various portfolio transactions involving MYOB, Arnott's and Laser Clinics Australia;
+ DuluxGroup on its successful $4.2 billion acquisition by Nippon Paint by scheme of arrangement, the largest trade/strategic takeover in Australia in 2019;
+ Damstra on its successful IPO and subsequent scrip for scrip merger with Vault Intelligence; and
+ The Tang family office on their substantial holding in Cromwell Property Group (CPG), including the successful defence of Takeovers Panel and Federal Court applications made by CPG.

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Kevin advises on strategic mergers and acquisitions and corporate transactions, specialising in public takeovers (friendly and hostile), schemes of arrangement, private M&A deals, equity capital markets transactions and general corporate and securities law matters.

Kevin recently advised on the following significant transactions:

+ Web.com on its proposed acquisition of the Webcentral Group (formerly known as Arq Group) by scheme of arrangement;
+ Ruralco Holdings on its $469 million acquisition by Agrium Australia, a subsidiary of Nutrien, by scheme of arrangement;
+ ICPF and IOMH on the sale of a 50% interest in the Investa management platform from a Macquarie group entity to Oxford Properties;
+ Web.com on its $105 million acquisition of Dreamscape Networks by scheme of arrangement;
+ Xuchen International, a subsidiary of Chengtun Mining Group Co, on its $109 million acquisition of Nzuri Copper by scheme of arrangement;
+ Superloop on its proposed $494 million acquisition by QIC by scheme of arrangement;
+ Siteminder on its $150 million capital raising;
+ The Stars Group on its $151 million acquisition of the remaining 20% stake in BetEasy; and
+ Shaw and Partners on the sale of 51% of its shares to SIX Swiss Exchange-listed EFG International, and associated shareholder arrangements.

> **THE TEAM COMPRISE "TENACIOUS NEGOTIATORS WHO SUGGEST COMMERCIAL SOLUTIONS TO ISSUES FACED ON TRANSACTIONS. SOME OF THE BEST M&A DEAL MAKERS IN THE INDUSTRY."**
>
> IFLR1000 2021

SUSANNAH MACKNAY

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Susannah specialises in mergers and acquisitions, equity capital markets transactions and advising on disclosure, corporate governance and other listing rules matters. She also has experience advising listed companies on responding to activist shareholders.

Before joining Gilbert + Tobin in 2020, Susannah was a partner of Slaughter and May in London where her practice focused on cross-border transactions.

Susannah recently advised on the following transactions:

+ TPG on its sell-down of a minority stake in Novotech Health Holdings (NHH) pursuant to a competitive sale process, with the transaction valuing NHH at $2.4 billion;
+ IFM on its investment in Zuuse - the investment was the first by IFM's new private equity growth fund;
+ Emerging Markets Property Group on the US$1 billion merger of its MENA and South Asia operations with those of OLX Group;
+ Prudential, the global systemically important insurer, on the demerger of M&G to create two FTSE100 companies;
+ Vodafone on the €18.4 billion acquisition of Unitymedia in Germany and certain assets in CEE from Liberty Global;
+ Värde Partners on the £1 billion sale of NewDay, the UK's largest credit card issuer, to CVC and Cinven; and
+ Macquarie Principal Finance on the £235 million acquisition of ParkingEye from Capita.

CRAIG SEMPLE

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Craig specialises in general corporate law with an emphasis on mergers and acquisitions, takeovers and schemes of arrangements and equity capital market transactions.

Craig is regarded as one of Australia's leading M&A lawyers (most recently acknowledged by Chambers Asia Pacific 2021). Best Lawyers has recognised Craig since 2010 in the 7 practice areas, including Mergers & Acquisitions, Equity Capital Markets, Corporate Law, Corporate Governance and Practice and Private Equity. Craig has also been named as a Melbourne Lawyer of the Year in either Corporate Law, Private Equity or Corporate Governance over the last 8 years, most recently in 2021 for Equity Capital Markets law.

Craig recently advised on the following significant transactions:

+ IOOF on its $975 million acquisition of ANZ's One Path Pensions and Investments and aligned dealer groups businesses and on its acquisition of Wealth Central as part of IOOF's "Advice 2.0 transformation strategy";
+ BGH consortium (including BGH Capital, AustralianSuper and Rod Jones) on its successful $2.1 billion acquisition of Navitas by scheme of arrangement, the largest take private by an Australian PE fund;
+ Anheuser-Busch InBev on the $16 billion sale of Carlton & United Breweries to Asahi Group, the largest M&A transaction in Australia in 2019/20;
+ IFM on its investment in Zuuse and on its acquisition of My Plan Manager;
+ Xero's on its issue of US$700 million of listed convertible bonds and associated call spread arrangements;
+ SS&C Technologies on its $244 million proposal to acquire GBST Holdings by scheme of arrangement;
+ the sale of Zomojo and Exablaze to Cisco Systems Inc.; and
+ Bank of America and Goldman Sachs as the joint lead managers of Perpetual's $250 million placement.

> **CRAIG SEMPLE IS APPRECIATED FOR HIS "IMMENSE KNOWLEDGE OF M&A IN AUSTRALIA," AND IS LAUDED AS "AN EXCEPTIONALLY GIFTED LAWYER WHO IS COMFORTABLE WITH BOTH THE MICRO AND MACRO ASPECTS OF THE TRANSACTION."**
>
> Chambers Asia-Pacific 2021

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Sarah specialises in mergers and acquisitions (particularly takeovers and schemes of arrangement), capital raisings (particularly those with control implications), advising on securities law and Listing Rule matters and corporate advisory and governance work.

Sarah was recognised by Best Lawyers 2021 for Mergers and Acquisitions Law, Equity Capital Markets Law, Corporate Governance Practice and Corporate Law.

Sarah recently advised the following on significant transactions:

+ BCI Minerals on its placement and ANREO;
+ Panoramic on its ANREOs and on the successful defence of the hostile takeover bid by Independence Group;
+ Exore Resources on its acquisition by Perseus Mining by scheme of arrangement;
+ Triton Minerals on its change of control transaction;
+ Australian Grains Champion on its approach to CBH; and
+ Cobalt One, Renaissance Minerals, MEO Australia, Lemur Resources, Iron Ore Holdings and Aurora Oil & Gas on their acquisitions by takeover bid or scheme.

> **"THE ADVICE RECEIVED IS ALWAYS PRAGMATIC, COMMERCIALLY AWARE BUT WITH A DEEP LEVEL OF SPECIALIST EXPERTISE AND KNOWLEDGE. I AM ALWAYS CONFIDENT THAT I AM GETTING THE BEST POSSIBLE ADVICE FROM THE TEAM."**
>
> Chambers Asia-Pacific 2021

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Jeremy is a Special Counsel in Gilbert + Tobin's competition and regulation group. He has over 14 years' experience in merger review, market regulation and competition law, gained at Gilbert + Tobin and from over 9 years' experience at the ACCC.

Jeremy has advised clients in relation to a range of high profile and important transactions, ACCC investigations into alleged criminal cartel and anti-competitive bundling conduct and various matters relating to electricity, gas, water and infrastructure access and regulation.

Jeremy has extensive experience in merger regulation arising from over six years as a senior member of the ACCC's merger review team. During that time, Jeremy was involved in the assessment of many large and complex transactions including BG / Shell, Foxtel / Austar, AGL / Macquarie Generation and BHPB – Rio Tinto (iron ore JV). During his time at the ACCC, Jeremy also had a leading role in the ACCC's East Coast Gas Inquiry.

A selection of Jeremy's experience includes advising:

+ Tabcorp in relation to competition clearance for its A$12 billion merger with Tatts;
+ Anheuser-Busch InBev in obtaining ACCC clearance for its global merger with SABMiller and for its $16 billion sale of CUB to Asahi;
+ Brookfield in relation to the Australian regulatory aspects of its global acquisition of Genesee & Wyoming Australia;
+ Telstra in its restructure with News Corporation of the ownership of Foxtel and Fox Sports;
+ Beach Energy in relation to its acquisition of upstream gas assets from Origin;
+ Whitehaven on its bid for the Queensland coal assets of Rio Tinto;
+ a client in relation to an ACCC investigation into alleged criminal cartel conduct;
+ a health-sector client in relation to an ACCC investigation into alleged anti-competitive bundling arrangements; and
+ a major energy retailer in relation to the ACCC's ongoing electricity and gas inquiries.

EBONY KEENAN-DUNN

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Ebony has experience in advising both public and private company clients in relation to mergers and acquisitions, corporate fundraising, private equity transactions and general corporate and commercial issues. She has particularly strong experience in listed company takeovers and schemes of arrangement, and has acted on more than twenty-five control transactions and a significant number of primary and secondary capital raisings for her clients.

Ebony recently advised on a number of significant transactions including:

+ the proposed acquisition of a 55% interest in Colonial First State (CFS) and establishment of a joint venture with Commonwealth Bank of Australia, with the transaction valuing CFS at $3.4 billion;
+ KKR on corporate aspects of its $3.2 billion acquisition of Arnott's Biscuits and certain international operations of Campbell Soup;
+ BGH consortium (including BGH Capital, AustralianSuper and Rod Jones) on its successful $2.1 billion acquisition of Navitas by scheme of arrangement, the largest take private by an Australian PE fund;
+ KKR on its $2 billion acquisition of MYOB Group by scheme of arrangement; and
+ MYOB on the sale of its interest in Acumatica and rollover into the acquiring entity.

Prior to joining Gilbert + Tobin, Ebony was special counsel with a large global firm where she gained experience in Australia, London and Dubai.

LISA d'OLIVEYRA

Executive Counsel

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Lisa is a senior lawyer with significant experience in mergers and acquisitions, equity capital markets transactions, company law and corporate governance.

Lisa is responsible for a range of strategic initiatives designed to foster key client relationships and originate new business. She spearheads a number of programs designed to add value to a range of current and prospective clients, including boardroom events, thought leadership (including publications on developments in M&A and corporate governance) and continuing professional development for in-house counsel clients.

Prior to joining Gilbert + Tobin, Lisa was a senior lawyer at a top tier global law firm. Lisa has also worked at Davis Polk & Wardwell in New York.

> "THE GILBERT + TOBIN MERGERS & ACQUISITIONS TEAM IS ONE OF THE LEADING M&A TEAMS WITHIN AUSTRALIA. THEY HAVE A DEPTH OF EXPERTISE AND A CONSISTENT LEVEL OF HIGH-QUALITY PARTNERS ACROSS THE ENTIRE PRACTICE. THE G+T M&A TEAM ARE EXPERTS IN THEIR FIELD AND KNOW WHEN TO PUSH LEGAL POINTS AND WHEN TO COUNSEL TO MAKE COMMERCIAL CALLS. THEY ARE TRULY A RARE FIND AND A PLEASURE TO DEAL WITH."
>
> The Legal 500 2021

TANYA MACDONALD

Lawyer

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Tanya is a Lawyer in Gilbert + Tobin's competition and regulation group. She specialises in complex merger clearances, cartel investigations, misuse of market power complaints, financial services and telecommunications regulation and competition and regulatory compliance. She also has extensive experience advising on consumer protection, trade promotions and franchise regulation. Tanya has advised clients in the financial services, telecommunications, digital platforms, online wagering, energy, broadcasting, packaging, chemicals, commodities trading, manufacturing and explosives and fertiliser industries.

A selection of Tanya's experience includes:

+ acting for the Australian Banking Association in obtaining ACCC authorisation to implement recommendations arising from the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and authorisation to enable banks to offer financial relief and support packages to customers impacted by COVID-19;
+ acting for KKR on regulatory aspects of the proposed acquisition of a 55% interest in Colonial First State and establishment of a joint venture with Commonwealth Bank of Australia;
+ lead lawyer on the Gilbert + Tobin team acting for Telstra in its restructure with News Corporation of the ownership of Foxtel and Fox Sports;
+ advising Telstra in a range of other merger-related, competition and regulatory matters;
+ secondment to APA Group for nine months as Acting Senior Legal Counsel responsible for competition and regulatory matters; and
+ advising clients in the financial services sector on their response to various legislative amendments and recommendations to industry arising from the Royal Commission and ASIC and industry-led inquiries affecting the mortgage broking industry.

Prior to joining Gilbert + Tobin, Tanya was a senior associate at Norton Rose Fulbright in South Africa.

AWARDS + RECOGNITION

2021 BEST LAWYERS AUSTRALIA

Gilbert + Tobin was named "Law Firm of the Year" for Corporate Law. 75 Gilbert + Tobin partners are recognised by Best Lawyers, representing over 85% of the partnership acknowledged as leading in their areas of expertise.

Among these, 8 partners are named as Best Lawyers "2021 Lawyer of the Year", including three Corporate Advisory partners (Justin Mannolini, Neil Pathak and Craig Semple).

2021 CHAMBERS ASIA-PACIFIC AWARDS

41 Gilbert + Tobin partners are recognised by Chambers in 22 areas of law. We are one of only two Australian law firms to be ranked Band 1 in each of Corporate/M&A, Equity Capital Markets, Private Equity and Competition & Antitrust. We are also ranked Band 1 in Acquisition Finance, TMT, Fintech and Charities.

2021 LEGAL 500

Gilbert + Tobin has been ranked Tier 1 across ten different practice areas: Corporate/M&A, Capital Markets (Equity), Banking and Finance, Competition and Trade, Data Protection, Dispute Resolution, Intellectual Property, IT and Telecoms, Project Finance and Restructuring and Insolvency.

2020 MERGERMARKET AUSTRALIA M&A AWARDS

Gilbert + Tobin won:

+ M&A Legal Advisor of the Year
+ Consumer M&A Legal Advisor of the Year
+ Mid-Market M&A Legal Advisor of the Year (US$5 - 150 million)
+ Advised on Energy, Mining & Utilities M&A Deal of the Year

2020 DOYLE'S GUIDE

Gilbert + Tobin is ranked 1st Tier for Corporate Law.

2020 BEATON CLIENT CHOICE AWARDS

Gilbert + Tobin was named:

+ Best Law & Related Services Firm
+ Most Innovative Firm
+ Best provider to Mining, Oil & Gas

2020 LAWYERS WEEKLY PARTNER OF THE YEAR AWARDS

Corporate Advisory / M&A partners Neil Pathak and Adam D'Andreti were recognised as, respectively, the leading M&A partner and leading Capital Markets partner in Australia for 2020.

2020 FINANCIAL TIMES INNOVATIVE LAWYER AWARDS ASIA-PACIFIC

Gilbert + Tobin won Most Innovative Team in Asia-Pacific.

2020 AUSTRALASIAN LAW AWARDS

Gilbert + Tobin was named Law Firm of the Year (101 – 500 lawyers).

2020 ASIALAW AWARDS

Gilbert + Tobin was named Australian Firm of the Year.

Best Lawyers

TOP RANKED Chambers Asia-Pacific 2021 Gilbert + Tobin

The Legal 500 Asia Pacific Top Tier 2021

MERGERMARKET M&A AWARDS

LawyersWeekly PARTNER OF THE YEAR AWARDS 2020

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