



MARCH 2016

TAKEOVERS AND SCHEMES REVIEW – 2016



GILBERT
+ TOBIN

GILBERT + TOBIN PRESENTS THE 2016 TAKEOVERS AND SCHEMES REVIEW

2015 was an interesting year for Australian public company mergers and acquisitions. It had two distinct stories. Market activity by number of transactions remained steady in line with 2014. However, the total value of transactions rose significantly with a number of high value transactions, the likes of which Australia has not seen for a few years. This report examines 2015's public company transactions valued over \$50 million and provides our perspective on the trends for Australian M&A in 2015 and what that might mean for 2016.

We also consider the impact regulators are having on the M&A market.

As is usually the case, the review examines public company transactions valued over \$50 million as we consider this gives a more focussed review of market and sector trends which are most relevant to our clients, M&A financial advisers and other interested readers. The data from 2015 is also compared against previous years.

We trust you will find this report to be an interesting read and a useful resource for 2016.

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KEY HIGHLIGHTS

DEAL NUMBERS
STEADY, VALUES
SIGNIFICANTLY UP



In 2015, Australian listed company deal flow by number of transactions was steady, consolidating the recovery in 2014 from a very slow 2013. However, deal activity by value of transactions (rather than volume) significantly increased.

The total value of public company transactions over \$50 million was \$46 billion, almost double the value of deals in 2014. This led many to say that it was boom time for Australian M&A.

In our view, the handful of very high value deals led to an overstatement of the strength of the Australian market. We expect 2016 to be solid. However, at this point in time, it is difficult to see where the mega deals will come from in 2016. That said, with a falling A\$ and steady interest rates, solid demand from Asian and US buyers and the promise of continued consolidation in the property sector, 2016 may ultimately surprise on the upside.

SCRIP OFFER
STRUCTURES
THREATENING
ALL-CASH AS
THE DOMINANT
FORM OF
CONSIDERATION



Consideration structures in 2015 diverged from the norm as more bidders offered alternatives to all-cash consideration, which is often said to be preferred by target shareholders.

It has often been said that the certainty of cash consideration is generally preferred. “Cash is king” is a common refrain. However, consideration structures in 2015 diverged from the norm: only 61% of transactions offered all-cash consideration, compared with 70% in 2014. Bidders, targets, and most importantly, target shareholders seemed more willing than ever to embrace all-scrip mergers, cash/scrip combinations (including foreign scrip) and even the rare ‘stub equity’ model was offered (with success). This may be attributable in part to the relatively high number of very large transactions (which may be difficult to fully fund in cash) but also a willingness by parties to bridge any gap in bidder and target value assessments and expectations by offering target shareholders some form of scrip with its future exposure to the post-acquisition group.

TRANSPORT &
LOGISTICS
AND REAL ESTATE
ARE KEY SECTORS



The top 3 sectors by value in 2015 were transport & logistics, real estate and professional services.

In 2015, by value of transactions, transport & logistics, real estate and professional services all dwarfed the value of deals in the energy & resources sector, the usual Australian market leader. Having said that, energy & resources transactions still contributed significantly to deal count, with 35% of all announced transactions over \$50 million coming from this sector.

DECREASE IN
FOREIGN BIDDERS
– SURELY AN
ABERRATION?



The statistics show decreased interest from foreign bidders for Australian listed companies in 2015, but this may not reflect broader trends.

The statistics show decreased interest by foreign bidders for Australian listed companies in 2015. Approximately 54% of all offers were made by a foreign bidder in 2015, compared to almost 70% in 2014. However in our view, this is an anomaly which does not reflect the broader trend of increasing interest from foreign acquirers, which is at least in part supported by a lower A\$. Interest in Australian (unlisted) companies and assets from US and Chinese trade buyers and foreign pension funds is definitely up. The demand for Australian infrastructure (eg the NSW electricity privatisation where TransGrid sold for \$10.3 billion) and agriculture (eg competing Chinese bids for S. Kidman & Co) is evidence of the overall trend. The statistics may simply reflect foreign bidders are less willing to undertake public bids in Australia given the relatively restrictive takeover laws which offer a bidder little deal security compared with some other jurisdictions.

GREATER
REGULATOR
INTERVENTION



In our view, Australian takeovers are becoming subject to increasing regulatory scrutiny.

ASIC seems to have renewed vigour in reviewing takeovers and schemes of arrangement, including active participation in Takeovers Panel matters, pursuing directors for breach of laws relating to takeover funding, and detailed review of scheme documentation. The ACCC have also continued their practice of undertaking detailed reviews of transactions from a competition perspective. Takeovers Panel application numbers decreased in 2015, however some key policy initiatives were undertaken including guidance on shareholder intention statements as well as updates on a number of other guidance notes. Foreign investment, as always, attracts scrutiny. In 2015, the foreign takeover laws were substantially revised and FIRB is becoming more sophisticated in its approach.

1. MARKET ACTIVITY

SIGNIFICANT INCREASE IN TRANSACTION VALUES, WITH STEADY DEAL FLOW

Australian public company deal activity in 2015 was significantly up in terms of aggregate transaction values. The total value of public company transactions over \$50 million was \$46 billion, almost double the value of deals in 2014. This was thanks to a number of large, high profile public company transactions. (see opposite for highlights).

However, until August 2015, transaction activity by number of transactions announced trailed 2014. Only a late surge from August to November (the busiest year end for Australian public M&A in recent times) brought 2015 up to 2014 activity levels by number of transactions.

In total, 37 public company transactions valued over \$50 million were announced in 2015 which consolidated the recovery from 2013 activity levels.

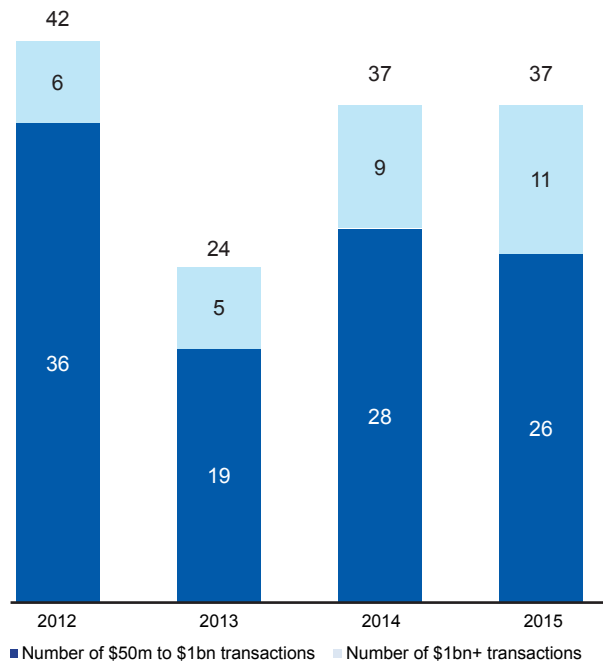
TRANSACTION VALUES: INCREASE IN LARGE VALUE DEALS

There was a significant increase in the number of high value transactions announced in 2015. This included Japan Post's \$6.5 billion acquisition of Toll, the proposed \$9 billion (approx.) acquisition of Asciano by a consortium led by Brookfield (with Asciano subsequently becoming subject to a competing proposal from a consortium led by Qube and, most recently, the two separate consortia proposing to combine into one joint recommended transaction) and DUET's \$1.4 billion acquisition of Energy Developments.

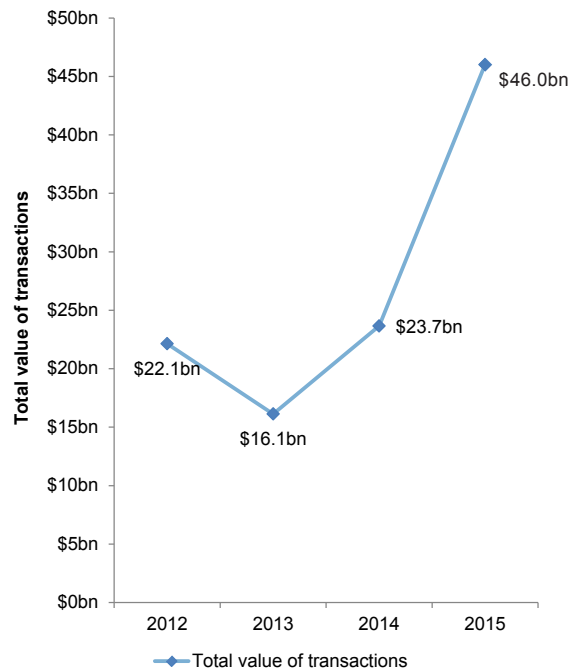
In total, there were 11 transactions valued over \$1 billion, compared to 9 in 2014. However, 3 of these were valued over \$5 billion. The last time there were any \$5 billion plus transactions for Australian public companies was back in 2011.

The 2015 listed company deals are of course, in addition to other significant transactions which do not involve listed companies, for example, the \$10.3 billion purchase by the Hastings led consortium for TransGrid in the NSW electricity privatisation process.

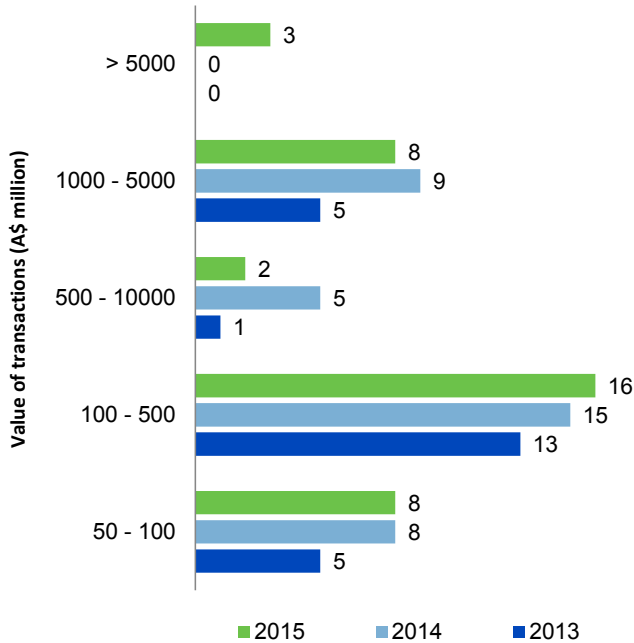
TRANSACTION ANNOUNCEMENTS PER YEAR BY NUMBER



TRANSACTION ANNOUNCEMENTS PER YEAR BY VALUE



DISTRIBUTION OF TRANSACTION VALUES



\$5 billion +

- + Competing bids by Brookfield and Qube led consortiums, for Asciano valuing Asciano around \$9 billion
- + Federation Centres/Novion \$7.9 billion merger by scheme
- + Japan Post's \$6.5 billion acquisition of Toll by scheme

\$1 billion +

- + Iron Mountain's proposed \$3.4 billion cash and scrip acquisition of Recall
- + DEXUS' proposed \$2.5 billion acquisition of Investa by scheme
- + TPG's \$2 billion acquisition of iiNet by scheme
- + DUET's \$1.4 billion acquisition of Energy Developments by scheme

\$500m+

- + REA Group's \$751 million acquisition of iProperty Group by scheme, including a stub equity and earn out mechanism
- + Ferrovial's unsolicited \$715 million takeover bid for Broadspectrum (formerly Transfield Services) albeit Ferrovial's interest may be waning

\$100m+

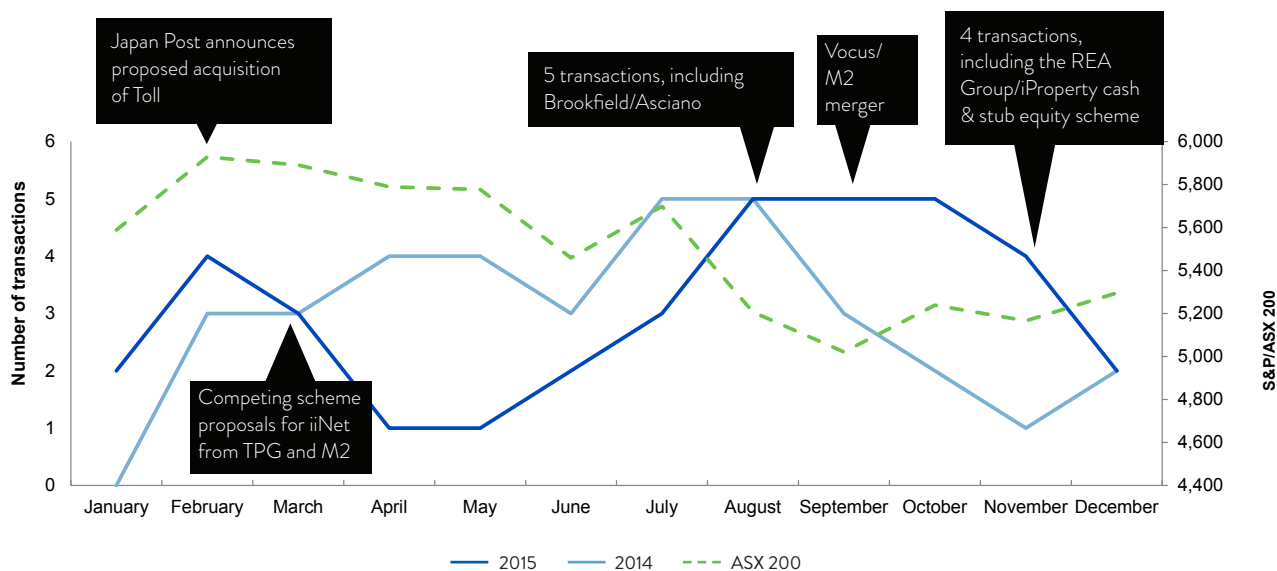
- + Programmed Maintenance Services' \$422 million acquisition of Skilled Group by scheme
- + Crescent Capital's successful \$235 million unsolicited proportional takeover bid for Cardno

TIMING OF ANNOUNCEMENTS: A STRONG FINISH TO 2015

Until late 2015, transaction activity (by number of transactions announced) trailed 2014. Indeed, it could be said that the high profile of larger value deals masked the overall solid yet unspectacular state of Australian M&A activity.

However, in the period from August to November 2015, more transactions valued over \$50 million were announced than the corresponding period in the last 4 years. It could be that bidders sought to capitalise on depressed security prices, with the S&P/ASX 200 consistently remaining below 5,300 since August 2015 (from highs of over 5,900 earlier in the year), or merely just a desire to get things done or underway before the year end.

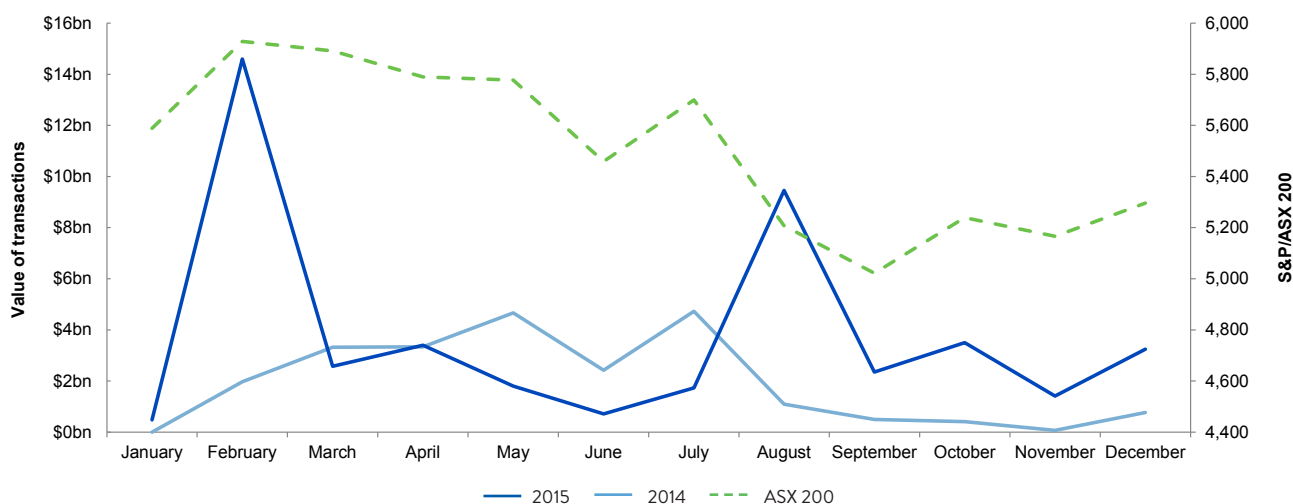
TIMING OF ANNOUNCEMENTS



The value of listed company M&A transactions announced during each month in 2015 spiked in February and August. In February, transactions with an aggregate value of \$14.6 billion were announced, including the \$7.9 billion Federation Centres/Novion

Property merger and Japan Post's \$6.5 billion acquisition of Toll. In August, \$9.5 billion worth of transactions were announced, mostly comprising the proposed Brookfield acquisition of Asciano.

TRANSACTION VALUES BY MONTH



What is clear from the data is that the low levels of M&A activity (both in deal size and number) in 2013 seem to be behind us, with both 2014 and 2015 reflecting a significant and sustained recovery from those lows. We expect 2016 to be solid. However, at this point

in time, it is difficult to see where the mega deals will come from in 2016. That said, with a falling A\$ and steady interest rates, solid demand from Asian and US buyers and the promise of consolidation in the property sector, 2016 may ultimately surprise on the upside.





**“[THE TEAM] STANDS
OUT FOR ITS ‘VERY
ACUTE, COMMERCIAL,
ATTENTIVE AND
FLEXIBLE’ APPROACH.”**

– LEGAL 500 2015

2. SECTOR ANALYSIS

An economy in transition:

+ transport & logistics, real estate and professional services up

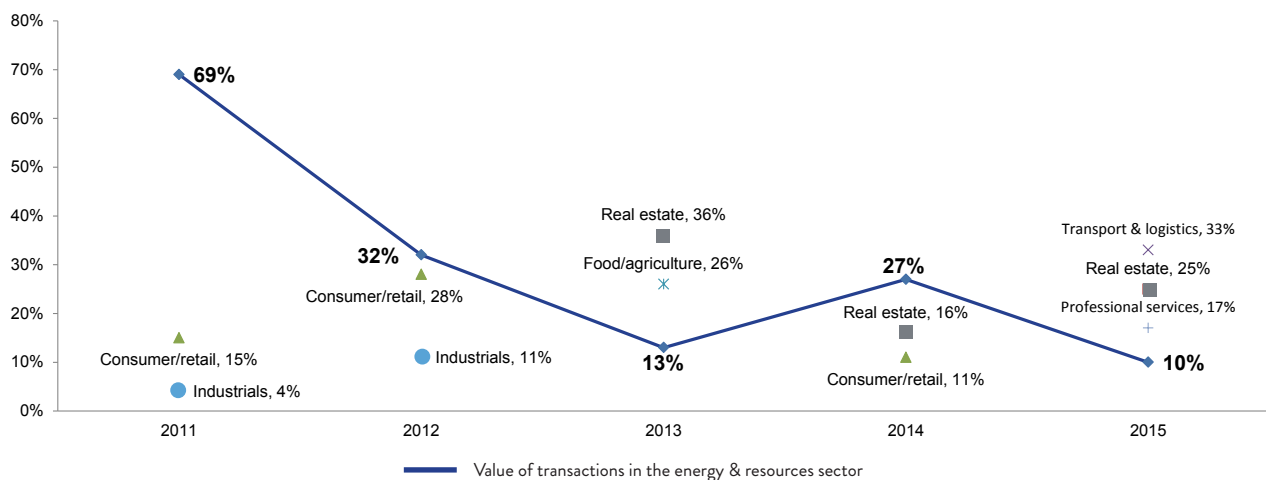
+ energy & resources down

SECTOR ANALYSIS BY DEAL VALUE

In the 5 years we have been publishing our Takeover and Schemes Review, there has always been one constant: the consistent dominance of the energy & resources sector for deals.

However, this appears to be on a downwards trajectory, particularly when looking at the value of transactions in the energy & resources sector.

VALUE OF TRANSACTIONS IN ENERGY & RESOURCES AND OTHER SIGNIFICANT SECTORS

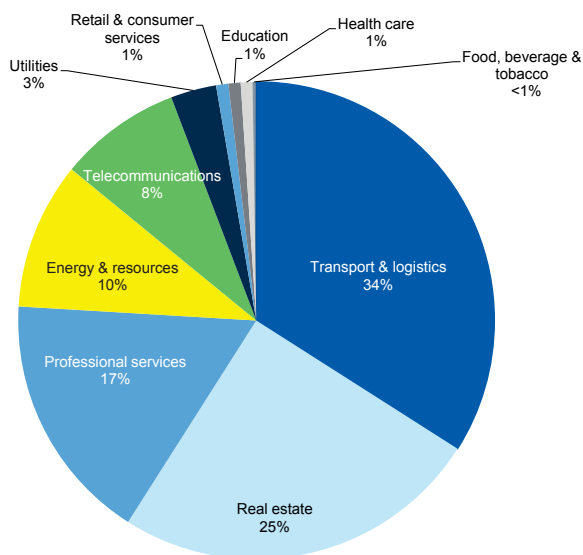


Transactions in each of the transport & logistics, real estate and professional services sectors in 2015 dwarfed energy & resources transactions by value. This was in line with expectations set out in our 2015 report, where we forecasted a strong year for the real estate sector.

We expect more of the same for the real estate and professional services sectors in 2016. The 2016 year end statistics will also show it to be a strong year for transport & logistics. However, this will be due largely to the Qube consortium's bid for Asciano only being formalised in early 2016. We do not foresee much more activity in this sector.



TOTAL VALUE OF TRANSACTIONS PER SECTOR (2015)



The acquisition of Toll by Japan Post and the competing bids for Asciano by the Brookfield led consortium and the Qube led consortium ensured that transport & logistics was a much more significant deal engine in 2015 than previously.

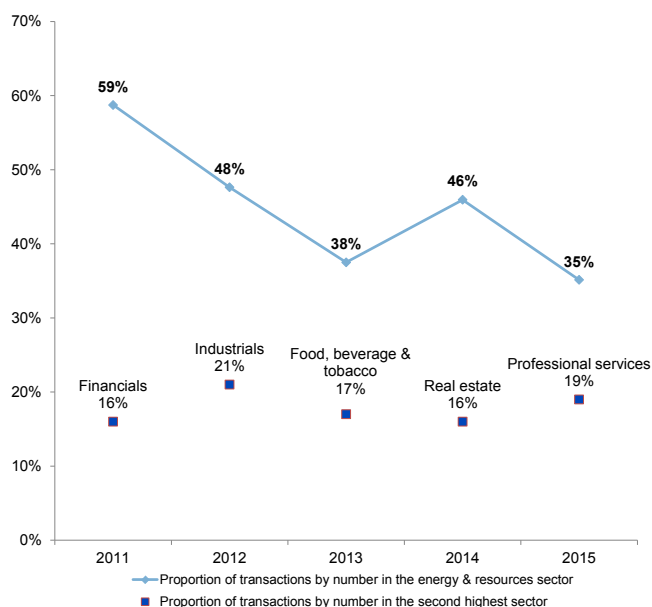
Not to be outdone, real estate also rated highly with the approximately \$8 billion Federation Centres/Novion transaction and REA Group's \$751million acquisition of iProperty figuring prominently. (We have classified the REA Group/iProperty scheme as a real estate related transaction given its connection with that sector, albeit we recognise that it could also have been categorised in the services sector.)

The value of professional services transactions also increased greatly on previous years, largely due to Iron Mountain's proposed \$3.4 billion acquisition of Recall, albeit that the transaction is subject to regulatory approvals which are taking some time.

SECTOR ANALYSIS BY NUMBER OF TRANSACTIONS

That all said, the energy & resources sector, which is obviously facing some difficult times with troubled commodity prices, still led when it comes to the number of transactions (albeit not as much as in previous years).

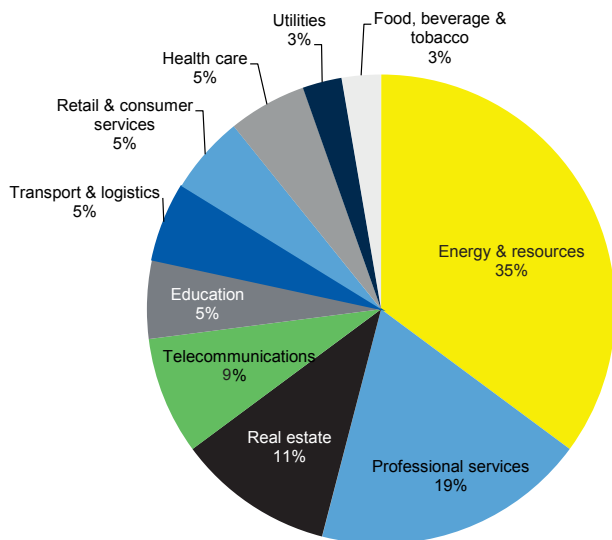
NUMBER OF TRANSACTIONS IN ENERGY & RESOURCES AND OTHER SIGNIFICANT SECTORS



Energy & resources deals accounted for 35% of all transactions by number, followed by professional services at 19% and with real estate in third place at 11%. The market leadership of the energy & resources sector by number of deals could be expected to continue in 2016 as the shake out from the challenges in the mining industry (including low commodity prices) drives consolidation.



TOTAL NUMBER OF TRANSACTIONS PER SECTOR (2015)



Interestingly, despite the focus on the agribusiness sector in private transactions, there was little public company activity in this sector. This may purely be a function of many agribusinesses being privately owned.

SECTORS OF INTEREST FOR FOREIGN AND LOCAL BIDDERS

Essentially foreign bidder interest in energy & resources remained very high (45%) with professional services very strong (25%) by number of deals. Interestingly, real estate, which was a significant sector for local bidders, did not attract any interest from foreign buyers in 2015 (at least for listed real estate entities).

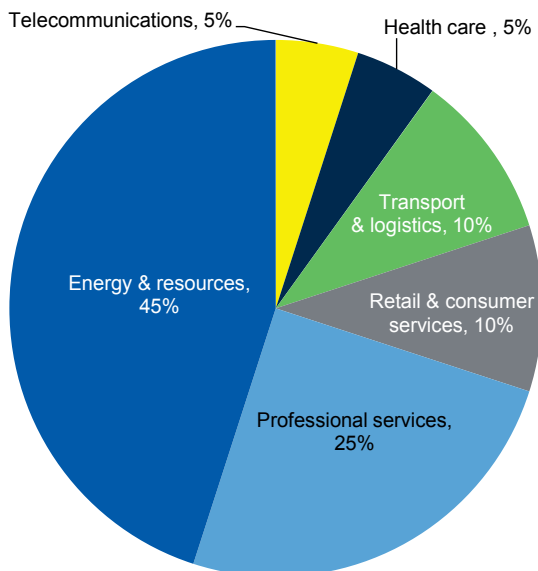
By contrast, Australian bidders were more equally spread, with real estate and energy & resources each accounting for 23% by number of deals.

WHAT DOES 2016 HOLD?

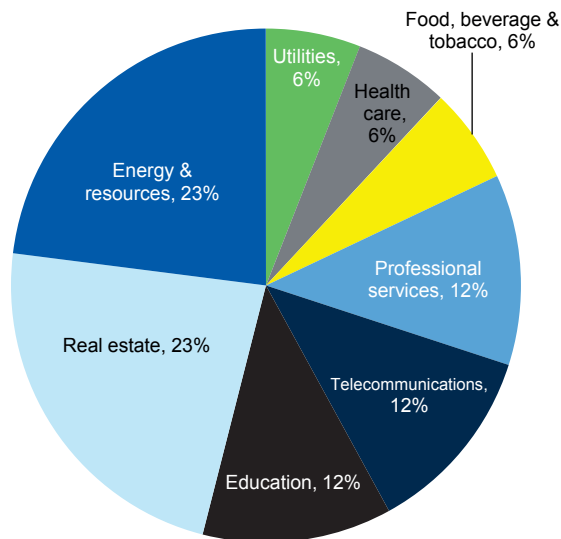
Seeking guidance from the immediate past to predict the future, we consider that real estate will again be a strong sector in 2016. We expect there to be some consolidation in the sector including some larger deals. DEXUS' proposed takeover of Investa for approximately \$2.5 billion, announced in December 2015, may be the first of many transactions in the real estate sector.

We also expect the energy & resources sector to hold its own. Difficult times may drive some consolidation at the lower end of the market and also push cash strapped targets into the arms of healthier bidders. Santos, for one, was subject to a takeover approach in late 2015 and may continue to be a target as the oil & gas sector struggles through challenging pricing.

NUMBER OF FOREIGN BIDDERS BY SECTOR (2015)



NUMBER OF AUSTRALIAN BIDDERS BY SECTOR (2015)

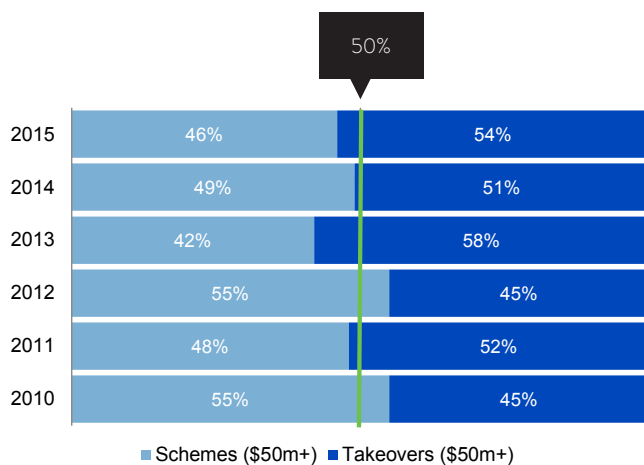


3. TRANSACTION STRUCTURES

SCHEMES V TAKEOVERS: FINELY BALANCED FOR TRANSACTIONS GENERALLY

The preference for takeover bids over schemes in 2014 was slightly less pronounced in 2015, with 54% of transactions valued over \$50 million proceeding by takeover bid, compared to 46% by scheme. This is consistent with a general trend which sees the schemes/ takeovers split generally fall around the 45:55 mark

SCHEMES V TAKEOVERS (\$50M+)



STRONG PREFERENCE FOR SCHEMES IN HIGH VALUE TRANSACTIONS

However, when examining 12 transactions valued over \$1 billion (in this case, counting the proposed Brookfield/Asciano scheme and takeover bid separately), the strong preference was to proceed by scheme of arrangement over takeover bid: 83% of these high value transactions took the form of a scheme.

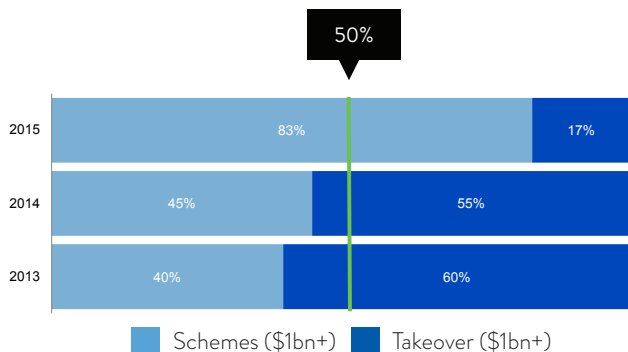


TOP 5 TRANSACTIONS BY DEAL VALUE

1. Competing bids for Asciano by Brookfield and Qube led consortia valuing Asciano at \$9 billion (approx.)
2. Federation Centre's \$7.9 billion acquisition of Novion by scheme
3. Japan Post's \$6.5 billion acquisition of Toll by scheme
4. Iron Mountain's proposed \$3.4 billion acquisition of Recall by scheme
5. DEXUS' \$2.5 billion proposed acquisition of Investa by scheme

2015 represented a significant departure from 2014 where only 45% of the high value transactions proceeded by a scheme. The split in 2014 was, in a number of cases, driven by competition, where takeover bids are often preferred.

SCHEMES V TAKEOVERS (\$1BN+)



Unlike 2014, it seems all the largest deals in 2015 involved friendly, agreed transactions without competition (other than Asciano, but even Asciano started off as a friendly/agreed scheme, and only flipped to a takeover once a competitive bid by the consortium led by Qube was announced). In this respect, bidders and targets preferred the lower approval thresholds and timetable certainty offered by schemes of arrangement. Further, for many bidders, there would be a greater need for due diligence in higher value transactions. There can also be merit in proceeding via scheme where significant regulatory approvals are required such as ACCC or FIRB. In these cases, there is scope to alter the timing of the shareholder meeting to coincide with obtaining a regulatory approval (this occurred in the Iron Mountain/Recall transaction), while takeover bids with long regulatory timelines risk going stale, making it hard to get momentum with few acceptances until the conditions are satisfied. That said, from time to time, parties to a scheme may take the less common approach and push ahead with the scheme meeting before clearing all regulatory hurdles, perhaps where a decision is expected in the short term following the scheme vote, for example, as was done in TPG's acquisition of iiNet.

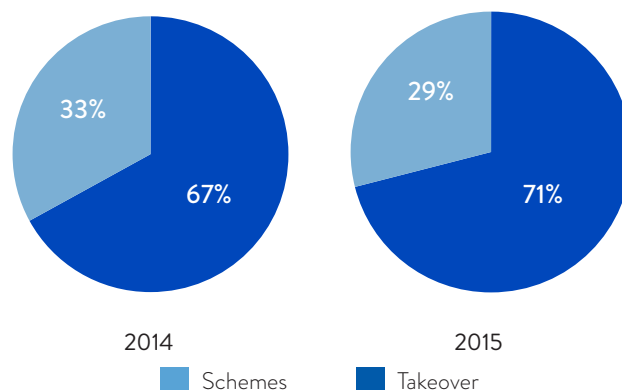
PRE-BID STAKES

An interesting by-product of the prevalence of schemes in 2015 for high value transactions was that the bidders were less likely to have a pre-bid stake: in 2015 only 9% of \$1 billion plus bidders had significant pre-existing shareholdings in the target compared with 67% in 2014. These statistics may in part be due to the inability to vote a pre-bid holding in scheme.

By way of example, the larger deals which had no pre-bid holding included the Japan Post/Toll, Equifax/Veda, Vocus/M2 and DUET/ Energy Developments transactions.

Consistent with 2014, takeovers were the preferred structure in 2015 where the bidder had a pre-bid shareholding of over 20%. These included the Guangdong Rising/PanAust, Zijin Mining/Norton Gold Fields and CIMIC/Devine takeover bids.

SCHEME / TAKEOVER SPLIT: WHERE BIDDER HAS A PRE-BID SHAREHOLDING OF OVER 20%



ON-MARKET TAKEOVERS

While on-market takeover bids remained relatively uncommon, they had a 4-fold increase in 2015, with 4 on-market takeover bids in 2015, compared to 1 in each of 2014 and 2013.

Each of these transactions in 2015 were commenced on a hostile basis. For example:

- + G8 Education's on-market bid for Affinity Education, was announced as a follow-up to its unsuccessful off-market bid for the same company; and
- + Auctus' \$56 million on-market bid for Atherton Resources in September 2015 was announced as a follow-up to an unsuccessful off-market takeover bid launched in April 2015 (although at that time, Atherton Resources was named Mungana Goldmines and the offer price valued Mungana Goldmines below \$50 million).

In a hostile context, on-market bids can have their advantages, as the bidder can acquire shares on-market immediately on announcement without having to wait for formal offer documents to be dispatched to shareholders. The clear disadvantages for on-market bids is that they can only be done on an unconditional basis and the consideration can only be cash.

**“THE G+T CORPORATE
COMMERCIAL TEAM EXCEEDED
EXPECTATIONS. THEY ARE VERY
COMMITTED, RESPONSIVE AND
COMMERCIAL, AND HAVE AN
INCREDIBLE KNOWLEDGE AND
UNDERSTANDING OF OUR
BUSINESS.”**

– CHAMBERS ASIA PACIFIC 2015

4. FOREIGN BIDDERS

Despite the falling A\$, 2015 was a big year for Aussie bidders

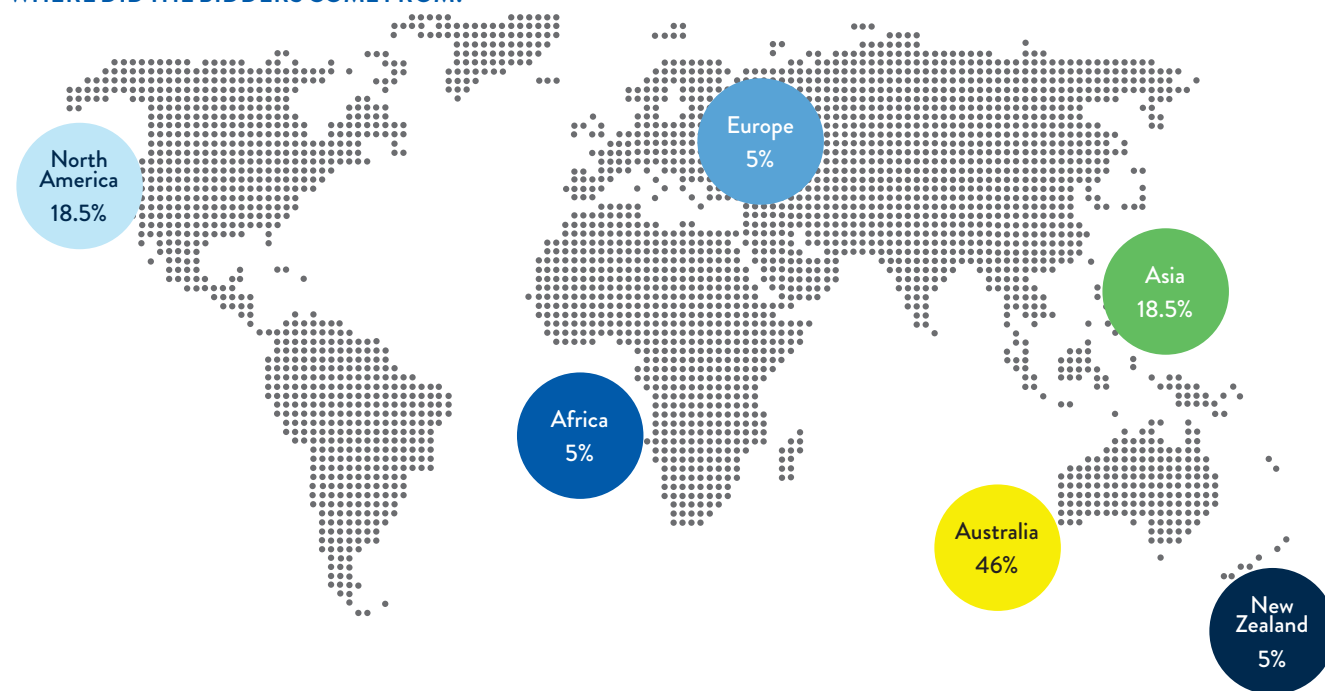
AUSTRALIAN BIDDERS ALMOST 50%

Perhaps surprisingly given the heavy fall in the A\$ in 2015, Australian bidders made up 46% of all bidders by number in public company transactions. Taking into account transaction values, the percentage was a solid 43%.

This is a significant increase on 2014, where Australian bidders accounted for only 31% of bidders in all transactions.

Apart from Australia, Asia and North America (approximately 19% each) were the 2 other continents which provided the most bidders. The interest from Asia by number was down significantly on 2014 with Asian bidders making up approximately 19% of bidders in 2015 compared with 33% in 2014.

WHERE DID THE BIDDERS COME FROM?



Asia
Japan:
Japan Post's \$6.5 billion takeover of Toll
China:
Guangdong Rising's \$1.2 billion acquisition of PanAust

Africa
South Africa:
Sibanye's proposed \$415 million scheme to acquire Aquarius Platinum

Europe
Spain:
Ferrovia Services' proposed \$715 million takeover bid for Broadpectrum

North America
Canada: Brookfield led consortium's \$9 billion proposed acquisition of Asciano
US: Iron Mountain's proposed \$3.4 billion acquisition of Recall and Equifax's proposed \$2.5 billion acquisition of Veda

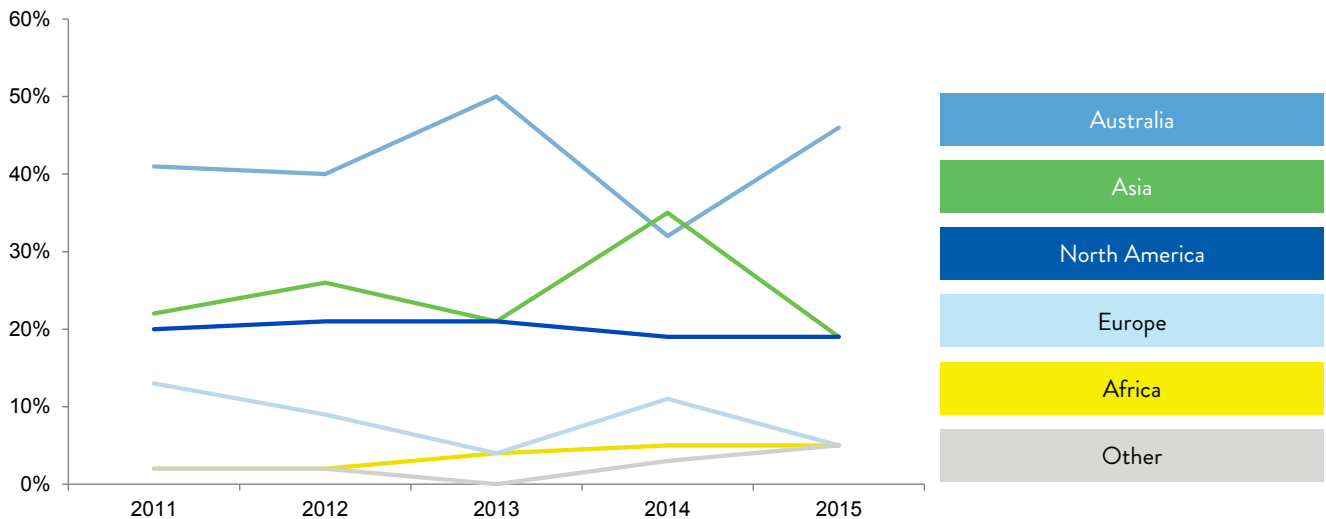
WHY THE CHANGE?

It's difficult to discern any trends here. We think the higher number of home grown bids in 2015 can be attributed to:

- + the high degree of sector consolidation in the telecommunications sector (TPG/iiNet and Vocus/M2); and
- + some high profile bids in infrastructure (DUET/Energy Developments), and property (Federation Centres/Novion and REA Group/iProperty).

We also consider that, in this case, the data from public company transactions does not reflect broader M&A trends. For instance, there has been significant interest from foreign bidders in Australian assets which are not listed. For example, the NSW electricity privatisation process had multiple foreign bidders willing to pay attractive prices, culminating in the \$10.3 billion sale of TransGrid. Other auction processes for utilities and infrastructure assets like Pacific Hydro had significant competition from foreign bidders. Similarly, there were competing Chinese bids for each of Swisse (the multivitamin company) and S. Kidman & Co.

PROPORTION OF TRANSACTIONS BY REGION OVERTIME



THE LARGEST NUMBER OF FOREIGN BIDDERS FROM INDIVIDUAL COUNTRIES WERE:



6 deals – United States



4 deals – China



2 deals – Japan



2 deals – South Africa



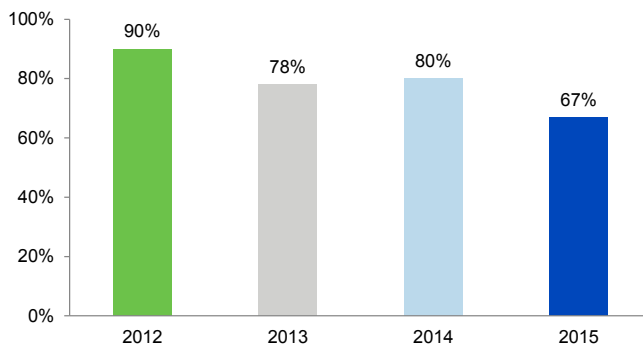
2 deals – New Zealand

FOREIGN BIDDERS' SUCCESS RATES SLIGHTLY DOWN

Foreign bidders had mixed success rates in 2015.

The statistics suggest a material decrease in the success rates of foreign bids in 2015 (67%) compared to prior years (80% in 2014 and even higher in 2012 at 90%).

FOREIGN BIDDER SUCCESS RATES



That said, when one delves deeper into the transactions underlying the data, it tells two different stories.

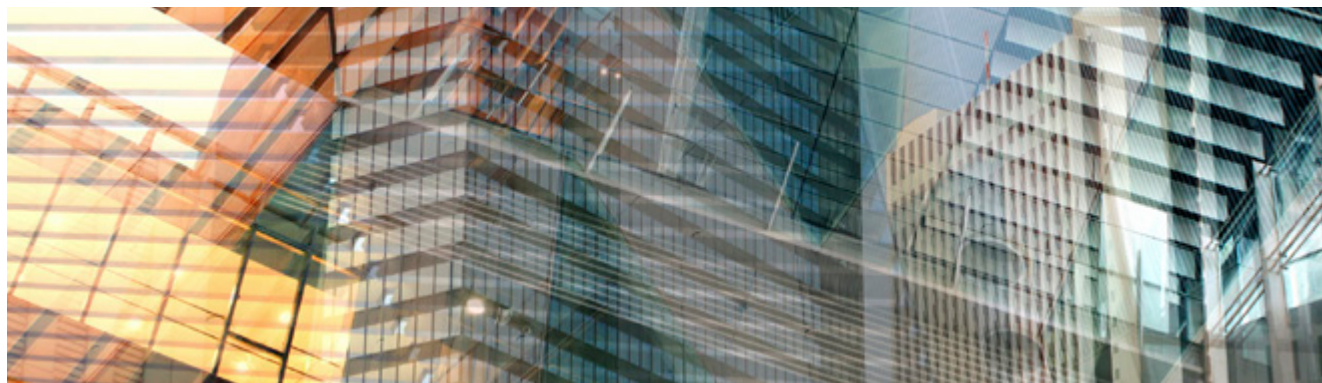
All high value deals by foreign bidders in 2015 which reached a conclusion before the finalisation of this report were successful. This included Japan Post/Toll, Equifax/Veda and Guangdong Rising/PanAust. This does not take into account deals which have not yet completed including the Brookfield consortium's bid for Asciano and Iron Mountain's proposed acquisition of Recall which is subject to regulatory approvals.

However, when one considers the smaller end of the market there have been a number of unsuccessful transactions including:

- + New Zealand based Briscoe's bid for Kathmandu, which failed to secure board recommendation after the independent expert concluded that the offer price was significantly lower than their assessed valuation; and
- + several smaller mining and resources takeovers including the Netherlands' Ichor Coal's bid for Universal Coal, Indonesia's Cakra Mineral's bid for Cokal Ltd and China's Landbridge Group's bid for Armour Energy.

WHAT DOES 2016 HOLD?

We expect foreign bidder interest to be very strong in 2016. The A\$ is significantly down on prior years. While currency alone is not a reason to undertake M&A, it can be a factor which motivates and encourages foreign bidders to take action.



FIRB SPOTLIGHT

Substantially revised foreign investment rules came into effect in Australia on 1 December 2015 with changes to the Foreign Acquisitions and Takeovers Act taking effect on that date. The basic process for approval by the Foreign Investment Review

Board (FIRB) (including a 30 day examination period and a 10 day notification period) remains the same, but there are a number of important changes to the way Australia's foreign investment approval regime works.

WHATS NEW?

'Notifiable actions' and 'significant actions'

The new legislation classifies certain transactions as being 'notifiable actions' or 'significant actions'. Notifiable actions must be notified up front. However, in both cases the Treasurer has the power to block or unwind the transactions unless they are notified and a statement of no objection is received.

15% threshold moves to 20%

The general approval threshold for acquiring a 'substantial interest' has increased from 15% to 20%. However, the concept of 'aggregate substantial interest' has been retained at 40%. Under the new provisions, certain listed companies are now able to disregard small shareholdings (below 5%) to determine whether the 40% threshold is met for purposes of determining 'foreign person' status. While it is still the case that a listed company's status as a foreign person could change unexpectedly, this should make it less likely that ASX-listed companies that are essentially Australian will find themselves caught as 'foreign persons' under Australia's foreign investment rules.

Policy in relation to 'Foreign Government Investors' brought into the law

Prior to the changes, FIRB applied a certain published policy in relation to state owned investment and other foreign government investment, which required approval under the policy for acquisitions of any shares in Australian companies over the monetary thresholds, as if it was law. The changes have now brought this within the law as well as clarifying its operation.

New concepts of land

The revised foreign investment rules have done away with the concept of 'Australian urban land', which arbitrarily captured a wide variety of transactions. The new categories are:

- agricultural land;
- residential land;
- commercial land; and
- certain mining tenements,

and land can be classified as more than one type. In effect, all land transactions are now potentially subject to approval, particularly where foreign government investors are involved.

Agricultural land register

Earlier reforms require that from 1 July 2015 all foreign persons with interests in agricultural land must report these interests to a register of foreign ownership of agricultural land which will be administered by the Commissioner of Taxation.

Penalties

Penalties for breach of the law have been given some substance, including significant fines and potentially criminal sanctions. While the Treasurer has always had the power to unwind or cause divestment of acquisitions made in breach of the law, the perception is that this power is more likely to be used (eg as has occurred in the case of certain high value residential property acquisitions).

Application fees

All FIRB applications now incur fees. The fees vary depending on the kind of application being made, but most transactions will attract a fee of \$25,000. A significantly larger fee of \$100,000 applies for transactions valued over \$1 billion. The statutory 'clock' on an application starts upon payment of the fee.

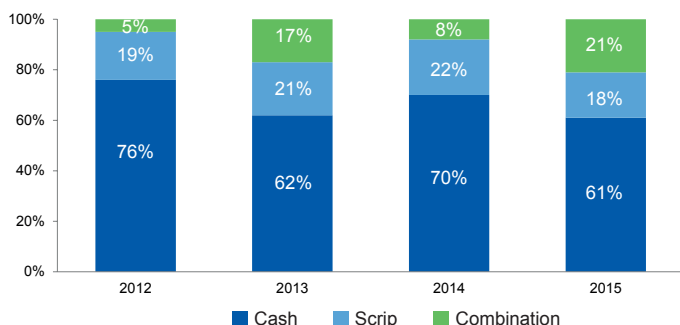
Flexibility

The new rules allow for greater flexibility through the regulations, which provide that the legislation may not apply to certain kinds of acquisitions, interests, businesses or persons. The Treasurer also has power to grant exemption certificates to a particular person specifying that an interest does not give rise to a 'significant action' or 'notifiable action', as well as waive application fees in exceptional circumstances.

5. CONSIDERATION: CASH VS SCRIP

CASH IS NOT THE ONLY WAY TO DO THE DEAL

TYPES OF CONSIDERATION BY NUMBER OF TRANSACTIONS



The preference for cash in 2014 was not replicated in 2015, with only 61% of transactions comprising all-cash consideration.

It could be argued that the 2015 outcome is just a correction back to the position in 2013. However, we do not think this observation is appropriate given the small sample size in 2013 due to the low transaction activity that year. Indeed, when looking at 2012, 2014 and 2015 (which each had comparable activity levels), there has been a consistent decline in the use of all-cash consideration.

To us, the data indicates an increased flexibility in 2015 by both bidders and also target boards to venture into more creative ways to get a deal done and to deliver value to shareholders,

For example:

- + foreign scrip: offering foreign scrip consideration has often been considered too difficult to execute in the Australian market. However, there were a number of examples in 2015 of target boards being willing to offer their shareholders exposure to the fortunes of the foreign bidder seeking to acquire their shares – for example both Iron Mountain (US) and Brookfield (Canada) offered foreign scrip in their recommended acquisitions of Recall and Asciano respectively; and
- + stub equity: in the right circumstances, a value gap between a

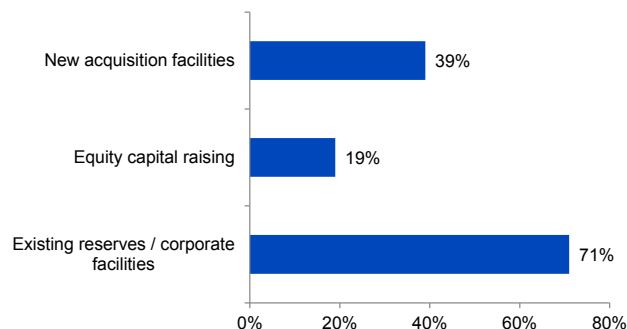
bidder and target can be bridged by offering the opportunity to participate in any future upside in the merged group with no downside risk for shareholders. In REA Group's successful acquisition of iProperty by scheme, the default consideration was all-cash, however shareholders could also elect to receive stub equity with a 2 year 'earn out' mechanism that allowed for any future upside to be realised. Risk was minimised for shareholders by placing a 'floor' on the 2 year buy-out of the stub equity equivalent to the default all-cash consideration.

In addition, there was a significant proportion of traditional scrip mergers. For example, consolidation in the property and telecommunications industries was evidenced by the all-scrip mergers of Federation Centres/Novion and Vocus/M2, as well as the competing proposal for iiNet submitted by M2 (which ultimately did not proceed because TPG increased its original offer price).

SOURCES OF CASH CONSIDERATION

The clear majority of transactions which offered all-cash or an all-cash alternative were funded via the existing cash reserves of the bidder (either cash held on balance sheet or from existing facilities). One of 2015's largest transactions, the \$6.5 billion acquisition of Toll was, unsurprisingly, funded entirely from the existing reserves of the state-owned Japan Post. The next two largest all-cash transactions, being the Equifax/Veda and DUET/Energy Developments schemes were funded by debt and a capital raising, respectively.

SOURCE OF FUNDS



As reflected in the diagram on the previous page, in a number of examples, multiple sources of cash consideration were used. For example:

- + REA Group used both existing cash reserves and a dedicated new acquisition facility to satisfy its cash obligations under its \$751 million acquisition of iProperty. REA Group also managed exposure by requiring that a minimum threshold of iProperty shareholders elect to receive the unlisted stub equity alternative consideration, thereby limiting its total cash outlay to \$500 million; and
- + for its proposed \$9 billion (approx.) acquisition of Asciano, Brookfield arranged for funding from its existing cash reserves, new facilities from a consortium of Canadian banks and also a relatively small equity raising to fund its potential cash obligations under the scheme.

QUICK-FIRE EQUITY RAISE

DUET's \$1.4 billion all-cash acquisition of Energy Developments was funded entirely via a new equity raising. The combined institutional placement and accelerated entitlement offer was opened and closed before Energy Developments had even received court approval to dispatch its scheme booklet to shareholders.

Clearly, given that shareholders holding over 85% of Energy Development shares had indicated their intention to vote in favour of the scheme, DUET had the requisite confidence to proceed with such a significant equity raising.

DEAL IN FOCUS: REA GROUP AND IPROPERTY

REA Group's \$751 million acquisition by scheme of arrangement of online Asian property portal iProperty was one of 2015's unique public M&A transactions. The consideration structure allowed for iProperty shareholders to elect to retain exposure to the iProperty business via an indirect unlisted interest in the REA Group bidding vehicle. Here are the key features:

Stub equity: iProperty shareholders could choose between all cash \$4.00 consideration or a mixed option of \$1.20 in cash and the remaining consideration in the form of shares in an unlisted 'Rollco', which would in turn own shares in the bidding vehicle, along with REA Group.

Scale back: the extent of REA Group's dilution in the bidding vehicle was managed via a scale-back being applied to the mixed consideration option if elections by iProperty shareholders exceeded a pre-determined limit.

Cash certainty: REA Group achieved cash funding certainty via a 'maximum cash' condition, requiring a minimum level of mixed consideration elections to ensure its maximum cash exposure did not exceed a pre-determined limit.

A major iProperty shareholder made a public statement prior to the scheme meeting that it intended to elect to receive the mixed consideration, ensuring that the maximum cash condition would not be triggered.

Earn out with base price: Reflecting the high-growth trajectory of the iProperty business, the Rollco shares issued to electing shareholders are subject to a two year 'earn-out' structured in line with REA's investment metrics. This allows for a full cash-out of those shares within 2 years, subject to the performance of iProperty following implementation. There is also a minimum buy-out price referable to the \$4.00 cash consideration.

This is perhaps the best example in 2015 of parties breaking from the 'cash only' mould in Australian public M&A. The structure in this deal allowed for the interests of different shareholders to be catered for without raising class issues which could otherwise create voting complications in a scheme. Shareholders were delivered potential upside exposure, while maintaining certainty of outcome via the baseline price. In addition, there were clear boundaries on the level of equity exposure being offered to iProperty shareholders, via the scale-back mechanism and maximum cash condition.

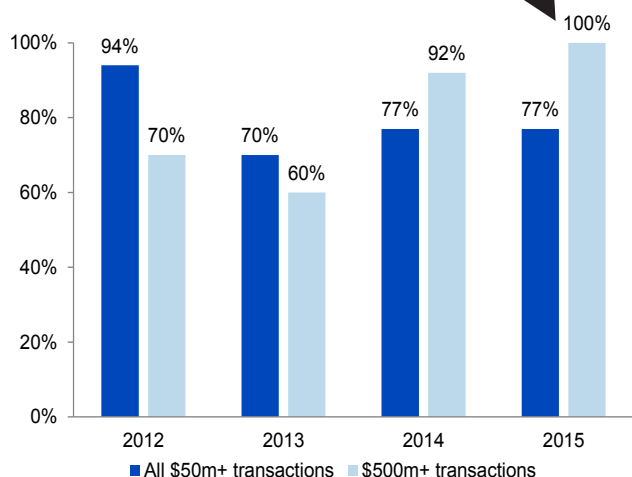
6. SUCCESS FACTORS

In 2015, 77% of 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, were successful.

This is consistent with overall success levels in 2014. It is clear that the success rates for deals generally have significantly improved when compared to the success rates just 2 years ago. What is particularly interesting is that for high value deals over \$500 million (of which there was a significant number), the success rate is 100%. The perfect record is of course subject to an asterisk in that the Brookfield/Ascianno, Iron Mountain/Recall, DEXUS/Investa and Ferrovial/Broadspectrum transactions have not been included in the analysis, as they are currently incomplete and ongoing. While at least one of these deals may fail, the very high level of success is worth noting.

SUCCESS RATES

Note: This does not take into account the Brookfield/Ascianno, Iron Mountain/Recall, DEXUS/Investa and Ferrovial/Broadspectrum transactions which are still ongoing.



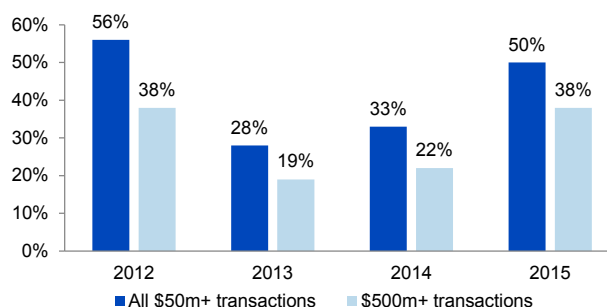
PREMIUMS HAVE MARKEDLY INCREASED

The improvement in success rates in 2015 is arguably driven by bidders being prepared to pay more.

As can be seen from the table below, there was a marked increase in the average premiums offered in 2015 by comparison with 2013 and 2014:

- + average premiums offered in respect of all transactions valued over \$50 million increased by 52%; and
- + average premiums offered in respect of all transactions valued over \$500 million increased by 73%.

AVERAGE PREMIUMS OFFERED



These are significant increases. In many cases, the higher premiums have been driven by the competitive pressure for perceived quality strategic assets. These competitive pressures have seen many deals commence as hostile, but end up being agreed because of subsequent increases in prices that the target has been able to extract in exchange for a recommendation.

We consider that the increased premiums are driven by bidders being prepared to pay up for due diligence and a target board recommendation, to increase the likelihood of the acquisition progressing quickly and successfully.

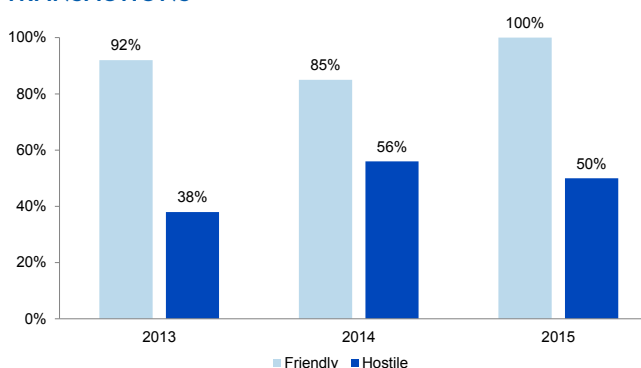
TOP 5 TRANSACTIONS BY PREMIUM OFFERED

1. 130% - Tetra Tech's \$109 million takeover bid for Coffey International
2. 129% - Coal of Africa's \$126 million proposed takeover bid for Universal Coal
3. 100% - Auctus' \$56 million takeover bid for Atherton Resources
4. 83% - Recruit Holdings' \$290 million acquisition of Chandler Macleod by scheme
5. 82% - PT Cakra Mineral's unsuccessful takeover bid for Cokal

It could be said that these factors reflect the bedrock of prudence and cautiousness that continues in the current market.

And you can see why bidders have been prepared to pay more to secure the co-operation of the target: friendly deals had a 100% success rate in 2015. That said, there are a number of long-standing friendly transactions which are yet to reach a conclusion (including Brookfield/Asciano and Iron Mountain/Recall)!

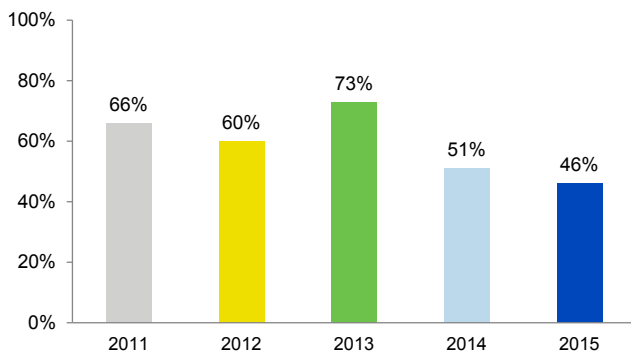
SUCCESS RATES FOR FRIENDLY AND HOSTILE TRANSACTIONS



USE OF PRE-BID ARRANGEMENTS

In 2014, there was a marked decline in bidders seeking to secure their position by acquiring a pre-bid stake or reaching some arrangement with a target shareholder before announcing the transaction. 2015 displayed broadly the same outcome, with only 46% of all transactions involving a pre-bid arrangement.

TRANSACTIONS FEATURING PRE-BID ARRANGEMENTS



There is seemingly no single reason why the use of the pre-bid arrangements continues to remain at the lowest level in the last 5 years.

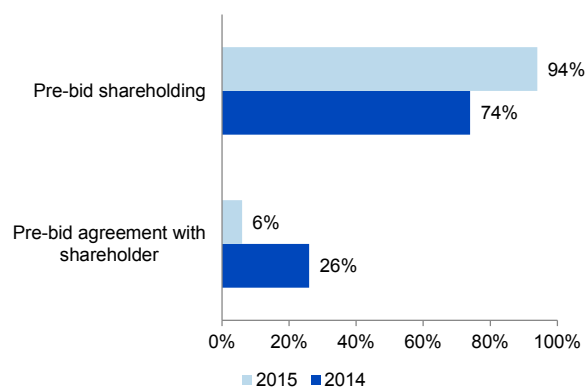
However, it is arguable that the following factors are contributing to the continued diminished use of pre-bid arrangements:

- + there may be less perceived need for them, given:
 - the increased prospect of success in agreed deals will be delivered via forms of deal protection (eg no shop or matching rights) to bidders; and
 - the higher premiums which are being offered;
- + the greater number of higher value deals seen in 2015 tended to discourage the acquisition of a pre-bid stake (given the quantum of the financial outlay required to accumulate a meaningful stake and the risk of being left with that stake if the wider deal was unsuccessful); and
- + there has been an increase in the use of scrip consideration, and pre-bid stakes can complicate scrip bids (with the minimum bid price rule) and require cash resources which the bidder may not have.

TYPES OF PRE-BID ARRANGEMENTS

Having said that, still almost half of all deals involved some form of pre-bid stake, with the purchase of actual shares (as opposed to an equity derivative/swap or a pre-bid acceptance or option agreement) still being the most common of these strategies.

TRANSACTIONS FEATURING PRE-BID ARRANGEMENTS



Interestingly, in the last year, we have seen the use of pre-bid agreements with shareholders (such as voting or acceptance agreements) decrease significantly, and be replaced almost entirely by an increase in pre-bid shareholdings.

It does seem that this would be a combination of:

- + shareholders being unwilling to enter into such agreements, have their shares locked up without payment and with no guarantee of the bid succeeding and at the same time risk missing out on the full benefits of any subsequent bid; and
- + bidders, having regard to the likely view of target shareholders, considering that there is little efficacy in wasting time seeking pre-bid agreements with shareholders compared to simply buying shares outright.

Despite all of this, it still remains the case that deals get done much more quickly if the bidder has a pre-bid stake.

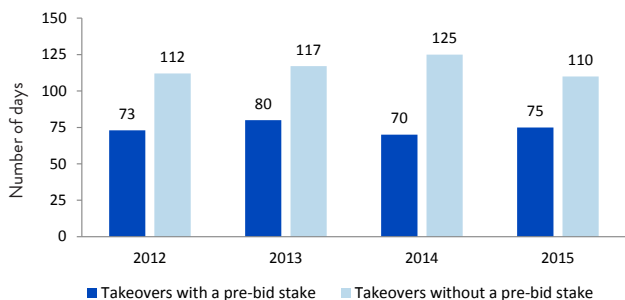
EQUITY DERIVATIVES

Equity derivatives continue to be a relatively uncommon method of building a pre-bid stake: only one bidder in 2015, being Crescent Capital Partners in its bid for Cardo, used equity derivatives for this purpose.

This correlates with our experience of exploring with our clients the possible use of increasingly sophisticated and complicated pre-bid arrangements, but few of them choosing to implement these strategies. However, there were some notable examples that suggest equity derivatives have their place, such as:

- + Brookfield's equity derivative position taken after it had launched its scheme proposal for Asciano; and
- + KKR's 10% stake in OZ Minerals which did not result in an announced takeover transaction in 2015.

DAYS TO CLOSE OF A TAKEOVER BID



7. TRANSACTION TIMING

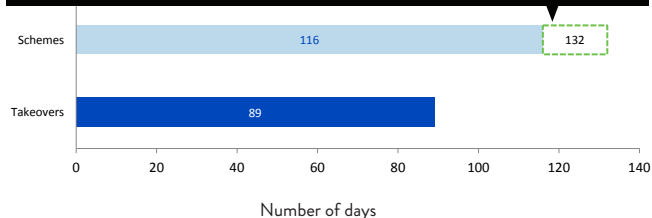
Schemes still, on average, take longer to complete than takeover bids.

The average time taken to complete:

- + a scheme of arrangement increased from 108 days in 2014 to 116 days in 2015; and
- + a takeover reduced marginally from 92 days in 2014 to 89 days in 2015.

AVERAGE DAYS TO END OF TAKEOVER OFFER PERIOD VS SCHEME IMPLEMENTATION DATE

If the Brookfield/Asciano and Iron Mountain/Recall schemes were implemented by 22 February 2016

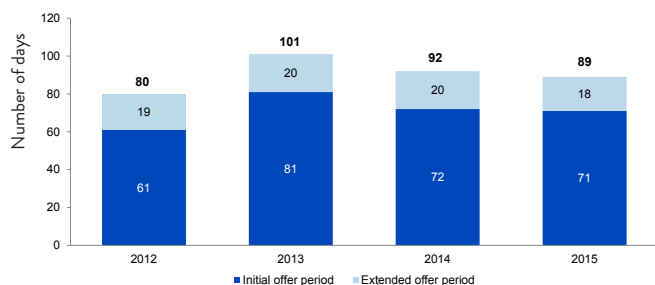


However this data does not include schemes announced in 2015 which at the time of writing this report are still ongoing. If we assumed that the Brookfield/Asciano and Iron Mountain/Recall schemes were implemented by 22 February 2016 (being the date this report was written), the average timing for implementing a scheme would have increased materially to 132 days.

TAKEOVERS

As can be seen, in respect of takeover bids, the average period of time from announcing a firm intention to proceed with the offer to the end of the offer period as initially disclosed by the bidder (excluding any extensions) has been fairly static.

TIMING IN TAKEOVERS



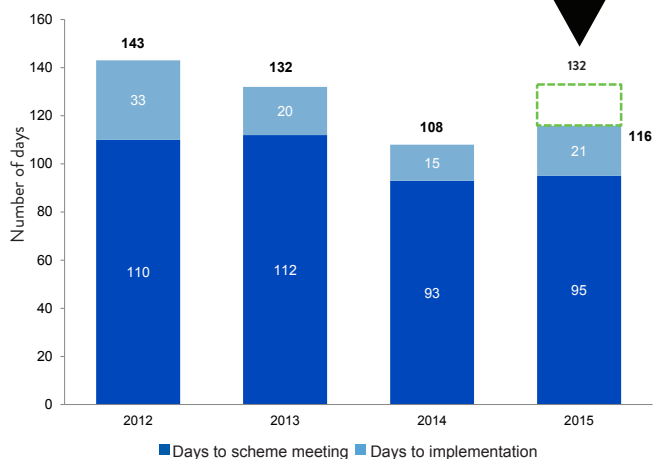
SCHEMES OF ARRANGEMENT

The average time to implement a scheme of arrangement in 2015 was higher than in 2014. From the 2015 data, it seems that the key risks to deal timetables are:

- + competition for the same target – the competing transactions for Asciano and the resultant delays to the Brookfield proposal readily demonstrate this; and
- + regulatory approvals – both Iron Mountain/Recall and, to a lesser extent, Brookfield/Asciano demonstrate that the ACCC’s detailed review of transactions can significantly impact deal timetables. The same can be said of TPG’s acquisition of iiNet, which was slightly delayed following shareholder approval while the ACCC’s review was being finalised.

TIMING IN SCHEMES

If the Brookfield/Asciano and Iron Mountain/Recall schemes were implemented by 22 February 2016



However, interestingly, the average period to the scheme meeting remained constant, which suggests that the increase in timing may relate to availability of court dates, or bidders deciding to allow more time for implementation.

8. IMPLEMENTATION AGREEMENTS AND BID CONDITIONS

ALL FRIENDLY TRANSACTIONS FEATURED AN IMPLEMENTATION AGREEMENT

Parties continue to prefer to formalise their arrangements in agreed transactions via an implementation agreement. In 2015, all transactions (takeover bid or scheme) which were announced on an agreed basis had an executed implementation agreement. In 2014, two agreed unconditional takeover bids did not have implementation agreements (see our 2015 Takeovers and Schemes Review for further information). These unique circumstances did not present themselves in 2015.

HOSTILE TURNED FRIENDLY – DON'T ASSUME YOU'LL GET THE USUAL PROTECTIONS

Bidders and targets consistently agree exclusivity provisions in implementation agreements with a suite of familiar settings in a common framework. These can include:

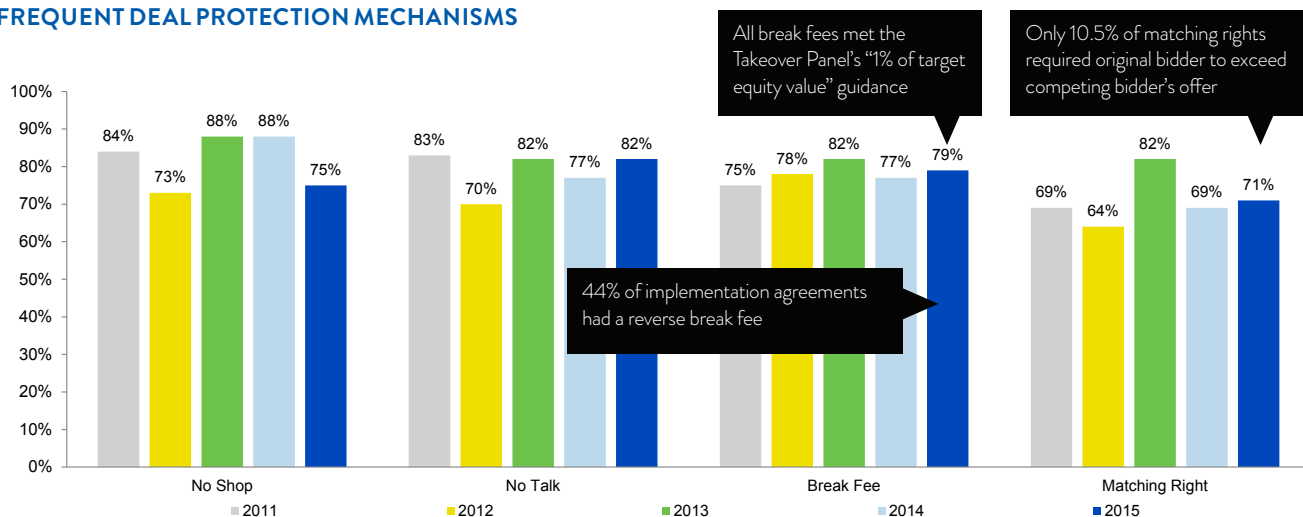
- + restrictions on the target soliciting competing transactions (ie 'no shop'), or talking to potential competing bidders unless approached with a potentially superior proposal (ie 'no talk');
- + matching rights in favour of the bidder if a competing proposal does emerge; and
- + break fees.

On first impressions, the graph below seems to indicate that this trend has changed: for example, there has been a drop in the proportion of implementation agreements where a standard 'no shop' provision is offered.

However, there were a number of transactions in 2015 which commenced on an unsolicited/hostile basis, but as the bid period and acceptances progressed, target directors came to recommend the offer. In these cases, it was less common to see the usual suite of exclusivity provisions once the transaction was agreed. For example:

- + in Crescent Capital's successful unsolicited proportional bid for Cardno, the parties agreed terms approximately 3 weeks after the offer period had commenced, by which time the bidder had a 19% interest. Given this stake and the time which had elapsed, it may not have been necessary for the bidder to secure the usual protections given that the prospect of a competing bidder was limited; and
- + similarly, Armour Energy directors changed their recommendation from 'reject' to 'accept' following an increase in offer price from the Landbridge Group in its unsolicited takeover bid. Often where a bidder has already commenced its offer without a recommendation, target directors see no reason to constrain themselves from 'shopping' the company further.

FREQUENT DEAL PROTECTION MECHANISMS



FRIENDLY TRANSACTIONS: OTHER LESS COMMON POSITIONS

There were some other less common positions taken in friendly transactions in 2015, in particular when it came to 'no shop' and 'no talk' provisions. Two examples of interest:



REA Group's acquisition of iProperty:

This transaction had the usual 'no shop' and 'no talk' obligations. However, these obligations did not take effect until approximately 3 weeks after announcement. In circumstances such as this, where the bidder already held a blocking stake in excess of 20%, granting a brief 'go shop' period can give target directors comfort that they have every opportunity to test the market before proceeding.

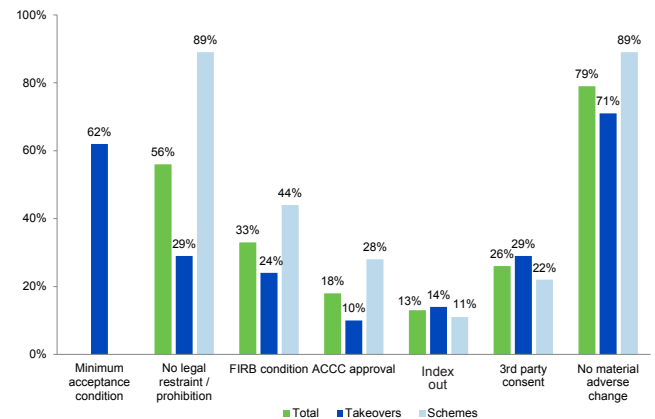


Zijin Mining's acquisition of Norton Gold Fields:

In this transaction, the implementation agreement did not include any 'no shop' or 'no talk' obligations. The only exclusivity protection given to the bidder was a warranty that Norton was not currently engaged in any discussions with a third party and a right to match any third party proposal. In this case, the bidder already held over 80% of the target shares so clearly it was unlikely that a rival bid would appear.

CONDITIONS: MAC CONDITIONS REMAIN MOST COMMON, INDEX OUT CONDITIONS RETURN

FREQUENCY OF CONDITIONS IN 2015



- + **No material adverse change (MAC) conditions** featured in 79% of all transactions, consistent with 2014 (78%). Also consistent with 2014, these conditions were most common in schemes (89% in 2014). These conditions are generally the subject of some negotiation and the triggers and exceptions can vary depending on the target entity. In 2015, the most common exception to a MAC trigger was for general economic conditions, with 65% of all MACs falling away in this case.
- + **Minimum acceptance conditions** fell to 62% of all takeover bids, in contrast to 2013 and 2014 which saw almost 80% of takeover bids include a minimum acceptance condition. 62% is more consistent with 2011 and 2012 levels. In 2015, 5 takeover bids were announced on an entirely unconditional basis, including 4 on-market takeover bids. This goes some way to explaining the fall in minimum acceptance conditions.
- + **Index out conditions:** increased significantly, from 3% of all transactions in 2014 to 13% in 2015. These conditions can often be difficult to secure in friendly transactions, and the statistics reflect this: the majority of the transactions which had an index out condition were hostile transactions, for example Crescent Capital's proportional bid for Cardno and Briscoe's hostile takeover bid for retailer Kathmandu.

9. THE REGULATORS

ASIC

In our view, ASIC continued its renewed vigour, evident in the last couple of years, of adopting a more interventionist approach in public company transactions.

This approach manifested itself in:

- + ASIC's review periods for scheme booklets often exceeding the statutory 2 week period prior to the first court hearing, causing parties to build contingencies into their transaction timetables;
- + detailed reviews of takeover documentation becoming the norm. It is not uncommon for ASIC to write to bidders and targets to express concerns about disclosure and other aspects of transactions. That said, ASIC's willingness to push for changes in takeovers is limited since its support is not required for a takeover bid in the same way it is for a scheme; and
- + ASIC bringing court proceedings against directors of a bidder company, Mariner Corporation, for breach of the Corporations Act following a Takeovers Panel decision against Mariner (albeit the action was unsuccessful).

In this section we provide some observations from ASIC's M&A regulatory activities from 2015.

Focus on scale back mechanisms

ASIC have said that it would closely examine scale back mechanisms where a mixed consideration option is offered, on the basis that they may effectively amount to a 'maximum acceptance' condition that would be prohibited in a takeover bid. With the trend in 2015 for different consideration options to be offered, it remains to be seen how this will play out in practice. It may be an example of the takeover provisions not neatly fitting within the framework for schemes where activation of a scaleback would not cause the transaction to terminate, as would be the case with a true maximum acceptance condition in a takeover bid.

Enforcement at the Panel

ASIC brought one application before the Takeovers Panel in 2015, successfully challenging an undisclosed association in respect of Ritchfield International and securing divestment orders in respect of over 15% of the shares in the company.

ASIC also continued to be involved in Takeovers Panel matters brought by others. The Panel's decisions reflect active participation in the submissions process by ASIC in a number of matters.

Funding certainty

This remains a hot topic for ASIC. Following success at the Takeovers Panel in examining the funding arrangements of Mariner in its bid for Austock, ASIC took civil action against the Mariner directors, alleging that they were reckless as to whether they would have funding in place to satisfy the obligations under the bid. ASIC was unsuccessful in establishing that the directors were reckless. However, the matter was the first time in a long time that ASIC has taken enforcement action against individuals for breach of the takeover laws.

In any case, it is clear that ASIC has been actively examining takeover and scheme disclosure to ensure that funding is in place and the identity of those providing funding is clear.

Independent expert reports

Consistent with practices over the past 5 years, expert reports continue to be closely scrutinised by ASIC, including independence of the expert, testing of methodologies selected by the expert and other matters within the expert's discretion.

In 2015, ASIC also took the additional step of visiting the offices of independent experts to examine workpapers and consider whether the expert could properly be considered independent. It remains critical that any communications between transacting parties and the expert be carefully considered to avoid any real or perceived inference that the expert is not independent.

Shareholder activism & association

Shareholder activism, particularly by institutional investors, has been attracting attention in Australia of late, consistent with global trends. ASIC released guidance (Regulatory Guide 128) on where collective action by multiple shareholders can give rise to association issues. The guidance made clear that various actions including jointly signing statutory requisitions for company meetings, joint proposals for board change, arrangements for control transactions and proposals that benefit particular shareholders rather than all shareholders may give rise to an association. The Takeovers Panel remains the body that will determine, during the course of a takeover or acquisition of a substantial interest, whether an association arises, however the guidance provides a useful indicator of ASIC's views on these matters and where it may raise queries or even take Panel action.

TAKEOVERS PANEL

Activity levels on applications to the Takeovers Panel for a declaration of unacceptable circumstances fell significantly in 2015. Only 13 cases were considered by the Panel in 2015, compared to 24 in 2014. In addition, in 10 out of the 13 applications brought, the Panel did not even commence proceedings, dismissing the application at an early stage.

Costs orders

It is uncommon for the Takeovers Panel to make costs orders on the basis that (amongst other matters), its role is to expeditiously and informally resolve disputes and to find a pragmatic solution to unacceptable circumstances, rather than to necessarily identify problematic conduct and find fault.

That said, the Takeovers Panel's decision in *Ritchfield International Limited* [2015] ATP 4 was a rare occasion in which the Panel made a costs order. Relevant considerations included:

- + clear breaches of fundamental provisions, including the 20% rule and substantial holding disclosure rules;
- + failure to disclose relevant information, or providing inconsistent information, to ASIC in initial investigations, which only became clarified in Panel proceedings; and
- + unreasonable reluctance to provide full and adequate disclosure of information relevant to the proceedings to the Panel.

This decision shows that clear breaches of the law and an unhelpful or potentially misleading approach in Panel proceedings (or the preceding discussions) can undermine the usual assumption that the Panel will be reluctant to order costs.

Policy

The Takeovers Panel released some new and revised Guidance Notes, including:

- + Shareholder intention statements: this has been a key area of focus from ASIC in recent years. The Panel provides guidance in Guidance Note 23 on matters such as timing of acceptance following a statement (2 to 3 weeks is suggested as a reasonable period) and the need for intention statements to be clearly qualified as being subject to no superior proposal emerging so as to not constrain an auction for the target.

Unfortunately, the guidance does not provide any comfort for whether or not a bidder procuring a statement in compliance with the above would give rise to a relevant interest in those shares or an association. Views of practitioners on this topic vary. In our view, absent anything more, such a statement should not give rise to a relevant interest or an association.

- + Funding arrangements: some commentators queried whether ASIC's defeat in the *Mariner* decision (see discussion on page 30) might undermine the Panel's approach in Guidance Note 14 that funding arrangements for a control transaction need to be sufficiently certain at the time of announcement. The Panel revised its guidance to remove references to s 631 (this was the provision for which breach was not made out by ASIC in *Mariner*) and clarify that failure to comply with the Panel's requirements, while not necessarily in breach of s 631, would give rise to unacceptable circumstances given the underlying policy aims of the takeover provisions in the Corporations Act.

ACCC

2015: A quick review is a good review

Two major trends have emerged in relation to ACCC merger review over recent years:

- + a year on year reduction in the number of public merger clearances; and
- + a general increase in the time the ACCC takes to review those mergers.

Why? The ACCC's confidential pre-assessment option is being used in the overwhelming majority of matters, both with the ACCC choosing to make decisions without market inquiries where it does not consider significant competition issues arise and with parties strategically using this process where possible. This leaves the more complex mergers to the public review process, increasing the time of review.

The good news is that, following criticism of the time taken for the ACCC to make public merger decisions, 2015 saw the ACCC shorten its average review time compared with the historical high of 2014. However, parties can still expect the average merger clearance to take around 16 weeks – twice the time it took in 2009.

The ACCC has just announced that it is going to change its approach to market feedback letters – where it notifies the parties of competition concerns arising from its public inquiries – so that they reflect only the ACCC's material competition concerns rather than a long list of potential issues. It is hoped that this will narrow the focus of responding submissions and cut both preparation and ACCC review time.

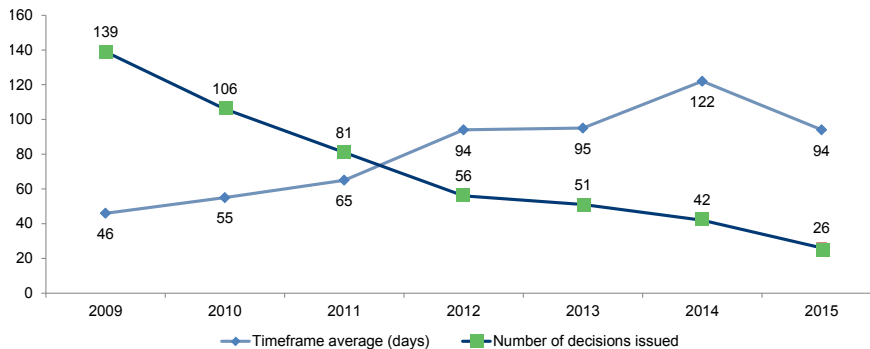
2015 IN REVIEW – FEWER MERGERS ASSESSMENTS BUT A HIGH CLEARANCE RATE

2015 – Public merger clearance decisions*

Total mergers publicly reviewed	28
Cleared	19
Cleared subject to undertakings	5
Opposed	2
Withdrawn/discontinued	2

* confidential pre-assessments continued to increase, with ACCC clearing 85% of matters via pre-assessment in 2014/2015

ACCC PUBLIC MERGER REVIEW TRENDS 2009-2015



LOOKING FORWARD: MERGER REVIEW PROCESS IN THE WAKE OF THE HARPER REVIEW

The Harper Review into competition policy issued its Final Report in March 2015, which considered that “overall the merger provisions of the CCA are working effectively”, but offered a number of recommendations:

- + the ACCC should be the decision-maker at first instance (preventing parties from bypassing the ACCC by approaching the Australian Competition Tribunal directly);
- + the ACCC should be empowered to authorise a merger if it is satisfied that the merger does not substantially lessen competition, or if the public benefit would outweigh any anti-competitive detriment; and
- + issues of transparency and timeliness arising in the informal merger review process should be further reviewed during consultation between the ACCC and business representatives.

The Government’s response to the Final Report, issued 25 November 2015, agreed with these recommendations, with the Government committing to producing draft exposure legislation in relation to changes to the formal merger review process, and extracting from the ACCC commitments to alter its approach in relation to the informal merger review process.



FIRB

2015 was a very significant year for the Foreign Investment Review Board (FIRB) and the Foreign Acquisitions and Takeovers Act. Perhaps not a revolution but certainly the operation of FIRB, the administration of the foreign investment laws and the legislation itself improved for the better. There were a number of different aspects to this which are discussed below.

Transaction review

FIRB and the Treasurer refused to approve the proposed acquisition by foreign investors (that is, mainly Chinese buyers but also interest from others) of the cattle and agribusiness, S. Kidman, on the basis that it was contrary to the national interest.

Kidman is Australia's largest private land owner and holds approximately 1.3% of Australia's total land area, and 2.5% of Australia's agricultural land. It has 10 cattle stations covering 101,411 square kilometres and manages a long-term average herd of 185,000 cattle. One of Kidman's stations, Anna Creek, is also the largest single property holding in Australia. Around 50% of Anna Creek is located within the Woomera weapons testing range in South Australia. The Treasurer considers that the Woomera weapons testing range makes a unique and sensitive contribution to Australia's national defence and it is not unusual for governments to restrict access to sensitive areas on national security grounds. Accordingly, the original proposed acquisition was rejected. We understand that this transaction is being restructured to exclude Anna Creek and on this basis is expected to be granted FIRB approval.

The rejection of the Kidman transaction occurred in the context of significant publicity and politicised commentary around 2 other high profile transactions.

First, the Port of Darwin was sold (or more precisely leased for 99 years) to Landbridge Corporation, a Chinese company. Reportedly, the US Government was unhappy that it had not been consulted about the sale to Chinese interests given its navy often uses the Darwin port in the context of its Asia-Pacific operations. Some consider such unhappiness to be misplaced given the sale of the port was a very public and prolonged process – it should have come as no surprise.

Secondly, the sale of TransGrid for over \$10 billion as part of the privatisation of New South Wales's electricity transmission and distribution network. TransGrid's asset base included ownership of part of the Federal Government's fibre optic network and telecommunication assets; control of much of the nation's backup

electricity supply; and servicing of a large number of defence bases, Parliament House in Canberra and the defence and intelligence community. Security experts publicly stated that an acquisition of TransGrid was critical to national infrastructure. In the lead up to the signing of sale documentation with the eventual successful acquirer, all foreign bidders participated in a very detailed FIRB review process and agreed to a number of strict conditions with FIRB including:

- + the operation and control of TransGrid's transmission system and telecommunications business is undertaken solely from within Australia;
- + electricity supply data and personal information is accessible and held solely within Australia;
- + foreign consortium members maintain their interest in TransGrid at no more than 50%;
- + 50% of TransGrid's board comprise Australian citizens and residents, TransGrid has an independent chairperson and an independent director on the board who are Australian citizens and residents, one of whom is required for all board quorums; and
- + annual reporting to FIRB, approved by the independent chairperson, certifying compliance with the conditions.

All foreign bidders obtained FIRB approval, although ultimately a consortium led by an Australian infrastructure fund manager, Hastings, was the successful bidder.

The above 3 transactions all led to much politicised comment. No doubt that is inevitable for such high profile transactions. We expect FIRB to continue to be more involved in high profile and sensitive transactions at earlier stage, like it was in TransGrid (noting there are 2 other assets to be sold in the NSW electricity privatisation), and perhaps how some would suggest it should have been in respect of the Port of Darwin.

“EXCELLENT: THE QUALITY OF LEGAL ADVICE IS OUTSTANDING AND THEY ALSO HAVE EFFICIENT TURNAROUND TIMES AND PROVIDE GOOD VALUE FOR MONEY.”

– CHAMBERS ASIA PACIFIC 2015

Revised laws

The Foreign Acquisition and Takeovers Act 1975 (Cth) was significantly revised to enhance and improve its operation with effect on 1 December 2015. These changes were long overdue. The operation and practices of FIRB had greatly outgrown the legislation. FIRB was, in many respects, operating on the basis of the policy rather than the law. The key changes to the law are summarised on page 21.

Views on the utility of the changes differ. Some say it is a great improvement. Another view is, by trying to fix various problems and loopholes in the law, the Government has made the rules very detailed and complex. That coupled with the increased penalties for breach mean that now, more than ever, foreign acquirers need excellent lawyers to navigate through the legislation. Understandably, we do not see this as a bad thing! Whatever the case, the Government must be commended for undertaking a thorough consultation process with industry and practitioners in an endeavour to improve the operation, and administration, of the foreign investment rules. Consultation will continue post the changes to see how the revised laws are operating in practice.

Improved administration

Over the years, FIRB has been criticised for a lack of transparency and generally poor administration of the legislation and the application process. However, this has changed significantly over the course of 2015 and in particular in the second half of the year. FIRB has overhauled its website and has started issuing and updating regulatory guidance notes on interpretation and practical issues. More importantly, FIRB officers have been increasingly open to engagement and discussion on various matters. The increased approachability and transparency is welcomed. While there is still some way to go, the improvements in this area have been significant.

Fees

It cannot go without mention that application fees have been introduced. Previously, there was no charge for FIRB review. Now, the application fee is generally \$25,000. However, it can be as much as \$100,000 for transactions over \$1 billion. These are significant fees, particularly on larger deals. They may have an impact on the propensity for bidders to lodge FIRB applications early in auction processes.

The charging of application fees brings FIRB into line with some other regulators like US anti-trust regulators who have charged an application fee for some time. If the fees are used to enhance the administration of the legislation and the review process, then adopting a user pays system may not be such a bad thing. Nevertheless, it remains to be seen how these funds are spent and the degree to which the administration of the system improves.



2015 PUBLIC M&A TRANSACTIONS

Target	Bidder	Transaction Type
Asciano Ltd	Brookfield Infrastructure Partners LP	Scheme Takeover
Novion Property Group	Federation Centres	Scheme
Toll Holdings Ltd	Japan Post Co., Ltd	Scheme
Recall Holdings Ltd	Iron Mountain Incorporated	Scheme
Investa Office Fund	DEXUS Property Group	Scheme
Veda Group Ltd	Equifax Inc.	Scheme
iiNet Ltd	TPG Telecom Ltd	Scheme
M2 Group Ltd	Vocus Communications Ltd	Scheme
Sirius Resources NL	Independence Group NL	Scheme
Energy Developments Limited	DUET Group	Scheme
PanAust Ltd	Guangdong Rising Assets Management Co., Ltd	Takeover
iProperty Group Ltd	REA Group Ltd	Scheme
Broadspectrum Ltd	Ferrovial, S.A.	Takeover
Skilled Group Ltd	Programmed Maintenance Services Ltd	Scheme
UXC Ltd	Computer Sciences Corporation	Scheme
Aquarius Platinum Ltd	Sibanye Gold Ltd	Scheme
Drillsearch Energy Ltd	Beach Energy Ltd	Scheme
Chandler Macleod Group Ltd	Recruit Holdings Co., Ltd	Scheme
Kathmandu Holdings Ltd	Briscoe Group Ltd	Takeover
Cardno Ltd	Crescent Capital Partners	Takeover
Norton Gold Fields Ltd	Zijin Mining Group Co., Ltd	Scheme
Affinity Education Group Ltd	Anchorage Childcare Pty Ltd (ultimately owned by funds managed or advised by Anchorage Capital Partners)	Scheme
Vision Eye Institute Ltd	Jangho Group Co., Ltd	Takeover
Affinity Education Group Ltd	G8 Education Ltd	Takeover (on market) Takeover
Vision Eye Institute Ltd	Pulse Health Ltd	Takeover
Universal Coal plc	Coal of Africa Ltd	Takeover
Devine Ltd	CIMIC Group Ltd	Takeover
Tandou Ltd	Webster Ltd	Takeover
Coffey International Ltd	Tetra Tech Inc	Takeover
Aditya Birla Minerals Ltd	Metals X Ltd	Takeover
The PAS Group Ltd	Australia Brands Investments LLC	Takeover (on market)
Universal Coal plc	Ichor Coal NV	Takeover
Cokal Ltd	PT Cakra Mineral Tbk	Takeover
Phoenix Gold Ltd	Evolution Mining Ltd	Takeover
Cue Energy Resources Ltd	NZOG Offshore Ltd	Takeover (on market)
Armour Energy Ltd	WestSide Corporation Ltd (subsidiary of Landbridge Group Co., Ltd)	Takeover
Atherton Resources Ltd	Auctus Chillagoe Pty Ltd	Takeover (on market)

Status	Bidder Origin	Consideration Type (Cash / Scrip / Combo)	Transaction Value A\$
Current	Canada	Combination cash & scrip	\$8.9 billion
Successful	Australia	Scrip	\$7.9 billion
Successful	Japan	Cash	\$6.5 billion
Current	United States	Combination cash & scrip	\$3.4 billion
Current	Australia	Combination cash & scrip	\$2.5 billion
Successful	United States	Cash	\$2.5 billion
Successful	Australia	Cash	\$2.0 billion
Successful	Australia	Scrip	\$2.0 billion
Successful	Australia	Combination cash & scrip	\$1.8 billion
Successful	Australia	Cash	\$1.4 billion
Successful	China	Cash	\$1.2 billion
Successful	Australia	Cash	\$751 million
Current	Spain	Cash	\$715 million
Successful	Australia	Combination cash & scrip	\$422 million
Successful	United States	Cash	\$416 million
Current	South Africa	Cash	\$415 million
Successful	Australia	Scrip	\$384 million
Successful	Japan	Cash	\$290 million
Unsuccessful	New Zealand	Combination cash & scrip	\$289 million
Successful	Australia	Cash	\$235 million
Successful	China	Cash	\$233 million
Successful	Australia	Cash	\$212 million
Successful	China	Cash	\$198 million
Unsuccessful	Australia	Cash Scrip	\$185 million
Unsuccessful	Australia	Scrip	\$162 million
Current	South Africa	Combination cash & scrip	\$126 million
Successful	Australia	Cash	\$119 million
Successful	Australia	Scrip	\$114 million
Successful	United States	Cash	\$109 million
Successful	Australia	Scrip	\$90 million
Unsuccessful	United States	Cash	\$86 million
Unsuccessful	Netherlands	Cash	\$81 million
Unsuccessful	Indonesia	Cash	\$75 million
Successful	Australia	Combination cash & scrip	\$74 million
Successful	New Zealand	Cash	\$70 million
Unsuccessful	China	Cash	\$61 million
Successful	United States	Cash	\$56 million

OUR APPROACH

In this report, we have summarised our key observations of an analysis of the 37 public takeovers and scheme transactions announced during the 2015 calendar year in respect of ASX-listed companies.

We have only analysed deals which have a market value of over \$50 million.

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. We have traced the progress of these transactions until 22 February 2016.

A full list of transactions analysed is set out on pages 36 to 37.

The primary sources of data used in compiling the report were bid documents 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, an off-market takeover bid as “successful” if it has become unconditional such that the bidder increased its shareholding in the target, and an on-market takeover as “successful” if the bidder substantially increased its shareholding or otherwise achieved an outcome consistent with its public announcements.

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 (or if discussions were initially announced and were followed by an agreed deal).

Where this report refers to a transaction’s value, the reference is to the value of 100% of the target’s equity based on the final offer price.

Transactions referred to as providing cash

consideration include all-cash transactions and also transactions where shareholders were offered an all-cash alternative.

Unless otherwise specified, where this report 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 the announcement of the transaction.

Unless otherwise specified, all dollar references are to the Australian dollar.

We have treated:

- + the scheme and takeover bid proposed by Brookfield to acquire Asciano; and
- + the off-market and on-market takeover bids by G8 Education for Affinity Education,

each as one transaction for the purposes of analysing market and sector activity, foreign bids, consideration, deal outcomes and transaction timing. However, we have considered each scheme and takeover bid individually when considering transaction structures, implementation agreements and bid conditions.



ABOUT GILBERT + TOBIN

Gilbert + Tobin is the leading independent Australian commercial law firm. We pride ourselves on providing 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 Asia Pacific (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 and Competition and Antitrust.

Our M&A team comprises highly experienced partners and lawyers who achieve commercial results through creative solutions and perseverance. Our lawyers have worked at all key corporate regulators

including ASIC, the Takeovers Panel and the ACCC.

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, competition and regulation, banking and infrastructure, communications and technology, litigation and dispute resolution, real estate and projects and employment.



Perth



Melbourne



Sydney

RECENT GILBERT + TOBIN TRANSACTIONS

- + Aquis on the listing of Aquis Entertainment Limited by reverse takeover and the proposed \$300 million redevelopment at Casino Canberra
- + Aquis on the acquisition of Casino Canberra
- + Asahi Holdings on its acquisition of Mountain Goat
- + Aurora Oil & Gas on the \$2.6 billion acquisition by Baytex Energy Corp by scheme of arrangement
- + AusNet Services on its proposed \$110 million acquisition of the Mortlake Terminal Station
- + Baycliffe in relation to the \$111 million sale of its shareholding in APN News and Media
- + Caltex Australia in relation to the block trade by its major shareholder, Chevron, of its 50% shareholding for \$4.74 billion
- + Citigroup and CBA as the underwriters of the \$150 million capital raising by Flexigroup
- + Citigroup and Macquarie as the joint lead managers of Slater & Gordon's \$890 million accelerated renounceable entitlement offer
- + Credit Suisse and UBS AG as the underwriters of Mayne Pharma's \$118 million non-renounceable entitlement offer and institutional placement to fund its acquisition of the Doryx brand and related acquisitions
- + Credit Suisse as the sale facility agent in connection with Vocus' scrip acquisition of Amcom
- + Credit Suisse as the underwriter of Evolution Mining's \$248 million renounceable entitlement offer to fund its acquisition of the Cowal Gold Mine in New South Wales from Barrick Gold Corporation
- + Credit Suisse, Citigroup and UBS AG as the joint lead managers of the \$552 million IPO of Eclix Group (formerly Fleet Partners)
- + Crescent Capital Partners on its successful \$235 million proportional takeover bid for Queensland based Cardno
- + CRH Europe Lightside on its 100% acquisition of shares in BUCI from Helmsman Capital
- + CVC as vendor in its sell down of 27 million shares (10% stake) in Manta via a block trade (along with UBS as co-seller), and on its subsequent sell down of its remaining shares in Mantra
- + Dentsu Aegis Network on its acquisition of 51% of Soap Creative Pty Ltd, a leading Australian digital creative agency
- + Dentsu Aegis Network on its acquisition of 51% of Belgiovane Williams Mackay, an Australian independent creative advertising agency
- + Energy Developments on its \$1.4 billion acquisition by DUET Group by scheme of arrangement
- + Financiers to the successful consortium bidding to acquire TransGrid in the NSW poles & wires privatisation
- + Goldman Sachs as an underwriter of the \$704 million IPO of Costa Group Holdings
- + Goldman Sachs and Morgan Stanley as the underwriters of Transurban Group's \$2.7 billion entitlement offer to fund its acquisition of Queensland Motorways
- + Goldman Sachs as the sale facility agent in connection with the demerger of South32
- + Goldman Sachs as the underwriter of BOQ's \$440 million equity raising to fund its proposed acquisition of Investec Australia's specialist finance and leasing businesses
- + Goldman Sachs as the underwriter of Treasury Wine Estates' \$486 million entitlement offer
- + Goldman Sachs in relation to the establishment of its alliance with CBA
- + GrainCorp and its consortium partners Morrison and Australian Grains Champion in relation to the proposal to corporatise Co-operative Bulk Handling
- + Graincorp on the proposed \$3.4 billion takeover offer by Archer Daniels Midland
- + Greenstone on its \$1 billion deferred IPO
- + Ludowici on the sale of its engineered rubber business to Mageba
- + Macquarie Capital and Goldman Sachs as the joint lead managers of the \$471 million IPO of Pepper Group
- + Macquarie Capital and Goldman Sachs as the underwriters of the \$371 million IPO of Amaysim Australia
- + Macquarie Capital and UBS as the underwriters of the \$499 million IPO of Gateway Lifestyle Group

- + Macquarie Capital as the underwriter of the \$300 million institutional placement by TPG Telecom
- + Macquarie Capital, Deutsche Bank and Morgan Stanley as joint lead managers of APA Group's \$1.835 billion accelerated entitlement offer to part fund its acquisition of BG Group's QCLNG Pipeline
- + Macquarie Capital, UBS, CIMB Capital Markets, Credit Suisse, Goldman Sachs and Merrill Lynch as underwriters of the \$3.6 billion IPO of Healthscope
- + Mantra Group on its \$53 million placement and non-underwritten share purchase plan
- + Melbourne IT on its \$22 million acquisition of 50.2% of Outware Systems Limited, a mobile application developer
- + Melbourne IT on its acquisition of Uber Global
- + MEO Australia in relation to the hostile takeover bid by Mosman Oil and Gas
- + Morgan Stanley as the underwriter of the \$306 million block trade sale of Hancock Prospecting's 14.99% shareholding in Fairfax Media
- + Morgan Stanley as the underwriter of the \$176 million IPO of Baby Bunting
- + National Australia Bank on the renegotiation of its arrangements with Visa
- + Olam International on its US\$1.3 billion acquisition of Archer-Daniels Midland's worldwide cocoa business
- + Orica on the \$750 million sale of its chemicals business to funds advised by Blackstone
- + Pacific Equity Partners (being the sponsor/existing owner) on the \$2.3 billion IPO of Link Group, which was the largest IPO in 2015
- + Pacific Equity Partners on its \$1 billion sale of Hoyts Group to ID Leisure Ventures Limited, a China-based investment fund founded by entrepreneur Mr Sun Xishuang
- + Pacific Equity Partners on its \$225 million acquisition of Kerry Pinnacle Pty Limited, the Australian bakery ingredients, manufacturing and distribution business of Kerry Group Plc
- + Pact Group on its \$80 million acquisition of Jalco
- + Pricepanda's sale of 100% of its shares to Next Commerce in return for a 40% stake in Next Commerce Pty Limited
- + Quadrant Private Equity on its acquisition of 100% of the equity of Urban Purveyor Group Holdings
- + Quadrant Private Equity on the \$410 million VIP Petfoods sale
- + Qube consortium on its proposed \$9 billion takeover of Asciano
- + REA Group on its acquisition of iProperty Group for \$751 million (offering a mix of cash consideration and stub equity) by scheme of arrangement
- + Rocket on its 100% acquisition of the Suppertime online food delivery business
- + Scepter Partners on its \$7.1 billion proposal to acquire Santos
- + Sona Petroleum on its US\$50 million acquisition of the Stag oilfield from Santos and Quadrant Energy
- + SP AusNet on the 20% sell-down by its major shareholder, Singapore Power, to State Grid of China for \$824 million and the termination of the management arrangements with Singapore Power
- + Spotless Group on its \$1.8 billion IPO
- + Spotless Group on its acquisition of the Utility Services Group
- + Steelmakers Australia consortium (including POSCO and Noble) on the proposed \$3.2 billion takeover of Arrium
- + Syrah Resources on its successful \$211 million entitlement offer and placement
- + Telstra on its \$1.4 billion off-market share buy-back
- + Telstra on its \$1 billion acquisition of Pacnet (an Asian-based telecommunications provider)
- + Ten Network Holdings on its \$154 million entitlement offer, as part of a broader agreement with Foxtel, under which Foxtel acquired up to 15% of Ten's diluted share capital
- + TPG led consortium including Blackstone, Canada Pension Plan Investment Board and Ontario Teachers' Pension Plan Board on its proposed bid for the GE consumer finance business
- + TPG led consortium, comprising TPG, PAG and the Ontario Teachers' Pension Plan Board on the \$1.215 billion acquisition of DTZ, a global property services business of UGL

- + UBS and Morgan Stanley as the underwriters of the \$275 million IPO of Integral Diagnostics
- + UBS, Goldman Sachs and Merrill Lynch as the joint lead managers of the \$2.1 billion IPO of MYOB
- + Vail Resorts on its \$176.6 million acquisition of the Perisher Ski Resort
- + Victorian Government on the discontinuance and acquisition of the East West Link Project
- + Vitol on its \$2.9 billion acquisition of Shell's Australian downstream assets, including the Geelong Refinery and 870 retail sites across Australia
- + Wesfarmers Industrial & Safety on its \$180 million acquisition of the Pacific Brands Workwear division
- + Wesfarmers on its US\$100 million acquisition of a 13.7% interest in Quadrant Energy Holdings, a special purpose vehicle established by Macquarie and Brookfield to acquire Apache Corporation's oil and gas assets in Western Australia
- + Westpac on its \$8 billion acquisition of the Australian assets of Lloyds bank
- + Wilmar International and First Pacific Company on the \$1.9 billion acquisition of Goodman Fielder by scheme of arrangement
- + Woolworths Holdings (South Africa) on its \$2.15 billion acquisition of David Jones by scheme of arrangement and acquisition by takeover of minorities in Country Road



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Neil is the head of the Melbourne M&A team. He specialises in listed company takeovers, cross-border acquisitions, Takeover Panel matters, private sales and disposals, private equity transactions, equity capital raisings and other capital management transactions and corporate governance matters.

He has expertise in a number of industries including the mining/resources, energy, infrastructure, agribusiness, chemicals, retail, manufacturing, gaming, logistics, dot com and IT sectors.

Neil is recognised as a leading Australian M&A lawyer in all key international publications including Best Lawyers and Chambers. Each of Australasian Lawyer and Lawyers Weekly nominated him for Australian Dealmaker of the Year in 2015.

Neil recently advised on the following significant transactions:

- + Vail Resorts on its acquisition of Perisher;
- + Aquis Entertainment Group on its reverse takeover of Discovery and various other development projects;
- + Asahi on its acquisition of Mountain Goat;
- + Syrah Resources on its \$211 million rights issue; and
- + AusNet Services' \$110 million acquisition of the Mortlake Terminal Station from Origin Energy.



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Craig specialises in general corporate law with an emphasis on mergers and acquisitions, capital markets and securities offerings, takeovers and restructurings.

Craig is consistently recognised by leading directories for his expertise, including being in Best Lawyers for the last 5 years in the practice areas of Mergers & Acquisitions, Equity Capital Markets, Corporate Law and Corporate Governance and Practice and as Corporate Lawyer of the Year for 2016 and Private Equity Lawyer of the Year for 2015.

In 2015, Craig advised on the following transactions:

- + Goldman Sachs in relation to the establishment of its alliance with CBA;
- + Dentsu Aegis Network Limited, Dentsu Inc. on its acquisition of 51% of Belgiovane Williams Mackay Pty. Ltd and its acquisition of 51% of Soap Creative Pty Ltd;
- + Melbourne IT on its acquisitions of Uber Global and Outware;
- + National Australia Bank on the renegotiation of its arrangements with Visa; and
- + Spotless on its acquisition of the Utility Services Group.



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Nirangjan is a partner in Gilbert + Tobin's Corporate Advisory group.

Nirangjan's practice centres on M&A with particular expertise in listed company takeovers and schemes of arrangement, having advised on a number of recent significant, high profile transactions in the Australian market. Nirangjan has also worked as a lawyer at the Takeovers Panel and in the corporate finance division of ASIC, giving him a unique skill set in public company takeovers and schemes of arrangement with significant regulatory experience.

His recent transactions include advising:

- + REA Group on its \$750 million acquisition of iProperty (including stub equity consideration).
- + AusNet Services on its acquisition of the Mortlake Terminal Station and ongoing long term service arrangements.
- + Energy Developments Limited on its \$1.4 billion acquisition by DUET Group by scheme of arrangement.
- + Brookfield's lenders on the public company legal aspects of Brookfield's proposed \$8.9 billion acquisition of Asciano Limited.
- + Woolworths South Africa on its \$2.15 billion acquisition of David Jones Limited.
- + Woolworths South Africa on its acquisition of the minorities in Country Road Limited.
- + Bidder for Transgrid, NSW poles & wires privatisation, which ultimately sold for \$10.3 billion.
- + Wilmar International and First Pacific Company on the \$1.3 billion acquisition of Goodman Fielder Limited.
- + Aquis Group on its reverse takeover of Discovery Resources.
- + Aquis Group on its successful acquisition of Casino Canberra and proposed redevelopment including gaming regulator engagement.
- + Wesfarmers Industrial and Safety on its \$180 million acquisition of the Workwear Division of Pacific Brands Limited.



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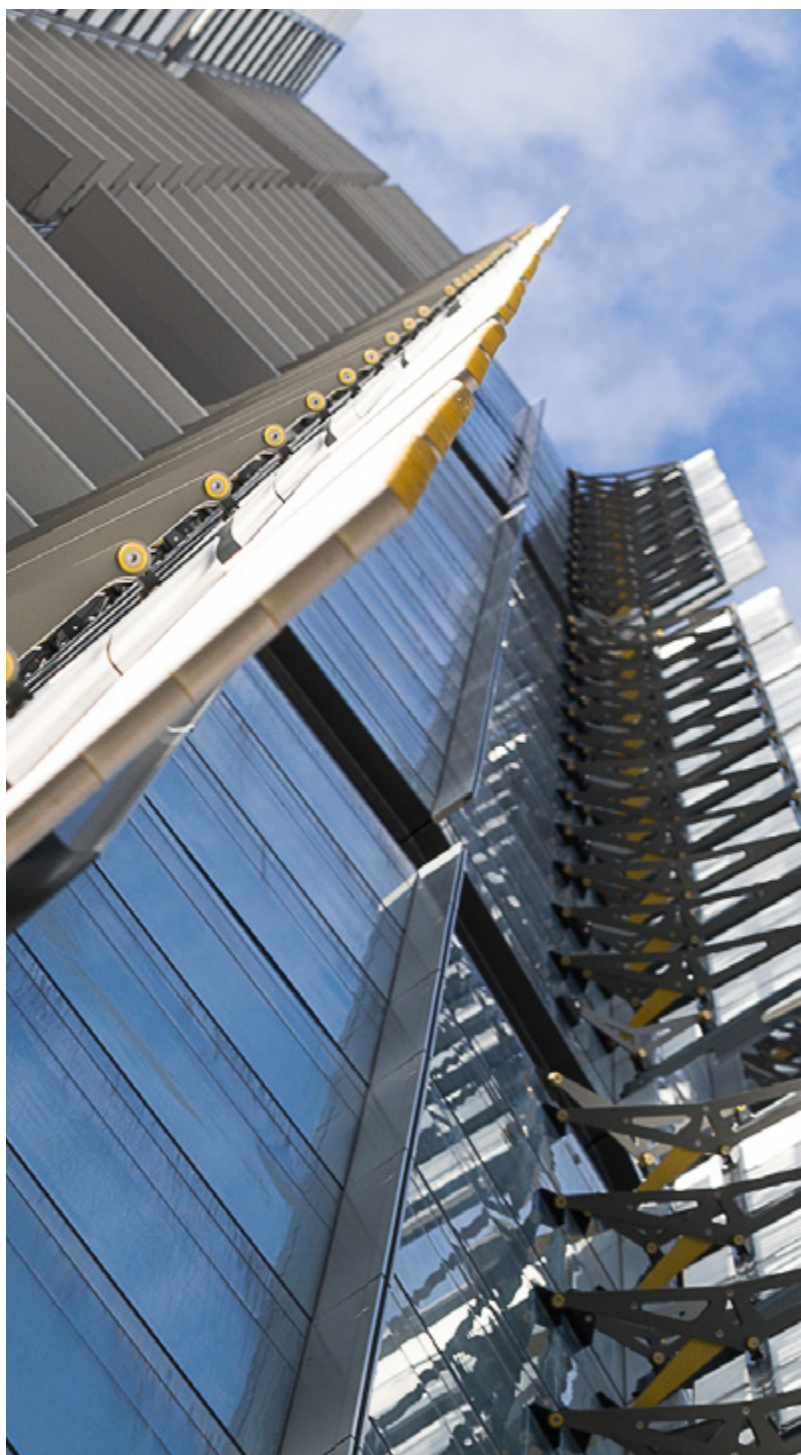
Frederick advises clients on public and private mergers and acquisitions, equity capital markets transactions, as well as general corporate law and governance matters.

In 2015, Frederick assisted on deals including:

- + REA Group on its \$751 million acquisition of iProperty Group by scheme of arrangement;
- + Energy Developments on its \$1.4 billion acquisition by DUET Group by scheme of arrangement; and
- + the State of Victoria on its cancellation of the East West Link infrastructure project and acquisition of project assets.

REACH AND RECOGNITION

- + **2016 Chambers Asia Pacific:** 38 Gilbert + Tobin partners were recognised in 17 areas of law. Gilbert + Tobin was given a Band 1 ranking in each of Corporate/M&A, Equity Capital Markets, Private Equity and Competition and Antitrust.
- + **2015 Chambers Asia-Pacific Awards of Excellence:** Gilbert + Tobin won the rarely awarded Australian Client Service Law Firm of the Year.
- + **2015 Australasian Law Awards:** Gilbert + Tobin won 5 awards including:
 - Australian Law Firm of the Year (250-500 lawyers)
 - Law Firm Leader of the Year
 - Property, Infrastructure and Projects Deal of the Year
 - Insolvency & Restructuring Deal of the Year
 - International Deal of the Year.
- + **2015 Best Lawyers Australia:** 49 Gilbert + Tobin partners were recognised in 39 areas of law which represents over 70% of the partnership being acknowledged as leading in their areas of expertise. Among these, five partners were named as Best Lawyers 2015 Lawyer of the Year including Neil Pathak and Craig Semple who were identified as outstanding Corporate Advisory lawyers.
- + **2015 IFLR Asia Awards:** Gilbert + Tobin won Australian Law Firm of the Year and High-Yield Deal of the Year at the prestigious International Financial Law Review Asia Awards which recognise the most innovative legal firms and deals in the Asia Pacific region.
- + **2015 Financial Times Asia-Pacific Innovative Lawyers Awards:** Gilbert + Tobin was recognised as Most Innovative Australian Law Firm for the second year and placed second overall in the top 25 Asia Pacific headquartered law firms, performing strongly across several categories as an innovation leader.



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