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TAKEOVERS + SCHEMES REVIEW

KEY HIGHLIGHTS

2020

GILBERT + TOBIN PRESENTS THE 2020 TAKEOVERS + SCHEMES REVIEW

On 12 March 2020, Gilbert + Tobin released the 2020 edition of its *Takeovers + Schemes Review*, providing an in-depth analysis of 2019's public M+A transactions valued over $50 million.

Highlights from 2019

- After a seven-year high for public M+A transaction activity in 2018, activity softened in 2019 with a decrease in both the value and number of transactions. In particular, the aggregate transaction value decreased significantly, down from $48.7 billion in 2018 to approximately $24 billion in 2019.
- The healthcare sector made the greatest contribution to announced public M+A by value, followed closely by retail & consumer services and industrial products.
- Private equity firms were particularly acquisitive in 2019, and were the proponents of 44% of the aggregate transaction value, up from 28% in 2018. Interestingly, 2019 also saw significant involvement of Australian superannuation funds in public M+A for the first time.
- While the number of transactions involving a foreign bidder was broadly the same as recent years, the aggregate deal value attributable to foreign bids fell by more than half from $42 billion in 2018 to $19 billion in 2019. Bidders from North America were the most active, while interest from China was more subdued.
- Despite a fall in average final premiums paid by bidders, 89% of the total number of announced M+A transactions over $50 million were successful in 2019.
- The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry ignited increased scrutiny and action by corporate regulators.

2020 outlook

Since the onset of the coronavirus (COVID-19) pandemic, the world has changed in a dramatic way and at a significant pace. The Australian economy, and indeed the global economy, has been severely impacted. The short to medium term seems very uncertain. Stock markets have rapidly declined. While they have recently recovered some lost ground, they remain subject to extreme volatility.

This all makes M+A hard.

The impact of the pandemic on company turnover and earnings means many companies will have urgent funding needs. However, on the flip side, those with cash and liquidity will see opportunities emerge. Many Australian companies are not overleveraged and have healthy balance sheets (unlike in the global financial crisis) and private equity can access billions in available cash.

For our insights on the current Australian M+A and equity capital market landscape and what we're seeing in real time, see our publication COVID-19: Mergers + Acquisitions in a time of crisis.

The following pages provide a summary of a number of the key highlights from our Review.

1

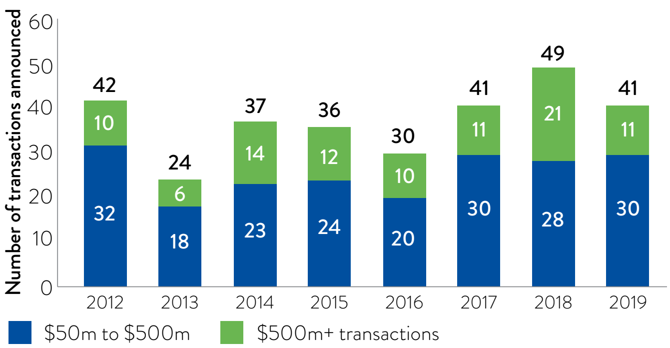
PUBLIC M+A ACTIVITY DOWN AFTER BUMPER 2018

2019 saw a distinct softening in activity in public M+A transactions in Australia.

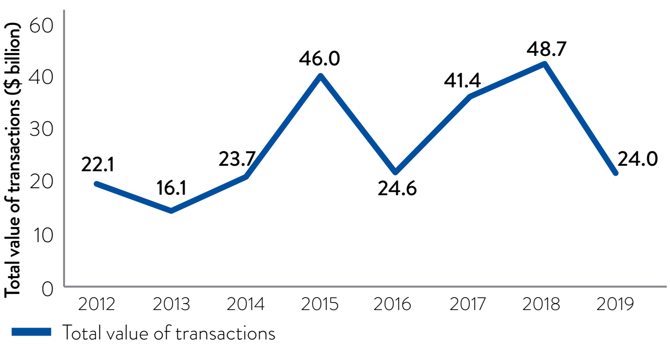
There were 41 transactions valued at $50 million or more in 2019, representing a 16.3% decrease from the previous year but consistent with 2017 levels (which was a five-year high at the time).

When measured by aggregate transaction value, the fall in public M+A activity in 2019 appears even more pronounced, decreasing by more than 50% from 2018 levels to approximately $24 billion. This was a direct result of the marked decrease in the number of transactions worth over $500 million.

Transaction announcements per year by number



Total transaction value per year



TRANSACTION HIGHLIGHTS

$1 BILLION+

+ Brookfield's $4.4 billion acquisition of Healthscope
+ Nippon Paint's $3.8 billion acquisition of DuluxGroup
+ BGH Capital consortium's $2.1 billion acquisition of Navitas
+ China Mengniu Dairy Company's $1.5 billion acquisition of Bellamy's Australia
+ EQT's proposed $1.4 billion acquisition of Metlifecare*
+ Brookfield's $1.3 billion acquisition of Aveo Group

$500 MILLION+

+ AP Eagers' $836 million off-market takeover offer for Automotive Holdings
+ Wesfarmers Lithium's $769 million acquisition of Kidman Resources
+ PSP Investments' $724 million acquisition of Webster
+ Shell Energy Australia's $617 million acquisition of ERM Power
+ Fox Corporation's $585 million acquisition of Credible Labs Inc

** Since publication of the Review, EQT has sought to terminate the deal on the basis that the MAC clause has been triggered due to the impacts of COVID-19.*

2

HEALTHCARE AND RETAIL & CONSUMER SERVICES WERE THE KEY SECTORS

HEALTHCARE

led the way in terms of aggregate deal value, largely due to Brookfield's $4.4 billion acquisition of Healthscope (the largest transaction by value in 2019)

RETAIL & CONSUMER SERVICES

strongly represented in both number of deals and aggregate transaction value

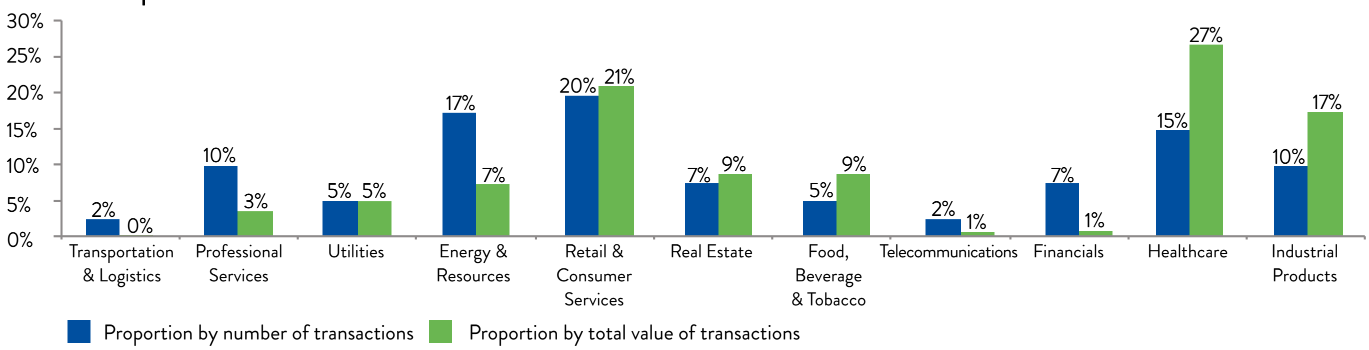
ENERGY & RESOURCES

continued to attract significant public M+A activity by transaction volume

In 2019, the healthcare sector led the way by value, contributing 27% of total transaction value, a significant increase from 10% in 2018. Retail & consumer services came in second by deal value (21%), with industrial products coming in third (17%).

Retail & consumer services led public M+A activity in 2019, accounting for 20% of transaction volume. Energy & resources was the second largest contributor to transaction volume (17%), followed by healthcare (15%).

Transactions per sector (number vs value)



Top transactions by sector

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

1 Healthcare (Hospitals)

Brookfield Asset Management's successful acquisition of Healthscope by scheme of arrangement

$4.35 billion

2 Industrial Products (Construction Materials)

Nippon Paint's successful acquisition of DuluxGroup by scheme of arrangement

$3.82 billion

3 Retail & Consumer Services

BGH's successful acquisition of Navitas by scheme of arrangement

$2.09 billion

4 Food, Beverage and Tobacco (Consumer Staples)

China Mengniu Dairy Company's successful acquisition of Bellamy's Australia by scheme of arrangement

$1.5 billion

5 Healthcare (Aged Care)

EQT's proposed acquisition of Metlifecare by scheme of arrangement*

$1.44 billion

** EQT has sought to terminate the deal on the basis that the MAC clause has been triggered due to the impacts of COVID-19.*

3

CONSIDERATION TYPES – CASH AT AN ALL TIME HIGH

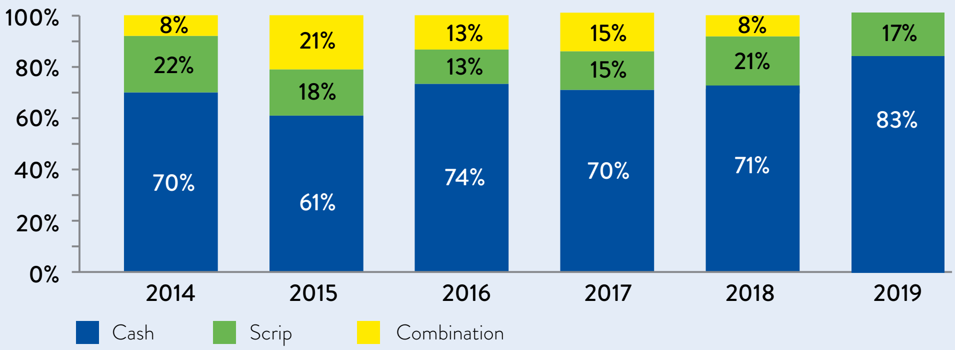
The use of cash-consideration was at an all-time high.

83% of transactions in 2019 gave target shareholders the option to receive all cash consideration, up from 71% of transactions in 2018. This is the highest percentage we have identified in the past 10 years. It may, in part, be attributable to the increased activity of private equity bidders, and the relatively cheap debt funding available to bidders.

There were no transactions which had a consideration structure which offered target shareholders a fixed combination of both cash and scrip with no all cash alternative.

However, there were five transactions which gave shareholders the option to elect either scrip or cash consideration.

Types of consideration by number of transactions



STUB EQUITY CREATIVITY REMAINED UNDER ASIC's SPOTLIGHT.

Two transactions in 2019 involving Brookfield sought to provide flexibility for all target shareholders by incorporating a stub equity option into the consideration structure. A further two transactions sought to provide scrip consideration to select shareholders (management/consortium members), who formed a separate class of shareholder when voting on the scheme of arrangement.

4

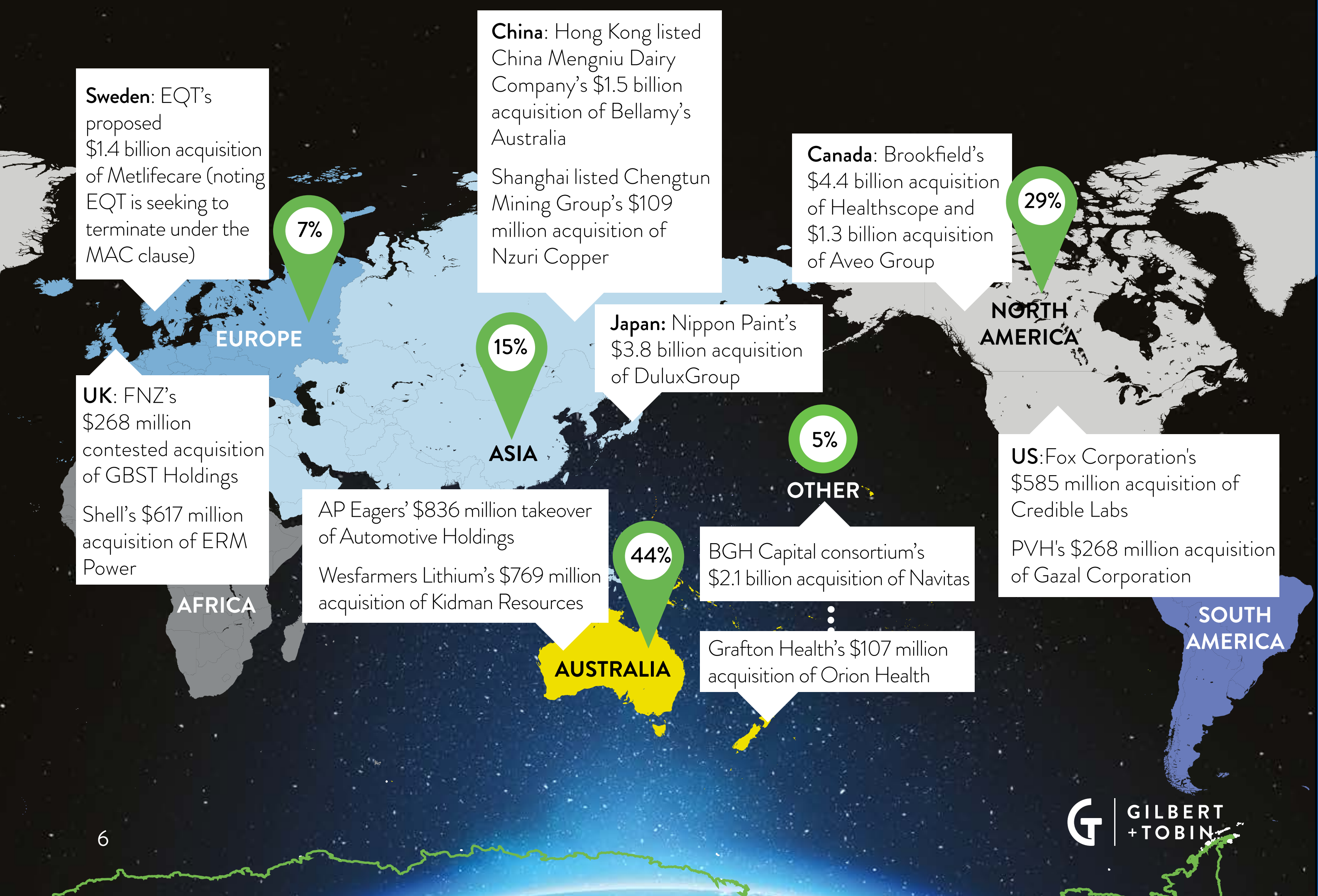
VALUE OF FOREIGN INVESTMENT FALLS BUT DEALS STILL SUCCESSFUL

Foreign investment activity in 2019 in terms of deal volume was broadly the same as recent years, with 56% of all public M+A deals over $50 million involving foreign acquirers compared to 59% in 2018. However, more strikingly, the aggregate deal value attributable to foreign bids fell by more than half from $42 billion in 2018 to $19 billion in 2019. Foreign bidder transactions exceeding $50 million had a success rate of 95%.

Interest from North American bidders increased in 2019. There was a decrease in the activity of Chinese and European bidders.

In 2018, there was significant foreign interest in energy & resources, real estate and financials, while 2019 saw strong foreign interest in healthcare, retail & consumer services and industrial products.

All six transactions exceeding $1 billion involved a foreign bidder. This continues the trend of foreign bidders being significant players in the highest value public M+A transactions.



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PRIVATE EQUITY AND SUPERANNUATION FUNDS ACTIVE

While overall public M+A activity may have been down in 2019, private equity continued to be a significant contributor, being the proponents in transactions with a value of approximately $10.3 billion last year. This represented 44% of aggregate transaction value (up from 28% in 2018) and 24% of transaction volume (consistent with 2018).

A range of PE houses were active in public deals in 2019 including BGH Capital, TPG, KKR, Brookfield, PEP, Quadrant and Adamantem. Private equity again had a strong appetite for M+A in the healthcare sector in particular, with healthcare accounting for 30% by number and 57% by value of overall private equity M+A spend in 2019.

Interestingly, 2019 also saw significant involvement of Australian superannuation funds in public M+A for the first time. In particular, AustralianSuper was a key part of the BGH Capital consortium's proposals for Healthscope and Navitas and used its significant shareholding to drive the Navitas transaction. QIC Private Capital also made a successful public M+A bid for Pacific Energy. This evidences superannuation funds' shift from being purely passive investors to active drivers of activity.

57% HEALTHCARE

Healthscope
($4.4 billion)

Metlifecare
($1.4 billion - bidder has sought to terminate)

Konekt
($74 million)

24% RETAIL & CONSUMER SERVICES

Navitas
($2.1 billion)

QMS Media
($421 million)

12% REAL ESTATE

Aveo Group
($1.3 billion)

4% UTILITIES

Pacific Energy
($467 million)

1% INDUSTRIAL PRODUCTS

Legend Corporation
($79 million)

1% FINANCIALS

Pioneer Credit
($120 million – current)

1% PROFESSIONAL SERVICES

Dreamscape Networks
($105 million)

Percentage of PE Investment across all PE deals, by value

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SUCCESS RATES WENT UP; PREMIUMS WENT DOWN

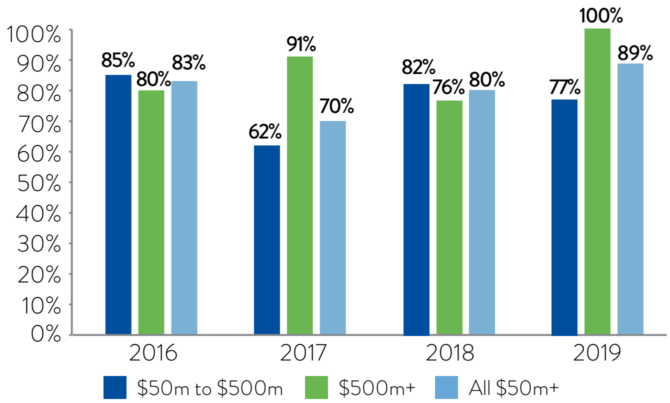
89% of the total number of announced M+A transactions over $50 million were successful in 2019, representing a significant increase over 2017 where only 70% of transactions reached a successful outcome and an increase over 2018 where 80% were successful.

This is despite the average final premium paid by bidders decreasing to 39% in 2019 after a five-year high of 50% in 2018.

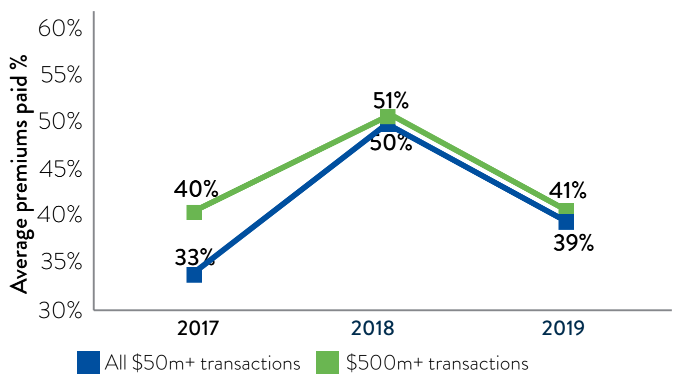
Transactions valued above $500 million enjoyed a 100% success rate, significantly up from 76% in 2018 (and the highest we have observed since 2014).

Success rates were broadly similar for schemes and takeovers. Unsurprisingly, friendly transactions enjoyed a significantly higher success rate in 2019 than hostile transactions, reversing the unexpected result observed in 2018.

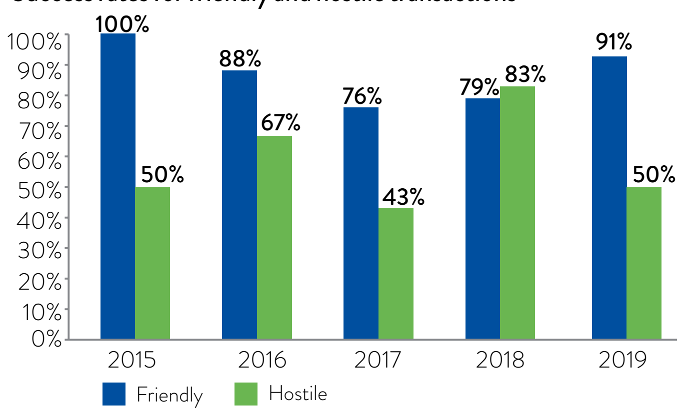
Success rates



Average premiums paid



Success rates for friendly and hostile transactions



The success rate for 2019 does not include four transactions which were current at 1 March 2020. The success rates for 2016 to 2018 have been updated to reflect the ultimate outcome of all transactions which were analysed in those past Reviews.

Top five premiums offered in 2019

1. **141%** Advanced Personnel Management's $74 million acquisition of Konekt
2. **95%** FNZ Group's $268 million acquisition of GBST Holdings
3. **73%** IPH's $192 million acquisition of Xenith IP Group
4. **59%** China Mengniu Dairy Company's $1.5 billion acquisition of Bellamy's Australia
5. **57%** PSP Investment's $724 million acquisition of Webster

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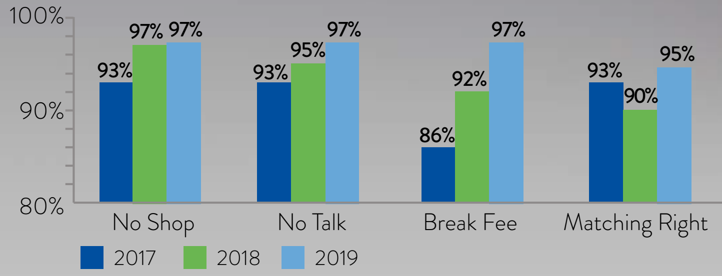
DEAL PROTECTION MEASURES AND BID CONDITIONS

Implementation agreements for the vast majority of agreed transactions continued to include the usual suite of exclusivity provisions.

In addition to standard obligations on the target board to recommend the transaction to shareholders (in the absence of a superior proposal and, where applicable, subject to a favourable independent expert's report), these provisions included:

+ restrictions on the target soliciting competing proposals (i.e. no-shop) and talking to potential competing bidders unless approached with a potentially superior proposal (ie no-talk);
+ break fees payable on the occurrence of certain trigger events including a change in recommendation by the target board or material breach of the implementation agreement (which were mostly within the Takeovers Panel's 1% guidance);
+ matching rights in favour of the bidder if a superior proposal emerges, giving the bidder an opportunity to match the superior proposal before the target board can change its recommendation.

Frequent deal protection mechanisms

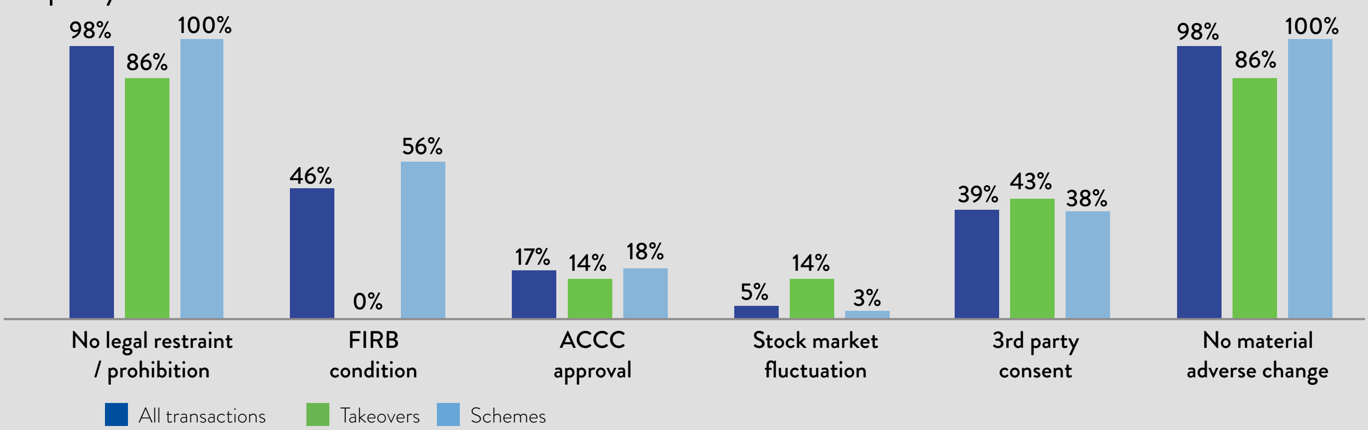


Continuing the trend of recent years, 49% of transactions valued over $50 million featured a reverse break fee in 2019.

Conditions in off-market takeovers and schemes

100% of all schemes had material adverse change (MAC) conditions, as did 86% of off-market takeovers. The triggers and exceptions to the MAC conditions were generally subject to much negotiation. While the triggers were commonly based on falls in EBITDA and net assets, falls in revenue and increases in net indebtedness were sometimes used. MAC conditions are currently getting a real-life workout given the impacts of COVID-19. A number of bidders in incomplete public M+A transactions (including EQT / Metlifecare and Carlyle (Robin Bidco) / Pioneer) are seeking to terminate, claiming that the MAC clause has been triggered due to the impacts of COVID-19.

Frequency of conditions



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PRO-ACTIVE REGULATORS

The Financial Services Royal Commission seemed to galvanise public opinion and scrutiny of large corporates further in 2019. Regulators, including ASIC and APRA, which were criticised for not taking stronger action sooner against misconduct, have stepped up regulatory action.

ASIC's controversial 'why not litigate?' approach has seen the regulator increase its regulatory presence with a 20% increase in the number of enforcement actions over FY 2018-2019. It is also progressing criminal prosecutions in relation to three different M+A transactions.

The ACCC continues to be activist in its approach to investigating mergers. However, the ACCC also extended its losing streak in merger decisions before the courts/tribunals to seven with the Federal Court recently allowing the Vodafone/TPG merger to proceed.

The Takeovers Panel was also very busy in 2019, hearing 38 applications. This was the second highest ever, as the Panel celebrated its 20th birthday in March 2020.

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