Ashurst

The M&A Deal Report 2025

An analysis of Australian Public Mergers and Acquisitions

Outpacing change

Ashurst

contents

foreword

Ashurst is excited to launch the inaugural edition of *The M&A Deal Report*. Our Report analyses acquisitions of Australian ASX listed entities valued in excess of $50 million in 2024 and provides some perspectives on what that might mean for 2025 and beyond.

2024 was a relatively modest year for Australian M&A.

Perhaps it was the calm before the storm? Will we see lightning strike in Australian M&A in 2025? How will the Trump wild card play out?

There are certainly some strong indicators: inflation coming down, interest rates past their peak, a weak A$ and plenty of private capital and debt funding available.

Most started 2025 expecting business confidence out of the US would provide positive momentum to M&A. The position is now less clear, but if the world can navigate the tariff battles and adjust to a new norm, confidence and momentum may return, especially with the otherwise deregulatory bias of the Trump administration.

So M&A in Australia could be humming in 2025 – if the US wild card comes up trumps and we can get past some financial distress in selected sectors, a potential transaction slowdown while the Federal election takes centre stage in Q2, and oncoming increased competition regulation. See more on the outlook in Chapter 1.

Some key data and themes from 2024:

- 43 binding $50 million+ public M&A deals announced in 2024. Slightly lower than the 45 deals in 2023.
- Aggregate public M&A deal value in 2024 was $45.3 billion, materially down on $71.5 billion in 2023, but still ahead of 2022.
- Number of 2024 mega deals (those valued over $1 billion) was 11, consistent with 2023. Largest public deal was Renesas Electronics Corporation / Altium at $9.1 billion. However, 2024 had no monster public M&A deals like Brookfield / EIG / Origin Energy ($16.3 billion) or Newmont / Newcrest ($26.1 billion).
- Private capital bidders had a slow H1 2024 but began to emerge in H2, ultimately accounting for 30% of deals (up from 20% in 2023). However, total deal value for private capital was relatively low at $5.5 billion (down from $23.2 billion in 2023). This of course does not include private M&A, with Blackstone's $24 billion acquisition of AirTrunk being a stand out.
- Once signed up, private capital deals enjoyed a high success rate of 91% in 2024. The only miss was one PE firm losing out to another in the battle for Pacific Smiles.
- Australian companies listed on ASX remain attractive to foreign bidders. 22 of the 43 announced deals (51%) involved a foreign bidder, equivalent to 2022.
- The materials sector had the greatest M&A intensity, accounting for 33% of total deals and 55% of total deal value. Notable transactions included the acquisitions of CSR ($4.3 billion) and Alumina ($3.3 billion). The information technology (14% by total deals, 22% by value) and the wider energy sectors (28% by number and 18% by value) were also strong.
- On deal structures, schemes of arrangement were, as always, far more popular than takeovers.
- Hostile deals were nearly as successful as friendly deals.
- There was an increase in reverse break fees: 63% of all deals (up from 56% in 2023 and 51% in 2022). Not only were they more common, at times they increased in size above the 1% cap on target break fees.
- As for regulators, the ACCC got through significant law reform including mandatory filings and FIRB is trying to be more user friendly but the process continues to take time – perhaps not surprising in a complex world with geopolitical tensions. ASIC got tougher. Regulatory transaction fees (FIRB, ACCC filing fee and new public M&A fees) increased all round. A sign of the inflationary times...

We trust this Report will be a useful resource to you as we all look forward to a busy 2025.

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1 | What can we expect in 2025?

Key takeaways

Leveraging off the events of 2024, what can we expect in 2025?

We are cautiously optimistic that 2025 will be a strong year for mergers and acquisitions including public M&A for the following reasons:

- Reducing inflation and interest rate environment assisting with debt funding cost and availability;
- Plenty of private capital available;
- Weak $A making Australian targets attractive to foreign investors;
- New mandatory ACCC filing laws coming into effect from 1 January 2026 (voluntary from 1 July 2025), meaning some might like to get their deals closed before the laws change;
- Increased shareholder activism, which can lead to M&A; and
- Conflation of the availability of private capital, a perception of over-regulation / over-reporting for listed companies and challenges of finding new institutional investors for mid-sized ASX listed companies, may make it attractive for such companies to be taken private.

Of course there are some challenges and headwinds to overcome including anxiety arising out of some of the Trump administration's policies (particularly on tariffs), an increasingly regulated Australian market (eg ACCC and FIRB and a tougher ASIC), sluggish economic growth, cost pressures not under control with some significant companies in financial distress (albeit that in itself may create M&A opportunities) and a forthcoming federal election which might slow domestic acquirers.

That all said, the Trump administration's policies and how the business world adjusts to them could be the wild card which determines if this is a strong or average year for M&A.

We discuss some of these items further below.

Private capital – just getting started

Leaving aside Blackstone's monster $24 billion acquisition of AirTrunk (a private company M&A deal), private equity and private capital could be said to have had a quieter 2024. That said, there is certainly plenty of PE money available and many would say the challenge is finding the right targets.

Australian superannuation funds now have over $4 trillion in assets, speeding away from the ASX, where the total capitalisation of all listed stocks is $3.1 trillion. We expect this gap to increase.

Globally, there are almost 25 times more private equity and venture capital backed companies than those listed on public markets.

The sheer volume of private capital backed companies and historic levels of private capital dry powder (as well as pent up exits), together with cheaper debt funding as interest rates subside, evidence that private capital will continue to be a significant factor in M&A activity in 2025. This is already playing out with Insignia Financial attracting interest from 3 competing private capital bidders at valuations of circa $3 billion. In addition, we consider mid-market listed companies to be ripe for takeover by private capital where the attractiveness of private ownership will be increasingly preferred over the constant reporting cycle and over-regulation of listed markets.

As part of the private capital drive, we also expect to see more direct investments from large Australian superannuation funds in 2025 as their funds under management constantly rise.

Weak $A may translate into increased foreign investment by the US and others

We expect high levels of foreign investment activity to continue in 2025. That said, when it comes to business confidence and cross-border M&A, the Trump administration will be the key wild card.

Global companies and firms seeking expansion will enjoy favourable investment conditions in Australia in 2025 driven by the weakened Australian dollar and heightened outbound aspirations of key trading partners.

The US has the potential to be a key source of inbound investment. If US based companies can quickly adjust to, and triangulate, the new US administration's policies, we expect both US corporates and US headquartered cashed-up private equity firms will be looking to invest in Australia which must look as cheap buying with a weak $A.

In addition, companies from Asian nations that are geopolitically aligned to Australia, like Japan, are also expected to increase investment in Australia in 2025, a significant example being Nippon Life's recently announced $8.2 billion acquisition of Resolution Life and MLC.

Range of sectors ripe for M&A – in particular energy, technology and real estate. Materials will continue to be strong.

We expect the uptick in M&A will be across a broad range of industries.

Factors contributing to this are varied with M&A supported by both favourable growth outlooks in some industries and a sense that valuations may have bottomed out in more challenged sectors. Having regard to these factors, our top 3 industries to watch are:

Energy transition

Scale of challenge and diverse range of industry participants make this sector ripe for M&A.

Technology

Emerging technologies at low $A prices are highly attractive to foreign investment / private capital.

Real estate

After a quiet few years we see the combination of valuations bottoming out, the interest rate outlook improving and growth in some sub-sectors such as life sciences and logistics as driving activity. If not in 2025, then soon after.

We also expect the materials sector, which had the most deals in 2024, will continue to be strong in to 2025.

Distressed M&A opportunities?

Cost pressures and financial distress may be coming to a head in some sectors creating distressed M&A opportunities throughout 2025. We expect to see some borrower-led distressed sales, loan to own trades and more traditional external administrator led processes.

Private credit has been increasingly active in the restructuring market and this trend will continue. Private credit involvement is more likely to drive restructuring activity, rather than formal insolvency processes.

Insolvency rates are relatively high in the SME sector. This has not yet translated into the medium / large sectors, however there a number of well-known, large scale restructuring situations underway and these are expected to continue throughout 2025, with more to follow. The healthcare, manufacturing, transport, retail and leisure / gaming sectors all have targets facing particularly difficult situations. That said, this will give rise to opportunities (including in some cases significant government assistance).

As is always the case, distressed M&A transactions present unique opportunities for prospective private capital and strategic buyers who are in a position to assess risk, move quickly and transact.

Shareholder activism to provide M&A momentum

2023 and 2024 saw increasing levels of shareholder activism. This can only continue and likely increase in 2025.

Drivers of increased shareholder activism have been two-fold:

- the greater willingness, and confidence, of large institutional investors (including, increasingly, superannuation funds) to privately and publicly prosecute their views on the strategy and performance of investee companies; and
- the growth of private capital activist-focussed funds, some might call themselves "constructivists", that have outperformed in recent years.

Each of these drivers will continue through 2025 and should lead to investors asserting their influence behind closed doors and (less often) publicly.

ACCC merger reform – a tale of 2 halves

The new mandatory merger control regime will come into effect from 1 January 2026 (with it being available from 1 July 2025 on a voluntary basis).

The new regime has the potential for longer approval timetables, mandatory ACCC notification and the uncertain operation of new tests for clearance. Will the ACCC be suitably geared up to deal with the increased level of applications and revised approach? There will inevitably be teething issues, and system blockages, from late 2025 as all adjust to the new system.

For bidders and targets wanting to avoid these uncertainties, the first half of 2025 provides a clearer window to transact. In the second half of 2025, there may be difficult judgments on whether to apply for clearance under the current or new regime to avoid potentially refiling post January 2026 (albeit where approval is obtained in the second half of the year, parties will still be able to complete within 12 months without refiling).

Is Australia increasingly at risk of over regulation in 2025?

FIRB continues to take time. While there have been some improvements in approvals for straightforward deals, the complex world we live in with geopolitical tensions and security risks perhaps inevitably means FIRB review can take longer.

The forthcoming Federal election, to be held by mid May, will also slow down FIRB approval on more complex matters as the Government moves into caretaker mode pre-election. The election also has the potential for policy uncertainty and for many a fear of a hung parliament or a minority government. These factors may cause some aspiring acquirers to pause until we have the certainty of a new government.

In 2024, the Federal Government also proposed to significantly strengthen ASIC's enforcement powers by amending the beneficial ownership regime, including expanding the definition of "relevant interest" to include all equity derivatives and enhancing ASIC's ability to issue tracing notices and make freezing orders for non-compliance. Apart from these new proposed powers, ASIC generally seems to be adopting a tougher approach.

Fees for takeovers and schemes have increased and we can expect a material fee for mandatory ACCC applications.

All these changes are expected to increase compliance costs and burdens, delay deal timetables and generally add friction in the system. Call them transaction taxes if you like. That said, ultimately we don't see these factors as fundamentally reducing M&A deal appetite.

2 | Deal Activity

Key takeaways

In 2024, there were 43 binding deals that were valued at $50 million or more with a total value of $45.3 billion.

Deal numbers in 2024 were slightly lower than 45 transactions announced in 2023 but still ahead of 2022 (39 deals).

Aggregate deal value in 2024 was 36% lower than 2023's headline value of $71.5 billion but still ahead of 2022 levels ($43.5 billion)

All in all, the last 3 years have been similar other than 2023 which involved one $26 billion deal and one $16 billion deal while in 2024 the largest deal (Renesas Electronics Corporation / Altium) was $9.1 billion.

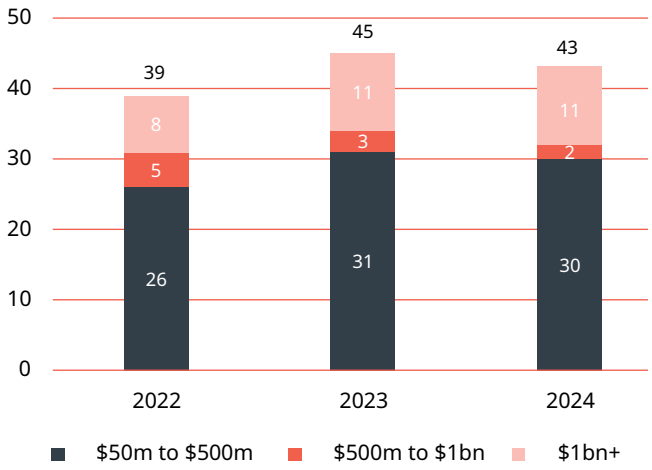
Deal numbers

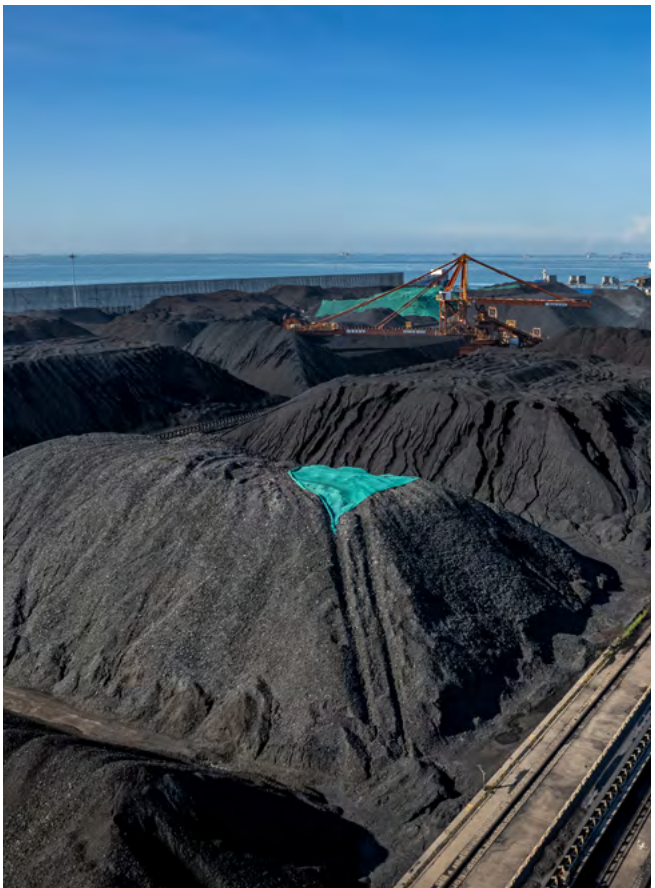
As set out in the graph below, there were 43 binding deals valued over $50 million announced in 2024.

There was a 4% decrease on the number of deals (45) announced in 2023 but still ahead of the number of deals announced in 2022 (39).

There were the same number of mega deals (being transactions valued at more than $1 billion) in 2023 and 2024.

Number of deals announced

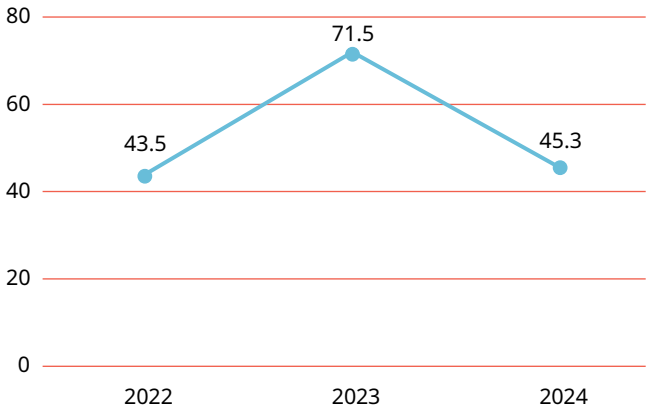




Deal value

The aggregate announced deal value in 2024 was $45.3 billion.

Total deal value ($bn)

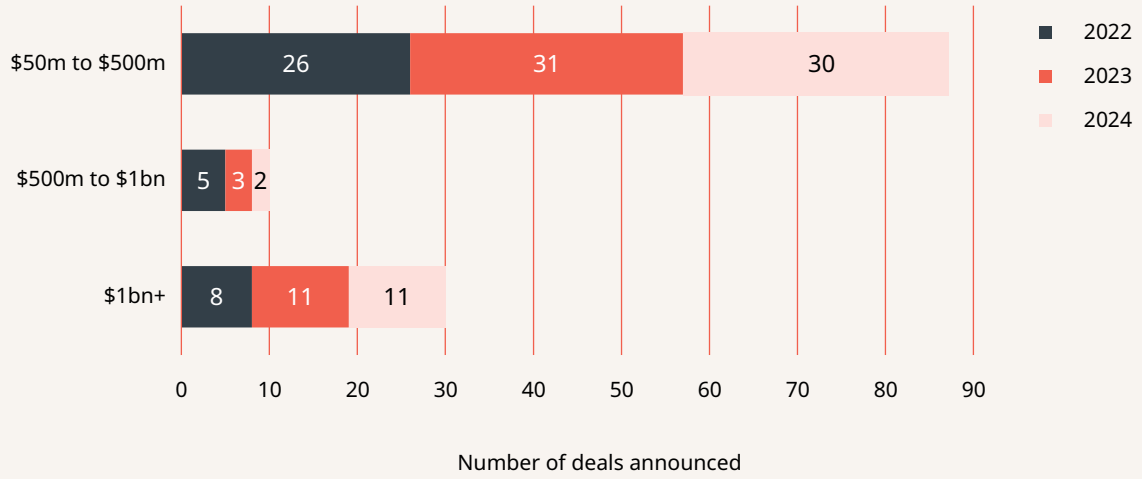


The aggregate value of announced deals was materially higher in 2023 at $71.5 billion. While 2024's aggregate deal value was 37% lower than 2023, it was on par with 2022 ($43.5 billion).

While there were 11 mega deals in each of 2024 and 2023, the value of those deals announced in 2023 was much higher:

- There were 3 deals in 2023 with a value above $8 billion, namely:
  - the $8.7 billion Arcadium Lithium / Allkem deal;
  - the $26.1 billion Newmont / Newcrest deal; and
  - the unsuccessful $16.3 billion Brookfield / EIG / Origin Energy deal.
- These transactions were significantly larger than the 3 largest deals in 2024, being:
  - the $9.1 billion Renesas Electronics Corporation / Altium deal;
  - the $6.9 billion Seven Group / Boral deal; and
  - the $5 billion Northern Star Resources / De Grey Mining deal.

Distribution of deal values



The above data, which focuses on binding takeovers and schemes of arrangements, does not include the potential $80 billion combination of Woodside Energy and Santos. However, this potential deal was short lived as their early stage merger discussions did not progress to a binding offer. If they had, this would have significantly increased the value of public M&A in 2024 (illustrating the impact that 1 or 2 sizeable deals can have on the data) – still, we all have stories of the big fish that got away!

In addition, the turn of the year has also seen a number of competing $3 billion+ proposals for Insignia Financial by Bain Capital and CC Capital in late 2024 with Brookfield joining the race in 2025. These proposals are all non binding to date, but hopefully at least one turns into a binding bid in 2025. These competing bids, as well as other smaller announced transactions in the first month of 2025, suggest that 2025 may be a strong year for public M&A transactions in Australia albeit with headwinds ahead due to the upcoming Federal government election and the competition merger law changes later in the year.

Competing bids

There were 5 competitive bidding situations in 2024.

There were:

- two competing bidders for Namoi Cotton, being Louis Dreyfus Company and Olam Agri, with Louis Dreyfus Company achieving success after multiple bids;
- three competing bidders for Sierra Rutile, being PRM Services, Leonoil and Gemcorp Commodities, with Leonoil emerging as victor;
- two competing bidders for Pacific Smiles, being Genesis Capital and Crescent Capital Partners, with Genesis Capital now in control of Pacific Smiles;
- two competing bidders for OreCorp in the form of Silvercorp Metals (announced in December 2023) and Perseus Mining who was ultimately successful; and
- two competing bidders for Bigtincan Holdings, being Vector Capital Management and Investcorp AI Acquisition Corp, a proposed SPAC transaction. Investcorp failed to match Vector's all-cash proposal, leading to termination of the SPAC transaction.

In addition, SelfWealth, which was subject to a binding scheme proposal from Bell Financial Group in 2024, received a competing proposal from Syfe in February 2025.

Top deals

The largest deals announced in 2024 were as follows:

$5 Billion+

Renesas Electronics Corporation's successful $9.1 billion acquisition of **Altium**

Seven Group's successful $6.9 billion acquisition of **Boral**

Northern Star Resources' proposed $5 billion acquisition of **De Grey Mining**

$1 Billion+

Compagnie de Saint-Gobain's successful $4.3 billion acquisition of **CSR**

Alcoa's successful $3.3 billion acquisition of **Alumina**

The Ardonagh Group's successful $2.3 billion acquisition of **PSC Insurance Group**

CRH and **Barro Group's** successful $2.1 billion acquisition of **Adbri**

Madison Dearborn Partners' successful $1.4 billion acquisition of **APM Human Services**

Pacific Equity Partners' proposed $1.3 billion acquisition of **SG Fleet Group**

Red5's successful $1.1 billion acquisition of **Silver Lake Resources**

Seraya Partners' (through its infrastructure platform, Cyan Renewables) successful $1.1 billion acquisition of **MMA Offshore**

$500 Million+

Charter Hall and **Hostplus'** successful $758 million successful acquisition of **Hotel Property Investments**

Pilbara Mineral's successful $605 million acquisition of **Latin Resources**

3 | Bidders

Key takeaways

Private capital bidders increased to 13 in 2024, up from 9 in 2023, accounting for 30% of 2024's announced deals.

However, total private capital deal value fell by over 75% or $17.7 billion to just $5.5 billion - in 2024 there was no mega private capital deal for the first time in years.

Foreign bidder interest was constant, representing 51% of all announced deals in 2024.

Total deal value of foreign bids was $26.7 billion, down significantly from $62.4 billion in 2023.

While the proportion of Australian bidders was 49%, total deal value involving Australian bidders increased to $18.6 billion in 2024, up from $9.1 billion in 2023.

Private capital bidders

2024 saw a greater incidence of deals involving private capital bidders, with 13 of 43 (30%) announced deals over $50 million, up from 9 deals (20%) in 2023. The level in 2024 was similar to that in 2022 (13 deals, or 33%).

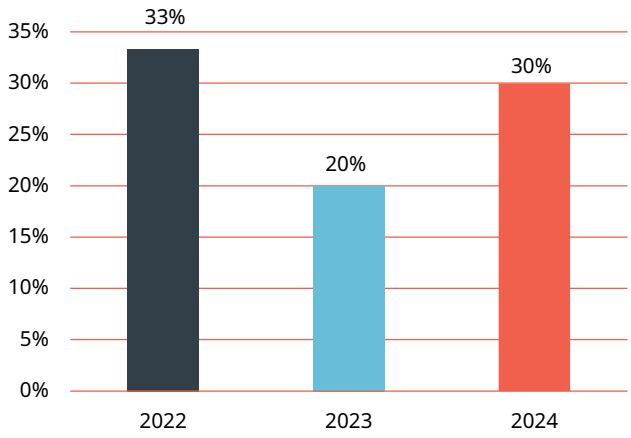
We consider that this increase can be attributed to:

- increased availability of private capital (and the need for it to be put to use);
- inflation stabilising, which has the effect that interest rate levels are trending down and debt funding is available on reasonable terms; and
- for many mid-market ASX listed companies, ownership by private capital is becoming more attractive than the listed environment (avoiding regular public reporting cycles and over-regulation).

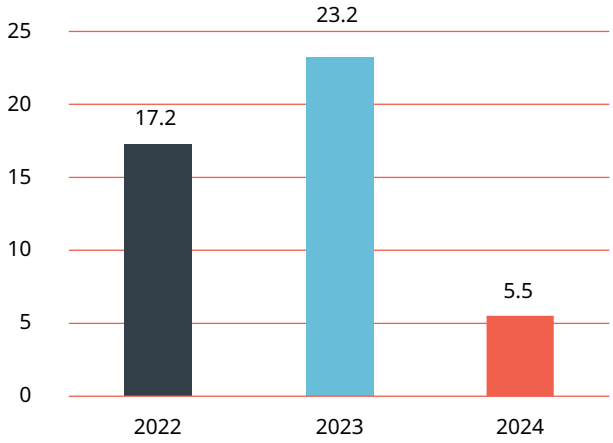
While the percentage of private capital transactions in 2024 increased, the total deal value of announced transactions involving private capital was relatively low, with private capital transactions only accounting for $5.5 billion (or 12%) of 2024's total transaction value, down from $23.2 billion (32%) and $17.2 billion (40%) in 2023 and 2022, respectively.

This reflects the impact of no private capital mega takeover or scheme in 2024 unlike 2023 which included the Brookfield / EIG consortium's $16.3 billion bid for Origin Energy and 2022 which included Blackstone's acquisition of Crown Resorts for $8.9 billion. Excluding each of those deals, the total deal value for private capital over the past 3 years is more comparable. And of course, Blackstone's $24 billion acquisition of AirTrunk was a private (not public) M&A deal.

Proportion of deals involving private capital



Value of private capital bids ($bn)



Top 5 private capital bids (2024)

	Name of deal	Value
1	Madison Dearborn Partners' successful acquisition of APM Human Services	**$1.4 billion**
2	Pacific Equity Partners' proposed acquisition of SG Fleet	**$1.3 billion**
3	Cyan Renewables' (an infrastructure platform of Seraya Partners) successful acquisition of MMA Offshore	**$1.1 billion**
4	Crescent Capital Partners unsuccessful acquisition of Pacific Smiles Group	**$333 million**
5	Genesis Capital's successful acquisition of Pacific Smiles Group	**$322 million**

Superannuation funds had direct involvement in one public M&A deal, being the successful hostile $758 million acquisition of Hotel Property Investments, which saw Hostplus team up with Charter Hall.

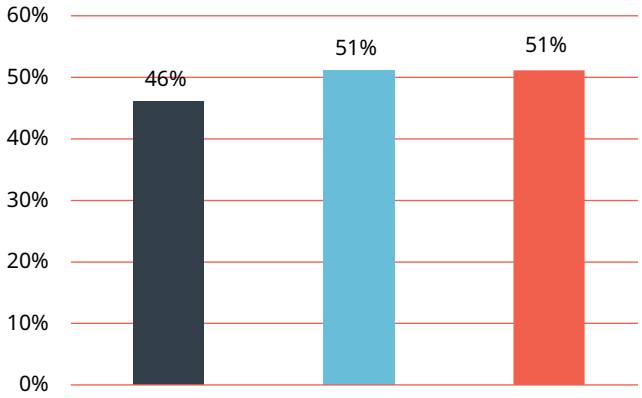
Foreign bidders

Foreign bidders' appetite for ASX listed companies remained steady in 2024, with 22 of the 43 announced deals (51%) involving a foreign bidder, which was identical to 2023 but ahead of 2022 (46%).

Over one-third of all foreign bids (8 of 22) were in the materials sector, with notable transactions including:

- Alcoa's $3.3 billion acquisition of Alumina;
- Compagnie de Saint-Gobain's $4.3 billion acquisition of CSR; and
- CRH and Barro Group's $2.1 billion joint acquisition of Adbri.

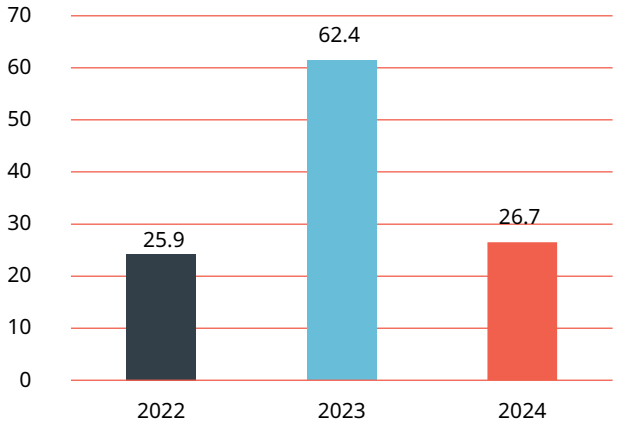
Proportion of deals involving foreign bidders



Foreign deals continued to account for the majority (59%) of aggregate deal value in 2024.

However, the aggregate foreign bid deal value in 2024 of $26.7 billion (59% of total deal value) was a sharp decline from 2023 of $62.4 billion (87% of aggregate value). Indeed, 2024 was comparable to the level seen in 2022 of $25.9 billion (60% of total deal value). That said, 2023's numbers were heavily skewed by Newmont's $26.1 billion acquisition of Newcrest, and the Brookfield / EIG consortium's $16.3 billion bid for Origin Energy, with these 2 transactions accounting for over 59% of that year's total foreign deal value.

Value of foreign bids ($bn)



Of the 11 mega deals announced in 2024, 7 involved foreign bidders. This demonstrates the importance of foreign investment and that large ASX listed companies have a consistent appeal to foreign bidders (8 of the 11 mega deals in 2023, and 6 of the 8 mega deals in 2022, involved a foreign bidder).

The top 5 foreign bids in 2024 came from 5 different countries.

Top 5 foreign bids (2024)

	Jurisdiction	Name of deal	Value
1	Asia (Japan)	Renesas Electronics Corporation's successful acquisition of Altium	**$9.1 billion**
2	Europe (France)	Compagnie de Saint -Gobain's successful acquisition of CSR	**$4.3 billion**
3	North America (US)	Alcoa's successful acquisition of Alumina	**$3.3 billion**
4	Europe (United Kingdom)	The Ardonagh Group's successful acquisition of PSC Insurance Group	**$2.3 billion**
5	Europe (Ireland)	CRH and Barro Group's successful joint acquisition of Adbri	**$2.1 billion**

There was equivalent interest from North American and European bidders in ASX listed companies in 2024, with each of these regions accounting for 16% of total bids.

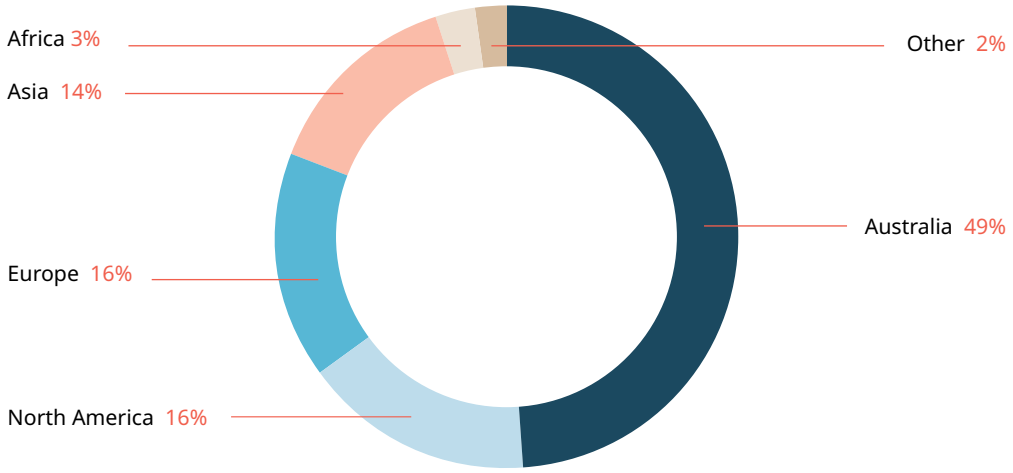
The proportion of transactions involving European investors rose from 7% in 2023 to 16% in 2024. Bids emanated from a range of countries including France, the United Kingdom, Ireland, Malta, the Netherlands and Sweden.

2024 saw a continued decline in the relative weight of North American foreign investment interest in ASX listed companies, with 16% of the total number of deals having a North American bidder, down from 20% in 2023 and 33% in 2022. The North American bidders were from the US and the Cayman Islands. In 2024, unlike the two previous years, there were no bidders from Canada.

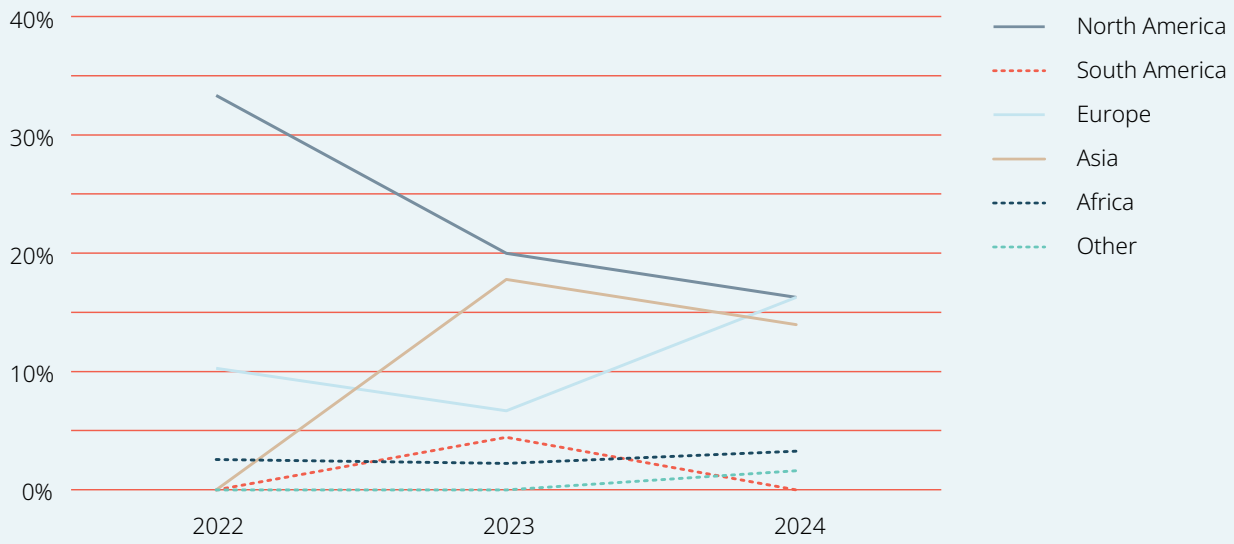
Asian interest in ASX listed companies also dropped from 18% of announced deals in 2023 to 14% of announced deals in 2024 (noting that there were no Asian bids in 2022). Bidders from Singapore, Japan, Indonesia and China featured in the 2024 deal list.

With the A$ continuing to decline in strength, we expect that Australia will become a more attractive destination for foreign bidders and translate into increased investment in Australia in 2025. That said, when it comes to business confidence and cross-border M&A, the Trump administration will be the key wild card.

Foreign bids by region (2024)



Proportion of foreign bids by region



Australian bidders

The proportion of Australian bidders has trended downwards since 2022, with 21 of 43, or 49%, of the total number of announced bids in 2024, equal to 49% of deals in 2023 but down from 54% of deals in 2022.

Deals involving Australian bidders accounted for $18.6 billion in 2024 (or 41% of total deal value), up from $9.1 billion (13%) in 2023 and similar to the $17.7 billion invested in 2022 (41% of total deal value).

Top 5 Australian bids (2024)

	Name of deal	Value
1	Seven Group's successful acquisition of Boral	**$6.9 billion**
2	Northern Star Resources' proposed acquisition of De Grey Mining	**$5 billion**
3	Pacific Equity Partners' proposed acquisition of SG Fleet	**$1.3 billion**
4	Red 5's successful acquisition of Silver Lake Resources	**$1.1 billion**
5	Charter Hall and Hostplus' successful acquisition of Hotel Property Investments	**$758 million**

4 | Target Sectors

Key takeaways

In 2024, public M&A was once again led by the materials sector, with the largest number of deals (14 deals, 33% of total deals) and the highest total deal value ($24.9 billion, 55% of total deal value).

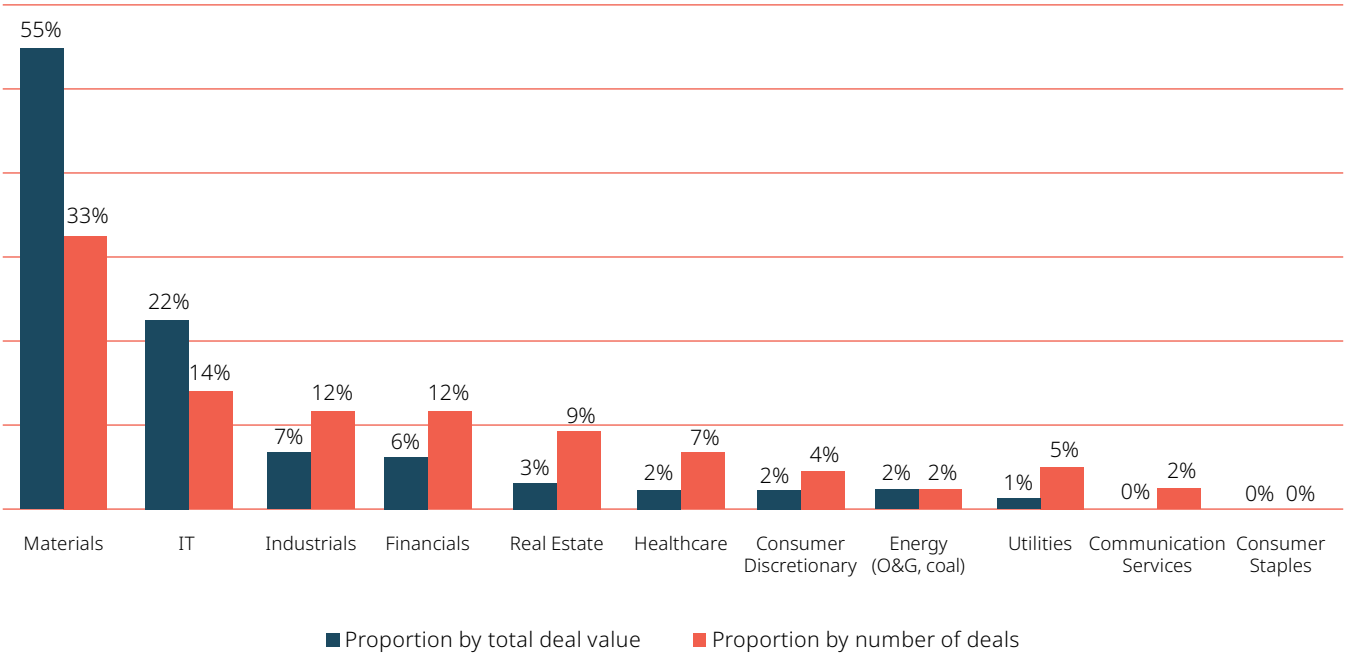
Other sectors with significant public M&A deal activity included information technology (14% of total deals, 22% of deal value) and industrials (12% of total deals, 7% of total deal value).

Private capital bidders made significant investments into the industrials sector and foreign bidders were mostly attracted to the materials sector.

Overview

The materials sector led all other sectors in public M&A in 2024, consistent with 2023. These deals accounted for 33% of total deals in 2024 and 55% of the total deal value. 4 of the top 5 deals by value came from the materials sector. Considering these factors, one might say the materials sector dominated all other sectors.

Deals by sector (2024)



The largest deal by value in 2024 was in the information technology sector:

Renesas Electronics Corporation's successful acquisition of **Altium** for **$9.1 billion.**

The other sectors with reasonable activity in 2024 were information technology (6 deals), and the industrials and financial sectors (5 deals each).

Nearly 80% of aggregate deal value in 2024 came from deals in 2 sectors (materials (55%) and information technology (22%)), with the next largest sector being industrials (7%).

Deals involving the wider energy industry (which is broader than the GICS classification for Energy, as described below) accounted for 28% of total deals in 2024, with a value of almost $8 billion (18% of total deal value).

Top 5 transactions (2024)

	Sector	Deal	Value	Bidder
1	Information Technology	Renesas Electronics Corporation's successful acquisition of Altium	**$9.1 billion**	Foreign
2	Materials	Seven Group Holdings' successful acquisition of Boral	**$6.9 billion**	Australian
3	Materials	Northern Star Resources' proposed acquisition of De Grey Mining	**$5 billion**	Australian
4	Materials	Compangie de Saint-Gobain's successful acquisition of CSR	**$4.3 billion**	Foreign
5	Materials	Alcoa's successful acquisition of Alumina	**$3.3 billion**	Foreign

Materials

As discussed above, materials led all other sectors in public M&A in 2024, accounting for 33% of total deals in 2024 (14 deals) and representing 55% of total deal value ($24.9 billion).

This is consistent with 2023, where the materials sector accounted for 42% of deals by number and 59% of deals by value.

	Total		Materials	
	Deals	Value ($bn)	Deals	Value ($bn)
2022	39	43.5	7 (18%)	10.7 (25%)
2023	45	71.5	19 (42%)	42.2 (59%)
2024	43	45.3	14 (33%)	24.9 (55%)

Despite the sector's strong performance, there were fewer deals in materials and a sharp decrease in total deal value in 2024 compared to 2023. The total number of deals in the materials sector decreased from 19 to 14, and deal value was down from $42.2 billion to $24.9 billion. This decrease is, however, consistent with the overall decline in M&A in 2024 compared to 2023: there were fewer deals overall in 2024 (43, down from 45) and a lower aggregate deal value ($45.3 billion, down from $71.5 billion).

The materials sector is broad: it includes the manufacture of chemicals, construction materials, glass, paper, and related packaging products, as well as metals, minerals and mining companies. Activity in both the metals and mining sector and construction sector drove activity in 2024.

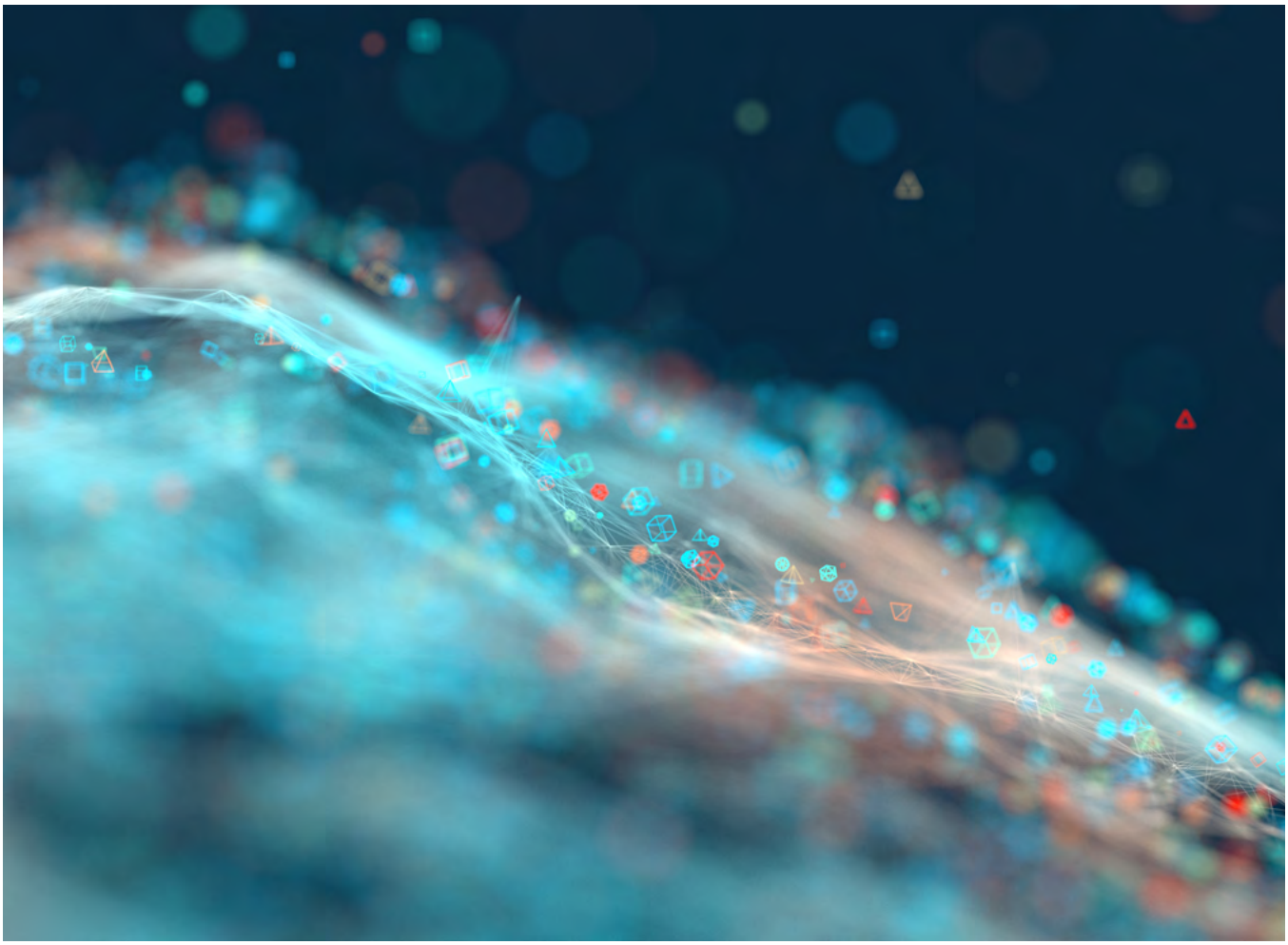
Reflecting the sector's strength, 4 of the top 5 deals in 2024 by deal value were in the materials sector:

Seven Group's successful acquisition of Boral for $6.9 billion by off-market takeover.

Northern Star Resources' proposed acquisition of De Grey Mining for $5 billion.

Compagnie de Saint-Gobain's successful acquisition of CSR for $4.3 billion.

Alcoa's successful acquisition of Alumina for $3.3 billion.



Information technology

The information technology sector had the second highest level of activity based on both number of deals and total deal value in 2024.

Deals in the sector comprised 14% of total deals (6 deals) but 22% of total deal value ($10.2 billion).

The value of information technology sector deals dramatically increased from 2023, when there were 5 deals with a total value of only $650 million. This increase in value was almost entirely attributable to Renesas Electronics Corporation's successful acquisition of Altium for $9.1 billion, the largest deal in 2024 by deal value. Altium is a global provider of software for the design of printed circuit boards, a crucial component of electronic devices.

This deal was an outlier for the sector, with the next largest deal being PAR Technology Corporation's acquisition of TASK Group Holdings for $311 million. Other than the Renesas / Altium deal, the average deal size in the information technology sector was approximately $207 million.

Industrials

The industrials sector accounted for 12% of all deals in 2024 (5 deals) and 7% of total deal value ($3.1 billion).

This was an increase from 2023 levels, in which there were only 3 deals with a total value of $1.4 billion.

Of the 5 deals in the industrials sector, 2 deals were over $1.2 billion each, namely:

- Madison Dearborn Partners' acquisition of APM Human Services; and
- Pacific Equity Partners' proposed acquisition of SG Fleet Group,

and the remaining 3 deals each had a deal value of between $150 and $200 million.

This was a similar pattern to deals in the industrials sector in 2023, when there was 1 deal for $1.2 billion (Mitsubishi's acquisition of Link Administration Holdings) and 2 smaller deals for under $200 million each.

Energy

Our sector analysis in this Report is based on the Global Industry Classification Standard (GICS).

This classification defines the energy sector as comprising oil, coal and gas. Based on this fairly limited definition, the GICS energy sector:

- **Accounted for only 2% of total deals** (1 deal) and 2% of total deal value ($1.1 billion) in 2024.
- Had the **largest decrease in activity**, dropping from 13% of total deals in 2023 to just 2% in 2024.
- Had a **corresponding fall in aggregate deal value from $17.1 billion in 2023** (24% of total value, albeit that was skewed by the Brookfield / EIG consortium's $16.3 billion bid for Origin Energy) to just $1.1 billion in 2024 (2% of total value).

This classification does not, however, take into account wider activity which is occurring in relation to Australia's energy transition.

Looking at the broader picture, 28% of deals in 2024 related to the energy industry, including targets involved in:

- the energy transition (including producing lithium, copper, rutile and other rare earth metals);
- electricity and renewable energy storage; and
- offshore oil and gas.

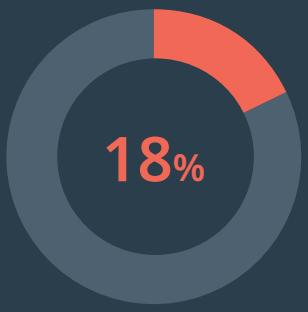
These deals accounted for 18% of total deal value in 2024 and included targets in the materials, energy and utilities sectors.

The largest deal in the wider energy industry in 2024 was Alcoa's acquisition of Alumina for $3.3 billion, with Alcoa consolidating its ownership in the bauxite mines, alumina refineries and smelters in which Alumina had a 40% interest.

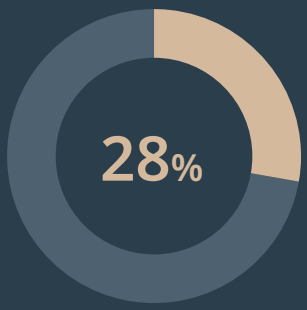
There were 2 other mega deals in the wider energy industry, being:

- Red 5's acquisition of Silver Lake Resources (a gold and copper miner) for $1.1 billion; and
- the acquisition of MMA Offshore (an offshore renewables and energy company) by Cyan Renewables (an infrastructure platform of Seraya Partners) for $1.1 billion.

Deals in the wider energy industry (2024)



Proportion by total deal value



Proportion by number of deals

Sectors with minimal activity

There were no deals in the consumer staples sector in 2024. By contrast, deals from this sector accounted for both 7% of total deals and aggregate deal value in 2023.

Activity in the consumer discretionary sector also decreased significantly in deal value, dropping from $2.2 billion in 2023 to $341 million in 2024. This is not surprising given the headwinds created for the sector with inflation and interest rates remaining higher through 2024 and discretionary consumer spending growing only modestly.

Consistent with the past few years, there was minimal public M&A activity in the communication services, utilities or real estate sectors. We think that this will change for real estate in 2025 as it comes off cyclical lows.

Sectors of interest to private capital

Private capital bidders were interested in a variety of sectors in 2024, with information technology emerging as a favourite (3 deals).

That said, there was a shift in focus for the deployment of private capital, with the greatest spend in 2024 occurring in the industrials sector, including:

- Madison Dearborn Partners' acquisition of APM Human Services; and
- Pacific Equity Partners' proposed acquisition of SG Fleet Group,

each for more than $1.2 billion. By contrast, there were no private capital bids in the industrials sector in 2023.

The wider energy sector also attracted private capital investment in 2024, as seen in the $1.1 billion acquisition of MMA Offshore by Cyan Renewables (an infrastructure platform of Seraya Partners).

Private capital also went head to head in the healthcare sector, as demonstrated by the competitive bids for Pacific Smiles Group by Genesis Capital and Crescent Capital Partners.

The real estate sector attracted superannuation fund investment in 2024, with Hostplus teaming up with Charter Hall to acquire Hotel Property Investments.

The utilities sector failed to attract any interest from private capital in 2024. This follows a number of years of intense activity by private capital in this sector prior to 2022, depleting the number of these assets remaining listed.

Sectors of interest to foreign bidders

Consistent with the overall performance of the sector in 2024, foreign bidders were most active in the materials sector.

In 2024, there were 8 deals in the materials sector involving foreign bidders, representing 36% of all foreign bids. This is the same number as in 2023, when materials was also the leading sector for foreign bidders. Significant foreign bids in the materials sector included Compagnie de Saint-Gobain's acquisition of CSR for $4.3 billion and Alcoa's acquisition of Alumina for $3.3 billion.

While there are challenges in approval timeframes for major projects, Australia's metals and mining sector remains an attractive destination for further investment.

Australia's well documented housing shortages have also fuelled foreign interest in the construction sector, as seen in the acquisitions of CSR and Adbri.

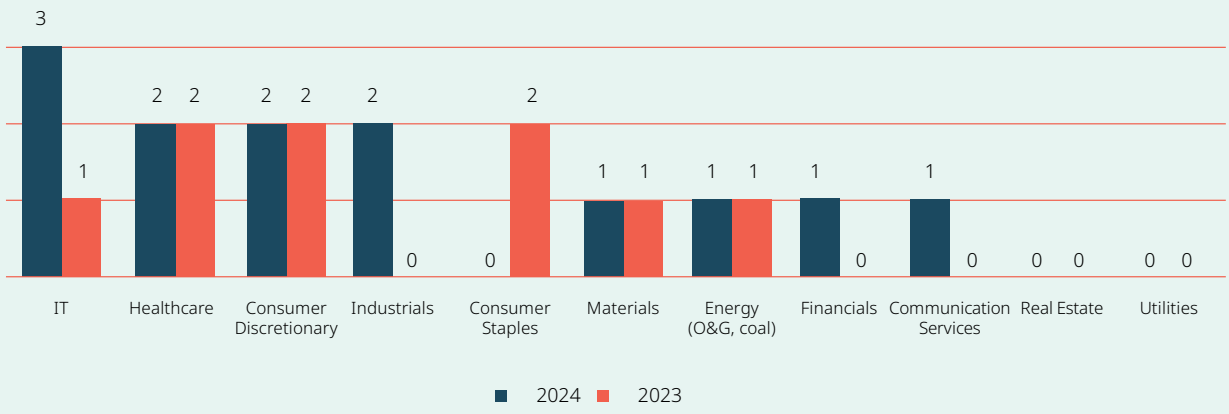
The next most popular sectors for foreign bidders in 2024 were information technology (6 deals) and industrials (4 deals). This was an increase from 2023, which saw 3 foreign deals in each of these sectors.

Deals with foreign bidders in the information technology sector included 2024's largest deal: Renesas Electronics Corporation's acquisition of Altium for $9.1 billion.

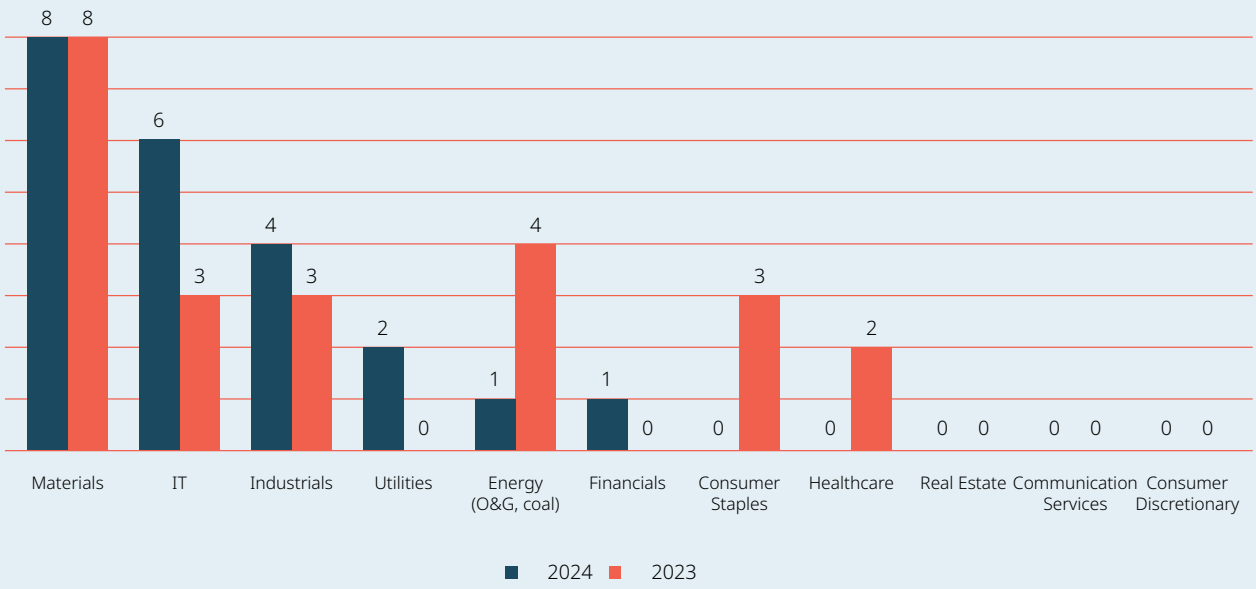
The consumer staples sector received no foreign bids in 2024, down from 3 foreign deals in 2023.

It appears from the graph on page 29 that there was a decline in foreign interest in the energy sector (as defined by GICS), from 4 deals in 2023 to 1 deal in 2024. As mentioned above, however, these traditional energy deals (involving oil, coal and gas) need to be considered alongside transactions in the wider energy sector. Indeed, 8 energy market deals involving foreign bidders were announced in 2024, including targets in the materials and utilities sectors involved in the production of future facing minerals used in the energy transition and renewable energy storage.

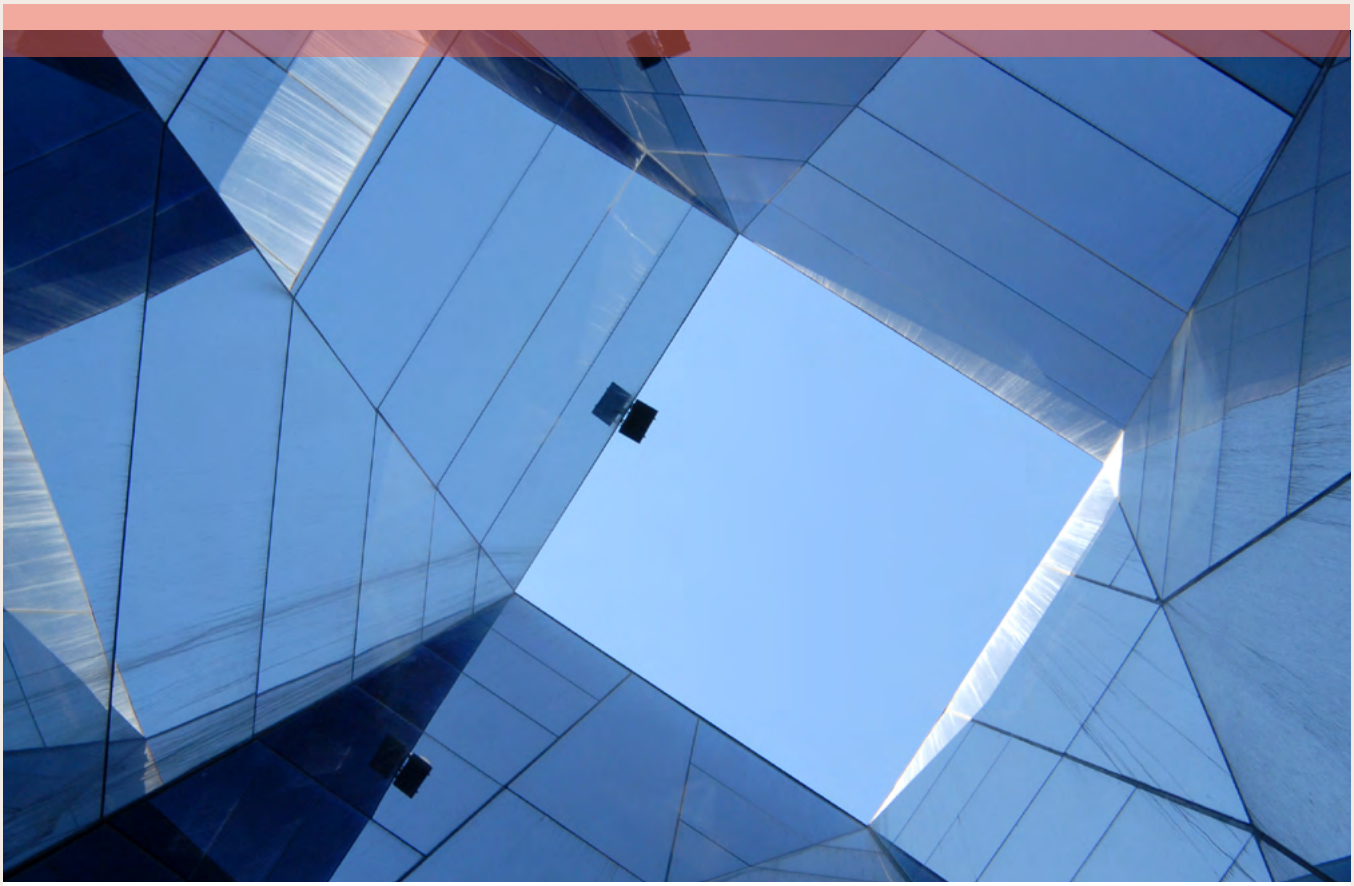
Number of private capital bidders, by sector



Number of foreign bidders, by sector



5 | Deal Structures



Key takeaways

Schemes of arrangement remain the dominant transaction structure for announced deals in 2024, making up 75% of deals valued at more than $50 million, while only 25 % were takeover bids.

Schemes remain the structure of choice for mega deals.

This preference for schemes is largely consistent with the trend observed in previous years.

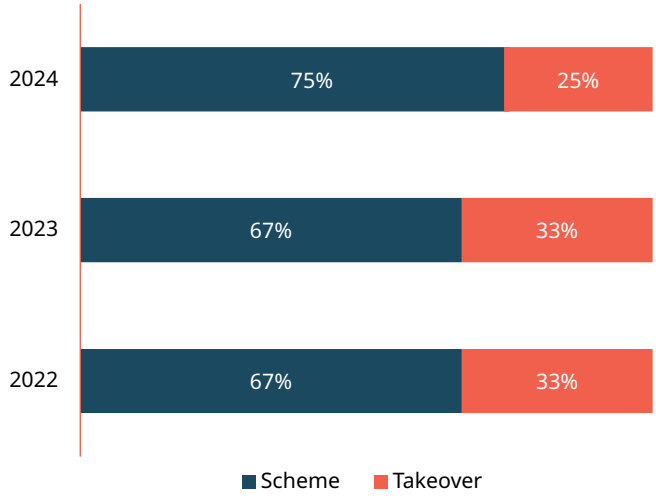
Dual scheme / takeover structures were used in 2 transactions.

Schemes continue to dominate takeovers

Schemes of arrangement continued to be the preferred structure in 2024 for public M&A deals exceeding $50 million.

Schemes were used in 32 M&A deals in 2024, with only 11 deals proceeding as a takeover bid. This is slightly higher than the number of schemes that were undertaken in 2023, however, given the reduced overall deal activity, the figure represents a 10% growth in the preference for schemes over takeovers based on the data from the previous 2 years.

Proportion of schemes vs takeovers ($50m+)



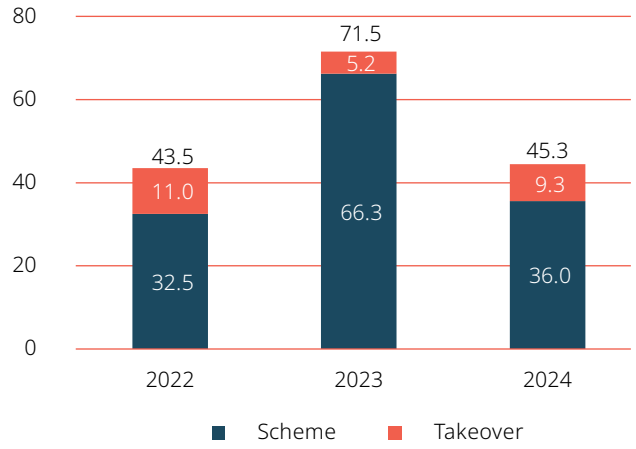
This continued preference for schemes is likely attributed to certain benefits that they generally offer over takeover bids (particularly where the bidder does not hold a significant pre-bid stake), namely:

- the **lower shareholder approval threshold** required for a bidder to proceed to compulsory acquisition, with schemes binding on all shareholders if approved by 75% of votes cast at the scheme meeting (and by a majority in number under the "head count" test), compared with takeover bids which require the bidder to receive sufficient acceptances to have a relevant interest in at least 90% of target shares (including acceptance from 75% of those shares bid for) before proceeding to compulsory acquisition;
- a perception of **higher deal certainty** offered by a structure that delivers an "all or nothing" outcome where a bidder will acquire 100% of the shares in the target if the requisite regulatory, shareholder and court approvals are obtained (unlike takeover bids which can leave bidders falling short of the 90% compulsory acquisition threshold);
- the **greater flexibility** afforded to bidders under a scheme which permits, for example, different forms of consideration to be offered to key shareholders of the target in order to secure their support for the transaction. The strict prohibition on collateral benefits being offered to target shareholders in takeover bids does not apply to schemes. In a scheme, deals can be structured to provide other incentives or benefits to key shareholders - this might require those shareholders to vote in a separate class but still allow the transaction to proceed if approved by the requisite majority of the other class. An example of this in 2024 was the scheme used in The Ardonagh Group's successful $2.3 billion acquisition of PSC Insurance Group, which is discussed in detail on pages 36 to 37 of this Report; and
- the **perception that a scheme is inherently more friendly** (as it is a target-led process) and will therefore allow the bidder greater access to the target's management in order to conduct detailed due diligence on the target. This is often important for very large transactions where detailed legal, financial, tax and operational due diligence is likely to be required by the debt and equity financiers backing the deal.

Bidders with a significant pre-bid stake are more likely to structure their bid as a takeover.

In 2024, the aggregate deal value for schemes was significantly higher than for takeover bids, accounting for approximately 80% of the total value of public M&A deals valued at $50 million or greater.

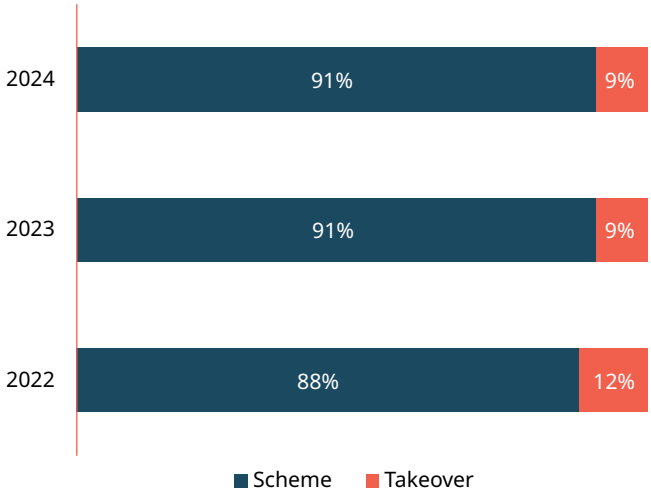
Value of schemes vs takeovers ($bn)



Mega deals utilised schemes

Of the 11 mega deals announced in 2024 (being those valued at more than $1 billion), 10 were implemented by scheme of arrangement, with the only exception being Seven Group's takeover bid for Boral. In that instance, prior to launching its bid, Seven held a relevant interest of 71.6% in Boral and would have been precluded from voting those shares in the same class as minority shareholders to approve its acquisition under a scheme, meaning that a takeover bid was the preferred pathway to acquiring 100% of the company.

Proportion of schemes vs takeovers ($1bn+)



Takeovers remained a strategically important structure in obtaining control

Takeover bids were often prominent in transactions involving competing offers and in deals involving bidders holding significant pre-bid stakes.

These deals included:

- Leonoil's successful acquisition of Sierra Rutile (owner and operator of a mining operation in southern Sierra Leone) for $79 million, where it had the benefit of a 19.85% pre-bid stake, achieving success over Gemcorp Commodities;
- Perseus Mining's successful takeover of OreCorp (owner of a gold project in Tanzania) for $272 million where it had the benefit of a 19.9% pre-bid stake, achieving success over OreCorp;
- Louis Dreyfus Company's successful takeover of Namoi Cotton (owner and operator of a cotton ginning business) for $160 million, where it had the benefit of a 16.99% pre-bid stake, achieving success over Olam Agri's friendly takeover bid. The friendly deal between Louis Dreyfus Company and Namoi Cotton was originally structured as a scheme of arrangement, but was changed to a takeover once Olam Agri emerged as a competing bidder;
- Seven Group's successful takeover bid for Boral for $6.9 billion, where it had the benefit of an existing pre-bid interest of 71.6%;
- Genesis Capital's successful takeover of Pacific Smiles Group for $322 million, where it had an economic interest of 19.9% acquired through a derivative, achieving success over Crescent Capital Partners; and
- Charter Hall and Hostplus' successful takeover of Hotel Property Investments for $758 million, where the Charter Hall Group had the benefit of a pre-bid interest of 17.9% (a 'strategic stake' which Charter Hall had acquired approximately 5 months before teaming up with Hostplus to launch an offer).

The use of takeover bids in these deals highlights that they can be a faster alternative to schemes. They can be highly effective in competitive transactions involving multiple bidders (where speed of execution is a driving factor) and/or circumstances where extensive due diligence is not required (e.g. where a target has limited assets such as an energy or mining project, where the bidder has a significant pre-bid stake and sufficient knowledge of the target and its operations or where external debt financing is not required).

Bidders with a significant pre-bid stake will often be more inclined to proceed by way of a takeover bid (which can still be structured as a friendly transaction and recommended by the target board) to reduce the extent to which minority shareholders or greenmailers can veto the deal. This is because a bidder with a large existing ownership is precluded from voting on a scheme which enhances the power of smaller shareholders to bring down the scheme as only 25% of votes need to be cast against the scheme to destroy it.

On-market takeovers are rare

It is rare for on-market takeover bids to be used in Australia, and even rarer in large deals.

This is perhaps unsurprising given their structural limitations, including the requirement that on-market takeover bids comprise only cash consideration (i.e. bidders cannot offer scrip or a mix of scrip and cash) and must be made without any conditions on the bid.

Reflecting this is the fact that there were no on-market takeovers in 2024 valued at more than $50 million, trending down from the 2 that were executed in 2023 (being Accel-KKR's $82 million acquisition of intelliHR and Tattarang Group's $759 million acquisition of Mincor Resources NL).

Dual scheme / takeover structures

Concurrent or dual scheme of arrangement and takeover bids continue to be used on occasions to incentivise shareholders holding significant potential blocking stakes to vote in favour of the scheme to get the higher price on offer under the scheme.

This follows confirmation from the Takeovers Panel that these transaction structures are acceptable (see Nitro Software Limited [2023] ATP 2).

A dual scheme and takeover offer will generally involve a bidder entering into an implementation agreement with the target which:

- proposes a scheme for a 100% acquisition at a certain price; and
- includes a commitment from the bidder to make a concurrent takeover offer, typically with a 50.1% minimum acceptance condition at a discount to the price offered under the scheme and conditional upon the scheme failing (therefore providing an incentive for shareholders to vote in favour of the scheme).

Dual scheme and takeover bid structures were used in 2 deals in 2024 valued at over $50 million, being:

- J-Power's acquisition of renewables developer Genex for $382 million; and
- SEQ Hospitality Group's $81 million acquisition of hospitality operator Eumundi Group.

This was 1 more than in 2023, where only 1 dual structure was announced, being SQM and Hancock Prospecting's acquisition of Azure Minerals.

Both of the dual structure deals in 2024 involved targets with existing shareholders holding stakes which could potentially block the scheme vote.

J-Power's dual bid structure sought to overcome a significant blocking stake of around 20% held by Scott Farquhar's Skip Enterprises. It offered a slightly higher price in its scheme proposal at $0.275 per share compared with $0.270 per share in its takeover offer (which was conditional on the scheme failing and a minimum acceptance of 50.1%).

SEQ Hospitality Group also used a dual structure in its bid for hospitality operator Eumundi Group. SEQ did not hold any interest in the target prior to its bid and was faced with potential blocking shareholders including SJ Shoobridge Superannuation Fund, with an interest of approximately 18%.

However, the proposed dual acquisition structure employed by SEQ was somewhat unusual in that it was structured as a takeover bid subject to a 90% minimum acceptance condition (which, if satisfied would allow the bidder to proceed to compulsory acquisition of 100%) with a scheme being the "fallback" position. The scheme was conditional upon the takeover bid remaining conditional before the scheme meeting date (i.e. SEQ failing to satisfy the 90% minimum acceptance condition by that date). However, if the scheme was not implemented, the takeover offer would remain open (and SEQ could theoretically waive the 90% minimum acceptance condition to acquire some but not all of Eumundi).

The price offered by SEQ was the same for both acquisition structures ($1.55 per share before being increased under both the scheme and the takeover offer to $1.62 per share after Shoobridge had publicly commented that the initial offer price was too low).

In its original bidder statement SEQ noted the dual structure was being proposed "***to allow Eumundi Shareholders the best opportunity to receive the $1.55 price per Eumundi Share offered by SEQ***". The structure also provided SEQ with a chance to acquire 100% of the target in a shorter timeframe and without the associated costs of holding a scheme meeting (noting that the scheme booklet was ***not*** included in a combined, target and bidder's statement as is customary for joint dual and scheme bids and instead was provided to shareholders at a later date).

Ultimately, however, the takeover conditions were not met prior to the scheme meeting and the shareholders (including Shoobridge) voted in favour of the scheme (at the $1.62 higher price).

These examples demonstrate that despite the risks and increased complexities associated with a dual scheme / takeover structure, they will likely continue to be utilised as an effective tool for overcoming potential blocking stakes in public M&A deals.

Deal Spotlight

The Ardonagh Group's successful acquisition of PSC Insurance Group by scheme of arrangement

The Ardonagh Group's successful $2.3 billion acquisition of PSC Insurance Group (PSC) via a scheme of arrangement exemplified some of the advantages of a scheme versus an off-market takeover bid including the ability to:

- tailor the structure of the offer to meet the objectives of key shareholders – offering key management different consideration (share consideration) as part of their management incentive arrangements; and
- implement a concurrent restructure of the target's assets.

Deal summary

On 11 October 2024, The Ardonagh Group (a large independent insurance distribution platform based in the UK), via its bidding vehicle Rosedale BidCo (**Ardonagh**) acquired PSC (an ASX-listed diversified insurance services company with significant businesses in Australia and the UK) by way of a scheme.

The offer price under the scheme was $6.19 per PSC share, which represented a ~27.6% premium to PSC's undisturbed closing price on the last trading day before market speculation about a potential deal surfaced. PSC shareholders were offered all cash consideration, with the exception of certain directors and senior management personnel, that were offered, in part, shares in an unlisted entity within the Ardonagh corporate group.

Amongst other customary terms, the scheme implementation deed (**SID**) included the following key terms:

- In addition to shareholder, court and Australian and UK regulatory approvals, a requirement that 5 PSC directors elected to receive (as a minimum) a specified percentage of the scheme consideration in scrip.
- A reverse break fee (of 1%, equal value to the break fee) payable to PSC if the SID was terminated due to a material and unremedied breach by Ardonagh or if the scheme became effective, but Ardonagh did not pay the scheme consideration.
- Ardonagh effectively secured a pre-bid stake via a call option over a total of 19.99% of PSC shares in favour of Ardonagh. Those options were exercisable (at a price equivalent to the offer price under the scheme) if a competing bid emerged, and Ardonagh determined that the competing bid was bona fide and could result in the scheme not being implemented.
- Immediately following implementation of the scheme, PSC was restructured such that:
    - PSC's Australian and New Zealand operations were transferred to its majority owned Australian subsidiary, The Envest Group; and
    - PSC's operations in other jurisdictions (including the UK) were transferred to other entities within the UK part of the Ardonagh corporate group.

Offer structure

Implementation of the scheme was conditional on 5 PSC directors electing to receive as a minimum a specified percentage of the scheme consideration in scrip. Those directors agreed to exchange approximately 21% of their aggregate shareholdings in PSC, which equated to approximately 8% of the total PSC shares then on issue, for unlisted shares in bidder entities. In addition to

those 5 directors, certain other members of PSC's senior management were given the option to receive part of their consideration in such shares.

The share component of the offer was relatively complex. In summary:

- Ardonagh offered shares in different entities within the Ardonagh corporate group, dependent on the tax residency of the recipient (i.e. shares issued in an Australian entity for Australian residents, and shares issued in a UK entity for UK residents).
- The share component was undertaken through a number of steps, which included (among others) the issue of loan notes to UK resident recipients which would then be exchanged for shares in a UK entity within the Ardonagh corporate group through a series of internal transfers.

It was a condition to implementation of the scheme that Ardonagh and PSC agree the terms (acting reasonably), and enter into agreements to give effect to these steps.

The offer structure would not have been permitted under an off-market takeover offer due to the restrictions on collateral benefits and the type of conditions that can be imposed (an off-market takeover bid cannot be subject to a condition, the fulfilment of which depends on the bidder's opinion, belief or state of mind).

The offer of unlisted shares to a select number of shareholders meant that those shareholders were treated as a separate class of members for voting purposes, and as such they voted on the scheme at a separate meeting. The need to hold 2 separate meetings increased the execution risk (as the scheme would need to be approved in 2 separate meetings), but was clearly an important aspect of the deal. PSC cited in the scheme booklet the importance to Ardonagh of the continued involvement of PSC management in the business, and to ensure management's and Ardonagh's interests were aligned.

The share offer was part of a broader retention strategy which also included offering bonuses and retention payments to key senior PSC employees in connection with the scheme. The booklet also explained that shares were not offered to other shareholders because (among other reasons) this offer would only be made to a small cohort of senior management, consistent with Ardonagh's existing equity ownership structure.

Key takeaways

This deal demonstrates the attractiveness of a scheme where the bidder intends to make different offers to select shareholders (including key management) and/or plans to implement a concurrent restructure of the target or its assets.

Although an off-market takeover may include offers to shareholders of a combination of cash and scrip, offers must be on the same terms for all shareholders. Undertaking the offer via a scheme gave Ardonagh the flexibility to make a part-share offer exclusively to certain directors and senior management of the target. This effectively increased the voting power of minority (non-associated) shareholders, although the scheme was still voted through and successful.

Ashurst advised Envest Group as part of the Ardonagh Group on the $2.3 billion acquisition of PSC Insurance Group Limited by scheme of arrangement and the separation of PSC UK and the ANZ business between Envest and the UK part of the Ardonagh Group.

6 | Consideration

Key takeaways

Cash remained the preferred form of consideration, with 75% of deals giving target shareholders the option to receive all cash, up from 64% of deals in 2023.

All share (or scrip) deals, or those offering a mix of cash and scrip consideration, were less common.

Some deals gave target shareholders the option to elect their preferred consideration.

Stub equity continued to be utilised.

No deals were funded through bidders accessing equity capital markets.

Fewer deals were funded through new acquisition debt facilities.

Cash trumps scrip

Cash remained the preferred form of consideration in 2024 with 75% of deals involving the bidder offering a cash only consideration or offering target shareholders the ability to select all cash consideration.

This is a significant increase from 2022 and 2023, where 64% of deals in each of those years offered target shareholders the option to receive all cash consideration.

In 2024, there were 7 all cash mega deals which accounted for 64% of all deals valued over $1 billion. These deals included:

- Renesas Electronics Corporation's successful $9.1 billion acquisition of Altium;
- Compagnie de Saint-Gobain's successful $4.3 billion acquisition of CSR;
- The Ardonagh Group's successful $2.3 billion acquisition of the PSC Insurance Group; and
- CRH and Barro Group's successful $2.1 billion acquisition of Adbri.

Scrip deals less prominent

23% of deals in 2024 involved the bidder offering target shareholders all share (or scrip) consideration.

This continued a downwards trend observed in recent years (with 29% of deals in 2023 offering all scrip consideration and 31% in 2022).

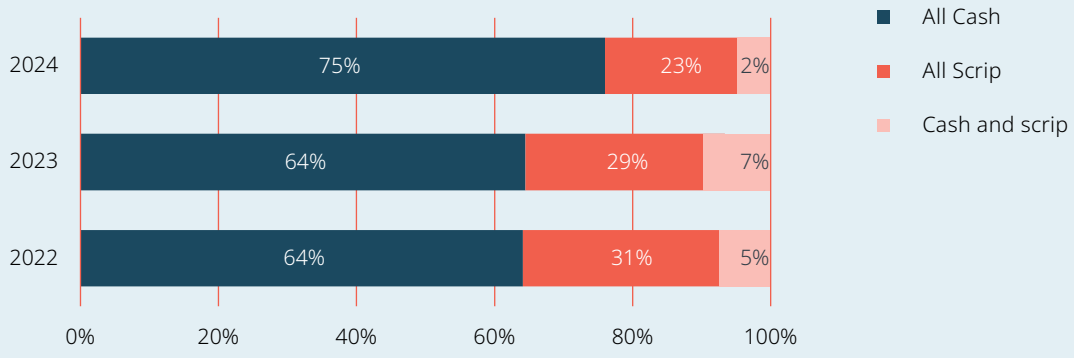
All scrip consideration was seen slightly more often in mega deals compared to all deals. In 2024, there were 3 all scrip 'mega deals' which accounted for 27% of all deals with a total value above $1 billion. These deals include:

- Northern Star Resources proposed $5 billion acquisition of De Grey Mining;
- Alcoa's successful $3.3 billion acquisition of Alumina (which is described further on page 43); and
- Red 5's successful $1.1 billion merger of equals with Silver Lake Resources.

Scrip offers the following advantages over cash consideration in mega deals:

- cash consideration can require bidders to source debt financing which can be challenging in mega deals, especially in the recent interest rate environment;
- scrip consideration can bridge perceived valuation gaps by giving target shareholders the opportunity to retain exposure to the underlying business (plus potential upside from the merged entities); and
- scrip deals have the potential for tax roll over relief.

Consideration structures, by number of deals



Mixed consideration and use of 'stub equity'

Deals offering both cash and scrip consideration (with no ability to elect for all cash) remained rare in 2024, occurring in 1 deal (or 2% of deals) only, being the Seven Group / Boral takeover. This is consistent with recent years: only 7% of deals in 2023 and 5% of deals in 2022 offered both cash and scrip consideration, with no all cash option.

This is consistent with recent years: only 7% of deals in 2023 and 5% of deals in 2022 offered both cash and scrip consideration, with no all cash option.

That said, there were a number of other deals where shareholders electing scrip consideration was an important component of the overall transaction structure, which involved 'stub equity'.

Stub equity enables target shareholders to receive all or part of their consideration in the form of the unlisted shares in the bidding vehicle. It is most commonly used by private equity bidders, and is typically seen where there are founders, key management or other significant shareholders who wish to remain invested in the business. Generally speaking, a stub equity offer is made available to all shareholders, to avoid a subset of shareholders being treated as a separate class for the scheme of arrangement. Particular shareholders electing to "roll over" their investment by receiving stub equity can also be an important aspect of the deal from the bidder's perspective, which in some cases is conditional on a minimum level of stub equity elections being made. These dynamics were seen in the following 2024 deals which included stub equity:

- Madison Dearborn Partners' acquisition of APM Human Services was conditional on certain 'key rolling shareholders' electing to receive all stub equity consideration. These shareholders included the founder and key members of management;
- Knight Frank / Bayley Corporation consortium's acquisition of McGrath was conditional on at least 22% of the total issued share capital of McGrath electing to receive shares in an unlisted Australian entity that would indirectly own the issued capital in McGrath. While the relevant condition did not single out the founder, John McGrath, he held 23.3% of the target's shares and indicated his intention to elect for stub equity at the time the scheme implementation deed was entered into;
- Ardonagh Group's acquisition of the PSC Insurance Group was conditional on certain directors and senior managers electing to receive stub equity in respect of a proportion of their shares in the target; and
- Adamantem's acquisition of QANTM Intellectual Property was not conditional on any stub equity elections, however, key principals working in the business, holding approximately 19% of the target's share capital, undertook to elect to receive stub equity as part of voting commitment deeds which were signed at the time the scheme implementation deed was entered into (meaning that, in effect, the desire for a minimum level of rollover was satisfied in advance).

In 2 deals in 2024, we saw a variation to the typical stub equity structure. This involved the company in which the stub equity was offered not only owning the target company but also the existing business of the acquirer group. In particular:

- the Knight Frank / Bayley Corporation consortium offered McGrath shareholders stub equity in an entity that would own both the McGrath business and the existing Knight Frank business. The stub equity therefore offered continued exposure to McGrath along with exposure to the combined Knight Frank business; and
- Ardonagh Group offered certain PSC Insurance Group directors and senior managers stub equity in an unlisted entity in the Ardonagh Group. These shareholders were therefore offered continued exposure to PSC Insurance Group, as well as the combined Ardonagh Group (for further details, see pages 36 to 37 of this Report).

Stub equity is most commonly used by private equity bidders and is typically seen where there are founders, key management and other significant shareholders who wish to remain invested in the business.

Tiered consideration

In 2024 there was only 1 public M&A deal involving the use of tiered consideration, being the commitment to vary the bid to a higher price if the bidder achieves a certain percentage shareholding (often at 90% which is the compulsory acquisition threshold).

Seven Group successfully employed tiered consideration in its takeover bid for Boral. A similar tiered consideration approach was also adopted in Seven Group's successful acquisition of a majority interest in Boral in 2021. Buoyed by this success, Seven Group initially offered:

- minimum consideration of 0.1116 Seven Group shares and $1.50 cash per Boral share;
- an increase of $0.10 per share in cash if Seven Group acquired 80% or more and/or the Boral Board unanimously recommended the offer; and
- a further $0.10 per share in cash if Seven Group acquired 90.6% or more.

Boral's directors told shareholders to reject this offer on the basis that it undervalued the company. Seven Group declared this offer was its 'best and final price'. Despite that, it subsequently varied the components of its offer (but not the headline price), to comprise:

- 0.1116 Seven Group shares and $1.70 cash per Boral share;
- Boral paying a $0.26 fully franked dividend per Boral share (with cash consideration correspondingly reduced by $0.26 for shareholders who accepted the offer after the dividend record date); and
- Seven Group paying a $0.30 fully franked dividend per Seven Group share after completion of the takeover (ie with those target shareholders having acquired shares in Seven Group participating in these dividends).

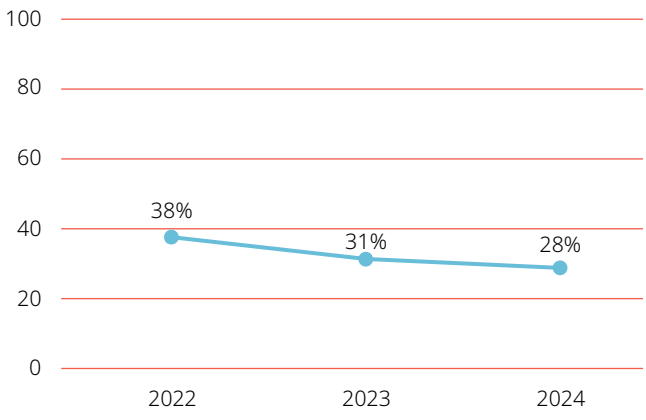
This offer was favourably received by target shareholders and recommended by Boral's directors. Although the maximum consideration remained the same, some shareholders would benefit from the value of franking credits received in connection with the dividends.

Bid funding for cash deals

28% of deals in 2024 involved the consideration being funded, at least in part, by a new acquisition debt facility (and which does not include drawing down on existing debt facilities). This continues a downwards trend observed in recent years (31% in 2023 and 38% in 2022), which is unsurprising given the recent interest rate environment.

As in 2022 and 2023, no deals in 2024 were funded through an equity raising from public investors by a listed bidder or by its holding company.

Proportion of deals funded by an acquisition facility



Alcoa's acquisition enabled synergies to be achieved by removing duplicative corporate costs and enabling more streamlined decision making as well as creating a group with greater balance sheet strength and funding flexibility.

Deal Spotlight

Alcoa's $3.3 billion acquisition of Alumina – the ultimate scrip deal

The acquisition of Alumina by Alcoa was significant as it was one of the largest deals in 2024 and ultimately fulfilled the long expected outcome of its demerger from Western Mining Corporation, by unifying ownership of the global Alcoa World of Aluminium joint venture which Alcoa controlled.

It was a complex deal, requiring shareholder approval by Alumina shareholders as well as by Alcoa shareholders given the number of Alcoa shares being issued. While not a condition to the transaction, it also required the approval of shareholders of Hong Kong listed CITIC resources given the value of the Alumina shareholding relative to CITIC Resources' market capitalisation.

Background

Alumina was founded in December 2002 when Western Mining Corporation spun off its aluminium and bauxite assets. Alumina's only business activity is the ownership of a 40% share in Alcoa World Alumina & Chemicals (AWAC), a joint venture with Alcoa. Alcoa managed the joint venture and owned the remaining 60% of AWAC.

Alumina had 2 long-standing shareholders with large holdings:

- Allan Gray, holding above 20%; and
- CITIC Resources, with 19.01%.

The AWAC joint venture had faced some challenges in recent prior periods leading to reduced free cash flow generation. As a result, Alumina had not declared a dividend for 2 years and also had limited additional debt funding capacity, with a credit rating downgrade announced shortly after entry into the Scheme Implementation Deed with Alcoa.

Alcoa's acquisition enabled synergies to be achieved by removing duplicative corporate costs and enabling more streamlined decision making as well as creating a group with greater balance sheet strength and funding flexibility.

Post-acquisition, Alumina shareholders held 36.1% of the enlarged Alcoa.

Transaction structure

Alcoa acquired 100% of the shares in Alumina by scheme of arrangement. Consideration provided to Alumina shareholders was largely in the form of Alcoa shares represented by Alcoa CDIs listed on the ASX, with Alcoa obtaining a foreign exempt listing on ASX (a condition precedent to the deal).

Due to its ownership of a bank in the US, CITIC could not hold 5% (or more) of voting shares in Alcoa and accordingly was issued non-voting preference shares for the consideration it received above 4.9%. These shares were not considered so different in terms of rights as to create a separate voting class for scheme approval purposes.

Alcoa and Alumina initially entered into a Process Deed to provide for the acquisition of Alumina, alongside Alcoa's announcement that it had entered into a conditional share sale agreement with Allan Gray. The agreement with Allan Gray gave Alcoa the right to acquire up to 19.9% of Alumina at a fixed number of Alcoa shares for each Alumina share, the ratio being equivalent to the consideration set out in the Process Deed. Alcoa and Alumina entered into a scheme implementation deed around 2 weeks later. The conditional share sale agreement with Allan Gray terminated when the scheme booklet was published, with Allan Gray reiterating its support for the transaction at that time.

Ashurst advised Alcoa in relation to this transaction.

7 Bid Tactics

Key takeaways

86% of deals were agreed with the target or friendly in 2024, slightly down from 91% of deals in 2023. There was an uptick in the number and value of hostile bids in 2024 (6 deals totalling $8.5 billion, up from $2.6 billion in 2023).

Pre-existing shareholdings were the most common type of pre-bid stake, present in 28% of deals (up from 24% of deals in 2023).

Use of voting agreements with shareholders fell significantly, down from 8 deals in 2023 to only 1 deal in 2024.

We also saw a return in the use of physically settled equity derivatives, featuring in the Seven Group / Boral deal.

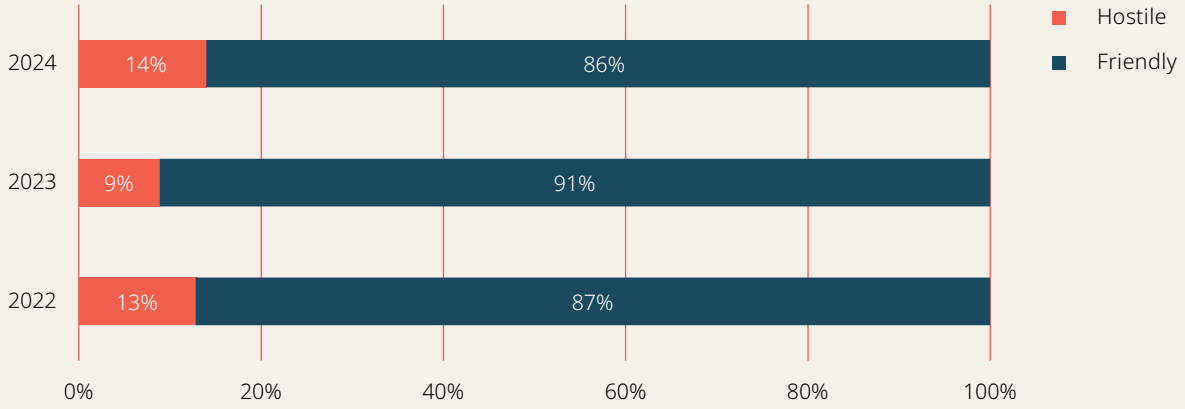
2024 saw the median premium offered (relative to the pre-bid trading price) stabilise at 38% in 2024, which was equivalent to 2023. Perhaps unsurprisingly, the higher premiums were present in friendly deals rather than hostile deals.

9 deals involved a premium in excess of 100%, including the massive 186% premium offered by Energy Fuels Inc for Base Resources.

Hostile bids

While still relatively infrequent, we saw a greater proportion of hostile bids in 2024 as compared to 2023 (14% in 2024, up from 9% in 2023 and 13% in 2022).

Proportion of hostile bids



There were 6 hostile takeover bids in 2024, of which 5 were successful (Seven Group / Boral, Perseus Mining / OreCorp; Genesis Capital / Pacific Smiles, Viburnum Funds / GTN and Charter Hall + Hostplus / Hotel Property Investments). Only 1 hostile bid was unsuccessful (Aspen Group / Eureka Group).

While no 2 transactions have the same fact pattern, hostile bids generally only occur in circumstances where:

- the target board has refused to engage with, or has rejected (or is assessed as being likely to reject), the bidder's offer; and
- the bidder remains confident that it would be able to reach the control threshold of >50% at the offer price if put to shareholders directly (inclusive of a premium) without a board recommendation. This was seen in Genesis Capital's bid for Pacific Smiles, where the bidder's own defensive stake coupled with the support of another major shareholder on the register enabled it to reach the control threshold even in the context of a competing bid from Crescent Capital Partners at a higher price.

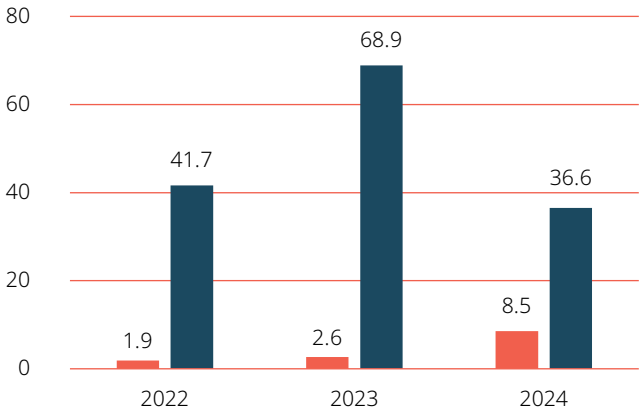
If the hostile bidder does eventually cross the control threshold of 50%, target boards tend to (almost always, although reluctantly) recommend that shareholders accept the takeover bid. This is because:

- control of the target has passed to the bidder, and any strategic direction that the incumbent board sought to implement to create value which is contrary to the bidder's views (which is usually one of the reasons for the board's rejection of the bidder) can no longer be pursued; and
- future opportunities for shareholders to exit at the takeover offer price (or higher) becomes highly uncertain after control has passed to the bidder, due to reduced trading liquidity in the shares and low prospects of a future takeover bid at the same or a higher premium.

As discussed on page 48, these deals show that acquiring a pre-bid stake, and/or acquiring the support of major shareholders remains an important element of a successful deal.

The value of hostile bids was significantly higher in 2024 ($8.5 billion, up from $2.6 billion in 2023 and $1.9 billion in 2022). This however was largely due to the $6.9 billion Seven Group / Boral hostile deal.

Value of hostile vs friendly bids ($bn)



Once a hostile bidder crosses the 50% control threshold, target boards almost always—albeit reluctantly—recommend that shareholders accept the offer.

Pre-bid arrangements

Use of a form of pre-bid arrangement as a proportion of total deals was slightly lower than prior years (49% in 2024, as compared to 53% in 2023 and 46% in 2022), though (unsurprisingly) all hostile deals involved some form of pre-bid arrangement.

Existing or pre-bid stakes

Holding a stake in the target company remains a key factor in securing successful outcomes for a bidder.

The most common form of pre-bid stake was a shareholding held by a bidder (or a related entity) in the target for at least 6 months before an offer was made (i.e. the bidder was a pre-existing shareholder as opposed to undertaking a pre-bid raid). Pre-existing shareholdings were present in 28% of deals in 2024, slightly up from 24% and 23% of deals in 2023 and 2022, respectively.

In each of the 6 hostile bids in 2024, the bidder either held or acquired a pre-bid stake or interest in the target:

- Seven Group held a relevant interest of 71.60% in Boral;
- Genesis Capital acquired an economic interest of 19.9% in Pacific Smiles Group through a derivative (which was later physically settled);
- Viburnum held 35.6% in GTN;
- Perseus Mining acquired 19.9% in OreCorp;
- Charter Hall Group held 17.9% in Hotel Property Investments; and
- Aspen Group held 13.64% in Eureka Group.

Bidders conducted a pre-bid raid or acquired a pre-bid stake before launching the bid in 12% of deals in 2024 (compared to 18% of deals in 2023 and 15% in 2022).

Voting arrangements and pre-bid acceptance agreements

The use of voting arrangements, which involved target shareholders agreeing in writing to vote in favour of the announced scheme, were also less prevalent in 2024 as compared to prior years. Voting commitments were seen in only 1 deal, being Adamantem's successful $261 million acquisition of QANTM Intellectual Property. This represented 2% of deals in 2024, compared to 18% in 2023 and 8% in 2022. QANTM had attracted interest from a number of other bidders. Adamantem's ability to secure voting commitments in respect of approximately 19% of QANTM shares, from principals working in the target business, was a key part to Adamantem's success. In particular, it helped see off IPH, who submitted an NBIO 2 days before QANTM entered into a binding deal with Adamantem, at a higher headline price at the time it was made (the offer included a scrip component). IPH did not proceed further after the QANTM board rejected the approach and Adamantem's voting commitments were announced at the time of entry into the scheme implementation deed with QANTM.

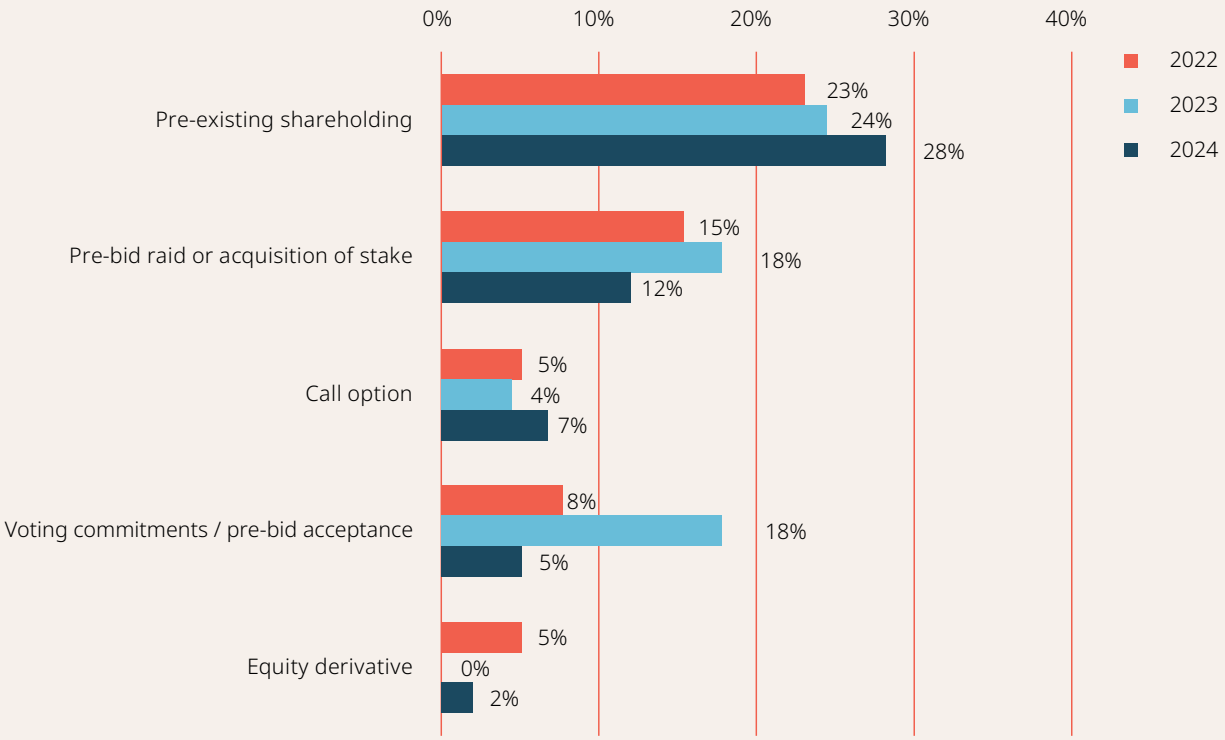
Pre-bid acceptance agreements between takeover bidders and target shareholders were also not common, occurring in relation to only one takeover bid (BWP Trust's successful $247 million takeover of Newmark Property REIT).

Conditional sale agreements / call options

Arrangements with key shareholders where the bidder has a right to acquire shares in the target (by way of a conditional sale or call option) increased on prior years (7% in 2024, as compared to 4% and 5% in 2023 and 2022, respectively). These arrangements were used in 3 scheme deals:

- Alcoa / Alumina;
- Ideagen / Damstra Holdings; and
- The Ardonagh Group / PSC Insurance Group.

Pre-bid stakes



Use of swaps and the impact of disclosure reforms

We highlight 2 recent interesting deals where M&A proponents established material swap positions prior to announcing their bids.

This follows market focus on the precise terms of swaps and the nature of the interest they convey in relation to Grok Ventures' initial interest in AGL and IFM's initial stake in Atlas Arteria (both acquired in 2022).

These situations highlight some of the complexities which can arise when swaps (or other equity derivatives) form part of a pre-bid stake, in terms of ascertaining the true economic exposure and voting power of the bidder. This is at a time when Treasury has announced proposed reform of the Corporations Act disclosure regime to "***bring equity derivatives into fuller view***" (for further detail, see page 73 of this Report).

When swaps are used:

- the bidder may be able to remain covert for longer while building its initial position (because the registered shareholder visible to the company will be a financial counterparty or nominee which may well hold interests in connection with multiple engagements); and
- there can be greater complexity in assessing the ultimate economic exposure and voting power of the bidder. This can influence the extent to which the pre-bid stake is viewed by the market as 'locking up' a certain position in target shares.

Soul Patts' proposal to acquire PPT

On 6 December 2023, diversified investment house Washington H. Soul Pattinson (**Soul Patts**) announced a (swiftly rejected) proposal to acquire Perpetual by way of scheme with simultaneous demerger of Perpetual's asset management business. This proposal followed a series of notifications by Soul Patts:

- first, on 19 September 2023, a "notice of interest" of a 7.3% interest including a 4.29% relevant interest (the remainder being a swap interest);
- on 11 November 2023, when Soul Patts announced it had become a substantial holder with an aggregate 9.99% economic interest, including 3.33% through a cash settled swap interest;
- on 13 November 2023, when Soul Patts announced it had increased its interest to 14.99%, including voting power of 11.66%. That voting power included relevant interests in up to 2 million shares under a physically settled derivative.

Some questions:

- as a diversified investment house, did Soul Patts' early holdings receive less focus from Perpetual and its team because some of it was a swap interest only?
- did the physically settled derivative appearing as part of voting power give Soul Patts greater 'punch' when it announced its 14.99% interest?

Perpetual ultimately announced an agreed transaction with KKR, for KKR to acquire its wealth management and corporate trust businesses. This transaction is not otherwise analysed in this report as it relates to the acquisition of part of Perpetual's business (rather than Perpetual itself).

Seven Group's acquisition of Boral

Seven Group's starting position for its acquisition of Boral was 71.6% including a physically settled swap of 9.2%. The Boral Bid Response Committee recommended rejecting the offer as "not fair and not reasonable".

This swap had been in place for some time: the swap was actually entered into in 2021 in connection with Seven Group's prior bid for Boral (pursuant to which it acquired approximately 71% of Boral). The deal disclosures described this item as being an interest of "up to" the number specified, suggesting a "variable notional" where the number of shares that will ultimately be delivered is subject to variation. This led to an 'inflated' headline interest that might be of tactical benefit. The swap was ultimately settled in June 2024, part-way through Seven Group's "mop-up" bid.

The Seven Group proposal had been declared "best and final" from the outset. Despite this, Seven Group's proposal was amended to provide an extra incentive for Boral shareholders to accept the cash and scrip offer. Dividends were ultimately paid by both Boral and Seven Group (post closing so the former Boral shareholders

- now shareholders of Seven Group via the scrip offer - could participate), and the cash payment 'bumps' were brought forward, resulting in a successful outcome (for further detail, see page 41 of this Report).

Other use of physically settled derivatives

Physically settled swaps may also be used as an interim measure where the holder is subject to a holding restriction that is less than 20% (for example, a 10% foreign government investor's foreign investment limitation, as was the case in the Ares Management raid on Helia Group).

Cash settled swaps

We also note the use of cash settled swaps in 2024 in:

- CRH and Barro Group's successful $2.1 billion scheme of arrangement for Adbri announced in February 2024, where a swap over 4.6% of Adbri shares was taken by CRH in April 2023; and
- Genesis Capital's $322 million bid for Pacific Smiles Group, where a cash-settled swap over 18.75% (later increased to 19.9%) of Pacific Smiles Group shares was later amended to provide for physical settlement. This swap was physically settled shortly after Crescent Capital Partners entered into a scheme implementation deed with the target. There were arrangements in existence at the time of entry into the cash-settled swap which pointed to Genesis Capital's intention to acquire a relevant interest in the shares, which were not referenced in the initial disclosure of the cash settled swap. These arrangements were the subject of Takeovers Panel proceedings relating to Genesis Capital's initial failure to disclose the full terms of the related agreements.

Cash settled swaps typically provide only an economic exposure to the relevant shares. That said, they create an economic incentive for the bank which has written the swap to hedge the exposure, which can effectively take the target shares "out of play" (which was a factor in the Genesis Capital arrangements). As outlined on page 73 of this Report, there are proposals for the cash settled swaps to create a "relevant interest" as well as an economic interest.

Implications

The proposed reform is likely to generate its own idiosyncrasies and loopholes but seems intended to coincide physical and swap positions. This may reduce the perceived tactical benefits seen from building swap positions in preparation for an M&A bid.

Blocking stakes

Existing shareholders holding substantial stakes in the target have the potential to effectively "block" a bidder's ability to acquire 100% of a company (e.g. by blocking the ability for a bidder to achieve compulsory acquisition, or by having a meaningful enough stake to vote down a scheme of arrangement).

Aspen Group's failed $146 million bid for Eureka Group is a good example of how lack of shareholder support and a "blocking stake" can complicate a bidder's plans for control. In this bid, Ben Cottle very quickly (through multiple transactions) acquired a 19.29% stake in Eureka after the announcement of a proposed takeover bid by Aspen, stopping Aspen's practical ability to achieve roll-over relief and compulsory acquisition. Aspen's unsuccessful bid has since resulted in it reducing its 36% stake (acquired after making its bid unconditional) in Eureka to approximately 13% following an equity raising by Eureka and a secondary sale (including to Ben Cottle).

Similarly, Genesis Capital's success with its $322 million bid for Pacific Smiles was achieved through various means, including its 19.9% stake in the target (which it voted against rival player Crescent Capital Partners' $333 million scheme of arrangement), and securing the support of major shareholders for its own bid. Genesis Capital was successful in acquiring Pacific Smiles despite offering a lower premium than its rival.

Another example of the impact of a blocking stake was seen in the competing offers for Orecorp. Silvercorp Metals' proposed acquisition of Orecorp (which was announced in late 2023) by scheme was changed to a takeover bid a month after Perseus Mining acquired (again, very quickly) a 19.9% substantial holding in Orecorp and announced its intention to vote against the Silvercorp Metals scheme (which would make the rejection of the scheme a practical certainty). Perseus Mining then made its own $272 million takeover bid which was ultimately successful due to its higher all cash price (which Silvercorp also sold into).

With or without a blocking stake, the battle in competing bids is usually won on price. In the Namoi Cotton transaction, despite Louis' Dreyfus Company's' significant holding of 16.99% in Namoi Cotton and entry into a scheme implementation deed with Namoi, Olam Agri launched a takeover bid for Namoi Cotton at a higher price per share, which also had the support of the major shareholder Samuel Terry Asset Management (subject to there being no superior proposal). Ultimately Louis Dreyfus Company succeeded in its $160 million bid for Namoi Cotton by converting its proposal to a takeover, bidding the highest price per share and securing the target board recommendation (as well as major shareholder support).

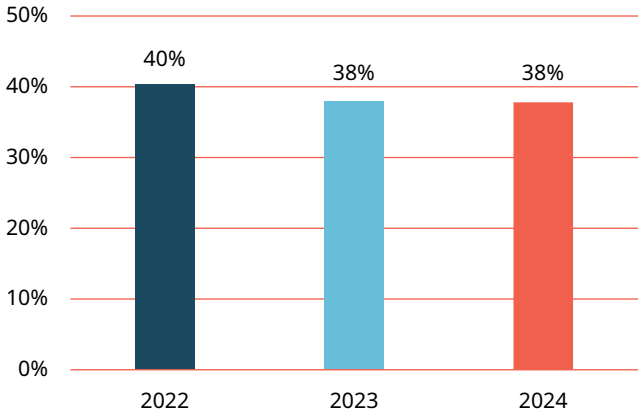
Similarly, the three-way competing proposals for Sierra Rutile shows that winner (on bid price) usually takes all. The 19.9% interest held by Gemcorp Commodities in Sierra Rutile was not sufficient to deter Leonoil (who itself, over time, acquired 19.85% in the target) from making its own competing takeover bid (without a minimum acceptance condition). Leonoil was ultimately successful in its $79 million bid, after Gemcorp Commodities decided not to match or better Leonoil's price. Both bidders managed to achieve a greater stake than the first bidder, PRM Services, who held an 11.46% interest in the target before launching its $37 million on-market takeover bid, which kicked off the competing offers. Ultimately, price is almost always king in securing a win.

The exception this year was Pacific Smiles, where Genesis Capital's successful bid was at a lower price point than Crescent Capital Partners' all-cash play which was voted down by Pacific Smiles shareholders. That said, Genesis Capital's bid included a scrip component, which ultimately was an attractive option for shareholders.

Deal premiums

The median premium (as a percentage relative to the pre-bid trading price) offered by bidders was 38%, which was equal to 2023 and only slightly lower than 2022 (40%).

Median premiums offered by bidders



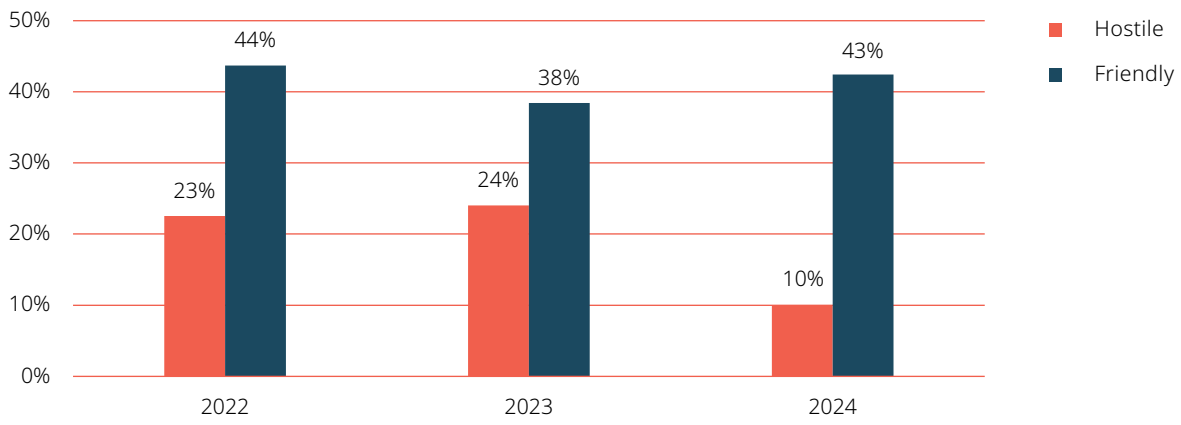
The top 5 premiums were all offered by foreign bidders showing a keenness of available capital in sectors like information technology, materials, industrials, energy and utilities.

Top 5 Premiums (2024)

	Premium	Deal	Target industry	Bidder
1	185.71%	Energy Fuels Inc's successful $374 million acquisition of Base Resources	Materials	Foreign, industry / strategic acquirer
2	140.00%	Ideagen's successful $69 million acquisition of Damstra Holdings	Information technology	Foreign, private capital owned
3	130.77%	Leonoil's successful $79 million acquisition of Sierra Rutile	Materials	Foreign, industry / strategic acquirer
4	119.72%	Beijing Energy International's proposed $179 million acquisition of TPC Consolidated	Utilities	Foreign, industry / strategic acquirer
5	116.90%	Louis Dreyfus Company's successful $160 million acquisition of Namoi Cotton	Industrials	Foreign, industry / strategic acquirer

The gap between the median premium offered by hostile bidders compared with those offered by friendly bidders widened significantly in 2024 to 33% (10% in hostile bids vs 43% in friendly bids) This is in contrast to 2023 (where the differential in was 14%) and 2022 (where the gap was 21%). This is perhaps unsurprising in a comparatively slower deal market vis-à-vis prior years, with hostile players being able to edge their way into a successful deal by securing shareholder support, with mounting pressure on target boards to secure a higher price in exchange for a recommendation thereby resulting in greater premium figures observed in friendly deals.

Median premiums offered by hostile vs friendly bidders



8 | Deal Conditions and Terms

Key takeaways

Material adverse change (MAC) conditions were present in 86% of all deals in 2024, but were almost always present in schemes where it is considered a standard condition.

Despite ASIC's views that MAC conditions should only contain quantitative triggers, 41% of MAC conditions in 2024 included both qualitative and quantitative triggers and 5% of MAC conditions in deals featured only qualitative triggers.

Of the takeover bids which included a minimum acceptance condition, only 1 deal contained a 90% threshold (which would allow a bidder to proceed to compulsory acquisition) in 2024, which was slightly lower than the preceding 2 years.

Break fees were present in 79% of deals in 2024, which was broadly consistent with 2023 and 2022.

Reverse break fees featured in 63% of deals in 2024, up from 51% (2022) and 56% (2023).

The number of deals with reverse break fees that were larger than the target break fee has also increased.

Material adverse change (MAC) conditions

MAC provisions were the most commonly included condition in deals in 2024, being included in 86% of all deals - almost all schemes and in 55% of takeovers.

MAC provisions are designed to protect the bidder from events or changes in circumstances that have a material negative impact on the target's business, financial condition, or operations that occur or arise between the date of signing of the agreement and completion. Scheme implementation agreements can also include MACs in relation to the bidder (typically only in the case of deals with a scrip component). This Report analyses data on MACs in relation to the target only.

The trigger events which are covered by MAC clauses will vary between agreements and will typically be expressed as either qualitative triggers or quantitative triggers:

- quantitative triggers are where the impact of the event meets a specified quantitative threshold, such as a diminution of revenue or EBITDA (and / or net assets); and
- qualitative triggers are where the event impacts the target's ability to conduct its business, its reputation or profitability in the same manner as they were conducted prior to the transaction being agreed.

MAC clauses will generally exclude as triggers any changes in law or regulation, changes in the broader economic or political environment, force majeure events and matters that were disclosed to the bidder or publicly disclosed by the target prior to entry into the implementation agreement or announcement of the offer.

6 off-market takeovers in 2024 included MAC conditions (55% of all off-market takeovers) and 4 of those takeovers included a combination of both qualitative and quantitative triggers.

In contrast, nearly all schemes included MAC conditions. 18 schemes included MAC conditions with only quantitative triggers, 2 with only qualitative triggers and the remaining 11 schemes contained both quantitative and qualitative triggers.

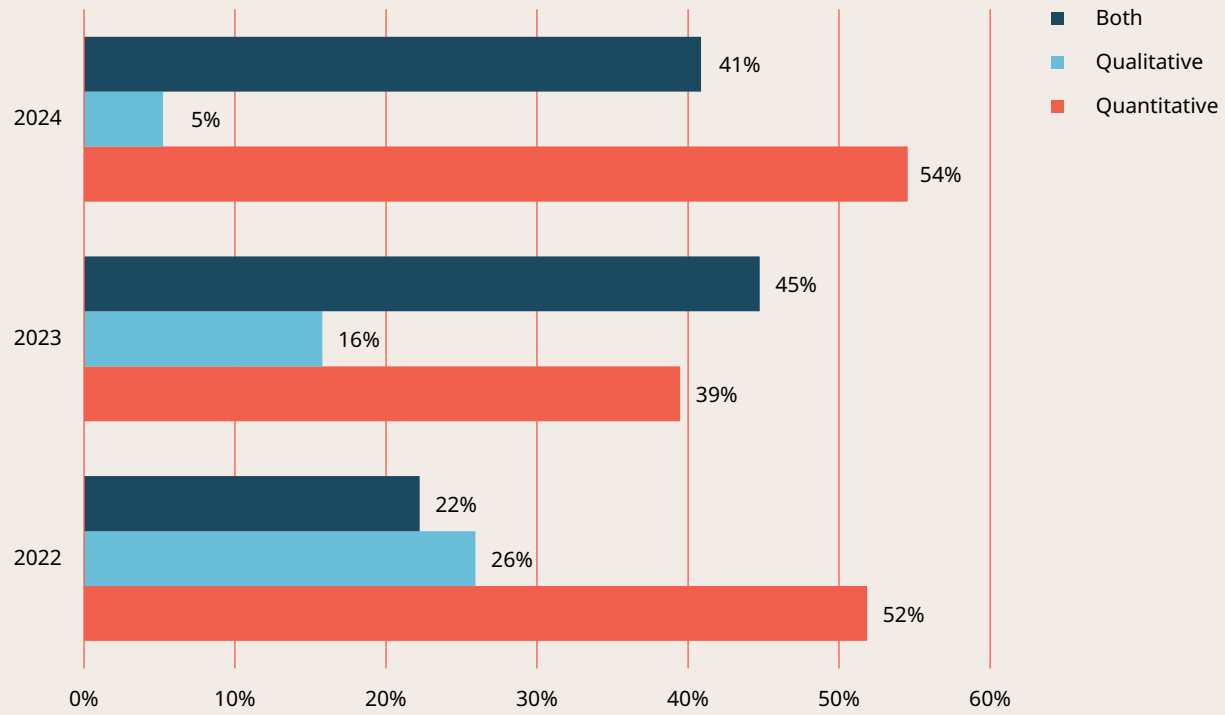
There were only 6 deals without MAC conditions in 2024, including:

- the Alcoa / Alumina scheme, likely due to Alcoa being the operator and majority shareholder partner in AWAC, the joint venture between Alcoa and Alumina which was Alumina's sole business; and
- the Olam Agri offer for Namoi Cotton, likely due to it being a competitive bid circumstance and Olam Agri wanting to minimise the conditions in its takeover offer as compared to the other competing takeover offer from Louis Dreyfus Company.

ASIC indicated in their September 2022 Corporate Finance Update, that they consider that MAC clauses should be based on quantitative triggers only which are objective so that parties to a transaction, and their shareholders, can determine whether a material adverse change has occurred (and not qualitative triggers which are subjective, semi-subjective, unclear or self-defeating).

The data shows that the percentage of deals with only qualitative triggers has decreased from 26% in 2022 to 5% in 2024. However, the percentage of deals that contain a combination of both quantitative and qualitative triggers has increased significantly over the same period, being present in 41% of deals in 2024, compared to 22% of deals in 2022.

MAC triggers, by proportion of deals



Therefore qualitative triggers for MAC conditions remain a feature of public M&A. The most commonly included qualitative trigger for MAC conditions in 2024 was an event that has or could reasonably be expected to have a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the target group as a whole.

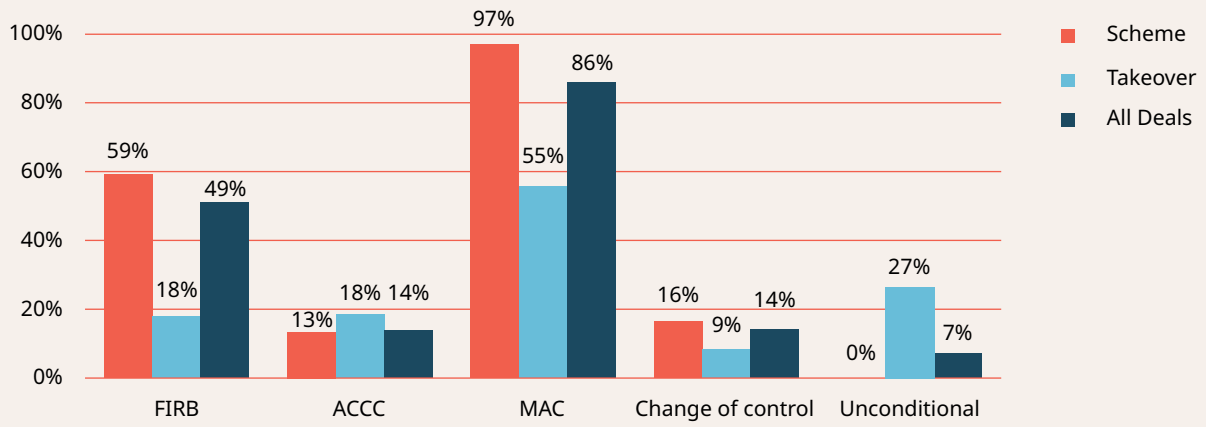
Other triggers can be transaction specific, and examples of triggers included in deals in 2024 are:

- an event that has or is reasonably likely to have a material adverse effect on the status or terms of any approvals, licences, permits or tenements in relation to a specific project or projects: Leonoil / Sierra Rutile, MACH Metals / Rex Minerals;
- an event that has or is reasonably likely to have an effect that will prevent, materially delay, or materially impair the target's ability to consummate the transaction: WAM Leaders / QV Equities;
- an event in relation to any financing arrangement or other agreement to which the target is a party entitling a third party to require payment of an amount in excess of a specified monetary amount: Red 5 / Silver Lake Resources;
- franchisees representing a particular percentage of aggregate franchise fees terminating their agreements: Knight Frank / Bayley Corporation consortium / McGrath;
- the suspension of the full class status of a specified number of vessels owned by the target group by the classification society applicable to those vessels: Cyan Renewables / MMA Offshore;
- the total number of the target group's retail customers reducing by a specified percentage: Beijing Energy International / TPC Consolidated; and
- the settling of legal proceedings, claims, investigations or other like proceedings where the settlement amount payable is in excess of a specified amount: SEQ Hospitality Group / Eumundi Group.

Bid conditions

Conditions in off-market takeover bids and schemes included minimum acceptance conditions, material adverse change (MAC), failure to receive third party consent under material contracts for change of control, FIRB approval and ACCC approval.

Bid conditions (2024)



As discussed above, MACs were the most commonly included condition in deals in 2024. MAC conditions featured in 86% of all deals in 2024, including almost all schemes and in 55% of takeovers.

The next most common condition was FIRB approval, which was included in 49% of all deals, including 59% of schemes and 18% of off-market takeovers. Foreign bidders in larger deals prefer a scheme of arrangement structure as it provides certainty that if the scheme is approved by target shareholders and all other conditions are satisfied, the bidder will acquire 100% of the target, that is, it is an all or nothing outcome. Several deals involving foreign bidders did not require FIRB approval as a condition because the relevant monetary thresholds which trigger the FIRB approval requirement were not exceeded.

Examples included:

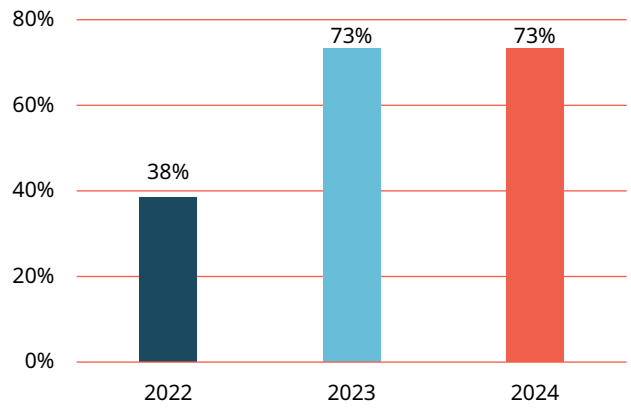
- Mawson Gold's successful $133 million acquisition of Southern Cross Gold;
- Leonoil's successful $79 million acquisition of Sierra Rutile
- Gemcorp Commodities unsuccessful $70 million offer for Sierra Rutile; and
- Vector Capital Management's proposed $200 million acquisition of Bigtincan Holdings.

Third party consents for change of control conditions and ACCC approval conditions were each included in 14% of deals in 2024.

Minimum acceptance conditions

In 2024, 73% of takeovers included a minimum acceptance condition, which was the same as 2023.

Minimum acceptance conditions in takeovers

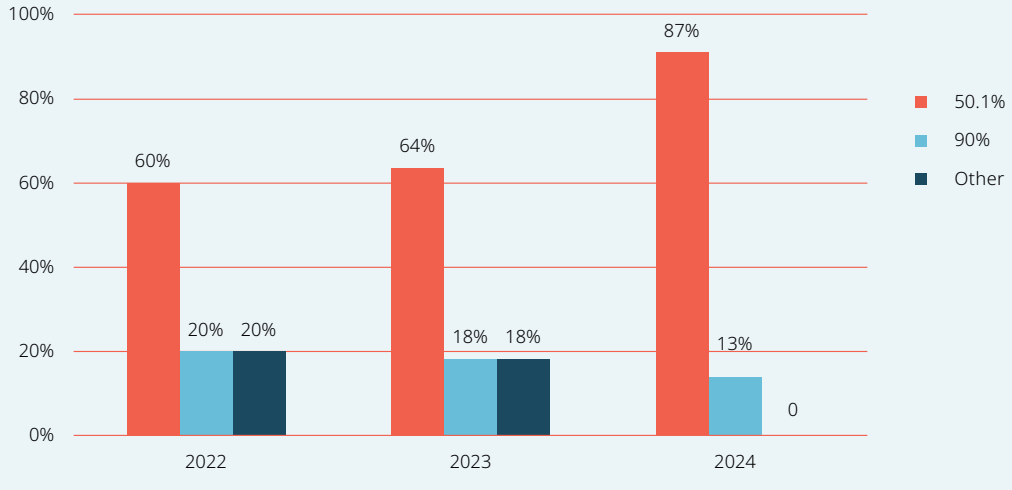


Of those takeovers including a minimum acceptance condition:

- 7 deals (87%) included a 50.1% (or 51%) minimum acceptance threshold, which was an increase on 2023 (64%) and 2022 (60%). This is the key threshold that enables the bidder to obtain majority ownership and the ability to pass ordinary resolutions to appoint and remove directors from the target board; and
- 1 deal (13%) included a 90% minimum acceptance threshold, being the ownership threshold at which a bidder can then proceed to compulsory acquisition of the remaining target shares. This was a small decline from 2022 (20%) and 2023 (18%). In any event, it is common for a bidder to waive a 90% minimum acceptance condition once they have received acceptances for at least 50.1% of the target shares.

Minimum acceptance conditions were not included in Seven Group's hostile takeover of Boral, as the bidder was already the majority shareholder in the target and was making the takeover offer to acquire the remaining shares held by minority shareholders. In addition, Viburnum Funds' takeover of GTN and Leonoil's competing takeover offer for Sierra Rutile (announced after Gemcorp Commodities had announced its takeover offer) did not have minimum acceptance conditions.

Threshold for minimum acceptance condition



For the most part, break fees in 2024 did not exceed 1% of the equity value of the target at the offer price.

Unconditional takeover bids

There were no on-market takeovers (which must be unconditional under section 625(1) of the *Corporations Act 2001* (Cth)) valued at more than $50 million during 2024.

However, there were 3 unconditional off-market takeover offers. This is equal to 27% of the total number of takeovers in 2024 which is higher than the percentage of unconditional takeovers in 2023 (20%).

The unconditional takeovers offers in 2024 were:

- Seven Group's hostile takeover of Boral, where Seven Group already held 71.6% of Boral shares prior to the takeover offer;
- Genesis Capital's $322 million competing hostile bid for Pacific Smiles, which had received an earlier bid from Crescent Capital Partners; and
- Viburnum Funds' hostile bid for GTN, which was a nil-premium takeover offer.

Break fees

Break fees were present in 79% of deals in 2024, which was broadly consistent with 2023 and 2022 (76% and 79%, respectively).

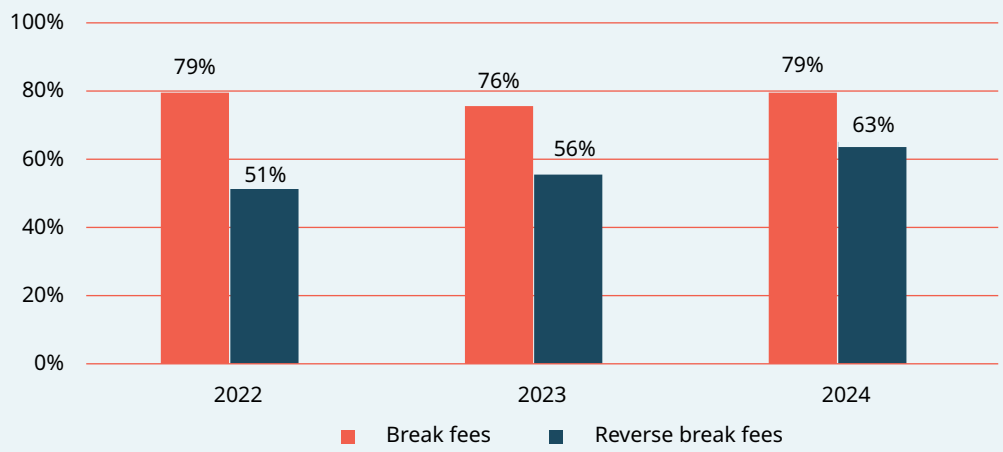
Break fees are fees payable by the target to a bidder if certain trigger events occur that prevent the deal from proceeding, or cause it to fail, including a failure by a target director to recommend the scheme, a change in recommendation by the target board or a material breach of the implementation agreement by the target.

For the most part, break fees in the deals in 2024 adhered to the Takeovers Panel's general guidance that break fees payable by a target should generally not exceed 1% of the equity value of the target at the offer price.

Deals with larger break fees in 2024 included:

- Investcorp AI Acquisition Corp's unsuccessful acquisition of Bigtincan Holdings. This proposed 'SPAC' transaction included a break fee of $4.1 million, representing 1.93% of the equity value of the target at the time of announcement. The larger break fee may have taken into account the expected additional equity to be invested in the SPAC vehicle by the sponsor of the Investcorp vehicle and other investors as part of the transaction; and

Break fees and reverse break fees



- River Capital's successful $106 million acquisition of Midway which included a break fee of $1.6 million (in certain circumstances), representing 1.47% of the target's equity value. There are various examples of break fees of more than 1% in lower value deals, given out of pocket transactions costs can exceed 1% of equity value in these deals, which seems to have been accepted by the Takeovers Panel, ASIC and the Courts. River Capital's deal simply falls into this category.

The Takeovers Panel's guidance is that break fees exceeding 1% of the target's equity value may be justifiable if the bidder has incurred significant costs in connection with the deal and the break fee is a genuine and reasonable estimate of the costs incurred and expected to be incurred by the bidder. The fact that the break fees in those 2 deals represents more than 1% of the equity values of the targets can be explained by the smaller absolute size of those deals.

Some commentators have suggested that with the effects of inflation and other regulatory challenges, it might be time to revisit the Panel's guidance that target break fees be capped at 1%.

In 2024, there were 2 recommended deals which did not have a break fee. They were Olam Agri's unsuccessful $155 million takeover of Namoi Cotton and WAM Leaders' successful $218 million acquisition of QV Equities by way of scheme of arrangement.

The lack of a break fee in the Olam Agri takeover offer for Namoi Cotton can be explained by the fact that Namoi Cotton was already subject to a takeover offer by Louis Dreyfus Company that had been recommended by the target. Louis Dreyfus Company was ultimately the successful acquirer of Namoi Cotton in that takeover contest.

The lack of a break fee in the WAM Leaders / QV Equities deal is attributable to the fact that WAM Leaders initially announced an intention to make a hostile takeover for QV Equities in January 2024 following rejection by the target of an earlier non-binding conditional proposal. Subsequently, in March 2024, QV Equities and WAM Leaders negotiated improved deal terms for target shareholders with the deal proceeding by way of a recommended scheme of arrangement.

Reverse break fees

Reverse break fees are fees that are payable by the bidder to the target company if certain trigger events occur that prevent the deal from proceeding or cause it to fail, including material breach by the bidder or failure by the bidder to obtain regulatory approvals or approval of the bidder's shareholders.

They were initially popularised in the US by private equity firms to manage the risk of financing failures in leveraged buyouts with the reverse break fee being subject to a cap. Reverse break fees were therefore viewed mostly as a bidder-friendly tool to cap their liability in these circumstances and were sometimes referred to as an option fee. In Australia, they are often viewed more as a deal protection measure for the target, and have become more prevalent due to the volatile economic environment and risks associated with obtaining regulatory approvals.

These fees are perceived as serving 2 main purposes:

1. to provide certainty as to the amount payable to compensate the target for the costs incurred and opportunities lost if the transaction fails due to the bidder's actions or inactions; and
2. to incentivise the bidder to complete the transaction.

There is currently no formal Panel guideline in relation to reverse break fees which have, at least in the past, tended not to raise issues within the Panel's jurisdiction. The quantum of reverse break fees has historically mirrored that of target break fees (1% of the target's equity value based on the offer price) due to simple reciprocity although there is no requirement or guidance requiring it to be so.

Over the past few years, the prevalence of reverse break fees has increased, being agreed in 63% of deals in 2024, up from 56% of deals in 2023 and 51% of deals in 2022.

Further, the number of deals with reverse break fees that were larger than the quantum of the target break fee in the same deal also increased in 2024 compared to 2023 and 2022. This indicates that the Australian market is progressively aligning with US practices, particularly in cases where the market capitalisation of the bidder and/or a bidder shareholder approval requirement justify a higher reverse break fee.

For example:

- Renesas Electronics Corporation's successful $9.1 billion acquisition of Altium had a reverse break fee equal to 4.5% of the target's equity value, compared to the target break fee which was equal to 1% of the target's equity value. Parties seek to justify larger reverse break fees on the grounds that the particular deal involves a higher risk for the target or higher transaction costs, loss of opportunity costs and potential damage to the target's reputation associated with a failed deal. The triggers for the reverse break fee in the Renesas / Altium deal included failure by the bidder to obtain

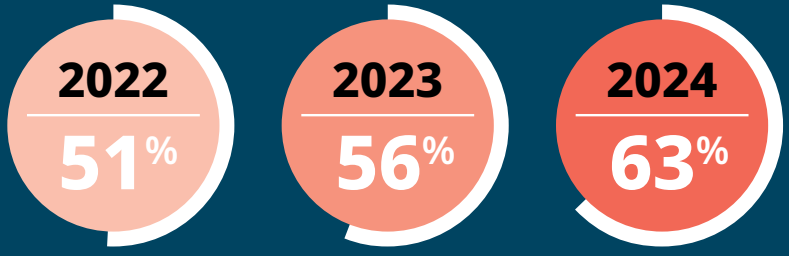
certain necessary regulatory approval for the deal and a material breach of the scheme implementation agreement by the bidder; and

- the reverse break fees in each of the following deals were approximately double the size of the break fees in those deals:
    - Alcoa's successful $3.3 billion acquisition of Alumina;
    - Mawson Gold's $133 million acquisition of Southern Cross Gold;
    - Bell Financial Group's proposed $58 million acquisition of SelfWealth; and
    - Northern Star Resources' proposed $5 billion acquisition of De Grey Mining.

There have been questions as to whether the Panel should develop a policy position or issue guidance on reverse break fees to address novel circumstances associated with reverse break fees in a small number of Australian control transactions. We understand the Panel considered this last time it reissued the Guidance Note 7: Deal protection and determined it was not necessary. We agree with that position – parties should have freedom to contract as they wish if it does not lock up control of the target in an inefficient or unacceptable manner which reverse break fees generally do not.

For further discussion on reverse break fees, see Chapter 10 on the Takeovers Panel.

The prevalence of reverse break fees has increased, being agreed in 63% of deals in 2024, up from 56% in 2023 and 51% in 2022, signaling a shift towards US practices in the Australian market.



9 | Deal Wins and Losses

Key takeaways

86% of deals were successful in 2024, with the success rate trending upwards over the last 3 years.

Largest deals had the highest success rate in 2024, with all deals valued over $500 million succeeding.

Competing bids continued to be the primary reason for deals not succeeding in 2024.

Schemes of arrangement consistently enjoy a higher success rate than takeovers.

2024 saw a decrease in the takeover success rate, with only 73% of deals considered successful in 2024 (compared to 80% in 2023 and 77% in 2022).

Success rates for friendly and hostile deals were similar in 2024. 87% of all friendly transactions in 2024 were successful, compared to 83% of hostile deals.

Success rates

In 2024, 86% of public M&A deals valued over $50 million were successful.

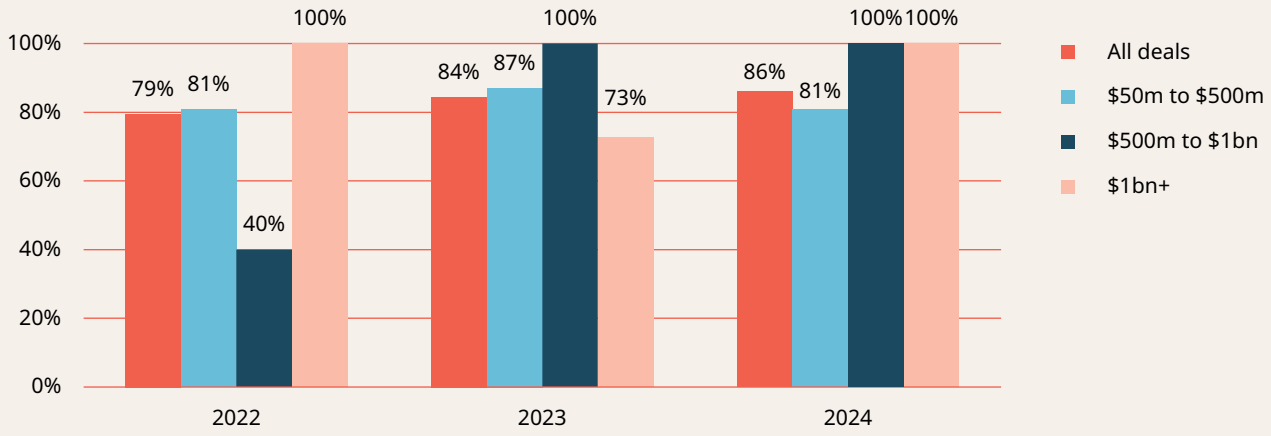
This result was broadly on par with 2023, where 84% of deals were successful, but an improvement from the 79% success rate seen in 2022. We should note that our data may overstate the levels of success, as we do not analyse non-binding indicative offers which are hard to track and which inevitably have a higher fail ratio. Our data does, however, capture the extent to which a binding takeover bid or agreed deal is successful.

The mega deals, being those valued at over $1 billion, were all successful in 2024, an outcome consistent with 2022 and reflecting an uptick from 2023 where 73% of mega deals were successful.

Similarly, both deals in the mid range, being deals valued between $500 million and $1 billion, were successful in 2024. This was equivalent to 2023, but an enormous improvement on 2022 where only 40% of the 5 deals announced in this price range were successful

In contrast, there has been a generally higher volume and more consistent success rate for deals valued between $50 million to $500 million. 2024 saw a 81% success rate from deals of this size, down from 2023 which saw a success rates of 87%, but equal to 2022.

Success rates



We note that 6 of the deals from 2024 have not been included in our analysis on this data point as the outcome is pending at the time this Report was prepared.

Unsuccessful transactions

5 deals announced in 2024 were unsuccessful, representing 14% of transactions where the outcome is known.

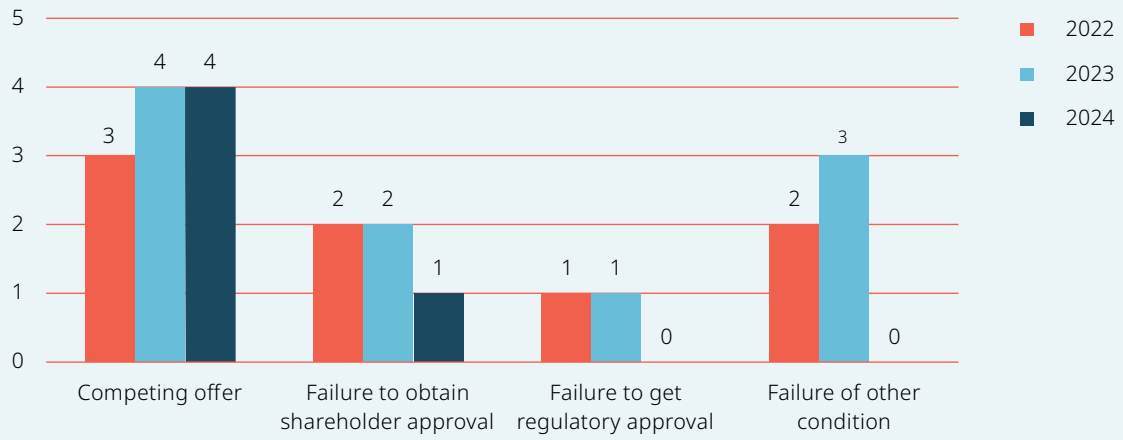
4 deals were unsuccessful due to the emergence of a competing offer that was ultimately successful:

- The $333 million scheme of arrangement between Crescent Capital Partners and Pacific Smiles was blocked by rival bidder Genesis Capital, which used its 19.9% stake to vote down Crescent's scheme, despite Crescent offering a higher premium and having the target board's recommendation at the time.
- Olam Agri emerged as a competing bidder for Namoi Cotton, but its friendly bid was ultimately trumped by Louis Dreyfus Company offering a higher premium.
- Gemcorp Commodities' $70 million friendly takeover offer for Sierra Rutile was defeated by Leonoil Company's competing $79 million takeover bid.
- Investcorp AI Acquisition Corp's $220 million scheme of arrangement with Bigtincan Holdings (a 'SPAC' transaction) was terminated in the face of a rival all-cash proposal from Vector Capital Management, despite Investcorp's transaction having a higher headline premium. Invescorp failed to provide a counter proposal during the matching period, and Bigtincan Holding's board determined that the Vector proposal was more favourable to target shareholders having regard to consideration, conditionality, funding, certainty and timing.

Competing deals also played a significant factor in deals being unsuccessful in 2023 and 2022.

Aspen Group's unsuccessful $146 million hostile takeover of Eureka Group Holdings did not involve a competing bidder. As discussed on page 52 of this Report, the deal failed after Ben Cottle acquired a blocking stake. Further, the deal was not recommended by the target board and the independent expert opined that the consideration was neither fair, nor reasonable.

Number of deals by reasons for failure



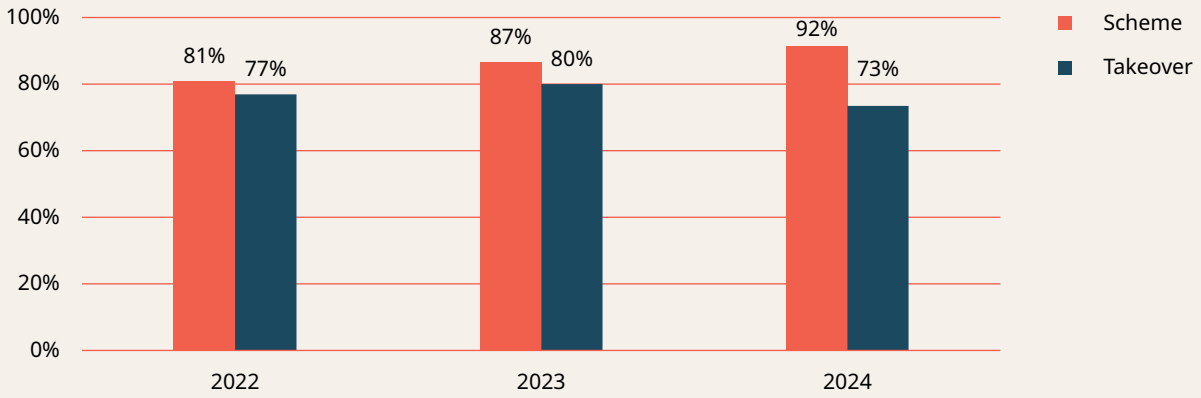
We note that some deals fail for more than one reason.

Transaction structure achieving greatest success

The year-on-year growth in the percentage of successful schemes of arrangement continued in 2024, with a 92% success rate, compared with 87% in 2023 and 81% in 2022.

However, there was a drop in the takeover success rate in 2024, with only 73% successful as compared to 80% in 2023 and 77% in 2022. The underlying data shows that the actual number of unsuccessful takeovers has been consistent over the past 3 years, being 3 per year. However, as there was a smaller number of total takeovers in 2024 (being 11, as compared to 15 in 2023 and 13 in 2022), the percentage of successful takeovers has dropped.

Success rates for schemes vs takeovers



Success rates for hostile and friendly deals

An acquirer having the support of the target board is obviously a key driver of success and the data from the past 3 years bears out this truth.

That said, success rates for friendly and hostile deals were similar in 2024. 87% of all friendly transactions in 2024 were successful, compared to 83% of hostile deals. This can be contrasted with 2022 and 2023, where the differential was 22 percentage points and 38 percentage points, respectively.

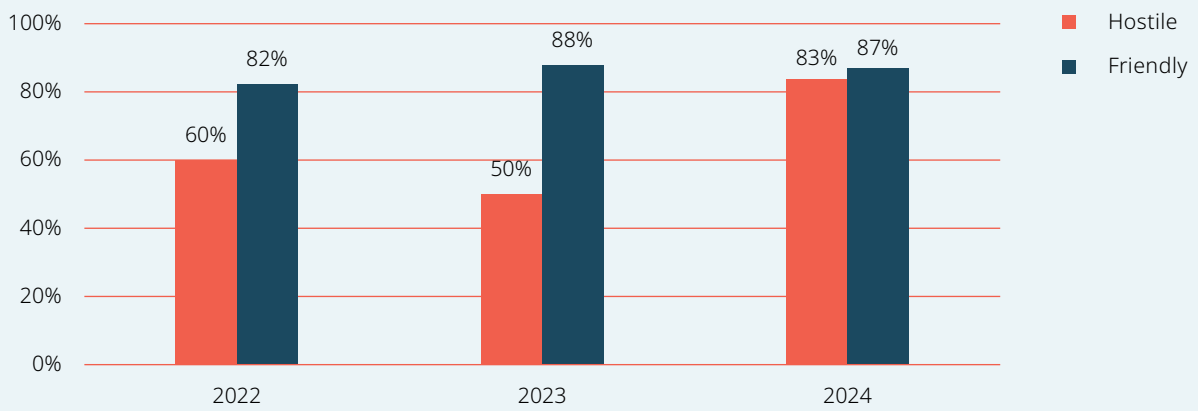
Taking schemes of arrangement out of the equation, which require the support of the target board to implement and can therefore be regarded as friendly, 83% of 2024's hostile takeovers were successful, compared to 60% of friendly takeovers. The 2 unsuccessful friendly bids (Olam Agri / Namoi Cotton and Gemcorp Commodities / Sierra Rutile) involved the friendly bidder being outbid by a second higher bidder. Was this just bad luck or good strategy by the target to get an auction started by agreeing a friendly bid with one party which forced others to move?

In any case the higher success rate for hostile bids over friendly bids is a curious result. Perhaps the point is the vast majority of friendly deals are by schemes now and the data set of 5 friendly takeovers may not be large enough to make meaningful comparisons. Perhaps it can also be partly explained by competing bidders and the different circumstances or fact patterns in relation to those deals.

All of 2024's successful hostile deals involved the acquirer having the benefit of a pre-bid stake:

- in Seven Group's successful $6.9 billion acquisition of Boral, Seven had the benefit of an existing pre-bid interest of 71.6% in Boral (including via a physically settled equity swap). An improvement to the offer terms to incorporate various dividends ultimately led to the Boral board recommending the deal;
- in Viburnum Funds' successful $95 million acquisition of GTN, Viburnum had the benefit of an existing pre-bid interest of 35.6% in GTN;
- in Charter Hall and Hostplus' successful $758 million acquisition of Hotel Property Investments, Charter Hall Group had the benefit of an existing pre-bid interest of 17.9% (a 'strategic stake' which Charter Hall had acquired approximately 5 months before teaming up with Hostplus to launch an offer); and
- the remaining 2 hostile deals involved competing bidders offering higher premiums which were ultimately recommended by the target board, being:
    - Perseus Mining's successful $272 million takeover of OreCorp, where it had the benefit of a 19.9% pre-bid stake, achieving success over Silvercorp Metals' friendly scheme of arrangement; and
    - Genesis Capital's successful $322 million takeover of Pacific Smiles, where it had the benefit of a 19.9% pre-bid stake, achieving success over Crescent Capital Partners' friendly scheme.

Success rates for hostile vs friendly deals



Success rates by bidder type

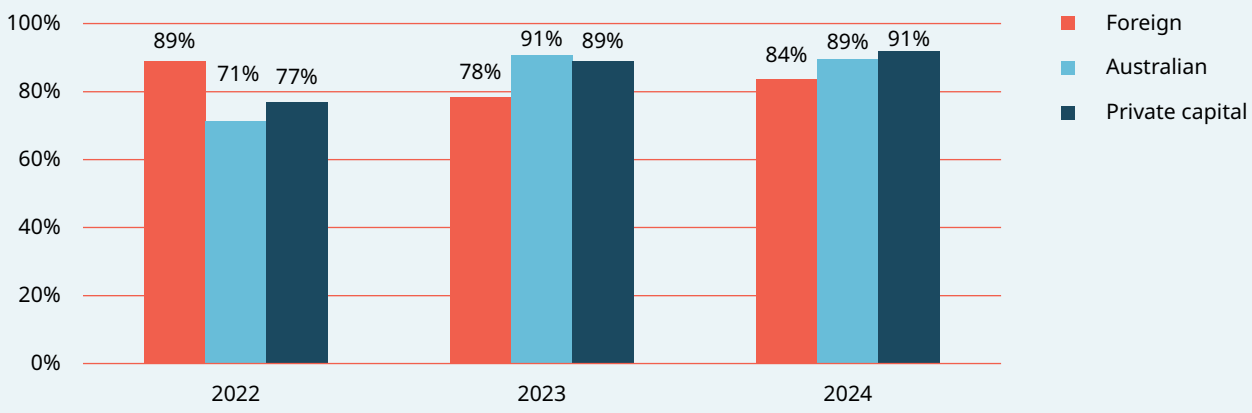
The data over the past 3 years shows that no one bidder type has emerged with a significantly higher success rate.

Private capital deals were significantly more successful in 2024 (91%) when compared to 2022 (where success rates were only 77%), but broadly on par with 2023 (89%). Crescent Capital Partners' $333 million scheme of arrangement with Pacific Smiles was the only private capital deal which failed in 2024.

While foreign bidders enjoyed a higher success rate than Australian bidders in 2022, the opposite was the case in 2023 and 2024. Of the 22 transactions involving foreign bidders in 2024, only 3 announced deals were unsuccessful, being Olam Agri's bid for Namoi Cotton, Gemcorp Commodities' bid for Sierra Rutile Holdings and Investcorp AI Acquisition Corp's 'SPAC' transaction with Bigtincan Holdings, each of which failed in circumstances involving a competing bidder.

FIRB has not publicly blocked any announced public transaction exceeding $50 million for the past 3 years. However, this of course may only be part of the story as the FIRB settings may have discouraged some potential bidders or indeed initial discussions with FIRB, when a transaction remains confidential, may have deterred bidders from proceeding. For further details, see page 79 of this Report.

Success rates by bidder type



A premium over 40% does not always guarantee success.

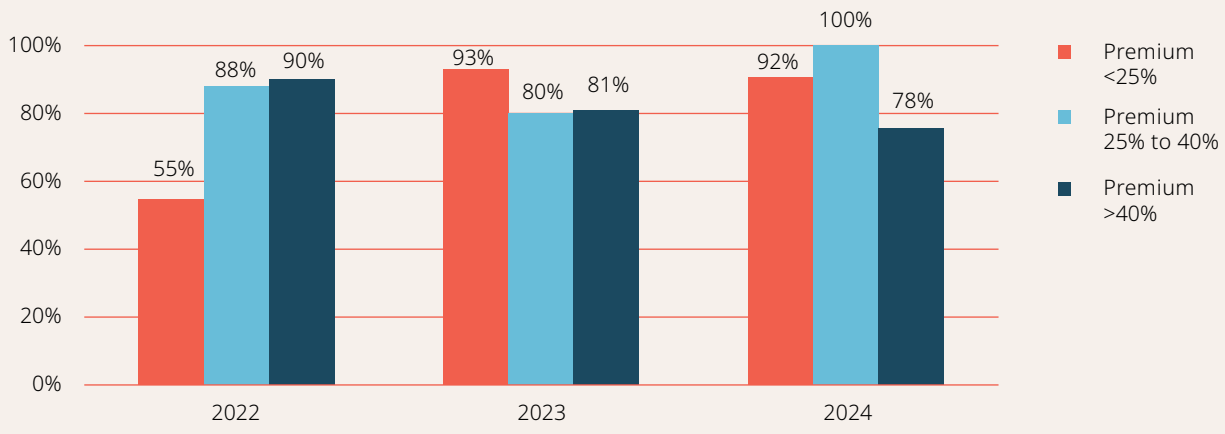
Impact of premium offered on success rates

A premium of above 40% has not always guaranteed success, with acquirers offering these premiums enjoying a success rate of 78% in 2024, down from 81% in 2023 and 90% in 2022.

This can be contrasted with a success rate of 100% in 2024 where the premium offered sat in the 25% to 40% range, up from 80% in 2023 and 88% in 2022.

The data shows that deals offering a more modest premium of less than 25% can still enjoy success. Indeed, the 92% success rate in 2024 for deals offering lower premiums was higher than the success rate for deals offering a premium greater than 40%.

Success rates by premium band



10 | Corporate Regulators and FIRB

In this Chapter we explore the latest developments in relation to the regulation of M&A by the Australian Securities and Investments Commission (ASIC), the Takeovers Panel and the Foreign Investment Review Board (FIRB).

ASIC

The second half of 2024 saw a number of developments in relation to ASIC's regulation and oversight of transactions and entities subject to the Australian takeover rules. In particular, the Federal Government proposed new legislation to significantly amend the beneficial ownership regime in the Corporations Act, and introduced new regulations which, from 1 January 2025, impose new and increased fees for control transactions involving Australian entities including takeovers and schemes of arrangement.

Expansion of beneficial ownership regime

In November 2024, the Federal Government issued the *Treasury Laws Amendment Bill 2024: Enhanced Disclosure of Ownership of Listed Entities* (Cth) (**Exposure Draft**) which proposes significant amendments to Chapters 6 and 6C of the Corporations Act to enhance the beneficial ownership disclosure regimes for listed entities in respect of equity derivatives.

The current position in relation to the disclosure of equity derivative positions in relation to listed entities is set out in Chapter 6C of the Corporations Act and the Panel's Guidance Note 20 (**GN20**):

- Under the Corporations Act, only "relevant interests" arising from ***physically settled*** equity derivatives are required to be included in the calculation of a person's "substantial holding" for purposes of the substantial holder disclosure regime in Chapter 6C as well as, importantly, the takeover limits in Chapter 6.
- Under GN20, the Panel expects the disclosure of long positions in ***cash settled*** equity derivatives of greater than 5% (and subsequent 1% movements).

Despite the Panel's guidance, there have been a number of recent examples of defective disclosure (or non-disclosure of relevant agreements) in relation to cash settled equity derivative positions, which can lead to, and has led to, the Panel declaring unacceptable circumstances (for example, *Pacific Smiles Group Limited* [2024] ATP 12, as set out on page 51).

The Exposure Draft seeks to broadly align the substantial disclosure regime in the Corporations Act with GN20, by extending the meaning of a "relevant interest" to capture interests under equity derivatives, regardless of the settlement method or whether the counterparty has a relevant interest in the underlying securities. This essentially brings all equity derivatives within the new Chapter 6C disclosure regime and Australia into alignment with many other foreign jurisdictions, requiring holders to disclose their derivative-based interests to the market as they would any other interests forming part of a substantial holding, and requiring more detailed disclosure of the nature of the holder's interests in relation to the relevant entity. Among other things, this is likely to:

- complicate the disclosure obligations for potential bidders seeking to engage in stake building strategies, by introducing 5 different categories of disclosable percentages; and
- increase compliance burdens for investment banks who write the derivatives, as they may (among other things) be expected to provide more information to the counterparty regarding their hedging.

It is expected that ASIC will provide amended pro-forma substantial holding notices to accommodate the new disclosure requirements. Something which some will say is long overdue!

Moreover, the expanded definition of "relevant interest" will apply in Chapter 6, meaning, importantly, that all equity derivative positions will be counted when considering if a holder has reached the 20% takeover limitation in section 606.

In addition, the Exposure Draft aims to streamline the disclosure of substantial holdings in foreign companies listed on a financial market in Australia by applying Chapter 6C of the Corporations Act to these entities, subject to ASIC exempting foreign bodies from these requirements where they are already subject to equivalent requirements under their home laws. Currently, Chapter 6C only covers entities formed under the Corporations Act (noting that foreign entities listing on the ASX typically agree to an analogous substantial holding disclosure regime upon being admitted to the ASX).

ASIC's enforcement powers would also be strengthened under the proposed new regime through the ability to issue tracing notices to a wider class of owners and interest holders, including persons reasonably suspected of having certain kinds of involvement with listed entities or being associates of such persons (and the tracing notice regime will also apply to foreign bodies listed on an Australian financial market, not just Australian incorporated bodies). Further, ASIC would also be empowered to make freezing orders for non-compliance with substantial holding notice and tracing notice obligations, effectively extending ASIC's existing powers that can be invoked to assist an ASIC investigation. It will be interesting to see how ASIC uses this broad power.

Overall, the proposed amendments in the Exposure Draft involve significant complexity and, if introduced in the current form, will have a number of important implications for market participants, including both writers and takers of derivatives in relation to both substantial holding disclosure and compliance with takeover rules.

Consultation in relation to the Exposure Draft closed on 13 December 2024 and we now await feedback from Treasury and ASIC. We assume the Government would like to pass these new laws before it is dissolved before the forthcoming federal election in Q2 2025.

Increased lodgement fees for successful control transactions

In December 2024, the *Corporations (Fees) Amendment (Takeovers) Regulations 2024* (Cth) was issued which, from 1 January 2025, introduced significantly higher fees for successful control transactions.

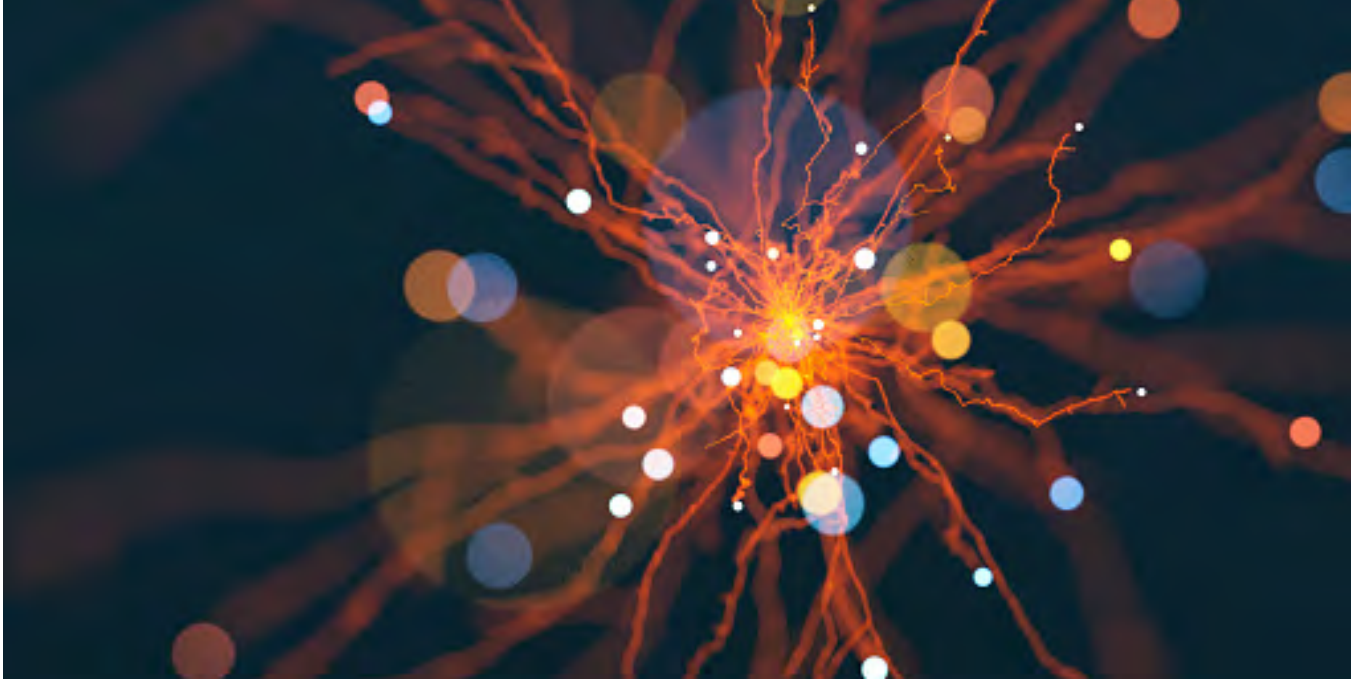
The new Regulations impose significant fees upon the lodgement on certain documents which are necessary to implement successful control transactions involving Australian entities. The fees will apply to the lodgement of the following documents between 1 January 2025 and 31 December 2027:

- a copy of an order of approval of a members scheme of arrangement under Part 5.1 of the Corporations Act;
- a copy of a new or modified constitution of a listed registered scheme as part of a control transaction in relation to a trust scheme; and
- compulsory acquisition and compulsory buy-out notices following a takeover bid.

The quantum of the lodgement fees is cascading by reference to the value of the consideration payable under the transaction (called the "threshold value"). The fee bracket covers transactions with a threshold value of $10 million to over $500 million, with a minimum fee of approximately $10,000 and a maximum of approximately $195,000.

The Treasurer has stated that the revised fee structure better reflects the value to market participants of, and the cost to the Government for providing, the framework facilitating takeovers transactions – rather than being for cost-recovery purposes. ASIC will continue to levy charges for other documents lodged at various stages of the takeover and scheme of arrangement processes. However, only one singular fee will be payable for control transactions which involve lodging more than one document the subject of the new Regulations described above, for example an arrangement involving more than one scheme of arrangement or takeover bid but relating to the same target company.

The increased fees for lodgement of takeover and scheme documents come at a time of broader and continuing increases in the costs of executing control transactions in Australia, particularly in light of the doubling of FIRB fees in 2022, the prospect of significant ACCC filing fees and amounts which are often payable to state revenue offices in order to implement a transaction.



Takeovers Panel

2024 overview

In 2024, the Takeovers Panel received a total of 26 applications, including 5 review applications and 2 withdrawn applications. This is broadly consistent with levels of activity in previous years.

Notably in 2024, there were a significant number of unique applications in which the Panel considered complex and nuanced policy issues, particularly when compared to more recent years where many of the applications were review applications or related to the same topic or company.

The Panel made declarations of unacceptable circumstances in 4 cases and declined to conduct proceedings in 14 cases (in certain cases, as a result of the Panel accepting undertakings from the relevant party/ies). The following chart illustrates the number of Panel applications received during the past 10 years:

The Panel did not issue any new or amended guidance notes (or consult in relation to proposed new guidance) during 2024. However, while considering various applications, the Panel was required to consider and outline its approach to a number of important policy matters, most notably in relation to deal protection mechanisms including reverse break fees and standstill arrangements.

During 2024, the Panel also introduced new standing requirements for applicants in its pro-forma application, requiring applicants to explain how their interests are affected by the relevant circumstances identified under section 657C(2) of the *Corporations Act*.

Reverse break fees on the rise – further guidance required?

Reverse break fees have become far more prevalent in Australian public M&A deals in recent years (see page 62 of this Report for more details).

These fees are typically set at around 1% of the target's equity value, mirroring the Panel's guideline for traditional break fees. However, we have seen reverse break fees far exceeding 1% of the target's equity value in a number of recent transactions (see page 62), potentially recognising the greater impact a failed transaction has on the target and suggesting a shift in market practice.

There is currently no formal Panel guideline in relation to reverse break fees which have, at least in the past, tended not to raise issues within the Panel's jurisdiction. This has the potential to change in the future in light of the emerging prevalence of reverse break fees and evolving transactions structures. The Panel's approach to reverse break fees came into spotlight in 2024 in *Westgold Resources Limited* [2024] ATP 15.

Westgold Resources

In May 2024, the Panel received an application from Ramelius Resources seeking a declaration of unacceptable circumstances in relation to the terms of a proposed merger between Westgold Resources (as bidder) and Karora Resources (as target) pursuant to a Canadian plan of arrangement. The merger agreement included reciprocal deal protection provisions and, relevantly, allowed either the bidder or target to terminate the arrangement if it received and entered into a superior proposal, subject to paying a C$40 million termination fee.

Ramelius subsequently made 2 competing proposals to acquire Westgold, both of which were rejected by Westgold on the basis that they did not constitute a superior proposal for Westgold under the terms of the merger agreement with Karora.

Ramelius sought a declaration of unacceptable circumstances on the basis that, among other things, the termination fee payable by Westgold was equivalent to approximately 4% of Westgold's market capitalisation, which was in excess of the Panel's 1% guidance for break fees and was therefore anti-competitive. Westgold and Karora submitted that the termination fee was consistent with Canadian market practice, and referred to several examples of Australian deals with break fees or reverse break fees exceeding the 1% guideline. Karora also submitted that it would not have entertained an ability for Westgold to have a right to effectively walk away if the break fee was limited to 1%.

In the specific circumstances and having regard to undertakings provided by the parties, the Panel concluded the termination fee was not having an anti-competitive effect on the market for control of Westgold, noting that Ramelius continued to make competing proposals for Westgold, and as such the reverse break fee would not give rise to unacceptable circumstances. The Panel agreed with ASIC's submission that the reverse break fee is one factor in the overall merger agreement that may influence the Panel to find unacceptable circumstances have arisen.

However, the Panel did not reach (and considered it did not need to reach) a concluded view on a number of matters raised in the submissions concerning the reverse break fee, including whether the fee should properly be characterised as a "reverse break fee" or a "break fee", whether it should be subject to the 1% guideline and the relevance of market practice concerning the quantum of break fees in Canadian plans of arrangement. The Panel noted that a future Panel may well need to consider these matters depending on the facts of the particular case.

Where to from here?

Given the emerging and evolving use of reverse break fees in Australian public M&A deals, the Panel may need to develop a policy position or issue guidance to address the complexities and potential anti-competitive effects associated with these fees in Australian control transactions.

In particular, reverse break fees can serve as a lock-up device deterring a third-party from making a competing offer for the bidder itself, potentially raising anti-competitive concerns. This is especially so in the context of mergers of equals and reverse takeovers, where the 'bidder' is sometimes more likely to be a target of a competing bid than the 'target' itself. In these circumstances, and where the bidder is an entity subject to Australian takeover rules, the Panel may be required to consider its approach reverse break fees (including appropriate quantums and triggers), as it does for traditional target break fees. In doing so, the Panel will need to be acutely aware of the impact of any policy on the competitiveness of the Australian market for control transactions relative to its peer markets abroad.

We understand the Panel considered whether guidance on reverse break fees was necessary last time it reissued Guidance Note 7: Deal protection and determined it was not necessary. We agree with that position – parties should have freedom to contract as they wish if it does not lock up control of the target in an inefficient or unacceptable manner which reverse break fees generally do not. That all said, the position regarding reverse takeovers and mergers of equals with potentially anti-competitive break fees may require some more consideration. It will be interesting to see how this evolves if and when another such transaction comes before the Panel.

Reverse break fees can serve as a lock-up device deterring a third-party from making a competing offer for the bidder itself, potentially raising anti-competitive concerns.

Standstills – Enforceable, within reason

During 2024 and for the first time in nearly 15 years, the Panel revisited the nature of standstills in control transactions in 3 separate decisions in quick succession: *Metallica Minerals Limited* [2024] ATP 9, *Pacific Smiles Group Limited* [2024] ATP 12 and *Westgold Resources Limited* [2024] ATP 15.

In this context, standstills refer to contractual mechanisms under which one party is restricted from acquiring an interest in another party's shares for a specified period of time (often between 6 and 12 months), subject to limited exceptions. These restrictions are most commonly agreed to by a prospective suitor (in confidentiality agreements or similar pre-bid agreements) in exchange for the receipt of non-public information regarding the target, in contemplation of a potential takeover bid or scheme of arrangement.

In these recent decisions, a number of policy matters regarding standstill arrangements were considered.

In particular, in *Metallica Minerals*, the Panel considered the acceptability of a mutual standstill restriction (which applied for a period of 2 years, or an earlier date agreed by the parties) agreed to by the parties in connection with a potential control transaction in circumstances where no confidential or price sensitive information was given by either party to the other.

The Panel confirmed a number of key matters in relation to standstill arrangements and their permissible limits. In particular, the Panel made clear that:

- Standstills are not prima facie unacceptable, even if no confidential or price sensitive information has been shared, provided the term of the standstill is commercially justifiable. However, the exchange of price sensitive information and the continued confidentiality of this information is an important consideration.
- The duration of a standstill must be commercially justifiable – the Panel indicated that, generally, a period of 6 to 12 months is consistent with market practice when confidential information is exchanged, however, if no confidential information is shared, the standstill period should be shorter.
- Standstills are voluntarily entered into, with the terms of release up for negotiation, and parties should not rely on the Panel to rewrite the terms of a standstill after the fact. In addition, there is a public interest in enforcing standstills as they encourage business transactions through the exchange of information and therefore have the potential to maximise shareholder value.
- The existence and terms of a standstill may affect the behaviour and considerations of market participants, and targets will need to consider the need to publicly disclose the terms of any standstill.

In *Westgold,* relatedly, the Panel also affirmed its position that there should not be unacceptable fetters or constraints on a company's "fiduciary out" to deal protection mechanisms in order to consider competing proposals, including, in certain circumstances, a competing proposal for a bidder, applying the Panel's Guidance Note 7 to Westgold as bidder.

The Panel concluded that it would not be unacceptable for Westgold to enforce a pre-existing standstill applicable to Ramelius (a prospective suitor for Westgold), which did not fall away upon Westgold entering into the relevant merger agreement to acquire a third party (Karora).

The Panel did however have concerns with the effectiveness of the fiduciary out to certain deal protection provisions agreed to by Westgold in favour of Karora, including a requirement for Westgold not to waive the Ramelius standstill without the prior consent of Karora.

Westgold ultimately agreed to Panel undertakings to remove the requirement for Karora consent, while also noting that it did not intend to release Ramelius from its standstill restrictions in any event. The Panel did not need to determine the broader question of whether and in what circumstances a bidder that is "in-play" (eg Westgold) should prima facie have a termination right to consider competing proposals (as Westgold had already negotiated such a right with Karora), which, as of today, remains a live policy question to be further tested in the Panel.

It appears unlikely that the Panel will, for a variety of reasons, seek to intervene in standstill arrangements absent clear and serious unacceptable circumstances (having regard to the above key considerations). However, given the nuanced issues arising in different circumstances, we expect that the Panel will continue to assess the adequacy of its existing policy and consider the appropriateness of issuing formal guidance to market participants.

New procedural rules

In January 2024, the Panel announced changes to its pro-forma application, requiring applicants to explain how their interests are affected by the relevant circumstances identified under section 657C(2) of the Corporations Act. The Panel also announced intentions to amend its Procedural Guidelines to explicitly reference standing as part of the Panel's routine consideration as to whether it has jurisdiction to conduct proceedings in relation to the application.

These amendments come following discussions with the Law Council of Australia and are part of a broader project being undertaken to streamline Panel processes.

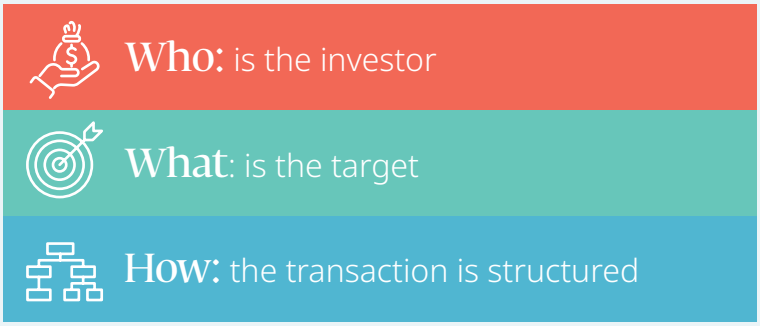
FIRB

2024 reforms – a future made in Australia

In the latter part of 2024, foreign investors waited to feel the impact of the 'major' changes to Australia's foreign investment regime that were announced by the Australian Government in May 2024.

The changes were intended to streamline the foreign investment application and review process by fast tracking lower risk applications, and more rigorously assessing the national interest and security implications of higher risk proposals.

Lower risk investments will be identified through the following criteria:



The Government set itself the ambitious target of processing 50% of investment proposals within the 30 day statutory decision period from 1 January 2025. By adopting this streamlined approach to low risk investments, FIRB is intending to focus on more complicated transactions where there will be increased scrutiny of national security risks. This includes:

- investment in sensitive sectors such as critical minerals, technology, critical infrastructure, energy;
- investment in proximity to certain Government facilities and in targets having access to sensitive data.

The Australian Government also committed to improving transparency in communicating to foreign bidders when they can expect a longer assessment period. Whilst we wait for FIRB's reporting for the second half of 2024 to identify whether processing times are improving, FIRB continues to be at the mercy of its consult partners and other Government agencies when processing applications, and very few foreign bidders seem to be experiencing the benefits.

Fees

Part of the May 2024 overhaul was a largely welcomed move by the Australian Government to introduce refunds (75%) to unsuccessful bidders in competitive processes. The changes were aimed squarely at improving competition among foreign and domestic bidders in competitive processes, and we are still waiting for guidance from FIRB on the approach to these refunds. That said, these changes are likely to be of limited benefit to foreign bidders in public M&A transactions, given they would not generally be structured as competitive auction processes.

Application, rejection and withdrawal

2024 continued the same as previous years, and while most applications are approved by FIRB, it is impossible to determine the number of rejections. The practice of withdrawing applications continues, including where an early determination is made that the proposed transaction is contrary to the national interest and / or national security. Rejections appear to be on the increase, however, it continues to be difficult to interpret FIRB's reporting on the number of withdrawals.

11 | Competition Regime

In this Chapter, we explore the latest developments from Australia's competition regulator, the Australian Competition and Consumer Commission (**ACCC**) in relation to mergers and acquisitions and the upcoming changes to the merger regime.

ACCC – The year in review

307

In the financial year ending 30 June 2024, the ACCC reviewed 307 mergers or acquisitions under the informal clearance process. This is similar to the number of acquisitions reviewed in previous years. Of these:

- **285 were pre-assessed** (i.e. not publicly reviewed due to a low risk of competition concerns).
- **22 were subject to public review**. Of these:
  - **2 were opposed outright** (Transurban Group's proposed acquisition of Horizon Roads, opposed in September 2023 and Australian Clinical Labs' proposed acquisition of Healius, opposed in December 2023);
  - **5 were withdrawn** (Icon Group's proposed acquisition of a lease at St John of God Hospital Geelong; Global Payments Australia 1's proposed acquisition of School Bytes Learning; Endeavour Group's proposed acquisition of Price Consort Hotel; realestate.com.au's proposed acquisition of Dynamic Methods; and Greencross' proposed acquisition of Habitat Pet Supplies), 4 of which occurred after a Statement of Issues was published;
  - **1 was discontinued** following developments in overseas jurisdictions (Microsoft's proposed acquisition of Activision Blizzard);
  - **1 was not opposed** after acceptance of a remedy (Viva Energy's proposed acquisition of OTR Group); and
  - **13 were not opposed**, including 1 proposed acquisition which was revised to address the ACCC's competition concerns.

2

In addition, the **ACCC finalised 2 merger authorisations** in this period:

Brookfield / EIG's proposed acquisition of Origin Energy that was granted on conditions; and

ANZ's proposed acquisition of Suncorp Bank that was denied by the ACCC, but subsequently authorised by the Australian Competition Tribunal in February 2024, as discussed further below.

8

Also in this period, the **ACCC completed 8 investigations of completed acquisitions**, details of which are not publicly available.

Deal Spotlight

ANZ's acquisition of Suncorp Bank

The Australian Competition Tribunal (Tribunal) authorised Australia and New Zealand Banking Group's (ANZ) proposed acquisition of 100% of the issued share capital in SBGH Limited from Suncorp Group Limited (Suncorp Group). SBGH owns 100% of the shares of Suncorp-Metway Limited (Suncorp Bank).

ANZ provides a range of banking products and services to retail and business customers in Australia and New Zealand, and to institutional customers globally. Suncorp Bank provides a range of banking products and services to retail and business customers in Australia. ANZ had initially sought merger authorisation from the ACCC for the proposed acquisition. The ACCC decided not to grant authorisation and ANZ appealed to the Tribunal.

The Tribunal set aside the ACCC's decision and found the proposed acquisition would not be likely to have the effect of substantially lessening competition in the national home loans market, or local or regional Queensland markets for agribusiness customers and small to medium enterprise (**SME**) customers. Further, the Tribunal was satisfied that the proposed acquisition would be likely to result in a net public benefit.

The Tribunal considered 2 relevant counterfactuals that had a realistic commercial possibility of occurring: a "No Sale counterfactual" under which Suncorp Bank remained under the ownership of Suncorp Group, and a "Bendigo Merger counterfactual" under which Suncorp Bank would merge with Bendigo Bank.

In the home loans market, the Tribunal found the proposed acquisition would not materially increase the prospect of coordination, including because there would not be any substantive change in the structure of the market.

In the agribusiness banking markets, the Tribunal was satisfied ANZ would remain constrained by other competitors such as NAB and Rabobank. Suncorp Bank's agribusiness offering was not particularly unique or unable to be replicated by other competitors and barriers to expansion are relatively low.

In the SME banking markets, the Tribunal found that while there would be some loss of competition from the removal of Suncorp Bank as an independent competitor, there would still be a large number of competitors remaining, barriers to expansion are relatively low, and ANZ and Suncorp Bank are not particularly close competitors.

The Tribunal therefore authorised the proposed acquisition. Further, the Tribunal was satisfied the proposed acquisition would result in likely public benefits in the form of productive efficiencies from integration synergies. These outweighed any likely public detriments given that any reduction in competition was not likely to be meaningful and was uncertain.

Ashurst acted for ANZ in this matter.

Our top 5 themes for merger clearance in Australia in 2025

1 Legislation and regulation filling perceived gaps in merger regime

In November 2024, Parliament passed laws to transform Australia's merger clearance regime from an informal system to a mandatory and suspensory one, commencing 1 January 2026 (but available voluntarily from 1 July 2025).

These important reforms, comprising both procedural and substantive amendments to the *Competition and Consumer Act 2010* (Cth) (**CCA**), are designed to address shortcomings that various parties, including the ACCC, argued exist in the informal regime.

- The ACCC is concerned that it does not always receive timely, upfront notification of proposed acquisitions, and further, that parties sometimes threaten to complete their acquisitions before the ACCC can complete its review.
- The ACCC is also concerned that serial / creeping acquisitions are not adequately captured, nor are acquisitions that create, strengthen or entrench a substantial degree of market power.

The move to a mandatory and suspensory regime resolves the ACCC's concerns around visibility and time to complete its reviews. The amendments also allow the ACCC to treat the effect of the acquisition as the combined effect of any acquisitions by the parties and their related bodies corporate in the same or substitutable goods or services in the previous 3 years (to address serial acquisitions) and make refinements to the test the ACCC will apply (to include acquisitions that create, strengthen or entrench a substantial degree of market power).

The passage of the laws followed multiple rounds of consultation by government on the design of the new regime, as part of the Competition Review Taskforce. A snapshot of the new merger clearance regime is set out in the table on pages 86 to 87 of this Report. Further consultation on the detail is expected in early 2025.

2 Teething problems from July 2025 onwards

From 1 July 2025 to 31 December 2025, the ACCC will be administering both the existing informal clearance system and the new system in parallel, as parties may voluntarily opt in to the new process once it becomes available on 1 July 2025. We expect a number of merger parties will opt-in, with numbers increasing in the final quarter of 2025 as we approach the closure of the informal regime. This will be a test for the new system which will come under increasing pressure, even before the new regime has "officially" commenced.

There are numerous potential pressure points and teething problems that may emerge as the new regime takes effect, many of which will have an impact on deal timetables. This includes:

- parties who seek informal clearance but do not receive it before 31 December 2025 will likely have to re-notify under the mandatory regime. The ACCC transitional guidelines released 4 March 2025 note that "where appropriate", the ACCC will try to consider these acquisitions through the new process more quickly, reflecting work already undertaken during the informal review. However, there is little certainty about how this will operate and in practice, parties may seek to avoid this ambiguity by opting-in to the new regime voluntarily;
- an increased amount of work is likely to be required by parties in order to complete the notification form and provide all the necessary information to the ACCC, particularly if review by the Tribunal is anticipated;

- an unspecified and potentially lengthy amount of time may be spent in pre-notification discussions, as the ACCC comes to grips with the information and data available in each merger;
- we expect a higher volume of notifications than currently forecast, which may result in resourcing issues at the ACCC; and
- as it does not currently produce very detailed reasons in most cases, the ACCC may experience difficulties in complying with its new obligations to do so, while also meeting the statutory timeframes for a review.

In announcing its renewed priorities for 2025-2026, the ACCC has highlighted that successful implementation of merger reform, promoting compliance with the new regime, and taking enforcement action, where necessary, will be a significant focus for the agency in the year ahead. While the ACCC is doing what it can to prepare, teething problems are inevitable. Apart from anything else, the ACCC will require significant additional resources to deal with an increased workload and with novel situations. This would likely stretch any organisation and it remains to be seen how quickly the ACCC can rise to meet these challenges.

3 Close scrutiny of mergers in certain industries

The new merger regime will implement economy-wide merger notification thresholds, but certain "high risk" sectors may be designated by the Treasurer, meaning that lower thresholds will apply in those sectors. The government has announced that supermarkets will be designated, and it will also consider targeted notification requirements for the fuel, liquor, and oncology-radiology sectors. The ACCC has also called for pathology to be considered. If designated, mergers in these sectors would face greater scrutiny by the ACCC. The government has also recently identified childcare, aged care, medical GPs and dentists as hot-spots for serial acquisitions, meaning that acquisitions in these industries are also likely to receive close examination.

The ACCC is already closely reviewing mergers in many of these sectors under the existing informal regime e.g. its opposition to Australian Clinical Labs' proposed acquisition of pathology provider Healius in December 2023, and its Statement of Issues in June 2024 in relation to oncology-radiology provider Icon's proposed acquisition of leases at various hospitals, among others. In addition, the ACCC continues to carefully scrutinise mergers that:

- are in sectors where mergers may **directly affect the cost of living**, including supermarkets, telecommunications and essential services as well as healthcare generally, e.g. Coles' acquisition of fresh milk processing facilities from Saputo Dairy Australia;
- involve **digital aspects or access to data,** e.g. the merger of Sigma with Chemist Warehouse, and realestate.com.au's proposed acquisition of Dynamic Methods; or
- comprise **private equity roll-ups** e.g. Greencross' proposed acquisition of pet products and services supplier, Habitat, that was ultimately withdrawn by the parties.

4 Increased reliance on economic analysis and data

While the ACCC currently undertakes economic and data analysis as part of many of its merger reviews, this capability will be strengthened in preparation for the new regime. In particular, the ACCC will rely on enhanced economic analysis supported by data at each stage of a merger review. This may, where appropriate, include use of economic tools like diversion ratios to test the degree of competition between relevant products and services and Gross Upward Pricing Pressure Index (GUPPI) analysis to test post-merger incentives to raise prices.

The ACCC also intends to support its reasons with in-depth and extensive economic and data analysis. While the reliance on economics and data has the potential to aid the analysis of some mergers, it will not be without challenges for others. In particular, in industries where the types of data on which the ACCC wishes to rely are not available, it may be necessary for merger parties to explain this gap to the ACCC. In mergers where the raw data exists but has never been analysed in this way, parties will need to spend time conducting this analysis themselves (with the assistance of their own economists), in order to be able to properly anticipate and respond to the ACCC's likely concerns.

5 Novel theories of harm

International competition regulators are increasingly demonstrating a willingness to adopt novel theories of harm when opposing mergers, particularly digital ones.

In *Booking / eTraveli*, for instance, the European Commission relied on an "ecosystems" theory of harm. Booking Holdings (**Booking**), the leading hotel online travel agent (**OTA**) in Europe, proposed to acquire eTraveli, a supplier of flight OTA services in Europe. The Commission found that the merger would allow Booking to expand its travel services "ecosystem", as a flight OTA product would generate significant additional traffic to Booking's platform and a significant share of these additional customers would stay on Booking's platform to book accommodation due to brand strength and customer inertia. As a result, even though the deal related to acquiring an operator in a different market (hotels vs flights), the Commission found that the deal would have made it more difficult for rival hotel OTAs to compete, strengthening Booking's alleged dominant position in the hotel OTA market.

Under the new merger regime, as part of the ACCC's analysis of whether a merger would have the effect or likely effect of substantially lessening competition, the ACCC may consider whether an acquisition has the effect or likely effect of "creating, strengthening or entrenching a substantial degree of power in the market". Where an acquisition by a company with market power gives rise to competition concerns beyond horizontal overlaps or vertical foreclosure issues, the ACCC may look to novel theories of harm such as "ecosystem" effects to support its conclusion on "creating, strengthening or entrenching" market power. The challenge for parties is that, as these theories of harm are still emerging, they may (at least initially) prove more difficult to respond to than conventional ones.

Snapshot of Australia's new merger clearance regime

A high level outline of the new merger clearance regime is set out below. The new regime will commence on 1 January 2026, but will become available on a voluntary basis from 1 July 2025. Merger authorisation will no longer be available from 1 July 2025.

Mandatory	Parties to acquisitions that exceed specified thresholds will be required to notify the ACCC before putting the acquisition into effect, unless the ACCC has determined that the acquisition does not require notification.
Suspensory	A notifiable acquisition cannot complete without ACCC approval.
Filing fees	Filing fees are likely to be between $50,000 - $100,000 per deal, but are yet to be finalised.
ACCC primary decision-maker; limited review by Tribunal	The ACCC will be the primary decision-maker, with limited merits review by the Australian Competition Tribunal.
Timelines	The following timelines will apply, but are subject to pre-filing discussions, extensions and clock-stopping: Phase 1: 15-30 business days Phase 2: 90 business days Public benefit application: 50 business days (commencing after conclusion of Phase 2), and Tribunal review: 90 calendar days
Notification thresholds	The Government has announced the proposed thresholds, but further consultation is anticipated and these are therefore subject to change. It is clear from the proposals that a greater number of transactions will be notifiable than is currently the case.
Control	"Control" means the capacity of one entity to determine the outcome of decisions about another entity's financial and operating policies. Acquisitions that do not confer or change "control" are, in general, not required to be notified. However, Ministerial determination will be used to adjust the scope of this exemption and the Government has announced, for example, that it will require acquisitions that result in the acquirer holding more than 20% voting power in unlisted / private companies to be notified (provided monetary thresholds are met). Ministerial determination may also be used to require that other deals be notified, including changes in the type of control from joint to sole, or changes in joint control (again, provided monetary thresholds are met).
Chapter 6 acquisitions	A carve-out has been created to provide a safe-harbour for acquisitions involving publicly listed companies, widely held (unlisted) companies and listed registered schemes (such as managed investment trusts) that do not result in a person having voting power above 20%. These deals will not need to be notified to the ACCC. See also the comments on Transparency and Confidential review below.

Waivers	Parties will be able to seek a "notification waiver" from the ACCC. Upon application, the ACCC will be able to determine that an acquisition is not required to be notified.
Pre-notification discussions	Parties may engage in pre-notification discussions with the ACCC. There is no fixed timeline for this part of the process but, at least initially, it may take some time.
Transparency	Information about notified acquisitions will be published on a public register maintained by the ACCC. Further consultation is expected to take place in 2025 in relation to the requirements for the ACCC's public register.
Surprise hostile takeover bids - confidential review	Confidential review will be available for certain deals involving surprise hostile takeover bids but various conditions apply. These include requirements that the body corporate is subject to the takeover laws in the Corporations Act; the acquisition is a takeover acquisition in relation to a proposed takeover bid; the proposed bid has not been publicly proposed; and the notifying party makes a written request for confidentiality at the time of notifying the ACCC. The legislation also prescribes various additional requirements for the written request. Confidential applications will not be listed on the public register for 17 business days.
Land	All land acquisitions meeting the proposed monetary thresholds must be notified unless they fall within limited exemptions. The exemption will cover land acquisitions in relation to residential property development or any business primarily engaged in buying, selling or leasing property which does not intend to operate a commercial business (other than leasing) on the land.
Penalties	Penalties will apply for failure-to-file (i.e. notify) and gun-jumping (i.e. failure to suspend completion pending the ACCC's decision), consistent with existing penalties for contravention of the CCA. Penalties will also apply for providing false or misleading information. New ACCC surveillance capabilities will monitor for non-compliance with notification requirements.

Ashurst are singularly knowledgeable about various aspects of both domestic and cross-border situations across a variety of industries and geographies. They can disseminate and assess complex contractual topics into actionable recommendations. A highly competent team across all levels, senior to junior.

Corporate / M&A – Asia-Pacific, Chambers Asia-Pacific 2024

12 | 2024 Deal list

Target	Bidder	Final Deal value (A$)	Deal structure	Bidder Origin	Cash	Status
Altium Limited	Renesas Electronics Corporation	$9.1 billion	Scheme	Japan	Cash	Successful
Boral Limited	Seven Group Holdings Limited	$6.9 billion	Takeover	Australia	Cash & Scrip	Successful
De Grey Mining Limited	Northern Star Resources Limited	$5 billion	Scheme	Australia	Scrip	Current
CSR Limited	Compagnie de Saint-Gobain	$4.3 billion	Scheme	France	Cash	Successful
Alumina Limited	Alcoa Corporation	$3.3 billion	Scheme	United States of America	Scrip	Successful
PSC Insurance Group Limited	The Ardonagh Group	$2.3 billion	Scheme	United Kingdom	Cash	Successful
Adbri Limited	CRH plc / Barro Group	$2.1 billion	Scheme	Ireland	Cash	Successful
APM Human Services Limited	Madison Dearborn Partners, LLC	$1.4 billion	Scheme	United States of America	Cash	Successful
SG Fleet Group Limited	Pacific Equity Partners	$1.3 billion	Scheme	Australia	Cash	Current
Silver Lake Resources Limited	Red 5 Limited	$1.1 billion	Scheme	Australia	Scrip	Successful
MMA Offshore Limited	Cyan Renewables (an infrastructure platform of Seraya Partners)	$1.1 billion	Scheme	Singapore	Cash	Successful
Hotel Property Investments	Charter Hall Retail REIT and Hostplus	$758 million	Takeover	Australia	Cash	Successful
Latin Resources Limited	Pilbara Minerals Limited	$605 million	Scheme	Australia	Scrip	Successful
Rex Minerals Limited	Salim Group (through MACH Metals Australia Pty Ltd)	$393 million	Scheme	Indonesia	Cash	Successful
Genex Power Limited	Electric Power Development Co., Limited (J-Power)	$382 million	Dual Scheme / Takeover	Japan	Cash	Successful
Base Resources Limited	Energy Fuels Inc	$374 million	Scheme	United States of America	Scrip	Successful

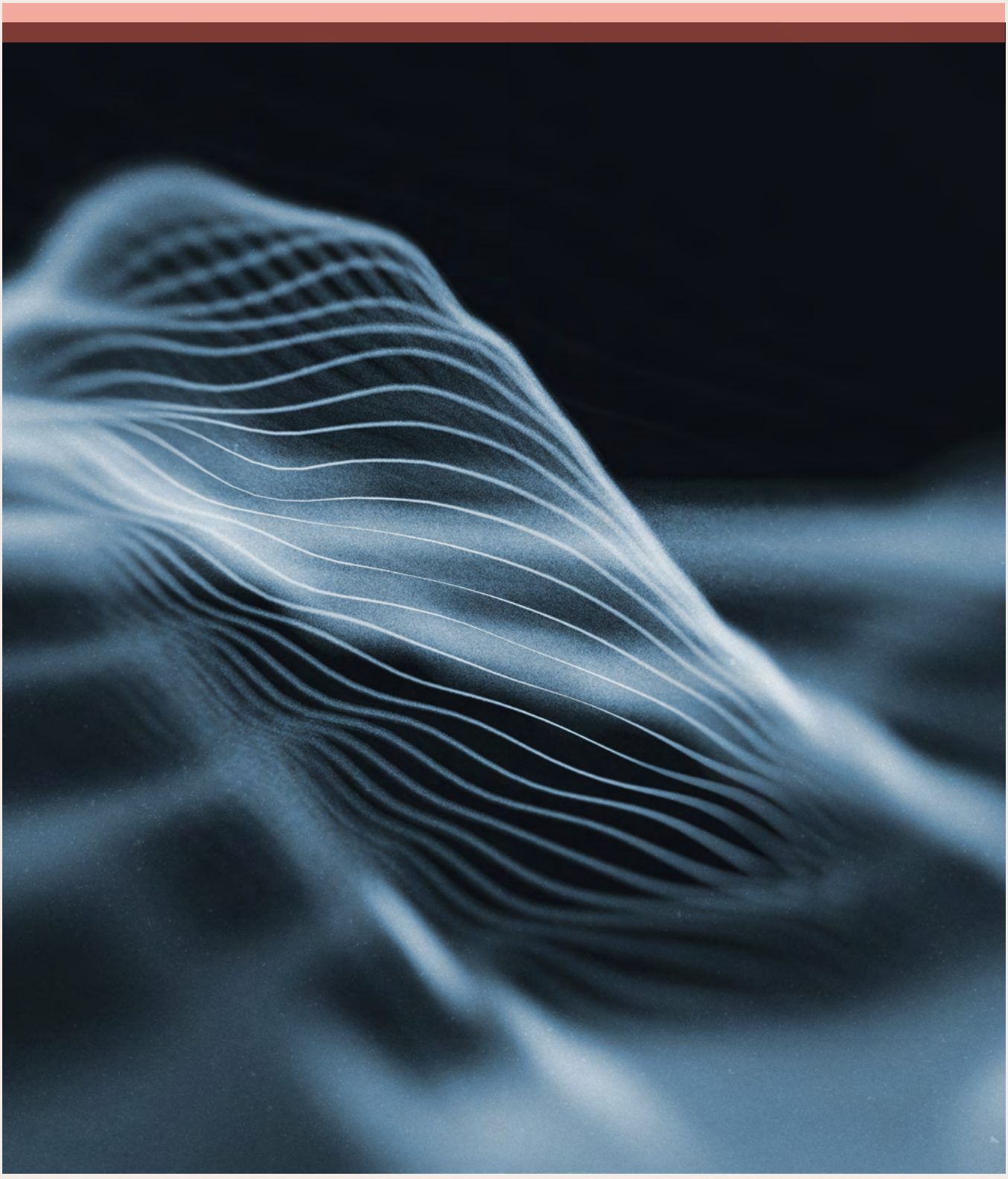
Target	Bidder	Final Deal value (A$)	Deal structure	Bidder Origin	Cash	Status
Capitol Health Limited	Integral Diagnostics Limited	$352 million	Scheme	Australia	Scrip	Successful
Pacific Smiles Group Limited	Crescent Capital Partners	$333 million	Scheme	Australia	Cash	Unsuccessful
Pacific Smiles Group Limited	Genesis Capital	$322 million	Takeover	Australia	Cash	Successful
TASK Group Holdings Limited	PAR Technology Corporation	$311 million	Scheme	United States of America	Cash	Successful
OreCorp Limited	Perseus Mining Limited	$272 million	Takeover	Australia	Cash	Successful
QANTM Intellectual Property Limited	Adamantem Capital	$261 million	Scheme	Australia	Cash	Successful
Newmark Property REIT	BWP Trust	$247 million	Takeover	Australia	Scrip	Successful
Ansarada Group Limited	CapVest Partners LLP (through its portfolio company Datasite)	$236 million	Scheme	United States of America	Cash	Successful
Auswide Bank Limited	MyState Bank Limited	$227 million	Scheme	Australia	Scrip	Successful
Bigtincan Holdings Limited	Investcorp AI Acquisition Corp.	$220 million	Scheme	Cayman Islands	Cash	Unsuccessful
QV Equities Limited	WAM Leaders Limited	$218 million	Scheme	Australia	Cash	Successful
Bigtincan Holdings Limited	Vector Capital Management	$200 million	Scheme	United States of America	Cash	Current
Silk Logistics Holdings Limited	DP World Australia Limited	$188 million	Scheme	United Arab Emirates	Cash	Current
TPC Consolidated Limited	Beijing Energy International Holding Co., Ltd	$179 million	Scheme	China	Cash	Current
Namoi Cotton Limited	Louis Dreyfus Company B.V.	$160 million	Takeover	Netherlands	Cash	Successful

Target	Bidder	Final Deal value (A$)	Deal structure	Bidder Origin	Cash	Status
Namoi Cotton Limited	Olam Agri Holdings Limited	$155 million	Takeover	Singapore	Cash	Unsuccessful
Eureka Group Holdings Limited	Aspen Group Limited	$146 million	Takeover	Australia	Scrip	Unsuccessful
Southern Cross Gold Limited	Mawson Gold Limited	$133 million	Scheme	Sweden	Scrip	Successful
Midway Limited	River Capital Pty Ltd	$106 million	Scheme	Australia	Cash	Successful
McGrath Holding Company Limited	Knight Frank Australia / Bayley Corporation Limited consortium	$95 million	Scheme	Australia	Cash	Successful
GTN Limited	Viburnum Funds Pty Limited	$95 million	Takeover	Australia	Cash	Successful
Eumundi Group Limited	Fortitudo Group (through SEQ Hospitality Group)	$81 million	Dual Scheme / Takeover	Australia	Cash	Successful
Sierra Rutile Holdings Limited	Leonoil Company Limited	$79 million	Takeover	Sierra Leone	Cash	Successful
Prospa Group Limited	Salter Brothers Tech Fund consortium	$74 million	Scheme	Australia	Cash	Successful
Sierra Rutile Holdings Limited	Gemcorp Commodities Assets Holdings Limited	$70 million	Takeover	Malta	Cash	Unsuccessful
Damstra Holdings Limited	Ideagen Limited	$69 million	Scheme	United Kingdom	Cash	Successful
SelfWealth Limited	Bell Financial Group Limited	$58 million	Scheme	Australia	Cash	Current

We particularly value the Ashurst team for their commercial acumen and problem-solving abilities, great project management and attention to detail in drafting.

Corporate / M&A – Australia, Chambers Asia-Pacific 2025

13 | Methodology



This Report is based on our analysis of 43 public M&A transactions involving Australian targets which are listed on ASX that were announced in 2024. A full list of deals is set out on pages 89 to 91.

Deals are only included in our data set if a binding scheme, merger or takeover implementation agreement was entered into, or if the bidder had announced an intention to proceed with a firm takeover offer. Our Report does not extend to non-binding indicative offers which did not result in a scheme of arrangement or takeover offer being announced.

The 43 deals included in our analysis each exceeded $50 million in total consideration. The market value of a deal has been calculated based on the 100% of the target's equity on a fully-diluted basis, taking into account the disclosed treatment of equity incentives in connection with the scheme or takeover offer, and the offer price per share (and for scrip deals, this price is calculated based on the bidder's share price on the date of the announcement of the deal). We have excluded smaller transactions as at times they can contain bespoke arrangements which may skew the data, and are generally of less relevance to Ashurst's broader network of clients, banks and other advisers with whom we work.

The Report excludes foreign transactions involving acquisitions of CHESS Depositary Interests (CDIs) and corporate restructurings between parties who are related or otherwise connected, along with any re-domiciliations.

Our data has tracked progress of these transactions until 17 February 2025, and consequently some announced transactions were still in progress at the time this Report was published.

We have classified a bidder as foreign or Australian based on the domicile of the bidder (or, where applicable, the domicile of the majority shareholder of the ultimate holding company of the bidder).

We have classified a deal as "private capital" if the bidder involves private equity, private capital or a superannuation fund, either as sole bidder or as the majority participant in a consortium.

We have classified the sector and industry group of a deal based on the official classification of the target company under the Global Industry Classification Standard.

Deals are classified as offering cash consideration if the target shareholder has the ability to elect to receive all cash.

We have classified a deal as "hostile" if the offer was not initially recommended by the target board and target shareholders are encouraged to reject it. We have treated all schemes of arrangements as "friendly".

Premiums offered by a bidder were measured against the undisturbed share price of the target, being the closing price of the target's shares on the day prior to announcement of the deal. If it's clear that a potential for a bid has become public at an earlier time (eg because of a leak or an announcement of initial discussions), the premium is measured against the closing price of the target's shares on the day prior to the date the potential for a deal became public. If a deal involved a competing bidder, the premium of the second and later bids is measured against the pre-bid closing price relating to the first bid.

We have treated a scheme as "successful" once it has become effective. We have treated a takeover bid as "successful" if it has become unconditional and the bidder has substantially increased its shareholding in the target having regard to its objectives. A deal is classified as "unsuccessful" if the bidder fails to obtain regulatory approval, shareholders vote the scheme down at the scheme meeting, a condition precedent is not satisfied, the offer is withdrawn/lapses, and/or the parties terminate the scheme implementation deed or merger agreement.

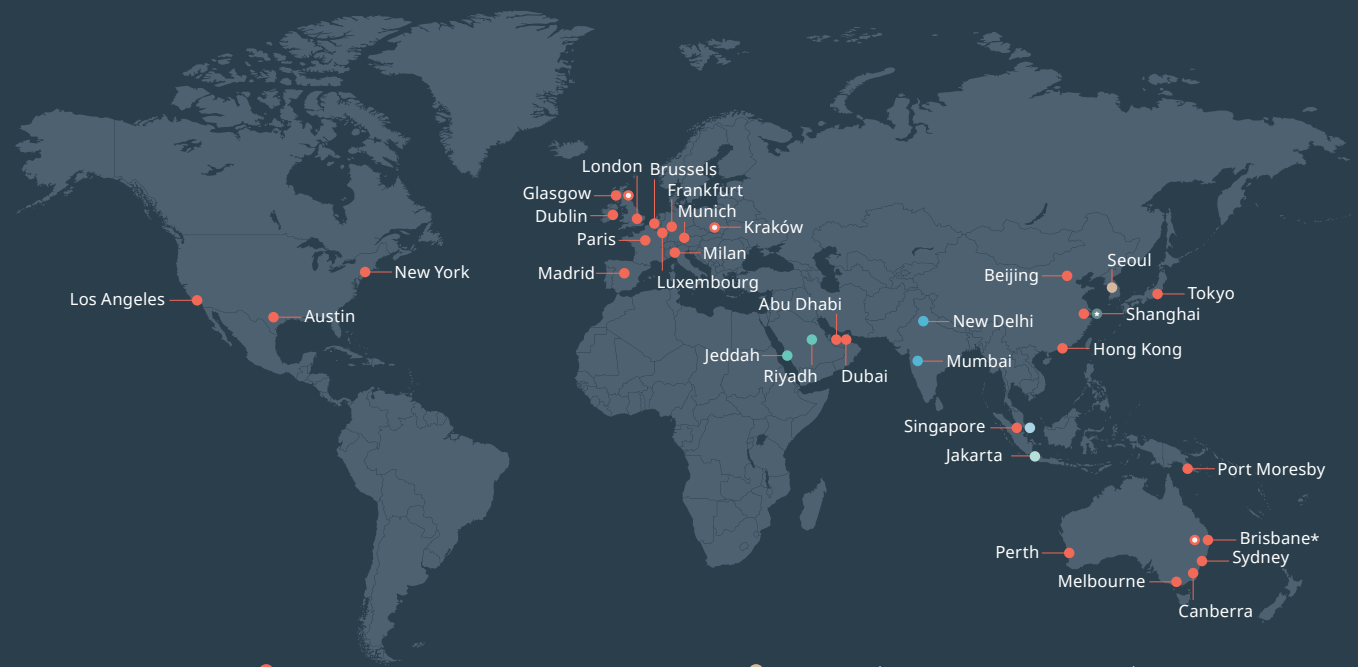
All dollar references are to the Australian dollar unless otherwise stated. If the deal consideration was originally quoted in a foreign currency, we have converted the amount to Australian dollars based on the RBA's exchange rate data on the day of announcement.

> Our Ashurst team is very practical, and solutions focussed. They are very knowledgeable about what the 'market' is and great advocates for us to achieve the best result.
>
> Corporate / M&A – Australia, Chambers Asia-Pacific 2025

14 | About Ashurst

Ashurst is a leading international law firm offering top tier, multi-jurisdictional legal expertise, complemented by risk, compliance and NewLaw capabilities. We act for a broad range of multinational and Australian corporates, financial institutions, private equity firms, superannuation / pension funds and governments.

With 31 offices across 4 continents, and a network of over 500 partners and 2,000 legal, risk and compliance practitioners across Australia, Asia, Europe, the Middle East, North America and the United Kingdom, our global expertise combined with the knowledge and understanding of local markets, ensures we can assist our clients to position for successful outcomes in today's global business environment.



31 Offices

18 Countries

11 Time zones

450+ Partners

1800+ Lawyers

2000+ People

Our Corporate and M&A team

Our Corporate and M&A team advises clients across the full range of corporate expertise including public M&A, private M&A, joint ventures, private equity, high growth and venture capital, equity capital markets, reorganisations, corporate advisory, corporate governance and regulatory compliance.

Ashurst provides Legal, Risk Consulting and NewLaw services to help clients navigate the complexities of M&A transactions and post-transaction integration. Our M&A Lifecycle solution delivers a coordinated and cohesive approach across the life of an M&A transaction. It helps simplify the deal process and substantially reduce execution risk. Legal-led and risk informed, M&A Lifecycle solution provides legal, risk and compliance insights at all stages of a deal - from planning and strategy through due diligence and transaction negotiations, to execution and post-transaction integration and monitoring.

Significant M&A transactions are critical business matters for any organisation and the teams involved. Managing the strategy, commercial drivers and legal matters of the transaction as well as all relevant stakeholders including counterparties, Boards, bankers, lawyers, consultants, regulators and other stakeholders requires a considered and thoughtful approach. The Ashurst team, both in Australia and throughout the world offer experienced, commercial, proactive and pragmatic legal advice to assist clients successfully achieve their objectives and navigate whatever challenges and hurdles that materialise.

The firm has proactive and skillful management of the client and a strong understanding of the key commercial issues and risks for the client.

Corporate / M&A – Australia, Chambers Asia-Pacific 2025

Some recent large-scale and high-profile transactions our Australian team have acted on include advising:

7-Eleven on the competitive sale of 7-Eleven Australia, delivering $2 billion for the founding shareholders.

Adamantem Capital on its successful $261 million acquisition of QANTM Intellectual Property Limited by scheme of arrangement.

AGL Energy on its $150 million acquisition of a 20% equity interest in Kaluza Limited.

Alcoa Corporation on its successful $3.3 billion acquisition of Alumina Limited by scheme of arrangement.

Ansell on its acquisition of Kimberley-Clark's personal protective equipment business for US$460 million (c. A$980 million) and acquisition financing including an equity raising of $465 million and debt financing.

ANZ Banking Group on the $4.9 billion acquisition of Suncorp Bank, including all aspects of the successful ACCC outcome.

Bell Financial Group on the proposed acquisition of SelfWealth Limited for cash (with a scrip alternative) by scheme of arrangement.

Best & Less Group Holdings on its response to a $237 million off-market takeover offer by BBRC International Pte. Limited as trustee for BB Family International Trust (BBRC) and Ray Itaoui.

Envest Group as part of the Ardonagh Group on the $2.3 billion acquisition of PSC Insurance Group Limited by scheme of arrangement and the separation of PSC UK and the ANZ business between Envest and the UK part of the Ardonagh Group.

Kin Group on its $240 million unsolicited off-market takeover bid to acquire Pact Group Holdings Limited.

Kin Group and L Catterton on their purchase of a 49% interest in Remedy Drinks (an Australian manufacturer of fermented beverages and other food and beverage products) from Lion.

Mirvac on its $1.01 billion acquisition with Pacific Equity Partners of the Serenitas Group from GIC.

Nippon Life Insurance Company on its US$8.2 billion acquisition of Resolution Life Group Holdings Limited and its acquisition of the remaining 20% shareholding in MLC Limited from NAB.

PAG on its acquisition of KKR's controlling interest in Australian Venue Co. Holdings Limited.

Palisade Impact on its acquisition of Energy Locals.

Palisade Impact on its acquisition of RepurposeIT

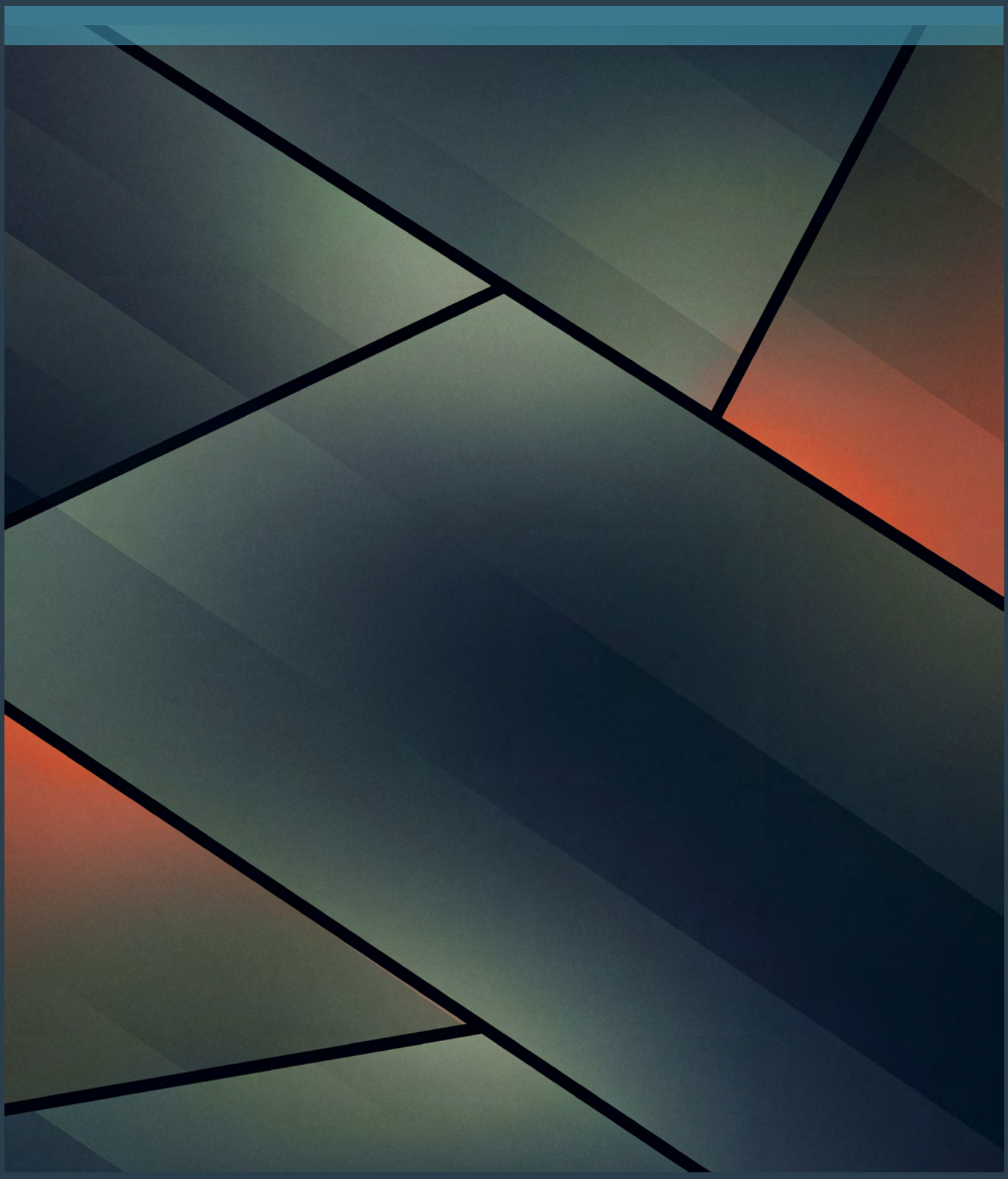
Pernod Ricard S.A on the €$250 million sale of its wine business in Australia, New Zealand and Spain.

PT Pyridam Farma Tbk on its $326 million acquisition of Probiotec by scheme of arrangement.

Woolworths Group on its $586 million acquisition of a 55% interest in the Petspiration Group, a leading Australian and New Zealand speciality pet retailer.

Woolworths Group on the $13 billion merger of the Endeavour Drinks business and ALH Group by scheme of arrangement and the separation of its retail drinks and hospitality business to create ASX-listed Endeavour Group.

15 | Authors



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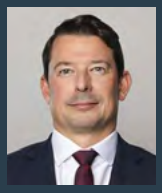

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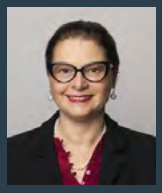

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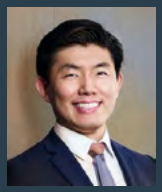

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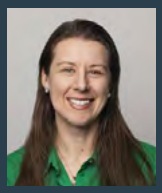

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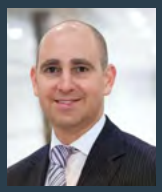

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