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# Bid Tactics



## Key takeaways

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93% of deals were friendly (or ultimately proceeded on target-agreed terms) in 2025, an increase from 86% in 2024, while the number and value of hostile bids in 2025 declined (three deals totalling \$848 million, down from six deals totalling \$8.5 billion in 2024).

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Pre-existing shareholdings were the most common type of pre-bid stake, present in 30% of deals, which was slightly ahead of 2023.

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Use of voting agreements with shareholders increased significantly, from 5% of deals in 2024 to 28% of deals in 2025. Use of call options also continued an upwards trend, being present in 10% of deals in 2025, up from 7% of deals in 2024.

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No deals in 2025 involved the use of physically settled equity derivatives, returning to 2023 levels.

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2025 saw a significant increase in the median premium offered (relative to the pre-bid trading price) from 38% in both 2023 and 2024 to 45% in 2025. Interestingly, hostile deals had a higher median premium than friendly deals.

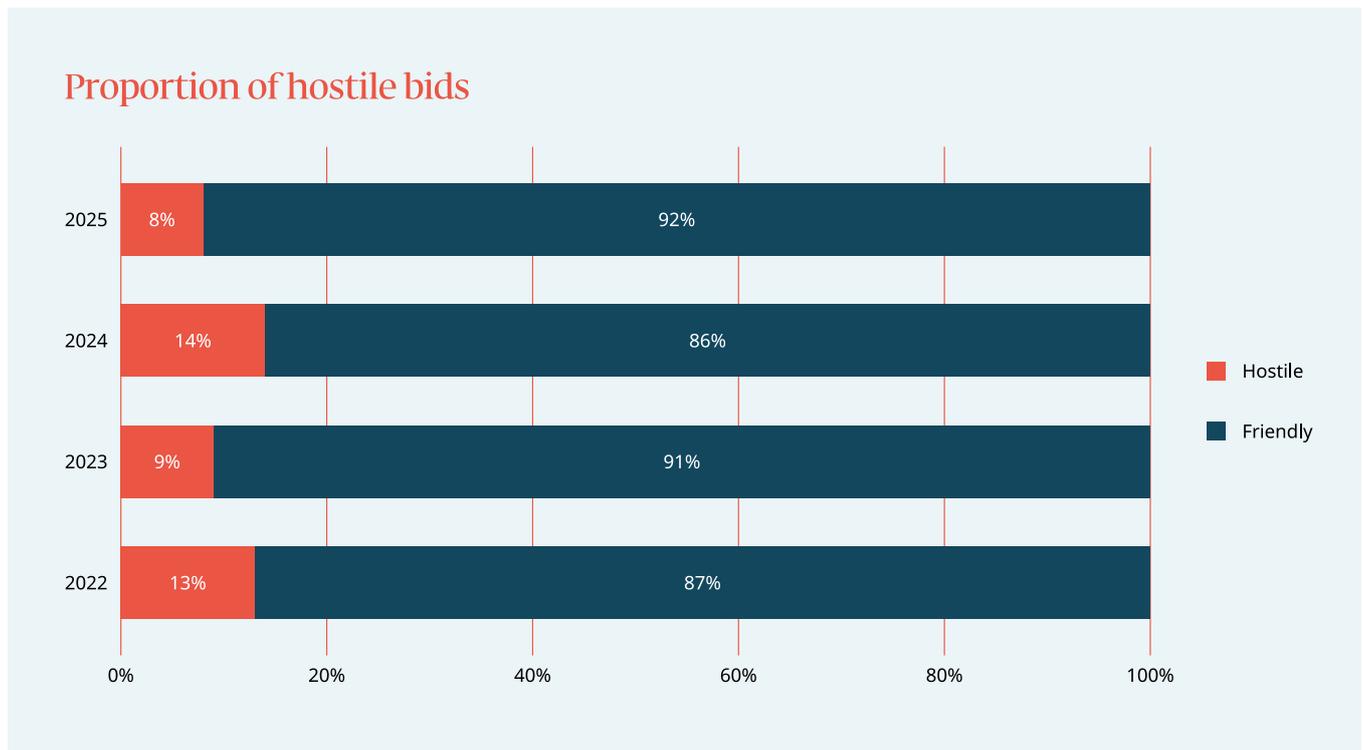
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Six deals involved a premium in excess of 100%, including the massive 199% premium offered by Shenghe Resources for Peak Rare Earths.

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## Hostile bids

The proportion of hostile bids decreased in 2025 as compared to 2024, with 2025 recording the lowest proportion of hostile bids in the last four years (8% in 2025, down from 14% in 2024, 9% in 2023 and 13% in 2022).



There were three hostile takeover bids in 2025. One was successful (Elphinstone Group / Engenco), and the other two were unsuccessful (betr Entertainment / PointsBet Holdings and Lederer Group / Elanor Commercial Property).

While no two deals 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.

betr Entertainment's hostile bid for PointsBet Holdings failed due to insufficient shareholder support, and the competing bidder (MIXI, Inc) obtained control, although well short of the required 90% compulsory acquisition threshold due to a blocking stake held by betr (see further on page 61 of this Report).

Lederer Group's hostile bid for Elanor Commercial Property was unsuccessful as the hostile bidder failed to achieve a controlling stake, holding only 43% of the target at the time the takeover offer closed.

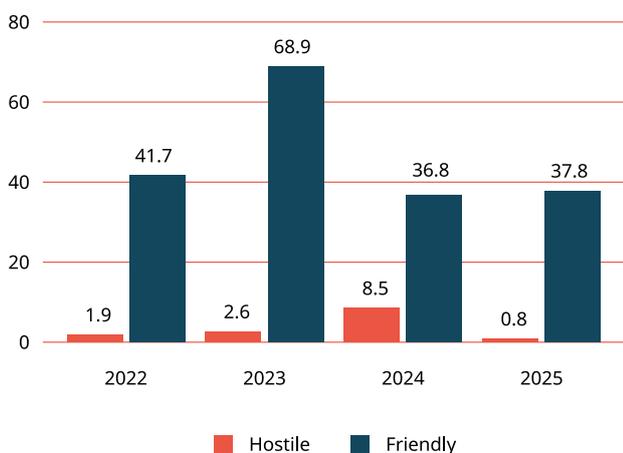
If the hostile bidder does eventually cross the control threshold of 50%, target boards tend to (sometimes reluctantly) recommend that shareholders accept the takeover bid. This is because:

- 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) become 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.

An interesting circumstance arose in the successful hostile takeover for Engenco. In this deal, Elphinstone Group (a 68.53% major shareholder and bidder) made a cash offer for all of the outstanding shares in Engenco at 30.5c per share, representing a 47.6% cash premium. The Independent Board Committee of Engenco noted that the offer price fell short of the independent expert's fair value range (being 31.8c per share on the lower end) and gave an unusual recommendation that shareholders "accept if they wish to sell [their shares]" and "reject if they wish to retain [their shares]". The Independent Board Committee only changed its position to unanimously and unqualifiedly recommend that shareholders accept Elphinstone's offer after two major shareholders accepted and Elphinstone had reached voting power of 88.98%, taking Elphinstone much closer to the compulsory acquisition threshold of 92.13% (noting that a threshold higher than 90% was required, as is common in bids made by bidders holding a pre-existing controlling stake, due to the technical need to acquire 75% of the target shares not already held to trigger the compulsory acquisition right).

The total value of hostile bids was significantly lower in 2025 (\$848 million, down from \$8.5 billion in 2024, \$2.6 billion in 2023 and \$1.9 billion in 2022) due in part to the lower number of hostile takeover bids (three in 2025, vs six in 2024), and accounting also for the fact that the large value of hostile bids in 2024 was mostly due to Seven Group's \$6.9 billion successful bid for Boral. Even among those, the largest value hostile bid was the unsuccessful betr Entertainment / PointsBet Holdings deal which accounted for \$472 million.

### Value of hostile vs friendly bids (\$bn)



## Pre-bid arrangements

Use of a form of pre-bid arrangement as a proportion of total deals was significantly higher than prior years (73% in 2025, as compared to 49%, 47% and 54% of deals in 2024, 2023 and 2022, respectively), and (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 (although there are exceptions – such as betr Entertainment's bid for PointsBet Holdings which failed notwithstanding a significant 19.6% stake).

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 six 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 30% of deals in 2025, which has trended upwards over the past four years (28%, 24% and 23% of deals in 2024, 2023 and 2022, respectively).

Bidders conducted a pre-bid raid or acquired a pre-bid stake before launching the bid in 15% of deals in 2025 (compared to 12%, 18% and 15% of deals in 2024, 2023 and 2022, respectively).



### Voting commitments and pre-bid acceptance agreements

The use of voting commitments (which involve target shareholders agreeing in writing to vote in favour of the announced scheme) and pre-bid acceptances in takeovers were significantly more prevalent in 2025 as compared to prior years.

Voting commitments in schemes or pre-bid acceptances in takeovers were seen in 11 deals, which represented 28% of deals in 2025, compared to 5% in 2024, 18% in 2023 and 8% in 2022. Interestingly, only three of these deals were contested by another acquirer (Proprium Capital's \$370 million acquisition of AV Jennings Homes by scheme of arrangement, Fenix Resources' unsuccessful \$75 million takeover bid for CZR Resources, and Iris Capital's pending \$193 million takeover bid for Reef Casino) and Fenix Resources was unable to secure the minimum 75% acceptance threshold despite the voting commitments.

Voting commitments were seen in 35% of schemes. However, pre-bid acceptance agreements between takeover bidders and target shareholders remained uncommon, occurring in relation to only two takeover bids (Fenix Resources / CZR Resources and Iris Capital / Reef Casino).

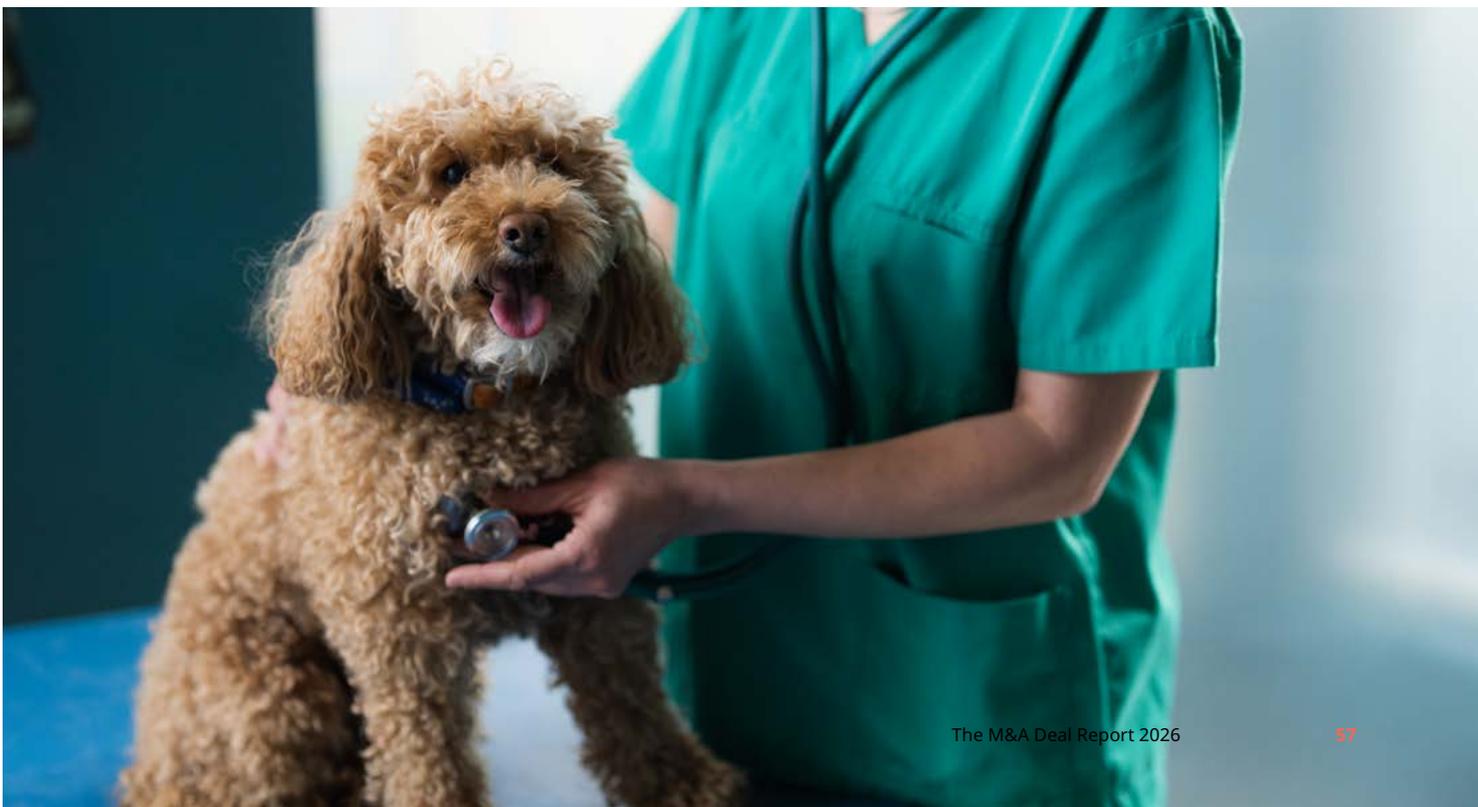
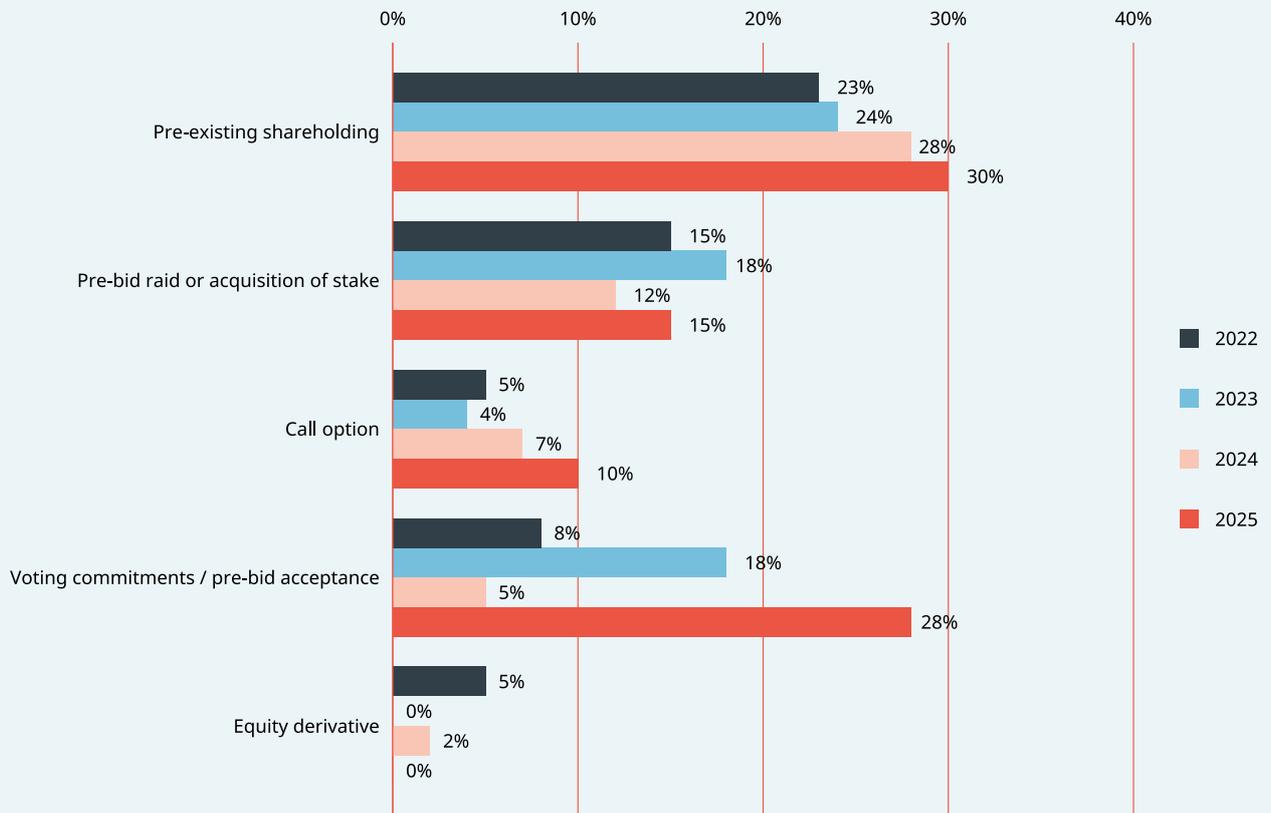
### Conditional sale agreements / call options

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 (10% in 2025, up from 4% in 2023 and 7% in 2024).

These arrangements were used in one takeover (Fortescue / Red Hawk) and the following three schemes:

- TPG Capital / Lynch Group;
- Adamantem Capital / Apiam Animal Health; and
- Ideagen / Envirosuite.

## Pre-bid stakes



# Derivatives disclosure reforms – will things be the same in 2026?

## Introduction

Equity derivatives, notably cash-settled total return swaps (**TRSs**) providing synthetic “long” exposure for the taker, have long been part of the Australian M&A toolkit. They allow bidders to:

- obtain exposure over target securities, at undisturbed prices without immediately appearing on the target’s register;
- bridge regulatory waiting periods (for example, while FIRB no-objection is pending) by providing economic exposure where physical acquisition is constrained; and
- potentially create a financial incentive for the swap writer (often an investment bank) to hedge the exposure, which can effectively take the target shares “out of play”.

The *Treasury Laws Amendment (Strengthening Financial Systems and Other Measures) Bill 2025* forces market participants to revisit the structure and disclosure framework applicable to strategic equity derivative transactions entered into by bidders. The amendments to the *Corporations Act 2001* (Cth), to take effect on 4 December 2026 (i.e. 12 months after Royal Assent), replace the current patchwork of Takeovers Panel guidance and market practice with a statutory regime that mandates disclosure of both physical and cash-settled (and, confusingly, “settleable”) positions.

Frequent users of equity derivatives will need to plan immediately for the new disclosure architecture.

## The current position versus the new law

Under the current regime, only “relevant interests” count towards substantial holding disclosure. Disclosures of cash-settled derivatives, where they form part of an overall long position of 5% or more, are made in compliance with Takeovers Panel Guidance Note 20 (**GN 20**).

The new regime retains the existing concept of “relevant interest” so the approach to the 20% threshold in section 606 will be unaffected (unlike the earlier version of the proposed reforms) by a cash-settled equity derivative. However, the substantial holding notice regime in Chapter 6C is significantly expanded to include several new concepts – including a “deemed economic interest” for substantial holding disclosure as well as “relatable” and “settleable” physical interests. As a result, long positions including cash or physically settled derivatives over the 5% substantial holder threshold must be disclosed in granular levels of detail including any offsetting short positions, and ongoing 1% movements (including shifts within derivative categories) will trigger further disclosure obligations. Furthermore, ASIC will have at its disposal an expanded penalties and freezing orders regime, to force regulatory outcomes where breaches appear to be serious.

## Considerations for bidders and advisers

The changes should not significantly impact bidders who are considering a sub-5% stakebuilding strategy. However, if an equity derivative is to be used as a temporary stake prior to obtaining regulatory approval (such as the Treasurer’s no-objection notification under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FIRB Approval**) – as Hanwha Ocean had done so in relation to Austal), the complicated and granular disclosure regime will need to be taken into account. In particular:

- **Five interlocking metrics:** disclosers of substantial holdings inclusive of derivatives will need to calculate and disclose the “relatable”, and deemed “physically settleable”, and “non-physically settleable” aspects of the derivative in the substantial holder notice. They will also need to disclose the aggregate derivative-based holding percentage, the overall holding percentage, and any offsetting short position percentage – and any 1% movements in these figures.

- **ASIC calculation instruments for short positions:** Particularly for offsetting shorts, disclosers will need to take into account the prescribed disclosure and calculation methodology to be confirmed by ASIC (which has not yet occurred).

## Challenges for the writers (i.e. the banks)

The new regime creates significant burdens on the operational teams of banks who write equity derivatives. The writers will need to consider:

- **Aggregate disclosure burden and confidentiality:** having systems in place to disclose, on the request of ASIC or the target (where a “reasonable suspicion” exists in relation to a particular stake and another person’s potential interest in that stake including by way of a deemed interest in a derivative), details of deemed economic interests, offsetting shorts, relevant agreements and, critically, information about “other persons” with deemed economic interests (i.e., client long positions). How this will interact with client confidentiality obligations remains a work in progress.
- **Potential ASIC exemptions/reliefs for market-making/client service flows:** what exemptions will be available for routine writers of derivatives for financial transactions. The Explanatory Memorandum to the amendments anticipates ASIC may, by instrument, exempt certain transactions involving (for instance) market-making and hedging activities. The terms and conditions of any exemptions will need to be examined carefully.

## Final observations

The new disclosure framework will not reduce the utility of equity derivatives and the products will remain a legitimate and potent tool in Australian public M&A. That said, from 4 December 2026, the disclosure burdens for long positions exceeding the 5% threshold may cause some stakeholders to rethink their approach. Our recommendation is to collaborate now with prospective writers and advisers, and consult with ASIC, to stress-test structures against the new categories, lock down data and document workflows (including attachments such as long-form confirmations), and pre-agree disclosure playbooks.

## Hanwha’s raid on Austal – a study on equity derivatives as a FIRB “bridge”

On 2 April 2024, Hanwha Ocean, a major South Korean commercial, industrial and military shipbuilder, submitted an unsolicited, non-binding \$1 billion takeover bid for Western Australia-based shipbuilder and defence contractor Austal. Hanwha Ocean’s approach was rejected by the Austal board over concerns that Hanwha Ocean would not be able to obtain the necessary regulatory approvals to complete the takeover.

Following the rejection of this bid, Hanwha proceeded to build its stake in Austal in the following manner:

- on 17 March 2025, Hanwha (through its wholly owned subsidiary), acquired a 19.9% combined long position in Austal inclusive of a substantial relevant interest of 9.9% in Austal (the maximum physical interest which could be held without FIRB Approval) and an additional 9.9% economic interest through a cash settled TRS;
- Hanwha also applied to FIRB to seek a no-objection notification in respect of the increase of its direct equity position in Austal to 19.9%;
- on 12 December 2025, the Treasurer conditionally approved Hanwha’s increase of its direct equity stake to 19.9%, with the condition that Hanwha remain a minority shareholder in Austal and be barred from increasing its stake above 19.9%.

While the FIRB approval condition contains an unusual cap on future acquisitions, Hanwha’s approach to securing the extra 9.9% by a cash-settled TRS while awaiting FIRB approval demonstrates the continued utility of TRSs as an effective tool in the face of potential regulatory hurdles. Of course, if FIRB approval had not been forthcoming for Hanwha, Hanwha may have needed to plan for an effective “unwinding” strategy (which ultimately wasn’t required here).

## 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).

Central Asia Metals’ failed \$232 million bid for New World Resources is a good example of how lack of shareholder support and a “blocking stake” can complicate a bidder’s plans for control. In the competition between Central Asia Metals and Kinterra Capital for control for New World Resources, the competing bidders rapidly improved their positions through multiple transactions to respectively hold a 12.08% and 19.3% stake in New World Resources and each submitted a number of revised bids. However, as the largest shareholder of New World Resources, Kinterra Capital expressly acknowledged its ability to prevent Central Asia Metals from reaching the 90% threshold required for compulsory acquisition. Central Asia Metals ultimately withdrew its bid and accepted Kinterra Capital’s revised bid, resulting in the successful acquisition of New World Resources by Kinterra Capital for \$254 million.

Existing shareholders with an initial blocking stake should not remain complacent in a battle of competing bids. In the PointsBet Holdings transaction, betr Entertainment was a competing bidder to MIXI, Inc and had made its own all-scrip off-market takeover bid for PointsBet at a higher price than MIXI, Inc (who had agreed to acquire betr Entertainment by scheme). betr Entertainment also had a 19.6% stake in PointsBet, which was important in blocking MIXI, Inc from obtaining the required majority approval for its recommended scheme of arrangement. However, immediately following the scheme being voted down, MIXI, Inc made an all-cash off-market takeover bid and rapidly increased its shareholding in PointsBet from 9.15% to 51.9%, thus acquiring its own blocking stake against betr Entertainment’s bid. In comparison, betr Entertainment was only able to increase its initial substantial shareholding to 27.72%. As a direct result of MIXI, Inc. effecting its

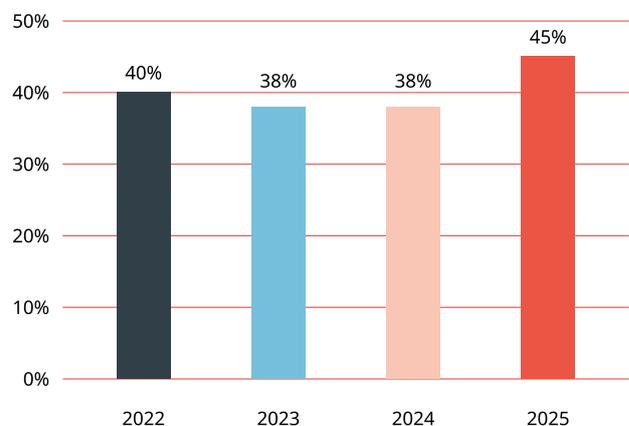
blocking stake, betr Entertainment failed to obtain a controlling stake in PointsBet despite its final \$472 million bid being superior in value to MIXI, Inc’s \$435 million bid. By the time the takeover offer closed, MIXI, Inc had further increased its relevant interest in PointsBet to 66.43%.

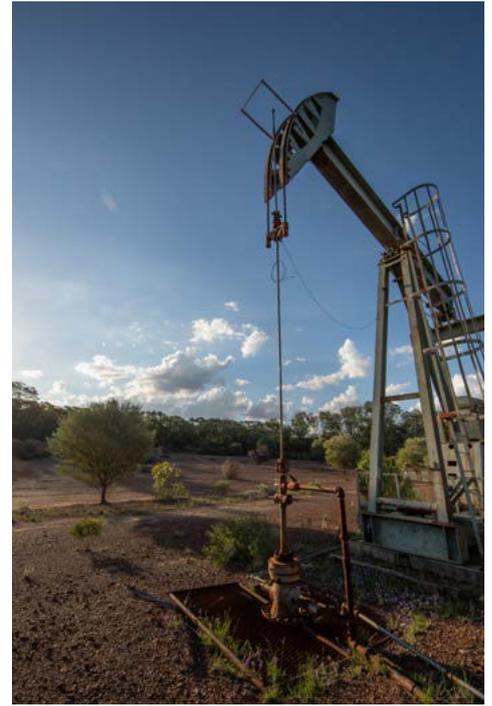
However, it is important to note that blocking stakes are not the only hurdle to a successful bid. Fenix Resources’ failed \$75 million bid actually had the support of the majority shareholder, The Creasy Group, which held a 52.2% interest in CZR Resources. However, despite being backed by the majority shareholder, Fenix Resources’ bid lapsed as the minimum acceptance condition of 75% of all CZR’s shares was not satisfied by the closing date of the bid due to the emergence of a different proposal from the Robe River Iron Associates Joint Venture to buy CZR’s main asset.

## Deal premiums

The median premium (as a percentage relative to the pre-bid trading price) offered by bidders was 45%, which is a significant increase from previous years (38% of deals in 2024 and 2023, and 40% of deals in 2022).

### Median premiums offered by bidders





The top five premiums were all offered by foreign bidders, showing a keenness of available capital in sectors like materials, financial services and consumer discretionary.

## Top 5 Premiums (2025)

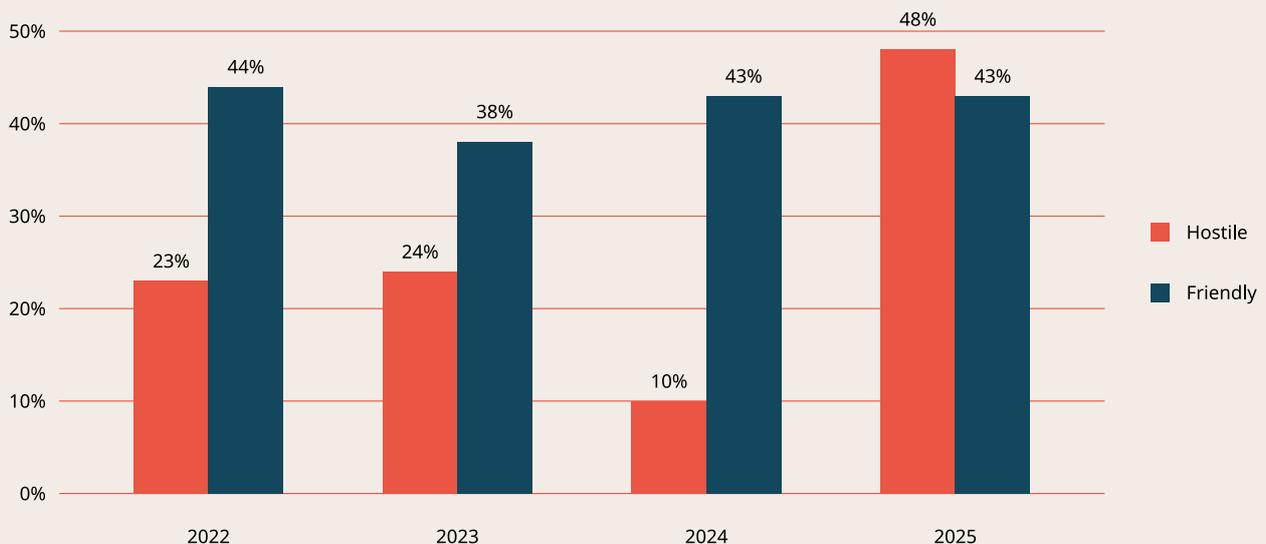
	Premium	Deal	Target industry	Bidder
1	199.17%	Shenghe Resources' successful \$131 million acquisition of Peak Rare Earths	Materials	Foreign, industry / strategic acquirer
2	139.29%	Kinterra Capital's successful \$254 million acquisition of New World Resources	Materials	Foreign, private capital owned
3	133.33%	Svava's successful \$65 million acquisition of SelfWealth	Financials	Foreign, industry / strategic acquirer
4	132.14%	Central Asia Metals' unsuccessful \$232 million offer for New World Resources	Materials	Foreign, industry / strategic acquirer
5	112.06%	Dollarama's successful \$259 million acquisition of The Reject Shop	Consumer Discretionary	Foreign, industry / strategic acquirer

The gap between the median premium offered by hostile bidders compared with those offered by friendly bidders almost equalised in 2025, with median premiums offered by hostile bidders overtaking those of friendly bidders by only five percentage points (48% in hostile bids vs 43% in friendly bids). This is in contrast to 2024 (where the differential was 33 percentage points) and 2023 (where the gap was 14 percentage points).

Consistent with 2024, the top five premiums were all offered in friendly deals, which suggests that there remains pressure on target boards to secure a higher price for its shareholders in exchange for a recommendation to counter hostile bidders. The high premiums offered in Kinterra Capital's bid for New World Resources and Svava's bid for Selfwealth are also unsurprising as both bids were contested (with Central Asia Metals competing for New World Resources and Bell Financial announcing a binding bid for Selfwealth in November 2024).

In contrast, the steep increase in the median premiums offered by hostile bidders may potentially forecast a shift towards a more bullish market and increased deal activity, in which hostile bidders are also pressured to offer higher premiums in an attempt to outbid competing hostile bidders (as was the case in the betr Entertainment / PointsBet Holdings deal which was unsuccessful despite offering a 68.67% premium) or secure the support of shareholders who might otherwise prefer to remain invested in the target rather than accept a quick exit.

### Median premiums offered by hostile vs friendly bidders





# Authors

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## Eliza Blandford

Eliza has 18 years' experience advising on acquisitions, divestments, corporate governance, strategic investments and contracting.

[View Profile](#)



## Anita Choi

Anita advises on significant M&A transactions with a particular focus in the energy, energy transition and infrastructure sectors.

[View Profile](#)



## Carl Della-Bosca

Carl advises on public and private M&A, JVs and equity capital raisings with extensive experience in the mining and energy sectors.

[View Profile](#)



## Anton Harris

Anton is Head of Private Capital in APAC with significant experience leading large public and private M&A transactions.

[View Profile](#)



## Kylie Lane

Kylie is a member of our global board, and corporate practitioner with extensive expertise advising on M&A in the energy, resources and infrastructure sectors.

[View Profile](#)



## Susannah Macknay

Susannah specialises in acting for corporate and private equity clients on large M&A transactions.

[View Profile](#)



## Amelia Morgan

Amelia specialises in public and private M&A with significant expertise advising corporate and private capital backed investors on their most important and strategic transactions.

[View Profile](#)



## Neil Pathak

Neil is Head of Australia and Co-Head of M&A Australia with extensive expertise in listed takeovers, cross-border acquisitions and capital raisings.

[View Profile](#)



## John Brewster

John is Head of our Australian Corporate Practice with 20 years' experience leading complex public and private M&A transactions.

[View Profile](#)



## Tony Damian

Tony is Co-Head of M&A Australia with 30 years' experience advising on strategic and complex M&A transactions and board advisory matters.

[View Profile](#)



## Melissa Fraser

Melissa is head of our APAC antitrust, regulatory and trade practice with particular expertise in complex merger clearance matters.

[View Profile](#)



## Andrew Kim

Andrew has 20 years' experience in public M&A and equity capital markets transactions.

[View Profile](#)



## Bruce Macdonald

Bruce specialises in M&A and equity capital markets work advising on significant and innovative transactions.

[View Profile](#)



## Will Mason

Will specialises in corporate M&A, with a particular focus on private equity transactions.

[View Profile](#)



## Ratha Nabanidham

Ratha specialises in M&A and corporate advisory with extensive experience advising on public and private M&A transactions.

[View Profile](#)



## Murray Wheeler

Murray advises on M&A transactions with particular expertise in the infrastructure, energy and mining sectors.

[View Profile](#)

# Editor

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**Lisa d'Oliveyra**

**Senior Corporate Development Counsel**

Corporate Transactions

# Other authors and contributors

---



**Jonathan Bisset**

**Senior Associate**

Corporate Transactions



**Venthan Brabaakaran**

**Expertise Lawyer**

Competition



**Bronte Campion**

**Lawyer**

Corporate Transactions



**Joshua Chin**

**Lawyer**

Corporate Transactions



**Alyssa Croce**

**Lawyer**

Corporate Transactions



**Joshua Hanegbi**

**Lawyer**

Corporate Transactions



**Brandon Lam**

**Lawyer**

Corporate Transactions



**Daniel Lucanus**

**Lawyer**

Corporate Transactions



**Rosie Maguire**

**Senior Associate**

(admitted in England & Wales,  
not admitted in Australia)

Corporate Transactions



**Giselle McLeod**

**Graduate**

Corporate Transactions



**John McMeniman**

**Senior Associate**

Corporate Transactions



**Joseph Nguyen**

**Senior Associate**

Corporate Transactions



**Bonnie Paton**

**Senior Associate**

Corporate Transactions



**Shenaye Ralphs**

**Lawyer**

Corporate Transactions



**Nikita Reid**

**Lawyer**

Corporate Transactions



**Lucas Ryan**

**Graduate**

Corporate Transactions



**Jade Stuart**

**Lawyer**

Corporate Transactions



**Amanda Tesvic**

**Expertise Counsel**

Competition



**Josh Walsh**

**Senior Associate**

Corporate Transactions