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FREEHILLS

AUSTRALIAN PUBLIC M&A REPORT 2020

TWELFTH EDITION

Contents

FY20 highlights

$13.4bn
TOTAL DEAL VALUE
(FY15 - FY19 average: $36.1bn)

51
ANNOUNCED DEALS
(FY15 - FY19 average: 57)

63%
OVERALL SUCCESS RATE
(FY15 - FY19 average: 71%)

2
MEGA DEALS (>$1bn)
(FY15 – FY19 average: 7)

29%
DEALS INVOLVING A PRIVATE EQUITY BIDDER
(FY15 - FY19 average: 17%)

10 largest deals

TARGET	BIDDER	DEAL VALUE	SECTOR	ANNOUNCED
Bellamy's Australia Limited	China Mengniu Dairy Company	$1,434.1m	Consumer Staples	September 2019
Aveo Group	Brookfield	$1,248.6m	Real Estate	August 2019
Infigen Energy	Iberdrola Renewables Australia	$834.8m	Utilities	June 2020
Infigen Energy	UAC Energy	$776.6m	Utilities	June 2020
Webster Limited	Public Sector Pension Investment Board	$724.5m	Consumer Staples	October 2019
Cromwell Property Group	ARA Asset Management	$667.8m	Real Estate	June 2020
ERM Power Limited	Shell Energy Australia	$605.7m	Energy	August 2019
OptiComm Ltd	Uniti Group	$530.8m	Telecommunications	June 2020
Australian Unity Office Fund	Charter Hall Limited and Abacus Group Holdings Limited	$495.0m	Real Estate	September 2019
Australian Unity Office Fund	Starwood Capital Group	$485.2m	Real Estate	January 2020

60%
FOREIGN BIDDERS BY VALUE
(FY15 – FY19 average: 65%)

29%
OF TAKEOVERS WERE UNSOLICITED
(FY15 – FY19 average: 37%)

$124m
MEDIAN TARGET VALUE
(FY15 – FY19 average: $102.1m)

7
TARGETS SUBJECT TO COMPETING BIDS
(FY19: 4)

Introduction and key findings

Introduction

This is the twelfth edition of Herbert Smith Freehills' Australian Public M&A Report.

This edition examines the 51 control transactions involving Australian ASX listed targets that were conducted (or announced as intended to be conducted) by way of takeover bid or scheme of arrangement in the 2020 financial year.

Activity overview

Public M&A activity was lower in FY20 as compared with previous years. There were 51 control transactions announced in FY20 compared to 63 in FY19, 56 in FY18 and 59 in FY17. Total deal value for FY20 was significantly reduced, with an aggregate of $13.4bn (compared to $45.9bn in FY19, $40.9bn in FY18 and $23.4bn in FY17). Unsurprisingly, activity appears to have been significantly impacted by the Covid-19 pandemic and the global uncertainty and economic effects flowing from it.

The significantly greater decrease in deal value relative to number of deals for FY20 as compared with prior years highlights the absence of mega deals (>$1bn), with only 2 mega deals announced in FY20, the lowest we have recorded in our twelve editions. We conclude that in this period of uncertainty, the mid-market appears to have maintained a level of resilience, while bidders appear more reluctant to press ahead with mega deals.

Success rates were also lower than in previous years (63%, down from 74% in FY19). In FY20, a higher level of schemes were used than takeovers as compared with previous years (57% in FY20, 49% average in FY15-19). This tends to highlight a focus on achieving execution certainty in the Covid-19 affected environment.

Despite lower levels of activity, the Energy and Resources sector showed continued strength in FY20. Energy and Resources deals accounted for 37% of all public M&A activity, driven by the large number of gold deals, with key targets including Cardinal Resources, Echo Resources and Spectrum Metals.

Opportunity in times of uncertainty

Private equity emerged as an enthusiastic capital provider in FY20 that was willing to look beyond the crisis in making investment decisions. Private equity bidders accounted for 29% of all deals in FY20 (versus an average of 17% for the preceding 4 years). An example of this is BGH's bid for Village Roadshow, whose theme parks and cinema operations have been heavily impacted by the Covid-19 pandemic.

There was a sharp increase in the number of deals announced in the second half of FY20 without the support of the target board ('unsolicited' deals). Before January 2020, 18% of bids were unsolicited, whereas after January 2020, 43% of bids were unsolicited. It seems that opportunistic bidders are hoping to take advantage of business trading and share price uncertainty to put their proposals direct to shareholders and are willing to run the risk of not having target board support from the outset.

Mega premiums

A proportionately high number of bidders offered mega premiums of over 50% of the target's undisturbed share price (47% of unsolicited bids and 31% of friendly bids). Share price volatility due to the Covid-19 pandemic has played a part, and, although the share market on the whole has performed reasonably well, there have been pockets of significantly depressed share prices.

12 out of 20 deals (60%) announced after the market crash on 20 February 2020 involved a premium of over 50%. 8 out of these 12 deals (67%) involved targets which had suffered depressed share prices relative to the pre-Covid-19 period. These mega premiums indicate bidder confidence in the prospects of the targets, and perhaps an acknowledgment that (notwithstanding depressed share prices) bidders must match shareholder expectations to avoid being seen as opportunistic (including having regard to relevant entry prices).

The re-emergence of cash

Cash has re-emerged as the preferred form of consideration, with 74% of all deals offering shareholders only cash (66%) or a choice of cash (8%) as consideration.

Deals were more likely to succeed when cash was offered as consideration. This is likely a result of both target boards and shareholders seeking deal certainty, and less willingness across the market to stay on for future upside in an inherently uncertain trading and economic environment.

Reneging and renegotiating agreed deals

A number of bidders attempted to renegotiate or walk away from deals agreed prior to the advent of the Covid-19 pandemic as a result of alleged defaults arising in connection with the impacts of the pandemic. A number of these situations involved an alleged occurrence of a material adverse change (**MAC**), while others (as a related or separate issue) concerned increases in target indebtedness or concerns with obtaining or retaining financing.

Increased competitiveness

The levels of competitiveness were increased in FY20 compared to FY19, and consistent with those seen in FY18. There were 7 targets that were subject to competitive bids in FY20. A notable example was Infigen Energy, which was subject to competing bids from both Iberdrola Renewables Australia and UAC Energy (both announced in June 2020). The resources and effort required to pursue a listed target in competition with another bidder is significant and the fact that competitive deals have continued through the challenging circumstances of the pandemic suggests that the energy is worthwhile where the target has a privileged or uniquely positioned business.

Activity increased markedly towards the end of FY20, with 9 deals announced in June. A further 12 deals have been announced as at the end of September 2020.

Shareholder activism

In FY20 three schemes were voted down by shareholders, being the Australian Unity Office Fund scheme, Prime Media scheme and Silver Chef scheme. This continues the theme we have observed in recent years of shareholders playing an active role in scrutinising, or seeking to apply leverage with respect to, deals recommended by the target board. For bidders, it is vital to have an engagement strategy for both shareholders and proxy advisers, and to adapt this strategy to shareholder responses over the course of the deal. Deal opponents who are prepared to spend money on blocking positions pose particular challenges in public M&A deals.

Foreign investment activity

This year we observed unprecedented changes to Australia's foreign investment regime, including the temporary $0 screening threshold for foreign investments implemented as a response to the Covid-19 pandemic. These significant changes do not appear to have dissuaded foreign bidders, as the number of foreign bidders was largely unchanged from FY19.

Protecting against bidders walking away

It might be expected that, in the current environment and with recent examples of unsuccessful deals, target boards would focus heavily on mitigating the risk of bidders not proceeding with their announced offers. For example, a rise in the number and quantum of reverse break fees to be paid by a bidder in certain circumstances where it did not complete the agreed deal might be expected. However, in FY20 63% of agreed deals did not contain a reverse break fee at all (an increase from 54% FY19). Where a reverse break fee was adopted, the majority of instances continued to see the size of the fee pegged to the target's break fee, even though only the latter must generally comply with the Takeover Panel's guidance of 1% of equity value. The impacts of the Covid-19 pandemic and the unsuccessful deals we have seen may have come too late in FY20 to influence the statistics on reverse break fees – it will be interesting to see if this is the case in FY21.

There was a slight decrease in the proportion of deals (excluding on-market takeovers, which must be unconditional) containing MAC conditions (84% in FY19 to 76% in FY20). Later in FY20 where a MAC condition was included, the condition often contained carve-outs for matters, events or circumstances arising in connection with the Covid-19 pandemic. That type of carve-out appeared in 31% of implementation agreements announced after the market crash on 20 February 2020 containing a MAC condition.

Looking forward

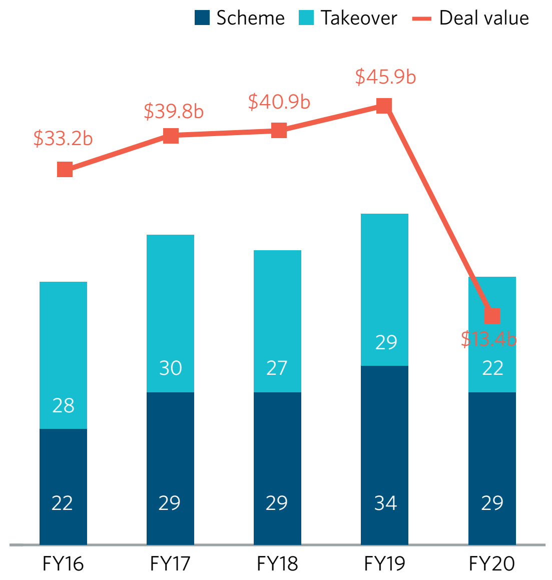
Activity increased markedly towards the end of FY20, with 9 deals announced in June. A further 12 deals have been announced as at the end of September 2020.

Deal landscape

Overall volume and value

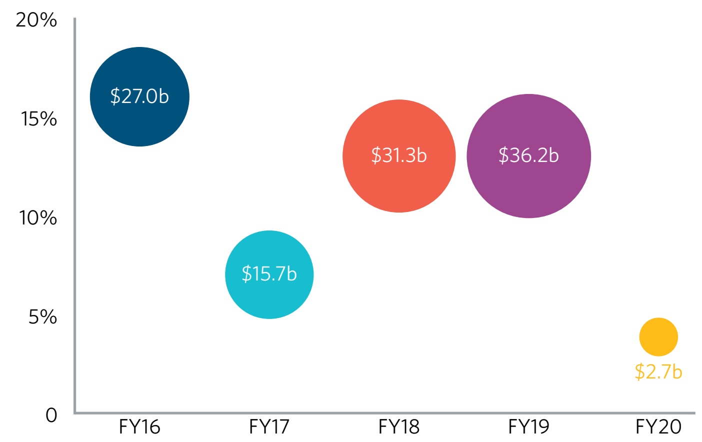
Total number and value of deals per year

FY20 saw a decrease in both the total volume and total value of deals announced compared to previous years.



Percentage and value of deals >$1bn

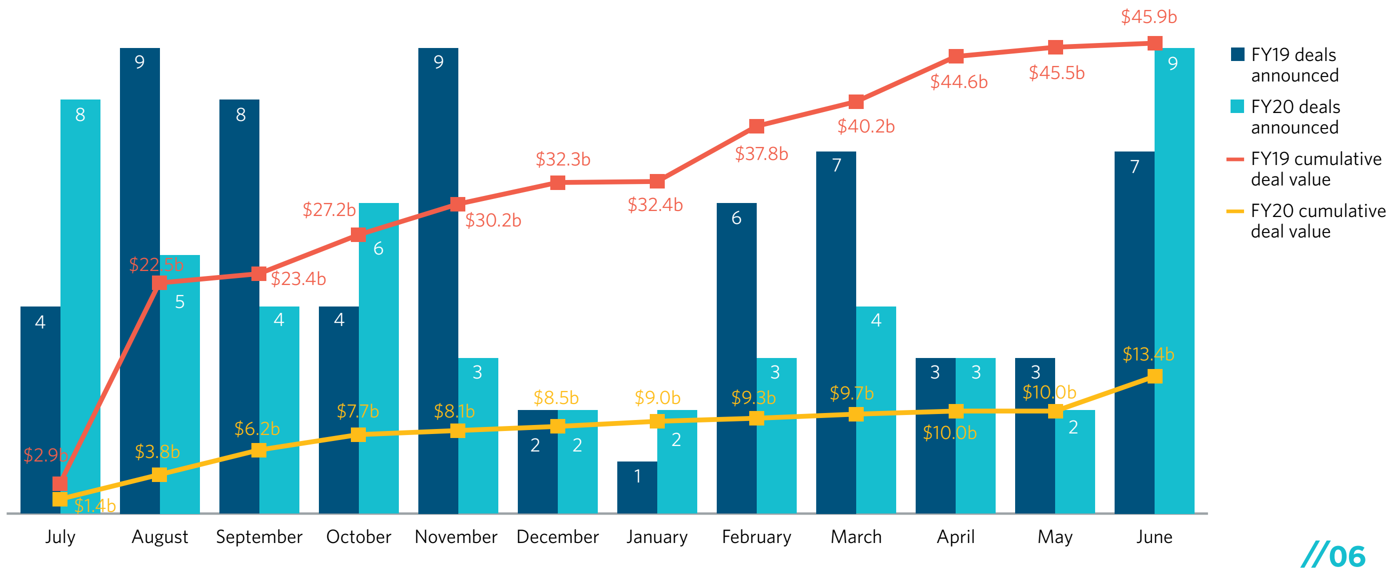
The proportion and value of mega deals (>$1bn) was significantly lower than the past 5 years, with only 2 mega deals being announced (China Mengniu Dairy Company's bid for Bellamy's Australia and Brookfield's bid for Aveo Group). Both of these deals were announced early in the financial year (September 2019 and August 2019 respectively).



FY20 deals and value by month

Number and value of deals announced in FY20 (month-by-month)

There was a strong start to FY20, with the aggregate number of deals announced from July to October similar to the levels seen in FY19. Interestingly, the lower aggregate deal value for FY20 relative to FY19 appears to have been present in the first half of FY20 (ie pre-Covid-19 pandemic). As may be expected, activity between January and May 2020 was significantly reduced as bidders retreated during the period of uncertainty caused by the Covid-19 pandemic. However, late in FY20 the green shoots of a recovery in activity started to appear, with 9 deals announced in June and a noticeable uptick in cumulative deal value relative to the corresponding month in FY19.

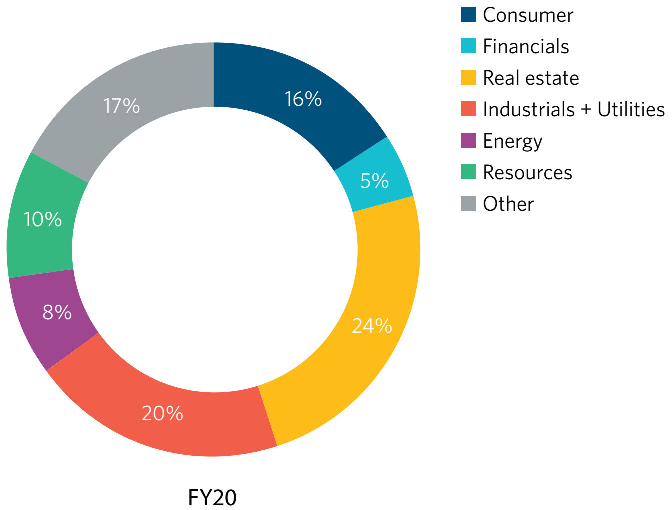


Deal landscape

Industries and competition

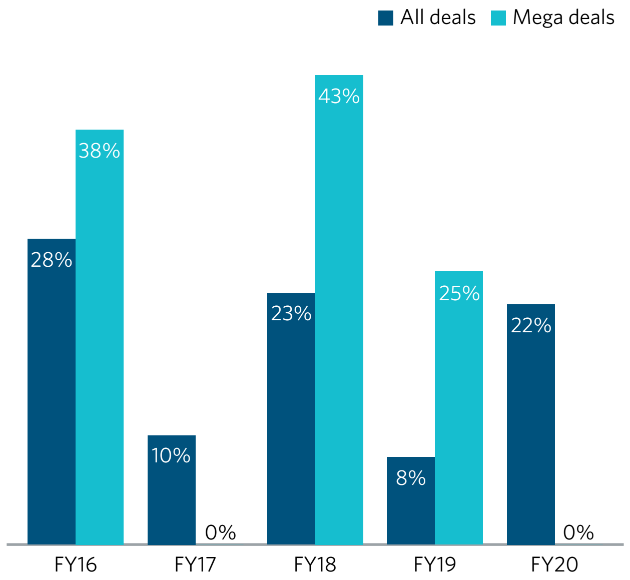
Value of deals by sector

High value targets were spread across several sectors, including Real Estate (24% of deal value), Industrials and Utilities (20% of deal value), and Energy and Resources (18% of deal value).



Competitive bids

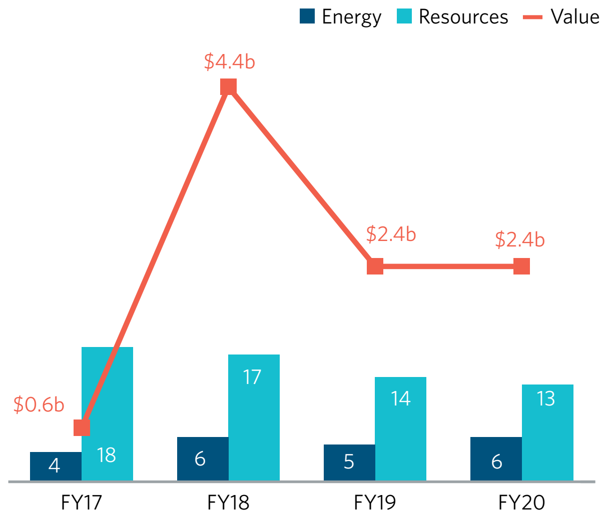
There were 7 targets subject to competitive bids in FY20, including Infigen Energy. Neither of the two mega deals involved competing bidders.



Energy and resources

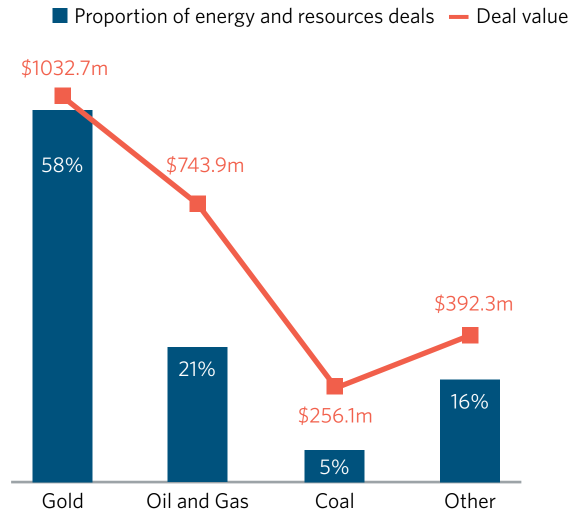
Number and value of energy and resources deals

The number and value of Energy and Resources deals in FY20 remained largely consistent with FY19 levels, despite activity in other sectors dipping. Energy and Resources deals accounted for 37% of all FY20 deals.



Energy and resources deals by value

The highest value targets in the Energy and Resources sector were in the gold industry ($1bn of the cumulative $2.4bn value of Energy and Resources deals involved gold).



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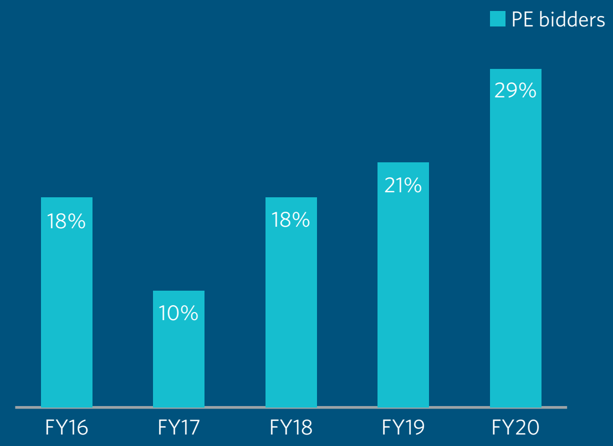
FY20 in focus

Private equity bidders

Number of private equity bidders

The proportion of private equity bidders in FY20 was at an all-time high compared to the last 5 years, at almost triple the levels of FY17 and more than 10% higher than FY18. Private equity investors were willing M&A participants during the Covid-19 pandemic, with notable deals including the high dollar value Brookfield bid for Aveo and BGH Capital bid for Village Roadshow. With the benefit of having seen how the global financial crisis unfolded and willed-on by highly liquid limited partners, private equity has demonstrated a willingness to participate in take-privates even with the economic uncertainty and downturn connected with the Covid-19 pandemic. Private equity bidders were particularly active in the Industrials and Utilities sector and the Energy and Resources sector (with these sectors accounting for 7 of the 15 private equity deals in FY20).



BGH Capital bid for Village Roadshow

HSF is acting for BGH Capital on its $478m bid for Village Roadshow, whose core businesses comprise theme parks and cinemas. The deal is a case study that touches on many of the themes in this report in conducting M&A with a Covid-19 impacted target.

Background: Rival bids were made before the onset of the Covid-19 pandemic, in December 2019 and January 2020 at $3.90 and $4.00 per share by Pacific Equity Partners and BGH Capital, respectively. The bidders entered due diligence just as the impacts of the Covid-19 pandemic set in for Village Roadshow's businesses, most of which were closed at the time due to State-imposed restrictions.

Ultimately, BGH Capital was selected as the preferred bidder in May 2020. The parties negotiated exclusively following BGH's selection, and in August 2020, BGH Capital and Village Roadshow signed a recommended deal for consideration of up to $2.45 per share.

Covid-19 themes observed in this transaction:

Willingnesss of private equity

The bids were launched pre-Covid-19, but BGH was willing to proceed notwithstanding the Covid-19 impacts on Village Roadshow. This reflects private equity's willingness to participate in this environment and look through the crisis in making investment decisions.

Contingent consideration

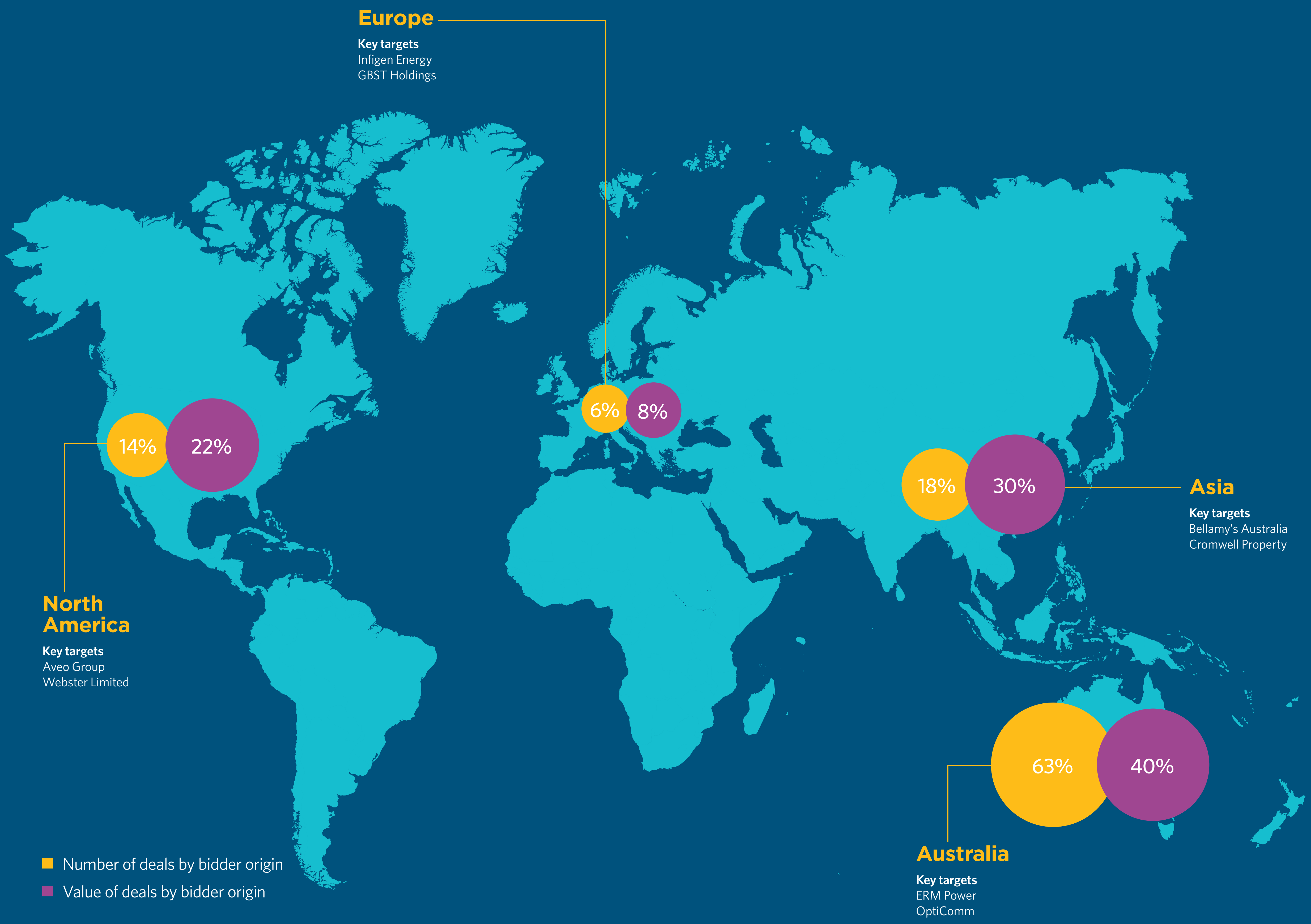
The transaction uses contingent consideration to navigate Village Roadshow's trading uncertainty. Broadly, shareholders will be entitled to an extra $0.12 per share if key theme parks are open, $0.08 per share if a majority of cinemas representing 75% of revenues from the cinema business are open, and $0.05 per share if Queensland state borders are open to residents of New South Wales and Victoria. This allows Village Roadshow shareholders to participate in an early re-open of key businesses. Shareholders may (subject to terms and conditions) also retain their investment in the privatised Village Roadshow.

Greater diligence workload

Due diligence, conducted between March and August, was more involved than usual, which was necessary to assess the impact of the Covid-19 pandemic in a rapidly changing landscape.

Implementation agreement

The parties gave close attention to the unique ramifications of the Covid-19 pandemic on many of the customary provisions in the implementation agreement.



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Deal landscape

Origin of bidders

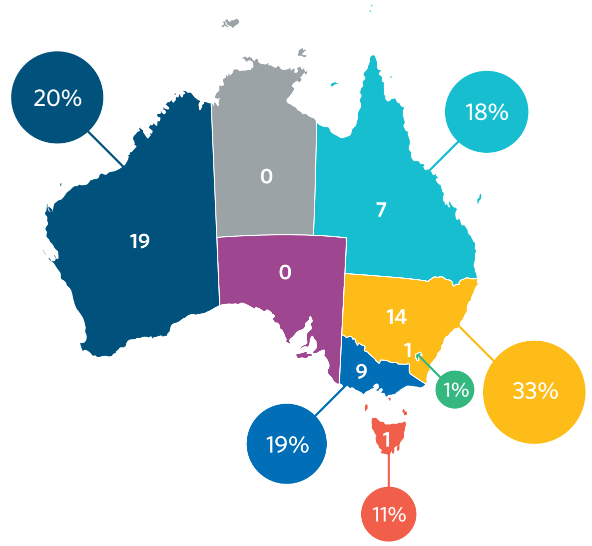
Percentage of deals by origin of bidder

While the volume of activity involving foreign bidders in FY20 remained largely consistent with FY19 (37% in FY20, 38% in FY19), in FY20 there was a large reduction in the value of foreign bidder activity (60% of deals by value in FY20 involved a foreign bidder as compared with 80% in FY19). Domestic bidders by value rose, not because of high value deals with Australian bidders, but because of the notable absence of some of the higher valued foreign acquisitions seen in previous years. The revised foreign investment framework and the extension by the Foreign Investment Review Board of the period to review applications from 30 days to up to 6 months would have contributed to this situation.

Location of targets

Number and value of targets per state

FY20 saw Western Australia overtake New South Wales as the State with the most targets in play during FY20 (19 targets representing 20% of total deal value), however targets in New South Wales accounted for the highest value of deals (14 targets representing 33% of total deal value). Victoria and Queensland were also hubs of activity (9 and 7 targets representing 19% and 18% of total deal value respectively). There were no targets in South Australia or the Northern Territory during FY20, and only one target in Tasmania accounting for 11% of deal value (Bellamy's Australia).



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Deal landscape

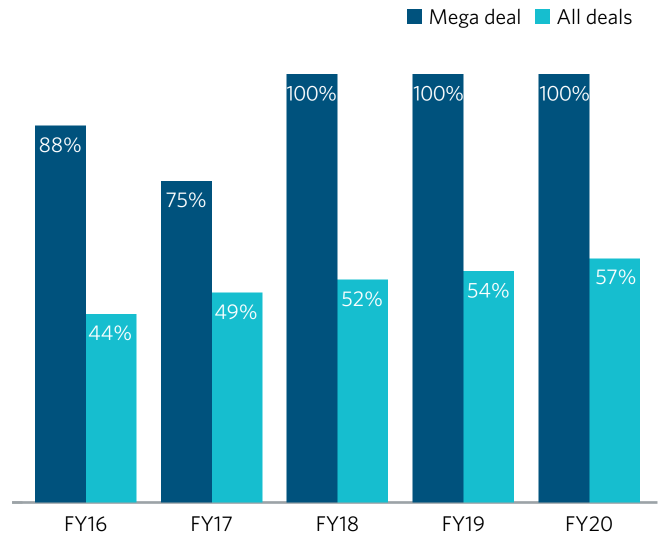
Deal structures

DEALS STRUCTURED AS SCHEMES

BOTH STRUCTURED AS SCHEMES

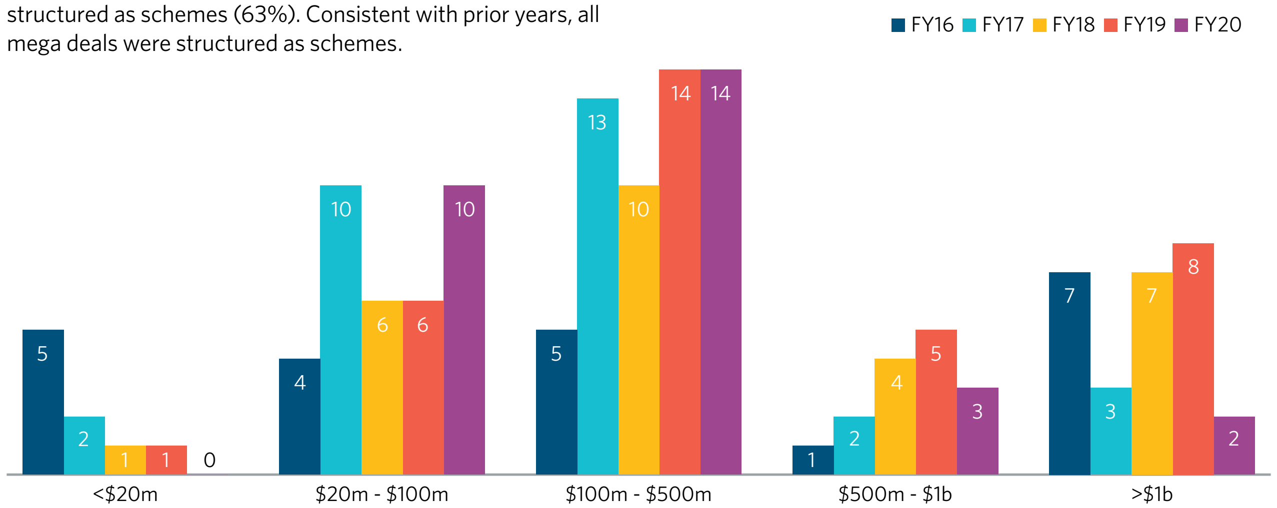
Deals structured as schemes

There has been an upward trend since FY16 of bidders preferring schemes over takeovers. The use of schemes was at a record high in FY20, being the preferred structure of 57% of all deals. This continues the rise of the scheme of arrangement as the preferred mechanism to effect control transactions, particularly for mega deals.



Use of schemes by value range

Schemes continued to be the preferred structure for mid and high value deals in FY20, with 19 of 30 deals valued >$100m being structured as schemes (63%). Consistent with prior years, all mega deals were structured as schemes.



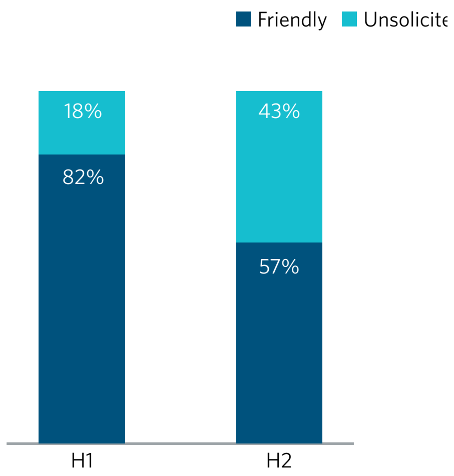
Deal landscape

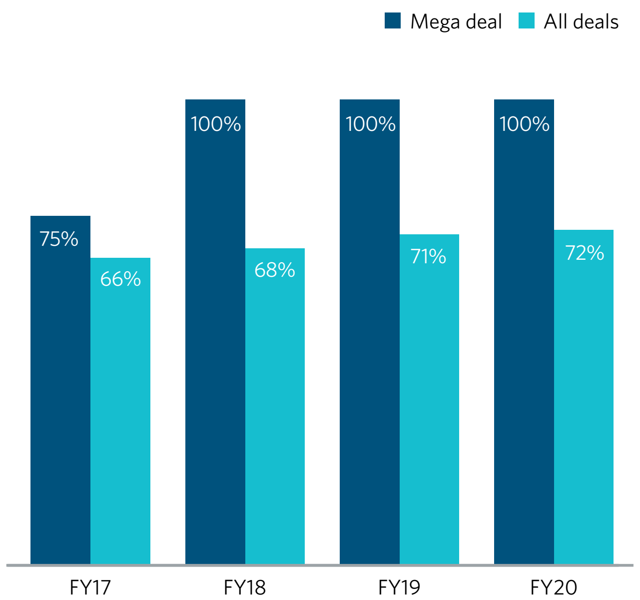
Friendly vs unsolicited deals

Proportion of deals launched with target support

72% of deals in FY20 were launched with target board support ('friendly' deals), consistent with the tendency towards friendly deals seen in previous years. As with FY18 and FY19, all mega deals were announced with the support of the target board.

There were more unsolicited bids in the second half of FY20, likely due to confident bidders taking advantage of the turbulent environment to capitalise on the opportunities presented by the Covid-19 pandemic (43% in H2, 18% in H1).





FY20 in focus

Opportunity amongst uncertainty

While the uncertainties caused by the Covid-19 pandemic deterred some bidders, others saw opportunities in the Australian market.

In particular, since the onset of the Covid-19 pandemic in the second half of FY20, we saw increased interest in the Energy and Resources sector, with 6 of the 13 deals announced post-March 2020 involving targets in this sector, and in particular targets in the gold industry. This is unsurprising given the depressed share prices across the sector, and the desire for safe haven assets such as gold during times of economic uncertainty (particularly given the all-time highs recently seen in gold prices). 6 of these 13 deals were 'unsolicited' deals, being deals launched without the target board's recommendation. This is contrary to the general trend of bidders favouring deals with target board support (72% of all deals were 'friendly' deals in FY20).

One example of an unsolicited and opportunistic play in the Energy and Resources sector is Singapore's Golden Investments' on-market takeover bid for Stanmore Coal in April this year. The takeover bid follows the unsuccessful attempt by Golden Investments to gain control of Stanmore Coal in November 2018, where Golden Investments initiated a bid at $0.95 per share. In FY20, Stanmore Coal's share price had been on a steady decline since its peak in July 2019 of $1.45 per share, and, during the peak of the Covid-19 pandemic, on 2 April 2020, Golden Investments launched its bid. The offer price of $1 per share was not dissimilar to its 2018 offer price, however, the offer now represented a 22% premium to Stanmore's closing price of $0.82 on 1 April 2020. Golden Investments' control play was successful, with the Singaporean company ultimately obtaining a controlling stake in Stanmore Coal. This deal was also noteworthy as it was the only on-market takeover announced in FY20.

Value distribution of unsolicited bids

Consistent with prior years, in FY20, unsolicited bids (bids launched without target board support) were more common for plays in lower-valued targets, with the highest number of unsolicited bids occurring in the target value range of <$20m.

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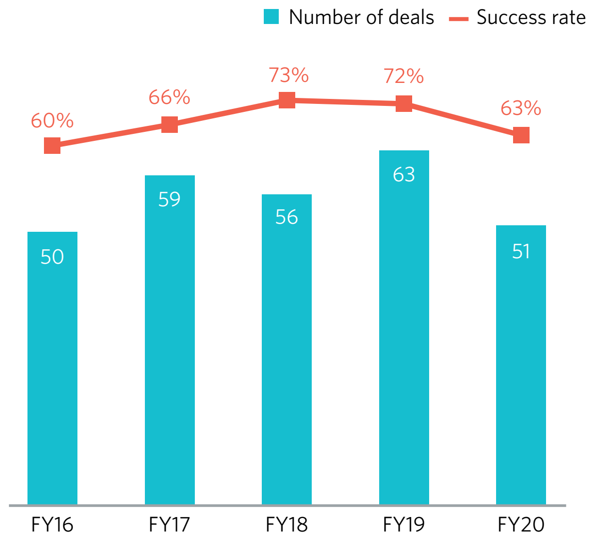
Outcomes

Overall success rates

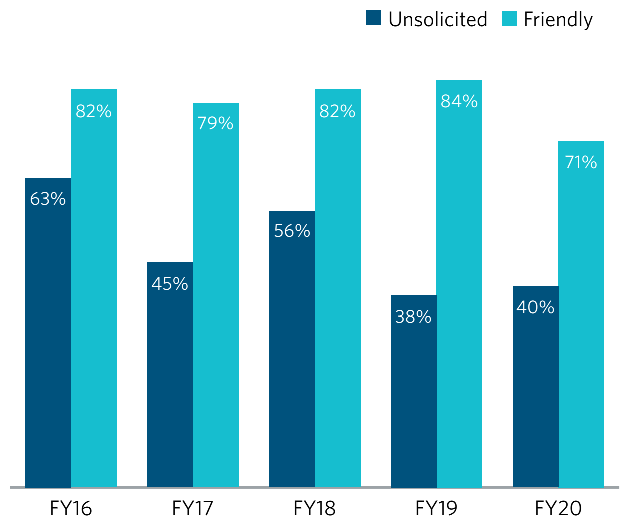
Number of deals and success rates

FY20 saw overall success rates drop from 72% in FY19 to 63%, closer to the historic levels we saw in FY16 (60%). A key reason for reduced success rates appears to be the increase in deals in FY20 that were withdrawn or terminated due to implications connected with the Covid-19 pandemic.



Success rates in completed unsolicited and friendly deals

Friendly deals were the most successful, reflecting the trust that shareholders place in a target's board to assess a transaction. Consistent with FY19, deals that were initially launched without target board support only had a 40% success rate.



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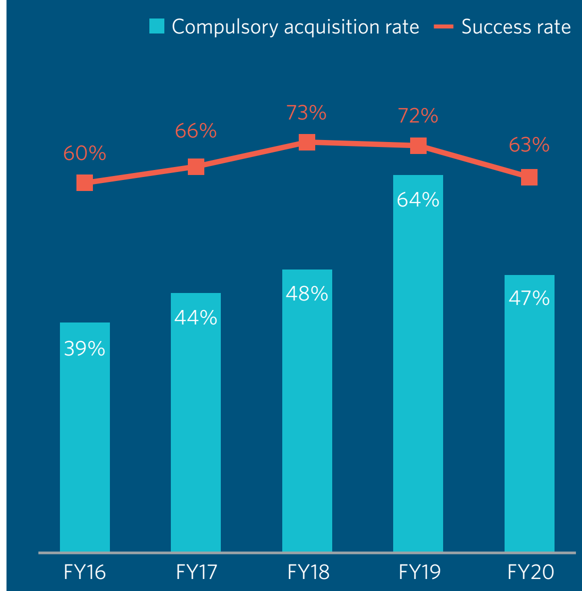
Reaching 100%

47% of completed takeover bids proceeded to compulsory acquisition

58% of completed deals (scheme or takeover) saw the bidder acquire 100% interest in the target

Takeover bids proceeding to compulsory acquisition

In FY20 there was a drop in the number of bidders proceeding to compulsory acquisition, contrary to the general upward trend since FY16. This is perhaps a consequence of the uncertainties brought by the Covid-19 pandemic, which had a negative effect on the overall deal success rate in FY20 (63% in FY20, compared to 72% in FY19 and 73% in FY18).



FY20 in focus

Deal impacts of the Covid-19 pandemic

Aside from the general market uncertainties resulting from the Covid-19 pandemic which have dampened deal activity, some deals announced in FY20 were unsuccessful as a direct result of the implications of the Covid-19 pandemic.

Generally, the implications of the pandemic took the form of an inability to secure or obtain financing and/or increases in target indebtedness, which triggered termination rights under implementation agreements such as material adverse change clauses (**MAC**s). Whilst the control proposals may have been terminated, in a number of these examples the bidders continued to work with the targets in other ways, including entry into alternative arrangements.

The market quickly adapted MAC carve-outs for the new environment, with two transactions announced in March including MAC carve-outs relating to the pandemic. MACs with a Covid-19 related carve-out appeared in 31% of all implementation agreements announced after the market crash on 20 February 2020.

Transactions affected by the Covid-19 pandemic included the following.

Pioneer Credit / The Carlyle Group

In December 2019, debt collection company Pioneer Credit entered into a scheme implementation agreement (**SIA**) with an entity related to private equity firm The Carlyle Group (**Carlyle**) after experiencing financial difficulties. As part of the deal, Carlyle agreed to acquire Pioneer Credit's debt and provide additional interim funding. Pioneer reported that Carlyle later alleged a number of breaches under the SIA and the facility agreement, including the occurrence of a material adverse change under the SIA and a material adverse effect under the facility agreement. Pioneer proceeded to terminate the SIA, citing protracted discussions between the parties had meant that the scheme would not become effective by the sunset date and commenced legal proceedings against Carlyle in relation to the financing agreement. The parties later entered into a standstill agreement and the legal proceedings were discontinued.

Oliver's Real Food Limited / EG FuelCo (Australia) Ltd

In March 2020, health food company Oliver's Real Food (**ORF**) entered into a SID with EG FuelCo (Australia) (**EG**). Shortly after, ORF temporarily suspended its operations and announced that its net indebtedness had exceeded the cap imposed by a condition precedent in the SID. EG was unwilling to waive the condition precedent and the SID was terminated by mutual agreement. The parties later entered into an exclusive long-term supply agreement and intellectual property licence.

LNG Limited / LNG-9 Pte Ltd

In February 2020, US gas exporter Liquefied Natural Gas Ltd (**LNGL**) announced that it had entered into a bid implementation agreement with LNG-9, along with an agreement to obtain bridge financing from First Wall Street Capital. Soon after, US gas prices plunged as international and domestic travel slowed due to the Covid-19 pandemic. When First Wall Street Capital refused to provide the agreed financing, LNG-9 withdrew its takeover bid, alleging that this event (among others) had a MAE on LNGL. Administrators have since been appointed to the target.

CML Group / Scottish Pacific Group

Scottish Pacific's acquisition of CML was terminated by mutual agreement after Scottish Pacific raised concerns that certain events may have occurred which had a MAE on CML's business. Although CML disagreed with Scottish Pacific, it stated that termination was in the best interests of CML's shareholders given the 'significant practical challenges that CML would need to overcome to progress a scheme transaction with a bidder which wished to terminate the scheme'.

Alto Metals / Goldsea Australia Mining

In February 2020, Goldsea Australia Mining announced an intention to make a takeover bid for Alto Metals. Being a China-based bidder, the bid was conditional on Goldsea obtaining FIRB approval. Alto received a competing proposal from a separate bidder, Habrok, and Goldsea subsequently increased the consideration offered under its bid.

Ultimately, Goldsea's offer was allowed to lapse due to significant delays in obtaining FIRB approval. At the time of writing, the Habrok offer is still on foot.

Outcomes

Shareholder activism

The Australian Unity Office Fund scheme, Prime Media scheme and Silver Chef scheme did not proceed to implementation due to a lack of shareholder support or active investment by deal opponents holding a blocking stake.

Silver Chef

In July 2019, commercial kitchen equipment supplier Silver Chef entered into a SIA with a consortium of investors under the leadership of private equity firm Next Capital, after an earlier take-private proposal by Next Capital in April 2019 that was followed by a drawn out period of due diligence and engagement with Silver Chef's financiers. After release of the scheme booklet, Blue Stamp Company (**BSC**), another private equity firm and 19.99% shareholder of Silver Chef, announced an intention to vote against the scheme and proposed that it would benefit all shareholders if Silver Chef was recapitalised via an accelerated entitlement offer.

As the Silver Chef Chairman and his related entities intended to retain their shares under the scheme, BSC's 19.99% shareholding amounted to a blocking stake. Accordingly, BSC's voting intention led to the Next Capital SIA being terminated in late August 2019. Silver Chef then commenced discussions with BSC in respect of the proposed recapitalisation, before receiving a conditional proposal from Next Capital to acquire Silver Chef's hospitality business as a standalone business.

BSC and the Silver Chef Chairman initially did not support Next Capital's proposal. However, before the end of September 2019, Silver Chef announced that it had entered into an in-principle agreement with Next Capital to sell its hospitality business for $18m, which was supported by both BSC and the Silver Chef Chairman. The transaction completed in December 2019.

Australian Unity Office Fund

In November 2019, the scheme meeting occurred for the Australian Unity Office Fund / CHAB Office scheme (CHAB Office being a joint venture run by the Charter Hall Group and Abacus Property Group consortium). Despite over 60% of eligible votes cast being in favour of the resolutions, the scheme resolutions were not passed by a requisite majority of 75% of target unitholders. This was notwithstanding CHAB's divestment of its 19.9% pre-bid stake to counter the impact of unitholders who were anticipated to vote against the scheme.

Prime Media

In December 2019, the proposed merger of Prime Media and Seven West Media was blocked by shareholders, despite the merger having obtained ACCC approval. 53% of Prime Media shareholders voted against the merger, including major shareholders, WIN Corporation owner Bruce Gordon and Australian Community Media executive Chairman Antony Catalano (who collectively held approximately 25% of the Prime Media shares by the time of the shareholder vote). It was reported that Mr Gordon sought to combine Prime Media with his regional TV broadcaster WIN. Meanwhile, Mr Catalano was reported to have signalled his intention to merge Prime Media with his regional publishing network ACM.

Unsuccessful deals - Covid-19, shareholder activism and other impacts

Reasons for failure in unsuccessful transactions

As at the date of this report, 14 deals announced in FY20 were unsuccessful, being 27% of all control proposals surveyed for FY20. In the majority of the unsuccessful deals, conditions were not met (accounting for 7 failed bids). These statistics are focused on schemes and takeovers that are launched and do not take into account the additional non-binding indicative offers that did not reach binding bid stage, such as Alimentation Couche-Tard's non-binding offer for Ampol (formerly, Caltex Australia).

Of the 14 unsuccessful deals, just under half failed due to Covid-19 related implications (including issues relating to securing financing or refinancing), around a quarter failed due to a rival bidder, a quarter failed due to a lack of shareholder support and the remainder failed due to reasons such as an inability to secure FIRB approval in time (which is itself related to impacts of the Covid-19 pandemic).

FY20 in focus

Creative responses to facilitate optionality

FY20 saw target boards going beyond traditional transaction processes to create optionality for their shareholders.

One example was Pacific Energy's response to receiving a rival proposal from a consortium of bidders. Pacific Energy signed a process deed with the rival bidder despite having already agreed a scheme implementation deed (**SID**) with the first bidder (QIC). This led to QIC exercising its matching rights under its SID and, as a result of Pacific Energy's tactics, Pacific Energy obtained an 11% premium to QIC's offer price. QIC made submissions to the Takeovers Panel in respect of Pacific Energy's conduct. However, the Takeovers Panel declined to make a declaration of unacceptable circumstances, noting among other things, that the outcome of the conduct was to elicit a materially higher offer and in substance the break fee agreed with the rival consortium was not anti-competitive or coercive.

The Panel's response emphasises that it will try not to second guess decisions made by target boards running a transaction process. The Panel's response of supporting the actions of the target board to conduct its transaction process as it considered was in the best interests of target shareholders, is also consistent with its response to proceedings instituted by rival bidder FNZ Group in relation to rival bids for GBST Holdings.

Tightening of foreign investment regulation

Temporary reforms implemented on 29 March 2020

On 29 March 2020, the Australian Government implemented temporary changes to Australia's foreign investment review framework in response to the Covid-19 pandemic. The changes included reducing the monetary screening threshold for all foreign investments in Australia to $0 and extending the timeframe for processing foreign investment approval applications from 30 days to up to 6 months. The changes were implemented with the purpose of protecting Australian businesses from being sold to foreign investors without government oversight in the context of the disruption caused by the Covid-19 pandemic.

Before the changes were implemented, foreign investment proposals were assessable by the Foreign Investment Review Board (**FIRB**) if the proposal met the relevant monetary thresholds, which ranged from $0 to $1,192. Lowering all of the monetary thresholds to $0 has meant that a significant number of potential acquisitions which may not have previously required FIRB approval have required approval before being able to be completed.

Whilst the timeframe for most approvals has been extended, FIRB has sought to prioritise urgent applications for investments that protect and support Australian businesses and Australian jobs. FIRB has also accommodated commercial deadlines when possible, if supporting information is provided with an application which outlines the relevant commercial imperatives of FIRB's timely attention to the application.

However, the impact of significant delays in FIRB approvals was felt by some foreign bidders where applications were considered by FIRB to be 'non-urgent', including China's Goldsea Group's bid for Alto Metals. Goldsea ultimately withdrew its bid after FIRB requested a further six month extension to consider the deal. The extension would have pushed the FIRB decision-making window to 10 months from the date of the initial application.

New reforms to be implemented 1 January 2021

On 5 June 2020, the Treasurer announced new reforms to the foreign investment review framework, focusing on sensitive national security-related businesses. The Federal Government's intention is that these changes take effect on 1 January 2021.

On 31 July 2020, the Australian Government released the exposure draft legislation, which acts as a framework for the new reforms.

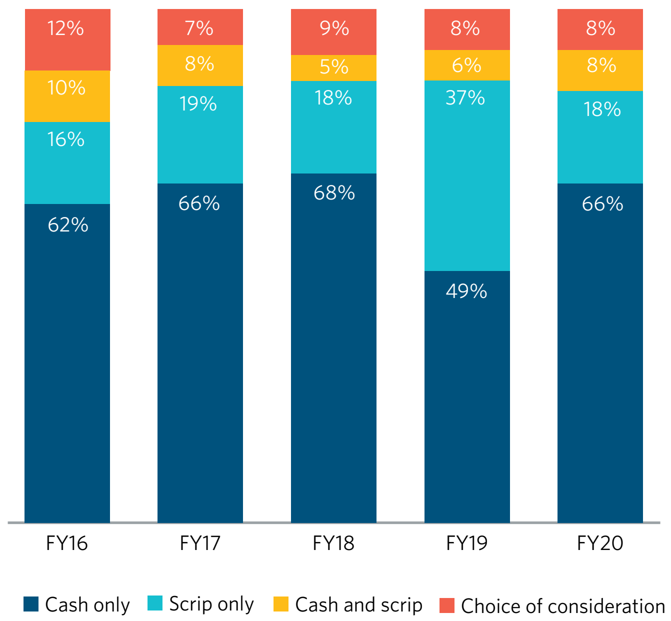
The reforms have introduced some welcome changes such as simplifying fees as well as relief for funds with passive Foreign Government Investors. However, investors should be aware of the increased scrutiny of applications and the increased potential for conditions to be attached to approvals. The proposed reforms are significant as they focus on national security assets and businesses, that will be subject to lower interest and value thresholds for requiring approval. We continue to see high levels of interest by foreign investors in Australian assets and with this is a keen focus on the new regime and how it will be applied.

Consideration and funding

Consideration

Types of consideration offered

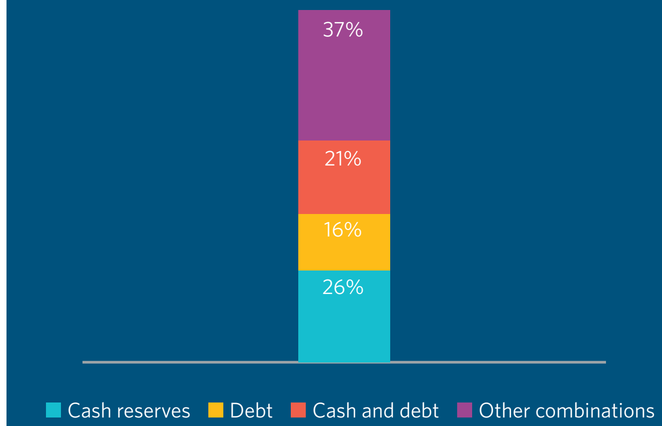
Cash was the preferred form of consideration offered in FY20, with 74% of deals involving cash only or a choice of cash or scrip consideration. The number of deals offering cash only consideration (66%) returned to FY17 and FY18 levels (66% and 68% respectively), after a spike in the use of scrip consideration in FY19.

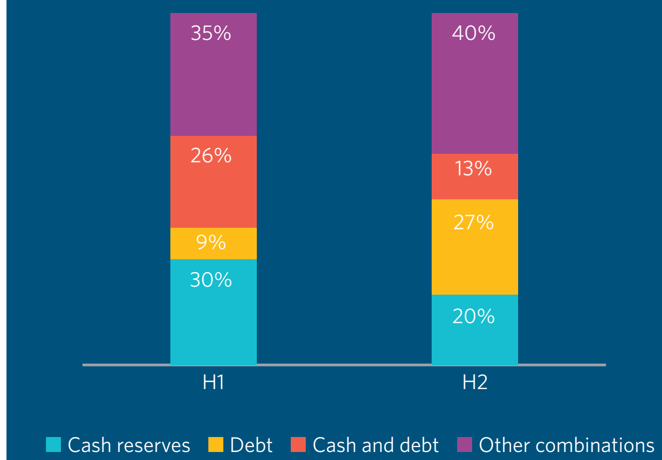


FY20 in focus

Funding deals during a global pandemic

Of the 38 deals that offered cash consideration in FY20 (or a choice between cash and scrip consideration), bidders most commonly relied on cash reserves to fund the acquisition (26%). Perhaps counter-intuitively, in the second half of FY20 after the on-set of the Covid-19 pandemic, more bidders turned to debt financing to fund their cash consideration (27%), while the number of bidders relying on cash reserves to fund decreased (20%). This suggests that perhaps bidders were confident in their ability to secure debt financing despite the uncertainties created by the Covid-19 pandemic. Another reason for the increase in debt financing could be the record low interest rates seen in FY20, with the Reserve Bank of Australia lowering the official cash rate to just 0.25%, encouraging bidders to capitalise on this low cost of financing.



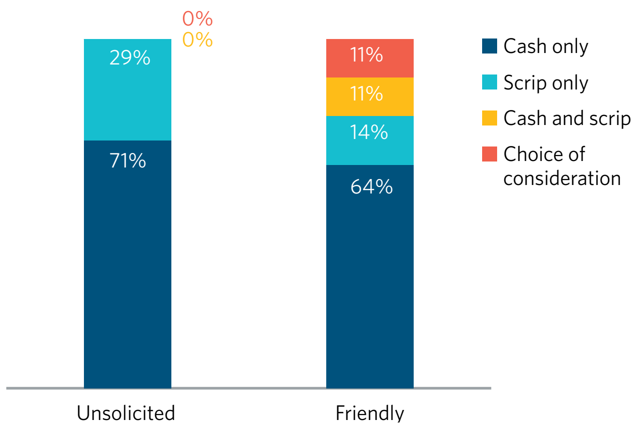


Consideration and funding

Consideration in unsolicited and friendly deals

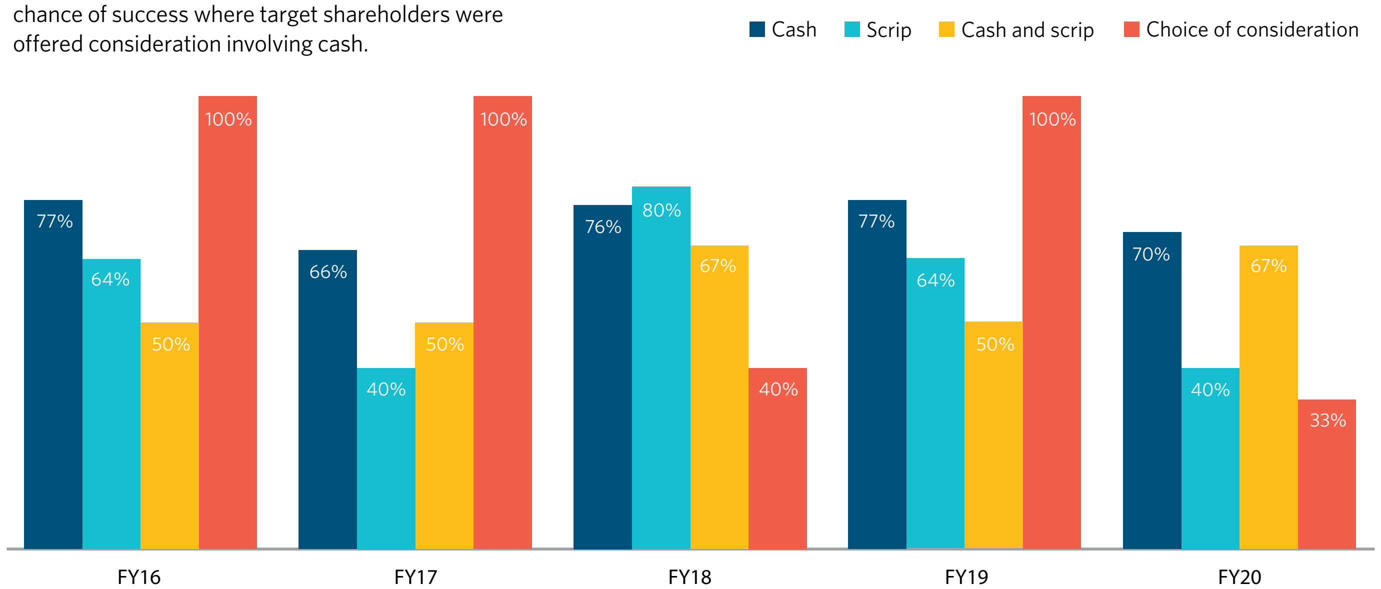
Consideration offered in unsolicited and friendly deals

FY20 saw a rise in cash deals, with bidders and targets both preferring the certainty offered by a cash deal (as opposed to a scrip alternative) in times of uncertainty. Understandably, cash was preferred to scrip in unsolicited deals.



Success rates by consideration offered

Consistent with previous years, deals in FY20 that had completed at the date of this report had the highest chance of success where target shareholders were offered consideration involving cash.



Impact of consideration

COMPLETED CASH ONLY DEALS WERE SUCCESSFUL

COMPLETED SCRIP ONLY DEALS WERE SUCCESSFUL

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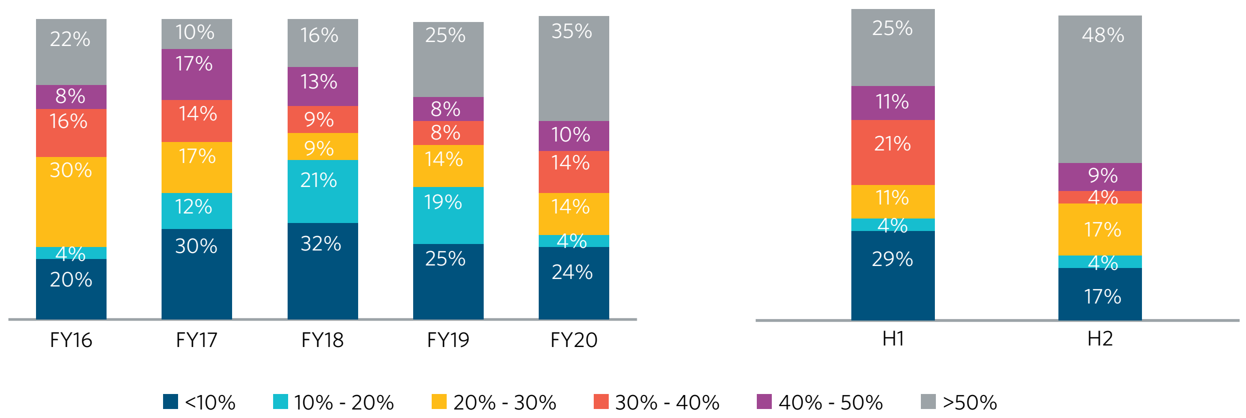
Pricing

Initial share premium

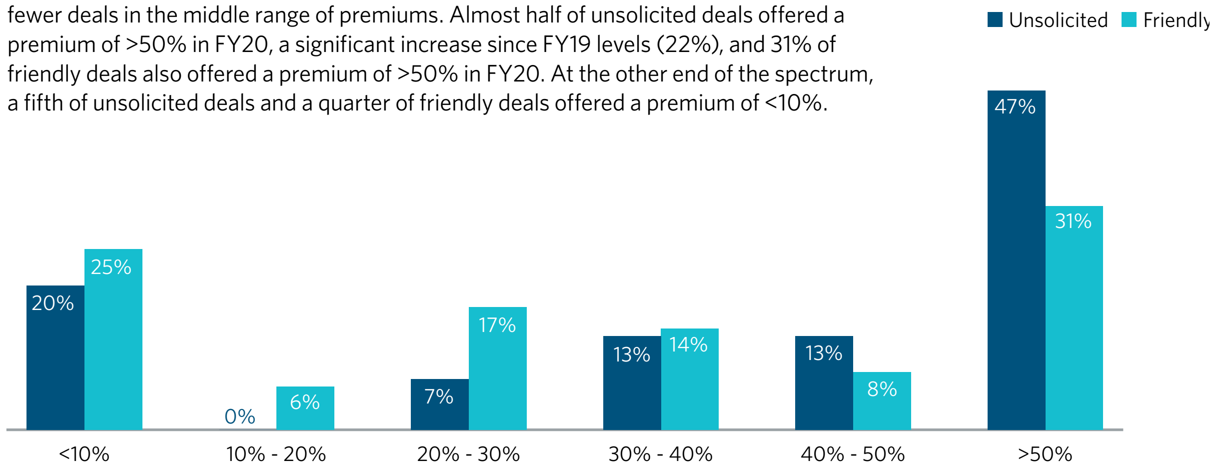
Initial share premium offered in all deals

FY20 saw a significant increase in the number of deals offering an implied share premium of >50% (35% in FY20, compared to 25% in FY19). This is largely a result of the fact that, in the second half of FY20, 48% of all deals involved an implied share premium of >50% (whereas only 25% of deals did in the first half of FY20). These record high implied share premiums are likely contributed to by the Covid-19 pandemic depressing share prices and inflating premiums, as bidders offered relatively high prices designed to meet shareholder expectations and acknowledge pre-pandemic entry prices.



Initial share premium offered in unsolicited and friendly deals

FY20 saw a rise in both high and low extremes of implied share premiums offered, but fewer deals in the middle range of premiums. Almost half of unsolicited deals offered a premium of >50% in FY20, a significant increase since FY19 levels (22%), and 31% of friendly deals also offered a premium of >50% in FY20. At the other end of the spectrum, a fifth of unsolicited deals and a quarter of friendly deals offered a premium of <10%.

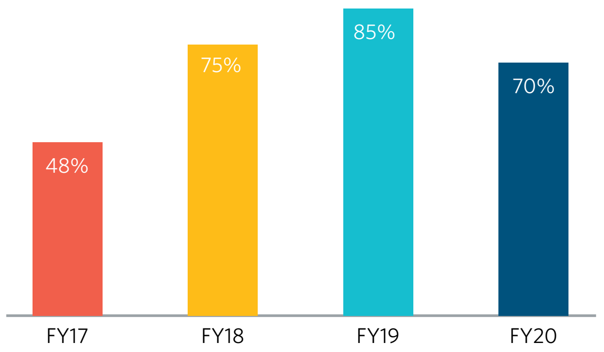


Conditions

Minimum acceptance conditions

Use of minimum acceptance conditions

The use of minimum acceptance conditions in off-market takeovers dropped in FY20, with 70% of off-market takeovers involving a minimum acceptance condition compared to 85% in FY19.



Minimum acceptance threshold

Of the 14 takeovers containing a minimum acceptance condition in FY20, 5 applied a 50% or 50.1% 'control' threshold, while 9 applied a 90% 'compulsory acquisition threshold' (up from only 6 takeovers applying this threshold in FY19, demonstrating a further preference towards deal certainty).

Of the 9 deals which applied the 90% threshold, 3 did not satisfy the condition (and subsequently resulted in an unsuccessful deal).

FY20 in focus

The re-emergence of due diligence conditions

A number of hostile takeover bids were subject to due diligence conditions.

Following a series of Takeovers Panel cases stemming back to 2003, it is generally understood that a target is under no obligation to comply with a due diligence condition. Two hostile takeover bids in FY20 – IGO Limited's (formerly Independence Group) bid for Panoramic Resources Limited (**Panoramic Bid**) and Goldsea Australia Mining Pty Ltd's bid for Alto Metals Limited (**Alto Bid**) – included a due diligence condition in the respective bidder's statement.

- In the Panoramic Bid, the due diligence condition required the target to provide a technical expert with access to the target's mining operations for the purpose of conducting an investigation of the past and prospective performance of the target's operations. Further, the condition required the target to provide a number of factual confirmations itself in its target's statement.
- In the Alto Bid, the due diligence condition required the target to provide certain information to the bidder to allow the bidder to conduct due diligence. This information included access to the target's mining operations, information and agreements with respect to the target's mining tenements and information provided by Alto to other bidders or potential bidders.

In the Panoramic Bid, the due diligence condition (as well as a number of other conditions in the bidder's statement) were not satisfied. The bidder did not waive the conditions or extend the offer period, and as a result, the offer lapsed. The Alto Bid was also unsuccessful, but due to an unrelated reason to the due diligence condition.

Responding to due diligence conditions

How then should target directors respond to receipt of a hostile bid that contains a due diligence condition?

Of course, target directors must act in accordance with their duties in deciding whether to provide information to potential bidders or to allow bidders to undertake due diligence, including considering any appropriate confidentiality requirements or protocols. In determining how to respond, target directors would normally be expected to consider (at a minimum) the terms and conditions of the proposal, the level of certainty, whether the proposal is superior to an existing proposal, and whether the bidder is a competitor to the business of the target company. If sensitive information is to be supplied to the bidder, the target may consider seeking a standstill, effectively requiring the target's consent for disclosure to allow any bid to proceed (the intent being to hamper the immediate hostile bid and allow some negotiating leverage).

ASIC confirms ban on proprietary company custodian structures but public company stub deals can proceed

Stub equity structures (where securities in an unlisted vehicle with ongoing exposure to the target business post-implementation are offered as consideration to target shareholders) have been under ASIC's scrutiny for several years. Stub equity allows target shareholders to retain economic exposure to the target business, while also allowing the takeover or scheme to proceed. In FY20, 3 schemes offered stub equity, including the Brookfield/Aveo scheme and Carlyle/Pioneer Credit scheme.

ASIC has expressed concerns where a stub equity structure is used involving an Australian proprietary company due to the reduced governance and disclosure requirements that apply to proprietary companies and custodian structure.

In 2018, ASIC made submissions to the Federal Court in connection with the Capilano Honey scheme, raising concerns that shareholders were not being accorded adequate protection by the proposed stub equity structure. The Federal Court acknowledged the concerns ASIC raised but ultimately approved the scheme. ASIC subsequently released a consultation paper on stub equity in June 2019.

On 24 September 2020, ASIC announced that it had modified the Corporations Act to prevent stub equity offers of scrip in proprietary companies being made to large numbers of retail target holders in takeover bids and schemes of arrangement. Commissioner Armour said: 'These changes uphold the legislative intent of the restrictions on proprietary companies and ensure that retail investors benefit from the higher levels of regulation available in public companies'.

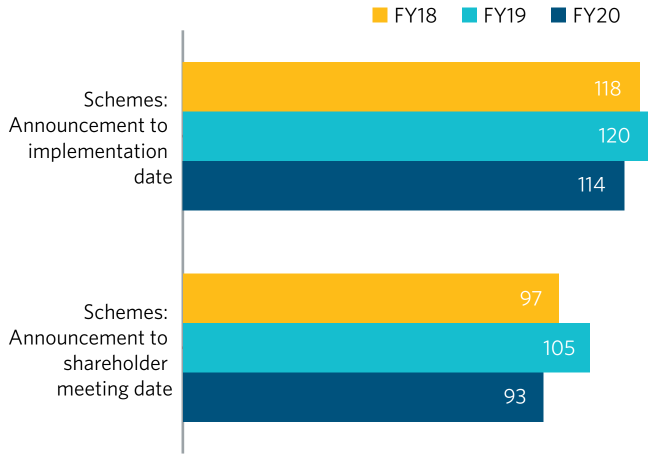
ASIC's change does not prevent the use of foreign entities or unlisted public companies as stub equity vehicles.

Timing

Critical point

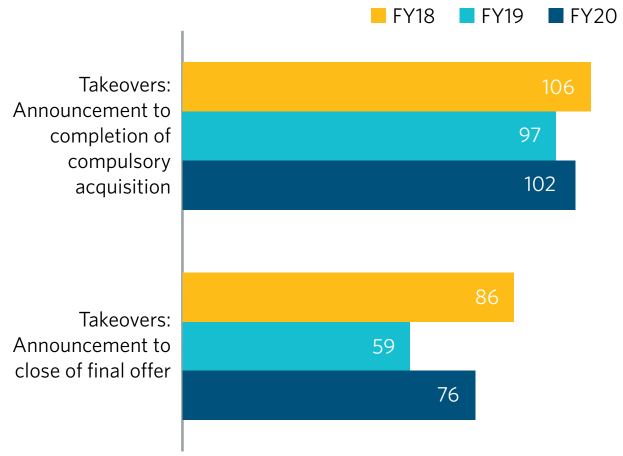
Schemes

In FY20, the median time from announcement to the scheme meeting date (93 days) and the implementation date (114 days) was quicker than the median periods for FY19 (105 and 120 days, respectively).



Takeovers

In FY20, the median time for successful takeover bids to close was 76 days, this was longer than the 59 days seen in FY19, although still shorter than FY18 (86 days). The median period to get compulsory acquisition was 102 days, similarly longer than the 97 days seen in FY19.



Timing — longest deals

168 days
LONGEST SCHEME

Pacific Equity Partners' (**PEP**) acquisition of **Zenith Energy Limited** was the longest scheme to complete in FY20, taking 168 days.

Following the announcement of the scheme on 6 March 2020, Zenith was notified that Apex Opportunities Fund Pty Limited, an entity controlled by Infrastructure Specialist Asset Management Ltd (as trustee of the Diversified Infrastructure Trust) and OPTrust Private Markets Group (an investment division of OPSEU Pension Plan Trust Fund), had become a substantial shareholder with 17.61% voting power.

On 6 May 2020, in response to PEP's concern that the size of Apex's interest would make the scheme challenging to implement, Zenith consented to the release of confidential information to Apex for the purposes of exploring the possibility of it joining the consortium.

Later in May, Zenith entered into a revised SID to reflect Apex taking an equity position in the PEP group holding structure. There were no other material changes to the initial SID.

Early stage submissions of proxy votes indicated the scheme might not have passed, and in July the parties entered into a further revised SID. Under the further revised SID, PEP increased its offer from $1.01 to $1.05 per Zenith share.

The scheme was approved by Zenith shareholders on 31 July and was implemented on 21 August 2020.

142 days
LONGEST TAKEOVER

Ibaera Capital Fund GP Limited's hostile bid for **Azumah Resources Limited** was the longest takeover to complete in FY20, taking 142 days from announcement to close of the final offer.

The unconditional all-cash offer was announced on 18 September 2019, following a number of rejected proposals by Ibaera to acquire Azumah including by way of scheme of arrangement.

Despite a strong reject campaign initiated by the Azumah board, the offer was ultimately recommended when Ibaera agreed to increase the consideration from 2.8 cents to 3.3 cents per share on 28 October 2019.

Ibaera proceeded to compulsory acquisition on 6 February 2020, after extending the close of offer date on four separate occasions.

Timing — shortest deals

67 days
SHORTEST SCHEME

360 Capital Total Return Fund's friendly acquisition of **URB Investments Limited** was the shortest scheme in FY20, completing in 67 days. The transaction was announced on 14 October 2019, with the support of URB's major shareholder Washington H. Soul Pattinson, and after the parties had entered into a SID.

The scheme booklet was released three weeks later which contained an indicative timetable for the remainder of the deal. This timetable was followed strictly, with the transaction receiving overwhelming support at the meeting of URB shareholders on 6 December 2019. The scheme was implemented later that month.

46 days
SHORTEST TAKEOVER

Singapore-based Golden Investments (Australia) Pte Ltd's unsolicited bid for **Stanmore Coal Limited** was the quickest completed deal in FY20.

The bid was announced on 2 April 2020, and followed an earlier, unsuccessful attempt by Golden Investments to gain control of Stanmore in FY19.

At the time of announcement, Golden Investments already held 31.4% of the shares in Stanmore and subsequently increased its shareholding to 51%.

On 17 April 2020, the opening date of the offer, the Stanmore Coal board announced a bonus issue of new shares to eligible shareholders on a 1 for 33 basis. This announcement was made without consultation with Golden Investments and despite its 51% interest.

Notwithstanding Stanmore's efforts to deter the bid, Golden Investments confirmed on 28 April that its offer extended to all of the Stanmore shares to be issued pursuant to the bonus issue. This effectively represented an increase of 3.03% to the aggregate amount of the offer for those shareholders who were eligible for the bonus issue.

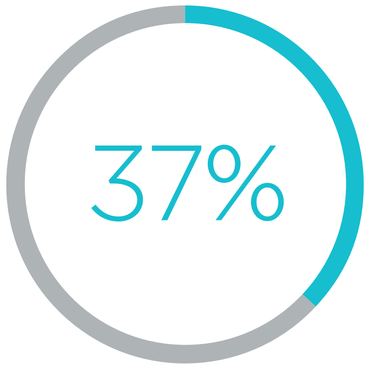
The bid successfully closed on 18 May 2020 – just 46 days from announcement.

Regulatory involvement

Use of regulatory conditions

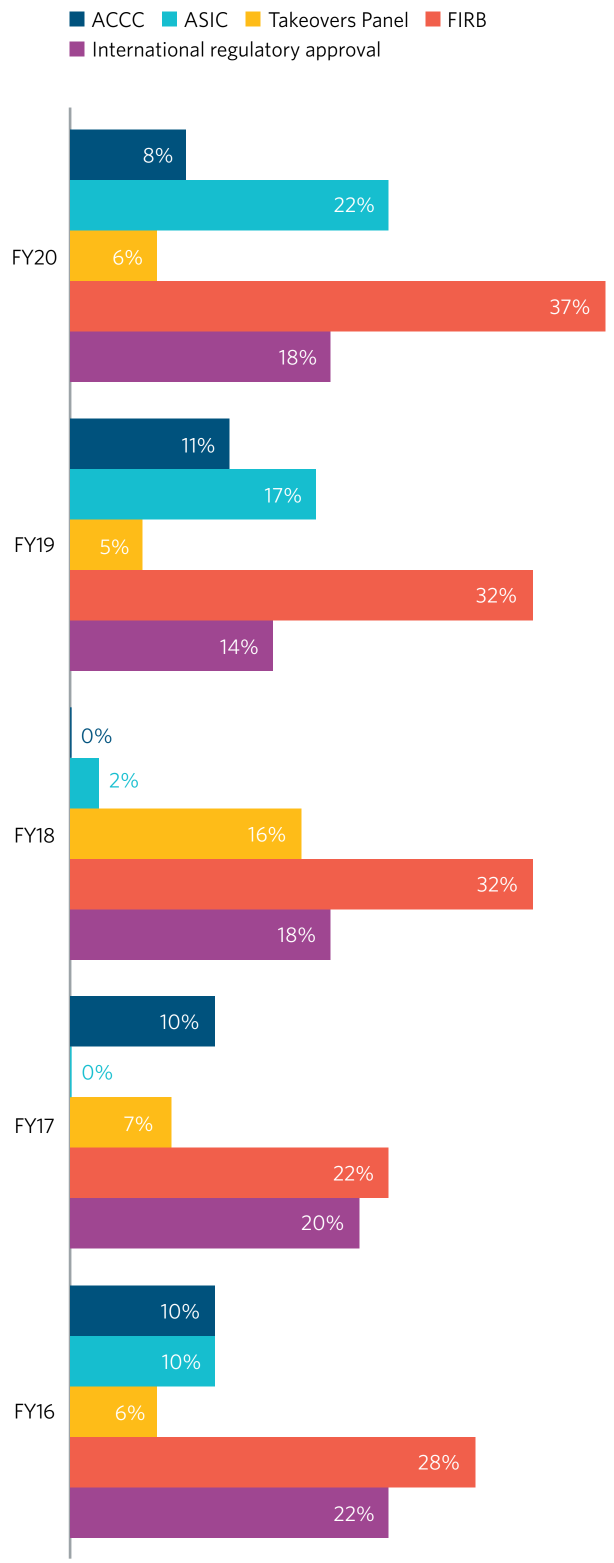
Proportion of deals with regulatory conditions

FY20 continued the upward trend of high levels of regulatory conditions. FIRB approval was required in 37% of all deals, which reflects the continued high level of inbound investment into Australia. The time taken to obtain FIRB approval increased, with all deals requiring FIRB approval taking at least 60 days (of which, half of those deals involved FIRB approval taking up to 90 days). A notable example of delays in FIRB approval includes China's Goldsea Group's bid for Alto Metals as discussed earlier in this report.



OF DEALS CONDITIONAL ON OBTAINING FIRB APPROVAL

OF DEALS CONDITIONAL ON INTERNATIONAL REGULATORY APPROVAL



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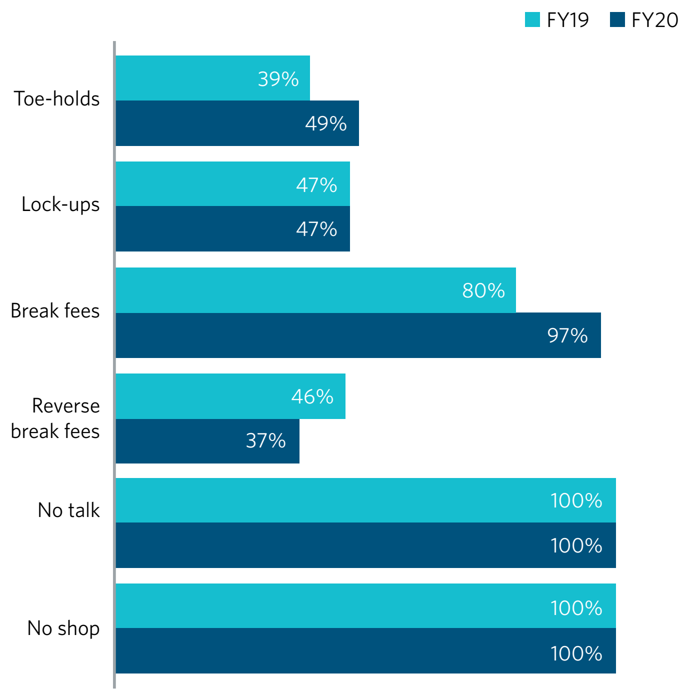
Deal protection

Forms of deal protection

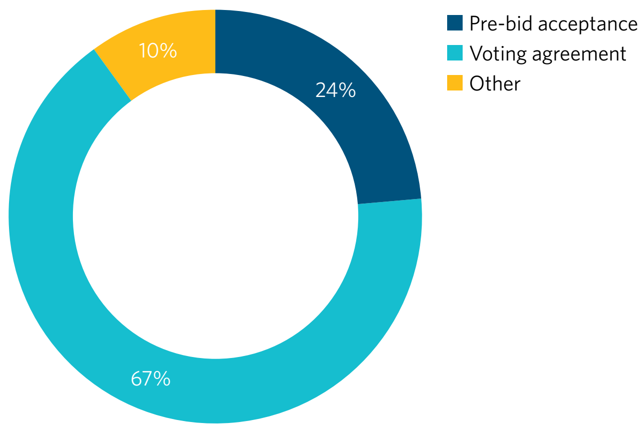
Proportion of negotiated deals with protection

Consistent with FY19, the use of no shop and no talk exclusivity provisions was a feature of all negotiated deals in FY20. The use of break fees was more prevalent than FY19, with 97% of all negotiated deals containing a break fee. The use of toe-holds was also more common than the levels seen in FY19.



Use of lock-up devices

Lock-up devices featured in 46% of deals in FY20, up from 41% in FY19 and 29% in FY18. Voting agreements were the most common form of lock-up in FY20.



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FY20 in focus

Disclosure of equity derivatives

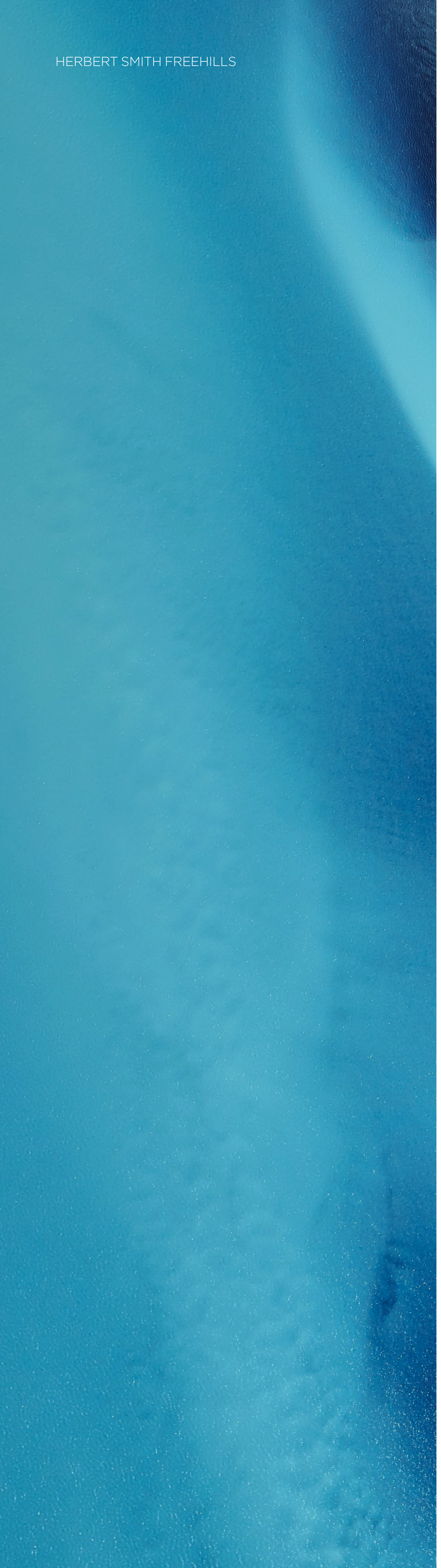
In May 2020, the Takeovers Panel issued updated Guidance Note on equity derivatives (GN20), which will introduce a number of important changes to the public disclosure regime.

The revised GN20 makes it clear that all long positions (whether capable of physical or cash settlement) over 5% should be publicly disclosed. Importantly, the Panel now expects disclosure regardless of whether a control transaction has commenced. Previously, the Panel only expected disclosure of long positions where a control transaction had commenced.

The revised GN20 also sets out factors the Panel may take into account in determining whether an acquisition of a long position in excess of 20% will constitute unacceptable circumstances. Some of these factors include: whether the holder has attempted to exercise control or influence over the entity, whether (and when) the long position was disclosed, and whether the acquirer of the long position could have relied on an exemption to the 20% rule if the acquirer had the acquisition as a physical holding (such as the "3% creep" exemption).

If the Panel makes a declaration of "unacceptable circumstances" in relation to disclosure of equity derivatives, the revised GN20 provides that the Panel can make any order, including remedial orders, it thinks appropriate. Orders may include disclosure orders, orders to dispose of any securities and orders for the cancellation of agreements.

Although the revised GN20 has not yet come into effect, we expect to see enhanced disclosure of equity derivative positions ahead of the formal commencement date of the revised GN20, particularly from persons who amass significant long positions in ASX-listed entities but who have not yet decided whether or not to attempt to exercise control over, or undertake a control transaction in respect of, that entity.

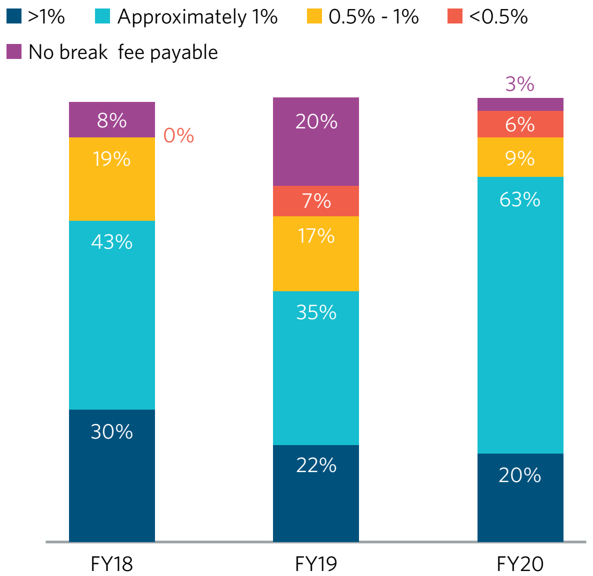


Deal protection

Break fees

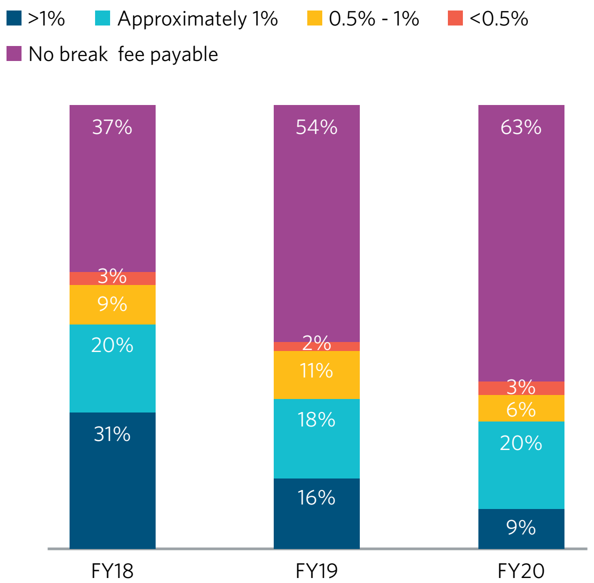
Quantum of break fees

As seen in FY18 and FY19, a break fee of 1% was the most common break fee in FY20. This is consistent with the Takeover Panel's guidance that a break fee not exceeding 1% of the equity value of the target is generally not unacceptable.



Quantum of reverse break fees

The use of reverse break fees nearly halved against FY18 levels, with the majority of negotiated deals (63%) not involving a reverse break fee. As with break fees, reverse break fees were most commonly valued at 1%.



List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Silver Chef Ltd	Industrials	Consortium BidCo for SIV	Australia	$27.5m	Scheme	Cash and scrip
Villa World Limited	Real Estate	Avid Property Group Australia Pty Ltd	Australia	$293.5m	Scheme	Cash only
Metgasco Ltd	Energy (Oil and Gas)	Melbana Energy Ltd	Australia	$15.6m	Takeover	Scrip only
Dreamscape Networks Ltd	Information Technology	Web.com Aus BidCo Pty Ltd	North America	$105.0m	Scheme	Cash only
Pacific Energy Ltd	Utilities	QGIF Swan BidCo Pty Ltd	Australia	$412.9m	Scheme	Cash only
GBST Holdings Limited	Information Technology	FNZ (Australia) Bidco Pty Ltd	Europe	$261.5m	Scheme	Cash only
Egan Street Resources Limited	Resources (Gold)	Silver Lake Resources Ltd	Australia	$52.1m	Takeover	Scrip only
Wellcom Group Limited	Commercial Services	Innocean Worldwide Inc	Asia	$262.8m	Scheme	Cash only
Macquarie Media Limited	Communication Services	Fairfax Media Ltd	Australia	$250.0m	Takeover	Cash only
Aveo Group	Real Estate	Hydra RL BidCo Pty Ltd	North America	$1248.6m	Scheme	Cash or scrip
Alliance Resources Limited	Resources (Gold)	Gandel Metals Pty Ltd	Australia	$21.4m	Takeover	Cash only
ERM Power Limited	Energy (Supply)	Shell Energy Australia Pty Ltd	Australia	$605.7m	Scheme	Cash only
Echo Resources Limited	Resources (Gold)	Northern Star Resources Ltd	Australia	$228.1m	Takeover	Cash only
Australian Unity Office Fund	Real Estate	CHAB Office Pty Ltd as trustee for the CHAB Office Trust	Australia	$495.0m	Scheme	Cash only
Pacific Energy Limited	Utilities	OPTrust/ICG Consortium	Australia	$460.2m	Scheme	Cash only
Bellamy's Australia Limited	Consumer Staples	China Mengniu Dairy Company Ltd	Asia	$1434.1m	Scheme	Cash only
Azumah Resources Limited	Resources (Gold)	IGIC Pte Ltd	North America	$27.4m	Takeover	Cash only
Webster Limited	Consumer Staples	PSP BidCo	North America	$724.5m	Scheme	Cash only

List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Konekt Limited	Health Care	Advanced Personnel Management International Ltd	Australia	$46.5m	Scheme	Cash only
URB Investments Limited	Financials	360 Capital Total Return Fund	Australia	$85.8m	Scheme	Cash and scrip
Prime Media Group Limited	Communication Services	Seven West Media Ltd	Australia	$63.8m	Scheme	Scrip only
CSG Limited	Information Technology	Fuji Xerox Asia Pacific Pte Ltd	Asia	$139.3m	Scheme	Cash only
QMS Media Ltd	Telecommunications	Shelley Bidco Pty Ltd	Australia	$420.6m	Scheme	Cash only
Panoramic Resources Limited	Resources (Nickel)	IGO Limited	Australia	$311.4m	Takeover	Scrip only
CML Group Limited	Financials	Consolidated Operations Group Ltd	Australia	$96.8m	Scheme	Cash or scrip
Royalco Resources Limited	Resources (Hydrocarbons)	Fitzroy River Corporation Ltd	Australia	$12.7m	Takeover	Cash only
Pioneer Credit Limited	Financials	Robin BidCo Pty Ltd	North America	$119.9m	Scheme	Cash or scrip
National Veterinary Care Ltd	Health Care	Australian Veterinary Owners League Pty Ltd	North America	$248.8m	Scheme	Cash only
Keybridge Capital Ltd	Financials	Aurora Dividend Income Trust	Australia	$10.4m	Takeover	Cash only
Australian Unity Office Fund	Real Estate	Legs Bid Co Services Pty Ltd as trustee for Legs Bid Trust	North America	$485.2m	Takeover	Cash only
Spectrum Metals Limited	Resources (Gold)	Mount Magnet Gold Pty Ltd	Australia	$207.8m	Takeover	Cash and scrip
Alto Metals Limited	Resources (Gold)	Goldsea Australia Mining Pty Ltd	Asia	$19.1m	Takeover	Cash only
Liquefied Natural Gas Ltd	Energy (LNG)	LNG-9 Pte Ltd	Asia	$114.2m	Takeover	Cash only
CML Group Limited	Financials	Scottish Pacific Group Ltd	Australia	$124.0m	Scheme	Cash only

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List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Windlab Limited	Energy (Renewables)	Wind Acquisition 2 Pty Ltd	Australia	$68.2m	Scheme	Cash only
Zenith Energy Limited	Utilities	Elemental Infrastructure BidCo Pty Ltd	Australia	$150.9m	Scheme	Cash and scrip
Oliver's Real Food Limited	Consumer Discretionary	EG FuelCo (Australia) Ltd	Europe	$25.1m	Scheme	Cash only
Stanmore Coal Limited	Energy (Coal)	Golden Investments (Australia) Pte Ltd	Asia	$256.1m	Takeover	Cash only
Sienna Cancer Diagnostics Limited	Health Care	BARD1 Life Sciences Ltd	Australia	$24.7m	Scheme	Scrip only
XCD Energy Limited	Energy (Oil)	88 Energy Ltd	Australia	$8.4m	Takeover	Scrip only
Alt Resources Limited	Resources (Gold)	Aurenne Ularring Pty Ltd	Australia	$30.7m	Takeover	Cash only
Alto Metals Limited	Resources (Gold)	Habrok (Alto) Pty Ltd	Australia	$19.4m	Takeover	Cash only
OneVue Holdings Limited	Financials	IRESS Ltd	Australia	$107.2m	Scheme	Cash only
Exore Resources Ltd	Resources (Gold)	Perseus Mining Ltd	Australia	$61.7m	Scheme	Scrip only
Infigen Energy	Utilities	UAC Energy Holdings Pty Ltd	Asia	$776.6m	Takeover	Cash only
OptiComm Ltd	Telecommunications	Uniti Group Ltd	Australia	$530.8m	Scheme	Cash or scrip
Infigen Energy	Utilities	Iberdrola Renewables Australia Pty Ltd	Europe	$834.8m	Takeover	Cash only
Cardinal Resources Limited	Resources (Gold)	Shandong Gold Mining (Hong Kong) Co Ltd	Asia	$300.0m	Takeover	Cash only
Cassini Resources Ltd	Resources (Gold)	Oz Minerals Ltd	Australia	$64.9m	Scheme	Cash and scrip
Cromwell Property Group	Real Estate	ARA Real Estate Investors 28 Ltd	Asia	$667.8m	Takeover	Cash only
Reckson New York Property Trust	Real Estate	Keybridge Capital Ltd	Australia	$3.0m	Takeover	Scrip only

About Herbert Smith Freehills

A market leader in M&A

Herbert Smith Freehills is a market leader in mergers and acquisitions, consistently acting on some of the most complex and strategic corporate transactions in Australia and around the world.

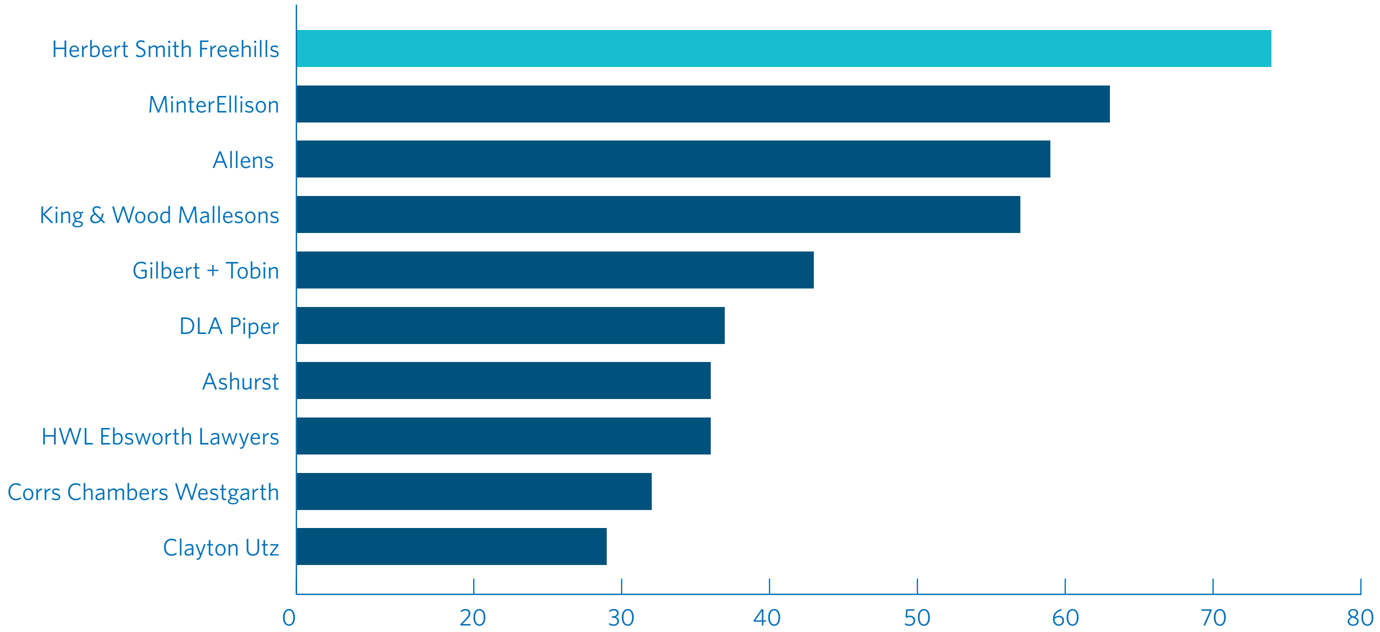
The volume and quality of transactions in which the firm is involved ensures that our clients have access to the deepest knowledge of market trends and M&A deal technology.

Described as a "standout practice" and an "acclaimed Australian offering", the firm is "especially valued for its ability to provide substantial, multi-jurisdictional support at both the regional and global level" (Chambers Asia Pacific, 2020).

Herbert Smith Freehills is consistently awarded the highest possible ranking in the area of Corporate M&A by Chambers Asia Pacific, Asia Pacific Legal 500 and IFLR1000.

All public and private M&A deals: 1 July 2019 to 30 June 2020

Number of bidder and target roles by Australian legal advisers



Source: Mergermarket Australian legal adviser data as at 24 September 2020

The Herbert Smith Freehills Corporate team in Australia has recently received the following awards:

- Australian Deal Team of the Year – M&A team – Australasian Law Awards 2020
- Transaction Team of the Year – M&A team – Lawyers Weekly Australian Law Awards 2019
- M&A Legal Adviser of the Year – Mergermarket Australia M&A Awards 2019
- Cross-Border M&A Legal Adviser of the Year – Mergermarket Australia M&A Awards 2019
- Law Firm of the Year for M&A Law – Best Lawyers 2019
- Band 1 Corporate/M&A – Chambers Asia Pacific 2020

For further information visit our website www.herbertsmithfreehills.com.

Methodology

This report is a summary of a review of the 51 public transactions that were announced during FY20 (a full listing of deals reviewed can be found on pages 28 to 30) based on public information available up to August 2020.

The transactions reviewed were mergers and acquisitions of Australian companies listed on the ASX, which were conducted by way of takeover or scheme of arrangement pursuant to Australian corporations law, including all announced transactions or proposals irrespective of the size.

Schemes of arrangement which were genuine restructures rather than merger transactions have been disregarded.

Foreign transactions which involved the acquisition of ASX-listed securities have been disregarded (eg CHESS depository interests in a US company or transactions governed by or conducted under foreign law).

Consistent with the approach taken in previous years, we have considered bidders making consecutive bids for the same target as one deal.

Where a deal was not initially recommended by the target board on the date of announcement of the transaction, we have referred to that transaction as 'hostile' or 'unsolicited'. 'Friendly' deals were initially recommended by the target board on the date of announcement.

Dividends and contingent value rights have not been included in deal value calculations. Further, all deal values have been calculated with reference to the number of target shares on issue and do not include any outstanding convertible instruments (eg performance rights).

An arrangement with, or statements of intention by, target shareholders in respect of their securities is referred to as a 'lock-up device'.

The state-by-state division of targets is based on the location of the target's head office.

The primary source of data was ASX announcements. Where possible, the data was cross-checked using alternative sources (eg the Takeovers Panel website).

All dollar figures are shown in Australian dollars unless otherwise stated.

The Herbert Smith Freehills Corporate team in Australia has recently advised:

- TPG Telecom on its recently completed $5.4b merger of equals with Vodafone Hutchison by way of scheme of arrangement
- Aveo on its $1.3b acquisition by Brookfield by way of scheme of arrangement
- UAC Energy on its $777m takeover contest involving Infigen Energy
- ERM Power on its $606m acquisition by Shell Energy Australia by way of scheme of arrangement
- BGH Capital on its proposed $478m acquisition of Village Roadshow, conducted via two alternative and concurrent scheme of arrangement structures
- IGO on its $311m unsolicited takeover attempt for Panoramic Resources
- FNZ Group on its $261m acquisition of GBST Holdings by way of scheme of arrangement
- The Carlyle Group on its $120m acquisition attempt for Pioneer Credit by way of scheme of arrangement
- Seven West Media on its acquisition attempt for Prime Media by way of scheme of arrangement
- Ibaera Capital on its successful unsolicited takeover bid for Azumah Resources

Your team

If you have any questions relating to mergers and acquisitions or corporations law more generally, please contact one of the following partners in the Corporate group at Herbert Smith Freehills.

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