HERBERT SMITH FREEHILLS

AUSTRALIAN PUBLIC M&A REPORT 2018

TENTH EDITION

Contents

FY18 highlights

$40.9bn
TOTAL DEAL VALUE

56
ANNOUNCED DEALS

72%
OVERALL SUCCESS RATE

7
MEGA DEALS (>$1bn)

6
TARGETS SUBJECT TO MULTIPLE BIDS

10 largest deals

TARGET	BIDDER	DEAL VALUE	SECTOR
Westfield	Unibail-Rodamco	$20.82bn	Real estate
Investa Office Fund	Blackstone	$3.14bn	Real estate
Sirtex Medical	CDH Genetech	$1.87bn	Health care
Sirtex Medical	Varian Medical Systems	$1.56bn	Health care
Aconex	Vantive Australia	$1.56bn	Information technology
Mantra Group	Accor	$1.18bn	Consumer
APN Outdoor Group	JCDecaux	$1.12bn	Consumer
Programmed	PERSOL Holdings	$778m	Industrials
Tox Free Solutions	Cleanaway	$666m	Industrials
Pepper Group	Red Hot Australia	$657m	Financials

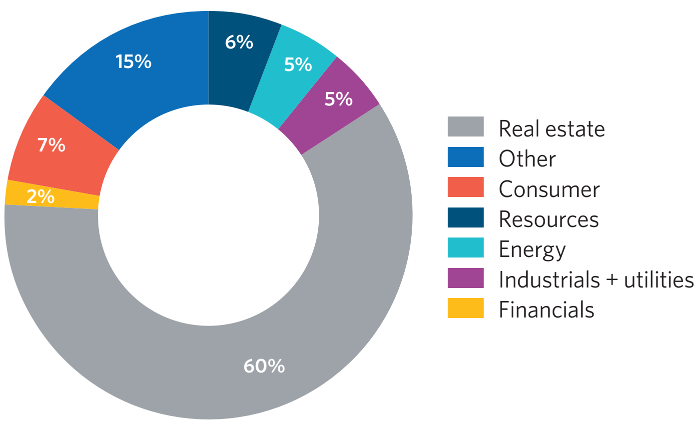
90%
foreign bidders by value

67%
of takeovers were hostile

$179m
median target value

82%
of deals included cash as all or part of the consideration

Value of sectors



Introduction and key findings

Introduction

This is the tenth edition of Herbert Smith Freehills' Australian Public M&A Report. This edition examines the 56 control transactions involving Australian targets listed on the ASX that were conducted by way of takeover or scheme of arrangement in the 2018 financial year.

Activity overview

Public M&A activity in FY18 was broadly consistent with that experienced in the previous three years. There were 56 deals announced in FY18 compared to 59 deals in FY17, 50 deals in FY16 and 55 deals in FY15. Total deal value increased to $40.9bn, but was just $20.1bn excluding Unibail-Rodamco's $20.8bn acquisition of Westfield Corporation (the largest public M&A transaction in Australian history). Total deal value was $23.4bn in FY17, $33.2bn in FY16 and $28bn in FY15.

Sector overview

The real estate sector accounted for 60% of deals by value and 11% of deals by number.

The energy and resources sectors also featured strongly, contributing $4.44bn to total deal value and representing 41% of deals by number.

Levels of activity in the health care and information technology sectors were higher than those experienced historically. Deals in the health care sector accounted for 11% of overall deal value and 13% of overall deal volume. Deals in the information technology sector accounted for 4% of deals by value and 9% of deals by number.

Bidders sought certainty of full ownership

Bidders were very focused on certainty of outcome in FY18. There was a preference for structuring transactions as schemes and for cash consideration. There was also an increase in the use of minimum acceptance conditions in takeover bids, material adverse change conditions, deal protection mechanisms and break fees. This approach by bidders translated into a high overall success rate of 72% in FY18.

Preference for schemes

For the first time since the inception of this report, schemes were the preferred transaction structure over takeover bids (52% relative to 48%). This preference for schemes was even more evident in larger transactions, with 64% of deals valuing the target at greater than $100m being schemes.

Cash

Cash was the sole form of consideration offered in 68% of deals and cash was an element of the consideration offered in 82% of deals.

High conditionality

Material adverse change conditions relating to the target featured in 79% of all deals (59% of takeovers and 97% of schemes).

There was also an increase in the use of deal protection mechanisms in negotiated deals in FY18, in particular exclusivity provisions, notification and matching rights, and break fees.

Bidders were also focused on certainty of outcome when employing a takeover bid as the transaction structure. 75% of off-market takeovers included a minimum acceptance condition.

Activity underpinned by foreign bidders

Foreign bidders were dominant in public M&A activity in FY18. They accounted for 90% ($36.8bn) of total deal value and 52% of bidders by number. North American bidders were the most active, representing 14 of the 29 foreign bids and 22% of total deal value.

Competition at the top end of town

In FY18 there was a healthy level of competition with 6 out of the 49 targets attracting multiple bidders.

Competitive deals primarily involved targets valued between $100m and $500m (42%) or >$500m (33%).

Takeovers Panel involvement

A significant number of applications were made to the Australian Takeovers Panel in FY18. Applications were made for a range of reasons including disclosure related issues, collective action, frustrating action, shareholder intention statements and target shareholder coercion.

The Panel made a declaration of unacceptable circumstances in 4 of the 6 deals in which it commenced proceedings.

Key findings

Looking forward

There has been a strong start to public M&A activity in FY19. Data for July and August shows that there were 10 deals announced with a total deal value of over $16.6bn. This compared to 10 announced deals and an overall deal value of only $2bn at the same time in FY18. This leads us to believe that the overall number of deals in FY19 will remain consistent with levels of activity experienced in the past four years (50 to 60 deals) but that overall deal value will reach similar or higher levels to that in FY18.

We expect that bidders will continue to take a conservative approach to structuring public M&A transactions and that they will remain focused on achieving certainty of outcome. This has already been demonstrated by the data for FY19 as at the date of this report which exhibits a preference for structuring transactions as schemes and offering cash as the sole form of consideration.

We expect this cautious attitude, political turbulence and global trade uncertainty to be offset by the following drivers of Australian public M&A activity:

- foreign bidders continuing to dominate and underpin public M&A activity, particularly given the depreciation of the Australian dollar against foreign currencies;
- continued interest from private equity bidders;
- increased activity in the energy and resources sectors; and
- continued growth in the health care and information technology sectors.

Deal landscape

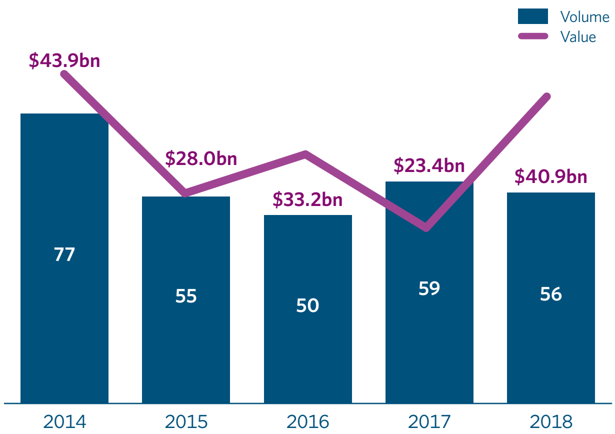
Overall volume and value

Total deal volume in FY18 was consistent with that in FY17, FY16 and FY15.

Total deal volume decreased slightly from 59 announced deals in FY17 to 56 deals in FY18.

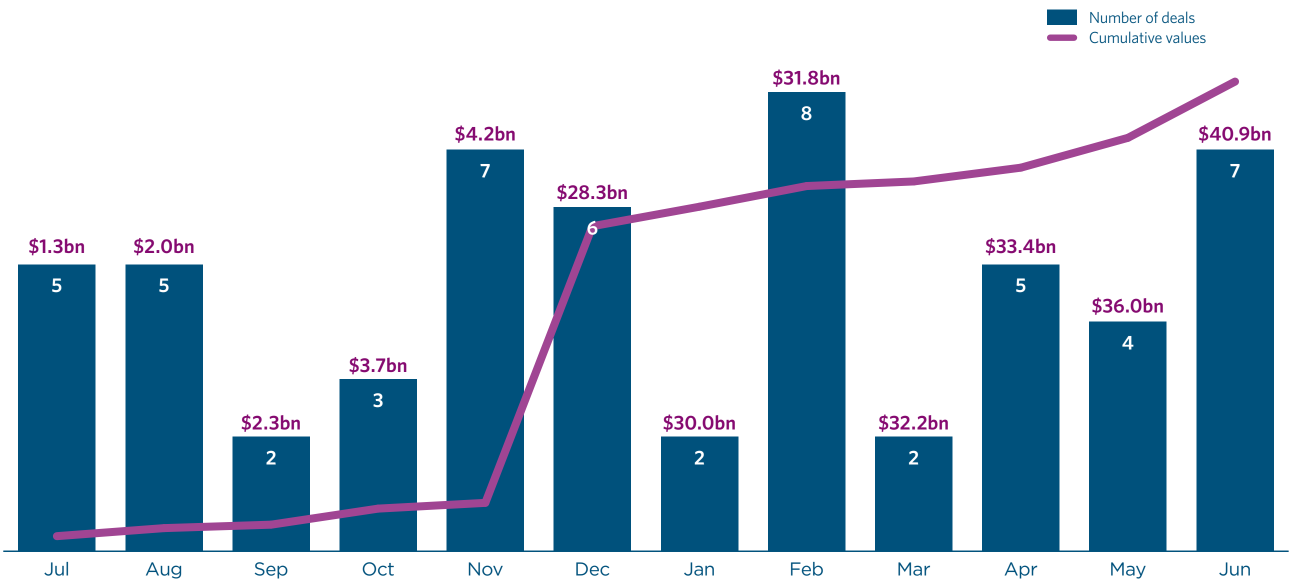
Total deal value was significantly higher ($40.9bn compared to $23.4bn) but was bolstered by Unibail-Rodamco's $20.8bn acquisition of Westfield Corporation.

Total number and value of deals per year



Total cumulative value

Total cumulative deal value and number of deals per month



Deal landscape

Mega deals

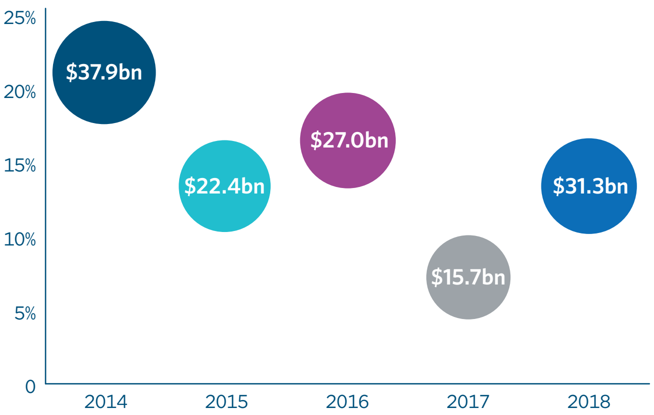
There were 7 mega deals[1] announced in FY18. Mega deals accounted for $31.3bn of total deal value, representing 77% of total deal value and 13% of total deals by number.

The largest mega deal in FY18 was Unibail-Rodamco's acquisition of retail property giant Westfield Corporation by way of scheme of arrangement for $20.8bn. This is Australia's largest M&A deal on record.

The other mega deals were:

- Vantive Australia's acquisition of Aconex by scheme of arrangement (information technology, $1.56bn);
- JCDecaux's acquisition of APN Outdoor Group by scheme of arrangement (consumer discretionary, $1.12bn) which was still ongoing as at the date of this report;
- the acquisition of Investa Office Fund by private equity group, Blackstone by scheme of arrangement (real estate, $3.14bn) which was still ongoing at the date of this report;
- Accor SA's acquisition of Mantra Group (consumer discretionary, $1.18bn); and
- CDH Genetech's proposal to acquire Sirtex Medical by scheme of arrangement (health care, $1.87bn), which trumped Varian Medical System's unsuccessful proposal to acquire Sirtex Medical for $1.56bn.

Percentage and total value of deals >$1bn



Schemes vs takeovers

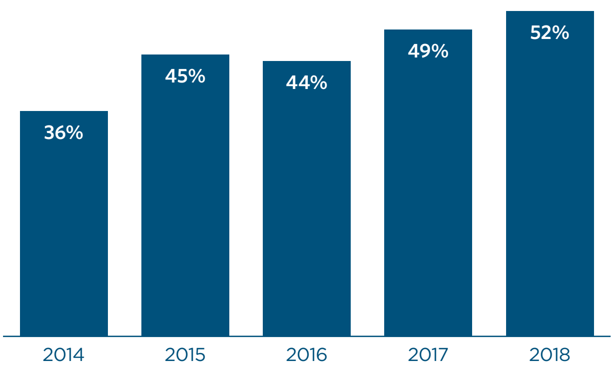
Schemes accounted for 52% of the deals in FY18.

This is the first year since the inception of this report that schemes have been the preferred transaction structure to takeover bids.

Consistent with previous years, schemes were the preferred deal structure in FY18 for negotiated transactions (78%).

All mega deals in FY18 were structured as schemes.

Schemes as a proportion of deals



1. In this report we refer to deals in which the target was valued at $1bn or more as 'mega deals'.

Deal landscape

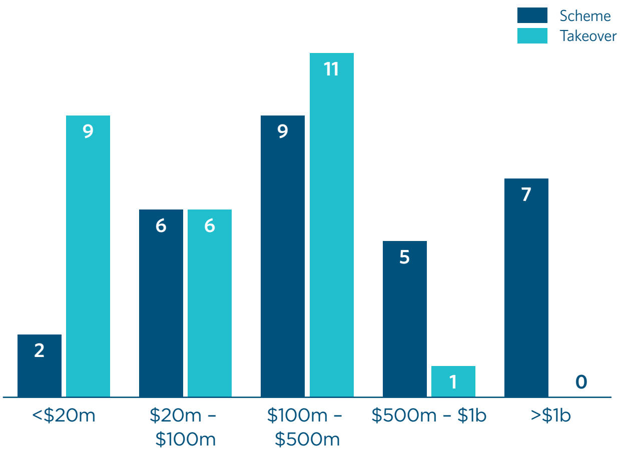
Distribution of deal values

Targets valued at <$100m accounted for 41% of deals in FY18.

Targets valued at >$500m comprised only 23% of deals and targets valued between $100m and $500m accounted for 36% of deals.

Consistent with previous years, there was a preference for structuring larger deals as schemes of arrangement, with 64% of deals valuing the target at >$100m being schemes.

Number of deals by value range



On market bids

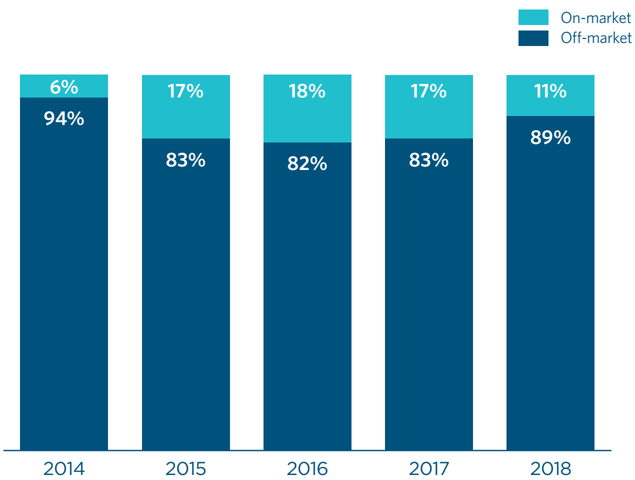
Of the 27 takeover bids in FY18, only 3 were on-market bids.

All on-market bids announced in FY18 were for targets valued at <$30m and were launched without target board support.

Each on-market bid announced involved a bidder that held a significant stake in the target company (between 15% and 70%) prior to launching the bid.

As at the date of this report, the one on-market bid that had completed was unsuccessful.

On-market takeover bids as a proportion of takeovers



Deal landscape

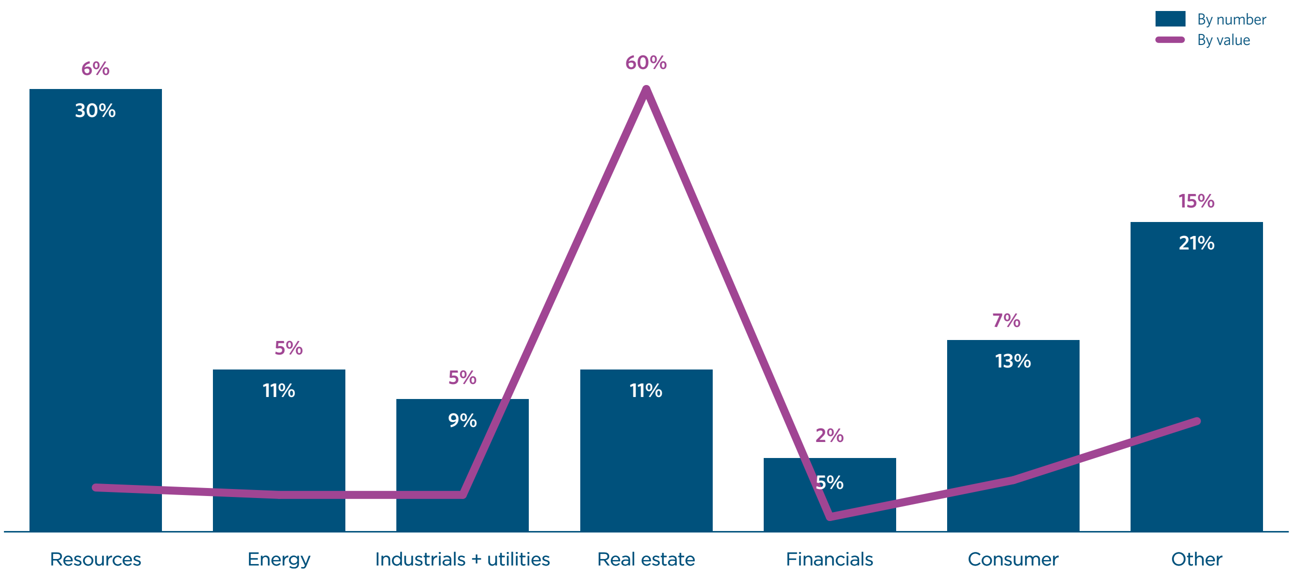
Industries

The real estate sector accounted for 60% of deals by value in FY18. Significant contributors to this figure were Unibail-Rodamco's $20.8bn acquisition of Westfield Corporation and Blackstone's $3.14bn acquisition of Investa Office Fund.

The health care and information technology sectors featured strongly again in FY18. Health care sector deals accounted for 11% of overall deal value and 13% of overall deal volume. The information technology sector accounted for just 4% of deals by value but 9% of deals by number. Deals in these sectors are captured in the 'Other' category in the chart below.

There was a low level of activity in the financials sector in FY18. Deals in that sector only accounted for 2% of deals by value and 5% by number.

Number and value of deals by sector



Deal landscape

Energy and resources

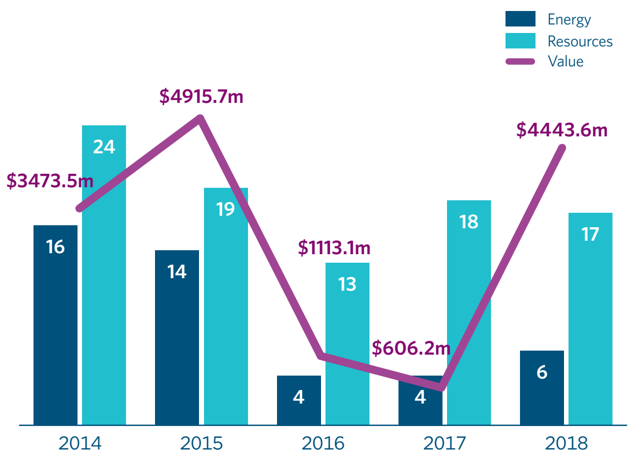
There was a rise in activity in the energy and resources sector in FY18. Companies with oil and gas assets (6), gold assets (5) and battery material[2] assets (7) were the main targets amongst the 23 energy and resources deals in FY18.

Energy and resources deals contributed $4.44bn (11%) to total deal value and represented 30% of deals by number. The average energy and resources deal value was $193m, with the largest energy deal being Mitsui & Co Ltd's acquisition of AWE Ltd for $594m and the largest resources deal being Oz Minerals' $408m off-market takeover bid for Avanco.

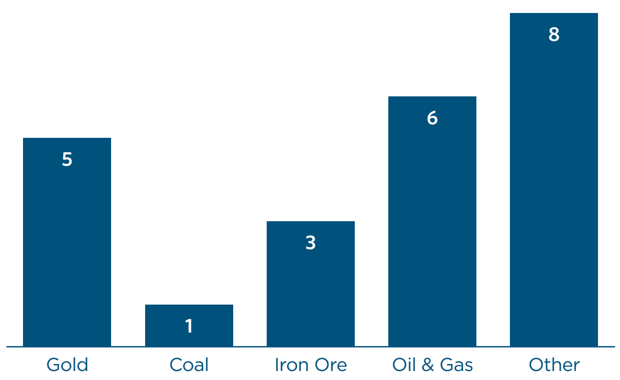
52% of energy and resources deals involved targets valued at <$100m.

Companies with battery material assets represented 30% and 22% of energy and resources deals by number and value respectively.

Number and value of energy and resources deals



Number of energy and resources deals by commodity



2. In this report we have referred to resources involved in the production of batteries (ie. lithium, nickel, cobalt, copper) as 'battery materials'.

Deal landscape

Origin of bidders

Foreign bidders featured very strongly in Australian public M&A activity in FY18, with 52% of bidders coming from outside of Australia and New Zealand and accounting for 90% ($36.8bn) of total deal value.

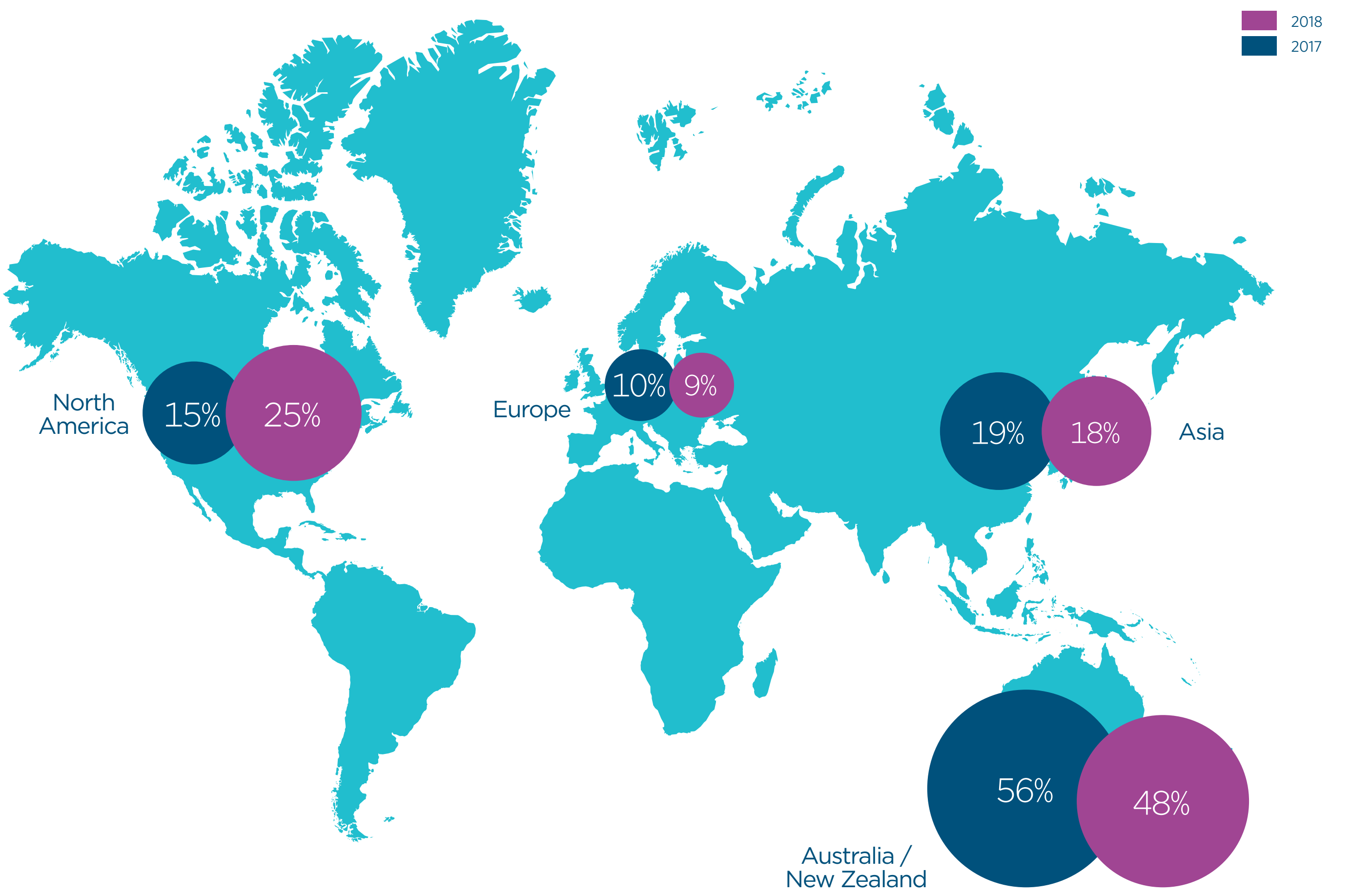
North American bidders were the most prevalent, representing 25% of all bidders and 14 of the 29 foreign bids. Bidders from North America acquired targets across the full range of sectors, but were focused on the health care (4) and resources (3) sectors. The value of bids from North America amounted to $9bn (22% of total deal value).

Asian bidders also featured strongly, representing 18% of all bidders and 10 of the 29 foreign bids. The targets of Asian bidders were across a broad range of sectors with the largest number being in the energy and resources sectors. The value of targets of Asian bidders amounted to $4.23bn (10% of total deal value) with the largest targets being Sirtex Medical and Programmed Maintenance Services.

Activity by European bidders in FY18 was consistent with FY17 in terms of deals by number (9% in FY18 compared to 10% in FY17), but accounted for 58% of total deals by value as a result of Unibail-Rodamco's acquisition of Westfield Corporation for $20.8bn.

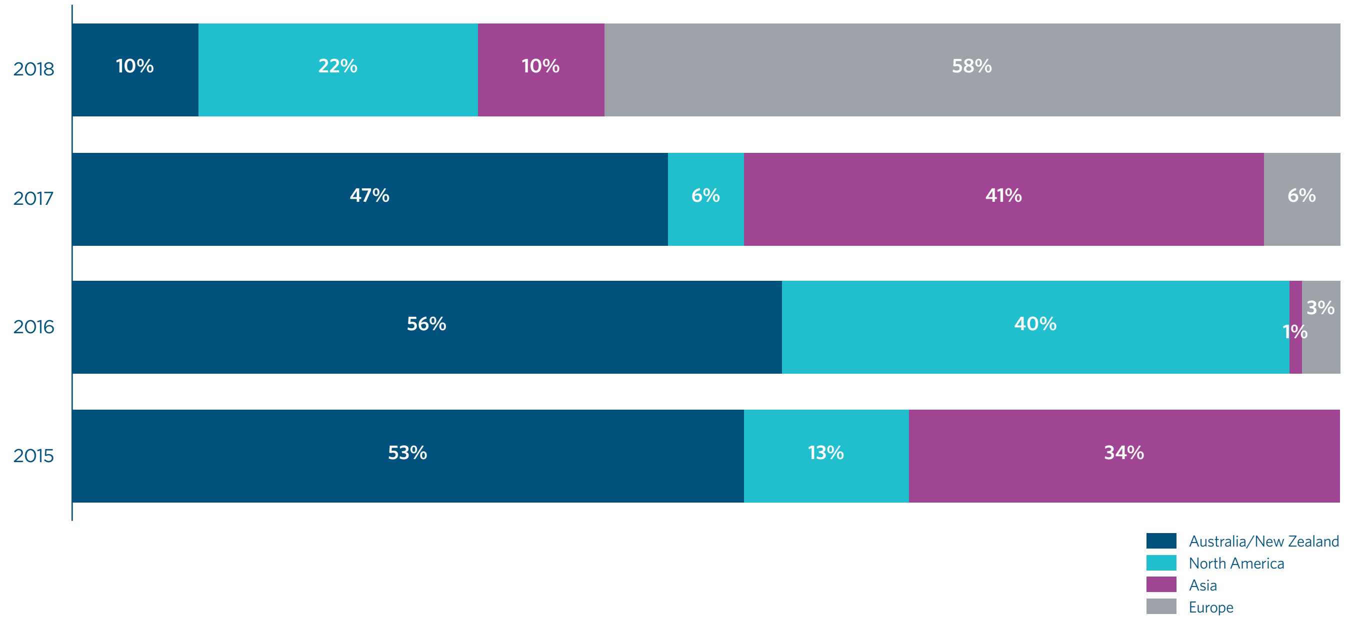
Australian bidders were principally from Western Australia (14%), Victoria (13%) and New South Wales (11%).

Percentage of deals by origin of bidder



Deal landscape

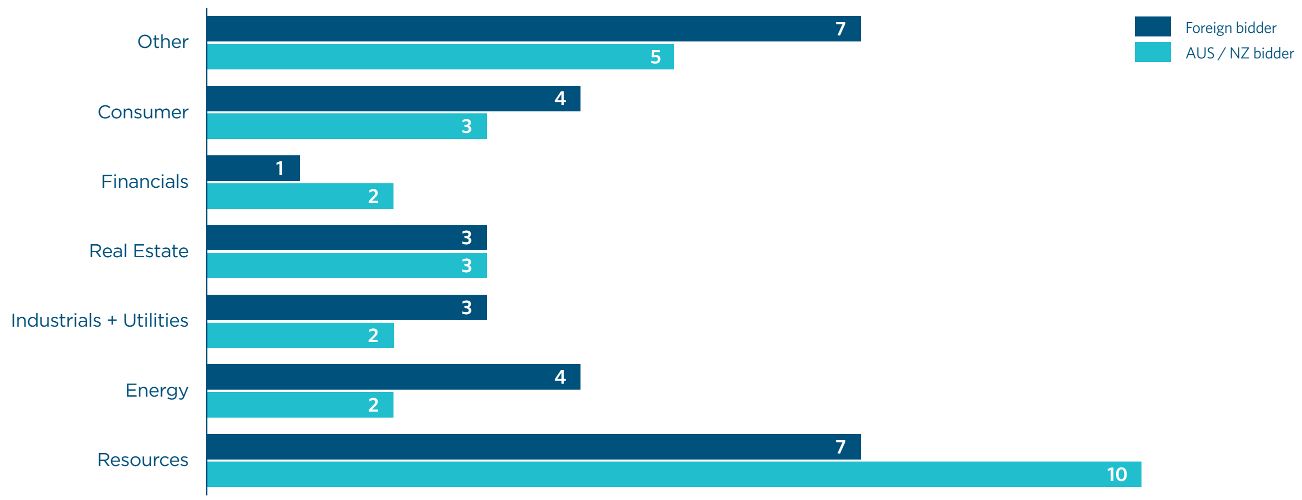
Percentage of deal value by origin of bidder



Origin of bidders by sector

In FY18, foreign bidders were involved across all sectors again and most heavily in the resources (7), health care (5), energy (4) and consumer (4) sectors.

Number of bidders by origin and sector of the target



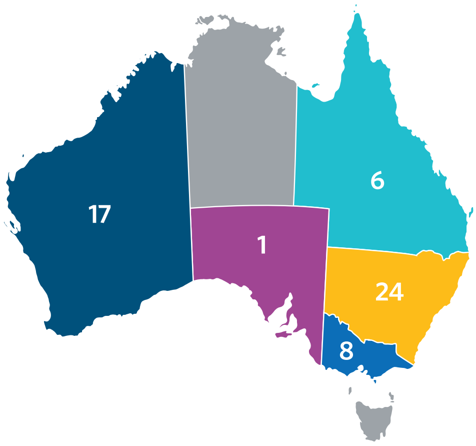
Deal landscape

Location of targets

New South Wales was the location of the largest number of targets (43% of deals). These targets accounted for 79% of total deal value.

Targets located in Western Australia and Victoria comprised 30% and 14% of deals by number respectively.

Number of targets per state



Level of competition

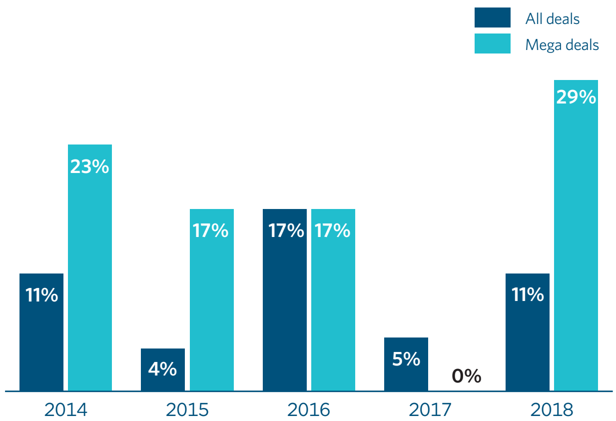
In FY18, 6 out of the 49 targets attracted multiple bidders.

These were:

- Asia Pacific Data Centre Group (real estate);
- Atlas Iron (resources);
- AWE (energy);
- Bulletproof Group (information technology);
- Goldfields Money (financials); and
- Sirtex Medical (health care).

Competitive deals primarily involved targets valued between $100m and $500m (42%) or >$500m (33%).

Proportion of targets subject to multiple bids



Competitive scenarios

Deal landscape

Private equity activity

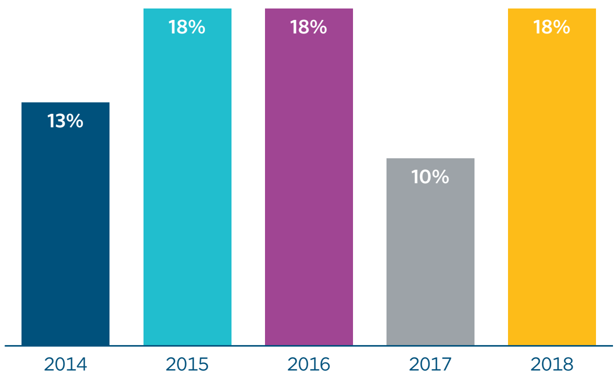
Private equity bidders were active in FY18 and were involved in 18% of announced deals.

Private equity backed deals were focused on targets valued at >$100m and contributed $7.26bn (18%) to total deal value. The largest transaction involving a private equity bidder was the acquisition of Investa Office Fund by Blackstone for $3.14bn (real estate).

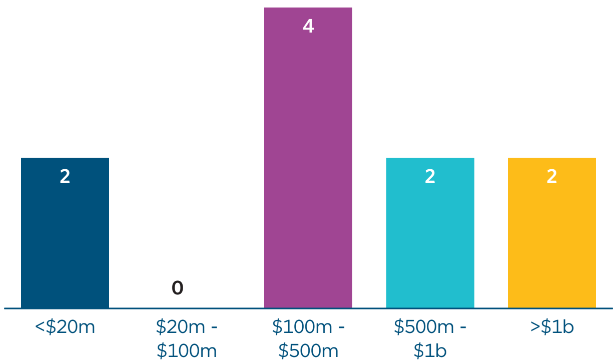
Private equity bidders included KKR, Blackstone, Taurus Funds Management, Oaktree Capital Management and Pacific Equity Partners.

Private equity bidders acquired targets across a broad range of sectors and almost completely originated from North America (50%) and Australia (40%).

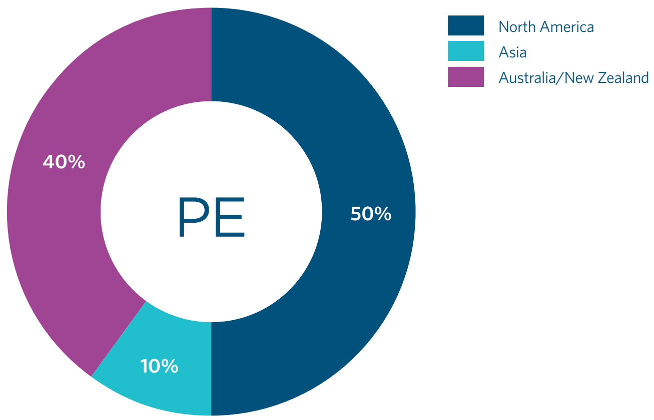
Percentage of deals involving private equity bidders



Value distribution of deals involving private equity bidders



Origin of private equity bidders

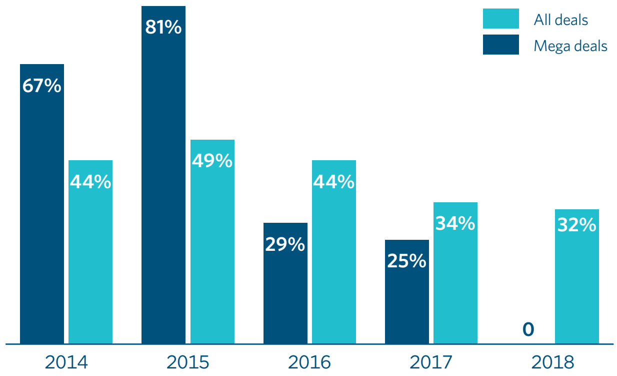


Deal landscape

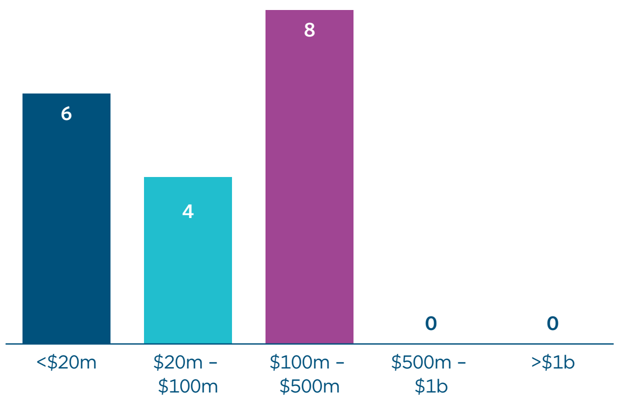
Target board support

Of the 56 public M&A transactions announced in Australia in FY18, 18 (32%) were announced without the support of the target board.

Proportion of deals launched without target support



Target value in hostile bids



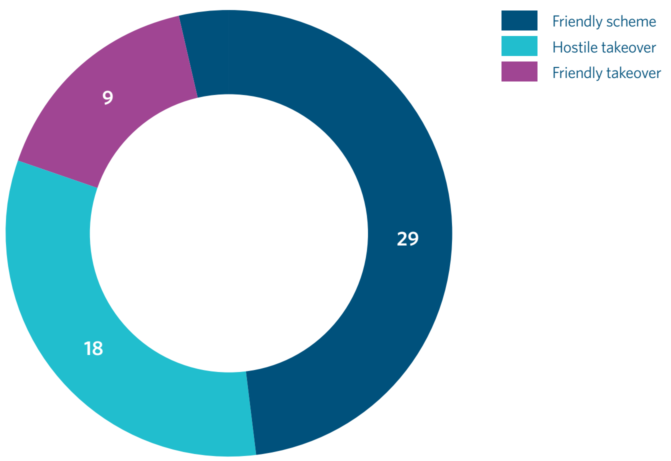
Hostile bids

67% of takeover bids were hostile.

Of the 18 hostile bids in FY18, 11 were subsequently recommended by the target board.

50% of the 14 completed hostile bids were ultimately successful, with the target board eventually recommending acceptance in all of those bids that were successful.

Hostile and friendly deals by deal structure



Outcomes

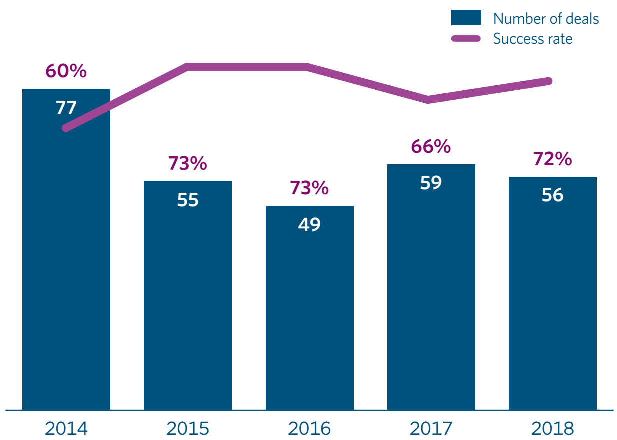
Overall success rates

72% of completed deals were successful[3] in FY18. At the date of writing this report, 10 of the 56 deals were still current.

In terms of transaction structure, 74% of schemes were successful compared to 70% of takeover bids.

A pre-bid stake of less than 20% did not result in a higher success rate. However, bidders with a pre-stake of more than 20% enjoyed a higher success rate of 80%.

Number of deals and success rates

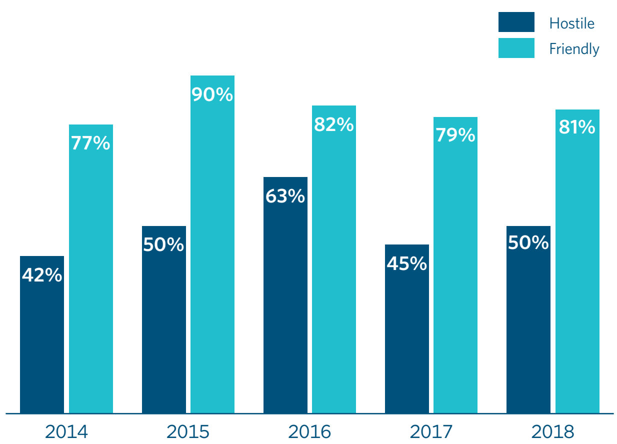


Success rates – hostile vs friendly

Only 50% of completed hostile deals achieved a successful outcome.

Success rates in completed friendly deals (81%) remained consistent with historic levels.

Success rates in hostile and friendly deals



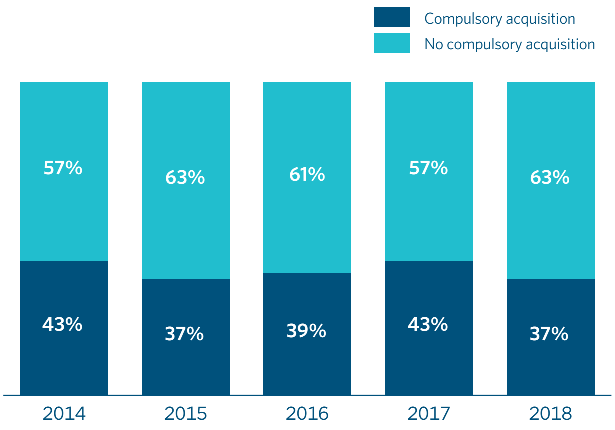
3. In this report we have referred to unconditional deals in which the bidder has acquired a relevant interest in 50.1% or more of the target and deals in which the minimum acceptance condition has been satisfied as 'successful'.

Outcomes

Reaching 100%

As at the date of this report, 37% of takeover bids that had closed had proceeded to compulsory acquisition.

Proportion of takeover bids that proceeded to compulsory acquisition



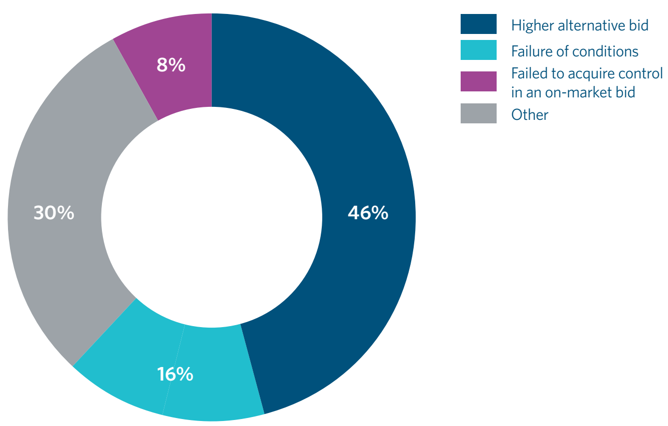
Reasons for failure

In FY18, 13 of the 44 deals that had completed as at the date of this report were unsuccessful. This included 6 friendly deals and 7 hostile deals.

There were a range of reasons that bids were not successful. These included:

- a higher alternative bid;
- failure to gain a controlling stake in an on-market bid;
- failure of conditions;
- target shareholders voting down a proportional takeover bid or a scheme of arrangement at a scheme meeting; and
- mutual termination following a failure to obtain specific demerger relief from the Australian Taxation Office.

Reasons for failure in unsuccessful transactions



Consideration

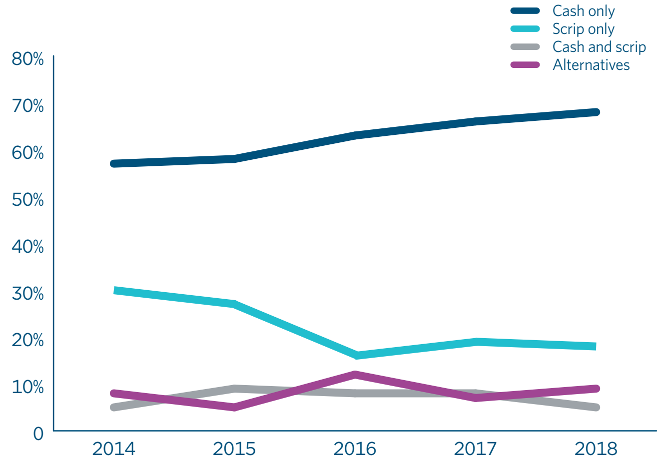
Consideration offered

Cash remained the most widely used form of consideration in FY18.

Cash was the sole form of consideration offered in 68% of deals and cash was an element of the consideration offered in 82% of deals.

Scrip was the only form of consideration offered in just 3 of the 29 foreign bids and was an element of the consideration offered in 24% of foreign bids. Where scrip was offered by a foreign bidder, target shareholders received unlisted scrip in 43% of cases and had the option to elect to receive CHESS Depository Interests listed on the ASX or scrip listed on a foreign exchange in 57% of cases.

Consideration offered



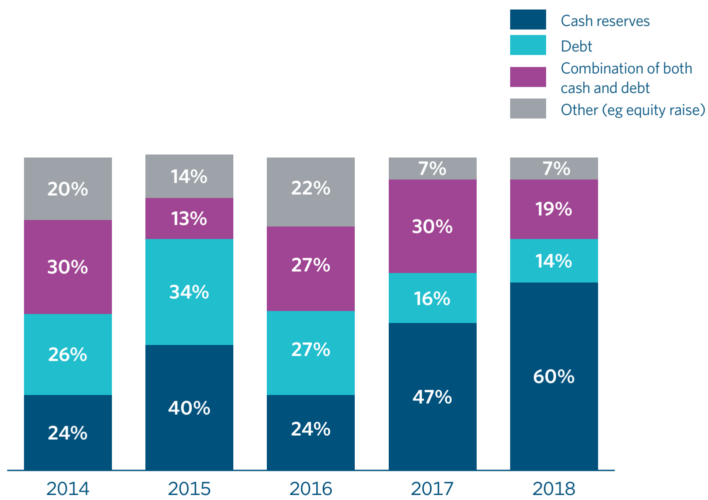
Funding of cash consideration

Cash consideration was primarily funded from existing cash reserves.

Debt was an element of funding in 40% of deals in which cash consideration was offered to target shareholders but was used solely in just 14% of deals.

An equity raising was used to fund a proportion of the consideration offered in just 3 deals (Investa Office Fund, Sirtex Medical and Tox Free Solutions).

Funding source for cash consideration



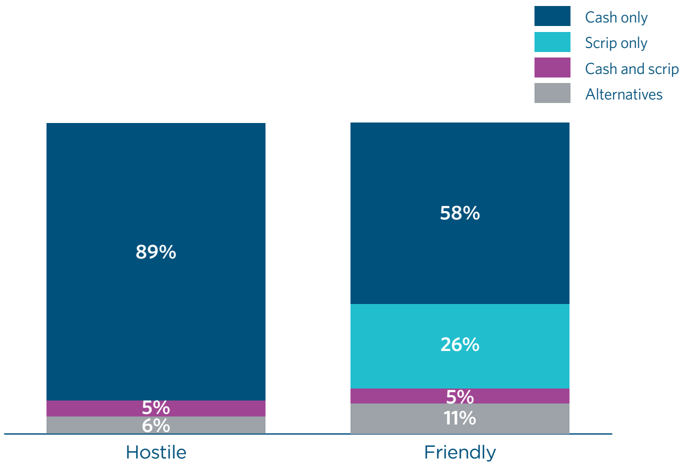
Consideration

Consideration in hostile and friendly deals

89% of hostile transactions offered cash only.

Cash consideration was a component of the consideration in 74% of friendly deals in FY18.

Consideration offered in hostile and friendly deals

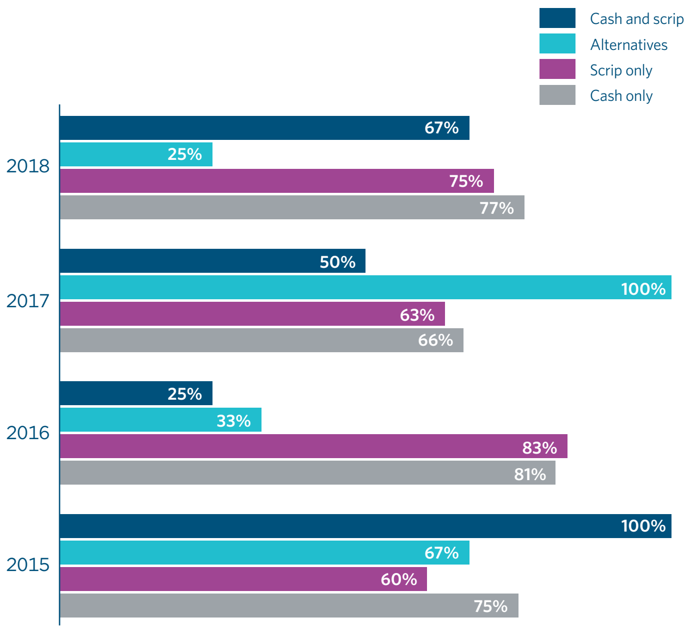


Impact of consideration

Success rates were highest where target shareholders were offered cash consideration only (77%) followed by scrip consideration only (75%).

There were no hostile all-scrip deals in FY18, but hostile all-cash deals had a 58% success rate.

Success rates by consideration offered



Consideration

Initial share premium

Despite the increase in total deal value and competition, share premiums offered continued to decline in FY18.

There was a noticeable increase in the proportion of deals with an initial premium in the 10% - 20% range compared to FY17.

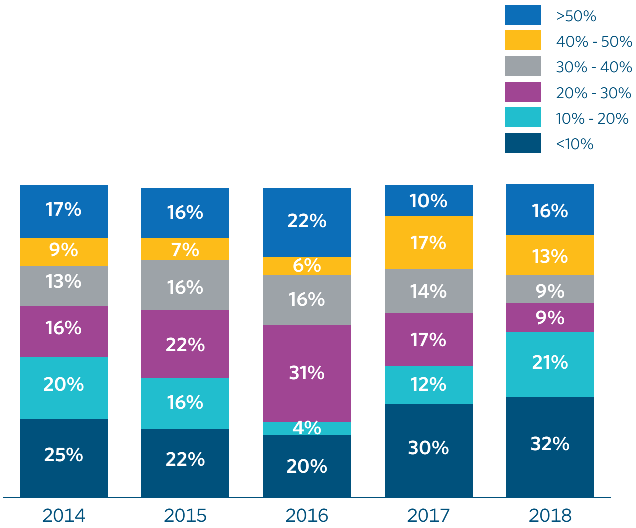
An initial premium of <10% was the most prevalent level in friendly deals (34%). An initial premium in the 10% - 20% range was the most prevalent in hostile deals (39%).

The average initial share premium offered in FY18 was 27.9%. The lowest premium was a discount of 90.9% (Beadell Resources[4]) and the highest premium was 178% (Viralytics).

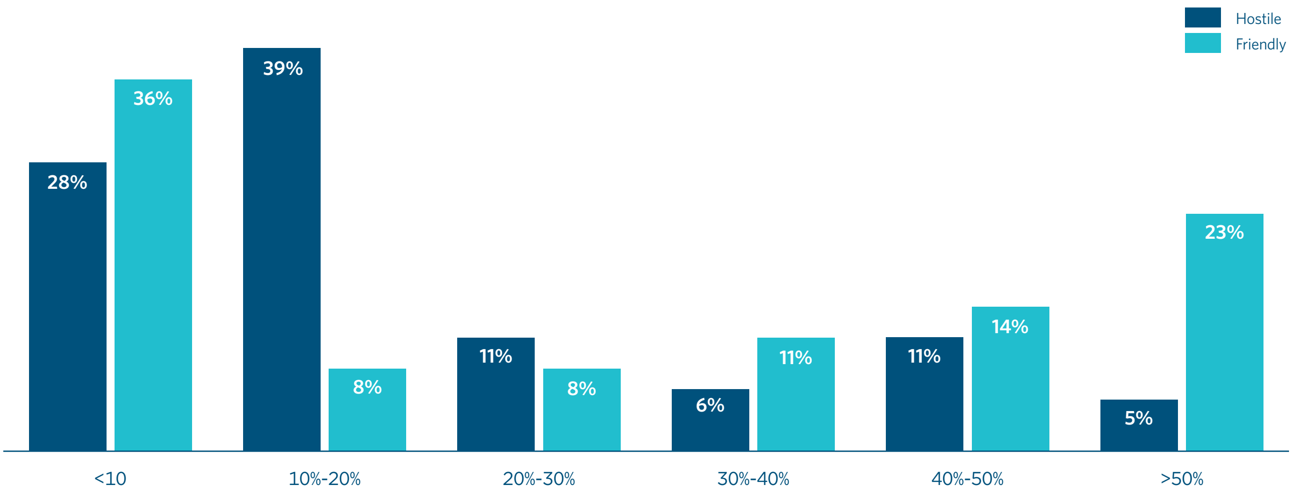
The average initial share premium offered:

- in schemes and takeover bids was the same in FY18 (28%);
- by foreign bidders (26.3%) was lower than that offered by domestic bidders (29.6%);
- was the highest in the health care (63.4%), information technology (38%) and consumer (31.6%) sectors; and
- in the resources and energy sectors were 20.5% and 13.9% respectively.

Initial share premium offered



Initial share premium offered in hostile and friendly deals



4. Golden Harp Resources Inc's acquisition of Beadell Resources was a reverse takeover.

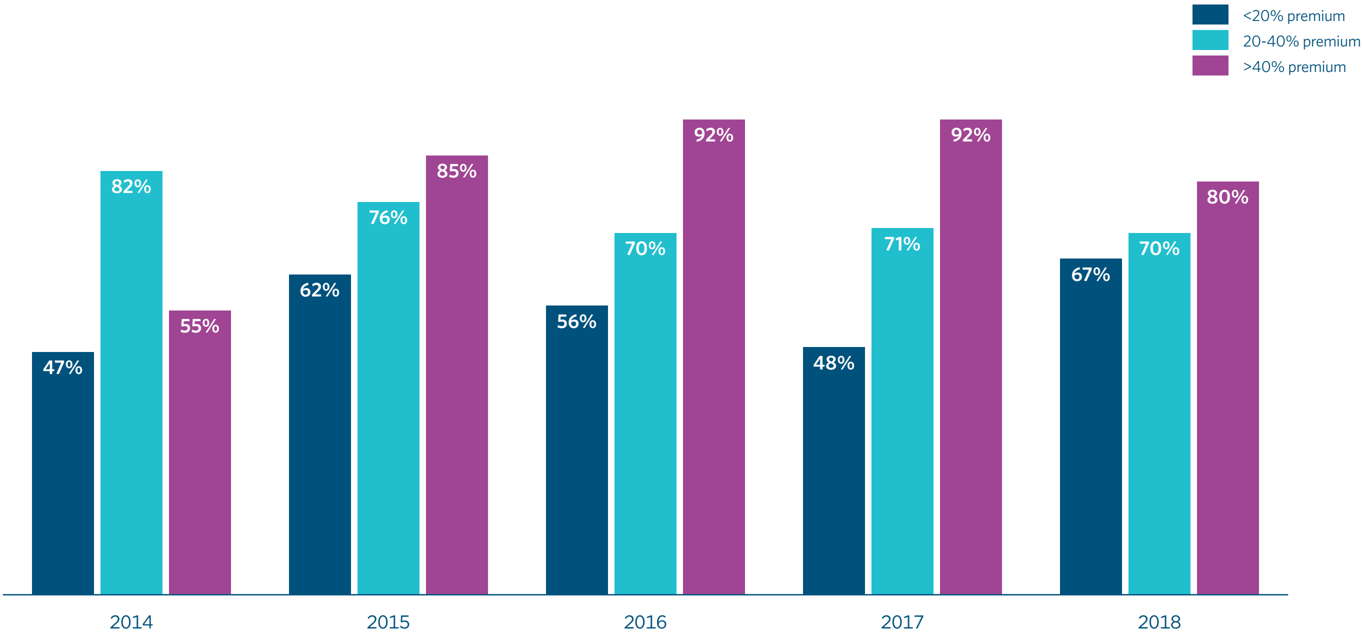
Consideration

Impact of initial share premium

While premiums offered to target shareholders were slightly lower in FY18, higher premiums continued to be associated with higher success rates.

Bids offering a premium of <20% were successful in 67% of cases. Bids offering a premium of >40% were successful 80% of the time.

Success rates of deals based on initial share premium offered



Regulatory involvement

Regulatory approval conditions

ACCC

Although ACCC approval was a condition precedent in 4 of the 56 deals, the ACCC did not release a statement of issues or take regulatory action in relation to any public M&A deals in FY18.

Deals with an ACCC approval condition were in the consumer discretionary (75%) and industrials (25%) sectors.

FIRB

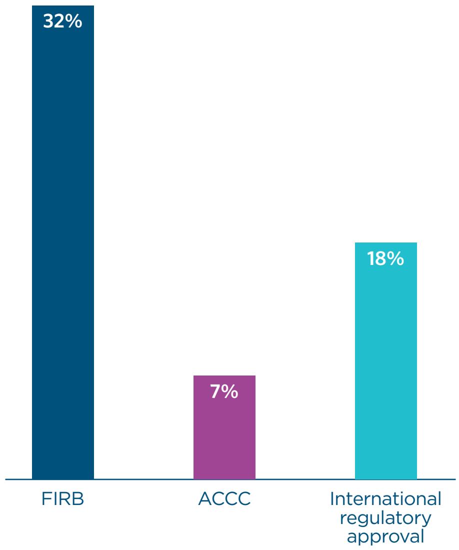
A FIRB approval condition was included in 18 of the 56 deals (32%) in FY18 and FIRB approval was granted in all cases.

International regulatory approvals

In FY18, an international regulatory approval was required in 10 of the 56 deals (18%).

International regulatory approvals were sought from the New Zealand Commerce Commission, the New Zealand Overseas Investment Office, the Central Bank of Ireland, the Competition and Consumer Protection Commission of Ireland, the Korean Fair Trade Commission, the German Federal Cartel Office, various stock exchanges (SGX, JSE and TSX) and for US anti-trust clearance.

Proportion of deals with regulatory approval conditions



Takeovers Panel

There was an increase in regulatory intervention in public M&A activity by the Australian Takeovers Panel in FY18.

The Australian Takeovers Panel received applications in respect of 10 of the 56 deals in FY18. Applications were submitted for a range of reasons, including disclosure related issues (9 deals), collective action (1 deal), frustrating action (2 deals), shareholder intention statements (1 deal) and coercion of target shareholders (2 deals).

Only 1 application was made to the Takeovers Panel by ASIC (Finders Resources).

The Panel:

- declined to conduct proceedings in 4 instances (due to corrective disclosure in 2 cases);
- declined to make a declaration of unacceptable circumstances in 2 instances (Tap Oil, Bulletproof); and
- made a declaration of unacceptable circumstances in 4 instances (Realm Resources, Molopo Energy, Finders Resources, Strategic Minerals) in relation to issues of disclosure, shareholder coercion and shareholder intention statements.

Deal in focus

Shareholder coercion in Realm Resources

A declaration of unacceptable circumstances was made by the Takeovers Panel in relation to T2 Resources Fund's $220m off-market takeover bid for all of the issued shares in Realm Resources that it did not already own (T2 had an 85.71% interest in Realm shares at announcement of the bid).

The Takeovers Panel considered that, in combination and among other factors, the continuing suspension of Realm shares (which denied Realm shareholders liquidity and price realisation), the limited opportunity for Realm shareholders to assess the improved financial and operational position of Realm, T2's intention to de-list Realm, and statements to Realm shareholders that they might not be able to otherwise sell their holdings had the potential to coerce Realm shareholders to accept the T2 bid.

The Panel ordered that the offer period for T2's bid be extended by an additional month and that shareholders who had already accepted the offer be given withdrawal rights.

The Panel's decision highlights the importance of taking into account all relevant circumstances when acting as a major shareholder and serves as a reminder to major shareholders to be careful not to engage in conduct that could effectively coerce target shareholders into taking certain action in respect of a takeover bid. The Panel's decision also clarifies that an intention to delist a target following a takeover bid by a greater than 75% shareholder will not by itself be unacceptably coercive and that additional factors need to be present.

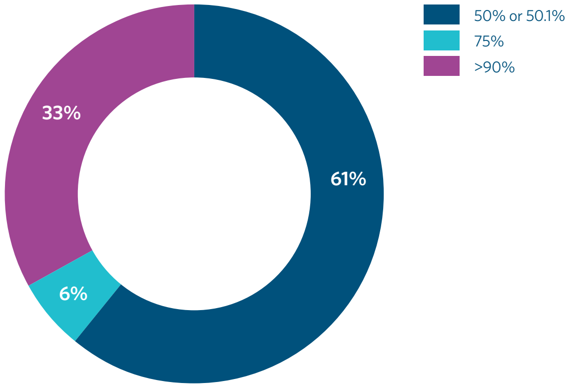
Conditions

Minimum acceptance conditions

The use of minimum acceptance conditions in off-market takeover bids returned to historic levels in FY18 (75%).

18 of the 25 off-market takeover bids contained a minimum acceptance condition, with 6 of these applying a 90% threshold, 1 applying a 75% threshold and 11 applying a 50% or 50.1% threshold.

Use of minimum acceptance conditions



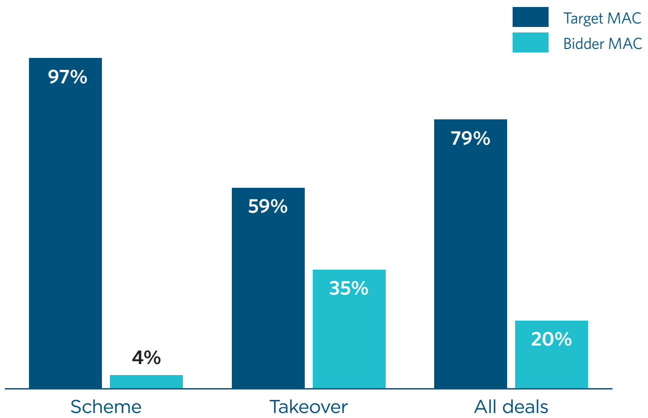
Material adverse change

Material adverse change conditions relating to the target featured in 79% of all deals (59% of takeovers and 97% of schemes).

Bidder material adverse change conditions were included in 20% of all deals (35% of takeovers and 4% of schemes) and 63% of friendly deals in which scrip was an element of the consideration offered.

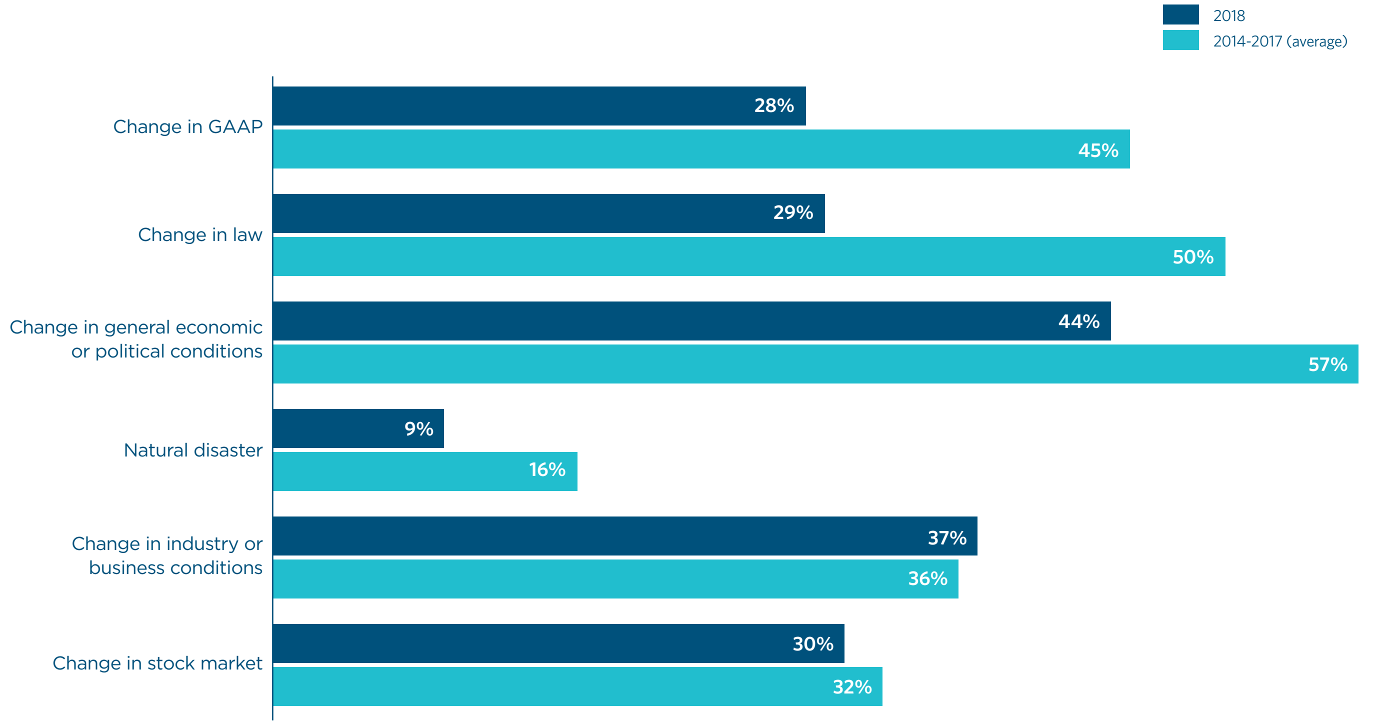
Consistent with previous years, the scope of material adverse change conditions were often narrowed by an extensive number of express exclusions.

Prevalence of material adverse change conditions



Conditions

Carve-outs from material adverse change conditions



Timing

Critical point

The median time from announcement to the scheme meeting date (94 days) was slightly less than in FY17 but the median time from announcement to implementation (116 days) was marginally greater.

Accor SA's acquisition of Mantra Group took the longest of completed schemes in FY18 at 231 days. This deal required approval from the ACCC, the New Zealand Commerce Commission and FIRB.

The scheme that completed most rapidly was the merger of equals of Global Construction Services and SRG, taking just 91 days from announcement to implementation.

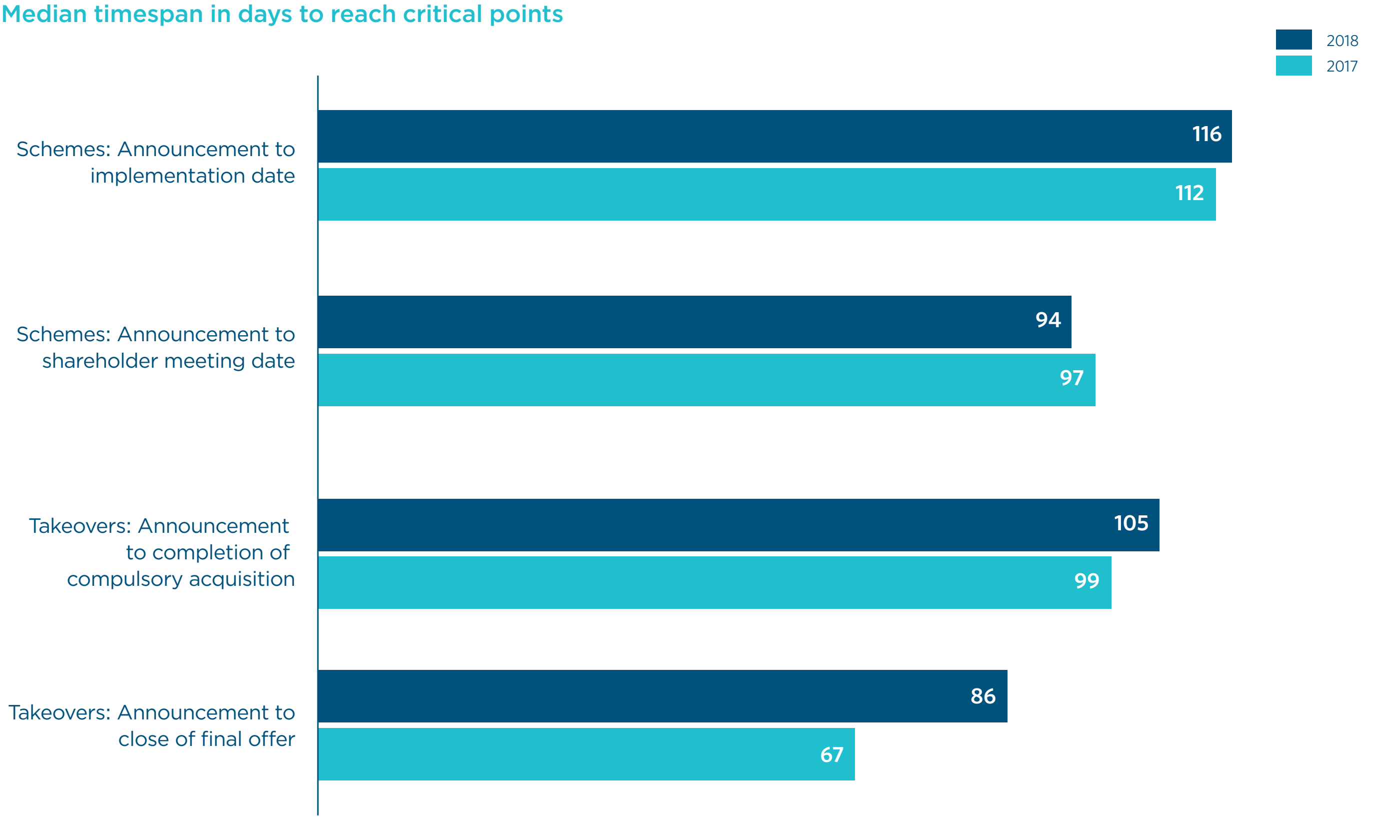
The median time for takeover bids to close increased to 86 days in FY18.

Although Aurora Fortitude Absolute Return Fund's takeover bid for Molopo Energy remained open for 389 days after announcement, it was ultimately unsuccessful.

Eastern Field Developments takeover bid for Finders Resources is still ongoing, despite having been open for more than a year. Delay in this deal has been due to a number of Takeovers Panel proceedings.

Moly Mines' takeover bid for Queensland Mining Corporation was the fastest deal in FY18, taking just 35 days from announcement to close of the final offer. In this deal, two major shareholders who together held 20% of the issued shares in Queensland Mining Corporation gave undertakings in relation to their shareholdings.

Median timespan in days to reach critical points



Timing

Deal in focus

Finders Resources panel saga

Eastern Field Developments $175m off-market takeover bid for Finders Resources was subject to a number of proceedings in the Takeovers Panel. Eastern launched its takeover bid on 6 October 2017 and submitted an application to the Takeovers Panel on 2 March 2018 seeking corrective disclosure in Finders target's statement, a revised independent expert's report, a revised independent technical expert's report and the release of certain persons from non-acceptance statements in relation to the offer. The Takeovers Panel declined to conduct proceedings in respect of this application.

ASIC submitted an application to the Takeovers Panel on 29 March 2018 on the basis that acceptances by Taurus Funds Management (which managed 11.31% of Finders shares) and Finders' independent directors were contrary to previous statements that they would not accept the bid and ASIC's truth in takeovers policy (as set out in ASIC Regulatory Guide 25 Takeovers: false and misleading statements). The Panel made a declaration of unacceptable circumstances, emphasising that shareholders cannot depart from unqualified public intention statements. A review application was lodged in respect of this decision.

On 6 June 2018 the review Panel affirmed the decision of the initial Panel to make a declaration of unacceptable circumstances but set aside the initial Panel's orders to make new orders:

- deferring payment of consideration to Taurus to give Eastern the opportunity to mitigate the effects of any reliance on Taurus' statement; and
- compensating persons who acquired Finders shares on market above the Eastern bid price.

The review Panel's decision indicates that whether it is unacceptable to resile from a last and final statement will depend on the circumstances and effects of the change of position, rather than an iron rule that a last and final statement is a promise to be kept in accordance with its terms.

As at the date of this report, Eastern's offer is still ongoing and has been extended to close on 19 November 2018 (more than a year after the initial announcement of the transaction). The saga also continues with Eastern applying to the Federal Court of Australia on 16 July 2018 for judicial review of the Panel's decision.

Independent expert reports

Use of independent expert reports

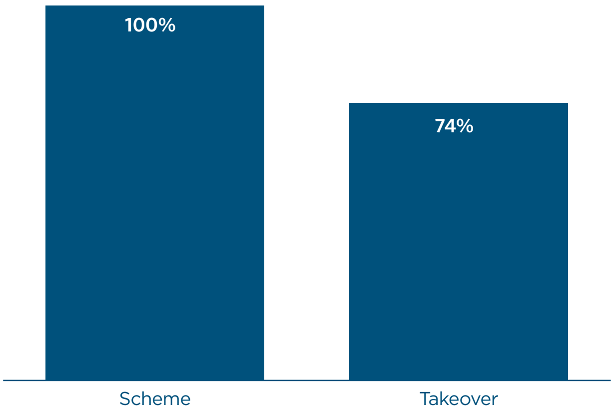
In FY18, an independent expert report (IER) was commissioned in 74% of takeover bids.

The majority of takeovers in which an IER was procured were hostile (70%), with the remainder (30%) being friendly.

An IER was procured in all schemes that reached the scheme meeting date.

Consultation with an independent expert was required due to the bidder's initial shareholding exceeding 30% or the bidder and target having a common director in 24% of deals involving an IER. In the remainder, the IER was obtained voluntarily to assess the merits of the offer.

Use of IERs



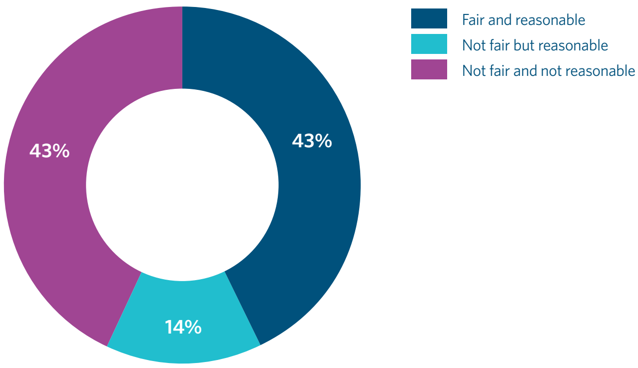
Findings of independent expert reports

78% of IERs published in connection with a scheme found the transaction was fair and reasonable to target shareholders (the remaining 22% of IERs found the transaction was not fair but reasonable).

50% of IERs commissioned for friendly takeovers found the offer was fair and reasonable to target shareholders (the other 50% found the transaction was not fair but reasonable).

In relation to hostile takeovers, 43% of independent experts found the transaction was neither fair nor reasonable to target shareholders and only 1 of these deals was ultimately successful. For the remaining hostile takeovers in which an IER was commissioned, 43% were found to be fair and reasonable, and 14% were found to be not fair but reasonable.

Findings of IERs in hostile takeovers



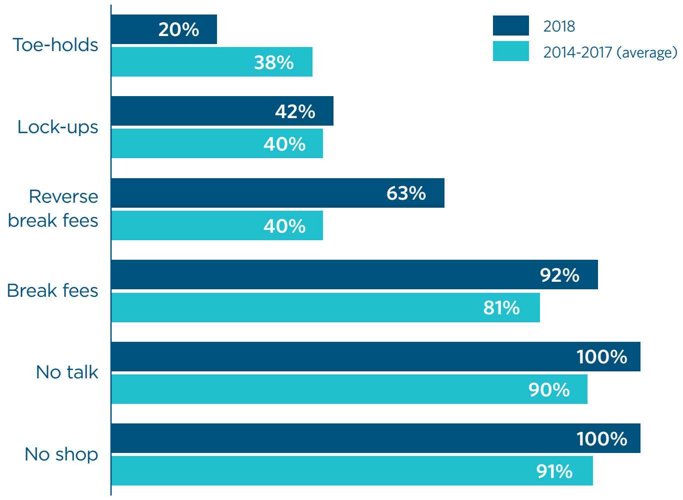
Deal protection

Forms of deal protection

Deal protection mechanisms were used more frequently in negotiated deals in FY18 than in previous years.

The one exception to this trend was the lower use of toe holds (where a bidder has or acquires a stake in the target prior to announcement of the transaction).

Proportion of negotiated deals with protection



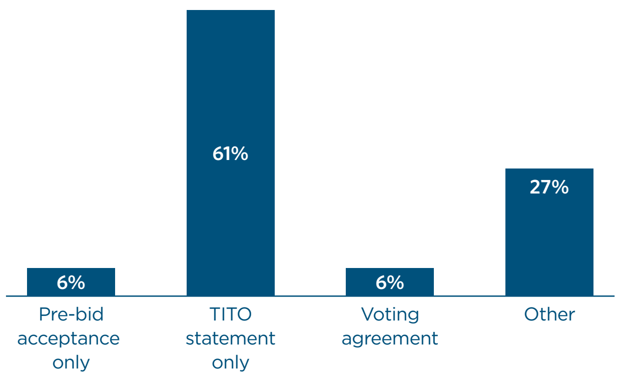
Lock-up devices

In FY18, 29% of deals included a form of lock-up device compared with 38% in FY17.

Truth in takeovers (TITO) statements remained the most prevalent form of lock-up device by a considerable margin. 14 of the 16 lock-ups took the form of a TITO statement or involved a TITO statement in combination with another lock-up device.

Only 17% of hostile bids included a form of lock-up device.

Use of lock-up devices



Deal protection

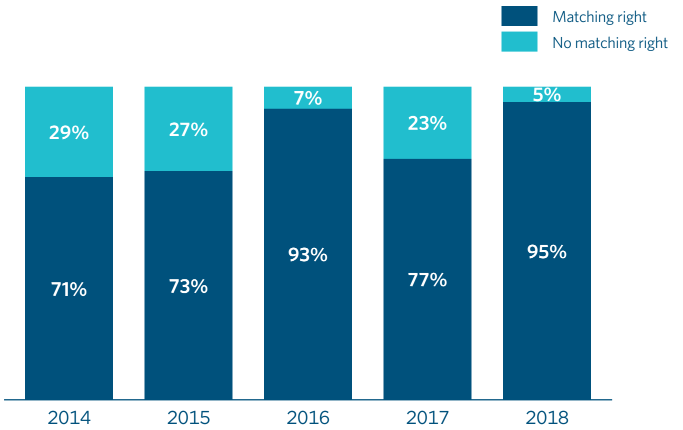
Matching rights

Notification rights and matching rights were included in 100% and 95% of negotiated transactions in FY18 respectively.

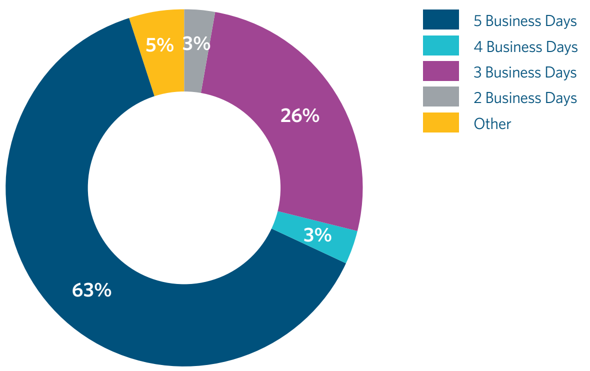
The majority of deals that included a matching right required a bidder to match a superior proposal (86%) rather than make a superior offer (14%).

The longest period of time that a bidder had to match a superior proposal was 7 business days.

Proportion of negotiated deals that included matching rights



Matching periods



Deal protection

Break fees

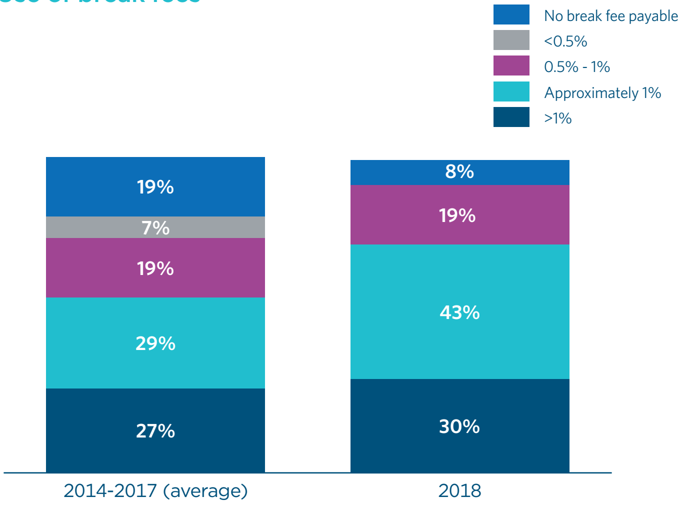
The use of break fees in negotiated transactions increased in FY18 relative to previous years.

A break fee was included in 92% of negotiation transactions.

A break fee of approximately 1% was the most common in FY18. This is consistent with the Takeovers Panel's guidance that a break fee not exceeding 1% of the equity value of the target is generally not unacceptable.

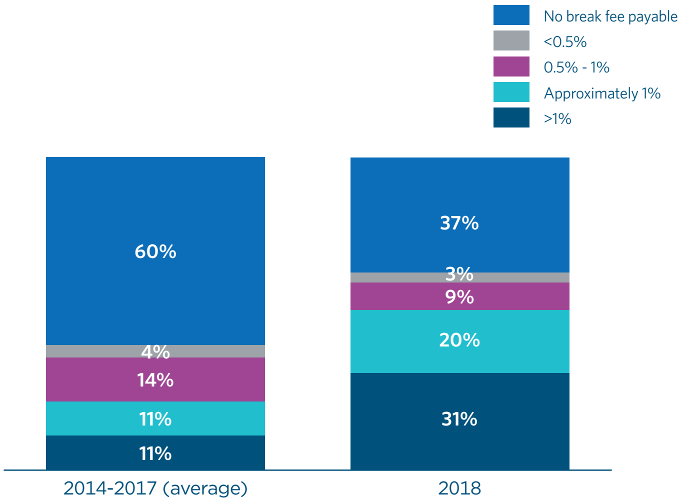
There were no break fees of less than 0.5% of the target's equity value.

Use of break fees



There was also an increase in the use of reverse break fees in FY18 relative to previous years, with 63% of negotiated transactions including a reverse break fee compared to 49% in FY17, 32% in FY16, 47% in FY15 and 32% in FY14.

Use of reverse break fees



List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Aconex Ltd (ACX)	Information Technology	Vantive Australia Pty Ltd	North America	$1,563,930,857	Scheme	Cash
Altona Mining Ltd (AOH)	Resources (Copper)	Copper Mountain Mining Corporation (C6C)	North America	$87,322,711	Scheme	Scrip
AMA Group Ltd (AMA)	Consumer Discretionary	Queen TopCo Pty Ltd	North America	$451,647,638	Scheme	Alternatives (Cash or Scrip)
Aphrodite Gold Ltd (AQQ)	Resources (Gold)	Spitfire Materials Ltd (SPI)	Australia	$31,817,670	Scheme	Scrip
APN Outdoor Group Ltd (APO)	Consumer Discretionary	JCDecaux SA	Europe	$1,118,939,135	Scheme	Cash
Asia Pacific Data Centre Group (AJD)	Real Estate	360 Capital Group (TGP)	Australia	$224,250,195	Takeover	Cash
Asia Pacific Data Centre Group (AJD)	Real Estate	NextDC Ltd (NXT)	Australia	$215,050,187	Takeover	Cash
Asia Pacific Digital Ltd (DIG)	Consumer Discretionary	Trimantium Growthops Ltd (TGO)	Australia	$19,739,532	Takeover	Scrip
Atlas Iron Ltd (AGO)	Resources (Iron Ore)	Redstone Corporation Pty Ltd (RDS)	Australia	$389,743,526	Takeover	Cash
Atlas Iron Ltd (AGO)	Resources (Iron Ore)	Mineral Resources Ltd (MIN)	Australia	$280,175,898	Scheme	Scrip
Automotive Solutions Group Ltd (4WD)	Consumer Discretionary	AMA Group Ltd (AMA)	Australia	$17,620,968	Takeover	Cash
Avanco Resources Ltd (AVB)	Resources (Copper)	Oz Minerals Brazil (Holdings) Pty Ltd	Australia	$407,846,470	Takeover	Combination
AWE Ltd (AWE)	Energy (Oil and Gas)	Mitsui & Co Ltd	Asia	$593,991,208	Takeover	Cash
AWE Ltd (AWE)	Energy (Oil and Gas)	Mineral Resources Ltd (MIN)	Australia	$484,197,757	Scheme	Alternatives (Cash or Scrip)
AWE Ltd (AWE)	Energy (Oil and Gas)	CERCG Aus Gas Pty Ltd	Asia	$441,830,453	Takeover	Cash
Bauxite Resources Ltd (BAU)	Resources (Bauxite, Silica and Lithium)	Mercantile OFM Pty Ltd	Australia	$19,298,010	Takeover	Cash

List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Beadell Resources Ltd (BDR)	Resources (Gold)	Golden Harp Resources Inc	North America	$10,000,115	Scheme	Scrip
Billabong International Ltd (BBG)	Consumer Discretionary	Boardriders Inc	North America	$198,079,110	Scheme	Cash
Bulletproof Group Ltd (BPF)	Information Technology	Klikon Group Holdings Pty Ltd - AC3	Australia	$24,681,117	Scheme	Cash
Bulletproof Group Ltd (BPF)	Information Technology	Macquarie Cloud Services Pty Ltd	Australia	$17,886,085	Takeover	Cash
Cobalt One Ltd (CO1)	Resources (Cobalt)	First Cobalt Corp	North America	$64,715,716	Scheme	Scrip
Excelsior Gold Ltd (EXG)	Resources (Gold)	Spitfire Materials Ltd (SPI)	Australia	$33,682,036	Scheme	Scrip
Finders Resources Ltd (FND)	Resources (Gold and Copper)	Eastern Field Developments Ltd	Asia	$175,091,466	Takeover	Cash
Godfreys Group Ltd (GFY)	Consumer Discretionary	Arcade Finance Pty Ltd	Australia	$13,095,227	Takeover	Cash
Goldfields Money Ltd (GMY)	Financials	Firstmac Holdings Ltd	Australia	$25,223,594	Takeover	Cash
Indo Mines Ltd (IDO)	Resources (Iron Ore)	PT Surya Langgeng Utama	Asia	$10,760,532	Takeover	Cash
Integral Diagnostics Ltd (IDX)	Health Care	Capitol Health Holdings Pty Ltd	Australia	$357,461,325	Takeover	Combination
Investa Office Fund (IOF)	Real Estate	Blackstone Singapore Pte. Ltd	North America	$3,141,699,671	Scheme	Cash
IPE Ltd (IPE)	Financials	Mercantile OFM Pty Ltd	Australia	$10,512,263	Takeover	Cash
LifeHealthcare Group Ltd (LHC)	Health Care	Pacific Health Supplies BidCo Pty Ltd	Australasia	$168,499,395	Scheme	Cash
Mantra Group Ltd (MTR)	Consumer Discretionary	Accor SA	Europe	$1,177,818,511	Scheme	Cash
Maxsec Group Ltd (MSP)	Information Technology	Future Fibre Technologies Ltd (FFT)	Australia	$12,315,328	Takeover	Scrip
Medical Australia Ltd (MLA)	Health Care	ICU Medical Inc	North America	$11,761,879	Scheme	Cash

List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Mineral Deposits Ltd (MDL)	Resources (Zircon and Titanium)	ERAMET SA	Europe	$287,599,048	Takeover	Cash
Mitula Group Ltd (MUA)	Information Technology	LIFULL Co. Ltd	Asia	$183,095,851	Scheme	Alternatives (Cash or Scrip)
Molopo Energy Ltd (MPO)	Energy (Oil and Gas)	Aurora Absolute Return Fund (ABW)	Australia	$44,827,317	Takeover	Alternatives (Cash or Scrip)
Pepper Group Ltd (PEP)	Financials	Red Hot Australia BidCo Pty Ltd	North America	$656,949,715	Scheme	Alternatives (Cash or Scrip)
Primary Gold Ltd (PGO)	Resources (Gold)	HGM Resources Pty Ltd	Asia	$35,314,711	Takeover	Cash
Programmed Maintenance Services Ltd (PRG)	Industrials	PERSOL Holdings Co Ltd	Asia	$777,727,759	Scheme	Cash
Queensland Mining Corporation Ltd (QMN)	Resources (Gold and Copper)	Moly Mines Ltd	Australia	$50,339,755	Takeover	Cash
Realm Resources Ltd (RRP)	Resources (Coal, Aluminium and Platinum)	T2 Resources Fund Pty Ltd	Australia	$220,388,545	Takeover	Cash
Reckson New York Property Trust (RNY)	Real Estate	Aurora Property Buy-Write Income Trust (AUP)	Australia (VIC)	$3,951,208	Takeover	Cash
RHS Ltd (RHS)	Health Care	PerkinElmer Inc	North America	$25,177,735	Scheme	Cash
Royal Wolf Holdings Ltd (RWH)	Industrials	GFN Asia Pacific Holdings Pty Ltd	North America	$183,708,305	Takeover	Cash
Sino Gas & Energy Holdings Ltd (SEH)	Energy (Oil and Gas)	LSF10 Summertime Investments, Ltd	North America	$529,713,571	Scheme	Cash
SIRTeX Medical Ltd (SRX)	Health Care	CDH Genetech Ltd	Asia	$1,873,974,312	Scheme	Cash
SIRTeX Medical Ltd (SRX)	Health Care	Varian Medical Systems Inc	North America	$1,561,645,260	Scheme	Cash
SRG Ltd (SRG)	Industrials services)	Global Construction Services (GCS)	Australia	$152,601,975	Scheme	Scrip
Strategic Minerals Corporation NL (SMC)	Resources (Gold and Uranium)	QGold Pty Ltd	Australia (QLD)	$28,180,214	Takeover	Cash

List of deals announced

TARGET	SECTOR	BIDDER	BIDDER LOCATION	DEAL VALUE	TAKEOVER OR SCHEME	CONSIDERATION
Tap Oil Ltd (TAP)	Energy (Oil and Gas)	Risco Energy Investments (SEA) Ltd	Asia	$29,817,727	Takeover	Cash
Tawana Resources NL (TAW)	Resources (Lithium)	Alliance Mineral Assets Ltd	Australia	$186,899,133	Scheme	Scrip
Tian An Australia Ltd (TIA)	Real Estate	Oasis Star Ltd	Asia	$112,591,479	Takeover	Cash
Tox Free Solutions Ltd (TOX)	Industrials	Cleanaway (No.1) Pty Ltd	Australia	$665,884,102	Scheme	Cash
Viralytics Ltd (VLA)	Health Care	Merck Sharp & Dohme (Holdings) Pty Ltd	North America	$486,960,056	Scheme	Cash
Watpac Ltd (WTP)	Industrials	BESIX Group SA	Europe	$168,715,344	Scheme	Cash
Westfield Corporation (WFD)	Real Estate	Unibail-Rodamco SE	Europe	$20,816,605,511	Scheme	Combination

About Herbert Smith Freehills

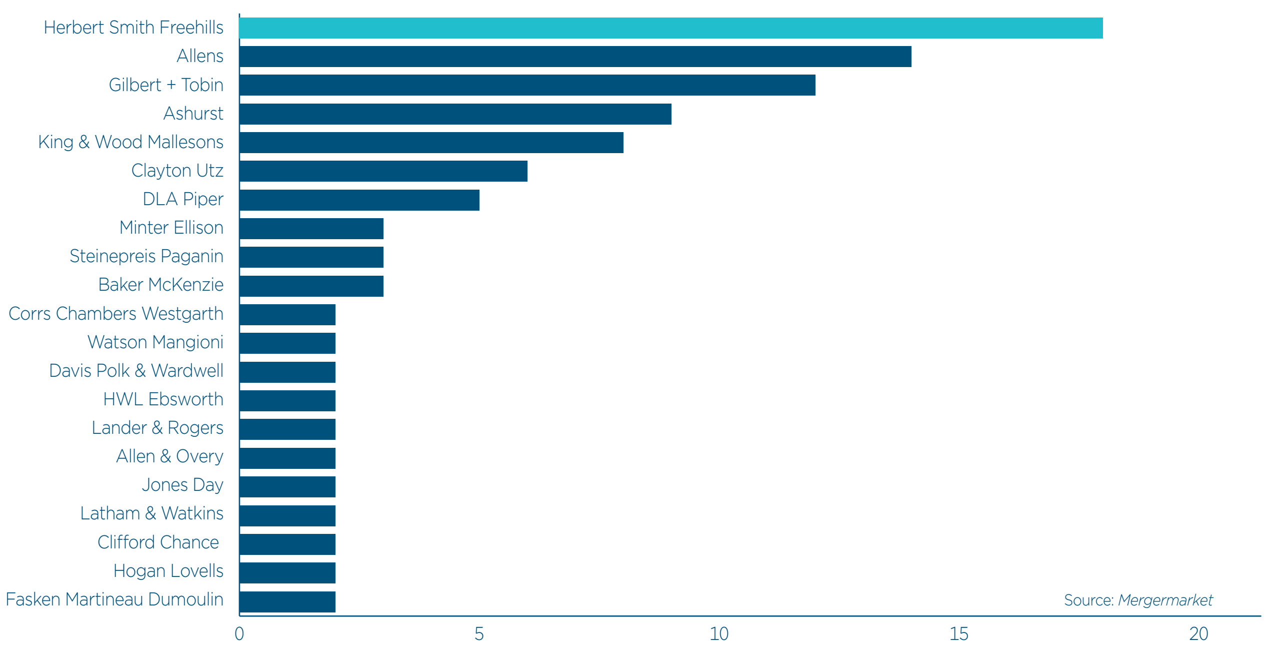
Consistently recognised as a market leader in M&A

Herbert Smith Freehills is a leading international legal practice. It provides an integrated service to its clients across 27 offices worldwide. It offers clients a top-tier end-to-end capability across the globe with a distinctive focus on industry sectors and unparalleled depth of expertise.

Herbert Smith Freehills is leader in mergers and acquisitions, acting on some of the most complex and strategic corporate transactions in Australia and around the world. The volume of transactions in which the firm is involved ensures that our clients have access to the deepest knowledge of market trends and latest issues.

All public M&A deals: 1 July 2017 to 30 June 2018

Number of bidder and target roles by Australian legal advisers



The Herbert Smith Freehills team in Australia has recently advised:

- Accor on its $1.18bn acquisition of Mantra Group by way of scheme of arrangement;
- Aconex on its acquisition by Vantive Australia by way of scheme of arrangement for $1.56bn;
- JCDecaux on its $1.12bn scheme proposal for APN Outdoor Group;
- Mitsui on its successful $594m off-market takeover bid for AWE Ltd;
- OzMinerals on its $408m acquisition of Avanco Resources by way of off-market takeover bid; and
- Royal Wolf Holdings on its response to GFN Asia Pacific's $184m off-market takeover bid.

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

Methodology

This report is a summary of a review of the 56 transactions which were announced during FY18 (a full listing of deals reviewed can be found on pages 30 to 33) based on public information available up to 30 August 2018.

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). 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.

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

Primary sources of data were ASX announcements. Where possible the data was cross-checked using alternative sources.

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

Contact us

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If you have any questions relating to mergers and acquisitions or corporations law in Australia, please contact one of the partners in the Corporate group at Herbert Smith Freehills. Details are on our website **www.herbertsmithfreehills.com**.

Disclaimer

All transactions include terms which are particular to the circumstances of that transaction. Accordingly, a direct comparison of terms is not always possible and in reviewing the data we have relied on our own judgement to interpret terms in a way which enabled us to categorise them for presentation in this report.

This report does not reflect any views of Herbert Smith Freehills. Each M&A transaction is different and whether any matters or terms discussed in this report are relevant to a particular transaction should be determined in the context of the facts and circumstances of that transaction.

Herbert Smith Freehills thanks Cameron Sivwright and Sandra Johnston for their significant contribution towards collection and analysis of the data and preparation of this report.

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