

# BIG DEALS FEATURE AMID INCREASING COMPLEXITY

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Legal Briefings - By **Tony Damian, Partner** and **Rodd Levy, Partner**

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## 2016 HIGHLIGHTS

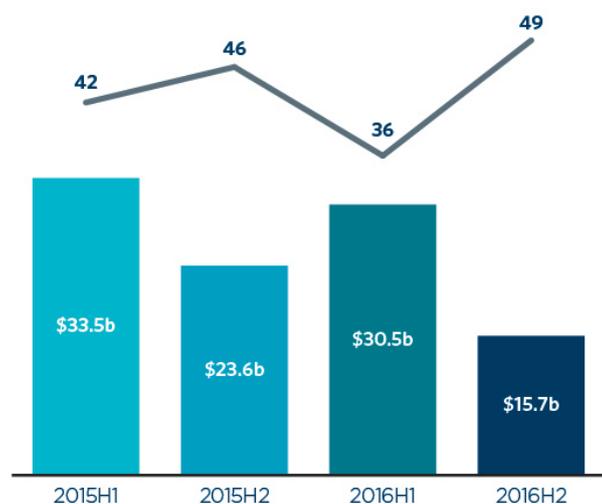
- We saw a number of very large infrastructure transactions during 2016, including Ausgrid, Port of Melbourne and Asciano.
- Those deals influenced the overall value of M&A transactions, and disguised a softer M&A market at lower value levels.
- Foreign acquirers remain a prominent part of the Australian M&A scene. During 2016, this has given rise to many concerns about foreign investment approvals, including limits being imposed on the level of foreign ownership in key infrastructure assets and new conditions being imposed to protect the government's tax base. This has created an apprehension of uncertainty in some proposed transactions.

## THE STATE OF THE MARKET

Overall, the market value of Australian M&A has been very steady in 2016 compared to previous years. 2016 saw a significant number of very large private M&A transactions, including the sale and long-term lease of 50.4% of the Ausgrid electricity network for A\$16.4b and the sale via long-term lease of Port of Melbourne for A\$9.7b. In the public M&A space, similarly sized deals included the long-running break up sale of Asciano for A\$8.7b. All of these mega-deals included Herbert Smith Freehills playing a key role.

Despite this surge in mega-deals, mid-level deals in the space between A\$500m and A\$1b have been fewer.

As illustrated in the following graph, 85 Australian public M&A deals were announced in 2016, which was broadly consistent with 2015 figures. Whilst the cumulative value of those transactions was slightly lower than 2015 levels, this was more than offset by the significant value of private M&A deals announced throughout the year.



Total value (A\$b) and number of Australian public M&A deals

Source: Mergermarket\*

## HIGHLIGHTS FROM SELECT TRANSACTIONS

2016 saw the resolution of the bidding war for Asciano, with Qube and Brookfield and their various co-investors ultimately uniting as a consortium to acquire the company. The finalised deal was structured as a 'consortium break-up bid' by scheme of arrangement and involved the acquisition of Asciano by a special purpose vehicle and its effectively contemporaneous break-up into three separate companies, reflecting Asciano's business units. In this way, the bid provided for the acquisition of a large target, but also allowed consortium members to break off a smaller entity which the relevant consortium member then controlled.

Ferrovial S.A.'s hostile cross-border off-market takeover of Broadspectrum also attracted interest in 2016. The hostile bid, ultimately recommended by the Broadspectrum Board, occupied headlines over a number of months due to various unexpected developments relating to Broadspectrum's operation of regional immigration processing centres in Nauru and Manus Province, including a decision of the PNG Supreme Court in April 2016 finding that the detention of asylum seekers in the Manus Province processing centre was unconstitutional. Following those developments the Broadspectrum Board revised their recommendation to 'accept' given the uncertainty relating to the impact of those developments on the company. Ferrovial subsequently received acceptances for more than 90% of Broadspectrum shares and proceeded to compulsory acquisition.

## PREDICTIONS FOR 2017

Our key predictions for M&A in Australia in 2017 are as follows:

## **INBOUND M&A FROM CHINA AND NORTH AMERICA**

Recent word of renewed scrutiny on outbound acquisitions by Chinese companies, perhaps driven by leveraging concerns, suggests that Chinese bidders will be less active in 2017 than in recent years. We expect this to be a focus of the first half of 2017. Australia remains a friendly destination for foreign and Chinese investment, and this is likely to remain so as other developed economies apply their own renewed focus to foreign investment. In FY2016, North American bidders provided 40% of deal value in Australian public M&A. There were also many significant private M&A processes in which North American bidders participated. We think 2017 will see a continued focus on Australia from US and Canadian companies and funds. Business deregulation in the US is an area of common ground for the incoming Administration and Congressional Republicans. Favourable developments on that front will give US companies confidence to continue executing M&A deals. We also see continuing strong interest on Australian assets from the Canadian side of things.

## **FOREIGN INVESTMENT REVIEW BOARD STAYS CENTRE STAGE**

Barely a week went by in 2016 without FIRB hitting the headlines, with the Ausgrid knock-back in July being the most prominent instance. We expect FIRB considerations to remain a significant part of transactions across a wide array of sectors (not least infrastructure, utilities and agribusiness).

## **CONSORTIUM AND BREAK-UP BIDS**

We see strong prospects for more consortium bids in 2017 – both for regulatory reasons (FIRB and ACCC) and in order to facilitate access to different parts of targets' businesses. This trend is evidenced by the Asciano break-up transaction, the Macquarie-led consortium proposal to break up Tatts Group, the Australian/Chinese bidding consortium for the Kidman cattle station group and various other transactions. All have brought together bidders who have different objectives and involve the eventual break-up of the assets to be acquired.

## **BEAR HUG SEASON**

With hostile bids becoming a little less popular in recent times, we expect bidders to exert pressure on target boards through bear hug approaches. Leaks and announcements of desires to do deals will be a common part of the M&A landscape in 2017.

## **SECTORS**

Infrastructure and mining look like top picks across the sectors for 2017. The hopefully green shoots in some mineral prices might spur confidence with positive M&A driving the sector. We also suspect that high levels of interest in the renewables sector will continue, and that property might see some M&A activity.

## 2016 - KEY DEALS

**Break up of Asciano** - The Brookfield/Qube consortium's A\$8.9b acquisition of Asciano by scheme of arrangement in 2016 followed a series of hotly contested but ultimately unconsummated takeover bids for the company in 2015. The scheme was structured as a consortium break-up bid, resulting in Asciano's division into three separate companies, reflecting its business units.

**Sale of Ausgrid by NSW Government** - Following the Federal Treasurer's decision to block earlier bids for Ausgrid by Chinese and Hong Kong bidders and the subsequent re-launch of the sale process, a consortium consisting of IFM Investors and AustralianSuper successfully concluded an agreement with the NSW Government for the A\$16.4b sale and long-term lease of 50.4% of the Ausgrid electricity network.

**Proposed combination of Tabcorp and Tatts Group** - The proposed merger of Tatts Group and Tabcorp Holdings by scheme of arrangement offered Tatts shareholders a mix of cash and Tabcorp scrip and, if successful, will result in the creation of a A\$11.3b gaming giant. As at the date of this publication, one competing proposal has been received by the Tatts board but dismissed as not superior to the proposed Tabcorp merger.

**Acquisition of Pacific Brands** - The unsolicited A\$1.1b bid by US clothing giant HanesBrands for Australian consumer products and retail company Pacific Brands offered shareholders a combination of cash and a fully franked special dividend and was effected by scheme of arrangement.

**Broadspectrum takeover** - The unsolicited and vigorously defended A\$1.2b bid for Broadspectrum by Spanish infrastructure group Ferrovial, which followed an unsuccessful bid for Broadspectrum in 2014, set the scene for a series of hostile bids in 2016.

*Herbert Smith Freehills acted on each of the transactions described above.*

## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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