TOP 10 AUSTRALIAN M&A PREDICTIONS FOR 2017

19 December 2016 | Australia
Legal Briefings – By **Tony Damian** and **Simon Haddy**

Our annual Top 10 Australian M&A predictions for the coming year are set out below. We also look back at how accurate last year's predictions turned out to be.

Rodd Levy's crystal ball has broken, and so we are pleased to announce that our new resident seer Simon Haddy has joined veteran soothsayer Tony Damian in preparing this year's predictions for the M&A world.

1. MIXED ACTIVITY LEVELS

It is trite to say that the world economy faces interesting challenges going into 2017. On the political front, the combined effect of Brexit, a Trump presidency and other events such as the Italian referendum vote and the rise of minority parties around the globe, has yet to be felt. In particular, the role that these events will have in a globalised and interconnected world economy can be seen as a key driver to what the next few years of growth will look like. Mixed economic activity levels around the world combined with political uncertainty should result in mixed M&A activity levels in Australia. Some major deals throughout the year will prove highlights to a good but not outstanding vintage.

2. GEOGRAPHIC PREDICTION: CHINA

Recent word of a 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.

3. GEOGRAPHIC PREDICTION: NORTH AMERICA

In FY 2016, North American bidders provided 40% of deal value in Australian public M&A. There were also many significant private M&A processes North American bidders were involved in. 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.

4. SECTORS

Infrastructure and mining look like top picks across the sectors for 2017. The hopefully green shoots in some mineral prices might drive 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.

5. CONSORTIUM AND BREAK-UP BIDS

Inspired by the Asciano transaction, we see strong prospects for more consortium bids – both for regulatory reasons (FIRB and ACCC) and in order to facilitate access to different parts of targets' businesses.

6. BID CONDITIONS AND FRUSTRATING ACTION

Given the Panel's recent re-working of its frustrating action policy, we predict (somewhat bravely) that 2017 might see targets challenging excessively onerous hostile bid conditions and asserting that they are free to pursue their own alternative transactions.

7. 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.

8. LEVERAGING COURT PROCESSES FOR STRATEGIC PRESSURE IN SCHEMES

2016 saw three situations where cunning stakeholders were able to impede scheme processes, and achieve their own separate commercial aims, by launching their own court proceedings and complicating scheme processes. We would not be surprised if this kind of strategic litigation continues in 2017.

9. FIRB STAYS CENTRE STAGE…

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

10. …AND IS JOINED BY ASIC

ASIC has steadily reasserted itself in recent years in the M&A space – we expect that to continue. Both behind the scenes activity and public scrutiny of M&A scenarios by the corporate regulator will increase in 2017.

REVIEW OF OUR 2016 PREDICTIONS

Readers may recall that this time last year, we declared that all of our predictions for 2015 had come true. While we think we did well for 2016, we weren't quite there with a clean sweep – the litigious agitators who took the Panel to a higher level of applications than in 2015 blocking the prefect record. However, we think we can (almost) claim the following nine predictions as coming true:

1. Continued strong activity levels – a lineball call – while deal values were strong, deal numbers were more middle of the road.

2. Foreign capital makes its mark.

3. More big deals.

4. Even fewer hostile bids – while a similar level of deals were launched without target board support, at the larger end of the deal spectrum, a higher percentage of deals were launched in 2016 with target support than in 2015.

5. Sectors to watch – we called resources which has had a strong year.

6. More scrutiny from FIRB.

7. The rise and rise of shareholder activism.

8. Privatisations.

9. Focus on deal protection.

We also predicted fewer Takeovers Panel applications. The run sheet for Panel decisions in 2016 is slightly higher than in 2015, so we will concede defeat on that one.

The Herbert Smith Freehills M&A team thanks all our clients for their valued support in 2016 and wishes everyone the best for 2017.

KEY CONTACTS

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

TONY DAMIAN
PARTNER, SYDNEY

+61 2 9225 5784
Tony.Damian@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.