HERBERT SMITH FREEHILLS

EXPERT DEALMAKERS PREDICT POSITIVE YEAR FOR M&A AHEAD

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News

Herbert Smith Freehills mergers and acquisitions experts, Tony Damian and Simon Haddy have revealed their top 10 predictions for the Australian M&A market in 2018.

Discussing the outlook for the year ahead, Mr Damian said: “The unlocking of increased confidence in board rooms here and abroad means 2018 will be a busy year in M&A. We expect strong overall activity to be underwritten by a healthy number of very large transactions.”

Mr Haddy added: “As 2017 has progressed, we’ve seen an increasing momentum and desire to get deals moving across a broad range of sectors. We expect this sentiment to continue into 2018.”

The partners’ predictions for the year ahead are:

1. Higher total deal values helped by mega-deals

“Patchy”, “mixed” and “choppy” are some heavily used adjectives describing this year’s market. While the year isn’t out, even with some late breaking deals, it appears that total deal value was down by approximately 20-30%. Interestingly, total volumes seem to be roughly on par with 2016. While similar adjectives will no doubt get a good workout again in 2018, we think there are enough positive motivators – including capital availability, strategic imperatives, and a desire not to be left behind – to drive greater deal activity across a wide variety of sectors and geographies. Those motivators, along with renewed global business confidence, will also see Australia get its share of mega-deals, which will help the aggregate value equation. Expect to see a couple of new entrants into the list of top 10 Australian M&A deals next year.

2. Global political headwinds challenge deal-making

The political headwinds globally are not blowing strongly in favour of deal-making. From the recent Trump administration move on the AT&T – Time Warner deal, to nationalistic sentiments around the world on foreign investment rules, the trend in this direction is unlikely to change anytime soon. While it won't help, it also won't be fatal to deal volumes, as suggested by our first prediction.

3. FIRB remains in the spotlight, and is joined by the CIC

Regulation of foreign investment will remain a hot topic. FIRB, in conjunction with the newly-minted Critical Infrastructure Centre, will continue to take an active interest in a large number of transactions. Of particular relevance will be (unsurprisingly) energy and infrastructure, along with any businesses where data or technology aspects could be perceived as having a national security dimension. And that's of course not to forget agricultural land...

4. The hot sectors

Always a gamble to pick the winners, but don't write off continued investment in the renewables sector. Likewise keep an eye on financial services, healthcare, agribusiness, and any infrastructure assets that come to market. It would be great to see corporates making strategic step-out acquisitions in order to expand their service offerings, particularly by acquiring technology-based solutions.

5. The shareholder revolution continues

Gone are the days where a board recommendation and an expert's report were enough to convince shareholders to take a particular course of action on a deal. Shareholder activism takes many forms, and in relation to M&A deals, it can start deals, it can see shareholders step in and drive bid bumps and it can end deals. This trend has been advancing in recent years and it will continue strongly in 2018. One positive note on this front – the revolution will see shareholders continue to form their own views and pay less attention to the (often perplexing) views of proxy advisers on deals.

6. PE reassesses the public space

2017 had its share of swings and misses for PE in the public deal space. Vocus and Fairfax come to mind. This has led at least some PE houses to reflect carefully about dances with listed companies. A word of caution to listed boards – the PE approaches that are made in 2018 will be made with intent and purpose, with those approaches having to have satisfied what we see as tough internal gatekeepers.

7. Court scrutiny of scheme procedures

We have seen murmurings from the bench on various aspects of schemes. This is not so much on the substantive "deal or no deal" issues, but on procedures such as objector timeframes, plaintiff evidence and the like. This will continue as Courts remind market participants of their important role in agreed mergers by way of scheme.

8. Panel's workload is unlikely to reduce

While the Takeovers Panel's commitment to regulatory clarity has limited the areas traditionally fought over in takeovers (the reduction in complaints about the content of bidder and target statements comes to mind), aggrieved parties will most likely still be creative in their attempts to pique the Panel's interest. The extent of the truth-in-takeovers policy, including the vexed question of how long – if at all – a bidder must wait on the sidelines after its "best and final" bid closes unsuccessfully, could be an area where the Panel is called into action.

9. Loan-to-own deals continue to star

Loan-to-own deals effected by way of creditors' schemes of arrangement are becoming a staple in the Australian M&A landscape. This year saw significant deals in the space such as Boart Longyear, Slater & Gordon and Bis Industries. Important developments also emerged, including from the New South Wales Court of Appeal's consideration of the Boart Longyear matter – the most important Australian court decision in the scheme of arrangement space in almost 40 years. We see a strong future for these deals in 2018, with continuing refinement to the procedures as Courts and market participants explore the uncharted legal issues on these deals.

10. ACCC to stay front and centre

Concentration in the Australian market, and recent reforms to the law, will inevitably lead to ongoing ACCC scrutiny of a large number of deals. ACCC Chairman, Rod Sims, recently said that the ACCC has "heard the message from the courts" and that, for complex mergers, the ACCC will be gathering substantially more evidence and issuing significant document requests, which will definitely increase the burden on the merger parties and see some lengthening of timelines.

Herbert Smith Freehills has been issuing annual M&A predictions for over 10 years and the firm's partners have a strong track record when it comes to the accuracy of their crystal ball gazing.

Looking back on the predictions made last year, Mr Damian and Mr Haddy argue that they can (almost) claim the following of predictions as coming true:

1. Mixed activity levels

2. Geographic prediction: China

3. Consortium bids

4. Bear hug season

5. Court processes in schemes

6. FIRB stays centre stage

7. And FIRB is joined by ASIC

The Herbert Smith Freehills M&A team thanks all of its clients for their valued support in 2017 and wishes everyone the best for 2018.

MEDIA CONTACT

For further information on this news article, please contact:

KELLY MURRAY, EXTERNAL COMMUNICATIONS LEAD

SYDNEY
Tel: +61 2 9322 4472
Mob: +61 429 115 625
Email: kelly.murray@hsf.com