EXPERT DEALMAKERS REVEAL PREDICTIONS FOR AUSTRALIAN M&A IN 2019

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Firm news

Herbert Smith Freehills M&A partners, Tony Damian and Simon Haddy have once again drawn upon their significant deal-making expertise and market insights to develop 10 predictions for the year ahead.

Discussing the outlook for 2019, Mr Damian said: “We expect 2019 to be a big year for M&A. Many of the drivers of a very active 2018 remain present and in some cases, those drivers will be even more relevant in the year ahead. In particular, the pools of capital managed by private equity, sovereign wealth funds and domestic super funds, as well as companies looking to inorganic growth, will all contribute to a strong demand side equation in M&A.”

Mr Haddy added: “We have seen activity across a number of sectors this year. Property, financial services and healthcare will be sectors to watch in 2019. Regulatory issues will also be important in the coming year.”

The pair’s annual Top 10 Australian M&A predictions include:

1. Is it a bird, is it a plane? No, it’s superfunds!

2018 was the year that super funds broke out as active M&A participants. No longer should these funds be thought of in public M&A situations as reactive participants. Rather, given their stakes in many listed companies and also given the size of funds under management, the emergence of a preparedness to be involved in deals early represents a major moment for Australian M&A. Watch this space in 2019.

2. Boards take control

Despite immense pressure from shareholders on a range of fronts, 2018 has seen no shortage of board taking control in M&A situations, disclosing approaches, rejecting approaches and generally forming a view and fighting the corner.

3. Political risk

It can be a fine line between politics and policy, but – either way – uncertainty is on the rise both in Australia and around the globe. Some of this is sector-specific (information, energy and agriculture spring to mind) and some of it has a protectionist bent (foreign investment restrictions, tax reforms, and tariffs). There will be risks and opportunities for canny investors able to navigate the more treacherous waters.

4. Stub equity deals on the rise

A number of deals in 2018 continued the development of stub equity deal technology, on the back of prior deals such as KKR-Pepper and PEP-Patties Food. That technology accommodates the different desires of different shareholders. The Capilano Honey and Greencross schemes are classics of the genre in 2018. While traditionally the realm of the PE bidder, we have also seen this deal structure extending to corporates, such as in the Brookfield-Healthscope proposal. We expect more bidders to think deeply in relation to these kinds of deal structures in 2019.

5. More of the urge to demerge

2018 saw the Coles demerger and the announcement of the proposed Commonwealth Bank demerger. We expect to see more of this in 2019 – demergers present an option for companies to focus on core areas and from an execution avoid the ups and downs of equity markets and the vagaries of sale processes.

6. PE on the hunt

All those dollars in private equity funds will need to be deployed, and we don’t see this slowing down. While there have been some hits and misses in 2018, the success rate is probably no worse (and is arguably better) than private market auctions. And there is often the potential to deploy considerably larger sums.

7. Property, financial services and health the ones to watch

Always a risk in trying to pick the winners, but the macroeconomic picture, current and pending regulatory reforms (and royal commissions), as well as industry evolution more generally mean that property, financial services and healthcare are likely to continue to shine.

8. Think big

2018 had its share of big deals and attempted big deals – those well into the billions of dollars of deal value. Boards will continue to explore all options in 2019 and we see the preparedness to take on transformative deals continuing. Foreign bidders will also have their role to play here.

9. Infrastructure

Leaving aside the increasing heat in foreign investment regulation and tax policy, investors will be faced with a shorter list of potential brownfield transactions – both in privatisations and secondary trades. Instead, focus will move even further towards greenfield projects and expansions of existing facilities, as well as “core-plus” and “infrastructure-like” sectors. The changing nature of our energy and transportation networks, as well as developments in waste and recycling sectors, are all likely to provide opportunities.

10. Truth in takeovers

The *Finders Resources* judicial review process, ASIC’s revisiting of its policy, and the broadening use of various types of (ostensibly) binding “intention statements”, will all contribute to an uncertain area where players may try to take advantage.

Herbert Smith Freehills has been issuing annual M&A predictions for more than a decade, and the firm’s partners have an impressive track record when it comes to the accuracy of their crystal ball gazing. As for last year, Tony and Simon have reviewed their predictions for 2018, and given themselves full marks.

REVIEW OF 2018 PREDICTIONS

1. Higher deal volumes – and strong value as well.

2. Global political headwinds challenge deal-making – turbulence around the world hasn’t helped, but they haven’t prevented activity.

3. FIRB remains in the spotlight, and is joined by the CIC – and, as we said in our prediction, “of particular relevance will be (unsurprisingly) energy and infrastructure…”. Tick.

4. The hot sectors – we’ll stand by our call of renewables, financial services, healthcare, agribusiness, and any infrastructure assets that come to market.

5. The shareholder revolution continues – shareholder activism, in all its forms, has continued to thrive.

6. PE reassess the public space – PE approaches have been made with intent and purpose, but with mixed success.

7. Court scrutiny of scheme procedures – judicial murmurings haven’t gone away.

8. Panel’s workload is unlikely to reduce – an array of colourful disputes, as well as new guidance on the question of how long (if at all) a bidder must wait on the sidelines after its “best and final” bid closes unsuccessfully, both aligned with our predictions.

9. Loan-to-own deals continue to star – arguably not as prevalent as 2017’s banner year, but now an acknowledged part of the weaponry.

10. ACCC to stay front and centre – thorough scrutiny and lengthy lengthy processes have been part of the 2018 landscape. Oh, and add the unprecedented litigation for “gun jumping”, where buyers and sellers get a little too cosy with each other before their deals are approved.

Herbert Smith Freehills’ M&A team thanks all our clients for their valued support in 2018 and wishes everyone the best for 2019.

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