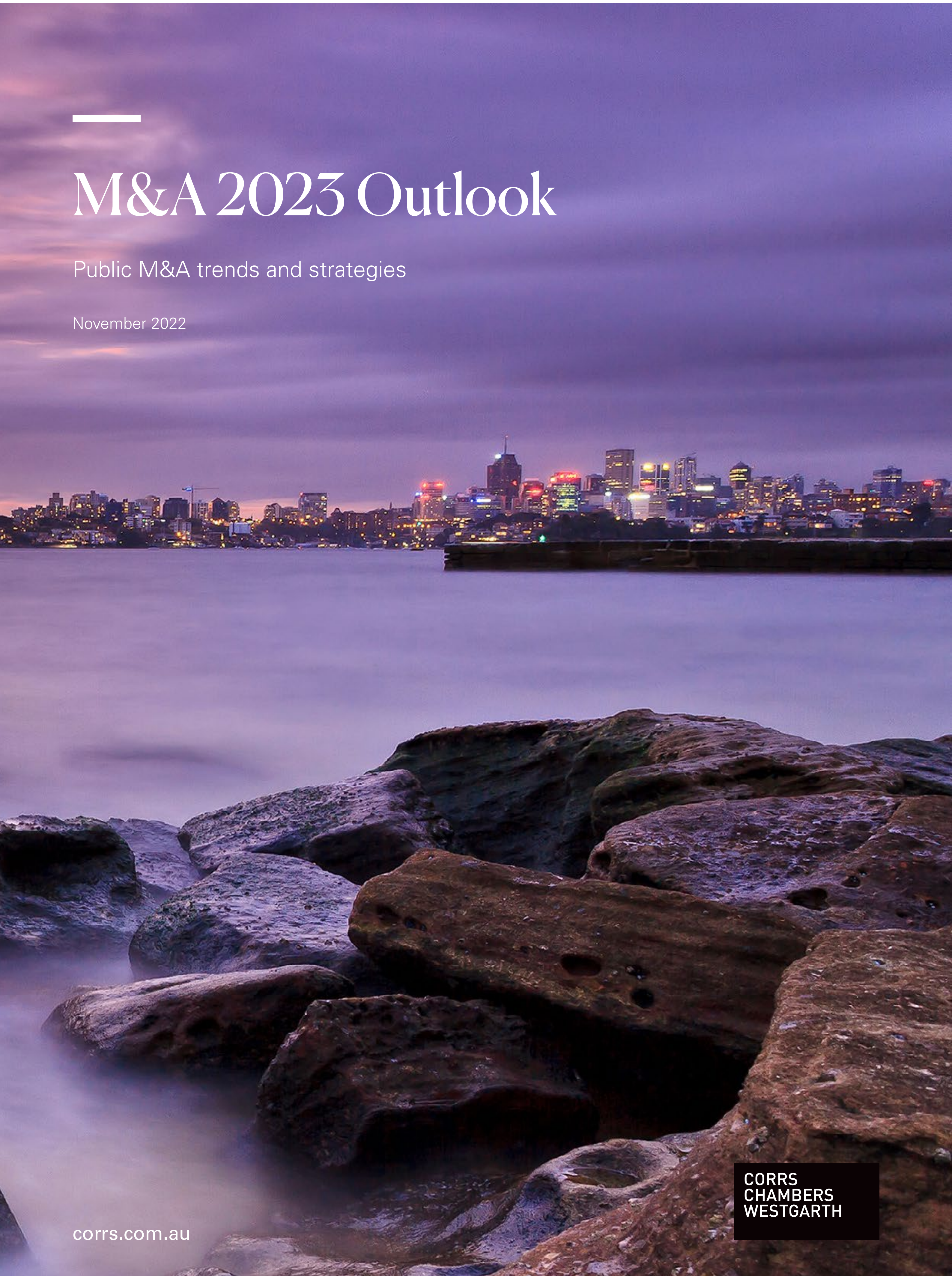
M&A 2023 Outlook

Public M&A trends and strategies

November 2022



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Deal predictions based on real data

We look beyond statistics to consider what strategies and drivers will really matter to bidders, targets and shareholders undertaking a public M&A deal in 2023.

This report is based on the most recent data taken from our proprietary database and in-depth research for the 12-month period ended 30 September 2022.

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Introduction

> Opportunity is often delivered in a fog of uncertainty.
>
> Victor Hugo

The last 12 months tell a tale of two different M&A markets.

The first quarter of our annual M&A Outlook survey period saw the M&A market continue to skyrocket, riding on the highs of record deal activity from 2021.

Of the 56 deals announced during the survey period, 43% were announced in the first quarter – an unprecedented concentration compared to previous years.

However, as market conditions began to shift, so too did deal activity. The air of uncertainty and market volatility dulled the appetite for deal making.

Geopolitical instability, spiralling inflation and high cost of debt suggest a downturn may be inevitable.
But opportunities remain.

Last year we posed the question: How long will the peak last?

This year, the key questions are:

- With M&A markets having peaked in the first quarter, how long will the downturn in M&A markets remain before they rebound again?
- Which sectors and types of deals will buck the trend of declining M&A activity?
- What opportunities do the current market dynamics present for deal makers?
- What will the regulators focus on?

Our 12th annual M&A Outlook report outlines our predictions for the coming year and highlights key trends in the public M&A space.

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Predictions for 2023

1. Slower activity levels, but public M&A will rebound
2. Domestic energy and resources sector to remain buoyant
3. 'Out-of-favour' sectors will be back in vogue
4. Bespoke structures crucial to deals
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7. Regulators will continue to focus on lessons of previous periods
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1. Slower activity levels, but public M&A will rebound

Against current global uncertainty, spiralling inflation and expensive debt, deal activity will generally be slower than in prior years, but public M&A activity is expected to rebound as valuations settle.

Market volatility is the enemy of deal-making, but once valuations settle we expect deal activity to pick up. With stock markets down, targets become more attractive, particularly in sectors like technology where valuations were very high in 2021.

Further, the AUD exchange rate may make Australian targets better value for foreign bidders, especially compared to the USD exchange rate.

It is key that offers from bidders cannot be seen to be opportunistic from a target perspective – more inventive consideration structures may be required, such as the novel earn-out structure used on the Crestone transaction.

2. Domestic energy and resources sector to remain buoyant

Geopolitical instability, including that arising from Russia's invasion of Ukraine, appears unlikely to be resolved in the near term. This will continue to put pressure on global oil and gas markets.

Notwithstanding the global push to transition into renewables, there is still a strong demand for oil, gas and other critical minerals, which will maintain elevated pricing levels, as evidenced by the recent Origin Energy offer from Brookfield Asset Management and EIG.

Companies operating in this space will continue to garner interest from bidders, with access to critical minerals making them a high-priority acquisition target.

3. 'Out-of-favour' sectors will be back in vogue

As life returns to normal, sectors which were impacted during the COVID pandemic are rebounding – as evidenced through recent reported earnings and some quite bullish forward guidance.

We anticipate the pent-up demand for travel, leisure and 'adventure' expenditure will continue for a period into 2023, until inflationary measures really start to bite and consumers begin to assess discretionary spending more closely.

Assets in the transport, healthcare (particularly with weighting to elective and cosmetic procedures), insurance and tourism sectors could all present interesting M&A opportunities. This will all depend on what investors are prepared to believe and how much runway existing lending syndicates are prepared to offer.

4. Bespoke structures crucial to deals

In a buoyant market where earnings keep increasing, acquisitions of 100% of a target business tend to be relatively straightforward and uncontroversial. In a more volatile market this becomes trickier.

We anticipate 'structured' M&A – transactions with bespoke structures designed to mitigate the risks particular to the deal – will become more dominant in 2023.

While legal structuring cannot overcome fundamental value misalignment, it can ease conversations between vendors, management teams and buyers. In 2023, we expect more deals to incorporate bespoke structures, including sub-control deals, convertible notes (both private and listed), deferred payments (both private and listed), increased conditionality and combinations thereof. It could also be time to dust off the loan-to-own playbooks.

Bespoke arrangements will also continue to be used by bidders to give themselves as much certainty as possible of doing a deal. This includes novel exclusivity arrangements. Traditional auction processes are not well-suited to negotiating these sorts of transactions, so we expect a continuation of the bilateral engagements that have been more prevalent in the second half of 2022.

5. Greater use of pre-bid stakes

Consistent with the need for more bespoke structures and exclusivity arrangements to get deals done, we expect a continuation of the increased use of pre-bid stakes as a means of both creating greater deal certainty for bidders and bringing target boards to the negotiating table.

While the problem for bidders at the start of the year was ensuring they were not overbid or did not lose the deal after doing the hard work upfront to unlock the opportunity, the problem for many now is how to get the board to engage and provide access to due diligence or recommend the transaction.

The difficulty in securing a recommendation is playing out in a range of current situations, including in relation to technology stocks, and was also evident in a number of transactions last year which were ultimately unable to be agreed. Even deals that were eventually agreed took some time to secure a recommendation (for example, the Sydney Airport deal required five indicative non-binding offers to secure a recommendation).

6. Fewer 'mega-deals' and more strategic acquirers

In the current environment, it's no surprise debt markets are tight. Anecdotally, the Australian and US Term Loan B (**TLB**) markets are closing, if not already closed.

With this in mind, it is likely deals which require A$500+ million of funding will be harder to execute.

In the mid-market (sub A$500 million), debt is still available but is increasingly expensive with lenders being more selective than last year on what they will support.

Given sponsors' required returns and the increased cost of financing, strategic acquirers may be more prevalent and successful in 2023.

7. Regulators will continue to focus on lessons of previous periods

We expect the key takeovers regulators, being the Australian Securities & Investments Commission (**ASIC**) and the Takeovers Panel (**Panel**), to continue to focus on promoting competition and minimising uncertainty about deals completing.

Two key concerns for regulators that arose out of activity over previous periods were: (i) the tendency of bidders to push targets and shareholders on lock-ups earlier and harder as a response to difficult market conditions; and (ii) for bidders to find novel ways to terminate or leverage an agreed termination of transactions.

For example, through their guidance and decisions this year, ASIC and the Panel have focused on pre-bid exclusivity, matching periods and uncertain material adverse change (**MAC**) clauses.

8. More of the E, the S and the G

Environmental, social and governance (**ESG**) considerations are increasingly becoming a mainstay in M&A transactions and are showing no signs of abating.

There are a number of recent examples of M&A, both acquisitions and disposals, undertaken with the purpose of achieving ESG outcomes and goals, including BHP's sale of its petroleum portfolio to Woodside. ESG activism is also growing, with the AGL demerger a recent example.

'E' factors have been front-of-mind across all corners of the M&A ecosystem for some time – and will remain so. As society grapples with climate change, companies are facing even more pressure from consumers, investors and government to make net zero commitments and establish energy transition strategies aligned to Paris Agreement targets.

There has been a noticeable lag around 'S' and 'G' considerations, however, this appears to be correcting, with accountability around human rights and governance behaviours being demanded by major institutional investors.

Recent high-profile data breaches and the introduction of the reporting obligations under the *Security of Critical Infrastructure Act 2018* (Cth) (**SOCI**) will naturally sharpen and accelerate firms' focus on cybersecurity and the way sensitive customer data is handled, and the current review of the *Modern Slavery Act 2018* (Cth) is likely to result in penalties for non-compliance.

In focus – The impact of ESG activism in M&A and demergers

In 2023, we expect ESG concerns to be a driving force in M&A and divestment activity, particularly as pressure mounts for carbon-intensive oil companies to rationalise their portfolios. This should, in turn, unlock deal opportunities – although buyers will need a convincing ESG and decarbonisation narrative in order to find support from the regular stable of onshore funders.

The market is seeing high levels of interest in these assets from smaller regional exploration and production businesses as well as large-scale offers such as the recently announced bid for Origin Energy from Brookfield Asset Management and EIG. Once the large-scale mergers (such as the Woodside and BHP Petroleum transaction) settle down, non-core assets are likely to be next on the auction block.

We have already seen companies divesting assets with high carbon footprints with varying levels of success. There are several impediments to these transactions, including uncertainties around the accuracy of current models for assessing decommissioning costs.

There are recent examples of investors and shareholders applying an ESG lens and taking a proactive role to influence the outcome of a M&A transaction which they consider inconsistent with their perception of good governance or accepted ESG standards.

The AGL Energy Limited (**AGL**) demerger proposal is one example, where AGL abandoned a plan to split its business into separate generator and retailer arms in response to shareholder pressure, including from Mike Cannon-Brookes' private investment firm Grok Ventures and institutional investors like HESTA.

The AGL experience illustrates how transactions which require shareholder approval can be vulnerable to external pressure especially where activist investors are prepared to acquire stakes in the business.

We anticipate that ESG-conscious stakeholders, including key investors, will not be shy in looking for ways to adversely impact structural decision-making, which may include a range of techniques such as 'buying' votes as a means to vote down proposals. Under Australian law, shareholders can separately deal with their rights to vote and their economic interests. As a result, voting rights can be transferred in a variety of ways (such as stock lending, equity swaps and voting agreements) to enable a motivated ESG-focused shareholder to thwart a proposed transaction.

These sorts of strategies will be particularly effective if the transaction requires a special majority, where the go/no-go threshold is 25% of shareholders present and voting. The evolution of derivative structures to facilitate stake-building has also enabled shareholder activism in these types of transactions. In particular, this will be the case for companies where the acquirer either needs regulatory approvals to build the stake (for example, Foreign Investment Review Board (**FIRB**) approval) or where there is insufficient liquidity in the existing stock to acquire a stake directly.

In the case of AGL, an entity associated with Mr Cannon-Brookes amassed an 11.28% interest in AGL shares through complex arrangements involving a loan and equity collar transaction and a cash-settled total return swap with an investment bank.

While transactions that reflect ESG best practice are clearly the preferred outcome from a board's perspective, preparation is required for potential activist approaches on future M&A transactions. Detailed forward-planning and consideration of alternate strategies and restructure options are likely to be of critical focus. This includes an emphasis on target boards staying proactively and meaningfully engaged with the company's shareholder base.

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Key trends and insights from 2022

In last year's M&A Outlook, we made four key predictions

- A hot market would equal stiff competition, high premia and defence preparations
- Frenzied activity levels would show no signs of abating
- Cash would continue its reign
- Regulators would continue to take centre stage

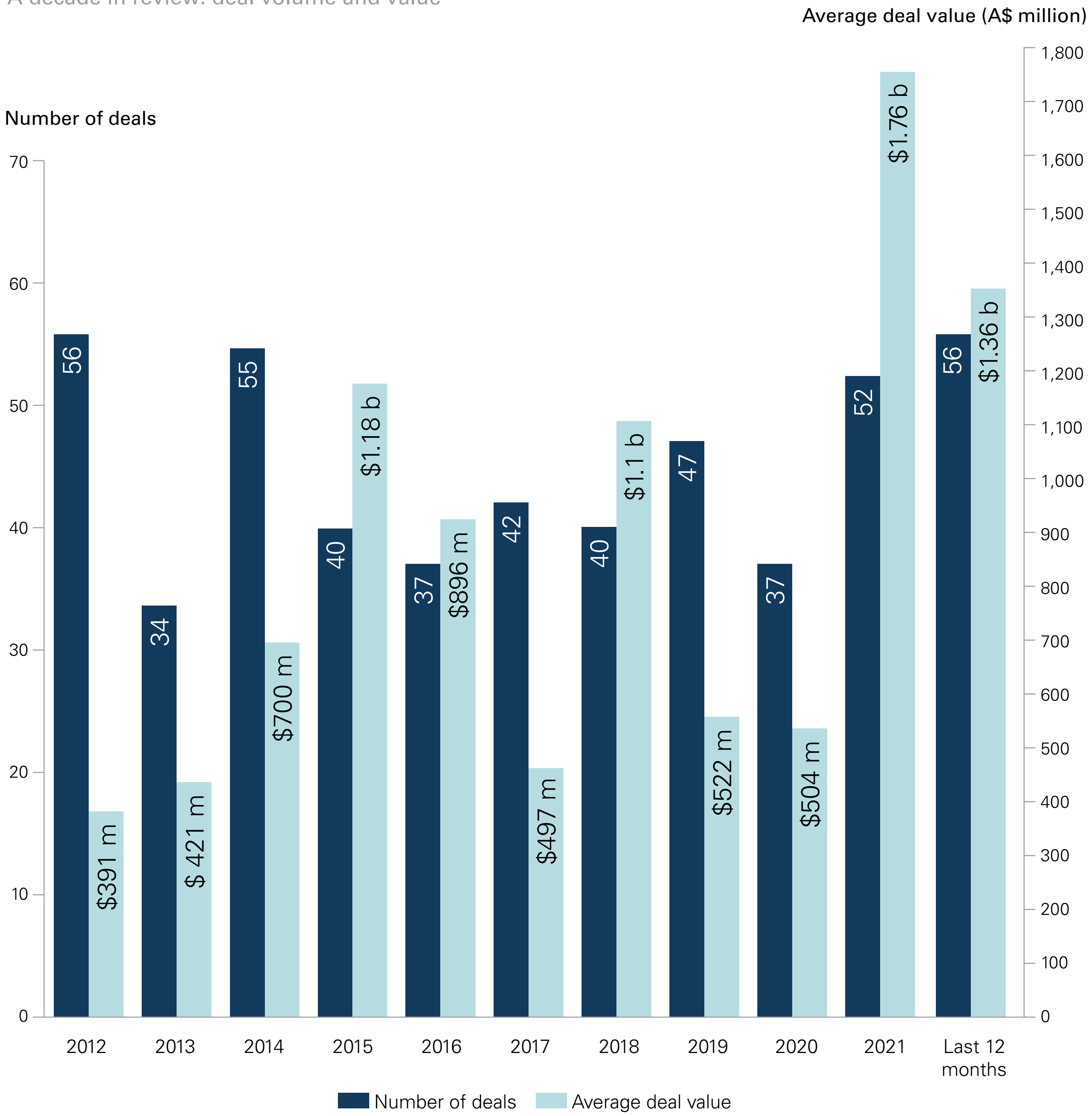
Here we explore what happened in the 12-months leading up to 30 September 2022 and which of our predictions were correct.

Deal figures high, but showing signs of slowing

Continuing the trend from 2021, where we saw a 40% increase in deals announced compared to those in 2020, deal activity continued to grow, with 56 deals announced within our survey range, which is an additional four deals compared to 2021.

> Our prediction that frenzied activity levels would continue was correct, with the highest number of deals (equal to 2012) announced in the past decade, however, announcement rates are now slowing.

A decade in review: deal volume and value

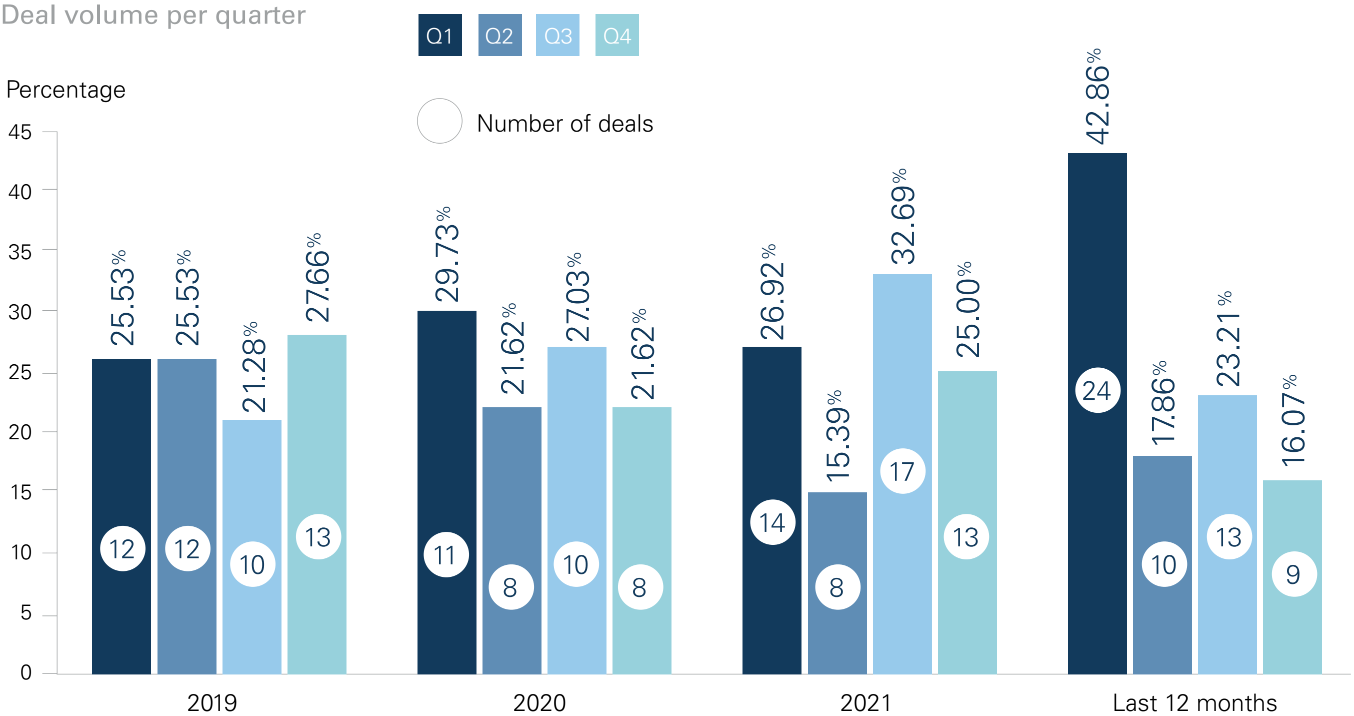


Drastic difference in volume between first and last quarter

While an impressive overall number of deals were recorded this year as compared to our 10-year survey period, also noteworthy was the fact that 43% of these were announced in the first quarter of the survey period, which is an unusually high concentration. The final quarter for the survey period saw only 16% of the deals for the survey period, the slowest quarter we've seen over the previous three years.

We consider the end of the first quarter (December 2021) as the end of the deal peak.

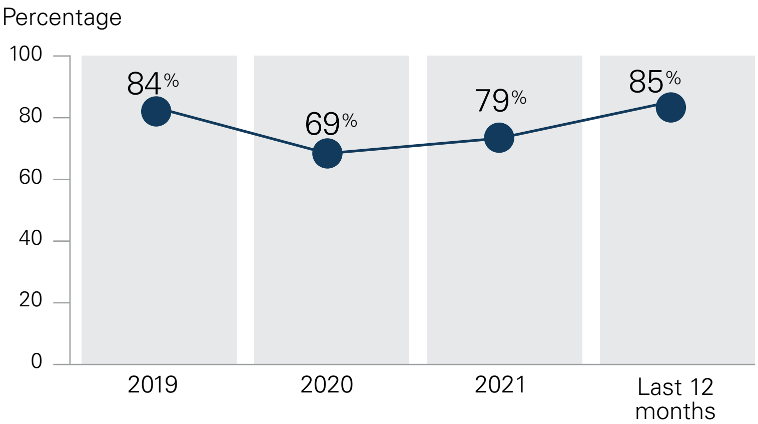
Deal volume per quarter



Deal success rates were back at pre-COVID levels

Deal completion rates have bounced back up to 85% for the past 12 months, similar to the success rates we were seeing in 2019, which is a bounce back from the plunge in 2020.

Deal success



Our prediction that M&A conditions would return to normal due to high vaccination rates and the resumption of 'normal' life has proved correct. Success rates dipped markedly during the early COVID period as changes in valuation caused parties to look to exit or renegotiate agreed deals.

The change this year is due in part to market conditions but also to changes in target behaviour in negotiating much less restrictive pre-implementation covenants, MACs and other conditions precedent.

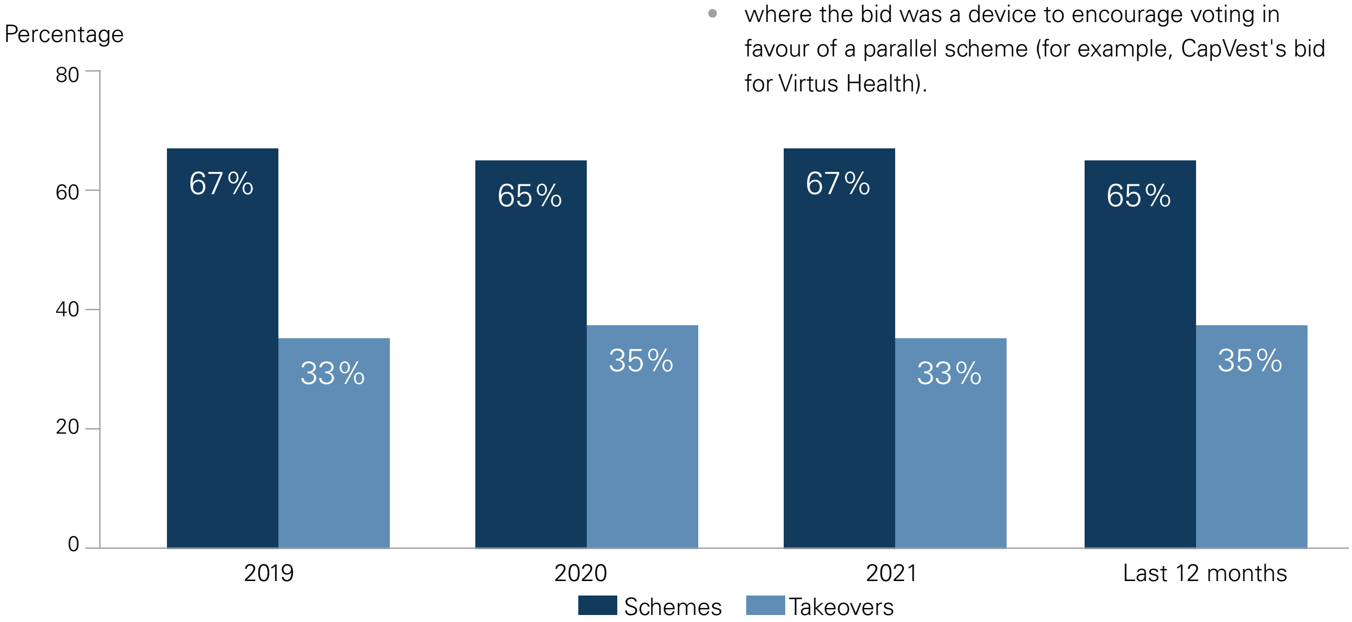
Takeovers used strategically, but schemes continue to prevail

Schemes continued to be by far the most popular transaction structure due to both the certainty they provide and the fact they are better suited to more complex transactions, like the ones we saw in the survey period.

At the same time, we continued to see takeovers used strategically, including:

- where the bidder had a significant pre-existing interest (for example, HOCHTIEF's bid for CIMIC);
- where the transaction was not recommended at the outset (for example, Westgold's bid for Gascoyne); and
- where the bid was a device to encourage voting in favour of a parallel scheme (for example, CapVest's bid for Virtus Health).

Schemes vs takeovers



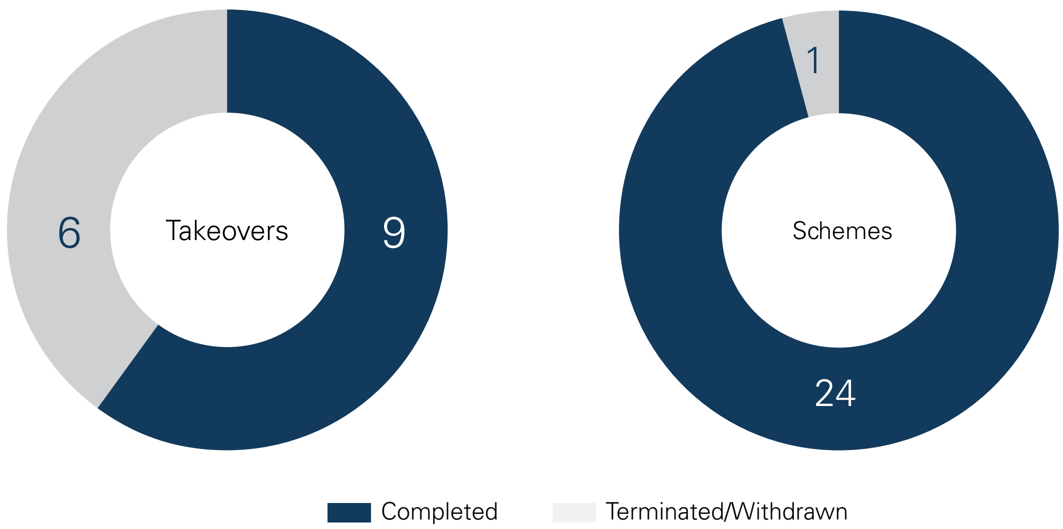
Note: The Virtus Health/CapVest transaction has been counted in both the scheme and takeover statistic.

Despite competition, high success rate for schemes

Notwithstanding the high level of competition for assets and the concern in the Australian market about the contestability of agreed public deals until having received court approval (for schemes), once deals were agreed, we saw a very high success rate.

All agreed schemes completed, other than CapVest's bid for Virtus Health, which failed due to BGH's competing takeover and in part to BGH's successful building of an initial stake. Of the takeovers (which excludes any that are ongoing), 60% of those were successful. Interestingly, we note that 60% of all takeovers were not recommended at the outset.

Success rates for agreed deals



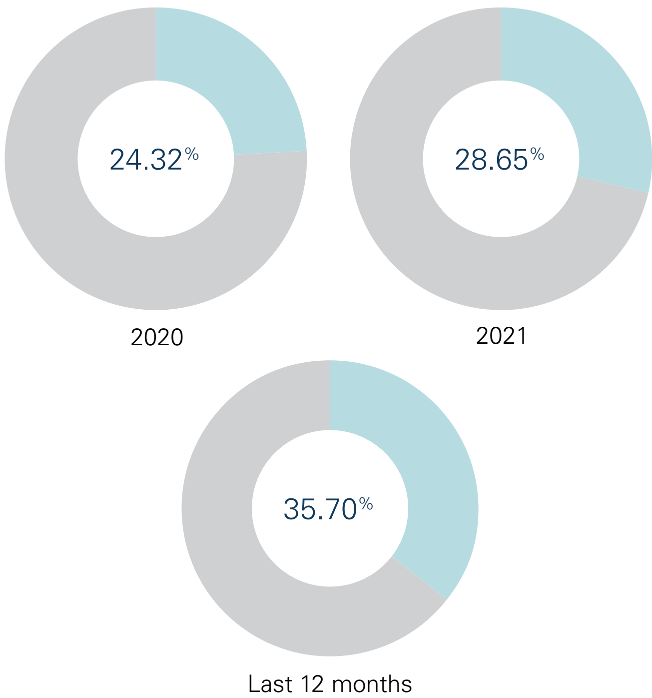
Takeover premia remained high and price bumps rose

Takeover premia has continued to increase from previous years and deals where we saw bidders offer a price bump are up to 35.7%. Initial premia has dipped approximately 10% compared to the initial premia that was being seen in 2021, taking the initial premia amount back to roughly the same amount as the 2020 period.

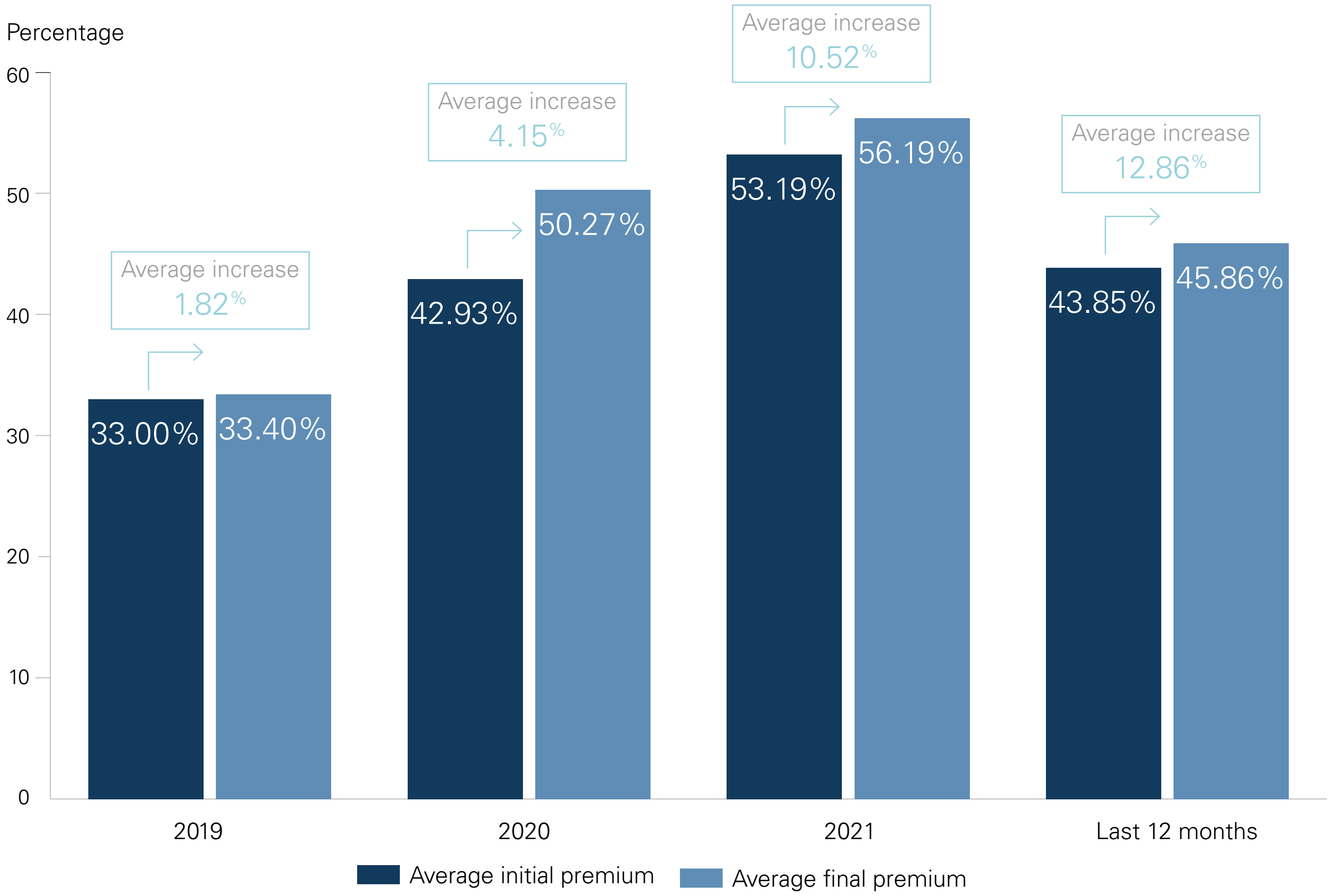
This year, the average initial premium was 43.85% at the outset of an announced approach or transaction, with the average premium at 45.86% at close of the transaction. Price bumps continue to be a common feature of the takeover landscape: 35.70% of deals experienced a price bump in the current survey period. Bidders had to boost their offers even more than they did last year, with an average increase of 12.86% from the initial announced price, compared to the average increase of 10.52% in 2021.

To put this general trend in context, in 2019, on average, bidders only had to boost the price by less than 2% and were offering an average final premium of around 33%. This is considerably lower than the premiums offered in the previous 12 months.

Number of deals with a price bump



Average premiums and price increases



Note: These averages reflect the increase between the transaction announcement and the final premium and do not include the premiums that decreased.

Decrease in MAC clauses

We have seen a decrease in the use of MAC clauses, with 75.90% of deals containing MAC clauses in the current survey period, compared to 87.50% last year.

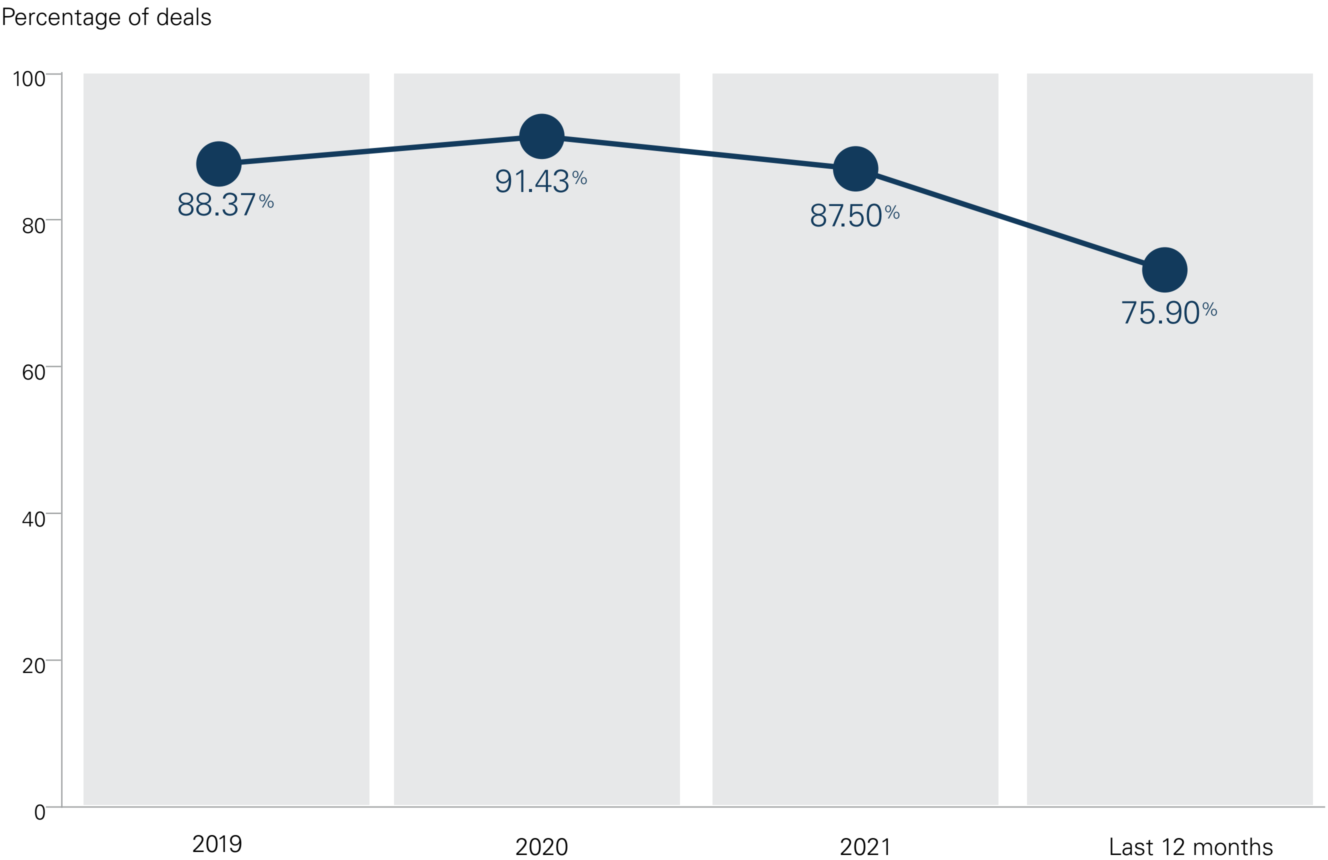
Our prediction that there would be a lower incidence of MAC clauses has proven to be correct, with 24.1% of deals not including a MAC clause. This is a significant reduction from last year where only 12.5% of deals did not include a MAC.

We expect this trend has been driven by targets concerned about deal certainty following COVID. Even if the MAC clause is not unequivocally triggered, the existence of a MAC clause can give the bidder leverage in terminating a deal in the event of a material event or change.

Regulator insight

ASIC is alive to the uncertainty some MAC clauses create and has recently stated that parties to control transactions should ensure MAC clauses have objective and quantifiable standards. One consequence is that it is no longer acceptable in ASIC's view to include a 'general' MAC limb for an undefined 'material adverse change' in relation to the business. We have seen ASIC take action to address this concern in a number of recent transactions.

Deals with MACs



Industry sectors – are they hot or not? A look at 2021 vs last 12 months

Metals and mining was the most dominant sector this year comprising 32% of deals, in the survey period compared to 13% last year. Of the 18 deals in the metals and mining sector, 77.8% (14 deals) were in the gold sector. Gold-related M&A comprised a huge 25% of all deals this year.

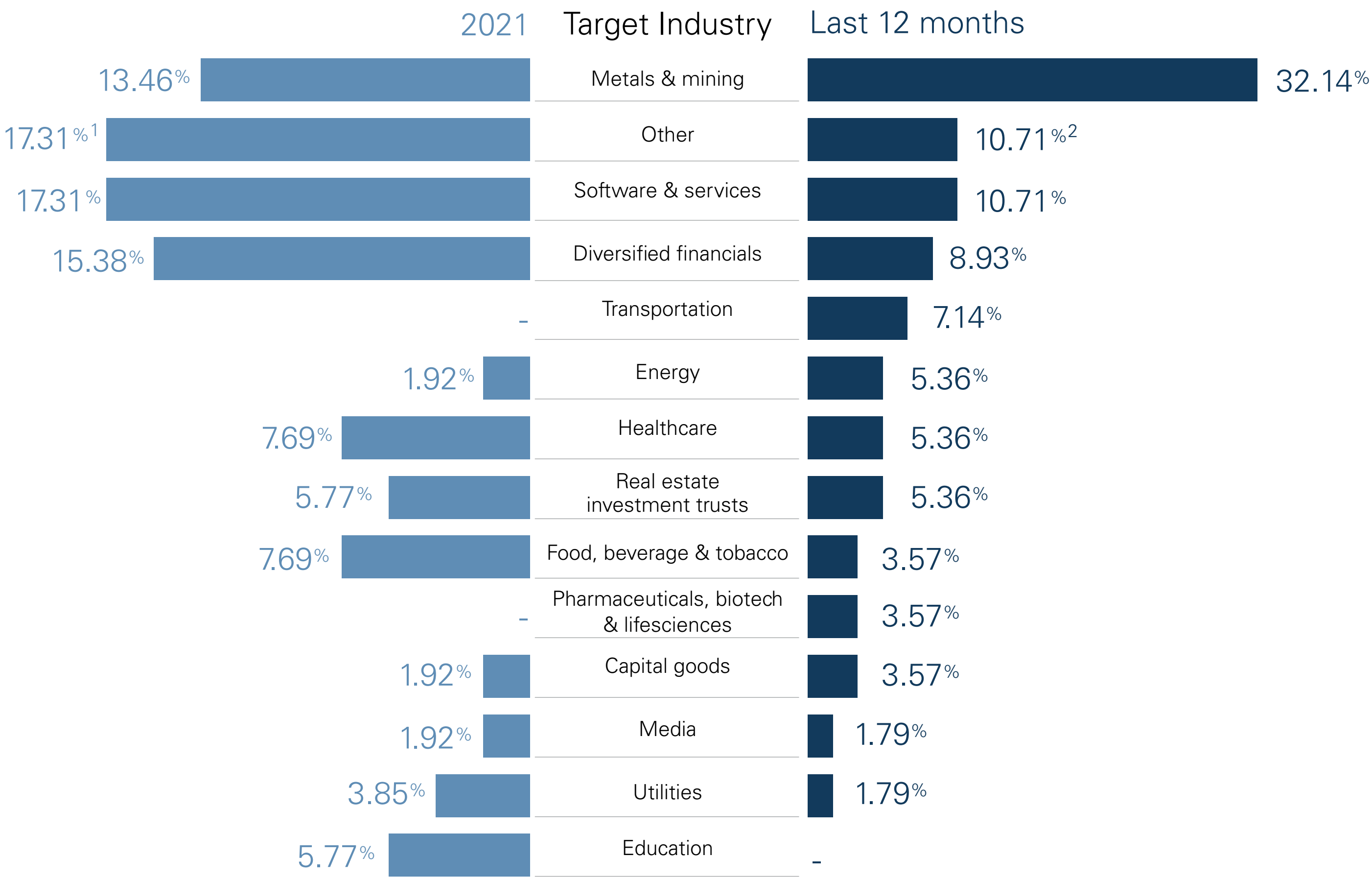
While diversified financials saw less activity this year compared to 2021, we still saw significant deals including the activity around Perpetual and the related financial technology part of the sector. There were a number of other non-public deals in this sector (which are not picked up by the survey) and we see continued interest in the sector.

Leaving aside the Pendal/Perpetual deal, almost all of the deals above A$1 billion in deal value were in the infrastructure (or infra-like) and real estate sectors (Sydney Airport, AusNet, Uniti, Crown, Aventus and Irongate). This reflects the fact that when earnings become more difficult to value, we will see relatively greater activity in real assets which are generally easier to value. Still, continued activity going forward will be contingent with investors getting comfortable with inflation and interest rate projections.

Healthcare and education will continue to be attractive given the fundamental positive macro thematics associated with those sectors. However, we expect it will nevertheless be difficult to do deals in this sector without more certainty around funding, costs and inflation-impacted demand.

Finally, one opportunistic bright spot going forward is technology stocks, as valuations fall to what investors consider to be more reasonable levels. This is creating opportunities to do deals that were previously too expensive. We have seen a number of indicative proposals announced in the last six months which are beginning to be translated into agreed deals (for example, Nearmap, ReadyTech, Nitro, ELMO and Infomedia) and we expect more will come.

Target industries by percentage of deals



[1] For 2021 'Other' comprises consumer goods, paper and forests, construction and property management.
[2] For last 12 months 'Other' comprises consumer services, commercial services, entertainment, construction, retail and telecommunications services.

Multiple bids remain with tight competition from bidders

Approximately 21% of the deals announced during the survey period saw multiple bids or were contested. This is a continuation of the trend of contested deals we saw in 2021 and 2020.

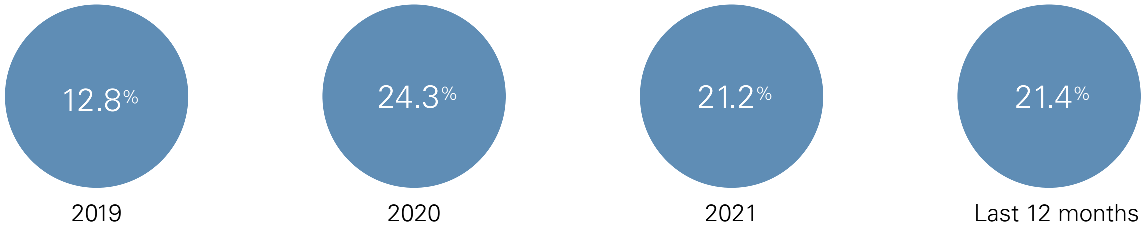
Good examples of the level of competition include the competing proposals for:

- Virtus Health from BGH and CapVest;
- AusNet from APA and Brookfield;
- API from Woolworths, Wesfarmers and Sigma;
- Apollo Consolidated from Gold Road and Ramelius; and
- MACA from Thiess and NRW.

We even saw a different type of competition, whereby bidders, following the announcement of a bid, subsequently received a bid for their own shares, such as in respect of Perpetual (with its bid for Pendal) and Gascoyne (with its bid for Firefly).

> Our prediction of a hot and difficult market resulting in stiff competition has proved correct. We see this trend continuing even as actual M&A deal volume falls away given that there will be a smaller number of attractive targets and a large number of bidders still wanting to transact.

Percentage of targets that received multiple bids

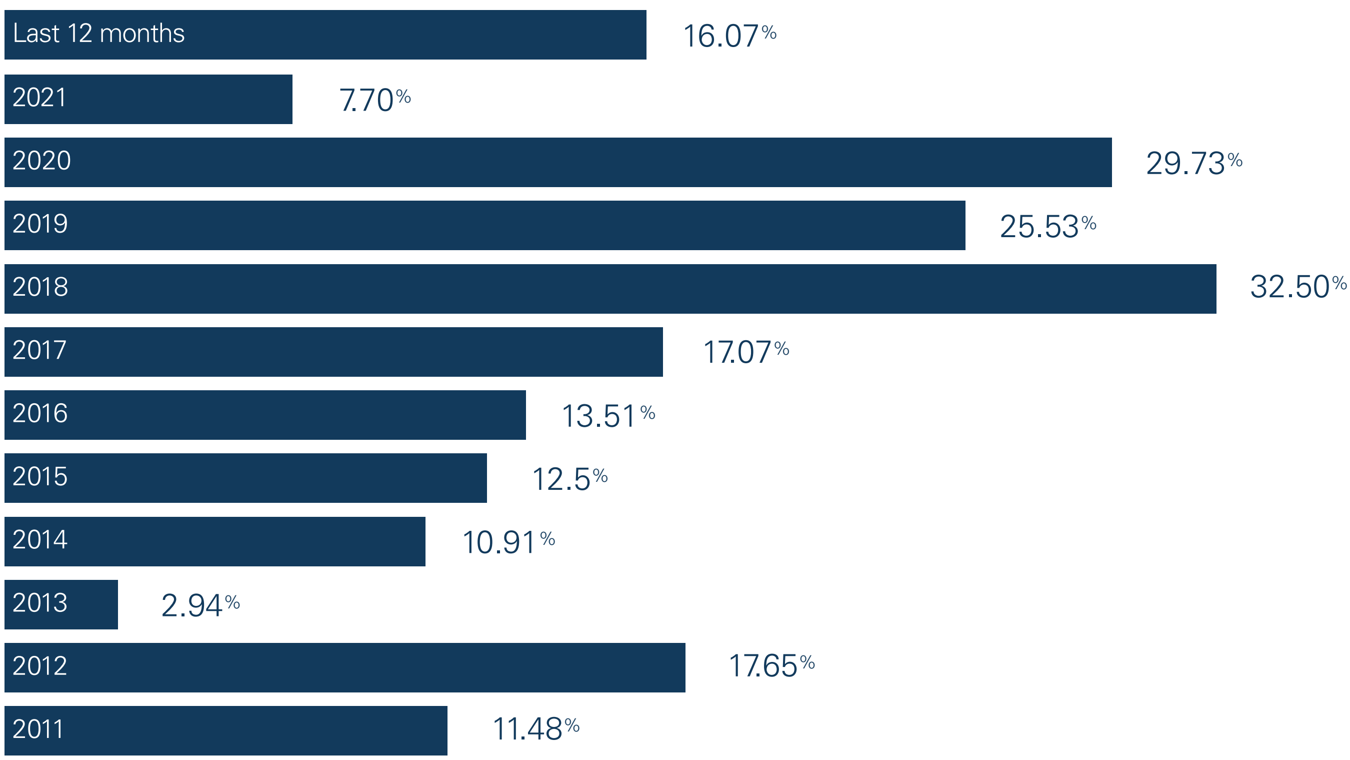


Sponsor deals limited, strategics dominate

While we hear plenty about financial sponsors leading take-privates and having excess capital to deploy, the statistics reveal that (like last year) few proposed deals end up proceeding, largely because of an inability to agree on price with target boards.

Despite an increase compared to last year's statistics, financial sponsors accounted for only 16% of deals, which is very limited compared to the pre-2021 period. This number falls to only 10% if you exclude the infrastructure consortium deals we saw this year and focus on buyout funds.

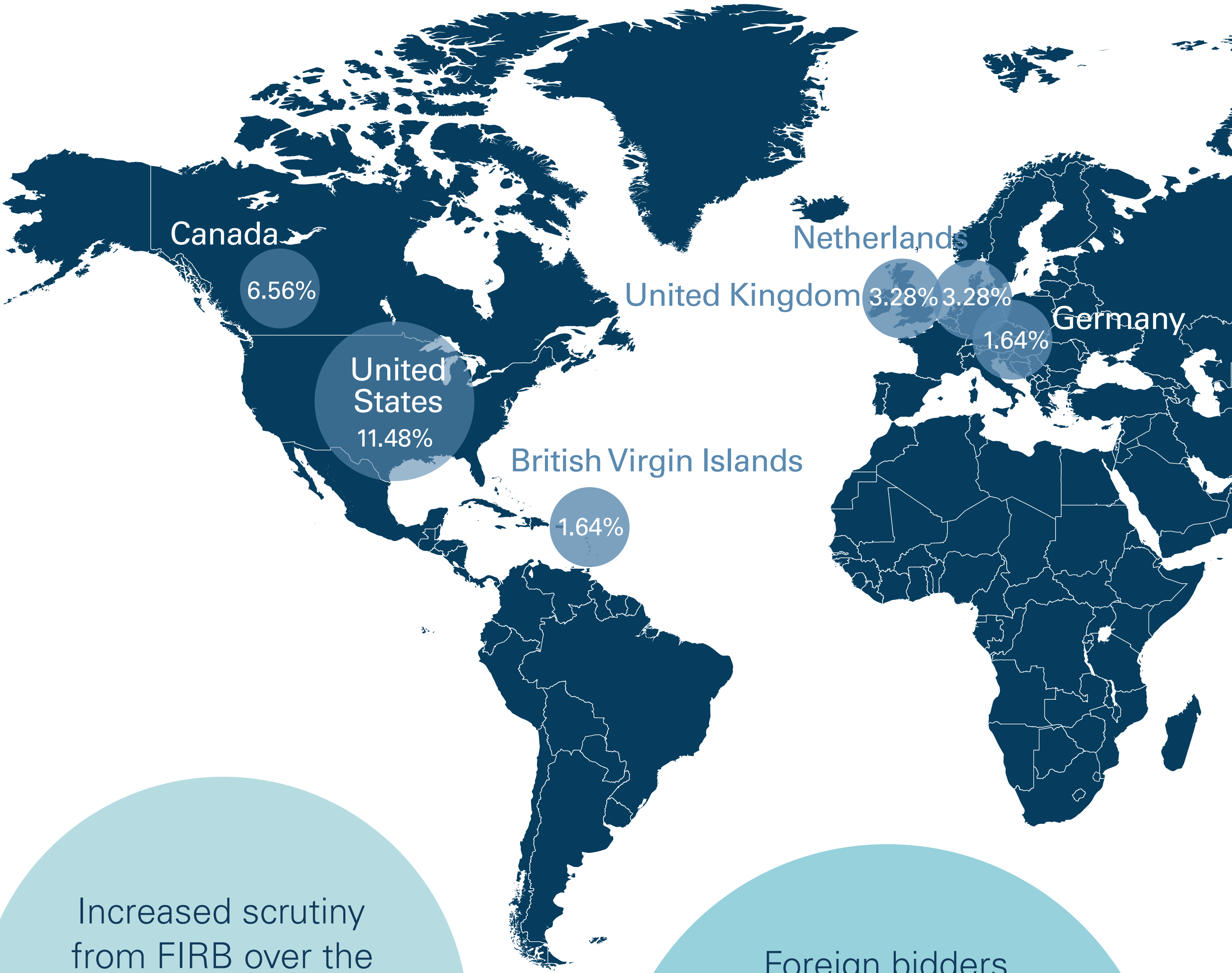
Private equity deals by percentage of total deals



Domestic bidders were centre stage

Domestic bidders continued to dominate activity. This is consistent with recent years, but a marked change from the period prior to 2018 where the statistics were reversed and foreign bidders comprised the clear majority.

Looking at the jurisdiction breakdown, it is telling that during a period of increased focus on national security, foreign acquirers came overwhelmingly from jurisdictions that form part of the Five Eyes intelligence alliance (70% of all foreign bidders).



Increased scrutiny from FIRB over the past years has given Australian bidders a significant edge over foreign acquirers.

Foreign bidders represented **34.43%** of the bidders in the past 12 months. This is **2.82% less than 2021** (37.25% foreign bidders) and **8.81% less than 2020** (43.24% foreign bidders).

Note: Where a bidder was a consortium from multiple jurisdictions, each jurisdiction has been counted individually.

In respect of deals over the A$1b value, 69.2% were either entirely foreign bidders or a consortium that included a foreign bidder.

The United States has, for the past three years, been the most predominant foreign bidder.

The Five Eyes intelligence alliance nations include Canada, Australia, New Zealand, the United Kingdom and the United States, and they account for over 90% of the overall bidders.

In the past 12 months, four bids were from joint ventures that resided in a combination of jurisdictions.

Cash continued to reign

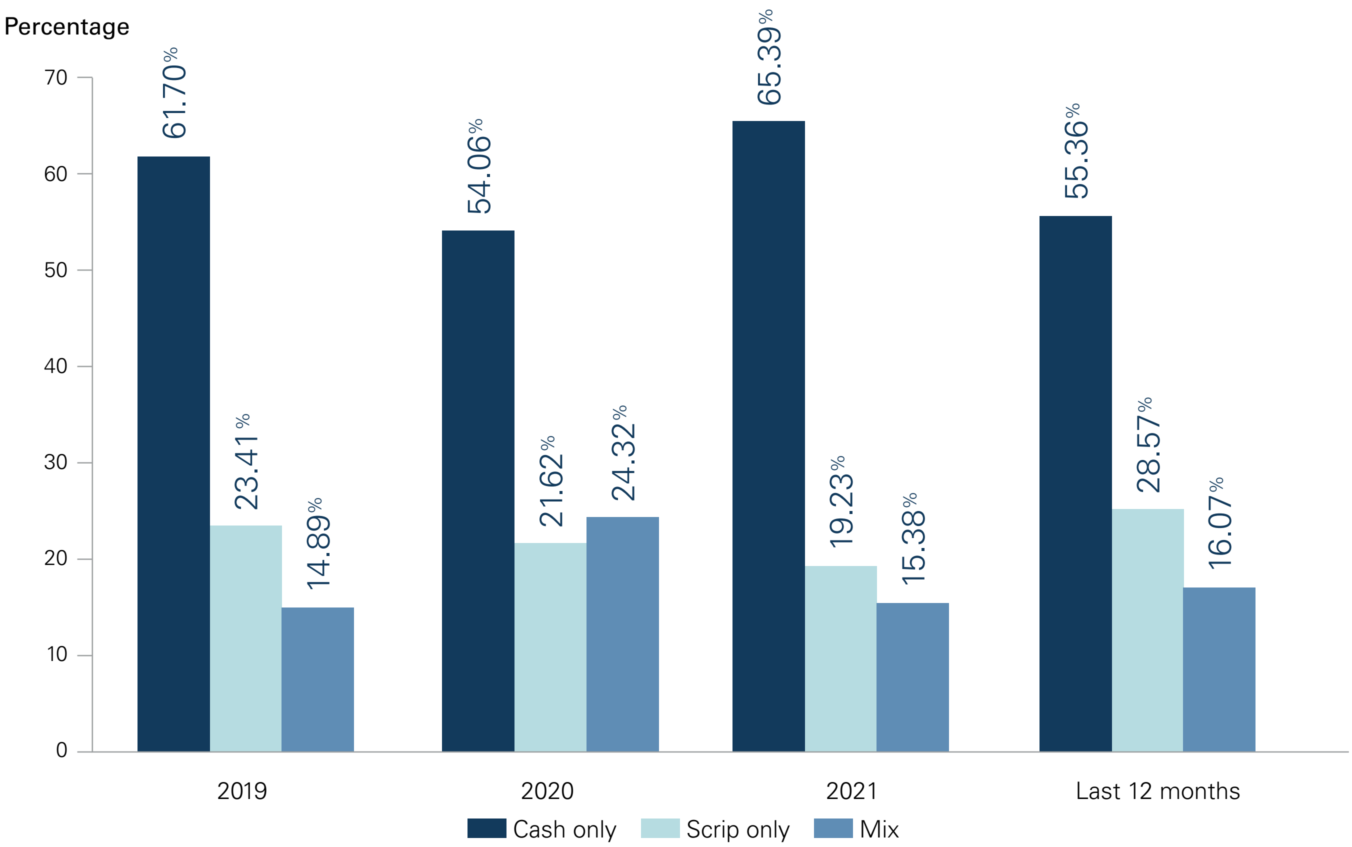
In line with previous years, cash was still the preferred consideration across the board. However, the percentage of all-cash bids decreased to 55.36% in the current survey period, down from 65.39% in 2021.

With the price of debt going up as interest rates continue to rise, we expect that use of scrip consideration will increase going forward. It is also a good currency to be using when there is some uncertainty about the outlook and when both bidder and target operate in the same sector, given that both parties will face the same risks.

Our prediction that cash would continue to reign has proved correct (notwithstanding the decreased proportion of all-cash bids compared to last year).

At the end of the day, while there will be good economic reasons for using scrip on some deals, the decision will be driven by target shareholder preference and the ability/cost of using scrip for the bidder. More often than not, that will drive a decision to use cash. However, this year we saw some large ASX-listed entities like Qantas and HomeCo make good use of their relatively well-priced securities to pay for their deals.

Deal consideration – cash vs scrip



Cash vs. scrip – what was a better investment?

The following bidders offered either cash and scrip, or scrip only, as consideration for a transaction during the survey period. Below tracks the value of their shares against cash during the previous 12 months.

	1 October 2021	31 March 2022	30 September 2022	Difference
Cash[3]	$100.00	$100.40	$101.25	▲ 1.25%
ASX: HDN	$1.575	$1.435	$1.125	▼ 28.57%
ASX: ABB	$4.91	$5.32	$2.28	▼ 53.56%
ASX: HUB	$27.25	$27.24	$20.86	▼ 23.45%
ASX: QAN	$5.71	$5.21	$5.02	▼ 12.08%

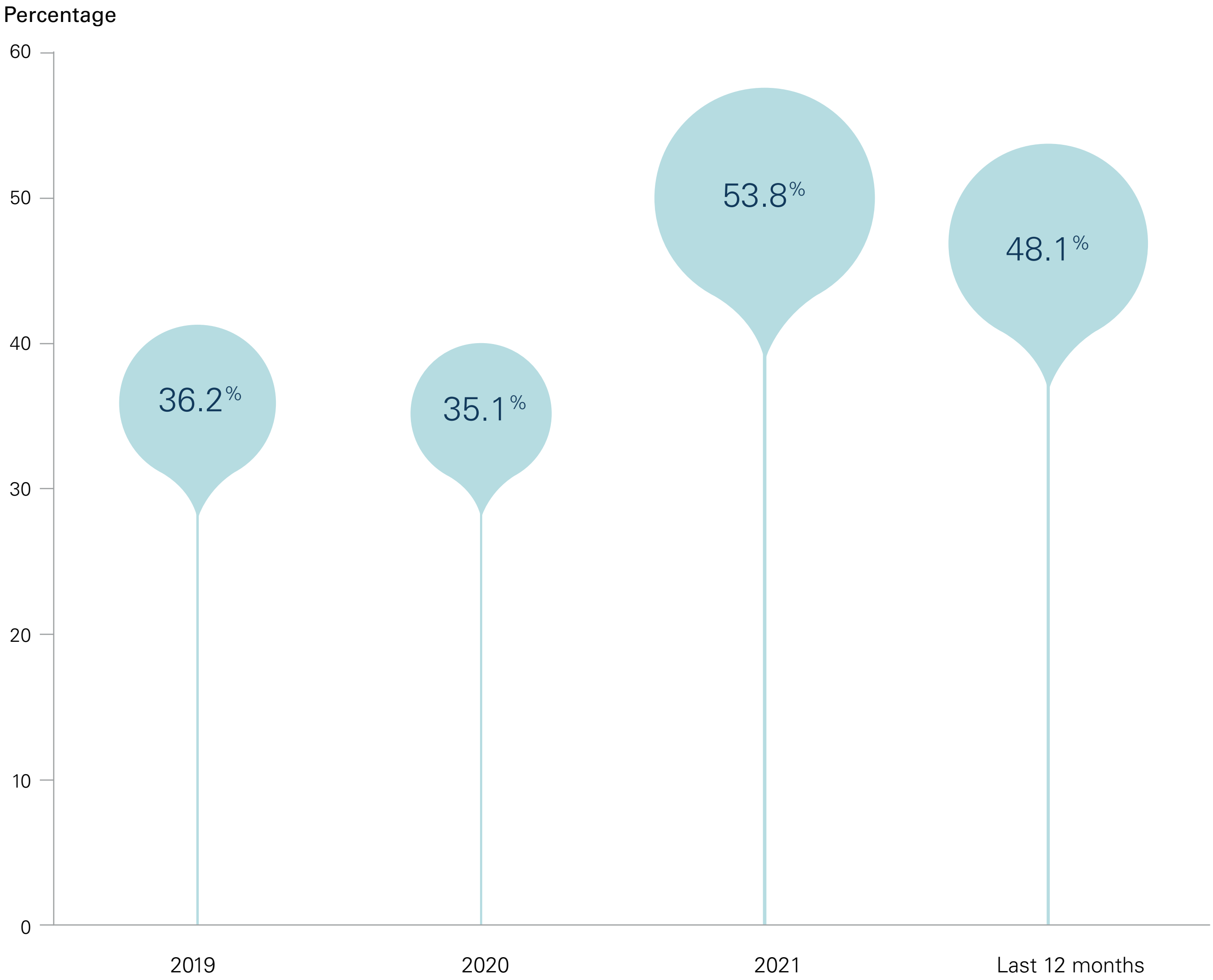
[3] Macquarie Bank's variable interest rate for Macquarie Savings Accounts for balances up to A$250,000.

Reverse break fees maintain their popularity

Reverse break fees remained popular this year, compared to their use in pre-COVID periods. In particular, given targets' experiences of bidders seeking to terminate deals without any clear measure of loss during COVID, it will become increasingly common for targets to insist on a reverse break fee – at least in cases of material breach by the bidder.

Reverse break fees payable for failure of conditions or other events will still be difficult to obtain and will be negotiated on a case-by-case basis.

Use of reverse break fees in agreed deals



Regulator insight

The Takeovers Panel provides guidance that 1% is a generally acceptable amount for the value of a break fee in a control transaction. In the past 12 months, break fees in public transactions reflected these guidelines, with 1% of the deal value representing the average break fee.

Interestingly, in the past 12 months, reverse break fees also represented approximately 1% of the overall deal value, which is comparatively lower than the values seen in US deals, where reverse break fees can be up 5% of the deal value.

Pre-bid stakes used more often and to better effect

Pre-bid stakes were much more prevalent this year – with pre-bids used on 47% of all deals, which is a 14% jump from the previous survey period.

This reflects both improved market conditions, with lower relative equity markets and more stable economic conditions, and a growing recognition of their strategic importance for deals. It also reflected an increase in opportunistic bids from existing shareholders.

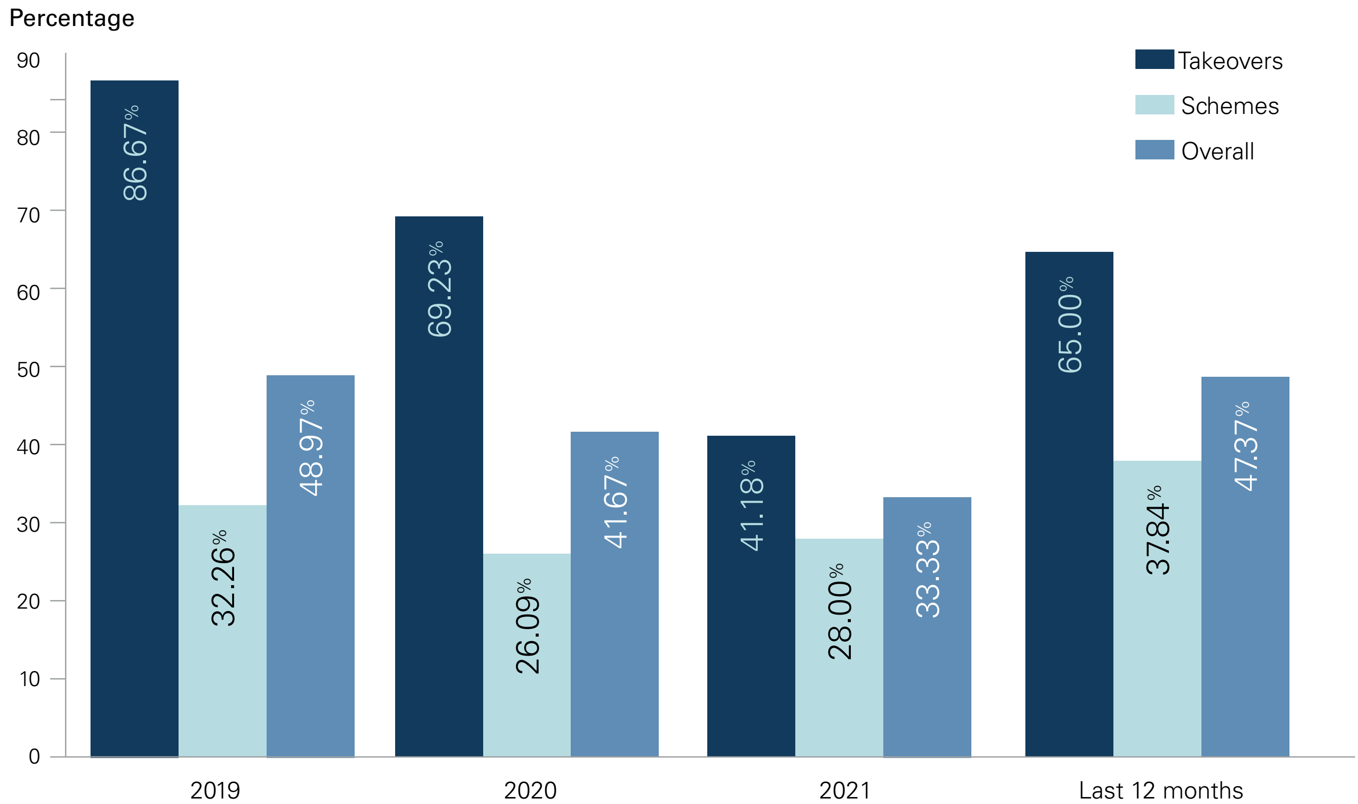
Bidders had some form of pre-bid stake on almost 50% of deals, taking the forms of direct stakes, call options, pre-existing stakes and voting agreements.

We also saw a significant increase in bids from existing shareholders with just under 20% of all deals represented by such transactions, including bids for CIMIC, Cashrewards, Alliance Aviation, iSelect and AIMS Property.

If we exclude pre-existing stakes held by existing shareholders not in anticipation of the deal, we saw pre-bid stakes on just under 30% of deals, and takeovers were by far the more popular deal type to see these pre-bid stakes.

Pre-bid stakes by deal type

Historical comparison



Note: The Virtus Health/CapVest transaction has been counted in both the scheme and takeover statistic.

In focus – The developing world of pre-bid stake structures

In prior publications, we have frequently waxed lyrical about the power of a pre-bid stake. It not only provides the bidder with a seat at the target's table for engagement purposes, it can act as a significant deterrent to rival bidders.

Pre-bid stakes have historically been the domain of strategic bidders who are prepared to invest cash upfront to take direct stakes in target companies. These typically took the form of an acquisition of a direct legal interest, potentially accompanied by a physically settled equity derivative for a portion of the stake (to address any FIRB or other regulatory approvals required before the legal interest could be acquired).

Increasingly, however, private equity bidders and institutional investors are also willing to take stakes with a view to maximising their prospects of success in a bid. Notable examples include BGH Capital, which took a direct 19.9% stake in Virtus Health, and Blackstone, which took a direct 10% stake in Crown. In addition to BGH Capital's stake, it followed up its pre-bid stake by launching a takeover and acquiring additional shares on market to take its position above 20%. This decision was critical in overcoming CapVest's agreed deal after a prolonged period of competing offers back and forth.

However, pre-bid stakes can take other less direct forms which can serve as useful deterrents to rival bidders. One such example this year was TA Associate's exclusivity and standstill arrangements with Viburnum Funds (**Viburnum**) in relation to its stake in Infomedia. The arrangements precluded Viburnum from negotiating with competing bidders or supporting a competing proposal.

If a bidder can tie itself up with a major shareholder (in recent years super funds have proven a willing partner for many sponsors), this can be a cost-effective way of taking an interest in the company without an initial outlay of capital. It is not as watertight as a direct stake however, and most institutional investors find it difficult to actively vote against a competing proposal, which means that excluding these stakes from the vote can be less effective than originally perceived.

Despite the Viburnum tie-up, Infomedia still managed to solicit interest from two other potential bidders, although no transaction ultimately eventuated with any bidder. As we have seen in previous years, financial investors (when pushed) will almost always need to sell eventually and accept or vote in favour of the best deal on the table.

This is where strategic bidders tend to have an advantage, with Woolworths, Qantas, Wesfarmers, 360 Capital and Cooke Inc. using physical stakes or negotiated call options to overcome or discourage competing bids, given their ability to commit to not support other proposals. Wesfarmers exercised its right to acquire 19.9% of API under a call option in response to a competing proposal from Sigma and publicly committed to vote against the Sigma proposal and a subsequent Woolworths proposal. Both Sigma and Woolworths walked away from indicative proposals at higher prices than that at which Wesfarmers ultimately proceeded.

Another recent development in pre-bid stakes is the collar/forward derivative, which was employed in the Grok/AGL and Gold Road/De Grey Mining stake builds. Corrs acted on the Gold Road stake build, which was structured to allow the bidder to build a stake quickly in circumstances where there was insufficient liquidity in the stock for an equity swap. This structure requires the bank writing the swap to build the stake incrementally, based on the number of shares it can acquire in the market to hedge the swap.

The collar/forward structures rely on liquidity in the stock lending market to build the stake, which allows for a larger initial stake build at the outset than might otherwise be available. Gold Road employed this structure in its stake build for De Grey Mining even though it is an Australian entity and did not require FIRB approval to acquire the stake. The structure was used simply because of the liquidity constraints in the stock.

03

Strategies for targets in 2023

2021 was largely a seller's market for M&A transactions. Valuations were high and competition for quality assets was fierce, as evidenced by the multiple bidders for targets. Approximately 21% of the surveyed deals in the last 12 months had multiple bids or were contested.

This continued until the end of 2021, however, as we progressed into the second half of the survey period, we saw a marked slow-down in the number of announced transactions and there have been a number of deals where bidders and targets have parted ways. Examples include Telus International's approach to Appen, the KKR consortium's proposal to acquire Ramsay Health, and Dye & Durham's offer for Link Group.

While the termination of a number of these transactions was a result of issues specific to each deal, a common theme in most terminated transactions was the gap in valuation expectations between targets and bidders. This was in part caused by a development in the business after the commencement of a transaction, market volatility and an increase in interest rates.

In each of the Appen, Ramsay and Link deals, announcement of the termination of the transactions saw their share prices drop by approximately 21%, 29% and 45%, respectively. These drops represent the difference in share price as at the close of business the day after the revocation announcement, compared to the share price as at the close of business the day of the offer announcement, as seen in the graphs. This highlights the need for target boards to be particularly cautious in their response to approaches from bidders.

Key strategies include the following.

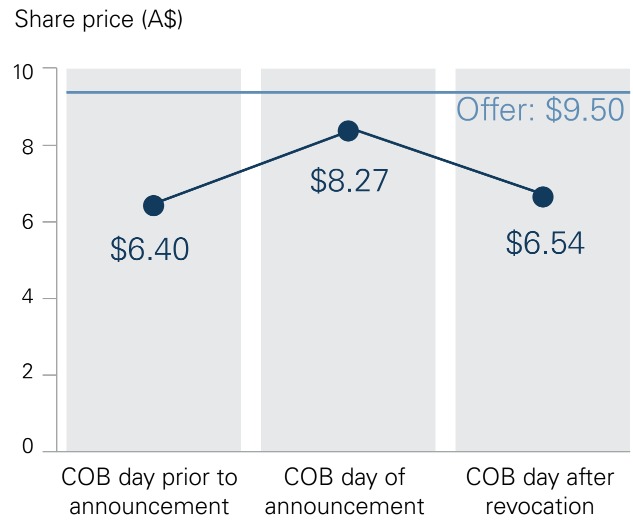
Keep the transaction confidential

In a volatile market, early or voluntary disclosure of a transaction, before a binding transaction is reached, can be a double-edged sword.

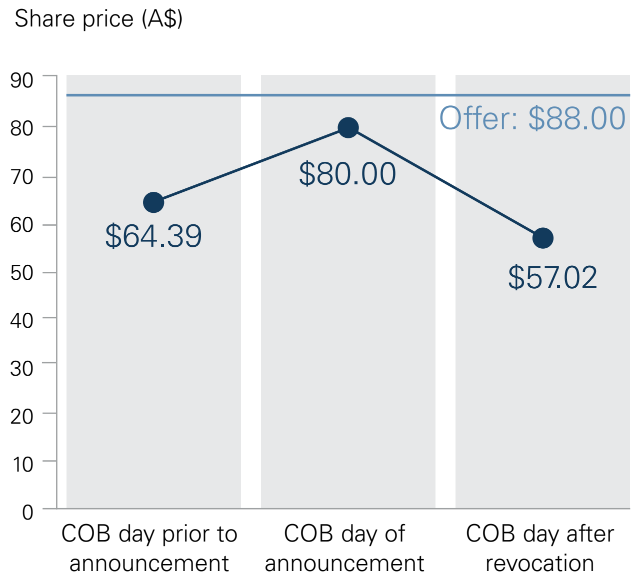
On one hand, it can draw a line in the sand under the share price and serve to discourage a renegotiation of the offer price by the bidder in a falling market. On the other hand, if discussions with a bidder terminate, market speculation as to the reasons for the cessation of discussions are likely to adversely impact the share price.

In either case, maintaining confidentiality is paramount for target boards and early disclosure of a transaction should not be made lightly without considering all the consequences.

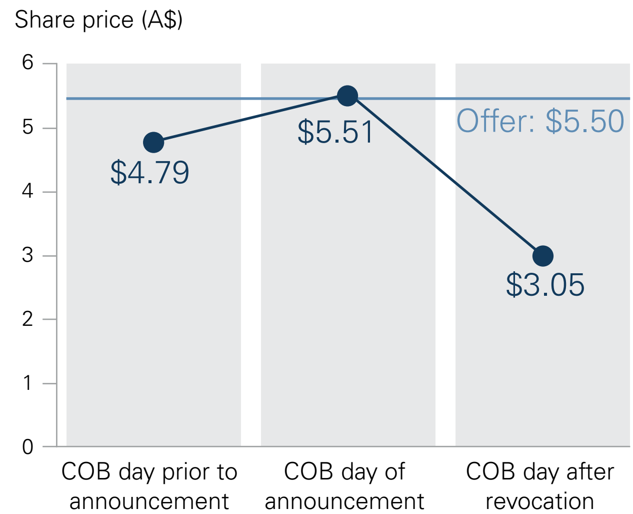
Appen (ASX: APX)



Ramsay Health Care (ASX: RHC)



Link Administration (ASX: LNK)



Requirements before any public announcement

Bidders should be required to conduct critical diligence and negotiate key terms of the implementation agreement before any public announcement. It is in the interests of the target board to limit, as much as possible, the risk that a transaction does not proceed after announcement.

Accordingly, if a process deed or other announcement is proposed before execution of an implementation agreement, it should be done only after the bidder has undertaken critical due diligence and confirmed there are no changes to its price, and that it is aligned with the target on the key terms of the agreement.

Seek reverse break fees

Targets should be seeking reverse break fees but avoiding the optionality to terminate. Reverse break fees (where the bidder pays the target a fee for breaching its obligations under an implementation agreement) are becoming increasingly prevalent in public M&A transactions. In the survey period we saw 48.1% of deals include a reverse break fee.[4]

While reverse break fees are helpful in providing compensation for the target's time and effort incurred in undertaking the transaction, a bidder often requires the reverse break fee to be the sole remedy available to the target. This effectively provides a bidder with 'optionality' to walk away from a deal if it changes its mind, in return for a fraction of the deal value.

Reverse break fees are often limited to 1% of the target's equity value (to reflect the quantum of break fee payable by the target), but there is no legal reason why this should be the case. Target boards should reject 'sole remedy' provisions which exclude its ability to seek specific performance.

Seek liquidated damages

Targets should also seek liquidated damages if there is a real risk that the bidder is also a takeover target. Requiring a bidder to pay liquidated damages as a separate and distinct remedy from reverse break fees is novel and is currently playing out in the scheme involving Pendal.

In that scheme, the bidder, Perpetual, has agreed to pay liquidated damages if it breaches the implementation agreement in order to pursue a transaction in respect of itself and the result of this alternative transaction is that the implementation of the scheme will become impossible or impracticable (including if the Perpetual directors determine the breach is required in order to comply with fiduciary duties). If they do, targets should ensure they preserve the ability to seek specific performance for additional damages. The court determined this was the case for Pendel under its agreement.

Limit material adverse change

In a volatile economic environment, MAC clauses and termination rights are more likely to be triggered. MAC clauses may also be triggered by risks within the business. In Dye & Durham's bid for Link Group, for example, a MAC clause was triggered when the Financial Conduct Authority notified of a fine of up to £306 million that Link Group may have to pay.

Targets should aim to exclude MAC conditions where possible. Frequently, however, MAC conditions are linked to a bidder's financing and are difficult to exclude in their entirety. In these circumstances, targets should seek to negotiate the most limited, clear and objective MAC triggers possible, having regard to the specifics of the target's business and market conditions at the time. As previously noted, ASIC is also focused on ensuring MAC conditions are objective and have quantitative thresholds, and has shown a willingness to intervene to amend MAC clauses where required.

It may also be preferable to negotiate MAC triggers which allow for a renegotiation in the offer price, rather than an absolute termination right. The same analysis applies to pre-implementation covenants and conditions linked to 'prescribed occurrences' or 'regulated events', which we saw being used to terminate transactions during the pandemic.

Speed is essential

We are all familiar with the adage 'time kills deals' but this is even more pertinent for target boards with a backdrop of falling stock markets, rising interest rates and geopolitical uncertainty.

Finding the quickest path to signing and completing a deal will significantly reduce the prospects of a bidder seeking to renegotiate the offer price or terminate the transaction because of subsequent developments.

[4] This percentage comes from the announced deals where this information was available at the time of publication.

In focus – Managing renegotiation and termination risk for target boards

While the past couple of years have been a target-friendly environment, with multiple bidders vying for target assets in a competitive market, 2023 promises to bring more uncertainty for target boards which will have to guard against opportunistic bids in a falling market. Additionally, even where target boards are eager to close a deal, market uncertainty and regulatory approvals may prolong completion timeframes, which exposes the target to ongoing MAC and termination risks.

A number of deals this year have underlined the importance of managing MAC and regulatory risk well. Among them, the bid for Link Group by Dye & Durham, which ultimately did not proceed due to a fine being imposed by a foreign regulator that allowed the bidder to terminate the deal under a MAC condition. Our statistics this year showed a marked drop in MAC conditions – this is consistent with our view that target boards will need to carefully consider whether to allow MAC conditions in the current environment. If a MAC is agreed, it is important to ensure the triggers are appropriate, having regard to the market conditions and the specific risks to the business. Targets should test bidders' assumptions that a MAC trigger should automatically allow a termination of the deal. If a particular issue is foreseeable, query whether shareholders' interests would be better served by instead repricing the transaction based on pre-agreed metrics.

In the past year, regulators (in particular, antitrust regulators in the US and Europe) have been particularly rigorous in their review of transactions. This has resulted in lengthy and extended delays in completion timeframes. Reverse break fees for a bidder's failure to obtain regulatory approvals and 'hell or high water' obligations are some of the devices that target boards can employ to mitigate risk in these situations.

In some jurisdictions, the ability of a bidder to terminate a transaction in particular circumstances typically only lasts until a shareholder vote. Whereas in Australia, the termination right in the case of a scheme usually extends until the second court hearing, when all the conditions precedent have been satisfied. This extends the exposure period for targets, in addition to being highly disruptive for the business due to the prolonged operation of pre-completion conduct of business covenants and employee uncertainty.

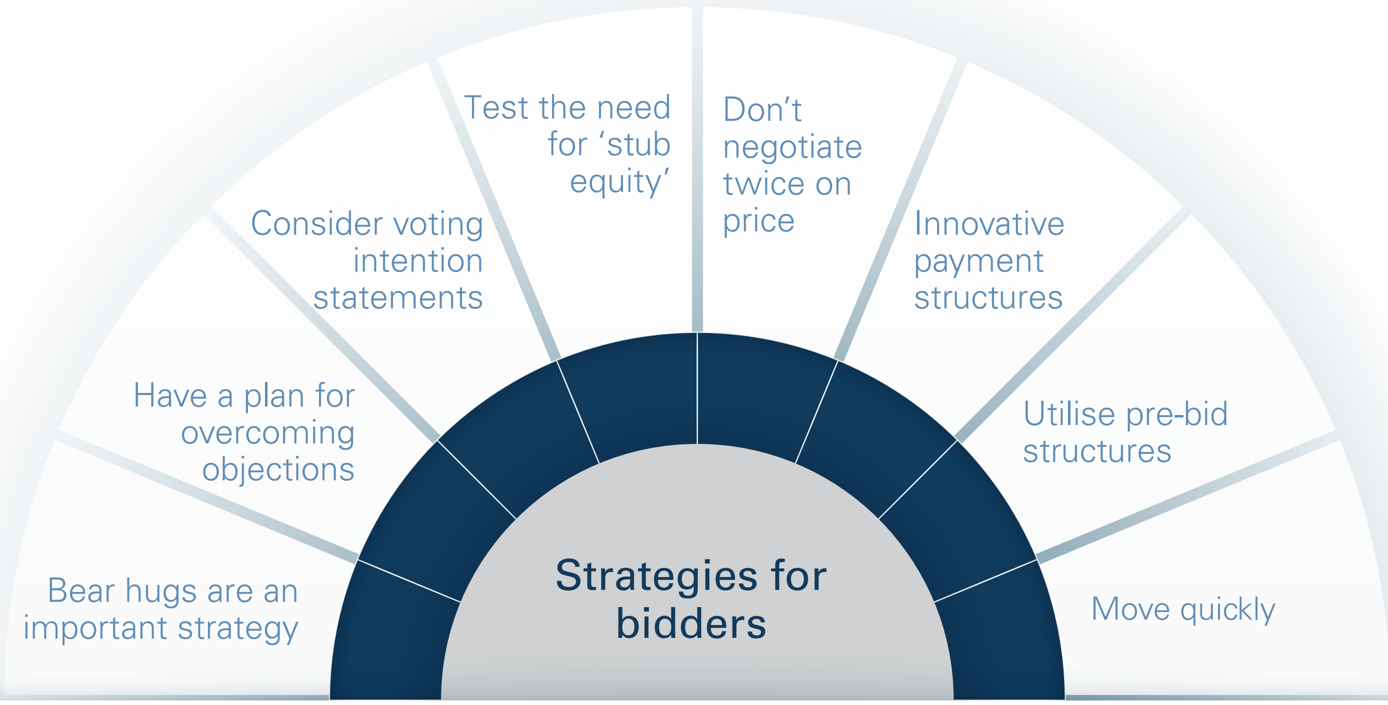
However, in a number of recent transactions (including Verra Mobility Corporation's acquisition of Redflex and Square's bid for Afterpay), the courts agreed to grant approval for the scheme even while a regulatory approval has remained outstanding as a condition subsequent. In both cases, the condition subsequent had to be satisfied by a specific date, otherwise the scheme would not proceed.

While this strategy may also have benefits for the bidder, target boards may wish to consider whether it is preferable overall to push for a shareholder vote and court approval of a scheme, even where regulatory conditions remain outstanding. To do so might effectively 'lock the scheme in' and provide certainty for shareholders and the parties.

Finally, target boards also need to consider what fall-back positions are available to the company, if a transaction becomes public and does not proceed for any reason. The inevitable share price drop (as evidenced by Link Group, Appen and Ramsay, amongst others) will need to be countered. This can be achieved either by a clear vision and strategy for the target business as a standalone ongoing business or by implementing alternative fall-back transactions which continue to provide shareholder value. Examples of the latter include Ramsay's potential sale of its stake in its French business, Ramsay Sante, and Link Group's potential distribution of its PEXA shareholding to shareholders.

04

Strategies for bidders in 2023



Bidder strategies

The market has moved from 2021 where targets had the upper hand in M&A transactions due to the rising stock market. Now, bidders have more leverage.

However, closing any gap in valuation expectations or otherwise getting engagement from intransigent boards remains the single biggest execution risk for M&A deals in 2023. Bidders looking for better value in a declining stock market may come up against resistance from target boards and major shareholders still expecting 2021 multiples or otherwise not willing to engage due to uncertainty on value.

In a buoyant market, advisers can often have largely an 'execution' role, but bidders should demand more of their advisers in this environment. M&A, special situations and debt advisers have a unique ability to structure a 'confidence bridge' where parties are willing to compromise through some difficult transaction issues. By being proactive around legal and financial structuring novelties, regulatory developments and reasonable mechanisms to share risk, proactive advisers may be the catalyst to facilitate transactions that might otherwise have fallen by the wayside.

Throughout this publication we have highlighted several key strategies and structures that bidders and their advisers could devise to maximise the prospects of their public M&A transactions succeeding.

Key strategies include the following.

Bear hugs are an important strategy

Where a board is refusing to engage, publicly announcing a proposal and engaging directly with shareholders remains an important strategy (although not guaranteed to succeed). We are seeing many more examples of this strategy recently, where a gap may exist between board and shareholder expectations on price. There exists no 'put up or shut up' rule in Australia, requiring you to bid after announcing an indicative proposal, so there are few limits on the use of this strategy. However, it is important to consider whether to do this before signing a non-disclosure agreement which may limit disclosure and contact with shareholders without consent.

Have a plan for overcoming objections

If the support of a major shareholder cannot be obtained, bidders should consider structures to overcome opposition from a major shareholder. This could include comprehensive proxy solicitation campaigns and dual takeover/scheme or asset sale and distribution structures which do not require the support of those shareholders.

Consider voting intention statements

Bidders should also consider whether it would be preferable for the target to seek voting intention statements from shareholders (subject to a superior proposal) as an alternative to a direct arrangement. This is particularly useful where the shareholder holds more than 20%, meaning the arrangement would otherwise require joint bid relief.

The solicitation of a voting intention will be carefully considered to make sure it does not result in an agreement between the bidder and the shareholder. We have recently seen more frequent success with these types of structures in respect of large stakes (for example, Singapore Power's statement of intention in respect of its 33% of AusNet).

Test the need for 'stub equity'

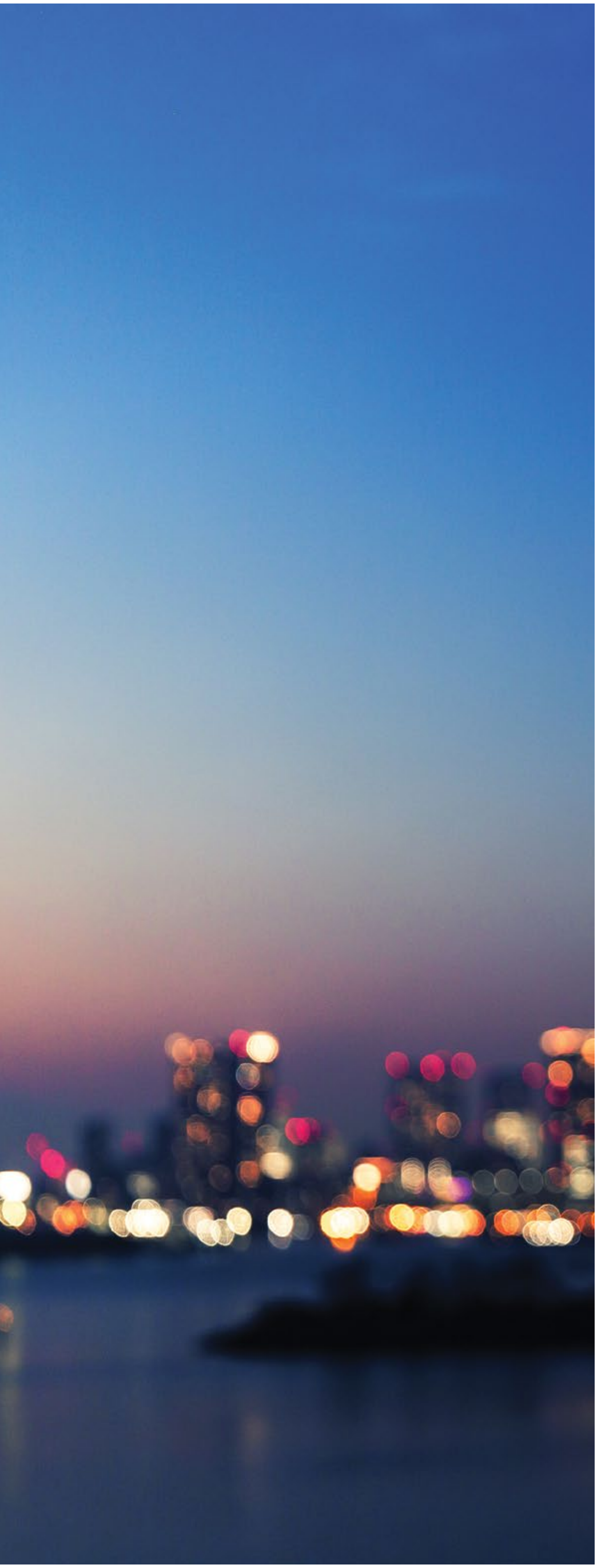
Stub equity structures have now become a standard tool in the PE bidder 'bag of tricks' to allow management or a major shareholder to rollover without treating them differently.

However, we are seeing that bidders are now starting to test the need for the additional complexity and ongoing cost associated with managing a potentially large and diverse register. In many cases it is preferable to exclude management and accept the impact on voting. Examples this year include the bids for Uniti and Sydney Airport.

Don't negotiate twice on price

Given the difficulty in reaching any agreement on value, the last thing a bidder wants to do is go through that process twice. Targets generally have two points of leverage, being due diligence and their recommendation.

From a bidder's perspective, it would be preferable to have a target confirm they will recommend the same price at which they grant access to diligence. The downside is public announcement, but interloper risk can be mitigated to some extent through process deeds and exclusivity (subject to appropriate fiduciary outs).



Innovative payment structures

Bidders need to look for innovative ways to bridge the value gap. This might include the earn-out like structure used by Crestone.

Other examples in the last year include the conditional price increase agreed by Pfizer in its bid for ResApp, which was linked to independently verified results of a patient study and a number of special dividends used to win board support.

Utilise pre-bid structures

Bidders need to consider how to build a stake in the target and consider any alternatives, including where regulatory approvals or insufficient liquidity would otherwise prevent a direct acquisition. Bidders should also consider alternative structures with major shareholders that support or offer defensive protection in respect of a deal, without acquiring physical stock. The form of arrangement will depend on the consideration required and willingness of the bidder to exclude shares from any scheme vote.

Move quickly

As per our advice to targets, bidders should similarly move quickly and consider frustrating actions policy. This is to pre-empt both competing proposals but also defensive or alternative actions that may be taken by the target.
We saw two deals in the last year where prospective targets (Perpetual and Gascoyne) announced their own bids for other listed targets. The subsequent bid for each of Perpetual and Gascoyne were subject to each of them not proceeding with the respective deals they had already announced. The Panel has confirmed the final position taken in the Gloucester Coal decisions was that unless those deals are subject to shareholder approval or the bidder otherwise has a contractual right to terminate its bid, the bidder will generally not be free to consider and agree to a takeover of itself.

In summary, move quickly and consider whether or not a proposal can be put which flags a 'possible takeover offer' and triggers the Panel's frustrating actions policy, which would prevent a target taking such actions.

In focus – Structures for major shareholder engagement

Dealing with the needs and objectives of major shareholders, including where there are competing bidders, has resulted in a variety of imaginative and, in some cases, complex change of control structures being employed to get transactions over the line.

Structures have previously been implemented to facilitate a variety of different imperatives, such as:

- neutralising a significant hostile shareholder who may be a competing bidder (for example, Huon Aquaculture);
- providing an optimal exit structure for the exit of an existing major shareholder (for example, Carsome Group's takeover of iCar, Coca-Cola European Partners' takeover of Coca-Cola Amatil); and
- allowing management or major shareholders to rollover and maintain their investment to take the business forward in an unlisted vehicle (for example, Village Roadshow).

These bespoke takeover structures or features are becoming increasingly accepted by the market and regulators as a result, even though they are mainly seen on larger transactions due to their complexity. Bidder funding requirements can also influence the extent to which they may be available as a tool.

Historically, when faced with a significant hostile shareholder who could block a scheme proposal, one solution was to make a takeover bid with a 50.1% minimum acceptance condition, which might evolve into a scheme or other structure at a later point in the transaction when the major shareholder 'flipped'. Other common structures have included 'stub equity' structures designed to allow major shareholders and management of the target to roll their shareholdings into the bid vehicles, but where all shareholders are offered the opportunity to do so in order to avoid class creation issues.

More recently, bidders have been prepared to go to the additional expense and complexity of proposing alternative or parallel structures upfront.

These parallel structures typically involve proposing the bidder's preferred structure as Option A, alongside an alternative Option B structure which has a higher likelihood of proceeding due to:

- lower acceptance/approval requirements (for example, a takeover offer with a 50.1% minimum acceptance condition, or an asset sale and return of capital); or
- the ability for the major shareholder to vote (as they are only treated differently under Option A but not under Option B).

Shareholders are sometimes incentivised to approve the bidder's preferred structure by incorporating a slightly higher price, but this is not always the case. Ultimately, the objective of the alternative structures is to encourage approval of the preferred structure on the basis that other shareholders are no worse off under it than the bidder's less-preferred structure, which is likely to proceed in any event.

There remains some residual risk that the Option B structure is open to challenge on the basis that the major shareholder is associated with the bidder. However, the increasing acceptance of these types of structures by the courts and regulators has made such structures less doubtful.

Some examples of recent parallel structures have included:

- **Huon Aquaculture's acquisition by JBS** – the major shareholder held approximately 50% and a competing bidder acquired approximately 20%, so three parallel structures were offered, all at the same price. This was partly to facilitate the major shareholder selling at a higher level than the listed entity level, but also to deal with the significant competing bidder.
- **Village Roadshow acquisition by BGH Capital** – where the principal held approximately 40% and wished to roll over their investment. Two alternative schemes were proposed with some ability for minority shareholders to rollover into the bid vehicle.

At the more complex end of the market, we expect to continue to see diverse and imaginative structures used (subject, of course, to ASIC, the courts and the Panel continuing to be comfortable with the particular features of each transaction).

05

In focus – Earn-outs

Bridging the value gap: earn-outs in takeovers and schemes

As the market moves into a more volatile phase, we expect that gaps will open up in value expectations between sellers and buyers. One way of bridging the gap is to use earn-outs or another form of contingent consideration.

Earn-outs are rare in public market deals … why?

While earn-outs are not unusual in private treaty transactions, they remain relatively rare in takeovers and schemes of arrangement despite having appeared in that context since at least 2004. We put this down to a combination of legal and commercial factors.

General rule: the earn-out in a takeover or scheme needs to be offered to every shareholder.

- In **takeovers,** the equality of opportunity principle means that the earn-out needs to be offered to all shareholders on the same terms.
- In **schemes**, the consequence of offering an earn-out to a limited group of shareholders (such as management) will be to put those shareholders in a separate class and risk disrupting the dynamics of the scheme vote.

Marketing the deal

The requirement (in practice) to offer an earn-out to all shareholders has flow-on effects for the marketing of the deal.

- First, it means that shareholders who aren't close to the day-to-day business have to form a view of the 'at risk' elements of the consideration. This is in contrast to private deals where earn-outs are usually offered to management or shareholders who are much closer to the business. Shareholders who are remote from the business may tend to more heavily discount the offer price than is probably fair.
- Further, because earn-out provisions tend to be complex in their design and administration, there is a risk that explaining the earn-out might distract target shareholders from the value message.

We suspect that these factors are the main reason why earn-outs have not featured strongly in public markets deals.

Recent examples of earn-outs in public market deals

Two recent schemes suggest that there may be a growing appetite for earn-outs in public markets deals.

Crestone

- Corrs recently acted for LGT Group on its acquisition of wealth management group, Crestone, by way of scheme of arrangement.
- The transaction attracted significant attention in the market and public comment from ASIC, as the consideration included a very substantial and long dated earn-out component.
- Scheme consideration consisted of:
  - a fixed cash component; plus
  - the right to receive an earn-out payment calculated (in large part) by reference to Crestone's revenue and EBITDA results in each of the 2024, 2025 and 2026 financial years. According to the scheme booklet, the earn-out payment (which is uncapped) will be of almost equal size to the cash component, if the company's business plan for the relevant financial years is achieved.

Bingo

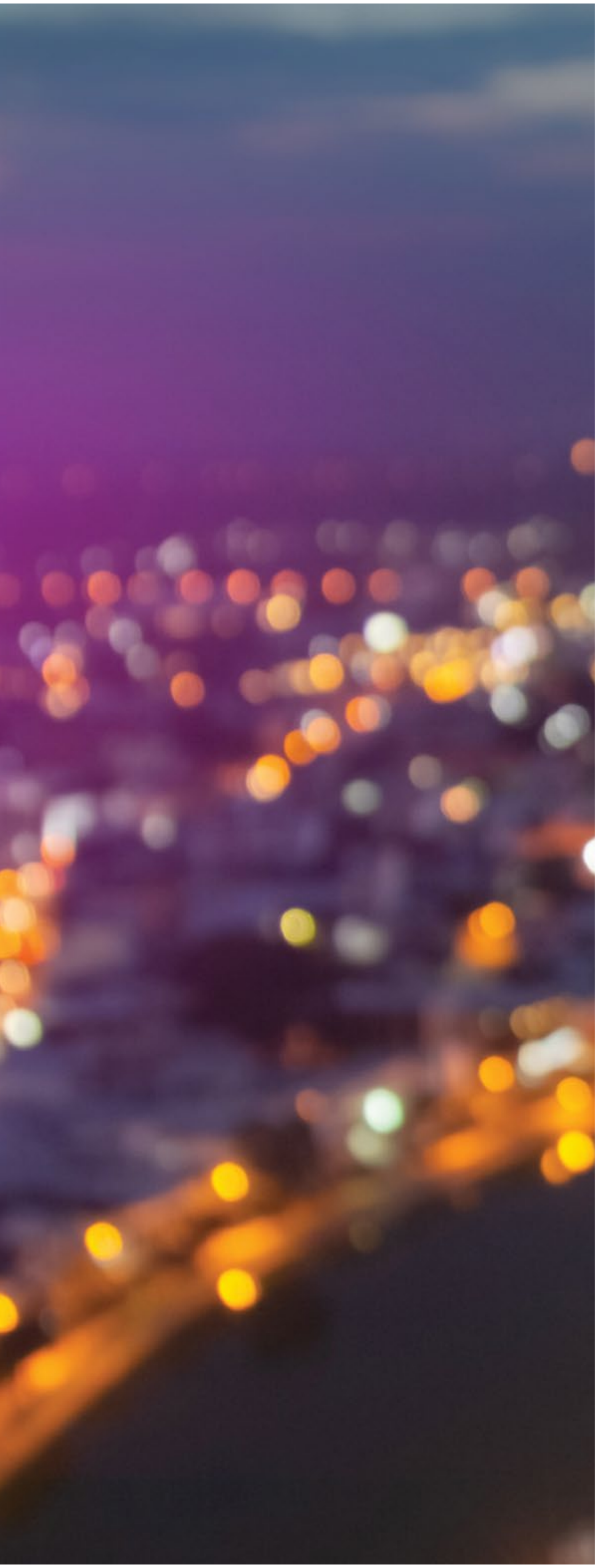
- MIRA's acquisition of Bingo Industries in late 2021 included a (more modest) form of earn-out consideration.
- Bingo shareholders were offered the choice of:
  - all cash consideration; or
  - a cash and equity alternative which included a Class C security that entitled the holder to a capped dividend calculated by reference to the EBITDA of the target business in future financial years.

ASIC and the courts' position on earn-outs

Historically, ASIC has been concerned that target shareholders are being asked to vote on a scheme where there is considerable uncertainty about the quantum of the earn-out consideration. But they have not always pressed these concerns and have not gone so far as to oppose the schemes.

The courts have consistently been less concerned than ASIC about the ability of shareholders to understand these earn-out models. In Crestone, Justice Black of the NSW Supreme Court had little difficulty in convening the scheme meeting and approving the scheme. While acknowledging ASIC's concerns, he noted that "the fact that some consideration for scheme shares was deferred was not a reason to decline approval of the scheme," and that "the contingent and deferred nature of the Earn-out Scheme Consideration is sufficiently disclosed in the scheme booklet".

ASIC has subsequently cautioned the market in its June 2022 Corporate Finance Update that "we will continue to monitor the use of earn-out consideration in transactions and intervene where appropriate". ASIC also pointed to a number of factors, specific to the Crestone deal, which it considers mitigated against some of the concerns that they might otherwise have had with the earn-out.



What does this mean for targets and bidders?

Careful drafting of scheme documentation required

Our view is that the scheme documentation incorporating an earn-out will need to be carefully drafted to ensure the material is readily understandable by shareholders who may not be close to the business. Fair objection to an earn-out could be raised where the triggers for payment are set so high that the 'at risk' component is illusory.

Potential intervention by regulators

ASIC or the Panel might intervene where the bidder is able to exert a direct influence on whether the triggers are met. ASIC would also look critically at the disclosures in the case of a complicated earn-out being offered to a large retail shareholder base. Absent those issues, however, it is difficult to see any legal obstacle to an earn-out that has a sound commercial basis, clear triggers and which is appropriately disclosed to shareholders.

Navigating the legal complexities for structuring the earn-out

The bidder's obligation to pay the earn-out will generally need to be given legal form, typically either by way of the issue of a special purpose security (which carries rights or entitlements representing the earn-out) or through the issue of a debenture by the bidder. The latter option brings with it an obligation to appoint a trustee to represent shareholders' interests and enhanced disclosure requirements during the earn-out period. While these requirements create complexity, they are unlikely to dissuade the transaction parties from using an earn-out where the commercial drivers for doing so are strong.

Other considerations for target boards and independent experts

Using an earn-out to bridge value gaps does raise issues for the target board and for the independent expert.

History shows that independent experts have a hard time putting a value on 'at risk' consideration.

- **Crestone:** the expert determined that the offer was fair and reasonable on the basis of the cash component alone.
- **Bingo:** the expert discounted the Class C dividend by more than 50% of its maximum in order to arrive at a present-day risk-weighted value.

Relevantly, in either case, the expert did not rely on the value of the earn-out in forming a view that the offer was fair and reasonable.

For independent experts, the valuation of an earn-out is inherently difficult because it requires them to make an estimate of future scenarios and corresponding probabilities relating to the underlying performance metric. However, none of this should be impossible, particularly given that experts are well used to forming views on value based on long-term discounted cash flows. Target boards should engage proactively with experts to ensure that they are given the necessary information to form their judgments and do not overly discount the value of the earn-out in determining whether the offer is fair and reasonable.

It would be an interesting challenge if the expert were to determine that the offer is only fair and reasonable if the earn-out is achieved (or only if the earn-out is achieved to a minimum level), as that would require someone to form a view as to how likely the earn-out is to be triggered.

Target boards may need to take the lead in this respect. Directors of the target will generally be best placed to make an assessment of the likelihood of the earn-out being achieved and to provide direction to shareholders as to how they should value the earn-out. Indeed, directors will presumably need to have already formed a view on the likelihood of the earn-out becoming payable in order to make their recommendation that shareholders support the offer.

The challenge set for directors in these circumstances is that they may need to express a view on the earn-out without the usual caveat that their recommendation is subject to the expert's determination. While this might make target directors uncomfortable, that may ultimately be the price that the board is required to pay in order to bridge the value gap for its shareholders.

Earn-outs: key takeaways

Effective negotiating tool

Contingent value rights in whatever form can be an effective negotiating tool in public M&A when there are different perspectives on value or the outlook for the business.

Carefully consider the drafting

There are benefits and risks to both parties and earn-out triggers need to be carefully drafted to minimise the potential for dispute, especially regarding thresholds and milestones and measurement methods.

Can help bridge the gap

Despite their inherent difficulties, earn-outs can be an effective mechanism to help bridge the price gap between buyers and sellers and there is growing acceptance in the Australian market from the courts and regulators about their role.

Corrs public M&A database

Corrs has a detailed proprietary public M&A database from which it drew the statistics and trends referred to in this publication. The database covers all announced takeovers and schemes with a deal value over A$25 million from 2011 to 2022. The statistics referred to in this publication provide a limited snapshot of the more detailed information that is available in the database.

We would be pleased to assist with queries on deal statistics and market trends relating to public M&A activity, including deal structures and pre-bid stakes, rival bid strategies, target engagement, announcements, recommendation, pre-bid strategies, deal protection (such as lock-up devices and break fees), bid conditions, truth in takeover statements, tiered bid structures, getting to compulsory acquisition, sector activity, consideration, bidders and foreign investment.

Please feel free to contact a member of the Corrs M&A team.

Methodology

In producing this publication, we reviewed data from a deal sample of 56 takeover bids and schemes of arrangement, which:

- involved an Australian-listed target;
- were announced between 1 October 2021 and 30 September 2022; and
- had a deal value over A$25 million.

We note that when referencing the year '2021' in this publication, we have reviewed data from deals announced between 1 October 2020 and 30 September 2021, and similarly for 2020 and 2019.

A full list of all deals in our database this year is set out in Appendix A. Information in relation to these deals is current to 30 September 2022 (unless otherwise specified in this publication). As at that date, twelve schemes and five takeovers from the deal sample were ongoing.

The information used was largely obtained from our own in-depth research and market analysis, along with primary sources such as ASX announcements, bidder and target statements and scheme booklets.

Appendix A – Methodology

	Target name	Bidding entity (Parent)	Date announced	Deal value (A$)	Bid/Scheme
1	Absolute Equity Performance Fund Ltd	WAM Leaders Ltd	14/06/2022	$88,764,962.00	Scheme
2	AIMS Property Securities Fund	AIMS Investment Group Holdings Pty Ltd (Great World Financial Group Holdings Pty Ltd)	23/06/2022	$56,091,295.00	Off-market bid
3	Alliance Aviation Services Ltd	Qantas Airways Ltd	05/05/2022	$763,489,811.00	Scheme
4	Alliance Resources Ltd	Gandel Metals Pty Ltd	22/02/2022	$42,123,546.50	Off-market bid
5	Altamin Ltd	V B S Exchange Pty Ltd (Victor Smorgon Group)	03/05/2022	$37,213,091.00	Off-market bid
6	Angel Seafood Holdings Ltd	Valley Seas BidCo Pty Ltd (Laguna Bay Agricultural No 1 Pty Ltd)	11/02/2022	$32,314,971.00	Scheme
7	Apollo Consolidated Ltd	Ramelius Kalgoorlie Pty Ltd (Ramelius Resources Ltd)	18/10/2021	$181,333,474.00	Off-market bid
8	Apollo Consolidated Ltd	Gold Road Resources Ltd	21/10/2021	$163,307,530.00	Off-market bid
9	Apollo Tourism & Leisure Ltd	THL Group (Australia) Ltd (Tourism Holdings Ltd)	10/12/2021	$137,007,068.00	Scheme
10	AusNet Services Ltd	Australia Energy Holdings No 4 Pty Ltd (Brookfield Asset Management, Inc.)	01/11/2021	$10,149,405,888.00	Scheme
11	Australian Pharmaceutical Industries Ltd	WFM Investments Ltd (Wesfarmers Ltd)	08/11/2021	$763,616,854.00	Scheme
12	Aventus Group	HomeCo Daily Needs REIT	18/10/2021	$2,182,621,485.00	Scheme
13	Bardoc Gold Ltd	St Barbara Ltd	20/12/2021	$143,440,559.00	Scheme
14	Big River Gold Ltd	Borborema LLC (Aura Minerals Inc)	20/04/2022	$91,740,760.00	Scheme
15	Carawine Resources Ltd	QGold Pty Ltd	22/02/2022	$28,945,213.00	On-market bid
16	Cashrewards Ltd	1835i Ventures Trusco III Pty Ltd as trustee of 1835i Venturs Trust III	22/10/2021	$89,457,622.00	Off-market bid
17	CIMIC Group Ltd	HOCHTIEF Australia Holdings Ltd (HOCHTIEF AG)	23/02/2022	$6,848,518,292.00	Off-market bid
18	Class Ltd	Hub24 Ltd	18/10/2021	$346,293,100.00	Scheme
19	Crown Resorts Ltd	SS Silver II Pty Ltd (Blackstone Inc)	14/02/2022	$8,870,773,350.00	Scheme
20	Dacian Gold Ltd	Genesis Minerals Ltd	5/07/2022	$124,339,695.68	Off-market bid
21	Demetallica Ltd	AIC Mines Ltd	19/09/2022	$35,015,078.00	Off-market bid
22	DGO Gold Ltd	Gold Road Resources Ltd	04/04/2022	$254,500,845.00	Off-market bid

	Target name	Bidding entity (Parent)	Date announced	Deal value (A$)	Bid/Scheme
23	FAR Ltd	Samuel Terry Asset Management Pty Ltd as trustee for Samuel Terry Absolute Return Active Fund	31/01/2022	$42,705,341.10	Off-market bid
24	Focus Minerals Ltd	Theta Gold Mines Ltd	09/12/2021	$73,099,426.00	Off-market bid
25	Gascoyne Resources Ltd	Westgold Resources Ltd	30/09/2021[5]	$124,266,267.00	Off-market bid
26	HRL Holdings Ltd	Australian Laboratory Services Pty Ltd (ALS Ltd)	30/06/2022	$79,101,009.00	Off-market bid
27	iCar Asia Ltd	Carsome Group Pte Ltd	18/10/2021	$238,410,163.00	Scheme
28	Intega Group Ltd	Kiwa Australia 2 Pty Ltd (Kiwa N.V.)	04/10/2021	$376,485,867.00	Scheme
29	Irongate Group	Charter Hall PGGM Industrial Partnership No 2 (Charter Hall Group and PGGM)	30/03/2022	$1,287,382,533.00	Scheme
30	iSelect Ltd	Innovation Holdings Australia Pty Ltd (IHA Group)	10/08/2022	$72,026,026.00	Scheme
31	Kyckr Ltd	RealWise KYK AV Pty Ltd	06/07/2022	$43,500,000.00	Scheme
32	Link Administration Holdings Ltd	Link Acquisition Australia Pty Ltd (Dye & Durham Corporation)	22/12/2021	$2,467,469,784.00	Scheme
33	MACA Ltd	Thiess Group Investments Pty Ltd (CIMIC)	26/07/2022	$367,339,159.00	Off-market bid
34	Minotaur Exploration Ltd	Andromeda Metals Ltd	10/11/2021	$95,129,103.00	Off-market bid
35	MyDeal.com.au Ltd	Woolworths Group Ltd	20/05/2022	$271,768,671.00	Scheme
36	Nearmap Ltd	Atlas AU Bidco Pty Ltd (Thoma Bravo L.P)	22/08/2022	$1,050,115,004.00	Scheme
37	Oklo Resources Ltd	B2Gold Oklo Resources Pty Limited (B2Gold Corp.)	26/05/2022	$87,025,643.00	Scheme
38	Over the Wire Holdings Ltd	Aussie Broadband Ltd	02/12/2021	$342,847,660.00	Scheme
39	Ozgrowth Ltd	WAM Capital Ltd	23/12/2021	$132,750,000.00	Scheme
40	PayGroup Ltd	Deel Australia Holdings Pty Ltd (Deel Inc)	23/06/2022	$118,327,272.00	Scheme
41	Pendal Group Ltd	Perpetual Ltd (PPT)	25/08/2022	$2,158,919,660.00	Scheme
42	PTB Group	PAG/PTB BidCo Pty Ltd (GenNx360)	19/08/2022	$202,888,875.92	Scheme
43	Quantum Health Group Ltd	Paragon Care Ltd	08/11/2021	$84,995,464.00	Scheme

[5] The initial announcement was 30 September 2021, which is before the review period, but the substantive information was released within the review period and is therefore included as part of the statistics.

	Target name	Bidding entity (Parent)	Date announced	Deal value (A$)	Bid/Scheme
44	ResApp Health Ltd	Pfizer Australia Holdings Pty Ltd (Pfizer Inc)	11/04/2022	$178,817,600.00	Scheme
45	Senex Energy Ltd	K-A Energy 1 Pty Ltd (POSCO International and Hancock)	13/12/2021	$883,080,147.00	Scheme
46	Swick Mining Services Ltd	DDH1 FinCo Pty Ltd	22/10/2021	$97,065,279.00	Scheme
47	Sydney Airport	Sydney Aviation Alliance Pty Ltd	08/11/2021	$23,613,627,213.75	Scheme
48	Tassal Group Ltd	Aquaculture Australia Company Pty Ltd (Cooke Inc)	16/08/2022	$1,123,514,777.00	Scheme
49	Uniti Group Ltd	MBC BidCo Pty Ltd (Morrison & Co Infrastructure Partnership, Commonwealth Superannuation Corporation and Brookfield Australia)	14/04/2022	$3,619,970,425.00	Scheme
50	Vimy Resources Ltd	Deep Yellow Ltd	31/03/2022	$348,248,395.00	Scheme
51	Virtus Health Ltd [6]	Evergreen BidCo Pty Ltd (CapVest Partners LLP)	14/03/2022	$707,390,957.00	Scheme and off-market bid
52	Virtus Health Ltd	Oceania Equity Investments Pty Ltd as trustee for the Oceania Trust (BGH Capital Pty Ltd)	06/04/2022	$697,554,202.00	Off-market bid
53	WAM Active Ltd	Keybridge Capital Ltd	07/02/2022	$85,598,312.00	Off-market bid
54	Western Areas Ltd	IGO Nickel Holdings Pty Ltd (IGO Ltd)	16/12/2021	$1,244,759,010.00	Scheme
55	Westoz Investment Company Ltd	WAM Capital Ltd	23/12/2021	$196,260,000.000	Scheme
56	Z Energy Ltd	Ampol Holdings NZ Ltd (Ampol Ltd)	11/10/2021	$1,966,117,743.00	Scheme

[6] For the purposes of the statistics for the review period, the scheme and off-market bid were counted as one transaction unless otherwise noted in the publication.

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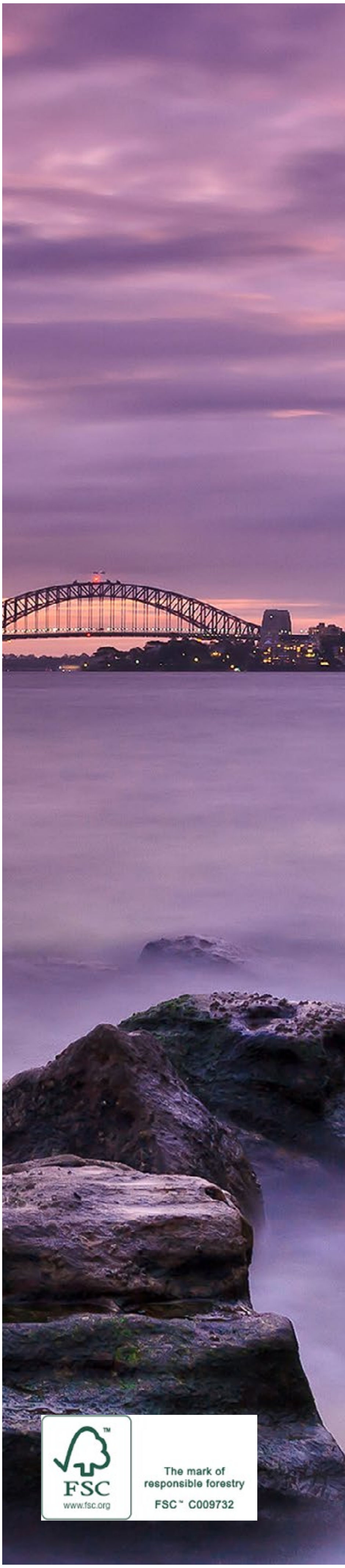

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