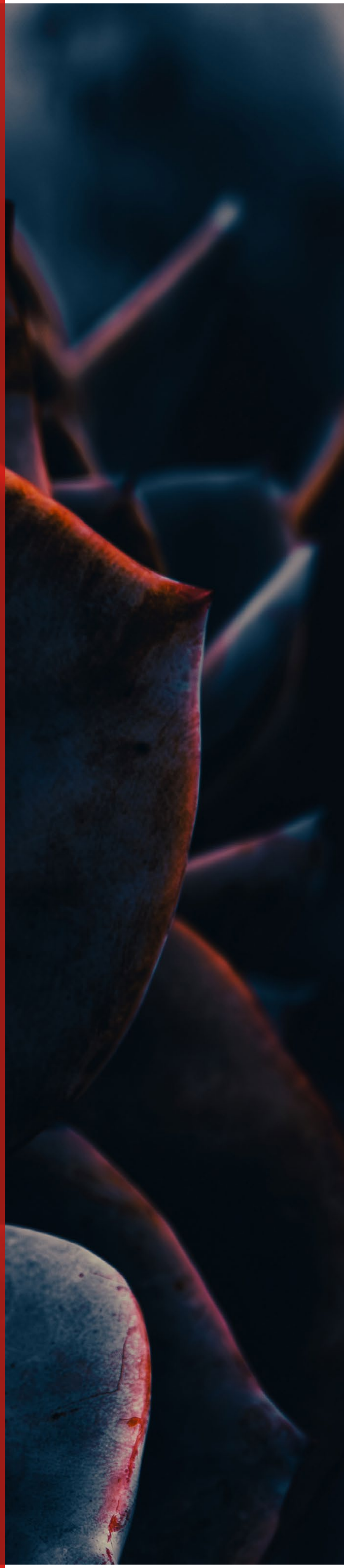
NORTON ROSE FULBRIGHT

Australian public M&A deal trends report

2025 Edition

Deal certainty supporting resilience of Australia's public M&A market



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Introduction

The first quarter of 2025 has been characterised by an air of concern about the state of Australia's public capital markets.

ASIC has recently closed its discussion paper, published in February, on the dynamics between Australia's public and private capital markets. ASIC's paper has been driven, in part, by the decline in IPOs and listed entities over the past 10 years and the shift towards private market investment. The paper reports that the value of equity raised in IPOs in 2024 is down 82 per cent from that in 2024 and, in the same period, the number of listed issuers on ASX has also dropped by 4 per cent.

The challenges described by ASIC are not unique to Australia and the paper details a number of actions taken by foreign regulators in the US, UK, EU, Canada, NZ, Hong Kong and Singapore to promote public markets and improve their attractiveness to issuers and investors.

But despite ASIC's concerns, our analysis of the Australian public M&A market in 2024 and beyond has shown remarkable resilience, suggesting there is relative strength to be found there despite the challenges faced by public capital markets at large.

Buoyed by early signs of global economic recovery, Australian dealmakers were quick out of the gates in 2024. Deal activity was up 38 per cent in the first quarter when compared to 2023 and continued to simmer for the remainder of the year.

While overall deal value was down compared to 2023, when excluding outlier 'mega deals' like the $26 billion Newcrest Mining acquisition in 2023, the outlook of the Australian public M&A market remained solid.

The vast majority of deals reviewed for this year's report were negotiated deals (78 per cent), where the target and bidder had signed an implementation agreement. Consistent with previous years' findings, negotiated deals secured higher premiums for shareholders (59.99 per cent over one month VWAP, compared to 37.04 per cent) and enjoyed significantly higher success rates compared to unnegotiated deals (85 per cent, compared with 67 per cent).

So, what should we credit for the success of negotiated deals?

The support of a target's board clearly plays a critical role in influencing shareholder sentiment and improving acceptance and approval rates. But given the nature of a board's role, their recommendation of a transaction is not static and may change if new circumstances arise. In that context, one of the most important factors behind a negotiated deal's resilience is the suite of mechanisms that protect it from rival bids and market turmoil known as 'deal protection devices.'

In this year's report, we take a deeper diver into the nature of deal protection mechanisms, their incidence in the Australian market and how they are deployed to fortify deals and improve the prospects of success.

TOTAL DEAL VALUE
$38bn

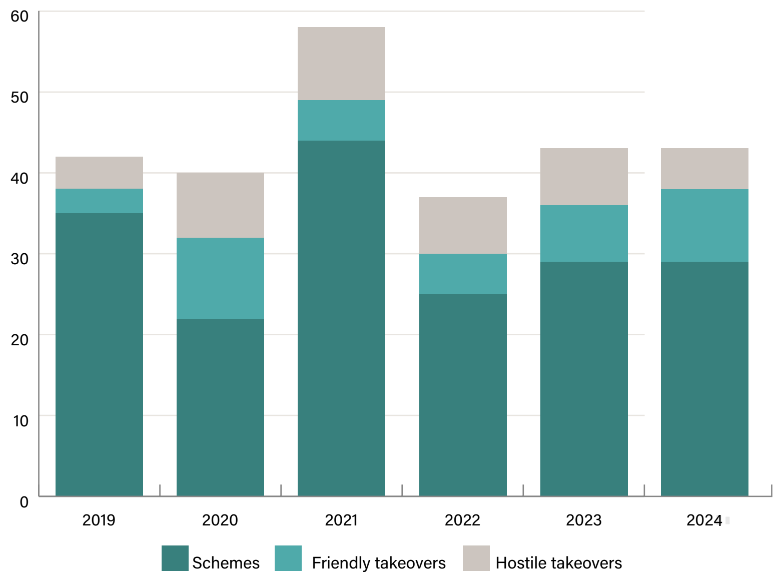
MEGA-DEALS
9 (>=$1 bn)

34% FOREIGN BIDS CONTRIBUTING **63%** OF DEAL VALUE

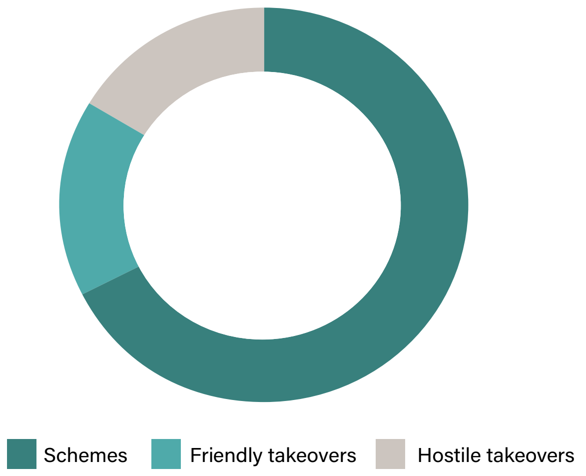
SUCCESS RATE
80%

43 ANNOUNCED DEALS SURVEYED IN 2024 WITH A DEAL VALUE OF OVER **$50mn**

Deal structure (number)



Deal structure (percentage)



Year in review

Year in review and the year ahead

In this section of the report, we review the past year of Australian public M&A activity and analyse various deal trends regarding deal structuring, bidder origins, the form of consideration and premiums offered. Having tracked many of these data points since 2019, we are able to identify developing trends and market responses to domestic and international events, and to use these insights to make predictions for the year ahead.

Modest increase in public M&A deal appetite

M&A activity surged in the early months of 2024, with a total of 18 reviewed deals announced in the first quarter (up 38 per cent from the same period the previous year). Following a brief downturn in June and despite market volatility in the lead up to the US presidential election, deal appetite remained steady for the remainder of the year, bringing the total deal count to 43 (the same as 2023).

Early signs give reason to be hopeful for consistent public M&A activity in 2025. Deal count in the first 2 months of 2025 is on par with the same period of 2021, which leads in deal volume for the last 5 years. An easing monetary policy environment may also help to stimulate debt-funded acquisitions this year.

In line with the concerns outlined in ASIC's discussion paper, we can also expect to see an increase in take-private transactions by private investors and private equity funds.

Average deal value declines

Despite the uptick in deal count, the average deal value fell in 2024. 'Mega deals' (being deals of $1 billion or more) were smaller and less frequent than in 2023, bringing the average deal size down to $952 million. Unsurprisingly, total deal value also fell to $38 billion, $21 billion less than the previous year. However, if we exclude 2023's outlier $26 billion acquisition of Newcrest Mining Limited, 2024 performed better on value than 2023.

MEGA-DEALS
9

AVERAGE DEAL VALUE
$952mn

As above, an easing cash rate may support growth in deal value in 2025, but we expect the key determinator to be whether foreign bidders can be tempted back to the Australian market.

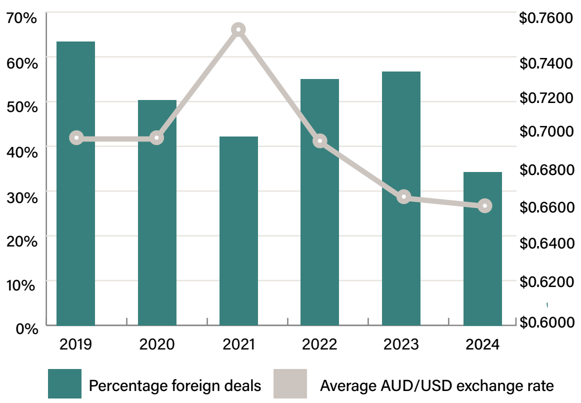
Decrease in foreign interest

Interest by foreign bidders also fell in 2024, with only 34 per cent of deals involving a foreign bidder (down from 56 per cent the previous year). The trend did not appear to be linked to any change in the strength of the Australian dollar, which was slightly weaker against the US dollar in 2024 than the average for 2023. Though the sharp fall in the strength of the Australian dollar between September 2024 to January 2025 may prove tempting enough to lure US bidders back to the fray in 2025.

Despite the drop in the number of foreign bidders, they continued to bring the most value to the table for Australian targets, contributing 63 per cent of total deal value.

One of the challenges for the Australian public M&A market is the trend towards multijurisdictional deals, of which Australian businesses comprise only a small component. Recent years have seen growth in multijurisdictional M&A involving APAC businesses headquartered out of Asia and, though often having Australian operations, it has become less common for the target's holding company to be an Australian listed entity.

Percentage of foreign deals



Success rates

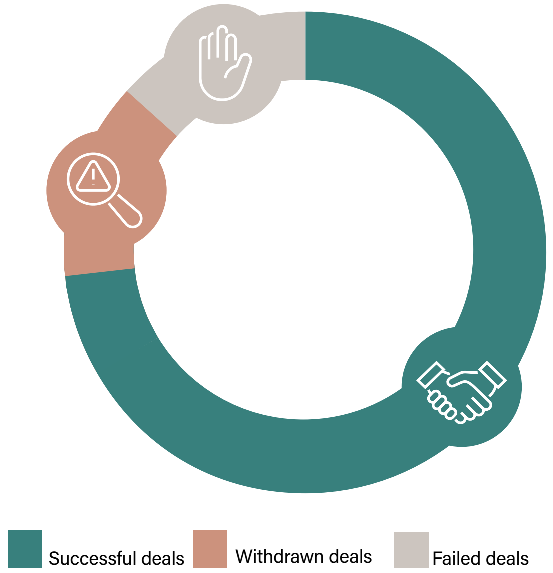
Of the 2024 deals which have closed or been withdrawn at the date of reporting:

- 80 per cent were successful
- 9 per cent were withdrawn
- 11 per cent were unsuccessful

When looking only at negotiated deals, the success rate was even higher (85 per cent) and outperformed unnegotiated deals by 18 per cent.

Established norms around deal protection are the essential ingredient to success of negotiated transactions (refer to section 3 of this report for a deep dive on the most common deal protection devices in the Australian market). We expect deal protection devices to continue delivering high success rates among negotiated deals in the year ahead.

Deal status (percentage)

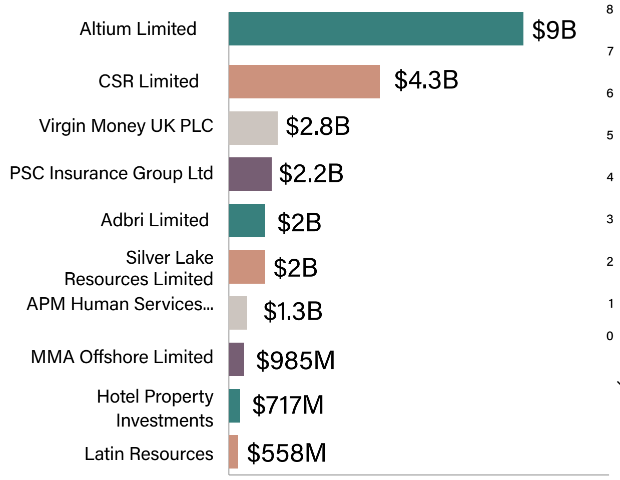


Top ten deals by value

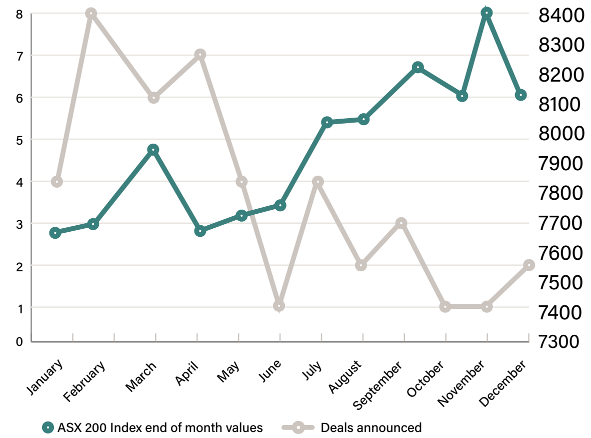
There were a number of notable deals throughout the year, including the well-publicised $9.1 billion takeover of Altium Limited by Japanese semiconductor provider Renesas Electronics Corporation that took the title for largest deal.

Mega-deals often involve a number of complex regulatory hurdles to completion and tend to be announced earlier in the calendar year, perhaps to minimise disruption caused by shutdown periods in December and January. The notable absence of mega-deals announced in 2025 to the date of reporting suggests an early slump in deal value and we will be curious to see whether this recovers in the months ahead.

Ten largest deals by value



Deals announced by month 2024



Monthly deal count

30 DEALS ANNOUNCED JAN – JUN 24

13 DEALS ANNOUNCED JUL – DEC 24

We observed a correlation between the number of deals announced in a month and the relative performance of the ASX 200 Index for that month. Deal count grew the most when ASX performance dwindled, which may be driven by opportunistic bidders taking advantage of lower trading prices to make their bids appear more attractive. There was a noticeable drop in deal activity in the second half of the year as the ASX saw stronger results, but this could also have been influenced by the sharp uptick in the strength of the Australian dollar against the US dollar between July and September that impacted value for foreign bidders.

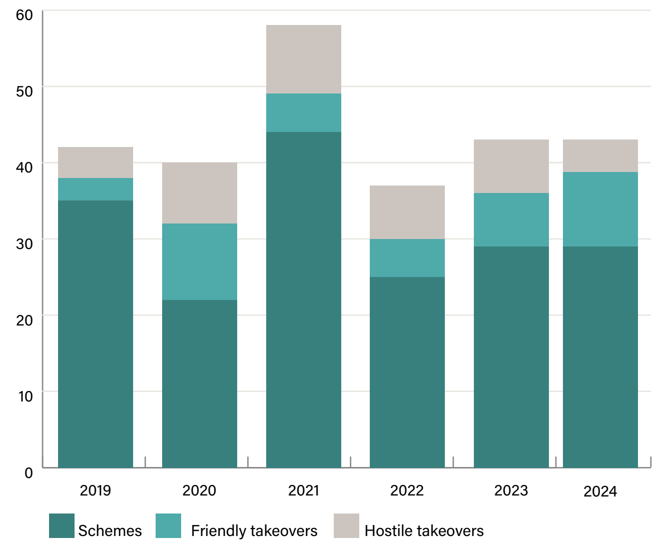
While it's hard to predict how 2025 will perform, the weakening Australian dollar may help to improve deal volume during Q1 2025, though persistent global geopolitical instability and the upcoming Australian federal election may continue to dampen activity until Q3 2025.

Structure and execution of deals

The structure of public M&A deals was consistent with previous years' results. Schemes continue to be preferred by dealmakers, adopted in 66 per cent of all reviewed transactions. Where a takeover structure was used, these were always off-market bids.

The relative success of schemes and negotiated takeovers will continue to see these structures preferred in 2025.

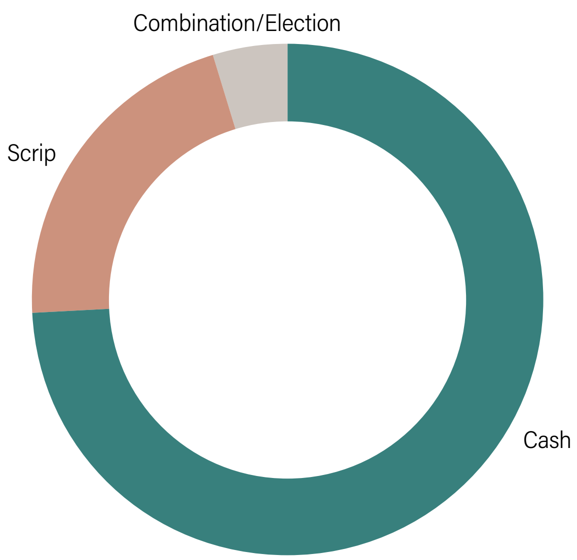
Deal structure (number)



Consideration

Cash continued to be the preferred type of consideration offered by bidders and was more popular in 2024 than in the previous year. When compared to all-cash transactions, scrip is viewed less favourably by Australian target shareholders. Share price fluctuations create a risk of value erosion between announcement and completion. Where foreign scrip is offered, barriers to trading from Australia may also make it difficult for target shareholders to realise value for their shares.

Cash was offered in 70 per cent of deals and scrip in only 20 per cent. We did not see bidders experimenting with combination or election mechanisms as regularly as we did in 2023, with only 7 per cent of bidders offering these consideration mechanisms.



Premiums

Premiums remained strong in 2024, with target shareholders collecting an average of 53 per cent over the one-month VWAP for their shares. Premiums tended to be stronger in negotiated deals than in unnegotiated deals, perhaps due to the presence of matching rights that may encourage price-increases by the initial bidder as a means of securing a contested bid (refer to section 3.7 of this report for more details on matching rights in Australian deals).

Since tracking this trend, we have consistently observed Australian target boards secure control premiums of between 30 per cent and 50 per cent over the one-month VWAP in single bidder transactions. In bid-war scenarios, control premiums of up to 150 per cent are not uncommon.

One month VWAP premium to the announcement:

Average	Most common range (schemes)*	Most common range (takeovers)*
53%	30.01% - 40%	20.1% - 30%

Premium to share price the trading day prior to an accouncement:

Average	Most common range (schemes)*	Most common range (takeovers)*
55.12%	30.01% - 40%	30.01% - 40%

** Where more than one mode range appeared in the data we have selected the range closest to the data point average.*

Deep dive on deal protection

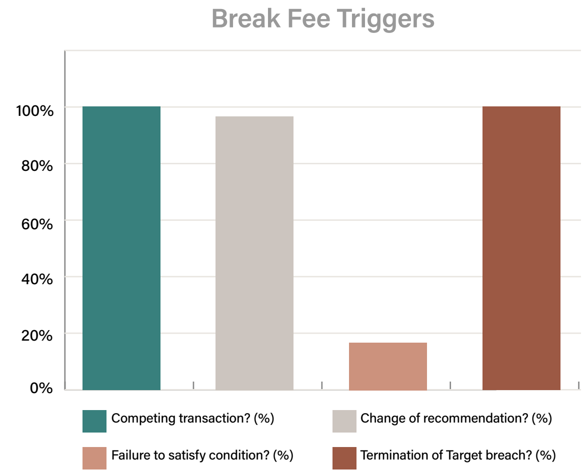
In this year's report, we take a deep dive into deal protection devices. These devices, which are described in more detail below, play a critical role in ensuring deal certainty. For bidders, they serve to prevent the target from abandoning a negotiated transaction in favour of a rival bid, except in limited circumstances, and can deter opportunistic rival bids from emerging in the first place. For targets, they can help to induce bidders to make a proposal, assist with the conduct of an orderly sale process and generate competitive tension by encouraging rival bidders to put their best offer forward. We discuss each of the most common deal protection devices and the trends we've observed below.

Break fees

A break fee is an amount the target must pay a bidder if a transaction is terminated in certain circumstances. 85 per cent of the negotiated deals we reviewed contained a break fee.

The most common circumstances in which break fees are payable in Australian negotiated public M&A deals are:

- Target directors withdrawing their recommendation for the transaction (except where the directors have received independent expert advice that the transaction is not or no longer in the best interests of members). 97 per cent of transactions with a break fee contained this trigger.
- A competing transaction is implemented (except where such transaction is determined by the target board to be a 'superior proposal'). This trigger appeared in all transactions with a break fee.
- The target commits a material breach of its obligations under the implementation agreement. This trigger appeared in all transactions with a break fee.
- The target fails to satisfy a condition precedent within its control. This trigger is less common, appearing in only 18 per cent of negotiated deals reviewed. Well advised targets should resist this type of trigger as conditions precedent are typically not wholly within a target's control to satisfy.



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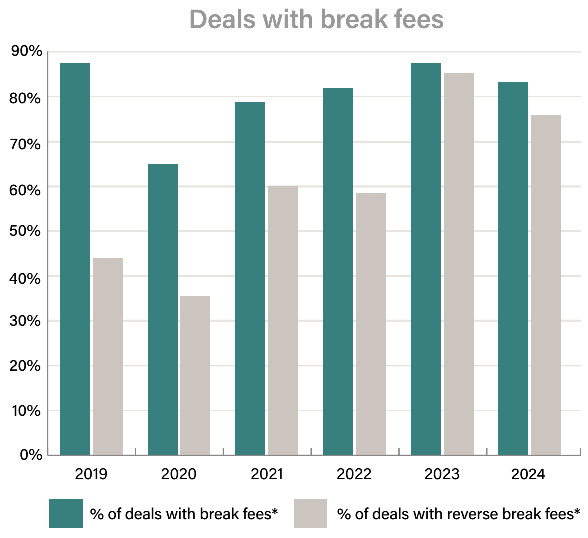
Reverse break fees

Reverse break fees provide for the bidder to pay the target upon termination of the transaction for certain specified events relating to the bidder (such as failure to obtain a required regulatory approval).

Historically, reverse break fees have not attracted much regulatory attention, since they do not have the same capacity to coerce target shareholders in the same way as regular break fees. However, the Takeovers Panel in *Westgold Resources Limited* [2024] ATP 15 at [72] signposted potential developments in its policy on reverse break fees in scrip transactions that are better characterised in substance as a 'merger of equals.'



Deal in focus: Altium's asymmetrical break fees

The year's mega-deal, the $9 billion Altium-Renesas scheme, provided interesting insights into the changing tides in the world of reverse break fees.

Reverse break fees have been steadily increasing in popularity in negotiated deals since we began recording them in 2019. Where once seen as a 'nice to have,' reverse break fees are now seen in practically all deals in which the bidder has negotiated a break fee from the target.

Typically, the quantum of a reverse break fee would be equal to or less than the break fee a target agreed to pay the bidder (which, in line with the Takeovers Panel guidance, would generally not exceed 1 per cent of the equity value of the target).

More recently, however, we have seen an emergence of asymmetrical reverse break fee arrangements, particularly where the bidder is responsible for numerous or complex regulatory approvals that introduce additional completion risk. A recent example is the 2023 Newcrest-Newmont scheme that faced a plethora of competition and foreign investment regulatory hurdles, justifying a US$375 million reverse break fee payable to Newcrest where those approvals were not met, being more than twice the size of the break fee payable by Newcrest.

Under the Altium-Renesas scheme, Altium had agreed to pay Renesas a break fee equal to approximately $91m or 1 per cent of the scheme consideration, payable under usual circumstances (e.g. material breach within Altium's control, withdrawal of directors' recommendation, completion of a competing transaction). The reverse break fee payable by Renesas was more than four times that amount, at $411m or 4.51 per cent of the maximum scheme consideration.

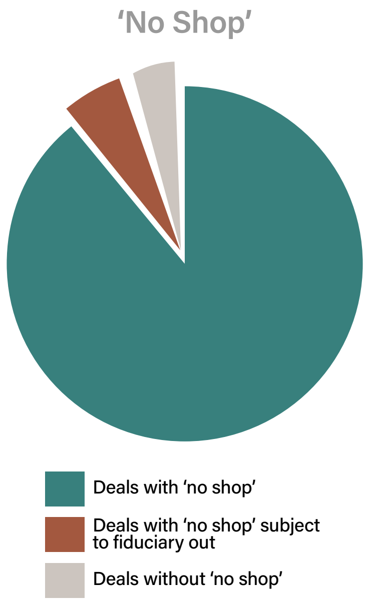
The disparity in the Altium-Renesas break fees speaks to the asymmetrical risks faced by the counterparties with respect to the defeating conditions. Whereas conditions within Altium's control were relatively standard, foreign regulatory conditions in Renesas' court were not as well-worn and introduced significant completion risk to Altium and its shareholders.

No-shop

A 'no-shop' obligation prohibits a target from seeking alternative transactions from a third party. No-shop restrictions are a near universal feature of negotiated public M&A deals in Australia, appearing in 97 per cent of the deals reviewed by us in 2024.

The Takeovers Panel considers no-shop restrictions to be less anti-competitive than the other deal protection devices discussed below and they are generally not required to have a 'fiduciary out' (see section 3.8 below). Despite this, 6 per cent of reviewed transactions did subject no-shop clauses to a 'fiduciary out,' but this was typically where the the clause restricted the target from responding to unsolicited approaches in the nature of a 'no-talk.'

No-shop restrictions can sometimes be subject to a test of the market for a limited period of time under a 'go-shop' or 'market-check' provision. We did not find such provisions in any of the reviewed deals, but would not expect to see them at the binding bid stage.



No-talk

A 'no-talk' obligation prohibits a target from discussing or negotiating a competing transaction with another party. Like no-shop clauses, no-talk restrictions are commonplace and appeared in 97 per cent of the deals reviewed.

Where they appear, no-talk provisions tend to be drafted restrictively to prevent targets from engaging in any discussions, regardless of whether the original approach was solicited or unsolicited.

Less restrictive no-talk clauses (that permit negotiations if the approach was unsolicited) appeared in only 6 per cent of the reviewed transactions. Target boards negotiating a no-talk clause before a comprehensive market sounding has occurred should consider seeking a less restrictive formulation to stimulate competitive tension.

Regardless of the formulation, the Takeovers Panel considers the absence of an effective 'fiduciary out' to a no-talk clause as likely to give rise to unacceptable circumstances, and we found only one deal that failed to observe this policy.

No-DD

A 'no-DD' obligation prohibits a target from giving a third party access to non-public information without the bidder's consent. The Takeovers Panel considers these clauses to have a similar impact on competition as a no-talk agreement, and they should also be subject to an effective 'fiduciary out.' 91 per cent of the negotiated deals we reviewed contained a no-DD arrangement and all of these were subject to a 'fiduciary out' in line with the Takeovers Panel guidance.

Notification obligations

A notification obligation requires the target to give the bidder details about any competing proposal received by the target. 97 per cent of transactions we reviewed included a notification obligation.

Notification clauses vary on the level of detail the target needs to disclose about the competing proposal, such as the price, the material terms, any conditions and the identity of the competing bidder.

Bidders appear unwilling to limit the details required to be disclosed to them under notification clauses. Nearly all of the deals reviewed (88 per cent) adopted an expansive formulation, requiring targets to disclose a competing bidder's identity. Where a broad notification obligation is accepted, target boards may consider seeking a 'fiduciary out' to allow them to withhold certain details from the bidder where disclosure would be likely to contravene their duties.

> ***"Notification rights appeared in 97 per cent of deals reviewed and 88 per cent of these required the target to disclose the identity of the competing bidder."***

Matching rights

A matching right gives an initial bidder a limited opportunity to improve its proposal in response to a competing offer made to the target. During the agreed matching period, the target's board of directors is prevented from recommending or entering into a binding agreement in relation to the competing offer. 97 per cent of reviewed transactions included matching rights.

The matching period is agreed by the parties but cannot be for a time that removes the practical likelihood a competing bidder will be prepared to put forward a proposal. The longest matching period the Takeovers Panel has accepted is five business days *(in Ross Human Directions Ltd [2010] ATP 8)*, but often the circumstances will require the period to be shorter. Circumstances which may warrant a five business day matching period could be, for example, where the bidder's major shareholders are located offshore and the bidder requires the longer period to reasonably respond to a competing proposal.

Four business days was the average matching period in the deals reviewed, with one business day being the shortest and five business days being the longest.

SHORTEST MATCHING PERIOD	LONGEST MATCHING PERIOD	AVERAGE MATCHING PERIOD
1 BUSINESS DAY	5 BUSINESS DAYS	4 BUSINESS DAYS

Fiduciary outs

A fiduciary out clause exempts the directors of a target from complying with an exclusivity obligation if it is likely their fiduciary duties require them not to comply. They play an important role in mitigating the adverse impact that deal protection devices can have on the acquisition of control taking place in an efficient, competitive and informed market.

All of the no-talk and no-DD clauses we reviewed for the purposes of this report were subject to a fiduciary out, with varying degrees of restriction.

Having regard to the Takeovers Panel guidance in Guidance Note 7 and the seminal decision on fiduciary outs *(Ross Human Directions Ltd [2010] ATP 8)*, deal makers should heed the following principles when crafting these clauses:

- The decision of whether a fiduciary out may be relied upon must sit with the directors themselves and not some other person. For example, a fiduciary out may be unacceptable where it requires a professional advisor to opine that a competing proposal is a superior proposal before it may be relied upon (as opposed to the directors forming that opinion themselves after receipt of professional advice).
- The fiduciary out must not impose additional requirements on the directors' actions beyond seeking professional advice that (a) a competing proposal could reasonably be considered to become a superior proposal; and/or (b) failure to respond to a competing proposal would likely breach the directors' duties. Examples of unacceptable requirements include requiring the directors to act 'in good faith' or 'reasonably' in determining what their duties are.
- Requirements for directors to be able to rely on a fiduciary out must not be overly restrictive or require special criteria to be met (e.g. that the competing proposal be fully financed or involve a 100 per cent acquisition). 3 per cent of the fiduciary out clauses we reviewed contained restrictive features that may, if challenged, be found unacceptable.

Exclusivity period

An exclusivity period is the agreed period of operation of any deal protection device. The length of time must be reasonable, having consideration for the circumstances of the transaction. In the absence of an earlier implementation or termination of the transaction, five months was the average exclusivity period granted to bidders in the negotiated deals reviewed.

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Regulatory developments

ASIC

Reinvigorating public capital markets

ASIC has expressed a renewed focus on the health of Australia's public markets and improving their attractiveness to issuers and investors. In February 2025, ASIC published a discussion paper on the topic and the shift towards private markets, seeking input from stakeholders on ASIC's regulatory approach.

The paper lists a number of proactive steps taken by regulators in the US, UK, EU, Canada, NZ, Hong Kong and Singapore to promote public markets and improve their attractiveness to issuers and investors. Submissions on the discussion paper were due on 28 April and we will be watching closely for ASIC's response to these and whether we can expect any similar changes in Australia.

Response to AI innovation

ASIC has shown a piqued interest in understanding whether existing regulatory frameworks are able to deal with the challenges posed by the development and use of emerging AI technologies across corporate Australia. In early 2024, ASIC Chair Joe Longo expressed confidence in existing regulatory frameworks and indicated the corporate regulator would not hesitate to test regulatory parameters that are unclear or present opportunities for exploitation.[1] However, Mr Longo did not rule out the need for reform to address specific issues arising from the increased use and commercialisation of AI, including data poisoning, input manipulation, AI 'hallucinations' and privacy and IP concerns.

1 Joe Longo, 'We're not there yet: Current regulation around AI may not be sufficient' (Speech, UTS Human Technology Institute Shaping Our Future Symposium, 31 January 2024).

New fees for scheme and takeover lodgements

On 12 December 2024, new regulations were made to increase and impose fees on lodgements required to implement a scheme of arrangement or takeover bid. The fees apply to the following lodgements relevant to transactions contemplated by this report:

- In respect of a scheme, the orders from the second court hearing lodged with ASIC under s411(10).
- In respect of a takeover, a compulsory acquisition notice under s661B(1)(b) or a compulsory buy-out notice under s662B(1)(b).

The revised fees are set out in the table below and are determined by reference to the value of the consideration payable for the securities under the transaction.

Threshold value	Applicable fee
>$500 million	$195,000
≥$100 million but ≤$500 million	$145,000
≥$35 million but <$100 million	$50,000
≥$10 million but <$35 million	$10,000

Foreign Investment Review Board (FIRB)

A major overhaul of Australia's foreign investment regime was announced in May 2024. In general, the changes, which came into effect on 1 July 2024, continue to be implemented administratively via changes to FIRB's policies, processes and resources, rather than through legislation.

The changes aim to implement stronger scrutiny of transactions, a risk-based approach to assessing transactions, and a more streamlined approach to low-risk transactions.

Greater scrutiny of transactions in sensitive sectors
Greater resources will be provided to FIRB to enable it to apply stronger scrutiny to transactions in sensitive sectors.

Sensitive sectors include critical infrastructure, critical minerals, critical technology, investments in proximity to sensitive Australian Government facilities, and investments that involve holding or having access to sensitive data sets.

Additional scrutiny of transactions with particular tax arrangements
Transactions with particular tax arrangements will be subjected to greater scrutiny, in order to ensure that foreign investors pay their share of tax.

Tax characteristics flagged for greater scrutiny include:

- Investments structured through effective low or no tax jurisdictions
- Internal reorganisations or other intragroup transactions that may represent initial steps of a planned broader arrangement resulting in the avoidance of Australian tax
- Pre-sale structuring of Australian assets that present risks to tax revenue on disposal by private equity or other investors
- The use of related party financing arrangements to reduce Australian income tax or avoid withholding tax
- Facilitation of migration of assets (such as intellectual property) to offshore related parties in jurisdictions with effective low taxation

Risk-based approach to streamline approval processes
FIRB has indicated that it aims to provide faster approvals to enable low-risk capital to flow more quickly. While no guarantees on timeframes have been provided, FIRB has indicated that faster approvals may occur in the following circumstances:'

Post-transaction reviews
FIRB has signalled that it will apply greater post-transaction scrutiny to compliance with FIRB-imposed conditions, tax and other laws, including through exercising its powers to undertake on-site visits.

Who

- Where investors have a strong track record of compliance
- Where investors are repeat investors who are well-known to Treasury, investing alone and not in consortium with unknown investors
- Where investors are genuinely passive in nature with no demonstrable control over an asset

What

- Where investments occur in non-sensitive sectors, including manufacturing, professional services, commercial real estate, new housing and mining of non-critical materials
- Where investments are not near sensitive Australian Government facilities

How

- Where transactions have a clear ownership structure, and a clear ultimate controlling entity for assets, land or entities once the transaction is complete
- Where the transaction is structured in a simple or unconvoluted way

ACCC

Significant reforms to Australia's merger rules were announced in April 2024, which will come into force in January 2026, with transitional provisions effective from 1 July 2025. The changes involve a shift from the current voluntary notification regime that has been in place since 1974, to a single mandatory, suspensory merger regime, being the most significant amendments to the merger law regime in 50 years.

They follow remarks by the Chair of the ACCC that Australia's merger regime is "no longer fit for purpose". The reforms focus on procedural changes that have the net effect of giving the ACCC greater discretion to block acquisitions of assets or shares that it considers may be anticompetitive.

Shift from voluntary to mandatory suspensory notification regime

Under the reformed regime, merger parties must notify the ACCC of mergers which meet certain thresholds. Notifiable mergers will be suspended from completing unless approval is granted by the ACCC.

A merger may proceed unless the ACCC reasonably believes that the merger would have the effect, or be likely to have the effect, of substantially decreasing competition in any market, including if the merger creates, strengthens or entrenches substantial market power. Consequently, it could become harder to obtain ACCC approvals for acquisitions by firms with larger market shares in concentrated markets.

Notification thresholds

Economic thresholds will apply in determining whether a merger is notifiable to the ACCC. These are subject to consultation and have yet to be announced.

While the precise legal details are yet to be confirmed, commentary by the Treasurer suggests that, at this stage, the following economy-wide approach will be adopted:

- Very large acquirer: If the Acquirer is a very large business with > AUD 500m in Australian annual revenue, then most transactional activity it undertakes will likely need to be notified to the ACCC. A hair trigger (>AUD 10m revenue acquisitions) is therefore being applied to very large businesses.
- Large acquirer: If the Acquirer is a large business with AUD 200m to AUD 500m in Australian annual revenue, then it will need to notify the ACCC if the rolling 3 year cumulative revenue threshold of AUD 50m is exceeded for any market.
- Large combined business: Otherwise, the Acquirer will need to notify the ACCC if the combined business exceeds AUD 200m in annual Australian revenue and either:
  - The Australian Target is substantial (>AUD 50m annual revenue)
  - The global transaction is large (>AUD 250m transaction value)

In considering whether a merger meets notification thresholds, all mergers undertaken by the parties in the preceding three years will be taken into account, regardless of whether individual mergers were separately notifiable. This will enable consideration of the effect of possible serial or creeping acquisitions.

While no market share thresholds are proposed, the Treasurer could potentially introduce market share thresholds for specific sectors if concerns arose, such as, for example, supermarkets.

The ACCC will encourage pre-notification discussions to assist to resolve any uncertainty regarding notification, including to help clarify what information should form part of the notification. In the same vein, the ACCC will have discretion to determine whether an acquisition should be exempted from notification under a formal notification waiver process. Additionally, the ACCC could be approached on a confidential basis for certain specified types of transactions such as surprise/hostile on-market takeover bids and voluntary transfers under the FSTR Act.

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Transparency and fees

Merger reviews will attract fees which are likely to be between $50,000 and $100,000. An exemption will apply to small businesses.

The ACCC will maintain a public register, listing (i) all mergers notified to it, (ii) findings on material facts, and (iii) the reasons for all merger decisions.

Penalties and appeal rights

If parties fail to notify a notifiable merger, or if mergers close prior to approval by the ACCC, substantial penalties may apply to merger parties, their executives and their officers. Further, any illegally completed mergers will be void.

Should parties seek to dispute a merger decision, merits review can be sought in the Australian Competition Tribunal. Appeals to the Federal Court will be limited to judicial review.

Process

Parties will need to provide significant volumes up-front information regarding the parties and proposed transaction when notifying the ACCC. It is yet to be seen whether these will be specified in legislation.

A phased review process will apply to approval of mergers notified to the ACCC, with:

- An initial Phase 1 review taking 30 working days
- If competition concerns are identified, a Phase 2 review will commence, taking up to an additional 90 working days
- Parties may also lodge a further application within 21 calendar days of a Phase 2 determination, seeking a substantial public benefits authorisation, which will extend the review by up to another 50 business days

Transitional provisions and next steps

If ACCC clearance or authorisation, under the current regime, has been obtained for an acquisition prior to 1 January 2026, then the new merger regime will not apply as long as the transaction is completed within 12 months of the ACCC's decision.

If ACCC clearance or authorisation has not been obtained before 1 January 2026, or completion has not occurred within 12 months after the decision, then the acquisition will become subject to the new regime and must be re-notified.

Takeovers Panel

There were 26 applications made in 2024.
Of these:

THE PANEL MADE INTERIM ORDERS WITH RESPECT TO APPLICATIONS **2**

27% RESULTED IN A DECISION TO CONDUCT PROCEEDINGS

27% RESULTED IN A PARTY GIVING AN ENFORCEABLE UNDERTAKING

23% RESULTED IN A DECLARATION OF UNACCEPTABLE CIRCUMSTANCES

THE PANEL MADE FINAL ORDERS WITH RESPECT TO APPLICATIONS **4**

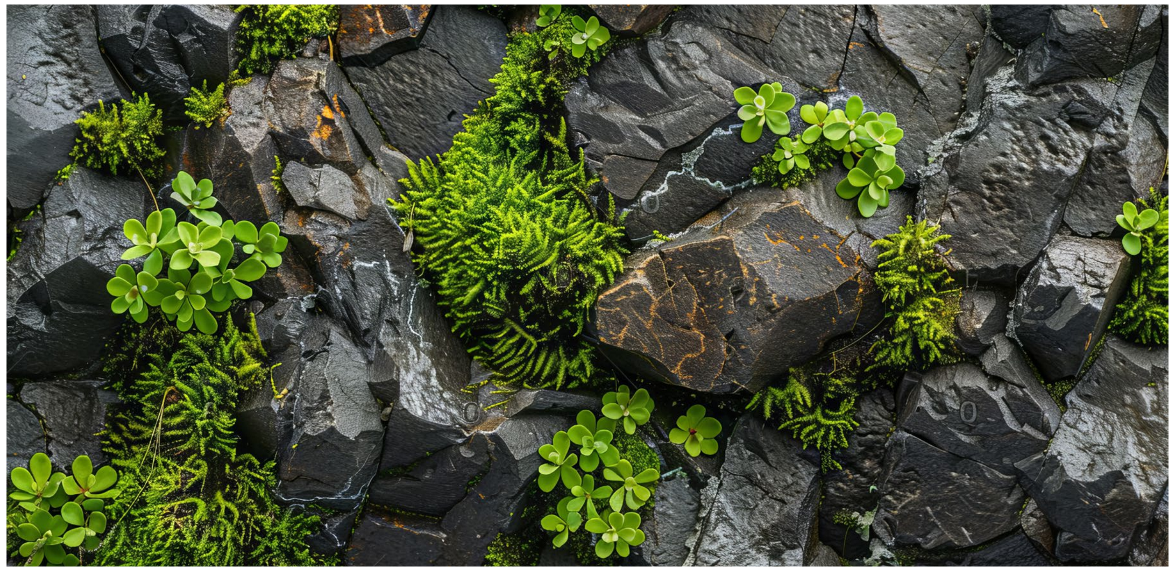
Change to Panel procedures on standing
On 18 January 2024, the Panel updated its pro-forma application to require applicants to explain how their interests are affected by the relevant circumstances identified in the application under section 657C(2) of the Corporations Act.

Under section 657C(2) of the Corporations Act, an application for a declaration of unacceptable circumstances may only be made by ASIC, the bidder, the target or any other person "whose interests are affected by the relevant circumstances". The "standing rule", as this section is known, is the Panel's primary weapon against tactical litigation, the other being the Panel's power under section 658A of the Corporations Act to dismiss an application that the Panel is satisfied is "frivolous or vexatious".

The updates to the Panel's pro-forma applications have been welcomed by dealmakers and their advisors who, in recent years, have lamented an apparent rise in tactical litigants with little to no interest in a control transaction using Panel proceedings as a means of disrupting it.

The Panel's popularity among tactical litigants can be linked to its relative speed and inexpensiveness when compared to traditional court proceedings. Malicious applicants also do not face the risk of a costs order being made against them.

The Panel has considered the issue of standing in a number of recent decisions, including in the matter of *Webcentral Group Limited* [2021] ATP 4 brought by Keybridge Capital Limited in relation to the takeover bid by 5G Networks Limited. While Keybridge had been a substantial Webcentral shareholder during the 5G Networks bid, Webcentral and 5G Networks both submitted that Keybridge was not a person "whose interests are affected by the relevant circumstances" on the basis that Keybridge did not accept the bid and sold all but one of its Webcentral shares on market prior to bringing the application. While ultimately accepting that Keybridge had standing, the circumstances gave the Panel pause on Keybridge's motivation to bring the application.[2]



<?> *Webcentral Group Limited* [2021] ATP 4 at [36].

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Report methodology

Reported deals
Norton Rose Fulbright reported on takeover bids and schemes of arrangements announced during the calendar year ended 31 December 2024, which were valued at $50 million or more. As at the date of publishing this report, 8 surveyed deals remain current and are yet to complete. Where an offer document was not been released to the market, we have not included certain trends in our results.

AUD
All dollar figures reported are in Australian dollars unless otherwise stated. Any break fees or deal values not originally in Australian dollars have been converted using the Australian dollar currency rate quoted at the time of reporting.

Sources
Unless otherwise indicated, the data and information in this report has been generated from our own research, market analysis and primary sources that are publicly available including ASX announcements, bidder and target statements, implementation agreements and scheme booklets.

Deal terms differ depending on the circumstances surrounding each deal and we have exercised our judgment in interpreting and categorising these terms for the purpose of this report where they were not directly comparable.

Announcement date
The announcement date reported in respect of a takeover bid is the earlier of the date that a public announcement is made that a bidder intends to make a takeover bid or the date that the takeover bid is actually made. The announcement date in respect of a scheme is the date a public announcement is made that an agreement has been entered into to propose a scheme (for instance, a scheme implementation deed).

Consideration
The value of the consideration, for the purposes of calculating deal values in this report, was calculated as follows:

- Where the consideration included non-cash consideration, such as scrip, it was valued as at the announcement date using the same methodology as used in the initial announcement. If no value was cited in the initial announcement the value was calculated using the closing market price of the bidder scrip prior to the initial announcement (or such other appropriate date to reflect the undisturbed share price) where listed and/or the foreign exchange rate on the announcement date (as applicable).
- Where the final consideration depended upon the movements in the value of bidder scrip or the foreign exchange rate, the value of the final consideration was recalculated using the value of the bidder scrip or foreign exchange rate as at the time such adjustments were made.

Deal value
Where a deal was successful, the value of the deal is the final consideration paid or payable per issued security in the target multiplied by the aggregate number of those securities at the end of the offer period for a takeover bid or record date for a scheme. Where a deal remained ongoing as at 31 December 2024, the value of the deal is the consideration offered per issued security in the target as at that date multiplied by the aggregate number of securities in the target subject to the offer as at that date. Deal value is assessed against all issued securities in the target, including any that are already owned by the bidder at the date the transaction is announced.

Premiums

To extract trends from offer premiums we analysed data from offer documents which quoted a premium to the closing price on the last trading day prior to the announcement of a bid and to the one-month VWAP to announcement of the bid. If either of these premiums was not cited in the takeover announcement it was not included in our results. For instance zero premiums, negative premiums and any other forms of premiums which were not calculated against the trading price the day prior to the bid announcement or as a one-month VWAP were not included in our reporting. Premiums quoted exclude deals where the bidder did not offer a premium for control (or offered zero premium).

Deal categorisation

Takeovers initially recommended by the target board on the date of the announcement are regarded as "friendly". Conversely takeovers not initially recommended by the target board on the date of the announcement are regarded as "hostile".

Rounding

Some percentages reported will not add to 100 per cent as numbers have been rounded up.

Success

- A takeover bid is referred to in this report as successful if any securities were acquired under the takeover offer if it was unconditional or after the satisfaction or waiver of all conditions in the case of a conditional takeover bid. A scheme is referred to in this report as being successful if court approval is obtained and the scheme became effective.
- A bid is unsuccessful if the acceptances received from shareholders are less than 50 per cent, even if the deal is declared unconditional. Lapsed deals recorded as unsuccessful deals.
- A bid is recorded as withdrawn when the ASX has received notification from the companies involved that the deal is withdrawn or where the bidder returns all acceptances back to shareholders.

Currency of information

Unless otherwise indicated, information in relation to the deals in this report is current to 31 December 2024.

About the authors

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Jeremy Wickens is a commercial-minded and responsive Corporate, M&A and Equity Capital Markets lawyer based in Melbourne. He is fortunate to have had a rich career over the past 20 years, and has been involved in some of Australia's most significant projects and transactions, including the recent highlight of leading negotiations on the scheme implementation agreement for Vodafone Hutchinson's $16.8 billion merger of equals with TPG Telecom. Jeremy's strengths are preparing and negotiating high quality documentation for large deals. He has an eye for detail, but focusses on the commercially important points. Once engaged, Jeremy dedicates himself to achieving his client's objectives and closing the deal. He combines firm negotiation and advocacy with caring for his clients, in the sense of understanding their businesses and being cost-conscious, reliable and easy to do business with. Having worked in-house with BHP Billiton, AGL Energy, ConocoPhillips and Santos, Jeremy understands his clients need a lawyer who shares their business objectives, gets to the point and stands behind his recommendations. He is recognised in Best Lawyers in Australia in the practice areas Corporate, Equity Capital Markets, Mergers and Acquisitions, Natural Resources and Oil & Gas.

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Ellen is a Senior Associate specialising in Corporate, M&A, Equity Capital Markets and Projects. Ellen leads transaction delivery and provides advisory support for both domestic and international clients across a range of industries but with a particular focus on technology, professional services and energy markets. In her 5 years with NRF's Melbourne corporate team, Ellen has been a highly valued and efficient team member on a number of first-of-their-kind transactions. Highlights in the public M&A space include her involvement in the team advising on Vodafone Hutchinson's $16.8 billion merger with TPG Telecom in 2020 and her role as transaction delivery lead and advisor to 5G Networks on its merger with Webcentral Limited by way of 'top-hat' scheme in 2021 and, later, on the disposal of Webcentral Limited's domains hosting business to Oakley Capital and its investment partners for a total transaction value of $165 million. Ellen is known for delivering high-quality and commercial advice that reflects a true appreciation for the motivations driving her client's activities.

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