SEPTEMBER 2023

2023 M&A Review

THE MARKET, HIGHLIGHTS, AND KEY WINS

MARKET PERFORMANCE

It is well known that the mergers and acquisitions (M&A) market, both in Australia and globally, has flourished over the last couple of years. In the wake of the COVID-19 shutdowns, the enormous demand for new transactions amid a bounce back pushed the M&A market into hyperdrive.

After such a period of high activity, the 2022/2023 financial year was predictably more restrained with M&A activity slowing down to its pre-pandemic levels. This was driven by a number of factors, including the tightening of monetary policy, a decrease in the availability and affordability of debt and geopolitical uncertainty and tension. Inevitably, as the mood darkened, the appetite for M&A eased in Australia.

Despite the cooling of market conditions in the second half of 2022, the level of M&A activity in Australia remained strong, particularly when compared against pre-pandemic levels of deal making. Further, despite the tapering M&A market, sellers continued to benefit from competitive bidding processes and above average multipliers on enterprise value.

THE ROAD AHEAD FOR M&A.

Looking ahead, there are likely to be several chalenges as the M&A market conditions continue to cool. Based on the transactions that McInnes Wilson Lawyers has advised on in the last 12 months, such challenges will likely include:

Valuations Gap

As valuations continue to ease back, there will be greater difficulties in reaching an agreement on purchase price. That is, as Sellers continue to cling to the pricing expectation that evolved during the boom period, Buyers are more likely to focus on downside risk. Advisors and practitioners will likely have the difficult job over the next 12 months of having to adjust the purchase price expectations of their sell-side clients.

External Risks

The continued macroeconomic risks in Australia (and across the globe) will likely threaten M&A activity. In particular, inflationary and interest rate pressures will continue to affect the size, volume and pace of transactions in Australia.

Transaction Financing

Financing will prove to be a more difficult part of the M&A process over the next 12 months. Moving forward, advisors and practitioners will likely need consider more modern financing options that can help get deals closed.

The initial growth in M&A activity, followed by the slowdown in the latter part of 2022, gave rise to an interesting shift in trends over the 2022/2023 financial year. We have set out the key trends below and anticipate these will continue for at least the next 12 months.

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HOT TOPICS

Environmental, Social and Governance

It is clear that dealmakers are now focusing on environmental, social and corporate governance (ESG) considerations to a greater extent than ever before.

This reflects the growing regulatory imperative - continued pressure from a diverse group of stakeholders (including policymakers, regulators (including ASIC), investors, customers and employees) continues to prompt dealmakers to approach M&A through an ESG lens.

Stakeholders are more informed about ESG and how it can impact value. Faced with spiralling inflation and interest rates rises, stakeholders are sensitive to the cost structure of target companies, and ESG now forms part of due diligence almost without exception. Good ESG governance is a must. Buyers want to be confident that risks are being identified and managed.

The importance of ESG has also been heightened due to growing concerns about "greenwashing" – this has stressed the importance of ESG due diligence and scrutinising a target's claims on ESG in more detail.

Warranties and Indemnities

Amid a heightened sense of risk in the current market conditions, Buyers are naturally determined to scrutinize every transaction with greater granularity.

However, elongated deal processes continue to be more vulnerable to failure. Accordingly, we have seen Buyers actively seek to mitigate their transaction risk through warranty and indemnity. Attractive forms of warranty and indemnity protection sought by Buyers in recent times have included:

1. extending the liability for warranty and indemnity claims to related entities and key person of Sellers; and
2. escrowing part of the purchase price for part or all of the contractual warranty period.

Earnouts

We have seen an increase in Buyers seeking to negotiate earnouts as part of the purchase price for the transaction. Earnouts have been sought to:

1. assist with any funding shortages of the Buyer (and to reduce the costs of debt financing for the transaction); and
2. mitigate purchase price risk, and the risk of a downturn in trading performance after completion (which is a concern of Buyers during this period of economic uncertainty).

If a earnout is negotiated, Sellers need to ensure (among other things) that there is adequate security in place to secure the payment obligations of the Buyer after Completion.

HOT TOPICS

Regulatory Approvals

Regulatory approvals on deals saw transaction timetables be extended considerably.

In particular, transactions conditional on Foreign Investment Review Board (FIRB) and Australian Competition & Consumer Commission (ACCC) approvals were forced to sit in limbo for significant periods of time.

Transaction timeframes being extended created deal risk for Buyers, with Sellers often looking to negotiate terms with other bidders, without as many strings attached. To mitigate risk, Buyers should ensure they have their regulatory ducks in a row (and have a clearer picture on timeframes for the requisite approvals) before commencing negotiations with a Seller.

Cybersecurity

Cybersecurity continues to be an area where there is potential for disruption.

Particularly on larger transactions (where public announcements are made at signing), there were instances on deals where bad actors sought to take advantage of the targets' cybersecurity flaws and sabotage deal processes (with the aim of holding the transaction ransom).

Moving forward, investing in technology tools to detect and repel such threats will become even more crucial.

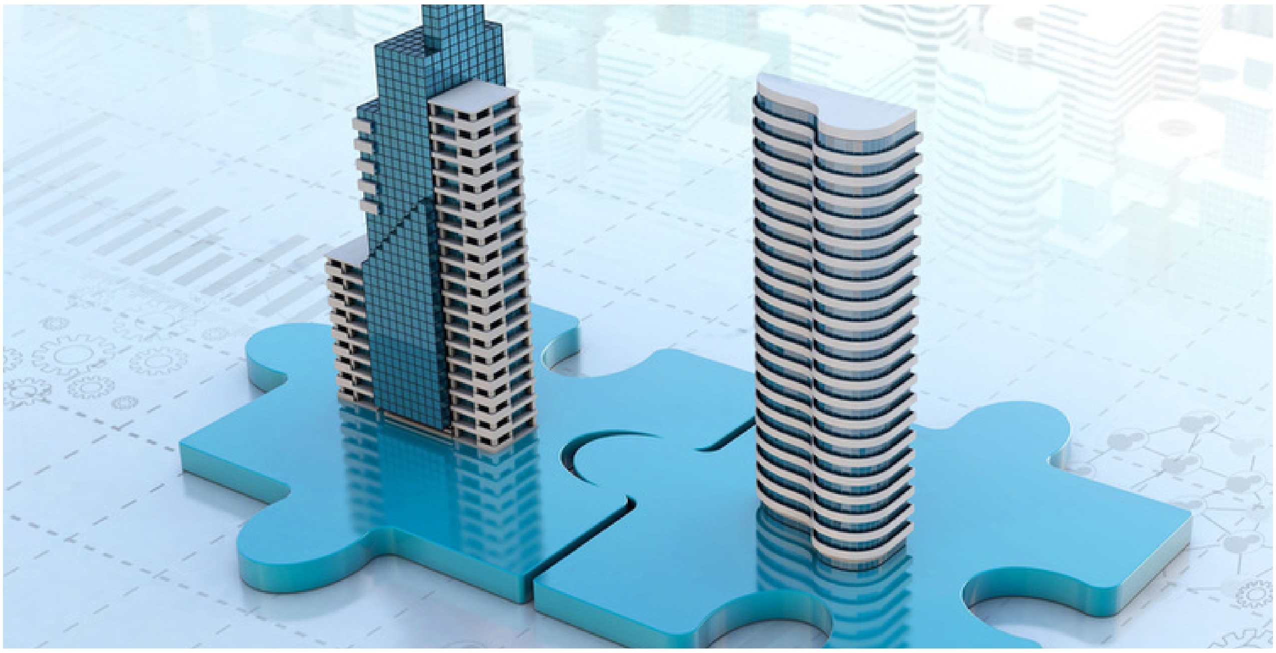
Financing and Scrip Consideration

With the cost of capital rising and lenders becoming more risk-averse, securing affordable transaction financing is becoming increasingly challenging.

This has resulted in increased scrip consideration being offered on transactions, with Buyers relying on scrip consideration to reduce their overall funding requirements and transaction spend.

We expect scrip consideration to remain attractive because of the current macroeconomic conditions and the ongoing high market valuations and tax benefits it offers.

KEY DEALS IN FY2023



With offices in Brisbane, Sydney, Melbourne, Canberra and Adelaide, McInnes Wilson Lawyers covers the full spectrum of M&A transactions. Our firm has extensive experience advising on strategic and complex mergers, acquisitions, takeover bids, demergers, schemes of arrangements and corporate restructures.

We take pride in our work and support our clients through each step of an M&A transaction - from the term sheet and legal due diligence phase through to completion.

We advise across a range of industries, including healthcare, property, consumer, retail, wholesale and franchising, media and telecommunications, professional services, technology and transport.

The McInnes Wilson Lawyer's M&A team has been involved in a number of significant transactions across a variety of industries in the 2023 financial year.

We have provided a selection of these transactions in this review.

LawyersWeekly 30 UNDER 30 2022 FINALIST MERGERS AND ACQUISITIONS

MCINNES WILSON LAWYERS 2023 RECOGNIZED BY Best Lawyers®

LEADING DOYLES COMMERCIAL 2023

KEY DEALS IN FY2023

Manufacturing

- **(Tru Blu Beverages)** Advising the shareholders of Tru Blu Beverages Pty Limited on the sale and purchase of their shares to global beverage company, Refresco B.V. for over $140 million.

- **(Toughdog)** Advising on the sale and purchase of shares in 4 Way Suspension Products which owns and operates the renown "Toughdog" suspension business. The transaction completed with a top line purchase price of $67 million, which included a deferred purchase price component that was subject to an earnout.

Software

- **(IR4)** Advising a foreign public listed entity on its acquisition of a majority stake in automation solutions software provider.

- **(Project Tiger)** Advising a Victorian based software provider (whose predominant customer was Bunnings Limited) on the sale of its underlying software, assets and undertakings to a US listed company (which included an offer of part scrip consideration in the listed acquirer).

Property and Construction

- **(Land rich entity)** Advising the owners on the sale of land owning SPV companies and trusts to foreign purchasers for over $90 million.

- **(North Queensland Marina)** Advising a Singaporean entity on acquiring shares in a group of companies that owned over 300 marina berths in North Queensland. The transaction had a deal value of over $25 million and required specialist FIRB advice.

- **(Gold Coast Construction Company)** Advising the shareholders of a Gold Coast based construction company on the sale of their shares to a family office group for over $12 million.

- **(Scooter Group)** Advising the purchaser of the Scooter Group fit out and construction business from the appointed Receivers and Managers (including advising on a competitive bidding process).

- **(Queensland Golf Clubs)** Advising the purchasers on acquiring assets and real property in connection with two Golf Club resort businesses conducted in Central Queensland.

- **(Company title Property)** Advising Elouera Flats on the sale of its company title property (the last one of its kind in Canberra) for over $15 million.

RTOs

- **(ACCCO)** Advising on the sale and purchase of shares in a national childcare registered training organisation to Canadian based early learning and childcare provider.

- **(Project Skills)** Advising on the purchase of a national construction and building registered training organisation. The acquirer was a large family office group that acquired the business as part of a larger roll-up of RTO businesses.

KEY DEALS IN FY2023

Health and Aged Care

- **(Oaktree)** Advising on the leveraged management buyout of a retirement village business, that is supported by a share purchase price and a debt refinance. Acting on the sale of a retirement village for a long term client owner/operator - deal value $30 million.
- **(Aged care provider)** Advising on the sale of a retirement business (to divest from retirement village assets) operated by a national retirement village operator.
- **(Allied Health)** Advising the shareholders of two separate allied health groups on the sale of their shares to a private equity group as part of a larger roll-up. The allied health groups operated across Australia from 14 different locations and each had a transaction value of over $10 million.

Primary Industries

- **(5 Fish)** Advising the owners of a whiting trawling business of the sale its underlying assets and undertaking to a strategic buyer (which includes the assignment of the underlying licenses and quotas across various jurisdictions) for $10 million.
- **(Withcott)** Advising on the sale and purchase of shares in Withcott Seedlings to a UK-based private equity firm, ADM Capital for over $40 million.

Retail

- **(Next Generation Pet Foods)** Advising two targets in the retail pet food space on a contemporaneous share sale to a private equity fund for over $20 million.
- **(Project Flex)** Advising the shareholders of an e-commerce homewares business on the sale of its shares to US private equity for over $10 million.
- **(Paint Plot)** Advising an Australian e-commerce business in the arts and crafts industry on the sale of its assets and undertakings to US private equity.

Professional & Financial Services

- **(Scheme of Arrangement)** Advising major shareholders on the sale of their shareholdings in an ASX listed specialist third party administrator for the financial services industry via a scheme of arrangement.
- **(Insurance Roll-up)** Assisting private equity on its roll-up of a number of insurance brokerage businesses across Australia.
- **(Financial Planning)** Advising on the sale and purchase of 10 different financial planning businesses, each with a deal value over $4 million.

KEY DEALS IN FY2023

Logistics and Distribution

- **(Distribution Purchaser)** Advising a foreign purchaser on the acquisition of two separate distribution businesses (one in Queensland and the other in Victoria). The transaction was completed in February 2023 and required specialist FIRB advice (with both businesses having significant landholdings which formed part of the transactions).

- **(TPL)** Advising a purchaser on the acquisition of shares in an Australian third party logistics provider with a deal value of over $10 million.

Transport

- **(Kelsian Group)** Advising Kelsian Group Ltd (ASX: KLS), Australia's largest integrated multi-modal transport provider, on its acquisition of North Stradbroke Island Bus Service (Queensland), Burrows Bus Service (Western Australia), and Grand Touring Luxury Transport (Northern Territory).

- **(Thompson Bus Services)** Advising Thompson Bus Services on its acquisition of Sunshine Coast's Coolum Coaches.

Capital Raising and Debt Financing

- **(Getahead)** Advising Getahead Australia on two separate rounds of pre-seed capital raising for over $4 million, including investment from a prominent venture capital group.

- **(Developer Group)** Advising a Queensland property developer on raising $15 million in capital through the issue of bespoke loan notes to a range of sophisticated investors.

- **(KDL Group)** Advising KDL Property Group on a number of financing arrangements with MaxCap Group, including a $25 million facility for a 272 lot residential subdivision in Queensland.

- **(KDL/HBQ)** Advising KDL Property Group on the term of a bespoke equity participation arrangement with HB Land Queensland for the provision of $10 million worth of unsecured funding for a development in Queensland.

- **(Dream Farm)** advising the Dream Farm on the terms of its secondary investment by Altor Capital.

WHAT'S NEXT?

Looking to the second half of 2023, dealmakers are arguably facing one of the most uncertain M&A environments in recent memory.

While the headwinds for M&A appear to be gathering speed, dealmakers must become more selective and remain determined to pursue the right transactions. To avoid seeing transactions derailed, they will also need to navigate a careful course through the problems posed by the economic slowdown, rising inflation and interest rates, and political risk.

Despite the looming changes and challenges, it is our view that M&A will play an increasingly important role in corporate strategies. We also think there will be even better opportunities for some investors to generate healthy returns in today's environment, as valuations and multiplier expectations start to cool.

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