



Holding Redlich

2023 M&A Review



Commentary



M&A activity has had a bumper couple of years. Market trends and economic headwinds suggest 2023 is set to be another interesting year for transactions. There has been plenty of activity to start 2023, with good quality businesses and assets remaining in high demand.

As expected, 2022's M&A activity was built on a strong 2021 and continued on an upward trajectory, particularly during the first half of the year. Favourable conditions allowed M&A activity to flourish, with impressive deal numbers and deal values across both public and private sectors, domestic and international.

The latter part of 2022 saw M&A activity slow down to its pre-pandemic levels. This was driven by a multitude of factors, including capital market volatility, interest rate rises, fluctuations in inflation and geopolitical tensions.

Notwithstanding the deceleration in the second half of 2022, the level of M&A activity remains consistent and is still higher than long term averages in Australia and New Zealand. There are also good prospects for continued activity in 2023 notwithstanding some economic headwinds.

Holding Redlich's M&A team was involved in a number of significant deals across a variety of industries and for the third-consecutive year was selected as a finalist for Transaction Team of the Year at the Australian Law Awards. We set out a selection of these transactions in this review. With offices in Melbourne, Canberra, Sydney, Brisbane and Cairns, our team covers the full spectrum of M&A transactions – both in public markets and by private treaty. We advise across a range of industries, including agribusiness; brands, consumer, retail, wholesale and franchising; education; healthcare; industrials; media and telecommunications; professional and financial services; technology and transport.



Key deals in 2022

Last year, our team assisted in a range of complex corporate M&A matters, including cross-border deals and transactions involving individuals, private equity firms and listed parties – domestic and international. We set out a selection of our key deals below.

PROFESSIONAL AND FINANCIAL SERVICES

- advising LifeWorks Australia (part of the NYSE/TSX dual-listed TELUS Corporation) on the acquisition of Benestar, an employee assistance program and workplace wellbeing provider, from the Cover-More Group
- advising Hostplus in its successor fund transfer with Statewide Superannuation (\$12bn transfer)
- advising Randstad N.V. (listed on the Euronext Amsterdam) on the acquisition of the Finite Group, a large provider of technology recruitment and professional services in Australia and New Zealand
- advising the shareholders of a large architecture and design firm on a proposed sale to an international design group
- advising ARC Funds Ltd (**ASX:ARC**) in connection with establishment of funds/joint ventures, including with Lanyon Investment Company Ltd
- advising the shareholders of a large Quality, Environment, Safety certification company in connection with share sale
- advising the owners of a financial planning business on the sale of their business.

TECHNOLOGY

- advising 3P Learning Limited (**ASX:3PL**) on the acquisition of Pairwise Pty Ltd and the educational assessment and reporting software known as 'Brightpath'
- advising Enero Group Limited (**ASX:EGG**) in relation to the Australian law aspects of two foreign acquisitions: ROI DNA, a US based strategic B2B sales and marketing agency and GetIT Pte. Ltd, a Singapore based specialist B2B technology marketing agency
- advising ITC supplier (cloud-hosted project managed software provider) in connection with the sale of multinational software and services business

- advising The Payment App Pty Ltd in connection with its acquisition of a number of fin-tech companies and businesses including Smartransfer Pty Ltd, Jifie Pty Ltd, Moonx Pty Ltd and The Clever Fox Financial Services Pty Ltd.

MANUFACTURING AND ENGINEERING

- advising the shareholders of Corrosion Control Engineering, Australia's largest cathodic protection specialist, on a sale to private equity owned Eptec Group
- advising Questas Group on the acquisition of the hydraulic cylinder repair business, Isadraulics
- advising Questas Group on the acquisition of a hard chrome plating specialist, Australian Surface Technologies
- advising SMEC Australia Pty Ltd on the divestment of its pavement management system business to ARRB Pty Ltd
- advising Southern Steel Group on the acquisition of a steel manufacturer
- advising a Brisbane-based manufacturing company on the acquisition of distressed assets from a company in liquidation.

HEALTH AND FITNESS

- advising Jetts Fitness Global in a management buyout from parent company Fitness & Lifestyle Group
- advising an independent pharmaceutical group on its acquisition of a number of pharmacies in Queensland.

RETAIL AND DISTRIBUTION

- advising a leading international distributor on the sale of their Australian distribution business
- advising the shareholders of an Australian-owned manufacturer and distributor of campers and caravans on the sale of the



company to a national outdoor recreation retailer

- advising New Zealand shareholders on the sale of a chemicals manufacturing and distribution business, based in Australia & New Zealand, including conducting comprehensive vendor due diligence (Australian aspects only)
- advising Wellnex Life Limited (**ASX:WNX**) on the acquisition of the teeth whitening brand, Mr Bright
- advising Onelife Botanicals Pty Ltd on its acquisition of the cannabis manufacturer, MediPharm Labs Australia Pty Ltd
- advising in connection of sale of quick service restaurant franchise business.

TRANSPORT AND LOGISTICS

- advising an Australian start-up business on the sale of its shipping logistics software assets to an ASX-listed shipping and logistics company
- advising Altus Traffic Pty Ltd on its acquisition of a traffic management and control business and associated entry into a long-term, multi-jurisdictional services agreement.

ENERGY, MINING AND RESOURCES

- advising global renewable energy business FRV-X on its significant investment in renewable energy software business Evergen
- advising Risen Energy on the sale of the largest solar farm in Western Australia
- advising Risen Energy on the acquisition of the project entity for the Campbells Forest Solar Farm
- advising a Europe-based wind turbine installation and service business on its proposed acquisition of an Australian wind turbine installation business
- acting for Quantum Graphite Limited (**ASX:QGL**) as bidder in its hostile takeover bid of ASX-listed Lincoln Minerals Limited (**ASX:LML**), and acting for QGL as applicant in associated Takeovers Panel proceedings
- advising the shareholders (jointly) of Zoskar Pty Ltd (t/a CCR Hose and Fittings) in connection with the sale of their shares to Hydraulink Pty Ltd
- advising Nexif Energy on the Australian aspect of the sale of its power generation assets in Australia and Southeast Asia to RATCH Group PLC.

TOURISM & HOSPITALITY

- advising a large Queensland company on the acquisition of a regional hotel.

ECM & DEBT FINANCING TRANSACTIONS

During the year, our team also assisted in a range of equity capital markets and debt financing transactions, including:

- advising Hydrix Limited (**ASX:HYD**) on various capital raisings by way of an accelerated non-renounceable entitlement offer, private placement and loyalty options offer
- advising Wellnex Life Limited (**ASX:WNX**) on a share purchase plan
- advising Enero Group Limited (**ASX:EGG**) in relation to a \$50 million facility from Westpac to fund general corporate and working capital requirements
- advising Altor Capital in connection with its secondary investment in The Dream Farm Pty Ltd
- advising Locality Planning Energy Holdings Limited in connection with a \$20 million facility with Roadnight Capital and a second \$10 million facility with Roadnight Capital
- advising a private lender in connection with multiple loans and associated security arrangements including to Blue Sky Beverages Pty Ltd, Consulting Coordination Pty Ltd, Finley Capital Partners, Protect and Collect Pty Ltd and Blaxtrees Pty Ltd
- advising Infinity Management Company Pty Ltd in connection with a \$40 million facility with Global Credit Investments Pty Ltd
- advising the private lending arm of a Hong Kong conglomerate in its Australian real property finance transactions
- advising a UK lender on the Australian security arrangements for a loan to a UK borrower in connection with an Australian share purchase acquisition.



Hot topics and trends



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

DUE DILIGENCE

The keen emphasis on due diligence was a consistent trend across 2022 and we continued to see buyers undertaking comprehensive due diligence reviews before progressing with the next stages of transactions. We also observed an increasing focus on cybersecurity as part of the due diligence process, following the uptick in security incidents last year.

INTEREST RATES AND SCRIP CONSIDERATION

Financing a deal has become more challenging. Sharp increases in interest rates (to the highest they have been in over a decade) resulted in an increasing reliance on scrip consideration, as buyers sought to reduce their costs of funding and their interest rate exposures. We expect that this trend will continue into 2023.

We also anticipate that companies with variable interest rate exposure will consider the disposal of non-critical assets and investments, which would result in increased opportunities for potential buyers.

The economic slowdown expected in 2023, coupled with continued high borrowing costs, is likely to cause an increase in M&A activity for businesses in distress. Buyers with cash reserves are likely to capitalise on such businesses, at a reduced cost.

DEFERRED PAYMENT MECHANISMS

The popularity of deferred payment mechanisms saw an upward trend in the second half of 2022. This was, in part, a result of interest rate rises and the availability of funding. We expect that the use of deferred payment mechanisms, particularly earn-outs, will be a frequent inclusion in M&A transactions over 2023.

CONTINUED IMPORTANCE OF ESG

ESG, or 'environmental, social and corporate governance', retained a prominent role in the deal process. There is a greater focus on upholding the spirit of good ESG principles, and buyers have incorporated these assessments into their due diligence processes. Buyers are more broadly assessing ESG risks, looking beyond strict legal compliance, and assessing whether risks exist that may fail to meet public expectations or cause reputational exposure.

REGULATORY APPROVALS

The latter half of 2022 saw an industry-wide extension in the average timetable for deal completion. A key contributor to this increase was the expanded scope of the foreign investment regulatory regime and the time periods associated with regulatory approval processes, such as applications to the Foreign Investment Review Board (FIRB) and the Australian Competition & Consumer Commission (ACCC). The time periods required for these regulatory approvals increase the risk of either party seeking to pull out of or vary a deal. In order to reduce this risk, participants should consider FIRB and ACCC implications during the preparation and strategy stages of a transaction and prepare any necessary applications as soon as practicable.

Interested parties should also be aware of the increase in FIRB fees, which generally doubled, on and from 29 July 2022.

INCREASE IN DEBT AND DEBT-TO-EQUITY DEALS

Given the increasing interest rate environment and the tightening of traditional bank finance, we have seen a rise in the number of debt and debt-to-equity deals. We expect that this trend will continue in 2023.



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