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M&A IN THE CITY

2020 <> 2021

LOOKING BACK & FORWARD ON

DEALMAKING

THE IDEAS WE SHARED IN 2020

2020 <> 2021

LOOKING BACK & FORWARD ON
DEALMAKING

2020 VISION: GLOBAL M&A MAY DEFY PREDICTIONS AGAIN
JAN 8, 2020

RIO'S RANGER CLEAN-UP HOSTAGE TO HEDGE FUND
FEB 7, 2020

INSOLVENCY: OUT OF SAFE HARBOUR AND INTO DRY DOCK
MAR 26, 2020

CAN DIRECTORS SEE THE REGULATORY THREAT ON CLIMATE?
JAN 10, 2020

ASX REDUCES SPEED LIMIT FOR BIG END OF TOWN
MAR 9, 2020

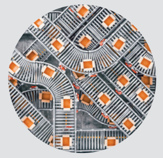
ASIC AND ASX RIGHT TO FAVOUR INSTITUTIONAL CAPITAL RAISINGS
APR 3, 2020

M&A IN AN UNCERTAIN WORLD – WEAR GLOVES!
APR 22, 2020

FIRB – PROTECTION OR EXTINCTION FOR CRITICAL MINERAL MINERS?
APR 28, 2020

RIDING THE NEXT CAPITAL RAISING WAVE
JUL 8, 2020

GLOBAL M&A CATCHES A COLD WITHOUT LINGERING EFFECTS
OCT 16, 2020



INSIDER TRADING AND START-UP FOUNDERS – THE FIX TO KEEP THEM LOCAL
DEC 14, 2020

'NETFLIX FOR MINERALS': A SOLUTION TO MINERS' FUNDING CHALLENGES
DEC 22, 2020

ASX CAPITAL RAISING SCRUTINY NOT WHAT IT SEEMS
APR 23, 2020

CONTINUOUS DISCLOSURE RELAXATION CAUSES JOY AND DESPAIR – WHO'S RIGHT?
MAY 28, 2020

FUNDING DISCLOSURE LITIGATION DESERVES ITS OWN LOCKDOWN
AUG 2, 2020

M&A DEALS ARE BACK IN TOWN
OCT 28, 2020

VOLATILITY REIGNITES AUSTRALIAN EQUITY CAPITAL MARKETS
DEC 18, 2020

We begin 2021 with high hopes and a low baseline... Surely it can't be that hard to exceed what 2020 delivered!? Interesting question. Our *2021 predictions are overleaf*. But first, what did we learn from last year?

2020 was unquestionably 'a year like no other'. Necessity certainly had us thinking creatively about how we do business. While we're happy to move on from 2020, we don't want to forget what it has taught us, so we've gathered together here the evolution of ideas we shared via the pages of the *Australian Financial Review*.

We began venturing that M&A in 2020 may 'defy predictions' – true, in many ways! While we certainly didn't see what was coming, one prediction continues to ring true – there would continue to be, we said, a major focus on the technology sector. The ESG focus on climate, we forecast, would loom ever larger for directors.

In February, we considered how assets requiring remediation could see their owners 'held hostage' – a function of Australian law's focus on fairness. Was it right?

We examined the implications of ASX's guidance update in early March – poking into implications for disclosure in takeovers – a pertinent issue particularly following the *Myer* class action.

Later that month coronavirus infected the ASX. We argued the bourse and regulator ASIC were right to ease placement rules and were right to prioritise survival over diluted shareholders, enabling companies to swiftly raise much-needed capital. Insolvent trading relief we welcomed as an opportunity to test directors' duties worth. Three weeks later ASX bowed to pressure on allocations, and introduced placement scrutiny rules we thought threw 'grit into the system' of temporary capital raising relief.

By April, the impact on M&A was apparent – opening up discussion on the use of material adverse change clauses and mechanisms for parties to keep deals alive. Geopolitics were having an impact too. In the interests of continued investment in the minerals sector we urged FIRB to take a balanced view on what constituted the national interest.

In May, the treasurer used COVID-19 powers to temporarily relax continuous disclosure and insolvent trading rules, a sensible step in a volatile environment we argued, hopeful the disclosure change in particular would serve to curb class action opportunism and open the way for a conversation on directors' duties.

The end of FY20 brought data, and reflection. Australia had accounted for $US22bn of the capital raised globally, thanks to the system discussed above. Room for improvement? Of course. We suggested 4 ways further placements could be made smoother and more inclusive.

In August, with news federal Parliament would examine the litigation funding industry, we again made the case for regulating rampant rent seeking in disclosure class actions – pointing to the crippling cost of D&O insurance and risk of chilling entrepreneurial endeavour right when it was needed most.

Our third annual M&A conference in October – held with Allens and HSF – brought welcome confirmation of the opportunity to opine on the recovery in M&A and the ingenuity and adaptation that had enabled deals to get done.

As the year wound up, we began reflecting, and looking forward to renewed confidence for equity capital markets in 2021. We welcomed the chance to think about a fix to incentivise start up founders to list locally, and how streaming deals might help resources companies adapt to the geopolitical shifts that have constrained foreign investment.

What will 2021 bring? Read on... >

THE YEAR AHEAD PREDICTIONS FROM KEY PARTNERS

MARKET OUTLOOK

DAVE FRIEDLANDER & NIGEL HUNT

The market disruption in 2020 did a number of things. For some it presented an existential challenge, others were forced to respond very quickly, adapt and go hard to drive their businesses. A common thing we saw though was that disruption prompted many companies to step back and re-assess their longer-term vision and focus. The results of those strategic assessments will drive M&A volumes throughout 2021. We're already seeing this - showing up as sales processes for certain assets and strategic acquisitions to either build scale, move into areas seen to offer better growth prospects or longer-term viability. Increased M&A volume often follows activity in Equity Capital Markets, of which there has been plenty over the past 6 months. The combination of re-focused companies, many with strengthened balance sheets and emerging economic confidence will drive M&A activity in 2021. Resources and resources related businesses will be active given the longer-term industry outlook and commodity price tailwinds. Technology, including online businesses (principally in the fintech and healthtech sectors) are areas where we expect increased M&A activity. We think there is pent up demand for transactional activity combined with all-time low interest rates, meaning that capital is looking for a 'home' and will get deployed across 2021.

SECTORS TO WATCH

NICOLA CHARLSTON & WILL HEATH

2021 will be a year of the 'haves' and 'have-nots' determined primarily by how the relevant company's business and sector is impacted by COVID-19 and geopolitical headwinds. Technology and infrastructure businesses performed strongly in 2020 and will have the opportunity to explore growth pathways, including M&A, in 2021. The financial services sector will continue to remain active as post-Hayne re-alignment of businesses continues, while new entrants in the buy-now/pay-later space and banking will generate attention. The huge disruption caused by COVID-19 on the tourism and leisure sector may see a shake-out, either in the form of industry consolidation or (if a 'new-normal' can't be reached as expected) restructuring. Similarly, businesses relying on cross-border trade flows and/or cross-border investment are likely to live in continued short-term uncertainty, as national governments pivot between trade and protectionism.

DISTRESSED M&A

TIM KLINEBERG & MARK VANDERNEUT

As we move into 2021 conditions remain far from benign with COVID continuing to ravage the global economy and Government intervention in many aspects of the markets and life in general. In 2020 we have seen temporary reforms aimed at delaying the economic impacts of lockdown and seeking to facilitate ongoing trading, in many cases for businesses with negligible or even zero revenue. In 2020, the uncertainty impacted deal flow in distressed M&A transactions which we might otherwise have seen if the Government had not been as active.

The outlook for distressed M&A in 2021 is more positive. We expect to see more distressed targets up for sale as the temporary COVID reforms roll off and market forces reassert themselves in various sectors. Some global groups will be looking to consolidate and focus on core businesses and markets, which is expected to lead to divestments in Australia and the Asia-Pacific region. On the buy-side, there is substantial dry powder with many investors well-funded and looking for higher yielding investments. Important to keep a close eye on the various maturing distressed situations in various sectors including retail, resources, hospitality and travel and leisure.

ACCC AND MERGERS

CAROLINE COOPS & SHARON HENRICK

Deals in the tech, energy, aviation and financial services sectors can expect heavy scrutiny from the ACCC as the ACCC continues its focus on what it sees as increasing concentration and major players flexing their muscle in these industries. ACCC Chair, Rod Sims, has also laid down a potential stumbling block in the quest for distressed assets as the impacts of COVID hit home, saying that the ACCC will be watching out for troubled firms seeking to sell to their main competitor. In what may be a surprise to those conscious of their directors duties and maximising shareholder returns, Sims has put on record that "Just because the main competitor is going to pay you the most doesn't mean they're the ones you sell out to. If there's other buyers, then you should be open to those because that may be a more competitive outcome." In what may be an ominous signal for some he added: "Sometimes the better outcome is to let the firm exit, if the only alternative is to sell to the dominant player."

Also on the ACCC's radar when it comes to mergers is the "monopolist's premium" when buying up companies or assets. Sims has said that there is "a correlation between how much you get paid for being acquired, and how anticompetitive it is. Bigger players benefit more from removing the competition. That's why we're concerned." So opening up the chequebook and paying what could be seen by the competition regulator as above the odds is likely to lead to acquisitive companies experiencing the pointy end of the ACCC's inquiries, further complicating assessments of deal and execution certainty.

CROSS BORDER / REGULATORY

PAUL SCHRODER & INTAN EOW

While cross-border M&A will continue to be significant, we expect it will remain at the flatter levels of more recent years. Key drivers of this spill-over from 2020 in the form of continuing trade tensions with China, retreat by some global groups to core businesses and markets, and strict quarantine preventing in-person diligence. The 1 January 2021 lifting of FIRB's $0 thresholds introduced in response to COVID-19 will provide limited relief but will be tempered by the impact of the most significant reforms to Australia's foreign investment regime in over 45 years.

There will be opportunities for those who can navigate complexity as foreign investors seek local partners, and Australian self-sufficiency becomes a national priority. FIRB's focus will be on national security, critical infrastructure, and data protection, but the increasing uncertainty and cost will benefit domestic bidders over their foreign rivals in other sectors too.

SOUTH AND SOUTHEAST ASIA

JAKE ROBSON & MICHAEL LAWSON

We see 2021 as being a mixed bag in the region. The economies in certain countries, such as India, Vietnam and Singapore, show signs of continuing the growth seen in Q4 2020, driven in large part by M&A activity picking up. In other countries, such as Indonesia and Thailand, which are very dependent on tourism and are still suffering high levels of COVID-19 infections, we are not likely to see any significant recovery until well into H2. We see growth in the region being driven largely by activity in the tech, consumer, telecom and financial services sectors this year. We will see the U.S. and Chinese tech giants continue their expansion plans into the region primarily through investments into domestic and regional digital platforms whilst at the same time looking to invest heavily into under-developed tech infrastructure such as data centres, telecoms towers, sub-sea cable and fibre projects, either alone or in partnership with large domestic or regional players and Governments.

We will also see a focus from financial institutions (largely left behind by the fintech revolution across Asia over the last 3-5 years) on increasing their reach and accessing previously unbanked or underbanked customer bases. Expect to see these entities partnering with, and also often investing in, digital platforms such as e-commerce players and ride-hailers. As far as PE-backed M&A is concerned, we feel that 2021 will see a deployment of the very significant amounts of capital which had been held back in 2020 now that there is light at the end of the tunnel as far as COVID-19 is concerned with the vaccination rollouts across the region and globally. Whilst we do not see a major wave of distressed M&A activity in the region in 2021, there will be significant amounts of opportunistic deals driven by corporates' desire to divest non-core assets and businesses.

KEY CONTACTS

David Friedlander
Partner, Head of Public M&A
Sydney / Melbourne
david.friedlander@au.kwm.com
T +61 417 922 444

Evie Bruce
Managing Partner,
M&A – Sydney
evie.bruce@au.kwm.com
T +61 448 285 402

Nicola Charlston
Partner, Melbourne
nicola.charlston@au.kwm.com
T +61 412 840 759

Caroline Coops
Partner, Melbourne
caroline.coops@au.kwm.com
T +61 438 654 810

Intan Eow
Partner, Sydney
intan.eow@au.kwm.com
T +61 439 447 364

Will Heath
Partner, Melbourne
will.heath@au.kwm.com
T +61 415 603 240

Sharon Henrick
Partner, Sydney
sharon.henrick@au.kwm.com
T +61 438 323 765

Nigel Hunt
Partner in charge, Perth
Nigel.Hunt@au.kwm.com
T +61 419 818 819

Tim Klineberg
Partner, Head of Restructuring
& Insolvency – Sydney
tim.klineberg@au.kwm.com
T +61 451 302 009

Michael Lawson
Partner, Singapore
michael.lawson@sg.kwm.com
T +65 9026 6929

Jake Robson
Partner, Head of Corporate / M&A
South & South-East Asia – Singapore
jake.robson@sg.kwm.com
T +65 8725 3592

Paul Schroder
Partner, Sydney
paul.schroder@au.kwm.com
T +61 405 571 923

Mark Vanderneut
Senior Associate, Sydney
mark.vanderneut@au.kwm.com
T +61 400 939 451

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