CHINAGOABROAD
Where China meets the world

TOP 10 PREDICTIONS FOR M&A IN 2011

1. Resources M&A

M&A continued to dominate the landscape in 2010 and it probably doesn't take Nostradamus to predict that resources will feature prominently in 2011. Below that broad title, we expect to see continuing high levels of activity in coal, gold/copper, uranium and oil and gas.

We also expect a diverse range of acquirers. In 2010, we saw significant acquisitions made by companies not only from China (eg PetroChina/Royal Dutch Shell Plc's $3.4 billion acquisition Arrow Energy and Minmetals US$1.8 billion acquisition of various assets from China Minmetals Non-Ferrous Metals), but also from Thailand (Banpu's $2.5 billion acquisition of Centennial Coal) and Canada (Goldcorp Inc's C$3.6 billion proposed acquisition of Andean Resources). We expect this to continue in 2011.

2. Schemes of arrangement taking centre stage

The *Freehills 2010 Public M&A Report* showed, consistent with previous years, an increase in the use of schemes of arrangement to effect acquisitions of public companies. We expect this trend to continue in 2011.

Certainty of timing, an all or nothing outcome and stakeholders (including ASIC and the Courts) becoming more adept at compressing the timetables for schemes seem to be the key drivers leading to an increasing use of schemes.

We also expect to see more hostile scheme proposals via bear hugs being applied.

3. The continuing rise of Asia

In 2010 we saw continuing interest in Australian assets from Asian based acquirers. Significant assets attracted acquirers from China, Singapore, Thailand and India. Deals in this category included:

- Singapore Exchange's proposed $8.4 billion merger with ASX Limited

- Banpu's $2.5 billion acquisition of Centennial Coal

- Wilmar International's $1.75 billion acquisition of CSR's sugar and renewable energy business, Sucrogen, and

- Wah Nam's proposed $800 million takeover offer for Brockman Resources.

We expect Asian based acquirers to feature prominently in 2011. While the jurisdictions we have mentioned will continue to provide bidders in M&A deals, we also suspect one or two other Asian jurisdictions will be added to the ranks of being active in Australian M&A in 2011.

4. A more active FIRB – in line with the worldwide trend

Given the increased M&A activity towards the end of 2010 (which we expect to continue in 2011) and particularly in the sensitive resources and agribusiness sectors, we expect to see a more and more vigilant FIRB.

In these times of continued economic concerns, particularly in Europe and North America, we expect to see a general worldwide trend of foreign investment regulatory scrutiny and intervention on the basis of local issues and concerns, such as BHP and Potash Corp.

In Australia this will manifest itself in FIRB probing and seeking additional information and an increased incidence of approvals being granted subject to conditions and undertakings relating to maintenance of Australian head office, industry impacts, pricing of export of product and maintenance of employment. Also expect some outright rejections (which will perhaps be presented as withdrawals of applications).

5. Agribusiness – we got it, others want it

As the last few years have demonstrated a race for resource security, we are beginning to witness a similar race for security of food and other agricultural products. In 2010, we saw:

- Agrium Inc's. (Canada) acquisition of AWB Limited

- Wilmar International Limited's (Singapore) acquisition of CSR's Sucrogen business, and

- Ebro Foods (Spain) make a A$600 million takeover offer for rice producer Ricegrowers Ltd, also known as SunRice.

We expect to see this intensify in 2011, with more deals announced in the agricultural sector.

6. ACCC – increasing intervention but we expect some return fire

Market observers have noticed a more interventionist ACCC in 2010 with more deals blocked and a hard line approach to merger review enquiries. We expect more of the same in 2011.

The rationales for some decisions have been met with some disquiet. Many rejected merger parties, while considering the decisions to be wrong, have opted against taking on the ACCC in what may prove to be a long running public battle.

We think that will change in 2011 – already at the end of 2010 we have seen someone, faced with a rejection in the informal clearance process, take on the ACCC. This will continue in 2011.

7. More cash deals – capital raisings to support acquisitions

Cash acquisitions gained in popularity in 2010. Many of those had capital raisings attached to them to fund those acquisitions. Larger deals in this category included:

- **Brambles Limited / IFCO Systems NV** – where 50% of the €923 million acquisition price will be funded using an underwritten share purchase plan and underwritten dividend reinvestment plans (for next 3 dividends); and

- **Macarthur Coal Limited / MDL 162** – where Macarthur raised $335 million through a institutional placement to fund the acquisition of a Bowen Basin mining tenement.

Separately, press reports suggested ANZ was considering a large capital raising to fund a proposed acquisition of Korea Exchange Bank which is now on hold.

We expect cash to be king in 2011. While there will be scrip deals on offer, we expect to see a higher proportion of cash deals in many cases with concurrent capital raisings.

8. Unlocking of lock ups and breaking of break fees

Lock up devices, in particular, no shops, no talks, matching rights and break fees, appear to have become standard fare for agreed/friendly deals—often with little negotiation.

With increased M&A activity in 2011 we expect to see more transactions with rival bidders, with second and third bidders seeking to upset and disrupt lock up devices. This should result in increased Takeovers Panel and court review of devices and, no doubt, observations—like in *Ross Human Directions*—that the devices have gone too far.

This is in line with a developing trend in other jurisdictions as well. For example, the UK Takeover Panel has issued a consultation paper proposing that deal protection measures be prohibited, except where a target has put itself up for public auction. This radical change was proposed *notwithstanding* a majority of submissions agreed with retaining the current approach. Whether these proposed changes come into force in the UK remains to be seen. We expect some watering down.

One thing is clear though: expect regulators to be on the look out for lock ups which over reach.

9. Australians go abroad with high A$ making foreign acquisitions cheaper

In 2010, many commentators asked the question as to whether the high Australian dollar would put a dampener on inbound M&A activity. That inbound activity in 2010 did not seem to be too deterred by the higher exchange rate.

Towards the end of this year, we have already seen what we think will be a trend of increasing importance in 2011: Australian companies utilising a higher Australian dollar to make acquisitions abroad. This may often be coupled with domestic capital raisings to fund those acquisitions.

We expect foreign deals by Australian companies such as BHP's $40 billion bid for Canada's Potash Corporation, Brambles €923 million proposed acquisition of Germany's IFCO Systems NV and ANZ's approx $4billion bid for Korea Exchange Bank to be a feature of the M&A landscape in 2011.

10. **The return of the big PE bid**

It has already started the second half of this year with TPG and Carlyle taking out Healthscope and KKR approaching Perpetual.

However with unused investment commitments and debt becoming more accessible we expect to see many more private equity approaches and bids in 2011. The conservatism of the last three years has resulted in many large and mid-market companies with low gearing and stable cash flow….a nice combination for a private equity pursuer.

The time to strike would seem to be now, particularly, before the general economy improves and asset prices increase.

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