India Investment News

HD **Herbert Smith Freehills Partners' Top 10 Australian M&A Predictions for 2015**

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Dec. 18 -- UK-based Herbert Smith Freehills issued the following news release:

Herbert Smith Freehills corporate partners Tony Damian and Rodd Levy have released their annual top 10 M&A; predictions for Australia in the coming year. They have also looked back on the accuracy of their predictions for 2014.

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Tony and Rodd's predictions for 2015 are:

1. Increased M&A; activity in 2015 as companies seek to grow

If M&A; was back in 2014, in 2015 we predict we will see the decision makers in **board** rooms continuing their focus on strategic (but disciplined) growth. This will drive M&A; next year. Companies are under pressure to deliver a growth vision. This sentiment applies to both local and overseas **board** rooms. Australia will remain an attractive destination for inbound M&A; in 2015. Throw in strong sectoral activity and a splash of private equity and it all points to a busy year ahead.

2. Sectors to watch

Our three picks for 2015 are **property**, resources and financial services. **Property** had a significant role to play in 2014 - deals included Commonwealth Banks exit from its A$20 billion **property** platform as well as the Westfield **transaction**.

We expect this to continue.

Resources should also be active but we see this as more consolidation plays than multi-billion dollar transformational deals.

Finally, the financial services sector should also provide deal volume, perhaps fuelled by the continuing refinement of the regulatory settings around capital standards.

3. Increased M&A; activity from **Chinese** acquirers post FTA

In terms of inbound M&A;, we expect to see **Chinese** acquirers take a position of prominence in the Australian M&A; landscape in 2015. The proposed changes to investment thresholds under the **Chinese**-Australia Free Trade Agreement send a practical message of encouragement to **Chinese** private enterprises.

4. Developments in **Chinese** regulatory approvals

Related to the point above, the relaxation of the NDRC outbound investment approval regime and the implementation of a number of reforms by MOFCOM's Anti-Monopoly Bureau will be of importance in 2015. Under the new outbound investment regime, only **Chinese** outbound investment in 'sensitive countries' or in 'sensitive industries' will be subject to NDRC verification. All other outbound investment will simply be required to be registered with NDRC. The reforms implemented by MOFCOM's Anti-Monopoly Bureau over the past year are aimed at streamlining the merger review process and reducing wait times for **transactions** that are unlikely to cause competition concerns, which will assist non-**Chinese** deals where the parties have sales in **China**.

5. Target companies to focus more on bidder risk and uncertainties on deal structuring

2014 was marked by a long series of proposed **transactions** that did not proceed. Sometimes deal terms could not be agreed (eg Myer's proposed merger of equals with David Jones). Sometimes due diligence left bidders claiming uncertainty about asset valuations (eg KKR's reported position after the process run by SAI). And sometimes the target and the bidder were still apart on acceptable values after due diligence (eg KKR and Treasury Wines).

We think this history will lead to much greater scrutiny by targets on bidders in 2015 as targets will weigh up the potential advantages of engaging with bidders compared to the downside. This may cause targets to seek greater protection as a condition of engaging with a bidder.

6. Current practice of not disclosing approaches to encourage more approaches to be made

While there have been some exceptions, recent standard market practice has been for target companies not to disclose to the market that they have received an approach from a potential bidder, so long as the approach remains confidential. This change in approach, encouraged by changes to the ASX listing rules and the rewriting of Guidance Note 8 in 2013, has meant that targets and serious bidders are more willing to hold sensible discussions without the pressure to immediately disclose what they are doing. We consider that this has been good for the market and will continue to foster an environment where bidders are prepared to approach listed companies with acquisition proposals.

7. Competition law reform to allow public interest to off-set lessening of competition

The key M&A; reform recommendation from the Harper root and branch competition law review is to allow the ACCC to have regard to any public benefit that may arise if a merger which may reduce competition in a market proceeds. At present, this is a consideration only open to merger proposals that come before the Australian Competition Tribunal (as demonstrated by Murray Goulburn's bid for WCB and AGL's acquisition of Macquarie Generation). We consider that a change in the law in this respect will be a good thing and will encourage more M&A; activity.

8. Truth in takeovers rule to remain in full force, despite some market commentators criticising the rule

The truth in takeovers rule has come in for a bit of a battering recently, particularly as the rule applies to shareholders. The rule has been criticised as not allowing bid prices to be maximized.

We disagree with this criticism. The main purpose of the rule is to promote market integrity. We consider that the market's ability and confidence in relying on statements made during takeovers is paramount to the operation of an efficient market. While we have advocated some codification of the rule (such as clarifying the period for which a bidder is bound by a best and final statement), we consider the rule is an important part of our market and do not expect the rule to be watered down.

9. Creative deal structures

In 2014 we saw innovative deal structures continue to emerge. Deals such as the acquisition of Atlantic Gold by Spur Ventures (under which the **transaction** would, had the scheme of arrangement been voted down, have immediately flipped into a divestiture of all the operating entities with the Atlantic Gold **group**, leaving just the listed shell behind - this would have required just an ordinary resolution compared to the 75% vote required by the scheme) demonstrated that even now, there remain creative new ways of executing deals. As the pressure mounts to make deals come off, we expect more of this in 2015.

10. Limited law reform, unless it can cut red tape significantly

There are a number of reforms that we and others have advocated for some time: greater clarity about disclosure of equity derivatives, a more bidder friendly approach to joint bids, repeal of the escalator prohibition and defined limits to the truth in takeovers rule.

Canberra has, unfortunately, not seen fit to take up any significant reforms. One notable exception has been the change to the law to allow members of the Takeovers Panel to discharge their duties even if overseas. That is consistent with the government's desire to cut red tape. We do not see any change in approach for 2015, in contrast to other jurisdictions (notably the UK) which have felt free to adjust their rules to meet changing market conditions and attitudes.

Review of 2014 predictions

How did we do last year? We are prepared to call the following predictions as having come true:

* M&A; is back,

* The return of the contest,

* Welcome back, ASIC (note its active role in a number of deals, including David Jones),

* Deal protection under scrutiny (evidenced by continuing judicial interest on deal protection measures in schemes),

* A big year for FIRB (if interest in **residential** housing counts!),

* Competition clearance alternatives,

* Shareholder activism arrives (witness the Roc Oil**transactions**).

The following predictions were perhaps slightly less prominent:

* Bid conditions in the spotlight,

* Warranty insurance becomes mainstream,

* Creative consideration.

Source: Herbert Smith Freehills

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