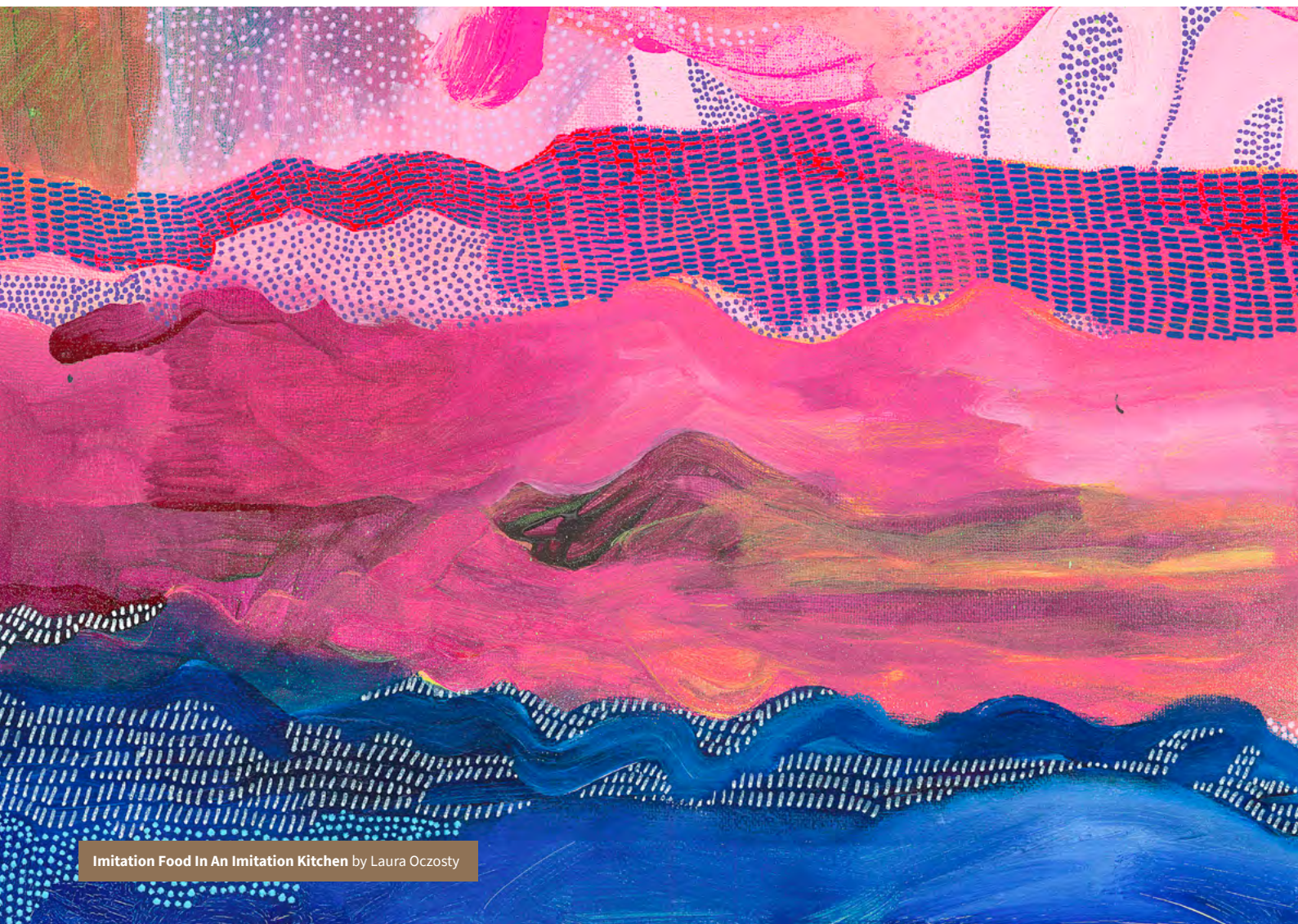


IT'S PUBLIC

KWM M&A INSIGHTS | AUGUST 2025



WELCOME TO THE SECOND EDITION OF IT'S PUBLIC

your essential guide to Australian public M&A from KWM.

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WHAT'S INSIDE?

- In **The Hard Case of James Hardie and What's Next For ASX**, Antonella Pacitti and Will Heath dissect the recent investor backlash against ASX's approach to waivers in cross-border deals. They provide a clear-eyed look at the ASX Listing Rules, offering crucial insights into the debate around shareholder approval and the balance between market facilitation and investor protection.
- **Dealing In Transition: What's Ahead For Energy M&A?** by Jonathan Grant, Rod Smythe, and Josh Thorneycroft, explores the significant M&A opportunities arising from Australia's energy transition. This piece breaks down the five key forces shaping the energy market — from the role of data centres and storage solutions to the evolving place of gas — and offers strategic guidance for investors navigating this dynamic sector.
- **"The View from NYC"** by Nicola Charlston and Anthony Boogert brings you a global perspective on dealmaking. Drawing from their recent experiences in New York, they highlight cautious optimism in capital markets, the rising influence of "sovereignty" on M&A decisions across critical industries, and the increasing prominence of political considerations in regulatory approvals.
- And for a deep dive into the dealmaking implications of Australia's changing regulatory landscape, check out the transcript of our podcast **"Merge Ahead: Navigating Australia's New Merger Regime"** featuring Antonella Pacitti, Lizzie Knight, and Jennifer Barron. Their conversation unpacks the newly implemented ACCC mandatory merger notification regime, the interplay between ACCC and FIRB processes, and critical considerations like "Hell or High Water" clauses and the growing impact of national security considerations on foreign investment.

We trust you find this edition insightful and helpful in navigating the complexities of public M&A.

MEET THE EDITORS



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THE VIEW FROM NYC

Nicola Charlston and Anthony Boogert recently spent a week in New York City meeting with clients and advisers and attending the IBA's annual M&A Conference. With global dealmaking at a crossroads and the US market navigating a complex mix of optimism and caution, the timing was ideal to hear firsthand perspectives. Here are the key themes that emerged from their discussions and the conference.

GLOBAL M&A ACTIVITY IS 'SO-SO'

The positive transactional momentum leading into the start of the second Trump Administration lost steam after Liberation Day, as shifting political signals and policy ambiguity injected renewed caution into the market.

However, while M&A participants reported that 2025 has fallen short of the optimistic expectations set earlier in the year, the reality also demonstrates more resilience than some of the gloomier narratives suggest — particularly outside of sectors hit hardest by tariffs and consumer demand fluctuations.

Many consider that uncertainty is no longer a disruption — it's the baseline. Rather than waiting for clarity, market participants have increasingly recognised that ambiguity, whether geopolitical, regulatory, or macroeconomic, is the new operating environment. The dealmaking playbook is adjusting accordingly.

'SOVEREIGNTY' – THE THEME OF 2025

The concept of 'sovereignty' is set to become a defining theme in 2025, shaping government policy, corporate strategy, and investment decisions. This renewed focus on national self-sufficiency and control over key sectors is expected to drive a significant increase in deal activity across several critical industries including:

- **Defence:** With growing geopolitical tensions and a heightened emphasis on national security, governments are likely to prioritise investment in domestic defence capabilities. This is expected to result in increased mergers, acquisitions, and strategic partnerships within the defence sector, as countries seek to secure supply chains, develop advanced technologies, and reduce reliance on foreign suppliers in the defence industry.
- **Domestic Manufacturing:** The drive for sovereignty will also encourage a resurgence in domestic manufacturing, with governments and businesses looking to strengthen local production capabilities to mitigate risks associated with global supply chain disruptions. This trend is likely to result in a wave of consolidation and investment in manufacturing assets, as well as the establishment of new domestic facilities. Sectors such as pharmaceuticals, electronics, and automotive components may see heightened deal activity as firms seek to onshore production and secure greater control over essential goods.
- **Critical Minerals:** For many nations, access to critical minerals — such as lithium, cobalt, and rare earth elements — has become a strategic priority, given their importance in technology, energy, and defence applications. This is expected to drive increased investment, joint ventures, and acquisitions aimed at securing reliable sources of these minerals.



REGULATORY OVERLAY

Political considerations are now playing a far more prominent role in the regulatory approval of major transactions than ever before. In the US in particular, the traditional model — where dealmakers relied heavily on established lobbying channels and regulatory expertise — has been disrupted by a more direct and assertive role of the executive branch. The result is that regulatory decisions are no longer solely the domain of independent agencies or technical experts; but instead are subject to the prevailing political climate and the priorities of the government at the time.

A prominent example of this new reality is the proposed acquisition of US Steel by Nippon Steel. In this case, the US Federal Government has considered taking a so-called “Golden Share” — a special class of share that would give the government veto power or other special rights over key decisions. This move is emblematic of the increasing willingness of the executive branch of government to assert direct control over transactions deemed to have strategic importance, particularly where foreign ownership of critical assets is involved.

CAUTIOUS OPTIMISM FOR PRIVATE EQUITY AND CAPITAL MARKETS

After a prolonged period of uncertainty, cautious optimism is emerging that we will see a new wave of private equity and capital markets transactions. While private equity exits remain challenging, largely due to the mismatch between high internal valuations and buyer price expectations, the broader macroeconomic backdrop is becoming more supportive. Decreasing interest rates, stabilising inflation, and record levels of dry powder are creating favourable conditions for private equity sponsors to re-engage in dealmaking.

At the same time, early signs of recovery in the capital markets are beginning to materialise, with the IPO window gradually reopening, led by momentum in the US.

Together, these factors suggest a more constructive environment for transactions in the second half of the year, even if caution continues to temper deal execution.

SECTOR FOCUS

The energy sector continues to be a focal point in cross-border M&A activity, driven by a convergence of geopolitical, technological, and structural forces. Governments remain acutely focused on energy security and reducing reliance on foreign energy sources — a priority that has intensified since the onset of the Ukraine conflict.

Simultaneously, the global push toward energy transition and electrification is reshaping the sector, with significant investment flowing into renewables, storage, and infrastructure. Adding further momentum is the surging demand for power from data centre operators, spurred by the rapid growth of AI and crypto mining.

These overlapping dynamics are sustaining strong deal flow and strategic interest across both traditional and emerging energy assets, with buyers navigating regulatory and political complexity in pursuit of long-term value.



THE HARD CASE OF JAMES HARDIE AND WHAT'S NEXT FOR ASX

Antonella Pacitti & Will Heath

“This is fundamentally not in the spirit of the law or the listing rules. It’s basically treating Australian shareholders with contempt.”

This was the chorus of a group of Australia’s largest investors following James Hardie’s April announcement of its (now complete) merger with Azek and proposed move to a primary listing on the NYSE. The target of this investor backlash was ASX, criticised for its apparent penchant for granting waivers to facilitate ‘terrible deals’ at the expense of local shareholders. Investors argued against ASX facilitating cross-border scrip-for-scrip deals that dilute Aussie holdings or shift the company’s centre of gravity offshore.

WHERE ARE WE NOW?

No knee-jerk changes have yet been made to the ASX Listing Rules or Guidance Notes. ASX is taking a measured approach to the feedback. It has just completed roundtable consultation with those same investors, with three key themes seemingly up for discussion:

1. lowering the threshold at which cross-border scrip-for-scrip deals will require shareholder approval
2. retesting shareholder approval requirements for ‘significant’ transactions under the ASX Listing Rules
3. requiring that dual-listed entities - presumably of any kind (whether Foreign Exempt Listings or a dual-listing in the ‘primary’ sense) - obtain the approval of shareholders before they are permitted to drop their ASX listing

ASX will issue a consultation paper with more details in coming months, with rule changes (if any) or updated guidance to follow in a year or so. KWM will prepare a submission and we welcome your ideas – please get in touch!

In the meantime, let’s get some scene-setting points straight: ASX does a fantastic job at regulating our market. Its Listing Rules and Guidance Notes are, by global standards, generally transparent and clear. And credit to ASX for listening to investor feedback and initiating this consultation process. Second, a lot of noise was made in relation to a couple of issues which were legally clear, as we’ll explain below. And, third, James Hardie is a pretty uncommon ASX-listed case. Sure it is listed on ASX, but it isn’t an Australian public company and its ASX primary listing had been accompanied by a secondary listing on NYSE for over two decades – the result of various complex cross-border transactions and redomiciling which had already been approved by shareholders. Should one relatively unique deal trigger a rewriting of the rules?



WHAT DO THE ASX LISTING RULES SAY? (AND DID THE DEAL COMPLY?)

While it may not have been consistent with the antagonists' media narrative, the ASX Listing Rules and Guidance Notes on deals like James Hardie are pretty clear, the result of considerable market consultation and careful, incremental improvement. In summary:

- **Scrip-for-scrip issuance:** As it is, under Chapter 7 of the ASX Listing Rules, listed entities can issue up to 15% of their equity capital without securityholder approval, and even more in the context of an Australian takeover or scheme, unless it amounts to a 'reverse takeover' (ie one where the bidder issues 100% or more of their existing equity securities under, or to fund, the bid or scheme). This is backed up by our general law, which (at least for Australian companies) did away with authorised capital concepts some time ago, vesting considerable discretion in directors to raise and apply capital in the best interests of the company. ASX's Guidance Note on Chapter 7 has said for some time that ASX will consider granting a waiver to extend the Australian takeover/scheme exception to a listed entity making a takeover offer or merging with a foreign company or trust provided that it satisfies ASX that the deal is subject to an applicable regulatory regime equivalent to the Corporations Act. A further note in ASX's guidance makes it clear that ASX has previously granted waivers in relation to cross-border deals involving the US, UK, Canada and New Zealand, amongst other jurisdictions.
- **Company transforming deals:** Under Chapter 11, an ASX listed entity can also acquire a business or merge with one without its shareholders agreeing to it, provided the transaction does not constitute a significant change in the nature or scale of existing activities or a disposal of the main undertaking. ASX guidance confirms that shareholder approval is required for certain 'back door' listings as well as abandonment of a listed entity's main undertaking, and clear quantitative and qualitative criteria exist for determining whether deals may result in significant changes. Doing a controversial or bad deal is not a reason for ASX to require a shareholder vote.
- **De-listings:** The Listing Rules state that a listed entity may ask ASX to remove it from the ASX official list at any time, but ASX is not required to act on the entity's request for removal and may require conditions to be satisfied. Again, ASX's Guidance Note sets out clear criteria and notes that in some cases approval of security holders may be required before an entity can be removed from listing on ASX.

Investors may legitimately choose to debate the deal's commercial rationale, but criticism of its conformity with the ASX Listing Rules is not well-founded.

HOW DOES ASX APPLY ITS LISTING RULES?

Overall, when it comes to the ASX Listing Rules and investor protection, it's always about disclosure, dilution or changing the investment case mid-hold; and the latter two trigger a say by shareholders only if it crosses acceptable thresholds. Otherwise, ASX is largely seen as a facilitator of public markets, not a regulator. And that's an important distinction. It's also why many of ASX's rules bring with them a potential for exercise of ASX discretion and a clear rule of interpretation that speaks to both the spirit and the intention of the rule in question – all of which can work in favour of that facilitation, or equally against it. In our experience, ASX carefully weighs up the commercial imperatives of a transaction with its role in protecting investors (against both dilution and a bait-and-switch to their investment case) when determining how to apply the Listing Rules and whether to invoke its discretions. And, as we have noted above, ASX's guidance notes are by in large clear.

Is it ASX who should be more prescriptive and restrictive in its rules of engagement (as the James Hardie investors would say)? Is it for our corporate and securities laws to reset the dynamic between directors and shareholders by adding more tools to the activist toolkit? Or is it simply a case of applying the existing laws and policy settings in a manner that (chooses to) read the room?

James Hardie and Azek exemplifies the tension here: by treating the Delaware-governed US merger as if it were an Australian scheme proposal under Part 5.1 of our Corporations Act, ASX allowed James Hardie to issue about 35% of its issued shares to Azek shareholders without existing shareholders having a say, leaving many feeling sidelined. But, let's be clear: that decision by ASX was entirely in line with its Guidance Note and previous deals. You wouldn't have had to look much further than BHP's bid for Anglo or REA's bid for Rightmove to see how ASX-listed entities attempt outbound M&A without shareholder approval.

And it's hard to say whether James Hardie's investors would have been quite as outraged if the 'terrible deal' involved acquiring an Australian target and a Corporations Act-governed transaction; but there would have been no need for an ASX waiver if it did...

HOW DID JAMES HARDIE PLAY OUT?

ASX's decision to grant the waiver to James Hardie was justified because there was a comparable regulatory regime governing its merger with Azek, one that ASX could relate to, in the US and one which ASX had stated clearly in its Guidance Note was a jurisdiction in respect of which ASX had previously granted waivers. Put another way: it isn't for ASX to second-guess the SEC or the Delaware Courts, any more than it is for it to second-guess the role of ASIC or the Australian Courts in regulating Part 5.1 merger schemes; so why insist on a shareholder approval requirement?

But what of Chapter 11? It's really just a means of ensuring that the investment narrative told and sold – at the outset of an entity's life on ASX and developed since - is consistent with material corporate actions that are later pursued by the entity, and does not require the hand brake to be applied by shareholders or by ASX (from a suitability for listing perspective) before directors get carried away.

We've negotiated enough cross-border mergers to know that if a bidder requires its own shareholder approval – especially in a competitive or contested scenario – it can seriously undermine deal certainty and potentially derail an otherwise superior proposal for shareholders. It often comes with demands for a supersized reverse break fee, even where there are common shareholders between bidder and target and a potential for coercion that would make the Takeovers Panel balk (if you tried it with an Australian target). Admittedly, the 100% reverse takeover threshold – which is the ultimate no-go in Chapter 7 of the ASX LRs – already more permissive than in the US or the UK. But a 2017 ASX review of that did not seem to invite the same push for change as James Hardie provoked...

WHERE TO FROM HERE?

Regulatory oversight of dealmaking continues to increase, and there are some meaningful reasons to accept that. But introducing additional shareholder approval requirements or lowering the threshold at which directors must defer to shareholders is not regulatory oversight. At its worst, it's delegating complex decisions to a disparate and oft misaligned group (of individuals, corporates and funds), each with their own interests and varying abilities to digest increasingly voluminous materials. That's not to say that shareholder approval – for the bidder – doesn't have its place, even when not strictly required but otherwise appropriate. A well-functioning and advised board should always consider whether a transaction is so transformative (for a bidder) that it ought to be considered by the owners of the bidder too, and a strong investor relations culture will ensure that these considerations are worked through regardless of what the law, the regulators or the facilitators have to say.

But let's not change the Listing Rules, Guidance Notes or wave goodbye to ASX waivers – or a board's ability to execute - because of one contentious deal.

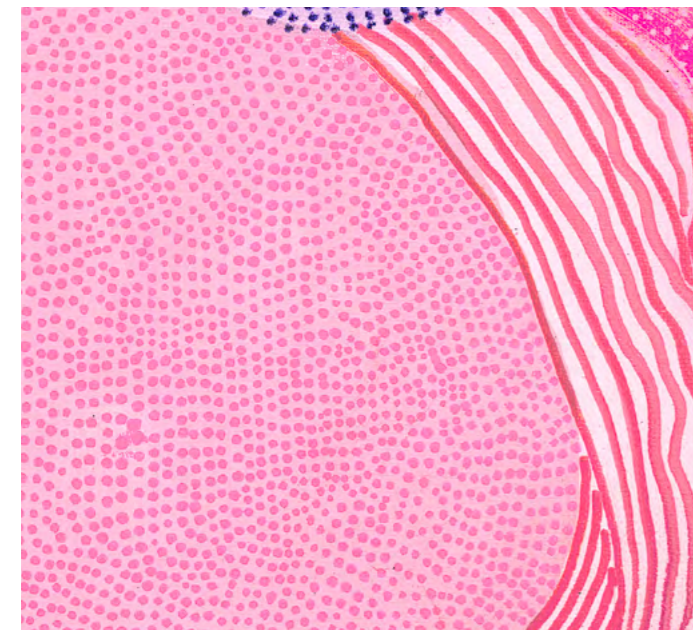


DEALING IN TRANSITION: WHAT'S AHEAD FOR ENERGY M&A?

M&A opportunities are flowing from the huge capital investment required for Australia's energy transition and the disruption caused to longstanding businesses. For dealmakers, understanding this dynamic environment is crucial. [Jonathan Grant](#), [Rod Smythe](#) and [Josh Thorneycroft](#) break down some of the forces at play, asking – what do they mean for markets and investors?

Australia's energy market is being reshaped by the transition away from thermal energy generation to a more sustainable energy mix. There is a constant flow of new policy announcements coming from Federal and State Governments to drive system-wide outcomes and an energy market review underway. Major companies are either seeking to provide new forms of energy to meet future demand, or to re-engineer their business model if they are currently dependent on traditional forms of energy which are emissions-intensive or in short supply in the domestic market.

The energy transition brings uncertainty, but presents huge opportunities as aggregate electricity demand will increase even further. Dealmakers are now tasked with assessing the implications of this change. The challenge for investors is to understand how these structural shifts and regulatory changes impact the investment thesis for their existing holdings, and to identify opportunities to deploy capital into assets and companies which stand to benefit from this. These factors will play a critical role in shaping the future of energy M&A.



FIVE FORCES SHAPING MARKETS

1 The Role of Data Centres and Large Energy Users

A notable trend is the increasing involvement of data centre operators and other large energy consumers in securing green energy supply. While some of these players ensure their energy needs are met by entering into long-term power purchase agreements, others start looking at securing their energy supply by directly investing into energy projects, particularly renewable energy projects. The capital investment needs of these companies, and associated energy requirements, are increasing exponentially to build the pipeline of AI-scale data centres which are often multiple times larger than what exists today.

Australia's data centre M&A market was particularly active in 2024 (including [KWM acting](#) on Blackstone's A\$24 billion acquisition of Airtrunk), and the ASX also attracted a high profile data centre IPO amid an otherwise quiet year for new issuances. We are active on a series of planned deals in this space in 2025, showing momentum in the sector remains strong as consumer and enterprise AI use cases proliferate.

For further analysis on interactions between data centres and the energy sector, please see our ongoing series – Part I [here](#), and Part II [here](#). KWM has also published a comprehensive [APAC Data Centre Regulatory Guide](#) covering 13 jurisdictions.

2 Storage Solutions

One of the most striking trends is the rapid proliferation of battery storage solutions. These solutions are being deployed at both utility-scale (often located alongside generation assets or close to major energy users), and smaller capacities (able to be rolled out quickly and at scale, and soon to be supported by the Labor federal government's Cheaper Home Batteries Program as discussed [here](#)). An example is KWM-advised Palisade / Intera Renewables [acquiring the Limestone Coast North BESS project](#) in South Australia.

Investors are increasingly interested in the potential of storage solutions. However, the challenge is that, in particular for small batteries, the ownership of these battery storage solutions remains dispersed and often remains with individual households or local communities. As the market continues to grow, we expect new investment structures will emerge in this market allowing investments to be made beyond the manufacturing, sale and distribution of batteries, and into ongoing operations and maintenance of these batteries.

3 The Role of Smart Technologies

The integration of smart technologies into Australian homes will also play a role in shaping the market. The adoption of smart meters, car chargers, and demand response technologies is on the rise. These innovations will allow consumers to maximise energy efficiency and reduce their bills.

The question arises: will this technology be utilised for individual benefit, or will it serve the system as a whole? As households become more energy-efficient, the potential for collective benefits increases. This could lead to new business models that focus on collaborative energy management.

4 Gas as a Transition Solution

While renewables are the focus, gas will remain a significant player in the energy landscape. As coal-fired generators reach the end of their life cycles, gas is seen as a necessary bridge fuel. This investment may not involve large-scale new builds, instead focussing on infrastructure development like pipelines and storage solutions. Examples of the opportunity identified in this space are the announced A\$36.4 billion bid by foreign private capital players for ASX-listed Santos, and private capital sponsor Stonepeak's acquisition of a 75% interest in fuel distribution leader IOR Group ([advised by KWM](#)).

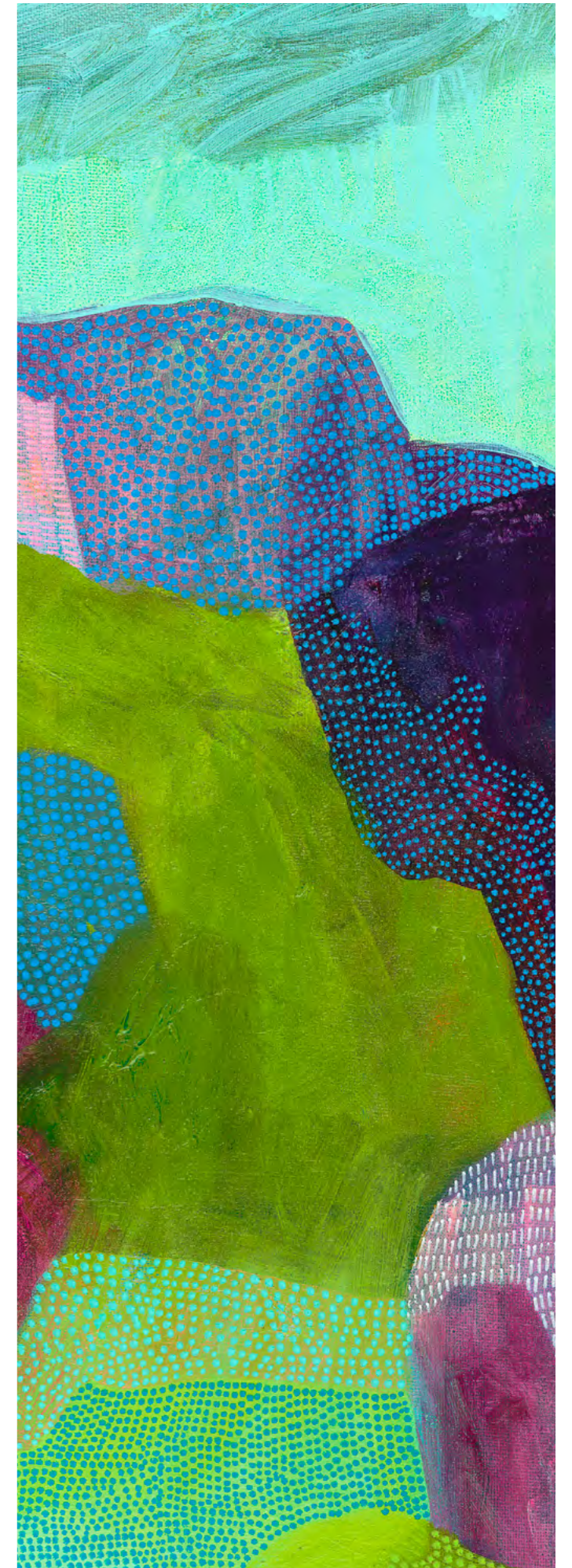
Investors should be aware of the evolving nature of gas in the energy mix. Opportunities will arise in the upstream development of gas projects, especially for those willing to engage in capital deployment in this sector.

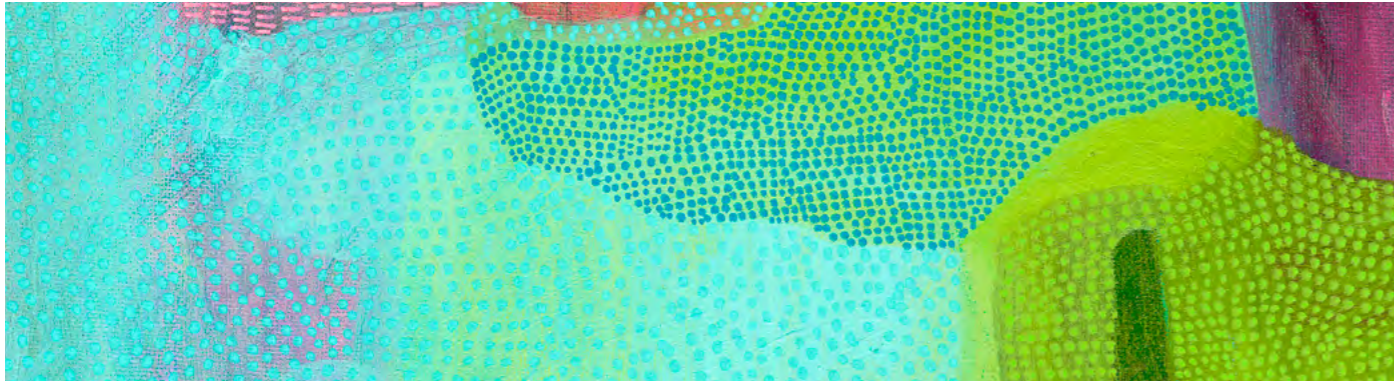
5 Navigating Regulatory Challenges

The re-election of the Albanese Labor Government has been seen to provide welcome certainty on the policy direction for decarbonisation. You can read our thinking on that in greater detail [here](#).

While the market is ripe with opportunities, regulatory and policy changes can create uncertainty. The size and scale of investments will mean many deals are subject to scrutiny from FIRB and/or the ACCC, particularly under the stringent new 2026 merger clearance system. The energy transition is unprecedented, and navigating it requires careful consideration.

Higher interest rates and inflation are additional factors affecting the market. Investors must remain vigilant about the broader economic environment and its impact on M&A opportunities.





INVESTMENT ESSENTIAL TO SUSTAIN THIRST FOR TRANSFORMATION

AEMO's Integrated System Plan for Australia's energy system calls for an estimated A\$122 billion of annualised capital costs until 2050. This immense funding requirement means that tapping a diversified array of funding sources will be essential to fulfil the investment demands.

Renewable developers, traditional utilities, and large international energy firms continue to be active in supplying the capital to support this transition market. Institutional investors, private equity, superannuation funds and sovereign wealth funds are also stepping in. In 2025, the market has seen examples in private markets such as KKR acquiring remote off-grid power leader Zenith Energy, and an active ASX market where [Goodman Group raised A\\$4.4 billion](#) from investors to turbocharge its global data centre development ambitions, both leading players being advised by KWM.

Government support plays a role too. Both Federal and State Governments are investing in renewable projects through grants and funding. This financial backing plays an important role for parts of the market which seek to achieve scale. KWM plays an active role in this part of the market, including [work for Transgrid](#) on the market-first Central-West Orana Renewable Energy Zone PPP, and [advising AEMO Services Limited](#) on 5 rounds of the Long-Term Energy Service Agreements tender program under the NSW Electricity Infrastructure Roadmap.

In the past, private capital was hesitant to invest in projects before they were ready for construction. However, this sentiment is shifting. Investors are now willing to engage with earlier-stage projects, recognising the potential for growth. This trend opens doors for new types of joint ventures, partnerships and acquisitions.

The transition to renewables offers a wealth of M&A opportunities for investors able to navigate regulatory challenges and economic uncertainties, as the interplay between traditional and renewable energy sources continues to shift.

A focus on innovation, proactive engagement and strategic planning will be critical. The energy transition is a significant opportunity for those ready to invest in Australia's sustainable future.

MERGE AHEAD: NAVIGATING AUSTRALIA'S NEW MERGER REGIME

KWM PODCASTS



In this episode of "It's Public," host [Antonella Pacitti](#) welcomes FIRB and foreign investment specialists [Lizzie Knight](#) and competition law expert [Jennifer Barron](#) to discuss the newly implemented mandatory merger notification regime in Australia.

[Jennifer Barron](#) explains the transition to the new merger regime, which from January 1, 2026, means any deal that meets framework criteria requires Australian Competition and Consumer Commission approval or a waiver for completion. This marks a significant shift from the informal clearance process - which remains temporarily available under transition arrangements.

[Lizzie Knight](#) emphasizes the growing importance of managing regulatory risk, particularly the interplay between Foreign Investment Review Board and ACCC requirements. With foreign investment regulations becoming more stringent, bidders must be proactive in ensuring compliance, or risk derailing their deals.

Antonella, Lizzie & Jennifer also discuss "Hell or High Water" clauses, which bind bidders to accept conditions imposed by regulators. While these clauses can protect deal value, they introduce additional complexity and timing risks. The trio also reflect on the broader economic and political landscape impacting M&A activity in Australia, particularly in critical sectors such as commodities and national security.

The transcript below has been edited for brevity and clarity. You can listen to the full conversation here via KWM's podcast channels.

Download the podcast here



Antonella Pacitti: Hello and welcome to our "It's Public" podcast, your source for public M&A and markets. I'm Antonella Pacitti, a partner at King & Wood Mallesons in Perth. Today, I'm joined by two of our newest partners: FIRB and foreign investment specialist Lizzie Knight in Canberra, and competition law expert Jennifer Barron from Sydney, recently returned from the ACCC. Welcome, Lizzie and Jennifer.

Lizzie Knight: Hi, Antonella.

Jennifer Barron: Hello, Antonella

Antonella Pacitti: The new mandatory notification merger regime is like navigating a new country's road rules — you know your destination, but the journey is different. Can you help us navigate this regulatory traffic to get a deal done? Lizzie, what's on our agenda?

Lizzie Knight: We'll discuss how dealmakers should approach regulatory and deal completion risk under the new merger regime, focusing on how ACCC and FIRB processes work together. Jennifer understands the new merger regime's mechanics, and I, the FIRB gearbox. We'll show how to steer them to complete a deal.

Antonella Pacitti: OK. For dealmakers, what does this mean for completion risk in an uncertain market? Should public takeovers remain conditional on FIRB and ACCC approval, or is upfront approval the way to go? What about "Hell or High Water" clauses, and will we adopt US practices? Jennifer, what arrived on July 1st?

Jennifer Barron: Merger reform has been a long discussion, beginning in August 2021 with then ACCC Chair Rod Sims. It's remarkable how quickly we're now implementing a new regime. Legislation passed late last year, setting up a mandatory framework for deals completing after January 1st next year. If your deal is caught, you must engage with the ACCC and cannot complete without a waiver or approval; otherwise, the acquisition is void. While mandatory aspects start next year, the ACCC began accepting notifications on July 1st this year.

Antonella Pacitti: So, the ACCC started accepting notifications a week ago. Where are we now?

Jennifer Barron: We're in a transitional phase where the new regime operates alongside informal clearance. Parties can choose informal clearance, which offers a year to complete without the new process, or start the new process now. To use informal clearance, the ACCC must decide this calendar year. The new regime is less flexible but offers statutory timeframes and timely review by the Australian Competition Tribunal, unlike the expensive Federal Court path. Many parties new to ACCC engagement will need to understand their obligations. Previously, you considered competition impact; now, notification requirements are central to deal timing. Fresh news includes a new ministerial instrument on June 30th, setting thresholds and fees, and the ACCC's interim process guidance on July 1st, outlining expectations.

Antonella Pacitti: That's clear, Jennifer. Now, let's bring in FIRB. Lizzie, how does this new merger clearance regime interact with FIRB, especially in a volatile market? How do we manage execution and timing risk? Are we heading towards "Hell or High Water" positions?

Lizzie Knight: Everyone's focused on this "New World Order," with geopolitics and geo-economics being key terms. Regulatory risk, especially foreign investment risk, is a primary concern. Targets in volatile markets seek regulatory certainty and are wary of bearing regulatory and timing risks, as delays cost money and hinder deal execution. We see targets scrutinizing bidders' ability to transact, considering equity stacks and potential ACCC overlaps. This is coupled with significant verbal regulatory conditions, which, while not "Hell or High Water" yet, make it hard for bidders to commit, as conditions impact value. For example, a bidder buying a target with offshore data was told by FIRB that all data must be stored and accessed in Australia, and directors couldn't take phones abroad — a significant cost and inconvenience. The market is rightly focused on this. With the new merger regime, the ACCC is already taking interest in FIRB applications, particularly on data and roll-ups. Hopefully, the ACCC's July 1st guidance will improve FIRB-ACCC collaboration.

Jennifer Barron: I'm glad you're using our competition law terms, Lizzie. Streamlining is the goal, but ensuring the ACCC has necessary information for competition assessment remains crucial, regardless of notification. The ACCC and Treasury are working on the foreign investment framework's interaction with the new merger regime. FIRB applications will now ask if the acquisition will be notified to the ACCC. FIRB can still refer deals to the ACCC for assessment if not notified. The ACCC suggests voluntary notification for potential competition issues. Streamlining means parties who've notified the ACCC or obtained a waiver can provide FIRB their reference number instead of detailed analysis. Otherwise, they'll need to provide sufficient information for a competition assessment. The ACCC can also impose conditions in their approvals. While remedies are usually undertakings, other conditions are possible, with expected party engagement. For "Hell or High Water" clauses, it depends on what parties can accept and its impact on value. They must consider how far they'll pursue the ACCC process, including costly Phase Two or Tribunal proceedings, before even approaching the ACCC.

Lizzie Knight: That's interesting, Jennifer. It suggests we'll be working hand-in-hand through regulatory approval. I'm curious about "Hell or High Water" outs. Antonella, can you explain what it means and if it works in Australia?

Antonella Pacitti: Great questions, Lizzie. We've long dealt with foreign counterparts' influence on "Hell or High Water." It's thrilling to now have a regulatory environment for these considerations. It's challenging for a control counterparty, usually the bidder, to agree to "Hell or High Water," which binds them to conditions imposed by a third-party regulator. In short, the bidder must accept any conditions imposed by the ACCC or FIRB, with no or limited ability to walk away, even if conditions materially shift the deal's value (e.g., divestment, operational curtailment). It can also mean no sunset date for approval conditions, leading to protracted deal completion. The "time kills deals" adage becomes even more relevant.

Lizzie Knight: Antonella, in this competitive public market, I wonder how this works. FIRB has new guidance on refunds and credits for competitive processes. Jennifer, how will this work with the ACCC?

Jennifer Barron: This is a key change. The new ACCC regime is less flexible. Currently, the ACCC assesses multiple bidders. Under the new regime, an acquisition can't be notified until the vendor and acquirer intend to agree, making formal notification unlikely during competitive bids. However, pre-notification discussions are possible to facilitate quicker post-notification assessment. Formal fees are substantial: nearly \$57,000 for filing, and up to over \$1.5 million for Phase Two, depending on transaction value. Parties need an early, well-informed view of competition risks. The ACCC aims to quickly clear 80% of mergers (15-20 business days), but complex issues require thorough preparation. Lizzie, how does FIRB feed into this deal planning?

Lizzie Knight: It feels like a new world order, but some things remain constant, like regulatory risk. Strategies haven't changed much: read political tea leaves, consider press focus, and be proactive in contentious deals. For most deals, regulatory approval is just a process; overstating it can create unnecessary concern. In this dance of narratives, who should lead — bidder or target?

Antonella Pacitti: I always favour a collaborative approach. If both parties see merit, the target should support the bidder in obtaining FIRB or ACCC approvals. This ensures conditions are met promptly and builds a collaborative reputation. However, if the value proposition is borderline, a more neutral approach is understandable. I don't believe our regulatory framework fully supports "Hell or High Water." Post-execution, bidder and target should collaborate to ensure regulator-imposed conditions are well-informed and preserve value for all stakeholders.

Jennifer Barron: We've discussed the new regime's details, but it's part of a larger economic and political picture, especially regarding productivity, a government focus. The new regime aims to give the ACCC better tools to prevent anti-competitive mergers while speeding up benign ones, promising a more efficient and predictable process. The ACCC targets 80% of mergers determined in 15-20 business days. However, such significant change can be unsettling amid global economic uncertainty. Lizzie, what's the climate for deals and investment attractiveness?

Lizzie Knight: It's FIRB's 50th birthday this year. Assistant Minister for Productivity Andrew Leigh has criticized regulatory "thickets" and "risk aversion" holding Australia back. With a population of 25 million, we need foreign capital and its benefits. It's a race for capital, and Australia must remain competitive against nations like New Zealand, Canada, and the UK. Businesses support FIRB streamlining, and I hope it pays off. Lessons from New Zealand and the UK's FDI revamp, like minimizing compliance costs and avoiding duplicate conditions, are valuable. New Zealand went from least to most attractive for foreign investment. I want to shift from low-productivity compliance to focusing on attracting investment. Antonella, what are your views on public market trends and Australia's attractiveness?

Antonella Pacitti: Lizzie, public markets are under pressure due to private capital's continued dominance and ease of execution. This means more proactive sell-side analysis of bidder risk by targets. It's not just about an approach, but testing if a bidder can go the distance and provide necessary information to regulators. This impacts the dynamic between private capital and publicly scrutinized investors. We'll see more emphasis on liquidated damages, break fees, reverse break fees, and triggers for failing to get critical regulatory approvals. Bidders previously resisted reverse break fees for third-party regulator issues, but I foresee a lower bar for triggering them when deals fail. We've discussed "Hell or High Water" and the US view; let's see how it plays out here. Lizzie, your work on national interest decision-making is fascinating. Can you give us an overview?

Lizzie Knight: I've been studying the last decade's key events defining national security. It shows the convergence and ubiquitous nature of data, and the palpable expansion of national security's definition. Small events lead to regulatory changes in the US, Canada, or UK, then adopted here. This interconnectedness makes national security seem expensive and daunting. But I'm optimistic. Sensible statements from figures like Jake Sullivan and Dr. Stephen Kennedy emphasize balancing economics and national security, advocating "high fences and small yards" to avoid "insurmountable fences and infinite yards." The balance isn't quite right, but policymakers are working to protect economic and strategic interests without one dominating the other. I hope the "front door" provides a solution. Jennifer, where is the regulator's interest most acute?

Jennifer Barron: A key benefit of the new ACCC regime is greater visibility of serial acquisitions, including private equity roll-ups. Scrutiny is high in liquor, pathology, and radiation oncology, with bespoke thresholds for supermarkets. Generally, the ACCC focuses on retail, essential services, and the digital economy, but other sectors aren't exempt. Competition law's strength is learning about diverse industries. Recently, the ACCC opposed mergers in pathology, toll roads, supermarkets, aviation, fertility services, and ready-made meals. Industry dynamics are crucial. Antonella, what areas see regulatory attention in Western Australia?

Antonella Pacitti: Jennifer, in Western Australia, we think commodities. Regulator interest in commodities means critical minerals, as the name suggests. The tariff discussion is also looming large in 2025. It raises the question of whether our government will leverage critical mineral stocks in tariff negotiations with the US — a reverse CFIUS situation. Interestingly, FIRB and the ACCC's merger reforms show real interest in gold and conventional commodities. Lizzie, are you seeing that too?

Lizzie Knight: Yes, gold is a concern in a volatile market for hedging; we need to keep it here. FIRB recently approved Goldfields' 3.7 billion acquisition of Gold Road Resources. Everyone is watching Harmony Gold's US1 billion acquisition of the CSA copper mine in NSW, which will be the first test of the new FIRB portal. This deal shows gold miners increasing copper exposure for the new energy transition. FIRB recently asked us for all minerals on our exploration licenses; though we focused on gold, trace critical minerals caused a stir. But with proper management and explanation, there's always a way through.

Antonella Pacitti: We appreciate that, Lizzie. FIRB looking at our assets from the ground up, even before the portal. Lizzie and Jennifer, thank you both for this terrific discussion. It's been a thrill to distil this complex environment and highlight your market-leading capabilities.

A big thank you again to Lizzie and Jennifer, and until next time.

PUBLIC M&A MARKET ON A PAGE – JULY 2025¹ AN OVERVIEW OF H1 2025

1. The statistics on this page are for deals announced between 1 January 2025 and 30 June 2025 where the target is or was listed on ASX and the deal value is A\$50 million or more.



NUMBER OF DEALS

19



AGGREGATE DEAL VALUE

A\$23.1B



STATUS

5

SUCCESSFUL

2

UNSUCCESSFUL

12

CURRENT

LARGEST DEALS IN H1 2025

Target	Bidder	Deal value	Sector
Brickworks Limited	Washington H. Soul Pattinson and Company Limited	A\$14 billion ²	Construction Materials and Industrial Property
Domain Holdings Australia Ltd	CoStar Group, Inc	A\$2.8 billion	Software & Services
Spartan Resources Limited	Ramelius Resources Limited	A\$2.4 billion	Metals & Mining
Mayne Pharma Group Limited	Cosette Pharmaceuticals, Inc.	A\$615 million	Pharmaceuticals, Biotechnology & Life Sciences
Hutchison Telecommunications (Australia) Limited	Hutchison Telecommunications (Amsterdam) B.V.	A\$434 million	Telecommunications Services
Dropsuite Limited	NinjaOne, LLC	A\$415 million	Software & Services
Pointsbet Holdings Limited	MIXI Australia Pty Ltd	A\$398 million	Consumer Services
AVJennings Limited	PM Nominees C Pty Ltd	A\$366 million	Consumer Durables & Apparel
Ainsworth Game Technology Limited	Novomatic AG	A\$337 million	Consumer Services
Red Hawk Mining Limited	FMG Pilbara Pty Ltd	A\$240 million	Materials

2. This transaction involves a merger between the target and bidder and the deal value represents the expected market capitalisation as disclosed to ASX on 2 June 2025.



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