

Belarus M&A Deal Points Study 2010





M&A transaction practice

- Mergers and acquisitions usually complicated due to the size, value, and nature of the purchased object (businesses as a going concern)
- Nevertheless, internationally accepted standards in M&A transactions exist, including commonly used clauses in transaction documents
- Use of these clauses depends on the particular transaction, applicable regulation and culture of the parties, but it also allows comparing practices across different countries and drawing conclusions on practice in a particular region



Belarus M&A Deal Points Study

- Belarus M&A Deal Points Study 2010 is the first of its kind in CIS countries and is conducted by the leading Belarus M&A law firms:
 - SORAINEN
 - Magisters
 - Vlasova, Mikhel & Partners
 - Stepanovski, Papakul & Partners
 - Businessconsult
- A Working Group comprising representatives of the participating firms worked out the principles and tools for the study, taking into account *inter alia* practices in similar studies worldwide (e.g. studies conducted by the American Bar Association and by Baltic law firms)



Belarus M&A Deal Points Study aims

- The aims of the Belarus M&A Deal Points Study include:
 - Participating law firms are committed to monitoring and developing M&A transaction practice in Belarus from both transactional and legislative aspects
 - The study analyses the main features of M&A transactions and how parties used transaction processes and clauses to mitigate risks
 - The study also compares results with similar surveys in other regions



Methodology

- The study analyses 20 M&A transactions completed during a two year period July 2008 – June 2010
- Participating firms filled in detailed questionnaires for each transaction
- Although full responses to all questions were encouraged, it respondents were able to omit answering any question at their discretion
- Data collection and analysis was done through the online survey tool SurveyShare (www.surveymshare.com)

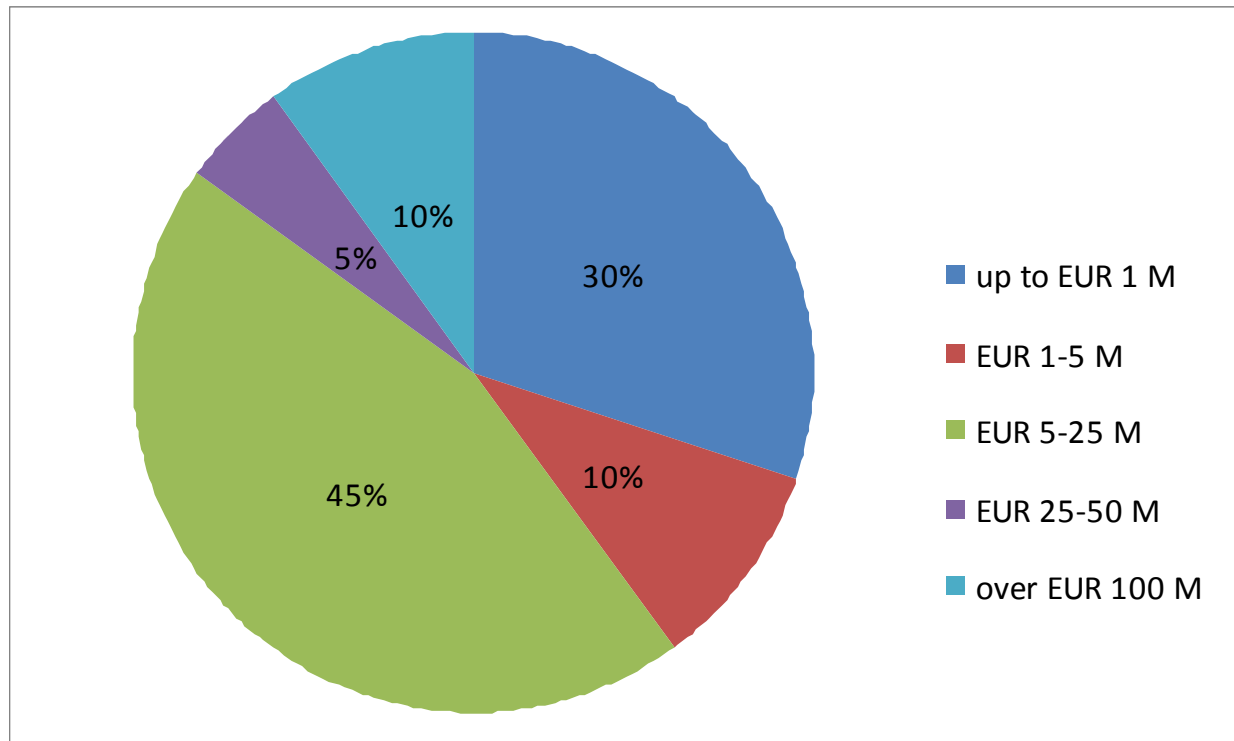


Transactions analysed

- Transactions included in the survey have the following characteristics:
 - The survey covered M&A and joint venture transactions, i.e. acquisition or merger of businesses via share or asset transactions, corporate statutory mergers or in any other way
 - Only Belarus transactions were studied, i.e. the M&A transaction involved targets operating in Belarus
 - Transactions were completed during the two year period July 2008 – June 2010.
 - There were no limitations as to deal value, nature of the parties or the target or the sales process of the transaction. However, the survey included questions regarding these features



Transaction value



- Transaction value is defined as the purchase price paid, including deferred payments and earn-outs, if any
- The transaction value of most M&A transactions in Belarus is up to EUR 25 million, with the majority in the EUR 5 – 25 million range

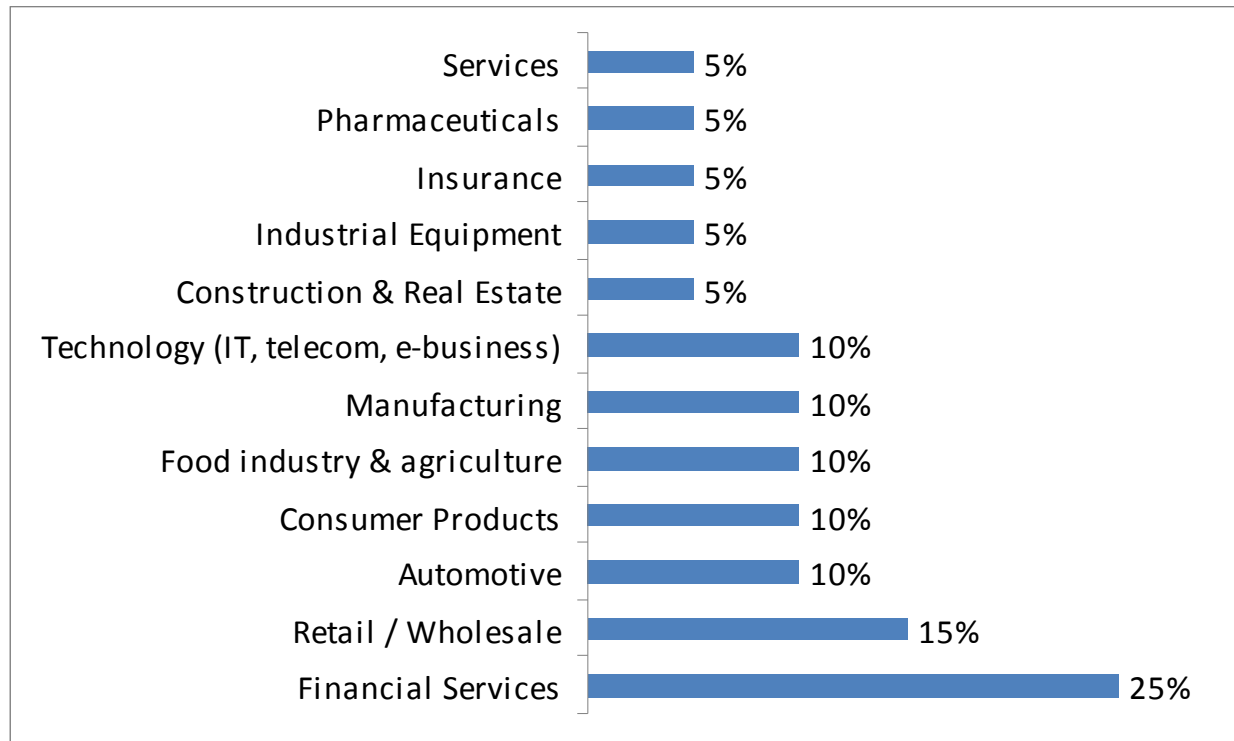
Evolution of transaction value

	2008H2	2009H1	2009H2	2010H1	<i>Total</i>
up to EUR 1 M		1	1	4	6
EUR 1-5 M		1		1	2
EUR 5-25 M	2	2	1	4	9
EUR 25-50 M	1				1
over EUR 100 M	1		1		2
Total	4	4	3	9	20

- Due to the financial and economic crisis in local and global markets, transaction values show a slight decreasing trend, although the number of Belarusian M&A transactions is increasing.

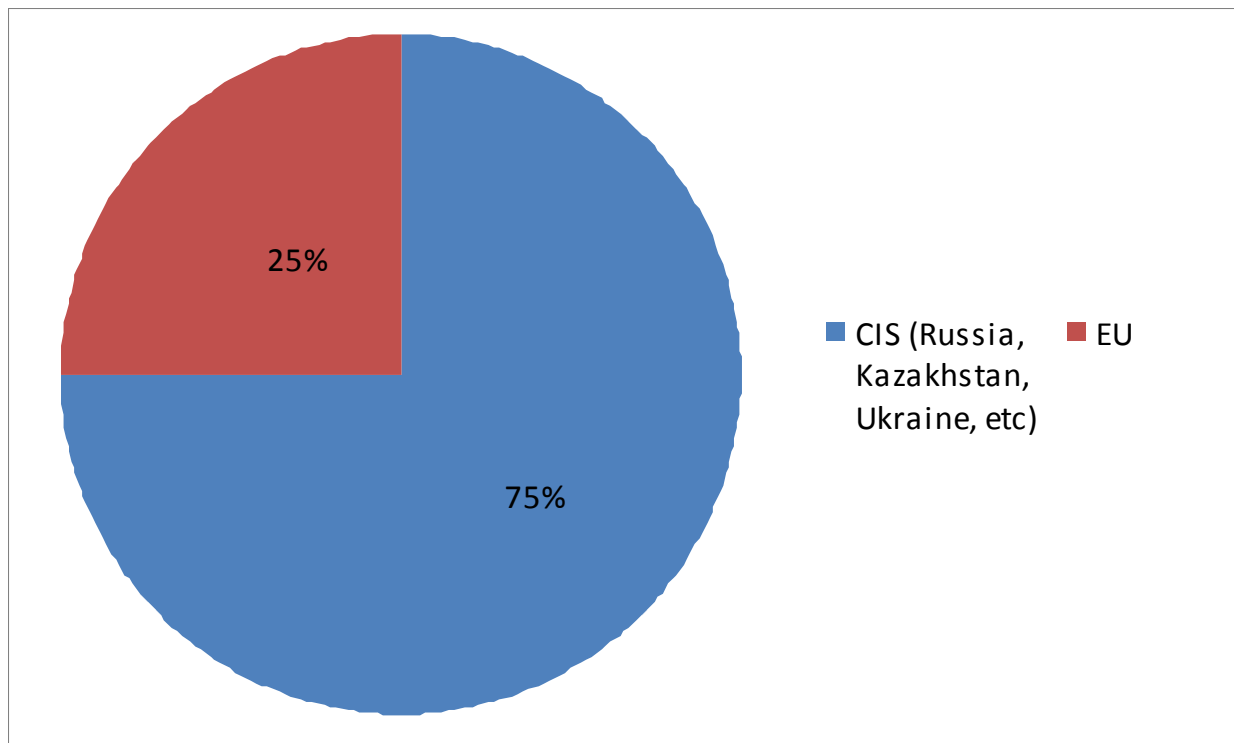


Target sector



- Although transactions were spread among many sectors, M&A activity was most active in the financial services and retail / wholesale sectors.

Besides Belarus, in which countries did the target operate at the time of closing?

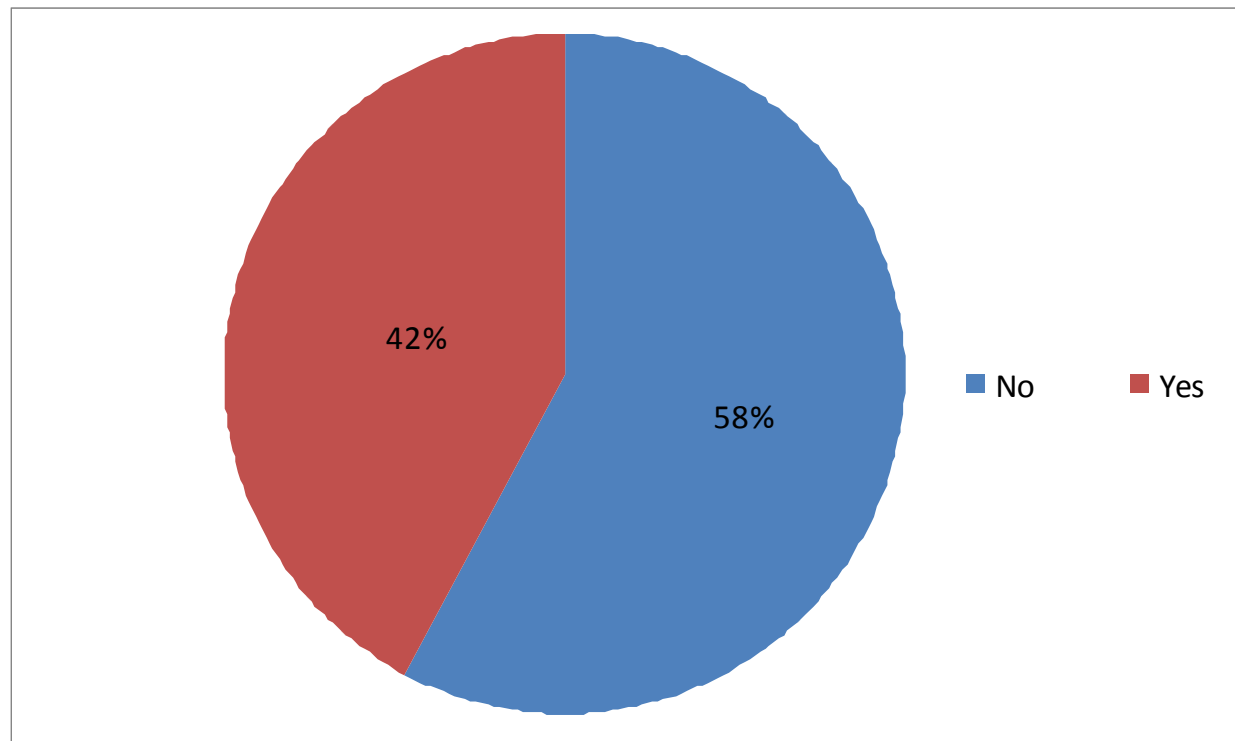


* Among positive responses

- If the target was operating in other jurisdictions, the connection was mostly with CIS countries rather than EU ones



Is the target party to the main acquisition agreement?

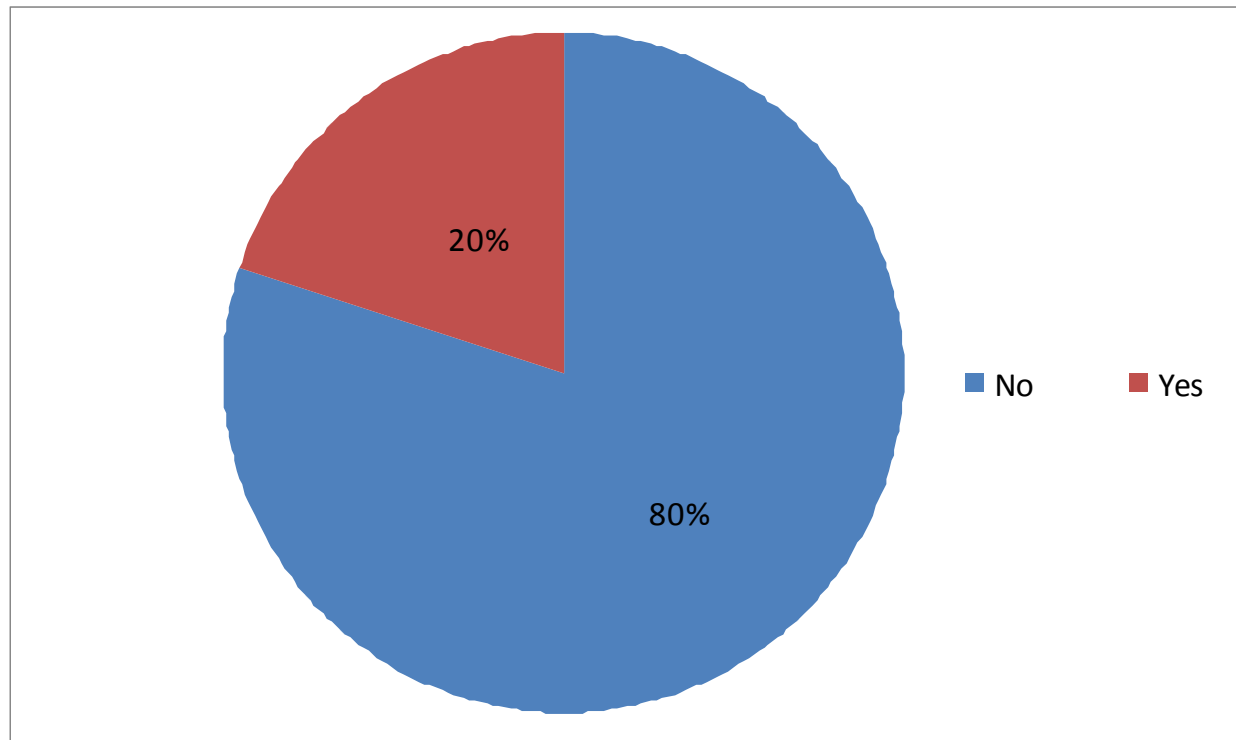


* Excluding instances with no response

- Compared to many other jurisdictions, in Belarus the target is often party to the agreement. This is probably because the target itself needs to perform certain actions required by local legislation



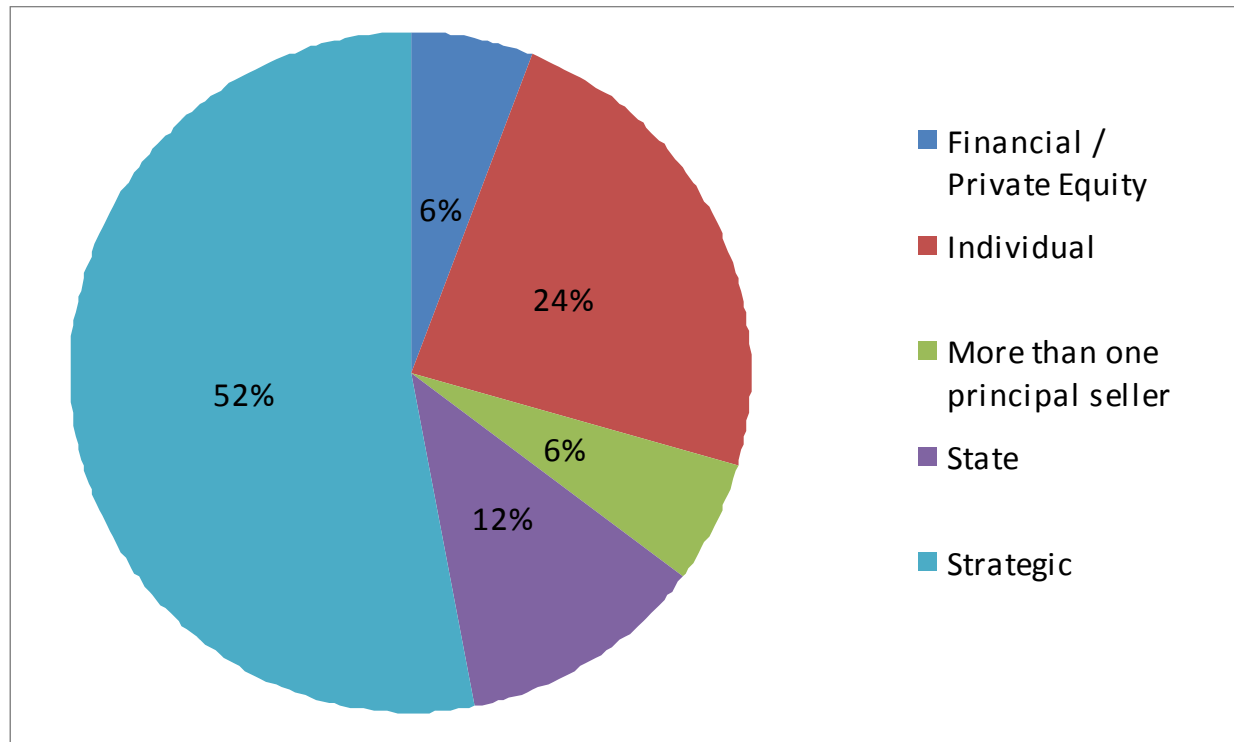
Are shares of target publicly traded?



- In 20% cases, the target was listed on a stock exchange. In the majority of these cases, the stock exchange was the Belarus Stock Exchange



Nature of principal seller

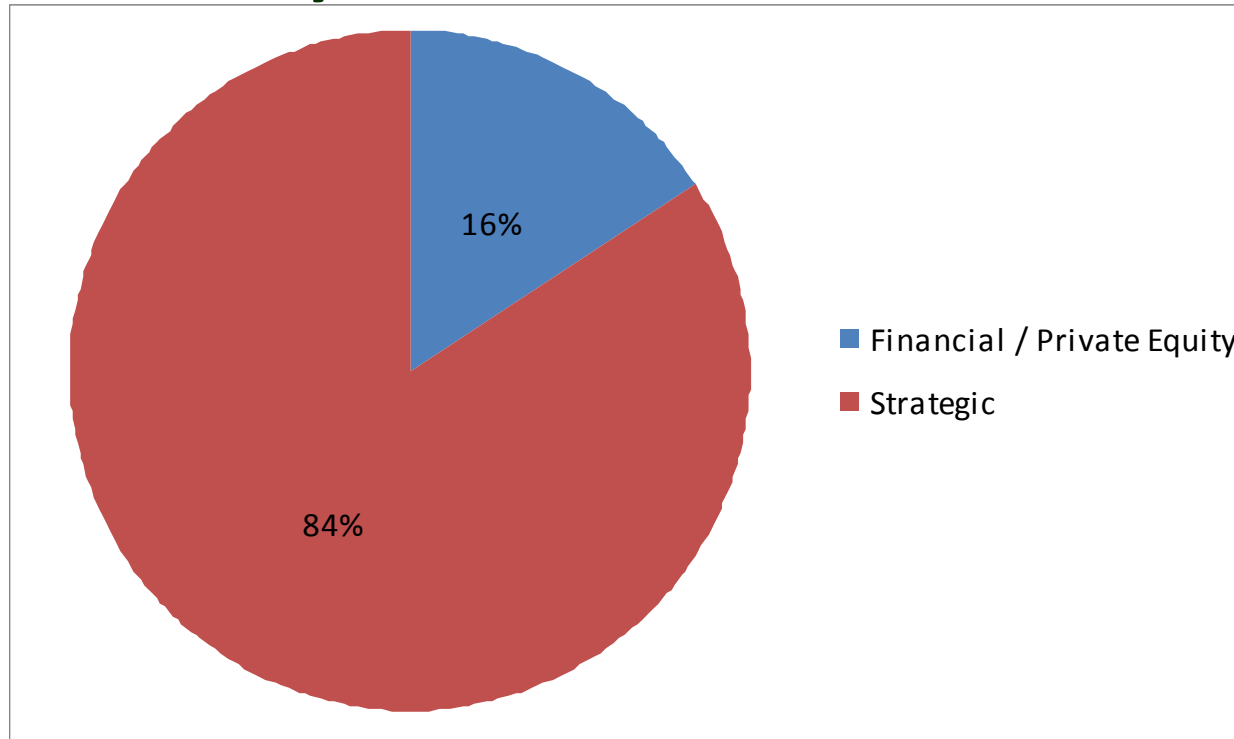


* Excluding instances with no response

- Sellers are mostly strategic (i.e. from the same line of business) who are exiting from the company or reducing their shareholdings. Cases when a purely financial investment has been sold remain very few



Nature of the buyer

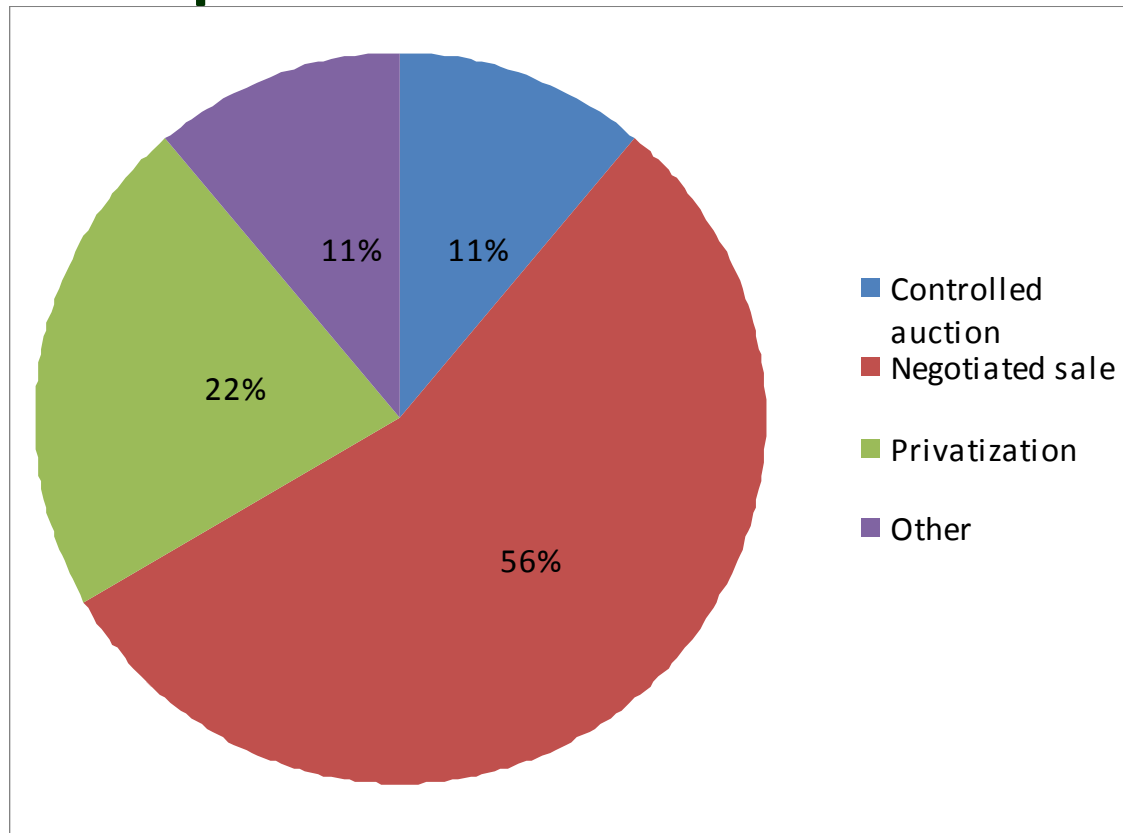


* Excluding instances with no response

- As in the case of sellers, buyers are mostly strategic, although there have also been proportionally more buyers with purely financial objectives



Selected sales process

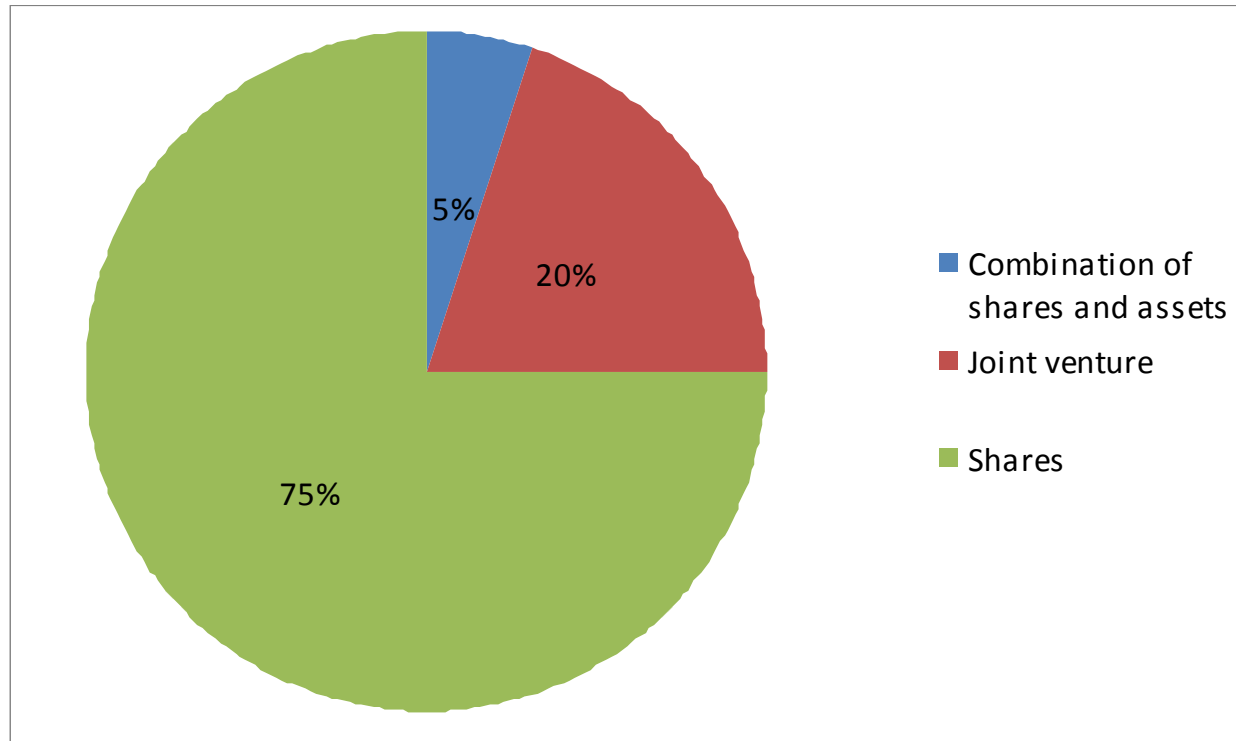


* Excluding instances with no response

- Most M&A transactions are carried out based upon individual negotiations
- An important feature of Belarus M&A is that of privatisations, which comprise more than a fifth of transactions analysed



Form of transaction

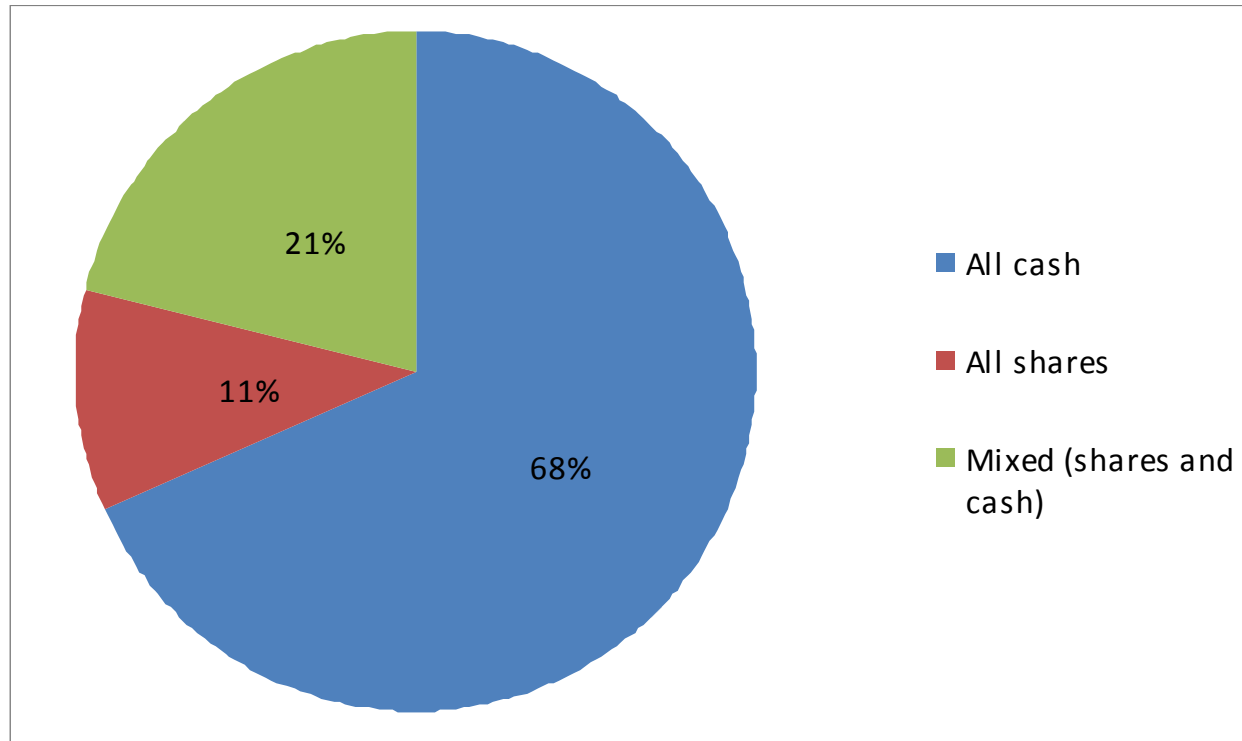


* Excluding instances with no response

- Most transactions are carried out as share transactions and surprisingly few transactions involve asset transfers. Joint ventures comprise 1/5 of transactions analysed



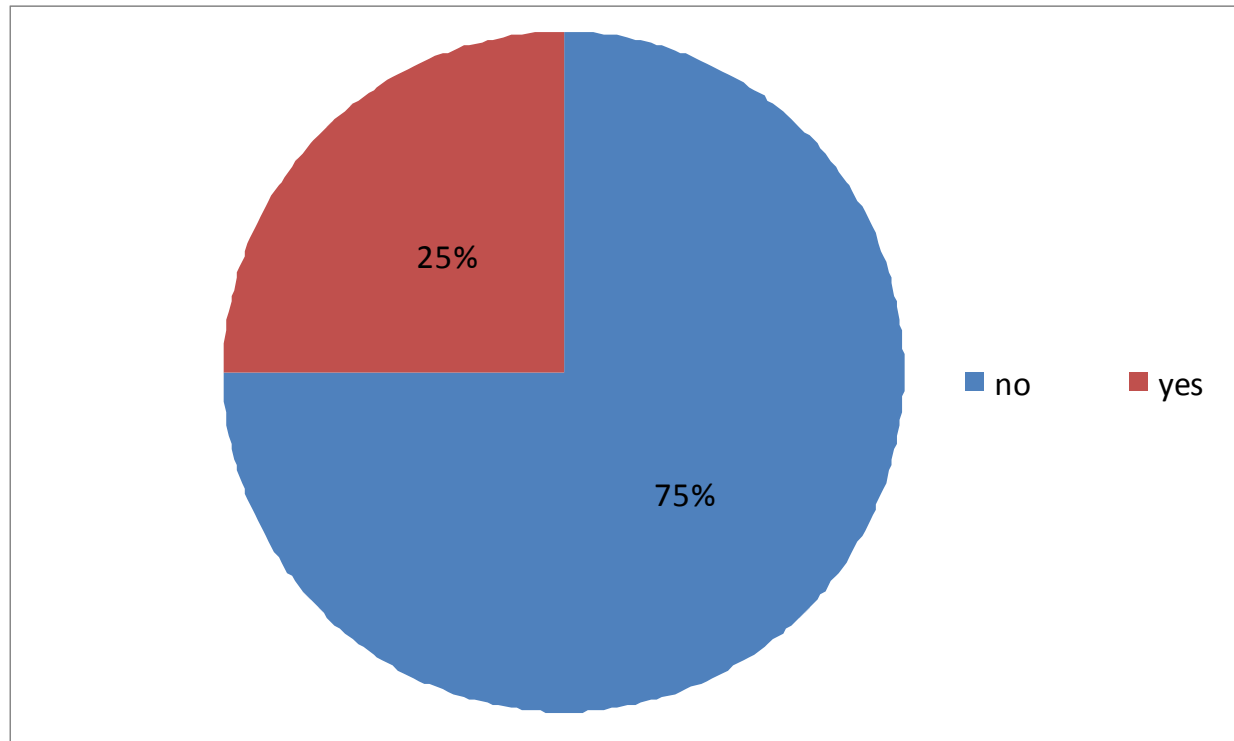
Form of consideration



* Excluding instances with no response

- The purchase price has been predominantly paid in cash, as opposed to shares

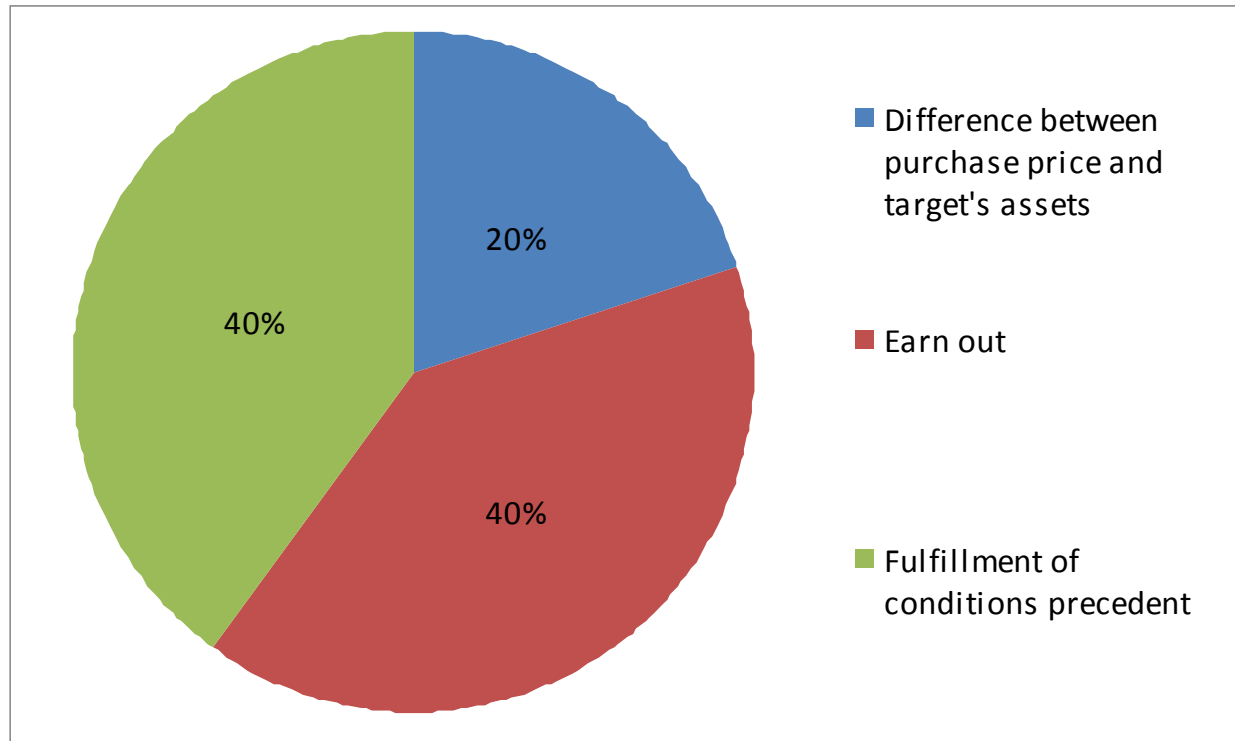
Price adjustment at closing



- 75% of responses indicate that the purchase price was paid as a lump sum and that it was not adjusted at closing. This may be a consequence of the relatively modest value of transactions

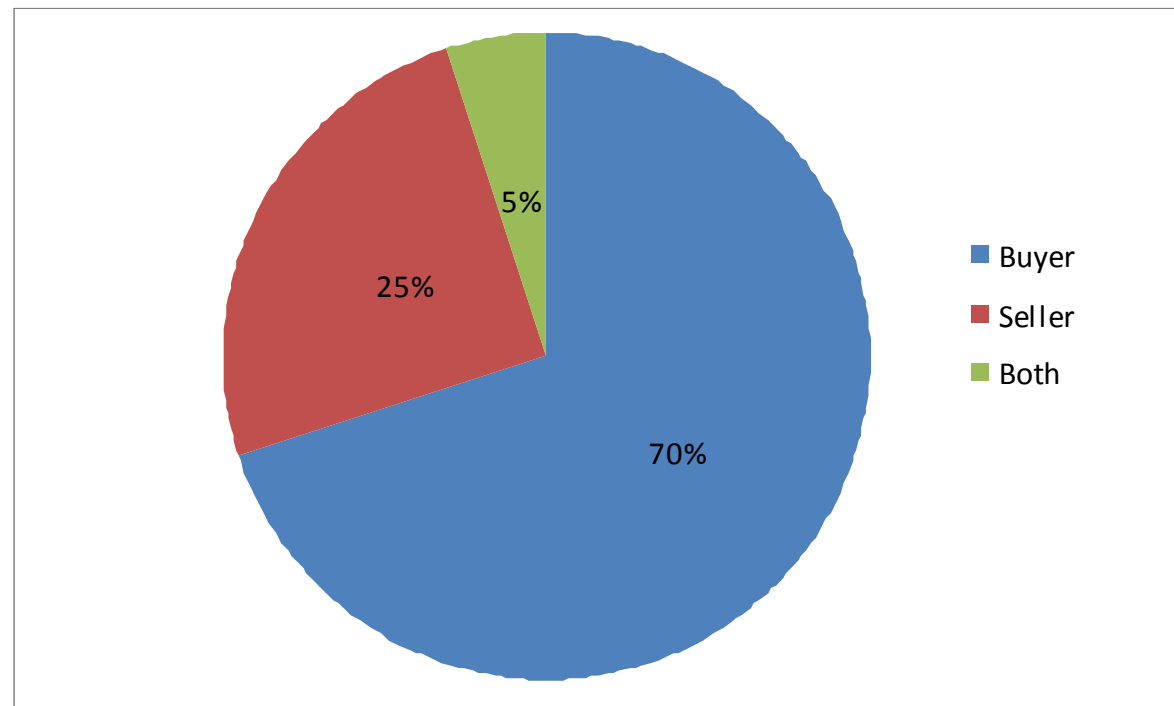


Nature of price adjustment



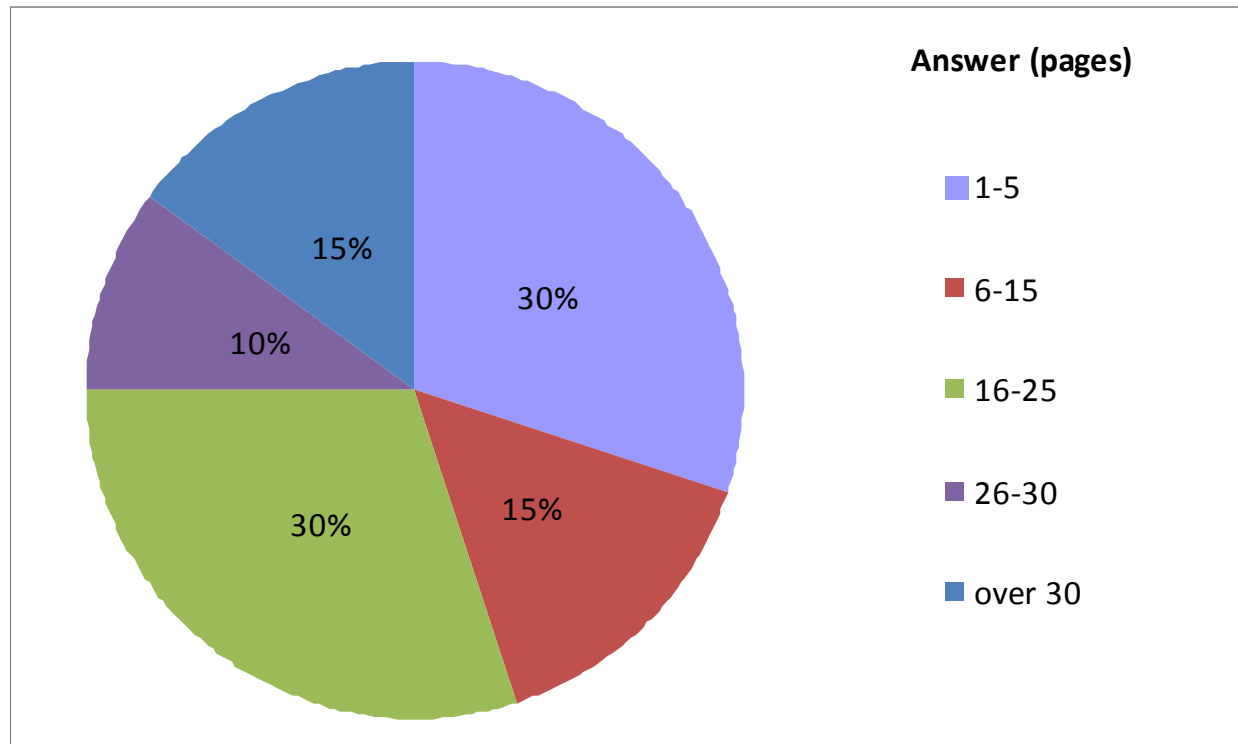
* From positive answers only

Which party prepared the first draft of the main acquisition agreement?



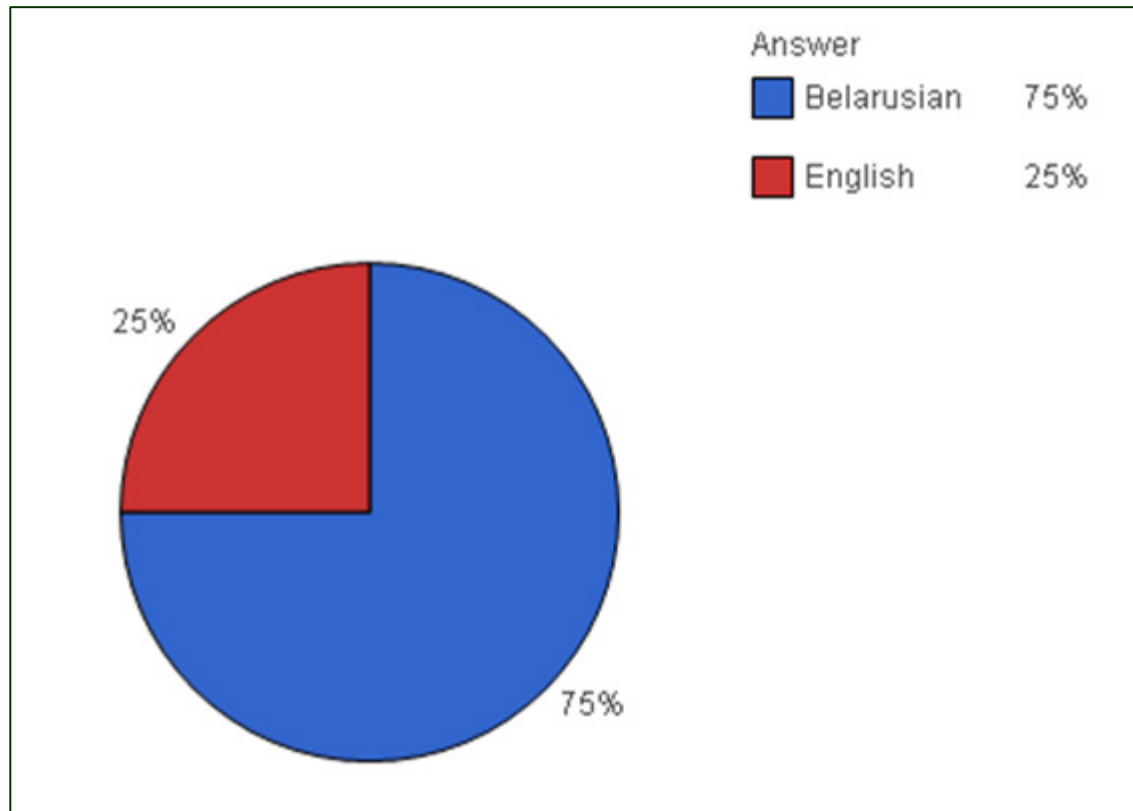
- Who prepared the first draft of the transaction document may be determined by negotiating power or by the chosen transaction process. In most transactions surveyed, the buyer or its advisors prepared the first draft of the main acquisition agreement

Length of main acquisition agreement



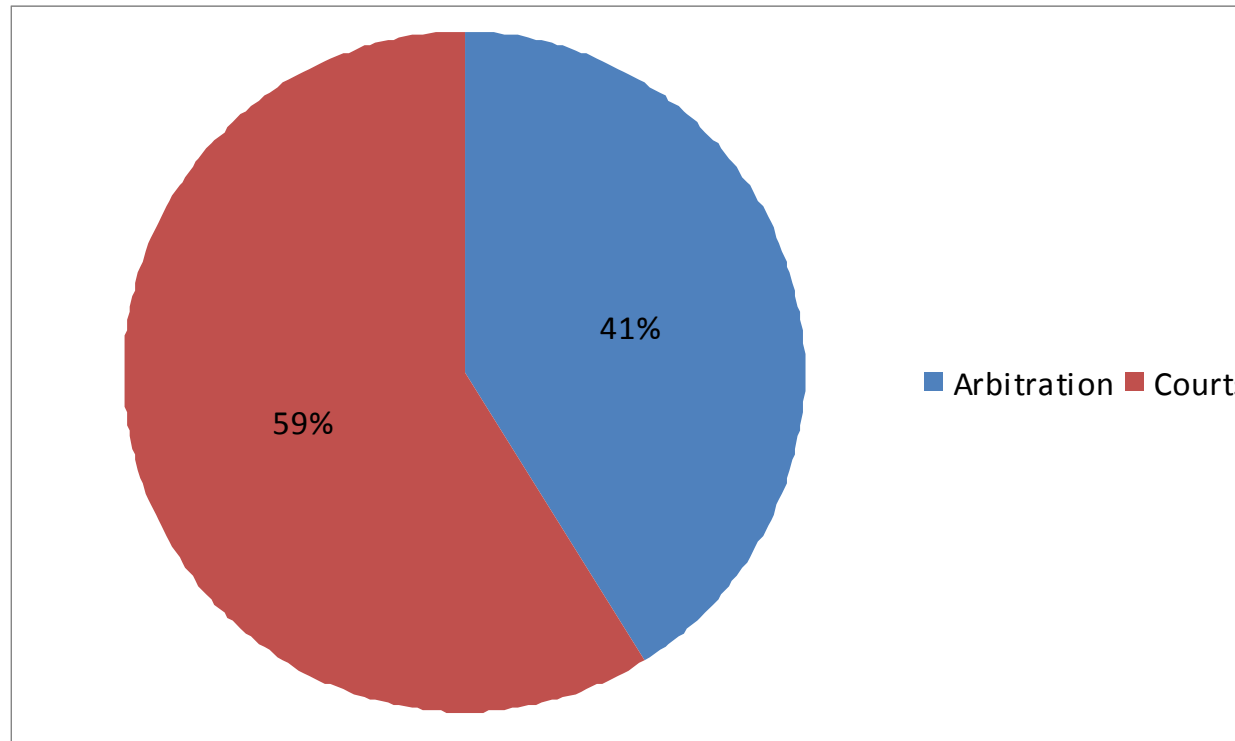
- The average length of the main transaction document is up to 25 pages
- When the agreement is based on local law, the transaction document tends to be rather short and parties rely on statutory provisions

Governing law



- Parties chose Belarusian law as governing law of main transaction documents due to mandatory provisions. English law was chosen in 25% of cases.

Dispute resolution mechanism

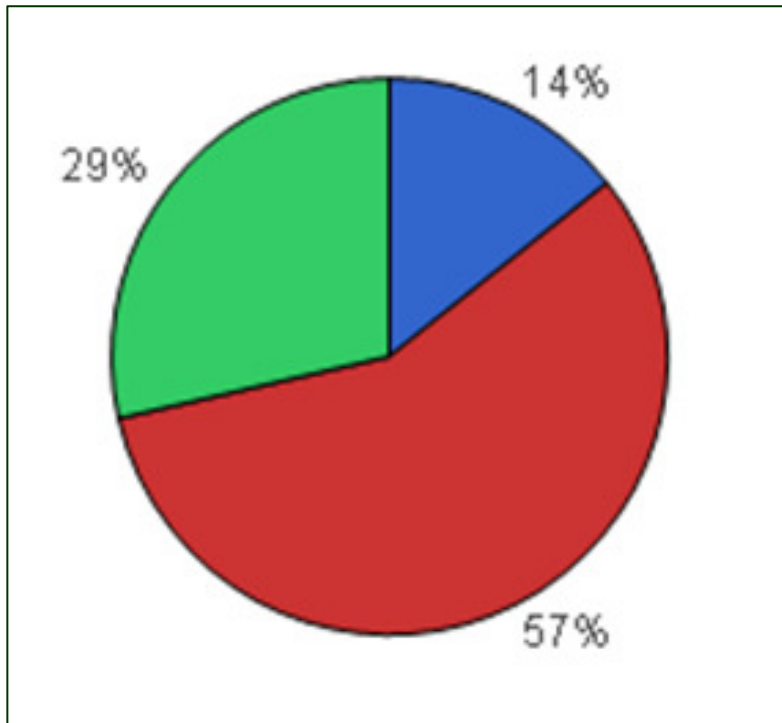


* Excluding instances with no response

- Most M&A transactions still have local courts as the dispute resolution mechanism. This is particularly relevant for local-to-local agreements and may be mandatory (e.g. for privatisation transactions)
- When parties choose arbitration as the dispute resolution mechanism they often select ICC or LCIA institutional rules



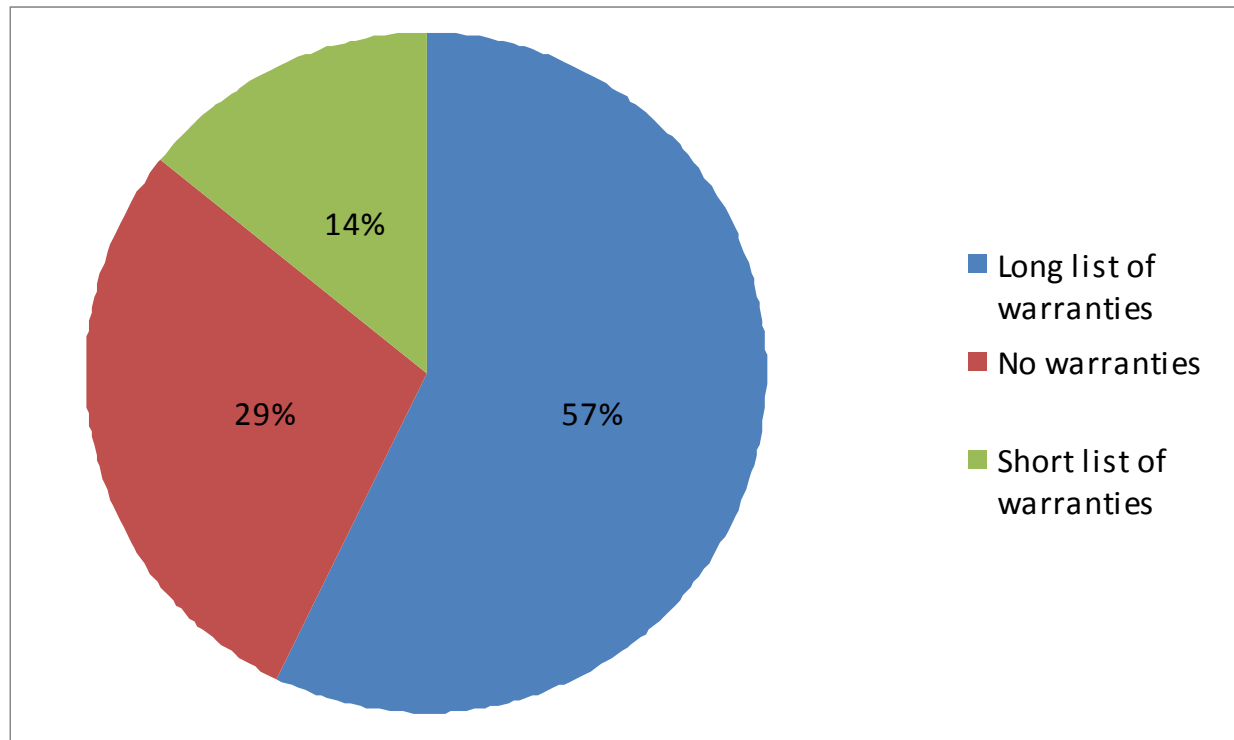
Language of the agreement



Answer	
English	14%
English, Russian	57%
Russian	29%

* Excluding instances with no response

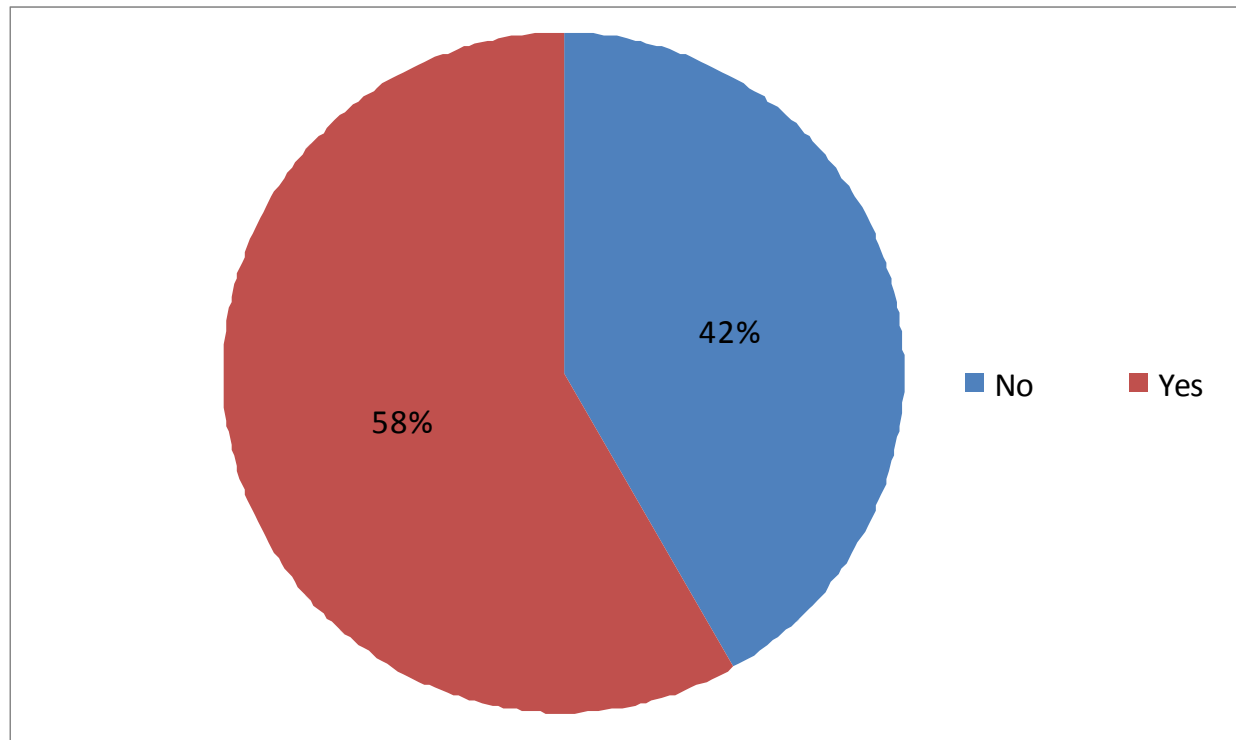
Did the seller give any representations and warranties?



* Excluding instances with no response

- Most transactions include a long list of seller's warranties
- Short lists of warranties (up to 2 pages) or no warranties are featured mostly in purely local agreements

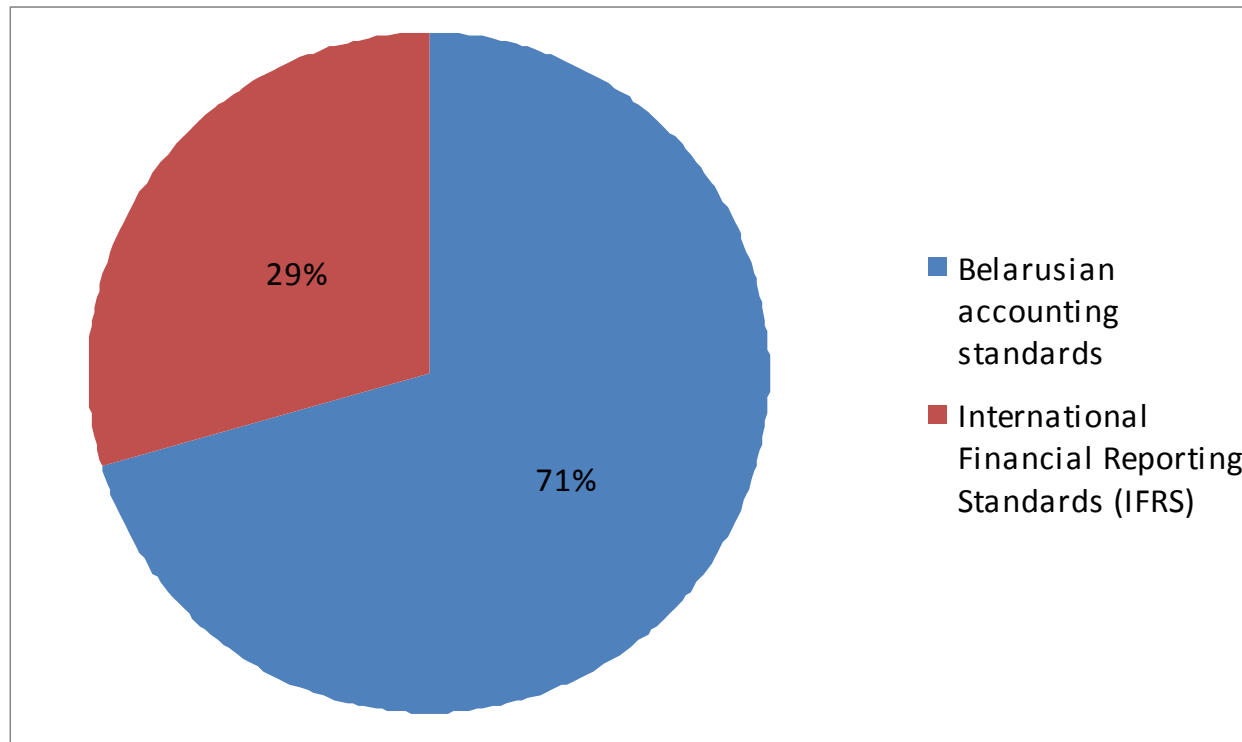
Do the seller's warranties include a general knowledge qualification?



* Excluding instances with no response

- If sellers give warranties, these normally include a knowledge qualification that limits them to the seller's knowledge

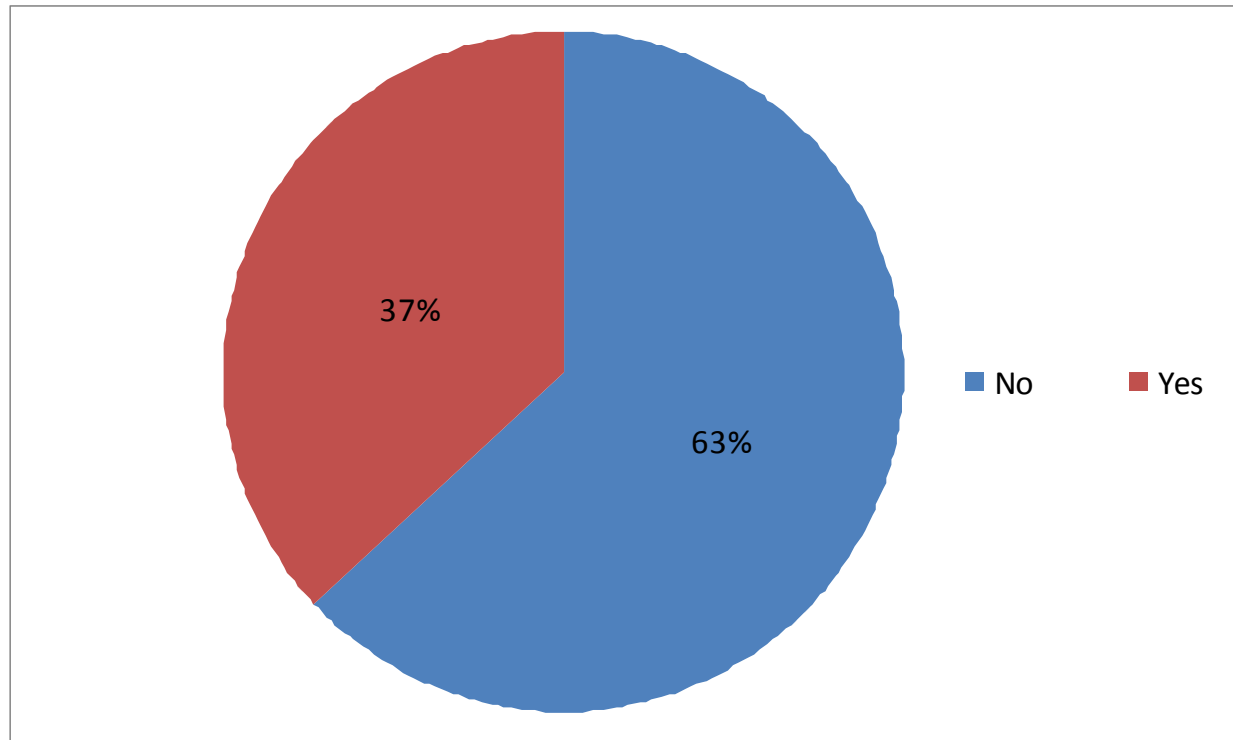
What accounting standards were used to represent accuracy of accounts?



* Excluding instances with no response

- Predominantly, warranties refer to local Belarusian accounting standards
- If other standards are used, reference is made to IFRS

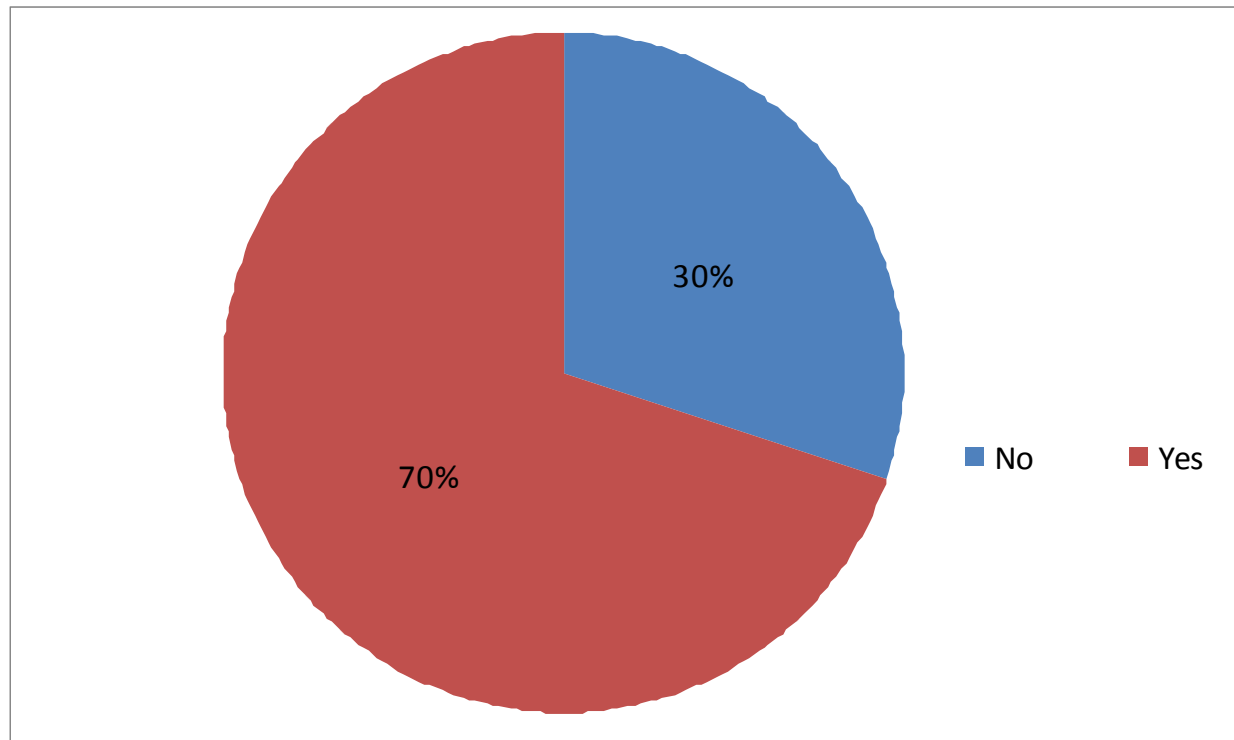
Is there a “Full Disclosure” warranty?



* Excluding instances with no response

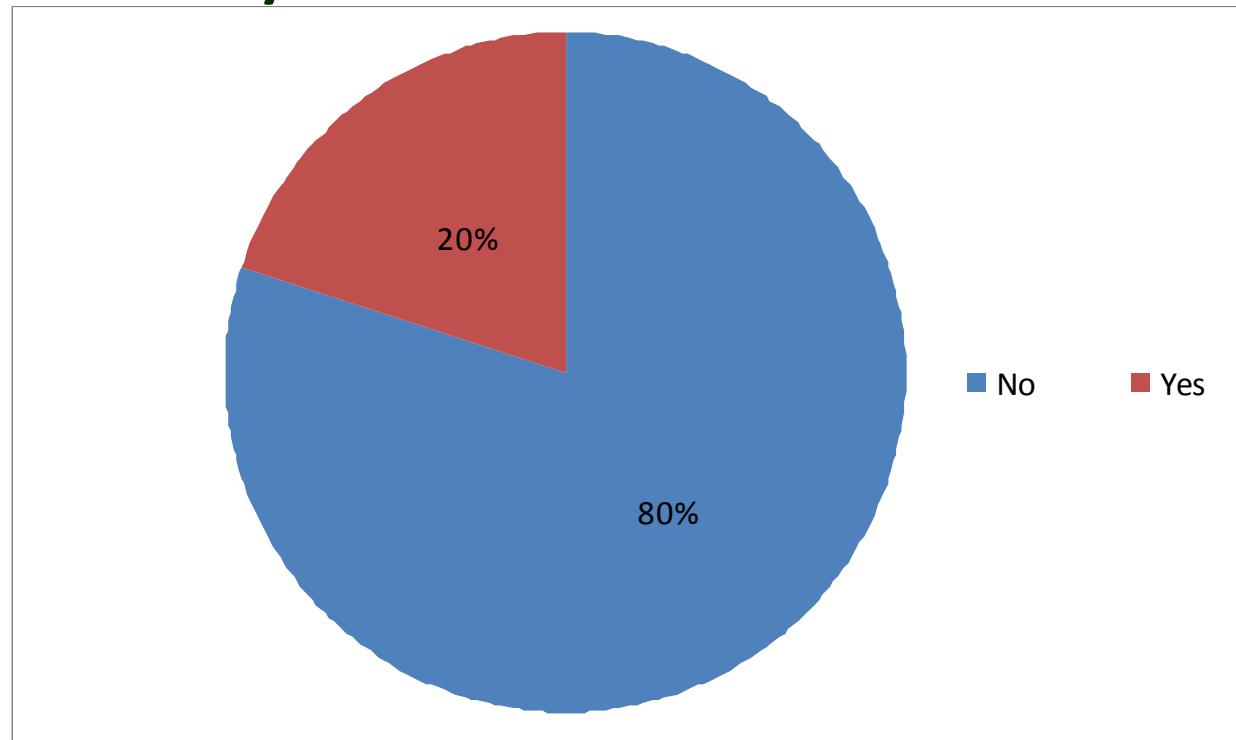
- A “Full Disclosure” warranty tends to ensure that the seller provided the buyer with all necessary information on the target, and that all statements made are true and not misleading

Did closing occur after signature of the acquisition agreement?



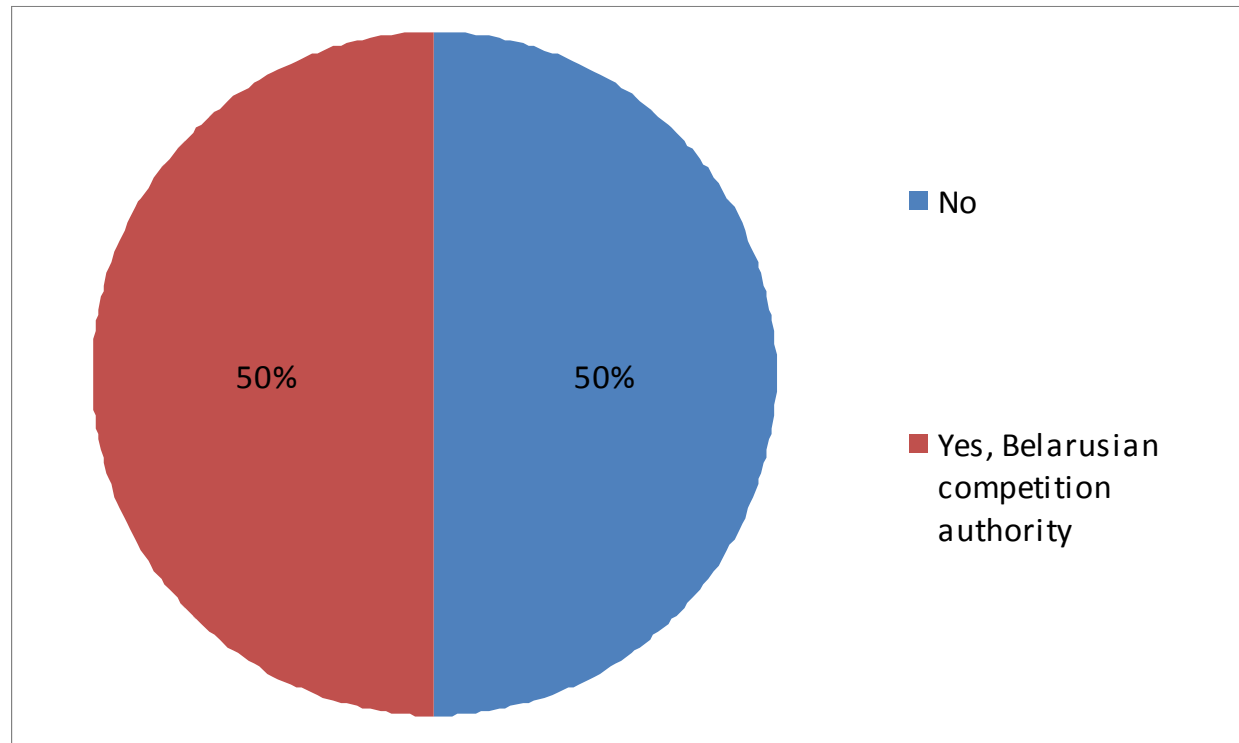
- Closing generally occurs at a later date than signing of agreement as several conditions need to be fulfilled before transfer of shares or assets as the object of the transaction

Is there a MAC/MAE clause?



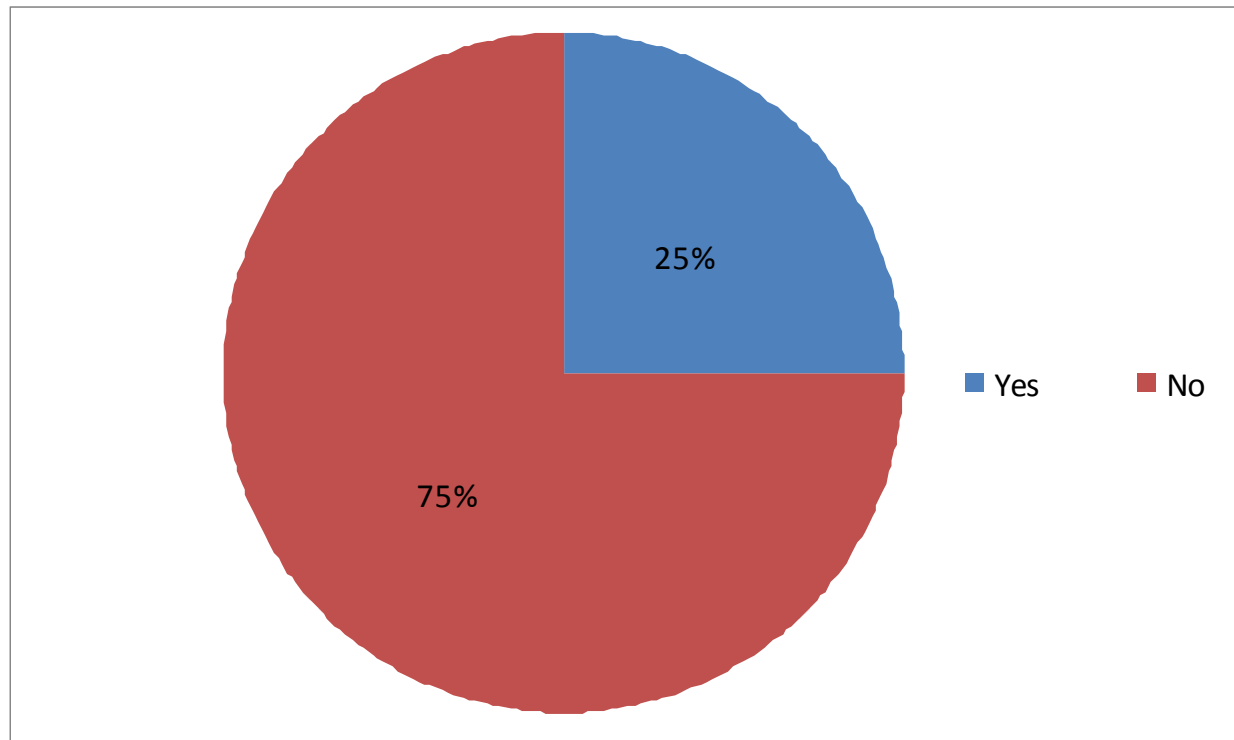
- MAC (material adverse change/effect) clauses remain rare in Belarusian M&A transactions and are still seldom used

Was the transaction subject to approval by competition authorities?



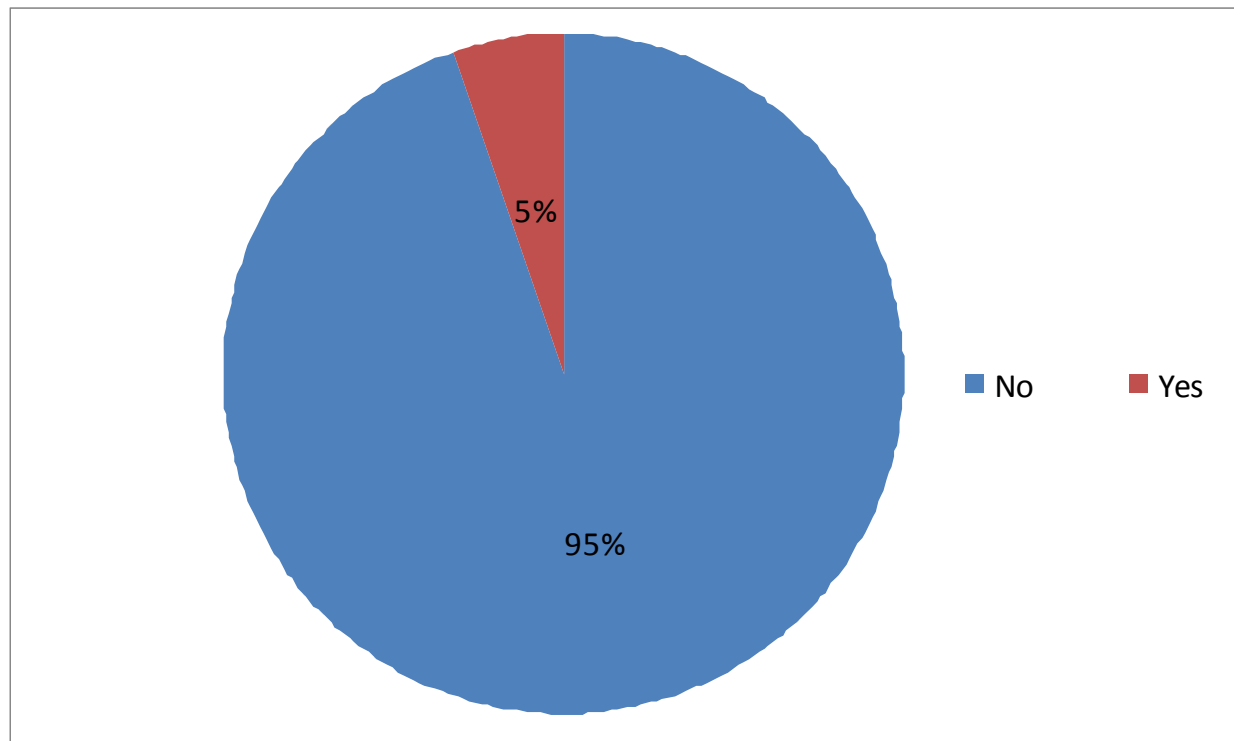
- Due to recent changes to the Belarusian competition laws, increasing number of M&A transactions require approval by competition authority.

Are damages or losses a defined term?



- Parties to Belarusian M&A transactions tend to rely on statutory provisions for defining damages or losses

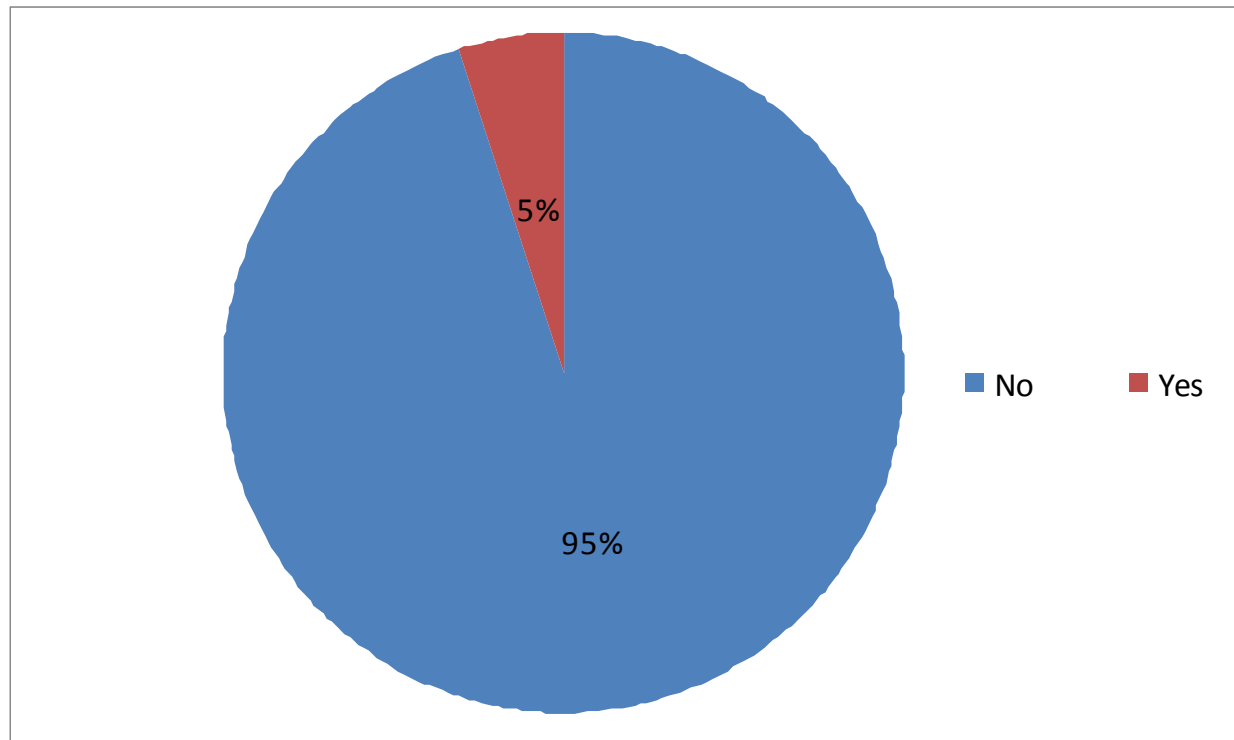
Is warranties survival period specifically stated in the agreement?



* Excluding instances with no response

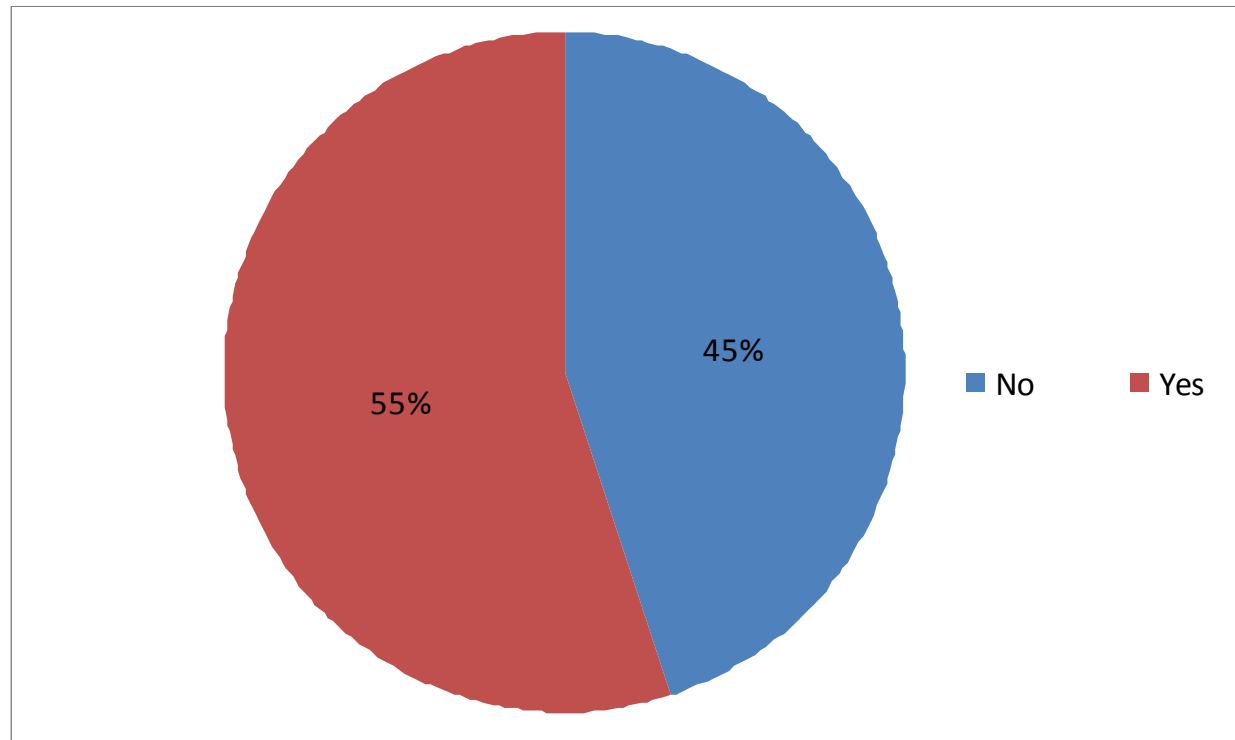
- Unlike many other European jurisdictions, Belarusian transactions do not provide for different (shorter) limitation periods for claims under representations and warranties

Do basket/thresholds limiting warranty claims exist?



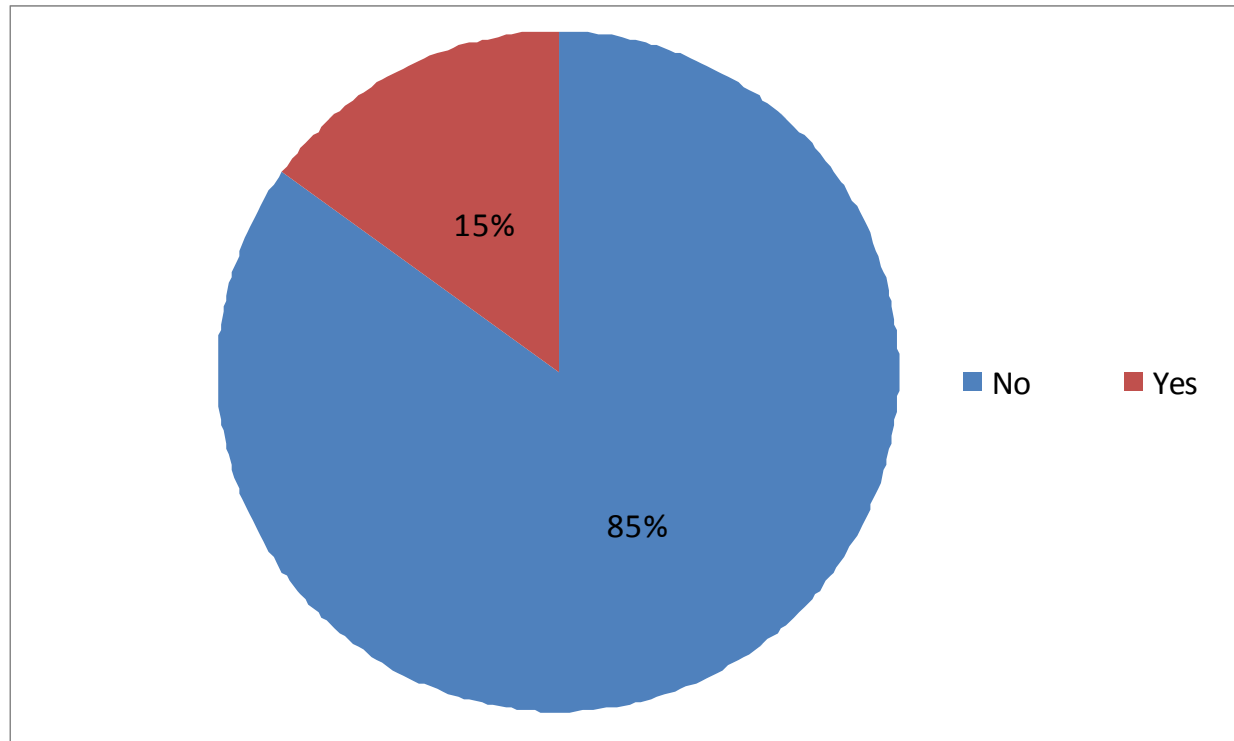
- Under a “threshold” monetary limitation buyers can only bring against the seller claims bigger than a minimum amount. Baskets are thresholds for the aggregate amount of all claims brought against the seller
- Belarusian transactions do not yet generally acknowledge baskets or thresholds for claims

Are agreement-provided remedies the only buyer's remedies for breach?



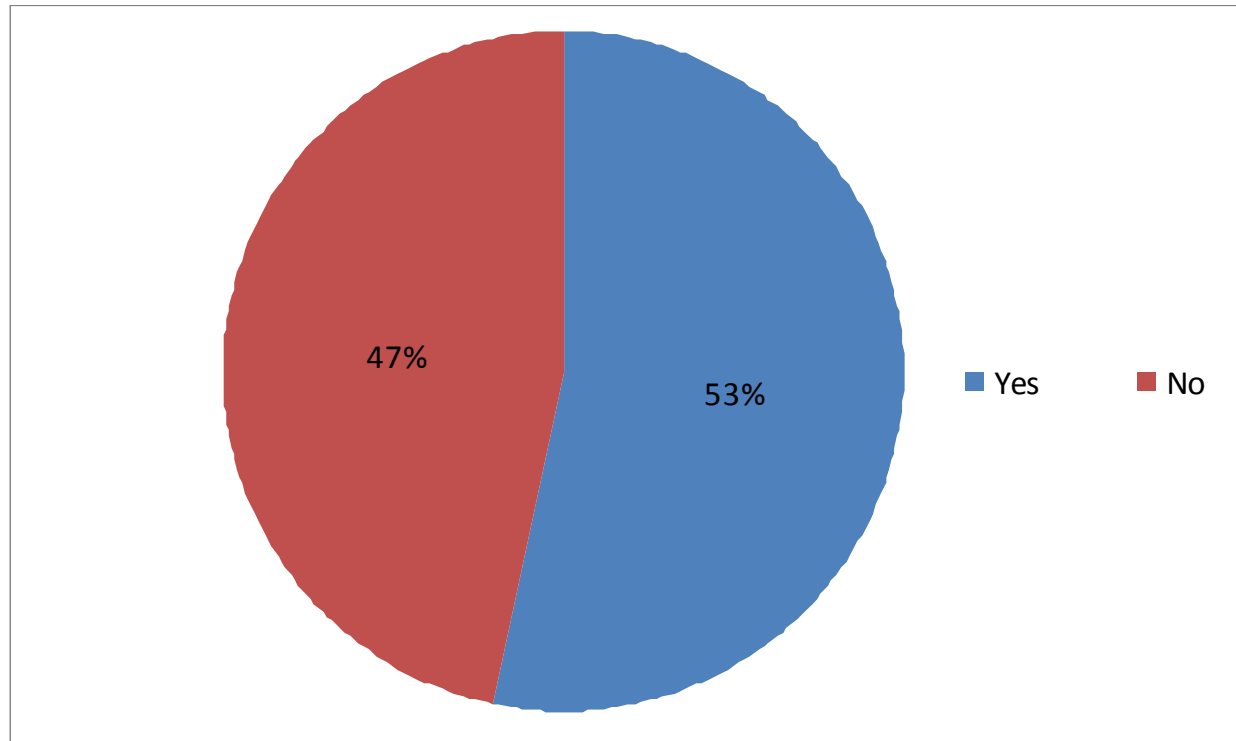
- Mandatory provisions of purchase and sale contracts that are normally reflected in transaction documents governed by Belarusian laws provide for both buyers' and sellers' remedies.

Non-competition obligation of the seller



- Non-competition obligations are rarely used in Belarus due to their potential unenforceability

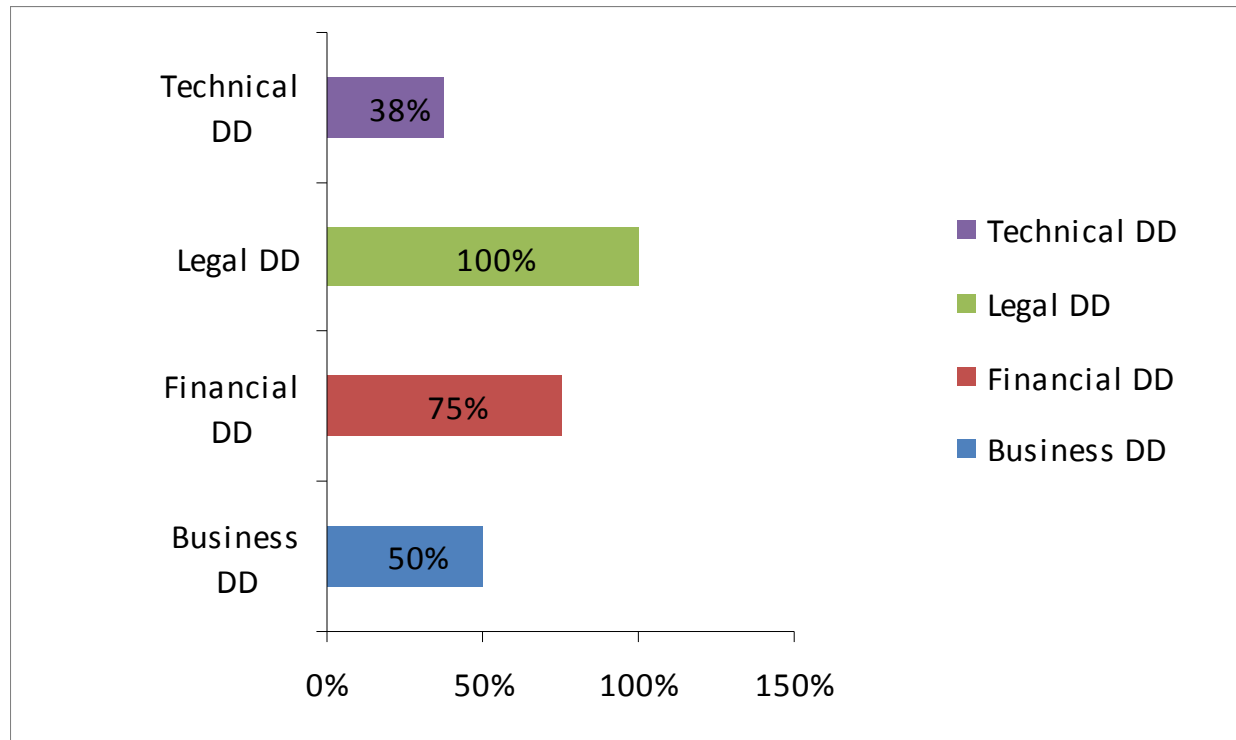
Was due diligence conducted?



* Excluding instances with no response

- Due diligence of the target business is used in approximately half of transactions

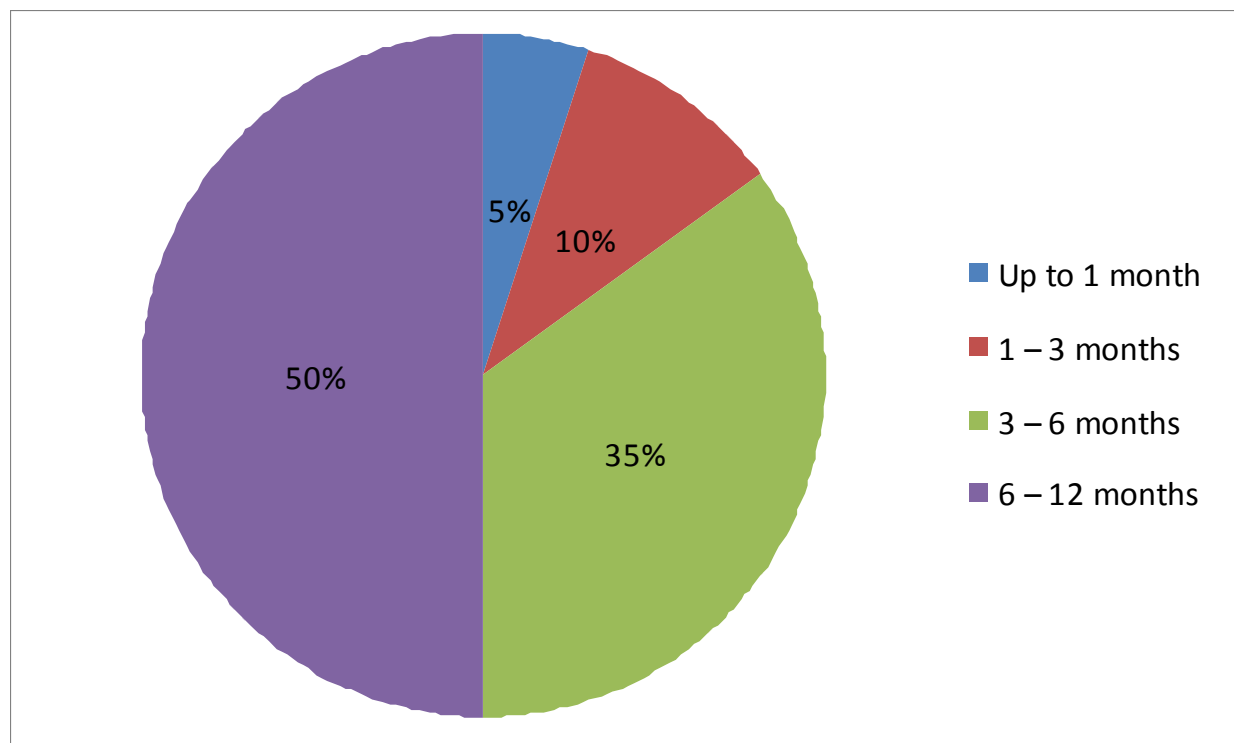
What due diligence was conducted?



* From transactions where DD was conducted

- Legal and financial due diligences are the most common types of due diligence (if conducted).

Length of the transaction process



- Transaction process length is the period from (a) the earliest of: start of active negotiations or due diligence, or signing of term-sheet or other analogous documents, until (b) transfer of shares or assets
- M&A transactions are typically concluded within 3 – 12 months



Conclusions

- Typical Belarusian M&A transactions during the period July 2008 – June 2010 can be characterised as follows:
 - transaction value: EUR 5-25 million
 - share transaction between strategic investors or a privatisation
 - negotiated sale process lasted for approx 6 months
 - representations and warranties (if given) are reasonably wide-scoped, but liability is mostly left to be regulated by statutory norms
- Belarusian M&A practice is familiar with most internationally used deal points, but their use is sometimes restricted due to local mandatory norms
- Collaboration by participating firms provides very interesting data for further monitoring and development of the market. The study is a good basis for Belarus M&A Deal Points Studies for coming years



BUSINESSCONSULT

law firm



Magisters



SORAINEN

ESTONIA LATVIA LITHUANIA BELARUS



SPP

Stepanovski, Papakul & partners



VLASOVA MIKHEL & PARTNERS

Businessconsult

Ph: +375 17 246 9200

E-mail: office@businessconsult.by
www.businessconsult.by

Magisters

Ph: +375 17 268 8282

E-mail: minsk@magisters.com
www.magisters.com

SORAINEN

Ph: +375 17 306 2102

E-mail: belarus@sorainen.com
www.sorainen.com

Stepanovski, Papakul & Partners

Ph: +375 17 2094483

E-mail: info@spplaw.by
www.spplaw.by

Vlasova, Mikhel & Partners

Ph: +375 17 203 8496/67

E-mail: info@vmp.by
www.vmp.by