

# Belarus M&A Deal Points Study 2010





## 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 & methodology

- 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
- 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

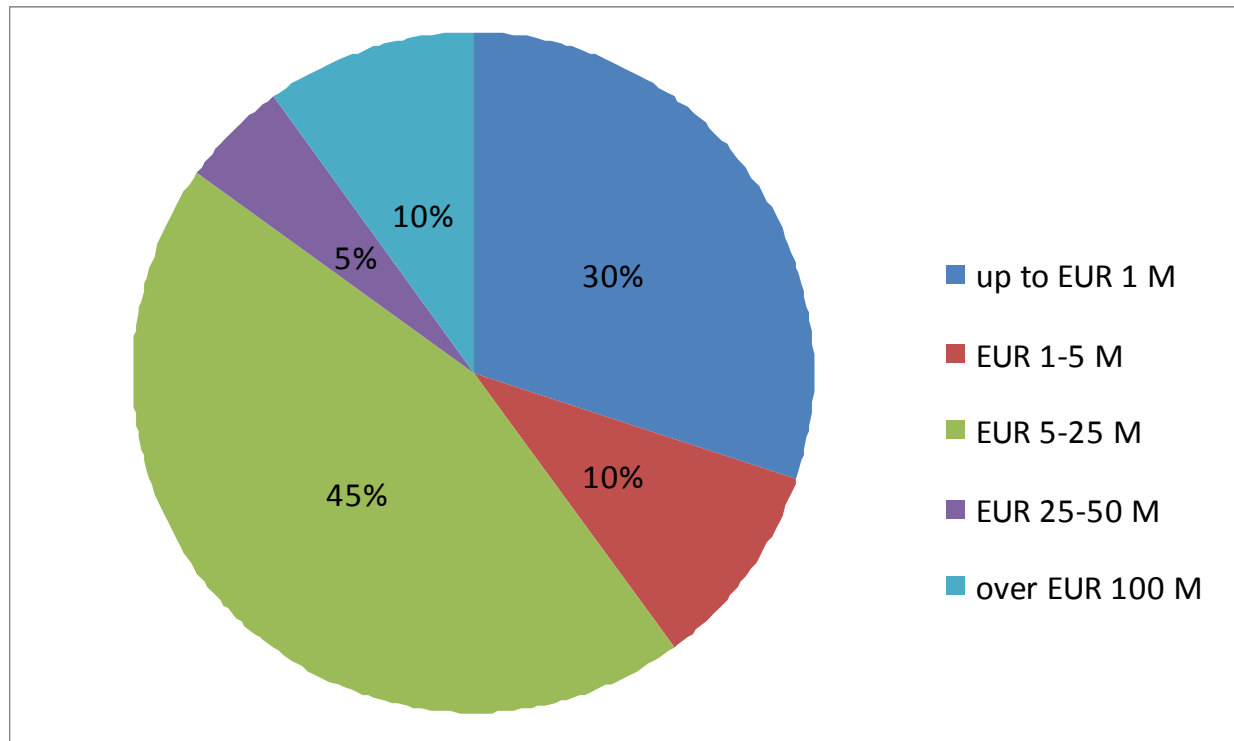


## Transactions analysed

- 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



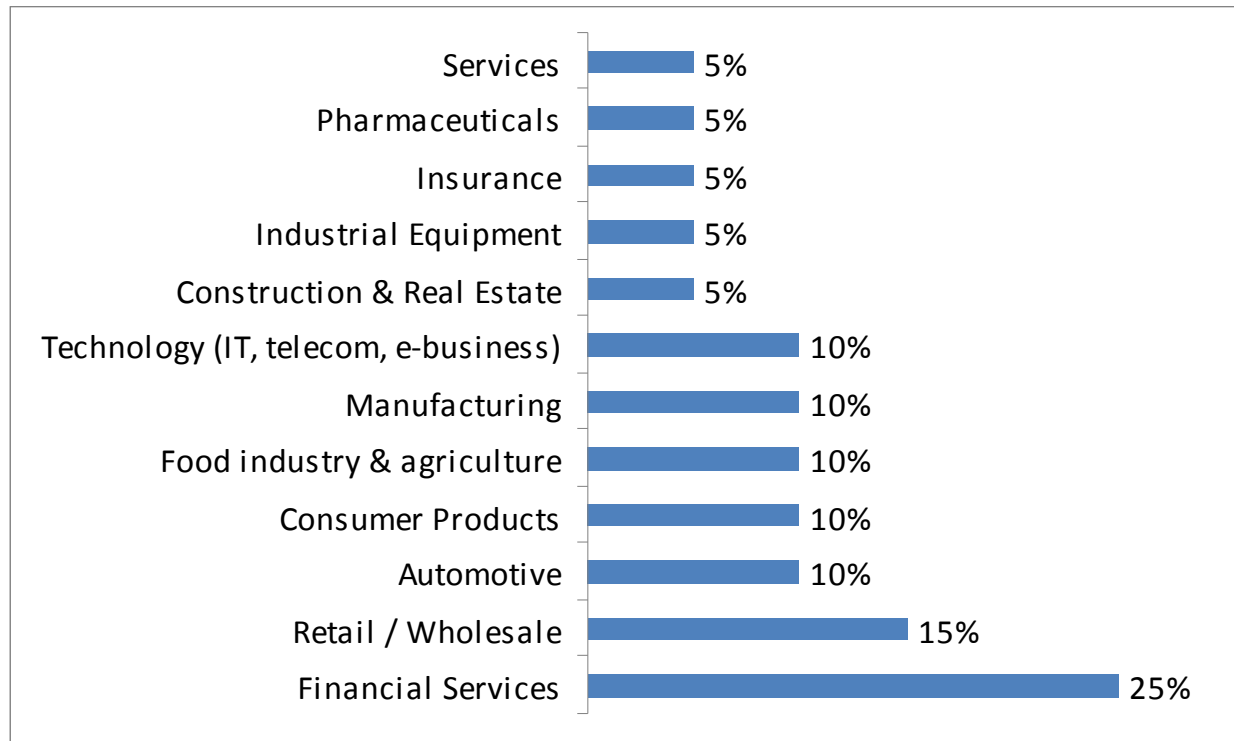
## Transaction value



- 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



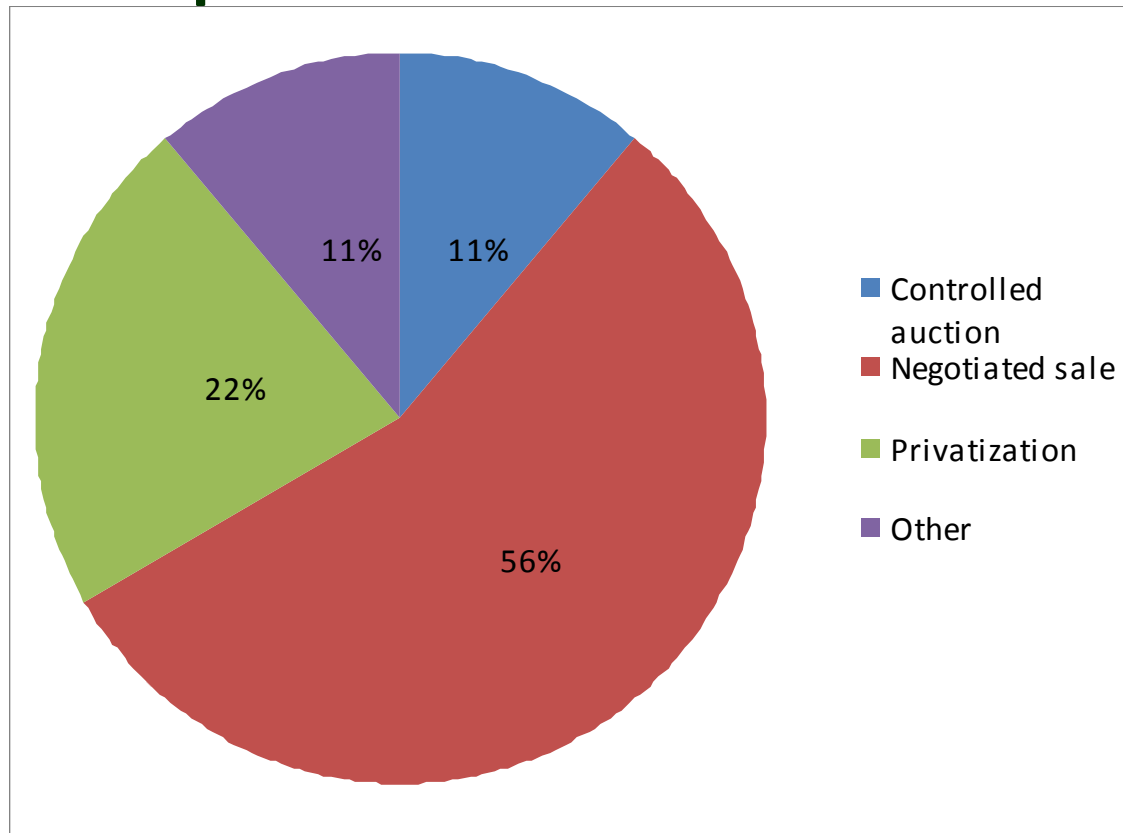
## Target sector



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



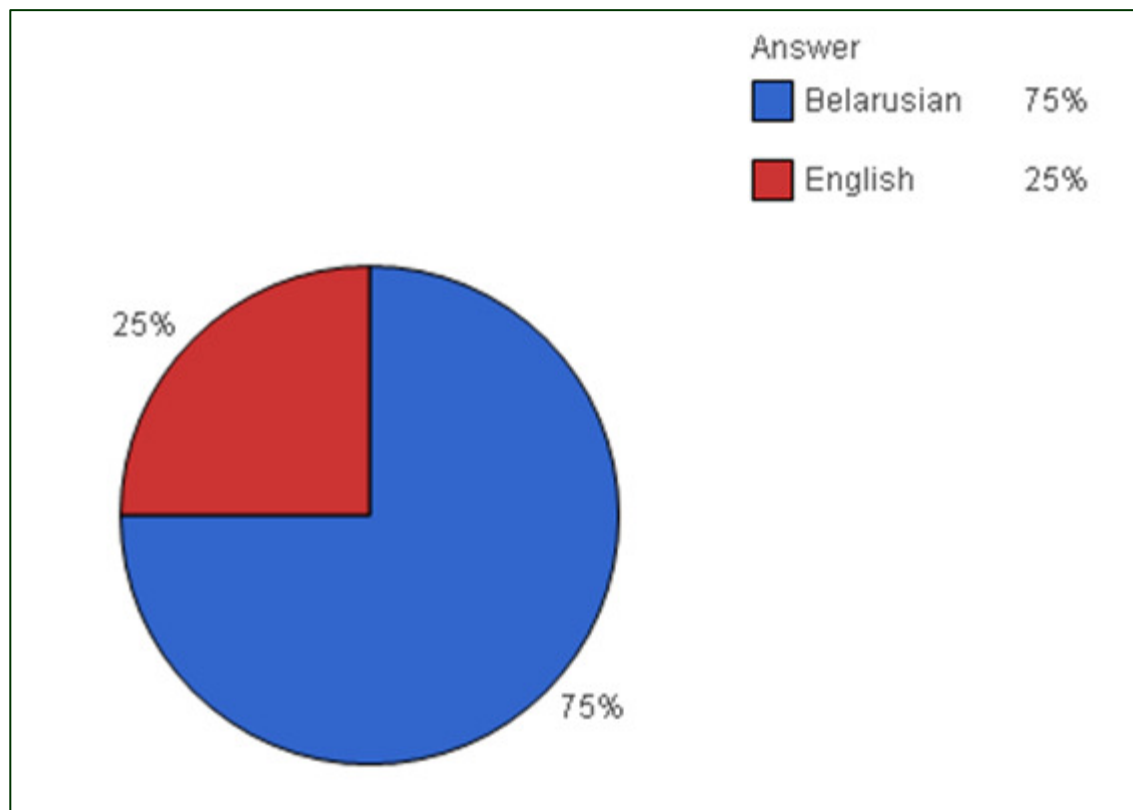
## Selected sales process



\* 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

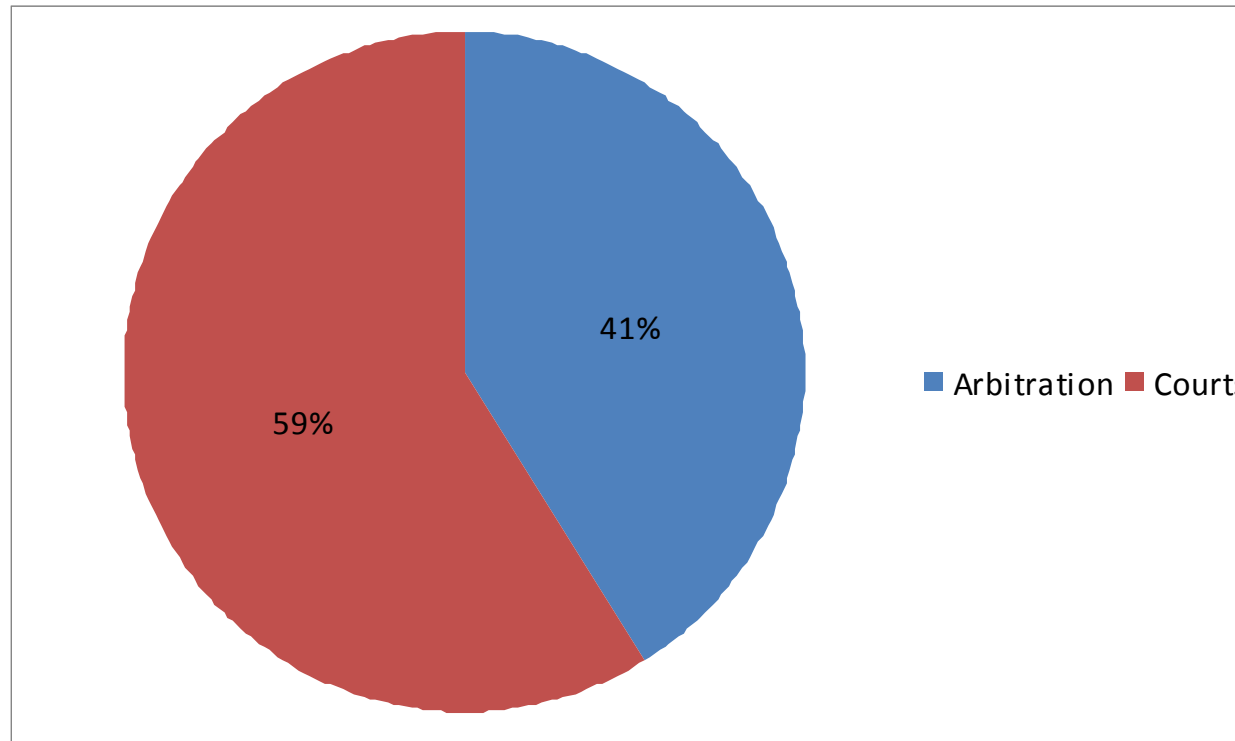
## Governing law



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



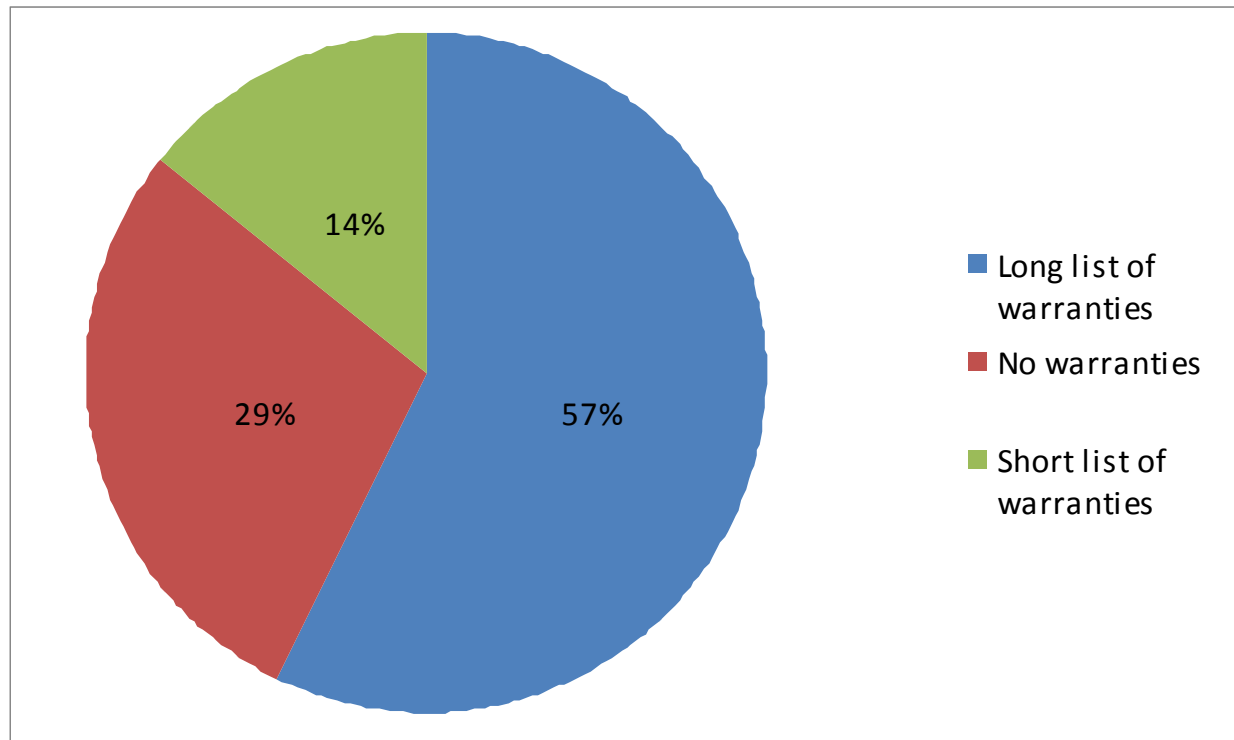
## Dispute resolution mechanism



\* 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

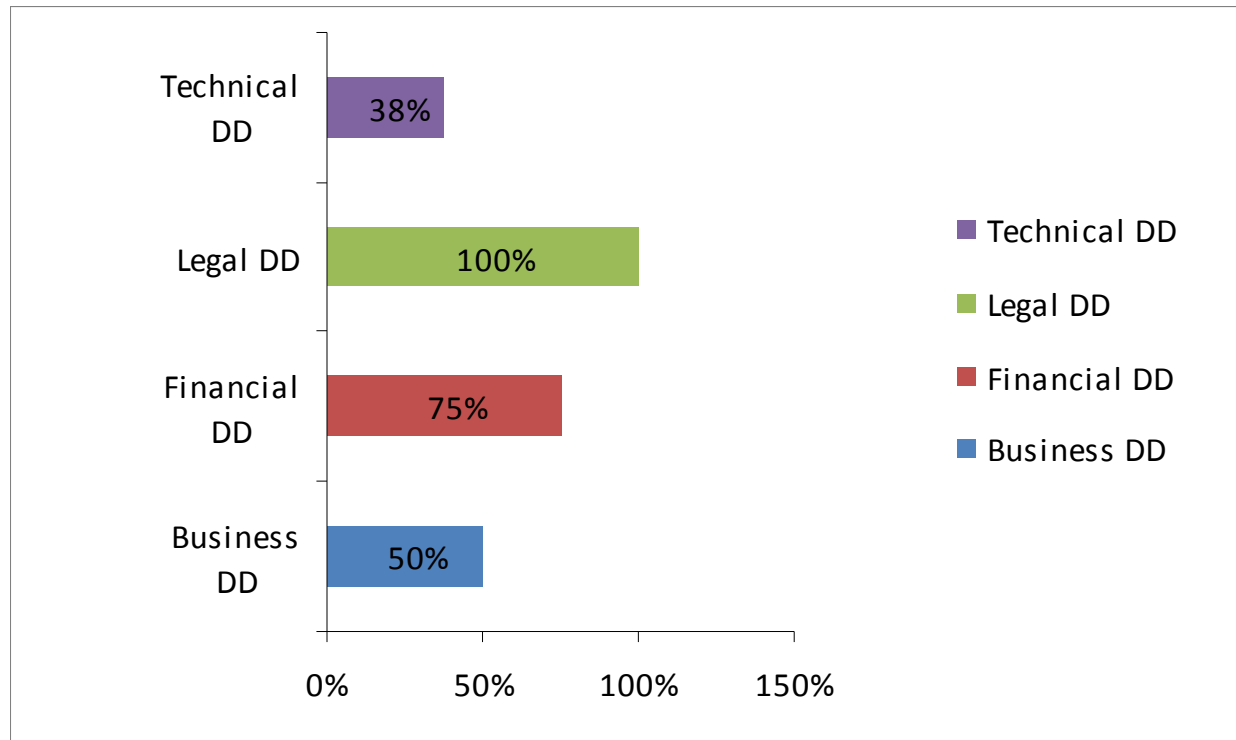
## Did the seller give any representations and warranties?



\* Excluding instances with no response

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

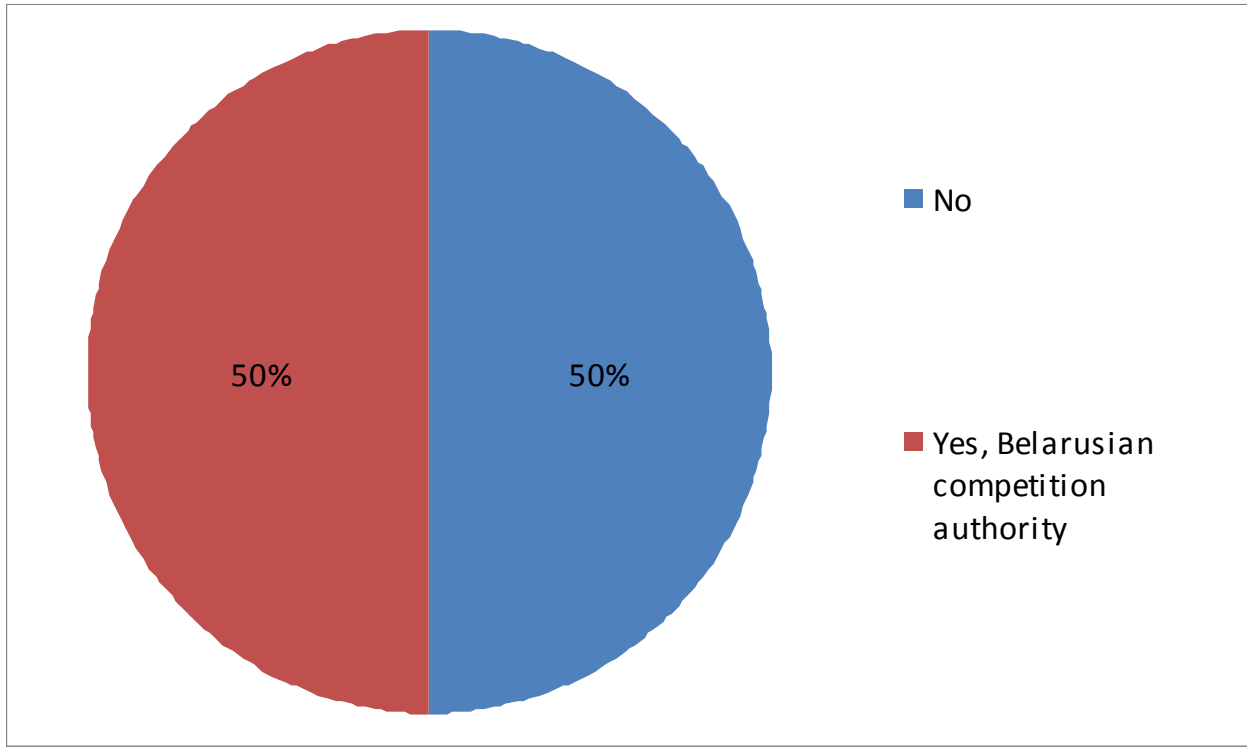
## What due diligence was conducted?



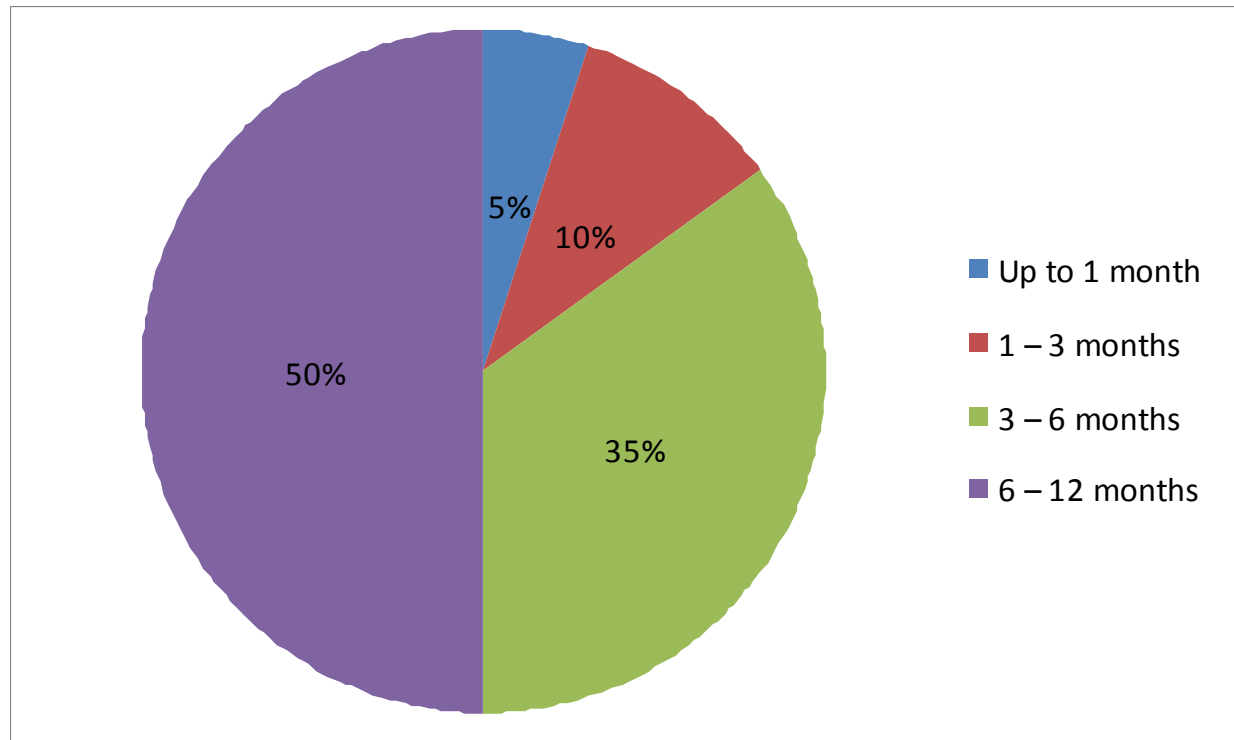
\* From transactions where DD was conducted

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

# Was the transaction subject to approval by competition authorities?



## Length of the transaction process



- Transaction process length is the period from (a) the earliest of: start of active negotiations, signing due diligence or term-sheets or other analogous documents, until (b) shares or assets transfer (closing)
- 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
  - Due Diligence is becoming a common practice compared to previous years
- M&A market in Belarus is about to undergo major quality and quantity changes:
  - Need for investments
  - Privatization
  - Markets diversification
  - Increase of competition law influence on M&A deals



## Conclusions

- Belarusian M&A practice is familiar with most internationally used deal points, but their use is sometimes restricted due to local mandatory norms
  - Shareholder's agreements contradicting mandatory norms cannot be enforced in Belarus
  - Payment terms under the contract with a Belarusian party are limited to the options foreseen in the Belarusian legislation
  - Decisions of foreign courts and tribunals contradictory to Belarusian mandatory norms cannot be enforced in Belarus
  
- 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



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