



Baltic M&A Deal Points Study 2013

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2013 Baltic M&A Deal Points Study

- Drawing on the experience of the Baltic M&A Deal Points Study 2011 and 2009 this new edition is conducted by the following Baltic M&A law firms:
 - SORAINEN
 - Raidla Lejins Norcous
 - LAWIN
 - Tark Grunte Sutkiene
 - Borenius
- The study analyses 84 M&A transactions completed during the period July 2011 – June 2013.
- Although full responses to all questions were encouraged, respondents were able to omit answering any question at their discretion due to confidentiality or other reasons.
- This 2013 study compares the results to the similar 2011 and 2009 studies.

Transactions Analysed

- The 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, joint venture agreements or in any other way.
 - Only Baltic transactions were studied, i.e. the M&A transaction involved targets operating in one or more of the Baltic States: Estonia, Latvia and Lithuania.
 - Transactions were completed during the two year period July 2011 – June 2013.
 - There were no limitations as to deal value, nature of the parties or the target or the sales process of the transaction.

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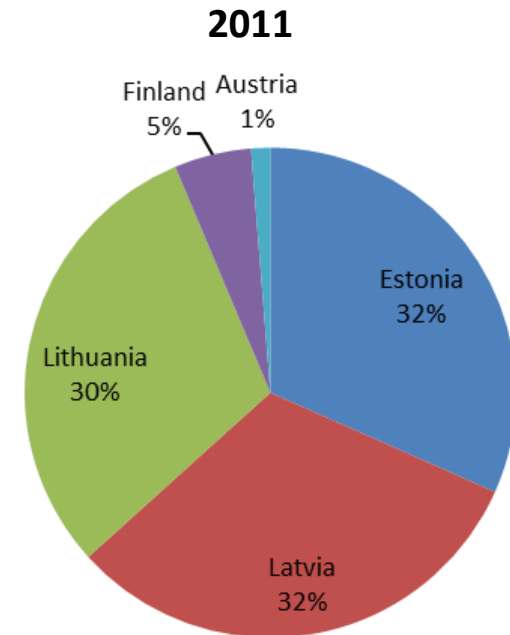
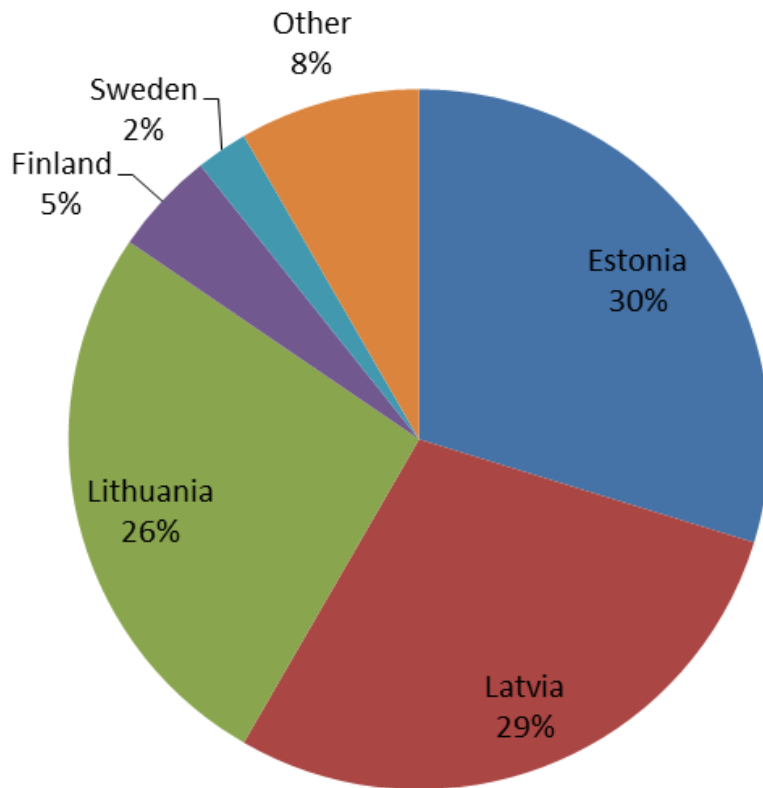
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The Parties

General characteristics of the transactions

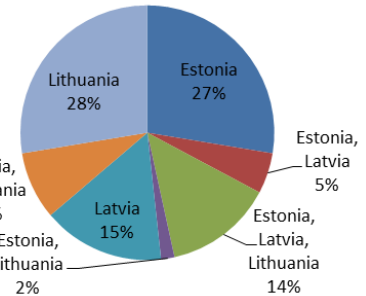
Country of the Target Head Office



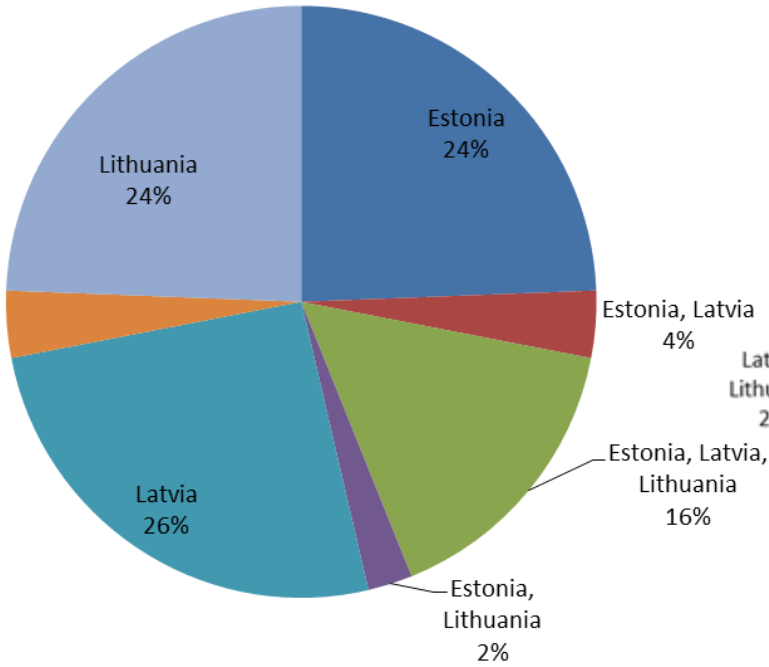
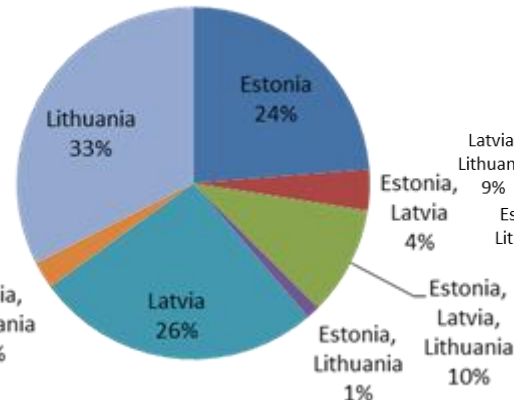
- Transactions concerned slightly more international targets compared to earlier study, although Baltic targets are by far prevailing.

Baltic State where the Target Operates

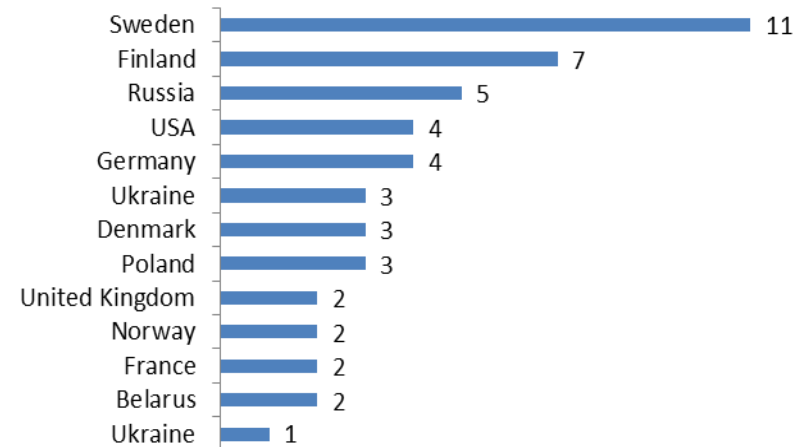
2009



2011

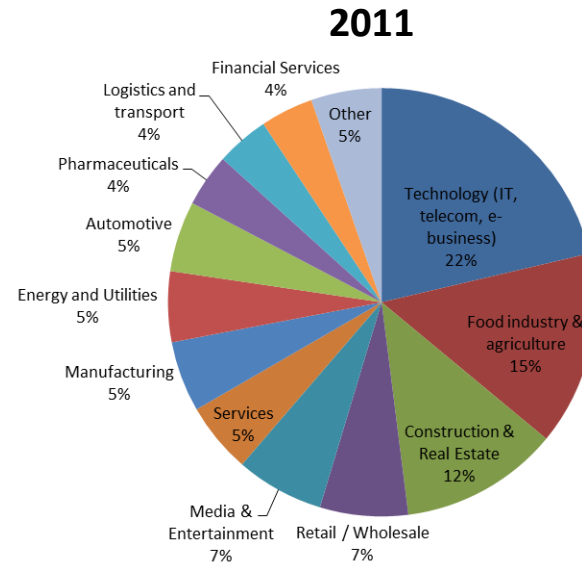
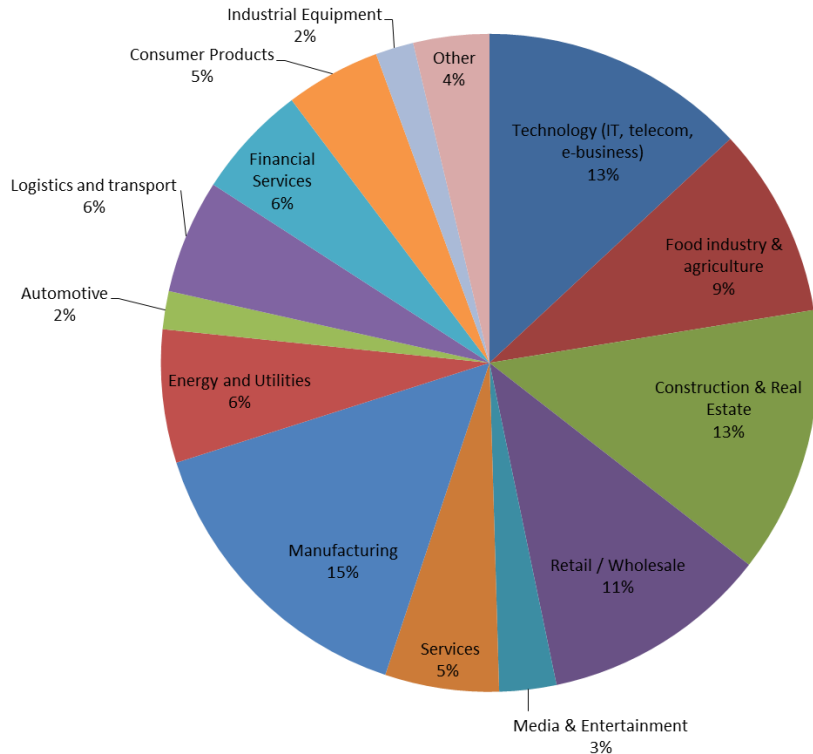


No. of targets having operations outside the Baltic States

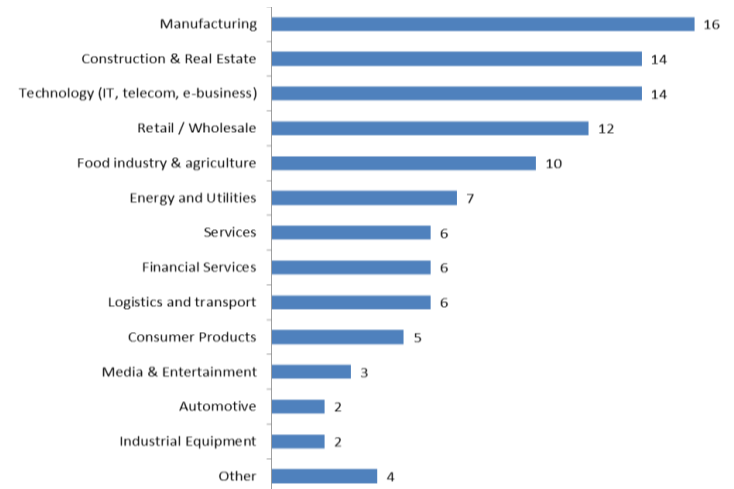


- Number of pan-Baltic targets has increased.
- Targets' geographical focus outside the Baltics include mainly Sweden, Finland and Russia, i.e. the main export countries for Baltic companies.

Target's Main Industries



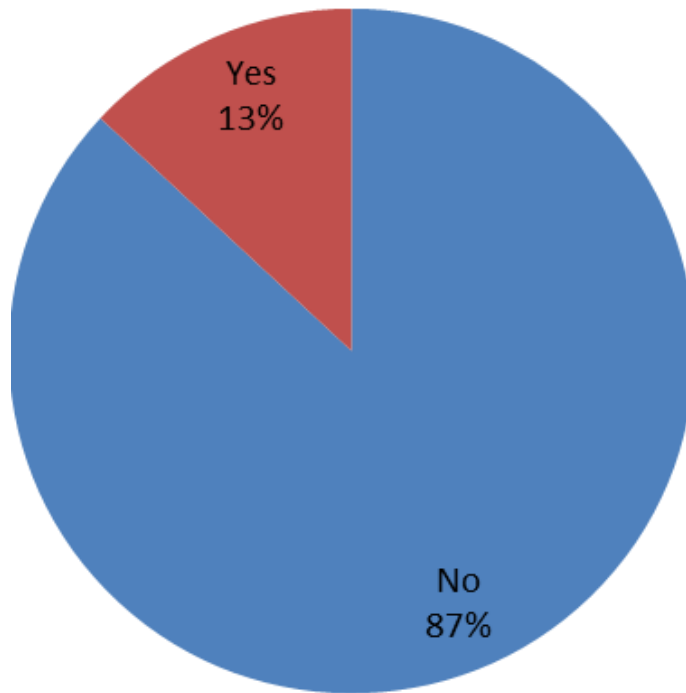
No. of targets operating in each industry



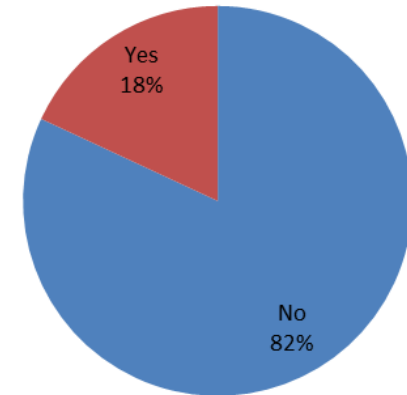
- Increased activity in Manufacturing sector as compared to 2011 study.
- Construction & Real Estate, Technology, Retail/Wholesale and Food Industry & Agriculture remain as sectors with active M&A.

Other Target Characteristics

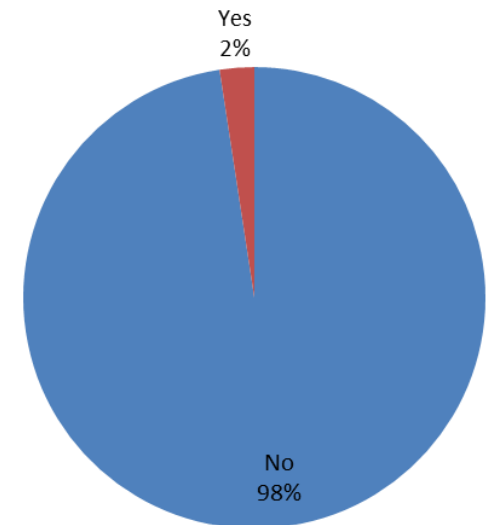
Was the Target distressed?



2011

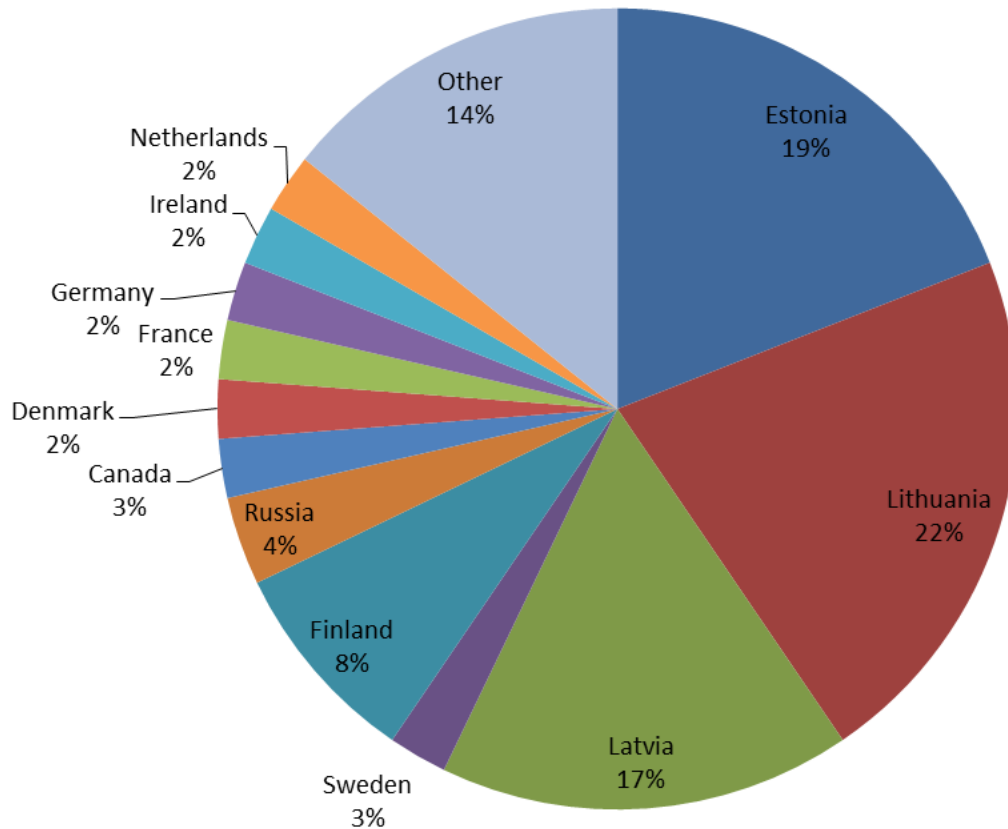


Are shares of the Target publicly traded?



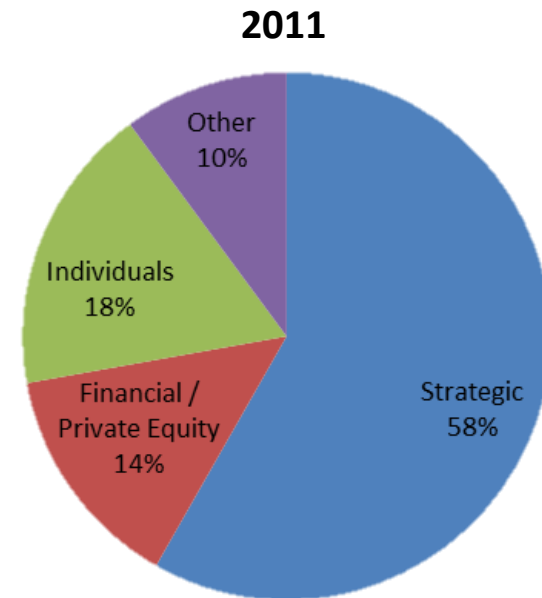
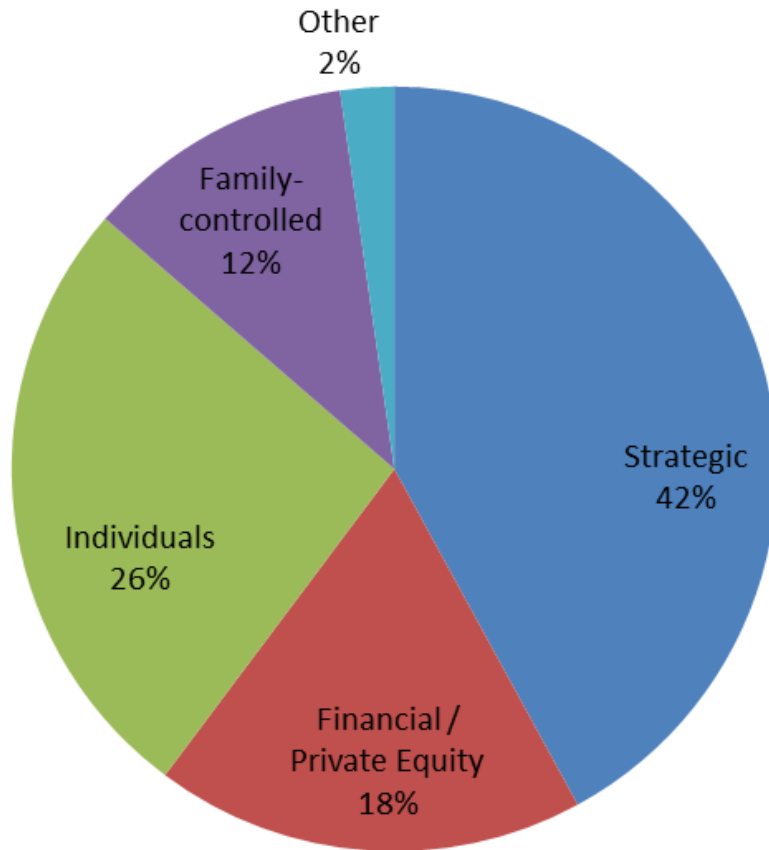
- Less distressed targets compared to 2011 study.
- Two targets listed on stock exchange (none in 2011 study).

Country of the Seller



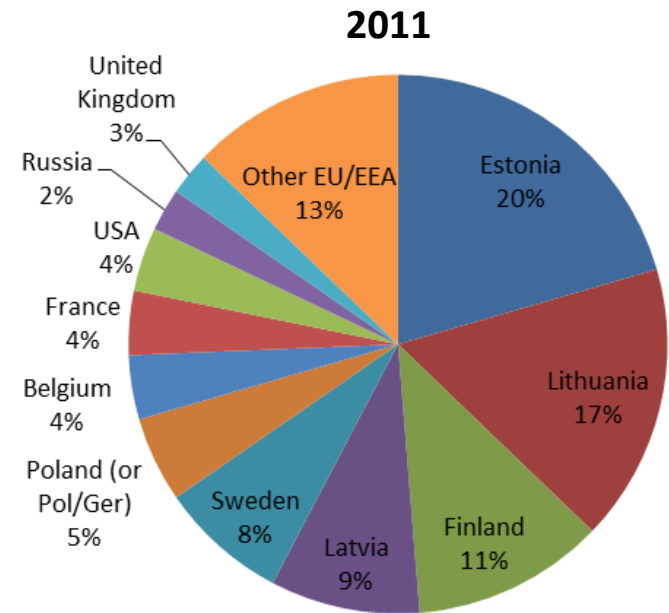
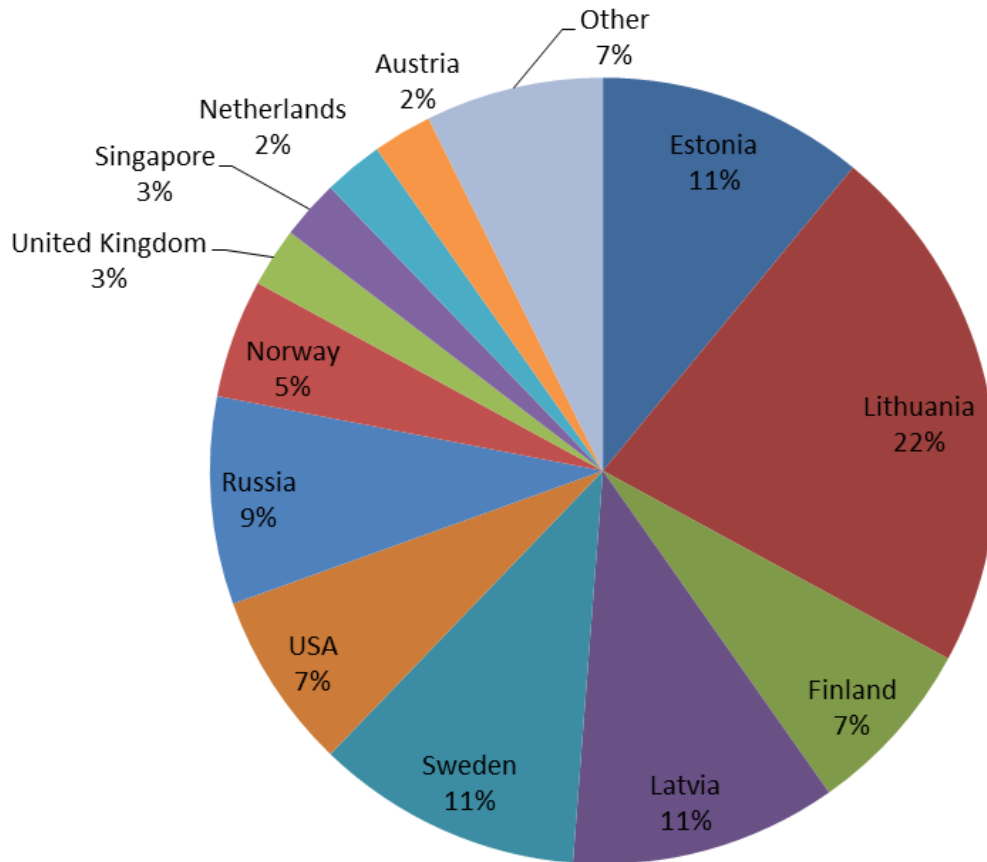
- Majority of the sellers are from the Baltic States similarly to 2011 and 2009 studies.
- Slight trend showing foreign shareholders exiting their Baltic investments.

Nature of the Seller



- Higher concentration of individual and financial/private equity sellers compared to 2011 study.

Country of the Buyer



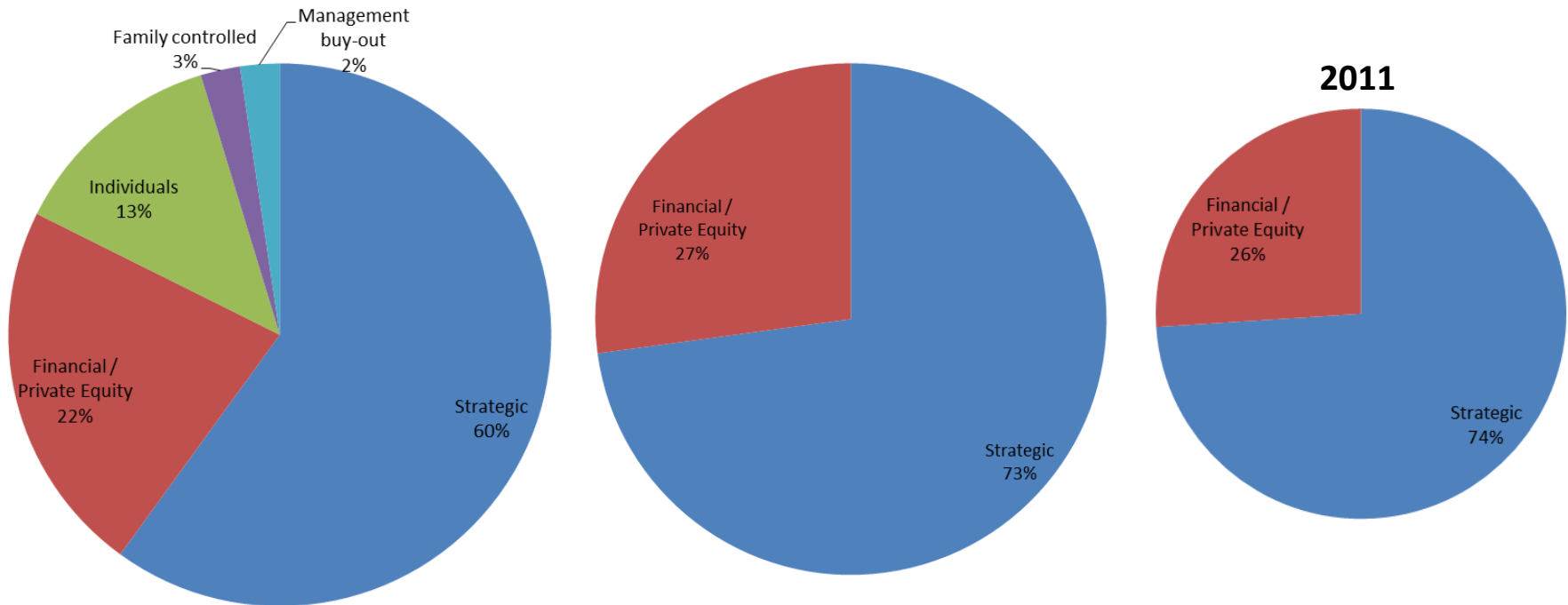
- Majority of buyers come from Baltic and Nordic countries, however, there is a noticeable increase of buyers from Russia.

Geography of Buyers and Targets

Origin of buyer	Estonia	Finland	Latvia	Lithuania	Other	Sweden	Ukraine	Total
Austria	2							2
Denmark	1							1
Estonia	7	1	1					9
Finland	4	1	1					6
Latvia			9					9
Lithuania	1		2	13	1		1	18
Netherlands			1			1		2
Norway	2		2					4
Other				3	1	1		5
Russia			5	1	1			7
Singapore			1	1				2
Sweden	4		2	1	2			9
UK	1	1						2
USA	3			2	1			6
Total	25	3	24	21	6	2	1	82

- Most Baltic buyers (especially Lithuanian) acquired targets in their own country.
- Finnish and Swedish buyers preferred Estonian targets, whereas Russians preferred Latvian targets.

Nature of the Buyer



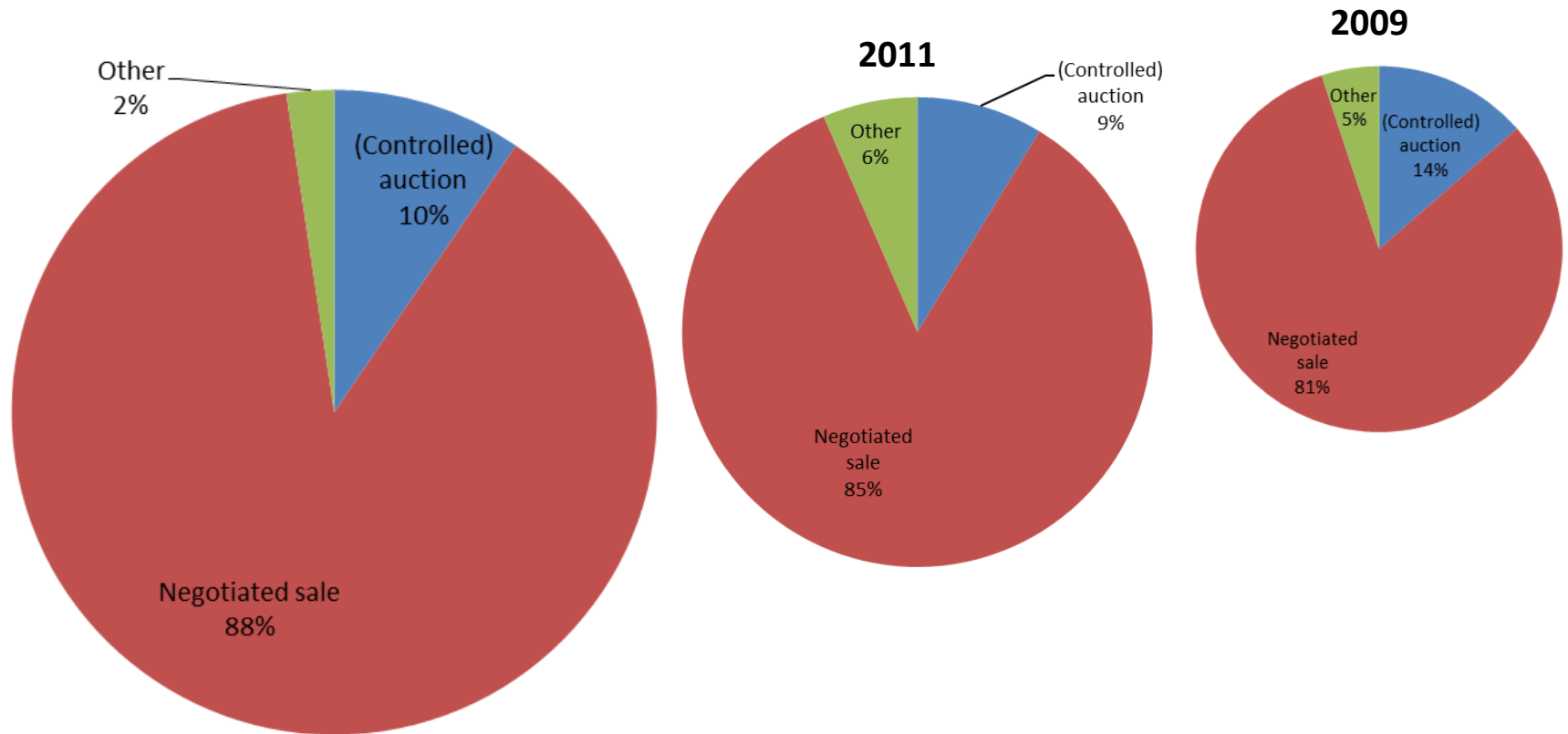
- The proportions of the strategic buyer and financial/private equity buyer have remained substantially the same in comparison to 2011 study.

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Sales Process and Form of Transaction

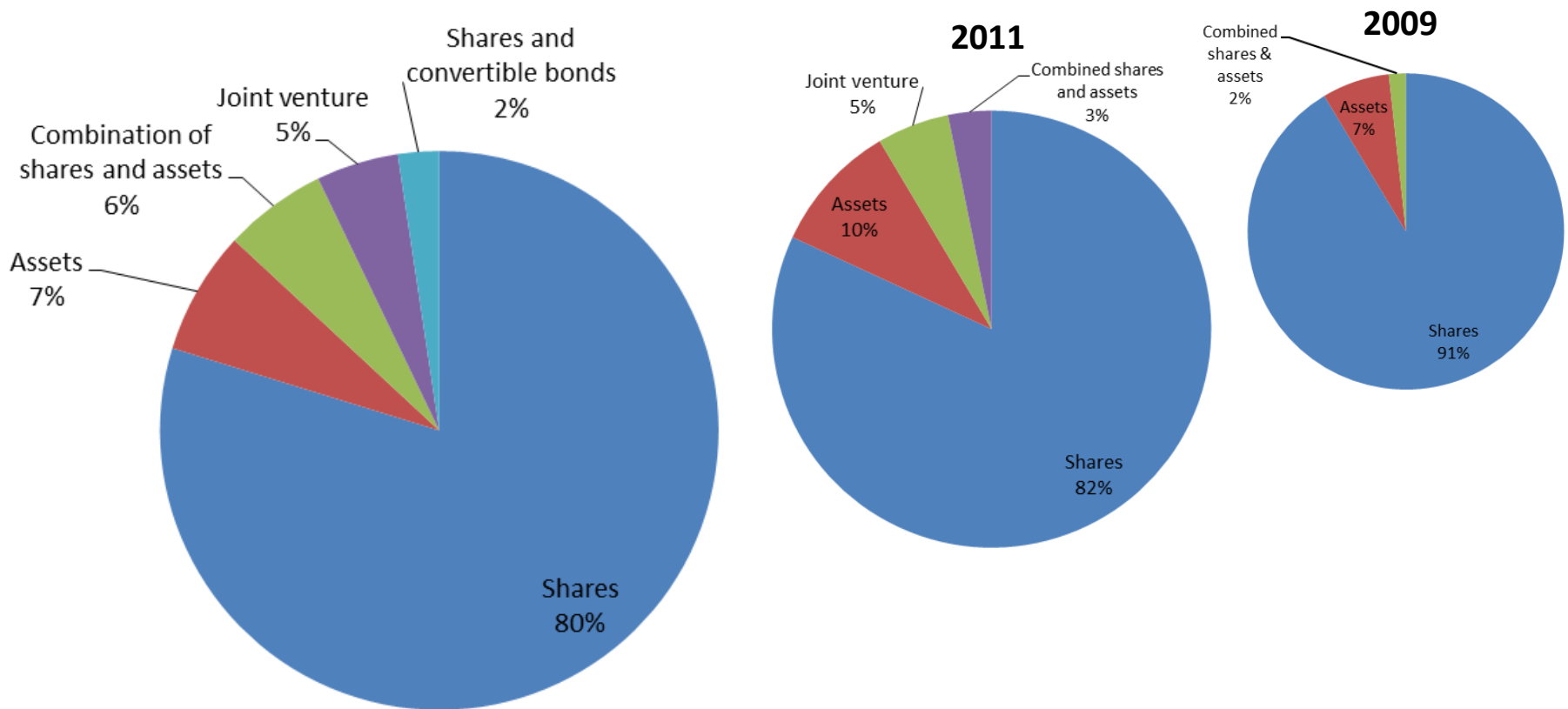
General characteristics of the transactions

Nature of the Sales Process



- The percentage of negotiated sales has increased steadily during the period analysed (2007-2013).
- Controlled auctions remain rare in the Baltic M&A transactions.

Form of Transaction



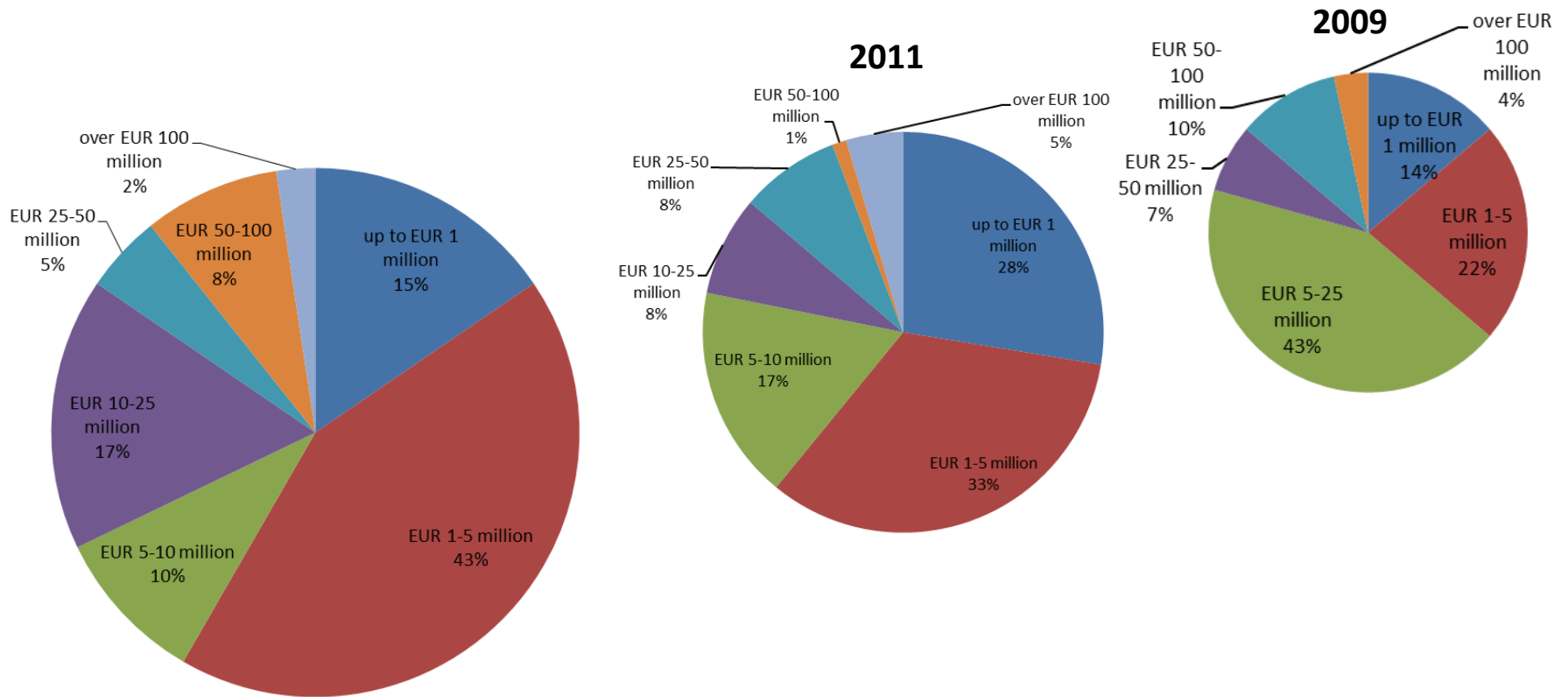
- As in 2011 and 2009 studies, most of the transactions in the Baltics are share deals.



Transaction Value and Payment

General characteristics of the
transactions

Transaction Value



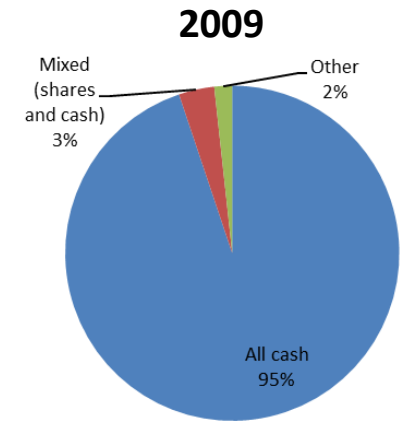
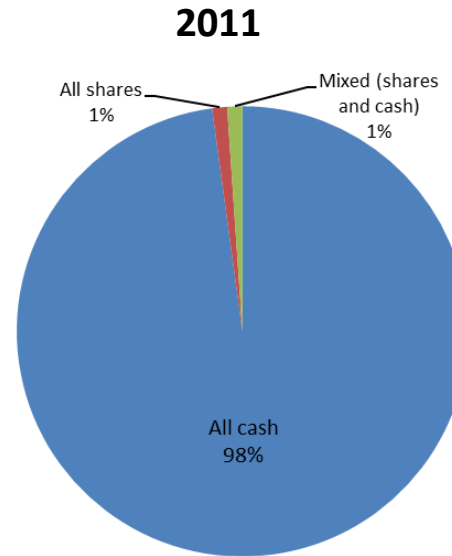
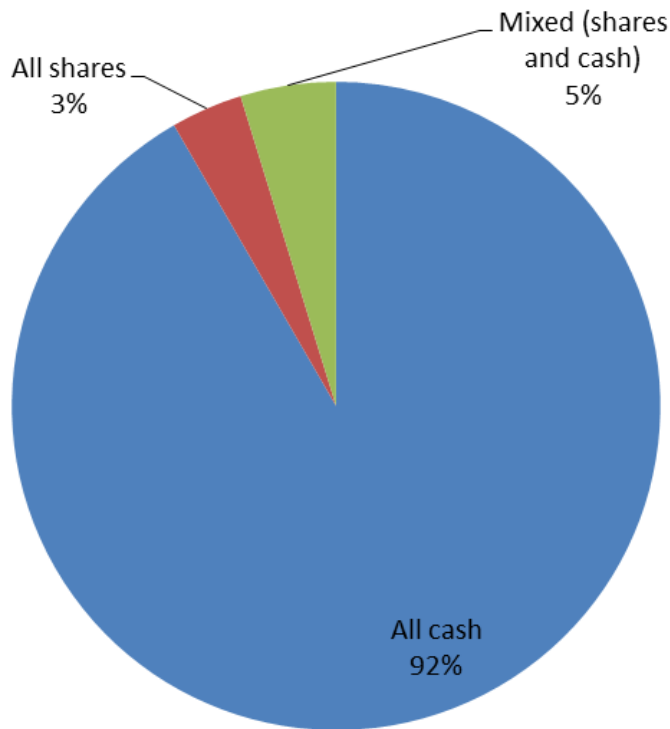
- The value of a typical Baltic M&A deal remains in the 1-5 million bracket.

Distribution of Transaction Value by Buyer and Sales Process

Transaction value	Strategic Buyer	Financial/Private Equity Buyer	Individuals	Management buy-out	Family controlled	Total
up to EUR 1 million	7	2	2	1		12
EUR 1-5 million	18	12	6		1	37
EUR 5-10 million	4		2		1	7
EUR 10-25 million	12	2				14
EUR 25-50 million	4					4
EUR 50-100 million	4	2	1	1		8
over EUR 100 million	1	1				2
Total	43	17	9	1	2	84

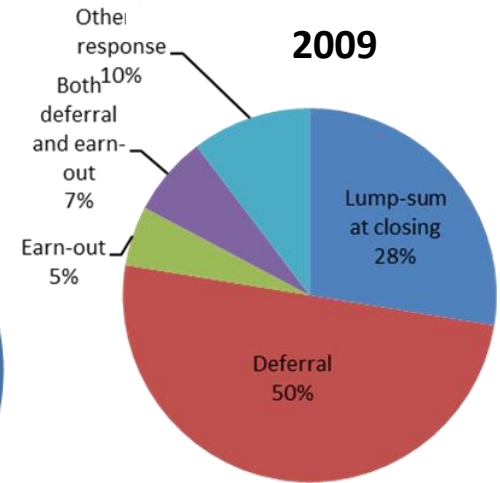
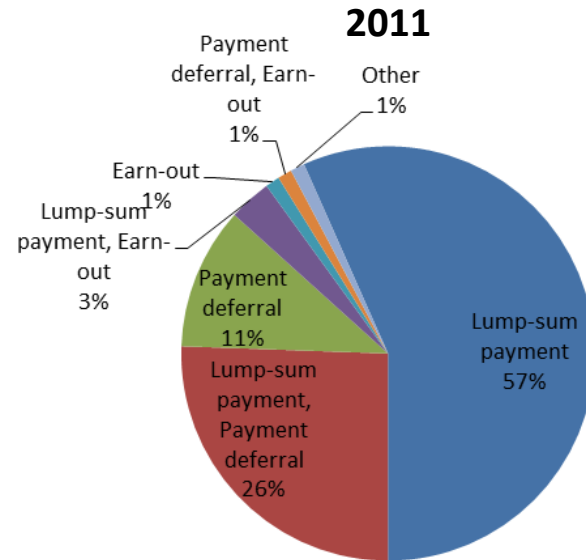
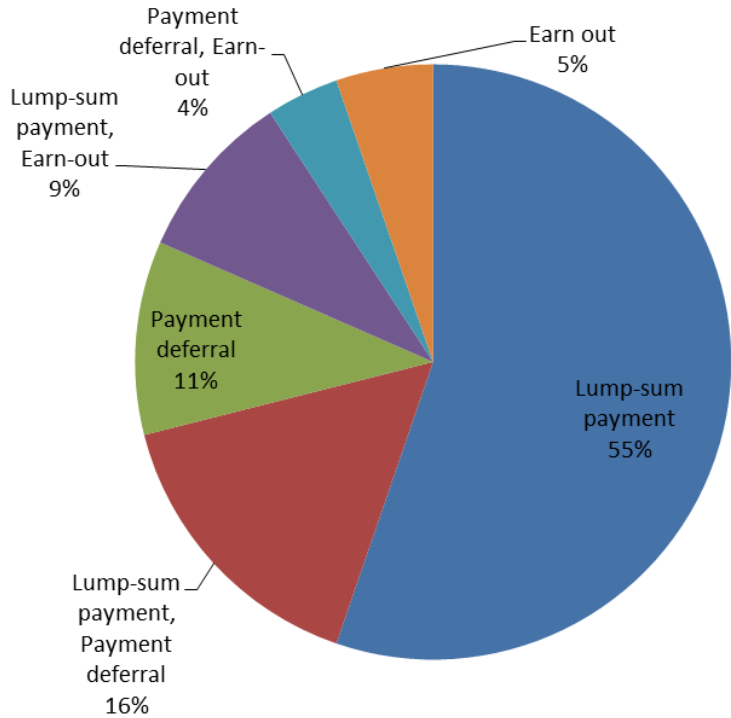
Transaction value	Controlled auction	Negotiated sale	Other	Total
up to EUR 1 million		12	1	13
EUR 1-5 million	1	34		35
EUR 5-10 million	3	5	1	9
EUR 10-25 million	1	13		14
EUR 25-50 million		4		4
EUR 50-100 million	2	5		7
over EUR 100 million	1	1		2
Total	8	74	2	84

Form of Consideration

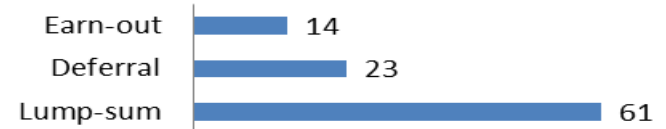


- Almost all transactions have cash as consideration, reinforcing the tendency in 2011 and 2009 studies, though mixed consideration is slightly growing.

Payment Terms



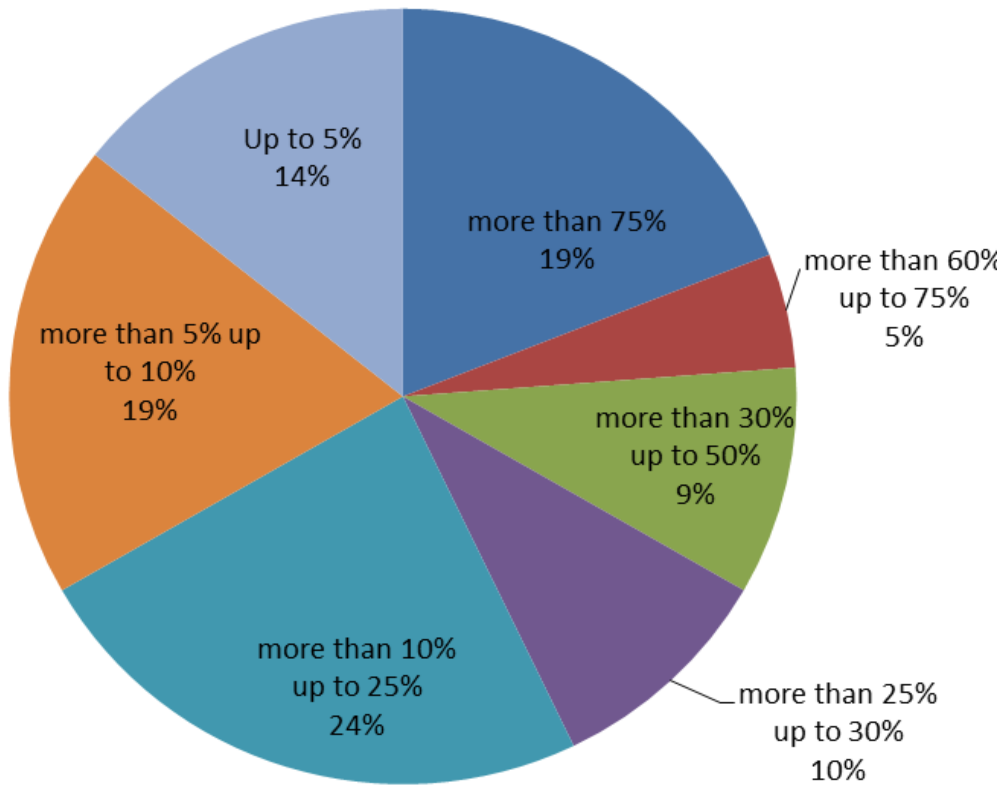
Number of transactions using each payment term



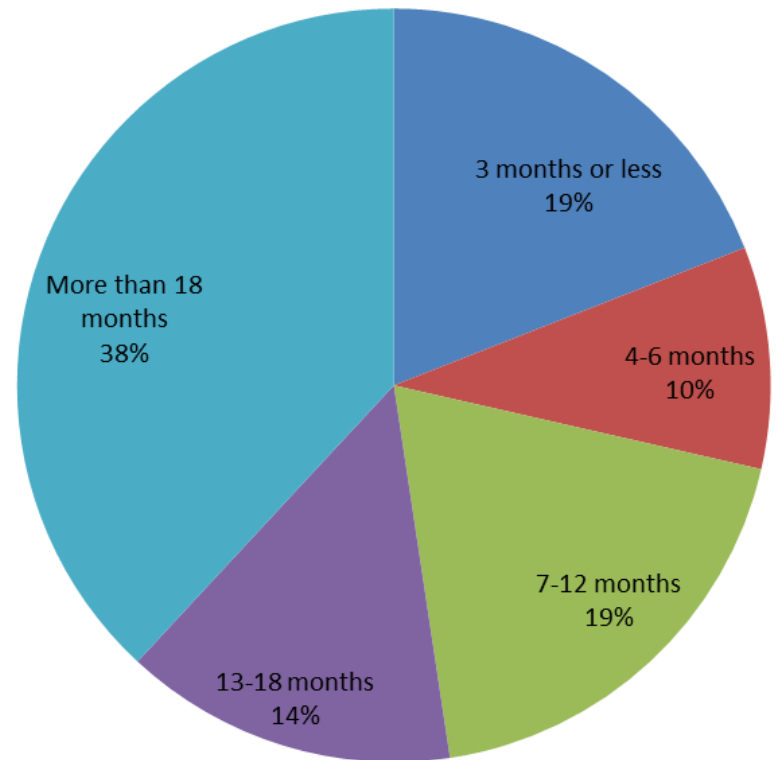
- Lump-sum payment is by far the most used payment term in Baltic transactions.

Payment Terms (cont.)

Percentage of price deferred (if deferred)

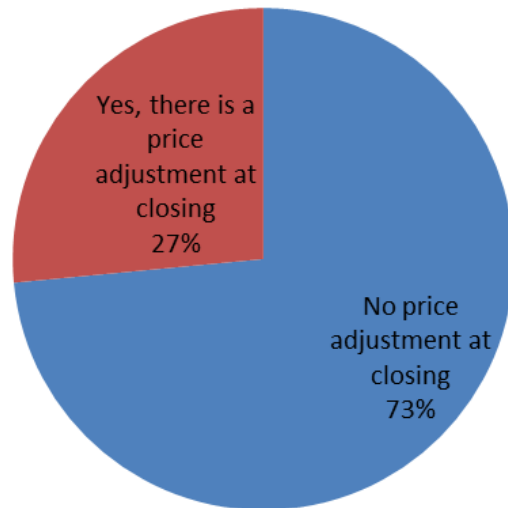


Length of deferral

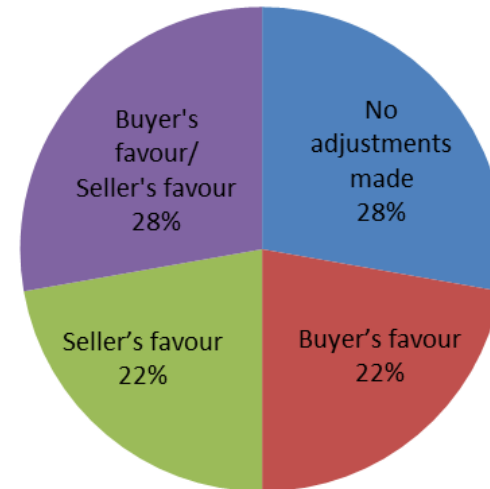


Price Adjustment at Closing

Price adjustment at closing

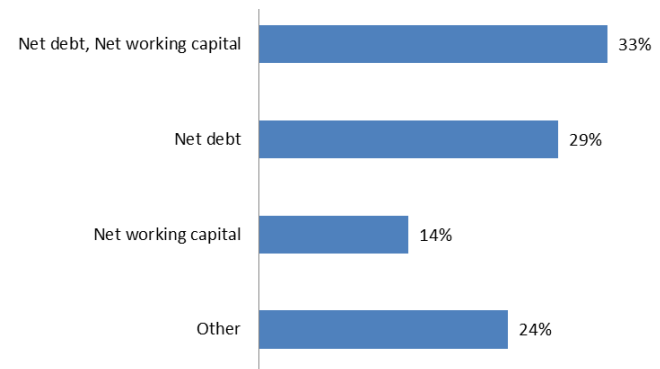


Who were the adjustments favouring?



- The proportion of the transactions without price adjustment remain high at 73%.
- The most popular adjustment base is net debt combined with net working capital.

Adjustment based on:

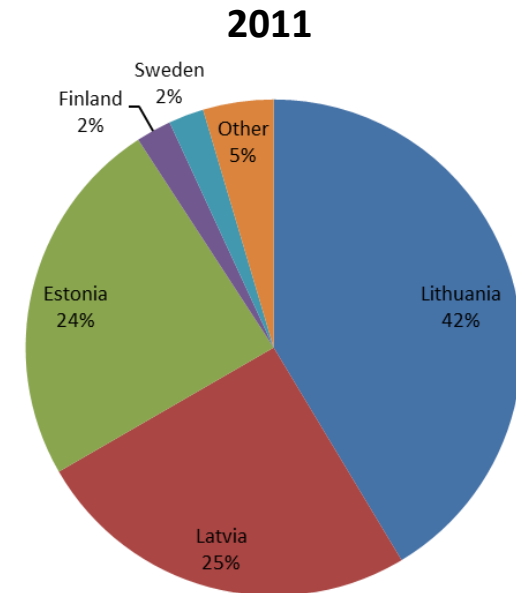
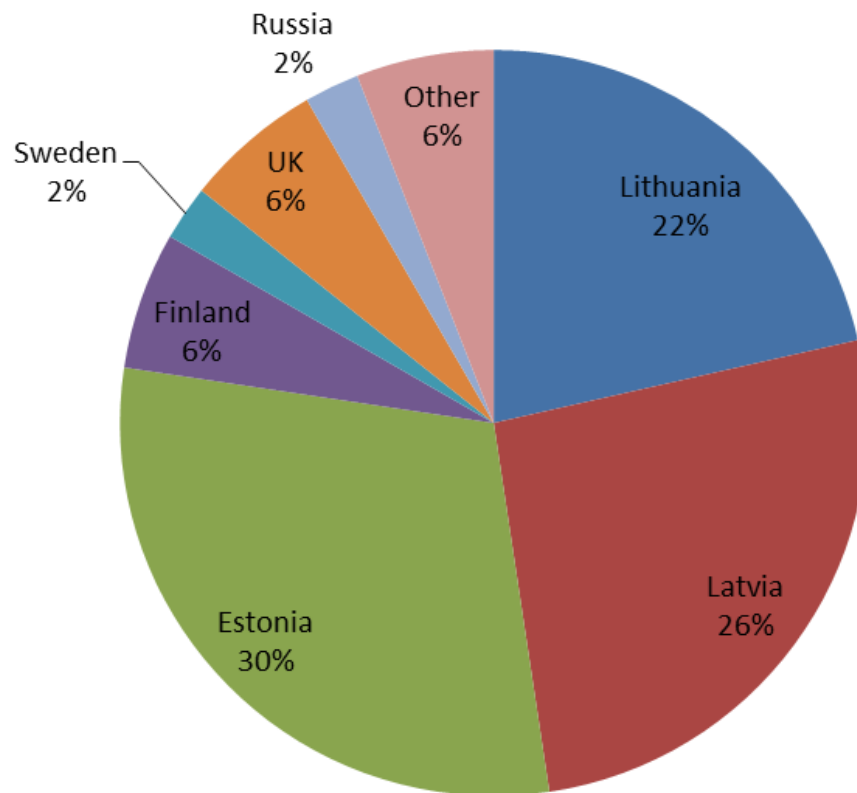


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Governing Law and Dispute Resolution

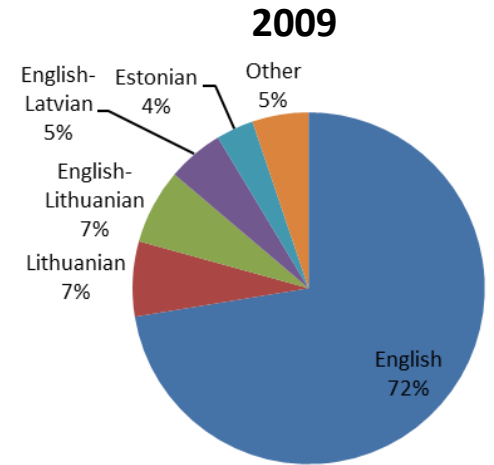
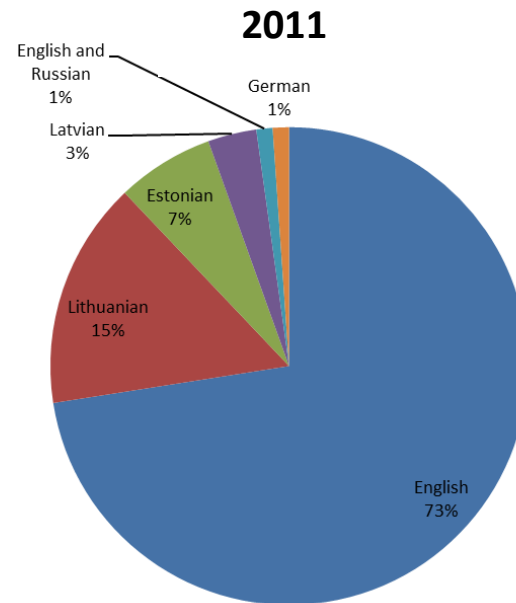
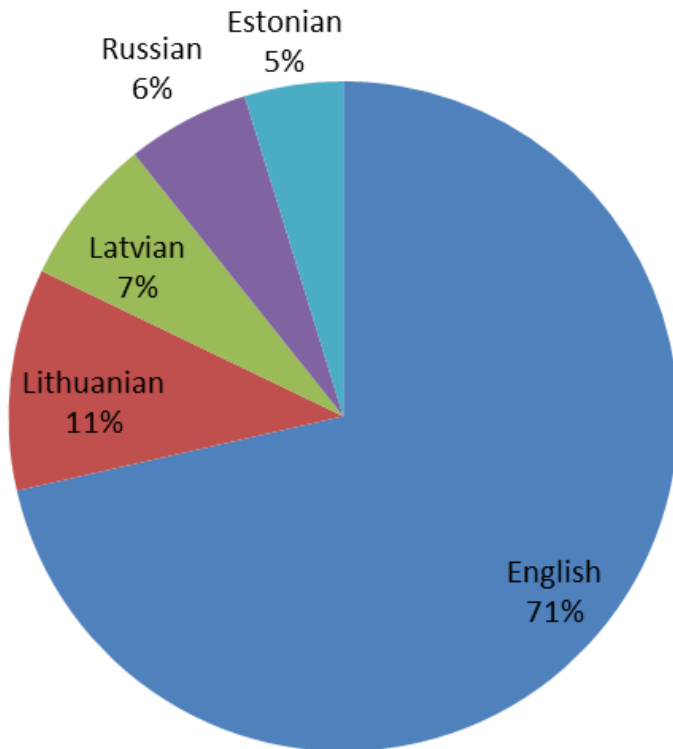
General characteristics of the transactions

Transaction Governing Law



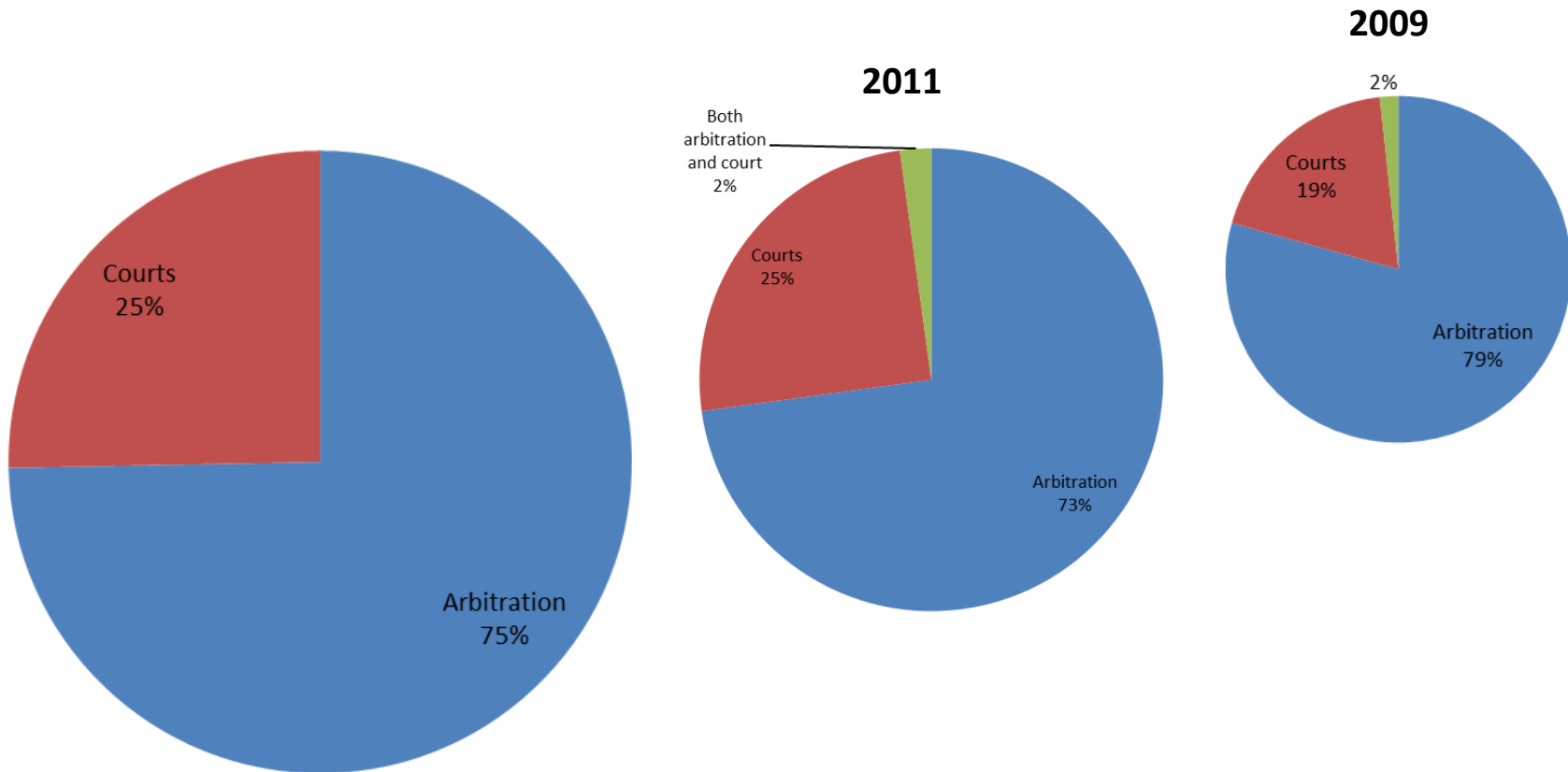
- Most Baltic M&A transactions are governed by the local laws of the Baltic State, however, there is a tendency of increase of Nordic and other law governance.

Main Agreement Language



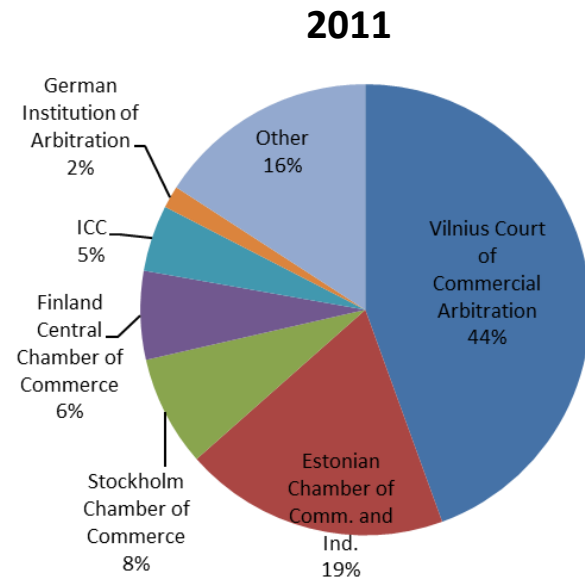
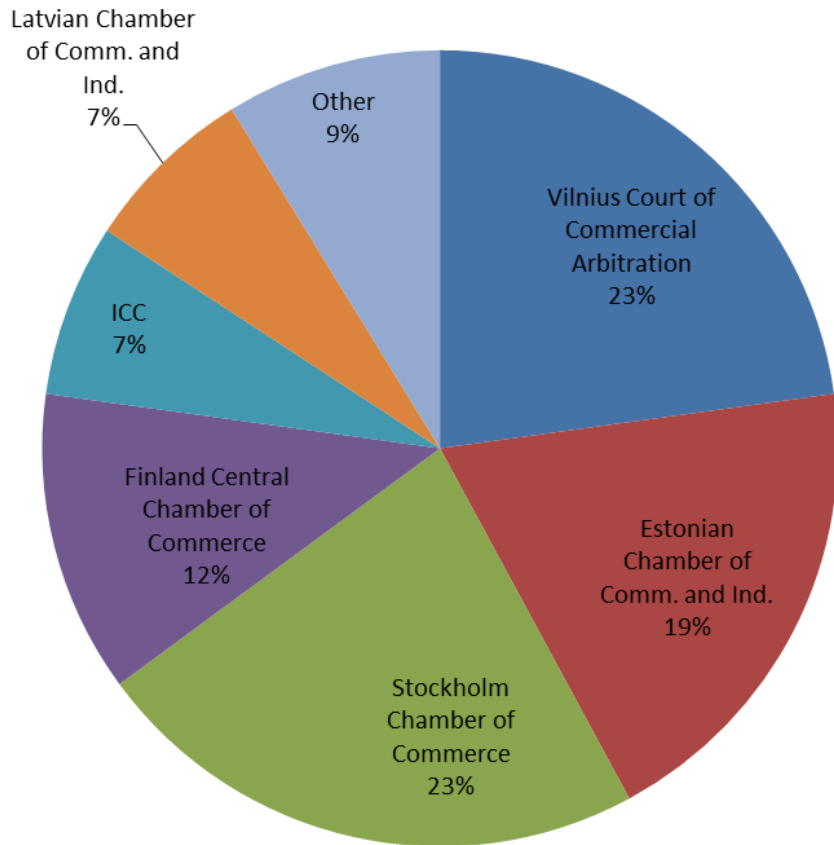
- English is by far the predominant language.
- Russian is the only other foreign language used in the Baltics besides English and local languages in the analysed transactions.

Dispute Resolution Mechanism



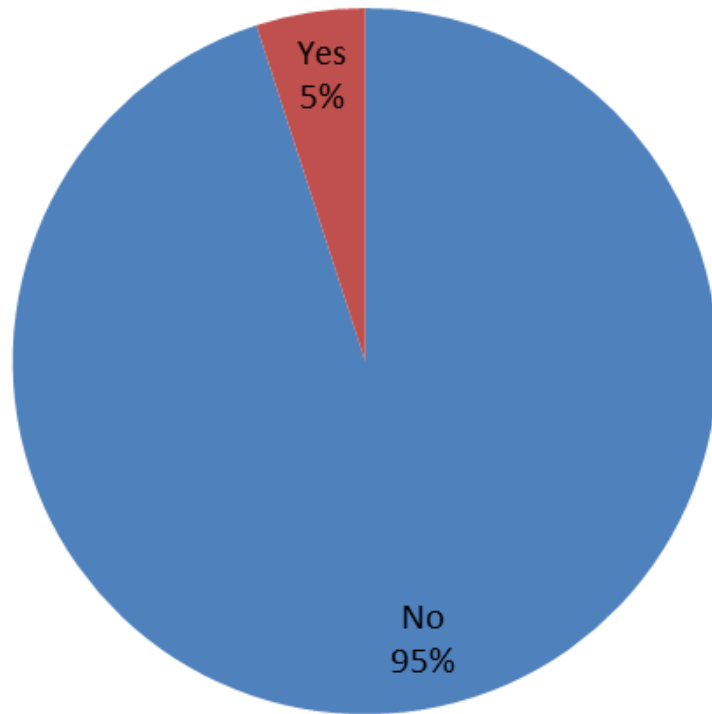
- Arbitration clauses are still predominant, as they have been throughout the period analysed (2007-2013).

Dispute Resolution: Arbitration Location

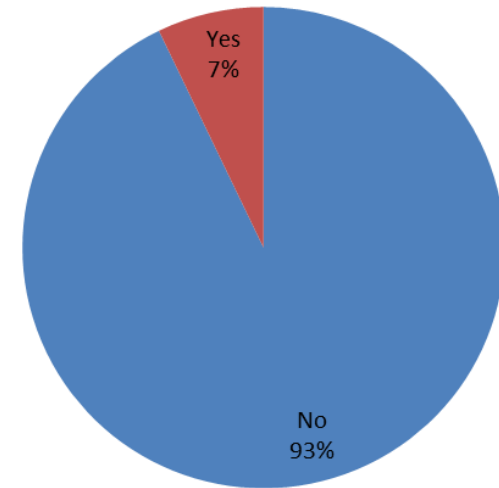


Dispute Resolution: Existence of Disputes

Did the transaction or the agreement give rise to any disputes?



2011

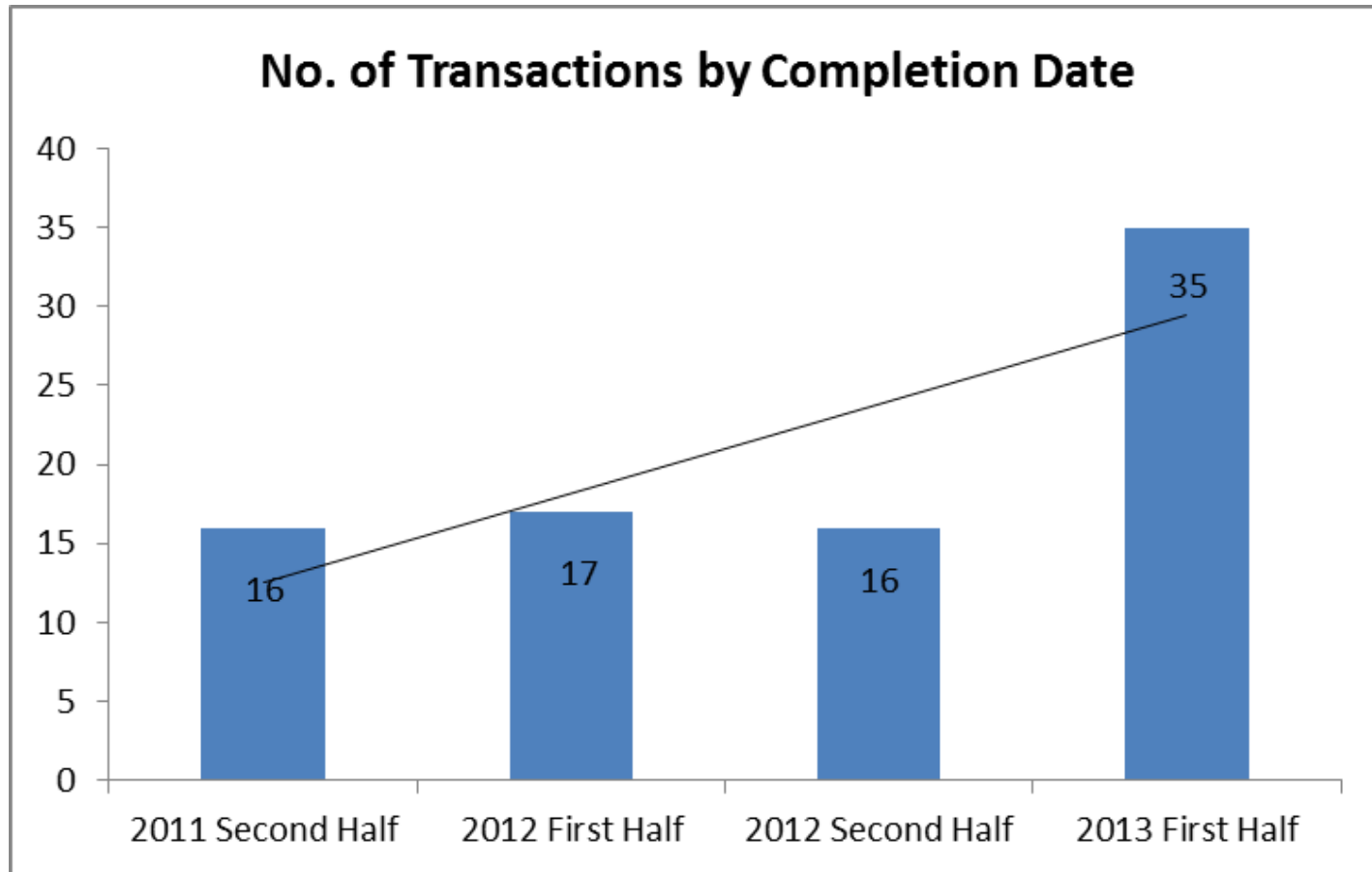


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Timeline

General characteristics of the transactions

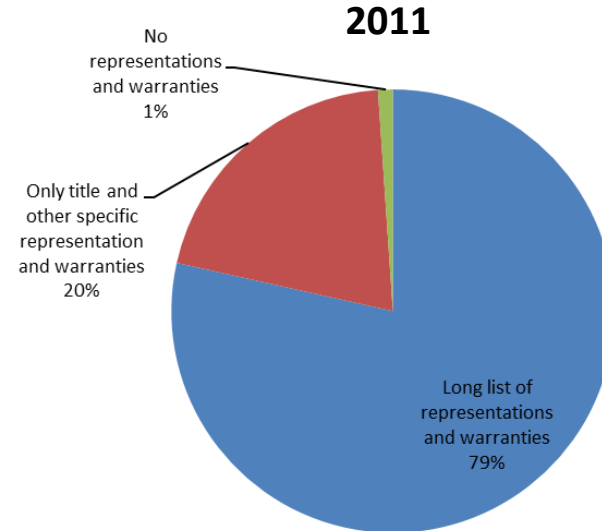
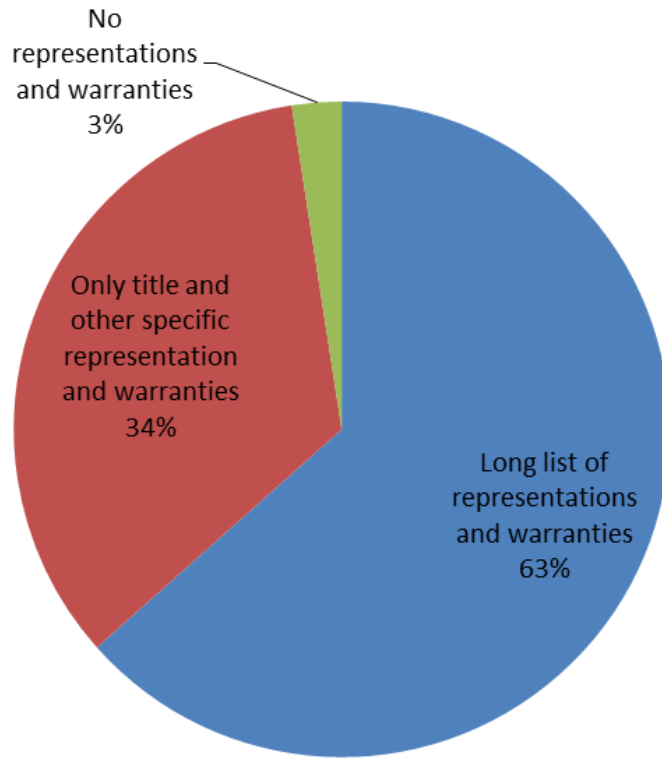
Timeline of Transactions



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Representations and Warranties

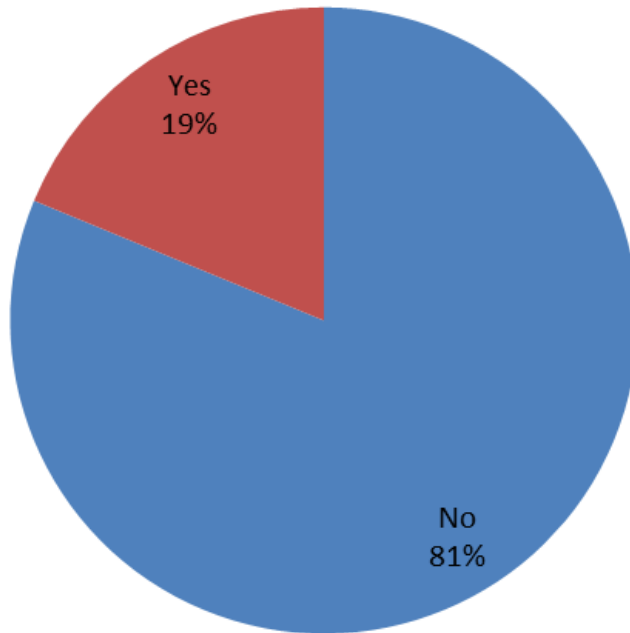
Representation and Warranties of the Seller



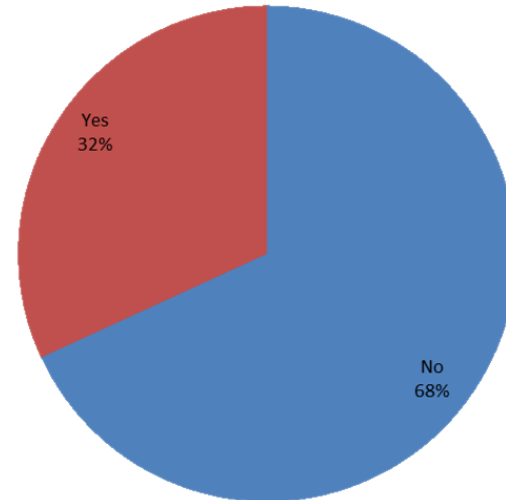
- Although most transactions had a long list of R&W, the tendency in 2013 study is clearly towards only title and specific R&W, which may indicate stronger seller's position.

Representation and Warranties of the Seller

Do the Seller's R&W include a general knowledge qualification?



2011



- In comparison to 2011 study the general knowledge qualification is even less used.

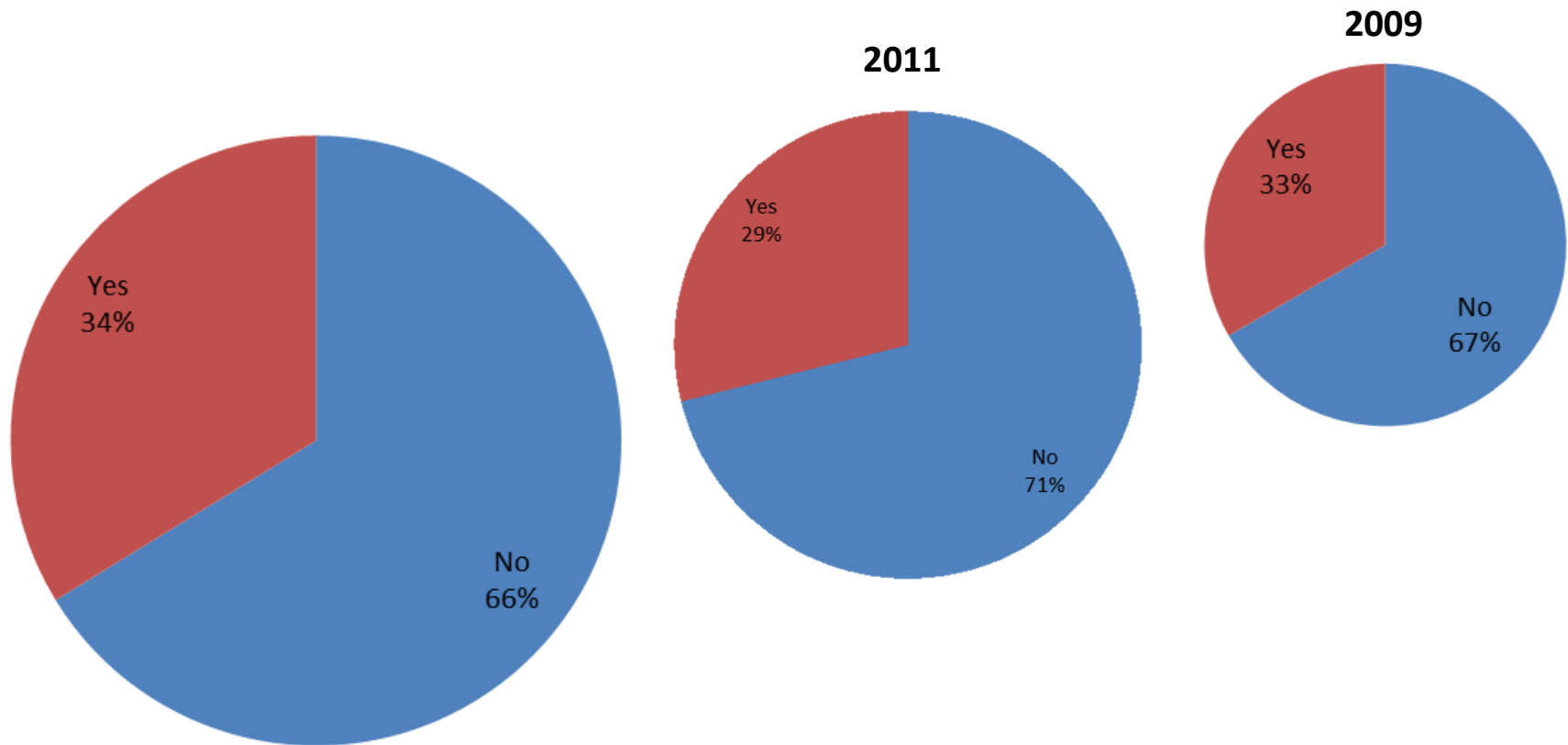
Seller's R&W Knowledge Qualification

Do the Seller's R&W include a general knowledge qualification?	Family-controlled	Financial / Private Equity	Individual person(s)	Strategic	Other	Total
No	9	12	15	32	2	70
Yes	1	1	4	5	5	16
Total	10	13	19	37	7	86

Do the Seller's R&W include a general knowledge qualification?	2011 Second Half	2012 First Half	2012 Second Half	2013 First Half	Total
No	12	12	15	26	65
Yes	4	3		8	15
Total	16	15	15	34	80

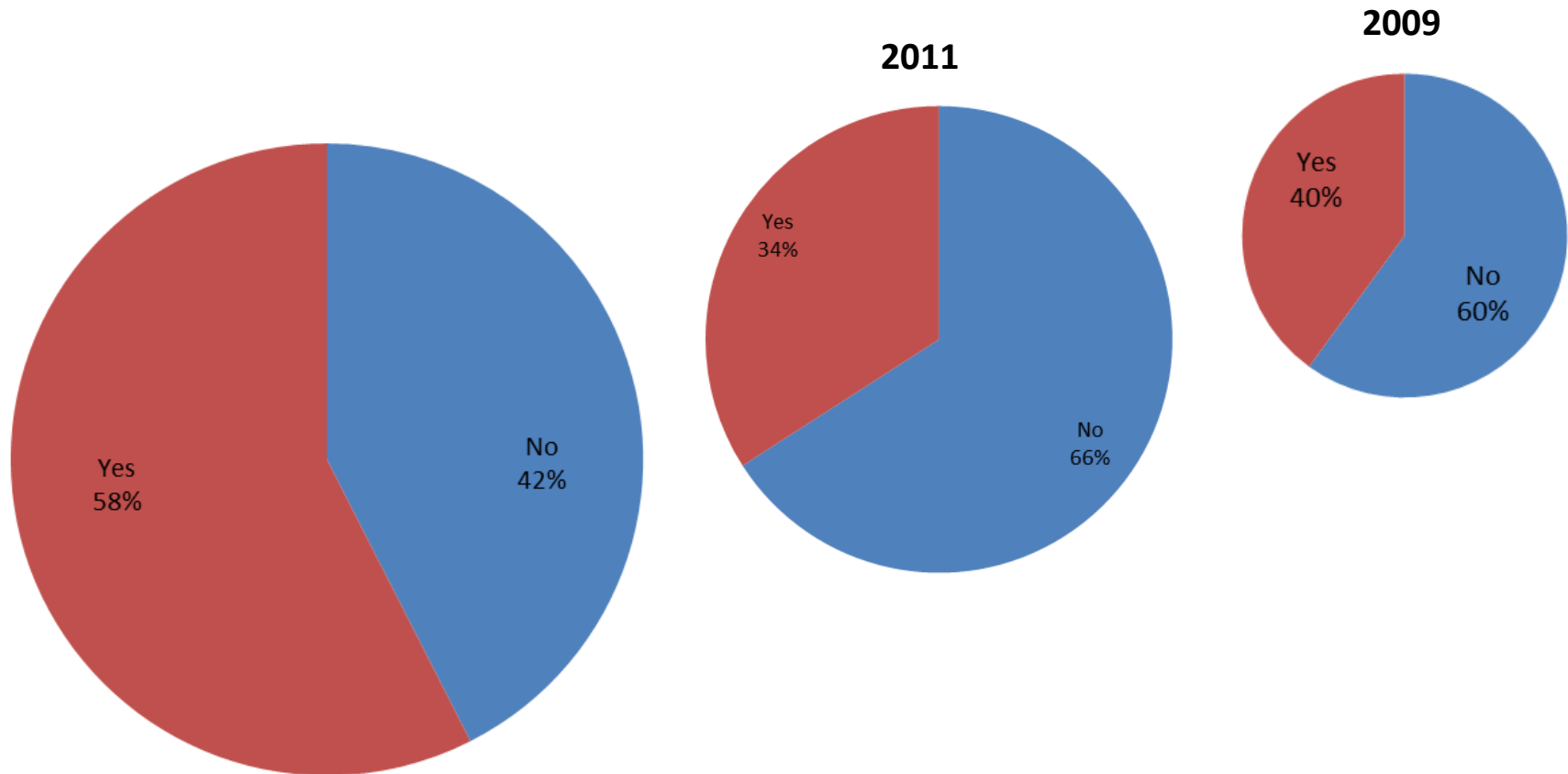
- Individual sellers are more keen on qualifying the representations and warranties by their knowledge.

Usage of Disclosure Letter



- The proportion of transactions using a disclosure letter has increased to the level of 2009 study.

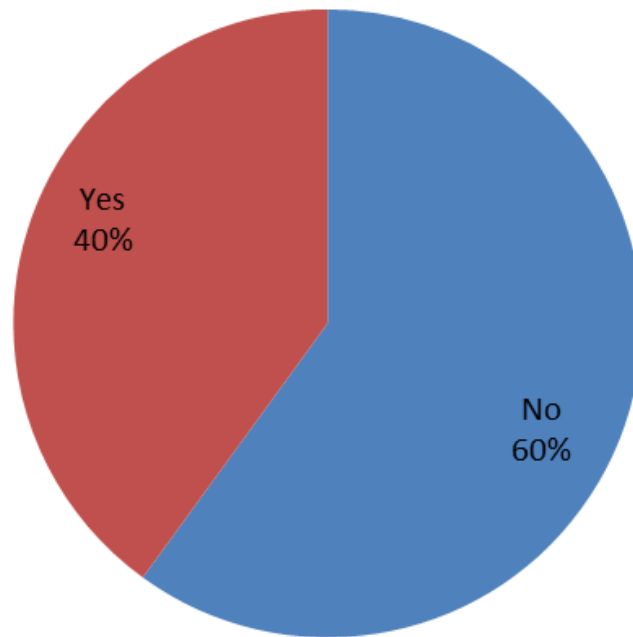
Due Diligence Disclosures considered General Qualification to R&W



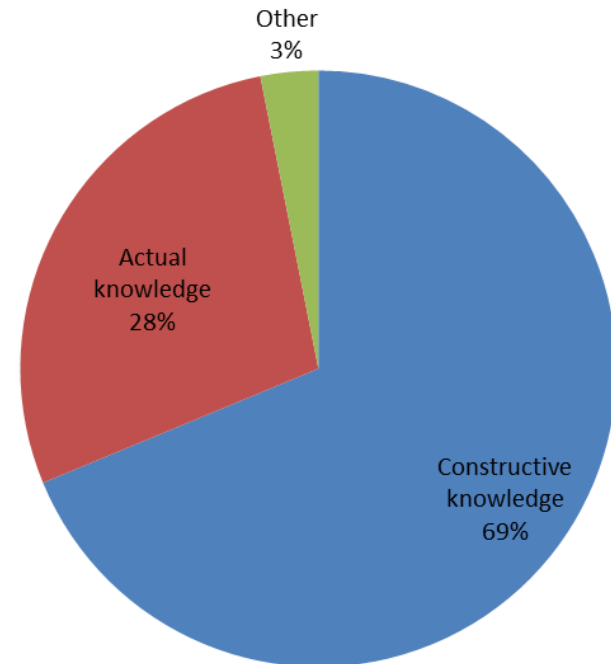
- A new trend of due diligence being viewed as alternative to R&W has been indicated.

Standard of Knowledge

Definition of Seller's/Target's knowledge



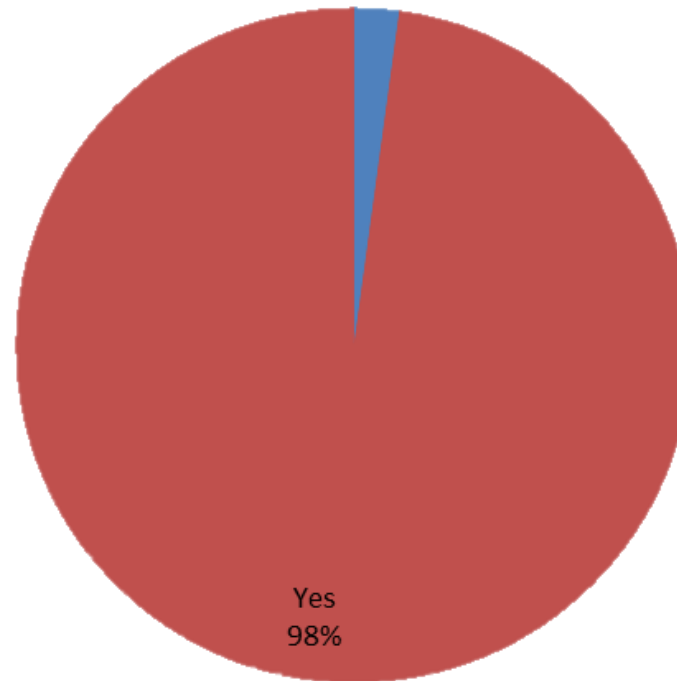
Standard of knowledge



- Seller's/target's knowledge is defined in most of the transactions.
- The standard of knowledge is related to constructive knowledge and the actual knowledge qualification is less popular choice.

Title Warranties

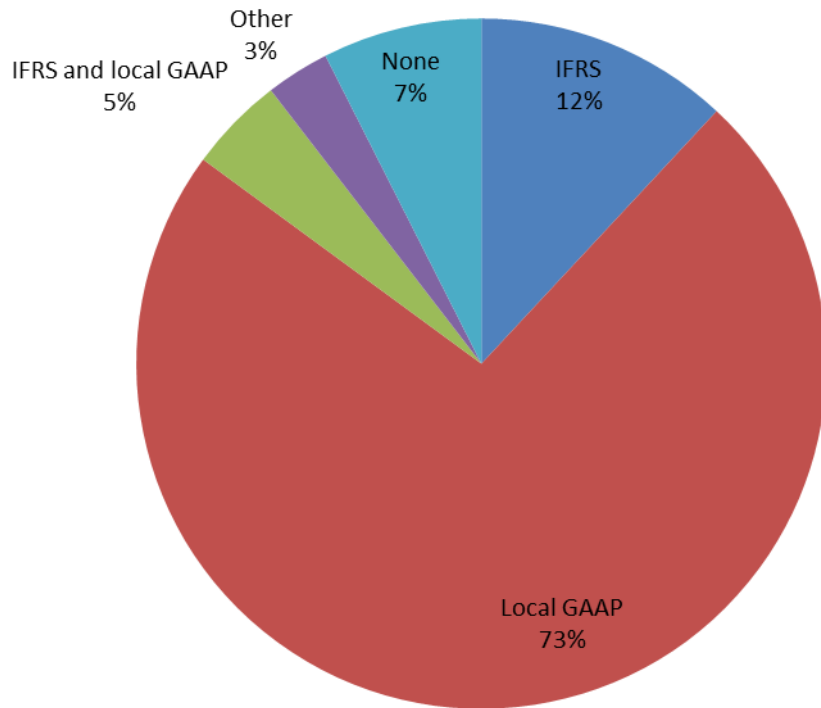
2011/2013 Are there any title warranties given by the Seller?



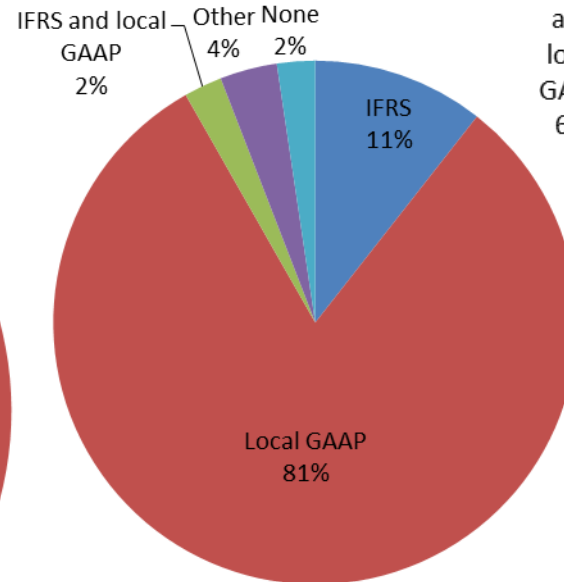
- Title warranties are given by the seller with respect to the title, ownership and encumbrance of the sales object in almost all transactions.

No Undisclosed Liabilities and Fair Presentation Warranties: Accounting Standards

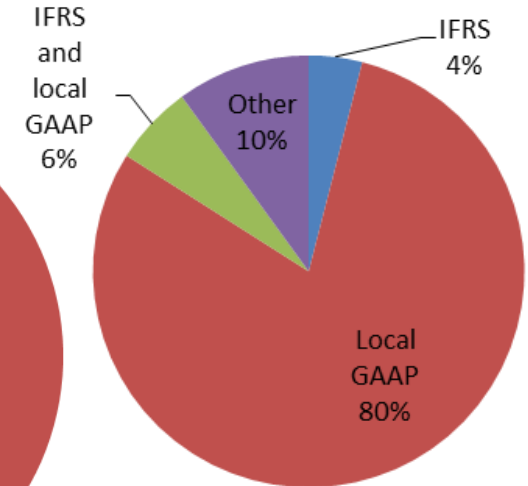
Accounting standards used



2011



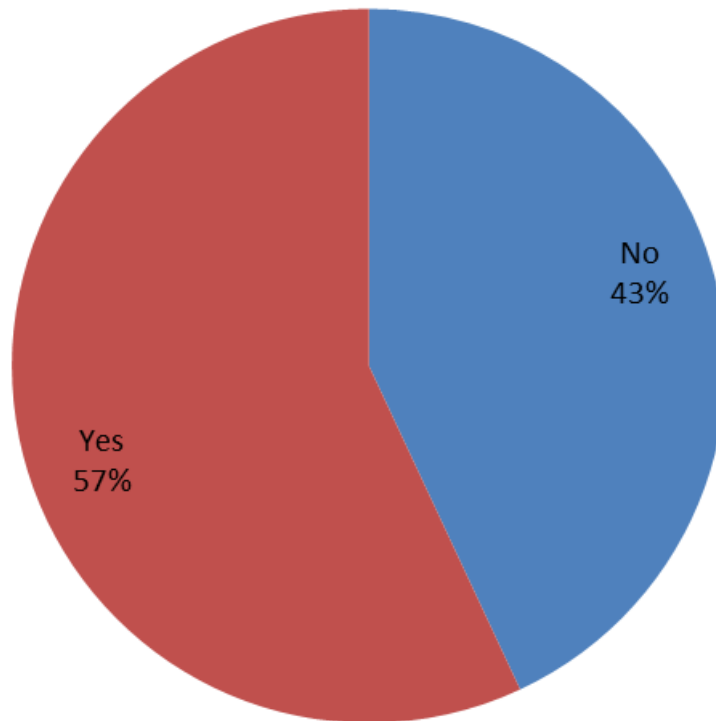
2009



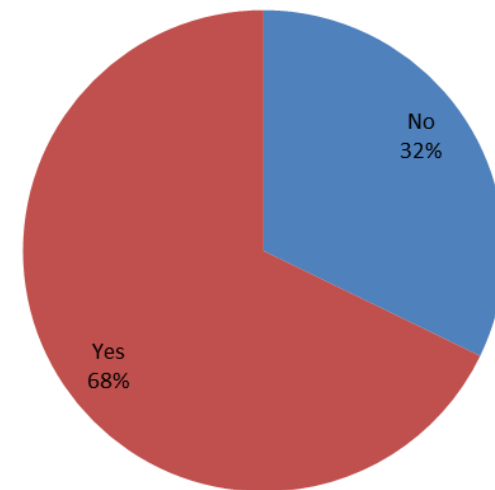
- Local accounting standards are still predominant.

No Undisclosed Liabilities and Fair Presentation Warranties

„Undisclosed liabilities“ warranty by Seller or Target



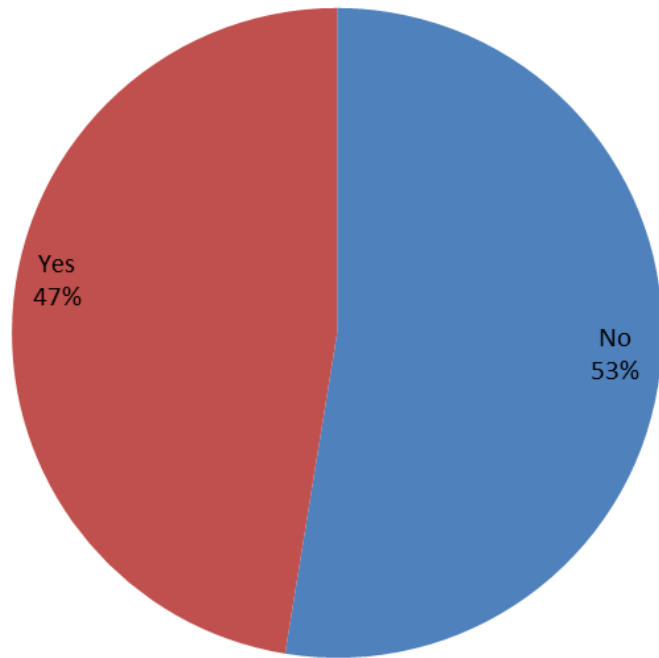
2011



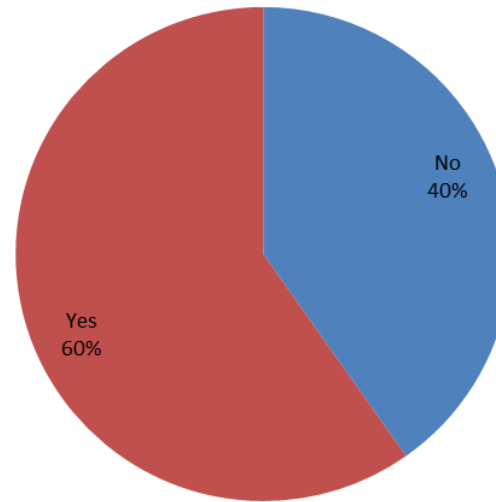
- The „undisclosed liabilities“ warranty is somewhat less popular compared to 2011 study, which may indicate stronger seller’s position.

Full disclosure Warranty

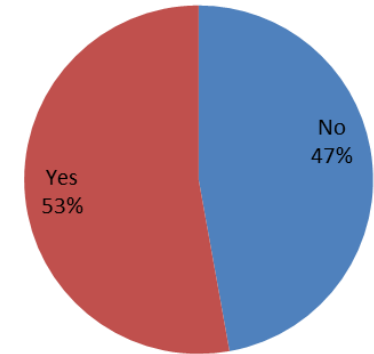
„Full disclosure“ warranty by Seller or Target



2011



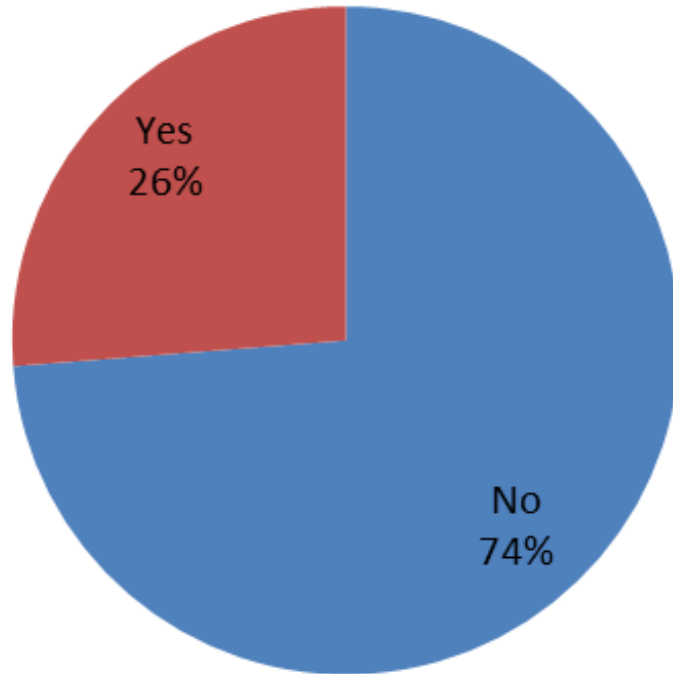
2009



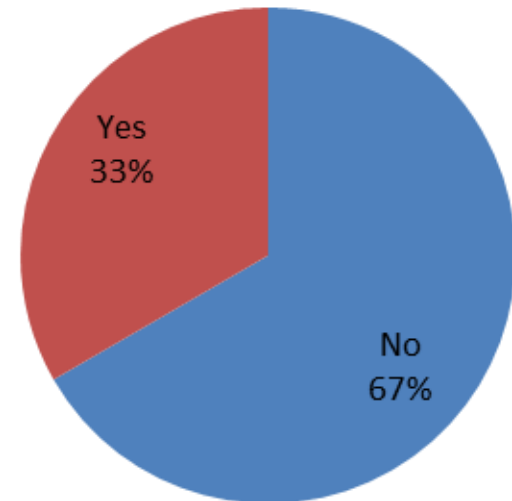
- In majority of transactions the „full disclosure“ warranty is not included, whereas in 2009 and 2011 study the opposite was indicated.

Full disclosure Warranty

Is it knowledge qualified?



2011

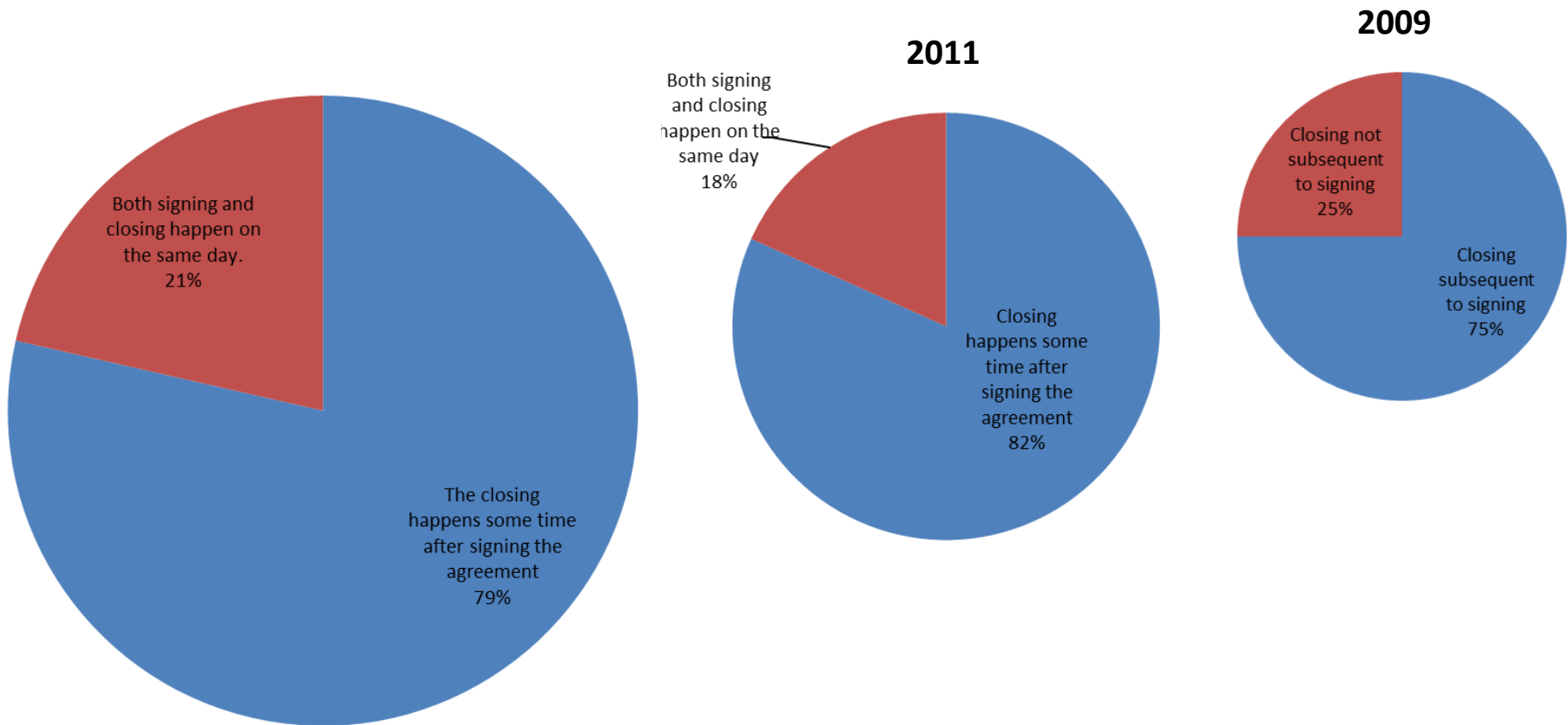


- In nearly two thirds of the transaction the „full disclosure“ warranty is not knowledge qualified.

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Closing and Conditions Precedent

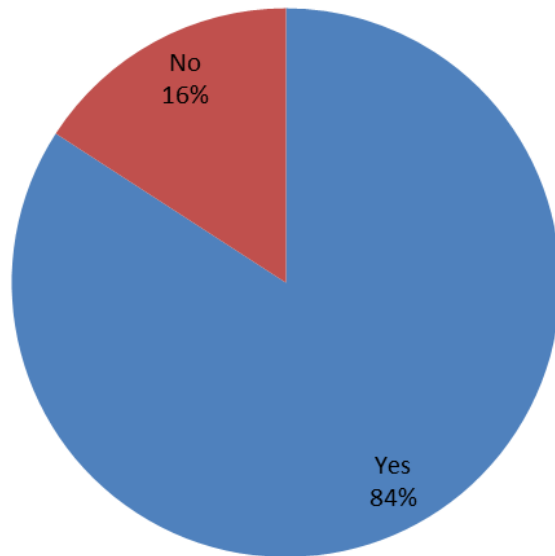
Timing of Signing and Closing



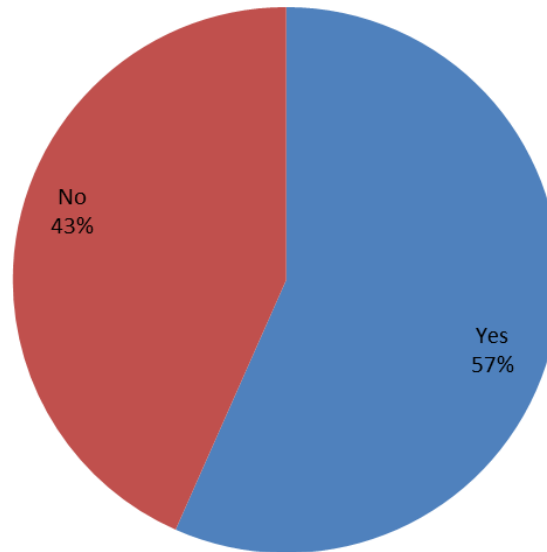
- As indicated in the previous studies in 2011 and 2009 the closing is deferred in the vast majority of the analysed transactions.

Closing

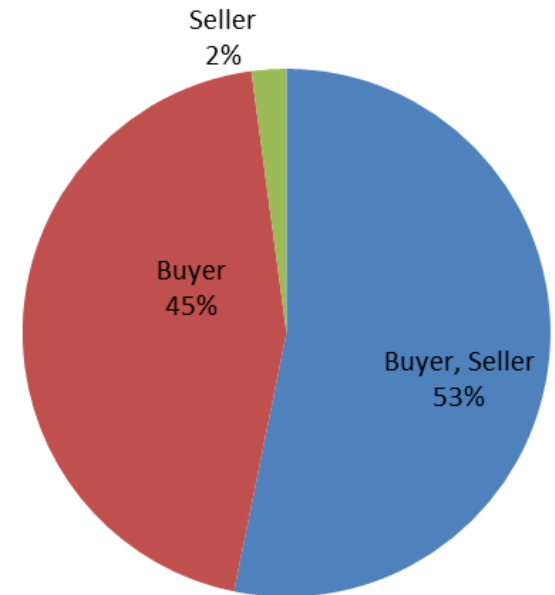
Does the closing or the closing date depend on fulfilling the conditions precedent?



Is the closing subject to accuracy of representations?



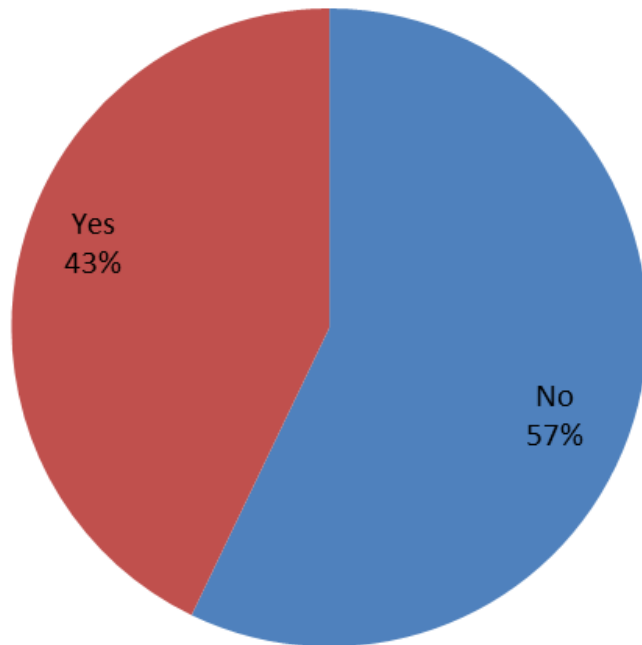
Who may rely on the accuracy of representation?



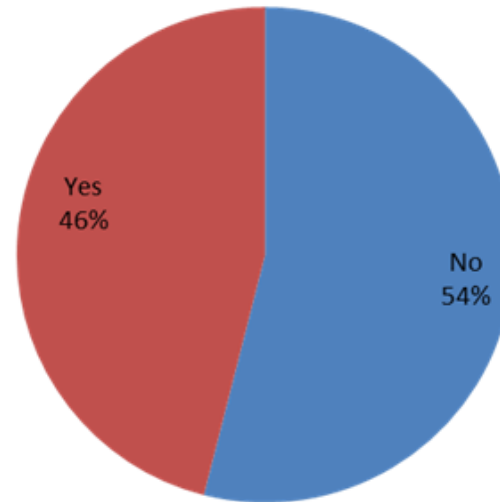
- In vast majority of transactions the closing depends on the fulfilment of conditions precedent.
- In most of the transactions the closing is subject to accuracy of representations and both the buyer and the seller can rely on the accuracy of representations.

MAC (“material adverse change”)/ MAE (“material adverse effect”) Clause

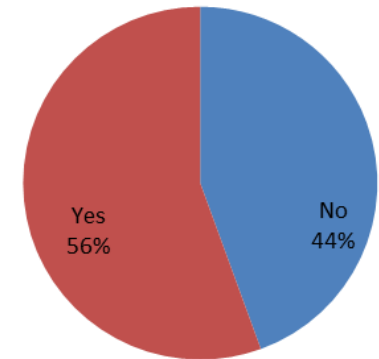
Do the agreements include a Material Adverse Change („MAC“) or Material Adverse Effect („MAE“) Condition?



2011



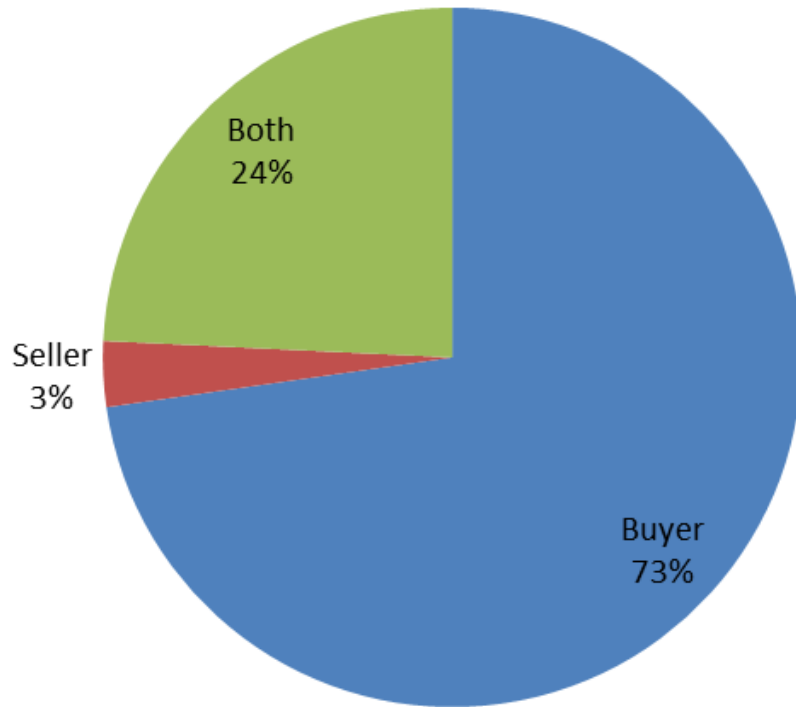
2009



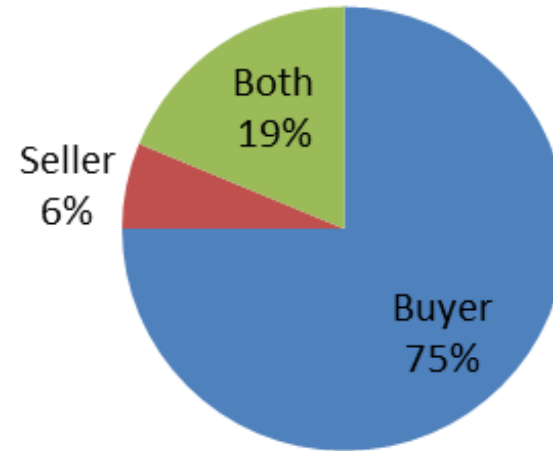
- MAC clauses, which make closing conditional upon nothing material changing for the worse, are gradually losing their popularity.

MAC (“material adverse change”)/ MAE (“material adverse effect”) Clause

Who may invoke the MAC clause?

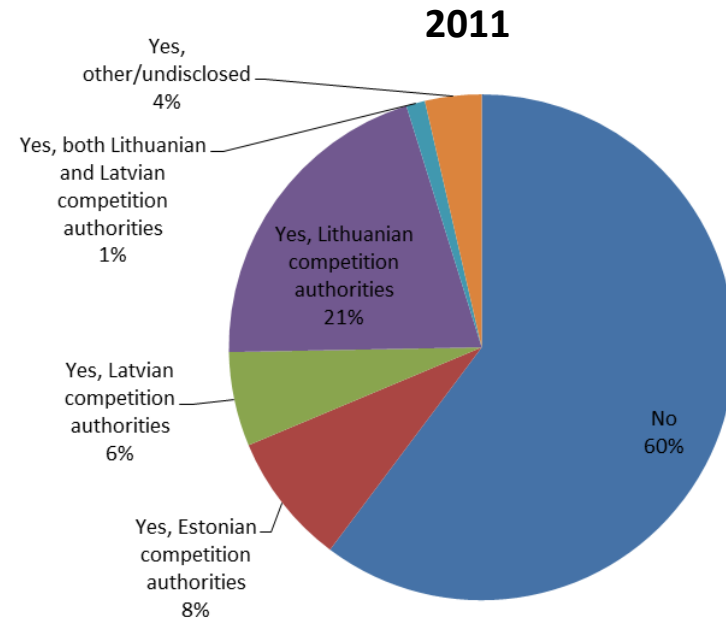
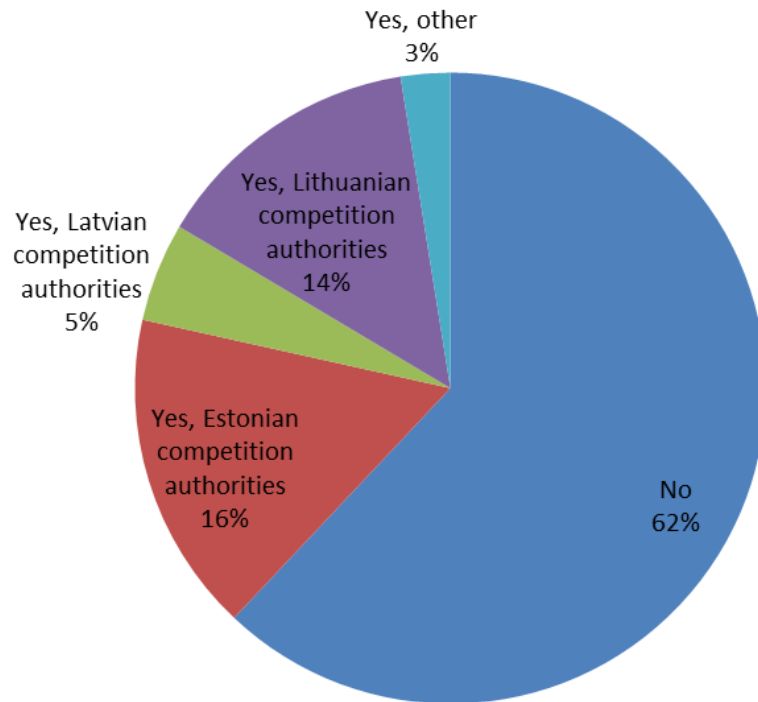


2011



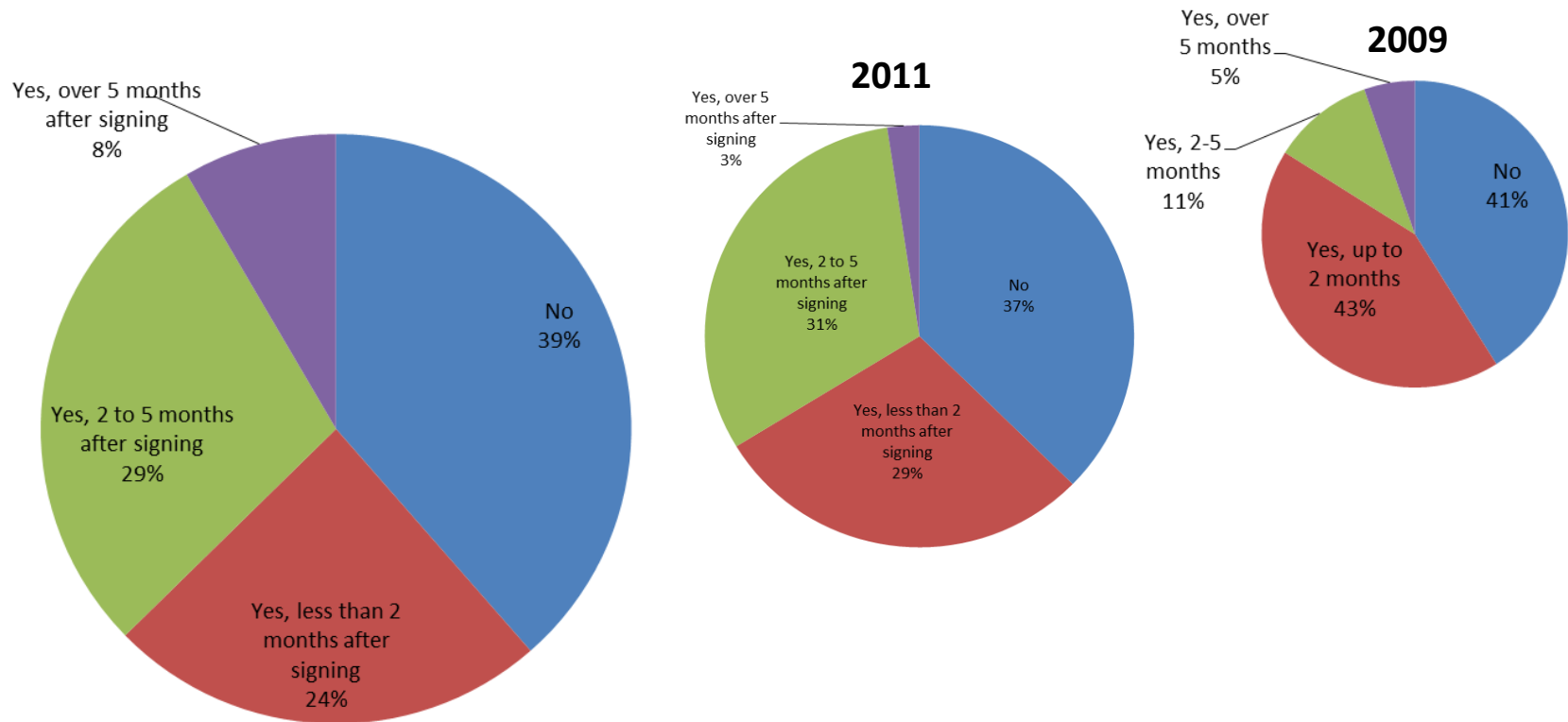
Competition Clearance

Was the transaction subject to approval by competition authorities?



- The proportion of the transactions subject to competition authority approval have remained the same during the period analysed (2007 – 2013).

Long-stop Date



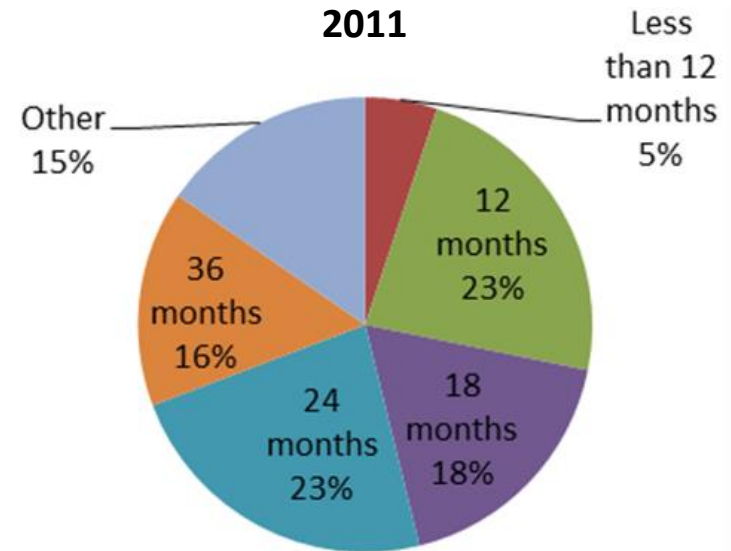
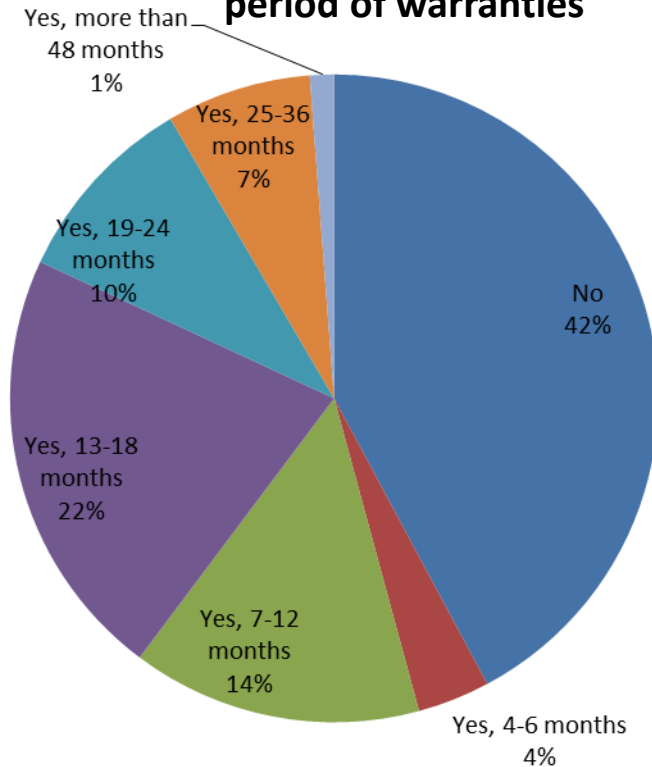
- The usage of *long-stop date* has remained relatively constant during the study period of 2007-2013.
- The popularity of 2-5 months *long-stop date* could refer to connection with competition authority's approval.

The background of the slide is a light green color with a pattern of darker green, wavy, ribbon-like lines that resemble a molecular structure or a complex network. The lines are more prominent on the left side and fade towards the right.

Liability and Indemnification

Survival of Warranties

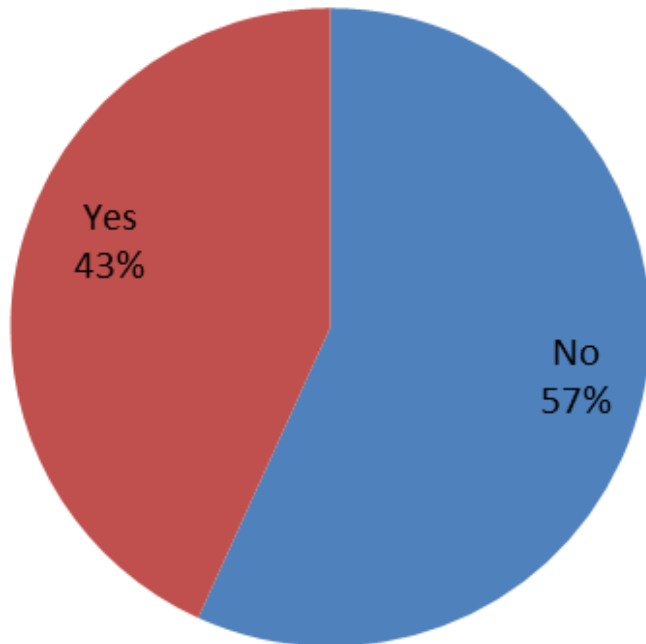
Establishment of general survival period of warranties



- The usage of general survival period has remained the same in comparison to 2011 study.
- The survival periods of R&W are longer as compared to 2011 study.

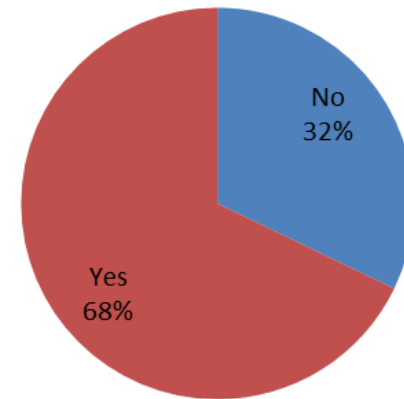
Survival of Warranties Carve-outs

Carve-outs to time limitations

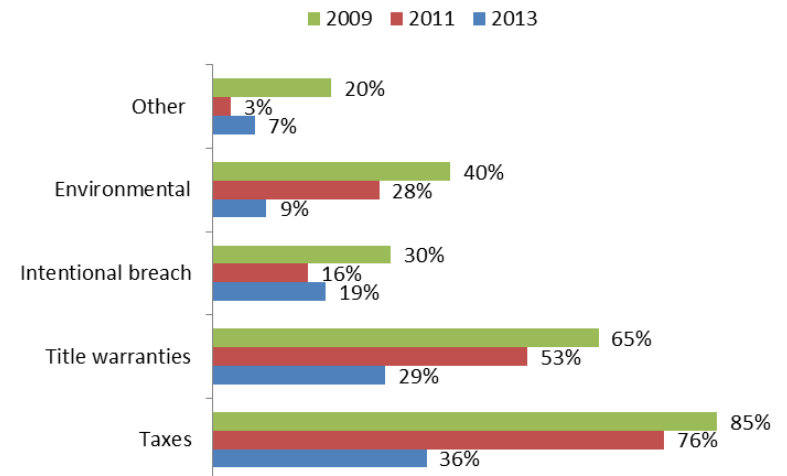


- The usage of carve-outs has reduced significantly in comparison to 2011 study.
- Connection with longer survival periods could be indicated.

2011

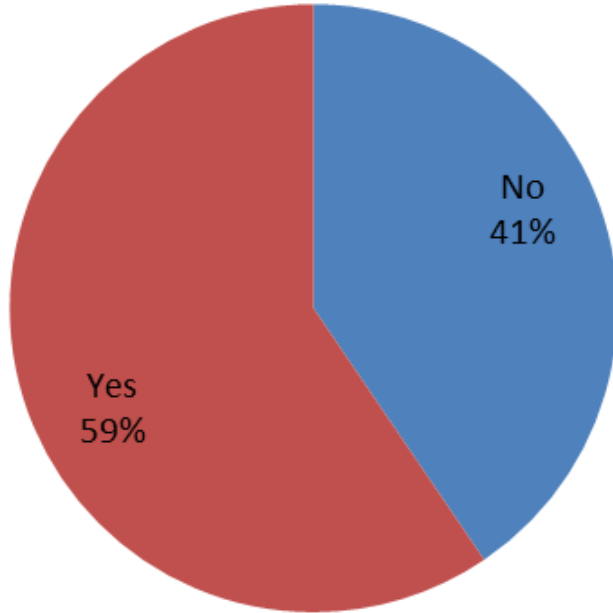


% of specific time limitation carve-outs of positive responses

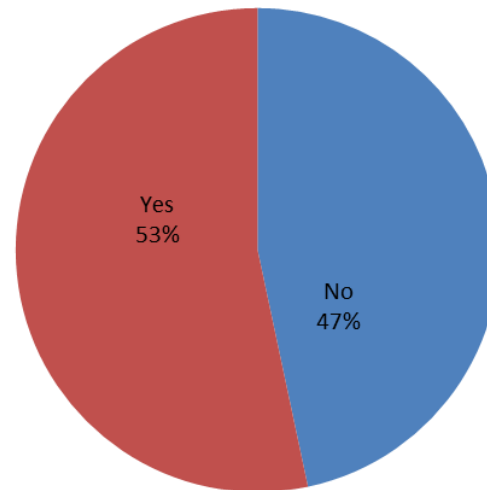


Baskets and Thresholds

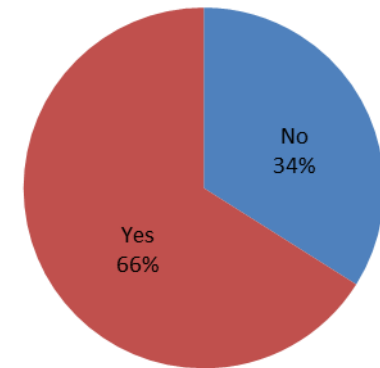
Baskets, *de minimis* or thresholds for asserting claims under the warranties?



2011



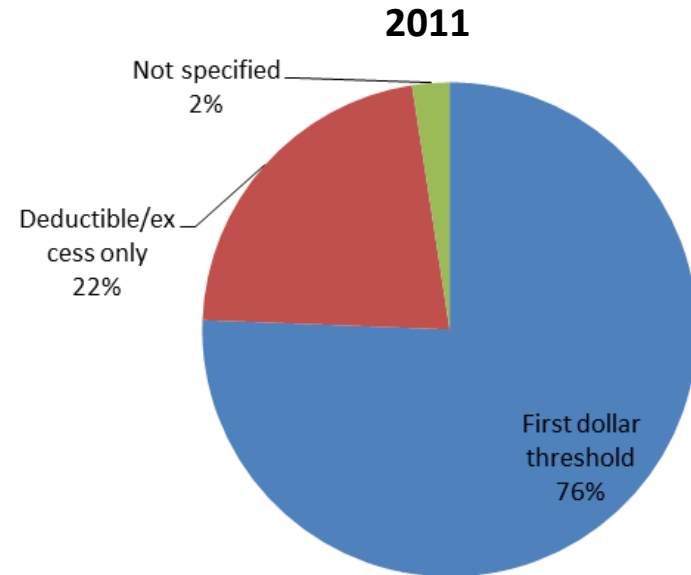
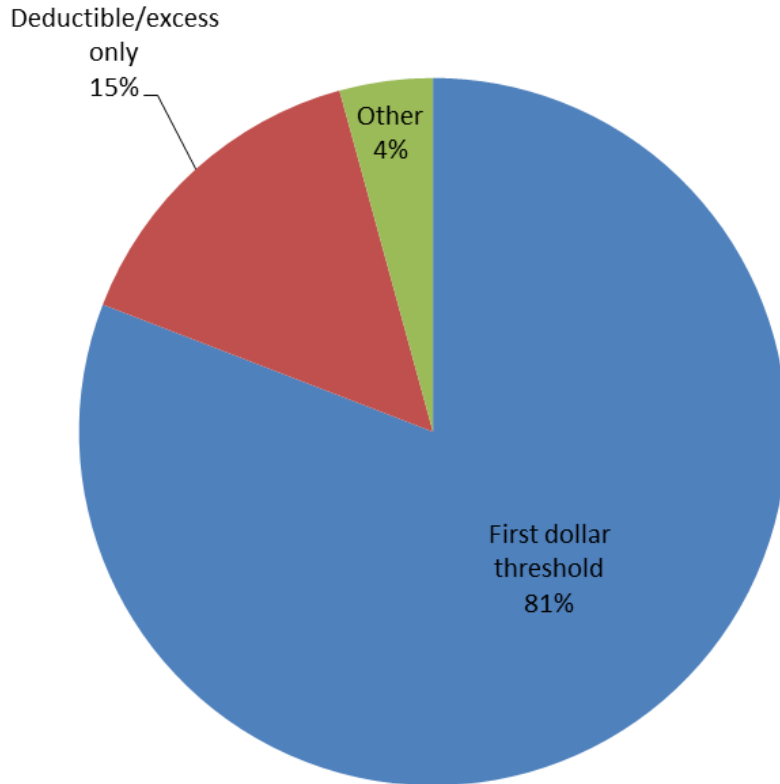
2009



- Baskets and thresholds are re-gaining the popularity.

Baskets and Thresholds (cont.)

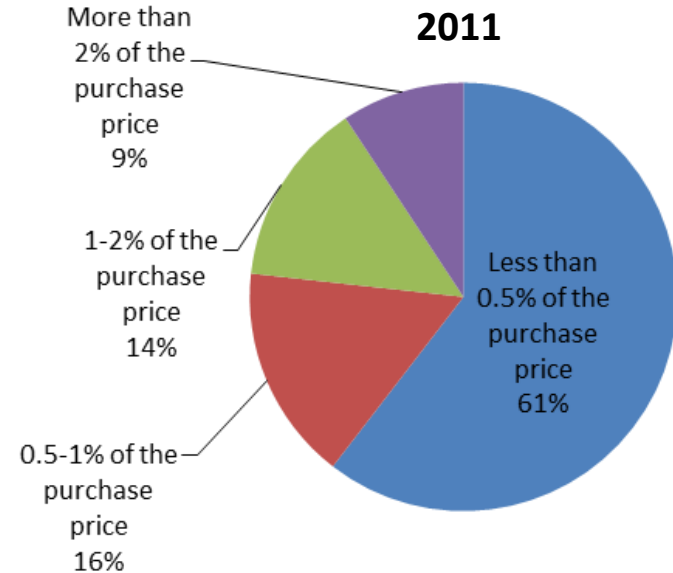
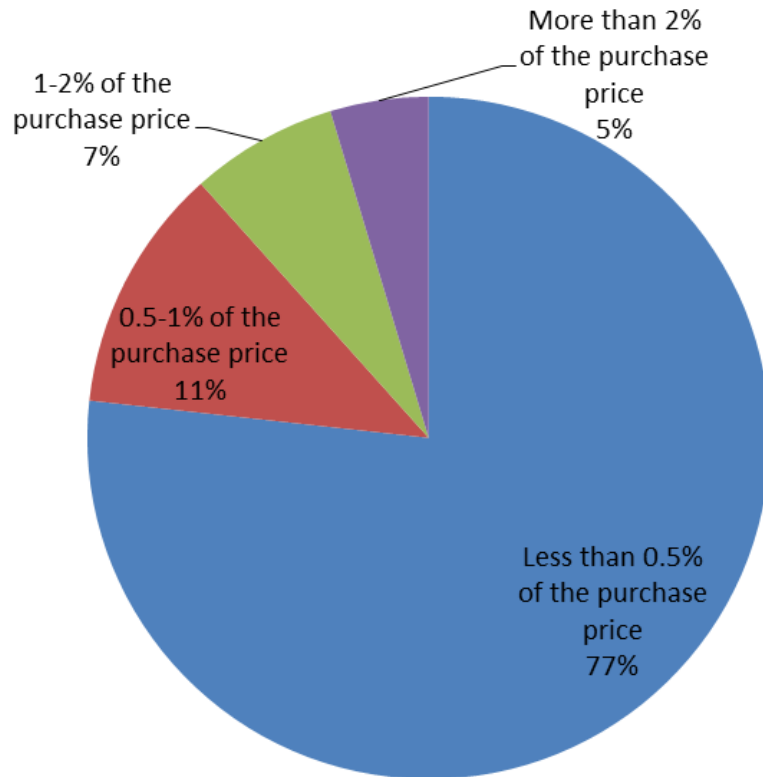
Basket/threshold *deductible/excess only* or *first dollar*



- Typically, the M&A transactions in the Baltics are *first dollar*, with this trend being reaffirmed even more strongly in 2013 study.

Baskets and Thresholds (cont.)

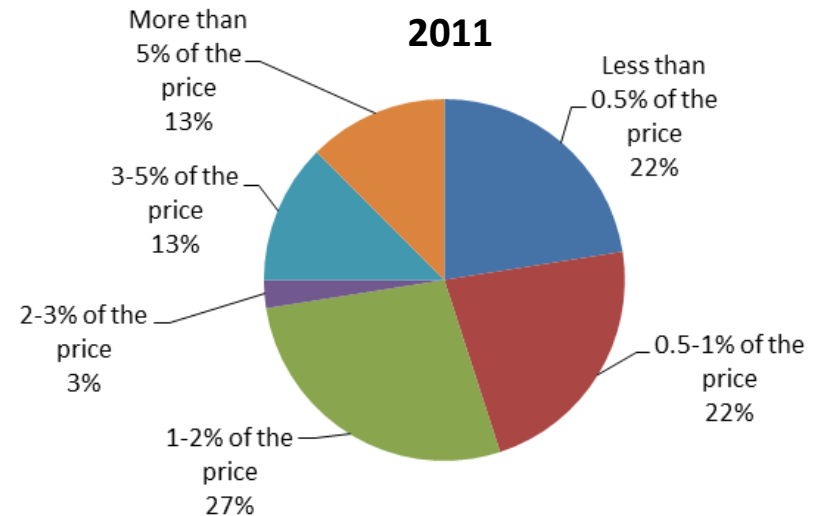
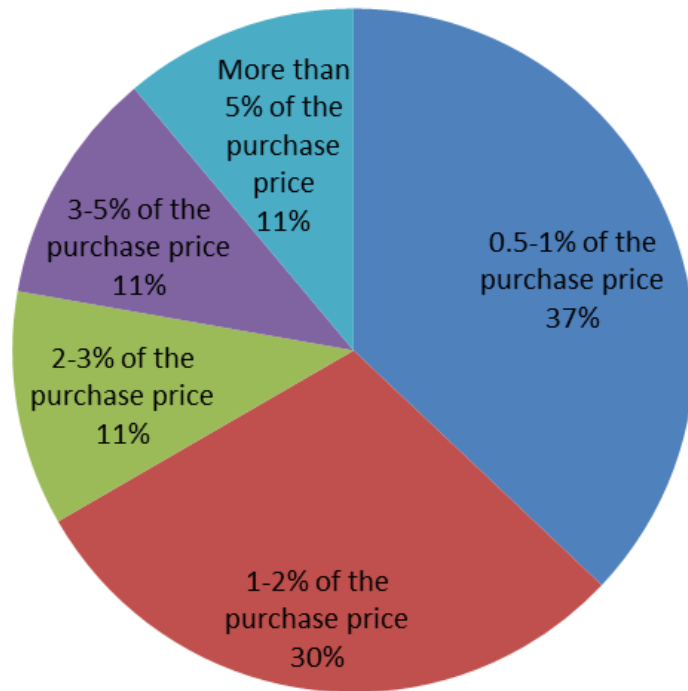
Amount of threshold per claim



- Typically, the threshold is less than 0,5% of the purchase price per claim with the threshold amount being lower in 2013 than in 2011 study.

Baskets and Thresholds (cont.)

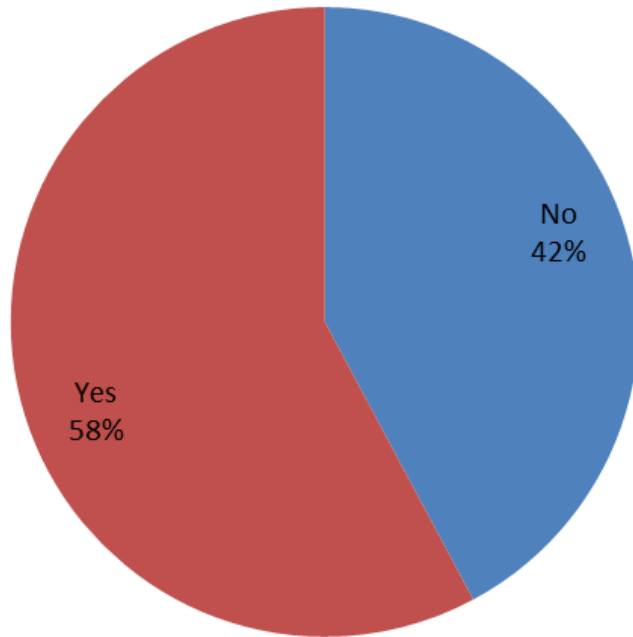
Amount of basket/threshold for the aggregate of all claims



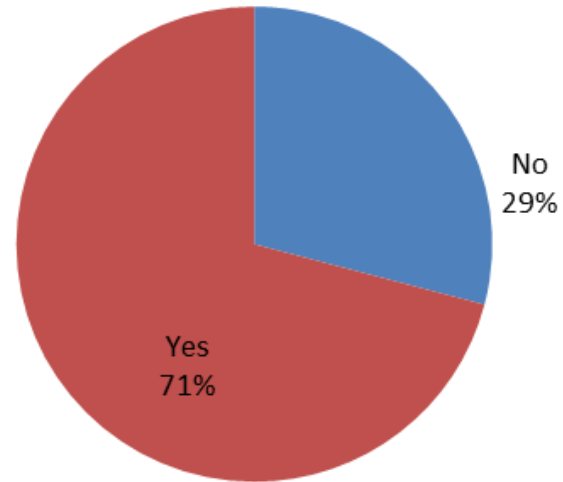
- The amounts of basket/thresholds for the aggregate of all claims has remained the same in essence in comparison to 2011.
- The most used amount of basket/threshold for the aggregate of all claims is 0,5% - 1% of the purchase price.

Overall Cap or Ceiling to Liability

2011/2013 Seller's liability for breach of warranties limited to a maximum total amount

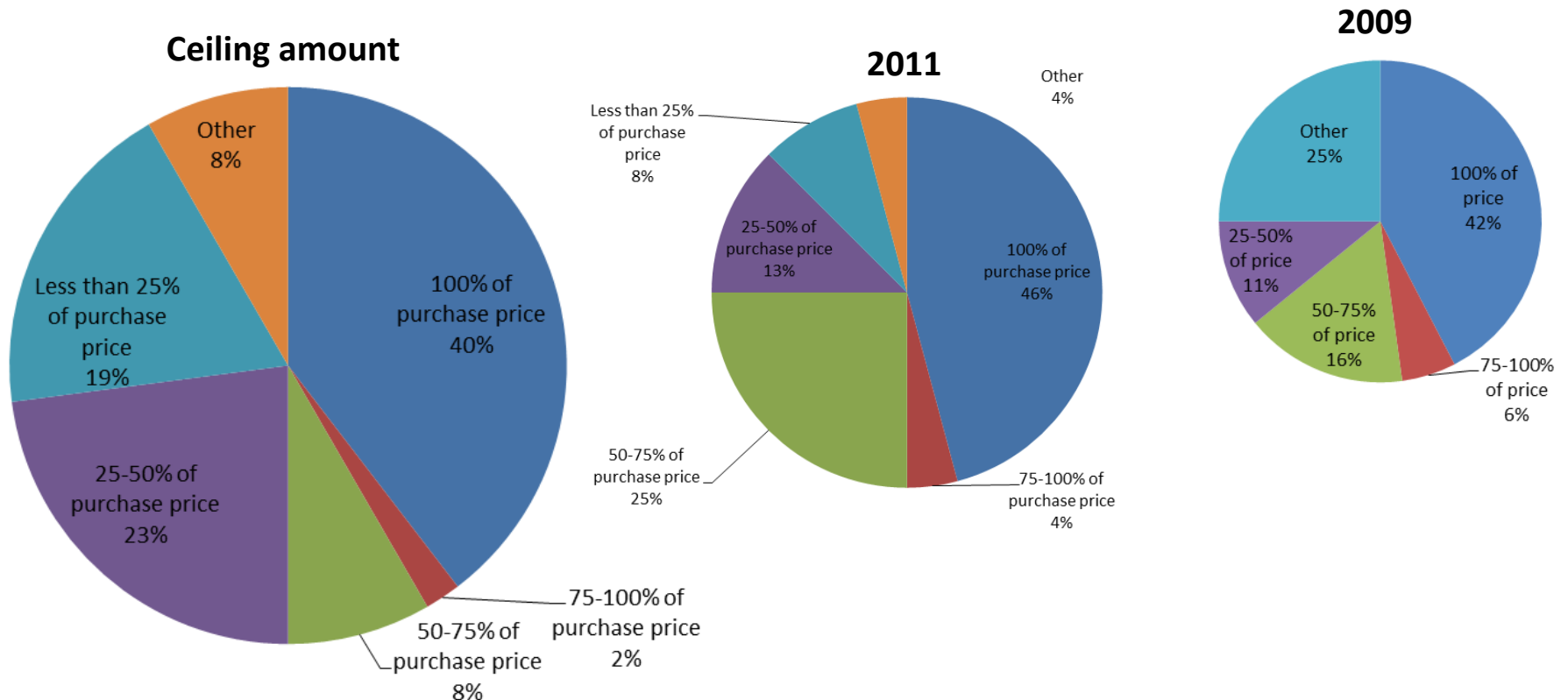


2009



- Overall caps have remained the same in the 2013 and 2011 study.

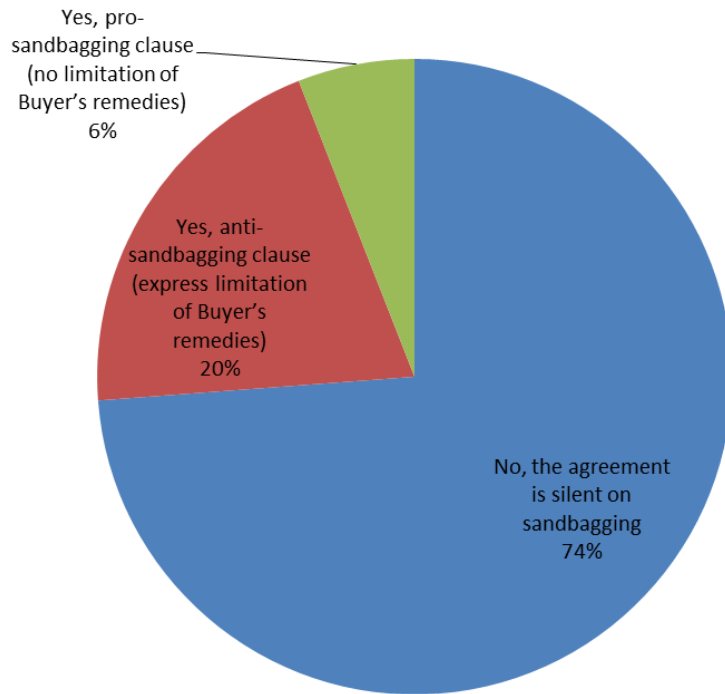
Amount of Cap to Liability



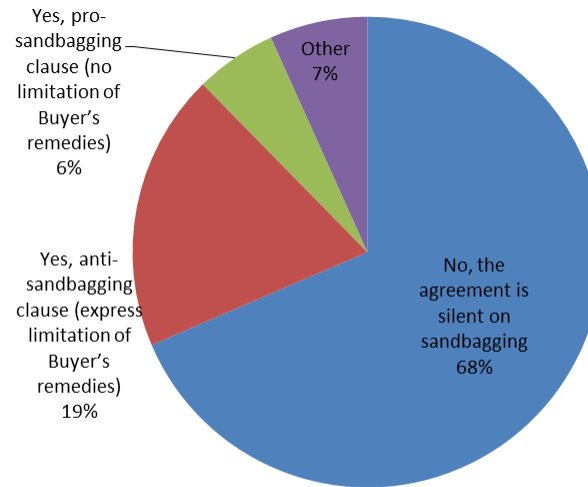
- Due to the relatively small value of Baltic transactions, liability of 100% of the purchase price have been very common throughout the period of 2007-2013.
- Interestingly, the usage of 50-75% cap decreased, whereas the usage of 25-50% cap has increased.

Sandbagging

Provisions limiting the Buyer's remedies if it has pre-existing knowledge of warranties breach



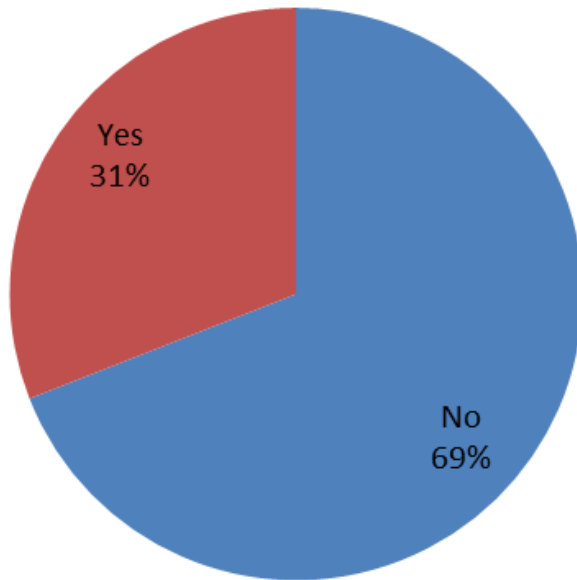
2011



2009

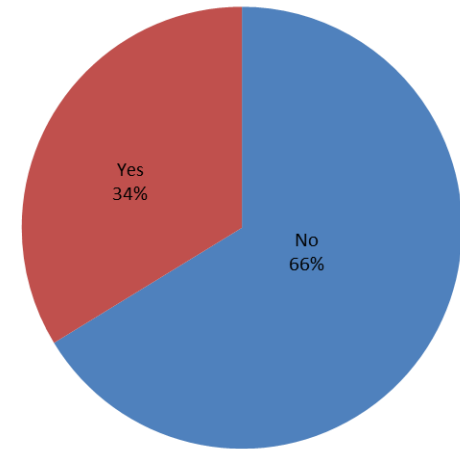
- A vast majority of Baltic transactions do not contain *sandbagging* clauses.

Security for Seller's Obligations

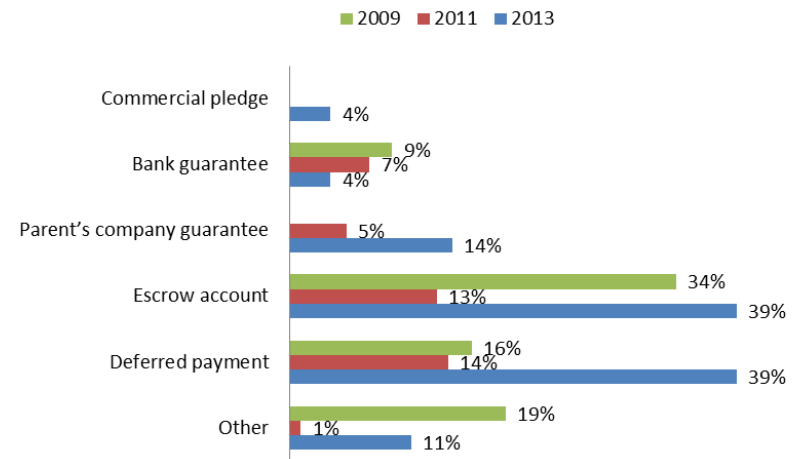


- The overall trend of establishing a security for the sellers obligations has remained the same as compared to 2011 study, however, the establishment of escrow accounts has re-increased drastically to the level of 2009 study along with large increase of deferred payment popularity.

2011



Forms of security of Seller's Obligations

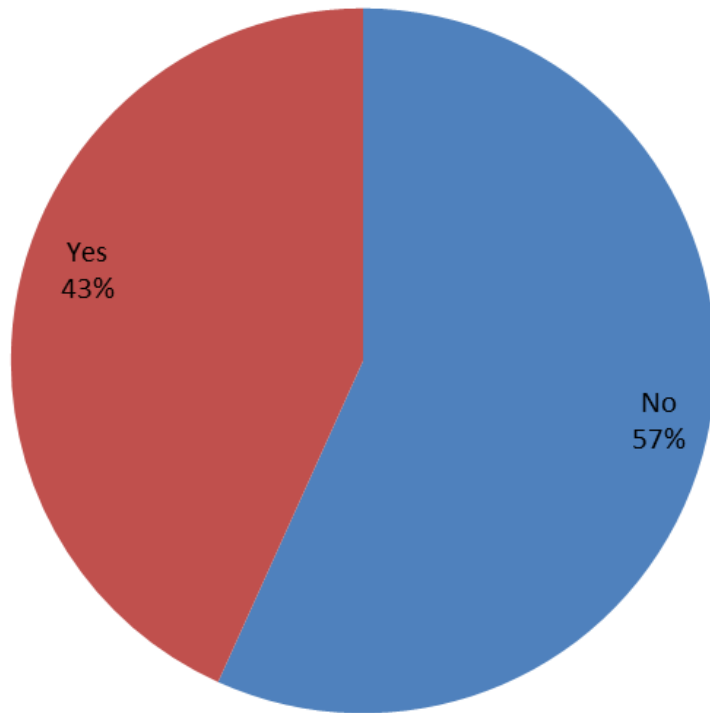


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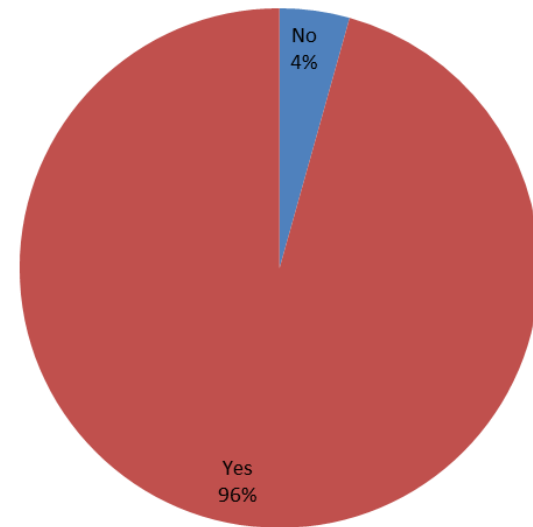
Joint ventures and Shareholders' Agreements

Shareholders' Agreements (SHA)

Is there a shareholders' agreement signed between the parties?

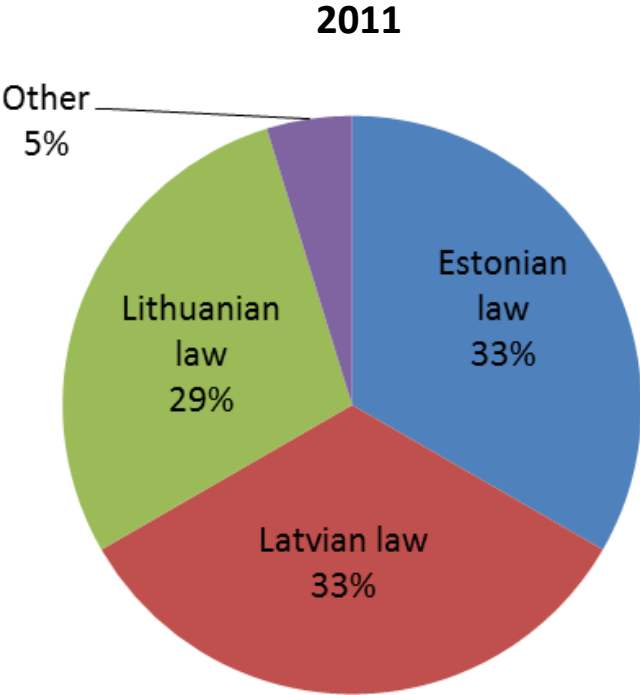
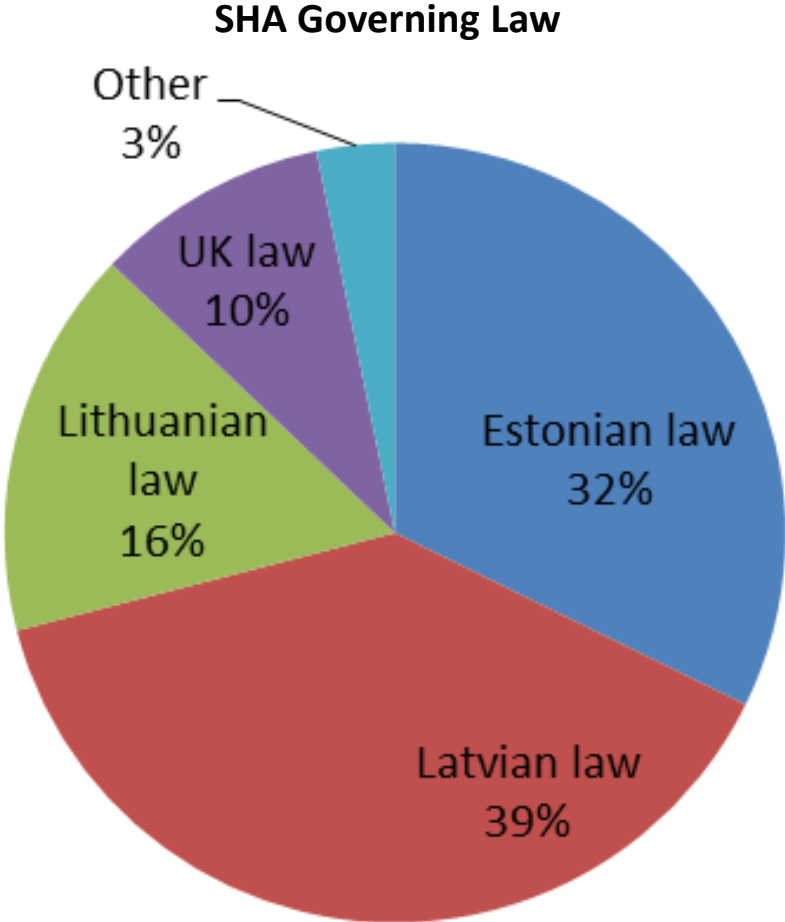


2011



- The shareholders' agreement has significantly reduced in popularity since 2011 study.

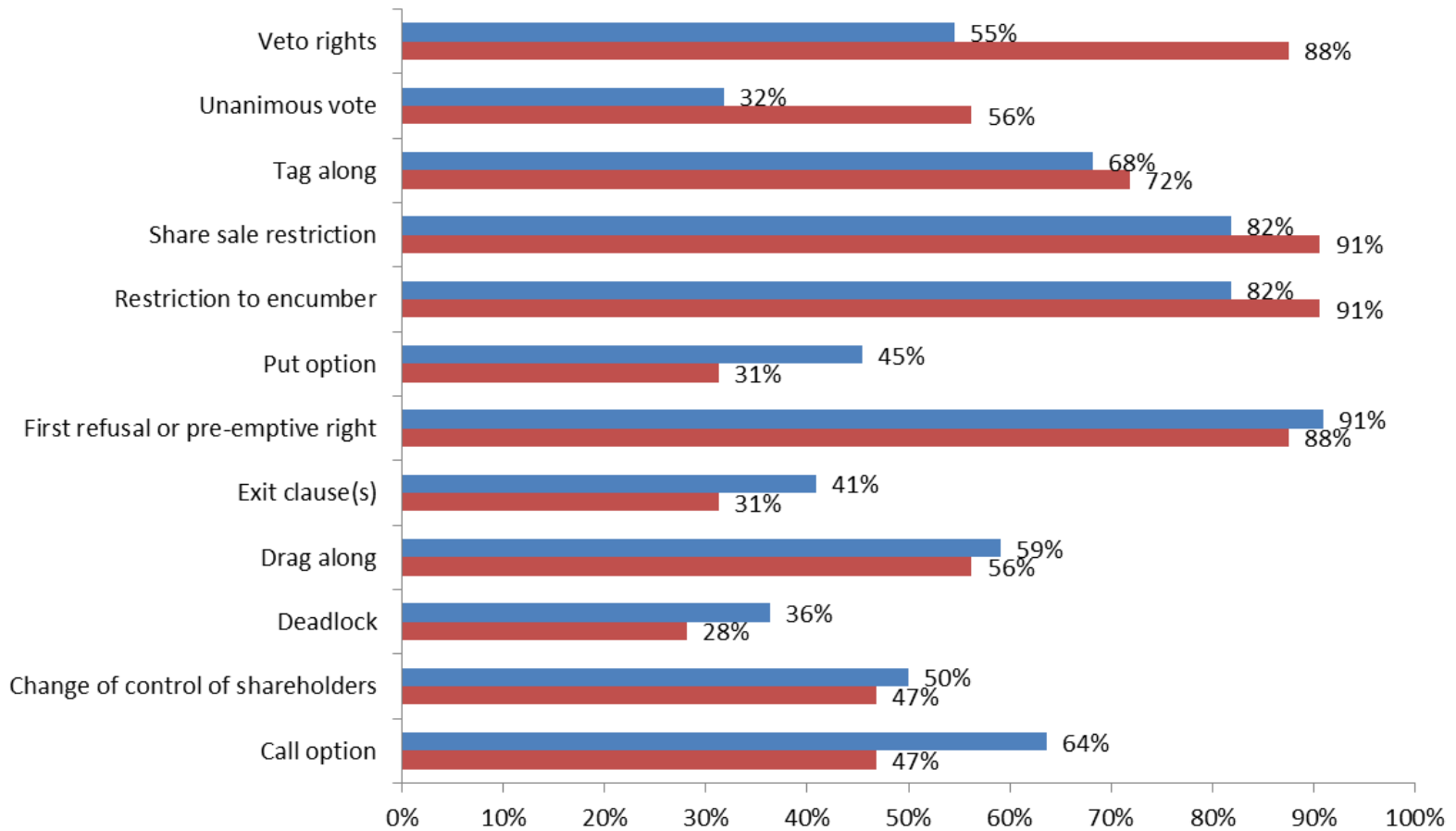
Shareholders' Agreements (SHA)



Shareholders' Agreements (SHA)

Percentage of SHA with the provision

■ 2011 ■ 2013

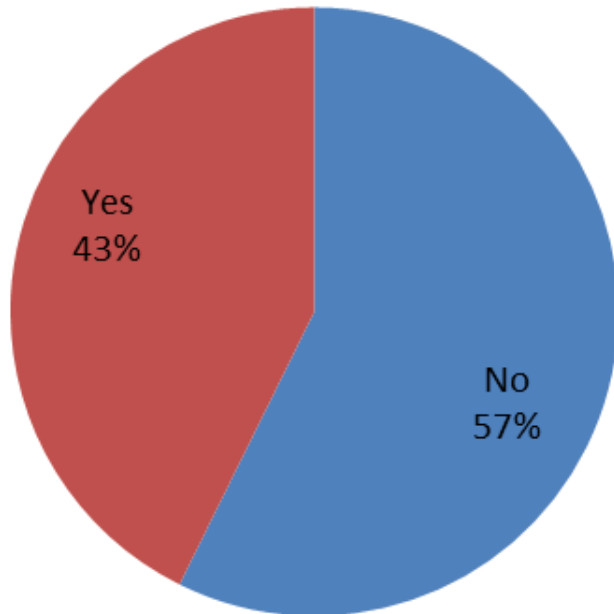


The background of the slide is a light green color with a pattern of darker green, wavy, ribbon-like lines that resemble a stylized map or a network of paths. The lines are more prominent on the left side and fade towards the right.

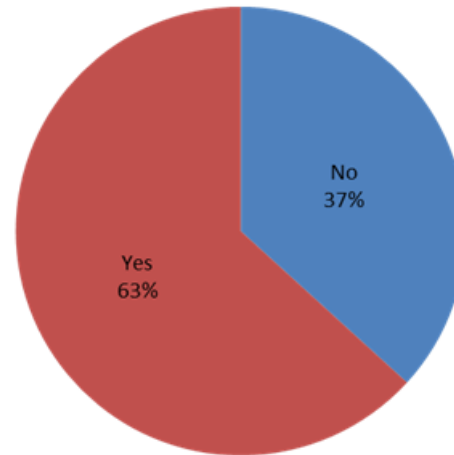
Covenants

Seller Non-Competition Obligation

Agreement containing a non-competition obligation of the Seller

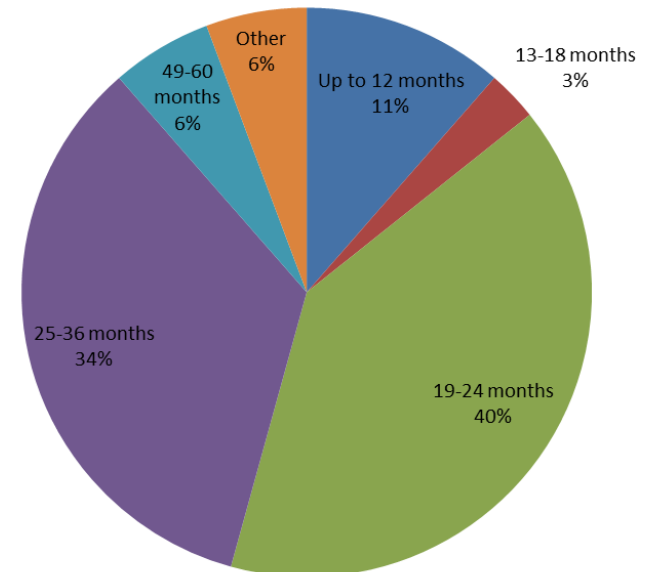


2011



2009

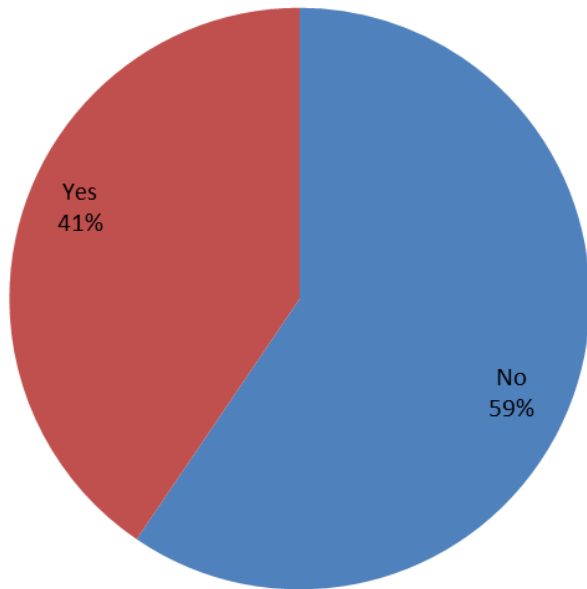
Duration of such obligation



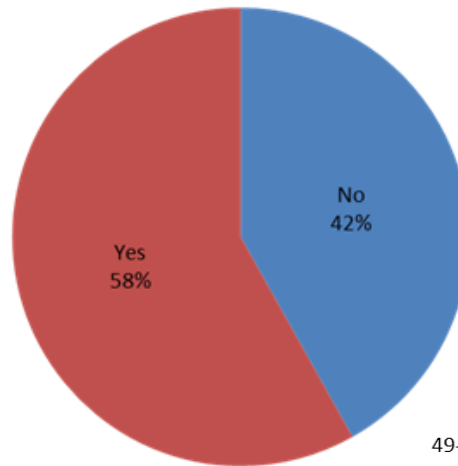
- Contrary to 2011 and 2009 studies the majority of the transactions did not include a non-competition obligation for the sellers, but if included the maximum allowed term of 19-24 months was mostly used (24-36 months in 2011).

Seller Non-Solicitation Obligation

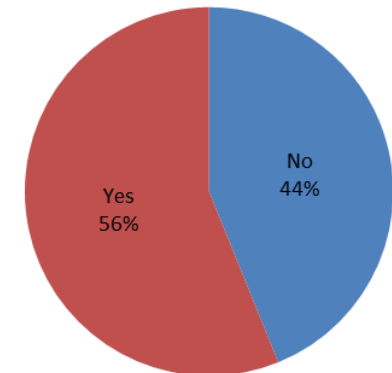
Agreement containing a non-solicitation obligation of the Seller



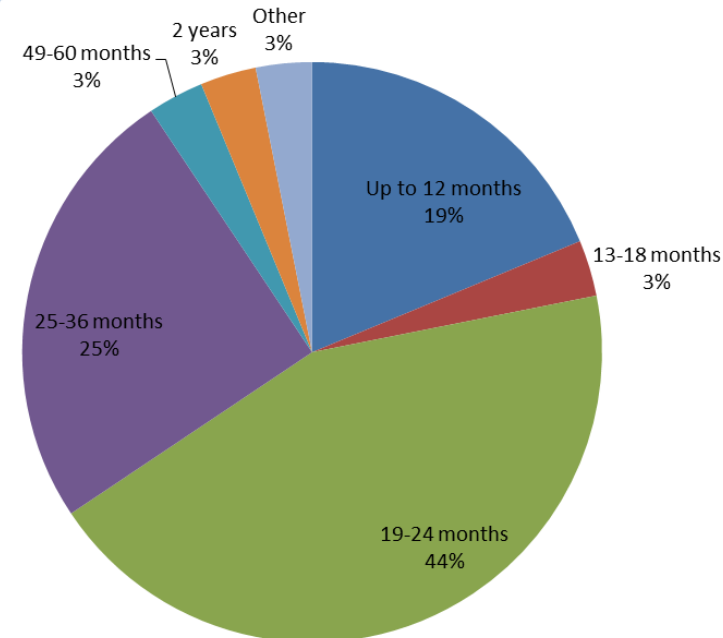
2011



2009



Duration of such obligation



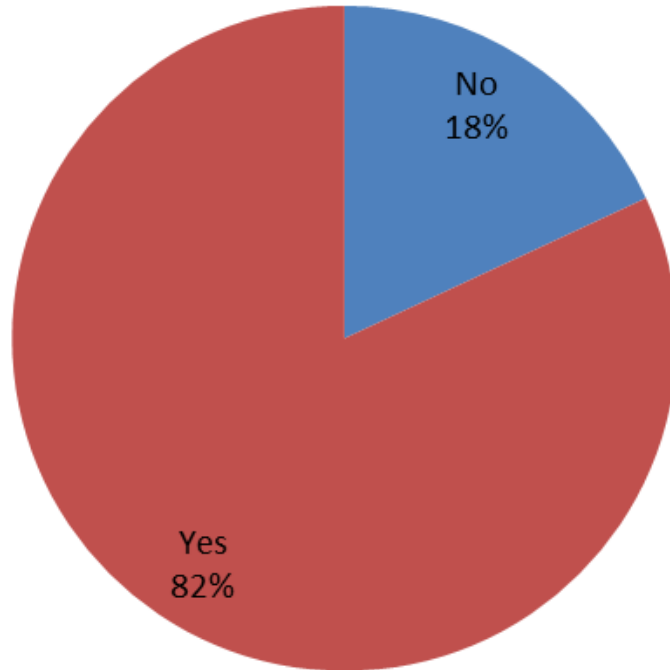
- In contrast to 2011 and 2009 studies, the majority of transactions do not contain a non-solicitation obligation for the seller.
- The duration of the obligation is generally 19-24 months (36 months in 2011).

The background of the slide features a light green gradient. On the left side, there are several overlapping, wavy, ribbon-like shapes in various shades of green, ranging from light to dark. These shapes are somewhat chaotic and organic in form, resembling stylized waves or abstract patterns. The text 'Due Diligence' is positioned on the right side of the slide, centered vertically relative to the wavy patterns.

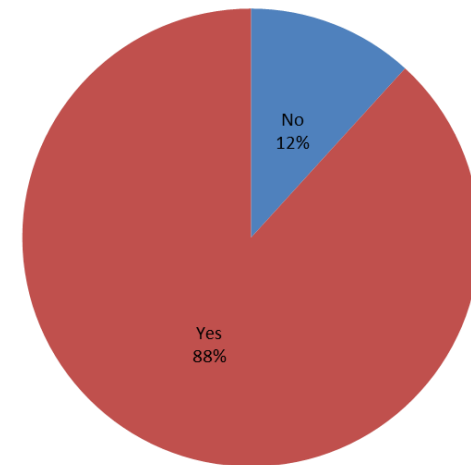
Due Diligence

Due Diligence

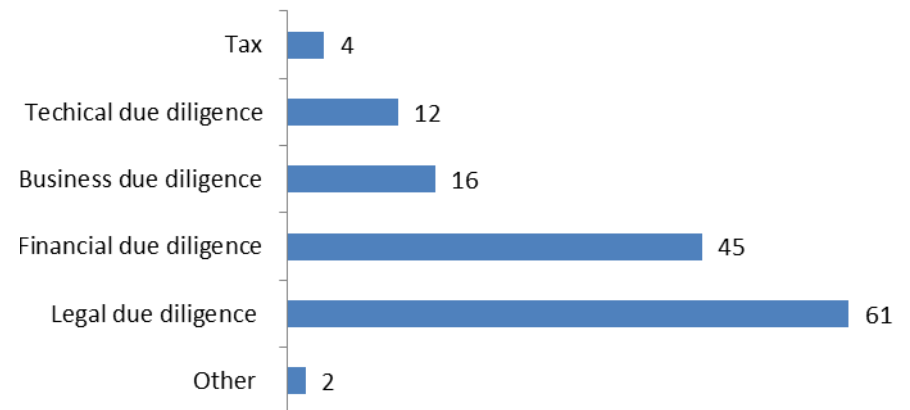
Was the due diligence conducted by the Buyer?



2011

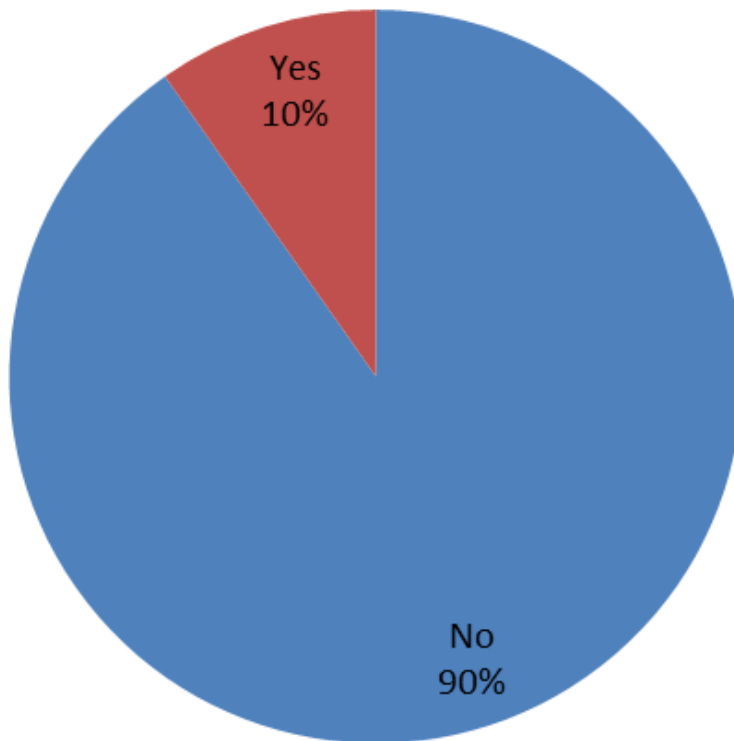


No. of transactions having each type of due diligence

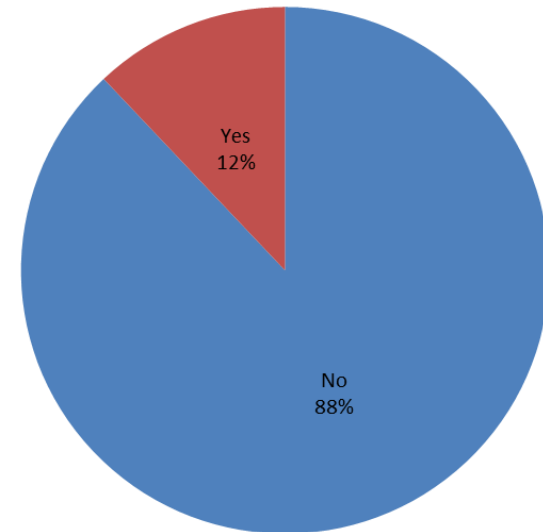


Due Diligence

Was the vendor's due diligence conducted?



2011



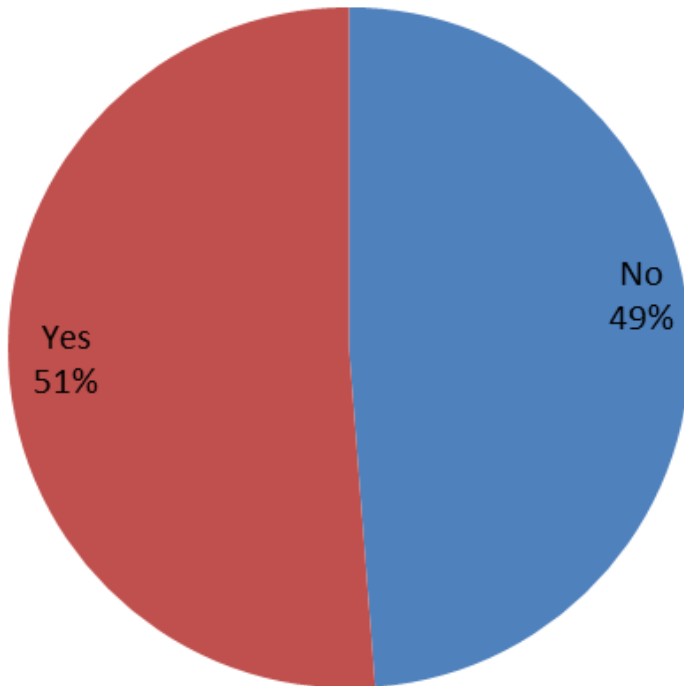
- While buyers routinely carry out the target due diligence, vendor's due diligence is becoming even more rare in the Baltic States.



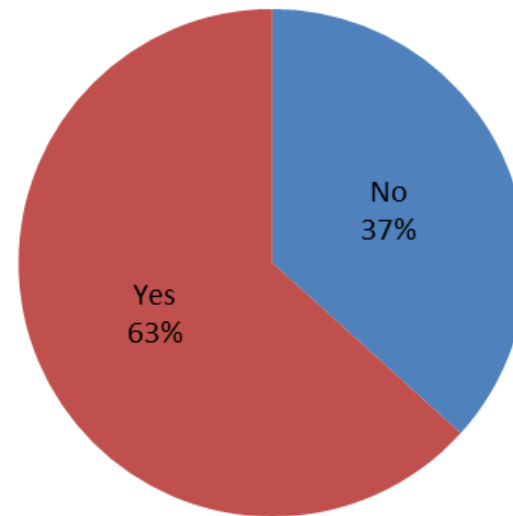
Length of Transaction and Letters of Intent

Use of Letters of Intent

Were the initial negotiations formalised by signing a letter of intent?

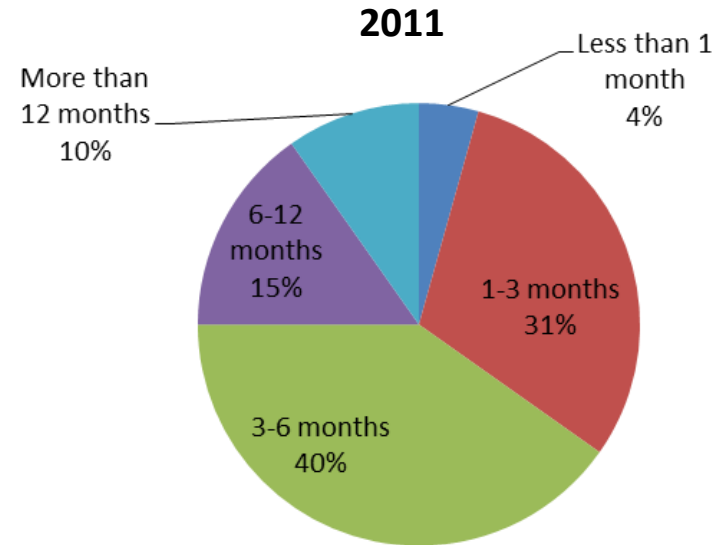
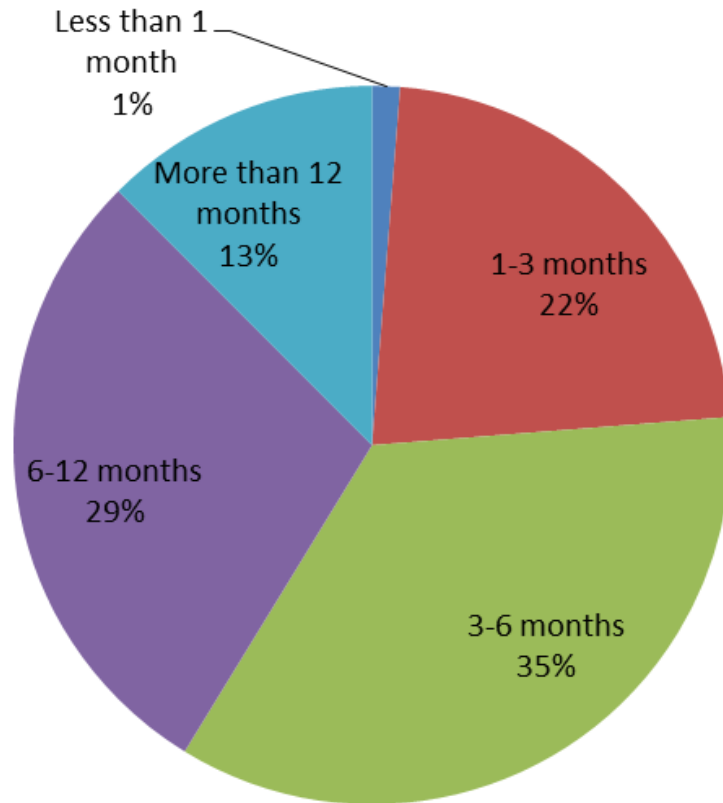


2011



- Roughly half of the transaction in the Baltics were formalised in the negotiations stage with a letter of intent.

Length of Transaction Process



- The transaction process has lengthened as compared to 2011 study.
- A typical transaction takes 3-12 months from a letter of intent or due diligence to the closing.

Contacts

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