

# Baltic M&A Deal Points Study 2011



## Selection of statistics



LAW FIRM

GLIMSTEDT

**BORENIUS**

ATTORNEYS AT LAW

**LAWIN**



**SORAINEN**

ESTONIA LATVIA LITHUANIA BELARUS

**RAIDLA LEJINS & NORCOUS**

TARK  
GRUNTE  
SUTKIENE

Tamme Otsmann Ruus Vabamets

# Baltic M&A Deal Points Study 2011



- Drawing on the experience of the Baltic M&A Deal Points Study 2009, this new edition is conducted by the following Baltic M&A law firms\*:
  - SORAINEN
  - Raidla Lejins Norcous
  - LAWIN
  - Tark Grunte Sutkiene
  - Borenius
  - Glimstedt
  - Tamme Otsmann Ruus Vabamets
- \* SORAINEN, Raidla Lejins Norcous, LAWIN, Tark Grunte Sutkiene and Borenius contributed in all Baltic countries, Glimstedt contributed in Lithuania and Latvia, and Tamme Otsmann Ruus Vabamets in Estonia
- The study analyses 96 M&A transactions completed during the period January 2009 – June 2011
- 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 2011 study compares the results to the similar 2009 Baltic study

## Transactions analysed

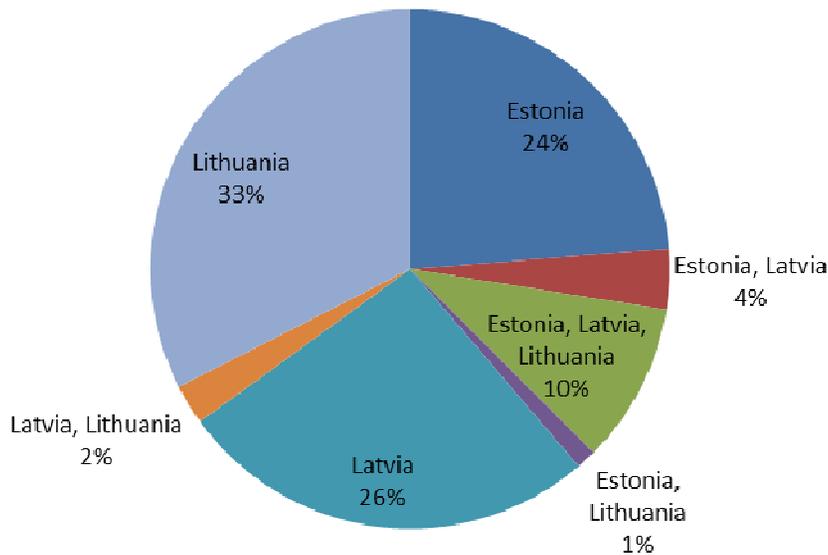


- Transactions included in the survey have the following characteristics:
  - The survey covered M&A and joint venture transactions, i.e. acquisition or merger of businesses via share or asset transactions, corporate statutory mergers or in any other way
  - Only Baltic transactions were studied, i.e. 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 and a half year period January 2009 – June 2011
  - 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

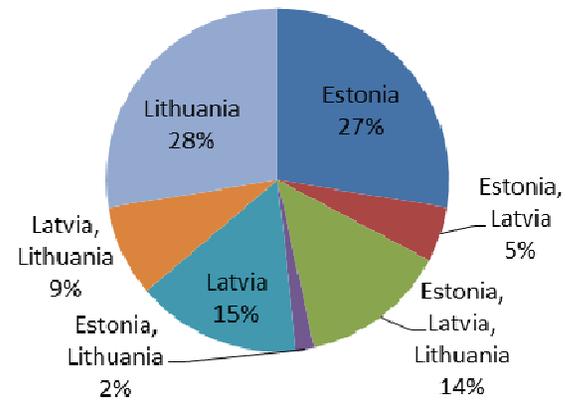
# Where do the Targets Operate



Baltic States where the Target operates

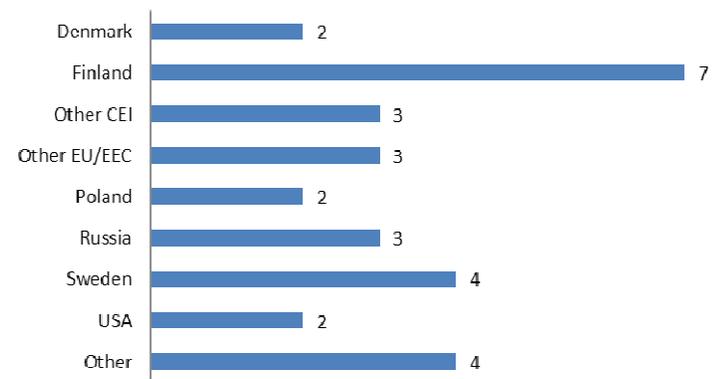


2009 Baltic States where the Target operates



- During the crisis, the targets were smaller and thus only 10% of the analysed targets were operating across all Baltic States

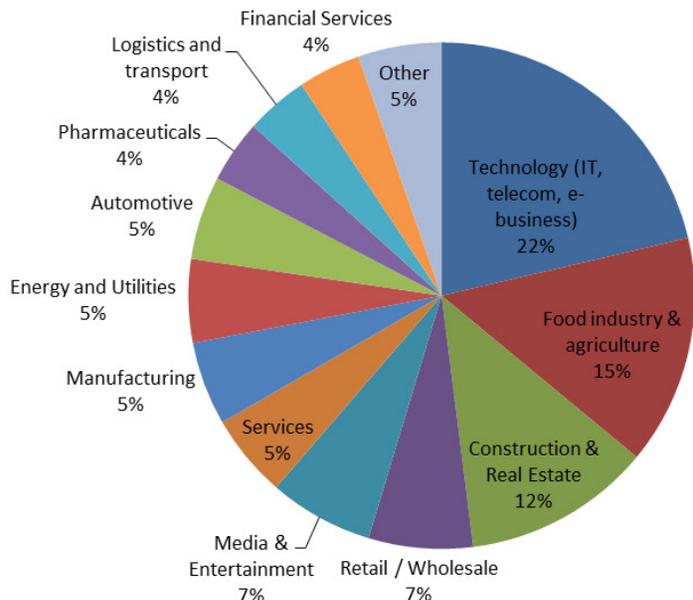
No. of Targets having operations outside the Baltic States



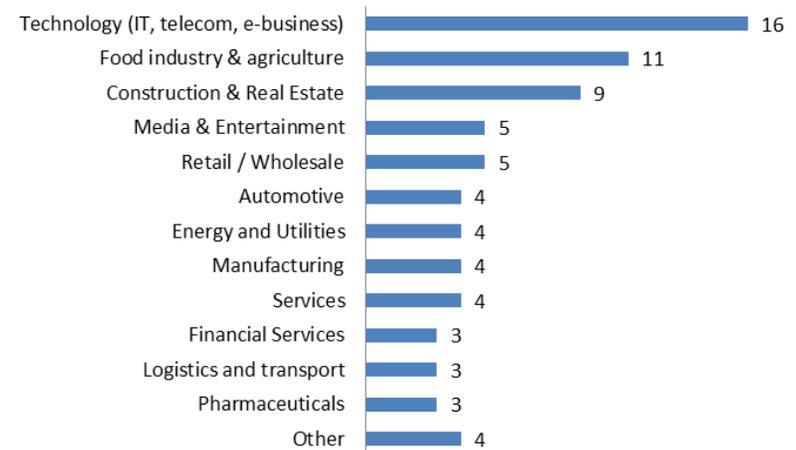
# What are the Target's Main Industries



Target industry as percentage of total positive responses

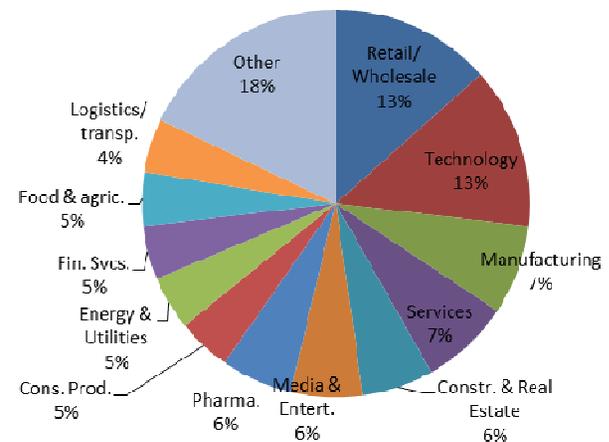


No. of targets operating in each industry



- The IT sector remains active in M&A
- While the 2009 study showed consolidation in the retail sector, the current study shows activity in its vertically connected food & agriculture sector

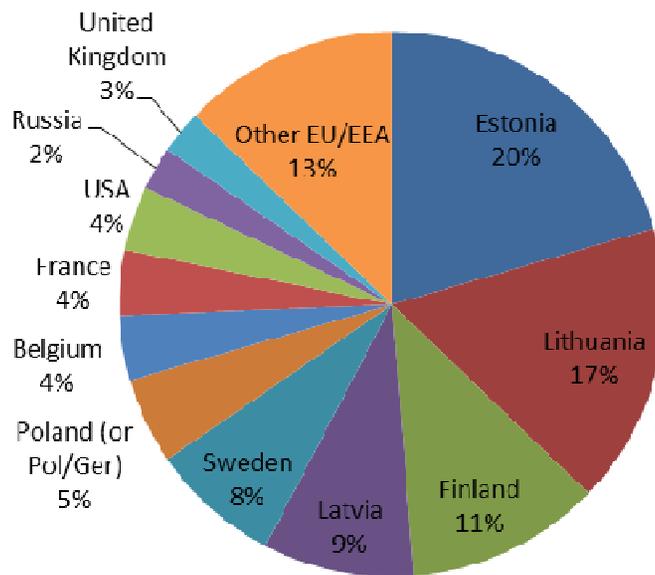
2009 Target Industry



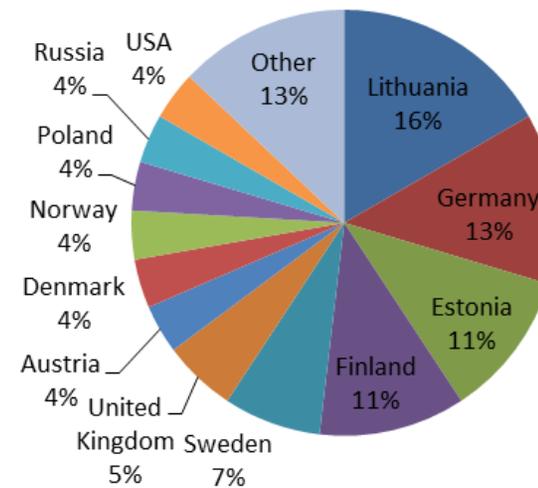
# Country of the Buyer



Buyer Country of Origin



2009 Buyer Country of Origin



- Buyers come from more diverse countries, but mostly from the Baltic States and neighbouring countries
- The proportion of Baltic and Nordic buyers has increased with respect to the 2009 study

# Geography of Buyers and Targets



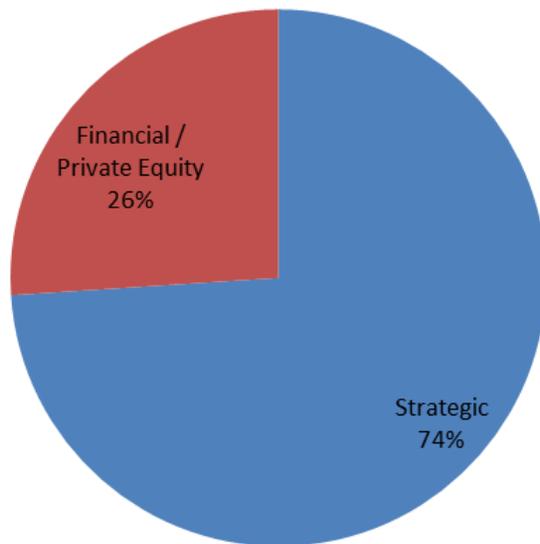
Origin of Buyer	Austrian Target	Estonian Target	Finnish Target	Latvian Target	Lithuanian Target	Total
Belgium				2	1	3
Estonia		11	1	3		15
Finland		4		2	3	9
France				2	1	3
Latvia				7		7
Lithuania				1	11	12
Poland (or Pol/Ger)				1	3	4
Russia		1		1		2
Sweden			2	1	3	6
United Kingdom				1	1	2
USA		3				3
Other EU/EEA	1	3		4	1	9
<b>Total</b>	<b>1</b>	<b>22</b>	<b>3</b>	<b>25</b>	<b>24</b>	<b>75</b>

- Most Baltic buyers (especially Lithuanian) acquired targets in their own country, Finns preferred Estonian targets, Polish preferred Lithuanian ones

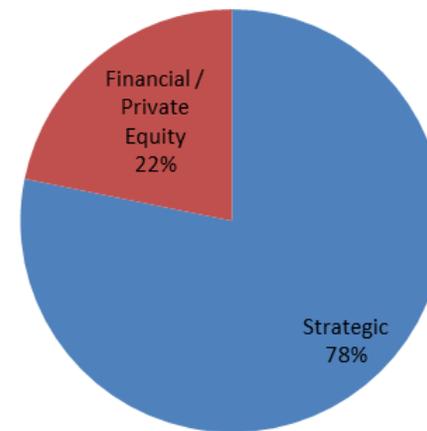
# Nature of the Buyer



Nature of the Buyer



2009 Nature of the Buyer

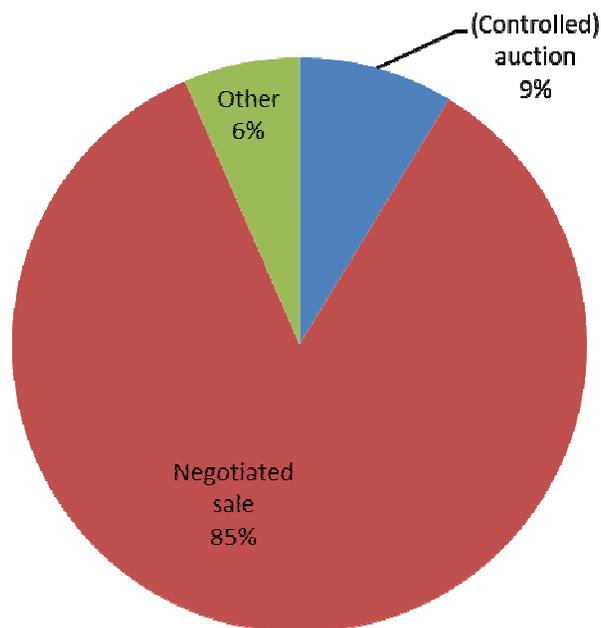


- The vast majority of buyers is strategic
- Around 29% of strategic sellers, 20% of financial sellers and 10% of individuals sold targets to financial/PE buyers

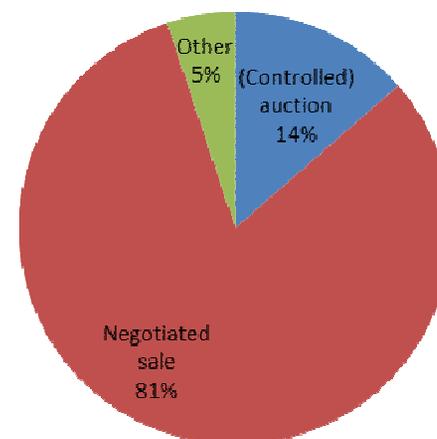
# Nature of the sales process



Nature of the sales process

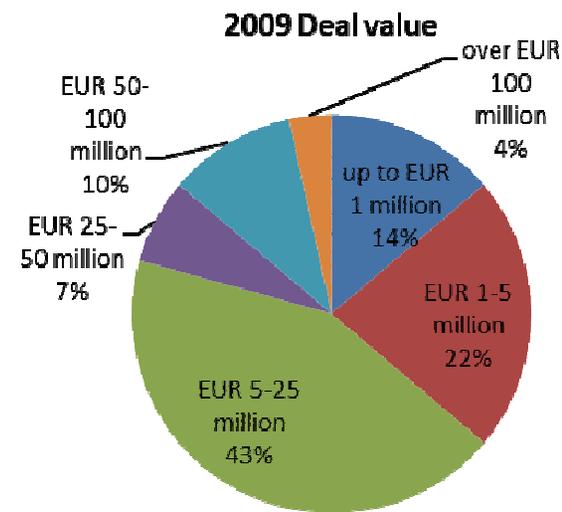
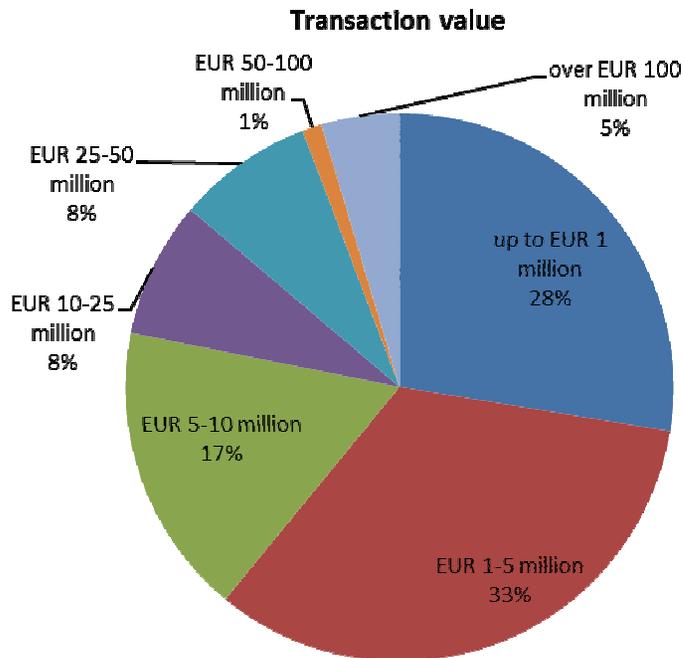


2009 Nature of the sales process



- Due to the relative low value of Baltic M&A transactions and the limited number of buyers, very few auctions were carried out in the analysed period (2009-2011)

# Transaction value

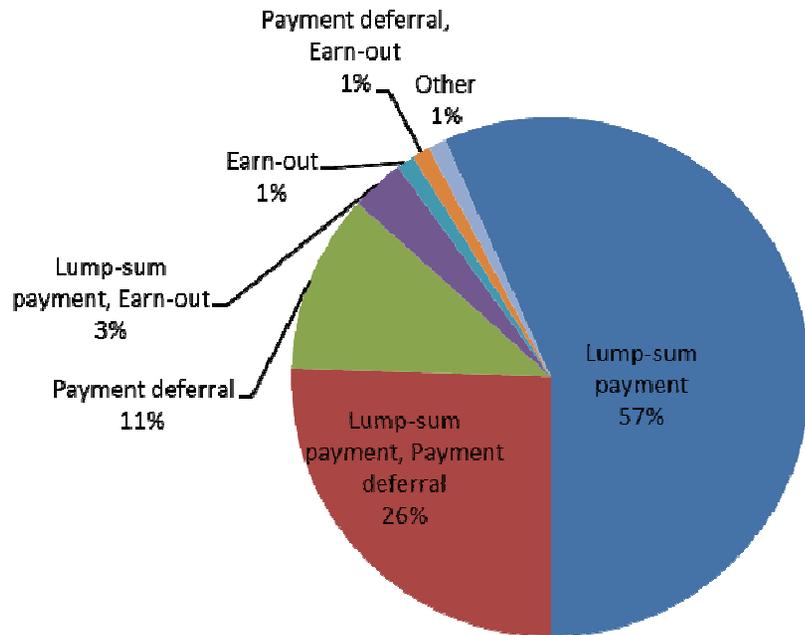


- The value of the typical (median) Baltic M&A transaction in the studied period was in the EUR 1-5 million bracket, with 62% transaction values of 5 million or less, of which close to half had values of EUR 1 million or less
- In comparison, the median value in the 2009 study was in the EUR 5-25 million bracket

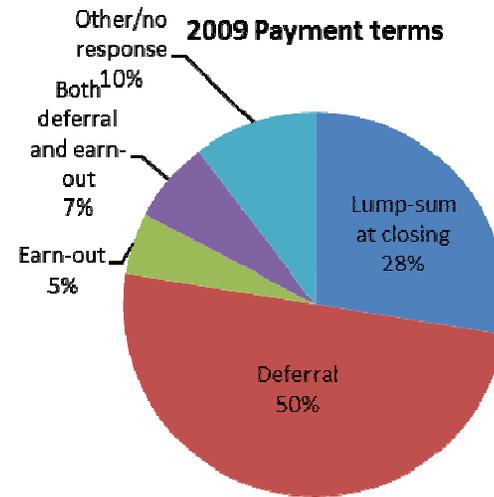
# Payment terms



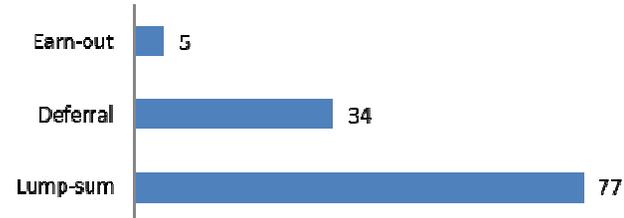
**Payment Terms Used**



**2009 Payment terms**



**Number of transactions using each payment term**

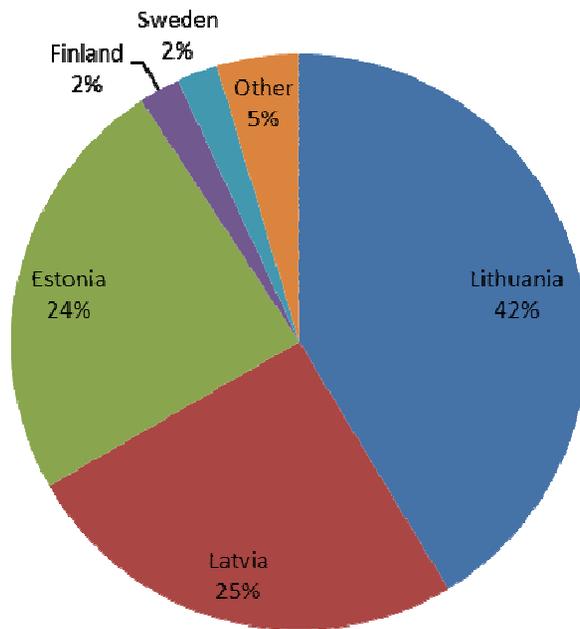


- In stark contrast to the 2009 study, the lump-sum payment (mostly at closing but also combined with deferral) was by far the most used payment term in the analysed transactions

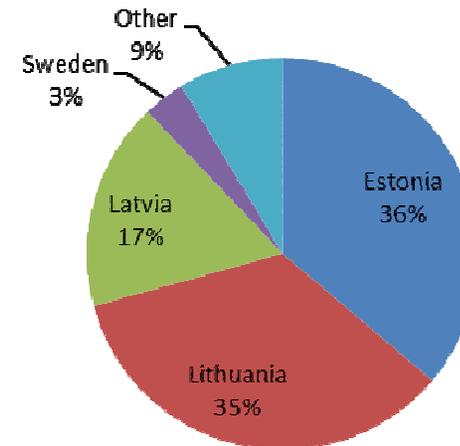
# Transaction Governing Law



**Main Agreement Governing Law**

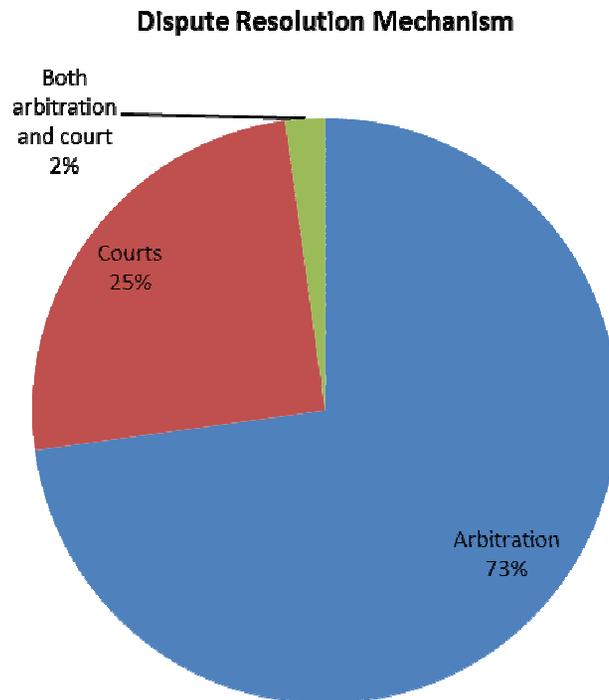


**2009 Governing Law**

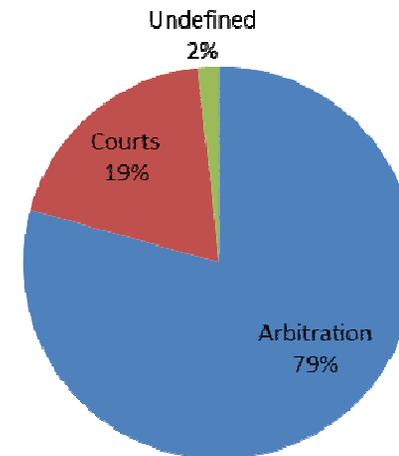


- Most analysed transactions are governed by local laws of a Baltic State, normally coinciding with the country where the target is headquartered

# Dispute Resolution Mechanism



**2009 Dispute Resolution Mechanism**

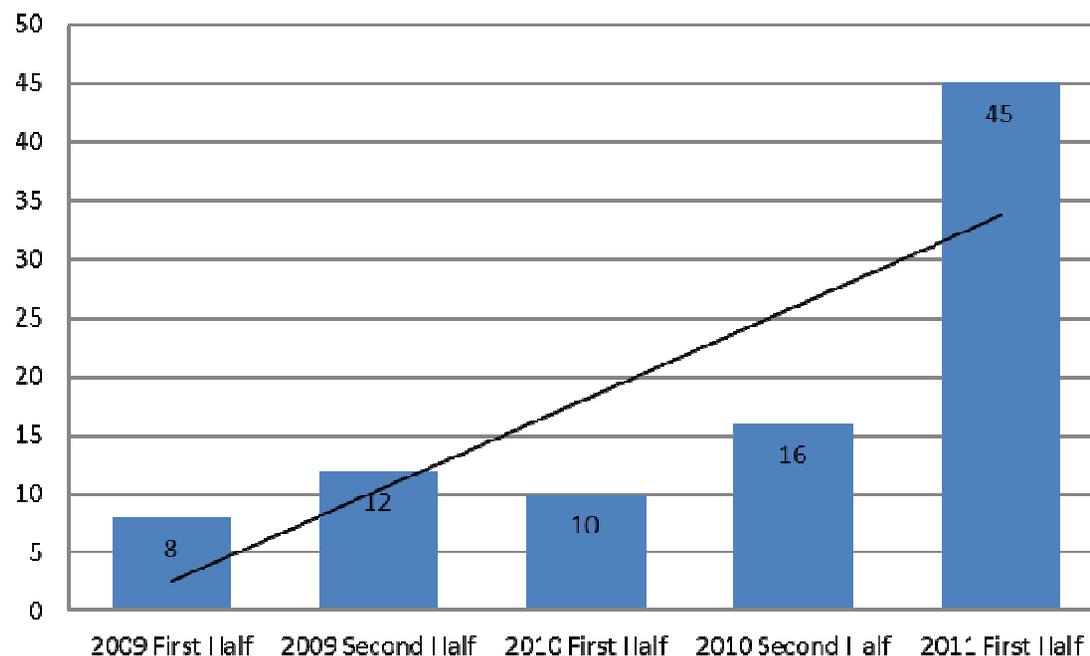


- Arbitration clauses are still predominant, but courts are becoming increasingly popular

# Timeline of Transactions



No. of Transactions by Completion Date

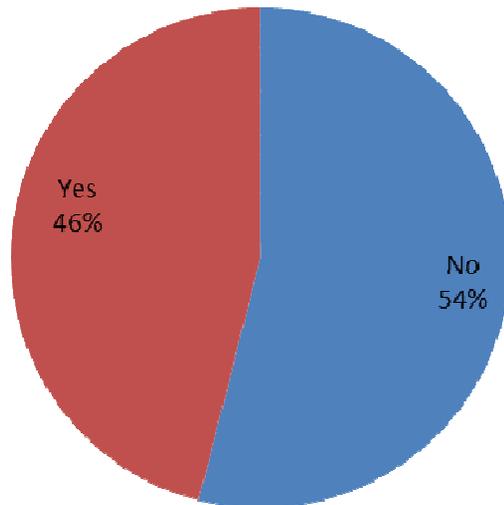


- The transaction trend reflects the evolution of the Baltic economies, with 47% of the transactions happening in the first half of 2011
  - Note: these numbers should be read with the caveat that the respondents did not have to spread transactions proportional to the real transaction volume

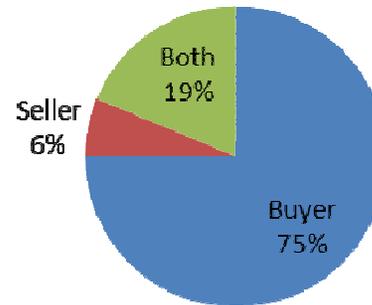
# MAC (“material adverse change”)/MAE (“material adverse effect”) Clause



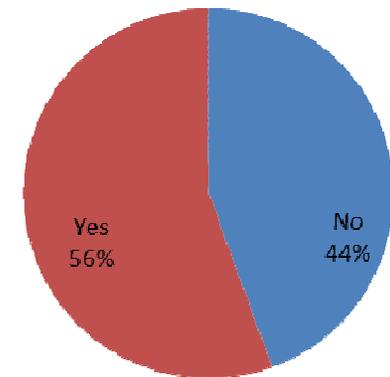
Agreements Include a Material Adverse Change (“MAC”) or Material Adverse Effect (“MAE”) condition



Who may Invoke the MAC clause?



2009 MAC/MAE Clauses

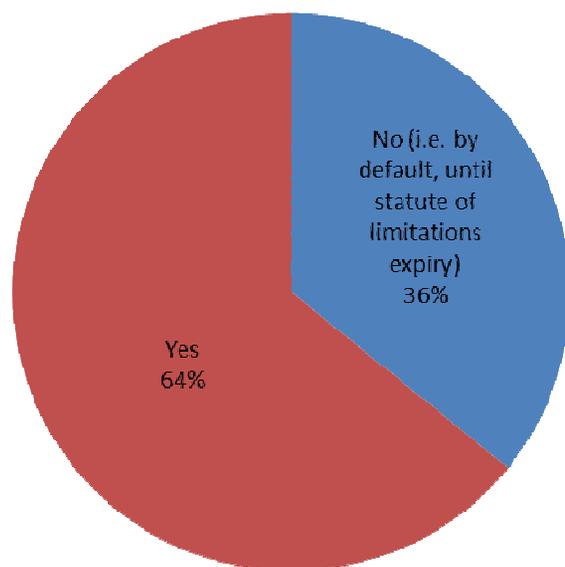


- A MAC/MAE clause aims to give a party the right to cancel the agreement and abandon the transaction before completion if events occur that are seriously detrimental to the target or the transaction, making closing conditional upon nothing material changing for the worse
- MAC clauses are used somewhat less frequently during the economic crisis than in 2007-2008

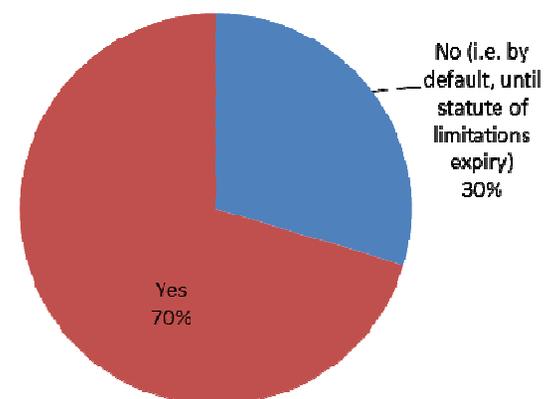
# Survival of Warranties



Is the general period of survival of warranties expressly defined?

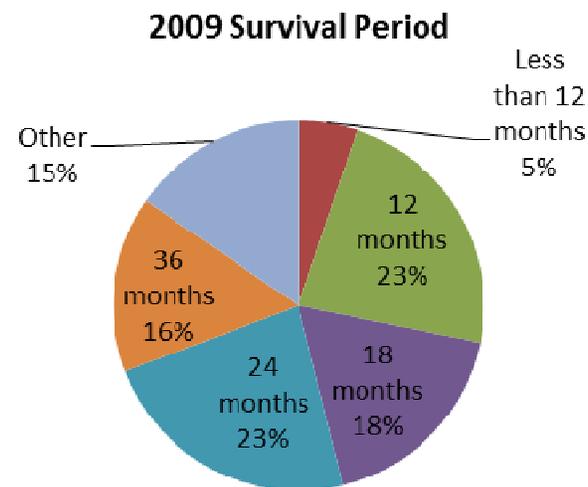
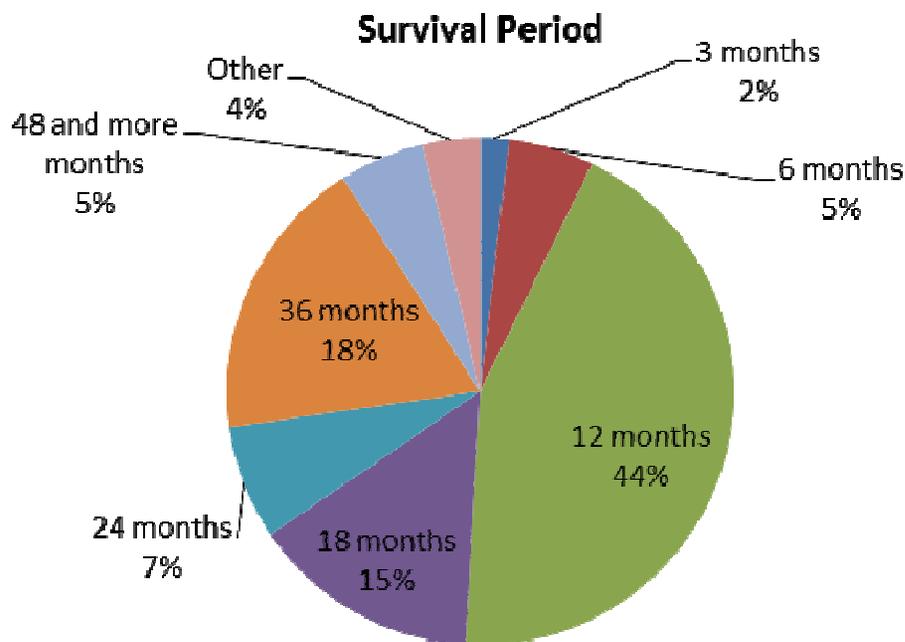


2009 Survival of Warranties



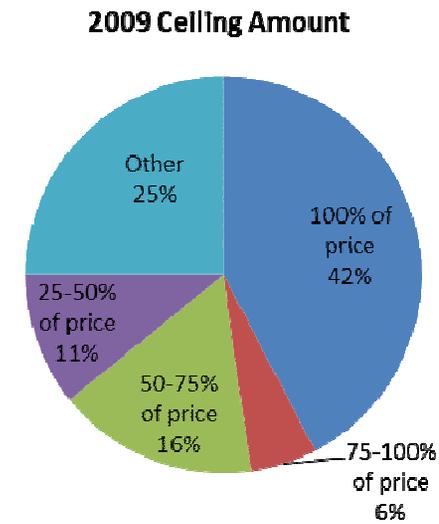
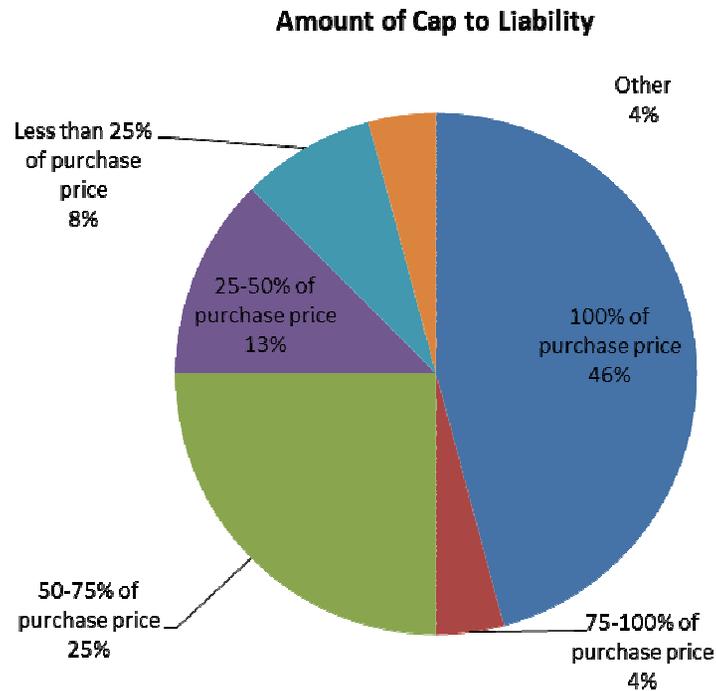
- The general law statute of limitations period could be too inadequate or unclear for certain transactions and the parties may choose to set a specific period instead
- In the Baltic States, setting a specific period is still the rule, although the proportion has been reduced from 70% to 64%

# Survival of Warranties (cont.)



- The survival periods of R&W are considerably shorter compared to those in the 2009 study

# Amount of Cap to Liability

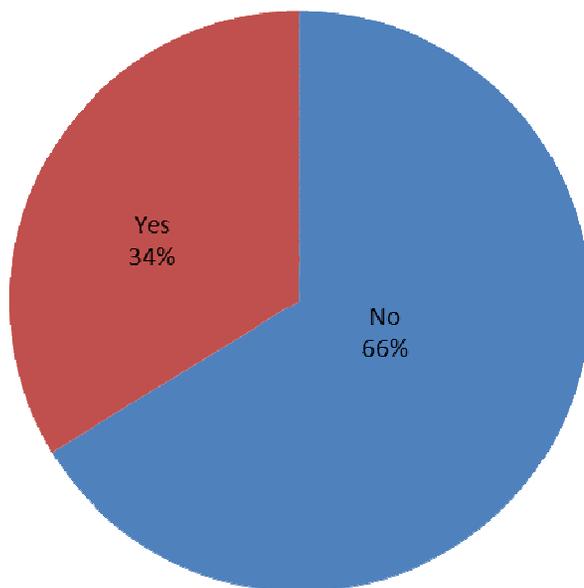


- Due to the relatively small value of Baltic transactions, liability caps of 100% of the purchase price are very common when these caps are used

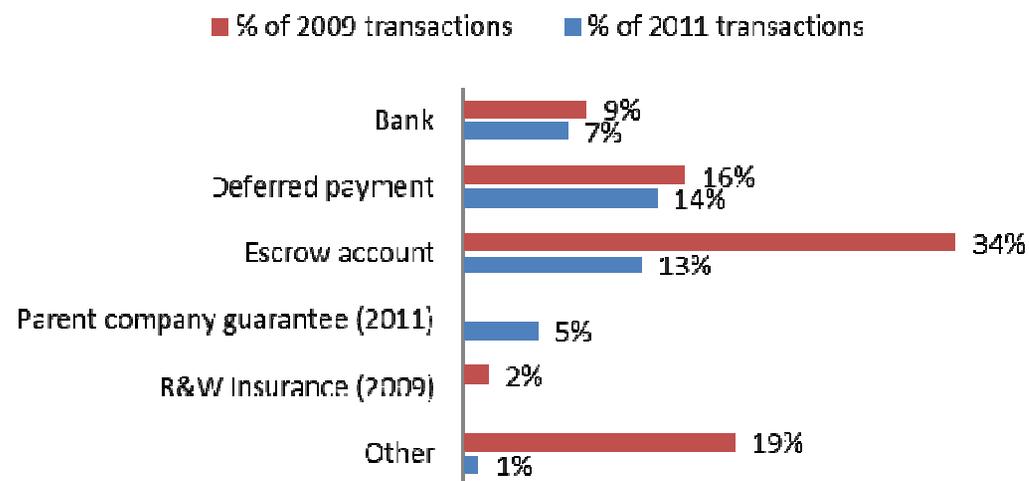
# Security of Seller's Obligations



## Security for the Seller's obligations in the agreement



## Forms of Security of Seller's Obligations

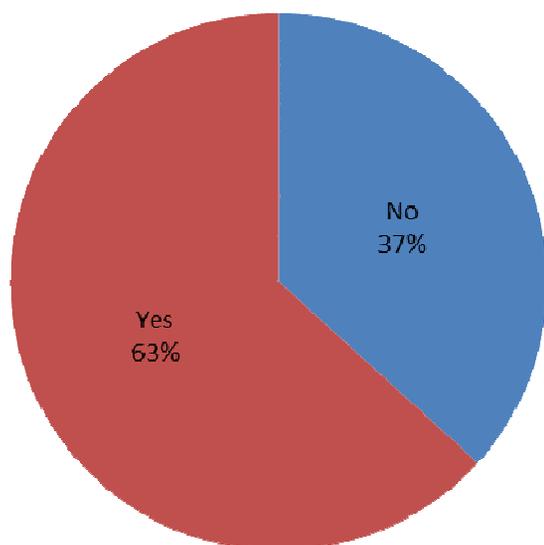


- The popularity of establishing security for the sellers obligations has somewhat diminished, particularly in the case of the establishment of escrow accounts

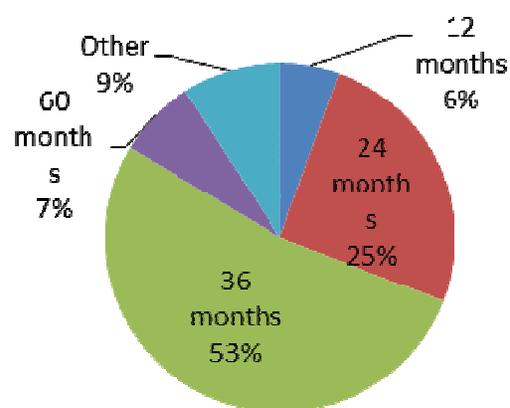
# Seller Non-Competition Obligation



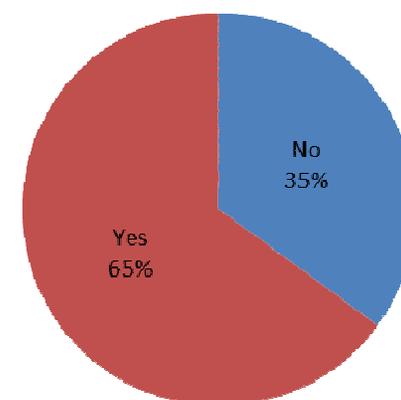
**Agreement containing a non-competition obligation of the Seller**



**Duration of such obligation**



**2009 Seller non-competition obligation**

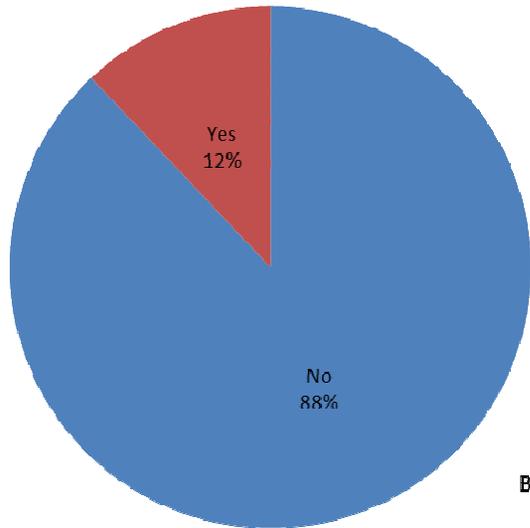


- The majority of the transactions included a non-competition obligation for the seller and – if so – the maximum allowed term of 24-36 months was mostly used

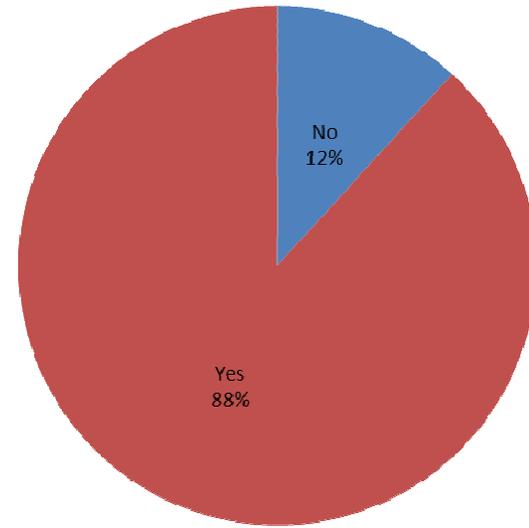
# Due Diligence



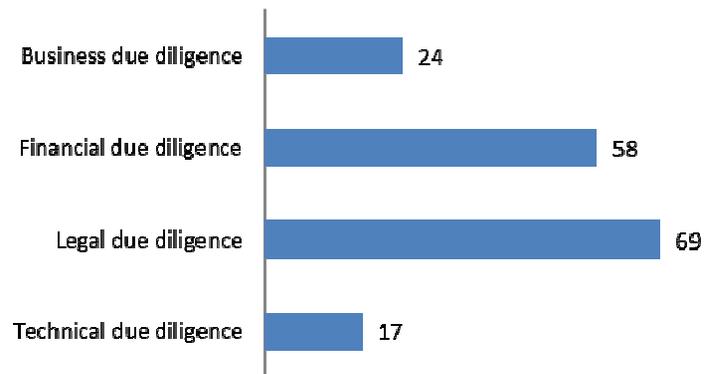
Was the vendor's due diligence conducted?



Was the due diligence conducted by the Buyer?



No of transactions having each type of due diligence



- While buyers routinely carry out the target due diligence, vendor's due diligence are still rare in the Baltic States

## Conclusions



- During the January 2009-June 2011 period IT, Food and Agriculture were the most active sectors in Baltic M&A market
- The median value of the Baltic M&A transactions analysed dropped to the EUR 1-5 million bracket during the crisis and this affected also transaction processes and deal points
- While Baltic M&A practise is fairly similar to the one in larger more developed foreign countries, the complexity of the deal points tends to be lower

# Full statistics



- In order to receive full statistics of the Baltic M&A Deal Points Study 2011, please contact:



Toomas Prangli

[toomas.prangli@sorainen.com](mailto:toomas.prangli@sorainen.com)

RAIDLA LEJINS & NORCOUS

Sven Papp

[sven.papp@rln.ee](mailto:sven.papp@rln.ee)



Martin Simovart

[martin.simovart@lawin.ee](mailto:martin.simovart@lawin.ee)



Risto Vahimets

[risto.vahimets@tgslegal.com](mailto:risto.vahimets@tgslegal.com)



Peeter Kutman

[peeter.kutman@borenius.ee](mailto:peeter.kutman@borenius.ee)



Gediminas Dominas

[g.dominas@glimstedt.lt](mailto:g.dominas@glimstedt.lt)



Tõnis Tamme

[tonis.tamme@torv.ee](mailto:tonis.tamme@torv.ee)