VLERICK
BUSINESS SCHOOL

2020 M&A MONITOR

SHEDDING LIGHT ON M&A IN BELGIUM

Created by the Centre for Mergers, Acquisitions and Buyouts

Banque • Bank J.Van Breda & C° | BDO | NautaDutilh | Sowaccess Groupe Sowalfin

ACKNOWLEDGMENTS

This report was prepared by Mathieu Luypaert, Professor of Corporate Finance and M&A at Vlerick Business School and Gianni Spolverato, Doctoral Researcher at Vlerick Business School.

The authors thank all survey respondents for their participation, and Hugo Bovesse, Veerle Catry, Houari Chaib, Maxime Colle, Wouter De Maeseneire, Marie Depelssemaker, Dominic Dhaene, Wannes Gheysen, Elke Janssens, Sophie Manigart, Miguel Meuleman, Wouter Thierie, Hans Vanoorbeek, Alexander Veithen, David Veredas and Laurent Wenric for their valuable input.

The administrative support of Cloé De Moor is highly appreciated, and all members of Vlerick's Accounting & Finance Area are thanked warmly for their valuable input and feedback.

Please direct questions and comments about this report via email to: **mathieu.luypaert@vlerick.com** or **gianni.spolverato@vlerick.com**.

CONTENTS

ABOUT THE CENTRE FOR MERGERS, ACQUISITIONS AND BUYOUTS

Vlerick Business School's Centre for Mergers, Acquisitions and Buyouts develops and disseminates knowledge concerning best practices in the entire M&A field – from deal origination to completion, from financing to integration. The Centre reaches out to key decision-makers and influencers in an M&A process as well as to professional advisors and intermediaries. Its activities are supported by Bank J.Van Breda & C°, BDO, NautaDutilh and SOWACCESS.

BANK J.VAN BREDA & C° is a specialised bank focusing exclusively on family businesses and the liberal professions, covering both professional and private needs throughout the client's lifetime. The bank assists its clients in systematically building up, managing and protecting their assets. Clients can count on Bank J.Van Breda & C° for personal, specialised and proactive advice. Bank J.Van Breda & C° is a 100% Belgian bank and is part of the Ackermans & van Haaren group.

BDO is an international consultancy organisation with a strong reputation in financial services (audit, corporate finance, accounting, tax & legal) and other specialised advice, including strategy & transformation, digital, risk advisory and interim management. Focusing on the needs of the customer, BDO's approach is honest, hands-on and pragmatic. In Belgium, BDO has more than 850 partners and staff working out of 11 offices. BDO is part of a strong international network with about 80,000 partners and staff active in more than 160 countries.

NautaDutilh is an international law firm practising Dutch, Belgian and Luxembourg law. Founded in 1994, the Brussels office has become an important player on the Belgian legal market with an outstanding reputation in corporate M&A, banking & finance, capital markets, litigation & arbitration, intellectual property, public & regulatory, taxation, restructuring, competition and anti-trust, and employment law. Focusing on 7 sectors (financial institutions, real estate & infrastructure, energy & natural resources, life sciences, tech, private equity and professional services), NautaDutilh is able to offer its clients tailor-made solutions based on thorough knowledge of all relevant markets. Known for its ability to think adaptively, NautaDutilh is entrusted by its clients with highly complex cases.

SOWACCESS (Société Wallonne d'Acquisition et de Cession d'Entreprises), a subsidiary of the SOWALFIN Group, is the Walloon government company that facilitates the transfer and acquisition of SMEs. SOWACCESS provides information and raises awareness about the sale and acquisition of businesses among potential sellers and buyers. Furthermore, it facilitates contact between both parties in the most confidential manner, through the management of various matching platforms, combined with cross-border partnerships and initiatives. In collaboration with a wide network of private advisors (certified by their independent Ethics Committee), SOWACCESS guarantees that all buyers and sellers receive the required support, while maintaining the highest standards in terms of quality, neutrality and independence.

PREFACE

At the moment of writing this 2020 M&A Monitor, the COVID-19 lockdown has entered its fifth week. In addition to infecting a large number of people, the COVID-19 pandemic has triggered a series of unprecedented containment and isolation measures worldwide.

The unparalleled nature of the event makes it hard to predict economic consequences. We've witnessed a bloodbath on stock markets worldwide and several companies have run into liquidity issues. In heavily affected sectors, like aviation and hospitality, huge job cuts are being announced in order to avoid bankruptcies. Economists are urging governments to come up with unprecedented support packages to keep companies afloat and avoid a recession or even a depression. Meanwhile, the M&A market is also in full lockdown. Currently running M&A processes are put on hold and practically no new deals are being initiated.

The historical evolution of M&A activity shows a very strong correlation with overall economic performance. We experienced sharp drops in M&A volume during the dotcom crash and following the subprime crisis, mainly driven by uncertainty and a lack of financial resources. The key question now is: how long will it take to win the fight against the novel corona virus – but scientists seem to disagree on this. At the same time, attractive buying opportunities could arise for acquirers. We might evolve from a seller's market to a buyer's market in only a couple of months' time, as acquisition prices are likely to drop significantly and attractive companies possessing valuable technologies might be put on sale due to short-term liquidity issues.

In this 2020 M&A Monitor, we want to shed some light on the possible effects of COVID-19 on the M&A market. In addition to our annual survey on typical deal characteristics observed by M&A experts over the past year, we launched another survey right after the outbreak of the corona virus in Europe, focused on the pandemic's anticipated impact on M&A. The large majority of the surveyed experts foresee a decline in 2020 M&A activity of more than 30%, for both domestic and cross-border transactions. In addition, 60% of all respondents expect a decrease in valuation multiples exceeding 10%. One out of five experts forecast the drop in multiples to even surpass 20%.

Looking back at 2019, we noticed a stabilising M&A market. The most positive evolution was noted for the smallest segment of transactions (below €1 million), while cross-border acquisitions experienced the largest drop. The average EV/EBITDA multiple remained constant at a level of 6.5. Typical financing structures and process characteristics also remained largely in line with 2018 figures. For the first time, we also asked respondents about the anticipated effects of M&A on employment. Interestingly, the results show that a reduction in labour costs is rarely expected. The employment effects over the next three years are projected to be negative in only 11% of 2019 domestic transactions – 17% of cross-border transactions – while a positive impact is forecasted in 33%. This constitutes important information for companies and policy-makers, especially in view of a possible increase in unemployment rates following the corona pandemic.

Enjoy the read and stay safe!

MATHIEU LUYPAERT
Professor of Corporate Finance and M&A
Head of Centre for Mergers, Acquisitions and Buyouts
Vlerick Business School

GIANNI SPOLVERATO
Doctoral Research Associate
Centre for Mergers, Acquisitions and Buyouts
Vlerick Business School

METHOD

The insights presented in this document are based on the online survey responses from **110 Belgian M&A experts**, collected between **27 January and 30 March 2020**. This sample of M&A professionals was gathered through Vlerick's professional network and that of the sponsors of the Centre for Mergers, Acquisitions and Buyouts, supplemented by online searches.

We first present the respondents' insights into the evolution of the Belgian M&A market. The subsequent results relate specifically to the transactions that the respondents have been involved in during 2019. We distinguish between different size categories, ranging from deals with a transaction value of less than €1 million to deals with a transaction value greater than €100 million. Before the survey was sent out, it was tested extensively and verified by practitioners and academics.

In order to collect additional data on the impact of the **corona crisis**, we sent an additional survey to all the respondents of the last three years. This led to an additional sample of 40 respondents who answered our survey between **18 March and 30 March 2020**.

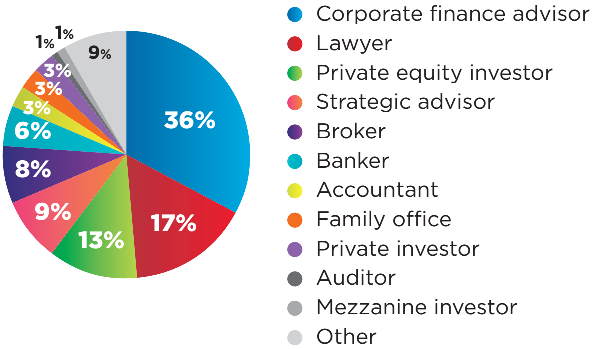
This report provides the aggregated results from our survey. In some cases, extreme outliers were removed from the sample.

ABOUT THE RESPONDENTS

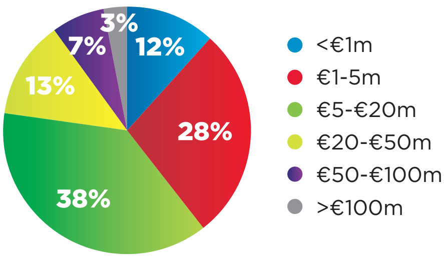
The surveyed experts represent a **comprehensive sample of the entire Belgian M&A market**. They:

- cover a wide variety of professional roles, with corporate finance advisors (36%), lawyers (17%), private equity investors (13%), strategic advisors (9%) and brokers (8%) as the largest groups;
- represent various deal segments: 51% of the respondents are primarily active in M&A with a total deal value between €5 - €50 million, 10% typically work on deals with a value greater than €50 million, and 40% work on small transactions (< €5 million);
- cover a wide range of industries, with the strongest presence in business services (56%), construction (32%) and consumer goods (29%);
- have an average of 13 years of professional M&A experience (ranging from 1 year to 35 years of experience);
- have worked on an average of 8 deals over the 12-month period preceding this survey;
- are active in the three main regions of Belgium (80 in Flanders, 71 in Brussels, and 71 in Wallonia), as well as outside Belgium's borders (30 in Europe, 12 in other regions).

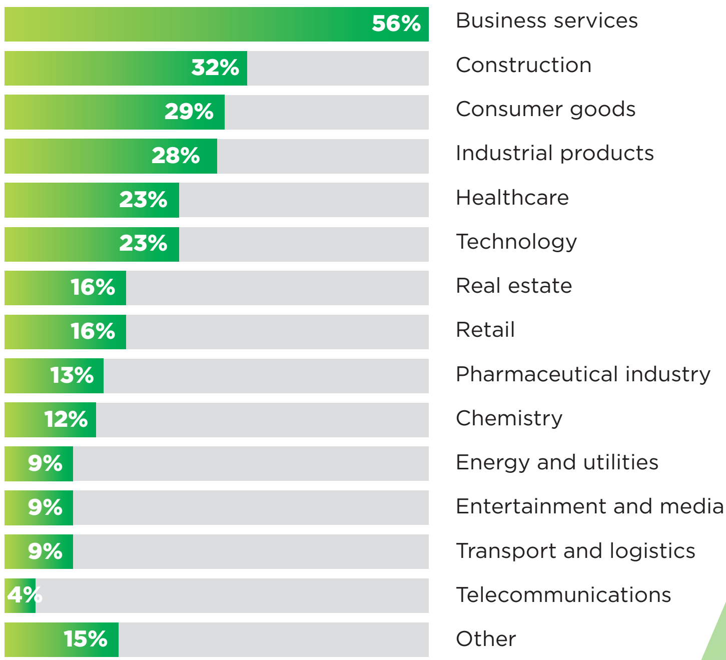
% RESPONDENTS PER PROFESSIONAL ROLE



PRIMARY MARKET SEGMENT OF RESPONDENTS - TRANSACTION VALUES



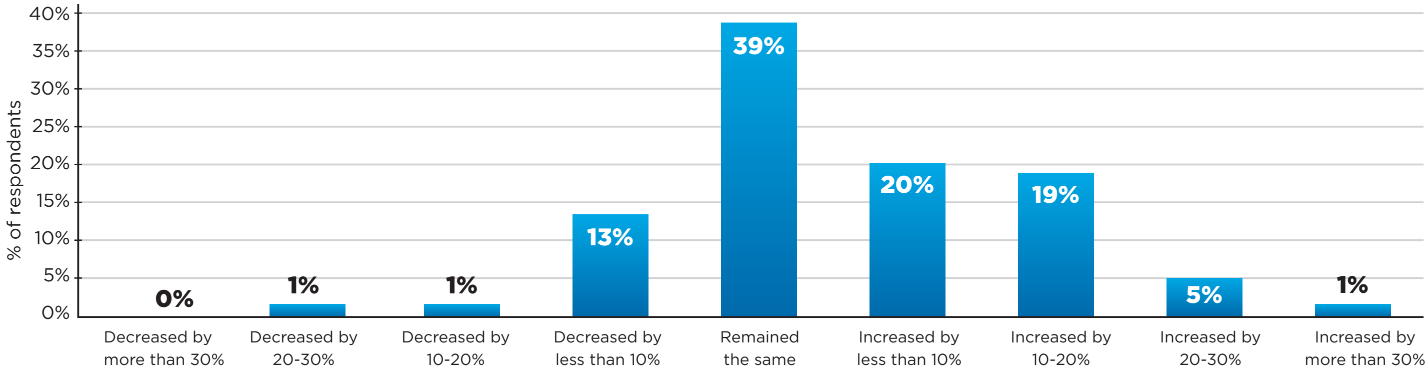
% RESPONDENTS INVOLVED IN M&A IN A GIVEN SECTOR OVER THE PRECEDING YEAR



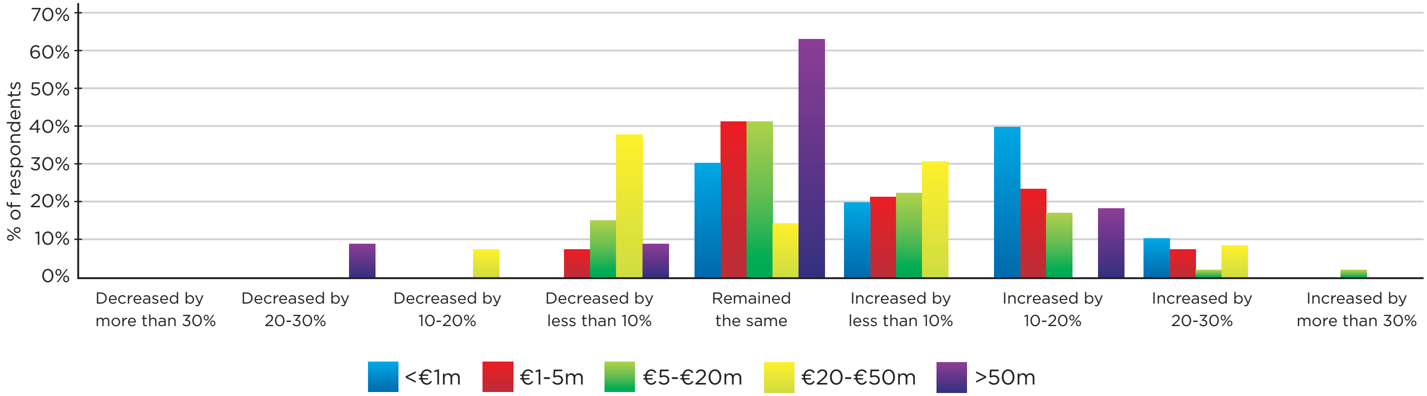
THE EVOLUTION OF THE BELGIAN M&A MARKET

2019 was characterised by a stable evolution in the M&A market. 40% of the M&A experts report no significant increase in the number of transactions compared to 2018, while 20% experienced a slight progression of less than 10%. Yet, still one in four experts noticed a significant increase of more than 10%. In line with the predictions presented in last year's monitor, this increase is mainly driven by the smallest transactions. In the segment of acquisitions valued at less than €1 million, 70% of the respondents recorded an increase and none of the respondents observed a decrease in transaction count.

2019 EVOLUTION OF NUMBER OF M&A TRANSACTIONS



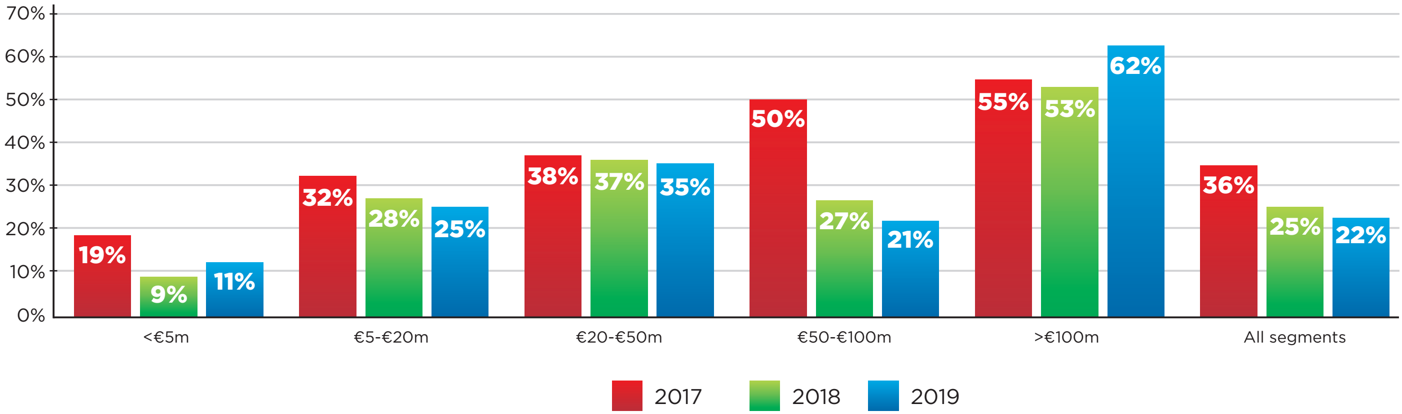
2019 EVOLUTION OF NUMBER OF M&A TRANSACTIONS PER SIZE CATEGORY



CONTINUED DECLINE IN CROSS-BORDER ACQUISITIONS

As Brexit unfolded and global trade tensions with the US continued, the number of cross-border deals declined further in all but the largest and smallest size segments. More specifically, the overall fraction of transactions by Belgian acquirers that were cross-border dropped from 36% in 2017 to 22% in 2019. This decrease confirms a global trend, as only one out of four M&A transactions worldwide in the first half of 2019 involved companies from different countries. This represents a historical low in line with levels observed during crisis periods, like 2003 and 2009 (see Financial Times, *Trump's America leads charge in global deal-making*, 27 June 2019).

% CROSS-BORDER DEALS BY BELGIAN ACQUIRERS

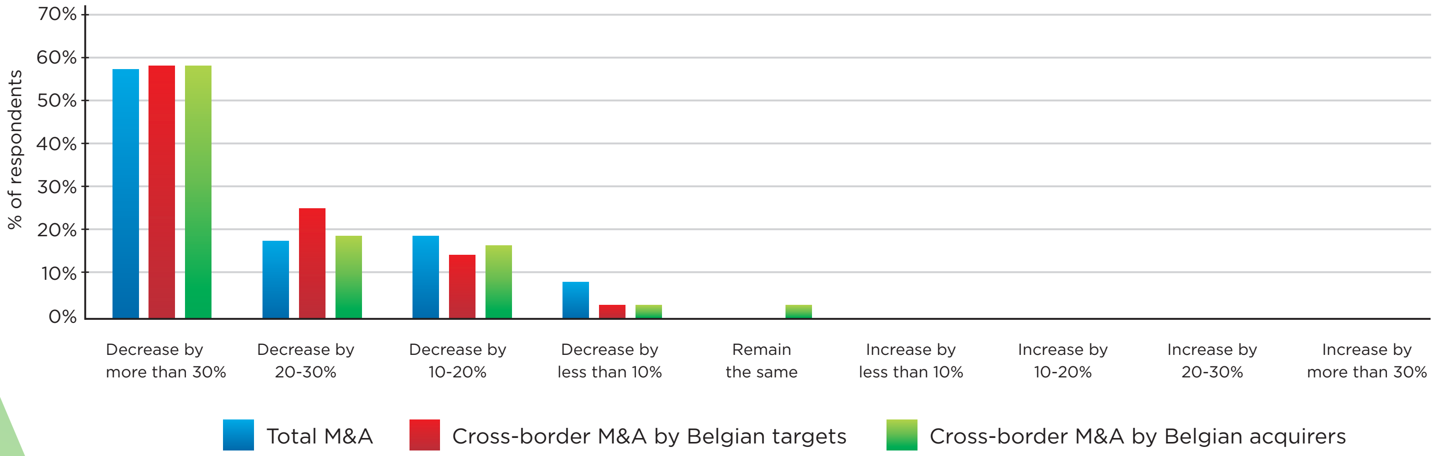


MARKET CLOSED UNTIL FURTHER NOTICE …

While central banks are providing trillions to support markets, and governments are introducing measures to combat the virus, the question remains how the corona crisis will impact the M&A market. All surveyed experts agree that deal activity will be frozen for at least the first two quarters of 2020 and that it's very likely that the halt in deal activity will continue throughout the summer. Potential sellers are currently focusing on cost-cutting and keeping their businesses alive, while buyers are saving their liquidities for what is yet to come. In addition, banks have put acquisition financing requests on hold. Also, antitrust regulators are postponing in-depth investigations of some proposed deals, significantly delaying several bigger M&A transactions. Some other transactions could be withdrawn by the acquiring companies by relying on Material Adverse Clauses (MAC) in the contract. As a result, 60% of the experts that we surveyed expect a reduction of more than 30% in Belgian M&A activity.

The key question is whether we should see this as a short-term shock or as the start of an extended economic downturn. Some respondents believe that if COVID-19 can be contained in a reasonably short period of time, the impact will be limited as there is still a significant amount of dry powder available with institutional investors. Many others, however, believe that a recession was already looming around the corner and that the deteriorating cash positions of many companies due to this virus might cause a further decline in investor confidence.

EXPECTED EVOLUTION OF M&A TRANSACTIONS FOR 2020



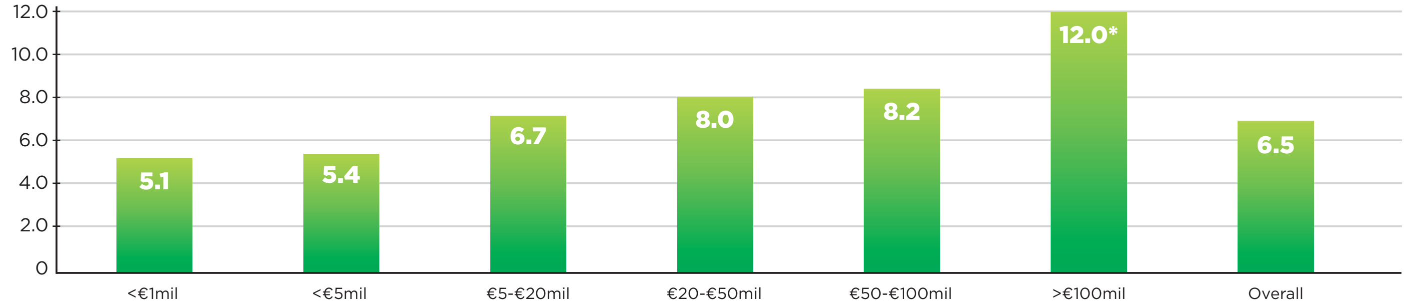
One does not need to be an expert to know that corona is having an immediate impact on M&A files that were about to go to market and on ongoing transactions (in whatever stage of the process). All are put on hold 'until further notice'... Investors, strategic buyers and also targets are waiting to see what will happen in the coming weeks and what the impact will be. Nobody knows how long this crisis situation and current lockdown will last and, afterwards, how fast business will resume, let alone recover from the damage. In Belgium, we have little history or experience with 'vulture capital' (i.e. investing in restructuring files), but this might change now.

Respondent A

VALUATION

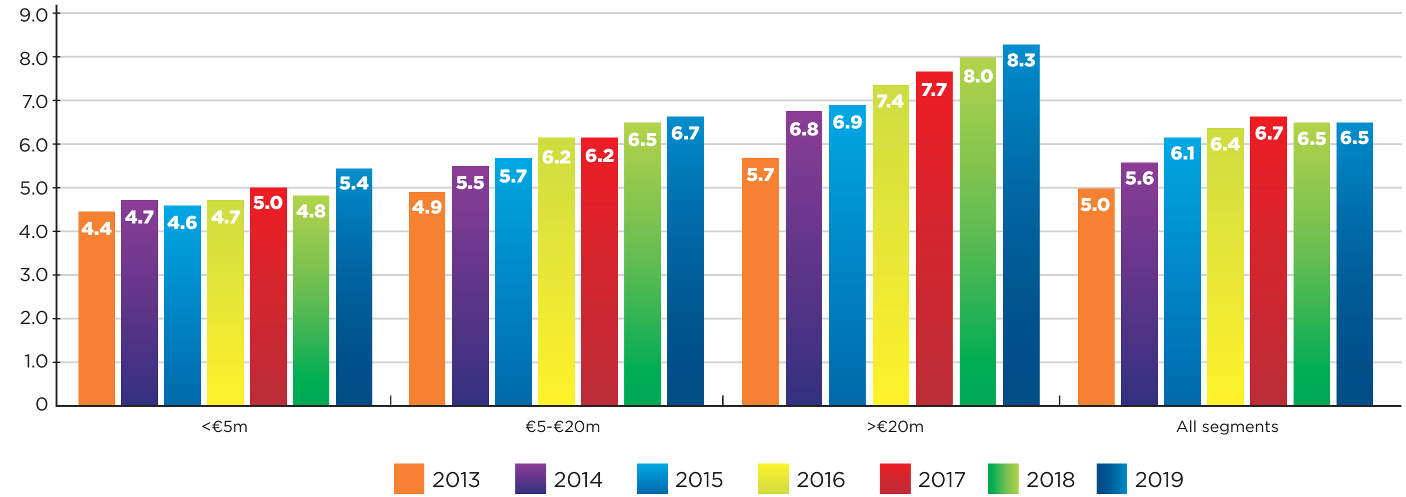
The average target was sold at an EV/EBITDA multiple of 6.5 in 2019. Although this seems to imply no increase compared to 2018, the historical evolution shows an appreciation in all size segments for the year 2019. Multiples within the segment of €5 - €20 million and above €20 million increased by 0.2 and 0.3, respectively. The stability in the overall average can be explained by the increase in the number of small deals in our sample. Although the multiple for deals valued at less than €5 million increased from 4.8 to 5.4 in 2019, it is still well below the overall average.

AVERAGE ENTERPRISE VALUE (EV)/EBITDA



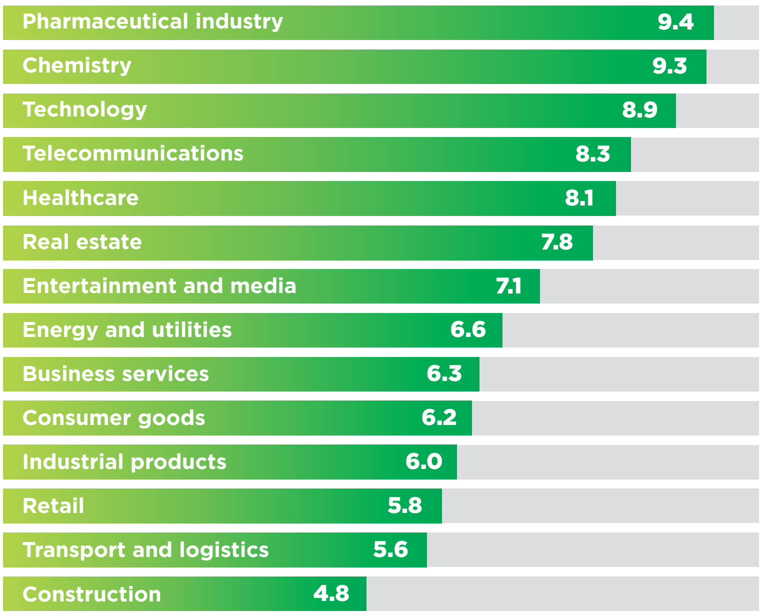
** This figure should be interpreted with caution, given the limited number of observations in this size segment.*

EVOLUTION EV/EBITDA



Compared to 2018, the distribution of multiples across industries remained relatively unchanged. High-growth and knowledge-intensive industries – such as pharmaceutics (9.4), chemistry (9.1) and technology (8.9) – are the most highly valued. Similarly, the growth expectations for the healthcare sector drive the multiple up to 8.1. Due to the regulatory barriers, the enterprise value of telecom companies averages 8.3. Moreover, real estate (7.8), entertainment and media (7.1), and energy and utilities (6.6) rank above the overall average. Companies in capital-intensive industries remain at the lower end of the spectrum. Targets in retail (5.8), transport and logistics (5.6), and construction (4.8) are amongst the most conservatively priced industries. Finally, consumer goods (6.2) and industrial products (6.0) sell slightly below 6.5 times EBITDA.

EV/EBITDA PER INDUSTRY

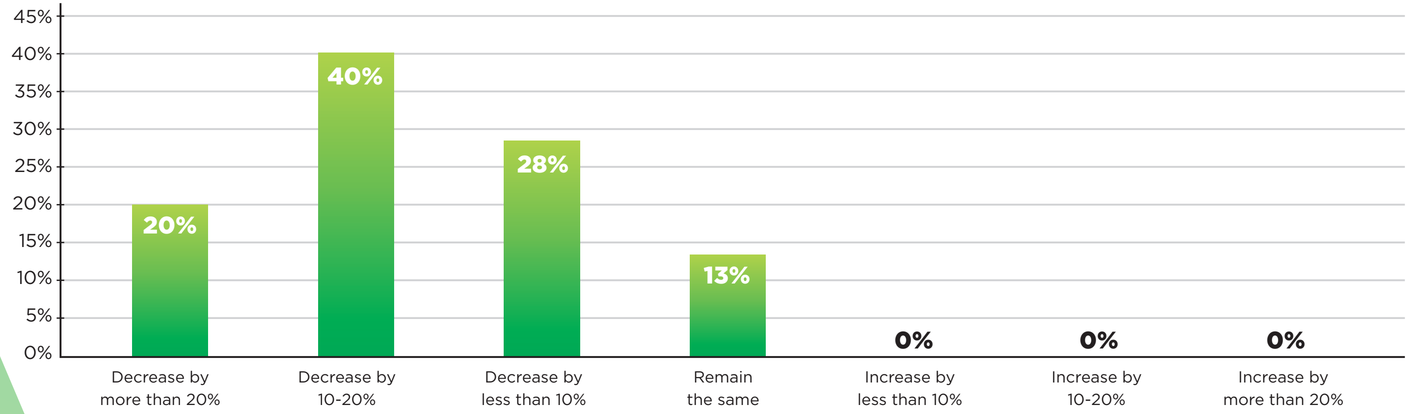


ONCE THE DUST SETTLES...

Our results show that total deal count will be significantly lower for the year 2020 due to the current freeze in M&A activity – but how will this eventually impact transaction prices once the world has been cured of COVID-19? In a supplementary survey focused on the corona virus, we also asked respondents about their expectations for the multiples in 2020.

The respondents largely agree that 2020 multiples will be significantly affected by the virus. 60% even expect multiples to decrease by more than 10%. The largest group (40%) predicts a decrease between 10% and 20%. 28% believe that the average multiple will decrease only moderately (i.e., by less than 10%), while 13% expect no change at all compared to 2019 levels.

EV/EBITDA EXPECTATIONS FOR 2020



Many transactions will be suspended because of a decrease in operational performance, MAC clauses and more financing difficulties. If the economic outlook continues to forecast a recession, a recovery in multiples and activity will be very gradual.
Respondent B

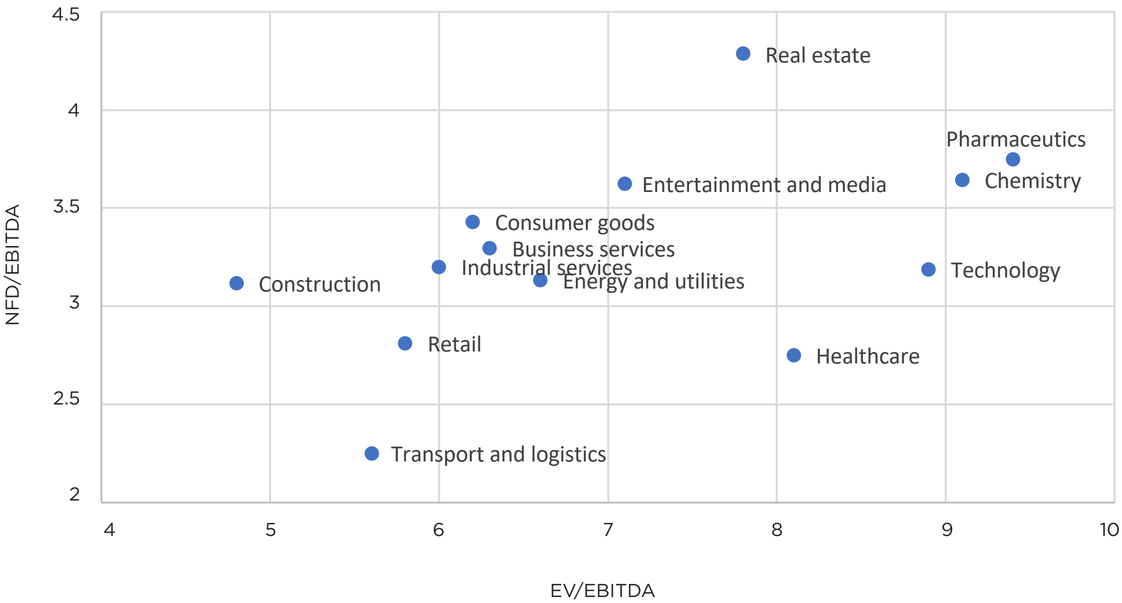
I expect multiples to decrease due to less favourable financing terms, uncertainty related to whether and when business as usual will pick up, and strategic buyers needing their funds to revive their business and having less room to pay back funding obligations.
Respondent C

DEAL STRUCTURING & FINANCING

This section zooms in on the sources of funds used to finance M&A transactions. We examine the typical extent of debt financing in M&A and the required (semi-) equity in MBO/MBI transactions. In addition to upfront financial needs, the deal structure might include delayed payments that are fixed (vendor loans) or that depend on post-M&A performance (earnouts).

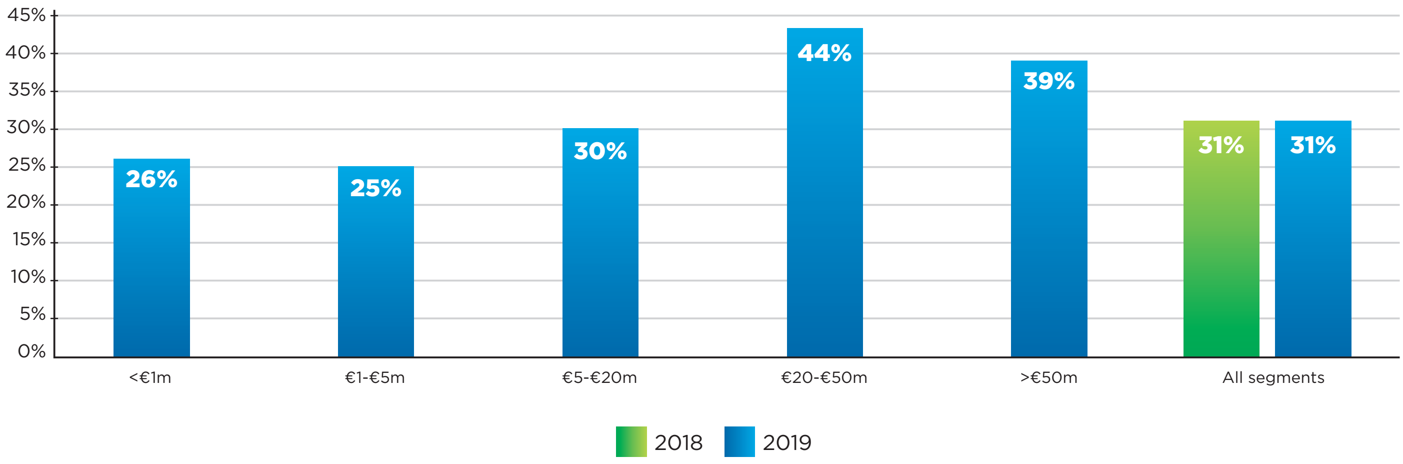
We asked respondents about their observed sector average ratio of net financial debt (NFD) to EBITDA to finance M&A transactions. The graph below plots each industry according to its respective NFD/ EBITDA ratio and EV/EBITDA multiple. The average NFD/EBITDA ratio amounts to 3.2.

Our findings illustrate a strong positive correlation between valuation and financing multiples. For the highest priced industries – such as pharmaceutics (3.8) and chemistry (3.6) – we find that the NFD/EBITDA ratio is well above the average of 3.2. In line with the low risk profile in the real estate industry, deals in this sector top the list in terms of debt financing (4.3). Transactions within entertainment & media (3.6) are relatively more leveraged. Consumer goods (3.4), business services (3.3), industrial products (3.2), energy & utilities (3.1), and construction (3.1) centre around the midpoint. Tech deals (3.2) are close to the average in terms of leverage, notwithstanding an average EV/EBITDA multiple of 8.9. Retail (2.8) and transport & logistics (2.3) score significantly below the average. Remarkably, despite being the fifth highest priced industry, the healthcare sector displays the second lowest NFD/EBITDA ratio (2.8).



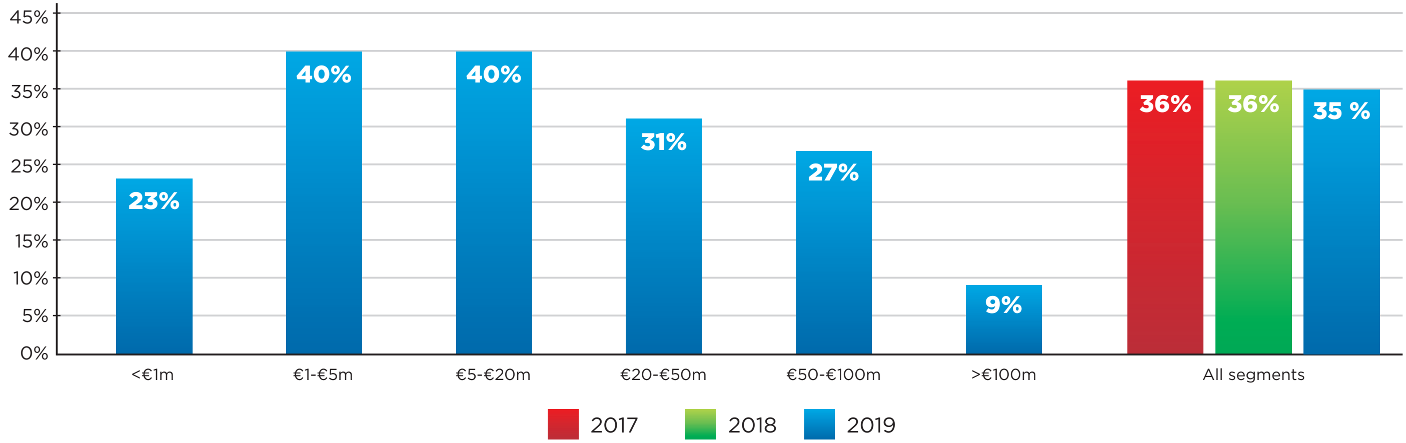
Next, we consider the equity and semi-equity contribution in the acquisition value in MBOs and MBIs. Semi-equity relates to mezzanine-financing, such as preference shares and subordinated debt. Our results are consistent with our earlier conclusion that bank financing remains an important driver of M&A activity. The average acquirer in a buyout or buy-in transaction only needed to provide 31% of the transaction value in the form of (semi-)equity. This percentage increases with the size of the deal. For the micro-transactions, the equity-to-value ratio is 26%, whereas deals with a transaction value between €20 and €50 million are usually 44% equity-financed (above €50 million, this figure is 39%).

% (SEMI-) EQUITY NEEDED TO FINANCE MBO/MBI

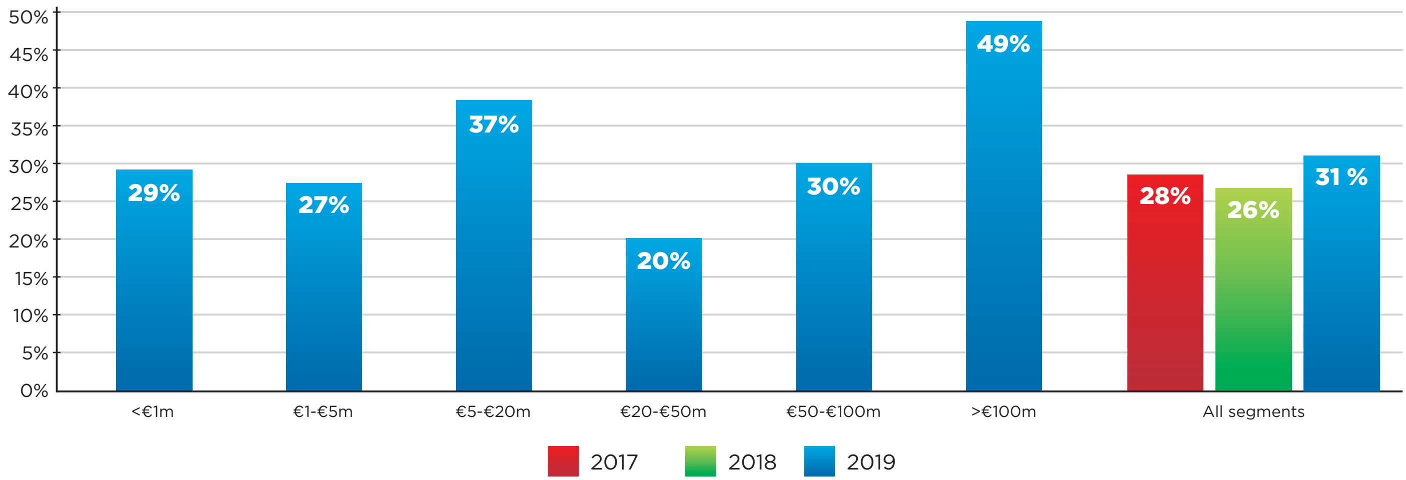


The use of vendor loans remained stable compared to previous years (35% in 2019 versus 36% in 2018/2017). Vendor loans are most commonly used to finance a part of the transaction value in the range of smaller deals, but remarkably not for the smallest transactions valued at less than €1 million. Furthermore, these vendor loans are found to finance an average of 19% of the deal value at an average interest rate of 2.75%. Similarly, the prevalence of earnouts stayed roughly in line with the previous years (31% in 2019 versus 26% in 2018 and 28% in 2017) and is found to be comparable across the various size segments. The higher fraction for the largest sized deals (49%) is remarkable but should be interpreted with caution, given the limited number of observations in this size segment.

% OF DEALS INCLUDING VENDOR LOANS

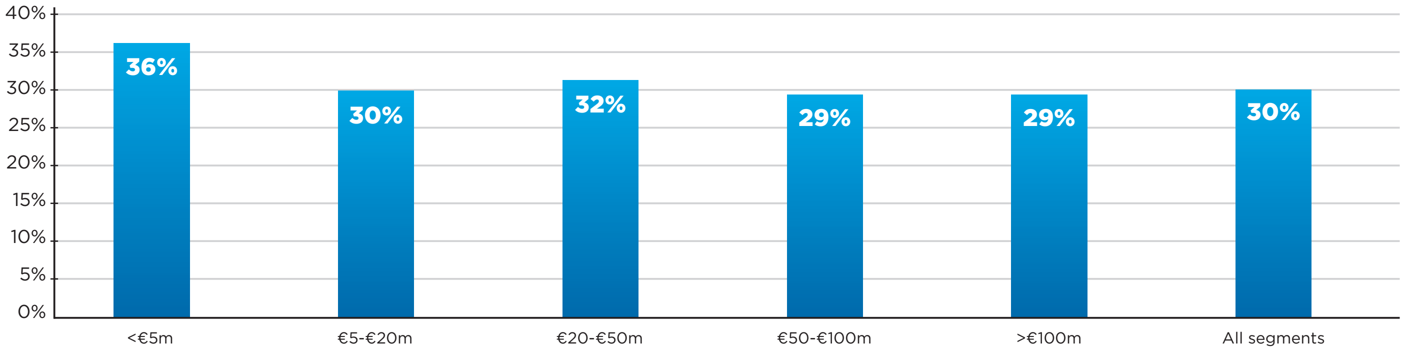


% OF DEALS INCLUDING EARNOUTS



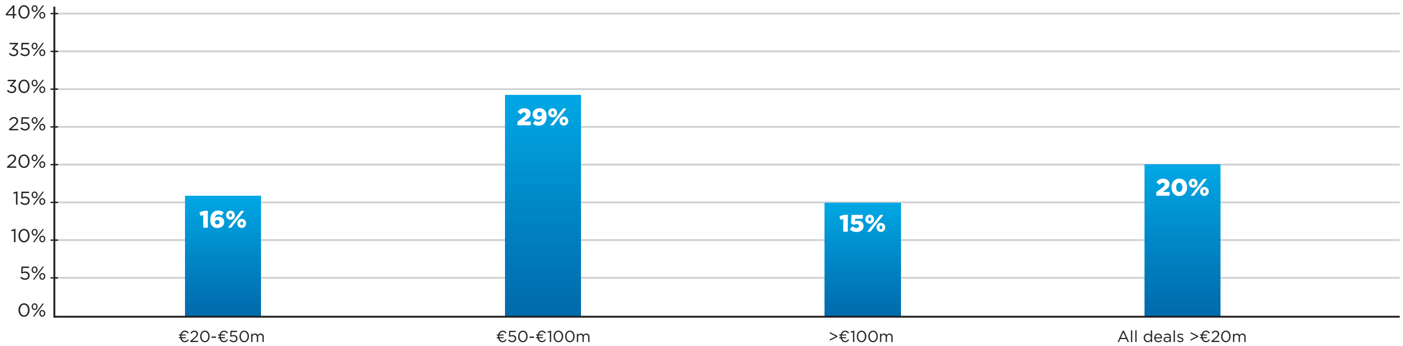
We also asked M&A lawyers to provide their input on the selling party's maximum liability if there is a breach of representations and warranties. Our results indicate that, on average, this amounts to 30% of the transaction value. This fraction remains quite constant over all size segments, although the liability cap was set highest for deals with a transaction value of less than €5 million (36%).

LIABILITY CAP (% OF DEAL VALUE)



Also in this regard, we asked our respondents about the use of W&I (Warranty and Indemnity) insurance for the transactions in which they were involved in 2019. W&I insurance provides cover for losses arising from a breach of the representations and warranties. As such insurance tends to be used only for the more sizeable transactions, we only report the results for transactions above €20 million. The results for those deals show that about 1 out of 5 transactions included W&I insurance. The insurance contracts were most frequently used for transactions between €50m - €100m (29%).

% OF DEALS INCLUDING W&I INSURANCE



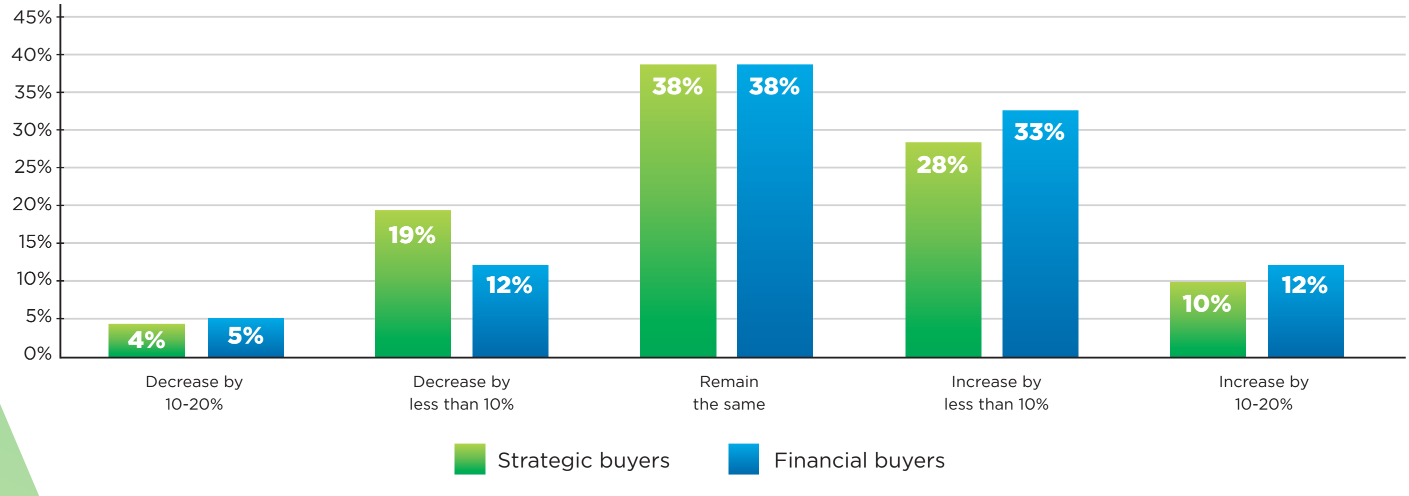
IMPACT OF M&A ON EMPLOYMENT

One of the novelties in this year's monitor is that we asked respondents to also provide their opinion on the estimated impact of their transactions on employment in the target companies.

According to 38% of the respondents, employment is likely to increase in the three years following a strategic transaction in 2019. Another 38% forecast no significant change, while 23% envisage a decline. So, contrary to popular belief, layoffs are expected in only a small minority of mergers and acquisitions. Although savings in overhead costs play an important role in many transactions and could cause a reduction in the work force, most of the experts believe that revenue synergies would facilitate a net increase in the target company's work force.

In last year's monitor, we concluded that increasing revenues is the most important motive for financial buyers. In line with this finding, our results show a slightly more positive picture for this sub-set of deals. 45% of the experts expect an increase in the target's workforce for financial transactions such as buyouts and buy-ins. The few respondents expecting a decrease in workforce after the transaction (17%) argue that the target companies required major organisational restructuring due to inefficient management and distress before the acquisition.

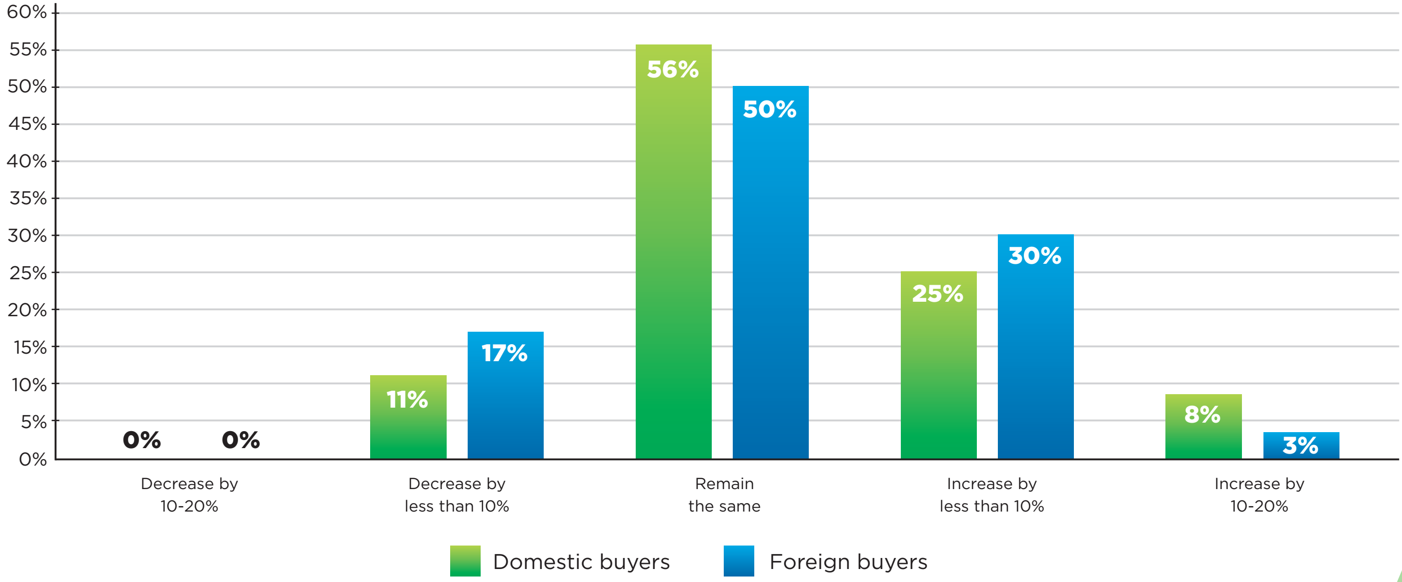
EMPLOYMENT IMPACT: STRATEGIC VS FINANCIAL BUYERS



Interestingly, we observe a similar picture across domestic and foreign buyers. 50% anticipate no change for foreign buyers versus 56% for domestic buyers. 33% of the experts expect an increase for both foreign and domestic buyers. There seems to be a slightly larger group expecting a decrease for foreign buyers, but the difference of 6 percentage points is statistically not significant.

An important note is that fewer respondents had an opinion on employment effects depending upon the nationality of the buyer. Compared to our first graph, our second graph depicts the respondents of a slightly smaller sample in which relatively more experts believe that there would be no significant change in the employment rate.

EMPLOYMENT IMPACT: DOMESTIC VS FOREIGN BUYERS

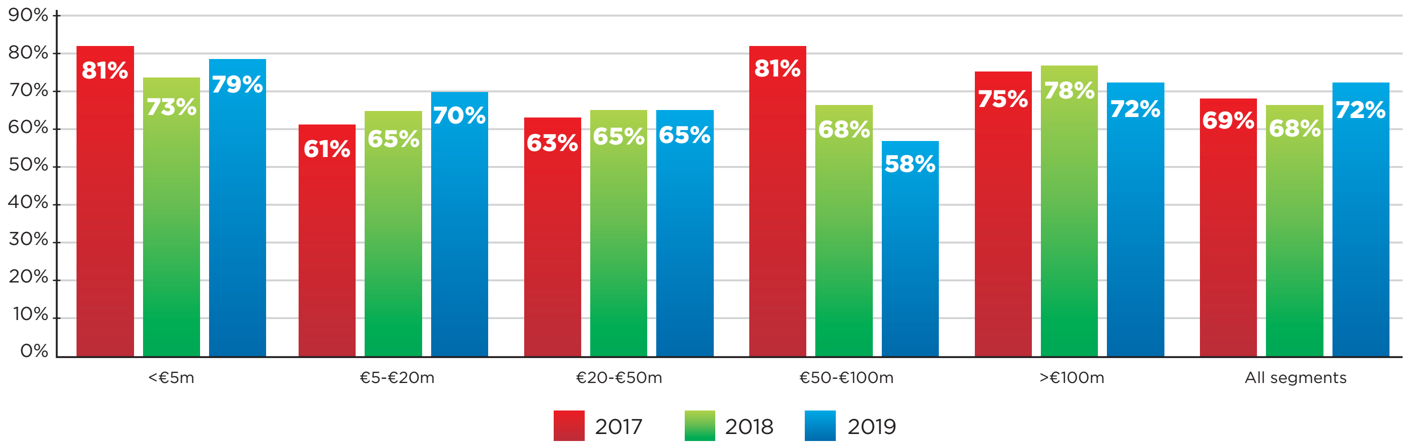


DEAL PROCESS

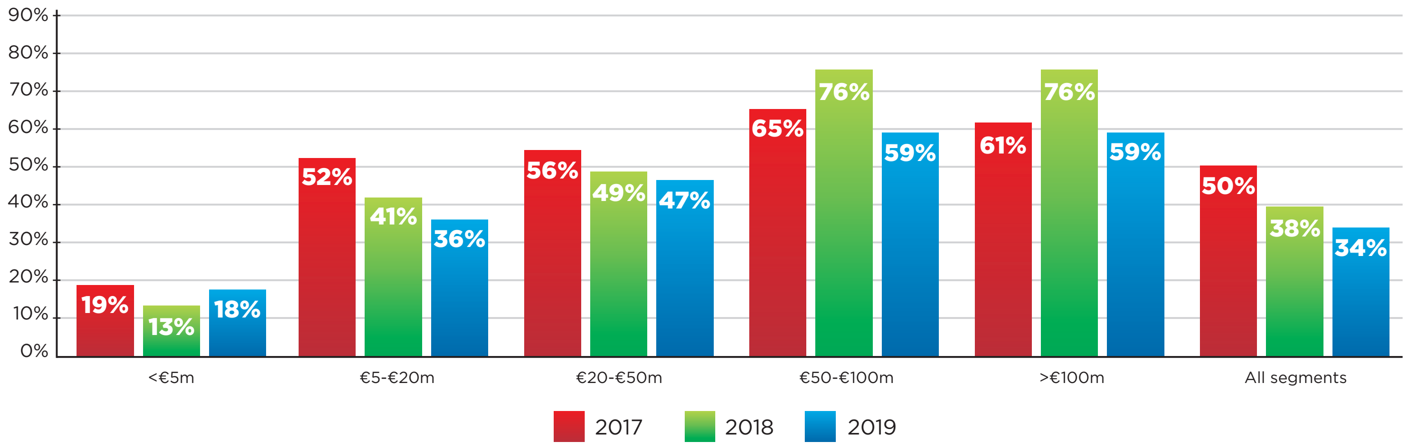
Seller-initiated transactions represent 72% of all deals. Overall, these results are not much different from 2018, where 68% of the transactions were seller-initiated.

Auctions are still rarely used in the smallest transactions, but their overall occurrence has also decreased in the other segments. Whereas 50% of the companies were sold through an auction in 2017, only 34% were in 2019. The largest decrease can be observed for the largest segments. For deals valued between €50 million - €100 million, as well as for deals above €100 million, the fraction decreased from 76% in 2018 to 59% in 2019.

% SELLER-INITIATED TRANSACTIONS

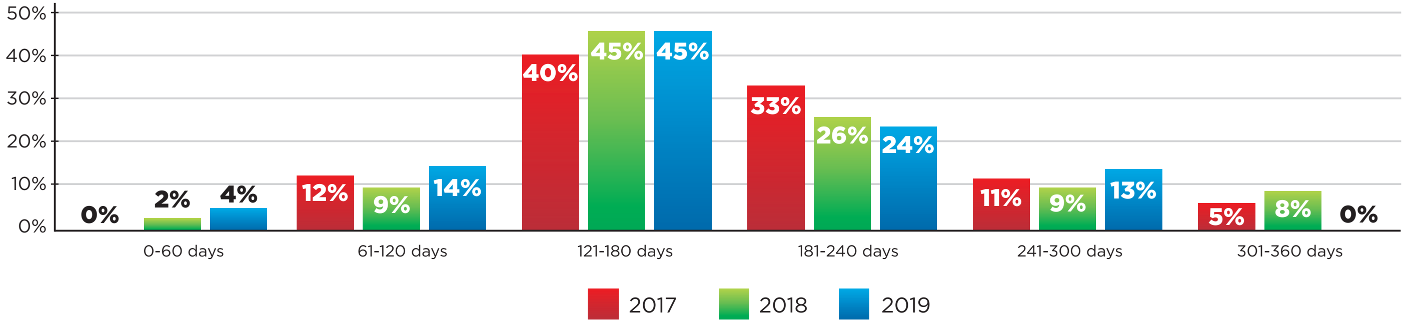


% AUCTIONS



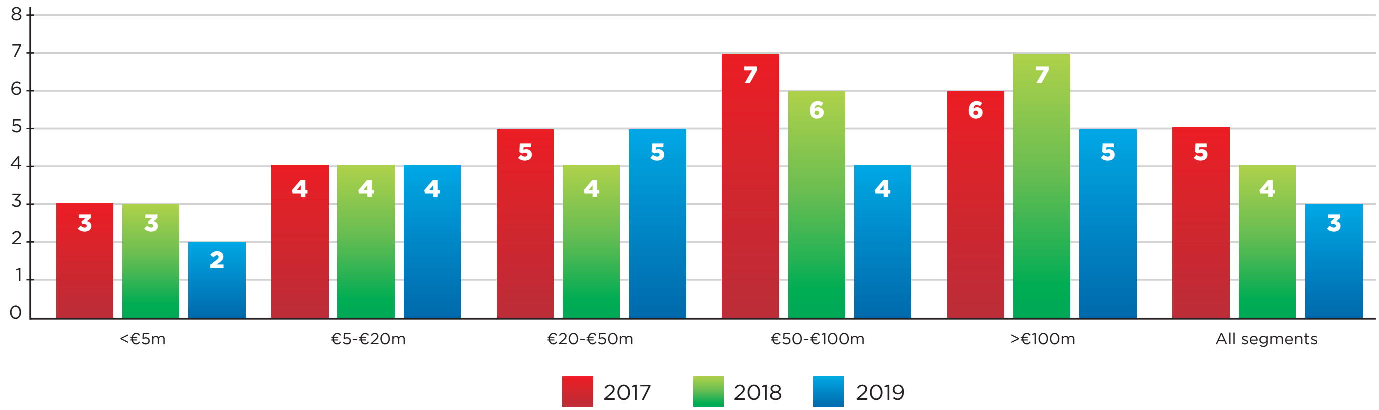
The average transaction takes 4 to 6 months from first contact to final closing of the Share Purchase Agreement. This duration remained relatively stable over the past three years, with 63% of the respondents reporting that they were able to close the deal within 6 months. Closing the deal took more than half a year for only 37% of our sample.

LENGTH OF THE DEAL PROCESS



We noticed a significant drop in the overall average of bidders making an indicative offer in the deal process: from 5 to 3 bidders in the last three years. Although this finding can be partly attributed to the higher weight of transactions below €5m, we also notice a drop in the two largest size segments.

AVERAGE NUMBER OF BUYERS MAKING INDICATIVE OFFER



A FINAL WORD FROM OUR PARTNERS

BDO

The whole world has been surprised by the speed at which COVID-19 has taken control of our lives.

Investors who have taken positions in industries particularly affected by the crisis, or who have taken quite aggressive positions by closing deals with high-debt financing, are now focusing all their efforts on managing the portfolio companies in order to survive.

The excess 'Dry Powder' the private equity players and corporates had before the crisis has turned into a key competitive advantage, as it allows them not only to survive, but also to (re-)invest at lower valuation multiples, at increased yields, and to strengthen the market positions of their existing investments.

Veerle Catry
Partner
BDO Belgium

Yet, the difficulty in identifying and choosing the right investment will remain, as well as the appropriate investment structuring. A diversified deal investment offering – with different layers of capital and debt structure financing (subordinated, convertible bonds, mezzanine, etc.) – is likely to emerge in order to attract the most interesting investments.

Furthermore, company owners and their management are confronted with surrealistic circumstances: whereas yesterday, they were solicited by potential investors with increasing valuation multiples, today, they have entered into severe cash protection measures and, if the federal and regional governmental support remains insufficient for them, they will be forced to open their capital or to perform distressed M&A at significantly lower valuations. When it comes to valuing a company in times of crisis, drafting financial forecasts becomes even more important and complex due to stretching the forecast period and assumption as well as implementing a multi-scenario approach and sensitivity analyses on the key value drivers.

So, the COVID-19 crisis has already impacted the M&A market. The question remains: how long and how severe will it be? At this stage, there is only one certitude: the corona crisis will be in favour of those who were criticised yesterday – those who had excess 'Dry Powder' yesterday and are able to invest it diligently in the aftermath of the crisis.

BANK J.VAN BREDA & C°

As a niche bank for entrepreneurs, and with a specific focus in the Belgian SME landscape, we know that the impact of the corona crisis will be great for the SME segment. The longer the situation persists, the more difficult it will be for SMEs.

For many companies, it is possible to bridge multiple months without sales – but every company has its limits. This will also have an impact on the M&A market, as turnover will often be cut from the figures for 2 or more months. So, as of today, I am bearish on the M&A market in the short-term. I would expect significant disruption until the number of new corona virus cases announced each day decreases. Once that happens, I am bullish on M&A activity in the medium- and long-term once the market adjusts to normal activity. There is a tremendous amount of money to be deployed, and we will continue to have a very favourable low interest rate environment and access to financing.

But the question will be how the seller and buyer will deal with this with the figures in 2020. The seller can clearly indicate that turnover has fallen due to the corona crisis. The buyer can assume that this will have an impact on the price. As a solution both parties will be discussing more with earn-outs and vendor loans.

Of course, we hope that the situation will stabilise soon so that both the economy and M&A activities can continue as before the corona crisis.

Banque·Bank J.VanBreda&C°

Wannes Gheysen
Responsible Advisory
Bank J.Van Breda & C°

NAUTADUTILH

Vlerick Business School's M&A Monitor 2020 confirmed a relatively stable, still seller-driven M&A market in 2019. These results are in line with the observations of NautaDutilh's Corporate M&A practice.

This will undoubtedly change due to the COVID-19 pandemic; indeed, a substantial drop in M&A activity is expected.

However, every crisis brings opportunities with it. Despite the unprecedented social and economic relief packages adopted by governments to keep the economy afloat, a large number of companies will face severe liquidity issues – particularly in the (non-food) retail, travel, leisure, catering and energy sectors – and become attractive acquisition targets. Indeed, while the M&A market will drop overall, a significant increase in distressed M&A deals is expected.

NautaDutilh

Maxime Colle
Local Partner
NautaDutilh

COVID-19 could very well tip the M&A market towards a more buyer-friendly one, resulting in changes to the dynamics of negotiations and transactions.

Since the outbreak of the COVID-19 pandemic, our commercial contracts, litigation, restructuring and real estate teams have been heavily involved in matters relating to force majeure and material adverse change (MAC) clauses. In M&A transactions, calls for a 'return of the MAC clause' may be heard more frequently in the coming months. It should be recalled that a MAC clause allows the buyer to back out of the acquisition, or to renegotiate the commercial terms, if, between signing and closing, there is a change in circumstances that significantly reduces the target's value. Whether or not an MAC clause can be invoked based on the COVID-19 pandemic will largely depend on how specifically the clause is drafted. It is unlikely that a generic MAC clause will allow the buyer to walk away from the deal, especially if the COVID-19 outbreak started prior to signing. This conclusion could be different in the case of more specific MAC clauses (e.g., a specific drop in revenue).

Another topic currently being discussed is W&I insurance. While it is expected that W&I insurance will continue to be available, such coverage is not suited for COVID-19-related losses, occurring more at the macroeconomic level. Buyers will therefore have to rely on traditional contractual risk allocation mechanisms, such as specific indemnities, purchase price reductions, earn-outs, higher liability caps, and closing conditions.

BRUSSELS - GHENT - LEUVEN
VLERICK BUSINESS SCHOOL - THE BUSINESS SCHOOL OF GHENT UNIVERSITY AND KU LEUVEN
STICHTING VAN OPENBAAR NUT - PUBLIC UTILITY FOUNDATION - VAT BE 0424 244 049
HQ: REEP 1 - 9000 GHENT - BELGIUM - T + 32 9 210 97 11
INFO@VLERICK.COM - WWW.VLERICK.COM