CUATRECASAS

M&A MARKET TRENDS IN SPAIN IN 2023

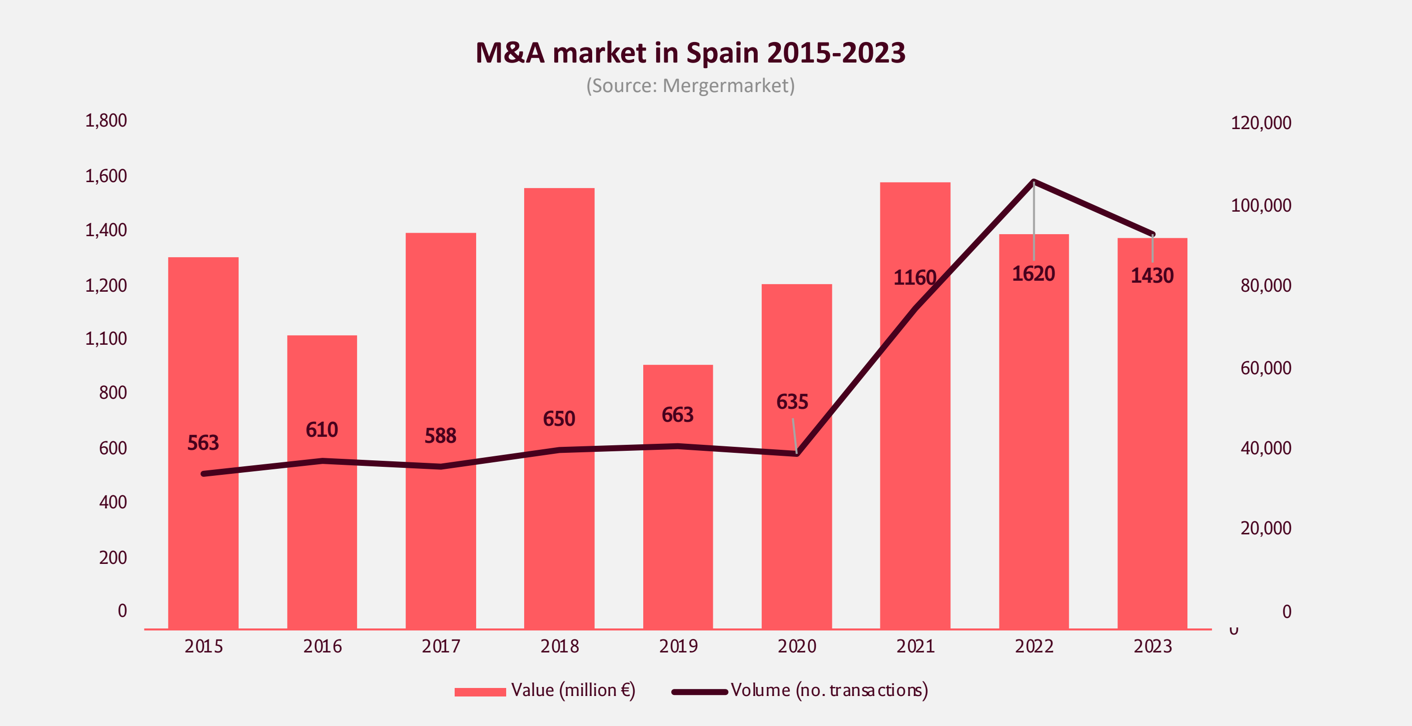
M&A MARKET OUTLOOK IN SPAIN 2023

Market overview

Owing primarily to the increased cost of financing, inflation, the supply chain crisis, and geopolitical uncertainty, 2023 was, at large, a complex year within the M&A sector.

Despite a slowdown in the transactional market, which was particularly noticeable in the number of smaller transactions, the overall market value has proven resilient, reaching figures similar to those of 2022.

In all, 1,430 transactions were registered (-11.7%), totaling €94,362 billion (-1%).



Source: Own elaboration based on data provided by Mergermarket. Transactions announced between January 1, 2023, and December 31, 2023, involving a target, bidder or seller whose main jurisdiction is in Spain. Data obtained on January 26, 2024.

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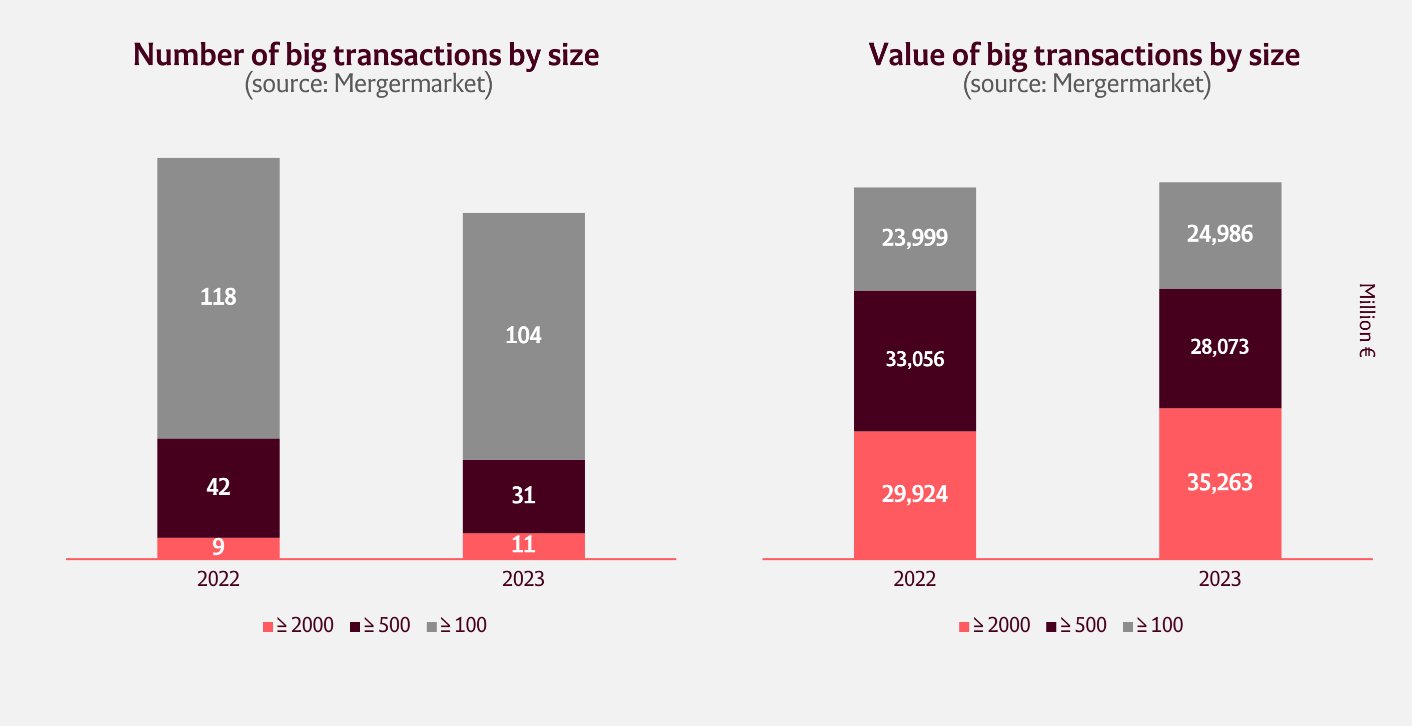
2023 has also saw important transactions, which enabled similar figures to the previous fiscal year to be maintained in terms of the total value of the transaction market.



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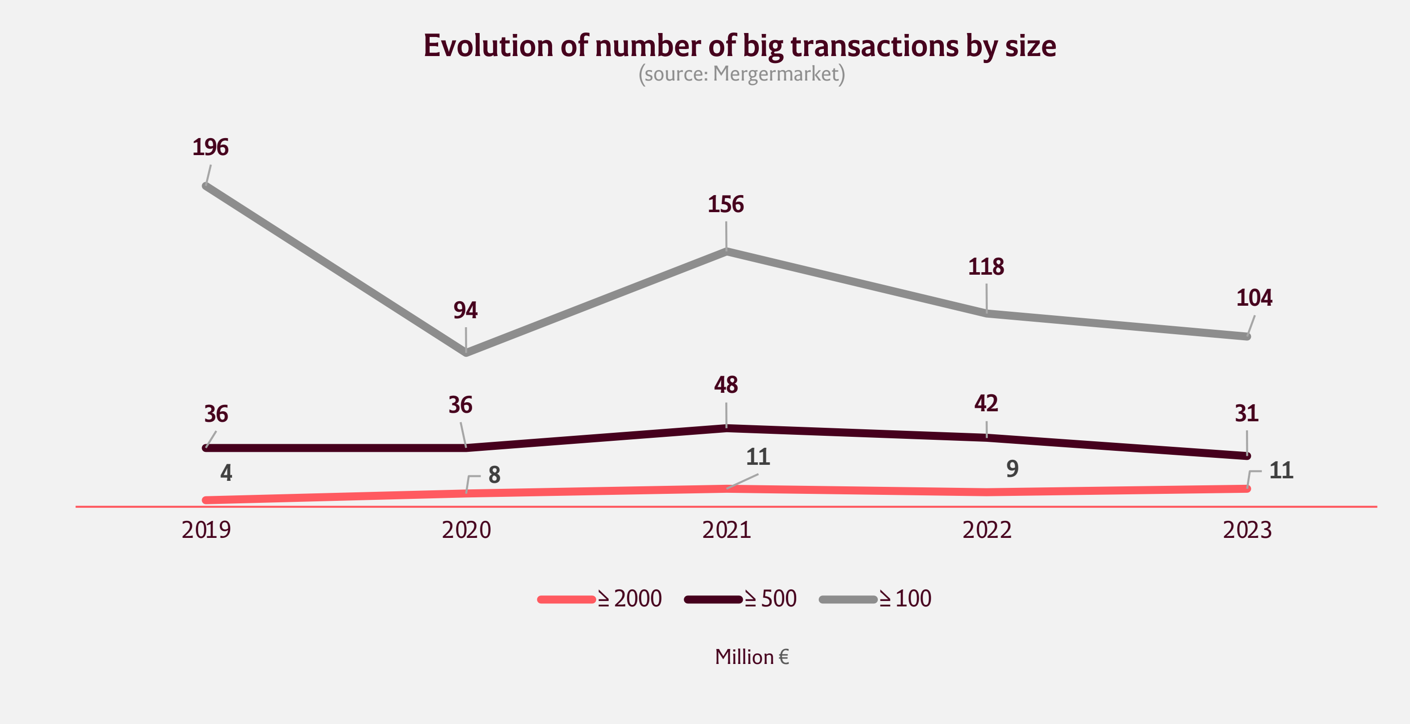
The mega transactions (valued at over €2 billion) have proven resilient in 2023, and have even grown in number and value, maintaining a volume higher than the average of previous years.



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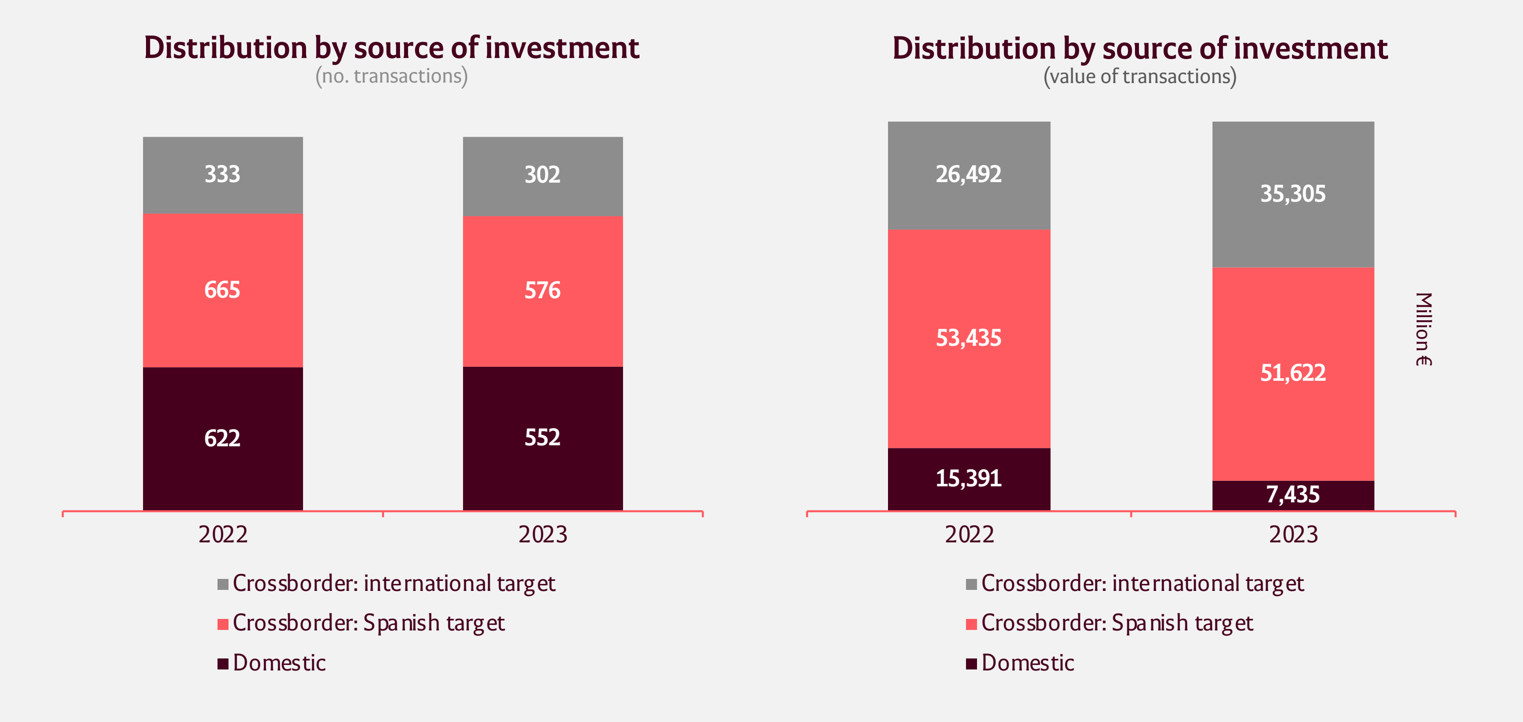
Source of investment

Crossborder transactions predominated in the Spanish market (61%), mostly involving inbound investments (Spanish target). This was also where the highest value transactions were concentrated.

In the last year, transaction value experienced two divergent trends: the outbound investments shot up and the purely national ones were affected.



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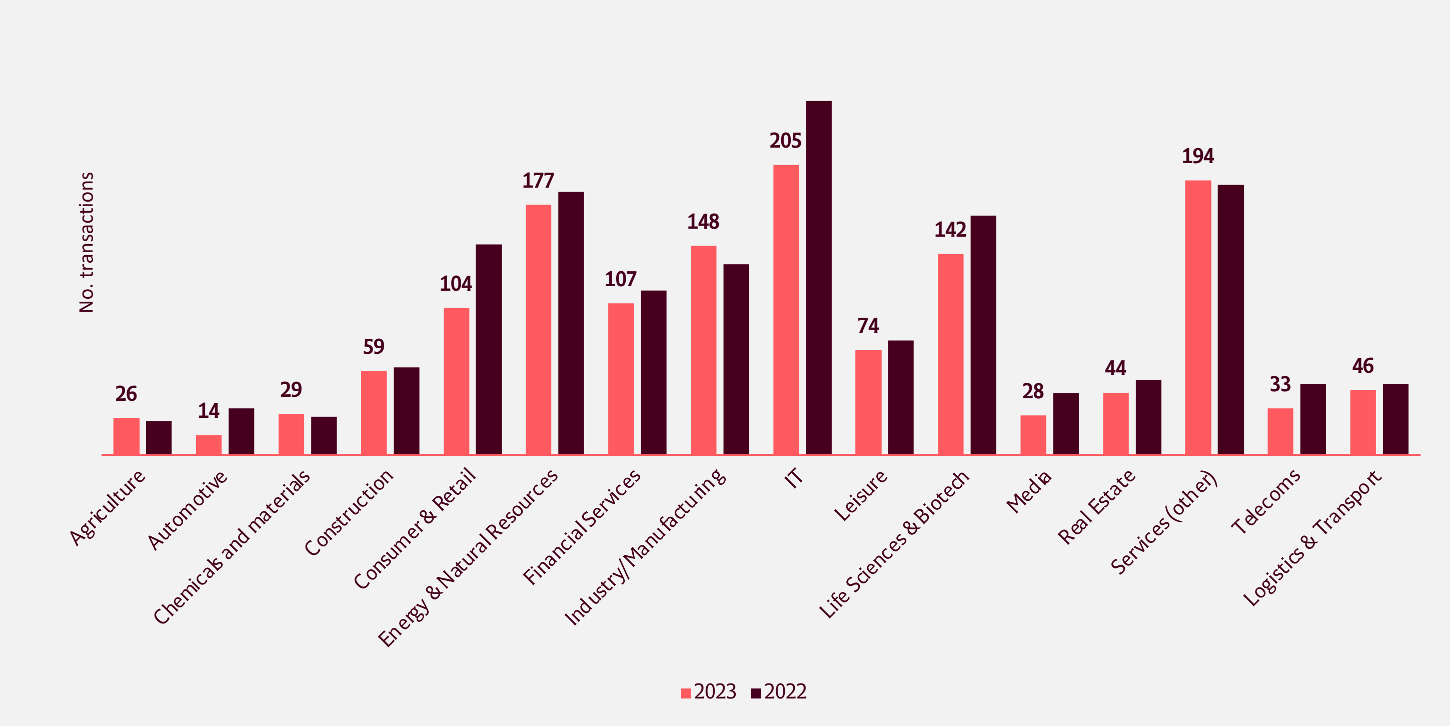
M&A MARKET OUTLOOK IN SPAIN 2023

Overview of the main sectors

Following the trend in recent years, the technology/internet, services, energy, pharmaceutical/health, and consumer/retail sectors dominated the market.

Only the services, agricultural, and chemical sectors managed to resist the slowdown in market activity.



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M&A MARKET TRENDS IN SPAIN IN 2023

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Analysis of M&A transactions

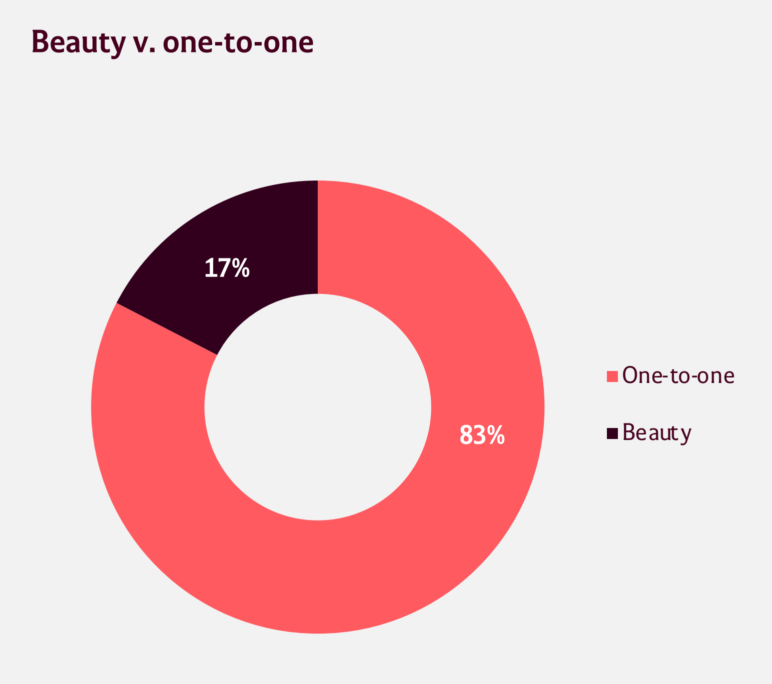
Based on the analysis of the most important transactions Cuatrecasas has advised on, this study shows the M&A market trends in Spain in 2023.

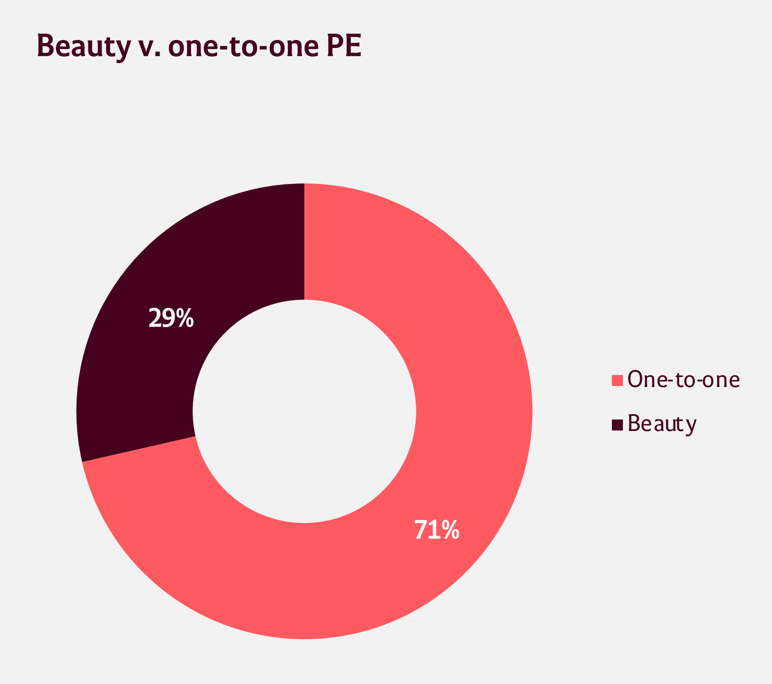
We have advised on almost 50 M&A transactions subject to Spanish law, with values exceeding €10 million, conducted through share purchase agreements within the scope of general M&A and private equity transactions.

M&A MARKET TRENDS IN SPAIN IN 2023

1. Auctions

In 2023, very few transactions were signed within the framework of an auction. If we focus only on private equity deals, the percentage is higher, although the number of exits decreased considerably.





M&A MARKET TRENDS IN SPAIN IN 2023

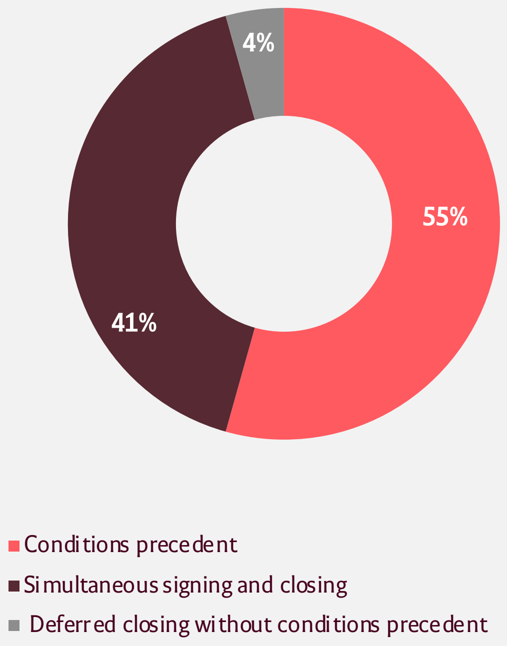
2. Conditions precedent

More than half of the transactions involved signing and deferred closing due to the imposition of conditions precedent. If we only consider the transactions above €100 million, the percentage rises to 100%.

As usual, the agreed conditions precedent were widely varied. We draw particular attention to requests for third-party waivers (such as lenders' or suppliers' consent) and regulatory approvals, especially in cases of anti-trust and foreign direct investment, attributable to the current surge in Europe of the economic protectionism of strategic industries.

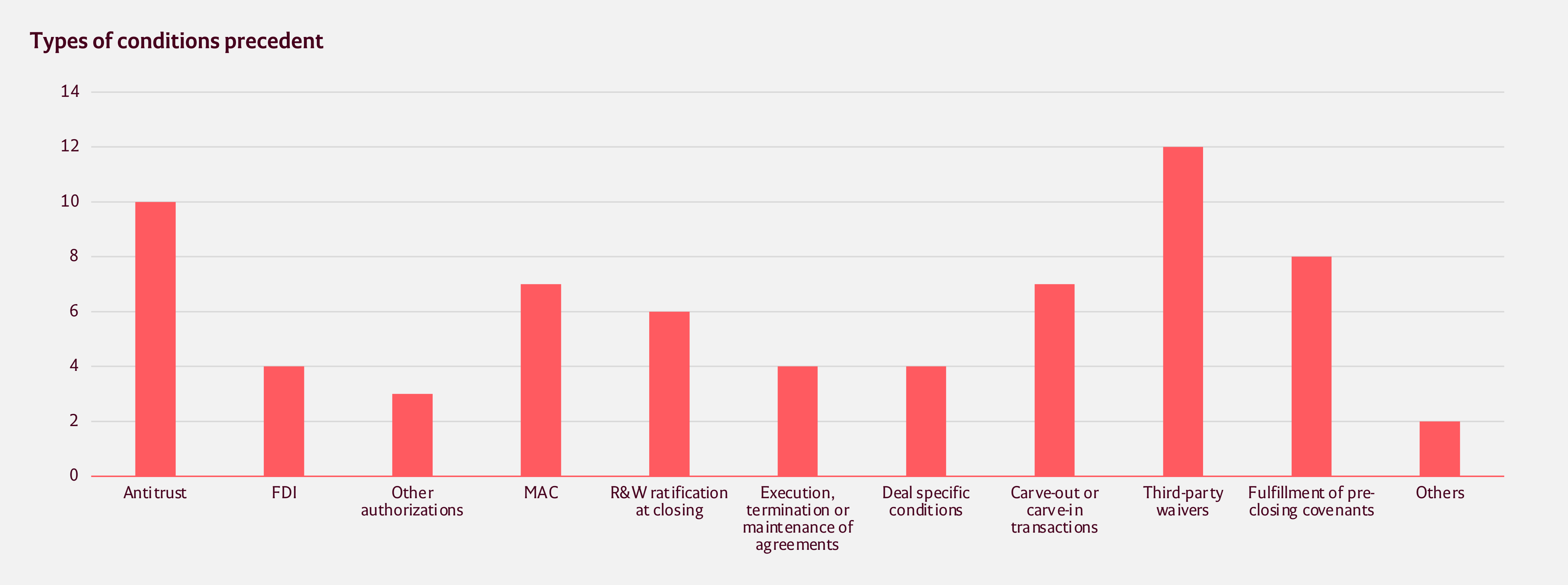
Deferred closing was not as pronounced as in the private equity sector—where practically all transactions with deferred closing arose from the need for regulatory approval—but it was included in almost half of the transactions with conditions precedent, and in nearly all deals above €100 million.

Simultaneous signing and closing v. deferred closing



M&A MARKET TRENDS IN SPAIN IN 2023

2. Conditions precedent



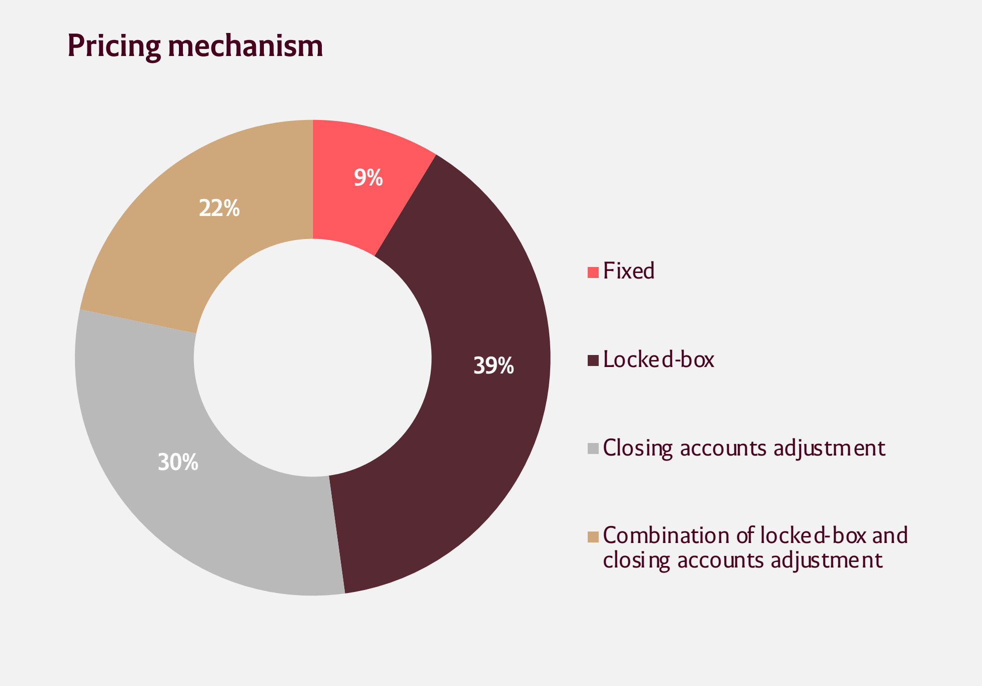
M&A MARKET TRENDS IN SPAIN IN 2023

3. Price

The locked-box mechanism has been used more extensively than completion accounts adjustment (39% of the deals v. 30% of the deals).

22% of the deals combined completion accounts up to a specific date and locked-box mechanism from that date forward. This pricing mechanism is mainly used in higher-valued transactions.

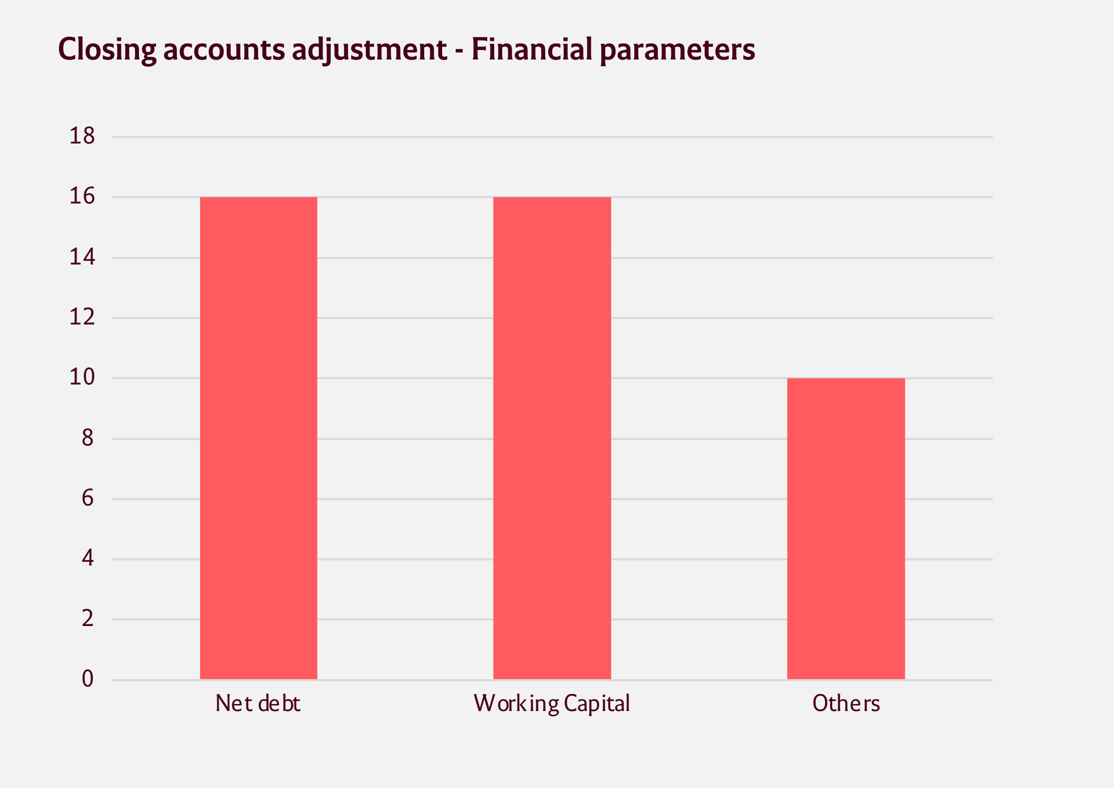
Only 14% of the transactions in which a locked-box mechanism was agreed incorporated a ticking fee concept, i.e., an increase in the price from the date of the financial statements until the date of signature of the agreement or the closing date, either through a set daily amount or an agreed interest rate on the price. It is noteworthy that nearly all the transactions that included it were private equity deals.



M&A MARKET TRENDS IN SPAIN IN 2023

3. Price

Among the financial parameters most widely used for price adjustment, the most common was net debt and working capital (used in 83% of the deals that opted for closing accounts adjustment or combined adjustment and locked-box as a pricing mechanism).



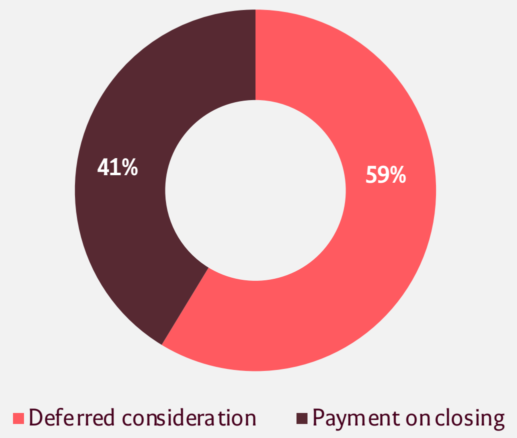
M&A MARKET TRENDS IN SPAIN IN 2023

3. Price

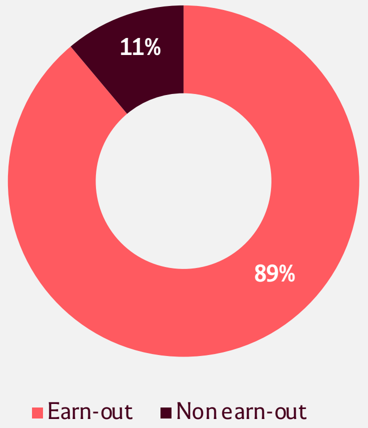
In terms of payment schedules, almost 60% of the transactions included an agreement to an initial price and a deferred price involving, in practically all cases, a variable price or earn-out, rather than a set deferred price.

This is common in times of uncertainty, since the use of earn-outs helps parties overcome their differing expectations about a company’s future performance. The most widely used parameters to calculate the earn-out were EBIT/EBITDA.

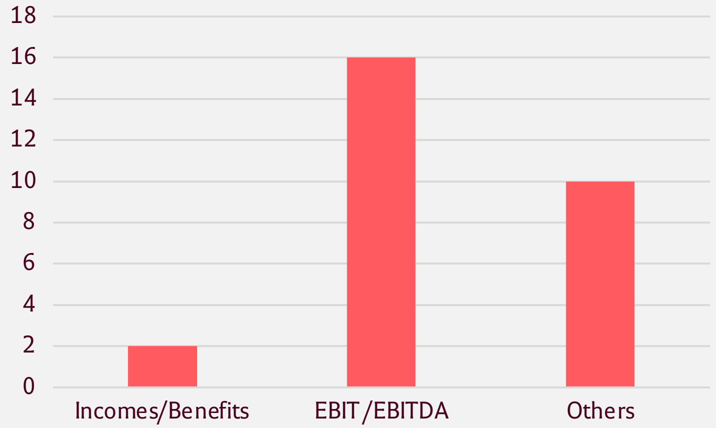
Payment on closing v. closing + deferred consideration



Earn-out



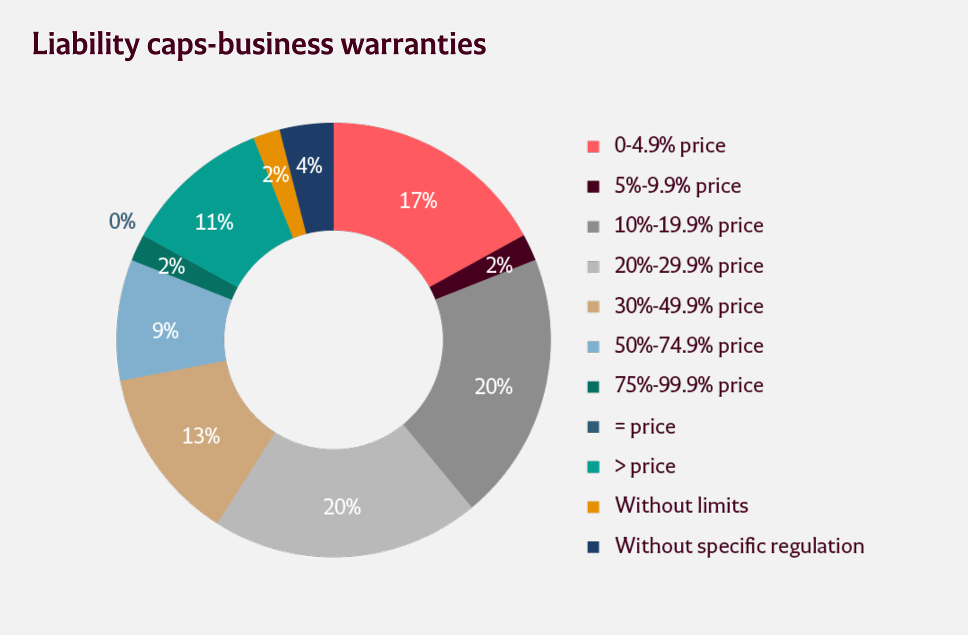
Earn-out parameters

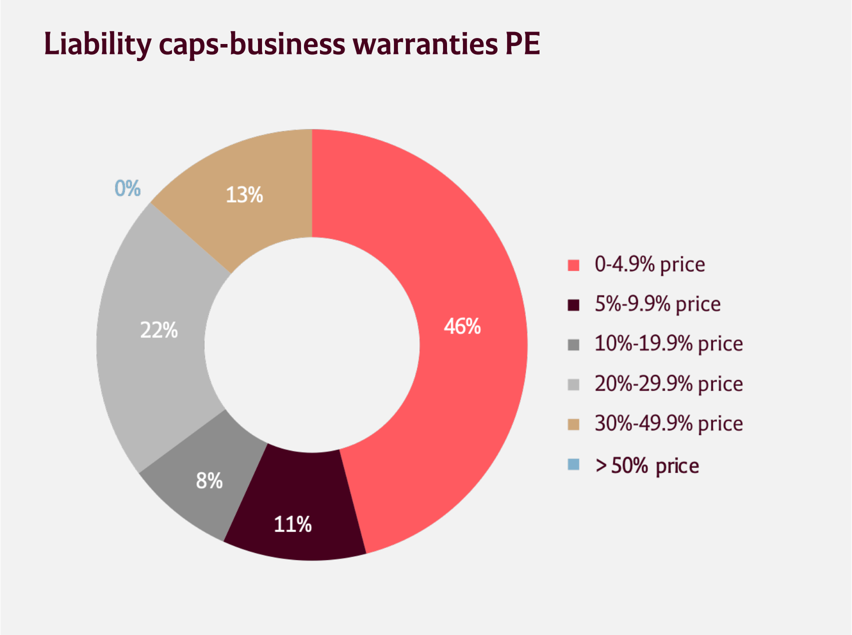


M&A MARKET TRENDS IN SPAIN IN 2023

4. Seller's liability

The limitation of liability for business representations and warranties granted by the seller differs greatly, but the vast majority (81%) is set at below 50% of the purchase price. In contrast, there were far more clean exit deals in exclusive private equity transactions, accounting for almost half of them.

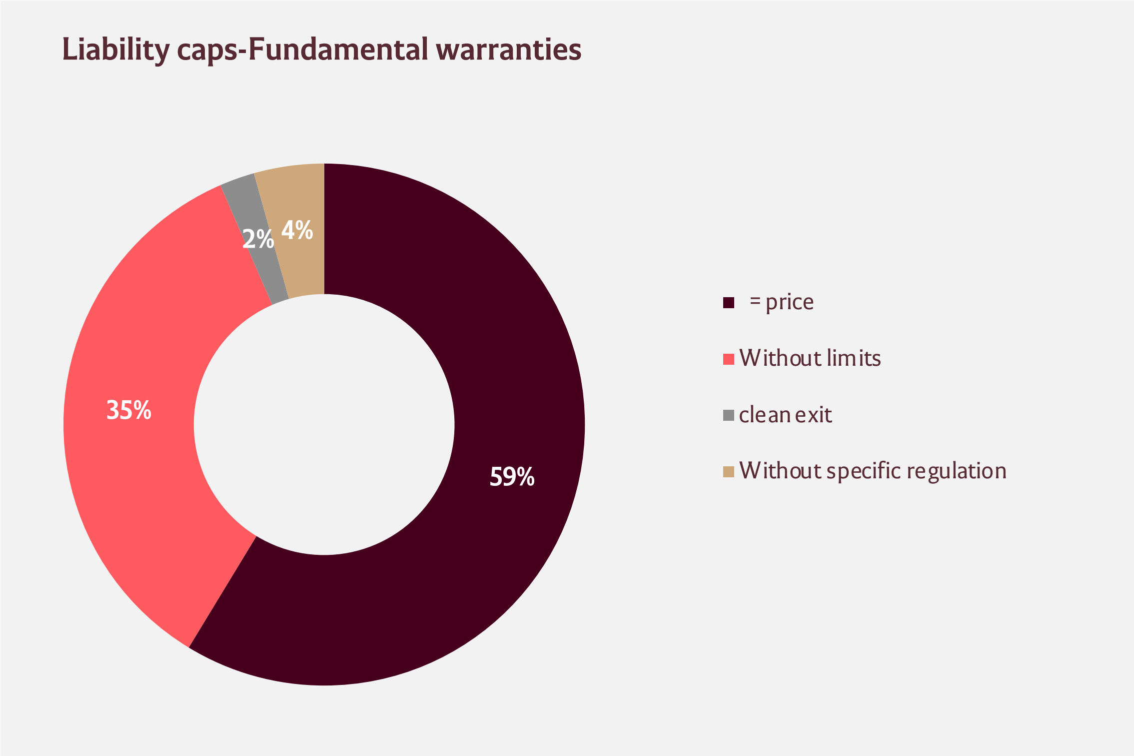




M&A MARKET TRENDS IN SPAIN IN 2023

4. Seller's liability

In almost all transactions, the seller's liability for breach of the fundamental warranties—as usual—was limited to the purchase price or not limited at all.

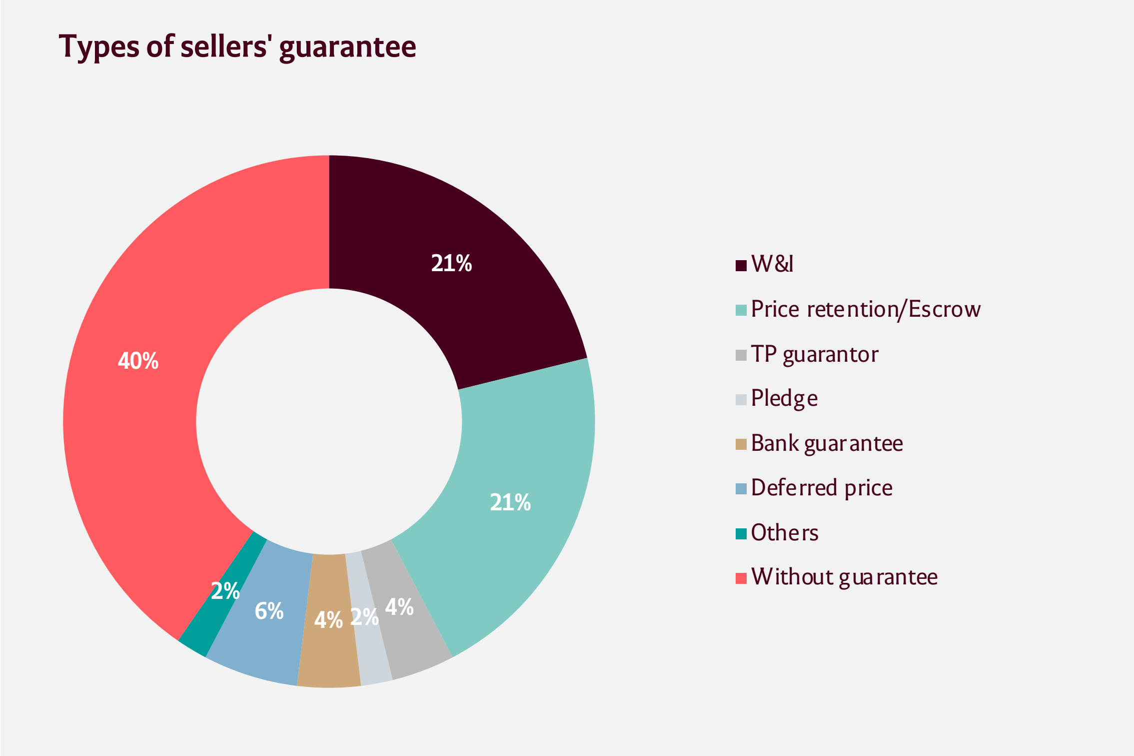


M&A MARKET TRENDS IN SPAIN IN 2023

4. Seller's liability

Unlike private equity transactions, in which W&I insurance is commonly used—over 50% of transactions in 2022 and 36% in 2023, according to our statistics—the percentage dropped to almost 20% when all M&A transactions are considered.

In fact, most of the deals that opted for a W&I insurance were either private equity transactions or involved a fund.

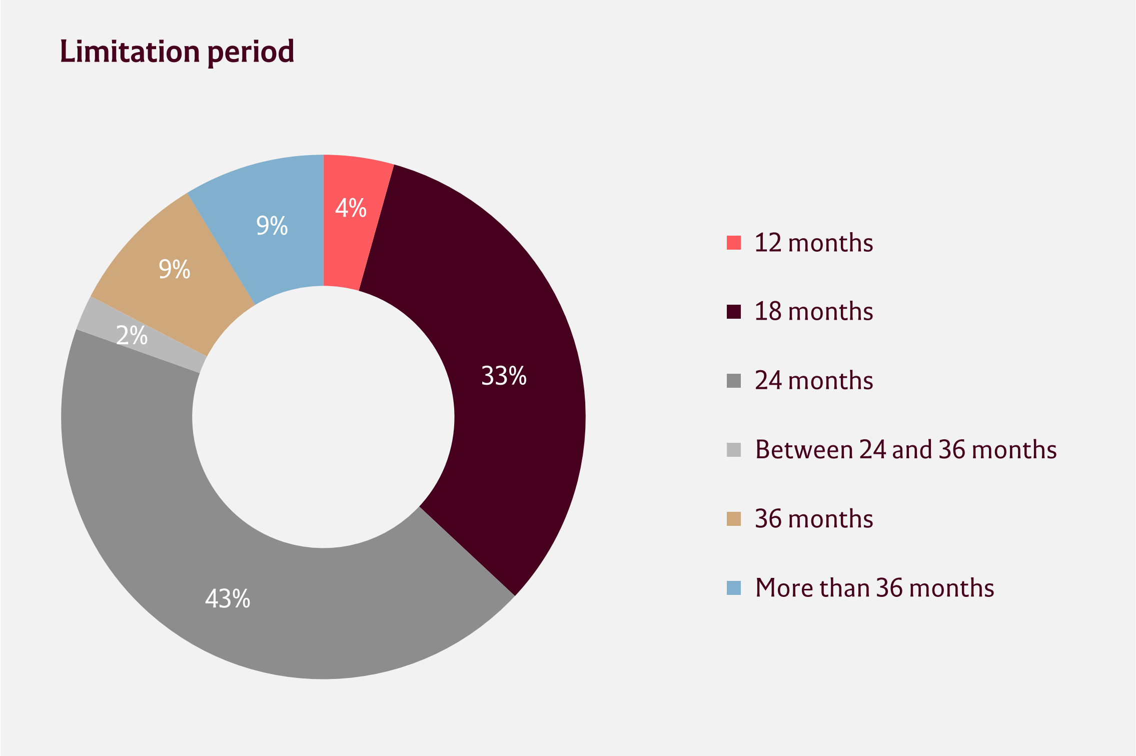


M&A MARKET TRENDS IN SPAIN IN 2023

4. Seller's liability

The most common terms fixed for the temporary limitation of the seller's liability were 24 months (43% of the transactions) and 18 months (33% of the transactions).

It is customary to subject specific issues to time barring in accordance with applicable law or regulations, mainly in tax, labor and social security as well as cases involving damages related to the breach of a fundamental warranty. It is also common in administrative, environmental and criminal matters, and sometimes in intellectual property and data protection matters.



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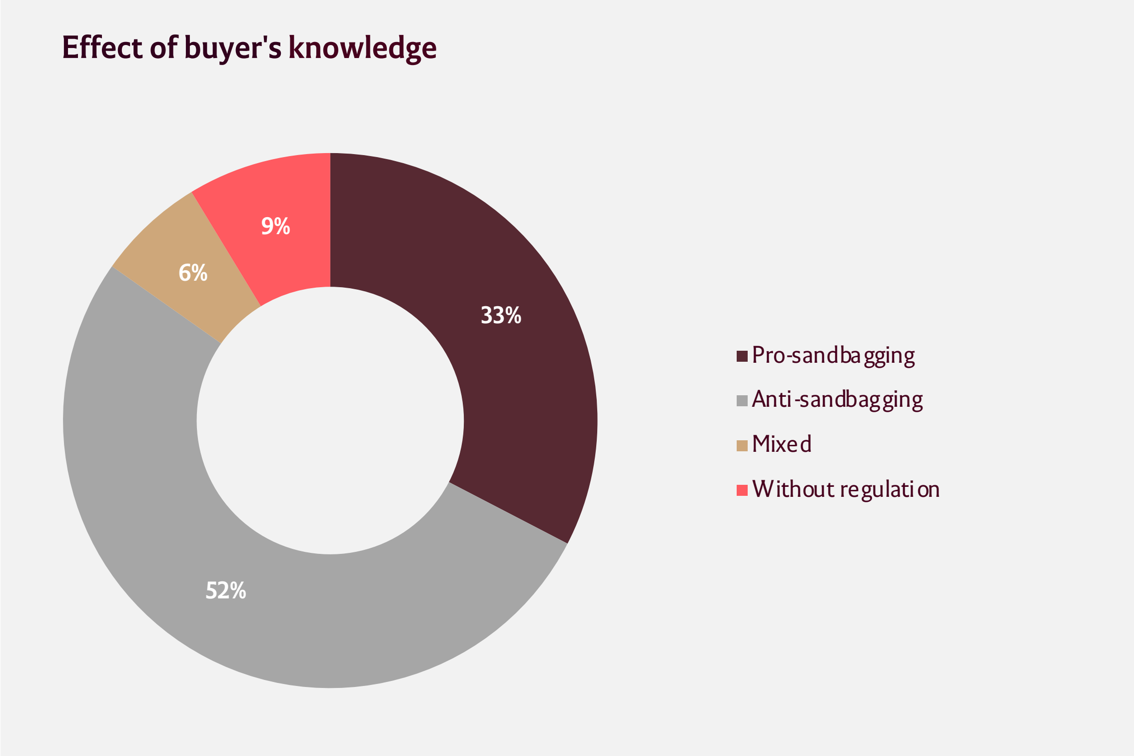
4. Seller’s liability

Over 90% of all deals regulate the impact of the purchaser's knowledge on the seller’s liability.

In 52% of the cases, an anti-sandbagging clause was agreed (meaning that the purchaser’s knowledge excludes or limits the seller’s liability), as opposed to 33% of the cases that included a pro-sandbagging clause (where this knowledge does not exclude or limit the seller’s liability) .

In 6% of the deals, a mixed solution was agreed. In these cases, the purchaser’s knowledge does not exclude or limit the seller’s liability for third-party claims, but it does so for direct claims.

In 37% of the deals in which an anti-sandbagging clause was agreed, it only applied to information “fairly disclosed” to the purchaser in the due diligence materials.



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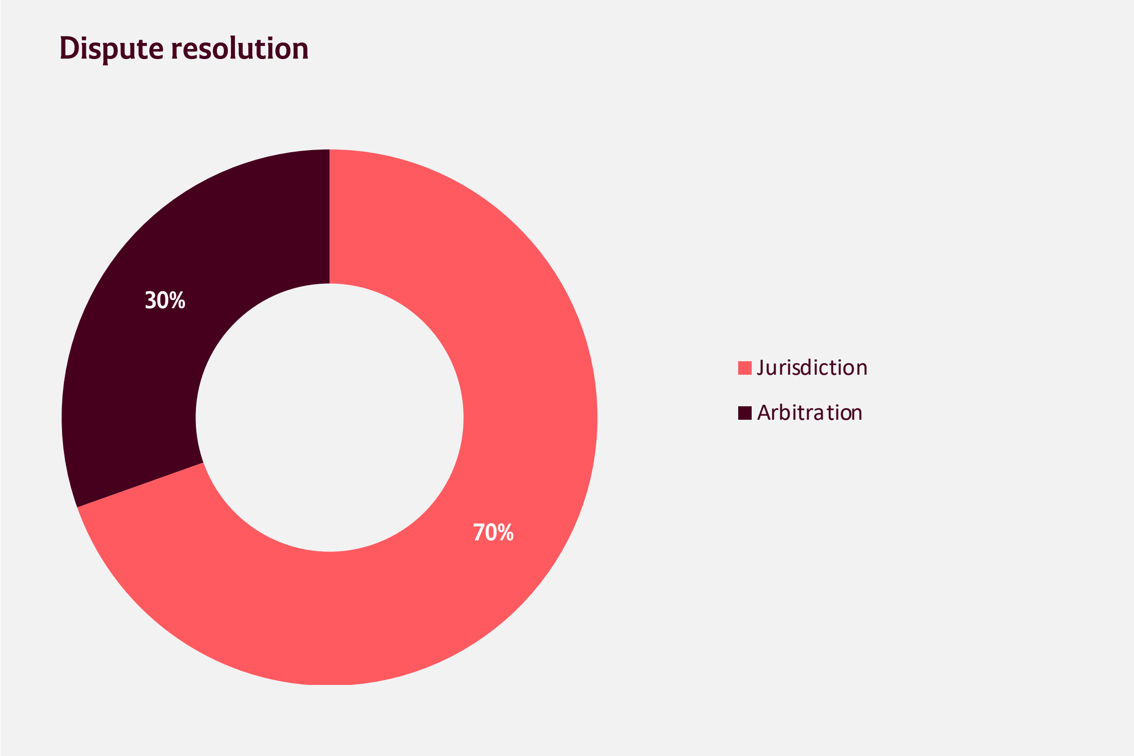
5. Dispute resolution

Arbitration as a dispute resolution mechanism was used in 30% of the deals, while jurisdiction was the preferred option in 70% of them.

In transactions where arbitration was chosen, the seat of arbitration was Madrid in more than 85% of the cases. The court of arbitration in 50% of the deals was the International Chamber of Commerce.



WHAT DO WE EXPECT IN 2024?

Slight reactivation of the market: Despite the ongoing uncertainty, we may see a slight increase in M&A activity, given that (i) interest rates are expected to stabilize, (ii) the gap between sellers and buyers' valuation of target companies is narrowing and (iii) there is a considerable amount of dry powder.

Strategic sectors will remain dominant: Investors will continue to opt for and be active in strategic sectors, particularly in the technology and energy sectors (probably focusing on renewable energies).

Regulatory authorizations will gain traction: Driven by strategic interests, the wave of economic protectionism will continue to be reflected in the need—in many cases—to require regulatory authorization for deals with investors from third countries. The energy, technology, defense, and infrastructure sectors will be of particular concern for European authorities.

Flexible measures: As uncertainty is expected to persist into 2024, we anticipate that parties will continue to choose mechanisms that help them mitigate this uncertainty. These mechanisms may include more thorough due diligence or the use of earnouts.

OTHER PUBLICATIONS

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Mergermarket TTR DATA REFINITIV Bloomberg

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