

M&A market trends in Spain in 2022

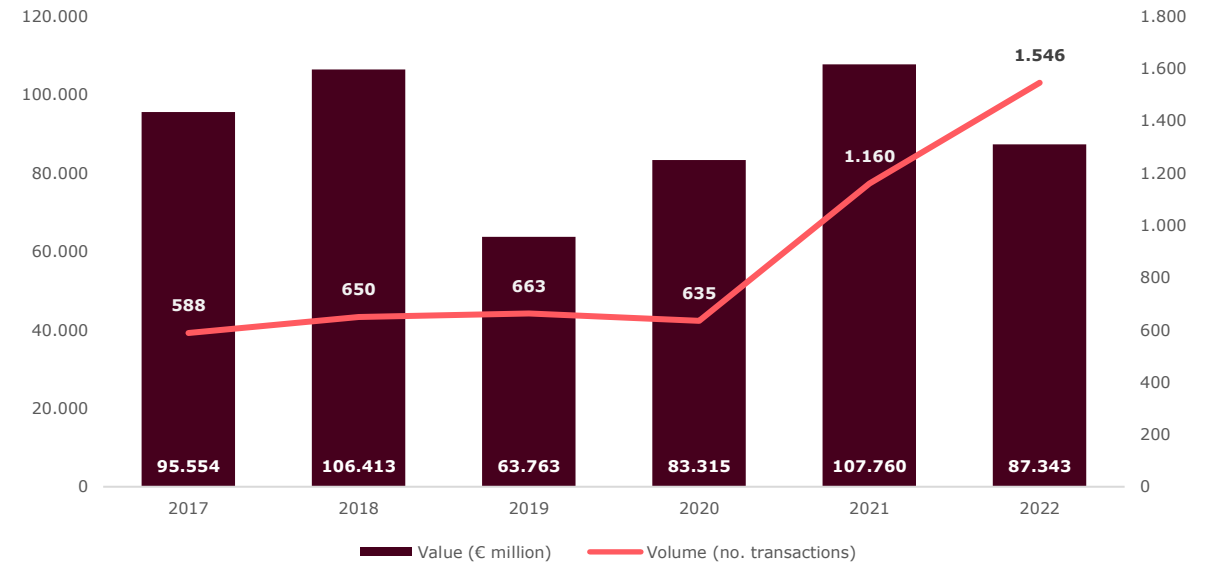
March 2023

I. Market evolution

Overview

In 2022, the M&A market in Spain saw the highest number of M&A transactions in history (1,546), resulting in a 33.3% growth. The volume of transactions doubled in size in just two years.

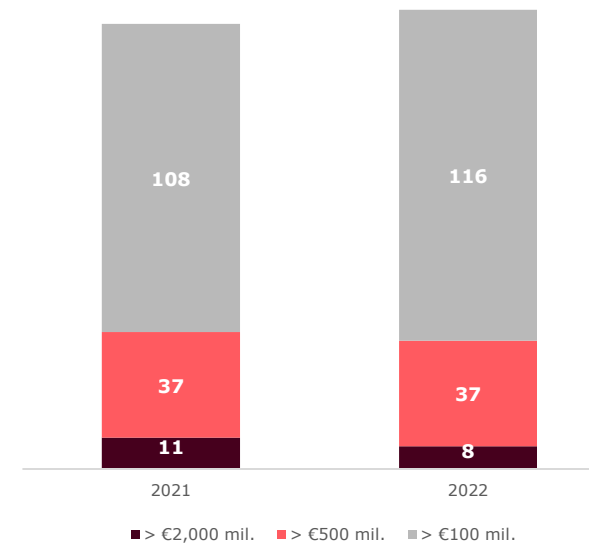
M&A markets in Spain 2017-2022



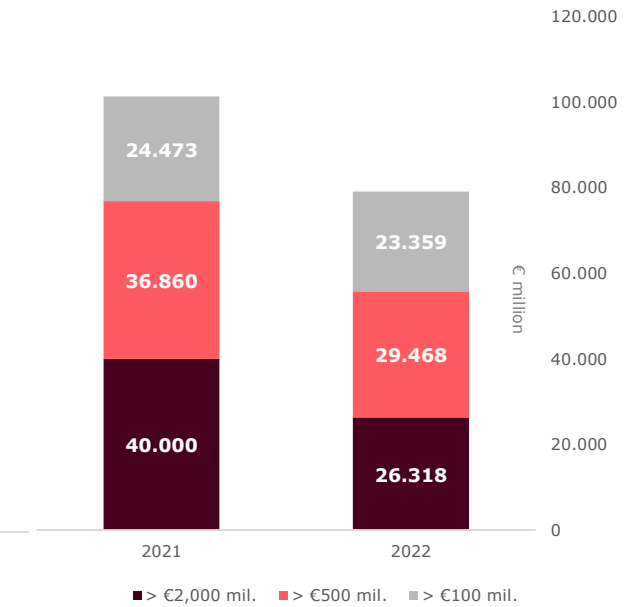
I. Market evolution

However, following the record reached in 2021, the value of the transactions dropped by 19%, mainly owing to the general fall in the number, and particularly the volume of large transactions.

Number of transactions by size



Value of transactions by size

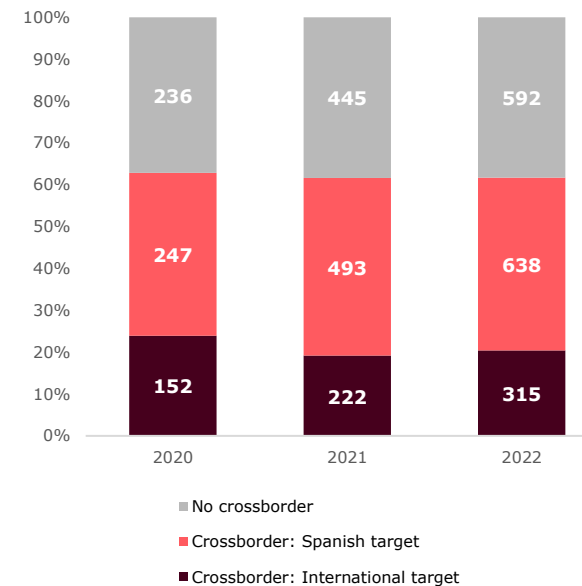


I. Market evolution

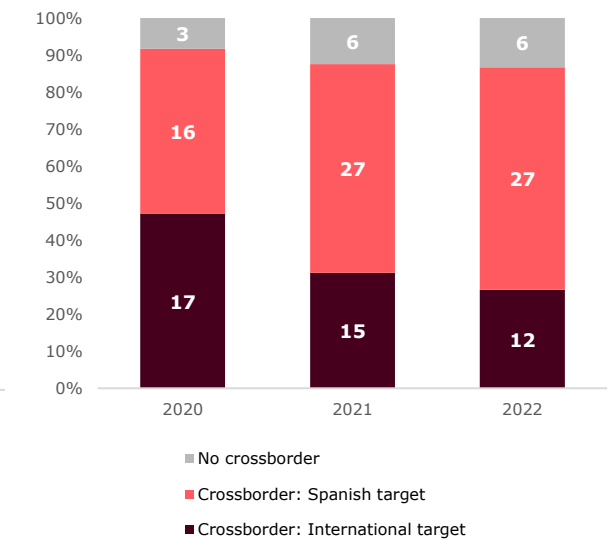
Source of investment

Crossborder transactions predominate in the Spanish market (62%), mostly involving inbound investments (Spanish target). This is particularly the case as regards transactions with a value exceeding €500 million, in which foreign investors with an interest in Spain are increasingly coming into play.

Distribution by source of investment (no. transactions)



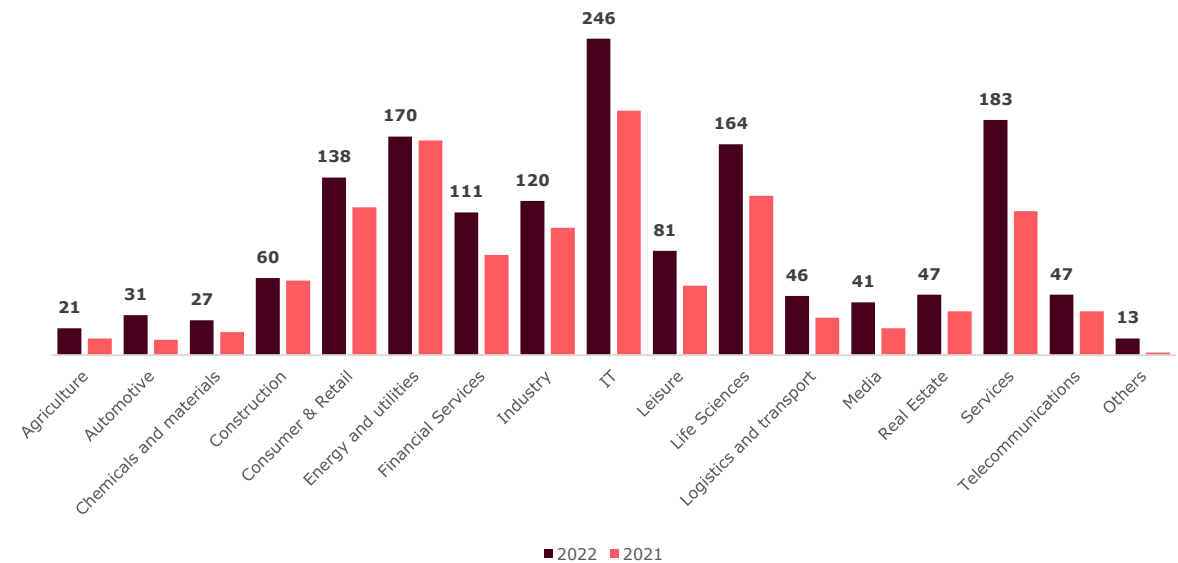
Distribution by source of investment in large transactions (no. transactions)



I. Market evolution

Overview of the main sectors

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



Source: Own elaboration based on data provided by Mergermarket. Transactions announced between January 1, 2022, and December 31, 2022, involving a target, bidder or seller whose main jurisdiction is in Spain. Data obtained on February 27, 2023.

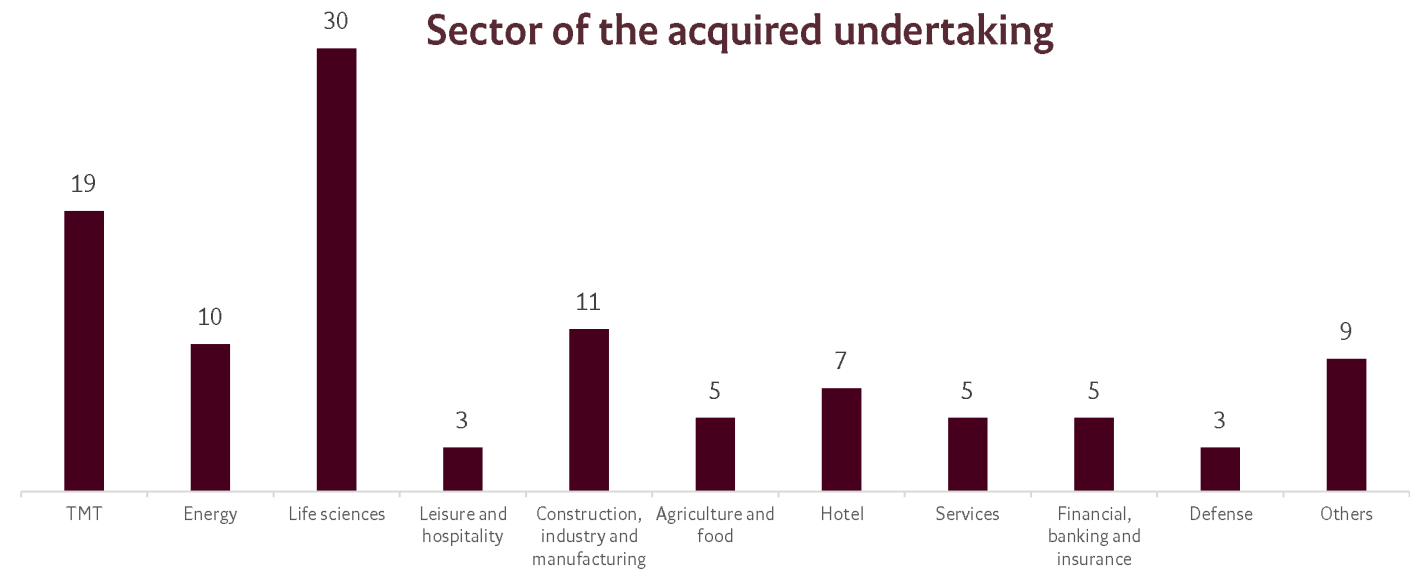
Analysis of M&A transactions

Based on the analysis of the most important transactions Cuatrecasas has advised on, this study shows the M&A market trends in Spain in 2022 drawn on our experience.

We have advised on over 100 M&A transactions subject to Spanish law, conducted through share purchase agreements, regarding general M&A and private equity transactions.

1. Sectors

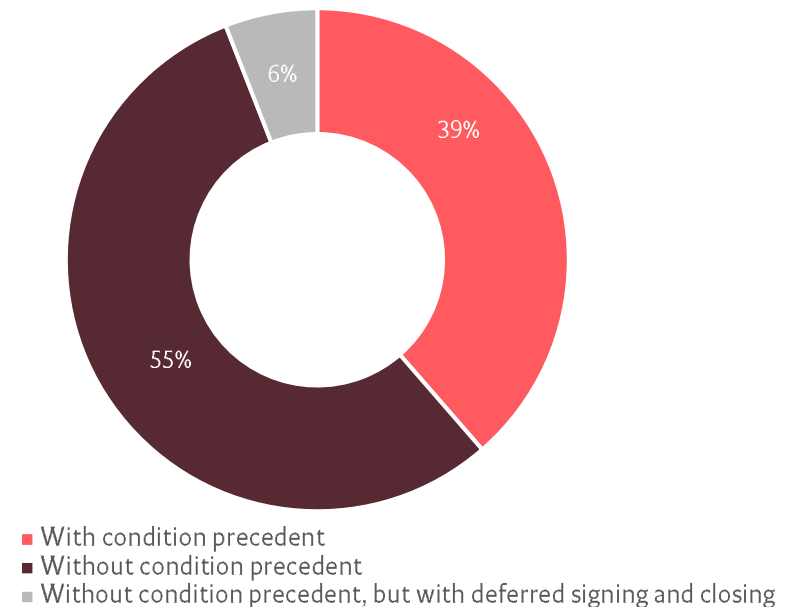
Investment in the life sciences sector makes up 28% of the analyzed transactions (the majority in the veterinary sector, a field in which several funds have been very active). The TMT sector, making up almost 18% of the analyzed transactions, is in second place, followed by the energy and industry sectors.



2. Conditions precedent

A first analysis indicates that over half of the transactions were not subject to a condition precedent, but if we exclude transactions involving the purchase of veterinary clinics—all of which follow the same pattern, we find that almost 60% of the transactions were subject to a condition precedent or were envisioned with signing and deferred closing.

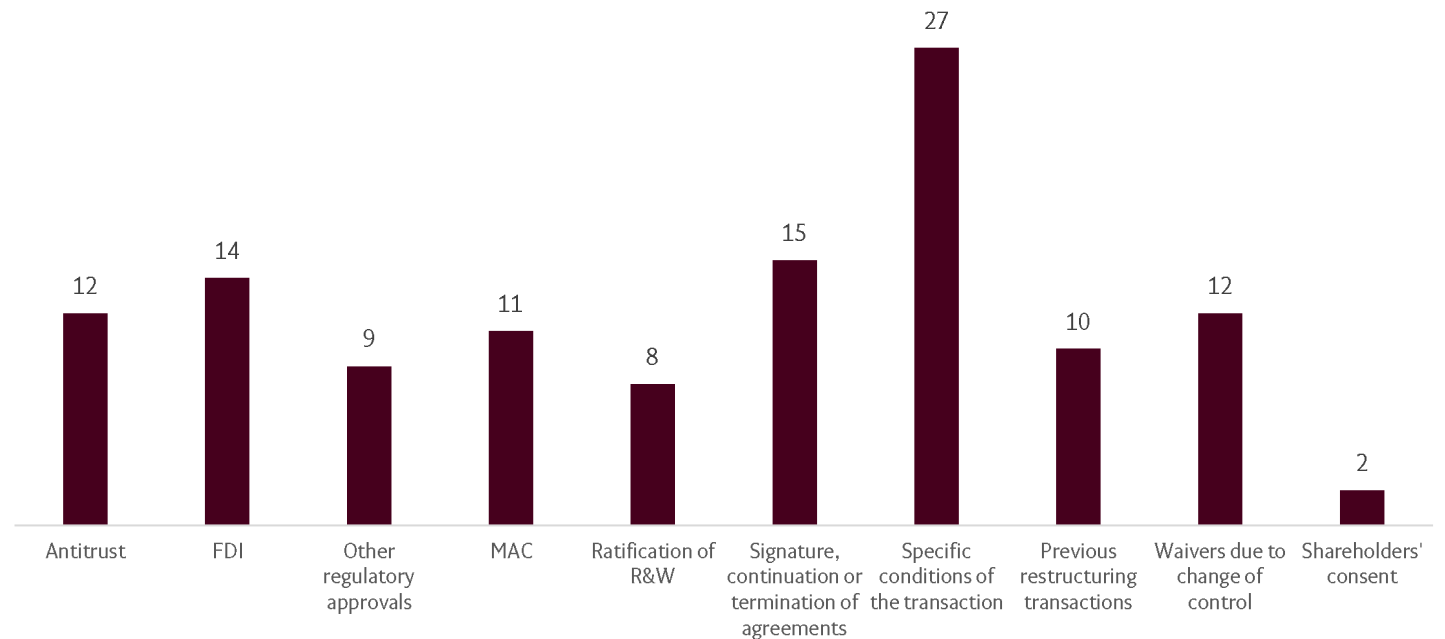
Simultaneous v. deferred signing and closing



2. Conditions precedent

The agreed conditions precedent are, quite typically, widely varied. We emphasize regulatory approvals, especially for anti-trust and foreign direct investment, as well as other administrative authorizations. 70% of the transactions that included conditions precedent required obtaining regulatory approval.

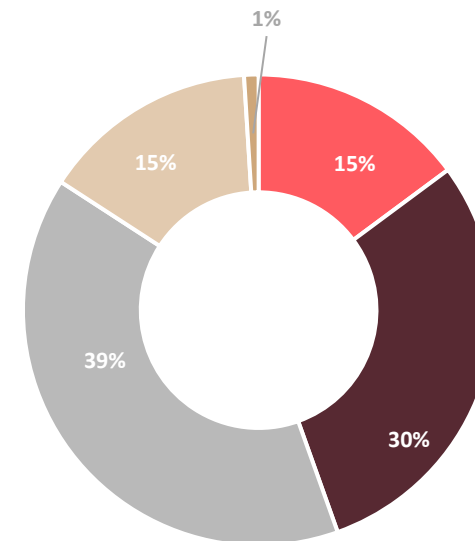
Types of conditions precedent



3. Price

The most used price mechanism is that of price adjustment (39% of transactions), followed closely by locked-box (30% of transactions). However, these percentages are reversed if we exclude the transactions involving the purchase of veterinary clinics—all of which have followed a similar pattern, namely choosing a price adjustment or a combined adjustment and locked-box mechanism.

Price mechanism



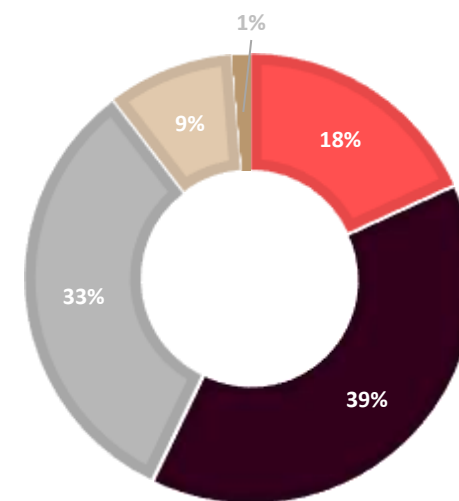
■ Fixed ■ Locked-box ■ Price adjustment ■ Combined locked-box and price adjustment ■ Other

3. Price

The locked-box option has thus become the most frequently used price mechanism in recent years in the M&A market, accounting for 38% of the transactions, with price adjustment comprising 31%, while the combination of both mechanisms was used in 9% of the transactions.

25% of the transactions in which a locked-box mechanism was agreed (including transactions that combined locked-box and price adjustment mechanisms) 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. This tendency, which is common in other jurisdictions such as the United Kingdom, was barely observed in Spain, although we now see that the percentage of transactions in which it is used has risen.

Price mechanism excluding veterinary transactions

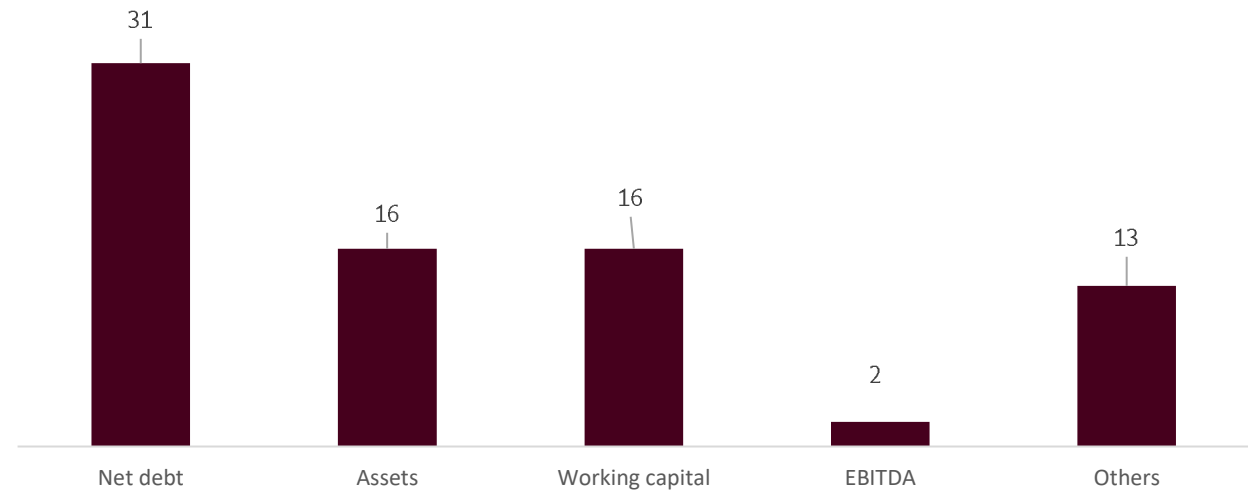


■ Fixed ■ Locked-box ■ Price adjustment ■ Combined locked-box and price adjustment ■ Other

3. Price

Among the financial parameters most widely used for price adjustment, the most common is net debt.

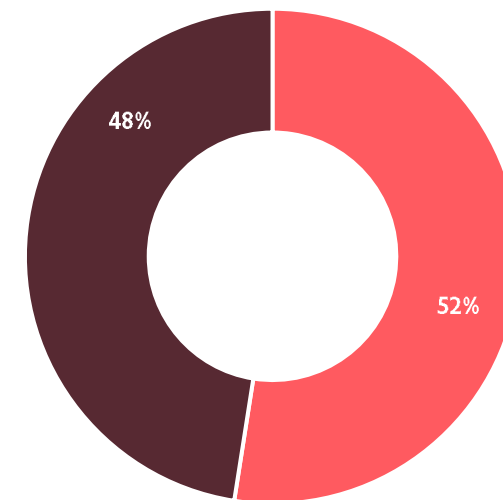
Price adjustment - financial parameters



3. Price

As regards the time at which payment was made, over half of the transactions included an agreement as to an initial price and a deferred price, which in practically all cases involved a variable price or earn-out, rather than a set deferred price.

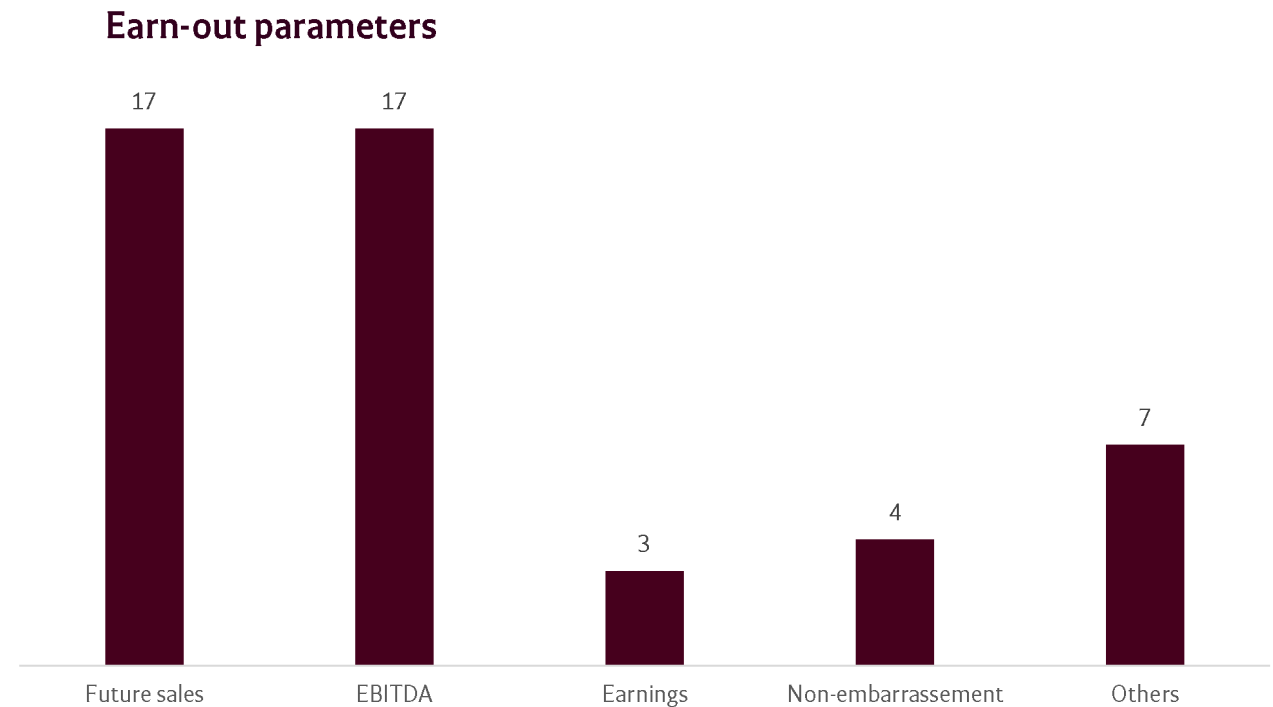
Payment on completion vs. deferred price



■ With deferred price ■ Without deferred price

3. Price

The most widely used parameters to calculate the earn-out were based on future sales and EBITDA, which is to be expected in times of global uncertainty, as is currently the case.

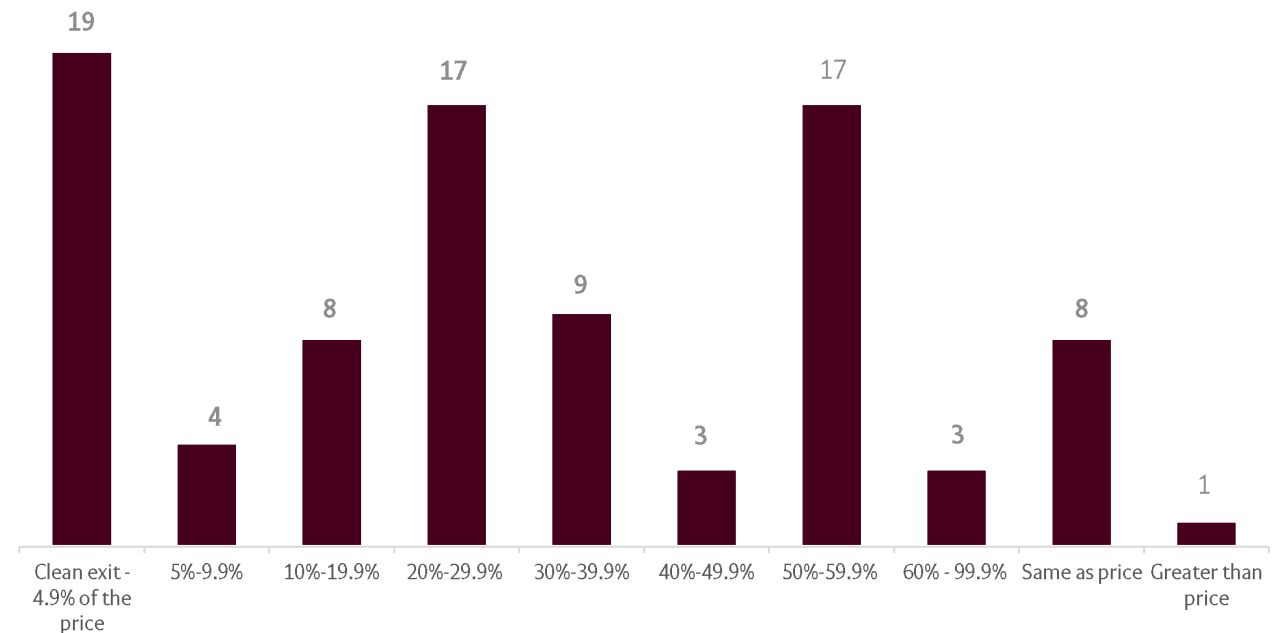


4. Seller's liability

The limitation of liability for the business representations and warranties granted by the seller differs greatly, but the vast majority (87%) is set at below 60% of the purchase price. This percentage is even greater if we exclude transactions involving the purchase of veterinary clinics.

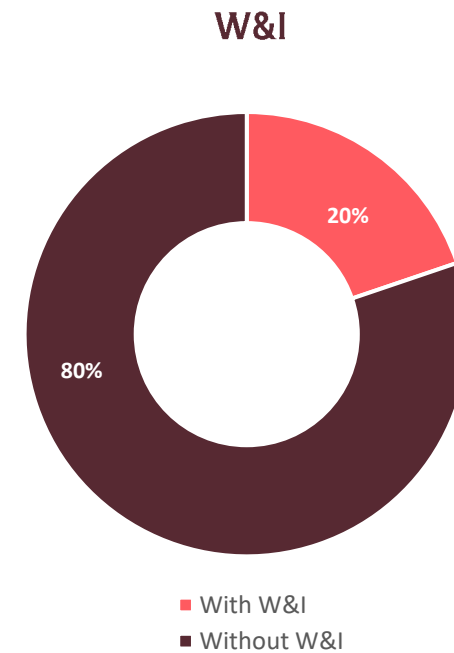
90% of the transactions with a limitation of liability set at below 5% of the price are due to the purchaser having taken out W&I insurance.

Limitation of liability - Business warranties



4. Seller's liability

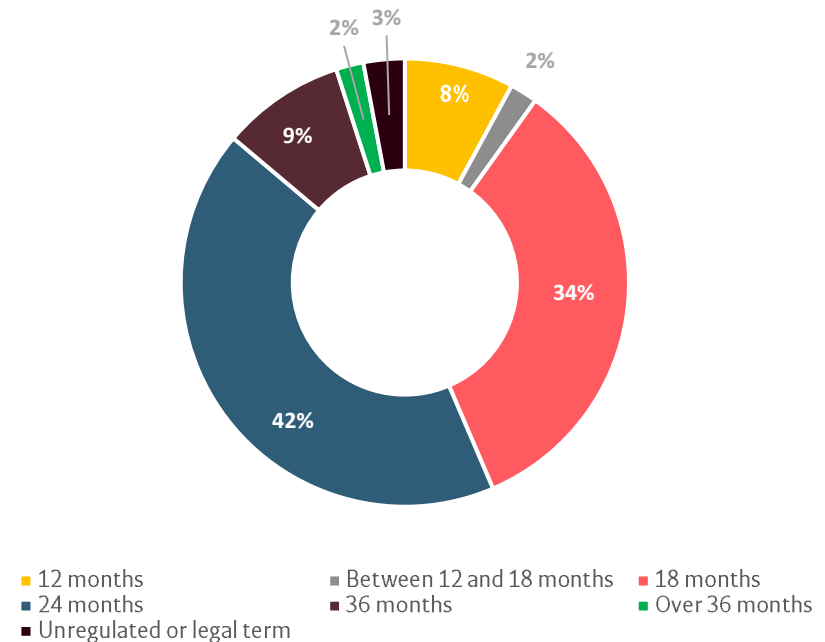
Unlike private equity transactions, in which W&I insurance is commonly taken out (as was the case in over half of the transactions in 2022, based on our statistics), the percentage drops to 20% if we take into account all M&A transactions. In fact, private equity transactions accounted for 85% of those covered by W&I insurance as a guarantee of the seller's liability.



4. Seller's liability

As regards the temporary limitation of the seller's liability, three-quarters of the transactions set out an 18-month term (34% of the transactions) or a 24-month term (42% of the transactions). Subjecting specific issues to time barring as provided by law or regulations is common practice, mainly in tax, labor and social security, administrative and environmental, intellectual property, data protection, and criminal issues, as well as damages related to the breach of a fundamental warranty.

Temporary limitation of the seller's liability

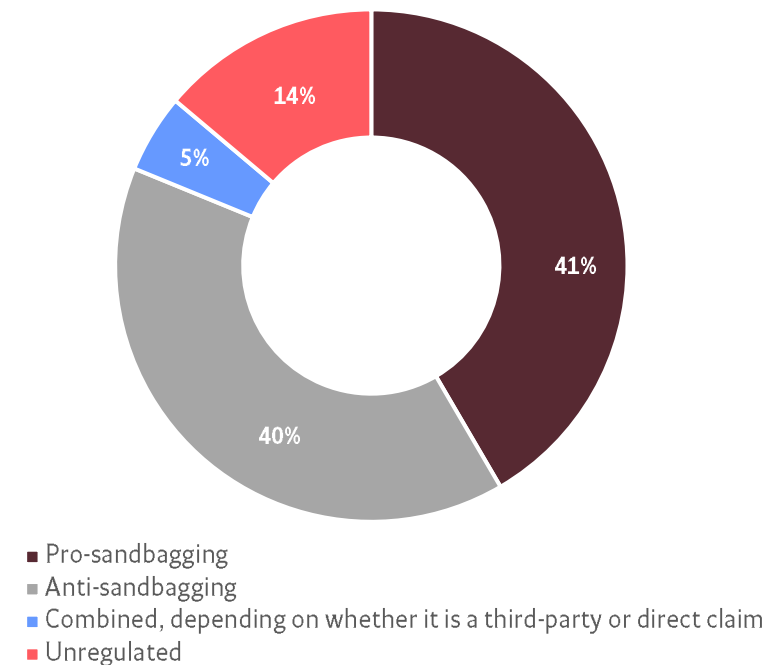


4. Seller's liability

The vast majority of transactions (86%) regulate the impact of the purchaser's knowledge on the seller's liability, despite then including an almost equal number of pro-sandbagging and anti-sandbagging provisions.

In some cases (5% of the transactions), it is agreed that the purchaser's knowledge does not exclude the seller's liability if there are third-party claims, but that the seller cannot be held liable if any direct claims are filed.

Purchaser's knowledge



Our practice

A large team of lawyers advising on national and international deals.

Our practice

We advise on M&A deals, joint ventures, distressed M&A and all types of corporate transactions throughout the process. We also advise on national and crossborder corporate restructurings, as well as on all types of commercial agreements.

We have teams specializing in capital markets, and private-equity and venture-capital investments, as well as in incorporating regulated and unregulated funds and other investment vehicles.

We also advise our clients on all aspects of their business and corporate activities, including on their incorporation, and we act as legal advisors and secretaries of the board of directors. We assist our clients with all matters relating to regulatory compliance and corporate governance.

“ International firm with a noted corporate practice, offering expertise in cross-border M&A and corporate restructuring.”

Chambers, 2022

“ Cuatrecasas lawyers are capable of providing M&A support very efficiently and quickly.”

Chambers, 2022

- > **Sophistication:** We advise on large transactions in different markets, including, in 2021/2022, two of the four largest M&A transactions by value in Spain. We represent major international companies and funds.
- > **Foreign Direct Investment (FDI):** Since 2020, our firm has supervised a large number of transactions the Spanish government approved to control foreign investment for national security reasons during the COVID-19 pandemic.
- > **Insight into market trends:** Our experience advising on domestic and crossborder M&A transactions for leading companies enables us to anticipate potential obstacles and achieve creative, practical solutions.

Acknowledgments

Market leadership

According to the main M&A deal rankings, year after year we are one of the law firms with the largest market share in the Iberian Peninsula.

Reputation

Our practice and our lawyers are recognized every year by prestigious international legal directories.

Leading law firm by deal volume in M&A rankings Iberia, 2022



Spain M&A Legal Adviser of the Year 2020, 2021



Leading firm – Tier 1 in Corporate M&A



Leading firm – Tier 1 in International & Crossborder Transactions



Ranking global

Ranking			2022	
2022	2021	Company Name	Value (USDm)	Deal Count
20	34	Cuatrecasas	22,946	237

Only firm in Continental Europe

Ranking Península Ibérica

Ranking			2022	
2022	2021	Company Name	Value (USDm)	Deal Count
1	1	Cuatrecasas	9,862	205

Leader in Spain and Portugal with 205 deals

For additional information, please contact our [*Knowledge and Innovation Group*](#) or your regular contact person at Cuatrecasas.



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