



fieldfisher

# SELLING OR FUNDING – WHAT TECH COMPANIES NEED TO CONSIDER NOW

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8<sup>th</sup> December 2020

# SERIES B&C FINANCING AND M&A TRENDS & VALUATION METRICS

Pietro Strada, Managing Partner



# COMPANY SNAPSHOT

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Silverpeak advises **outstanding technology companies**  
on M&A and larger financing transactions



**European** clients – **Global** counterparties

# OUR PRESENCE IN THE TECHNOLOGY SECTOR

Silverpeak has deep sector knowledge and extensive execution experience in the technology sector



# SELECTED RECENT TRANSACTIONS

GB | EU




**V-NOVA**  
Video compression solutions

Investment by

**FAMILY OFFICES & HNW INVESTORS**


October 2020 

GB | US




Fibre broadband network operator

£100m investment by



**OAKTREE**

September 2020 

PT | US



**ARMILAR**  
VENTURE PARTNERS

Continuation Fund  
Including:



**outsystems**  
Investment by



**GENERAL ATLANTIC**

September 2020 

GB



Satellite antenna technology

Investment by

**INSTITUTIONAL & STRATEGIC INVESTORS**

September 2020 

LT | JP | GB



Mobility-as-a-Service platform

Investment by



**Aioi Nissay Dowa**



**Sumitomo**  
For International and Development




**European Bank**  
For International and Development

**octopus investments**

June 2020 


ES | US




Game streaming platform

Sale

**FACEBOOK**


December 2019 

GB | US




Cloud transformation consultancy

Sale



**DXC technology**

November 2019 


EU | EU

**CONFIDENTIAL**

SaaS FinTech platform

Fundraise

\$150m

September 2019 

FR | US



M2M cybersecurity for the industrial internet

Sale



**CISCO**

August 2019 

GB | GB | US



**oxbohica**  
Autonomous vehicle software

Investment by



**PARKWALK**



**ipgroup**



**AWA XL GROUP**

July 2019 

GB | GB



**thoughtonomy**  
SaaS Intelligent automation platform

Sale



**blueprism**

July 2019 

US | NL | BE



**CHOICE HOTELS**  
(Maxxton)

Hospitality ERP SaaS

Sale

**FORTINO CAPITAL**

June 2019 

GB | GB



Digital bank

Investment by



**RBS**



**Bó**

December 2018 

IT | NL



**GREEN BIT**  
BIOMETRIC SYSTEMS

Fingerprint scanners & software

Sale

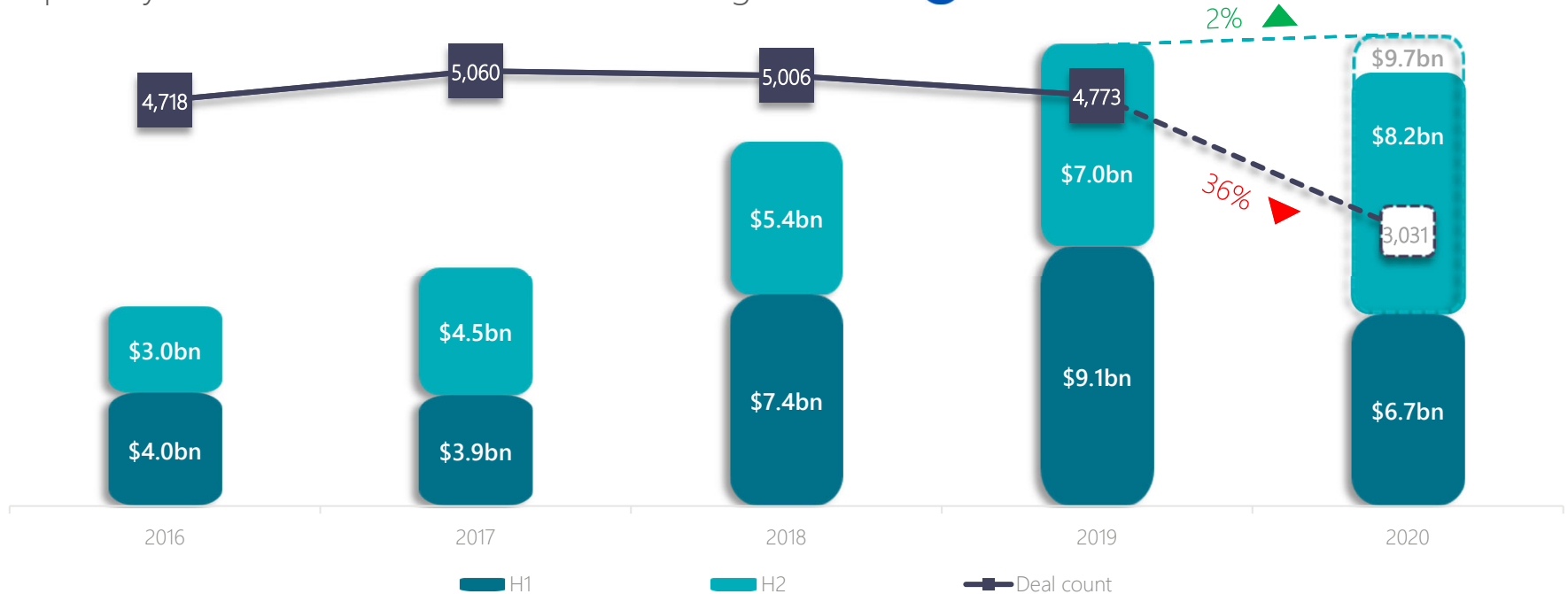


**gemalto**  
security to be free

December 2018 

# TOTAL VENTURE CAPITAL FINANCING IN EUROPE

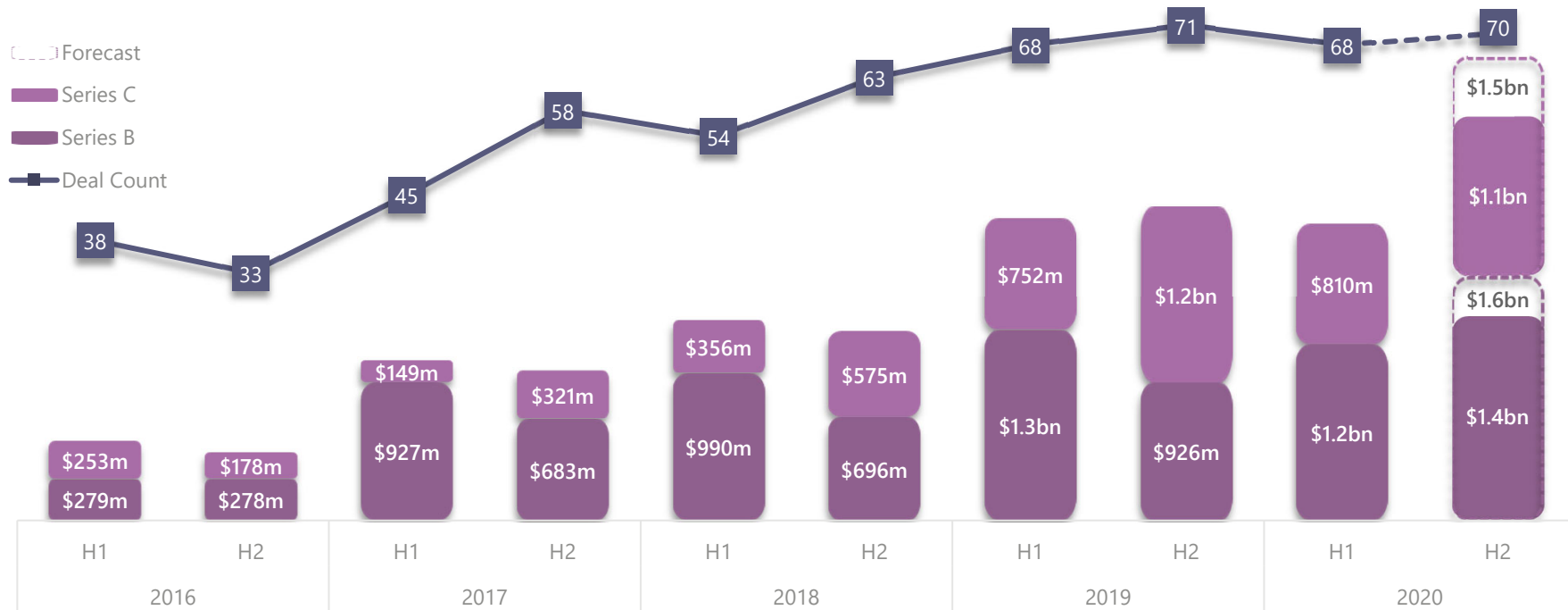
2020 Total Venture Capital deal count has tumbled, however the value invested has not, especially in H2' 20 when there has been a large increase 🇪🇺



Source: Pitchbook | Q4 2020 multiples are taken at 01/12/20

# SERIES B & C FINANCING ROUNDS IN EUROPE

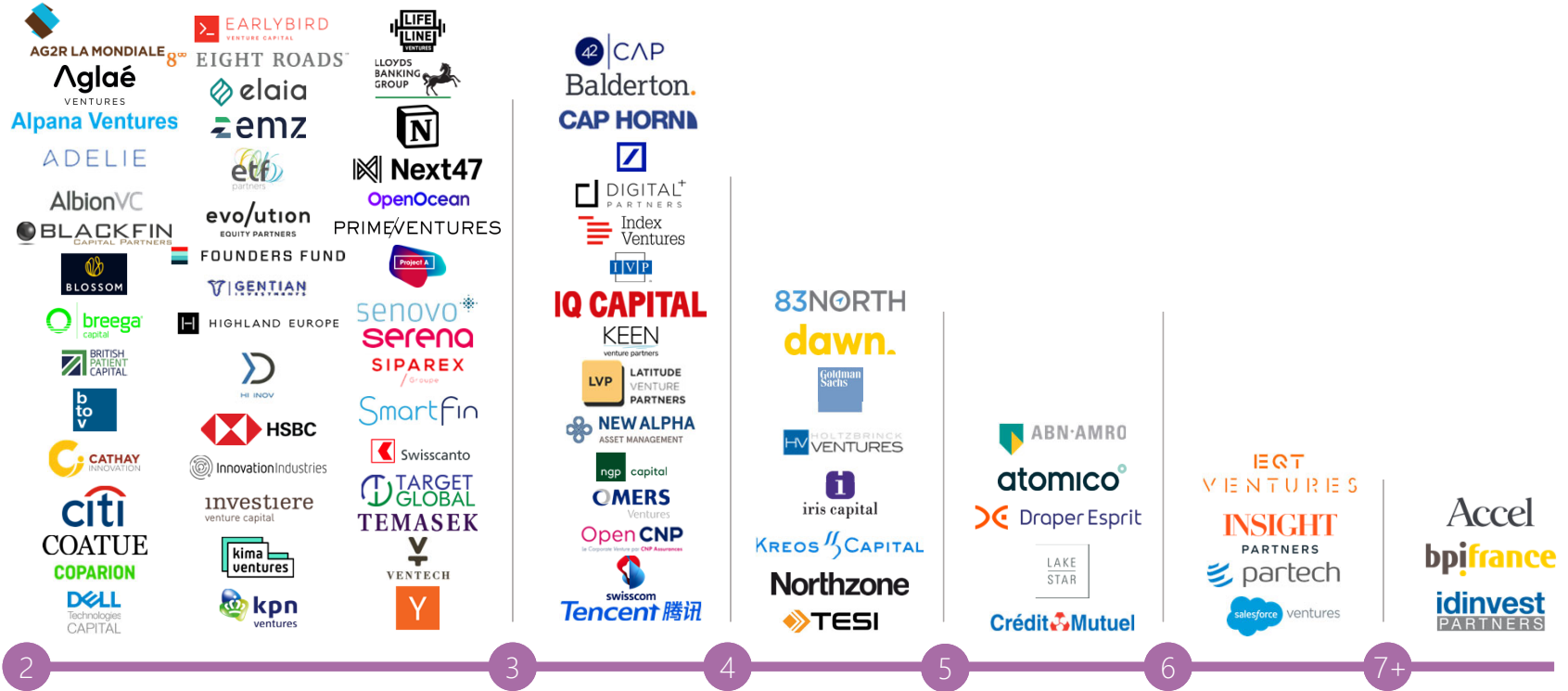
B & C rounds are on an upward trend in value however the number was flat in 2020 



Source: Pitchbook | deal count includes rounds with undisclosed values

# MOST ACTIVE INVESTORS IN B & C ROUNDS

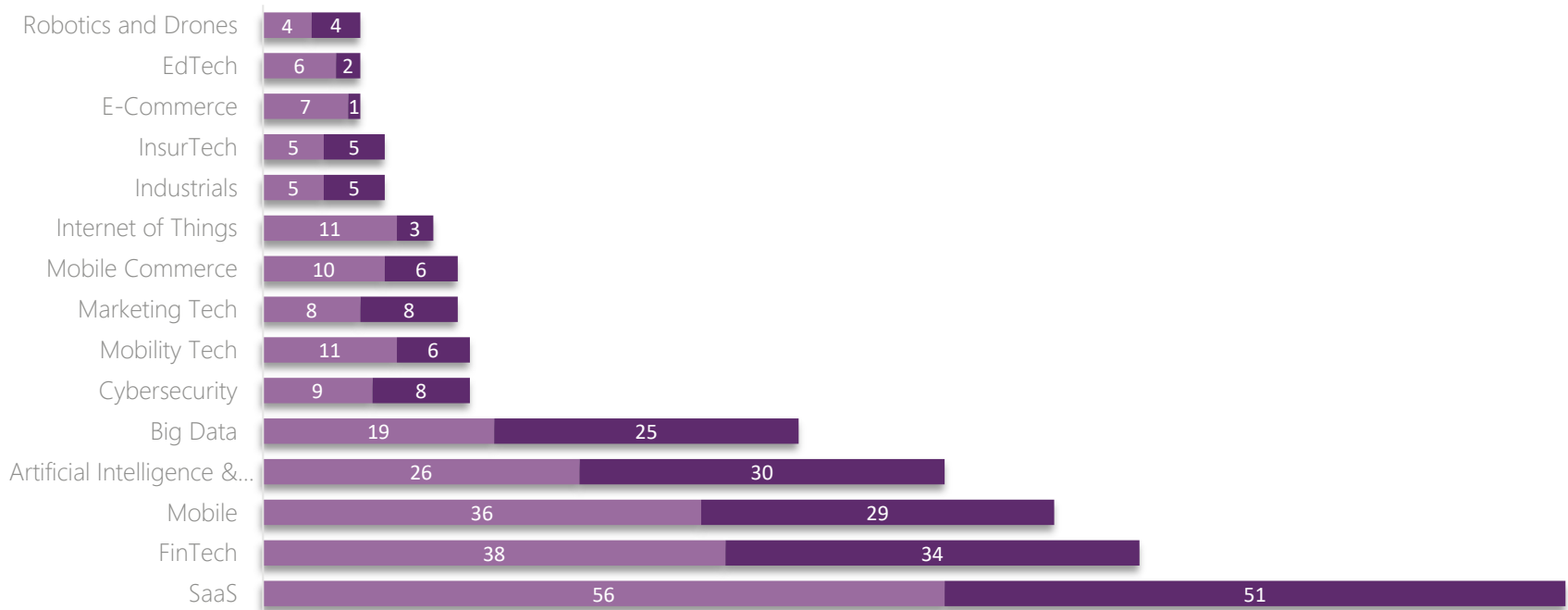
82 Investors participated in more than two B & C rounds in the last 12 months





# BREAKDOWN OF EUROPEAN B & C ROUNDS: BY THEME

SaaS and Fintech remain the most active in B&C series rounds 



Source: Pitchbook | 2020 YTD is up to 01/12/20

■ 2019 ■ 2020

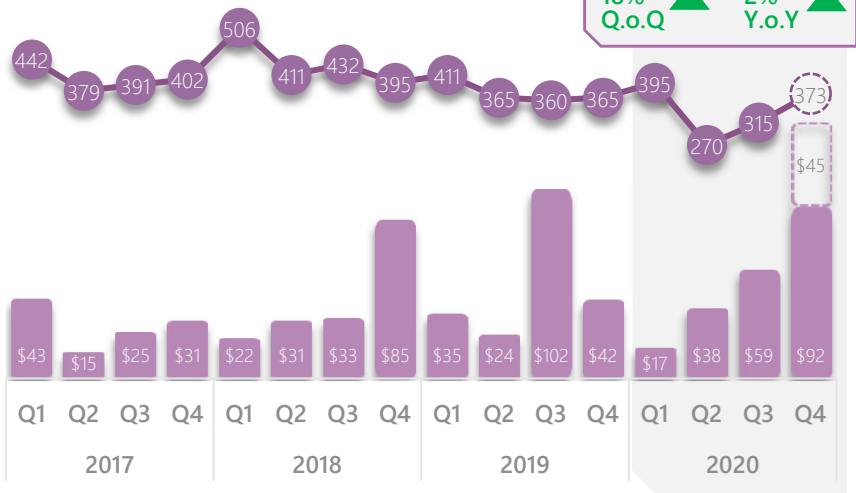
# M&A DEAL BREAKDOWN BY REGION

Deal count in both N. America and Europe is recovering whilst larger deals continue to be more prevalent in N. America

## North America

Q4 Median Size of Disclosed Deals **\$125.0m**

Q4 change by deal count  
**18%** ▲  
 Q.o.Q  
**2%** ▲  
 Y.o.Y



■ Cumulative deal value (\$bn)    □ Forecast    ● Deal Count

Source: Pitchbook | Data as of 01/12/2020

## Europe

Q4 Median Size of Disclosed Deals **\$23.5m**

Q4 change by deal count  
**23%** ▲  
 Q.o.Q  
**25%** ▲  
 Y.o.Y



■ Cumulative deal value (\$bn)    □ Forecast    ● Deal Count

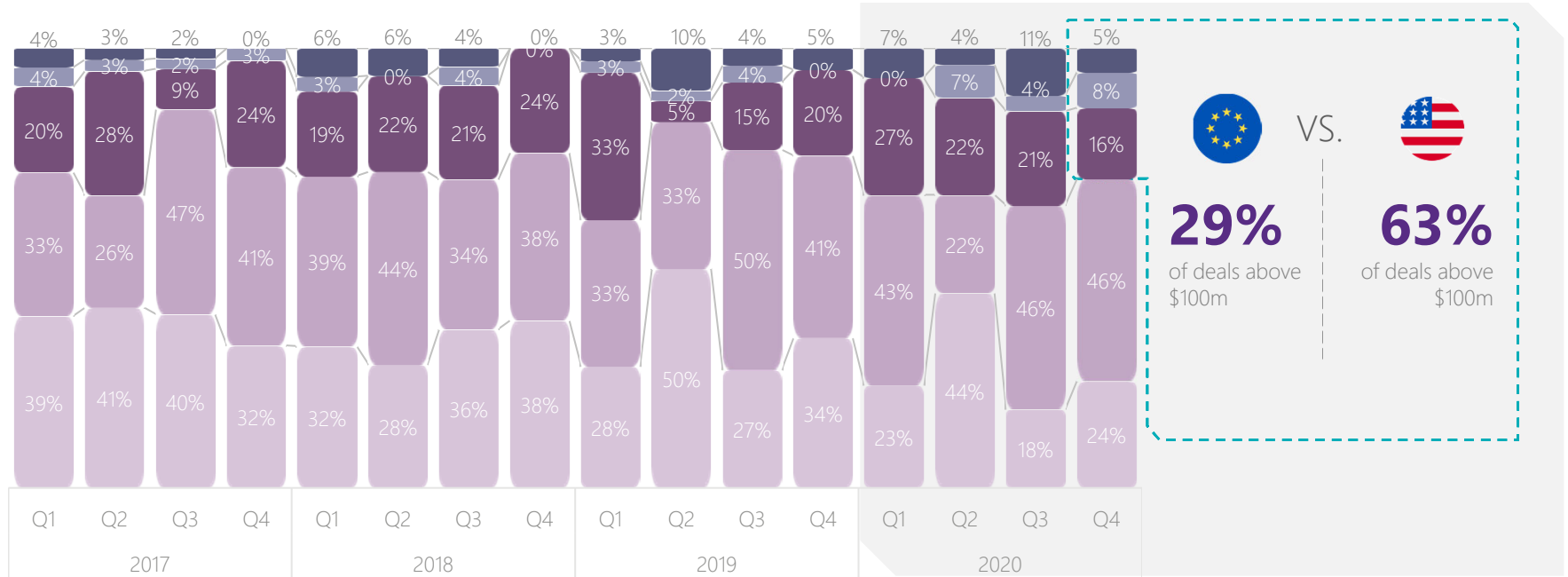




London | Paris | Milan | San Francisco | Shanghai

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# M&A DEAL COUNT BY SIZE<sup>(1)</sup> – EUROPE

Share of <\$100m deals in Europe increases as larger businesses acquire struggling competitors



 VS.   
**29%** of deals above \$100m  
**63%** of deals above \$100m





















Source: Pitchbook | Data as of 01/12/2020  
 (1) Deals with disclosed values >\$10m only

■ \$0 - 25M ■ \$25 - 100M ■ \$100 - 500M ■ \$500M - 1bn ■ \$1B+





















# 10 BIGGEST TECHNOLOGY DEALS YTD

US PE firms & corporate buyers continue to dominate as H2'20 features sizable strategic transactions. Notable absence of Chinese & European buyers

## Corporate buyers

 	Acquired	 IHS Markit 	\$46.7bn Nov-20 <sup>(1)</sup>
 	Acquired	 	\$40.0bn Sep-20 <sup>(1)</sup>
 	Acquired	 	\$35.0bn Oct-20 <sup>(1)</sup>
 	Acquired	 	\$27.7bn Dec-20 <sup>(1)</sup>
 	Acquired	 	\$22.8bn Jul-20 <sup>(1)</sup>

## PE

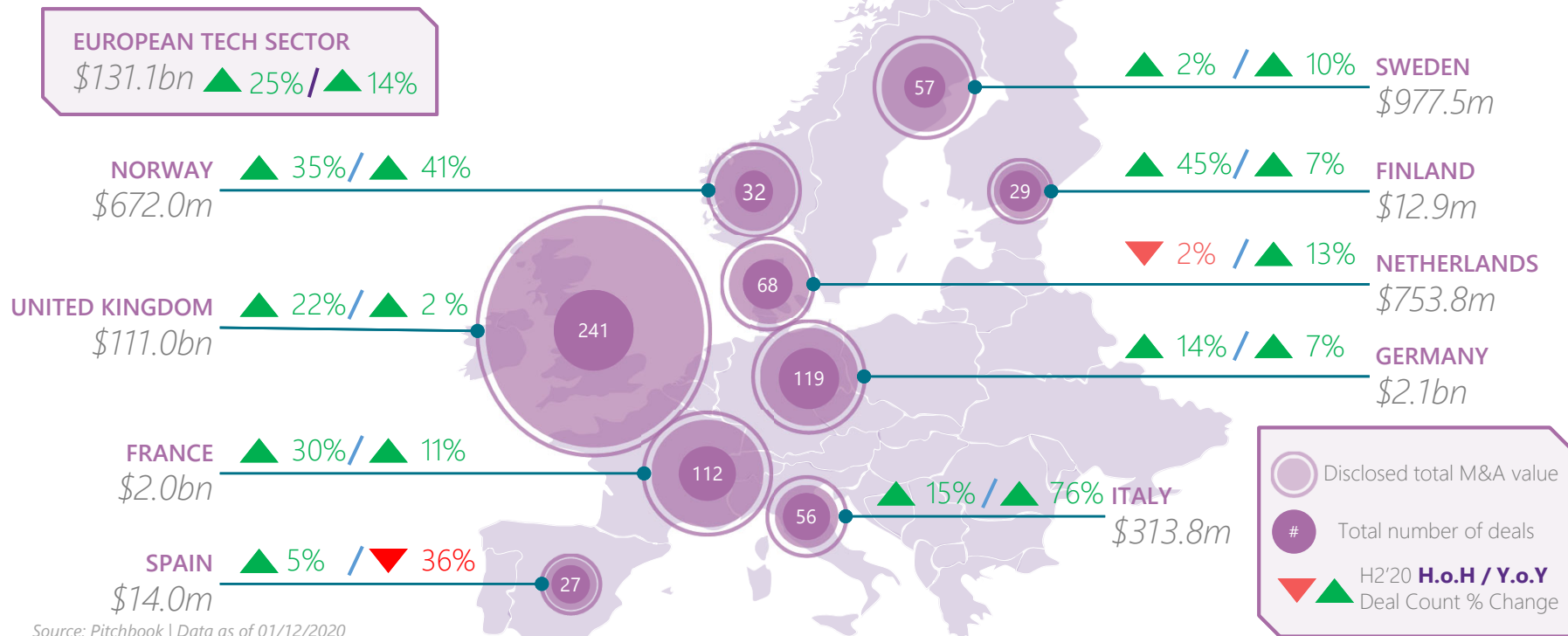
 	Acquired	 	\$6.9bn Jun-20
 	Acquired	 	\$5.3bn Jan-20
 	Acquired	 	\$5.0bn Mar-20
 	Acquired	 	\$4.7bn Aug-20 <sup>(1)</sup>
 	Acquired	 	\$4.3bn Aug-20

Source: CapIQ, Pitchbook | Data as of 01/12/2020

<sup>(1)</sup> Announced

# FORECAST H2'20 DEAL ACTIVITY IN EUROPE

Uplift in deal activity across most European countries whilst the Nordics see the largest boost



Source: Pitchbook | Data as of 01/12/2020

Note: Deal count and disclosed deal size based on Technology Screening criteria



# LEGAL ISSUES IN THE CURRENT CLIMATE

Tim Bird, Partner



# TIM BIRD

My practice focuses on technology and fintech companies, with an emphasis on US and Japanese inward investment, private equity, venture capital, M&A, equity capital markets and general corporate advice.

My experience as a transactional lawyer includes two years at Deutsche Bank working with technology companies and a year on secondment at US Private Equity fund Citigroup Venture Capital working on large cross-border LBOs.

My work typically involves advising clients on various sophisticated cross-border exits/acquisitions.

- Glory Global Solutions (International) Limited on its €200m acquisition of 80% of Acrelec Group S.A.S., the French developer of the kiosks used by McDonald's and other quick serve restaurants in their drive-thru restaurants.
- Blue Prism Group PLC on its £80 million acquisition of Thoughtonomy in the RPA space.
- Elektron Technology plc on its disposal of the Bulgin business via a share sale of Elektron Technology UK Limited to Equistone Private Equity for £105 million.



**Tim Bird**  
Partner, Fieldfisher London

# LEGAL ISSUES IN THE CURRENT CLIMATE

1

Equity Fund Raising – vesting / reverse vesting



2

M&A – Using W&I insurance to provide a cleaner exit



3

IR35 – when contractors are seen as employees



4

Data privacy update





# EQUITY FUND RAISING – VESTING / REVERSE VESTING

Why do my shares have to vest when I've spent years building my company?

01

Investors will want the Founders to stay for the journey and not leave when the going gets tough

02

In the unlikely event the Founder does leave in the vesting period, this mechanism will enable the Company to incentivize new management without heavily diluting the other investors

03

The key is to strike a balance and Founder vesting in a series round will not be like vesting in a share option scheme, but more lenient

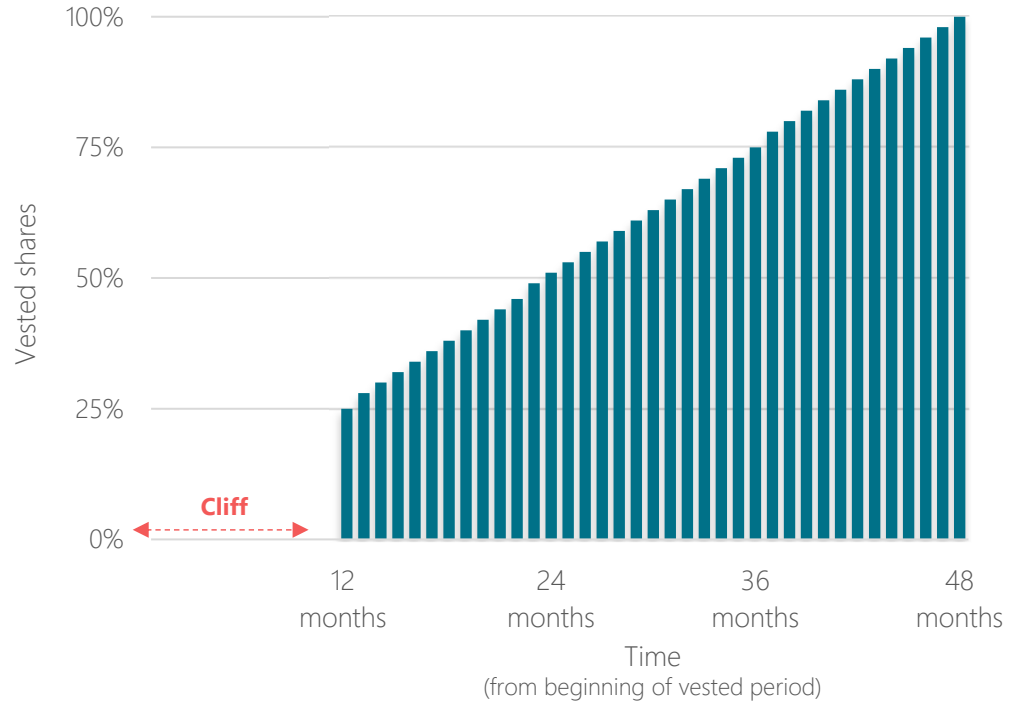
04

Generally, the later the series round, the greater the portion of shares the Founder will be allowed to treat as already vested

# EQUITY FUND RAISING – VESTING / REVERSE VESTING

What's the market standard for vesting periods?

- Usually 36-48 months from investment
- The shares will vest (become fully owned without risk of losing them on exiting the business) usually monthly over that time
- It's common to have a 12 month "cliff" during which 100% of unvested shares will be at risk
- Vested shares don't always stay vested – a large funding round may require some or all of the Founder shares to become unvested again, though possibly for a shorter time



# REVERSE VESTING – SINGLE AND DOUBLE-TRIGGER

As you head towards an exit, Founders may be asked to agree to double-trigger acceleration on a Trigger Event

## Single-Trigger

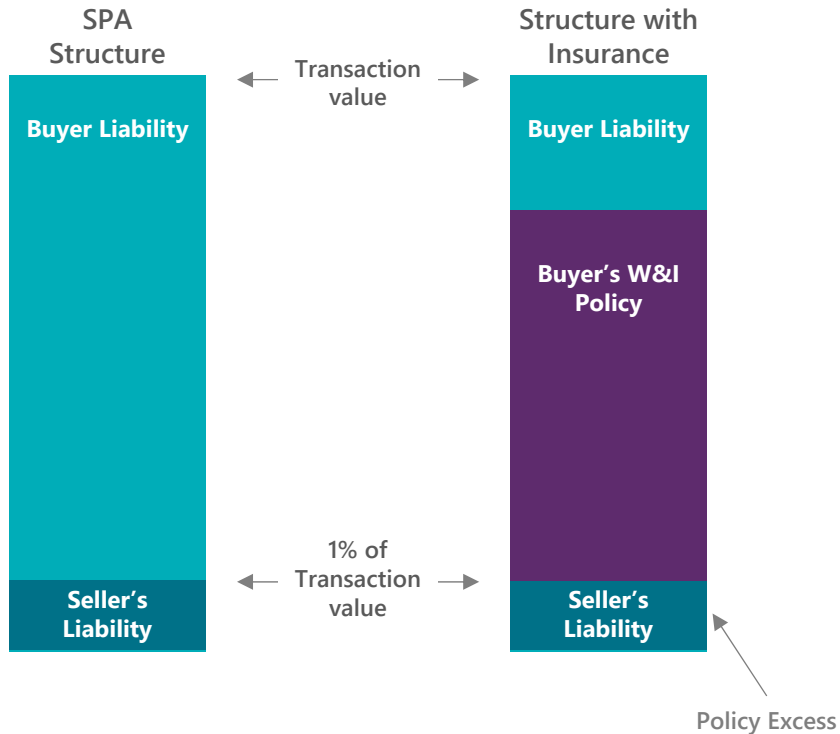
- Single-Trigger acceleration means that vesting will be triggered by a sale of the company - this is standard during earlier funding rounds

## Double-Trigger

- In a pre-IPO or pre-exit funding round, the Founders are more likely to be required to agree to double-trigger acceleration, whereby there will have to be a sale of the company AND involuntary termination of the Founder, usually within 9-18 months after closing, for acceleration of vesting
- This is often with a 3 month pre-closing window so as to stop the company from pre-emptively terminating the Founder just before a sale

We have seen a few of these recently and have reached agreement that roll-over equity can be treated as unvested for the duration of the vesting period OR the cash consideration which the Founder would have received on sale of the unvested shares is placed into escrow for the vesting period

# M&A – USING W&I INSURANCE TO PROVIDE A CLEANER EXIT



Through necessity or otherwise, a seller will typically attempt to resist having to tie up sale proceeds or have any residual liabilities post completion.

A failure by the parties to reach an agreement on liability apportionment can adversely impact the transaction; making negotiation difficult, affecting the target's value, or leading to deadlock.

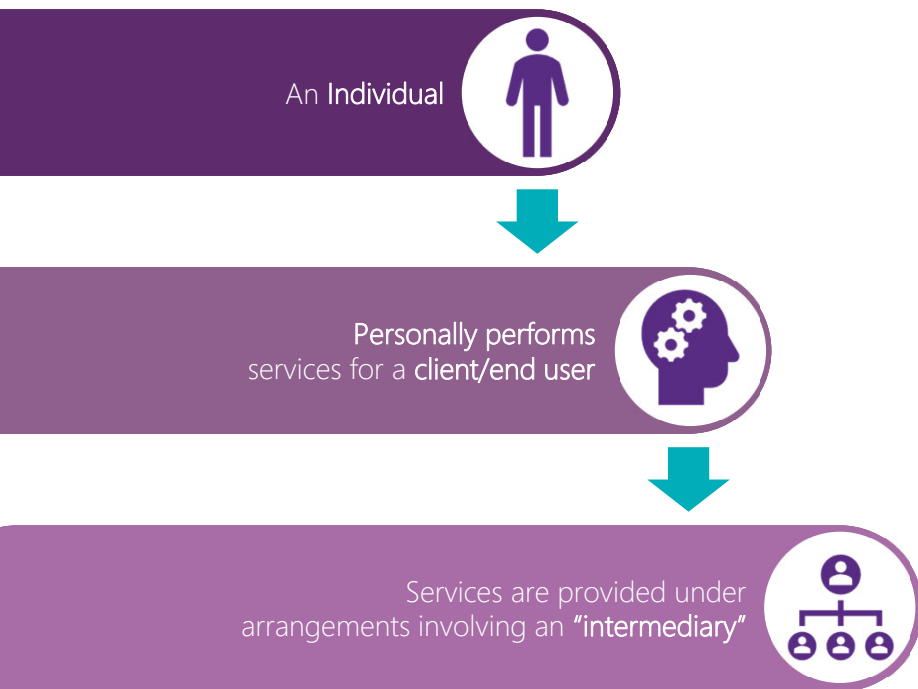
A seller-initiated Buyer's Warranty & Indemnity ("W&I") Insurance policy is the tool of choice for bridging this gap in party expectations.

# M&A – USING W&I INSURANCE TO PROVIDE A CLEANER EXIT

We are increasingly seeing W&I insurance as part of an exit in over 50% of transactions

- W&I can bridge the gap between buyers and sellers so as to enable a cleaner exit for the sellers whilst providing adequate protection for buyers
  - W&I policy is almost always a buy-side policy even where stapled by the sellers as part of an auction process. This will mean that the broker acts for the buyer even if a package is provided by the sellers. Buyers may even require their “own” broker to place the insurance with the market so better to make sure the headline policy offered is sensible
- Note that a thorough DD exercise will be needed by the buy-side in order to satisfy the needs of the underwriter. If you try to cut corners either to save time or money, they are likely to exclude elements which you will wish had been covered
  - Known risks will usually be excluded, which can be frustrating since they are often the very risk you want covered. We have recently seen an increase in the number of separate W&I policies taken out to cover the excluded issues – usually tax-related

# IR35 – WHEN CONTRACTORS ARE SEEN AS EMPLOYEES



"...the aim of both tax and the NIC provisions (an aim which they may be expected to achieve) is to ensure that individuals who ought to pay tax and NIC as employees cannot, by the assumption of a corporate structure, reduce and defer the liabilities imposed on employees by the United Kingdom's system of personal taxation."

**R (Professional Contractors Group & Others) v IRC [2001] EWCA Civ 1945**

# IR35 – SMALL COMPANY EXEMPTION

## Small Company Exemption

*(2 of the following 3 criteria)*

- ✓ **Less than 50 employees**
  - ✓ **Balance sheet less than £5.1m**
  - ✓ **Turnover less than £10.2m**
- Application is subject to consultation

## However...

*HMRC Internal Manual*

### ***"When small companies are acquired..."***

When all or part of a small company is acquired, that company may no longer qualify as small for the purposes of Chapter 10, Part 2 ITEPA 2003.

The size of the group's parent will determine whether the acquired company qualifies as small for the purposes of Chapter 10, Part 2 ITEPA 2003."

**Buyers are likely to take a conservative view**

# DATA PRIVACY UPDATE

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- Security is always key – and the **main sources of fines**
    - Marriott's fine was "inherited" when it acquired Starwoods
    - Could have been avoided with good privacy/info sec diligence
    - ICO fines Marriott International Inc **£18.4m for failing to keep customers' personal data secure**
  - You are responsible for your service providers:
    - Make sure you have contracts in place with them
    - Security and GDPR terms
- If you provide services to your customer, can you use your data for your own (e.g. product improvement, machine learning) purposes
    - Check your contracts
  - Know where your data is and the "grounds on which you process it"
    - Make sure you have good records
    - And good privacy notices to all: customers and staff
  - Comply with GDPR "cross border data flow" rules – "standard contractual clauses"
    - A fast moving area with Schrems II, new regulatory guidance, new SCCs, and Brexit!





# A CEO'S EXPERIENCE OF A BIG FUNDING ROUND

Matthew Hare, CEO & Founder



# Gigaclear



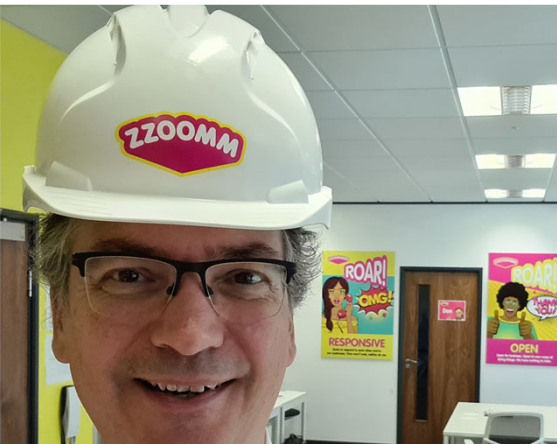
**9 March 2018**

**CASH OFFER  
FOR  
GIGACLEAR PLC  
BY  
INFRACAPITAL (GC) SLP LP**

**Summary**

Infracapital is pleased to announce an all cash offer by Infracapital (GC) SLP LP ("Infracapital (GC)") for the entire issued and to be issued ordinary share capital of Gigaclear plc ("Gigaclear" or the "Company") other than Gigaclear Shares owned by Infracapital (GC) or by other members of the Infracapital Group.

# ZZOOMM



Attracting  
private  
investors





Attracting  
institutional  
investors

# PRACTICAL POINTS FOR AN OPTIMAL TRANSACTION

Paddy MccGwire, Managing Partner



# CLEAR OBJECTIVES: THE 3 HATS





# HOW TO START TO THINK ABOUT AN EXIT

## 1. Set financial objectives

- Management - Investors
- Total invested
- Market opportunity

## 3. Identify most likely buyers and rationale to buy you

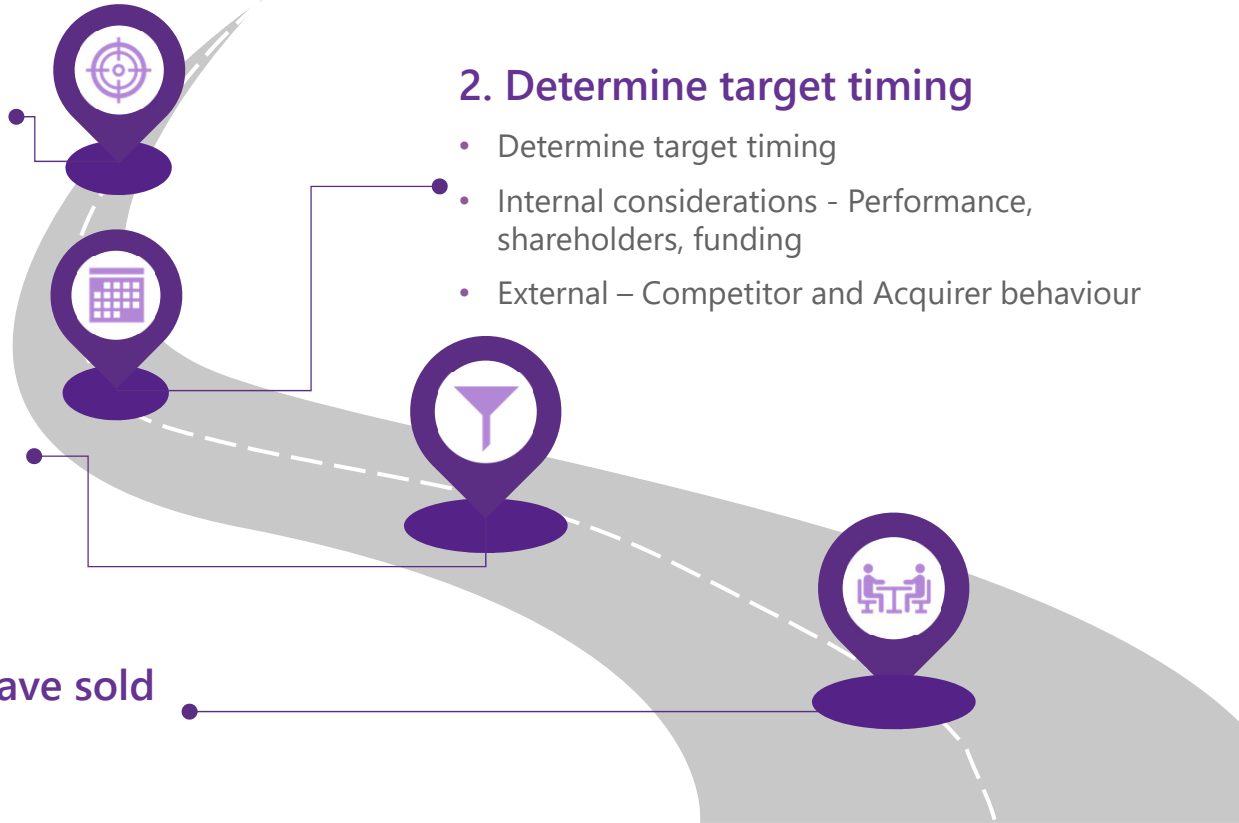
- What are they buying?
- Get to know them

## 4. Speak to other CEOs that have sold

- Understand the spectrum of normal

## 2. Determine target timing

- Determine target timing
- Internal considerations - Performance, shareholders, funding
- External – Competitor and Acquirer behaviour



# FUNDING CONSIDERATIONS

1. How long have we got?
2. Has the last funding got us to the inflexion point for the next round?
3. How much can existing investors provide?
4. Are we still Venture, or Growth?
5. Do any shareholders want to exit?
6. How much capital do we need to make sure we get to the next inflexion?
7. Is a sale a better way to meet the company's needs? Is it feasible?
8. Consider dual track?



# GETTING YOUR HOUSE IN ORDER

## FINANCIAL SYSTEMS & ACCOUNTING

- Audited accounts
- Budgeting process
- Management accounts
- Accounting policies
- Difference vs. IFRS and US GAAP
- Ability to do second and third tier analysis



## OTHER KEY INFO

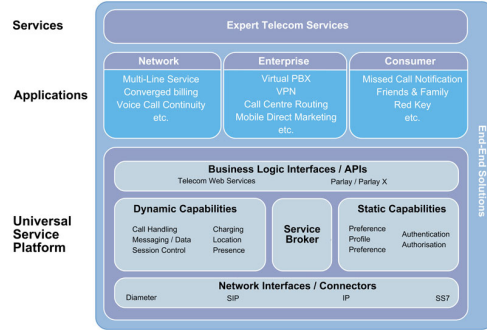
- Clean IP
- Customer contracts
- Updated and complete cap table
- Waterfall analysis
- Business model
- 3-5yr strategic/business plan
- Scenario analysis
- Virtual data room (VDR)

## CORPORATE DOCUMENTS REPOSITORY

- Corporate filings
- Board minutes
- AGMs
- Taxes
- Shareholder agreements
- Options agreements

# IDENTIFYING POTENTIAL BUYERS: USEFUL ANALYSES

## PRODUCT AND TECHNOLOGY "MAPS"



## BUYER BUCKETS

Sorted by category, then alphabetically, not systematically checked for conflicts or previous discussions

	TRADITIONAL TICKETING	SELF SERVICE TICKETING	SECONDARY TICKETING	MUSIC, THEATRE & EVENTS ECOSYSTEM	MUSIC PLATFORMS	ENTERPRISE SOFTWARE / OTHER	TOTAL
Count	8	6	6	6	7	4	37
A LIST	4	4	1	5	2	0	16
Logos	DEAG, eventim, live nation, ticketmaster, vivendi/See TICKETS	cvent, Eventbrite, ticketscript, VENDINI	ebay, StubHub	AEG, efk / paylogic, TIME OUT, WAVE IMG	PANDORA/ticketfy, Spotify		
B LIST	4	2	5	1	5	4	21
Logos	encore, FANDANGO, Fandango.com, TOPICA	billetto, XING EVENTS, onvendo	ticketbis, Razorgator, SeatGeek, viagogo, VIVIDSEATS	axel springer	CBS / lost.fm, DEEZER, SHAZAM, songkick, SOUND CLOUD	Advanced, amazon, ORACLE, SAP, Ticket WOP	

## PRIORITISATION AND SHORT-LISTING

Ranked by Overall Fit, then by Strategic Fit, \$ Firepower, M&A Propensity and Alphabetically

Company	Strategic Fit	\$ Firepower	M&A Propensity	Overall Fit
Buyer 1	●	◐	●	◐
Buyer 2	●	◐	◐	◐
Buyer 3	●	◐	◐	◐
Buyer 4	◐	◐	◐	◐
Buyer 5	◐	◐	●	◐
Buyer 6	◐	◐	◐	◐

## OTHER CONSIDERATIONS

- Buyer lists are dynamic and should be maintained
- Monitor the news involving buyers
- Identify and map relationships
  - Operational champion
  - Execution champion

# SPELLING OUT THE COMMERCIAL RATIONALE

## M&A rationales are often driven by potential revenue synergies

- **Short-term** – cross-selling **existing products to the other customer base**
- **Mid-term** – marketing jointly-developed **new products to existing clients**
- **Long-term** – marketing jointly-developed **new products to new clients**

## The commercial synergy matrix: a framework

		PRODUCTS		
		New products (for both)	Target's products	Buyer's products
CUSTOMERS	New clients and segments	Long-term synergies	Mid-term synergies	
	Target's clients	Mid-term synergies	Target as is	Short-term synergies
	Buyer's clients		Short-term synergies	Buyer as is

# CONSIDER THE DIFFERENCES OF APPROACH

## STRATEGIC



Focus on strategic fit



Longer lead time



Possible  
Earn out structure



Will demand exclusivity  
post signed LOI

## FINANCIAL / PE



Real focus on KPIs



Quick to get  
up to speed



Deep and broad  
due diligence



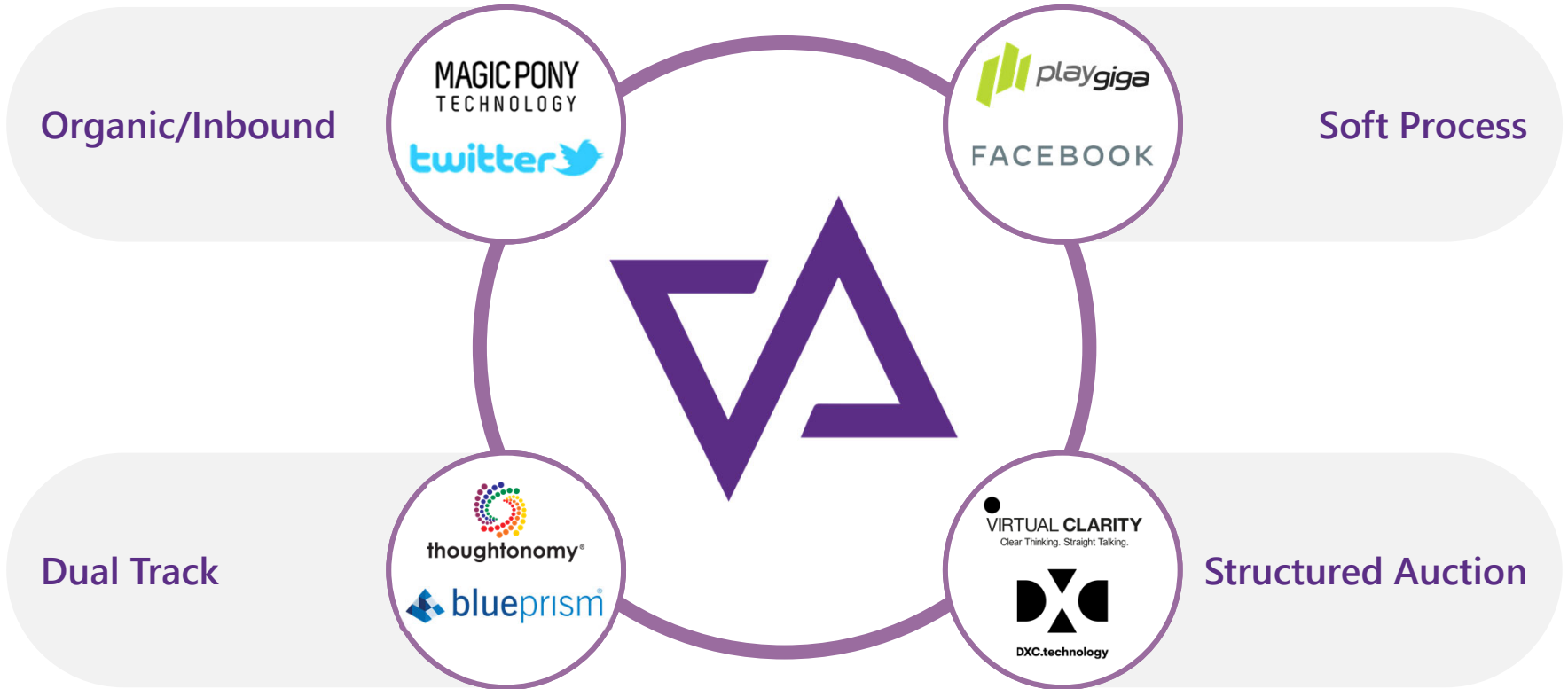
Flexible exclusivity  
post Term sheet



# GETTING STRATEGIC VALUE

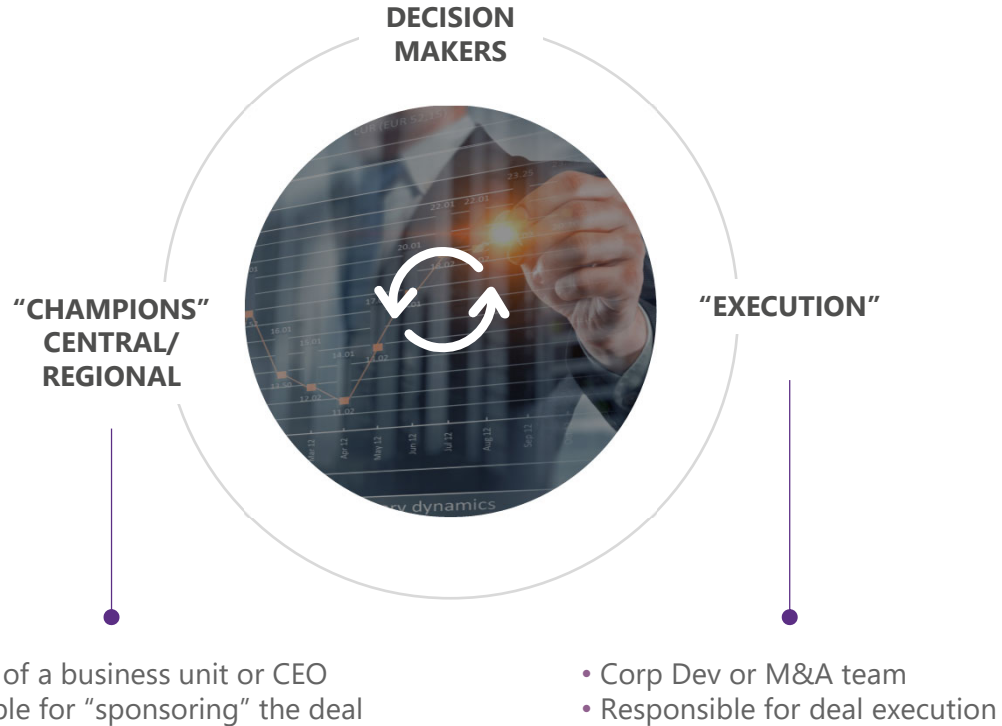


# DIFFERENT SITUATIONS REQUIRE DIFFERENT PROCESS TYPES





# BUYERS' SENIOR EXECUTIVES TYPICALLY INVOLVED



# THINGS TO REMEMBER DURING THE MARKETING PHASE

01

You are **selling**

02

The **perception of value is created by every piece of information** communicated

03

Retain and **communicate good news** during the engagement

04

Only ask for an LOI/Term Sheet **when buyers/investors have all relevant information**

# NUGGETS OF WISDOM IN NEGOTIATION



# PANEL DISCUSSION - LESSONS FOR AN OPTIMUM TRANSACTION

## Chairman:

Paddy MccGwire, Silverpeak

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Pietro Strada, Silverpeak

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Tim Bird, Fieldfisher

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Matthew Hare, Zzoomm

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**THANK YOU  
FOR JOINING**

