SILVERPEAK

Bird & Bird

OPTIMISING EXITS FOR EUROPEAN TECHNOLOGY COMPANIES

21 November 2019

SILVERPEAK

SOFTWARE LANDSCAPE:
ARE US GIANTS MISSING OUT ON EUROPEAN TARGETS?

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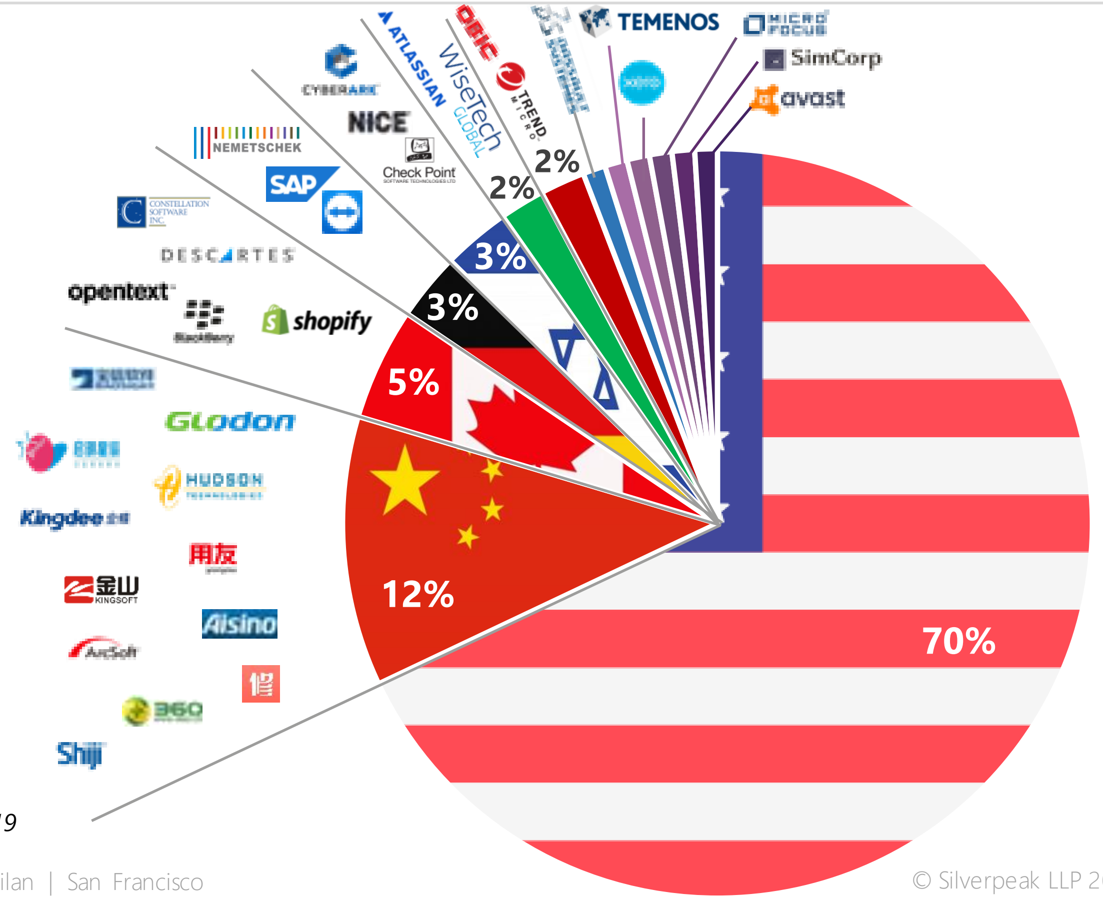
US DOMINATES THE SOFTWARE & SAAS GIANTS SCENE

Geographic distribution of 103 companies with market cap of at least $2.5bn

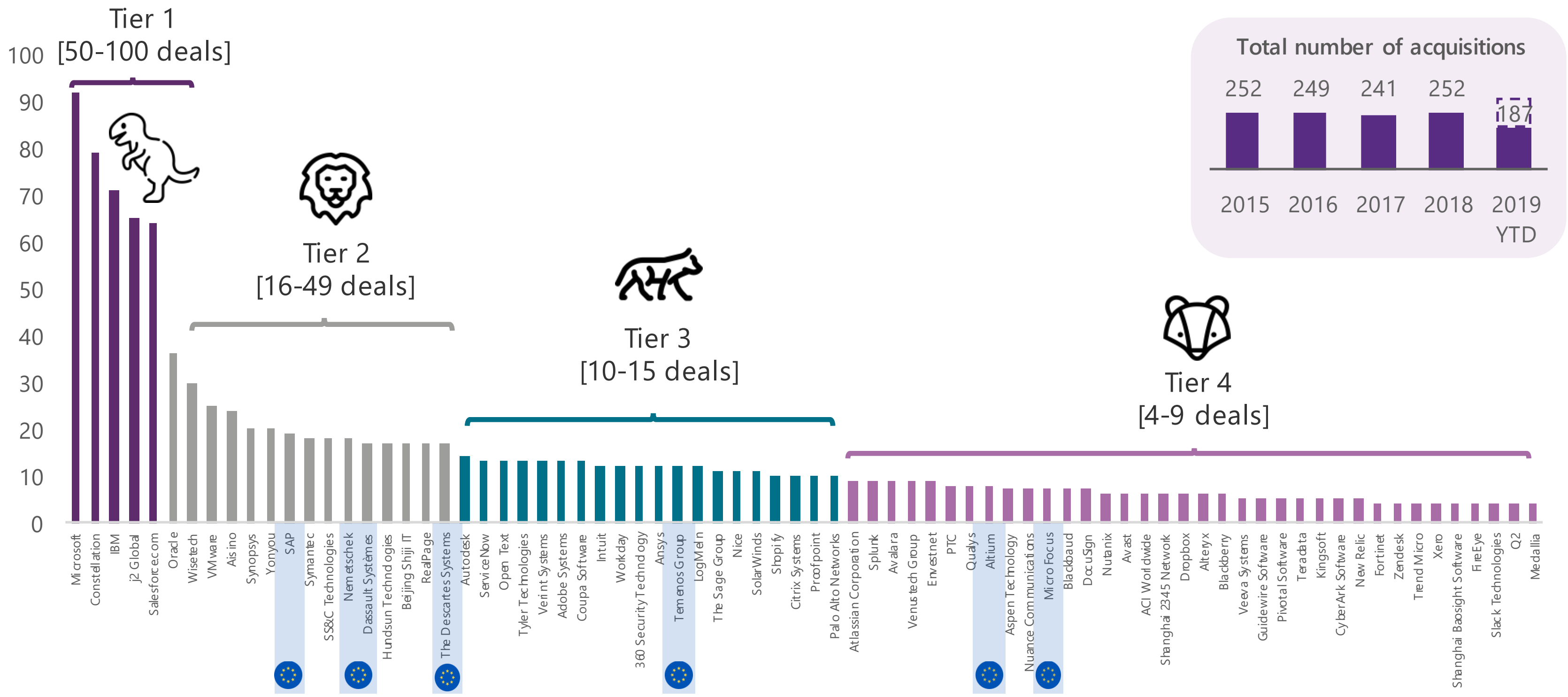
- Australia
- Japan
- France
- Switzerland
- New Zealand
- United Kingdom
- Denmark
- Czech Republic



Source: Capital IQ, based on market cap at 30/09/19

36 SOFTWARE & SAAS GIANTS HAVE OVER 10 ACQUISITIONS

of acquisitions of Software & SaaS giants 2015–2019 Q3



Source: Capital IQ

Note: 2019 YTD is up to 30/09/19

THERE IS AN INCREASING GROUP OF PE-BACKED BUYERS

Most active financial buyers of software & SaaS companies in 2018-2019 Q3

# OF DEALS	BUYER	TARGET
15	THOMA BRAVO	AUTODATA, mailgun, Aucerna, imperva, quorum, nintex, meridianlink, corily, ConnectWise, EllieMae, VERACODE, APTTUS, Centrify
10	VISTA EQUITY PARTNERS	Acquia, AltaReturn, Black Mountain, PlanSource, MINDBODY, Wrike, APPTIO, IAS Integral Ad Science, LogicMonitor, 7PARK
9	VALSOFT	CMSHospitality, Credex Systems, Profit Tools, Bluebird Auto Rental Systems, XLDent, SARS Software Products, Inc., thermeon, welcome
8	verdane capital	conexus, zisson, HR Manager, SCANMARKET, CAREERFOUNDRY, easypark, basware*
7	ESW CAPITAL	CHUTE, Avolin, ResponseTek, enseQuence, olive, firm58, kayako
6	KKR	rb media, burning glass, exact, myob, bmc

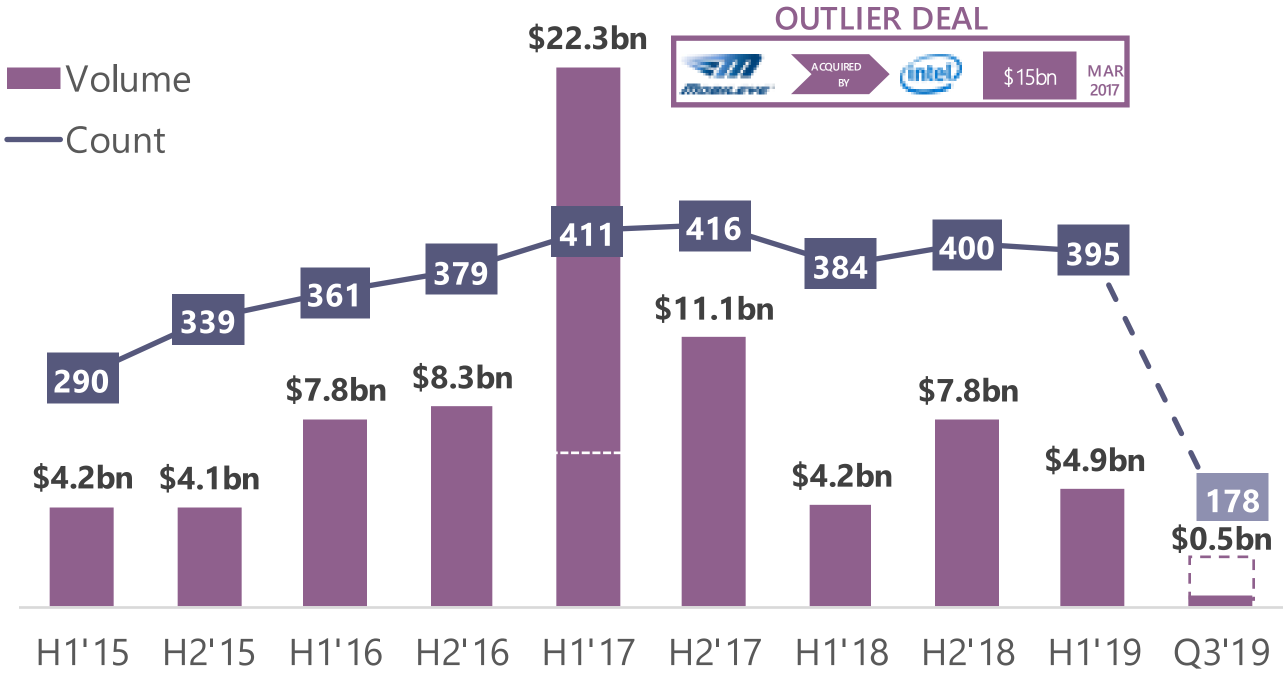
OTHER ACTIVE BUYERS (5+ TRANSACTIONS)

MARLIN EQUITY PARTNERS, INSIGHT VENTURE PARTNERS, bpifrance, ASG[1], FP Francisco Partners, EQT

*Baseware only sold one of its businesses units, [1]ASG is a strategic holding

ACQUISITIONS OF EUROPEAN COMPANIES PEAKED IN 2017

M&A of European Software and SaaS companies, by volume and count, 2015-2019 Q3



Source: Capital IQ

Note: closed deals only, includes rounds with undisclosed values

SELECTED M&A TRANSACTIONS 2018-19 Q3

2018

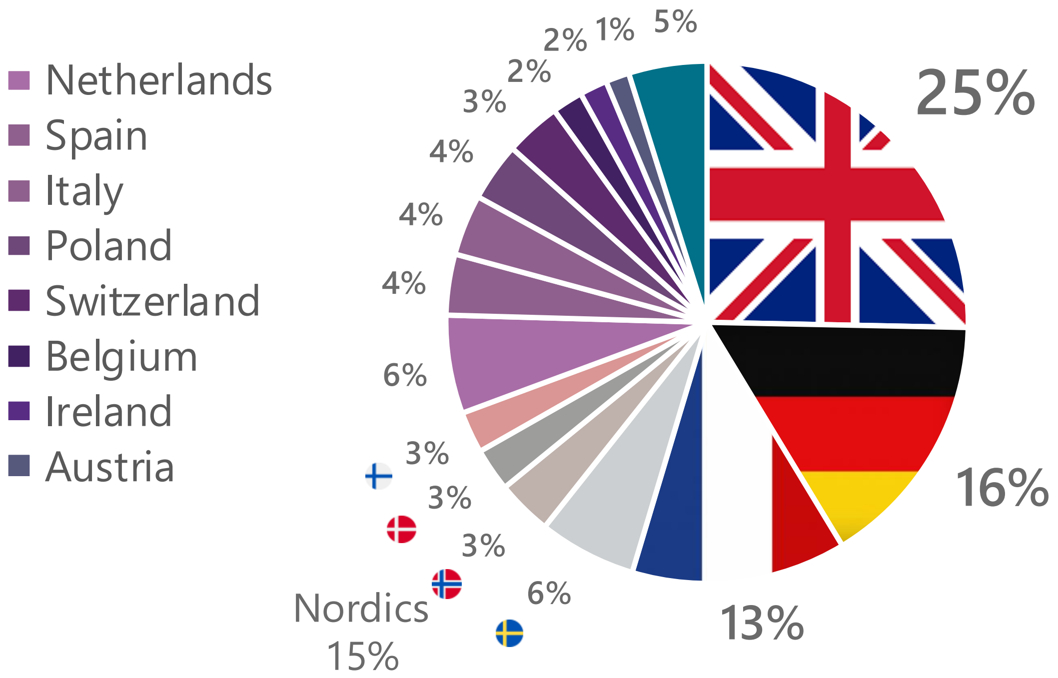
SUSE	ACQUIRED BY	EQT	$2,535m	JUL 2018
epi	ACQUIRED BY	INSIGHT PARTNERS	$1,160m	SEP 2018
NDS	ACQUIRED BY	PERMIRA	$1,000m	MAY 2018
link mobility	ACQUIRED BY	abry partners	$535m	JUL 2018
grapeshot	ACQUIRED BY	ORACLE	$454m	APR 2018
metrologic group	ACQUIRED BY	SANDVIK	$436m	APR 2018
NEWVOICEMEDIA	ACQUIRED BY	Vonage	$340m	SEP 2018

2019 Q1-Q3

eFront	ACQUIRED BY	BLACKROCK	$1,300m	MAR 2019
TOMTOM TELEMATICS	ACQUIRED BY	BRIDGESTONE	$1,034m	JAN 2019
FOUNDRY	ACQUIRED BY	roper	$542m	MAR 2019
GRANTA	ACQUIRED BY	ANSYS	$257m	JAN 2019
TAX SYSTEMS	ACQUIRED BY	BOWMARK CAPITAL	$147m	FEB 2019
allegorithmic	ACQUIRED BY	Adobe	$105m	JAN 2019
dataArtisans	ACQUIRED BY	Alibaba.com	$103m	JAN 2019

UK, GERMANY & FRANCE REPRESENT OVER 50% OF ALL TARGETS

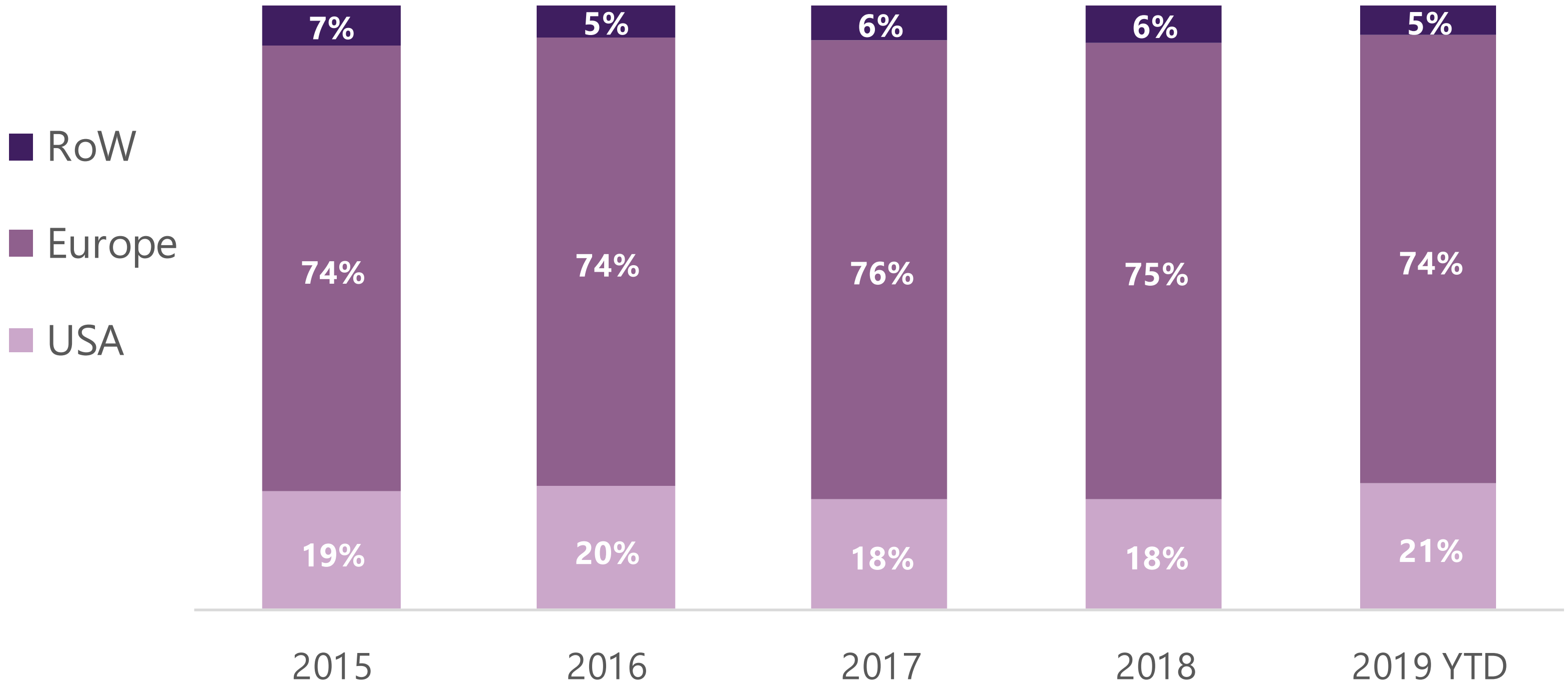
Breakdown of the number of European acquisitions by location of target 2015-2019 Q3



Source: Capital IQ

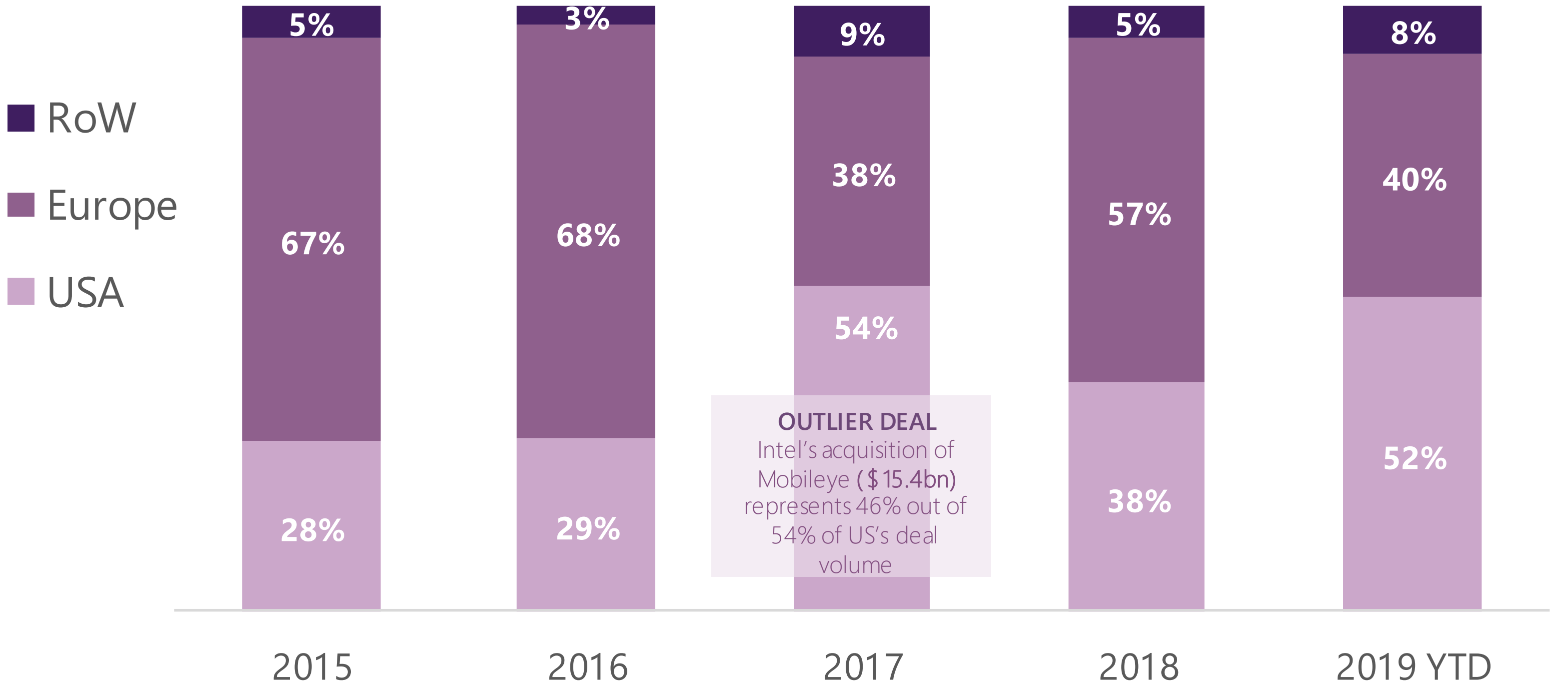
THE REPRESENTATION OF BUYERS REMAINS CONSISTENT

Geographical breakdown of buyers by **deal count** 2015-2019 Q3



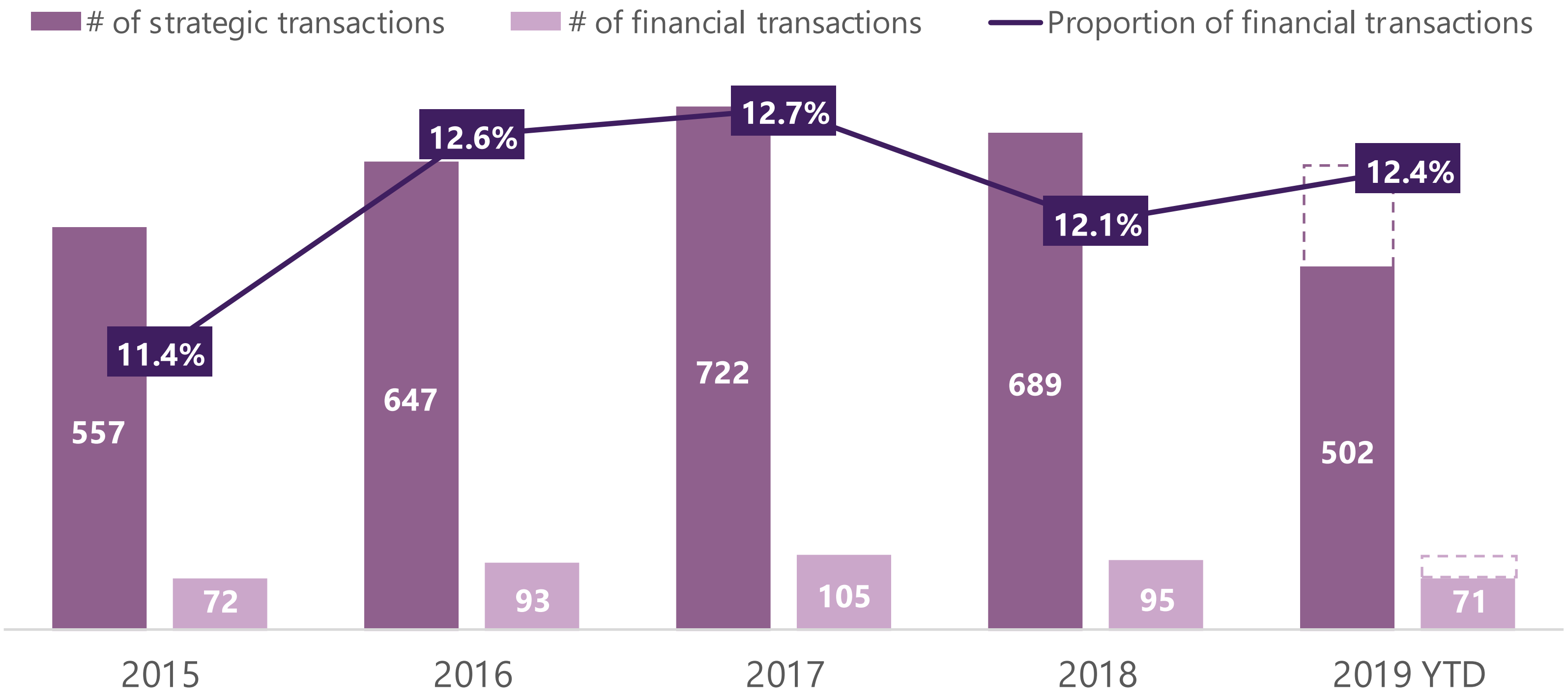
BUT US BUYERS SHARE OF DEAL VOLUME IS INCREASING

Geographical breakdown of buyers by **deal value** 2015-2019 Q3



PROPORTION OF FINANCIAL BUYERS IS PRETTY STATIC

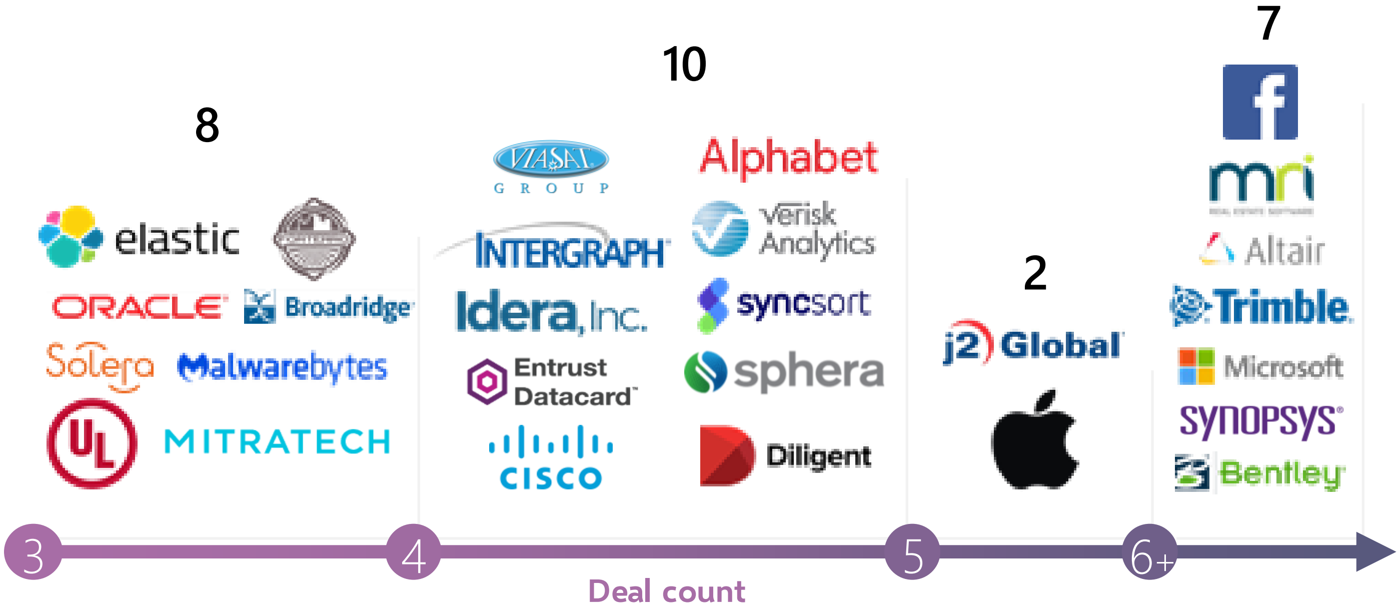
of deals split by financial and strategic buyers



Source: Capital IQ, 2019 YTD is up to 30/09/19

THERE IS ONLY A SMALL POOL OF REPEAT US BUYERS...

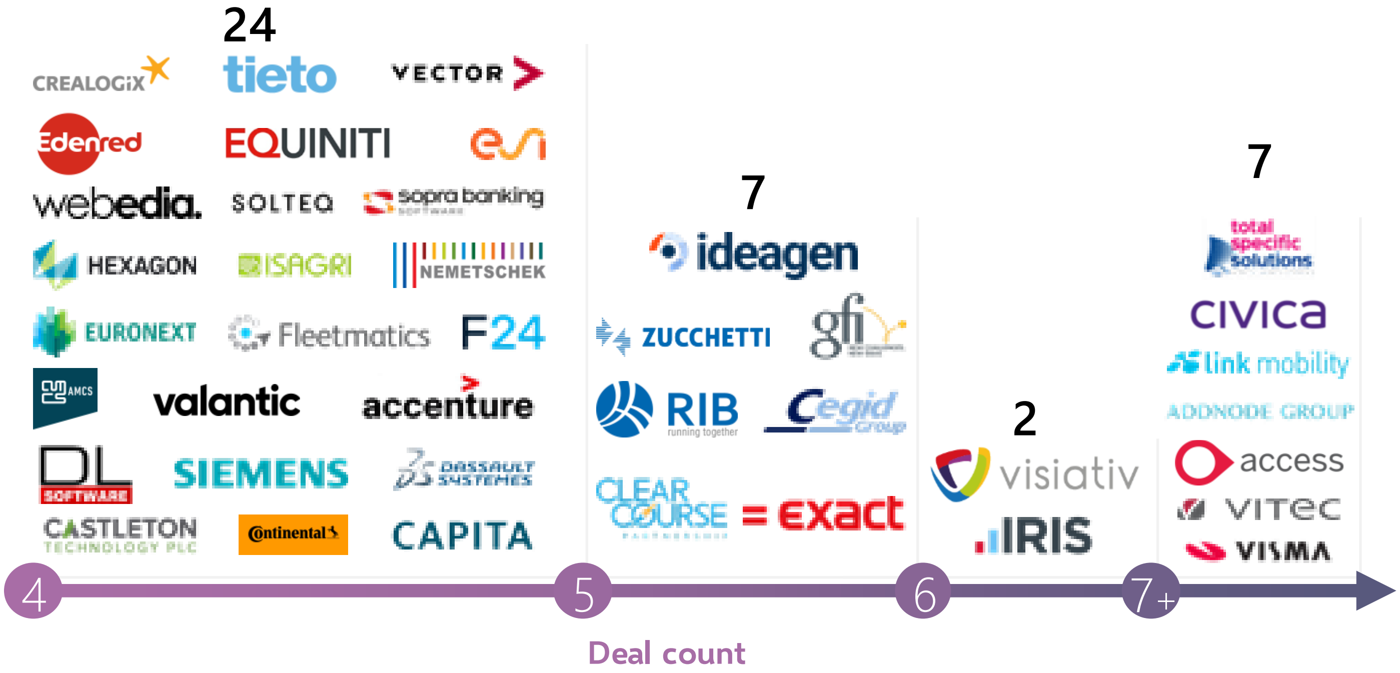
27 US companies have bought more than two European software companies 2015-2019 Q3



Source: Capital IQ

...BUT REPEAT EUROPEAN BUYERS ARE MORE PLENTIFUL

81 European companies have bought more than two European software companies 2015-2019 Q3



Source: Capital IQ

SINCE 2015, ONLY 5 GIANTS ARE REPEAT BUYERS OF EU COMPANIES

Global software giants
(≥ $2.5bn market cap & ≥ 10 acquisitions)

Buyers of European software & SaaS companies
(≥ 4 acquisitions)

Source: Capital IQ and Silverpeak analysis

Bird & Bird

TRENDS & RISK IN M&A TRANSACTIONS

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Bird & Bird &

Trends & Risk in M&A Transactions

21 November 2019

Agenda

1. Limitations on liability
2. Warranty & indemnity insurance
3. Tax
4. Purchase price adjustments

Limitations on liability

Limitations on liability

Financial caps on liability

- Most M&A agreements provide for the sellers' overall financial liability for warranty claims to be capped at an agreed level (absent fraud).
- In the UK it is still common for the financial cap to be between 90-100% of the purchase price on smaller transactions where there is not an auction process.
- There is an increasing trend towards buyers accepting a lower limit on the higher value deals, often 40% or less.
- Extension of types of fundamental warranties outside the caps on liability.
- Liability caps remain consistently higher for European transactions as compared to US transactions but US buyers are more likely to require a portion of the transaction value (often 10%) to be put into escrow.

Disclosure

- We are seeing a significant trend in buyers accepting general disclosure of the transaction data room, subject to a standard of 'fair disclosure', which is typically set out in the M&A agreement.

Limitations on liability

Time Periods

- Sellers are expecting a shorter period for general warranties (often as low as a single audit period).

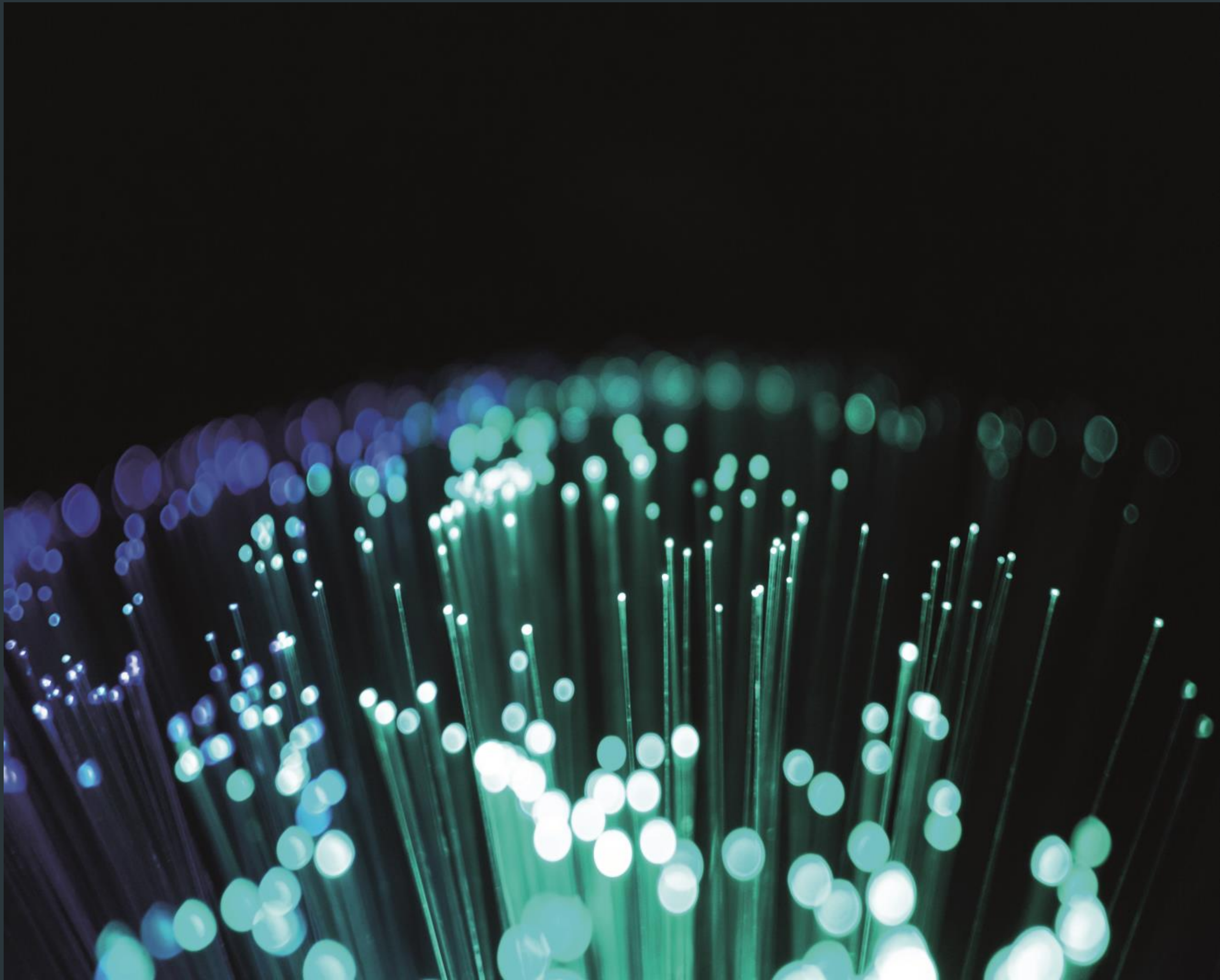
- For IP rich targets, purchasers are wanting a longer period for IP warranties, compromising on the period offered for tax, and accepting a four year period for both.

- It is common in most M&A transactions to have time limits on the buyer's ability to bring claims, usually with separate limits for tax and non-tax claims and for specific indemnities.

- In the absence of agreement to the contrary, the normal period during which a claim will be actionable is 6 years if the M&A agreement is signed under hand, or 12 years if it is executed as a deed.

- We are typically still seeing:
  - between 12 – 24 months after completion for general warranty claims; and
  - between 4 – 7 years after completion for tax warranties and the tax covenant
  - for specific indemnities - time periods set by reference to the matter concerned though buyers are increasingly under pressure to accept shorter time periods, particularly with the increased use of W&I insurance.

Warranty & Indemnity Insurance



Warranty and indemnity insurance

- 72% of our London Corporate fee earners reported seeing a rise in the use of W&I insurance over the last five years. Although this is still more typical in PE deals than in the sale of owner managed businesses.

- The benefits of W&I insurance include:
  – allowing sellers to have immediate access to sale proceeds and a reduced period of risk (if any) - in some sectors (such as real estate) the seller's cap on liability has been reduced to £1 with the insurance policy effectively paying for any claims that arise – but more difficult in tech deals and therefore not a "complete solution";

  – helps institutional investors obtain a clean exit, and if institutions are not able to give warranties avoids management being left with 100% of the liability;

  – on transactions where the sellers are joining the buyer's management team, W&I insurance can be particularly helpful in resolving warranty disputes which might otherwise poison the relationship between the parties; and

  – Range of products – can for example it is possible to get a knowledge scrape or get insurance for specific issues.

Warranty and indemnity insurance

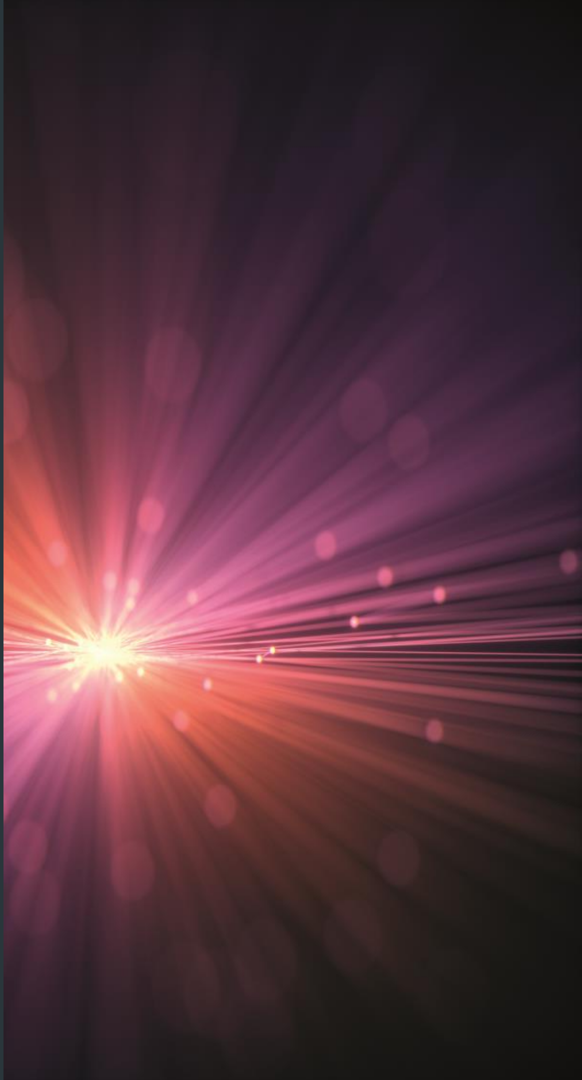
Location and types of Claim

- US team sees a much higher claims volume than the UK/European team.
- The European market's lower claims frequency results in lower premiums.
- New insurers have recently joined the market, focusing on SME deals. These insurers are offering limits of £5m for a £50,000 premium, allowing smaller deals to make use of W&I insurance.
- Transactions with deal sizes of between £5m-30m are starting to use W&I insurance as it becomes more economical to insure.

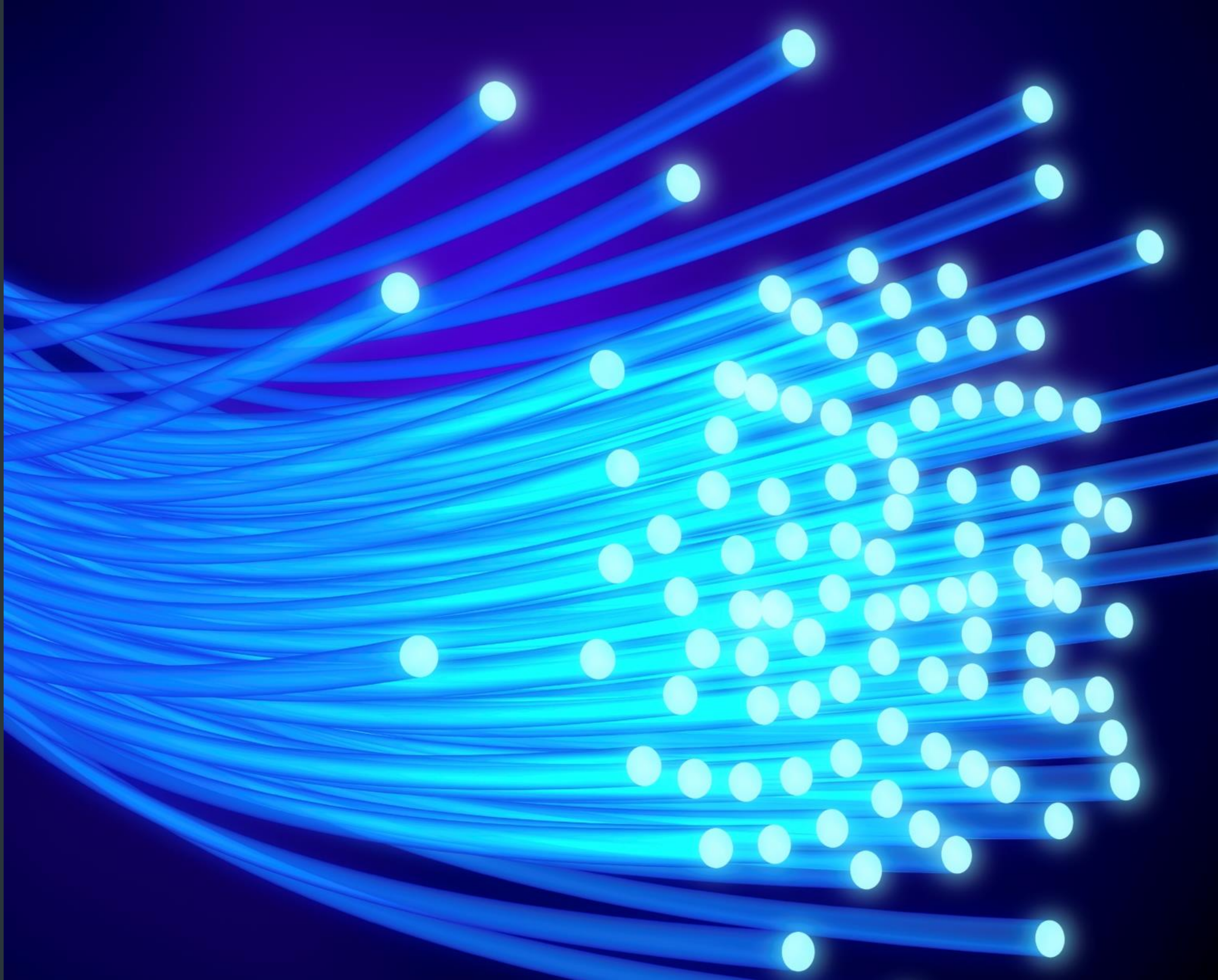
Tax

Tax

- Use of EMI options over growth shares to get ER (and put and call arrangements).
- Risks around Capital Gain Tax and Entrepreneurs Relief (and deciding whether to trade a dry tax charge for tax certainty) where deferred or earn-out payments are being made.
- Possible to make earn-outs conditional on management remaining with the business for a defined period without damaging the tax treatment.



Purchase price adjustments



Purchase price adjustments

Completion accounts vs locked box accounts

- Our London Corporate fee earners reported that 78% of transactions in the last 12 months have involved some form of a price adjustment mechanism.

- A completion accounts adjustment involves the final purchase price being calculated after the deal has been completed by reference to a set of accounts which are drawn up to the completion date. It is typical for the buyer to draw up the completion accounts within a specified period of completion.

- A locked box mechanism involves accounts being prepared to a date before completion – the locked box date. Any payments out of the Company after the locked box date to sellers and their connected persons will be subject to "leakage" provisions in the M&A agreement.

Purchase price adjustments

Earn-outs

- We have seen certain buyers taking a broader view on what earn-out targets are set with payments sometimes linked in whole or in part to non-financial measures such as successful integration of the target into the buyer's business – reflects the nature of some of the technology driven M&A and the importance of integration.

- We have seen an increase in partial deals where management retain shares in the seller with subsequent put and call option arrangements.

- Reasons to use earn outs:
  - where the management team is being retained to incentivise them;
  - to bridge the gap between the buyer's and seller's perception of the value of the business and future performance; and
  - where the buyer is operating in a new market or business.

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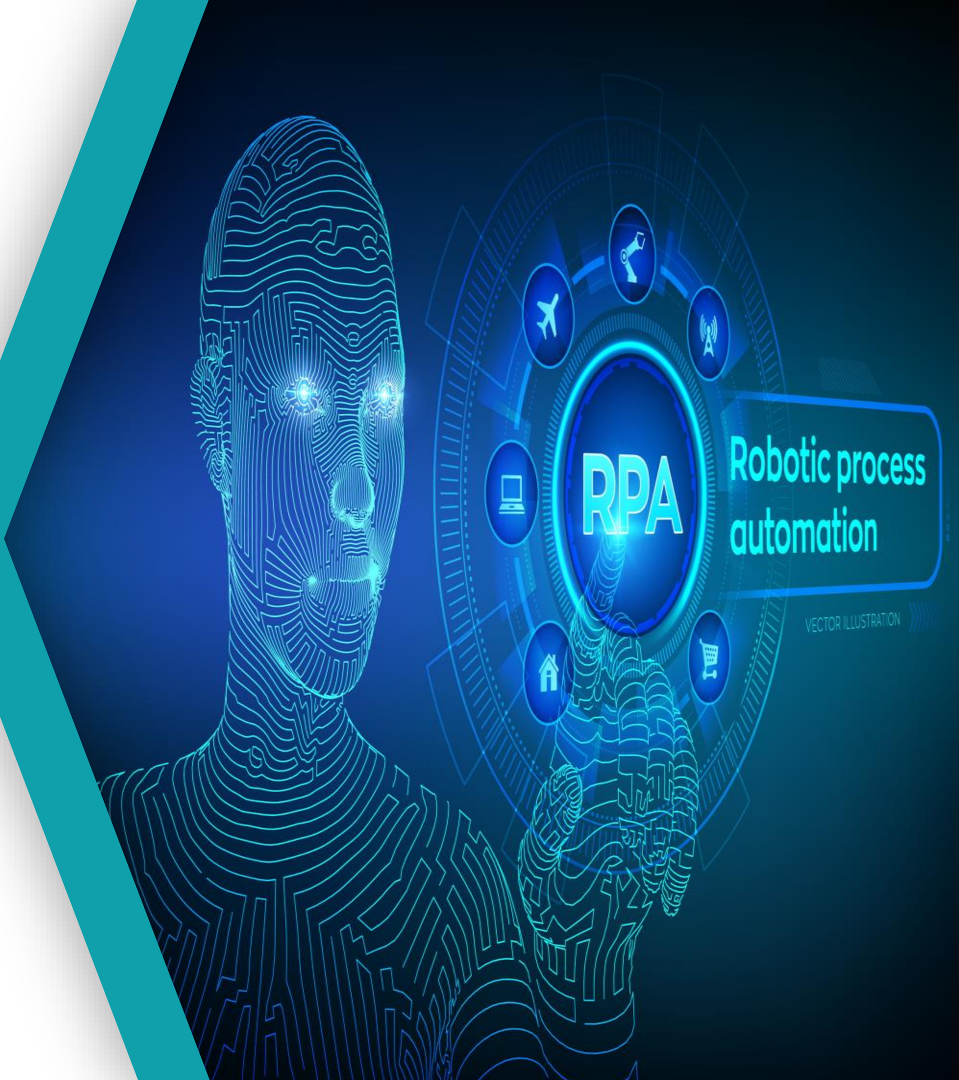
MY EXIT EXPERIENCE

Terry Walby



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ACHIEVING A STRATEGIC VALUE

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THE 3 HATS

Be clear on your objectives

CLEAR OBJECTIVES: THE 3 HATS

Company

Shareholder

Management

Identify individual objectives

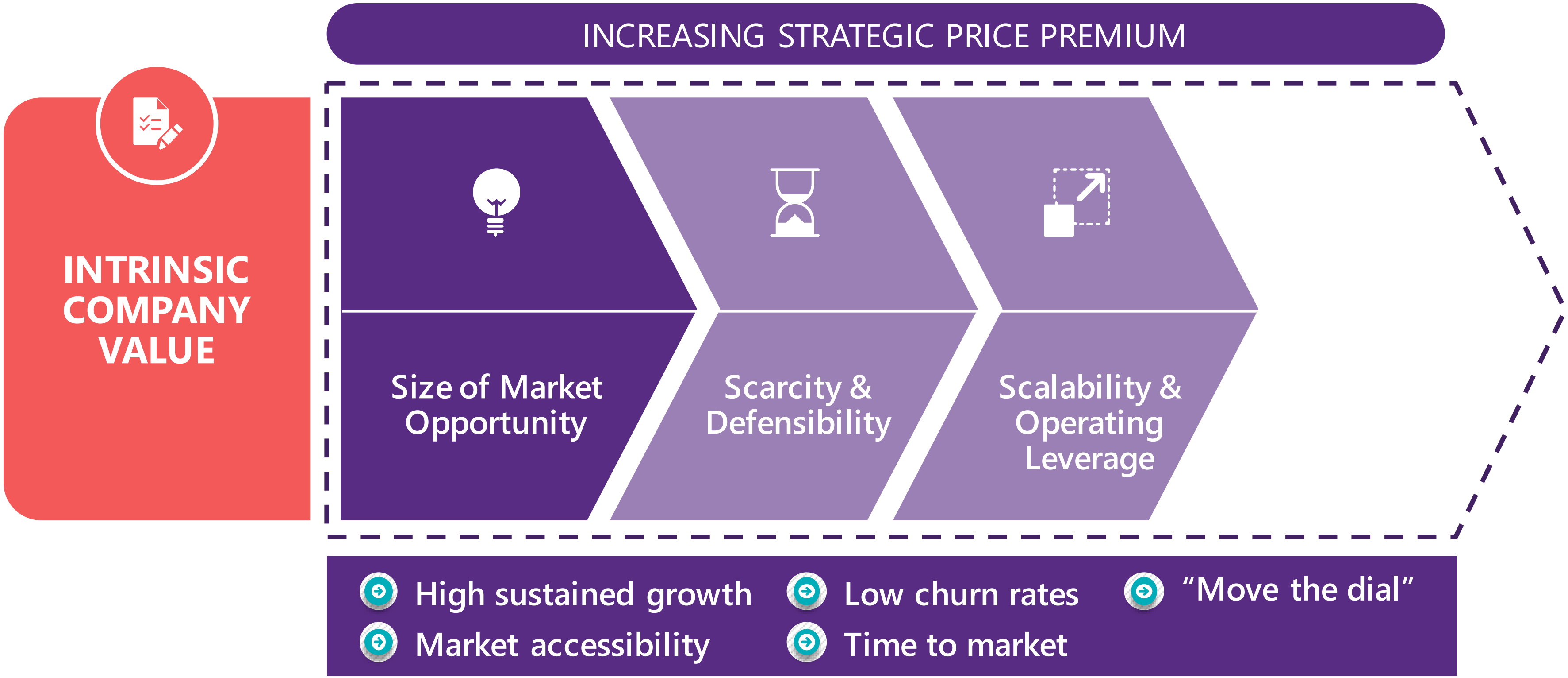
GETTING STRATEGIC VALUE

INCREASING STRATEGIC PRICE PREMIUM

INTRINSIC COMPANY VALUE

- Size of Market Opportunity
- Scarcity & Defensibility
- Scalability & Operating Leverage

GETTING STRATEGIC VALUE



GETTING STRATEGIC VALUE

INCREASING STRATEGIC PRICE PREMIUM

INTRINSIC COMPANY VALUE

Size of Market Opportunity

Scarcity & Defensibility

Scalability & Operating Leverage

- Absence of competition
- Barriers to entry
- Strong IP – differentiated & defensible
- High opportunity cost : build vs. buy
- Product pricing premium
- Value to multiple strategic buyers

GETTING STRATEGIC VALUE

INCREASING STRATEGIC PRICE PREMIUM

INTRINSIC COMPANY VALUE

Size of Market Opportunity

Scarcity & Defensibility

Scalability & Operating Leverage

High scalability + high operating leverage = higher operating margins

GETTING STRATEGIC VALUE

INCREASING STRATEGIC PRICE PREMIUM

INTRINSIC COMPANY VALUE

- Size of Market Opportunity
- Scarcity & Defensibility
- Scalability & Operating Leverage
- Value to Buyer

How do we share the combined value that is not available to either individually?

PRACTICALLY, HOW?

- Start when ready
- Prepare thoroughly
- Target acquirers globally
- Create a market
- Articulate clearly
- Help the acquirer help you

Be realistic and run a competitive process

Appoint quality advisers

SO WHAT IS A STELLAR EXIT?

High
Value?

High revenue
multiple?

High return on
capital invested?

High earnings
multiple?

PANEL DISCUSSION - LESSONS FOR AN OPTIMUM EXIT

Chairman:
Paddy MccGwire, Silverpeak

Simon Fielder, Bird & Bird

Pietro Strada, Silverpeak

Terry Walby, Thoughtonomy

Tom Wrenn, ECI Partners

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THANK YOU FOR COMING