NautaDutilh Q1 2015 Private Equity & Venture Capital Barometer Belgium

This is the second NautaDutilh Belgium Private Equity & Venture Capital Barometer. After our spring 2014 Interim Report, we submitted a questionnaire to a select group of private equity and venture capital players, asking about trends in their practice in the last two quarters of 2014 and the first quarter of 2015. Our first Barometer presented the Q3-Q4 2014 results. This publication shares highlighted results from the first quarter of this year. In September, we will present trends for the summer 2014-summer 2015 period.

For more information on NautaDutilh's Private Equity Team:
http://www.nautadutilh.com/Documents/Images%20and%20publications%20for%20news/Private_Equity_report_Benelux_2014_US-format.pdf

Elke Janssens
T: +32 2 566 81 50, M: +32 478 99 63 45
E: elke.janssens@nautadutilh.com

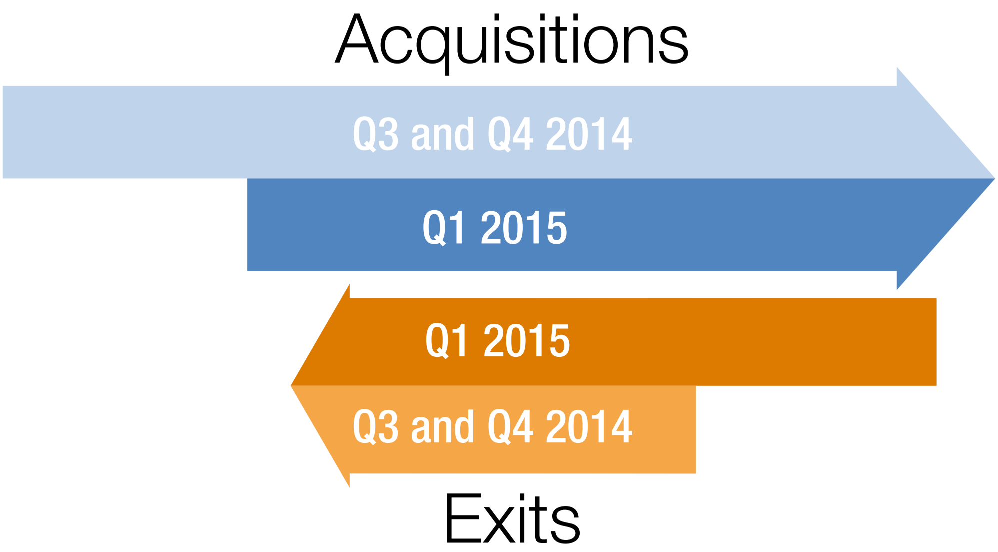
Pascal Faes
T: +32 2 566 86 12, M: +32 477 93 10 92
E: pascal.faes@nautadutilh.com

Sophie Jacmain
T: +32 2 566 81 94, M: +32 497 51 47 73
E: sophie.jacmain@nautadutilh.com

The 2013 Report refers to «NautaDutilh's 2013 Belgian Private Equity and Venture Capital Market - An Outlook», available at http://www.nautadutilh.com/PageFiles/10051/Private_Equity-Report_Belgium_2013%20UK.pdf.
The 2014 Interim Report refers to «NautaDutilh's 2014 Outlook on the Benelux Private Equity, Venture Capital & Leveraged Finance Market - An Interim Report», available at http://www.nautadutilh.com/Documents/Images%20and%20publications%20for%20news/Private_Equity_report_Benelux_2014_US-format.pdf.
The Q3-Q4 2014 Barometer refers to the first NautaDutilh Private Equity & Venture Capital Barometer, available at http://www.nautadutilh.com/en/home/news-events/news-publications/news/2015/4/q3-q4-2014-belgian-private-equity-venture-capital-barometer/.

The number of acquisitions drops significantly and equals the number of exits!

In Q1 2015, the reported number of acquisitions equalled the number of exits. This is in line with data from MergerMarket, according to which most



acquisitions (by a single PE/VC player) are also exits (by another PE/VC player). Other notable transactions included sales by a family shareholder (see below). In Q1 2015, fewer acquisitions by corporates were reported.
The average percentage of received business propositions investigated by Q1 2015 respondents rose by over 20% (from 31% to 37%). The average percentage of received business propositions further negotiated also rose (from 12% to 15%). The number of weeks needed to sign/close a deal (from receipt of the information memorandum) held steady at approximately 18 weeks. Even though no conclusions can be drawn from these figures *per se* (regarding differences in investment policies of private equity and venture capital players or business angels, such as a preference for several smaller annual investments versus a single significant one), there are two possible reasons why more proposals are being reviewed. On the one hand, more good targets which meet investors' criteria may be on the market; on the other hand, private equity and venture capital players may be compelled to review more candidates as the quality of available targets is decreasing. As mentioned in our previous Barometer, the following still holds true: «Continuously low interest rates, low investments over the last few years and available funding opportunities on the market mean that both Belgian PE and VC/BA players have large cash reserves available and are still actively looking for investment targets». This may explain why an increasing number of potential targets is being screened. «In addition, the government is stimulating entrepreneurship and thus start-ups, which are looking for venture or seed capital,» states Elke Janssens, head of NautaDutilh's Private Equity Group.

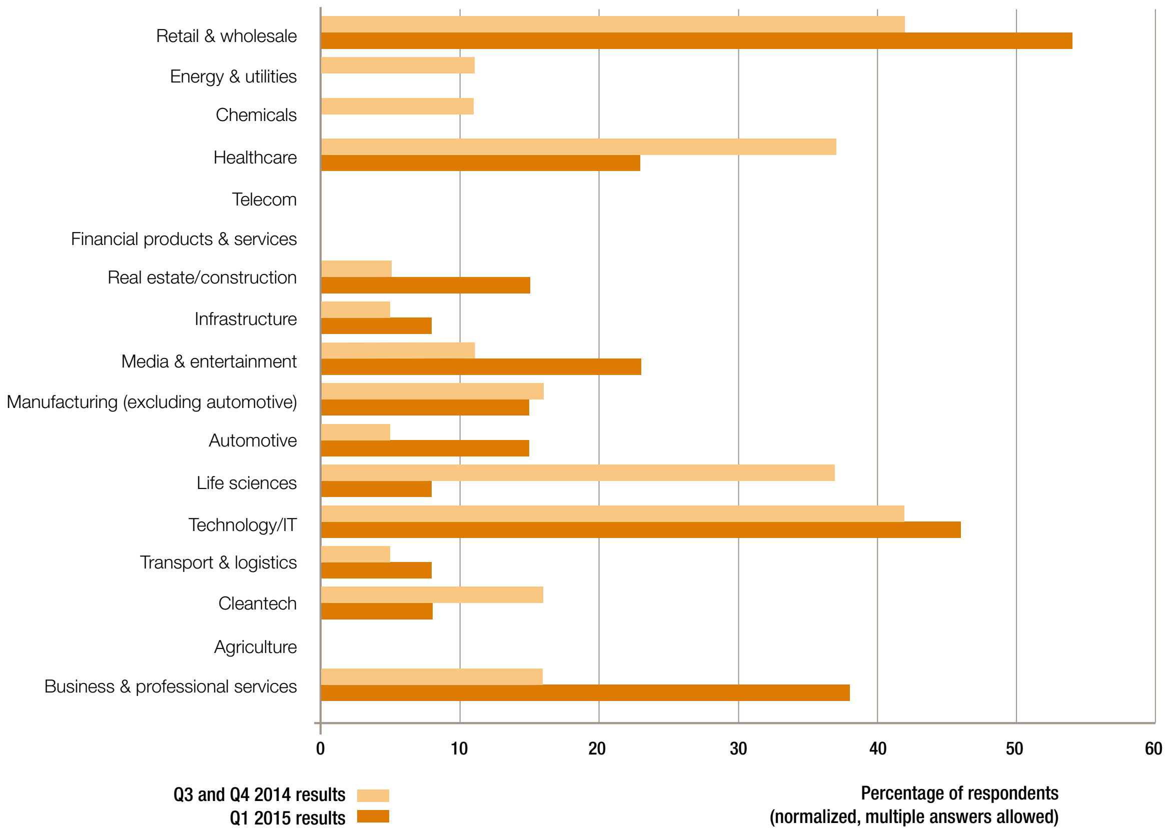
The number of acquisitions significantly dropped in both absolute (29 signed and closed transactions, down from 114) and relative (2.25 acquisitions per Barometer respondent, down from 6) terms. Nevertheless, the number of exits held relatively steady at two exits or divestments per Barometer respondent.

Sectors with the most PE/VC activity[1]

In the 2013 Report : the 2014 Interim Report and the Q3-Q4 2014 Barometer, the technology & IT, retail & wholesale, life sciences, and healthcare sectors held the top spots for Q3 and Q4 2014. We have already pointed out shrinking profit margins and the fact that many Belgian retail and wholesale companies are for sale. This trend is confirmed by our Restructuring and Insolvency team and by the first-place ranking of retail and wholesale transactions in Q1 2015. The acquisition by PAI Partners of AS Lathouwers (a specialty retailer of outdoor equipment and clothing) and the auction sale of Veritas (acquired by Indufin and management) are both worth mentioning.

Second place is held by the technology & IT sector. In this regard, Cobepa's bid for Exclusive Networks Group (a UK company active in the distribution of security, storage and network technologies), AAC Capital Partners' bid for Corilus (a Belgian developer of software and hardware for the healthcare sector), and HGST's bid for Amplidata (a Belgian provider of object storage technology) are all worth mentioning.

Somewhat surprisingly, third place is held by the business and professional services sector. Noteworthy transactions included the bid by Accent Jobs for People (a Belgian provider of recruitment and leasing services) for the Abylsen Group (a French engineering and consultancy services firm).



(Please note that for the sake of clarity the graph now indicates the «Percentage of total respondents» while the previous Barometer referred to the «Percentage of total responses».)

[1] The information is based on press coverage or obtained from www. mergermarket.com.

A life sciences deal which received substantial press coverage was Intrexon's acquisition from GIMV and Life Sciences Partners of ActoGeniX (a Belgian bio-pharmaceutical company focused on the development and commercialisation of ActoBiotics), a 2006 spin-off of VIB (the Flemish Institute for Biotechnology) and the University of Ghent.

Distressed company deals

The Q3-Q4 2014 Barometer showed that investors have little interest in distressed assets. Indeed, for the most part, the abovementioned acquisitions did not involve distressed companies. The Q1 2015 Barometer confirms this trend, with nearly no respondents mentioning distressed company deals. Heightened risk adversity and the fact that weak companies with structural issues are likely to increasingly underperform if market conditions worsen both influence the choice of target.

In her daily practice, however, Sophie Jacmain of NautaDutilh's Restructuring and Insolvency Team witnessed in Q1 2015 an increase in both involuntary restructuring procedures and silent debt restructuring activities (i.e. companies trying to renegotiate and modify their agreements with banks), in which we mainly act as an advisor to the bank. In general, restructuring work involves two sectors: retail & wholesale (established brands are increasingly facing stiff competition) and real estate (due to high office vacancy rates, special purpose vehicles holding real property are no longer able to reimburse their debts). In both sectors, the acquisition price tends to be paid in several instalments, depending on the restructured target's performance and results.

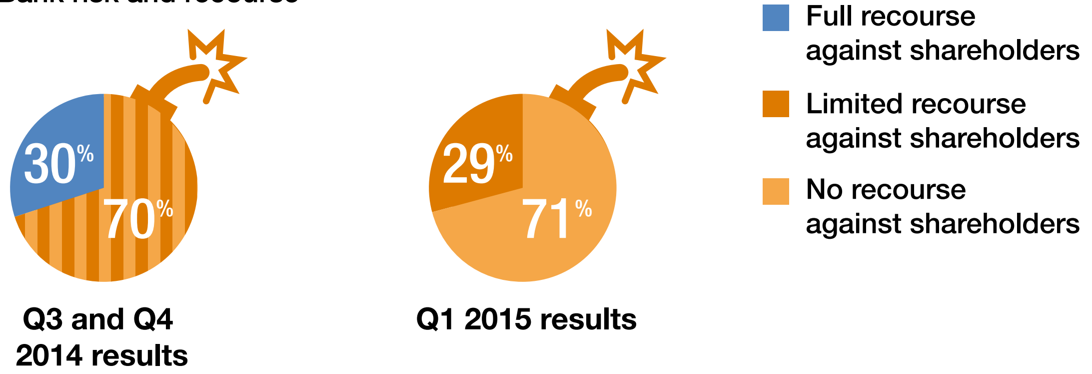
Debt to equity, bank risk and recourse

Respondents to our 2013 Report and our 2014 Interim Report predicted a rise in equity levels to 30-40%; the actual figure is around 30%. This is in line with our findings with respect to deals closed in the reference period.

In our experience, bank debt is secured in nearly all transactions. However, the number of respondents confirming this conclusion decreased from 86% to 62%.

One surprising trend reported in Q3-Q4 2014 was that in 30% of deals, respondents mentioned that the acquisition was financed with full recourse against shareholders, while we expected limited-recourse financing. As expected, the Q1 2015 Barometer shows a drop to 0% of deals with full recourse against shareholders, while 29% of deals have limited recourse and 71% no recourse.

Bank risk and recourse



Investment partners

Both the Q3-Q4 2014 and Q1 2015 Barometers focus on two key findings: firstly, most respondents invested either with a co-investor or current management (the Q1 2015 Barometer confirmed our findings that players usually team up or invest with current management, an increase from 30% to 50% between Q3-Q4 2014 and Q1 2015); secondly, management's stake tends to be around 20% (i.e. most respondents reported a management stake of up to 20%, in line with the findings of our 2013 Report, our expectations for 2014 and the Q3-Q4 Barometer, even though a management stake of up to 50% can be found in specific deals sponsored by venture capitalists or business angels).

Another interesting finding is that when asked about the percentage of the target company acquired, answers of up to 85% were given (as in the previous barometer). While in practice private equity and venture capital players often acquire nearly all outstanding shares of the target, some common shares may continue to be held by management or the previous majority shareholder (often a blocking minority stake of 15% to 20%).

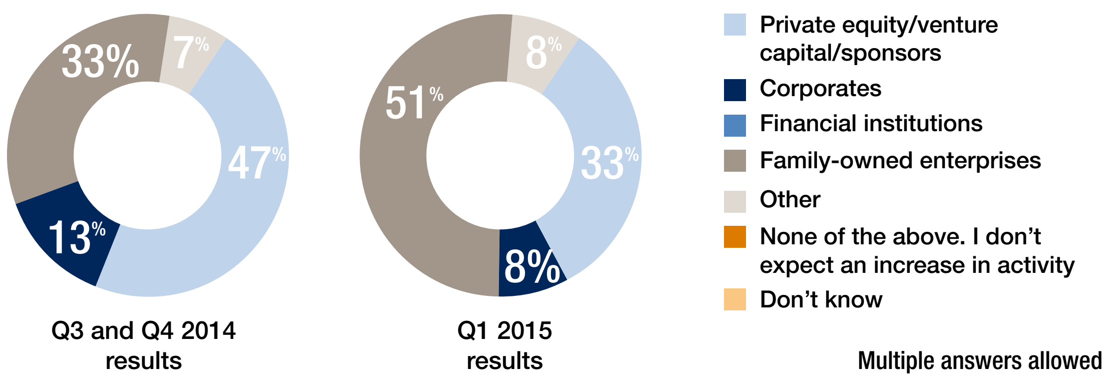
Who are the sellers?

In most cases (respondents were allowed to give multiple answers), Q3-Q4 2014 respondents mentioned a transaction in which a PE player or family was on the selling side (few corporates and no financial institutions were mentioned). This was in line with the findings of our 2013 Report and 2014 Interim Report, both of which identified family owners and PE players as the most likely sellers over the next twelve months.

We were somewhat surprised by the Q3-Q4 Barometer results, according to which PE/VC players were the most active sellers (which could be explained by the fact that closed-end funds are obliged to exit). However, the Q1 2015 results confirmed our previous findings that the shareholders of family-owned enterprises lead the sellers' pack (50% of sellers).

One sale of a family-owned business which received substantial press coverage was the EUR 315 million acquisition by Kingspan Group (Ireland) of Joris Ide (a Belgian manufacturer of steel roof and wall coverings) from Ergon Capital Partners, the majority shareholder's Belgian holding company, and founder Joris Ide.

Who are the sellers



Multiple answers allowed
Percentage of total answers

Tax issues

This publication does not purport to provide an extensive overview of all relevant changes in tax law. However, we would like to draw your attention to the following three issues: (i) Luxembourg and Belgian ruling practice is currently under scrutiny by the European Parliament; (ii) the Belgian fairness tax has been challenged; and (iii) there are a number of noteworthy recent developments regarding VAT exemptions.

(i) Special Committee on Tax Rulings and Other Measures Similar in Nature or Effect (TAXE)

The European Parliament established TAXE to examine practice in the application of EU state aid and tax law in relation to tax rulings and other measures similar in nature or effect issued by the Member States. Between mid-March and mid-July 2015, stakeholders will be heard. TAXE organised public hearings on tax rulings and harmful tax practices on 11 May 2015 (mostly an exchange of views with investigative journalists) and 1 June 2015 (covering the international dimension of tax rulings and other measures). We will keep you posted of any significant conclusions drawn by TAXE.

«Even though 57% of respondents stated that Belgian ruling practice is not a factor when considering potential deals [in line with the 2013 Report and 2014 Interim Report], we assisted several clients with the filing of applications in the reference period and continue to assist clients filing such applications today», confirms Pascal Faes, a tax partner with NautaDutilh. With respect to the location of the acquisition vehicle, even though Lux Leaks reported that the acquisition vehicle's majority shareholder is often based in a tax haven, respondents answered that in 78% (Q3-Q4 2014) and 88% (Q1 2015) of deals, the acquisition vehicle's majority shareholder is located in Belgium.

(ii) Challenge to the fairness tax

The Act of 30 July 2013 introduced the so-called fairness tax, a separate assessment aiming at taxing distributed profits (dividends) not effectively subject to normal Belgian corporate tax due to the notional interest deduction and/or the carry-forward of tax losses. The fairness tax applies as from assessment year 2014, at a rate of 5.15% (i.e. 5% plus a 3% surcharge).

On 28 January 2015, the Belgian Constitutional Court requested a preliminary ruling from the Court of Justice of the European Union (CJEU) on the question of whether the fairness tax is compatible with EU law. The question referred to the Court was whether the fairness tax violates the Parent-Subsidiary Directive, as Belgium levies an extra tax on dividends exchanged between a subsidiary and its parent company. In the run-up to the hearing before the Constitutional Court in late November 2014, documents were produced stating that the European Commission considers the fairness tax to violate the Parent-Subsidiary Directive. In the meantime, however, the Commission has unofficially informed Belgium that it no longer deems the fairness tax contrary to the Parent-Subsidiary Directive, even though it has not yet taken a final position on this matter.

(iii) VAT issues

In order to comply with a position adopted by the European Commission in 2011, the Belgian VAT authorities were obliged to modify the VAT treatment of legal-entity company directors: as of 1 January 2016, they will no longer be able to choose whether to apply VAT to their fees. A corporate entity holding a directorship must henceforth always register as a VAT payer, apply VAT to services rendered, and comply with all VAT filing rules and regulations (VAT Decisions 125.180 and 125.180/2). Companies with legal-entity directors on their board will thus have to pay 21% VAT on their directors' fees. If the company is entitled to a full deduction of input VAT, there will be no additional cost. However, if the company is not entitled to a full deduction of input VAT, an additional cost will arise. For the sake of completeness, please note that this decision does not affect natural-person directors, whose activities fall outside the scope of VAT.

One possible statutory basis to exempt directors' fees charged to qualifying UCITS from VAT could be Article 44(3)(11) of the Belgian VAT Code, which exempts the administration of qualifying UCITS from VAT. Please note, however, that while the administration of private equity vehicles used to fall within the scope of this exemption, the new article (which entered into effect on 16 July 2014) no longer covers services related to the administration of such vehicles. On 30 March 2015, the VAT administration issued VAT Decision 127.885, stating that all entities falling within the scope of the Act of 3 August 2012 on 27 March 2014 would continue to benefit from the exemption. We have been informed that the finance minister will propose this fall an amendment to Article 44(3)(11) in order to bring all private equity vehicles (back) within its scope of application. We will be sure to keep you duly informed.