Auction strategies

Optimising your auction.

Freshfields Bruckhaus Deringer

There are various things that sellers and buyers can do to maximise value.

Auctions

have for some time been the preferred method for private (and some public) M&A processes and there are various things that sellers and buyers can do to maximise value/get ahead of the competition.

This document outlines

some of the techniques sellers and buyers can use to put themselves in the best position. Whichever side of the auction you are on, knowing the other side's tactics and pressure points will be an advantage.

We conducted detailed analysis

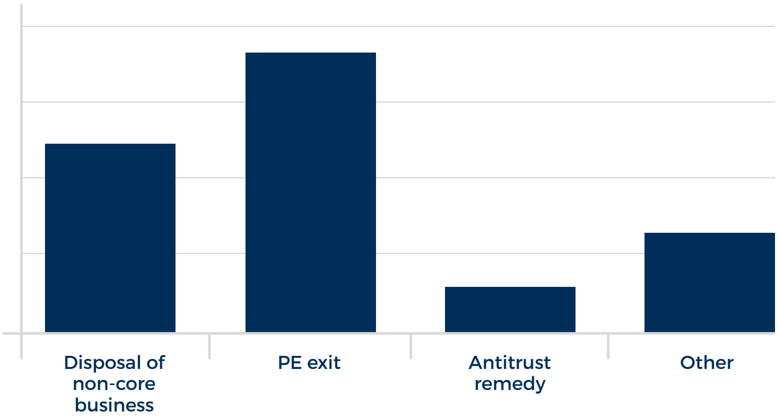
of over 50 recent private M&A auctions across the globe on which Freshfields advised. In this document we summarise some of our findings to highlight certain trends that we are seeing.

Auction processes

Rationale for auction

Rationale will impact many of the drivers, for example:

- private equity (PE) exit — less likely to offer business warranties and management issues may be more acute;
- corporate/non-core disposal — carve-out complexities could impact pre-signing auction timeline and process; and
- antitrust remedy — certainty of closing will be the number one driver, above even value.



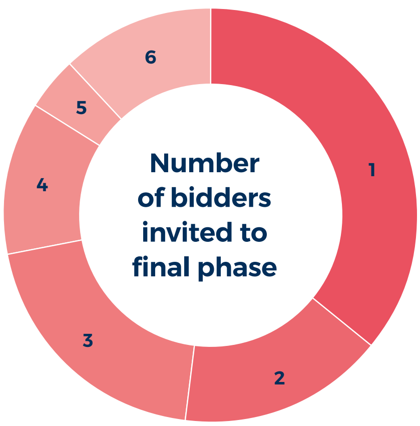
The auction framework

- Various drivers will impact the optimum framework, for example financial sponsors typically prefer to defer most of their costs until the final stages.
- Two-stage auctions are now the most common.
- The quality of bids will influence how many bidders get invited to the final stage, but there is a trend towards fewer, higher quality bidders.

Key consideration

Many bidders will want to move fast, but setting an unrealistic timetable can put off certain bidders.

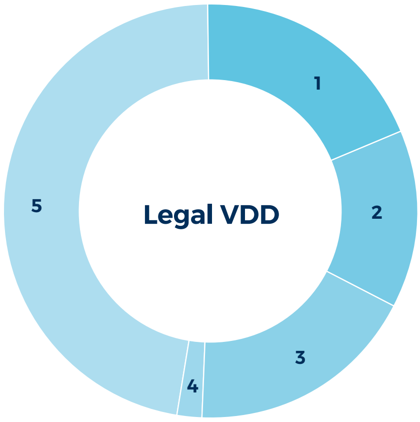
1	Two stages	67%
2	Three stages	31%
3	Other	2%



1	Two bidders	36%
2	Three bidders	16%
3	Four bidders	20%
4	Five bidders	12%
5	Six bidders	4%
6	Other	12%

Vendor due diligence

- Most auctions include financial and commercial reports.
- Important to understand if other specialist reports, such as environmental, insurance, etc, will assist bidder financing.
- Legal reports in some form now more common than not (although still remain rare in US-led and Asia-led processes).

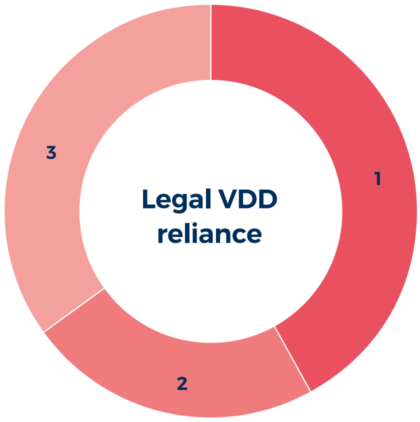


1	Full report	19%
2	Red flags report	14%
3	Factbook	18%
4	Data room roadmap	2%
5	None	47%

Key considerations

Factor in sufficient time to scope properly and for a thorough review and editing exercise of all reports. Rushed reports can cause irreparable harm.

How and when should highly sensitive commercial information be disclosed? This may drive the endgame tactics.



1	Purchaser/lenders	42%
2	Purchaser	23%
3	None	35%

Aligning management

Upfront steps to fully align management can be key to maximising value:

- effective incentivisation; and
- ensuring management feels the seller has their backs (eg requiring adequate severance terms, where applicable).

Common pitfalls include:

- not involving them early enough;
- not chaperoning all management interactions with bidders;
- insufficient rehearsal of the management presentation;
- not controlling the Q&A process, so management gets overwhelmed; and
- not factoring in time for certain outputs if the bidder is PE (eg a management warranty deed and equity term sheet will normally be negotiated by signing).

To receive a copy of the complete version of this report, please contact:

mary.hatt-lewis@freshfields.com