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Public M&A Year in Review: Trends and Highlights from 2016

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Presenter:

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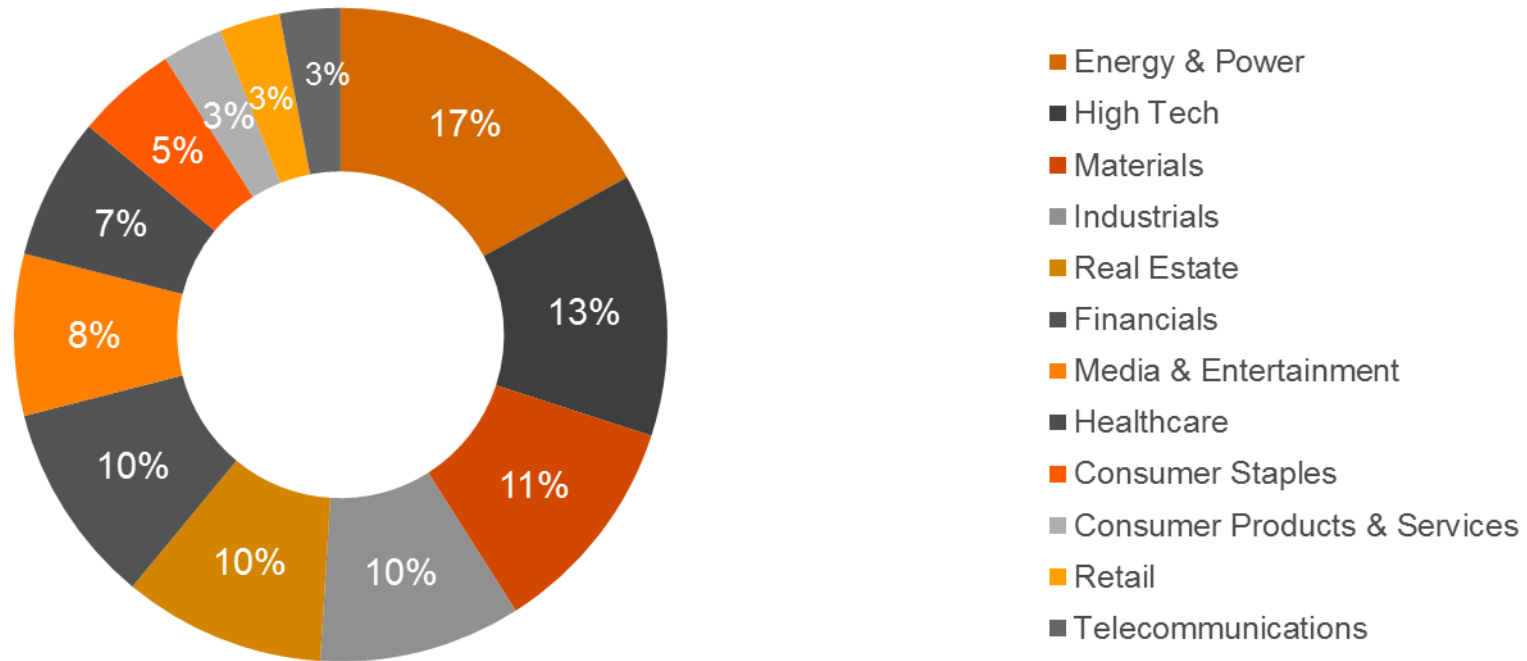
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Global M&A Snapshot

- 2015 was the strongest year for deal-making on record by deal value; 2016 was the third-strongest
- Worldwide M&A totaled \$3.67 trillion → 16% decrease in dollar value from 2015 (but 0.8% increase in deal volume)
- Withdrawn M&A value: \$804.7 billion → 8-year high
- Cross-border M&A globally: \$1.4 trillion
- Record levels of outbound M&A by Chinese buyers, inbound M&A for US assets
 - China outbound M&A doubled in value year-over-year; number of deals increased by 42%
 - US inbound M&A hit all-time annual high of \$519.1 billion, up 18% from 2015

Global M&A — Industry Comparison

Worldwide Announced M&A Target Industry, by Value



Most balanced industry mix since Thomson Reuters began record-keeping

Global M&A — Largest Announced Deals

Acquiror/Target (<i>Announcement Date</i>)	Macro/Mid-Level Industry	Deal Value	Consideration
AT&T/ Time Warner (<i>Oct. 22, 2016</i>)	Media and Entertainment/ Motion Pictures/Audio Visual	\$107.5 billion	Cash and stock
Bayer/ Monsanto (<i>May 23, 2016 (offer); Sept. 14, 2016 (agreement signed)</i>)	Materials/Chemicals	\$63.9 billion/ \$66 billion	All cash
British American Tobacco/ Reynolds American (<i>Oct. 21, 2016 (offer); Jan. 16, 2017 (agreement signed)</i>)	Consumer Staples/Tobacco	\$57.8 billion/ \$60.3 billion	Cash and stock
Sunoco Logistics Partners/ Energy Transfer Partners (<i>Nov. 21, 2016</i>)	Energy and Power/Oil & Gas	\$51.4 billion	All stock
ChemChina/ Syngenta (<i>Feb. 3, 2016</i>)	Materials/Chemicals	\$46.6 billion	All cash
Qualcomm/ NXP Semiconductors (<i>Oct. 27, 2016</i>)	High Technology/ Semiconductors	\$45.9 billion	All cash
Enbridge/ Spectra Energy (<i>Sept. 6, 2016</i>)	Energy and Power/Oil & Gas	\$43.1 billion	All stock
Praxair/ Linde (<i>Dec. 20, 2016</i>)	Materials/Chemicals	\$42.7 billion	All stock
CenturyLink/ Level 3 Communications (<i>Oct. 31, 2016</i>)	Telecommunications/ Wireless	\$34.4 billion	Cash and stock
GE Oil & Gas/ Baker Hughes (<i>Oct. 31, 2016</i>)	Energy and Power/Oil & Gas	\$31.7 billion	Cash and stock

Global M&A — Middle and Small Markets

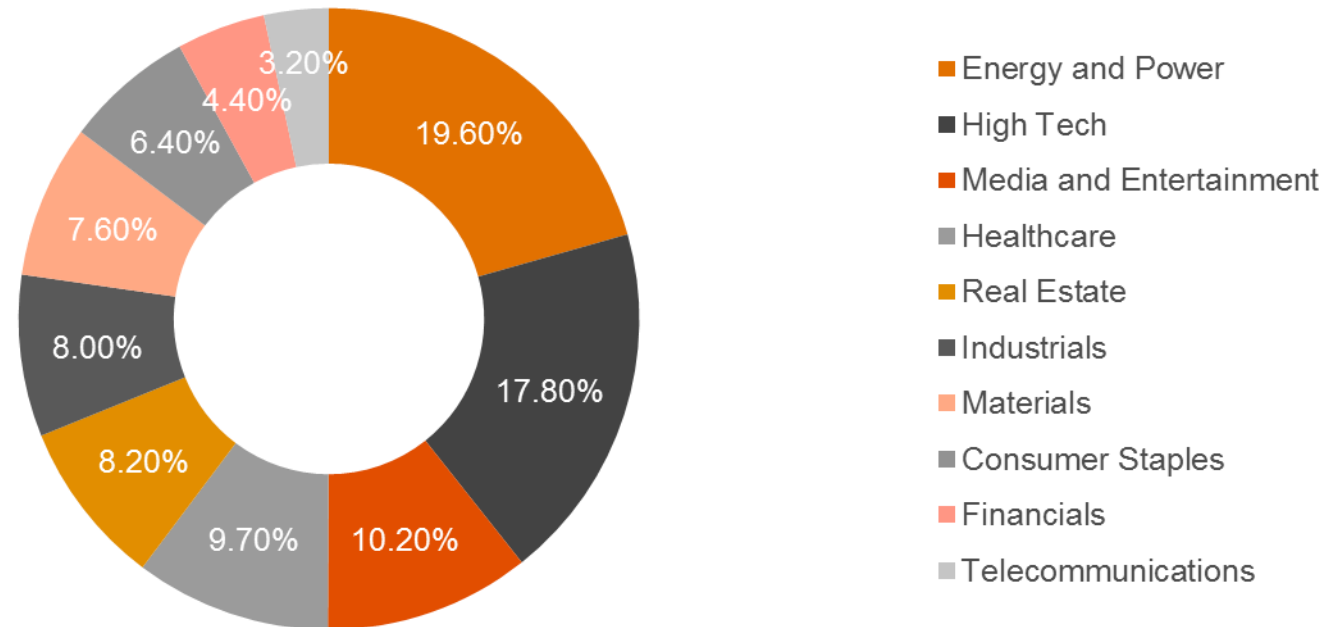
- Worldwide announced middle-market M&A (<\$500 million) totaled \$931.6 billion on 45,486 deals
 - 1.2% decrease in deal value from 2015 on a 2.0% increase in deal volume
 - Most active industries: Real Estate (17.6%), Industrials (11.9%), Financials (11.7%), and High Technology (11.3%)
- Worldwide announced small-cap M&A (<\$50 million) totaled \$163.1 billion on 40,743 deals
 - 4.1% increase in deal value from 2015 on a 2.4% increase in deal volume
 - Most active industries: High Technology (15.5%), Industrials (12.3%), Financials (11.3%), and Real Estate (11.0%)

United States M&A Activity

- Announced M&A deals for US-based target companies: \$1.67 trillion in deal value → 17% decrease from 2015
- By deal volume, the total number of announced deals rose 7% from 2015
- Withdrawn deals for US target companies accounted for 70% of the \$804.7 billion in global withdrawn M&A value
 - 13 agreements for acquisitions of US reporting companies valued at >\$100M terminated
 - Compare: 2015 (8); 2014 (5); 2013 (5); 2012 (5)
- US inbound M&A hit all-time annual high of \$519.1 billion → up 18% from 2015
- 34 signed deals for the acquisition of US reporting companies valued at \$5 billion or more
 - Compare: 48 in 2015

Most Active Industries (US Target, Announced M&A)

US-Target Announced M&A Target Industry, by Value

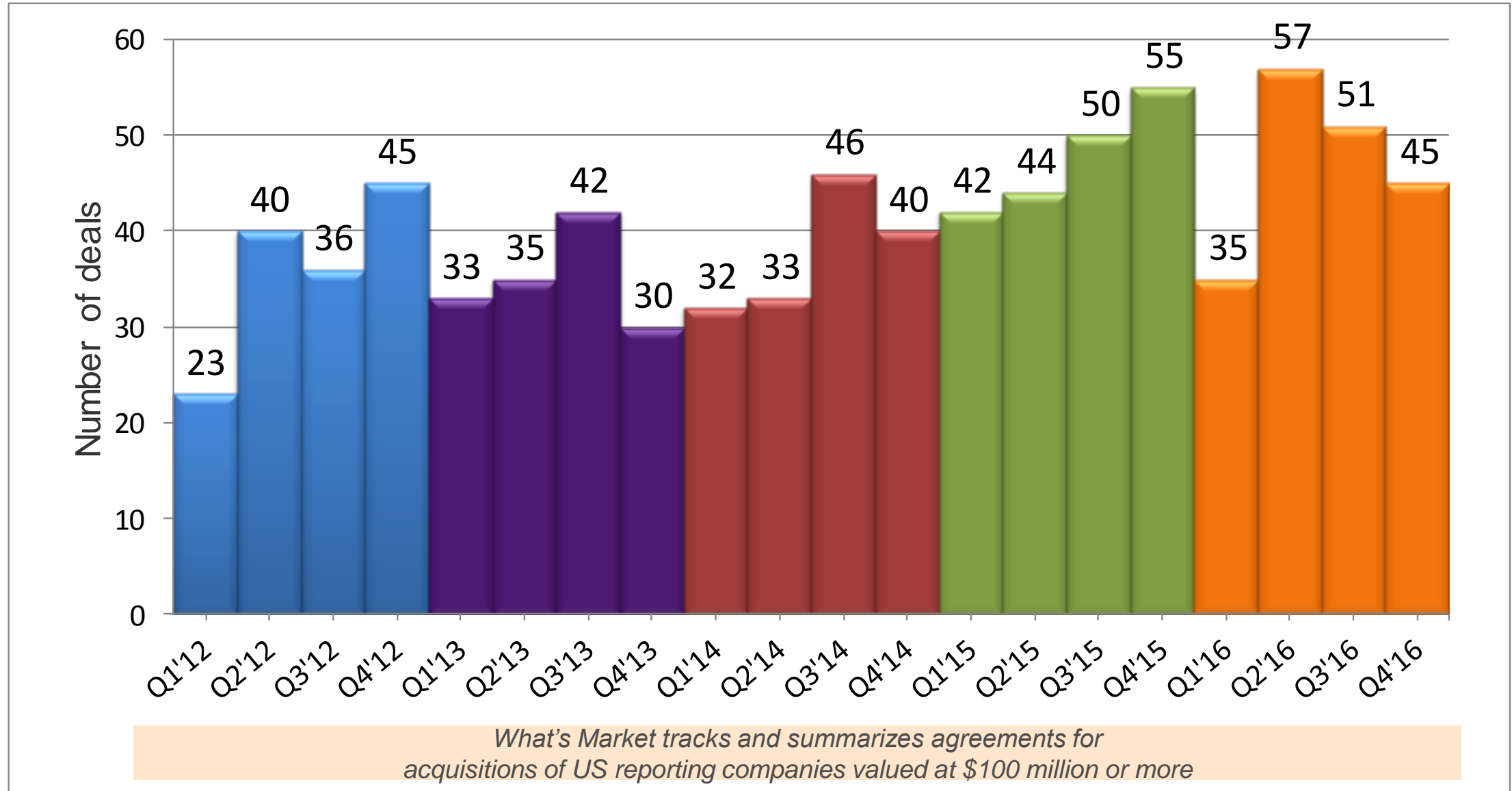


Energy and Power: \$327.2 billion
High Tech: \$297.3 billion
Media and Entertainment: \$170.2 billion

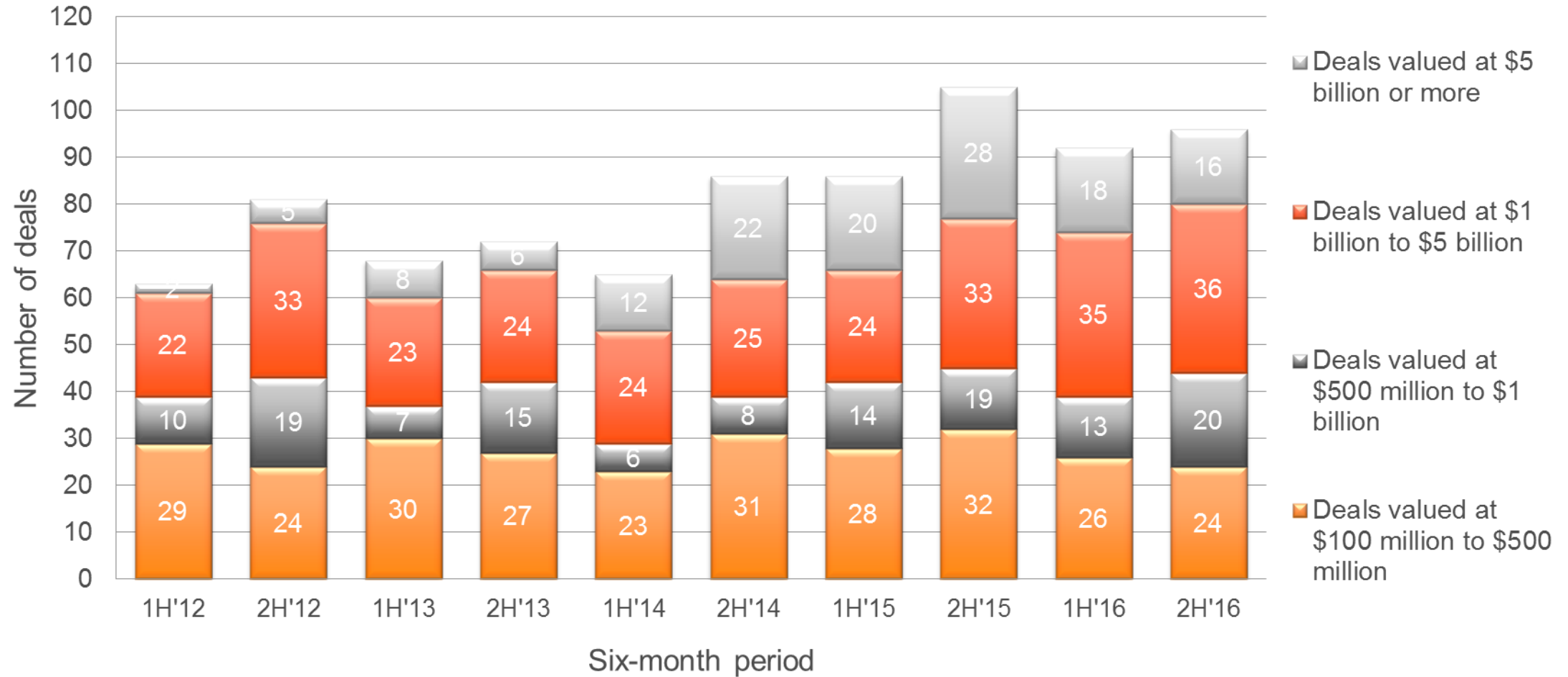
US M&A — Middle and Small Markets

- US announced middle-market M&A deals (<\$500 million): \$217.9 billion on 10,689 deals
 - 4.6% increase in deal value from 2015 on a 7.7% decrease in deal volume
 - Most active industries: Real Estate (19.6%), Energy and Power (13.6%), High Technology (12.8%), and Financials (10.9%)
- US announced small-cap M&A deals (<\$50 million): \$27.4 billion on 9,612 deals
 - 4.2% increase in deal value from 2014 on a 7.9% increase in deal volume
 - Most active industries: High Technology (18.6%), Real Estate (17.1%), Healthcare (14.5%), and Financials (11.1%)

US Public M&A Activity by Quarter

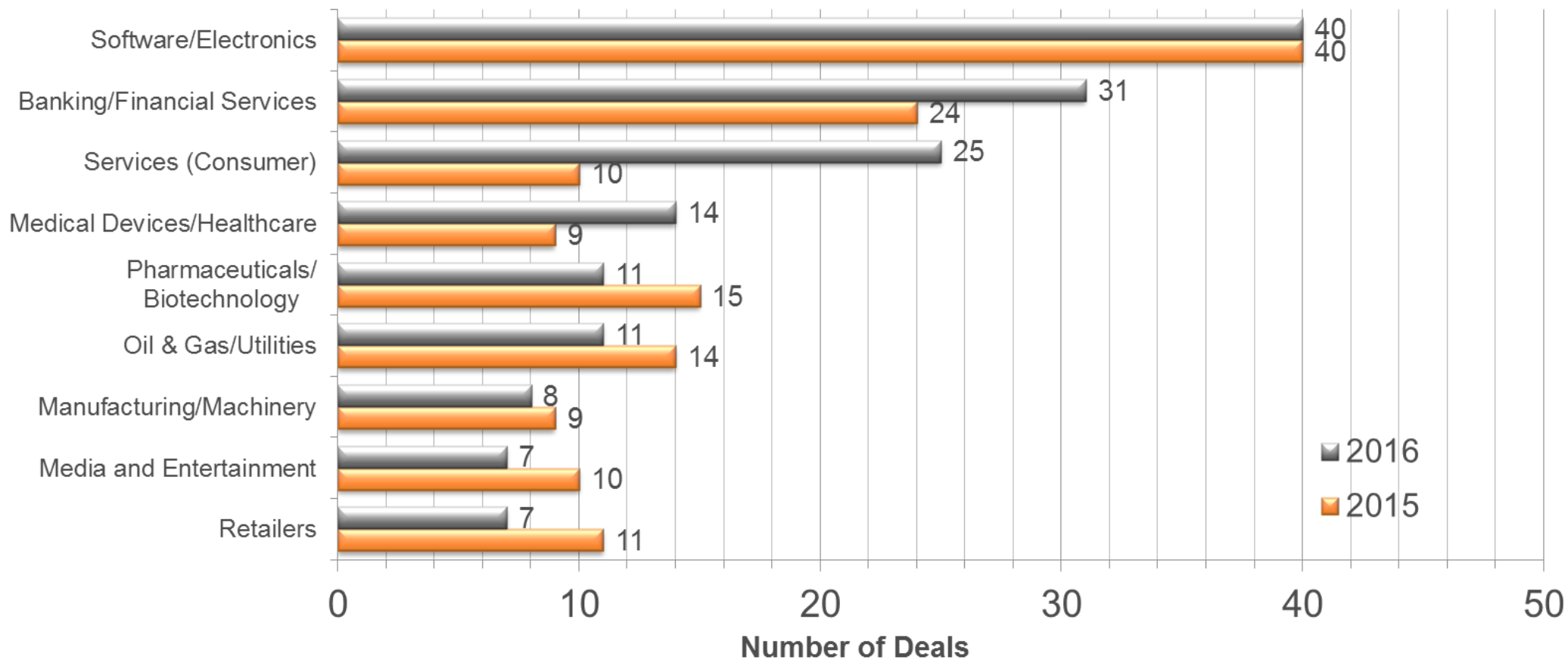


US Public M&A by Deal Value

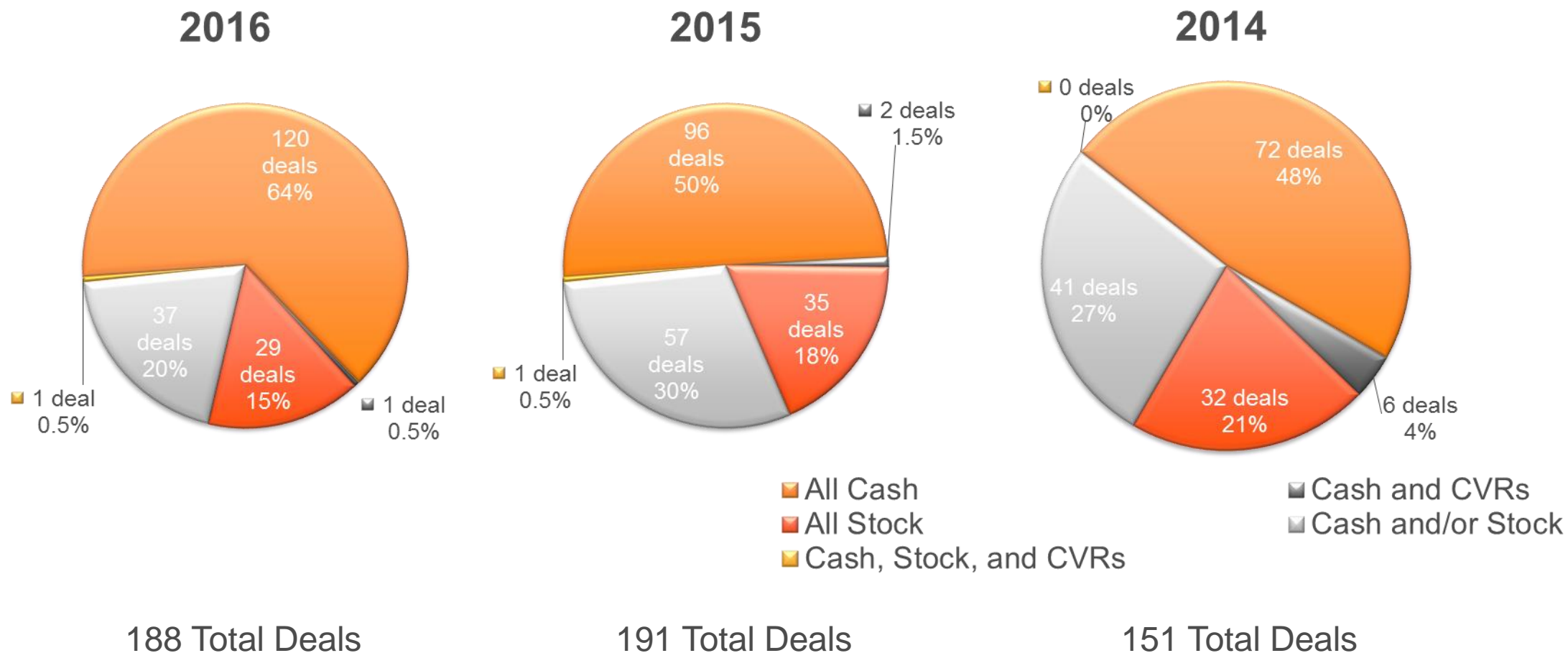


Most Active Industries (US Public Target, Signed Deals, >\$100M)

Industry Sector

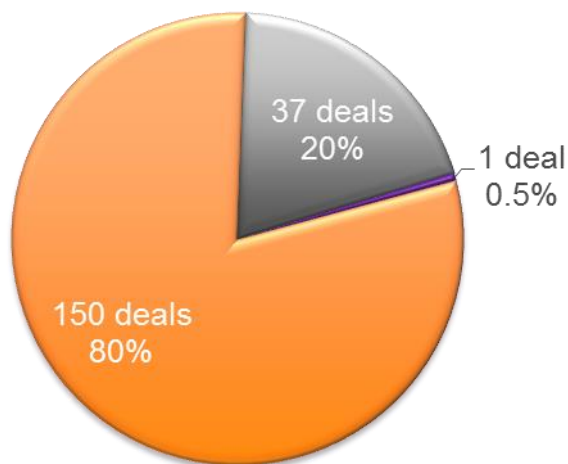


US Public M&A — Type of Consideration



US Public M&A — Strategic vs. Financial Buyer Activity

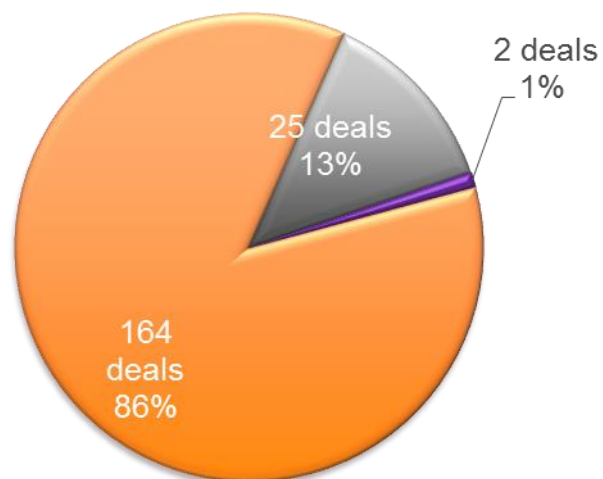
2016



188 Total Deals

39 deals (21%) were structured as front-end tender offers.

2015



191 Total Deals

46 deals (24%) were structured as front-end tender offers.

2014



151 Total Deals

34 deals (23%) were structured as front-end tender offers.

■ Strategic
 ■ Financial
■ Collaboration

US Public M&A — Largest Strategic Deals

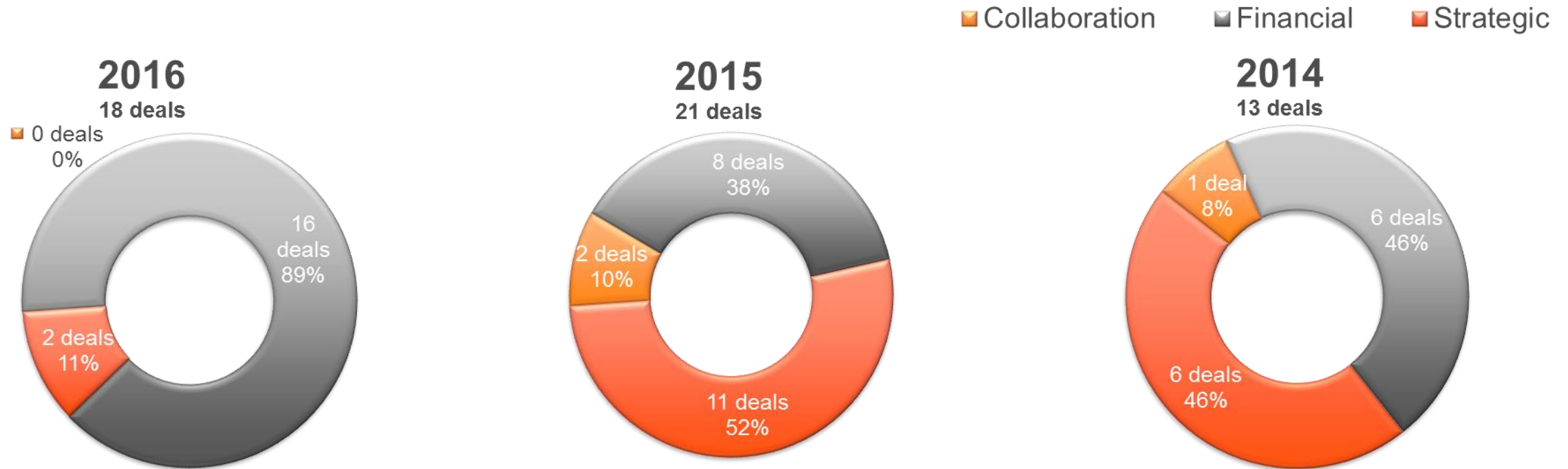
Acquiror/Target (<i>Signing Date</i>)	Industry	Deal Value	Consideration
AT&T/ Time Warner (<i>October 22, 2016</i>)	Media and entertainment	\$107.5 billion	Cash and stock
Bayer/ Monsanto (<i>September 14, 2016</i>)	Chemicals	\$66 billion	All cash
Sunoco Logistics Partners/ Energy Transfer Partners (<i>November 20, 2016</i>)	Oil and gas	\$51.4 billion	All stock
Qualcomm/ NXP Semiconductors (<i>October 27, 2016</i>)	High tech/ semiconductors	\$45.9 billion	All cash
Enbridge/ Spectra Energy (<i>September 5, 2016</i>)	Oil and gas	\$43.1 billion	All stock

Of the 34 deals valued at over \$5 billion in 2016, 31 (91%) were with strategic buyers.

US Public M&A — Largest Financial Deals

Acquiror/Target (<i>Signing Date</i>)	Industry	Deal Value	Consideration
Apollo Global Management/ The ADT Corporation (<i>February 14, 2016</i>)	Consumer Products and Services	\$6.9 billion	All cash
Blackstone Group/ Team Health Holdings (<i>October 30, 2016</i>)	Healthcare	\$6.0 billion	All cash
Riverstone Holdings/ Talen Energy (<i>June 2, 2016</i>)	Energy and power	\$5.2 billion	All cash
Apollo Global Management/ Rackspace Hosting (<i>August 26, 2016</i>)	High tech/IT consulting and services	\$4.0 billion	All cash
Ares Capital/ American Capital (<i>May 23, 2016</i>)	Financials	\$3.2 billion	Cash and stock

Go-Shops and Strategic Buyers



The two deals in 2016 with strategic buyers who agreed to go-shops were Tesla Motors, Inc./SolarCity Corporation and Lennar Corporation/WCI Communities, Inc.

M&A Deals and Antitrust Enforcement Trends

- US antitrust regulators were aggressive in 2016
- Terminated public M&A deals:
 - Halliburton Company/Baker Hughes Incorporated, announced in November 2014 → abandoned after litigation commenced
 - \$3.5 billion reverse break-up fee
 - Staples, Inc./Office Depot, Inc., announced in February 2015 → abandoned after the FTC won a preliminary injunction in federal court
 - \$250 million reverse break-up fee
 - Lam Research Corporation/KLA-Tencor Corporation, announced in October 2016 → terminated rather than litigate against the DOJ
 - No reverse break-up fee for antitrust failure contemplated in the merger agreement

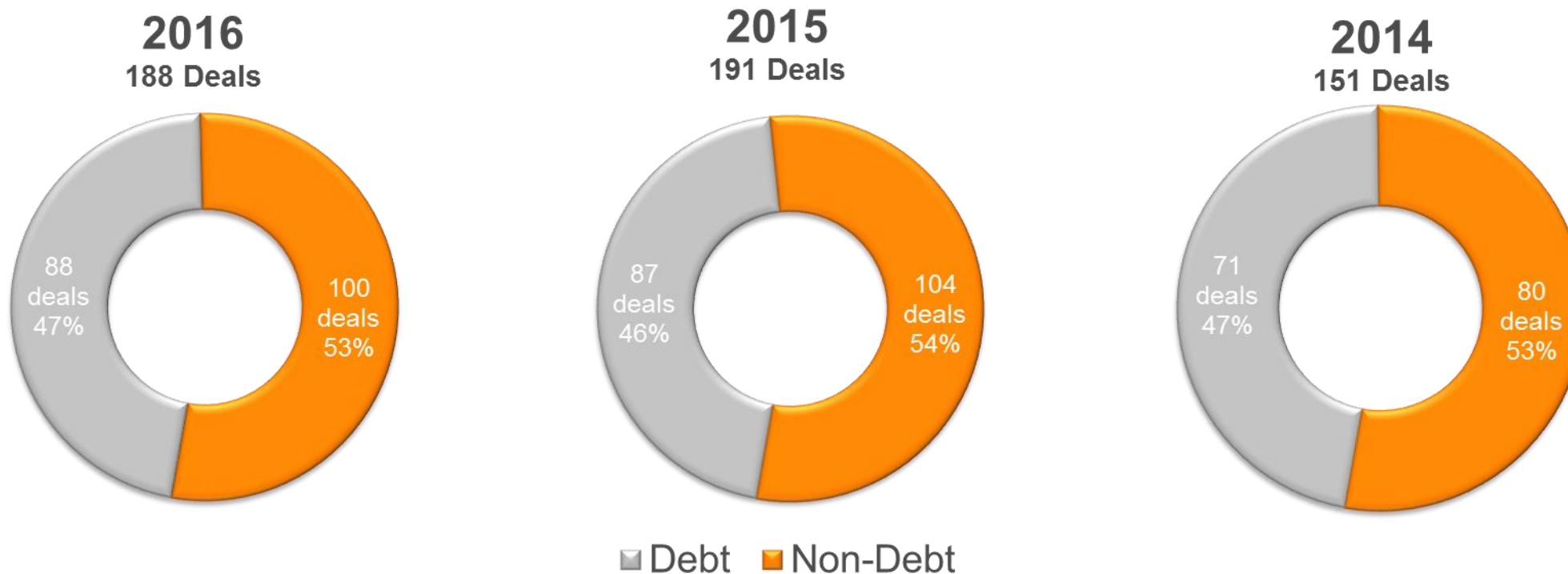
M&A Deals and Antitrust Enforcement Trends

- Twenty-five of the 188 US public deals signed in 2016 charged the buyer a reverse break-up fee for antitrust failure
 - 6 of the 25 deals were valued at >\$5 billion
 - 13 of the 25 deals valued at \$1–\$5 billion
 - 3 of the 25 deals contain reverse break-up fees priced at >7% of the deal value
 - Microchip Technology Incorporated/Atmel Corporation (7.02% fee)
 - Google Inc./Apigee Corporation (7.46% fee)
 - China Oceanwide Holdings Group Co., Ltd./Genworth Financial, Inc. (7.78% fee)
 - Largest reverse break-up fee by dollar value payable for antitrust failure agreed to in a 2016 merger agreement: \$2 billion, from the \$66 billion Bayer/Monsanto deal

Withdrawn Deals in 2016 (US Public Target, Signed Deals, >\$100M)

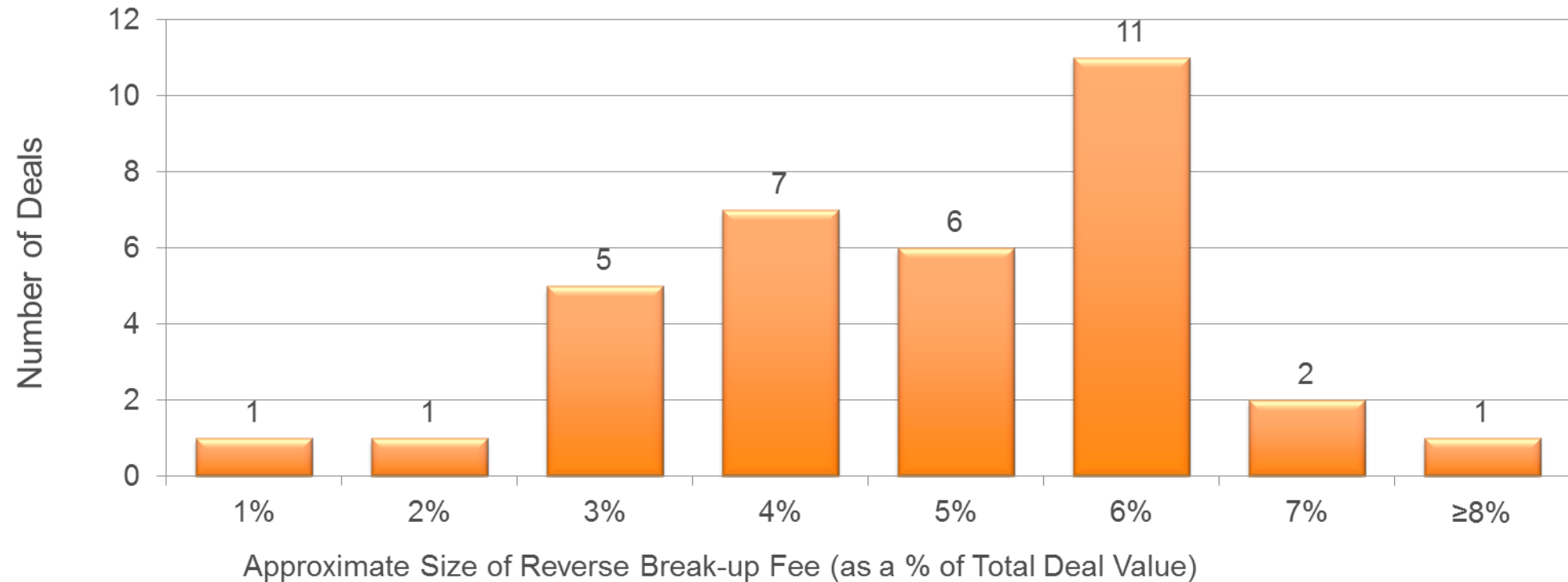
Acquiror/Target (<i>Signing Date</i>)	Termination Date	Reason Abandoned	Ultimate Outcome
Dialog Semiconductor/ Atmel (<i>Sept. 19, 2015</i>)	January 19, 2016	Topping bid	Microchip Technology acquired Atmel
Media General/ Meredith (<i>Sept. 7, 2015</i>)	January 27, 2016	Topping bid for MG	Nexstar Broadcasting acquired Media General
SunEdison/ Vivint Solar (<i>July 20, 2015</i>)	March 7, 2016	Financing failure	Vivint Solar pursuing legal remedies
Allergan/ Pfizer (<i>Nov. 22, 2015</i>)	April 6, 2016	Regulatory failure	Companies still independent, active in M&A
Halliburton/ Baker Hughes (<i>Nov. 16, 2014</i>)	April 30, 2016	Antitrust failure	GE signed a deal on 10/30/16 to combine its oil & gas business with Baker Hughes
Staples/ Office Depot (<i>Feb. 4, 2015</i>)	May 16, 2016	Antitrust failure	Companies still independent
Konecranes/ Terex (<i>Aug. 10, 2015</i>)	May 16, 2016	Mutual agreement	Restructured carveout transaction
Energy Transfer Equity/ The Williams Companies (<i>Sept. 28, 2015</i>)	June 29, 2016	Failure to satisfy tax-opinion closing condition	Chancery Court decision in ETE's favor appealed to Delaware Supreme Court
Mitel Networks/ Polycom (<i>Apr. 15, 2016</i>)	July 8, 2016	Topping bid	Siris Capital acquired Polycom
NextEra Energy/ Hawaiian Electric Industries (<i>Dec. 3, 2014</i>)	July 16, 2016	Regulatory failure	Companies still independent
Incipio/ Skullcandy (<i>June 23, 2016</i>)	August 23, 2016	Topping bid	Mill Road Capital Management acquired Skullcandy
Lam Research/ KLA-Tencor (<i>Oct. 20, 2015</i>)	October 5, 2016	Mutual agreement based on antitrust failure	Companies still independent
New York Community Bancorp/ Astoria Financial (<i>Oct. 28, 2015</i>)	December 20, 2016	Mutual agreement	Companies still independent

Leveraged vs. Unleveraged Transactions



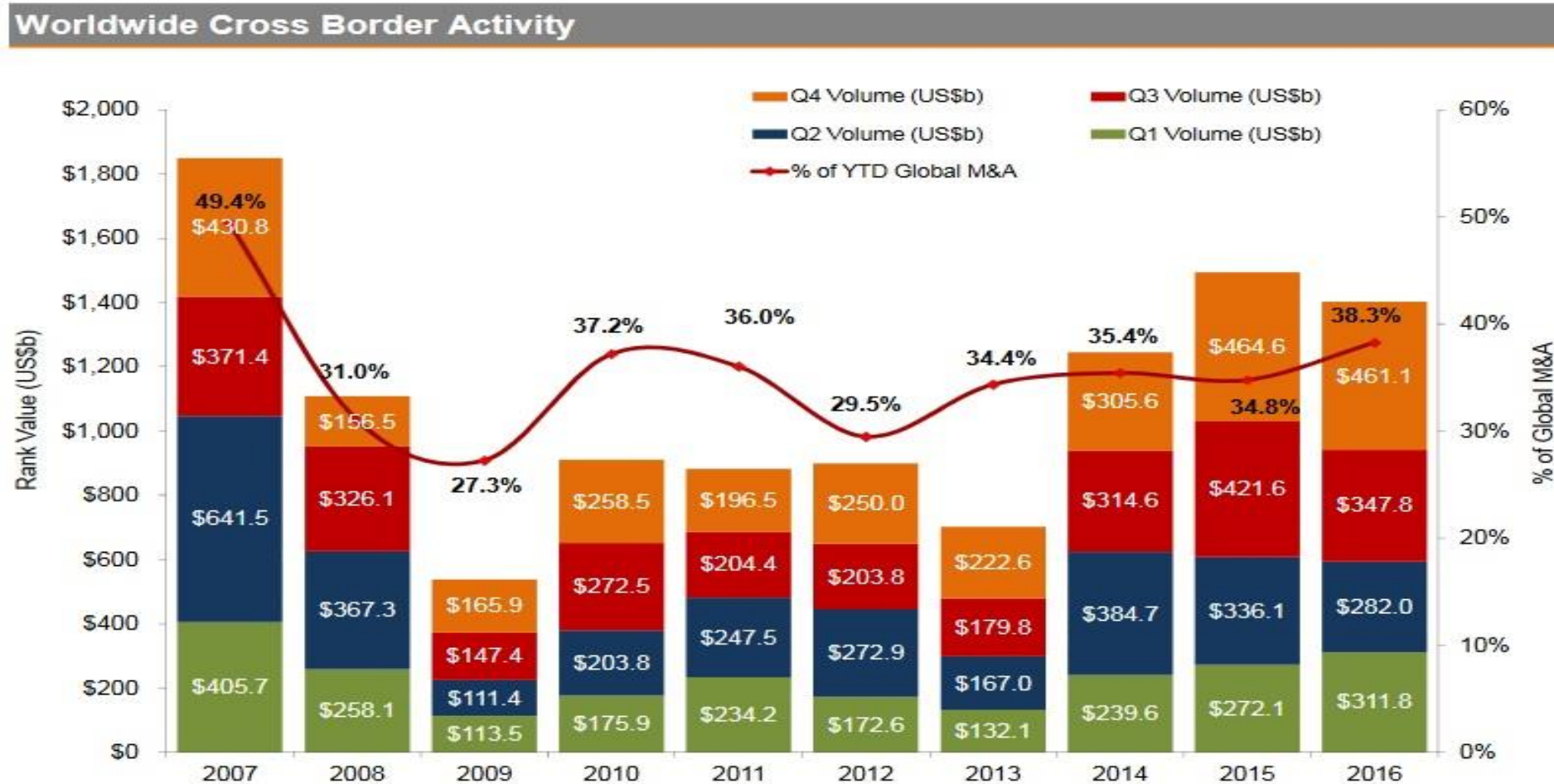
In 2016, of the 34 deals for the acquisition of US reporting companies valued at \$5 billion or more, 23 were leveraged with new debt.

Reverse Break-Up Fees in Leveraged Deals



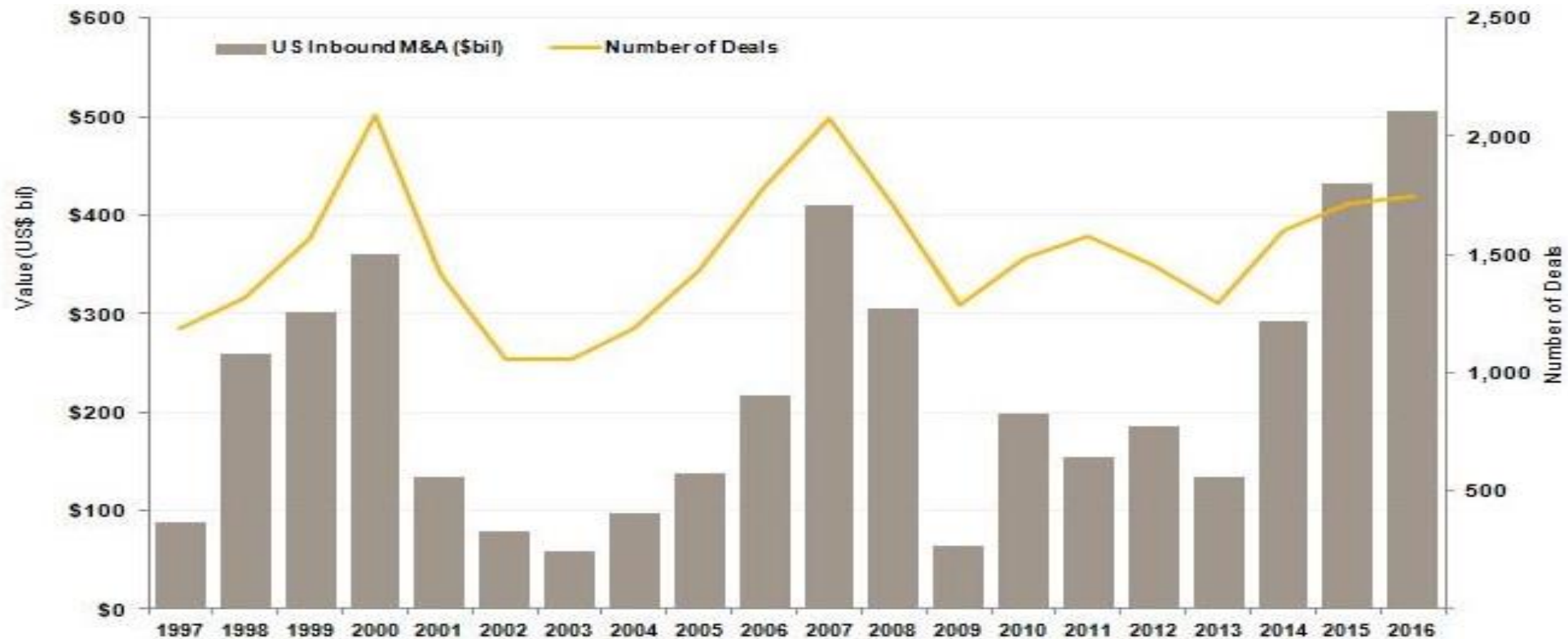
- 34 of the 88 leveraged deals in 2015 (39%) contain a reverse break-up fee payable for a financing failure or other material breach by the buyer or failure to otherwise close the deal (not including for antitrust failure or fiduciary triggers). Compare 32% in 2015, 34% in 2014, and 65% in 2013.
- 14 of those 34 deals (41%) set the fee at 6% or more of deal value.

Cross-Border M&A — Worldwide



Cross-border M&A activity totaled \$1.4 trillion in 2016 worldwide, third most all-time for any annual period (2007 and 2015). 38.3% of overall M&A volume.

Cross-Border M&A — US Inbound

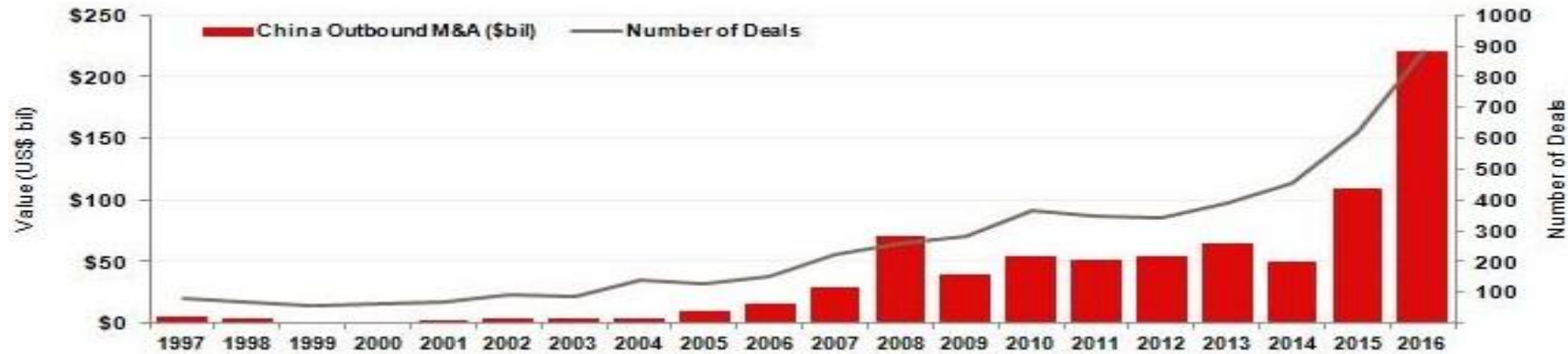


- US inbound M&A hit all-time annual high of \$519.1 billion, up 18% from 2015
- 31% of US-target deals involve foreign buyer, up from 22% in 2015

Cross-Border M&A — US Inbound

- 44 acquisitions by foreign buyers of US reporting companies valued at >\$100 million
- Largest cross-border deals for acquisitions of US reporting companies in 2016 were:
 - Bayer AG/Monsanto Company (\$66 billion all-cash)
 - Shire plc/Baxalta Incorporated (\$32 billion cash and stock)
 - Enbridge Inc./Spectra Energy Corp. (CAD\$37 billion/~US\$28 billion all stock)

Cross-Border M&A — China-Outbound



- China outbound M&A doubled in value year-over-year
- Four deals involving US reporting companies:
 - China Oceanwide Holdings Group Co./Genworth Financial
 - Suzhou Dongshan Precision Manufacturing Co./Multi-Fineline Electronix
 - Tianjin Tianhai Investment Company/Ingram Micro
 - Apex Technology Co., PAG Asia Capital, Legend Capital Management Co./Lexmark International

Hostile M&A

- Middle-of-the-road year for hostile deal activity
- Hostile bids:
 - Bayer AG/Monsanto (bid raised, ultimately signed)
 - British American Tobacco/Reynolds American (bid raised, ultimately signed)
 - Sanofi SA/Medivation (Medivation does deal with Pfizer)
 - Gannett Company/Tribune Publishing (bid abandoned)
 - Mondelez International/The Hershey Co. (bid abandoned)
- Deals prompted by activist campaigns:
 - Ares Capital/American Capital (Elliott Management)
 - Westlake Chemical/Axiall Corporation (Brigade Capital Management)

Hostile M&A

- Topping bids in 2016:
 - Dialog Semiconductor plc, Atmel Corporation, and Microchip Technology Incorporated (successful)
 - Media General, Inc., Meredith Corporation, and Nexstar Broadcasting Group, Inc. (successful)
 - Marriott International, Inc., Starwood Hotels & Resorts Worldwide, Inc., and Anbang Insurance Group Co., Ltd (unsuccessful)
 - Thermo Fisher Scientific Inc., Affymetrix Inc., and SummitView Capital (unsuccessful)
 - Mitel Networks Corporation, Polycom, Inc., and Siris Capital Group (successful)
 - Incipio, LLC, Skullcandy, Inc., and Mills Road Capital Management (successful)

Trends for 2017

- Antitrust enforcement: laissez-faire vs. populism
- Cross-border buyer demand vs. nationalism
- As stock market goes...
- Return of the MAC?
- SEC proposal for mandatory use of universal proxy cards in all contested-director elections at annual meetings
- Impact of Delaware legal developments on deal negotiations
 - Business judgment rule when shareholders approve the deal in an informed vote (*Corwin* and progeny)
 - Impact of *Trulia* on disclosure-only settlements already being felt
 - Forum-selection provisions respected (*Gawrych v. Monsanto*)

Relevant Practical Law Resources

- Making Good Use of Special Committees
- Preparing a Portfolio Company for Sale

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About the Speaker

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Daniel joined Practical Law from O'Melveny & Myers LLP, where he was counsel in the M&A group. Previously he was a corporate associate at Fried, Frank, Harris, Shriver & Jacobson LLP.