KHAITAN & CO
ADVOCATES
SINCE 1911

CELEBRATING 110 YEARS

PUBLIC M&A

Report | 2021-22

Our Ambition Statement

Our ambition is to be a respectable law firm providing efficient and courteous service, to act with fairness, integrity and diligence, to be socially responsible and to enjoy life.

We should put greater emphasis on working in consonance with our aforesaid values than on maximising earnings.

Earn we should, but with dignity and pleasure.

A brief history of Khaitan & Co

1911	Founded in Kolkata by Debi Prasad Khaitan, one of seven members of the Constituent Assembly who framed the Constitution of India in 1949
1970	Opened office in New Delhi
1994	Opened office in Bengaluru
2001	Opened office in Mumbai
2011	Celebrated our centenary as one of India's oldest and largest law firms
2021	Opened offices in Singapore and Chennai 880+ fee earners including 225+ partners and directors

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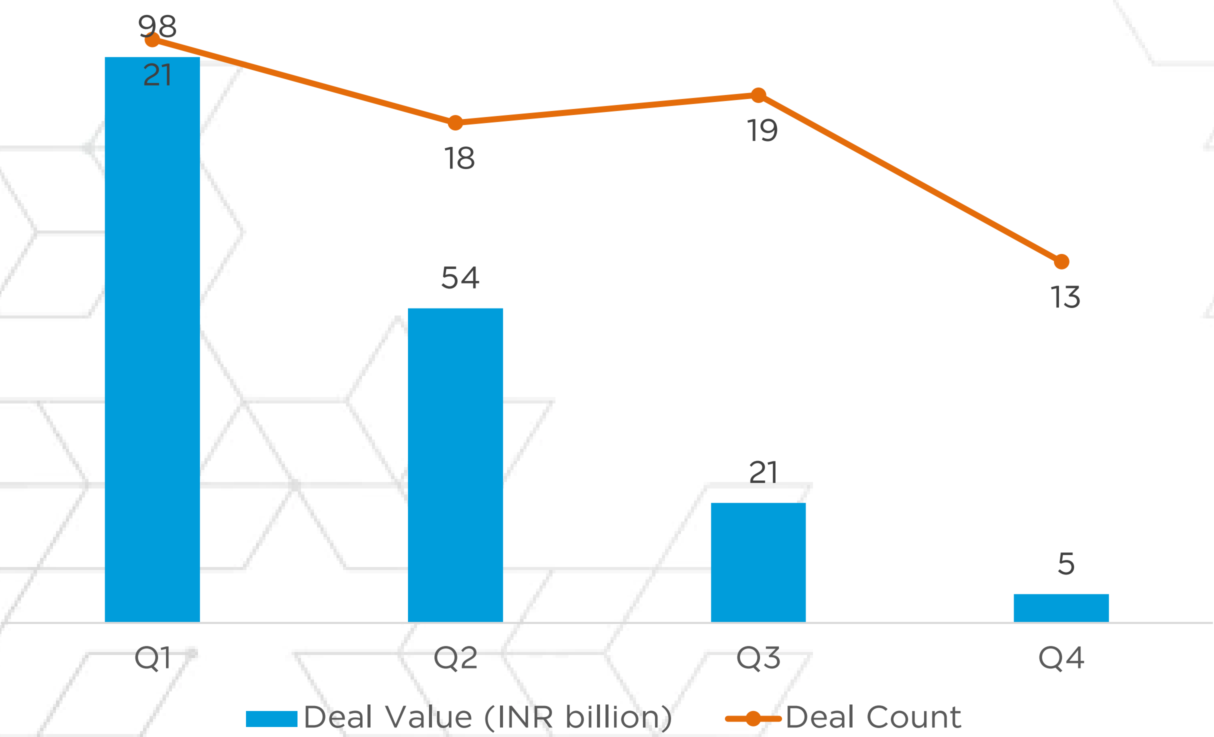
INTRODUCTION

01	It's been an exciting year for Public M&A – we have witnessed a substantial bull run; attractive valuations coupled with robust initiatives by SEBI towards stronger and clearer regulations have been key drivers in increasing deal activity in the listed space.
02	The period between 1 April 2021 to 28 February 2022 was marked with 71 tender offers for acquisitions of substantial stake in, or control over Indian listed companies. The aggregate value of such tender offers was c. INR 177 billion, which is higher than the COVID-19 hit financial year 2020-21.
03	Financial sponsors and strategic investors have shown increased interest in taking a controlling position in listed businesses.
04	In takeovers by financial sponsors, a combination of transitional arrangements (with outgoing promoters) and new professional management was preferred.
05	In this snapshot, amongst other things, we have provided a broad overview of certain deal trends and our key learnings from recent listed deals.

Deal Statistics for FY 2021-22



SECTOR ANALYSIS

01

In volume, the financial services sector saw most activity recording 21 deals valued at INR 15.48 billion, followed by IT/ITES sector (11 deals), and chemical and metal sectors (5 deals each).

02

In deal value, the technology sector led the fray recording aggregate deal value of INR 116.76 billion, followed by healthcare and life sciences sector (INR 18.91 billion) and energy sector (INR 18.53 billion).

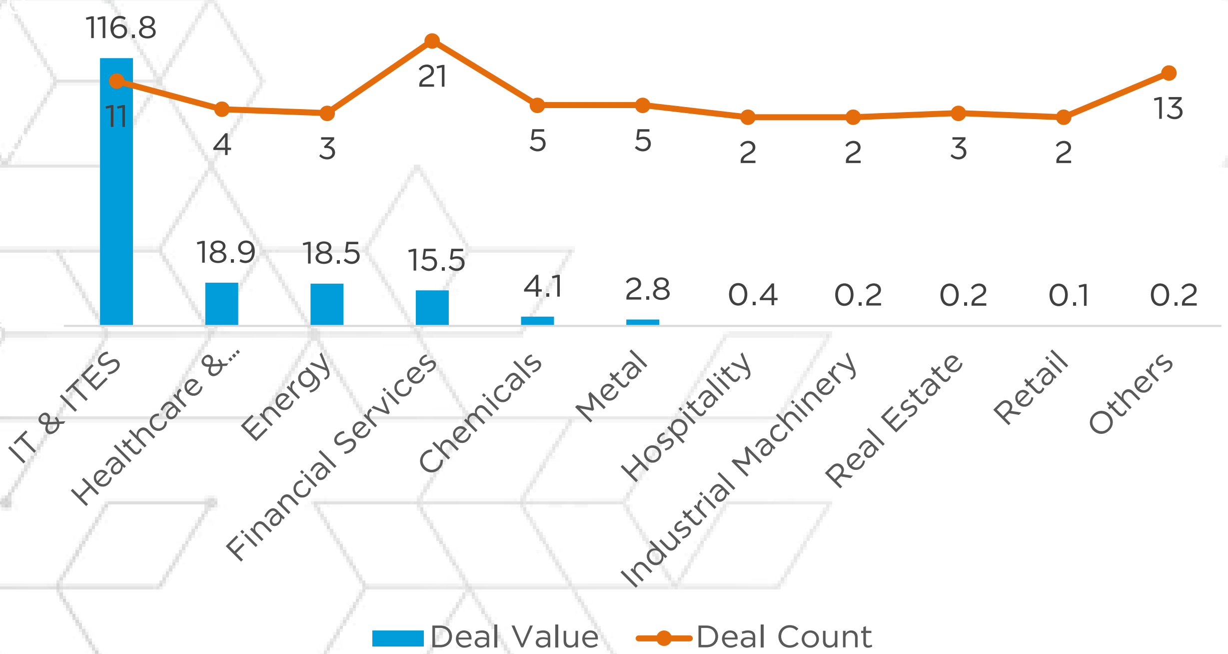
03

The deal momentum in the technology and financial services sectors was fueled primarily by the need to achieve rapid growth.

04

Majority were mid-sized deals, aimed at entering new verticals, geographies or capabilities.

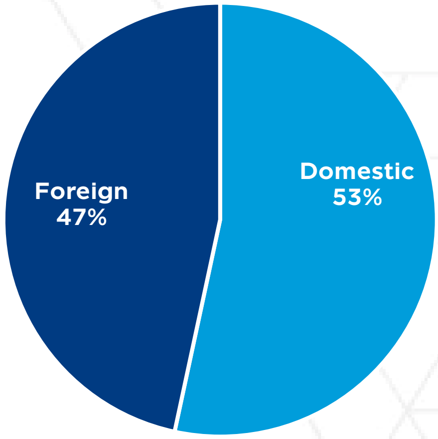
Sector-wise Deal Activity (value in INR billion)



TRENDS

Foreign investment aggregating to c. INR 82 billion contributed to 47% of the total deal value, with the major contributor being the tender offer made for the shares of Mphasis Limited.

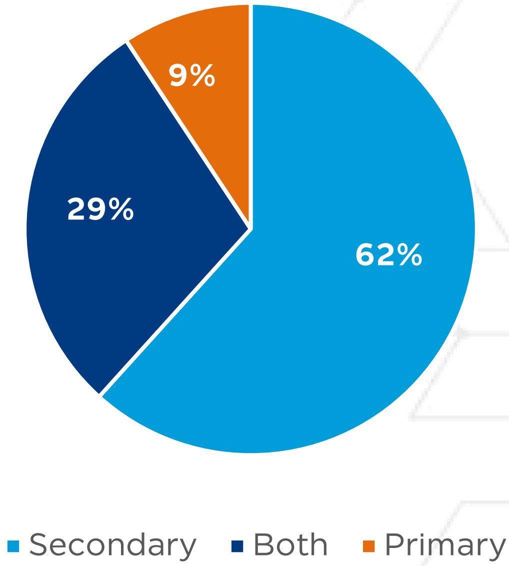
Domestic transactions contributed to 53% of the deal value, with the major contributor being the tender offer made to the shareholders of Justdial (INR 22 billion).



c. 62% of the tender offers were triggered on account of secondary acquisitions.

c. 9% of the tender offers were triggered on account of primary acquisitions.

c. 29% of the tender offers were triggered on account of combination of both secondary and primary acquisitions.



TOP DEALS

- During 1 April 2021 to 28 February 2022, the top ten tender offers by value were (in descending order of value):

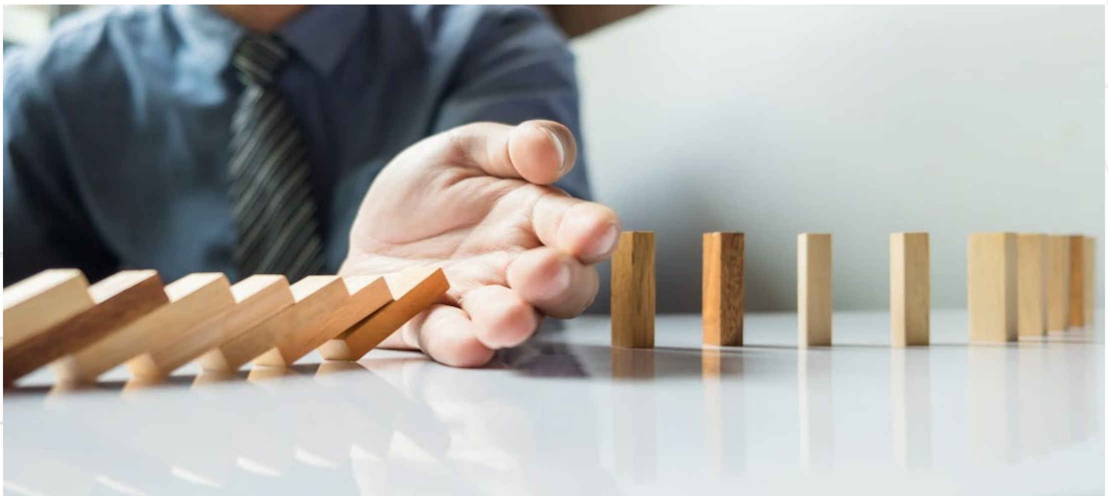
No	Target Company	Acquirers	Value (in INR billion)
1	Mphasis	BCP TOPCO IX	8,262.00
2	Justdial	Reliance Retail Ventures	2222.05
3	Sterling and Wilson Solar	Reliance New Energy Solar	1842.65
4	Thyrocare Technologies	Docon Technologies Private, API Holdings	1,788.00
5	Magma Fincorp	Rising Sun Holdings	1,391.82
6	Tejas Networks	Tata Sons, Panatone Finvest , etc	1038.59
7	Clariant Chemicals (India)	Luxembourg Investment Company 428 S.à r.l., etc	296.36
8	Lloyds Metals and energy	Thriveni Earthmovers Private	225.62
9	Lyka Labs	Ipca Laboratories	97.34
10	Sunshield Chemicals	Indus Petrochem	67.39

- The aforesaid tender offers comprised 97% of the aggregate deal value of all tender offers during 1 April 2021 to 28 February 2022. The largest tender offer by value was for Mphasis Limited, being INR 82.62 billion and the smallest tender offer was for Mrugesh Trading Ltd., being INR 7 lakh.
- Khaitan & Co acted on 4 of the 10 largest tender offers, ie 1. Justdial Limited, 2. Sterling and Wilson Solar Limited, 3. Magma Fincorp Limited and 4. Tejas Networks Limited. These deals comprised 37% of the aggregate deal value of all the tender offers during 1 April 2021 to 28 February 2022.

KEY REGULATORY CHANGES

Combined Tender cum Take Private Offer

- The Takeover Regulations have been recently amended to provide flexibility in implementing a combined tender cum take private deal. In brief, a takeover deal triggering a tender offer can now be structured in a manner where the acquirer (not being a promoter) specifies upfront the tender offer price and an indicative take private price. The indicative take private price would need to include a suitable premium and cannot be less than the book value of the listed target company. If the response to the tender offer leads to satisfaction of the take private threshold (ie 90% of the total shares of the listed company), the shareholders will be paid the indicative take private price (ie take private succeeds) and if it does not, then the shareholders will be paid the tender offer price (ie take private fails). In the event, the take private threshold is not met, but the acquirer acquires more than 75%, a period of 12 months would be available to the acquirer to re-attempt (at its discretion) the take private deal. If the take private fails again, the acquirer would be required to bring down its shareholding to 75% within a further period of 12 months.
- Importantly, this new combined process: (i) does not entail a reverse book building process to be followed for the take private leg, (ii) allows the acquirer to offer a different price for the take private on one hand, and the tender offer on the other hand, and (iii) does away with any interest costs being levied on account of any gap between the tender offer and take private deal.



Proportionate Acquisition

- An acquirer now has the option to proportionately reduce its acquisitions under: (i) the triggering acquisition agreement (SPA/SSA), and (ii) the shares tendered in the open offer, such that its ultimate shareholding in the listed target company does not exceed 75%. This provides an acquirer the flexibility to restrict its overall acquisition to 75% and not be subject to a subsequent sell down obligation to achieve minimum public float requirements (if the SPA/ SSA shares + shares tendered in the open offer breaches 75%).
- Such acquirer should not: (A) acquire joint control of the listed target, or (B) have been (in the last 2 years): (i) a promoter of the listed target, (ii) associated with promoters of listed target, (iii) holding >25% stake in listed target.

KEY REGULATORY CHANGES

Take Private/ Delisting

- SEBI has introduced new rules for take private deals and the key changes include: (a) defining the role of independent directors ("IDs") in the take private process by, amongst other things, requiring IDs to provide reasoned recommendations on the delisting proposal; (b) clarity on determination of book value which is pertinent for the take private counter offer process; and (c) streamlining timelines and reducing procedural inefficiencies in implementing such transactions. Such revisions are expected to provide a clearer roadmap to acquisition under the take private route.

Preferential Allotment

- SEBI has made certain changes to the framework governing preferential issue of securities; key changes include (a) reduction of look back period for determining minimum preferential issue price (under the erstwhile regime, the minimum price is linked to the average of the weekly high and low of the volume weighted average price (VWAP) during the preceding 26 weeks / 2 weeks, and now SEBI has reduced the lookback to preceding 90/ 10 trading days or any stricter provisions in the charter documents); (b) any allotment resulting in change of control or allotment of more than 5% shares will require a valuation report from a registered independent valuer and in case of change in control, a committee of IDs is required to provide reasoned recommendations and comments on pricing and other aspects of the preferential issue; (c) reduction of the tenure of applicable lock-in requirements; (d) guidelines for pledging promoter securities issued pursuant to preferential allotment; and (e) permitting 'non-cash' preferential issue through share swaps supported by a valuation report. Such revisions are largely aligned with the commercial requirements of present day deal making and are expected to provide a boost to fund raising in the listed space.

Promoter re-classification

- SEBI has made certain changes with respect to the promoter re-classification process. Key revisions include: (a) reduction in the overall reclassification timeline (by almost 2 months); and (c) automatic re-classification (based on adequate disclosures) as part of a tender offer process/ merger scheme. Re-classification of promoter shareholding has emerged as an important aspect of control transactions involving listed companies, and the revisions have played a key role in streamlining the entire process and increase deal efficiency.

LANDMARK DEALS

Consolidation of holdings through the voluntary open offer route

Poonawalla Group's acquisition of controlling stake in Magma, through primary acquisition of shares and tender offer

Acquisition of controlling stake in Just Dial, via combination of primary/secondary acquisitions; along with the tender offer

Tata Group's acquisition of controlling stake in Tejas via acquisition of equity shares and warrants

Acquisition of Fortis Healthcare

Merger of Birlasoft into KPIT and demerger of engineering business

Merger of INOX with PVR Limited

Acquisition of Patni Computers by Apax-backed iGATE Corp

Acquisition of stake in Cholamandalam

Shareholder Right to requisition EGM for removal and appointment of directors

Acquisition of retail & wholesale, logistics & warehousing business of the Future Group under a court approved scheme

Sale of its controlling stake (up to 51% stake) in Essel Propack Limited to Blackstone

Transfer of the business undertaking of the Home Textiles Business of GHCL Limited by way of slump sale

RECENT LEARNINGS

- Permitted Early Acquisitions: Typically, secondary acquisitions in a control deal are completed only post a gap of approximately 30 days from execution of the share purchase agreement. However, recent amendments to the Takeover Regulations permits such acquisitions to be completed immediately post execution on the condition that: (a) the acquisition is undertaken through the stock exchange settlement process; and (b) the acquired shares are temporarily placed in escrow without access to voting rights. Such acquired shares can subsequently be moved out of the escrow and access to voting rights can be restored. This allows more flexibility in structuring and greater deal certainty.

  Recent examples of acquisitions under this route includes: Reliance Group's acquisition of Justdial; Tata Group's acquisition of Tejas Networks and Crompton Greaves' acquisition of Butterfly Gandhimathi.

- Exit Linked Management Incentives: Management incentive schemes have traditionally played a key role in adding overall value to the company and its shareholders. In addition to performance metrics, the incentive schemes may also be linked to the company's market capitalization. This could be helpful for financial sponsors with defined exit horizons.

KHAITAN & CO PUBLIC M&A PRACTICE

Practice

M&A involving listed companies are highly complex transactions which are intricately regulated and time sensitive in nature. They demand meticulous advance planning and careful navigation through the deal process. All of this necessitates a specialised practice offering. Khaitan & Co's Public M&A practice is all-encompassing one-stop shop from transaction advisory, execution of trades, tax advisory to regulatory interface. Our team routinely advises on listed company acquisitions, takeovers (negotiated and unsolicited), take-private transactions, carve-out transactions, buybacks, court approved schemes of arrangement and restructuring, leveraged buy-outs and management buy-outs.

Execution

Our clients include strategic and financial investors, large and mid-cap listed companies, promoter groups, merchant banks and investment banks. We also continually represent domestic and international clients, including Indian conglomerates, multinational corporations and international private equity funds, across sectors.

Khaitan & Co Advantage

Khaitan & Co has a highly specialised team that focusses on Public M&A transactions. The team has experience and expertise in dealing with all aspects of a Public M&A transaction, including navigating through complex public market laws. Several of our partners have been part of committees set up by SEBI and stock exchanges, and therefore, enjoy deep understanding of the regulatory framework.

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Abhishek specialises in Public M&A deals. He routinely advises financial and strategic investors on listed company transactions. He has worked on friendly as well as hostile bids in the listed space.

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