

Shaping the future of digitalization

Global perspectives on digital technologies,
risk and corporate digital responsibility

March 30, 2022

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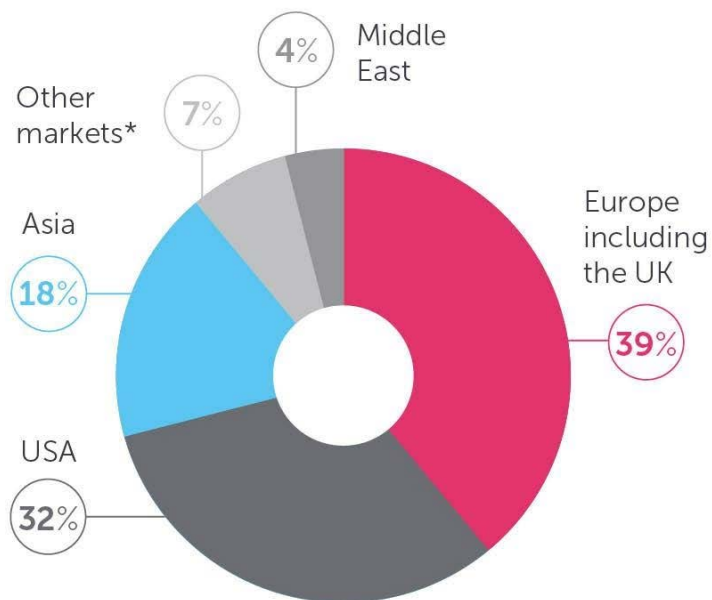
Mark Herlach, *Partner, US Head of Competition, EU and Trade*

Shaping the future of digitalization: the report



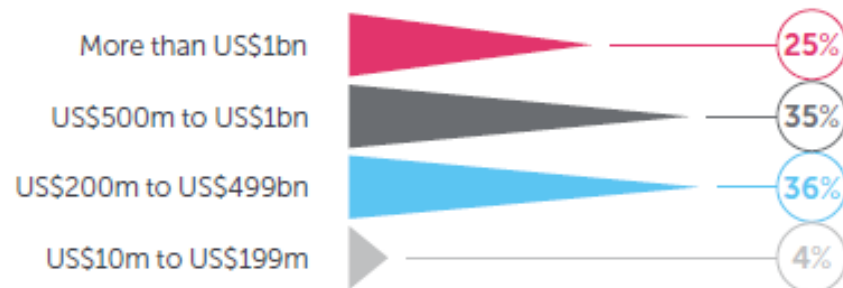
700 executives surveyed worldwide

Region breakdown

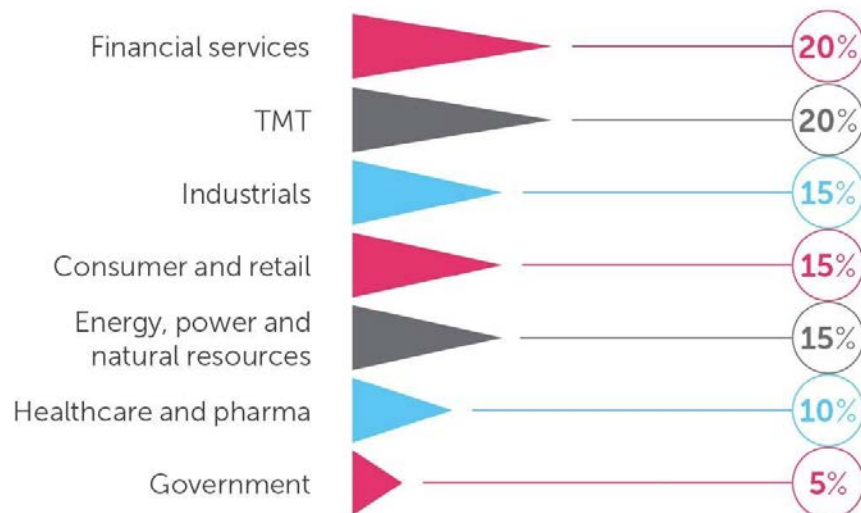


*Other jurisdictions around the world with a strong or emerging focus on digital technology including Mexico, Brazil, South Africa and Indonesia

Size breakdown (revenue)



Sector breakdown



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Key definitions



Defining digitalization

Digitalization is the application of digital technologies to transform business activities, processes, competencies and models to fully leverage the changes and opportunities brought about by technology and data. This encompasses a company's procurement, deployment and/or use of such technologies. It also encompasses businesses developing, selling/re-selling or licensing out such technologies. In all cases, this could be for internal use or customer-facing purposes, making it relevant to all companies regardless of sector



Defining corporate digital responsibility (CDR)

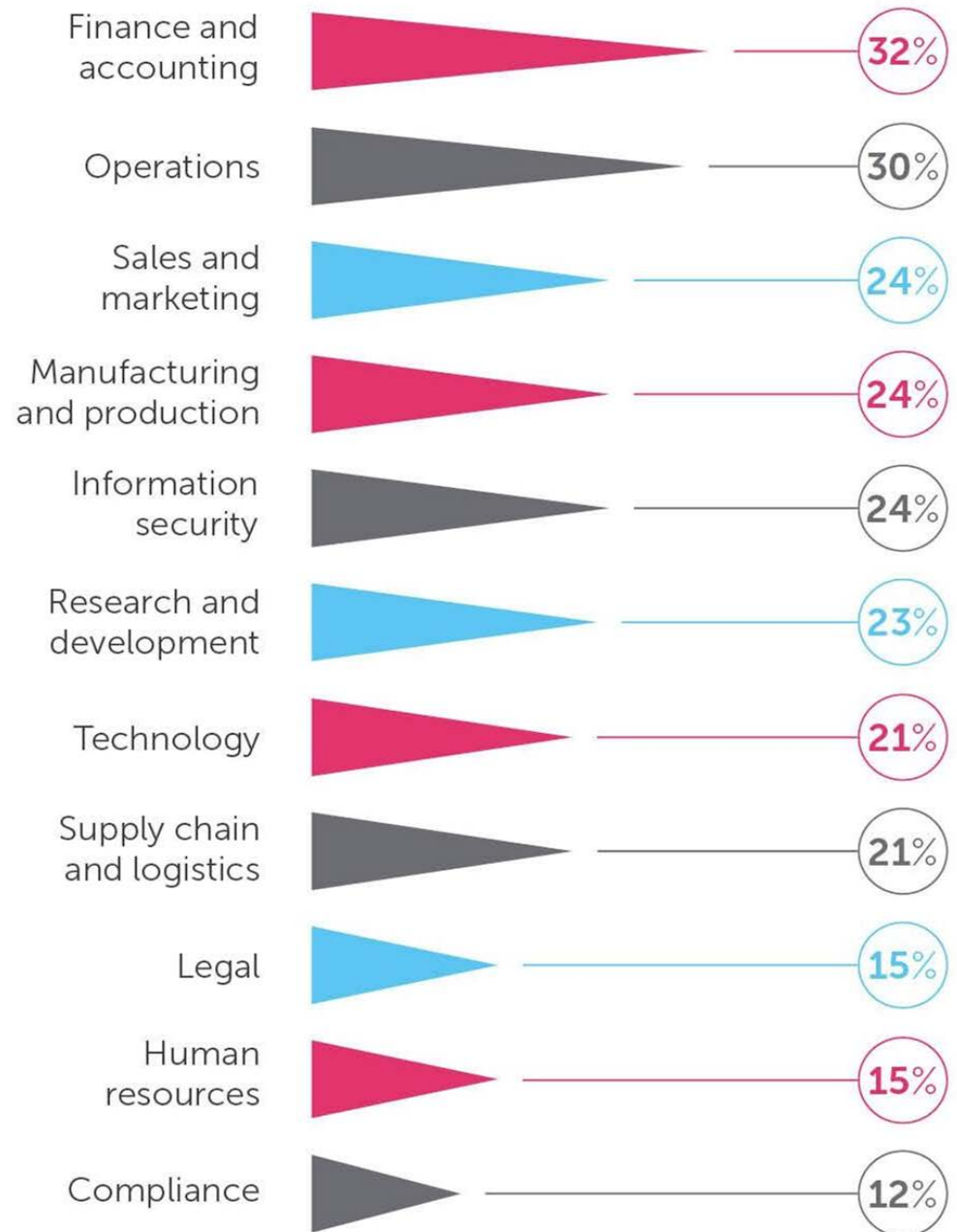
CDR is a set of responsibilities (relating to commercial, legal, compliance, ethics, ESG, governance and oversight imperatives) that organizations should consider when making decisions relating to technology and data and when implementing their digitalization strategy

Future trends:

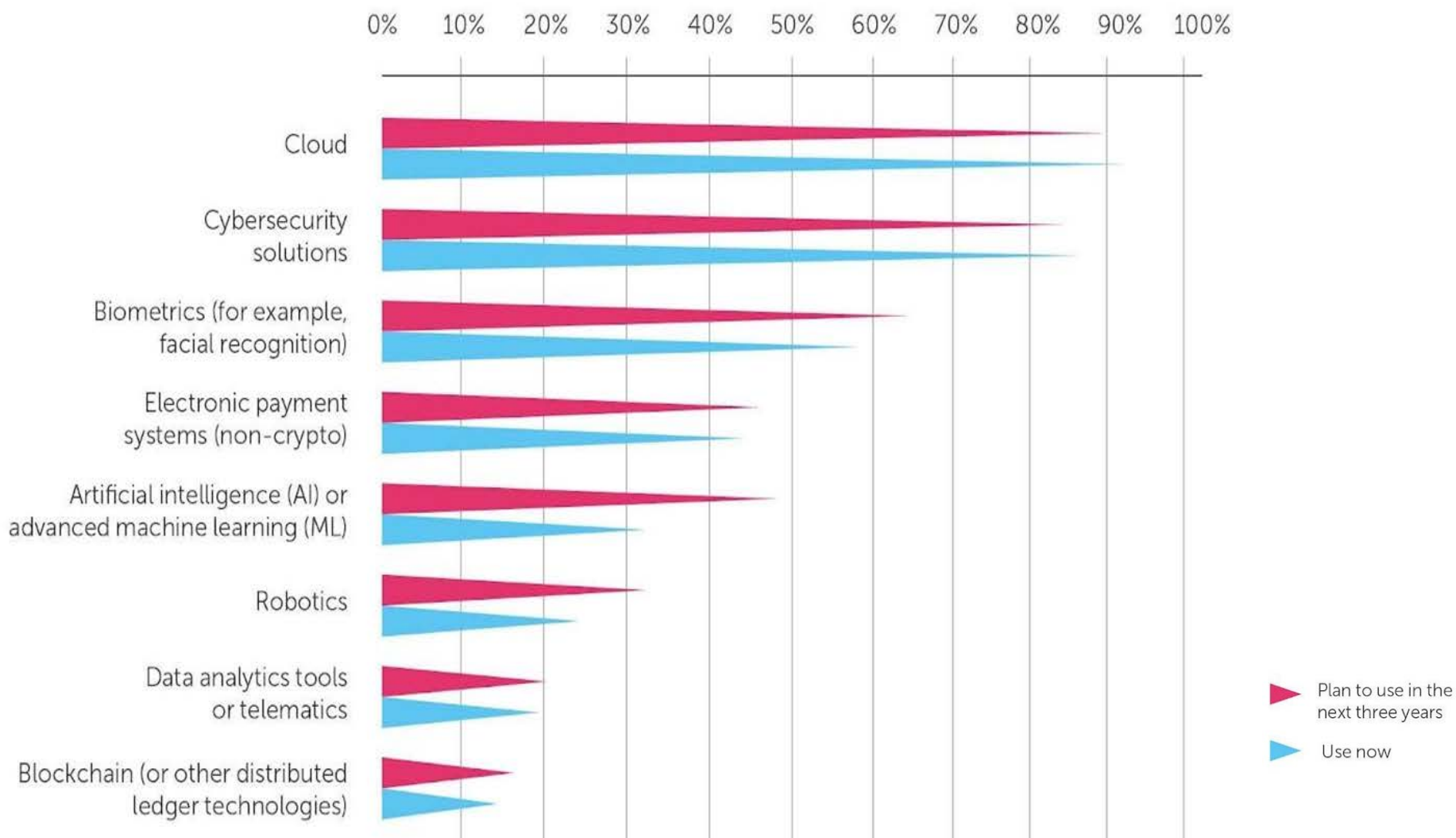
Investments in digital technologies

Main objectives for using digital technologies

Functions businesses are prioritizing for digital technology investment during the next three years



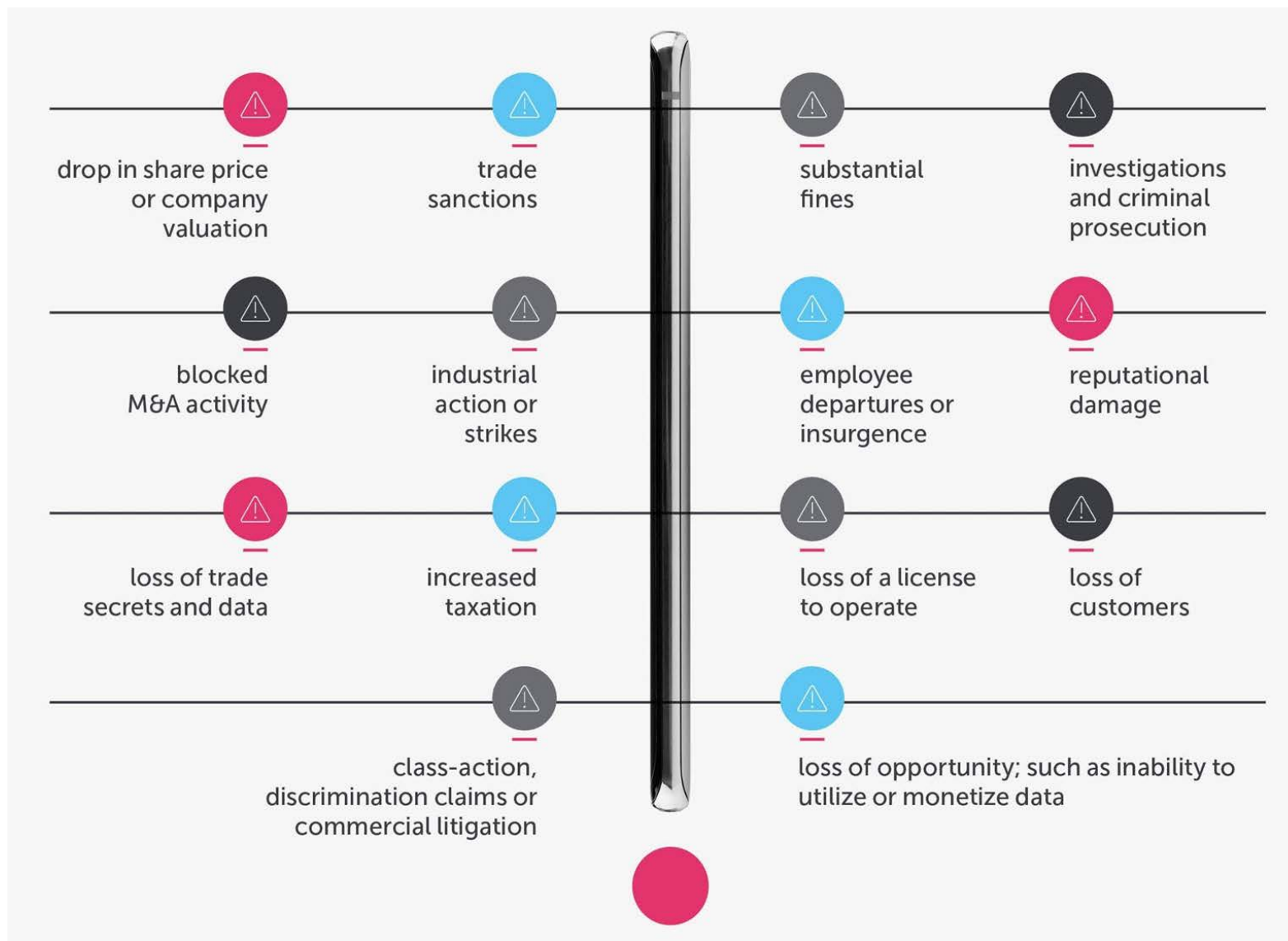
Which digital technologies are in highest demand?



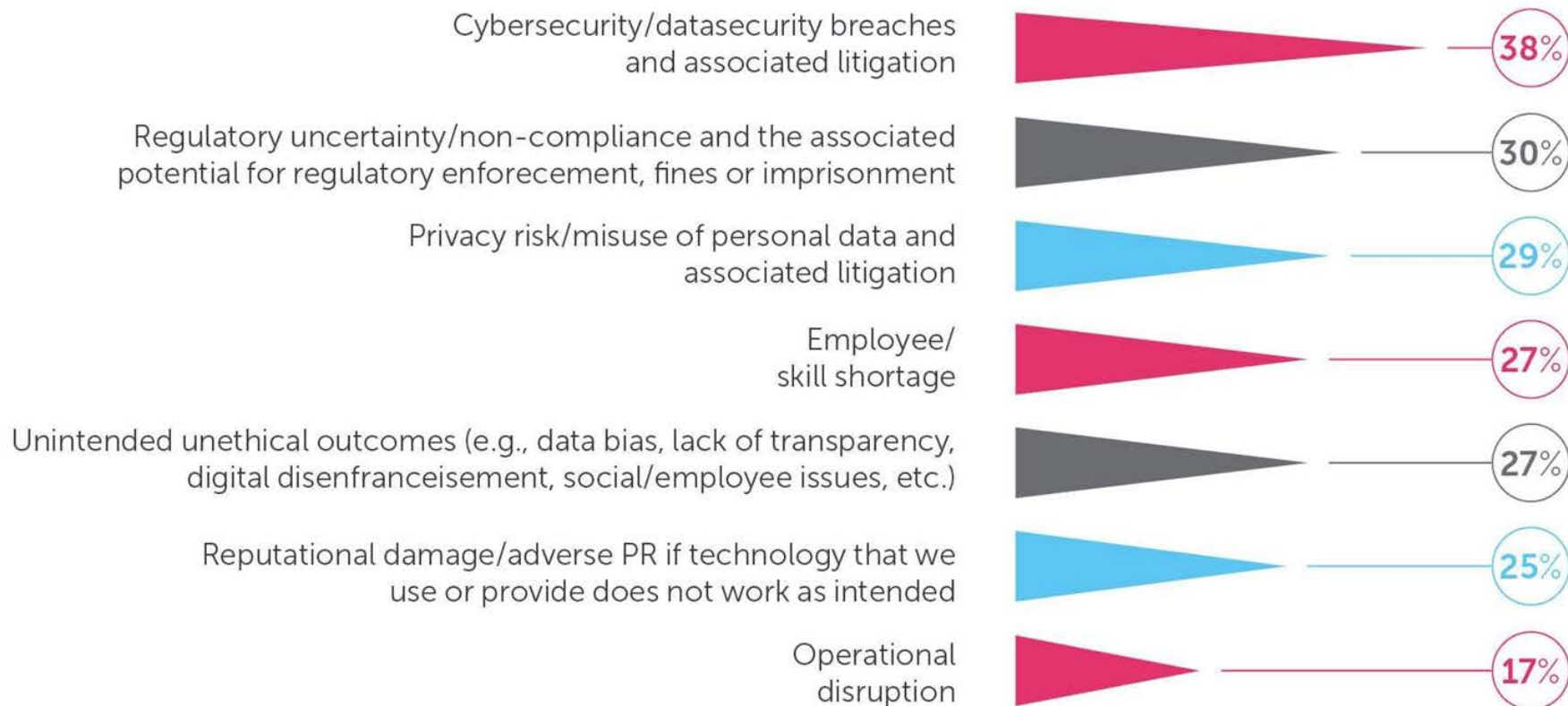
When considering digitalization-focused technology company targets to acquire, invest in, or form a strategic partnership with in the next two years, which of the following digital technologies are you looking for the company to offer?

High risk, high reward: evaluating and navigating risks

Navigating risks

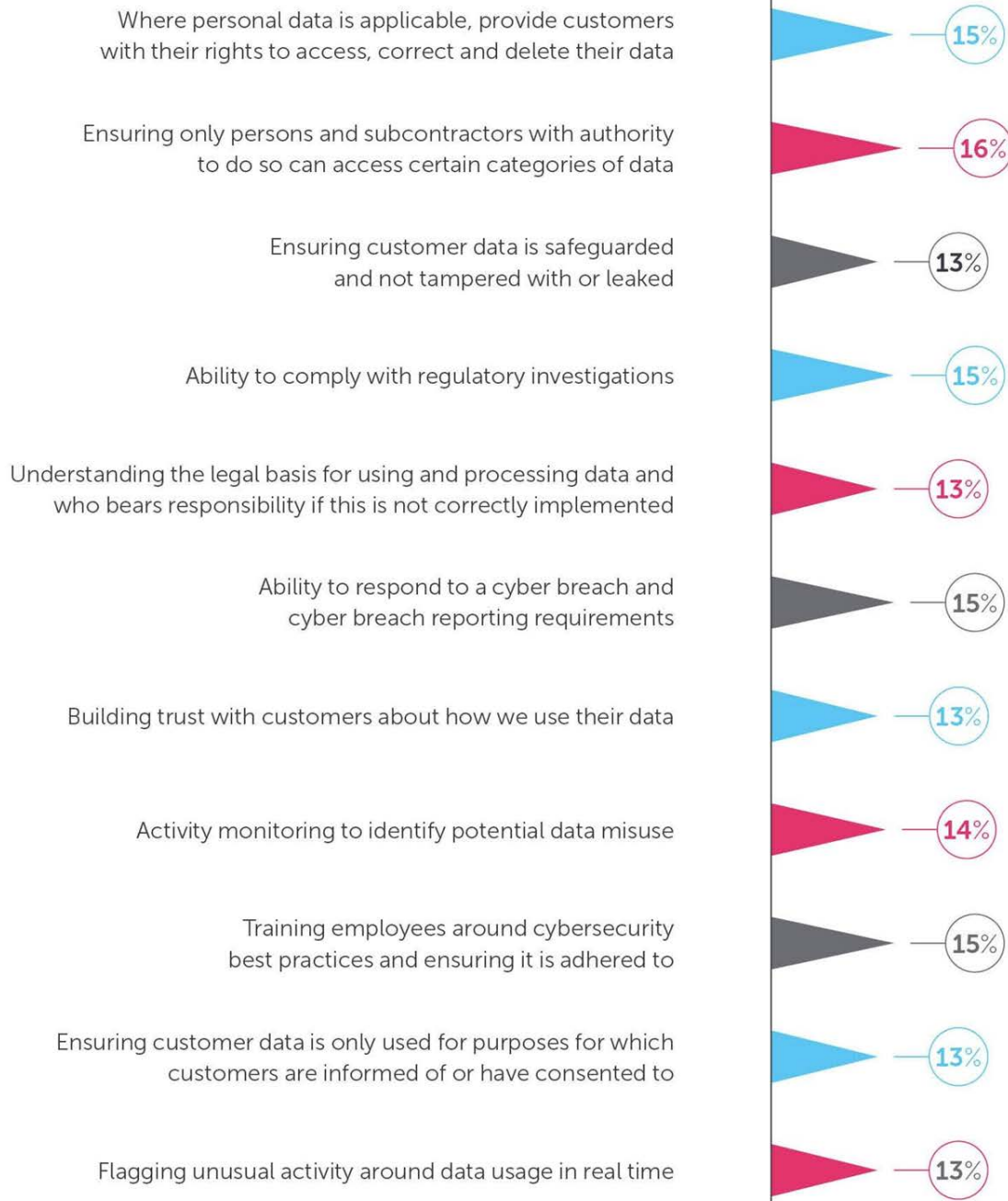


Top risks associated with the use or provision of digital technologies

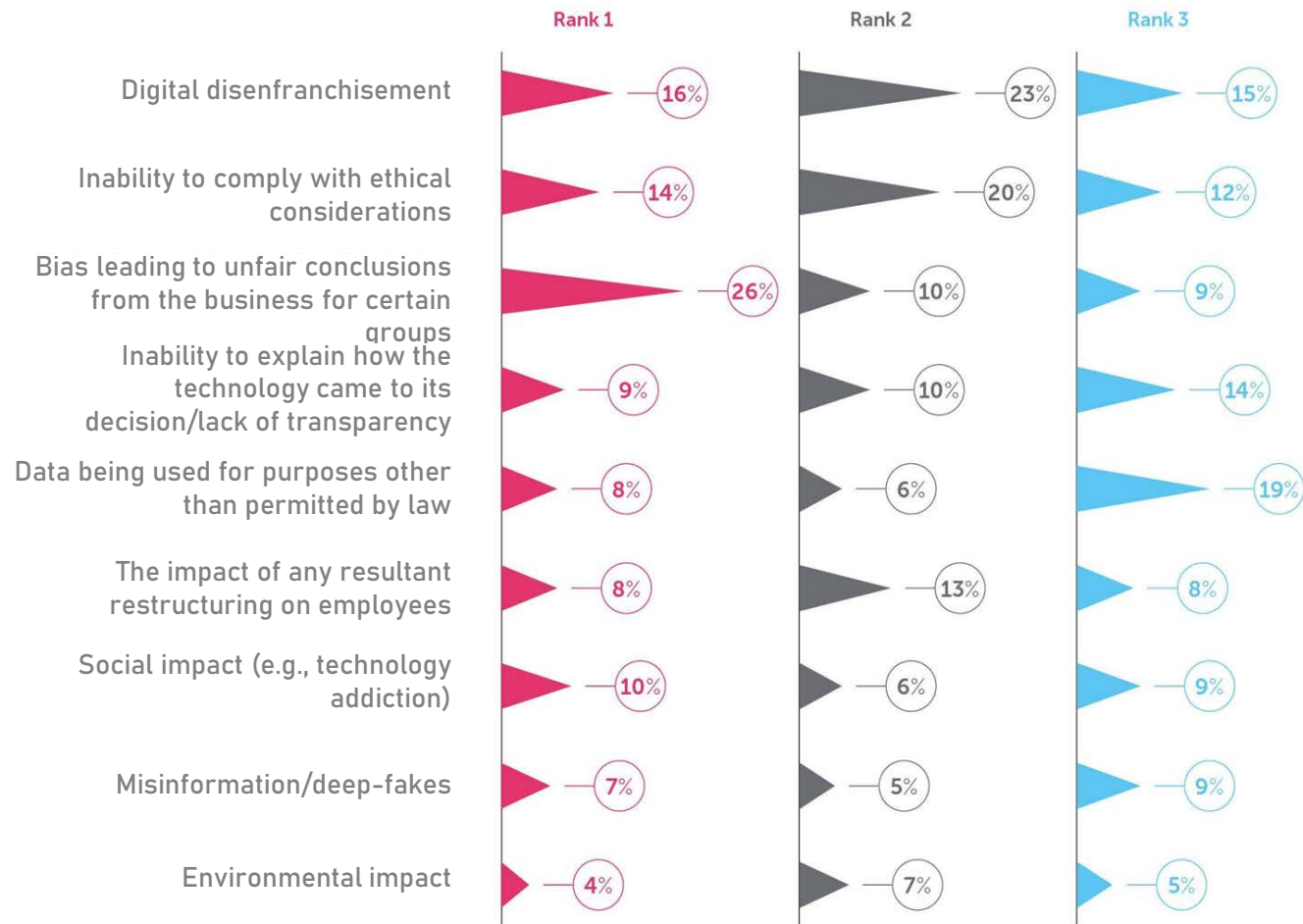


How confident are you in your organization's ability to do each of the following?

Each relate to practices associated with collecting and monetizing data.

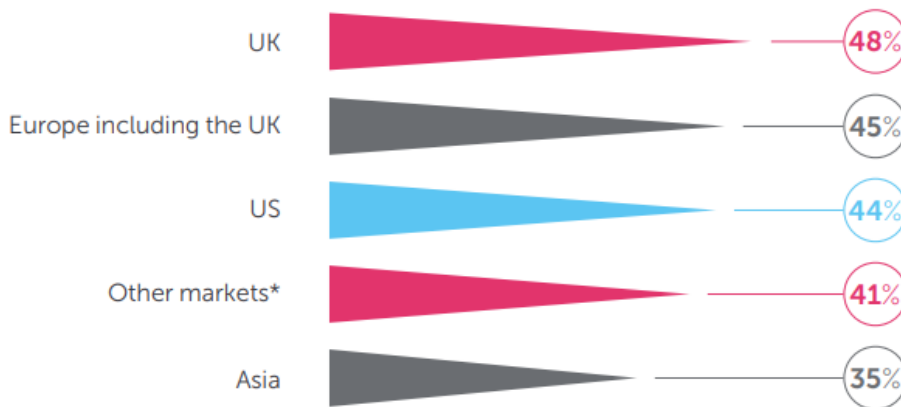


Greatest risks related to unintended unethical outcomes



- ‘**Digital safety gap**’ is emerging as customer-facing products and solutions advance faster than back-room safety assurance(s)
- **The impact?** Regulatory action is the biggest concern. Class actions are a worry especially in the US
- European businesses focus concerns around risk averse cultures making them uncompetitive
- **Takeaway:** If you want to stay ahead, don’t wait for regulation – invest in safety resilience to match your tech risk exposure

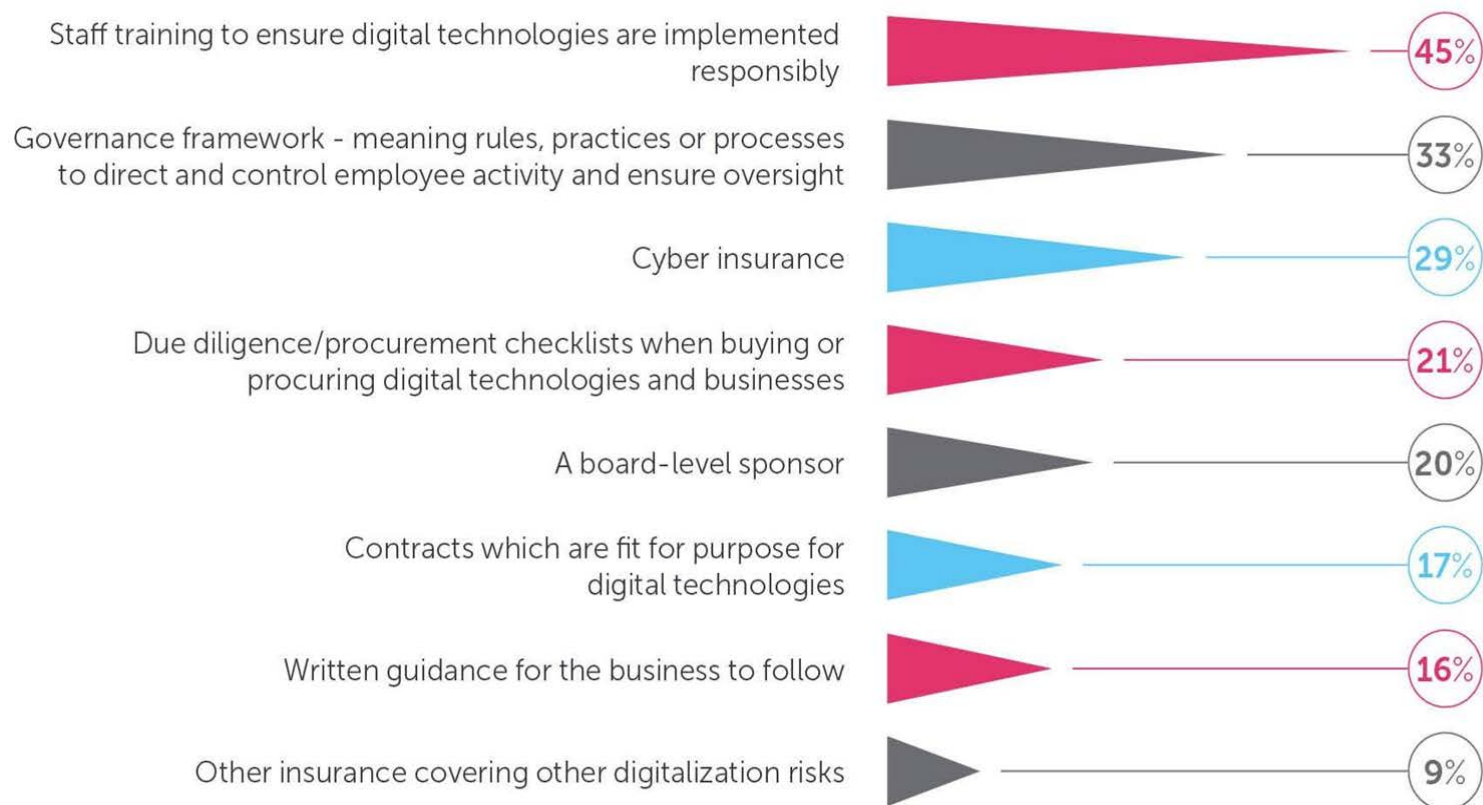
Percentages of businesses that are significantly concerned that a risk-averse approach to product safety may lead to uncompetitive products



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From intent to action: corporate digital responsibility

What businesses currently have in place to deal with corporate digital responsibility obligations



Board or senior leadership oversight is crucial, but often lacking

- ❑ A significant majority of respondents (59%) recognize that CDR is a board-level issue
- ❑ Only 20% of our respondents have a board-level sponsor or advocate for their CDR strategy
- ❑ Just 11% of our respondents that use AI or ML have a board member responsible
- ❑ Just 21% use due diligence or procurement checklists tailored to CDR when they procure digital technologies or acquire technology businesses

CDR recommendations

1. Build a strategy that works for the present but is also adequately forward-looking
2. Base your CDR strategy on a understanding of the full spectrum of current and emerging strategic, legal, corporate, regulatory, sectoral, ethical and ESG risks and responsibilities that accompany digitalization
3. Understand what technologies the business is developing, selling, licensing or using or intending to use, as well as where, for what purpose and what the implications will be
4. Put data and rights to use at the heart of the strategy

CDR recommendations

5. Consider and address upfront the implications for and impacts on people/staff
6. Address appropriate oversight and governance obligations, whether by industry or by virtue of jurisdictional differences
7. Review your contract templates and playbooks to ensure they are fit for purpose, both on the sales and the procurement side, and audit
8. Build a strategy across the markets in which you operate or intend to operate, not just one focused on the country where your company is headquartered

CDR and M&A

When considering digitalization-focused technology company targets to acquire, invest in, or form a strategic partnership with in the next two years, which of the following digital technologies are you looking for the company to offer?

How important are each of the following factors in evaluating whether to move forward with a target company, investment or partner?

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Beat It or Never Surrender?

Real Estate Lessons Learned from the
Pandemic

March 30, 2022

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Is There Something I Should Know?

~ *Duran Duran*

Please please tell me now

Agenda

- Office space
 - Overview
 - Strategies to shed space
 - Surrender and holdover
 - Negotiating leases
 - Confidentiality
- Industrial and retail space

If You Leave

~ *Orchestral Maneuvers in the Dark*

Mass Exodus

- Overall positive absorption of office space
- However, 110M fewer sf occupied than two years ago

Source: <https://www.nar.realtor/commercial-market-insights/february-2022-commercial-market-insights>

Should I Stay or Should I Go?

~ *The Clash*

If I go, there will be trouble

And if I stay it will be double

Considerations:

Reducing Office Space

- Biggest negative net absorption: big cities and Midwest
- Positive net absorption: FL, TX, CA and West
- Class C buildings losing tenants
- Class A buildings:
 - Air filtration
 - Touchless elevators
 - AV equipment
 - Dedicated and hot desks
 - Amenities to draw employees back to the office

Beat It

~ Michael Jackson

Strategies

- Expiration
 - Short-term extensions
 - Longer-term extensions
- Early termination
 - Right to terminate in lease
 - Negotiated termination

Never Surrender

~ *Corey Hart*

Just a little more time is all we're asking for

Considerations:

Lease Document – Trouble Spots

- Surrender requirements
 - Removal of improvements
 - Repair of damage
- Holdover
 - Possession versus required condition
 - Rent (specified in lease or statutory) and other damages
 - Extension of term

The Search is Over

~ Survivor

Negotiating New Leases

- Force majeure: health emergencies, material and labor shortages, approvals
- Government-mandated closures
 - Absorb/share risk
 - Cap reduced rent
- Construction
 - Buildout period (holdover, eviction in old space)
 - Construction costs (higher, plus security for allowance)
 - Amenities
 - Contractor fraud

Negotiating New Leases (cont.)

- Be careful about rules
- Operating expenses
- Attracting employees to the office
 - Dogs
 - Food
 - Alcohol

Private Eyes

~ *Hall & Oates*

Private eyes

They're watching you

They see your every move

Confidentiality

- Sharing office space with third parties
 - Processes to ensure confidentiality
 - Construction
 - Technology: no shared servers or printers
- Home office
 - No shared laptops
 - Two-factor authentication, strong passwords, auto logoff
 - Store and dispose of files securely
 - Disable smart speakers

Hot Hot Hot

~ Buster Poindexter

Industrial

- Demand is exceeding supply
- Vacancy rate is 4.2%
- Market leaders: Chicago, Dallas-Fort Worth, Indianapolis, Phoenix, Austin, San Antonio, Charlotte
- New solution for short-term warehouse arrangements

Source: <https://www.nar.realtor/commercial-market-insights/february-2022-commercial-market-insights>

Retail

- Net absorption is outpacing supply
- Vacancy rate declined toward 4.2%
- Challenges for tenants who want to close
 - Continuous operations clause
 - Hours of operation provision
 - Specific performance remedy

Source: <https://www.nar.realtor/commercial-market-insights/february-2022-commercial-market-insights>

Find our songs at:

<https://open.spotify.com/playlist/5DTEep7DH6me00E2mc4Cod?si=rPDNiTsrRICopYV0-MGxMA>

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Big, meet Small

The challenges for industrial companies
investing in early stage technology

March 30, 2022

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Agenda

- Originating new technology deals
- Pricing investments (particularly for listed business)
- Undertaking (proportionate) due diligence
- Funding growth/R&D
- IP ownership
- (Proportionate) Venture controls and management incentivization
- Downside protection
- Moving to ownership

Originating new technology deals

- Most commonly undertaken by in-house business development function
- Investee tech company often reaches out
- Buy-side corporate finance advisors not set-up to support corporates with such investments
- Importance of clarity of objective for the corporate
- Corporate Venture Capital is a growing route to access these opportunities

Pricing investments (particularly for listed business)

- Culturally challenging for a major corporate
- How will shareholders react to a listed company paying a multiple of revenue for a pre-profit business and the impact of EPS?
- Pricing often driven by other strategic concerns
- Time horizons for ROI
- Does the corporate have an exit route and/or path to control?

Undertaking (proportionate) due diligence

- David v. Goliath
- Care needs to be taken not to exhaust or distract the management team
- Speed of execution is paramount
- Due diligence
 - IP
 - Open source software
 - Use of consultants
 - Personalities

Funding growth/R&D

- Further invest via equity
- Can management match investment?
- Relying on bank debt vs. equity calls
- Sometimes tax breaks (e.g. R&D tax credits) are lost post-investment by a major corporate

IP ownership

- IP diligence is key
- Future IP has to be developed by management pursuant to appropriate service agreements to ensure there is no debate about the ownership of IP
- Terms on which corporate IP is used
- How to restrict the investee company from trading with competitors
- Steps you can take to further protect the IP
 - Registrations, documentation, etc.

(Proportionate) Venture controls and management incentivization

- Often need some sort of shareholders' agreement or joint-venture agreement
- Balance between ensuring appropriate governance and freedom to operate
- Focus on the 'must haves'
- The technology needs to achieve certain milestone developments within agreed timeframes
- Use of board representatives and similar
- Use of share growth scheme to incentivize management

Downside protection

- Most commonly seen is a failure to achieve milestones
- Balance to achieve
- Put option may not work if founders can't fund it
- A traditional corporate investment will often include a regulatory or reputational "rip-chord"
- A right to appoint a corporate finance advisor to run a third-party sale process is a common exit route
- Use of lower investment level along-side commercial agreements with the investee tech company

Moving to ownership

- Assuming the investment has been excellent, what rights does the corporate need in order to take control?
- Use of call options and similar mechanisms – who has trigger rights?
- What diligence needs to be conducted in order to take control?
- What happens to management if you suddenly make them all very wealthy?
- Instead of “right of first refusal,” look for softer “right of first offer” or “right of notification” to enable M&A to be pursued

Takeaways

- Even if they fail, corporates can sometimes learn valuable lessons on what not to do
- Value in investigating targets re relationships whether commercials, partnership or otherwise
- Entrepreneurs have a lot of options as to how they fund their ventures
- It is important to consider and articulate what you can bring that is distinct from those other sources (e.g. sales, R&D, resource, opening up international markets, etc.)
- Very common in the VC world to collaborate with others on the cap table, so building external relationships is key

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