

# Lost in Arbitration ?



ASA Below 40 \_ Summer retreat in Neuchâtel \_ 24/25 June 2011

# Fields of activity



## Aerospace

F2010-11 revenues: \$8.6 billion  
49% of total revenues  
Backlog: \$16.6 billion\*  
Employees: 30,300\*\*

\* As at January 31, 2011

\*\* As at January 31, 2011. Includes contractual and inactive employees

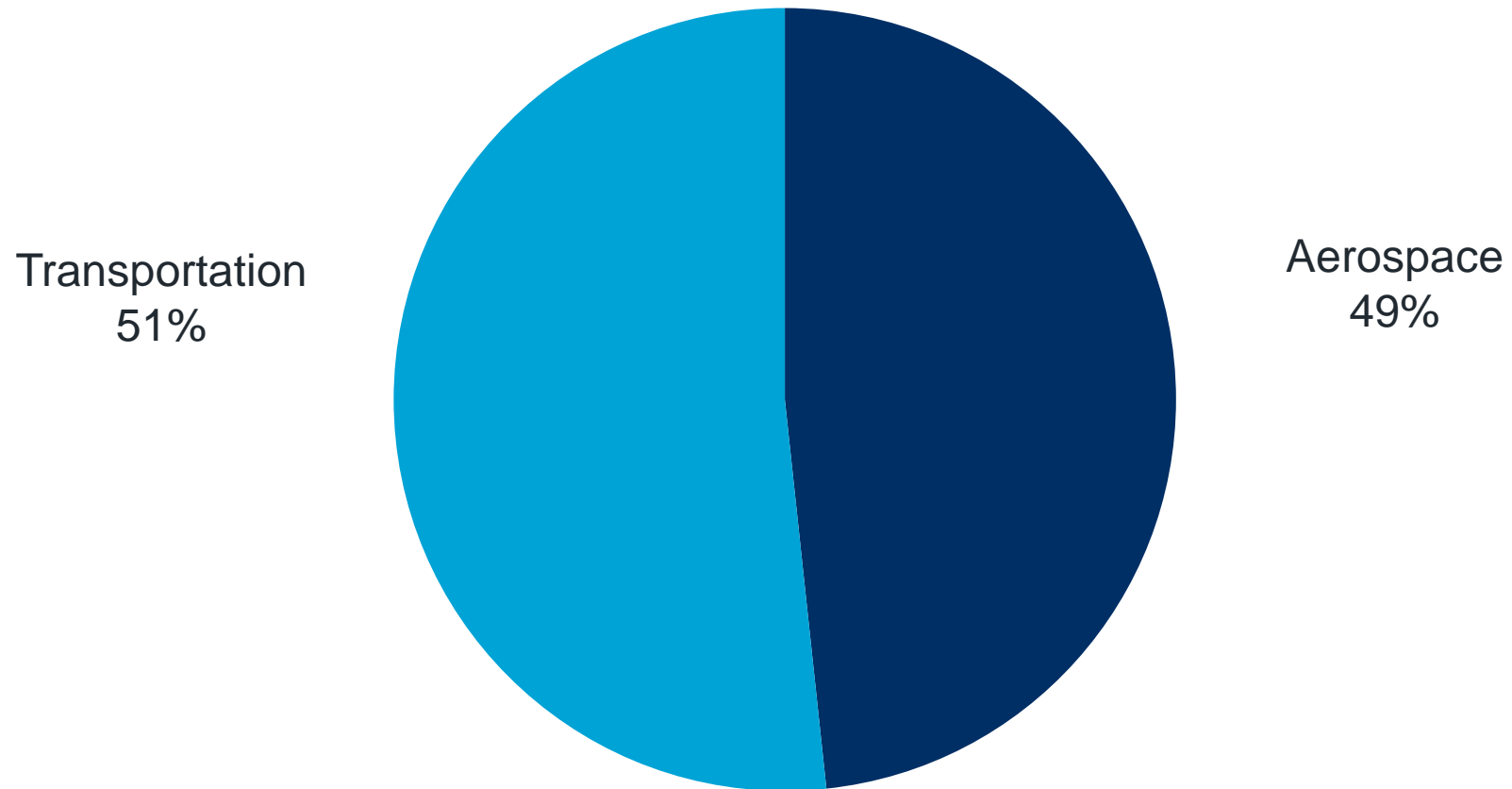


## Transportation

F2010-11 revenues: \$9.1 billion  
51% of total revenues  
Backlog: \$33.5 billion\*  
Employees: 34,900\*\*

**BOMBARDIER**

# A diversified company: Breakdown of revenues by business segment



For fiscal year 2010-11

# Bombardier Transportation

## Global Expertise – Local Presence

---



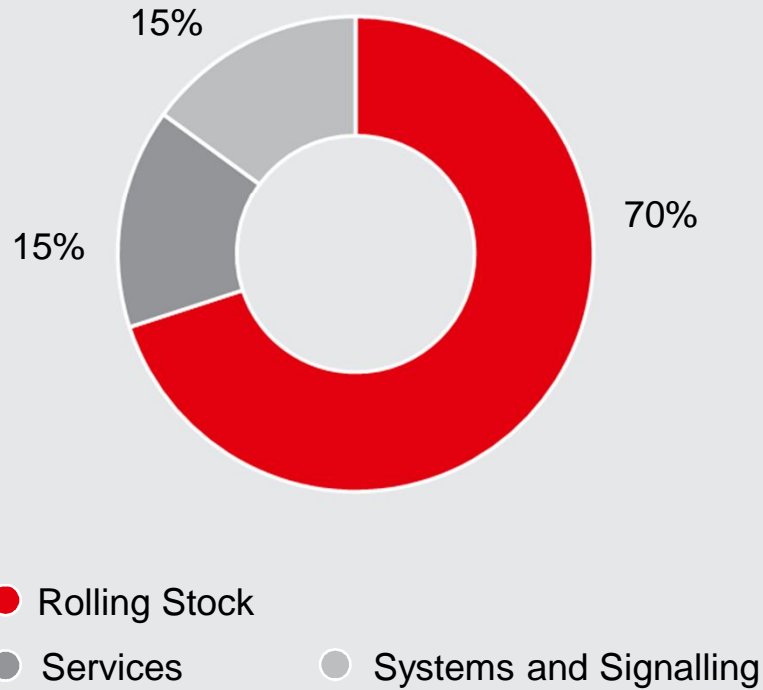
© Bombardier Inc. or its subsidiaries. All rights reserved.

# Bombardier Transportation

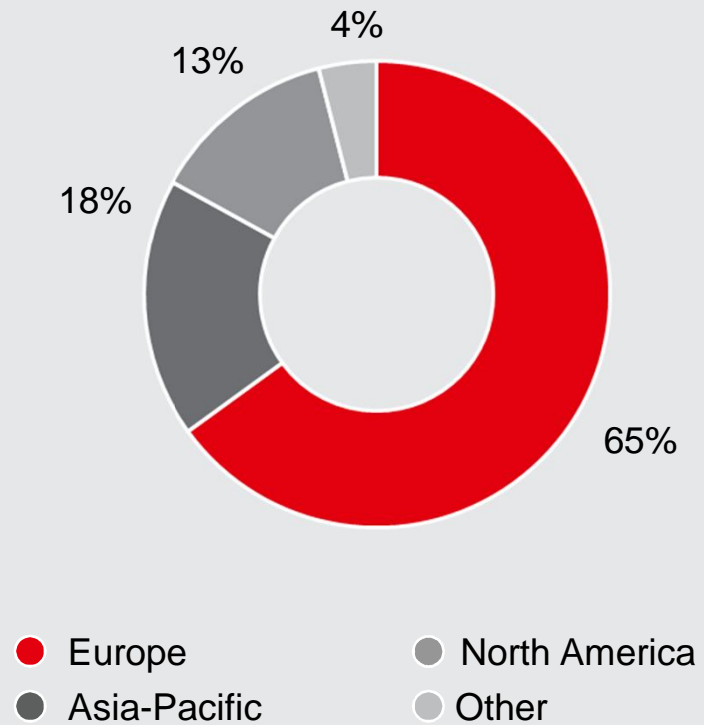
## Segmented Revenues

Total 2011 revenues: \$9.1 bn US<sup>1</sup>

Revenues by market segment



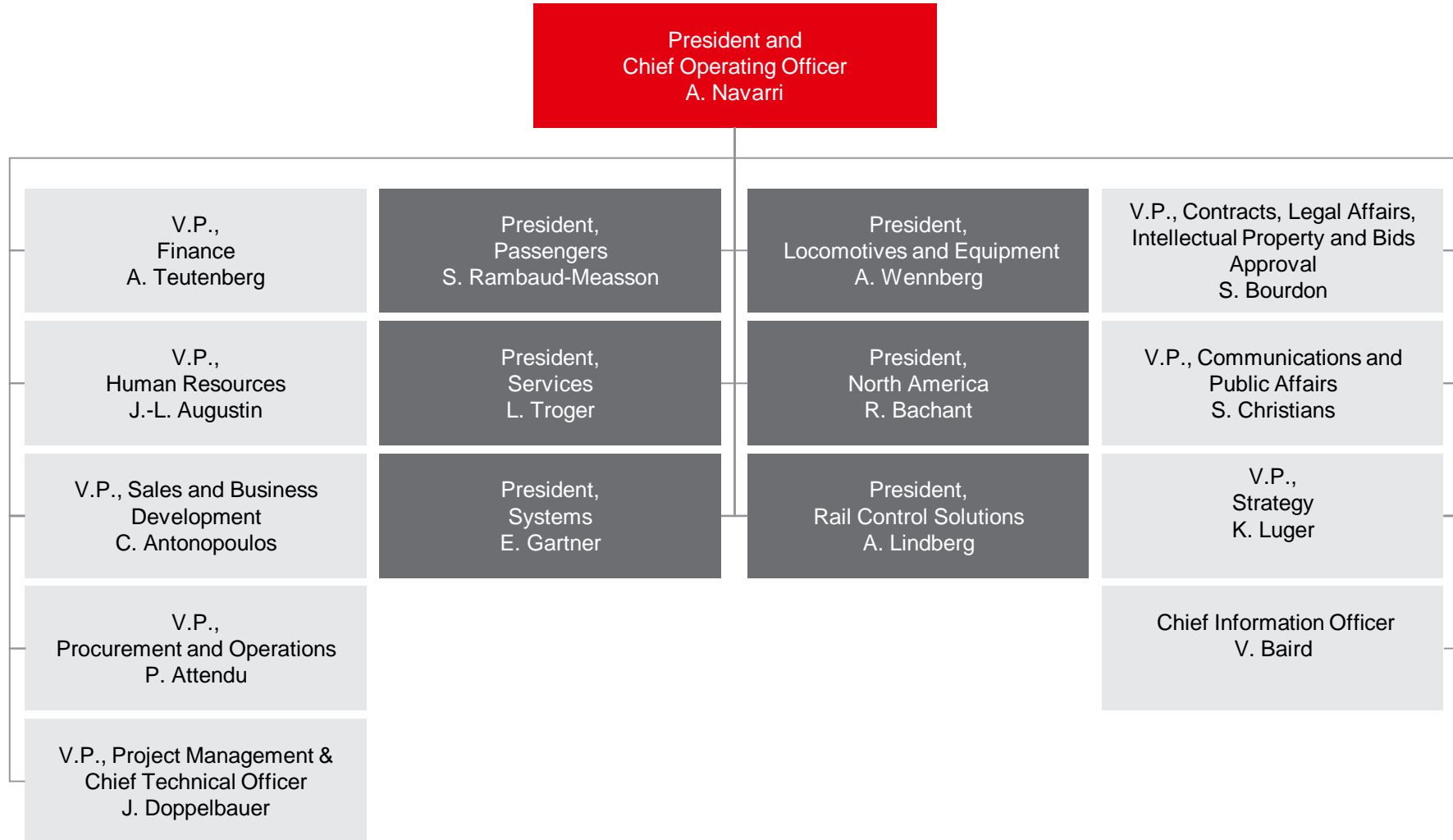
Revenues by geographic region



© Bombardier Inc. or its subsidiaries. All rights reserved.

# Bombardier Transportation

## Our Divisions and Group Functions



© Bombardier Inc. or its subsidiaries. All rights reserved.

# Bombardier Transportation – Switzerland

## Switzerland as part of the worldwide BT network



**WINTERTHUR** – Competence Center Bogies



**VILLENEUVE** – Production Site Passengers

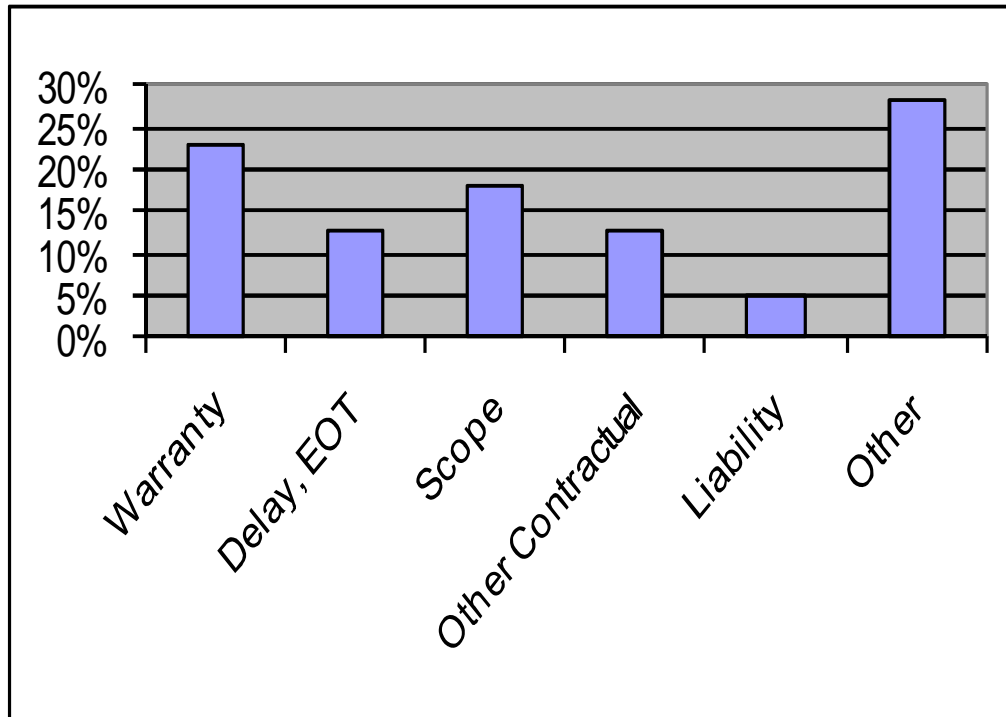


**ZÜRICH** – Head Office CH  
 Competence Center Locomotives  
 Competence Center Propulsion & Controls  
 Services – Passengers – Light Rail Vehicles



© Bombardier Inc. or its subsidiaries. All rights reserved.

# Matter of dispute



Warranty	23%
Delay, EOT	13%
Scope	18%
Other Contractual	13%
Product Liability	5%
Other	28%

**JV  
Issues**

## Dispute Resolution – Arbitration best option ?

---

- Yes, because:
  - confidentiality is an issue
  - considerable expertise at arbitral institutions and law firms
  - Part of procedural tactic, gain of time
  - cross-border recognition and enforcement of arbitral awards

## Dispute Resolution – Arbitration best option ?

---

- But: (in general)
- Arbitrators do not play an active role in conflict resolution.
- Arbitrations are designed to decide upon a dispute but not to assist parties in finding settlement.
- Arbitrators do not express their views on the merits of the disputes in the course of the proceedings.

# Dispute Resolution – Arbitration best option ?

---

- But: (procedural issues)
- Paper driven proceedings (time and cost consuming). Uncertainty of the outcome and the date of the rendering of the arbitral award.
- Taking of evidence even on minor matters. In general: arbitration is too much focused on procedural issues. Lawyers and arbitrators may be passionate about this, but is the same true for the clients ?
  - „Winning a lawsuit is not the goal, maximizing profits and minimizing risks is.“

# Dispute Resolution Recommendation Matrix

DISPUTE RESOLUTION  
RECOMMENDATION MATRIX

Pre-Selection

Detailed Questionnaire

**BOMBARDIER**

# Dispute Resolution Recommendation Matrix

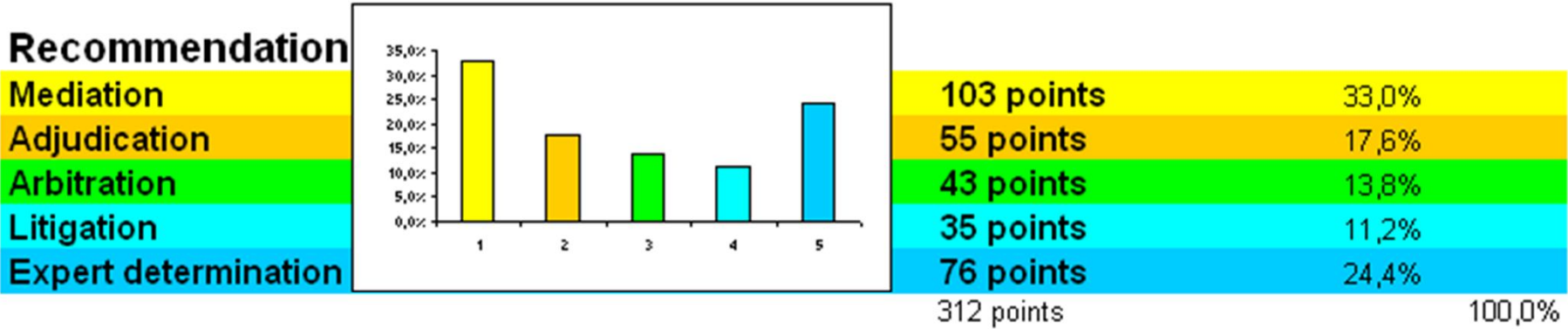
- **1. Step:**
  - In some cases, only one proceeding may be appropriate
  - In some cases, some proceedings may be inappropriate

Dispute Resolution Recommendation Matrix Part 1		select from dropdown
1	Do you need legal precedence for similar issues in the future?	Yes
	<a href="#">Mediation</a>	Because of your reply to question 1, Mediation is not an option for dispute resolution in for this issue.
	<a href="#">Adjudication</a>	Because of your reply to question 1, adjudication is not an option for dispute resolution in for this issue.
	<a href="#">Arbitration</a>	Because of your reply to question 1, Arbitration is not an option for dispute resolution in for this issue.
	<a href="#">Litigation</a>	Because of your reply in question 1, Litigation seems to be the only option for dispute resolution in this case.
	<a href="#">Expert determination</a>	Because of your reply to question 1, Expert determination is not an option for dispute resolution in for this issue.

# Dispute Resolution Recommendation Matrix

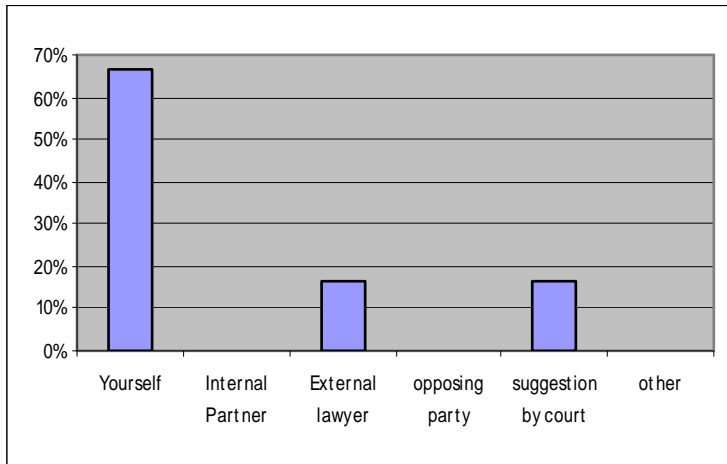
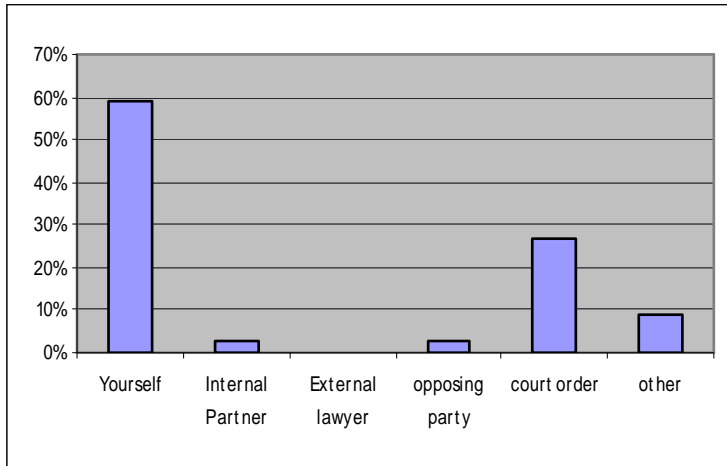
■ **2. Step: Check list**

- Features which distinguish the different proceedings from one another are checked
- Answers are assessed on grounds of
  - Scientific research (Sander, Goldberg)
  - Completed and customised by dispute resolution experience of Bombardier



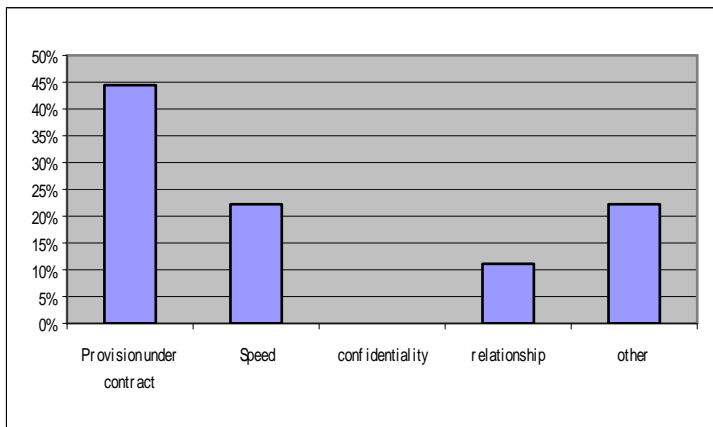
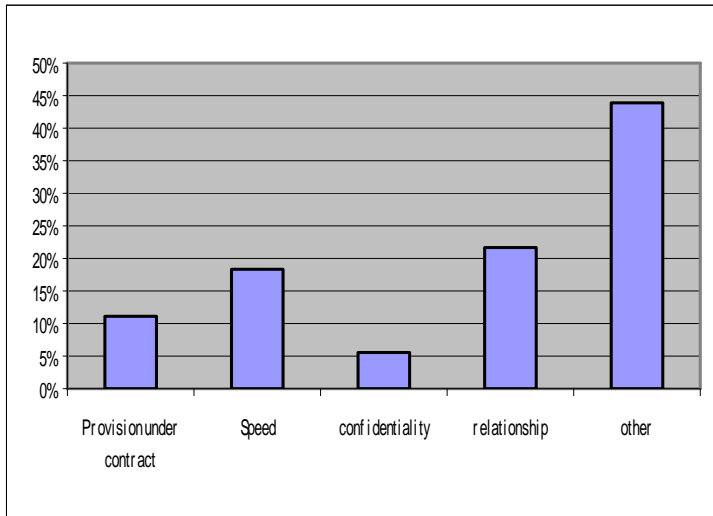
**Recommendation based on the answers:**  
**Mediation (103 points)**  
 The second-best solution is Expert determination (76 points)

# Mediation – whose idea?



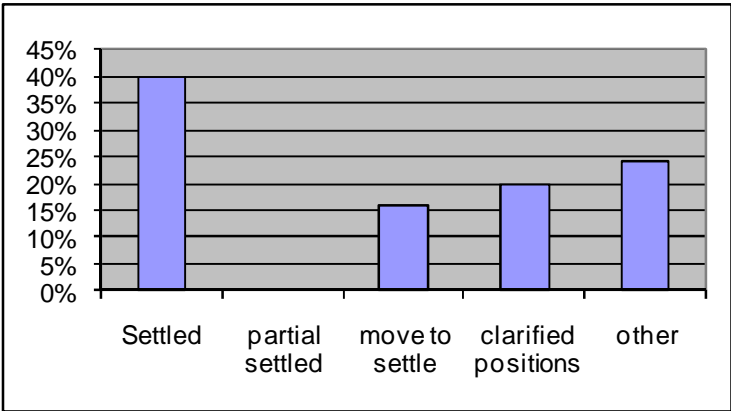
	2007	2011
<b>Yourself</b>	<b>59%</b>	<b>67%</b>
<b>Internal Partner</b>	<b>3%</b>	<b>0%</b>
<b>External lawyer</b>	<b>0%</b>	<b>17%</b>
<b>opposing party</b>	<b>3%</b>	<b>0%</b>
<b>court / arbitral tribunal</b>	<b>26%</b>	<b>17%</b>
<b>other</b>	<b>9%</b>	<b>0%</b>

# Why Mediation?

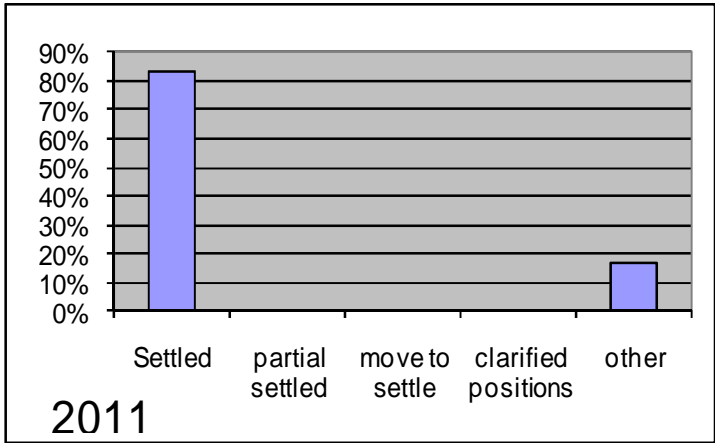


	2007	2011
Provision under contract	11%	44%
Speed	18%	22%
confidentiality	5%	0%
relationship	22%	11%
other	44%	22%

# Mediation results



2007



2011

	2007	2011
<b>Settled</b>	<b>40%</b>	<b>83%</b>
<b>partial settled</b>	<b>0%</b>	<b>0%</b>
<b>move to settle</b>	<b>16%</b>	<b>0%</b>
<b>clarified positions</b>	<b>20%</b>	<b>0%</b>
<b>other</b>	<b>24%</b>	<b>17%</b>

Thank you for your attention

