

**AIJA Deal Points Survey - Market Standards for Share Deals
(M&A Commission)**

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Executive Summary of Canada

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1. General Statement

- The deals studied are all cross-border deals and are generally standard for Canadian transactions; all of the deals are governed by Canadian law.

2. Summary of Transaction Details

- 3 deals reported
- Maximum deal value = EUR 208,000,000, minimum deal value = EUR 11,400,00 and median deal value = EUR 11,400,000
- Maximum % of shares acquired = 100, minimum % of shares acquired = 51 and median % of shares acquired = 70
- Industries of reported deals include construction, media and consumer goods
- Buyers' countries of origin include the UK, Israel and Italy and Targets' country of origin was Canada in each deal
- 66% of targets had below 200 employees
- 100% of deals were without auction
- 100% of the deals were between two industry companies

3. Letters of Intent

- 100% of transactions had LoIs signed
- 100% of the deals contained exclusivity clauses and 66% of those were greater than or equal to one month
- 66% of LoIs had certain clauses binding and 33% were not binding in any respect

4. Due Diligence

- 66% of transactions involved vendor due diligence
- Where a vendor due diligence was performed, 50% of cases where the report was disclosed to the Buyer
- 100% of transactions used a virtual data room for delivery of due diligence materials
- The virtual data rooms were organized by the investment bank, seller and/or seller law firm
- 33% of the deals had a formalized Q&A procedure
- 100% of deals included the right to print copies

5. Purchase Agreement

- Transaction
 - o 66% of transactions had non-simultaneous closings
 - o 100% of purchase agreements were in English
- Purchase Price
 - o 66% of transactions had cash consideration and 33% had a combination of cash and stock
 - o 66% of deals had closing accounts, 33% of deals were without price adjustments and a locked box was applied for 100% of these deals
 - o 100% of deals had payment in installments with 66% of these including earn outs and 33% including payment of a portion of the purchase price into an escrow account
 - o 33% of the deals financed with equity, 33% with a combination of debt and equity and 33% unknown
- MAC clause
 - o 100% of deals included a MAC clause
 - o 66% had a back-door MAC, 33% a condition precedent; 66% had a defined MAC clause; 66% of the MAC clauses did not contain a materiality threshold
- Reps & Warranties
 - o 100% of deals included representations and warranties
 - o 100% of deals included standard reps&warranties
 - o 100% of deals included an extensive list of reps&warranties and 66% of these were repeated on closing
 - o 100% of the deals were without specific indemnifications
 - o 66% of deals included only tax warranties and no tax indemnity and 33% included both tax indemnities and tax warranties
- Limitation of liability
 - o 33% of deals included a general limitation on liability and it was for 18 months
 - o 33% of deals included a specific limitation on time regarding tax liability and it was for 6 months
 - o 33% of deals included an individual minimum claim and the amount is EUR 32,500 or less than 0.01 % of purchase price, and there were no deductibles used

- 100% of deals included an aggregate minimum claim in the amounts of EUR 1,000,000, EUR 70,000 and EUR 52,000, which equals approximately 0.5%, 0.6% and 0.8%, respectively, of the purchase price
- 66% of deals had a liability cap in the amount of EUR 42,000,000 and EUR 2,600,000 amounting to 20% and 45%, respectively, of the purchase price
- None of the deals had carve-outs
- Disclosures
 - 66% of deals had disclosures; 50% of those were warranties only and 50% were warranties and specific indemnities
 - Percentage of deals with
 - full data room disclosure = 0%
 - Q&A log = 0%
 - Disclosure letters/schedules = 100%
 - Disclosure of due diligence report = 0%
 - Public information disclosed = 66%
 - Update between signing/closing = 33%

6. Conditions Precedent

- 0% of deals with merger filings as CP
- 66% of deals with third party consents as CP
- 33% of deals with certain funds clause as CP
- 66% of deals with the bring-down of warranties as CP
- 33% of deals with MAC clause as CP
- 0% of deals with seller's legal opinions as CP
- 66% of deals with retention of key employees as CP

7. Non-Competition/Non-Solicitation/Restrictive Covenants

- 33% with a non-compete clause, the duration being 60 months, and 0% had a liquidated damages clause
- 66% with a non-solicit clause, 50% of the durations being 12 months and 50% undisclosed, and 0% had a liquidated damages clause
- 0% of deals with non-disparagement covenants
- 0% of deals with non-embarrassment covenants
- 0% of deals with blue pencil clauses

8. Governing law & Jurisdiction

- 100% of deals with choice of law clauses and jurisdictions were 33% in each of the Canadian provinces of Alberta, Ontario and Quebec
- 33% of deals with jurisdiction clauses and the Courts of Alberta was the jurisdiction chosen
- 33% of deals with arbitration clauses, which were in accordance with ICDR, Canada rules, required three arbitrators and were to be arbitrated in the English language
- 0% of deals with prior mediation obligation
- 0% of deals with initiation of formal litigation procedures

9. General Information

- 100% of deals with cross-border element
- Blake, Cassels & Graydon LLP, Borden Ladner Gervais LLP, Gowling Lafleur Henderson LLP and Chiomenti Studio Legale acted on these deals
- No deals were referred through AIJA members

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