

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

Munich 2016

Executive Summary of [China]

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Introductory Remarks for National Reporters (NRs)

Deal points studies are often used by deal practitioners as a resource for market trends when negotiating acquisition agreements. The studies usually present a statistical breakdown of how key provisions are treated in a sample of publicly or otherwise available M&A contracts. The value of the deal points studies is that they give the practitioner a much better sense of M&A drafting trends than she or he could get by doing an own research.

Against this background the M&A Commission has decided to launch an “**AIJA Deal Points Survey**” with the goal to gather and analyze market standards for share deals in various AIJA jurisdictions. The overall objective of the survey is to gain a better understanding of market trends in share deals from the perspective of AIJA members so that we may share the insights with all interested AIJA members and thus improve our knowledge and general fitness when it comes to negotiating deal terms in share deals.

The AIJA Deal Points Survey will be conducted on the basis of the following documents:

- **Questionnaires** in the form as attached hereto as Exhibit 1 to be filled out on a case-by-case basis, i.e. one questionnaire each for each transaction covered;
- **Executive Summaries** in the form as set out hereinafter, with the goal of summarizing the findings from the various questionnaires; and
- **General Report** (to be drafted by the General Reporters) on the basis of the Executive Summaries received from the NRs.

The Questionnaires and the Executive Summaries are to be drafted by all interested NRs, i.e. each NR should fill out Questionnaires and provide an Executive Summary in respect of the information she or he put together in the Questionnaires. It may well be the case (and even desired) that there are several NRs in one and the same jurisdiction where each of them is expected to fill out Questionnaires and an Executive Summary (independently from each other or, if they want, in cooperation with each other). Thus, we are looking to receive numerous Executive Summaries and Questionnaires from NRs even if they are in the same AIJA jurisdiction.

The Questionnaires attached hereto are straight-forward and can be answered within a reasonable time. Obviously, the more Questionnaires are filled out, the better the sample for the Executive Summaries will be. However, in order to adopt a reasonable and time-efficient approach, we would expect that each NR covers 3 to 5 transactions, i.e. fills out 3 to 5 Questionnaires and drafts 1 Executive Summary covering the respective Questionnaires, unless NRs team-up and provide an Executive Summary in respect of many more Questionnaires. We leave it up to the NRs whether they want to join efforts or not. NRs with highest number of transactions will win a prize!

The transactions to be covered by the NRs should meet the following criteria:

- Private share deals only (not asset deals)
- Survey is not restricted to certain industries
- Deal value at least EUR 1m
- Closings taken place after 1 January 2014

Please note that the Executive Summaries do not necessitate full sentences everywhere. NRs can e.g. simply insert a number where we ask about the number of transactions which fall into a certain category, or they can provide comments/findings in the form of bullet points.

To sum up, each NR is kindly requested to provide us with a completed Executive Summary together with all copies of the completed Questionnaires (including annexes thereto).

Deadline for submission: 15 January 2016.

1. General Statement

- Online video platform business is an uprising industry with promising profit in China but it is very strictly regulated with strict procedures for obtaining permits and approvals. Any entity which is already in this industry and has obtained the permits make themselves a highly valued entity. However, it is not uncommon to find most of these entities are also operating poorly in dealing with intellectual property right infringement and litigation. However, for most deals in this industry, buyers are willing to take the risks of the Target Company's poor management consequences as they are focused more on the opportunity to obtaining the relevant permits and approvals.

2. Summary of Transaction Details

- One deal is reported here
- Maximum deal value of the deal reported is Euro 2.8 million
- 100% share acquirement
- Telecom—online video platform service
- Both the buyer and the seller are Chinese residents
- The Target Company has less than 150 employees
- No auction was conducted
- Cash buyout

3. Letters of Intent

- 0% of transactions with LoI signed
- There was no exclusive clause
- It was signed in Beijing China and it has bonding effect on both the Buyer and the seller

4. Due Diligence

- Transaction was done with the buyer's conduction of the due diligence
- The due diligence report was fully disclosed to the Buyer
- The transaction was done without a data room
- Formalized Q&A procedure was followed and the right to print/copy was granted

5. Purchase Agreement

- Transaction

- The transaction is with non-simultaneous closings.
- The purchase agreements are in Chinese.
- Purchase Price
 - The purchase price is in the consideration of the Target Company's business permits, license, and existing online platform services.
 - The purchase price was 8.4 million Euro when the LoI was signed but the purchase price was adjusted to 2.8 million Euro in the purchase agreement after the management and operation problems were found during the due diligence .
 - Installments were made based on the Seller's earn outs.
 - The buyer will pay cash to buy the Seller's shares without securing a loan.
- MAC clause
 - 100 percentage of the deal is with MAC clause.
- Reps & Warranties
 - There is no percentage of deals linked to specific reps & warranties.
 - General standard tax warranties were made. No specific tax warranties are against tax indemnities.
- Limitation of Liability
 - Although the acquisition did not require filing with Chinese authority, all the permits and licenses do need to be filed with the competent authority if any information is changed in those permits and licenses (e.g. shareholder's information, extension of the license). In general, each license takes 90 days to be filed, therefore the time lines were determined, the closing date, the first month of the closing date the 3rd month of the closing date, and the 6th month of the closing date.
 - Shares titlement transfer need to be filed within 30 days after the closing date.
 - Penalty of 20% of the purchase price will occur for material breach of the purchase agreement
- Disclosures
 - The Buyer conducted due diligence on the Target Company. The due diligence report is 100% disclosure to the Buyer.

6. Conditions Precedent

- The acquisition did not require filing.
- The Target Company had one previous share transfer in conditional terms but the shares were transferred without meeting the conditions. Therefore, all the

present shareholders and previous shareholders need to consent to waive any rights to claim the Target Company's shares before the closing of the deal. In addition, the Target Company had debt of the value of 10% purchase price to a third party, the Target Company needs to sign a debt settlement with the third party without reducing the Target Company's assets before the closing of the deal.

- The buyer didn't need financing to close the deal

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

As it is the Target Company's permits, license and existing operating tool that the Buyer was interested, the buyer didn't insist to put non-competition or restrictive covenants in the purchase agreements. Besides, the Target Company agreed to adjust the purchase price over half discount and they would be very unlikely to sign any non-competition clauses.

8. Governing law & Jurisdiction

The purchase agreement is governed by Chinese law (choice of other law is not allowed in China if both parties are Chinese residents). The jurisdiction was decided to be in Beijing and there was an arbitration clause with local arbitration rules with 3 arbitrators. There will be 30 days of mediation before bringing the dispute to arbitration.

9. General Information

This is a China domestic share acquisition deal. No other law firms are involved and there is no referral from AIJA members.

Please find here some useful information for drafting your report. Following these basic rules will ensure consistency among all our reports as well as a convenient experience for our readers.

STYLES

- There are two different levels of headings you may use. See example below.
- Your body text needs to be Garamond, Size 12.
- If you need to display a list, you may use bullet points or letters in lowercase.
- For the use of footnote, you can use the style available here¹.

- **Headings**

Heading 1, Font: Garamond, Size 14, Bold

Heading 2, Font: Garamond, Size 12, Bold

- **Body text**

Read here your body text in Garamond, Size 12.

- **Lists**

A list can be displayed with letters in lowercase:

- a. Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore
- b. et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat.
- c. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat non proident, sunt in culpa qui officia deserunt mollit anim id est laborum.

or with bullet points:

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¹ This is a footnote.

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You can also use indentation to add extra levels to your lists.

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BIBLIOGRAPHY

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- Doe, John B. *Conceptual Planning: A Guide to a Better Planet*, 3d ed. Reading, MA: SmithJones, 1996.
- Doe, John B. *Conceptual Testing*, 2d ed. Reading, MA: SmithJones, 1997

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