

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

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Executive Summary of Estonia

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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 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

The deal values of the reported deals are not very high, which is typical for Estonian (and Baltic) transactions as targets, even when consolidated, are rather small. Majority of transactions are done between trade/industry players, however, the PE/VC part in M&A is steadily increasing.

2. Summary of Transaction Details

NR to report on the survey data compiled with respect to transaction details, including the following aspects:

- Number of deals reported - 5
- Maximum, minimum and median deal value of deals reported – over 25 MEUR, over 1 MEUR, over 17 MEUR
- Maximum, minimum and median percentage of shares acquired in deals reported – 100%, 50%, 100%
- General information on relevant industries of reported deals: one reported deal is a food production transaction, one is from manufacturing, one is from retail, two others concern energy infrastructure
- General information on Buyers' and Targets' countries of origin: majority Estonia, one Buyer is from Denmark
- Percentage of deals with targets below/above 200 employees: one deal over 200 employees, other 4 under
- Percentage of deals with/without auction – 1 transaction with controlled auction, 4 without
- General information on the nature of the transactions – one transaction was cross border, one had a complicated financing structure, all had separate signings and closings, all needed merger clearances, except one.

3. Letters of Intent

NR to report on the survey data compiled with respect to letters of intents, MoUs, etc., including the following aspects

- Percentage of transactions with LoIs signed/not signed – three of the reported deals, had LOIs, term sheets, and also NDAs.
- Where signed, information on how many contained exclusivity clauses together with information on percentage of LoIs with exclusivity clauses up to/more than 1 month – two deals had exclusivity clauses and for over 1 month.
- Where signed, information on binding character – binding only to the extent of applicable law.

4. Due Diligence

NR to report on the survey data compiled with respect to due diligence, including the following aspects:

- Percentage of transactions with/without vendor due diligence – none of the reported deals had vendor due diligence, on the sell side, the law firm’s obligations were limited to compiling the data room.
- Where a vendor due diligence was performed, percentage of cases where the report was/was not disclosed to the Buyer – N/A
- Percentage of transactions with/without data room – all transactions had organised data rooms.
- Percentage of transactions with virtual data rooms vs. percentage with physical data rooms – two had virtual data room, two had virtual datarooms with partly physical data rooms set up for the confirmatory due diligence part, and one had only physical data room.
- Information on who managed/organized the data room – law firms in charge of instructing the virtual data room providers, except two deals where the seller organised it inhouse, or the target organised it.
- Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted – formalised Q&A was arranged in three deals, print rights/downloading rights were in two deals given only to the extent the documents concerned Excel files, in three deals had non-restricted printing rights.

5. Purchase Agreement

NR to report on the survey data compiled with respect to purchase agreement, including the following aspects:

- Transaction
 - o Percentage of transactions with simultaneous closings vs. non-simultaneous closings – all transactions had separate signing and closing stages.
 - o Information on languages of purchase agreements – all reported deals were drafted in English.
- Purchase Price
 - o Information on forms of consideration – all reported transactions were with cash consideration.
 - o Information on purchase price determination (percentage of deals without price adjustments, including information on use of locked-box, vs. percentage of deals with closing accounts) – 2 transactions were locked-box, two were fixed priced.

- Information on payment mechanics (full payment vs. instalments with earn outs, retention by buyer etc.) – 4 transactions were full payment at closing, 1 was payment in three instalments, no escrow though.
- Information on financing, i.e. use of equity vs. debt (bank, bonds, vendor loans) – for three, the financing form was unknown, for one it was bank debt, for one it was a combination of bank loan and equity, securing financing was a CP.
- MAC clause
 - Percentage of deals with/without MAC clause – 2 had MAC clauses, 3 did not.
 - Where used, information on MAC clause form, definition and materiality threshold – the MAC clauses were defined, although only one had a numerical threshold.
- Reps & Warranties
 - Percentage of deals with/without reps&warranties - none
 - Percentage of deals with/without standard reps&warranties – three deals had non-standard reps&warranties – mostly only title and capacity.
 - Information on length and on repetition of reps&warranties as per closing – all reps&warranties were repeated at closing, and 2 deals had standard length, three limited.
 - Percentage of deals with/without specific indemnifications and nature thereof – specific indemnities were used in 3 deals, tax was a common element, one had an environmental, competition law and counterparty consent related indemnities as well.
 - Information on tax warranties vs. tax indemnities – the deals which had tax indemnities, had also tax warranties, except for one deal that did not have additionally a tax warranty.
- Limitation of liability
 - Information on time limitations in general (percentage of months) – varied greatly on reported deals – 6, 8, 12, 18 months and 36 months.
 - Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc. – title to shares had a limit of statutory period – 36 months (except in one deal where it had 18 months), the capacity or accounts did not have a specific limitation period.
 - Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles – no usage of deductibles, percentages were used in two reported deals, three deals had specific numbers.
 - Information on liability caps (amount in EUR vs. percentage of purchase price) – in two deals, maximum amount in EUR was used, typically all

had also an element of percentage when it came to limitation of liability for breach of title warranties, except the one deal with numerical cap.

- Information on carve-outs – only one deal had a carve out on tax indemnity (relating to specific right off of receivables between certain group companies)
- Disclosures
 - Percentage of deals with/without disclosures and information on percentage of deals with disclosures against warranties only vs. warranties and specific indemnities – all reported transactions had disclosures against warranties structure.
 - Percentage of deals with/without
 - full data room disclosure – all deals had full data room disclosure
 - Q&A log – all deals had fully Q&A log included, one did not have explicitly
 - Disclosure letters/schedules – only one deal had a disclosure letter
 - Disclosure of due diligence report – no due diligence reports were disclosed
 - Public information disclosed – in all deals, public info was included
 - Update between signing/closing – disclosures were expected to be made between signing and closing on all deals

6. Conditions Precedent

NR to report on the survey data compiled with respect to conditions precedent, including the following aspects:

- Percentage of deals with/without merger filings as CP and information on percentage of jurisdictions – all reported deals, except one, required merger filings
- Percentage of deals with/without third party consents as CP – three deals had third party consents as CPs, two deals did not.
- Percentage of deals with/without certain funds clause as CP – one deal had a finance clause.
- Percentage of deals with/without the bring-down of warranties as CP – three deals reported had bring-down clause
- Percentage of deals with/without MAC clause as CP – one deal had such a clause.
- Percentage of deals with/without seller's legal opinions as CP - none
- Percentage of deals with/without retention of key employees as CP - none

- Information on opinion coverage – N/A

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

NR to report on the survey data compiled with respect to Non-Competition/Non-Solicitation/Restrictive Covenants, including the following aspects:

- Percentage of deals with/without non-compete clauses and information on duration and the use of liquidated damages clauses – three deals had non-compete, and two of them had liquidated damages (either as a percentage of purchase price or a fixed sum) clause.
- Percentage of deals with/without non-solicit clauses and information on duration and the use of liquidated damages clauses – one had a non-solicitation clause with respect to employees, and had a liquidated damages clause of the solicited employee’s salary for 12 months.
- Percentage of deals with/without non-disparagement covenants - none
- Percentage of deals with/without non-embarrassment covenants - none
- Percentage of deals with/without blue pencil clauses - none

8. Governing law & Jurisdiction

NR to report on the survey data compiled with respect to governing law and jurisdiction, including the following aspects:

- Percentage of deals with/without choice of law clauses and information on jurisdictions chosen – all reported deals had Estonia as jurisdiction on the basis of choice of law clause
- Percentage of deals with/without jurisdiction clauses - none
- Information on jurisdictions chosen – arbitration on all deals
- Information on arbitration clauses (applicable rules, number of arbitrators, language) – two of the reported deals had the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, three had the Rules of the Arbitration Court of the Chamber of Commerce and Industry of Estonia in Tallinn. Four deals had three arbitrators, one deal had one arbitrator, with English as the language of arbitration chosen.
- Percentage of deals with/without prior mediation obligation - none
- Percentage of deals with/without initiation of formal litigation procedures and information on the grounds (purchase price, reps&warranties or indemnities, other aspects) – no formal initiation of litigation procedures with respect to any of the deals.

9. General Information

NR to report on the survey data compiled with respect to the following aspects:

- Percentage of deals with/without cross-border element – one reported deal had a cross border element
- Names of involved law firms – SORAINEN, COBALT (LAWIN AND BORENIUS), Tark Grunte Sutkiene, Red Legal
- Information on whether referrals were made by other AIJA members – none of the deals were referred by AIJA members.

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