

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

Munich 2016

Executive Summary of Finland

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15 February 2016

General Statement

The Finnish M&A market continued to be active in 2015, the active industry sectors being for instance, healthcare, information technology and infrastructure which are also expected to remain active sectors in 2016. As in 2013 and 2014, the markets experienced a number of high profile transactions in which the transaction value amounted to several billion euro. In the mid-market, transactions concerned, for instance, healthcare and infrastructure, often involving either sales by private individuals or private equity to larger private equity backed actors in these fields.

Summary of Transaction Details

Number of deals reported: six (6).

Maximum, minimum and median deal value of deals reported:

- Max. 100,000,000
- Min. 6,000,000
- Median 15,000,000

In all deals 100% of the target shares were acquired.

The survey data consists of: three (3) computer / software / IT / e-commerce deals, two (2) industrial / manufacturing deals and one (1) energy deal.

In all survey data deals the parties were Finnish except for one (1) deal with a German buyer and two (2) deals with Swedish buyers. All target companies were Finnish.

Percentage of deals with targets below 200 employees: 83.3% (5/6 deals).

Percentage of deals with auction: 16.7% (1/6 deals).

All but one (1) deal were industrial / trade vs industrial / trade of nature. One (1) deal was Private Equity / Venture Capital vs Private Equity / Venture Capital.

Letters of Intent

Percentage of transactions with LoIs signed: 66.7% (4/6 deals).

In four (4) deals LoIs contained exclusivity clauses and only one (1) LoI contains exclusivity up to one (1) month.

Where signed, information on binding character: two (2) LoIs with no binding character, one (1) LoI with binding character and one (1) LoI binding only in respect of certain clauses.

Due Diligence

Percentage of transactions with vendor due diligence: 0%.

Percentage of transactions with data room: 100%.

Percentage of transactions with virtual data rooms: 100%.

Information on who managed/organized the data room: In three (3) deals the data room was managed by a law firm, in two (2) deals by investment banker and in one (1) deal by some other organization (E&Y).

Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted: Q&A procedure was arranged in four (4) deals. Full printing rights were granted in three (3) deals, while limited printing rights were granted in two (2) deals and no printing / copying was allowed in one (1) deal.

Purchase Agreement

Transaction

Percentage of transactions with simultaneous signing and closing: 16.7% (1/6).

Information on languages of purchase agreements: All SPA's were drafted in English.

Purchase Price

Information on forms of consideration: In all deals the purchase price was paid in cash and all deals included a purchase price adjustment element with closing accounts. None of the deals involved in the survey used locked-box mechanism (although locked-box purchase price is fairly common in Finland). In four (4) deals the purchase price was paid in full as per closing and in two (2) deals in instalments with a combination of earn out payments and payment of portion of purchase price into escrow account.

In two (2) of the deals equity was used to finance the deal, in two (2) deals bank debt, in one (1) deal a combination of debt and equity and in respect of one (1) deal the combination of financing was unknown.

MAC clause

Percentage of deals with MAC clause: 33.3% (2/6). In these two (2) deals MAC clause was used as a CP, it was defined in the Purchase Agreement and it did not contain a materiality threshold.

Reps & Warranties

Percentage of deals with reps&warranties: 100%.

Percentage of deals with standard reps&warranties: 100%. In Finland the set of reps&warranties is often extensive (i.e. including both fundamental and operational representations and warranties), however, we think that in all deals involved in this survey the set of reps&warranties represents fairly customary representations given by industrial sellers in the Finnish market.

Information on length and on repetition of reps&warranties as per closing: All SPAs contained extensive lists of reps&warranties. This is a standard Finnish market practice. In all deals reps&warranties were repeated at closing.

Percentage of deals with specific indemnifications and nature thereof: 66.7% (4/6). Four (4) deals have certain specific indemnification clauses. These relate to certain agreements, target subsidiary transaction(s), overtime compensation by the target company, third party software license breaches, breach of competition laws in existing agreements, certain third party damages and the sellers failing to use their best efforts to collect receivables of the target company that are over 365 days old at the time of closing within two (2) years following the closing.

Information on tax warranties vs. tax indemnities: In four (4) deals the SPA's contain both tax warranties and tax indemnities. In two (2) deals the SPA's contain only tax warranties, no tax indemnity.

Limitation of liability

Information on time limitations in general (percentage of months): 15 months (50%) and 18 months (50%).

Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc.

- Title to shares: yes, unlimited / 60 months / 120 months.
- Capacity: yes, unlimited / 60 months / 120 months.
- Accounts: no.
- Tax: yes, legal statute of limitations / 15 months / within four (4) / six (6) months following the end of the statutory tax reassessment period of such taxes.
- Social security: no.
- Labour: no.
- Environmental: In one deal 60 months.
- Criminal: no.
- IPR: In one (1) deal, 36 months.

Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles

All SPA's contained a tipping basket (if the basket amount is reached, compensation for the full amount).

Basket: EUR 50,000, minimum claim amount EUR 5,000

Basket: EUR 30,000, minimum claim amount EUR 10,000

Basket: EUR 150,000, minimum claim amount EUR 40,000

Basket: 1.25% of purchase price, minimum claim amount ~0.1% of purchase price

Basket: 0.163% of purchase price, minimum claim amount 0.0063% of purchase price

Basket: 2% of purchase price, minimum claim amount 0.25% of purchase price

Information on liability caps (amount in EUR vs. percentage of purchase price)

12% / 25% / 50% / 100% save for reps&warranties, where 30% (excluding 100% for title and capacity) / 30% / 100% save for general warranty breach (other than title and capacity, IPRs) capped to 20% and IPR warranty breach capped to 50%.

Information on carve-outs

- In 3/6 deals: No carve-outs.
- In 2/ 6 deals: Yes, specific time limitations and EUR-for-EUR basis.
- In one (1) deal: Yes, no limitation apply.

Disclosures

Warranties only in 83.3% (5/6) of deals. In one (1) SPA: No disclosures allowed (except for SPA and Disclosure letter).

Percentage of deals with:

- Full data room disclosure: 83.3% (5/6).
- Q&A log: 50% (3/6).
- Disclosure letters/schedules: 66.7% (4/6).
- Disclosure of due diligence report: 0%.

- Public information disclosed: 0%.
- Update between signing/closing: 16.7% (1/6).

Conditions Precedent

Percentage of deals with merger filings as CP and information on percentage of jurisdictions: 16.7% (1/6), in five (5) jurisdictions.

Percentage of deals with third party consents as CP: 33.3% (2/6).

Percentage of deals with certain funds clause as CP: 50% (3/6).

Percentage of deals with the bring-down of warranties as CP: 66.7% (4/6).

Percentage of deals with MAC clause as CP: 50% (3/6).

Percentage of deals with seller's legal opinions as CP: None. Not typical in Finnish M&A deals.

Percentage of deals with retention of key employees as CP: 2/3.

Non-Competition/Non-Solicitation/Restrictive Covenants

All deals include a non-compete clause with the duration being either 24 (50%) or 36 months (50%) in all cases. Liquidated damages vary from 1% to 20% of the purchase price value. Liquidated damages clauses are included in three (3) deals.

All deals include a non-solicit clause with the duration being 12 (33.3%), 24 (33.3%) or 36 (33.3%) months. Liquidated damages vary from 50,000 EUR to "an amount corresponding to the total gross annual salary of the respective employee or manager." Liquidated damages clauses are included in three (3) deals.

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.

Governing law & Jurisdiction

In all deals the SPA included a choice of laws clause and Finland was chosen as the applicable jurisdiction.

Percentage of deals with jurisdiction clauses: All deals are governed by the substantive laws of Finland and this was stated in each SPA. One (1) SPA included the following note: "However, any Party may apply to a court of competent jurisdiction for a precautionary measure, temporary procedural remedy, temporary

restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of legal proceedings”.

Information on arbitration clauses (applicable rules, number of arbitrators, language)
In all SPA's disputes are to be settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Finland Chamber of Commerce in English (evidence may be submitted and witnesses heard also in Finnish). In two (2) SPAs the composition of the arbitral tribunal was one (1) arbitrator. In two (2) SPAs the composition of the arbitral tribunal was chosen to be three arbitrators. In two (2) SPAs there were no provisions on the composition of the arbitral tribunal.

Percentage of deals with prior mediation obligation. In one (1) deal prior mediation was obliged.

Percentage of deals with/without initiation of formal litigation procedures and information on the grounds (purchase price, reps&warranties or indemnities, other aspects): None has come to our attention.

General Information

Percentage of deals with cross-border element. 66.7% (4/6).

Names of involved law firms: N/A (but all six (6) deals are different cases).

Information on whether referrals were made by other AIJA members: None of the deals was referred by an AIJA contact.

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