



INTERNATIONAL ASSOCIATION OF YOUNG LAWYERS

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

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Executive Summary of Germany

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1. General Statement

- [general market trends in respect of deal points generally
- surprising survey results (innovative or unusual deal points)
- groundbreaking or prominent deals covered
- other information worthwhile flagging to the AIJA community]

2. Summary of Transaction Details

Please note: Percentage figures have been rounded.

- Number of deals reported: 3
- Maximum, minimum and median deal value of deals reported: min. EUR 7.5 Mio., max. EUR 100 Mio., median EUR 45 Mio.
- Maximum, minimum and median percentage of shares acquired in deals reported: each 100 %
- General information on relevant industries of reported deals: 1 IT, 1 Medical/Health, 1 Services
- General information on Buyers' and Targets' countries of origin: all Germany/Germany except for one Buyer (Italy)
- Percentage of deals with targets below/above 200 employees: 67 % below, 33 % above
- Percentage of deals with/without auction: 67 % without auction, 33 % with
- General information on the nature of the transactions: 2 Industrial / trade vs. Industrial / trade; 1 PE/VC vs. Industrial / trade

3. Letters of Intent

- Percentage of transactions with LoIs signed/not signed: 100 % signed
- 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: 100 % exclusivity clauses with 100 % more than 1 month
- Where signed, information on binding character: 33 % everything binding, 67 % only the exclusivity clause

4. Due Diligence

- Percentage of transactions with/without vendor due diligence: 0 % with vendor due diligence

- 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: 100 % with
- Percentage of transactions with virtual data rooms vs. percentage with physical data rooms: 100 % virtual
- Information on who managed/organized the data room: 67 % seller, 33 % law firm and investment banker
- Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted: 100 % formalized Q&A and 100% right to print/copy

5. Purchase Agreement

- Transaction
 - o Percentage of transactions with simultaneous closings vs. non-simultaneous closings: 67 % non-simultaneous, 33 % simultaneous
 - o Information on languages of purchase agreements: 100 % English
- Purchase Price
 - o Information on forms of consideration: 67 % cash, 33 % combination of cash and stocks
 - 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): 33 % without price adjustments but with use of locked box, 67 % with price adjustments (closing accounts)
 - o Information on payment mechanics (full payment vs. instalments with earn outs, retention by buyer etc.): 33 % full payment, 33 % instalments with earn outs, 33 % instalments with earn outs, retentions and escrow account
 - o Information on financing, i.e. use of equity vs. debt (bank, bonds, vendor loans): 33 % equity, 33 % mixed (equity, bank debt, vendor loan), 33 % unknown
- MAC clause
 - o Percentage of deals with/without MAC clause: 67 % with MAC clause
 - o Where used, information on MAC clause form, definition and materiality threshold: condition precedent (right to walk away), defined; one contained a materiality threshold
- Reps & Warranties
 - o Percentage of deals with/without reps&warranties: 100 % with

- Percentage of deals with/without standard reps&warranties: 67 % with / 33 % without
- Information on length and on repetition of reps&warranties as per closing: 67 % extensive list, 33 % limited list; 67 % without repetition as per closing, 33 % with repetition
- Percentage of deals with/without specific indemnifications and nature thereof: 67 % with specific indemnifications (legal disputes, social security)
- Information on tax warranties vs. tax indemnities: 100 % both
- Limitation of liability
 - Information on time limitations in general (number of months): 36, 24, 18 months
 - Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc.:
 - Title to shares: 96 months, 60 months (third deal no specific limitation)
 - Capacity: 1 deal with 96 months
 - Taxes and social security: 6 months after assessment has become final and binding, legal statute of limitations, none
 - Accounts: none
 - Labor: none
 - Environment, criminal: none
 - Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles: 67 % amount in EUR, no deductibles
 - Information on liability caps (amount in EUR vs. percentage of purchase price): 67 % amount in EUR (EUR 7,500,000; EUR 2,000,000), 33 % percentage of purchase (30 %)
 - Information on carve-outs: 33 % none, 33 % all indemnifications, 33 % tax
- Disclosures
 - Percentage of deals with/without disclosures and information on percentage of deals with disclosures against warranties only vs. warranties and specific indemnities: 100% disclosure against warranties only
 - Percentage of deals with/without
 - full data room disclosure: 67 % without, 33 % with,
 - Q&A log: 67 % disclosed, 33 % not disclosed

- Disclosure letters/schedules: 67 % with, 33 % without
- Disclosure of due diligence report: 100 % without
- Public information disclosed: 67 % without, 33 % with
- Update between signing/closing: 100 % without

6. Conditions Precedent

- Percentage of deals with/without merger filings as CP and information on percentage of jurisdictions: 67 % with merger filing, 33 % without
- Percentage of deals with/without third party consents as CP: 67 % with, 33 % without
- Percentage of deals with/without certain funds clause as CP: 100 % without
- Percentage of deals with/without the bring-down of warranties as CP: 67 % with, 33 % without
- Percentage of deals with/without MAC clause as CP: 67 % with, 33 % without
- Percentage of deals with/without seller's legal opinions as CP: 100 % without
- Information on opinion coverage: n/a
- Percentage of deals with/without retention of key employees as CP: 67 % without, 33 % with

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

- Percentage of deals with/without non-compete clauses and information on duration and the use of liquidated damages clauses: 67 % with (36 months, EUR 100,000, no blue pencil clause), 33 % without
- Percentage of deals with/without non-solicit clauses and information on duration and the use of liquidated damages clauses: 67 % with (36 months, EUR 100,000), 33 % without
- Percentage of deals with/without non-disparagement covenants: 100 % without
- Percentage of deals with/without non-embarrassment covenants: 100 % without
- Percentage of deals with/without blue pencil clauses: 100 % without

8. Governing law & Jurisdiction

- Percentage of deals with/without choice of law clauses and information on jurisdictions chosen: 67 % with, 33 % without, Germany
- Percentage of deals with/without jurisdiction clauses: 67 % with, 33 % without
- Information on jurisdictions chosen: Frankfurt (Germany)

- Information on arbitration clauses (applicable rules, number of arbitrators, language): 67 % DIS, 33 % no arbitration; number of arbitrators 100 % three; language 100 % English
- Percentage of deals with/without prior mediation obligation: 100 % without
- Percentage of deals with/without initiation of formal litigation procedures and information on the grounds (purchase price, reps&warranties or indemnities, other aspects): 100 % without

9. General Information

- Percentage of deals with/without cross-border element: 100 % without
- Names of involved law firms: Heuking, Kühn, Lüer, Wojtek; Hengeler Mueller; Watson Farley Williams
- Information on whether referrals were made by other AIJA members: no

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