

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

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Executive Summary of Norway

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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

Two conflicting factors are presently shaping in the Norwegian economy: the decline in oil prices during the past year has caused negative outlooks for one of the largest Norwegian industries, but at the same time, the stock exchange is at a peak, and consumers are apparently little affected by the global turmoil, as spending remain largely unchanged.

For Norway, the current trends in structuring M&A transactions seem to be the following:

- Share acquisitions continue to be the most common form of transaction structure.
- Cash is the most commonly used consideration in connection with acquisitions of non-listed companies.
- Asset purchases are less frequent than share transactions, but asset deals occur regularly.
- Locked box mechanisms continue to be the structure of choice for private equity sellers. Post-closing adjustments to the purchase price (completion accounts) still remain a common feature of the Norway private M&A market. If a post-closing mechanism is used, adjustments are most commonly agreed for variations in the target's working capital and net debt
- Escrow structures as a basis for making contractual claims in respect of warranties and purchase price adjustments are normally not popular among sellers, and a seller will frequently resist such requests. However, depending on the relative bargaining positions of the seller and buyer, it is not uncommon for buyers to frequently request escrow structures. Currently, it does however seem that W&I insurance is gaining ground, as a method for getting rid of a more traditional escrow account mechanism.

The deals covered in the survey include (i) the sale and acquisition of the third largest telecommunications operator in Norway to the second largest telecommunications operator in Norway, (ii) the indirect sale and acquisition of Nepal's largest company (the seller being a Norwegian limited liability company), and (iii) the largest sale and acquisition in Norway of a single property (Statoil ASA's headquarters in Stavanger).

2. Summary of Transaction Details

Advokatfirmaet Simonsen Vogt Wiig AS ("we" or "us") have reported on four (4) private equity deals.

The largest deal had a deal value of EUR 12,300,000 and the smallest deal had a deal value of EUR 950 million.

All the deals involved the purchase or sale of 100% of the issued and outstanding shares of the target company.

The reported deals involve the sale and acquisition of three (3) telecommunications businesses and one (1) property company.

The buyers' country of origin ranges from Norway (two (2) deals), Malaysia (one (1) deal) and the United States (one (1) deal). The sellers' country of origin includes Norway (three (3) deals) and Sweden (one (1) deal).

Of the four (4) reported deals, 50% of the targets had more than 200 employees, whilst 50% of the targets had less than 200 employees.

In 50% of the four (4) reported deals, auctions were organized, whilst the other two (2) reported deals did not involve auctions.

3. Letters of Intent

A letter of intent was signed in one (1) of the reported deals (25%). That letter of intent granted the prospective buyer an exclusivity period of one (1) month, and the letter of intent was binding upon the parties.

4. Due Diligence

- One (1) on the reported deals (25%) was with a vendor due diligence, and the due diligence report was provided to the buyer on a non-reliance basis.
- All (100%) of the reported deals were with a data room (for the benefit of the prospective buyer), and all (100%) of the data rooms were virtual.
- The data rooms were organized and managed either by the seller or the seller's legal adviser.

5. Purchase Agreement

- Transaction
 - o None of the reported deals had simultaneous signing and closing.
 - o The purchase agreement of all the reported deals was drafted in English, although one (1) of the reported deals involved a Norwegian buyer, a Norwegian seller and a Norwegian target.
- Purchase Price
 - o The purchase price of all the reported deals was settled by cash payment on closing, except for any post-closing adjustment amount.
 - o Two (2) of the four (4) reported deals (50%) involved locked-back mechanisms whilst the other two (2) reported deals (50%) involved closing accounts.

- Two (2) of the four (4) reported deals (50%) involved debt or bond financing whilst the purchase price of other two (2) reported deals (50%) did not involve any similar external financing.
- MAC clause
 - One (1) of the four (4) reported deals (25%) included a material adverse change clause whilst the other three (3) reported deals (75%) did not include any such clause.
 - The material adverse change clause in the one (1) reported deal was a condition precedent (according to which the buyer may abort the transaction if such change occurred).
- Reps & Warranties
 - All (100%) of the reported deals had standard (extensive) representations and warranties of the seller as well as the buyer, and they were in all (100%) of the reported deals repeated at the closing.
 - Two (2) of the four (4) reported deals (50%) included certain specific indemnifications and they were, in both cases, a result of due diligence findings.
 - None of the reported deals included specific indemnities relating to tax; however, all (100%) of the reported deals included standard tax warranties by the seller.
- Limitation of liability
 - The general time limitations in the reported deals range from 12 to 24 months.
 - All (100%) the reported deals include specific time limitations regarding title to shares, capacity, accounts, tax etc. and the longer time limitations range from 24 months to 48 months and seven (7) years in connection with tax warranties (the legal statute of limitations regarding tax claims under Norwegian law is ten (10) years).
 - In the reported deals the individual minimum claim amounts range (in percent of the purchase price) from 0.03% to 0.08%; however, there is no use of deductibles meaning that the seller are liable for the entire amount if the individual minimum claim amounts and the baskets are fulfilled.
 - In the reported deals the liability caps range (in percent of the purchase price) from 5% to approximately 40%.
 - Generally, the reported deals include carve-out with respect to fundamental warranties and specific indemnities (if any).
- Disclosures
 - All (100%) the reported deals include disclosures against the warranties for information which has been fairly disclosed in the data room;

however, no such disclosures apply against the specific indemnities (if any).

- Percentage of deals with/without
 - None of the deals include full data room disclosure. Such disclosure is always limited to information which has been fairly disclosed.
 - One (1) of the reported deals (25%) includes a disclosure letter.
 - None of the reported deals includes a disclosure of the due diligence report.
 - None of the reported deals includes an updated of the disclosures between signing and closing.

6. Conditions Precedent

- Two (2) of the four (4) reported deals (50%) involved mergers filings as a condition precedent, both of which were filed with the Norwegian Competition Authority.
- None of the deals include third party consents as a condition precedent.
- Three (3) of the four (4) reported deals (75%) included bank approvals or similar approvals as a condition precedent.
- One (1) of the four (4) reported deals (25%) included the bring-down of warranties as a condition precedent.
- Two (2) of the four (4) reported deals (50%) included material adverse change clauses as a condition precedent.
- None of the deals were with seller's legal opinions as a condition precedent.
- None of the deals were with retention of key employees as a condition precedent.

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

- Two (2) of the four (4) reported deals (50%) had non-compete clauses and they had a duration of between 24 months and 5 years. Neither of them however had any liquidated damages clause in case of a breach of the relevant non-compete clause.
- Two (2) of the four (4) reported deals (50%) had non-solicit clauses and they had a duration of between 36 months and 5 years. Neither of them however had any liquidated damages clause in case of a breach of the relevant non-solicit clause.
- None of the reported deals had any non-disparagement covenants.
- None of the reported deals had any non-embarrassment covenants.

- None of the reported deals had any had any blue pencil clauses.

8. Governing law & Jurisdiction

- All (100%) of the reported deals had choice of law clauses. Three (3) of the agreements are governed by Norwegian law, whilst one (1) of the agreements is governed by English law.
- All (100%) of the reported deals had arbitration clauses. Three (3) of the four (4) reported deals (75%) are subject to the Norwegian Arbitration Act, whilst one (1) of the reported deals is subject to the arbitration rules of the London Court of International Arbitration Institute.
- None of the reported deals include prior mediation obligation.

9. General Information

- Three (3) of the four (4) reported deals (75%) had cross-border elements, where the seller, the buyer and/or the target were non-Norwegian entities.

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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.

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Heading 1, Font: Garamond, Size 14, Bold

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- **Lists**

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- b. et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat.
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or with bullet points:

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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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