

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

Munich 2016

Executive Summary of Russian Federation

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18 January 2016

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

[NR to provide a general statement on key findings from the survey, including information on:

- 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]
- Imposition of EU/US sanctions that, combined with low oil prices, have harmed the Russian market activity and decreased the number of foreign investors willing to participate in such market. Taking this into account Russia shifted its focus eastwards.
 - At the beginning of 2015 Russian advisors expected deal-making activity to decrease. Actually, in 2015 the decrease in terms of both the average value and the number of deals took place.

In terms of share deals' volume of and size, 2016 is likely going to be similar to 2015. However, notwithstanding this we still expect increase of the number of deals on the Russian market in 2016 in comparison to 2015.

- Notwithstanding the abovementioned, 2015 brought impressive track record in advising on innovative and complex M&A deals in Private Equity segment structured under Russian and foreign (English) law.
- Due to changes in Russian civil law legislation during 2014 and 2015 (providing substantial changes in (a) legal framework of Russian legal entities, (b) corporate and civil agreements regulations, (c) liability provisions, etc.) the use of Russian law as governing for the transaction documents increased in comparison to previous years.

This resulted in innovative approach to interpretation of Russian law concepts in order to tailor them to the client's needs.

Number of reviewed share deals were governed by Russian law with application of the most innovative mechanisms and instruments becoming available to such kind of transactions recently under Russian law.

- Most of the reviewed transactions required significant pre-sale reorganization of the group in order to properly separate certain assets and consolidate them in separate structure for the purpose of conducting further share deal transaction.
- The deals were sometimes complicated by post-completion price adjustment mechanisms (including those based on the Key Performance Indicators).

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:
4
- Maximum, minimum and median deal value of deals reported:
Maximum: EUR 37 687 271; minimum: EUR 1 000 000; median:
EUR12 929 317.75
- Maximum, minimum and median percentage of shares acquired in deals reported:
Maximum: 100% (all transactions reviewed); minimum: not applicable; median:
100%
- General information on relevant industries of reported deals:
The reviewed transactions were implemented in the following spheres:
Exhibitions sphere; Computer / Software / IT / E-Commerce; Construction;
Consumer Goods / Food / Retail.
- General information on Buyers' and Targets' countries of origin
 - 1st transaction: both parties are incorporated in Russian Federation;
 - 2nd transaction: USA, Connecticut (Buyer) and England (Seller);
 - 3rd transaction: both parties are incorporated in Cyprus;
 - 4th transaction: Spain (Buyer) and Russian Federation (Seller).
- Percentage of deals with targets below/above 200 employees
All targets had less than 200 employees.
- Percentage of deals with/without auction
All the deals were organized without a competitive auction.
- General information on the nature of the transactions]
All transactions reviewed were share deal transactions.

Two of the transactions were of Private Equity / Venture Capital vs Industrial / Trade nature. One of these two transactions was also connected with the sale of family business.

The rest of the transactions reviewed were of Private Equity / Venture Capital vs Private Equity / Venture Capital nature.

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
Signed: 75%, not signed: 25%

- 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

Three of the reviewed transactions were accompanied with LoI. All of these LoI contained exclusivity clause. The percentage of LoI with the exclusivity clause with up to/more than 1 month is equal to 100%.

- Where signed, information on binding character]

One of reviewed LoI was not binding.

Other LoI reviewed contained information regarding binding character for the following provisions: validity, exclusivity and confidentiality.

Please note that one of the reviewed LoI contained the following extensive list of binding provisions (which is quite unusual for LoI entered into on the Russian market):

- Transaction structure;
- Conditions Precedent to Closing of Transaction;
- Consideration;
- Conduct of Business before Completion;
- Compliance with Sanctions;
- Access;
- Announcements and Confidentiality;
- Choice of Law and Dispute Resolution;
- Termination and Timing;
- Costs, Effect of the Agreement.

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
With Vendor DD: 0%; without Vendor DD: 100%
- Where a vendor due diligence was performed, percentage of cases where the report was/was not disclosed to the Buyer
The Vendor DD was not conducted.
- Percentage of transactions with/without data room
-
- Percentage of transactions with virtual data rooms vs. percentage with physical data rooms

-
- Information on who managed/organized the data room
-
- Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted]
-

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
25% vs 75%
 - o Information on languages of purchase agreements
Two of the reviewed transactions: English language; the rest of transactions were bilingual (Russian / English).
- Purchase Price
 - o Information on forms of consideration
Cash consideration only.
 - 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)
Without price adjustment: 25% (locked-box was applied); percentage of deals with price adjustment: 75%
 - o Information on payment mechanics (full payment vs. instalments with earn outs, retention by buyer etc.)
 - Payments in Instalments (earn out payments);
 - Full payment on closing;
 - Retention by buyer.
 - o Information on financing, i.e. use of equity vs. debt (bank, bonds, vendor loans)
For the two of the reviewed transactions: information on financing is unknown.
The rest of the transactions: both the equity and combination of equity + debt.
- MAC clause

- Percentage of deals with/without MAC clause
100%vs 0%
- Where used, information on MAC clause form, definition and materiality threshold
Only in one transaction MAC clause had a form of back-door MAC.
MAC clause was not defined only in one of the reviewed transactions.
None of the reviewed transactions contain materiality threshold.
- Reps & Warranties
 - Percentage of deals with/without reps&warranties
With reps&warranties: 100%, without reps&warranties: 0%
 - Percentage of deals with/without standard reps&warranties
With standard reps&warranties: 100%, without standard reps&warranties: 0%
 - Information on length and on repetition of reps&warranties as per closing
 - Extensive list: 4 transactions; limited list: 0 transactions;
 - All transactions contain reps&warranties, which were repeated on closing.
 - Percentage of deals with/without specific indemnifications and nature thereof
With specific indemnifications: 50%, without specific indemnifications: 50%.
Nature of specific indemnifications:
 - 1st transaction: Title to main assets and to shares of the target company and holding company, tax liability, off-balance obligations, historical ownership of target's shares, shareholder's loans;
 - 2nd transaction: carve out of certain business and net assets of the target.
 - Information on tax warranties vs. tax indemnities
One of the transactions had only tax warranties, but the rest had both the tax warranties and tax indemnities.
- Limitation of liability
 - Information on time limitations in general (percentage of months)
The time limitation period varies from 18 months to 72 months depending on the transaction (18, 24, 36 and 72 months).

- Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc.
 - Title to shares:
 1. Two of the reviewed transactions contained legal statute limitation period equal to 36 months.
 2. The rest: 60 and 72 months.
 - Capacity: Legal statute limitations only.
 - Accounts: Legal statute limitations only.
 - Tax:
 1. Two of the reviewed transactions contained limitation period equal to 48 months after closing;
 2. One of the transactions contained limitation period equal to 36 + 3 months after closing;
 3. One of the transactions contained legal statute limitations.
 - Social security: Legal statute limitations only.
 - Labor: Legal statute limitations only.
 - Environment: Legal statute limitations only.
 - Criminal: Legal statute limitations only.
 - Specific limitations: One of the transactions included off-balance obligations' limitations equal to 60 months.
- Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles
 - One of the reviewed transactions contained information on individual minimum claim equal to 10 000 USD and 100 000 USD for aggregate minimum claim (no deductibles);
 - The second transaction out of the reviewed transactions contained information on individual minimum claim equal to 4 307 EUR (no deductibles);
 - The rest of the reviewed transactions contained no information on claim amounts.
- Information on liability caps (amount in EUR vs. percentage of purchase price)
 - Two of the reviewed transactions contained information on maximum liability cap equal to 100% of the purchase price gained in fact by the Sellers;
 - The rest of transactions contained no information on liability caps.

- Information on carve-outs
 - One of the reviewed transactions contained Carve-Outs for title and tax.
- Disclosures
 - Percentage of deals with/without disclosures and information on percentage of deals with disclosures against warranties only vs. warranties and specific indemnities
 - Two of the reviewed transactions: disclosures against warranties. The rest of the transactions had no disclosures.
 - Percentage of deals with/without
 - with full data room disclosure: 0%
 - with Q&A log: 0%
 - with Disclosure letters/schedules: 100%
 - with Disclosure of due diligence report: 0%
 - with Public information disclosed: 0%
 - with Update between signing/closing: 0%]

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
 - Only one of the reviewed transactions required merger filing. Therefore, the percentage of deals without merger filings equals to 75%; with merger filings: 25%
 - Merger filing required by 1 jurisdiction.
- Percentage of deals with/without third party consents as CP
 - 75%vs 25%
- Percentage of deals with/without certain funds clause as CP
 - None of the transactions required bank financing on the part of the buyer.
- Percentage of deals with/without the bring-down of warranties as CP
 - 100%vs 0%
- Percentage of deals with/without MAC clause as CP
 - 75%vs 25%
- Percentage of deals with/without seller's legal opinions as CP
 - None of the transactions required Seller's legal opinions. Therefore, the percentage of deals without Seller's legal opinions equals to 100%.

- Percentage of deals with/without retention of key employees as CP
100%vs 0%
- Information on opinion coverage]
None of the transactions required Seller's legal opinions.

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
 - Percentage: 50%vs 50%;
 - Duration period: 36 months settled for both of the reviewed transactions;
 - No specific amount was settled for liquidation damages.
- Percentage of deals with/without non-solicit clauses and information on duration and the use of liquidated damages clauses
 - Percentage: 75%vs 25%;
 - Duration period: the transactions reviewed settle 36, 24 and 12 months period.
 - No specific amount was settled for liquidation damages.
- Percentage of deals with/without non-disparagement covenants
75%vs 25%
- Percentage of deals with/without non-embarrassment covenants
0% vs 100%
- Percentage of deals with/without blue pencil clauses]
75%vs 25%

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
100% vs 0% (One of the reviewed transactions were governed by Russian laws. The rest of transactions were governed by the laws of England and Wales.)
- Percentage of deals with/without jurisdiction clauses
0% vs 100%
- Information on jurisdictions chosen
-

- Information on arbitration clauses (applicable rules, number of arbitrators, language)
 - Arbitration was chosen in all of the reviewed transactions;
 - Rules of Arbitration of the London Court of International Arbitration and Judicial code under governing law were used;
 - Number of arbitrators: three (in three of the reviewed transactions) and one arbitrator for one reviewed transaction;
 - English language in all transactions.
- Percentage of deals with/without prior mediation obligation
25% vs 75%
- Percentage of deals with/without initiation of formal litigation procedures and information on the grounds (purchase price, reps&warranties or indemnities, other aspects)]
None of the parties of reviewed transactions initiated formal litigation procedures. Therefore, the percentage is: 0% vs. 100%

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
All the deals contained a cross-border element.
- Names of involved law firms
-
- Information on whether referrals were made by other AIJA members
None of the reviewed transactions were referred by another AIJA member.]

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