

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

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Executive Summary of Switzerland

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1. General Statement

General statements on key findings from the survey:

- purchase agreements are drafted buyer friendly (e.g., cash as consideration, full payment on closing, no MAC clauses, disclosure of DD room against reps & warranties, liability cap of less than 50%)
- no deal provides for a representations and warranties insurance.

2. Summary of Transaction Details

- Number of deals reported: 7.
- Maximum, minimum and median deal value of deals reported: EUR 257'000'000, EUR 3'000'000, EUR 94'710'714.
- Maximum, minimum and median percentage of shares acquired in deals reported: 100%, 50%, 85.7%.
- General information on relevant industries of reported deals: Consumer goods, food and retail industry (6 deals); e-commerce (1 deal).
- General information on Buyers' and Targets' countries of origin: Mostly Swiss based buyer and Swiss based target (4 deals).
- Percentage of deals with targets below/above 200 employees: 57.1% (4 deals with above 200 employees).
- Percentage of deals with/without auction: 28.6% (2 deals with auction).

3. Letters of Intent

- Percentage of transactions with/without LoIs signed: 57.1% (4 deals with LoI).
- Percentage of LoIs with exclusivity clause: 75% (3 out of 4 deals with LoI), all of them with duration of more than 1 month.
- Binding character: 75% (3 deals), not binding regarding obligation to sale and purchase.

4. Due Diligence

- Percentage of transactions with/without vendor due diligence: 0% (no deal with vendor DD).
- Percentage of transactions with/without data room: 71.4% (total 5 deals with data room).
- Percentage of transactions with virtual data rooms vs. percentage with physical data rooms: 60% (3 deals) virtual data room; 40% (2 deals) physical data room.

- Information on who managed the data room: 60% (3 deals) data room provider; 40% (2 deals) seller.
- Formalized Q&A procedure: 80% (4 deals).
- Right to print or copy: 60% (3 deals).

5. Purchase Agreement

a) Transaction

- Percentage of transactions with simultaneous closings vs. non-simultaneous closings: 14.3% (1 deal with simultaneous closing).
- Information on languages of purchase agreements: 85.7% (6 deals) German, 14.3% (1 deal) English.

b) Purchase Price

- Information on forms of consideration: 100% of the deals in cash.
- Information on purchase price determination: 3 deals with price adjustment (42.9%), 3 deals with locked box (42.9%).
- Information on payment mechanics: full payment on closing in 6 deals (85.7%), escrow account in 1 deal (14.3%).
- Information on financing: 100% of the deals were financed with equity.

c) MAC clause

- Percentage of deals with/without MAC clause: 28.6% (2 deals with MAC clause).
- Where used, information on MAC clause: Both clauses provided for a definition and material threshold. One was a CP, one was a back-door MAC.

d) Reps & Warranties

- Percentage of deals with/without reps&warranties: 100% (all 7 deals with reps&warranties).
- Percentage of deals with/without standard reps&warranties: 85.7% (6 deals with standard reps&warranties).
- Information on length and on repetition of reps&warranties as per closing: 5 deals (71.4%) with extensive list, 2 deals (28.6%) with limited list. 100% as per signing and closing.
- Percentage of deals with/without specific indemnifications and nature thereof: 71.4% (5 deals with specific indemnifications); mostly regarding tax, some regarding reorganizations prior to closing, one regarding certain employee claims.

- Information on tax warranties vs. tax indemnities: 4 deals (57.1%) tax warranties and indemnification, 1 deal (14.3%) tax warranties, 1 deal (14.3%) tax indemnification.

e) Limitation of liability

- Information on time limitations in general: 85.7% (6 deals) with general time limitation, average duration of 47 months after closing.
- Information on specific time limitations:
 - Capacity: 5 deals (71.4 %), average duration of 122.4 months;
 - Accounts: 4 deals (57.1%), average duration of 22.5 months;
 - Tax: legal statute of limitation in 5 deals (57.1%)
 - Social Security: legal statute of limitation in 4 deals (57.1%)
 - Labor: 4 deals (57.1%), average duration of 22.5 months;
 - Environment: 4 deals (57.1%), average duration of 34.5 months;
 - Other limitations: IP, IT and data protection, material agreements, assets necessary for business, insurances, litigation, disclosure of information and its completeness and ordinary course of business since record date or general limitation clauses, that the SPA does not constitute a breach of any other obligation.
- Information on individual minimum claim amounts, on aggregate minimum claims and on liability caps:

#	Purchase price (€)	Individual minimum claim amounts (€)	Aggregate minimum claims (€)	Liability caps (in percent of the purchase price)
1	142'000'000	92'000	1'250'000	22.5
2	20'000'000	92'000'	276'000	20
3	7'275'000	none	none	100
4	230'000'000	200'000	1'500'000	30
5	257'000'000	138'000	460'000	30
6	3'700'000	none	none	none
7	3'000'000	none	none	none

- Information on carve-outs: 4 deals (57.1%); mostly regarding tax and regarding certain reorganizations prior to closing.

f) Disclosures

- Percentage of deals with/without disclosures: 57.1% (4 deals with disclosure).
- Percentage of deals with/without disclosures against warranties only: 57.1% (4 deals with disclosures against warranties).
- Percentage (only regarding the 4 deals with disclosure) of deals with
 - full data room disclosure: 100%;
 - Q&A log: 75% ;
 - Disclosure letters/schedules: 25%;
 - Disclosure of due diligence report: 0%;
 - Public information disclosed: 0%; and
 - Update between signing/closing: 25%.

6. Conditions Precedent

- Percentage of deals with/without merger filings as CP and information on percentage of jurisdictions: 28.6% (2 deals with merger filings, 1 deal with 1 jurisdiction, one deal with 2 jurisdictions).
- Percentage of deals with/without third party consents as CP: 28.6% (2 deals with third party consent as CP).
- Percentage of deals with/without certain funds clause as CP: 0% (no deal with certain funds clause as CP).
- Percentage of deals with/without the bring-down of warranties as CP: 14.3% (2 deals with the bring-down of warranties as CP).
- Percentage of deals with/without MAC clause as CP: 14.3% (1 deal with MAC clause as CP).
- Percentage of deals with/without seller's legal opinions as CP: 0% (no deal with seller's legal opinions as CP).
- Percentage of deals with/without retention of key employees as CP: 0% (no deal with retention of key employees as CP).

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: 57.1% (4 deals with non-

compete clause); average duration of 57 months; liquidated damage clause used in 1 deal (EUR 1'000'000).

- Percentage of deals with/without non-solicit clauses and information on duration and the use of liquidated damages clauses: 42.9% (3 deals with non-solicit clauses); average duration of 68 months; no liquidated damage clause was used.
- Percentage of deals with/without non-disparagement covenants: 14.3 % (1 deal with non-disparagement covenants).
- Percentage of deals with/without non-embarrassment covenants: 0% (no deal with non-embarrassment covenants).
- Percentage of deals with/without blue pencil clauses: 0% (no deal with blue pencil clause).

8. Governing law & Jurisdiction

- Percentage of deals with/without choice of law clauses and information on jurisdictions chosen: 100% (all deals with choice of law clause); mostly Swiss law (5 deals), 1 Austrian law, 1 Belgian law.
- Percentage of deals with/without jurisdiction clauses: 71.4% (5 deals with jurisdiction clause).
- Information on jurisdictions chosen: Mostly Switzerland (3 times Zurich, 1 time Basel), 1 Belgium (Bruxelles).
- Information on arbitration clauses (applicable rules, number of arbitrators, language): 28.6% (2 deals); ICC-Rules, 3 arbitrators, German.
- Percentage of deals with/without prior mediation obligation: 0% (no deal with prior mediation obligation).
- Percentage of deals with/witout initiation of formal litigation procedures: 0% (no deal with initiation of formal litigation procedure)

9. General Information

- Percentage of deals with/without cross-border element: 57.1% (4 deals with cross-border element).
- Names of involved law firms: Walder Wyss (Switzerland), Schellenberg Wittmer (Switzerland) and PWC Zurich (Switzerland), Arnecke Siebold (Germany), Freshfields (Austria), SCWP Schindhelm (Austria).
- Information on whether referrals were made by other AIJA members: No referrals made by other AIJA members.

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