

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

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Executive Summary of France

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1. General Statement

- General market trends in respect of deal points generally:
 - o In the past years, lots of mergers have taken place in the banking sector. The French Government aims to attract more foreign investments and is liberating several sectors where M&A opportunities can be found. For instance, liberation of sectors like energy and distribution has proven to be effective in lowering the barriers of entry and create further M&A opportunities.
 - o Moreover, the French Government has initiated various reforms such as *Act no. 2014-856 of 31 July 2014* on a “social and solidarity” economy introduces a new obligation to provide information to employees of companies having less than 250 employees, aimed at allowing them to take over an activity in order to protect jobs. The Act creates an obligation to consult the work council or each employee at least 2 months before the change of control of the company in order to enable the employees to make a counter-offer. Failure to comply with this requirement is punished with a fine corresponding to a maximum of 2% of the price for the shares sold.
- Surprising survey results (innovative or unusual deal points):
 - o The survey results are not very surprising and are consistent with the trends we have seen in our own French market practice. We have noted however one unusual deal point regarding the choice of jurisdiction for a US/French deal where even if the parties had chosen French law to govern the SPA, courts of the state of New-York were chosen.
- Groundbreaking or prominent deals covered:
 - o None.

2. Summary of Transaction Details

- 8 deals reported
- Maximum, minimum and median deal value of deals reported:
 - o Maximum value: EUR 130 Million,
 - o Minimum value: EUR 2.8 Million,
 - o Median value: EUR 66.4 Million.
- 100% of shares acquired in deals reported
- General information on relevant industries of reported deals:

The reported deals were involving the following industries:

 - o Biotechnology
 - o Computer / Software / IT / E-Commerce

- Consumer Goods / Food / Retail
- Industrial / manufacturing
- Energy
- Services
- Holding
- Medical / Pharma
- Computer / Software / IT / E-Commerce
- Sports
- General information on Buyers' and Targets' countries of origin:
 - Buyers' Countries: France / Belgium / China / Luxembourg / USA
 - Targets' Countries : Belgium / France / Spain / Tunisia / Gabon / Nigeria / Congo

The countries mostly involved in the reported deals are European.
- Percentage of deals with targets:
 - below 200 employees: 75%
 - above 200 employees: 25%
- Percentage of deals with/without auction:
 - Deals with auction: 75%
 - Deals without auction: 25%
- General information on the nature of the transactions:

The nature of the transactions is mostly "Industrial/trade vs industrial/trade" (5 out 8 deals). Nevertheless, the transactions can also be a management buy-out (2 out 8), a sale of family business (1 out 8) or a "Private equity / Venture Capital vs Industrial / Trade" (1 out 8).

3. Letters of Intent

- Percentage of transactions with LoIs signed/not signed:
 - 87.5% of transactions with LoIs signed,
 - 12.5% of transactions with LoIs not signed
- LoIs signed:
 - In France, Paris, Hong Kong, California (U.S.A)
 - All 7 contained exclusivity clauses together
 - 87.5% of LoIs with exclusivity clauses up to more than 1 month
- Information on binding character:

- Among the 8 deals reported, 3 have LoIs with binding character, 3 have LoIs with no binding character and 1 with only certain clauses such as confidentiality and exclusivity with binding character.

4. Due Diligence

- Percentage of transactions:
 - with vendor due diligence: 12.5%
 - without vendor due diligence: 87.5%
- Where a vendor due diligence was performed, 100% of cases where the report was disclosed to the Buyer
- Percentage of transactions:
 - With data room: 87.5%
 - Without data room: 12.5%
- Percentage of transactions:
 - with virtual data rooms: 75%
 - with physical data rooms: 12.5%
 - with both: 12.5%
- Information on who managed/organized the data room:
 - It was organized by Seller in 4 cases,
 - It was organized by both Seller and Data Room Provider in 1 case,
 - It was organized by Investment Banker in 3 cases.
- Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted:
 - Formalized Q&A procedure was followed in 3 cases, and a right to print was granted in 7 cases over 8.

5. Purchase Agreement

- Transaction
 - Percentage of transactions with simultaneous closings vs. non-simultaneous closings: 50% / 50%
 - Information on languages of purchase agreements: majority of French written agreements, but two out of eight are written in English.
- Purchase Price
 - Information on forms of consideration: none of the deals have a consideration with only stock. Though, two out of eight have a

consideration with a combination of cash and stock. The majority are paid by cash.

- 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): 62.5% of deals are without price adjustments with one out of five using a locked-box mechanism / 37,5% of deals with price adjustment with closing accounts.
- Information on payment mechanics (full payment vs. instalments with earn outs, retention by buyer etc.): 62.5% of deals were fully paid on closing. The 3 deals with payment in instalments are with earn out payments. Though, each of them is combined with either retention by buyer, payment of portion of purchase price into escrow account and vendor loan.
- Information on financing, i.e. use of equity vs. debt (bank, bonds, vendor loans): 3 out 8 deals are financed with a combination of debt and equity. Out 8 are financed with only equity. There is only 1 deal where the finances are unknown.
- MAC clause
 - Percentage of deals with/without MAC clause: 50%/50%
 - Where used, information on MAC clause form, definition and materiality threshold: Every time it was used, the MAC clause had the form of a condition precedent and was always defined. Nevertheless, it only contained a materiality threshold in one deal.
- Reps & Warranties
 - Percentage of deals with/without reps&warranties: There is a set of contractual representations and warranties in 7 deals out 8 (87.5%). Therefore, only one deal does not have a set of reps and warranties (12.5%)
 - Percentage of deals with/without standard reps&warranties : 2 deals out of 8 do not have a standard set of representations and warranties (25%). 6 deals out of 8 have standard sets of reps and warranties (75%).
 - Information on length and on repetition of reps&warranties as per closing: 2 deals out of 8 have an extensive list (25%). 6 deals out of 8 have a limited list (75%).
 - Percentage of deals with/without specific indemnifications and nature thereof: 2 deals out of 8 not have specific indemnifications for specific liabilities and risk discovered during DD (25%). 6 deals out of 8 do not (75%).
 - Information on tax warranties vs. tax indemnities: 50% of the deals only have tax warranties but no tax indemnity / 50% have both tax warranty and tax indemnity.

- Limitation of liability
 - Information on time limitations in general (percentage of months):
Out of 8 deals, the average time of limitation is 27 months. However, 3 deals out of 8 have a liability during 36 months after the closing.
 - Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc.

For title to shares: when there is a specific limitation it is usually legal statute of limitations, except one deal where the specific limitation is of 36 months.

For capacity, there is only three deals containing a specific limitation. Two are with legal statute of limitations. One has a specific limitation of 36 months.

For accounts, two deals contain a specific limitation. One has a specific limitation of 18 months. The other has a legal statute limitation.

For tax, five deals contain a legal statute limitation. One deal contains a specific limitation of 36 months.

For social security, the deals containing a specific limitation all contain a legal statute limitation.

For labour, four deals contain a specific limitation which is a legal statute limitation.

For environment, one deal contains a legal statute limitation.

For criminal, two deals contain a specific limitation. One is a legal statute limitation; the other is a limitation of 120 months.
 - Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles: only one deal have an individual minimum claim. It is stipulated in euro. There is no use of deductibles.
 - Information on liability caps (amount in EUR vs. percentage of purchase price): 4 deals out of 8 do not contain a cap. In the 4 containing one, 3 out of 4 are stipulated with an amount in EUR. One is a percentage of the purchase price.
 - Information on carve-outs: 2 deals out of 8 have carve-outs. Both of them are for fraud, willful misconduct or errors.
- Disclosures
 - Percentage of deals with/without disclosures and information on percentage of deals with disclosures against warranties only vs. warranties and specific indemnities: 5 deals out of 8 (62,5%) allow disclosure. Only 1 out of 5 concerns allowance of disclosure for warranties and specific indemnities. The other 4 are 'warranties only'.

- Percentage of deals with/without
 - full data room disclosure: 0%
 - Q&A log: 20% (1 out 5)
 - Disclosure letters/schedules: 60% (3 out 5)
 - Disclosure of due diligence report: 0%
 - Public information disclosed: 40% (2 out 5)
 - Update between signing/closing: 20% (1 out 5)

6. Conditions Precedent

- Percentage of deals:
 - with merger filings as CP and information on percentage of jurisdictions: 12.5%
 - without merger filings as CP and information on percentage of jurisdictions: 87.5%
- Percentage of deals:
 - with third party consents as CP: 25%
 - without third party consents as CP: 75%
- Percentage of deals:
 - with certain funds clause as CP: 12.5%
 - without certain funds clause as CP: 87.5%
- Percentage of deals:
 - with the bring-down of warranties as CP: 12.5%
 - without the bring-down of warranties as CP: 87.5%
- Percentage of deals:
 - with MAC clause as CP: 50%
 - without MAC clause as CP: 50%
- Percentage of deals:
 - with seller's legal opinions as CP: 50%
 - without seller's legal opinions as CP: 50%
- Percentage of deals:
 - with retention of key employees as CP: 12.5%
 - without retention of key employees as CP: 87.5%

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

- Percentage of deals:
 - o with non-compete clauses and information on duration and the use of liquidated damages clauses: 62.5 % - 2 out of 5 for a duration of 24 months, 2 out of 5 for a duration of 36 months and 1 out of 5 for a duration of 12 months
 - o without non-compete clauses and information on duration and the use of liquidated damages clauses: 37.5 %
- Percentage of deals:
 - o with non-solicit clauses and information on duration and the use of liquidated damages clauses: 75 % - 2 out of 6 for a duration of 24 months, 2 out of 6 for a duration of 36 months and 1 out of 6 for a duration of 12 months
 - o without non-solicit clauses and information on duration and the use of liquidated damages clauses: 25 %
- Percentage of deals:
 - o with non-disparagement covenants: 12.5 %
 - o without non-disparagement covenants: 87.5 %
- Percentage of deals:
 - o with non-embarrassment covenants: 12.5 %
 - o without non-embarrassment covenants: 87.5 %
- Percentage of deals:
 - o with blue pencil clauses: 0%
 - o without blue pencil clauses: 100%

8. Governing law & Jurisdiction

- Percentage of deals with/without choice of law clauses and information on jurisdictions chosen: 100% of the deals chose the application of French law.
- Percentage of deals with/without jurisdiction clauses : 100% with.
- Information on jurisdictions chosen: 4 out 8 chose the commercial court of Paris, one the court in the state of New-York, and 3 out of 8 chose the competent tribunals.
- Information on arbitration clauses (applicable rules, number of arbitrators, language): 0%
- Percentage of deals with/without prior mediation obligation: 25% have a prior mediation obligation.

- Percentage of deals with/without initiation of formal litigation procedures and information on the grounds (purchase price, reps&warranties or indemnities, other aspects): 0% with procedures.

9. General Information

- Percentage of deals with/without cross-border element: 62.5% of the deals contain one or several cross-border element(s).
- Names of involved law firms: King Wood and Mallesons / Dechert LLP / Joffe & Associés / Lefebvre Avocats Associés / De Gaulle Fleurance & Associés / CMS, Albiñana & Suarez de Lezo / Lydian / Lartigue Tournois Associés / Thomas Mayer & Associés / Michael Li & Co
- Information on whether referrals were made by other AIJA members: 0% of the deals were referred by AIJA members.

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