

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

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Executive Summary of Hungary

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1. General Statement

The present general report on Hungary covers five share deals pertaining to the acquisition of 100% shares of various Hungarian companies by mainly (80%) foreign parties. Given Hungary's geographical location and its strong agricultural background, it does not come as a surprise that the relative majority of the deals (40%) was related to companies doing business in the area of consumer goods/food/retail. Some of the covered transactions were inter-group transactions – in these cases it can be clearly seen that the form, structure and content of the SPA is much less complex than in case of private equity/venture capital transactions or straightforward sales of business. 40% of the deals covered was sale of a family business, which shows that there are companies with considerable in the ownership of Hungarian families, and that these companies may very well be interesting for foreign investors as well. The total lack of auctions in the examined deals signalizes that the deals were made “face-to-face” by means of direct negotiations, which finding is further supported by the fact that only in 20% of the deals was a LOI signed, and even then, it was merely partially binding.

2. Summary of Transaction Details

- Number of deals reported: 5 (five)
- Maximum, minimum and median deal value of deals reported: EUR 371,961,000 / EUR 1,894,450 / EUR 92,621,090
- Maximum, minimum and median percentage of shares acquired in deals reported: in each cases 100%
- General information on relevant industries of reported deals: financial services/insurances (20%), energy (20%), consumer goods/food/retail (40%), computer/software/IT/e-commerce (20%)
- General information on Buyers' and Targets' countries of origin: in all cases, the Target's country was Hungary, while the Buyer's country was Austria (20%), Luxembourg (20%), Czech Republic (20%), France (20%) and Hungary (20%)
- Percentage of deals with targets below/above 200 employees: in all cases, there were less than 200 employees affected
- Percentage of deals with/without auction: in none of the examined cases was an auction performed
- General information on the nature of the transactions: industrial/trade vs industrial/trade (20%), group restructuring (20%), sale of a family business (40%), private equity/venture capital vs industrial/trade (20%)

3. Letters of Intent

Out of the examined 5 (five) deals:

- Percentage of transactions with LoIs signed/not signed: 20% / 80%
- 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%
- Where signed, information on binding character: only with respect to certain clauses (provisions on confidentiality, expenses, exclusivity, applicable law)

4. Due Diligence

Out of the examined 5 (five) deals:

- In none of the cases was a vendor due diligence performed.
- Percentage of transactions with/without data room: 60% / 40%
- Percentage of transactions with virtual data rooms vs. percentage with physical data rooms: 67% / 33%
- Information on who managed/organized the data room: data room was provided by either the law firm or data room provider
- Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted: in 67% of the cases where DD was performed, such rights were granted, while in 33% of the case no such rights were granted

5. Purchase Agreement

Out of the examined 5 (five) deals:

- Transaction
 - o Percentage of transactions with simultaneous closings vs. non-simultaneous closings: in 67% there was a non-simultaneous closing, while in the remainder of the cases (33%) there was a simultaneous closing
 - o Information on languages of purchase agreements: in all cases, English
- Purchase Price
 - o Information on forms of consideration: cash (80%), combination of cash and stock (20%)
 - 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): 40% of the deals was without price adjustment and without the use of locked-box, 20% of the

deals was without price adjustment and with the use of locked-box, 40% of the deals was with closing accounts

- Information on payment mechanics (full payment vs. instalments with earn outs, retention by buyer etc.): full payment within 45 days from the closing (20%), full payment on closing (20%), payment in installments with retention by buyer and payment of portion of purchase price into escrow account (20%), payment in installments with payment of portion of purchase price into escrow account (20%), payment on closing and deferred payment by means of warrants (20%)
- MAC clause
 - Percentage of deals with/without MAC clause: 60% / 40%
 - Where used, information on MAC clause form, definition and materiality threshold: the MAC clause was defined in all such cases, and in 67% there was a materiality threshold imposed, the form of the MAC clause was back-door (33%), condition precedent (33%) and reps&warranties (33%)
- Reps & Warranties
 - In all cases, reps&warranties were included.
 - Percentage of deals with/without standard reps&warranties: 60% / 40%
 - Information on length and on repetition of reps&warranties as per closing: 40% limited 60% extensive, 20% repeated
 - None of the deals was with specific indemnifications with regard to the performed DD.
 - Information on tax warranties vs. tax indemnities: in all cases, both tax indemnity and tax warranties were included
- Limitation of liability
 - Information on time limitations in general (percentage of months): no limitation (20%), 24 months (20%), 36 months (20%), 60 months (40%)
 - Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc.: specific limitations imposed in 20% of the total deals examined as to shares (60 months), capacity (60 months) and taxes (66 months)
 - Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles: in 60% of the examined cases there was minimum amount prescribed: EUR 1,000 (basket: EUR 75,000), EUR 10,000 (basket: EUR 150,000) and EUR 30,000 (basket: EUR 90,000) respectively
 - Information on liability caps (amount in EUR vs. percentage of purchase price): no cap (20%), 100% of the purchase price (60%), EUR 10,750,000 (20%)

- Information on carve-outs: specific carve-outs were made in 40% of the deals examined, pertaining to ongoing tax audit, any and all law suits, excise taxes and certain claims arising from contracts with vendors
- Disclosures
 - Percentage of deals with/without disclosures and information on percentage of deals with disclosures against warranties only vs. warranties and specific indemnities: no disclosure in 40%, disclosure against warranties only in 20%, disclosure against warranties and specific indemnities in 40%
 - Percentage of deals with/without
 - full data room disclosure: in all cases, where a DD was performed (60% out of the total deals)
 - Q&A log: in all cases, where formalized Q&A process took place (40% out of the total deals)
 - Disclosure letters/schedules: in 20% of the deals examined
 - Disclosure of due diligence report: in all cases, where a DD was performed (60% out of the total deals)
 - Public information disclosed: in all cases
 - Update between signing/closing: in no cases

6. Conditions Precedent

Out of the examined 5 (five) deals:

- In none of the deals examined was merger filing, third party consent, draw-down of certain funds, bring-down of warranties, seller's legal opinions and retention of key employees prescribed as CP.
- Percentage of deals with/without MAC clause as CP: 20% / 80%

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

Out of the examined 5 (five) deals:

- Percentage of deals with/without non-compete clauses and information on duration and the use of liquidated damages clauses: 40% (24 and 48 months duration respectively, no liquidated damages) / 60%.
- Percentage of deals with/without non-solicit clauses and information on duration and the use of liquidated damages clauses: 40% (24 and 48 months duration respectively, no liquidated damages) / 60%.
- None of the examined deals contained non-disparagement covenants.
- None of the examined deals contained non-embarrassment covenants.

- None of the examined deals contained blue pencil clauses.

8. Governing law & Jurisdiction

Out of the examined 5 (five) deals:

- All examined deals contained choice of law clauses: in case of 20% of the deals, the chosen jurisdiction was Austria, in the remainder (80%) the chosen law was the law of Hungary.
- In 20% of the cases, the jurisdiction of the regular courts of Hungary was set forth.
- In 80% of the cases, there was an arbitration clause included. In all affected cases, the language of the arbitration was prescribed to be English, and in all such cases, there should be 3 arbitrators. In two cases (40%), the forum should be the Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry, in one case (20%) the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna, and in one case (20%) the Arbitral Agreement between the Austrian Federal Economic Chamber, Vienna, and the Hungarian Chamber of Commerce and Industry, Budapest shall apply.
- In none of the examined deals was prior mediation obligation prescribed.
- In none of the examined deals was formal litigation procedure initiated.

9. General Information

Out of the examined 5 (five) deals:

- Percentage of deals with cross-border element: 80%
- Percentage of deals without cross-border element: 20%
- Names of involved law firms: Szecskay Attorneys at Law
- Information on whether referrals were made by other AIJA members: no referral was made by other AIJA members

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