

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

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Executive Summary of Ireland

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1. General Statement

We have witnessed a wide variety of M&A deals in Ireland over the last few years. However the principal sectors continue to be agri-food, pharmaceutical, technology and financial services. Deal value has increased over recent times and 2015 saw record volume and deal value levels in Ireland. A growing number of transactions have an international element attached and Irish law firms are increasingly expected to co-ordinate and project-manage pan-European and international transactions.

During the financial crisis, we had seen a general shift towards more buyer-friendly legal documentation but that trend has reversed in recent times to a more balanced position due to the upsurge in more willing buyers and increased auction scenarios.

The amendments to the Competition Act 2002, introduced by the Competition and Consumer Protection Act 2014, now require a competition filing where a target's asset(s) has as little as €3 million in turnover in the State and provided that the aggregate turnover of the undertakings involved in the State is at least €50 million. This has led to a marked increase in the number of transactions with a merger control condition precedent and greater transaction complexity to cover the gap period between signing and completion.

2. Summary of Transaction Details

- Number of deals reported - four
- Deal value of deals reported – maximum €60 million, minimum €11 million and median €36 million
- Percentage of shares acquired in deals reported- Maximum 100%, minimum 50% and median 87.5%
- Industries of reported deals- Food industry, medical pharma industry, biotechnology and financial services technology.
- General information on Buyers' and Targets' countries of origin - 75% of the Buyers in the deals reported were Irish incorporated companies. The other Buyer was a UK company. 75% of the Target companies were Irish incorporated companies with the other target being a Jersey company (with an Irish trading subsidiary).
- 75% of the targets in the deals reported had in excess of 200 employees.
- 75% of the deals reported did not have an auction.
- 100% of the deals reported are private company share acquisitions and 75% of these were private equity capital vs trade.

3. Letters of Intent

- 75% of transactions with LoIs signed.
- 50% of the LoI's in the deals reported contained exclusivity clauses, all 50% of those LoIs have exclusivity clauses more than 1 month and each of those LoI's only had certain binding clauses for example exclusivity and confidentiality.

4. Due Diligence

- 100% of the deals reported were without vendor due diligence.
- 100% of the deals reported had a virtual data room, 50% of which were managed and organised by the Seller and 50% of which were managed and organized by a data room provider.
- In 50% of the deals reported there a formalized Q&A procedure was followed and in 100% of the deals reported a right to print/copy was granted.

5. Purchase Agreement

- Transaction
 1. 75% of the transactions had a non-simultaneous signing and closing.
 2. All (100%) of the purchase agreements in the deals reported were in English.
- Purchase Price
 1. In 75% of the deals reported the consideration was in the form of cash. In 25% of the deals reported the consideration was a combination of cash and stock.
 2. In 75% of the deals reported the purchase price was determined by closing accounts and in 25% of the deals a locked box mechanism was used.
 3. In 25% of the deals reported there was full payment on closing. In 50% of the deals reported there was an earnout payment with a portion of the purchase price being paid into an escrow account and in 25% of the deals reported there was a payment in installments with a payment of a portion of the purchase price into an escrow account.
 4. 100% of the deals reported were financing by the use of equity.
- MAC clause
 1. 25% of purchase agreements in the deals reported did not contain a MAC clause.

2. 50% of the deals had a MAC in the form of a condition precedent (both of which were defined) and 25% of the deals reported had a back-door MAC (not defined). 25% of the purchase agreements in the deals reported had a MAC which had a materiality threshold.
- Reps & Warranties
 1. 100% of the deals had reps&warranties
 2. 50% of the deals had standard reps&warranties and 50% of the deals had extensive reps&warranties.
 3. In 75% of the deals there is repetition of reps&warranties as per closing
 4. In 75% of the deals there are specific indemnifications dealing with pre-completion re-organisations, title and capacity, issues surrounding whether consultants engaged by the company are employee or independent contractors, employee claims, use of open source IP and government grant clawbacks.
 5. 100% of the deals have both tax warranties and tax indemnities.
 - Limitation of liability
 1. 50% of the deals reported have a time limit on the general warranties of 18 months and 50% have a time limit of 24 months.
 2. In 75% of the deals reported there are no time limits on title and capacity warranties and in 25% there is a time limit of 36 months. In 50% of the deals reported there is a time limit of 61 months on the tax warranties and in the other 50% there is a time limit of 72 months.
 3. In the deals reported the minimum claim amount as a percentage of purchase price ranged from 0.04% to 0.27%.
 4. In 75% of the deals the maximum liability cap was 100% of the purchase price and in the other 25% percentage of the deals the maximum liability cap is 10% of purchase price).
 5. In 50% of the deals there are carve outs for specific indemnifications.
 - Disclosures
 1. 100% of the deals reported have disclosures against warranties only.
 2. Percentage of deals with:
 - full data room disclosure – 50%
 - Q&A log disclosed – 25%
 - Disclosure letters/schedules – 100%
 - Disclosure of due diligence report – 25%
 - Public information disclosed – 0%

- Update between signing/closing - 50%

6. Conditions Precedent

- 50% of deals with merger filings as CP (25% with 3 jurisdictions and 25% with 1 jurisdiction).
- 100% of deals with third party consents as CP.
- 100% of deals without certain funds clause as CP.
- 75% of deals with the bring-down of warranties as CP.
- 50% of deals with MAC clause as CP.
- 100% of deals without seller's legal opinions as CP.
- 75% of deals without retention of key employees as CP.

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

- 100% of deals with non-compete clauses with a duration of 24 months in 75% of those deals and a duration of 36 in 25% of those deals. None of the deals reported had a liquidated damages clause.
- 100% of deals with non-solicit clauses with a duration of 24 months in 75% of those deals and a duration of 36 in 25% of those deals. None of the deals reported had a liquidated damages clause.
- 50% of deals with non-disparagement covenants.
- 25% of deals with non-embarrassment covenants.
- 100% of deals with blue pencil clauses.

8. Governing law & Jurisdiction

- 100% of deals with choice of law clauses and 100% chose Ireland.
- 100% of deals with jurisdiction clauses and 100% of jurisdictions chosen are Ireland.
- 100% of deals without arbitration.
- 100% of deals without prior mediation obligation.
- 100% of deals without initiation of formal litigation procedures

9. General Information

- 50% of deals with cross-border element
- Names of involved law firms - Confidential

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