

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

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Executive Summary of the Republic of Lithuania

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1. General Statement

- general market trends in respect of deal points generally and surprising survey results (innovative or unusual deal points)

Lithuanian M&A market has shrunk twice last year but experts remain calm and claim that such statistics was resulted by the unusually large number of M&A deals in 2014. It is safe to say that generally the Lithuanian market is experiencing recovery. Conditions in most of the deals covered, although adapted for every situation individually, were more or less standard. This could also signalize that there were no extraordinary changes in the market.

- groundbreaking or prominent deals covered:

Deal. No 2. the client, a risk capital fund which divested of its shares in a major Baltic cooling and refrigeration technology group via a private tender process. VARUL represented the first fund in the Baltics under bankruptcy (liquidation) proceedings, which entailed a special legal structure used for completion of the transaction.

Deal No 3. Our Law Firm advised one of the world's leading brands in circuit protection (producing, essential circuitry and sensors for the Automotive industry giants like BMW, Cadillac, Nissan, Volvo, GM, Daimler, Maybach, Jeep, etc.) on all aspects of acquisition of a Swedish owned group of companies having essential production capacities in Lithuania. It was a multinational M&A deal.

2. Summary of Transaction Details

- Number of deals reported

4 Deals

- Maximum, minimum and median deal value of deals reported

Maximum value - 60 million EUR, minimum - 2,38 million EUR, median - 28,68 million EUR.

- Maximum, minimum and median percentage of shares acquired in deals reported

100 % in all deals.

- General information on relevant industries of reported deals

Deal No 1 - Services (shopping and retail services); Deal No 2 - Services & Industrial (cooling and refrigeration technology, installation); Deal No 3 - Automotive, Computer/software/IT/E-commerce, Industrial/Manufacturing; Deal No 4 - Services (sport services).

- General information on Buyers' and Targets' countries of origin

Buyers and Targets were of The Republic of Lithuania in most of the deals reported, except one Buyer was registered in Estonia and one Target company was registered in United Kingdom.

- Percentage of deals with targets below/above 200 employees
25 % above 200, 75 % below 200 employees.
- Percentage of deals with/without auction
25 % with, 75 % without auction.
- General information on the nature of the transactions
50 % of deals - Private Equity / Venture Capital vs Industrial / Trade,
50 % of deals - Private Equity / Venture Capital vs Private Equity / Venture Capital

3. Letters of Intent

- Percentage of transactions with LoIs signed/not signed
25 % of deals - signed, 75 % of deals - not signed
- 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

The only LoI signed contained exclusivity clause more than 1 month.

- Where signed, information on binding character
Only certain clauses such as exclusivity and confidentiality

4. Due Diligence

- Percentage of transactions with/without vendor due diligence
0 % with vendor due diligence.
- Where a vendor due diligence was performed, percentage of cases where the report was/was not disclosed to the Buyer
- Percentage of transactions with/without data room
50 % with data room, 50 % without.
- Percentage of transactions with virtual data rooms vs. percentage with physical data rooms
100 % virtual (in cases where data room was available).
- Information on who managed/organized the data room
One deal - Seller managed/organized the data room, other deal - investment banker.
- Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted

Formalized Q&A procedure wasn't followed in any deals, but in 100 % of the deals right to print/copy was granted.

5. Purchase Agreement

- Transaction
 - o Percentage of transactions with simultaneous closings vs. non-simultaneous closings
100 % transaction with non-simultaneous closings.
 - o Information on languages of purchase agreements
25 % - in Lithuanian, 75 % - in English.
- Purchase Price
 - o Information on forms of consideration
100 % deals - cash.
 - 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)
50 % - without price adjustments, locked-box used, 50 % - with closing accounts
 - o Information on payment mechanics (full payment vs. instalments with earn outs, retention by buyer etc.)
50 % - full payment on closing;
25 % - first part of purchase price was paid no later than 3 working days after the date of signing the shares sale-purchase agreement. The remaining purchase price was paid not later than 3 calendar months after the date of signing of share sale-purchase agreement;
25 % - two separate dates for two stages of closing, payment of full parts of purchase price on both closings with subsequent adjustment
 - o Information on financing, i.e. use of equity vs. debt (bank, bonds, vendor loans)
25 % - bank debt, 75 % - combination of debt and equity.
- MAC clause
 - o Percentage of deals with/without MAC clause
50 % with MAC clause, 50 % - without.
 - o Where used, information on MAC clause form, definition and materiality threshold

In both deals MAC had a form of both - Condition precedent and Back-door MAC, was defined and had a materiality threshold.
- Reps & Warranties

- Percentage of deals with/without reps&warranties
75 % of deals with reps/warranties, 25 % - without.
- Percentage of deals with/without standard reps&warranties
66,6 % - with standard set, 33,3 % - without.
- Information on length and on repetition of reps&warranties as per closing
66,6 % - limited list and repeated on closing, 33,3 % - extensive list, not repeated on closing.
- Percentage of deals with/without specific indemnifications and nature thereof
25 % - with specific indemnifications of various nature, 75 % - no specific indemnifications.
- Information on tax warranties vs. tax indemnities
50 % - no tax warranties, no tax indemnity, 50 % - only tax warranties, no tax indemnifications.
- Limitation of liability
 - Information on time limitations in general (percentage of months)
25 % no time limitations, 25 % - 18 months, 50 % - 12 months.
 - Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc.
75 % of deals had no specific time limitations, 25 % - 60 months for title to shares, capacity and accounts warranties.
 - Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles
50 % of deals had no individual minimum claim amount clause, 25 % - 25 000 EUR with the use of deductibles, 25 % - 50 000, no use of deductibles.
 - Information on liability caps (amount in EUR vs. percentage of purchase price)
25 % of deals reported had no liability cap clause, 75 % had the liability cap clause, of which 33,3 % - maximum liability cap was of the amount of 100 % of purchase price, 33,3 % - 20 % of the purchase price, 33,3 % - 3 million EUR.
 - Information on carve-outs
75 % of deals had no carve-outs, 25 % - carve-outs in case of breaches of *Authority*, *Legal Status* and *Shares of the Company* warranties.
- Disclosures

- Percentage of deals with/without disclosures and information on percentage of deals with disclosures against warranties only vs. warranties and specific indemnities

25 % with disclosures against warranties only, 25 % with disclosures against warranties and specific indemnifications, 50 % - no disclosures allowed.

- Percentage of deals with/without

- full data room disclosure

50 % of deals - full data room disclosure, 50 % - without.

- Q&A log

100 % - without

- Disclosure letters/schedules

50 % - with, 50 % - without

- Disclosure of due diligence report

100 % without

- Public information disclosed

75 % with public information disclosed, 25 % - without.

- Update between signing/closing

50 % - with update, 50 % - without.

6. Conditions Precedent

- Percentage of deals with/without merger filings as CP and information on percentage of jurisdictions

100 % without

- Percentage of deals with/without third party consents as CP

50 % with third party consents as CP

- Percentage of deals with/without certain funds clause as CP

50 % of deals with certain funds clause

- Percentage of deals with/without the bring-down of warranties as CP

50 % of deals with, 50 % without.

- Percentage of deals with/without MAC clause as CP

50 % of deals with, 50 % without.

- Percentage of deals with/without seller's legal opinions as CP

25 % - with, 75 % - without.

- Information on opinion coverage

Opinion covers status and valid, binding and enforceable nature of agreement.

- Percentage of deals with/without retention of key employees as CP
100 % without.

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
75 % without, 25 % - with, duration - 24 months with the use of liquidated damages.
- Percentage of deals with/without non-solicit clauses and information on duration and the use of liquidated damages clauses
75 % without, 25 % - with, duration - 24 months with the use of liquidated damages.
- Percentage of deals with/without non-disparagement covenants
100 % without
- Percentage of deals with/without non-embarrassment covenants
100 % without
- Percentage of deals with/without blue pencil clauses
100 % without

8. Governing law & Jurisdiction

- Percentage of deals with/without choice of law clauses and information on jurisdictions chosen
100 % with choice of law clause. 25 % - the State of Delaware, United States of America, 75 % - laws of The Republic of Lithuania.
- Percentage of deals with/without jurisdiction clauses
100 % of deals with jurisdiction clause.
- Information on jurisdictions chosen
25 % - choice of ordinary courts - courts of The Republic of Lithuania;
25 % - choice of ordinary courts - exclusive jurisdiction of the United States District Court for the District of Delaware in Wilmington Delaware;
25 % - choice of arbitration in accordance with Arbitration Institute of the Stockholm Chamber of Commerce
25 % - choice of arbitration in accordance with Vilnius Court of Commercial Arbitration
- Information on arbitration clauses (applicable rules, number of arbitrators, language)

In one deal - 1 arbitrator, in the other deal - three arbitrators. Language in both - English.

- Percentage of deals with/without prior mediation obligation

100 % without.

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

100 % without.

9. General Information

- Percentage of deals with/without cross-border element

75 % with cross-border, 25 % without.

- Names of involved law firms

Law Firm Sorainen; Law Firm Vilgerts, Law Firm Boyes Turner, Law Firm Transatlantic Law International Limited, Law Firm Heussen, Law Firm Höcker Advocaten, Law Firm CEAG s.r.o.

- Information on whether referrals were made by other AIJA members

No referrals were made by other AIJA members.

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