

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

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Executive Summary of Spain

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Introductory remarks for National Reporters (NRs)

Deal points studies are often used by deal practitioners as a resource for market trends when negotiating acquisition agreements. The studies usually present a statistical breakdown of how key provisions are treated in a sample of publicly or otherwise available M&A contracts. The value of the deal points studies is that they give the practitioner a much better sense of M&A drafting trends than she or he could get by doing an own research.

Against this background the M&A Commission has decided to launch an “**AIJA Deal Points Survey**” with the goal to gather and analyze market standards for share deals in various AIJA jurisdictions. The overall objective of the survey is to gain a better understanding of market trends in share deals from the perspective of AIJA members so that we may share the insights with all interested AIJA members and thus improve our knowledge and general fitness when it comes to negotiating deal terms in share deals.

The AIJA Deal Points Survey will be conducted on the basis of the following documents:

- **Questionnaires** in the form as attached hereto as Exhibit 1 to be filled out on a case-by-case basis, i.e. one questionnaire each for each transaction covered;
- **Executive Summaries** in the form as set out hereinafter, with the goal of summarizing the findings from the various questionnaires; and
- **General Report** (to be drafted by the General Reporters) on the basis of the Executive Summaries received from the NRs.

The Questionnaires and the Executive Summaries are to be drafted by all interested NRs, i.e. each NR should fill out Questionnaires and provide an Executive Summary in respect of the information she or he put together in the Questionnaires. It may well be the case (and even desired) that there are several NRs in one and the same jurisdiction where each of them is expected to fill out Questionnaires and an Executive Summary (independently from each other or, if they want, in cooperation with each other). Thus, we are looking to receive numerous Executive Summaries and Questionnaires from NRs even if they are in the same AIJA jurisdiction.

The Questionnaires attached hereto are straight-forward and can be answered within reasonable time. Obviously, the more Questionnaires are filled out, the better the sample for the Executive Summaries will be. However, in order to adopt a reasonable and time-efficient approach, we would expect that each NR covers 3 to 5 transactions, i.e. fills out 3 to 5 Questionnaires and drafts 1 Executive Summary covering the respective Questionnaires, unless NRs team-up and provide an Executive Summary in respect of many more Questionnaires. We leave it up to the NRs whether they want to join efforts or not. NRs with highest number of transactions will win a prize!

The transactions to be covered by the NRs should meet the following criteria:

- Private share deals only (not asset deals)
- Survey is not restricted to certain industries
- Deal value at least EUR 1m
- Closings taken place after 1 January 2014

Please note that the Executive Summaries do not necessitate full sentences everywhere. NRs can e.g. simply insert a number where we ask about the number of transactions which fall into a certain category, or they can provide comments/findings in the form of bullet points.

To sum up, each NR is kindly requested to provide us with a completed Executive Summary together with all copies of the completed Questionnaires (including annexes thereto).

Deadline for submission: 15 January 2016.

1. General Statement

Spain has been a hub of M&A activity over the last 12 months and has shown a considerable improvement since the latest economic meltdown. There has been renewed foreign investor interest in Spanish assets, combined with local companies' expansion ambitions at home, which have triggered increase in acquisitions across a range of sectors. The trend appears to remain positive however the political outcome of Spain and/or Catalonia could hinder the development of such trend. A couple of the most prominent deals in Spain were: (i) the combination of The Coca-Cola Company business with Coca Cola Enterprises, Inc and Coca Cola Iberian Partners SA into a new company to be called Coca Cola European Partners Plc; and (ii) the acquisition of Panrico Group by Grupo Bimbo (which implied the acquisition of the main competitor in the bakery market in Spain and Portugal).

2. Summary of Transaction Details

The survey data compiled for preparing the Spanish National Report with respect to transaction details is as follows:

- Number of deals reported: 4.
- Maximum (EUR 600M), minimum (14M) and median (120m) deal value of deals reported.
- Maximum (100), minimum (0.97) and median (25) percentage of shares acquired in deals reported.
- General information on relevant industries of reported deals: IT, Industrial/Manufacturing, Services and Retail.
- General information on Buyers' and Targets' countries of origin: Buyers countries of origin [UK, Luxembourg/USA, Spain and France] and Target's countries of origin [Spain].
- Percentage of deals with targets below/above 200 employees: 75%.
- Percentage of deals with/without auction: 25%.
- General information on the nature of the transactions: Stock swap agreement, Private Equity/Venture Capital vs Industrial/Trade and Industrial/Trade vs Industrial/Trade.

3. Letters of Intent

The survey data compiled for preparing the Spanish National Report with respect to LoIs details is as follows:

- Percentage of transactions with LoIs signed/not signed: 100% 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: 75% \leq 1 month.
- Where signed, information on binding character: 25% with binding character.

4. Due Diligence

The survey data compiled for preparing the Spanish National Report with respect to due diligence details is as follows:

- Percentage of transactions with/without vendor due diligence: Only 25% of the transactions with vendors due diligence.
- Where a vendor due diligence was performed, percentage of cases where the report was/was not disclosed to the Buyer: 100% of cases where a vendor due diligence was performed was disclosed to the relevant Buyer.
- Percentage of transactions with/without data room: 50% of transactions with data room.
- Percentage of transactions with virtual data rooms vs. percentage with physical data rooms: 100% of virtual data rooms when due diligence was implemented.
- Information on who managed/organized the data room: 50% Investment Banker and 50% Seller when data room was managed/organized and put in place for the intended transaction.
- Information on whether formalized Q&A procedure was followed and whether right to print/copy was granted]: formalized Q&A procedure was generally followed and also a right to print/copy was granted.

5. Purchase Agreement

The survey data compiled for preparing the Spanish National Report with respect to the purchase agreement details is as follows:

- Transaction
 - o Percentage of transactions with simultaneous closings vs. non-simultaneous closings: 25% of the transactions implied a simultaneous closing.
 - o Information on languages of purchase agreements: 25% Spanish and 75% English.
- Purchase Price
 - o Information on forms of consideration: 25% stock, 50% cash and 25% combination of stock and 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% of the transactions were without price adjustments and only one (i.e. 25%) transaction contained a locked-box.

- Information on payment mechanics (full payment vs. instalments with earn outs, retention by buyer etc.) 75% of the transactions contained a full payment provision and 25% of the transactions contained a payment by installment by means of earn out payments.
- Information on financing, i.e. use of equity vs. debt (bank, bonds, vendor loans): 75% of the transactions covered the use of equity and 25% is unknown.
- MAC clause
 - Percentage of deals with/without MAC clause: 50% of the deals included a MAC Clause.
 - Where used, information on MAC clause form, definition and materiality threshold: 50% of the deals included a back door MAC.
- Reps & Warranties
 - Percentage of deals with/without reps&warranties: 100% of the deals included reps&warranties.
 - Percentage of deals with/without standard reps&warranties: 75% of the deals included standard reps&warranties.
 - Information on length and on repetition of reps&warranties as per closing: 75% of the deals included an extensive list.
 - Percentage of deals with/without specific indemnifications and nature thereof: 75% of the deals have specific indemnifications.
 - Information on tax warranties vs. tax indemnities: 25% of the deals had tax warranties but no tax indemnity, 25% of the deals had only tax indemnity but not tax warranties and 50% of the deals had both tax indemnity and tax warranties.
- Limitation of liability
 - Information on time limitations in general (percentage of months): The average percentage is of 18 months.
 - Information on specific time limitations (number of months) such as title to shares, capacity, accounts etc: Generally, the average percentage is of 18 months and statute of limitation for tax, labor and social securities (among others).
 - Information on individual minimum claim amounts (amount in EUR vs. percentage of purchase price) and the use of deductibles: 75% of the deals involved minimum claim amount and the use of deductibles. The average individual minimum is 50,000 EUR and the average aggregate minimum claim amount is 500,000 EUR.

- Information on liability caps (amount in EUR vs. percentage of purchase price): the liability cap goes from 10% to 100%.
- Information on carve-outs: 25% of the deals involved a carve out.
- Disclosures
 - Percentage of deals with/without disclosures and information on percentage of deals with disclosures against warranties only vs. warranties and specific indemnities: 75% of the deals contain warranties and specific indemnities and 25% of the deals covered only warranties.
 - Percentage of deals with/without
 - full data room disclosure: 25% of the deals
 - Q&A log: 25% of the deals
 - Disclosure letters/schedules: 25% of the deals
 - Disclosure of due diligence report: 25% of the deals
 - Public information disclosed: 25% of the deals
 - Update between signing/closing: N/A

6. Conditions Precedent

The survey data compiled for preparing the Spanish National Report with respect to the conditions precedent details is as follows:

- Percentage of deals with/without merger filings as CP and information on percentage of jurisdictions: N/A.
- Percentage of deals with/without third party consents as CP: N/A.
- Percentage of deals with/without certain funds clause as CP: N/A.
- Percentage of deals with/without the bring-down of warranties as CP: N/A.
- Percentage of deals with/without MAC clause as CP: 25% of the deals.
- Percentage of deals with/without seller's legal opinions as CP: N/A.
- Percentage of deals with/without retention of key employees as CP: 25% of the deals.
- Information on opinion coverage: N/A.

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

The survey data compiled for preparing the Spanish National Report with respect to the Non-Competition/Non-Solicitation/Restrictive Covenants details is as follows:

- Percentage of deals with/without non-compete clauses and information on duration and the use of liquidated damages clauses: 75% of the deals contained

- non-compete clauses and only 25% of the deals expressly regulated liquidated damages.
- Percentage of deals with/without non-solicit clauses and information on duration and the use of liquidated damages clauses: 75% of the deals contained non-solicit undertakings and only 25 of the deals expressly regulated liquidated damages.
- Percentage of deals with/without non-disparagement covenants: N/A.
- Percentage of deals with/without non-embarrassment covenants: N/A.
- Percentage of deals with/without blue pencil clauses: N/A.

8. Governing law & Jurisdiction

The survey data compiled for preparing the Spanish National Report with respect to the governing law and jurisdiction details is as follows:

- Percentage of deals with/without choice of law clauses and information on jurisdictions chosen: 100% of the deals with choice of law clauses (50% Spain, 25% UK and 25% France).
- Percentage of deals with/without jurisdiction clauses; 100% of the deals with jurisdiction clauses.
- Information on jurisdictions chosen: Barcelona, Paris and London.
- Information on arbitration clauses (applicable rules, number of arbitrators, language): 75% of the deals contained ICC arbitration clauses.
- Percentage of deals with/without prior mediation obligation: 25% of the deals.
- Percentage of deals with/without initiation of formal litigation procedures and information on the grounds (purchase price, reps&warranties or indemnities, other aspects): N/A.

9. General Information

The survey data compiled for preparing the Spanish National Report with respect to the general information details is as follows:

- Percentage of deals with/without cross-border element: 100% of the deals with cross-border elements.
- Names of involved law firms: Darrois Villey Maillot Brochier, Cleary Gottlieb Steen & Hamilton; Farrer & Co, Machado Meyer, Moruglu Arevedsen, Lindahl, among others.
- Information on whether referrals were made by other AIJA members: It involved some AIJA members but the deals which fall within the scope of this report were not referred through AIJA members.

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