

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

**Munich 2016**

**Executive Summary of Uruguay**

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January 11, 2016

## ***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. Summary of Transaction Details**

This National Report for Uruguay contains data compiled with respect to three transactions where Ferrere was involved in the year 2015. In the three transactions, 100% of the shares of the target company were acquired by the buyer. One of the transactions had a value of US\$ 45,000,000 (United States dollars forty five million) for 100% of the shares and the other two had a value of approximately US\$ 2,000,000 (United States dollars two million) for 100% of the shares.

In the three cases, the target companies were Uruguayan and the companies involved were corporations with its capital represented by shares. In one transaction, there were two target companies and one of them was a limited liability company with its capital represented by partnership interests (and not by shares). The three transactions were cross-border transactions as the buyer in all cases was a foreign company or individual. In one of the cases the buyer was a Chinese corporation, in other case it was a Dutch investment fund and in the third case, the buyers were two Brazilian individuals.

The industries involved in the reported deals are quite diverse. One of the deals involved the acquisition of a target company that operates a slaughterhouse and meatpacking plant in Uruguay. The meat sector is very dynamic in Uruguay and in the last years has had a great number of M&A transactions. The second reported deal involved the acquisition of a company that operates a dairy farm and the third one involved the acquisition of a company that manufactures and sells automotive parts.

The three target companies have employees but only one of them has more than 200 hundred employees.

In only one of the transactions there was an auction or competitive process among the bidders. The other two transactions were privately negotiated with only one buyer.

## **2. Letters of Intent**

In two out of the three reported transactions, a letter of intent or MOU was signed prior to the execution of the share purchase agreement.

In only one of the transactions, the MOU was of a binding nature. This means that when entering into the MOU, the buyer paid a certain amount of money to the sellers and if the transaction was not completed due to the buyer's fault, the sellers could keep that amount as a penalty. This MOU also contained an exclusivity clause for more than one month. In the second transaction, there was a MOU signed but it did not have a binding character and it did not contain an exclusivity provision. In the third transaction, there was no MOU signed.

## **3. Due Diligence**

None of the reported transactions were made with a vendor due diligence.

In fact, in one of the transactions there was no due diligence from the buyers either. In this transaction, the buyers relied on the representations and warranties made by the seller in the share purchase agreement and in the indemnification provisions, instead of performing a due diligence on the target.

In the two transactions where there was a due diligence performed by the buyer, there was a physical data room, this means that physical copies or originals of the requested documentation were provided to the advisors of the buyer. The information from the physical data room was provided in one of the cases directly by the sellers, without involvement of their advisors, and in the other case by the accounting and tax advisors of the sellers.

In both cases where a due diligence was performed by the buyers, Q&As were allowed but there was no formal procedure for it. Informal meetings with management or advisors of the target company were organized to answer questions or emails were exchanged when a question arose.

#### **4. Purchase Agreement**

##### a. Transaction:

- 100% of the reported transactions had non-simultaneous closings.
- 100% of the purchase agreements were drafted in English. However, only one of them was drafted only in English. The other two were drafted both in English and Spanish. In one of them, it was agreed that the English version would prevail in case of discrepancies and in the other one, it was agreed that the Spanish version would prevail in case of discrepancies.

##### b. Purchase Price

- In 100% of the reported deals, the form of consideration was cash.
- One of the reported deals contained a price adjustment mechanism and the remaining two contained a fixed price without adjustment and without closing accounts.
- In two of the reported deals the price was paid in installments without earn outs or retention by buyer and in one of the reported deals there was full payment at closing.
- In two of the reported deals, the financing for the acquisition was debt from a bank and in the remaining deal the source of financing was unknown.

##### c. MAC clause

- 100% of the deals contained a MAC clause with a definition that did not contain a materiality threshold.

- In 100% of the reported deals, the MAC clause had the form of a condition precedent to closing that gave the buyer the right to walk away.
- d. Reps & Warranties
- 100% of the reported deals contained extensive standard reps & warranties which were repeated at closing.
  - Two out of three of the reported deals contained specific indemnification obligations for specific liabilities and risks discovered during the due diligence. In one of them this specific indemnification was with respect to the title to the shares and in another it was with respect to labor and social security matters.
  - 100% of the reported deals contains tax reps & warranties and tax indemnities.
- e. Limitation of liability
- In two out of three transactions there were no limitations of liability of the sellers. Only one of the reported transactions contained a generic limitation of liability in time for 12 months after the closing date.
  - None of the reported transactions contained a specific limitation of liability in time for specific matters.
  - One of the reported transaction contained a minimum claim amount of US\$ 100,000 in the aggregate.
  - In none of the reported transactions deductibles were used.
  - None of the reported transactions contained a liability cap or a carve-out.
- f. Disclosures
- 100% of the reported deals contained disclosures from the sellers against warranties only with disclosure schedules.
  - 100% of the deals did not include full data room disclosure, Q&A log, disclosure of due diligence report or public information disclosure.
  - One of the deals contained an update of the disclosures between signing and closing.

## 5. Conditions Precedent

- In 100% of the reported deals a merger filing was not required and therefore it was not included as a CP.
- In 100% of the reported deals, there were no third party consents required and therefore it was not included as a CP.

- In 100% of the reported deals, there was no CP relating to the buyer obtaining bank financing.
- In 100% of the deals the bring-down of warranties and the MAC clause were included as a CP.
- 100% of the deals did not contain the seller's legal opinion as a CP.
- In one of the deals, the retention of key employees was included as a CP.

## **6. Non-Competition/Non-Solicitation/Restrictive Covenants**

Only one of the transactions contained a non-compete clause for the sellers for the period of 36 months after closing but no liquidated damages were included in case of breach of such provision.

None of the reported transactions contained non-solicit clauses, non-disparagement covenants, non-embarrassment covenants or blue pencil clauses.

## **7. Governing law & Jurisdiction**

- 100% of the reported deals contained choice of law clauses. In two out of three deals the law chosen was the one of Uruguay and in the remaining one, the law chosen was of the State of Delaware, United States.
- In one out of three reported deals there was a choice of jurisdiction clause and the jurisdiction chosen was Uruguayan courts.
- In two out of three deals, the parties chose arbitration as a dispute resolution method. The applicable rules were the ones of the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in one case and the ICC Rules in another case. In both cases, the language chosen for the arbitration proceedings was English. In one case, the number of arbitrators was three and in the other case, the number of arbitrators was not specified.
- 100% of the reported deals did not contain a prior mediation obligation of the parties.
- 100% of the reported deals without initiation of formal litigation procedures.

## **8. General Information**

- 100% percent of the deals contained a cross-border element as the buyer in 100% of the transactions was a foreign individual or company.
- The other law firms involved in the transactions were Dacheng Law Offices (China), Estudio Dr. Raúl Doldán Amarelli (Uruguay) and Salaverri•Dellatorre•Burgio & Wetzler Malbrán (Argentina).



- None of the transactions was referred by another AIJA member.

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