



FAIRNESS OPINIONS REGULATION IN FRANCE

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Independent Appraiser: Key Statistics

About the Independent Appraiser

- Mostly accountant/audit background
- Working in a small structure + likely member of one of the 3 main professional bodies (APEI, ANDEFI, A3E)
- Working with a variety of presenting banks
 - Flags raised if assignments repeatedly with the same sponsor institution(s) (art. 261-4 I)
- Concentrated market:
 - while over 50 independent appraisers have been involved, only half of them have been assigned 3 times and above (last 10 years)
 - Over the last 2 years, the top 3 independent appraisers covered **c.50%** of the transactions and **60%** of fees paid (the top 3 being different)

About the Fairness Opinions

- 400+ fairness opinions since 2006, i.e. **38/year**
- Fees are determined by **size of the target** mainly, as well as complexity of the transaction and reputation of the appraiser
- Fees statistics, over 10 years:
 - Median: **51 k€** (mean: 100 k€)
 - Min: 5 k€ / Max: 2 300 k€
- 2014 AMF recommended minimum fee of **50 k€**
- Fees statistics, over 2 years:
 - Median: **80 k€** (mean: 140 k€)
 - Min: 10 k€ / Max: 600 k€
- Fees amounts **widely spread**

Situations Involving a Fairness Opinion in France

Compulsory basis	Voluntary basis
Conflict of interest involving the company Board (art. 261-1 I)	Any situations (art. 261-3)
Squeeze-out procedure (art. 261-1 II)	
Reserved capital increase at (i) a discount and (ii) providing control of the company	
Disposal of the company's main asset (recommended)	

Situations Involving a Conflict of Interest

The AMF code lists 6 situations, among others (art. 261-1 I):

- ❑ 1° if the target company is already **controlled** by the offeror, before the bid is launched;
- ❑ 2° if the senior managers of the target company or the persons that control it, have entered into an **agreement** with the offeror that could compromise their independence;
- ❑ 3° if the **controlling shareholder does not tender** its securities to a buyback offer launched by the company for its own securities;
- ❑ 4° if the offer is **related to one or more transactions** that could have a significant impact on the price or exchange ratio of the proposed offer;
- ❑ 5° if the offer pertains to financial instruments in **multiple categories** and is priced in a way that could jeopardise the fair treatment of shareholders or bearers of the financial instruments targeted by the bid;
- ❑ 6° if the non-equity financial instruments that give or could give direct or indirect **access to the capital or voting rights of the offeror** or of a company belonging to the offeror's group are provided as consideration for the takeover of the target company.

Independence of the Independent Appraiser

AMF Code (art. 261-4)

- I. - The independent appraiser **must not** be placed in a conflict of interest in relation to the parties concerned [...]
 - The independent appraiser shall not work **repeatedly** with the same sponsoring institution(s) [...]
- II. - The appraiser shall prepare a **statement** certifying that there are no known past, present or future ties between him and the parties concerned [...]
 - If there is the **risk of a conflict of interest** but the appraiser deems this **unlikely to compromise his independence** or impair the objectivity of his assessment, he shall mention this risk in his statement, including **relevant supporting information**

AMF Instruction (2006-08)

- Conflict of interest situations include:
 - Legal or capital **links** with the parties involved
 - Previously appointed by the parties involved over the last **18 months**
 - **Economic interest** in the contemplated transaction

AMF Recommendation (2006-15)

- Appraiser to abide by a **code of ethics**
- Appraisal report **may** mention contacts with third parties

Fairness Opinion Review by the Regulator

Topics	Details
Target Valuation	<ul style="list-style-type: none"> - Valuation to be based on a variety of methods (apply or explain) - Consistency - Squeeze-out specificities
Related Agreements	<ul style="list-style-type: none"> - Wide range of related agreements - Review to identify and explain any differences with the offer price
Target Business Plan	<ul style="list-style-type: none"> - Underlying hypothesis to be tested against market practices, previous business plans, historic vs expected, company objectives - Appraiser to comment on whether the underlying business plan is cautious or ambitious
'Right Price' / 'Fair Price' ?	<ul style="list-style-type: none"> - The right price is determined by the markets (i.e. 'normal' takeover) - The fair price is a condition to the fairness opinion (i.e. 'simplified' takeover + squeeze-out)

Examples of Critical Aspects (1/2)

Conflict of Interest

Previous Relationships

Has the appraiser been previously appointed by one of the involved parties?
If so, how related was the transaction? What are the combined fees?

Outsourced Analysis

What perimeter of the appraisal report has been outsourced, and to whom?
Is it properly disclosed? Is the combined analysis consistent?

Fees

Are they fixed? If not, what do they depend on?
Is the regulator approval eventually a condition to the fees?

Examples of Critical Aspects (2/2)

Valuation

Implied Valuation Price

How has been calculated the target implied share price?
How have debt instruments been valued?

Related-Party Transactions

When are they expected to be put in place?
How do they impact the target business plan? And its valuation?

Valuation of Specific Assets

Can some assets be seen as non-operational and how are they valued?
How are potential valuation differences addressed?
How have they been valued in the past?

Asset Disposal by the Offeror Bought Back by One of the Selling Shareholders

Is the valuation consistent between the disposal transaction and its acquisition?
How are any differences in valuation justified?

Independent Appraisal in France

Pros and Cons of the Independent Appraisal Model in France

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- Detailed and disclosed appraisal reports
- Flexible
- Boards take an informed decision
- Part of the approval process by the regulator
- Affordable (50-80k€ median fees)

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- Remaining Independent can be challenging
- Expertise required on a wide range of topics
- Appointment process

Efforts to Promote Independent Appraisals in France

Overall

- ❑ Publication of AMF recommendations and guidances
- ❑ Professional associations recognised by AMF
- ❑ AMF dialogue with the professional associations
- ❑ Professional associations propositions and influence

On Specific Transactions

- ❑ Discussion with the regulator to address potential areas of concerns
- ❑ AMF intervention if requested by the independent appraiser