

REVISE

Opponentura Decision Review Report No. 66 of 05.09.2026

Case No. 6 “Signing the 65% strategic sale term sheet” · first review

Decision-support software — not legal, financial or professional advice; the final decision rests with the person whose decision it is.

The panel members are software AI roles with an assigned review mandate, not people: they have no personal professional experience, and this document is not independent human expertise.

THE DECISION AND WHAT NEXT

1 · 24 h

Written request to buyer's counsel for the earn-out EBITDA calculation methodology before signature

2 · 24 h

Request the full good-leaver/bad-leaver definition and removal provisions in writing

3 · 24 h

Ask in writing whether the investment committee can work to 45 days, and request the committee date

4 · 5 wd

Engage and pay independent M&A counsel; instruct on non-compete governing law and merger-control filing

🕒 **Verdict: REVISE.** The decision works in substance, but it is early to sign. In order: first “Check this first” from “The essentials”, then the orders in “Resolved”. Other moves on the same problem are in “What instead”.

THE PANEL'S VERDICT

Objective and direction: Reasonable — partial liquidity with retained upside is a coherent response to the client's stated 80%+ wealth concentration at age 47. Nothing in the record undermines the goal itself.

Current structure: Not ready for signature — as described by the client, the package gives the buyer control over inputs that may affect both the €2.0M earn-out and the value of the retained 25%, while the operative definitions have not been supplied in writing.

Three reasons, no more:

1. The earn-out and the put/call both refer to EBITDA after costs and decisions the buyer will control: budget, CFO hire, pricing, shared-services allocation, and part of marketing [client's account]. External sources confirm that, after control transfers, accounting practices and operating decisions can affect earn-out metrics generally, and that precise metric definitions, access rights, and dispute mechanics matter [1].
2. The bad-leaver definition — the clause that may cut the value of the retained 25% — has only been verbally summarised by the buyer's lawyer. The client has not read the actual definition.
3. The stated 21-day deadline is unverified, untested, and the client has not asked whether a 45-day timetable is possible.

Probability that signing this term sheet as described delivers all stated objectives — liquidity, lower personal risk, continued building, and reduced operating load: **likely no**.

HOW THE FRAMING CHANGED

Before review: “Accept the strategic offer and sign the term sheet — am I right?” — framed as a price-and-liquidity decision on a €7.8M headline.

After review: This is not principally a headline-price decision. It is a control-and-contract-definition decision. The reliably specified amount is €5.8M cash at closing. The €2.0M earn-out and the value of the retained 25% remain contingent on provisions not yet seen in writing.

THE ESSENTIALS

What risk is being accepted: The client would exchange control of a business reported at €6.2M revenue for €5.8M of immediate cash and €2.0M plus a retained 25% whose value is contingent and presently unpriced. The structural concessions described by the client — buyer-majority board, control over budget and key decisions, a 36-month CEO obligation, and a five-year non-compete — would be difficult to reverse after signature.

Using the client’s figures, €5.8M is certain cash at closing. The €2.0M earn-out equals approximately 25.6% of the €7.8M headline. The gap is material because the client has not received the written methodology that determines whether the earn-out is payable.

What supports the decision: Two points survive scrutiny.

First, €5.8M at closing is described as cash not subject to the earn-out performance tests. It diversifies personal wealth regardless of later business performance.

Second, the stated objective is internally coherent: the client wants partial liquidity, lower personal concentration risk, continued involvement, and some future upside. The goal survives. The current instrument does not yet reliably deliver it.

Dangerous assumptions

1. The €2.0M earn-out is simply money the client can earn through operational performance. It is contingent on ARR and EBITDA tests, while the client reports that buyer-controlled decisions affect inputs to EBITDA. Earn-out disputes commonly arise around accounting, measurement, and post-close operational choices [1]. **UNDERWEIGHTED**
2. Bad-leaver mechanics apply only to voluntary early departure. The client has not seen the contractual definition. **UNVERIFIED**
3. The 21-day deadline reflects an external necessity rather than negotiating pressure. The client has not independently verified it or tested an extension. **UNVERIFIED**

Check first: Send one written request to the buyer’s counsel within 48 hours for: (1) the earn-out EBITDA calculation methodology, including shared-services and intra-group cost treatment; and (2) the complete good-leaver/bad-leaver definition, including removal and termination provisions.

The buyer’s response or refusal is the most informative currently available fact.

⊗ **The decision stops being right if:** the buyer refuses to provide written earn-out methodology and leaver definitions before signature, or refuses to discuss a 45-day timetable while demanding signature on the current deadline. That combination — urgency plus opacity on provisions affecting payout — leaves the proposed decision unjustified.

The client runs a twelve-year-old B2B SaaS business, reported at €6.2M revenue, €4.9M recurring revenue, €1.0M EBITDA, €1.4M cash, no bank debt, 32 employees, 5% annual churn, and a largest customer representing approximately 12% of revenue. The client holds 90%; more than 80% of personal wealth is in the company. The client is 47, tired of daily operations, does not want a full exit, and seeks liquidity plus retained upside.

A strategic buyer offers €7.8M headline for 65%: €5.8M cash at closing and up to €2.0M earn-out after two years, conditional on ARR of at least €6.5M and EBITDA of at least €1.5M. The client reports that EBITDA would be calculated after costs and decisions controlled by the buyer. After the transaction, the buyer would hold 65%, the client 25%, and management/options 10%. The board would be 3/1/1 in the buyer's favour. The client would remain CEO for at least 36 months. A put/call after three years would be at roughly 7× EBITDA, subject to good-leaver/bad-leaver treatment. The non-compete would run for five years in Europe. The buyer seeks a signed term sheet within 21 days.

The strongest form of the client's position is that €5.8M immediately converts concentrated company wealth into personal liquidity; the client retains 25% of future upside; and remaining independent preserves 100% of concentration and operating exposure.

The questions about the case did not weaken the client's objective. They weakened the proposed instrument. The client confirmed: no specific personal obligation makes €5.8M today materially different from €5.8M in three years; no crisis follows if no deal occurs this year; the deal does not clearly reduce the operating burden; no M&A lawyer or sell-side adviser is engaged; the bad-leaver definition has not been read; the deadline is not verified; and the fund has not been asked for written indicative terms.

CASE MATERIALS

No transaction documents were supplied. The term sheet remains with the buyer; no shareholder agreement draft has been received; and the company's historic P&L has not been provided. The panel therefore worked from the client's account and externally verified materials.

- [2] CMS European M&A Study 2024, based on deals advised on by CMS in 2023 — earn-outs appeared in 23% of the reviewed deals; they appeared in 29% of Technology, Media & Communications deals. EBIT/EBITDA was used in 36% of earn-out clauses. Value: earn-outs are common, but their prevalence does not establish safety in any individual transaction. (cms.law)
- [3] CMS, 21 March 2025 — covering 582 M&A deals CMS advised on in 2024, describing increased use of purchase-price adjustments and earn-outs in a buyer-favourable shift in deal structuring. Value: contingent consideration and price-protection mechanisms can be buyer-protective tools. (cms.law)
- [1] Proskauer — after control passes, a buyer may alter accounting practices or operational decisions affecting earn-out financial performance; the article recommends precise drafting and consideration of limits on buyer action. Value: directly corroborates the structural risk described by the client. (proskauer.com)
- [4] Grant Thornton M&A dispute survey — 36% of respondents used unadjusted EBITDA as the earn-out metric; the survey states that even straightforward earn-out measures become complicated where those negotiating the metric are not those calculating it. Value: supports concern about metric definition and post-close calculation control. (grantthornton.com)
- [5] Cooley, 21 June 2024 — advises clear definitions of earn-out metrics, illustrative EBITDA calculations, timing mechanics, seller information rights, and clarity on business decisions affecting earn-outs. Value: supplies a drafting checklist for the missing written terms. (cooley.com)
- [6] Seller-side earn-out commentary — identifies protections including restrictions on buyer actions affecting EBITDA, maintained separate books and records, retained operational control, a defined “normalised EBITDA,” historical accounting practices, and clear dispute mechanisms. Value: identifies protections relevant to the reported structure. (jpfirm.com)

- [7] EU Merger Regulation, Article 3 (first-source not independently re-verified beyond the source list; norm retained per exception for legal norms) — a concentration may arise from a lasting change of control; control may result from rights or contracts conferring decisive influence over the composition, voting, or decisions of company organs. Value: confirms that governance rights, not merely nominal share percentage, can be relevant to legal control analysis. The applicability of any filing regime is fact- and jurisdiction-dependent and cannot be determined from the record. (eur-lex.europa.eu)
- [8] Arithmetic from client-provided figures: €7.8M headline equals approximately 1.26× reported revenue, 1.59× recurring revenue, and 7.8× reported EBITDA. €5.8M cash at closing equals approximately 0.94× reported revenue, 1.18× recurring revenue, and 5.8× reported EBITDA.
- [9] Not available in the file: buyer identity; buyer acquisition history; investment-committee date; prior founder outcomes; term sheet text; shareholder agreement; earn-out calculation rules; full bad-leaver definition; full put/call mechanics; governing law; and dispute provisions.

THE PANEL

In the chair — **the Chair of Opponentura** (permanent: runs the review, reconciles the positions and delivers the synthesis).

The mandates invited for this case:

- **Mandate “Second Party to the Deal”** — Examines how the buyer’s investment committee, legal team and board designees would actually use their approval rights over budget, CFO hiring, pricing and capex, and checks whether the EBITDA test in the earn-out and the put/call is structured so that the buyer controls the very number that prices both — asking why a rational buyer would set it up any other way.
- **Mandate “Veteran of a Failed Earn-Out”** — Checks the bad-leaver definition, the shared-services and marketing allocation mechanics, and the board composition against known patterns where a majority buyer can suppress EBITDA or trigger a bad-leaver exit before the 36-month or 3-year milestones, and asks what specifically in this term sheet prevents that outcome here.
- **Mandate “Falsification Methodologist”** — Checks which claims in the founder’s own account are unverified — the 21-day deadline, the bad-leaver price mechanics, the fund’s implied valuation, the three-year independent forecast — and tests whether the decision to sign changes once those unknowns are resolved instead of assumed.

VENDOR	WHAT RUNS ON IT	WHY CHOSEN
Anthropic	the main panel, synthesis of the report	long reasoning and work with a large volume of case materials
OpenAI	the second-vendor critic, the decision-bias reviewer, the independent fact check	a different school of training: it breaks the blind spots common to a single vendor

The panel runs on the newest flagship models from Anthropic and OpenAI. Two vendors are used deliberately: a different school of training breaks the blind spots common to one vendor. Agreement between them is not evidence in itself — what rests on what is stated by the origin tag on every finding.

STATEMENTS

Role “Second Party to the Deal”: the term sheet names its own lever — critical [client’s words]

Essence. The client reports that earn-out EBITDA is calculated after buyer-controlled budget, CFO hiring, pricing, shared-services allocation, and part of marketing. These are material drivers of reported EBITDA. The party owing the earn-out therefore controls decisions that may affect whether the threshold is met.

Evidence. The specific control allocation is client-reported because the actual term sheet has not been supplied (requires confirmation). Professional sources confirm that once control passes, changes in accounting practices and operational decisions can affect earn-out performance, and that the drafting of metrics, seller access rights, and expense treatment requires precision [1].

Conclusion. Do not treat the €2.0M as reliable consideration until the agreement defines the methodology in writing: accounting policies, named exclusions or treatment of intra-group costs, timing, access to records, audit rights, and independent dispute resolution. Until then, the reliably identified immediate payment is €5.8M, or 5.8× the client's reported current EBITDA.

Role “Second Party to the Deal”: month 37 is a material but unquantified risk — high [client's words]

Essence. At expiry of the 36-month CEO obligation, the client may no longer control the board, budget, executive hiring, or strategic direction. The reported governance structure makes the post-lock role and economics uncertain.

Evidence. Board composition, approval rights, and the lock period are client-reported (requires confirmation). No transaction documents, buyer track record, or founder references are available. Therefore, whether replacement at month 37 is likely, unusual, or planned cannot be established.

Conclusion. The client should not assume either continued employment or removal. The correct protection is contractual: define the post-lock role, transition terms, termination rights, and good-leaver treatment before signature.

Role “Second Party to the Deal”: every operative deal fact currently comes from the counterparty — high [client's words]

Essence. The headline, earn-out mechanics, put multiple, leaver rules, and deadline all originate with the buyer or the buyer's lawyer. No independent transaction adviser has reviewed the deal.

Evidence. Confirmed by the client's answers. The client has no M&A lawyer or sell-side adviser engaged and has not received the relevant definitive language.

Conclusion. Independent M&A counsel must be engaged before any term sheet, exclusivity undertaking, or no-shop obligation is signed. This is not an allegation of buyer misconduct. It is an evidentiary fact: the current information base is one-sided.

Role “Falsification Methodologist”: the control package is unpriced — critical [client's words]

Essence. The client treats the entire package as decided at signature: share split, earn-out, board majority, veto rights, CEO lock, put/call, leaver clauses, and non-compete. Yet the €7.8M headline does not assign value to the individual concessions.

The client is not merely selling 65%. As a matter of EU merger-control law, decisive influence can arise through rights over the composition and decisions of corporate bodies, independently of formal ownership percentage [7].

Evidence. The client's answer 1 and the transaction structure as described (requires confirmation). The remaining issue is not whether legal control transfers in every jurisdiction; it is that practical operating control is described as shifting to the buyer.

Conclusion. Create a concession-by-concession schedule before signature. For each concession, identify: price, control effect, earn-out effect, residual-equity effect, legal restriction, and walk-away point. The client has not decided which provisions justify walking away. That decision must come before signature.

Role “Falsification Methodologist”: the stated urgency is not personally anchored — high [client's words]

Essence. The rationale is liquidity and de-risking. The client confirms there is no mortgage, education obligation, health event, or comparable fixed need that makes €5.8M today materially different from €5.8M in three years. The company can continue operating for the next 12 months without crisis. The transaction does not clearly reduce daily operating work.

Evidence. The client's own answers 2, 7, and 8.

Conclusion. The objective of diversification remains sound. The urgency does not. The client has no demonstrated personal reason to accept the buyer's 21-day clock without testing it. Define the minimum liquidity needed to reduce concentration and the maximum loss of control acceptable in exchange for it; then assess whether the corrected strategic structure satisfies both.

Role “Falsification Methodologist”: eight conditions must hold, and several are unestablished — high [client's words]

Essence. For immediate signature to be justified, all of the following would need to be acceptable: the deadline is genuinely binding; €5.8M is sufficient compensation even if the earn-out is zero; the EBITDA test is protected from buyer-controlled decisions; the CEO lock is tolerable and leaver-safe; the non-compete is acceptable under its governing law; the put fairly values the retained 25%; no better liquidity structure exists; and buyer ownership adds enough value to justify control transfer.

Evidence. The third condition is not shown to be protected because written methodology is unavailable. The fourth is unresolved because the leaver definition is unavailable. Conditions concerning timing, put mechanics, non-compete law, alternatives, and buyer value creation are unestablished.

Conclusion. This is not yet a decision based on established facts. It is a wager on documents the client has not received. The necessary work is to convert the material unknowns into documents, numbers, and negotiated rights.

Role “Falsification Methodologist”: the fund is neither a valuation anchor nor a proven alternative — medium [client's words]

Essence. An informal discussion of €3M for 20% implies a €15M post-money valuation. But no document is signed, no due diligence has occurred, no written indication has been requested, and the fund has not been told that a strategic process exists.

Evidence. The client's answer 4. The arithmetic implication is accurate, but execution probability and governance terms are unknown.

Conclusion. Remove the fund from price comparison. It is not executable evidence. It remains a process opportunity: request a written non-binding indication promptly, covering valuation, primary versus secondary proceeds, governance, board rights, preference structure, dilution, founder role, and exclusivity.

Role “Falsification Methodologist”: the independence forecast is unbuilt — medium [client's words]

Essence. The client forecasts ARR of €8M and EBITDA of €2M in three years. ARR would rise from €4.9M to €8.0M, a total increase of about 63.3%, equivalent to approximately 17.7% annual compounded growth over three years. EBITDA would double from €1.0M to €2.0M.

Evidence. Arithmetic from client-provided figures. The record has no historical monthly ARR, gross retention, net retention, bookings, pipeline conversion, pricing plan, hiring plan, or capacity model.

Conclusion. The independence case is a client forecast, not an evidenced comparator. Build a three-year operating model from monthly actuals with bear, base, and upside cases before using independence to accept or reject the deal.

Role “Veteran of a Failed Earn-Out”: the leaver clause exists only as speech — critical [client's words]

Essence. The clause that may materially reduce the value of the retained 25% has not been read by the person bound by it.

Evidence. The client's answer 3: the buyer's lawyer provided a verbal summary, but the client has not seen the definition.

Conclusion. Obtain the complete written good-leaver/bad-leaver language, together with all removal and termination provisions, before signing. Independent counsel must assess whether termination without cause, resignation after the lock, incapacity, death, disagreement over strategy, and alleged underperformance are properly addressed.

Role “Veteran of a Failed Earn-Out”: the founder holds one board vote against the buyer's three — high [client's words]

Essence. The reported 3/1/1 board and buyer approval rights mean the client cannot control decisions over budget, executive hiring, pricing, capex, product development, debt, M&A, and dividends. Those decisions may also affect earn-out and retained-equity economics.

Evidence. Client-reported deal terms (requires confirmation). EU law confirms that rights over corporate decisions can be relevant to the existence of decisive influence, although no filing conclusion can be reached on this record [7].

Conclusion. Seek either client consent rights over decisions directly affecting earn-out calculation or an earn-out schedule that removes those decisions from discretion through defined accounting and operational rules. A neutral expert determination mechanism should apply to calculation disputes.

Role “Veteran of a Failed Earn-Out”: the downside has not been computed — medium [client's words]

Essence. The client has not calculated the downside. The current comparison places a €7.8M headline against an undefined zero-earn-out and low-EBITDA outcome. [calculation]

Evidence. Client's answer 3. Based on the client's reported terms, and assuming no discount, debt/cash adjustment, working-capital adjustment, payment deferral, or leaver reduction:

[= €5.8M + + (25%)]

Illustrative values:

YEAR-3 EBITDA	25% PUT AT 7× EBITDA	TOTAL PROCEEDS WITH ZERO EARN-OUT
€0.5M	€0.875M	€6.675M
€1.0M	€1.750M	€7.550M
€1.5M	€2.625M	€8.425M
€2.0M	€3.500M	€9.300M

With a full €2.0M earn-out and €2.0M year-3 EBITDA, total proceeds would be approximately **€11.3M**. The retained stake calculation is $€0.25 \times 7 \times €2.0M = €3.5M$; therefore $€5.8M + €2.0M + €3.5M = €11.3M$.

Conclusion. Build downside cases in euros before signature. At minimum model: zero earn-out with €0.5M and €1.0M EBITDA; full earn-out with a defined fair put; and independence with execution-risk adjustment. No decision should rely on an undefined residual stake.

Role “Veteran of a Failed Earn-Out”: the five-year European non-compete requires legal analysis — medium [client's words]

Essence. A five-year Europe-wide restriction may materially constrain the client's future career if control transfers and employment later ends.

Evidence. The client reports the scope and duration (requires confirmation). The governing law, contractual definition of competing activity, geographic drafting, and enforceability provisions have not been supplied.

Conclusion. No conclusion on enforceability can be made from the record. Counsel should review the actual clause and governing-law provision before signature. Until reviewed, the client should assume the restriction may be enforced according to its written scope.

Role “Veteran of a Failed Earn-Out”: the deal does not deliver the lifestyle change sought — medium [client’s words]

Essence. The client wants relief from day-to-day operations. The reported structure leaves the client CEO for 36 months while introducing a buyer-controlled board, a CFO the client did not select, and a budget the client cannot determine.

Evidence. Client answer 7: the deal “does not obviously reduce my operating load” and changes the balance sheet rather than the calendar.

Conclusion. One stated objective — reduced operating load — is not delivered by the current structure. If it matters, negotiate it explicitly through role definition, delegated authority, reporting cadence, management support, succession planning, and post-close scope. If it does not matter enough to negotiate, remove it from the stated rationale.

THE ARGUMENT

Point one — is the earn-out worth negotiating, or worth writing off?

The role “Second Party to the Deal” argued that the earn-out may be made more reliable through contractual drafting: accounting policies, cost treatment, access rights, examples, and neutral determination. The role “Veteran of a Failed Earn-Out” argued that the client should mentally value the offer at €5.8M unless and until those protections are written and reviewed.

Decisive argument: The difference is one of posture, not verified fact. The record establishes that the earn-out is not currently documented in a form the client can assess. Accordingly, the €2.0M should not be counted as reliable consideration before the methodology is received and independently reviewed. The cash-at-closing amount is €5.8M, or 5.8× reported current EBITDA; the €7.8M headline is conditional.

Point two — is the buyer’s conduct the risk, or the buyer’s incentive?

The role “Veteran of a Failed Earn-Out” considered whether the structure suggests deliberate adverse design. The role “Second Party to the Deal” objected that bad faith need not be inferred: ordinary buyer decisions on integration, pricing, allocation, and budgets can affect subsidiary metrics.

Decisive argument: The second formulation is stronger. The report does not find bad faith by the buyer. The issue is structural misalignment: the buyer may rationally run the acquired company in a manner that differs from the client’s earn-out incentives. The remedy is contractual protection, not speculation about character.

Point three — how much weight does the client’s answer 8 carry?

The role “Falsification Methodologist” argued that absence of a fixed personal obligation removes the case for urgency. The role “Veteran of a Failed Earn-Out” argued that concentration risk is real even without a date attached.

Decisive argument: Both propositions stand. Diversification remains a valid objective. Nothing in the client’s account establishes that this transaction must be signed in 21 days. The client can pursue a proper process without abandoning the goal.

Point four — is the fund a benchmark or a distraction?

The role “Falsification Methodologist” argued that the implied €15M post-money cannot be used as valuation evidence because it is informal and undocumented. The role “Second Party to the Deal” agreed that its

governance terms may prove unattractive or controlling.

Decisive argument: The fund is not a valuation benchmark. It is a process instrument. A written indication would establish whether an alternative liquidity path exists; until then, it should not support any price conclusion.

MAP OF DISAGREEMENT

Where all roles agree. The underlying objective is sound. The reliably identified immediate cash amount is €5.8M, not €7.8M. The earn-out methodology and leaver terms must be obtained in writing. The 21-day deadline is unverified and should be tested. Independent M&A counsel is necessary before signing. The proper verdict is REVISE, not REJECT.

Where they differ.

- *Earn-out treatment:* one role considers it potentially curable through drafting; another would value it at zero until paid.
- *Nature of buyer risk:* one role considered deliberate adverse design possible; the other treats ordinary post-acquisition incentives as sufficient to create risk.
- *Urgency:* one role considers the absence of a personal deadline decisive against speed; another considers concentration risk sufficient to preserve the goal but not the timing.
- *Fund process:* all agree it is untested; the distinction is whether it is merely optional or an urgent process step.

What resolves the disagreement. Written earn-out methodology and leaver definitions resolve the first. The buyer’s response to a 45-day request resolves the timing question. A downside model resolves whether €5.8M alone supports the proposed control transfer. A written fund indication establishes whether an actual alternative exists.

Who changed position. No role changed its conclusion on the submitted decision. All converge on REVISE.

RISK MAP

RISK	PROBABILITY	HARM	ACTION IN ADVANCE	EARLY INDICATOR	DECISION THRESHOLD
Buyer-controlled cost allocation or operating decisions reduce EBITDA below the €1.5M earn-out gate	high	Up to €2.0M earn-out plus lower value of the put	Define EBITDA, treatment of shared-services and intra-group charges, seller access rights, audit rights, and neutral expert determination before signature [1]	Buyer resists written methodology or declines to define cost treatment	Refusal to provide meaningful written protections: do not count the earn-out; reassess as a €5.8M cash transaction or decline
Leaver clause reduces the value of the retained 25%	unknown	Potentially material, but unquantified	Obtain the complete definition and termination provisions; require clear treatment for termination without cause and post-lock departure	Clause withheld, broad discretion, or unclear cause definitions	No reviewable written clause before signature: do not sign

RISK	PROBABILITY	HARM	ACTION IN ADVANCE	EARLY INDICATOR	DECISION THRESHOLD
Signature occurs before independent legal review because of the 21-day deadline	high	Client accepts control and payout provisions not yet read	Request 45 days within 48 hours; engage independent counsel promptly	Flat refusal without disclosure of key clauses	Refusal of extension combined with refusal to disclose earn-out and leaver language: decline
Put is based on disputed or undefined EBITDA	medium	Material variability in retained-stake value	Define EBITDA, valuation mechanics, payment timing, debt/cash and working-capital treatment, discounts, and dispute process	Definitive documents retain “roughly 7× EBITDA” without mechanics	No fixed formula and neutral determination: retained 25% remains unpriceable
Five-year European non-compete constrains future work	unknown	Potential loss of sector mobility	Review actual wording, scope, governing law, and enforcement risk with independent counsel	Buyer refuses to provide governing law or contract language	If the reviewed clause materially restricts future work beyond what the client accepts: reprice or decline

WHAT INSTEAD

OPTION	WHY IT APPEARS	MAIN ADVANTAGE	MAIN UNKNOWN
Written indicative term sheet from the fund	The informal fund discussion has not been tested	Establishes whether an alternative source of liquidity and governance structure exists	Price, execution probability, preferences, board rights, dilution, and control protections are unknown
Remaining independent while preparing an evidence-based operating plan	The client reports no crisis and no dated personal cash obligation	Retains control while the client builds a real comparison case	Personal concentration remains high; forecast reliability has not been tested
Negotiated strategic transaction after documentation and counsel review	The client’s liquidity goal is coherent	Could provide material liquidity while preserving negotiated protections	Buyer willingness to document earn-out, leaver, role, governance, put, and timetable protections

The panel did **not** verify the feasibility, pricing, financing, governance, or execution risk of other alternatives. They must not be treated as available transactions merely because they are conceptually possible.

THE VOTE

Positions of the roles on the decision as submitted:

No mandate supports the decision as currently framed. Votes: REVISE — 3.

Not one member of the panel supported the decision as it stands. Votes: REVISE — 3.

ROLE	VOTE	REASON IN BRIEF
Mandate “Second Party to the Deal”	REVISE	Probability the position as stated (“sign this term sheet as-is within 21 days”) will deliver the founder’s stated goal (liquidity + reduced risk + continued upside + reduced operating load): маловероятно (20-45%)
Mandate “Falsification Methodologist”	REVISE	The proposed signature commits the founder to a control transfer, a three-year employment constraint, and a contingent price before the facts that determine their economic cost have been established
Mandate “Veteran of a Failed Earn-Out”	REVISE	One line: The headline number is not in dispute; the mechanism by which the founder actually receives it — earn-out definition, bad-leaver trigger, board control over the very metric both depend on — is undocumented, unverified, and structurally tilted against him...

RESOLVED

The decision to seek partial liquidity is upheld. The decision to sign the reported term sheet within 21 days in its present undocumented form is returned for rework. Nothing is signed until orders 1, 2, and 3 have produced answers.

Order 1. Send a written request to the buyer’s counsel for the earn-out EBITDA calculation methodology, including shared-services allocation, intra-group charges, marketing allocations, accounting policies, measurement timing, seller information rights, audit rights, and dispute procedure. **Deadline:** 48 hours. *What it tests:* whether the €2.0M is contractible or discretionary. *If defined and reviewed as acceptable by independent counsel:* the earn-out can be evaluated as contingent consideration. *If not provided, or deferred to definitive documents without agreed principles:* remove €2.0M from the working valuation and reassess the offer as €5.8M at closing.

Order 2. Request the full good-leaver/bad-leaver definition, together with all removal and termination provisions. **Deadline:** 48 hours. *What it tests:* whether termination without cause, resignation after the 36-month lock, incapacity, and board-initiated changes are treated fairly. *If the terms are clear and counsel approves them:* the retained 25% becomes more assessable. *If the provisions are withheld, vague, or permit adverse treatment without clearly defined cause:* do not sign.

Order 3. Ask the buyer in writing whether its investment committee can work to a 45-day timetable and request the actual committee date or business rationale for timing. **Deadline:** 48 hours. *What it tests:* whether the deadline is a demonstrated constraint or a negotiating instrument. *If extended or credibly explained:* continue with counsel-led review. *If refused without disclosure of key payout terms:* treat the combination as a serious process failure and decline the term sheet.

Order 4. Engage independent M&A counsel. Engage a sell-side adviser if proportionate and feasible. **Deadline:** 5 working days. *What it tests:* nothing; it is a precondition. No document, exclusivity undertaking, or no-shop covenant is signed before counsel has reviewed the term sheet, earn-out methodology, leaver provisions, put/call provisions, governance, and non-compete. Counsel must also advise on governing law, enforceability of restrictive covenants, and whether any regulatory or merger-control analysis is required. EU law recognises that decisive influence may arise through rights over corporate composition and decisions [7].

Order 5. Build a downside model in euros. **Deadline:** 15 working days. Include: (a) zero earn-out with put at €1.0M year-3 EBITDA; (b) zero earn-out with put at €0.5M year-3 EBITDA; (c) full earn-out with a defined put formula; and (d) independence at the €8M ARR / €2M EBITDA forecast, bridged from actual monthly results and adjusted for execution risk. *What it tests:* whether the worst credible deal outcome is attractive enough compared with a 12-month independent path.

Order 6. Notify the fund that a live strategic process exists and request a written non-binding indication covering valuation, primary versus secondary split, governance, board rights, liquidation preference, dilution, founder role, and exclusivity. **Deadline:** 14 days. *What it tests:* whether an actual alternative exists. If no indication arrives, do not treat the fund as a live option. Its absence does not validate the strategic offer.

Order 7. Request buyer-provided references to prior acquired founder-CEOs, if available, and conduct counsel-advised reference calls. **Deadline:** 15 working days. *What it tests:* founder experience of integration, governance, retained roles, and process fairness. The panel cannot predetermine what reference calls will prove. They are context, not a substitute for contractual terms.

Cancellation criteria. Stop the process and decline this term sheet if any of the following occurs:

- the buyer refuses both an extension beyond 21 days and disclosure of earn-out and leaver language;
- the leaver definition cannot be reviewed before signature;
- the buyer insists on discretionary control over budget, CFO appointment, pricing, and shared-cost allocation while refusing earn-out protections;
- the buyer requires binding exclusivity or a no-shop before orders 1 and 2 are answered and independently reviewed.

WHAT WE NEED FROM YOU

Established by the panel and requiring no external re-verification:

- The commercial rationale for partial liquidity and reduced concentration risk.
- Arithmetic from the client's figures: €5.8M equals 5.8× reported current EBITDA and approximately 0.94× reported revenue; €7.8M equals 7.8× reported EBITDA and approximately 1.26× reported revenue.
- That the client has no dated personal obligation compelling a transaction within 21 days.
- That the client has not received or reviewed the earn-out methodology, bad-leaver definition, put/call mechanics, shareholder agreement, or governing-law provisions.
- That the deal does not, on the client's own account, clearly reduce operating workload.

Outstanding for the next review:

1. The complete earn-out methodology and good-leaver/bad-leaver provisions.
2. The full put/call clause: multiple, EBITDA definition, debt/cash adjustment, working-capital treatment, minority discount if any, payment timing, call/put asymmetry, and dispute process.
3. Governing law, jurisdiction, and complete non-compete wording.
4. Thirty-six months of monthly ARR, gross and net retention, bookings, EBITDA, headcount, and cash flow.
5. Actual annual salary and dividends, so the panel can assess what immediate liquidity changes in the client's personal position.
6. Buyer identity and transaction history, if the client seeks a buyer-specific assessment.
7. Any written fund indication.

DISSENTING OPINIONS

Role "Veteran of a Failed Earn-Out" records a dissent on framing, not verdict: even with improved drafting, a dual ARR-and-EBITDA hurdle means the client may achieve revenue growth while failing the profitability threshold. This role would value the deal at €5.8M until any earn-out proceeds are actually paid.

The other roles consider the earn-out potentially improvable through concrete written protections, but agree that it must not be relied on before those protections are received and independently reviewed. The disagreement does not change the vote.

TAKEN ON TRUST

- All deal terms as described by the client: the 65/25/10 split, €5.8M at closing, the €2.0M earn-out and dual threshold, board composition, veto list, 36-month CEO obligation, roughly 7× EBITDA put/call, leaver mechanics, and five-year non-compete. No term sheet was supplied.
- The company's reported financial position: €6.2M revenue, €4.9M recurring revenue, €1.0M EBITDA, €1.4M cash, no bank debt, 32 employees, 12% largest-customer concentration, 5% churn, and 90/10 cap table.
- That more than 80% of the client's personal wealth is in the company and no mortgage, education expense, or health matter creates a dated need for cash.
- That the fund discussion is informal, unsigned, and without diligence.
- That no M&A lawyer or sell-side adviser is engaged and the buyer introduced neither.
- The €8M ARR / €2M EBITDA three-year independence forecast as the client's own projection, not verified by the panel.

WHAT WOULD CHANGE THE VERDICT

Toward APPROVE: independent counsel receives and approves written earn-out methodology, including transparent cost treatment, information rights, audit rights, and neutral dispute mechanics; leaver terms clearly protect against unfair treatment following termination without cause or expiry of the CEO lock; put/call mechanics are fully priced; the buyer permits a reasonable review timetable; and the client's downside model shows that the corrected deal meets the actual minimum-liquidity and acceptable-control-loss thresholds.

Toward REJECT: the buyer refuses disclosure of material payout clauses before signature; refuses both meaningful time and legal review; retains discretion over earn-out drivers while refusing protections; requires exclusivity before disclosure; or presents leaver terms that materially jeopardise the retained 25%.

Neutral but decision-changing: a written fund indication or another documented alternative would not itself condemn the strategic offer. It would remove the unsupported assumption that this control sale is the only route to the client's stated objective.

SOURCES

External information the report relies on. A number in square brackets in the text leads here; the addresses are given as the search returned them on the day of the review.

- [1] proskauer.com — <https://www.proskauer.com/blog/navigating-earn-out-disputes-key-cons...>
- [2] cms.law — <https://cms.law/content/download/678829/file/CMS%20European%20M%26A%...>
- [3] cms.law — <https://cms.law/en/nld/news-information/buyers-take-the-lead-in-shif...>
- [4] grantthornton.com — <https://www.grantthornton.com/insights/articles/advisory/2024/use-up...>
- [5] grantthornton.com — <https://www.grantthornton.com/content/dam/grantthornton/website/asse...>
- [6] cooley.com — <https://www.cooley.com/news/insight/2024/2024-06-21-4-tips-for-draft...>
- [7] jpfirm.com — <https://www.jpfirm.com/news-resources/earnouts-seller-pitfalls-risks/>
- [8] cms.law — <https://cms.law/en/mne/legal-updates/cms-european-private-equity-stu...>
- [9] eur-lex.europa.eu — <https://eur-lex.europa.eu/eli/reg/2004/139/oj/eng>

PROCEDURES OF THE “O-18” METHOD

The review does not go “in our own words”: the “O-18” method has 18 procedures with named primary sources and stated limits of applicability (the method passport — opponentura.com/method/o18/). Four are mandatory in every case, the rest are distributed among the panel without repeats — so that different critics look at the decision with different instruments instead of repeating one another.

Mandatory in every case: Steelman, Pre-mortem (Klein), Key assumptions, Chain-of-Verification.

Distributed across this panel: Falsification (Popper), Quality of information, Good faith of the source, Failure mode map (FMEA), Toulmin warrant attack, What If? (the surprise has already happened), Competing hypotheses (ACH, Heuer), Bow-tie (ISO 31010), Inversion (Munger), High impact, low probability, Four points of view (stakeholders), Base rate and the outside view (Tetlock).

Procedures used in total: 16 of 18.

Not used in this review: Scan for biases in the position, Code and engineering. The catalogue is covered by a panel of five or more; on a smaller panel some procedures stay unassigned, and we name them plainly rather than pass over them.

HOW THIS REPORT WAS ASSEMBLED

The “O-18” method, revision 1.0 · report format 3.1 · review of 05.09.2026.

Form of the review: a panel of three critics.

Applied: collecting external facts by live search; argument between the critics; fact check on a second vendor’s engine; editorial proofread.

Not applied in this review: open-source reconnaissance; reading the pages you named; the decision-bias reviewer; tournament of options; proportionality check on the criticism; recess and a second round on contested facts.

HOW TO READ THIS

- **Verdict** — the panel’s decision: APPROVE, REVISE or REJECT.
- **Severity of a finding** (critical / high / medium / low) — how strongly the factor affects the decision on this case: “critical” can turn the decision around, “low” is worth knowing.
- **Origin tag** at the end of a finding — what it rests on: [client’s words] — from what you told us, not verified; [document] — from a file you attached; [open source] — from a public source, with a link; [calculation] — the panel’s arithmetic on your own figures; [assumption] — a critic’s supposition; [panel’s conclusion] — an inference from the above. The tag goes by the weakest link: it shows what you can take to a lawyer and what to verify first.
- **Cancellation criteria** — conditions agreed in advance under which the decision should be reconsidered.
- **The cheapest check** — the smallest test capable of refuting the decision before large commitments.

SEAL OF OPPONENTURA

High-stakes decision review · Report No. 66

Verdict: **REVISE**

SHA-256: 473b2864ebe055fd

opponentura.com

Signed: the Chair of Opponentura

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In the chair


The Chair of Opponentura

