

The valuation implications of the recent UK High Court decision in the Stabilus case

Never before have we seen business valuation issues so thoroughly analysed in the UK courts. The Stabilus case¹ raised important issues that all valuers should be cognisant of when preparing valuations. We have summarised the key elements of the judgement as follows:

- Background to the case;
- Expert evidence of valuations presented to the court;
- Key comments made by Justice Eder in relation to the Expert valuations;
- Key take aways from the judgement that all valuers should be aware of.

Background to the case

The Stabilus Group was a leading manufacturer of gas springs and hydraulic vibration dampers used predominantly in the automotive industry. We set out a brief history of the Stabilus Group below:

- January 2008: Paine & Partners LLC buy Stabilus for €519m.
- Late 2008 / early 2009: Stabilus in severe financial difficulty.
- April 2009: The Stabilus Group is restructured. At this time it owed €409m to Senior Lenders and a further €83m to Mezzanine Lenders.
- Mezzanine defendants challenged the validity of the restructure, which carved up all the value to Senior Lenders hybrid, and nil was left for Mezzanine Lenders.
- Acquirers (Triton) initiated proceedings seeking declaratory relief that the Restructure was and is valid.
- Mezzanine defendants claim damages asserting transfer was at below market value.

Mezzanine defendants lost

- Justice Eder stated:

“in order to succeed Mezzanine defendants must demonstrate any sale should have been at a value (net of pensions) in excess of existing Senior Debt at the time of restructuring €409m”.

¹ Saltri III Ltd vs MD Mezzanine SA Sicar &Ors [2012] EWHC 3025

Expert evidence of valuations

- A desktop valuation was performed by American Appraisal for the Senior Lenders to support the transfer value.
- Expert evidence of valuation for the Acquirers (Triton).
- Expert evidence of valuation for the Mezzanine Defendants.

We set out below the valuations presented by each Expert:

American Appraisal (for Senior Lenders)

€220m to €230m incl.
pension liabilities.

AA opined that the price that could be achieved in 2010 was in the range of €188m to €208m (excl. pension liabilities €31.9m).

Mezzanine Defendants (MDs)

€490m to €500m incl.
pension liabilities.

MDs argued that the valuation by AA was lower than some of the indicative offers received in Aug. 2009 and should have rung alarm bells, detailed criticisms of AA.

Triton Parties (Acquirer)

€262m or €230m excl.
pension liabilities.

Triton opined that a reasonable level of valuations was in the range of €170m to €270m, with the latter representing the maximum value at 8 April 2010.

Justice Eders comments in relation to the Expert valuations

The judgement is over 100 pages long, we present some of the key comments made, as they relate to the valuations presented.

Justice Eders commented that AA's document was substantial and impressive and involved over 270 hours of work. He stated that whilst it was only a desktop, and thus had its limitations, it had been produced in co-operation with management and based on detailed management projections. He also commented that the conclusion was based on three separate valuation methodologies, DCF, market multiples, LBO.

Accordingly, Justice Eders accepted Triton evidence that the range of reasonable valuations was from €170m to €270m, the latter representing the maximum reasonable valuation of Stabilus as at 8 April 2010.

Justice Eders rejected the Mezzanine defendant's criticisms of AAs valuation. Justice Eders

considered the Expert valuation evidence of AA and the Mezzanine defendants, and covered many issues ranging from discount rate components, selecting multiples, using management information, considering previous valuations and more.

We set out the key take-aways from the case below:

Key take-aways

Issue

Using previous valuations of the subject company to support conclusion

Business plans

Beta

Expert witness reports

Case highlight

It is important to understand the nature and purpose of previous valuations prepared. If valuations are prepared for internal reporting purposes rather than “fair market value” for sale purposes, then they are not suitable support.

You must understand the reasons for previous variation in budgets vs. actual results. Just because historically budgets have varied from actual results, does not mean that this would continue in the future. A blanket assumption that this would be the case is not acceptable. Therefore adjusting forecasts without considering the reasons for the variations is not acceptable. Past variations are not an automatic indication that there will be future variations.

Monthly 5 year beta observations are the most suitable to use in the CAPM.

You must request to see other Witness reports, specifically by company management. Specifically check your assumptions and any deviations from their viewpoint. Any deviations must be fully supported, as the court considered management’s expert reports as strong evidence of the performance and prospects of the business.

Discount of multiple relative to guideline companies

Applying a discount to guideline company multiples is qualitative rather than strictly quantitative. You need to make a comparison of risk, growth and size relative to guideline companies, when estimating a suitable discount.

Management contact

Ensure regular contact with management.

Hindsight

The facts and outlook are as at the valuation date, hindsight is not a sense check for assumptions at valuation date.

Financing conditions

Consider the market for your subject company in light of finance availability