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Experts unpack data deals and pitfalls

Tom Webb | 25 September 2019

A medical device company's in-house counsel has shone a light on a "data play" acquisition that saw his employer buy a chain of hospitals – in a session that also saw counsel to the buyer in *Verizon/Yahoo!* touch on negotiations that followed the discovery of the enormous Yahoo! data breach. *Tom Webb in Seoul*

Speaking at the International Bar Association's annual conference in Seoul yesterday, Varian Medical Systems general counsel John Kuo said the company's recent acquisition of an Indian hospital chain was "totally a data play".

Kuo said Varian had wanted to get patient data it could feed into its data lake to create machine-learning algorithms to improve its products' software, which assist in crafting treatment plans.

“So for us, unlike past acquisitions we’ve done ... when we’re acquiring technology, this was purely a data play,” Kuo said.

The panel later turned to issues that arise in data-rich deals. Edward Lee, a partner at Wachtell Lipton Rosen & Katz in New York, said: “One thing that we tell our clients they should never compromise on is having a detailed discussion” with individuals in charge of data protection and cybersecurity, and determine if there is a chief information officer or chief technology officer.

“Sometimes I’ve seen management teams on the sell side resist meetings – they’ll say ‘You don’t need to meet the CTO or the CIO, the GC can handle that conversation,’” Lee said. “That’s a red flag ... you should insist on having a meeting with the person who really lives this day to day.”

Some companies, Lee said, understand and set up the requested discussions immediately. He said that is a “sign of an organisation that values compliance with these laws and values protection of these assets.”

Lee represented Verizon during its acquisition of Yahoo!, in which the target discovered a huge data breach between the Verizon deal signing and closing. The Wachtell partner pointed to the publicly available contract the companies signed.

The 2016 stock purchase agreement between the two companies contains a raft of Yahoo! representations relating to its data protection and cybersecurity standards and practices.

Lee noted that the representations were framed as being to Yahoo!’s knowledge, but had no date limitation – meaning they would have been false when the deal closed.

“That was our hook to begin negotiating,” he said.

Verizon had agreed to buy Yahoo! for \$4.83 billion in 2016. Following the discovery of the record data breach that affected at least 500 million user accounts, Verizon cut its purchase price by \$350 million.

The IBA panel also featured Netgear general counsel Andrew Kim, Ellisa Habbart of The Delaware Counsel Group and Gleiss Lutz partner Stefan Weidert. Yulchon partner Doil Son and Yuval Horn of Horn & Co in Tel Aviv co-moderated the session.

The conference continues this week.

 Transactions

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