

M&A LAWYERS MUST PREPARE FOR 'BIG DATA' REVOLUTION

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Category: [Archive](#)



Big Data transactions could soon be worth 'hundreds of millions', while due diligence is changing due to the need to analyse large volumes of complex data – lawyers who master this will strengthen client relationships

Deals involving the sale of Big Data are on the increase, while companies' use of such large data sets is revolutionising the way law firms carry out due diligence in all M&A transactions. It's a scenario that can pose major challenges for lawyers who do not possess the relevant skills – increasingly, the Big Data that businesses possess impacts on their value, with the result it needs to be effectively addressed when conducting due diligence.

Big Data generally refers to large, complex volumes of data from traditional and digital sources. Given that companies today accrue huge amounts of data, when a company or investor is contemplating an acquisition, the due diligence process must include not only the traditional areas of inquiry – such as the company's finances and legal and tax issues – but also vast quantities of intangible data. Consequently, Big Data is a valuable asset – a thorough analysis of it during due diligence can provide valuable information for an acquirer.

As deadlines for the completion of transactions are often tight, there is pressure on law firms to quickly analyse large amounts of often complex data, says Leopoldo González-Echenique, a

consultant at Herbert Smith Freehills and head of the firm's financial services regulatory practice in Madrid. "Artificial Intelligence (AI) tools such as data analysis can make the difference in obtaining a truly efficient and competitive result," he says. "Implemented properly, a law firm's adoption of Big Data and AI technologies should significantly strengthen its relationships with clients."

Posing a threat

However, such technology can be a double-edged sword, according to Pedro Fernández, partner at Pérez-Llorca in Madrid. He argues that the emergence of this "new economy" means M&A lawyers have to adapt and improve their knowledge in order to effectively serve clients. "Big Data has created a new area of value (and concern) that has to be properly addressed in the due diligence," he says. "New areas mean new opportunities for the specialisation of M&A lawyers, but they also pose a threat for those who do not have these skills."

Yet when M&A lawyers have the right skillset and adopt the most appropriate technology, Big Data has the potential to improve the service they offer clients. "Fifteen years ago, the data analysis tasks that a Big Data tool is now able to finish (with no one watching over it) in just one night would have required many hours of work and consumed many resources," says Sara Midori Martínez, associate at Herbert Smith Freehills. "These tools are making lawyers' jobs easier by reducing the total costs expended in these processes, improving legal risk management and improving legal team performance."

Big Data can also be bought and sold in M&A transactions, with companies looking to acquire Big Data storage vendors and analytics companies. "Many recent and significant M&A deals have had an important Big Data component," says Fernández. "I have seen this in the cybersecurity and biotech sectors, or simply in transactions involving Big Data platform companies." One high profile example of this type of deal was Amazon's \$14billion acquisition of US retailer Whole Foods, with analysts saying that one of the key motivations for the takeover was Amazon's desire for access to Whole Foods' consumer data.

Roca Junyent Madrid managing partner Carlos Blanco says that given the digitalisation of the economy, traditional companies and venture capital funds are increasingly investing in newer companies whose business is based on 'Big Data' (see Madrid Annual Report on page 26). He continues: "Some of these big data companies have a high valuation, we're now seeing deals of €20million, €30million and €50million in value, with these valuations based on future expectations for the company, instead of EBITDA (earnings before interest, taxes, depreciation and amortization) – there are now new deals that involve such companies whose price could potentially be hundreds of millions."

Acquiring companies can use Big Data to assess how attractive a target is, or how successful an acquisition might be in the market. One managing partner of a law firm in Madrid remarks how Big Data is increasingly influencing which assets or companies they decide to acquire as they can use the Big Data they already have to better determine what synergies target companies could possibly offer. Meanwhile, there are new business models that mean companies are becoming increasingly reliant on the use of Big Data, and this creates legal issues related to how companies managed to gather such data and whether or not it is legal to possess the data they have, says one partner.