

We believe that the acceleration of the digital economy will prompt companies to change their strategies and fuel M&A opportunities in the technology sector. Already in 2020 we have assisted clients with dozens of technology transactions. Below, we summarise some considerations for technology transactions, based on recent experience:



Transaction structuring

- Share deal vs asset deal
- Going concern transfers
- Transfer of employees
- Non-compete and non-solicitation covenants



IP Rights

- Insufficient title to developed software
- Problems with employment contracts
- Open source licensing



Data

- Insufficient rights to use personal data
- Illegal sources of data
- Vendor lock-in issues

WHO HAVE WE ASSISTED IN 2020?



APLOVIN CORPORATION, a US mobile game specialist and the world's third-largest mobile advertising network operator after Google and Facebook, on its acquisition of **Geewa**, a major Czech mobile game developer based in Prague



INFOSYS, a global leader in next-generation digital services, on the Czech and Hungarian aspects of the acquisition of **GuideVision**, a leading ServiceNow Elite partner in Europe



GENESIS GROWTH EQUITY FUND I in connection with the acquisition of a majority stake in **R2B2**, a Czech programmatic advertising agency that operates a digital ad network spanning all online screens – computers, mobile devices and TVs



GENESIS PRIVATE EQUITY FUND III (GPEF III) on its acquisition of the largest operator of contact centres in the Czech Republic. **Conectart**, which presently operates call centres in eight towns across the Czech Republic, employing over a thousand operators



KEMP TECHNOLOGIES INC in connection with its acquisition of a 100% ownership stake in **Flowmon Networks a.s.**

And that's not all ... we are currently advising clients in connection with their acquisition of a currency exchange and international payments and hedging provider ... we are also assisting a Czech software developer with the restructuring of its business as well as a CEE food industry company with a spin-off of its e-commerce business.

KEY RISKS

01 What actually is IP?

In CEE, we often face situations where tech firms have an incorrect understanding of how intellectual property protection works. In particular, we often hear from the founders that their software “was developed by an external firm and therefore can be freely used”, or that “the software is based on open source and can be freely used”. Both of these assumptions are wrong. Lack of a proper license and related documentation for externally developed software can leave the target dependent on the external firm. The absence of internal open source policies and illegal use of software implemented in the final product can expose the target's key product to litigation.

02 Is data being used without breaching the law?

Data laws in the EU don't just protect personal data. Non-personal data can fall under business secret protections, or copyright or database laws. Often, databases used by the targets have been collected in breach of such laws, which can also open the targets to claims of unfair competition.

03 Open source software problems

We have frequently heard this year that “using this kind of data is in line with GDPR”. Nevertheless, we often find that the entire business model has been set up in breach of the GDPR. Monitoring traffic data details or combining information about customers from various sources are classic examples of this. Data protection should be reviewed from an EU perspective, not just at the national level. For example, the Czech Republic incorrectly implemented legislation on cookies, and although companies have tended to be safe so far, 2021 could bring some significant changes.

04 Employment agreement issues

Employment agreements very often fail to contain appropriate protections for the employer. In particular, they contain misleading IP clauses, do not protect the employer against the employee requesting additional remuneration in some cases, or do not correctly describe the scope of the position. Such failures can lead to the employer not being transferred sufficient IP rights for an employee's creation.

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