M&A and the Metaverse

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Authors

Felipe Palhares

Ian Bussinger

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Although it is not yet possible to know what the real importance of the Metaverse will be for business over the next few years, there is no denying that this new reality has brought about significant movement in the merger and acquisitions market.

In the technology market in particular, there have been some major transactions involving the Metaverse, such as Microsoft's acquisition of video games developer Activision Blizzard for almost USD 70 billion. In commenting on the deal, Microsoft's CEO, Satya Nadella, said that the transaction would help build the Metaverse that Microsoft is aiming for.

In December 2021, Nike also began to prepare for the opportunities opened up by the Metaverse with its acquisition of RTFKT, a digital design studio that develops collectable digital goods, including digital sneakers, issued as NFTs. RTFKT had already produced three models of sneakers in collaboration with the artist Fewocious, each carrying a price tag ranging from USD 3,000.00 to USD 10,000.00 a pair. When launched, the entire collection of 621 pairs of digital sneakers sold out in 7 minutes, for a total of USD 3.1 million.

For as long as the Metaverse is in the plans, M&A transactions involving businesses engaged in developing the Metaverse itself, or applications within the Metaverse, can be expected to grow exponentially. Tech companies often adopt inorganic growth strategies based on M&A transactions to accelerate development of a new technology, to acquire a team of talent, or to take advantage of the synergies that can be obtained in new markets with solutions developed by other businesses.

For big players that are in the process of creating their own Metaverse platforms, there is an enormous variety of opportunities in acquiring startups and small businesses that are highly focused on certain projects, as in the example of the digital sneakers. It is only natural that the first Metaverse that is able to establish a sustainable existence will attract the largest share of users, becoming a type of "main" Metaverse, and everything indicates that the race to the Metaverse will include many M&A transactions.

In practice, the Metaverse tends not to have too great an effect on the phases of M&A transactions, at least initially, especially since current legislation continues to focus on the "physical world" and the law has not yet addressed many legal questions associated with the new virtual environment. The usual M&A agreements will continue to be necessary to implement transactions, and legal due diligence will continue to be fundamental, possibly with an expanded scope, in order to examine new issues that are raised by the Metaverse. As discussed in another article in this e-book, due diligence will clearly be needed for digital assets.

One aspect of M&A transactions that might undergo a more obvious transformation in these initial stages are the interactions between the parties, especially the meetings to discuss the deal and then negotiate the terms and conditions of the transaction documents. At the end of 2021, Bill Gates said that in his view, within three years most business meetings will be held in the Metaverse. If his prediction is right, M&A negotiation meetings may stop being held via today's video conference applications and migrate to the Metaverse.

In this scenario, a central issue will be user authentication, to ensure that a given avatar in the Metaverse effectively represents one of the parties to the transaction, or one of the parties' advisers, and that third parties do not obtain access to information exchanged during the negotiations, which is likely to be sensitive for both the parties and the market, in the case of listed companies, for example. Some commentators have already expressed concern over how the Metaverse will affect disclosure of material information on companies listed on the stock market and the impacts for insider trading.

Another issue that might arise is how to deal with any losses that might be caused when M&A negotiations take place in the Metaverse. How will events of breach be treated when they occur solely in the Metaverse, but constitute a violation of non-compete clauses or a breach of an M&A agreement? And what about breaches of confidentiality and information leaks? Will the fact that they take place in the Metaverse make a difference?

To make sure that NDAs signed at the beginning of M&A transactions are effective, it is also important to understand how the data from meetings in the Metaverse will be processed, and with whom it can be shared. For obvious reasons, Metaverse platforms will be able to access and store meeting information, which can raise significant concerns that must be assessed before migrating this phase of transactions to the Metaverse.

Regardless of how relevant the Metaverse will be as far as the dynamics of M&A transactions are concerned, there can be no doubt that it will generate many significant transactions – at least in the "real world" – in the coming months as players look to acquire businesses that already operate in – or are preparing to operate in – the Metaverse.

>>> This article is part of the e-book "Metalaw: Reflections on Law in the Metaverse".
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Felipe Palhares

Ian Bussinger