



Consolidation of AV Industry is Creating Unique Due Diligence Issues

Insights

4.18.19

Traditional automakers and large tech companies continue to acquire AV-tech startups as competition for key personnel, proprietary technology, and AV data increases. As the AV industry continues to consolidate, traditional auto makers and tech companies will need to continue to conduct thorough due diligence during the acquisition phase. Moreover, they will need to have policies and procedures in place to protect trade secrets and confidential information, while ensuring that any potential acquisition target has properly managed and protected its AV-related data.

Competition to acquire AV-tech startups will likely continue to increase due to traditional automakers and tech companies competing to develop commercial autonomous ride-share services. Meanwhile, cash-strapped AV-tech startups will be looking to rely upon a partner to assist with the development of lidar technology or another particular aspect of AV technology. As the industry develops, certain startups will undoubtedly emerge with critical intellectual property and valuable AV-related data that larger competitors will seek to acquire in order to launch fully autonomous ride sharing services.

As a result of increased competition and consolidation, talent is already at a premium. Additionally, as even more niche AV-tech startups begin to emerge, automakers and tech companies should fine-tune their due diligence process based upon the unique aspects and purposes for each transaction. As previously mentioned, venture capitalists and companies investing in and acquiring AV-tech startups should already be conducting even more rigorous due diligence related to key executives, trade secrets, confidential information, noncompetition agreements, and the management of AV-related data.

For many AV tech start-ups, their value is found in key executives and trade secret information related to the development of lidar technology and data related to the operations of AVs in certain conditions or scenarios. Consequently, data management and storage solutions are becoming even more critical for the AV industry because data related to AVs continues to multiply due to autonomous test vehicles, which generate between 5TB and 20TB of data per day per vehicle. As a result, AV companies must receive, store, protect, and analyze the data in real-time.

During the due diligence process, automakers and tech companies must scrutinize the collection, protection and storage of AV related data to ensure that the integrity and security of the collected

protection, and storage of AV-related data to ensure that the integrity and security of the collected data has not been compromised or is at risk of a breach.

With regard to noncompetition agreements, acquiring companies should review the structure of their deal and make sure that noncompetition agreements are assignable and that the restrictive covenants are enforceable. Because employees may be located in different states, a state-by-state analysis can be critical. In addition to noncompetition agreements, acquiring companies should also develop an attractive employee retention plan for key employees.

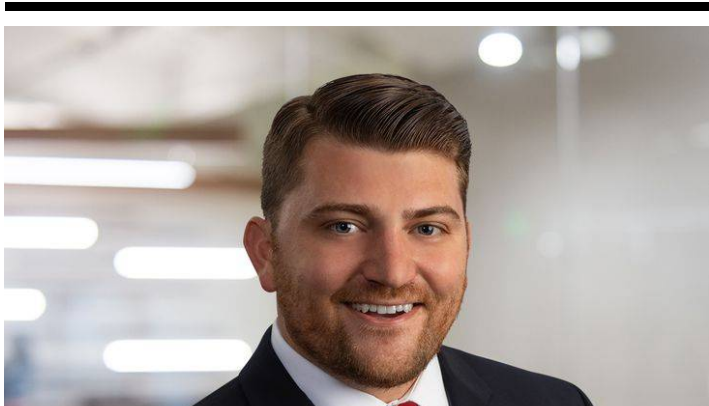
Additionally, buyers should ensure that target companies have adequate proactive measures in place to ensure trade secrets retain their value after the investments/acquisitions are completed. Protective measures should include well-written policies and procedures, sufficient confidentiality/non-disclosure agreements, and electronic protocols designed to prevent or discover electronic theft of information. For more information, see implementing a [Trade Secrets Protection Program](#).

Additionally, buyers should be mindful of federal, state, and local employment laws if they plan to scale a tech startup and hire employees. Buyers also should ensure that each key employee has not engaged in conduct that could potentially lead to harassment claims and result in the dismissal of the key employee or damage to the company's reputation.

At a minimum, buyers and their advisers should inquire about the target company's EEO policies, anti-harassment and anti-retaliation policies and procedures, including employee handbooks, and training efforts; what employee complaints the company has had and how they were handled; and whether there are any known sexual misconduct allegations against any top executives.

In summary, as competition increases, the AV industry has continued to consolidate with automakers and tech companies acquiring smaller AV-tech startups. Due to the importance of retaining key employees, trade secrets, confidential information and the management of AV related data, buyers should conduct thorough and rigorous due diligence to ensure the ability to protect trade secrets and confidential information, enforce non-competition agreements, the integrity of AV-related data, and protect the purchaser from harassment and other employment related claims.

Related People





Brett P. Owens

Partner

813.769.7512

Email