

The Biggest M&A Moments Of The 2nd Half Of 2017

By **Chelsea Naso and Benjamin Horney**

Law360, New York -- The second half of 2017 saw a presidential decision on a national security matter block a deal, a rare tie vote allow an acquisition to escape antitrust hurdles, and the home of Mickey Mouse make a major, multibillion-dollar asset acquisition.

Here, Law360 recaps the most headline worthy M&A moments of the second half of the year.

Hotly Contested Memory Biz Sale Finally Sees Firm Details

A hotly contested potential sale of a flagging Japanese company's memory business finally saw firm details unveiled, with a private equity-backed group gearing up to buy the unit in an 11-figure deal.

Tokyo-based Toshiba Corp. in September announced that it planned to sell Toshiba Memory Corp. to a group led by Bain Capital Private Equity LP, in a deal that will also see it maintain an interest in the business.

Under the terms of the deal, Toshiba will sell all of the shares of TMC to K.K. Pangea, a special-purpose acquisition company formed and controlled by Bain, according to a statement.

Toshiba plans to invest 350.5 billion yen (\$3.1 billion) in Pangea as part of the transaction. Bain Capital will invest 212 billion yen, Japanese optical products manufacturer Hoya Corp. will invest 27 billion yen, and South Korean chipmaker SK Hynix Inc. will invest 395 billion yen. A group of U.S. investors — including Apple Inc., flash memory company Kingston Technology Corp., data storage company Seagate Technology PLC, and Dell Technologies Capital — will invest a total of 415.5 billion yen.

The investment from Toshiba and Hoya is expected to keep more than 50 percent of Pangea's stock in the hands of Japanese companies, according to a statement. The intention is to keep Japan-based companies in control of the business, it said.

The U.S. investors are not acquiring common stock or voting rights in TMC through their investment in Pangea, according to a statement. SK Hynix will also be prevented by a firewall from accessing TMC's proprietary information and will be prohibited from owning more than 15 percent of the voting rights in Pangea and TMC for 10 years.

Toshiba also said that a public-private partnership between the Japanese government and several corporations known as the Innovation Network Corp. of Japan and the government-owned **Development Bank of Japan** — both of which were part of the preferred consortium Toshiba selected in June — are not currently part of the consortium, but may invest in Pangea or TMC at some point in the future.

Although Toshiba stands by its ability to close the deal by the end of March 2018 and the company's shareholders have already voted in favor of it, the transaction has not been without its challenges.

Toshiba was tied up in arbitration with its joint venture partner, **Western Digital Corp.**, for months about its ability to transfer its interests in three joint ventures to a new owner without consent from Western Digital and its **SanDisk** subsidiaries. On Dec. 12, however, they agreed to settle their differences, ending their legal spat and removing what had been a serious impediment to the sale of TMC.

Bain Capital is advised by **Ropes & Gray LLP**.

Hoya is advised by **Pillsbury Winthrop Shaw & Pittmann LLP**.

Kingston Technology is advised by **Akin Gump Strauss Hauer & Feld LLP**.

Western Digital is represented by **Hueston Hennigan LLP** and **Cleary Gottlieb Steen & Hamilton LLP**.