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Goulston & Storrs Defeats Attempt to Enjoin Sogou $3.5 Billion Merger with Tencent

October 13, 2021

On September 13, 2021, Goulston & Storrs defeated an attempt to preliminarily enjoin a $3.5 billion merger (the Merger) of our client Sogou Inc. (Sogou) with an indirect subsidiary of Tencent Holdings Limited (Tencent), whereby Sogou became a privately-held indirect wholly-owned subsidiary of Tencent.

The complaint and motion for a preliminary injunction, filed in the United States District Court for the Southern District of New York, alleged that Sogou's transaction statement on Schedule 13E-3, as initially filed in December 2020 with the Securities and Exchange Commission, falsely stated that Sogou shareholders were not entitled to appraisal rights under Cayman Islands law, and omitted information about a Cayman Islands trial court decision published after the initial Schedule 13E-3 was filed, in which the Cayman Islands court determined, in a decision that was stayed pending appeal, that Cayman company shareholders in another merger had the right to appraisal.

The claim, pursuant to Section 13(e) of the Securities Exchange Act of 1934 and Rule 13e-3 promulgated thereunder, sought a declaration that Sogou's SEC filing was false and misleading, and sought to enjoin the Merger until Sogou amended its SEC disclosures.

In opposing the preliminary injunction, Goulston argued that, among other reasons to deny the motion, no private right of action exists under Section 13(e) and that, even if it did exist, the plaintiff could not demonstrate irreparable harm or likelihood of success on the underlying merits of his claim.

In his September 13, 2021 decision, U.S. District Judge Paul G. Gardephe held as a matter of first impression in the Southern District of New York that no private right of action exists under Section 13(e) and denied plaintiff's motion for preliminary injunction. Judge Gardephe further held that even if there were a private right of action, the plaintiff could not meet his burden of showing irreparable harm or that he was likely to succeed on the merits of his underlying claim. The plaintiff was found not to have shown that Sogou violated any disclosure obligations under Section 13(e) or Rule 13e-3.

The Merger was consummated on September 23, 2021. Goulston has filed a motion to dismiss the complaint in its entirety, which is being briefed.

The Goulston & Storrs team is led by directors Richard Rosensweig, Nicholas Cutaia and Chuck Jacob, and associates Isabel Sukholitsky and Justin Heller.

Memorandum Opinion and Order