

GDPR Fines – Auditing and Pricing in M&A-Transactions

gbf Technology Workshop 2.0

8 November 2019

Nando Stauffer von May

Partner | Dr. iur. | Notary of the Canton of Bern | Attorney-at-law

The logo for gbf, consisting of the lowercase letters 'gbf' in a blue, serif font. The 'g' is stylized with a long, curved tail that extends downwards and to the left.

Pricing in M&A-Transactions



Pricing in M&A-Transactions

gbf



Pricing in M&A-Transactions

Situation 1



We know about the data breach and notified such breach to the authority.

- + manner in which the infringement became known to the supervisory authority
- + degree of cooperation with the supervisory authority

Pricing in M&A-Transactions

Situation 2



We know about the data breach but did not notify it.

Duty to notify the supervisory authority (GDPR 33) and the data subject (GDPR 34).

Pricing in M&A Transactions

Situation 2



However, we told it to the purchaser, or it became apparent in the course of the due diligence process.

Pricing in M&A-Transactions

Situation 3



We are not aware of any concrete data breach but due to the business model or sector, an infringement is rather likely.

Pricing in M&A-Transactions

Situation 1: calculation

Situation 2: calculation x probability of a fine

Situation 3: Possible infringements x probability of infringements x
probability of a fine

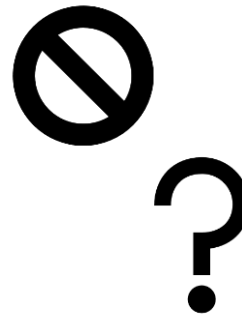
= amount (to be agreed by the parties)



Pricing in M&A-Transactions



- Transfer of the risk -> Insurance
- Are fines insurable?
 - Swiss-DSG criminal fines?
 - GDPR administrative fines?



Pricing in M&A-Transactions

- No deal
- Discount
- Deferred Payment
- Escrow
- Indemnity clause
- Representations and warranties



Pricing in M&A-Transactions



- Warranty & Indemnity Insurance (not possible in situation 1 and 2 – as already known)
- Litigation Buyout Insurance (not for fines)
- (Other) Special Situation Insurance ?

Pricing in M&A-Transactions



Nando Stauffer von May

Partner | Dr. iur. | Notary of the Canton of Bern | Attorney-at-law