

# Special Report



**THE** recent acquisition of JobStreet Corp Bhd's assets by Australia-listed SEEK Ltd has raised concerns on control of strategic data falling into the hands of non-Malaysians.

On Feb 19, SEEK Asia Investments, which is controlled by SEEK, said it was planning to buy out JobStreet's virtual job portal business in Malaysia, the Philippines, Singapore, Vietnam and Indonesia for RM1.73 bil. JobStreet has



by Lim Cian Yai

a database of 12 million job seekers.

Vital data falling into foreign hands has always been a touchy subject in Malaysia. It prompted a public outcry when Singapore-listed Parkway Holdings became the largest shareholder in Malaysian-controlled Pantai Holdings Bhd back in 2005. At that time, Pantai-owned Fomema (now renamed Unitab Medic), provided medical screening to more than one million legal foreign workers in the country.

To be sure, today there are foreign-owned companies that own databases containing what could be termed as strategic information such as personal profiles, addresses and even credit-related information. Companies such as Mudah.my Sdn Bhd and Fair Isaac are foreign controlled while others such as RAM Credit Information and Dun & Bradstreet are joint ventures with foreign parties (see page 20).

While mergers and acquisitions (M&As) are part of doing business and cannot be avoided or controlled by the authorities, are Malaysian companies inevitably exposing data deemed sensitive to foreigners? To what extent are these companies and even government agencies revealing strategic information by allowing them access to data that carry financial, economic and security value?

Similarly, how can Malaysian companies protect themselves when carrying out cross-border business and avoid involvement in any unlawful activities of their partners? The question of transparency and free trade also applies.

Overseas entities are also proactive in protecting their data. Two US-based non-profit organisations – Electronic Privacy Information Center (EPIC) and Center for Digital Democracy (CDD) – have filed complaints with the US Federal Trade Commission and demanded that US regulators block the US\$19 bil deal between Facebook Inc and WhatsApp, until the former could furnish more details on how it would use personal data of WhatsApp.

## Data protection

In the case of JobStreet, the data of its clientele are protected by the Personal



JobStreet headquarters on Jalan Sultan Ismail, Kuala Lumpur

## Data breach worries

Australian company's recent acquisition of JobStreet's assets raises the question of whether Malaysia is exposing its sensitive data to foreign companies



“There could be some risk on changes of privacy policy about data usage, the processing and gathering process.”

– Sonny

Data Protection Act 2010 (PDPA) or known as Act 709, which came into force on Nov 15 last year.

Under the Act, sensitive personal data are defined as information on one's physical or mental health condition, political opinions, religious beliefs, criminal records or any other information deemed sensitive by the government.

“Individual data owners are the main beneficiaries of the Act, as consumers had been affected by the abuse of personal data to identity thieves in the past and no clarity has been given on how these data were circulated to third parties,” says Sonny Zulhuda, an assistant professor at the civil law department, International Islamic University Malaysia.

Commenting on the deal between JobStreet and SEEK, he says: “There could be some risk on changes of privacy policy about data usage, the processing and gathering process.”

As the PDPA regulates only companies which process personal data in commercial transactions, the interest of business organisations, federal government and state governments are not being protected under this Act

when they deal with partners abroad.

This could be risky for local companies like Commerce Dot Com Sdn Bhd and Bestinet Sdn Bhd, which deal in data-sensitive business like ePerolehan and Foreign Workers Centralised Management System.

“Currently there is no legislation regulating them and the signing of non-disclosure agreements (NDAs) is one of the ways to safeguard their interest, regardless of whether the deal goes through,” says a legal expert who did not want to be identified.

The lawyer explains that an NDA will be stamped during negotiations to ensure the parties involved will keep information confidential. He argues that if the government imposes too many regulations on foreign investors, eventually Malaysia will lose these investments to other countries in the region.

“It is tough to strike a balance among data disclosure, protection, transparency and free trade when

doing business cross border as it is free market practice.

“It is also a matter of who needs who more and what are the benefits you offer to attract people over,” the lawyer quips. As such, perhaps personnel and companies should exercise more caution on data disclosure.

“So one should uphold the principle of disclosing only necessary and minimal data to third parties,” says Foong Cheng Leong, the founder of Foong Cheng & Co, a boutique legal firm specialising in intellectual property, data protection and privacy.

Foong is uncertain on the extent of Malaysian organisations being open to foreigners and allowing them to access their databases. However, he says none of his clients are open to allowing third-party access to their data, given the sensitivity and implications of data leakage.

Besides, considering that data protection legislation varies around the world, organisations will need to disclose data at their own peril if their home country or the country they transport data to is not equipped with such legislation, he says.

He agrees there is no legislation in Malaysia to protect the interest of local organisations on transactions with foreigners.

“However, banking records may be subject to the Financial Services Act 2013 and government data may be subjected to the Official Secrets Act 1972,” he adds.

Acknowledging the importance of its sensitive data, MYEG Services Bhd (MyEG) is taking a hands-on approach to reduce data exposure to third parties. “We develop all solutions internally and we do not appoint any third-party contractors. “No overseas partners would have access to our data in any official manner,” says managing director and co-founder of MyEG, Wong Thean Soon, in an email response to **FocusM**.

He adds the company has been approached by various parties in the past but has never agreed to any partnership which requires MyEG to disclose data to a third party without consumers' approval. Further, MyEG's security firewalls are audited by government agencies annually.

In the case of JobStreet, Foong says, it is speculative to assume that the personal data processed by JobStreet will be disclosed to SEEK. “Assuming that SEEK wishes to acquire the entire database for other usage, it may hit a stumbling block as the PDPA imposes restrictions on the transfer of personal data to third parties and overseas, regardless of their shareholding in the company.



Malaysia-based finance advisory firm Najadi & Partners has been prompted to relocate its servers to Russia

BLOOMBERG

“Nevertheless, one possible way to go around this is that JobStreet had notified users via privacy notice that the collected data will be transferred in the aforesaid parties or places,” explains Foong, who is also chairman of the KL Bar Information Technology Committee.

In its privacy policy, JobStreet states it reserves the right to disclose users’ data to “any third party which acquires all or part of the assets or business of JobStreet.com”.

Therefore, registered users have already given JobStreet their consent to sell its assets, including the database, to SEEK and users may not receive notice from JobStreet on the changes in shareholding.

When contacted by **FocusM**, JobStreet’s chief operating officer Suresh Thiru stresses that the e-database is the company’s product and all the data are protected by the PDPA. He declines to comment on whether there will be a notice issued to notify members about the business disposal and management’s plan on the listed entity after the disposal.

Upon disposal, shareholders will receive special cash dividends from the proceeds. However, there are indications that Mark Chang, the founder and CEO of JobStreet, is not keen in pursuing an online recruiting venture after that.

JobStreet ceased its four-year operation in Thailand on Feb 28. Users are still able to use JobStreet services to apply for jobs in the next 60 days before the website becomes permanently unavailable. JobStreet owns 49% of JobStreet Recruitment (Thailand) Co Ltd.

The company has not made an announcement on the fate of JobStreet India, which is not included in the disposal to SEEK.

Industry observers like veteran technology journalist Asohan Aryaduray believes both parties have abided by the laws and adhered to strict privacy regulations throughout the deal.

“Seeing that SEEK is listed in Australia, it would probably have to abide by Australian laws, with or without this merger,” says the executive editor and co-founder of Digital News Asia, an online ICT news portal.

**Foong claims it is speculative to assume the personal data processed by JobStreet will be disclosed to SEEK**



**Thiru says the e-database is JobStreet's product and all the data are protected by the PDPA**

He sees the PDPA as one of the weakest data protection laws as it covers only commercial use and does not require notification of breaches. “Regional peers like Australia have more robust laws. Although there is no data privacy legislation, there is a raft of laws covering the use of personal data.”

Also, since the merger is subjected to regulatory approval from Singapore, Asohan expects legislation in the city-state to come more into play than Malaysia’s PDPA. “However, this does not mean the Personal Data Protection (PDP) Commission in Malaysia should not investigate the proposed acquisition if there are such concerns,” he adds.

#### Authority's green light

It is not mandatory for JobStreet to seek the green light from the PDP Commission for the business transaction with SEEK. However, it is advisable for the company to notify the commission about the deal, says Sonny.

“Transferring data to foreigners is supposed to be subject to authorities’ approval but given that the PDPA currently has no clear guidelines on what the countries’ business owners can transfer from its database, there is no duty for JobStreet to report to the PDP Commission.

This is one of the

loopholes of the legislation when it comes to implementation and requires further improvement by the PDP Commission, he says.

“The ministry is supposed to have guidelines on which and what are the areas [where] data can be transacted,” Sonny says.

However, he believes trans-border data flow cannot be allowed unless the countries where data are transported to have provided equal legal protection to data users.

As foreigners who hold Malaysian personal data do not fall under the jurisdiction of the PDPA, it triggers safety and privacy concerns should our personal data flow overseas.

“No one knows what these parties will do [with our data] 10 to 30 years down the road. Imagine the implications of having our prime minister’s data relating to his Internet activities such as emails, chat logs, visited websites, being published to the world,” says Foong.

He reckons that in view of these loopholes in the PDPA, one can foresee foreign third parties taking advantage of Malaysians’ data for their own use, as the PDPA’s extraterritorial reach is not wide.

“It (PDPA) is a good thing but the concern is enforcement. Thus far, there is no prosecution under the PDPA,” he says.

In the case of the Facebook and WhatsApp deal, despite assurances by the two quarters that the privacy policies will not change, EPIC and CDD noted that Facebook had in the past amended an acquired-company’s privacy policies, like Instagram that it bought in 2012.

The revelation by Edward Snowden about data containing United States’ surveillance programmes last year has prompted Malaysia-based finance advisory firm, Najadi & Partners (previously known as AIAM Malaysia Sdn Bhd) to relocate its server to Russia.

“I believe it is time to say goodbye to .com as .ru has an excellent service and it is safe,” its president and chief executive officer Pascal Najadi was quoted as saying. He believes data are protected by law in Russia.

Pascal is the son of Arab-Malaysian Bank founder, Hussain Ahmad Najadi who was killed by a gunman in Kuala Lumpur last year. Not affected by the server relocation, the consultancy firm continues to run its business in Malaysia and Russia. **FocusM**

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## Fomema subject of outcry over sensitive data

**THE** first instance of how sensitive data are to Malaysians arose in September 2005, when then-Fomema & Systems Sdn Bhd (now Unitab Medic Sdn Bhd) was the subject of an outcry when Singapore-listed Parkway Holdings bought a 30% stake in parent company Pantai Holdings Bhd. This made Parkway the single-largest shareholder in Pantai and it gained management control of the hospital chain.

At that time, Pantai Fomema held a 75% stake in Fomema Sdn Bhd, whose role was to implement and manage mandatory health screening for all legal foreign workers in Malaysia. Fomema had a 15-year concession ending in 2012.

At the same time another Pantai subsidiary – Medivest Sdn Bhd – was granted a 15-year concession beginning in 1996, to provide support services to public hospitals.

The incident led politicians and lawmakers to question why Parkway, a foreign firm, could hold major stakes in two government concessions.

The public was also concerned about personal data security, as foreigners could access Medivest and Fomema systems



**In September 2005, Singapore-listed Parkway Holdings bought into Fomema & Systems' parent company**

which contained strategic data critical to government and Malaysians.

The controversy ended when state-owned sovereign wealth fund Khazanah Nasional Bhd took control of Pantai in 2006, running the group in partnership with Parkway.

## Job market monopoly

**THE** acquisition by Jobs DB of JobStreet’s 12 million-strong registered members will give rise to a formidable and comprehensive database of jobseekers spread across Southeast Asian job markets.

Last year, JobStreet’s member base in Malaysia surpassed two million jobseekers, making it the largest online recruiter in the country ahead of Jobs DB, the number two with over 850,000 registered users.

A legal practitioner tells **FocusM** the deal between JobStreet and SEEK, while in compliance with regulations, would worsen the brain drain in Malaysia.

In a stock filing dated Feb 19, SEEK said the acquisition of JobStreet’s business is in tandem with the company’s expansion in the strategic and high-growth Asian region.

The Australia-based online employment service provider already has a footprint on the homefront, and Southeast Asia as well as Asia via various subsidiaries and the wholly-owned Jobs DB Inc (Jobs DB), established in 1998; it has a comprehensive member base of 14.6 mil, plus 220,000 corporate clients.

SEEK also holds an 80% stake in Zhaopin, a leading job recruitment tool in China.

Should the deal be approved by JobStreet shareholders, the merger and acquisition (M&A) will enable SEEK to capture the lion’s share of the Southeast Asian employment market, especially in Malaysia, the Philippines, Indonesia and Vietnam, where JobStreet is a dominant player.

Combined registered members of JobStreet and Jobs DB in Malaysia are expected to make up 21.72% of Malaysia’s 13.12 million labour force. Apart from JobStreet and JobsDB, players like myStarJob.com, JenJobs and JobsCentral.com.my are players in this game.

In a written response to **FocusM**, Shila Dorai Raj, CEO of the Malaysia Competition Commission (MyCC) says M&As do not come under the jurisdiction of the Commission.

“MyCC does not do any assessment nor require companies which want to merge to send in a pre-merger notification requirement. Therefore MyCC can only monitor the merger entity to see if any abuse arises from the merger deal,” she says.

SEEK is awaiting approval from the Competition Commission of Singapore, as its investment vehicle SEEK Asia Investments Pte Ltd, which intends to acquire JobStreet’s business, was incorporated in Singapore.

Nevertheless, industry observers see M&As as normal corporate exercises and feel smaller players should differentiate themselves from the big boys to stay relevant.

“Consolidation among players is normal. If you are a standalone, you may be unable to withstand challenges from outsiders. They [JobStreet and JobsDB] are consolidating to make sure companies from this region can still dominate the market,” says Cradle Fund CEO Nazrin Hassan.

Nazrin believes small players should unleash their potential in niche segments.

“There are always untapped markets. You can be a big boy or a good company that exits that particular segment. The opportunity to build something that has decent exit value is still there,” he adds.

Asohan Aryaduray, co-founder and executive editor of Digital News Asia, agrees smaller players will have little room to manoeuvre. “It will not be a monopoly per se, as there are too many players in this space; but it gives SEEK a tremendous advantage,” he tells **FocusM**.

Certainly this will give the new, merged entity bragging rights, which it can channel into recruiting even more jobseekers and employers. Asohan is however concerned about possible layoffs should JobStreet and Jobs DB merge into a single entity.

A local-based technopreneur sees the cash-deal exit of JobStreet, which many entrepreneurs dream of, as a motivating story. “If the founders, team and investors are proud of their accomplishment, it’s absolutely inspirational,” comments Adam Hirsch, founder of Mother Goose Venture Developers.

Hirsch thinks Malaysia’s system in terms of funding, training and support resources is more than sufficient to breed talented entrepreneurs. “The only ingredient lacking is more active entrepreneurs who are building companies instead of talking about building companies,” he says.