

The Collaborator's Dilemma

Are you cross-selling or merely cross-dressing?



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Introduction

In pursuing profits, law firms have often been hostage to conventional wisdom. One of the most prevalent assumptions has led to the growth of what I refer to as the 'barnacle firm' - a firm in which collective benefits are assumed to accrue as a result of the 'collaborative synergies'; economies of scale and 'cross-selling' that are presumed to increase exponentially as more partners or 'barnacles' are added.

If such a firm ever had a cogent strategy, which could be considered its 'hull', that hull, over time, has been completely overgrown. A host of 'barnacles' in the form of disparate legal expertise and services have been added with little regard for the original strategy (or other consequences), other than an increase in 'billings' and partner numbers. The assumption is of course that 'bigger is better' no matter what synergies or logic there is in being able to provide an ever 'fuller' service firm. The outcome in my view is a slowing ship of state that becomes ever less manoeuvrable and in stormy economic times has a high probability of running hard aground on the rocks of adversity!

Such misalignment in strategy can be tolerated in 'good times' but a lack of cohesive strategies that produce equitable profits across teams and partners becomes an increasingly destructive issue.

A typical recent comment attributed to an American managing partner, is a case in point,

"In our experience the cross-marketing opportunities that big firms have are extremely valuable. In essence, you've got hundreds of colleagues out there helping you to market your practices. Working with a large firm provides attorneys the opportunity to service many clients that they'd otherwise not have the opportunity to represent."

This is a widely held belief. Managing partners, team leaders and consultants spend an inordinate amount of time attempting to encourage such collaboration and 'cross-selling'. Why does it fail in so many

cases? Even in fully integrated firms where profits are shared, why do some partners, prefer to send work out to non related firms and even in smaller firms there is so little mutual support, or cross selling in evidence? Are the gains, so heavily relied on, there to be realised? What factors should be considered when driving inter team collaboration and the chimera of increasing profitability.

In short why, in so many cases, is the 'whole' in fact *less* than the sum of a firm's parts?

The firm – the economic model

There is no inevitability in the grouping together of individuals to form law firms. Economists¹ have long told us that such groupings occur to enable costs to be reduced and efficiencies gained. They talk of lower 'transaction' costs. Where it makes more sense to utilise a shared resource than to negotiate each time to use an external equivalent, the group will use its internal resource and save such 'transaction costs', the greatest of which may be time. If however the 'internal cost', normally the cost and time associated with the firm's coordinating bureaucracy or reward/cost sharing mechanisms become too high then members of the firm will leave or increasingly utilise external rather than internal resources.

Whilst there are many larger firms whose profitability² suggests that benefits of collaboration are there to be captured the contrary experience is far more common. This in part might explain why the legal sector is one of the most fragmented of all sectors with even the largest firms commanding no more than 2-3% of the market.³

The overwhelming predominance of very small firms suggests the benefits of size are not easily captured. Capturing the benefits of what I will refer to broadly as collaboration, requires a more considered approach, particularly in a more volatile and less profitable economic environment.

Differing aims of collaboration

The classic benefits arising from collaboration are most obviously captured in the joint purchasing of office space, equipment and sharing IT/HR, marketing and other administrative functions. In many firms it goes no further. In a firm I visited recently in China, each 'partner' hired and paid his own staff, retained control over their own billings etc and simply funded the remaining overheads to an agreed amount. The model was more akin to a barrister's chambers and an interesting contrast to conventional communist 'collective' ideology.

Most firms aspire to or assume there are much greater gains. The firm seeks to acquire partners, who can not only build their own teams, profile and expertise and leverage profits in that way, but also;

1. actively cooperate to service larger or existing clients with multi-disciplinary needs
2. 'package' existing legal services to better serve an existing, wider or emerging market e.g. 'carbon trading' or 'water' law
3. broaden the geographic reach for clients interstate or internationally
4. cooperate in introducing their peers to their 'own' clients and reduce therefore the acquisition cost per client and increase the firm's share of that client's 'wallet'
5. share and develop 'best practice' across teams
6. build a shared culture which underpins a 'brand' which sets them apart/differentiates them in the market
7. share precedents and other 'knowledge-based' resources

¹ Ronald Harry Coase: "[The Nature of the Firm](#)" (1937)

² Austats: 8667.0 Legal Services, Australia

³ IBISWORLD - Legal Services in Australia 10 February 2009

So what's so hard about 'cross-selling'?

The typical history of the small to medium size firms is one where initially partners came together who shared similar technical skills and client profile e.g. immigration, conveyancing/property, family etc. In that sense there is a common strategy i.e. to share overheads and skills to exploit a common market.

If that strategy prevails and further partners are added with similar skills then the firm likely remains a specialised 'boutique', focusing on providing relatively limited services to a well defined market. If, however, the firm expands, as is so often seen, by adding partners whose skills and clients are unrelated to the 'founding partners', then the original strategy of the firm has changed. Usually such growth occurs because there is a personal relationship between the people concerned and an attitude that the 'more there are to share the overheads the better', prevails. There is no more science in it than that.

Eventually however such a firm will realise that it has acquired quite disparate skills and clients, which whilst still achieving the limited aims of 'sharing overheads', does nothing to achieve the broader aims listed in above. These aims will however be increasingly espoused. The justification is one of offering clients a 'full service', and increased profitability is said therefore to be more likely.

What is being overlooked?

It is easy to appreciate the strategic logic of the 'boutique' firm, a similarity of both technical skills and clients. Not only do the partners share a similar professional skill and respect each other's professional expertise, there will be similarity in precedents required, IT, secretarial support, administrative needs and any number of other systems and processes that are shared between the partners. Most critically, their clients will have shared issues and expectations ranging from legal outcomes to the fees and services they expect to receive. A shared culture should be able to be readily developed to support a 'brand' in the market that differentiates the firm. None of this is easy and takes continuing nurturing but it is readily understood.

How much more complex the situation becomes, where not only the technical skills differ but almost on every other level there are marked differences. These will extend to how the practitioner seeks work, what leverage such work is capable of supporting, the fees each matter can generate, the profit margin obtainable, the nature of the support staff and systems needed etc, etc. Think of the differences between an M&A partner to one performing relatively routine work for a statutory insurer or performing bulk mortgage transactions for major banks. Think of the divide between the class litigator and the typical commercial advisor or tax expert.

Herein lies the root of the problem in collaborative activities and cross-selling between partners/teams. Such diversity of clients, skills, profits and systems are to be found in almost every firm and yet many firms continue to acquire ever more 'barnacles' with little thought as to how, if at all any synergies are to be captured. It is assumed that a client having one service need will readily be converted to purchasing other services from the same firm. The firm for its part readily assumes it can coordinate its service offering to the same client without putting its relationship with that client in jeopardy.



The potential downside of such ill-considered growth is considerable. One only has to attempt to manage the competing claims for resources, profits and recruits let alone attempt to build an effective culture or brand to know how divisive these issues can become. To revert to the economic model of the firm outlined previously, the internal transaction costs in turf wars between such groups and the bureaucratic overheads needed to service such diverse requirements often exceeds any benefits from 'cross-selling' or synergies.

Key factors to consider

Firms are not, however inevitably confined by fears of such constraints. Productive growth, capturing the synergies, is possible if for instance sufficient 'linkage' exists between what partners are offering. For example, a firm focussing on family law could quite logically expand its services to capture the work that might originate from its client base in the wills and estates area. There may be differing skills involved, but at least the client base has common characteristics. As the clients will all be individuals, similar pricing and marketing techniques will likely be involved. There is, in short, likely to be common cause between such partners (and importantly their expectations of income to be derived from such a common client base are likely to be similar).

It is relatively easy to think of other such situations where such linkages exist - personal injury solicitors expanding into the realm of occupational health and safety and discrimination law, commercial SME advisers acquiring tax and property expertise, franchise lawyers acquiring trademark expertise.

Clearly however as such linkages become ever more tenuous the problem of meaningful collaboration between such groups/partners to achieve any of the first four listed aims above becomes more remote. It becomes extremely difficult to manage the competition for resources let alone the 'strategic' agenda of the firm in such a situation.

How do you assess the degree of linkage or synergy that might exist?

Key issues that should serve to guide the likelihood of successful collaboration being possible can be divided into two main groups:

1. Client based factors

- a. Is the same client or type of client being targeted?
- b. What is the extent of difference in the needs being sought to be satisfied?
- c. Are the decision makers who are expected to provide the new instructions the same?
- d. How 'core' to the client are the respective services being offered?
- e. Would the client expect to pay at a similar rate and fashion for both services?
- f. Is there a necessary link between the two services in the client's mind, or are they usually acquired quite separately?
- g. Would you expect the client to provide its instructions through one partner even if differing services are being required?
- h. Would the client expect a similar reporting regime in respect of both services?
- i. Is the client/client type being targeted being chosen because it is an existing client/client type of the firm or because it falls within an industry or sector the firm is servicing? Or is it because the firm is offering a common service to a range of quite different market or industry sectors?
- j. How well does the target client(s) understand the need or value of the additional service being offered?
- k. Can common marketing tactics be adopted to promote the services or are different approaches required – how different?

2. Law firm factors

- a. Does the firm charge similar rates for the services? Can any differences be justified?
- b. Is there a similar profit expectation – i.e. similar leverage/overhead profile?
- c. Do the respective partners expect to control the direction of instructions to them or will it be provided through a common point within the firm?

- d. Will the respective partners report/respond in a similar manner to the client?
- e. Are the partners both familiar with the characteristics of the industry/market within which the target client(s) operate?
- f. Do the partners share a similar approach in dealing with/marketing to clients of the target type or are quite differing approaches sustainable?

A case in point

An example of how some of these factors can interplay might go something like this. A firm enjoys long standing relationships with several large insurers offering motor vehicle and general insurance products to the retail market. The partners have historically not offered any other services other than claims management and basic policy drafting/interpretation to these clients. They are aware however, that much legal work is going to competitor firms of a commercial nature dealing with the insurer's extensive property investments and more complex financial products as well as the insurer's own corporate work.

The partners are aware much higher fees are paid for that work and decide to expand their offering to attempt to capture that share of their client's legal spend. They are optimistic that once they have the expertise on board their long standing relationships with their contacts at the insurers will enable them to 'cross sell' the new services. Having developed a reputation for aggressive volume litigating on behalf of their clients (for which they are highly regarded), they set about recruiting commercial practitioners who have the skill set to service these needs.

After several years of trying, the firm abandons its attempt to secure such work, and to their considerable annoyance sees their pre-eminent role decline, even in the litigation work they continue to provide. To make matters worse, their new recruits, despite generous salaries etc departed the firm after two years of fruitless attempts to secure such work. Furthermore several of the firm's more promising junior litigators left, complaining of a 'two speed' firm where the firm's traditional strengths were 'taken for granted'.

Despite the promise of their new recruits, they were ultimately beneficiaries of only token work from their major clients. The usual wining and dining and customary relationship building exercises had taken place, but with little to show, despite the considerable support shown by the litigation partners. What work they had received was piece-meal and was often the cause of internal and external friction.

What had happened? Firstly, the original partners ascertained that the 'contacts' they had at the insurers, whilst senior in the claims structure had little or no say in where other 'non claims' related work was directed. In fact, within the organisation as a whole, the claims staffs were viewed somewhat disparagingly by senior management, who viewed their activities (including their lawyers), as a necessary but unwelcome evil. The real 'profit engine' of the insurer was the management of its investment income. For that core part of the business they were prepared to pay top lawyers, top dollars – the sort of lawyers whose name they could drop at their board lunches and expect to see an appreciative raised eyebrow from perhaps a major fund manager or corporate 'heavy weight'.

Certainly, in deference to continued requests from colleagues within the company, some work had been forwarded to the 'new' solicitors but nothing too critical. They had not been pleased to see that, despite the 'new' firm's reputation for 'value for money', the bills they received were close to what their preferred 'name' corporate lawyers were charging. Further, the 'new lawyers' were often pictured involved in somewhat distasteful litigation and were unable to quickly commit the range of resources required in handling the one complex matter that had been referred to them.

Whilst this may seem a somewhat extreme example it is one I have seen played out in many firms albeit with different clients operating in different sectors. Why couldn't the insurance lawyers cross sell their new partners to their best clients who clearly had a need for the services they were now attempting to offer?

Some of the issues are obvious and some less so.

- For a start, the services sought to be 'cross sold' were not in any way linked – the claims managers did not need any of the firm's newly acquired corporate/commercial advice.
- The decision makers were entirely different and the close relationships the partners enjoyed

simply did not extend to the board or those who controlled what the client considered its core business.

- The firm was strongly associated with one type of service, purchased at a considerable discount in exchange for volume. The commercial work was not offered in that way, with price being a very secondary consideration to an in depth understanding of the insurers core business.
- The firm did not possess sufficient depth of commercial resources to meet the complexities of the one or two larger matters the insurers 'tried out' on the new firm. Turnaround and quality were clearly an issue as was dealing with the firm's CRM partner who was a litigator.
- The firm attempted to distinguish itself from the established commercial advisors by emphasising its relative cheapness
- The firm had considerable difficulty managing the internal issues associated with the new arrivals. Their secretarial and other support expected to be paid a premium over other staff and marketing and conference expenses were 'astronomical' compared to their previous experience. The firm's recruiting practices and IT systems were questioned and much of the support staff, particularly in marketing, was seen to be well below par.
- The new commercial staff seemed unable or unwilling to use the same 'case flow' management system that had formed the bedrock of the firm's reputation in managing high volume litigation
- For much of the time, the commercial staff were engaged in prospecting, marketing and profiling activities with long term horizons, rather than amassing billable time – when they did get work they seemed to work very hard but then there were requests for highly paid overtime and extra support solicitors which could not be supplied from the firm's own resources
- The newcomers were treated with suspicion by existing staff who tended to 'steer clear' of them. They resented the 'investment' the firm was making in the new endeavour.
- The traditional client base of the firm was aware of the higher profile the firm was attempting to take and wondered who was paying for the new marketing initiatives and additional staff to whom they were constantly being introduced to – they began even to question in their own mind how committed the firm was to their traditional clients!

A more considered approach

Cross selling in the end is a strategic issue. It needs to be considered in the context of the markets, clients and services the firm is attempting to provide. Conventional strategic choices for firms can include a 'portfolio management' approach. This can bring together under a common management structure quite disparate services. The firm reduces its risk profile compared to a specialist non diversified firm. If it is assumed however that such gains will extend through cross selling between groups then care needs to be taken to ensure that the specialist offerings of individual teams are not compromised internally through distraction, resource denial, friction etc and externally through client confusion, and poor delivery.

Clients in the past may have been more tolerant, but increasingly this is less common as in-house counsel seek to unbundle the services being offered and seek specialist services.

Before committing considerable sums let alone the 'opportunity costs' associated with any such initiatives consideration needs to be directed to the issues raised above. The real surprise is that in considering either acquiring or building new expertise in a firm, some of these initiatives are not killed off much earlier.

Even when there are reasonable prospects of success there should be a clear 'game plan' and a 'sunset clause' built into the project to find and develop such linkages or synergies. Such a project should be led and actively managed. There is nothing intrinsically wrong in having teams within firms servicing quite different markets with very different expertise as long as there are no misguided assumptions as to whether and how such 'synergies' and profits can be achieved or even if they are likely to exist at all.

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