When Bigger Isn't Better: The Downside to Constant Consolidation

The only constant in life is that nothing is.

Legal services are no exception. Currently, mergers and acquisitions are all the rage. In fact, consolidation is having far-reaching effects across our industry—and not all to the good. Bigger isn't always better.

As we learned during the pandemic, physical size can limit innovation, recruiting, customer service, and information security. As legal service providers continue to combine forces, legal professionals should consider how more agile organizations can provide a higher level of expertise free of the incessant distractions of the latest integration.

Call it the upside to constant consolidation. But first, let's consider the downside.

How We Got Here

Consolidation in the legal industry mirrors what the accounting industry experienced just a few decades ago. In the 1980s, there were eight major accounting firms: Arthur Andersen LLP, Arthur Young, Coopers & Lybrand, Deloitte Haskins and Sells, Ernst & Whinney, Peat Marwick Mitchell, Price Waterhouse, and Touche Ross & Co. Now we have only the Big Four: Deloitte, Ernest & Young, KPMG, and PwC.

Today is the 1980s for legal providers. The industry began with several small players, and as those companies grew, many were acquired and then sold again. Fueled by the historically low cost of capital and aggressive growth rates, private equity investors' appetites grew, prompting the next flip. And the next and the next. Consider these examples in eDiscovery:

- KLDiscovery notes on its "Our History" page that it is a consolidation of LDiscovery, Kroll Ontrack, AlphaLit, RenewData, FlashData Solutions, Turnstone Solutions, Credence Corporation, CopySecure, Elite Document Solutions, Oyez Legal Technologies, Ibas/Vogon, Engenium, Strategic Legal Solutions, Compiled, and Superior Document Services. KLD also merged with Pivotal Acquisition Corp in 2019—an appropriate middle name, there.
- HaystackID acquired Flex Discovery, Envision Discovery & Inspired Review, eTERA, Business Intelligence Associates (BIA) in 2022 as well as merged with NightOwl Global. Earlier this month, the company announced its acquisition of Business Intelligence Associates, "marking its fifth investment in four years," according to the press release.
- Epiq Legal Services has lately been on an acquisition spree, picking up Fireman & Co. this year, Simplex Legal Services in 2021, Hyperion Global Partners in 2020, and H&A eDiscovery in 2019.
- Consilio's M&A history goes back to 2015 when it separated from First Advantage and took on Shamrock Capital Advisers as its principal investor. Consilio then added Backstop LLP, Proven Legal Technologies, the Huron Legal practice, and EQD. In 2018, the growing conglomerate merged with Advanced Discovery with funding from a new private equity firm, GI Partners. Later that year, it acquired DiscoverReady. And last year, in partnership with PE groups Stone Point Capital and Aquiline Capital Partners, Consilio completed its merger with Xact Data Discovery.

In fairness, consolidation in legal services is not simply all good or all bad. Many talented people leverage powerful technology at the largest organizations. Still, the never-ending M&A activity can exacerbate workflow issues and complicate communications. It also can damage employee morale; a relentless focus on cost-cutting and expansion and invariably distracts leadership and employees from the needs of customers to the enormous challenge of integrating systems and cultures.

Other downsides of industry consolidation also might resonate:

- A stifling of innovation through forced conformity and an unblinking focus on the bottom line.
- Increased security concerns and risks.
- Confusion by customer managers about their (newly acquired) mission and business culture.
- Stakeholder burnout and fatigue, leading to inferior results.

An instructive example of the negative effects of consolidation can be found in one of Level Legal's newest partners, a major airline. The company's previous provider had gone through several rounds of acquisitions. With each deal, the airline was shuttled between project managers. Lacking a single point of contact for their important legal work, the airline left their vendor of 14 years for a provider that could provide the level of care that they needed.

The Unintended Consequences of Consolidation: Better Alternatives

As the biggest legal services companies continue their "acquire at all costs" focus, law firms and corporations are finding better alternatives in the marketplace—just not those that the voracious mega-providers had intended.

Service providers that prioritize flexibility over size are thriving. They offer quality work and an emphasis on quality people, while delivering the full range of services that customers of all sizes need. These agile alternative legal service providers are not subject to the exacting quarterly financial performance demands imposed by private equity or venture capital. Instead, they have the freedom to invest in their customers' best interests. They are listening first and then providing bespoke solution roadmaps tailored to each project. In short, they are free to deliver peace of mind to the customer.

Sound interesting? Look for these qualities in a concierge legal services provider:

- **Careful attention to fine details.** The teams in these nimble companies focus intently on the customer, not on the broader business environment or short-term revenue demands. This focus gives them the agility to design customized workflows and processes for each customer. A useful indicator: the fewer press releases about acquisitions, the better.
- **High employee morale.** Employee satisfaction and support are frequently overlooked in the legal services industry, where employees have become exhausted with the churn of consolidation. Because many of the managed services firms were acquired by private equity firms looking for the next flip, the first order of business is to slash expenses. Counterintuitively, smaller providers provide the consistency and steadiness that larger firms don't. They can provide employees with a clearer sense of purpose, the conviction that they can make a difference, and pride in their work product. One way to tell: Note on LinkedIn where valued employees go when they leave the bigs.
- **Encouragement of innovation and creativity.** Organizations that aren't beholden to the private equity playbook can foster momentum, excitement, and engagement for their teams. This in turn leads to better customer service—or what we at Level Legal call "delight." In contrast, a myopic focus on acquisition or baiting the next biggest fish in the private equity pond flushes out innovation.

- **The ability to pivot quickly.** Providers with an appetite for acquisition are not able to react quickly to changing trends and new information. Those that are free to deploy resources as needed can do so quickly and nimbly, without worrying about having to rationalize their actions to outside interests. They can act as trusted partners for their customers. They are stronger champions.
- **A high importance on high-quality human engagement.** This is particularly important in our data-driven, post-COVID era. As workers have adapted to working remotely and communicating through technology, over-reliance on technology can undermine the quality and efficiency of professional interactions. As Heather Hartnett, CEO and founding partner of Human Ventures, noted in a recent *Fast Company* article, "The more sophisticated technology gets, the more we seem to stop speaking to each other." Hartnett suggests making phone calls in the workplace is a lost art: "Phone calls are important. They drive more meaningful conversations, avoid bias, and sometimes are the much more efficient means for getting things done."

Beyond Consolidation

Consolidation in the legal services industry may provide the illusion of a one-stop-shop experience for customers. But as providers get bigger and become more focused on the next liquidity event, they risk losing touch with employee and customer needs. That one-stop may feel more like a dead end.

Those seeking personalized service and innovation should look beyond the players that are consumed with acquisition, and toward those that can provide a more responsive, customized, and customer-focused approach. It's time to bring humanity back to legal services. ■

–Joey Seeber

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