

Why Freshfields Turned To An Alt Provider To Close A Deal

By **Steven Lerner**

Law360 (March 4, 2021, 2:00 PM EST) -- Requests for information on a merger or acquisition are usually time-consuming and can sometimes challenge law firms to scramble for ways to save the client's deal.

This was the case when Freshfields Bruckhaus Deringer LLP last year faced two regulator-prompted antitrust review requests for a multinational merger in the financial sector.

Freshfields attorney Richard Snyder told Law360 Pulse the firm anticipated a document-intensive review for this matter while trying to meet cost-conscious client demands.

"Clients were increasingly requiring us to set budgets and engage in cost management efforts," Snyder said. "They want, generally speaking, better results, a little bit faster."

The first regulatory hurdle — and review process — began when the U.S. Department of Justice opened an investigation into the merger and then issued a second request for information in 2020.

The DOJ had changed some procedures for merger investigation processes in March 2020 because of COVID-19. Snyder said that changes associated with compliance on the second request forced firms to move faster on document submissions.

"You can't just submit everything on the last day with the certification of compliance and hope for the best," he said. "It has imposed a huge timing burden on companies in terms of trying to hit particular deadlines with respect to a second request."

Months after the DOJ's inquiry started, the European Commission launched its own probe and issued a document request for information, or RFI.

Snyder said there was some overlap with documents that could be used for both investigations, but Freshfields still had to quickly review hundreds of thousands of pages. Each jurisdiction also had unique custodians, collections and analyses.

And although the firm had previously relied on paralegals and contract reviewers to support a second



Richard Snyder

request, Snyder said contract reviewers often need a lot of supervision and process management.

Given the scale of each matter and accelerated pace of discovery, Freshfields needed some help with the document review so it could focus on moving the deal forward with regulators.

Enter Outside Help

Freshfields enlisted an alternative legal service provider, or ALSP, to cost-effectively expand the head count for the document review.

While such providers largely handle relatively mundane and simple document review tasks, some ALSPs specialize in complex areas of law, such as antitrust review, and help firms with more advanced assignments.

Dallas-based ALSP Level Legal, which supported Freshfields on another project years ago and had experience in antitrust reviews, was selected to manage the document requests.

Level Legal assembled a team of 88 reviewers for the DOJ's second request and 124 reviewers for the European Commission's RFI. Detailed instructions were provided for reviewers.

Snyder said that having Level Legal push out the instructions to the reviewers made his life a lot easier. The reviewers assessed the relevance and significance of each document, as well as whether there were any reasons a document should be withheld in full or in part.

A project manager from Level Legal served as a liaison between Freshfields and the reviewers.

At the end of each day, Freshfields received a queue of about 15 to 20 questions from the reviewers on legal and factual issues.

"I often say the best assurance I have that the review is going really well is that we get really good questions that are decisive and questions that highlight specific issues," Snyder said.

He added that it was comforting that the questions from the reviewers were thoughtful.

"If you're not asking questions along the way, it's an indicator that you're on autopilot," Daniel Bonner, Level Legal's director of client solutions, told Law360 Pulse.

Freshfields used a predictive coding workflow in software from Relativity to quickly analyze documents. The firm's attorneys performed the training and model stabilization on the platform.

"At some point, you just can't look at every single document because it's not efficient, it's not really desirable and it slows down the process," Snyder said. "Had we looked at every single document going to the DOJ or to the commission, we would have needed two to three times the team that we had and we would have incurred two to three times the costs."

Snyder said that associates at Freshfields also conducted quality checks over sets of documents examined by the reviewers without putting eyes on every single one.

The Finish Line

Both the DOJ and EU reviews were completed on time.

Bonner said it took 11 days to review about 450,000 documents for the DOJ and 23 days to review about 340,000 documents for the EU.

"We hit the deadline and we kind of crossed the finish line in style," Snyder said. "We weren't up in the middle of the night, we weren't stressing about it."

Reviewing documents is typically a last-minute scramble to finish, he said, with associates usually plowing through databases in the middle of the night.

With this case, Snyder credited the resources and assistance from the reviewers for making a tremendous difference.

"When we approach a matter like this, we're looking to allocate work efficiently, both in terms of getting the best results and also in terms of client cost concerns," Snyder said.

Snyder added that Freshfields was impressed with the quality of work from the reviewers and there was good communication throughout the process.

"Hearing Rich say we crossed the finish line in style was probably the best feedback we can get," Bonner said.

Freshfields showed that having a good relationship with an ALSP can be an asset for handling complex regulatory reviews.

"I never felt as though I was pushing it off on some other company," Snyder said. "I felt like I was just bringing these colleagues in to manage this process."

--Editing by Brian Baresch and Alyssa Miller.