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The fantasy and realities behind the ideal European law firm

The international strategies of mainland European firms explored in the previous article, coupled with the aggressive expansions outside of London by US and UK firms, clearly demonstrate that the 'ideal' European law firm in terms of size, manageability, quality of work and profitability for its partners remains one of the greatest challenges facing the business law profession, says Tony Williams

The last five years have seen seismic change in the European market. In the UK, a magic circle of five top tier firms is now firmly established with a strong chasing pack of aspirants wanting to expand this group further. To a large extent the recent downturn has been relatively benign for these top tier firms as a flight to quality continues and they use their financial muscle to maintain and enhance their position with the more substantial clients. Many, but by no means all of them, appear to be determined to establish a strong US capability, but so far success in this approach has been limited.

In Germany we moved from most firms in the late 1990s asserting their determination to operate without a strong UK partner to almost complete capitulation by the leading German firms. In the past five years virtually all of the major German firms have either split or merged in whole or in part with major UK or US firms. The most notable exception has been Hengeler Mueller which has established a very close strategic alliance with Slaughter and May. It is still unclear how successful these mergers will be especially when the German market starts to recover but initial signs are encouraging. These merged operations do appear to be winning a growing share of the, albeit reduced, M&A market especially on the larger cross-border transactions. The French experience has been less dramatic than in Germany with a number of leading French firms determined to remain independent. However the UK and US firms have continued to develop mainly on the back of top tier lateral hires of younger but often relatively high-profile and very able partners. Last year the US and UK firms dominated the top 20 slots for French M&A but there were still a number of leading French firms maintaining strong positions.

While Germany and France have seen the most interest by the US and UK firms, Italy and Spain have not been ignored. In Italy in particular there has been considerable interest although it has proved relatively difficult to establish a full merger with an Italian firm. In part this is due to the structure of Italian firms which tend to be dominated by a relatively small number of high-profile senior partners with very good connections into Italian business and politics. These partners are often very highly remunerated even by US standards. Although the difficulties Clifford Chance encountered with Grimaldi have been well documented it should be noted that notwithstanding the split, Clifford Chance still has a very strong Italian presence with a number of very able and well regarded Italian partners. Brosio Casati is linked with Allen & Overy and Gianni Origoni with Linklaters. It is likely that other foreign firms will continue to develop

strong links with Italian firms but that if they are unable to effect a merger they will continue to develop by lateral hires and growing their own partners. The Spanish market is still dominated by a big three of Uría & Menéndez, Cuatrecasas and Garrigues. However Clifford Chance, Freshfields and Linklaters all have very strong Spanish operations with other UK and US firms also paying more attention to the Spanish market.

These changes may cause an observer to think that Europe is or will be dominated by the leading UK and US firms. The real position is not so clear-cut. Evidently New York and English law firms dominate international transactions. The major international investment banks are also used to dealing with the major US and UK firms and are comfortable with them but this is not the end of the matter. The UK firms without a top tier New York capability will still need to look to the whole European market for their major work and profits. In order to be successful they will clearly need to be less London centric and to develop a much more flexible approach which acknowledges the different cultures, roles and aspirations of the lawyers across Europe. This does not just mean having token continental European representation on the management boards or management teams of the firm. In the short term they have the capability of becoming truly European firms but they will need to be flexible. They have to understand what their clients want and how to provide it. A one-size-fits-all approach to a range of clients in various countries will be insufficient. To be successful a firm will need to ensure that it is providing the service and expertise required by their clients. The development of a strong, high quality domestic practice with the ability to work effectively and efficiently across borders often to very demanding timetables will be essential. Despite their initial scepticism as to the value of such firms, many general counsel recognise that a strong cross-border capability is increasingly important as it minimises the management time required by the general counsel and should, if the firm's name is credible, reduce the personal risk to the general counsel of running the transaction.

If the UK firms have the capability of becoming truly European firms where does this leave the US firms developing in Europe and the strong local firms?

For the strong local firms the position is complex. A number of European alliances which excluded a UK firm have proved to be rather unstable. For example, the Pünder International and BBLP alliances broke up when one or more partners sought a stronger relationship with other firms. However, for the top firms in any country the conflicts that bedevil the larger international firms present real opportunity. For example, despite its close arrangement with Slaughter and May, Hengeler Mueller should still be able to act for a client whose interests are in conflict with a Slaughter and May client. Such a position may not be taken if they were one firm. But this approach does require caution. The more arm's length the relationship appears the less credible the ability to promote a top tier and integrated European capability. However, these top tier firms may find that they are particularly in demand from major US firms that do not have a capability in that country. Such firms will be reluctant to use a local office of one of their more established US or UK competitors.

The difficulty with this approach is that to a large extent the future success of such top tier firms is dependent on the actions of others. If best friends in other countries decide to link up with different firms then the international capability will be diminished. If a firm's major referrers decide to establish an office in the local firm's country, the referral source will dry up. Indeed, even worse, the new entrant, as it knows the best people in the local firm may seek to kick start its local office by recruiting the most 'go-ahead' partners in the local firm.

However it is not all bleak. Provided the local firm can maintain the quality of its team and client base and maintain its profitability it should be able to continue to hold a leading position in its market and to recruit and retain the best lawyers. As long as it has a clear reputation for quality and is at least as profitable as the foreign firms, its position is strong. Critics may well argue that firms such as Slaughter and May are in long term decline. However it contains some of the best practitioners and is consistently the most profitable of the UK firms. The same applies to Hengeler Mueller and Uría & Menéndez. If that is decline then perhaps a few other firms would like to suffer it! Indeed even if a firm such as Slaughter and May did decide that its approach was unsustainable it would surely have no shortage of New York suitors anxious to link with a focused and highly rated firm of manageable size.

Given the importance of referrals from the US firms to the leading European firms, the ambitions of the US firms in Europe is important. Traditionally the most successful New York firms have been reluctant to dilute their earnings and culture by developing substantial European presences. There have been some notable exceptions, among them Shearman & Sterling and to some extent Weil Gotshal & Manges. The last year has seen much more active top quality recruiting in London by many of the New York powerhouse firms, but at this stage the extent of their ambition in Europe as a whole is uncertain.

It is however dangerous to generalise about the development of the US firms in Europe. Some firms, frustrated by the inability to find a suitable merger candidate in the UK are actively looking for merger and development opportunities in Europe while still developing their London offices. Some of these firms, particularly those based outside New York, seem more aware of the cultural issues and appear determined to build a firm which respects local characteristics.

Just as the US firms are finding development difficult in the UK and the rest of Europe (there are over 100 US firms in London) the UK firms are only having limited success in the US. Clifford Chance has pulled off a major merger but not without subsequent difficulties. No other major UK firm has effected a major merger despite active efforts by, among others, Linklaters.

Outside the rarefied atmosphere of the top transactions there are many very good quality firms across Europe that have a solid client base and have a range of links, from full mergers to best friends referral arrangements. As general counsel become more sophisticated as to their buying patterns and demand strong local knowledge, international capability and a cost effective service, these firms have a real opportunity to provide a great service to major clients. They may not get the largest transactions, but will be regularly used for matters up to say \$1 billion, which accounts for the vast majority of transactions. They will need to invest in providing a coordinated service and use common training, know-how and similar systems. Although these firms will probably need a UK capability, they need not be dominated by a UK firm. Indeed this grouping of firms could account for a large proportion of European legal spend.

These trends mean that the European firm of the future is likely to come from one of the following groups:

The strong national players

These firms will have a very strong reputation in their domestic market and have a sufficiently well regarded international name to give confidence to major international clients to use them. They may have degrees of link-up with similar firms in other major countries. They will be well

connected in their national business community and major clients and firms without a presence in the country will be anxious to use them. Potentially they will benefit from any conflicts in the larger international firms.

UK firms committed to a European practice

They will consider the European market their 'home' market. The more successful firms will abandon aspects of the 'imperial' approach evident in some such firms in recent years. The European practices will have a strong local practice predominantly at the top end of the market. They will provide a top tier international service and will probably lead the European league tables on major transactions.

US firms with a European capability

This may, initially at least, be less extensive than that developed by the UK-based firms and probably focus less on local law although these firms are likely to have a major role especially where US parties are involved or where the US aspects of the deal are material, for example, a US listing, anti-trust clearance etc.

The second division

These will be firms not necessarily famous for the mega deals but still doing significant work for good quality clients. These may be even more international in their approach than the UK-based firms and may be less dominated in management or lawyer numbers by the UK. Unfortunately, any crystal ball gazing is fraught with uncertainties. If a top tier UK/US link-up occurs (or if the merged Clifford Chance is clearly shown to operate at the very top of the New York market) or if major New York firms decide to develop more actively in Europe, the impact on the practice of law in Europe will be substantial. Although the rate of change will slow after the frantic moves of the last few years it will take a few more years for truly European firms to emerge and more importantly this will require a more visionary approach by law firm management.

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