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The Tyco-Eversheds deal – from whiteboard to renewal

By Eduardo Reyes | 29 April 2013

News broke late last week that Tyco is extending the 2006 deal it signed with Eversheds, whereby the firm provides the company's legal needs for a fixed price – in return for sole-provider status for huge swathes of Tyco's external legal needs.

The deal was much-hyped at the time, and had it not been extended would have made a much bigger splash. The top line would have been that Eversheds had been unable to make the deal pay – built in to the agreement reached was a commitment to add additional 'value' year on year, and there was no guarantee that the company's more lucrative complex instructions would go to the firm.

But the fixed-fee part of this deal was always the least interesting component – the market-changing bit of the action went on in-house.

Tyco's then-GC in EMEA Trevor Faure reviewed, and then utterly changed, the way the business in his region sourced legal advice. Faure called it the 'SMARTER' model – later writing a book on it (2010), and lecturing on the model at Harvard. Orange is among the businesses that have adopted the model.

In 2006 Faure took me through the process in the room it was designed in – a meeting room where the walls were entirely covered in whiteboards, which even ran around the doors and windows.

For every part of the business he carried out a 'stakeholder analysis', set targets and expectations for improvement, and identified the 'core legal essentials' and the best practices that enable them. All before moving on to perform 'gap analysis' – a tool that compares actual performance with potential performance.

That's a lot of whiteboard, and we still haven't got to appointing a law firm.

Faure's conclusion was that the potential/performance gap would be most effectively closed if more high value and strategic legal work was moved in-house, and more standard legal work was outsourced.

The outsourced work, and the legal risks it related to, would be best provided by a single firm that had legal advice 'coverage' across the EMEA region. As closing the gap between performance and potential was judged harder to achieve with external instructions, the winning firm also committed to adding 'value'.

In the SMARTER model, it looks like a lot of infrastructure sits around the client-lawyer relationship, but Faure insisted that it was a 'scalable' model – fit for meeting legal needs of organisations with small or large legal spends.

Eversheds partner Stephen Hopkins notes that the firm has been in pole position to win the complex work that Tyco outsources, and that this now makes up the majority of its Tyco fee income. Dave Symonds, the current EMEA GC at Tyco, praises service levels and says the partnership will 'grow and develop'.

The deal had its sceptics at the time. But looking back over the intervening years, does this arrangement feel anything other than fairly rational?

Well, not every GC who is changing the relationship between their business and its legal needs bought the SMARTER book or consciously conducted a gap analysis along the Tyco lines.

But the drift of strategic matters in-house is a trend, fixed (or at least 'predictable') fee arrangements are more widespread, and the number of in-house lawyers continues to rise – as does the status and standard of general counsel and their senior colleagues.

And the clear preference for private practice and their in-house clients is to partner with fewer law firms, but to have each firm do a higher proportion of its work.

Given all that, the challenge for those who were sceptical about the main features of the Tyco approach is to map out a convincing alternative. Mind you, if they have a pack of coloured whiteboard pens, I know of a cracking room they could ask to borrow.

Eduardo Reyes *is Gazette features editor*