Strategy in law firms: what it is and why we should care

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1. Introduction

Traditionally, in professional service firms (PSFs) in general, and law firms in particular, strategy has (at best) been implicit in the decisions made by executives (typically partners). Since clients and projects come in unpredictable streams and it is very difficult to know ex ante which of these clients and assignments are likely to be won by our firm, strategy – traditionally seen as formal planning – has often been regarded as impossible for PSFs. In addition to the fluctuating and unpredictable nature of the demand for professional services, most such firms, at least up to a certain size, have traditionally been internally owned, typically in some sort of partnership form. An interesting and not so frequently discussed characteristic of partnerships is that they typically require consensus for any major strategic decision to be made. In many partnerships it is unheard of that some partners (ie, the majority) should make decisions on behalf of the whole collegium, against the will of other partners (ie, the minority). In small firms, this dilemma typically takes one of two possible forms:

- The firm remains fragmented, with each partner taking care of his own practice within the firm, acquiring clients and hiring apprentices according to his local needs. The firm may have common policies, but sanctions reinforcing such policies are unusual, as such sanctions would require the other partners to bring a conflict out into the open, and partners who are already busy with their own portfolio are normally very reluctant to 'rock the boat'.
- The firm remains small, growth (if any) is slow, and the partners pay particular attention to attracting, retaining, and promoting new partners that share the common set of goals and values, such that consensus can more or less be taken for granted. In such firms, client acquisition is based on consensus, and recruiting is a highly prioritised process of very careful selection of people who 'fit in'.

In another chapter in this book (Smets, Morris and Harvey), the importance of building and maintaining a reputation is highlighted. I would argue that partnerships of the type discussed in the second bullet above may relatively easily develop a consistent reputation over time, whereas partnerships of the type under the first bullet are more likely to suffer from a fragmented reputation, where the different aspects of the reputation are highly dependent on the decisions, actions, and reputations of each individual partner or practice manager. As I will argue further in this chapter, strategy is crucial to linking individual partner decisions and developing a consistent reputation over time, both in the client markets and in the markets for legal expertise (new hires). As pointed out by Maister (D Maister (1982) "Balancing the Professional Service Firm", *Sloan Management Review*, 24(1): 15–29), client acquisition and hiring are two sides of the same coin; if you have the best lawyers (in a given area of law), you are also likely to attract the most challenging client assignments. And if you have the most interesting set of client assignments, you are likely to be able to choose among the very best candidates in hiring new professionals into the firm. In this sense, client acquisition (and retention) and hiring (and promotion and retention) are like the chicken and the egg-problem – after the firm has been founded, typically by a few senior lawyers with a particular expertise, reputation, and relationships with (potential) clients, it is hard to know which dimension comes first and which drives the further growth of the firm.

In traditional PSFs, it has been a common view that strategy is 'redundant'. If only you have the right experts and the appropriate list of references to previously successful business with high-prestige clients, an excellent reputation will follow, and clients will more or less queue up at your door. In the past, marketing was paradoxically seen as negative and bad for reputation (see eg RE Sibson (1971) "Managing Professional Services Enterprises – The Neglected Business Frontier", New York, NY: Pitman) – comments were often along the lines of: 'they must be short of business, since they have to advertise for new clients'. An innocent and highly illustrative incident happened to a small IT-consulting partnership in Norway, when they decided to advertise for new partners. They placed an advertisement in Norway's biggest newspaper, in the business section, but the newspaper made a mistake and put the advertisement in a hardly visible spot elsewhere in the paper. They were highly apologetic, and without asking the partners of the consulting firm, they decided to re-run the advertisement the next day, on the front page of the newspaper. Little did they know that compensating their customer through such an expensive spot would be highly negative; the IT partnership received a lot of sceptical comments from colleagues and competitors ('are you desperate for business, since you run such an expensive advertisement?'), as well as clients ('how much profit are you really making on my assignment, when you can afford that kind of advertisement?') (BR Løwendahl (2005) *Strategic Management of Professional Service Firms*, 3rd Edition, Copenhagen: Copenhagen Business School Press, page 78).

Yet telling potential clients that the firm has unique expertise and is doing well in particular practice areas is also important to maintaining a sustainable business, as running short of sufficient 'billable hours' may be a disaster for the firm. It is not just that idle professionals turn from a revenue-generating 'asset' into a cost-generating 'liability'; another danger is, as noted by Johan Sagen, founder and previous CEO of the IKO-group (an Oslo-based management consulting firm, later merged into Cap Gemini):

> *"With three or more experts idle in the office for more than a couple of days in a row, you always run the risk of the experts figuring out something else to do with their time. And that 'something' is unlikely to fit well with your own firm's strategic direction! Worst case, you not only get a 'spin-off'. you get a new competitor in the market, who also knows your own business from the inside!"* (See BR Løwendahl (1992) "Global Strategies for Professional Business Service Firms", Unpublished PhD

Dissertation, Philadelphia: University of Pennsylvania (Wharton); BR Løwendahl (2005) *Strategic Management of Professional Service Firms*, 3rd Edition, Copenhagen: Copenhagen Business School Press for an explanation).

Hence, it is important to know what your strategy is, both for client acquisition and retention and to know what professionals to recruit and retain.

2. Value creation in PSFs

As stated above, strategy was often rejected in traditional partnership firms, in the same way as marketing was thought to be unnecessary or even negative. Instead, firms typically advertise promotion of new partners and make large ads for new hires, as this implicitly signals growth and success? The extent to which such hires and promotions are strategic in nature, however, is more questionable.

Strategy in a PSF is not, and cannot be, about planning. As Peter Lorange, professor and former president of IMD in Switzerland, has pointed out in many of his speeches and texts, "Strategy means choice", and choice means not only what to do in the short term or long term, but also what not to do (see Løwendahl, 1992; 2005). If a firm is to achieve consistency over time and thereby build a strong favourable reputation, it needs not only to provide consistently high quality in whatever it delivers; it also needs to have a clear focus in terms of what it does and does not do for and with its clients. Elsewhere I have also argued (T Skjølsvik, BR Løwendahl, R Kvålshaugen, S and Fosstenløkken (2007), "Learning to Choose and Choosing to Learn – Strategies for Client Co-production and Knowledge Development", *California Management Review*, 49(3): 110–28) that PSFs need to have a conscious strategy of target clients and projects in order to maximise potential learning, thereby enhancing the resource base of the firm (see eg Gracheva, in this volume or Løwendahl, 2005 for more elaboration on this). And an improved resource base will again increase the firm's probability of winning the most interesting (and potentially profitable) client assignments in the next period of time.

Lorange and Løwendahl (in Løwendahl, 2005; Figure 3, pages 46 to 47) described this as a three-step value-creation process for PSFs:

- You need to sell a 'credible promise' (ie, convince the client that you are the right firm to solve whatever problem the client might have). Here, reputation clearly plays an important part, and may both enhance and limit the opportunities the firm has in a given market niche. In other words, firms are both supported and hindered by their past performance, as potential clients often check on reputations 'through the grapevine'. It may be very difficult to convince a new client that you are able to solve a particular legal problem that the firm has never faced before, unless the firm has been able to recruit a new senior lawyer with an established reputation in that particular area. Well-established clients who know the firm well, may be more willing to 'experiment' with new service areas, but then frequently at a discounted price and an unusually low leverage (of juniors to seniors) on the project, thereby making such service area expansions expensive (but perhaps still profitable) investments.
- You need to deliver what you promised. That means not only delivering

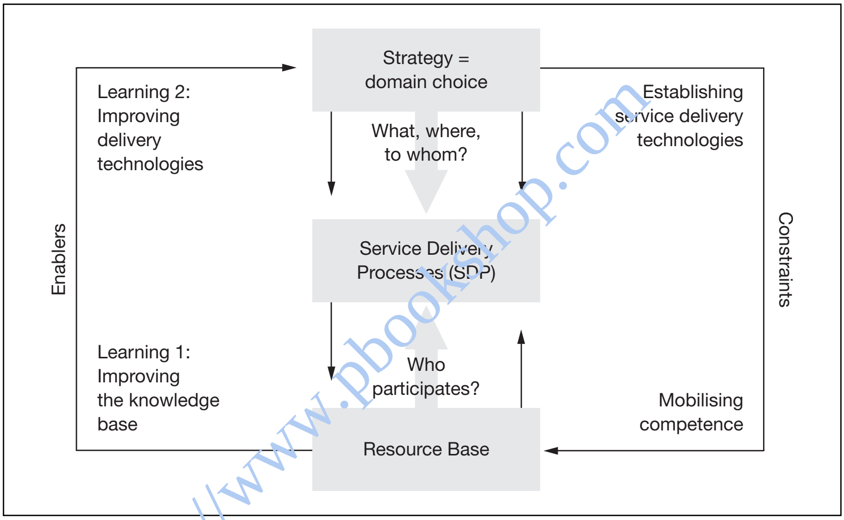
according to contract (whether formal or 'by handshake'), but managing expectations, managing the interaction with the client's representatives, and delivering on time and on budget (or ideally below budget for within-firm costing purposes). This sounds like the easy part of value creation, but is really at the core of what the law firm is all about. An ability to define, manage and staff client assignments in the most effective (quality assuring) and efficient (cost-minimising) way is crucial to the firm's long-term success, in terms of both profits and reputation. Just as strategy cannot mean plan, the organisation of value creation cannot mean stable and strict formal structure. But somehow the staffing of the assignment needs to be managed for the benefit of both the professionals and the clients, and what we show in our 2007 article (Skjølsvik, *et al*) is that not only should firms manage each assignment as it has been won, but they should also manage the overall portfolio of projects, both for short-term efficiency and effectiveness and for long-term learning and reputational effects that reinforce the position of the firm and help it win the 'most desired' assignments in the next round of competition. The most successful firms succeed at becoming the 'preferred supplier of legal advice' for a given set of clients in a chosen set of legal services, thereby in some sense being able to avoid head-on competition for a number of important assignments. In the 'good old days', such a position was thought to come more or less automatically, if only you had the right people and provided excellent guidance. I would argue that this is less and less true, as clients become more and more sophisticated in their purchasing processes, even for professional services such as legal advice (eg, T Skjølsvik (2012) "Beyond the Trusted Advisor – The Impact of Client–Professional Relationships on the Client's Selection of Professional Service Firms", PhD Dissertation, Oslo: BI Norwegian Business School).

- The third process pointed out by Lorange and Lowendahl (in Løwendahl, 2005), and which I would argue still is under-focused in many PSFs, perhaps particularly in internally owned or partnership firms, is 'learning from the delivery'. All firms have some kind of archival system that allows them to go back to previous cases and build on previous solutions in their legal practice, and most have some kind of electronically based retrieval system which makes it easier for everyone to access previous cases independently of time and place. The quality of such archival systems, however, varies substantially, and the firm typically needs to have very clear incentives in place in order to get very busy lawyers to commit some of today's potentially billable hours to entering previous experience into an archive for further reference. Or the firm may allow juniors to participate on assignments on a non-billable basis, in order to learn from seniors. In the author's experience, most firms, regardless of PSF-industry, struggle with this problem of knowledge retention and transfer, especially in times when business cycles are at their peak. Paradoxically, it is when you have time to take care of archives and knowledge transfer, that you most need access to this information firm-wide, in order to make new sales efforts as target focused as possible.

3. What is strategy?

If strategy is not plan, what is it? As mentioned above, the core of strategy is choice. It is choosing what to do, which assignments we should give the highest priority now, what we are not going to do, and what should be our primary targets in the medium to long term. In our model 'The VCPs for PSFs-framework' (BR Løwendahl, Ø Revang, and SM Fosstenløkken (2001) "Knowledge and Value Creation in Professional Service Firms: A Framework for Analysis", *Human Relations*, 54(7): 911–31), we described the value-creating processes (VCPs) by the illustration of 'three bubbles and six arrows', as shown in Figure 1.

Figure 1: Value creation processes in PSFs



Strategy is the top bubble in Figure 1, and here we define strategy as the same as 'choice of domain', which is a concept from sociology in the early 1960s (Levine and White, 1961). The choice of domain simply means: the choice of what to deliver (ie, the range of services); to whom (ie, the set of (target) clients served); and, if applicable, where (locally, from one office, from multiple offices, nationally, regionally (eg, the European Union), globally, etc?). This may sound simple but in practice often turns out to be difficult, because choosing what to do also implies choosing what not to do; choosing which clients to serve also means choosing what (types of) clients not to serve. And choosing future target practice areas inevitably also means that some seniors will not see their 'pet projects' on the priority list. Again, ownership models requiring consensus on strategic priorities are likely to lead to more difficulty when making such decisions, not less.

Whereas it may be easy to commit to servicing a new client in a new niche, it may be very much more difficult to get consensus on turning down an interesting assignment, or even worse, terminating a long-term relationship with a client that no longer fits within the strategic portfolio of the firm. And if one particular partner has a strong relationship with such a client, substantial resistance is likely to result.

The second bubble of the figure obviously represents the 'how', and is equally important for both profits, quality, and learning/process development. It is not, however, as strategic in nature as the other two bubbles. The bottom bubble represents the resources of the firm, and although these may include both tangible resources (finances, office equipment, etc) and other intangible resources (reputation, client relationships, etc; also called relational resources in the author's book (Løwendahl, 2005)), it is obvious that the most important resources to a PSF in general and a law firm in particular, are its competences – individual as well as collective. Since individuals, especially senior professionals and experts, have not only competences but also strong opinions as to how their own resources may best be deployed, for the benefit of the clients, themselves, and the firm (typically in that order), we have drawn the two strong outer arrows in the above figure. The left-hand arrow, from resources to domain choice, indicates that the stronger your resource base and the more specialised competences you have, the more freedom you have in choosing your strategic domain. It is not, however, a question of some top management deciding on the domain, then ordering the resources into ranks and allocating them to wherever management might see fit. One good reason why so many PSFs in general and law firms in particular are internally owned is precisely that the best professionals do not take orders about domain choices. They want to be listened to and respected in these decisions, and if they fundamentally disagree and they do not expect conditions to improve in the near future, they are likely to leave for a competitor or set up their own business instead. Hence, in many ways the resource base sets the premises for what domain choices are possible (and desirable) to make. The right-hand out arrow has to do with the processes described above as 'selling a credible promise'. As pointed out by Smets, Morris, and Harvey elsewhere in this book, the reputation of the firm rests fundamentally on the perceptions and evaluations of external stakeholders, and these may represent a fundamental constraint on what the PSF is allowed to do, what kind of assignments it is likely to be allowed to undertake and for which clients.

The shorter arrows in the figure pertain to learning processes, and are therefore more operational in nature. The right-hand arrows indicate that the domain choice (ie, the strategic priorities), informs and sometimes largely dictates the composition of the assignment teams and how they work together for and with the clients (the 'technology'). At the same time, the professionals have to be motivated or rather 'mobilised' to put their best effort into this particular client assignment. One important element of the delivery technology of a law firm is how the assignment team is composed and leveraged, in terms of how many senior partners are involved, how they work together, how many juniors are involved and at what stages of the process, etc. Many firms with relatively specialised practice areas have 'templates' that can be put into action very quickly, given a particular type of assignment (eg, should the firm be called in as part of a due diligence team ahead of a potential merger). This organisational template is what we call 'technology' here, in line with traditional organisational theory, and we argue that many PSFs could improve on both quality (effectiveness) and cost (efficiency) by further refining and enhancing such technology, not in terms of rigid structures, but rather in terms of a set of best practices that can be mobilised when the appropriate situation emerges.

The left-hand arrows indicate that learning takes place both within the resource bubble, as individuals learn and collective experience is accumulated, and as resources are combined into task forces or assignment teams for each particular client assignment. Our research has shown (eg, SM Fosstenløkken (2007) "Enhancing Intangible Resources in Professional Service Firms", PhD Dissertation, Oslo: Norwegian School of Management BI (Currently Norwegian Business School)) that the most important competence development factor in PSFs, regardless of industry, is the nature of the assignments undertaken and the role each individual is allowed to play in each assignment. Professionals learn from each other; from the clients; from working on the assignment itself; from working with the 'technology' of the assignment (especially for larger projects) from external sources when information needs to be collected or advice sought, (for example, from a senior professor in that particular legal practice area) and so on (see eg, SM Fosstenløkken, BR Løwendahl and Ø Revang (2003) "Knowledge Development through Client Interaction: A Comparative Study", Organization Studies, 24(6): 859–79 for an elaboration of these learning processes).

4. Strategy in PSFs – an oxymoron?

Is it really possible to develop strategy for a PSF? Is it not always the client who decides what firm to work with, so that the PSF needs to be alert and flexible in order to respond to whatever needs the client might have? From the above discussion it should be clear that the author's view is that strategy is important for PSFs, and maybe even more important than it is for manufacturing firms. The typical (or rather caricatured) manufacturing firm has a set of production machinery and processes that are relatively fixed investments, and will typically strive to maintain and increase its market share based on these already well-established practices. Major strategic investments, especially those leading to diversification, are typically scrutinised in detail before the investment is made. The owners, via the board of directors, are typically involved when investments are of a large magnitude or represent a significant shift from past practices. As discussed above, PSFs very often have internal owners, and these owners – whether partners or not – are typically directly involved, not only in large and long-term financial investments of a strategic nature, but also in the everyday running of the firm. As a result, it may be very difficult to distinguish between an operational and a strategic decision, and this distinction becomes even more blurred if the strategy is not agreed upon by all key decision makers. A strategy, in terms of common goals and priorities, is crucial in order to secure consistency over time; and the more decentralised the decision making and the more autonomy individual partners have, the more important strategy is. This does not mean that every PSF should have a formal strategy document, detailing what, where, when, and with whom the firm should work in the future. Here, even more than in the manufacturing firm, it is the process of coming to an agreement on strategic priorities that is of importance, not the resulting document.

The examples illustrated at the beginning of this chapter talked about the