

Chapter 9: The role of CI in shaping strategy

By Andrew Hedley

“IF YOU are ignorant of both your enemy and yourself, then you are a fool and certain to be defeated in every battle. If you know yourself, but not your enemy, for every battle won, you will suffer a loss. If you know your enemy and yourself, you will win every battle.”

When Sun Tzu penned *The Art of War* in the sixth century BC, the issues at stake were those of life and death, not business gain or loss. However, the principles of his advice (and indeed that of other military strategy writers such as Carl von Clausewitz in *On War*) are applicable to those concerned with charting a course through the increasingly choppy waters of commerce in the 21st century.

Having a clear understanding of the role that competitive intelligence plays in the strategy process, coupled with a determination to unearth insights that will serve to enhance strategy and create advantage, will help all law firm leaders increase their certainty and confidence in the outcomes of their deliberations. In short, there is a clear opportunity to create competitive advantage through the acquisition and use of high quality competitive intelligence.

The importance of competitive intelligence in law firm strategy development

Preconceived notions are the enemy of the strategist. It is only by questioning and

challenging the *status quo* and historic precedents that robust paths can be created. It is only by imagining a world in which the taken-for-granted rules of competition are turned on their heads that agility, flexibility and responsiveness of current approaches can be stress-tested. This calls for creativity in thought and action, which can be a challenge for many businesses.

Lawyers and law firms are particularly challenged to take a creative approach to solving problems, for several reasons. They have historically enjoyed a highly regulated and protected environment. Through lawyers' legal training and the risk-averse personalities of many who are attracted to the profession, they learn to perceive past decisions as those that govern future decisions. This respect for precedent has led to a hard-wired culture within both the legal profession and the larger legal services industry that values highly old ideas and behaviours and distrusts new ones that have not yet been tested.

Like a parachute, the mind works far better if it is open. Unfortunately for law firms, the scarcity of parachute thinkers is a major pinch point in strategy development, innovation, a willingness to adapt to new ways of working and a redefinition of the competitive environment.

Traditionally, firms have relied upon, and promoted, the logical, incremental, process-oriented personality in terms of management and decision making – that is, people with a strong left-brain orientation. Conversely, the

right-brain, lateral, creative thinker has an uphill struggle in many business situations.

For longer-term success, a balance is needed. Whilst right-brain thinking is vital in the generation of ideas, the left-brain process approach is crucial to their testing, development, selection and implementation in law firms that are increasing in size, complexity and footprint year on year. This is not a call for increased bureaucracy but rather for sensible and prudent consideration of opportunities, risks, challenges, resources, competencies, competitor responses and attractiveness to clients.

Any process should follow the overarching guideline of being as *complex as necessary but as simple as possible* without losing sight of the need to be comprehensive. What this means in practice is that strategic analysis and intelligence gathering should focus on providing a good understanding of:

- *Resources* such as core competencies, skills, strength in depth, talent management and geographic reach. Where do we need to build (or shrink) in terms of people, places or skills?
- *Expectations, objectives and power* of partners including aspirations, ambition, culture, governance and decision making. What sort of firm do we want to be part of and what sort of work do we want to do?
- *The environment* faced by the business including clients, sectors and competitors on a timescale that is relevant to the strategy horizon. Where will future competitive advantage come from, where are the threats emerging and what will happen to current and future clients and sectors?

A challenge for many organisations is the ability to filter and refine the multitude of

information sources (both internal and external) that are available to them. This is vital if coherent thinking is to prevail over an inherently *ad hoc* approach. Intelligence must be marshalled to create meaningful analysis, providing robust forecasts and the development of a range of scenarios (with accompanying strategy toolkits charting potential courses of action).

Clearly scenario planning and sensitivity analysis techniques should accompany any well-informed strategy process but these are an anathema to many law firms. Why is this? Perhaps because such an exercise might illustrate unacceptable risks or extreme exposure to economic sensitivities on which the proposed strategy could founder. This attitude is foolhardy at best and plain reckless at worst; burying one's head in the sand is not a proven method for avoiding disaster.

Of course, one should not constrain competitive intelligence to simply the competitor sphere. As we demonstrate later in this chapter by using thinking based on the five forces model, competitive forces extend much wider than just to competitors in the impacts those forces can have on a law firm's success. By looking at competition more broadly at an industry level, and not just at the rivalry between individual competitors, we can identify other drivers that impact our competitive performance and incorporate those into our strategic thinking and planning.

Always think about the strategic triangle

Many law firms fail to appreciate the importance of competitive intelligence in terms of client-relationship development and revenue growth.

Right from the first opportunity to service a client, a clear understanding of competitive position and competitor

strengths and weaknesses will play a part in winning new business as well as being fundamental to staying one step ahead in offering services that enhance current client relationships and provide opportunities to broaden and deepen the client franchise. Picking up on this theme, it can be argued that competitive advantage flows from managing the interplay of three things: the client, the competition and the firm.

We need excellent competitive intelligence to understand all three and devise an effective approach to managing and monitoring each individually, as well as their interplay. However, all three are moving all the time and we only have direct control and influence over our own firm.

A variation of a model first suggested by strategy guru Kenichi Ohmae can be useful in framing the challenge that firms face and which enhanced competitive intelligence can help them to overcome. The strategy triangle gives us a simple framework within which to consider the impact of competitive intelligence on business success (see Figure 1).

It must be the case that, when a client has legal work to source, he considers those firms likely to be able to service his needs

through a comparative lens – what will each give me and at what price?

In order to choose, the client needs to make a comparison. To make this comparison he needs to understand two things – what a firm can offer and why this offer is better (in a way that is important to the client) to that promised by the other firms competing for the same work. It follows that a firm that understands the points of difference on which a client will choose has an advantage in being able to invest in being better at the things that matter most.

Using CI and client preference to create service strategies

Having an in-depth understanding of the other firms competing for a slice of the action is hugely important. These are the specific players your differentiation strategy needs to centrally consider, since it is with this relatively small group that you will fight most of your battles, win most of your clients and inevitably lose a few skirmishes along the way.

Of course, taking this competitive view of the market allows firms to develop much more focused, tactical responses to

specific opportunities. To be effective at this level often means differentiating through being one per cent better at a host of small things rather than a couple of silver-bullet differentiators that many firms seem to search for endlessly but that are as elusive as the pot of gold at the end of the rainbow. When combined, these small differences allow your firm to stand out from the pack in a way

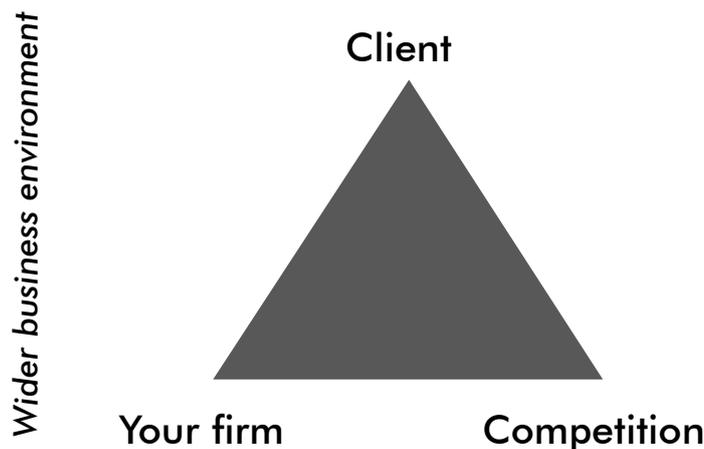


Figure 1: The strategic triangle

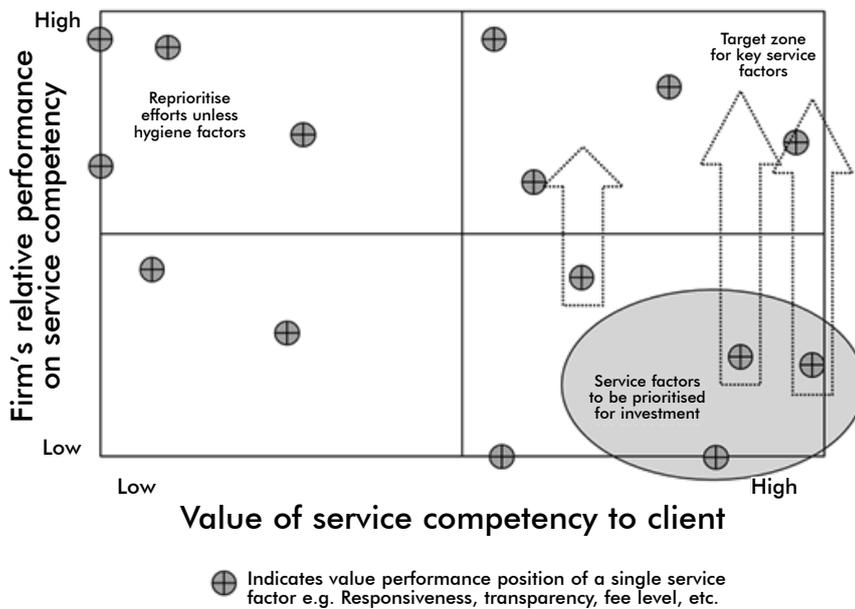


Figure 2: Mapping service competencies to client value

that is valuable to the client and hard for competitors to replicate.

In this approach to differentiation there is no stand-out single point of competitive advantage but rather a host of smaller factors that, when combined, make the firm simply better than the pack with which it is competing.

To create enduring success firms must have excellent competitive intelligence. In my experience, too few firms undertake regular competitor analysis, benchmarking their performance across a range of variables – both financial and non-financial. Moreover, firms need to ensure that their competitive intelligence is always highly relevant to the decision at hand, allowing decisions to be made quickly and with high levels of certainty.

There has been a reasonable amount of research looking at a wide range of purchase criteria within groups of clients. These studies have looked at the relative

importance of various law firm service attributes and benchmarked the clients' views of how law firms performed against them. By linking importance to performance, it is possible to identify areas where clients' needs are satisfied (or even over-satisfied in some cases) and those in which improvements would be both desirable and create advantage.

Moreover, the relative weight (or score) attached to each of these service factors provides a basis for differential investment decisions aimed at delivering improvements in the areas of most significance to clients. It also allows gap analysis to identify potential opportunities for differentiation as well as areas that need to be strengthened. This approach can be mapped as seen in Figure 2, with service factors being conveniently analysed on the basis of client importance and relative competitive performance.

On the face of it, the service factors that should be prioritised for investment and

improvement are easy to identify – they are those in the bottom right-hand corner of the chart in Figure 2. These are important to the client and are areas in which the firm has a relative competitive disadvantage. While this is correct, there is a further nuance to consider.

In the top left-hand corner of the grid are those factors that are of low importance to the client but on which the firm performs strongly. It would be easy, at least with a superficial view, to come to the conclusion that these are factors that can be readily abandoned. Saved resources could then be diverted to improve performance in areas of more apparent significance.

On closer examination, however, experience suggests that there are four types of service factors that fall into this ‘high competence/low client value’ categorisation, only one of which can be eliminated without careful further consideration:

1. *Historic vestiges* – there will be some factors that are historic and that fall into the ‘way we have always done things’ category. They will not be hugely symbolic from a cultural perspective and will often be vestiges of days gone by. These are the service factors that can be dispensed with.
2. *Professional status* – in the same quadrant there will also be factors that are highly important to the psyche of the lawyer. These will be concerned with professional status and the accepted norms of the legal professional, the self-esteem of the lawyer and the cultural environment of the firm and its jurisdiction. Aspects of the unique culture of the firm may be invested in these factors. Provided they do not conflict with modern business practices and so undermine the client experience, it may well be that they

should be maintained. Indeed some will fall into the next category.

3. *Hygiene* – ‘hygiene factors’ is a phrase used to describe aspects of the product or service that do not create advantage but that are fundamental to staying in business. They are the ‘table stakes’ of being a law firm. The example often used to illustrate the importance of hygiene factors is airline safety. Very few people select their airline on the basis of its safety record – it is assumed to be excellent. They use factors such as timetable, flight duration, service and price. These are the dimensions on which airlines compete and seek to differentiate themselves. However, any systemic failure on the safety front will put the airline out of business. Safety moves from being a non-issue to being the most important issue by a significant margin. So it is with law firms in terms of hygiene factors such as being an excellent lawyer. Recognise and maintain excellence in the service dimensions in that top left-hand corner.
4. *Education and appreciation* – finally there may be some service factors that fall into what I term the ‘education and appreciation’ category. These are factors that add value but often the client does not understand or appreciate them. In this sense they will often be enablers that provide the foundations for other more visible service factors to flourish. They are hidden gems.

In searching for additional sources of added value, firms will often seek to invent new approaches or techniques. In some cases, simply bringing to the surface and communicating effectively the positive benefits of aspects of the current service mix will move them in the mind of the client to the right on the grid given a

deeper and fuller appreciation of their importance.

Recipes not ingredients

I have a view of competitive advantage that is based on recipes not ingredients. By this I mean that if you asked any competent strategist to list the things that are important in client choice, they would all produce broadly similar lists. These are the ingredients. The question, however, is not about ingredients, it is about recipes – how they are put together to produce an intoxicating dish or a bland mish-mash. High-quality competitive intelligence is needed to ensure that your recipe mix is more appealing to the client than that offered by competitor firms since it allows you to understand areas of relative competitive strength and weakness.

If one were to list all of the performance criteria in rank order and then score firms in

a ‘weight class’ against them, everyone would score highly on the most important criteria. It is not until the lower reaches of a ranked list that significant differences in performance and approach start to appear. Of course it is important to separate areas where firms are just different from those that are ‘differences that matter’ – by which I mean things that are determinant rather than just different.

Competitor analysis does not equal competitive analysis

There is a real danger that the broad field of competitive analysis is reduced to a narrow focus on the activities of current competitors. This means that potentially significant forces on a firm could be overlooked with far-reaching consequences.

There are more facets to competitive intelligence than the already formidable task of gaining a thorough understanding of competitor activity, plans, strengths and

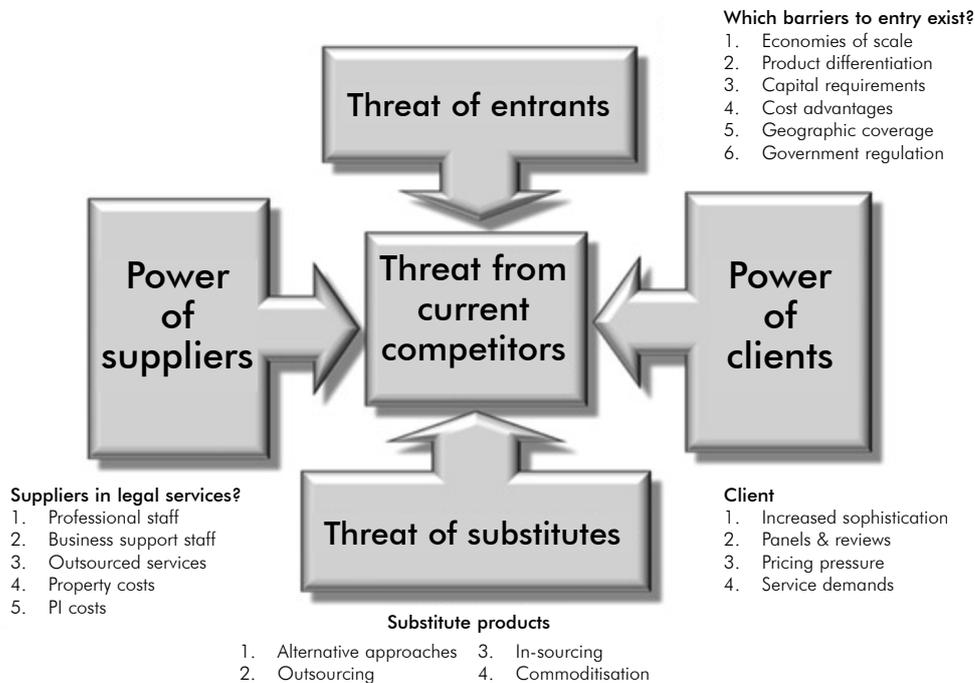


Figure 3: Five forces model

weaknesses. For our purposes I will use the five forces model (see Figure 3) as a lens through which to assess the competitive pressures facing the legal sector in addition to those posed by current competitors.

This model was first proposed by Michael Porter as a way of analysing industry competitiveness and can be applied to the legal services sector. It considers the interplay of five different forces, which each affect overall competitiveness and ultimately the return on investment of players in any industry.

Critics of the five forces model may say that it encourages confrontational thinking with clients and suppliers being presented as adversaries to be overcome. This is a simplistic view of the approach – the model does not suggest that the relationship with other parties cannot be developed in a spirit of business partnership but rather it is a recognition that each of these forces creates competitive pressures that need to be understood at the strategic level and responded to at the tactical one.

Taking each of the forces in turn (aside from current competitors which have already been considered), we can review the role that competitive intelligence has to play in ensuring that a firm fully understands the current and future issues at stake and is consequently able to make the most appropriate strategic choices.

Threat of entrants

For a non-law firm, entering the legal services market has been historically extremely difficult at best and in most cases impossible. This was principally due to regulatory regimes that restricted access to qualified firms and individuals governed by rules of professional conduct and local bar or law society regulations. There is also, for a portion of the work, the intellectual requirement to understand and advise in

some extremely complex areas. However, it should also be clear that there are areas of legal practice that are not complex and in which the use of protectionist practices restricted new entrants to the market to the ultimate detriment of the client.

In many jurisdictions there are active moves to deregulate the legal profession as economies operating in global markets recognise the inherent inefficiencies of any unnecessarily protectionist regimes. This can be seen most sharply in the UK. When the Legal Services Act comes into full force in October 2011, England and Wales will have the most deregulated legal services industry in the world, allowing external investment in law firms and the establishment of law firms by non-lawyers.

Interestingly, aside from the ‘none shall pass’ barrier imposed by regulation, the other barriers to entry are not significant for a corporate entity looking to enter the legal services market. The differentiation of the core legal service is low within firms operating in the same markets, skills are generic within the profession and so, by the act of hiring professionals, an organisation becomes equipped instantly with these core competencies.

Differentiation is being forged by firms with an excellent client-service orientation and with the ability to leverage their legal skills through the effective use of IT. There are many potential entrants to the market that are highly competent in creating differentiated offerings on the basis of client service and IT leverage.

This is a very significant competitive threat to incumbent firms and it should be expected (in legal markets that are becoming increasingly deregulated) that there will be powerful new entrants. It appears likely that the initial wave will target the high street (or main street, to use the US vernacular)

where revenues are large, there is an opportunity to build a powerful consumer brand, the complexity of legal work generally undertaken is not challenging, and the model lends itself to automation and a service-led approach.

However, firms operating in more commercial areas would be very unwise to be complacent. It should be anticipated that, having cut their teeth on the high street, these new entrants will move into mid-market commercial law over time.

Horizon scanning will be increasingly important in the run-up to 2011 and beyond. Firms will need to be better at anticipating and responding to possible scenarios (an approach discussed later in this chapter and described in much more detail in Chapter 11 of this report) because the rate at which new competitors will develop products, enter new markets, change strategies and address market opportunities will be much faster than anything that incumbents have experienced before. Service life cycles will shorten and firms will need to be innovative to prosper.

Scenarios can be developed to anticipate how a firm would react to changes in the economic, political, technological, environmental, regulatory or social regimes in the geographies in which they operate. Scenario planning can be highly effective in anticipating potential future changes, mapping options available to the firm and making plans for actions should these anticipated events unfold. Interestingly, there are few law firms in my experience that have a formal horizon scanning or scenario-planning approach.

Threat of substitutes

Competitive intelligence also needs to uncover the dangers posed by substitute products. Gaining an understanding of the

potential threats coming from outside the legal services industry will be increasingly important as deregulation opens doors to organisations that, instead of competing with law firms head to head, seek to replace the services of the lawyer with a different service altogether.

A trend for non-lawyer organisations to offer new services that replace those that have been the staple of many traditional law firms is likely to be a fast-growing competitive threat. Identifying the areas that are likely to be most under attack from substitute products is vital. The firm must then make a choice to either build entry barriers or diversify its service mix to reduce risk. This will be an important area in which competitive intelligence can contribute to the strategy of firms.

Power of clients

The client is king and, quite simply, wants its services delivered better, more quickly and more cheaply every year. Firms need to be able to understand these trends and take measures to reshape their businesses to be competitive in this new paradigm.

Enduring downwards pressure on fees and moves to new charging models aimed at creating more certainty for the client (primarily through fixing the maximum fee exposure in one way or another) will mean that firms need to shift their operating models from ones that drove profit by spending as much time as possible on a matter to one that is predicated on spending as little time as possible on that same matter in order to maximise profit.

Understanding the ways in which this might be achieved, how other firms are responding to these pressures and how client requirements will continue to develop are topics that are central to an effective competitive intelligence function.

Power of suppliers

Within the legal services sector, supplier pressure comes from the main cost centres of the firm – people, premises, professional-indemnity cover and technology.

Understanding how these pressures are likely to change in the future allows a law firm to put in place good contingency plans and to ensure it gets its timing right in terms of implementation.

For example, over the ten years in the run-up to the start of the current recession, growth in law firm turnover has been matched by growth in associate salary expectations and competition between firms, which has driven salaries to unprecedented levels. Consequently turnover growth has not been reflected in the sort of leveraged partner profit increases that one might expect.

The pressure of the recession, in which the market is constrained by demand rather than by supply, means that firms have accepted reduced and often fixed fees.

The traditional model operated on the basis of an associate lockstep in which lawyers received a salary raise each year based on year of post-qualification experience. This worked well in a market founded on the hourly rate model (where increased salary equalled increased hourly rate equalled increased profit) but raises serious profitability issues in one that is moving to fixed fees (in which increased salary means decreased profit unless there is demonstrable further added value to justify the rise). Consequently many firms are now moving away from associate lockstep to an approach that is competency-led.

However, a law firm must take great care to model these related changes in pricing, productivity and compensation before implementing them so as to understand very well their reciprocal implications. Firms that replicate in kneejerk style competitors' fixed-fee prices before understanding

the concurrent implications of these new models do so at their own peril. This confluence among pricing, productivity and compensation is an important area in which long-range CI can contribute significantly to the firm's growth and prosperity plans.

Using CI intelligently

A comprehensive competitive intelligence programme – combining client listening, competitor analysis and market evaluation – should guide strategic thinking and inform strategic choices.

A world in which no firm invests in competitive intelligence is akin to the first sentence in Sun Tzu's statement: "If you are ignorant of both your enemy and yourself, then you are a fool and certain to be defeated in every battle." This has been the historic *status quo* but the position is fast changing. During this transitional period and beyond, there will be significant commercial advantage to be gained by those that can achieve a fully rounded perspective from which to develop their strategy.

Andrew Hedley is the founder and principal of Hedley Consulting, a boutique consultancy advising the leaders of law firms on strategy, business development and change projects. In addition to project assignments, Andrew is a sought after strategy group guide, partner retreat speaker, workshop facilitator and coach. He is a contributor to specialist management publications, a regular conference speaker and the author of Developing Strategic Client Relationships (Ark Group, 2008). Andrew can be contacted at andrew.hedley@hedleyconsulting.com.