

# "It's alright Ma, I'm only bleeding": Asia-Pacific exceptionalism and BigLaw global M&A

By Patrick Dransfield and David Miles

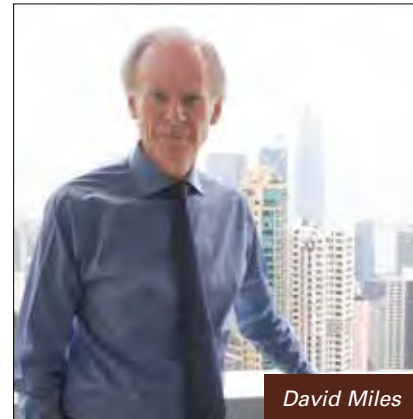
The 2015 results for Asia recently published by Mergermarket throw up some interesting statistics. In a record year for the value of deals, they confirm what we have long been arguing: namely that Asia (excl. Japan) is something of an anomaly for BigLaw, and also that it is the rise of the powerful local independent firms that the global firms need to be increasingly wary of.

Firstly, how do the Mergermarket statistics support our argument regarding the exceptionalism of Asia (excl. Japan)? If one compares the top 10 deal firms by value on a global and also European basis, nine out of 10 names recur: namely (in alphabetical order): Cleary Gottlieb; Cravath Swaine & Moore; Freshfields Bruckhaus Deringer; Latham & Watkins; Skadden, Arps, Slate, Meagher & Flom; Sullivan & Cromwell; Wachtell Lipton; Weil Gotshal; and White & Case.

The only law firms to appear in both the global top 10 law firms list and the Asia-Pacific (excl. Japan) top 10 are: Freshfields Bruckhaus Deringer; Skadden, Arps, Slate, Meagher & Flom; and Sullivan & Cromwell. However, there are four local independent firms in the top 10 (and five if you include King & Wood Mallesons, who for these purposes we see as more local than global) and 10 in the top 20. Much of this is driven by Chinese acquisition, and it is these local firms that the Chinese companies are for the most part turning to. Who would have thought that Commerce and Finance Law Offices would be at number three in terms of total deal value in 2015 in Asia-Pacific (excl. Japan)? Now, of course annual figures can throw off some anomalies, but there is no denying that these local firms are making an impact on deals which the global firms might otherwise have thought was more their domain. We don't see this trend reversing. If anything, we think it's likely to be a trend that we will see continue this year and beyond.



Patrick Dransfield



David Miles

## Asia-Pacific – League table by value 2015

Rank	Company name	Value (US\$m)	Deal Count
1	Freshfields Bruckhaus Deringer	202,648	59
2	Skadden Arps Slate Meagher & Flom	152,908	56
3	Commerce and Finance Law Offices	121,972	19
4	Linklaters	114,403	55
5	Herbert Smith Freehills	107,250	90
6	Kim & Chang	90,120	87
7	King & Wood Mallesons	82,304	137
8	Guantao Law Firm	76,928	7
9	Sullivan & Cromwell	76,723	18
10	Woo Kwan Lee & Lo	75,151	2
11	Davis Polk & Wardwell	67,710	30
12	Latham & Watkins	60,062	33
13	Zhong Lun Law Firm	51,685	73
14	Allen & Gledhill	49,212	24
15	WongPartnership	48,121	28

Source: Mergermarket

However, some of the top global firms still have much to celebrate. Freshfields Bruckhaus Deringer will be happy that they remain dominant. And other top US and English firms will be content. But there's no sign of Clifford Chance, which is a surprise. However, the real concern must lie in the tiers of international firms

below these. Not one of them is in the top 20 after all their investment and scaling up in Asia!? So, will we see them looking to further strategic alliances or federation type mergers to break into the market more effectively? It seems it's only likely to be of game-changing benefit if they can partner with one of the top local firms.

What must Dentons be thinking that in such a strong Chinese year Dacheng doesn't feature at all?

Global firms have more to celebrate in Japan. One might expect the top slots to be taken by leading Japanese firms, but only four are in the top 15. The top global firms are holding their own, but again, no real impact by the second and lower tiers.

So once again, across the board, Asia challenges some of the more typical assumptions applied in the western legal markets. In Asia, being global or international doesn't guarantee the biggest deals.

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*David Miles is the former Partner, Executive Committee member and Chairman of Asia for Latham & Watkins. He is currently Chairman of Asia Community Ventures.*

### Japan – League table by value 2015

Rank	Company name	Value (US\$m)	Deal Count
1	Mori Hamada & Matsumoto	32,650	90
2	Nishimura & Asahi	23,065	65
3	Nagashima Ohno & Tsunematsu	21,930	41
4	Sullivan & Cromwell	21,152	13
5	Freshfields Bruckhaus Deringer	20,672	10
6	Debevoise & Plimpton	18,805	7
7	Skadden Arps Slate Meagher & Flom	16,457	10
8	Simpson Thacher & Bartlett	15,510	5
9	Jones Day	12,142	6
10	Linklaters	11,610	12
11	Clifford Chance	10,898	12
12	Herbert Smith Freehills	10,291	11
13	Morrison & Foerster	9,207	17
14	Ashurst	8,892	7
15	Anderson Mori & Tomotsune	7,939	35

Source: Mergermarket

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# ‘Stuck in the middle with you.’ Value, leadership and legal services strategy

Photo: Patrick Dransfield

by Patrick Dransfield, Publishing Director of ASIAN-MENA COUNSEL

Economist and business guru Michael Porter wrote that business strategy should target either cost leadership or superior quality. He urged companies not to be ‘stuck in the middle’. A company must either gain a cost advantage or effectively market product differentiation. Business failure resulted from falling between the stools of cost leadership (or ‘value’) and superior quality.

Many, including John Kay of the *Financial Times*, consider the idea that one must choose between cost leadership and superior quality to be nonsense. And I agree with them. Michael Porter’s ‘either’ competitive price ‘or’ superior quality scenario fits squarely into the logical tautology of the two-horse race: of course, there should be (and often is) the third option of superior quality *AND* cost effectiveness.

However, unconsciously, Porter’s tautological position is dominating the discussion regarding quality in the legal services sector. The much-touted argument goes that you are either in the game of delivering ‘bespoke’ legal services, for which companies pay a premium, or providing a commoditised service at a discounted price.

## The blind leading the blind?

I have lost count of the times that I have heard senior partners argue that their service provision is indeed unique, unlike their rivals just across the lift lobby. Few, it seems, are claiming to be comfortable in the ‘squeezed middle’ – the delivery of superior commoditised legal services at a cost-effective price. This is odd because the vast majority of legal work is in this middle area. Therefore, I have decided to go on a quest and garner opinions regarding this conundrum from senior practitioners from the whole gamut of legal service providers, including Kirtee Kapoor of US-originated international law firm Davis Polk & Wardwell; Dr Mohamed Idwan Ganie of Indonesia’s law firm Lubis Ganie Surowidjojo; Nick Seddon, Partner at consultancy Beaton Capital; Kirsty Dougal of ‘new law’ provider of tech-enabled legal services Axiom; and Paul Smith, Chairman of United Kingdom-originated international law firm Eversheds.

### **Kirsty Dougan, Head of Asia, Axiom**

The choice between cost and quality is a fool's choice, because it simply needn't be made. In fact, there is a term for offerings that lay at the cross-section between the two: value.

When the objective is value (better quality at a reduced cost) it requires not only great legal talent, but also change management, best practices, process re-engineering, technology and the ability to harmonise all of these things in a (new) legal service delivery model that stands up to intense scrutiny.

Let us explain further: most general counsel have historically seen two components of their job – managing risk versus managing cost – at odds with one another. That way of thinking finds its roots in the industry's obsession with pedigree, associating quality control with the resume of the lawyer doing the work. Pedigreed lawyers are expensive and so, says this logic, if you have less money, you're going to get less pedigree and more risk. If a GC feels that they are being asked to make a zero-sum trade-off between cost mitigation and risk mitigation, they will always choose risk mitigation.

But the well-kept secret of the legal industry is that the trade-off isn't necessary to make at all. Axiom's Managed Services offering breaks the paradigm for the way traditional legal work is delivered, applying process innovation (tools that drive standardisation and consistency of risk positions) and sophisticated technology in support of experienced legal practitioners. As such, Axiom delivers superior economics through a combination of improved productivity, including reduction in rework and errors, better alignment of work with seniority of the team members and a utilisation of lower cost locations. Importantly, this balance is achieved without forcing clients to make the cost/risk trade-off; the methodologies and tools that we use simultaneously improve both risk and cost.

As a result, neither our firm, nor our clients are 'stuck in the middle'. Instead, we're at the intersection of a new path forward.



banish it back in to its corner as being far too difficult to deal with. Now I can look at the law from outside I can see why I did not want to deal with the 'd' issue.

First I need to take issue with the assumption that differentiation equates to quality. Most clients will tell you that for international law firms, quality is a given, so isn't a point of differentiation at all.

Factors of differentiation might be size (the biggest), focus (the boutiques), geography (the pioneers), business model (the innovators) or reputation (the brand leaders). The common factor with all of these is that, unless you are extremely close to achieving your chosen factor of differentiation, getting there from where you start is likely to be extremely difficult. If you are mid-sized and want to be the biggest, you have to grow. If you are full service and want to focus, you have to shrink. If you are not in the geographies you need to be in, you need to expand. If you are a traditional big law firm and you want to become a new law firm, you have to break the old model. And if you have an average reputation and want to be a brand leader, you have major sacrifices to make.

So if you cannot differentiate, then you are "stuck in the middle" and, as Michael Porter said, you will have to compete on price.

### **Paul Smith, Chairman, Eversheds**

The traditional law firm model is based on a number of partners combining as a firm to work for their clients with junior lawyers and supporting staff, sharing the profits at the end of each financial year.

The traditional model is increasingly under threat, especially from large buyers of legal services such as multi-national companies who regard law firms as 'suppliers' just like any other suppliers of services. New structures are set up as companies rather than partnerships, employing a mix of lawyers and other professionals. Some law firms have embraced these changes and are approaching the market in new ways, whereas other firms resist the changes and hold that common sense will prevail and the old model will continue to prosper.

A useful case study is that of US company Tyco which operates globally and the relationships it has with its primary legal provider which is international law firm Eversheds. Tyco used to use hundreds of law firms throughout the world working on hourly rates. There was no control on cost, no overview of the services being provided and no way of assessing whether the legal work was being done in a cost effective manner. In Europe, the Middle East and Africa, Tyco was using 280 different law firms in 35 countries. In a joint exercise involving the legal department and the procurement department, they invited 12 firms to tender for their legal work, with the aim of appointing one firm to handle most of the work, with the flexibility to appoint other firms if the



### **Kirtee Kapoor, Partner, Davis Polk & Wardwell**

I believe no service provider can sustain their client relationships unless clients get 'value' for what they are paying. Neither premium nor commodity pricing is the answer in my mind – value pricing is. The art and science of value pricing is where much of attention should be focussed.

### **Nick Seddon, Partner, Beaton Capital**

We at Beaton are more in the Porter camp. When I was in private practice, the issue of differentiation was the elephant in the corner of the room. The challenge of how to differentiate would occasionally appear in the front of my mind but I would quickly

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single firm did not have the capability to handle a particular matter. The firms were asked to propose a fixed fee to handle all the work which was defined in the contract. The firm also had to commit to reduce that fixed fee by 20 percent in the first year and by 30 percent in the second year of the contract. Work done outside of the scope of the contract on more complex matters was to be done on the basis of discounted hourly rates.

The contract with Eversheds has been renewed four times and the cost of the 'in-scope' work has been reduced by over 50 percent. As Eversheds has gained the trust of Tyco, now over 75 percent of the work is carried out on the more profitable 'out-of-scope' work. Tyco has saved many millions of dollars in external legal spend and the project is very cost effective.

Following the establishment of the relationship with Tyco, Eversheds has set up many similar models with international companies following the Tyco model. Some of these models have bonus arrangements to ensure that quality standards are met. One arrangement provides that Eversheds can receive between 80 percent and 120 percent of its invoice value depending upon client feedback. This reflects a high quality legal service being recognised whilst at the same time being done in a cost-effective way. Such arrangements has given Eversheds a substantial competitive advantage compared to more traditional law firms.

**Dr Mohamed Idwan Ganie, Managing Partner, Lubis Ganie Surowidjo**

All services and work products must meet the required quality standard and must be offered at the right price. This applies equally to commoditised and bespoke services. Quality means to us 'fit for

the purpose' at the right cost/price, and ultimately must lead to client satisfaction.

However, there cannot be any consistent quality and client satisfaction if quality is not properly managed. The economic reality is that a firm can only provide external quality services to clients if its internal processes also fulfill required quality standards. Quality drives productivity and productivity in turn is able to lower the cost of production, without compromising on quality. As part of 'total client experience' leading either to client satisfaction or dissatisfaction, we must provide the right service or product. But we must also live up to the standards of superior service. Not only does what we deliver matter, but how it is delivered, too.

The 'value for money' principle must also apply in the legal industry, although many firms simply don't know how to reduce fees but increase profitability. This applies equally to commoditised and bespoke services. Bespoke services can't be the justification for unpredictable or excessive fees actually caused by inefficient service delivery. Especially highly leveraged, large firms with a high cost base must figure out how to turn their big size into economies of scale for the benefit of the client and also for their firm's own profitability.

In conclusion, yes, I agree, it is the right quality and it is the right price. And it is ultimately the resulting client satisfaction, based on the total client experience with a firm, that makes clients want to come back next time or makes them recommend that firm to others through word-of-mouth, if that is a firm's ultimate business objective. For us, it is.



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