



# Compete and win: Strategies for mid law

Acting 'dynamically' is way forward

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Time & billing

# It's now 12 years since the economic crash, yet mid-tier law firms have never been under such intense pressure from all sides as they are now. They have to act. But how?

We know the environment is getting increasingly hostile. Competition from big law remains fierce, even as alternative service providers are proliferating. In-house counsel continues to take work away from outside counsel, and the talent that mid-law traditionally nurtured and developed has never been so uncertain.

It all paints a dispiriting picture for mid-tier firms, who genuinely risk extinction if no remedy can be found to counter these multiple mounting threats.

## HOWEVER ALL IS NOT LOST

This paper sets out a golden opportunity for mid-tier firms which will make the future considerably brighter if they take the initiative to act. In it we:

- Outline the threats mid-tiers face
- Identify why some firms are outperforming others and breaking away from the pack
- Explain what differentiates 'dynamic' firms from their 'static' peers
- Describe how these 'dynamic' behaviours can be successfully applied by mid-tier firms and why now is the time to do it

In summary, this paper plots a course which explains how – by being proactive and dynamic – mid-tier firms can differentiate and compete successfully in today's challenging legal environment.

# 1. The threats faced by mid-law

## 1.1 Big law

In a globalized world, law firms are continuing to merge. They've good reasons to do so. Consolidation provides clients with a broader range of services; achieves some back-office economies of scale; extends the geographic footprint in line with the growth ambitions of clients; and gives access to new markets. It also has the potential to elevate firms into global brands.

## 1.2 Alternative service providers (ASPs)

At the same time, demand for alternative legal services providers is growing. According to a 2016 survey by Deloitte, more than half (52%) of in-house legal departments were already considering buying legal services from non-traditional firms.<sup>1</sup> Alternative providers are threat because they commoditize areas of law and through outsourcing and automation can appear to offer a cost effective service which is more attractive to clients monitoring legal spend. If mid-tiers can't effectively demonstrate the value they provide, they increasingly risk losing out to alternative providers.

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1 <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-future-trends-for-legal-services.pdf> Research consisted of 243 web-based surveys and 30 long-form qualitative interviews. Data was collected between September 2015 and February 2016.

2 [http://www.altmanweil.com//dir\\_docs/resource/BD1D63C3-3DD0-4FE4-BCAC-AD6F59CCC65A\\_document.pdf](http://www.altmanweil.com//dir_docs/resource/BD1D63C3-3DD0-4FE4-BCAC-AD6F59CCC65A_document.pdf)

## 1.3 In-house counsel

The trend for in-house legal teams to grow may be slowing but it is continuing. According to Altman Weil's 2017 Chief Legal Officer Survey<sup>2</sup>, 38% of law departments plan to add in-house lawyers in the next 12 months while only 8% plan to decrease the number of lawyers on the staff.

This reflects the reality that clients still want to streamline legal spend by holding on to work that would otherwise have gone to outside counsel. The Altman Weil survey goes on to note: "Outside counsel spend is the only category in which more departments cut their budgets in 2017 than increased it."

Notwithstanding, the survey also recorded "a noteworthy turnaround" in predictions about future outside counsel spending. When asked about their plans for 2018, 40% of law departments indicated they hoped to increase their outside budgets this year as opposed to the 33% that anticipated a decrease. This is the first time since 2007 this has happened suggesting that in-house teams may have optimized what they can take in-house.

As to what CLOs want from outside counsel, the top service improvement they'd like to see is greater cost reduction (51.3%), followed by improved budget forecasting (46.2%) and non-hourly based pricing structures (38.5%). Mid-tier firms take note.

## 1.4 Restless clients

Relatedly, a considerable challenge is that a lot of clients think that conventional law firms no longer meet their business's needs. For example the Deloitte survey revealed that the majority of participants (55%) were conducting a significant review of their legal supplier or considering one.<sup>3</sup> A significant issue is a lack of confidence in the cyber security savviness of law firms. They're also looking for more pro-active knowledge sharing. Traditional law firms are seen as trailing other professional services firms in these technology related areas. Deloitte's research showed that legal services purchasers want better and more relevant technologies to be used and shared on integrated platforms.<sup>4</sup>

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3 <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-future-trends-for-legal-services.pdf>

4 <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-future-trends-for-legal-services.pdf>

5 <http://www.lawpracticetoday.org/article/why-lawyers-leave-law-firms-and-what-firms-can-do-about-it/>

## 1.5 Attracting and keeping talent

Finally, legal recruitment and retention is becoming a bigger issue. A recent survey<sup>5</sup> of nearly 400 attorneys who'd left at least one employer found that the main reason for going (cited by 34%) was the intense time demands of the job and the stress of balancing that with the desire for 'family time'. Company culture can also determine a firm's ability to retain talent, with 'toxic culture' cited as the second biggest reason for people leaving their law job (19%). Perhaps the most interesting finding was that salary is not the most important factor. Only 16.5% of respondents said they would probably or definitely have stayed for more money. This in fact provides mid-tier law with an opportunity – if they choose to take it.

However, in reviewing data from the last 11 years, the overall picture remains alarming.

- The average lawyer is now billing 156 fewer hours per year than they did in 2007 – that's equivalent to one month's work<sup>6</sup>
- Demand for legal services has not grown... yet supply has increased 11% over the last 7 years<sup>7</sup>
- The net result is a 'dog-eat-dog' environment, where one firm's gain is another firm's loss

## 1.6 Mergers & acquisitions

According to Altman Weil MergerLine, a reputable industry resource well known for tracking law firm mergers and acquisitions, there were 102 U.S. law firm combinations in 2017, the highest annual total since this data has been tracked. As stated in the latest report, not only is there a newly intensifying appetite for larger combinations looking for new ways to differentiate themselves from competitors, there is an ongoing interest in acquiring small, high-quality firms to buy market share. In fact, in 2017, M&As involving law firms with 21 or more lawyers represented only 20% of total deals, while 80% were acquisitions of firms with 2 to 20 lawyers. This is to say that the mid-tier firms are feeling the pinch and squeeze both from the smaller firm bottom as well as the larger firm top.

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6 Thomson Reuters Peer Monitor

7 ARA and US census data

## CHART 1 – GROWTH IN DEMAND FOR LAW FIRM SERVICES



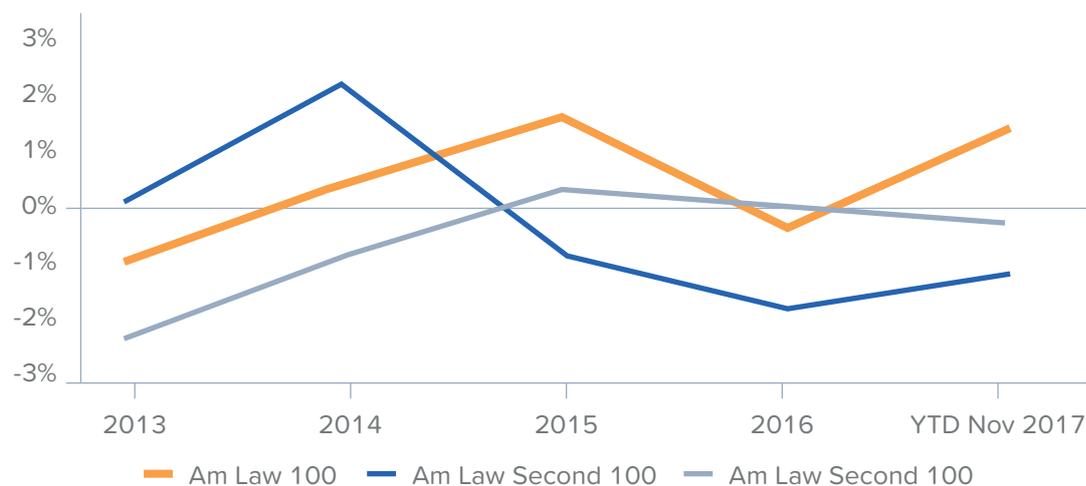
Consequently, Peer Monitor’s 2018 report on the state of the legal market forecast:

- Sluggish growth in demand
- Continued decline in productivity
- Modest rate increases
- Continued downward pressure on realization
- Continued upward pressure on direct expenses

It looks increasingly clear that against this challenging backdrop, mid-tier firms need to do something different to survive. But what? In the next section we’ll look for clues in how AMLAW 100 firms are responding to these same pressures – and beating them.

## 2. Bucking the trend – dynamic vs. static

CHART 2 – HISTORIC SEGMENT DEMAND GROWTH



All timekeepers  
Billable time type; non-contingent matters

Source: Thomson Reuters Peer Monitor

Even in this adverse climate, research<sup>8</sup> is telling us that AMLAW 100 firms are still thriving: they're outperforming AMLAW 200 firms as well as mid-sized firms. So how are they bucking the trend and posting performances that show them breaking away from the pack?

To find out, researchers<sup>9</sup> reviewed AMLAW 100 financial data from 2014 – 2016. Analyzing a range of performance metrics that included revenue per lawyer, change in profit margin and net profit margin, they were able to separate the top-performing 25% from the bottom-performing 25%. They then classified the top performers as “dynamic” and the poorest performers as “static”.

8 Thomson Reuters Peer Monitor

9 Dynamic Law firm Study 2017, Thomson Reuters

The researchers, by the way, could find no significant difference in the competence of legal delivery between dynamic and static firms. Rather, what distinguished the dynamic firms was that they had:

- Recognized the competitive forces arrayed against them.
- Acted by putting strategies in place to address the issues.

A deeper dive into the realization journeys of these two groups revealed that even though the 'static' firms were billing on average \$5 more per hour than their 'dynamic' competitors at the beginning of engagements – nevertheless they finished engagements realizing, on average, \$5 per hour less. Dynamic firms were better able to sustain the value of their work on the journey.

Moreover, the data showed that the loss of revenue was happening before the static firms' bills even left the firm – in other words, at a time in the journey when billing was under their own control. This indicated that their lower performance was in fact self-inflicted.

A closer analysis of this 'work to billing' portion of the transaction cycle then revealed that:

- Alternative fee arrangements (AFAs) play a big role in this part of the transaction cycle: 75% of dynamic firms actively pursuing AFAs while 70% of static firms had AFAs thrust upon them at the request of clients.<sup>10</sup>
- Dynamic firms have a confident understanding of their cost structures which supports proactive AFA behaviour and decisions.
- Dynamic firms underline and emphasize the quality and value of their work product, delivering quick and OCG compliant invoices, and accurate, timely timekeeping.

## OUTPERFORM IN THE REALIZATION JOURNEY

Although 'static' firms started at \$5 / hour on average they ended the journey at \$5 per hour lower than 'dynamic firms'.



How is this done? It happens because dynamic firms have prioritized the introduction of technology which supports the beginning of the transaction cycle. Such technology supplies:

- The capacity to convert data into actionable business intelligence on things like cost and pricing.
- Efficient and accurate data capture – especially on timekeeping.
- The capacity to forecast workloads and pricing – including knowing the optimum blend of available skills and their price level.
- The capacity to execute controlled project management which ensures engagements are optimally executed. This matters a lot when firms are operating on fixed fees.

In short, this is technology that is directly connected to the understanding of productivity and resource utilization.

Moreover, it emerged that the dynamic firms have focused their technology spending strategically. It has gone way beyond 'keeping the lights on'. They have spent money on technology which enhances lawyer productivity and which nurtures the client relationship. They recognize the need for good data and then they leverage it. This is what builds the capacity to maintain value across the realization journey.

And here's the really good news; mid-tier firms can now do the same.

## 3. How this applies to mid-tier firms

At this point, some readers may be thinking 'It's all very well for the big firms, but this isn't something we can do'.

On the contrary, mid-tier firms absolutely can adopt dynamic behaviours. In truth they can do so more easily than big law.

This is because mid-tiers can use their size to their advantage. For a start, they will typically be defter and more nimble at adopting change. They don't have to overcome the inherent inertia of big firms, with lots of risk-averse partners who struggle to change or make quick decisions.

On a technical level mid-tiers also have smaller, more compact and less dispersed IT estates making the adoption of new technology easier.

Mid-level firms also retain a great capacity to attract and retain top talent. They can provide more flexibility which plays into the work / life balance which lawyers increasingly seek. Plus they can offer more variety in the range of work, which lawyers also often find attractive. Remember, salary isn't the biggest factor.

Another important consideration is that big clients increasingly recognize the value proposition of mid-tier firms and have begun to strategically target them. They know that mid-tiers have an inherently lower cost base than big firms, so can price very competitively. At the same time, they know that with the right technology on board (more on that below) – there's no loss of functionality or security when working with mid-tier firms.

This is because, notwithstanding all of the above, the real game-changer at this point is that top legal technology is now, for the first time, fully within reach of mid-tier firms – and this happens because of the cloud.

## CLOUD technology – Levelling the playing field

It used to be the case that sophisticated legal technology was the preserve of big law because it was expensive to commission and implement. Cloud computing, however, has significantly changed the model and therefore the cost of accessing top technology. Cloud enables mid-tiers to simply login and start using the software. Firms no longer have to provision servers, load software, train employees and make big up-front payments every time they invest in a new application. The on-boarding cost is slashed. There's no CAPEX, only OPEX – and it's highly scalable.

It also used to be the case that sophisticated technology needed sophisticated (and expensive) in-house IT expertise. That now no longer applies. The firm simply pays a per-user subscription fee to access an intuitive service that sits in the cloud.

Another advantage of cloud services is that they are designed to integrate with existing systems and each other. This enables mid-tiers to 'pick and mix' the blend of cloud-based applications that best meet their needs without worrying about the traditional constraints of integrating legacy systems with new ones.

A further big advantage of cloud services is that they conspicuously level the playing field when it comes to security. Back in the day, big firms had the advantage because they could invest much more money in making their systems secure. Now, cloud providers take that strain and commit vastly more resources to information security and encryption than even the biggest firm could ever afford on its own.

The result is that mid-tiers can offer their clients reassurances that their data security is now world class and on a level that equals or exceeds what even the largest big-law firm can claim. It also makes security audits straightforward and quick.

An attendant advantage – and a cost saving – is that business continuity and disaster recovery are taken care of by the cloud provider when all your data is off-premises. In addition mid-tiers can realize further cost savings when they eliminate redundant hardware and reclaim the office space that the server room and archive took up.

Cloud also enables the kind of collaboration which, as we have seen, clients are increasingly looking for. They can get a real-time view of activity and billing and can access current documents from the cloud if the system is set up to allow it.

Cloud also enables lawyers to be mobile. They no longer have to be pinned down in an office. Files can be accessed securely from any internet enabled device or location. This confers the flexibility that lawyers increasingly want and expect.

In summary, cloud could have been invented to advantage mid-tier law firms.

It levels the technology playing field, making top technology available to all. It is disruptive, thus providing a sensational opportunity. Mid-tier law has the agility and nimbleness to take early decisions and move more quickly. With smaller IT estates, mid-tier law can adopt technology sooner and seize first mover advantages.

## 4. In conclusion – why be dynamic?

The research that was undertaken on dynamic vs. static firms showed that those firms which were proactive, and which used technology to engage with clients, collaborate, file share and offer new billing models and fee arrangements, had a higher realization rate than their lower performing, static, peers. The dynamic firms were perceived as offering better value and were able to convert that value to the firm's bottom line.

To succeed in today's marketplace, mid-tier firms need to embrace the same dynamic behaviours. They also need to avoid static behaviours. These can be summarized as follows:

## Dynamic vs. static behaviours

Dynamic	Static
Focuses and invests on start of transaction cycle	Focuses and invests on start of transaction cycle
Invests in data first	Invests in data first
Is proactive with clients re. AFA and data	Is proactive with clients re. AFA and data
Cloud is in and mobile is a given	Cloud is a work in progress, mobile is on demand
Comfortable with early majority adoption / less dependent on peer firm behaviour	Comfortable with late majority adoption / values peer firm adoption
Invests in technology and business development for differentiation	Invests, but only to keep pace with peers
Markets the role technology plays in the firm's service delivery	Technology not used as a differentiator

Moreover, as we've demonstrated, the emergence of cloud computing alongside the other factors we listed have made the adoption of dynamic behaviours eminently doable for mid-tier law firms. Conversely, because of a multitude of threats, these same firms will be in trouble if they don't act.

Technology now presents mid-tier firms with a golden opportunity to be disruptive and dynamic, to be proactive and progressive. They have the choice to stick with what they think they know and suffer the consequences, or to exploit their inherent advantages over big law and win.

#### ABOUT THE AUTHOR

## Peter Zver, President Tikit Inc

Peter Zver was appointed President of Tikit North America in July, 2013 and has been serving the legal market for over two decades. His background is in Information Systems and Finance and was the founder of Zver & Associates and PensEra Knowledge Technologies, both of which specialized in addressing the business of law via the delivery of technology products and services. His work has mainly focused on the business of law and fintech, more specifically timekeeping and the impact next generation technologies have on improving profitability and client relationships for law firms. Peter is an active contributor to ILTA and other legal industry media organizations.

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