

TMT report 2014: Innovate to survive



The TMT sector was the scene of some of the biggest M&A deals in the last year and it is attracting many new law firms looking for a piece of the action. Those that survive will be the ones that get to know their clients' business best

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The technology, media and telecommunications [TMT] sector is evolving at a frantic rate and the landscape is changing dramatically. Some of the biggest mergers to take place in Iberia in the last year have involved TMT companies, with the result that the sector looks markedly different compared to 12 months ago.

Law firms operating in this sector face a number of challenges. First of all, consolidation means fewer companies, which means fewer clients. Secondly, the rapid development of technology means that lawyers face a constant struggle to keep up to date with the latest innovations and their legal implications. In addition, there is also a trend for lawyers to quit private practice and go and work for TMT clients.

There are, however, many opportunities for law firms. TMT clients are increasingly asking their legal advisers to assist them in the development of their products as legal issues are integral to their design, meaning that lawyers who are able to form close partnerships with their clients will foster a sense of loyalty that is perhaps not present in other practice areas. Meanwhile, the rapid changes in the sector present an opportunity for smaller, more flexible, niche firms that are more able than the larger more traditional firms to adapt to fast-changing client demands. It has been an eventful year in the TMT markets, according to DLA Piper partner Diego Ramos. "There's been a boom of corporate work around the sector," he says. Major deals in the last 12 months included Vodafone's €7.2bn acquisition of Ono and Orange's €3.4bn acquisition of Jazztel (which is subject to regulatory approval). Ramos adds that, in addition to M&A deals, the last year has also seen the introduction of new IP laws and new TV regulations, some of which have been approved and some of which are expected to be approved before the end of the year. Javier Marzo, partner at Garrigues, adds that there are a large number of players in the sector and that further consolidation in the telecommunications industry, in particular, should be expected.

Three become one

Gómez-Acebo & Pombo partner Almudena Arpón de Mendivil agrees that there is currently a tendency towards consolidation in the sector. "Corporate transactions are reshaping the market. The convergence of the three TMT sectors is confirmed, these moves show the importance of immediate connectivity, speed and content," she says. Arpón de Mendivil adds that such developments are promoting an increasingly digital environment where new legal issues such as security and privacy have become a priority: "This creates a need for advice on compliance in those areas."

Osborne Clarke España partner David Miranda says telecommunications companies in Spain are "moving towards a business model more focused on content rather than the traditional infrastructure business model". He adds: "Entertainment-related services are one of the main drivers for media and telecommunications market operators in their search for a leading market position." Miranda believes a combination of "telecommunications and media law advice" are the characteristics of a successful TMT law firm at present.

Clifford Chance counsel Carme Briera highlights the acquisition of Cableuropa by Vodafone and the acquisition by Telefónica of a significant stake in the share capital of DTS (the Spanish pay satellite platform) as two of the main developments in the sector over the last 12 months. With regard to the DTS deal, she says that it positions Telefónica as a "major player in the pay-TV sector".

Another key development, according to Briera, was the introduction of the new General Law on Telecommunications, the main purpose of which was to establish measures to allow the implementation of 2020 Europe's Digital Agenda, promote investment in the sector, increase competition and remove regulatory barriers

for the deployment of electronic communications networks. She adds that the law details the “regulation of operators directly or indirectly controlled by entities of the public sector in order to avoid market distortions affecting competition”.



“ The US is ahead in innovation and, despite its efforts, Europe is still trying to get there. ”
Almudena Arpón de Mendivil
Gómez-Acebo & Pombo

Cecilia Álvarez, counsel at Uría Menéndez, says many companies that are digitalising their businesses do not have the necessary legal expertise in-house so are reliant on external lawyers. She adds that non-European clients in particular need advice on data protection and IP regulations. Hogan Lovells partner Gonzalo F. Gállego says one of the main challenges in the sector is trying to

“match new technologies with new laws – companies don’t always manage that so they need external lawyers”. Abril Abogados founding partner Ignacio Temiño says TMT is a rapidly changing sector with many spin-off and start-up companies entering all the time. However, Javier Aparicio, partner at Cuatrecasas, Gonçalves Pereira, says that TMT companies with new ideas to develop usually need to go to the US because regulations in Europe make innovation much more difficult.

Ecija partner Juan Salmerón says: “It is clear the telecoms business is not any more about voice calls. Nowadays revenues come from the quadruple play – the triple play service of broadband Internet access, television and telephone with wireless service provisions – and the other services associated to them where content is king.” He adds that this trend explains why Vodafone purchased ONO, Telefónica’s acquisition of Canal Plus, and Orange’s expected acquisition of Jazztel. Rodrigo Almeida Dias, partner at F. Castelo Branco & Associados, says: “The TMT market is creating a wide range of work for lawyers including M&A and securities, as well as advice on the restructuring of companies – for example HP recently announced that it would be splitting into two companies. However, clients are demanding special fee arrangements for a lot of services.”

Tiny firms coming out on top

Marzo says that TMT is not a niche area anymore because there is a “tendency to be digital” in every industry. “Every corporate lawyer needs input from TMT experts at some point,” he adds. Ramos says that while the day-to-day work of TMT lawyers remains the same, clients are now increasingly demanding strategic advice and not just legal advice. He adds that, because TMT law and regulations are becoming more harmonised across Europe, firms are now differentiating themselves by promoting their expertise in particular sectors or industries.

Gállego agrees that, in the future, lawyers could increasingly specialise in particular niche areas, such as privacy and cloud computing. Aparicio says that regulators are creating the need for specialisms “for example, in Germany there are experts in safe harbour”, he claims.

Temiño states that the Svensson case – in which the Court of Justice of the European Union held that websites that redirect internet users via hyperlinks to protected works that are already freely available online does not infringe copyright – as well as the Google “right to be forgotten” issue shows that even “tiny firms with young lawyers” can handle the most important TMT cases. Consequently, he adds that there are new lawyers coming into the TMT market. Gállego explains that a legal assessment is now part of the design of new products: “The product won’t work if it doesn’t fulfil the law.”

Meanwhile, according to Aparicio, TMT companies are increasingly involving lawyers in the development of new products. This is a view shared by Baker & McKenzie partner José María Méndez, who observes: “We are warming up for M&A work, due to consolidation in the sector. We have also spent a lot of non-billable hours identifying challenges and opportunities for the clients to innovate.” He adds that consolidation will also bring competition and regulatory law work in the sector. He adds: “It’s a highly regulated sector. Many non-EU companies want to invest in Europe so lawyers have to be creative to find the right way.”

Álvarez points out that, in the TMT sector, law firms are no longer a service provider but rather a partner. She remarks: “We [law firms] are now competing with our colleagues elsewhere in Europe. Local specialities will not

disappear but we are now in a European market.” She adds that technology users now have opportunities for recourse whether that be consumer law or class actions.

Araoz & Rueda partner Ainhoa Veiga stresses that survival in the continuing evolving and converging TMT sector requires “transformative changes” to gain the leverage necessary to compete in the market. She believes that the market is now experiencing the “so-called next level of convergence”, which is coming from outside of the TMT markets, for example, financial/payment services.

Partners join clients to “get rich”

Susana Rodríguez Ballano, senior associate at Deloitte Abogados, identifies social media marketing, cloud computing services, mobile marketing and technologies, electronic payment systems content and big data or privacy impact assessments as some of the main emerging TMT areas. She adds they may “present attractive opportunities for law firms as these areas do not have yet enforceable laws which are adapted to the actual reality of practice”.

Pérez-Llorca partner Juan Rodríguez Cárcamo claims that the internationalisation of telecommunications companies is reflected in the “increasing complexity” of their inquiries. He comments: “As a result, in contrast to specialised attorneys, clients now demand a lawyer capable of approaching the problem from all perspectives. Global problems demand global solutions.”

Ramos observes that another trend is law firms losing their partners to clients. “Some become executive presidents or operations managers at clients – they’re escalating to management positions in bigger companies,” he says. According to another partner, lawyers are making such moves because it enables them to “get richer”. Aparicio remarks that while there is competition between different regions (“Europe is competing on ideas”), the globalisation of the digital world is increasingly about “competition between companies rather than regions”. However, Álvarez argues that there is not a European market for everything and that each of the European countries still has their own identities. She adds that, in comparison to jurisdictions such as the US, the “values of privacy in Europe have an impact”.

Arpón de Mendivil says that from a regulatory perspective the issues are two fold. First, there is a tension between the “burden imposed on traditional operators and the lighter touch applied to other players”. Second, in general, the US has a “softer approach to regulation” than the EU. “Europe is in a worse position, its regulations can differ depending on the member state while the US is ahead in innovation and, despite its efforts, Europe is still trying to get there.” She adds: “You think we will compete with other European countries, but in the end, most of these matters are global.”

Loyalty bonus

Lawyers argue that there is now a chance for TMT law firms to win some loyalty from clients because they will appreciate that their legal advisers have handled their case and consequently now understand their business better than most.

Gállego says TMT clients tend to be loyal and adds that lawyers that know their client and their product, will foster a very close relationship with that client. Arpón de Mendivil says the “trust factor” does play a part: “If a client trusts you, they will be loyal to you.”

Francesc A. Baygual of Roca Junyent says TMT clients demand a “higher degree of commitment” when their project is starting and funding needs to be found. Marzo suggests: “We have to be closer to clients and understand how their business works.” In this respect, Temiño explains that lawyers can be involved in “changing the business models of their clients”.

Lawyers say that firms in the TMT sector are having to provide better quality services without a corresponding increase in fees, even though clients expect greater partner involvement. Ramos says that this market dynamic encourages lateral hires: “It may be easier to take the expertise from the outside, but this is logically more expensive and may lower morale among lawyers already at the firm in some cases.”

With regard to fees, lawyers state that clients are more inclined to want certainty about costs upfront and ask their legal advisers how many hours they would expect to bill for work before giving them the business. Meanwhile, the multijurisdictional nature of much TMT work means that clients often benchmark the fees law firms charge against other jurisdictions.

Álvarez argues that TMT lawyers cannot work alone as they have a bigger role to play coordinating other lawyers, such as those practising competition law. Álvarez adds that it is important that TMT lawyers are innovative and have a close relationship with their clients. She adds: “For clients, the lawyer is more important than the law firm – in the TMT sector, you choose the lawyer you trust in each jurisdiction.”

One partner says that the consolidation in the TMT sector is reducing the number of clients for law firms.

Garrigues’ Marzo says the challenge is to provide legal advice in an environment that is moving fast. “You have to follow the sector and compete with smaller more flexible firms,” he adds. “TMT lawyers will be fashionable, so many issues are TMT related. Everything is somehow affected by TMT.”

Clients demand lower prices

Ramos says there will be a lot of regulatory developments ahead so there will be a need for “enhanced compliance”. He adds: “There are also several elections in a row to come. This is usually not good for the market.” Being a lawyer in the TMT sector demands “intense learning”, according to Temiño, who says that if “you want to be innovative, you need to be constantly updated”. Álvarez says the market needs legal expertise on an on-going basis, therefore it is important that lawyers work in close partnership with their clients as they evolve. Meanwhile, Aparicio argues that, while lawyers need to learn continuously, it is also important that regulators learn from the market as some of their decisions have been damaging to the market.

Temiño says that, with clients increasingly demanding lower prices, one of the big challenges for law firms is maintaining a high quality of service, while controlling costs and not raising fees. Allen & Overy partner Pablo Mayor says TMT clients are increasingly asking their legal advisers for a more complete and integrated service. He adds that they need advice “not only from a regulatory perspective, but also in relation to tax, litigation and company law”.

According to Manuel Alonso, a partner at Jausas, lawyers in all practice areas need to consult TMT lawyers to meet the “new needs of clients”. Paloma Bru, of counsel at Jones Day, says clients now need global TMT advice in jurisdictions that are “very different”. She adds it is therefore important that law firms offer a “truly global response” to their clients’ needs.

Monereo Meyer Marinel-lo Abogados senior associate Belén Arribas Sánchez says the main concern of multinational client is local compliance, notably “having to comply also with the rest of local country legislations as well as globally”. She adds: “Some large groups are imposing or adapting their worldwide guidelines and procedures into their subsidiaries’ systems. Some are putting in place binding corporate rules, for example.”

According to Ramón y Cajal Abogados partner, Norman Heckh, law firms face the challenge of integrating a “team of professionals dedicated full time to IT law”. He adds: “Depending on the organisation of the firm, IT professionals could be part of different departments and provide legal advice on other matters as well as IT. This implies a lack of long-term specialisation that does not conform to client’s expectations.”

Portugal: TMT sector set for growth

Uría Menéndez partner Francisco Brito e Abreu says the Portuguese legal market has undergone considerable changes over the past 12 months, and, as evidence, highlights Zon’s merger with Optimus (creating a new operator called NOS) and Altice’s acquisition of Oni. Meanwhile, Portugal Telecom’s planned merger with Oi (a memorandum of understanding has been

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 Leonor Chastre
 Cuatrecasas, Gonçalves Pereira



signed) will create a company with more than 100 million clients and a turnover of more than €12bn.

The TMT sector is expected to continue to grow in the coming year. Sales of up to 2.5 million smartphones in Portugal are anticipated in 2014, a 12 per cent increase on 2013. Where do the opportunities lie for law firms? Brito e Abreu points to consolidation in the sector as well as the implementation of new data protection regulations, in addition to the growth of “consumer protection in distance sales that will foster the development of cross-border e-commerce”.

However, Ana Rita Escarduça of Raposo Bernardo does not anticipate much consolidation in the IT sector. She says it is unlikely because the IT market in Portugal consists of “small companies without enough capital structure” to make acquisitions. She adds: “Furthermore, as banking is currently not financing the sale of companies, concentration will be even more difficult.”

Cuatrecasas, Gonçalves Pereira’s Lisbon-based partner Leonor Chastre says that Cloud services and Software as a Service (SaaS) have become the model that companies choose to acquire software. She adds that regardless of size, both SMEs and large corporations are changing their software procurement processes to “address their needs with Cloud software”. With regard to the telecommunications sector, Chastre adds that 4-play (internet, phone, TV and mobile internet) is now the overwhelming preference and this has influenced what telecommunications companies now offer. “The development of OTT (over-the-top) solutions by the telecoms companies had not been as successful as was expected,” she says.

Chastre claims the biggest challenge for law firms is providing legal frameworks and advice to clients to enable them to “address new global challenges over the internet”. She states: “Both in the B2B and B2C sectors, completely new legal environments are being defined and clients require legal expertise to assure that they are compliant and those that provide services are also compliant.”

Trying to keep up

Fernando Resina da Silva, partner at Vieira de Almeida, says providing legal assistance to TMT clients is a major challenge because existing legislation is unable to keep up with the pace of technological evolution: “This requires lawyers to have technical and scientific knowledge to build the necessary bridge between law and technology.”

PLMJ partner Daniel Reis says, with regard to the TMT clients’ demands, two trends can be observed: cost-cutting, such as requiring fixed fees for projects or monthly retainers; and the desire for more proactive attitudes from law firms, for example, clients want outside counsel to “approach them proactively with respect to risks or problems, and solutions”. The biggest challenge law firms face is client retention due to the fact the Portuguese market is “very small”, according to Reis.

Pedro Pinto, Bessa Monteiro, Reis, Branco, Alexandre Jardim & Associados (pbbr) senior partner César Bessa Monteiro says law firms must ensure they continue to have qualified lawyers with not only legal knowledge but also technical expertise in order to be able to “keep up with the pace of both legal and technical innovation in this area”. He adds: “We believe that clients are extremely demanding in this regard. This demand requires law firms to carefully select the lawyers working on these matters and to invest in their permanent education.”

According to Vieira de Almeida partner Magda Cocco, the TMT sector is undergoing a “significant growth spurt” due to a wide range of sectors adopting new technology. She adds: “Among others, the automobile, banking and health sectors have been resorting extensively to new technologies in the development of new products and services”. Cocco says that mobile health, tele-consultation, mobile pay, geolocation devices and big data are fast becoming TMT industry staples, bringing with them the “inevitable legal issues to be tackled by law firms”.

Ana Fazendeiro, lawyer at Abreu Advogados, says the increasing presence of companies on the web, through their online shops (e-commerce), social network presence, contests and advertising, are “big opportunities for law firms that think global and can anticipate changes on rules applied to the digital era”.

Clients do routine work in-house

AVM Advogados managing partner, Antonio Vicente Marques, says developing technology means “more projects,

more consumer products and more start-ups forming and being acquired". He adds: "As such, there is an increasing amount of activity for lawyers in the new media sector, particularly in the fields of user-generated content, internet and mobile communications, data protection, privacy, e-commerce issues and fraud prevention." SRS Advogados partner Octávio Castelo Paulo says there is currently a trend for TMT clients to internalise their routine work and to allocate their budget for external lawyers to contentious matters and to very specific matters where the input of an outside counsel can make a bigger difference. He adds that there is also a tendency among TMT clients to create panels of law firms and "diversify the suppliers of legal services".

Ricardo Rodrigues Lopes, partner at Caiado Guerreiro & Associados says the Court of Justice of the European Union's decision earlier this year in the "right to be forgotten" case will create opportunities for lawyers as it will create new obligations for internet service providers, data controllers and data processors. He adds that law firms' work may change "from a small number of big projects and contracts, although some of these projects still exist, to having to deal with a higher number of smaller projects and contracts".

Coelho Ribeiro e Associados partner Jaime Medeiros says competition is increasing and that all major firms will have to "reinforce their TMT practice not necessarily with regard to numbers of practitioners but rather level of expertise level". Macedo Vitorino & Associados partner João de Macedo Vitorino says law firms are forced to "keep fees low enough to avoid pressure of competitive offers from other firms".

Margarida Couto, partner at Vieira de Almeida, says the biggest challenge facing law firms is keeping up with the rapidly changing shape of the sector "considering the consolidation of the telecommunications market and the associated uncertainties of not knowing how the puzzle would look like at the end of the game".

Marques da Cruz & Associados partner Vitor Marques da Cruz says a major challenge will continue to be the "rhythm of technological update and the amount of technical information that we are demanded to understand and to analyse, in order to fully and properly advise our clients".



Working as a team

Eduardo Bazaco, senior associate at AC&G Asesores Legales, says the fast development of new communications and commercial channels means "law firms must be up to date more than ever when it comes to the regulatory advance and take an active part when it comes to the design and application of already existing laws". He adds: "In this sense, professional development and training programmes will be very much in use as to make lawyers capable of undertaking different projects within TMT sector, no matter the business area of law."

Erika Rodriguez, new technologies manager at BDO, says continuous technological evolution has "pushed clients to get away from piecemeal solutions and demand a much more holistic approach to their legal challenges, even across geographies". She adds: "Take the case of emerging markets (mainly Latin-America and Asian-Pacific), which represent good investment opportunities in the TMT sector, and where the need for regulatory and transactional advice now requires a global perspective."

CCA-Ontier partner Filipe Mayer says law firms are not yet totally accomplished in providing TMT legal services. He adds: "The majority of the law firms that are dedicated to these fields, with whom we have contact, have expertise in one or two fields covering TMT, but not all the areas that of TMT. Depending on, of course, the clients' portfolios of each law firm, for us, we believe this will be the major challenging for the law firms in this market."

Cremades & Calvo-Sotel associate Antonio Jiménez Gil says clients needing TMT services advice no longer want the traditional law firm-client relationship but "outside lawyers who work as team members integrated in each corporative process of the company". Roca Junyent's Anna Viladàs Jené says adapting to client needs makes a large demand on law firms' "human capital and time". She adds: "This means finding new ways of balancing costs in particular taking into consideration the pressure law firms are experiencing when it comes to fee arrangements."

According to Marita Dargallo Nieto, partner at Sol Muntañola Abogados, advising clients that are start-ups, and lack a significant budget for legal advice, can be a big challenge.

However, the constant innovation in the TMT sector presents a significant opportunity for smaller niche law firms in

what is an extremely competitive market. More dynamic by nature, such firms are sometimes better able to align themselves with the needs of TMT clients than the larger established players.