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Optimising your multi-sourcing strategy

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Agenda for this afternoon’s presentations

- Multi-sourcing – benefits, challenges and how to address them
  - Paul O’Hare, Commercial Technology Partner, Kemp Little

- TUPE issues specific to multi-sourcing contracts
  - Kathryn Dooks, Employment Partner, Kemp Little

- Supplier and contract management services and tools
  - Jim Odell, Partner and co-founder, Kemp Little Consulting
Multi-sourcing: benefits, challenges and how to address them
Outline

- Multi-sourcing – benefits and challenges

- Addressing multi-sourcing challenges
  - Procurement strategy
  - Contract terms and structures
  - Mechanisms for incentivising supplier collaboration

- Implementing an effective service integration and management (SIAM) strategy
Evolution of sourcing models

Source: Everest Group
Multi-sourcing: benefits and challenges

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Risks and challenges</th>
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<tbody>
<tr>
<td>Greater control over supply chain</td>
<td>No single point of responsibility</td>
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<td>Maintenance of supplier competition post-signature</td>
<td>Customer retains integration risk</td>
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<td>No ‘margin stacking’</td>
<td>No end-to-end service levels</td>
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<td>Greater flexibility &amp; less risk of supplier lock-in</td>
<td>Risk of service gaps</td>
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<td>Increased supplier management costs</td>
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<td>Delivery dependent on supplier collaboration</td>
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Addressing multi-sourcing challenges

- Procurement strategy

- Contract terms

- Contracting structure – use of OLAs/collaboration agreements

- Governance arrangements

- Supplier collaboration incentives
Contract considerations specific to multi-sourcing

- Data and information sharing requirements
- Cross licensing of IP
- Standardised and integrated contract processes
- Adherence to common IT standards
- ‘Fix first, settle later’ principles
- ‘Skin in the game’ on achievement of end-to-end service delivery
- Acceptance of SIAM provider role
Procurement strategy

- RFP process

- Customer pre-contract due diligence

- Contract negotiation timetable – OLAs/collaboration agreements

- Timing of appointment of SIAM provider (if outsourced)
Contracting structure: OLAs & collaboration agreements

- Entered into in parallel to direct agreements
- Contractualises multi-sourcing principles
- Risk/reward models to incentivise supplier collaboration
- Documents SIAM provider’s role
- Enforcement considerations
Incentivising supplier collaboration: general principles

- Balance of practical measures in addition to usual ‘nuclear’ options of termination/suspension of ability to bid for future work packages

- ‘Skin in the game’ against successful performance by other suppliers – element of supplier charges linked to achievement of end-to-end service levels

- Combination of risk/reward – may require additional customer funding

- Combination of hard and soft measurements

- Role of SIAM provider
Incentivising supplier collaboration: Example ‘painshare’ mechanism

- Diagnosis of service failures
- Suppliers required to produce single root cause analysis (one version of the truth)
- If diagnosis agreed, supplier at fault liable for service credit payment
- Failure to agree RCA results in all suppliers paying a higher service credit
Incentivising supplier collaboration: ‘gainshare’

- Bonus pool linked to achievement of end-to-end service delivery
- Linked to customer business benefits
  - Service availability
  - Incident resolution
  - Customer satisfaction
  - Supplier collaboration behaviours
- Allocation/distribution by SIAM provider
Delivery of SIAM function

- Options for delivery of SIAM function
- Operational responsibilities of SIAM provider
- Enforcement of multi-sourcing principles/OLA terms
- SIAM provider incentivisation and accountability
Service integration and management: Options

- Customer retains in-house
- SIAM function performed by one of service tower providers
  - larger pool for selection
  - more likely to have requisite experience
  - may be cheaper
- But:
  - perception of conflict by/with other suppliers
  - requires stronger policing by customer
  - limits scope of SIAM function
- SIAM function performed by independent specialist SIAM provider
Role of SIAM provider: operational responsibilities

- Provision of integrated service desk
- Change management (including changes that cross supplier boundaries)
- Demand and capacity management
- Release management
- Defining and communicating to suppliers standardised IT processes and architectures
- Service provider assurance (including auditing for adherence to standards and processes)
- Service knowledge management – ensuring that each supplier’s CMDB, KMDB and process manuals up to date and accurate
Role of SIAM provider: OLA enforcement responsibilities

- Dispute resolution/implementation of ‘fix first, settle later’ terms
  - Supplier requirement for easy recovery of rectification costs where not at fault
  - No direct supplier enforcement rights
  - SIAM provider adjudication on cost allocation
- Administration of service credit and bonus pools (re soft measurement targets)
- Generally accepted by suppliers, provided:
  - SIAM provider not tower provider
  - Limits on SIAM adjudication rights
  - Right of redress
- Auditing of supplier compliance with OLA terms
SIAM accountability, risk allocation and incentivisation

- Allocation of legal/commercial risk on supplier performance/delivery
- Service integration risk
- Service levels around SIAM operational responsibilities
- Skin in the game on achievement of end-to-end service metrics
- Gainshare on SIAM provider cost-savings – contribution to funding of bonus pools
TUPE/ARD in a multi-sourcing environment
When does TUPE/ARD apply?

Two tests:

- **Standard “multi-factoral” test**
  - Most common in sales of businesses

- **Service provision change – TUPE (UK only)**
  - First-generation outsourcings
  - Second-generation outsourcings
  - Taking services back in-house
TUPE: typical sole-sourcing model

1\textsuperscript{st} generation

Client \rightarrow Prime contractor \rightarrow Sub-contractor

Employees on entry

Employees on exit

2\textsuperscript{nd} generation

Client \rightarrow Prime contractor \rightarrow Sub-contractor

Employees on exit

Employees on exit
TUPE: Moving from sole-sourcing to multi-sourcing model

1st generation – sole-sourcing

Client

Prime contractor

Sub-contractor

2nd generation – multi-sourced

Client

Supplier

Supplier

Supplier

Supplier

Employees on exit

Employees on exit

Employees on exit
Fragmentation

Principles

- A service provision change can occur where the activities are distributed among a number of contractors, provided that it is possible to identify with which contractor they end up.
- TUPE may be avoided where services are randomly distributed.

Examples

- *Clearsprings Management Limited v. Ankers EAT* [2009]
Other points to bear in mind with SIAM models

- Activities fundamentally the same?
  - 15% difference - Enterprise Management Services Limited v Connect Up Limited
  - Change in “ethos” – Nottinghamshire v Hamshaw
  - Central co-ordinated service vs split service - Johnson v Campbell

- Scope for TUPE to apply in-contract
  - Termination of discrete work packages/service towers

Once you see the bigger picture, we’ll help you hang it on the wall.

Successful Multi-Sourcing

Consulting Services and Solutions

JIM ODELL
KEMP LITTLE CONSULTING PARTNER

JUNE 2014
Operating at the Intersection of Technology, Law and Consulting

The collaboration between Kemp Little LLP and Kemp Little Consulting delivers a unique strategic and commercial proposition for any business using, buying or supplying technology.
Operating at the intersection of Technology, Law and Consulting
Services, Solutions and Systems

Core Methods
- Process Re-design
- Tools Selection and Implementation
- Contracts Management

Business Challenges
- Regulatory Compliance and Risk
- Cloud Services Procurement
- Digital Marketing and Social Media
- Data Rights, Location, Security & Compliance
- Sourcing and Procurement
- Cloud HR Solutions
- Bid Support and Engagement

Systems and Services
- IP Patent Strategy
- Contract Concierge System
- Audit and Compliance Systems and services
- Business and IT Strategy
Consulting Services to support Multi-Sourcing

Managing complexity requires well conceived processes, supported by appropriate systems.

- Pre contract discovery services
- Program and project management
- Knowledge transfer
- Pre and post contract obligations management
- Transition support for suppliers
- Contract concierge and management services
Identifying and Managing suppliers in a Multi-Sourcing environment

Programme, Risk management and Governance

Strategy
- Business Strategy
- Technology Strategy
- Life-cycle management
- Discovery
- Service Integration and Management

Preparation
- Project Initiation
- Baseline current
- Prepare documents

Procurement Phase
- Supplier Selection
  - Engage Market/Providers
  - Develop scoring models
  - Evaluate
- Contract Negotiation
  - Negotiate contracts/schedules
  - Due diligence
  - Develop transition plans

In-life
- Transition
- Contract Concierge
- Terminate
- Transfer

Design and transition to new TOM

External factors/drivers may include regulation/competition etc.
Pre-contract discovery services. Commercial/Legal Risk Identification and Management

- Large-scale, complex procurement processes, particularly in a multi sourcing environment typically involves innovative technology solutions, and/or new or multiple potential suppliers.

- We work with key stakeholders to identify and prioritise specific commercial and legal issues and to design and implement a pro-active approach to manage them through to the Contract Negotiation stage.

- KLC offer an initial 2-day Discovery process to identify and prioritise key issues. Facilitated workshop session(s) to engage key stakeholders in agreeing, rating and ranking risks. Design of ‘Gate’-ing process to establish milestones consistent with client’s project/programme management approach. At each agreed milestone (at least at end of each procurement stage) formal review and update against each key risk.

- The Output is an end-of-stage report which feeds directly into negotiating strategy and approach for Contract Negotiation stage
Program and project management services

Multi-Sourcing requires close program management during the negotiations.
Knowledge transfer and multi sourcing

TUPE and knowledge transfer are closely associated challenges.

Subject matter experts may not be easily transferred so what to do?

- Knowledge Transfer from the client to the supplier - usually a client obligation
- Knowledge Management during the supplier contract - not necessarily well specified in the outsourcing contract or diligently executed
- Knowledge Transfer from the supplier to the client (or new supplier) at exit - very little incentive for the existing supplier to properly and diligently execute

KLC knowledge transfer services provide an independent quality alternative to client or supplier delivery of the knowledge transition and management service

Allows knowledge to be maintained confidentially on behalf of the client or the supplier at all the stages in the cycle.
Knowledge transfer. The challenge of moving from sole-sourcing to multi-sourcing model

1st generation – sole-sourcing

Client → Prime contractor → Sub-contractor

2nd generation – multi-sourcing

Client → Supplier → Supplier → Supplier → Supplier

Knowledge captured and then transferred on exit
The PRA and FCA are beginning to examine regulated outsourcing arrangements much more closely. Working closely with our legal colleagues we can design processes to manage and demonstrate compliance:

Our processes enable senior managers to demonstrate that

- That they have given clear strategic direction to the business: what can and can’t be outsourced; and is and isn’t a critical outsource activity.
- That the strategy has been implemented and followed consistently across the whole business.
- That intra-group outsourcing has been considered and documented with the same rigours as external outsourcing unless there are documented and clear rationales for not doing so.
- That the overall supply chain risks for the firm and each of its outsourcings have been considered, monitored and documented.
Post-contract; Transition Support for incoming suppliers

- KLC help to develop a valid strategy for working with sub-contractors and partners with detailed process and IT mapping exercises to support delivery

- KLC undertake:
  - data assurance exercises to ensure client data is fit for purpose.
  - due diligence over the data, application and IT resources managed by exiting suppliers.
  - document the client’s IT estate.
  - independent determination of engagement status and issues during contract delivery.
  - transition and client management services to assist suppliers to fulfil services obligations.
The KLC Contract Concierge Service.

- Multi-Sourcing involves the assumption of a large number of existing contractual obligations and/or the creation of complex multi-supplier contract arrangements for configuration and delivery of the contracted service(s).

- Working with Effacts and our leading commercial lawyers KLC has designed a contract concierge-style system delivered as S A A S.

- KLC Contract concierge service enables regular reporting, in particular alerting ahead of contractual expiry/renewal.

- Designed to enable General Counsels, their legal suppliers and internal teams to have visibility of nested and overlapping agreements. In other words a collaboration tool as well as a contract management solution.
Contract Concierge Systems and Services.
Contract Concierge Systems and Services.
Multi-Sourcing: Summary

- Multi-sourcing can deliver benefits not available with a sole-sourcing approach, but also gives rise to additional challenges – in particular management of the service integration function, and incentivising supplier collaboration.

- Adapting the procurement strategy, contract terms and structures, and introducing a balance of risk/reward mechanisms to incentivise collaboration are all essential to the success of any multi-sourcing strategy.

- In a multi-sourcing scenario (especially when moving from sole-sourcing to a multi-sourcing model), TUPE is much less likely to apply because of fragmentation and change of activities.

- There’s also a greater chance that TUPE will apply in-contract, when discrete work packages/service towers are terminated.

- Managing complexity requires well conceived processes, supported by appropriate systems.
  - Pre contract discovery services, Program and project management, Knowledge transfer
  - Pre and post contract obligations management, Transition support for suppliers, Contract concierge and management services
Speakers

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