

Finding the balance

In-house counsel must understand not only the law, but also the market. Making time to do so can be challenging, particularly in a highly regulated, fast-moving sector, but doing so is one of the best ways to prove your worth

“I have two answers to your question,” responds Emese Békéssy of Wizz Air on being asked how busy legal counsel manage to balance their time between researching regulatory issues and keeping tabs on more business-oriented developments. “On the one hand, there is what I would consider to be the ideal situation. On the other, there is the dark reality.”

Békéssy, the head of legal at low-cost airline Wizz Air, tries to follow a path that lies closer to the former than the latter. Nevertheless, many corporate counsel will recognize the tension she describes between keeping tabs on the latest regulations and finding time to read around business implications – garnering industry intelligence to ensure not only legal compliance, but legal compliance in the most commercially effective manner. Indeed, Fred Krebs, the president of the Association of Corporate Counsel (ACC), suggests that the current environment is particularly demanding in this regard. “There’s a sort of ebb and flow, a pendulum, in terms of how much in-house lawyers are expected to focus on strictly legal work or have responsibility for things other than just the law,” he says. “Right now I would say the pendulum has swung towards broader responsibilities.”

To some extent, as Air Malta’s Senior Advocate Brian Muscat observes, it is wrong to imply that there is a definite dividing line. “In my opinion, corporate and legal issues go hand in hand. That seems to be borne out when it comes to doing the work, since on a particular project both legal counsel and commercial executives will have the same objective in mind, even if they have different ideas on how to get there.” Yet it is also true that in a hectic in-house legal department, seeing beyond reams of technical regulation can be a challenge, especially when providing sound legal advice is your primary purpose. “Another way to look at it,” says Krebs, “is that you may not have more

responsibility in terms of admin or human resources, but it is still expected that you will be able to provide qualitatively better advice than outside counsel because of your understanding of the company and the industry in which it operates. That expectation has always been present – but in today’s environment, where there are such demands to prove your value, it is a critical component.”

The whiz kids

The challenge, however, is one that is by no means limited to lawyers, and Krebs points out that in a world of tremendous innovation, many professions across a variety of fields have to combine the fundamentals of their job with an outlook that takes in the latest developments. Nevertheless, different industries do have different dynamics, and the airline industry – where lean business models and abundant legislation meet head-on – provides an instance where the balancing act is both particularly precarious and particularly important. As a result, the in-house counsel of airlines are good examples for other lawyers to turn to when seeking advice on how to cope and, indeed, prosper.

“It certainly seems to me that aviation is in some ways unfairly targeted by regulators,” Békéssy contends. “Finance and telecoms are examples of other sectors that are receiving a lot of legislative attention right now, but the amount of meddling when it comes to airlines is simply out of proportion, especially compared to other modes of transport.” The speed with which new rules are spun out has inevitably led to some perplexing legal tangles in places, with passenger rights and safety rules sometimes appearing to be in contradiction. Getting to grips with these Gordian knots would be enough to fill anyone’s working day, but both Békéssy and Muscat know how essential it is to keep ahead by also maintaining their awareness of overall commercial aims. Says Muscat: “Imagine me drafting a code share agreement without knowing about the current roles of marketing carriers and operating carriers.” Békéssy, meanwhile, draws attention to the example of aircraft financing. “In terms of seeing through a sale and leaseback transaction, my commercial



Far left:
Emese Békéssy
 Head of legal, Wizz Air

Right:
Brian Muscat
 Senior advocate, Air Malta



colleagues will have a better idea of the market conditions. However, it's important for me to find out about industry developments from them – or on my own – so that I can adequately reflect these in the documents I draft. It's essential that these represent the hard line we want to go down in negotiations.”

There's a great deal in the suggestion that the best way to improve business knowledge is simply to keep on top of the numerous legal issues which crop up on a daily basis. “You need to approach it as a practical learning curve,” argues Muscat. “Having meetings day to day with colleagues in the commercial department means that business issues obviously get raised, so I make sure I take advantage of the opportunity to ask questions about any areas I don't understand.” The same can also hold true for external meetings. “The aim is to gain a general understanding of the various players in the industry, broadly defined,” comments Békéssy. “As someone who is intimately involved in negotiations with suppliers, lessors, insurers and so on, you should be able to do that. However, whether it's more important for in-house counsel to be aware of industry developments than it is for the outside law firms helping them is a difficult question.”

Inside information

In-house counsel are rightly expected to know at least the workings of their own company inside out, but a quick glance through this guide confirms how greatly they value business expertise in the lawyers they deal with at external firms. Indeed, three years of canvassing counsel for the ILO Client Choice Awards have made clear that industry-specific knowledge is a key factor separating the outstanding from the merely satisfactory. European Company Lawyers Association President Bengt Gustafson observes that the impracticality for private practice lawyers of reading company reports all day means that they must make tactical decisions. “There needs to be a balance. Law firms should learn as much general information as they can about the problems facing clients in their sectors. They can then apply this information from one company to another.” And while Muscat lists cost as the main consideration, he

also looks for substantial knowledge of the jargon and framework of the industry. “I expect them to be familiar with the standard ground handling agreement of the International Air Transport Association (IATA), which most airlines use. At the very least, they need to know about IATA itself.”

Krebs comments that today's in-house counsel presume that good private practice lawyers will bring a broader perspective to the issues they're called in to address, taking advantage of their position serving multiple clients by providing valuable market information. At a nimble operation such as Wizz Air – where the two lawyers comprising the in-house team handle legal work from all of the company's departments and international operations – this service is particularly valued. “When we ask external counsel to help us in the documentation process of a lease agreement, we will heavily rely on them being specialists and helping us to benchmark what we want to achieve with the rest of the market,” outlines Békéssy. “For the most part, in-house counsel operate within their own environment, but a law firm will regularly be dealing with other airlines, as well as financiers. Therefore, I expect them to have a fuller picture, a better knowledge of the scope of market developments.” That, of course, does not extend to revealing confidential information or indeed any specifics about other players in the industry. “Through their transaction experience, however, they will be able to tell us if our aircraft financing wish list is off the mark compared to what's out there.”

Translation skills

If law firms are expected to supply industry knowledge as well as technical proficiency, then in-house counsel have the task of synthesizing the result so that key points can be easily and effectively communicated to lay colleagues. However, appreciating the likely extent of business ramifications is essential not only to interact properly with colleagues, but also in prioritizing workload. “One of the characteristics of a good lawyer and of a good businessman is the ability to know what to handle and when,” explains Krebs. “Do I need to respond to this immediately? Is this a

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two-hour problem or a two-day one? Can I address this on the information I have or do I need to push for more time to research this?"

Given the multi-jurisdictional and occasionally contradictory nature of aviation regulation, this is easier said than done. "Sometimes it can be difficult to explain legal issues in legal language, let alone in business terms," admits Muscat. Nevertheless, it is an essential function, especially as commercial colleagues may otherwise regard their in-house team as creating unnecessary complication. "Part of my job," explains Muscat, "is making the various business implications of an agreement clear depending on whether it is subject to Maltese or English law. Since executives are often focused on budgets and launch dates, this may seem like a distraction, but the results can be very, very diverse and I must get that across – preferably as early as possible in the deal."

At Wizz Air, keeping costs down requires individual team members to stay abreast of developments in their own areas and to take responsibility for communicating that information effectively. In preparing for a board meeting, Békéssy will typically pore over proposed EU legislation together with industry studies, condensing hundreds of pages into a few key paragraphs and bullet points. "It can be tough for lawyers, who are usually averse to dealing with numbers," she notes, "but we need to translate everything that arrives in the form of a legal instrument into operational and financial data, and then state what this means for the company in practice."

Békéssy says that her background working at PricewaterhouseCoopers before specialization of the legal profession in Hungary prepared her for the numerous challenges of her current role. "One of the fun parts of being an in-house lawyer as opposed to external counsel is that you really understand how the company operates as a whole. The difficulty of it is obviously the same: that I need to be aware of everything." Krebs confirms that recent ACC surveys have revealed a widespread feeling among in-house lawyers that there is too much information and too little time. "You hear so frequently that lawyers face a huge challenge in keeping up with both legal information

and commercial know-how," he comments. "If you consider the amount of information available through the Internet and with instantaneous communications, making sense of it all is a daunting task."

Avoiding overload

Of course, there are no easy answers for either in-house counsel or private practice lawyers, but perhaps technology has the potential not only to create distraction, but also to alleviate some of the strain. ILO itself, after all, has provided legal updates across the full spectrum of commercial law for the past 10 years to become for many an indispensable, time-saving resource. In the aviation sector, it has also started to report from the intersection of law and business with the launch of the ILO+ industry e-zine. Seeking out additional reading material may be low down a busy lawyer's list of things to do, yet tapping industry intelligence in such a way opens up the bigger picture without extra hassle. Békéssy creates space in her hectic schedule by reading legal updates when travelling or else by giving herself a break from those hundred-page reports. "Without these kinds of newsletters, my job would certainly be more difficult," she reveals.

Krebs observes that in addition to reading the trade press, there are multiple proactive ways for lawyers to further their knowledge. These include making more use of networking organizations, such as the ACC, and trade bodies (Békéssy highlights the degree to which the European Low Fares Airline Association assists her in keeping track of legislative developments and assessing their business implications). Krebs believes that most methods are valid and fixing on a way to go largely comes down to personal choice. However, he also warns that one of the dangers of today's environment is the feeling that "if I just had a little more information, I could make a decision". He explains: "You can always analyze a little further and take more time, but that can become paralyzing. The important thing is knowing when to make the decision and move on." In the era of 24/7 wireless communications, the potential to find oneself buried under new developments and deliberations is even greater. Nevertheless, there's no doubt that taking the time to gain a better understanding of your organization is a huge plus.

"Of course, the theory and discussion of this are quite easy," concludes Krebs. "Doing it in the real world is a lot more difficult."