



INSTITUTE FOR
THE
FUTURE OF
LAW PRACTICE

CASE STUDY

Law Department Transformation Exercise

IFLP 20-01

August 2020

By Bill Mooz, Monica Goyal, and Bill Henderson

- ¶ 1. Big Datalytics' revolutionary product has enabled it to rapidly develop a global business generating \$3B+ annually in revenues, along with annual growth rates in excess of 30%. This uncommon combination of large revenues and rapid growth has caused the company's stock to be a darling of Wall Street, trading at industry-leading multiples.
- ¶ 2. Big Datalytics is at a critical point in its history. It no longer is an under-the-radar company with a new and untested product. Its success has attracted the attention of all of the major software companies, including Oracle, SAP and Microsoft, each of which has developed a competing product. While these products still can't match the performance of what Big Datalytics offers, they are improving steadily and are starting to capture market share in the big data space. This growing competition, along with the early stages of saturation in the big data market place, represents a very real threat to Big Datalytics' ability to continue to grow revenues and earnings.
- ¶ 3. Big Datalytics' Board includes a number of savvy, forward-thinking, industry veterans who recognize this threat and take it very seriously. At the Board's urging, Big Datalytics has taken a number of steps to counter this threat. First, it has brought in a new CEO and a new CFO, each of whom have significant experience in taking companies from fast-growing startups to large companies that scale. Second, the company has launched a two-pronged strategy of (i) accelerating the development of new features in its core product to extend its current position of technical leadership in its core market and (ii) developing a series of complementary software products that can provide it with additional revenue streams and growth opportunities outside of its core product market.
- ¶ 4. Executing on this strategy will require every investment dollar that the company can muster. To date, Big Datalytics' overriding focus has been on speed of innovation and growth, with things like operational excellence, scalability and efficiency being secondary considerations at best. Management has decided that the company is at an inflection point and this needs to change.
- ¶ 5. Accordingly, the company's new CFO has launched a company-wide effort to get every department to rethink its current approach to the way it handles its responsibilities and develop and implement new approaches that are more scalable, produce more consistent results, and deliver material cost savings.
- ¶ 6. Big Datalytics' legal department accounts for \$90 million in annual spend, including the salaries of in-house lawyers, outside counsel spend, etc. The CFO considers this to be material and has directed the GC to present a plan for modernizing the department's approach to delivering legal services and generating significant cost reductions. The GC has conducted a preliminary analysis of where the department's big cost areas are and has identified four areas for potential change and savings: Mergers and Acquisitions, Litigation, Commercial Contracting, and Procurement. The GC has further decided to start by focusing on Commercial Contracting.

Commercial Contracting

- ¶ 7. Big Datalytics generates revenue by entering into license agreements with its customers. This commercial contracting activity requires significant support from legal. The approaches employed currently can only be described as diverse, far-flung and disjointed.
- ¶ 8. **Current Contracting Model:** Big Datalytics' primary product is software, which contains an embedded, click-accept license. Many customers simply do business with Big Datalytics by submitting orders for product that are governed by the click-accept licenses. However, a significant number of customers insist on having negotiated, signed license agreements with Big Datalytics. Big Datalytics' regional selling units have taken a wide variety of approaches to the negotiation of agreements with a number of customers using highly localized agreement templates that are outdated or otherwise inconsistent with the company's "standard" license agreement. A number of the selling units also stand out as having a very high percentage of negotiated agreements. Each selling unit and their assigned lawyers apply their own judgment as to what constitutes an appropriate modification to the agreement when a customer asks for changes, resulting in widely differing risk profiles. Finally, all selling units experience huge spikes in demand at quarter end, causing the legal department to use a wide variety of different law firms to help provide coverage at these critical points in time.
- ¶ 9. **Process and Tools:** Each selling unit establishes its own processes for handling commercial agreements, the procurement function in each region establishes its own processes for handling purchase agreements, and each engineering group establishes its own processes for handling their acquisition of technologies. Most of these processes are largely undocumented, but some units have "approval matrixes" that specify who must sign off on any requested changes from the standard terms. Most of the detail in these matrixes tends to be around the approval of extra levels of discount. None of these processes are automated. Approvals are handled by email and it is incumbent on the people involved to manually hand the deal off to anyone else whose approval or involvement may be necessary (e.g., Finance for review of financial terms, support for review of support terms, etc.). As a result, attorneys spend significant amounts of time performing the non-legal tasks of chasing approvals, etc. In addition, the contracting process often is a black box where customers, sales reps, business units and others have little visibility into how close to done the agreement is, let alone a good understanding of why it takes as long as it does to close deals.
- ¶ 10. Once completed, contracts get submitted into a company-wide repository, together with a cover sheet that identifies key features of the agreement such as the parties and products involved. In practice, these forms are often incomplete or inaccurate and many groups maintain duplicate repositories that often contain multiple drafts as well as the final agreement.
- ¶ 11. **Resourcing:** Big Datalytics currently has substantial resources dedicated to supporting its commercial contracting activities. Roughly 50% of the personnel in the legal department work on matters related to commercial contracting. The legal depart-

ment also spends several million dollars a year on outside law firms to assist with the negotiation of both very complex agreements and the large volume of relatively straightforward sales agreements that hit at the end of each quarter.

- ¶ 12. **Contract Volumes and Complexity:** The company has a wide array of contracts that vary dramatically in terms of complexity and volume. The company's license agreements number in the millions each year, but the vast majority get handled on a click accept basis. The company has hundreds of agreements (including negotiated licenses and channel agreements) that are relatively straight forward but get handled manually. Finally, the company has tens of agreements (including strategic alliances, joint ventures, etc.) that are very complex and require significant lawyering.

The GC believes that by revamping its approach to commercial contracting Big Datalytics can (i) reduce transaction cycle times, (ii) lower risk and (iii) derive significant cost savings.

Module 1 Problem: Stakeholders

You and your colleagues are junior members of the Big Datalytics legal department who are reputed to have “special skills” connected to the modernization of legal departments. This reputation comes from conversation you have had with peers about coursework you took during law school combined with some unusual internship experiences. For this reason, the GC has delegated the Commercial Contracting component of the legal department to you, at least until you prove you are not up for the job.

Contracts are the lifeblood of all businesses, including Big Datalytics. Further, whatever has been done in the past has been good enough to get the company to the present day, which is a successful operating company (\$3 billion annual revenue, 30% annual growth) in a very competitive and fast-moving space. What is the practical implication of this fact? Your Commercial Contract proposal is going to involve changing how people do their work – indeed, this includes some very successful and powerful people within the company.

To avoid stepping onto one of many political landmines, the general counsel has told you to conduct a “stakeholder analysis” of all the people connected to, or affected by, how the company does its contracting. That is all he says, expecting you to figure things.