

“Mergers and Strategic Alliances: A Global Strategy for the Future of Law in Nigeria and Africa”

MANAGING PARTNER ROUNDTABLE

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Keynote Address by:

Femi Lijadu – Partner, Ukiri & Lijadu

There was once a time when, according to the famous quote by **Benjamin Franklin**, you could say that nothing is certain except death and taxes.

The full quote reads “**Our new Constitution is established, everything seems to promise it will be durable but, in this world, nothing is certain except death and taxes**”.

I think that we can safely say nowadays that nothing is certain except death and taxes and **globalisation**. I can hear some murmurs in the crowd about the rising spectre of protectionism and other anti or counter globalising forces in the world, but I would say these are sporadic exceptions to a definite and demonstrable general global economic trend since the **Second World War** of a world in which geographic location and physical borders are becoming less significant for trade and the movement of goods and services.

If this assessment is correct and globalization is, to some extent, inevitable then I believe that it is a classic example of an exercise in futility for lawyers to rail against it or to act as if it does not exist. Rather than sound the battle cry against the forces of change, I believe that we lawyers and others involved in the delivery of legal services should analyse, manage and harness the phenomenon to fulfil our own professional and national development goals. The changing business environment requires changes in our **attitudes, behaviour, knowledge, training, conduct, networks and practices** as lawyers and not posturing. Whether we like it or not, low-cost communications technology allows **outsourcing** and **off shoring** of even sophisticated services like law beyond national borders, technological advances have permitted the standardisation, commodification and automation of not only legal documentation but some aspects of legal analysis, opinion writing and rendering advice as well as many other aspects of legal practice also. Artificial intelligence and machine learning means that robots can pass bar examinations with flying colours, analytics can qualitatively scrutinise the content of hundreds of thousands of documents in a few seconds and identify flaws or features. We need to embrace innovation and change to raise the standards and quality of legal service. The Nigerian legal profession is potentially one of the strongest in the world and our beloved country is blessed with talent but we are in danger of being left behind if we do not adapt. In the words of **Machiavelli**, the political theorist not the rapper, “**Whosoever desires constant success must change his conduct with the times**”.

That is why I am very grateful to the organisers of this excellent forum for inviting me to speak and for aptly framing the 5 key issues for discussion around this important topic of the future of law practice in **Nigeria** and **Africa** and the strategic role of mergers and alliances in the quest to secure a bright future for the profession. I shall read out the questions so that they are at the forefront of our minds because they combine so well to form a solid and clear framework for our discussion. Following this we can dive into the subject matter immediately.

1. *What is the impact of globalization on the legal profession and how has it influenced the need for cross-border collaboration*
2. *What are the opportunities available to the Nigerian legal profession considering current economic realities?*
3. *How should one manage potential challenges and risks associated with mergers and alliances in the legal industry?*
4. *Could smaller law firms thrive without such alliances?*

I believe that while touching on all the above questions we are sure to elucidate some of the emerging trends, potential disruptors, and opportunities for innovation and growth in the global legal market?

While there is a general awareness of globalization as an issue, there is no clear indication that we members of the profession in **Nigeria**, recognize the need to adapt to fast-paced and inevitable change in the dynamics of global business. The dynamics of legal practice are evolving fast under our very eyes. Within our shores, the context of competitive strategy, consumer needs and the minimum efficient scale necessary to render

competitive legal services have all changed dramatically in recent years. However, the sheer pace and speed of globalization often sets minds reeling ... Otherwise fearless advocates are sometimes reduced to quivering wrecks by inchoate fears about the possible impact on the profession of what they see as the relentless march of unregulated global capitalism. Globalisation is thus seen as some kind of promethean monster stalking the earth and wreaking untold havoc on the helpless citizens and advocates of the developing world. But are we really so helpless? I don't think so.

Before succumbing to panic, we ask questions and seek answers to them in the cold, hard light of objective analysis fueled by our enlightened self-interest. We should consider global market developments, the changing needs and the interest of our clients, the pursuit of professional excellence and our national economic development. This takes us to our first question:

What is the impact of globalization on the legal profession and how has it influenced the need for cross-border collaboration?

To be able to determine the impact of globalization, we first need to agree on what it means. So, what is globalisation?

This clarification is important because globalisation is a controversial term that seems to mean so many different things to so many different people. I propose to use it in a relatively simple way to mean **"the simultaneous contraction of space and time arising from technological advance."** In my view, the beauty of this definition is that it is arguably "pure" and shorn of any obvious political or ideological overtones or intricate prescriptive connotations regarding the "proper" direction of political economy. This basic definition of globalization means national barriers are falling and you can send information from **Lagos** to **Karachi** in 5 seconds not five days. It means you can sit in **Kano** and hold a videoconference with your supplier in **Buenos Aires** at the drop of a hat. It means you can be in **Enugu** and monitor the progress of your goods from **Atlanta** online. You can be in Nairobi and have your lawyer in **Dubai** review your joint venture agreement with your business partner based in **Hong Kong**.

Globalisation essentially means the world is getting smaller and more inter-connected every day.

Having defined globalisation for the purpose of this discussion, we can now turn to examine its impact.

What is its' impact on the legal profession and practice in Nigeria?

The renowned legal futurist, **Richard Susskind** in his book **"Tomorrow's Challenge"** speaks of the importance of three forces driving change in legal Services. These are:

- i. *The "More-For-Less" challenge,*
- ii. *Liberalization, and*
- iii. *Technology*

This trio, he argues, form **"a confluence of powerful forces"**. The more for less challenge is the client's quest for ever better and more extensive service at lower costs, liberalisation is the opening of the legal services (i.e. in US and Europe) to alternative legal services providers and not just lawyers or law firms. For example, legal tech providers like **LegalZoom**, **Nolo**, **Rocket Lawyer**, and **LegalVision** have come forth to offer quick, less expensive and accurate legal services in areas of the law that are easily standardised and are needed by a wide variety of customers such as will and tenancy agreements. is routine and where there are lots of potential. Technology is the third challenge and opportunity. He argues in addition that the legal profession will experience a tsunami (my word not his) of artificial intelligence (AI) applications that will not just alter but reframe the way in which legal work is conducted. We don't have to imagine as it is happening already

with armies of AI powered legal research technicians scrutinising enormous legal databases in record time and with pinpoint accuracy. Document reviews that could take an army of lawyers several days or weeks, can now be done at the click of a mouse. Interestingly, Bloomberg Law has apparently reported that the teams responsible for **IBM's Watson AI** system have been engaging in informal discussions with prominent US law firms, and that **IBM** may announce its entry into the legal market before too long.

McKinsey recently estimated that 22% of a lawyer's job and 35% of a law clerk's job could be automated [**McKinsey & Co., Jobs Lost, Jobs Gained: Workforce Transitions in a Time of Automation (December 2017)**]. I actually believe that those figures seriously underestimate the extent to which the routine work of lawyers will be commodified and taken over by technology. We should expect that smart contracts, self-executing agreements stored on blockchains will become commonplace.

Apart from the above trends, we can identify five additional ways in which globalization has an impact on legal services.

Firstly, the practice of law is increasingly international, and the global provision of legal services is already taking place even in **Nigeria**. Nigerian and foreign clients, corporations and individuals in Nigeria routinely obtain legal advice or services extra-territorially. The service could, in principle, be delivered through any of the four modes recognized by the **World Trade Organisation**. The first mode is known as "**cross-border supply**" where, for example, an opinion is written in **Dubai** by an Indian lawyer and sent to a Nigerian based company in **Port Harcourt** via the internet. The second mode, known as "**consumption abroad**", is where a client travels to **New York** to consult a U.S. law firm on a joint venture agreement in **Nigeria**. The third mode is "**commercial presence**" where the foreign law firm opens an office in, say, **Abuja** and renders legal services to a multinational company with operations in **Nigeria**. You are all aware that , for example Dentons has registered here, complied with local regulatory requirements to permit a law office to be opened in its name. The fourth mode is known as the "**temporary movement of natural persons**" and simply involves a lawyer or the client physically moving to another country to deliver or "consume" legal services. This could be a **German** lawyer coming to advise on a transaction in Lagos or a Nigerian lawyer traveling to Accra to advise a Nigerian bank on a transaction in **Ghana**.

Secondly, the needs of clients have changed as they expand their businesses across borders. A case in point is the expansion of Nigerian banks and oil and gas service and trading companies into other West African countries. This has put pressure on Nigerian law firms acting for them to seek to establish a presence and capacity in those countries. It has also made law firms seek to expand in terms of size and depth of expertise. There are thus immediate opportunities for Nigerian law firms to expand in the **West African Sub-region** and beyond as **Nigeria** could increasingly become a hub for the sub-regional oil and gas and banking industry.

Thirdly, the use and application of technology in delivering legal services is critical. Documents can be transmitted instantaneously through telecommunication devices. To illustrate the point, if I live in **Lagos**, although I cannot have my hair cut in **Beijing** without flying there, I could, in principle, have a Chinese lawyer based in **Shanghai** prepare a lease agreement for my two-room apartment in **Ajegunle**. Legal services are thus now a product or commodity that can be delivered and consumed within and across national borders. This means that the traditional view of legal services as a special combination of legal knowledge, experience and attributes must be adjusted to address legal services as a bundle of proficiencies that can be imported or exported. ICT technology has in effect diminished the importance of geographical location for providers and consumers of legal services worldwide.

Fourthly, there has been a noticeable shift from advocacy in domestic courts to arbitration and commercial legal work. International trade generally requires less representation in local courts and more legal counseling in structuring and implementing transactions. Growing areas of legal services include corporate

restructuring, data protection and privacy law, environmental law, privatization, cross-border mergers and acquisitions, intellectual property rights, new financial instruments, the law relating to digital financial instruments, securitization and competition law. As a result, clients have a need for a constant flow of legal advice on a multitude of transactions involving copious documentation of varying complexity.

Finally, there is international pressure on Nigeria from developed countries, under the auspices of the **World Trade Organisation (WTO)** and other multilateral agencies to open up its legal services market to foreign lawyers and firms.

These are a summary of the immense pressures of globalisation affecting the practice of law in **Nigeria** and **Africa** and pushing many firms to consider strategies for sustainable growth such as mergers with domestic and or foreign firms and entering alliances with other domestic or international firms. The question we must consider now is as follows:

What are the opportunities available to the Nigerian legal profession considering current economic realities?

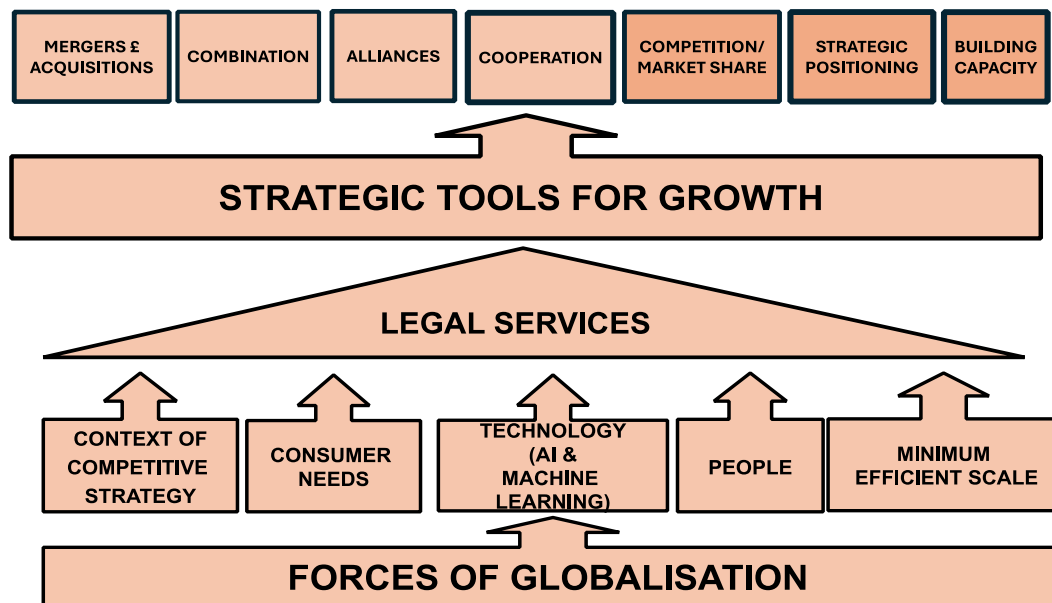


Diagram: Impact of Globalisation on Legal Services/Strategies for Growth (Source: Derived from Christopher Bartlett and Sumantra Ghoshal “Managing across borders”)

It is said that there are basically two ways to achieve growth in a competitive market. You either grow by capturing market share from your competitors or by expanding in a market that is itself in an underlying phase of expansion. A merger or alliance with a domestic or an international firm or a firm in another country offers the opportunity for Nigerian firms to expand their reach and access new markets and clientele. The same applies to entering a close or loose alliance with another domestic or with a compatible firm in a different jurisdiction on mutually beneficial terms.

- **Olajide Oyewole LLP and DLA Piper - Alliance**
- **Adepetun Caxton Martins Agbor & Secun (ACAS) and Dentons - Combination**
- **Olisa Agbakogba Legal and Capstone Legal – Collaboration/MOU**

- **Aluko & Oyebode and Africa Legal Network - Alliance**
- **Templars and Ferociter, Ampem Chambers – Merger**
- **GElias and Multilaw – Alliance**

How should one manage potential challenges and risks associated with mergers and alliances in the legal industry?

A well-structured and systematic process with adequate checks and feedback mechanisms built in would go a long way towards mitigate the risks of failure of a merger, combination or alliance. The rule of thumb is that the closer the combination, the more thorough and detailed the scrutiny required. Factors to consider will include the following:

- **Clear Objectives & Strategy**
- **Vision and Values**
- **Alignment of Goals**
- **Identify Potential Partners**
- **Identify Value**
- **Check Business compatibility**
- **Check Partner compatibility**
- **Build Relationships**
- **Open and frank communication**
- **Resources Allocation Structure**
- **Governance system**
- **Risk Management**
- **Negotiate agreements**
- **Manage the relationship**
- **Make the deal**
- **Monitor and evaluate outcomes**

Could smaller law firms thrive without such alliances?

Yes, but increasingly the minimum efficient scale to be able to offer services at the top of the market will be limited to those firms that have the size and resources to invest in the best technology and that have the reach to service their client's business as it expands domestically and internationally as the case may be. No matter how the skill and dexterity of a small firm, at some point size, in terms of capacity to deliver multiple services to one or several clients simultaneously and in multiple locations, will become a limiting factor.

In the light of the technology revolution and other forces driving globalisation, we have briefly examined the fate or place of smaller firms. If small firms may struggle to compete, it may be useful to extend our enquiry to ascertaining some factors which will distinguish successful law firms in the not-too-distant future:

- **Scale and size efficiency and sufficiency**
- **Investment in new and relevant knowledge**

- **Distinctive capabilities/specialisation**
- **Agility. The ability to respond quickly to changes in the economic, legal and regulatory landscape.**
- **Innovative channels**
- **Vigilant on pricing**
- **Employee flexibility – collaboration and connectivity**
- **Resilience measures**
- **Client solutions**
- **Talent: People who deliver outcomes**

All the above factors are taken into account by clients reviewing their business models and redefining what constitutes value from legal service providers in the light of the following trends.

- **Consolidation of players in the market**
- **Legal teams measured by revenues**
- **Performance data easy to gather**

Conclusion

Having been through this analysis I, like **Benjamin Franklin**, am persuaded that in this world, nothing is permanent except **death, taxes, globalisation** and the **ingenuity of Nigerian lawyers**. They are undoubtedly amongst the most able and hard-working professionals anywhere in the world. Having said that the legal profession is undergoing profound disruption. Lawyers need to become globally competitive and lift our gaze to keep pace with the fundamental developments taking place in the industry some of which I touched on earlier.

In the fast changing and unpredictable global business environment speed, agility, adaptability, efficiency and size will be critical for the profession not just to survive but to thrive. I believe that mergers and alliances are key strategic tools that will assist the legal industry in Nigeria in addressing the challenges of practising law at the highest levels of skill and proficiency in an increasingly globalised world.