



Cutting through complexity

## What we've been up to in our first six months...

Welcome to the first of what will no doubt turn out to be a fitful and irregular series of newsletters. Coffey Graham has been in business since late last year and we thought it was time to let clients and friends know what has been happening.

We were fortunate enough to be instructed in our early days by clients we had worked closely with over a number of years. The breadth of work we have become involved with has been encouraging too. Matters range from negotiating telecoms outsourcing to advising property developers on the enforceability of large personal guarantees; and from drafting a suite of agreements for an innovative software firm to defending and counterclaiming in a dispute relating to a business-critical supply agreement.

## North Africa calling

Rory has spent much of the last three months acting for the Algerian subsidiary of Qatar Telecom in a major outsourcing to Ericsson. This follows on from deals he has done for "3" in the UK (also with Ericsson) and for Orange in Switzerland.

*"This is perfect work for us: a chunky, complicated technology deal where we get to be part of the commercial team. The fact that the contract was subject to Algerian law didn't alter the underlying task. We had to drive to get a good deal which didn't sacrifice the parties' working relationship for a 'quick win'", comments Rory.*



Zinedine Zidane, the public face of the client, wasn't present in person, unfortunately, though an enormous poster of him dominated the entrance to the client's HQ.

Back in the UK, Rory is working on a Mobile Virtual Network Operator (MVNO) deal, with a topical twist. He's also advising on a number of ideas for restructuring the traditional technology procurement deal to try to make them work better – and make financial sense for the parties.

## Other matters and deals

- **Department for Business, Enterprise and Regulatory Reform:** we advised on the terms under which government grants should be made to technology start-ups. A major issue we helped solve was balancing protection of the government's investment against making the

terms so one-sided that no-one would apply for a grant at all.

- **Rob** has spent much of the last several months working closely with PepsiCo's in-house legal team. Rob observes:

*"Being involved in the core commercial business of a client, whether it's a global player or a start-up, is one of the most fascinating aspects of my job"*

- **Coffey Graham** has begun to establish itself as a popular choice for referrals from well-known City law firms in dispute resolution matters. Rob has advised on mediations and arbitrations, and is currently preparing for a commercial court hearing. Rob has also recently acted as a supervising solicitor.

- **Pro Bono** advice is something which Coffey Graham is committed to providing. Rob is currently working on an immigration matter and is pleased to be collaborating again with leading counsel in this area.

## Coming soon

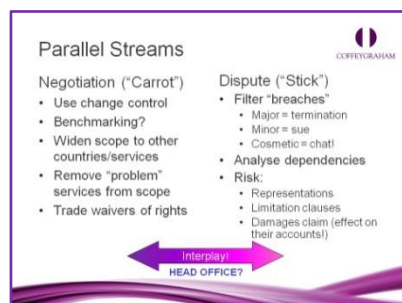
We are quite sure that the time has come for a party. We are planning something special, and look forward to revealing further details, and our surprise guest, very soon!

## Outsourcing in the Credit Crunch

In March, Rory was one of two speakers at a seminar looking at how the current financial situation will affect outsourcing deals. The audience was a good mix of users and service providers, from the private and public sectors.

As suspected, many of the questions were about how to re-negotiate or get out of a deal which was built on the assumption that usage of a service would only go up over time.

One of the reasons that Rory (a commercial negotiator) and Rob (a dispute resolution lawyer) went into partnership was to deal with this kind of situation, where there is a potential dispute or falling out, but where the aim is to leverage the situation to get a better deal rather than to end up in court. We advocate a "carrot and stick" approach:



A full version of the slides, together with various papers we have written, will shortly be available on our website or directly from Coffey Graham.

Thanks for reading!

robert.coffey@coffeygraham.com  
+44 (0)20 3145 1169

rory.graham@coffeygraham.com  
+44 (0)20 3145 1168

This newsletter is prepared for clients and contacts of the firm and does not represent legal advice on any specific matter.

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## Legal update: for anyone who is, or uses, a consultant (that's all of you!)

The High Court has recently opined<sup>1</sup> on the case of a consultant who, having been intimately involved in developing the products of one client, set up in competition and created products which relied on information he had gathered and retained from his original client. That client then successfully sued him – and the others involved in the competing venture – for breach of confidence.

The common-sense judgment reiterated that, even in the absence of a written contract, the fact that the parties had clearly treated the information as being highly confidential implied a duty of confidence. It also examined what amounts to a "trade secret", ie something so confidential that there is an on-going duty not to disclose or use it even after the consultancy has finished. In essence:

- if information goes to the heart of what the client is doing and the work of the consultant necessarily involved such information;
- if the client clearly regards the information as being secret and takes steps to ensure this (eg always having NDAs or password protection on databases) and
- if the information has commercial value

then it is likely to be a trade secret rather than the consultant's general "stock in trade" knowledge.

Our comments:

- just because a consultant takes away knowledge in his or her head, that does **not** necessarily stop it being the client's trade secret
- it is **always** best to have a clear written agreement about which party owns what information and who can do what with it – this goes to ownership of copyright etc too (we are always having to fix things after the event for clients...)
- the more deeply an external consultant is embedded into a client organisation, the more likely he or she is to be regarded as having similar duties of confidentiality to an employee.

For further information, please ask!

<sup>1</sup> Vestergaard Frandsen et al v Bestnet Europe et al