CHANGES IN THE LEGAL MARKET VIA DISRUPTIVE TECHNOLOGIES

The contribution of digital technologies to the Australian economy is forecast to be $139 billion by 2020, when it will equate to 7% of Australia's GDP (DAE 2015a). This represents the size of Australia's digital economy and illustrates the significant role technologies such as cloud platforms, data analytics, artificial intelligence (AI) and the Internet of Things (IoT) will play in driving economic growth in Australia.[1]

Disruption is the result of the rapid evolution of a business that fundamentally changes the market it operates in. The terms 'disruption' and 'innovation' have almost become interchangeable since the Harvard Business School Professor, Clayton Christensen, coined the term 'disruptive innovation' in the 1990s. Today, the fear of not innovating is driving businesses to look for opportunities to transform or innovate to stay relevant to their market or compete against start-ups who are not held back by legacy constraints. When looking at successful disruptors in different markets, one thing becomes apparent: you shouldn't try to be faster than your competitors; instead, you should aim to be better than them.

When considering the impact of disruption on a market, you need to examine how long you can maintain the advantage you have gained compared to others. Often, the ability to maintain the advantage gained will require a business to continually innovate and consider client needs. What is assured is that once a market is disrupted, competitors will follow and copy the success (often without the investment) of the disrupter. Examples of this behaviour are common in businesses such as AirBnB and Uber. However, in all cases of disrupted markets and gaining rapid market share in a short amount of time, the competition 'copied' many of the innovations that were developed to compete and survive.

In both cases of disruption and rapid innovation, the process often occurs quickly. The speed of change often means businesses are using agile change management processes, and risk management is critical to the success of such change.

What does a disruptor look like?

There are many recent disruptions in markets we are all familiar with. In each case, the common theme that enabled success was that the business predicted what its customers wanted. Also, all disruptors used technology as the fundamental change facilitator.

Netflix

Netflix is not a new company; it has disrupted its market more than once. This market also demonstrates what can happen if a business does not respond to change sufficiently quickly: the collapse of Blockbuster is one of the larger fatalities recorded. In the late 1990s, when Netflix was directly competing with Blockbuster, it focused on convenience and developed a mail-order distribution service. They used customer desire for convenience and irritation with late fees to rapidly gain market position. In 2007, when streaming technology started to become viable, Netflix completely changed its business model to offer services via that medium. In 2013, the business started to create content, using artificial intelligence and machine learning to identify the types of content their customers were interested in. It was the use of both the data collected and these technologies that enabled Netflix to be at the forefront of innovation, disrupting their market a number of times.

Netflix's distinctive strength is its the ability to understand its customers using analytics and behavioural data.

Uber

Ride-share companies such as Uber demonstrate how a disruption is often caused by a general lack of innovation in a market. Before ride-sharing services, taxi companies had three advantages over other competitors: drivers who knew how to navigate, a dispatching system to manage a fleet of drivers, and a high level of government protection for their services. With growth in technologies, such as GPS and smartphones, any competitive advantage from the first two factors were negated; the third advantage is constantly being eroded. When you consider the industry in general and whether it was ripe for disruption, you only need to look at the issues often highlighted by customer feedback. Were drivers and phone dispatchers universally courteous? Were the vehicles always clean and safe? It is this lack of any real advantage that made the industry vulnerable to disruption. What is apparent in this industry is that once you disrupt its market, your competitors will follow. Most taxi companies are looking to implement updated apps, better tracking systems and improve customer experience on the back of Uber's innovation.

Ride-sharing companies have disrupted the taxi industry by using GPS systems and smartphone technologies effectively, eroding any competitive edge held by taxis in the market.

Airbnb

While companies offering services similar to Airbnb have not dramatically affected major hospitality companies, they have certainly disrupted the market. In many ways Airbnb has actually helped the hospitality sector by increasing travel among all demographic groups and enabling low cost accommodation options for many travellers who simply cannot afford hotels. The rise of Airbnb has forced many larger players in this sector to look closely at their businesses to improve their services. In 2016, the Marriott and Starwood chains merged to become the world's largest hotel chain, bringing together features and reward programs from both sides to attract and retain customers.

The rise of Airbnb has increased travel among all demographic groups, which has created a new market rather than completely disrupting the existing model.

Technology, the enabler

When considering examples of real disruption and those companies that are responsible, it becomes apparent that technology is a key factor in their success. The use of technology will often be the innovation, enabling the business to identify and execute fundamental change. Many new and emerging technologies are now enabling and causing disruption, including:

- Internet of Things (IoT)
- advancements in analytics, and artificial intelligence and machine learning (AI)
- robotics (automation)
- blockchain technologies.

Many of these technologies will coexist and be used in combination to identify opportunities to disrupt markets.

AI is often paired with robotics to enable the automation of tasks traditionally performed by humans. Many businesses are looking to adopt these technologies to build efficiencies, reduce labour costs and increase quality and accuracy. The disruptors have built platforms that enable businesses to adopt these technologies without large-scale investment.

IoT and blockchain technologies are often paired when building new supply chain technologies. Iot devices exist on packages, containers, vehicles and ships, to track various conditions such as movement, environmental conditions and location. This information is written into a blockchain and becomes part of a digital contract.

The great risk divide

An organisation's ability to keep pace with the market, their competitors and the demands of their customers, is critical. A modern day imperative is that it also keeps pace with advancements in technology. As discussed at the beginning of this article, this landscape is changing rapidly and requires a team of people for structured, balanced and strategic thinking, with clear direction about which technologies to invest in, and how to integrate them into 'business as usual'. There is plenty to choose from!

But what of risk?

In the digital age, it is fair to say there is the potential for a 'risk divide'. In mature organisations, this divide will be small, if not already bridged; in less mature organisations, the gap may be quite pronounced. In a start-up, there is often no risk-aware culture at all except possibly from savvy investors who are asking the right questions.

The divide we are talking about is the perceived (or real) difference in objectives between the risk-takers or 'innovators', and the risk managers or 'fun police'. This is an issue that resonates with many General Counsels (GCs), as often the role of the GC is to make sure that the key risks are adequately assessed and managed.

This risk divide is not new to business, we have always had operational arms in a business and centralised risk and compliance managers. But the rapid growth of technology accentuates the potential technology risk divide, and makes it a real issue that needs to be tabled and addressed. Some of these risks can end businesses, like those associated with cybersecurity and data privacy, or at least have a significant impact on an organisation. So, what are some of the strategies for bridging the divide?

The technological advancement of any organisation does not necessarily signal the introduction of heightened risk, and the 'fun police' are often more capable of participation than people think. So why is it that, in many organisations, the people charged with identifying and managing strategic risks to the business, are often consulted last or late in the innovation or disruption journey?

Generally, there are two main factors underlying this: a lack of familiarisation with the process (or a lack of process), and a fear of the answers.

Adequate project management processes

Big change in an organisation is often managed through using projects, with steering committees, responsible stakeholders and key delivery streams. Two important questions to consider are: has an organisation's project management process kept pace with the digital age, and are key risk management gates built into the process to deal with modern technology risks? If not, then they should be.

Early consultation on risk avoids the 'traffic cop' scenario that most project teams complain about. Security-in-design, privacy-in-design or just plain risk-in-design are not just buzzwords, they are an important aspect of modern projects and change management. If a business engages early with appropriately qualified and proactive risk managers, takes the time to identify key risks, and builds in strategies during the design, build, testing and acceptance phases, then there will be far fewer surprises at the end. Factoring it in upfront also means factoring in the costs and timeline.

Avoiding the inevitable

Another factor that can enhance the risk divide is avoidance. Often, people who are taking risks know they are taking those risks, and if allowed, they will delay the inevitable risk management and acceptance conversation until the last minute. This can result in delays, overruns (budget and time) and the acceptance of heightened risk into the business when it may have been avoided.

This goes beyond process; it is cultural. It is important (and the GC plays a key role here) to create a culture that is mature about accepting risks, and mature about the proper and timely mitigation of risks that are foreseeable. This is easier said than done. It needs to be driven from the top down, across an entire business. Reinforcing or justifying risky practices to meet a product launch deadline sets a cultural tone that can be hard to undo.

Footnotes

1. Deloitte Access Economics, 2017, p. 1, in *Australia's Digital Pulse: Policy Priorities to Fuel Australia's Digital Workforce Boom*, a report prepared for Australian Computer Society)

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