

5 UPS AND DOWNS OF E-DISCOVERY PRICE COMPRESSION

Experts tackle the pros and cons around price compression in a continually growing e-discovery industry.

BY IAN LOPEZ

As the surge of legal tech M&As and partnerships currently making headlines can attest, e-discovery is a booming industry. And as with many growing industries, e-discovery has reached the point of price compression. But what does that mean for customers?

“When you think about where our industry has come from, we’re in a kind of turning point,” said Adi Elliott, vice president of marketing at Epiq Systems. “It’s really important to contextualize price compression into the history of the industry.”

As Elliott explained it, “the history of e-discovery started with people printing pieces of paper and shipping them around,” and “where the industry really took off was, there were just a lot more pieces of paper.”

In the mid-2000s, he said, the e-discovery industry became “fully digital,” as companies “all at once stopped printing these documents, and we kept them in kind of online databases for people to log into via the internet.”

“So now instead of, ‘How much does it cost to print out a piece of paper?’, it’s, ‘How much does it cost to process and host my gigabytes? But same general idea. Just replace the word page with gigabyte, and you’ve got the same thing,” Elliott explained.



Today, the industry has completely changed. “Price compression comes from treating our industry like we’re all just printing out pieces of paper, because that’s what we come from, and treating it like it’s a commodity. But in reality, while no one was paying attention, it incrementally became a totally different industry that is actually more akin to the global cloud services space,” he said.

Here are some of the ways e-discovery price compression is impacting clients in various industries.

1. Client Perception of Pricing – Paradise or Flux?

There are of course pros and cons to price compression, and in the

view of Zapproved CEO and founder Monica Enand, one benefit has been “more predictable e-discovery costs courtesy of pricing transparency.”

“Clients are getting what they’ve craved – not just lower costs, but predictability,” she said. “There always was a wild card in pricing, and that was hosting. Typically clients paid per gigabyte per month. Since cases last an indeterminate amount of time, this ongoing fee compounded the cost of litigation.

However, Elliott argued that prices are “in flux” as are business models, and as a result, “clients have a lot of anxiety about, ‘Am I paying the right price?’”

“The only language that clients have had to be more efficient with e-discovery is largely being charged less money,” he said. “There has not been a route to more efficiency for the most part in e-discovery besides charging less money.”

2. Goodbye Data Centers, Hello “Cloud-Washing”

A large driver of costs for e-discovery providers can be found in data security, and when it comes to our global economy, this to many translates as a need for international data centers. But with costs going down and companies trying to stay afloat, how to fund such large scale operations?

If clients “were looking at the industry” from a security standpoint and using “the same sort of rigor to analyze what e-discovery company you would use to decide to host your email,” they would “never in a million years say I’m going to host my email with ... somebody that doesn’t have their information security story completely buttoned up,” Elliott said. “But in e-discovery, because we come from this weird tradition of paper, we sometimes take our foot off the gas there.”

In Enand’s view, price compression is leading to “the extinction of data centers,” as well as “the rise of ‘cloud-washing.’”

“Vendors know the appeal of the cloud and many are creating their “cloud” solution via cloud-washing -- hosting their on-premise software in the cloud,” she said. “Unfortunately, it is not the same thing and does not offer the same benefits of scalability, security, performance and cost that a cloud-native solution provides.”

3. Benchmarking in a Saturated Marketplace – Too Many Players in the Game?

While many legal departments rely on a few key providers with in-

dustry-wide recognition, emerging on the scene are numerous solutions for addressing various tasks along the Electronic Discovery Reference Model (EDRM).

“The number of players and the huge diversity of business models and companies doing e-discovery services is so great that it’s really hard to benchmark,” Elliott said. There’s so many players involved in the e-discovery industry that it makes it really hard to compare. You can compare us to a few peers, but it’s really hard to compare us to one of those other hundred, because it’s almost like we’re in a different business.”

Elliott added, “If you look at it from a ‘could and should standpoint,’ there’s hundreds and hundreds and *hundreds* of service providers out there. And there’s probably only five to eight that clients should realistically use if they’re thinking about how sensitive their data is and the real, true information security requirements and legal requirements.”

4. Interplay Between Customer and Provider

In a market filled with providers using lower prices as a selling point, the expectations of customers are sure to evolve, but what does that mean for the parties involved? According to Enand, in-house legal experts stand to hold greater influence over data and the discovery process.

“As customers demand more, industry vendors will need to focus intensely on the customer experience. Those who listen to the customer and respond with a true understanding of their critical business challenges will develop better products and services to earn customer trust and be the vendors who succeed,” she noted.

However, Elliott warned, clients are left “in a position where they’re having to sometimes force price compression.”

“A lot of clients are actually compensated on how efficient they are. One way it impacts clients is their success is largely measured on how much money they can save in e-discovery,” he said.

For some, he added, it is part of their job to make e-discovery cheaper, “saving X percent. They almost have a pseudo procurement number on their heads sometimes,” forcing them to “make it [e-discovery] more efficient or keep the number down to where price compression directly feeds sometimes in their internal corporate goal.”

5. E-Discovery For All?

One might find an upside to price compression in greater affordability of resources. In e-discovery, this could mean that smaller industry players can more evenly compete with bigger entities, while clients, in turn, have a greater variety in choice.

“Price compression is a good thing for the industry,” Enand said. “Customers benefit from more choices, vendors become better or die, and the legal system benefits because e-discovery becomes more affordable and accessible.”

However, Elliott noted that, “a lot of people think they have an answer,” but “we need a new way to talk about being efficient in e-discovery.”

He explained that, sometimes, “price becomes overly dominant,” and that “when you focus on price, it comes at the expense of client services and data security outright.” In actuality, he said, these probably are two of the biggest “drivers of efficiency.”

Clients don’t always realize “the tradeoff they’re making,” for cheaper e-discovery, he added.