
THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

SIXTH EDITION

EDITOR
JOHN P JANKA

LAW BUSINESS RESEARCH

THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

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JOHN P JANKA

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CONTENTS

Editor's Preface	vii
<i>John P Janka</i>	
List of Abbreviations	ix
Chapter 1 COMPETITION LAW OVERVIEW.....	1
<i>Abbott B Lipsky, Jr and John D Colahan</i>	
Chapter 2 AUSTRALIA.....	16
<i>Angus Henderson, Raymond Roca and Capucine Hague</i>	
Chapter 3 BRAZIL.....	30
<i>André Gomes de Oliveira, Renato Parreira Stetner and Tiago Franco da Silva Gomes</i>	
Chapter 4 CANADA	41
<i>Theo Ling, Ricard Pochkhanawala, Jonathan Tam and Andrew Chien</i>	
Chapter 5 CHINA.....	58
<i>Jihong Chen</i>	
Chapter 6 EU OVERVIEW	71
<i>Maurits J F M Dolmans, Francesco Maria Salerno and Federico Marini-Balestra</i>	
Chapter 7 FRANCE.....	89
<i>Myria Saarinen and Jean-Luc Juban</i>	
Chapter 8 GERMANY.....	107
<i>Gabriele Wunsch</i>	

Chapter 9	GREECE.....	124
	<i>Anna Manda and Valia Apostolopoulou</i>	
Chapter 10	HONG KONG.....	142
	<i>Simon Powell and Chi Ho Kwan</i>	
Chapter 11	INDIA.....	158
	<i>Atul Dua and Arjun Uppal</i>	
Chapter 12	INDONESIA.....	173
	<i>Agus Ahadi Deradjat and Kevin Omar Sidharta</i>	
Chapter 13	JAPAN.....	187
	<i>Hiroki Kobayashi, Saori Kawakami, Daniel Senger and Shintaro Ojima</i>	
Chapter 14	KAZAKHSTAN	203
	<i>Yerzhan Yessimkhanov and Assel Kalmagambetova</i>	
Chapter 15	KOREA.....	215
	<i>Wonil Kim and Kwang-Wook Lee</i>	
Chapter 16	LEBANON	227
	<i>Souraya Machnouk, Joy Lahoud and Ziad Maatouk</i>	
Chapter 17	LUXEMBOURG	240
	<i>Linda Funck</i>	
Chapter 18	MEXICO	261
	<i>Jaime Deschamps and Andoni Zurita</i>	
Chapter 19	NIGERIA.....	271
	<i>Ebunoluwa Awasika and Olumide K Obayemi</i>	
Chapter 20	POLAND.....	284
	<i>Tomasz Koryzma, Agnieszka Besiekierska and Marcin Lewoszewski</i>	

Chapter 21	PORTUGAL.....	294
	<i>Jaime Medeiros and Mónica Oliveira Costa</i>	
Chapter 22	RUSSIA.....	307
	<i>Maxim Boulba and Elena Andrianova</i>	
Chapter 23	SINGAPORE.....	318
	<i>Ken Chia and Seng Yi Lin</i>	
Chapter 24	SPAIN	341
	<i>Pablo González-Espejo</i>	
Chapter 25	SWITZERLAND	354
	<i>András Gurovits</i>	
Chapter 26	TAIWAN.....	370
	<i>Arthur Shay and David Yeh</i>	
Chapter 27	TURKEY.....	384
	<i>Burçak Ünsal and Okan Gündüz</i>	
Chapter 28	UNITED KINGDOM	399
	<i>Omar Shah and Gail Crawford</i>	
Chapter 29	UNITED STATES	434
	<i>John P Janka and Jarrett S Taubman</i>	
Chapter 30	UZBEKISTAN.....	455
	<i>Nodir Yuldashev</i>	
Appendix 1	ABOUT THE AUTHORS.....	467
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS ...	489

EDITOR'S PREFACE

This fully updated sixth edition of *The Technology, Media and Telecommunications Review* provides an overview of the evolving legal constructs relevant to both existing service providers and start-ups in 29 jurisdictions around the world. It is intended as a business-focused framework for beginning to examine evolving law and policy in the rapidly changing TMT sector.

The burgeoning demand for broadband service, and for radio spectrum-based communications in particular, continues to drive law and policy in the TMT sector. The disruptive effect of these new ways of communicating creates similar challenges around the world:

- a* the need to facilitate the deployment of state-of-the-art communications infrastructure to all citizens;
- b* the reality that access to the global capital market is essential to finance that infrastructure;
- c* the need to use the limited radio spectrum more efficiently than before;
- d* the delicate balance between allowing network operators to obtain a fair return on their assets and ensuring that those networks do not become bottlenecks that stifle innovation or consumer choice; and
- e* the growing influence of the 'new media' conglomerates that result from increasing consolidation and convergence.

A global focus exists on making radio spectrum available for a host of new demands, such as the developing 'Internet of Things,' broadband service to aeroplanes and vessels, and the as yet undefined, next-generation wireless technology referred to as '5G'. This process involves 'refarming' existing bands, so that new services and technologies can access spectrum previously set aside for businesses that either never developed or no longer have the same spectrum needs. In many cases, an important first step will occur at the World Radiocommunication Conference in November 2015, in Geneva, Switzerland, where countries from around the world will participate in a process that sets the stage for these new applications. No doubt, this conference will lead to changes in long-standing radio

spectrum allocations that have not kept up with advances in technology, and it should also address the flexible ways that new technologies allow many different services to co-exist in the same segment of spectrum.

Many telecommunications networks once designed primarily for voice are now antiquated and not suitable for the interactive broadband applications that can extend economic benefits, educational opportunities and medical services throughout a nation. As a result, many governments are investing in or subsidising broadband networks to ensure that their citizens can participate in the global economy, and have universal access to the vital information, entertainment and educational services now delivered over broadband. Governments are also re-evaluating how to regulate broadband providers, whose networks have become essential to almost every citizen. Convergence, vertical integration and consolidation are also leading to increased focus on competition and, in some cases, to changes in the government bodies responsible for monitoring and managing competition in the TMT sector.

Changes in the TMT ecosystem, including the increased reliance by content providers on broadband for video distribution, have also led to a policy focus on 'network neutrality' – the goal of providing some type of stability for the provision of important communications services on which almost everyone relies, while also addressing the opportunities for mischief that can arise when market forces work unchecked. While the stated goals of that policy focus are laudable, the way in which resulting law and regulation are implemented can have profound effects on the balance of power in the sector, and raises important questions about who should bear the burden of expanding broadband networks to accommodate the capacity strains created by content providers.

These continuing developments around the world are described in the following chapters, as well as the developing liberalisation of foreign ownership restrictions, efforts to ensure consumer privacy and data protection, and measures to ensure national security and facilitate law enforcement. Many tensions exist among the policy goals that underlie the resulting changes in the law. Moreover, cultural and political considerations often drive different responses at the national and the regional level, even though the global TMT marketplace creates a common set of issues.

I would like to take the opportunity to thank all of the contributors for their insightful contributions to this publication and I hope you will find this global survey a useful starting point in your review and analysis of these fascinating developments in the TMT sector.

John P Janka

Latham & Watkins LLP

Washington, DC

October 2015

LIST OF ABBREVIATIONS

3G	Third-generation (mobile wireless technology)
4G	Fourth-generation (mobile wireless technology)
5G	Fifth-generation (mobile wireless technology)
ADSL	Asymmetric digital subscriber line
AMPS	Advanced mobile phone system
ARPU	Average revenue per user
BIAP	Broadband internet access provider
BWA	Broadband wireless access
CATV	Cable TV
CDMA	Code division multiple access
CMTS	Cellular mobile telephone system
DAB	Digital audio broadcasting
DECT	Digital enhanced cordless telecommunications
DDoS	Distributed denial-of-service
DoS	Denial-of-service
DSL	Digital subscriber line
DTH	Direct-to-home
DTTV	Digital terrestrial TV
DVB	Digital video broadcast
DVB-H	Digital video broadcast – handheld
DVB-T	Digital video broadcast – terrestrial
ECN	Electronic communications network
ECS	Electronic communications service
EDGE	Enhanced data rates for GSM evolution
FAC	Full allocated historical cost
FBO	Facilities-based operator
FCL	Fixed carrier licence
FTNS	Fixed telecommunications network services

List of Abbreviations

FTTC	Fibre to the curb
FTTH	Fibre to the home
FTTN	Fibre to the node
FTT _x	Fibre to the <i>x</i>
FWA	Fixed wireless access
Gb/s	Gigabits per second
GB/s	Gigabytes per second
GSM	Global system for mobile communications
HDTV	High-definition TV
HITS	Headend in the sky
HSPA	High-speed packet access
IaaS	Infrastructure as a service
IAC	Internet access provider
ICP	Internet content provider
ICT	Information and communications technology
IPTV	Internet protocol TV
IPv6	Internet protocol version 6
ISP	Internet service provider
kb/s	Kilobits per second
kB/s	Kilobytes per second
LAN	Local area network
LRIC	Long-run incremental cost
LTE	Long Term Evolution (4G technology for both GSM and CDMA cellular carriers)
Mb/s	Megabits per second
MB/s	Megabytes per second
MMDS	Multichannel multipoint distribution service
MMS	Multimedia messaging service
MNO	Mobile network operator
MSO	Multi-system operators
MVNO	Mobile virtual network operator
MWA	Mobile wireless access
NFC	Near field communication
NGA	Next-generation access
NIC	Network information centre
NRA	National regulatory authority
OTT	Over-the-top (providers)
PaaS	Platform as a service
PNETS	Public non-exclusive telecommunications service
PSTN	Public switched telephone network
RF	Radio frequency
SaaS	Software as a service
SBO	Services-based operator
SMS	Short message service
STD-PCOs	Subscriber trunk dialling-public call offices
UAS	Unified access services

List of Abbreviations

UASL	Unified access services licence
UCL	Unified carrier licence
UHF	Ultra-high frequency
UMTS	Universal mobile telecommunications service
USO	Universal service obligation
UWB	Ultra-wideband
VDSL	Very high speed digital subscriber line
VHF	Very high frequency
VOD	Video on demand
VoB	Voice over broadband
VoIP	Voice over internet protocol
W-CDMA	Wideband code division multiple access
WiMAX	Worldwide interoperability for microwave access

Chapter 13

JAPAN

*Hiroki Kobayashi, Saori Kawakami, Daniel Senger and Shintaro Ojima*¹

I OVERVIEW

The media and telecommunications environment in Japan has undergone significant development in 2014 and early 2015. The country has completed implementation of its broadband infrastructure, with a broadband penetration rate of 100 per cent facilitating a readily accessible high-speed data communication usage environment nationwide. Further, in preparation for hosting the 2020 Olympic Games in Tokyo, the government has sought to develop its telecommunications networks and regulations to better accommodate foreign visitors to Japan. Pursuit of this goal has led to the expansion of free Wi-Fi accessibility, as well as the streamlining of telecommunications regulations to better accommodate foreign visitors' mobile devices. We expect Japan to continue to develop its telecommunications networks, services and technologies in the coming years in anticipation of the upcoming 2020 Olympic Games.

The government is also increasingly prioritising expanding market access and competition within the Japanese telecommunications industry, with the ultimate goal of reducing mobile device charges for Japanese consumers. Major Japanese companies, such as Rakuten, have increasingly begun to enter the MVNO sector, and this activity has served to both increase pressure on Japanese regulators to facilitate fair competition within the telecommunications industry, as well as incentivise the major telecommunications companies to reduce prices. Increased regulatory activity by Japan's Ministry of Internal Affairs and Communication (MIC) and other government authorities has led to pressure on the major Japanese telecommunications companies to reduce or eliminate practices perceived as anti-competitive, such as automatically renewing two-year contracts and

¹ Hiroki Kobayashi is a corporate partner and Saori Kawakami, Daniel Senger and Shintaro Ojima are transactional associates at Latham & Watkins Gaikokuho Joint Enterprise.

refusing to unlock SIM cards. Such reforms look to reduce costs for consumers in making full use of Japan's extensive, high-quality telecommunications networks in future years.

II REGULATION

i The regulators

MIC's broad authority to regulate telecommunications and broadcasting derives from statutes, which are the ultimate source of law in the telecommunications and media sectors in Japan. The core statutes are:

- a* the Wire Telecommunications Act, which governs facilities for wired signal transmission, such as wired telephony, wired broadband networks and cable television;
- b* the Radio Act, which governs facilities for wireless signal transmission, such as mobile phones, terrestrial and satellite television broadcast infrastructure and high-powered Wi-Fi networks;
- c* the Telecommunications Business Act, which regulates telecommunications and media businesses; and
- d* the Broadcast Act, which regulates the content that telecommunications and media businesses carry or provide.

The Broadcast Act and the Radio Act were amended in November 2010 to provide for a streamlined broadcast licence regime, including the separation of broadcasting licences from transmission licences.

Prior to the amendment, general broadcasting licences, cable radio broadcasting licences, CATV broadcasting licences and licences to broadcast through third-party facilities were granted by MIC under different statutes using different procedures. Under the amended Acts, the statutory licensing provisions for these activities are consolidated into the Broadcast Act and the Radio Act, and broadcasting is divided into two major licensing categories: 'main broadcasting', consisting of terrestrial broadcasting, and broadcasting through broadcasting and communication satellites located over 110 east longitude; and 'regular broadcasting', consisting of broadcasting through other satellites, CATV and IPTV.

Prior to the amendment, terrestrial broadcasting licences were granted only to broadcasters that provided their own broadcast content and operated the wireless transmission facilities used to distribute it. Under the amended Acts, broadcasters are now able to distribute their programming through third-party terrestrial wireless transmission facilities, just as they already were permitted to distribute their programming through third-party satellites and third-party cable television providers.

These reforms are expected to help lessen the regulatory burdens on telecommunications and broadcasting companies, to provide flexibility to the management of those companies and to open up competition by decoupling the ownership of broadcasting facilities from the production of broadcasting content.

ii Regulated activities

MIC exercises its regulatory power in numerous ways. MIC has the authority to grant broadcasting licences (for facilities such as television and radio stations that produce or broadcast media content), wireless transmission licences (for mobile phones and facilities such as mobile phone base stations and satellites) and telecommunication business licences (for traditional wired communications as well as mobile phone providers and ISPs), and monitors the businesses conducted with such licences.

MIC also allocates radio spectrum and has adopted detailed regulations to monitor and establish technical standards applicable to spectrum users and their licensed facilities and businesses. MIC's decision-making process in exercising this authority has often been criticised as opaque and arbitrary. For example, the allocation of radio spectrum to private sector users is based on the 'overall judgement' of MIC, not on any clear set of factors, leaving applicants unsure of what is required and opening MIC to accusations of favouritism or political manipulation. Spectrum policy in Japan is further discussed in Section IV, *infra*.

Currently under the Radio Act, use of mobile devices that do not fulfil the requirements of Japanese technology standards with respect to radio waves in Japan, and for which the manufacturer has not obtained authentication in Japan, is prohibited by law. Therefore, many foreign visitors' use of their own mobile devices in Japan is substantively illegal, although there are no known cases of any foreign visitor being accused of Radio Act violations. However, the Radio Act was amended in the legislative session of 2015, and once this amendment becomes effective, foreign visitors to Japan will become allowed to use their own mobile devices not authenticated in Japan for up to 90 days so long as such devices meet equivalent standards to Japanese technology standards. The amendment was implemented as a measure to encourage foreign tourists to visit Japan in anticipation of the Olympic Games in Tokyo in 2020. There used to be concerns that devices not authenticated in Japan may adversely affect the radio use environment. However, MIC concluded that the possibility of non-authenticated foreign devices adversely affecting the radio use environment would be minimal.

iii Ownership and market access restrictions

Foreign ownership and management of broadcasting licence holders, wireless transmission licence holders and Nippon Telecommunication and Telegraph Corporation (NTT), the semi-privatised national telecommunications service provider, is restricted by statute.

As discussed in Section II.i, *supra*, the Broadcast Act and the Radio Act, each amended in 2010, now divide broadcasting into two categories: main broadcasting and regular broadcasting. Under the Acts, no foreign national, foreign entity or Japanese entity that has either a non-Japanese director or 20 per cent or more of its voting shares directly owned by foreign nationals or entities may hold or receive a licence for main broadcasting. Further, indirect foreign ownership of 20 per cent or more through a subsidiary or affiliate is not permitted for terrestrial (non-satellite) main broadcasting licences. If foreign nationals or entities acquire 20 per cent or more of the voting shares of a main broadcasting licence holder, the licence will be cancelled. To avoid cancellation, any main broadcasting licence holder whose shares are traded on a stock exchange is permitted by statute to refuse to recognise the transfer of its shares if the transfer would

cause it to violate foreign ownership restrictions. In contrast, foreign investment in regular broadcasting licence holders is not restricted. As a result, several foreign-owned broadcasters now broadcast into Japan through cable television and third-party satellites.

Ownership of multiple broadcast outlets is also restricted by the Broadcast Act and related regulations. This restriction on the concentration of ownership is intended to support press freedom and diversity of speech in broadcasting. The restriction includes limits on ownership of shares in, and board seats of, multiple main broadcasting licence holders, as well as upper limits on the use of satellite transponder capacity. However, in response to worsening business conditions for radio broadcasters, MIC amended regulations in 2011 to relax cross-ownership restrictions on radio broadcasting licence holders, allowing entities to control up to four licence holders. Cross-ownership of newspapers and broadcasters has not been restricted in Japan. Newspaper companies often hold large ownership stakes in broadcast companies – in fact, each major private Japanese television broadcast network is affiliated with a major newspaper.

iv Transfers of control and assignments

In addition to foreign ownership and management, and cross-ownership limits, MIC approval is required for mergers and acquisitions that result in a new entity holding main broadcasting or wire transmission licences. Therefore, a statutory merger involving a licence holder or the divestiture of a business conducted under such licence generally requires MIC approval. The MIC review is primarily to determine whether the transferee of a licence would be eligible to independently qualify as a new licensee.

Further, the Telecommunications Business Act was amended in May 2015 to require the major telecommunications companies to renew their telecommunications business registration when such companies engage in mergers or share acquisitions. The telecommunication industry in Japan is monopolised by three major private telecommunication companies – NTT DOCOMO,² KDDI and SoftBank – and this amendment allows MIC to review any proposed merger or share acquisition's potential anti-competitive effects on business operations and fair trade. The amendment will come into effect in the spring of 2016.

In addition, pursuant to Japan's Foreign Exchange and Foreign Trade Act, certain acquisitions of shares in broadcasting licence, wireless transmission licence and telecommunication business licence holders by non-Japanese parties are subject to prior filing and waiting periods.³ Ordinarily, this is a *pro forma* requirement where no national security concerns are present.

2 NTT DOCOMO is publicly traded, but NTT Corporation holds approximately 60 per cent of shares in the company. NTT Corporation is 32.47 per cent owned by the Japanese Ministry of Finance as of 30 June 2015.

3 Regulated transactions include an acquisition of 10 per cent or more shares in such licence holder whose shares are traded on a stock exchange or over-the-counter market; and an acquisition from a Japanese party of any shares in such licence holder whose shares are not traded on a stock exchange or over-the-counter market.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

In Japan, MIC regulates internet and IP-based services (such as high-speed internet and VoIP), along with wired telephony and mobile phones, under the Telecommunications Business Act. The Act and the regulations thereunder emphasise protection of the secrecy of communications and the reliable and non-discriminatory provision of telecommunication services.

The Act not only regulates service providers that operate their own network facilities, but also regulates service providers that provide services to facilitate telecommunication between users but do not operate their own network facilities, such as dedicated hosting services on which clients can operate an e-mail server. Internet-based services that are not designed to facilitate telecommunication, such as internet banking and internet-based newsletter and media subscriptions, are not considered to be a 'telecommunication' and therefore are not regulated under the Act.

ii Universal service

Under the Telecommunications Business Act and the NTT Act, the NTT group must provide wired telephony services (analogue or IP over optical fibre), pay phone services and emergency call services to all areas in Japan. NTT East and NTT West provide services to depopulated areas, and a telecommunications trade association comprising the major telecommunications companies in Japan reimburses NTT East and NTT West for any cost deficits incurred by NTT's provision of such service. National law requires every landline and mobile phone user (customer) to pay a small fee (approximately ¥2 to ¥8, varying from year to year) as part of their monthly telephone service bill to cover these costs.

There is no similar law requiring universal broadband service. However, as of 2014, the penetration rate of broadband infrastructure (3.5G, satellite internet, 3.9G, DSL, optics fibre/FTTH, etc.) in Japan has already reached 100 per cent, and super-broadband (data transmission speed over 30Mb per second, including 3.9G, DSL, optics fibre/FTTH, etc.) infrastructure has reached 99.9 per cent penetration in Japan.

Meanwhile, MIC has been planning and implementing improvements to public Wi-Fi services so as to increase foreign visitors to Japan. In particular, MIC has been managing the implementation of the 'SAQ2⁴ JAPAN Project' (SAQ is an acronym for 'selectable', 'accessible' and 'quality') since June 2014. The goals of the SAQ2 JAPAN Project include improving preparation of free Wi-Fi and facilitating the use of such Wi-Fi; facilitating the acquisition and setting up of Japanese SIM cards by foreign mobile phone users in Japan; reducing international roaming fees for foreign mobile phone users in Japan; and implementing multi-language interpretation systems (i.e., translation applications). In November 2013, an NTT group affiliate started to provide a smartphone application, 'Japan Connected-free Wi-Fi', which allows users to connect

4 This application was prepared primarily for foreign visitors' use, but Japanese residents are also able to use the application.

to approximately 130,000 public Wi-Fi access points,⁵ including access points at airports, train stations, convenience stores and tourist spots in Japan, with one-time user registration. This NTT affiliate also continues to install more Wi-Fi access points.

Separately from the above free Wi-Fi service improvements, major Japanese mobile phone service providers are currently cooperating to establish an emergency disaster service set identifier (SSID), '00000JAPAN'. This SSID will enable every Wi-Fi user to use all Japanese mobile service providers' Wi-Fi networks during natural disasters regardless of the provider to which a user is currently subscribed.⁶

iii Restrictions on the provision of service

The telecommunications business in Japan is dominated by NTT East and NTT West and by the three major private telecommunication companies: NTT DOCOMO, KDDI and SoftBank. Telecommunication regulations, in combination with antitrust law, facilitate competition among telecommunication service providers. Because providers can become dominant to the exclusion of new entrants once their network or technology standard has been adopted by a critical mass of users, MIC and the Japan Fair Trade Commission have jointly adopted guidelines to regulate anti-competitive practices by providers that have high market shares. For example, such guidelines state that it would raise antitrust issues if a telecommunications service provider, such as a mobile phone carrier, with a high market share contractually restricts its customers from switching to another service provider or charges an excessive cancellation fee.

Under the Telecommunications Business Act, prices charged to end users by NTT for wired telephony services and payphone services are subject to a cap determined by MIC. This is to prevent these companies from abusing their near monopoly over these fundamental services and encourage them to improve efficiency. Prices charged by NTT for certain services, including optic data services, are subject to prior notification obligations to MIC. If MIC finds the pricing scheme inappropriate because it is anti-competitive or otherwise significantly unreasonable, MIC may require the carrier to change the pricing scheme. Otherwise, prices charged to end users of telecommunications services and other terms of service are not regulated. However, Prime Minister Shinzo Abe and other governmental officials have recently begun putting pressure on the major telecommunications companies to reduce prices for mobile phone services.

As a general rule, all telecommunication business licence holders must provide access to any other carrier that seeks to interconnect with their network. However, prices for, and methods of, interconnection have been areas of public controversy and regulatory scrutiny. Telecommunications companies have pressed for greater access to NTT's infrastructure, including its optical fibre network. Previously, NTT only provided access to its fibre-optic network on a bulk basis; however, on 1 February 2015, NTT East and NTT West respectively launched single-line fibre-optic wholesale to other carriers, including to non-traditional telecommunication companies such as

5 As of November 2014.

6 Normally, users can only use the Wi-Fi network of the service provider to which they are currently subscribed.

Sohgo Security Services (ALSOK) and Tsutaya, a rental video company. This fibre-optic wholesale is designed to improve fibre-optic use by reducing fees for fibre-optic use at the end user level. As of September 2015, 271 operators have commenced utilising such fibre-optic wholesale services. Before the commencement of this fibre-optic wholesale, there were competition concerns regarding NTT group companies' fibre-optic service, because NTT East and NTT West and the counter service provider execute contracts for the provision of fibre-optic wholesale service and do not disclose the contracts to the public. Therefore, other major telecom service providers such as KDDI and Softbank expressed concern that NTT East and NTT West provide their fibre-optic wholesale service with lower prices to NTT group companies than to other unrelated companies, so that those NTT group companies can in turn provide fibre-optic services to end users at lower prices. In response to these concerns, MIC prepared guidelines with regard to the provision of fibre-optic wholesale that prohibit unfair treatment of specific service providers and provide for potential enforcement by MIC. However, MIC is not currently examining any fibre-optic wholesale agreements, although KDDI, Softbank and other service providers have requested that MIC or a third party perform such examinations.

To date, the introduction of fibre-optic wholesale has not yet resulted in significant price reductions due to increased competition or new entrants from other industries; however, it is likely that more time is required for such effects to occur. MIC announced in March 2015 that increased competition and resulting price reductions had not yet occurred as a result of the fibre-optic wholesale service. A survey by MIC shows NTT DOCOMO obtained 46.6 per cent of the fibre-optic service share and NTT Communications (a data communication company of NTT group) obtained 18.1 per cent (the total of these two companies' share is approximately 65 per cent). This share concentration within NTT group is prominent, although NTT group companies do not provide fibre-optic services at lower prices than their competitors. To address concerns with respect to its high market share, NTT announced on 7 July 2015 that they will reduce the price of their fibre-optic connection fee from approximately ¥2,900 per line to ¥2,000 in stages until 2019, and target expansion of fibre-optic service to new customers.

Along with the introduction of a fibre-optic wholesale service, in recent years mobile line wholesale services, MVNO, have been expanding in Japan. MVNO has existed since 2001, but until recently service providers and subscribers have been very few in number. In 2007, MIC's guidelines regarding MVNO were amended to clarify the rights and obligations between MVNO and MNOs, and a dispute settlement procedure was established. After this amendment, the number of MVNO service providers using MNOs' mobile lines or WiMAX lines increased. In 2013, there was another amendment in the MVNO guidelines that clarified the extent to which MNOs could solicit information regarding MVNO business plans in connection with granting such MVNOs access to their networks, and established an opinion submission procedure to MIC. Further, in 2014, the guidelines for operation of Type II designated telecommunication facilities were amended, which included a change in the calculations for mobile line wholesale pricing. These changes in calculations are expected to lead to reductions in mobile line wholesale prices, to the benefit of MVNOs. These changes have spawned a recent increase in MVNO activity. In FY2013, 15 MVNOs provided only data communication service, and seven MVNOs provided both data communication

services and voice communication services. However, in FY2014, the number of MVNOs providing both services increased to 14, while the number of MVNOs providing only data communication services decreased to 12. The number of MVNO subscribers was 7.17 million in December 2013, increasing to 10.87 million subscribers by December 2014. However, MVNO service subscribers still only constituted 5.8 per cent of all mobile service subscribers in December 2014 despite this recent increase.

In connection with the recent expansion in MVNOs, controversy has emerged among mobile phone providers regarding the issues of SIM unlock and two-year contracts with automatic contract renewal.

MIC has been requesting mobile service providers to provide an option for SIM unlock to mobile phone customers, as they believe SIM lock prevents consumers from freely choosing mobile phone carriers and causes competition stagnation, and MIC prepared guidelines for the implementation of SIM unlock in June 2010. However, the guidelines did not include a direct or indirect obligation of mobile service providers to implement SIM unlock. Therefore, NTT DOCOMO was the only operator that implemented SIM unlock at that time.⁷

MIC, as part of its regulatory enforcement powers, has the authority to issue a business improvement order to telecommunications companies that significantly disrupt the sound development of telecommunications services. Taking advantage of this authority, MIC amended the guidelines regarding SIM unlock in December 2014. This amendment indicated that MIC shall consider telecommunications companies that fail to address requests for SIM unlock without any reasonable grounds for doing so as having engaged in action sufficiently disruptive to the sound development of telecommunications services to constitute grounds for issuance of a business improvement order against them. Therefore, mobile service operators are now substantially obligated to provide SIM unlock. These amended guidelines apply to devices that are released after May 2015.⁸ It is expected that customers' choice of mobile carriers and competition among major mobile service operators as well as MVNO service operators will be facilitated by this SIM unlock policy.

Abolishment of two-year contracts, however, has not shown significant progress. Two-year contracts, in which customers receive certain discounts subject to two years' continued use of the same service provider, enable customers to purchase expensive smartphones effectively for free or discounted prices. However, the two-year contract system has been identified as reducing customers' freedom of choice in mobile service carriers since customers are required to pay approximately ¥10,000 for early termination of such two-year contracts. In July 2015, a council of advisers to MIC stated that binding customers over two years raised concerns, but they did not raise any specific issues with

7 However, NTT DOCOMO required customers to pay a fee of ¥3,000 for SIM unlock, and the SIM unlock provided was incomplete.

8 However, each operator provides SIM unlock service with no charge only after six months from users' purchase of devices, and each provider generally requires a charge of ¥3,000 for SIM unlock within six months after users' purchase of devices. MIC has not invoked a business improvement order against any operator's policy at this stage.

respect to binding customers for two years and simply mentioned that ‘contract period binding agreements could be regarded as an anti-competitive market structure or action and we need to consider it further’. In addition to the discussion regarding two-year contracts, the advisers mentioned automatic contract renewal as a concern and raised the issue, stating that ‘automatic contract renewal has the effect of making two-year contracts four-year contracts or six-year contracts by the extension of contracts’ and ‘in that sense, we cannot deny that the current automatic contract renewal system deprives customers of freedom of choice of services’. The automatic contract renewal system has been regarded as a problem, since customers can terminate their two-year contracts only in the 25th month from the beginning of their contracts with no charge, and customers are once again required to pay a termination fee due to early termination of a renewed two-year contract after the 26th month from the beginning of their original contract, so that mobile service operators force their customers to use the same operator for another two years.

The council of advisers to MIC concluded ‘it is appropriate to establish a plan where two-year contracts are not renewed after the initial binding period so that customers can terminate their contracts with no charge’. However, this conclusion does not substantially affect current operators, because failure to comply with this recommendation would not result in issuance of a business improvement order by MIC. Therefore, the abolishment of two-year contracts with automatic contract renewal remains unlikely in the near future.

Separate regulations exist in Japan restricting unsolicited texts and e-mails and unsolicited phone calls. With respect to unsolicited texts and e-mails, the Act on Regulation of Transmission of Specified Electronic Mail prohibits:

- a* the transmission of e-mails using false sender information as a means of advertisement for the sender’s own or another person’s sales activities;
- b* the transmission of e-mails using fictitious e-mail addresses for the purpose of sending multiple e-mails to promote the sender’s own or another person’s sales activities; and
- c* the transmission of e-mails to persons who refuse to receive such specified e-mails.

Violators may face penalties of up to one year’s imprisonment or a fine of up to ¥1 million. With respect to unsolicited phone calls, each local prefectural government has established a local ordinance prohibiting unsolicited phone calls. For example, the Metropolitan Government of Tokyo has an anti-nuisance ordinance prohibiting continued unsolicited phone calls and facsimiles, and offenders may be penalised with up to six months’ imprisonment or a fine of up to ¥500,000.

iv Security

In keeping with Japan’s constitutional protection of freedom of speech and secrecy of communication, the Telecommunication Business Act prohibits ISPs from censoring or infringing on the privacy of communications passing through their networks.

As a general matter, the Law Concerning the Protection of Personal Information (Privacy Act) protects personal information or data that can be used to identify specific living persons, and generally applies to any entity that gathers the personal information of

5,000 or more individuals. Under the Privacy Act, such entities are required to publish a 'purpose of utilisation' regarding their use of personal information. Personal information incorporated into a database must be kept accurately, and necessary and proper measures to maintain its security must be instituted. Any person about whom personal data is kept in a database for more than six months has a right to request access to the data, and add to, modify or delete it. In August 2015, the Privacy Act was amended to strengthen protection of personal information, including expanded protection of sensitive personal information and restrictions on transfer of personal information outside Japan; and to establish protocols for use of anonymised data to facilitate 'big data' analysis.

Further, MIC has issued Privacy Act guidelines that are specific to telecommunications businesses. Since MIC guidelines also take into account the obligations of telecommunication business licence holders to preserve the secrecy of communications, they provide for a more stringent data protection regime than would apply under the Privacy Act alone. MIC guidelines generally prohibit telecommunication businesses from collecting information related to race, religion, disability or other attributes that may form a basis for discrimination. The guidelines also require such licence holders to specify what length of time they intend to retain personal information and to delete any personal information after the expiry of such period. Under MIC's Privacy Act guidelines, information related to persons making or receiving communications, such as usage history, identity and user location, may only be disclosed to third parties in very limited circumstances, such as pursuant to a search warrant. In addition, MIC's Privacy Act guidelines were amended on 2 November 2011, allowing telecommunications business providers to provide users' locational information to third parties only if they have the user's consent, a search warrant or other valid justification; and obtain a user's locational information pursuant to law enforcement agencies' requests only if a warrant is issued. MIC's Privacy Act guidelines also require telecommunication businesses to specify what length of time they intend to retain communication log information and to delete such information after the expiry of such period. In June 2015, MIC announced an indicative permissible length of time to retain communication log information (six months to a year, depending on the business reasons for retaining such information).

ISPs are not currently required to proactively delete content that infringes upon the intellectual property rights or privacy of others. However, the Internet Provider Liability Limitation Act, enacted in 2001, provides a safe harbour for ISPs that delete such content. Under the Act, no ISP may be held liable for the deletion of content on its network if the ISP reasonably believes that such content infringes the intellectual property rights or privacy of others, or a third party alleges such infringement and the sender of the content does not respond to the ISP's inquiry within seven days. ISPs are further protected by the Internet Provider Liability Limitation Act, which shields ISPs from tortious liability for failing to delete infringing content. In reliance on this statutory defence to liability, ISPs generally do not take steps to monitor the content passing through their networks. The Act does, however, authorise persons whose rights are infringed by content delivered over the internet to demand information regarding the sender of the content from ISPs, so that legal action may be taken against the sender. However, as a practical matter, it is often not possible to identify the original sender of such infringing content where content passes through multiple networks.

A statute for the protection of children from harmful internet content, known as the Youth Internet Environment Act, became effective in April 2009. The statute directs governmental bodies to improve internet safety for juveniles (under the age of 18) by encouraging ISPs to use technologies that limit juvenile access to harmful content. The statute targets content glorifying crime or suicide, obscene sexual content, and other depictions of extreme violence or cruelty. The statute further exhorts parents to monitor their children's internet use, and to limit access to inappropriate content by using filtering software and other measures. The statute requires mobile network service providers to filter internet content for customers that are juveniles, except where a parent has expressly requested that filtering not be used. Under the Act, from April 2010, manufacturers of devices with internet connectivity (other than mobile phones) are also required to pre-install filtering software or otherwise facilitate the use of third-party filtering software or services. In Japan, cybercrime has long been an area of public concern. In recent years, law enforcement has focused efforts to combat cybercrime on computer hacking through the unauthorised use of IDs and passwords, and other attacks on security holes; the distribution of computer viruses, and the input of data and unauthorised commands that can cause damage to computers and data; and other types of crimes facilitated through the internet, such as drug trafficking, prostitution, fraudulent internet auctions and child pornography.

Combating the distribution of child pornography has been an area of particular scrutiny and public interest. The Act on Punishment of Activities Relating to Child Prostitution and Child Pornography and the Protection of Children, originally passed in 1999, prohibits the distribution of child pornography. This Act was amended in 2004 to outlaw the uploading and distribution of child pornography over the internet, and was further amended in 2014 to criminalise the simple possession of child pornography images and to require ISPs to block child pornography.

In order to combat increasing threats against cybersecurity, the Basic Act on Cybersecurity was enacted in November 2014. The Act prescribes the concept of cybersecurity and defines the roles and responsibilities of the government. In January 2015, the Cybersecurity Strategic Headquarters (Headquarters) and National Center of Incident Readiness and Strategy for Cybersecurity (NISC) were established to facilitate programme planning, policy formulation and overall coordination for cross-cutting cybersecurity measures. The Headquarters will define the uniform standard of cybersecurity protection applicable to government agencies and, based on such standard, each agency will establish and manage security policies customised for such agency, and will also streamline its structure and organisation to enforce newly implemented security measures.

Amid mounting concerns regarding cybersecurity, in May 2015, over 1.25 million sets of personal pension records were leaked after a cyberattack on the management system of Japan Pension Services, a special public corporation entrusted by the Minister of Health, Labour and Welfare with public pension system operations. Based on its authority set forth in the Basic Act on Cybersecurity, NISC announced in August 2015 its evaluation of the measures and policies to combat material breaches of cybersecurity within government agencies. The government will be implementing the My Number system under which every resident in Japan will receive his or her own 12-digit individual number (nicknamed 'My Number') that will be used for administrative procedures

related to social security, taxation and disaster response beginning in January 2016. The Japan Pension Services incident has raised concerns regarding information security, and the coupling of pension information with My Number will be delayed until proper cybersecurity preventive measures have been implemented.

With respect to government authorities' ability to monitor the content of telecommunications, law enforcement authorities are currently allowed to utilise wiretapping during criminal investigations of organised crime for murder, drug-related crimes, arms possession or stowaway smuggling by obtaining a wiretap warrant pursuant to the Act for Wiretapping for Criminal Investigation (Wiretapping Law). A proposed amendment to the Wiretapping Law has been introduced in the legislature that would allow wiretapping to be used in any criminal investigation of organised crime regardless of the suspected offence. Legislators hope this amendment will allow authorities to better address organised criminal fraud, which has particularly affected the elderly and cost victims billions of yen each year over the past five years. As of September 2015, this proposed amendment is still under discussion.

IV SPECTRUM POLICY

i Development

The need for access to the radio spectrum has steadily increased with the proliferation of new technologies utilising wireless data transmission. The number of licensed wireless stations and devices increased from 3.8 million in 1985 (a majority of which were for amateur radio stations and handheld two-way radios), to 146 million in March 2013 (over 98 per cent for mobile devices).

MIC holds broad discretion to determine how the radio spectrum is allocated in Japan, and describes its decision-making process as open and collaborative – including consultations with the public, scholars and industry experts. However, MIC decision-making has been criticised by some as arbitrary and opaque. This has led to some calls for spectrum auctions as a fairer method of allocation. Despite such criticism, MIC has yet to establish a system that provides transparency over spectrum policy and spectrum allocation decisions. While there was some movement toward implementing a spectrum auction system and a bill that would have implemented such system was submitted to the legislature in March 2012, the bill lost momentum after a change in the controlling political party in Japan took place in December 2012, and the bill has since been rejected.

As an example of MIC's ability to exercise discretion in allocating spectrum, in December 2014, MIC issued 3.5GHz 120MHz bandwidth spectrum licences to each of NTT DOCOMO, KDDI and SoftBank. This was the first spectrum allocation since MIC amended its policy restricting submissions of multiple licence applications from companies that operate their spectrum as a 'group'. Prior to the amendment, companies that held more than one-third of the voting rights of another company were restricted from submitting licence applications together with such affiliate companies. However, MIC expanded this restriction on multiple licence applications by group companies to take into consideration additional factors in determining what companies constitute a group, including non-voting capital structure, decision-making authority and the

business relationship between the companies, in order to reduce multiple applications by *de facto* group companies and facilitate greater entry into the spectrum market. Due to this amended restriction, YMobile, which was not previously considered a group company of SoftBank but was now considered a member of SoftBank's group under the new policy, was unable to submit an application, and applications were accepted from NTT DOCOMO, KDDI and SoftBank only.

As MIC planned to allocate 40MHz of the 120MHz available to each of the three applicants, it was always clear that each of the three applicants would receive an equal allocation. However, there was some competition in this allocation scheme in which MIC exercised discretion. The 120MHz bank is divided into 'high' 'medium' and 'low' components, and NTT DOCOMO's first choice was the 'low' component, while both KDDI and SoftBank preferred the 'high' component. MIC determined that it would grant Softbank the 'high' component because KDDI failed to specify in its application when they would be able to start operation of speeds of more than 1Gbit/per second.

ii Broadband and next-generation mobile spectrum use

In most areas of Japan, the 3.9G (up to 300Mb per second) service has been standardised, and the 3G (up to 7.2Mb per second) service now functions as a backup spectrum. In addition, mobile phone companies are in the process of expanding 4G services (LTE-Advanced or WiMAX2), which will enable data transmission speeds of up to 1Gb per second. In March 2015, NTT DOCOMO, the first among the major Japanese mobile phone companies, launched its LET-Advanced next-generation mobile communication service called PREMIUM 4G, which uses carrier aggregation technology. PREMIUM 4G's initial maximum transmission speed remains at 225Mb per second, but NTT DOCOMO plans to continuously improve the transmission speed, aiming to accelerate to a maximum 300Mb per second towards March 2016. KDDI (au) and Softbank, which are the other major mobile phone companies, have also begun implementing the same service.

NTT DOCOMO plans to launch the next generation mobile communication service 5G, which will enable data transmission speeds of up to 10Gb per second sometime in 2020, the year in which the Tokyo Olympic Games will be held.

iii Spectrum auctions and fees

MIC imposes spectrum usage fees on broadcasters, mobile phone carriers and other businesses that use radio spectrum, as provided for in the Radio Act. The formulae used to establish the usage fees have been criticised as unfairly favouring broadcasters at the expense of mobile service providers. Until 2005, the fees were determined, in the case of broadcasters, per broadcaster, and in the case of mobile phone carriers, by the number of base stations and subscriber handsets. Even after changes were made in 2005, 2011 and 2014, the formulae still favour broadcasters, satellite operators and other 'vested' rights holders. The total amount of spectrum fees MIC imposed for the fiscal year ending March 2015 was approximately ¥74 billion (up from ¥68 billion in 2010), 74 per cent of which was paid by mobile phone carriers and only 8.9 per cent of which was paid by broadcasters, even though the bandwidth of spectrum occupied by mobile phone carriers is narrower than that occupied by broadcasters.

While spectrum fees are purportedly charged to cover spectrum administration costs, such as monitoring illegal spectrum use, MIC has been criticised for using the fees to pay for ‘miscellaneous’ expenses that appear to have little connection to spectrum administration. In August 2010, MIC’s committee to explore reform of spectrum usage fees announced a policy to strengthen links between the amount of spectrum usage fees and the bandwidth of spectrum occupied by fee payers, and to use the spectrum usage fees more efficiently. In May 2011, a bill to amend the Radio Act to implement the revised spectrum usage fee scheme was passed.

An action plan published in November 2010 by MIC’s study group on spectrum allocation recommended that MIC consider the introduction of spectrum auctions as a way to allocate spectrum licences more efficiently and transparently. However, the plan also warned that the transition would raise questions of fairness such as those between existing licensees who did not pay for their licences at auction and future licensees who would bear this additional cost, and a related concern for consumers that the cost of auction fees would be ultimately passed on to the public in increased fees for services. MIC has held a series of meetings led by scholars since March 2011 to consider the implementation of spectrum auctions, and in March 2012 submitted a bill to amend the Radio Act to include spectrum auctions. The amended Act would have established a mechanism in which MIC would conduct an auction to grant the licence to the applicant with the highest bid price. The spectrum auction was envisaged to be first used for the licensing of the 3.4GHz to 3.6GHz band, which was planned to be used for 4G mobile phones from 2014. However, the discussion on the bill was put on hold in anticipation of the change of government from the Democratic Party of Japan (DPJ) to the Liberal Democratic Party (LDP), which took place in December 2012. In January 2013, the Minister of Internal Affairs and Communications under LDP Prime Minister Abe announced that the LDP government would not resubmit the bill for spectrum auctions. DPJ resubmitted the bill, but it was voted down. DPJ was able to obtain LDP’s consent to adopt a non-binding resolution by a committee of the legislature acknowledging that spectrum auctions have benefits and detriments and should be reviewed through public hearings. Efforts to implement spectrum auctions as a method to provide greater transparency of MIC’s spectrum allocation process have effectively returned to square one.

V MEDIA

i Restrictions on the provision of service

While freedom of broadcasting is an underlying premise of the Broadcast Act, the Act includes certain content requirements, such as an obligation to be politically impartial; a prohibition on reporting ‘manipulated facts’; an obligation to present diverse opinions on controversial issues; and an obligation to provide closed captioning, audio commentary or other aids for the impaired where possible. Main broadcasting licence holders are also required to provide a balance of entertainment, news and educational programming.

ii Internet-delivered video content

The internet and dedicated networks are widely used to deliver video content. Internet television services available in Japan vary widely, from simultaneous transmission of terrestrial and satellite television broadcasts, to exclusive IPTV channels with programming provided by domestic and foreign third-party programme providers, to VOD services. The methods of video delivery vary from free video-sharing sites (such as YouTube), to membership-based video-sharing sites (such as Nikoniko Douga), to partially fee-based video delivery sites (such as Gya!) and to full fee-based video delivery sites (such as Hulu and Netflix). Traditional television stations (i.e., NHK and commercial television broadcasters) also have VOD service, and are streaming broadcast programmes through personal computers and smartphones. The Supreme Court ruled that services that record and forward Japanese television programmes and those that provide real-time streaming of Japanese TV programmes via the internet breach the originating television station's copyright, and therefore the third-party recording or streaming of Japanese television programmes without a licence constitutes a breach of Japanese copyright law.

For regulatory purposes, MIC has taken the view that video delivery over the internet is not a 'broadcast' under the Broadcast Act, and consequently the content restrictions under the Act discussed in Section V.i, *supra*, do not apply. While 'broadcast' is defined in the Broadcast Act as 'transmission of telecommunication for the purpose of being directly received by the public', MIC's position is that video delivery over the internet does not fall within this definition because it requires a request to send that results in receipt by a specific recipient, and not the public. This interpretation allows internet content providers to distribute multimedia offerings without being regulated as traditional broadcasters. However, such technical distinction has been criticised as resting on shaky ground, and calls have been made for clearer legislation clarifying that content restrictions will not apply to internet broadcasts.

iii Mobile services

Video broadcasting services for mobile devices in Japan began in 2006. The first service, still popular today, is known as 'One-Seg' because it uses one out of the 13 segments that constitute the spectrum bandwidth allocated to each terrestrial digital television broadcasting channel. The other 12 segments are used for traditional television broadcasts. In 2013, mobile devices that can receive 'Full-Seg' broadcasting were introduced. 'Full-Seg' is named in contrast to 'One-Seg' as it uses the traditional 12 segments for television broadcasting. Mobile devices with 'Full-Seg' receiving functions allow their users to enjoy high-definition television broadcasts through mobile devices at the same level of quality as traditional terrestrial television. Currently, One-Seg and Full-Seg services are generally limited to the simultaneous delivery of DTTV broadcasts to mobile devices. VOD services provided by mobile networks to subscribers are also widely available. Major mobile carriers offer VOD services free of charge or at a low price, mainly to attract subscribers to their network and not as a significant revenue source.

The next-generation multimedia broadcasting service 'Moba-Cas' provides viewers with high-definition broadcasts mostly equivalent to the Full-Seg service, and allows users to store content delivered through the dedicated spectrum band to their mobile devices.

VI THE YEAR IN REVIEW AND OUTLOOK

2015 is an important year for Japan's ICT industry, as it is the 30th anniversary of the privatisation of Nippon Telegraph and Telephone Public Corporation (known as NTT post privatisation). Since NTT's privatisation, and through active competition among the ICT companies, the ICT industry has become one of Japan's fastest growing sectors. Increased entry into the telecommunications market by MVNOs, as well as increased regulation of anti-competitive practices within the industry, will allow the ICT industry to continue to expand and provide increasingly effective service at reduced prices for consumers.

Japan also continues to develop new telecommunications and media technologies to be implemented in future years. MIC announced its vision for the Tokyo Olympic Games in 2020 to be broadcast in 4K and 8K ultra-high-definition formats. To achieve such a goal, in September 2014 MIC announced a roadmap for encouraging use of 4K and 8K broadcasting. The roadmap aims for actual broadcasting of 4K broadcasting through CS, cable television and IPTV to start in 2015, test broadcasting of 4K and 8K broadcasting through BS to start in 2016, and actual broadcasting of 4K and 8K through BS to start in 2018. In line with this roadmap, actual broadcasting of 4K started in March 2015.

In addition to seeking to expand access to free public Wi-Fi, MIC has also announced its vision to have 5G mobile technology in place ahead of all other countries in anticipation of the 2020 Tokyo Olympic Games. The public and private telecommunications sectors in Japan are combining strength as an 'All Japan' platform to achieve this goal. Development of media and telecommunications policy and technology in Japan has seen a resurgence over the past year, and further significant progress is likely in the near future.

Appendix 1

ABOUT THE AUTHORS

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Mr Colahan is based in Latham & Watkins' London office and divides his time with the Brussels office. Prior to joining Latham & Watkins, Mr Colahan was the international antitrust counsel, based in London, for The Coca-Cola Company, where his responsibilities included advising all operating groups on strategic planning and implementation of a wide variety of international joint ventures and acquisitions as well as the conduct of international antitrust litigation and investigations. Mr Colahan has also served as a legal adviser on European law to the European secretariat of the UK Cabinet Office and has represented the UK in numerous cases.

He represents clients before the European Commission, national authorities in Europe and internationally, as well as conducting litigation in the European courts and numerous national courts. He has advised on a wide variety of international antitrust matters, including structuring and implementation of international mergers, acquisitions and joint ventures, cartel enforcement, single firm conduct and compliance counseling. Mr Colahan has worked in a broad range of sectors including fast-moving consumer goods, alcoholic and non-alcoholic beverages, retail, media and publishing, pharmaceuticals, aviation, manufacturing, agricultural, defence, bulk chemicals, maritime, energy, software, supply of professional services, telecommunications and finance.

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Gail Crawford is a partner in the London office. Her practice focuses primarily on technology, data privacy and security, intellectual property and commercial law, and includes advising on technology licensing agreements and joint ventures, technology procurement, data protection issues, and e-commerce and communications regulation. She also advises both customers and suppliers on multi-jurisdictional IT, business

process and transformation outsourcing transactions. Ms Crawford has extensive experience advising on data protection issues, including advising a global corporation with operations in over 100 countries on its compliance strategy, and advising a number of US e-commerce and web businesses as they expand into Europe and beyond. She also advises online businesses and providers of communications services on the impact of the UK and European restrictions on interception and disclosure of communications data.

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John P Janka is a partner in the Washington, DC office of Latham & Watkins LLP, where he served as a global leader of the communications law practice group for a decade. For almost three decades, Mr Janka has counselled international telecommunications operators and ISPs, content providers, investors and banks on a variety of regulatory, transactional and controversy matters. His experience includes the purchase, sale and financing of communications companies, the procurement and deployment of communications facilities, global spectrum strategies and dispute resolution, the provision of communications capacity, content distribution, strategic planning, and effectuating changes in legal and regulatory frameworks. His clients include satellite operators, broadband providers, wireless and other terrestrial communications companies, video programming suppliers, ISPs, television and radio broadcast stations, and firms that invest in and finance these types of entities.

Mr Janka has served as a United States delegate to an ITU World Radio-communication Conference in Geneva, and as a law clerk to the Honorable Cynthia Holcomb Hall, United States Court of Appeals for the Ninth Circuit. Mr Janka holds a JD degree from the University of California at Los Angeles School of Law, where he graduated as a member of the Order of the Coif, and an AB degree from Duke University, where he graduated *magna cum laude*.

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Jean-Luc Juhan is a partner in the corporate department of the Paris office of Latham & Watkins.

His practice focuses on outsourcing and technology transactions, including business processes, information technology, telecommunications, systems and software procurement and integration. He also has extensive experience advising clients on all the commercial and legal aspects of technology development, licensing arrangements, web hosting, manufacturing, distribution, e-commerce, entertainment and technology joint ventures.

Mr Juhan is in particular cited in *Chambers Europe 2014*, *Option Droit & Affaires 2014* and *The Legal 500 Paris 2014*: ‘Great negotiator’ Jean-Luc Juhan, who is ‘very sharp and down-to-earth’ and has ‘very good knowledge of the industry’, advises high-profile French and international groups on large outsourcing, telecommunication and integration system projects’.

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Mr Kwan specialises in civil and commercial litigation and arbitration proceedings. He has assisted in various civil matters such as shareholders disputes, contractual disputes and debt recovery actions.

He also has experience in a variety of regulatory matters, including licensing matters, financial and corporate regulations and investigation, as well as white-collar defence and investigations.

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Mr Lipsky is a partner in the Washington, DC office of Latham & Watkins. He is internationally recognised for his work on both US and non-US antitrust and competition law and policy, and has handled antitrust matters throughout the world. He served as Deputy Assistant Attorney General for Antitrust during the Reagan Administration. Having served as chief antitrust lawyer for The Coca-Cola Company from 1992 to 2002, Mr Lipsky has incomparable experience with antitrust in the US, EU, Canada, Japan and other established antitrust-law regimes, as well as in new and emerging antitrust-law regimes in scores of jurisdictions that adopted free-market policies following the 1991 collapse of the Soviet Union. He has been closely associated with efforts to streamline antitrust enforcement around the world, advocating the reduction of compliance burdens and the harmonisation of fundamental objectives of antitrust law.

Mr Lipsky was the first international officer of the American Bar Association Section of Antitrust Law. He served on the editorial board of *Competition Laws Outside the United States* (2001), the most ambitious annotated compilation of non-US competition laws yet produced. He has held a variety of senior positions among the officers and governing council of the Section of Antitrust Law and continues to serve as co-chair of its International Task Force. He is admitted to practise before the US Supreme Court and various federal appellate courts.

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Shintaro Ojima is an associate of Latham & Watkins Gaikokuho Joint Enterprise in Tokyo. Mr Ojima's practice focuses on mergers and acquisitions and general corporate matters. His representative experience in the telecommunications industry includes representing the underwriters in a US\$4.4 billion senior notes offering by SoftBank Group Corporation, the largest high yield bond offering in Asia by a leading mobile phone carrier in Japan. Prior to joining Latham & Watkins, Mr Ojima served as an associate in the corporate department of a major international law firm in Tokyo. Mr Ojima is admitted to practise in Japan and is a member of the Tokyo Bar Association.

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Simon Powell is the managing partner of the Hong Kong office of Latham & Watkins and the chair of the litigation department in Asia.

Mr Powell's practice focuses on complex contentious regulatory, commercial litigation and arbitration matters, including contentious technology, media and telecommunications regulatory issues and disputes; financial and corporate regulation and investigation; antitrust and competition law; and contentious insolvency and business restructuring and reorganisation.

Mr Powell represents numerous multinational and local corporations in connection with a wide range of multi-jurisdictional and cross-border issues, including those operating in the telecommunications industry, and in relation to antitrust and competition issues and regulatory matters generally, with a particular focus on Hong Kong.

Mr Powell is one of only a few solicitor-advocates in Hong Kong, giving him full rights of audience before all the Hong Kong civil courts (including the newly instituted Competition Tribunal, which has been set up as a part of the judiciary). He is also a fellow of the Chartered Institute of Arbitrators, and a CEDR accredited mediator. He sits on the Hong Kong Law Society's competition committee, which focuses on reviewing and commenting upon competition-related issues within Hong Kong.

MYRIA SAARINEN

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Myria Saarinen is a partner in the Paris office of Latham & Watkins. She has extensive experience in IP and IT litigation, including internet and other technology-related disputes. She is very active in litigation relating to major industrial operations and is involved in a broad range of general commercial disputes.

She has developed specific expertise in the area of privacy and personal data, including advising clients on their transborder data flows, handling claims raised by the French Data Protection Authority, and setting up training sessions on the personal data protection framework in general and on specific topics. She also has expertise in cross-border issues raised in connection with discovery or similar requests in France.

Ms Saarinen is named among leading practitioners in commercial litigation, data privacy and IT (*The Legal 500 Paris 2014*, *Chambers Europe 2013*, *Chambers Global 2013*).

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Daniel Senger is an associate of Latham & Watkins Gaikokuho Joint Enterprise in Tokyo. Mr Senger's practice focuses on project finance and general corporate matters. He has worked on a number of large international project financings in Japan and the greater Asia-Pacific region, as well as several M&A, corporate finance and other general corporate matters across various industries. Prior to joining Latham & Watkins, Mr Senger served as an associate at a major international law firm in New York. Mr Senger is admitted to practise in New York.

OMAR SHAH

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Omar Shah is a partner in Latham & Watkins' London office. He advises clients in the media and communications sector on antitrust and regulatory issues, and represents them before UK, EU and other regulatory and competition authorities, courts and tribunals. His experience includes acting for a UK broadcaster in an Ofcom investigation into licensing of digital terrestrial television; acting for a major UK telco in an Ofcom investigation into consumer broadband pricing; acting for a leading provider of electronic programme guides in securing UK licensing from Ofcom; representing various telcos in securing merger control clearance from the Office of Fair Trading (now part of the Competition and Markets Authority), the European Commission and other regulators for several transactions; and defending a major advertiser and provider of online music services in an investigation by the Advertising Standards Authority, including subsequent judicial review proceedings in the High Court.

JARRETT S TAUBMAN

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Jarrett S Taubman is counsel in the Washington, DC office of Latham & Watkins LLP, where he represents providers of telecommunications, media, internet and other communications services (and their investors) before the Federal Communications Commission, state public utilities commissions and various courts. Mr Taubman assists clients in implementing strategies to facilitate the development of favourable regulatory policy, structuring transactions and securing required regulatory consents, and ensuring ongoing compliance with complex regulatory requirements. Much of his practice involves the navigation of the complex legal and policy issues raised by the advent of broadband services. Mr Taubman also represents both communications and non-communications clients before the Committee on Foreign Investment in the United States, a multi-agency group with the statutory authority to review and block proposed investments in critical US infrastructure from non-US sources.

Mr Taubman received his JD from New York University School of Law, a master's degree in public policy from Harvard University's Kennedy School of Government, and a BS from Cornell University's School of Industrial and Labor Relations.

GABRIELE WUNSCH

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Dr Gabriele Wunsch is an associate in the Hamburg office of Latham & Watkins LLP, practising IP and media law in the firm's litigation and corporate departments. She is a graduate of the Westphalian Wilhelms University at Münster, and completed parts of her studies and work in Germany, England, Spain, Switzerland and the United States. Furthermore, Dr Wunsch studied on the Humboldt University of Berlin's European and civil business law postgraduate programme, promoted by the German Research Foundation, where she wrote her doctoral dissertation on the harmonisation of EU law.

During her legal traineeship, she worked, *inter alia*, for the Ministry of Foreign Affairs, in the IP and unfair competition department of another major law firm, and in the legal department of a well-known online auction house. Subsequently, Dr Wunsch completed a master's degree (LLM) at the Technical University of Dresden and Queen Mary, University of London, specialising in intellectual property law.

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