
THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

FOURTH EDITION

EDITOR
JOHN P JANKA

LAW BUSINESS RESEARCH

THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

Reproduced with permission from Law Business Research Ltd.

This article was first published in
The Technology, Media and Telecommunications Review, 4th edition
(published in October 2013 – editor John P Janka).

For further information please email
Adam.Sargent@lbresearch.com

THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

Fourth Edition

Editor
JOHN P JANKA

LAW BUSINESS RESEARCH LTD

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

www.TheLawReviews.co.uk

PUBLISHER
Gideon Robertson

BUSINESS DEVELOPMENT MANAGERS
Adam Sargent, Nick Barette

MARKETING MANAGERS
Katherine Jablonowska, Thomas Lee, James Spearing

PUBLISHING ASSISTANT
Lucy Brewer

MARKETING ASSISTANT
Chloe Mclauchlan

PRODUCTION COORDINATOR
Lydia Gerges

HEAD OF EDITORIAL PRODUCTION
Adam Myers

PRODUCTION EDITOR
Timothy Beaver

SUBEDITOR
Caroline Rawson

EDITOR-IN-CHIEF
Callum Campbell

MANAGING DIRECTOR
Richard Davey

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2013 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients.

Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of October 2013, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-907606-83-0

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ABOU JAOUDE & ASSOCIATES LAW FIRM

BAKER & McKENZIE.WONG & LEOW

BING HODNELAND ADVOKATSELSKAP DA

CASTRO, BARROS, SOBRAL, GOMES ADVOGADOS

CLEARY GOTTLIEB STEEN & HAMILTON LLP

DENTONS

DESCHAMPS Y ASOCIADOS SC

DLA PIPER

ELVINGER, HOSS & PRUSSEN

ENS (EDWARD NATHAN SONNENBERGS)

JONES DAY

LATHAM & WATKINS

McCARTHY TÉTRAULT LLP

MEHMET GÜN & PARTNERS

MINTER ELLISON

ROSCHIER

SETH DUA & ASSOCIATES

SHALAKANY LAW OFFICE

SHAY & PARTNERS
URÍA MENÉNDEZ
WENGER PLATTNER
YOON & YANG LLC
ZHONG LUN LAW FIRM

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 with John D Colahan</i>	
Chapter 2	AUSTRALIA.....15
<i>Anthony Lloyd, Paul Kallenbach and Paul Schoff</i>	
Chapter 3	BRAZIL34
<i>André Gomes de Oliveira, Renato Parreira Stetner and Tiago Franco da Silva Gomes</i>	
Chapter 4	CANADA46
<i>Hank Intven and Grant Buchanan</i>	
Chapter 5	CHINA.....61
<i>Jihong Chen</i>	
Chapter 6	EGYPT73
<i>Aly El Shalakany and Omar Sherif</i>	
Chapter 7	EUROPEAN UNION.....85
<i>Maurits J F M Dolmans, Francesco Maria Salerno and Federico Marini-Balestra</i>	
Chapter 8	FINLAND120
<i>Mikko Manner, Anna Haapanen and Suvi Laes</i>	

Chapter 9	FRANCE	132
	<i>Myria Saarinen and Jean-Luc Juhan</i>	
Chapter 10	GERMANY	151
	<i>Laura Johanna Reinlein and Gabriele Wunsch</i>	
Chapter 11	HONG KONG	167
	<i>Simon Berry and Viola Jing</i>	
Chapter 12	INDIA	184
	<i>Atul Dua, Salman Waris and Arjun Uppal</i>	
Chapter 13	ITALY	197
	<i>Stefano Macchi di Cellere</i>	
Chapter 14	JAPAN	211
	<i>Hiroki Kobayashi, Richard Fleming, Saori Kawakami and Chiyo Toda</i>	
Chapter 15	KOREA.....	225
	<i>Wonil Kim and Kwang-Wook Lee</i>	
Chapter 16	LEBANON.....	237
	<i>Souraya Machnouk, Rania Khoury and Ziad Maatouk</i>	
Chapter 17	LUXEMBOURG	249
	<i>Linda Funck</i>	
Chapter 18	MEXICO	269
	<i>Jaime Deschamps and Andoni Zurita</i>	
Chapter 19	NORWAY	279
	<i>Olav Torvund, Jon Wessel-Aas and Magnus Ødegaard</i>	
Chapter 20	PORTUGAL.....	287
	<i>Joana Torres Ereio, Joana Mota and Raquel Mauricio</i>	

Chapter 21	ROMANIA	303
	<i>Cosmina Simion and Laura Leancă</i>	
Chapter 22	SINGAPORE	317
	<i>Ken Chia and Koh See Khiang</i>	
Chapter 23	SOUTH AFRICA.....	340
	<i>Zaid Gardner</i>	
Chapter 24	SPAIN	351
	<i>Pablo González-Espejo and Leticia López-Lapuente</i>	
Chapter 25	SWEDEN	367
	<i>Erik Ficks and Björn Johansson Heigis</i>	
Chapter 26	SWITZERLAND	377
	<i>Michael Isler</i>	
Chapter 27	TAIWAN	392
	<i>Arthur Shay and David Yeh</i>	
Chapter 28	TURKEY	405
	<i>Serra Başoğlu Gürkaynak, Begüm Yavuzdoğan and M Onur Sumer</i>	
Chapter 29	UNITED ARAB EMIRATES.....	420
	<i>Joby Beretta</i>	
Chapter 30	UNITED KINGDOM.....	434
	<i>Omar Shah and Gail Crawford</i>	
Chapter 31	UNITED STATES	454
	<i>John P Janka and Jarrett S Taubman</i>	
Appendix 1	ABOUT THE AUTHORS.....	473
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS ...	497

EDITOR'S PREFACE

The pervasive influence of internet and wireless-based communications continues to challenge existing laws and policies in the TMT sector. Old business models fall by the wayside as new approaches more nimbly adapt to the shifting marketplace and consumer demand. The lines between telecommunications and media continue to blur. Content providers and network operators vertically integrate. Many existing telecommunications and media networks are now antiquated – not designed for today's world and unable to keep up with the insatiable demand for data-intensive, two-way, applications. The demand for faster and higher-capacity mobile broadband strains even the most sophisticated networks deployed in the recent past. Long-standing radio spectrum allocations have not kept up with advances in technology or the flexible ways that new technologies allow many different services to co-exist in the same segment of spectrum. The geographic borders between nations cannot contain or control the timing, content and flow of information as they once could. Fleeting moments and comments are now memorialised for anyone to find – perhaps forever.

In response, lawmakers and regulators also struggle to keep up – seeking to maintain a 'light touch' in many cases, but also seeking to provide some stability for the incumbent services on which many consumers rely, while also addressing the opportunities for mischief that arise when market forces work unchecked.

The disruptive effect of these new ways of communicating creates similar challenges around the world: the need to facilitate the deployment of state-of-the-art communications infrastructure to all citizens; the reality that access to the global capital market is essential to finance that infrastructure; the need to use the limited radio spectrum more efficiently than before; 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 the growing influence of the 'new media' conglomerates that result from increasing consolidation and convergence.

These realities are reflected in a number of recent developments around the world that are described in the following chapters. To name a few, these include liberalisation

of foreign ownership restrictions; national and regional broadband infrastructure initiatives; efforts to ensure consumer privacy; measures to ensure national security and facilitate law enforcement; and attempts to address 'network neutrality' concerns. Of course, none of these issues can be addressed in a vacuum and many tensions exist among these policy goals. Moreover, although the global TMT marketplace creates a common set of issues, cultural and political considerations drive different responses to many issues at the national and regional levels.

This fourth edition of *The Technology, Media and Telecommunications Review* provides an overview of the evolving legal constructs that govern these types of issues in 30 jurisdictions around the world. In the space allotted, the authors simply cannot address the numerous nuances and tensions that surround the many issues in this sector. Nevertheless, we hope that the following chapters provide a useful framework for beginning to examine how law and policy continues to respond to this rapidly changing sector.

John P Janka

Latham & Watkins LLP

Washington, DC

October 2013

LIST OF ABBREVIATIONS

3G	Third-generation (technology)
4G	Fourth-generation (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
FTTC	Fibre to the curb

List of Abbreviations

FTTH	Fibre to the home
FTTN	Fibre to the node
FTTx	Fibre to the x
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 (a next-generation 3G and 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
UASL	Unified access services licence

List of Abbreviations

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 14

JAPAN

Hiroki Kobayashi, Richard Fleming, Saori Kawakami and Chiyo Toda¹

I OVERVIEW

2013 has been a quiet year for media and telecommunications regulation in Japan. Since the 2011 earthquake, the Japanese government has been focused on urgent national issues, such as nuclear power plant disasters and changes to electric power policies. This has led to a loss of traction for reform in telecommunications and media regulations. However, reform introduced prior to the 2011 earthquake, such as amendments to broadcast regulations, digital switchover of television and the allocation of broadcast spectrum was mostly completed by the end of 2012. The newly elected Japanese government, which formed its cabinet in June 2013, is starting to show signs of gradually addressing new telecommunications and media policies.

Telecommunications and media infrastructure has benefited from the rapid spread of 3.9G mobile phones in 2013, speeding the growth of high speed broadband internet access throughout the county. Another significant step in infrastructure development was the commencement of television broadcasts in May 2013 from the new 829.8 metre Sky Tree broadcast tower in Tokyo, replacing the famous Tokyo Tower built in 1958. Telecommunication and media are undergoing further rapid change in Japan, including utilisation and regulation of ‘big data’, creating the potential for a number of issues to develop in the near future. The direction the new government will take on policies to address such issues remains to be seen.

¹ Hiroki Kobayashi is a corporate partner, and Richard Fleming, Saori Kawakami and Chiyo Toda are transactional associates at Latham & Watkins Gaikokuho Joint Enterprise in Tokyo.

II REGULATION

i The regulators

The Ministry of Internal Affairs and Communications (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.

Also, 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.

The reforms are expected to 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 telecommunications 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.

Taking these criticisms into consideration, in March 2011 MIC organised a study group to discuss the implementation of a radio spectrum auction system. In March 2012, a bill on radio spectrum auctions was submitted to the Japanese legislative body but was not put on vote (further discussed in Section IV, *infra*).

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*, under the Broadcast Act and the Radio Act, each amended in 2010, broadcasting is now divided into two categories: main broadcasting and regular broadcasting. Under the two acts, no licence for main broadcasting may be held by or granted to a foreign national, a foreign entity or a 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. 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 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 its regulations in 2011 to relax cross-ownership restrictions on radio broadcasting licence holders, allowing entities to control up to four licence holders. In addition, 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 a licence generally requires MIC approval. MIC review is primarily to determine whether the transferee of a licence would be eligible to independently qualify as a new licence holder.

Further, 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.² Ordinarily, this is merely a *pro forma* requirement where no national security concerns are present.

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 'telecommunication' and therefore are not regulated under the Act.

MIC does not regulate technical standards for internet protocol, but part of its mandate is to enhance Japan's information and technology infrastructure. In 2003, MIC established a study group to facilitate the transition from Internet Protocol version 4 (IPv4) to Internet Protocol version 6 (IPv6) and in 2007, MIC issued guidelines to encourage governmental entities to prepare for the implementation of IPv6 within one year. As of March 2013, approximately 56 per cent of the ISPs are either providing or testing IPv6, up from 41 per cent the previous year. MIC provides additional support to the IPv6 transition through tax deductions. However, despite such efforts, adoption of IPv6 has been slower than anticipated. As of March 2013, only 3.15 per cent of Japanese internet end-users use IPv6 services, ranking fifth globally. The results of such efforts are

2 Regulated transactions include (1) 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 (2) 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.

described in greater detail in the Second Progress Report published by an MIC study group in July 2013.

ii Universal service

Under the Telecommunications Business Act and the NTT Act, NTT group must provide wired telephony service (analogue or IP over optical fibre) in all areas in Japan. There is no similar law requiring universal broadband service.

To encourage private companies to construct broadband infrastructure, in 2004 MIC announced its u-Japan strategy ('u' for 'ubiquitous'). One goal of the initiative is the construction of nationwide broadband infrastructure, wired and wireless as appropriate. The u-Japan strategy has been quite successful in facilitating the extension of broadband access to Japan's population centres. MIC announced that 99.8 per cent broadband coverage had been achieved as of March of 2013. High-speed broadband (optical and 30Mb/s download or faster cable) reached a level of 97.3 per cent coverage for over 52.35 million households in March 2012. In 2012, the number of broadband service subscribers grew by 54.3 per cent to 60.98 million subscribers including 20.36 million subscribers of 3.9G mobile phone (increased by 890 per cent from the previous year). MIC announced that approximately 88.4 per cent of Japanese people using the internet subscribe to a broadband internet service.

iii Restriction on the provision of service

The telecommunications business in Japan is dominated by NTT East and NTT West (half-privatised wired telephony service providers; collectively, 'NTT') and by three major private telecommunication companies, NTT DOCOMO, KDDI, SoftBank. Telecommunications regulations, in combination with antitrust law, facilitate competition among telecommunications 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 unfair 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 pay-phone 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.

As a general rule, all telecommunications business licence holders must provide access to any other carrier that seeks to interconnect with their network. However, prices for, and methods of, interconnection are areas of public controversy and regulatory scrutiny.

Telecommunications companies have pressed for greater access to NTT's infrastructure, including its fibre-optic network. NTT only provides access to its fibre-optic network on a bulk basis, for what NTT describes as technical and economic efficiency reasons. SoftBank has argued that it is technically possible for NTT to provide third-party access for smaller volumes without unreasonable expense, and that such access would increase efficiency and promote competition. In early 2011, NTT proposed, and MIC approved, plans to reduce the prices to be charged for interconnection with its respective fibre-optic lines by 30 per cent over the following three years in response to pressure from SoftBank and other private telecommunications providers. In May 2011, access to SoftBank's own network became an issue when NTT DOCOMO made a filing for governmental mediation for the first time, alleging lack of transparency of SoftBank's pricing for interconnection to its mobile networks. This issue was solved in November 2012 when MIC designated SoftBank as an operator of Category II-designated telecommunications facilities. Category II-designated telecommunications facilities operators are required to calculate its interconnection fee in accordance with MIC's guideline and publicly disclose such interconnection fees. However, NTT DOCOMO and KDDI further proposed to MIC in the public hearing process that eAccess's (a mobile communication company under the SoftBank group) pricing for interconnection charges shall also be disclosed by designating eAccess as an operator of Category II-designated telecommunications facilities. MIC did not designate eAccess as a Category II operator but stated that non-designated operators should also take proactive action according to the guideline by considering the verifiability of the interconnection charges and that MIC will conduct necessary verification if eAccess discloses its calculation basis.

In connection with future expansion of the nation's fibre-optic network, SoftBank has proposed that NTT spin off their copper and optic networks that reach end-users to a new joint venture formed by the government and major carriers including NTT and Softbank, so as to make the networks available equally to all carriers and accelerate the replacement of copper wire networks with fibre-optic networks. However, the government's task force turned down this proposal and recommended to the government a less drastic approach to segregate NTT's copper and fibre-optic operations with operational firewalls. On 30 November 2011, the amended Telecommunication Business Act became effective, which imposes regulations requiring such operational firewalls. In exchange, the NTT Act was also amended in a manner that streamlines NTT's ability to expand its telecommunication services. Rather than requiring a licence to expand beyond regional services, the amended NTT Act now only requires NTT to file before such expansion.

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 (the 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.

Further, MIC has issued Privacy Act guidelines that are specific to telecommunications businesses. Since MIC guidelines also take into account the obligations of telecommunications 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 telecommunications 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 (1) provide users’ locational information to third parties only if they have the user’s consent, a search warrant or other valid justification; and (2) obtain a user’s locational information pursuant to law enforcement agencies’ requests only if a warrant is issued and the user is put on notice.

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 of 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. Also under the Act, from April 2010, manufacturers of devices with internet connectivity (other than mobile phones) are 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 gaps in security; 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 the Punishment of Activities Relating to Child Prostitution and Child Pornography and the Protection of Children (the Child Pornography Prohibition Act), 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. Lawmakers are continuously proposing further amendments to the Act to criminalise the simple possession of child pornography images and to require ISPs to block child pornography. The amendment has been discussed through the 183rd (from 28 January to 26 June 2013) and the 184th Diet session (from 2 to 7 August 2013) but has not yet passed due to concerns that it could lead to broader censorship of internet content. Even without the passage of the amendment, major ISPs began to voluntarily block access to child pornography sites in April 2011, following a recommendation by the an interagency working group of the Japanese government. Although the Child Pornography Prohibition Act requires ISPs to block the URLs of child pornography sites, child pornography users bypass the URL blocks by directly inputting IP addresses. In July 2012, a Japanese pornography provider, using servers in the United States that users accessed by inputting the IP address, was arrested by both the US Department of Homeland Security and Japanese police.

The National Police Agency is responsible for Japan's information security. It established a cyber security department in 1997, and issued a comprehensive information security policy in 2000. In 2001, the National Police Agency also established a cyber terrorism department, known as the Cyber Force Centre, which monitors network information flows from nine offices around Japan. In 2005, the Cyber Force Centre became a member of the Forum of Incident Response and Security Teams, an international information sharing network for computer incident response organisations.

Beyond the authorisation of day-to-day monitoring and information gathering carried out by the National Police Agency, Japan has no laws directly addressing issues of national security in cyberspace. However, a White Paper published in August 2011 by the Ministry of Defence prominently addressed the importance of cybersecurity, stating: 'Cyberattacks on the information and communications networks of governments and militaries as well as on important infrastructure significantly affect national security. Japan must continue to pay attention to developments in cyberspace threats.' The Ministry of Defence has also established a systems command within the military and in 2012, created a new high-level post to formulate responses to the threat of cyberattack. The Ministry of Defence also reports that it is taking additional steps with respect to training and personnel in order to increase readiness for computer attacks

that threaten Japan's national security. Despite its efforts, in June 2012, the Supreme Court and several other government offices were attacked by the international hacking group Anonymous in protest at the enactment of a bill to impose criminal penalties on unauthorised downloading. In September 2012, 11 governmental websites went down due to cyberattacks associated with political protests in connection with the Ryukyu Islands where both Japan and China claim sovereignty. The Supreme Court's website was changed to display the Chinese national flag and was unable to recover from the attack for a week. To combat cyberattacks, the Cyber Incident Mobile Assistant Team (CYMAT) was established under the National Information Security Center. CYMAT is the first organisation to gather personnel from every Japanese ministry to support governmental organisations in responding to information-security incidents.

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 Japanese legislative body 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.

ii Broadband and next-generation mobile spectrum use

Following the general discontinuation of analogue television broadcasts in 2011, the digital television broadcasts that replaced them occupy a much narrower spectrum band. The remaining spectrum is being reallocated to wireless broadband to meet the recent explosion of demand. Such demand includes Mobacas, a next-generation platform for multimedia broadcasting exclusively to mobile devices, as well as independent transmission for police, fire departments and local governments and 'intelligent transport systems' where the spectrum will be used for communication among vehicles or between vehicles and roads to prevent traffic accidents.

The Radio Act was amended in 2011 to accelerate spectrum reallocation. Under the amended Radio Act, a wireless transmission spectrum licence applicant is required to provide a plan to cover costs of implementing the reallocation of that spectrum, including reconfiguring wireless stations currently utilising such spectrum for a different

spectrum. In December 2011, MIC announced the licence requirements for the 900MHz band, which is known as the 'platinum band' for its ideal mobile telephone propagation properties and indoor coverage quality. Each of the major Japanese mobile telephone companies, including NTT DOCOMO, KDDI and SoftBank, applied. Each applicant committed to cover the reallocation cost within the ¥12 billion and ¥21 billion cost range specified by MIC and each committed to the highest level of that cost range. As a result, MIC awarded the 900MHz licence based on other criteria. SoftBank won the licence because it had the highest customer density within its existing spectrum. SoftBank initiated services under this spectrum bandwidth in July 2012, adopting the name 'Platinum Band' from the name it was known by in the industry. Although SoftBank was the sole winner of the 900MHz band, as a concession, MIC designated the 700MHz band for mobile device use and allocated that band equally among NTT DOCOMO, KDDI and a third carrier. The three carriers have announced they will start commercial services using the bandwidth in 2015.

Another valuable spectrum bandwidth previously used for analogue television broadcasts between 207.5MHz and 222MHz reallocated by MIC to mobile broadcasting was the subject of vigorous competition between two consortiums led by NTT DOCOMO and KDDI (Japan's two largest wireless carriers). Each consortium was vying for the licence to utilise this spectrum band. In September 2010, MIC decided to award the licence to the consortium led by NTT DOCOMO, partnered with Fuji TV and other major television stations. The decision backed a format based on Japan's current digital television standard ISDB-T, over the adoption of Qualcomm's MediaFLO technology proposed by the consortium led by KDDI. The consortium aired Japan's first broadcast, NOTTV, on 1 April 2012 on the 207.5MHz to 222MHz spectrum band using their newly created Mobacas platform. The number of mobile devices compatible with NOTTV is increasing, and in June 2013, NOTTV announced it had reached 1 million subscribers.

MIC had indicated that it would allocate the spectrum band between 90MHz and 108MHz, also formerly used for analogue television broadcasts, to local multimedia broadcasting. In a January 2010 survey conducted by MIC, over 100 entities, including local radio stations and television stations, expressed their desire to provide content for this proposed local multimedia broadcasting platform. However, the majority of such content providers withdrew due to high capital expenses. In July 2013, MIC announced a draft amended plan to allocate half of this spectrum band to community radio broadcasting.

Apart from the additional spectrum bandwidth made available by the digital switchover, mobile carriers are also establishing next-generation mobile services using spectrum bands that were already available. UQ Communications, an affiliate of KDDI, took the lead in next-generation mobile service by offering a mobile WiMAX service in February 2009 using the 2.5GHz band. In July 2013, MIC allocated additional spectrum to UQ Communications. Softbank has announced it is considering filing an injunction against the allocation, arguing that the allocation process was not transparent and MIC's decision was unreasonable.

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 and 2011 the formulae still favour broadcasters, satellite operators and other 'vested' rights holders. The total amount of spectrum fees MIC received for the fiscal year ending March 2012 was approximately ¥75 billion (up from ¥67 billion in 2011), 85 per cent of which was paid by mobile phone carriers and only 7 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 is 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 legislative body 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 broadcast content

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. Each of these requirements are applicable to all main broadcasting licence holders, while only some apply to regular broadcasting licence holders.

ii Digital switchover

In Japan, satellite digital television broadcasts began in 2000, and terrestrial digital television (DTTV) broadcasts began in 2003. The nationwide switchover of both analogue terrestrial and satellite broadcasts was completed on 31 March 2012. However, as of June 2013, 59,484 households reported technical problems with DTTV broadcasting reception. As temporary relief, MIC is subsidising the simultaneous analogue broadcast of terrestrial television programmes via satellite to those affected by the switchover until March 2015.

Although there have been trial runs for digital radio since 2003, there are no immediate plans to fully cancel or replace analogue radio. The future of radio broadcasting in Japan is currently being studied by MIC, including an eventual shift from traditional radio broadcasting to digital broadcasts targeted to mobile devices.

iii Internet-delivered video content

Video content delivery utilising internet protocols, both through dedicated networks and over the internet, has steadily increased over recent years. The methods of video delivery vary from free video-sharing sites (such as YouTube), membership-based video-sharing sites (such as Nikoniko Douga), and partially fee-based video delivery sites (such as Gyao!). Traditional television stations (such as NHK and commercial television broadcasters) have introduced the video-on-demand service ‘Motto-TV’ (coined from the Japanese word ‘motto’, meaning ‘more’), and are streaming terrestrial broadcasting and video-on-demand (VOD) content through compatible television and smartphones for a fee.

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, which results in receipt by a specific recipient, 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.

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. However, 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.

iv Mobile services

Video broadcasting service 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. Currently, One-Seg service is 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' described in Section IV.iii, *supra*, will provide viewers with higher definition broadcasts than One-Seg, and will allow users to store content delivered through the dedicated spectrum band to their mobile devices.

In addition to services using dedicated spectrum bands such as One-Seg and Moba-Cas, high-speed mobile networks now provide widely available access to mobile media services. In Japan, wireless carriers are in the process of switching from 3G service (up to 7.2Mb per second) to 3.9G service (up to 300Mb per second). In addition, mobile phone carriers plan to establish 4G services (LTE-Advanced or WiMAX2) which will enable data transmission speed of up to 1Gb per second. NTT DOCOMO hopes to launch 4G services sometime after 2015.

VI THE YEAR IN REVIEW AND OUTLOOK

Japan's telecommunications and media regulatory regime has stabilised, at least for the time being. Some of the regulatory reforms put forth in Japan over the past several years have begun to realise measurable benefit to the public and commercial enterprise. Others however, in particular proposed amendments to spectrum auction policies, have suffered setbacks.

Emerging issues are now developing with the spread of infrastructure and advances in technology, giving rise to potential new regulatory schemes. For example, the development of enhanced data processing technologies that have led to resources of massive and complex data (known colloquially as 'big data') carries with it a number of potential issues, ripe for new regulation. Until today, Japanese data-use regulation has focused only on the protection of personal information and Japan had no regulation or official guidelines regarding anonymous information included in big data. Some companies have implemented self-imposed regulation governing use of big data, but

such regulation is without the benefit of governmental endorsement. Consequently, companies have faced public criticism over their use of big data and Prime Minister Abe has announced the establishment of guidelines for use of anonymous big data as part of the government's new growth strategy.

Japan's new growth strategy also includes a ¥50 billion reserve in the next year's budget to promote its 'Cool Japan' programme, designed to exploit Japanese culture abroad as a seed for future Japanese economic growth. Cool Japan was formed on the theory of 'soft power', a country's ability to spread its cultural and ideological influence.

The upcoming year will likely see further attention given to emerging telecommunications and media technology and infrastructure and a re-examination of Japan's existing regulatory scheme.

Appendix 1

ABOUT THE AUTHORS

SIMON BERRY

Latham & Watkins

Simon Berry is a partner in the Hong Kong office of Latham & Watkins and a member of the corporate department.

Mr Berry has extensive experience in regulatory law. His practice also focuses on a broad range of mergers and acquisitions, reorganisations, post-acquisition integration and corporate finance transactions involving regulated entities such as banks, insurance companies and financial institutions.

His experience in regulatory matters includes licensing and advisory work covering a wide range of regulated activities including securities, commodities, futures and other derivatives, asset management and proprietary trading including offerings of investment products, outsourcing, e-commerce-related issues, data privacy, internet securities trading and e-banking matters. He has advised on the acquisition and disposal of a number of licensed entities as well as members of stock exchanges, futures exchanges, clearing companies and other regulated entities.

His experience in mergers and acquisitions includes takeover offers, sales and purchases of businesses and companies, direct investments, private equity, joint ventures, mergers by legislation, schemes of arrangement and other commercial agreements. He has also advised on transactions involving television companies and radio broadcasting companies. He is the chairman of the Competition Law Committee of the Law Society of Hong Kong.

JOHN D COLAHAN

Latham & Watkins

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.

GAIL CRAWFORD

Latham & Watkins

Gail Crawford is a partner in the London office. Her practice focuses primarily on technology, 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 2.0 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.

RICHARD FLEMING

Latham & Watkins Gaikokuho Joint Enterprise

Richard Fleming is a transactional associate in the Tokyo office of Latham & Watkins Gaikokuho Joint Enterprise. His practice focuses on banking, acquisition finance, private equity finance and project finance. Prior to joining Latham & Watkins, Mr Fleming worked in the Los Angeles office of Skadden, Arps, Slate, Meagher & Flom LLP, where he represented commercial and investment banks, private equity sponsors as well as private and public companies in connection with leverage finance matters, refinancings and restructurings. Mr Fleming received his undergraduate degree from Tulane University in mass communication and before becoming a lawyer, Mr Fleming spent 12 years working in the film industry in Los Angeles. During his film industry career, Mr Fleming's work included film development, financing, production and delivery, as well as worldwide sales and licensing of film rights for all forms of media.

JOHN P JANKA

Latham & Watkins LLP

John P Janka is a partner in the Washington, DC office of Latham & Watkins LLP, where he is chair of the communications law practice group. For 25 years, 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 effecting changes in legal and regulatory frameworks. His clients include satellite, wireless and other terrestrial communications companies, video programming suppliers, information service providers, 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*.

VIOLA JING

Latham & Watkins

Viola Jing is an associate in the Hong Kong office of Latham & Watkins and a member of the litigation department.

Her practice focuses on civil and commercial litigation and financial regulatory compliance and investigations. She has acted for high net worth individuals, private and public companies in monetary claims and other civil matters.

Ms Jing's experience in litigation includes advising clients on shareholders or directors disputes, debt recovery actions, defamation, general commercial, employment, corporate insolvency and bankruptcy matters and attending companies winding-up and bankruptcy proceedings.

Her experience in regulatory matters includes advising public companies and individuals on regulatory and compliance issues under Hong Kong's securities regulatory regime.

JEAN-LUC JUHAN

Latham & Watkins LLP

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

His practice focuses on outsourcing and technology transactions, including business process, 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 quoted in *Chambers Europe 2013*, *Option Droit & Affaires 2013*, *Legal 500 EMEA 2013* and *Legal 500 Paris 2013*: “Great negotiator” Jean-Luc Juhan, who is “very sharp and down-to-earth” and has “a very good knowledge of the industry”, advises high-profile French and international groups on large outsourcing, telecommunication and integration system projects.’

SAORI KAWAKAMI

Latham & Watkins Gaikokuho Joint Enterprise

Saori Kawakami is an associate of Latham & Watkins Gaikokuho Joint Enterprise in Tokyo and a member of the corporate department. Her practice focuses on M&A, project finance, general corporate, employment and telecommunications matters. Her representative experience in the telecommunications industry includes representing: Perfect World Co Ltd, a leading online game developer and operator in China in purchasing C&C Media Co Ltd, an online game company in Japan for US\$21 million; Liberty Global Inc in the US\$4 billion sale of its stake in Jupiter Telecommunications Co Ltd (J:COM), a leading broadband provider of communications services in Japan; and Japan Entertainment Network KK, a subsidiary of Turner Broadcasting System Inc in a stock purchase deal between Secom Co Ltd, the largest security company in Japan. Ms Kawakami is admitted to practise in Japan and is a member of the Daini Tokyo Bar Association. She is fluent in Japanese and English.

HIROKI KOBAYASHI

Latham & Watkins Gaikokuho Joint Enterprise

Hiroki Kobayashi is a corporate partner of Latham & Watkins Gaikokuho Joint Enterprise in Tokyo. He advises on Japanese legal issues relating to a variety of areas of transactional practice, including corporate law and various government regulatory matters. He handles a number of cross-border M&A matters in collaboration with Latham & Watkins attorneys in other offices, and counsels clients on M&A transactions conducted under different business practices. His recent experience includes an acquisition by Turner Broadcasting System, Inc through its Japanese subsidiary Japan Entertainment Network KK of Japan Image Communications Co Ltd, a licensed operator of multiple TV channels, and a sale by Liberty Global of its US subsidiaries holding shares in Jupiter Telecommunications, Japan’s largest cable television operator, to KDDI. Mr Kobayashi has spoken on the topic of privacy in cyberspace at a meeting of an academic society of computer scientists. Mr Kobayashi is admitted to practise in Japan and New York and is a member of the Dai-ichi Tokyo Bar Association and the New York State Bar Association. He is a native speaker of Japanese and fluent in English.

ABBOTT B LIPSKY, JR

Latham & Watkins LLP

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 in 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.

LAURA JOHANNA REINLEIN

Latham & Watkins LLP

Laura Johanna Reinlein is an associate in the Hamburg office of Latham & Watkins LLP, practising in the firm's litigation department. Dr Reinlein wrote her doctoral thesis on the topic of control of concentrations in the media sector under the influence of media convergence. During her legal studies at Johannes Gutenberg University at Mainz she worked as a research associate at the chair of public and media law under Professor Karl-E Hain, mainly in the field of media, constitutional and administrative law. During her legal traineeship she worked, *inter alia*, for a public broadcasting corporation and the State Media Authority of Bavaria.

MYRIA SAARINEN

Latham & Watkins LLP

Myria Saarinen is a partner in the Paris office of Latham & Watkins LLP. 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 has also expertise on cross-border issues raised in connection with discovery or similar requests in France.

Ms Saarinen is also active in the corporate governance and compliance areas and assists clients in drafting and implementing grant of powers, delegation of liability and other compliance schemes.

Ms Saarinen is named among leading practitioners in commercial litigation, data privacy and IT (*The Legal 500 EMEA 2013*) and her expertise in the data privacy area is particularly lauded (*Chambers Europe 2013, Chambers Global 2013*).

She is active in firm management, serving on the ethics, technology and privacy and security committees of Latham & Watkins.

OMAR SHAH

Latham & Watkins

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, 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

Latham & Watkins LLP

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 (FCC), 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 (CFIUS), 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.

CHIYO TODA

Latham & Watkins Gaikokuho Joint Enterprise

Chiyo Toda is an associate of Latham & Watkins Gaikokuho Joint Enterprise in Tokyo. Her practice focuses on M&A, general corporate, antitrust, and telecommunications and technology matters. Her representative experience in the telecommunications and technology industry includes representing: the underwriters in the US\$3.3 billion bond offering by Softbank Corporation, the largest high yield bond offering in Asia by a leading mobile phone carrier in Japan, and Cap Gemini SA in its acquisition of a Japan-based IT service provider. Ms Toda is admitted to practise in Japan and is a member of the Daini Tokyo Bar Association. She is fluent in Japanese and English.

GABRIELE WUNSCH

Latham & Watkins LLP

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 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. She completed parts of her studies and work in Germany, England, Spain, Switzerland and the United States. During her legal traineeship, Dr Wunsch 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 she completed a master's degree (LLM) at the Technical University of Dresden and Queen Mary, University of London, specialising in intellectual property law.

LATHAM & WATKINS

Latham & Watkins LLP
45 rue Saint-Dominique
75007 Paris
France
Tel: +33 1 40 62 20 00
Fax: +33 1 40 62 20 62
jean-luc.juhan@lw.com
myria.saarinen@lw.com

Latham & Watkins LLP
Warburgstrasse 50
20354 Hamburg
Germany
Tel: +49 40 4140 30
Fax: +49 40 4140 3130
johanna.reinlein@lw.com
gabriele.wunsch@lw.com

Latham & Watkins
18th Floor, One Exchange Square
8 Connaught Place, Central
Hong Kong
Tel: +852 2912 2500
Fax: +852 2912 2600
simon.berry@lw.com
viola.jing@lw.com

Latham & Watkins Gaikokuho Joint Enterprise
Marunouchi Building, 32nd Floor
2-4-1 Marunouchi, Chiyoda-ku
Tokyo 100-6332
Japan
Tel: +81 3 6212 7800
Fax: +81 3 6212 7801
hiroki.kobayashi@lw.com

Latham & Watkins
99 Bishopsgate
London
EC2M 3XF
United Kingdom
Tel: +44 20 7710 1000
Fax: +44 20 7374 4460
omar.shah@lw.com
gail.crawford@lw.com
john.colahan@lw.com

Latham & Watkins LLP
555 Eleventh Street, NW
Washington, DC 20004
United States
Tel: +1 202 637 2200
Fax: +1 202 637 2201
john.janka@lw.com
jarrett.taubman@lw.com
tad.lipsky@lw.com

www.lw.com