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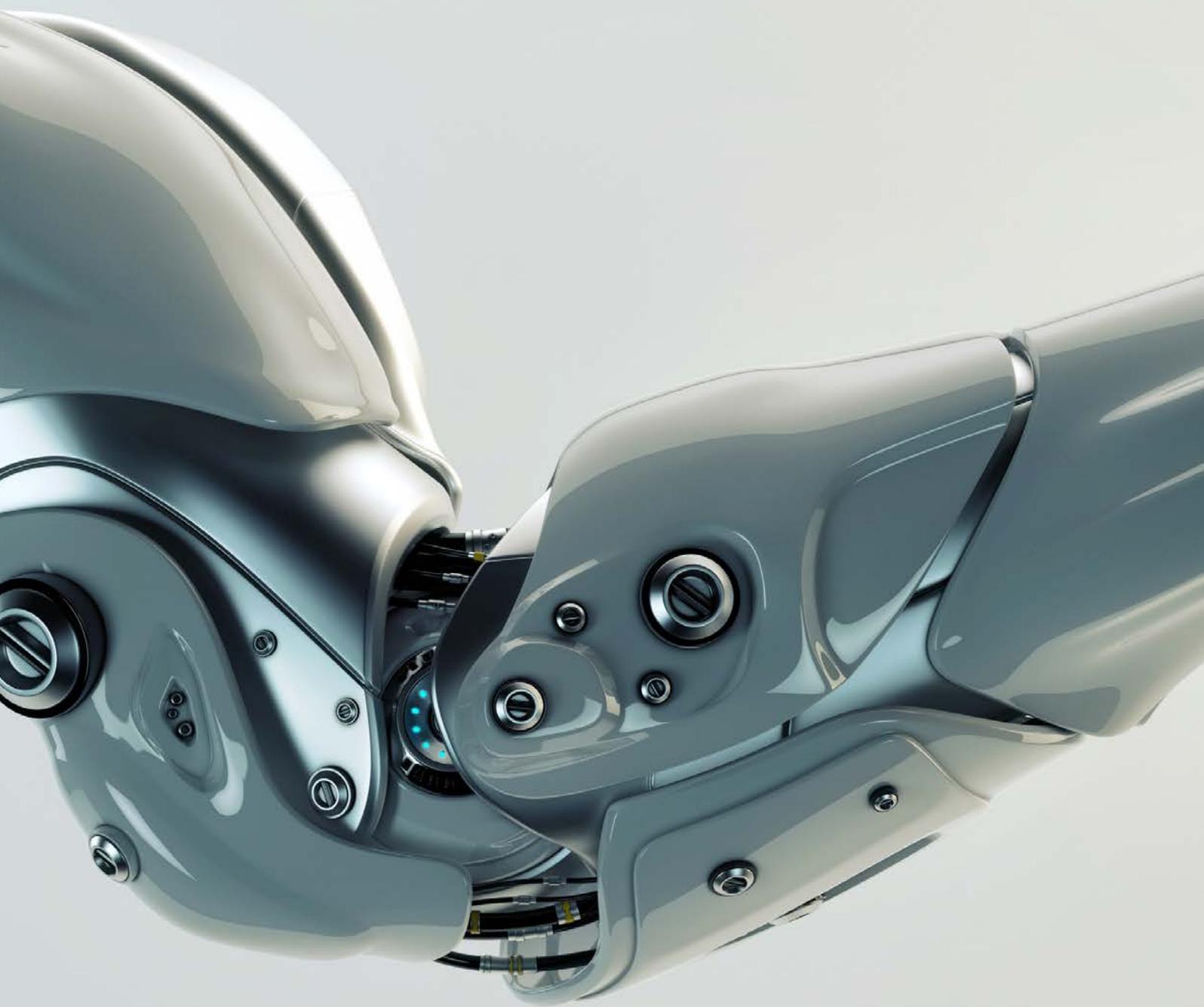
Law.Tax

Autumn 2015

# TRANSMIT

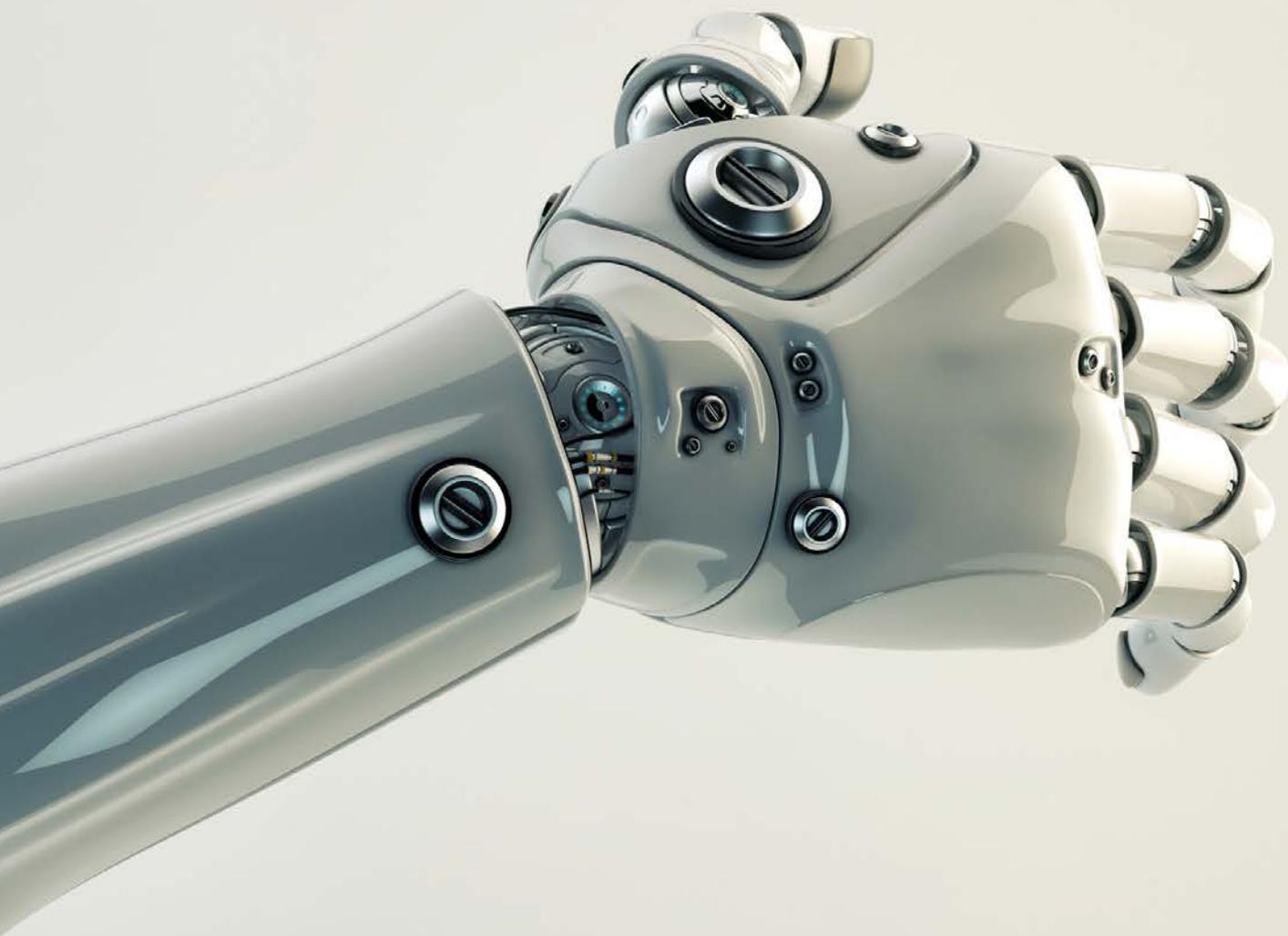
TMC sector update





# Welcome to TRANSMIT

Autumn 2015



The Technology, Media and Communications sector is seeing a period of intense activity and upheaval, yet also of reflection and analysis. Major acquisitions and disposals are remaking the structure of the sector at the same

time as new technologies are challenging it. Regulators battle to keep up and to manage change. It is fundamental for all involved to have access to up to date information and insights; Transmit seeks to deliver this to its readers.



**Chris Watson**  
Global Head of TMC

# Contents

## Europe

- 6 Austria
- 7 Belgium
- 8 France
- 9 Germany
- 10 Hungary
- 12 Italy
- 14 The Netherlands
- 16 Poland
- 18 Romania
- 19 Russia
- 20 Serbia
- 22 Slovakia
- 23 Slovenia
- 24 Spain
- 26 Switzerland
- 27 Turkey
- 28 UK
- 30 Ukraine

## Middle East

- 32 Oman
- 34 UAE

## Asia

- 36 China
- 38 Singapore

## The Americas

- 40 Brazil
- 42 USA



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# Europe

## CJEU declares 'Safe Harbour' invalid

On 6 October 2015, the Court of Justice of the European Union (CJEU) delivered its judgment on the 'Schrems vs Facebook' case, ruling that European internet users' personal data are not adequately protected against access by US surveillance agencies. In doing so it declared invalid the 'Safe Harbour' scheme, which had established simplified procedures for transferring data to the US.

## Background

In 2013, Austrian law student Max Schrems filed a complaint against Facebook Ireland for violation of data protection laws, on the basis that Facebook was automatically transmitting all data to the US under the Safe Harbour scheme.

Schrems' complaint asserted that it is against EU law to transmit data to the US without national authorities in Europe verifying that Facebook complies with European standards of data protection in the US.

The High Court of Ireland had already considered this issue to be a decisive factor in the interpretation of EU law in late September 2014 and thus referred the case to the CJEU for a preliminary ruling. The CJEU conducted proceedings in that regard under case number C-362/14.

When making its decision, the CJEU considered whether the Safe Harbour scheme was compliant with EU legislation. The Safe Harbour scheme is based on an agreement drawn up between the EU and the US which provides for self-certification by participating US companies. All such certified companies appearing on the US government's Safe Harbour list were to qualify as offering adequate protection for personal data transferred to them from the EU.

On 6 October 2015, the CJEU ruled that the Safe Harbour agreement between the US and the EU was invalid because US companies could not provide an adequate level of protection of personal data. After the revelations made by Edward Snowden, companies in the US can no longer be considered a 'safe harbour' for European users' personal data.

## Far-reaching implications

The ruling has far-reaching implications for companies in the US and Europe undertaking Transatlantic transfers of personal data. National data protection authorities (DPAs) are no longer bound by the Safe Harbour scheme to allow transfers of personal data from the EEA to the US. DPAs will be free (and obliged) to investigate personal data transfers based on the Safe Harbour and to begin enforcement action in respect of transfers they deem to be non-compliant. Accordingly, businesses must review their existing transfer arrangements and consider the alternative compliance mechanisms available to them immediately, such as model contract clauses and in the medium term binding corporate rules

National DPAs issued holding responses to the ruling. The Commission also issued a [statement](#). It undertook to issue further guidance and work closely with DPAs in order to '*(avoid) a patchwork of potentially contradicting decisions by the national data protection authorities and therefore provide predictability for citizens and businesses alike.*'

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# Austria

## Communications

### Telecommunications market sees continued growth

In June 2015 the Austrian Regulatory Authority for Broadcasting and Telecommunications (**RTR**) published its Telecom Monitor annual report which provides an indication of the excellent position of Austria's mobile telecommunications market. The mobile telecommunications sector generated more than 60% of overall industry revenues in 2014. Data usage volumes in the consumer market have also seen an impressive increase of about 50%. At the other end of the scale, text and multimedia messaging fell back and are losing relevance.

### Frequency reallocation boosts 4G networks

In August 2015 RTR decided to reallocate existing frequency usage rights in the 2.1 GHz range so bands can also be used for LTE (4G). The reallocation of UMTS frequency usage rights was necessary to promote competition within the LTE broadband sector, and mobile network providers are expected to benefit from the diversification of the 2.1 GHz frequency range.

For more information, please visit: [www.rtr.at/en/pr/P112082015TK](http://www.rtr.at/en/pr/P112082015TK) and [www.rtr.at/en/pr/P111062015TK](http://www.rtr.at/en/pr/P111062015TK)

## Media & sport

### Decision reached in UEFA broadcasting dispute

The Austrian Communications Authority (**KommAustria**) has published a decision in the dispute between Austrian broadcasting ORF and PULS 4 TV regarding the broadcasting rights of the UEFA Champions League.

KommAustria ruled that ORF did not acquire broadcasting rights at excessive prices in violation of Austrian law. The relevant Act prohibits ORF, which is a public entity, from using its budget to acquire broadcasting rights at excessive prices and creating a distortion of competition within the market. Although this provision is based on EU law, this ruling was the first of its kind.

For more information, please visit: <https://www.rtr.at/en/pr/P129062015Medien> (in German)

## M&A

### Adidas hit the ground running with fitness app acquisition

Runtastic GmbH, an Austrian fitness app maker, was acquired by the German Adidas Group in a transaction valued at EUR 220 million. With more than 140 million downloads and around 70 million registered users, Runtastic has a strong industry position. Available in 18 languages, Runtastic is already considered one of the most diverse global players in the health and fitness app market.

For more information, please visit: <http://www.adidas-group.com/en/media/news-archive/press-releases/2015/adidas-group-acquires-runtastic/>

## Automotive

### Road tests on the horizon for driver-less cars

Many automotive manufacturers, including Mercedes-Benz and Audi, are developing driver-less cars. To give these innovations an opportunity for testing, the Austrian Ministry for Transport, Innovation and Technology has announced that test tracks will be introduced at the beginning of 2016. These are likely to be roads which are free from traffic, but may also include certain public roads for limited time periods. Details of this project still remain unclear.

For more information, please visit: <https://www.bmvit.gv.at/presse/interviews/2015/0828kurier.html> (in German)

## eHealth

### Online pharmacies introduced

From 25 June 2015 it became possible to sell pharmaceuticals online in Austria, providing certain requirements are met. Only over-the-counter pharmaceuticals are permitted to be sold online and online sales are limited to public pharmacies which operate a physical pharmacy. In addition, online pharmacies must be registered with the Austrian Federal Office for Safety in Healthcare.

For more information, please visit: <http://www.bmg.gv.at/home/Schwerpunkte/Medizin/Arzneimittel/Arzneimittelsicherheit/> (in German)

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# Belgium

## Media

### **Court of Appeal rules on payment of royalties by satellite operators**

The Brussels Court of Appeal recently ruled that operators of satellite television are not required to pay royalties to the collecting rights society AGICOA.

In a preliminary ruling the European Court of Justice confirmed that, under Article 2 of the Satellite and Cable Directive N° 93/83/EEC, a satellite package provider rebroadcasting programmes does not need to obtain authorisation from the respective rights holder for the transmission of television programmes.

However, the provider must first have agreed with the original broadcasting organisation that the relevant programmes can also be broadcast through that satellite provider, and the rebroadcasting must not make the programmes accessible to a 'new public'. For these purposes, a 'new public' is one which was not taken into account by the rights holders when giving their authorisation to the original broadcasting organisation.

The Court ruled that both the direct and indirect transmission of television programmes by the satellite provider fulfilled all the conditions of the Directive, and must be considered a single communication to the public by satellite. The Court also found that, under the contracts, the satellite provider had obtained the appropriate consent from the copyright owners for the broadcasts, and as there was no 'new public', no new consent was required.



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# France

## Communications

### **TDF commits to improve its hosting contracts**

Following proceedings initiated by one of its competitors, on 4 June 2015, tower company TDF provided the French Competition Authority with an improved version of the hosting contracts it agreed with mobile operators for use of its broadcasting pylons. The excessive duration of TDF's existing hosting agreements, as well as the insertion of restrictive early termination clauses (for a few dozen sites per year only), has been deemed to restrict the market.

TDF has agreed to limit the duration of new hosting contracts to 10 years, as opposed to the existing duration of up to 20 years. In addition, TDF has committed to limiting compensation for early termination of the contracts to three months' rent, which applies to ongoing and future contracts. These commitments will make it easier to offer mobile operators alternative hosting for their radio equipment while their contract with TDF is still in force.

The French Competition Authority will monitor TDF's compliance with these commitments.

For more information, please visit:  
<http://bit.ly/TransmitFRComms>

### **Withdrawal of licences from three overseas operators**

For the first time, the French telecoms regulator has used its new sanctioning powers. The regulator has withdrawn frequencies allocated in 2008 to three overseas companies (Guadeloupe Telephone Mobile, Martinique Telephone Mobile and Guyane Telephone Mobile) which failed to meet coverage obligations and pay licensing fees. Given their persistent failures, the disciplinary body of the regulator decided to apply sanctions and, given the seriousness of these failings, to withdraw the frequencies that had been allocated to the operators in 2008. The frequencies will be re-allocated to other operators in the next few months.

The three companies appealed to France's highest administrative court, the Conseil d'Etat, for the sanctions to be suspended. However, the French Supreme Court rejected all three appeals in a summary ruling on 8 July 2015.

For more information, please visit:  
<http://bit.ly/TransmitFRComms2>

### **Reallocation of the 700 MHz band**

The Prime Minister has amended the National Radio Frequency Allocation Table by Ministerial Order, specifying the timetable for transfer of the 700 MHz band from the DTT (Digital Terrestrial Television, also known in French as TNT) sector to the French telecoms regulator (**ARCEP**). This band will be freed up thanks to recent improvements in DTT compression standards and for wireless, to respond to the exponential increase in traffic on cellular networks. Mobile wireless service providers will be authorised to use this band to offer mobile broadband services for smartphones, tablets, laptop computers and other mobile devices.

The 703-733 MHz and 758-788 MHz frequencies will be progressively released between 5 April 2016 and 30 June 2019.

The call for tenders was launched on 6 July 2015 with a view to establishing and operating a mobile terrestrial network. The French regulator plans to conduct the auction and award the licences by the end of 2015.

For more information, please visit:  
<http://bit.ly/TransmitFRComms3>  
(in French)

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# Germany

## Communications

### MHZ auctions

On 19 June 2015 the spectrum auction regarding 270 MHz of spectrum in the 700 MHz, 900 MHz, 1500 MHz and 1800 MHz bands for mobile broadband ended in Mainz after 16 days and 181 rounds of bidding.

All three companies taking part in the auction procedure (Telefónica, Telekom and Vodafone) were successful in bidding for spectrum, with the combined bids totalling EUR 5,081,236,000. This amount exceeded the reserve price of EUR 1.5 billion as well as expert predictions of EUR 4.4 billion.

The results of the individual auction rounds can be viewed at:  
[www.bundesnetzagentur.de/mobilebroadband](http://www.bundesnetzagentur.de/mobilebroadband)

## Data protection

### Google requires website operators to seek opt-in consent

Google has changed its guidelines in accordance with the EU Cookie Directive (Directive 2009/136/EC). The new guidelines require website operators to gain opt-in consent for cookies from any user visiting the site. The German data protection authorities have argued that the directive has still not been effectively implemented into German law. As such, the German Telemedia Act (Telemediengesetz, TMG) would still apply, so only opt-out consent and the information required to revoke consent is required.

Due to the controversy around the implementation of the Cookie Directive in Germany, it currently seems unlikely that either Google or the German data protection authorities would sanction an opt-out solution. Currently Google's cookie guidelines only relate to Google AdSense and Double Click, but it seems likely that Google will expand its guidelines to other services like AdWords, Dynamic Remarketing and Analytics.



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# Hungary

## Communications

### **NMHH signs administrative contracts with Magyar Telekom and Telenor on bilateral amendments of subscriber contracts**

The National Media and Infocommunications Authority ('**NMHH**') investigated the practices of Magyar Telekom and Telenor regarding the bilateral amendment of residential mobile services fees in subscriber contracts. As a result, the service providers have now committed to adopting measures to ensure they comply with the subscriber rights rules of the Electronic Communications Act.

### **4G network sharing between Telekom and Telenor**

Magyar Telekom and Telenor will also share their newly awarded spectrum in 800 MHz and jointly operate and develop their 4G mobile networks in all parts of Hungary (except Budapest). This is expected to double the mobile internet speed currently available in the 800 MHz band, provide earlier access to fast mobile internet services and significantly increase coverage.

For more information, please visit:  
[http://www.telekom.hu/about\\_us/press\\_room/press\\_releases/2015/february\\_25](http://www.telekom.hu/about_us/press_room/press_releases/2015/february_25)

## Media

### **Legislator annulled commonly used commercial term in channel license agreements**

By amending the Act on Programme Distribution and Digital Switchover, the Hungarian legislator has banned distributors and media service providers from agreeing disadvantageous terms in situations where the media provider makes its channel available for users for free or in unencrypted form by third party program distributors.

In Hungarian channel license agreements it is common for the distributor to be exempt from paying the license fee if the media provider agrees with a third party distributor to distribute the channel as free-to-air or without encryption and/or without any subscription fee from subscribers or users. This amendment is aimed at encouraging media providers to launch new free-to-air channels and broaden the channel line-up of the state-owned free digital television service.

## Technology

### **Hungarian startup Brandvee has been selected to join BBC Worldwide start-up accelerator**

Brandvee is an application which helps publishers increase revenues by tracking how content spreads from one sharer to another through downstream visits. It creates targetable segments of endorsers who drive significant traffic.

The start-up has been selected to join the BBC Worldwide Labs programme, where it will have access to a network of BBC Worldwide mentors, on hand to offer the company advice and expertise in technology, content, legal, advertising, marketing and sales, with the objective of closing a business deal with BBC Worldwide.

## Data protection

### **NAIH opinion issued on data protection aspects of asset transfers**

The Hungarian National Authority for Data Protection and Freedom of Information ('**NAIH**') has issued a milestone opinion relating to an asset transfer of an online shop to another company with an essentially identical business profile. The transfer included the transfer of a database containing customers' personal data. Following the transaction, the relevant people would automatically become the customers of the buyer.

NAIH opined that the parties should agree the data processing tasks in the relevant transfer agreement, the seller should perform and disclose a 'legitimate interest balancing test' and customers should have a right to object to the transfer of their data. The buyer may process the personal data only in accordance with the seller's privacy terms, and the parties should also agree which party will be liable for the fulfilment of mandatory data retention requirements.

## eHealth

### **Electronic health care system to launch in 2017**

The introduction of an eHealth system allows doctors to access patient medical records any time, anywhere, subject to patient approval. Patients will also be able to access their own medical records via a government website. Within the framework of digital self-determination, patients can determine by who, when and in what circumstance their medical records may be accessed; and they may prohibit the central storage of their data if they wish. Institutions will be given the possibility of free access to the new eHealth system from the second half of 2016. From the first quarter of 2017, its use will be mandatory for all healthcare providers.



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# Italy

## Communications

### **New contractual rules for the supply of electronic communications services**

On 25 September 2015 the Italian Communications Authority ('**AGCOM**') issued a Regulation (Resolution 519/15/CONS) aimed at strengthening the contractual rights of users in relation to the supply of electronic communications services.

The Regulation protects users by limiting the risk of non-requested services being activated, or services being requested on the basis of incomplete or misleading information.

The Regulation provides that (i) suppliers cannot impose an initial contract which exceeds 24 months and (ii) the period for early termination notice shall not exceed 30 days from the agreed expiration date.

The Regulation also seeks to protect users from unilateral contract amendments. In addition to providing a right of withdrawal, any notification of contractual amendments must be sent as a separate communication. Notice of any amendments must also be published on the home page of the suppliers' website and in retail stores, and, in the case of mobile services suppliers, by SMS, or for pay-tv services suppliers, through prime-time broadcasting on major channels.

## Data protection

### **New regulation on remote monitoring of employees**

The government has approved the final four decrees implementing the so-called Jobs Act (Law n. 183 of 10 December 2014), which, among other things, establishes new rules for the remote monitoring of employees in Italy.

The decrees confirm two existing principles; (i) using monitoring tools for the sole purpose of reviewing employees' work activity is not permitted, and (ii) audiovisual systems and other devices that can trigger remote monitoring of employees can only be installed for the purposes of ensuring workplace productivity and safety or protecting business assets. Additionally, such systems may only be operated if a prior agreement is reached with the unions, or authorisation is obtained from the Italian Ministry of Labour and Social Policy.

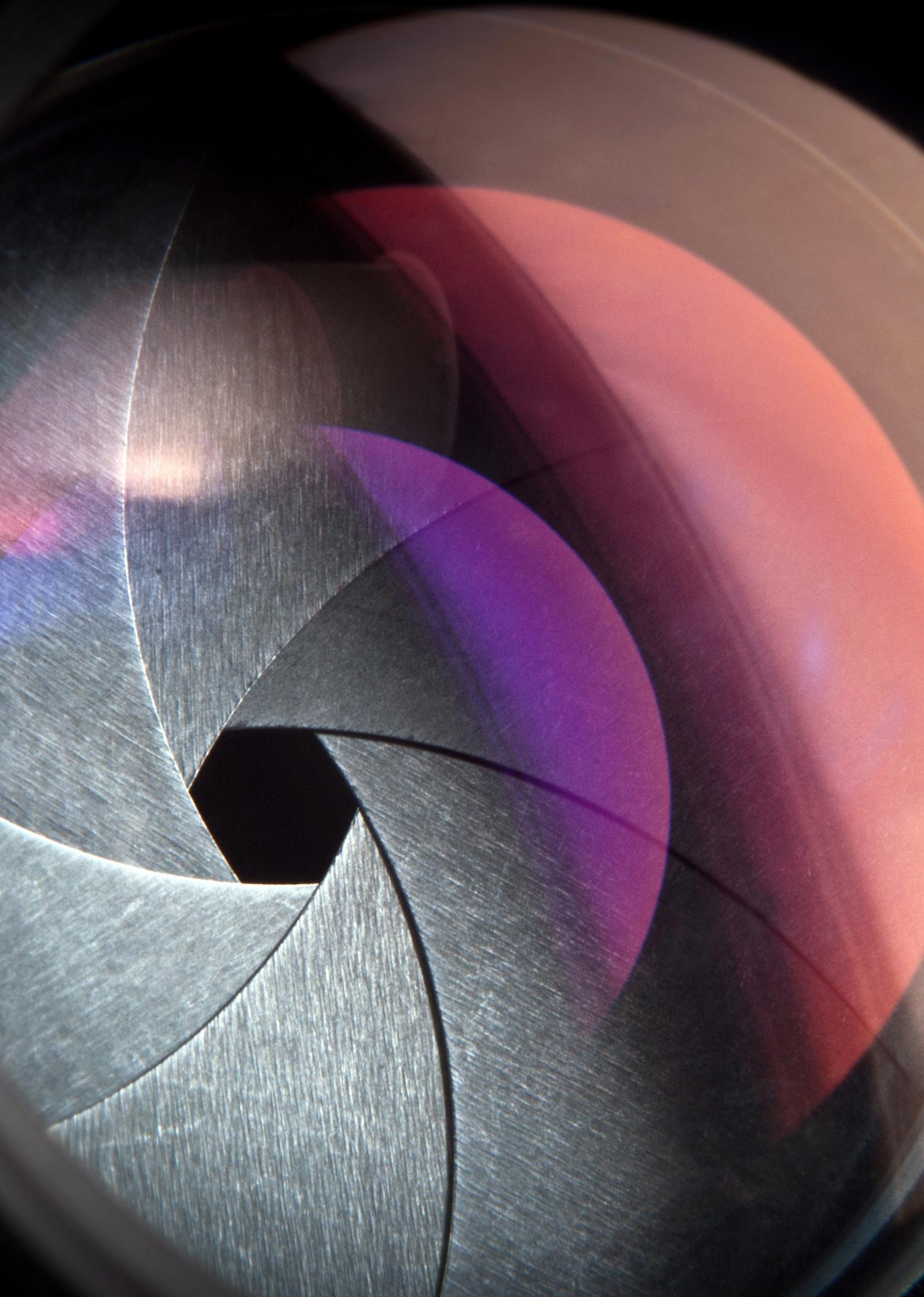
However, as a result of the new decrees, when such audiovisual systems and other devices are necessary for the performance of the working activity (e.g. smart phones, tablets and other similar devices) or monitoring building access, they can be used without any prior agreement or approval, provided that an adequate privacy information notice is given to the employees. The new rules provide that any data collected through such tools and devices can be also used in the context of disciplinary proceedings.

### **New whistleblowing obligations for Italian banks**

In July 2015 the Bank of Italy updated the Banks' Supervisory Regulations (Decision n. 285 of 17 December 2013) and set out the rules relating to new whistleblowing obligations.

Italian banks and their parent companies must adopt specific procedural and organisational measures which allow their employees to report any circumstances which may result in a breach of the applicable banking law.

The new rules must be complied with by 31 December 2015.



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# The Netherlands

## Communications

### **KPN allowed to end support of outdated internet technology**

KPN will be allowed to terminate support of the Asynchronous Transfer Mode (**ATM**) service. ATM is an out-of-date technology for several services, including high-speed internet. All but a few thousand users have moved on to Ethernet. ATM is no longer being developed, software is no longer being updated and hardware is no longer produced. Maintenance has become relatively expensive, and the only remaining wholesale customer of regulated ATM is telecommunications services provider Tele2. ATM customers were notified of KPN's intention to end the service several years ago.

## Media & sport

### **New regulations for commercial media services regarding product placement**

New regulations issued by the Dutch media authority clarify the types of programmes in which commercial audiovisual service providers (broadcasters and VOD providers) are allowed to insert product placement. This is to include films, TV series, sports shows and entertainment programmes.

The regulations indicate how product placement is allowed, for example how the product may be mentioned, discussed or actively used, that it must be integrated in the programme in a natural manner and that it cannot affect the independence of media services. Product placement for medical treatments is prohibited. Programmes including product placement must clearly identify themselves as such at the beginning and end of the programme.

## Data protection

### **Obligation to notify data breaches as of January 2016**

The law on the notification of data breaches (amending the Dutch Personal Data Protection Act) will enter into force on 1 January 2016.

The new law will require a data breach to be reported to the Dutch data protection authority ('**CBP**') where there is a chance that the data breach will have negative consequences for the protection of personal data; it will require the persons whose data is involved to be notified if the data breach will impact their privacy.

The new law also significantly increases the CBP's power to impose fines. Currently, the CBP may only impose fines of up to EUR 4,500. From 1 January 2016 the maximum fine that the privacy authority can impose will be EUR 810,000 or 10% of the annual turnover of the legal entity.

## Finance

### **Mobile phone contracts are a form of credit**

The Dutch finance ministry has decided in a letter to the Dutch Parliament, that a mobile subscription sold with a 'free' phone is a loan and must adhere to the regulations on credit provision.

As a result, mobile providers will need to inform customers about credit terms, including the interest rate, and use a general disclaimer about the costs of borrowing.

Mobile providers must also ensure that the borrower can meet the obligations of the loan, and if the credit granted totals more than EUR 250, register the contract with the Credit Registration Bureau, so that other credit providers are aware of the loan.

Consumers will acquire the right to refer disputes over mobile phone contracts to the Financial Services Complaints Institute.



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# Poland

## Communications

### LTE auction in Poland

In February 2015 the President of the Office for Electronic Communication ('UKE') started the LTE auction process, which consist of two parts: initial verification and bidding. Within the initial verifications, if the auction documentation stipulates, the President of UKE may reject offers from bidders if any entity from their capital group is a holder of frequencies similar to those subject to the auction. Bidding must be carried out in accordance with the rules specified in the auction documentation.

The regulator's approval of frequency sharing has been reflected in the auction documentation for LTE frequencies. Critics claim that the chosen auction model allows participants to prolong the proceedings excessively if they wish to.

## Technology

### New law will support start-ups

On 25 September 2015, the lower house of the Polish parliament passed an Act introducing changes to the laws on research activity and taxation, aimed at encouraging innovation. If it is passed by the upper house of the parliament and signed by the President, the Act would come into effect in 2016.

The start-up community has long criticised the Polish taxation system as unfavourable to innovators. Shareholders who brought intellectual property or patents to a business as in-kind contributions in exchange for shares had to pay tax on these shares, which discouraged scientists from commercialising the results of their research. Further, the existing taxation system did not enhance the operation of venture capital funds, as these funds had to pay tax on the sale of shares. The new Act addresses these two restraints and introduces some additional tax incentives to encourage investments in R&D.

The new Act also introduces changes to the laws on R&D institutions. It encourages the commercialisation of academic research by increasing academic institutions' competence to enter into agreements without the assistance of the Treasury. It also facilitates the employment of young and foreign scientists in R&D institutions.

## Data protection

### Data Protection Officer

Recent changes to Polish data protection law include a general description of the function of a Data Protection Officer ('DPO'), as well as the principles of transferring data outside the EEA.

The DPO is responsible for ensuring compliance with the legislative provisions on the protection of personal data. The DPO will be required to conduct two different types of internal audit: for the data controller and for the Inspector General for Personal Data Protection. The ad-hoc audits must be conducted immediately after receiving notice of a data breach or if a data breach is suspected.



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# Romania

## Communications

### **ANCOM launches spectrum auction**

The Romanian National Authority for Management and Regulation of the Communications Sector ('**ANCOM**') is organising a single selection procedure for both frequency bands, auctioning 16 paired blocks to be awarded on a national level in the 3.4 – 3.6 GHz band and 36 unpaired blocks to be awarded on a national level in the 3.6 – 3.8 GHz band. The minimum value of the licence fee is EUR 370,000 for the blocks in the 3.4 – 3.6 GHz band, and EUR 185,000 for the blocks in the 3.6 – 3.8 GHz band.

The frequency bands will be used to provide broadband wireless data transmission and internet access services across the country.

### **New notification obligations for value-added content services**

ANCOM has introduced new disclosure obligations for the providers of value-added content services (e.g. games, contests, technical support, horoscope or apps for mobile phones). Providers are now required to supply end users with information on the costs they will incur when enabling such value-added content services via text or multimedia messages (SMS/MMS).

In order to prevent additional (unwanted) charges, abuse or fraud, end users must be given clear information on the tariff and charging method that will apply each time they utilise an internal network/ national number or short code for a value-added service, as well as during the use of the service.

For services provided by means of recurring text or multimedia messages (SMS/MMS) users must be informed that they will incur subsequent charges, how often they will receive such messages and how to unsubscribe.

## Data protection

### **Categories of processing operations requiring notification to the Romanian Data Protection Authority**

The Romanian Data Protection Authority ('**RDPA**') recently published a draft decision on the notification requirements for categories of processing operations. While such RDPA regulations already exist, the RDPA is seeking to implement a single regulation which reflects current developments in Romania in terms of personal data processing.

The draft decision indicates that processing certain categories of personal data which present special risks to the rights and freedoms of individuals requires prior notification to the RDPA. Certain categories shall also be subject to a mandatory prior audit by the RDPA.

In addition, the draft decision provides that transfers outside the EEA or to countries which are not recognised as ensuring an adequate level of protection shall require the prior approval of the RDPA.

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# Russia

## Data protection

### **Requirement to process Russian citizens' personal data locally**

On 1 September 2015, new legislation came into force in Russia which requires the personal data of Russian citizens to be stored and processed in databases located within Russia (subject to few exceptions). Databases containing personal data which were located abroad before 1 September 2015 do not need to be transferred to Russia provided that they are not updated thereafter.

The Federal Law No. 242-FZ On Amendments to Certain Laws of the Russian Federation in Order to Clarify the Procedure for Personal Data Processing in Information and Telecommunications Networks applies to Russian legal entities, branches and representative offices of foreign organisations located in Russia, as well as foreign organisations whose activities are directed to Russia. An activity may be considered directed to Russia if, for example, efforts are made by an organisation to include the Russian market in its business strategy by making it possible to pay for services/work in roubles, or the performance of a contract directly within Russia (e.g. delivery of goods to a buyer in Russia).

Cross-border transfer of personal data is not prohibited, and the rules governing these transfers remain unchanged. To this end, personal data may be transferred abroad to a foreign person (by copying it from the 'primary' Russian database into the 'secondary' foreign database) subject to existing Russian rules on cross-border transfer. These include obtaining consent from the data subject and determining the legitimate purposes and timeframe of the transfer.

## Sport

### **Foreign sports professionals face new hurdles in Russia**

In July 2015, Russia adopted a new law on the employment of foreign sports professionals, coaches and other sport specialists in the Russian Federation. Russian clubs and organisations must now comply with criteria set out by the Russian Ministry of Sport when hiring foreign players. The Ministry of Sport may determine the maximum number of foreign players allowed at each club, and foreign players must meet certain criteria, including age requirements. And a minimum number of international appearances.

Previously, requirements were determined independently by sport federations in each specific sport, leading to inconsistency and ambiguity. Although the new law will decrease the overall number of foreign sports professionals, lawmakers have reminded critics that it will increase the quality of foreign players, and also provide greater opportunities for local talent to develop.

The new restrictions will not be applicable to clubs when entering international competitions organised by international sports federations. At this stage, the Russian Ministry of Sport have not finalised the criteria for foreign players in each sport, including overall limits, but a decision is expected shortly.

While tightening general rules, the new law has also lifted some restrictions on obtaining work permits for foreign sports professionals, coaches and other sports specialists. Now Russian sport clubs and organisations which exist as non-commercial organisations may enjoy a simplified work permit procedure. Compared to a regular work permit procedure, which usually takes up to 3-4 months, the 'highly qualified specialist' work permit may be obtained within 14 business days, and can cover a period of up to 3 years. To qualify for the 'highly qualified specialist' work permit a foreign sportsman's salary must be at least RUR 167,000 per month (approx. USD 2,700).

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# Serbia

## Communications

### 4G services commence

During the second quarter of 2015, the Serbian Regulatory Agency for Electronic Communications and Postal Services carried out a tender process for the allocation of rights to use radio frequencies in the frequency band 1710-1785/1805-1880 MHz. All three mobile operators in Serbia, Telekom Srbija a.d., VIP d.o.o. and Telenor d.o.o., participated in the tender and acquired two 5 MHz frequency blocks each, at the total price of EUR 7,000,000.

As a result, the provision of 4G services by all three mobile providers finally started in the beginning of the third quarter of 2015.

## Media

### Intense legislative activity in media sector during summer 2015

The Serbian Regulatory Authority for Electronic Media ('RAE') had an active summer in 2015, adopting several regulations within their mandate.

On 8 July the RAE adopted three rulebooks. The Rulebooks concerned; the Implementation of Competition in the Provision of Media Services, the Obligations of Media Services Provisions during Election Campaigns, and the Protection of Human Rights in the Provision of Media Services.

The RAE then adopted the Rulebook on the Procedure for Issuing Licenses for the Provision of Media Services based on Request, and the Rulebook on the Procedure for Issuing Licenses for the Provision of Media Services Based on a Public Competition, on 31 July.

The new regulations demonstrate Serbia's ongoing efforts to bring telecoms regulations closer to the EU media regulatory framework, whilst also seeking to realise the commitments made during the EU accession process.

## Data protection

### New data protection law

Serbia will soon have a new personal data protection law. The draft legislation is near finalisation and is based on the draft personal data protection law prepared by the Commissioner for Information of Public Importance and Personal Data Protection. The legislation will regulate data deletion and anonymisation, collection of biometric data, video surveillance and breach of data security. It will regulate indemnities in relation to damages caused by misuse or the putting at risk of such data, and processing of personal data related to children, deceased or missing persons.

For more information, please visit:

<http://www.novosti.rs/vesti/naslovna/drustvo/aktuelno.290.html:565828-Video-nadzor-pod-kontrolom> (in Serbian)

## M&A

### Ongoing privatisation of a major telecom provider

The Serbian major telecom provider Telekom Srbija a.d. has been subject to a number of unsuccessful privatisation attempts in recent years. Typically, the price offered by bidders was considered too low by the government. The offers also suffered from timing issues, with bidders determining that the acquisition was not optimal in terms of strategy at the respective stages.

However, the latest government initiative to privatize the provider in mid-2015 garnered interest from at least eight regional and global players, with several submitting non-binding offers and being invited to the second round of bidding. The process is expected to complete during the final quarter of 2015.



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# Slovakia

## Communications

### **Closer cooperation in the area of service quality and frequency management**

The Slovak Office for the Regulation of Electronic Communications and Postal Services, the Head of the Czech Telecommunication Office, the Slovenian regulator (AKOS) and the President of Croatian regulator (HAKOM) entered into a memorandum of co-operation this summer on the regulation of fixed and mobile networks.

This memorandum aims to establish the necessary framework for cooperation and information exchange between the signatories.

## Sport

### **New draft sports law**

A draft sports law was introduced to the Slovak Parliament at the end of August.

The Act aims to comprehensively regulate sport, including the status of sports professionals, sport organisations, financing, national representation and contractual relationships in the sports industry.

One of the most important elements of the proposed legislation is the formation of a new Information System of Sport. This will publish data on sports organisations, athletes and sports professionals, all of whom will be obliged to register. The system will also publish contracts involving public finance sponsorships. The public, therefore, will be able to monitor public funding of sport, increasing transparency.

The proposed date on which the act will come into force is 1<sup>st</sup> January 2016.

## Technology

### **New support for start-ups?**

The Slovak Government has approved the Concept for Support of Start-ups and Development of the Start-up Ecosystem in the Slovak Republic.

The Concept includes 18 measures that will be the subject of legislative, institutional and financial reform. The aim is to facilitate the start-ups as a way of doing business and encourage the formation of companies where there is clear potential for innovation.

The Government intends to create a regulatory environment without unnecessary obstacles to the creation and operation of start-ups in Slovakia.

## Automotive

### **Jaguar Land Rover to invest in Slovakia**

Jaguar Land Rover has signed a letter of intent with the government to examine the feasibility of constructing a plant in the west of Slovakia. If built, the plant would be able to produce up to 300,000 vehicles a year. The new plant is expected to produce its first car in 2018 and would manufacture aluminium vehicles.

About £1bn is expected to be invested in the new factory.

For more information, please visit: <http://www.telegraph.co.uk/motoring/car-manufacturers/jaguar/11795875/Jaguar-Land-Rover-eyes-plant-in-Slovakia-to-drive-global-expansion.html>

## eHealth

### **Decree on standards of health informatics and timeliness for data provisions**

On 1 June 2015 the Decree of the Ministry of Health No. 107/2015 Coll. on Standards of Health Informatics and Timeliness for Data Provisions came into force.

The decree sets standards of health informatics and for information systems related to the Slovak eHealth Implementation Programme.

For more information, please visit: [http://www.ezdravotnictvo.sk/en/eHealth\\_Programme/Pages/default.aspx](http://www.ezdravotnictvo.sk/en/eHealth_Programme/Pages/default.aspx)

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# Slovenia

## Data protection

### **Business email address is personal data**

The Information Commissioner ('**IC**') recently released a statement confirming that both redirecting the emails of a former employee and keeping the email address of a former employee after the termination of employment is a breach of the provisions of the Personal Data Protection Act ('**PDPA**').

It was confirmed that forwarding emails would require the consent of the former employee. Similarly, where the former employee was the recipient of the email, the consent of all senders is required as the email addresses are classed as personal data.

Employers wishing to ensure the continuity of work must do so without interfering with the privacy rights of a former employee. Recommendations on how to avoid infringing privacy rights include discontinuing the email accounts of departing employees immediately, and setting up automatic responses which prompt users to redirect correspondence to another contact.

If an employer forwards emails without observing these protocols, the employer may face a fine of up to EUR 4,170, and the individual(s) responsible may be personally liable for a fine of up to EUR 830.



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# Spain

## Communications

### Protection against premium rate calls

The Spanish Competition and Market Authority ('**CNMC**') has published a report surrounding a recent Draft Order which aims to improve the protection of consumers calling premium rate numbers. In its report, the CNMC sets out various recommendations aimed at providing additional protection for users, including more accurate billing procedures and a restriction on using premium rate numbers to provide customer support services.

For more information, please visit:  
<http://bit.ly/TransmitSpainComms> (in Spanish)

### Fibre optic network rivalry nears verdict

The CNMC will make its final decision on competition in fibre optic networks between Telefonica and its main rivals, Vodafone, Orange and Yoigo by the end of this year. The CNMC originally proposed that Telefonica share its networks with rivals around Spain, except in large cities where sufficient competition for fibre optics infrastructure already exists. Telefonica has complained that this model discourages investment.

For more information, please visit:  
[http://economia.elpais.com/economia/2015/09/01/actualidad/1441110684\\_939426.html](http://economia.elpais.com/economia/2015/09/01/actualidad/1441110684_939426.html) (in Spanish)

## Media

### New media content guidelines

The CNMC has published new criteria to classify which potentially damaging audio-visual content is suitable for different age groups. Restricted content includes violence, sex, fear, drugs, discrimination, imitable behaviour and obscene language. In their criteria, the CNMC has tried to weigh up freedom of expression against the protection of minors.

For more information, please visit:  
<http://bit.ly/TransmitSpainMedia> (In Spanish)

## Data protection

### System and software upgrade

The Spanish Data Protection Agency ('**AEPD**') has simplified and expanded its online enrolment and notification with two major improvements to its services. It has updated its 'NOTA' website, and also launched a new method to provide email confirmation when resolutions are uploaded.

For more information, please visit:  
<http://bit.ly/TransmitSpainData> (in Spanish)

## Finance

### Crowdfunding framework introduced

In April, a law relating to business funding was enacted. The new law provides a legal framework around crowdfunding for the first time, in recognition of the increased importance of the phenomenon in recent years.

For more information, please visit:  
[https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-4607](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-4607) (in Spanish)



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# Switzerland

## Communications

### **ComCom speeds up porting of phone numbers to a new provider**

From 1 November 2015, the Swiss Federal Communications Commission ('**ComCom**') is reducing the time allowed to arrange the porting of numbers. This will allow telecoms subscribers wishing to switch provider to transfer their mobile and landline numbers faster in future. In doing so, ComCom aims to increase competition between telecommunications service providers and improve consumer rights.

For more information, please go to: <http://www.comcom.admin.ch/aktuell/00429/00457/00560/index.html?lang=de&msg-id=57213>

### **Revision of the Radio and Television Act (RTVA)**

On 14 June 2015, the Radio and Television Act ('**RTVA**') was revised so that the radio-television fee is no longer associated with the possession of equipment. The new fee collection system provides for a universal fee from households and businesses. Private households will pay approximately CHF 400 annually, and the fee payable by businesses will be linked to their annual turnover. For those who do not currently pay under the possession based fee system, as well as those who meet certain criteria, a series of exceptions are being planned. The new system will be implemented in mid-2018 or at the beginning of 2019.

For more information, please go to: <http://www.bakom.admin.ch/empfangsgebuehren/03812/04936/index.html?lang=en>

## Technology

### **Launch of the new .swiss internet domain**

After reaching an agreement with ICANN (the Internet Corporation for Assigned Names and Numbers), the new .swiss internet domain became available to public or private businesses and organisations from September 2015. To help manage the launch, applications will be received in two stages. The first phase will relate to registered trademarks, names associated with public bodies and other distinctive marks protected in Switzerland, with the second phase relating to any type of name or mark.

For more information please go to: <http://www.bakom.admin.ch/dokumentation/medieninformationen/00471/index.html?lang=en&msg-id=58618>

## eHealth

### **Federal Act on the Electronic Patient Record**

On 19 June 2015, the Swiss Parliament adopted the Federal Act on the Electronic Patient Record ('**AEPR**'). The AEPR defines the legal requirements for dealing with electronic patient records and aims at allowing access to medical information at any time and place.

For more information, please go to: <http://www.bag.admin.ch/themen/gesundheitspolitik/10357/10360/index.html?lang=de> and <http://www.bag.admin.ch/themen/gesundheitspolitik/10357/10360/14832/index.html?lang=de> (in German or French)

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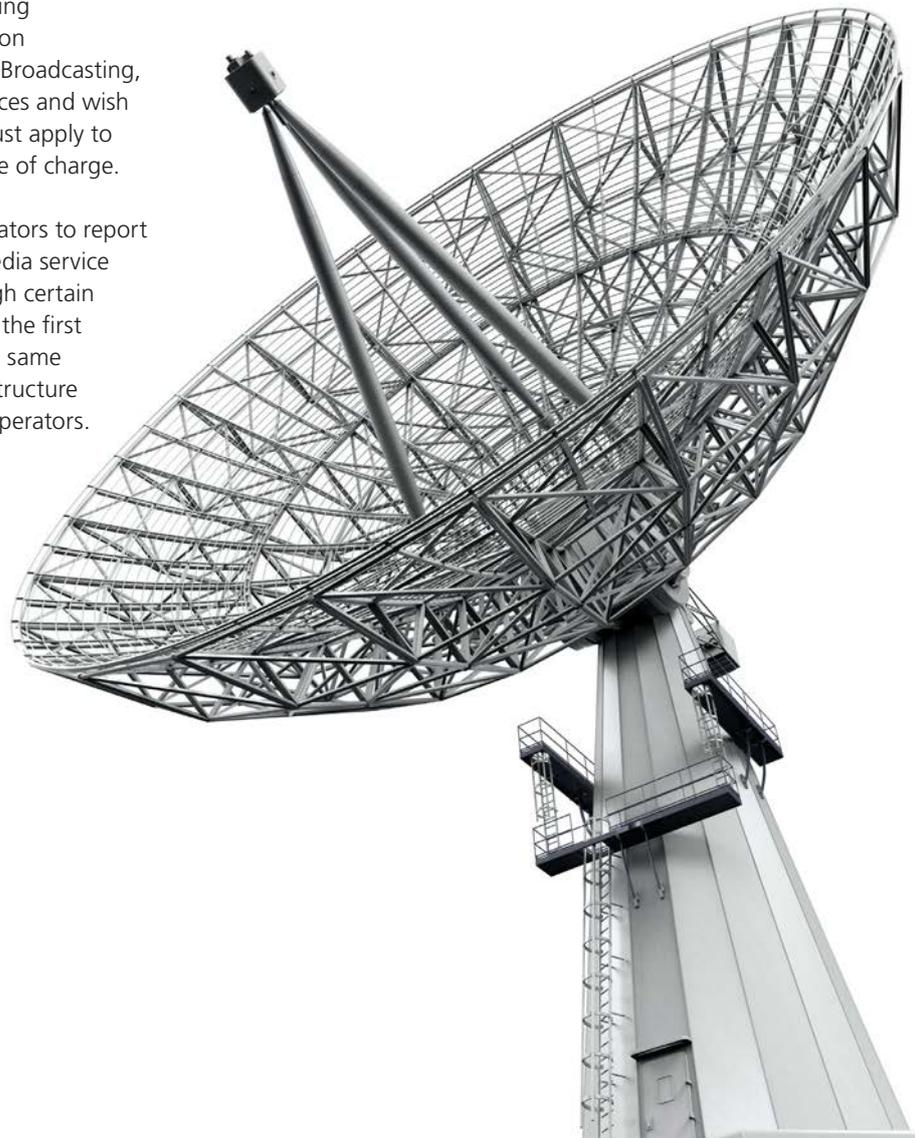
# Turkey

## Communications

The Regulation on Cable Broadcasting was amended on 26 June 2015, separating the cable television licence ('**K-TV**') into two separate licences depending on the broadcasting technique. The Radio and Television High Council (the '**Council**') will now issue a K-TV HD licence to media service providers using high definition broadcasting technology and a K-TV SD licence for those using the standard definition broadcasting technology. Providers that wish to broadcast using both technologies must apply to the Council for a second licence, which they will be able to get free of charge.

The Regulation on Satellite Broadcasting was also amended on 26 June 2015. The satellite television licence ('**U-TV**') has now been separated into two licences, one for high definition broadcasting technologies and one for standard definition broadcasting technologies. As with Cable Broadcasting, providers that have either of the two licences and wish to broadcast using another technology must apply to the Council to receive a second licence free of charge.

The requirement of satellite platform operators to report information annually to the Council on media service providers has also been abolished, although certain information must still be reported prior to the first broadcast of a media service provider. The same has also been stipulated for satellite infrastructure operators in respect of satellite platform operators.



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# UK

## Communications

### House of Lords Select Committee looks into online platforms

In September 2015, a House of Lords Select Committee launched an inquiry into online platforms in the EU Digital Single Market. This follows the now widespread usage of online platforms, such as Facebook or eBay, in all aspects of daily life for both businesses and consumers alike. The Select Committee is echoing the European Commission's concerns about whether current regulations are fit for purpose in addressing the technological reality.

The inquiry is running until December 2015, with a published report due in Spring 2016. It aims to examine the effect of online platforms, focusing on transparency, data use, market dominance and the online provider's relationships with its suppliers.

## Technology and sourcing

### Data Centre Climate Change Update

The UK Government has announced the withdrawal of the Climate Change Levy ('CCL') exemption for renewable energy. The Government asserted that a substantial portion of the exemption benefited overseas suppliers, and that the money could be spent more effectively to support UK-based renewable energy generation. Data centre operators purchasing renewable energy generated on or after 1 August 2015 have to pay the CCL in full on that energy, unless they benefit from another relief.

Relief is available to data centre operators under the industry's Climate Change Agreement ('CCA'), which came into force in July 2014. For qualifying participants this reduces the CCL payable by 90% on electricity bills and eliminates charges that would otherwise have been payable under the Carbon Reduction Commitment ('CRC'), in return for various undertakings on power

usage and energy stewardship. It remains to be seen whether the withdrawal of the CCL exemption will encourage applications from data centre businesses to participate in the CCA, and whether higher prices will threaten some businesses' green credentials.

The CCL exemption will continue during a transitional period for supplies of renewable energy generated before 1 August 2015. Stakeholders have until 31 October 2015 to respond to a Government consultation on the length of the transitional period, which is expected to end no earlier than 31 March 2016.

## Data protection

### Change of policy responsibility

From 17 September 2017, policy responsibility for data protection and sponsorship of the UK Information Commissioner's Office ('ICO') will be transferred from the Ministry of Justice to the Department for Culture, Media and Sport. The Lord Chancellor's responsibilities under the Public Records Act 1958 and associated legislation will therefore be transferred as necessary to the Secretary of State for Culture, Media and Sport.

### ICO comments on ECJ's rejection of the Safe Harbour agreement

On 6 October 2015, the ECJ issued a landmark ruling invalidating that the transatlantic Safe Harbour agreement. The ICO has issued a statement highlighting the important obligation on organisations to protect personal data when it leaves the UK and emphasising that businesses may need to review how they transfer data to the US to ensure such transfers are legally made.

For more information, please go to: <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2015/10/ico-response-to-ecj-ruling-on-personal-data-to-us-safe-harbor/>



## Automotive

### UK gears up for connected cars

The UK Government is hoping to lead the way in policy development for connected and automotive vehicles. There have been a number of initiatives including the launch of a code of practice earlier this year, a new joint policy unit called the Centre for Connected and Autonomous Vehicles and a £20 million investment fund.

For more information, please go to: [http://law-now.com/ealerts/2015/09/eu-gears-up-for-connected-vehicle-regulation-but-longer-road-ahead-for-autonomous-vehicles?cc\\_lang=en](http://law-now.com/ealerts/2015/09/eu-gears-up-for-connected-vehicle-regulation-but-longer-road-ahead-for-autonomous-vehicles?cc_lang=en)

## eHealth

### Mandatory logo for selling medicines online

From 1 July 2015, any party in the UK selling medicines online to the general public needs to be registered with the Medicines and Healthcare Products Regulatory Agency ('MHRA') and be on the MHRA's list of UK registered online retail sellers. Each page of a website offering medicines for sale must display the new European common logo which is registered to the seller by the MHRA. The EU common logo is a legal requirement across Europe. Third party marketplace websites selling medicines on behalf of a registered party must display the registered party's EU Common Logo on every page of the website which offers the relevant medicine for sale.

For more information, please go to: <https://www.gov.uk/government/news/new-mandatory-logo-for-selling-medicines-online>

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# Ukraine

## Media

### **Disclosure of information about the owners of TV and radio companies**

On 3 September 2015, a new law on disclosure of information about the owners of TV and radio companies (the '**Media Transparency Law**') was adopted.

The Media Transparency Law introduces a consistent approach to disclose the actual ownership structure and provide information about the ultimate beneficial owner of the TV and radio companies. This information must be submitted to the National Television and Radio Broadcasting Council as well as made publicly available on the companies' websites. In addition, the Media Transparency Law prohibits the establishment and continuing activity of TV and radio companies where ownership is vested in legal entities registered in offshore zones.

## Technology

### **New Law on Electronic Commerce**

On 3 September 2015, Ukrainian Parliament adopted an Electronic Commerce Law (the '**E-Commerce Law**') which regulates legal relations in the field of e-commerce and determines the process of electronic transactions.

The Ukrainian e-commerce sector is growing each year – the buying and selling of goods online has become common practice for Ukrainians, but previously there was no legal basis for the regulation of e-commerce. This long-awaited and widely supported law is now expected to bring more clarity to the legal framework of e-commerce.

The E-Commerce Law is not restricted to services solely giving rise to buying and selling online. It also covers the provision of information or commercial communications (e.g. adverts) and providing tools which allow for the search, access and retrieval of data.

## Automotive

### **Special measures on imports of cars cancelled**

On 10 September 2015, the Interdepartmental International Trade Commission (the '**Commission**') announced the abolition of the special import duties with respect to imported cars, regardless of country of origin. The Commission's decision comes into force on 30 September 2015.



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# Oman

## Communications

### Reduced Mobile roaming charges

Oman's Telecommunications Regulatory Authority ('TRA') has announced its intention to introduce reduced Gulf Co-operation Council ('GCC') mobile roaming rates with effect from 1 April 2016. This will include reduced roaming rates for voice calls, SMS and mobile data services throughout the GCC. The reductions of roaming charges on both inter-operator wholesale level and end-user retail level will take place over a three year period for voice calls and SMS services, and over a five year period for mobile data services.

### Improving internet infrastructure

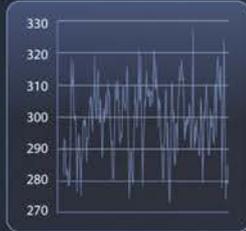
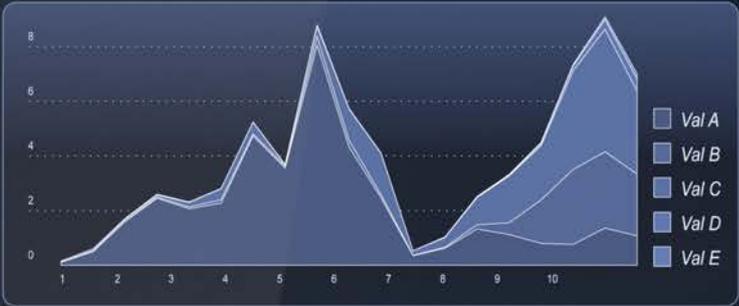
While Oman may not be as advanced as some of its GCC neighbours in terms of the provision of internet services, there is an increasing drive towards improving fixed broadband infrastructure throughout the country through the introduction of fibre-based networks, HSPA and LTE networks. In a clear demonstration of this initiative, the Oman Broadband Company (OBC) has enabled access to fibre networks for around 70,000 residential and commercial businesses around Muscat. Over the next 25 years, OBC intends to have all homes and businesses connected to its national broadband infrastructure, with each of the major telecommunication providers being given access to this new infrastructure.

There are also plans to improve the 4G infrastructure with Omantel (Oman Mobile) and Ooredoo Oman recently acquiring spectrum in the 800 MHz and 2.6 GHz spectrum bands in order to continue expansion plans. These initiatives present attractive opportunities for the major international players to develop their Middle Eastern reach.

## Data protection

### Draft Personal Information Protection Law

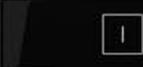
On 28 April 2015, the Information Technology Authority ('ITA') reviewed the first draft of the new proposed 'Personal Information Protection Law'. It is anticipated that the law will serve to complement rather than replace existing laws and regulations, including the Cyber Crime Law and the Electronic Transactions Law. The decision to establish a new law came about as a result of an ever-growing need for a framework that protects individuals from the risks associated with social media and the internet. Further details will be released as the draft law is considered in greater depth by other government entities and private sector stakeholders.



High (12m)	330	Market cap	120
Low (12m)	240	P/E Ratio	18,70
Avg Vol (5m)	2782827	EPS	21,35



A navigation bar containing five icons: a globe, a folder, a bar chart, a magnifying glass, and a gear.



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# United Arab Emirates

## Communications

### Cybercrime Laws

DIFC Law No.3/2012 and Federal Law No.5/2012 (the '**Cybercrime Laws**') were introduced to combat cybercrime, including any act which insults others or accuses others of acts which would lead to punishment or being held in contempt by a third party, online or through any other information technology. In July 2015, an Australian expatriate was fined approximately \$3,600 and deported for posting a picture of a car taking up two disabled parking spaces, along with offensive remarks, on a social media website.

### Anti-Discrimination and Hatred Decree

The Federal Decree-Law No.2/2015 on Combating Discrimination and Hatred (the '**Decree**'), issued in July 2015, criminalises the production, circulation and possession of any form of media which is discriminatory or provokes hatred or contempt through '*any means of expression*' (e.g. websites, social media etc.). If found guilty, offenders could face penalties ranging from six months' to more than ten years' imprisonment and fines of Dh 50,000 to Dh two million (approximately £9,000 to £350,000).

Where representatives, directors or agents of a legal entity, had knowledge of an employee committing an offence in the name of the company or its interest (e.g. on a company social media page or website), the legal entity itself may be jointly liable. Therefore, UAE businesses should have formal systems set up to educate their employees of the potential consequences under the Decree and to prevent an employee implementing joint liability on the company and its management.

### Internet Monitoring

In March 2015 the Telecommunication Regulatory Authority ('**TRA**') announced it has started monitoring social media networks for inappropriate and abusive behaviour as part of a crackdown on social media bullying. This is being implemented via a key word detection system.



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# China

## Communications

### Changes in the telecoms market

China's big three telecom operators - China Telecom, China Unicom and China Mobile - have seen a reshuffle in leadership. Unicom Chairman, Chang Xiaobing, and Telecom Chairman, Wang Xiaochu, have swapped roles, and a vice minister from the Ministry of Industry and Information Technology has been appointed as Chairman of China Mobile.

The State-run businesses are set to experience further changes soon if the proposed plan to combine China's phone mast infrastructure proceeds as planned. The companies are in discussions to create a joint venture with a view to improving access to 4G services for China's 1.3 billion mobile phone users. This move follows Premier Li Keqiang's push to streamline the telecoms industry and widen access to the internet throughout China.

## Media

### Gaming and games consoles

Under the 2015 Catalogue for the Guidance of Foreign Investment ('**Catalogue**') foreign companies will be permitted to manufacture and sell games consoles in China. Both Sony and Microsoft have pledged to reach out to Chinese consumers, but the censorship of console games and the popularity of mobile gaming have prompted suggestions that breaking into the Chinese market will prove difficult even with the reduced restrictions.

Despite the changes it is likely that foreign firms will still look to partner with China's many established gaming providers in order to overcome the hurdles which were not addressed by the new Catalogue. This approach was recently taken by Activision and Tencent, who successfully partnered to release the game Call of Duty in the Chinese market.

## Data protection

### Draft Cyber Security Law

The National People's Congress of China ('**NPC**') recently published a draft Cyber Security Law which is set to apply to both Chinese and international businesses operating within China. According to the NPC, the focus of the new law is the 'establishment of a coordinated, efficient crisis management system.'

The draft legislation contains provisions which supplement the pre-existing data privacy rules, requiring, amongst other things, that 'important' personal information and data collected in China by internet companies and service providers must be stored within China, unless a request for overseas storage is approved. This provision has been controversial, with concerns being expressed as to how it will apply to Cloud storage and overseas data backups.

## Finance

### Increased control over internet financing

In an effort to tighten controls over online lending and increase consumer protection, the People's Bank of China has released guidelines to increase governmental supervision of the largely unregulated internet financing industry. Whilst the lack of regulation had the benefit of allowing online lenders to deliver low cost loans to small businesses, the Chinese authorities have expressed concern that the rise in loans offered by online lenders helped to fuel the recent swell in the Chinese equities market.

As regulations are enacted to substantiate the guidelines, it is likely that consolidation will be seen in the internet financing industry. Larger groups, such as Alibaba, are likely to benefit from the reform, whilst smaller lenders may struggle to compete in light of the increased regulatory demands. If the new regulatory environment does lead to consolidation and a reduction in market competition, it could endanger the low rates which have allowed innovative micro-enterprises to thrive.

## Technology

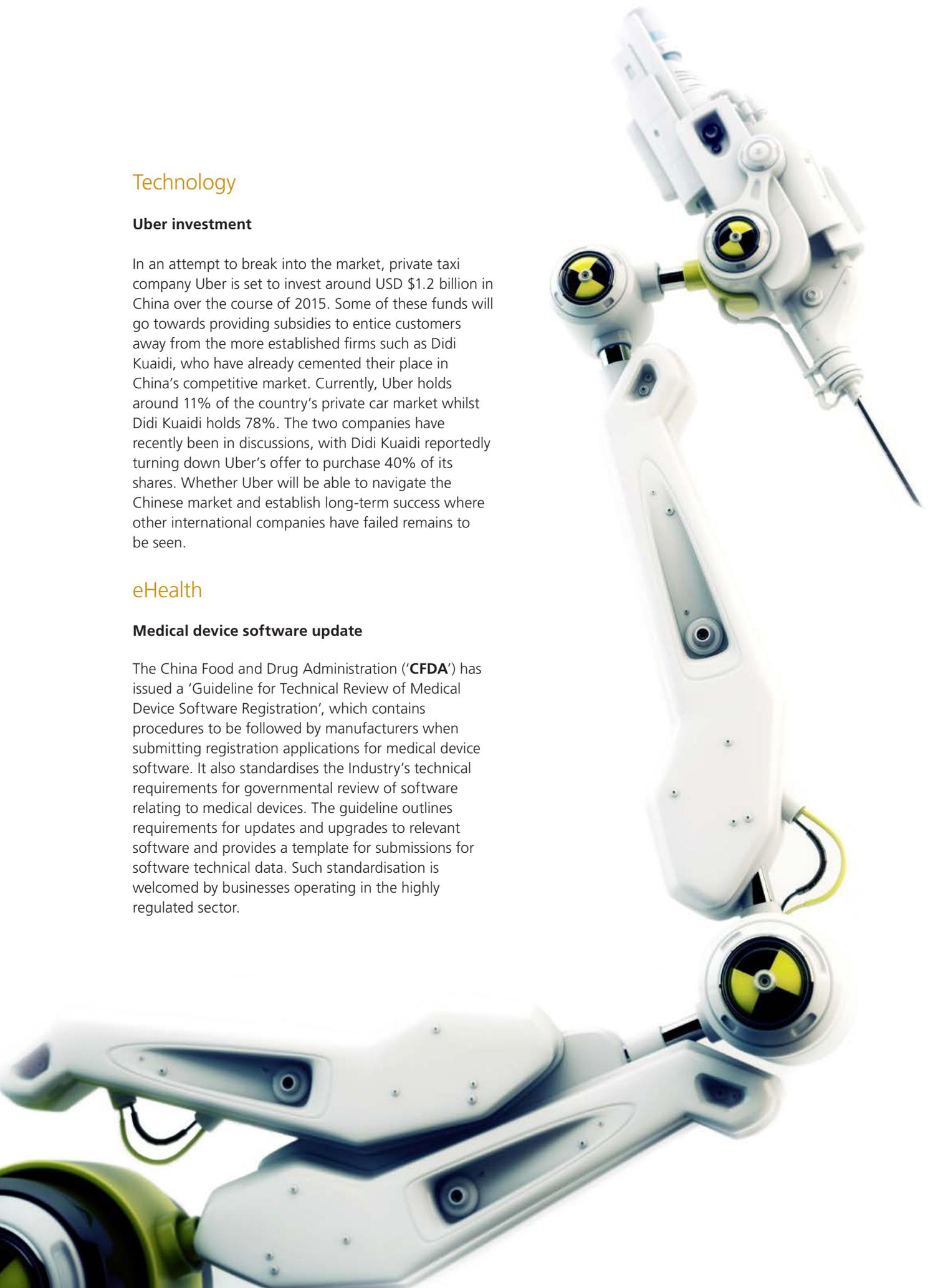
### Uber investment

In an attempt to break into the market, private taxi company Uber is set to invest around USD \$1.2 billion in China over the course of 2015. Some of these funds will go towards providing subsidies to entice customers away from the more established firms such as Didi Kuaidi, who have already cemented their place in China's competitive market. Currently, Uber holds around 11% of the country's private car market whilst Didi Kuaidi holds 78%. The two companies have recently been in discussions, with Didi Kuaidi reportedly turning down Uber's offer to purchase 40% of its shares. Whether Uber will be able to navigate the Chinese market and establish long-term success where other international companies have failed remains to be seen.

## eHealth

### Medical device software update

The China Food and Drug Administration ('CFDA') has issued a 'Guideline for Technical Review of Medical Device Software Registration', which contains procedures to be followed by manufacturers when submitting registration applications for medical device software. It also standardises the Industry's technical requirements for governmental review of software relating to medical devices. The guideline outlines requirements for updates and upgrades to relevant software and provides a template for submissions for software technical data. Such standardisation is welcomed by businesses operating in the highly regulated sector.



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# Singapore

## Communications

### IDA's second consultation on the allocation of spectrum

On 7 July 2015, the Info-Communications Development Authority of Singapore ('**IDA**') issued a second public consultation to seek further industry feedback on the proposed framework for the upcoming spectrum allocation exercise and the introduction of a new entrant in the mobile market in Singapore. The IDA's goal is to establish Singapore as a 'Smart Nation' underpinned by a high speed, trusted and resilient infocomm infrastructure, comprising fixed and wireless networks.

The IDA has put forward various proposals for consultation, including the proposal to facilitate the entry of a new Mobile Network Operator ('**MNO**') by structuring the spectrum allocation exercise. The IDA has also proposed to facilitate the entry of Mobile Virtual Network Operators ('**MVNOs**') by aiding the negotiations for 'thick' MVNOs, covering aspects relating to technical and commercial service level agreements, as well as the price structure and level that MNOs offer to MVNOs. Additionally, in view of the increasing demand for mobile data consumption, the IDA has proposed allocating a total of 225 MHz of spectrum from the 700 MHz (including the Extended GSM band), 2.3 GHz and 2.5 GHz bands for the next spectrum allocation exercise to be conducted in early 2016.

## Data protection

### New advisory guidelines on security of personal data

Section 24 of Singapore's Personal Data Protection Act ('**PDPA**') requires organisations to make reasonable security arrangements to protect personal data in their possession or under their control in order to prevent unauthorised activities or risks ('**Protection Obligation**'). While there are no standards specified as to what security arrangements are considered 'reasonable', the Personal Data Protection Commission ('**PDPC**') issued two advisory guidelines in May 2015: (i) guidelines on securing personal data in electronic medium and (ii) guidelines on managing data breaches.

The Guidelines on Securing Personal Data seeks to provide examples of good practice. The Guidelines on Managing Data Breaches is useful to help organisations have an overall sense of the issues to take note of in the event of a data breach. The PDPC has advised that organisations should notify the PDPC as soon as possible of any data breaches that 'might cause public concern' or where there is 'a risk of harm to a group of affected individuals'.

These Advisory Guidelines issued by the PDPC are non-binding and the PDPC recognises that there is no 'one size fits all' solution to comply with the Protection Obligation under the PDPA. This means that the onus is on an organisation to ensure that its security arrangements are sufficiently reasonable under its own circumstances in order to mitigate the likelihood and impact of a data breach.

## Technology

### MAS paves the way for FinTech innovation with SGD 225 million scheme

The Monetary Authority of Singapore ('**MAS**') is launching a Financial Sector Technology & Innovation scheme ('**FSTI**') to provide funds of SGD \$225 million (approximately £104 million) to develop finance services technology to enhance Singapore's banking sector. What is the FSTI Scheme?

MAS is looking to use the funds to develop cyber security (including trusted computing, security analytics, threat intelligence and active breach detection), efficient digital payment systems and regulatory reporting, smart surveillance systems, decentralised record keeping systems (preventing duplicate invoicing in trade finance), digital and mobile payments (to increase productivity and self-checkout functions), authentication and biometrics Cloud computing, learning machines and unified point-of-sale terminal systems.

Funds under FSTI can be used for:

- innovation centres: to encourage financial institutions to set up their R&D and innovation labs in Singapore (Metlife and Swiss bank UBS have applied for use of the FSTI scheme funds under this purpose);



- institution-level projects: to support the development of creative solutions that have the capacity to contribute to efficiency, growth, or competitiveness; and
- industry-wide projects: to assist the establishment of industry-wide technology infrastructure that may be required for the delivery of new, integrated solutions.

MAS has stated that it will work with the industry and educational institutions under the scheme. However, as FSTI is in its early stages, there is no further guidance

on which entities may apply for the funds, how MAS intends to distribute the funds over the next five years (whether to financial institutions themselves or directly to IT companies under MAS supervision), or what kind of involvement MAS intends in relation to the FSTI participants.

Kindly contributed by Rajesh Sreenivasan and Lionel Tan, partners at Rajah & Tann LLP.

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# Brazil

## Sport

### **Brazil likely to approve draft legislation for licensed sports betting**

In July 2015 Brazil's Senate approved the 'MP Football' legislation (MP 671/2015) with the aim of stabilising the finances of the country's football clubs. Part of the legislation will involve the creation of two new lotteries, with a portion of their proceeds to be diverted to football clubs. While the specifics of the legislation are yet to be established it is believed that the new regime will also apply to online gambling and will permit foreign investors to submit applications for gambling licences.

Currently the only forms of legal gambling permitted in Brazil are lotteries, horseracing and live poker tournaments. Boasting the world's fifth-largest population, Brazil is a potential goldmine for online gambling operators. Previous legislative efforts to approve online betting have failed, but both the lingering costs of the over-budget 2014 FIFA World Cup and the escalating costs of the 2016 Summer Olympic Games are helping to change attitudes. Having passed the Senate, the draft legislation is awaiting sanction from President Dilma Rousseff.

For more information, please visit:  
<http://calvinayre.com/2015/07/15/business/brazil-to-legalize-sports-betting/>

## Data protection

### **Public concern over draft privacy laws**

The draft of Brazil's first data protection legislation has generated public criticism and raised major concerns. Many believe the definitions of personal data and consent are too broad and that, in relation to personal data, the extent to which anonymised data falls within the definition is unclear. The concern with the broad definition of consent is that individuals may become desensitised to the importance of privacy, as it makes no distinction between the varying types of consent. Suggested changes to the draft include narrowing the definition of personal data, clarifying the consent for processing rules, defining the jurisdictional scope of the laws, adopting a more European approach to international transfers of data, and establishing a data protection authority.

For more information, please visit:  
<http://pensando.mj.gov.br/dadospeessoais/texto-em-debate/anteprojeto-de-lei-para-a-protecao-de-dados-peessoais> (in Portuguese).

## Automotive

### **Measures to increase vehicle exports**

Brazil's government is preparing measures to increase vehicle exports as part of a plan to bolster its faltering automotive industry, the country's most important manufacturing sector. Measures are expected to include financing for autopart manufacturers from state-owned banks and the reduction of import tariffs in some bi-lateral trade accords, such as those with Colombia, Peru and Uruguay. Brazil is one of the world's five biggest auto markets and a major base of operations for Fiat Chrysler Automobiles NV, Volkswagen, General Motors and Ford.

For more information, please visit:  
<http://www.reuters.com/article/2015/07/10/brazil-autos-exports-idUSL1N0ZQ00V20150710>



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# United States of America

## Communications

### **The ABCs of the TCPA and the Federal Communication Commission's Long-Awaited Order Interpreting the Telephone Consumer Protection Act**

The Telephone Consumer Protection Act ('TCPA') is one of several federal statutes that govern how businesses may use the telephone to place telemarketing and non-solicitation calls to consumers' cell phones and landlines. Unlike some of the other statutes, the TCPA provides for a private right of action, allowing individuals to sue and recover for violations. As companies have drawn more on third-party vendors and new delivery technology to become more sophisticated in their use of telemarketing and text messaging campaigns, the plaintiffs' class action bar has kept pace. With its high statutory damages and relatively low proof hurdles, the TCPA has been a 'go to' statute for the plaintiffs over the past few years. Since its October 2013 regulatory amendments took force – especially those relating to the use of autodialers and prerecorded telemarketing messages – these types of actions have spiked and are being filed almost every day in almost every jurisdiction. The plaintiffs' bar received a boost this past July when the Federal Communications Commission ('FCC') released its much-anticipated omnibus Declaratory Ruling, which purported to expand the reach of the TCPA. It would be an understatement to say that the Ruling has been controversial. Indeed, it engendered detailed dissents by two of the five FCC Commissioners, and a number of entities already have petitioned the U.S. Court of Appeals for the D.C. Circuit to set the Ruling aside.

One of the central issues addressed by the Ruling is the definition of 'automatic telephone dialing system' (more commonly referred to as 'autodialer'). The TCPA defines an autodialer to be 'equipment which has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.' The FCC's Ruling states that a device meets the definition of autodialer 'even if it is not presently used for that purpose . . .' As far as the FCC is concerned, any device that has the present or future 'capacity' to dial numbers on a random or sequential basis (or from a list) is covered by the statute.

But, despite the sweeping terms of the Ruling, the FCC agreed that the definition does not extend to 'every piece of malleable and modifiable dialing equipment,' otherwise a run-of-the-mill smartphone or handset with a speed dialer would be an autodialer.

Despite the FCC's sweeping interpretation of the statute, there may be some room to use a dialing device or program, at least for live operator calls. The FCC has long held, and courts have been inclined to agree, that a device, which requires human intervention, such as a pure preview dialer, is not a dialer that is subject to the TCPA. In its Ruling, however, the FCC refused to provide clarity on what constitutes 'human intervention' that would place a call outside the scope of TCPA liability, stating that such determinations must be made on a 'case-by-case' basis.

The first crop of post-Ruling decisions are beginning to issue from the courts, providing some guidance on what is and is not an autodialer. For example, in *Luna v. Shac, LLC*, -- F. Supp. 3d --, 2015 WL 4941781 (N.D. Cal. Aug. 19, 2015), the Northern District of California held that a web-based platform used to send promotional text messages was not an autodialer based on the extent of human involvement. Specifically, the process to send the text messages involved an employee, first, inputting telephone numbers into the platform manually, or by uploading or cutting and pasting an existing list of phone numbers. Next, the employee would log in to the platform to draft the message content. The employee, then, would designate specific phone numbers to which the message would be sent. Finally, the employee would click 'send' on the website to transmit the message to the defendant's customers. The messages could be transmitted in real-time or as prescheduled messages to be sent on a future date. It bears noting that, while the court cited the FCC Ruling, it did not address the future capacity of the platform to autodial. The plaintiff filed a motion for reconsideration and, at the same time, noticed an appeal. Oral argument is scheduled on the motion for reconsideration for mid-October 2015.

## Automotive

### WiFi and Smart Cars Hope to Avoid Collision

While the autodialer definition is by far the most important of the Ruling's 'clarifications,' it is not the only controversial determination. Another lightning rod that may affect many marketers is the FCC's resolution of the issue of calls or texts to re-assigned cell phone numbers. The Ruling states that the term, 'called party,' contained within the TCPA refers to the current subscriber. Thus, the FCC reasons, a marketer who makes calls or sends texts inadvertently to the wrong number (because the number has been re-assigned) does not have the required consent to do so. The Ruling holds that, if the merchant has actual or constructive knowledge that the number has been re-assigned, it can be held liable under the TCPA for a violation; what exactly 'constructive knowledge' means is not explained. However, the FCC recognized that, in some cases, the marketer may have no reason to know or think that the number called has been re-assigned. In those cases, the merchant is permitted to make one call to the 'wrong number' without exposure to TCPA liability; any subsequent calls to the wrong number are not exempt.

Yet, as the dissenting Commissioners pointed out, it is impossible for a merchant to determine whether it is calling a re-assigned number on the basis of a single call, thus the 'one-call exemption' serves no real-world purpose. The FCC set forth a number of suggested procedures that merchants might follow to avoid the problem of re-assigned numbers, all of which are unrealistic, or expensive and essentially unreliable. Because this problem is not one that marketers create, the FCC could have held that calls to re-assigned numbers are exempt unless and until the party receiving the call notifies the merchant that the number has been re-assigned. But the Commission did not. The one-call rule can fairly be characterized as a general hostility to the use of phones to communicate with consumers and customers or donors – a view that pervades the Ruling.

Companies and organizations that use the phone to communicate with customers, donors, and prospects must be aware of the TCPA (and FCC and judicial interpretations of the statute) and consider how to best implement a program to comply with it. Engaging counsel well-versed in the numerous intricacies of the TCPA can do much to help avoid attracting scrutiny from a regulator or the class action plaintiffs' bar. With statutory damages set at \$500 per violation (or \$1500 if the violation was willful), it is clear that an ounce of proactive TCPA compliance can be worth millions in liability prevention.

The Federal Communications Commission is under pressure to find ways to expand the availability of free, unlicensed Wi-Fi in the United States through additional spectrum allocations. In particular, some members of the FCC and certain major players in the telecom/technology sector have suggested making portions of the 5.9 GHz radio spectrum band available for WiFi 'sharing.' Proponents of this idea aver that more unlicensed airwaves in this band could lead to benefits such as more wireless hotspots, less network congestion, greater speeds, and faster innovation. But, this WiFi proposal threatens to collide with incumbent users of this radio spectrum, who are predominantly automobile manufacturers and vendors that intend to use this radio spectrum for a wide range of 'smart car' applications.

Back in 1999, the 5.9 GHz band was set aside by the FCC for the automotive industry to be used for a wide range of 'Intelligent Transportation System' applications, such as vehicle monitoring and highway traffic management systems. Since that time, efforts have been underway to use this spectrum to develop technology that can reduce car crashes and improve roadway safety. These specific services, known as Dedicated Short Range Communications Service (DSRC), are designed to have automobiles communicate in real time to one another and communicate with street lights, curbs, bicycles, and even pedestrians to reduce the number of auto accidents and fatalities.

Now, just as various 'smart car' technologies seem to be close to being commercially available, various interests are pressing the FCC to make more unlicensed spectrum available for WiFi and other unlicensed wireless broadband services. To that end, this past month Members of Congress called on the Department of Transportation (DOT), Department of Commerce (DOC), and the FCC to explore opening up the 5.9 GHz band for unlicensed use. Without any specific legislative command, Members of Congress informally asked the FCC in a letter to proceed with testing in the 5.9 GHz band to determine whether additional unlicensed operations could avoid causing harmful interference to incumbent users of this radio spectrum, including DSRC operations. This Congressional framework includes nine principles that a broad group of stakeholders—automakers, unlicensed spectrum advocates, and technology companies—apparently support. It includes specific testing duties for the FCC regarding interference-avoidance and allocation of spectrum in the 5.9 GHz band.

At roughly the same time that Congress asked the FCC to look for additional WiFi spectrum, U.S. Transportation Secretary Anthony Foxx made a major announcement on the future of vehicles intended to make driving in the U.S. safer, cleaner, and more efficient. At the New York City Joint Management Traffic Center, the Secretary revealed that New York City, the State of Wyoming, and Tampa, Florida will receive up to \$42 million to pilot next-generation technology in infrastructure and in vehicles to share and communicate anonymous information with each other and their surroundings in real time. The goal of this project is to reduce traffic congestion and greenhouse gas emissions, while cutting vehicle crash rates by as much as 80 percent.

New York City will install Vehicle to Vehicle (V2V) technology in up to 10,000 city-owned vehicles; including cars, buses, and limousines, that frequently travel in Midtown Manhattan, as well as Vehicle to Infrastructure (V2I) technology throughout Midtown. This technology includes upgrading traffic signals with V2I technology along avenues between 14th Street and 66th Street in Manhattan and throughout Brooklyn. Additionally, roadside units will be equipped with connected vehicle technology along major thoroughfares in Manhattan.

U.S. DOT made an additional award of \$17 million to the City of Tampa to help solve peak rush hour congestion in downtown Tampa and to protect the city's pedestrians by equipping their smartphones with the same connected technology being put into the vehicles. Tampa also committed to measuring the environmental benefits of using this technology.

In Wyoming, the focus of DOT grants will be on the efficient and safe movement of freight through the I-80 east-west highway corridor, which is critical to commercial heavy-duty vehicles moving across the northern portion of the United States. Approximately 11,000 to 16,000 vehicles travel this corridor every day. By using V2V and V2I technologies, Wyoming's Department of Transportation will collect vehicle information and disseminate it to vehicles not equipped with the new technologies.

Various research findings in the U.S. have found that these types of technology could help reduce vehicle crashes by as much as 80 percent, while also reducing the 4.8 billion hours that Americans spend in traffic annually.

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