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Spring/Summer 2016

TRANSMIT

TMC sector update



Welcome to TRANSMIT

Spring/Summer 2016



The recent months have been so full of incident and change in the world of Technology, Media and Communications that we have needed to be very selective in what has been included in this issue of Transmit. The Digital Single Market program has progressed significantly, the role of the European Union has been thrown in to question by the UK Brexit referendum decision and corresponding reactions in other EU countries; the European Commission has become increasingly active in relation to electronic platforms and their effects within the European markets; the pace of mobile mergers and fixed-mobile convergence has increased yet with some significant roadblocks; and all of this against the world of record technical change and disruption accompanied by ever increasing focus on the role of data, its protection and its retention and ownership. These are interesting times.



Chris Watson
Global Head of TMC

Contents

Europe

6 Austria
7 Belgium
8 Czech Republic
10 France
11 Germany
12 Hungary
16 Italy
18 The Netherlands
20 Poland
21 Portugal
22 Romania
23 Serbia
24 Slovakia
26 Slovenia
28 Spain
29 Switzerland
30 Turkey
31 Ukraine
33 United Kingdom

Middle East

34 UAE

Asia

36 China
38 Singapore

The Americas

40 Brazil
42 USA



Europe

Privacy Shield gets the green light

On 8 July 2016, the European Commission published a statement (the "**Statement**") confirming that the Article 31 Committee gave their "strong support" to the Privacy Shield, which has been drafted to replace the Safe Harbour regime with a view to providing a legally compliant way to effect EU-US data transfers. On 12 July 2016, the European Commission issued its "implementing decision", pursuant to which the Privacy Shield was adopted.

The adoption of the Privacy Shield comes after numerous setbacks, the most recent being i) the European Data Protection Supervisor echoing the criticisms levelled at the Privacy Shield by the Article 29 Working Party; and ii) the European Parliament passing a non-binding resolution, which although it welcomed the Privacy Shield, urged the European Commission to continue negotiating with the US government to implement fully the Article 29 Working Party's recommendations.

The Article 29 Working Party's opinion was particularly critical and raised concerns with a number of provisions, ultimately recommending they are reviewed, revised and in some cases strengthened, to afford better protection for EU citizens whose personal data is being transferred outside of the EU to the US. Of particular concern were:

1. the absence of obligations on organisations to delete data no longer required;
2. bulk collection of personal data by US authorities; and
3. the lack of clarity around the new Ombudsperson role - in particular regarding their independence and autonomy and also the nature of their role and functions.

The Working Party recommended that the European Commission should amend the draft Privacy Shield to ensure that the level of protection it affords to EU individuals is equivalent to EU law and that the Privacy Shield should be reviewed after the GDPR applies from 25 May 2018.

In response to these criticisms, the Statement made clear that:

"…the U.S. has given the EU written assurance that the access of public authorities for law enforcement and national security will be subject to clear limitations, safeguards and oversight mechanisms and has ruled out indiscriminate mass surveillance of European citizens' data. And last but not least the Privacy Shield protects fundamental rights and provides for several accessible and affordable redress mechanisms."

Despite the assurances given in the Statement, the final Privacy Shield may be open to challenge. In a statement made on the 12 July 2016 by Maximilian Schrems (whose legal action led to the overruling of Safe Harbour) he states his view that, "*It is little more than an [sic] little upgrade to Safe Harbor, but not a new deal. It is very likely to fail again, as soon as it reaches the CJEU.*" Mr Schrems has taken aim at model clauses with the recent referral by the Irish Data Protection Commissioner to the CJEU questioning the validity of Facebook's reliance on them to transfer data from Ireland to the US, and it seems likely that he will look to challenge the validity of the Privacy Shield too.

In terms of next steps, the US Department of Commerce will start operating the Privacy Shield in the US. Organisations will then have the opportunity to review the Privacy Shield framework and update their compliance. Organisations will be able to certify with the US Department of Commerce from 1 August 2016.

Organisations should keep under review the options for EU-US personal data transfers. The CJEU will not decide upon the validity of model clauses for some time. Additionally, the EU and the US have agreed to establish a mechanism to monitor the functioning of the Privacy Shield through an annual joint review. The European Commission and the US Department of Commerce will carry out this review to ensure that the Privacy Shield is functioning in accordance with the principles and commitments made.

In October 2015, the European Parliament voted in favour of EU wide **net neutrality** rules that require internet service providers to treat all online content equally without blocking or slowing down specific websites.

The **General Data Protection Regulation** (GDPR) was adopted by EU institutions in April 2016 and will apply from 25 May 2018.

Austria

Communications (telecoms & satellite)

In October 2015, the European Parliament voted in favour of EU-wide net neutrality rules that require internet service providers to treat all online content equally without blocking or slowing down specific websites.

The regulation provides national regulation authorities with far-reaching responsibilities to enforce compliance with open internet access. In Austria, the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) is responsible for monitoring net neutrality provisions. The RTR is empowered to verify the actual capability of end users to enjoy net neutrality, to set minimum quality standards and to define the levels on detail which relate to how internet access providers meet information requirements.

For more information, please visit:
https://www.rtr.at/en/pr/PI28102015TK



Media & sport

Once Austria's national football team successfully secured their place at the 2016 UEFA European Championship (Euro 2016),the broadcasting rights of this huge sporting event were in great demand.

The Austrian national public service broadcaster, ORF, who have acquired broadcasting rights to Euro 2016, entered a cooperation agreement with ATV (the largest commercial television station in Austria) which comprises a sublicense allowing the station to show six matches at the group stage of the tournament. Due to the cooperation agreement, live switching between parallel matches was prevented and thus each match could be broadcast live and in full length.

For more information, please visit:
http://diepresse.com/home/sport/fussball/euro/4927573/FussballEM_ORF-gibt-sechs-Spiele-an-ATV-ab

Finance/M&A (in the TMC space)

The Austrian Federal Competition Authority (BWB) and the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) have published reports assessing the effects of the merger between Hutchison 3G Austria and Orange Austria. The deal took place at the end of 2012 and the expert analysis provides interesting conclusions

Both studies compare the actual price developments to econometric predictions of price developments without the merger. The results show that the merger undoubtedly led to significant price increases in 2013 and 2014 for smart phone users as well as traditional users who do not use data services. The studies show price increases for existing customers in the range of 14% – 20%.

Although competition in the communication sector has intensified due to lower-priced offers of new operators, retail prices are still above pre-merger levels.

For more information, please visit:
https://www.rtr.at/en/pr/PI14032016TK



Belgium

Communications (telecoms & satellite)

On 16 February 2016, the Brussels Court of Appeal rendered its final decision in a comparative advertising dispute that started with an advertising campaign by BASE Company in 2014. From 25 to 26 January 2014, BASE placed an advert in several newspapers stating that a comparative study published by its competitor Proximus (Belgacom) showed that BASE had an excellent network 'according to Proximus'.

When Proximus filed suit, BASE launched a counterclaim in relation to a Proximus television advertisement which showed a consumer who needed to climb in a tree in order to be able to have a conference call, while a Proximus customer was said to have the best signal everywhere.

The Court of Appeal ruled that the advertising of both parties did not meet all the statutory requirements of comparative advertising.

BASE was not entitled to claim that it had an excellent network 'according to Proximus'. While Proximus had indeed published a comparative study showing that the network of BASE was (by some measurements) performing better than its own network, Proximus clearly did not conclude that BASE had an 'excellent' network. As a result, the slogan used by BASE was found to be misleading the public.

With regard to the counterclaim, the Court of Appeal ruled that there was comparative advertising by Proximus. Although the advert did not name the competing network which the consumer climbing the tree was using, the competitors could either be identified or at least easily guessed at. Therefore, the Court concluded that there was comparative advertising. Next, the Court found that the Proximus advert did not meet all the criteria of lawful comparative advertising. The Court stated that there was an unlawful comparison, because no objective data showed that the competitors of Proximus had a weaker network. Suggesting that competitors in general do not perform well is unlawful if there is no objective evidence to support such a claim.

Czech Republic

Media & sport

A draft bill enabling the Ministry of Finance to block internet websites considered

A draft Bill on gambling proposed by the Czech Ministry of Finance was passed into a final reading. If the bill is passed, it will enable the Ministry to create a list of illegal gambling websites and would oblige internet service providers to block such websites within 15 days. It is unclear whether only specific URLs or entire domains would be affected. The Ministry would be in sole control of the list, without judicial or independent regulatory overview. The draft Bill also introduces blocking of bank accounts associated with illegal gambling operations. The Ministry of Finance justifies the proposal by precedent measures in Denmark and France.

The draft has been subject to criticism from expert bodies such as STIR (the Association of Internet Development) and CZ.NIC (a public body responsible for operation of the domain name registry for the .CZ domain), who claim that such wide discretion of the Ministry clerks creates a 'dangerous precedent'. The critics further argue that the blocking measures can be legally bypassed by internet anonymisers, by a change of DNS or by use of VPNs, or simply by moving the websites before the end of the 15 day period. Given that there is no systematic legislative tool to block websites featuring child pornography or websites used for the illegal sale of drugs, some consider its introduction solely in relation to gambling either inappropriate or ineffective and fear it will open doors to censorship in other areas of the internet. The Czech Telecommunication Office have also expressed concerns that the measure might be in breach of Article 56 TFEU on the freedom to provide services.

Communications (telecoms & satellite)

A third round of LTE spectrum auction to take place

The Czech Telecommunication Office announced that a third round of spectrum auctions for LTE ('Long Term Evolution' wireless data communication technology) frequencies would begin at the end of April 2016. The first two rounds took place in 2013 and 2014. The auctioned frequencies will be 1800 and 2600 MHz and the expected price is around CZK 734 million (EUR 27 million). Approximately 80% of the Czech population are now covered by LTE networks. The annual fees for operating the spectrum were decreased in November 2015.

Data protection

New system of electronic records of sales

The new system of electronic records of sales of goods and services (EET) will now be introduced in the Czech Republic. The new Act on Electronic Records of Sales (the EET Act) was signed by the president on 30 March 2016 and will become effective from either December 2016 or January 2017.

The EET is an online system for communication between businesses and financial authorities. Information about every payment accepted by the business will be immediately sent to the financial authority who will immediately acknowledge receipt. Customers should therefore receive receipts that have already been confirmed by the financial authority.

At first, the EET system will only apply to businesses providing catering and accommodation services; three months later it will apply to retail and wholesale businesses; fifteen months later to other groups of businesses (with a few exceptions) and eighteen months later to all businesses.

The EET Act aims to prevent businesses from evading taxes. However, it is criticised as being discriminatory because initially it will only apply to certain categories of businesses at the beginning. Other critics state that it might also lead to the elimination of small sole traders because of the high costs of the electronic devices needed for the system, while others also question the potential impact on business and/or data privacy.



Technology & sourcing (including tech start-ups)

New Internet of Things network in the Czech Republic

On 1 April 2016 České Radiokomunikace, a company which owns a major telecommunication infrastructure assets, launched a new network for the Internet of Things based on Long Range technology (IoT) in the Czech Republic. The network covers every regional city in the Czech Republic and is accessible to 25% of Czech citizens. Tests done on LoRa technology have shown its wide reach, low power consumption and low operational costs. The signal quality and reach was proven for both indoor and outdoor facilities. České Radiokomunikace, which is owned by the Macquarie Infrastructure Fund, aims to be a leader in the provision and development of digital infrastructure and IoT in the Czech Republic. Currently, there is only one other provider of IoT network in the Czech Republic, a company called SimpleCell Networks which uses T-Mobile transmitters. Its network is based on SIGFOX technology.

France

Communications (telecoms & satellite)

Adoption by the French Telecom Regulatory Authority of three decisions establishing higher tariff caps

On 16 February 2016 the French Telecom Regulatory Authority (ARCEP) adopted three decisions establishing a new tariff framework for key unbundling tariffs. This new tariff framework aims to make access to the copper local loop more expensive and consequently to encourage operators to invest heavily in optical fibre network.

For more information, please visit:
Decision 2016-0206 dated 16 February 2016 on access to the copper local loop for the years 2016 and 2017: http://www.arcep.fr/uploads/tx_gsavis/16-0206.pdf

Decision 2016-0207 dated 16 February 2016 on wholesale tariffs for the generalist DSL access at the subnational level for the years 2016 and 2017: http://www.arcep.fr/uploads/tx_gsavis/16-0207.pdf

Decision 2016-0208 dated 16 February 2016 on the wholesale access to telephone service for years 2016 and 2017: http://www.arcep.fr/uploads/tx_gsavis/16-0208.pdf

Mobile infrastructure sharing

The French law (No. 2015-990) aimed at promoting the economic growth, activity and equity of economic opportunity (Macron Law), dated 6 August 2015, created a new Article in the French Postal and Electronic Communications Code (Article L.34-8-1-1), which entrusts the ARCEP with an additionnal competence in mobile infrastructure sharing. The ARCEP may request, after obtaining the opinion of the Competition Authority, the modification of private mobile infrastructure sharing agreements already signed, specifying; geographical scope, duration, and conditions of their extinction. This is in order to promote the digital development of the territory.

For more information, please visit:
http://www.arcep.fr/uploads/tx_gspublication/consult-partage-reseaux-mobiles-janv2016.pdf

Adoption of a Ministerial Order on prior information of the consumer on the technical characteristics of fixed internet access offers

This Ministerial Order, published on 25 March 2016, entered into force on 1 June 2016 for advertising messages and will enter on 1 March 2017 for commercial documents. It puts an end to the several years of conflict between Free and Orange on the one hand, and Numericable-SFR on the other hand. Free and Orange accused Numericable-SFR of lying about its fibre offers, which are not 'real fibre offers' according to Free and Orange. Numericable-SFR provides fibre to the building (FTTB) offers which cannot be qualified as fibre optic connection from end-to-end according to Free and Orange, because the link to the apartments is provided by a coaxial cable and not by an optical fibre. Whereas Free and Orange provide fibre to the home (FTTH) offers.

Free and Orange accused Numericable-SFR of misleading advertising and sent white notes about this issue to the former direction for Competition, Consumer Affairs and Prevention of Fraud of the French Ministry for Economy. To respond to this criticism, Numericable-SFR has explained that differences between FTTH and FTTB are minimal for the consumer, and the new FTTB technology provides a downstream rate equivalent to the FTTH technology.

By its Ministerial Order, approved by the French Regulatory Authority by a decision adopted on 3 December 2015, the French government ruled in favour of Orange and Free, meaning that Numericable-SFR will have to specify that its fibre offers do not go into the home.

Numericable-SFR declared that it was seeking any available judicial remedy, in France and in the EU, against this Ministerial Order.

For more information, please visit:
https://www.legifrance.gouv.fr/eli/arrete/2016/3/25/EINC1525767A/jo



Germany

Media & sport

Game-changing decision for publishers

The German Federal Court of Justice (Bundesgerichtshof – BGH) ruled in April that publishers are not entitled to receive a revenue share from the German collecting society VG Wort as they are not considered as rights holders under copyright law.

For many years the German collecting society VG Wort has paid publishers a lump sum quota between 30% and 50% to the revenues. In 2013, while the case was still on its way up to the Federal Court of Justice the VG Wort started to reserve the right to recover the revenue depending on the outcome of the law suit. This decision was influenced by the preceding Higher Regional Court's decision as well as the case-law by European Court of Justice (ECJ). In November 2014 the Federal Court of Justice suspended the proceedings for almost a year to wait for the outcome of the ECJ ruling in the *HP Belgium v. Reprobel Case (C-572/13).* In this case, the ECJ held in November 2015 that Art. 5 (2) b of Directive 2001/29 stipulates that fair compensation for the reprography and private copying exception must be received entirely by the right holder and cannot be reduced by allocating a part to the publishers. After that, VG Wort stopped to disburse the lump sum and reclaimed all revenues already paid for 2012.

In its recent judgement the Federal Court of Justice held that the German practice of paying a lump sum to publishers to compensate for the private copying exception was illegitimate. The compensation had to be 'distributed exclusively to the persons entitled, specifically in the proportion in which these revenues are based on exploitation of these rights and enforcement of claims'. The court denied any entitlement for the publishers. Neither were they holder of an ancillary copyright nor could the right for compensation be ceded effectively from the authors to the publishers. The latter practice, i.e. the assignment of the compensation rights in advance, which publishers and authors had followed in their publishing contracts for years, was invalid due to the ruling in the Reprobel case.

For a large number of German publishers the judgement may have disastrous economic implications. They may have to reimburse the payments of the last three years.

The Federal Parliament (Bundestag) has recently directed a resolution to the Federal Government (Bundesregierung) to consider national legislation in order to ensure a fair revenue share for publishers and, when indicated, promptly submit proposals. It also asked the European Commission to submit a corresponding legislative proposal on the EU-level.

Hungary

Communications (telecoms & satellite)

Magyar Telekom launches Wi-Fi Fon service

Magyar Telekom launched its free WiFi service, Wi-Fi Fon, for its subscribers as of 5 April 2016. In Hungary, the service is mainly provided by WiFi hotspots embedded in the equipment of Magyar Telekom placed at the subscriber access points. These WiFi hotspots are totally separate from the subscribers' own WiFi network and do not reduce its data, reliability or maximum bandwidth. The service is provided in close cooperation with Fon Wireless Ltd and for premium subscribers also includes the use of the use of Fon's international WiFi network. UPC was the first to launch a similar service (Wi-Free) in Hungary.

For more information, please visit: http://www.telekom.hu/static/sw/download/Lakossagi_aszf_10_melleklet_egyeb_szolgaltatasok_20160301.pdf?bcsi_scan_101f9ca0b77a944d=0&bcsi_scan_filename=Lakossagi_aszf_10_melleklet_egyeb_szolgaltatasok_20160301.pdf (in Hungarian)

Media & sport

Media Council proceedings against Luxembourg media service provider

Due to the inappropriate age rating of multiple episodes of Való Világ 7, a reality show airing on RTL2, the Media Council conducted administrative proceedings against a media service provider based in Luxembourg and found serious violations of the provisions for the protection of minors. The Hungarian Media Act enables the authority to impose certain sanctions if a foreign media service provider has committed serious infringements three times within 12 months. The procedure conducted is similar to the one set out in Article 3 of the AVMS Directive.

New collecting society representing film producers applies for registration

The Digitalfilm Association has applied for registration at the Hungarian Intellectual Property Office (HIPO) as a collecting society representing film producers. The association claims royalties from operators on behalf of film producers for the communication to the public of cinematographic works. Both the application and the legality of the claim are heavily disputed by Hungarian operators and media service providers. HIPO has not given any decision yet.

Technology and sourcing (including tech start-ups)

Budapest Stock Exchange proposes SME and Start-up market

The Budapest Stock Exchange (BSE) announced its intention to create an online trading platform which would serve as a common market place for small and medium-sized enterprises, start-ups and a wide range of investors. The new platform will allow SMEs and new smaller businesses to gain easier access to financing sources other than bank financing without having to meet stock exchange criteria. This initiative aims to provide easier access to private equity funding by reducing the costs and administrative burden associated with public stock exchange requirements. The new platform will also provide an opportunity for private equity and venture capital investors as well as non-institutional investors to find their target investments. The BSE's initiative follows capital market trends in the US where similar crowd financing opportunities have been introduced by the Jumpstart Our Business Start-ups Act (JOBS Act) allowing retail and non-accredited investors to enter the market. This trend can also be traced in the European Union financial regulations.

For more information, please visit: https://bet.hu/topmenu/tozsde/bemutatkozas/strategia_fo_iranyai (in Hungarian)

IBM acquires Ustream to propel cloud-based video services across industries

IBM has acquired Hungarian start-up Ustream Inc. Ustream provides cloud-based video streaming to enterprises and broadcasters for everything from corporate keynotes to live music concerts. Founded in 2007, the company provides live and on-demand video streaming services to more than 80 million viewers and broadcasters per month. The relationship between IBM and UStream dates back to at least April 2014, when Ustream was the only video service included in the launch of IBM's cloud marketplace. Later that year, the two



companies announced that Ustream technology would be used to incorporate video streaming capabilities into Bluemix, IBM's open cloud development platform.

For more information, please visit: https://www-03.ibm.com/press/us/en/pressrelease/48582.wss

Data protection

Mandatory contents of privacy notices and policies

The Hungarian Data Protection Act provides that before the commencement of data processing the relevant person must be given clear and detailed information on all aspects of the processing. Hungary's Authority for Data Protection and Freedom of Information (NAIH) has provided more specific recommendation for companies on how to comply with the general information requirements in practice. NAIH also gave detailed clarifications on the requirements of privacy notices and privacy policies.

For more information, please visit: http://naih.hu/files/tajekoztato-ajanlas-v-2015-10-09.pdf (in Hungarian)

NAIH decision on inadequate performance of data protection obligations

In a recent decision, NAIH targeted the data processing practices of a particular financial institution. However, most of the NAIH's findings apply to other industries too.

For more information, please visit: http://naih.hu/files/NAIH_2015_328_hatarozat.pdf (in Hungarian)

Database protection recommendations from NAIH

In a recent decision, NAIH imposed a HUF 2,000,000 fine (approximately EUR 6,700) on an IT service provider for failing to implement adequate data security measures. The case is also important for other companies because NAIH provided specific recommendations on how to comply with the general requirements on the security of data processing in practice. According to the findings of NAIH, companies should revise not only their data security measures (in particular to ensure adequate access levels, data sharing, data minimisation and encryption) but the wording of their appropriate internal rules and data processing agreements as well.

For more information, please visit: http://www.naih.hu/files/NAIH_2015_2765_H_hatarozat.pdf (in Hungarian)



Companies may take full advantage of Binding Corporate Rules

As of 1 October 2015, the Hungarian Data Protection Act officially accepts Binding Corporate Rules (BCR) as adequate protection in the case of data transfers outside the EEA. This is now endorsed by the new NAIH guidelines which provide detailed procedural rules for the introduction of BCRs in Hungary. The fee for the NAIH approval of a BCR is HUF 266,000 (approximately EUR 900).

On the basis of the amended legislation, it is advisable for Hungarian companies operating outside the EEA to consider the preparation of their own BCR. Companies using a BCR that has already been approved by another European data protection authority (or by multiple authorities) prior to 1 October 2015 should also request NAIH approval, in order to have their BCR recognised in Hungary too.

For more information, please visit: http://www.naih.hu/mit-jelent-a-koetelez--szervezeti-szabalyozas--bcr--.html (in Hungarian)

Finance/M&A (in the TMC space)

Magyar Telekom sells media subsidiary

Magyar Telekom has sold its subsidiary, Origo Zrt, the publisher of the widely read news portal origo.hu and provider of two television channels to New Wave Media Kft, the owner of online daily vs.hu. The value of the transaction amounted to EUR 13.2 million and was closed in early February 2016.

For more information, please visit: http://www.telekom.hu/about_us/press_room/press_releases/2015/december_17

Competition Office approves the purchase of the second largest commercial channel by government commissioner

The Competition Office (GVH) approved the purchase by Magyar Broadcasting Co. (owned by government commissioner for the film industry Andrew G. Vajna) of Hungary's second largest commercial television channel, TV2. GVH did note, however, that the approval of the acquisition 'does not mean that GVH has assumed a position regarding the potential civil law dispute on the matter, adding that reaching a decision on such a dispute is up to the court'.

For more information, please visit: http://hungarianspectrum.org/2015/10/24/high-stake-battle-for-the-ownership-of-hungarys-tv2/ (in Hungarian)

http://magyarhirlap.hu/cikk/39209/Competition_office_approves_Vajnas_purchase_of_TV2

http://www.broadbandtvnews.com/2016/01/05/hungarian-tv2-ownership-still-in-dispute/

Automotive

Hungarian government supports e-Mobility

The Hungarian government has set up its 'Jedlik Ányos Plan' to further develop e-Mobility in Hungary. Since 1 January 2016, the plan has allowed electric cars with green registration numbers to park for free throughout the Budapest area. Also, because the national network of charging stations is still underdeveloped and the charging stations are concentrated in the area of Budapest and along the motorway between Budapest and Vienna, the plan introduces additional rules in order to accelerate the expansion of charging spots throughout the country. The plan seeks to reduce bureaucratic issues in order to speed up new projects in the sector of e-mobility. These legislative changes show that the Hungarian decision makers are willing to introduce measures to expand the use of electric vehicles. The coming months will show whether these measures give the right incentives to further develop the grid of e-charging stations.

For more information, please visit: http://www.kormany.hu/hu/nemzetgazdasagi-miniszterium/hirek/elektromobilitas-150-toltoallomas-letesul-orszagszerte (in Hungarian)

eHealth

Hungarian hospitals in the Cyberspace

The test run of the Electronic Health Care Provision System (EESZT) is about to start. The care centre, built with an investment of HUF 100 billion within the framework of three EU programs, will enable the entire Hungarian health care system to become electronic. This includes inpatient and outpatient care, GPs and pharmacies. The system has been launched on a voluntary basis, and full live operation will start in Q1 2017 when it will be mandatory. The fundamental concept of the EESZT is that the health care data of each patient will be entered into a central database which can be accessed online, i.e. from anywhere (with appropriate authorisation).

For more information, please visit: http://hirlevel.egov.hu/2016/03/19/elektronikus-terben-a-magyar-korhazak/ (in Hungarian)

FinTech

Hungarian FinTech map published by Portfolio online financial journal

According to the FinTech map published by Portfolio online financial journal, there are currently approximately 50 FinTech start-ups and SMEs under the radar of Hungarian banks. Over the past three years, 35 FinTech and InsureTech start-ups have appeared in Hungary, focusing on prepaid banking, payment transaction services, crowd-funding, mobile payment, robovisor based asset management or on bitcoin-based banking. In the insurance business, Hungarian InsureTech start-ups use state-of-the-art technologies, such as telemetry or artificial intelligence in order to perform tasks such as renewing car insurance. There is no segment of banking (apart, perhaps, from lending) in which there would not be at least one or two FinTech firms. The most dynamically growing area is financial services, where there are sixteen FinTech initiatives or service developments within Hungary.

In addition to the above start-ups, thirteen domestic SMEs have received nearly HUF 4 billion in EU grants and/or venture capital through the Jeremie funds for the development of digital financial technologies such as credit rating, risk analysis, accounting systems or front-end or mobile payment mechanisms. International companies have also appeared in Hungary with e-commerce or prepaid payment mechanisms (eg. Sofort Banking, Borgun hf, Cashbackapp), or with asset management services (eg. eToro). Further Personal Financial Management Services (PFM) like start-ups and service providers may emerge that compare and offer banking loan and savings products following the implementation of Payment Services Directive 2.

For more information, please visit: http://www.portfolio.hu/vallalatok/it/ime_magyarorszag_fintech_terkepe.228697.html (in Hungarian)

Italy

Communications (telecoms & satellite)

Italian Communications Authority (AGCOM) announces a public consultation on universal service obligations

On 24 March, by Resolution 113/16/CONS, the Italian Comunications Authority announced a public consultation on the universal service obligation. The consultation will last for 120 days.

In particular, the consultation addresses the issue of fixed broadband and whether the provision of fixed broadband connectivity should be included in the universal service obligation. Currently, the universal service obligation includes only the provision of narrow band.

The goal of the Italian government, as announced recently by the Prime Minister Renzi, is to provide 30 mpbs broadband connections across the entire Italian territory by 2020.

Media & sport

A new, less burdensome, sanctions regime for unlawful prize contests

The Italian legislator has substantially eased the sanctions applied in case of a prize contest carried out in Italy without complying with the relevant requirements established by Italian law.

The 2016 Stability Law (Legge di Stabilità) entered into force on 1 January 2016. The new regime contains the following provisions:

— in the first instance, the sanction will be the payment from one to three times the VAT owed with a minimum of EUR 2,582.28;

— where the banned prize contest continues to be carried on, the sanction increases from two to six times the VAT owed, with a minimum of EUR 5,164.57; and

— a notice must be published in the media.

Important decision of the Italian Supreme Court relating to internet blogs

The Italian Supreme Court (Corte di Cassazione) has recently issued an important decision relating to internet blogs (decision n. 12536/2016). According to the Supreme Court, an unregistered internet blog will not be deemed a 'newspaper', even if published by a journalist. Therefore, internet blogs can be made subject to preventive seizure proceedings ordered by the Italian judiciary authorities. Internet blogs do fall within the scope of the right of freedom of expression which is protected by the Italian constitution. However, since from a regulatory point of view they are not newspapers, blogs are not protected by the specific provisions of Italian law relating to the press, which prohibit the imposition of preventive seizure measures on newspapers.

Data protection

New Inspections Plan approved by the Italian Data Protection Authority

On 10 March 2016 the Italian Data Protection Authority (Garante) approved the new Inspections Plan for the period of January to June 2016.

According to the new plan, the Authority, also with the assistance of the Guardia di Finanza (the Italian police agency under the Italian Ministry of Economy and Finance's authority), will carry out inspections, inter alia, on:

— credit recovery companies;

— employment agencies;

— private investigators;

— companies which transfer personal data to the United States; and

— banks, in particular for the purpose of verifying their compliance with the Authority's general decision of 12 May 2011 on the circulation of information in the banking sector and the tracking of banking operations.

In a press release published on its official website, the Authority announced that 1,700 administrative sanctions were issued in 2015 (an increase of 190% compared to the preceding year), for a total of EUR 3,500,000. 33 criminal law breaches were reported to courts, in particular for the non-implementation of the minimum security measures required by the Italian data protection law and unlawful employee monitoring activities.


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The Netherlands

Communications (telecoms and satellite)

Final decision on the unbundled access market published

The Dutch regulator ACM has published its final decision on the unbundled access market. The decision is that Dutch telecom company KPN must continue to grant its competitors access to its copper and fibre-optic networks for a further three years. KPN remains subject to broadband and (to a lesser extent) fixed telephony regulation, while cable networks will not be regulated.

The Netherlands has two major networks that consumers can use for their broadband, television and telephony needs: the cable network of Ziggo and the copper and fibre-optic networks of KPN. In ACM's opinion, having just two providers in this market cannot be considered healthy competition. This decision, which allows competitors to use KPN's networks, came into force on 1 January 2016.

DTT auction in July

The current permit for the Digitenne service, which has around 300,000 subscribers, expires on 31 January 2017. The DTT service is currently operated by KPN's Digitenne. The government aims to auction the licence in July. The new Dutch digital terrestrial TV licence will be offered with no minimum bid price, according to the proposal from the Ministry of Economic Affairs. If only one candidate applies for the licence, there will be no auction.

The licence holder will be expected to ensure a smooth transition with Digitenne and offer a similar level of coverage, with a minimum 25 TV and radio channels. While no technology has been set, the government has said previously it prefers DVB-T2.

Dutch rules on net neutrality lapse

On 30 April 2016, when a European regulation on net neutrality enters into force, the Dutch form of strict net neutrality disappears. The European regulation guarantees net neutrality across the European Union.

While the current Dutch law explicitly bans any tariff differentiation for internet services, this was scrapped under the EU law. As a result Dutch operators will be able to offer 'zero rating', which means there will be no charging for data traffic for specific services or offering certain internet services at a discount. The Dutch regulator ACM said this is allowed under the EU legislation, as long it has no impact on the quality of other internet services.

Cyber security bill sent to parliament

The first ever cyber security bill was sent to the Dutch parliament in January 2016. The cyber security bill applies to any national or international provider of products and services, the availability or reliability of which are vital to Dutch society (so-called vital providers). If adopted, the bill introduces mandatory notification to the National Cyber Security Center (NCSC) of serious security breaches or loss of integrity of vital ICT systems. The reporting obligation will apply to a number of still to be designated sectors, such as electricity, gas, nuclear, water, telecom, transportation (including main ports and airports such as Rotterdam and Schiphol), finance, and government (including primary defences). These sectors are part of the country's critical infrastructure.

The bill also regulates how governmental organisations should exchange information relating to cyber security incidents and threats.

Lower House approves compensation in case of network failure

In January 2016, the Lower House approved changes to the Telecommunications Act. The main considerations were the compensation for network disruptions and shortening of notice periods in telecom contracts.

End-users will be entitled to compensation for the inconvenience caused by non-availability of telecom services if a network problem lasts more than 12 hours. By shortening notice periods in telecom contracts, the Ministry of Economic Affairs wants to improve the position of small customers and allow for greater competition.

Media and sport

New Media law accepted by Dutch Senate

The Dutch Senate accepted the new Media law, but the law only applies to the 13 Dutch regional independent broadcasters not for the national broadcast organisations. Within five years a new company will apply for one licence for all regional broadcasters. The new organisation will also define a combined policy for technical solutions, human resources and accounting.

Other plans for the public broadcast system, such as changes regarding the role of the culture minister in appointing members of the board of directors and supervisory board of the Dutch Public Broadcasting Agency (the NPO, a public broadcasting organisation that administers the public broadcasting service in the Netherlands), the relationship between the NPO and broadcasters, public involvement and the parliamentary procedure for ensuring transparency of programming costs, will all be amended. This means that new legislation will need to be introduced.

Data protection

Dutch Data Protection Authority: Extra attention with regard to patient data required

In an open letter addressed to all the boards of medical institutes in the Netherlands, the Dutch Data Protection Authority (DPA) asks for extra attention with regard to the protection of medical data. The letter specifically urges institutions to take internal measures in order to ensure an adequate level of protection.

The letter refers to several investigations the DPA has carried out recently in the context of the Electronic Patient Record. The investigations showed that healthcare facilities did not meet the legal requirements regarding data security. The DPA also points at the legal obligation to report data breaches as of 1 January 2016.

WhatsApp changes data handling of non-users

WhatsApp has made changes to how it handles data of non-users of WhatsApp, following a warning from the Dutch Data Protection Authority (DPA). After an investigation the DPA concluded that WhatsApp was permitted access by the user to telephone numbers of non-users in his or her mobile phone address book.

On 3 November 2015, the company reached an agreement with the DPA on measures aimed at protecting the privacy of non-users. WhatsApp now offers additional protection for non-users by processing their telephone numbers using a different method and has also changed the way it stores this data. Only a limited number of engineers have access to this data. To confirm these measures, WhatsApp will have an external review carried out.

According to the Dutch DPA, by doing so the company now has a legal basis to process this data.

Finance/M&A (in the TMC space)

Vodafone, Liberty Global agree merger of Dutch activities

On 15 February 2016, Liberty Global (Ziggo) and Vodafone reached an agreement to merge their operating businesses in the Netherlands to form a 50:50 joint venture. The joint venture will operate under both the Vodafone and Ziggo brands and will create a nation wide integrated communications provider with over 15 million revenue-generating units, of which 4.2 million are video, 3.2 million are high-speed broadband, 2.6 million are fixed-line telephony and 5.3 million are mobile. The transaction is expected to close around the end of 2016, subject to regulatory approvals and consultations with the Works Councils.

Poland

Communications (telecoms & satellite)

The Polish auction of 800MHz and 2600MHz spectrum for 4G wireless services has ended with bids totalling PLN 9.23 billion (approximately EUR 2.15 billion). The five lots of 800MHz and the 14 lots of 2600MHz have been awarded to four out of six bidders. Out of these four only Orange, T-Mobile and P4 confirmed their bids, acquired 4 800MHz lots and had paid the full amount when NetNet resigned. The last lot of 800MHz is still to be distributed (most likely to T-Mobile).

In March 2016 Cyfrowy Polsat bought a majority of interests in Midas. Cyfrowy, which already controls mobile operator Polkomtel, has offered EUR 1 million to acquire 66% of Midas from Cyprus-based Litenite (the cost of the acquisition would include EUR 183 million debt). Midas owns licences in the 800MHz, 900MHz and 1800MHz bands that are currently used by Polkomtel. Cyfrowy announced Polkomtel's network expansion and the expenditure of up to EUR 250 million between 2016 and 2018.

In April UPC Poland (a cable operator with more than 1 million cable broadband subscribers and a cable network passing through 2.9 million Polish households) acquired Net-Sat Media, a Gdansk operator which provides a range of TV, telephony and internet packages.

Based on the research of PMR, in 2015 the total value of the mobile internet market in Poland reached EUR 1.1 billion (increase by 18% YOY).

In March the supervisory board of Netia (a Polish fixed line alternative operator) officially confirmed plans to invest EUR 93 million in a last mile, fibre infrastructure until 2020. Netia's plans include the upgrade of the network (close to 1.7 million households), to grant all the homes passed connection capacities of at least 100 Mbit/s.

In January the Polish Office for Competition and Consumer Protection fined T-Mobile Polska for the rising of subscription fees in 2014. Based on this decision (which is not final), T-Mobile will have to pay EUR 1 million fine and EUR 14.9 to each subscriber who was offered the changed tariff. According to PMR, damages for the customers may cost the operator up to EUR 6.9 million.

Portugal



Communications (telecoms & satellite)

In August 2015 Autoridade Nacional de Comunicações (ANACOM), the Portuguese national regulatory authority for communications, issued a decision on the specification of the price control obligation on wholesale markets for voice call termination on individual mobile networks. It was decided to approve an exemption clause concerning the non-discrimination obligation, as well as to exclude the application of regulated termination rates for traffic originated outside the EEA.

The referred amendment of the Portuguese Regulation had an immediate impact, as the Portuguese operators immediately begun to apply non-regulated rates to all traffic originated outside the EEA since September 2015.

Technology and sourcing (including tech start-ups)

In 2016 the market will assist the launching of first privately held .brand Top-Level Domains by a Portuguese Company.

MEO – Serviços de Comunicações e Multimédia, S.A., a company belonging to Portugal Telecom Group, is expected to launch its .SAPO and .MEO Top-Level Domains in the second quarter of 2016, the only ones held by Portuguese companies. The Portuguese market anticipates a serious impact on the current practices of domain name registration and is expects an increase in the number of domain name registrations, not only in Portugal, but also in several Portuguese-speaking countries.

Romania

Communications (telecoms & satellite)

Orange enters into network sharing agreements with Telekom Romania

Orange Romania (part of the Orange Group) has entered into two network sharing agreements with Telekom Romania (Deutsche Telekom Group):

— a 4G national roaming agreement, whereby Telekom gains access to Orange's 4G mobile network (which offers the highest 4G coverage in Romania); and

— a wholesale access agreement, whereby Orange is granted access to Telekom's fixed broadband network (allowing Orange to provide high-speed fixed internet services and cable TV to its customers).

The transaction sets a new global precedent for fixed and mobile network sharing arrangements.

Serbia

Communications (telecoms & satellite)

4G sector continues to improve

After the completion of the tender procedure for the issuance of individual licenses, for use of radio frequencies in the range 791-821 / 832-862 MHz for the territory of the Republic of Serbia, three incumbent mobile operators, Telekom Srbija a.d., Vip Mobile d.o.o. and Telenor d.o.o., were awarded with the licenses to use the mentioned range. Prior to the delivery of licenses, all three mobile operators have fulfilled their obligations to the budget of the Republic of Serbia. The total amount of fees paid being is EUR 105,053,111.

All three mobile operators begun to provide 4G mobile telephony at the end of March 2015, after obtaining permits for the range of 1800 MHz. The new bands which they were awarded licenses for will allow operators to continue improving the coverage and internet speed in Serbia.

New Law on Information Security

On 26 January 2016, the Serbian Parliament adopted a new Law on Information Security. The law entered into force on 5 February 2016.

This Law regulates the protection measures against security risks in information and communication systems, the liability of legal persons in the management and use of information and communication systems and it sets the relevant authorities for the implementation of the information protection, coordination between stakeholders and monitoring of the proper application of the adopted measures.

The Law establishes the National Centre for the Prevention of Security Risks in ICT Systems (National CERT), which will coordinate the prevention and protection against the security risks in ICT systems at the national level.

Data protection

Expected amendments to data privacy rules concerning NPL transactions

The current Serbian regulations governing data protection and the privacy of data, although being largely harmonised with the EU acquis (Serbia bidding to become member of EU in the future), still appear to be overly rigid when applied to the banking sector, more specifically to the non-performing loans (NPL) sale processes.

The rules principally require the data subject's consent for any transmission of personal data, including those associated with the transfer of a bank's claims (including those coming from NPLs) to a third party. In order to canvas the market and make a proper price discovery exercise, a bank essentially needs to undertake an efficient bidding process, which, in final instances, would require transmission of such data to final bidders. Requiring individual consents in large-scale portfolios of NPLs indeed does not seem to be a practical solution. Because banks are typically not prepared to take any risks associated with the transfer of data without such consents, this important sector is currently on-hold.

Several initiatives have come from the EBRD and other notable international stakeholders to provide technical assistance to the government in order to produce the required amendments to regulation so as to allow for relevant exceptions in these specific cases. Otherwise allowable transactions will continue being non-feasible in practical terms. The amendments are expected to be adopted in the third or in the fourth quarter of 2016.

Finance/M&A (in the TMC space)

Uncertain privatisation of a major telecom provider

The major Serbian telecom provider Telekom Srbija a.d. has been subject to a number of unsuccessful privatisation attempts in recent years. Generally, 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.

This trend continued with the latest government initiative to privatise the provider in late-2015, despite the fact that several non-binding offers were submitted and the bidders were invited to the second round of bidding. The process was expected to complete during the final quarter of 2015, but was eventually halted at the end of 2015.

The topic still appears on the government's agenda and following the general elections in late April 2016, it remains to be seen whether the new government will undertake yet another privatisation attempt in the third quarter of 2016.



Slovakia

Communications (telecoms & satellite)

In October 2015 a new mobile operator (4ka) started to provide services in Slovakia. The 4ka project is based on cooperation with SWAN Mobile, a.s. (connected with SWAN, a.s., the third largest internet provider in Slovakia) and the state owned Slovak Postal Service which is providing some finance and its chain of postal offices for distribution of this new product.

Technology and sourcing (including tech 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 inform legislative, institutional and financial reform. The aim is to promote 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.

On 12 October 2015 V4 countries (Poland, Hungary, Czech Republic and Slovakia) signed a Memorandum of understanding dealing with cooperation with start-ups and increasing their support. The V4 cooperation could lead to creation of a common space for start-ups from V4 countries in Silicon Valley in the USA.

For more information, please visit:
http://www.visegradgroup.eu/visegrad-group-to

Media & sport

A new Act on sport came into force from 1 January 2016. The Act comprehensively regulates sports, including the status of sporting professionals, sport organisations, financing, national representation and contractual relationships in the sports industry. One of the most important elements of the new legislation is the formation of a new Information System of Sport which will be publishing data and lists of sport organisations, athletes and sport professionals, all of whom will be obliged to register. The system will also publish contracts involving public finance sponsorships. The public will therefore be able to monitor public funding of sport, increasing transparency.

Automotive

In December 2015 Jaguar Land Rover and the Slovak government signed an investment agreement dealing with the construction of a new plant in the west of Slovakia (Nitra). It is estimated that GBP 1.1 billion will be invested in the new factory. The State will subsidise approximately EUR 130 million i.e. 9% of the whole investment.

The new plant is expected to produce its first cars in 2018 and will be able to produce up to 300,000 vehicles a year. There will be an estimated 2,800 jobs created by the new plant.

eHealth

On 24 March 2016 the Slovak Supreme audit office (SAO) published its findings regarding the implementation of eHealth in Slovakia.

The SAO stated that the eHealth system is still not working and the delay in implementation now totals more than 4 years. In addition, the SAO pointed out some of the errors that have been made in the attempts to implement eHealth and made a recommendation that the planned eHealth insurance cards (that would cost EUR 55 million) are replaced with existing electronic identity cards.

For more information, please visit:
https://www.nku.gov.sk/documents/10157/749295/Projekt+eHealth+je+st%C3%A1le+nefunk%C4%8Dn%C3%BD+a+me%C5%A1k%C3%A1+viac+ako+1522+dn%C3%AD/0120d639-e04b-4dc9-bf0d-2f9ab3b8e187

Slovenia

Communications (telecoms & satellite)

Radio frequency issues in the region near Italian border

In March 2016, the decision of the local court in Ljubljana (enforcement department) complied with the judgment related to frequency use issued by an Italian local court although the Republic of Slovenia does not recognise the enforceability of the Italian judgements.

The judgment relates to the use of radio frequency spectrum in the area around the Slovenia-Italy border. A small Italian radio station filed a complaint against a Slovenian radio station, demanding damages for issues caused by the use of the same or similar radio frequency as used in Italy by the claimant. The Agency for Communication Networks and Services of the Republic of Slovenia (AKOS) clarified that the main reason for the overlap of radio frequencies on the border territory is that Republic of Italy does not assign frequencies to their radio stations in accordance with international agreements, such as the Geneva 84 Agreement on the use of the Band 87.5 – 108 MHz for FM sound broadcasting. Consequently, Slovenian (as well as Croatian) and Italian radio stations mutually interfere with one another.

Because Italy does not recognise the international agreements but assigns radio frequencies in their own way, the Slovenian radio station filed a complaint with the High Court over the decision on enforcement. If the High court rejects the complaint this could provide a precedent that allows for Italian radio stations to file more claims for damages and more importantly, force Slovenian radio stations to move from the border area. Disputes regarding the use of frequencies have been going on for decades.

Finance/M&A (in the TMC space)

Consolidation in the Telecom sector

After the Telemach and Tušmobil convergence and Telekom Slovenije acquisition of Debitel, the consolidation of the telecommunication sector in Slovenia continues. This is due to competitive pressure and the regulatory framework, which demands further convergence of telecommunication services. Thus SI.MOBIL, being the second largest mobile telecommunication services provider, acquired Amis, which has a focus on local broadband services. The transaction was cleared by the Slovenian Competition Protection Agency on 20 August 2015. Further, insolvency proceedings of T-2 (the third largest broadband provider) were re-initiated on 4 March 2016, which is likely to trigger further M&A activity in the telecommunication sector.

Automotive

Fast Charging Stations for electric vehicles

Within the framework of the Green Corridors project in Slovenia, part of the Central European Green Corridors (CEGC) project, 26 high power recharging points for electric vehicles were installed along the Slovenian motorway network. On 13 October 2015 the first two fast charging stations along the Štajerska motorway in Slovenia were opened and by the end of 2015 the remaining 24 opened. Since the end of 2015 Slovenia has a fast-charging station every 50 kilometres along its entire motorway network. The stations are compatible with most electric vehicles and allow customers to charge 50 kW DC and 43 kW AC at the same time. Empty electric car batteries with a capacity between 18 and 24 kWh can be charged up to 80% in half an hour.

For more information, please visit: http://www.mzi.gov.si/si/medijsko_sredisce/novica/browse/16/article/799/8132/6dd3b9ef0c88179426e141edab35f442/ (in Slovene)
http://www.sodo.si/hitre-polnilnice (in Slovene)

Within the framework of the CEGC project 115 high power charging stations were installed in Austria, Croatia, Germany, Slovakia, and Slovenia with the aim of enabling long distance driving along the TEN-T network and providing country-wide coverage in Austria, Slovakia and Slovenia.

For more information, please visit:
http://www.cegc-project.eu/

Slovenia finally connected to RESPER

On 27 November 2015 Slovenia finally fulfilled its obligations under Directive 2006/126/EC and connected to the EU driving licences network (RESPER).

eHealth

The implementation of the national health care information system eHealth

The amendment of the Healthcare Databases Act (HDBA) adopted in June 2015 provided legal basis for the implementation of the national health care information system (eHealth) and corresponding personal information databases on the national level. These systems will enable easier communication as well as the secure and traceable exchange of data and electronic documents between health care providers. The Central Patient Data Register represents a core database which is supplemented with eight additional databases supporting different eHealth solutions such as ePrescription and eReferals. In accordance with the rules on the conditions, deadlines, method of integration and use of the eHealth system for mandatory users adopted in September 2015, eHealth solutions should be integrated and used by all health care providers by 1 April 2016. However, the web portal (zVem), enabling secure access for users (both patients and health professionals) to eHealth services and health information, should be active shortly.

For more information, please visit: http://www.ezdrav.si/ (in Slovene)

Online sale of medicinal products and European common logo

In accordance with the Medicinal Products Act (MPA) medicinal products which are not subject to medical or veterinary prescription may be supplied online by pharmacies and, in certain cases, also by specialised stores for medicinal products. In order to be able to supply medicinal products online pharmacies and specialised stores must fulfil conditions laid down in the MPA, including obtaining the authorisation of the ministry responsible for health and clearly displaying the European common logo with a safe hyperlink to the list of online suppliers on their website.

On 28 November 2015 rules on the on-line dispensing of medicinal products entered into force. The rules define in greater detail the procedure for granting and revoking online supply authorisation and conditions for the design and use of the European common logo. Business entities dispensing medicinal products online must harmonise their activity with the MPA and the rules by 28 November 2016.

For more information, please visit: http://www.mz.gov.si/si/pogoste_vsebine_za_javnost/izdaja_zdravil_prek_medmrezja/ (in Slovene)



Spain

Communications (telecoms & satellite)

The Council of the Spanish Competition and Market Authority (CNMC) has approved the new regulation of the wholesale market of broadband. In its regulation of the internet access services, the CNMC sets out the conditions in which an operator with significant power in the market – in Spain, Telefónica – should make available to other operators certain elements and services of its network so that they can use it for their own broadband services at retail level.

For more information, please visit: http://www.minetur.gob.es/telecomunicaciones/banda-ancha/regulacion/nivel-mayorista/Paginas/nivel-mayorista.aspx (in Spanish)

Media & Sport

On 11 March 2016 the Official Gazette of Spain (BOE) published the latest version of the World Anti-Doping Code. The Spanish State has been looking to make sure that they are compliant with the World Anti-Doping Code since 2015. In order to achieve this they will need to amend the Organic Law 3/2013.

For more information, please visit: http://www.csd.gob.es/csd/documentacion/01GabPr/Novedades/el-boe-publica-la-ultima-version-del-codigo-mundial-antidopaje/ (in Spanish)



Data Protection

Joint Working Agreement with the Council of Consumers and Users

The Spanish Data Protection Agency (AEPD) has signed a joint working agreement with the Council of Consumers and Users which aims to raise the awareness among citizens of their legal rights and inform them how to make a claim in the case that their personal data is used in the irregular contracting of services.

For more information, please visit: http://www.agpd.es/portalwebAGPD/revista_prensa/revista_prensa/2015/notas_prensa/news/2015_12_14-ides-idphp.php (in Spanish)

International transfers of data to US

The AEPD, with the aim of deepening in the direct information to those responsible for international transfers of data to the US, has informed that the European Commission has announced a new framework for the execution of the abovementioned international transfers of data to the US.

This new framework aims to become the successor to the US-EU Safe Harbour Privacy Statement, which was annulled by the European Court of Justice last October.

For more information, please visit: http://www.agpd.es/portalwebAGPD/revista_prensa/revista_prensa/2016/notas_prensa/news/2016_02_03-ides-idphp.php (in Spanish)

FinTech

The FinTech & InsurTech Spanish Association was born last March and is supported by over 50 Spanish Fintech and InsurTech companies, representing the vast majority of the companies in the sector. The objective of the Association is to create a favourable environment for developing start-ups and FinTech and InsurTech companies in Spain, carrying out communication and collaboration tasks with the bodies of the system responsible for strengthening its growth and ecosystem.

For more information, please visit: http://asociacionfintech.es/presentacion-de-la-asociacion/ (in Spanish)

Switzerland

Communications (telecoms & satellite)

Partial revision of the Telecommunications Act (TCA)

The Swiss Federal Council opened a public consultation procedure for the revision of the TCA in mid-December 2015. The consultation period ended on 31 March 2016. According to the preliminary draft, several new provisions aim at strengthening the position of consumers. For example, internet providers would be required to publicly inform if they discriminate traffic by content. In relation to international roaming, new regulations are proposed, enabling the Swiss Federal Council to take action against excessive retail tariffs and to foster competition.

Furthermore, the general reporting obligation for telecom providers will be abolished. Only those providers who use public resources will be registered. Finally, the use of spectrum will become more flexible: a concession for the use of a frequency spectrum should only be necessary in exceptional cases. Spectrum trading and the joint use of infrastructure for the mobile communication should be fostered as well.

The next step for the Swiss government will be, based on the feedback from the public consultation, to prepare a draft bill and submit it to the Federal Parliament.

For more information, please visit: https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-59923.html (in German or French)

Media & sport

Tender for management of .ch domain names

In mid-April 2016, the Swiss Federal Office of Communications (OFCOM) started the public tendering for the management of the database of .ch internet domain names. The contract with the SWITCH Foundation, which managed the database until now, will expire in mid-2017.

For more information, please visit: https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-61133.html

Technology and sourcing (including tech start-ups)

Revision of the Copyright Act (CopA)

In mid-December 2015, the Swiss Federal Council opened a public consultation on the modernisation of the Swiss Copyright Act (CopA). The consultation period ended on 31 March 2016.

One of the objectives is to provide better measures against internet piracy without criminalising the users of such offers. Hosting providers will be obligated to block access to known privacy platforms at the instruction of the authorities. Furthermore, the statutory provisions will be adapted to keep up with technological developments. The next step will be that the Swiss government, based on the feedback from the public consultation, will prepare a draft bill and submit it to the Federal Parliament.

For more information, please visit: https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-59918.html (in German or French)

Turkey

Data protection

It has been almost a decade since the first draft of the Turkish Data Protection Law was prepared and submitted to the Turkish Parliament for notification. Nevertheless, on 7 April 2016 the Data Protection Law, as approved by the Turkish Parliament on 24 March 2016, was published in the Official Gazette and entered into force. Please note that certain articles shall only enter into force six months following the publication of the Law in the Official Gazette.

Prior to this new law, general provisions on data protection existed in various pieces of Turkish legislation. However, due to the piecemeal manner which these provisions were implemented, there was no solid principle of data protection. This law is expected to encourage foreign investors and companies, which previously abstained from entering the Turkish market, to enter into Turkey, since the introduction of the Law will assist foreign investors in complying with their existing obligations under EU law and create a more level playing field.

Ukraine

Communications (telecoms & satellite)

Simplification of the business environment in the telecommunications market

On 1 March 2016 Ukraine's telecoms regulator, the National Commission for the State Regulation of Communications and Information (NCCIR, or locally abbreviated to NKRZI) approved the decision 'Some questions in relation to simplification of business environment in the field of telecommunications and radio frequency resource of Ukraine.'

This document provides for the removal of onerous requirements from the license terms and abolition of irrelevant regulations. Amendments include:

— the introduction of a single model application to obtain a license;

— the list of documents that must be provided by potential licensees to provide proof of financial capacity to implement the stated activities has been minimised; and

— requirements for submission of a bank guarantee and investment contract have been removed.

For more information, please visit: http://nkrzi.gov.ua/index.php?r=site/index&pg=99&id=994&language=uk

Parliamentary hearings on reform of information and communication technologies and development of ukraine's information space

On 3 February 2016 the Ukrainian parliament held parliamentary hearings on the topic 'Reform of the information and communication technologies and the development of information space'. The aim of this hearing was to analyse the state of implementation of the state policy on reforming communication, particularly discussing the new proposed draft laws on cybersecurity and on radio frequency resource, amongst others.

Media & sport

Final analogue switch-off set for June 2018

Ukraine's National Television & Radio Broadcasting Council (NRADA) has determined the final date of nationwide analogue TV switch-off in all broadcasting frequency ranges as 30 June 2018, when the spectrum will be entirely freed up for 4G mobile broadband usage.

The proposals contained in the draft resolution of the Cabinet of Ministers 'On introduction of changes in the use of radio frequency resource of Ukraine' were adopted at an NRADA meeting on 24 September 2015.

Before the resolution, the previous target date (approved by the Cabinet of Ministers in June 2006) allowed the use of frequencies for analogue TV up to 1 January 2016, but the final disconnection date has been revised due to doubts about the feasibility of the implementation plan. NRADA proposes that the release of the 'first digital dividend' (800MHz) 4G mobile broadband frequency band is begun in 2016, while the process for releasing the 'second digital dividend' (700MHz) band to operators should begin in the first half of 2017.

For more information, please visit: https://www.telegeography.com/products/commsupdate/articles/2015/09/29/final-analogue-switch-off-set-for-june-2018/

Technology and sourcing (including tech start-ups)

Finance and Technology Transfer Centre for Climate Change (FINTECCC) TC Programme in Ukraine

In 2013 the EBRD established the Finance and Technology Transfer Centre for Climate Change (FINTECCC), in order to accelerate deployment of climate technologies in markets which are lagging in this respect. FINTECC is the EBRD's response to the global recognition that climate technology transfer is a key component in the strategy to reduce GHG emissions and address the challenges of climate change.

In 2016 FINTECCC was introduced into Ukraine. It is expected that FINTECCC will result in substantial benefits for Ukraine. The FINTECCC approach in Ukraine will comprise of a combination of policy dialogue, technical assistance and incentive grants, including a new type of incentive grants called 'Innovation Vouchers'. The project cost is expected to be EUR 3 million.

For more information, please visit: http://www.ebrd.com/work-with-us/projects/tcpsd/finance-and-technology-transfer-centre-for-climate-change-finteccc-tc-programme-in-ukraine.html



Finance/M&A (in the TMC space)

Turkcell acquires 100% of Astelit

Turkcell has signed the share purchase agreement to acquire local partner SCM Holding's 44.96% stake in Ukrainian cellco Astelit (life:)) to take the Turkish group's stake to 100%. Turkcell's press release confirms that Ukrainian conglomerate SCM's shares in Astelit's holding company Euroasia Telecommunications Holding BV will be bought for USD 100 million, in accordance with an independent valuation study.

Ukraine's third largest mobile network operator Astelit has adopted a new brand name for its entire operations, 'lifecell', replacing the existing 'life:)' brand, in a strategic move driven by its Turkish parent Turkcell.

For more information, please visit:
https://www.telegeography.com/products/commsupdate/articles/2015/06/29/turkcell-takes-100-of-astelit-for-usd100m/

The acquisition of Viasat Ukraine

1+1 Media has entered into an agreement to buy the DTH and internet businesses of Viasat Ukraine from Modern Times Group (MTG). In a statement, 1+1 says that the main reasons for entering into the agreement were the strong market position of Viasat Ukraine in the DTH sector, its technological flexibility and its presence in the pay-TV market.

The acquisition of Viasat Ukraine, which is believed to have around 150,000 customers, will be completed after it receives the approval of the Antimonopoly Committee of Ukraine (AMCU).

For more information, please visit:
http://www.broadbandtvnews.com/2016/03/01/mtg-sells-viasat-ukraine/

MTS 'agrees to buy TriMob' from Ukrtelecom

MTS Ukraine, the country's second largest cellco by subscribers, has reached a preliminary agreement to buy TriMob, the 3G mobile subsidiary of Ukrainian nationwide fixed line operator Ukrtelecom, part of conglomerate SCM Group. The deal should be closed in the first half of 2016, at a price roughly in the region of UAH 3 billion (USD 125 million).

The AMCU has issued a request for public comments on its website, seeking opinions and objections to MTS Ukraine's proposed acquisition of Ukrtelecom's mobile network operating division TriMob.

For more information, please visit:
https://www.telegeography.com/products/commsupdate/articles/2016/01/15/mts-agrees-to-buy-trimob-from-ukrtelecom-report-claims/

United Kingdom

Communications (telecoms & satellite)

European Commission blocks Three's proposed acquisition of O2

Following an investigation, the European Commission blocked the proposed acquisition of O2 by Hutchinson, and in its press release raised competition concerns, specifically:

— Combined, O2 and Three would have been a market leader and the Commission argued it would result in less incentive for the merged entity to compete with competitors, therefore reducing choice and quality for consumers, whilst raising mobile prices.

— The merged entity would retain network sharing arrangements currently enjoyed between EE and Three and Vodafone and O2, respectively. Accordingly, it would have weakened EE and Vodafone and hampered future developments.

— There would be fewer mobile network operators willing to host virtual operators, thus placing them in a weaker bargaining position.

The Commission's decision is far removed from the policy position it has previously adopted in four-to-three mobile mergers, having approved mergers in Austria, Ireland and Germany, subjecting them to interventionist clearance conditions. However, the present decision shows that the Commission may doubt the effectiveness of such remedies and the market and commentators will be hotly anticipating the Commission's decision in respect of Hutchinson 3G Italia and VimpelCom's Wind which is expected shortly.

For more information, please visit: http://europa.eu/rapid/press-release_IP-16-1704_en.htm

eHealth

Big Data potential

The General Data Protection Regulation (GDPR) was adopted by the EU institutions in April 2016 and comes into force on 25 May 2018. The GDPR recognises that society has a legitimate interest in increasing knowledge through scientific research. It aims to balance this interest against measures for the adequate protection of data. The European Commission has also published proposals for a new European cloud initiative to share results and knowledge within the scientific community.

The advent of the new data protection framework, along with the generation of increasingly large volumes of data, may provide companies operating in the eHealth sector with opportunities to harness that data to improve patient safety. In particular, the use of Big Data techniques by pharmaceutical companies (as well as the analysis of data obtained from wearables and apps) may enhance their ability to detect potential adverse reactions to medicinal products. This, in turn, is likely to aid compliance with their pharmacovigilance requirements to report adverse reactions to medicinal products once those products are on the market.

FinTech

Broadcasters' copyright infringed by 8 second sports clip

In the case of *England and Wales Cricket Board Limited and Sky UK Limited v Tixdaq Limited and Fanatix Limited*, the High Court has held that the defence of fair 'fair dealing', allowing use of copyright material for the purpose of reporting current events, did not apply to an App that allowed users to record, upload and share 8 second clips of sporting events which had been filmed from TV broadcasts.

The case considered recent judgments from the CJEU and held that the defence did not apply because the primary purpose of the App was to enable the sharing of clips (not the reporting of current events) and that the use undermined the investment made by the Claimants. Further, the Court considered that 8 seconds could constitute a 'substantial part' of a sporting event sufficient to establish copyright infringement. The Defendants had clearly attempted to 'push the legal boundaries', hence this judgment provides some welcome guidance on the scope of the fair dealing defence: an area where there is little existing judicial guidance, particularly in the field of new forms of media delivery.

For the full text of the decision, please visit http://www.bailii.org/ew/cases/EWHC/Ch/2016/575.html



Media & sport

New FinTech initiative in Scotland

Scottish Financial Enterprise (SFE) has established a new FinTech Strategy Group to position Scotland as a major player in the FinTech market. SFE Chief Executive Graeme Jones said 'The speed of development in financial technology is truly breath-taking and the industry in Scotland is well placed to be a serious global contender. The financial services cluster in Scotland is second only to London in the UK in scale and diversity, providing a critical mass to build on with the new developments created by FinTech.'

The Strategy Group brings together over 30 leading industry figures from financial technology disciplines, including CMS Partner Alan Nelson, with representation from the Scottish Government and higher education institutions. The group, which is chaired by Royal Bank of Scotland's Head of Design Louise Smith, will consider the opportunities for Scotland in the global FinTech market (including Big Data, disrupters, differential regulation, blockchain, cybercrime and globalisation) and develop a five year strategy in connection with industry and government initiatives. The Strategy Group will also identify emerging markets and map out the skills needed to ensure that Scotland's higher education institutions are leading innovation and producing graduates with the right skills at the right time.

For more information, please visit http://www.sfe.org.uk/New-Fintech-Group-Meets.aspx

FinTech bridge established between Britain and Singapore

The UK and Singapore have established the first ever FinTech bridge following the signature of a regulatory co-operation agreement between the Financial Conduct Authority and the Monetary Authority of Singapore. The agreement enables the regulators to refer FinTech firms to each other and sets out how they plan to share and use information in their respective markets. The UK Government considers the bridge as major milestone for both countries and in its commitment the FinTech sector in the UK. It is hoped that the bridge will attract FinTech firms and investors from Singapore to the growing UK market which generated GBP 6.6 billion revenue in 2015 and has a workforce of over 60,000 employees. The arrangement will also help UK FinTech firms and investors gain access the Asian market and expand to Singapore.

For more information, please visit: https://www.gov.uk/government/news/first-ever-fintech-bridge-established-between-britain-and-singapore

UAE

Data protection

New Open Data Law

The Dubai Government has introduced a new Open Data Law (Dubai Law No.26 of 2015) which covers the sharing of non-confidential data relating to the Emirate of Dubai, between governmental entities and potentially private stakeholders, though the full scope of the law currently remains unclear.

A number of other cities around the world have implemented Open Data regimes, traditionally with the intention of making government held information freely available. The Dubai Law goes further in allowing a designated 'Competent Authority' to designate non-governmental bodies as 'Data Providers', rather than just being concerned with data held by governmental bodies. Therefore, there is the potential for private businesses and individuals, that produce, own, publish or exchange data related to the Emirate of Dubai, to be required to make that data freely available, or at least exchange that data with other 'Data Providers'.

It is hoped that the new Law will unleash a wave of freely available data, and encourage greater innovation from both businesses and individuals. It remains to be seen, however, how data protection and cyber security issues will be addressed in relation to the information.

Legislative reform increases penalties for Cybercrimes

In the wake of an increasing body of legislation aimed at combatting cybercrime, the UAE's Federal Commission has approved an amendment to the legislation covering cybercrime penalties (Article 9 Federal Law no.5 of 2012). The new law specifically seeks to crack down on people using a fraudulent computer network protocol address or using fake accounts with criminal intent. The law is also set to penalise hackers and online fraudsters based outside of the UAE and governmental authorities have established 'electronic patrols' to track down offenders.

Under the amendment, cybercrimes have been raised from a misdemeanour to a more serious offence. Criminal acts committed using a false email or IP address can now lead to imprisonment, and the fine for these has been more than doubled to between AED 500,000 and AED 2 million.



China

Communications (telecoms & satellite)

5G – the next generation of high-speed mobile communication technology in China

Zhaoxiong Chen, the vice-minister of the Ministry of Industry and Information Technology of the People's Republic of China has recently declared that the '5G Network is the main direction of development of the next generation of mobile communication technology and it is also a significant component of the next generation of information infrastructure.' This statement was followed by Premier Keqiang Li's announcement at the fourth session of the 12th National People's Congress in March 2016 that China will actively promote the fifth generation mobile communication network (5G Network) and conduct research into ultra-wideband technology, bringing the 5G Network into the commercial space.

The China Academy of Telecommunications Research (CATR) has initiated an analysis of, and technical preparations for, the 5G Network in China. It is predicted that the CATR will demonstrate different technologies to the International Telecommunications Union (ITU) in two or three years and the ITU will officially make a selection and announce and apply the standard for the Chinese 5G Network in 2020.

The features of the 5G Network are; high speed, low energy consumption and the possibility to use the Internet of Things. It is hoped that it will bring about further reform and foster innovation in telecommunications and internet technology.

Media & sport

The PRC Government strengthens restrictions on online publishing services

China has taken further steps towards taking control of information published on the internet with the introduction of new regulations (the Regulations) which took effect from 10 March 2016.

The Regulations cover 'digitised works with characteristics of publishing, such as editing, production or processing, provided to the public through information networks'. This includes database services, maps, games, animations, audio and videos.

The Regulations require that any content published online must come from a server within China, and prior approval by competent governmental agencies is required for any collaboration between a local online publisher and a foreign-invested company. This will make VIEs (the vehicle that foreign investors may use to get around the regulatory restrictions on pursuing online publishing in China) subject to stricter scrutiny.

Technology and sourcing (including tech start-ups)

New Classification of Telecommunications Services

China has issued its new Catalogue of Classification of Telecommunications Services (the 2015 Catalogue) which took effect from 1 March 2016. The new 2015 Catalogue aims to catch up with the internet and telecommunications industries in China, which have developed at lightning speed over the past few years.

The internet and telecommunications industries are highly regulated sectors in which foreign investors are prohibited or restricted from conducting many of the types of business listed in the 2015 Catalogue.

Notably, the 2015 Catalogue categorises 'internet resource collaboration services' under 'internet data centre services.' This potentially imposes stricter requirements on large IT companies who are steering their businesses away from traditional IT consultancy to cloud computation. This is because the 2015 Catalogue does not list IT consultancy as a restricted or prohibited business, whilst cloud computation does fall within the remit of the 2015 Catalogue and is subject to censorship for operating data services. A licence to operate an internet data centre is now needed in order to provide cloud computation services. This follows a recent trend of requiring servers to be located within mainland China by the PRC government.

Finance/M&A (in the TMC space)

Increase in outbound investment and support for the banking sector

Chinese technology firms are set to splurge in 2016 as the slowing economy and intense competition forces firms to buy more assets abroad and pursue new avenues for revenue growth. The latest announcement, in February 2016, by Tianjin Tianhai Investment Co. of its proposed acquisition of Ingram Micro Inc., a US-based technology services provider and software distributor for USD 6

billion is further evidence of China's determination to acquire technology assets to boost its domestic capabilities and replace imports.

In other welcoming news, it has been reported that a pilot programme is being planned to allow certain commercial banks to set up equity investment arms to take direct stakes in technology firms. Known as an 'investment and loan linkage mechanism', the programme is an exception to Chinese commercial banking law, which forbids banks from directly investing in equities of non-bank institutions. The move is intended to channel more financial support to China's technology sector and will launch sometime this year, following special approval by the State Council.

Automotive

Rise in the development of smartcars

In recent years, internet giants and Chinese car makers have collaborated on numerous occasions to develop and produce internet-based smartcars.

Recent developments include the second session of the World Internet Conference in December 2015 at which Baidu and BMW exhibited a driverless car after two years of joint research. They plan to sell the car in bulk within five years. It has also been announced that Alibaba and SAIC Motors are setting up a platform to create internet cars based on Alibaba's YunOS system which combines maps and digital entertainment with vehicle and parts development and car services. There are also many other collaborations between internet and automotive companies forming, such as Harmony Futeng, a joint venture between Tencent Holdings, Hon Hai Precision Industry Company and China Harmony Auto Holdings.

China will formulate relevant technical standards and actively strengthen construction infrastructure for the development of smartcars. At present, the Telematics Industry Application Alliance (TIAA) is actively working on issuing corresponding standards related to telematics. Furthermore, the Ministry of Transport and the Ministry of Industry and Information Technology also plan to launch technical specifications and development programs for telematics.

eHealth

Licence for Medical Alliance issued

At the beginning of 2016, Shenzhen saw the opening of the first medical entity with an officially-issued licence to run a so-called 'Medical Alliance' in China, Shenzhen Bode Jia United Doctors Medical Group Limited. The structure of the Medical Alliance involves a group of doctors who sign collaboration agreements with hospitals, which make it possible for contracted practicing physicians of the hospitals to provide medical services in other medical institutions or hospitals that have also entered into these collaboration agreements.

Back in 2009, China issued the Circular Concerning Issues Relevant to Multisite Practices by Doctors. However, the current system for hiring doctors in public medical institutions has become a major obstacle for multisite practices, and has made it difficult for doctors to provide medical services in different institutions.

The issuance of the licence for the Medical Alliance represents a fundamental breakthrough and departure from the conventional model in which a doctor must be confined to one hospital when providing medical services.

It will also contribute to the development of mobile medical services. The concept of mobile health was introduced to China in 2011 and has gradually become the focus of medical industries and investment in the sector. The issue of the licence has increased the potential flexibility of doctors, which in turn provides more opportunities for the medical industry to adapt to the innovative environment of internet and mobile technology.

FinTech

New regulations for online payments and financial services to be introduced

Following on from draft guidelines issued in August 2015, new regulations have been introduced by the People's Bank of China regarding online payments and financial services.

The new regulations establish three different types of payment accounts, restrict the size of payments made from non-bank payment accounts to an annual maximum of RMB 200,000 and introduce greater requirements for identity verification. Additionally, certain services provided by online platforms are prohibited under the new regulations such as accepting public deposits, pooling investors' money to fund in-house projects and giving guarantees for lenders. This will impact the services provided by China's ever-expanding peer to peer lending industry, which relies on third party payment providers to route funding instead of using a bank as an intermediary. The new regulations come into force on 1 July 2016.

Singapore

Communications (telecoms & satellite)

Singapore to restructure its telecommunications and media regulators to meet evolving demands of increased convergence in the info-communications sector

The Singapore Ministry of Communications and Information (MCI) announced on 18 January 2016 that the Info-communications Development Authority (IDA) and the Media Development Authority (MDA) will be restructured to form the Info-communications Media Development Authority (IMDA) and the Government Technology Organisation (GTO). The new IMDA will combine the regulatory and industry promotion functions of both the IDA and the MDA, and will include the Personal Data Protection Commission (PDPC). The GTO will help government agencies leverage emerging technologies, and will be responsible for the resiliency and cybersecurity needs of government infrastructure. The establishment of a converged regulator is a logical evolution that follows the examples of other converged regulators worldwide. The IMDA will now be able to provide regulatory oversight and analyse the impact of infocomm media players across the media, telecoms and IT sectors in Singapore holistically. The merger will lead to streamlining of the legislative and licensing framework governing infocomm media players.

Info-communications Development Authority (IDA) to release spectrum for mobile broadband services to facilitate entry of new mobile operator

On 18 February 2016, the IDA announced that it plans to release more spectrum for mobile broadband services to facilitate the entry of a fourth mobile operator in Singapore. IDA will set aside 60 MHz from the 900 MHz and 2.3GHz bands, at a lower reserve price of SGD 35 million, which will only be open to new entrants. The spectrum rights will begin in April 2017. A spectrum allocation exercise will take place later this year. At least two new companies have indicated their interest in the auction.

Interestingly, IDA also proposes to issue guidelines for wholesale negotiations between Mobile Virtual Network Operators and mobile network operators. This is a recognition of the new commercial and technical reality where such virtual operators are able to repackage wholesale services into their own products and these guidelines are aimed at promoting innovative offerings for the market.

Technology and sourcing (including tech start-ups)

Ministry of Transport to review private car-sharing apps; LTA issues third-party taxi booking certificates of registration to Grab Taxi and Hailo Singapore

On 2 October 2015, Transport Minister Khaw Boon Wan announced on his blog, Moving News, that the Ministry of Transport will review private car-sharing apps. The intention of the review is to level the playing field and create a fair solution, in consultation with taxi operators and the general public. Senior Minister of State for Transport Ng Chee Meng, who is leading the review, has three priorities: ensuring that commuters' interests are taken care of; promoting healthy competition and; levelling the playing field for taxi drivers where justified.

Besides private car-sharing apps, some apps allow consumers to book taxis. On 1 December 2015, Grab Taxi and Hailo Singapore were granted certificates of registration by the Land Transport Authority (LTA) to operate their third-party taxi-booking mobile apps. The certificates are valid for three years, and may be renewed. The LTA is currently processing applications from the following service providers: UberTAXI, MoobiTaxi, Karhoo, and ConnexTaxi. PAIR Taxi's application was rejected because its fare model did not meet the fare charging conditions stipulated in the regulatory framework.

Data protection

Singapore to get new Cyber Security legislation

On 21 January 2016, the Minister for Communications and Information and Minister-in-charge of Cyber Security Mr Yaacob Ibrahim announced that a new cyber security bill will be introduced in light of the growing threat of cyber-related attacks in Singapore affecting both the public and private sector in the past few years. At present, Singapore's primary cyber security legislation is the Computer Misuse and Cybersecurity Act (Cap. 50A) (CMCA).

The new cyber security bill is intended to provide the Cyber Security Agency of Singapore with wider powers to enable it to better prevent and cope with cyber security threats to Singapore's critical information infrastructure. A key feature that may be included in the new cyber security bill is a mandatory



requirement to report cyber security breaches, an obligation not presently mandated under the CMCA unless the Minister of Home Affairs specifically requires a person or entity to do so through the issuance of a certificate. Given the potential reputational and financial damages that cyber-attacks are capable of causing to businesses, companies should keep apprised of developments relating to the new cyber security bill, and develop policies and procedures (such as crisis management teams) to respond to cyber security related incidents when they inevitably occur.

Factors in deciding appropriate enforcement measures under the Personal Data Protection Act

The Personal Data Protection Commission (PDPC) released its Annual Report 2014/15 on 30 October 2015. It revealed that the PDPC has received over 6,000 complaints since the Do Not Call (DNC) Registry was launched, and has closed 95% of complaint cases to date. The PDPC has brought two organisations to court for DNC-related offences and has issued advisory notices to more than 1,800 organisations with minor isolated breaches. In considering the appropriate enforcement measures to be pursued in each case, the PDPC has suggested that it considers factors such as the severity of the breach, the degree of isolation between incidents, the number of complaints against the organisation and its cooperation after being informed of objectionable practices.

Eyes on the Trans-Pacific Partnership – its impact on the ASEAN Economic Community

On 5 November 2015, the full text of the Trans-Pacific Partnership (TPP) was released, and is undergoing ratification by the participating parties in their respective countries which may take up to 3 years. The scope and significance of the TPP extends far beyond traditional trade issues and touches on many other areas, including data protection.

Under the TPP, the parties have committed to ensuring the free flow of global information and data, which is recognised as being essential to the growth of the Internet and the digital economy. The TPP prohibits the imposition of customs duties on electronic transmissions, and prevents parties implementing discriminatory measures or outright blocking measures which favour national producers or suppliers. In addition, the TPP parties agree that consumer protection laws, including online consumer protection, must be maintained, and there must be enforcement of privacy and other consumer protections in the TPP markets, including cooperation on policies regarding personal information protection, online consumer protection, cyber-security threats and cyber-security capacity. With the continual growth of e-commerce as the preferred manner of doing business, such co-operation can only benefit businesses and end consumers.

Brazil

Communications (telecoms & satellite)

Convergent service license proposal by Anatel in Brazil

A board member of Brazilian telecom regulator Anatel proposed changing the current concessions regime to introduce a so-called convergent telecommunication service license which would include fixed and mobile telephony, but not pay TV. The proposal would replace the licenses for fixed and mobile telephony, trunking and fixed internet. Brazilian telecom authorities and regulators are currently discussing changes to the fixed telephony public concession model for the 2016-20 period, putting broadband at centre stage. One of the possibilities is to end the concession regime to allow provision of fixed telephone services by internet service providers through the use of voice over internet protocol. The proposal was presented at Anatel's latest board meeting and will be discussed in further meetings.

For more information, please visit:
http://www.valor.com.br/empresas/4506698/anatel-propoe-opcao-concessao?utm_source=newsletter_tectel&utm_medium=06042016&utm_term=anatel+propoe+opcao+concessao&utm_campaign=informativo&NewsNid=4507550

Media & sport

Brazil passes anti-doping law a day before WADA deadline

A major catastrophe has been avoided ahead of the Rio 2016 Olympic and Paralympic Games after sport doping legislation was passed in Brazil just one day before the World Anti-Doping Agency (WADA) deadline. Had this been missed it would have resulted in revoking accreditation for the laboratory in Rio de Janeiro where testing is due to take place during the Rio 2016 Games. The Government's official gazette has now confirmed the necessary changes have been passed in a Presidential Decree.

Cases should now be heard within the international standard maximum 21 days, rather than the more common Brazilian time-frame of 60 days.

It comes as a relief to Rio 2016 organisers who are still grappling with infrastructure delays and other concerns including the Zika Virus, with the Olympic Opening Ceremony on 5 August.

For more information, please visit:
https://citizentv.co.ke/sports/brazil-pass-anti-doping-law-a-day-to-wada-deadline-118799/

Technology and sourcing (including tech start-ups)

Brazilian police arrest Facebook's Latin America vice-president

In the latest clash between a US internet company and Brazilian law enforcement authorities, police in São Paulo have detained the regional vice-president of Facebook for failing to provide information requested by a criminal investigation. The executive was questioned about Facebook subsidiary WhatsApp's alleged non-compliance with a court order.

According to the court, WhatsApp had been ordered to reveal messages relating to a suspected drug-trafficking ring. After the company denied three related requests by federal police, the judge first imposed a daily fine on the US Company of BRL 50,000 (GBP 9,000), then a daily fine of BRL 1 million (GBP 180,000), and finally ordered the arrest.

For more information, please visit:
http://www.theguardian.com/technology/2016/mar/01/brazil-police-arrest-facebook-latin-america-vice-president-diego-dzodanData protection

Congress' Parliamentary Investigation Committee regarding Cyber Crimes proposes censorship.

At the beginning of April, a Brazilian Congress' Parliamentary Investigation Committee released its final report examining online criminality. Amid discussions about online paedophilia and revenge porn, it has proposed censorship and amendment of the Marco Civil (Brazilian internet law). The report has proposed at least eight draft bills addressing internet control and 19 measures to combat internet crimes. However, the report has been criticised as undermining fundamental rights, including freedom of expression and the right to privacy.

For more information, please visit:
http://exame.abril.com.br/tecnologia/noticias/relatorio-da-cpi-dos-crimes-ciberneticos-sugere-censura



USA

Media & sports

'Turn that back on!' FCC evaluating whether it should change its rules governing contract negotiations between cable companies and broadcast television stations

Cable companies and other multichannel video programming distributors (MVPDs) continue to be an attractive option for US consumers for high-speed Internet access, cable and premium television channels as well as local television broadcast programming. According to several MVPDs, consumers consider the latter offering – their local programming – to be a 'must have' in any cable subscription, and if an MVPD is unable to provide that programming, customers will simply switch to another provider that can.

Federal law, however, prohibits MVPDs from retransmitting a broadcast station's programming without the station's express consent. Federal law also requires broadcasters and MVPDs to negotiate for such consent – known as 'retransmission consent' – in good faith. Indeed, the United States Federal Communications Commission (FCC) has developed a list of what it considers to be 'objective good faith negotiation standards.' A violation of these standards is considered a per se breach of the good faith negotiation obligation. These standards include, for example, prohibitions against refusing to negotiate for retransmission consent at all, refusing to designate a representative with authority to negotiate retransmission consent, unreasonably delaying the negotiation, and refusing to respond to a consent proposal. Even if the objective standards are satisfied, however, the FCC may consider whether, 'based on the totality of the circumstances,' a party has failed to negotiate retransmission consent in good faith. The FCC has the authority to investigate complaints of bad faith negotiation conduct, and to levy fines and penalties if it concludes that a party or parties acted in bad faith.

In 2014, in response to complaints that certain broadcasters were not negotiating in good faith and, in certain instances, causing MVPD customers to be 'blacked out' from online programming during the negotiation process, the United States Congress passed the STELA Reauthorization Act (STELAR), which subsequently was signed into law by President Obama. In STELAR, Congress directed the FCC to conduct a 'robust examination of negotiating practices,' including 'whether certain substantive terms offered by a party may increase the likelihood of negotiations breaking down' and also to develop a test that examines 'the practices engaged in by both parties if negotiations have broken down and a retransmission consent agreement has expired.' In response to this directive, the FCC recently issued a notice of proposed rulemaking, requesting comments from broadcasters, MVPDs and any other interested party on whether there is a need to update the totality of the circumstances test as well as whether there are specific practices that the FCC should identify as evidencing bad faith negotiation under that test.

As of March 31, 2016, the FCC had received over 125 comments from broadcasters, MVPDs, trade associations and other interested parties regarding the totality of the circumstances test, whether it should be modified and, if so, proposed modifications. Regardless of whether the FCC ultimately decides to modify its rules, the FCC's regulatory scrutiny of contract negotiations between broadcast stations and MVPDs likely will be heightened over the coming months and years in response to Congress' directives in STELAR.

Data protection

FCC proposes rules that would require internet service providers to comply with privacy rules restricting the use and increasing the protection of customer information

On March 31, 2016, the United States Federal Communications Commission (FCC) instituted a proceeding that proposes the adoption of privacy rules for broadband Internet Service Providers (ISPs). The rules, if ultimately adopted, would require ISPs to comply with the traditional privacy requirements of the federal Communications Act, including restrictions on dissemination of customer information as well as increased obligations to protect such information. According to the FCC, 'ISPs are the most important and extensive conduits of consumer information and thus have access to very sensitive and very personal information that could threaten a person's financial security, reveal embarrassing or even harmful details of medical history, or disclose to prying eyes the intimate details of interests, physical presence, or fears.'

The rulemaking proceeding was instituted in response to ISPs needing 'concrete guidance explaining' their privacy responsibilities as well as the need for consumers to be able to protect their privacy. The proposed rules would 'give broadband customers the tools they need to make informed decisions about how their information is



used by their ISPs and whether and for what purposes their ISPs may share their customers' information with third parties.' More specifically, customer data that is 'necessary to provide broadband services and for marketing the type of broadband service purchased by a customer' would not require any customer consent beyond subscribing to the ISPs services. Additionally, unless the consumer affirmatively opts out, ISPs can use customer data for the purpose of marketing other communications-related services and also share such data with their affiliates that provide such services for the purpose of marketing such services. If the ISP wants to use the consumer's data for any other purpose, however, the consumer has to affirmatively and expressly 'opt-in' (i.e., agree) to such use.

The proposed rules would also impose a transparency obligation on ISPs, specifically requiring them to provide customers with clear, conspicuous and persistent notice about the data and information that they will collect and use from the consumer as well identify the third-parties with whom the ISP may share such data. ISPs would also be required to notify consumers of how they can change their privacy preferences.

On the data security side, the proposed rules would require ISPs to implement heightened protection protocols, institute personnel training practices, adopt customer authentication requirements, and also identify a senior manager who will be responsible for data security. In addition, ISPs would be required to assume responsibility for the use and protection of data that is shared with third-parties.

Finally, ISPs would be required to implement procedures for notifying customers of any data breach or unauthorized access or dissemination of customer data.

In the words of the FCC, these rules are designed to 'close the gap' between the current federal privacy regime and the '21st Century telecommunications services provided by broadband networks.'

This action by the FCC is yet another instance of a federal governmental agency invoking its authority to protect consumer privacy in the modern, digitally-interconnected world. While the proposed rules would only apply to broadband ISPs, the FCC's decision to institute this rulemaking as well as recent regulatory and enforcement action by the Federal Trade Commission and state attorneys general confirm that companies that have access to sensitive information about their customers should consider adopting strong data security protocols for such information and also be transparent with its customers about the information it collects, how it will use it, and with whom it may be shared.

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