Hogan Lovells

TMT Horizons

2019

Welcome

The dynamism of the Technology, Media and Telecoms sector is set to continue.

Challengers can reach scale seemingly overnight, forcing market change at a similar speed. Established business models are upended, driving consolidation and restructuring. Regulators rush to respond, radically reshaping the environment.

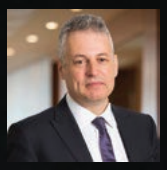
These trends show no sign of slowing down.

In recent years, another unquestioned trend in the sector has been globalization. A shift in the balance of power from local to global has been seemingly inevitable – whether in the rise of "Big Tech", the complexity of supply chains or the explosion of global content production budgets.

That inevitability is now in question as regulators and tax authorities seek to claw back ground, trade policies take a protectionist turn and national security and cultural identity emerge as increasingly important political themes.

This year's TMT Horizons reflects the fact that the intersection between the inherent dynamism of the sector and the increasing challenges to unchecked globalization will dominate the next chapter for TMT.

Michele Farquhar
Partner
Washington, D.C.



Peter Watts
Partner
London

Best Law Firm of the Year 2019
Legalcommunity IP & TMT Awards, Italy, 2019

TMT Deal of the Year
Asia Legal Awards, 2019

The view from Silicon Valley

Increased competition for technology assets from non-traditional buyers, IPO market volatility, and high levels of available cash held by potential buyers mean we expect tech M&A to continue to grow its share of the overall deal market.

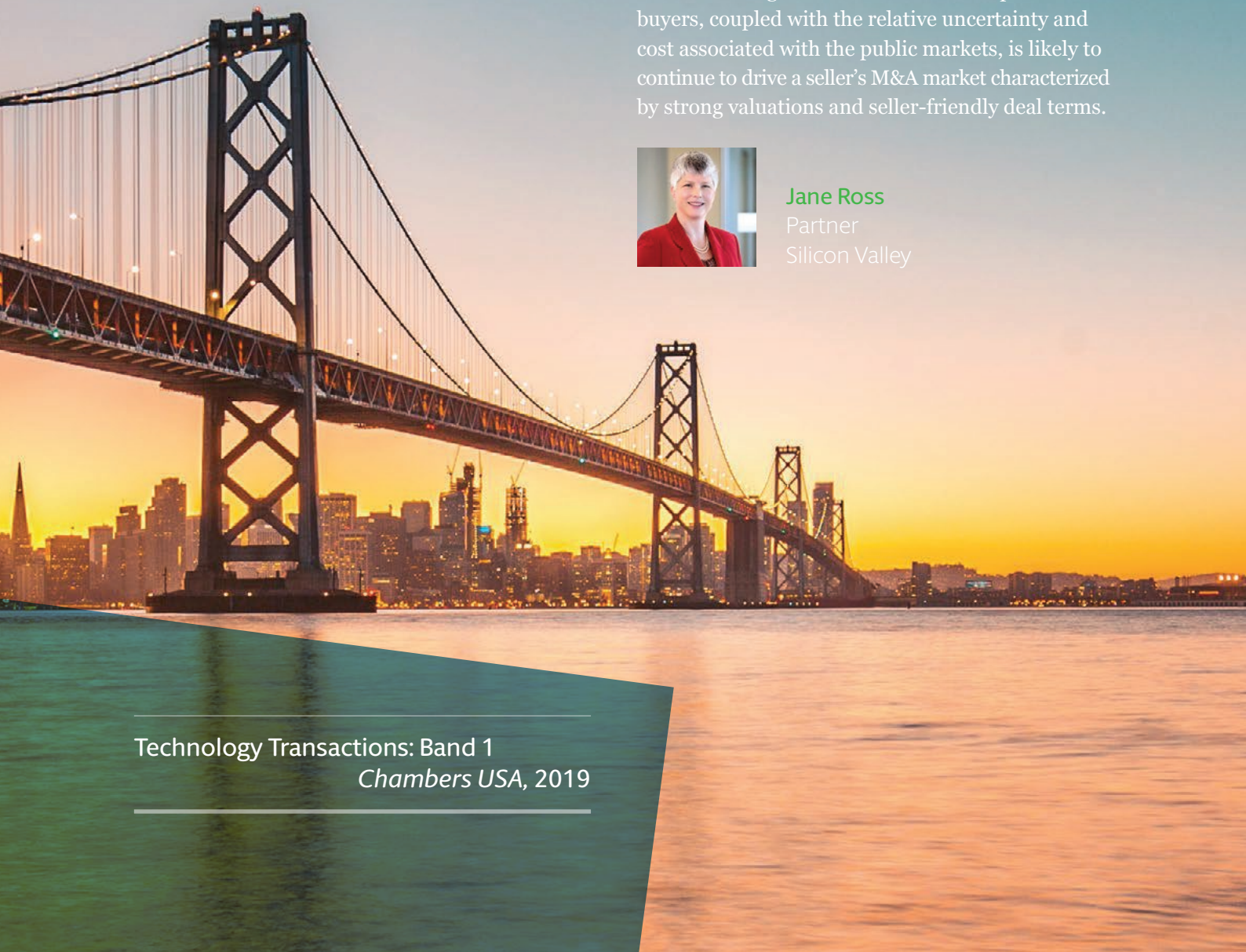
The majority of potential acquirers of a tech company are no longer other tech companies. “Old economy” businesses – companies in the industrial, automotive and consumer industries – increasingly look to drive growth and maintain relevance and competitiveness through tech acquisitions. So consumer companies are acquiring e-commerce capabilities and auto manufacturers are acquiring autonomous vehicle technologies.

This doesn't mean the tech industry itself has lost the acquisition habit. As large tech companies mature, they expand into products and services beyond their core business or via vertical acquisitions. So Facebook and Google acquire Oculus and Waymo respectively; and hardware and social media companies are buying software and digital advertising businesses.

Finally, attracted by high growth and increasing numbers of later-stage technology companies, private equity funds have ramped up their tech acquisition strategies. A number have raised technology-focused funds which are among the most active tech acquirers today.

This increasing number of well-funded potential buyers, coupled with the relative uncertainty and cost associated with the public markets, is likely to continue to drive a seller’s M&A market characterized by strong valuations and seller-friendly deal terms.

Jane Ross
Partner
Silicon Valley



Technology Transactions: Band 1
Chambers USA, 2019

The view from Europe

Telecoms is likely to see continuing decline in the market share of traditional European operators with their roots in fixed line. However, antitrust concerns continue to hinder consolidation of network operators elsewhere meaning traditional telcos increasingly turn their attention to head on competition with the likes of Sky and Liberty Global in providing content.

Media is transformed by the breakup of the Murdoch Empire, ushering in a new era with Disney and Comcast looking to stamp their mark on the Fox and Sky brands in Europe.

Tech remains a significant disruptor across all business sectors. This is accompanied by a dynamic legal environment as regulators struggle with the challenges of maintaining a workable regulatory framework with an increased emphasis on data and cybersecurity.

With content, advertising, and convenience continuing to be key revenue drivers, we see the likes of Google and Amazon competing not only with even newer entrants, like Netflix, but also traditional content companies, the continuing challenge of tech based models to the traditional major players in the advertising market and an increasingly crowded market for tech driven mobility and delivery solutions.

Looking forward, these trends show little sign of weakening at either a global or a regional level. However, taking a European perspective, linguistic, cultural, and political barriers are sometimes more complex than might at first appear from the outside – meaning that the market is often more fragmented, and complex, than might at first appear.

Don McGown
Partner
London

TMT: IT: Italy: Band 1
Chambers Europe, 2019

TMT: Media: France: Band 1
Chambers Europe, 2019

TMT: IT: Spain: Band 1
Chambers Europe, 2019

The impact of China's new Foreign Investment Law on foreign investment in the TMT sector

A quiet revolution has been taking place in China, with the Foreign Investment Law (FIL) due to take effect on 1 January 2020.

The most significant overhaul of the foreign direct investment environment in China since the 1980s, it replaces a regime based on specific types of corporate vehicle with a vehicle-agnostic rulebook. The removal of much of the implementing detail from the final version leaves a legal framework like a doughnut – with a large hole in the middle, to be filled by current unknown implementing regulations.

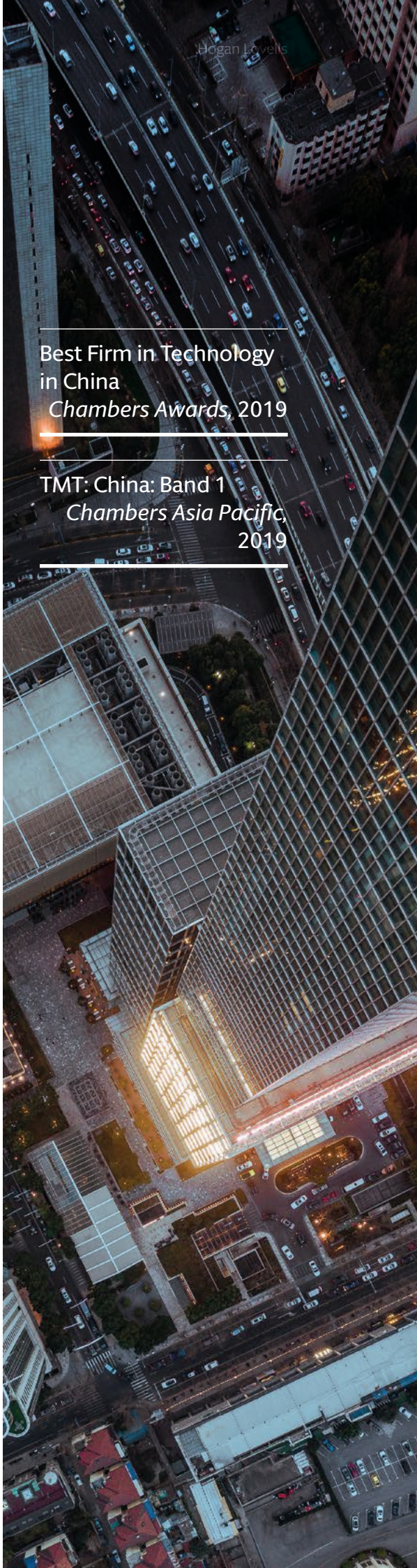
Featuring heavily in the sectors where foreign investment is restricted or prohibited, TMT investments will still commonly be subject to approval.

The 'elephant in the room' remains whether the FIL will address the use of Variable Interest Entity structures – a common workaround structure for investing in sectors that are off-limits or restricted to foreign investment. Those structures have never been publicly endorsed by any Chinese regulator but, in practice, underpin most major e-commerce platforms in China as well as the wealth of many Chinese individuals and foreign investors.

The FIL effectively kicks the can down the road – leaving the door open for future regulation. Some foreign investors may greet this compromise position with a sigh of relief as China did not seek immediately to regulate. However, it does inevitably leave a question mark hanging over the future of existing investments and those made going forward using the VIE structure.

For existing foreign investors, with no sign of a significant liberalization in these sectors, which China views as highly sensitive politically, the options in the event of a restructuring being imposed down the road due to new regulation are very limited.

Andrew McGinty
Partner
Hong Kong



Protecting digital rights in Russia

On 18 March 2019 the Russian President signed the Federal Law introducing the notion of "digital rights" to the Russian Civil Code (the RCC). The law will be in force from 1 October 2019.

The RCC now defines digital rights as "rights under the law of obligations and other rights whose content and ways of exploitation should be determined in accordance with the rules of the information system that has the necessary features as provided by law". The assignment of digital rights is possible only within this information system.

The RCC defines digital rights as civil law rights and a type of property rights. This, in turn, means that digital rights are marketable and can be transferred for a consideration.

It is yet to be clarified if the notion of "digital rights" includes tokens, cryptocurrencies, virtual property, domain names, and electronic accounts. However, even now it is apparent that the concept of digital rights has already made its way into the system of civil law rights.

Overall, a regulatory framework has been created to legitimize commercialization of digital rights in Russia.

Natalia Gulyaeva
Partner
Moscow

TMT: Russia: Band 1
Chambers Europe, 2019

Taxing TMT – a transformative revolution

In the next 18 months, big changes are expected in the world of tax that will affect a large number of businesses in TMT, especially ones involved in the digital economy. This builds upon measures already implemented as part of the OECD/G20 BEPS Project to clampdown on tax avoidance by multinationals.

On 12 February 2019, the OECD released a consultation document on proposals made to address difficulties inherent to taxation of the digital economy. The proposals considered essentially fall under two "pillars". One pillar would create new rules for determining which countries have rights to tax corporate profits. The second pillar would close loopholes in much the same way as recent U.S corporate tax reforms.

The OECD has now reported back to G20 Finance Ministers. It has undertaken to work with the 120+ countries of its Inclusive Framework to deliver a "consensus-based long-term solution" by the end of 2020.

Why is this so important in TMT? First, the digitalization of business is accelerating. Second, some proposals will potentially affect all multinational businesses. And third, the cross-border arrangements implemented by many high-margin technology businesses appear particularly vulnerable to the proposals.

Graham Poole
Senior Director – Economics and Transfer Pricing
London

Rupert Shiers
Partner
London

The future of the Essential Patent

The legal framework for the exploitation of so-called standard-essential patents (SEPs) through fair, reasonable and non-discriminatory (FRAND) licensing terms, defines the economics of applying many technological innovations in real world scenarios.

Two major trends emerging in the field signal the importance of SEP and FRAND principles across the TMT sector.

First, SEPs and FRAND are no longer a significant issue exclusively in the telecommunications industry. Instead, hand in hand with the transformation from a mostly analogue into a digitized and connected world, SEPs become relevant in more and more industries as diverse as the automotive industry (connected cars), manufacturers of household appliances (smart homes) and the healthcare industry (digital health) to name only a few.

Each of these industries already is, or soon will be, confronted with licensing requests from SEP owners which raise the issue of FRAND licensing terms.

Second, this is increasingly a worldwide issue. Case law is developing rapidly in different regions of the world. Those developments are not always consistent or even in the same direction. This is even true for Europe where, although EU law is based on the European Court's 2015 decision in *Huawei v ZTEnational* case, law is developing in a far from uniform way.

These trends are set to continue promising to make SEP and FRAND part of the lexicon of a much wider range of businesses in the future.

Dr. Benjamin Schröer
Partner
Munich

Owning the Future: IP and AI

Companies across the TMT sector, as well as a wide range of other industries, are continuing to investigate artificial intelligence and how it will impact them going forward.

In addition to the complex task of determining how to adopt AI and when the technology will be ripe for their industry, companies continue to struggle with how to protect their AI-related technology.

The ability to patent AI varies across the globe. There are few court decisions or specific laws providing definitive guidance. In addition to helping companies determine what can be patented and where, we are seeing many companies struggle with decisions as to which technology should be kept as a trade secret instead of protected by patent.

Since AI is largely a black box, it is often impossible to determine how the AI inferred a particular output, determining infringement can be difficult. In addition, competitors will have difficulty reverse engineering AI-related technology.

Companies will therefore increasingly need to consider whether they need to change their IP strategy for protecting their AI technology. If they do decide to keep the technology as a trade secret, they will need to determine how to sufficiently define the secret (the black box) and update the definition as the AI changes over time.

Jason D. Lohr
Partner
San Francisco, Silicon Valley

Intellectual Property: Global-wide: Band 1
Chambers Global, 2019

OTT vs TV: The next instalment

We expect to see more U.S. consumers abandon the traditional TV subscription platform and migrate to over-the-top (OTT) providers who offer skinny packages and other video programming alternatives such as Netflix and Hulu.

Traditional facilities-based multichannel video programmers (MVPDs) are countering the OTT threat by improving their video offering with better user interfaces, creating new bundles including mobile and/or home security, and experimenting with skinny packages and their own streaming services. So far this has not dented the steady quarterly migration of subscribers to OTT.

Whilst the impact on traditional cable companies has been minimal – as their high speed data businesses are essential to the provision of streaming video – cord cutting is having a more significant impact on satellite providers of video content. MVPDs believe there is a floor to this trend but there is no sign yet of it approaching.

OTT migration puts further pressure on large media companies to experiment with their own direct to consumer offerings. They do so as they continue to attempt to protect and not overtly disrupt the MVPD subscription model that pays them well and provides the eyeballs for their ad business.

With live sports one of the few remaining "tune in" genres, media companies are going all-in on sports in an effort to continue to support large license fees. This price pressure, along with subscriber loss, is a growing threat to mid- and small-size MVPDs – many are shutting the video segment of their businesses to focus on ancillary businesses like broadband, voice and mobile.

We do not expect this level of flux to decline anytime soon. It remains to be seen who will next jump into the fray and who will exit.

Niki Frangos Tuttle
Partner
Denver

esports – from homes to stadiums

esports is an industry growing at lightning speed. A young and highly dynamic crossroads of sports and entertainment, it is reaching broad global audiences and is correspondingly attracting heavy investment and endorsement from big industry players across all sectors, spanning technology, consumer goods, traditional sports and financial institutions. The buzz and spectacle of esports events and their audience reach can easily outshine most traditional sports events.

The industry generated over US$900 million in revenues in 2018 and esports revenues are expected to grow to US$1.4 billion by 2020.

esports is a particularly attractive proposition for businesses looking to position their brand with young audiences tired of traditional advertising. From in-game brand placement to advertising during live streams or sponsoring an entire tournament-series, esports offer numerous attractive new formats for companies to position their brand message.

Corresponding with the fast rise of this new industry, we are already seeing new regulatory incentives both nationally and on an international level. We are also observing sharpening self-regulation and awareness of IP ownership in the complex network of individual IP contributions that are driving this exciting industry.

All the signs are that these trends will continue and, if anything, accelerate – making esports a key opportunity for brand owners to evaluate in the coming years.

Anthonia Ghalamkarizadeh
Counsel
Hamburg

Space and satellite

2019 will continue the past five years' trend for innovations in space, smaller satellites in larger mega-constellations, big data analytics (in converging wireless, drones and space applications), VC/PE and innovation arm investment in space, and joint ventures between large established and start-up satellite companies, as well as continued globalization of strategic partnerships and financial investments.

Satellite project finance and VC/PE investments are expected to continue apace in 2019, with an inevitable consolidation in the industry, and some of the mega-constellations likely to falter.

Many areas of satellite-related law are evolving, such as export-related requirements placed on new space technologies, data analytics and AI and sovereign perspectives of applying their own regulations to global satellite systems that are "flagged" in one place but gather information globally.

While some areas – such as asteroid mining – have taken a step backward in the queue, there are many changes yet to come in the next several years. Space has never been more accessible, there have never been bigger financial bets placed than are being placed with the mega-constellations. Other innovative technologies, such as AI, 3D printing, satellite refueling technologies, optical and radar satellites, and ground technologies innovation are on the cusp of changing the face of the satellite industry.

Randy S. Segal
Partner
Northern Virginia, Silicon Valley, Washington, D.C.

Transportation: Aviation and Air Travel: Regulation: Band 1
Legal 500 United States, 2019

Drones

We expect some significant changes in the commercial drone market over the next 12-18 months.

From a regulatory perspective, we will see the release of more rules allowing expanded operations of drones, allowing many industries – from healthcare to energy to newsgathering to public safety – to realize the benefits of drone technology in more robust ways. The development of these final rulings may extend beyond this timeline, however understanding the content of the rules and knowing the federal government's approach to safely and securely allowing expanded operations will allow for broader commercial drone applications.

We also would anticipate seeing new legislation and policy around the use of counter-drone technology. Clarity on authority and use will provide over one hundred counter-drone technology companies the ability to use this technology for uses such as protecting sports stadiums, critical infrastructure, amusement parks, and more.

As businesses contemplate this future, increased corporate M&A activity is likely. This will range from acquisitions of companies bringing their drone services in-house to consolidation in the counter-drone industry and from consolidation amongst companies developing various technologies to service drone air traffic management programs.

Lisa Ellman
Partner
Washington, D.C.

Gretchen A. West
Senior Director
Silicon Valley

GDPR for tech – one year on

Technological development presents tech companies with new challenges in applying GDPR principles, including data minimization and privacy by design.

In particular, the development of forms of artificial intelligence such as, facial recognition, driverless cars, the use of drones in logistics, home automation and autonomous machines, smart contracts and more generally the Internet of Things, is a real challenge in terms of adaptation to GDPR rules which aim to balance the right of freedom of individuals with the freedom of private economic initiative, without suppressing technological progress.

The GDPR recognizes a great importance to the "privacy by design" (the design of data collection and processing tools) and "privacy by default" (set these tools in such a way as to reduce the use of personal data) obligations as corollaries of a more general principle of minimization of personal data with respect to the purposes of processing.

We already have seen more and more tech companies implementing these principles in the development of their new products and services. Over coming months and years we expect to see an increasing focus in the tech sector companies on governing and regulating processes from source and finding ways to ensure responsible and sustainable technological development methodologies which achieve necessary levels of privacy protection.

Massimiliano Masnada
Partner
Rome

Cyber Law (Including Data Privacy & Data Protection): U.S.: Band 1
Legal 500 United States, 2019

Has the U.S. got GDPR disease?

In May 2018, the EU's General Data Protection Framework (GDPR) took effect, imposing significant new data protection obligations and maximum fines of 4% of global worldwide turnover.

At the same time, California legislators were readying to pass the landmark California Consumer Privacy Act (CCPA), which borrowed key concepts from the GDPR and takes effect in January 2020.

The CCPA applies to all for-profit companies with annual revenues of $25 million (likely just in California), that handle the personal information of 50,000 or more Californians annually, or that derive 50% of annual revenues from certain disclosures of consumers' personal information.

Covered businesses are required to provide detailed notice of data processing activities, and grant Californians rights to access, delete, and opt out of certain disclosures of their personal information. The maximum regulatory fine is $7,500 per affected consumer. There is also a private right of action for breaches of certain data with maximum penalties of $750 per affected consumer.

The CCPA has kicked off a debate in Congress and other states about their own data protection legislation. Companies doing business in the U.S. should be readying for CCPA compliance, while keeping an eye on the impact of follow-on legislation at federal and state levels.

Bret Cohen
Partner
Washington, D.C.

Data Protection: Global-wide: Band 1
Chambers Global, 2019

Will Brexit be good or bad for Big Data innovation in the UK?

Brexit has become a synonym of uncertainty.

Politicians struggle to find a magic formula for a prosperous Brexit whilst the efforts of most businesses appear focused on mitigating the damage of a possible “no-deal Brexit.”

Data driven technological innovation – whether development of truly effective AI, acceleration of the arrival of connected vehicles, or the social benefits of clinical trials – are not waiting for a resolution of Brexit. These are global phenomena.

This means that the effect of Brexit on data innovation needs to be understood in the context of global regulatory trends. In other words, irrespective of Brexit, the UK is likely to participate in the current regulatory trends affecting the collection, use and sharing of data.

We should expect therefore, a constant tension between the demands for greater access to data and the tightening of regulatory frameworks and their interpretation. The UK Information Commissioner has made it clear that her greatest concern is unfair and invisible uses of data. This will continue to be the case after Brexit.

So whatever shape Brexit takes, anyone engaged in data innovation will need to be able to demonstrate that their practices are compatible with strict regulatory demands.

Eduardo Ustaran
Partner
London

Is China isolated on privacy?

China's approach to data protection regulation can often mystify: a history of lax enforcement, with a move, of late, towards tough data protection standards that threaten data localization and borrow heavily from GDPR. At the same time, the country moves towards a "social credit" system that promises to analyze thousands of data points to generate automated judgements on people's value to society.

The complexity and apparent contradictions of the regulatory environment underlines China's unique political and cultural context. But it goes too far to say that China is isolated on privacy.

Other jurisdictions in the Asia-Pacific region are drawing inspiration from China's moves. India's draft Data Protection Bill makes provision for localization of critical personal data. Vietnam's Cyber Security Law shares some features with China's, although to date appears focused on the removal of online content considered sensitive to the ruling Communist Party.

The region has, more generally, seen a trend towards adopting key features of GDPR, and in this respect China, on paper at least, has moved to the vanguard. The move here does fairly reflect consumers' concerns about the handling of their personal data in China's increasingly wired economy, even if data controls also serve in China's quest for internet sovereignty enshrined in the Cyber Security Law.

Data regulation is increasingly linked to trade. And in this respect, China is broadly aligned with most other countries.

For the future, we can expect to see data regulation again come to the fore in coming months as geopolitical tensions concerning trade play out and resolve, and impacts on foreign investment and market access to China become clear.

Mark Parsons
Partner
Hong Kong

EU trade policy and the TMT sector

We expect non-EU telecoms operators to face an increasing number of regulatory hurdles in their efforts to both operate and invest in the EU market.

In March 2019 the European Commission published a recommendation that essentially seeks to establish EU-wide minimum common security requirements for entities involved in the development of 5G networks, including foreign service and equipment suppliers.

More specifically, the recommendation aims to design EU-wide tools to address 5G network cybersecurity risks including possible mitigating measures (for example, third-party certification for hardware, software or services) and national technical regulations providing for mandatory certification of information and communications technologies products relevant to 5G networks.

Whilst the recommendation is not legally-binding, in light of growing concerns over security threats connected with growing Chinese technological presence in the EU, Member States are likely to implement it. We have already seen initiatives across a wide range of EU Members including Germany, the UK, and France whilst the Netherlands, Austrian, Belgium or the Czech Republic, and others are actively considering introducing new rules with regard to access to their 5G network.

In addition an EU regulation also adopted in March 2019 seeks to enhance cooperation between the EU Member States and the European Commission in the field of foreign direct investments (FDI) screening. Key features of the new regime are a "cooperation mechanism" for Member States to exchange information where FDI is undergoing screening by a national authority; an ability for the Commission to issue non-binding opinions (including as to whether an investment might affect projects of EU interest); and reaffirmation that national security concerns remain within the realm of EU Member States (as opposed to that of the European Commission).

Going forward we expect that the regulation will lead EU Member States to further scrutinize foreign investments, inter alia, in the field of telecommunications networks, which a high number of them consider to be strategic and essential infrastructures.

Lourdes Catrain
Partner
Brussels

Brexit and TMT trade

The TMT sector has proved to be particularly resilient in the Brexit debate, with a number of firms opting for increasing their investments into the UK, and remaining cautiously optimistic around the prospect of a good deal with the EU27 in a post-withdrawal scenario.

At multilateral level, the UK's membership of the WTO will not be affected by the Brexit outcome. However, if the UK leaves the EU, we anticipate that the UK Government will have to build new coalitions on the world stage when it comes to tackling the issues of data restriction and forced localization during the negotiations. In this context, the UK voice in Geneva will be crucial to address some key issues that TMT firms face globally.

The last two decades have seen the exponential growth of domestic and cross-border electronic commerce. Despite this fast increase in electronic transactions, there are no specific multilateral rules in the WTO regulating this type of trade.

In addition to local laws, businesses and consumers instead have to rely on rules agreed by some countries in their bilateral or regional trade agreements to facilitate cross-border TMT trade. In practice, these rules do not always operate very effectively.

In January 2019 the WTO launched negotiations to put in place global rules on electronic commerce. 76 WTO members, including the U.S., China, the EU and Japan, agreed to start negotiating a new framework. The main topics of discussion are forced localization and restrictions on cross-border data flows, among other protectionist measures that some countries are adopting.

These negotiations have the potential to result in a multilateral legal framework that consumers and businesses could rely on to make it easier to do business online. They are therefore potentially very significant for the TMT sector.

Aline Doussin
Partner
London

Risk Advisory: Brexit: Band 1
Legal 500 UK, 2019

U.S. – Trade policy for the tech sector

The Trump Administration's "America First" policies pose serious challenges for U.S. and multinational tech companies.

Punitive duties imposed on $250 billion of imported goods from China under Section 301 of the Trade Act of 1974 as part of an ongoing struggle over U.S.-China technology trade. These included duties covering products that were identified as Chinese industrial policy priorities under Made in China 2025 which include information technology, artificial intelligence, and robotics. The 25% duties have posed serious challenges for U.S. and multinational technology businesses sourcing products from China and face significantly higher U.S. duties and serious disruption of their supply chains and sourcing strategies. Negotiations to resolve the dispute may, or may not, result in total removal of the U.S. tariffs on Chinese technology.

The Administration has begun aggressively wielding U.S. export controls and economic sanctions, including against Chinese technology companies.

A major expansion of CFIUS, the interagency committee that conducts national security reviews of foreign investments, has led to a major increase in the number of transactions subject to CFIUS scrutiny, and particularly acquisitions by Chinese firms. Certain transactions/investments by non-U.S. companies now require mandatory filings. Any acquisition of or even minority investment in a U.S. business by a non-U.S. company should include a CFIUS assessment.

The Export Control Reform Act established a permanent statutory basis for control of commercial and dual-use items licensed by the Department of Commerce. This expands U.S export controls to cover a new, as yet undefined, category of "emerging and foundational technologies." The Commerce Department's consultation has identified AI, machine learning, robotics, biotech, position, navigation and timing technology, microprocessors, advanced computing, data analytics, quantum information and sensing, 3D printing, and robotics as amongst the potential technologies in this category. Understanding the implementing regulations when published will be critical.

Warren H. Maruyama
Partner
Washington, D.C.

International Trade: U.S.:
Nationwide: Band 1
Chambers USA, 2018

Will 5G worsen the digital divide?

If not managed properly, the emergence of 5G could increase the digital divide.

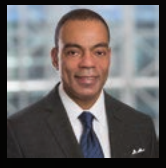
Initial 5G deployments will be expensive in many parts of the world where millimeter wave (24 GHz and above) spectrum will be used to deploy 5G. Millimeter wave spectrum is plentiful, allowing for far greater network capacity than the spectrum used for 4G, but millimeter wave signals fall off much more quickly than the signals transmitted over the lower band spectrum used for 4G, requiring a dramatically larger number of cell sites, on average, to achieve the same geographic coverage.

The greater the number of cell sites required, the more expensive it will be to achieve seamless, wide area coverage. Verizon Wireless' very limited millimeter wave deployments of 5G in Minneapolis and Chicago, for example, cover only very small pockets in those cities, essentially creating isolated fast and high-capacity "hot spots."

Past experience with the introduction of advanced mobile technology suggests that mobile carriers will initially deploy 5G where they expect to generate the greater return, which tends to be in core business districts or wealthy residential neighborhoods.

Because 5G is expected to spur economic growth where it is deployed, regulators who are concerned about the digital divide will be looking for ways to incentivize mobile carriers to deploy 5G over better propagating spectrum or to provide regulatory relief or other support for 5G deployments using millimeter wave spectrum.

It will be interesting to see what policies and practices emerge to address this challenge.



Ari Fitzgerald
Partner
Washington, D.C.

5G – the view from Mexico

5G relies on different issues. These include spectrum, infrastructure and regulation.

In Mexico the regulator has allocated 584 MHz for IMT. This represents 44.9% of ITU's recommended amount of spectrum for 2015.

Despite the lag, there has been progress.

In 2017, the 700 MHz band was assigned to build a new 4.5G network for wholesale services. This currently covers 32% of the population but shall cover 92.2% by 2024.

In 2018, part of the 2.5 GHz band was awarded (with social coverage obligations) and the 600 MHz band was released from television services and will be ready for auction.

Last March, the regulator issued a study identifying 11,190 MHz (allocated and unallocated, low and high frequencies) that could be devoted to 5G.

In terms of infrastructure (including fiber optic), each municipality has its own rules and payments for installing towers/poles and cables which hinders the deployment of new networks. But the regulatory framework has not been updated to cover new technologies and IoT services.

Looking to the near future, it is predicted 5G services could be released by Telcel and/or AT&T in 2020, which would position Mexico in the forefront of Latin America. It is expected that in 2025, 14% of the total connections will be 5G in Mexico, in contrast with the 8% average in Latin America and the Caribbean.

Federico Hernández Arroyo
Partner
Mexico City

Telecoms & Broadcast: Regulatory: Band 1
Legal 500 United States, 2018

Platform regulation – a global trend

We expect to see more legislation, policies and public debate regarding the regulation of online platforms globally.

The EU is the frontrunner in this regard.

On 17 April 2019 the European Parliament approved a new Regulation regarding platform-to-business trading practices with an aim to establish a fair, trusted and innovation-driven environment for businesses when using online platforms. This is the first regulation of its kind and covers online platform intermediaries and general online search engines that provide services to businesses or consumers in the EU.

The Regulation requires terms and conditions to be more transparent and for platforms to give reasons for suspending or terminating a business' account.

We can expect other jurisdictions to closely follow the implementation of the Regulation, as this is in line with global trends towards greater scrutiny of digital markets. In addition, a number of competition authorities including South Africa, Korea, France, Japan, and the UK have called for international coordination to deal with digital platform concerns in the fields of e-commerce, search, or social media.

Falk Schöning
Partner
Brussels

Technology and antitrust – the view from Brussels

The near future will see continuing developments in thinking on how best to apply competition law to the digital economy particularly given its extreme returns to scale, the network effects that may arise, and the importance of personal and non-personal data.

The European Commission has revealed some of its priorities in this area through the high-profile infringement decisions it has taken in recent years.

However, the Commission's views, and the rigor of its factual analysis, are subject to correction by the EU Courts. It should not automatically be assumed that those decisions are "the law".

The recently published report on Competition Policy for the digital era, authored by advisors appointed by Commissioner Vestager, is another indicator of possible ways forward for EU competition law. But many of its prescriptions for digital platforms and data – such as reversing the burden of proof in some cases – are controversial. The various national competition authorities also need to be considered, and their perspectives are not necessarily the same as those of the European Commission.

What is undeniable is that antitrust in the tech sector is in transition. What is less clear is the final destination.

Chris Thomas
Partner
Brussels

For more information

TMT Horizons is a snapshot of just some of the issues the industry will face this year. Our team is working on those and many other issues to provide clients around the globe with valuable and innovative solutions to their most complex challenges – present and future.

If you want to know more about our team contact one of the global leads or explore some of our additional resources.

Additional resources

www.hoganlovells.com where you can find information on everything from satellite to digital health and links to our blogs on everything from privacy to drones.

www.hlmediacomms.com our global blog for everything TMT.

www.hlengage.com where you can find detailed analysis of fintech, blockchain, and payments.

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