
THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

SIXTH EDITION

EDITOR
JOHN P JANKA

LAW BUSINESS RESEARCH

THE TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

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JOHN P JANKA

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EDITOR'S PREFACE

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

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

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

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

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

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

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

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

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

John P Janka

Latham & Watkins LLP

Washington, DC

October 2015

LIST OF ABBREVIATIONS

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

List of Abbreviations

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

List of Abbreviations

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

Chapter 10

HONG KONG

*Simon Powell and Chi Ho Kwan*¹

I OVERVIEW

Hong Kong has one of the most developed telecommunications and internet services markets in the world. Its legal and regulatory system promotes competitiveness while at the same time striving to enhance and facilitate business investment.

In terms of telecommunications, there are in total four mobile network operators,² 24 local fixed network operators³ and 273 external fixed telecommunications service providers⁴ serving Hong Kong's population of slightly over 7.30 million in a land area of approximately 1,000 square kilometres.⁵ The residential fixed line penetration rate is 99.29 per cent⁶ and the mobile subscriber penetration rate is 228.8 per cent.⁷ The competition for internet services is intense, with a total of 210 ISPs.⁸ The number of

1 Simon Powell is a partner and Chi Ho Kwan is an associate at Latham & Watkins.

2 As of July 2015, provided by the Office of the Communications Authority (OFCA).

3 i.e., licensees authorised to provide facility-based local fixed telecommunications services under an FTNS licence, an FCL or a UCL using wireline or wireless technology (as of August 2015, provided by OFCA).

4 i.e., licensees authorised to provide facility-based external telecommunications services (ETS) under an FTNS licence, an FCL or a UCL, and those authorised to provide service-based ETS under SBO licences (as of August 2015, provided by OFCA).

5 As of mid-2015, provided by the Census and Statistics Department (CSD).

6 The residential fixed line penetration rate is calculated by dividing the number of residential fixed lines by the number of households in Hong Kong (as of June 2015, provided by OFCA).

7 As of June 2015, provided by OFCA.

8 i.e., licensees authorised to provide internet access services under an FTNS licence, an FCL, a UCL or an SBO licence (as of August 2015, provided by OFCA).

registered customer accounts with broadband access exceeds those with dial-up access by approximately 2.08 million, and the household broadband penetration rate is 83.2 per cent.⁹ According to OFCA, there are approximately 2.39 million subscribers to licensed domestic pay television services in Hong Kong,¹⁰ and there are, according to Nielsen Hong Kong, around 2.46 million households in Hong Kong.¹¹ There are more than 38,000 Wi-Fi access points in the city,¹² and the numbers continue to grow. As these figures demonstrate, the use of telecommunications services is advanced and widespread in Hong Kong.

Looking at television broadcasting, Hong Kong is a peculiar place in that, despite the fact that there is no limit to the number of licences that can be granted, there have only been two domestic free-to-air television programme service providers in the past 30 years. On 1 April 2015, the Chief Executive in Council granted a third domestic free-to-air television programme service licence to HK Television Entertainment Company (HKTVE), enabling HKTVE to provide free television services in Hong Kong using fixed network as its transmission mode. It has not yet commenced its service. Further, as from 1 April 2016, one of the two original domestic free-to-air television service providers, Asia Television Limited will cease to be a domestic free television programme service licensee following the expiry of its licence, reducing the number of licensees back to two. There are currently three domestic pay television service licensees (Hong Kong Cable Television Limited, PCCW Media Limited and TVB Network Vision Limited).

In addition to domestic free-to-air and domestic pay television service providers, there are two other main categories of television broadcasting licences: non-domestic television programme service licences (mainly satellite television services) and other licensable television programme service licences (mainly hotel room television services). Domestic television licences (both free-to-air and pay) are granted and renewed by the Chief Executive in Council (with recommendations from the Communications Authority (CA)), while the CA issues and renews licences in the other two categories. Post-licensing, the responsibility for regulating compliance with the relevant rules and regulations and monitoring compliance and non-compliance rests mainly on the CA.

There are three providers of analogue sound broadcasting services operating 13 radio channels.¹³ Of the three providers, one is funded by the government (and does not hold a sound broadcasting licence). Although there are only 13 local radio channels, given the proximity of Hong Kong to mainland China, it is not uncommon for radio signals from radio stations on mainland China to be picked up in Hong Kong. In March 2011, the government granted 12-year sound broadcasting licences to three providers for the provision of DAB services in Hong Kong. They are required under their licences to provide 24-hour DAB services within 18 months of the licences being granted and launched in stages, with a wide variety of programmes. As of November 2013,

9 As of June 2015, provided by OFCA.

10 Ibid.

11 According to statistics from April 2015 to June 2015, provided by the CSD.

12 As of August 2015, provided by OFCA.

13 As of September 2013, provided by OFCA.

there were four providers of DAB services operating 18 radio channels. Of these four providers, one is funded by the government and does not hold an audio broadcasting licence.

The Chief Executive in Council is responsible for issuing sound broadcasting licences.

II REGULATION

i The regulators

The Telecommunications Authority (TA) and the Office of the Telecommunications Authority (OFTA)

Prior to 1 April 2012, the Hong Kong telecommunications industry was regulated by the TA through its executive arm, OFTA. OFTA advised and regulated the telecommunications industry with a view to formulating macro-supervisory policies, while at the same time supervised the licensing of telecommunications services providers (such as unified carriers, space station carriers and mobile virtual network operators). Its other roles included enforcing fair competition in the market, formulating, allocating and managing radio frequency spectrum and satellite coordination. OFTA was also responsible for supervising and overseeing the implementation and enforcement of measures against unsolicited electronic messages. OFTA also represented Hong Kong in the International Telecommunication Union and other international forums.

The Broadcasting Authority (BA) and the Television and Entertainment Licensing Authority (TELA)

Prior to 1 April 2012, the broadcasting industry in Hong Kong was regulated by the BA, an independent statutory body established under the Broadcasting Authority Ordinance¹⁴ comprising members appointed by the Chief Executive of Hong Kong. The BA's responsibilities included handling licence applications and renewals, handling complaints, conducting enquiries, overseeing the enforcement of fair competition and levying sanctions on licensees who breached the laws, rules and regulations. It relied on the Commissioner of TELA to discharge its executive functions.

As the executive arm of the BA with regard to broadcasting regulation, TELA was mainly responsible for dealing with complaints against the contents of broadcasting programmes and complaints regarding anti-competitive behaviour, and for processing applications (new and renewals) for television programme service licences.

Further, as the regulatory agency responsible for the entertainment, film and newspapers industries, TELA also monitored publications, handled film censorship, and processed applications for other entertainment and gaming licences (such as amusement arcade licences and mahjong licences) and the registration of newspapers.

14 Chapter 391 of the Laws of Hong Kong.

The CA and OFCA

In light of the continued blurring of the roles of the BA and the TA, on 1 April 2012, the Communications Authority Ordinance¹⁵ came into operation, and the CA was created as a unified regulator to service the broadcasting and telecommunications industries. The functions of the BA and the TA were transferred to the CA. Like the TA before it, the CA operates through an executive arm, OFCA. OFCA is a combination of the broadcasting arm of TELA (other TELA functions were transferred to other government departments) and OFTA. The Office for Film, Newspaper and Article Administration under OFCA took over TELA's previous functions in relation to film classification, control of obscene and indecent articles and newspaper registration, but the issuance of entertainment licences was transferred to the Home Affairs Department. The CA took over all powers and functions of the TA and the BA, and the TA and the BA were both dissolved on 1 April 2012.¹⁶

The major pieces of legislation administered by OFCA are:

- a* the Communications Authority Ordinance;
- b* the Telecommunications Ordinance;¹⁷
- c* the Unsolicited Electronic Messages Ordinance (UEMO);¹⁸
- d* the Broadcasting Ordinance;
- e* the Competition Ordinance;¹⁹
- f* the Broadcasting (Miscellaneous Provisions) Ordinance;²⁰ and
- g* the Trade Descriptions Ordinance (TDO).²¹

The purpose of the Telecommunications Ordinance is to 'make better provision for the licensing and control of telecommunications, telecommunications services and telecommunications apparatus and equipment'. For this purpose, the Telecommunications Ordinance contains provisions regulating, *inter alia*, licensing, preventing some anti-competitive practices and imposing some restrictions on ownership.

The Legislative Council enacted the Competition Ordinance in June 2012, giving the CA concurrent jurisdiction with the newly established Competition Commission with regard to the investigation and bringing of enforcement proceedings in respect of competition cases in the communications sector before the Competition Tribunal (the tribunal established within the judiciary to hear and adjudicate competition cases). The Competition Ordinance is being implemented in phases. When the competition rules in the Competition Ordinance come into force, the competition provisions in the Broadcasting and Telecommunications Ordinances will be repealed simultaneously.

The UEMO 'provide[s] for the regulation of the sending of unsolicited electronic messages and for connected purposes' and was adopted in 2007. All forms of commercial

15 Chapter 616 of the Laws of Hong Kong.

16 Part 2, Section 7 of the Communications Authority Ordinance.

17 Chapter 106 of the Laws of Hong Kong.

18 Chapter 593 of the Laws of Hong Kong.

19 Chapter 619 of the Laws of Hong Kong.

20 Chapter 391 of the Laws of Hong Kong.

21 Chapter 362 of the Laws of Hong Kong.

electronic messages with a ‘Hong Kong link’ are regulated so as to monitor and regulate ‘professional spamming activities’. Users of telecommunications services in Hong Kong now have an option to register on facsimile, short message and pre-recorded message do-not-call registers. As of August 2015,²² more than 2.8 million numbers have been registered. However, the effectiveness of this legislation is sometimes queried, as service providers in various industries still appear able to circumvent the regulations and restrictions, and continue to make or send unsolicited marketing calls, facsimiles and text messages.

The purpose of the TDO is:

[to] prohibit false trade descriptions, false, misleading or incomplete information, false marks and misstatements in respect of goods provided in the course of trade or suppliers of such goods; to confer power to require information or instruction relating to goods to be marked on or to accompany the goods or to be included in advertisements; to restate the law relating to forgery of trade marks; to prohibit certain unfair trade practices; to prohibit false trade descriptions in respect of services supplied by traders; to confer power to require any services to be accompanied by information or instruction relating to the services or an advertisement of any services to contain or refer to information relating to the services; and for purposes connected therewith.

On 19 July 2013, amendments to the TDO came into effect to ‘provide greater protection for consumers by extending its coverage from goods to services and specified unfair trade practices’²³ by prohibiting false trade descriptions of services, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepted payments. The CA has concurrent jurisdiction with the Customs and Excise Department to enforce these provisions in the broadcasting service sector. The CA does not preview or pre-censor any material before it is broadcast. Editorial responsibility lies with the licensees themselves. The CA has promulgated a set of codes of practice for television and sound broadcasting services to provide guidance on these issues to the service providers.

The Office of the Privacy Commissioner for Personal Data (Privacy Commissioner)

The Privacy Commissioner is the only independent privacy commissioner in Asia. The Privacy Commissioner has formulated operational policies and procedures relating to the implementation of privacy protection provisions, and is responsible for ensuring the protection of the privacy of individuals with respect to personal data and for overseeing the administration and supervision of the Personal Data (Privacy) Ordinance (PDPO),²⁴ the legislation that regulates the collection and use of personal data in Hong Kong.

There are six data protection principles under the PDPO that must be adhered to, the fourth of which deals with the security of personal data. Telecommunications and broadcasting service providers must be prudent at all times to safeguard personal data that are in their possession against unauthorised or accidental access, processing,

22 Based on the Registration Statistics on Do-not-call Registers published by OFCA.

23 Press release of the OFCA dated 15 July 2013.

24 Chapter 486 of the Laws of Hong Kong.

erasure or other use. There have been several incidents in Hong Kong regarding the alleged breach of this principle: for example, the leakage of personal data by members of the Hong Kong police force as a result of a peer-to-peer application that was installed on their personal computers. The Hong Kong police force's alleged lack of awareness of the potential impact of such programmes led to the leakage of important personal data to the public via the internet. A second example is the alleged misuse of the personal data of more than 2 million individuals in Hong Kong that had registered under a rewards programme run by the service provider of the biggest electronic payment system in Hong Kong (Octopus).²⁵ The leak of the personal data of Octopus users was so significant that the Privacy Commissioner issued its first-ever interim report on its investigation into the matter at the end of July 2010. The final report was published in October 2010.

In response to increasing concerns over the alleged misuse of personal data, the PDPO was amended in 2012 to:

- a* address the unauthorised disclosure of personal data by a person who obtained such personal data from a data user;
- b* extend the enforcement power of the Privacy Commissioner;
- c* clarify the requirements when using personal data for direct marketing and when providing personal data to another for use in direct marketing; and
- d* provide legal assistance to an aggrieved individual seeking compensation from a data user for damages suffered as a result of the data user's contravention of any requirement imposed by the PDPO in relation to their personal data.

The Privacy Commissioner has published codes and guidelines on personal data privacy protection regarding the internet for information technology practitioners, biometric data users, CCTV and drone operators as well as mobile service operators.

Sources of law

Hong Kong's laws governing broadcasting, communications, media and the publication of books and newspapers are scattered across multiple pieces of legislation, including:

- a* the Communications Authority Ordinance;
- b* the Broadcasting Ordinance;
- c* the Competition Ordinance;
- d* the Film Censorship Ordinance;²⁶
- e* the Interception of Communications and Surveillance Ordinance;²⁷
- f* the Telecommunications Ordinance;

25 Octopus runs a rewards programme for customers to incentivise the usage of the Octopus card. When one registers for the Octopus reward programme, certain personal data are provided to Octopus. In the summer of 2010, it was revealed that Octopus had been selling personal data of those registered for the reward programme to other unrelated service providers (such as insurance companies) for direct marketing purposes. In July 2010, Octopus disclosed that it had made HK\$44 million since early 2006 by selling personal data.

26 Chapter 392 of the Laws of Hong Kong.

27 Chapter 589 of the Laws of Hong Kong.

- g* the UEMO;
- h* the Books Registration Ordinance;²⁸
- i* the Registration of Local Newspapers Ordinance;²⁹
- j* the TDO;
- k* the PDPO; and
- l* the Competition Ordinance.

The Communications and Technology Branch of Hong Kong's Commerce and Economic Development Bureau (CEDB) is the policy bureau responsible for broadcasting and telecommunications policy. However, the responsibility for supervision of licensees rests with the CA.

ii Ownership restrictions

The Telecommunications Ordinance

The CA has power to impose conditions, including the period of validity, in respect of the licences issued under the Telecommunications Ordinance. In addition, the CA has authority to require a licensee to comply with the terms of its licence and any applicable legislation, regulations and codes of practice, and to suspend or revoke licences in accordance with the Telecommunications Ordinance or other rules or regulations to protect the public interest.

The Telecommunications Ordinance disqualifies two categories of person from controlling an entity with a sound broadcasting licence: 'disqualified persons' and 'unqualified persons'. Subject to exemptions, disqualified persons are restricted from exercising control (or increasing control) over a sound broadcasting licence holder.³⁰ 'Disqualified persons' include advertising agents, suppliers of broadcasting materials to licensees, a sound broadcasting licence holder, any person who (as its business) transmits sound or television material, whether in Hong Kong or outside Hong Kong, a domestic free-to-air or a domestic pay-TV licensee, or an associate of any of such persons.³¹ 'Unqualified persons' refers to persons who are not for the time being ordinarily resident in Hong Kong³² and who have not at any time been resident for a continuous period of no less than seven years; or, in the case of a company, is not a company that is

28 Chapter 142 of the Laws of Hong Kong.

29 Chapter 268 of the Laws of Hong Kong.

30 Section 13G of the Telecommunications Ordinance.

31 Section 13A of the Telecommunications Ordinance.

32 'Ordinarily resident in Hong Kong':

a in the case of an individual, means:

- (i) resident in Hong Kong for not less than 180 days in any calendar year; or
- (ii) resident in Hong Kong for not less than 300 days in total in any two consecutive calendar years; and

ordinarily resident in Hong Kong.³³ The aggregate of the voting shares that can be held by ‘unqualified persons’ may not exceed 49 per cent of the total number of voting shares of a sound broadcasting licence holder.

The CA also imposes a disposal restriction within a three-year period after the grant of a sound broadcasting licence.³⁴ Unless the CA otherwise agrees, the right, title or interest in 15 per cent or more of the shares in a sound broadcasting licence holder may not be transferred or acquired, directly or indirectly, within the three years after the grant date. Any agreement or similar arrangement or understanding that breaches this requirement is void.

Where there is a change in relation to a carrier licensee, the CA may conduct investigations to ascertain whether that change has, or is likely to have, the effect of substantially lessening competition in a telecommunications market and, if so, to direct the licensee to take such steps as might be necessary to eliminate or avoid such effect. These provisions are triggered when there is a ‘change’ in relation to a carrier licence, which is deemed to be the case where a person (either alone or with an associated person)³⁵ becomes the beneficial owner or voting controller of more than 15 per cent of the voting shares in the licensee (save where a person does not acquire more than 30 per

b in the case of a company, means a company:

- (iii) that is formed and registered in Hong Kong under the Companies Ordinance (Cap 622);
- (iv) in which case: if not more than two of its directors take an active part in the management of the company, each of those directors is for the time being ordinarily resident in Hong Kong and each of them has at any time been resident for a continuous period of not less than seven years; or, if more than two of its directors take an active part in the management of the company, a majority of those directors are each of them, for the time being ordinarily resident in Hong Kong and have at any time been resident for a continuous period of not less than seven years; and
- (v) the control and management of which is *bona fide* exercised in Hong Kong.

33 Section 13I of the Telecommunications Ordinance.

34 Section 13J of the Telecommunications Ordinance.

35 ‘Associated person’ includes:

a where the licensee is a natural person:

- (i) a relative of the licensee;
- (ii) a partner of the licensee and a relative of that partner;
- (iii) a partnership in which the licensee is a partner;
- (iv) a corporation controlled by the licensee, by a partner of the licensee or by a partnership in which the licensee is a partner; or
- (v) a director or principal officer of a corporation referred to in (iv);

b where the licensee is a corporation:

- (i) an associated corporation (being a corporation over which the licensee has control or, where the licensee is a corporation, a corporation that has control over the licensee or that is under the same control as is the licensee);
- (ii) a person who controls the corporation and, where the person is a natural person, a relative of the person;

cent of the voting shares in the carrier licensee and (1) is not or does not concurrently become the beneficial owner or voting controller of more than 5 per cent of the voting shares in any other carrier licence holder or (2) acquires the power to influence the affairs of such other carrier licence holder as he or she wishes); a person becomes the beneficial owner or voting controller of more than 30 per cent of the voting shares in the licensee; or a person becomes the beneficial owner or voting controller of more than 50 per cent of the voting shares in the licensee, or acquires the power (whether or not in the form of voting shares) to control the affairs of the carrier licence such that the carrier licence holder must act in accordance with such person's instructions.³⁶

The Broadcasting Ordinance

The Chief Executive in Council grants licences under the Broadcasting Ordinance for domestic free-to-air and domestic pay-TV programme services, whereas the CA is responsible for granting licences for non-domestic and other licensable television programme services.³⁷

Control restrictions for broadcasting licences are set out in Section 8(4) of the Broadcasting Ordinance. The restrictions in relation to domestic free-to-air and domestic pay-TV programme service licences are:

a the exercise of the control and management of the licence holder must be *bona fide* in Hong Kong and, where there are two or more directors (the majority being individuals as opposed to corporates), the individuals who actively participate in the company must satisfy a residency requirement.³⁸ The residency requirement is equally applicable to those directors who actively participate in management and operations, and to the principal officers (being those in charge of the selection, production or scheduling of television programmes) of the licence holder; and

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- (iii) a partner of a person who controls the corporation and, where the partner is a natural person, a relative of the person;
 - (iv) a director or principal officer of the corporation or an associated corporation and a relative of the director or principal officer; or
 - (v) a partner of the corporation and, where the partner is a natural person, a relative of the partner; and

- c* where the licensee is a partnership;
 - (i) a partner of the partnership and, where the partner is a natural person, a relative of the partner;
 - (ii) a corporation controlled by the partnership, a partner in the partnership or, where a partner is a natural person, a relative of the partner;
 - (iii) a corporation of which a partner is a director or principal officer; or
 - (iv) a director or principal officer of a corporation referred to in (iii).

36 Sections 7P(16) and (17) of the Telecommunications Ordinance.

37 Sections 8(1) and (2) of the Broadcasting Ordinance.

38 Such individuals must be ordinarily resident in Hong Kong, which means the individual must reside in Hong Kong for no less than 180 days in a calendar year or have done so for no less than for a total of 300 days in any two consecutive years and, further, such individuals must have ordinarily resided in Hong Kong for a period of not less than seven years.

- b* no disqualified person or their controlling entities or persons or associates (unless otherwise disclosed in the licence application) can exercise control over (or remain in control of) the licence holder. The purpose of this is to restrict cross-media ownership.

The restrictions are less stringent for non-domestic and other licensable television programme service licence holders, which are only required to have at least one director or principal officer satisfying the residency requirement.

Broadcasting licences ownership and voting restrictions

The Broadcasting Ordinance sets out detailed restrictions regarding the holding, acquisition or exercise of voting control of licence holders (except for domestic pay-to-air television programme licence holders) who are not qualified voting controllers. A qualified voting controller is someone who, in the case of an individual, has resided in Hong Kong for a period of no less than seven years or, in the case of a corporation, whose directors satisfy the Hong Kong residency requirement. An ‘unqualified voting controller’ is anyone who is not a qualified voting controller. Unqualified voting controllers cannot exercise voting control in excess of 49 per cent of the total voting control at any time. Further, prior approval of the CA is required for the holding, acquisition or exercise of voting control by an unqualified voting controller of 2 to 6 per cent or 6 to 10 per cent, or more than 10 per cent of a licence holder. If an unqualified voting controller holds more than 10 per cent, only up to 10 per cent of the voting rights can be exercised by such controller.

Further, a domestic free-to-air television programme service licence will not be granted to a company that is a subsidiary of a corporation.³⁹

iii Competition measures

Sector-specific competition provisions governing the broadcasting and telecommunications industry are, at present, set out in the Broadcasting Ordinance and the Telecommunications Ordinance, respectively. The CA is vested with the power of investigations and adjudication in enforcing these competition provisions. On 14 June 2012, the Competition Ordinance was passed as a general and cross-sector competition law curbing anti-competitive conduct across all industry sectors. Under the Competition Ordinance, the CA will have concurrent jurisdiction with the Competition Commission to enforce the Competition Ordinance in respect of the conduct of telecommunications and broadcasting licensees, including merger and acquisition activities involving carrier licensees. A government notice under the Competition Ordinance has specified that the Ordinance will come into full force from 14 December 2015.⁴⁰ Upon commencement of the competition rules of the Competition Ordinance, the competition provisions in the Broadcasting Ordinance and Telecommunications Ordinance will be repealed, subject to transitional arrangements.

39 Section 8(3) of the Broadcasting Ordinance.

40 Competition Ordinance (Commencement) (No. 2) Notice 2015.

For the telecommunications industry, the relevant provisions currently in force include Sections 7K (anti-competitive practices), 7L (abuse of position) and 7N (non-discrimination) of the Telecommunications Ordinance. Under Section 7K, a licensee shall not engage in conduct that has the purpose or effect of preventing or substantially restricting competition in a telecommunications market. When assessing whether conduct is anti-competitive, the CA will have regard to whether there is a price-fixing element; whether the action would prevent or restrict the supply of goods or services to competitors; and agreements regarding the sharing of markets on agreed geographical or customer lines. Certain actions prescribed under Section 7K(3) are deemed anti-competitive, including entering into an agreement, arrangement or understanding that has an anti-competitive purpose or effect; making provision of or connection to a telecommunications network, system, installation, customer equipment or service conditional upon the person acquiring or not acquiring a specified telecommunications network, system, installation, customer equipment or service without the prior written authorisation of the CA; or giving an undue preference to, or receiving an unfair advantage from, an associated person placing a competitor at a significant disadvantage, or preventing or substantially restricting competition. The CA has the power to determine whether an act is anti-competitive.

Section 7L prohibits licensees in a dominant position from abusing their position. A licensee is in a dominant position when it is able to act without significant competitive restraint from its competitors and customers. In considering whether a licensee is dominant, the CA is obliged to take into account:

- a* the market share of the licensee;
- b* the licensee's power to make pricing and other decisions;
- c* any barriers to entry to competitors in the relevant market;
- d* the degree of product differentiation and sales promotion; and
- e* the other matters stipulated in the guidelines issued in this regard pursuant to the Telecommunications Ordinance.

Section 7N prohibits a licensee who is in a dominant position in a market from discriminating between persons who acquire the services in the market on charges or on terms of supply.

The Broadcasting Ordinance has similar competition provisions prohibiting anti-competitive behaviour and abuse of dominance. Section 13 (prohibition on anti-competitive conduct) prohibits a licensee from engaging in conduct that has the purpose or effect of preventing, distorting or substantially restricting competition in a television programme service market. When determining whether a licensee's conduct is anti-competitive, the CA will have regard to whether there is a price-fixing element; whether the action would prevent or restrict the supply of goods or services to competitors; and agreements regarding the sharing of markets on agreed geographical or customer lines. Any provision in an agreement permitting anti-competitive behaviour is void.

Section 14 (prohibition on abuse of dominance) is similar to Section 7L of Telecommunications Ordinance, as it prohibits a licensee in a dominant position in a television programme service market from abusing its position. A licensee is in a dominant position when it is able to act without significant competitive restraint from

its competitors and customers. In considering whether a licensee is dominant, the CA is obliged to take into account:

- a* the market share of the licensee;
- b* the licensee's power to make pricing and other decisions;
- c* any barriers to entry to competitors into the relevant market; and
- d* the other matters stipulated in the guidelines issued in this regard pursuant to the Broadcasting Ordinance.

Where the CA is of the view that there is anti-competitive behaviour or an abuse of position, it can issue a cease-and-desist notice requiring the licensee to cease the anti-competitive behaviour or abuse⁴¹ by a particular date.

III SPECTRUM POLICY

i Development

Spectrum policy in Hong Kong encompasses management, pricing, supply and rights relating to spectrum. It was monitored and regulated by the former TA prior to 1 April 2012, and is now monitored and regulated by the CA. Since 2007, the government has adopted a market-based approach to spectrum management,⁴² and it will not depart from this approach unless there is a public policy reason to do so. The CA is open about the availability of spectrum, and a spectrum release plan governing a three-year period going forward was released pursuant to the Radio Spectrum Policy Framework that was announced in April 2007. Under the spectrum release plan, industry participants can bid for spectrum use rights through an open bidding or tendering process. To ensure industry participants are kept aware of the availability of spectrum, the spectrum release plan is updated annually on a rolling basis or as required taking into account the latest developments. Spectrum availability determines the number of market players in the industry. Currently, spectrum is auctioned and allocated by the CA through the latest spectrum release plan. Where spectrum has been previously allocated under an earlier release plan, it will be clearly stated in the current release plan.

The CA announced the spectrum release plan for 2015 to 2017 on 6 March 2015. According to the plan, no spectrum will be available for release during this period.⁴³ Nonetheless, the CA has clearly stipulated that the release plan is non-binding, and it is not bound to allocate or assign any spectrum to any industry player. All allocation of spectrum, as and when such allocation is made, is subject to the CA's discretion.

As part of the spectrum management policy, Hong Kong is also considering spectrum trading to create a market for secondary trading of spectrum use. The

41 Section 16 of the Broadcasting Ordinance.

42 'Market-based approach' for spectrum management means 'methods relying on market forces to ensure the efficient use of spectrum as a public resource'. (From the Radio Spectrum Policy Framework (April 2007) published by the Communications and Technology Branch of the Commerce, Industry and Technology Bureau of Hong Kong).

43 Spectrum Release Plan for 2015–2017 dated 6 March 2015 published by the OFCA.

government is understood to have commissioned feasibility studies, but it has yet to make the consultant's report publicly available.⁴⁴ However, the consultant's conclusions can be inferred from the reports of the Subcommittee on Telecommunications. These suggest that, in jurisdictions where it is permitted, spectrum trading does not occur frequently. Further, while demand for spectrum remains incessant, few holders of spectrum rights are willing to transfer their rights to other operators. The administration does not therefore consider spectrum trading a matter of priority, even though it is viewed as desirable under the Radio Spectrum Policy Framework.⁴⁵

Until the government makes the findings of the feasibility report publicly available, the telecommunications industry in Hong Kong cannot be sure what potential changes there may be (and the extent of such changes) in relation to spectrum. If spectrum trading is adopted, relevant competition measures may be required; there may be allocation of spectrum bands that are permitted for secondary trading; and a new licence category for spectrum use may be created. The CA takes the view that this subject should be dealt with in the long term:⁴⁶ in November 2013, two Hong Kong TV stations were fined by the OFCA for renting transmission capacity without the prior consent of the CA, per the licence requirement, constituting illegal spectrum trading under the current legislation.

ii Spectrum auction and fees

Since it is a limited resource, and demand is high, the government imposes a fee on the use of spectrum. This fee (the spectrum utilisation fee (SUF)) is applicable to all use of spectrum save those reserved for government use. As an example, in March 2013, a total of 50MHz of radio spectrum in the 2.5–2.6GHz band was sold for HK\$1.54 billion to four bidders.⁴⁷

The results of the latest auction of spectrum in the 1.9–2.2GHz band were announced by the OFCA on 10 March 2015. A total of 49.2MHz of spectrum was reassigned after the incumbent spectrum assignees exercised their right of first refusal. Following the decision of the CA on the arrangements for reassignment of the spectrum and its decision to give conditional consent to the acquisition by HKT Limited of CSL New World Mobility Limited, the other three incumbent spectrum assignees accepted the right of first refusal for the reassignment of 68.2MHz of the 118.4MHz of paired spectrum that were assigned in 2001. The remaining 49.2MHz was reassigned through auction, where a non-incumbent spectrum assignee was assigned a total of 19.6MHz of spectrum, with the rest being assigned to the incumbent spectrum assignees. Together,

44 OFTA's 2008/2009 Trading Fund Report.

45 Report of the Subcommittee on Telecommunications, LC Paper No. CB (4) 170/12-13; LC Paper No. CB (4) 364/12-13(05).

46 'Arrangements for the Frequency Spectrum in the 1.9-2.2 GHz Bank upon Expiry of the Existing Frequency Assignments for the Provision of 3G Mobile Services and the Spectrum Utilisation Fee' issued by the CA and the Secretary for Commerce and Economic Development on 15 November 2013.

47 Press release of the OFCA dated 19 March 2013.

the winners of the auction paid SUFs of HK\$2.42 billion for their 15-year licences, which are to commence on 22 October 2016.⁴⁸

IV MEDIA

i Mobile services

To facilitate the development of broadcast-type mobile TV services, the government announced the Framework for Development of Broadcast-type Mobile TV Services in Hong Kong in February 2010. It was announced that the radio spectrum of 678–686MHz would be released for the introduction of broadcast-type mobile TV services in Hong Kong with at least 75 per cent of the transmission capacity to be used to provide mobile TV services, with the operator entitled to harness the remaining capacity of the UHF allocated for delivery of other services such as datacasting.⁴⁹

Pursuant to the Telecommunications Ordinance, an operator of the network used to transmit mobile TV services via the assigned spectrum is required to obtain a UCL. The government has also indicated that the content of mobile TV, either local broadcast-type or streaming-type, should be subject to regulation by general laws rather than under the Broadcasting Ordinance. To enable self-regulation, the industry will be required to develop codes of practice on the provision of mobile TV services prior to service commencement. The codes should include, *inter alia*, the requirement of conditional access with a view to protecting public morals and children.⁵⁰

The radio spectrum of 678–686MHz was auctioned off in June 2010, with China Mobile Hong Kong Corporation Limited successfully bidding for the spectrum at an SUF of HK\$175 million. OFTA announced that, after payment of the SUF and submission of the performance bond, China Mobile Hong Kong Corporation Limited will be assigned the spectrum under a 15-year UCL. The licensee would be obliged to provide service coverage to at least 50 per cent of Hong Kong's population within 18 months from licence grant.⁵¹

V THE YEAR IN REVIEW

i The Competition Ordinance⁵²

The Competition Ordinance was passed by the Hong Kong Legislative Council on 14 June 2012. Its operation is not restricted to broadcasting or telecommunications, but applies to all sectors and industries in Hong Kong. The Competition Ordinance has not

48 Press release of the OFCA dated 8 December 2014 and the Successful Bidder Notice published by the CA dated 10 March 2015.

49 Framework for Development of Broadcast-type Mobile TV Services in Hong Kong (February 2010) published by the Communications and Technology Branch of the CEDB.

50 Ibid.

51 Press release of the OFTA dated 29 June 2010.

52 No. 14 of 2012 of the Government of the Hong Kong SAR Gazette.

yet come into full operation, with the government implementing the legislation in phases so that the public and business sectors can familiarise themselves with the new legal requirements during the transition period. The Competition Ordinance is now due to come into full force on 14 December 2015. At this time, relevant competition provisions that are currently embedded in the Telecommunications Ordinance and the Broadcasting Ordinance (and subsidiary legislation) will be amended or repealed (as applicable). The amendments and changes that will be made to the Telecommunications Ordinance and the Broadcasting Ordinance are set out in full in Schedule 8, Parts 4 and 9 of the Competition Ordinance. Some of the more important changes are described below.

In April 2013, the Competition Commission was established under the Competition Ordinance as an independent statutory body responsible for the general competition regulations. The Competition Commission has developed regulatory guidelines to provide clear guidance on the Competition Commission's interpretation and implementation of the competition rules, and to explain the procedures for handling complaints, conducting investigations and considering applications relating to exclusions and exemptions. Six draft guidelines under the Competition Ordinance were released for public consultation in October 2014 and, following the consultation exercise, final form guidelines were issued jointly by the Competition Commission and the CA on 27 July 2015. The six separate guidelines pertain to complaints, investigations, applications for exclusions and exemptions, the First Conduct Rule, the Second Conduct Rule and the Merger Rule.

Pursuant to Part 11 of the Competition Ordinance,⁵³ the CA will have concurrent jurisdiction with the Competition Commission with regard to telecommunications and broadcasting-related competition matters. The CA will have jurisdiction over entities licensed under the Telecommunications Ordinance or the Broadcasting Ordinance; unlicensed entities whose activities require them to be licensed under the Telecommunications Ordinance or the Broadcasting Ordinance; and entities exempted pursuant to Section 39 of the Telecommunications Ordinance. The 'merger rule', set out in Schedule 7 of the Competition Ordinance, will apply only to the telecommunications sector. Unless exempted, undertakings that are subject to the merger rule will be prohibited from 'directly or indirectly, carrying out a merger that has, or is likely to have, the effect of substantially lessening competition in Hong Kong'. Factors that can be taken into account in determining whether there is a substantial lessening of competition are set out in Schedule 7 of the Competition Ordinance.

The Competition Ordinance also contains provisions enabling competition-related matters to be transferred between regulators with concurrent jurisdiction.

Sections 7K (anti-competitive practices), 7L (abuse of position), 7N (non-discrimination) and 7P (authority may regulate changes in relation to carrier licensees) of the Telecommunications Ordinance, and Section 13 to 16 of the Broadcasting Ordinance, will be repealed when the Competition Ordinance comes into full operation and replaced by the conduct rules set out in Part 2 of the Competition Ordinance. A new Section 7Q (exploitative conduct) will be added to the Telecommunications Ordinance.

On 23 September 2015, the Competition Commission published its draft leniency policy for undertakings engaged in cartel conduct. Pursuant to Section 80 of the

53 Part 11, Sections 159 to 161 of the Competition Ordinance.

Competition Ordinance, the Competition Commission may make a leniency agreement with a person that it will not bring or continue proceedings in the Competition Tribunal for a pecuniary penalty in exchange for the person's cooperation in an investigation or proceedings under the Competition Ordinance. Under the draft cartel leniency policy, the Competition Commission will agree not to bring proceedings in the Competition Tribunal for a pecuniary penalty against the first cartel member who reports the cartel conduct to the Competition Commission and meets all the requirements for receiving leniency under the policy. At this stage, the CA has yet to decide whether it should adopt (whether on its own or jointly with the Competition Commission) a leniency policy and, if so, when that should take place. The CA has indicated that it would welcome submissions from broadcasting and telecommunications licensees in this regard.⁵⁴

ii Charging scheme in respect of administratively assigned spectrum

In contrast to those assigned by auction, bands of radio spectrum without congestion that are assigned administratively (not by auction) are not subject to any form of SUF. In November 2010, the government issued a public consultation paper relating to the proposed implementation of a charging scheme in respect of the SUF for such spectrum, including relevant guiding principles, the proposed SUF and its calculation methodology, and the implementation details. The charging scheme is intended to encourage spectrum users to use the spectrum wisely and effectively. The government envisaged the return of any surplus spectrum for subsequent reassignment to other users. To encourage the return of surplus spectrum, a one-off grant, capped at 10 per cent of the annual SUF applicable to the spectrum, was proposed. This grant is also available where users migrate to other means of providing their services.

It is proposed that the SUF be imposed on spectrum in frequency bands that are currently congested (that is, 75 per cent occupied) and are anticipated to be more congested in the future. As a result, eight frequency bands used as fixed links, electronic news gathering or outside broadcast links and selected satellite links will be subject to a SUF. The SUF will be determined based on the estimated opportunity cost of the spectrum. The proposed SUF will be payable annually, and there will be a transition period of five years before the charging scheme is fully in force. It is also proposed that the SUF bands will be reviewed every five years.

Having considered the views of 10 market participants on the consultation paper, the Secretary for Commerce and Economic Development and the former TA issued a consultation conclusion on 23 September 2011, and decided to proceed with the implementation of the SUF charging scheme for spectrum assigned administratively based on the lists of frequency bands, SUF levels and implementation arrangements in early 2012 after a grace period of two years. To implement the scheme, the government will make the necessary amendment to the Telecommunications (Designation of SUF) Order⁵⁵ and make regulations to specify the level of SUF under Section 32I(2) of the Telecommunications Ordinance.

54 Guide to the Draft Leniency Policy for Undertakings Engaged in Cartel Conduct published by the Competition Commission on 23 September 2015.

55 Chapter 106Y of the Laws of Hong Kong.

Appendix 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIMON POWELL

Latham & Watkins

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

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

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

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

MYRIA SAARINEN

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

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

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

DANIEL SENGER

Latham & Watkins Gaikokuho Joint Enterprise

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

OMAR SHAH

Latham & Watkins LLP

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

JARRETT S TAUBMAN

Latham & Watkins LLP

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

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

GABRIELE WUNSCH

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

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

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