

THE TECHNOLOGY,
MEDIA AND
TELECOMMUNICATIONS
REVIEW

TWELFTH EDITION

Editor
Matthew T Murchison

THE LAWREVIEWS

THE

TECHNOLOGY, MEDIA AND TELECOMMUNICATIONS REVIEW

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PREFACE

This volume marks the 12th edition of *The Technology, Media and Telecommunications Review*, which has been fully updated to provide an overview of evolving legal and policy activity in this arena across 25 jurisdictions around the world. This publication continues to occupy a unique space in the literature on TMT issues. Rather than serving a traditional legal treatise, this Review aims to provide a practical, business-focused survey of these issues, along with insights into how this legal and policy landscape in the TMT arena continues to evolve from year to year.

In 2021, the ongoing covid-19 pandemic has continued to loom large over legal and policy developments in this sector. As the threat of infection has continued to affect how we live, work and interact, the importance of connectivity has never been greater or more obvious. For many businesses, remote working has been the rule rather than the exception since March 2020, and may well persist in some form well after the pandemic is over. Many schools switched to distance learning formats during the pandemic. Tele-health is on the rise as doctors check in on patients via videoconference. Even tasks as mundane as grocery shopping have shifted online. And broadband connectivity, where available, has made it all possible.

The experience of covid-19 has, in turn, continued to reshape policymakers' understanding of the TMT arena. The shift to remote working and distance learning has stress-tested broadband networks across the world – providing a 'natural experiment' for determining whether existing policies have yielded robust systems capable of handling substantial increases in internet traffic. At the same time, the pandemic has prompted new initiatives to ensure, improve and expand broadband connectivity for consumers going forward. In various jurisdictions, policymakers are moving forward with subsidy programmes and other efforts to spur the deployment of advanced networks more deeply into unserved and underserved areas. Regulators also have taken steps to preserve internet access where it already exists, including by exploring mandates prohibiting disconnection of customers or requiring certain rates for low-income consumers – measures that, where adopted, sometimes have sparked fresh legal challenges and policy debates over the relative merits of government intervention and market-based solutions.

New technologies likewise have required new approaches and perspectives of policymakers. A notable example is the ongoing deployment of 5G wireless networks, as regulators continue to look for ways to facilitate such deployment. These initiatives take a variety of forms, and frequently include efforts to free up more spectrum resources, including by adopting new rules for sharing spectrum and by reallocating spectrum from one use to another. Multiple jurisdictions have continued to auction off wireless licences in bands newly designated for 5G deployment, capitalising on service providers' strong demand for

expanded access for spectrum. The planned deployment of new satellite broadband services, including multiple large satellite constellations in low-earth orbit, also continues to be a focus of regulatory interest across the world.

Meanwhile, long-running policy battles over the delivery of content over broadband networks continue to simmer in various jurisdictions, and new fronts have opened on related issues involving the content moderation policies of social media companies and other online platforms. Policymakers continue to grapple with questions about network neutrality, the principle being that consumers should benefit from an ‘open internet’ where bits are transmitted in a non-discriminatory manner, without regard for their source, ownership or destination. While the basic principle has been around for well over a decade, unresolved issues remain, including whether newer kinds of network management practices implicate such concerns, and whether efforts to promote a healthy internet ecosystem are best served by light-touch, market-based regimes or by more intrusive government interventions. In the United States, the light-touch approach reinstated in 2018 seems fairly certain to be revisited at the federal level, and certain states are continuing to claim an ability to impose their own restrictions on internet service providers. Regulators around the world have begun taking more aggressive enforcement action against internet service providers’ zero rating plans, which exempt certain data from counting against a customer’s usage allowance. Regulators in Asia are grappling with similar policy questions. In addition, these neutrality principles, usually debated in the context of broadband networks, are now spilling over to the content side, where social media companies are facing increased scrutiny over claims of discriminatory practices in moderating content appearing on their platforms. Indeed, some jurisdictions are considering measures that not only would rescind immunities these platforms have traditionally enjoyed for their content moderation practices, but also would require increased transparency and potentially even impose anti-discrimination mandates or other consumer protections. In short, while the balance of power between broadband network operators and online content providers historically has turned on the degree of regulation of the former, both sides’ practices are now very much in the spotlight.

The following country-specific chapters describe these and other developments in the TMT arena, including updates on privacy and data security, regulation of traditional video and voice services, and media ownership. On the issue of foreign ownership in particular, communications policymakers have increasingly incorporated national security considerations into their decision-making.

Thanks to all of our contributors for their insightful contributions to this publication. I hope readers will find this 12th edition of *The Technology, Media and Telecommunications Review* as helpful as I have found this publication each year.

Matthew T Murchison

Latham & Watkins LLP

Washington, DC

November 2021

JAPAN

*Stuart Beraha, Hiroki Kobayashi and Benjamin Han*¹

I OVERVIEW

The media and telecommunications environment in Japan has continued its rapid development throughout 2020 and 2021. While the country has already achieved a broadband penetration rate of 100 per cent, numerous measures have been (and continue to be) implemented to enhance the nation's telecommunications networks.

i Society 5.0

The government is continuing to pursue its Society 5.0 initiative: the digitalisation of the entire society by integrating digital innovations (like AI and big data analysis) into the physical (real) world. In furtherance of this initiative, the government has pursued a number of programmes and measures in the telecommunications space.

For example, the government is continuing to push the rollout of 5G and other cutting-edge technology that is capable of transferring data at even higher rates than is currently possible with Long-Term Evolution (LTE). NTT DOCOMO, KDDI, Softbank and Rakuten Mobile were each allocated 5G spectrum by the Ministry of Internal Affairs and Communication (MIC) in April 2019. These four mobile services providers have launched 5G telecommunication services in 2020.

Additionally, the government is already exploring initiatives to roll out Beyond 5G technologies (i.e., successor technologies like 6G), viewing it as critical infrastructure to achieve Society 5.0. The United States and Japan recently signed an agreement to jointly invest approximately US\$4.5 billion for the development of Beyond 5G technologies.² Furthermore, Japanese leaders have recently issued a joint statement with leaders of the other members of the Quad (the United States, Australia, India and Japan), which affirmed the Quad's commitment to 'advancing the deployment of secure, open, and transparent 5G and beyond-5G networks'.³

Society 5.0 will inevitably result in a significant increase in personal data communication, both domestic and cross-border. The security of such data is a key concern with respect to such communication, which the government has addressed through various regulations. That said, the government seeks to strike a balance between the protection of personal data and the potential economic benefits of big data analysis. One approach that the government has been

1 Stuart Beraha and Hiroki Kobayashi are partners and Benjamin Han is an associate at Latham & Watkins Gaikokuho Joint Enterprise.

2 See <https://asia.nikkei.com/Business/Telecommunication/US-and-Japan-to-invest-4.5bn-in-next-gen-6G-race-with-China>.

3 See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/24/joint-statement-from-quad-leaders/>.

exploring is the creation of a personal data store-type regime known as personal information banks, which would entail personal data being collected by a trusted entity (i.e., a personal information bank) and such entity providing service providers with access to such data in accordance with the data subject's instructions.

ii Recent digitisation efforts

The government is also pursuing a number of efforts aimed at digitising government services and making them more easily accessible to residents. For example, the MIC has pursued 'open data' initiatives with respect to governmental data, encouraging all governmental agencies (including municipal agencies) to allow citizens to easily access and use governmental data in digital format for free. According to statistics from the government CIO Portal, in 2020, around 56.6 per cent of the local governments have implemented open data initiatives.

Additionally, to allow Japanese residents to access more government services online and more conveniently, the government has rolled out personal identification cards known as My Number cards. Among other services, My Number card holders are able to make certain tax filings online (electronically authenticated with My Number card data) and receive family, tax, residency and other records at convenience stores (which are ubiquitous in most Japanese cities) rather than at their local city hall or ward office. That said, despite being introduced in 2015, the adoption of My Number cards has been sluggish – reportedly only 36 per cent of Japanese residents had My Number cards as of 1 August 2021.

Even where residents have received My Number cards, there have been hiccups in the implementation of programmes attempting to leverage the system. Notably, the government offered residents with My Number cards an online application option for the government's ¥100,000 special covid-19 stimulus payment. However, local municipal offices were flooded with requests to reset My Number card passcodes (required to log onto the government's application page) from residents who forgot them, and many residents reported having trouble accessing the application page even with a correct passcode: in some cases, it was simply quicker for residents to mail a physical application. Additionally, even when residents were able to submit an application online, all applications were reportedly reviewed by government officials by hand, meaning an online application was not necessarily processed more quickly than a physical application.

The government is nevertheless expected to continue pursuing data and digitisation initiatives. In furtherance of this goal, the Japanese Diet passed the Basic Act on the Formation of a Digital Society, which came into full force and effect on 1 September 2021. The Basic Act on the Formation of a Digital Society defines digitised society as:

a society in which creative and vigorous development is enabled in all fields by obtaining, sharing or transmitting a wide variety of information or knowledge globally in a free and safe manner via the Internet and other advanced information and telecommunications networks, and by using information and telecommunications technologies and other advanced technologies to appropriately and effectively utilize the wide variety and large amount of information recorded as an electronic or magnetic record.

The Basic Act on the Formation of a Digital Society also provides that the government must, in the development of strategies to form a digital society, take measures necessary to:

- a ensure the smooth circulation of information by a diversity of actors (e.g., by standardising data);

- b* ensure opportunities for the use of advanced information and telecommunications networks and of information from information and telecommunications technologies;
- c* develop human resources;
- d* improve the productivity and convenience of everyday life;
- e* ensure the utilisation by citizens of information held by the government and local public entities;
- f* develop a public basic information database;
- g* secure cybersecurity; and
- h* protect personal information.

These measures are expected to be implemented by a newly established governmental agency known as the Digital Agency. The bill establishing the Digital Agency was enacted in May 2021 and came into full force and effect on 1 September 2021.

The initiatives that the Digital Agency is authorised to pursue include:

- a* the establishment and promotion of priority plans for the formation of a digital society;
- b* comprehensive and basic policy planning, etc., regarding numbers that identify individuals;
- c* usage of My Number, My Number cards and corporate numbers as well as the installation and management of network systems for the provision of information;
- d* planning of comprehensive and basic policies on verifying identities using information and communication technology, etc.;
- e* electronic certification of commercial registration (through verifying identities using information and communication technology), electronic signatures, public personal authentication (related to verifiers) and affairs regarding electronic powers of attorney;
- f* comprehensive and basic policy planning for data standardisation, external cooperating functions and a database on basic public information (basic registry) etc.;
- g* creation and promotion of basic policies for establishing and managing information systems of national, local public organisations, and quasi-public sector private businesses;
- h* supervising the establishing and management of information systems conducted by the government and lump-sum budgeting; and
- i* executing all or part of those affairs independently.

II REGULATION

i Main sources of law

The MIC's broad authority to regulate the telecommunications and broadcasting spaces is derived from a series of statutes, which are the ultimate source of law in these sectors in Japan. The core statutes conferring this authority include:

- a* the Wire Telecommunications Act, which governs facilities for wired signal transmission such as wired telephony, wired broadband networks and cable television;
- b* the Radio Act, which governs facilities for wireless signal transmission such as mobile phones, terrestrial and satellite television broadcast infrastructures and high-powered WiFi networks;
- c* the Telecommunications Business Act, which regulates telecommunications and media businesses; and
- d* the Broadcast Act, which regulates the content that telecommunications and media businesses carry or provide.

The Broadcast Act and the Radio Act were amended in November 2010 to provide a more streamlined regime for the review and granting of broadcast licences, which included the separation of broadcasting licences from transmission licences, previously a single licence, to make the process for receiving a licence easier for applicants.

Prior to this amendment, general broadcasting licences, cable radio broadcasting licences, cable TV (CATV) broadcasting licences and licences to broadcast content through third-party facilities were granted by the MIC under different statutes using different procedures that had developed over time as the underlying technologies were developed and implemented. The statutory licensing provisions for these activities were consolidated into the amended versions of the Broadcast Act and Radio Act, under which broadcasting activities have been divided into two major licensing categories: main broadcasting, consisting of both terrestrial broadcasting and broadcasting through broadcasting and communication satellites located over 110 east longitude; and regular broadcasting, covering broadcasting through all other satellites, CATV and internet protocol TV (IPTV).

Prior to the amendment, terrestrial broadcasting licences were granted only to broadcasters that both provided their own broadcast content and operated the wireless transmission facilities used for its distribution. Under the amended Broadcast Act and Radio Act, broadcasters are able to distribute their programming through third-party terrestrial wireless transmission facilities, just as they already were permitted to distribute their programming through third-party satellites and third-party cable television providers.

These reforms have lessened the regulatory burdens on telecommunications and broadcasting companies to provide flexibility as to the management of those companies and to open up competition by decoupling the ownership of broadcasting facilities from the production of broadcasting content.

ii Regulated activities

The MIC exercises its statutorily conferred regulatory power in numerous ways. For one, it has the authority to grant broadcasting licences (for facilities such as television and radio stations that produce or broadcast media content), wireless transmission licences (for mobile phones and facilities such as mobile phone base stations and satellites) and telecommunication business licences (for traditional wired communications as well as mobile phone providers and internet service providers (ISPs), and monitors the businesses conducted with such licences.

The MIC is also charged with allocating radio spectrum to licence holders, and has adopted detailed regulations to monitor and establish technical standards applicable to spectrum users and their licensed facilities and businesses. The process through which the MIC exercises this decision-making authority is often criticised as opaque and arbitrary. For example, the allocation of radio spectrum frequencies to private sector service providers is based on the overall judgement of the MIC, and not on any clear set of factors, leaving applicants unsure as to what elements are being considered and opening the MIC to accusations of favouritism or political manipulation. Spectrum policy in Japan is further discussed in Section IV.

The Broadcasting Act requires licensed broadcasters to stay politically neutral and report the 'truth'. In February 2016, the Minister of the MIC stated during a legislative session that a broadcaster would violate the Broadcasting Act if it repeatedly broadcast lengthy content supporting a particular political view without reporting on other political views. The

Minister further indicated that, in the event of such a violation, the MIC could issue an order to suspend such broadcaster's business. This statement was criticised for potential chilling effects on freedom of speech.

iii Ownership and market access restrictions

Restrictions on foreign investment

Inbound direct investments in Japan are regulated by the Foreign Exchange and Foreign Trade Act (Law No. 228 of 1949, as amended) and related regulations (collectively, FEFTA), which are administered by the Ministry of Finance (MOF) and the Bank of Japan (BOJ). The FEFTA has been substantially amended in the past few years, which has made its framework much more complicated. As a very high level summary, if a transaction will result in a foreign investor holding 1 per cent or more of the shares or voting rights in a publicly listed Japanese company, or any shares at all of a non-listed (private) Japanese company, the FEFTA may require a pre-closing filing and clearance process involving the MOF, the BOJ and other industry-specific regulators, or a post-closing report. Specific clearance requirements will vary based on, among many other factors, whether the industries and activities of the Japanese company falls within certain specified categories of regulated industries (designated sectors). Certain categories of broadcasting, telecommunication and radio businesses fall within such designated sectors and, accordingly, an acquisition of shares of a Japanese company engaged in such businesses may trigger the FEFTA clearance requirement.

Additionally, foreign ownership and management of broadcasting licence holders, wireless transmission licence holders and Nippon Telegraph and Telephone Corporation (NTT), a semi-privatised national telecommunications service provider, is restricted by industry-specific statutes, as summarised in the table below:

| Business | Category | Maximum permitted foreign ownership | | D&O positions that may not be filled by a foreigner |
|--|--|-------------------------------------|-----------|--|
| | | Direct | Indirect | |
| Land broadcasting | Approved basic broadcaster | 20% | 20% | Specified officers* |
| | Supplier for basic broadcasting stations | 20% | 20% | Specified officers |
| | Specified terrestrial basic broadcaster | 20% | 20% | Specified officers |
| Satellite broadcasting | Approved basic broadcaster | 20% | N/A | Specified officers |
| | Supplier for basic broadcasting stations | One-third | N/A | Representative [†] ≥one-third of all officers |
| Certified broadcasting holding company | | 20% | 20% | Specified officers |
| Radio | Radio station | One-third | N/A | Representative ≥one-third of all officers |
| NTT | | One-third | One-third | All officers |
| <p>* Specified officer means an officer of a corporation or organisation having considerable influence over the execution of the business of the corporation or organisation, as specified under Order of the Ministry of Internal Affairs and Communications (e.g., executive directors).</p> <p>† Representative means a person who has authority to represent (i.e., act on behalf of) a company.</p> | | | | |

In 2021, two violations of foreign investment restrictions were revealed. In March 2021, Tohoku Shinsha notified the MIC that 20 per cent or more of its shares were held by foreigners at the time the MIC granted Tohoku Shinsha a licence to operate a satellite basic broadcaster business. As a penalty for such violation, the MIC cancelled Tohoku Shinsha's

licence. Shortly thereafter, in April 2021, Fuji Media Holdings publicly announced that its foreign investor ownership had exceeded the 20 per cent threshold in March 2014, which it reported to the MIC, but did not issue a public announcement at the time the incident occurred. Fuji Media Holdings' foreign investor ownership fell below the 20 per cent threshold by December 2014. At that time, the MIC only verbally warned Fuji Media Holdings and did not impose any other penalties. As the magnitude of the penalties significantly differed between these two incidents that, on their face, appear to be very similar, the MIC had to explain why the penalties were equitable. The reason the MIC gave was that Tohoku Shinsha violated the restrictions at the time it was granted a licence, whereas this was not the case for Fuji Media Holdings.

These incidents drew the MIC's attention to the status of compliance with the foreign ownership regulations, and in April 2021, the MIC requested that all certified broadcasting holding companies and basic broadcasters answer inquiries on their respective compliance with the foreign ownership regulations. Additionally, the MIC established a working group comprised of experts to review the Japanese framework of the FDI regulations governing the telecommunication industry. The working group has considered what overall framework is appropriate, taking into consideration the current situation where two regulatory regimes – the general FEFTA and industry-specific regulations – are governing in parallel. Although the working group has not yet reached a conclusion in this regard, discussions so far indicate that the industry-specific regulations framework will be amended to impose stricter information and document production requirements, but that the current foreign ownership percentage limitations will not be affected.

Restrictions on cross-ownership

Ownership of multiple broadcast outlets is restricted by the Broadcast Act and related regulations. This restriction on the concentration of ownership is intended to support press freedom and the diversity of speech in broadcasting. The restriction includes limits on the simultaneous ownership of shares in, and control over board seats of, multiple main broadcasting licence holders, as well as aggregate upper limits on the use of satellite transponder capacity for owners of multiple main broadcasting licence holders. However, in response to worsening business conditions for radio broadcasters, the MIC amended its regulations in 2011 to relax restrictions on the cross-ownership of radio broadcasting licence holders, now allowing simultaneous control of up to four licences. Cross-ownership of newspapers and broadcasters is not restricted in Japan. Newspaper companies often hold large ownership stakes in broadcast companies: in fact, each major private television broadcast network in Japan is affiliated with a major newspaper.

iv Transfers of control and assignments

In addition to foreign ownership and management, and cross-ownership limits, MIC approval is required for mergers and acquisitions that result in a new entity holding a main broadcasting or wireless transmission licence. Therefore, a statutory merger pursuant to which a licence holder will not be the surviving company, or the divestiture of a business conducted under such licence, each generally require MIC approval. The MIC's review process focuses on the proposed transferee rather than the transferred broadcasting or wireless business, and primarily involves a determination as to whether that transferee would have been eligible to independently qualify as a new licensee if it had submitted a full application. According

to the MIC, it generally endeavours to finish the licence transfer review process within one month, which is a significantly shorter time frame than in the case of licence renewals or new applications.

The Telecommunications Business Act was amended in May 2015 to require the major telecommunications companies⁴ to renew their respective telecommunications business registrations when they engage in mergers or share acquisitions. This amendment, which came into effect in 2016, allows the MIC to review the potential anticompetitive effects of any proposed merger or share acquisition on business operations and fair trade. Anticompetitive concerns are particularly important in the Japanese telecommunications industry, which was monopolised by three major private telecommunication companies – NTT DOCOMO,⁵ KDDI and SoftBank – until Rakuten Mobile entered the market in October 2019.

In addition, pursuant to Japan's Foreign Exchange and Foreign Trade Act, certain acquisitions of shares in broadcasting licence, wireless transmission licence and telecommunication business licence holders by non-Japanese parties are subject to prior filing and waiting periods unless the acquiring investor satisfies criteria for exemption from such prior filing requirement.⁶ When there are no national security concerns present, this is ordinarily a pro forma requirement.

III TELECOMMUNICATIONS AND INTERNET ACCESS

i Internet and internet protocol regulation

The MIC regulates internet and IP-based services (such as high-speed internet and voice over internet protocol), along with wired telephony and mobile phones, under the Telecommunications Business Act. The Act and the regulations thereunder emphasise protection of the secrecy of communications and the reliable and non-discriminatory provision of telecommunications services.

The Act not only regulates service providers that operate their own network facilities, but also service providers that facilitate telecommunications between users but do not operate their own network facilities (such as dedicated hosting services on which clients can operate an email server). Internet-based services that are not designed to facilitate telecommunication, such as internet banking and internet-based newsletter and media subscriptions, are not deemed to be telecommunications services, which would require a filing with the MIC. However, personal matching services, social network services (SNS) providers and other businesses not traditionally considered telecommunications services may nonetheless be regulated under the Act, necessitating a filing with the MIC before commencing business.

4 These renewal requirements apply to any fixed line provider with greater than 50 per cent market share and any mobile provider with greater than 10 per cent market share.

5 NTT Corporation is 34.81 per cent owned by the Ministry of Finance as of 30 June 2021. NTT DOCOMO was a publicly traded subsidiary of NTT Corporation, but on 29 September 2020, NTT Corporation announced that it planned to take NTT DOCOMO private by making a tender offer for, and purchasing all of NTT DOCOMO's publicly traded shares (around 34 per cent of NTT DOCOMO's outstanding common shares) for around ¥4.25 trillion. NTT Corporation completed the buyout on 29 December 2020, and NTT DOCOMO is now a wholly-owned subsidiary of NTT Corporation.

6 Regulated transactions include an acquisition of 1 per cent or more of the shares of a licence holder whose shares are traded on a stock exchange or over-the-counter market; and an acquisition from a Japanese party of any shares in a licence holder whose shares are not traded on a stock exchange or over-the-counter market.

ii Universal service

Under the Telecommunications Business Act and the NTT Act, the NTT group is required to provide wired telephony services (analogue or IP over optical fibre), pay phone services and emergency call services to all areas of Japan. NTT East and NTT West⁷ provide services to depopulated areas, and a telecommunications trade association comprised of each of the major telecommunications companies in Japan then reimburses NTT East and NTT West for any cost deficits incurred by an NTT group's provision of the service. National law requires each telecommunication service provider connecting its network with that of NTT East or NTT West to pay a small fee (approximately ¥2 to ¥8, varying from year to year) per landline and mobile phone number (customer), which costs are typically passed along to individual users in connection with their monthly telephone service bills. Notwithstanding such funding assistance, NTT East and NTT West have operated at a deficit in their landline businesses due to the burden of owning and maintaining all of the facilities necessary to provide services to the entirety of Japan, even to rapidly depopulating areas. To reduce this burden, the NTT Act was amended in May 2020 to permit NTT East and NTT West to use wireless telecommunication facilities owned by other telecommunications companies to fulfil their duties of providing universal service.

There is no similar law requiring universal broadband service currently, but the MIC's Information and Communications Council announced in December 2019 that it is considering extending universal service requirements to include broadband service. Notwithstanding the lack of a formal requirement for universal coverage, as of 2015, the broadband infrastructure (3.5G, satellite internet, 3.9G, digital subscriber line (DSL), optics fibre/fibre to the home (FTTH), etc.) penetration rate in Japan had already reached 100 per cent, and super-broadband infrastructure (optical fibre/FTTH, 3.9G and other infrastructure with a data transmission speed over 30Mb per second, including DSL, fixed wireless access, satellite, broadband wireless access) penetration rate had similarly reached 99.98 per cent. That said, rolling out optical fibre will be especially important to enable the proliferation of 5G. Optical fibre's nationwide penetration rate was 98.8 per cent as of March 2019, but it is below 95 per cent in a few prefectures. The MIC is planning to complete installing optical fibre in all cities, towns and villages, with a goal of finishing by March 2022.

Rakuten Mobile: a new mobile network operator service provider

Rakuten KK, a major e-commerce platform, has long had the largest market share of all mobile virtual network operators (MVNOs) in Japan. Its recently established subsidiary, Rakuten Mobile, was approved to become Japan's fourth mobile network operator (MNO) in April 2018. Rakuten Mobile was allocated 1.7GHz 40MHz bandwidth in April 2019, and shortly thereafter announced the launch of its MNO services. To consolidate its service offerings, Rakuten KK also assigned its MVNO business to Rakuten Mobile in April 2019. Rakuten Mobile launched MNO services in April 2020.

⁷ NTT East and NTT West are subsidiaries of NTT Corporation. NTT was initially a single consolidated conglomerate that conducted all of the activities now conducted by the individual NTT group companies. In 1999, the NTT conglomerate was forced to split into multiple smaller companies for antitrust purposes.

Public WiFi access

According to a 2017 survey of foreign visitors conducted by the Japan Tourism Agency, the lack of free public WiFi in Japan was ranked the third most inconvenient aspect of their visit to Japan.

The MIC has been implementing improvements to public WiFi services in an effort to increase the number of foreign visitors to Japan. In particular, the MIC has been managing the implementation of the SAQ2⁸ JAPAN Project⁹ since June 2014. The goals of the SAQ2 JAPAN Project include:

- a increasing the number of free WiFi hotspots and improving the accessibility of these hotspots to the public;
- b facilitating the availability and installation of Japanese SIM cards for foreign mobile phone users in Japan;
- c reducing international roaming fees applicable to foreign mobile phone users in Japan; and
- d implementing multi-language interpretation systems (i.e., translation applications).

In November 2013, an NTT group affiliate began providing a smartphone application called Japan Connected-free Wi-Fi, which allows users to connect to approximately 190,000 public WiFi access points across Japan,¹⁰ including those at airports, train stations, convenience stores and tourist spots, with a one-time new user registration. The smartphone application is available in 16 languages, including English, French, German, Spanish, Italian, Chinese, Korean, Thai and Bahasa Indonesia. This NTT group affiliate also continues to install additional WiFi access points.

In preparation for hosting the 2020 Olympic Games in Tokyo (which were moved to 2021), in February 2016 the MIC issued a policy statement encouraging the adoption of a simplified and unified authentication protocol with the goal of increasing foreign visitors' access to free public WiFi services. On behalf of the MIC, Gateway App Japan, a non-profit organisation, publishes a smartphone application, called the *Omotenashi* app,¹¹ with the cooperation of KDDI and SoftBank, the primary competitors of the NTT group. These two smartphone applications (Japan Connected-free Wi-Fi and the *Omotenashi* app) remain compatible. Recently, a handful of private companies, such as Accenture and SoftBank, have launched first-party applications enabling foreign visitors to access thousands of WiFi access points across Japan. With users' consent, some of these private companies gather anonymised data from the use of their applications, including data user attributes and location history, which they then analyse and sell to third parties as reports.

Tokyo Metro, a railway company owned by the Japanese national and local Tokyo governments that operates many of the subway lines in Tokyo, provides public WiFi access points at nearly all of its stations. In 2017, Tokyo Metro announced that it would equip all of the subway trains it operates with WiFi by 2020. Both Japan Connected-free Wi-Fi and Travel Japan Wi-Fi are available on these trains.

8 This application was prepared primarily for foreign visitors' use, but Japanese residents are also able to use the application.

9 SAQ is an acronym for selectable, accessible and quality.

10 As at March 2020.

11 *Omotenashi* means hospitality.

In January 2019, the government began imposing a ¥1,000 departure tax, informally known as the international tourist tax, on all foreign visitors to improve Japan's tourism infrastructure, including through the proliferation and enhancement of public WiFi.

Separately from the above improvements to free WiFi services, major Japanese mobile phone service providers have established an emergency disaster service set identifier (SSID): 00000JAPAN. This SSID enables each WiFi user to use all Japanese mobile service providers' WiFi networks during natural disasters regardless of the provider to which they are subscribed.¹² This SSID was made available for the first time during a two-week period following an earthquake in the Kumamoto area in April 2016. More recently, this SSID was activated following flood disasters in the Hiroshima and Osaka areas in July 2018 and September 2018, respectively, as well as following a large earthquake in Hokkaido in September 2018, and severe typhoons during the autumn of 2019. During the 2018 Hokkaido earthquake, however, the WiFi access points were rendered unusable due to widespread electrical outages. In light of growing security and privacy concerns, the MIC recently warned that communications sent through this SSID are intentionally unencrypted to prioritise accessibility, and therefore subject to interception by third parties.

Use of foreign mobile devices

As a general rule, it is prohibited to use mobile devices in Japan that do not meet Japanese radio wave emission standards, and with respect to which the manufacturer has not obtained authentication from the government. Therefore, until relatively recently, many foreign visitors' use of their personal mobile devices in Japan was technically illegal, although there are no known cases of any foreign visitor being charged with Radio Act violations for personal mobile device use. In August 2016, an amendment to the Radio Act took effect, permitting foreign visitors to Japan to use their personal mobile devices (even if not authenticated in Japan) for up to 90 days, so long as the devices have either been certified by the Federal Communications Commission in the United States or received CE certification in the European Economic Area using standards equivalent to those imposed upon Japanese technology. This Radio Act amendment was implemented to encourage foreign tourists to visit Japan in anticipation of the Olympic Games originally scheduled to take place in 2020. While there had previously been concerns that devices not authenticated in Japan could adversely affect the radio use environment, the MIC eventually concluded that the likelihood of any adverse effect was minimal. The MIC further loosened the restrictions to allow Japanese residents to use foreign mobile phones for R&D purposes via an amendment to the Radio Act. Under the amended Radio Act, which came into force in force in November 2019, Japanese residents are permitted to use foreign mobile phones for R&D purposes for up to 180 days, although the user is required to file prior notification with the MIC and this exception only allows users to connect devices that have received certain foreign certifications to WiFi or Bluetooth.

In addition to government-imposed restrictions, private companies in Japan have in certain cases voluntarily adopted policies prohibiting the sale of certain foreign mobile devices. In May 2019, for example, NTT DOCOMO, KDDI and Softbank voluntarily

12 Normally, users can only use the WiFi network of the service provider to which they are currently subscribed.

ceased distribution of mobile devices manufactured by Huawei after sanctions were imposed upon it by the United States. These carriers eventually resumed sales of Huawei devices after the US government announced it was extending the pre-‘ban’ grace period.

Proliferation of the internet of things

To address the rapid increase in the number of internet of things (IoT) devices, which could exhaust the number of available mobile phone numbers, the MIC in January 2017 amended its regulations on the assignment of phone numbers to assign the designation ‘020’ to machine-to-machine (M2M) data connection devices, keeping them separated from standard mobile numbers designated with ‘090’, ‘080’ and ‘070’. It is expected that M2M data connections conducted through mobile networks will initially be used primarily for telemeters (e.g., remote management of water and gas meters, vending machines and elevators) and telematics (e.g., GPS and other information services equipped in vehicles) and will eventually cover connected cars and other IoT devices. NTT DOCOMO, KDDI and several MVNOs commercially launched M2M data connection services in October 2017.

New regulations have recently been adopted to address IoT devices’ vulnerability to cybercrime (see the ‘Cybercrime’ section below).

IP network

In November 2015, NTT announced a plan to switch from the use of fixed-line public switched telephone network (PSTN) to IP telephony. According to NTT’s updated implementation plan, NTT will commence work on the switch to IP telephony in January 2024 with completion planned for January 2025. As the existing PSTN is a fundamental telecommunications infrastructure, the MIC is paying close attention to what kind of IP telephony will emerge as well as the process through which NTT will transition away from PSTN. In light of the importance of PSTN to the existing infrastructure, in February 2016 the MIC asked the Telecommunication Council to identify potential issues that could arise from the switch to IP telephony. To mitigate certain concerns identified by the Council (such as consumers’ ability to retain existing telephone numbers), the MIC presented a proposed amendment to the Telecommunications Business Act to the Diet in March 2018, which was subsequently enacted in May 2018. Under the proposed amendment, each telecommunication company must obtain the MIC’s approval of its plans regarding the use of telephone numbers, and must thereafter comply with the approved plans. Additionally, when telecommunication companies cease to provide services during the shift to IP telephony, those companies must file notice of such cessation with the MIC so that the MIC may make a public announcement of the terminating services to customers.

iii Restrictions on the provision of service

The telecommunications industry in Japan has traditionally been dominated by NTT East and NTT West and by three major private telecommunication companies: NTT DOCOMO, KDDI and SoftBank. A fourth major service provider, Rakuten Mobile, was granted an MNO business licence in April 2018 and launched commercial MNO services in April 2020. Because existing providers can become dominant to the exclusion of new entrants once their network or technology standard has been adopted by a critical mass of users, the MIC and the Japan Fair Trade Commission (JFTC) have jointly adopted guidelines to regulate anticompetitive practices by service providers with high market shares. For example, the guidelines state that the JFTC could take corrective action, such as issuing a cease and desist

order, if a telecommunications service provider with a high market share, such as a mobile phone carrier, were to contractually restrict its customers from switching to another service provider or to charge an excessive cancellation fee for doing so.

Pricing restrictions

Under the Telecommunications Business Act, prices charged to end-users by NTT East and NTT West for wired telephony and payphone services are subject to caps to be determined by the MIC. These caps are intended to prevent these companies from abusing their near-monopoly over these fundamental services and to encourage them to improve efficiency. Prices to be charged by NTT East and NTT West for optical data services, and prices to be charged by KDDI, NTT DOCOMO and SoftBank for mobile services, must all be submitted to the MIC for review before implementation. If the MIC finds a pricing scheme inappropriate, either because it is anticompetitive or otherwise significantly unreasonable, the MIC may require the carrier to change its pricing scheme. Otherwise, prices charged to end-users and the other terms of service are not regulated. This may change, however, as the government has recently started applying pressure on the major telecommunications companies to reduce prices for mobile phone services.

As a general rule, all telecommunication business licence holders must provide access to any other carrier that seeks to interconnect with their network. However, the prices charged for, and the methods of, interconnection have been areas of both public controversy and regulatory scrutiny. Telecommunications companies have pressed for greater access to NTT's infrastructure, including its optical fibre network. NTT only provided access to its fibre optic network on a bulk basis until 1 February 2015, after which NTT East and NTT West respectively began to offer single-line fibre optic wholesale to other carriers, including to non-traditional telecommunication companies such as Sohgo Security Services (ALSOK) and Tsutaya, a rental video company. These fibre optic wholesale programmes are designed to facilitate fibre optic use by reducing fees for fibre optic services at the end-user level. As of December 2018, approximately 751 operators had commenced use of these fibre optic wholesale services.

Prior to the commencement of NTT's fibre optic wholesale programme, there were competition-related concerns stemming from the confidential nature of NTT East's and NTT West's contracts with the secondary retailers to whom they provided fibre optic wholesale services. At the time, other major telecom service providers, such as KDDI and Softbank, expressed concerns that NTT East and NTT West were providing their fibre optic wholesale services to NTT group companies at lower prices than to unaffiliated companies, which in turn enabled NTT group companies to provide fibre optic services to end-users at lower prices. In response to these concerns, the MIC issued guidelines relating to the provision of fibre optic wholesale that prohibit the disparate treatment of select service providers and also provide the MIC with potential enforcement mechanisms. A survey conducted by the MIC showed that NTT DOCOMO and NTT Communications (a data communication company within the NTT group) obtained approximately 60 per cent of the fibre optic wholesale service market by offering large fee discounts on their respective mobile services to end-users. Given the prominence of this market share, and due to their relationship to NTT East and NTT West, other fibre optic service providers have argued that the discounted fees charged by NTT DOCOMO and NTT Communications are anticompetitive in nature. To address these concerns, the MIC decided in May 2016 to launch investigations into NTT DOCOMO's business practices. In its investigation report, which was issued in

August 2018, the MIC concluded that the discounted fees charged by NTT DOCOMO and NTT Communications did not constitute anticompetitive practices. However, the MIC did determine during its investigation that NTT DOCOMO's online description of the terms and conditions applicable to its pricing discount was misleading to customers. NTT DOCOMO voluntarily modified this description, but in June 2018 the MIC nonetheless issued an administrative direction to NTT DOCOMO to prevent future occurrences of misleading marketing.

MVNOs

Along with the introduction of fibre optic wholesale services, the availability of mobile line wholesale services (MVNOs) in Japan has also begun to expand. While MVNOs have existed in Japan since 2001, until recently the number of service providers and subscribers had been few in number. In 2007, the MIC's guidelines regarding MVNOs were amended to clarify the relative rights and obligations between MVNOs and MNOs, and a formalised dispute settlement procedure was established. After this amendment, the number of MVNO service providers using MNOs' mobile lines or worldwide interoperability for microwave access (WiMAX) lines significantly increased. In 2014, the guidelines for the operation of Type II designated telecommunication facilities were amended, which included a change in the calculations for mobile line wholesale pricing. These calculation changes have reduced mobile line wholesale prices to the benefit of MVNOs. More recently, in 2017 the guidelines regarding MVNOs were amended twice to, among other things, clarify that the MIC is authorised to issue business improvement orders to MNOs who discriminate against MVNOs with respect to providing access to its network.¹³

The aforementioned guideline amendments have spawned a recent increase in MVNO activity. In FY2013, only 22 MVNOs provided data communication services or voice communication services in Japan. However, as of March 2021 the number of active MVNOs has increased to 1,516. Correspondingly, there were 26.12 million MVNO subscribers by March 2020, up from 7.17 million in December 2013. However, despite this recent increase in MVNO activity, MVNO service subscribers still only constituted 13.4 per cent of all mobile service subscribers as of March 2021.

Anticompetitive business practices

One of the reasons MVNO penetration remains low stems from MNOs' common practice of permitting subscribers to purchase new mobile devices on monthly instalment plans – often simultaneously offering discounts on monthly subscription fees equal to or greater than the amount of such monthly instalment payments. MNOs advertise that this instalment and discount programme renders subscribers' new devices 'effectively free'. In contrast, the vast majority of MVNOs do not have the financial resources to permit subscribers to pay for new mobile devices in instalments. Instead, MVNO subscribers seeking a new mobile device must often pay its entire purchase price upfront. This resource disparity has made it difficult for MVNOs to compete with MNOs for new subscribers.

13 The MIC, as part of its regulatory enforcement powers, has the authority to issue business improvement orders to telecommunications companies to the extent it deems their activities to significantly disrupt the sound development of telecommunications services.

Recognising the high barriers to entry created by these effectively free mobile device programmes, in March 2016 the MIC issued guidelines compelling MNOs to decrease the size of their mobile device discounts so that subscribers are required to make reasonable payments toward their new devices. The intended result of these guidelines is to bolster competition and, eventually, reduce mobile service subscription fees. In October 2016, the MIC issued official warnings to NTT DOCOMO, KDDI and SoftBank for attempting to subvert the March 2016 amended guidelines by distributing coupons to subscribers and potential subscribers in lieu of discounts.

The MIC has also made efforts to address the issues of SIM locking and mandatory two-year service contracts with automatic contract renewal, in each case to facilitate competition between MNOs and MVNOs and reduce consumers' mobile expenses.

Since the MIC's initial adoption of guidelines in 2010, it has encouraged mobile service providers to provide SIM unlock options for customers' mobile devices, as it believes that the practice of SIM locking prevents consumers from freely choosing mobile service carriers and causes competition stagnation. Following an August 2018 amendment to the guidelines, mobile service providers will be required to honour SIM unlock requests for all mobile devices effective as of 1 September 2019, including devices purchased on second-hand markets, other than mobile devices for which the purchase price is being paid in instalments (in which case, SIM unlock requests must still be honoured starting 100 days after the purchase). In August 2021, the MIC drastically revised the guidelines such that, as a general rule, SIM locking is prohibited. SIM locking will only be permitted with the MIC's prior approval.

Until recently, there had been little progress toward the abolishment of automatically renewing two-year service contracts. For years MNOs frequently required customers enjoying the benefits of their effectively free mobile device programmes to enter into two-year contracts under which customers were required to pay approximately ¥10,000 for early termination, plus an accelerated payment of the purchase price of a smartphone that would otherwise be paid by instalments during the two-year term. The two-year contract system, in conjunction with the effectively free mobile device practice, has long been identified as reducing customers' freedom of choice in mobile service carriers. Although the MIC issued guidelines on numerous occasions over the years to address these contracting practices, which it viewed as raising anticompetitive concerns, the guidelines were largely ineffective in addressing the fundamental issue of automatically renewing two-year contracts.

However, the government finally took the next step in May 2019 by legislatively imposing restrictions on the use of automatically renewing two-year contracts through an amendment to the Telecommunication Business Act – a significantly more affirmative step than its prior non-binding guidelines. As a general principle, the newly amended Telecommunication Business Act prohibits the use of any contract provisions that would restrict consumers' ability to terminate their mobile service contracts if the restrictions rise to a level that would be deemed to have anticompetitive effects. Given the generality, the MIC has been delegated the task of adopting specific regulations to carry out this mandate. The MIC's regulations clarify the types of anticompetitive behaviour that are prohibited under the amended Telecommunication Business Act. The MIC's regulations list, among others, the following as examples of prohibited provisions in consumers' mobile service contracts:

- a* any termination penalty (regardless of amount) in conjunction with a contract term longer than two years;
- b* regardless of contract length, any early termination penalty in excess of ¥1,000; and

- c automatic renewal clauses coupled with an early termination fee, regardless of the initial contract term, unless the following conditions are met:
- the contract must be terminable without a fee during a minimum three-month window extending from one month prior to expiry of the original contract term through the first two months of the renewal period;
 - consumers must be given the choice, upon execution of the original contract, not to have any termination penalty apply to renewal periods;
 - consumers must be given the choice, at the time of automatic renewal, not to have any termination penalty apply to that renewal period; and
 - the service provider cannot change pricing or terms to incentivise customers to consent to a longer termination penalty period.

The MIC has also recently begun analysing the state of competition between MVNOs. In particular, the MIC has expressed concerns that MNOs might favour affiliated MVNOs and, in turn, discriminate against unaffiliated MVNOs by providing them slower data traffic speeds. The MIC did not mention any MNOs by name, but many commentators believe that the MIC was referring specifically to KDDI (with respect to UQ Communications, an MVNO that is 32 per cent-owned by KDDI) and SoftBank (with respect to Y!Mobile, a low-cost mobile service affiliated with SoftBank). In October 2018, the MIC established new regulations prohibiting MNOs from discriminating between MVNOs with respect to data traffic speeds. In connection with the foregoing, in May 2020, the MIC revised the MVNO guidelines to, among other things, clarify that an MNO is permitted to operate an MVNO business by relying on a network provided by another MNO, but if such operation of the MVNO business substantially harms competition, the MIC may restrict that business through an administrative order.

Similar to the primary mobile service providers described above, the MIC has also recently expressed concerns that the market shares of UQ Communications and Wireless City Planning (WCP) could permit them to stifle competition by rejecting competitor MVNOs' requests to connect to their telecommunication facilities. In response, the MIC designated UQ Communications and WCP as Type II designated telecommunication companies effective as of December 2019. This designation requires UQ Communications and WCP to each file with the MIC their respective terms and conditions regarding competitor MVNOs' access to their telecommunication facilities.

In light of increasing customer complaints, effective as of October 2018, the amended regulations implementing the Telecommunication Business Act added MVNO voice communication services to the list of services for which customers have an eight-day cooling-off period after signing a new service contract, during which period the agreement can be terminated without penalty.

The MIC also seeks to address another competition issue – the cost to comply with the Telecommunication Business Act may differ between Japanese and foreign enterprises. The cost difference is primarily due to the difficulty of extraterritorial enforcement of the Act, resulting in uneven enforcement between domestic and foreign enterprises. Before the Telecommunication Business Act was amended, a foreign company was not subject to extraterritorial enforcement unless the company had an establishment or a facility in Japan, even if it provided services to Japanese consumers. To address this gap, the MIC amended the Telecommunication Business Act in May 2020 to extend its extraterritorial enforcement to foreign enterprises that provide to Japanese customers services equivalent

to those of the domestic enterprises that are regulated by the Telecommunications Business Act. These amendments came into full force and effect in April 2021. The amended Telecommunication Business Act requires such foreign telecommunication companies to register with the MIC and to designate a local representative in Japan to ensure that the MIC can realistically enforce sanctions. This amendment also aims to enhance the protection of Japanese consumers' privacy rights. As a consequence of extraterritorial application, even foreign telecommunication companies must comply with the obligation to protect consumers' right to secrecy of communication, which is protected even more stringently than personal data under Privacy Act (e.g., even the collection of secret communication requires the consent of data subjects). However, foreign telecommunication companies may face difficulty in complying with these secrecy of communication requirements. The first difficulty is to correctly delineate what categories of data fall within those requirements in the context of digital communication (which may include header data, IP addresses, location data, etc.). The MIC has provided guidance that any component of communication (such as date, place, identification code, frequency of communication) is deemed to constitute a secret communication. However, such a broad definition may be difficult to apply in practice in the course of business. Foreign telecommunication companies should monitor how discussions develop with respect to understanding these requirements.

Unsolicited communications

Separate regulations exist in Japan restricting unsolicited texts and emails and unsolicited phone calls. With respect to unsolicited texts and emails, the Act on Regulation of Transmission of Specified Electronic Mail prohibits:

- a* the transmission of emails using false sender information as a means of advertisement for the sender's own or another person's sales activities;
- b* the transmission of emails to persons who have not opted in to receive such specified emails; and
- c* even where the recipient has opted in to receive emails from the sender, the transmission of an unreasonably large number of emails for the purpose of corroborating or promoting the sender's own or another person's sales activities.

Violators of these prohibitions on unsolicited texts and emails may face penalties of up to one year's imprisonment or a fine of up to ¥1 million. Regulations pertaining to unsolicited phone calls are handled at the local prefectural level. Accordingly, each local prefectural government has established a local ordinance prohibiting the making of unsolicited phone calls. For example, in July 2018 the metropolitan government of Tokyo increased penalties under an anti-nuisance ordinance prohibiting continued unsolicited phone calls, facsimiles, emails and SNS messages, with offenders now being penalised with up to one year's imprisonment or a fine of up to ¥1 million.

As a result of a study conducted by the Working Group on Consumer Protection Rules based on the MIC's collection and analysis of consumers' complaints trends, the MIC has recognised that there are widespread consumer complaints about solicitations made by telecommunication business providers that intentionally mislead consumers as to the identity of such provider or omit the purpose of communication (e.g., to solicit customers to enter into subscription contracts they may not desire). Some consumers were induced to enter into agreements with small-sized enterprises that misleadingly portrayed themselves as larger, more well-known enterprises, while others switched service providers under the mistaken

belief that they were just switching to a different subscription plan provided by their existing service provider. To address these issues, the MIC amended the Telecommunication Act to require telecommunication service providers and distributors to clearly state their identity and the purpose of a communication prior to each communication for solicitation. The amendment came into full force and effect in October 2019.

iv Privacy and data security

Protection of personal information

In keeping with Japan's constitutional protection of freedom of speech and secrecy of communication, the Telecommunications Business Act prohibits ISPs from censoring or infringing on the privacy of communications passing through their networks.

As a general matter, the Law Concerning the Protection of Personal Information (Privacy Act) protects personal information or data that can be used to identify specific living persons. Under the Privacy Act, the entities handling such information are required to publish a 'purpose of utilisation' regarding its use. Personal information incorporated into a database must be kept accurately, and necessary and proper measures to maintain its security must be instituted. Any person whose personal data is kept in a database for more than six months has a right to request access to the data, and add to, modify or delete it. In August 2015, the Privacy Act was amended to strengthen the protection of personal information, including through expanded protection of sensitive personal information, restrictions on the transfer of personal information outside Japan and the establishment of protocols for the use of anonymised data to facilitate big data analysis.

Further, the MIC and the Personal Information Protection Committee (PPC) have jointly issued Privacy Act guidelines that are specific to telecommunications businesses. As these guidelines are structured to reflect the requirements under both the Privacy Act, which generally applies to all businesses handling personal information, and the Telecommunications Business Act, which provides protections relating to the secrecy of communication (a constitutional right), they are considered even more stringent and robust than the general guidelines issued by the PPC, which solely reflects Privacy Act regulations. Such additional restrictions require, among other things, telecommunications business operators to:

- a* publish privacy policies regarding their collection and use of private information and, in particular, the collection of information through smartphone applications, on a reasonable effort basis;
- b* establish internal regulations regarding the length of time they may retain communication log records; and
- c* delete this information after the expiry of such period.

Telecommunications business operators are particularly likely to transfer personal data across borders, which is subject to certain restrictions under the Privacy Act when a business operator processing personal data in Japan transfers the data to third parties located in foreign countries. Even foreign businesses (not directly processing personal data in Japan) should pay attention to the extraterritoriality of Japan's data privacy rules, which is triggered when the foreign business collects personal data from a data subject located in Japan when supplying goods or rendering services to him or her. In an effort to facilitate the international exchange of information, in July 2018 the PPC and the Commissioner for Justice, Consumers and Gender Equality of the European Commission mutually recognised each other's personal

data protection regimes as equivalent. Beginning in January 2019, the restrictions on the cross-border transfer of personal data between Japan and the EU have been exempted. Following Brexit, such mutual recognition was extended to the United Kingdom.

Further amendments to the Privacy Act were passed in June 2020, which will come into full force and effect in April 2022. The amendments pertain to various matters, including the enhancement of data subject rights, narrowing the scope of permissible opt-out transfer of personal data, creating a new category of pseudonymised data with, *inter alia*, less cumbersome requirements and heightened filing duties upon a data breach. Particularly, foreign companies should take note that extraterritorial enforcement will be strengthened. Under the amended Privacy Act, the PPC will have the authority to directly issue compulsory orders to foreign companies and impose criminal penalties for failure to comply with such orders. Having said that, there are substantial limits on the government's ability to enforce such regulations outside Japan. To address this issue, the PPC is permitted to collaborate with regulators in foreign countries for the purpose of enforcing Privacy Act regulations. Foreign companies should be on the lookout for how the practice will develop with respect to extraterritorial enforcement. Additionally, in August 2021, the PPC issued a draft of regulations implementing the new amendments and guidelines to clarify how to manage day-to-day data operations in compliance with the amendments. They include various new rules, including, among other things, more stringent transparency requirements in the case of cross-border transfers of personal data; under such requirements, the data provider will be required to provide the data subject with explanations of the data privacy framework of the country in which the data recipient is placed, and data security measures that the data recipient will maintain. The draft will be subject to an ongoing public comment process until September 2021.

The Japan Fair Trade Committee (JFTC) has also approached personal data protection from the perspective of competition law. In December 2019, the JFTC issued guidelines on abuse of market dominance in the context of digital platforms collecting personal data from platform users. This suggests that in the JFTC's view, abuse of market dominance could occur in the business-to-consumer context, rather than solely in the business-to-business context. Whether a digital platform provider has market dominance is a fact-intensive inquiry. The JFTC guidelines list types of behaviour constituting abuse, which mainly consist of violations of the Privacy Act. However, it should be noted that the guidelines are non-exhaustive: other behaviour may constitute abuse even if it does not violate the Privacy Act. In addition, certain abusive behaviour covers collection of information that is related to a person but not identifiable. Such unidentifiable information is not protected by the Privacy Act, but the JFTC may still seek to protect it.

At the same time, in the furtherance of the Society 5.0 initiative, which will be facilitated by easier data circulation, the government has sought to establish systems by which data subjects can provide personal data in exchange for services, while being protected against the illegitimate use of such data. As a result, the personal information bank (PIB) regime has been adopted. Under this regime, a PIB enters into a contract with a data subject under which the PIB is authorised to manage the data subject's personal data and, when necessary, to collect personal data that the data subject already provides to other companies (e-commerce platform, SNS, etc.). When a company desires to use personal data managed by a PIB, the PIB is authorised to determine whether to give the consent to such usage on behalf of the data subject following the general policy specified by the data subject. The data subject

also has the right to opt-out of usage. There are no constraints on the kinds of benefits that may be offered to data subjects in exchange for access to their personal data. Accordingly, the PIB may offer benefits to incentivise the data subjects to participate in its service.

A PIB is not legally required to obtain any governmental licence to operate its data business, but a PIB may obtain certification from the Information Technology Federation of Japan (ITFJ) if desired, primarily to demonstrate the PIB is reputable. The MIC and METI issued the latest guidelines setting forth the criteria that an applicant must satisfy to obtain such certification in October 2019. As of April 2021, seven PIBs have obtained the ITFJ certification, and two PIBs have launched data services.

Protection of digital platform users

As illustrated by the JFTC's approach to digital platform operators' collection and processing of personal data, Japanese regulators have taken a great interest in protecting users (both marketplace participants and customers). For this purpose, the Ministry of Economy, Trade and Industry (METI), JFTC and MIC pushed for the Act For Transparency of Digital Platformer Transaction (Platformer Act). The Platformer Act was enacted in June 2020, and came into effect in February 2021.

METI has specified the digital platform businesses that will be subject to the Platformer Act (specified platformer): Amazon Japan GK, Rakuten Group, Inc, Yahoo Japan Corporation, Apple Inc, iTunes Kabushiki Kaisha, and Google LLC. specified platformers are subject to three types of obligations:

- a* disclosure requirements;
- b* requirements to establish procedures and structures to effectively communicate with marketplace participants and to handle inquiries and complaints from marketplace participants; and
- c* requirements to submit annual reports to METI on the compliance status and self-assessment thereof with respect to compliance with the requirements of (a) and (b).

To comply with the disclosure requirements, a specified platformer may need to disclose items that are not included in typical terms of use, including the criteria used to determine the ranking of products, and the criteria for banning participation in a marketplace.

Furthermore, the Diet passed the Act for the Protection of Consumers who use Digital Platforms (APCDP) on 28 April 2021. The APCDP will come into full force and effect by May 2022. Online mall businesses and internet auction businesses will be subject to the APCDP, so a greater number of companies are expected to be subject to the APCDP as compared to the Platformer Act. Under the APCDP, among other things, the Prime Minister is authorised to request digital platform providers to remove unsafe products that are offered in the online market by a seller that cannot be identified. Additionally, consumers will have the right to compel digital platform providers to disclose the information of sellers that is necessary to file a court case to make a claim for damages. To the extent that digital platform providers remove such products or disclose the applicable seller's information in accordance with a request, the digital platform providers will not be liable for any damage incurred by the seller as a result of such removal or disclosure.

Treatment of infringing content

ISPs are not currently required to proactively delete content that infringes upon the intellectual property rights or privacy of others. However, the Internet Provider Liability Limitation Act, enacted in 2001, provides a safe harbour for ISPs that delete such content. Under this safe harbour, no ISP may be held liable for the deletion of content on its network if the ISP reasonably believes that the content infringes the intellectual property rights or privacy of others, or if a third party alleges infringement and the content sender does not respond to the ISP's inquiry within seven days. The Internet Provider Liability Limitation Act further shields ISPs from tortious liability for failing to delete infringing content. In reliance on this statutory defence to liability, ISPs generally do not take steps to monitor the content passing through their networks. The Act does, however, authorise persons whose rights are infringed by content delivered over the internet to demand information regarding the sender of the content from ISPs so that legal action may be taken against the sender. However, as a practical matter, it is often not possible to identify the original sender of such infringing content where content passes through multiple networks. In recent years, the government has paid close attention to piracy issues affecting Japanese businesses, in particular those piracy activities that target the types of media relevant to its Cool Japan policy (e.g., manga and animation).

In April 2018, the Intellectual Property Strategy Headquarters of the Cabinet Office (IPSHQ) took what many viewed to be an aggressive step by issuing a policy called Urgent Countermeasures against Piracy Sites directed at piracy issues. Under this policy, the IPSHQ declared that it is appropriate for private ISPs to voluntarily block access to three major piracy websites: Manga-mura, Anitube and Miomio. The policy does not legally oblige ISPs to block access to these sites, but the IPSHQ nonetheless expects ISPs to voluntarily comply. Notably, there has been a strong backlash against the policy from the Japan Internet Providers Association, which has argued that blocking access to these sites violates laws protecting the secrecy of communications. According to the IPSHQ, the policy is simply a temporary measure intended to bridge the gap until the government passes more permanent legislation concerning piracy websites. The IPSHQ established a council of experts for the purpose of drafting such legislation, and initially targeted the issuance of an interim report in September 2018. However, there has been strong disagreement among the council's members concerning the legitimacy of blocking access to online content, which led to a failure to meet the intended report timing. The final meeting of the council in October 2018 ended without a subsequent meeting being scheduled. According to reports, the council may discontinue further discussions.

Although the IPSHQ did not reach a consensus, the Agency for Cultural Affairs (ACA) approached this issue from the perspective of the Copyright Act and successfully pushed for an amendment thereto, whereby an operator of piracy sites is subject to a criminal penalty of imprisonment of up to five years or fines of up to ¥5 million, or both; and a person posting a hyperlink to infringing content on a piracy site is subject to imprisonment of up to three years or fines of up to ¥3 million, or both. In addition to the ban on piracy sites, the ACA addressed illegal downloads of infringing content. Before the amendment, the statutory ban on illegal downloads pertained only to a limited category of infringing contents: music and films. The amended Copyright Act will ban downloads of all the categories of infringing contents, including books, theses and computer programs. The ban on piracy sites came into full force and effect on 1 October 2020. The extension of infringing content categories came into full force and effect on 1 January 2021.

Protection of minors

A statute for the protection of minors from harmful internet content, known as the Youth Internet Environment Act, became effective in April 2009. The statute directs government bodies to improve internet safety for juveniles (under the age of 18) by encouraging ISPs to use technologies that limit juvenile access to harmful content. The statute targets content glorifying crime or suicide, obscene sexual content, and other depictions of extreme violence or cruelty. The statute further exhorts parents to monitor their children's internet use, and to limit access to inappropriate content by using filtering software and other measures.

The statute requires mobile network service providers to filter internet content for customers that are juveniles, except where a parent has expressly requested that filtering not be used. Under the Act, commencing in April 2010, manufacturers of devices with internet connectivity (other than mobile phones) became required to pre-install filtering software or otherwise facilitate the use of third-party filtering software or services. Initially, the Act did not impose any filtering-related requirement on mobile phone use outside the mobile network (e.g., on WiFi) partly because only 1.5 per cent of juveniles owned smartphones in 2010. However, as of 2017, 63.2 per cent of juveniles owned smartphones, and only 44 per cent of those juvenile smartphone users utilised filtering software. This means that a large population of juveniles could have been exposed, or at least had access, to inappropriate content in an unfiltered manner. In June 2017, the Act was amended to include smartphones within the scope of mobile network service providers' obligations to filter internet content and manufacturers' obligations to pre-install filtering software. The amended Act also requires mobile network service providers (i.e., MNOs and MVNOs) to confirm whether each new subscriber is a juvenile and, if so, to explain filtering to such juvenile and activate filtering. The amended Act became effective in February 2018.

Cybercrime

In Japan, cybercrime has long been an area of public concern. In recent years, law enforcement has focused its efforts on combating cybercrime related to computer hacking through the unauthorised use of IDs and passwords, and other attacks on security holes; the distribution of computer viruses, and the input of data and unauthorised commands that can cause damage to computers and data; and other types of crimes facilitated through the internet, such as drug trafficking, prostitution, fraudulent internet auctions and child pornography.

Combating the distribution of child pornography has been an area of particular scrutiny and public interest. The Act on Punishment of Activities Relating to Child Prostitution and Child Pornography and the Protection of Children, originally passed in 1999, prohibits the distribution of child pornography. This Act was amended in 2004 to outlaw the uploading and distribution of child pornography over the internet, and was further amended in 2014 to criminalise the simple possession of pornographic images featuring minors and to require ISPs to block such pornographic material.

To combat increasing cybersecurity threats, the Basic Act on Cybersecurity was enacted in November 2014. The Act prescribes the concept of cybersecurity and defines the roles and responsibilities of the government. In January 2015, the Cybersecurity Strategic Headquarters (Headquarters) and National Center of Incident Readiness and Strategy for Cybersecurity were established to facilitate programme planning, policy formulation and overall coordination for cross-cutting cybersecurity measures.

With respect to government authorities' ability to monitor the content of telecommunications, law enforcement authorities were previously only permitted to utilise

wiretapping during criminal investigations of organised crime for murder, drug-related crimes, arms possession or stowaway smuggling by obtaining a wiretap warrant pursuant to the Act for Wiretapping for Criminal Investigation (Wiretapping Law). However, in April 2016, the Wiretapping Law was amended to permit wiretapping to be used in criminal investigations underlying a broader scope of organised crimes, including those involving the use of explosive materials, kidnapping, fraud, theft and child pornography.

The MIC has expressed particular concerns that IoT devices are vulnerable to malware that could render them ‘zombies’ subject to manipulation by a cyber-attacker. The MIC has stressed that, to implement countermeasures against cyberattacks, it is essential to have specific information relating to the servers used for cyberattacks and infected networks. However, it was difficult for telecommunications business operators to share such information with one another in light of legal obligations to protect the secrecy of communications under the Telecommunications Business Act. In May 2018, the Telecommunications Business Act was amended with the goal of establishing a legal framework to permit the sharing of information among telecommunications business operators for cybersecurity purposes. Under the amended Telecommunications Business Act, a third-party organisation designated by the MIC will act as a hub through which the relevant information will be shared among telecommunications business operators without violating the secrecy of communications. In January 2019, the MIC designated ICT-ISAC Japan, a cybersecurity research organisation, to act as the third-party for these purposes.

In addition, the Act on National Institute of Information and Communications Technology has been amended to authorise the National Institute of Information and Communications Technology to assess networks and identify those lacking appropriate password configurations. The National Institute of Information and Communications Technology will identify the specific networks and convey the particular network-specific information to telecommunications business operators via a designated third-party organisation so that they can warn network owners of any password configuration deficiencies. The National Institute of Information and Communications Technology began operating in February 2019 under the project name ‘NOTICE’ (i.e., the National Operation Towards IoT Clean Environment). Following these cybersecurity developments, the Telecommunication Business Act was correspondingly amended in April 2019 to add new data security requirements to the technological specification requirement for IoT terminal equipment.

IV SPECTRUM POLICY

i Development

The need for access to the radio spectrum has steadily increased with the proliferation of new technologies utilising wireless data transmission. The number of licensed wireless stations and devices increased from 3.8 million in 1985 (a majority of which were attributable to amateur radio stations and handheld two-way radios) to 283 million as of March 2021 (99 per cent of which were attributable to mobile devices).

The MIC has broad discretion to determine how radio spectrum is allocated in Japan and describes its decision-making process as open and collaborative – including consultations with the public, scholars and industry experts. However, the MIC’s decision-making has been criticised by some as arbitrary and opaque. This has led to some calls for the implementation of spectrum auctions as a fairer method of allocation. Despite such criticism, the MIC has yet to establish a system that provides transparency over spectrum policy and spectrum allocation

decisions. While there was some movement toward implementing a spectrum auction system, and a bill that would have implemented such system was submitted to the legislature in March 2012, the bill lost momentum following a December 2012 change in the controlling political party in Japan, and the bill has since been rejected.

Many critics point to the MIC's issuance, in December 2014, of 3.5GHz 120MHz bandwidth spectrum licences to each of NTT DOCOMO, KDDI and SoftBank as prime examples of its discretionary authority when allocating spectrum. This was the first spectrum allocation since the MIC amended its policy restricting submissions of multiple licence applications from companies that operate their spectrum as a group. Prior to the amendment, companies that held more than one-third of the voting rights of another company were restricted from submitting licence applications together with such affiliate companies. However, to reduce multiple applications by de facto group companies and facilitate greater entry into the spectrum market, the MIC expanded this restriction on multiple licence applications by group companies to take into consideration additional factors in determining what companies constitute a group, including their non-voting capital structures and decision-making authority, and the business relationships between companies. Due to this amended restriction, YMobile, a company in which SoftBank held an ownership stake but that had not previously been considered a SoftBank group company, was now considered a member of SoftBank's group and unable to submit a spectrum allocation application, which resulted in applications being accepted from NTT DOCOMO, KDDI and SoftBank only.

As the MIC planned to allocate 40MHz of the 120MHz available to each of the three applicants, it was always clear that each would receive an equal allocation. However, there was some competition in the individual allocations across the available 120MHz in which the MIC exercised discretion. The 120MHz bank is divided into high, medium and low components. While NTT DOCOMO's first choice was the low component, both KDDI and SoftBank preferred the high component. The MIC determined that it would grant Softbank the high component because KDDI failed to specify in its application when it would be able to start operation of speeds of more than 1Gbit/per second.

In November 2017, the MIC announced the allocation of 1.7GHz 80MHz bandwidth and 3.4GHz 80MHz bandwidth. NTT DOCOMO, KDDI and SoftBank all applied for allocation of 60–120MHz bandwidth. In addition, Rakuten Mobile, a major online shopping platform that has the largest MVNO market share, applied to become the fourth MNO. Pursuant to the MIC's policy in favour of new entrants, Rakuten Mobile obtained 1.7GHz 40MHz bandwidth and announced the launch of its MNO services. NTT DOCOMO, KDDI and SoftBank also obtained 40MHz bandwidth each.

In May 2019, the Radio Act was amended to expedite the implementation of 5G services. Meanwhile, the MIC completed the first round of 5G spectrum allocation, which was awarded to NTT DOCOMO, KDDI, Softbank and Rakuten Mobile in 2019 on the condition that 5G services shall be rolled out on a nationwide basis within two years. For the purpose of expediting 5G spreading, the MIC also started granting subsidies to corporations for the installation of optical fibre. These four major providers launched 5G telecommunication services in 2020. By the end of 2020, 5G services were rolled out in all prefectures of Japan, but the scope of coverage within each prefecture varies. The coverage of 5G services will be gradually expanded to uncovered areas.

In addition, and separate from its goal of nationwide 5G coverage, the MIC has started to grant 'local 5G' spectrum authorisations. The first round of local 5G authorisations was granted to 13 organisations (including Fujitsu, Tokyo University). Local 5G is intended to be used only within a narrow and limited area such as the grantee's specific building or land.

ii Flexible spectrum use

Originally, the Radio Act required the MIC to grant bandwidth licences that specified the specific purpose for which the bandwidth could be used. This inflexibility was criticised as an obstacle to the efficient use of bandwidth. The Radio Act was amended in 2010 to facilitate the flexible use of spectrum and allowed the MIC to grant licences covering multiple uses. For example, a terminal on a train can now be licensed for transmission of data for operation of the train (use for operation of public services) and voice data over a pay phone equipped in the train (use for telecommunication). As of 2016, the MIC had granted 1,500 licences permitting multiple uses, and the MIC expects that the number of such licences will continue to increase.

iii Broadband and next-generation mobile spectrum use

The MIC annually reviews spectrum usage and revises a spectrum allocation plan to reflect spectrum needs for new technologies and services.

By 2015, LTE networks operated by NTT DOCOMO, KDDI and SoftBank achieved 99 per cent coverage of the national population. LTE is technically categorised as 3.9G, even though the International Telecommunication Union permitted it to be commercially referred to as 4G. In March 2015, NTT DOCOMO was the first among the major Japanese mobile service providers to launch its LTE-advanced next-generation mobile communication service, called PREMIUM 4G, which uses carrier aggregation technology and is technically categorised as 4G. PREMIUM 4G's maximum transmission speed reached 788Mb per second in limited areas. KDDI (au) and Softbank, the other major mobile phone companies in Japan, have also begun implementing the same service.

The government is now focusing on 5G, which will enable data transmission speeds of up to 10Gb per second. As described above, 5G spectrum was allocated to NTT DOCOMO, KDDI, Softbank and Rakuten Mobile in 2019. These four providers launched 5G telecommunication services in 2020.

The MIC monitors the development of new technologies and their need for spectrum. For example, the MIC has facilitated the development of intelligent transport systems through its spectrum policy by allocating appropriate bandwidth among the following: vehicle information and communication systems, electronic toll collection systems and car-mounted radars. In July 2020, the MIC issued the intelligent transport systems roadmap, which includes a plan to begin use of automatic driving systems on highways and within certain geographic areas (such as areas suffering from depopulation) in 2020; and a plan to install automatic driving systems in logistics by 2025.

iv Spectrum auctions and fees

The MIC imposes spectrum usage fees on broadcasters, mobile phone carriers and other businesses that use radio spectrum, as provided for in the Radio Act. The formulae used to establish the usage fees have been criticised as unfairly favouring broadcasters at the expense of mobile service providers. Until 2005, fees were determined, in the case of broadcasters, on a per-broadcaster basis, and in the case of mobile phone carriers, by the number of base stations

and mobile devices connected to the respective network. Notwithstanding a series of changes in 2005, 2011 and 2014, the formulae continued to favour broadcasters, satellite operators and other vested rights holders. No changes have been made to the usage fee formulae even after a further change in 2017 involving the formation of the Council of Spectrum Policy 2020, which discussed potential changes to the usage fee formulae but eventually concluded that no change should be made. The total amount of spectrum fees the MIC imposed for the fiscal year ending March 2015 was approximately ¥74.7 billion (up from ¥68 billion in 2010), 74 per cent of which was paid by mobile phone carriers and only 8.9 per cent of which was paid by broadcasters, which has raised concerns since the bandwidth of spectrum occupied by mobile phone carriers is actually narrower than that occupied by broadcasters. This gap existed because the discounted usage fees applying to broadcasters were less than those applying to mobile phone carriers on the grounds that broadcasting is of a public nature. In light of the 99.9 per cent mobile phone penetration rate, the MIC announced a plan in May 2018 to discount usage fees imposed on mobile phone carriers to match those imposed on broadcasters. The MIC planned to submit the relevant amendment to the Telecommunications Business Act to the legislature in 2019. The amendment to the Radio Act resulted in an increase to spectrum fees for 5G services and IoT, which applies to both mobile phone carriers and broadcasters.

While spectrum fees are purportedly charged to cover spectrum administration costs, such as monitoring illegal spectrum use, the MIC has been criticised for using the fees to pay for miscellaneous expenses that appear to have little connection to spectrum administration. In August 2010, an MIC committee charged with exploring spectrum usage fee reform announced a policy to strengthen the link between the amount of spectrum usage fees charged to licence holders and the bandwidth of spectrum they occupy, and to more efficiently use the spectrum usage fees collected. In May 2011, a bill to amend the Radio Act to implement the revised spectrum usage fee scheme was passed.

An action plan published in November 2010 by the MIC committee charged with studying spectrum allocation recommended that the MIC consider the introduction of spectrum auctions as a way to allocate spectrum licences more efficiently and transparently. However, the plan also warned that the transition would raise questions of fairness between existing licensees who did not pay for their licences at auction, and future licensees who would bear this additional auction-related cost. The committee also raised related concerns that the cost of auction fees could ultimately be passed along to consumers by way of increased service fees.

From March 2011 to December 2011, the MIC held 15 meetings led by scholars for the purpose of considering the implementation of spectrum auctions, and in March 2012 a bill was submitted to amend the Radio Act to include spectrum auctions. The amended Act would have established a mechanism through which the MIC could conduct auctions to grant licences to applicants offering the highest bid price. The spectrum auction was envisaged to be first used for the licensing of the 3.5GHz band, which was planned to be used for 4G mobile phones starting in 2014. However, discussions regarding the bill were put on hold in anticipation of a change in the controlling political party from the Democratic Party of Japan (DPJ) to the Liberal Democratic Party (LDP), which took place in December 2012. In January 2013, the Minister of Internal Affairs and Communications under the then LDP Prime Minister Abe announced that the LDP government would not resubmit the bill for spectrum auctions. The DPJ subsequently resubmitted the bill, but it was voted down.

However, the DPJ was able to obtain the LDP's consent to adopt a non-binding resolution by a committee of the legislature acknowledging that spectrum auctions have benefits and detriments and should be reviewed through public hearings.

Efforts to implement spectrum auctions as a method to provide greater transparency into the MIC's spectrum allocation process have effectively returned to square one. The MIC formed a study group in November 2017 to improve the effectiveness of spectrum use. In August 2018, the study group issued a report focusing on reform of the spectrum allocation system. This report discusses the feasibility of an auction system. It does not advocate a pure auction system under which only the offered amount is decisive, although it does recommend using the offered amount as one element for spectrum allocation.

Following the issuance of this report, the Radio Act was amended in May 2019 to adopt what some commentators refer to as a 'partial auction' system, whereby the MIC will consider the amount of special fees offered by the applicant based on its own valuation of the spectrum. The applicant's offer alone is not a decisive element, but it does serve as an element in the MIC's consideration.

V MEDIA

i Restrictions on the provision of service

While freedom of broadcasting is an underlying premise of the Broadcast Act, the Act includes certain content requirements, including:

- a* an obligation to be politically impartial;
- b* a prohibition on reporting 'manipulated facts';
- c* an obligation to present diverse opinions on controversial issues; and
- d* an obligation to provide closed captioning, audio commentary or other forms of aid for the hearing impaired and visually impaired where possible.

Main broadcasting licence holders are also required to provide a balance of entertainment, news and educational programming.

ii Internet-delivered video content

The internet and dedicated networks are widely used to deliver video content. Internet television services available in Japan vary widely, from simultaneous transmission of terrestrial and satellite television broadcasts, to exclusive IPTV channels with programming provided by domestic and foreign third-party programme providers, to video on demand (VOD) services. The methods of video delivery vary from free video-sharing sites (such as YouTube), to membership-based video-sharing sites (such as Nikoniko Douga), to partially fee-based video delivery sites (such as Gya!) and to full fee-based video delivery sites (such as Hulu and Netflix). Many traditional television stations (i.e., Nippon Hoso Kyokai, a public broadcaster formed under the Broadcasting Act, and commercial television broadcasters) also offer VOD services, and are streaming broadcast programmes through personal computers and smartphones. A survey published on 21 August 2021 indicates that there are 31.6 million fee-based video delivery service users to date in 2021, and that number was expected to increase to 39.7 million by 2023.

The Supreme Court has ruled that services that record and forward Japanese television programmes and those that provide real-time streaming of Japanese TV programmes via the

internet breach the originating television station's copyright. Therefore, third-party recording or streaming of Japanese television programmes without a licence constitutes a breach of Japanese copyright law.

For regulatory purposes, the MIC has taken the view that video delivery over the internet is not broadcasting under the Broadcast Act and, consequently, the content restrictions under the Act discussed in Section V.i do not apply. While the term broadcast is defined in the Broadcast Act as the 'transmission of telecommunication for the purpose of being directly received by the public', the MIC's position is that video delivery over the internet does not fall within this definition because content is not transmitted until a specific user makes a corresponding request, such that the broadcast is not being made to the public. This interpretation allows internet content providers to distribute multimedia offerings without being regulated as traditional broadcasters. However, the MIC's technical distinction has been criticised as resting on shaky ground, and calls have been made for clearer legislation clarifying that content restrictions will not apply to internet broadcasts.

VI THE YEAR IN REVIEW AND OUTLOOK

In pursuit of its efforts to digitise government services, throughout 2020 and 2021 the government has passed legislation such as the Basic Act on the Formation of a Digital Society and the Act to establish the Digital Agency. Data-related laws in Japan (i.e., the Telecommunication Business Act and the Privacy Act) have also been amended to expand their extraterritorial effect. While it is not clear at this stage how aggressively the Japanese regulators will enforce such laws extraterritorially, foreign companies should continue to monitor developments in the extraterritorial application of these laws.

The government has also taken steps to expand market access and competition in the Japanese telecommunications industry by making it easier to enforce regulations equally between Japanese service providers and non-Japanese service providers, and adding regulations to eliminate or regulate anticompetitive business practices like SIM card locking.

Additionally, the government is seeking to increase consumer protection with respect to purchases made on online markets, and has adopted new platform-specific consumer protection regulations. In sum, the development of media and telecommunications policies and technology in Japan has seen a resurgence over the past few years, and further significant progress is likely in the near future.

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