HERBERT SMITH FREEHILLS

COVID-19 ASIA: TECH INDUSTRY LESSONS AND INNOVATIONS SO FAR

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Legal Briefings

Novel coronavirus disease (COVID-19) has rocked global industry and financial markets since it began.

The tech, media and telecommunications (TMT) sector is no exception, with many companies affected by supply chain, manufacturing and consumer demand issues.

That disruption has been balanced by new innovations and increased use of platforms to tackle and ameliorate the impact of the outbreak on citizens, markets and companies alike.

Innovations and business responses already underway in Asia may extend to new countries and regions as the outbreak spreads.

HEALTHCARE TECHNOLOGY

According to Sina Tech News, Chinese technology giant Alibaba has developed an AI system capable of detecting COVID-19 in a computerized tomography scan of a patients' chest within 20 seconds, with allegedly 96% accuracy. The system was trained on images and data from 5,000 confirmed COVID-19 cases, and is reportedly being used by at least 100 healthcare facilities in China already.

Competitor Ping An Healthcare and Technology recently announced a similar system that can detect COVID-19 in 15 seconds with 90% accuracy. Ping An also reported a 10-fold increase in the number of users on its online health care and consultation platform between 22 January and 6 February 2020, compared with the first 21 days of January. The chairman and chief executive said that the COVID-19 outbreak had demonstrated that online medical consultation is an efficient and convenient method to allow patients to avoid catching infectious diseases.

Smartphone apps are another innovative tool to assist citizens in the battle against COVID-19. In South Korea, developers have created applications that alert users if they are in the vicinity of a 'high-risk' location as classified by the government. There are also apps that provide data about the age, gender and nationality of infected patients, as well as the venues they visited before infection. The attempt by app developers to simplify and present government data in a more reader-friendly way has been widely welcomed.

> Market players have an unprecedented opportunity to respond to this new receptiveness to and critical need for online or technology-driven healthcare solutions, which may drive even greater innovation and investment in this area.

E-COMMERCE

Increased demand for grocery and food deliveries during the COVID-19 outbreak has not only created more business opportunities for e-commerce companies, but also more employment opportunities for temporary staff.

RedMart, the grocery arm of e-commerce firm Lazada, has recently witnessed an unprecedented level of demand in Singapore. Singapore-based technology giant Grab has stated that its food delivery business saw a more than 20% jump in orders over the last couple of weeks.

Meicai, a Chinese technology start-up that provides direct delivery services between farms and restaurants, announced recruitment of over 10,000 frontline employees in mid-February. JD Logistics, the logistics arm of e-commerce company JD.com, also created over 20,000 new positions. Meituan, another grocery delivery service provider, received four times more grocery orders in February 2020 compared to the same period last year.

The strong demand for e-commerce in China and Southeast Asia more broadly has offset some of the adverse impact of COVID-19 on traditional retail sales. E-commerce platforms globally still face challenges however – unprecedented online demand is testing the scale and reliability of platforms while human and quarantine issues in logistics are compromising supply and delivery.

Force majeure provisions are important in the context of supply chain disruptions. When unforeseeable events beyond the control of a contractual party occur, depending on the exact wording of the clause in question, the obligations of the parties may be suspended or deferred. In some cases, it may even release a party from its contractual obligations without liability.

Typically, events that constitute force majeure include outbreaks of war, extreme or very unusual weather events, and natural disasters. Given the recent situation, parties may now wish to include epidemics, pandemics and/or quarantine restrictions as force majeure events. Other issues such as the enforcement of obligations, termination rights, change of law clauses and other contractual protections and mitigating factors will need to be carefully navigated in existing contracts and clauses tightened from here.

> The surge in demand for the products and services of the e-commerce industry also means intensified competition amongst market players. With higher expectations from consumers on the reliability of services, companies with more solid technological support are more likely to win over consumers.

REMOTE WORKING TOOLS AND ONLINE TEACHING PLATFORMS

The Chinese Ministry of Education launched a national cloud learning platform to ensure students' continued learning during school closures caused by the outbreak. Major telecommunications operators such as China Mobile, China Unicom and China Telecom worked with tech giants including Baidu, Alibaba and Huawei to support the platform.

Before the national platform launched, a number of Chinese tech giants offered free online classes, including Alibaba's DingTalk homeschool programme, Tencent Classroom and Huawei Cloud Classroom, each recording a spike in users.

Videoconferencing software has also seen a significant increase in demand. Universities and companies have relied heavily on video conferences as global travel bans have been imposed and classes and events have been cancelled. According to an estimate by Bernstein, Zoom Video Communications Inc., a US-listed video communication provider, added 2.22 million monthly active users in the first three months of 2020, compared to an addition of 1.99 million throughout the entire 2019. Its fourth quarter earnings announced on 4 March 2020 topped market analysts' estimates and its share price hit an all-time high on 5 March 2020.

> The flexibility offered by remote working and education tools have never been more commended than during the COVID-19 outbreak. This may not be a one-off opportunity for market players. This new familiarity may drive long-term adoption after the outbreak.

MEDIA AND CLOUD

"Stay at home" media has been boosted by the COVID-19 outbreak as people stay at home either for quarantine or social distancing purposes. Online demand streaming services and the mobile gaming industry have seen record usage levels. The television industry has responded swiftly to the outbreak by creating new content. For example the format of some reality shows has shifted to a new genre of 'cloud reality shows', where stars are online as part of the show.

The traditional movie industry is, arguably, less adaptive, and is reportedly expecting a loss of billions as a result of the outbreak. Most cinemas in China have been closed since the Lunar New Year, and the share price of some major Chinese film studios suffered an approximate 10% drop in early February. Film releases of major franchises, such as the latest James Bond movie, have been postponed.

Social media recorded a spike in users as people sought both information and an alternative to face-to-face human contact. Weibo, one of the most popular micro-blogging sites in China, saw users grow by 31%. Douyin, a Chinese version of Tik Tok, recorded 102% growth in users. Reports showed that the audience of video-sharing platforms like Douyin have surged to 574 million, a 35% increase from the previous year.

The increased popularity of livestreaming media has also led to increased business for internet and cloud-based applications, with providers such as Amazon and Microsoft Azure performing well in a generally weak economy. The resilience demonstrated by these industry players hints that cloud computing, is still growing in otherwise stagnant markets.

> The increased popularity of online streaming services was evident prior to the COVID-19 outbreak. The outbreak has only strengthened user adoption. This also points towards an increasing reliance on cloud-based applications and digital infrastructure as essential platforms to support livestreaming media and other applications.

OPPORTUNITIES FOR INVESTORS

The TMT sector has demonstrated that it can be flexible, resilient and innovative, despite the impact of COVID-19.

Technology has heavily supported the societal shift to online channels as quarantines and social distancing has increased, and created new methods of communications and support for people in very challenging environments.

In the medium term, this may drive investment in these assets and companies, or trigger traditional companies to speed up their technology transformation strategies.

Investment sources already focused on the sector prior to the outbreak have deep pockets. According to Preqin, the global private equity industry had record levels of "dry powder" estimated at US$1.43 trillion at the end of 2019. Of that, it is estimated that approximately US$350 billion worth of dry powder was available for Asia-focused funds to deploy, much of which is targeted at investments in the tech and healthcare sectors.

With new opportunities come new risks and uncertainties however. Buyers and investors will need to consider issues such as data protection, IT and cyber security risk, and intellectual property as part of due diligence investigations for new investments in unfamiliar sectors. Material adverse change clauses, which allow buyers to walk away before closing if events occur that are detrimental to the target, will need to be crafted and negotiated carefully, and for existing sale agreements, questions of construction will arise in assessing whether the COVID-19 outbreak has triggered a MAC clause.

Investors hungry for growth will need to ensure ongoing compliance with unfamiliar laws and regulations specific to the technology sector.

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