

Structuring the consumer terms for connected car services

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Patrick Ayad is a partner at Hogan Lovells based in our Munich office. He is highly regarded for his work in the areas of international contract drafting, global procurement and distribution, and regulatory issues such as environment and international trade. He advises global companies in the consumer goods and industrial sectors, including the automotive industry. Ayad heads the firm's global automotive industry sector group.

Who will sell the connectivity services available in connected cars?

Ayad: Traditionally, car manufacturers have not sold cars directly to the consumer, and this will continue to be the case. But in the future, car manufacturers will be selling connectivity services. For example, you could have an app on your mobile phone that allows you to remotely cool or heat the interior of your car before you get into it, lock or unlock your car from your home, look at the gas gauge, or park the car while standing next to it. The services are quite innovative, and they will become even more exciting going forward. And it's a completely new business model and revenue stream for car manufacturers.

Limited connectivity services already exist in most cars, such as the ability to place an emergency call or access the internet. With these connectivity services increasingly coming into the picture, car manufacturers and major suppliers are now trying to get this direct contact with the consumer. And they need consumer agreements that outline the terms associated with use of their cars' connectivity services, which the consumer in turn has to accept.

What role will automotive dealers play in the sale of these connectivity services?

Ayad: Traditionally cars have been sold by dealers. That's a somewhat sensitive issue — particularly in the U.S. but also in other parts of the world — because you have franchise and distribution laws that protect the dealers. Car manufacturers will have to carefully navigate through these laws in order to be able to smoothly introduce this new business model.

How does Hogan Lovells help clients deal with the legal challenges associated with connected car services?

Ayad: We have helped automotive companies on the development and global rollout of the consumer terms associated with their connectivity services. This involves reviewing the different

consumer laws in the various countries. In Europe, for example, we have harmonization for the sale of goods but not for the sale of services — so in every country the laws are different, but at the same time you want to achieve a high degree of consistency.

We also work with the in-house business teams to describe the connectivity services in a way that's legally enforceable and also understandable. One real challenge is that these services are a moving target — simply because of innovation. It's really difficult to draft terms when you know that the services will be changing. You need to be quite innovative with how you draft the terms. We have a set of general terms that would apply to a basic business model. And then my recommendation is to have special terms in place for each of the connectivity services. The annexes with the specific services will allow you to introduce a new service and state that there is a new document that addresses the new service only.

Some of the connectivity services offered to consumers are provided by third parties. The face to the customer is the car manufacturer, which purchases these services from the third party and passes them on to the consumer. The service terms of the third-party product need to be somehow integrated into the consumer terms.

What are some of the best practices associated with developing these consumer terms?

Ayad: It's important that our lawyers are very closely aligned with the developers and the company's business side. The developers have so many ideas and these projects can't just be structured from a business perspective. So we provide project management advice for a company internally and also when it comes time to rollout these services globally. There is a lot of coordination with the other law firms involved.

What are some of the best practices associated with rolling out new connectivity services?

Ayad: When contemplating a rollout of connectivity services, companies should first think about where in the world they want to introduce these services and conduct a feasibility study. This will help determine if there are roadblocks or other issues to consider and plan for. For example, we know that in some countries there are very strict data protection rules. It depends on your IT infrastructure system and how you set it up — where the data comes from, where it is processed, and whether there is a transfer if you process this data.

If you are providing online services, you may run into difficulties regarding local telecommunication laws. You might end up as a telecommunication provider if you provide certain communication services. We can help clients look into the local telecommunications regulations.

All of this has an impact on timing. If you need some telecommunication registration in another country, it might take some months before you can offer these services. You need to make sure that the law does not come in and disrupt your planned product launch.

How will a consumer pay for and consent to these new consumer terms?

Ayad: Consumers will have to register online. It's a click-through process to accept the terms. We work with clients to draft the commercial terms and review the step-by-step process. We also help determine whether or not there are rules governing how a consumer can withdraw their consent. This process needs to be clear and transparent.

Contacts



**Dr. Patrick
Ayad, M.Jur.
(Oxford)**

Partner

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