The business of constructing and then maintaining and selling capacity over submarine fibreoptic cables is fascinating, and is absolutely fundamental to modern day communications. The sector has its own unique challenges due to the extraordinarily rapid pace of development in transmission technologies as well as the timescales and levels of investment required to build new systems.

DLA Piper is one of the largest global law firms in the world. We have a particular focus on this sector and are very familiar with its specific idiosyncrasies and requirements. Whether it’s negotiating a new consortium agreement, arranging finance, undertaking pre-investment due diligence, advising on taxation matters, dealing with regulatory matters, purchasing infrastructure or capacity (on a lease or “IRU” basis) or advising on the effects of insolvency we have sector-specific experience which we don’t think can be matched by any other law firm in the world.
UNRIVALLED SECTOR EXPERTISE
Offering outstanding legal support to the industry requires a complex mix of international law, financing, tax, regulatory, property and commercial expertise. It requires a thorough understanding of the sector in all its aspects, and it requires experience going back many years.
Our unrivalled international network matches perfectly the international nature of the business, and allows the firm to provide timely and relevant advice to submarine cable clients wherever they are doing business.

RECENT INTERNATIONAL EXPERIENCE
Lawyers at the firm have recently worked on:

■ The acquisition of the Globenet submarine cable system by BTG Pactual for US$750 million – we think the world’s largest ever pure submarine cable acquisition Our role included work on the central “take or pay” contract – using a model that has never before been applied to this sector.
■ The new Hibernia “Express” low-latency trans-Atlantic system (US$200 million) where we have worked on the system supply negotiations – these had some very unique features because of the overriding need to achieve the latency target; we also advised the incoming purchaser who has taken a significant equity stake in the business.
■ The new southern-Atlantic system (eFive’s SAEx system) planned to connect Brazil to South Africa (US$300 million).
■ The purchase of capacity (by way of IRU) by our client (a pan-African mobile operator) from a member of the West African ACE consortium – this project included speaking to the consortium itself to get them to pre-agree rules under the C&MA protecting our client in the event of the insolvency of the vendor. This had never before been done.
■ The highly innovative APX-West system from Perth-Singapore which will, for the first time, sell spectrum and not capacity and which also involves a very interesting commercial model involving the transfer of the cable system from private ownership into a true consortium system.
■ A new “spectrum” IRU and maintenance agreement on a trans-Atlantic route. Our client is the cable operator and their customer is a large multinational enterprise.
■ Advising Global Crossing against Global Marine in the Commercial Court regarding termination of a contract for providing maintenance services for a submarine cable network.
■ Advising Main One in connection with the extension of their existing West African cable system to other countries in the region.
■ Advising Broadband Infrac0, one of the principal investors in the (consortium) West Africa Cable System (WACS) in relation to its investment in WACS. The bulk of the work was to help them sell a significant percentage of their entitlement under the consortium’s construction and maintenance agreement (the “C&MA”) to another African telecoms operator.
■ Advising the Matrix cable system which connects Singapore and Indonesia. This involved drafting and negotiating many of their capacity sale contracts and advising on Matrix’s maintenance arrangements.
■ Advising the Farice system connecting Iceland to Scotland and Denmark. This involved assisting on a very innovative deal to sell part of their system and also helping with capacity sales, their extensive backhaul procurement and on the “cable crossing agreements” with other infrastructure owners.
■ Advising Islalink and Canalink in the development, financing, construction and operation of submarine telecommunications cable systems between the Spanish Peninsula and both the Balearic and Canary Islands and on INUs, O&Ms and co-location agreements.

CASE STUDY
Scandinavian Fibreoptic Cable System
Lawyers at the firm advised a Scandinavian Fibreoptic Cable System in connection with the structuring and drafting of a very complex deal allowing the system owners to sell one (of two) fibre-pairs contained within part of their cable, but to retain responsibility for the whole cable’s operations and maintenance whilst still allowing the purchaser, as much as possible, to operate their purchased assets independently if necessary.
This type of deal has never, to our knowledge, been done before and it required us to understand and think-through:

■ how such systems are constructed;
■ the regulatory background and impact of the deal;
■ the effect on existing backhaul arrangements;
■ the position on insolvency;
■ the difference (if any) between an “IRU” and a “normal” capacity lease contract.
The pace of change in the industry means that we are frequently required to “think outside the box” to develop contract solutions for new technologies.

**CASE STUDY**

**Sale of spectrum**

A relatively new concept in the industry is the sale of spectrum not capacity. Given the novelty, there are as yet no commonly-accepted standards for how the contracts should be structured. In this “vacuum” we have developed a contracting model to address some of the complexities and risks. For instance, some sections of spectrum on any given fibre-pair will be more useful than others. In a recent contract upon which we advised, the customer’s spectrum is “virtual” – they are allocated an amount of spectrum equivalent to a given percentage of the total spectrum on a single fibre-pair, but this could be sub-divided into smaller sections of spectrum across several different fibre pairs on the same cable.

This then introduces additional concepts – if, for example, there is a problem with one of the fibre-pairs in the cable but not the other, does the customer lose part of their spectrum or does the supplier have an obligation to switch them to the fibre-pair which is still functional?

**OUR VALUE ADDS**

We have developed a set of truly innovative project management tools a key feature of which is the Submarine Cable Supply Contract Dashboard. This allows customers to evaluate competing offers from vendors in a simple and objective manner, with a very visual output that ranks contracts according to various weighted criteria. It is designed to be useful in a tender exercise whether for identifying areas to focus on in negotiation, for helping pick a preferred bidder, or for reporting on the progress of negotiations to the board.
DLA Piper has over 4,200 lawyers located in over 30 countries throughout the Americas, Asia Pacific, Europe and the Middle East, positioning us to help companies with their legal needs anywhere in the world.

Mike is one of the firm’s lead partners on telecoms matters and he has a particular interest in, and focus on, submarine cable systems. Rated as one of the world’s leading telecoms lawyers, he has delivered a legal “masterclass” to all of the (triennial) SubOptic conferences since 2004, most recently on due diligence in submarine cable systems’. He was the only private practice lawyer on the SubOptic legal working group which produced a template System Supply Agreement in 2010.