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TMT Industry as the Driver of Change

Report 5

**TMT Looking
Ahead 2022**

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Contents

Foreword	03
How TMT Businesses Build Resilience in Response to Supply Chain Disruption	04
Inclusion, Diversity & Equity in the Workplace	05
Energy Transition and the TMT Sector	06
Workforce Redesign	07
TMT Companies as Stewards of Data — Forward-looking Trends for Boards	08
Conclusion	09
Key Contacts	10

Foreword

The TMT industry as a driver of positive change is the theme of our final report in this series. TMT companies are the first to face and develop innovative solutions to meet the increasingly sophisticated regulation of key technologies they develop. This report identifies the regulatory/industry trends to watch in the areas of supply chains, renewable energy, workforce redesign, I&D and data privacy and focuses on the important role TMT companies play in these areas.

As we look ahead:



TMT companies have a unique opportunity to **develop and support innovative technologies to access and store renewable energy** and **accelerate the transition to net zero.**



Data collection and companies' strategies in analyzing and utilizing data will drive how I&D goals are measured and met.



Employers are expected to keep a closer eye on how remote work affects a company's bottom line as employees increasingly have the ability to return to in-person work.



TMT companies should prepare for deepening **due diligence requirements in their global supply chains** covering areas such as worker conditions, sustainability practices and data protection.



Kate Alexander
Partner, London

This report, the final of a five-part series, explores the following key areas:

• **Section 1** looks at the sector's response to supply chain disruption including new compliance requirements focused on worker conditions and sustainability, data security and compliance drivers.

• **Section 2** explores how the TMT sector is accelerating progress in I&D and some key areas we expect to see on the radar, such as increased focus on data-informed strategies, increased transparency and the likely growth of non-traditional I&D policies.

• **Section 3** looks at developments in the renewable energy sector in the current challenging economic conditions — including in the long term corporate PPA market as well as TMT's role in innovating to help address underlying issues.

• In **Section 4** we share our views on what you should expect around workforce redesign.

• **Section 5** outlines how, in the face of ever increasing complexity and often conflicting data privacy regulations, TMT clients are focusing on data ethics policies with three core elements: accountability, transparency and security.

➤ Please read the conclusion to this report for key takeaways from each section.



1 How TMT Businesses Build Resilience in Response to Supply Chain Disruption

Authored by **Anne Petterd**, Partner, Sydney and **Kerry Contini**, Partner, Washington DC

Like most sectors, the TMT industry has been impacted from multiple directions by supply chain disruption and expanding compliance requirements. In response to these issues, we are seeing broader due diligence of suppliers feeding into more detailed contract commitments on compliance and associated auditing.

Worker conditions and sustainability

Worker conditions and sustainability are key focus areas.

- Suppliers to TMT product manufacturers are being asked detailed questions about the provision of all required benefits to their employees and safe workplace practices.
- Suppliers are also required to detail the measures they have taken to move to more sustainable sourcing.
- Suppliers increasingly have to answer these questions for their subcontractors, as well as their own personnel.

Compliance Drivers

Some governments have prioritised forced labour and environmentally damaging practices as part of their trade policies, with high penalties for violations.

- In the United States, the Biden Administration has several initiatives aimed at addressing the Administration's national security and disruption-related concerns in TMT supply chains, including semiconductors as well as information and communications technology supply chains.

Shock proofing

Businesses understand the need to move quickly to make changes to their supply chains to address disruptions.

- Expanding sanctions regimes have included some measures that have a particular impact on TMT businesses, such as restrictions on the online dissemination of certain content.
- The new measures have required quick assessment to identify their application to business activities and product offerings, and then to implement appropriate compliance mechanisms.

Data security

TMT product manufacturers are continuing to expand requirements that their suppliers must meet in relation to providing and securely managing data.

- Data utilisation now forms a significant part of operating supply chains. For example, parties share data to assist the identification of shortages of parts or raw products and monitor manufacturing, storage and delivery and plan logistics to optimise supply chain operations.
- In an era of increasing sanctions and compliance risks in supply chains, TMT businesses are leading the charge in incorporating data analytics tools into trade compliance processes.
- Greater sharing of data brings cybersecurity risk exposure. TMT businesses are conscious that their weakest link may be other parties with whom they do business (and share data). There is a growing expectation that a TMT product manufacturer will require its suppliers and logistics providers to be certified to a particular security standard, have data breach reporting obligations, and have in place disaster recovery and business continuity plans so as to lessen the impact of a cybersecurity breach.

Key Tip:

TMT businesses who have invested in greater due diligence and planning of their own and their suppliers' risks have been better-placed to respond to recent supply chain disruptions, underscoring the importance of these investments as supply chain disruptions continue to evolve.



2 Inclusion, Diversity & Equity in the Workplace

Authored by *Monica Kurnatowska, Partner, London* and *Susan F. Eandi, Partner Palo Alto*

TMT companies, in common with other sectors, are facing pressure to accelerate progress in inclusion and diversity (I&D), arising from recent social movements, increased stakeholder pressure and the disproportionate impact that COVID-19 has had on communities of color and women. Employees, customers, institutional investors and shareholders have recently been loudly protesting the lack of diversity in the workplace, in the C-Suite and at the board level, and TMT companies are working towards determining the best way to set and meet I&D goals. Our report "**Mind the Gap**" includes TMT key takeaways and the top I&D priorities for TMT businesses. We expect to see:

Data-informed strategy

Companies are expected to develop an increased focus on data-informed strategy as they increasingly appreciate that expending resources, providing training and implementing policies around I&D is ineffective in the long-term if not data-based.

More companies will scrutinize and make more use of their data — including recruitment diversity data, pay data, and employee performance assessment data — to its fullest potential to look deeper and really understand what is going on, prioritize and design programs and initiatives on the areas of greatest need, and measure the impact.

Data collection can be fraught with potential risk, cost and complexity. This is magnified when a company has global operations with jurisdictions having different rules and regulations.

Companies will need to work with counsel to gather data appropriately and lawfully, and build a measurement infrastructure over time that helps deliver insights and information to support I&D programs and policies.

Increased transparency to obtain employee and stakeholder trust

Companies are expected to take measures to foster a genuine speak-up culture where employees and other company stakeholders feel comfortable raising issues and concerns around I&D and information about themselves.

Employers can accomplish this by:

- Establishing Employee Resource Groups (ERGs) so that employees have safe spaces to speak up
- Taking action on problems that are identified by employees or other stakeholders
- Reporting back to employees and stakeholders about the actions the company is taking
- Increased transparency — whether or not required by applicable law — such as salary wage disclosure laws and pay data reporting requirements that are trending in the US

In short, demonstrating that the organization is accountable on its I&D promises will build trust with its employees and stakeholders.

Increase in "non-traditional" I&D policies

Companies are expected to accelerate policy development covering areas beyond the traditional suite of inclusion and diversity policies such as anti-bullying and harassment, equal opportunities and equal pay. We expect to see policies focusing on employee wellbeing as a whole, including policies centered around:

> **Mental health**

> **Menopause**

> **Fertility treatment**

> **Neurodiversity**

> **Domestic abuse**

In addition, organizations will likely pay attention to inadvertent challenges created by hybrid working, and combat a culture that rewards employees for being present, especially when hybrid work has opened the doors for so many for whom full-time work in a traditional office setting is physically, mentally or emotionally difficult.

3 Energy Transition and the TMT Sector

Authored by **Andrew Hedges**, Partner, London and **Stanislav Sirot**, Partner, Chicago

The transition to a carbon-neutral economy is a global seismic shift. The urgent strategic, operational and reputational challenges for any heavy energy user are considerable, but so are the opportunities for decarbonisation, innovation and potential growth.

The obvious area of transition is the shift to renewables. In mature markets, these technologies are well established. In emerging markets, such as Asia, Latin America, the Middle East and Africa, there is also a rapid growth of new renewables generation and the direction of governmental policy is clear. As countries move to deliver their commitments under the Paris Agreement or national net zero targets, significant support is emerging for other key energy transition technologies such as hydrogen, synthetic fuels, energy storage, small nuclear and other cross-over technologies. An increasing number of TMT sector companies are setting very ambitious net zero targets.

Whilst the TMT sector does not generate significant direct emissions (as compared to, for example, heavy industry) the electricity needs of the TMT sector are significant. Therefore the key focus for energy transition is around electricity consumption, such as for data centres, logistics processes and telecommunication equipment. Although data centres continue to be more energy efficient, their expected growth will drive increased global electricity demand. There is a clear momentum within the TMT sector, driven by both companies and their customers, to shift existing and new electricity demands to renewable sources.

Key Challenges

The TMT sector is a leader in pursuing their own renewables generation development and direct contracts with renewable electricity generators (referred to as corporate PPAs). However, some challenges remain:

- This market is subject to some key developments that will **drive up the cost** of procuring a long term corporate PPA. A number of sectors other than TMT, including oil and gas majors, are also acquiring renewables energy projects in order to achieve their own net zero targets. This results in additional competitive pressure.
- Developers of renewals projects are facing continuing **supply chain challenges** and the impact of rising inflation on equipment and other development costs.
- In many markets where energy prices have been rapidly increasing, developers are weighing up the **potential lost upside in entering into a long term corporate PPA** and looking for ways to renegotiate existing PPA pricing for projects that have not yet reached financial completion. This is translating into an increasing cost per unit of electricity to lock in a long term corporate PPA, obstacles keeping such pricing through the beginning of projects' construction, as well as the ability for sellers to push for more favourable terms.
- There is a notable number of markets where the **regulatory and commercial model for these types of transactions is under-developed** or is competing with direct government support schemes. While this is already changing relatively rapidly, it is causing difficulty for leaders that are moving from core mature markets to new regions in their procurement drive.

The Outlook

In the medium term, we expect further progress between the TMT sector and its supply chain to further reduce the indirect emissions of a business (known as scope 3). There are also increasing efforts from leading companies in other sectors to offer key supply chain partners access to renewable energy solutions.

Finally, as the push to net zero accelerates, TMT sector companies are likely to be the early adopters and drive the development of innovative energy storage solutions for excess renewable energy (such as utilizing regional hydrogen generation and storage hubs). Alongside this TMT sector companies are likely to increasingly partner with independent power producers capable of 24/7 renewable only generation from geographically diverse projects portfolios.

4 Workforce Redesign

Authored by **Robin Samuel**, Partner, Los Angeles and **Julia Wilson**, Partner, London

The hybrid work model has become the “go to” flexible work model for companies wanting to offer employees some remote work while still benefiting from in-person interaction. Permanent remote work and “work from anywhere” models are also in demand by employees, with a newer “work from anywhere” off-site model requiring employees to meet once a quarter or so in the same location for in-person meetings.

Key Considerations

“Work from anywhere,” schemes offering employees anywhere from 45 days to 5 or 6 weeks to work in their ideal location raise a number of legal issues—including tax (both personal and corporate), social security, employment health and safety, employee benefits and compensation, immigration, data protection, IP protection, and trade secret/confidential information issues.

➤ **Top Tip:** Employers will need to partner with global counsel who can lead them through these and other issues certain to arise with employees distributed around the world.

TMT employers are increasingly requiring employees to return to the office on some level, with some being adamant in their demands, citing the ability to promote communication, collaboration and company culture.

➤ **Top Tip:** Employers insisting on an in-person model will likely need to up the ante in terms of other perks — such as enhanced in-office amenities, increased compensation and benefits, and mental health/wellness initiatives (unlimited PTO and right to disconnect policies are examples) — to try to compete for the best candidates.

We expect employers with flexible work policies to closely follow how remote work drives business progression (or doesn’t) through financial and people analytics, and to make adjustments to their remote work policies as necessary.

➤ **Top Tip:** Tax considerations, overhead costs, salary adjustment requirements, and headcount triggers requiring employers to provide increased benefits will be watched closely.

Several tech companies have announced policies adjusting pay to the local market as remote employees relocate to lower-cost locales.

➤ **Top Tip:** We expect companies in this sector to closely watch the labor market, retention, and competitors to determine whether to adopt location-based pay adjustment policies.

Spotlight

Expect to see emerging pay equity and discrimination issues as those who work remotely find themselves on a second-tier track compared to colleagues who have returned to the office, especially since those continuing to work from home are often in a protected class (such as those who are medically unable to be vaccinated against COVID-19, women who are primary caretakers, and minorities who continue to favor the reduced harassment they experienced while working remotely in the early days of the pandemic).

Find out more at our **Workforce Redesign Hub:**



5 TMT Companies as Stewards of Data — Forward-looking Trends for Boards

Authored by *Elizabeth Denham CBE, Consultant, London and Cyrus Vance, Partner, New York*

In the digital economy, data and personal information are at the centre of innovation and new business models. In the TMT sector, developing new products and services involves the extensive collection and analysis of data. In addition, the regulation of data has moved beyond privacy protection to other disciplines, including anti-trust and content regulation. Today, there are policy overlaps that introduce conflicting obligations. Around the world, more than 150 data protection laws restrict how companies can treat personal information. Policy makers are analyzing whether to update competition laws and content regulations to meet new challenges and protect consumers in an increasingly digital world.

What does this mean for forward-looking boards?

In the face of tangled regulations and obligations for stewards of data, progressive companies establish data-ethics policies. Ethical companies must stand ready to account for the environmental and social costs of rapid technological growth. Businesses that cannot account for their use of data and cyber security — to customers, shareholders, partners and regulators — will not be sustainable. Alleviating risks presents opportunities, including the ability to boldly innovate with analytics, AI and machine learning.

Three important elements in any data-ethics approach are: accountability, transparency and security.

Accountability

Accountability requires companies to build robust infrastructure for cyber practices; data-management processes that are actively monitored; as well as clear ethical policies.

Companies must ask themselves: who is responsible for procurement and design of data services? How do customers expect us to treat their data? How will we account for decisions if challenged on the outcome?

Transparency

Transparency has long been a legal requirement in data-protection legislation. However newer regulations in the EU and the UK recognize that data analytics and AI can exacerbate inequalities and create social, not just individual, harms.

These increasingly comprehensive obligations require a new level of openness, as signalled by the transparency reports required by online harms regulation and other data-sharing obligations enshrined in law.

Security

As stewards of data, forward-thinking companies will also be required to demonstrate how well they secure it.

Companies must ask themselves, in the midst of a global cyber security crisis, are we ever-green in terms of cyber infrastructure, including defences in supply chain and partner organisations? Have we plugged into local, regional and national security networks? Have we prepared and planned for a cyber incident, not only to prevent it, but to manage it if a beach occurs?

Spotlight

Businesses are driven by mutual respect and trustful relationships. This is especially true in the digital economy. Cyber preparedness and ethical use of data give progressive companies the social and (emerging) legal license to operate in the online world. We predict ESG requirements will soon measure data use and data security as a component of environmental, social and governance responsibility.

6 Conclusion

In summary, as your company strategizes for the journey ahead to drive change, consider these key takeaways:



Compliance and Supply Chains

The current geopolitical environment is set to increase the breadth of compliance requirements as companies are forced to rework their supply chains in response to continued worldwide shortages and sanctions.



Corporate PPA Negotiations

TMT companies that signed corporate PPAs for projects that have not begun construction should be ready to renegotiate these PPAs as market prices and new projects construction costs grow rapidly.



Renewable Energy Competition

TMT companies will continue to face increased competition in procuring renewable energy to support their energy transition and sustainability targets.



I&D Policies

The traditional suite of I&D policies will be expanded to cover the well-being of the whole person. Companies are increasing their transparency to gain the trust of employees and other stakeholders.



Data and Trade Compliance

TMT businesses are leading the charge on incorporating data analytics tools into trade compliance processes.



Being Data Stewards

Forward-thinking TMT companies should consider themselves data stewards with clear policies and practical plans for breach prevention and incident management including having sustainable and effective cyber infrastructure themselves and reviewing such defences in their wider supply chain.



Data and ESG

ESG requirements will soon measure data use and data security as a component of environmental, social and governance responsibility.



Remote Work Schemes

Companies with remote workers should prepare for an increase in pay equity and discrimination claims, as more employees return to the office for in-person interaction and those logging on remotely (often in protected classes) find themselves at a disadvantage in terms of pay, promotion, and opportunities.



7 Key Contacts



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