

Tech Disputes

Spring 2022

Our quarterly round-up of key cases and developments arising in the wide world of tech provides a road-map to highlight issues which may impact your business, short-to-long term.

Key developments

UK Government sets out its priorities for the digital regulatory landscape

The Department for Digital, Culture, Media & Sport has [published](#) its letter to the regulators of the Digital Regulation Co-operation Forum (DRCF). Last summer, the government published its Plan for Digital Regulation, which set out the DCMS's commitment to developing a strategic, pro-innovation approach to digital regulation. The letter sets out the government's priorities for the digital regulatory landscape, including the need for closer collaboration to enable effective data sharing and minimising unnecessary burdens on businesses. The DRCF is asked to take the government's points into account in its work plan for 2022/23.

Final Report published: Consumer Internet of Things (IoT) sector inquiry

The European Commission has [published](#) the findings of its competition sector inquiry into the consumer Internet of Things (IoT). The report identifies potential competition concerns in the rapidly growing markets for IoT related products and services in the EU. Stakeholders raised concerns in the following areas: certain exclusivity and tying practices in relation to voice assistants, concerns in relation to the discoverability and visibility of their consumer IoT services, the extensive access to data to improve market position, and the lack of interoperability in the consumer IoT sector due to proprietary technology, leading at times to the creation of 'de facto' standards.

UK Government to add a duty to forthcoming Online Safety Bill: Covering fraudulent adverts

An [announcement](#) from The Department for Digital, Culture, Media & Sport has declared that a new legal duty will be added to the Online Safety Bill requiring the largest and most popular social media platforms and search engines to prevent paid-for fraudulent adverts appearing on their services. This announcement comes as the government launches its consultation into whether the UK's rules and regulations on online advertising are keeping pace with the rapid advances in technology.

European Data Protection Board Guidelines: Updated to reflect Data Subject Access Rights

[Guidelines](#) published by the European Data Protection Board provide updated guidance to companies on how to respond to data subject access requests. The guidance explains that to achieve compliance, companies need to ensure that requested data is transferred securely, the communication channels are clear and easy to use, and the data retention period is communicated to the data subject.

European Commission publishes its proposals on the EU Data Act

On 23 February 2022, the European Commission published its proposals to cohere rules across the EU regarding the use of data, to be referred to as the 'Data Act' and to operate as an EU Regulation. Like the GDPR, the Data Act will apply to all companies that place its products or services on the EU market or makes its data available to recipients in the EU. You can read more about this update in our Simmons & Simmons [article](#).

ESG: Human Rights and Environmental due diligence proposal

On 23 February 2022, the European Commission [published](#) its long awaited proposal for a directive on corporate sustainability due diligence. The Proposal is a significant development in the EU in terms of applying cross-sectoral mandatory obligations on companies to implement robust processes to manage human rights, governance and environment risks within their own business and value chains. The Proposal not only sets out companies' obligations but also details of monitoring, enforcement and remedy actions giving the legislation real teeth. Further analysis is available in our Simmons & Simmons [article](#).

Key cases

Competition Appeal Tribunal (CAT) to commence proceedings: (Meta Platforms Inc, Meta Platforms Ireland Limited and Facebook UK Limited)

The CAT has [published](#) an application to commence collective proceedings under section 47B of the Competition Act 1998 against Meta Platforms, Inc, Meta Platforms Ireland Limited and Facebook UK Limited alleging that Facebook has abused dominant positions in breach of Article 102 of the TFEU and the Chapter II prohibition of the Competition Act.

Delivery up of code on termination of an IT infrastructure project: (Transparency Ltd v Growth Capital Ventures Ltd)

An application for a mandatory interim injunction for the delivery up of software, source code and documentation relating to an IT infrastructure project was [rejected](#). The applicant had not identified an arguable case that it was entitled to delivery up, had not provided sufficient evidence as to its financial position and the evidence showed that damages would be an adequate remedy, so the balance of convenience lay in maintaining the status quo. Further analysis available in a Simmons & Simmons [article](#).

The impact of the pandemic on large media contracts (European Professional Club Rugby v RDA Television LLP)

The High Court (Commercial Court) [held](#) that the claimant could terminate a contract for broadcasting rugby union competitions, which had been postponed due to the pandemic, as the pandemic constituted a force majeure event (as defined in the contract).

Irish DPC fines Meta Platforms Ireland Limited €17m for infringements of EU GDPR

The Irish Data Protection Commission (DPC) has [announced](#) that it has adopted a decision which imposed a €17m fine on Meta Platforms after it was found that Meta infringed Articles 5(2) and 24(1) of the GDPR and failed to implement the necessary technical and organisational measures to demonstrate the security measures used to protect EU users' data. The decision was taken subject to a co-decision-making process outlined in Article 60 of the GDPR meaning all EU authorities were co-decision-makers, and therefore the decision represents the collective views of EU data protection authorities.

"All Reasonable Endeavours Clauses" (Brooke Homes (Bicester) v Portfolio Property Partners)

In Brooke Homes (Bicester) v Portfolio Property Partners, the court considered the scope of an "all reasonable endeavours" obligation in a contract. In this case the judge set out the three types of endeavours clauses commonly encountered: "reasonable endeavours", "all reasonable endeavours" and "best endeavours". Parties should remember the difference between them and remember that the contractual context will also be highly relevant. It is likely to be rare that a party will be obliged to act completely against its own commercial interests in order to fulfil any "endeavours obligation". Further analysis available in a Simmons & Simmons [article](#).

Disclosure Order (Norwich Pharmacal Order) and Telecoms (EUI Ltd v UK Vodaphone Ltd)

The Court of Appeal [refused](#) to order disclosure under the Norwich Pharmacal principle which would require a mobile phone service provider to disclose documents to an insurer that could support the insurer's potential claim against an allegedly fraudulent insurance policy holder.

Spotlight on the War in Ukraine - Sanctions

The invasion of Ukraine has sent a shockwave around the world.

We have been monitoring the key sanctions developments from the UK and Europe since the war began.

This Spotlight gives you the opportunity to tap into our market leading sanctions knowledge to see how and if they may impact your business.

We have a number of resources to help you navigate the challenges associated with the invasion. If you would like to hear more then please [email us](#) to receive weekly updates on UK and EU sanctions developments relating to the war in Ukraine.

Keen to find out more?



Online resources available at the click of a button

- AI Explainability Statements: what are they and why they're important?**
 Simmons & Simmons, Best Practice AI and Jacob Turner of Fountain Court Chambers recently advised Healthily on the [world's first AI Explainability Statement](#) to receive input from a data regulator, the ICO. In this [webinar](#) we discuss the importance of AI explainability and AI Explainability Statements, as well as the Legal and ethical risks around AI explainability.
- Contract masterclass webinar series**
 View our contract masterclass [webinar series](#) on demand, designed to give you up to date guidance on contractual issues in English law.
- Data centre podcast series**
 During [this series](#) we take a dive into the world of data centres and provide insight on the rapidly growing industry.



Related publications

- [Getting the Deal Through: Cybersecurity](#)**
 We have recently authored the UK chapter of Getting the Deal Through: Cybersecurity 2022.
- [Disputes and investigations predictions](#)**
 Discover our predictions for where we expect to see increased activity in disputes and investigations across the UK market in 2022.
- [UpData](#)**
 UpData provides regular updates on contentious, criminal and insurance risks relating to data, from cyber-attacks to regulatory enforcement.
- [AI: stay smart](#)**
 Key regulatory updates relating to AI around the world.
- [Cryptoview](#)**
 Timely global updates on the world of digital assets.
- [Digital download](#)**
 The latest, need-to-know information, communications and technology updates.



Please view any of these updates using the links above, or contact a member of our team to discuss any of the issues highlighted.

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