

Tech Disputes

Summer 2021

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

New pro-competition regime proposed: Consultation on digital markets

The UK government has [published](#) a consultation for a new pro-competition regime for digital markets. A new cross-regulator taskforce, the Digital Markets Unit (DMU), will be responsible for designating firms that have “substantial and entrenched market power in at least one activity” with Strategic Market Status (SMS). The DMU will oversee a mandatory code of conduct for those SMS firms and implement pro-competitive interventions where required. The objective of the code is to promote fair trading, open choices, trust and transparency.

Provisional findings published: Consumer Internet of Things sector inquiry

The European Commission has [published](#) its preliminary findings in the EU-wide sector inquiry into the Internet of Things (IoT) for consumer-related products and services. The report contains various provisional findings regarding the characteristics of respondents (noting that voice assistant providers were among the largest players), characteristics of consumer IoT products and services, and the main features of competition in the sector. The Commission asked for responses to its preliminary report by 1 September 2021, with the final report to be published in the first half of 2022.

Revisions to Broadband Guidelines proposed: European Commission invites views

The European Commission has [invited](#) views on a roadmap for the revision of the current guidelines on the application of the state aid rules to the rapid deployment of broadband networks (the Broadband Guidelines). The adjustments aim to adapt the Broadband Guidelines to suit technological progress, socio-economic developments, European Union connectivity targets and other recent policy developments. The deadline for comments is 16 September 2021, with a view to having the Guidelines adopted in the first quarter of 2022.

New EU requirements proposed: Electric Vehicle Batteries

The European Parliament is progressing legislation proposed by the European Commission on 10 December 2020 to modernise regulations relating to all types of batteries. The proposed legislation introduces new classification and requirements specific to electric vehicle batteries i.e. any battery designed to provide power to traction systems in hybrid or electric road vehicles. For more information, please see our article [here](#).

Consultation on mobile phones and tablets: Sustainable design and energy labelling

The European Commission has launched two parallel public consultations relating to mobile phones and tablets:

- [Proposal](#) on sustainable design: A possible implementing regulation under the Ecodesign Directive (2009/125/EC) to ensure that mobile phones and tablets are designed for energy efficiency and durability, reparability, upgradability, maintenance, reuse and recycling.
- [Proposal](#) on energy labelling: A possible delegated regulation under the Energy Labelling Regulation ((EU) 2017/1369) that would introduce, when relevant, labelling requirements for mobile phones and tablets that support ecodesign by giving consumers better information regarding product sustainability.

Key cases

Liquidated damages and limitation of liability ([Triple Point Technology Inc v PTT Public Company](#))

The Supreme Court has overturned a Court of Appeal decision regarding liquidated damages for the supply of a software system which was never completed. The Supreme Court has also overturned the Court of Appeal's interpretation of "negligence" in an exclusion clause, holding that it meant both tortious acts and a breach of a contractual duty of skill and care. For further information, please see our analysis of the case [here](#).

Can an AI system be named as an inventor of a UK patent? ([Thaler v The Comptroller-General of Patents, Designs And Trade Marks](#))

Recently, the Australian High Court and the South African patent office have indicated that AI systems can be named as patent inventors. The UK Court of Appeal is also considering this question after Dr Thaler [failed](#) to persuade the High Court that an AI system should be named as a patent inventor. Dr Thaler has submitted that legislation does not exclude non-human inventors and the Court should interpret the statute accordingly to foster innovation and investment in AI technology.

Amazon faces record GDPR fine in Luxembourg

The Luxembourg data protection regulator [issued](#) a decision on 16 July 2021 imposing a €746 million fine on Amazon in relation to its compliance with data protection laws. The decision relates to personalised adverts. Amazon has stressed that there was no data breach and no personal data was exposed to a third party. Amazon has stated that it intends to challenge the fine. Subject to that challenge, this will be by far the largest fine imposed by a European data protection authority since the GDPR came into effect in 2018.

Communication to the public of copyright protected content ([Joined Cases C 682/18 and C 683/18 \(YouTube and Cyando\)](#))

The European Court of Justice has ruled that operators of online platforms do not make a communication to the public where copyright protected content is illegally posted online by platform users, but they do where they 'contribute' to giving access to such content to the public in breach of copyright. Operators may benefit from the safe harbour exemption from liability under Directive 2000/31/EC.

Commercial considerations impact contractual interpretation ([Capitol Park Leeds PLC v Global Radio Services Ltd; Monsolar IQ Ltd v Woden Park Ltd](#))

The Court of Appeal has, in these two recent cases related to disputes over leases, taken a more flexible approach to contractual interpretation. The Courts noted in their judgments that weight should be given to considerations of commercial sense as well as the intention of the parties when interpreting contractual clauses. The interpretation of tech contracts are likely to be impacted by commercial considerations, but note that the literal meaning of the clause is still the starting point.

British Airways settles lawsuit over UK personal data breach

British Airways has [reached](#) a private settlement with most of the claimants in the group claim brought against it by approximately 16,000 individuals affected by a major personal data breach in 2018. BA has made no admission of liability and the payment amounts remain unknown. The settlement may encourage claimant law firms to pursue further such data breach claims and underlies the significance of follow-on claims being brought after regulatory action; the Information Commissioner's Office fined BA £20 million in late 2020.



Spotlight on Digital Dispute Resolution Rules

The UK Jurisdiction Taskforce has recently published its Digital Dispute Resolution Rules, a new set of arbitration rules intended to provide a specialised, quicker and cheaper dispute resolution process for disputes arising out of emerging digital technology such as cryptoassets, cryptocurrency, distributed ledger technology and fintech disputes.

The rules contain a number of novel features and should be welcomed as a positive step forward for the resolution of digital disputes. For parties who are considering incorporating the rules into their agreements it will be necessary to reflect on the benefits that using the rules may bring along with any potential challenges.

In this [article](#), we look at some of the features of the rules and how they may apply in practice.

Keen to find out more?



Online resources available at the click of a button

- Implementing AI governance: an international perspective**
 In this [session](#) our speakers give an overview of legal and regulatory trends across borders, and discuss practical steps that companies can take to manage risk while taking advantage of the benefits of AI technology.
- EU draft AI Regulation: key points and practical suggestions**
 In this [session](#) our panel discussed some of the key issues of the EU draft AI Regulation and provide practical suggestions as to what organisations should be doing now to prepare for this Regulation.
- Gaming and eSports: trends, opportunities and challenges**
 In this [webinar](#) our speakers discuss current trends and opportunities in the world of gaming and eSports, as well legal developments and regulation impacting the sector.
- High impact themes for the TMT sector in Africa**
 In this [session](#) our panel shared thoughts from a pan-African perspective on TMT growth, network infrastructure, regulation and ESG.



Related publications

- [UpData](#)
 Data risk - the latest news, updates and insight.
- [Gaming and esports download](#)
 Interesting issues we've seen in the legal sector and beyond.
- [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.
- [FinTech bulletin](#)
 Legal and regulatory developments in the UK, EU and internationally.
- [TechNotes](#)
 A series of byte-sized articles summarising the legal challenges posed by the disruptive technologies.
- [ESG: building value, minimising risk](#)
 Litigation, regulatory and conduct risks that will be significant in 2021 and beyond.



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

Key contacts



Robert Allen

Partner
Litigation & Arbitration
T +44 20 7825 4852
E robert.allen@simmons-simmons.com



Camilla de Silva

Partner
Contentious Regulatory, Crime & Competition
T +44 20 7825 3783
E camilla.desilva@simmons-simmons.com



Jayne Bentham

Partner
Litigation & Arbitration
T +44 20 7825 4380
E jayne.bentham@simmons-simmons.com



Darren Meale

Partner
Intellectual Property
T +44 20 7825 4365
E darren.meale@simmons-simmons.com



Patrick Boylan

Partner
Litigation & Arbitration
T +44 20 7825 3553
E patrick.boylan@simmons-simmons.com



Priya Nagpal

Partner
Intellectual Property
T +44 20 7825 3518
E priya.nagpal@simmons-simmons.com



Michael Burdon

Partner
Intellectual Property
T +44 20 7825 3236
E michael.burdon@simmons-simmons.com



Minesh Tanna

Managing Associate
Litigation & Arbitration
T +44 20 7825 4259
E minesh.tanna@simmons-simmons.com



Kevin Cordina

Partner
Patent Prosecution
T +44 20 7825 3927
E kevin.cordina@simmons-simmons.com



Emily Agnoli

Managing Associate
Contentious Regulatory, Crime & Competition
T +44 20 7825 3167
E emily.agnoli@simmons-simmons.com

simmons-simmons.com.

© Simmons & Simmons LLP and its licensors. All rights asserted and reserved. This document is for general guidance only. It does not contain definitive advice.

Simmons & Simmons LLP is a limited liability partnership registered in England & Wales with number OC352713 and with its registered office at CityPoint, One Ropemaker Street, London EC2Y 9SS, United Kingdom. It is authorised and regulated by the Solicitors Regulation Authority and its SRA ID number is 533587. The word "partner" refers to a member of Simmons & Simmons LLP or one of its affiliates, or an employee or consultant with equivalent standing and qualifications. A list of members and other partners together with their professional qualifications is available for inspection at the above address.