

Tech Disputes

Summer 2023

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.

Key developments

Key amendments by the EU Parliament to the EU AI Act

On 14 June 2023, the European Parliament [adopted](#) amendments to the draft EU AI Act. The European Parliament had proposed significant changes which aim to regulate AI systems more stringently. Key changes include new requirements for specific AI technologies like foundation models and generative AI, additional obligations for all AI system providers and users, and new categories of prohibited or heavily regulated high-risk AI systems. The EU AI Act will be negotiated between the European Parliament and the Council of the EU to agree on a final form that will become EU law by the end of 2023, followed by a grace period before organisations must comply. See our article [here](#).

Wall Street Firms fined a total of \$549m for widespread failure to maintain electronic records

The US SEC has [imposed](#) \$289 million in fines on 11 Wall Street firms for failing to maintain electronic records of employee communications on "off-channel" platforms like iMessage, WhatsApp, and Signal. Firms including Wells Fargo, BNP Paribas Securities, Bank of Montreal Capital Markets, and Wedbush Securities have acknowledged the violations and are implementing measures to prevent future similar violations. Additionally, the Commodity Futures Trading Commission [imposed](#) \$260 million in fines on four financial institutions for similar violations. This move follows a series of actions by regulators to enforce industry-wide compliance with recordkeeping and supervision requirements, and highlights the importance of ensuring complete and accurate records of "off-channel" employee communications.

European Commission Investigates Microsoft for Anti-Competitive Practices in relation to Teams

The European Commission has [initiated](#) proceedings against Microsoft on the grounds that it may be abusing its market position in the EEA by granting its communication tool, Teams, a distribution advantage by bundling it with its productivity suites, Office 365 and Microsoft 365, and limiting interoperability with rival offerings. This could prevent suppliers of other communication tools from competing, negatively affecting EEA customers. In reaction, Microsoft announced that it will unbundle Teams from Office 365 and increase the interoperability of rival products, effective from 1 October. If proven, the behaviour under investigation will constitute abuse of a dominant position in breach of EU competition rules.

CMA provisionally approves Microsoft-Activision's Restructured Proposal

The CMA has provisionally [approved](#) Microsoft's restructured deal to acquire Activision Blizzard's non-cloud gaming assets after rejecting the original deal to acquire the whole company earlier this year. Under the new agreement, Microsoft will not acquire cloud gaming rights from Activision, which will instead be sold to Ubisoft. The CMA believes this amendment prevents Microsoft from dominating cloud gaming and stifling competition. However, the CMA has lingering concerns regarding the enforceability of certain provisions in the deal and has opened a consultation until 6 October 2023 on Microsoft's proposed remedies. A final decision will be made after the consultation period.

Six 'Gatekeepers' designated under the EU' Digital Markets Act (DMA)

The European Commission has [designated](#) Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft as 'Gatekeepers' as each provide an important gateway between businesses and consumers in relation to core platform services. There are 22 designated services provided by the 'Gatekeepers', including 'Facebook' and 'Google Search', with a further five services under review by the Commission. Following the designation, the 'Gatekeepers' have six months to each (i) comply with the [full list of do's and don'ts](#) under the DMA and (ii) submit a detailed compliance report of the Commission that outlines how it will comply with its DMA obligations. If these obligations are not complied with, the Commission can impose fines up to 10% of the company's total worldwide turnover, which can increase to as high as 20% in the case of repeated infringements.

Key cases

Arbitration: *Payward Inc and Others v Chechetkin [2023] EWHC 1780 (Comm)*

The English Commercial Court declined to enforce a foreign arbitration award in favour of Payward, operator of the Kraken crypto trading platform, against Mr. Chechetkin. The court made its decision on public policy grounds, ruling that it the arbitrator had not considered or applied English consumer rights and financial services laws. This case highlights the interplay between international arbitration and UK consumer regulations, underscoring that consumer contract arbitration clauses must be tailored to the specific circumstances of the relationship. Read the judgment [here](#), and our article on the previous decision [here](#).

Competition: *Pollack v Alphabet Inc [2023] CAT 34*

The recent decision by the CAT sets a new direction for determining competing applications in collective proceedings. In carriage disputes where multiple applicants vie as class representatives, the CAT previously combined carriage and certification hearings. However, the approach taken in this decision suggests hearing carriage disputes earlier to save time and costs, emphasising cooperation among applicants and minimising the defendants' influence in selecting class representatives. The CAT's evolving strategy aims to streamline complex collective proceedings. Read the judgment [here](#).

Data: *Bekoe v Mayor and Burgesses of the London Borough of Islington [2023] EWHC 1668 (KB)*

The High Court upheld claims against the London Borough of Islington (the LBI) for misusing private financial data and breaching GDPR during a possession claim. The LBI accessed and shared claimant Mr. Bekoe's sensitive financial information without justification. The court ruled in favour of Mr. Bekoe, affirming his privacy rights and finding the LBI in breach of GDPR regarding GDPR principles, transparency, and right of access. Mr. Bekoe was awarded £6,000 in damages for privacy violations and GDPR breaches, as well as aggravated damages due to LBI's trial conduct. Read the judgment [here](#).

Data: *Mabadeje v Information Commissioner [2023] UKFTT 632 (GRC)*

The First-tier Tribunal (FTT) struck out an application made under section 166 of the Data Protection Act 1998. The FTT does not have general jurisdiction to deal with complaints that the Commissioner has (i) not judiciously followed Data Protection/GDPR rules or (ii) made decisions based on Civil Procedure Rules. It can only deal with complaints under section 166. Although the Applicant argued that the Commissioner did not investigate appropriately, the FTT found no reasonable prospects of concluding that the Commissioner had not taken appropriate steps to investigate the complaint. The FTT stated that if the Applicant wishes to seek an order of compliance against the Controller for breach of their data rights, the correct route is by separate civil proceedings in the County Court or High Court under section 167 of the DPA18. See the judgment [here](#).

Competition: *1596/5/7/23 Whitewater Capital Limited v Google LLC and Alphabet Inc*

Whitewater Capital Ltd has filed a damages claim against Google LLC and Alphabet Inc under section 47A of the Competition Act. The claim alleges abuse of dominance based on Article 102 TFEU and section 18 of the Competition Act, stemming from the European Commission's infringement decision (Case AT.39740) on Google's dominance abuse in the general search services market. The claim, covering periods before and after the decision, seeks redress for losses suffered by the claimant acquiring Ciao GmbH's assets, and asserts that Google favoured its own services over competitors including Ciao, causing significant harm in the form of loss of profits. Read the Summary of Claim [here](#).

Prompt Engineering & the continuing rise of ChatGPT

Prompt engineering is the process of preparing, developing, and optimising user inputs to achieve enhanced output with Generative AI

Keep an eye out for upcoming article on prompt engineering where we consider the key legal issues arising out of prompt engineering, including:

- IP protection and ownership of prompts;
- The risks of using trade secrets in prompts; and
- The underlying bias in prompts.

In our [article](#) on the irrepressible rise of ChatGPT, Dr Johannes Otterbach explores:

- ChatGPT's rapid growth,
- its potential applications,
- inevitable concerns, and
- the race among new adopters to innovate.

Keen to find out more?



Online resources available at the click of a button

- [The potential of digital innovation: a global journey](#)
Discover the boundless possibilities and transformative impacts that await in AI, data, regulation and more.
- [EU-US Data Transfers: What You Need to Know](#)
In this webinar our speakers focus on what the scope of the EU-US Data Privacy Framework is, its practical application, factors to consider in deciding whether to self-certify and the perception of the framework in Europe.
- [Asia webinar series: Emerging technologies](#)
Key themes linked to emerging technologies shaping the legal landscape in Asia.
- [Product liability webinars](#)
A series of four webinars covering hot topics.
- [Dealing with a data breach: Cyber Response+](#)
Are you experiencing a data breach or want to prepare for one? Our Cyber Response+ service can assist you any time of day, wherever you are in the world.



Related publications

- [Getting the deal through - Cyber Security 2023](#) and [Getting The Deal Through – FinTech 2024](#)
Quick reference guides enabling side-by-side comparison of local insights.
 - [Guide to collective and class actions in the UK and Europe](#)
Keeping pace with trends, infringements and procedural issues in key jurisdictions
 - [UpData](#)
Regular updates on contentious, criminal and insurance risks relating to data, from cyber-attacks to regulatory enforcement.
 - [Tech Disputes](#)
View this edition online and access previous issues.
 - [AI: stay smart](#)
Key regulatory updates relating to AI around the world.
 - [Crypto View](#)
Timely global updates on the world of digital assets.
 - [Digital download](#)
The latest, need-to-know information, communications and technology updates.
- Our Meta-Versus insights series focuses on disputes in the Metaverse:**
- [Meta-Versus: Part 1 - Introduction to disputes in the Metaverse](#)
 - [Meta-Versus: Part 2 - a non-exhaustive taxonomy of Metaverse disputes](#)
 - [Meta-Versus: Part 3 - How will disputes be resolved in the Metaverse?](#)



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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