

This is our summary of some of the key legal developments across a range of sectors for the week of 29 June 2009. It is intended for reference purposes only and does not constitute definitive advice. Links to the original source materials are included where there are no restrictions in terms of access. References may also be made to sources that require separate registration or subscription. A link to a source does not necessarily imply endorsement of the source or the material provided through the link.

For further information on any of the matters discussed in the summary please contact our Professional Support Lawyer, [Sarah Kirkness](#). If you have any comments, queries or suggestions please contact us at [comments](#). All suggestions and comments are most welcome. If you do not wish to receive this summary you can contact us at [unsubscribe](#).

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General

First Update on Progress Implementing Digital Britain Final Report Recommendations

The DCMS and BIS have published a joint paper setting out the details of how certain actions and recommendations in the recently published Digital Britain Final Report (which is now being referred to as the White Paper) will be implemented. The paper refers to the legislative programme 2009 - 2010 which has been announced, which includes a Digital Economy Bill to implement some of the headline actions from the Report that require legislative enforcement - giving Ofcom new duties to promote investment in infrastructure and content alongside the promotion of competition; giving the Secretary of State reserve powers to direct Ofcom to regulate the UK Internet Domain Name System to prevent abuse; reinforcing intellectual property protection by tackling illegal file-sharing and a new licensing regime to enable the wider commercial availability of orphan works; changing the licensing framework for radio to encourage increased investment and coverage as part of Digital Radio Upgrade; providing an updated remit for C4 Corporation, and adopting a new single rating system for Video Games Classification based on the pan European system. The paper goes on to details the steps that will be taken to implement the recommendations that do not require legislation to take effect, such as establishing the lines of accountability for the Digital Inclusion Champion and Expert Task Force, producing a report by the Consumer Expert Group on people with disability and the Internet being requested by the Autumn, the Board of C4 being given until the end of July to respond to proposals on the elements of the updated statutory remit for C4, the Government writing to the BBC about the specifics of the governance of the Network Design and Procurement Group following the Final Report's confirmation of the Broadband Universal Service Commitment by 2012 and its funding, a call for interest being announced in respect of the Next Generation Mobile and Spectrum Liberalisation on core issues around 900MHz and 800MHz spectrum, announcing the publication of a consultation on the option of a Contained Contestable Element of the Television Licence Fee to fund regional news (see Consultations & Reports, below for details) and announcing a consultation to look at giving independent Channel 3 broadcasters in Scotland and Northern Ireland equivalent status to qualifying independent production companies to access the independent production quotas of the BBC, C4, ITV and Five in the UK-wide market. See <http://www.culture.gov.uk/images/publications/DigitalBritain-WhitePaperupdate-30June2009.pdf> for further details.

PhonpayPlus' Annual Report for 2008/2009

PhonpayPlus have published their annual report for 2008/2009. The report summarises the activities of the regulator over the past year and notes that complaint volumes, which reached a high-water mark of 2,378 in April 2008, have been cut by more than one-third and complaints around mobile subscription services, which represented 65% of all complaints in 2008, are "steadily declining". The report said that of the 23,278 consumer complaints received in 2008/2009, 267 unique services were identified for further investigation. Of these cases, 69 proceeded to formal adjudication and went before the Tribunal. Over the period in question PhonpayPlus levied fines totalling £2,479,363. The report also looked at the market survey which PhonpayPlus commissioned at the end of 2008 - the survey identified widespread use of phone paid services by consumers but warned that the economic downturn would impact on an already declining market, predicting a contraction of 15% in 2008 to £920 million (from £1.08 billion the previous year). It found mobile messaging services, such as the sharing of video clips, remained relatively low in popularity, with just 5.5% of respondents having used the services. Adult content remained a "significant" part of the market in terms of revenue generation at £153 million. Of interest were the responses regarding phone paid services - although 48% of consumers had used a phone-paid service in the past six months, over half said they had "little or no trust at all" in any given service and, in fact, 25% of non-users cited a lack of trust as the key reason for staying away. The report predicted that most premium rate services will experience declining revenues this year, mainly as a result of global recession, a perceived lack of innovation in the marketplace, competition from alternate delivery platforms and consumers' mistrust of some services. See <http://www.phonpayplus.org.uk/upload/Annual-Report-08-09-for-web.pdf> for the Report.

ERG Publish Guidelines on International Roaming Regulation

The European Regulators Group (ERG) has published new Guidelines to complement the new Roaming Regulation 544/2009/EC, which amended the first Roaming Regulation 717/2007/EC and Directive 2002/21/EC, and which contains new provisions on mobile roaming which took effect from 1 July 2009. The Guidelines are not "presented as a legal interpretation of those provisions" but instead give practical advice on the application of the Regulations - see http://www.erg.eu.int/doc/publications/erg_09_24_final_roaming_regulation_erg_guidelines.pdf for details. The UK

Government has also amended the Mobile Roaming (European Communities) Regulations 2007, which set out how breaches of the Roaming Regulation 717/2007/EC will be dealt with in the UK - The Mobile Roaming (European Communities) (Amendment) Regulations 2009, SI 2009/1591, which came into force on 1 July 2009, makes minor amendments to the Mobile Roaming (European Communities) Regulations 2007 - see http://www.opsi.gov.uk/si/si2009/pdf/uksi_20091591_en.pdf for the Regulations.

Commission Adopts Consumer Enforcement Package

The European Commission has announced it has adopted a "consumer enforcement package" to strengthen the EU-wide enforcement of consumer rules. The package consists of a Communication setting out five priority areas for action, and a report on the first two years of application of the Consumer Protection Cooperation (CPC) Regulation, which established an EU wide network of public authorities enforcing consumer rules in the Member States. See <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1080&format=HTML&aged=0&language=EN&quiLanguag e=en> and <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/312&format=HTML&aged=0&language=EN&quiLangu age=en> for details.

Basis for Determining Benefit for Purpose of Confiscation Order - Whether Personal Benefit Obtained

The Court of Appeal (Criminal Division) has ruled on the question of how to determine the value of a "benefit" obtained by an offender who had been guilty of managing a company as a director in contravention of a director's disqualification order or an undertaking not to act as a director in the context of the appellants' appeals against confiscation orders. The Crown Court had said that the benefit obtained as a result of the criminal conduct by the person who had contravened the disqualification order or undertaking was equal to the total turnover of the relevant companies for the period of his contravention and the resulting confiscation orders were made on this basis. However, in the interim, the House of Lords delivered judgments in three cases on the question of how "benefit" was to be assessed and what was meant by an offender "obtaining" a "benefit" in the context of confiscation orders under the proceeds of crime legislation (*R v May* [2008] 1 AC 1028; *Jennings v CPS* [2008] 1 AC 1046; and *R v Green* [2008] 1 AC 1053). The appellants argued that the correct approach was to determine what money or other property they had personally obtained as a result of the criminal conduct and that on that basis they did not receive or obtain the turnover of the companies. The Court of Appeal said that if a defendant had been convicted of contravening a director disqualification order or undertaking, then in any subsequent confiscation proceedings, the questions to be asked were no different from that in any other type of crime - there was nothing in either the confiscation legislation nor the Company Directors Disqualification Act 1986 nor the decided cases to suggest that any different approach was to be taken in relation to a defendant whose criminal conduct consisted of contravening a director's disqualification order or an equivalent undertaking. The benefit gained by an offender who had been found guilty of contravening a director disqualification order or an equivalent undertaking was the total value of the property or pecuniary advantage gained, not the particular defendant's net profit. The conclusion of the Crown Court that the "benefit" to the appellants equalled the turnover of the relevant companies was wrong as a matter of law. For the purpose of making a confiscation order, the value of the benefit obtained by an offender who had been guilty of managing a company as a director in contravention of a director disqualification order, or an undertaking not to act as a director, was not necessarily the turnover of the relevant company or companies but the real benefit the offender had obtained personally. The appeals were allowed and in each case the confiscation order was quashed. (*R v Mornington Stafford Seager* [2009] EWCA Crim 1303 - see <http://www.bailii.org/ew/cases/EWCA/Crim/2009/1303.html> for the judgment).

Broadcasting

Commission Adopts New Communication on State Aid for Public Service Broadcasting

The European Commission has adopted a new Communication on State Aid for the funding of public service broadcasters, which replaces the Commission's 2001 Broadcasting Communication. The revised rules are built on principles laid down in the 2001 Communication but have been updated to take account of developments in new media and in response to claims by private sector media firms that public broadcasters were using public money to encroach on their areas of interest. According to the Commission, the main changes in the new Communication concern the ex ante control of significant new services launched by public service broadcasters to examine whether the service strikes a fair balance between competition in the marketplace and the social and cultural needs catered to by public media outlets; balancing the market impact of such new services with their public value; clarifications concerning the inclusion of pay services in the public service remit; more effective control of overcompensation and supervision of the public service mission on the national level; and increased financial flexibility for public service broadcasters. However, it will be left to each EU Member State to work out precisely how the ex ante test will be applied. The Commission also said that financial transparency would be at the core of the new rules and that independent national bodies will be required to ensure full accountability and that the new Communication would "give additional legal certainty to the media sector in Europe and ensure fair competition between public broadcasting and private media". (*EC Press Release IP/09/1072, 2 July 2009* - see http://ec.europa.eu/competition/state_aid/legislation/broadcasting_communication_en.pdf for the Communication).

Competition Commission Accepts Undertakings for VOD Sector

The Competition Commission has announced that it has accepted the undertakings given by BBC, BBC Worldwide Ltd, Channel 4 Television Corp and ITV Plc, addressing the substantial lessening of competition in the supply of video on demand (VOD) content at the wholesale and retail levels that it had anticipated would arise from the joint venture between the companies. See http://www.competition-commission.org.uk/inquiries/ref2008/kangaroo/pdf/notice_final_undertakings_bbc.pdf for the BBC and BBC Worldwide undertakings; http://www.competition-commission.org.uk/inquiries/ref2008/kangaroo/pdf/notice_final_undertakings_itv.pdf for the ITV undertakings; and http://www.competition-commission.org.uk/inquiries/ref2008/kangaroo/pdf/notice_final_undertakings_c4c.pdf for the Channel 4 undertakings. The undertakings took effect from the date they were accepted by the Competition Commission (25 June 2009) and will continue in force for five years - they have the effect of preventing the parties from acquiring all or any part of the VOD activities carried on by each other and also from having any of their managers or directors holding or being nominated for any directorship or managerial position in any company or other undertaking carrying on or having control of all or any part of the VOD activities of any of the other parties.

OFT Accepts Undertakings in Global Radio Acquisition of GCap Media

The Office of Fair Trading (OFT) has accepted the undertakings offered by Global Radio UK Limited to address competition concerns which arose in relation to customers who might have wished to carry out regional radio advertising campaigns in the East and West Midlands as a result of its acquisition of GCap Media plc. Global will divest four stations in the West Midlands to investment company LDC Midlands, together with their accompanying station brands and Gold licences. In addition, Global will sell the "106" licence for the East Midlands area and enter into a "Heart" brand franchise agreement with LDC which will include allowing LDC to use the Heart brand and some of its national programming in its own broadcasting. The OFT said the remedies will restore competition for regional radio advertising in the East and West Midlands by "establishing LDC as a credible competitor to the remaining Global stations". As a result of the undertakings, the merger will not be referred to the Competition Commission. (*OFT Press Release 77/09, 1 July 2009*).

Corporate

FSA Bans Director for Failing to Adequately Supervise Firm

The Financial Services Authority (FSA) has banned the former Compliance Director of Chase UK Corporation Limited from carrying out any controlled function involving the exercise of any significant influence at any authorised person, exempt person, or exempt professional firm pursuant to section 56 of the Financial Services and Markets Act 2000 as a result of his failure to adequately supervise the operations of the firm - under section 56, if it appears to the FSA that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person, exempt person or exempt professional firm, then the FSA may make a prohibition order. The effect of making a prohibition order is to prohibit an individual from performing functions within authorised firms and to prohibit authorised firms from employing the individual to perform specific functions. In this case, the director's failure to supervise the firm resulted in a number of fraudulent mortgage applications being made (*FSA/PN/083/2009, 26 June 2009*).

EVCA Response to Commission Proposal for Directive on Alternative Investment Fund Managers

The European Private Equity & Venture Capital Association (EVCA) has published its response to the proposed Directive on Alternative Investment Fund Managers (AIFM). The European Commission had published a proposal for a Directive on Alternative Investment Fund Managers in April this year, the objectives of which were to control systemic risks and ensure appropriate investor protection and appropriate transparency in the area of alternative investments. The response paper opens with the statement that although the industry "understands the objectives stated by the draft Directive", it states that it will ask for the text to be amended through the EU legislative process, in order to "fully take into account all specificities of this industry and its critical contribution to the financing of the European economy". The details of how this is to be done are set out in the paper, which details on how the Directive should be amended or clarified - see http://www.evca.eu/uploadedFiles/News1/News_Items/2009-06-26-ResponsepaperAIFM.pdf for details.

Sales of Assets in Company - Whether Ultra Vires for Undervalue

The Court of Appeal has ruled in an appeal on what it described as a "short, but quite basic, company law point" concerning the circumstances in which a sale of assets at an undervalue by a company to, or at the behest of, a shareholder in the company should be held ultra vires on the ground that, in substance, the sale was an unlawful distribution in disguise. In a short judgment the court restated the well-settled rule that the common law rule had devised for the protection of the creditors of a company - a distribution of a company's assets to a shareholder, except in accordance with specific statutory procedures, such as a winding up of the company, is a return of capital, which is unlawful and ultra vires the company. The court said a characteristic of an unlawful distribution of shares in a company was that the sale was known to be and was intended to be a sale at an undervalue. The correct test to be applied on the

issue of vires was to look at the true nature and substance of the payments and assess their genuineness (or otherwise) as payments of remuneration. In this case, the sale of the shares was "genuine, lawful and intra vires, even if it was at an undervalue" and accordingly, the appeal was dismissed. (*Progress Property Company Ltd v Moorgrath Group Ltd; Sub nom Progress Property Company Ltd v Moore & Anor* [2009] EWCA Civ 629 - see <http://www.bailii.org/ew/cases/EWCA/Civ/2009/629.html> for the judgment).

Draft Legislation - Share Capital and Acquisition by Company of its Own Shares Regulations

The draft Companies (Share Capital and Acquisition by Company of its Own Shares) Regulations 2009 have been published. The Regulations, which come into force on 1 October 2009, reduce the minimum pre-emption rights issue subscription period set out in section 562(5) of the Companies Act 2006 from 21 days to 14 days, introduce a requirement in section 646 so that, when creditors object to a reduction in a company's capital, they should demonstrate that their claim is at risk and that the company has not provided adequate safeguards and repeal section 725 to remove the 10% limit on companies holding shares in treasury and also amend sections 694, 697, 700 and 701 to extend the period for which authorisation may be given for the purchase by a company of its own shares from 18 months to 5 years. See http://www.opsi.gov.uk/si/si2009/draft/pdf/ukdsi_9780111481776_en.pdf for the Regulations and http://www.opsi.gov.uk/si/si2009/draft/em/ukdsiem_9780111481776_en.pdf for the accompanying (draft) Explanatory Memorandum.

Gambling

RGA Consult on Integrity in Sports Betting

The Remote Gambling Association (RGA) have begun a consultation on sports betting (which includes horse and greyhound racing) inviting comment on a range "commercial and integrity issues" in order to develop a co-ordinated approach and develop evidence-led policies. The RGA has produced four separate questionnaires for sporting organisations, governments and gambling regulators, non-RGA betting operators and trade associations and other interested parties. Their responses will be used to produce a report for RGA members, which will include recommendations on how best to meet the "challenges provided by the modern gambling environment". (*RGA Press Release, 1 July 2009*).

Greek Government Increases Gaming Taxes

The Greek Government Economy and Finance Ministry has announced a range of measures to deal with the country's widening budget deficit - the measures include the establishment of a uniform tax rate of 10% on winnings from lotteries, games of chance and fixed odds betting which will, according to reports, raise €180 million. Previously, a tax of 5% had been levied on some winnings.

Litigation

Ambiguity of Words in Published Article - Benefit of Doubt Whether Defamatory

The defendant publisher, who was involved in a libel action brought against it by the claimant professional footballer following the publication of an article in *The People* about the respondent's move to another football club, applied for a ruling that the words in the article it had published were incapable of conveying any defamatory meaning. At the time of publication of the article the claimant was in the midst of negotiations about extending his contract with his football club. There was no suggestion that the allegations contained in the article were true. The claimant sought to argue that the words in the article suggested he had lied about the reasons for missing certain matches and was disloyal to his club. The court (reluctantly) refused the application and held that the words were at least capable of bearing some defamatory meaning. It said that allowance had to be made when an article was opaquely written (as it was in this case) and that one had to "err on the side of generosity" which here worked in the claimant's favour (noting however that it would only be a very small class of readers who might draw a negative inference). (*Johnson v MGM Limited* [2009] EWHC 1481 (QB) - see <http://www.bailii.org/ew/cases/EWHC/QB/2009/1481.html> for the judgment).

Assessment of Damages for Serious Libels

The claimant was a Conservative borough councillor and a prospective parliamentary candidate for Slough. The first and second defendants were members of a local political organisation who had published a leaflet in which statements were made that the claimant was under investigation by the Electoral Committee for irregularities about her expenses. Libel proceedings were brought and settled against the first defendant; the defence of the second defendant was struck out and damages were ordered to be assessed. The second defendant sought to have the assessment postponed but the claimant submitted that, as a result of the libels, she had suffered distress and was entitled to damages of between £15,000 and £18,000. The court dismissed the second defendant's application for an adjournment as he had left his application to the last possible moment and had given no proper explanation for his failure to act earlier or to explore other possible responses, such as an appeal, to the order striking out the defence. The court said when assessing the damages to be awarded in a libel claim, it had to consider what meaning the defamatory words would bear as if it were a

jury. In this instance, the libels involved were serious allegations which could have been read by up to 300 people in the claimant's ward. In those circumstances, the appropriate amount of damages was £15,000. (*Coad v Cruz & Anor* [2009] All ER (D) 11 (Jul) - only a digest of the decision is available, from LexisNexis).

Libel Claim - Attempt to Strike Out Proceedings as Abuse of Process

The Court of Appeal has heard an application by the defendants for leave to appeal the High Court's decision not to strike out the claimant's libel proceedings against them. The claimant, a former associate of the Beatles, brought libel proceedings against the defendants, the New York Times and the International Herald Tribune, following the publication of an article about the death of the Beatles' one-time guru in which allegations were made about the reasons the claimant fell out with the band. The court noted that there was "no dispute" that certain words in the article were at least capable of being defamatory but at issue before the Court of Appeal was whether the entire claim was an abuse of process. The court said that although each of defendant papers was owned and circulated principally in the United States, and although the International Herald Tribune was published not in the UK but in Paris, and although the hard copy circulation of the New York Times was apparently less than 200 in the UK and that of the International Herald Tribune zero, and although Internet access to the publications appears to have no particular concentration in the UK, it was in the UK that the claimant had elected to sue and it was "not in dispute that he was entitled to do so". The High Court had refused to strike out the claim. The Court of Appeal said while there was good evidence of no more than 177 print sales in the UK of the New York Times and, although the article appeared on both journals' websites, there was no evidence of extensive downloading of it, it found that the defendants had not made out a case that there had been an error of law by the High Court in refusing the application to strike out the claimant's proceedings. It said while it "readily understood" the dissatisfaction of the defendants at being "expensively dragged before the courts of a country in which neither they nor the claimant were domiciled", and accepted, "because we all know it, that the cost of litigation in this country is a scandal", these were "not issues that can be addressed ... by using the law of abuse to shut out what is otherwise a legitimate claim". (*Mardas v New York Times Company & Anor* [2009] EWCA Civ 633 - see <http://www.casetrack.com/ct4plc.nsf/items/3-386-5272> for the judgment).

Sport

FATF Report on Risks to Football from Money Laundering

The Financial Action Task Force (FATF), the intergovernmental agency established by the G7 summit in Paris in 1989 to develop and promote national and international policies to combat money laundering and terrorist financing, has published a report which examines several cases that illustrate how the football sector can be used as a vehicle for laundering the proceeds of criminal activities. The report found that money laundering through the football sector was "deeper and more complex than previously understood" and said that the results appeared to show that there was "more than anecdotal evidence indicating that a variety of money flows and/or financial transactions may increase the risk of money laundering through football". The report identified a number of particular features of the sport which made it vulnerable - the market was physically easy to penetrate, mainly due to the low or absent entry barriers of the sector; the sector was complex and characterised by opaque networks of stakeholders and interdependence between the different actors such as players, agents, clubs, owners, managers, sponsors, etc; the management lacked professionalism, except for the major professional leagues; there was great diversity in terms of the legal structures, as the legal structures of football clubs varied from private limited companies to foundations; the sector deals with considerable cash flows and large financial interests and the transactions can involve substantial sums of money; the sums of money involved are often "irrational" and the results unpredictable; and despite the large sums involved, many football clubs are "financially in bad shape and their financial trouble could urge football clubs to accept funds from dubious parties". The report also identified a number of what it described as "cultural" factors that made the sport more vulnerable. In addition to the money laundering aspects, the report discussed several cases, which showed that the football sector had been used as a vehicle for perpetrating criminal activities such as illicit trafficking in human beings, corruption, drug trafficking (doping) and tax evasion. FATF identified out three key areas of vulnerability (market structure and lack of professionalism, sector finances and cultural and social weakness) and set out a number of recommendations to deal with the structural weaknesses or develop preventative measures. See <http://www.fatf-gafi.org/dataoecd/7/41/43216572.pdf> for details. The report also said that although there was "an ambiguous relationship between betting and sport", the issue of betting on sporting activities demanded separate consideration.

ASA Adjudicate on Beer Ad Implying Sponsorship of England Rugby Team

The Advertising Standards Association (ASA) has adjudicated on a complaint by the Rugby Football Union who objected to an advertisement that they said implied that Fuller's London Pride was an official sponsor endorsed by the England rugby team in breach of clauses 7.1 (Truthfulness), 14.7 (Testimonials and endorsements) and 20.2 (Denigration and unfair advantage) of the CAP Code. Fuller was not an official sponsor of the team although it had had a long history of supporting sporting events, both formally and informally. The ASA did not uphold the complaint - it said the specific features that official sponsors were likely to include in their advertising, such as the claims "official partner" or "official sponsor", were not included in the advertisement which was under consideration and they did not think that readers were unlikely to be misled into thinking that Fullers were an official sponsor or partner of the England rugby team.

Accordingly, the advertisement was not misleading and did not take unfair advantage of the reputation of the England rugby team. See http://www.asa.org.uk/asa/adjudications/Public/TF_ADJ_46480.htm for the ASA's findings.

Technology

Variation of Regulation to Increase .eu Top Domain Name Language Choice

The European Commission has adopted a Regulation to amend Regulation 874/2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration. The Regulation deals with the situation which has arisen as a result of there being more official languages of the Community comprising more alphabetic characters than those which were available for registration at the beginning of the registration period provided for in Regulation 874/2004 - originally all .eu domains had to be written using the letters a-z and the digits 0-9. It has now become technically possible to register names in the official languages of the Community under the .eu Top Level Domain also using alphabetic characters that were not available for registration at that time - it will now be possible to display characters in central European languages as well as produce websites in the Bulgarian, Greek and Cypriot alphabets. The Regulation contains a new Annex, which lists all the variations that may now be used. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:166:0003:0035:EN:PDF> for details. The Regulation came into force on 30 June 2009. New figures published by the EU executive last week showed that the number of .eu domain names registered grew by 11% in both 2007 and 2008. At present, just over 3,000,000 .eu websites are in use, but figures vary widely from country to country.

Commission Approves Carphone Warehouse Acquisition of Tiscali

The European Commission has approved under the EU Merger Regulation the acquisition of Tiscali UK Ltd, a subsidiary of Tiscali SpA, by The Carphone Warehouse Group Plc. Carphone Warehouse is active in the sale of mobile handsets, mobile connections and a range of associated devices, such as laptops. In the UK, it acts as a broadband and narrowband Internet access provider, fixed-line and mobile telecommunication services operator and as a mobile virtual network operator for domestic and business customers. Tiscali UK is a telecommunications and Internet Service Provider supplying broadband and narrowband Internet access services, fixed-line telecommunication services and digital TV services to business and domestic customers. It is only active in the UK. The Commission concluded that the transaction would not significantly impede effective competition in the European Economic Area, or any substantial part of it. It said the new entity will continue to face competition from a number of strong players, especially BT, as well as from a number of strong alternative operators, including those based on the cable platform and that competition from other technologies, such as mobile telecommunications, was also growing. (*EC Press Release, IP/09/1054, 30 June 2009*).

Private Members Bill - Online Purchasing of Goods and Services (Age Verification) Bill

The Private Members Bill for Online Purchasing of Goods and Services (Age Verification) Bill has had its third reading in the House of Lords. The Bill proposes making it a requirement for the providers of goods and services and the providers of specified facilities enabling the purchase of such goods and services to take reasonable steps, in certain circumstances, to establish the age of customers making such purchases remotely. The Bill was passed with no amendments and sent to the Commons. See <http://www.publications.parliament.uk/pa/ld200809/ldbills/016/09016.1-i.html> for the Bill, as it was originally introduced.

Consultations & Reports

Ofcom Regulatory Statement - Digital Dividend: Clearing the 800 MHz Band - <http://www.ofcom.org.uk/consult/condocs/800mhz/statement/clearing.pdf> (as a result of what Ofcom recognised as an increasing number of European countries that are now identifying a digital dividend in the 800 MHz band, Ofcom has, after consultation, set out its reasons for aligning the UK approach with that being applied in Europe to enable the UK to benefit from international economies of scale in equipment manufacture with fewer restrictions on how the spectrum can be used, particularly for the next generation of mobile broadband services - their decision to clear the 800 MHz band will mean clearing digital terrestrial television (DTT) from channels 61 and 62 and programme-making and special events (PMSE) uses (such as wireless microphones) from channel 69 - Ofcom said clearing the 800 MHz band in the UK will increase the spectrum that is made available in the upper band of the digital dividend for new uses by 24 MHz)

Ofcom Final Report - Predicting Areas of Spectrum Shortage - http://www.ofcom.org.uk/research/technology/research/spec_future/predicting/shortage.pdf (Ofcom's research models a set of future scenarios in order to identify if and where spectrum shortages are likely to arise, highlighting the high risk frequencies and services at particular points in time in respect of the future demand for spectrum)

Ofcom Final Report - Entertainment in the UK in 2028 - <http://www.ofcom.org.uk/research/technology/research/sectorstudies/entertainment/entertain2028.pdf> (Ofcom's commissioned study assesses the spectrum requirements for both the distribution and production of entertainment by

2028 and compares spectrum demand with likely supply, identifies problems of increased scarcity, and suggests ways of dealing with them)

Ofcom Consultation - Notice of Ofcom's Proposal to Make the Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2009 - <http://www.ofcom.org.uk/consult/condocs/regs2009/regs2009condoc.pdf> (consultation on Ofcom's proposals to draft regulations to make the Wireless Telegraphy (Ultra-Wideband Equipment) (Exemption) Regulations 2009 to implement the requirements of the European Commission Decision of 21 April 2009 (2009/343/EC) (the UWB Amendment Decision) allowing the use of the radio spectrum for equipment using ultra-wideband technology in a harmonised manner in the Community)

Ofcom Report - The Communications Market: Digital Progress Report - Digital TV, Q1 2009 - http://www.ofcom.org.uk/research/tv/reports/dtv/dtu_2009_01/q12009.pdf (Ofcom's 22nd report on the latest developments in multichannel television, including quarterly take-up figures, subscriber figures and device sales data)

DCMS Consultation - Sustainable Independent and Impartial News; in the Nations, Locally and in the Regions - http://www.culture.gov.uk/images/consultations/cons_sustainableindependentnews.pdf (the recently published Digital Britain Final Report (ie, the White Paper) set out proposals for introducing independently funded news consortia that would provide news in the Nations, locally and in the regions (in the Channel 3 weekday schedule). The Government intends to trial this proposal first on a pilot basis in Scotland, Wales and one English region, with national roll out from 2013 and the DCMS is inviting views on the proposal to provide top-up funding for news consortia through a contained, contestable element to be introduced to the next licence fee settlement in 2013 and on alternative sources of funding)