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## Competition Law: New Penalties for Directors

**The Office of Fair Trading (OFT)** wants to extend the banning of company directors to penalise not only those who have been directly involved in anti-competitive activities, but also those who should

The OFT currently has the powers to disqualify directors who are directly involved in competition law violations, however by widening its scope to include other executives as well, it will undoubtedly mean that many more directors could be disqualified for up to 15 years.

competition law, as well as being actively involved in assessing and recognising potential anti-competitive activities.

In a group of companies for example, directors of all subsidiaries could theoretically be affected by any anti-competitive behaviour resulting from the actions of one subsidiary.

The OFT commented that these drastic measures are intended to maximise the deterrent impact on executives and to force directors to take active steps to prevent anti-competitive behaviour from occurring in the first place.

The OFT is placing a high burden on directors and it is still unclear how these new measures will work in practice. What is clear however is that companies will need to start thinking about possible control mechanisms before employing a designated competition officer to ensure compliance.

In practical terms this means that all directors will need to have a general comprehension of



have known about these activities and done more to prevent them.

## Check your Website Disclaimers Now

**In a landmark ruling**, the Court of Appeal has for the first time considered website disclaimers. Apparently, errors on a website can be mitigated by a simple warning notice.

representations made on the website and instructed one of the affiliate companies, which later became insolvent. The customer therefore sued the website operators.

owe a duty of care to its visitors, this duty of care can easily be limited by including an appropriately worded disclaimer notice on the site.

The case involved a website of a pool installers' trade body containing the names of its members and highlighting the safeguards for customers who hire its members. However the website operators failed to identify which of the companies listed were only affiliate members, to whom none of the safeguards apply. A customer relied on the

The website operators only escaped liability because the website contained a disclaimer notice, urging customers to request an information pack before instructing any of the companies listed on the website. The Court of Appeal therefore ruled that the website operators did not owe customers a duty of care.

The Court of Appeal's ruling raises some questions and many more eyebrows. It does however also highlight the importance and value of including disclaimer notices on your website.

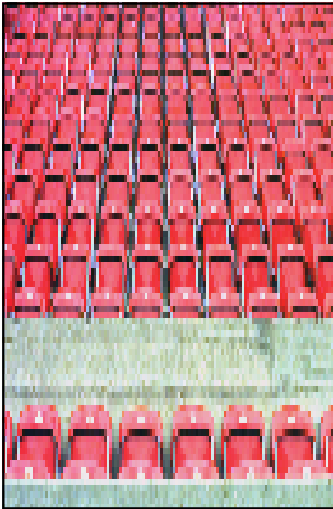
This case shows that, although a website does

If disclaimers work in successfully mitigating risks, as the court ruling implies, any business should surely consider including clearly visible disclaimer notices on their website.

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## Sports Betting Integrity



**The Minister for Sport, Gerry Sutcliffe,** announced the appointment of the Sports Integrity Panel to be chaired by Rick Parry, the Chief Executive of Liverpool Football Club.

The terms of reference of the panel will be narrowly focused on sports betting integrity and not on the issue of the promotion of a new sports right. This clear separation is a positive development for the betting industry, as it finally fails to support the proposition supported by many sports bodies that integrity issues and the creation of new sports IP rights are closely interlinked.

At the same time, the Remote Gambling Association (RGA) has started its own wide-ranging consultation. The UK Department for Culture, Media and Sport has seconded Jason Foley-Train to undertake this project with the RGA. It is expected that the consultation will cover more extensive grounds, such as existing warning systems and commercial realities.

Policy makers and regulators may wish to look at the wider picture before requiring the betting industry to share its profits with sports bodies. The underlying issues are more

complicated and the sports bodies' call for the creation of new IP rights needs to be considered in this context, otherwise bookmakers may face a double taxation whammy: a "fair return" to contribute towards the costs of treatment for problem gambling and the regulations, as well as a "fair return" for a newly created "competition organiser's right".

Voluntary arrangements and closer cooperation between the betting industry and sports bodies may not be perfect, but it may be the only workable alternative before policy makers address the underlying issues in full.

## Data Protection

**European Central Bank under scrutiny for data protection breaches:** the European Data Protection Supervisor (EDPS) has stated that the European Central Bank's privacy policy is in violation of EU law, which restricts the process of personal data for a specific purpose only. It also objects to a list of purposes which would not be sufficiently specified. This also includes statistical informa-

tion for research purposes, if this information could still be data on identifiable individuals.

The findings of the EDPS may not come as a surprise, however the implications may have far reaching effects on the way in which personal data is held and processed. One of the implications would be to clarify and ensure that "statistical information" (which is not

legally defined) does not contain or refer to any information (including IP addresses) that may link the statistical data with a living individual.

Considering the increased powers of the UK Information Commissioner and the growing complexity of data protection in online cross-border transactions, businesses will need to evaluate carefully their current privacy policies.



## Alderney's New Licensing Regime

**The Alderney Gambling Control Commission** has unveiled its new licensing framework, which separates licensing into two distinct areas. It will now differentiate between B2C and B2B applicants.

With a competitive fee structure, the new online gambling framework will encourage start up companies and smaller businesses to apply for a

licence in Alderney, thereby luring many online operators away from other jurisdictions.

The increase in complex B2B structures across multiple jurisdictions has become a Herculean task for operators to keep track of changing business models and to assess whether players or games are still within or outside regulated jurisdictions.

Alderney's response to these changes presents a way forward in the right direction. However with a lack of European cross-border agreements, evolving technologies and a continued diversification of business structures, it remains to be seen whether current voluntary agreements and closer cooperation between regulators will address these issues sufficiently.



## A Fair Deal for UK Licensed Operators



In April 2009, the UK Government announced that operators licensed in EEA states and white listed jurisdictions may face new requirements if they are to continue to advertise in the UK. The Government will explore ways to give UK licensed operators a level playing field to compete with those regulated overseas.

It is suggested that these operators will be required to make a contribution towards the cost of regulation and treatment of problem gamblers. As part of the review, DCMS will also look at the controls that apply to overseas operators, with the aim of ensuring the protections in the Gambling Act for underage and vulnerable members of society are properly upheld. A code of conduct which is legally binding on all those who advertise to the UK may be the starting point.

The Responsibility in Gambling Trust has long been arguing for financial contributions from overseas operators and voluntary contributions are being made, most notably from operators licensed in Alderney and Gibraltar. To force all operators to make

contributions and comply with high standards would obviously be fairer to those who already do so, but it is unclear how a system of enforced contributions and compliance might be policed. We are not convinced that a level playing field can be achieved unless all operators who wish to market to the UK are required to obtain a licence, although this would represent a major change of Government policy. The UK is such a lucrative market for gambling operators that there is no doubt that those currently licensed overseas will obtain a licence in the UK if that is made necessary.

Although the Government is committed to the principles of freedom of establishment and freedom to provide services enshrined in the European Community treaty, it must be considering the new systems of gambling legislation brought in recently in France and Italy.

On the one hand the Government has expressed the view that there is no legal basis for

banning operators based in EEA jurisdictions from advertising in the UK, but on the other hand it must have in mind the huge tax revenues the Italian Government is generating from operators required to become licensed in the country in order to advertise there. With the recent Schaldermose report endorsing the protectionist stance taken by many European jurisdictions, the UK Government is likely to stand alone if it maintains the position that EEA operators may advertise freely in the UK without obtaining a local licence.

Whilst these issues are weighed up by the Government, the white listing process has been suspended. Questions have been raised about the process by which jurisdictions become part of the white list, and why their submissions are not available for public scrutiny. This undermines the whole system and reduces the kudos associated with being licensed in a white listed jurisdiction. The inequality created by allowing operators subject to different standards of regulation to advertise in the UK provides further

fuel for the argument that all operators should be required to obtain a UK licence.

The results of the Government review are due by the end of the year, but with a general election on the horizon and concern over MPs expenses continuing, this issue is not a priority for the Government. Shadow Minister Tobias Ellwood MP has indicated that a conservative government would require all companies to obtain a licence from the Gambling Commission in order to advertise in the UK.

The Tories envisage a British standard kite mark which would enable players to easily see that a website meets high standards of practice. This is presented as a consumer protection initiative and it may be that this is a vote winning policy, rather than something which will necessarily be put into practice under a Conservative government.

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## Gambling Regulatory Update

- **Changes to Licence Fees and Fee Categories:** New Licence fees have come into effect from 1 August 2009, with small increases for most casino licensees. The boundaries between categories of non-remote casino licences, based on annual gross gambling yield, have moved upwards by 10% so, it may be worth checking if a lower fee category may now apply. For remote casino licensees, a new fee category has been introduced, allowing those with a yield of under £0.5million to take advantage of lower application and annual fees. This new category may be designed to encourage start up operators, who anticipate a small gambling yield to begin with, to become regulated in the UK. For those with a low gambling yield, taxes payable by gambling operators in the UK are likely to be of less concern.
- **Definition of a Gaming Table:** New regulations came into effect on 11 August 2009 clarifying that a wholly automated gaming table is not a "gaming table" for the purposes of determining how many gaming machines may be offered in a small, large or regional casinos. Following an extensive consultation exercise, it was anticipated that these regulations would provide a definition of when a gaming table is "available for use". Unfortunately, the regulations merely state that a gaming table is to be treated as being used in a casino at a particular time only if it is being used to play a casino game at that time; or available at that time to be used for that purpose.
- **Primary Gambling Activity:** Under new Guidance to Licensing Authorities issued on 1 May 2009, the Gambling Commission has clarified that the primary gambling activity authorised by an operating licence must be offered in the premises if gaming machines are to be made available for use. This is a response to the Commission's concern regarding operators who obtained an operating licence for betting, for example, but in fact had premises comprising only a number of gaming machines.

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