

## James Flynn QC

YEAR OF CALL: 1978 YEAR OF SILK: 2003

*"A highly accomplished advocate and adviser who is very easy to work with and puts clients at ease." "He has one of the finest analytical minds at the Competition Bar."*

Chambers & Partners 2015

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## Practice Overview

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James Flynn QC is a leading competition law litigator at the London Bar. His wide experience at the Bar builds on his years of practice at a magic circle law firm in London and Brussels together with his work as a Legal Secretary at the European Court of Justice. Current high profile cases in London include acting for the Road Haulage Association in the proposed collective proceedings against the truck cartel and for GSK in its appeal against the UK's first pharmaceutical patent reverse settlement proceedings (currently the subject of a reference to the European Court of Justice). He has considerable expertise concerning the interface between Competition and Intellectual Property law, particularly on the licensing of standard essential patents and FRAND terms (acting for Qualcomm, IP Com and Samsung) as well as 'pay for delay.' Significant CAT appeals in recent years include acting for Sky in the long-running Pay TV litigation; for BMI in relation to the Private Healthcare Market Investigation; for Aer Lingus in its dispute over Ryanair's protracted hostile shareholding; and for Asda in the successful appeals against the OFT's Tobacco decision. His considerable experience of competition damages cases embraces follow-on (public examples include envelopes, synthetic rubber and CRT and LCD screens) and standalone actions in the High Court and CAT, including acting for Intreprenuer in *Courage v Crehan*, the first standalone damages case to go to full trial in the United Kingdom, and for Cardiff Bus in the first follow-on damages action to come to trial and to lead to a damages award. He also appeared in the leading cases on the interaction between criminal law and competition law. Recent appearances in competition cases in Luxembourg include cartel appeals and the interchange fees litigation. He is acting pro bono for ClientEarth in an important appeal in Luxembourg concerning the right for NGOs to request a review of decisions of EU bodies in the environmental sphere. Notable previous EU cases include the leading authority on legal privilege in competition proceedings (*Akzo Nobel*) and the landmark *Microsoft* appeal. He has experience of arbitrations, as counsel and as arbitrator (including recently in *Queen's Park Rangers v EFL* in respect of the application of the Championship rules on Financial Fair Play).

His broader EU practice covers the areas of state aid, public procurement, IP, telecommunications and broadcasting, direct and indirect taxation, free movement and professional and financial services regulation. He was named as EU and Competition Law Silk of the Year in 2011 at the Chambers Bar Awards.

## EU/Competition

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### Important cases include:

- *IPCom v Nokia; IPCom v HTC* (High Court): licensing of standard-essential patents; FRAND terms

- *Ryanair v Competition Commission (no 2)* (CAT): fairness, sincere cooperation, jurisdiction and substantive issues arising from CC's prohibition of Ryanair's minority shareholding in Aer Lingus
- *BMI v Competition Commission* (CAT): fairness in the course of a CC market investigation
- *IAG and BA v SEPLA* (High Court): acting for SEPLA, a Spanish trade union, securing a ruling that IAG/BA's claims in respect of Spanish strike action were not "civil or commercial" so that English court had no jurisdiction (permission given to IAG/BA to appeal but appeal abandoned);
- *OFT v GlaxoSmithKline*: alleged competition law infringements arising from settlement of patent litigation
- *European Commission v Samsung*: giving an opinion to Samsung on the EC's case in respect of competition law implications of seeking injunctions to restrain the breaches of Standard Essential Patents.
- *Eurostar v Eurotunnel* (Intergovernmental Commission): challenging structure and transparency of Eurotunnel's charging regime for access to the Fixed Link (Channel Tunnel)
- *2Travel Ltd v Cardiff Bus* (CAT): follow-on damages and exemplary damages for a competition law infringement
- *Nokia v AU Optronics & other* (High Court): standalone competition law damages action
- *Sky v Ofcom* (CAT and Court of Appeal): Ofcom's powers to impose wholesale must offer obligation in respect of Sky's premium sports channels; Tribunal's power to make adverse costs orders against losing regulator;
- *Asda v OFT* (CAT): alleged object infringement in retail pricing of tobacco products
- *Ryanair v OFT* (CAT and Court of Appeal); *Ryanair v Competition Commission* (CAT and Court of Appeal): interaction of UK and EU merger control rules (representing Aer Lingus)
- *Akzo Nobel -v- Commission* (CFI and ECJ): legal professional privilege in EC competition cases
- *R -v- IB* (Southwark Crown Court and Court of Appeal): interaction of criminal cartel offence and UK and EU competition law
- *Kone -v- Commission* (CFI): escalators and elevators cartel
- *R -v- GG plc* (Southwark Crown Court, Court of Appeal and House of Lords): criminal law and price fixing: can a cartel be prosecuted as a conspiracy to defraud?
- *UEFA and FIFA v Commission* and *Infront AG v Commission* (CFI): compulsory listing of sports events under EC broadcasting legislation
- *Microsoft -v- Commission* (CFI): abuse of dominant position, tying and compulsory licensing of IP; conditions for interim relief
- *Crehan -v- Innpreneur Pub Company* (High Court, Court of Appeal, House of Lords): damages for competition law infringements; legal effect of EC Commission decisions
- *Omya v Commission* (CFI): EC merger control
- *BT and Hutchinson 3G -v- Ofcom* (CAT and Competition Commission): challenges to Ofcom's decision on regulating termination charges for mobile calls (representing Orange)
- *Hutchinson 3G v Orange and others* (Commercial Court): pre-action disclosure in view of competition damages claim
- *Endesa v Commission* (CFI): interim measures; turnover calculation under the EC Merger Regulation in a Spanish merger in the energy sector
- *Pernod Ricard v OFT* (CAT): nature of appealable decision; adequacy of Bacardi's voluntary undertakings to OFT
- *Claymore Dairies v Director General of Fair Trading* (CAT): nature of appealable decision; decision to lay aside investigation
- *Lysine cartel* (CFI and appeal to ECJ): double jeopardy rule; level of fines
- *Atlantic Container Line v Commission* (CFI): collective dominance in liner shipping
- *Freeserve v Director General of Telecommunications* (Competition Commission Appeal Tribunal): nature of appealable decision;
- *BetterCare v Director General of Fair Trading* (Competition Commission Appeal Tribunal): nature of appealable decision; concept of "economic activity" under the Competition Act
- *Suretrack v Infracore JNP Limited* (High Court): injunctions in dominance cases (UK Competition Act)
- *Euroalligates v Commission* (European Court of Justice and Court of First Instance): conditions for grant of interim measures; review of decision to terminate anti-dumping measures (acting for third country producers)

- *Institute of Insurance Brokers v Director General of Fair Trading* (Competition Commission Appeal Tribunal): overturning OFT negative clearance decision in first CAT case
- *Socket v Body Shop International* (High Court): injunctions in abuse of dominance cases (EC law)
- *Gencor v Commission* (European Court of First Instance): collective dominance under the EC Merger Regulation
- *Compagnie Maritime Belge* (European Court of Justice): collective dominance under Article 82
- *BP Chemicals v Commission Nos. 1 and 2* (European Court of First Instance): state aids
- *British Aerospace v Commission* (European Court of Justice): state aids

## Public Law

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### Important cases include:

- *Sky -v- Competition Commission, Virgin Media v Competition Commission* (CAT and Court of Appeal): merger control and media plurality aspects of Sky's investment in ITV
- *Somerfield v Competition Commission* (CAT): review of CC's decision in a grocery retailing merger
- *Afton Chemicals* (High Court, Administrative Court and on reference to the ECJ): validity of EU Directive on fuel additives
- *Lambiris v Specialist Training Authority* (High Court and Court of Appeal): judicial review: medical training and EC law
- *Ex parte Lunn Poly* (High Court and Court of Appeal): judicial review: state aids and discriminatory taxation

## Qualifications & Further Information

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### Qualifications

BA (Oxon) Jurisprudence 1977 (MA 2012); Called to the Bar (Middle Temple) 1978; Solicitor 1984-1996

### Career

- 2003: Queen's Counsel
- 1996 to date: Brick Court Chambers, London and Brussels
- 1989-1996: Linklaters & Paines, London and Brussels offices (Partner, Brussels office, 1993-1996)
- 1986-1989: Legal Secretary to Sir Gordon Slynn, Advocate General, subsequently Judge at the European Court of Justice
- 1982-1986: Linklaters & Paines, London and Brussels
- 1981: Pupillage at Monckton Chambers (with Christopher Bellamy), London
- 1980: Stage, Legal Service, EC Commission Brussels, (competition team, dealing with State aids and anti-trust issues) and European Court of Justice, Luxembourg on Middle Temple Bristow Scholarship
- 1979: Of Counsel, Goldsmith Delvolvé, Paris

### Further Information

Member of numerous professional organisations; positions currently held include:

- Chairman of the Competition Law Association
- UK member of CCBE Permanent Delegation to the European Courts

European Law Moot Court Society (Regional Finals judge)

Co-opted Member of the CBI State Aids Panel

Fluent in French (written and spoken)

## Publications

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- *The Law of State Aid in the European Union* (Oxford University Press, 2004)
- Chapter on United Kingdom Competition Law in *Competition Law in Western Europe and the USA* (Kluwer, 2004)
- *Competition: Understanding the 1998 Act* (with Jemima Stratford, Palladian, 1999)
- Chapter on EC State Aids in Vaughan, *Law of the European Communities* (with Leo Flynn, 1999)
- Contributions of chapters to many books including *European Community Law of State Aids* edited by Kelyn Bacon (2009); *Competition litigation: UK Practice and Procedure* by members of Brick Court Chambers; *Civil Appeals* (2<sup>nd</sup> ed 2013), *Butterworths European Court Practice*, *Butterworths Expert Guide to European Union*, *Environmental Law in Europe* (Kluwer, 1999), *Practitioners' Handbook of EC Law*, *Application of Articles 85 and 86 in the National Courts* (EC Commission, 1997), *The Role and Future of the European Court of Justice* (British Institute of International and Comparative law), as well as many articles on EC and competition law topics.
- Frequent speaker at academic and commercial conferences

## Directory Quotes

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- James Flynn QC is "top of the list" when it comes to competition-related matters, say respondents. He possesses considerable experience handling contentious matters at the intersection between competition and IP law. (Who's Who Legal - Competition 2019)
- James Flynn QC is "a standout practitioner across the whole competition law discipline, with considerable commercial awareness", according to sources. He is well versed in representing clients in the pharmaceutical, media and technology sectors. (Who's Who Legal - UK Bar: Competition 2019)
- "He is an excellent choice for intellectually complex cases that need complex written advocacy." (Chambers & Partners UK & Global 2019)
- "Smart, accessible and easy to work with, he has in-depth knowledge of the law." (Legal 500 2018-19)
- "Excellent, focused and pragmatic. Good instinct for strategy." (Legal 500 2018-19)
- James Flynn QC is a well-known figure in the competition and IP crossover space. He is highly regarded for his "deep knowledge of the law, which he carries lightly, a relaxed style before the court and an easy relationship with the judges". (Who's Who Legal - UK Bar: Competition 2018)
- James Flynn QC is noted as "an excellent all-rounded with lots of stamina for demanding cases". Sources also praise him for his "sharp insight" and "ability to develop a detailed argument while also knowing when to be brief". (Who's Who Legal - Competition 2018)
- "He has unparalleled knowledge of the competition law side of things." "He has encyclopaedic knowledge of EU antitrust law because he created the encyclopaedia." (Chambers & Partners 2018)
- "Superbly knowledgeable and liked by clients." (Legal 500 2017)
- "A superb advocate, who provides measured advice tailored to the specific court." (Legal 500 2017)
- "James Flynn QC is widely cited and a much in-demand silk. He is particularly well thought of for cases where there is a technical overlap between competition and IP law; as such he has an impressive portfolio of tech and life sciences clients. Sources remark that he has "a wonderfully balanced mind and the ability to distil the complex into the manageable" and "an encyclopaedic knowledge of EU law." (Who's Who Legal - UK Bar: Competition 2017)
- James Flynn QC "would be in many people's top 10" for competition issues, according to peers. Sources also praise his groundbreaking practice in the area, commenting: "James doesn't just cite the precedent, often he is the one who actually created it!" (Who's Who Legal - Competition 2017)
- "He is very user-friendly, and an iron fist in a velvet glove." (Chambers & Partners 2017)
- "He is immeasurably knowledgeable, and has seen it all and some more." (Legal 500 2016)
- "A thorough competition lawyer who is a pleasure to deal with." (Chambers & Partners 2016)
- "James Flynn QC has a "superb" practice encompassing all aspects of competition law. He garners praise for his "astute legal mind" (Who's Who Legal UK Bar 2015)

- "Analytically very strong." (Legal 500 2015)
- "A former solicitor in both Brussels and the City, as well as a référendaire at the ECJ, he is a highly esteemed lawyer who has regularly appeared before the Competition Appeal Tribunal (CAT) and the ECJ. He handles all areas of competition law, being an expert in everything from abuse of dominance and market investigations to criminal law cases." (Chambers & Partners 2015)
- "A highly accomplished advocate and adviser who is very easy to work with and puts clients at ease." "He has one of the finest analytical minds at the Competition Bar." (Chambers & Partners 2015)
- "Recognised for his vast experience in competition matters and his ability to work with others. He is frequently sought out for challenging and complex cases as a result of his impressive advocacy and advisory skills. Flynn demonstrates expertise in a variety of sectors including the IP, broadcasting and telecommunications spheres." (Chambers & Partners 2014)
- "He puts clients at their ease and generates confidence. A very accomplished advocate, he has a subtle yet very effective cross-examination technique." (Chambers & Partners 2014)
- "James Flynn QC is 'an iron fist in a velvet glove', and appeared in Sky v Ofcom." (Legal 500 2013)
- "James Flynn QC is a real client favourite, who impresses sources with his "great manner and approachability." He "always judges the situation brilliantly," and brings great "strategic insight" to EU and competition law matters." (Chambers & Partners 2013)
- "someone you can go to who is a superb advocate and always takes the issues seriously." (Chambers UK 2012)
- "a class act, very experienced in front of the CAT" (Legal 500 2011)
- Clients say that "he is an ideal choice as he is a strong court performer who demonstrates tremendous analytical powers." (Chambers & Partners 2011)
- "just as strong a reputation for competition and EU law matters, because of his "strategic thinking, swift responses and understanding of the client."" (Chambers & Partners 2010)
- "A barrister particularly noted for the "clarity and practicality of his advice," Flynn impresses with his "thoroughness and pleasing manner;" one client comments that "he is unassuming and far from bumptious, unlike some others."" (Chambers & Partners 2009)