

Kelyn Bacon QC

YEAR OF CALL: 1998 YEAR OF SILK: 2014

"She's phenomenal, one of the brightest of the bright."

Chambers & Partners 2018

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Practice Overview

Kelyn Bacon QC specialises in competition and EU law, with particular expertise in State aid law and pharmaceutical regulation. She has appeared in numerous landmark cases in the High Court, Court of Appeal, Supreme Court, as well as the Competition Appeal Tribunal and proceedings before the Competition Commission and European Commission, and she has acted in over 50 cases in the European Courts. Her clients have included major domestic and international private clients such as HSBC, Microsoft, Intel, Adidas, Visa, BUPA, Pfizer, Teva, Aer Lingus, Telefónica and the BBC, as well as government departments and the CMA.

Kelyn is cited in Chambers and Partners as a leading practitioner in Competition/EU law, Telecommunications and Intellectual Property. She was nominated as EU and Competition Silk of the Year in the Legal 500 UK Bar Awards 2019. She is also the general editor and co-author of the leading practitioner textbook *European Union Law of State Aid* (3rd edition 2017).

Kelyn acted for Flynn in its successful appeal against the CMA's *Phenytoin* decision. She is currently instructed in various competition and EU law disputes in the Competition Appeal Tribunal and High Court, including the *Trucks* follow-on damages litigation, and is acting in one of the Euribor appeals in the European Court.

Competition

Kelyn has extensive experience in the fields of competition and State aid law, both advising clients and appearing in domestic courts and tribunals, as well as proceedings before the CMA, the European Commission and the European Courts. Her areas of expertise include Article 101/Chapter I prohibition, Article 102/Chapter II prohibition and competition damages actions. Her clients have included major domestic and international private clients, as well as the OFT/CMA. She appeared as the Advocate to the Supreme Court in the *SeaFrance* merger case, and is currently instructed in one of the *Euribor* appeals in the European Court, as well as the *Trucks* litigation in the High Court and the Competition Appeal Tribunal. She was leading counsel for Flynn in the *Phenytoin* appeals in the Competition Appeal Tribunal.

Important European Court cases include: Case T-105/17 *HSBC v Commission*, C-286/11 P *Commission v Tomkins*, T-201/04 *Microsoft v Commission*, T-328/03 *O2 v Commission*, T-210/01 *General Electric v Commission*.

Important domestic cases include: *SS for Health and others v Flynn* (High Court), *Servier v CMA* (CAT), *Société Coopérative de Production SeaFrance* (Supreme Court), *Emerald v BA and others* (High Court), *AXA v CMA* (CAT), *HCA v CMA* (CAT), *Skyscanner v CMA* (CAT), *Teva v Reckitt Benckiser* (High Court), *Secretary of State for Health and others v Servier* (High Court and CA), *Construction bid-rigging cases* (CAT and CA), *Ryanair v OFT and Aer Lingus*

(CAT and CA), *National Grid v ABB and others* (High Court), *Barclays v Competition Commission* (CAT), *H3G v O2 and others* (High Court), *Mastercard v OFT* (CAT), *Adidas v Draper* (High Court), *Umbro v OFT* (CAT), *IBA v OFT* (CAT and CA).

EU law

Kelyn has appeared in a number of high profile cases in the English and European Courts raising issues of general EU law, including in particular free movement rights and taxation. She also has extensive experience in EU competition and State aid law, and pharmaceutical regulation.

Important European Court cases include: Case C-560/13 *Wagner-Raith*, C-362/12 *FII No. 3*, C-322/11K, C-123/11 *A Oy*, C-35/11 *FII No. 2*, C-18/11 *Philips Electronics*, C-71/10 *National Grid Indus*, C-310/09 *Accor*, C-297/08 *Commission v Italy*, C-283/05 *ASML*, C-36/03 *easyCar v OFT*.

Important domestic cases include: *BAT and others v SS for Health* (High Court and CA), *Test Claimants in the FII Group Litigation* (High Court, CA and Supreme Court), *Vodafone 2 v Revenue* (High Court and CA), *Boake Allen v Revenue* (High Court, CA and House of Lords), *DMG v Revenue* (House of Lords), *Pirelli v Revenue* (House of Lords).

Pharmaceuticals

Pharmaceutical regulation forms an important area of Kelyn's domestic and European Court practice, and she is now regarded as one of the foremost practitioners in this field. She acts for both branded and generic companies, and her clients have included Pfizer, Merck, Teva, Generics UK, AstraZeneca, CTRS and Shire as well as the MHRA.

Important European Court cases include: Case C-567/16 *Merck*, C-138/15 P *Teva v EMA*, C-629/15 P *Novartis v Commission*, C-471/14 *Seattle Genetics*, T-452/14 *CTRS v Commission* (CTRS III), T-583/13 *Shire v Commission*, C-617/12 *AstraZeneca*, T-472/12 *Novartis v Commission*, T-301/12 *CTRS v Commission* (CTRS II), T-140/12 *Teva v EMA*, T-12/12 *CTRS v Commission* (CTRS I), C-427/09 *Generics*, C-527/07 *Generics*.

Important domestic cases include: *Teva v MHRA* (High Court), *Accord v Astellas* (High Court), *Chemistree and Blackbay v MHRA* (High Court), *Dr Reddy's v Pfizer* (High Court), *Generics v Synapttech* (High Court and CA).

Public Law

Kelyn has acted for both applicants and respondents in judicial review and other proceedings raising issues of domestic and EU law, including pharmaceutical regulation, telecommunications regulation, aviation regulation, consumer protection and human rights. She has represented private sector clients and government bodies, and has appeared in proceedings in the domestic courts as well as regulatory appeals in the Competition Appeal Tribunal.

Important cases include: *Teva v MHRA* (High Court), *Chemistree and Blackbay v MHRA* (High Court), *Addison Lee v TfL* (High Court, CA and ECJ), *BT et al v Ofcom* (CA), *Heathrow airport charges* (CAA appeal), *R (Bonhoeffer) v GMC*, *R (Zagorski and Baze) v SS for BIS* (High Court), *Vodafone v Ofcom* (CAT), *H3G and BT v Ofcom* (CAT), *OFT v Officers Club* (High Court).

State aid

Kelyn is recognised as one of the bar's leading State aid practitioners, and she has acted in numerous domestic and EU State aid cases, as well as advising both private sector and public sector clients, including various government departments and local government bodies. She is the general editor and co-author of the leading

practitioner textbook *European Union Law of State Aid* (3rd edition 2017), and is the co-convenor of the UK State Aid Law Association (UKSALA).

Important European Court cases include: Case C-164/15 P *Commission v Aer Lingus*, T-812/14 *BPCLux and others v Commission*, C-518/13 *Eventech*, T-500/12 *Ryanair v Commission*, T-473/12 *Aer Lingus v Commission*, T-251/11 *Austria v Commission*, T-362/10 *Vtesse v Commission*, C-279/08 P *Commission v Netherlands*, T-289/03 *BUPA v Commission*.

Important domestic cases include: *R (Eventech) v Parking Adjudicator* (High Court and CA), *British Aggregates Association v HM Treasury* (High Court and CA), *R v SS for Trade and Industry, ex p BT3G and One2One* (High Court and CA), *Professional Contractors Group* (High Court and CA).

Publications

Books:

European Union Law of State Aid (2013, 2017)

Chapter in *Navigating European Pharmaceutical Law*, eds Manley and Vickers (2015)

European Community Law of State Aid (2009)

Section on State Aids in *Encyclopaedia of EU Law*, eds Vaughan and Robertson (2007 and 2011)

Chapter on 'State Aids in the English Courts – Definition and Other Problems' in *The Law of State Aid in the European Union*, eds Biondi, Eeckhout and Flynn (2004)

Chapters on licensing of IP rights under EC/UK competition law in *Working with Technology: Law and Practice*, eds Pierce and Purvis (2001)

Articles:

'Tying after Microsoft: One step forward and Two steps back?' (2008) *Competition Policy International* 65

'European Court of Justice upholds Judgment of the Court of First Instance in the British Airways/Virgin saga' (2007) 2 *Competition Policy International* 227

'The concept of state aid – The developing jurisprudence in the European and UK courts' (2003) 24 *European Competition Law Review* 54

'The substantive test for prohibition of a merger: did GE/Honeywell pass the test?' (2002) 17 *Eurolawyer* 12

'Differential Taxes, State Aids and the Lunn Poly Case' (1999) 20 *European Competition Law Review* 384

'State Aids and General Measures' (1997) 17 *Yearbook of European Law* 269

'State Regulation of the Market and EC Competition Rules: Articles 85 and 86 Compared' [1997] *European Competition Law Review* 283

Qualifications and Appointments

2017 - Appointed as a Deputy High Court Judge (Chancery Division)

2015 - Elected as a Governing Bencher of the Inner Temple

1998 – present: Pupillage and practice at Brick Court Chambers, London

1997 – 1998: Inns of Court School of Law, London, Bar Vocational Course (Princess Royal Scholar, Inner Temple)

1996 – 1997: European University Institute, Florence, LLM in European Law

1994 – 1995: University of Konstanz, Germany, Erasmus student

1992 – 1996: Merton College, Oxford, MA in Law with law studies in Europe (1st class)

Directory Quotes

Kelyn Bacon QC is “an unbeatable practitioner in state aid matters” and “a pleasure to work with”, say sources. She has over 20 years of experience in competition matters before domestic and EU courts for clients in the financial services, telecoms, media and pharmaceutical sectors. (Who's Who Legal - UK Bar: Competition 2019)

Kelyn Bacon QC impresses peers and clients alike with her standout work in regulatory matters relating to pharmaceuticals. She is “incredibly intelligent, thorough, hard-working and easy to work with”, and “picks up complicated matters quickly” say sources. (Who's Who Legal - UK Bar: Life Sciences 2019)

"Puts her points forward in an articulate and powerful manner" and is "lightning fast at drafting appeals or proceedings." (Chambers & Partners UK & Global 2019)

"Bacon is lightning-fast at drafting appeals and pleadings, and does really high-quality work very quickly." (Chambers & Partners 2019)

"Incredibly bright, has a fantastic depth of understanding and will give a decisive view in a no nonsense way." (Legal 500 2018-19)

"Unbeatable for state aid advice. Provides excellent, pragmatic advice." (Legal 500 2018-19)

The “technically strong and strategically astute” Kelyn Bacon QC is a star of state aid law and pharmaceutical regulation. Her experience before the European courts demonstrates her leading status and she has represented such high-profile clients as HSBC, Pfizer and the CMA, among others. One source praises her as “intellectually one of the brightest at the Bar”. (Who's Who Legal - UK Bar: Competition 2018)

"Unbeatable for state aid advice." "She's phenomenal, one of the brightest of the bright." (Chambers & Partners 2018)

"She is a very incisive advocate who deals rapidly with the points put to her." (Chambers & Partners 2018)

"One of the best technical competition lawyers at the Bar, and a really fine advocate to boot." (Legal 500 2017)

"Incredibly bright and willing to go the extra mile for her clients." (Legal 500 2017)

"Kelyn Bacon QC is considered “the top young competition silk at the Bar”. In praising her, sources remark that she is “incredibly smart and tough”. She has been involved in numerous landmark UK and EU competition cases, with a particular specialism in state aid law." (Who's Who Legal - UK Bar: Competition 2017)

Kelyn Bacon QC is widely recognised as “the top QC on state aid; extremely well known and highly respected in that area”. Sources additionally describe her as “a very smart, forceful drafter who is great to work with”. (Who's

Who Legal - Competition 2017)

"She's got a terrific brain and is good under siege." (Chambers & Partners 2017)

"She is sensible, gives pragmatic advice and is very accessible." "She is exceptionally well regarded and seen as a really serious opponent." (Chambers & Partners 2017)

"Kelyn is great as she's efficient, bright and helpful." (Chambers & Partners 2017)

"She is a clear and forceful drafter, and has a very sharp conceptual intellect." (Chambers & Partners 2017)

Kelyn Bacon QC is considered "an outstanding state aid lawyer". She is "extremely well known and highly respected in this area", with clients describing her as "very clever" and "as sharp as a tack". (Who's Who Legal - Competition 2017)

"Insightful and authoritative; an outstanding barrister." (Legal 500 2016)

"She gives excellent, commercial and pragmatic advice and is a veritable encyclopaedia on all matters competition-related." (Chambers & Partners 2016)

"Very sharp, highly intelligent and very quick to turn work around." (Chambers & Partners 2016)

"Excellent, extremely knowledgeable, responsive and someone who always offers practical advice." (Chambers & Partners 2016)

"Kelyn Bacon QC has a 'fierce intellect' and is noted for her 'compelling arguments'." (Who's Who Legal UK Bar 2015)

"She is highly intelligent and grasps the key points quickly, while her advice is pragmatic and often takes account of the bigger picture." (Chambers & Partners 2015)

"A devastatingly effective advocate" (Chambers & Partners 2015)

Languages

French, German, conversational Italian.