

## Robert O'Donoghue QC

YEAR OF CALL: 1996 YEAR OF SILK: 2017

*“excellent intellect and analytical capabilities...and great on his feet”*

Chambers & Partners 2017

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## Practice Overview

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Robert O'Donoghue QC has extensive experience of competition law, EU law, utility regulation, and related aspects of commercial and public law. Clients include British Airways, Google, Glencore, Telefónica, ASDA, Samsung, and Pfizer, as well as competition authorities and sectoral regulators in the UK and elsewhere. He has appeared in major cases in the High Court, Competition Appeal Tribunal, Court of Appeal, Supreme Court, EU Courts, Irish courts, international arbitral bodies, and in oral hearings before competition authorities and sectoral regulators in these matters. He is also involved in giving expert evidence on EU and competition law in foreign courts in class actions in Canada and Israel, as well as litigation in Sweden.

Robert has consistently appeared as a leading barrister in legal directories such as Chambers and Partners and Legal 500. Further awards and accolades include:

- Listed in Who's Who Legal 2017: Competition Future Leaders
- Listed as the “Leading Junior” in Competition Law by Who's Who UK Bar 2016
- Short-listed as “Competition Law Junior Of The Year” in 2015 by Chambers and Partners
- Listed in the “40 Under 40” of global competition lawyers by Global Competition Review– one of only three practising UK barristers listed (2012)
- Profiled as one of five junior barristers in the Global Competition Review UK Barrister Survey (2013)
- The youngest nominee and only practising barrister to feature in the Who's Who of Competition Lawyers & Economists (2011)
- Outstanding EU Competition Lawyer Fellowship Award, Global Competition Law Centre, College of Europe (2003)

## Competition

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Robert has acted in a number of leading competition law cases, including:

- *Balmoral Limited v Competition and Markets Authority* (acting for Balmoral in appeal against Galvanised Steel Tanks information-sharing decision)
- *Alpharma v Competition and Markets Authority* (acting for Alpharma in the CAT in an appeal against the first-ever “pay for delay” decision in the UK)
- Case CE/9742-13 *Phenytoin Sodium* (acting for Pfizer in relation to an excessive pricing allegation)

- *Micula and others v Romania* [2017] EWHC 31 (Comm), [2017] WLR(D) 35 (acting for Romania in respect of enforcement of ICSID Award found contrary to EU competition law)
- Case T-48-11 *British Airways v Commission* (acted for BA in securing refund of €104 million fine in cartel case)
- Case T-851/14 *Slovak Telekom v Commission* (acting for Slovak Telekom in appeal to the General Court against €35 million fine for breach of Article 102)
- *Terravision Limited v Stansted Airport Limited* (acting for winning bidders in competition law complaint over procurement)
- *Swedish Competition Authority v Nasdaq OMX*, acting for Nasdaq OMX in defence to litigation brought by Swedish Competition Authority)
- *GTS Gas Turbines SA v Rolls-Royce* (acting for GTS in abuse of dominance action against Rolls-Royce in relation to “aftermarkets”)
- *Unwired Planet Inc v Google & others* (IP action involving FRAND licence terms)
- *Foundem v Google* (acting for Google in follow-on damages action brought by Foundem alleging abuse of dominance)
- Acting for Glencore in a confidential arbitration (LCIA) concerning a \$43 billion industrial supply contract
- *BT & T-Mobile v OFCOM* [2011] CAT 24, on appeal *Telefónica O2 UK Limited and others v British Telecommunications plc* [2012] EWCA Civ 1002 (Court of Appeal) and on a further appeal to the Supreme Court in [2014] UKSC 42
- *Toshiba Carrier UK Ltd and Ors v KME Yorkshire Limited and Ors* (follow-on damages action)
- *T-344/12 Virgin Airways Limited v EU Commission*, acting for British Airways as intervener in appeal by Virgin against Commission approval of British Airways/BMI transaction
- Case T-260/13 *Ryanair v EU Commission*, acting for British Airways as intervener in appeal by Ryanair against Commission prohibition of the Ryanair/Aer Lingus transaction.
- *Asda and others v Office of Fair Trading* [2011] CAT 41 (acted for Asda in successful appeal against OFT decision in Tobacco)
- *EWRG and CEF v Recolight and others* (acted for claimants in major claim involving environmental law and competition law)
- *Raleigh v Mail Order Cycles Limited*, judgment of Norris J of 28 April 2010 (acted for Raleigh in successfully resisting a resale price maintenance claim)
- *Plus Markets plc v London Stock Exchange plc* (High Court) (breach of competition law and equities trading rules)
- *Idealing v London Stock Exchange* (breach of contract and abuse of dominance in information services)
- *Sel-Imperial Limited v British Standards Institution* (standards and breach of competition law)
- *Tesco v Competition Commission* [2009] CAT 6 (acted for Marks & Spencer in appeal against Competition Commission market investigation)
- *T-Mobile v Ofcom* (appeal against donor conveyance charge decision by Ofcom)
- *European Climate Exchange Limited v LCH.Clearent Limited* (High Court) (abuse of dominance in clearing facilities)
- Case C-95/04 P *British Airways Plc v. Commission & Virgin* (rebate practices)
- Case T-15/02 *BASF AG v Commission* (secured a €60 million fine reduction for BASF in cartel case)
- Case T-184/01 R, *IMS Health Inc. v. Commission*, [2001] ECR II-3193 (compulsory licensing of IP rights under EU law)
- Case C-481/01 P(R), *NDC Health Corp. & NDC Health GmbH & Co. KG v. IMS Health Inc*, [2002] 5 CMLR 1 (conditions for grant of interim measures against Commission decisions)

## Competition law – follow-on damages

Robert has acted in a large number of follow-on damages actions, for both claimants and defendants, including:

- *Nokia v AU Optronics and others* (acted for Samsung in follow-on damages action)
- *Tom Tom v AU Optronics and others* (acted for Samsung in follow-on damages action)

- *Iiyama Corporation & others v Samsung Electronics Corporation & others* (acting for Samsung in follow-on damages action and jurisdiction strike-out)
- *Vodafone v Infineon and Renesas* (acting for Part 20 party in follow-on action arising out of Smart Chip cartel)
- *Leeds City Council and others v Samsung Electronics Corporation* (acting for Samsung in respect of claim by public authorities)
- *Britned Limited v ABB* (acting for claimant in relation to damages for Power Cables Cartel)
- *Emerald Supplies Limited v British Airways plc* [2011] 2 WLR 203 (CA); [2009] 3 WLR 1200 (ChD) (test case on scope for competition law class actions in civil litigation in England & Wales)

## Competition law – cases before competition authorities/regulators

Robert has also represented clients in numerous competition notifications and investigations before the EU Commission, Office of Fair Trading, the Competition Commission, and specialist regulators, including:

- Ping Europe Limited (acting for Ping Europe Limited in relation to a complaint against an Internet-sales ban)
- Case COMP 39.470 *Google Search* (acting for Google in defence of complaints before EU Commission)
- “*Voluntary Ban*”, acting for various drinks manufacturers in respect of retail restrictions on sale of stronger alcohols supported by Local Authorities
- *Booksellers Association of UK & Ireland* (acting for the BA in respect of a competition law complaint against Amazon.com) (EU Commission, Competition & Markets Authority)
- *Fairness in fees* (acting for a complainant in respect of challenge to system of fixed legal fees in Cyprus (EU Commission))
- *ICE/Trayport (merger)*
- *Ticketmaster/LiveNation (merger)*
- CASE M.5650 *T-Mobile/Orange (merger)*
- Case COMP/39.416 *Ship Classification* (standardisation)
- Case COMP/39.258 *Airfreight (cartel)*
- Case COMP/38.432 *Professional Videotapes (cartel)*
- Case ME/3787/08 *Chiral Technologies Europe SAS/Chromtech Limited (de minimis mergers)*
- *British Telecom/Wanadoo (price squeeze)(Ofcom)*
- *Portugal Telecom/Sonaecom (price squeeze, refusal to supply)*
- M.1512 *DUPONT/PIONEER (merger)*
- M.1363 *DUPONT/HERBETS (merger)*
- M.2946 *IBM/PWC CONSULTING (merger)*
- M.1847 *GM/SAAB (merger)*
- M.2452 *BELGACOM / BAS HOLDING / SECURITAS (merger)*
- M.2546 *EADS / NORTEL (merger)*
- M.4297 *NOKIA/SIEMENS (merger)*
- M.1383 *EXXON/MOBIL (Phase II) (merger)*
- M.1940 *FRAMATOME/SIEMENS/COGEMA (Phase II) (merger)*

## EU law

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Robert has acted in a number of leading EU law cases before both the EU and English courts. Cases include, in addition to those listed under other headings:

- *Lebara Mobile Limited v Lycamobile Limited* [2015] EWHC 3318 (Ch.) (acted for Lyca in “net neutrality” challenge)
- *Hemming and others v Westminster City Council* (acting for the Bar Standards Board, Solicitors Regulation Authority, Architects Registration Board in pending appeal to the Supreme Court on the Services Directive)

- *Marine Management Organisation v Craig and others* (acted for the MMO in criminal proceedings against overfishing vessels where EU law issues were raised as a defence before the Crown Court and Court of Appeal (Criminal Division))
- *Butler v Nikon Metrology BV* (acted for principal in an arbitration involving the Commercial Agency Directive)
- *Montpellier Estates v Leeds City Council* [2010] 132 Con LR 129 (public procurement)
- *The British Airline Pilots Association -v- British Airways Plc* (Freedom of establishment and trade union activities (*Viking*))
- *Plus Markets plc v London Stock Exchange plc* (High Court) (Freedom of establishment/services and MiFID Directive)
- Case C-381/98, *Ingmar GB Ltd and Eaton Leonard Technologies Inc.* [2000] ECR I-9305 (status of Commercial Agency Regulations as *ordre public* under Rome Convention I)
- *U. v W.* (Attorney-General Intervening) [1998] Fam 29 (High Court) (Freedom to receive fertility services under EU law)

## Telecoms

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Robert has had a long-standing interest in telecommunications law, stemming from his secondment to DG Competition's Telecommunications Unit in 1998. Since then he has acted for both private undertakings and sectoral regulators in telecommunications matters. He is standing counsel to the Commission for Communications Regulation on telecommunications matters. Leading matters he has been involved in include:

- *Lebara Mobile Limited v Lycamobile Limited* [2015] EWHC 3318 (Ch.) (acted for Lyca in "net neutrality" challenge)
- *Vodafone v Commission for Communication Regulation* (acting for the Commission for Communication Regulation in relation to the regulation of mobile termination rates)
- *BT v Ofcom (NCCN 1046)* (acted for Telefónica in a CAT appeal against an Ofcom Determination in relation to termination charges)
- *BT & T-Mobile v OFCOM* [2011] CAT 24, on appeal *Telefónica O2 UK Limited and others v British Telecommunications plc* [2012] EWCA Civ 1002 (Court of Appeal) and on a further appeal to the Supreme Court in [2014] UKSC 42
- *Eircom v Commission for Communication Regulation* (bundling as a breach of regulatory obligations)
- *Eircom v Commission for Communication Regulation* (pricing of Line Share access)
- *Vodafone Ireland Limited v Commission for Communication Regulation* (regulation of mobile termination rates)
- *T-Mobile v Ofcom* (appeal against donor conveyance charge decision by Ofcom)
- CASE M.5650 *T-Mobile/Orange* (merger)
- *British Telecom/Wanadoo* (price squeeze)(Ofcom)
- *Portugal Telecom/Sonaecom* (price squeeze, refusal to supply) (EU Commission)
- *Spectrum auctions* (advice to both private undertakings participating in spectrum auctions and to Governments designing spectrum auctions, including State aid)

## Qualifications

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### Legal Career

- 1997-1998: Brick Court Chambers, Brussels
- 1998: secondment, DG Competition, Brussels,
- 1999-2007: Cleary Gottlieb Steen & Hamilton LLP, Brussels and London
- 2007-to date: Brick Court Chambers, London and Brussels
- 2017: Appointed to the Competition Commission of Hong Kong's Panel of External Senior Counsel

## Scholarships

- Bar Council Scholarship to the European Commission (1998)
- Hubert Greenland Major Scholarship (Lincoln's Inn) (1996)
- Entrance Scholarship, Carmelite College (1986)

## Publications

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### Books

*The Law and Economics of Article 102 TFEU*, Hart Publishing (2013) (Second Edition) (co-authored book with Jorge Padilla). This work has been cited with approval before the High Court, Irish Supreme Court, Court of Justice of the European Union, and in submissions to the US Supreme Court. It was also selected as runner-up for the Inner Temple Book Prize in 2008, out of a total of 79 entrants. Extracts from reviews include:

- "This is a truly outstanding book..." *Common Market Law Review*, Vol 44. No 4
- "[A] seminal guide for all those interested in Art.82 EC" *The Journal of Business Law* March 2007
- "This scholarly, practical and very substantial work is warmly welcome" Professor Valentine Korah, *World Competition Law and Economics Review* June 2007
- "[A] first-rate piece of work that will be highly influential in the years ahead and that will be gratefully referred to by everyone interested in this fascinating but difficult topic. It is very highly recommended" Professor Richard Whish, *Competition Policy International Journal*, Autumn 2006, Vol. 2, No. 2

*Competition Litigation: UK Practice and Procedure*, N Green and M Brealey eds, OUP, 2010 (co-authored the chapter on Jurisdiction)

"Verbalising A Test For Exclusionary Conduct" Chapter in CD Ehlermann & M. Marquis eds, "*A Reformed Approach To Article 82 EC*," Hart Publishing (2008)

"Dealing With *Viking & Laval*: From Theory To Practice," *Cambridge Yearbook of European Legal Studies* (2008-2009), Vol 11

"Over-Regulating Lower Prices: Time For a Rethink on Pricing Abuses Under Article 82 EC" Chapter in CD Ehlermann & I. Atanasiu eds, "*What is an abuse of a dominant position?*," Hart Publishing (2006)

"*The Treatment of Loyalty and Target Rebate Practices Under Article 82 EC*," Chapter in the Finnish Yearbook of EU law (2004)

### Legal Journals

Senior Editor, *Global Competition Policy*

### Articles

Net Neutrality in the EU: Unresolved Issues Under the New Regulation (co-authored with Tom Pascoe), available at [ssrn.com](http://ssrn.com) (2016)

Notes From a Small Island: Natural Justice and the Institutional Design and Practice of Competition Authorities and Appellate Courts, *Competition Policy International Journal* (September 2014) (co-authored with Tim Johnston)

Injunctions And Standard Essential Patents (SEPs): The Problems Of Arguing From The Particular To The General, *Competition Policy International*

, May 2013

[Europe's Long March Towards Antitrust Damages Actions](#), *Competition Policy International*, April 2011

[Recent Developments In Antitrust Class Actions in The United Kingdom](#), *Competition Policy International*, August 2010

Casenote on *GlaxoSmithKline*, *Competition Policy International*, April 2009

[Regulating the Regulated: \*Deutsche Telekom v. European Commission\*](#), *Competition Policy International*, May 2008

*Microsoft v. European Commission*: Sounds Good In Theory But . . . , *Competition Policy International*, September 2007

[Are Article 82 EC and Intellectual Property Interoperable? The State of the Law Pending the Judgment in \*Microsoft v. Commission\*](#), *Competition Policy International*, April 2007 (with Maurits Dolmans and Paul-John Loewenthal)

[The Final Piece In The Jigsaw: An Analysis Of The Draft European Commission Guidelines On Non-Horizontal Mergers](#), *Competition Policy International*, March 2007 (with David Parker)

Memorandum by John Temple Lang and Robert O'Donoghue, published in "An EU Competition Court – Report with Evidence (published in the Written Evidence of the 15th Report of Session 2006-07 by the European Union Committee of the House of Lords, ISBN 978 0 10 401052 5).

The EU Leniency Programme Comes of Age, (2004) 27 *World Competition*, Issue 1, pp. 75–99 (with Nicholas Levy)

Casenote on *Airtours*, *Common Market Law Review* 2003 p.1171-1185 (with Christoph Feddersen)

Defining Legitimate Competition: How to Clarify Pricing Abuses Under Article 82 EC, *Fordham International Law Journal*, Volume 26, Issue 1 2002 Article 5 (with John Temple Lang)

## Teaching

- Lectureship at the MBL-Freie Univ. Berlin 2015/2016
- Professor at the Brussels School of Competition Law since 2013
- Distinguished Alumni Lecture, University of Bristol, 2015
- Guest lecturer at King's College London LL.M program since 2008
- *Applying Viking in practice: the view from the Bar*, University of Cambridge, 5 November 2008
- *IP rights & competition law*, University of Oxford, [Centre for Competition Law & Policy](#), 18 February 2005
- *Future Trends in European Antitrust Law, Including Decentralisation*, EC Competition Law Summer School, organized by IBC UK Conferences, Downing College, Cambridge, 15 August 2003
- *Modernization of EC Competition Law*, lecture given at Cornell Law School Summer Program, Université de Paris II (Sorbonne), July 2003
- International Legal Cooperation (LL.M) Program, VUB-ULB (Brussels University), 2003 & 2004
- *Application and Evolution of EC Merger Control*, lecture to Executive Management & Leadership Program, University of Cambridge, 25 April 2003
- *Essential Facilities and IP Rights*, lecture given at Cornell Law School Summer Program, Université de Paris II (Sorbonne), July 2002

## Directory Quotes

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- Robert O'Donoghue QC is praised as "one of the real go-to barristers" who is "incredibly bright and a joy to work with". His knowledge of Article 102 matters is singled out in particular by respondents. (Who's Who Legal - UK Bar: Competition 2019)
- "He offers the full package; he has a lot of litigation experience and is a pleasure to work with." (Chambers & Partners UK & Global 2019)
- "He is fully trusted by clients because he really knows their business and gives very commercial advice. He always tries to step back, think about things with reference to the key principles and come up with creative ideas." (Chambers & Partners 2019)
- "Well regarded and in high demand, he is very strong on Article 101/Chapter 1 and 102 TFEU issues." (The Legal 500 2018-19)
- Robert O'Donoghue QC is a well-known and well-respected practitioner in the space who is frequently instructed for his expertise in telecoms regulatory and competition matters. (Who's Who Legal - UK Bar: Telecoms 2018)
- Robert O'Donoghue QC is a leading figure in competition law across Europe and frequently acts in both commercial and public law cases. His reputation as "an article 102 supremo" is borne out by his vast experience working with and representing sectoral regulators. (Who's Who Legal - UK Bar: Competition 2018)
- Thought Leader Robert O'Donoghue QC is "a leader" in the field, despite only taking silk in 2017, and "really understands how judges think". According to one impressed solicitor, "He is, without a doubt, one of the brightest lights in competition law". (Who's Who Legal - Competition 2018)
- "We go to him for abuse of dominance cases – his drafting is brilliant and he manages to make the most complex arguments appear simple." (Chambers & Partners 2018)
- "He has the gift of working seamlessly with the instructing solicitor for the best possible outcome for the client." (Chambers & Partners 2018)
- "His expertise includes abuse of dominance matters." (The Legal 500 2017)
- "Robert O'Donoghue QC was described as "the number-one junior" by several solicitors we interviewed and it is no surprise he has taken silk this year. He is highlighted for his cutting edge work in the pharmaceutical sector, including acting on behalf of Pfizer in relation to the suspected unfair pricing of its phenytoin sodium capsules. He is also described as "the outstanding expert on Article 102" by peers." (Who's Who Legal - UK Bar: Competition 2017)
- "Until recently taking silk, Robert O'Donoghue QC was one of the top competition law juniors. He has a strong practice in the telecoms sector, working with major clients including Telefonica." (Who's Who Legal - UK Bar: Telecoms 2017)
- Robert O'Donoghue QC is "an all-round EU competition law authority" as well as "a clear expert in Article 102 cases", according to sources. (Who's Who Legal - Competition 2017)
- "Extremely impressive and an absolute pleasure to work with. He's incredibly hard-working, highly intelligent and articulate, and has a great grasp of the economic arguments." "A very thorough adviser who knows case law inside out." (Chambers & Partners 2017)
- "He has an excellent intellect and analytical capabilities, as well as deep understanding of competition law and practice. He's clear when explaining things and great on his feet." (Chambers & Partners 2017)
- Robert O'Donoghue is "very well known" and a "truly excellent barrister". With particular experience relating to the energy sector, respondents describe him as "one of the brightest competition law stars of the English Bar". (Who's Who Legal - Competition 2017)
- "A creative thinker and strong advocate with an encyclopaedic knowledge." (The Legal 500 2016)
- "Has a wealth of knowledge and is a calming presence." "He's extremely helpful and his knowledge of Article 102 is encyclopaedic." (Chambers Global 2016)
- "Praised for his excellent advocacy skills, and singled out by many as one to watch." (Chambers Global 2015)
- "He is praised for his 'encyclopaedic knowledge of the area.'" (Who's Who Legal UK Bar 2015)

- "A lawyer with a very sharp intellect, who is articulate and clear." "He's extremely responsive and client-aware. There's no ivory tower around him." (Chambers & Partners 2015)
- "A really top-class litigator." "He was so involved that it felt as if he was part of the team, and was just working in the office next to us." (Chambers & Partners 2015)
- "He has an incredibly sharp intellect and a strong knowledge of the sector." (The Legal 500 2014)
- "Praised for his in-depth knowledge and his enthusiasm for competition law." (Chambers & Partners 2014)
- "'He has very good analytical skills and an obvious interest in legal developments.' 'He is a very thorough thinker and a persuasive speaker.'" (Chambers & Partners 2014)
- "continues to attract praise from the market for his 'ability to distil down and quickly identify the legal issues of complex competition cases in a clear way.' Sources identify his 'really good breadth of expertise' and note that he offers particular strength in matters concerning abuse of dominance." (Chambers & Partners 2013)
- "he is described as 'hugely knowledgeable and very personable,' and commended for his economics expertise" (GCR UK Barrister Survey 2013)
- "'has all the qualities one looks for in a barrister' in that he has a 'quick turnaround,' comes up with 'very bright and creative solutions' and has 'good presence in court.' He is a renowned expert on competition law, in particular on the abuse of dominant positions." (Chambers & Partners 2012)
- "has carved out a solid reputation as a star junior barrister" (Global Competition Review Barristers Survey 2011)
- "The 'highly intelligent', 'user-friendly' Robert O'Donoghue consistently impresses with his European experience." (Legal 500 2010)
- "will be the star of the competition bar in years to come" (Legal 500, 2009)