

David Bailey

YEAR OF CALL: ENGLAND AND WALES: 2012; NEW YORK: 2003; IRELAND:
2018

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Who's Who Legal - Competition 2019

Clerk's Email: TonysClerkingTeam@brickcourt.co.uk



Practice Overview

David Bailey specialises in competition and EU law.

David has appeared in a number of notable competition cases at the Bar. He acted for the European Commission in defending the *Lundbeck 'pay for delay'* and the *Power Cables cartel decisions*, appearing successfully before the General Court in both cases. He is currently instructed in various competition and EU law disputes in the Competition Appeal Tribunal and High Court, including the claims for damages against Renesas (*Smart Card Chips*), MOL (*RoRo*) and L'Oréal, and is acting in one of the *Euribor* appeals in the General Court. He has also appeared, both led and unled, for the Competition and Markets Authority, including in the appeals against the CMA's decisions in *Paroxetine* and *Phenytoin*.

David is Standing Counsel to both the UK Competition and Markets Authority and the Hong Kong Competition Commission.

In 2017 he was nominated at the Chambers Bar Awards as Competition Junior of the Year.

David is the co-author of Whish and Bailey *Competition Law* (9th edition, 2018), and the co-editor of Bellamy & Child's *European Union Competition Law* (8th edition, 2019). He is also a Visiting Professor of Law at King's College London.

EU/Competition

"David Bailey is regarded as "a future star". His steeped learning in this area is highlighted by numerous respondents. One client is particularly effusive, "He is an automatic choice. You have a library in front of you with an extensive knowledge of case law. He grasps key issues rapidly, is shrewd in his approach and has a very accessible manner." (Who's Who Legal - UK Bar: Competition 2017)

David was nominated as Competition Law Junior of the Year at the 2017 Chambers Bar Awards.

European Courts

Case C-307/18 *Generics (UK) Ltd v Competition and Markets Authority* – acting for the CMA in a preliminary reference made by the CAT following the appeals against the *Paroxetine* decision (with Jon Turner QC and Marie

Demetriou QC)

Case T-105/17 *HSBC v Commission* – acting for HSBC in seeking annulment of Commission's Euribor decision (led by Kelyn Bacon QC)

Cases C-164/15 & C-165/15 P *Commission v Aer Lingus*– acted for Aer Lingus in the appeal and cross-appeal to the Court of Justice against the General Court's judgment in Case T-473/12 (with Aidan Robertson QC)

Case T-684/14 *Krka v Commission* - acting unled for the European Commission in an appeal to the General Court against the Commission's 'pay for delay' decision in Servier

Case T-438/14 *Silec v Commission* - acting unled for the European Commission in the successful defence of an appeal to the General Court against the Commission's High Voltage Power Cables cartel decision

Case T-460/13 *Ranbaxy v Commission* - acting unled for the European Commission in the successful defence of an appeal to the General Court against the Commission's 'pay for delay' decision in Lundbeck

Case T-260/13 *Ryanair v Commission* – acted unled for the Commission in Ryanair's application for annulment of the Commission's decision prohibiting Ryanair's proposed takeover of Aer Lingus (appeal withdrawn)

Case T-473/13 *Aer Lingus v Commission* – acted for Aer Lingus in obtaining partial annulment of Commission's State aid decision on differentiated air travel tax rates in Ireland (led by Kelyn Bacon QC)

European Commission

General Electric/LM Wind – acting for GE in a European Commission investigation into a procedural infringement (with David Anderson QC)

Electrolytic Capacitors – acting unled for Nippon Chemi-Con in a European Commission cartel investigation

Credit Default Swaps – acting unled for Barclays Bank in its successful defence of a European Commission cartel investigation

Hoffmann-La Roche – acting for Roche in its successful defence of a European Commission investigation into whether Roche had failed to meet its pharmacovigilance obligations (with David Anderson QC and Victoria Wakefield)

Competition Appeal Tribunal

Electro Rent v CMA – acting for the CMA in the first ever appeal against fine for 'gun jumping' (with Marie Demetriou QC)

Transport for London v MasterCard – acting for TfL in a competition law damages claim (with Thomas de la Mare QC)

Pfizer and Flynn v CMA [2018] CAT 11 – acting for CMA in defending appeals against the CMA's *Phenytoin* decision (with Mark Hoskins QC, Hugo Leith and Jennifer MacLeod)

GlaxoSmithKline v CMA [2018] CAT 4 – acting for the CMA in defending appeals against the Paroxetine 'pay for delay' decision (with Jon Turner QC, Marie Demetriou QC, Daniel Piccinin and Thomas Sebastian)

Peugeot v NSK – acting for NSK in an action for damages following on from the European Commission's

automotive bearings cartel decision (with Danny Jowell QC) (settled)

High Court

Kodak v Goldman Sachs – acting for Kodak in competition law damages claim in connection with the alleged manipulation of the aluminium market

Daimler v MOL – acting for MOL Europe in a Commercial Court competition law damages claim (with Mark Hoskins QC)

Beauty Bay v L'Oréal – acting for L'Oréal in an action for damages and injunctive relief arising out of the operation of L'Oréal's selective distribution system (with Mark Hoskins QC)

Vodafone v Renesas – acting for Renesas in an action for damages following on from the European Commission's decision in Smart Card Chips (with Daniel Jowell QC)

iiyama v LG Electronics [2018] EWCA Civ 220 – acting for LG in a cartel damages claim (with Daniel Jowell QC)

Transport for London v MasterCard – acting for TfL in a competition law damages claim (with Thomas de la Mare QC)

Europcar v MasterCard – acting for Europcar in a competition law damages claim (with Thomas de la Mare QC)

British Airways v AirFrance-KLM – acting for AirFrance in a claim for contribution in the *Air Cargo* cartel damages litigation (with Colin West)

Microsoft v Sony Europe [2017] EWHC 374 (Ch) – acting for Sony Europe and Sony Corp in its successful application for a stay of proceedings pursuant to section 9 of the Arbitration Act 1996 (with Thomas de la Mare QC) (settled)

Streetmap v Google [2016] EWHC 253 (Ch) – acting for Streetmap in a stand-alone action for damages alleging an abuse of a dominant position (with Mark Hoskins QC)

Foundem v Google – acting for Foundem in an action for damages alleging an abuse of a dominant position (with Helen Davies QC and Sarah Ford QC)

Unwired Planet v Huawei Technologies [2015] EWHC 1029 (Pat) (with Jemima Stratford QC, Sarah Ford and Sarah Abram) – acting for the claimant in proceedings for infringement of standard essential patents

National Grid v ABB – acting for Alstom in a follow-on action for damages in the *Gas Insulated Switchgear* cartel (with Stephen Morris QC and Maya Lester) (settled)

R (BAA) v HM Treasury – acting for BAA in its appeal against the judgment of Moses J in relation to the compatibility of the Aggregates Levy with the EU state aid rules (with David Anderson QC and Kelyn Bacon QC)

Competition and Markets Authority

Online hotel booking – acting for the CMA in a consumer law investigation

Liothyronine tablets: suspected excessive and unfair pricing – acting for the CMA in an abuse of dominance investigation

Hydrocortisone tablets: alleged anti-competitive agreements and abusive conduct – acting for the CMA in an abuse of dominance investigation

Sports equipment sector: anti-competitive practices – acting for the CMA in relation to the infringement decision

against Ping dated 24 August 2017

Phenytoin sodium capsules: suspected unfair pricing – acting for the CMA in relation to the infringement decision against Pfizer and Flynn dated 7 December 2016

Online resale price maintenance in the commercial refrigeration sector – acting for the CMA in relation to the infringement decision against ITW dated 24 May 2016

Online resale price maintenance in the bathroom fittings sector – acting for the CMA in relation to the infringement decision against Ultra dated 10 May 2016

Pharmaceutical sector: alleged discounts offered on a product – acting for the CMA in relation to an ongoing investigation under the Competition Act 1998

Leisure sector: alleged anti-competitive practices – acting for the CMA in relation to an ongoing investigation under the Competition Act 1998

Energy market investigation – acting for EDF Energy in relation to the CMA's market investigation

Hotel online booking – acting for the CMA in relation to the closure of an investigation under the Competition Act 1998

Skyscanner v Competition and Markets Authority [2014] CAT 16 - acting for the CMA in an appeal to the CAT against the commitment decision in Hotel Online Booking (with Kelyn Bacon QC)

Mobility Scooters – advised the former Office of Fair Trading during an investigation of agreements relating to the sale of mobility scooters

Other competition authorities

Investigation into whether Economy Energy, E (Gas and Electricity) and Dyball Associates have infringed Chapter I of the Competition Act 1998 with respect to a suspected anti-competitive agreement – acting for Economy in an Ofgem cartel investigation (with Mark Brealey QC)

Hong Kong Code of Banking Practice – acting unled for Hong Kong Competition Commission in taking its first decision under section 11 of the Competition Ordinance

Hong Kong Vessel Sharing Agreements between liner shipping companies – acting (with Richard Gordon QC) for Hong Kong Competition Commission in granting its first block exemption under section 15 of the Competition Ordinance

ATF Overseas Holdings Limited v Jersey Competition Regulatory Authority – acting for the JCRA in defending an appeal against an infringement decision finding ATF guilty of an abuse of dominance (with Kelyn Bacon QC)

Association of Private Health Plans and Administrators – acting for the APHPA in an ongoing investigation by the Competition Commission of Mauritius

Arbitrations

Acted for claimants in the Chambre Arbitrale du Sport in relation to a high-profile sports-related dispute

Acted for a claimant in an LCIA arbitration in relation to a commercial and competition law dispute in the global metals industry (settled)

Acted for a respondent in an ICC arbitration in respect of a competition law dispute between a well-known sports team and a sportswear manufacturer (settled)

Public Law

Pfizer and Flynn v CMA [2018] CAT 11 – acting for CMA in defending appeals against the CMA's *Phenytoin* decision (with Mark Hoskins QC, Hugo Leith and Jennifer MacLeod)

GlaxoSmithKline v CMA [2018] CAT 4 – acting for the CMA in defending appeals against the Paroxetine 'pay for delay' decision (with Jon Turner QC, Marie Demetriou QC, Daniel Piccinin and Thomas Sebastian)

Skyscanner v CMA [2014] CAT 16 – acted for the CMA in a judicial review challenge in the CAT in relation to a commitment decision in Hotel online booking (with Kelyn Bacon QC),

Cases whilst working as a referendaire at the Competition Appeal Tribunal:

Everything Everywhere v Ofcom (Mobile Call Termination II)

Stagecoach v Competition Commission (merger)

BAA v Competition Commission (Airports market investigation)

Hutchison 3G v Ofcom (Mobile Call Termination I)

Tesco v Competition Commission (Groceries market investigation)

BSkyB v Competition Commission (BSkyB/ITV merger)

Merger Action Group v Secretary of State (LloydsTSB/HBOS merger)

Publications

Books:

Whish and Bailey Competition Law (co-author 7th, 8th, 9th editions. Current 9th edition, Oxford University Press, 2018)

Bailey and John (eds) *Bellamy and Child European Union Competition Law* (8th edition, Oxford University Press, 2019)

Rose and Bailey (eds) *Bellamy and Child European Union Competition Law* (7th edition, Oxford University Press, 2013)

Division 1 of *Butterworths Competition Law Service* (LexisNexcis)

Qualifications

2018: Barrister, Ireland

2017: Appointed to the Competition Commission of Hong Kong's Panel of External Senior Counsel

2016: Teaching Excellence Award for Sustained Excellence in Teaching, King's College London

2012 to date: Barrister, Brick Court Chambers

2012 to date: Visiting Professor of law, King's College London

2010–12: Senior Referendaire, Competition Appeal Tribunal

2007–10: Referendaire, Competition Appeal Tribunal

2003–06: Solicitor, Linklaters LLP

2003 to date: Attorney-at-law, New York

2001-2012: Lecturer, King's College London

2000-2001: LLM, Harvard University

1997-2000: LLB and AKC, King's College London

Directory Quotes

David is ranked in Competition Law as a band 1 leading junior in Chambers & Partners 2020, and was nominated as Competition Law Junior of the Year at the 2017 Chambers Bar Awards. He is also ranked as a leading junior in The Legal 500 2020, and is one of the top five 'Most Highly Ranked Leading Juniors' in Who's Who Legal UK Bar 2018: Competition, and the only junior amongst the four 'Most Highly Regarded' practitioners in Who's Who Legal 2017 Competition - Future Leaders 2017: Barristers Analysis.

"Literally wrote the text book on competition law." "He is extremely knowledgeable on the case law and has good commercial judgement." "David is aware of the wider picture when giving advice and takes that into account when thinking about the case strategy." "He has an encyclopaedic knowledge of the law and displays a willingness to get involved in order to help us to understand the difficult legal issues that come up." (Chambers & Partners 2020)

"He has a strong understanding of the CAT procedure." (The Legal 500 2020)

David Bailey is a "very bright" advocate who is "known to have one of the sharpest minds and some of the most encyclopaedic knowledge among competition juniors". (Who's Who Legal - Competition 2019)

David Bailey is one of the foremost competition juniors at the UK Bar and is recommended by peers who note his "incredible encyclopaedic knowledge of competition law and procedure". (Who's Who Legal - UK Bar: Competition 2019)

"He has an encyclopaedic knowledge of UK and EU law, and is someone with really good advocacy skills whose style is engaging." (Chambers & Partners UK & Global 2019)

"Has an unsurpassed knowledge of competition law and is very able to apply it; responsive and enjoyable to work with." (The Legal 500 2019)

David Bailey is renowned for his experience in competition law, particularly investigations by the Competition and Markets Authority where his advice is very well regarded. He is recommended by peers as "clever, personable and approachable" and with "a tremendous depth of knowledge on the law". (Who's Who Legal - UK Bar: Competition

2018)

"He has an encyclopaedic knowledge of competition law." "I have been really impressed by his court style." (Chambers & Partners 2018)

"David Bailey is regarded as "a future star". His steeped learning in this area is highlighted by numerous respondents. One client is particularly effusive, "He is an automatic choice. You have a library in front of you with an extensive knowledge of case law. He grasps key issues rapidly, is shrewd in his approach and has a very accessible manner."" (Who's Who Legal - UK Bar: Competition 2017)

"A number of Brick Court's members are counted among the most eminent at the senior and junior levels. Kelyn Bacon QC, James Flynn QC and Mark Hoskins QC are star competition silks, with David Bailey and Daniel Piccinin earning similar recognition at the junior Bar." (Who's Who Legal - UK Bar: Leading Sets 2017)

"David Bailey comes highly recommended for his "exceptional depth and breadth of knowledge of competition law". Described as a "great orator", he is "always very clear and is very involved in the wider policy debates." (Who's Who Legal - UK Bar: Competition - Future Leaders 2017: Barristers Analysis)

"He has an encyclopaedia of case law at his fingertips." (The Legal 500 2017)

"He has a really impressive legal mind, is extremely well organised, and is someone who always keeps to deadlines, no matter what the circumstances. He has a remarkable ability to synthesise and simplify things." (Chambers & Partners 2017).

David Bailey comes highly recommended for his "exceptional depth and breadth of knowledge of competition law". Described as a "great orator", he is "always very clear and is very involved in the wider policy debates". (Who's Who Legal - Competition 2017)

"He has an encyclopaedic knowledge of the case law; when you have him on board you know you are not missing out on the law side." "He has first-class knowledge of CAT procedure" and is "knowledgeable, hard-working, personable and easy to use." (Chambers & Partners 2016).

"A client favourite who has a strong focus on EU and competition law." (Chambers & Partners 2015).

"He is impressive and is gaining an excellent reputation at the Bar." (Chambers & Partners 2015).

"David Bailey is a "stand out" practitioner. With a wealth of expertise in the courts and in front of the European Commission, sources describe him as a "very resourceful litigator"." (Who's Who Legal UK Bar 2015).