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## Derek Spitz

Barrister

Call 2001



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## Scope of Practice

• Arbitration • Banking and Financial Services • Breach of Warranty • Civil Fraud • Company and Insolvency • Competition and EU Law • Economic Torts • Energy, Mining and Natural Resources • Injunctions (including freezing orders and search orders, and orders for disclosure of information) • IT and Telecommunications • Jurisdiction and Conflict of Laws • Restitution • Sale of Goods and Supply of Goods and Services

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## Overview

**Derek Spitz has a broad commercial litigation, competition and international arbitration practice, with particular expertise in private actions for damages in competition law cases. He has appeared in the CAT, High Court and the Court of Appeal, and is recommended by Chambers UK as a leading junior (Competition Law) and by The Legal 500 (Commercial Litigation and EU and Competition).**

Recent work includes acting for Sainsbury's Supermarkets Limited in substantial and high-profile claims against Visa and MasterCard concerning interchange fees implemented in breach of EU Competition law (judgment by the Court of Appeal in July 2018 following a 13-week trial against Visa and a 7-week trial against MasterCard. The case is currently on appeal to the Supreme Court); for Ryder Limited in another substantial and high-profile private action against the major European Truck manufacturers and distributors involved in a long-running Europe-wide cartel; for defendants in a breach of warranty and fraud claim involving alleged restrictive practices and abuse of dominance in relation to the supply of hydrocortisone tablets; for defendants in a complex fraud and conspiracy trial in the Commercial Court relating to the Iraqi oil and gas industry; for BMW in substantial "Elida-Gibbs" VAT repayment claims involving the proper construction of VAT and EU law; in a hard-fought trial concerning contractual construction and estoppel; in a lengthy arbitration under AFSA Rules, and advising on complex issues arising in derivative contracts under the ISDA Master Agreement.

Derek has also acted in a number of substantial international commercial arbitrations under ICC, LCIA, and AFSA Rules and in several banking and finance related matters.

Before being called to the Bar in England and Wales, Derek was a leading junior at the Johannesburg Bar, practising in commercial, competition and public law, and was an author and co-editor of Constitutional Law of South Africa (the leading work in the field). He continues to be a member of the Johannesburg Bar with expertise in South African law. Derek was educated at the University of the Witwatersrand (BA (Honours) LLB cum laude); Cornell University (MA) (Fulbright Scholarship); and Columbia University (JD) (Harlan Fisk Stone Scholar).

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## Examples of Recent Cases

### Arbitration

- Confidential arbitration under the AFSA Rules involving issues of jurisdiction, stay of proceedings, contractual construction, rectification, reciprocity of obligations and VAT under South African law
- **Microlights Ltd v Lichtplanners**  
Acted for Microlights in an arbitration under LCIA rules concerning repudiation and termination of a distributorship agreement and conspiracy under Dutch law.
- **Telkom SA Limited v Telcordia Technologies Inc**  
Acted for Telkom in an International commercial arbitration under ICC Rules arising out of a software supply and servicing agreement between a US software supplier and a South African telecommunications company. The dispute raised complex factual, legal and expert issues in an arbitration concerning very substantial sums and continued over several years in arbitration in London and Johannesburg and in litigation before the South African Appellate courts.
- **Aquarius Platinum SA (Pty) Ltd v Grinaker Ltd**  
Acted for Aquarius in an arbitration under LCIA rules concerning the interpretation and application of the pricing mechanism and the impact of forward exchange cover in a mining contract in the platinum industry.
- **Gardner v Ivanhoe Nickel & Platinum**  
Acted for the claimant in an international arbitration under LCIA Rules concerning the sale of a participation interest in a platinum tailings plant.
- Confidential international arbitration under UNCITRAL Rules relating to breach of a seismic survey contract in the oil & gas industry.

### Banking & Finance

- **Sainsbury's Supermarkets Ltd v (1) MasterCard Incorporated; (2) MasterCard International Incorporated; (3) MasterCard Europe S.P.R.L 1536 [2016] CAT 11; [2018] EWCA Civ 1536**  
Counsel for the claimants (with Mark Brealey QC) in the substantial stand-alone and follow-on claim concerning interchange fees implemented by MasterCard (as an association of banking undertakings) in breach of EU Competition law. The case concerned the way the fees are set and their level; pricing on two-

sided platforms; relations between retail and banking subsidiaries under the single economic entity doctrine; and the law on compound interest. Judgment by the Court of Appeal in July 2018 following a 7-week trial; the case is currently on appeal to the Supreme Court.

- **Sainsbury's Supermarkets Ltd v Visa Europe and ors** [2017] EWHC 3047 (Comm); [2018] EWHC 355 (Comm); [2018] EWCA Civ 1536  
Counsel for the claimants (with Mark Brealey QC) in a similar claim concerning interchange fees against Visa. Judgment by the Court of Appeal in July 2018 following a 13-week trial; the case is currently on appeal to the Supreme Court.
- **Pioneer Freight Futures Company Ltd (in liquidation) v British Marine Plc; Armada (Singapore) Ltd**  
Counsel for the defendant (with Ian Glick QC) in a claim involving substantial sums arising out of forward freight derivative contracts.
- **Aberdeen International Inc v Simmer & Jack Mines Limited**  
Acted for a Toronto-based global resource investment and merchant banking company in a dispute over a loan facility provided to a South African mining company under applicable South African law.
- **Park Lane Property (Leeds) Limited v Yorkshire Bank**  
Advised on the enforceability of a number of loan agreements.
- **Khatkar v Bank of Ireland**  
Advised a partnership on the enforceability of the conditions of an ISDA agreement and a fixed term loan agreement.
- **Carillion JM Limited v Northern Ireland Local Government**  
Acted for Carrilion in a dispute over development funding and the novation of a deed of collateral warranty.
- **Bank of Zambia v Access Financial Services Limited (in liquidation) and Ors**  
Acted (with Michael Sullivan QC) for Bank of Zambia concerning the recovery of funds misappropriated from the Bank of Zambia.

## Commercial Litigation

- **Sainsbury's Supermarkets Ltd v (1) MasterCard Incorporated; (2) MasterCard International Incorporated; (3) MasterCard Europe S.P.R.L** 1536 [2016] CAT 11; [2018] EWCA Civ  
Counsel for the claimants (with Mark Brealey QC) in the substantial stand-alone and follow-on claim concerning interchange fees implemented by MasterCard (as an association of banking undertakings) in breach of EU Competition law. The case also involved pass-on, ex turpi causa, quantification of damages and compound interest. Judgment by the Court of Appeal in July 2018 following a 7-week trial; the case is currently on appeal to the Supreme Court.
- **MG Rover Group Limited (CVL) v HMRC v BMW (UK) Holdings Ltd** [2014] UKFTT 327 (TC); [2016] UKUT 434  
Acting for BMW Holdings (with Ian Glick QC) in proceedings before the Tax Tribunal and on successful appeal to the Upper Tribunal (Tax and Chancery) in claims concerning the status of VAT groups and the entitlement to substantial "Elida-Gibbs" type VAT refund claims. Judgment on appeal in favour of BMW on 19 October 2016.
- **Jalal Al Gaoood and Future Agencies Co v Innospec & David Turner** [2014] EWHC 3147 (Comm) [2014] EWHC 3147 (Comm)

Acted for Innospec (with Jeffery Onions QC) in Commercial Court proceedings in relation to a claim for damages arising out of an alleged unlawful means conspiracy. The case concerned alleged bribery, corruption, conspiracy to injure, and causation in an oil and gas industry trial relating to the sale of petroleum additives in Iraq. Judgment for Innospec.

- **(1) Seakom Limited (2) Seakom International Limited v Knowledgepool Group Limited [2013] EWHC 4007 (Ch)**

Leading counsel for Knowledgepool Group in relation to a dispute concerning the interpretation of an agreement, estoppel by convention, assignment and novation, and damages. Judgment in favour of Knowledgepool Group.

- **Pioneer Freight Futures Company Ltd (in liquidation) v British Marine Plc; Armada (Singapore) Ltd**  
Counsel for the defendant (with Ian Glick QC) in a claim involving substantial sums arising out of forward freight derivative contracts.

- **Alchemy Metals Limited v CAV Aerospace Limited [2008] EWHC 1207; [2008] EWHC 2411**  
Counsel for the Defendants in a trial about the pricing mechanism in a metals supply agreement.

- **Telcordia Technologies Inc v Telkom SA Ltd (3) SA 266 (SCA)**  
Acted for Telkom in an ICC arbitration and in the High Court and South African Supreme Court of Appeal concerning the review of an arbitral award.

- **CEP Holdings Ltd v Steni AS**  
Various applications relating to a claim based on termination of a distribution agreement.

- Advised (with David Cavender QC) in class action claim against an international bank concerning representations relating to a tax avoidance scheme based on derivative transactions.

- **United Biscuits (UK) Ltd v Largo Foods**  
Dispute over breach of a supply agreement.

- Counsel (with Mark Howard QC and Neil Kitchener QC) in large and complex fraud and professional negligence matter against investment banking advisors arising out of the acquisition of a company.

- **Kuwait Airways Corporation v Iraq Airways Co [2004] EWHC 2603 (Comm)**  
Counsel (with Rhodri Davies QC) in a trial on quantum of damages for conversion.

- **Allan Knight v AAA (Euro) Ltd [2002] EWCA Civ 758 (CA)**  
Counsel in the Court of Appeal in a case concerning reasonable remuneration for work done.

## Competition and EU Law

Derek has been part of the team which co-authored the most recent edition of Bellamy and Child, European Community Law of Competition and co-authored an article on “Opportunities and pitfalls of litigating cartel damages claims in different fora in the UK” [2013] Competition Law Journal Vol. 12, Issue 1. In 2014, he was a delegate to and presented a paper at an international anti-trust conference in China.

- **Sainsbury’s Supermarkets Ltd v (1) MasterCard Incorporated; (2) MasterCard International Incorporated; (3) MasterCard Europe S.P.R.L [2016] CAT 11; [2018] EWCA Civ 1536**  
Counsel for the claimants (with Mark Brealey QC) in the substantial stand-alone and follow-on claim concerning interchange fees implemented by MasterCard (as an association of banking undertakings) in breach of EU Competition law. Judgment by the Court of Appeal in July 2018 following a 7-week trial; the case

is currently on appeal to the Supreme Court.

- **Sainsbury's Supermarkets Ltd v Visa Europe and ors** [2017] EWHC 3047 (Comm); [2018] EWHC 355 (Comm); [2018] EWCA Civ 1536  
Counsel for the claimants (with Mark Brealey QC) in a similar claim concerning interchange fees against Visa. Judgment by the Court of Appeal in July 2018 following a 13-week trial; the case is currently on appeal to the Supreme Court.
- **Ryder Limited and ano v MAN SE and ors** [2018] EWHC 1994 (Ch); [2018] CAT 19  
Acting for Ryder Limited, the claimants (with Mark Brealey QC) in a substantial and high-profile private action for damages against the major European Truck manufacturers and distributors involved in a long-running Europe-wide cartel. The case involves anti-competitive effect; causation; quantification of loss; pass-on, lost volume; compound interest; deliberate concealment. It also concerns the extent to which findings of the European Commission bind the Addressees of Commission Decisions, and the grounds on which non-Addressee subsidiaries are liable for infringements of competition law. Judgment on disclosure of the Commission Decision was given in July 2018 in favour of Ryder. A first CMC was held on 22-23 November 2018 and judgment was given on confidentiality rings and translations. A second CMC is scheduled for February 2019.
- **Chilcott UK Limited; Actavis Holdings UK Limited**  
Acting and advising (with Camilla Bingham QC) for defendants in a fraud and breach of warranty claim involving alleged anti-competitive restrictive practices and abuse of dominance in relation to the supply of hydrocortisone tablets.
- **Ocado Retail Limited v (1) MasterCard Incorporated; (2) MasterCard International Incorporated; (3) MasterCard Europe S.P.R.L**  
Counsel for the claimants (with Jon Turner QC) in a similar claim concerning interchange fees.
- **Iiyama Benelux BV and Ors v Koninklijke Philips NV and Ors**  
Counsel for the defendants (with Marie Demetriou QC) in a claim for damages for an alleged cartel infringement of EU competition law in the cathode ray tubes industry.
- **Vodafone Group Services Limited and Ors v (1) Infineon Technologies AG and Ors and Koninklijke Philips NV and Ors**  
Counsel for Philips (named third party) (with Marie Demetriou QC) in defending a claim for an alleged cartel infringement of EU competition law in the smartphone industry.
- **MG Rover Group Limited (CVL) v HMRC v BMW (UK) Holdings Ltd** [2014] UKFTT 327 (TC); [2016] UKUT 434  
Acting for BMW Holdings (with Ian Glick QC) in proceedings before the Tax Tribunal and on successful appeal to the Upper Tribunal (Tax and Chancery) in claims concerning the status of VAT groups under UK and EU law, and the entitlement to substantial "Elida-Gibbs" type VAT refund claims. Judgment on appeal in favour of BMW on 19 October 2016.
- **Toshiba Carrier UK Limited and others v KME Yorkshire Ltd and others** [2011] EWHC 2665 (Ch); [2012] EWCA Civ 169; [2012] EWCA Civ 1190  
Counsel for the claimants (with Jon Turner QC) in stand-alone and follow-on claims against a price-fixing cartel for damages for infringement of EU Competition law.
- **Sun Microsystems v Micron Europe**  
Advised in relation to claims against members of a price fixing cartel in the sale of Dynamic Random Access

Memory.

- **Sporting Bet Group**

Advised on relief from injunctive proceedings in Spain concerning the operation of sports betting websites

- **EU Competition Law Advice**

Advised on provisions in licence agreements intended to prevent rivals from using the owner's software to create a competitive product.

- **eBay v Beautybay**

Advised on competition law aspects of an exclusive licence agreement to use registered trademarks.

- **Burtens Foods Limited v British Sugar; Burtens Foods Limited v Renshaw Napier; Aimia Foods v British Sugar; Burtens Foods Limited v Mantons**

Counsel for a large food manufacturer in disputes about supply issues arising out of crop shortages and the implementation of new EU Directives.

- **Mutual Services (Portsmouth) Limited v John Paul Marr and Theresa Marr**

Acted for the claimants in proceedings for injunctions and damages, concerning breaches of restrictive covenants and restraints of trade on the sale of a business.

- **Nisa-Today's (Holdings) Limited v Karnal Sekhon t/a Nisa Local**

Acted for the defendant in a private action for breach of statutory duty relating to horizontal collusion in breach of the Chapter I prohibition under UK Competition Law.

- **Emerson Electric Co v Morgan Crucible Company plc [2008] CAT 28; [2008] CAT 8; [2007] CAT 30; [2007] CAT 28**

Acted for the claimants in a follow-on damages action for a cartel infringement of EU Competition law.

- **Provimi Limited v Aventis Animal Nutrition and SA & Ors [2003] EWHC 961 (Comm)**

Acted for the claimant (with Christopher Carr QC) in a complex case developing the private action for damages for breach of EU Competition law and involving the single economic entity doctrine, conflicts of law and jurisdiction in follow-on and stand-alone claims.

## Energy and Natural Resources

- **Jalal Al Gaoood and Future Agencies Co v Innospec & David Turner [2014] EWHC 3147 (Comm)**

Counsel for Innospec (with Jeffery Onions QC) in Commercial Court proceedings concerning a claim for damages based on an alleged unlawful means conspiracy. The case concerned alleged bribery, corruption, conspiracy to injure, and causation in an oil and gas industry trial relating to the sale of petroleum additives in Iraq. Judgment for Innospec.

- **Alchemy Metals Limited v CAV Aerospace Limited [2008] EWHC 1207; [2008] EWHC 2411**

Sole counsel for the Defendants in a trial concerning the pricing mechanism in a metals supply agreement.

- **Aquarius Platinum SA (Pty) Ltd v Grinaker Ltd**

Acted for the claimant in an arbitration concerning the interpretation and application of the pricing mechanism and the impact of forward exchange cover in a mining contract in the platinum industry.

- **Gardner v Ivanhoe Nickel & Platinum**

Acted for the claimant in an international arbitration under LCIA Rules concerning the sale of a participation interest in a platinum tailings plant.

- Confidential international arbitration under UNCITRAL Rules relating to breach of a seismic survey contract in the oil & gas industry.

## Injunctions and Other Interim Relief

- **Little Wing Films v Corporate Technology Limited**  
Acted in relation to a freezing injunction.
- **DSG Retail Limited v HCL Technologies Limited**  
Advising on the prospects of injunctive relief to prevent an electrical power shut-down to enable maintenance works to take place during peak retail shopping days before to Christmas.
- **Executive Care Group Limited v Tower Bridge Homes Care**  
Advised on the prospects of obtaining specific performance and injunctive relief on a share sale and purchase agreement.
- **Sporting Bet Group**  
Advised on relief from injunctive proceedings in Spain which restricted operation of an online sports betting business.
- **Mutual Services (Portsmouth) Limited v John Paul Marr and Theresa Marr**  
Acted for the claimants in proceedings for injunctions and damages, concerning breaches of restrictive covenants and restraints of trade on the sale of a business.
- **Burtens Foods Limited v British Sugar; Burtens Foods Limited v Renshaw Napier; Aimia Foods v British Sugar; Burtens Foods Limited v Mantons**  
Acted for a large food manufacturer in disputes about supply issues arising out of crop shortages and the implementation of new EU Directives. The case concerned injunctive relief to prevent cancellation of supplies.

## Pharmaceutical Industry

- **Chilcott UK Limited; Actavis Holdings UK Limited**  
Acting and advising (with Camilla Bingham QC) for defendants in a fraud and breach of warranty claim involving alleged anticompetitive restrictive practices and abuse of dominance in relation to the supply of hydrocortisone tablets.
- **Royal Bournemouth & Christchurch Hospitals NHS Foundation Trust**  
Advising on structuring an integrated supply chain for the purchase of specified products through a single entity.
- **Provimi Limited v Aventis Animal Nutrition and SA & Ors [2003] EWHC 961 (Comm)**  
Acted for the claimant (with Christopher Carr QC) in a complex case developing the private action for damages for breach of EU Competition law and involving the single economic entity doctrine, conflicts of law and jurisdiction in follow-on and stand-alone claims



# What the Directories Say

*"Derek is measured and very clever, and is also extremely user-friendly. He is a treat for instructing solicitors."* (Chambers UK 2024, Competition)

*"Derek is excellent in competition law. He is very thorough, diligent, easy to work with and a good team player."* (Chambers UK 2024, Competition)

*'Derek is very strategic and delivers his advice in a way that is easy for a client to understand.'* (Legal 500 2024, Commercial Litigation)

*'Cuts to the crux of an issue quickly and skilfully, both in advocacy and in advice to clients. Derek is very strategic, understands his clients' objectives and is enjoyable to work with.'* (Legal 500 2024, Competition)

*"He has some big cases under his belt. He has attention to detail and is a focused barrister, who is excellent with strategy and excellent in the courtroom."* (Chambers UK 2023, Competition)

*'Derek is a wonderful team player. He has a calm and ordered advocacy style, and really comes into his strength on cross-examination.'* (Legal 500 2023, Commercial Litigation)

*'Derek is a consummate professional and a very experienced competition senior junior. He is very easy to work with and always on top of the material with a tactical nous to boot.'* (Legal 500 2023, Competition)

*Advises claimants and defendants on private actions for competition law damages, particularly those arising from cartels. Spitz also assists clients with abuse of dominance cases. "He is easy to work with, pleasant and very good in cross-examination."* (Chambers UK 2019, Competition)

*"Meticulous in his preparation and a careful advocate."* (Legal 500 2018/19, Commercial Litigation)

*"While very good at pure competition law work, he is extremely knowledgeable with crossover competition and commercial law issues."* (Legal 500 2018/19, EU and Competition)

*"He is a very bright individual, who stays calm under fire and is a reliable member of the team."* (Chambers UK 2018, Competition)

*"A calm and measured advocate, who gets to the heart of the case."* (Legal 500 2017, EU and Competition)

*"Very knowledgeable and thorough in his approach, and easy to work with."* (Legal 500 2017, Commercial Litigation)

*"Particularly experienced in cartel damages litigation, he acts for both claimants and defendants. He has experience of acting in some of the leading cases in this field "He is very experienced and very able."* (Chambers & Partners 2017, Competition)

*"Handles a wide range of commercial cases, and has a particular focus on private enforcement when it comes to competition law matters. He also has experience of handling international arbitration. "He is a careful advocate who's meticulous in his preparation."* (Chambers & Partners 2016, Competition)

*"An exceptionally clear thinker, a silent assassin in court, and very good at getting to the heart of the detail in a case."* (Legal 500 2016, EU and Competition)



*"He operates at the level of leading counsel and has a really inquiring mind."* (Legal 500 2016, Commercial Litigation)

*"A barrister who is advancing his reputation within the competition law field due to his work on high-profile cases..." "He is very bright and he drafts well." "A fantastically calm presence in court and a strong technical lawyer".* (Chambers & Partners 2015, Competition)

*"He is appreciated for his careful advocacy style."* (Legal 500 2015, EU and Competition)

*"His ability to go through documents in a forensic way is outstanding".* (Legal 500 2015, Commercial Litigation)

*"Has a growing reputation in competition work having come to the area via his commercial practice. He is now highly sought after by leading silks, and has handled a number of complex damages claims. "He is adept at handling novel situations and contributing reliable and incredibly responsive advice." "He's technically highly accomplished and very diligent."* (Chambers & Partners 2014, Competition Law)

*"He has an excellent grasp of complex legal matters."* (Legal 500 2014, Commercial Litigation)

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## Previous Experience at the Johannesburg Bar

Before being called to the English Bar, Derek was a leading commercial and public law junior at the Johannesburg Bar in South Africa (where he was called in 1994). He acted for and advised large companies, government, NGOs and individuals and appeared in a number of significant cases in the High Courts, Court of Appeal and in the Constitutional Court. He continues to be a member of the Johannesburg Bar with expertise in South African law.

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## Awards



# Contact Clerks



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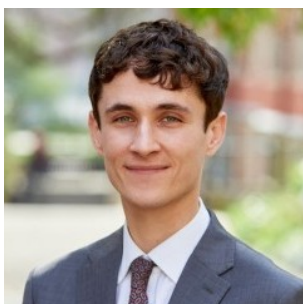


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