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Thomas Sharpe KC

Barrister
Call 1976 Silk 1994



Scope of Practice

• Competition and EU Law • Energy and Natural Resources • Judicial Review • Takeovers, Mergers and Acquisitions • Transportation and Processing Agreements • Online Gaming, IT and Telecommunications • Regulatory Regimes (inc. finance, telecommunications, utilities and transport)

Overview

Thomas Sharpe is a specialist in all aspects of EU, Competition Law, WTO trade disputes, UK Regulatory proceedings and investigations and commercial judicial review. His Competition Commission/CMA experience includes acting for Safeway for over a decade, from the initial aborted discussions with Asda, and no less than three full competition investigations culminating in the Safeway/Morrison report and merger.

He has recently advised on many aspects of Brexit and acted in the *Miller* case in the Supreme Court. His practice covers litigation and advice in UK and EU cartel proceedings, abuse of dominant position, state aids and UK and EU merger proceedings. He has appeared in over 100 CMA (and MMC/CC) inquiries and has extensive experience in regulatory work (particularly energy, communications and water) acting for regulated companies and is a long-standing adviser of Ofgem, Ofwat and the Water Industry Commission for Scotland (WICS).

Recent work includes CMA price reviews and licence modification proceedings in energy and appeals against Ofcom rulings on dark fibre and broadband in the CAT and CMA. He has a wide variety of British, American, German, French and Hong Kong clients, involving frequent appearances in the European Courts, the CMA, CAT, and UK High Court. He has also been called to the bar in Hong Kong and in the Caribbean, where he has conducted pro bono environmental litigation and a commission of inquiry into alleged corruption.

A graduate of Trinity Hall, Cambridge he holds degrees in both Economics and Law and is retained particularly where complex issues of law and economics are involved. He brings considerable experience from having been (part time) Executive Director of the IFS and holding various academic appointments in the UK and US latterly, until starting to practice, as a Fellow of Nuffield College, Oxford. He is a frequent lecturer and seminar participant and a past contributor to Halsbury's Laws (European Law), the LQR, CMLR, Eur L Rev and other legal journals and to symposia and published lectures in regulation. He is on the advisory or editorial boards of the European Competition Journal, Concurrences-Revue des droits de la concurrence, and Chairman of the Centre for Competition Policy, University of East Anglia.

Examples of Recent Cases

Competition and EU Law

"Really hard-working and all over the details. He doesn't cut corners and is a super person to have on board when you're faced with big ticket and complex regulatory work." "He gets to the real essence of a point; he has a gentle manner but is able to identify the flaw in arguments and pursue those points zealously." **Chambers & Partners 2020 - Competition Law**

"He has an unparalleled experience of the interface between competition law and regulatory issues, and a sage-like knowledge of how regulators approach things." **Chambers & Partners 2018 - Competition Law**

'Tom has a formidable track record and is excellent at delivering what the client needs.' **Chambers & Partners 2017 - Competition Law**

"He continues to be one of a select group of supreme competition silks.' 'A very effective advocate who is hugely experienced. His name carries clout in itself and he is a first choice for judicial reviews.' **Chambers UK 2016**

- **Unitech v Deutsche Bank AG (Court of Appeal)**
  The question before the Court of Appeal was whether the English courts should, as a matter of public policy, refuse to enforce a LIBOR contractual term when LIBOR was fixed by an illegal cartel **agreement, or, whether the innocent third party's only remedy lay in damages.**
- **Safeway v Twigger & Ors**
  The new owners of Safeway sought to recover a fine likely to be levied on Safeway by the UK competition authorities from former board members and employees. Tom acted for the defendants and the defence of ex turpi causa was successful in defeating the claim, so establishing the defence in this context.
- **MasterCard (various)**
  Acting for MasterCard 2003-2015 in the protracted Commission investigation investigation leading to its decision, then in appeals against that decision to the General Court and Court of Justice. In addition, in parallel in the UK, MasterCard was faced with an adverse OFT decision against its interchange fee which was successfully quashed in the CAT. After the decision MasterCard was faced with a large number of private actions in the High Court and CAT, all of which were preceded by numerous interim applications involving access to Commission documents, confidentiality and jurisdictional issues. The case is the first to address the proper analysis of "two-sided markets" in competition law.
- **SONI Limited v NIAUR (The Northern Ireland Authority for Utility Regulation)**
  Tom acted for SONI, which is the licensed Transmission System Operator (TSO) of the Electricity Transmission System (ETS) for Northern Ireland (NI). The CMA determined an appeal by SONI against a decision of the Northern Ireland Regulator (UR) to modify the conditions of SONI's licence. The appeal was successful and the CMA required the UR to amend SONI's licence. Please see here for more information.
- **Ineos Vinyls Ltd & Ors -v- Huntsman Petrochemicals (UK) Ltd**
  Tom acted for Hunstman in defeating a claim of abuse of a dominant position in chemicals pricing and transportation. This is an important case in calculating the existence of "overcharging" in Chapter II and Article 102 cases.
- **Pittville Ltd (as assignee of rights of MasterCigars Direct Ltd) v (1) Hunters & Frankau Ltd (2) Corp Habanos SA (2015)**
  Tom acted for Pittville, which was alleged conspiracy and breach of the competition rules but whose case had been struck out years before owing to a breach of a security for costs order. He argued successfully arguing that in granting relief from sanctions the court had a discretionary power under CPR r.3.1 to extend time for making the application even though an extension of time had not been applied for. In the unusual circumstances of the case, a security for costs order was varied four years after it had been made, so as to permit a claimant to provide alternative security.
- **Hutchison 3G UK Ltd v Office of Communications (Competition Appeal Tribunal) [2009] CAT 11**
  Acting for the CC in an appeal instigated by the two appellant mobile network operators in which the Competition Appeal Tribunal was required to determine challenges made by the intervening operators to a determination made by the CC following the referral of certain price control matters.
- **Clear v New Zealand Telecom**
  Tom appeared in the Privy Council on appeal from New Zealand, a challenge under section 36 of the

Commerce Act alleging abuse of New Zealand Telecom's dominant position by overcharging for access from Clear's long lines to the final telephone user. The leading case on the application of the Baumol-Willing rule.

- **European Night Services v Commission**
  A successful challenge to the Commission's refusal to grant exemption to the British and French railway companies for their long term rights to Eurostar paths. This is still the leading case on the "rule of reason" in applying Article 101(1).

Other competition litigation involves: successfully challenging a CC report on PPI acting for Barclays Bank; successfully defending the CC in judicial review of its decisions on mobile termination charges, and advising the CC in later proceedings; jurisdictional issues arising from patents and FRAND; arbitrations on the enforceability of market sharing terms in worldwide distribution agreements, railway and energy agreements; advice and proceedings in the Court of Justice on state aids and successful defending the German coal industry from a damages claim in the High Court and Court of Appeal for losses caused to a Welsh claimant from an illegal state aid; successful significant reductions in Commission's fines (eg BPB); successfully defending the Post Office against a Chapter II challenge, the first case under the Competition Act 1998.

UK competition cases include:

- **Soni v Northern Ireland Utility Regulator (NIUR)**, A successful challenge to a determination by the NIUR of various matters in Soni's licence. The case involved many issues including the Single Electricity Market in Ireland
- **ENWL v GEMA**, Acting for ENWL in a licence modification case on electricity distribution
- **Bristol Water** appeal from Ofwat determination, for Ofwat. Market investigations into grocery retailing, buses, motor industry, electrical goods, the proposed market abuse conditions in energy.

Energy and Natural Resources

"He provides very strategic input and is a great team player with a tremendous rapport with clients." **Chambers & Partners 2020 - Energy & Natural Resources**

"Very astute and switched on from the moment of instruction, he is a standout silk in this field." **Legal 500 2020 - Energy**

"He has unparalleled experience of the interface between competition and regulatory matters, and sage-like knowledge of the types of approach taken by regulators." **Chambers & Partners 2018 - Energy and Natural Resources**

"A very effective advocate." "Reassuringly patrician and encyclopaedically knowledgeable." **Chambers UK 2016**

Tom has a significant energy and natural resources practice. He regularly advises on a wide range of industry issues, from regulation in the domestic retail market, to international contracts for the exploration, supply and sale of oil, gas and electricity (including nuclear), interconnection and other issues. He is also familiar with ROCS (the renewable obiligations scheme), the CRC Energy Efficiency Scheme and the EU Emissions Trading Scheme and has advised oil and gas companies in relation to sea bed leases.

- Advising oil and gas companies in relation to seabed leases.
- **Ineos Vinyls Ltd -v- Huntsman Petrochemicals (UK) Ltd**
  Successfully defeated chapter II, Article 82 claim against Huntsman in relation to allegations of excessive prices for ethylene and pipelines.
- For **E.ON** in the Competition Appeal Tribunal (CAT) and in the High Court challenging an ORR decision.

Judicial Review

- **City Fibre v Ofcom**
  Tom acted for City Fibre in its CAT challenge to Ofcom's decision on dark fibre and leased line prices, which the CAT remitted to the CMA on the price control apsects.
- **Infinis v GEMA**

In the High Court and Court of Appeal, a case involving whether the wrongful refusal of ROCS by GEMA could found an action for "just satisfaction" under Article 1 of the First Protocol of the ECHR. The Court of Appeal held that it could, and thus extended the scope of damages for pure economic loss in the absence of negligence or misfeasance.

- **Camelot UK Lotteries LTD v Gambling Commission**
  Tom acted for the The Health Lottery in successfully defending the challenge to the grant of its licence by Camelot.
- **Easyair LTD v CAA**
  Acting for BAA in resisting a claim by easyJet to set aside the CAA's Gatwick landing charges.
- **London and South East Railway Ltd v British Transport Police Authority**
  Successfully acting for the claimants in a case concerning the proper basis on which railway companies pay for the expenses of the British Transport Police.
- **Intervention Board for Agriculture Produce ex parte British Sugar**
  A successful judicial review in the ECJ by British Sugar of a fine imposed by the International Board for Agricultural Products.
- **T-Mobile v Competition Commission**
  Successfully resisting the judicial review of the Competition Commission report on termination charges
- **Home Office ex parte Electronic Fund Raising Company Ltd**
  A challenge to the Government under Article 59 EC to the prohibition of competition to The National Lottery.
- **H.M. Treasury** *ex p* BT on a reference to the Court of Justice, a successful challenge to the leased lines EC Telecommunications Council Directive and implementing UK Regulations
- ***Ex p*** **Fedesa** ECJ - still the leading case on proportionality, involving the legality of the EU ban on beef hormone growth promoters

Transportation and Processing Agreements

- **EasyJet Airline Co Ltd v Civil Aviation Authority (Court of Appeal) [2009] EWCA Civ 1361**
  Acting for Gatwick Airport Limited in dismissal easyJet's appeal against the refusal of its claim for judicial review.
- **R. (on the application of London and South East Railway Ltd) v British Transport Police Authority Queen's Bench Division (Administrative Court), [2009] EWHC 1255 (Admin)**
  Acting for the claimants in a case concerning the basis on which TOCs pay for the expenses of the British Transport Police. It was successfully argued on behalf of the claimants that they had the right to be charged in accordance with express provisions as to payment contained in police services agreements between them and the BTPA.
- Acting for **Arriva Buses** in the High Court defending a claim of abuse of a dominant position.
- Advising on challenges and potential challenges to bus company mergers.
- Advising major automotive industry companies on contractual issues.

Online Gaming, IT and Telecommunications

- **British Telecommunications Plc v Office of Communications (Competition Appeal Tribunal) [2009] CAT 1**
- **Hutchison 3G UK Ltd v Office of Communications (Competition Appeal Tribunal) [2009] CAT 11**
  Acting for the CC in an appeal instigated by the two appellant mobile network operators in which the Competition Appeal Tribunal was required to determine challenges made by the intervening operators to a determination made by the CC following the referral of certain price control matters.
- Challenging EC Commission state aids decisions in the CFI for European telecommunications undertakings
- Successfully defending the Competition Commission's report on calls to mobile phones against a judicial review brought by T-Mobile, Vodafone and Orange.
- Clear v New Zealand Telecom in the Privy Council from New Zealand, the leading case on the principles to be used in interconnection and the application of the 'Baumol-Willig' rule.

Regulatory Regimes (inc. finance, telecommunications, utilities and transport)

- Ongoing Advisory role for the Water Industry Commission for Scotland.

- Advising Ofwat in relation to the 2009 and 2014 price reviews and in other related matters.
- Advising Ofwat in relation to supplier licence modifications.
- Overturning Ofgem's decision to introduce zonal transmission losses in electricity generation.
- Advising Ofgem in relation to licence modifications and 'innovation funding'.

General Advice Includes

Competition and financial services, aspects of auctions, internet bookmaking within the EU, commercial aspects of human rights, UK and US leniency programmes, newspaper and magazine distribution, home warranties, film distribution, on-course betting and many aspects of Hong Kong telecommunications law, from satellites to shared ducting.

What the Directories Say

"A good advocate who was able to make complicated issues simple for the judge and stick to his guns." (Legal 500 2027 - Energy)

"Thomas Sharpe KC is an accomplished competition law practitioner with significant experience on the regulatory side of energy work. He represents a range of clients, including utility companies, investment funds and regulatory bodies, providing both advocacy and non-contentious regulatory advice. He is particularly well regarded for his work in the water industry. Sharpe acts for significant market players from across Europe, including German and French clients." (Chambers UK 2026 - Energy & Natural Resources)

"He's able to take a very clear view on the most complex of matters." (Chambers UK 2024 - Energy & Natural Resources)

"Extremely clever and switched on, it is abundantly obvious that his wealth of experience allows him to provide succinct and practical advice." (Legal 500 2021 - Energy & Natural Resources)

"He is extremely good. He is very capable and his work is of a high standard." (Chambers UK 2022 - Energy & Natural Resources)

"He has got significant experience in energy regulations. He gets on top of everything extremely quickly and ahead of timeframes." (Chambers Global 2021 - Energy & Natural Resources)

"His knowledge of regulatory matters and appeals has been invaluable." "He is very smart, and second to none in a regulated sector." (Chambers Global 2021 - Competition)

"Very astute and switched on from the moment of instruction, he is a standout silk in this field." (Legal 500 2020 - Energy)

"Really hard-working and all over the details. He doesn't cut corners and is a super person to have on board when you're faced with big ticket and complex regulatory work." "He gets to the real essence of a point; he has a gentle manner but is able to identify the flaw in arguments and pursue those points zealously." (Chambers & Partners 2020 - Competition Law)

"He provides very strategic input and is a great team player with a tremendous rapport with clients." (Chambers & Partners 2020 - Energy & Natural Resources)

"Magisterial – a genuine heavyweight who commands instant respect and confidence from his clients." (Legal 500 2019 - Energy)

"He has an unparalleled experience of the interface between competition law and regulatory issues, and a sage-like knowledge of how regulators approach things." (Chambers & Partners 2018 - Competition Law)

'Tom has a formidable track record and is excellent at delivering what the client needs'. 'He's a really good egg who is very active in EU work and is calm and measured in court'. (Chambers & Partners 2017 - Energy & Natural Resources

'He continues to be one of a select group of supreme competition silks.' 'A very effective advocate who is hugely experienced. His name carries clout in itself and he is a first choice for Judicial Reviews.' (Chambers & Partners 2016 - Competition Law)

'..very impressive heavyweight' Thomas Sharpe KC has 'an excellent grasp of both law and economics" (Legal 500 2013)

"Thomas Sharpe KC comes highly recommended for his in-depth competition law expertise. He is described as "fantastic and hugely experienced," and clients "love the way he works". (Chambers & Partners 2012)

"Thomas Sharpe KC is 'first choice for competition issues'." (Legal 500 2011)

Other Experience

- Formerly, Fellow in Law, Nuffield College, Oxford, teaching mainly postgraduate Law and Economics students UK and EC competition law and regulation
- Sometime editor of Halsbury's Laws (state aids)
- Adviser to Secretary of State for Trade and Industry on aspects of telecommunications liberalisation and competition 1981-1983
- Executive Director, Institute for Fiscal Studies 1981-1987
- Special Consultant, National Economic Research Associates Inc. 1984-1987
- 'Of Counsel' Gibson Dunn & Crutcher, London and Los Angeles 1984-1987 (advising US companies on EC competition law and practice)
- Admitted to the Hong Kong Bar
- Pro Bono environmental work in the Caribbean
- Commission of Inquiry into government corruption in Nevis, (St Kitts and Nevis, Caribbean).
- Former Trustee, Musicians' Benevolent Fund, now Trustee Emeritus
- Member of the Council of the London Philharmonic Orchestra
- Trustee of Awards for Young Musicians
- Member of the editorial board of European Competition Journal and Concurrences.

Awards

2027 Chambers Top Ranked UK Bar

One Essex Court

Legal500 LEADING SILK 2027

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