

## Alan Bates

MA Law (Cambridge) First Class; LLM (Pennsylvania) Thouron scholar

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## Summary

Alan specialises in EU, competition and public law, with a strong emphasis on regulatory disputes. He also has a busy VAT practice, representing both taxpayers and HMRC.

Alan has a particular interest in State aid law, and is the co-author of the State aid chapter of *Bellamy & Child* (2008 edition).

He is a member of the Attorney General's C Panel

## Examples of Recent Court Work

- The *Construction Industry Collusive Bidding* and *Recruitment Agencies* appeals (Competition Appeal Tribunal, ongoing): Representing the OFT in these appeals, in which a total of 28 appellants are challenging the OFT's approach to setting penalties for infringements of the Chapter I prohibition.
- *Vtesse Networks* [2010] EWCA Civ 16: Successful defence of the method used for making rating valuations of underground fibre-optic cables, against a challenge under the EU Telecoms Directives and State aid law.
- *Independent Media Support v Ofcom* [2007] CAT 29, [2008] Comp AR 48; and [2008] CAT 13, [2008] Comp AR 161: Successful defence of regulator in proceedings concerning (a) the appealability of case closure decisions, and (b) the lawfulness of long term exclusive contracts to supply subtitling services to UK broadcasters.
- *R (Haynes) v Stafford BC* [2007] 1 WLR 1365: Judicial review of grant of licence for 'pet fair' involving sale of 13,000 exotic birds - lawfulness under EC Directives to prevent spread of avian flu.
- *Vodafone v Ofcom* [2008] CAT 22: Challenge to regulator's cost-benefit analysis for a change to call routing systems.
- *E.ON UK Plc v GEMA* CC02/07: The first ever appeal to the Competition Commission against an energy code modification decision.
- *R (Zoolife International Ltd) v Sec of State for Environment Food and Rural Affairs* [2007] EWHC 2995 (Admin), [2008] ACD 44: Challenge to appointment of zoo inspector on the basis of right to protection of trade secrets under ECHR Protocol I Art 1.
- *GlaxoSmithKline v HMRC* (ongoing): VAT liability of Lucozade Sport - whether a standard rated 'beverage'
- *T-Mobile v HMRC* [2008] BVC 2169, [2008] STI 1072: Representing HMRC in proceedings in which they succeeded in establishing that 'payment processing charges' made to customers that have not chosen to pay by Direct Debit are not exempt from VAT.

## Examples of Recent Advisory Work

Alan has advised in relation to **the compatibility of a wide range of commercial arrangements, agreements and practices with UK and EC competition law.**

In addition, his recent work has included advising:

- regulators in relation to **Competition Act investigations**, the resolution of **disputes between telecoms providers**, and the exercise of **consumer protection** powers;
- private sector clients, a central government department and regulators on **Freedom of Information Act** requests and **data protection** issues;
- local authorities and NHS trusts in relation to **procurement, State aid, TUPE** and **local government law** risks arising in connection with complex **reorganisations of public services** (including to new **third sector** providers);

- the OFT in relation to its decision whether to refer the grocery market to the **Competition Commission**;
- **airlines** and buyers of **ships and aircraft** on **VAT and duty** issues;
- a veterinary surgeon in **professional disciplinary proceedings** raising issues of **freedom of expression** and **human rights**; and
- a major campaigning organisation in relation to its **lobbying strategy** and **Parliamentary procedure**, including by preparing written submissions to a Commons Select Committee and drafting amendments to Parliamentary Bills.

## Experience Prior to Joining Chambers

Alan's experience prior to joining Chambers included carrying out a Human Rights Act audit of the English law of bail, teaching Public Law at King's College London, and serving as Judicial Assistant to the Senior Law Lord.

## Specialist Areas

### Competition Law

Alan is regularly instructed on behalf of both commercial enterprises and regulators to provide advice and/or representation in relation to matters of UK and EC competition law.

His considerable experience of proceedings before the Competition Appeal Tribunal includes the *Independent Media Support* case, which concerned the compatibility with Article 81 of long-term exclusive supply contracts in the broadcasting sector. He is currently instructed by the OFT in the *Construction Industry Collusive Bidding* and *Recruitment Agencies* appeals, in which 28 appellants are challenging the OFT's approach to setting penalties. He has also drafted submissions to the European General Court, and has been instructed in relation to private damages claims.

Alan also advises both businesses and regulators in connection with ongoing Competition Act investigations. His experience of assisting UK regulators both in carrying out investigations and in drafting their decisions provides him with the insight to help each business client (whether a complainant or an investigated undertaking) make the right strategic choices.

Clients also value his user-friendly and practical approach to providing advice to businesses and their lawyers on current or proposed commercial arrangements. He has advised businesses and trade associations in relation to the compatibility of a wide range of horizontal and vertical agreements and trade practices with UK and EC competition law. He is always happy to provide cost-effective advice by telephone so as to indicate the likely degree of risk presented by the commercial arrangement in question, and to identify whether more detailed analysis is needed.

Alan is a contributor to *Bellamy & Child's European Law of Competition* (2008) and has also written for the *Competition Law Journal*. He co-ordinates the competition law network of Advocates for International Development, and has advised the Government of Malaysia on the drafting of its new competition and consumer protection legislation.

### European Union Law

Alan frequently advises on matters involving complex points of European Union law, including in the contexts of environmental protection, free movement, public procurement, State aid, fundamental rights, employment, TUPE and VAT. He is particularly interested in the potential for Community law to be relied upon before the English courts to protect fundamental rights in situations where reliance on the Human Rights Act alone would not provide an adequate remedy.

Alan was instructed in *Vtesse Networks* [2010] EWCA Civ 16, one of the very few cases in which the Court of Appeal has had to grapple with principles of State aid law and the competition-related provisions of the EU Telecoms Directives.

Alan is also a member of the editorial board of *European Advocate*.

## Human Rights and Freedom of Information

Alan has an easy familiarity with the Human Rights Act and the case-law of the European Court of Human Rights, as well as with the case-law of the European Court of Justice in relation to the fundamental rights arising under EU law. From 2000-2001 he worked on the Law Commission's audit of the compatibility of the English law of bail with the European Convention on Human Rights, and contributed to the bail guidance that was subsequently issued to judges by the Judicial Studies Board.

His experience in the growing area of Information Rights has included advising both regulators and private sector clients on Freedom of Information Act requests and data protection issues. He also has significant experience of litigation in the First-tier Tribunal (Information Rights) including the recent *Crown Prosecution Service* and *People for the Ethical Treatment of Animals* cases.

## Procurement and State Aid Law

Alan has advised both bidders and contracting authorities concerning the application of the EC procurement regime, including in the context of major reorganisations of public services provision raising multiple points of procurement, State aid, TUPE, local government and public law. He has a particular interest in the often complex combination of State aid, procurement and competition law issues arising from 'externalisations' of public services to 'third sector' providers.

The breadth and depth of his knowledge of State aid law is illustrated by his having co-authored the State aid chapter of *Bellamy & Child's European Law of Competition* (2008), and he has provided advice about numerous State aid schemes to clients who have included aid distributors, aid recipients and potential complainants about unlawful aid. He has also contributed to the *European State Aid Law Quarterly*.

## Public Law and Regulation

Alan combines his thorough knowledge of public law with a pragmatic and client-focused approach. He has a particularly strong interest in challenges to regulators, and has been instructed by, or in relation to decisions of, all of the main UK competition and utilities regulators, including OFWAT, OFCOM, OFGEM and the OFT. Recent court work has included *Vodafone*, a technically complex case in the Competition Appeal Tribunal which concerned the reliability of OFCOM's cost-benefit analysis underlying a decision to mandate changes to inter-network arrangements for the routing of phone calls. He is currently instructed for OFCOM in the *Carphone Warehouse* appeal, in which price control questions are being determined by the Competition Commission.

Alan has also appeared in the Administrative Court in a number of notable cases outside the competition/regulation context, including *R (Haynes) v Stafford Borough Council* which led to the selling of exotic pets at large 'pet fairs' being declared illegal (a result for which animal welfare organisations had long campaigned), and to the Government making changes to primary legislation.

In addition, he has advised campaigning organisations on Parliamentary procedure and the legal aspects of their lobbying strategies, and has drafted submissions to Parliamentary select and standing committees. He recognises that judicial review proceedings are often only part of a client's wider political or commercial strategy, and is therefore keen to work with clients to develop a multi-pronged approach that is best adapted to achieve their objectives.

Alan is a member of the committee of the Administrative Law Bar Association (ALBA).

## VAT and Customs Duties

Alan has a busy VAT practice which benefits from its synergies with his other practice areas. He regularly appears in the VAT and Duties Tribunal representing taxpayers and HMRC, and was instructed in many of the recent judicial review applications concerning HMRC's 'extended verifications' of input tax claims suspected of being linked to high value missing trader frauds.

His VAT work within the past year has included appeals raising issues as to the scope of the food, education and financial services exemptions, and he recently represented HMRC in the VAT Tribunal in the *T-Mobile* case which

concerned the VAT liability of 'payment processing charges' made to customers who do not choose to settle their bills by Direct Debit (the case is now on appeal to the High Court, which has referred questions to the ECJ).

Alan also has experience of advising on proposed VAT and duty saving schemes (including in relation to ships and aircraft) and of drafting submissions to the ECJ. He is currently representing HMRC in an appeal concerning whether Lucozade Sport is a standard rated 'beverage' or is exempt from VAT. He is a case-note contributor to *De Voil Indirect Tax Intelligence*.

### **Additional Information**

Alan read Law at Christ's College, Cambridge, graduating with first class honours. He was awarded the University's Clive Parry Prize for Public International Law, the De Hart Prize for Public Law (re-awarded twice) and was a scholar of his college. He was subsequently awarded a Thouron scholarship to study at the University of Pennsylvania (where he obtained an LL.M. degree in 2002) and a Middle Temple Queen Mother scholarship for his year at Bar School. He subsequently interned with an organisation in India that was conducting DFID-funded research on the enactment and enforcement of competition law in developing countries.

For the judicial year 2004-05, Alan was Judicial Assistant to the then Senior Law Lord, Lord Bingham. More recently, Alan was awarded a Pegasus scholarship which enabled him to spend an extended period working on competition and regulatory disputes at leading New Zealand law firm Chapman Tripp.

He is a strong believer in the need for the Bar to be modern, meritocratic, user-friendly and diverse, while staying true to its ethics and values, and he seeks to further that belief through his membership of the Bar Standards Board's Education and Training Committee.

Outside work, Alan's interests include independent travel and learning to play the violin. He is a governor of Barrow Hill Junior School and a trustee of Freightliners City Farm.