

## Sir Nicholas Forwood KC

YEAR OF CALL: 1970 YEAR OF SILK: 1987

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### Practice Overview

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Sir Nicholas Forwood was called to the English bar in 1970. After eight years practice in London, he moved to Brussels in 1979 to set up a new chambers of barristers specialising in EC and competition law. Over the next 20 years he practised extensively in this field, before both the Court of Justice and the Court of First Instance (now the General Court of the EU) where he pleaded regularly both for corporate and individual clients as well as for the Community institutions. Also called to the Irish bar in 1981, and made Queen's Counsel in 1987, he was appointed to the CJEU as a judge of the General Court in December 1999.

Over 16 years as a Judge of the General Court, Sir Nicholas took part in many of the Court's leading judgments, dealing with more than 1500 cases, 464 of which were as "juge rapporteur". In the competition field, these included the trio of judgments in 2002 ( *Airtours*, *Tetra-Laval* and *Schneider*) that led to a fundamental restructuring of the Commission's merger task force, the review of the Commission's *GE/Honeywell* merger decision, the *Microsoft (2007)* and *Microsoft (2012)* cases on abuse of dominant position, in the latter as reporting judge, as well as numerous cartel cases including *JFE Engineering*. In other fields, he was reporting judge in the earliest judgments concerning judicial review of restrictive measures against suspected terrorists and organisations (*PMOI*, *Kadi*), in several leading judgments on state aids and in relation to EU IP law (trade marks, designs, plant variety rights), and the *FIFA/UEFA* cases on the broadcasting rights for the World Cup and European Cup.

Sir Nicholas Forwood has an advisory practice and also accepts appointments as arbitrator in a wide range of Commercial, Competition and IP disputes.

Sir Nicholas also practises as a Senior/Special EU and Competition Consultant to White & Case Brussels LLP, where he focuses on providing high-level advice and oversight exclusively in the fields of EU and Competition law, for specific clients of the firm and on specific matters.

# Competition

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The cases he has pleaded as counsel before the European Courts covered many areas. In the field of competition, they included cartels, particularly those with extra-territorial reach ( *Woodpulp*, *PVC*, *Soda Ash*, *Cement*, *LdPE* and *John Deere* ), abuses of dominant position, in particular cases involving intellectual and industrial property and advanced technology ( *IBM*, *Racal/Decca*, *Hilti* and *Tetrapak* ), resale price maintenance ( *Publishers Association ("Net Books")* ), and maritime transport and shipping conferences ( *B&I/Sealink*, *Compagnie Generale Maritime ("FEFC")*, *Atlantic Container Line ("TACA")* and *Compagnia di Navigazione Marittima ("SUNAG")* ), as well as mergers and concentrations ( *Zunis Holding*, *Pynnönnen* ), coal and steel undertakings ( *Hopkins*, *NALOO* ) and state aids ( *Assurances du Credit*, *British Cement Assn* ).

Other areas of experience included anti-dumping and other trade-protection measures, common agricultural policy and environmental cases. He also acted as counsel in a number of staff cases, both for the Community institutions, and for Community servants.

He was also involved in leading cases in the national and European courts on the constitutional aspects of EU law ( *Factortame* ), and on the EU rules on judgments and jurisdiction ( *Union Transport v. Continental Lines (HL)*; *Von Horn v. Cinnamond (HL, ECJ)* ). Before becoming a judge, he also sat as an arbitrator in cases involving EU law, and has acted as an expert witness on EC law in cases before other courts, particularly in non-European jurisdictions (Hong Kong and USA).

As a member, then Chairman of the CCBE's Permanent Delegation to the European Court of Justice, he was actively involved in consultations between the European Bars and the European Courts in Luxembourg on issues relating to the Courts' Statutes and Rules of Procedure.

## Reported Cases

### ECJ

Case 60/81 *IBM v. Commission*

EC Competition ■ Article 86 ■ abuse of dominant position ■ market definition ■ refusal to supply interface information ■ bundling ■ right to challenge procedural acts

Case 89/85 *Ahlstrom & Ors v. Commission*

EC Competition ■ cartel ■ "woodpulp" ■ extraterritorial jurisdiction of EC ■ economic evidence as proof of cartel

Case C-53/92P *Hilti v. Commission*

EC Competition ■ Article 86 ■ definition of relevant market ■ assessment of economic arguments and evidence ■ market survey evidence ■ abuse of dominant position ■ fixings ■ refusal to supply ■

tying

Case C-360/92P *Publishers Association v. Commission* (and in CFI)

EC Competition ■ Article 85 ■ resale price fixing for books ■ "Net Book Agreement" ■ refusal of exemption ■ relevance of national court judgment ■ lack of reasoning by EC Commission

Case C-480/93P *Zunis Holding v. Commission*

EC Competition ■ merger ■ rights of shareholders as complainants ■ complaint after approval of merger ■ power of EC Commission to reopen ■ admissibility

Case C-333/94P *Tetrapak v. Commission* (and in CFI as Case T-83/91)

EC Competition ■ Article 86 ■ definition of relevant product and geographic markets ■ assessment of economic power ■ abuse of dominant position ■ predatory pricing ■ discriminatory pricing ■ abuse on related markets to that dominated

Case C-18/94 *Hopkins v. National Power & Ors*

ECSC competition ■ Article 63 ■ discriminatory purchasing ■ rights of sellers

Case C-339/95 *Compagnia Naviera v. Compagnie Maritime Belge & Ors*

EC Competition ■ maritime transport ■ shipping conferences ■ application of Article 85 to arbitration awards

Case C-7/95P *John Deere v. Commission*

EC Competition ■ agricultural tractors ■ information exchange

Case C-428/98P *Deutsche Post v. Commission*

EC Competition ■ postal services ■ remail ■ complaints ■ Articles 85 and 86 ■ refusal to supply ■ justifiable reasons for refusal ■ relevance of national postal monopoly

Cases C-449&450/98P *IECC v. Commission*

EC Competition – courier services – appeal from judgment of CFI

## **CFI**

Case T-30/89 *Hilti v. Commission*

EC Competition ■ Article 86 ■ definition of relevant market ■ assessment of economic arguments and evidence ■ relevance of market surveys ■ abuse of dominant position ■ fixings ■ refusal to supply ■ tying

Case T-79/89 *ICI and Shell v. Commission*

EC Competition ■ Article 85 ■ PVC cartel ■ concept of concerted practice - evidence ■ access to file ■ formalities of decision

Case T-36/91 and 37/91 *ICI v. Commission*

EC Competition ■ Article 85 ■ soda ash ■ cartel ■ mutual withdrawal from markets ■ pricing ■ access to file ■ irregular authentication ■ Article 86 - abuse - rebates and discounts ■ rights of defence ■ access to file

Case T-448/93 *British Cement Assn, Blue Circle & Ors v. Commission*

EC Competition ■ state aids ■ Greek export subsidies ■ operating and investment aid ■ procedural rights of complainants ■ access to file

Case T-328/94 *ICI v. Commission*

EC Competition ■ plastics (PVC) ■ cartel ■ rights of defence

Case T-28, 110, 133 and 204/95 *IECC v. Commission*

EC Competition ■ postal services ■ remail ■ complaints ■ Articles 85 and 86 - refusal to supply

Case T-56/95 *Castle Cement v. Commission*

EC competition ■ cement ■ cartel ■ rights of defence ■ liability of successor undertaking

Cases T-70&71/95 *Aker and Euroc v. Commission*

EC competition ■ cement ■ cartel ■ extraterritorial effect of EU competition law

Case T-395/94 *Atlantic Container v. Commission* (Japanese Shipowners Assn intervening)

EC competition ■ maritime transport ■ shipping conferences

Case T-86/95 *Compagnie Generale Maritime v. Commission*

EC competition ■ maritime transport ■ conferences ■ through intermodal transport

Case C-339/95 *Compagnia di navigazione marittima*

EC competition ■ maritime transport ■ conferences ■ through intermodal transport – arbitral award – enforceability if incompatible with EU competition law

Case T - 285/97 *Pynönen v Commission*

EC competition ■ mergers ■ banking ■ rights of complainant

Case T-89/98 *NALOO v. Commission* (National Power intervening)

ECSC competition ■ discriminatory pricing of coal purchases ■ complaint - damages for infringements ■ obligation on Commission to decide on complaint

Case T-162/98 *SMSWA v. Commission* (National Power intervening)

ECSC competition ■ discriminatory pricing of coal purchases ■ rejection of complaint

Case T-213/98 *NYK v. Commission*

EC competition – maritime transport – Art 86 – joint dominance

Case T-132/97 *Collins v. Committee of the Regions* – staff case

## Qualifications and Further Information

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Qualifications & Education

St. John's College, Cambridge (1966–1969)

BA Mechanical Sciences (Part 1 – 1st Class Hons, Part 2 Law – 2nd Class Hons)

MA (1973)

Barrister, Middle Temple 1970 (Bencher 1998)

Queen's Counsel 1987; Bar of Ireland 1982

Practice in London (1971–1999) and Brussels (1979–1999)

Other appointments

Law Advisory Committee, British Council (1987–1993)

Chairman, Permanent Delegation of the CCBE to the

Court of Justice of the European Communities (1994–99)

Founding Council Member, European Maritime Law Organization (1991– )

Governing Board Member, World Trade Law Association (1996–2004)

Vice-President, UK Association of European Law (2007 – )