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## **Matthew O'Regan**

**Call** 2015

**Qualifications** LLB (Hons.) (Nottingham) first class, LLM (Amsterdam), Diploma in Legal Practice (Nottingham Trent), admitted as a Solicitor 1997, Solicitor-Advocate Higher Courts Civil Proceedings 2014

**Professional Memberships** The Honourable Society of the Middle Temple, Member of the Brussels Bar (E-list) 2001 – 2011, UK State Aid Law Association, Competition Law Association, Law Society Competition Section

**Awards** University of Nottingham Exhibition 1991, Reuben C Lipman Scholarship 1992

### **Practice Overview**

Matthew, a former Solicitor, is a specialist competition and regulatory lawyer. He was Called to the Bar and joined St John's Chambers in 2015, having previously been a Partner in the Competition Group of Burges Salmon LLP. He has a strong international perspective, having practised for over a decade in the Brussels office of Freshfields Bruckhaus Deringer LLP.

Matthew has a broad-based practice, with extensive experience in all aspects of competition law, EU law, State aid, public procurement and economic regulation, including competition disputes, regulatory investigations, transactional matters and advisory work. He combines his technical expertise and experience to provide pragmatic, commercially-focused and solution-oriented strategic advice and representation.

Matthew acts as an advocate in competition-related proceedings (including disputes, appeals and judicial reviews) in the UK and EU courts. He also represents and advises clients in all types of competition and regulatory investigations including in cartel, dominance and other investigations by the Competition and Markets Authority, other UK regulatory authorities and the European Commission. He also advises clients on UK, EU and international merger control proceedings; the application of the State aid and procurement rules; and the application of competition law to a wide range of transactions, commercial agreements and business practices.

He has broad sector experience, advising clients from numerous sectors, including: oil and gas, energy, nuclear, transport, airports and aviation, aerospace and defence, chemicals, telecommunications and media, financial services, consumer and sports goods, food and drink, aluminium, mining and natural resources, packaging, sport, private equity and retail and wholesale distribution.

Matthew accepts instructions from solicitors, overseas lawyers and in-house legal departments on all types of matters. He also assists solicitors firms, whether by providing an additional resource to those with established competition practices or by assisting those firms without their own competition law capability.

Matthew is qualified to undertake public access work in appropriate cases, for further information, please visit our Public Access page.

Matthew speaks frequently at seminars and conferences and also writes widely on all aspects of competition and regulatory law. He is also an Editor of the Competition Law Journal (published by Jordans) and contributor to the [Kluwer Competition Law Blog](#).



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## Areas of Law

### Competition disputes

Building upon his practice as a Solicitor, Matthew is a skilled competition litigator, undertaking work in the English and EU courts. He advises and represents clients on all types of competition disputes, including appeals in cartel and State aid cases, judicial reviews, follow-on damages actions and standalone disputes raising competition issues. He also has experience of international competition disputes, including multi-jurisdictional cartel litigation and the competition aspects of international arbitrations.

His recent work includes:

- Advising Co-operative Group on Competition Appeal Tribunal and judicial review proceedings against the Office of Fair Trading to recover the penalty imposed on Somerfield in *Tobacco* (subsequently reported as *Somerfield v Office of Fair Trading* [2014] EWCA Civ 400 and *Somerfield v Competition and Markets Authority* [2015] EWHC 82 (Admin) respectively).
- Advising a major oil refiner on threatened proceedings for the abuse of a dominant position in relation to third party access to terminal facilities operated by it (no proceedings issued).
- Case C-455/11P *Solvay v European Commission* [2013] on appeal from Case T-186/06 *Solvay v European Commission* [2011] ECR II-2839 - representing Solvay in its General Court appeal from the Commission's *Hydrogen Peroxide* cartel decision, obtaining a fine reduction of € 28 million, and in a further appeal to the Court of Justice, appearing as an advocate before both courts (concept of concerted practice, duration of infringement, application of 2002 Leniency Notice).
- Case C-224/12P *European Commission v The Netherlands and ING Groep* [2014] on appeal from Cases T-29 and 33/10 *The Netherlands and ING Groep v European Commission* [2012] - representing ING in its successful General Court challenge to terms imposed by the European Commission in approving state financial support during the financial crisis and in successfully defending the Commission's appeal to the Court of Justice, including appearing as an advocate before both courts (market economy investor principle, concept of commitments and Commission power to impose obligations).
- Case T-59/06 *Law & Bonar v European Commission* [2011] ECR II-397 - representing Low & Bonar, including appearing as an advocate, in its successful General Court appeal in *Industrial Bags*, securing a 25% reduction in fine.
- Case T-75/10 *Embraer v European Commission* - advising Bombardier Aerospace as an intervener in a competitor's General Court challenge (abandoned after close of written pleadings) to State aid approval of UK investment in its C Series programme.
- advising on aspects of appeals against the European Commission's cartel decisions in *Paraffin Waxes* and *Netherlands Bitumen*.
- Advising a multinational chemical manufacturer on arbitration proceedings concerning warranties and representations relating to compliance with competition law.

### Competition Investigations

Matthew has considerable experience in advising and representing companies subject to competition investigations by the Competition and Markets Authority ("CMA"), other UK authorities with powers to enforce the Competition Act 1998 ("CA98") and the European Commission ("EC") under Articles 101, 102 and 106 TFEU. He also advises complainants and third parties.

His experience covers all aspects of an investigation, including: applications for immunity and leniency; attendance at dawn raids; responding to requests for information and the production of documents; responding



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to statements of objections; representing clients in oral hearings; and closing cases through early resolution, settlement and commitment proceedings.

Matthew also advises and represents clients which are involved in CMA calls for information, market studies and market investigations under the markets provisions of the Enterprise Act 2002.

His recent work includes:

- *Distribution of road fuels in the Western Isles* - advising a third party on the OFT's CA98 Chapter II investigation.
- *Private Motor Insurance* – representing a leading insurer in CMA market investigation.
- *Road Fuels* – representing a leading refiner in OFT call for evidence.
- *Airports* – advising the Competition Commission on the implementation of remedies requiring the divestment of Gatwick, Stansted and Edinburgh airports following its market investigation.
- *Réel/Alcan* – defending Rio Tinto Alcan in a long-running EC abuse of dominance investigation into its licensing of aluminium smelter technology, which was successfully concluded by negotiating commitments.
- *Hydrogen peroxide cartel* – representing a global chemicals manufacturer in EC investigation, including a successful application for leniency.
- Attendance at dawn raids conducted by the EC and subsequent related advice.

## **Commercial agreements and practices and compliance**

Matthew has broad experience of advising clients from a broad range of industries on ensuring that their agreements and commercial practices comply with the Competition Act 1998 and Articles 101 and 102 TFEU. He advises on the application of “block exemptions”, where available, including for vertical agreements, motor vehicle distribution, research and development and technology transfer.

He advises on the application of competition law to a wide range of agreements, including distribution, agency, franchising, supply, IP licensing, R&D and joint selling agreements. He also advises on pricing and marketing strategies, including online marketing and resale price maintenance. Where appropriate, he can assist with the drafting of these agreements and their termination.

Matthew also advises companies which are or may be dominant, as well as those who deal with them, on a wide range of commercial strategies, including pricing, discounts and rebates, refusal to supply and access to infrastructure and facilities.

Matthew also advises companies on how to ensure that they, and their employees, comply with competition law. He assists clients with compliance programmes and the provision of training.

## **Merger Control**

Matthew has considerable expertise in and experience of UK, EU and international merger control. This includes Phase II reviews, numerous cases requiring remedies and many cases that have required clearances in several jurisdictions worldwide. He has a thorough understanding of the application of competition economics in merger cases.

Matthew advises on the jurisdictional aspects of merger control, including the reallocation of jurisdiction between the European Commission (“EC”) and national competition authorities under the EU Merger Regulation.



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Matthew is experienced in drafting merger notifications (including in complex mergers raising competition issues in multiple markets), making oral and written submissions to competition authorities, drafting responses to decisions to open Phase II investigations and statements of objections, and drafting and negotiating commitments and remedies (both structural and behavioural). He has also negotiated and drafted national security undertakings under the Enterprise Act 2002.

Matthew's experience includes:

- *Beijer Ref/HRP Holdings* – unconditional Phase I clearance by CMA (air-conditioning and refrigeration wholesaling) (advising purchaser)
- *HIG Capital/Petrochem Carless* – unconditional EC Phase I clearance (specialty fuels) (acting for selling shareholders).
- *Arla/Milk Link* – conditional EC Phase I clearance in £2 bn merger of dairy cooperatives, including negotiation of remedies (milk sector) (acting for Milk Link).
- *Arla/Milk Link* – acting for Crediton Dairy in obtaining EC approval to acquire a business Arla was required to divest to obtain EC merger approval.
- *Vodafone/O2/EE* – acting for third party in Phase II investigation of mobile payments joint venture (telecoms, financial services).
- *Com Hem/Canal Digital Kabel* – Phase II investigation by Swedish Competition Authority (telecoms) (acting for Com Hem).
- *Deutsche Bahn/Arriva* – conditional EC Phase I approval for £1.5 bn public bid, including negotiation and implementation of remedies (rail and bus) (acting for Deutsche Bahn).
- *Amcor/Alcan Packaging* – conditional EC Phase I approval for \$2 bn sale of Alcan Packaging, including negotiation of remedies (packaging) (acting for vendor, Rio Tinto Alcan).
- *Dow Chemical/Rohm and Haas* – unconditional EC Phase I clearance in \$18 bn global merger raising issues in multiple markets (chemicals) (acting for Rohm and Haas).
- *Statoil Hydro/JET Scandinavia* – conditional EC Phase II approval for sale of service stations, including negotiation of remedies (motor fuel retailing) (acting for vendor, ConocoPhillips).
- *SABIC/GE Plastics* – unconditional EC Phase I clearance for \$11 bn sale of GE Plastics (plastics, speciality chemicals) (acting for vendor, GE).
- *Toshiba/Westinghouse* – conditional EC Phase I clearance for £5 bn sale of Westinghouse, including negotiation of remedies (nuclear technology) (acting for vendor, British Nuclear Fuels).
- *Sasol/Engen* – complex proposed merger, including lengthy contested proceedings before the South African Competition Tribunal (petroleum refining, motor fuel retailing) (acting for merging parties).
- *General Dynamics/Alvis EC* – unconditional EC Phase I clearance and negotiation of national security undertakings with Ministry of Defence and OFT (defence equipment) (acting for General Dynamics).
- *Alcan/Pechiney* – conditional EC Phase I clearance for \$4.5bn unsolicited bid, including negotiation of both divestment and licensing remedies (aluminium, packaging) (acting for Alcan).

Matthew also advises clients on entering into strategic alliances and other joint ventures that do not require merger approval, but may raise issues under EU or national competition law. This includes advising on their structure, governance and operating arrangements, and drafting transactional documentation. His experience includes transactions in the oil and gas, chemicals and aerospace sectors.

### State Aid

Matthew has substantial experience of the EU State aid rules, including in relation to applications for EU structural funding under the ERDF and European Social Fund and national programmes such as the Regional Growth Fund. His clients include public authorities, state-owned companies and private sector clients (including companies and charities), whether recipients of aid, their investors or financiers or their competitors.



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His experience includes advising on public grants and subsidies, public funding for infrastructure projects, public investment (including repayable launch investment), debt relief and forgiveness, and public support for the rescue and restructuring of companies in financial difficulty.

His expertise covers all stages of State aid matters, including: advising on whether a measure constitutes aid and, if so, whether a block exemption applies; advising on structuring measures so as to avoid the requirement to make a notification to the European Commission ("EC"); where notification is required, drafting notification to the EC; drafting complaints to the EC in respect of non-notified aid; advising on EC investigations, whether following notification or a complaint; negotiating commitments with the EC in order to obtain approval; and appeals to the EU General Court and Court of Justice.

His experience includes:

- Advising higher and further education institutions on ERDF and Regional Growth Fund funding for a variety of projects that will provide education and training to local businesses
- Advising charities in the South West on obtaining funding under the Coastal Communities Fund, the National Heritage Memorial Fund and other funding schemes.
- Advising local authorities on funding a variety of projects, including energy centres and district heating networks, under the Regional Growth Fund and through prudential borrowing
- Advising a leading provider of social housing on public funding for an innovative 'rent to buy' scheme, which raised issues under the EU's rules for 'services of general economic interest'
- representing ING in its successful General Court challenge to terms imposed by the EC in approving state financial support during the financial crisis and in successfully defending the EC's appeal to the Court of Justice, including appearing as an advocate before both courts - Case C-224/12P *European Commission v The Netherlands and ING Groep* [2014] on appeal from Cases T-29 and 33/10 *The Netherlands and ING Groep v European Commission* [2012].
- representing Bombardier Aerospace in successfully obtaining unconditional Phase I clearance for UK launch investment in its CSeries programme.
- subsequently representing Bombardier Aerospace as an intervener in a competitor's General Court challenge to that approval - Case T-75/10 *Embraer v European Commission*.
- advising British Nuclear Fuels on the EC's in-depth investigation into the formation of the Nuclear Decommissioning Authority.
- advising BNFL on the restructuring of British Energy, including the EC's in-depth investigation, which found that BNFL's renegotiation of contracts with BE did not include State aid.

### EU structural funds

Matthew advises companies on the State aid and procurement aspects of funding provided by the European Regional Development Fund and other EU structural funds. This includes advising on ensuring that funding is compatible with the State aid rules and that beneficiaries of funding comply with their procurement obligations. He also advises beneficiaries in connection with Department for Communities and Local Government investigations into suspected irregularities which might lead to the claw-back of some or even all funding received.

### Economic Regulation

Matthew has broad experience of advising clients in a wide range of regulated sectors, including rail, gas, electricity, water, civil aviation, telecommunications and broadcasting. This covers a range of matters, including; compliance with licence conditions; modification of licences following a merger, acquisition or financial restructuring; price controls and their periodic review; access to regulated infrastructure, including access charges; and regulatory investigations.



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Matthew is the General Editor (with Laurent Garzaniti) of *Garzaniti, Telecommunications, Broadcasting and the Internet, EU Competition Law & Regulation* and an author of the market conduct and mergers chapters (third edition, 2010) and also the author of the EU section of the *American Bar Association Telecom Antitrust Handbook* (second edition, 2013).

## Procurement

Matthew advises both public and private sector clients on the application of UK and EU procurement law, including the Public Contracts Regulations 2015, the Utilities Procurement Regulations 2016 and the 2014 EU Procurement Directives. He advises on when these regulations apply and on structuring projects, bids and contract awards so as to comply with their requirements. He also advises on procurement disputes arising from the award of contracts.

## EU Law

In addition to competition, State aid, procurement and sector-specific regulation, Matthew advises clients on all other aspects of EU law, in particular the "four freedoms" (free movement of goods, services and people and freedom of establishment), as well as the free movement of capital.

## Cases

- *Solvay v European Commission* C-455/11P *Solvay v European Commission* EU:C:2013:796 on appeal from Case T-186/06 *Solvay v European Commission* EU:T:2011:276 - represented multinational chemical manufacturer Solvay in its EU court appeal against a decision by the European Commission to fine it € 167 million for involvement in a cartel between European hydrogen peroxide manufacturers.
- *Low & Bonar v European Commission* Case T-59/06 *Low & Bonar plc v European Commission* EU:T:2011:669 - successfully represented Low & Bonar in challenging a fine imposed on it for a subsidiary's involvement in a cartel between European manufacturers of industrial bags.
- *The Netherlands and ING v European Commission* C-224/12P *European Commission v The Netherlands and ING Groep* EU:C:2014:213 on appeal from Cases T-29 and 33/10 *The Netherlands and ING Groep v European Commission* EU:T:2012:98 - assisted ING in successfully challenging this finding in an appeal to the General Court that raised complex issues on the application of the 'market economy investor' principle to amendments to capital injections that themselves constitute aid and on the Commission's ability to impose restructuring obligations when approving State aid measures.
- *Embraer v European Commission* T-75/10 *Embraer v European Commission* - assisted Bombardier in obtaining this approval. He also represented Bombardier as an intervener in a legal challenge brought by a competitor, the Brazilian manufacturer Embraer, including drafting Bombardier's written observations to the General Court.

## Recommendations

As a Solicitor, Matthew was recognised as a leading practitioner by all leading directories, including *Legal 500*, *Chambers* and *International Who's Who of Competition Lawyers and Economists* (in whose 2014 edition, he was the only English competition lawyer listed who practised outside of London).

- "He is very responsive and practical and can deal with things calmly. He is also very good at talking to clients." **Chambers UK, Competition Law (2018)**
- "Matthew advises on a wide range of contentious and non-contentious competition law cases. 'He is quickly able to digest large amounts of information relating to very complex matters. His past experience



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as a solicitor means he is very pragmatic and proactive in his approach to advising clients.' " **Chambers UK, Competition Law (2017)**

- "Matthew is an intelligent individual with an incredible memory and excellent in court." **Chambers UK (2014)**
- "Impressive experience in handling transactions and competition investigations, both in the UK and at the European level." **Chambers UK (2014)**
- "A very experienced lawyer with a good grasp of Brussels cases." **Legal 500 UK (2014)**
- "A very good lawyer who looks for solutions." **Legal 500 UK (2014)**
- "Matthew is extremely precise and thorough, and is able to manage and assimilate a lot of data." **Chambers UK (2015)**

### Background

Matthew qualified as a Solicitor in 1997 with Herbert Smith, having trained with the firm. He joined Freshfields Bruckhaus Deringer in 2000 and worked in the firm's Brussels office between 2001 and 2011 (where he was Counsel from 2006 to 2011), before joining Burges Salmon as a partner in January 2012. Prior to his transfer to the Bar, Matthew qualified as a Solicitor-Advocate.

As a Solicitor, he advised a broad range of clients, from major Fortune 500, FTSE 100/350, privately-held and state-owned companies and small and medium-sized enterprises, to governments, the public sector and charities and other voluntary organisations. As well as representing these clients before the UK and EU competition authorities and courts, he often frequently advised on the application of the competition laws of numerous countries worldwide and represented them before a number of such authorities.

### Contact details

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