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# The CAT at 10

## Successes, challenges and the future

by **Phoebe Love** and **Adam Polonsky**

While outwardly its successes have been less extensive than some anticipated, the Competition Appeal Tribunal (CAT) has in fact achieved much in its first decade, notwithstanding it has faced procedural, institutional and market-wide headwinds. Those headwinds will continue to shape the next phase of the CAT's development and what that will look like. This article considers what the CAT has achieved, where the pressure points lie, and the reforms that would strengthen the system.

### Early success

The CAT serves as a robust gatekeeper. Through its operation of a certification stage for opt-out collective proceedings, it is able to filter prospective actions through scrutiny of class representation, expert methodology and funding adequacy, while avoiding US-style excesses. English law safeguards remain intact, ensuring damages are compensatory rather than punitive. Similarly, its mixed panels of judges and economists have, on the whole, produced balanced decisions that are technically literate and widely respected.

Following the Supreme Court's guiding hand in *Merricks*, certification has moved from early caution to progressively clearer expectations.[1] The CAT has been willing to approve claims where a proposed methodology is able to address issues arising at a common level and just as willing to refuse to certify claims where it considers agency or governance falls short. While cautionary lessons, cases such as *Riefa* are extremely helpful and clearly identify that class representative cannot merely be figureheads.[2] Independence, robust governance and a demonstrable understanding of the litigation arrangements are now baseline requirements.

The CAT has also developed a principled approach to approving collective settlements. The "just and reasonable" test is applied by reference to class members alone. Funding and stakeholder returns are supervised to ensure commercial bargains do not disproportionately dilute class outcomes and the Tribunal expects realistic, evidence-based plans for distribution that address administrative costs, communication strategies and the feasibility of making payments. If the regime is to deliver meaningful benefit, it is only right that detailed thought is given to these fundamental questions from the outset. This combination of firm oversight with clear expectations has improved the credibility of outcomes and the transparency of decision-making.

Contrary to suggestions of an explosion in litigation, filings have fallen sharply – from 17 in 2023 to just four [to verify] in 2025. Over its first decade, the Tribunal has case-managed around 44 distinct matters, roughly one new matter every 12 weeks. The evidence points to under-utilisation driven by uncertainty, not overload. In the meantime, the CAT has coped with a complex docket while building procedural tools such as umbrella proceedings in *Interchange* and "waves" in *Trucks*—that, with refinement, ought to deliver efficiency gains.

In *Kent* v *Apple*, the Tribunal delivered the first major "Big Tech" win for a class representative, finding that Apple abused its dominance in iOS app distribution and in-app payments.[3] The CAT held that Apple's commissions of up to 30 per cent were excessive and unfair and, to some extent, were passed on to consumers through higher prices. It also found exclusionary conduct that reserved key distribution and payment functions to Apple, foreclosed rivals and enabled those higher commissions to persist. The judgment suggests that around 36 million UK consumers could be entitled to roughly £1.5 billion. *Kent* provides proof of concept that opt-out proceedings can succeed on the merits and, given Apple's transaction data, may allow for practical, data-driven distribution.

### Practice Direction 3/2025: codifying how expert evidence works in collective proceedings

A notable advance in late 2025 is the CAT's Practice Direction on Expert Evidence.[4] It aligns the Tribunal's expectations with the Civil Procedure Rules and codifies how experts should work in collective proceedings. An expert's overarching duty is to assist the Tribunal with independent,

unbiased opinions, never assuming the role of advocate. The Practice Direction also sets practical safeguards that, if applied consistently, ought to improve the quality of evidence, while simultaneously reducing cost and delay.

Parties are expected to identify their experts early, state the field of expertise, and provide methodology statements mapped to pleaded issues. Where interests align, the Tribunal may require a joint expert rather than rival reports. Success-fee arrangements for experts are prohibited, and any prior involvement, whether instigating the case, concurrent work in other jurisdictions, or prior consulting, must be disclosed, with the Tribunal empowered to reject an expert if independence is in doubt.

Case management of the expert process has also become more structured. The Tribunal can require a detailed list of questions for experts correlated to pleaded issues, specify factual or legal assumptions, and identify the data and disclosure experts will need. It may call out method choices and key datasets at case management conferences (CMCs) and ask parties to justify whether expert evidence is necessary on specific topics. Experts are expected to help target disclosure, use coherent reasoning and root economic evidence in facts.

Importantly, the Practice Direction embeds modern evidence management tools. It limits lawyer involvement in expert drafting to format and accuracy and requires permission for supplemental expert materials outside orders. And it authorises "teach-ins" in advance of trial. These are neutral expert sessions to explain analytical questions so the Tribunal can understand what matters while explicitly discouraging advocacy.

It also formalises concurrent expert evidence (known as "hot tubbing") across the life of a case, not just at trial, with most questioning led by the Tribunal. This ought to be of particular value, given there is still a degree of unfamiliarity with them and uncertainty around how to get the most from these shared expert fora. As individual tribunals become more accustomed to the conduct of hot tubbing, their value in bringing complex issues into relief for the Tribunal will become more apparent.

Taken together, these changes provide clearer guardrails that should reduce duplication, compress timelines and improve the quality and clarity of expert testimony.

## The regime continues to face challenges

The Supreme Court's decision in *PACCAR* has cast a long shadow over the funding market.[5] It held that litigation funding agreements paying funders a percentage of damages are damages-based agreements and therefore unenforceable in CAT opt-out proceedings, prompting a shift to returns calculated as multiples of drawn or committed capital. The Civil Justice Council has since recommended a "light-touch" regulatory framework and urged legislative reversal of *PACCAR*, both prospectively and retrospectively. Meanwhile, *Justin Gutmann v Apple* confirmed that the CAT can order funder payments before distribution to class members, subject to its supervisory jurisdiction.[6] Additionally, a run of Court of Appeal rulings in July 2025 provided some stability, upholding amended, *PACCAR*-compliant agreements and finally, on 17 December 2025, the Ministry of Justice announced plans to regulate the litigation funding sector and reverse the controversial decision. Even so, funders remain cautious, and market confidence has yet to fully recover.

Beyond funding, procedural friction remains a recurring theme. Carriage disputes increasingly require early investment in expert methodology and governance, which promotes discipline but also front-loads cost and complexity if not tightly managed.

Defendants frequently deploy strike-out and summary judgment bids, security for costs applications, funding challenges and appeals. Nearly half of strike-out and summary applications across the regime have failed, yet they still absorb time and money, some might say deliberately so, where defendants understand the exhaustive effect such applications have on litigation budgets and consequently on the ability to manage litigation at proportionate cost. The CAT must grapple with such tactical behaviour, where its ultimate effect is to diminish returns for the class, and where appropriate consider the sanction of indemnity costs and the recoverability of funding multiples.

Timelines often extend beyond those in comparator regimes such as Australia, where mature case management practices frequently deliver a start-to-finish resolution in under three years. The UK's evolution is not surprising as early years bring procedural experimentation, but it carries real costs for claimants, funders and defendants alike when preliminary clashes multiply.

Institutional capacity compounds these pressures. The CAT runs on lean resources, including one permanent judge (the president), part-time members and a small staff. Its dual mandate means it must hear a non-discretionary variety of regulatory appeals alongside collective claims. With hearing days down 59 per cent from their 2022 peak, the pressure has temporarily eased. It will return as filings recover unless permanent capacity and case management infrastructure are strengthened, which is necessary and ought to be viewed as an investment in the CAT's sustainability.

Consumer engagement and distribution remain some of the regime's most difficult problems and the most visible to the public. Low take-up is not unique to the UK and comparative evidence shows participation is often modest in opt-out regimes, particularly where individual claim values are small, processes are cumbersome or awareness is limited. Nonetheless, when large settlement sums are set aside but only a small fraction is claimed, both deterrence and legitimacy suffer. This would improve with earlier engagement and more practical distribution design rather than simply increasing spend.

Finally, the scope of the regime is narrow. Confining opt-out to competition claims prompts carriage disputes and encourages attempts to shoehorn non-competition mass harms (such as data privacy and consumer protection) into a competition law framing. It also leaves gaps in redress for consumers and SMEs where individual losses are small but aggregate harm is large.

## The economic stakes

The deterrence value of collective proceedings is substantial once the system reaches maturity. The sectors in which collective proceedings have been brought represent approximately £1.36 trillion in annual gross value added (GVA), or 57.4 per cent of the UK economy. Using conservative overcharge assumptions and deterrence ratios from competition literature, it is estimated that the regime's annual economic impact will fall between £12.1 billion and £24.2 billion, with a central estimate of £18.1 billion. That equates to roughly £420–£840 per UK household in value protected from anti-competitive conduct including inflated prices, reduced choice and chilled innovation.

Collective actions raise the expected cost of anti-competitive conduct and help level the playing field for consumers and SMEs, particularly in sectors where regulator bandwidth is constrained. Business costs from defending collective proceedings must be proportionate, and here the CAT's certification filter, the "loser pays" rule and settlement scrutiny help contain unmeritorious cases and prioritise outcomes with class interests.

## What should come next?

The evidence supports refinement, not restriction. Prioritising changes which focus on capacity, scope and process will offer the greatest leverage over the challenges expressed above.

First, the CAT should be resourced to meet its specialist mandate. A forum that handles complex collective claims and regulatory appeals needs stable, permanent capacity. Increasing the number of full-time judges and expanding the economist and lay member panel would improve resilience and continuity. Administrative support and tools also matter. Enhanced listing and case management systems and model directions for recurring issues, such as security for costs and data access protocols, would reduce delay and cost and keep parties focused on delivering claims to trial in an efficient manner. Where proportionate, drawing on specialist costs judges or independent costs draftsmen would help keep budgets realistic and discourage attritional tactics. Taken together, these changes would reduce the real cost of running viable cases and bring parties to earlier settlements. Resourcing the CAT also relieves pressure on the High Court, which is facing long trial waits.

Second, the scope of the opt-out regime should be extended beyond competition. Confining opt-out to antitrust claims is increasingly artificial and inefficient. Adding gateways for subject areas where mass harms recur (data and privacy, consumer protection, financial services) would reduce boundary litigation and provide coherent access to justice across mass harm categories. It should also be made explicit that SMEs can access opt-out proceedings where they face small individual losses arising from common conduct. Businesses, particularly smaller ones, can face the same barriers to justice as consumers when dealing with mass harms of modest individual value.

Third, early case management needs refinement. A pre-action protocol for collective proceedings would promote early exchange on class definition, data sources, high-level methodology and a proposed timetable. Firm timetables, regular informal CMCs (such as those trialled during the interchange proceedings) and disciplined adjournment practices (borrowed from the Technology and Construction Court and the Commercial Court) would keep cases on track. Where claims cluster, identifying lead issues or modular trials to generate binding or persuasive outcomes could catalyse settlement across the cohort. The more predictable the interlocutory phase, the sooner cases reach trial or settlement.

Fourth, support for class representatives should be strengthened and the Tribunal should define its expectations. Publishing practical guidance for class representatives would set out expectations on independence, conflicts, oversight of funding and ATE arrangements, decision-making and advisory structures and communications with the class. In *Rodger*, the Tribunal criticised a proposed twice-yearly meeting schedule of the advisory panel for the class representative and approved the collective proceedings on the basis that the panel should meet at least quarterly.[7] While a panel is not formally required, the Tribunal now expects clear governance structures through regular meetings or engagement at appropriate junctures. Codifying the requirements for independent advisory committees would bolster oversight and demonstrate that decisions are taken in the class interest.

Finally, participation and distribution should be deliberately designed to improve engagement and prime the class for settlement or judgment. Where proportionate and privacy-compliant, defendants' transaction data (such as purchase histories and account identifiers) should be used to simplify the claiming and recovery journey. For example, a single portal with clear eligibility messaging and minimal documentation for low-value claims, delivered by trusted messengers such as the court and reputable consumer bodies. Distribution plans should be evidenced at certification, with realistic uptake modelling, realistic budgets, and revisited as evidence emerges – and there should be meaningful identification and engagement with class members throughout the proceedings, not just in the final stages. An informed class is much more likely to improve rates of take-up.

Where material sums remain unclaimed, cy-près should be directed to organisations that directly benefit the affected class or to improve compliance in the relevant market. Better take-up strengthens both compensation and deterrence and demonstrates that the regime delivers tangible value to consumers.

The UK regime has looked deliberately to Canada and Australia rather than the US, combining judicial certification, opt-out efficiency and robust settlement oversight with traditional safeguards. Timelines and costs remain higher than in jurisdictions with decades of class action experience, but that is characteristic of an evolving system rather than a structural flaw. The focus now should be on refinement. The quality of the CAT's judgments already compares favourably with many European courts and with calibrated reforms, the UK can remain a leading forum for collective redress.

## Conclusion

The CAT has shown that a well-designed, specialist tribunal can certify viable claims, supervise class-first settlements and deliver outcomes with significant economic value. The claims on its docket span sectors representing over half the economy. Once mature, the regime's deterrence effect is worth an estimated £12–24 billion a year. The risk today is under-utilisation, and the solution is not to constrict the gateway but to make the pathway faster, clearer and better resourced. That means: to invest further in supporting the CAT so it can manage complexity at scale; extending scope so consumers and SMEs can access redress wherever mass harms arise; refining early case management; supporting class representatives with clear guidance; and engaging the class early to turn settlements into real compensation.

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## Endnotes

1. *Mastercard Inc and Others v Merricks* [2020] UKSC 51.
2. *Christine Riefa Class Representative Ltd v Apple Inc and Others* [2025] CAT 5.
3. *Kent v Apple Inc and Apple Distribution International Ltd* [2025] CAT 67.
4. Competition Appeal Tribunal Practice Direction 3/2025: Expert Evidence
5. *R (on the application of PACCAR Inc and Others) v Competition Appeal Tribunal and Others* [2023] UKSC 28.
6. *Mr Justin Gutmann v Apple Inc Apple Distribution International Ltd, and Apple Retail UK Ltd* [2024] CAT 18.
7. *Professor Barry Rodger v (1) Alphabet Inc; (2) Google LLC; (3) Google Ireland Ltd; (4) Google Asia Pacific Pte Ltd; (5) Google Commerce Ltd; (6) Google Payment Ltd; and (7) Google UK Ltd* [2025] CAT 45.



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