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Competition MAGAZINE

The New Landscape: Exploring the Evolving World of Competition Law and Litigation

Thought Leadership for and by the Competition Community

INTRODUCTION

"The future depends on what you do today"

- Mahatma Gandhi

We are delighted to present Issue 14 of the TL4 Competition Magazine, our third edition of 2026: The New Landscape: Exploring the Evolving World of Competition Law and Litigation.

Delving into the ever-evolving world of competition law and litigation, this edition explores a wide range of topical issues and provides insights from a variety of jurisdictions.

We would like to thank our valued Corporate Partners and all those who have contributed to this edition. We hope you enjoy reading the latest instalment of the magazine.

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UPCOMING EVENTS

14-15 OCT 26

The UK Class Actions Forum - 6th Annual
Saddlers' Hall, London, UK

15-16 OCT 26

European Competition Law Regulatory Circle
Auberge du Jeu de Paume, Chantilly, France

3 NOV 26

The Merger Control Forum - 3rd Annual
Carpenters' Hall, London, UK

5 NOV 26

The EU Competition Law Private Enforcement Forum - 3rd Annual
Radisson Blu Hotel, Amsterdam, Netherlands

11-12 NOV 26

The Nordic Competition Law Summit - 2nd Annual
Radisson Blu Scandinavia Hotel, Copenhagen, Denmark

1 DEC 26

The Competition Law & Artificial Intelligence Summit - 3rd Annual
Saddlers' Hall, London, UK

11 FEB 27

The Irish Competition Law Forum - 2nd Annual
Dublin, Ireland

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2026/2027 CALENDAR

UPCOMING EVENTS

24-25 FEB 27

UK Competition Litigation Circle
South Lodge, Sussex, UK

2-3 MAR 27

The Competition Next Gen Summit - 3rd Annual
Glaziers Hall, London

18 MAR 27

The EU Digital Markets Competition Litigation & Compliance Forum - 3rd Annual
Brussels, Belgium

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60 SECONDS WITH...
JANET LANG
PARTNER
FRESHFIELDS

Q What originally made you want to be a lawyer?

A I admittedly grew up wanting to be a doctor, but after spending a year in the hospital with cancer, I had enough of the healthcare scene! So, I ditched my medical ambitions but held onto my love for logic and problem-solving and found my outlet in dissecting legal arguments instead.

Q What do you enjoy most about the work you do?

A I love solving problems and drawing on everything I have experienced over my career to come up with creative solutions. The legal question is only one part of it. Understanding how it fits into a client's business objectives and developing a regulatory strategy around it takes industry knowledge, relationships, and experience. I love putting it all together and being part of how value is unlocked in our society.

Q You've worked in both the US and Europe. What's been the biggest difference?

A The regulatory landscape. In the US, I typically focused on pure antitrust issues. In Europe, my work is largely centered around tech clients, and I am often connecting the dots across multiple digital regulations like the DMA, DSA, AI Act and Digital Fairness Act, in addition to traditional competition law. The challenge isn't a single enforcement risk. It's designing a coherent strategy for evolving regulations with multiple stakeholders.

Q What's a typical day like for you when you're not travelling or at a conference?

A There are no typical days…that's the fun part! I might be developing an RFI response, analyzing market dynamics, prepping for a Commission meeting, or discussing strategic options with a client. The one constant is dropping my kids off at school in the morning and then making a pour-over coffee at my desk (after years in Europe, I still can't start my day with an espresso)!

Q What's one thing people outside the legal industry always get wrong about your job?

A That I spend most of my time thinking about the law. I actually spend much more time thinking about my client's objectives and how those map onto economic and societal values, then the law as a framework through which outcomes are shaped. Sometimes the solution is a legal one, other times it's a business one. Most of the time, it's both.

Q When you're not working, what's your favourite way to switch off?

A Outside of work, I spend as much time as I can with my family. My boys are 2 and 4, so everything is an adventure. With the fast pace of being a corporate lawyer, I am so grateful for the forced slowness of toddlers and being fully in the present with them. When I get a rare second to myself, I practice yoga and still dream of my next scuba diving trip!

Q What's the best piece of advice you've ever been given?

A Be authentic. I had no exposure to corporate law prior to law school and my background is very different from many of my peers. Rather than worry about my differences or compare myself to others, my first partner mentor encouraged me to focus on my own personal strengths. Because of that mindset, I now bring a unique set of skills to the table that are highly valued by my colleagues and clients. And I derive so much purpose from being able to show others that there is no one face of success.

Q If you could have dinner with anyone, who would it be and why?

A Who has inspired you most in life? My mom has always been my greatest inspiration. She never waited for anyone else to get things done. She took on three jobs, repaired everything with her own hands, and spent countless weekends at soccer games and track meets to make sure I had every opportunity for success. My drive is born from her. Whenever I feel under pressure, she reminds me that biting off more than I can chew is always how I have grown.

Q What's something most people are surprised to learn about you?

A I was the first person in my family to have a passport. I am originally from Texas and left the US for the first time to study abroad in Switzerland during university. Now I live in Brussels with my husband who is French and have two bilingual kids.

Q What would your colleagues say is your trademark habit or catchphrase?

A "Let's go!" Maybe it's the former athlete in me, but I love giving my max to achieve something challenging, and I'm most energized by working together in a team with a shared mission.

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THE COMPETITION AND MARKETS AUTHORITY'S MARKETS REGIME IN PRACTICE

HARMS, MANIFESTATIONS, AND REMEDIES

Authored by: Martin Wickens (Principal) & Waldemar Schuppli (Principal) - Econic Partners

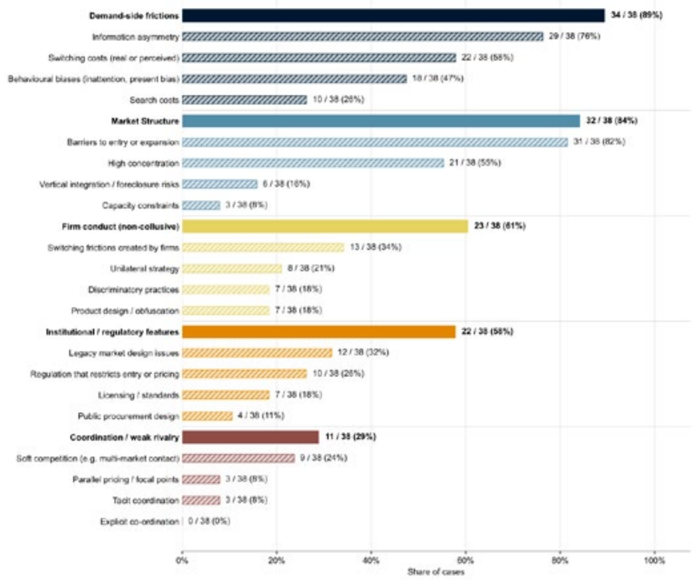
The UK Competition and Markets Authority ('CMA') has a broad review function commonly referred to as the markets regime which includes the powers to undertake market studies and market investigations. The CMA (including its predecessor bodies) has had these powers since 2002, during which time it has completed 14 standalone market studies and 24 market investigations. The UK was an early adopter of a markets regime, and similar tools have since been introduced in a number of jurisdictions, including Denmark, Norway and Sweden.

This article reviews the CMA's market regime and considers the patterns that emerge from its case practice. We analyse all previously completed standalone market studies and market investigations to classify the CMA's findings with respect to what the CMA's underlying concerns have been, how customers were adversely affected, and what remedies the CMA has imposed.

What are The Causes of Harm?

Figure 1 summarises the CMA's underlying concerns, categorised into demand-side frictions, market structure, firm conduct, institutional or regulatory features, and coordination or weak rivalry. It shows that the CMA most often identifies harm caused by demand-side frictions and market structure issues, including information asymmetries, switching costs, barriers to entry and expansion and high concentration.

Figure 1:



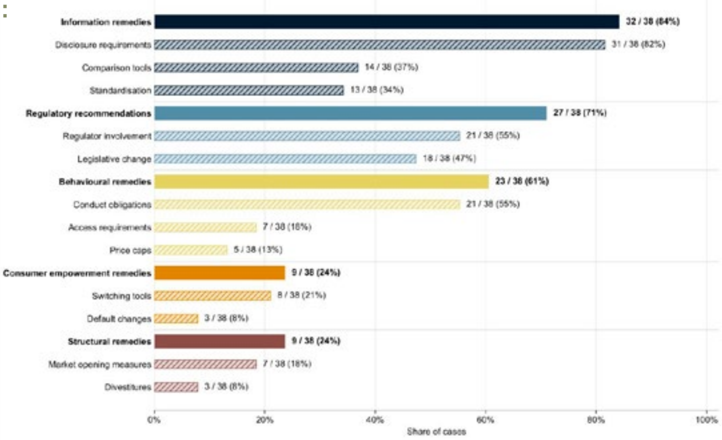
- In Veterinary services for household pets, pet owners were found to have less expertise than vets, limited ability to assess diagnostic and treatment options, and limited access to clear and comparable price information.
- In Mobile ecosystems and Mobile browsers and cloud gaming, customer switching was impeded by defaults, pre-installation, low user engagement and friction in changing default browsers or moving data between ecosystems. In traditional sectors, barriers to entry often arise from planning restrictions, high sunk costs and capacity constraints such as in Groceries, Private healthcare and Electric vehicle charging.
- High concentration is also a common cause of harm, where a small number of firms hold persistently strong market positions. In traditional sectors, this often reflects local monopolies or oligopolies, such as in Groceries, Local bus services and BAA airports. In digital and technology markets, concentration concerns often relate to ecosystem control and scale advantages, including in Mobile ecosystems, Mobile browsers and cloud gaming and Cloud services.

What are The Manifestations of Harm?

Figure 2 summarises how consumers were adversely affected, is categorised into price effects, quality effects, choice and variety, distributional issues, and dynamic effects. It shows that harm to consumers most commonly manifests through high prices, low quality and lack of innovation.

- In most cases, the CMA concluded prices were higher than would be expected in a well-functioning market, including in Veterinary services for household pets, Children's social care, Mobile radio network services and Private healthcare.

Figure 3:



- In other cases, harms arose indirectly, such as in Online platforms and digital advertising and Mobile ecosystems, where higher prices paid by advertisers or app developers could be passed through to consumers. Less frequently, the harm manifests in distributional impacts on vulnerable consumers or in specific local areas.
- Low quality is the most frequent manifestation of quality-related harms. Examples include Veterinary services for household pets, where customer satisfaction was low relative to the cost of veterinary services, and Heat networks, where some schemes had interruptions, weak billing information, poor complaints handling and limited redress. In BAA airports, poor service standards, particularly at Heathrow airport, reflected weak competitive pressure and regulatory shortcomings.

What Remedies Has The CMA Imposed?

Figure 3 shows the types of remedies the CMA recommended or imposed, categorised into information remedies, regulatory remedies, behavioural remedies, consumer empowerment remedies, and structural remedies.

It shows that information remedies, regulatory recommendations and behavioural remedies have been the most commonly used remedies. Disclosure requirements are often supported by conduct obligations or regulator involvement.

- Examples include Veterinary services for household pets, where the CMA required clear ownership signage and mandatory standardised price lists and in Funerals, where firms were required to publish the price of an attended funeral. In Road fuel, fuel retailers were to submit prices to a fuel finder scheme.

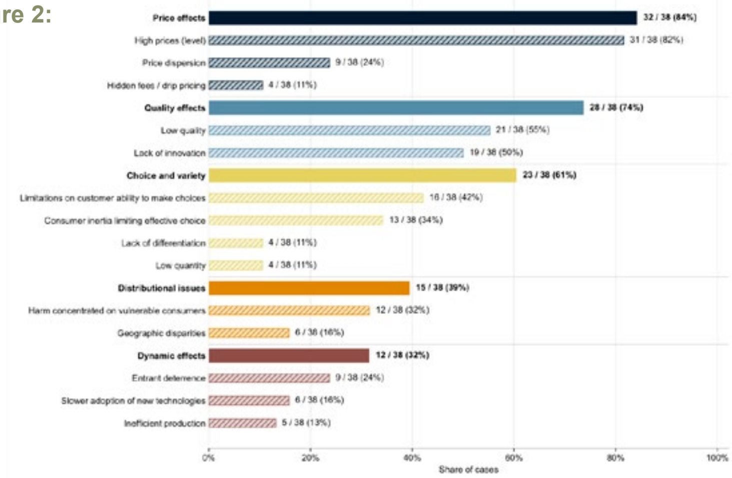
More interventionist remedies such as price caps or structural divestitures are rare but do happen in a few instances. For example:

- In Energy, Classified directory advertising services and Veterinary services for household pets, the CMA imposed price caps on certain products in each of those markets.
- In BAA airports, the CMA imposed a divestiture of the airports Gatwick, Stansted and either of Edinburgh or Glasgow and in Aggregates, cement and ready-mix concrete, the CMA required the leading supplier to divest one active cement plant to a non-UK supplier, thus enabling entry of a non-UK supplier.

For more detail see the full article here.

The views and opinions expressed in this response are those of the authors and do not necessarily reflect the views of Econic Partners or its clients.

Figure 2:




Competition

WHOSE CONDUCT IS IT?

OBJECTIVE LIABILITY AND THE MISSING QUESTION OF ATTRIBUTION IN BRAZILIAN ANTITRUST LAW

Authored by: Alessandro P. Giacaglia (Associate) - Pinheiro Neto Advogados

Law 12,529/2011 (the Brazilian Antitrust Law) says infringement exists regardless of fault but never says when an individual's act becomes the company's. Two other statutes answer that, and CADE could borrow the answer without reform.

An employee several levels below the board infringes the economic order. He holds no authority, was told not to do it, the compliance policy is real and applied, nobody above him knew, and the company derived no benefit. Is it liable? Case law has barely addressed the question.

Two Questions, and a Statute That Answers One

Article 36 defines infringement as conduct with the object or potential effect of harming competition, dominating a market, arbitrarily increasing profits, or abusing dominance, regardless of fault, even where effects are never achieved. CADE need not prove intent or negligence.

It settles nothing about attribution: when does a natural person's act become the entity's? Removing the mental element does not dispense with establishing that conduct belongs to the company. Otherwise, the rule that a penalty may not extend beyond the offender (Constitution, art. 5, XLV) would lack content in corporate enforcement. Article 173, §5 confirms this: it authorises corporate liability "without prejudice to individual liability of directors," meaning two tracks exist, not one derived from the other.

Constitutional guarantees usually invoked here attack objective liability itself. But they require the attribution step to be reasoned, not assumed.

In fact, the statute contains its own asymmetry. While the Antitrust Law establishes objective liability for companies, article 37, III provides that administrators can be fined only where fault or intent is proven. Individual liability is expressly subjective. That asymmetry coheres only if corporate liability rests on something organisational, not borrowed individual fault.

Why It Is Arriving Now

In cartel cases the question was academic: executives participated and effects were tangible. Unilateral conduct breaks that assumption, as conduct is the company's policy and individualising it would be artificial. Information exchange and price signalling break it the other way: discrete acts by identifiable people, sometimes below executive level. CADE's practice has been inconsistent, adopting different approaches to similar conduct.

The Answer Is Already in Brazilian Law

Law 12,846/2013 (the Anti-Corruption Law) establishes objective liability of legal entities and states the nexus the Antitrust Law omits. Article 2 reaches acts practised "in the interest or benefit, exclusive or not," of the entity, filtering by risk-benefit reasoning: benefit-takers bear risks, excluding agents pursuing exclusively their own interests. Article 3, §2: directors answer only to their culpability.

The Civil Code is plainer. Under articles 932, III and 933, an employer answers objectively for employee acts "in the exercise of the work entrusted to them, or by reason of it." Functional connection is the price of strict liability.

The Supreme Federal Court reasons similarly. In RE 548.181 (Rel. Min. Rosa Weber, 2013), the First Panel held that article 225, §3º does not require simultaneous prosecution of a natural person for corporate criminal liability. Two pillars support this. Practical: modern corporate structures distribute decision-making across layers, often making it impossible to attribute wrongful acts to any single individual. Normative: conditioning corporate liability on dual imputation would nearly empty the constitutional mandate. However, the Court did not dispense with attribution. Minister Rosa Weber observed that identifying internal agents remains relevant to establish whether they acted in the regular exercise of their functions and whether conduct was oriented to the entity's interest or benefit. Doctrine must develop imputation criteria.

Three regimes, two filters: functional connection and interest or benefit. Antitrust alone leaves them unwritten. Reading them into article 36 is coherence.

A fourth system points the same way. Under U.S. respondeat superior, corporate liability attaches through two prongs: act within employment scope and intent to benefit the corporation. In United States v. Hilton Hotels Corp., the Ninth Circuit held a company liable under the Sherman Act for agent conduct contrary to corporate policy. Compliance is not a defence; it operates downstream. The DOJ's Corporate Enforcement Policy (March 2026) formalises this: self-disclosure, cooperation, and remediation can yield a declination or graduated penalty reductions, but only after attribution is answered. Antitrust violations are carved out. That is why the fifth question below is graded: the test follows U.S. structure without borrowing an escape route it has never granted.

Compliance: A Bridge, Not an Exit

Currently, compliance is a discount: penalty calibration under article 45 and CADE's Compliance Programme Guide; a mitigating factor under article 7, VIII of Law 12,846/2013. It is tempting to argue compliance as a liability-excluding defence. That collides with article 36. The U.S. Corporate Enforcement Policy shows how a mature regime navigates this: voluntary disclosure, cooperation, and timely remediation may yield a declination absent aggravating circumstances. A recent declination letter illustrates: a company that self-reported export-control violations and undertook significant remediation received a declination conditioned on disgorgement. The misconduct was not excused; the compliance response determined the outcome.

The narrower proposition is stronger. An effective, pre-existing programme is evidence going to attribution; it shows the agent stepped outside the company's sphere of interest. Where attribution holds, it mitigates. Under the U.S. policy, effectiveness is assessed against specific criteria: commitment to compliance values, dedicated resources, qualified personnel, risk-based tailoring, independent reporting, and periodic testing. The same inquiry fits Brazilian antitrust: not whether a programme exists, but whether it was real, resourced, applied, and violated.

Five Questions, in Order

Considering the standards above, at least five questions could address attribution. The first two are gates: if either fails, attribution does not hold. The remaining three are graded, bearing on inference strength and sanction severity. Whether all five must be satisfied cumulatively or weighed in combination is left open.

- **Authority (graded).** Did the individual hold power to direct, manage or bind the company in the conduct?
- **Functional Connection (gate).** Was the act performed in the exercise of duties entrusted to him, or by reason of them?
- **Interest or Benefit (gate).** Was the conduct oriented to the company's interest or benefit, exclusive or not?
- **Organisational Diligence (graded).** Did an effective programme exist and operate, and did the agent act in isolation, against instruction? The inquiry parallels standards elsewhere: compliance values embedded, resources dedicated, personnel with genuine authority and independence, risk-tailored programme, effectiveness tested.
- **Factual Indicia of Isolation (graded).** Do the circumstances suggest an isolated episode rather than systemic practice? Considerations: single employee or coordinated group, limited in time or recurrent, confined narrowly or spread across units, ran against documented controls. The more facts point to aberration, the weaker the corporate responsibility inference.

The two gates defeat attribution outright when they fail. The three graded factors set inference strength and sanction level.

No Reform Required

None of this needs new legislation. CADE must say, in its votes, why the conduct is the company's. Objective liability was designed to spare the authority proof of a mental state, not the burden of identifying whose conduct it punishes.

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GERMAN FDI ENFORCEMENT IN NUMBERS AND THE EU'S FDI SCREENING FRAMEWORK

Authored by: Jonathan Kress[1], (Associate) - Alston & Bird

European foreign direct investment (FDI) screening regimes are in constant evolution. Germany's 2025 screening statistics highlight a system under growing demand. In parallel, the EU's newly adopted FDI Screening Regulation sets a binding floor for Member States and requires them to implement necessary updates to their regimes by early 2028.

Germany's 2025 FDI Screening Statistics: Higher Volume and Less Restrictive Measures

Germany, home to one of the EU's most active national screening regimes, published its 2025 enforcement statistics. According to the report by the Federal Ministry for Economic Affairs and Energy[2], Germany opened 339 national investment screening procedures under the Foreign Trade and Payments Ordinance (AWV) in 2025. That is a roughly 30 percent increase over the 261 procedures recorded in 2024 and the highest annual total on record. In parallel, Germany processed 451 pure EU cooperation-mechanism notifications (i.e., cases notified by other Member States in which no German national procedure was opened), representing a 46 percent jump from 308 in 2024.

Notably, sector-specific procedures (mostly covering defense-related acquisitions under sections 60 et seq. AWV, which apply regardless of the acquirer's nationality) more than doubled, rising from 38 cases (15 percent of the 2024 total) to 80 cases (24 percent of 2025 filings). Overall, information and communication technology drew the most scrutiny of any target sector (64 cases), followed by health and biotechnology (45), engineering (33), and energy (31).

The United States remained, by a wide margin, the most frequent country of origin of investors, accounting for 159 of the 339 procedures (up from 112 in 2024), followed by the United Kingdom (41 cases) and China (33 cases).

The Phase 2 in-depth review rate rose to 9 percent (31 openings), up from 7 percent (19 openings) in 2024. However, in terms of timing, a large number of all cases (41 percent) concluded within the initial 30-day assessment period.

1 The author is working as an Associate at Alston & Bird LLP in Brussels. The expressed views are personal.

2 Investitionsprüfung in Deutschland: Zahlen und Fakten. Available at: https://www.bundeswirtschaftsministerium.de/Redaktion/DE/Publikationen/Aussenwirtschaft/investitionsprufung-in-deutschland-zahlen-und-fakten.pdf?__blob=publicationFile&v=7

Despite the surge in volume, restrictive outcomes remained rare. Only 8 of all cases (2 percent) resulted in acquisition-restricting measures (i.e., prohibitions and conditions) down from 6 percent in 2024. A further 11 cases were resolved through voluntary investor commitments, compared with 8 in 2024.

Overall, Germany's system is processing substantially more transactions, channeling slightly more into deeper review, yet continuing to clear the vast majority without conditions.

The EU's New FDI Screening Regulation: A Binding Floor for 27 Member States

Regulation (EU) 2026/1386[3] (Regulation), adopted by the Council on 8 June 2026, replaces the 2019 framework[4] providing a minimum level of harmonization. The Member States' regimes must comply with the new rules by beginning 2028 and reflect, inter alia, the following novelties.

The Regulation introduces a minimum list of sectors that must be subject to ex-ante screening: defense and dual-use items, semiconductors, quantum technologies and certain AI applications, critical transport, energy, and digital infrastructure, strategic raw materials, systemically important financial-market infrastructure, and electoral infrastructure.[5] Member States remain free to expand beyond this floor.

Moreover, the Regulation deems EU entities effectively controlled by non-EU investors to constitute "foreign" investors.[6] That removes some legal uncertainty from assessing EU subsidiaries through which investments are routed. For Germany, which already captured such indirect structures, this changes little; for other Member States, it will mean an expansion. Also, the Regulation requires strict non-discriminatory treatment.[7] Most regimes do not discriminate between non-EU countries. But under some regimes, investors from allied jurisdictions (such as the United States or other OECD states) can no longer benefit from certain preferential carve-outs.

As regards the substantive assessment, the Regulation prescribes a list of risk factors that authorities must weigh when reviewing any deal. This diverse list includes, for example, critical infrastructure and continuity of supply (relating to the target) or opaque ownership and sanctions exposure (relating to the investor).[8]

On the procedural side, the Regulation broadens the triggers for notifying deals to the cooperation mechanism[9] and expands the ability of the European Commission (EC) and other Member States to comment on those cases[10]. For example, the EC may propose specific remedies and flag "systemic" risk across two or more deals.[11] These views are not binding, but the reviewing Member State must "give due consideration" before taking a decision.[12] The EC will also install a shared decision database.[13]

As regards the screening process, the Regulation imposes that national regimes follow two phases: a non-extendable 45-day Phase 1, and an in-depth Phase 2 with no harmonized deadlines. However, as the cooperation mechanism carries its own deadlines, it can, in some cases, run past the 45-day Phase 1 cap and push a deal into Phase 2.[14]

Lastly, the Regulation requires that Member States enable their authorities to call in non-notified deals for at least 15 months and up to five years post-closing.[15] However, this provision does not retroactively affect deals completed before the new rules apply.[16]

Key Takeaways

Germany's 2025 statistics and the EU's new Regulation are two sides of the same coin. The German statistics demonstrate that a national regime can handle significant case volume while remaining substantively open to FDI. The practical impact of the new Regulation will only emerge as Member States adjust their regimes. As the Regulation only sets out minimum requirements in many regards, meaningful divergence between national regimes is likely to persist.

3 Regulation (EU) 2026/1386 of the European Parliament and of the Council of 17 June 2026 on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452.
4 Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union.
5 Art. 3 (1), 4 (15).
6 Art. 2 (1), Recitals 15, 18.
7 Art. 4 (1).
8 Art. 19.
9 Art. 5.
10 Art. 8.
11 Art. 8 (4), (5).
12 Art. 12, 14 (4).
13 Art. 18.
14 Art. 4 (2), 11 (3), 14 (4).
15 Art. 4 (4).
16 Art. 30 (2), Recital 66.

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CMA'S CONSUMER FINING POWERS HIT THE ROAD

FIRST PENALTY SIGNALS BIGGER FINES AHEAD

Authored by: Mark Hills (Partner), David Birch (Trainee) & Sarah Wilks (Knowledge Counsel) - Mayer Brown

In the first application of its consumer penalty framework under the consumer enforcement regime of the Digital Markets, Competition and Consumers Act 2024 (the "DMCCA"), the UK Competition and Markets Authority (the "CMA") ordered the AA Driving School and BSM Driving School to refund more than 80,000 learner drivers and pay a £4.2 million penalty for unlawful "drip pricing." The decision offers the first insight into how the CMA will calculate penalties under the Consumer Enforcement Guidance, CMA200 (the "Consumer Enforcement Guidance"), an approach distinct from Competition Act 1998 fining under CMA73 (the "CA98 Penalty Guidance"). Businesses should take note: those on the wrong side of consumer law could face significant fines, likely to grow as the regime matures. Under the new consumer law regime, turnover for penalty purposes can be traced up through corporate structures, meaning portfolio companies caught by consumer law breaches could expose parent holding companies and PE sponsors to liability calculated by reference to the wider group's consolidated UK turnover.

The CMA found that mandatory £3 booking fees were not included in headline prices on the AA and BSM websites between April and December 2025, but were added only at checkout after customers had selected lessons, chosen times, and entered personal details. This amounted to drip pricing expressly prohibited under sections 225(4)(b) and 230 of the consumer enforcement provisions of the DMCCA.

1. Penalty Calculation Framework

The CMA exercised its power to impose a monetary penalty under section 182(4)(b) of the DMCCA, having regard to Chapter 7 of the Consumer Enforcement Guidance. The penalty was calculated using a five-step framework.

Step 1: Starting Point (£217.5 million): The starting point is a percentage of UK turnover. The relevant turnover was that of AA Limited (the parent company), with consolidated turnover for FY2025 of £1.45 billion. The percentage is fixed by reference to (a) Harm (Category 3–"moderate": approximately 80,000 consumers affected, total dripped fees of £800,000, infringement lasting less than one year), and (b) Culpability (high: CMA guidance on drip pricing had been published before the Relevant Period). These findings produced a starting point code of B (15%–22.5%). The CMA applied 15%, yielding £217.5 million.

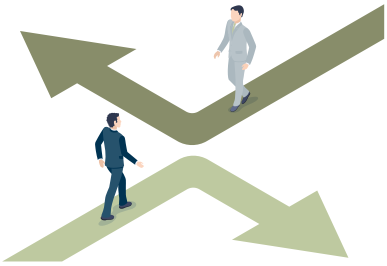
Step 2: Deterrence Adjustment (no change): The CMA concluded no increase was necessary, given the penalty already exceeded any benefit from the infringing conduct.

Step 3: Aggravating/Mitigating Factors (5% reduction → £206,625,000): The CMA applied a 5% reduction for co-operation: the Respondent volunteered information and answered questions quickly, materially reducing investigation time.

Step 4: Proportionality Adjustment (≈97% reduction → £7 million): This was the most significant step. The CMA found the Step 3 penalty disproportionate, considering: the Respondent being a large multi-line business with only a small proportion of turnover related to the affected products; infringement lasting less than one year; total consumer harm of approximately £800,000; the penalty vastly exceeding any gain; redress being paid; and the Respondent's co-operation. The CMA acknowledged that penalties are likely to be lower initially, and expressly noted that the same considerations may not apply in future cases.

Step 5: Settlement Discount (40% → £4.2 million): The CMA applied a 40% settlement discount for the Respondent's admissions, agreement to an expedited process, and compliance with settlement conditions. The discount is conditional; non-compliance triggers the full £7 million penalty.

Although the refund (more than £760,000) echoes the CMA's recent approach in competition cases, where money has been paid to businesses impacted by competition law breaches (see our Legal Updates on Vifor and Housebuilders), the two fining regimes are very different.



2. Key Differences Between Consumer and Competition Penalty Calculations

(a) Starting Point: Turnover Base
The most striking structural difference is the turnover base used to calculate the starting point. Under the Consumer Enforcement Guidance, the base is up to 30% of total UK turnover of the party (including controlled entities), with no separate duration multiplier. Under the CA98 Penalty Guidance, the base is up to 30% of relevant turnover in the affected market (i.e., turnover derived from products or services in the market to which the infringement relates), multiplied by the number of years of infringement. The practical effect: under the Consumer Enforcement Guidance, the mechanistic calculation can produce very large figures even for narrow infringements. Here, a £3 drip fee, leading to £800,000 consumer harm, generated a £217.5 million starting point for fining, whereas under the CA98 Penalty Guidance, the starting point is inherently calibrated to the affected market.

(b) Harm and Culpability Matrix
Under the Consumer Enforcement Guidance, the CMA uses a formalised matrix combining harm categories (major, significant, moderate, or other) with culpability levels (high, medium, low) to produce a "starting point code" (A (22.5%–30%), B (15%-22.5%), C (7.5%-15%), or D (up to 7.5%)), each with a defined percentage range. This is a more structured approach than under the CA98 Penalty Guidance, where the seriousness percentage (Step 1) is determined on a more holistic basis by reference to the nature and seriousness of the infringement.

(c) The Role of Proportionality
Under the CA98 Penalty Guidance, the proportionality check at Step 5 is a backstop; the starting point (based on relevant turnover × duration) is usually in the right territory before it is applied. Under the Consumer Enforcement Guidance, the proportionality step (Step 4) does much heavier lifting. Here, it produced a 97% downward adjustment, considering factors including the relevant products accounting for only a small proportion of total turnover, modest consumer harm, and redress being paid. The proportionality step in consumer cases therefore functions less as a safety net, and more as the primary mechanism for arriving at the actual penalty.

(d) Settlement Discount
The maximum settlement discount under the Consumer Enforcement Guidance is 40% (compared to 20% for cartel conduct and 40% in relation to non-cartel conduct under Guidance on the CMA's investigation procedures in CA98 cases, CMA8). Under the Consumer Enforcement Guidance, the discount is tied to admission of infringement, an expedited process, and ongoing compliance with settlement conditions; breach can result in the discount being withdrawn. Similarly, under the CA98 Penalty Guidance, the discount requires admission and agreement to a streamlined procedure. Although the maximum percentages may align in non-cartel cases, the Consumer Enforcement Guidance's explicit link between discount and ongoing compliance reflects a different enforcement philosophy—one focused more on restorative outcomes than punitive deterrence. Perhaps more significant the CMA appears to be utilising settlements in consumer cases to deliver decisions quickly, much faster than in CA98 cases.

(e) Duration
Under the CA98 Penalty Guidance, duration is a separate multiplier: the Step 1 percentage is multiplied by the number of years of infringement. Under the Consumer Enforcement Guidance, there is no standalone duration multiplier; duration is instead one of many factors considered at the proportionality step.

(f) Statutory Maximum
Under the CA98 Penalty Guidance, the maximum penalty is 10% of worldwide turnover. Under the Consumer Enforcement Guidance, the cap is £300,000 or 10% of worldwide turnover, whichever is higher; meaning smaller businesses could hypothetically face penalties that represent a larger proportion of their turnover than would apply under the CA98 regime.

3. Practical Takeaways

The CMA's action follows the strengthening of its consumer enforcement powers in April 2025, and signals its determination to make use of these, imposing significant remedies and penalties itself, without seeking a court order. The CMA is also reaching final decisions much more quickly than in CA98 cases. On 19 August 2026, the CMA announced it had opened further drip pricing investigations into three additional companies in the travel and driving tuition sectors. These additional investigations reinforce the view that the AA/BSM decision was not an isolated action but the start of a broader enforcement programme targeting hidden fees across consumer facing markets.

Sponsors at risk of fines for portfolio company conduct: Under section 204(1) of the DMCCA, "turnover" includes the turnover of any person who controls, or is controlled by, the party under investigation. "Control" is defined broadly, potentially capturing many PE structures, similarly to the CA98 regime. A consumer law breach by a single portfolio company could trigger a penalty calculated by reference to the fund's consolidated turnover. PE sponsors should ensure robust consumer law compliance features in pre-acquisition due diligence and portfolio governance.

Very high potential exposures leading to uncertainty: The CA98 Penalty Guidance methodology front-loads proportionality by using relevant turnover as the base. The Consumer Enforcement Guidance back-loads proportionality by starting with a broad turnover base and relying heavily on Step 4 to right-size the penalty. This gives the CMA significant discretion at Step 4, making it harder for businesses estimating exposure.

Signalling effect: The CMA's statement that the proportionality considerations applied in this case "may not all apply in future cases" suggests the Step 4 reduction was treated as exceptional for an early case. As the regime matures and infringements span longer periods, the gap between the mechanistic calculation and the final penalty may narrow considerably. High penalties will likely be challenged in the courts in future, but until then uncertainty reigns.

Co-operation incentives: The 40% settlement discount under the Consumer Enforcement Guidance is double the CA98 Penalty Guidance maximum for cartel conduct. Combined with redress directions, this creates a strong incentive for businesses to settle quickly and make consumers whole, a different enforcement philosophy from CA98 Penalty Guidance's primarily punitive orientation. Businesses under investigation should consider whether early engagement could provide a more efficient resolution.

HYPERLINKS ARE NOT (YET) ENOUGH: RETHINKING INFORMATION COMPLETENESS FOR THE DIGITAL CONSUMER

Authored by: Maria Rosaria Raspanti (Counsel) – Pavia e Ansaldo Studio Legale

On July 27, 2026, Lazio Regional Administrative Tribunal (TAR Lazio), competent for deciding appeals against decisions issued by the Italian Competition Authority (AGCM), handed down judgment No. 13642/2026, partially annulling the AGCM's decision to dismiss complaints filed by mobile operator Iliad against rival Wind Tre. The case concerned a wave of SMS-based "winback" campaigns (promotional messages sent to former customers of Wind Tre who had switched to Iliad) that allegedly failed to disclose essential terms and conditions, relegating critical details to a landing page accessible only through a hyperlink embedded in the text message.

The ruling reignites an important and still unresolved tension between traditional consumer-protection doctrine and the practical realities of digital commerce.

Iliad had reported Wind Tre to the AGCM on the grounds that the winback messages contained only headline information (showing monthly price, data allowance, minutes, and SMS bundles) while omitting activation fees, pre-activated paid add-ons, minimum contract duration, 5G coverage limitations, and restrictions on said "unlimited" voice offers. All remaining details were made available on a web page reachable through a hyperlink inserted in the SMS.

The AGCM, at the end of its preliminary investigation, concluded that no formal proceedings were necessary, considering the information conveyed by the SMS, together with the linked landing page, sufficient and truthful, as consumers had been given adequate time to evaluate the offer.

Iliad challenged the decision in court, which sided with Iliad on the information-completeness ground. Relying on a well-established line of administrative case law – including its own earlier rulings on SMS winback campaigns – the TAR Lazio held that a professional's duty to provide complete information must be complied with at the very first point of commercial contact with the consumer (that is, when first 'hooking' the potential client). According to this principle, the promotional message that initially captures the consumer's attention must itself be self-sufficient. Referring the consumer to a web page for additional details, even through a directly clickable hyperlink, according to the court, cannot retroactively remedy an informational shortfall at the moment of first engagement, because consultation of the landing page remains merely optional.

The court therefore found the AGCM's decision vitiated by a motivational defect: by attributing curative value to the hyperlink, the Authority had contradicted settled jurisprudence without explaining why it chose to depart from it. The judgment annulled the dismissal and ordered the AGCM to re-examine the complaints on this specific point.

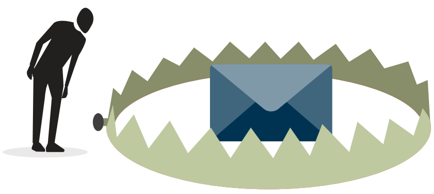
The court, by the way, rejected Iliad's second ground of challenge (that the campaigns were aggressive due to excessive messaging frequency and unreasonably short response windows) finding the AGCM's preliminary investigation on those aspects adequate and its conclusions not manifestly unreasonable.

The ruling deserves attention for what it decides, but also for what it leaves unexamined.

It seems that the TAR Lazio effectively treats a hyperlink as a legally irrelevant appendage to the promotional message. Never mind how prominent, accessible, or comprehensive the linked page may be: the consumer's decision-making process is deemed to crystallize at the 'hooking' moment, the instant the SMS is read.

This is where, in my opinion, the reasoning of the court invites critical scrutiny.

Today's average consumer in the digital market is a smartphone user who is accustomed to navigating commercial offers online, tapping links, comparing plans on aggregator websites, and reading terms and conditions on landing pages. The notion that such a consumer is effectively "trapped" by the first few lines of a promotional SMS (unable or unlikely to click through to a linked page before making a purchasing decision) appears to sit uneasily with observable market behavior.



Indeed, no regard seems to be paid by the TAR to the actual design, accessibility, or completeness of the landing page, nor to the specific digital literacy profile of the target audience. Instead, it applies the first-contact completeness principle as an abstract, all-or-nothing rule: either the SMS is self-sufficient, or it is deceptive.

A more nuanced standard (and assessment, which is what the AGCM appears to have done in the preliminary investigation) would shift the inquiry from the sheer quantity of information delivered at first contact to the quality of the overall informational journey provided to the user. Under such, more flexible, approach the key questions would be whether the hyperlink was adequately prominent and clearly labelled, whether the landing page was easily navigable and contained all material terms, and whether the consumer had a genuine opportunity to review the full offer before making an irrevocable commitment.

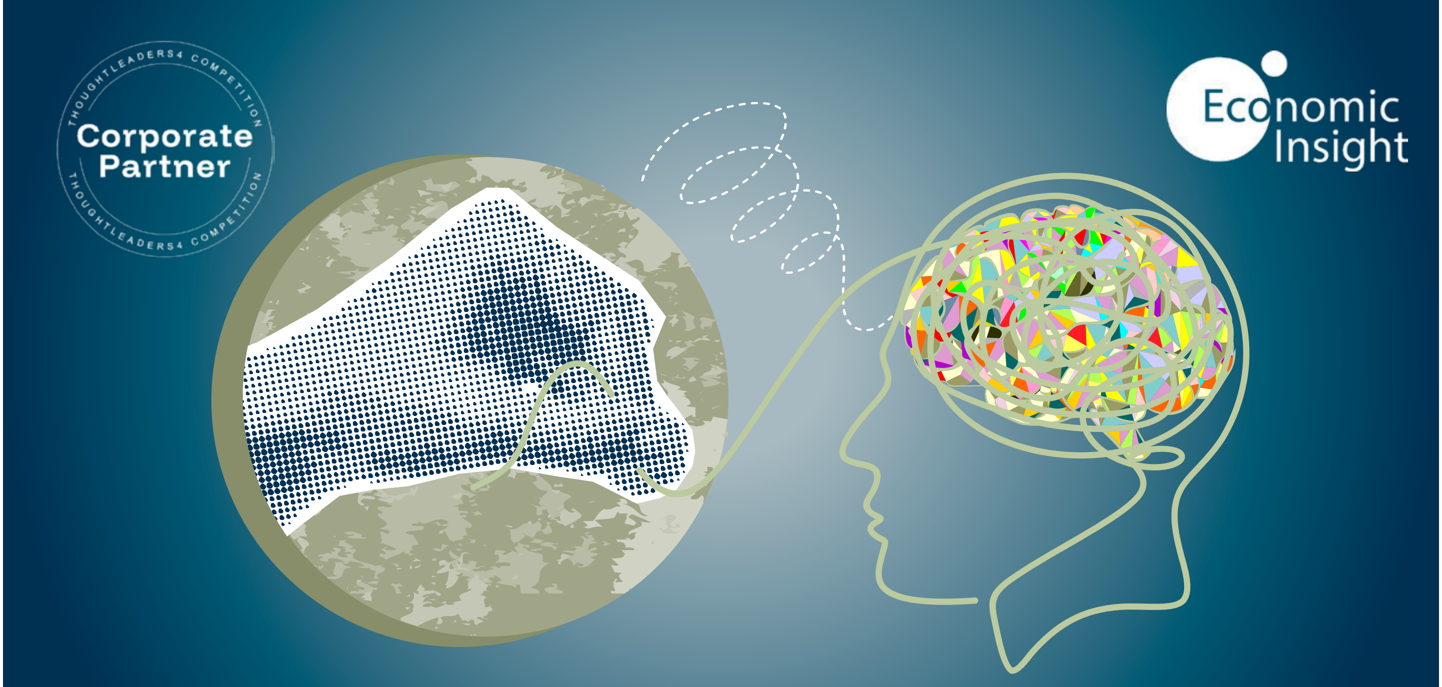
And this reorientation would neither weaken consumer protection, nor lessen the enforcement powers of the Authority. It would simply adapt both to a commercial environment in which layered disclosure – a concise headline message followed by a detailed explanatory page – has become the standard and often (this is an aspect that should not be overlooked if the user experience matters) the most user-friendly way of conveying complex information.

Indeed, the AGCM's own recent enforcement practice appears to be moving in precisely this direction. In a number of proceedings involving alleged informational deficiencies, the Authority has accepted commitments from professionals that centred on improving the clarity, prominence, and accessibility of supplementary disclosures – including linked landing pages – rather than insisting that every material detail be crammed into the initial contact point. This pragmatic, market-oriented approach recognises that rigid front-loading of information may be neither technically feasible nor, ultimately, in the consumer's best interest if it results in cluttered and unreadable messages (which the consumer is probably going to stop reading, as overloading). (Enlarge)

The divergence between the TAR Lazio's doctrinal rigidity and the AGCM's evolving flexibility exposes a real tension in terms of compliance orientation. Businesses now face a paradox: the enforcer signals willingness to accept layered digital disclosure, while the reviewing court insists that anything short of full informational self-sufficiency at first contact is per se deceptive. Until a possible appellate ruling clarifies the boundary, companies (particularly in sectors that rely on SMS or push-notification marketing) should therefore adopt a conservative compliance posture. At a minimum, this means including all material terms (price, activation costs, duration, key restrictions) in the body of the promotional message itself (even at the expense of brevity), treating hyperlinks only as a supplement, never as a substitute, for first-contact disclosure, ensuring that any linked landing page is clear, complete, and immediately accessible (which remains a must, in any case), and last but not least always documenting internal compliance assessments to demonstrate good-faith efforts in the event of regulatory scrutiny.

That considered, the times may well be ripe for a shift from a rigid, quantity-based test of first-contact disclosure to a qualitative assessment of the consumer's entire informational pathway. The decision by the Council of State on the possible appeal by the AGCM is therefore much awaited.

HOW CAN BEHAVIOURAL ECONOMICS BE USED



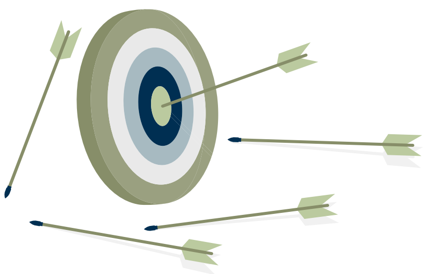
TO ANSWER COMPETITION LITIGATION QUESTIONS

Authored by: Madeleine Matos (Principal) - Economic Insight

Introduction

In 2024, behavioural economics (BE) has made its way into the US and UK courtrooms.[1] This follows increased use of the discipline over the last decade by UK and EU regulators to inform their investigations and remedy designs. As BE gains traction in competition litigation, especially abuse of dominance cases, the question is what it adds to standard competition economics.

This article explains how BE can enrich market definition, dominance analysis, theories of abuse, damages quantification, and evidentiary assessment.



Market Definition and Dominance

Market Definition

In abuse of dominance cases, the relevant product and geographic markets must first be defined. Economists typically use the hypothetical monopolist test, asking whether a hypothetical seller could profitably impose a Small but Significant Non-transitory Increase in Price (SSNIP), usually 5–10%.

BE does not replace this framework, but it can affect how substitution and competitive constraints are interpreted. Several behavioural mechanisms are particularly relevant:

- **Inattention and Salience.** Consumers may miss a 5–10% price rise where prices are complex, hidden, or non-salient, allowing profitable increases without switching.
- **Status Quo Bias and Inertia.** Consumers may fail to switch even when better alternatives exist, so observed elasticities may understate or mischaracterise competitive constraints.
- **Framing, Search Costs and Obfuscation.** Responses depend on how prices are presented, while complexity can reduce effective search and narrow the relevant market.

BE therefore often supports narrower market definitions in low-engagement markets, using familiar tools such as surveys and switching data, as well as more behavioural ones such as natural experiments.

For example, in Le Patourel v BT, the CAT found that SFV (Standalone Fixed Voice) Services is a separate – narrow – market, excluding bundled services.[2]

Dominance

Dominance turns on whether a firm can act independently of competitive constraints, often inferred from persistently high market shares and barriers to entry. BE can reveal additional behavioural barriers that make market power more durable than standard models suggest. Key behavioural factors include:

1 ‘US v Google’. US District Court for the District of Columbia (5 August 2024); ‘Le Patourel v BT’. CAT (19 December 2024).

2 ‘Le Patourel v BT’. CAT (19 December 2024); para. 448.

- **Behavioural Barriers to Entry.** Inertia, defaults and loyalty driven by status quo bias can entrench incumbents beyond what quality or price advantages would justify.
- **Complex Pricing.** Drip pricing, add-ons and complexity can let firms extract value from boundedly rational consumers while headline prices appear competitive.

The implication is that market shares may understate effective market power where conduct systematically exploits consumer biases. This is especially relevant in digital markets, where default status can be disproportionately valuable. In US v Google, the court emphasised that Google's default distribution gave it a major advantage because many users simply stayed with the default search option.[3]

Abuse of Dominance and Exclusionary Conduct

Once dominance is established, the issue is whether the firm abused that dominant position. Traditional analysis focuses on excessive pricing, exclusion, costs, switching barriers and network effects. BE adds that harm may arise from exploiting how consumers process information and make choices.

- **Exploitative Abuse.** A dominant firm may target consumer biases through drip pricing, bait-and-switch strategies, complex add-ons, introductory pricing followed by lock-in, or digital dark patterns. Prices may look competitive while the overall design extracts value from inattentive or present-biased consumers.
- **Exclusionary Abuse.** Firms may exclude rivals by creating cognitive or psychological barriers, for example through bundling that reduces comparability, exclusive dealing that keeps rivals out of sight, or default settings that foreclose consumer attention.

BE therefore broadens theories of harm beyond price and output. It can help show how a dominant firm harms consumers without visibly excessive prices, although it also requires careful empirical proof and boundary-setting to avoid overreach.

Quantifying Damages

BE also changes how harm is measured. Traditional damages analysis estimates the difference between the actual price and the competitive price, multiplied by the quantity sold. A behavioural approach can enrich that exercise in three ways:

- **Non-Price Harms.** BE can help value harm from cognitive exploitation, particularly in digital markets.
- **The Counterfactual.** The but-for world must consider whether consumers would actually have switched or taken up alternatives, since inertia can prolong harm.
- **Distributing Damages.** More attentive or price-sensitive consumers may experience different levels of harm, supporting segmentation of affected classes.

Standard before-and-after comparisons and regression-based counterfactuals may still be useful, but additional evidence is needed where harm is behavioural rather than purely price-based.

The main challenge is translating BE-informed damages models into claims that are both quantifiable and legally robust.

Evidentiary and Methodological Challenges

Although BE can sharpen competition litigation, it raises evidentiary and methodological challenges. To be persuasive, BE evidence must be:

- **Empirically Grounded**, showing that behavioural findings apply to the relevant market;
- **Replicable and Falsifiable**, not merely plausible or speculative; and
- **Causally Identified**, demonstrating that the conduct exploited a bias rather than merely coexisted with one.

The strongest evidence is likely to come from field experiments, natural experiments and revealed preference data from the actual market. Laboratory evidence may be less persuasive where samples or settings differ materially from the market at issue.

The required evidence will be case-specific, but courts will expect more than theory. I n Le Patourel v BT, BT's behavioural expert's claim that non-switching customers were a "different kind of person" was dismissed as speculation.[4]

At the same time, BE evidence need not explain every individual decision. The CAT accepted that it was impossible to identify each individual customer's motivation but still considered that there was sufficient evidence that a substantial number of customers attached positive value to the BT brand.[5] The judgment does not provide legal thresholds on what would constitute sufficient evidence, such that expert behavioural economists will have to test themselves what might hold up in court vs what might not.

Concluding Remarks

BE enriches, rather than replaces, the standard competition economics toolkit. Its value lies in explaining how real consumers respond to defaults, complexity, framing and inertia.

For BE to be useful in litigation, however, it must be supported by rigorous, market-specific evidence rather than broad theoretical claims.

As markets become more complex – especially digital markets – BE may move from being a useful supplement to an analytical necessity.

3 'US v Google'. US District Court for the District of Columbia (5 August 2024); page 2.
4 'Le Patourel v BT'. CAT (19 December 2024); para. 1106
5 'Le Patourel v BT'. CAT (19 December 2024); para. 1135.

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60 SECONDS WITH...

DR. SEBASTIAN PANTHÖFER

DIRECTOR

CHARLES RIVER ASSOCIATES

Q What's one competition law or economics trend that businesses should be paying much more attention to right now?

A One area I would pay close attention to is private DMA claims; I expect that we will see an uptake of activity in this space over the coming years.

Q You've worked across sectors ranging from AI and ad tech to telecoms and retail. Which industry do you find most fascinating at the moment, and why?

A One of the reasons why I truly enjoy my job is that we can get to know many different industries and uncover their specific competition aspects. If I must single out one industry, I would say retail. Retail affects people's everyday lives and has many different competition aspects that come into play; to name just a few: concerns over market power by retailers, a steady flow of mergers and acquisitions, competitive effects of retail alliances, cartels by FMCG producers and pass-on of overcharges, harm arising from territorial supply constraints and delistings, etc.

Q If you could bust one common myth about economists working in competition disputes, what would it be?

A I am not sure whether this is a common myth, but not all competition economists are experts in Excel – some of us use other tools too. ;)

Q AI is transforming almost every industry. What impact do you think it will have on competition enforcement over the next five years?

A Besides hopefully automating all our boring routine tasks, I am curious to see how AI will shape the battle between competition authorities and firms engaging in collusion. Competition authorities have enlarged their toolkit and now employ sophisticated screening algorithms to detect potential collusion from anomalies in data. However, it will only be a matter of time until the pricing algorithms that businesses use to facilitate or implement collusive agreements adapt their strategies to minimise the risk of being caught by the screening algorithms that competition authorities employ. And then the competition authorities need to improve their algorithms, and so on and so forth.

Q What's the most interesting part of your job that people outside the industry probably don't realise?

A The high-stakes nature of our work, both for the businesses involved and for society at large.

Q What was the last book, podcast, or article you read that genuinely made you think differently?

A Bill Gurley's Runnin' Down a Dream changed my perspective on what it means to have a successful career.

Q If you weren't an economist, what career do you think you would have ended up in?

A If I had followed my childhood passions, I would have likely ended up as a restaurant critic. Other potential career paths include architect and computer scientist.

Q You work on complex, high-stakes matters. How do you switch off and recharge outside of work?

A Spending time with friends and family, sports (bouldering, running, padel), and cooking.

Q What's one piece of advice you'd give someone starting a career in economics or competition consulting today?

A Build a strong foundation before you automate all processes with AI. Other than that, be curious, read widely, and enjoy the ride.

Q Finally, what's something your colleagues would be surprised to learn about you?

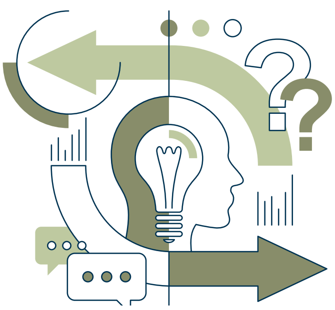
A Since my student days, I am an avid follower of a cooking show on German television ("Die Küchenschlacht").

FIRESIDE CHAT ON LITIGATION WITH ....

Authored by: Sofía Galán Pérez (Principal) & Fabrizio Vasselli (Principal) - Econic Partners

Q1: What are the most valuable skills for a competition economist involved in litigation projects, and why?

Fabrizio: Competition litigation requires a combination of theoretical understanding, technical expertise, sound judgment, and effective communication. Cases often involve complex economic questions and large datasets, and economists need to be comfortable applying economic theory and empirical techniques to produce evidence that can withstand scrutiny from opposing experts and the Tribunal.



Equally important is sound economic judgment. Litigation rarely lends itself to a one-size-fits-all approach, so a key part of the role is selecting the methodology that is most appropriate given the facts, industry context, and available evidence.

Finally, attention to detail and communication skills are critical. Every assumption and analytical choice may be challenged, and economists must be able to explain complex concepts clearly and persuasively to judges, lawyers, and clients.

Q2: What was the first litigation case that truly mattered to you, and why?

Sofia: The first litigation case that truly had an impact on me was the Spanish Envelopes Cartel case. What I found particularly interesting and rewarding was having the opportunity to apply for the first time my economic analysis background to a real-world competition damages dispute.

Coming from central banks where the focus is often on macroeconomic analysis and public policy, it was fascinating to see how rigorous economic methods could be used to assess very specific economic questions with legal consequences: how markets function, how anti-competitive conduct affects prices, and how damages can be credibly quantified.

The case showed me the power of economic evidence in litigation. It was not just about running models or analysing data; it was about translating complex economic concepts into clear and persuasive arguments that could withstand scrutiny from lawyers, courts, and opposing experts. That combination of analytical rigour and practical impact is what ultimately drew me into competition litigation and has kept me engaged ever since.

Q3: How do you think about economic evidence when you have to provide expert testimony?

Fabrizio: The purpose of economic evidence is ultimately to assist the judge in making an informed decision. When appearing in court, my objective is to help the Tribunal understand the analysis I have carried out, the reasoning behind it, and the key differences between my conclusions and those of the opposing expert.

To do that effectively, economic evidence needs to satisfy two requirements. First, it must be grounded in sound economic theory and robust empirical analysis, with the methodology tailored to the issues in dispute. Competition economists have a wide range of tools available, and an important part of the role is selecting the framework that is most appropriate for the case at hand.

Second, the analysis must be firmly anchored in the facts and commercial realities of the market. Even the most sophisticated economic analysis is unlikely to be helpful if it does not reflect how the market actually operates. The most persuasive evidence combines rigorous economic reasoning with a detailed understanding of the facts, enabling the Tribunal to assess why particular assumptions and methodological choices are justified.

Ultimately, effective expert evidence is both analytically robust and firmly connected to the factual record, allowing the Tribunal to reach a well-informed conclusion.

Q4: In practice, which damage quantification methodologies do courts tend to find the most persuasive?

Sofia: In my experience, courts are usually less interested in whether an expert uses a particular methodology and more focused on whether the chosen methodology is reliable, well explained, and consistent with the empirical evidence.

That said, comparative approaches tend to be particularly persuasive and easier for the judges to follow as compared to for example simulation models. Methods based on a credible but-for benchmark, such as before-and-after analyses or difference-in-differences frameworks, are often key techniques for courts when assessing and quantifying damages.

However, in my view, what makes an expert report truly convincing, provided it is rigorous, is not sophistication for its own sake. Courts tend to respond well when the expert clearly explains the theory of harm, identifies an appropriate counterfactual, relies on robust and reliable data, and demonstrates that the results remain stable under different assumptions. The most persuasive evidence is not necessarily the most complex one, but the one that combines sound economics with transparency, credibility, and a clear link between the methodology and the facts of the case.

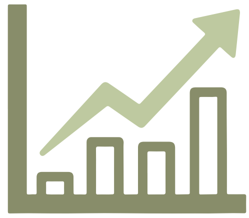
Q5: How do you prepare for cross-examination as an economic expert?

Fabrizio: Preparation typically starts with developing a thorough understanding of every aspect of the analysis, including the methodology, assumptions, data, and conclusions. An expert may be questioned on any element of their report, so it is important to be able to explain clearly not only what was done, but why particular choices were made.

I find it particularly helpful to prepare a table for each key piece of analysis setting out the methodology, assumptions and data sources relied upon, alongside potential criticisms and my responses to them. This forces me to think carefully about the rationale underpinning each decision.

Ultimately, cross-examination is not about persuading the Tribunal that the expert is right on every point. Rather, it is about demonstrating that the analysis is robust, transparent, and grounded in the evidence, while acknowledging any limitations where appropriate.

I also find mock cross-examinations extremely valuable, particularly when conducted by colleagues who have not been closely involved in the case. They can identify unclear explanations, challenge underlying assumptions, and ask the difficult questions that may arise during cross-examination.



Q6: What are the most important trends in competition litigation that lawyers should be paying closer attention to from an economic perspective?

Sofia: From an economic perspective, I think two of the most important trends that competition lawyers should be paying closer attention to are claims based on pass-on and umbrella effects. These issues are increasingly appearing in competition litigation, either as part of a defence strategy or because indirect consumers of an anticompetitive infringement are seeking compensation for the harm they have suffered.

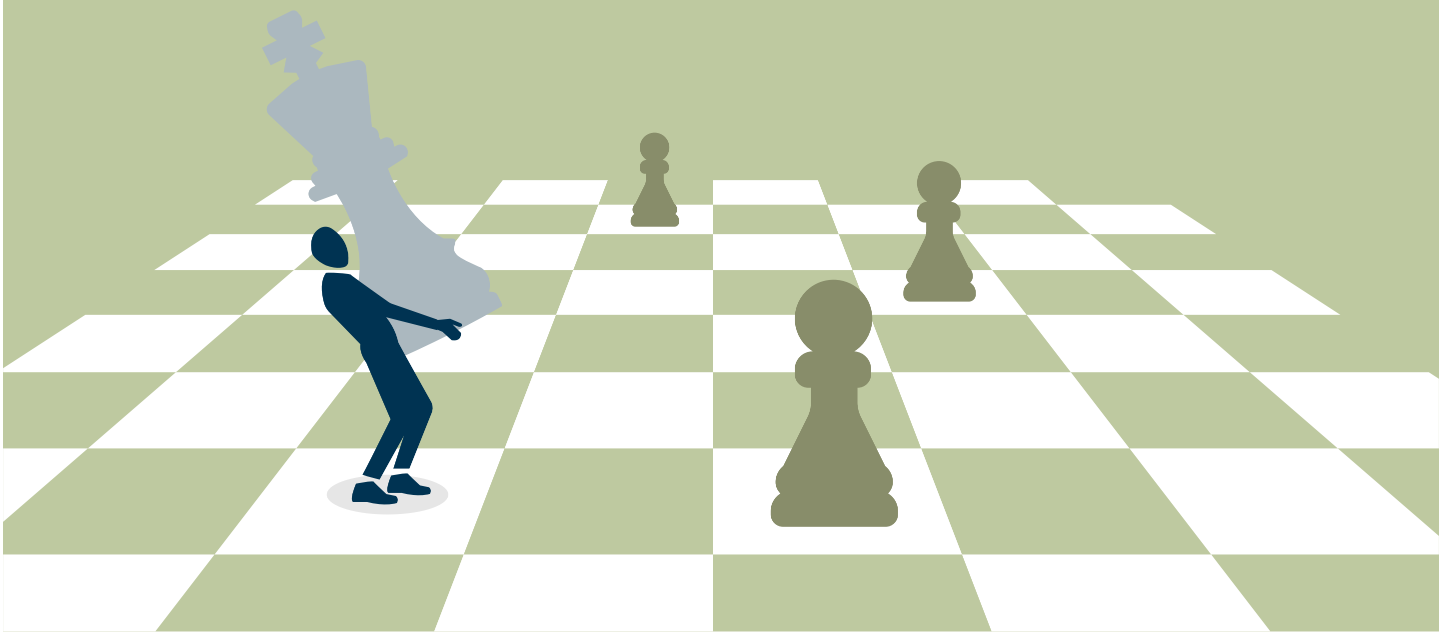
Traditionally, damages claims focused on customers who purchased directly from cartel members or other participants in the infringement. However, both economists and courts are increasingly recognising that anticompetitive conduct can also harm indirect customers who did not purchase directly from the cartelists, whether through pass-on effects or umbrella effects.

The key challenge lies in establishing causation and quantifying the harm. In this regard, quantitative techniques such as comparator-based methods and simulation models can be particularly useful.

The views and opinions expressed in this response are those of the authors and do not necessarily reflect the views of Econic Partners or its clients.

FROM INVESTIGATION TO CLASS ACTION

BUILDING A DATA STRATEGY THAT LASTS THE DISTANCE



Authored by: Craig Earnshaw (Senior Managing Director) & Jason Keenan (Managing Director) - FTI Consulting

U.K. competition-related class actions are on the rise, involving roughly 655 million class members in the last reporting year. While few competition investigations progress all the way from the first internal inquiry through to a settled class action, when they do, there is significant impact on the handling of electronic evidence and key facts. These rare but longstanding matters provide a view of how early data decisions can be tested years later across regulatory engagement, follow-on litigation, discovery, quantum analysis and settlement.

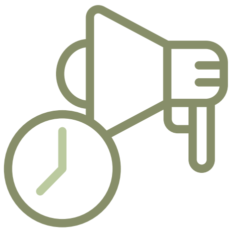
Most organisations face challenges in extracting key facts from their large data repositories, and in the competition and class actions space, those challenges rarely resolve on a predictable timeline. That's why early data strategy matters: it creates a foundation for decisions that may need to stand up to scrutiny across the long lifecycle.

Start Proportionate

The instinct at the earliest stage, often before anyone outside the organisation is involved, is to assume that more preservation is always safer. In practice, jumping straight to the highest level of preservation is rarely proportionate or necessary. The better starting point is targeted, defensible action.

Where there is a whistleblower allegation or an early signal of regulatory interest, the immediate focus should be on communications involving the relevant individuals, across email, chat and messaging platforms, along with any other channel likely to confirm, contextualise or challenge the allegation. Securing those sources first, and understanding what has happened, matters most. Where escalation is anticipated, e.g., where a regulator is already active in an adjacent or consumer-facing space, legal teams should also assess preservation capability and retention controls across systems likely to become relevant, including customer records, marketing or sales platforms.

These initial steps do not automatically trigger immediate and broad preservation. Rather, the aim is to establish a proportionate and defensible position, including key communications, a documented record of decisions taken, and a working understanding of where the relevant data sits.



Scaling at a Moment's Notice

Starting proportionately does not mean starting slowly. It means putting enough structure in place to scale quickly if the matter escalates. Once a request for information or a dawn raid lands, the scale and complexity of data management changes immediately. The exercise stops being an internal inquiry and becomes one of establishing a defensible process for preserving and collecting data on a large scale, carried out under business constraints including disruption and cost.

This is also where competing priorities tend to surface. In-house teams are naturally focused on managing cost and minimising disruption to the business, while external counsel needs sufficient data to support a sound response. Both incentives are legitimate, and reconciling them early, rather than after the pressure has intensified, makes for a smoother process.

Multinational organisations face additional layers of complexity. Data may span jurisdictions, sit within recently acquired businesses with systems that need to be treated differently, or be subject to local privacy obligations that determine where and how it can be preserved, transferred and reviewed. These issues are much easier to manage if the organisation already has a clear view of its systems landscape and decision-making framework before the matter escalates.

The Decade-Long Obligation

The same discipline matters even more if the matter progresses to a class action. Parties are formally on notice, and for large class actions, discovery will scale considerably. A clear early view of likely volume and complexity gives parties a stronger basis for proportionality arguments. Early case assessment, sampling, analytics and technology-assisted workflows can then help test what really needs to be reviewed or produced, reducing volume while maintaining a record of the approach taken. Cost estimation deserves the same attention, giving both the tribunal and the parties a realistic sense of what lies ahead rather than a late surprise.

As a matter moves toward quantum assessment, the data focus often shifts from communications to transactional, financial, customer relationship management or other structured data systems. Many of those systems were not built with litigation in mind and may not have a straightforward export function, so getting the information into a usable format can become a technical undertaking in its own right.

There is also a countervailing consideration: during discovery, organisations may need to preserve key data that supports their own quantum modelling, causation analysis or other arguments, even where that material is not strictly required for discovery. The strategic question is therefore not only what must be produced, but what should be retained as relevant to the wider case.

Holding the Line for Years, not Months

Class actions often span many years, with look-back periods stretching a decade or more. Much of the relevant data may live on legacy systems that IT teams would otherwise expect to decommission. Preserving everything indefinitely is neither affordable nor realistic, particularly while the rest of the business continues to modernise its systems around the litigation hold.

Applying smart, granular legal holds, rather than a single instruction covering an entire custodian or system, makes long-term preservation more manageable. Overlapping matters across jurisdictions rarely conclude on the same timetable, so the ability to release one hold without disturbing another is essential.

Equally important is a playbook that supports consistency over time. People move on from long-running matters, and institutional memory fades. New team members need a clear account of what has been decided and why, not just an inherited folder of old correspondence. Eventually, that position will reverse, as the organisation determines when it's safe to retire a system or data population while remaining alert to any overlap with other live or prospective matters touching the same materials.

Final Thoughts

The decisions made in the first weeks of an internal investigation are rarely the ones being tested when a matter finally reaches settlement, but they are the foundation everything else rests on. Treating discovery readiness as a continuum, from the earliest internal inquiry through to the final stages of a class action, is what allows organisations and their legal teams to remain proportionate, scalable and defensible over time.

A data strategy that lasts the distance is not about preserving everything forever. It is about knowing what matters, making proportionate preservation decisions at each stage and keeping enough control to adapt as the matter evolves.

COLLECTIVE ACTIONS

Corporate Partner

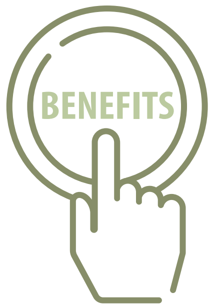
NORTON ROSE FULBRIGHT

BECAUSE YOU'RE WORTH IT?

Authored by: Nuala Canavan (Partner) & Emilia Radley (Senior Associate) - Norton Rose Fulbright

Last year marked a decade since the UK introduced the competition collective proceedings regime. Over that period, the Competition Appeal Tribunal (the CAT) has seen an exponential growth in collective actions, with tens of billions of pounds of damages claimed on behalf of consumers and businesses, and hundreds of millions of pounds spent on legal and other fees.[1]

The main purpose of the regime was to secure access to justice where numerous individuals suffer small losses that in isolation would not justify standalone litigation. The regime is now advanced enough to allow the CAT to step back and consider whether that aim has been achieved in the cases that have been resolved to date: are class members in fact receiving compensation at scale, and if so, at what cost? In this article, we consider outcomes in recent cases, and the CAT's increasing scrutiny of the likelihood of class members receiving meaningful compensation.



The Benefit Analysis: To What Extent are Class Members Benefitting from Collective Proceedings?

After years of claims battling their way through certification and case management stages, a handful have now progressed to trial and/or settlement. However, despite significant damages figures claimed (with several claims seeking over £1 billion in damages), to date, there has been limited financial payout for class members.

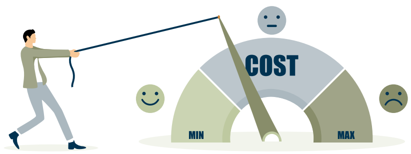
Of the three claims in which the CAT has reached a judgment, only one has resulted in an award of damages for the class (Kent v Apple[2]). However, given that the defendants are seeking permission to appeal, this sum is yet to be distributed to the class. Each of the other two claims (Le Patourel,[3] and the claims against the non-settling defendants in Boundary Fares[4]) failed to establish a breach of competition law.

With the exception of Ro-Ro[5] (in which the Class Representative secured settlements of nearly £93 million across all five defendant groups, compared to an original claim value of approximately £150 million) other settlements have achieved lower or even nil recovery, and/or resulted in minimal distribution to the class:

1 Opt-out collective actions regime review: call for evidence, published on 6 August 2025.
2 1403/7/7/21 Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd [2025] CAT 67.
3 1381/7/7/21 Justin Le Patourel v BT Group PLC [2024] CAT 76.
4 1304/7/7/19, 1305/7/7/19, 1425/7/7/21 Justin Gutmann v London & South Eastern Railway Limited and Others [2025] CAT 64.
5 1339/7/7/20 Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others.

- In Merricks,[6] the parties agreed a settlement of £200 million, less than 2% of the original £14 billion damages claimed. In its judgment approving the settlement, the CAT noted that the outcome was "very far from a success" for the class. The low level of the settlement led to the public breakdown in relationship between Mr Merricks and his claim's funders, Innsworth Advisors, who opposed it on the basis that it was too low and premature. Distribution of the settlement is yet to take place.
- In Boundary Fares, the Class Representative, Mr Gutmann, agreed a settlement with one of the defendants, Stagecoach, of approximately £25 million. Whilst the CAT accepted that "the Settlement was positive, in that some recovery was made in a case where the merits did not appear to be strongly in favour of the CR", it subsequently found the low levels of take-up of the settlement award by the class to be "extremely disappointing". Only 7,290 valid claims were made, totalling £216,724.91 in claimed value – 0.9% of the total value available. This fell significantly short of even the lower range of uptake projected by the Class Representative of 10% (estimating approximately 140,000 claims).
- Finally, in Qualcomm[7] the CAT approved a "drop hands" settlement after trial but before judgment, with the claim being withdrawn entirely by consumer association Which?, no parties making any costs payments, and no adverse findings made against Qualcomm. The proceedings therefore resulted in no payment to consumers at all.

Accordingly, while class members have received some benefits from collective proceedings, these have been limited to date. It is fair to say that the collective proceedings regime is still developing, and further judgments and settlements are no doubt on the horizon, where results may differ. However, even where there is success for the claimants at trial or in obtaining a settlement, the example of Boundary Fares shows that this is not the end of the story: in practice, getting money to the class is proving to be more difficult than anticipated.



The Cost Analysis: How Much do Collective Actions Cost?

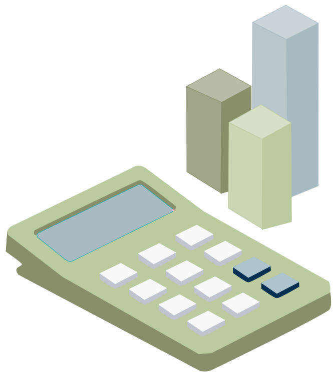
Collective claims are characteristically extremely costly: they typically span years, require numerous hearings and extensive legal and expert input; and governance, funding arrangements and after-the-event insurance add further layers of complexity and expenditure.

Merricks, the first claim to have been certified by the CAT, took nearly nine years to reach settlement, after extensive interlocutory disputes and appeals. By late 2024, the Class Representative's costs had exceeded £40 million.[8] It remains to be seen how much of the settlement amount is ultimately distributed to the class. However, the experience in Boundary Fares (below) suggests that this may well fall short of total costs.

In Boundary Fares, once distribution of the settlement sums had taken place, the CAT carried out a backward-looking cost-benefit analysis of the settlement, comparing the c. £200,000 ultimately claimed by class members with the £5 million paid to the funder, and the Class Representative's legal costs of £18 million. The CAT observed, "the beneficiaries of these proceedings and the Settlement are not the class members, given the level of take-up". Whilst the CAT stressed that no stakeholder had behaved improperly, it noted that

> ***"outcomes which appear to be predominantly for the benefit of stakeholders rather than class members or charity are not in the public interest or for the benefit of the collective settlement regime which is there to make justice available for those who cannot afford to bring such claims on their own".***

These figures demonstrate how the low amounts of compensation ultimately reaching class members can be significantly outweighed by the costs of pursuing these claims, calling their value into question.



Counting the Cost: When Collective Proceedings Fail the Value Test

The CAT's commentary in Boundary Fares signalled a need for a recalibration. Given the low levels of distribution of the settlement sum, the CAT concluded that "in the future, far more work needs to be done on the likely level of uptake at the stage of the settlement approval, and in appropriate cases at the earlier certification stage". That direction was put into practice for the first time in Waterside,[9] where the CAT opted to address head on the question of the likely benefit of the action compared to its costs when considering certification.

The proposed claim alleged collusion among major producers of farmed Atlantic salmon, raising wholesale prices that were said to have been subsequently passed on to a class of approximately 40 million consumers. Similar claims already formed the basis of parallel proceedings by individual retailers (e.g. Asda and Tesco), which are progressing to trial.

The CAT accepted that the claims advanced by the proposed Class Representative were prima facie appropriate for collective proceedings. However, the CAT did not stop there and went on to compare the anticipated costs of the action with the likely benefits. Its findings were not favourable. The PCR's proposed budget

6 1266/7/7/16 Walter Hugh Merricks CBE v Mastercard Incorporated and Others [2025] CAT 28.

7 1382/7/7/21 Consumers' Association v Qualcomm Incorporated [2026] CAT 50.

8 As at 30 November 2024: Merricks v Mastercard [2025] CAT 28, paragraph 148(1). This is in addition to anticipated costs estimated to be up to £5.7 million (ibid, at paragraph 148(2)).

9 1643/7/7/24 Waterside Class Limited v Mowi ASA and Others [2026] CAT 32.

exceeded £15 million in costs (excluding up to £19.4 million in insurance premia and legal team success fees of up to 50%). While damages claimed were between £71-382 million, applying the take-up rate from Boundary Fares the CAT estimated that just £0.7-3.1 million would be likely to reach consumers after trial and judgment. Even applying five times the Boundary Fares take-up, the CAT observed that an optimistic calculation of pass-on and damages would result in £15 million going to the class. Expected compensation would therefore be "dwarfed by the proposed costs of these proceedings". On this basis, the CAT refused certification, concluding that there was

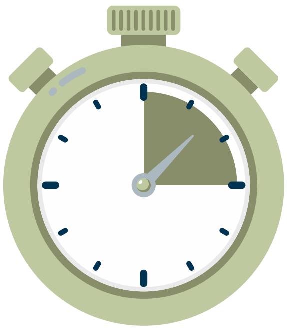
"no evidence to support an expectation that the amount which will be returned to the class will be proportionate to and/or exceed the costs being spent, irrespective of whether account is taken of the funder's fee".

The relevance of a cost-benefit assessment is not novel; indeed, Rule 79(2)(b) of the CAT Rules 2015 expressly directs the CAT to consider "the costs and benefits of continuing the collective proceedings" when assessing the suitability of claims for collective proceedings. In fact, the CAT considered the cost-benefit analysis did not favour the continuation of proceedings in Rowntree, however certification was denied on other factors of the certification test.[10] The significance of the Waterside judgment is that even where an action is otherwise deemed by the CAT to be appropriate for collective proceedings, an unfavourable cost-benefit analysis alone can be a bar to certification where it points "plainly against continuation".[11] This is in contrast to the CAT's previous decisions, where claims were certified even where the cost-benefit analysis was unfavourable.[12]

The CAT's concerns with the likely distribution in Waterside arose due to the similarity in proposed distribution approach to the Boundary Fares scheme, which would have required class members to step forward and adduce evidence (such as receipts) which many individuals are unlikely to have retained. The CAT emphasised the need to consider distribution at the outset, urging Class Representatives to explore novel solutions to ensure recovered amounts find their way to the appropriate class members.

It is also notable that the CAT criticised the proposed Class Representative's budgeted costs. In particular, it highlighted the duplication of work with the retailer claims, suggesting that the proposed Class Representative could have sought to minimise costs by "piggy-back[ing]" on the liability claim, including by sharing counsel, disclosure and expert witnesses.[13] The CAT was particularly unimpressed by the proposed Class Representative's own costs, which it deemed to

"vastly exceed[ ] the remuneration that would ordinarily be expected for a person engaged in public service".[14]



The Beginning of the End – or just the End of the Beginning?

The CAT's commentary in these recent cases suggests that proposed Class Representatives can expect to face increased scrutiny of whether proposed claims are likely to lead to class members receiving meaningful compensation, such that the anticipated costs of those claims can be justified. Parties should expect greater scrutiny of proposed costs and efficiencies, and heightened consideration of the details of envisaged distribution at an earlier stage of proceedings. Class Representatives may be expected to come up with novel and more effective ways of distribution, leveraging any opportunities to automate the distribution of settlement funds rather than relying on individuals proactively to step forward.

However, these developments should not be seen as undermining the future of the collective actions regime. Rather, the Waterside judgment demonstrates that, while access to justice remains a governing principle of the regime, this does not mean "access at all costs". Indeed, the government's consultation on the opt-out regime[15] has proposed to maintain its existence and scope, however has suggested that the cost-benefit analysis should be made part of the statutory certification threshold test, to guard against the risk of claims being brought that carry disproportionate cost compared to the benefit they deliver to the underlying class. In the meantime, we expect to see a shift in the CAT's approach towards an expectation that – if they are to be certified to proceed – such claims must demonstrably be capable of delivering meaningful compensation to consumers.

10 1634/7/7/24 Rowntree v Performing Right Society Limited and Others [2025] CAT 49, para 103.

11 Waterside, para 47.

12 For example the CAT's certification decision in Boundary Fares, where it granted certification despite finding that "the cost benefit analysis comes out slightly against the grant of a CPO"; Gutmann v First MTR South Western Trains [2021] CAT 31, para 178.

13 Waterside, para 39.

14 Waterside, para 54.

15 Accessible here: https://assets.publishing.service.gov.uk/media/6a58b35031fb6daf31413811/swifter-and-simpler-competition-redress-regulatory-appeals-and-competition-enforcement.pdf

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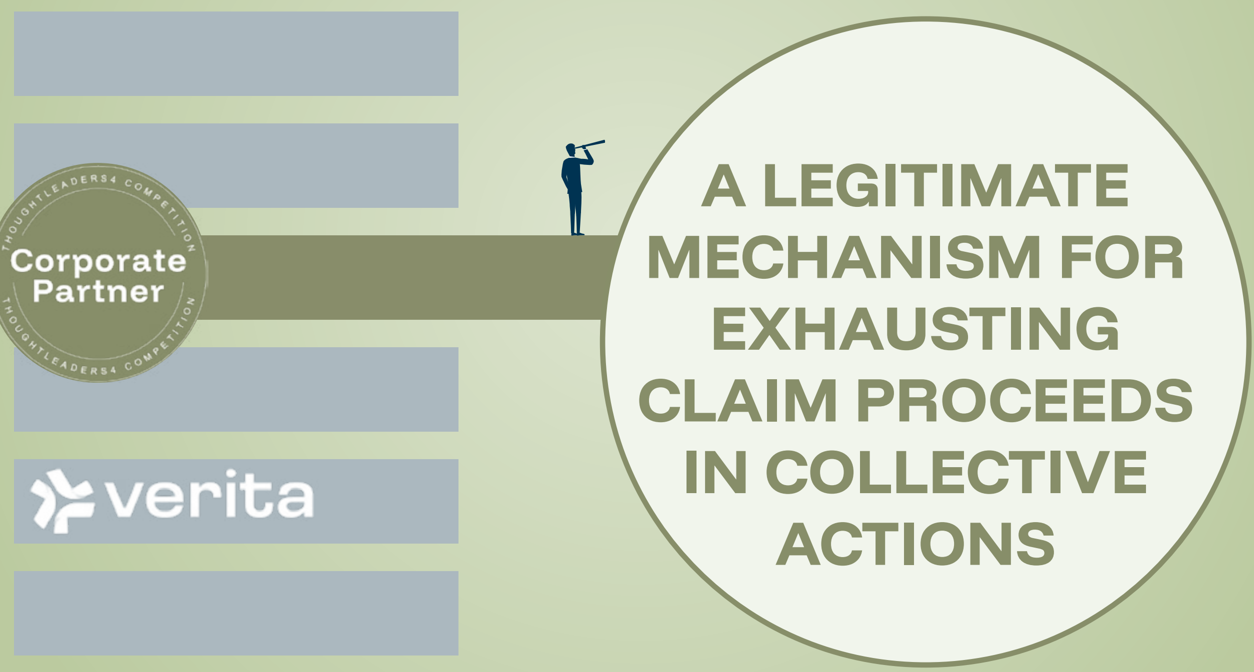
LOOKING BEYOND PARTICIPATION WITH (RE)DISTRIBUTION

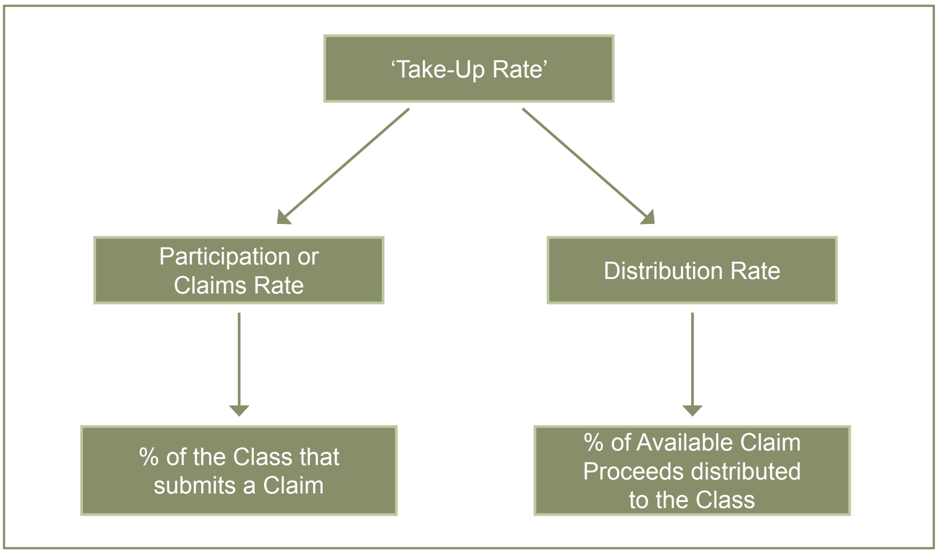


Authored by: Niamh Tattersall (Director) & Greg Haber (Senior Vice President) - Verita Global

It's no secret that the collective action community in the UK and abroad was abuzz following the Waterside CPO Judgment. The term 'take-up rate' took on a whole new significance following the Competition Appeal Tribunal's (CAT) emphasis on the take-up rate forming a key part of the cost-benefit analysis, and therefore, certification process. The subsequent Brook CPO judgment further highlighted the importance of the role take-up rates play in the CAT's cost-benefit analysis.

Both judgments emphasised an unspoken distinction of the term "take-up-rate" that claims administrators know all too well. 'Take-up-rate' or 'uptake' can indeed have two meanings: (a) the number of claims submitted from the total number of existing class members (also known and better described as the Participation or Claims Rate); and (b) the percentage of claim proceeds that are distributed to class members and who ultimately receive a payment (better described as the Distribution Rate). These measures are not interchangeable and are often conflated and confused. Each impacts the administration differently and a sophisticated distribution plan considers* both.

What We Mean by 'Take-Up Rate':



The CAT's certification process and cost-benefit analysis appears to focus on the Distribution Rate, specifically, suggesting a higher Distribution Rate is needed to balance out the costs incurred by the Class Representative bringing the action. This slight but important shift in perspective as to how the regime views 'take-up rates' alters the nature in which distribution plans are developed. Instead of focusing solely on factors that increase the Participation Rate, such as comprehensive notice to class members, and the development of a frictionless claim process, designing a distribution plan focused on increasing the Distribution Rate becomes paramount.

That does not mean crafting a distribution plan should only consider the Distribution Rate. Experience and logic dictate that increasing the Participation Rate naturally increases the Distribution Rate. The more class members who file valid claims, the more class members will be available to receive funds from the claim proceeds.

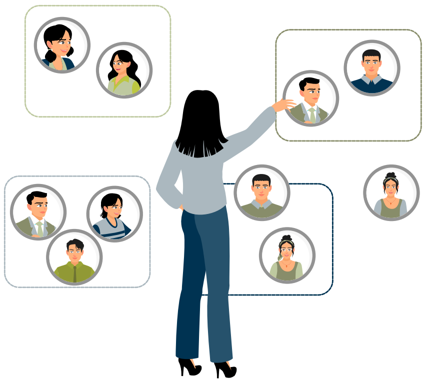
This still raises a critical question:

How do we distribute a high percentage of available claim proceeds when the number of claims submitted is a smaller (sometimes significantly so) than the total number of existing class members?

The CAT's scrutiny has resulted in a hyper-focus on presenting to the CAT any and all methodologies that may increase the Distribution Rate to satisfy the certification process and cost-benefit analysis. Many of these methodologies include various automatic payment processes, where a class member does not submit a claim and "automatically" receives a payment or a credit directly from a claims administrator or the defendant. Automatic payments are limited by the availability and accuracy of the class member data, likely obtained from defendants, and account information and the capability of a defendant's payment mechanisms to effectuate them.

Inevitably, there will be some percentage of the class that is required to proceed with filing a claim to participate in any claim proceeds. To add further complexity, technically automatic payments do not contribute to the Participation Rate because there is no claims process in which automatically paid class members participate. No participation is required; payments are automatic. Thus, distribution plans must account for the reality that the Participation Rate will hit a ceiling, where only so many class members submit a claim form or are eligible for an automatic payment.

This is where redistribution becomes relevant.



Redistribution: Looking Beyond the Initial Distribution

Redistribution is precisely what it sounds like: a distribution mechanism whereby additional distributions are made to class members who were already paid successfully as part of the initial distribution, with the purpose of extinguishing the remaining available claim proceeds to the greatest extent possible. Redistribution is commonly utilised in North American class action regimes, typically paid for separately from the settlement fund, and its process is straightforward.

When claims proceeds remain undistributed, class members who successfully receive an initial payment, receive another payment on a pro-rata basis depending on the amount of remaining available claim proceeds. The process can be repeated, where approved and subject to any agreement of the parties or direction from the court, until the remaining available claim proceeds are exhausted or are reduced to the level where further redistribution is impracticable. When such a level is reached, any remaining funds are typically then sent to a designated cy pres recipient. Effectively, class members can be compensated more than once. Practically, the Distribution Rate ranges are dramatically higher – because claim proceeds are delivered to class members and those funds are exhausted.

A simple example of how redistribution achieves a higher Distribution Rate even with a moderate Participation Rate can be demonstrated as follows.

Suppose a class of 30,000,000 class members, has a 2% Participation Rate (600,000 class members filed a claim), with estimated damages per class member in the range of £10 to £50 and a £100,000,000 million fund of available claim proceeds. Each class member can receive an initial payment of, say, £50 (£ 50 x 600,000 class members = £ 30,000,000), which will reduce the fund to £70,000,000 – a Distribution Rate of approximately 30% (70% of the fund remains). To increase the Distribution Rate, additional funds can be redistributed to class members in an agreed upon amount, say an additional £50, can continue to occur, as long as it is commercially feasible, as necessary and as agreed until the claim proceeds are nearly exhausted. In this example, claim proceeds could be redistributed until the fund is reduced to £1,000,000 and, thereby increasing the Distribution Rate to approximately 99% and distributing approximately £99,000,000 of available claim proceeds to class members.

It goes without saying that Redistribution should not replace efforts to maximise the Participation Rate. In fact, a sophisticated distribution plan considers the complementary nature of the Participation Rate and the Redistribution mechanism, where Redistribution can enhance the overall success of the distribution. As the CAT's approach to the cost-benefit analysis and certification continues to evolve, there is a compelling case for redistribution to form a core component of any proposed distribution plan – particularly where the objective is to distribute as much of the claim proceeds as possible.

60 SECONDS WITH... JOHN W. ELIAS

PARTNER

HERBERT SMITH FREEHILLS KRAMER

Q What's the best piece of professional advice you've ever received?

A "You build your reputation every day." What I've come to understand is that reputation is built on consistent delivery – showing up prepared, following through, and doing whatever the matter calls for, at every level of complexity. Not in a showy way; just reliably, every time. Over a long career, first at DOJ and now in private practice, I've seen that clients and colleagues notice that consistency more than any single standout moment. Reputation isn't proclaimed — it accumulates through both the routine and the challenging moments handled well.

Q What's the biggest challenge facing businesses from a competition law perspective right now?

A The biggest challenge is navigating an evolving and fragmented regulatory context. In the U.S., enforcement priorities are shifting in ways that call for continuous monitoring of the regulatory posture. Right now, we are seeing state-level enforcers as active as they have ever been. Private enforcement is also extremely active. And international requirements are constantly evolving, with, for example, Australia's new premerger notification regime picking up even some deals with very limited local nexus. Companies face scrutiny not just from Washington, but from state and foreign capitals, as well as from private plaintiffs. Proactive risk assessment – before you're in the crosshairs – has never been more important.

Q Which competition law trend or development do you think will have the greatest impact over the next 12 months?

A We continue to see courts grapple with the intersection of AI and antitrust. Algorithmic pricing tools have been and will continue to receive scrutiny. Enforcers are asking hard questions about whether AI systems are facilitating coordination among competitors – even absent direct competitor-to-competitor communication.

Q If you could give businesses one piece of competition law advice, what would it be?

A Be proactive. The businesses that navigate antitrust enforcement successfully are the ones that identify and address vulnerabilities early — whether in pricing practices, distribution arrangements, information-sharing with competitors, or proposed acquisitions. The regulatory environment today is complex and evolving: enforcement priorities can shift, state attorneys general are increasingly aggressive, and private plaintiffs are active. Early, candid internal assessment of antitrust exposure – followed by concrete risk mitigation – pays dividends.

Q What's a common misconception people have about competition law?

A The most persistent misconception is that antitrust is only relevant to monopolies or massive corporations. Companies of all sizes face exposure – particularly around agreements with competitors, pricing practices, and distribution arrangements. A mid-market company sharing pricing information through a trade association, or a startup deploying aggressive exclusivity provisions, can trigger scrutiny. Another misconception is that U.S. antitrust is purely domestic. Many clients are surprised to learn that a deal or practice that's unproblematic in Washington may face heightened risk in Brussels, London, or elsewhere. The geographic footprint of antitrust risk has never been larger, and businesses need to plan accordingly.

Q Which sector or industry do you think regulators will be paying particularly close attention to in the coming years?

A Defense. Regulators are acutely focused on the resilience and competitiveness of the defense industrial base, citing the risk that consolidation can erode competitive pricing and threaten national security. DOJ's recent blocking of Transdigm's acquisition of Stellant sent a clear signal that, even in a deal-friendly environment, regulators will not hesitate to act in this sector, especially if the Department of War opposes a deal. The FTC's 2025 divestiture requirements to protect competition in military and commercial aircraft markets sent a similar message. And the procedural landscape is shifting too: the DoW now requires parties to affirmatively submit HSR filings for qualifying defense-related transactions – broadening DoW oversight beyond deals that would previously have been referred by the FTC or DOJ. For any company that touches defense contracting, this is a new and more complex regulatory reality that needs to be planned for from the earliest stages of any transaction.

Q What's been the most interesting or unexpected development in your practice recently?

A Joining HSF Kramer itself has been genuinely energizing in ways I didn't fully anticipate. Coming from nearly 18 years in a government practice – most recently supervising the DOJ Antitrust Division's appellate, international, and policy functions – I expected the transition to private practice to be significant. What's surprised me is how central cross-border coordination has become to even routine antitrust counseling. HSF Kramer's trans-Atlantic and trans-Pacific platform means I'm working regularly alongside colleagues in Brussels, London, Sydney, and Paris on matters that a domestic firm simply couldn't handle with the same seamlessness. I've developed an even greater appreciation for the similarities and differences in our legal contexts, and I routinely discover more of the nuances of how our respective antitrust regimes operate.

Q What skill has been most valuable to you throughout your legal career?

A The ability to put yourself in the decision-maker's seat. Whether as a line attorney at DOJ, as a White House staffer, or advising clients, the most valuable thing I could do was not just to understand the case and our arguments, but why an audience might find them compelling – or not. That mindset translates directly into private practice. My clients benefit most when I can tell them not just what the law says, but how the DOJ or FTC is likely to approach their particular facts. That combination of advocacy and perspective is what allows clients to make truly informed, strategic decisions.

Q When you're not working, what's your favorite way to switch off and recharge?

A I'm a big fan of The Traitors – if you haven't watched it, it's a social deduction reality TV show, with contestants trying to identify hidden "Traitors" in their midst. The franchise is filmed in dozens of countries, and it's interesting to see cultural differences come out in the game play. I recently joined a live, in-person mini-version put on by a DC events company. You're in a room full of people trying to figure out who's deceiving whom. It was quite the experience, and the same patterns from the TV show emerged quickly in our live version.

ThoughtLeaders 4 Competition

Meet ThoughtLeaders 4

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