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British Group of the
Ligue Internationale du Droit de la Concurrence
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A round up of hot topics in collective actions and legal and economic perspectives on recent issues in proving and quantifying damages in Competition Law Litigation Cases

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Date: 24 September 2025

Introductions

Kim Dietzel opened the session by highlighting the evolving nature of competition litigation, particularly within the collective proceedings order (CPO) regime, as well as outside of the CPO regime, with several significant judgments being handed down considering whether there has been a breach of competition law, and, if so, whether that caused harm to claimants.

Refusal to Certify in PRS/Rowntree

Ben Rayment discussed the Rowntree v PRS case, in which David Rowntree brought a collective action against PRS alleging unfair distribution of royalties. The CAT refused certification and struck out the claim entirely—an unusual move—on the basis that the proposed class was not properly defined and included PRS members who did not have individual claims to the unclaimed royalties in respect of which the proposed class representative (PCR) was seeking to claim under competition law.

- The Tribunal found the methodology for assessing aggregate damages inadequate, failing the Microsoft test, and provided no basis as to how (assuming a class member had a claim to undistributed royalties) the undistributed royalties should be fairly distributed in the counterfactual.

- The proceedings also failed the cost-benefit analysis, not because of the scale of the funder's fee, but because the claim lacked clear benefit to the class (the whole PRS membership). If the PRS had to pay

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damages to the class the PRS might have to recoup those sums from royalties it collected on behalf of its members (i.e. the class) who were effectively suing themselves and many of whom could have done worse not better as a result of the proceedings. The proceedings coudl have have primarily ended up serving funders and lawyers not the class members.

- The CAT acknowledged Rowntree's suitability as PCR but raised concerns about internal governance, including his decision to change solicitors without consulting his advisory panel.

- The judgment serves as a strong reminder that each class member must have an individual claim and that internal mechanisms or ADR options should be considered before launching collective proceedings. In this case the PRS had an internal procedure for resolving complaints between members and the PRS over royalties.

Bulk Mail Case Management

Ben Rayment considered Bulk Mail Claim, in which the CAT certified a £1.2 billion collective action brought by the class representative, Bulk Mail Claim Ltd, against Royal Mail, alleging abuse of dominance through discriminatory pricing that harmed bulk mail customers such as charities, retailers, public bodies and advertisers who send bulk mail. The claim follows Ofcom's 2018 decision that Royal Mail's pricing changes were anti-competitive and aimed at excluding rivals like Whistl from the market.

- In particular, Ben Rayment highlighted the Tribunal's increasing scrutiny over governance of collective proceedings, requiring detailed cost budgets, active case management, and transparency from the CR's director, an experienced economist.

- The CAT emphasised that the PCR is not just a figurehead but must actively manage the case, consult with a panel, and engage with a newly introduced "customer user group" to reflect class member interests.

- Cost management was a key focus, with the CAT requiring realistic budgets and updates at each hearing, ensuring the PCR had advice as to the level of bills of costs being submitted to him by the lawyers and experts and asking the PCR to notify the Tribunal of any delays in the funder paying invoices.

- The Tribunal dismissed Royal Mail's objections to the expert methodology, stating these were matters for trial, and confirmed the claim had a credible prospect of success.

Certification in Amazon

Kim Dietzel discussed the Amazon joint certification hearing which highlighted the Tribunal's flexibility in allowing claims to proceed despite methodological flaws, raising questions regarding the robustness of the certification regime.

- The hearing involved two separate claims—a consumer CPO and a retailer CPO—considered together after both had resolved carriage disputes.

- Both proposed class representatives were deemed authorised based on their carriage success, which Amazon did not challenge.

- The Tribunal raised concerns about funder returns but deferred scrutiny to the end of proceedings, echoing issues seen in Merricks.

- One PCR's expert failed to present a coherent methodology, yet the Tribunal certified the claim by relying on the stronger methodology of the other PCR's expert.

- The Tribunal encouraged the use of a single methodology or expert where no conflict exists between classes.

- This approach calls into question the purpose and standards of the certification regime, particularly the expectations placed on PCRs and their experts.

Boundary fares settlement distribution hearing
Stefan Kuppen highlighted the Gutmann case, in which Justin Gutmann brought a collective action against train operators alleging they abused their dominant position by failing to make “boundary fares” sufficiently available, causing Travelcard holders to be double-charged for parts of their journeys. The case was the second to be certified and the second to see a settlement, with Stagecoach, one of four defendants, agreeing to settle for up to £25 million, plus costs and distribution expenses.

- The settled portion of the claim became the first case to reach the distribution stage, but take-up by class members was extremely low—less than 1% of the available funds were claimed, prompting a stakeholder hearing to determine how to allocate the remaining balance.

- The CAT expressed disappointment at the poor distribution and highlighted lessons to be learned, including the need for better mechanisms to reach class members and possibly government-supported distribution platforms.

- The Tribunal scrutinised both the distribution to class members and the stakeholder entitlements (lawyers, funders, insurers), and emphasised that fairness may override the terms of funding agreements if necessary.

- The case illustrates the CAT’s increasing attention to transparency, governance, and cost management in collective proceedings, setting important precedents for future settlements.

Cases in Relation to Damages

1. Stellantis v Autoliv

a. Ben Rayment considered the Stellantis case in the CAT dismissed the claim, finding Stellantis failed to prove that any cartel activity caused an overcharge, despite relying on three types of evidence: Stellantis’s internal data, limited email disclosures, and econometric analysis.

b. The Tribunal reversed the evidential burden due to limited disclosure and drew adverse inferences against Autoliv, but still concluded causation was not established.

c. Econometric evidence was found inconclusive, and the Tribunal made important observations about the role of economic experts—highlighting the tension between needing to engage with facts and maintaining objectivity.

d. The case illustrates the difficulty of proving harm in standalone competition claims and raises broader questions about trial structure and the evidentiary burden in complex economic litigation.

2. Granville V LG Display

Stefan Kuppen highlighted the key points from Granville v LG Display, in which the court awarded approximately £4.4 million in damages (over half of which was interest), significantly lower than the £60 million claimed, due to findings on overcharge and pass-on.

(i) The judge preferred the defendants' regression model over the claimants' extrapolation model, finding overcharges of 4–14% depending on the product type.

(ii) Despite instability across different econometric specifications, the court was not troubled by the variation and applied the "broad axe" principle to estimate damages pragmatically.

(iii) On pass-on, the court found that 65% of the overcharge was likely passed downstream, based on a mix of economic reasoning and limited factual evidence.

(iv) Permission to appeal was granted on certain points, indicating ongoing legal debate around the evidentiary standards for overcharge and pass-on in cartel damages claims.

3. Le Patourel v BT

Kim Dietzel discussed the Le Patourel case, which ended with the CAT rejecting the claim despite finding excessive pricing, offering detailed guidance on competition law assessment and the limits of relying on regulatory findings. This case involved a class action against BT seeking over £1 billion in damages for alleged overcharging of residential landline customers.

(i) The claim was based on Ofcom's 2017 findings, but the Tribunal gave those findings limited weight and disagreed with some of Ofcom's conclusions.

(ii) The CAT found BT's prices were excessive but not unfair, meaning the abuse of dominance claim failed.

(iii) Permission to appeal was refused by the Court of Appeal, bringing the case to a close.

(iv) The judgment is extensive (300 pages) and provides detailed analysis on market definition, dominance, the Unfair Brands test, and causation/quantum.

(v) The CAT determined a reasonable margin to be 13.5%, and considered prices 20% above a competitive benchmark to be excessive—though it gave little reasoning for this threshold.

(vi) In assessing unfairness, the CAT emphasised economic value over cost, noting BT's offerings (e.g. UK-based call centres, scam call blocks) provided "distinctive value" and that switching levels were higher than Ofcom had estimated.

(vii) The CAT's quantum analysis applied the Albion Water approach, using the difference between actual price and competitive benchmark, which contrasts with its fairness assessment.

(viii) A novel claim for inflation on top of compound interest was rejected due to lack of legal authority.

(ix) The CAT held that compound interest on aggregate damages requires specific evidence, which the claimant had not provided—raising practical challenges for future claims.

4. Cabo Toys

Stefan Kuppen discussed the Cabo toys case, in which the High Court found that MGA abused its dominant position and made unjustified patent threats, but where Cabo, a start-up whose launch had been stifled, was awarded no damages because it failed to prove it would have traded profitably even without the exclusionary conduct.

(i) Stefan Kuppen noted the complexity of assessing quantum in this case, which occupied much time at trial but ultimately proved a side show. The case might have benefitted from a split trial, separating liability from the assessment of damages, but that was rejected by the court at an early stage.

(ii) Dr Vikram Kumar made a few remarks regarding market definition.