Department for Business & Trade Opt-out collective actions regime review: Call for Evidence

Response of Mishcon de Reya LLP
14 October 2025

About Mishcon de Reya LLP

Mishcon de Reya LLP has a market leading claimant-side Competition disputes practice, with a long history of advising both large corporate claimants and class representatives in collective proceedings in the UK Courts, including notably:

- Advising Sainsbury's Supermarkets in its interchange fee claims against Mastercard, successfully litigating the claims up to and including the Supreme Court.
- Advising the lead claimants in the Second Wave Trucks Proceedings in the CAT against the European Trucks Cartelists, who were a group of the UK's largest retailers.
- Advising Justin Le Patourel in the first collective proceedings action to reach trial in the CAT in early 2024.

Mishcon de Reya LLP also has a wider group actions practice and considerable experience in the management of claims outside the collective proceedings regime, notably:

- Advising a group of institutional investors in the Royal Bank of Scotland rights issue litigation.
- Advising over 100 investors in the Ingenious Media group in major group litigation.
- Advising Wirral Council in its securities action against Indivior Plc and Reckitt Plc, which began as the first representative action in that sphere, and is now proceeding as a group claim for hundreds of institutional investors.
- Advising 13,000 licensed black cab drivers against Uber for unlawful means conspiracy in the Commercial Court.
- Advising hundreds of businesses badly affected by the pandemic and their insurers' failure to pay out claims in Burger & Lobster & Ors v Allianz and the Hiscox Action Group.
- Advising Andrew Prismall, the proposed representative claimant in an opt-out representative action in the English High Court on behalf of 1.6million individuals against Google and Deepmind Technologies regarding the misuse of private information.

Executive Summary of Mishcon de Reya LLP's response

Overview

1. Mishcon de Reya LLP welcomes the opportunity to provide its views on the Department for Business and Trade's (**DBT**) Call for Evidence.[1] Before providing our detailed responses, we make the following general observations. To avoid potential repetition, these general observations should be read alongside our responses to the DBT's specific questions and necessarily form a core part of our overall response.

2. In summary:

   (a) We consider that the number and types of cases filed to date are to be welcomed, and importantly they illustrate the crucial role that private enforcement plays in the wider competition law framework given the shortfall in the number of CMA decisions which have generated follow-on cases – as was intended by the introduction of the opt-out regime.

   (b) Whilst we welcome the DBT's intention to consider whether the regime could be improved, we strongly consider any proposal to limit the scope of the regime to be misconceived, for the reasons set out within this response, and in any event premature. In our view, it is too soon to ask whether the regime is fulfilling its intended policy goals. While the regime was introduced ten years ago, it has been less than 1 year since the first judgment and settlements under the regime. Any changes to the scope of the regime at this time would be premature and detrimental to consumers and businesses alike.

   (c) Given the CAT's developing jurisprudence in opt-out collective proceedings cases, a more appropriate solution at this stage is for the CAT to consult on changes to its Rules and Guide to Proceedings in order to provide greater certainty to both litigants and defendants by codifying key principles and practices, and resolving some of the inconsistencies that have arisen to date.

Purpose of the Call for Evidence

3. It is important to recall at the outset that the current opt-out regime follows decades of careful consideration and consultation by the Government, and an intensive legislative process. Although the current regime was introduced only ten years ago, the Competition Act 1998 (**CA98**) and Enterprise Act 2002 enabled consumers and/or businesses to bring collective claims for breaches of competition law via opt-in proceedings. This mechanism came into force on 20 June 2003, but only one such claim was brought by the only body that was authorised under statute.[2] The outcome of this claim highlighted the acute need for an opt-out collective regime which would provide meaningful redress for consumers.

4. When the DBT consulted on options for wide-ranging reform in 2013, it considered that:

   (a) "*Competition creates growth and is one of the pillars of a vibrant economy. A strong competition regime ensures the most efficient and innovative businesses can thrive, allowing the best to grow and enter new markets, and gives confidence to businesses wanting to set*

[1] Available here.

[2] *Consumers Association v JJB Sports plc* (CAT Case No 1078/7/9/07). Following a settlement with the defendant, only a very small proportion of the affected class (around 130,000 consumers) opted in to the claim in order to obtain their share of the settlement sum.

up in the UK. It drives investment in new and better products and pushes prices down and quality up. This is good for growth and good for consumers".[3]

(b) The regime would increase growth by empowering small businesses to tackle anticompetitive behaviour that is stifling their business – alongside promoting fairness by enabling consumers and businesses who have suffered loss due to anticompetitive behaviour to obtain redress.[4] The regime had a two-pronged aim to allow "*consumers and businesses to get back the money that is rightfully theirs – as well as acting as a further deterrent to anyone thinking of breaking the law*".[5] Specifically as to the former, the Government noted that its ambition was to "*enable businesses, particularly SMEs, to be better able to take direct action against anticompetitive behaviour that is stopping them grow as well as allowing both consumers and businesses to recover money that they have lost because of infringements of competition law*".[6]

5. In explaining the need for a Call for Evidence, we note the DBT's concern that "*[t]his government is focused on economic growth, and a regime that is proportionate and focused on returns to consumers where they are due is good for growth and investment*"[7] and that a primary reason for the review is to understand whether the regime "*is delivering access to justice for consumers in a way that brings value without being disproportionately burdensome on business*"[8].

6. We continue to endorse the stated policy aims of the regime prior to its coming into force, as set out above. The regime embodies two important policy goals of private enforcement: (a) a retrospective looking element which seeks to address the adverse effects of anticompetitive conduct by placing consumers/businesses in a position that they would have been in *but for* the anticompetitive conduct taking place; and (b) a forward-looking element which seeks to put an end to the anticompetitive conduct which is the subject matter of the litigation. The combination of these policy aims produces a wider deterrent effect to others from engaging in anticompetitive conduct.

7. We consider that in seeking to assess the burden on businesses and whether the regime is stifling growth that the DBT should consider the impact on businesses of all sizes – and particularly SMEs who are not always able to compete against larger businesses who may be acting in a way that prevents fair competition on the merits. Equally, we note the Government's previous observations that "*SMEs in particular may be vulnerable to being harmed by cases which would not be significant on the scale of the entire economy, but which are harmful or fatal to them as individual businesses*".[9]

<u>Cases brought and scope of the regime</u>

8. The wording of the DBT Call for Evidence suggests that there has been a significant number of cases brought in the CAT and that, when the regime was introduced, it was expected that the majority of cases would be follow-on. The Call for Evidence also expresses concern around any incentivisation of speculative competition claims. We make the following observations in response:

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[3] Page 5 of Department for Business Innovation & Skills, "*A consultation on options for reform – government response*" (January 2013) – available here (**January 2013 Response**).
[4] Page 3 of the January 2013 Response.
[5] Page 6 of the January 2013 Response.
[6] Page 5 of Department for Business Innovation & Skills, "*Private actions in competition law: a consultation on options for reform*" (April 2012) – available here (**April 2012 Consultation**).
[7] Opt-out collective actions regime review: call for evidence; Executive summary.
[8] Opt-out collective actions regime review: call for evidence; Why we are reviewing.
[9] Page 10 of the April 2012 Consultation.

(a) When considering whether to introduce the opt-out regime, the Government was concerned that limiting the regime to follow-on cases would severely limit the number of cases brought, as even a case which is primarily follow-on may have a small proportion of stand-alone elements.[10] Thus, when consulting on the regime, the Government observed that one of the principal ways in which private action may help to reduce the amount of anticompetitive behaviour in the economy would be by tacking cases where a competition authority had not brought a case.[11] This is a necessary feature of the private enforcement regime, given that the CMAs Prioritisation Principles expressly indicate that, in deciding whether it is best placed to act and whether there is an alternative to CMA action, it will consider the existence of any private enforcement action.[12] That there should be no distinction between follow-on and standalone cases in any potential opt-out regime was the view of the majority of those who responded to the consultation, and it is a view that the Government expressly endorsed.[13]

(b) The Government's prior concern has been confirmed in the cases filed to date. There are currently no follow-on cases that have been brought following a CMA decision and which have been certified.[14] The first ever opt-out action was not certified due to the narrow scope of the infringement decision and the fact that the limitation rules prevented the Class Representative from pleading wider losses.[15] In a further proposed CMA follow-on, the CMA's decision was annulled on appeal by the addressees and the CMA did not pursue any appeal which had the effect of foreclosing the Class Representative from pursuing its claim any further.[16] Following Brexit, it is no longer possible to bring follow-on cases following a European Commission decision – and indeed the only follow-on cases that have been brought as opt-out proceedings and which have been certified to proceed are in respect of European Commission decisions prior to Brexit.[17]

(c) Accordingly, any suggestion that the regime was intended to focus on follow-on cases is misconceived, and the cases to date illustrate that a regime that is focussed on follow-on cases would not fulfil the intended policy objectives. In the absence of such decisions by the CMA and other sectoral regulators, the natural corollary is that there are more standalone claims. The current opt-out cases cover a range of sectors, and therefore a range of class members – both individual consumers and businesses. A summary of current and (where known) proposed claims, but excluding those which have been withdrawn or were refused certification, is included in the Annex to this response. Of the 51 cases which are included in the

[10] It was also a conscious decision of the Government when introducing the opt-out regime that the CAT's wider jurisdiction should be extended to hear standalone as well as follow-on cases, in response to criticisms that various cases had to be brought in the High Court rather than the CAT. See further paragraph 4.5 of the January 2013 Response.

[11] Paragraph 5.13 of the April 2012 Consultation. In addition, we note the Government previously considered that "*[t]he reliance on findings from the Competition Authorities **may be deterring valid representative claims**, particularly seeing the length of the typical antitrust case*" (our emphasis) (see the Department for Business Innovation & Skills, "*Impact Assessment*" (April 2012) – available here).

[12] CMA Prioritisation Principles at 3.41 (October 2023) – available here.

[13] See paragraph 5.17 of the January 2013 Response.

[14] For completeness, we note that some cases which combine follow-on and standalone elements with respect to decisions by the CMA have been filed but are yet to be heard at the certification stage (see, for example, Case Nos. 1437/7/7/22, 1529/7/7/22, 1530/7/7/22, 1531/7/7/22 and 1592/7/7/23).

[15] *Dorothy Gibson v Pride Mobility Products Limited* (Case No. 1257/7/7/16).

[16] *Home Insurance Consumer Action Limited v BGL (Holdings) Limited & Others* (Case No. 1423/7/7/21).

[17] See *Merricks* (Case No. 1266/7/7/16), *Trucks* (Case No. 1289/7/7/18), *FX* (Case No. 1336/7/7/19) (pending judgment by the Supreme Court) and *RoRo* (Case No. 1339/7/7/20).

Annex, over half (i.e. 30 of them) are claims where the represented class includes businesses – either exclusively or in addition to individual consumers.

(d) Given the potential for competition to be affected in any area or market, it is a natural consequence that private damages actions that are brought as a result of competition infringements span various sectors of the UK economy. It is also important to note that many of these standalone cases are progressing in other jurisdictions with similar regimes, and so it would be wrong to assume that such cases are speculative.[18]

Timing of the Call for Evidence

9. We note the DBT's observation that the regime has "*been in operation for approximately 10 years, and has developed significantly during this time*" such that this "*makes it an opportune time to review the efficacy of the regime*"[19]. Whilst the DBT is right that the regime has technically been in place for a decade (i.e. since the entry into force of the Consumer Rights Act 2015 (**CRA15**)), in practice the regime has been in operation for less than five years:

(a) The first proposed opt-out proceeding, filed in June 2016, was refused certification in March 2017 and was subsequently withdrawn as noted above.[20] That claim was a follow-on claim in respect of a decision by the Office of Fair Trading concerning resale price maintenance of mobility scooters. However, the proposed claim was not certified because the operative part of the CMA's decision was limited to particular resellers, and it was not possible for the Proposed Class Representative to bring a standalone claim for damages given the harm preceded October 2015 due to the operation of limitation rules.

(b) The second proposed opt-out proceeding, filed in September 2016, was also refused certification in July 2017.[21] However, this proposed claim went on appeal to the Court of Appeal and then the Supreme Court for clarification of the certification criteria. The Supreme Court gave judgment in December 2020.[22] Proposed claims that were issued prior to the Supreme Court's judgment were stayed pending the outcome, given the significance of the Supreme Court's judgment to the regime as a whole.

(c) Since the Supreme Court's judgment:

(i) at least 28 proposed claims have been certified to proceed to trial;

(ii) only 1 claim has gone to full trial and judgment (and appeals exhausted);[23]

(iii) there have been 5 trials in other proceedings where judgments are pending (a further trial is ongoing at the time of the Call for Evidence[24]), and many

[18] For example, the case brought by Ad Tech Collective Action LLP against Google contains similar allegations to the claim previously filed in the United States District Court (Southern District of New York) (*Ad Tech Collective Action LLP v Alphabet Inc. & Others* (Case Nos. 1572/7/7/22 and 1582/7/7/23)).
[19] Opt-out collective actions regime review: call for evidence; Why we are reviewing.
[20] *Dorothy Gibson v Pride Mobility Products Limited* (Case No. 1257/7/7/16).
[21] *Walter Hugh Merricks CBE v Mastercard Incorporated and Others* (Case No. 1266/7/7/16).
[22] [2020] UKSC 51.
[23] *Justin Le Patourel v BT Group PLC* (Case No. 1381/7/7/21).
[24] *Consumers' Association (Which?) v Qualcomm Incorporated* (Case No. 1382/7/7/21).

of these proceedings concern 'split' trials such that the judgment in the first trial may not be dispositive of the litigation as a whole; and

(iv) the award in only 1 claim has been distributed to class members following a settlement.[25]

10. The above illustrates that the regime is working in the sense that cases are being brought and actively litigated, in stark contrast to the single opt-in proceeding that was issued pursuant to the former regime as noted above. However, given that only one claim has been fully litigated to trial and final judgment (two further claims have been fully litigated to trial but judgments are pending[26]), and only one claim has been the subject of distribution following settlement, we consider that it is wholly premature for the DBT to conduct a wholesale review of the regime with a view to making fundamental changes to its scope and operation. As was noted when debating the CRA15 in Parliament, the introduction of the opt-out regime was "*the most fundamental reform of UK consumer law for more than a generation*" which would "*empower consumers and stimulate competition and growth*".[27] To fundamentally change the regime at this early stage would be premature and could potentially risk undermining the rationale for introducing the regime in the first place.

11. We consider that it would be a better use of the DBT's resources at this juncture to consider the ways in which the regime could benefit from clarification, and some of those areas are explained further in our responses below, with any wholesale review of the regime to follow once a material number of cases have been fully litigated.

[25] *Justin Gutmann v First MTR South Western Trains Limited and Another* (Case No. 1304/7/7/19).
[26] *Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd* (Case No. 1403/7/7/21) and *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others* (Case No. 1339/7/7/20).
[27] HL Deb 1 July 2014, vol 754, col 1648 – available here.

Q1. Is the regime currently affordable to a diverse range of classes?

If not, how do you think the current cost of bringing a claim impacts on how claims are funded?

Where third party litigation funders are used, are you aware of the cost of a claim having an impact on competition between litigation funders able to finance such a claim? If so, how?

Where third party litigation funders are used, do you consider that the cost of a claim under the regime influences funders' decision-making in relation to what cases to support? If so, how?

1. As matters currently stand, the filing of new cases under the current opt-out regime depends almost entirely on the availability of third-party funding. This has been recognised by the CAT[28], the Court of Appeal[29] and the Supreme Court[30]. The reasons for this are three-fold:

   (a) Class Representatives, most of whom are individuals (or individuals operating behind a special purpose vehicle or SPV), do not have the means or ability to self-fund and self-insure prospective proceedings, the costs of which run into the tens of millions.

   (b) There are currently no viable alternatives to third-party litigation funding, such as the use of class action proceedings funds which exist in other jurisdictions. We refer to our response to Question 3 with regard to the potential establishment of such a fund (or similar) in the future.

   (c) Damages-based agreements (**DBAs**) are unenforceable in opt-out proceedings.[31] In this regard, we note that the Civil Justice Council (**CJC**) has recommended that DBAs should be permitted in opt-out collective actions, given that the distinction between the use of DBAs in opt-in and opt-out proceedings is no longer justified (in the CJC's view) and any concerns as to excessive remuneration can be met by court and regulatory control.[32]

2. Our experience is that the likely cost of the litigation is a significant consideration for a litigation funder when deciding whether or not to fund a case, but of course it is not the only factor. Our experience is that the litigation budget will be weighed against the potential damages sum in order that the funder can assess its potential return on investment.

3. The number of cases filed across various sectors is largely a result of the UK's mature third-party litigation market which has enabled potential class representatives to bring cases, and indicates that the regime is working as intended when compared to the former opt-in only

[28] *Road Haulage Association Ltd v Traton SE & Others* (Trucks: CPO) [2024] CAT 51, the CAT said at [87]: "*third party funding from commercial funders provides the fuel which enables the vehicle of collective proceedings to operate*".
[29] *BT Group PLC v Le Patourel* [2022] EWCA Civ 593 at [77].
[30] *R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents)* [2023] UKSC 28 at [12]: "*… the effectiveness of group litigation may depend on the use of third party funding, since such litigation often involves high numbers of claimants who have individually suffered only a small amount of loss, where the pursuit of claims on any other basis would be uncommercial.*"
[31] Section 47C(8) CA98 and CAT Guide paragraph 6.81.
[32] CJC Report on Litigation Funding, 2 June 2025 (Recommendation 54).

regime.[33] However, the regime's dependence on third-party funding has some drawbacks which may have limited the extent of the success observed to date:

(a) The certification stage is an important and unique aspect of opt-out proceedings. However, several judgments following certification indicate that the costs of obtaining certification are high – around £1 million.[34] This is likely because: (i) the preparation of an application for a Collective Proceedings Order (**CPO**) involves extensive work from the legal and expert teams (with particular focus and weight being placed on the proposed economic methodology and evidence); (ii) Defendants are continuing to mount 'kitchen-sink' style responses to a CPO application challenging all potential aspects; (iii) certification hearings typically take place 12 months after a CPO application is filed which increases the timeframe for costs to be incurred; and (iv) almost all CPO applications are resolved following a hearing before the CAT, lasting between 1 - 3 days. A more streamlined approach to resolving certification that reduces costs may allow more claims to proceed.

(b) In our experience, funders tend only to look at prospective claims which are estimated to be worth multiple hundreds of millions given the need to ensure a 10:1 ratio *vis-à-vis* the litigation budget. This means that many lower value but nonetheless meritorious claims will not be funded, given that there is no guarantee that a lower value claim will be less complex or cheaper to litigate than a higher value claim. As noted above, such lower-value claims may also have a deterrent effect on anticompetitive conduct, which is an important feature of claims being brought in the first place.

(c) In a funded claim, the Class Representative will agree to a litigation funding budget with the funder. Whilst it is possible for budget variations to be sought after the execution of the litigation funding agreement (**LFA**), the process for doing so can be difficult and variations are not guaranteed. It is therefore usually the case that the litigation budget will act as a constraint on what the Class Representative is able to spend on bringing and litigating the claim to conclusion in the best interests of the class. Conversely, Defendants do not typically face the same restraint because: (i) most Defendants, particularly (but not exclusively) those operating in 'Big Tech', are well-resourced with large in-house legal teams; and (ii) as corporate entities, they can afford and will usually deploy whatever costs are necessary to defend the litigation, especially where such litigation goes to the heart of its business model. By way of illustration:

    (i) In the *Which? v Qualcomm* proceedings, the Defendant estimated that its costs to the first of two trials would amount to £42 million. The Defendant attempted – and failed – to obtain security for costs of this amount because it did not explain why the costs were, as the CAT remarked, extraordinarily high, nor that such costs were proportionate to the level of complexity of the issues.[35]

    (ii) In the *Le Patourel v BT* proceedings, the Class Representative obtained adverse costs insurance in the amount of £16.5 million which the Defendant

[33] Such as retail products (smartphones, salmon and musical instruments), technology services (online search, online advertising, app stores), transport (rail fares, car shipping), utility services (electricity) and financial services (banking charges, FOREX trading, cryptocurrency).
[34] As examples only, see Case No. 1304/7/7/2019 (Order dated 18 January 2022), Case No. 1382/7/7/21 (Order dated 4 July 2022) and Case No. 1606/7/7/23 (Order dated 18 December 2024).
[35] Transcript of Case Management Conference dated 19 December 2024, page 4, lines 12-17 – available here.

agreed at the certification stage. At the conclusion of proceedings, the Defendant claimed costs in excess of £26 million, which had not previously been notified to the Class Representative.[36]

4. The above illustrates the asymmetric position which exists between Class Representatives and Defendants, whereby a Defendant is able to deploy litigation tactics with a view to running down the litigation budget and/or incurring costs which exceed the level of cover for adverse costs (without necessarily incurring those costs proportionately or reasonably). This inequality of arms means that a Class Representative begins the litigation on the backfoot and, as a corollary, an otherwise meritorious claim risks not being dealt with justly or fairly.

5. We consider that the above concerns are capable of being mitigated, to some extent, by any or all of the following:

   (a) The improved costs management of opt-out cases. Class Representatives are required to provide costs budgets at the certification stage to demonstrate sufficient funding. This requirement could be extended to Defendants with caps on recoverable costs if costs increases are not notified. This will allow Class Representatives and litigation funders to manage the adverse costs cover in place. Intuitively, this should be of benefit to Defendants who will want to ensure that they are appropriately protected from costs risk.

   (b) The potential use of the fast-track procedure, or a variant thereof, for opt-out claims which are capable of being dealt with swiftly. For example, if the claim is 'follow-on' (or otherwise has a substantial follow-on element), then it may be appropriate for that claim to be subject to an expedited process. The existing fast-track procedure in the CAT is not available to collective proceedings.[37]

   (c) Encouraging the costs of insurance premia to be staged across key phases of the litigation, rather than requiring that it is paid in full at the outset and/or at the certification stage. This, which is a common feature of commercial litigation, has the potential to reduce the ongoing cost if a claim is settled before trial, and avoids funders having to pay a large upfront cost. In support of this, we note that the CAT has recently confirmed that a claimant, in the context of a security for costs application, was not required to provide security for costs which were not yet in prospect of being occurred.[38]

   (d) Exploring the possibility of allowing Class Representatives to adopt a two-staged approach to obtaining litigation funding whereby: (a) the Class Representative could obtain funding (including self-funding) up to certification only; and (b) if certification is granted, the Class Representative has the option of going back out to the market to obtain funding on the back of a positive certification judgment. We consider that this may be an attractive option in creating competition between funders, especially because funders would be considering an already-certified claim and so any risk will fall on the merits of succeeding at trial, and reduces the need for the Class Representative to secure the full funding amount at the very outset of the case.

[36] [2025] CAT 10 at [26].
[37] CAT Rule 74(3)(d).
[38] [2025] CAT 53.

Q2. Do you consider the way litigation funders' share of settlement sums or damages awards is approached currently to be fair and/or proportionate? Please provide reasoning to support your answer.

How could it be improved?

6. We consider it is important that the litigation funders' share of settlement sums or damages award remains within the CAT's discretion exercised at the conclusion of a case. This enables the CAT to take a holistic view in terms of the actual recovery of damages or level of settlement as against the costs incurred and which party has won on which issues in the litigation.

7. However, in our experience, we consider that there is a need for Class Representatives and litigation funders to be given greater certainty as to the future enforcement of the terms of their LFA. Although the CAT's discretion is important, recent judgments have demonstrated an inconsistency in the way the litigation funders' entitlement is approached – and in turn this has resulted in uncertainty and, for some funders, a reluctance to fund otherwise meritorious opt-out claims. For example, in *Merricks* the CAT determined the amount due to the funder prior to the settlement award being distributed to the class[39], whereas in *Trains* the CAT considered the funder's entitlement following distribution of the award to the class[40].

8. We therefore consider that the CAT should express a view on the reasonableness of funding terms at the certification stage in order to provide certainty to parties. It may consider doing so in a way which does not fetter its later discretion by looking at different potential outcomes in order to assess the viability of the funder's proposed return.

9. As against this, we note that the Access to Justice Fund (**ATJF**) has been awarded significant sums in *Merricks* and *Trains*. We are encouraged by the fact that undistributed sums are being given to charity which ensures the regime's purpose is being met, but note that – as mentioned previously – the regime is dependent on third-party litigation funding, and so any such award to the ATJF should be carefully considered against the funder's return on investment so as to avoid any unintended chilling effect on the availability of funding for future meritorious claims.

Q3. We are aware that recommendation 57 made by the CJC in its report on litigation funding proposes the introduction of an Access to Justice Fund. However, we would like to explore options for funding cases in the context of the CAT specifically.

Are there lessons to be drawn from other models of funding that could support access to the regime?

For example, Contingent Legal Aid Funds provide financial support for cases where funding would otherwise be unavailable, with the fund being replenished by a portion of settlement sums or damages where a case is successful. An example of this is the Ontario Class Proceedings Fund in Canada.

10. In the light of the views expressed above, we consider that there is real potential for the ATJF – or otherwise a separately established fund as part of or external to the ATJF – to become an integral source of funds for some future opt-out claims, which could reduce the

[39] [2025] CAT 28.
[40] The stakeholder entitlement hearing in Case No. 1304/7/7/19 took place on 10 and 11 September 2025. The CAT's written ruling is pending at the time of writing.

reliance by Class Representatives on third-party litigation funding (although we take the view that the availability of third-party litigation funding should remain).

11. One such area where ATJF could provide assistance is in funding smaller but nevertheless meritorious claims that are unattractive to funders given the levels of return sought. Additionally or alternatively, it may be possible for ATJF to provide 'seed funding' to enable a potential case (whether small or large) to get off the ground, with the ability for a third-party funder to fund the claim at a later stage. This would typically involve covering the costs of the early investment of a case, such as to obtain a preliminary expert report and/or counsel opinion, or otherwise to cover the costs of datasets that are required in order for an expert to undertake a preliminary analysis on quantum. We therefore consider that ATJF has the potential to remedy the drawbacks which have been experienced to date, as set out in our response to Question 1.

12. As to lessons in other models of funding, we note the existence of three funds which lend support to the above proposition:

(a) **Ontario:** As noted in the question, the Ontario Class Proceedings Fund is a public fund administered by the Law Foundation of Ontario. The fund covers legal disbursements (e.g. expert fees, court expenses) and indemnifies plaintiffs against potential adverse cost awards.[41] According to the Fund's 2024 annual report, it received $2,591,080 in interest and cy-près distributions. In 2019, the courts have directed the distribution of the remainder of settlement funds to be paid to the Class Proceedings Fund (Ontario) "*on the basis that it fulfils the access to justice and behavioural modification purposes of the Class Proceedings Act*" (see Cappelli v. Nobilis Health Corp., 2019 ONSC 4521).[42] In 2024, the Fund assessed and funded 14 new cases and provided supplementary funding in 28 ongoing cases.[43] In total, the fund awarded $7,728,087 in funding in 2024. After a successful outcome, the fund receives a levy based on the outcome. It receives 10% of any awards or settlements in favour of the plaintiffs in funded proceedings plus a return of any funded disbursements. In 2024, the fund received $3,012,230 in such levies. Since receiving The Law Foundation of Ontario's initial $500,000 grant in 1993 and 1994, the Class Proceedings Fund has been self-sustaining, supporting 234 class actions, awarding over $62M in funding and paying over $25M in adverse costs.[44]

(b) **Québec:** Québec has an equivalent to Ontario's Class Proceedings Fund, called 'Fonds d'aide aux actions collectives'. It provides financial assistance to cover expenses incurred by the action such as lawyers and expert fees, notices in newspapers court costs and other expenses necessary for the action.[45] Thirty-one new files were funded by the Fonds d'aide aux actions collectives during the 2023-2024 financial year: it spent $3,790,978 on funding class action beneficiaries and committed another $5,544,800 relating to assistance to beneficiaries as of 31 March 2024.[46] The fund also receives a levy. Depending on the amount of or kind of award the levy changes. This means that a sliding-scale percentage of the final award is

[41] See further here.
[42] See further here.
[43] 2024 Annual Report – Celebrating 50 years of advancing access to justice (*The Law Foundation of Ontario*) – available here.
[44] We understand that the Fund does not provide insurance for a plaintiff's adverse costs, but rather it can be ordered to pay them if a claim is unsuccessful.
[45] Informations sur l'aide financière - Fonds d'aide aux actions collectives (*Ministere de la Justice Quebec*) – available here.
[46] Rapport Annuel 2023-24' (*Fonds d'aide aux actions collectives,* September 2024) – available here.

withheld for the fund before distribution to class members.[47] The fund has not published information regarding how much it has gained from levies.

(c) **Hong Kong**: The Consumer Legal Action Fund is a fund established by the Government in 1994 to provide financial support and legal assistance to consumers with meritorious claims for compensation in class actions or as individuals. The assistance provided by the fund may include legal advice or assistance in pursuing civil claims – this can include engaging a solicitor or a barrister.[48] For the financial year ending 31 March 2024, the fund invested $539,177 in 2024 and $1,886,469 in 2023 into legal fees of assisted consumers. This includes financial assistance to both class actions and individuals. In this period, the fund granted assistance to 17 applications and had 48 ongoing cases of which 3 concluded (all out-of-court settlements).

Q4. How has the secondary market in litigation funding developed? Do you consider that there have been any subsequent impacts on transparency and client confidentiality?

13. No comment.

Q5. The CJC made recommendations in its report on litigation funding in relation to terms and approval of litigation funding agreements (for example, recommendations 19 and 20). However, we would like to understand more about litigation funding agreements used in cases before the CAT specifically.

Are funding agreements fair and transparent for class members and clear for the court to understand?

- **If not, why?**
- **How could they be improved?**

14. As a general point, we endorse Recommendations 19 and 20 of the CJC Report. If legislated for, Recommendation 19 should help to make the funding process more efficient and less costly. We also agree that LFAs should be disclosed to the court to consider whether to approve it, as per Recommendation 20 – although we note in practice this tends to be the case already given the criteria that are considered as part of the certification stage.

15. We note that LFAs are generally complex finance documents which we would not expect all class members to understand. In any event it is ultimately the role of the Class Representative – taking independent advice – to ensure that its terms are fully understood so that it can explain such terms to the class if required.

16. We consider that a standard-form LFA would assist in reducing satellite litigation associated with funding arrangements, thereby saving time and costs for litigants and the CAT. As it currently stands, we note that most LFAs are not public but a standard-form LFA, which is expressed in lay terms, would help to ensure transparency to class members. This could reduce issues at the certification stage because the CAT could focus on any deviation from the standard-form LFA.

[47] Act respecting the Fonds d'aide aux actions collectives chapter F-3.2.0.1.1, s. 38, par. *a*

[48] 'Information Pamphlet on Consumer Legal Action Fund' (*Consumer Legal Action Fund*, March 2023) – available here.

Q6. Is funding provision for the full potential cost of a claim sufficiently considered on the commencement of claims under the regime?

17. With the exception of the adverse costs risk explained above, we consider that the CAT looks at this issue in sufficient detail. In our experience, the CAT has shown a tendency to park a detailed review of the cost of the litigation at the certification stage and has tended to limit its consideration to the availability of further funding if required. This is likely because it is not going to be possible at the certification stage to predict with total certainty what the litigation will cost. This is particularly so given that Defendants are not required to file a Defence until after certification, and so the issues which are in dispute have not been fully ventilated in the parties' pleaded cases, and the Supreme Court has clarified that certification should not be a mini-trial on the merits. More generally, as noted in our response to Question 1, Defendants are generally incentivised to run down the litigation budget.

18. We consider that too much interference at the outset could result in an unintended chilling effect. For example, given the limited information available (particularly to a Class Representative, who is unlikely to be in receipt of any disclosure at the certification stage) it could mean that premature decisions are taken as to the costs of running the litigation – and therefore otherwise meritorious claims may be prevented from moving forward.

19. As we have indicated elsewhere, the potential for greater costs management at a stage after certification (and to be kept under review as the proceedings progress to trial) – for example, following the conclusion of the pleadings stage shortly after certification – would enable the CAT to obtain a more holistic view. Such a step may be assisted by CAT judges receiving training on costs issues, as is recommended by the CJC Report.[49]

20. We also note that the CAT has the power to decertify proceedings at any stage (either on its own motion or as a result of a Defendant's application), although it has indicated in previous cases that it will only do so on proper grounds.[50] To date, no applications for de-certification have been made – but we make the general point that this procedural mechanism remains available should costs become unmanageable.

Q7. Recommendation 15 of the CJC report on litigation funding proposes a binding dispute resolution process for funders and funded parties. However, we would like to explore further how conflict between litigation funders and class representatives could be approached.

To what extent should extra-curial dispute resolution be used or required to be used to resolve conflict between the funder and class representative or class?

21. We endorse Recommendation 15 of the CJC Report, which includes that the cost of the dispute resolution process should be borne by the funder.

Q8. Is the current scope of the regime appropriate?

22. When consulting on the opt-out regime prior to its introduction, the Government's preference was to consider reform on a sectoral basis. However, the current scope of the opt-out collective actions regime remains unnecessarily restrictive in excluding consumer cases and environmental claims beyond competition law as further explained below.

[49] CJC Report on Litigation Funding, 2 June 2025 at paragraph 11.43.
[50] See, for example, [2025] CAT 26 at [128].

23. This limitation undermines the regime's potential to deliver meaningful access to justice for consumers who suffer widespread harm but lack the resources to pursue individual claims. For the purposes of this response, "consumer cases" refers to claims arising from breaches of consumer protection legislation, unfair commercial practices, and product liability matters affecting multiple consumers.

24. By way of analogy, we note that the EU Representative Actions Directive (2020/1828) (**RAD**), which has not been implemented in the UK due to Brexit, sets a minimum standard for EU member states to enshrine a right of collective redress for EU consumers who have suffered harm as a result of breaches of EU consumer protection laws. The RAD includes a long list of infringements that are covered, and they apply to consumers and businesses. Although the RAD does not mandate opt-out proceedings, some countries – such as Spain and Portugal – are considering such mechanisms.

25. In our view, there are five main reasons why the regime should be expanded to cover consumer cases and environmental claims, as set out in the below paragraphs.

Access to justice imperative

26. In the same way as for competition harms, many consumer harms involve small individual losses that make individual litigation economically unviable. The current restriction creates an artificial barrier that leaves consumers without effective redress for other forms of widespread corporate wrongdoing. Crucially, consumer protection laws are designed to protect the same vulnerable parties that the collective actions regime was intended to serve.

27. Expanding the scope of the regime would create meaningful deterrent effects against corporate misconduct affecting consumers. Companies would face the prospect of being held accountable for widespread consumer harm, not just competition violations. The enhancement of this deterrent effect aligns with the Government's broader consumer protection objectives and commitment to reforming the consumer enforcement landscape in a way which delivers justice for consumers.

No other viable "group" option

28. It is well documented that third party funders are loath to fund relatively low value mass consumer claims on an opt in basis, as the economics of signing up such claimants make them unviable from the very beginning. At the same time, recent different attempts to bring cases on a representative basis under CPR 19.8, when on the face of it, all consumers do indeed have the same interest and have suffered the same loss, have generally been rejected by the English Court (unless the claim fits within a very narrow paradigm, where no individual causation / damage needs to be evidenced, no matter the overall communality)[51]. Reference is made in these decisions to it being the role of Parliament, not the Courts to expand the reach of opt out procedures, hence the reason for the request to extend the scope of the current regime to general consumer claims.

Regulatory alignment

29. The recent focus by the Solicitors Regulation Authority (**SRA**) on high-value consumer claims demonstrates growing recognition of the need for effective collective redress mechanisms.

[51] See: (i) *Lloyd v Google* [2021] UKSC 50; (ii) *Wirral Council v Indivior PLC and Reckitt* [2023] EWHC 3114 (Comm; and (iii) *Prismall v Google* [2024] EWCA Civ 1516.

The SRA's enhanced scrutiny of consumer LFAs highlights the importance of having appropriate procedural frameworks for large-scale consumer cases.

30. Broadening the scope of the opt-out regime to incorporate consumer claims would provide a regulated, judicially supervised alternative to the potentially problematic third-party funding arrangements that the SRA has identified as concerning. Such an expansion would directly address the SRA's concerns by channelling consumer claims through a structured, court-supervised process rather than relying on unregulated funding models. This approach would align with the SRA's objectives of ensuring consumer protection whilst maintaining appropriate professional standards.

Existing CAT infrastructure and expertise

31. The current opt-in process for consumer cases creates a burden on court time and resources which would be avoided under an opt-out regime. The CAT has developed substantial expertise in managing complex collective proceedings, and the existing certification process provides robust judicial oversight that could effectively filter consumer cases.

32. Administrative efficiency would be enhanced by utilising existing procedures rather than creating parallel systems. The CAT's established case management protocols, specialist judiciary, and procedural rules could seamlessly accommodate consumer cases, delivering significant cost savings to the court system whilst ensuring appropriate judicial scrutiny of claims. It would however require additional judges and lay panel members, court staff and courtrooms to handle the increase in the number of cases, and there would inevitably be a period with teething issues as the system bedded down.

International precedent

33. Other jurisdictions successfully operate broader collective action regimes encompassing consumer protection matters. The RAD demonstrates growing recognition of the need for collective redress beyond competition law. Countries such as Australia and Canada have implemented comprehensive class action systems that effectively handle both competition and consumer protection cases, resulting in improved consumer outcomes and enhanced corporate accountability.

34. Limiting scope to competition cases places the UK at a competitive disadvantage in consumer protection enforcement and fails to capitalise on international best practice in collective redress mechanisms.

Q9. How are cases which cut across multiple areas (for example, environmental protection or data) dealt with?

Is this appropriate?

Are certification decisions sufficiently predictable and transparent for parties?

35. Competition law is inherently a multidisciplinary area. The nature of competition cases mean that the analysis of the competition infringement will need to be considered within the specific sector/industry where the anticompetitive conduct is taking place. In some cases, an infringement may be taking place in a related market to which the Defendant firm is dominant, such that it will involve an assessment of more than one product/geographic market.

36. In terms of the application of the above to the regime, it is appropriate and preferable that the test for certification remains the same for all cases. A case where competition issues arose in a data protection context was certified following a second certification hearing[52], whereas a case where competition issues arose in the water sector was not certified (albeit this is on appeal)[53]. A defendant is entitled to oppose certification if it considers a claim to be unclear or frivolous, and in doing so it may apply to strike-out some or all of the proposed claim against it. This is a key feature of the certification process, and it is clearly preferable that all cases are subject to the same rigorous standard.

37. As to certification decisions being "predictable" and "transparent", we have observed that the CAT will structure its certification judgments carefully by reference to the certification criteria as set out in the CAT Rules and Guide. Clearly such judgments, and the general approach to case management by the CAT, should be predictable so that legal representatives can properly advise their clients and so that costs are sensibly incurred.

Q10. What approach should be taken if the same issues are concurrently being investigated by the CMA and brought before the CAT?

38. In short, we do not consider that there should be any change to the current approach. Private enforcement and public enforcement seek to achieve different objectives, but both are vital for the functioning of a healthy competition regime. In particular, private enforcement is the only means of ensuring that those harmed by anticompetitive conduct are fairly recompensed. We have also observed instances where public enforcement action has resulted in a narrow scope of infringement, often driven by limited resources within regulators, which prevents a follow-on claim from being properly pursued.[54] Conversely, private enforcement may identify a wider scope of infringement.

39. It is in any event not clear why private enforcement actions should be delayed or prevented altogether owing to an investigation by a competition authority which: (i) began after or around the same time that the private enforcement action was filed (particularly where it may take several months to prepare claims to be filed); (ii) is moving at a slower pace due to limited resources and the application of prioritisation principles; (iii) is not guaranteed to reach the same findings of anticompetitive conduct by virtue of an infringement finding, perhaps due to limited resources or an investigation being dropped without a finding of an infringement or because the CMA prefers to adopt a commitment decision; and/or (iv) in any event will not result in consumers being recompensed. If private enforcement is delayed or denied, then justice (i.e. compensation to affected consumers and/or businesses) is also delayed or denied.

40. Notwithstanding the mutual benefits of public and private enforcement, the application of the CAT's limitation provisions mean that private enforcement action has to be taken within a certain timeframe in order to preserve the rights of class members. Unlike in ordinary damages claims, there is no mechanism for a Proposed Class Representative to 'suspend' limitation in a cost-effective manner (such as via a standstill agreement). The operation of limitation rules has to be carefully considered before bringing an action, given a time-barred claim has the potential to be struck-out at the outset which comes with a potential cost exposure. The application of the limitation rules will vary from case to case, but in some instances it may mean that a private action has to be filed notwithstanding ongoing public

[52] *Dr Liza Lovdahl Gormsen v Meta Platforms, Inc. and Others* (Case No. 1433/7/7/22).
[53] *Professor Carolyn Roberts v (1) Thames Water Utilities Limited and (2) Kemble Water Holdings Limited* (Case No. 1635/7/7/24 and related Case Nos. 1603/7/7/23, 1628/7/7/23, 1629/7/7/23, 1630/7/7/23 and 1631/7/7/23).
[54] One such example has been noted above: *Dorothy Gibson v Pride Mobility Products Limited* (Case No. 1257/7/7/16).

enforcement. This was observed in the proposed opt-out claim by Home Insurance Consumer Action Limited against ComparetheMarket, where the Order withdrawing the proceedings (prior to a certification hearing) confirms that the CPO application had to be brought in order to preserve limitation pending the outcome of the appeal concerning the CMA's decision in the follow-on action (and where the CMA decided not to appeal the CAT's annulment of its decision to the Court of Appeal).[55] Even though, as the DBT has noted, the majority of cases are brought on a standalone basis, such claims still warrant a careful consideration of limitation provisions.

Q11. Do you consider that there is currently sufficient certainty for businesses in relation to the level of liability they face under the opt-out collective actions regime?

If not, why?

What additional measures do you consider could be introduced to provide increased certainty?

41. The purpose of the regime is to hold those who breach competition law to account. As was aptly put when CRA15 was being debated in Parliament: "*It is important to reiterate that these cases will arise only where a company has been found guilty of breaking competition law, and so good businesses will have nothing to fear from these proposals*".[56] We do not see what is envisaged by the need for further certainty for businesses in relation to the level of liability they face under a proposed opt-out claim, or why such certainty is required. Proposed Defendants will be put on notice as to the level of liability upon service of a CPO application on them, given the need for the CPO application to be accompanied by certain information as required by the CAT Rules/Guide.

42. Defendants have certain costs protections under the regime. If a settlement is agreed or a judgment is given in favour of a Class Representative, then that would demonstrate that they have breached competition law. However, if a judgment is given in favour of a Defendant, then they will benefit from the 'loser pays' rule in English litigation. This was a conscious decision by the Government when it introduced the opt-out regime,[57] such that those who bring unsuccessful cases pay the "full price" (being the reasonable and proportionate costs that are incurred) which was intended to discourage frivolous or unmeritorious claims. Class Representatives are required to set out how they would be able to pay the Defendant's recoverable costs if ordered to do so[58] – this has meant in practice that all Class Representatives take out very significant levels of after-the-event insurance.

43. We note that the Class Representative is required to keep the CAT and Defendant updated on these issues as the case progresses and the relevant factual and expert evidence is crystalised. For example, the Class Representative in *Le Patourel* provided an updated methodology to support an increased level of damages. We anticipate that the need and extent of such updates will develop as further case-law emerges.

44. We also note that the DBT's Call for Evidence document states that:

    (a) "*[s]ince 2015, the opt-out caseload has grown significantly, with tens of billions of pounds in damages claimed and hundreds of millions of pounds spent on legal fees*"[59] (our

[55] Order of the CAT dated 9 December 2022 in Case No. 1423/7/7/21 – available here.
[56] HL Deb 3 November 2014, Vol 756, col 580 – available here.
[57] Page 26 of the January 2013 Response.
[58] CAT Guide paragraph 6.33.
[59] Opt-out collective actions regime review: call for evidence; Why we are reviewing.

emphasis) and that this sum is far higher than the amount estimated in the Government's original impact assessment. This statement is supported by a footnote which then explains that "*[t]he exact total spend on legal fees is uncertain and not split by opt-out and opt-in cases. The order of magnitude can be estimated to be in the region of the hundreds of millions of pounds. Legal costs faced in some cases have reached tens of millions each. One estimate finds legal fees of around £1.3 billion (Law.com International)*"; and

(b) "*[t]he regime has developed and expanded significantly since its commencement, providing an important avenue for consumers to seek redress through which claimants have sought damages in the tens of billions of pounds*"[60], which in turn is supported by a footnote referring to a report published by law firm CMS. The methodology undertaken by CMS to arrive at the figures which are repeated in footnote one is unclear (for example, it is not clear whether the figures derive from the higher or lower bound claim estimates – nor is it clear whether the sums remove duplication of overlapping claims which are or will be the subject of a carriage dispute) and in any event we would expect that the DBT would seek to ensure that any statistics used as part of its Call for Evidence are appropriately neutral.

45. We therefore consider that the current framework provides certainty. We also do not see what additional measures would be appropriate or necessary. There is in fact more certainty to prospective Defendants in opt-out collective proceedings compared to those in ordinary private actions in the CAT or in the High Court.

46. We make the following observations which indicate that the DBT should exercise caution in any assessment that is undertaken which seeks to quantify the cost of the regime:

(a) If it is the case that claimants are seeking damages in the tens of billions of pounds, these sums are provisional estimates at the outset of a case. Given the asymmetry of information between a Class Representative and Defendant, a Class Representative is only able to quantify their claim on a preliminary basis. Such estimates are subject to the provision of disclosure and evidence in due course. It would therefore be misleading to use such sums to quantify the cost of the regime. The key amount is what is actually recovered by the Class Representative following settlement or trial. As set out above, no sums have been awarded yet by way of final judgment and in the settlements that have been approved in three cases, the Defendants have agreed to pay in aggregate £148,370,000 to class members.[61]

(b) For a collective action to proceed, the Class Representative is required to set out that it can cover the adverse costs of the Defendant if it is unsuccessful. A recovery on the standard basis were a Class Representative to be unsuccessful would range from 50-70% of the relevant legal costs. If a Defendant has recovered its costs, then its position is neutralised. As above, if a Defendant elects to spend more in legal fees than is reasonable and proportionate, then that is its prerogative, and it would be wrong to account for such costs as part of any assessment.

(c) If a collective action has been successful in obtaining a damages award or settlement amount, then this illustrates that the claim was justified and the unlawfully gained

[60] Opt-out collective actions regime review: call for evidence; Executive summary.

[61] This amount comprises: (i) £23.37 million from the settlements in *RoRo*; (ii) £25 million from the settlement in *Trains*; and (iii) £100 million from the settlement in *Merricks* (subject to the outcome of Innsworth's judicial review proceedings of the CAT's judgment). The sums are limited to the amounts which the CAT has ordered should be made available to class members, and therefore excludes the payment of costs.

profits are to be distributed to the represented class. In this scenario, the Defendant would be liable for their own costs as well as the costs of the Class Representative – as is the ordinary principle in English litigation.

Q12. Are there circumstances where it would be appropriate to provide protection to businesses from liability?

For example, might this be a consideration in certain circumstances in which businesses have cooperated with the CMA in a prior investigation?

47. This question highlights the differing aims of public and private enforcement in penalising anticompetitive conduct. Whilst a fine following public enforcement is intended to act as a deterrent to future wrongdoing, the fine is not distributed to those that have been harmed by anticompetitive conduct. Private enforcement provides an additional deterrent effect in that it seeks recompense for those affected by the infringement of competition laws, and thereby effectively increases the penalty for breaking the law. In other words, private enforcement seeks to quantify the actual effect of anticompetitive conduct so that those affected are put in the place they would have been *but for* the conduct.

48. Providing immunity from private damages will violate the basic right for claimants to seek damages, as established in the seminal judgments of *Crehan* and *Manfredi*. This has been long-established as part of English case law, and undoing this would represent a significant step backwards for access to justice.

49. It would also send the wrong message to wrongdoers, namely that one can participate in anticompetitive conduct but will be immune potentially from both a fine and damages, meaning that they would be able to retain the profits generated from the unlawful conduct. It is well established that anticompetitive behaviour harms consumers and/or businesses by lowering output, increasing prices and reducing choice and innovation. There is no compelling reason put forward as to why such wrongdoers should be shielded from the consequences of their actions, and particularly where they have caused significant financial loss to consumers and businesses whilst also impairing healthy competition.

50. We also note that the EU Damages Directive (2014/104) (**DD**), as implemented into English law, introduced mechanisms to safeguard the exposure of leniency applications to private damages (e.g. immunity recipients are only jointly and severally liable for harm caused to its direct and indirect purchasers (Art. 11 DD)). Furthermore, national courts are prevented from ordering disclosure of corporate statements and settlement submissions (Art. 6(6) DD). The current framework contains certain safeguards to immunity applicants in order to ensure a balanced approach. If a wrongdoer were somehow protected from private enforcement liability, then in cases concerning an abuse of dominant position it would stifle a potential claim altogether. In cases involving horizontal infringements, Class Representatives would only be able to sue other participants (such as immunity applicants in the context of a cartel). In that scenario, there should be a countervailing benefit to the Class Representative such that the immunity applicant should provide general co-operation and key documents to assist the Class Representative in its pursuit of damages against the remaining cartelists. We are however concerned that this approach would offend key principles that have been long-established in private enforcement, as set out above. Ultimately, a complete safe harbour for potential wrongdoers is likely to deter private enforcement altogether given the need for prospective litigants to carefully consider which entities to sue based on a variety of factors, such as jurisdiction, limitation, liquidity and any existing commercial relationships.

51. Specifically in the context of cartels, we note that the Government previously consulted on this issue and in 2021 arrived at the conclusion that it "*recognises that there is mixed evidence on the extent to which leniency programmes are frustrated by the private damages regime, and that more time may be needed to observe any effects of the changes introduced in 2017. For these reasons, government considers it may be premature to confer a private immunity on to holders of public immunity via a cartel leniency programme at this time*".[62] If regulatory authorities are noticing fewer leniency applicants coming forward, they should investigate in meaningful ways why that is and look to resolve that and incentivise those applicants in other ways. We do not see how it can possibly be in the interests of consumers for those applicants to be protected from collective actions.

52. Specifically, as regards co-operation as per the second question, the incentive for a business to co-operate in an investigation is to obtain a discount to the potential fine that may be levied, to reduce the length of the investigation and to obtain an infringement decision which provides limited details regarding the anticompetitive conduct. In almost all circumstances, the potential fine – which is capped at 10% of turnover – is significantly less than the amount of harm the wrongdoer may have caused and which may be pursued via private enforcement. It is unclear why the wrongdoer should obtain a further significant benefit by being shielded from damages claims altogether through what is an entirely different enforcement mechanism of competition law.

53. In our experience, it would be wrong to assume that businesses who have co-operated with the authorities will also co-operate in private enforcement. In the *Trucks* litigation before the CAT, despite the majority of the OEM Defendants settling with the European Commission, the OEM Defendants have strongly defended the cases made against them by businesses who overpaid for Trucks.

Q13. Should there be specific requirements in order to be eligible to act as a class representative?

54. We consider that there are already several requirements that are set out in the CAT Rules and Guide. The CAT is also slowly adding to these requirements as part of the growing body of case-law (for example, the CAT has recently expressed a view on the frequency at which a Class Representative's consultative panel should meet[63]). We consider that the current framework ensures flexibility in the CAT being able to exercise its judgment and discretion on a case-by-case basis.

Q14. Do you feel the current rules for class representatives are clear enough regarding the relationship between the class, class representative and funder and how to manage potential conflicts of interest?

Whilst we are aware that conflicts of interest between funders and funded parties are covered in recommendation 14 of the final report in the CJC's review of litigation funding, we are interested in exploring this topic in the unique landscape of the opt-out regime.

55. We consider that the current rules on this particular issue are sufficiently clear.

[62] Reforming competition and consumer policy: government response dated 20 April 2022 – available here.
[63] [2025] CAT 45 at [82].

Q15. Should there be more defined rules on what cases can be certified as opt-out proceedings?

56. We refer to our response to Question 9. As above, flexibility is important and the CAT (and Court of Appeal) is developing jurisprudence on this issue. We do not currently see a pressing need for more defined rules in the competition context, and would be concerned that doing so could run the risk of putting otherwise meritorious claims in a straightjacket.

Q16. Do you have any experience of involvement in ADR to resolve a loss suffered by consumers as a result of anti-competitive behaviour?

If so, what kind of ADR have you engaged in and how common is this in your experience?

If not, why not? What would make it more likely for you to consider this option in the future?

To what extent does the prospect of engaging in ADR deter businesses from wrongdoing?

How far do you believe that appropriate redress for class members can be achieved by ADR?

57. We do not have any direct experience on this. We are however concerned as to the significant asymmetry of information and understanding of competition law issues which exists as between consumers/businesses and those who infringe competition law. Consumers and small businesses are unlikely to be aware of whether they have been affected by anticompetitive conduct, and accordingly would require specialist advice on their rights. The complexity in quantifying competition damages claims also requires the involvement of an expert economist. It is not clear how ADR would ensure that individuals or small businesses looking to pursue such claims would have the means and ability to do so.

58. Given the number of settlements in opt-out cases relative to the number of cases which are progressing through the CAT, it is reasonable to assume that ADR does not have a true deterrent effect on wrongdoers. However, this could be due to a number of factors and it would be wrong to assume that this will always be the case:

(a) the fact that the regime is still in its infancy, and in practice has only been 'active' since the Supreme Court provided clarity on certification following *Merricks* in December 2020 (and therefore for less than five years at the time of this Call for Evidence);

(b) the fact that, as at writing, only one collective opt-out proceeding has gone to full trial and final judgment (whilst other cases have gone to a trial, in the majority of cases this is a result of a split trial such that, even following the first trial, the proceedings remain ongoing);

(c) the majority of cases filed under the regime, and certified, are not 'follow-on' in respect of a competition authority decision (only those which are certified and follow-on are in respect of a European Commission decision); and/or

(d) some cases (particularly those against Big Tech) focus on business practices which could require a significant change to the Defendant's business if it is found to be anticompetitive, and that change may have consequences on a global scale. Such cases are unlikely to be suitable for ADR.

Q17. Voluntary redress schemes were introduced by way of amendments to the Competition Act 1998 through the Consumer Rights Act 2015. They offer an avenue for redress by way of schemes voluntarily set up by businesses and approved by the CMA.

Are you aware of the option of voluntary redress schemes and under what circumstances a voluntary redress scheme could be used?

If yes, for what reasons would you or would you not be inclined to either use or advise the use of a voluntary redress scheme following an adverse finding by the CMA?

Noting that they have not yet been utilised, what reforms could be made to voluntary redress schemes to increase their use?

59. We do not have experience of utilising such schemes and therefore do not comment. However, we note that any redress scheme that is under the control of a regulator may be subject to practical limitations which, in turn, could reduce its effectiveness: (i) it would require a finding of liability by the regulator, whereas – as we have noted elsewhere – the majority of claims for private damages that have been brought are standalone; and (ii) such a process would be wholly subject to the discretion and administrative priorities of the relevant regulator.

Q18. Do you consider that additional alternative routes for redress could reduce the need for litigation? For example, could empowering the CMA to issue directions for redress reduce the need for private action?

60. Whilst as a matter of principle alternative routes for redress could reduce the need for litigation, this is yet to be seen in practice. Where it has happened in practice, the amounts given under redress are likely significantly lower than what could be achieved were private enforcement to be pursued. For example:

    (a) In July 2020, the CMA levied a fine of £2.3 million against three pharmaceutical companies who colluded to stay out of the market for fludrocortisone.[64] As a result of that anticompetitive agreement, the price of fludrocortisone supplied to the NHS had increased by up to 1800%. In this instance, the CMA secured a payment of £8 million directly to the NHS, which we consider is likely significantly lower than what the NHS could have achieved in private enforcement proceedings.

    (b) In March 2020, the CMA also levied a £3 million fine against two pharmaceutical companies following the uncovering of a market sharing agreement for the supply of Nortriptyline.[65] The pharma companies additionally agreed to make a £1 million payment to the NHS as compensation. We consider that the payment to the NHS is considerably lower than the NHS may have achieved in private enforcement proceedings.

    (c) The CMA has also accepted commitments for direct repayment to the NHS following investigations into the pharma sector. For instance, it agreed to a commitment to pay £23 million to the NHS from a pharmaceutical company which had restricted competition by spreading misinformation about a rival's competing

[64] See further here.
[65] See further here.

drug.[66] As with the example cited immediately above, we consider that the NHS could have achieved a higher sum than this in private enforcement proceedings.

61. We are therefore concerned that redress via the CMA would likely result in low amounts of recompense to consumers and small businesses avoiding the scrutiny of both the public and the CAT. Justice would not be seen to be done, and the wrongdoer would not be exposed to the adverse publicity (and the deterrent effect of such publicity) occasioned by competition damages litigation. Further, the adversarial process of proceedings before the CAT would allow expert evidence to be rigorously tested and subject to due process in a way that is transparent pursuant to the principle of open justice, whereas the CMA's administrative priorities has the potential to act as a limitation on what it is able to achieve – which in turn increases the risk that the outcome would not necessarily be one which is fair for consumers.

Q19. What barriers do you consider there are to pursuing alternative routes to redress, such as ADR, voluntary redress schemes, or similar potential options outside of, or prior to, litigation?

How could greater use of these alternative routes be facilitated?

62. We have noted some of the concerns with alternative routes in our responses above.

63. Another potential barrier, as we have alluded to in our response to Question 16, is the fact that some Defendants face the same or similar proceedings in multiple jurisdictions, where the claims relate to ongoing harm (rather than, for example, a historic price-fixing cartel) and/or where the claims, if successful, would require a significant change to the way in which the Defendant operates across its entire business operation (and therefore not just the UK). In our experience, such Defendants tend to be wary of the 'precedent effect' of settling a case in one jurisdiction, particularly where the case may require a significant change to its business model.

Q20. Do direct financial, rather than cy-pres, damages deliver justice effectively?

If not, what might alternatives look like?

64. In some cases, it may be appropriate to give class members a choice as to the financial reward. Some class members may value a monetary payout whereas others may prefer a donation to charity, regardless as to the level of the sum. Ultimately, a just outcome is one which ensures that the class member has been recompensed for the harm that it has suffered. A system which provides flexibility to the class member as to what to do with that sum may be a way of increasing general engagement with the regime.

Q21. What degree of influence, if any, do you consider litigation funders currently have over the resolution of a case?

For example, whether/when to settle or pursue an award of damages. We are aware that the CJC has made recommendations in relation to the level of influence funders should have over settlement in particular in its report on litigation funding (for example, recommendation 12), but would like to explore perspectives on to what extent this is currently an issue in cases before the CAT.

[66] See further here.

65. As recognised within the wording of Recommendation 12, this is suggesting a codification of the current prohibition of funder control. Recommendation 12 goes on to suggest that breach of this requirement should render the LFA unenforceable as against the funded party and should render the funder liable for the funded party's costs and adverse costs.

66. It is worth unpacking how the CJC reached Recommendation 12, and the evidence provided to the CJC in support of this. Respondents to the CJC during its Review of Litigation Funding proposed, *inter alia*, that there should be a prohibition on funders' control of litigation, whether direct or indirect, flagging that the lack of effective regulation was said to create a problem whereby "*Litigation funders can take effective control of funded litigation. Such control was said potentially to arise either or both directly and indirectly, the latter through exerting influence by, for instance, threatening to withdraw or withhold funding or through renegotiation of funding terms, i.e., making renegotiation contingent on the funded party ceding control of aspects of the litigation or settlement or giving priority to the litigation funder's interests*".[67] Other respondents to the CJC disagreed, stating that litigation funder control does not occur in practice, not least due to the continued application of the doctrines of maintenance and champerty and the fact that those litigation funders who are members of the Association of Litigation Funders would be bound by the Code of Conduct which also prevents this. The actions of Innsworth in *Merricks* were cited by some respondents as an example of attempted funder control over the terms of the settlement proposed. However, whilst Innsworth did challenge the approval of the settlement reached between Mr Merricks and Mastercard, it represents the only time this has occurred and ultimately it was unsuccessful.[68]

Q22. What safeguards do you consider could be implemented to mitigate the risk of litigation funders inappropriately influencing a case, or to help identify where such influence has been exerted?

67. Please see our response to Question 21 above. We are also confident that the CAT is alive to these issues.

Q23. Should remedies other than compensatory damages be available?

If so:

- **Why?**
- **What types of remedies?**
- **Should the availability of restitutionary damages be considered?**

68. As we have indicated above, we consider that it is too early to answer this question without the benefit of seeing how compensatory damages are distributed in practice. There has only been one instance where damages have been distributed to class members, and it would be wrong to propose any changes to the current regime on the basis of one example – especially given the many years it took for the regime to be conceived through the legislative process.

69. Notwithstanding the above, compensatory damages, which seek to place claimants in a position they would have been *but for* the anticompetitive conduct, are the central gravity of any action. It would contradict the very purpose of private enforcement were compensatory damages not to be pursued. As we have alluded to above, the regime depends on third-party

[67] Paragraph 7.9(b) of the CJC Review of Litigation Funding,

[68] Innsworth has now applied for judicial review, which is pending at the time of writing. We understand that the review is limited to the CAT's findings regarding the distribution of the £200 million settlement (rather than the settlement sum itself).

litigation funding, and it is difficult to see how any funder would be motivated to fund a case were compensatory damages not available or did not feature as part of a prospective claim.

70. However, other remedies are often pursued in parallel. This is particularly the case where the infringing conduct is ongoing, such that the claim is likely to seek injunctive relief that the conduct will cease which is an otherwise natural corollary if the CAT has found the conduct to be anticompetitive.

71. Specifically as to restitutionary damages, such damages are already considered when the CAT is invited to decide the beneficiary of any undistributed damages sum or settlement award. However, we do not consider that such damages should take the place of compensatory damages which should be the primary goal of ensuring that class members are recompensed for unlawful conduct.

Q24. What factors might incentivise you to settle or advise settlement rather than continuing to judgment before the CAT?

72. As with any settlement advice that is given to a client, it depends heavily on the particular circumstances of the case. In our experience, the litigation phases of disclosure and expert evidence are important milestones whereby the extent and strength of the evidence begins to crystalise – and so these two phases present an opportunity for litigants to reflect on the strength of their case. Alongside this, it is important for the parties to consider the costs incurred to date and that will be incurred were trial to take place. It may be appropriate in some cases for the CAT to order a short stay of proceedings at a point before trial in order to facilitate settlement discussions. Any such stay would need to be timed carefully to ensure that the parties have the means by which to sensibly engage with the positions that will be advanced at trial.

73. We also note that CAT Rule 45 (the equivalent of CPR 36 – i.e. offers to settle) does not apply to opt-out claims due to the settlement procedure set out in CAT Rules.[69] It may however be appropriate to allow parties to make such offers so that they carry costs consequences that may be considered either as part of any future settlement application or as part of determining costs post-judgment. Permitting Rule 45 offers in the opt-out context may therefore add an increased incentive for the parties to consider settlement.

74. Similarly, under CPR r32.18 a Notice to Admit facts is a request to pressure an opponent in litigation to admit facts and has the potential to save costs because a party would potentially not need to go through the expense of establishing a fact at trial. If a litigant refuses to admit facts which are subsequently established at trial, then there are no automatic cost sanctions but such a refusal will likely be a factor that the court takes into account when assessing costs pursuant to CPR r.44.2 and 44.3. Introducing such a mechanism in CAT proceedings more generally may add further incentives to the parties to settle or otherwise significantly narrow the issues in dispute.

Q25. To what extent do you think it would be beneficial for the CAT to have increased oversight of settlement/a stronger role in approving settlement agreements between parties?

75. The CAT has a specific process for considering settlements and at present settlements may only take place with its approval. An application for collective settlement approval order (**CSAO**) must first be made by the class representative and the Defendant(s) wishing to be

[69] CAT Guide paragraph 5.110.

bound by the settlement.[70] Such an application will set out the details of the claims that it is proposed will be settled, as well as the terms of the proposed settlement, including the payment of costs. Importantly, a CSAO application must also contain a statement that the applicants 'believe the terms of the proposed settlement are just and reasonable supported by evidence which may include any report by an independent expert or any opinion of the applicants' legal representatives as to the merits of the collective settlement' and specify how a settlement amount will be distributed. The CAT will make a CSAO only if it is satisfied that the terms are 'just and reasonable'. The factors that the CAT will take into account in such an assessment include, but are not limited to: (1) the value of the settlement, including provisions as to costs; (2) experts' and legal advisers' views; and (3) any provisions of the settlement that go to any unclaimed balance. Notably, the reversion of unclaimed settlement sums to defendants shall not, in and of itself, be considered unreasonable. Given the detailed process which is set out in the CAT Rules, it is not clear to us how much more oversight the CAT could sensibly have.

76. We consider that it is important that the parties have flexibility to approach settlement, and have set out in our response to Question 24 some further mechanisms that may increase incentives to settlement. In addition to those mechanisms, it may be appropriate for the CAT in certain cases to mandate a stay of the proceedings so as to enable settlement discussions to take place. Any such proposal would need to be considered carefully against the need to ensure that proceedings are allowed to progress expeditiously, and any such stay should not be at the risk of jeopardising the litigation timetable such that the proceedings cannot be dealt with fairly and justly. It may, for example, be appropriate for such a step to take place once the evidence in the litigation has crystalised and the parties can have informed discussions as to their respective trial positions. In any case, any such proposal should not prevent the parties from engaging in 'without prejudice' discussions throughout the course of the litigation.

Q26. What should happen to unclaimed funds from a settlement agreement?

77. We consider that there is a compelling argument to suggest that such funds should be given to charity (see further our response to Question 20 above), with the CAT to consider carefully the amounts to be given to charity as against the funder's return on investment. By settling a claim, a wrongdoer is essentially acknowledging that it has or may have done something to cause harm. Allowing an amount of unclaimed funds to be given to charity means that class members will be indirectly recompensed, such that society continues to benefit as a whole.

78. As noted in our response to Question 25, there is a potential for unclaimed funds to be reverted to a Defendant in a settlement scenario. The potential for reversion of settlement funds provides an appropriate incentive to Defendants to enter into settlements and thereby increase the prospect of litigation being concluded sooner. However, this has to be balanced against the fact that the Defendant stands to be rewarded for its conduct by being able to retain unlawfully gained profits and so the level of any reversion should continue to fall within the CAT's discretion.

Q27. How are funds distributed among consumers?

[70] Where there is no CPO, the proposed representative and the defendant can apply jointly to the CAT for a collective settlement order (**CSO**). A CSO effectively replaces the CPO aspect of the process in that it incorporates an assessment by the CAT as to the underlying claims in accordance with the criteria for the grant of a CPO.

How could this be improved?

79. Please refer to our response to Question 28 below.

Q28. Are consumers made sufficiently aware of proceedings/their right to claim their share of damages by current notice requirements?

If not, how could awareness be improved?

80. We anticipate that other organisations will be better placed to express a view on this question. However, to ensure that the regime operates at its best, it may be appropriate for the DBT to consider ways in which there could be improved public awareness and education of the regime – consulting with those with sufficient expertise in this area where required.

81. We would support the idea that notices to consumers should be made accessible and should be expressed in the clearest language in order for consumers to understand their rights.

Q29. The quantum of damages can vary from case to case. For example, out of the recent Merricks settlement of £200 million, £100 million was set aside for class members. Of this, individual class members can expect to receive approximately £45 each and no more than £70.

To what extent do you consider that this return is meaningful for individual class members?

82. As a preliminary observation, the CAT made clear in *Merricks* that its judgment on settlement ought to be considered on its own set of exceptional facts.[71]

83. What is meaningful will vary significantly from individual to individual (and business to business), and will ultimately be driven by various socio-economic factors. It is entirely plausible that £45, and likely a sum lower than that, is meaningful to various individuals in society, and particularly those who face financial hardship. We would therefore express caution to the DBT who are likely to receive a high number of responses from those who have reservations regarding the regime, rather than society at large who stand to benefit from opt-out cases – whether directly through distribution or indirectly through payments to charity. We anticipate that consumer bodies will put forward evidence for consumers in general, and it is appropriate for the DBT to attach significant weight to such evidence – or otherwise that the DBT will seek to source its own independent evidence. For completeness, we note that, in response to the consultation prior to the introduction of the regime, Which? adduced evidence to the Government that a sum of £5-£10 would be claimed by 85% of respondents to a survey conducted in March 2011[72] - indicating that such sums are 'meaningful' to consumers.

84. In any event, no matter the amount of the damages sum, it is right that it should be distributed to consumers or otherwise retained by a charity. It is for those operating in the regime, with the CAT's guidance, to ensure that as much of the pot of damages is distributed as possible. The alternative is that, as was the case prior to October 2015, unlawful profits are retained by the wrongdoer(s). We see no basis to argue this should be the case, nor have we yet heard anyone advocate for this (rather extreme) position.

[71] [2025] CAT 28 at [208].
[72] See page 442 of responses O to Z – available here.

Q30. What should happen to unclaimed or residual damages?

Should different expectations be applied to settlements?

85. Please see our response above, and to Question 26 in particular.

Q31. Is there anything else that you would like to share regarding the operation of the opt-out collective actions regime?

86. First, we propose that the CAT's Rules and Guide are subject to a wider consultation in order to clarify existing inconsistencies in some key areas and to codify, to the extent necessary, practices which have emerged. The CAT Rules and Guide came into force in October 2015. Given the passage of ten years since those provisions came into effect, and given the growing body of case-law that is emerging in the opt-out regime, it may be appropriate for the CAT to consult as to any changes. For example, it may be appropriate for the CAT to formally codify findings which consistently emerge as part of its approach to certification and carriage disputes. This would also alleviate the scope for inconsistencies in the approach as between different CAT panels on case management, for instance with regards to the permitted length of expert reports and joint expert statements, and the status of such materials at trial.[73] As set out in CAT Rule 120(3), the first report which carries out a review of the CAT Rules was to be published before 1 October 2020. Following a Call for Evidence in 2021, in April 2022 the Government indicated that it would carry out a further technical review of the CAT rules "*to encompass updating and improvement of case management procedures including in the context of private actions and with a view to enhancing the Tribunal's ability to conduct proceedings by electronic means*".[74] We understand that such a review is yet to be undertaken, and we would welcome the opportunity to provide our further thoughts were such a consultation to be opened (some of which have been set out in our responses above).

87. Second, it may be necessary to consider the adequacy of the CAT's resources. The CAT's caseload has increased in recent years, which is likely due to the changes brought about by the CRA15 (both the number of opt-out proceedings filed but also due to the CAT's increased competence to hear standalone claims). It is also a natural corollary of the fact that the CAT is now the preferred competition court, with any claims in the High Court with a competition law focus or element being the subject of an automatic transfer to the CAT, following the Court of Appeal's comments in Interchange that "*such claims should in normal circumstances be transferred to the CAT. We say this because of the specialist nature and other advantages enjoyed by the CAT*".[75] It may therefore be necessary for the CAT's resources to be increased commensurately in order to efficiently manage the caseload and ensure that its ability to try cases efficiently and fairly is not compromised. In this regard, it may be appropriate for the CAT to formalise the CAT user group so that it acts as a useful forum for practitioners to raise issues and suggestions as to the day-to-day running of litigation. We consider that the CAT user group should be expanded to include a sensible balance of law firms and barristers who appear before the CAT, and that it may be appropriate for meetings to be held on a more frequent basis.

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[73] In *Consumers' Association (Which?) v Qualcomm*, the CAT imposed page limits on expert reports and indicated that, in place of expert reports, it will only read the joint expert statement for the purposes of trial. We are unaware of such page limits being imposed in other proceedings. See transcript of Case Management Conference dated 30 July 2024 – available here.

[74] Post-implementation review of the CAT Rules 2015 and Government Response to the Call for Evidence, April 2022 – available here.

[75] [2018] EWCA 1536 (Civ) at [357].

ANNEX

Summary of current cases

Case no.	Case title	Sector	Class composition
1266/7/7/16	Walter Hugh Merricks CBE v Mastercard Incorporated & Others	Banking charges	Individuals
1289/7/7/18	Road Haulage Association Limited v Man SE and Others	Trucks	Individuals and businesses
1304/7/7/18	Justin Gutmann v First MTR South Western Trains Limited and Another	Rail fares	Individuals
1305/7/7/18	Justin Gutmann v London & South Eastern Railway Limited	Rail fares	Individuals
1336/7/7/19	Mr Phillip Evans v Barclays Bank PLC and Others	Foreign exchange spot trading (FOREX)	Individuals and businesses
1339/7/7/20	Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others	Car shipping	Individuals and businesses
1382/7/7/21	Consumers' Association ("Which?") v Qualcomm Incorporated	Smartphones	Individuals
1403/7/7/21	Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd	Apple apps	Individuals and businesses
1404/7/7/21	David Courtney Boyle & Edward John Vermeer v Govia Thameslink Railway Limited & Others	Rail fares	Individuals
1408/7/7/21	Elizabeth Helen Coll v Alphabet Inc. and Others	Online search	Individuals and businesses
1425/7/7/21	Justin Gutmann v Govia Thameslink Railway Limited & Others	Rail fares	Individuals and businesses
1433/7/7/22	Dr Liza Lovdahl Gormsen v Meta Platforms Inc. & Others	Social media	Individuals
1437/7/7/22	Elisabetta Sciallis v Fender Musical Instruments Europe Limited and Another	Musical instruments	Individuals and businesses
1440/7/7/22	Clare Mary Joan Spottiswoode CBE v Nexans France S.A.S. & Others	Electricity services	Individuals
1441/7/7/22	Commercial and Interregional Card Claims I Limited v Mastercard Incorporated & Others	Banking charges	Businesses
1442/7/7/22	Commercial and Interregional Card Claims II Limited v Mastercard Incorporated & Others	Banking charges	Businesses
1443/7/7/22	Commercial and Interregional Card Claims I Limited v Visa Inc. & Others	Banking charges	Businesses

Case no.	Case title	Sector	Class composition
1444/7/7/22	Commercial and Interregional Card Claims II Limited v Visa Inc. & Others	Banking charges	Businesses
1468/7/7/22	Mr Justin Gutmann v Apple Inc., Apple Distribution International Limited, and Apple Retail UK Limited	Smartphones	Individuals and businesses
1523/7/7/22	BSV Claims Limited v Bittylicious Limited & Others	Cryptocurrency	Individuals and businesses
1527/7/7/22	Alex Neill Class Representative Limited v Sony Interactive Entertainment Europe Limited & Others	Online stores and games consoles	Individuals
1529/7/7/22	Elisabetta Sciallis v Korg (UK) Limited and Korg Inc	Musical instruments	Individuals and businesses
1530/7/7/22	Elisabetta Sciallis v Roland Europe Group Limited and Roland Corporation	Musical instruments	Individuals and businesses
1531/7/7/22	Elisabetta Sciallis v Yamaha Music Europe GmbH and Yamaha Corporation	Musical instruments	Individuals and businesses
1572/7/7/22; 1582/7/7/23	Ad Tech Collective Action LLP v Alphabet Inc. & Others	Online advertising	Individuals and businesses
1592/7/7/23	Elisabetta Sciallis v Casio Electronics Co. Limited and Casio Computer Co., Limited	Musical instruments	Individuals and businesses
1595/7/7/23	Robert Hammond v Amazon.com, Inc. & Others	Online marketplaces	Individuals
1598/7/7/23	Doug Taylor Class Representative Limited v MotoNovo Finance Limited and Others	Vehicle finance agreements	Individuals
1599/7/7/23	Doug Taylor Class Representative Limited v Black Horse Limited and Others	Vehicle finance agreements	Individuals
1600/7/7/23	Doug Taylor Class Representative Limited v Santander Consumer (UK) plc and Others	Vehicle finance agreements	Individuals
1601/7/7/23	Dr Sean Ennis v Apple Inc and Others	Apple apps	Individuals and businesses
1606/7/7/23	Nikki Stopford v Google	Online search	Individuals
1624/7/7/23	Mr Justin Gutmann v Vodafone Limited and Vodafone Group PLC	Mobile telephone services	Individuals
1625/7/7/23	Mr Justin Gutmann v EE Limited and BT Group PLC	Mobile telephone services	Individuals

Case no.	Case title	Sector	Class composition
1626/7/7/23	Mr Justin Gutmann v Hutchison 3G UK Limited	Mobile telephone services	Individuals
1627/7/7/23	Mr Justin Gutmann v Telefonica UK Limited	Mobile telephone services	Individuals
1639/7/7/24	Bulk Mail Claim Limited v International Distribution Services Plc (formerly Royal Mail Plc)	Bulk mail	Businesses and public sector services
1640/7/7/24	Vicki Shotbolt Class Representative v Valve Corporation	Video games	Individuals
1641/7/7/24	BIRA Trading Limited v Amazon.com Inc. & Others	e-Commerce	Businesses
1643/7/7/24	Waterside Class Limited v Mowi ASA & Others	Salmon	Individuals
1644/7/7/24	Professor Andreas Stephan v Amazon.com, Inc & Others	e-Commerce marketplace services	Businesses
1673/7/7/24	Professor Barry Rodger v Alphabet Inc & Others	Android apps / mobile operating system	Businesses
1689/7/7/24	Consumers' Association ("Which?") v Apple Inc	Cloud storage	Individuals
1696/7/7/24	Dr Maria Luisa Stasi v Microsoft Corporation & Others	Software licenses	Businesses
1698/7/7/24	Clare Mary Joan Spottiswoode CBE v Airwave Solutions Limited & Others	Mobile communication networks	Individuals, businesses and public sector services
1720/7/7/25	Or Brook Class Representative Limited v Google Inc & Others	Online search and search advertising	Businesses
1731/7/7/25	Alexander Wolfson v Microsoft Corporation & Others	Software licenses	Individuals and businesses
1731/7/7/25	Mr Roger Kaye KC v Alphabet Inc & Others	Online search and search advertising	Businesses
1749/7/7/25	Association of Consumer Support Organisations Ltd v Amazon.com Inc. & Others	e-Commerce	Individuals and businesses
Proposed (no CAT case number)	Bed & Breakfast Association v Booking.com	Accommodation services	Businesses
Proposed (no CAT case number)	James Daley v Apple	Banking charges	Individuals