

RPC

UK CAT Collective Proceedings

Summer 2024 Update

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Developments in the UK's competition collective proceedings regime continue apace with new claims recently issued in the Competition Appeal Tribunal (**CAT**).

In the spring, we reported on the latest collective proceedings goings on [here](#), reflecting significant changes in the regime since our [2023 update](#).

In this short summer 2024 stock-take, we summarise some recent developments in the regime:

New CPO claims

A number of new collective proceedings order (**CPO**) claims have been filed, including:

- Atlantic salmon producers are now facing a new claim on behalf of UK consumers brought by [Waterside Class Limited](#) (whose sole director is Ms Anne Heal). Estimates are that there are circa 35 – 44 million persons in the proposed class and the alleged quantum for each member of the proposed class is on average approximately £1.97 - £10.71. The conduct in question relates to alleged unlawful collusion to increase Atlantic salmon prices. The proposed defendants (with one exception) are also subject to a proposed claim brought by ten UK-based supermarkets. These claims follow on from ongoing investigations by the European Commission.
- [Bulk Mail Claim Limited](#) is bringing a follow on claim further to Ofcom's finding that Royal Mail abused its dominant position in the market for 'Bulk Mail' delivery services in the UK by attempting to introduce discriminatory prices via 'Contract Change Notices'. The claim has been brought on behalf of retail customers, 94.7% of which are estimated to be SMEs. The estimated value of the claim is £878.5m. Behind the claim is Robin Aaronson (the sole director of Bulk Mail Claim Limited), an economist who was formerly at the regulator of the mail industry before the postal regulatory responsibilities passed to Ofcom.

Carriage disputes on horizon

- Two new CPO claims have been launched in relation to Amazon's buy-box practices. Both claims are on behalf of retailers. One claim is backed by Proposed Class Representative (**PCR**) Andreas Stephan and the other has been brought by the British Independent Retailers Association (**BIRA**). A carriage dispute is likely on the horizon due to the potentially overlapping nature of the claims.
- In relation to the competing claims against Amazon brought on behalf of consumer classes, the CAT previously determined in favour of Mr Hammond's claim (Julie Hunter's claim is no longer being pursued). The CAT's ruling is [here](#) and our article on the carriage ruling is [here](#).
- Our previous article considering the background to the CAT's new approach to carriage disputes (now normally considered as a preliminary issue) is [here](#).

New certified claims

- The [Ad Tech](#) claim against Google has been certified. In its ruling, the CAT emphasised the Pro-Sys test is not a pre-condition to certification and is "not a barrier to justice". The CAT confirmed the test is not an "unrealistically high threshold" for the articulation of the expert methodology.
- On the second attempt at certification, the four Commercial and Interregional Card Claims (**CICC**) were certified by the CAT. Similarly, the [Gormsen](#) claim against Meta was certified on the second try after the PCR addressed issues raised by the CAT at the first certification ruling.

Funding and costs

- The previously proposed Litigation Funding Agreements (Enforceability) Bill was not included in the parliamentary 'wash up' prior to the general election. Neither was it mentioned in the recent King's speech. It therefore remains to be seen what legislation, if any, will be enacted in the wake of the *PACCAR* decision which held that litigation funding agreements (**LFAs**) are damages based agreements (**DBAs**).
- A number of funding issues are currently on appeal from the CAT to the Court of Appeal, including in the [Gutmann v Apple](#) case. At appellate level, we can expect therefore further clarity as to permissible terms in LFAs soon.
- In the context of the [CSAV collective settlement](#) approved by the CAT in [McLaren](#), the Class Representative (**CR**) applied for an order that the costs and part of damages paid to it by CSAV be used to cover a portion of the costs, fees and disbursements incurred. The total sum due to the 'Stakeholders' at the date of the application was said to be £24.2m. The approved CSAV settlement sum was £1.5m of which c. £1.1m was the damages element. In its [ruling](#) on the costs application, the CAT found that, although it had the power to make the order sought, it would not be appropriate to assess what sums should be paid to funders before the outcome of the proceedings is known. On that basis, the CAT did not permit use of the damages element of the settlement sum at this stage. It did allow an additional sum from the proceedings costs element, however.

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Damages distribution

- In the recent [Spottiswoode](#) certification ruling, the CAT raised concerns as to the damages distribution plan. While the claim was certified, the CAT requested detailed proposals regarding distribution within 3 months, noting that failure to do so could lead to revocation of the CPO.
- In the [collective settlement](#) approved in the train ticketing litigation, the CAT scrutinised in detail the settling parties' proposed distribution plan. The parties modified the settlement proposal to take account of the CAT's concerns.
- For further details, see our blog post on the CAT's recent focus on distribution issues [here](#). Our article summarising the CAT's collective settlement approval process is [here](#).

First substantive trials

- In early 2024, the CAT heard the first substantive trial in the case of [Le Patourel v BT](#). The case concerns excessive pricing allegations regarding BT landline services, relying in part on Ofcom's prior regulatory findings. The ruling from this trial is expected any time soon and the CAT's determinations will help clarify many aspects of the competition collective proceedings regime. For our article considering the implications of the case for the wider regime, click [here](#).
- The first trial on abuse of dominance in Gutmann's train ticketing litigation has now also taken place. A split trial has been ordered in those proceedings with the trial on the alleged abuse determined first, followed by a determination of the issues pertaining to causation and the quantification of damages (the second trial).

DMCC hits the statute books

- The new Digital Markets, Competition and Consumers Act (**DMCC**) became law at the end of May 2024. The DMCC brings in a raft of substantial changes to the competition and consumer law regimes. It also ushers in a new pro-competition regime for digital markets which will be overseen by the CMA's Digital Markets Unit.
- Commencement of the DMCC will take place in stages. The first new powers under the DMCC are expected to come into force in the autumn.
- During the DMCC's passage through Parliament, it was debated whether the collective proceedings regime should be expanded to include consumer law claims. While that proposed amendment to the legislation was not progressed, query whether the new Government may take forward any changes to expand the collective proceedings regime in the future.

What to watch in September

- On 16 September 2024, the certification hearing in the [Ennis](#) case will take place over two days with one day in reserve.
- On 18 September 2024, the certification hearing in the [Stopford](#) claim will take place over 3 days.
- On 23 September 2024, the certification hearing will take place in the environmental based claims brought by [Professor Roberts](#) against a number of UK water companies. The claims concern allegations of abuse of dominance in relation to sewage spills. The cases raise interesting issues as to the intersection of competition law and the regulatory regime for the water and sewerage sector, particularly given ongoing and related investigations by Ofwat or the Environment Agency. As the first environmental based claim, the case is certainly one to watch.

CPO CLAIM STATUS AS AT 24 JULY 2024	CERTIFIED BY THE CAT	AWAITING CERTIFICATION	DISCONTINUED/ON HOLD	PUBLICISED BUT NOT ON CAT WEBSITE
	<p>Interchange fees (umbrella proceedings order in place): Merricks</p> <p>Trucks: RHA</p> <p>Train ticketing: Gutmann (First MTR)*; Gutmann (LSER); Gutmann (Govia)</p> <p>Maritime car carriers: McLaren*</p> <p>Landline services: Le Patourel</p> <p>Smartphone chipsets: Consumers' Association</p> <p>App Store: Dr Kent</p> <p>Train ticketing: Boyle</p> <p>Google Play Store: Coll</p> <p>Train ticketing: FX: Evans</p> <p>Phone batteries: Gutmann (Apple)</p> <p>Gaming consoles: Neill</p> <p>Social media: Dr Gormsen</p> <p>Power cables: Spottiswoode</p> <p>Ad Tech: Ad Tech Collective Action (consolidation of claims by Pollack and Arthur)</p> <p>Interchange fees: CICC I (Mastercard); CICC II (Mastercard); CICC I (Visa); CICC II (Visa)</p> <p>*Partial or full settlement terms approved by CAT</p>	<p>Cryptocurrency: BSV</p> <p>Musical instruments: Sciallis (Fender); Sciallis (Korg); Sciallis (Roland); Sciallis (Yamaha); Sciallis (Casio)</p> <p>Amazon: Hammond</p> <p>Car purchase finance: Doug Taylor (Santander); Doug Taylor (Black Horse); Doug Taylor (MotoNovo Finance)</p> <p>App Store: Dr Ennis</p> <p>Amazon and Apple: Riefa</p> <p>Android: Stopford</p> <p>Mobile Networks: Gutmann (Telefonica); Gutmann (Hutchinson); Gutmann (EE); Gutmann (Vodafone)</p> <p>Sewage and Wastewater: Roberts (Severn Trent); Roberts (Anglian Water); Roberts (Northumbrian Water); Roberts (Yorkshire Water); Roberts (United Utilities); Roberts (Thames Water)</p> <p>Performing rights: Rowntree</p> <p>Royal Mail: Bulk Mail Claim Limited</p> <p>Salmon: Waterside Class Limited</p>	<p>Mobility scooters: Gibson (withdrawn)</p> <p>Trucks: UKTC (carriage dispute unsuccessful)</p> <p>FX: O'Higgins (carriage dispute unsuccessful)</p> <p>Insurance comparison site: Home Insurance Consumer Action (CMA infringement decision successfully challenged)</p> <p>Amazon: Hunter (carriage dispute unsuccessful)</p> <p><i>Replica football kits: Consumers' Association (settled) - claim under a previous version of section 47B Competition Act 1998</i></p>	<p>Further CPO applications are in the pipeline. Those recently publicised include:</p> <p>Credit and debit cards: Further CPO claims proposed against Mastercard and Visa</p> <p>Gaming platform: Vicki Shotbolt's proposed claim against Valve Corporation regarding Steam</p> <p>Google Play Store: Professor Rodger proposed claim against Google (UK developers)</p> <p>Amazon: Two new CPOs against Amazon publicised (Andreas Stephan's claim and a claim brought by the British Independent Retailers Association)</p>
Total no: 52	21	26	5	Further CPOs in pipeline



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