

United Kingdom: the road ahead after the UK CAT Practice Direction

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IN SUMMARY

In December 2025, the UK's Competition Appeal Tribunal (CAT) issued a comprehensive Practice Direction on Expert Evidence, providing detailed guidance on the role and conduct of expert witnesses in competition litigation.^[1] This article discusses the key lessons and practical challenges arising from this new guidance as it relates to economic evidence. The new guidance from the CAT represents a renewed focus on how testifying economists develop and present economic evidence. The themes of greatest interest that emerge from the Practice Direction and recent CAT judgments include the necessity of fact-based modelling, the push for methodological transparency, and the CAT's active intervention to prevent advocacy.

DISCUSSION POINTS

- The need to calibrate quantitative models to observed factual evidence
 - The challenges of ex-ante model specification in applied econometrics, which is inherently iterative
 - The implications of disclosing unfavourable initial analyses and the difficulty of distinguishing outcome-driven model selection from routine model selection
 - The tension between relying on established economic methodologies and the need for case-specific evidential foundations
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REFERENCED IN THIS ARTICLE

- CAT Practice Direction: Expert Evidence
 - Stellantis CAT judgment
 - Royal Mail CAT judgment
 - Merchant Interchange Fee Umbrella Proceedings CAT judgment
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CAT PRACTICE DIRECTION: EXPERT EVIDENCE

In December 2025, the CAT issued its Practice Direction on Expert Evidence, providing detailed guidance on the role and conduct of expert witnesses in competition litigation. Central to this guidance is the foundational principle that an expert's overriding duty is to the Tribunal itself. The Practice Direction applies to all expert evidence before the tribunal, with a particular focus on economic evidence. It represents one of the clearest statements to date regarding the CAT's expectations for expert evidence in increasingly complex competition litigations.

Background And Motivation For Practice Direction

The Practice Direction was not issued in a vacuum. It followed mounting concerns regarding the role, conduct and presentation of expert evidence in complex competition litigation, particularly in collective proceedings and damages actions involving extensive economic analysis. Recent high-profile cases highlighted a number of recurring, systemic issues

regarding, in particular, the independence of experts, the lack of transparency surrounding econometric model selection and the growing volume and complexity of expert reports.

A central issue in recent judgments has been the risk that expert evidence becomes aligned too closely with the interests of the instructing party, rather than fulfilling the primary duty of assisting the Tribunal objectively. For example, in *Stellantis*,^[2] the Tribunal criticised the claimant expert's decision to revise aspects of the econometric model after observing that the original specification produced results inconsistent with the claimant's theory of harm. The Tribunal stated that the "theory of harm which is being tested should not be adjusted or revised in the light of the econometric data to ensure some desired result",^[3] emphasising the obvious zero tolerance for outcome-driven model selection.

A similar concern had previously been flagged in *Royal Mail*.^[4] In that cartel damages case, although both experts relied on the same underlying econometric methodology, they arrived at materially different overcharge estimates, ranging from 0% to 10%. These results were driven by different treatments of confounding factors like exchange rates and the 2008 financial crisis.^[5] The Tribunal expressed concerns regarding the extent to which the experts appeared to defend the technical choices favourable to their respective clients, rather than engage openly with competing interpretations. Most notably, the Tribunal criticised the claimant expert's decision to alter the treatment of the financial crisis only after initial modelling produced low overcharges, describing this as effectively "shifting the goalposts".^[6]

Beyond a lack of methodological transparency, the CAT has also raised concerns over the sheer volume and tone of recent expert submissions. More broadly, the Tribunal has observed that expert reports have become excessively lengthy, technical and adversarial, at times resembling legal advocacy on behalf of the parties rather than independent expert assistance to the Tribunal. This frustration was made explicit in *Royal Mail*^[7] and recently in the *Merchant Interchange Fee Umbrella Proceedings*.^[8]

Against this background, the Practice Direction represents a concerted effort by the CAT to actively manage economic evidence, reinforcing core principles of independence, methodological rigour and transparency to ensure that economic evidence remains manageable, accessible and genuinely useful to the court.

Economic Analysis

While the Practice Direction addresses economic evidence in just four short paragraphs, its impact is far-reaching. The Practice Direction materially alters how economic experts approach, document and present their analyses. The following sections examine the core requirements imposed on economic modelling, highlighting the significant methodological and operational hurdles these new standards present for testifying economic experts.

Economic Modelling Should Be Fact-based

The CAT explicitly stated that economic testimony articulating a purely theoretical position is fundamentally less helpful than testimony that applies economic theory to the facts of the case.^[9] Similarly, any quantitative economic models used to predict or quantify unobserved counterfactuals must be rigorously "calibrated to align with observed facts".^[10]

This emphasis on factual calibration reflects the traditional judicial concern that economic evidence should never become detached from the commercial realities of the market under consideration, even though that evidence is often necessarily trying to address counterfactual outcomes, namely, market outcomes but for certain aspects of these

commercial realities. In recent years, competition litigation has increasingly relied on sophisticated economic modelling techniques, such as regression analyses or simulation models, to estimate unobserved outcomes, including “but-for” prices, pass-on effects and lost profits. While such advanced techniques are often necessary to disentangle complex market dynamics, the CAT has made clear that economic evidence cannot simply operate at too high a level of abstraction.

These concerns were clearly illustrated in *Stellantis*, where the Tribunal expressed reservations regarding the extent to which the econometric analysis was genuinely connected to the factual evidence concerning the operation of the alleged cartel in the market. In particular, the Tribunal questioned whether the estimated overcharges identified by the claimant’s model were plausible considering the wider factual evidence regarding the functioning of the market and the conduct of sophisticated OEM purchasers. The Tribunal noted, for example, that the expert had not adequately engaged with whether the overcharge estimates of up to 26% were consistent with the commercial realities of the market, and in particular why purchasers with substantial bargaining power would have accepted such price increases without challenge.^[11]

These concerns were further reinforced in the *Merchant Interchange Fee Umbrella Proceedings*, where the Tribunal expressed concern that significant portions of the expert evidence relied too heavily on abstract assumptions regarding how profit-maximising businesses would be expected to behave, rather than analysing how the claimants actually priced in practice.^[12] The Tribunal observed that “care needs to be taken in drawing any conclusions directly from economic theory without reference to the facts” and criticised aspects of the pass-on analysis for effectively guaranteeing a correlation between costs and prices through the choice of proxy variables.^[13] In particular, the Tribunal noted that many merchants did not, in reality, treat interchange fees or broader cost of goods sold (COGS) as direct drivers of retail pricing decisions, notwithstanding the theoretical expectation that variable costs should influence prices.

Taken together, the reasoning in *Merchant Interchange Fee Umbrella Proceedings* and *Stellantis* reflects a broader expectation that econometric evidence should be evaluated against market realities, rather than viewed purely through the lens of statistical significance.

In practical terms, this means that economists are increasingly expected to explain not only whether a model produces statistically robust results, but also whether those results are commercially plausible and align with both the factual evidence and the underlying economic theory advanced by the expert. This requires much closer engagement with industry evidence, internal documents, pricing practices and the operational dynamics of the market.

Practical Challenges

This requirement creates an inherent tension between economic theory, econometric or other quantitative modelling, and messy factual realities. Economic modelling necessarily involves a combination of theoretical assumptions, empirical testing and statistical inference to accurately estimate counterfactual outcomes. The difficulty lies in determining the precise extent to which economic models must align with the available factual evidence, particularly where that evidence is itself incomplete, subjective or open to interpretation.

In many complex cases, the relevant “commercial realities” are evidenced primarily through a significant number of disclosed internal corporate documents.^[14] However, these

documents often reflect individual employee perspectives, negotiation dynamics, marketing spin or short-term market considerations, rather than objective economic relationships. Internal documents may also contain strategic statements designed purely for commercial posturing rather than rigorous economic analysis. As a result, there is a distinct risk that otherwise highly robust economic analysis may be given limited weight by the Tribunal if its conclusions do not align closely with the narrative emerging from the documentary record.

This issue is particularly acute in cartel and abuse of dominance cases that heavily rely on counterfactual analysis. Counterfactual outcomes are not directly observable and must instead be inferred from available evidence. Economists are therefore required to combine underlying theory, data and assumptions to estimate what would have occurred absent the alleged infringement. The CAT's emphasis on factual calibration increases the expectation that the assumptions underlying counterfactual modelling can be reconciled with the observable behaviour of market participants and the broader factual record.

The requirement also brings into focus the longstanding tension between economic theory and commercial reality. Economic models are fundamentally designed to isolate causal mechanisms and identify underlying economic relationships. To do so, they necessarily simplify reality and strip away certain market complexities. The CAT's increasing focus on factual plausibility may therefore create pressure on experts to prioritise consistency with internal documents and anecdotal evidence over simpler, broader and more robust economic logic and analysis.

This tension is particularly visible in complex markets characterised by intense strategic interaction, rapid technological innovation or dynamic competition, where internal documents may capture quickly outdated aspects of market behaviour. In such circumstances, a quantitative model may be perfectly sound even if it does not align fully with isolated, anecdotal factual observations. As more cases are brought in digital and other markets characterised by dynamic competition, economists may therefore face increasing challenges in explaining to the Tribunal why a model that departs from certain factual narratives nonetheless provides the most reliable estimate of competitive effects.

The CAT's request for factual calibration is not entirely novel in the sense that good econometrics and causal inference already require models to be grounded in the observable structure of the data, rather than relying purely on theoretically convenient assumptions. For example, a cartel overcharge model is reliable if the model can distinguish the impact of the cartel from other confounding factors (eg, market conditions affecting prices in the absence of a cartel). If the alleged cartel period happens to coincide with other major external factors, such as financial shocks that affect all markets or the introduction of new technologies that affect the pricing under consideration, the model needs to have sufficient data to separate the cartel effect from these other factors. Isolating the effect of these factors requires substantive, fact-based economic judgment. In this respect, the CAT's emphasis on factual plausibility is nothing more than endorsement of good empirical practices.

Ex-ante Specification And Model Justification

The Practice Direction also places increased emphasis on transparency in model selection and specification. Under the new rules, experts must justify their choice of econometric models and specifications, as well as consider how alternative models might affect the results.^[15] Crucially, the CAT noted that it will accord more weight to analytical techniques

and testing criteria that are identified *before* any data are analysed, rather than those selected after their effect on the outcome becomes apparent.^[16]

This requirement directly reflects the concerns raised in recent judgments regarding the risk of outcome-driven model selection. In particular, the CAT appears concerned that experts may consciously or unconsciously adjust model specification, such as dropping variables, changing time periods or altering functional forms, in ways that favour their client's legal position only after observing the data. The emphasis on *ex-ante* specification therefore seeks to reduce the scope for data mining, whereby modelling choices are influenced by the results they produce.

These concerns reflect the reasoning in *Stellantis*. There, the claimant expert initially tested a broader, multi-year cartel period but later narrowed the period for certain products after the original specification produced negative overcharge estimates.^[17] The Tribunal expressed concern that the modelling approach appeared to evolve in response to the econometric results.^[18]

Practical Challenges

The CAT's preference for *ex-ante* specification creates a significant practical hurdle because econometric modelling is inherently iterative and frequently depends on exploratory analysis of the available data. Economists typically begin with a broad conceptual framework and then refine their approach as they better understand the structure and limitations of the available data. Such iteration should not necessarily be equated with results-driven manipulation. Rather, exploratory analysis is often essential to determine whether *a priori* theoretical assumptions can be evaluated within the data.

Before accessing the data, an economist cannot know precisely which factors will be most salient for the model, whether certain variables are sufficiently reliable (or even available), or whether particular assumptions are empirically plausible. While an expert can readily outline a general methodological framework, such as a before-and-after analysis or an event study or difference-in-differences model, it is often impossible to pre-specify the precise final model.

This creates a degree of tension between the CAT's desire for transparency and the realities of applied econometrics. Modern empirical analysis frequently involves iterative processes, including testing alternative functional forms, assessing the sensitivity of results to different assumptions, and evaluating the robustness of the findings under different specifications. Such processes are regarded as good econometric practice because they help to ensure that the final model is robust, not driven by arbitrary assumptions, and grounded in the realities of the market (as the data reflect these realities). The key challenge therefore lies in distinguishing legitimate model refinement from impermissible outcome-driven specification changes.

The Practice Direction does not prohibit iterative development, but it does require greater transparency regarding how and why models evolve during the analytical process. To balance this practical reality with the CAT's objectives, it is considered perfectly reasonable for experts to be required to pre-specify the principles and processes governing model selection, rather than attempting to pre-specify every detail of the final model. For example, experts could identify in advance the criteria that will govern variable selection, the types of robustness checks that will be conducted, and the conditions under which alternative specifications may be preferred. Such an approach would preserve a degree of

flexibility necessary for rigorous empirical analysis while still addressing the CAT's concerns regarding transparency and methodological discipline. In effect, the focus would shift from pre-specifying the exact model to pre-specifying the decision-making framework used to evaluate competing models.

The CAT's emphasis on **ex-ante** specification may also encourage greater use of replication exercises, robustness testing and sensitivity analysis. Experts may increasingly be expected to demonstrate that their conclusions are not highly dependent on modelling assumptions. This could result in more extensive disclosure regarding the analytical process, including discussions of why certain approaches were rejected. At the same time, there remains a risk that excessive emphasis on **ex-ante** specification could inadvertently discourage legitimate exploratory analysis. Econometric evidence is often most valuable precisely because it allows experts to identify relationships that are not immediately apparent from the raw data. A rigid approach to pre-specification could therefore limit the ability of experts to extend their analysis outside the boundaries set by **ex-ante** specification in response to new insights emerging from the data.

Additional practical difficulties may also arise where parties have asymmetric access to the underlying data at the stage when **ex-ante** specifications are expected to be identified. In many competition cases, one party, typically the defendant, may possess greater familiarity with the relevant datasets, systems and commercial practices before disclosure is complete. This may affect the ability of the opposing expert to formulate detailed specifications in advance and could result in one side being more constrained than the other in adapting its analysis as added information becomes available. The CAT's increasing emphasis on **ex-ante** specification may therefore create practical asymmetries unless sufficient flexibility is preserved during the analytical process.

Disclosure Of Initial Analyses Including Unfavourable Ones

The Practice Direction also asks experts conducting quantitative analysis to disclose "any initial analysis that materially informed their subsequent choice of methodology, particularly if the earlier analysis produced a result contrary to the expert's client's interest".^[19]

This requirement represents potentially one of the most interesting aspects of the Practice Direction. It reflects the CAT's concern that experts may selectively present only those analyses that support their client's position, while omitting earlier analyses that point in a different, less favourable direction.

In general, the requirement is consistent with broader principles of transparency and independence. If earlier, discarded analyses materially influenced the development of the final methodology, the Tribunal may wish to understand exactly how and why those analyses were modified or discarded. Such disclosure may also assist the Tribunal in evaluating the robustness of the expert's conclusions.

Practical Challenges

The requirement to disclose initial analyses raises several significant practical and methodological challenges.

First, it introduces a potentially difficult distinction between material methodological changes and routine analytical refinements. Because econometric analysis is inherently iterative, economists will often need to explore multiple specifications before arriving at a final model, including testing alternative datasets, functional forms and assumptions.

Determining which of these routine refinements crosses the ambiguous threshold of having “materially informed” the final specification could be challenging. The concept of “materially informed” is itself inherently ambiguous. Many intermediate analyses may influence the expert’s conceptual thinking without directly determining the final specification. Economists may therefore face uncertainty regarding which analyses must be disclosed and which can properly be regarded as routine exploratory work falling short of the “materially informed” threshold.

Second, it substantially increases the administrative burden and conflicts directly with the CAT’s desire for conciseness. Experts may now be expected to maintain a sufficiently clear audit trail to explain exactly how earlier analyses informed subsequent modelling choices. This may significantly increase the administrative burden and costs associated with econometric analysis, particularly in complex cases involving large datasets and multiple iterations. At the same time, there is a very real risk that extensive disclosure of intermediate analytical steps may add more complexity, not less, to assessing the reasonableness of the expert’s ultimate reasoning. It also raises an important practical question: who is realistically expected to review and evaluate large volumes of disclosed intermediate modelling work? This is particularly notable given the CAT’s parallel concerns regarding the increasing volume and complexity of expert evidence in competition proceedings. If experts are required to disclose every materially relevant iteration, their reports may become even longer and more complex than they already are. Experts may therefore find themselves between the proverbial rock, the requirement to disclose initial analyses, and a hard place, which is another requirement in the Practice Direction that “expert reports must be concise” indicating that “the Tribunal is likely to set page limits for all expert reports”.^[20]

Third, there is potential risk that disclosed preliminary analyses may be opportunistically misinterpreted in cross-examination. Econometric modelling often involves testing specifications that are later rejected precisely because they are unreliable or inconsistent with economic theory. Opposing parties may nonetheless opportunistically seek to characterise such discarded analyses as “smoking gun” evidence that the expert initially reached contrary conclusions before adjusting the methodology to produce a more favourable outcome. Experts will therefore need to expend considerable effort to explain more carefully why preliminary analyses were rejected and why the final methodology is preferable. This may require greater emphasis on methodological reasoning and robust sensitivity and defensive testing within the expert reports themselves. Again, this may militate against the ability to adhere to cost and page limits.

Adherence To Established Approaches

The final core tenet of the Practice Direction dictates that where experts choose to depart from standard, widely accepted economic approaches, they must provide a coherently articulated explanation for doing so.^[21] The CAT warned that it may give greater weight to analytical techniques supported by established textbooks, major competition authority guidelines and peer-reviewed journals over less well-established, novel sources. Furthermore, experts are expected to proactively engage with previous UK case law that has discussed similar economic approaches.

This aspect of the Practice Direction reflects the CAT’s concern with ensuring that complex economic evidence is grounded in recognised analytical frameworks rather than novel or highly speculative methodologies. Competition litigation increasingly involves highly sophisticated empirical techniques, many of which may be unfamiliar to non-specialist

judges or tribunals. The CAT's stated preference for established methodologies therefore serves partly as a necessary mechanism for ensuring scientific reliability and consistency across claims.

Practical Challenges

This requirement creates a degree of tension with the Practice Direction's parallel emphasis that "economic modelling and other analysis must arise from and be based on the facts of the case".^[22] In its most strict interpretation, adherence to established approaches could restrict experts to "off-the-shelf", "textbook" approaches, models and methodologies that fail to adequately capture the realities of the case. When a textbook approach does not cleanly fit the facts, economists usually build upon it and tailor the model to reflect the idiosyncratic features of the market in question. A good practice is to adhere to the general economic principles and logic and modify the textbook model to reflect the relevant features of the market. The critical challenge for experts under this requirement is navigating this adjustment process carefully. They must walk a nuanced tightrope: tailoring established models closely to the factual record without crossing the boundary into what the Tribunal might dismiss as a "novel" or unproven methodology.

CONCLUSION

The Practice Direction represents a significant development in the CAT's approach to economic evidence in competition litigation. While it addresses the requirements on economic evidence in concise terms, its implications for testifying economists are potentially far-reaching.

At its core, the Practice Direction reflects a broader judicial effort to ensure that economic evidence remains transparent, factually grounded and genuinely useful to the CAT, rather than becoming an exercise in abstract theorising or adversarial advocacy. Recent judgments demonstrate an increasing willingness by the Tribunal to scrutinise not only the conclusions reached by economic experts, but also the methodological choices, analytical assumptions and modelling processes through which those conclusions are derived.

At the same time, the Practice Direction exposes several important tensions inherent in applied econometrics. Economists are now expected simultaneously to adhere to established methodologies while tailoring their analysis closely to the facts of the case, to pre-specify analytical approaches while engaging in inherently iterative empirical work, and to increase transparency regarding preliminary analyses without generating excessive complexity or disclosure burdens. These tensions are unlikely to disappear and will certainly shape the future presentation and testing of expert evidence before the CAT.

Many practical questions remain unresolved. It is still unclear how extensively the CAT will enforce disclosure obligations relating to preliminary analyses, how narrowly or broadly concepts such as "materially informed" will be interpreted, and how the CAT will balance demands for transparency against its parallel concerns regarding proportionality and the increasing volume of expert evidence.

Endnotes

- 1 Practice Direction 3/2025: Expert Evidence, The Competition Appeal Tribunal (Practice Direction). [^ Back to section](#)

- 2 ***Stellantis & Others v Autoliv & Others***, Competition Appeal Tribunal, Case No. 1435/5/7/22, 21 February 2025 (***Stellantis*** judgment). For a detailed discussion of economic evidence in this case, please refer to Anca Cojoc and Nikita Roketskiy, “Economist perspective: recent CAT judgments highlight key considerations for using economic evidence in damages claims”, *Global Competition Review*, 2025. [^ Back to section](#)
- 3 ***Stellantis*** judgment, ¶ 201. [^ Back to section](#)
- 4 ***Royal Mail Group Limited v DAF Trucks Limited and Others***, Competition Appeal Tribunal, Case No. 1284/5/7/18(T), 7 February 2023 (***Royal Mail*** judgment), ¶ 475. [^ Back to section](#)
- 5 For a detailed discussion of economic evidence in ***Royal Mail***, please refer to Anca Cojoc, Liam Colley and Vikram Kumar, “Economists’ perspective: recent CAT judgments yield lessons on the collection and submission of economic evidence”, *Global Competition Review*, 2023. [^ Back to section](#)
- 6 ***Royal Mail*** judgment, ¶ 425. [^ Back to section](#)
- 7 ***Royal Mail*** judgment, ¶ 231. [^ Back to section](#)
- 8 ***The Stephenson Harwood claimants & The Scott + Scott claimants v Mastercard Incorporated & Others & Visa Inc. & Others***, Case No. 1517/11/22 (UM), 18 February 2026 (***Merchant Interchange Fee Umbrella Proceedings*** judgment), ¶ 210. [^ Back to section](#)
- 9 Practice Direction, ¶ 16. [^ Back to section](#)
- 10 Practice Direction, ¶ 16. [^ Back to section](#)
- 11 ***Stellantis*** judgment, ¶ 205. [^ Back to section](#)
- 12 ***Merchant Interchange Fee Umbrella Proceedings*** judgment, ¶ 214. [^ Back to section](#)
- 13 ***Merchant Interchange Fee Umbrella Proceedings*** judgment, ¶¶ 214–215. [^ Back to section](#)
- 14 Recent competition litigation before the CAT has involved disclosure exercises on a scale rarely seen in ordinary commercial litigation, frequently involving hundreds of thousands, and in some cases, millions, of documents and transactional records. The ***Merchant Interchange Fee Umbrella Proceedings*** alone involved over 2,000 merchant claimants and extensive disclosure relating to pricing, interchange fees and transactional data across multiple sectors of the UK economy. [^ Back to section](#)
- 15 Practice Direction, ¶ 17. [^ Back to section](#)
- 16 Practice Direction, ¶ 18. [^ Back to section](#)

- 17** The claimant expert's model initially tested the hypothesis of cartel activity occurring from November 2002 to March 2011 for all three products (ie, seatbelts, airbags and steering wheels). However, as the Tribunal noted, the expert materially changed the alleged cartel period for the seatbelts estimation to July 2004 and March 2011 only. (*Stellantis* judgment, ¶ 201). [^ Back to section](#)
- 18** *Stellantis* judgment, ¶ 201. [^ Back to section](#)
- 19** Practice Direction, ¶ 17. [^ Back to section](#)
- 20** Practice Direction, ¶ 19. [^ Back to section](#)
- 21** Practice Direction, ¶ 15. [^ Back to section](#)
- 22** Practice Direction, ¶ 16. [^ Back to section](#)

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