

Economic experts and instructing lawyers before the CAT – the path ahead

As the Competition Appeal Tribunal intensifies its scrutiny of economic evidence, Cornerstone Research's Liam Colley emphasises the importance of experts and instructing lawyers having a relationship that welcomes challenge and puts analytical rigour at the heart of the case

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By



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The most useful economist in a competition dispute may be the one who tells the legal team something it would rather not hear.

As the Competition Appeal Tribunal (CAT) scrutinises expert evidence more closely, that capacity to challenge an instructing party deserves greater attention. The relationship between lawyers and economists should help expose weaknesses before trial, rather than leave the tribunal to discover them after years of expensive litigation.

This matters particularly in complex standalone claims, where economics can shape the alleged infringement as well as the calculation of loss. Lawyers need an assessment of whether the proposed account of harm survives economic scrutiny. Economists need to understand the pleaded case and the commercial evidence.

Yet closer collaboration can generate concerns about independence. The task is to preserve the benefits of that relationship while ensuring that the expert retains responsibility for the conclusions. It is also important that debates about apparent partisanship do not divert attention from the central question: does the analysis withstand examination?

The CAT's Practice Direction 3/2025 on Expert Evidence provides an important framework amid more robust scrutiny of the role of economics in complex disputes. It emphasises experts' overriding duty to the tribunal, constructive engagement with contrary evidence and explanations of methodological choices. It also addresses instructing parties' responsibilities, including the risk that partial instructions produce evidence that fails to engage with the disputed issues.

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This warning applies to both lawyers and economists. An expert cannot reliably assess a theory of harm if the factual material supplied is incomplete. Equally, an economist should question whether the instructions capture the relevant commercial circumstances.

We should recognise the sophistication of the audience receiving that evidence. In Cornerstone Research's recent report *Quantum Mechanics*, which explores the role of economic evidence in complex competition disputes, Slaughter and May partner Camilla Sanger comments: "The CAT is a very sophisticated user of economic evidence. The economist members play a really important role in helping the tribunal digest economic evidence and make sense of it."

The CAT's capacity to examine technical arguments should encourage economists to explain their work fully, but to do so lucidly.

A tribunal may reach a practical conclusion after examining conflicting estimates and incomplete information. The economist still needs to do the painstaking work of selecting appropriate tools, investigating alternatives, faithfully reflecting the often-complex factual matrix and explaining what weight to apply to the results.

The development of complex group cases before the CAT has seen economic evidence increasingly thrust to the core of competition disputes. But sophisticated clients do not benefit from economists who merely validate a position already adopted by the legal team.

They need someone willing to interrogate the assumptions, identify uncomfortable evidence and explain when a proposed argument is economically unsustainable. That willingness to stop, reconsider or reshape a case is valuable well beyond its initial assessment. It should continue as evidence develops.

Moreover, an agreement between an expert's conclusions and a party's case is not, by itself, evidence of partiality.

As Linklaters partner Sarina Williams observes: "An expert will have been selected because the economist's views align with the case, not because the client wants them to say what it wants."

A genuine assessment can support one side without losing independence. Similarly, robust interrogation by an independent expert should change a party's case even before the matter reaches court.

Earlier discussions between opposing economists can also help. Engagement before positions become entrenched can reveal which disagreements ultimately matter. Concurrent evidence can be particularly useful: it lets the tribunal examine competing approaches together and test the reasons for departing from established practice. The aim is to expose analytical weaknesses, not negotiate a compromise between estimates.

Sound economic evidence brings theory and facts together. A model that overlooks an important commercial fact is deficient, however elegant its construction. The answer is to apply the appropriate theory to the factual evidence, rather than regard theory and factual inquiry as rival approaches.

Instructing solicitors should also look beyond familiar courtroom names. Testifying experience matters but cannot compensate for mediocre analysis. A promising new expert supported by an experienced practice may bring considerable strength.

The lawyer-economist relationship should ultimately be judged by what it produces: analysis that has been internally challenged, tested against opposing explanations and presented with intellectual candour.

That requires confidence on both sides. Lawyers must accept that useful advice can be inconvenient; economists must defend their reasoning while remaining open to correction. The CAT's legitimate scrutiny should make that relationship more productive and the evidence emerging from it more reliable.

Liam Colley is a senior vice president and head of Cornerstone Research's European competition practice. Quotes for this article are drawn from the recent report, Quantum Mechanics: The Evolving Role of Economic Evidence in UK Competition Disputes.

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