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Why economic experts matter in Britain's biggest lawsuits

By: **Liam Colley**

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The UK's opt-out competition regime has developed at an extraordinary pace. In little more than a decade, the Competition Appeal Tribunal (CAT) has become the forum for claims

worth billions of pounds, often involving novel theories of harm, sophisticated business models, and some of the most technically demanding economic evidence presented in the UK (and European) courts.

That matters beyond the relatively specialist world of competition litigation. Because Parliament made opt-out redress available only for competition claims, the Tribunal is also seeing cases that in other jurisdictions would be brought as consumer cases.

Questions involving data, pricing and consumer behaviour - issues at the heart of how major technology firms operate - are increasingly finding their way into competition proceedings.

The result is a rapidly evolving legal and economic landscape with considerable impact on public policy, the business environment and consumer protection. And the debate over how it evolves is intensifying.

The government's [current consultation](#) comes at an important moment. It considers reforms to the way opt-out claims are brought and funded, alongside questions around certification, costs, settlement and redress. The government is currently minded to keep the regime limited to competition claims, while the Law Commission is separately considering the benefits and risks of a wider consumer class-action regime.

These are highly significant policy questions. But whatever architecture emerges, one lesson from the CAT's experience is already clear: economic evidence will be fundamental to making such systems work.

The heart of the case

Economic evidence is now rarely confined to quantifying damages once legal issues have largely been established. Increasingly, it shapes decisions from the outset: whether a claim is viable, whether it can be certified, how liability is framed, how damages are assessed, and ultimately whether a case succeeds.

That was one of the clearest findings from Cornerstone Research's [recent report](#) based on interviews with leading UK competition litigators. Claimant and defendant lawyers may disagree on individual cases or methodologies, but there is little disputing that economics now sits at the heart of competition litigation.

As cases have become larger and more complex, rigorous economic analysis has become indispensable. For economists, this is a moment of opportunity but also heavy responsibility. The quality of expert evidence has never mattered more.

The CAT has established itself as one of the world's most sophisticated judicial users of economic evidence. Its judges and specialist members engage directly with complex analytical questions, test assumptions and scrutinise competing methodologies. It is a notably rigorous and exacting review of the economic evidence.

But the system is under intense pressure. The sheer volume, scale and complexity of the claims now passing through the CAT would have been almost unimaginable a decade ago. Expert reports can run to hundreds of pages. Teams of economists can work on a case for years. Costs can be substantial.

That makes the debate over effectiveness and proportionality not only legitimate but urgent. It also puts a premium on the quality of what reaches the Tribunal in the first place.

Rights and wrongs

There is a risk that practitioners draw the wrong lesson from the Tribunal's pragmatism. Faced with competing methodologies and uncertain evidence, any court must sometimes adopt a practical solution. The wrong lesson is that precision therefore does not matter.

Pragmatism is not a substitute for credible analysis; it is what a court is entitled to fall back on after the painstaking work has been done. There are no shortcuts. Experts still have a responsibility to apply the most appropriate analytical tools, test alternative explanations, engage properly with the evidence and explain their reasoning as clearly as possible.

Economics is sometimes portrayed as a discipline in which experts can legitimately reach several different answers to the same question. Economic analysis does frequently involve uncertainty and legitimate judgements about assumptions.

But that should not obscure an important reality. There are good methodologies and poor methodologies. There are right ways of doing analysis and wrong ways. There is work grounded in economic theory, coherent processes and the factual record, and work that is not. It is that simple. Legitimate disagreement exists, but it is narrower than the profession sometimes portrays.

This is particularly relevant to the debate over certification. The government's consultation is examining whether the CAT should consider the "absolute suitability" of a claim for collective proceedings, give greater weight to the relationship between likely benefits and costs, and consider whether sufficient evidence exists to assess aggregate damages.

There is a balance to strike. Certification should not become a mini-trial that defeats the purpose of collective redress. But neither does a functioning system benefit from allowing questionable methodologies to travel deep into hugely expensive litigation before their shortcomings are exposed.

Better economics, not less economics

Recent efforts by the CAT to impose greater discipline on expert evidence should therefore be welcomed. While our report found high confidence among leading litigators in the work of economic experts, we must take the Tribunal's concerns about cost and partisanship seriously.

The Practice Direction on expert evidence sets those expectations out plainly, and we should treat it as the standard to be met rather than a constraint to be managed.

Earlier engagement between experts, greater focus on methodology, and the increased use of concurrent evidence - or "hot tubs" - can all help expose the genuine points of disagreement.

Concurrent evidence is at its most valuable precisely when one expert is applying best practice and the other is not: it makes the difference visible to the Tribunal in real time and obliges each expert to defend every departure from the other's approach. Ultimately, substantive differences should reflect genuine economic judgement rather than analytical shortcomings or partisan lapses.

Communication matters too. The most effective experts are not simply technically accomplished. They explain complex analysis clearly, objectively, and without sacrificing intellectual candour.

That does not mean dumbing economics down. The CAT is not asking economists to abandon sophisticated techniques. It is asking for evidence that is transparent, carefully reasoned and firmly anchored in the commercial and factual realities of each case.

This distinction will become more important if the UK eventually moves towards a broader opt-out consumer regime. The experience of the CAT demonstrates both the possibilities and the challenges of asking courts to resolve mass claims involving sophisticated economic and behavioural questions.

Building the next phase

The UK has much to build on. The CAT already has deep expertise, while London possesses an exceptional community of competition lawyers and economists. Perhaps most encouragingly, the Tribunal has shown itself willing to judge experts primarily on the quality of their work rather than academic credentials and reputation.

The charged policy debate around collective redress will continue. There are important questions about funding, access to justice, certification and whether opt-out mechanisms should ultimately extend beyond competition law.

Those choices deserve careful scrutiny. But if the UK gets the next stage right, the prize is considerable. The CAT can consolidate its position as a genuinely world-leading venue for resolving complex economic disputes.

The objective should not be less economic evidence. It should be better economic evidence, tested earlier, communicated more clearly, and held consistently to the highest standards.

That would make the collective-action regime more effective for claimants and defendants alike - and strengthen the CAT's standing among the world's leading dispute resolution forums.

Liam Colley is a senior vice president and head of [Cornerstone Research's](#) European competition practice.
