HAUSFELD
FOR THE CHALLENGE

COLLECTIVE REDRESS NEWSLETTER
YEAR IN REVIEW 2025

2025 marked a decade since the entry into force of the opt-out collective actions regime in competition law. It was fitting, therefore, that this anniversary year should also produce the first successful damages award to a class in the *Kent v Apple* [1] collective proceedings. The year also saw at least four new collectives claims filed, the certification of seven collective actions, three cases proceeding to trial, and further collective settlements in the *McLaren* [2] proceedings, in respect of the roll-on, roll-off car shipping cartel, as well as the *Merricks* [3] proceedings in relation to interchange fees.

In this newsletter, we provide an overview of another busy year in the Competition Appeal Tribunal ("Tribunal") and consider how the Tribunal has continued to exercise its gatekeeper function in deciding whether to certify collective claims, its first raft of substantive judgments in collective proceedings, and how it has sought to apply lessons from past proceedings in the application of its case management powers.

Finally, we also consider the Civil Justice Council's final report and recommendations in respect of third-party litigation funding, and the government's call for evidence on the collective action regime – two stocktakes that are likely to shape the future of the regime in 2026.

[1] *Dr. Rachael Kent v Apple Inc. and Apple Distribution International Ltd*, Case 1403/7/7/21.
[2] *Mark McLaren Class Representative Limited v MOL (Europe Africa) Ltd and Others*, Case 1339/7/7/20.
[3] *Walter Hugh Merricks CBE v Mastercard Incorporated and Others,* Case 1266/7/7/16.

NEW CLAIMS

Collective claims filed in 2025

2025 saw four new claims filed in the Tribunal. Continuing the trend from previous years, these cases represent a mix of standalone claims brought by both consumers and businesses, and continue to identify harms occasioned by Big Tech companies.

- Competing claims were brought by Roger Kaye KC[4] and Or Brook Class Representative Limited[5] against Google on behalf of companies advertising in the UK, accusing Google of abusing its dominant position in the search advertising market. Both Proposed Class Representatives advance an exclusionary abuse theory, alleging that – absent Google's exclusionary conduct – competition would have been stronger, leading to lower prices and/or better outcomes for advertisers who place adverts on Google. Notably, Kaye also advances a further 'exploitative' claim which focuses on whether the prices paid by advertisers were 'unfair', assessed by an analysis of Google's profitability during the alleged infringement period.
- The Tribunal held a carriage dispute hearing in October 2025 to determine which Proposed Class Representative ought to have carriage of the claims and subsequently proceed to a CPO hearing. Judgment following this hearing is pending.
- Subject to the certification of either the Brook or the Kaye proceedings, they are expected to be case managed alongside the *Stopford*[6] proceedings, in which a similar set of exclusionary abuses are alleged but damages on behalf of UK consumers, rather than UK advertisers, are sought.
- Microsoft is facing a claim brought by Alexander Wolfson[7] on behalf of UK-domiciled consumers who have purchased Microsoft software licenses since 2015. The claim alleges that the software giant abused its dominant position by limiting sales of pre-owned 'perpetual licences' for Microsoft products, thereby restricting competition faced by its new, more expensive, licenses. The Proposed Class Representative alleges that this conduct has artificially inflated prices across both categories of license.
- The Association of Consumer Support Organisations ("ACSO") has filed a claim[8] on behalf of over 45 million UK consumers who have purchased products on Amazon since August 2019. ACSO alleges that Amazon's price parity policies prevent third-party sellers from offering lower prices on other e-commerce platforms and their own websites, thereby reducing the competition faced by Amazon and allowing it to charge higher fees to third-party sellers, which are in turn passed on to consumers.

Further claims have also been announced against Booking.com, Apple, and Rightmove, however at the time of writing these claims are yet to be filed with the Tribunal.

CERTIFICATION

In certifying new claims as collective proceedings, the Tribunal continued to exercise its gatekeeper function, including by refusing to certify certain claims or exercising its power of strike out.

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[4] *Mr Roger Kaye KC v Alphabet Inc & Others*, Case 1733/7/7/25.
[5] *Or Brook Class Representative Limited v Google Inc & Others*, Case 1720/7/7/25.
[6] *Nikki Stopford v Alphabet Inc. and Others*, Case 1606/7/7/23.
[7] *Alexander Wolfson v Microsoft Corporation and Others*, Case 1731/7/7/25.
[8] *Association of Consumer Support Organisations Ltd v Amazon.com, Inc. and Others*, Case 1749/7/7/25.

In a landmark decision, the Tribunal also certified the first collective proceeding brought on behalf of public bodies, NGOs and charities, rather than on behalf of consumers or businesses.

Certifications granted

The Tribunal certified six collective actions in 2025.

Certification was granted in *Bulk Mail Claim Limited v Royal Mail*[9], which follows on from a 2018 Ofcom decision. The Proposed Class Representative alleges that Royal Mail abused its dominant position in the bulk mail delivery services market by introducing discriminatory pricing which led to Whistl, Royal Mail's main competitor, withdrawing from the market, thereby increasing prices for bulk mail delivery services. The Tribunal rejected Royal Mail's certification challenges to the Proposed Class Representative's damages methodology, holding that the approach was sufficiently plausible for the purposes of certification and that further criticism should be reserved for trial.

The judgment shows the Tribunal's willingness to scrutinise the Proposed Class Representative's suitability – it sought information regarding the origination of the claim, the funder's financial position, and the costs budget. It also directed for the participation of certain class members in case decision-making, given that the class also included certain large corporate entities with potentially large damages claims, through the establishment of a 'customer user group'. Reiterating that certification is not a mini-trial, the Tribunal welcomed focused engagement to place the proceedings on a sound footing, while emphasising that any funder returns will be subject to oversight.

Professor Barry Rodger's opt-out collective against Google on behalf of UK-domiciled third-party app developers was certified at the end of a CPO hearing in March[10], only seven months after being filed. It is now jointly case managed with the *Epic*[11] and *Coll*[12] Proceedings (see below on case consolidation). Google did not appear at the CPO hearing and provided only written observations focusing mainly on the Proposed Class Representative's funding arrangements.

Notably, in its judgment, the Tribunal reiterated that even if the Proposed Class Representative's litigation funding agreement were to be construed to mean that the funder is paid in priority to the class, this would be allowed following the Court of Appeal judgment in *Gutmann v Apple*[13]. The Tribunal also demonstrated its willingness to amend the funding agreement at the certification stage, following concerns (from Google) that the agreement permitted the funder to terminate the funding agreement in the event of either the Class Representative not following his lawyers' advice in respect of settlement (deemed a material and irremediable breach) or if it became apparent that the Class Representative / his solicitors would no longer earn a commercially viable return (deemed a material adverse change). The funding agreement was subsequently amended to qualify that the funder could only terminate the funding agreement if the Class Representative *unreasonably* failed to follow his lawyers' settlement advice (now deemed only a material, and not an irremediable, breach), and the latter clause was removed entirely.

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[9] *Bulk Mail Claim Limited v International Distribution Services Plc (formerly Royal Mail Plc)* [2025] CAT 19.
[10] *Professor Barry Rodger v Alphabet Inc. and Others* [2025] CAT 45.
[11] *Epic Games, Inc. and Others v Alphabet Inc. and Others*, Case 1378/5/7/20.
[12] *Elizabeth Helen Coll v Alphabet Inc. and Others*, Case 1408/7/7/21.
[13] *Mr Justin Gutmann v Apple Inc. and Others* [2025] EWCA Civ 459.

Two claims against Amazon, brought by Professor Andreas Stephan and Robert Hammond (known as the 'Buy Box' claims) on behalf of Amazon's retailer customers and consumers, respectively, were jointly certified in July[14]. Both claims are to be case managed together and raise similar allegations of abuse against Amazon – that the process for selecting the product appearing on the Buy Box favours Amazon Retail and third-party retailers using Amazon's logistics, delivery and packaging service (the fulfilment services), and that access to Amazon Prime is conditioned by the use of Amazon's fulfilment services. Professor Stephan alleges two additional abuses regarding access to non-public seller data and anti-discounting practices.

As part of the CPO hearing, Amazon raised multiple concerns regarding the Proposed Class Representatives' funding arrangements. The Tribunal found both litigation funding agreements to be adequate and indicated that entrants to the funding market will be supported where they demonstrate sufficient financial standing, that challenges to the funder's return on the basis they are excessive are not to be determined at the CPO stage, and that arranging specialist costs advice should ensure effective control of costs and avoid unreasonable fees and disbursements incurred on behalf of the class.

In respect of Mr. Hammond's expert methodology for the exclusionary abuse – the 'Buy Box' discrimination in favour of retailers using Amazon's fulfilment services – the Tribunal considered this was not set out in clear and coherent terms. The Tribunal required Mr. Hammond to adopt Professor Stephan's expert methodology for this part of his claim, emphasising the need to case manage both claims together and put forward a single method for common analytical issues across the two actions.

Lastly, 2025 saw the first certification of a collective action brought on behalf of public bodies, NGOs and charities, rather than a consumer or business class. Funded by the Home Office, *Spottiswoode v Airwave Solutions*[15] is an excessive pricing claim against Motorola relating to its provision of the UK's emergency radio communication network (the Airwave network). The claim is on behalf of purchasers of "Airwave Services", ranging from government departments and emergency services to smaller organisations like the coastguard, local authorities, and charities.

Given the smaller size of the class compared to other collective actions (400 to 2,000 members), class definition was a key point in dispute. The Tribunal found that the test to decide whether there is an objective and clear class definition does not require absolute precision and should be approached pragmatically.

On the opt-in or opt-out question, applying *FX*[16] and *Le Patourel*[17], the Tribunal ruled in favour of opt-out.[18] It rejected Motorola's claim that opt-in would be 'doable' merely because the class numbers are in the hundreds or thousands rather than millions. It held instead that the question must be considered by reference to the proposed class as a whole and in the context of the amount of damages recoverable by prospective class members. The Tribunal concluded that there would be a significant impediment to access to justice for many of the class members if the claims were to proceed on an opt-in basis, as many of the public entities and charities lacked the scale to participate in an opt-in claim.

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[14] *Professor Andreas Stephan v Amazon.com, Inc and Others & Robert Hammond v Amazon.com, Inc. and Others* [2025] CAT 42.

[15] *Clare Mary Joan Spottiswoode CBE v Airwave Solutions Limited and Others*, Case 1698/7/7/24.

[16] Evans v Barclays Bank [2023] EWCA Civ 876.

[17] *Justin Le Patourel v BT* [2022] EWCA Civ 593.

[18] *Spottiswoode* [2025] CAT 60.

Certification refused

Demonstrating its effective gatekeeper role, the Tribunal also declined to certify certain claims outright.

In *Roberts v Severn Trent Water Limited and Others*[19], the Tribunal refused certification in claims brought against six water and sewerage undertakers alleging that the under-reporting of pollution incidents meant that the undertakers were able to charge higher prices than would have been permitted had accurate reports been made. In its certification judgment, the Tribunal interpreted the application of section 18(8) of the Water Industry Act 1991 as operating as a statutory exclusion of the claim. Nevertheless, there remains cause for optimism for Prof. Roberts, as the Court of Appeal granted permission to appeal. That appeal has been listed for February 2026.

Another case in which the Tribunal denied certification on substantive grounds was *Rowntree v PRS*[20]. That action is on behalf of songwriter members of the Performing Rights Society (PRS) against PRS itself and concerns the manner in which the PRS distributes royalties that cannot be matched with the correct songwriter or publisher due to missing or inaccurate information ("Black Box" royalties). Mr. Rowntree alleges that the PRS should have distributed a greater proportion of 'Black Box' royalties to the songwriter members.

The Tribunal found that the claim suffered from several defects. Critically, it found that the claim did not plausibly allege an infringement of the Chapter I / II prohibitions; the Tribunal's concern did not relate to the appropriateness of redistributing Black Box royalties, but the *manner* of that redistribution. While one manner of distribution might be considered preferable to another, that did not of itself mean that the defendant's choice of a particular methodology was unfair or abusive. The Tribunal noted further issues in respect of the class definition, which included *all* songwriters as opposed to only those who are potentially 'owed' Black Box royalties and who cannot be identified.

Certification in part

Underlining that certification is not always an all-or-nothing decision, the Court of Appeal upheld the Tribunal's narrow certification judgment in *BSV v Bittylicious and Others*[21], which concerns a proposed opt-out collective action on behalf of UK-based holders of the cryptocurrency Bitcoin Satoshi Vision (BSV) for losses arising out of the defendants delisting BSV from their exchanges (see our 2024 newsletter here for further detail). The Court of Appeal affirmed the strike-out of the claim relating to the second category of loss arising from the "*foregone growth effect*" (defined as a lost opportunity for BSV to develop into a top tier cryptocurrency such as Bitcoin) and the strike-out of the alternative loss of chance claim for the sub-class who held onto their BSV. The Class Representative has applied to the Supreme Court for permission to appeal.

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[19] *Professor Carolyn Roberts v Severn Trent Water Limited and Others* (Cases 1603/7/7/23; 1628/7/7/23; 1629/7/7/23; 1630/7/7/23; 1631/7/7/23; and 1635/7/7/23) [2025] CAT 17.

[20] *Mr David Alexander de Horne Rowntree v the Performing Right Society Limited and PRS For Music Limited* [2025] CAT 49.

[21] *BSV Claims Limited v Bittylicious Limited & Others* [2025] EWCA Civ 661.

In *Justin Gutmann v Vodafone & Others*[22], the Tribunal certified a claim against multiple mobile network operators in respect of alleged loyalty penalty payments imposed on customers. However, the Tribunal struck out part of the claim, concerning claims arising before 1 October 2015, as time-barred.

CASE MANAGEMENT

Drawing on its increasing experience case-managing ongoing proceedings, the Tribunal issued several notable case management rulings in the course of this year, indicating how it will case-manage related proceedings, how it will deal with developing questions of substantive competition law, and its increasing interest in being kept appraised of parties' costs budgets in the course of proceedings.

Case consolidation

Following certification of the *Rodger* collective claim against Google in March[23], the Tribunal ruled that it would jointly case manage that case with the long-running *Epic* and *Coll* proceedings, concluding that all three actions – each challenging Google's app distribution and in-app payment practices – raise overlapping factual and economic issues.[24] Broadly, the three claims each allege exploitative and exclusionary abuses of dominance by Google through technical and contractual restrictions: Ms Coll seeks damages for UK consumers, Professor Rodger for UK app developers and Epic seeks injunctive relief. The *Coll* and *Epic* proceedings had been partially jointly case managed since May 2024.

The Tribunal's decision to jointly case manage the three proceedings was made despite the *Rodger* proceedings being filed over three years after the *Coll* proceedings and with trial in the *Coll* proceedings due to begin in just seven months (in October 2025). As a result of the joint case management, Ms Coll's trial date was vacated and a single trial in all three proceedings listed for October 2026. The Tribunal recognised that joint case management would cause some prejudice to Ms Coll. A significant factor in its balancing exercise was the fact that Professor Rodger and Epic agreed to provide a £3 million indemnity to Ms Coll to mitigate the impact of the additional costs that would arise for Ms Coll as a result of being jointly case managed.

The Tribunal's decision to jointly case-manage the proceedings contrasts with its approach in 2024 in the *Kent* and *Ennis* proceedings – two collective actions brought against Apple concerning App Store commission fees. In those proceedings the Tribunal found that the aim of achieving consistency through joint case-management did not justify the delay to the *Kent* proceedings that would arise from any joint case-management with *Ennis*.[25]

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[22] *Mr Justin Gutmann v Vodafone Limited and Others*, Cases 1624/7/7/23; 1625/7/7/23; 1626/7/7/23; and 1627/7/7/23.

[23] *Rodger* [2025] CAT 45.

[24] *Rodger, Coll & Epic* [2025] CAT 25.

[25] *Kent & Dr Sean Ennis v Apple Inc and Others* [2024] CAT 64.

Availability of user damages in competition law

In *Gormsen v Meta*, the Tribunal granted the Class Representative's application to amend her claim to include a new head of damages – "user damages" – which reflect the loss suffered by the class as a result of Meta interfering with their right to control the collection and/or use of their personal data concerning off-Facebook activities.[26] The Tribunal rejected Meta's argument that such a claim fails because user damages are not recoverable for breaches of competition law or, in the alternative, the Class Representative did not advance a proper methodology to calculate such damages. The Tribunal instead found that the case law does not conclusively show that user damages are not available for infringements of competition law. Therefore, in circumstances where a conventional claim to damages is not available, a claim to user damages may be possible and may have reasonable prospects of succeeding at trial. Given that this is a developing area of law, the Tribunal held that this question should not be one for summary determination and the amendments should be allowed.

Ongoing costs budgeting

Having mapped out a structured case management path in the *Bulk Mail* CPO judgment, a subsequent CMC saw the Tribunal impose prescriptive case management practices in relation to costs.[27] Of particular note, the Tribunal recognised the need to have equality of arms, and, although it did not impose formal costs budgeting, both the Class Representative and Royal Mail will be required to present updated costs budgets at CMCs going forwards. The Class Representative must also provide updated tables illustrating the potential recovery for class members after deduction of applicable costs under different scenarios.

FIRST JUDGMENTS

2025 was also the year in which the collective proceedings regime saw its first substantive judgments including the Tribunal's monumental damages award to the class in *Kent v Apple*.[28]

Kent v Apple: First collective action success

In what may be the standout case for 2025, and a landmark ruling in the nascent collective damages regime, the Tribunal found that Apple held – and abused – a dominant position in both the "iOS app distribution services market" and the "iOS in-app payment services market". Rejecting Apple's arguments that competition from Android or a broader "app transactions" market constrained its conduct, the Tribunal concluded that Apple enjoyed a 100% share in both markets. The judgment highlighted inconsistencies in Apple's submissions and found that many of Apple's assertions were not supported by the evidence.

As for the nature of the anticompetitive conduct, the Tribunal found that Apple's conduct amounted to both exclusionary and exploitative abuse. The Tribunal determined that Apple's contractual and technical restrictions prevented rivals from entering the markets (exclusive dealing) and that developers were compelled to use Apple's own payment system for subscriptions and in-app purchases (tying). It further found that Apple charged excessive and unfair prices under the *United Brands* test, with no objective justification for its conduct. Apple's claimed security rationale was found to be disproportionate, as less restrictive measures could

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[26] *Dr Liza Lovdahl Gormsen v Meta Platforms, Inc. and Others* [2025] CAT 55.
[27] *Bulk Mail* [2025] CAT 56.
[28] *Kent* [2025] CAT 67.

have achieved the same ends without eliminating all competition. Apple was therefore unable to demonstrate that its restrictions were necessary or proportionate to deliver the purported benefits it put forward.

On pass-on, the Tribunal concluded that the excessive commission burden was shared equally between developers and consumers, adopting a 50% pass-on (or 'incidence') rate. Quantum through to the date of judgment will be determined in due course but has been reported at approximately £1.5 billion, based on the Tribunal finding that Apple's commission should have been 17.5% for paid apps and 10% for subscriptions and in-app purchases. Apple sought the Tribunal's permission to appeal the judgment on 34 interlinked grounds, which were rejected. Apple has now sought permission to appeal from the Court of Appeal; this application is outstanding at the time of writing

Le Patourel v BT

In December 2024, the Tribunal issued its judgment in *Le Patourel v BT*[29], the first-ever opt-out collective proceeding to go to trial. While the Tribunal found that BT was dominant in the relevant market for the provision of landline telephone services to residential addresses and that the prices BT charged for these were excessive (per limb 1 of the *United Brands* test), it held that these prices were not unfair (under limb 2 of the test). The claim was therefore unsuccessful. In August, the Court of Appeal refused the Class Representative's permission to appeal on all grounds.[30]

In respect of limb 1, the Tribunal acknowledged that multi-product companies should have a degree of flexibility to recover common costs associated with different activities from a particular product. Although the Tribunal allowed BT to recover 40% of the total common costs through the pricing for landline telephone services, the Tribunal found that there was a significant and persistent excess above a competitive benchmark for each of the claim years – ranging from 25% to 49.9% – and that any excess of 20% or more would be significant.

On limb 2, the Tribunal commenced by noting that a finding of excessive pricing does not create a presumption of unfairness unless the very size of the excess is so significant to strongly point towards unfairness. In determining unfairness, various other factors should be considered, including distinctive value, anticompetitive intent, lack of transparency, and the presence of a regulatory regime. The Tribunal concluded that BT's prices were not unfair: BT's price excess was not a significant excess, customers attributed positive value and loyalty to the BT brand, and they were not captive or generally inert in the market – they could switch to other brands for the same service but chose not to. The prices were not held unfair by reference to four proposed comparators either.

The Court of Appeal refused to grant the Class Representative permission to appeal, as it found that the Class Representative's arguments did not raise points of law but went to the breadth of discretion to be accorded to the Tribunal in the complex exercise of weighing up the factual and expert evidence before it.

[29] *Le Patourel* [2024] CAT 76.
[30] *Le Patourel* [2025] EWCA Civ 1061.

Gutmann Boundary Fares

Another collective proceeding to receive a substantive judgment in 2025 was the Boundary Fares case.[31] In that case, the Class Representative, Mr. Gutmann, alleged that each defendant train company had abused their respective dominant positions by failing to make 'boundary fares' (an extension or add-on ticket to a valid Travelcard used to travel beyond the zones covered by the Travelcard) sufficiently available and/or to take reasonable steps to make ticket purchasers aware of boundary fares, with the consequence that class members effectively paid twice for part of their journey.

The Tribunal found on the facts that the alleged conduct did not amount to an abuse of a dominant position. While a failure to make boundary fares reasonably available for customers to buy could amount to an abuse, the Tribunal found that that was not the case on the facts.

Spottiswoode v Nexans & Others: judgment in preliminary-issue trial

Ms. Spottiswoode's claim against Nexans, Prysmian and NKT was in part dismissed following the Renewables Obligation scheme joint-issue trial heard with the London Array Proceedings.[32] The claim is an opt-out collective on behalf of UK electricity consumers, which follows on from the Commission's infringement decision in 2014 that found Nexans, Prysmian and NKT were involved in a cartel between February 1999 and January 2009 concerning the supply of high voltage power cables. Ms. Spottiswoode alleges that, due to the Power Cables cartel, purchasers of high-voltage underground and submarine power cables in the UK (i.e., offshore windfarms as well as electricity transmission and distribution companies) paid increased prices for such cables. This overcharge, the claim alleges, has then been passed down to electricity consumers through the charges that transmission and distribution companies levy on suppliers and via payments made by suppliers for offshore windfarms pursuant to the UK Government's Renewables Obligation scheme. In relation to the part of Ms. Spottiswoode's claim relating to the Renewables Obligation scheme, the Tribunal held that the number of Renewables Obligation Certificates awarded to offshore wind generators would not have been different in the counterfactual, so the alleged overcharge was not passed down to electricity consumers. Case management directions relating to the remainder of Ms. Spottiswoode's claim are pending.

TRIALS

In addition to *Kent v Apple*, which commenced trial in January and received a judgment in October, the Tribunal also proceeded to trial in respect of the *McLaren* and *Qualcomm*[33] collective proceedings.

McLaren trial

The *McLaren* proceedings have continued to shape the collective proceedings landscape this year too. This collective action, on behalf of new-car buyers and lessees, followed on from the European Commission's 2018 infringement decision which found that five international shipping groups operated a maritime car shipping cartel for almost 10 years.

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[31] Justin Gutmann v First MTR South Western Trains Limited *and Others* (Cases 1304/7/7/19; 1305/7/7/19; and 1425/7/7/21) [2025] CAT 64.

[32] *Clare Mary Joan Spottiswoode CBE v Nexans France S.A.S. & Others* [2025] CAT 68.

[33] *Consumers' Association v Qualcomm Incorporated*, Case 1382/7/7/21.

Mr. McLaren alleged that class members suffered financial loss due to the overcharge passed on to them by carmakers and retailers as a result of the collusion between the defendant shipping firms.

After the proceedings resulted in the first-ever collective settlement under the UK's opt-out regime in 2023, in respect of one of the defendants, Mr. McLaren went on to settle with two other defendants on the eve of trial (discussed below). The 9-week trial in respect of the Japanese shippers MOL and NYK (the remaining defendants) took place between 13 January and 13 March 2025, almost five years after the action was first filed.

The evidence heard at trial turned on the key issue of upstream pass-on and the extent to which the Class Representative could show that the overcharge pertaining to delivery costs was passed down all levels of the new vehicle supply chain to the first purchaser/lessee of the new car. The Class Representative also claimed losses in respect of the 'run-off' period of four years following the end of the cartel during which prices continued to be inflated (and passed down to new-car buyers and lessees). However, following the trial, the PCR and the two defendants who took the claim to trial, MOL and NYK, also agreed a settlement (discussed below), so (assuming the settlement is approved by the Tribunal) these issues will not be finally determined by the Tribunal.

Qualcomm liability trial

October saw another trial against a tech behemoth – the consumer class action on behalf of Which?, UK consumer champion, against Qualcomm, a global manufacturer of chipsets used in smartphones and holder of patents essential to widely-used 4G cellular technology. Which? alleges that Qualcomm abused its dominant positions in both the supply of chipsets and the licencing of the associated 4G essential patents across the cellular industry and employed an anticompetitive commercial strategy, which as a result, led to smartphone manufacturers including Apple and Samsung paying Qualcomm artificially inflated royalties for patent licences. Which? alleges that these increased costs were passed on to UK consumers who paid higher prices for Apple and Samsung smartphones.

The anticompetitive commercial strategy is known as NLNC (No Licence, No Chips), whereby Qualcomm makes entry into a licence agreement in respect of Qualcomm's cellular standard essential patents (SEPs) a strict precondition of the supply of physical chipsets. Which? alleges that the NLNC practice enabled Qualcomm to circumvent the FRAND framework, which has been designed to protect licensees from the market power of SEP owners and facilitate the resolution of disputes over SEP licence terms.

This trial – which is the first of two trials – was heard in the Tribunal for 5 weeks between 6 October and 4 November and focused on issues of liability, including market definition, dominance and abuse. The Tribunal heard from factual and expert witnesses and also included a two-day concurrent evidence session (hot tub) of the economic experts. Due to significant amounts of information in the proceedings remaining subject to confidentiality, significant parts of the factual and expert witness cross examination had to take place in closed proceedings. The significant questions for determination are: (i) whether Qualcomm held a dominant position in the relevant chipset and SEP markets identified by the parties' economic experts; and (ii) whether Qualcomm's NLNC policy was capable of constituting an abuse, departing from competition on the merits.

SETTLEMENTS

Further settlements in the *McLaren* proceedings

In December 2024, the Tribunal approved the second and third collective settlements in the *McLaren* proceedings, clearing deals with WWL/EUKOR (£24.5 million) and K-Line (£12.75 million).[34] The judgment reaffirms the "just and reasonable" test for collective settlement approval – assessing both monetary and non-monetary benefits and the likely success of the claim – and adopts the now-familiar "pots" structure, splitting the settlement sums into two damages pots and two costs pots. The settlement provided for a minimum class entitlement to be ring-fenced from any stakeholder claims for costs, fees, and disbursements (£8.75 million from WWL/EUKOR and £5.25 million from K-Line), and, as a condition of approval, the Tribunal required the stakeholders to provide undertakings in respect of those ring-fenced funds. The judgment also granted stakeholders liberty to apply for payments from other pots prior to distribution, recognising the potential for significant delay until the outcome of the proceedings is known.

Subsequently (and after a nine week trial, as discussed above), it was announced on 10 December that the proceedings against the two remaining defendants who took the claim to trial, MOL and NYK, have now also been settled for a combined total of £54m, which, subject to the Tribunal's approval, brings the total recovery to £92.75m.

Merricks v Mastercard

In a major 2024 development, Mr. Merricks entered into a proposed collective settlement agreement in respect of his follow-on collective claim against Mastercard for £200 million (originally valued at around £14 billion). The Tribunal approved the settlement in May 2025 as "just and reasonable", emphasising the focus on class members and the low likelihood of a significantly higher damages award through litigation given the outcome of the proceedings so far and the litigation risk involved, and awarding the litigation funder, an ROI, recognising the significant risk it had assumed but reflecting also the poor outcome of the case.[35] The litigation funder, which had opposed the settlement, subsequently brought a High Court judicial review challenging the distribution of the settlement sum, arguing that the Tribunal had erred in failing to consider the funder's contractual entitlements under the litigation funding agreements. In October, the Tribunal ruled that distribution of the settlement amount would be stayed pending the outcome of the judicial review.[36]

Settlement stakeholder entitlements in *Gutmann* Boundary Fares

After approving a £25 million settlement between Mr. Gutmann and Stagecoach South Western Trains in April 2024[37], the Tribunal reconvened in September 2025 to decide on the distribution of the unclaimed damages, following a low take-up rate from class members (resulting in just £216,485 being distributed to the class).

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[34] *McLaren* [2025] CAT 4.
[35] *Merricks* [2025] CAT 28.
[36] *Merricks* [2025] CAT 69.
[37] *Gutmann v Stagecoach South Western Trains Limited* [2024] CAT 32.

Under the settlement agreement, if the total amount claimed by class members was less than £10.2 million, then the Class Representative could apply for directions on how to allocate as between stakeholders the unclaimed balance from the £10.2 million fund – in this case nearly £10 million.

The Tribunal found it sensible and just that, considering the low take-up, the stakeholders agreed to allocate just under £4 million from the £10 million fund to the Access to Justice Foundation. The c. £4 million donation to charity was ordered to be paid from the unclaimed balance of £10 million, with the remaining £6.2 million allocated among the legal representatives acting on risk, the funder, and the ATE insurers.[38]

FUNDING

Following the Supreme Court's 2023 judgment in PACCAR, litigation funding agreements including a return based upon a percentage of damages recovered were damages-based agreements and therefore unenforceable. That, in turn, caused defendants in 2024 to challenge various aspects of funding agreements before the Tribunal, and to appeal those rulings to the Court of Appeal. 2025 accordingly saw two judgments from the Court of Appeal that clarify the post-PACCAR position on funding. Around the same time, however, the Civil Justice Council (CJC) also issued a final report further to a consultation on third party litigation funding, calling for a legislative reversal of PACCAR as a matter of priority.

Post-*PACCAR* funding appeals

Firstly, the Court of Appeal firmly rejected the argument brought by defendants in various collective proceedings that an express or implied cap on a litigation funder's return converts a litigation funding agreement (where the return is based on a multiple of the funder's outlay) into a damages-based agreement.[39] To conclude otherwise, the Court held, would render funding agreements in collective proceedings "practically impossible". It would also lead to a situation where a capped funding return (which by definition would protect the class) renders the funding agreement unenforceable.

The defendants further argued in the alternative that conditional clauses – which would permit a percentage-based return in the event that such a return were legally enforceable or permissible – render a funding agreement into an unenforceable damages-based agreement. The Court similarly did not find merit in this argument either: unless and until the law is changed, such clauses are simply of no contractual effect. Apple's and Visa's applications for permission to appeal to the Supreme Court were refused.

CJC consultation

In June, the CJC recommended urgent, retrospective legislation to reverse the Supreme Court's *PACCAR* decision.[40] It also advised permitting damages-based agreements in opt-out collective proceedings in the Tribunal, subject to Tribunal's approval of legal representatives' returns on the same basis as funders' returns under litigation funding agreements, and it rejected caps on funders' returns.

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[38] *Gutmann v Stagecoach* [2025] CAT 72.

[39] *Alex Neill v Sony; Commercial and Interregional Card Claims v Mastercard and Visa; Kent v Apple; and Gutmann v Apple* [2025] EWCA Civ 841.

[40] Civil Justice Council, 'Review of Litigation Funding – Final Report' (2 June 2025).

The CJC further proposed "light-touch" statutory regulation of litigation funding, replacing self-regulation and distinguishing between commercial funding and consumer/collective contexts. For consumers and collective proceedings, protective measures would include: a regulatory "Consumer Duty" modelled on financial services rules; independent advice from a KC on proposed funding agreements; without-notice court approval of funding agreement terms and funder returns; and enhanced notice to class members of funder returns in the distribution stage.

Shortly after the publication of the CJC's recommendations, the Department for Business and Trade launched a call for evidence on the opt-out collective action regime, discussed below. That call for evidence included multiple questions in respect of funding and closed in October 2025. It remains to be seen whether the Government will follow the CJC's recommendations.

LOOKING FORWARD TO 2026

The Supreme Court's judgment in the landmark FX litigation brought by Mr. Evans against eight global banks is expected on 18 December 2025. This precedent-setting appeal is expected to determine the definitive tests for opt-in vs opt-out collective proceedings and to have far-reaching consequences on all future opt-out collectives in the UK, particularly those brought on behalf of businesses.

Trials in 2026

Having seen three trials of collective proceedings in the Tribunal in 2025, a further two collective proceedings will head to trial in 2026.

Having successfully countered the *PACCAR*-related funding appeals this year, Alex Neill sees her claim against Sony[41] go to a full eight-week trial in March. Ms. Neill alleges that Sony abused its dominant position to impose unfair terms and conditions on PlayStation game developers and publishers, including a 30% commission, which results in 'excessive and unfair prices' for consumers buying games or other content in the PlayStation Store.

The three-way proceedings in *Coll*, *Rodger* and *Epic*, discussed above, are expected to commence trial in October.

Department of Business and Trade's call for evidence

In August 2025, the Department for Business and Trade launched a call for evidence on the opt-out collective action regime, for a stock-take of the regime a decade on from its entry into force.[42] The call for evidence sought views on access to funding for cases within the regime, the scope and certification of collective claims, and points concerning settlement, damages, and distribution.

[41] *Alex Neill Class Representative Limited v Sony Interactive Entertainment Europe Limited and Others*, Case 1527/7/7/22.
[42] Department for Business and Trade, 'Opt-out collective actions regime review: call for evidence' (6 August 2025).

Hausfeld's response to the call for evidence is publicly available here and highlights that the opt-out collective actions regime is the only realistic means by which consumers, SMEs and public organisations can enforce their rights against companies that have adopted unlawful practices in breach of competition law, and a core safeguard for consumers and SMEs that ensures rights are meaningful and enforceable.

That position was underlined by the Tribunal's judgment in *Kent v Apple*, which was handed down shortly after the call for evidence closed. As a result of that judgment, Apple has been held to account for its abusive conduct, and consumers and businesses stand to gain approximately £1.5 billion in redress. As was noted by the Tribunal in its judgment in that case, such redress would not have been possible absent the regime, as "*anti-competitive conduct may never be effectively restrained in the future if wrongdoers cannot be brought to book by the masses of individual consumers who may bear the ultimate loss from misconduct which has already occurred*".

The outcome of the Department of Business and Trade's call for evidence is expected in 2026.

This Year in Review has been authored by Scott Campbell, Pierre Welch, Colum Tremayne and Michael Zymler with the excellent assistance of Andra Tofan.

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Hausfeld have a very impressive Group Litigation practice. They provide an excellent service and, given their expertise in conducting large-scale claims, can deal with the factual, legal and procedural complexities with ease.'
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