



COMPETITION APPEAL TRIBUNAL

CATUG/2023

31 October 2023

**MINUTES OF THE COMPETITION APPEAL TRIBUNAL USER GROUP MEETING (03/23)
WEDNESDAY 20 SEPTEMBER 2023**

A meeting of the Competition Appeal Tribunal (CAT) User Group took place on Wednesday 20 September 2023 (1715-1845 hrs) in the Mansfield Room / via MS Teams.

Attendees			
	Marcus Smith J	CAT (President)	Chair
	Ben Tidswell	CAT (Chair)	
	Peter Freeman	CAT	
	Jessica Radke	CMA	
	Bruce Kilpatrick*	Addleshaw Goddard	
	Martin Ballantyne	Ofcom	
	Jon Turner KC*	Monckton	
	Mark Sansom	Freshfields	
	Morag Ross KC*	Axiom Advocates	
	Tom de La Mare KC*	Blackstone Chambers	
	Totis Kotsonis*	Pinsent Masons LLP	
	Anthony Maton*	Hausfeld	
	Stephen Tupper*	Tuppers Law	
	Rob Williams	Monckton	
	Stephen Wisking	Herbert Smith Freehills	

* via MS Teams

Apologies			
	Charles Dhanowa KC	CAT (Registrar)	
	Belinda Hollway	Scott + Scott	
	Marie Demetriou	Brick Court	
	Paolo Palmigiano	Taylor Wessing	
	George Peretz KC	Monckton	

Item	Record	Action
a. Introduction	The President welcomed all attendees. Particular welcome was extended to the three new members. The President indicated that new presences and departures from this rotation of the CAT User Group were due to be completed by the end of the year.	
b. Minutes of Previous Meeting (7 June 23)	The Minutes of the meeting on 7 June 2023 were reviewed. No issues were raised, and the Minutes were agreed.	
c. Digital Markets Update	As publicly announced, the President noted that the Department for Business and Trade is expeditiously considering the implications of the Supreme Court Judgment handed down on 26	

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	<p>July 2023 in <i>R (on the application of PACCAR Inc and others) (Appellants) v Competition Appeal Tribunal and others (Respondents) [2023] UKSC 28</i> for funding arrangements for collective proceedings, with a view to ensuring the policy objectives behind the collective proceedings regime under the Consumer Rights Act 2015 are fulfilled. A legislative amendment in the Digital Markets Bill has been suggested as a potential vehicle by which to implement any potential adjustments.</p>	
<p>d. CAT Rules Advisory Committee Update</p>	<p>The CAT led Rules commentary work is progressing, with various draft texts from authors having been received over the summer. The next step will be to ensure consistency between approaches across the draft texts, which will be collated into a single draft for discussion.</p> <p>Consideration of updates to the CAT Rules, by way of secondary legislation, is ongoing. The next meeting of the committee will consider Costs (Rule 104). Amendments to the CAT Rules will inform the CAT Rules commentary project in due course.</p> <p>There was a discussion regarding the continued utility and demarcation between the Guide to Proceedings and the CAT Rules commentary. A revised Guide to Proceedings is intended to co-exist with the commentary but is likely to become more in the nature of a practice direction.. The exact demarcation between the two texts will remain under review as both projects progress.</p>	
<p>e. Additional CAT Court Room Facilities</p>	<p>The logistical constraints faced by the Tribunal (including pressures on Tribunal staff and panel members and courtroom availability) were noted by the group. In particular, the group noted that collective action proceedings are likely to create a degree of a pinch point in the near future as the cases require more intense management and hearing time. This may raise credibility issues for the Tribunal. The group was concerned that there could be a real risk of degradation to services. It was noted that the Tribunal, given its UK wide jurisdiction, was willing to sit outside London in suitable cases but that this was not a panacea to logistical constraints and in fact would stretch the Tribunal further, in terms of personnel and costs. A member of the group noted that the parties in a case before the Tribunal imminently due for trial had written to the Tribunal about their concerns about court room resources and facilities.</p>	
<p>f. CAT Conference / Bellamy Lecture</p>	<p>Feedback following the CAT@20 Conference has been considered. The CAT is eager to keep momentum up given the positive feedback but does not intend to host another conference until 2025. In the interim, the CAT will host a Bellamy lecture at the Tribunal in 2024. The CAT is grateful to receive any outstanding papers from the CAT@20 Conference as soon as possible, which it will upload on its webpage. In addition, it is hoped that over time the CAT will be able to facilitate seminars and smaller events which bring together the judiciary, public authorities and private practitioners as well as economists and lawyers. There was support amongst the group for seminars which enable multiple practitioners from a variety of backgrounds to interface.</p>	

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<p>g. Any Other Business</p>	<p>a. Agenda for Next Meeting. The President asked for the group to consider whether any other items should be included on the agenda.</p> <p>(1) <u>Funding Arrangements.</u> It was suggested that a Practice Direction on disclosure of funding arrangements, in the aftermath of the PACCAR judgment, would be helpful to set expectations as to the material that should be provided and to reduce inter partes correspondence and disputes on the matter. This Practice Direction would be without prejudice to the points of principle following PACCAR which are yet to emerge and which will inevitably be case specific.. The Tribunal invited an articulation of the issues from members which would assist in understanding the areas of friction between the parties.</p> <p>Action: 03/23-01 – Tom de la Mare and Anthony Maton agreed to prepare a note on the subject for discussion at the next meeting.</p> <p>(2) <u>Judgment Embargo Policy.</u> It was suggested by the CMA that the policy for issuing judgments under embargo should be revisited with a view to fostering predictability and consistency..</p> <p>(3) <u>Communication With Class Members In Collective Proceedings.</u> A member of the group considered that best practice with regard to the communication by defendants with class members in collective proceedings should be revisited.</p> <p>Action: 03/23-02 – Members were asked to inform the Secretary of any other proposed agenda items for the next meeting by Fri 15 Dec 23.</p>	<p>Tom de la Mare & Anthony Maton</p> <p>All</p>
<p>b. Date of Next Meeting</p>	<p>The provisional date for the next CAT User Group meeting is Wed 10 Jan 24 (1730-1845 hrs).</p>	

Amy Dunne
for CAT President