



COMPETITION APPEAL TRIBUNAL

PRACTICE DIRECTION 3/2025

Expert Evidence

Introduction and overarching requirements

1. This Practice Direction sets out the principles applicable to expert evidence in the Tribunal. It sets out general principles that are applicable to the evidence of any expert in the Tribunal, as well as certain specific principles applicable to economic evidence.
2. While it is not bound by the Civil Procedure Rules, the Tribunal will take into account and will generally apply (in so far as relevant) the principles set out in CPR PD 35. The overarching principle is that experts should assist the Tribunal by providing objective, unbiased opinions on matters within their expertise. That duty overrides any obligation to the person from whom the expert has received instructions or by whom he or she is paid. Expert evidence in the Tribunal should therefore be, and should be seen to be, the independent product of the expert uninfluenced by the pressures of the proceedings, and an expert witness should never assume the role of an advocate: Tribunal Guide to Proceedings (2015), §7.67.
3. The Tribunal expects experts to acknowledge and respond in a fair-minded manner to evidence and views that challenge their positions, changing their minds if appropriate, particularly where the facts change or new evidence emerges. The Tribunal also expects experts to engage constructively with one another and with the Tribunal, to assist the Tribunal to understand the differences between them and to help the Tribunal to make informed decisions. As part of that process, the experts may be asked by the Tribunal to address alternative hypotheses presented by the Tribunal.

4. Experts should take personal responsibility for the analysis, opinions and conclusions expressed in their reports and oral evidence and should be aware that those views will be published in judgments and transcripts and could be cited in future cases.

Instructions to experts

5. Experts and those instructing them should have regard to the guidance set out in the Civil Justice Council's Guidance for the Instruction of Experts in Civil Claims 2014.
6. The Tribunal will normally require the parties to provide notice of the identity and field of expertise of their experts, and the issues proposed to be addressed by each expert. The Tribunal is also likely to require the parties to provide, at an early stage in the process, statements of the expert methodology or methodologies on which they intend to rely at trial, by reference to their pleaded cases. Where it appears that the interests of two or more parties are aligned on particular issues, the Tribunal may require those parties to instruct a joint expert rather than individual experts.
7. Experts and any consulting firms employing them should have no direct interest in the outcome of any case in which they provide testimony. Success fee arrangements are therefore not permitted.
8. Any prior involvement of the expert with either the instructing client or the case in question must be declared either at the stage at which the Tribunal grants permission for the provision of expert evidence (if the identity of the proposed expert is known at that point), or as soon as possible thereafter, so that it may be considered by the Tribunal and the opposing parties. Where an expert report is submitted without prior permission having been given, for example to support an application for a collective proceedings order, details of any prior instructions or involvement must be provided together with that report. In appropriate cases the Tribunal may reject the proposed expert.
9. In particular:

- (a) Experts or the firms for which they work may have carried out prior consulting work for clients by whom they are instructed or paid, including ongoing concurrent work on similar cases whether in the UK or other jurisdictions. Experts or the firms for which they work may also have been involved in the case prior to their formal instruction and may even have been involved in instigating the case. In such cases the Tribunal may ask the expert to address explicitly the steps they have taken to ensure that the opinions presented to the Tribunal are untainted by their historic involvement with the client and/or the case.
 - (b) Parties may seek to instruct in-house economists, who have worked on matters before the Tribunal, to give expert evidence. The Tribunal recognises that in some cases it may be more effective to hear a well-articulated account of the internal expert's analysis than to hear an external expert's endorsement of that analysis and will in appropriate cases permit in-house economists to give expert evidence. Parties who instruct in-house experts, and the experts themselves, must nevertheless remain mindful of the risk that doing so will raise questions in the Tribunal's mind as to the independence and impartiality of the evidence, and should weigh this risk against the benefits they perceive from taking such an approach.
10. Failure on the part of an expert to disclose their prior work for the client, or prior involvement in the case, may lead to that expert's evidence being disregarded (wholly or in part) at the hearing at which that evidence is relied upon.
11. The parties should, so far as possible, ensure that the experts' instructions cover the same issues and are based on the same sets of facts, and that the experts work on the basis of the same sets of underlying data. Both instructing parties and experts should be aware of the risk that providing/accepting instructions that present a partial view of the case may lead to evidence that does not fully engage with the issues in the case and is therefore ultimately not helpful to the Tribunal.

Case management

12. The Tribunal will seek to manage cases actively to move the provision of expert evidence forward in an effective manner, and to ensure that the evidence is strictly confined to the issues for which it is necessary. This may include:
 - (a) Directions for the parties to submit to the Tribunal, for approval, a detailed list of the questions to be considered by the experts, correlated to the pleaded issues.
 - (b) Directions for the parties to set out the factual or legal assumptions (if any) on which the experts should proceed in providing their evidence.
 - (c) Directions for the parties to set out the factual evidence and disclosure (if any) which it is anticipated that the expert will draw upon in addressing the questions they are asked to consider.
 - (d) Discussion of key points of data or specific analytical methodology at appropriate stages before the trial, including CMCs and issues hearings.
13. The Tribunal may ask the parties, at any appropriate stage before the trial, to justify the need for expert evidence on specific issues in light of the development of their respective positions.
14. While disclosure should primarily be for the parties' legal teams, experts should be involved in any requests that concern data and disclosure specifically for their analysis. Experts should try to keep their requests narrow and targeted, so as to avoid requesting disclosure that is ultimately not useful to their analysis. The Tribunal may require experts to submit short letters before a CMC relating to disclosure, explaining what they need and the steps they have taken to keep their requests to the minimum.

General principles for economic evidence

15. The expert's position must be coherently articulated and the reasons for that position explained, particularly where the expert departs from standard economic approaches. While

the Tribunal will assess any reasoned explanation on its own merits, analytical techniques supported by well-established textbooks, materials such as competition law enforcement guidelines issued by major competition authorities, and heavily cited articles in established peer-reviewed journals, may be accorded more weight than those relying on less well-established sources. Where the issues in dispute include an economic approach that has been discussed in previous case-law of the Tribunal or other UK courts, particularly cases involving the same parties, the Tribunal will expect the experts to have regard to that discussion.

16. Economic modelling and other analysis must arise from and be based on the facts of the case. Expert testimony that articulates a purely theoretical position is less helpful to the Tribunal than testimony that begins with the facts of the case and applies economic theory to those facts. Quantitative economic models that purport to make predictions or quantify unobserved counterfactuals should therefore be calibrated to align with the observed facts.
17. Where an expert carries out econometric analysis or other quantitative analysis involving mathematical manipulation of data, the Tribunal will expect the expert to justify their choice of model as well as the specifications of that model, to be prepared to answer questions on those points, and to be prepared to consider how alternative models and/or specifications might affect the results. The expert should also 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 interests.
18. Econometric or other analytical techniques, particularly tests and criteria used to decide between alternative models, that are identified in advance of any data being analysed are likely to be given more weight by the Tribunal than techniques selected only once their effect on the outcome can be observed.

Individual and joint expert reports

19. Expert reports must be concise and confined to the issues in dispute between the parties. Lengthy background explanations should be avoided. The Tribunal is likely to set page limits

for all expert reports, which must be adhered to unless the Tribunal gives permission for those limits to be exceeded.

20. The main body of any expert evidence must be readily understandable by all of the Tribunal panel. Experts should therefore use plain English explanations for technical matters where possible and should confine detailed technical explanations (where absolutely necessary) to technical annexes.
21. The Tribunal may direct joint expert meetings at any stage of the process. Where a joint expert meeting is directed, the Tribunal will normally direct that the experts should thereafter provide a joint statement of agreed and disputed points, correlated to the pleaded issues. Unless the Tribunal directs otherwise, joint expert meetings should be conducted (and the joint statement drafted) without the attendance of the parties' lawyers.
22. Where an expert meeting and joint statement is directed, the experts should use that process to engage in a constructive and realistic discussion, conceding ground where appropriate, rather than maintaining an entrenched position up to the point of trial. The aim should be to narrow the points of dispute as far as possible before the trial.
23. The Tribunal may direct that, following the meeting of the experts, the remaining disputed issues of key relevance to the case are set out by the experts in a form which represents their final position and supersedes earlier reports, and which can form the basis of cross-examination and/or concurrent evidence at the trial, as well as submissions from the parties. In such a case the Tribunal may direct, for example, a first round of individual expert reports, followed by a meeting of the experts, leading to a summary of the agreed and disputed issues, followed by final trial expert reports covering the disputed issues.
24. An expert instructed in a case has a continuing duty to the Tribunal. If, after producing a report, an expert's view changes on any material point, that should promptly be communicated to the Tribunal and the other parties in the case. That should not, however, be taken as permitting the expert to produce additional or supplemental expert reports. Permission must always be sought from the Tribunal where any party seeks to rely on any additional/supplemental expert reports or other expert materials (including in the form of

letters or spreadsheets, whether or not these are updated versions of materials that have previously been provided) that are not provided for in the Tribunal's orders or directions. If expert material is submitted without obtaining permission from the Tribunal in advance, the Tribunal may refuse to accept or may disregard that evidence, may impose cost sanctions and/or may take any other steps considered appropriate in the circumstances.

25. Unless the Tribunal directs otherwise, the involvement of the parties' legal teams in any expert report or joint expert statement should be limited to providing guidance as to the format of the report or joint statement and the issues to be addressed, and having sight of the draft report or statement to comment on the accuracy of any factual and legal points, as well as any typographical corrections or stylistic amendments to ensure comprehension of the document. The parties' lawyers must not, however, seek to influence the substantive views expressed by the experts.

Teach-ins

26. The Tribunal may require "teach-ins" in advance of the trial (or prior to the expert evidence at trial), at which experts present and explain the main analytical questions involved, in a neutral manner, with particular care to avoid presenting partial accounts favouring their clients. Experts are encouraged to discuss such teach-ins between themselves in advance, with the intention of ensuring they do not become a first round of expert argument.

Concurrent evidence

27. The Tribunal may direct that evidence is to be given by the experts concurrently (sometimes referred to as a "hot tub"), at any stage of the proceedings, which may include not only the trial but also earlier stages such as a CMC or a collective proceedings certification hearing. The primary purpose of concurrent evidence is to enable the Tribunal to identify the differences between the experts and better understand the economic thinking that lies behind these differences. Concurrent evidence will therefore mainly involve questions from the Tribunal. There may also be scope for supplementary questions from the parties.

28. The Tribunal will generally invite suggestions from the parties as to the issues to be addressed, and will normally send the experts in advance a list of the topics or areas of their evidence that will be covered. However, it is a matter for the Tribunal whether it also sends the experts in advance the specific questions which it intends to ask them. The experts will not be permitted to give prepared speeches.
29. If there are only two experts, they will normally be seated together in the witness box. Where there are more than two experts, they will be seated in the front row of the courtroom and counsel will need to move back to the second row. The parties and their representatives will be able to observe the evidence of the experts on the screens in court.
30. Where concurrent evidence is given, in addition to any electronic bundles being used by the court, the experts will normally be permitted to have with them their own hard copy notes or annotated hard copies of the expert reports, as reference materials; but the Tribunal may decide not to permit this in a particular case.
31. At the conclusion of the concurrent evidence, or sometimes at the end of individual stages of that evidence, there may be provision for:
 - (a) supplementary questions by counsel to all experts, particularly to enable clarification of the experts' answers on any point; and/or
 - (b) cross-examination of each expert in turn arising from any matter raised in the concurrent evidence; and/or
 - (c) cross-examination in the usual way on any areas of the expert evidence which are not covered by the concurrent evidence.

The scope and extent of such supplementary questions and/or cross-examination will be the subject of directions by the Tribunal.

32. Where supplementary questions are asked of the experts within the concurrent evidence session, the experts will remain under oath/affirmation in the witness box until the

conclusion of the supplementary questions. Where concurrent evidence is followed by the cross-examination of the individual experts, the Tribunal will need to determine whether it is appropriate to release the experts from the witness box and from their oath/affirmation, before each expert is re-sworn for the purpose of their cross-examination. An expert who has been released in that way is permitted to speak to their client's legal team about the case in the normal way, and to assist counsel for the purpose of cross-examination of another party's expert.

Cross-examination

33. Experts should expect to be cross-examined on matters in their own reports and the reports of other experts covering the same ground. The Tribunal's permission should be sought before an expert is cross-examined on any new point of substance which has not previously been considered in the expert process. In considering whether to grant permission, the Tribunal will consider the reasons for the introduction of the new point and the extent to which the expert can reasonably be expected to address it in their oral evidence (including consideration of what notice, if any, has been given to the relevant expert of the point in question). The Tribunal will also consider the extent to which the opposing expert has also had (or will have) the opportunity to address that issue in their evidence.
34. Experts are expected to remain open-minded and objective, and to assist the Tribunal by making concessions where it is reasonable to do so, rather than treating their cross-examination as an exercise in advocacy or defending their reports at all costs.
35. The expert is permitted to have with them a hard copy of the expert reports, and any other materials in the trial bundles, for reference during their cross-examination, in addition to any electronic bundles being used by the court. Unless otherwise directed by the Tribunal, experts will not be permitted to have their own notes with them during their cross-examination. (The normal position is different for concurrent evidence, as set out above.)

Miscellaneous

36. Where an expert is giving evidence both concurrently and by way of individual cross-examination, they do not need to confirm on oath/affirmation the evidence in each of their individual previous reports twice. It will be for the Tribunal to determine, depending on the circumstances, whether that sworn confirmation should be given at the commencement of the concurrent evidence, or at the stage of individual cross-examination.
37. Where the expert's cross-examination or concurrent evidence lasts more than one day, the expert may be provided with a copy of the transcript (if available) of their evidence of the previous day, unless the Tribunal otherwise directs in a particular case. In all cases, however, there must be no other communication with the expert concerning their evidence until they are released from their oath or affirmation.

The Hon. Mrs Justice Bacon

President

2 December 2025