

Title: The Competition Appeal Tribunal (CAT) Rules 2015 IA No: BISCCP005 Lead department or agency: Department for Business Innovation and Skills Other departments or agencies: N/A	Impact Assessment (IA)				
	Date: 01/09/2015				
	Stage: Final stage				
	Source of intervention: Domestic				
	Type of measure: Secondary legislation				
Contact for enquiries: James Ravenscroft, 020 7215 2171					
Summary: Intervention and Options				RPC Opinion: Awaiting Scrutiny	

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
1.42	1.42	-0.16	Yes	OUT

What is the problem under consideration? Rationale for government intervention?

The rules for processing and administering cases in the Competition Appeal Tribunal (CAT) have not been substantively reviewed since the CAT's creation in 2003. An independent review of the CAT Rules by Sir John Mummery (SJM) concluded that the current rules could be improved to make the appeal process quicker and less costly.

Government intervention to reform and update the Rules will ensure the framework operates in the most efficient and effective manner, protecting the right of those affected to challenge competition and regulatory decisions.

What are the policy objectives and the intended effects?

The main policy objective is to streamline procedures in the CAT and minimise the length and cost of CAT cases while ensuring access to recourse for affected parties.

Reducing the length and cost of CAT cases will:

- Provide overall savings to businesses appealing and defending cases in the CAT
- Enable beneficial market outcomes to be brought into force quicker, which will benefit consumers and, on the whole, businesses.
- Make the CAT's administrative proceedings more efficient.
- Promote greater confidence in the regulatory appeals process and scope for recourse for business.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

1. **Do nothing:** This option will leave the current rules for processing and administering CAT cases unchanged.
2. **Change CAT Rules to streamline procedures:** This option, based on the recommendations of SJM, will amend existing CAT Rules around i) case management, ii) striking out, iii) amendment of the notice of appeal, iv) volume of new evidence, v) statement of new evidence, and vi) settlement offers; - **Preferred option**

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 2018					
Does implementation go beyond minimum EU requirements?			NA		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: NA		Non-traded: NA	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____  Date: 7 September 2015

Summary: Analysis & Evidence

Policy Option 2

Description: Implement SJM's recommended changes to existing CAT Rules

FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 0.28	High:5.70	Best Estimate: 1.42

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0	0.0	0.0
High	0.0	0.0	0.0
Best Estimate	0.0	0.0	0.0

Description and scale of key monetised costs by 'main affected groups'

N/A

Other key non-monetised costs by 'main affected groups'

There will be small one-off familiarisation costs, particularly for legal advisers, as a result of these rule changes.

The specific rule change on settlements may result in costs to claimants that reject reasonable offers. This will be a transfer to the party who made the offer.

Stakeholders raised concerns on costs for specific provisions, but for reasons outlined below we do not believe these are substantive additional costs.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0	0.0	0.3
High	0.0	0.7	5.7
Best Estimate	0.0	0.2	1.4

Description and scale of key monetised benefits by 'main affected groups'

The changes to the CAT Rules will improve the efficiency of the CAT and result in lower costs to business. There is a clear, if small, benefit to business and our best estimate is that this is £165k per annum.

Other key non-monetised benefits by 'main affected groups'

Increasing the efficiency of the appeals process will reduce the workload of the CAT. This will allow the CAT to better meet its anticipated increase in workload following other changes in the competition regime.

The specific rule change on settlements may result in a benefit to parties that have reasonable offers rejected. This will be a transfer from the party who rejected the offer.

The new Rules will enable some regulatory decisions to be brought in quicker, which will allow firms and consumers to benefit from more efficient redress and a more competitive market sooner.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The key assumption for quantifying the benefit is the benefit of the CAT Rules changes as a proportion of the earlier wider ranging policy.

There is a risk that a faster appeals process may reduce the cost of an appeal, encourage a greater number of appeals and thus increase the total cost to business. The risk is minimal as the CAT has the power to strikeout clearly unmeritorious appeals.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.0	Benefits: 0.2	Net: 0.2	Yes	OUT

Evidence Base (for summary sheets)

Background

Scope of this impact assessment

1. This impact assessment relates to amending the existing CAT Rules based on recommendations in an independent review carried out by Sir John Mummery (SJM) including those focused specifically on private actions in competition law.

Role of the Competition Appeal Tribunal

2. The CAT plays a key role in the appeals regime, particularly in hearing appeals against competition decisions (under the Competition Act 1998 and the Enterprise Act 2002), and against regulatory decisions in the communications sector (under the Communications Act 2003). It also hears a number of appeals in other regulated sectors. Since April 2003, 224 cases have been registered with the CAT with an average of 15 annually over the last three years and almost all of these are appeals.¹ An additional eight cases are expected annually as a result of the separate reforms to the private actions regime.²

Review by Sir John Mummery

3. Government invited the Right Honourable Sir John Mummery, a senior member of the judiciary, to review the Rules. The review took into account changes to the competition landscape since the Rules were first introduced in 2003 and had regard to the proposed changes being considered as part of the Consumer Rights Bill 2014, particularly those relating to the expansion of the private actions regime.
4. This is the first substantive review of the Rules since the creation of the CAT in April 2003,³ despite the many changes to the competition landscape during that time. This is now an opportunity to review the Rules, and identify ways of streamlining the procedures taking into account the lessons learnt from over a decade of experience operating the Rules.
5. The Terms of Reference for Sir John's review asked him to recommend revisions to the Rules, with a view to ensuring that robust case management powers can be applied flexibly, effectively (so as to ensure cases are dealt with quickly) and (insofar as is practicable) consistently in individual cases. He was also asked to give attention to the over-arching policy considerations of minimising the length and cost of decision-making through the appeal process.

Problem under consideration

6. The current Rules of the CAT could be improved to reduce the length and cost of decision-making in the appeals process for competition and economic regulatory issues.

Economic Rationale for intervention

7. The competition regime exists to ensure competition and markets works well for consumers and business. Independent regulators and competition authorities are an essential element of this regime. However, where decisions have been delegated to independent experts outside of direct ministerial control, firms need to have a mechanism for challenging regulatory decisions, in order to correct regulatory mistakes and ensure regulators are operating in a reasonable and

¹ <http://www.catribunal.org.uk/237/Cases.html> - retrieved August 25th 2015, latest case 1239/4/12/15

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69124/13-502-private-actions-in-competition-law-a-consultation-on-options-for-reform-final-impact.pdf

³ The exception is an amendment introduced in 2004 in relation to appeals under the Communications Act 2003 (SI 2004/2068).

consistent way. Appeals are thus central to ensuring proper accountability of these bodies and well-functioning markets.

8. The CAT plays a key role in this appeals process.⁴ Its rules impact on the cost-effectiveness and proportionality of the system, both in relation to taxpayers and the parties to any appeal or action themselves.

Policy Objectives

9. The Government's policy objective is to strengthen the appeal process by minimising the length and cost of decision-making and by making the appeal process as streamlined and efficient as possible. The Government was particularly concerned about the following matters:
 - Constraining the volume of evidence and analysis introduced in appeals – considering whether, and to what extent, the Rules should be amended to set out the factors that the CAT should take into account when deciding whether to admit new evidence (that is evidence which could previously have been adduced at the investigation stage) in either communications or antitrust appeals.
 - Whether the CAT's rules allowed it the proper scope to dismiss unmeritorious appeals at an early stage.

⁴ More details on its functions are available here: <http://www.catribunal.org.uk/242/About-the-Tribunal.html>

Summary of Options

10. The options are:

1. **Do nothing:** Keeping the existing CAT Rules
2. **Amend the CAT Rules**

Option 1: Do Nothing/Baseline

11. This option will leave the existing Rules for governing CAT cases unchanged.
12. Over the years, there have been many changes to the competition landscape. However other than an amendment in 2004 in relation to appeals under the Communications Act 2003 (SI 2004/2068)⁵, the Rules have not been reviewed since the CAT's creation in 2003. This is now an opportunity to streamline CAT procedures taking into account the lessons learnt from 10 years of experience operating the Rules.
13. This option would not address the scope for improvements in efficiency and effectiveness identified in SJM's review.

Option 2: Amend the existing Rules for governing CAT cases

14. This option implements the rule changes recommended by SJM. The rule changes will be implemented together as a package. These changes all aim to streamline procedures in the CAT and reduce the length and cost of CAT cases. Some of the rule changes formalise in the Rules the current practice of the CAT and so have minimal impact and many affect only a very small number of cases. Some specific rules will also have discrete impacts.
15. Below, we first set out the costs and benefits of the package as a whole and then lay out each rule change, and specify any additional costs and benefits.

Package of Rule changes

16. The package of rule changes consists of:

- i) case management
- ii) striking out
- iii) amendment of the notice of appeal
- iv) volume of new evidence
- v) statement of new evidence
- vi) settlement offers

Costs

Costs to business: familiarisation costs

17. There will be one-off familiarisation costs as a result of these rules changes. These will be minimised by preserving, as far as possible, the basic structure and layout of the 2003 Rules. Additionally many changes formalise current practice at the CAT. Both users and members of the CAT are familiar with these. Furthermore, familiarisation will only be necessary for the specialist solicitors and counsel that represent parties at the CAT. As such, these costs are likely to be small. This cost is not quantified.

⁵ <http://www.catribunal.org.uk/240/Rules-and-Guidance.html>

Benefits

Benefits to business: Reduced cost of appealing/defending a case at the CAT

18. As a result of shorter appeals, the costs of both appealing and defending a case at the CAT will be reduced for businesses through lower legal fees and time saved. The changes are designed not just to improve the speed but also the efficiency of the process, and so should not result in an increase in appeals (for example, by giving the CAT greater flexibility to reduce the time burdens imposed by nuisance appeals or irrelevant evidence).
19. While there is a clear, if small, benefit there is no evidence to allow us to confidently quantify this benefit. In order to quantify this we estimate this policy as a proportion of the impact of a similar previous policy. This earlier wider ranging policy was estimated to reduce cost to business in this area by £3.31 million,⁶ based on reforms beyond changing the CAT Rules, such as changes to regulators processes and where appeals would be heard. The benefits of this policy, including all the individual provisions below, are likely to be substantially less. Our best estimate is that the benefit would be about 5% of the benefit of the previous reform. This seems a reasonable and conservative estimate as while this reform is far less wide reaching it includes some of the most clear cut opportunities to reduce the cost of the appeals process. Indeed the recommended Rule changes have at their root a regard for the efficiency, cost effectiveness and proportionality of the CAT procedures. This is reflected in the respondents welcoming the consultation with broad support for most of the proposed changes. To reflect the wide uncertainty our low estimate is 1% and our high 10%. This gives a best estimate benefit of £165k and low and high estimates of £35k and £660k respectively.

Benefits to businesses and consumers: introducing regulatory decisions quicker

20. The new Rules will enable some regulatory decisions to be brought in quicker, which will allow firms and consumers to benefit from a more competitive market sooner. Reducing the duration of appeals and thus the potential suspension of regulatory decision will benefit those firms and consumers that are the beneficiaries of such decision. However, this impact is not likely to be large and is not quantified.

Benefits to government: savings to the CAT

21. The CAT is funded by central government. Streamlining the appeals process will reduce the workload of the CAT. This will allow the CAT to better meet its anticipated increase in workload following other changes in the competition regime.

Specific provisions

Case management

22. During the course of a case management conference (CMC) the Tribunal discusses the main issues of the case. Under the new Rules, the CMC shall be held as soon as practicable after the filing of an appeal. Active case management will also include “encouraging parties to co-operate with each other in the conduct of proceedings”. This is not a substantive change to the Rules; the changes neaten up the existing rule and bring it into line with Tribunal practice. There will be no additional costs arising from this change and respondents agreed that the rule changes will help the CAT both in the task of case management generally and in the application of particular Rules.

Striking out

23. There are a number of grounds for which the CAT can strike out an appeal, in whole or in part. The new Rules will introduce a new ground for strike out, relating to where the CAT considers that it has no jurisdiction. This change is likely to affect very few cases. The CAT has been asked

⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207702/bis-13-924-regulatory-and-competition-appeals-impact_assessment.pdf

to strike out appeals or parts of appeals on only 13 occasions across all of its cases accepting the case for striking out on 6 of these occasions. These instances have applied across four separate grounds for strike out. Furthermore 11 out of 13 previous strike out requests have been dealt with on the papers so such provisions do not incur material costs. The new ground also overlaps with existing grounds, in particular, the CAT can strike out cases where there is no valid ground of appeal

24. Respondents to the consultation confirmed the absence of any additional costs as a result of this Rule change. Some considered it beneficial, for example, commenting that it facilitates efficient case management, is sufficiently precise (so avoids risks of further litigation to establish meaning), and some felt the additional Rule adds nothing to the existing rules so has no effect.
25. Given the low number of applicable cases, the potential overlap with existing grounds and the relatively costless nature to any application, as well as the views of consultation respondents, no additional costs are expected to result from this change and there is the potential for benefits.
26. SJM recommended a new ground where the party has failed to cooperate to such an extent that the CAT cannot deal with the case justly and fairly. In response to arguments put forward by respondents that the rule was superfluous and vague this Rule change will not be implemented.

Notice of Appeal

27. A party appealing a case drafts a Notice of Appeal setting out the grounds of appeal. Changes to the initial grounds of appeal can be done by amending the Notice of Appeal. The CAT then grants the amendment at their discretion. The new Rules grant wider discretion to the CAT, to permit amendment of the Notice of Appeal.
28. Giving the CAT wider discretion to permit amendment of the Notice of Appeal will reduce the amount of further litigation necessary to demonstrate that the new grounds fall within the specified conditions, thereby saving business – both appellants seeking to change or add grounds of appeal and defendants seeking to resist this – legal costs. The majority of respondents to the consultation agreed that further litigation will be reduced and supported a more flexible approach to amendments. While it was noted that significant amendments can result in the opposing party having to rework its arguments in light of these amendments, the CAT will still have discretion to not allow changes to the grounds of appeal. As a result, there will be no additional costs as a result of this provision.

Evidence – volume of new evidence

29. The application of the current rules had been guided by case law including rulings of the Court of Appeal. The new provisions proposed formalise how the Rules are currently applied.
30. There were concerns from stakeholders that the criteria for considering new evidence would inappropriately limit the CAT's discretion to allow new evidence. However, rather than preventing the introduction of any new evidence on appeal, the new Rules will give the CAT powers to control admission of new evidence allowing it to consider whether it was available to the regulator before the disputed decision was made. Guidance will set out in more detail how the criteria relating to whether evidence should be admitted will be interpreted.
31. There will be a benefit from the additional clarity from Court of Appeal Rulings being included in the formal Rules. There will be no additional costs as a result of this provision.

Evidence - statement of new evidence

32. There are no criteria set out in the 2003 Rules for determining whether new evidence should be admitted on an appeal. This means the CAT must rule on a case by case basis as to whether to admit new evidence. As part of the new Rules, parties, both appellants and respondents, must submit a statement identifying the new evidence. Parties will be required to then set out details of any objection to the admission of new evidence. Following, the suggestion in a number of

consultation responses, this is a change from the consultation when the Government proposed just to require appellants to produce a statement of new evidence.

33. A statement identifying new evidence which was not before the administrative decision maker will considerably assist defendants and the CAT, in more efficiently being able to ascertain new evidence and begin to address it at an early stage in the proceedings. Furthermore, all parties ought to know the evidence that is being admitted directly in support of their key arguments and full up-front disclosure will assist with overall transparency of the case and decision-making, thereby assisting all parties and the CAT. There was some support for the recommendation for a statement identifying new evidence with one respondent commenting “that it is useful for all parties to know what new evidence has been submitted” whilst another commented “that it is sensible to require an appellant to include a statement in its Notice of Appeal”.
34. Some respondents commented that the rule will be onerous on appellants believing that it would involve a great deal of work in a short time period and risk unnecessary satellite litigation. None of the responses to the consultation or our follow up enquires quantified this cost. Some of the concerns raised may be in response to part of the rationale given for this rule change i.e. that some regulators had expressed concerns that parties were deliberately holding back evidence to “game” the system. Stakeholders felt there was an absence of evidence to support this. The Government acknowledges that no evidence has emerged to date that suggests parties deliberately hold back evidence to “game” the system.
35. The government recognises the importance of appellants being able to submit all relevant evidence and this rule change is not designed to limit that (the CAT already has powers to address the introduction of new evidence). The statement of new evidence should assist parties more efficiently address new evidence and is not intended to be a burden. Instead, the statement is intended to be brief and succinct and only apply where new evidence is substantive and being relied on. The intention is to bring forward and make more transparent the evidence discovery process. These intentions will be reflected in the guidance that will accompany the Rule.
36. The benefits to the efficiency of the overall process from this change are potentially significant. There will be no significant additional cost of producing the statement of new evidence, although some costs that would have been incurred later will be shifted forward.
37. There is a risk, highlighted in a number of consultation responses, that this new rule will lead to litigation around the interpretation of “new”, for example whether the substance of a witness statement was brought forward before the regulator. Similarly to the concern about the statement being a burden, this is not the intention of the Rule and the CAT will have the ability to manage new evidence to avoid this.

Settlement offers

38. The current Rules provide for parties to make offers to settle, but they do not set out a procedure for making an offer. New Rules have been introduced to govern the procedure of settlement offers. Following an offer, if a claimant fails to subsequently obtain a more advantageous outcome, they may be liable to pay the defendant’s costs from the date of that offer. These Rule changes were widely supported by respondents to the consultation.
39. A settlement procedure offers cost and time savings to business, as it means that cases could be resolved without having to proceed to hearing. There is a new incentive on businesses to accept settlement offers where these are reasonable.
40. Businesses may face claims for costs where settlement offers are rejected. Not all the costs of a case will be affected - only those incurred after a rejected settlement is made are in scope of the change and only those of one party. Regardless, this will only affect cases where defendants make offers less advantageous than the final judgments. This will exclude all cases where financial settlements are not possible, for example regulatory decisions.
41. For costs awarded as a result of a more advantageous settlement being rejected, a useful extreme upper bound is the £11m *total* cost to business of appeals to the CAT estimated in an

earlier IA.⁷ However, these are avoidable through accepting the offer (which the outcome has implied to be *ex-ante* reasonable) for the reasons set out below the affected costs will be a tiny fraction of this figure.

- Not all cases are amenable to financial settlements, for example where regulatory decisions are being appealed
- Settlement offers will not be made in every case where financial settlements are possible
- Accepted settlements will not be affected
- Rejected settlements will not always result in costs being awarded (for example, the CAT will still determine whether cost recovery is justified)
- Only the costs of one side can be claimed
- Only the costs after the rejection of an offer can be claimed

42. In terms of the impact on the “One-In Two-Out” cost to business, some of the costs are likely to be out of scope as they will be incurred by non-businesses, such as regulators, or non-compliant businesses, i.e. those who have broken competition law.

43. In any event, these costs will not be an additional overall cost as they are a transfer from one party to another.

Private Actions section of the consultation - issues and proposals

44. The consultation on the Competition Appeal Tribunal (CAT) Rules of Procedure also included a section focused specifically on private actions in competition law. This follows on from the previous Government response to the consultation on “Private actions in Competition Law” published in January 2013. The original consultation focused on establishing the CAT as a major venue for competition actions in the UK; introducing a limited opt-out collective actions regime with safeguards; promoting alternative dispute resolution; and ensuring private actions complement the public enforcement regime. The private actions section of this consultation considered the detail of how some of these reforms would work in practice and be implemented in the CAT Rules.

45. The costs and benefits of introducing private actions have been assessed in the impact assessment accompanying the previous consultation. The measure was judged to be zero-net-cost as the costs fall on businesses that are not compliant with existing competition law. As such, for the purpose of measuring the burden of regulation (One-In-Two-Out), the following Rules will have zero net cost.

46. Nevertheless, for completeness, below are some of the details consulted on and the potential costs and benefits, all of which are encompassed within the previous impact assessment and so result in no additional cost.

Fast track procedure

47. The Government response to the consultation on Private Actions confirmed the intention to create a ‘Fast Track’ mechanism for simpler cases in the CAT, delivering swift, cheap results, to challenge anti-competitive behaviour. The purpose of introducing a ‘Fast Track’ mechanism within the CAT is to facilitate access to justice for SMEs who currently find it too costly to seek remedies for competition matters through the courts. Within the Competition Appeal Tribunal (CAT) Rules of Procedure consultation, we sought views specifically on whether a fast track procedure will benefit SMEs and micro businesses, providing them with access to redress.

48. There were concerns raised in the consultation responses that the compressed timescales of the Fast Track procedure would lead to increased costs as the time table is so tight. As a result the government is introducing more flexibility. Fast Track cases will proceed to a final hearing within six months but the CAT has sufficient flexibility under its case management powers to extend this

⁷ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207702/bis-13-924-regulatory-and-competition-appeals-impact_assessment.pdf

period in exceptional circumstances where it determines that it is in the interests of justice. Similarly, Fast Track cases will be granted three days for the final hearing itself, but in appropriate circumstances, a case with a trial estimate in excess of three days may still be made subject to that procedure and the CAT may use its discretion to extend this in exceptional circumstances in the interest of justice. This change is designed to reduce the risk of increased costs and is unlikely to involve additional costs – claimants choose whether to use the Fast Track, and won't if it is more costly.

Disclosure

49. Requiring disclosure can assist in resolving disputes more cheaply, but has the potential to impose burdens on parties. As such disclosure, including pre-action disclosure, will be permitted where the CAT determines that it is proportionate and necessary in the interests of justice. This will include situations where the CAT judges that disclosure could facilitate the fair disposal of proceedings; potentially assist the dispute to be resolved without proceedings; or save costs. The CAT will also have flexibility to determine the scope of disclosure necessary for each case to ensure that pre-action disclosure does not place an unreasonable burden and/or cost on either party. Claimants will also be required to provide evidence supporting their application for disclosure to act as a further safeguard against unnecessary and expensive disclosure.
50. This approach to disclosure will ensure that the potential reduced burdens from disclosure are achieved while minimising the risk of increased burdens. This change is designed to reduce the cost of private action cases and so will not involve additional costs.

Settlement offers in collective proceedings

51. A particular issue that arose during the consultation is whether there should be formal settlement offers in collective actions and whether they should carry consequences for costs. Recognising that early resolution of claims keeps costs down for both parties and possible cost implications incentivises early resolution, parties will be able to make Calderbank offers in collective actions in the CAT, i.e. offers 'without prejudice' save as to costs. This will ensure that if a party rejects an offer in favour of litigation, the Calderbank offer could then be considered at the end of the case when the CAT decides what order to make as to costs. This should strike a balance in protecting both parties by providing for cost-shifting protections where appropriate, *but not making such protections automatic*.

Notification of claims

52. The Rule changes will reduce the number of copies of a claim to be submitted to the CAT from ten to five, reducing the burden on claimants. In addition, to ensure that private actions complement the public enforcement regime, claimants will be required to copy an additional claims form to the CMA. This will involve a minimal cost and to ensure this cost is as small as possible the form can be sent by post or electronically. Overall there will be a reduction in the administrative burden on claimants (with an overall reduction from ten to six). Claimants will be required to submit the same version of the claims form to the CMA as to the CAT and will submit this at the same time as lodging their case with the CAT.

Key assumptions and risks

53. As set out in the individual paragraphs above, there are a number of areas where stakeholders are concerned that there will to clarify the correct interpretation of the new Rules. Guidance on the new Rules will help mitigate his risk.
54. There is a risk that a faster appeals process may reduce the cost of an appeal, encourage a greater number of appeals and thus increase the total cost to business. The risk is minimal as the CAT has the power to strikeout clearly unmeritorious appeals.
55. The key assumption for quantifying the benefit is the benefit of the CAT Rules changes as a proportion of the earlier wider ranging policy.

One-In-Two-Out status

56. The changes to the CAT Rules will improve the efficiency of the CAT and result in lower costs to business. There is a clear, if small, benefit to business and our best estimate is that this is £165k per annum. As such, this policy is estimated to be a £165k OUT.

Small and Micro-business Assessment

57. Small and Micro-businesses are in scope of the proposed changes, but will rarely be affected as they have a minor record of appealing at the CAT.⁸ Moreover, the revision of the Rules is intended to minimise the length and cost of proceedings in the CAT, resulting in a cost saving to all businesses. Since small and micro-businesses are in scope, if they were to appeal regulatory and competition decisions, they would benefit from these cost savings.

⁸ There have been few appeals from small and micro-businesses. One example is case 11191/6/1/12, Association of Convenience Stores and (2) National Federation of Retail Newsagents v Office of Fair Trading, <http://www.catribunal.org.uk/237-7599/1191-6-1-12-1-Association-of-Convenience-Stores-and-2-National-Federation-of-Retail-Newsagents.html>