



Department for
Business, Energy
& Industrial Strategy

Call for Evidence: Post-implementation review of the Competition Appeal Tribunal Rules 2015

Closing date: 10 May 2021



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Any enquiries regarding this publication should be sent to us at: CATRules2015Review@beis.gov.uk

Foreword

I am pleased to launch the post-implementation review of the Competition Appeal Tribunal Rules 2015 (the CAT Rules 2015) which came into force on 1st October 2015 by way of Statutory Instrument (The Competition Appeal Tribunal Rules 2015 SI 1648/2015).

The Competition Appeal Tribunal (CAT) is a specialist judicial body which hears appeals and decides certain cases involving competition or regulatory decisions. The CAT was created by Section 12 and Schedule 2 to the Enterprise Act 2002 and came into being in April 2003. Its principal functions are to hear and decide appeals of decisions taken by the Competition and Markets Authority (CMA) and economic regulators concerning infringement of UK and EU competition law and regulatory legislation. It also considers judicial reviews relating to merger and market investigations, as well as private actions in respect of infringements of competition law. Its jurisdiction extends to the whole of the United Kingdom.

The CAT Rules 2015 were the result of two reform exercises. The first arose from a review carried out in 2014 by a former member of the Court of Appeal and President of the Employment Appeal Tribunal, the Right Honourable Sir John Mummery, in 2014 with the aim of making a targeted number of improvements in relation to the rules in force at that time,¹ in order to provide proper accountability for administrative decisions, while at the same time minimising unnecessary costs and delays. This resulted in the strengthening of the CAT's case management powers in relation to appeals and judicial review applications. The second, much wider set of changes was to take account of the CAT's enlarged jurisdiction under the Consumer Rights Act 2015 with regard to private actions (and the wholly new area of collective actions) in respect of infringements of competition law.

The CAT Rules 2015 require the Secretary of State to carry out a review of the Rules, set out the conclusions of the review in a report and publish the report by 1st October 2020. Due to the coronavirus pandemic the report is expected to be published in Spring 2021.

As required by the Statutory Instrument², the review and subsequent report must assess: the extent to which the objectives intended to be achieved by the regulatory system established by the 2015 Rules are achieved; whether those objectives remain appropriate; and, if so, the extent to which these objectives could be achieved with a system that imposes less regulation.

I look forward to receiving your views and comments on this review.

PAUL SCULLY MP

Minister for Small Business, Consumers & Labour Markets

Minister for London

¹ The Competition Appeal Tribunal Rules 2003 (SI 2003/1372)

² Rule 120 of the CAT Rules 2015

Contents

Foreword	3
General information	5
Why we are consulting	5
How to respond	6
Confidentiality and data protection	7
Quality assurance	7
Overview	8
2015 Recommendations	9
Consultation questions	13
Next steps	13
Annex CAT Cases 2010 – 2020	14

General information

Why we are consulting

The Competition Appeal Tribunal Rules 2015, Statutory Instrument (SI 2015/1648) (the CAT Rules 2015) revoked and replaced the CAT Rules 2003 (SI 2003/1372) to modify and strengthen rules governing appeal and judicial review proceedings before the CAT and to incorporate new rules governing the conduct of private law actions in the CAT following the enactment of the Consumer Rights Act 2015 (the CRA 2015) which enlarged the CAT's jurisdiction in that respect.

Scope of the Review

Under the CAT Rules 2015, the Secretary of State is required to carry out a review of the CAT Rules 2015 and publish a report by 1st October 2020. Due to the coronavirus pandemic the report is expected to be published in Spring 2021. The report must:

- set out the objectives intended to be achieved by the regulatory system established by the CAT Rules 2015;
- assess the extent to which those objectives are achieved; and
- assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

This call for evidence will inform the post-implementation review (the Review) of the CAT Rules 2015 and help to answer the question of whether the rule changes have achieved the intended objectives:

- to minimise unnecessary costs and delays whilst balancing proper accountability for decisions;
- to ensure effective case management; and
- to provide a framework for the CAT's extended jurisdiction in private law actions related to infringements of competition law (as set out in the CRA 2015).

The Review covers the period from 1st October 2015 to 30th September 2020.

Consultation details

Issued: 16/03/2021

Respond by: 10/05/2021

Enquiries to:

CAT Sponsorship Team,
Department for Business, Energy and Industrial Strategy
1st Floor, Orchard 3
1 Victoria Street
London
SW1H 0ET

Email: CATRules2015Review@beis.gov.uk

Consultation reference: Post-implementation review of the Competition Appeal Tribunal Rules 2015

Audiences:

We are seeking views from all those with an interest in the application of the CAT Rules 2015. This includes but is not restricted to those who have been or are likely to be parties in proceedings before the CAT (for example, the CMA, Ofcom and other sector regulators, public and private enterprises and individuals), legal representatives (for example barristers and solicitors practising in the areas of competition, public law and commercial litigation), trade associations, consumer bodies and experts in legal procedure.

Responses are invited to answer the questions set out at page 13 which the Review is required to examine under Rule 120 of the CAT Rules 2015. We will assess all contributions against the scope of the review. Any recommendations which follow this Review will be informed by the evidence received. Responses should therefore provide supporting qualitative and quantitative evidence where possible.

As this is a specialist area of law, we will not hold formal stakeholder workshops but will email those we believe may have an interest and offer to meet any interested parties on request. If you would like to meet with the CAT review team or have any questions about the Review, please contact us at: CATRules2015Review@beis.gov.uk

Territorial extent:

The CAT Rules 2015 apply to the United Kingdom of Great Britain and Northern Ireland.

How to respond

Respond online at: [beis.gov.uk.citizenspace.com/consumer-competition-landscape/competition-appeals-tribunal-review-of-rules-cfe](https://beis.gov.uk/citizenspace.com/consumer-competition-landscape/competition-appeals-tribunal-review-of-rules-cfe)

or

Email to: CATRules2015Review@beis.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Overview

1. The CAT is a specialist appeal body with expertise in competition and regulatory decisions. It hears appeals against competition decisions (under the Competition Act 1998 (the CA98)), applications for review of merger and market decisions (under the Enterprise Act 2002 (the EA02)) and of regulatory decisions across regulated sectors (including, for example, under the Communications Act 2003 (the Comms Act 2002)). The CAT was created in its present form by Section 12 and Schedule 2 to the Enterprise Act 2002 and began operation in April 2003. Its jurisdiction extends to the whole of the United Kingdom.
2. In March 2014, the Right Honourable Sir John Mummery led an independent review³ of the Competition Appeal Tribunal Rules 2003 (SI 2003/1372) (the CAT Rules 2003) which at that time governed proceedings before the CAT. The terms of reference for Sir John's review asked him to develop and recommend revisions to the CAT Rules 2003 with a view to ensuring that robust case management powers could be applied flexibly, effectively (to ensure cases were dealt with quickly) and (insofar as was practicable) consistently in individual cases. He was asked to bear in mind an overarching policy consideration of Ministers, namely, to minimise the length and cost of decision-making through making the appeal process as streamlined and efficient as possible. In recommending changes, the Government invited Sir John to have specific regard to the cost-effectiveness and proportionality of the system, both in relation to taxpayers and the parties themselves.
3. Sir John noted that his review was the first review of the CAT's Rules 2003 since the creation of the CAT in 2003 and that there had been many changes in the competition landscape in the meantime. Changes had occurred in the appellate jurisdiction of the CAT and there were also proposed reforms in relation to the CAT in the Consumer Rights Bill (now the CRA 2015) that would expand its jurisdiction to determine private law litigation.
4. In August 2014, Sir John presented revised rules of procedure to the Government which he recommended making as improvements to the CAT Rules 2003. Sir John said that the revisions should secure "as far as practicable and subject to necessary updating, the Government's objective of minimising the length and cost of proceedings in the CAT and of streamlining the efficiency of the appeal and review process and of the new private action procedure."
5. In February 2015, the Department for Business, Innovation & Skills carried out a consultation⁴ on Sir John's report and recommendations. It sought views on the reforms related to two areas:
 - i. efficient case management, principally the recommendations made by Sir John; and
 - ii. the practical implementation through the rules of the CAT's expanded jurisdiction in respect of private law actions as a result of the enactment of the CRA 2015. This aspect, and particularly the introduction of a new form of collective proceedings necessitated the majority of the proposed rule changes.

³ <https://www.gov.uk/government/publications/competition-appeal-tribunal-rules-of-procedure-mummery-recommendations>

⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/401678/bis-15-75-competition-appeal-tribunal-cat-rules-of-procedure-consultation.pdf

6. The response to the Government's 2015 consultation⁵ was published in September 2015 and set out its broad acceptance of Sir John's recommendations. As a result, on 1st October 2015, the CAT Rules 2015⁶ came into force.
7. In its response to the 2015 consultation, the Government accepted Sir John's central recommendation that the five principles from the Guide to Proceedings 2005 should be incorporated into the CAT 2015 Rules (Rule 4) as Governing Principles. The principles provide for early disclosure in writing, active case management, strict timetables, effective fact-finding procedures, and short and structured oral hearings. Further recommendations by Sir John and accepted by the Government in relation to the CAT Rules 2015 largely consolidated the current practice or, in some cases, provided further clarification and flexibility, or were designed to deal specifically with the CAT's greater role in relation to private law actions (and more specifically the new collective actions regime). These recommendations are listed below and the full list of 2015 rules is available [here](#)⁷.

2015 Recommendations

General

8. **Target times and timetables** for cases are left to the discretion of the CAT to use its case management powers when setting timetables (in accordance with the CAT's normal practice at the time). This amendment was made to give the CAT the flexibility to consider each case on its own merits. Parties are required to identify and concentrate on the main issues from the outset and the CAT will fix target dates for the hearing using structured timetables for proceedings up to the main hearing, ensuring that cases are dealt with expeditiously and fairly. The Government recognised that cases would vary and therefore amended Rule 4(5)(c) to refer to the differing nature of cases. Under this rule, the CAT considers the nature of proceedings when setting timetables, which also assists with effective case management.
9. **No statutory time limit for delivery of a decision** was introduced as each case is different, as the time needed to reach a decision and set out the reasoning behind decisions varies from case to case. The CAT normally provides a general indication to the parties at the end of each case when a judgement might be delivered and informs parties of any unexpected delay.

Appeals

10. **Striking out** - a new provision in Rule 11(1)(a) and Rule 41(1)(a) allows the CAT to strike out an appeal or claim respectively where it considers that it has no jurisdiction to hear or determine the matter. This was intended to encourage the parties to focus on points of substance.

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/460442/BIS-15-357-competition-appeal-tribunal-rules-of-procedure-government-response.pdf

⁶ <https://www.legislation.gov.uk/ukxi/2015/1648/made>

⁷ www.catribunal.org.uk/sites/default/files/2017-11/The_Compensation_Appeal_Tribunal_Rules_2015.pdf

11. *Adducing New Evidence on Appeal (Rules 9 & 15)* - A new provision at Rule 9(4)(h) requires the notice of appeal to contain a brief statement identifying any new evidence, the substance of which (so far as the appellant is aware), had not been put before the decision maker at the time of the decision. Rule 15(3)(f) now requires the defendant to identify any new substantive evidence in a statement to be included with the defence, which was not referred to in the disputed decision or disclosed to the appellant before the decision was made. This was intended to facilitate the making of any objections to new evidence at an early stage.

A new provision at Rule 15(3)(c) requires the respondent to the appeal to set out in detail any objections to the admission of new evidence put forward by the appellant.

This was intended to give greater transparency in relation to whether new evidence was being relied upon and to make it easier to understand the other party's case and supporting evidence. The revised rule is accompanied by guidance in the CAT's Guide to Proceedings on its practical application.

12. *Constraining the volume of evidence* – The Government recognised that whilst it was important for appellants to have a proper chance to put forward evidence which supports their case, the CAT must retain a discretion to exclude evidence in certain circumstances. The criteria in Rule 21(2) list the factors the CAT will consider when determining whether it would be just and proportionate to admit or exclude evidence on appeal. This consolidation into the CAT Rules 2015 of the CAT's previous practice enables the CAT to continue to allow evidence to be adduced on appeal where it is just and reasonable to permit it and makes the likely exercise of its discretion more predictable.

Rule 21(2)(c) as amended allows the CAT to take into account (in cases where the substance of the evidence was not available to the respondent before the disputed decision was taken) the reason why the party seeking to adduce the evidence had not made it available to the respondent at that time.

The CAT's Guide to Proceedings was amended to set out in more detail how the CAT will interpret the rule and what factors it will take into account when considering matters relating to new evidence.

13. *Expert evidence* - New Rule 27 was included to assist applicants in proceedings for a review under section 120 or section 179 of the Enterprise Act 2002. This reflected current practice as set out in the Guide to Proceedings.

14. *Notice of Appeal (Rule 12)* - The revised Rule removes the restrictions contained in the former Rule 11(3) and gives the CAT more flexibility in deciding whether to permit amendments to the Notice of Appeal including: whether a proposed amendment involves any substantial change or addition to the appellant's case; if it is based on matters of fact or law which have come to light since the appeal was made; or could not otherwise have been practicably included in the notice of appeal.

Private actions

15. *Transfers of mixed/hybrid claims (Rules 71-72) previously 70-71* - The CAT Rules 2015 give the CAT a more flexible power to transfer a case which is outside its jurisdiction to the correct court or tribunal at an early stage. Provision is also made for the transfer of claims to the CAT if they are within its jurisdiction.

16. Settlement offers and costs consequences (Rules 45-49) - The CAT Rules 2015 contain provisions similar to those in Part 36 of the Civil Procedure Rules, which set out a procedure for making a settlement offer. This is intended to encourage parties to settle their disputes.

Rules 45-49 allow for a settlement offer to be made at any time, including before the commencement of proceedings. The CAT Rules 2015 also provide for clarification of a settlement offer at the request of the person to whom the offer has been made and provisions regarding the cost consequences following judgment in certain circumstances. This is intended to encourage and facilitate the settlement of cases by providing that adverse costs consequences may ultimately follow for those who do not accept reasonable offers to settle.

These provisions do not apply to collective proceedings, which are subject to a separate settlement regime (see below).

17. Additional Parties and Additional Claims (Rules 38 – 40) - The Government agreed with Sir John Mummery's recommendations that in order to facilitate procedural efficiencies it was important to have a mechanism to allow additional parties to join the claim or indeed to permit additional claims to a matter.

18. The CAT Rules 2015 provide additional procedures in relation to private law actions related to infringement of competition law which are set out below.

19. Fast Track Procedure (Rule 58) - The fast track procedure is intended to enable less complex claims to be brought, in particular by individuals and small businesses, and decided quickly with the limited risks as to costs.

In any case subject to the fast track procedure, the final hearing will be fixed to take place as soon as practicable and in any event within six months, and the recoverable costs will be capped at a level to be determined by the Tribunal.

In deciding whether to place a matter in the fast track process, the CAT takes into account all matters it thinks fit, including whether one or more of the parties is an individual or SME; whether the time estimate for the hearing is three days or less; the complexity and novelty of the issues involved; the number of documents and witnesses; and the nature of the legal remedy being sought.

20. Disclosure in Private Actions (Rules 60 – 65) - The CAT Rules 2015 provide detailed provisions for the disclosure of documents by parties in private actions, including pre-action disclosure and disclosure by non-parties.

21. Power to grant injunctions (Rule 67-68) - These rules introduced a discretionary power for the CAT to grant injunctions in relation to proceedings, other than in Scotland, when it is considered just and convenient to do so.

Collective Proceedings

22. The CAT Rules 2015 set out detailed procedures for the handling of cases under the newly introduced collective proceedings jurisdiction. These are set out below.

- 23. *The authorisation of a class representative (Rule 78)*** - The CAT Rules 2015 provide that only those who act fairly and adequately in the interests of the class members are authorised to act as a class representative. The CAT Rules 2015 set out a number of factors the CAT must consider before approving a class representative in collective proceedings, in order to ensure that unsuitable individuals or bodies are not permitted to act as a class representative.
- 24. *Criteria for certifying claims in collective proceedings (Rule 79)*** - The CAT Rules 2015 include 'the strength of the claim' as part of the certification criteria for opt-out collective proceedings. The criteria for certification have been examined in the recent judgment of the Supreme Court in the *Merricks v Mastercard* case⁸.
- 25. *Formal Settlement offers*** - The CAT Rules 2015 provide that formal settlement offers in collective proceedings should not attract the same cost protections as those which apply to such offers in non-collective proceedings.

The CAT Rules 2015 allow parties to make "Calderbank offers" in collective actions in the CAT, that is, offers "without prejudice" save as to costs. This ensures that if a party rejects an offer in favour of litigation, the Calderbank offer can then be considered at the end of the case when the CAT decides what order to make as to costs. This provision recognises the fact that a claimant may not always be able to assess whether an offer is just and reasonable at the time it is made. This approach allows the CAT to take the original offer into account when deciding on costs after the case has been concluded, and to make its assessment based on how the case developed during the course of the trial, and whether it believes that the claimant should have accepted the original offer. The CAT can then use its discretion to decide how to distribute costs.

Other issues raised and considered in 2015

- 26.** The CAT Rules 2015 provide that claimants should send a copy of their claim form to the Competition and Markets Authority (CMA) when serving it on other parties (Rule 33). This is to ensure consistency with similar provisions that already exist for actions in the High Court. It is also intended to ensure a more effective private actions regime and to complement public enforcement.
- 27.** The CAT Rules 2015 allow the CMA to make written observations and (with the permission of the Tribunal) oral representations to the Tribunal, where appropriate, in private action cases (Rule 50(2)); and the CAT can use its power to stay a case already being investigated by a competition authority (Rule 85(1)).

⁸ [2020] UKSC 51

Consultation questions

28. The Statutory Instrument which created the CAT Rules 2015, The Competition Appeal Tribunal Rules 2015 SI 1648/2015, requires the Secretary of State to carry out a review of the CAT Rules 2015, set out the conclusions of the review in a report and publish the report by 1st October 2020. Due to the coronavirus pandemic the report is now expected to be published in Spring 2021.

29. The report must:

- set out the objectives intended to be achieved by the regulatory system established by the CAT Rules 2015;
- assess the extent to which those objectives are achieved; and
- assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

30. The objectives of the revised rules set out in the Government Response (2015)⁹ to Sir John Mummery's review of the Rules of Procedure were:

- to strike the appropriate balance between providing proper accountability for regulatory decisions, while at the same time minimising unnecessary costs and delays; and
- to ensure that robust case management powers can be applied flexibly, effectively and consistently, having regard to their cost effectiveness and proportionality.

31. To inform this review and subsequent report we would like you to respond to the questions set out in the Statutory Instrument:

Question 1: To what extent have the objectives intended to be achieved by the regulatory system established by the 2015 Rules been achieved?

Question 2: Do those objectives remain appropriate and, if so, to what extent could they be achieved with a system that imposes less regulation?

Next steps

Comments made in response to this Review will be considered by the CAT PIR Team and will inform the final report which will then be considered by BEIS Ministers. We may contact you if, for example, we have a query in respect of your response. A final report covering the Review will be published on the GOV.UK website.

⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/460442/BIS-15-357-competition-appeal-tribunal-rules-of-procedure-government-response.pdf

Annex CAT Cases 2010 – 2020

Background

This Annex is intended to provide relevant context on CAT cases for consultation respondents. There are two sections: (i) basic contextual information on the CAT's activity, such as number of cases registered at the CAT, number of judgments handed down and number of case management conferences held, and (ii) data relating more specifically to the Rule changes such as the number of times the fast track procedure has been used.

The data cover the period October 2010-October 2020. This includes the period October 2010-October 2015 as a baseline for considering the impact of the rule changes against (the 5-year period before the rules were introduced), as well as the review period October 2015-September 2020 (when the rule changes were in place).

The data is sourced from a combination of internal BEIS case-level data based on published case updates, and the CAT's published annual reports.

Use and limitations of data

There are a number of points to note about this data specifically, and also about the use and limitations of statistics in this context more generally:

- While cases can be grouped by characteristics that they share (e.g. cases filed under a particular Section of the relevant legislation), they are often not directly comparable within these groups (or, indeed, across different groups). For example, two Section 46 CA98 cases may differ hugely in complexity, process (in terms of number of case management conferences needed, for example), the amount of evidence presented and a number of other factors.
- There are some indicators that are important to consider for the review, such as case durations, where it is not practical to present the duration of every case individually. For these cases, averages have been set out, but every effort has been made to ensure that there is as much transparency as possible about the limitations of doing this, such as setting out the sample sizes involved, relevant ranges, and indicating where averages are particularly skewed by outlier(s).
- For some indicators, there are differences between the baseline period (October 2010-October 2015) and the review period (October 2015-September 2020), that are not or may not be attributable to the Rule changes. For example, there are many factors that affect the duration of cases, such as complexity, which are not related to Rule changes. The caseload at the CAT is also influenced only to a limited extent by the Rule changes, and is largely influenced by whether businesses, individuals and regulators wish to initiate or defend cases.
- Many data fields, for example, the number of cases of a particular type registered in a given year, have a relatively small sample size and can fluctuate (relatively) significantly between different years. Often this reflects a unique event or set of circumstances that cause spikes in a particular year, rather than being indicative of a long-run trend.

- Data on case outcomes (for example, the number of cases where regulator decisions have been upheld or set aside on appeal) have not been included because legal judgments themselves are independent of changes to Rules of Procedure.

Contextual information

Number of cases registered at the CAT, by type¹⁰

Case type	2010 -11	2011 -12	2012 -13	2013 -14	2014 -15	2015 -16	2016 -17	2017 -18	2018 - 19	2019 -20	Apr - Oct 20
Section 46 CA98 (Main party appeal)	6	2	2	2	0	0	8	1	1	1	2
Section 47 CA98 (Third party appeal)	0	0	0	1	0	0	0	0	0	0	1
Section 47A CA98 (Monetary claims)	7	0	5	1	3	7	12	1	34	9	18
Section 47B CA98 (Collective proceedings)	0	0	0	0	0	0	2	0	4	3	0
Section 49B CA98 (Collective settlements)	0	0	0	0	0	0	0	0	0	0	0
Section 114 EA02 (Penalty appeals)	0	0	0	0	0	0	0	0	1	0	3
Section 120 EA02 (Merger reviews)	1	0	3	4	3	1	2	0	1	4	3
Section 179 EA02 (Market reviews)	0	1	2	6	3	0	0	0	1	0	0
Section 192 Comms Act 2003 (Appeals)	8	7	6	5	1	3	4	2	2	1	0
Section 317 Comms Act 2003 (Broadcasting competition appeal)	6	0	0	0	0	1	0	0	0	0	0
Applications for interim relief	0	0	0	0	0	0	1	0	0	0	0
Total	30	10	18	19	10	12	29	4	44	18	27

¹⁰ Source: BEIS internal data and CAT annual reports. Data not available for full financial year 2020-21: the far right column contains case data up to 31 October 2020.

As outlined above, there are many factors that influence the number of cases registered at the CAT, many of which are independent of the CAT Rules 2015 changes. These factors include changes in regulator enforcement activity. There are, however, some changes that are influenced by the CAT Rules 2015 changes:

- collective settlements (Section 49B CA98) were introduced by the CAT Rules 2015, so there would be no cases of this type brought prior to FY 2015-16;
- prior to October 2015, section 47B concerned claims for damages brought by a specified body on behalf of two or more consumers. That was reformed by the CRA 2015 when collective proceedings that are now included in the CAT Rules 2015 – were introduced. This is why these cases were only registered from FY 2016-17 onwards; and
- there has been a large increase in the number of private damages actions transferred from the High Court to the CAT following the expansion of the CAT's remit brought about by the CRA 2015.

CAT judgments and orders since 2010-11¹¹

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	Apr 20 – Oct 20
Judgments handed down (total), of which:	26	47	29	28	25	13	32	27	20	30	12
<i>Judgments disposing of main issue or issues</i>	9	14	10	7	5	3	5	7	6	11	2
<i>Judgments on procedural and interlocutory matters</i>	13	13	11	14	10	6	20	8	9	9	7
<i>Judgments on ancillary matters (e.g. costs)</i>	4	20	8	7	10	4	7	12	5	10	3
Orders made	133	118	106	106	114	52	105	52	77	137	112

¹¹ Source: CAT annual reports

Number of CAT case management conferences held, hearings held and sitting days¹²

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	Apr 20 – Oct 20
Case management conferences	7	12	7	8	6	4	20	8	8	13	9
Hearings	39	10	12	8	10	3	18	7	13	13	4
Sitting days	51	95	42	28	16	25	66	37	35	44	10

As with the data on number of cases registered, much of the workload (as measured by judgments and orders made, case management conferences and hearings held, and sitting days) is due to external factors rather than the CAT Rules 2015 changes, for instance the transfer of private actions cases from the High Court to the CAT¹³.

Data relating more specifically to Rule changes

As set out above, the changes in the CAT Rules 2015 were intended to “minimise unnecessary costs and delays whilst balancing proper accountability for regulatory decisions”. There are challenges and limitations associated with setting out quantitative evidence relevant to this objective:

- not all aspects of the objective are measurable using quantitative metrics. While “costs and delays” can be measured, the impact on, or balance against “proper accountability for regulatory decisions” is more subjective and requires qualitative assessment;
- there is an element of subjectivity regarding the definition of ‘unnecessary’ in the context of legal proceedings; and
- for this reason, the data presented are high-level, focusing on broad metrics such as average case duration.

Case durations

The duration analysis below is based upon 30 cases of 3 types: Section 46 CA98 (main party competition appeals), Section 120 EA02 (merger reviews) and Section 192 Comms Act 2003 appeals.

The analysis considers the number of calendar days between the case being registered and the ‘main’ judgment being made, as a measure of the amount of time taken by the CAT to process, manage, hear and make decisions on cases.

¹² Source: CAT annual reports

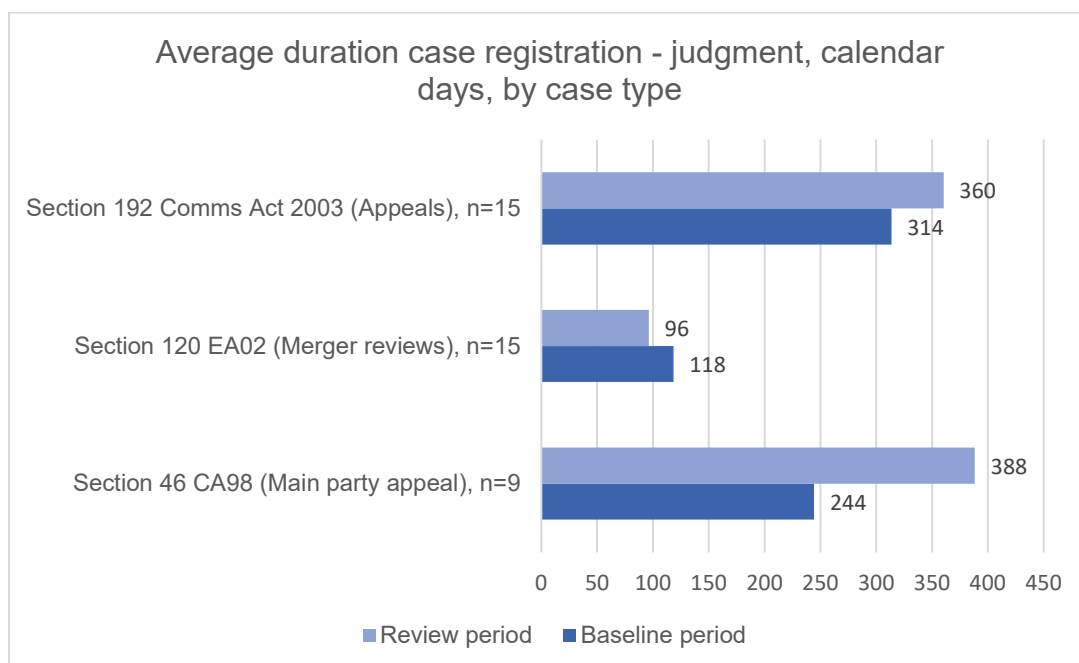
¹³ 49 private damages actions were transferred from 1 Oct 2015 to 31 Oct 2020.

This measure is imperfect. The key limitation is that it does not reflect differences in the complexity of cases which will affect the amount of time taken to manage, hear and make a decision on it. The sample size is also small and therefore not a reliable basis for assessing trends.

200 cases registered at the CAT were analysed and the following exclusions were made:

- Cases which were settled or withdrawn before a main judgment was made are excluded from the analysis.
- Section 317 Comms Act cases: there has only been one case in the 10-year period.
- Section 47 CA98 cases: there has only been one case in the 10-year period that has not been withdrawn.
- Section 47B CA98 cases: while there were two cases with a judgment in the review period, there were none in the baseline period.
- Section 114 EA02: there was only one case with a judgment in the 10-year period.
- Section 47A CA98 (monetary claims): private action cases have been excluded because while there are 13 cases with judgments in the period, duration is a less relevant measure for these cases. The factors affecting the duration of cases are often many and complex and can differ markedly from case to case.

It should be noted that it is only cases that commenced after 1st October 2015 that are included in the 'review' period; cases that commenced beforehand but continued until on or after 1st October 2015 are included in the baseline period. This is in line with how the CAT Rules 2015 changes were applied¹⁴.



9 Section 46 CA98 cases were considered; 3 in the baseline period and 6 in the review period.

Note that case conditions were not constant across the baseline and review period, due to factors separate from the changes to the CAT Rules 2015 which influenced the caseload and

¹⁴ The CAT guide to proceedings sets out: "Proceedings commenced before the Tribunal prior to 1 October 2015 are governed by the Competition Appeal Tribunal Rules 2003 (the "2003 Rules") and the Competition Appeal Tribunal (Amendment and Communications Act Appeals) Rules 2004 (the "2004 Rules")."

complexity of cases, as discussed earlier. The averages reported for the review period were also skewed by two complex cases: Paroxetine (696 days) and Phenytoin (485 days). Without these cases, the average duration in the review period is 314 days¹⁵.

15 merger review cases were considered: 10 in the baseline period and 5 in the review period.

15 Section 192 Comms Act appeals were considered; 10 in the baseline period and 5 in the review period.

All the cases were conducted to a timetable agreed with the parties and which had to allow those parties a just and reasonable time to prepare their cases.

Procedures introduced or amended by the Rules

- The 2015 Rules introduced a 'strike out' procedure, which allowed the CAT to strike out cases where it does not have jurisdiction. This has not been used.
- The Fast Track procedure was introduced by the 2015 Rules. Since then it has featured in 10 cases¹⁶. The Rules also introduced a power to grant injunctions in Fast Track cases, which has not been used.
- The CAT Rules 2015 made an amendment to the interim injunction procedure. Where the Tribunal grants an interim injunction in an FTP case, it may do so without requiring the applicant to provide an undertaking as to damages or impose a cap on the amount covered by the undertaking. There have been 4 interim injunction cases since 2015.

¹⁵ This also excludes the additional Phenytoin case for interim relief, which took 28 days. The sample in the review period would therefore be 3.

¹⁶ Note that the threat or presence of the fast track makes it easier to expedite some cases on the ordinary track.

This consultation is available from: www.gov.uk/government/consultations/post-implementation-review-of-the-competition-appeal-tribunal-rules-2015-call-for-evidence

If you need a version of this document in a more accessible format, please email enquiries@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.