

CAT Rejects Consumer Class Action Against Train Operators

6 November 2025

On 17 October 2025, the UK Competition Appeal Tribunal (“CAT”) in *Gutmann v First MTR South Western Trains Limited and Others* handed down its second merits [judgment](#)¹ in an opt out collective proceeding since the start of the regime 10 years ago. After the unsuccessful claim in *Le Patourel v BT Group PLC*,² the CAT again decided against the Class Representative and the underlying class, comprised in this instance of London Travelcard holders. The CAT rejected the claim that three major train operating companies had engaged in abusive conduct by failing adequately to raise awareness of “Boundary Fares” and/or make them sufficiently available to customers. Even if it was assumed that the train operating companies each held a dominant position, their conduct did not constitute an abuse.

The timing of the judgment coincides with the Government’s recent [consultation](#) on the CAT’s opt out collective actions regime, which included questions on the regime’s scope, the costs of proceedings and litigation funding. While the Boundary Fares case concerned a very specific product, the CAT also had these broader issues in mind in its judgment. In particular, the CAT observed that competition law is distinct from the general law of consumer protection, and the fact that a dominant company could have conducted its business better or differently to benefit consumers does not mean its conduct necessarily crosses the line to constitute abuse under competition law. The CAT was clear that a dominant company has no duty under competition law actively to assist all of its customers to pay the lowest price or purchase the optimal product for their needs.

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¹ [Justin Gutmann v First MTR South Western Trains Limited; Justin Gutmann v London & South Eastern Railway Limited and others; Justin Gutmann v Govia Thameslink Railway Limited and others](#) [2025] CAT 64 (“Gutmann”).

² See [Le Patourel v BT – Key Takeaways from the CAT’s Judgment in the First Competition Collective Action to Reach Trial](#), Cleary Gottlieb Alert Memorandum, 3 March 2025.

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What is a Boundary Fare?

Boundary Fares are a form of extension or add-on ticket sold for use with a London Travelcard. A Travelcard entitles the holder to unlimited free travel within prescribed zones on the London public transportation network. If a Travelcard holder wishes to go beyond the limited range of their Travelcard, they can purchase a Boundary Fare to cover the balance of the journey from the outer edge of the zone to which the Travelcard applies to their ultimate destination.³

At issue in these proceedings was the fact that if a Travelcard holder unaware of the Boundary Fare were to purchase unnecessarily a point-to-point ticket for the full journey, they would in effect be paying twice for the portion covered by the Travelcard.

The Alleged Abuse

The CAT's judgment concerned three separate proceedings against operators of three rail franchises for periods between 2015 and 2024.⁴ Each of the proceedings made broadly the same allegations as to the abuse of a dominant position contrary to Chapter II of the Competition Act 1998. In particular, the Class Representative alleged that the train operating companies had failed to:

- (a) take reasonable steps to make customers purchasing tickets aware of Boundary Fares; and/or
- (b) make Boundary Fares sufficiently available to customers.⁵

The Class Representative alleged that, as a result, Travelcard holders had purchased point to point fares

for their full journeys instead of Boundary Fares, thereby overpaying for such journeys.

No Profit from the Alleged Abuse

A crucial finding of the CAT, albeit one made earlier in the proceedings, was that the train operating companies were not actually paid twice when Travelcard holders acquired point to point tickets. Due to revenue sharing mechanisms underlying the Travelcard system, the train operating companies would receive the usual fare from the point-to-point ticket, but would not receive any money under the unused Travelcard.

Although a dominant company's conduct may still be abusive even if the company receives no commercial benefit, this finding was "*important context*" for the Class Representative's allegations. First, it distinguished the fact pattern from *Deutsche Post*, a key authority relied upon by the Class Representative to establish an abuse, where the defendants had in fact been paid twice.⁶ Second, it reduced the allegation to the simple fact that Travelcard holders were overpaying by virtue of the lack of information or access to the Boundary Fare, and not that the Defendant train operators were profiting.

No Lack of Awareness

Although it was one of the two central pillars of the Class Representative's case that there was insufficient awareness of Boundary Fares among rail passengers, the evidence relied on in support of this allegation was, in the Tribunal's view, "*wholly unsatisfactory*". In particular, there was no survey of the Travelcard holders

³ [Gutmann](#), para. 16.

⁴ The first two sets of proceedings concerned the South-Western and South-Eastern rail franchises. The South-Western proceedings were brought against Stagecoach South Western Trains Ltd and First MTR South Western Trains Ltd for the period 2015-2024. The South-Eastern proceedings were brought against London & South Eastern Railway Ltd and others for the period 2015-2021. Both proceedings were commenced in 2019 and certified in 2021. In 2021, the Class Representative commenced a third claim in relation to the Thameslink, Southern and Great Northern franchise against Govia Thameslink Railway Ltd and others. This third set of

proceedings was certified in 2023, and the CAT ordered that the three proceedings be case-managed and heard together. In 2024, Stagecoach South Western Trains Ltd settled its part of the proceedings for £25 million. For the remaining Defendants, the CAT directed that the trial of the issues should be split: the first trial, to which the recent judgment relates, focused on whether there was an abuse, on the assumption that the Defendants were dominant. Issues relating to causation and quantification of loss were reserved for a subsequent trial.

⁵ [Gutmann](#), para. 1.

⁶ [Gutmann](#), paras. 89-92.

who used any of the three Defendants' networks that might indicate a lack of awareness of Boundary Fares.⁷

Evidential issues proved a more general issue for the Class Representative; while there was evidence on the numbers of Travelcard holders and the number of point-to-point journeys that had been purchased during the course of the alleged abuse, there remained a lack of evidence as to the number of Travelcard holders who had purchased point-to-point fares (i.e., as to the size of the class itself).⁸

The Tribunal similarly found no suggestion that any of the Defendants adopted a policy to keep Boundary Fares obscure or to leave customers unaware of their existence. All of the Defendants sold Boundary Fares from all of their ticket offices, and Boundary Fares were mentioned explicitly in the training of ticket office staff. Although ticket staff did not routinely ask customers if they already held a Travelcard, the CAT considered this did not rise to the level of an abuse – competition law did not require a dominant company “*actively to assist all its customers to pay the lowest price or to buy the optimal product for their needs.*”⁹

The CAT noted that Boundary Fares were “*just one type of fare among many*”, relating only to a specific sub-set of consumer (Travelcard holders) in specific situations (travelling beyond the Travelcard zones).¹⁰ In light of this, the CAT also rejected the Class Representative's argument that the Defendants should have taken active steps to promote greater awareness of Boundary Fares, for example by a marketing campaign.¹¹

No Lack of Availability

The CAT considered the availability of Boundary Fares by the main sales channels for rail tickets. As Boundary

Fares were available through all station ticket offices, the arguments focused on their more limited availability on station ticket vending machines and online (via a website or app):¹²

- **Ticket machines.** The CAT was satisfied that two of the train operators, South Western Railway and Govia Thameslink Railway, had taken reasonable steps to upgrade or replace their ticket machines to sell Boundary Fares. Although there had been delays in doing so, the CAT decided that this could not “*amount to the imposition of an unfair selling system or a departure from “normal competition” that constitutes an abuse of dominance*”.¹³

The situation for the third train operator, London and South Eastern Railway, was more complex because its ticket machines could only sell tickets originating at a station where the ticket machine was located, and so did not include Boundary Fares. However, the CAT was satisfied that the rationale for this decision was to reduce ticket fraud, and so was objectively justified.¹⁴

- **Online.** Though the CAT was initially concerned about the lack of availability of Boundary Fares online, it emerged during the trial that this was a less significant channel for sales than station ticket offices and ticket machines during the claim periods,¹⁵ particularly prior to the Covid pandemic.¹⁶ As such, it was not “*unreasonable or other than “normal” commercial conduct*” that capital expenditure had not been made to introduce them online.¹⁷

The CAT also considered the position of third-party ticket retailers (such as Trainline). Although the Defendants did not require such retailers to sell

⁷ [Gutmann](#), para. 96.

⁸ [Gutmann](#), paras. 97-98.

⁹ [Gutmann](#), paras. 93, 101-102.

¹⁰ [Gutmann](#), para. 109.

¹¹ [Gutmann](#), para. 105.

¹² [Gutmann](#), para. 119.

¹³ [Gutmann](#), para. 125.

¹⁴ [Gutmann](#), paras. 126-127.

¹⁵ Proceedings against First MTR South Western Trains Ltd related to the period 2017-2024; against London & South

Eastern Railway Ltd and others, the period 2015-2021; and against Govia Thameslink Railway Ltd and others, the period 2015-2024.

¹⁶ [Gutmann](#), para. 129.

¹⁷ [Gutmann](#), paras. 130-134. The CAT also noted that, as online sales continue to grow, “*there could come a point at which a TOC [train operating company] would risk a finding of abuse if it failed to enable customers to purchase Boundary Fares online*” – but the CAT was satisfied this had not been reached at the time of trial. See [Gutmann](#), paras. 135-136.

Boundary Fares, this did not rise to the level of an abuse. Third-party ticket retailers were permitted to sell Boundary Fares, and had not been discouraged from doing so.¹⁸

Finally, though there were types of fare for which no Boundary Fare existed (such as Advance Fares and Season Tickets), the CAT likewise found no abuse. For example, a Boundary Fare for a season ticket holder would only benefit a small sub-set of customers – and competition law did not require a dominant company to create a product with such limited appeal.¹⁹

Implications for the Opt-Out Regime

While *Gutmann* concerned a specific set of facts, the CAT made two observations that are relevant to the wider regime. First, the CAT gave important guidance on the scope of competition law as it relates to consumer redress; secondly, it drew attention to the cost-benefit analysis that remains under review throughout collective proceedings. Due to the paucity of judgments so far under the regime, these issues have been principally highlighted at the certification stage – but the Boundary Fares judgment is a reminder that these questions continue to carry weight in the Tribunal’s reasoning as the case progresses to trial.

Scope of competition law. Crucially, the CAT observed “competition law is not a general law of consumer protection”. The concept of abuse is “broad” and “should develop to reflect new patterns of commerce”, but it is “not unlimited”.²⁰

As the CAT explained, a dominant company’s conduct does not amount to an abuse merely because it “could have carried out a particular aspect of its business better, or in a different way that would have benefited consumers.” Although dominant companies have a “special responsibility” not to allow their conduct to impair competition, competition law “does not create an obligation on the dominant company to organise or conduct its business so as to achieve the best outcome for its customers.”²¹

Such distinctions regarding the scope of competition law are significant for the types of cases that may be brought under the opt-out regime. While the CAT has been permissive in certifying claims in which the regime has been used creatively to address matters more closely tied to consumer or environmental law, in *Gutmann* the CAT emphasised that competition law has clear boundaries and does not provide a general mechanism of consumer redress. The reasoning in *Gutmann* is a reminder that such issues will remain a central factor when the CAT addresses the substantive merits of a case, which may affect claimants’ and defendants’ approach to more novel theories of harm in the future.

Cost-benefit. In its concluding remarks, the CAT notably suggested that, even if its judgment was wrong in rejecting some parts of the claim, there would remain a cost-benefit question as to whether the claim should proceed in a reduced form. For example, if the CAT had found that one of the defendants *had* abusively restricted sales of Boundary Fares on its station ticket machines, the case going forward would have a narrower class and a lower potential amount of damages.²²

In those circumstances, the CAT considered that the cost-benefit of the proceedings would be “markedly changed” and it “would then wish to consider whether, in those circumstances, the CPO should be revoked”.²³ As the CAT’s remarks show, the issue of cost-benefit is kept under review after certification, and remains a critical question throughout proceedings.

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¹⁸ *Gutmann*, paras. 139-161.

¹⁹ *Gutmann*, paras. 162-172.

²⁰ *Gutmann*, para. 79.

²¹ *Gutmann*, paras. 79-80.

²² *Gutmann*, para. 177.

²³ *Gutmann*, para. 177.