



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1568/7/7/22

BETWEEN:

JULIE HUNTER

Applicant /
Proposed Class Representative

- v -

- (1) **AMAZON.COM, INC.**
- (2) **AMAZON EUROPE CORE S.À.R.L.**
- (3) **AMAZON SERVICES EUROPE S.À.R.L.**
- (4) **AMAZON EU S.À.R.L.**

Respondents /
Proposed Defendants

ORDER

UPON reading the Proposed Class Representative’s collective proceedings claim form dated 14 November 2022 and the Proposed Class Representative’s application of the same date to serve the collective proceedings claim form on the First, Second, Third and Fourth Proposed Defendants out of the jurisdiction pursuant to Rule 31(2) of the Competition Appeal Tribunal Rules 2015 (the “Tribunal Rules”).

IT IS ORDERED THAT:

1. The Proposed Class Representative is permitted to serve the First, Second, Third and Fourth Proposed Defendants out of the jurisdiction.

2. This Order is made without prejudice to the rights of the First, Second, Third and Fourth Proposed Defendants to dispute the Tribunal's jurisdiction pursuant to Rule 34 of the Tribunal Rules.

REASONS

1. The Applicant and Proposed Class Representative, Julie Hunter, submits that these proceedings, should permission be granted, are likely to be treated as taking place in England and Wales for the purpose of Rule 18 of the Tribunal Rules. I agree. I therefore approach the question of service of out of the jurisdiction on the same basis as the High Court of England and Wales and in accordance with the Tribunal's guidance given in *Epic Games, Inc. and others v Apple Inc. and others* [2021] CAT 4.
2. The Proposed Defendants are associated with the Amazon marketplace platform. It is said that the First Proposed Defendant is a US corporation which is in charge of the algorithms to determine which sellers are eligible for, and which offers are displayed in, the 'Buy Box' of a product's detail page; the Second Proposed Defendant is incorporated in Luxembourg and is responsible for the management of Amazon's European marketplace websites, including operating the UK marketplace site amazon.co.uk; the Third Proposed Defendant is incorporated in Luxembourg and offers marketplace or intermediation services to third-party retailers and is responsible for the development of Amazon's Seller-Fulfilled Prime programme; and the Fourth Proposed Defendant is incorporated in Luxembourg and is engaged in direct sales to consumers on Amazon's European marketplaces. The Proposed Defendants are hereafter referred to collectively as "Amazon".
3. Herbert Smith Freehills LLP have been instructed on behalf of the Proposed Defendants but are not instructed to accept service of these proceedings.
4. The Applicant is applying for authorisation to act as the Proposed Class Representative to combine standalone claims in opt-out proceedings pursuant to section 47A of the Competition Act 1998 for damages caused by Amazon's alleged abuse of dominant position within the meaning of the Chapter II Prohibition and/or Article 102 TFEU (prior to 31 December 2020).

5. The proposed class is all “Relevant Purchasers” (as defined in paragraph 82 of the collective proceedings claim form) who, during the Relevant Period (being 14 November 2016 to final judgment or earlier settlement), made one or more purchases on the Amazon marketplace for the United Kingdom.
6. The Proposed Class Representative contends that Amazon is dominant in the market for the provision of intermediation services on online retail marketplaces in the United Kingdom (the “Relevant Market”). It is contended that Amazon has abused that dominant position, by means of the Buy Box. The Buy Box is the part of a product detail page which enables a purchase to be made. It is said that the use of the Buy Box systemically biases consumers in favour of (i) Amazon as a retailer and (ii) Amazon as a logistics provider to third-party retailers, which are not always the cheapest offer. It is further contended that this means consumers do not search for potential alternative offers and that it is comparatively difficult to locate such alternatives. It is said that as a result the proposed class has collectively suffered significant losses in the form *inter alia* of overcharges on goods purchased on the Amazon marketplace.
7. In the collective proceedings claim form reference is made to an ongoing formal antitrust investigation by the European Commission which is said to relate to preferential treatment by Amazon of its own retail offer and third-party retailers who use Amazon’s logistics and delivery services. It is said that the Commission has noted in a press release that it had made preliminary findings that Amazon’s rules and criteria for the Buy Box and Prime unduly favour Amazon’s own retail business and third-party retailers that use Amazon’s logistics and delivery services.
8. On the basis of the materials provided I accept there is a serious issue to be tried in relation to the standalone claims and it to be arguable that they are claims suitable for certification in collective proceedings.
9. I further conclude that there is a good arguable case that the claims fall within one of the CPR gateways in particular paragraph 3.1(9) of CPR Practice Direction 6B. The acts complained of are arguably committed within the jurisdiction and damage is arguably sustained within this jurisdiction.

10. As to *forum conveniens*, I find that in all the circumstances England and Wales is the appropriate forum to bring the proposed collective proceedings and that the Tribunal ought to exercise its discretion to permit service out of the jurisdiction. In particular I rely upon the fact that the proposed class comprises “Relevant Purchasers” who are domiciled in the UK and who have made purchases on the Amazon marketplace for the UK. I also place reliance upon the fact that the claims relate to UK and EU competition law.

11. Altogether, I therefore consider that the UK (and this Tribunal) is clearly and distinctly the appropriate forum for the trial of this action.

Justin Turner KC

Chair of the Competition Appeal Tribunal

Made: 6 December 2022

Drawn: 7 December 2022