



COMPETITION APPEAL TRIBUNAL

**NOTICE OF AN APPLICATION TO COMMENCE COLLECTIVE PROCEEDINGS UNDER  
SECTION 47B OF THE COMPETITION ACT 1998**

**CASE NO. 1595/7/7/23**

Pursuant to rule 76(8) of the Competition Appeal Tribunal Rules 2015 (S.I. 2015 No. 1648) (“the Rules”), the Registrar gives notice of the receipt on 7 June 2023 of an application to commence collective proceedings, under section 47B of the Competition Act 1998 (“the Act”), by Robert Hammond (“the Applicant/Proposed Class Representative”) against (1) Amazon.com, Inc. (2) Amazon EU S.À.R.L (3) Amazon Services Europe S.À.R.L (4) Amazon EU Media S.À.R.L (5) Amazon Europe Core S.À.R.L. and (6) Amazon UK Services Ltd (together “the Proposed Defendants”) (“the Application”). The Applicant/Proposed Class Representative is represented by Hagens Berman EMEA LLP, Melbourne House, 44-46 Aldwych, London, WC2B 4LL and Charles Lyndon Limited, 22 Eastcheap, London, EC3M 1EU (Reference: Amr El Sawaf/Robert Wilson).

The Application states that these proposed proceedings would combine claims for damages of a large number of persons (the “Proposed Class Members”) who have suffered loss as a result of the conduct of the Proposed Defendants (collectively “Amazon”). The proposed class is more fully described below. The Application alleges that the Proposed Defendants abused its position of dominance in the market for intermediation services on online marketplaces (the “Relevant Market”) in breach of the prohibition in Article 102 of the Treaty on the Functioning of the European Union (“Article 102 TFEU”) (prior to 31 December 2020) and section 18 of the Act (the “Chapter II Prohibition”). The Application states that the claims are not at present brought in respect of any infringement decision but of a standalone nature, although this could change depending upon the outcome of pending regulatory investigations. The claims relate to the period from 1 October 2015 to at least June 2020 (“the Relevant Period”).

According to the Application, the First Proposed Defendant, Amazon.com, Inc., is a US corporation registered in Seattle (State of Washington) and is the parent company of the Amazon Group and directly or indirectly the owner of the Second to the Sixth Defendants. The Second, Third, Fourth and Fifth Proposed Defendants are each registered in Luxembourg. The Sixth Proposed Defendant is headquartered in London.

The Application states that the Proposed Defendants are all entities within the Amazon group of companies. Amazon is a multinational technology company whose flagship offering, Amazon Marketplace, is the largest e-commerce retail platform of any kind in the UK. Amazon and third-party retailers sell goods side by side on Amazon Marketplace across a broad range of different product categories. In this capacity, Amazon Marketplace operates as a digital platform and two-sided market, connecting and intermediating transactions between buyers and sellers online. Amazon Marketplace generates revenue from selling both Amazon’s own inventory and charging fees levied on sales of third-party seller product offerings. Amazon also sells optional services to sellers on its marketplace, including advertising and Fulfilled by Amazon (“FBA”). In addition, Amazon offers cloud computing through Amazon Web Services to businesses and a range of digital streaming services to consumers.

The Application further states that the claims relate to the way in which Amazon promotes its own products and the products of third-party sellers on its platform who use Amazon’s own logistics service, FBA. FBA is a service offered to third-party sellers that delegates the entire order management to Amazon: storage of the product in Amazon’s fulfilment centres, packaging and shipping to the final customer, as well as after-sales assistance and the management of any returns and refunds. Both Amazon and a significant number of its third-party sellers use FBA (together, “FBA Sellers”) and receive preferential promotion on the platform, in particular in the Amazon “Buy Box” which reduces the competitive constraints imposed on those FBA sellers with the result that consumers pay more than they would otherwise have had to pay for FBA sellers’ products.

As stated in the Application, when a consumer accesses the intermediation services provided by Amazon to search the product offerings on the Amazon Marketplace, Amazon does not simply list the offerings that match

the consumers search, it also uses its proprietary algorithm to choose one offer to be placed in the Buy Box. The Buy Box is the featured offer in the product search results that allows the consumer to purchase the product without selecting a particular seller or retail offering. When purchasing the offer in the Buy Box, the consumer buys directly from the seller that Amazon's algorithm selects among all the sellers offering the requested product. In theory, every seller including Amazon itself who offers a product in "new" condition and meets the minimum requirements competes to obtain the Buy Box. Amazon uses its proprietary algorithm, the Featured Merchant Algorithm ("FMA") to choose one offer to be placed in the Buy Box. The FMA applies filters to eliminate offers that do not meet the customers characteristics and those of the search. Next, the FMA estimates the probability that a customer will choose that particular offer based on five characteristics and populates a value for each of the five characteristics for the respective retailers offer. The FMA associates a weight for each of the five characteristics, determined through econometric and machine-learning methods applied to aggregate models for viewing and purchasing customers on the Amazon platform. The offer with the highest score is selected for the Buy Box. It is alleged that Amazon designed the FMA to give preferential treatment to itself and the third-party sellers that rely on Amazon's FBA service as their logistics provider.

The Applicant/Proposed Class Representative alleges that the nature of the harm arising in this case is the restriction or distortion of competition created by Amazon's FMA. The FMA enables third party sellers to increase their chances of "winning" the Buy Box by signing up to use Amazon's own fulfilment/logistics service. This reduces price and quality competition amongst sellers. Using FBA allows sellers to charge higher prices (while still maintaining a higher probability of winning the Buy Box than non-FBA sellers), than they otherwise would have to set if the FMA did not favour the use of Amazon's own logistics service.

The Applicant/Proposed Class Representative also alleges that by providing a discriminatory advantage in the allocation of the Buy Box to sellers that purchase FBA services in addition to intermediation services, Amazon significantly increased the attractiveness of its FBA services to sellers in a manner that rival marketplaces and logistics firms could not match.

The Applicant/Proposed Class Representative contends that as a result of the alleged abuse, UK consumers have been affected by Amazon's conduct as follows:

- (a) when purchasing a FBA Buy Box winning offer that was more expensive than another offer which would have won the Buy Box, but-for the manipulation of the Buy Box based on the discriminatory FMA; or
- (b) when they purchased a non-Buy Box winning FBA offer from a seller that had chosen to charge higher prices than they would have otherwise charged, but for the discriminatory advantages conferred on FBA sellers by the FMA; and
- (c) by the fact that Amazon was able to charge FBA sellers more for FBA services and/or in commission fees as a result of the exclusionary effects of its conduct on marketplace fulfilment services and/or other marketplaces.

The Applicant/Proposed Class Representative claims that the Proposed Class Members over the Relevant Period have collectively suffered significant losses in the form, *inter alia*, of overcharges on goods purchased on the Amazon Marketplace which loss the Applicant/Proposed Class Representative estimates to be between (including VAT and excluding interest): £1.221 billion and around £1.361 billion.

In the Application, the "Proposed Class" is defined as all natural consumers who purchased at least one product from Amazon's UK based e-commerce marketplace at Amazon.co.uk during the Relevant Period, including the personal representatives or administrators (where appointed) of such purchasers who are deceased at the date of the granting of the collective proceedings order.

The Application proposes that all persons who fall within the class definition (and are not excluded) and who are domiciled in the UK on the domicile date to be determined by the Tribunal are to be included in the Proposed Class. The Application provides for persons who fall within the class definition but who are not domiciled in the UK on the domicile date to be determined by the Tribunal are proposed to be permitted opt into the proceedings.

The Application estimates that the Proposed Class comprises approximately 49.4 million Class Members and that if necessary, this estimate could be refined further following disclosure from Amazon.

According to the Application, the Claims are suitable to be brought in collective proceedings because the Claims are brought on behalf of an identifiable class of persons, and the Claims raise common issues, namely:

- (a) liability in relation to the alleged breaches of Article 102 TFEU and/or the Chapter II Prohibition;
- (b) whether the Proposed Defendants were part of an undertaking that held a dominant position during the relevant period;
- (c) If the Defendants held a dominant position, whether they abused that position,
- (d) whether the conduct of the Proposed Defendants caused all, or virtually all, the Class Members to pay more for the products they purchased from FBA sellers on the Amazon Marketplace.

The Applicant/Proposed Class Representative submits that he would act fairly and adequately in the interests of the Class Members because:

1. The Applicant/Proposed Class Representative has extensive experience championing consumer rights spanning over more than 20 years, including leading research and development teams for a leading consumer protection organisation. He is also a former practising solicitor, from 1984, to 1994.
2. The Applicant/Proposed Class Representative's own experience will be complemented by a consultative group, which includes individuals with relevant industry experience and has confirmed that he has sufficient capacity to act as class representative in this case, as he is semi-retired.
3. The Applicant/Proposed Class Representative is not aware of any material interest that conflicts with the interests of the proposed class members, as although he is a UK consumer who has purchased products from Amazon during the Relevant Period, he has elected to be excluded from the Proposed Class and will not make a claim against Amazon in respect to the alleged infringement.
4. The Applicant/Proposed Class Representative is aware that an application for a collective proceedings order was filed against some of the Amazon entities on behalf of an alternative class representative Julie Hunter. The Applicant/Proposed Class Representative is prepared to argue that he considers that he is best placed to act as the class representative in respect of the Claims and that his application should be preferred.
5. The Applicant/Proposed Class Representative has adequate funding for the Claims and will be able to pay the Proposed Defendants' recoverable costs if ordered to do so. The Applicant/Proposed Class Representative has entered into a funding agreement and has obtained After The Event insurance.
6. The Applicant/Proposed Class Representative has prepared a litigation plan for the proceedings, which includes:
  - (a) a proposed method for bringing the proceedings on behalf of the Proposed Class Members;
  - (b) a proposed method for informing Proposed Class Members of the Proposed Claims, updating Proposed Class Members as to the progress of the Proposed Claims, and engaging with Proposed Class Members;
  - (c) a plan for governance and consultation, taking into account the size and nature of the Proposed Class; and
  - (d) consideration of the costs of bringing the Proposed Claims and the potential for adverse cost liability.

The Applicant/Proposed Class Representative submits that these Claims are suitable for resolution through collective proceedings because:

1. The proposed collective proceedings present an appropriate means for the fair and efficient resolution to the common issues.
2. The Application states that collective proceedings are in all likelihood the only economically viable method for individual class members to obtain compensation for losses suffered as a result of the infringement.
3. The nature of the claims which are relatively low in value on an individual basis but substantial in aggregate are, in the Proposed Class Representative's view, a prime example of the type of claims for which collective proceedings provisions were designed.
4. The Proposed Class consists of approximately 49.4 million members. A group of individuals of this number, each with substantially the same claims could only bring their claims by way of collective proceedings.
5. The Applicant / Proposed Class Representative submits that the Claims are suitable for an aggregate award of damages as a practical and proportionate means of assessing damages in collective proceedings and has included a provisional methodology in this regard.
6. As to alternative methods of dispute resolution, the Applicant/Proposed Class Representative states that he has invited the Proposed Defendants to engage in settlement discussions, but the Proposed Defendants declined.

According to the Application, the proposed collective proceedings should proceed on an opt-out basis as they are the only practical means for bringing the claims. As the proposed class is extremely numerous, and the value of each individual claim is relatively modest, the Application states opt-in proceedings would not be feasible in this case.

The relief sought in these proceedings is:

- (1) Damages to be assessed on an aggregate basis;
- (2) Simple interest;
- (3) The costs of the Proposed Class Representative; and
- (4) Any such further and other relief as the Tribunal may see fit.

Further details concerning the procedures of the Competition Appeal Tribunal can be found on its website at [www.catribunal.org.uk](http://www.catribunal.org.uk). Alternatively, the Tribunal Registry can be contacted by telephone (020 7979 7979) or email ([registry@catribunal.org.uk](mailto:registry@catribunal.org.uk)). Please quote the case number mentioned above in all communications.

*Charles Dhanowa OBE, KC (Hon)*

Registrar

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