



Neutral citation [2026] CAT 79

Case No: 1644/7/7/24

IN THE COMPETITION APPEAL TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

26 October 2026

Before:

SIR PETER ROTH
(Chair)
CHARLES BANKES
KEITH DERBYSHIRE

Sitting as a Tribunal in England and Wales

BETWEEN:

PROFESSOR ANDREAS STEPHAN

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.
(5) AMAZON UK SERVICES LTD
(6) AMAZON PAYMENTS UK LIMITED

Defendants

Heard at Salisbury Square House on 14 and 15 October 2026

JUDGMENT (CLASS COMMUNICATIONS)

APPEARANCES

Kieron Beal KC, Daniel Carall-Green and Hannah Bernstein (instructed by Geradin Partners Limited) appeared on behalf of Professor Andreas Stephan.

Jon Turner KC, Oscar Schonfeld, Kristina Lukacova and Alexandra Breckenridge (instructed by Covington & Burling LLP) appeared on behalf of the Defendants.

A. INTRODUCTION

1. To what extent, if at all, should the Tribunal control communications between the defendant to collective proceedings and members of the class? That is the issue raised by the application made by Prof Stephan as the class representative in these opt-out collective proceedings against a number of companies in the Amazon group (**Amazon**). Mr Turner KC, on behalf of Amazon, said that the issue was extremely important for Amazon, and it is now arising in a number of proceedings.
2. The present collective proceedings are brought on behalf of a class of businesses (**sellers**) based in the UK who used Amazon's e-commerce marketplace to reach customers in the UK. The application for a collective proceedings order (**CPO**) was heard together with a related application in proposed collective proceedings brought by Mr Hammond on behalf of a class of consumers (the **Hammond action**). Against the opposition of Amazon, the Tribunal granted certification: [2025] CAT 42, [2025] Bus LR 2281 (the **CPO Judgment**).¹ The Tribunal issued a CPO on 27 November 2025. By his claim form, Professor Stephan (the **CR**) alleges that Amazon has abused a dominant position in the market for the supply of e-commerce marketplace services to third-party sellers in the UK in five distinct, although partially overlapping, respects. The details of the claim are summarised in the CPO Judgment.
3. The size of the class is estimated at over 200,000. Under the CPO, the closing date for opting-out was 27 February 2026, and only two sellers chose to opt-out. However, it should be noted that pursuant to rule 82(2) of the Competition Appeal Tribunal Rules 2015 (the **CAT Rules**),² a class member can seek permission of the Tribunal to opt-out after the specified time for doing so has expired.
4. Following the CPO, the CR served an amended Claim Form on 3 October 2025, Amazon served its Defence on 30 January 2026 and the CR served a Reply on

¹ The Court of Appeal refused Amazon's application for permission to appeal: [2026] EWCA Civ 183.

² All subsequent references to a "rule" are to the CAT Rules.

10 April 2026. Following a case management conference (CMC) held on 2 June 2026 and subsequent written proposals from the parties, the Tribunal directed that the trial of these proceedings, along with the Hammond Action, should be split, with the first trial (**Trial 1**) covering, in summary, the issues of market definition, dominance, whether Amazon abused its alleged dominant position in the various respects alleged, and the counterfactual. Initial directions regarding disclosure were made at that CMC. The second trial is to cover causation and quantum of loss, including the issue of pass-on by sellers to consumers. Trial 1 has been fixed to commence on 25 April 2028.

5. A second CMC was held on 14-15 October 2026 and largely concerned various aspects of disclosure by Amazon. Amazon had previously proposed to the CR that they seek to agree specific disclosure and information requests to be sent to a sample of sellers in the class; however, the CR's position was that it was premature to do so prior to disclosure by Amazon. Amazon disagreed and told the CR that it therefore intended itself to approach members of the class directly. With its solicitors' letter of 30 September 2026, Amazon served a memorandum of the same date from its economic expert, Mr Derek Holt, setting out the disclosure and information requests which it intended to make. The CR applied for an order that Amazon be restrained from doing so at this stage of the proceedings. The application was heard in the course of the CMC, and because of its significance we reserved our decision.

B. LEGAL PRINCIPLES

6. Class members who do not opt out, or choose to opt in, to collective proceedings are thereupon classified in the legislation as "represented persons": rule 73(2). Although represented persons obviously have a direct interest in the proceedings, they are not parties to the proceedings: the parties are the CR and the defendants: *Ennis v Apple* [2026] CAT 72 at [36]. On that basis, rule 74(1)-(2), in applying to collective proceedings the general provisions regarding private actions in part 4 of the CAT Rules, provides that for "claimant" in those provisions there should be substituted "class representative". Hence an order for costs may be made to or against the CR, but not to or against a represented person (save for very limited exceptions): rule 98; any settlement of the

proceedings is entered into between the CR and the defendants, and for opt-out proceedings any offer of settlement by the defendants must be made to the CR: rule 94(2); and an appeal against a decision in collective proceedings may be brought only by the CR or a defendant (and not by a represented person): s. 49(2A) Competition Act 1998. Indeed, it is in the nature of opt-out proceedings that many represented persons will not even be aware of those proceedings or that claims are being made on their behalf.

7. On that basis, rule 89 regarding disclosure in collective proceedings states:

“89. (1) In addition to the Tribunal’s general powers under these Rules to order disclosure, the Tribunal may order, on any terms it thinks fit, disclosure to be given—

- (a) by any party to the collective proceedings to any other party;
- (b) by the class representative to any or all represented persons; and
- (c) by any represented person to any other represented person (including a person within a different sub-class), the class representative or the defendant.”

8. The issue of direct communication by defendants to class members was considered by the Court of Appeal in *Mark McLaren Class Rep Ltd v NYKK and Others* [2023] EWCA Civ 1471, [2024] Bus LR 490. Those were opt-out proceedings, in which the Tribunal held that there was an implied provision in the CAT Rules that precluded any communication between a defendant and a class member on matters concerning the collective proceedings without the permission of the Tribunal, and made an order accordingly.³ The Court of Appeal held that no such provision was implied in the CAT Rules and the order was therefore set aside.
9. The specific issue before the Court of Appeal was whether the CAT Rules should be interpreted as including such a provision. However, several aspects of the reasoning of Popplewell LJ, with whose judgment Butcher J agreed, are of wider application, and his judgment also gave guidance as to the approach the Tribunal could adopt to the question of such communication.

³ Strictly, the Tribunal’s ruling was directed at communication during the opt-out period, but it was clear from its subsequent ruling at a CMC in the case that the provision was interpreted as covering subsequent communications as well: see the Court of Appeal judgment at [20]-[21].

10. Popplewell LJ noted that communications seeking evidence to defend a claim are protected by litigation privilege. If a defendant was invariably required to seek permission to communicate with class members (and in practice therefore to disclose the content of the intended communication for scrutiny by the Tribunal), that would require it to forgo its privilege: [103], [108]. Such a restriction could similarly interfere with a defendant's efforts to approach suitable experts, since in many cases potential experts would themselves be members of a large consumer class: [105]. It would therefore interfere unfairly with the defendant's ability to conduct its defence: [108].
11. Moreover, Popplewell LJ also noted, at [109], that such a "general prohibition" as the Tribunal had held was implied in the CAT Rules, was "not necessary to achieve the purpose of the regime". In that regard, he referred to the position in Canada, where there was no blanket prohibition and the courts approached justification for any proposed restriction on communication on a fact-sensitive basis. The critical consideration for the Canadian Courts appears to be whether the proposed communication risked "affecting the integrity of the class proceedings": see at [109]-[113]. Popplewell LJ significantly quoted in full the guidance set out by Perell J as a 'postface' to his judgment in the Superior Court of Ontario in *Del Giudice v Thompson* [2021] ONSC 2206:

"[53]..., I suggest that once a class action has commenced:

- a. If the defendant wishes to communicate with class members and the communication is: (a) out of the normal course of the defendant's business or affairs; and (b) on a topic that is substantively significant to the class action, then - not as a matter of courtesy - but as a means to avoid problems and objections, the defendant's lawyer should ask Class Counsel if there are any problems or objections to the notice.
- b. Class Counsel should respond with its objections, if any. Class Counsel should appreciate that for unofficial notices from the defendant, the court has a high threshold for exercising its jurisdiction to supervise the communication.
- c. If Class Counsel has comments, the defendant's lawyer should consider Class Counsel's comments and objections seriously. For example, Class Counsel may have advice as to how not to alarm the class members by the details of the notice. In a given

case, it is even conceivable that Class Counsel may not wish to discourage the Class Members from obtaining such benefits as the defendant may be offering.

d. If after considering Class Counsel's comments, there remains a dispute between the parties about the notice, then the defendant's counsel should consider inviting Class Counsel to schedule a case management conference to determine whether a motion is actually warranted to address the propriety of the notice.

e. If after considering Class Counsel's comments, there remains a dispute between the parties and the defendant's counsel decides not to suggest a case management conference, then the defendant should issue its communication. The defendant, however, should understand that proceeding in this way runs the risk that the plaintiff will move for an order that a corrective notice be issued likely at the expense and possible embarrassment of the defendant.

f. In any event, neither side should use the occasion of the notice opportunistically or tactically.

g. If there is a motion, in deciding that motion, the court's role is purely adjudicative. The court will not be deciding the merits of the case and will be making a decision in the context of the adversary system. It is not the court's role to prejudge the merits of either side's case."

12. Based on the Canadian experience, Popplewell LJ suggested that the Tribunal might helpfully issue a practice direction, or could make orders as part of its case management powers when making a CPO or at a CMC in the individual case, to guide the parties as to communications from defendants.
13. Since the Court of Appeal found that the Tribunal in *McLaren* had expressly not made its order in exercise of its case management powers, the Court declined to consider whether the order should have been made on that basis. But Popplewell LJ recorded that counsel for the defendants had accepted that some restriction on the freedom to communicate with class members can be justified on a case-by-case basis by the exercise of case management powers: see at [122]. And at [134] he held that it was open to the class representative there to proceed to invite the Tribunal to make an order on that basis.

14. In *Rodger v Alphabet Inc and Ors.* [2026] CAT 58, the Tribunal had to address not proposed communications by a defendant seeking voluntary disclosure but an application by defendants for an order for disclosure from individual class members. However, the Tribunal’s approach in those circumstances is in our view relevant to the matter before us. *Rodger* concerned opt-out collective proceedings against companies in the Alphabet/Google group on behalf of a class comprising app. developers for Android operating devices. Google issued disclosure applications against 17 of the top 25 members of the class (having first contacted them in writing two days before). The scope of documents sought was then significantly narrowed down following responses from both the respondent class members and the CR.
15. In his ruling, Mr H Malek KC referred to the Tribunal’s jurisdiction to order disclosure from a class member and held that such disclosure should be “carefully circumscribed so as not to impose too high a burden on class members”: [15]. He noted that collective proceedings vary considerably as regards the nature and composition of the class: the Tribunal may be very cautious before ordering disclosure from class members with relatively small claims, whereas large class members who represent a significant proportion of a substantial aggregate damages claim may be in a different position: [17]-[18].
16. The following principles emerge from the ruling in *Rodger*:
 - (1) Applications for disclosure from class members should not be regarded as routine and need to be properly handled, in a way that does not encourage class members to opt out of the proceedings to avoid the burden and consequences of disclosure: [18];
 - (2) Any order must be justified as necessary and proportionate and be limited to specific documents or categories of documents, in a way that it is clear that the documents can readily be identified: [18], [66];
 - (3) The applicant should be prepared to bear the costs of the application and to pay the respondent’s reasonable costs of responding to the application and of complying with any order, including legal costs: [19]; and

- (4) Where the respondent wishes to oppose the application, the Tribunal will in principle be prepared to receive submissions from the CR as well as the respondent: [19].
17. The recent judgment of the Tribunal in *Ennis v Apple Inc.* is close to the circumstances of the present case. That decision was made in opt-out proceedings by a class of business iOS app developers against companies in the Apple group (**Apple**). Apple informed the CR that it intended to seek disclosure on a voluntary basis from certain represented persons and raised this for consideration and guidance at a CMC. Apple stated that it intended to seek disclosure in 19 categories covering a period of about nine years. The CR applied in the alternative for various forms of order seeking to control Apple's communications seeking disclosure from class members.
18. Following *McLaren*, the Tribunal approached the question in terms of the exercise of its case management powers, which it was accepted were very broad. After considering in detail the judgments in *McLaren* and *Rodger*, along with the Tribunal's ruling in *Ad Tech Collective Action LLP v Alphabet Inc and Ors* [2026] CAT 54 (where the defendants asked the Tribunal to direct the CR to seek disclosure from certain class members), the Tribunal set out its general observations at [80]:
- (1) "There is, in the absence of legislation, no general prohibition on defendants in collective proceedings (or indeed the class representative) requesting represented persons to provide them with documents or information relevant to the issues in the case.
 - (2) Any such communication from the defendant, or the defendant's solicitor, to a class member must comply with any direction which the Tribunal may give and should be framed in terms which do not take unfair advantage of the class member, bearing in mind that the class member has a claim against the defendant which is combined in these collective proceedings. We propose to set out later in this judgment certain information which we consider should be included in the proposed communications.
 - (3) Class members are under no obligation to respond voluntarily to a request to provide documents or information – whether that request should come from defendant or from the class representative. Any class member who receives such a request is entitled to

insist that a formal application be brought before the Tribunal so that the Tribunal can determine the extent to which, if at all, that class member should be required to disclose information or documents for the purpose of the proceedings.

- (4) If the defendants apply for an order under r. 89(1)(c) for disclosure by a class member, the class member will be given an opportunity to respond to that application, and to object to providing the disclosure sought. The class representative will also be given an opportunity to respond to any such application. The class representative will usually be better placed than the class member to advance arguments, for example, about the relevance of the disclosure sought to the issues in the proceedings.
- (5) Any order for disclosure against a class member requires to be justified as necessary and proportionate in order to fairly resolve the issues in the proceedings. The Tribunal has recognised that an order for disclosure against class members “should be carefully circumscribed so as not to impose too high a burden on class members”: *Rodger*, §15. The Tribunal will accordingly, as a general rule, frame an order for disclosure against a class member so as to require specific disclosure of individual documents or defined categories of documents the production of which is justified as necessary and proportionate in the context of the proceedings.
- (6) Class members may have legitimate concerns about the disclosure of documents which contain confidential or commercially sensitive information. The Tribunal has well-established processes for protecting justified claims to confidentiality whilst ensuring that the proceedings are conducted fairly. In the context of an application for disclosure under r. 89(1)(c), the Tribunal can consider whether any claim to confidentiality or commercial sensitivity justifies refusal, or restriction, of the order sought. If an order is granted, the Tribunal can consider whether it should put in place arrangements to protect the confidentiality of the information in question.
- (7) The Tribunal has wide power to regulate the costs associated with any application for disclosure under r. 89(1)(c), including power to direct that the party seeking an order under r. 89(1)(c) bear the reasonable costs incurred by the class member in complying with the order. Whilst the Tribunal cannot prejudge the decision on costs in any particular case, the starting point in the ordinary case is that – unless there is a good reason to make some other order – the party seeking a disclosure order against a class member should be prepared to bear the costs of the application and to pay the class member’s reasonable costs in responding to any application and in complying with any order: *Rodger*, §19.”

19. In its decision on the CR’s application, the Tribunal recognised that Apple had acted properly in disclosing to the CR and the Tribunal its intended course of

action: [108]. The Tribunal observed that the class includes some significant organisations whose claims form a very significant part of the aggregate damages sought in the proceedings, and from whom some disclosure is likely to be justified: [106]. Although the Tribunal noted that Apple’s proposed disclosure requests were, on their face, “very wide-ranging indeed”, the Tribunal declined at that stage to be drawn into comment on the scope of what was sought: [107], [109]. And the Tribunal said it would not infer that Apple’s motive was to bring improper pressure to bear on class members: [111]. The Tribunal also held that it would not make an order for Apple to justify the basis on which it selected the represented persons to whom it would be directing its requests, to be satisfied that they were truly representative, stating, at [113]:

“It does not seem to us that this is an exercise upon which we should embark at this stage.”

20. Nonetheless, the Tribunal proceeded to set out a number of requirements regarding the nature and content of Apple’s communications. Although some of those were matters which Apple had offered to do in any event, the Tribunal considered that it was appropriate to incorporate them in a formal direction: [115]. Those included, as set out at [116]-[117]:

- (1) that Apple should make reasonable endeavours to identify whether any class member to which they propose to write has a legal department, and if so to send the letter to that legal department;
- (2) that there be a reasonable minimum period specified by the Tribunal for the class member to respond;⁴
- (3) that there be a link in the letter to the Tribunal’s webpage for the proceedings, and a link to, or copy of, the judgment in question;
- (4) that the letter should provide the relevant contact details of the CR or his lawyers; and

⁴ Specified as 28 days: Order of 8 September 2026, para 3.3.

- (5) that the letter contains a statement that a decision by the class member not to respond will not affect its commercial relationship with Apple.
21. Further, the Tribunal directed at [118] that the letter should draw attention to the matters set out in the judgment at [80]: see para 18 above; and that the following matters should be expressly stated on the face of the letter:
- “(1) that the class member is under no obligation to undertake any searches or to make any disclosure in response to the requests in the letter, unless the Tribunal makes an order to that effect;
- (2) that the Tribunal has made no such order;
- (3) that the class member is entitled to insist that Apple obtain a disclosure order from the Tribunal, and will have an opportunity to resist any application which Apple may make for such an order; and
- (4) that the class member is entitled to take its own legal advice before responding to the letter.”

C. THE PARTIES’ SUBMISSIONS

22. The CR made clear that he was not seeking to prevent Amazon from communicating with represented persons about the proceedings on an indefinite basis. He was making only what was described as a “protective application” regarding the timing of such communications, which would prohibit Amazon from engaging in evidence-gathering communications at this stage, on the basis that it was premature.
23. As explained by Mr Beal KC, the CR considered that the first stage was to see what information was produced by Amazon on disclosure, as it could reasonably be expected that such a large, sophisticated and well-resourced company will have a lot of valuable information itself. In that regard, he pointed to a study of sellers conducted by Amazon which it submitted to the EU Commission in 2020, as referenced in the Commission Decision at recital (68). After disclosure from Amazon, the CR recognised that some disclosure requests from “a limited number of sellers” may be appropriate, but those requests could then be better framed in the light of that disclosure and should be nothing like as extensive as the wide-ranging requests proposed by Amazon. Mr Beal urged that the Tribunal should direct what he described as “an ordered and structured

process”, whereby the two sides’ experts should seek to agree what disclosure would be sought and how the sample would be selected; and that if agreement could not be reached then the Tribunal would decide.

24. Underlying the CR’s position was a concern that when faced with the prospect of having to search for and produce the extensive range of documents, data and information which Amazon proposed to seek, many of the sellers would choose to opt out of the proceedings. Mr Beal pointed out that some sellers were very dependent on Amazon and he said they may feel under pressure to comply with its requests.
25. For its part, Amazon had informed the CR well in advance of its intention to seek disclosure and information from selected represented persons, and indeed it had sought to secure the CR’s cooperation in making a joint approach. As noted above, it sent the CR the memorandum from its expert setting out the disclosure and information it would be requesting, and it provided a further memorandum from Mr Holt (albeit only a few days before the hearing) describing in detail his sampling methodology for selecting those to whom Amazon would direct the requests. The intention is to send the first set of requests to around 14 larger sellers, and the second set of what are described as “data/information requests” to 85 sellers of a range of sizes, excluding only sellers with a very low value of sales on the Amazon UK platform. Moreover, Mr Holt’s memorandum identifies the names of the selected sellers in each category, although Amazon explained that it may approach other sellers if those first selected declined to respond.
26. Amazon stated that it proposed to write to these sellers on an open basis. Therefore, its initial letters at least would not be privileged, although it explained that it may wish to follow up with individual sellers who found the requests excessive to discuss what information or data they had available, and those communications would be privileged.
27. Amazon did not object to inclusion in its letters of statements of the kind prescribed by the Tribunal in *Ennis*: see paras 18 and 20 above. Indeed, it relied on *Ennis* in support of its position. But it argued strongly that Amazon has a

legitimate right to gather evidence which it considered necessary to defend itself from the serious allegations in these proceedings seeking massive damages. Mr Turner took us through the various requests proposed, showing how those related to the issues in Trial 1. He pointed out that the CR has said that his lawyers would be contacting some sellers to be potential witnesses, and that would doubtless involve asking them for information and relevant documents; to prevent Amazon from contacting sellers in those circumstances would be wholly unfair. But he said that if the Tribunal had concerns about some of the requests or the CR wished to suggest changes to the method of sampling, Amazon was ready to take those into account.

28. Moreover, the approach suggested by the CR of first waiting for Amazon's disclosure, then discussion between the experts seeking to agree a form of sampling of sellers, with the matter coming back to the Tribunal in the event of disagreement, was wholly impractical given the trial date. If sellers declined to respond to voluntary requests, an application for an order may have to be made, to which the respondent sellers would have a right to object. However, it was essential that this very relevant data and information was available for the experts to consider in preparing their expert reports that would have to be produced soon after next summer.

D. DISCUSSION

29. We note that both Amazon and the CR had sought to put forward a cooperative approach to seller disclosure: Amazon by inviting the CR to cooperate on agreeing a sampling process to identify a pool of sellers who could be approached and the topics in relation to which disclosure would be sought; and the CR with his proposal for a joint expert preparation of a targeted survey of sellers after review of Amazon's disclosure. However, there was a significant and material difference as to timing, and, we anticipate, in the scope of disclosure and information that would be sought. Neither side was attracted by the proposal of the other. While an agreed approach would doubtless have been helpful, from all that we have seen of the exchanges between the parties' representatives and experts we doubt that seeking to achieve agreement would

be fruitful. Furthermore, given the timeline to Trial 1, we consider that Amazon has at this stage a legitimate concern about delay.

30. Although the Tribunal can, and when appropriate will, direct cooperation between experts, collective proceedings remain fundamentally adversarial. In that regard, each side must be free to collect the evidence it seeks to advance its case. We note that Mr Beal said that the CR is not seeking to prevent Amazon approaching potential witnesses, as opposed to seeking disclosure from a range of sellers, no doubt in part because the CR has said that he will be approaching some sellers to be witnesses. But this is not a clear dividing line and we agree with Mr Turner that an approach to a potential witness inevitably involves discussion of what they would say (i.e. information) and what relevant documents they have.
31. We do have concern about the breadth of some of the requests Amazon proposes to direct to sellers, some of whom will not be large businesses. For example, for the sample of 85 sellers of various sizes who have offered products on the following channels:

- “(a) Other online marketplaces (e.g., eBay, Etsy, Onbuy, Argos);
- (b) The seller’s own website;
- (c) The seller’s own physical (bricks-and-mortar) outlets;
- (d) Wholesale sales to (i) physical and online department stores (e.g., John Lewis) or (ii) other retailers; or
- (e) Social media”

Amazon proposes to ask each of them to provide the following data, on a monthly basis during the period 1 October 2015 to 26 June 2024:

- “(a) for each of the sales channels listed above (where applicable), total Gross Merchandise value (GMV), value (excluding VAT) and volume of sales; and
- (b) for a representative sample of products sold through more than one channel at the same time, the same data broken down by channel.”

Such a request appears extremely burdensome, and goes well beyond what might be ordered by the Tribunal on an application for disclosure under rule 89(1)(c): see para 15 above. The fact that the disclosure or information may be relevant is not in itself a sufficient justification.

32. In our view, the governing principle is that the Tribunal can properly exercise its case management powers so as to protect “the integrity of the collective proceedings”, to adapt an expression from the Canadian jurisprudence. We would accordingly seek to prevent the defendants from communicating with represented persons in a manner which, even if unintentionally, is misleading or might be intimidatory, and which might place them under unfair pressure to seek to opt out. However, we should seek the least intrusive way of doing so in order to preserve the right of the defendants to prepare their defence. In the present case, we do not think that seeking to control the extent of the requests to be made, or the order sought by the CR, is the appropriate or proportionate way forward. Instead, we propose to follow the approach in *Ennis* of directing the inclusion of various statements on the face of the communications, tailored to the circumstances of the present case. However, given the general position that a court will not order disclosure from a third party of matters which should be obtainable from a party, we shall also direct that Amazon should not seek from represented persons disclosure or information unless it has taken reasonable steps to ascertain that equivalent information is not readily available within Amazon. Mr Turner confirmed that Amazon did not seek to resist such a restriction.

33. Accordingly, we direct that Amazon should:

- (1) make reasonable efforts to identify whether any seller to whom it proposes to write seeking disclosure or information has a legal department, and if so to send its letter to that legal department;
- (2) include a link in the letter to the Tribunal’s webpage for these proceedings;
- (3) provide in the letter the relevant contact details of the CR or his lawyers;
- (4) state that the seller has 28 days to respond to the letter; and
- (5) include the following statements in its letter:

- (i) that the seller is under no obligation to undertake any searches or provide information in response to the requests in the letter, unless the Tribunal should make an order to that effect;
- (ii) that at the present time the Tribunal has made no such order and Amazon has not applied for an order;
- (iii) that if Amazon applies for a disclosure order from the Tribunal, the seller will have an opportunity to resist the application;
- (iv) that if Amazon does make such an application, Amazon will normally be expected to bear the costs of that application and pay the seller's reasonable costs of responding to the application and of complying with any order, including its legal costs;
- (v) that if the Tribunal does make a disclosure order, it is likely to be limited to specific documents or categories of documents, in a way that it is clear that documents can readily be identified;
- (vi) that the seller is entitled to take its own legal advice before responding to the letter; and
- (vii) that a decision by the seller not to respond will not affect its commercial relationship with Amazon.

34. There are three further points:

- (1) It became clear that, depending on the response from individual sellers, Amazon may seek to follow this up to discuss whether there might be alternative information or documents relevant to the inquiry. It is important that Amazon should not in any follow-up communications say anything inconsistent with the statements above.
- (2) Although as noted above Amazon initially proposes to write 'open' letters to the selected sellers, which therefore will not be privileged, it

may choose to conduct any subsequent exchanges with a seller on a confidential and privileged basis. If it does so, it may inform the seller that the communication is privileged and that the seller may not discuss the contents of the communication with the CR or the CR's lawyers, although the seller is free to seek advice from its own lawyers.

- (3) Some of the documentation and information sought appears commercially sensitive, and Amazon through its own retail operation is a competitor of many of these sellers. It is important that Amazon should put in place arrangements to protect that confidentiality, potentially by arranging that any material produced goes only to its solicitors and independent economic expert, and should make clear to the relevant sellers that it will be doing so.

35. Finally, we note that Amazon had very responsibly informed the CR well in advance of its intention to communicate with represented persons to seek disclosure and information. We consider that this should be the norm, so as to allow the CR to consider the position and whether to seek any directions in that regard from the Tribunal.

36. This judgment is unanimous.

POSTSCRIPT

37. The Tribunal was assisted at the CMC by the oral submissions from the skilful and experienced advocates on both sides. But it was not assisted by what were clearly excessive claims to confidentiality that had been asserted by Amazon for some of the relevant documents, including passages in the correspondence from its solicitors, which inevitably hindered some of the exchanges between the Tribunal and the advocates at a hearing conducted in open court. There have been judicial warnings in the past about unreasonable claims to confidentiality being put forward: see e.g. *Infederation Ltd v Google LLC* [2020] EWHC 657 (Ch), [2020] 4 CMLR 22 at [56]-[58]. Although confidentiality rings have become an established part of competition proceedings, it is the duty of the parties' solicitors to satisfy themselves that documents, or passages in

documents, are restricted to a confidentiality ring only when they are truly commercially confidential.

Sir Peter Roth
Chair

Charles Banks

Keith Derbyshire

Charles Dhanowa C.B.E., K.C. (*Hon*)
Registrar

Date: 26 October 2026