



## COMPETITION APPEAL TRIBUNAL

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

#### **CASE NO. 1641/7/7/24**

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 2024 of an application to commence collective proceedings, on an opt-out and opt-in basis, under section 47B of the Competition Act 1998 (“the Act”), by BIRA Trading Limited, a company limited by shares incorporated in England and Wales, with company number 11628600, the Director of which is Mr Andrew Goodacre (“the Applicant/Proposed Class Representative”) against (1) Amazon.com, Inc., (2) Amazon Europe Core S.À.R.L., (3) Amazon EU S.À.R.L., (4) Amazon Services Europe S.À.R.L., (5) Amazon U.K. Services Ltd. and (6) Amazon Payments U.K. Limited (together “the Proposed Defendants”) (“the Application”). The Applicant/Proposed Class Representative is represented by Willkie Farr & Gallagher (UK) LLP, Citypoint, 1 Ropemaker Street, London EC27 9AW (Reference: Boris Bronfentrinker/Elaine Whiteford).

The Application proposes to combine standalone claims for damages for third-party merchants (the “Proposed Class Members”) who have suffered loss as a result of the conduct of the Proposed Defendants (collectively “Amazon”). The Application alleges that Amazon abused its position of dominance in the market for the supply of e-commerce marketplace services to third-party merchants tendering to customers in the UK (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 Amazon operated an unlawful product entry strategy whereby they leveraged non-public data acquired from third-party merchants on an upstream market in which they were dominant in order to inform business decisions on the downstream market on Amazon’s UK Online Marketplace, on which Amazon is the seller of record (“Amazon Retail”), and in competition against those third-party merchants on Amazon’s UK Online Marketplace. Amazon are also alleged to have self-preferenced their Amazon Retail product via the “Buy Box” feature, a function of Amazon’s website prominently features a single offer on a given page.

The Proposed Class are third-party merchants who are actual or potential competitors of Amazon for sales of products on Amazon’s UK Online Marketplace, who sold new goods on Amazon’s UK Online Marketplace on that platform between 1 October 2015 and 6 June 2024 (“Relevant Period”). The proposed collective proceedings are brought on an opt-out basis on behalf of each eligible claimant within the Proposed Class who is domiciled in the UK, on a domicile date yet to be determined, and on an opt-in basis on behalf of each eligible claimant within the Proposed Class who is not so domiciled. The Application estimates that the number of third-party merchants active on Amazon’s UK Online Marketplace between October 2015 and June 2023 whose country of origin was the UK is approximately 35,000 which estimates could be refined further with disclosure from Amazon. A preliminarily estimated is that the Proposed Class Members suffered aggregate losses of up to £1.147 billion, inclusive of interest to 30 June 2024.

Amazon is a multinational technology company, whose online marketplace is the largest e-commerce retail platform of any kind in the UK. Amazon UK Online Marketplace comprises the desktop and mobile-optimised versions of the website [www.amazon.co.uk](http://www.amazon.co.uk) with the Amazon homepage and iOS and Android versions of the Amazon app available for mobile devices where the app’s settings specify the UK as the region in which the merchant has chosen to sell. Amazon operates the Amazon UK Online Marketplace in two capacities: (i) upstream in the supplying e-commerce marketplace services to third-party merchants seeking to reach customers in the UK and (ii) downstream as a merchant, Amazon Retail, selling its own inventory on Amazon’s UK Online Marketplace. Amazon’s UK Online Marketplace generates revenue for Amazon both through direct sales by

Amazon Retail and through charging fees levied on third-party merchant product offerings.

The Proposed Defendants are all entities within the Amazon group of companies. The First Proposed Defendant, Amazon.com, Inc., is a US corporation registered under the laws of the State of Delaware, United States of America, with registration number 2620453. The Second Proposed Defendant is Amazon Europe Core S.À.R.L, a company incorporated under the laws of Luxembourg, with registration number B-180022. The Third Proposed Defendant is Amazon EU S.À.R.L, a company incorporated under the laws of Luxembourg, with registration number B-101818. The Third Proposed Defendant has a UK branch, Amazon EU S.À.R.L, with UK establishment number BRO17427. The Fourth Proposed Defendant is Amazon Services Europe S.À.R.L, a company incorporated under the laws of Luxembourg, with registration number B-93815. The Fifth Proposed Defendant is Amazon UK Services Ltd, a company incorporated under the laws of England and Wales, with a registration number of 03223028. The Sixth Proposed Defendant is Amazon Payments UK Ltd, a company incorporated under the laws of England and Wales, with a registration number of 11049457.

The First Proposed Defendant is the parent company of the Amazon group of companies and its presence in the UK consumer market is achieved primarily through the Second Proposed Defendant, its wholly owned subsidiary that has responsibility for operating the automated tools, databases and data infrastructures underlying the operation of Amazon's European business operations. The First to Fifth Proposed Defendants are involved in operating the Amazon UK Online Marketplace. The Sixth Proposed Defendant is counterparty to the Payments User Agreements whereby it acts as a payment service provider for third-party merchants making sales on the Amazon UK Online Marketplace.

In the course of its activities on the upstream market, the Application states that the Amazon acquired an enormous amount of real-time granular, non-publicly available, data regarding third-party merchants offering product for sale on Amazon's UK Online Marketplace, including the actual quantity sold and actual revenues generated, through an agreement between Amazon and third-party merchants which conferred on Amazon all rights to data generated through activities on Amazon's UK Online Marketplace. It is alleged that Amazon abused their dominant position on the upstream market to gain a structural advantage downstream as a retailer on Amazon's UK Online Marketplace by using that data to inform, including through its unique data-driven algorithms, the product entry strategy of Amazon Retail. This data is alleged to have informed its product entry strategy variously; including in relation to which products Amazon Retail should sell, when to start or end the sale of products, whether and on what terms to negotiate with suppliers and vendors for the sale of products on Amazon's UK Online Marketplace, and other pricing, inventory management and planning matters.

The Applicant/Proposed Class Representative contends that, as a result of the conduct, the Proposed Class has suffered loss in four ways described according to the following channels:

1. Business stealing channel: whereby Amazon began to sell the same or similar successful products sold by rival third-party merchants on the Amazon marketplace earlier and more precisely than would have been possible absent the conduct;
2. Price channel: whereby Amazon entered more product markets than it otherwise would have but for the conduct resulting in lower product prices in those product markets thereby depriving third-party merchants of higher margins and profits;
3. Innovation channel: whereby Amazon acquired greater benefits of innovation upon introducing same or similar products while shielded from competitive risk while third-party merchants took the risk of introducing new potentially unprofitable products acquiring fewer benefits of innovation; and
4. Capacity channel: whereby Amazon would have had a slower expansion path and exerted less competitive pressure on third-party merchants in the product markets resulting in the third-party merchants making fewer sales and achieving lower scale efficiencies in circumstances where the conduct enabled faster expansion.

The Applicant/Proposed Class Representative claims that the Proposed Class Members over the Relevant Period have collectively suffered aggregate damages in the form of profits lost or otherwise appropriated by the Amazon due to cumulative revenue lost through the four channels above and loss in profits flowing from ongoing suppressive effects to the third-party merchants' profitability due to the Amazon continued presence in

these product markets after entry. The losses suffered by the Proposed Class can be evaluated by assessing the sales acquired by Amazon relative to the counterfactual absent the alleged abusive conduct.

According to the Application, the Claims are suitable for resolution in collective proceedings because the Claims are brought on behalf of an identifiable class of persons, and the Claims raise common issues, namely liability in relation to the alleged breaches of Article 102 TFEU and/or the Chapter II Prohibition in the Relevant Market on the Amazon's UK Online 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 is not a member of the Proposed Class and is able to act impartially in the interests of all members of the Proposed Class and is not aware of any material interest that conflicts with the interests of the Proposed Class Members.
2. The Applicant/Proposed Class Representative is a pre-existing not-for-profit trade association for independent retailers in the UK, with a range of experience relating to the retailer sector, having 4,379 members across the UK as at 6 June 2024, which membership is reflective of the diversity of sizes, structures and sectors of independent retailers who sell through the Amazon's UK Online Marketplace.
3. The Applicant/Proposed Class Representative has put in place a governance and Litigation Plan, including a team of three individuals to manage the litigation, with day-to-day decision-making delegated to Mr Andrew Goodacre, who has been CEO of BIRA for the preceding five years.
4. The Applicant/Proposed Class Representative has adequate funding for the claims and will be able to pay Amazon's recoverable costs if ordered to do so. The Applicant/Proposed Class Representative has entered into a Litigation Funding Agreement with LCM Funding UK Limited and obtained a funder adverse costs indemnity insurance policy, insuring the Applicant/Proposed Class Representative in respect of Amazon's recoverable costs of up to £15 million.

The Applicant/Proposed Class Representative submits that these claims are suitable for resolution through collective proceedings because the most efficient, economically viable and fair way for the Proposed Class to obtain compensation for losses suffered as a result of the alleged abuse of a dominant position is through the Proposed Collective Proceedings. This is including because:

1. It would be inefficient and onerous to require each individual claimant to bring an individual claim in circumstances where the common issues cover legal, factual and economic issues, determinable only through expert economic modelling and analysis of extensive data disclosure by Amazon.
2. The individual claims of each claimant are relatively low in value as compared to the cost of bringing them, despite being substantial on an aggregate basis and the Proposed Collective Proceedings therefore provide an avenue for class-wide recovery without the expense of individual claims.

The relief sought in these proceedings is:

- (1) Damages to be assessed on an aggregate basis;
- (2) Compound or, in the alternative, 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

Published 1 August 2024