

**Notice of intention to accept  
commitments offered by  
Amazon in relation to conduct  
on its UK online marketplace**

**Case number 51184**

26 July 2023



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# 1. Introduction

- 1.1 On 5 July 2022, the Competition and Markets Authority (the '**CMA**') opened an investigation into whether certain practices by Amazon UK Services Ltd and Amazon.com, Inc., Amazon Europe Core S.À.R.L., Amazon EU S.À.R.L., and any other member of their corporate group ('**Amazon**') on Amazon's UK online marketplace (the '**UK Amazon Marketplace**') infringe the Chapter II prohibition of the Competition Act 1998 (the '**Act**') (the '**Investigation**').
- 1.2 The CMA is concerned that from at least January 2021 Amazon has engaged in conduct that may have abused, and/or continues to abuse, its dominant position in the market for the supply of e-commerce marketplace services to third-party sellers to reach customers in the UK. Specifically, the CMA's competition concerns are that:
- (a) Amazon uses data relating to, and/or derived from, the commercial activities of third-party sellers to inform business decisions by its retail arm ('**Amazon Retail**') when competing against those sellers on the UK Amazon Marketplace;
  - (b) Amazon sets and applies the conditions and criteria for selecting the 'Featured Offer'<sup>1</sup> on product pages in a discriminatory manner, such that Amazon Retail and sellers that use Amazon's fulfilment services are unfairly advantaged over other sellers; and
  - (c) third-party sellers that use carriers other than Amazon's fulfilment services or Royal Mail are unable to independently negotiate terms and rates for Prime delivery services with those carriers and must instead use the terms and rates that have been agreed by Amazon with those carriers.
- 1.3 On 7 July 2023, Amazon offered to provide binding commitments to the CMA to address the CMA's competition concerns (the '**Proposed Commitments**'). The Proposed Commitments are described in Chapter 5 below and are set out in full in the Annex to this Notice.
- 1.4 In summary, the main elements of the Proposed Commitments are:
- (a) Amazon will not use non-public data provided by third-party sellers to Amazon or derived through their use of Amazon's marketplace services (or related services) for the purposes of its own retail operations that are

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<sup>1</sup> The Featured Offer is displayed prominently on Amazon's product pages and provides customers with one-click options to 'Buy Now' or 'Add to Basket' in relation to items from a specific seller. The display of the Featured Offer with the associated 'Buy Now' and 'Add to Basket' options is commonly referred to as the 'Buy Box' or 'offer display'.

in competition with third-party sellers. Specifically, Amazon must not use such data to inform decisions to identify and add Amazon Retail offers; identify vendors or negotiate prices and terms; make decisions to start and stop purchasing products; inform inventory planning for products; or inform pricing decisions.

- (b) Amazon will apply objectively verifiable, non-discriminatory conditions and criteria to determine which offer (either from Amazon Retail or third-party sellers) will become the Featured Offer and will not use Prime-eligibility or Prime labelling as relevant criteria for selecting the Featured Offer.
- (c) Amazon will allow the use of independently negotiated rates between carriers and sellers in respect of Prime-eligible offers, as long as the carrier has connected with Amazon's systems in the appropriate manner. Amazon will make reasonable means available to enable interested carriers to connect with Amazon's systems, and will not use any rate information obtained for the purposes of Amazon's own rate-setting or commercial negotiations regarding fulfilment services.

- 1.5 The CMA's provisional view is that the Proposed Commitments, if implemented, would address the CMA's competition concerns.
- 1.6 Under section 31A of the Act, read with paragraph 2 of Schedule 6A to the Act, the CMA hereby gives notice that it proposes to accept the Proposed Commitments (the '**Notice**') and invites representations from persons likely to be affected by this proposed course of action.
- 1.7 The CMA will take relevant representations it receives into account before making its final decision on whether to accept the Proposed Commitments. Details on how to make representations are provided at the end of this Notice. The closing date for representations is **5pm on Friday, 1 September 2023**.
- 1.8 Should third parties wish to bring issues which do not relate to the specific competition concerns addressed by the Proposed Commitments (set out in paragraph 1.2 above) to the attention of the CMA, details on how to do so are set out in the [CMA's guidance on how to report a competition or market problem](#).
- 1.9 The CMA does not intend to publish the responses to the consultation. However, information contained in the representations may be used or summarised on an anonymous basis, including in any commitments decision or notice of intention to accept any modified commitments.

1.10 Formal acceptance of the Proposed Commitments by the CMA would result in the termination of its Investigation, with no decision made on whether or not the Act has been infringed. The commitments would take effect from the date of such acceptance.

1.11 Acceptance of the Proposed Commitments would not prevent the CMA from taking any action in relation to competition concerns which are not addressed by the Proposed Commitments. Moreover, acceptance of the Proposed Commitments would not prevent the CMA from continuing the Investigation, making an infringement decision, or giving a direction in circumstances where the CMA had reasonable grounds for:

- believing that there had been a material change of circumstances since the commitments were accepted;
- suspecting that a person had failed to adhere to one or more of the terms of the commitments; or
- suspecting that information which led the CMA to accept the commitments was incomplete, false or misleading in a material particular.<sup>2</sup>

1.12 The remainder of this Notice provides:

- an overview of the CMA's investigation (Chapter 2);
- background information regarding Amazon and the relevant market context (Chapter 3);
- details of the CMA's competition concerns (Chapter 4);
- a summary of the Proposed Commitments (Chapter 5);
- the CMA's assessment of the appropriateness of commitments in this case (Chapter 6);
- details of the CMA's intentions and how to provide comments in response to this Notice (Chapter 7); and
- the text of the Proposed Commitments (Annex).

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<sup>2</sup> Pursuant to section 31B of the Act.

## 2. The CMA's investigation

### The Investigation

- 2.1 In July 2022, the CMA launched a formal investigation under section 25 of the Act, having established there were reasonable grounds for suspecting that the Chapter II prohibition of the Act had been infringed.<sup>3</sup>
- 2.2 During the Investigation, the CMA has undertaken various investigative steps to gather evidence from Amazon and other third parties. These steps include sending formal notices requiring the production of documents and provision of information under section 26 of the Act, as well as obtaining further information through calls and other correspondence.

### The commitments offer

- 2.3 After the launch of the Investigation, Amazon indicated an intention to offer commitments to address the CMA's competition concerns. Accordingly, and in line with the CMA's Guidance on its investigation procedures under the Act (the '**Procedural Guidance**'),<sup>4</sup> the CMA proceeded to discuss with Amazon the scope of any commitments which the CMA considered would be necessary to address the concerns it had identified.
- 2.4 Section 31A of the Act provides that, for the purposes of addressing the competition concerns it has identified, the CMA may accept, from such person or persons concerned as it considers appropriate, commitments to take such action (or refrain from such action) as it considers appropriate. The Procedural Guidance describes the circumstances in which the CMA is likely to consider it appropriate to accept binding commitments and the process by which parties to an investigation may offer commitments to the CMA.<sup>5</sup>
- 2.5 In accordance with the Procedural Guidance, a business under investigation can offer commitments at any time during the course of the investigation until a decision on infringement is made. In this case, no decision on infringement has been made.

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<sup>3</sup> Similar conduct in the EEA has been investigated by the European Commission (Case AT.40462 Amazon Marketplace; Case AT.40703 Amazon Buy Box) and Italy's competition authority, the Autorità Garante della Concorrenza e del Mercato (AGCM), (Case A528). The European Commission has issued a decision to accept commitments in its cases: see Summary of Commission Decision C(2022)9442, 20 December 2022. The AGCM has issued an infringement decision in its case: AGCM's decision A528, 30 November 2021.

<sup>4</sup> [Guidance on the CMA's investigation procedures in Competition Act 1998 \(CMA8, 31 January 2022\)](#), paragraph 10.22.

<sup>5</sup> [Procedural Guidance](#), paragraphs 10.15 – 10.25.

- 2.6 The Proposed Commitments being offered to the CMA by Amazon are set out in the Annex to this notice. The offering of such commitments does not constitute an admission by Amazon of an infringement under the Chapter II prohibition.
- 2.7 Having considered Amazon's Proposed Commitments, the CMA is of the provisional view that they address its competition concerns for the reasons set out in this Notice, and that it is appropriate for the CMA to close the Investigation by way of a formal decision accepting the Proposed Commitments. Formal acceptance of the Proposed Commitments would result in the CMA terminating the Investigation, and not proceeding to a decision on whether or not the Chapter II prohibition has been infringed.

### **Other matters considered by the CMA**

- 2.8 In addition to the competition concerns set out in Chapter 4 of this Notice and which the CMA provisionally considers will be addressed by the Proposed Commitments, in the course of its Investigation the CMA also considered whether:
- (a) Amazon sets and/or assesses the criteria for selling under the Prime label in a way that unfairly favours Amazon Retail and other sellers that use the Amazon Fulfilment Network ('AFN')<sup>6</sup>; and/or
  - (b) Amazon restricts competition between carriers for Prime order services by limiting which carriers third-party sellers can use for the delivery of independently-fulfilled Prime orders.
- 2.9 Following review of the evidence gathered to date and consideration of this case against the CMA's wider portfolio of cases, the CMA decided, in accordance with the CMA's procedural guidance,<sup>7</sup> that it was not an administrative priority for the CMA to further investigate these issues at the present time (and as such these matters are not part of the competition concerns set out in this document which the Proposed Commitments seek to address).<sup>8</sup> In making this decision, the CMA noted, in particular that:
- (a) The preliminary evidence gathered by the CMA indicated that:
    - (i) Throughout 2022, the AFN on average met or exceeded the conditions and criteria for independently fulfilling Prime orders (to the

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<sup>6</sup> The AFN is Amazon's own logistics network, where Amazon is responsible for the fulfilment of orders (storing, packing, shipping and handling returns, refunds, and customer complaints).

<sup>7</sup> [Procedural Guidance](#), paragraph 10.2.

<sup>8</sup> The CMA's prioritisation principles are set out in *Prioritisation principles for the CMA* (CMA16), April 2014.



extent that comparable data is available for the AFN) and the average delivery time for AFN orders was faster than the delivery speed required for display of the Prime label.

- (ii) In addition to its Fulfilment by Amazon ('**FBA**') and separate Amazon Shipping services, Amazon has approved three UK carriers (DPD, Evri, and Royal Mail) to provide independent Prime delivery services to third-party sellers (carriers that have been approved by Amazon for this purpose are referred to in this Notice as '**SFP Carriers**') – more than on any other Amazon Marketplace in Europe in 2022. These carriers cover a significant proportion of the UK parcel shipping market<sup>9</sup> and it is likely that few, if any, other UK carriers would at present meet the criteria and have the requisite scale to be an SFP Carrier.
- (b) Further investigation of these matters would require significant further CMA resources which the CMA considers can be more effectively used on other projects.

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<sup>9</sup> See the [Pitney Bowes Parcel Shipping Index 2022](#). In 2021, Royal Mail, DPD, and Hermes (Evri) had a combined share of 50% of UK parcel shipping by revenue and 49% by volume while Amazon Logistics had a share of 12% by revenue and 17% by volume.

### 3. Background

#### The party and services under investigation

- 3.1 Amazon operates the UK Amazon Marketplace which is an e-commerce marketplace that enables sellers offering retail products to transact with consumers.
- 3.2 Amazon generates revenues from the fees and commissions paid by third-party sellers for the various services offered to third parties on its marketplace and from its own retail sales. Amazon provides basic services, including listing and payment services, to all third-party sellers.
- 3.3 Third-party sellers can also access optional services, including through programmes such as Amazon's professional selling plan or its FBA service. Membership of such programmes may incur specific fees. FBA allows sellers on the UK Amazon Marketplace to use Amazon's logistics centres and delivery network to store, package and ship their products to consumers. Products sold by sellers that use FBA ('**FBA Sellers**') are dispatched by sellers to be warehoused and delivered to the consumer by Amazon.
- 3.4 Amazon Retail sells products, including in competition with third-party sellers, on the UK Amazon Marketplace.

#### The relevant market

- 3.5 The UK Amazon Marketplace acts as an intermediary between distinct groups of users (sellers and end customers) and may, therefore, be described as a two-sided platform. On one side of the platform, Amazon supplies marketplace services (including fulfilment services) to third-party sellers. On the other side, it serves customers in the UK by providing a website on which they can find products, read descriptions and reviews of them, purchase them from third-party sellers or from Amazon Retail, and ultimately have the products delivered to them.
- 3.6 On the basis of its Investigation to date, the CMA's preliminary view is that the relevant market for the purposes of this Investigation is no broader than the supply of e-commerce marketplace services<sup>10</sup> to third-party sellers to reach customers in the UK.

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<sup>10</sup> Relevant aspects of the customer side of Amazon's e-commerce marketplace have been taken into account for the purposes of identifying the CMA's competition concerns.

- 3.7 The CMA considers that there are core marketplace services, such as listing and payment services, that are essential to permit sellers to conduct transactions on e-commerce platforms. The CMA has only included platforms that provide these services for the purposes of considering Amazon's position on the relevant market (below).
- 3.8 The CMA does not need to reach a definitive conclusion on the scope of the relevant market for the purposes of accepting commitments.

### **Amazon's position on the relevant market**

- 3.9 The CMA provisionally estimates that the UK Amazon Marketplace accounts for at least 50% of the market for the supply of e-commerce marketplace services to third-party sellers to reach customers in the UK, based on value of third-party sales and online reach.
- 3.10 In addition, very few (if any) of the alternative e-commerce marketplaces considered by the CMA have the range of features or services that Amazon offers to sellers, which indicates that Amazon is unlikely to face strong competition from other e-commerce marketplaces.
- 3.11 The degree of substitution between the available alternatives to the UK Amazon Marketplace for consumers may differ to some extent from sellers. However, due to the existence of factors such as the very wide range of products on the UK Amazon Marketplace and consumer loyalty from certain user groups (such as Prime users), the CMA provisionally considers that such alternatives for consumers are unlikely to apply a sufficient constraint to counteract Amazon's market power in the relevant market.
- 3.12 The CMA therefore suspects that Amazon holds a dominant position on the market for the supply of e-commerce marketplace services to third-party sellers to reach customers in the UK.

### **Amazon's conduct in the relevant market**

#### **Use of third-party seller data**

- 3.13 Amazon has told the CMA that all third-party sellers wishing to sell on the UK Amazon Marketplace must enter into the Amazon Services Europe Business Solutions Agreement (the '**BSA**') and the Amazon Payments UK User Agreement (the '**Payments Agreement**'). These are standard click-through agreements that set out, inter alia, the terms and conditions that apply in relation to the collection and use of third-party seller data by Amazon.

- 3.14 Under the terms of the BSA and Payments Agreement, third-party sellers are required to provide certain data to Amazon, including: contact details; credit card information; information about the products that they make available for sale on the UK Amazon Marketplace; information regarding shipment, fulfilment, order status and tracking; VAT registration (or other evidence that the seller is in business); and anticipated transaction volumes. Amazon has told the CMA that it collects certain other data relating to third-party sellers on its UK Amazon Marketplace, including data relating to the sales of listed products, such as transaction data.
- 3.15 In order to sell on Amazon, third-party sellers are required under the BSA to permit Amazon to use data relating to, and/or derived from, their commercial activities in connection with any Amazon product or service (not limited to the provision of services to third-party sellers on the UK Amazon Marketplace).

### **Selection of the Featured Offer**

- 3.16 On the UK Amazon Marketplace, each product has a single 'product detail page' which provides details of the product, including its attributes and specification and any consumer reviews. For any given product, there may be offers from one or more third-party sellers and/or from Amazon Retail. Amazon prominently displays on each product detail page the offer of one particular seller for the product – the Featured Offer – by placing it alongside one-click options to 'Buy Now' and 'Add to Basket'.<sup>11</sup> The display of the Featured Offer with the associated 'Buy Now' or 'Add to Basket' options is commonly referred to as the 'Buy Box' or 'offer display'. The product detail page also shows, less prominently (below the Featured Offer), any other competing sellers' offers (or provides links to such offers). These offers from competing sellers do not have the same one-click options as the Featured Offer.<sup>12</sup>
- 3.17 Having an offer selected as the Featured Offer is important to sellers, as evidence provided by Amazon indicates that over 75% of purchases on the UK Amazon Marketplace are made via the Featured Offer.
- 3.18 Amazon has told the CMA that it uses a two-step process to select the Featured Offer. First, Amazon assesses the eligibility of third-party sellers through a qualification process (the '**Featured Merchant Eligibility**' or '**FME**').

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<sup>11</sup> There may be some circumstances in which no Featured Offer is displayed on a product detail page.

<sup>12</sup> Products from sellers competing with the Featured Offer can either be added to the shopping basket directly from this list of '*Other sellers on Amazon*' or, after clicking on the link to the full list of other available offers, via the so-called '*Offer Listing Page*'. The Offer Listing Page provides the list of all available offers from different sellers for the same product, including the Featured Offer.

- 3.19 Amazon has told the CMA that the second step in selecting the Featured Offer involves using the Featured Merchant Algorithm ('**FMA**') to determine which of the qualifying offers will be the Featured Offer on the basis of various filters and offer attributes, such as price and delivery speed. Each offer attribute is assigned a weight as part of the process for selecting the Featured Offer.
- 3.20 Amazon has told the CMA that the non-price offer attributes considered by the FMA include whether an offer is Prime-eligible. The CMA understands that this means that Prime-eligible offers are more likely to be selected as the Featured Offer than similar offers that are not Prime-eligible, and that this is the case irrespective of whether or not the consumer viewing the offer is a Prime subscriber.

### **Amazon Prime**

- 3.21 Amazon Prime (or '**Prime**') is an optional, paid subscription programme available to consumers. Prime subscribers pay a monthly or annual fee in exchange for a broad range of services, for example fast and reliable delivery on a wide range of Prime products at no additional cost, free returns, support from Amazon's customer service, and access to digital content.
- 3.22 Amazon gives sellers the option to fulfil their offers under the terms and branding of its Prime programme, which enables them to have a Prime label displayed alongside their offers on the UK Amazon Marketplace. The Prime label conveys to Prime subscribers that they will incur no additional shipping charges if they buy the product and that the order will be delivered quickly (for example, the next day).
- 3.23 The CMA considers that being able to list their offers with a Prime label is important to sellers because Prime subscribers are likely to consider such offers due to the benefits described in paragraph 3.22 above. This is particularly important to sellers because the number of Prime subscribers in the UK is substantial and growing, having increased from [5 – 10] million people in 2018 to [15 – 20] million people in 2021.<sup>13</sup> Further, Prime subscribers are responsible for the vast majority of sales on the UK Amazon Marketplace (over 80% of the total value of sales in 2021).
- 3.24 To sell under the Prime programme, third-party sellers on the UK Amazon Marketplace must either use Amazon's FBA services or qualify for 'Seller

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<sup>13</sup> The exact figures have been replaced with ranges to avoid the disclosure of potentially commercially sensitive information.

Fulfilled Prime' ('**SFP**'). Under both options, a third-party seller and its offer must meet certain Prime eligibility criteria.

- 3.25 Amazon has told the CMA that all offers fulfilled by FBA are generally Prime-eligible. Third-party sellers who wish to fulfil orders themselves can obtain Prime eligibility under the SFP programme if they meet (and continue to meet) certain criteria. These criteria include the use of SFP Carriers.<sup>14</sup> SFP Carriers are selected by Amazon based on their timeliness and reliability of pick-up and delivery.
- 3.26 For a Prime-eligible offer to carry the Prime label when it is displayed to a Prime member, it must meet a delivery speed threshold.

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<sup>14</sup> Once qualified for SFP, sellers must also meet carrier collection time and weekend shipping requirements for Prime orders.

## 4. The CMA's competition concerns

- 4.1 This chapter sets out the CMA's competition concerns regarding Amazon's conduct.

### **Amazon Retail's use of non-public seller data to compete against third-party sellers**

- 4.2 Amazon Retail is able to access and use data relating to, and/or derived from, the commercial activities of third-party sellers, which Amazon obtains through its operation of the UK Amazon Marketplace (and related services it provides to third-party sellers, including FBA services). Such data is referred to in this Notice as '**Seller Data**'.
- 4.3 Certain types of Seller Data are not publicly available and cannot be replicated by third-party sellers in an equivalent manner<sup>15</sup> to Amazon (referred to as '**Non-Public Seller Data**').
- 4.4 The CMA suspects that Amazon Retail's access to Non-Public Seller Data, including via tools and automated systems that utilise such data, gives it an advantage over third-party sellers that operate in competition with Amazon Retail on the UK Amazon Marketplace, as those sellers do not have access to such data.<sup>16</sup>
- 4.5 The CMA is concerned that Amazon Retail may be able to use Non-Public Seller Data to inform various business decisions when competing on the UK Amazon Marketplace. These may include decisions relating to identifying and adding Amazon Retail offers; identifying vendors and negotiating purchase prices and terms; starting and stopping purchasing products; stocking, predicting, and planning inventories of products; and setting product prices.
- 4.6 The CMA's concerns are reflected in complaints that the CMA has received from third-party sellers. These have referred to Amazon's ability to use Non-Public Seller Data to:
- (a) monitor the success of products introduced by third-party sellers, with the intention of entering successful product markets as a retailer;

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<sup>15</sup> For example, in terms of the variety (including granularity), volume (such as the size of data sets), value (economic relevance) and velocity (such as the speed at which the data can be accessed) of the data.

<sup>16</sup> The CMA's concerns about Amazon Retail's use of Non-Public Seller Data arise regardless of whether that Non-Public Seller Data is accessed and used by an automated system, or manually by an employee; relates to an individual third-party seller or is aggregated; or is used in isolation or combined with other data.

- (b) identify and approach the suppliers of third-party sellers' high-selling goods; and
  - (c) negotiate more effectively with, and demand discounts from, suppliers of goods to Amazon Retail (for example, by referring to prices paid to suppliers by third-party sellers).
- 4.7 Amazon's access to and use of Non-Public Seller Data could give rise to a competitive advantage for Amazon Retail which arises from its operation of the UK Amazon Marketplace rather than from competition on the merits. This may, in turn, lead to the following adverse effects on competition:
- (a) a reduction in the scale and competitiveness of third-party sellers on the UK Amazon Marketplace;
  - (b) a reduction in the number and range of product offers from third-party sellers on the UK Amazon Marketplace; and/or
  - (c) consumers having less choice, being offered lower quality goods and/or paying higher prices on the UK Amazon Marketplace than would otherwise be the case.

### **Biases in the Featured Offer selection process**

- 4.8 The CMA is concerned that the FME and the FMA processes (the '**Featured Offer Selection Process**') may include or involve biases or discrimination that unfairly favour Amazon Retail and/or FBA Sellers, compared to sellers that do not use FBA services.
- 4.9 Data provided to the CMA by Amazon shows that where both Amazon Retail and third-party seller offers were eligible to be the Featured Offer on a product page in 2021, an offer by Amazon Retail was selected to be the Featured Offer in more than 80% of cases.
- 4.10 The CMA has received complaints from third-party sellers which allege that the criteria for selecting the Featured Offer discriminate in favour of Amazon-fulfilled offers (that is, offers from Amazon Retail and FBA Sellers), including in circumstances where Amazon-fulfilled offers are less competitive on price.
- 4.11 The CMA understands that Amazon changes the criteria and conditions for the Featured Offer Selection Process and how they are applied over time. The CMA suspects that, regardless of any such changes, the Featured Offer Selection Process may be designed and applied in ways that unfairly favour product offers from Amazon Retail and/or FBA Sellers.



- 4.12 The CMA is concerned that any biases or discrimination in favour of Amazon Retail and/or FBA Sellers in the Featured Offer Selection Process may lead to:
- (a) reduced competition between sellers on the UK Amazon Marketplace, including on parameters such as delivery (including speed and quality) and price;
  - (b) a reduction in the number and range of product offers from third-party sellers on the UK Amazon Marketplace;
  - (c) consumers having less choice, being offered lower quality goods and/or paying higher prices on the UK Amazon Marketplace than would otherwise be the case; and/or
  - (d) a reduction in the scale and competitiveness of fulfilment service providers that serve sellers on the UK Amazon Marketplace.

### **SFP Carrier rates and terms**

- 4.13 The CMA is concerned that third-party sellers that sell under the SFP programme (**'SFP Sellers'**) are unable to negotiate the terms and rates offered by SFP Carriers, except for Royal Mail, independently of Amazon.
- 4.14 Amazon has told the CMA that, while SFP Sellers are able to independently negotiate commercial terms and rates with Royal Mail, they are not able to do so with other SFP Carriers (as at the date of this Notice, those carriers are Evri and DPD, in addition to Ship with Amazon). Instead, Amazon requires SFP Sellers to agree to pre-negotiated rates and commercial terms that are specified in separate agreements between Amazon and the relevant SFP Carrier.
- 4.15 The CMA is concerned that this may:
- (a) disadvantage SFP Sellers that might otherwise be able to obtain better terms and rates from SFP Carriers than those which have been pre-negotiated by Amazon;
  - (b) reduce SFP Carriers' ability to compete against Amazon's fulfilment services, including on price; and
  - (c) lead to higher fulfilment costs being passed on to consumers by way of higher prices.

## 5. The Proposed Commitments

- 5.1 In order to address the CMA's competition concerns (as described in Chapter 4), Amazon has offered the Proposed Commitments to the CMA. The Proposed Commitments are set out in the Annex to this Notice and are summarised below.

### **Proposed commitments relating to the use of data by Amazon Retail**

- 5.2 Amazon has proposed to commit that it will not use non-public<sup>17</sup> data provided by third-party sellers or derived through third-party sellers' use of Amazon marketplace services (or related services, such as payment and fulfilment services), for decisions and decisional processes relating to retail operations by Amazon Retail that are in competition with third-party sellers.
- 5.3 The data to which this applies includes aggregated, individual, anonymised and personal data, whether in raw form or processed.

### **Proposed commitments relating to the Featured Offer Selection Process**

- 5.4 Amazon has proposed to commit that it:
- (a) will apply objectively verifiable and non-discriminatory conditions and criteria for the purposes of determining the selection of the Featured Offer; these conditions and criteria will include all applicable parameters and weightings, and will apply independently of a seller's choice of carrier; and
  - (b) will not use Prime-eligibility or Prime labelling as relevant criteria for the selection of the Featured Offer.

### **Proposed commitments relating to SFP**

- 5.5 Amazon has proposed to commit to allow the use of independently negotiated rates between SFP Carriers and SFP Sellers in respect of Prime-eligible offers, as long as the SFP Carrier has connected with Amazon's systems in the appropriate manner, so that rates can be displayed to sellers when they buy shipping labels through their Amazon seller account. Amazon will make reasonable means available to enable interested SFP Carriers to connect with

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<sup>17</sup> Data will be considered to be 'public' if it is provided by Amazon to genuine third-party sellers (i) for free, (ii) in an accessible format, and (iii) in an equivalent manner to the seller data used by Amazon Retail.

Amazon's systems, and will not use any rate information obtained for the purposes of Amazon's own rate-setting or commercial negotiations regarding fulfilment services.

## Duration

- 5.6 Amazon will implement the above commitments as of the end of a six-month implementation period which will start from the date Amazon receives formal notification of a decision by the CMA to accept commitments. Subject to any earlier variation or release pursuant to sections 31A(3) and 31A(4) of the Act or in accordance with paragraphs 10 to 13 of the Proposed Commitments (discussed below), the commitments will remain in place until 20 June 2028.
- 5.7 On 25 April 2023, the UK Government introduced to Parliament the Digital Markets, Competition and Consumers Bill,<sup>18</sup> which, if adopted, will confer powers on the CMA to regulate firms designated as having Strategic Market Status ('**SMS**') in respect of specific digital activities. These powers will include the ability to impose legally binding obligations on such firms, such as conduct requirements and pro-competition interventions.
- 5.8 The CMA has not decided whether, if it acquires such powers, it would seek to designate Amazon as having SMS in relation to any given digital activity (or activities). However, if it does, then it is possible the CMA may impose obligations under those new regulatory powers that cover (in whole or part), or are relevant to, the competition concerns addressed by the Proposed Commitments. The Proposed Commitments therefore include provisions in paragraphs 10 to 13 that the commitments will cease if and to the extent that the CMA imposes obligations on Amazon pursuant to the proposed Digital Markets, Competition and Consumers Act that the CMA considers would address, whether by the same or different means, the competition concerns addressed by the Proposed Commitments.

## Compliance, monitoring and reporting

- 5.9 The Proposed Commitments provide that an independent monitoring trustee (the '**Monitoring Trustee**') will be appointed to monitor compliance with the commitments. The Monitoring Trustee shall also appoint a technical expert, and, if necessary, other advisers. The CMA must approve the appointment of the Monitoring Trustee, technical expert and any other appointed adviser.
- 5.10 Under the Proposed Commitments, the Monitoring Trustee shall:

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<sup>18</sup> <https://publications.parliament.uk/pa/bills/cbill/58-03/0294/220294.pdf>.

- (a) monitor the performance of the Proposed Commitments and provide a written report on Amazon's compliance to the CMA (sending a non-confidential version to Amazon at the same time) on a semi-annual basis;
- (b) assess the technical means and format through which Amazon provides the information that is provided to it for review;
- (c) propose to Amazon measures it considers necessary to ensure compliance with the Proposed Commitments;
- (d) promptly report to the CMA in writing (sending a non-confidential version to Amazon at the same time) if it concludes on reasonable grounds that Amazon is failing to comply with the Proposed Commitments; and
- (e) reply to questions from the CMA regarding reports provided to it under the Proposed Commitments.

5.11 The Proposed Commitments provide that Amazon shall:

- (a) provide the Monitoring Trustee with all co-operation, assistance and information that is necessary to monitor Amazon's compliance with its obligations under the Proposed Commitments. The Monitoring Trustee shall have access to any of Amazon's IT infrastructure (including algorithms, databases, etc), as well as books, records, documents, management, technical or other personnel, facilities, sites, technical and all other information insofar as this is necessary for fulfilling its duties under the Proposed Commitments;
- (b) comply with any requests by the CMA to provide specified documents or information, which the CMA considers relates to any matter relevant to the exercise of its powers set out in Chapter III of the Act, should Amazon decline requests for information made by the Monitoring Trustee;
- (c) notify the Monitoring Trustee prior to any changes to the Featured Offer Selection Process to the extent they impact Amazon's compliance with the Proposed Commitments, and answer any questions from the Monitoring Trustee about them;
- (d) share and maintain such information, as may be reasonably required, with the Monitoring Trustee for provision to the CMA, provided such sharing of information is necessary to monitor Amazon's compliance with its obligations under the Proposed Commitments; and

- (e) take all actions reasonably required to remedy any breach of the Proposed Commitments and to ensure compliance with them, and inform the Monitoring Trustee about a breach within seven calendar days of becoming aware of it.
- 5.12 The CMA may, on its own initiative or at the request of the Monitoring Trustee or Amazon, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the Proposed Commitments.
- 5.13 The Proposed Commitments also provide for a complaint mechanism that allows third-party sellers and carriers that suspect non-compliance with the Proposed Commitments to submit a written complaint to the Monitoring Trustee.

## 6. The CMA's assessment of the appropriateness of commitments in this case

- 6.1 For the reasons set out below, the CMA provisionally considers that acceptance of the Proposed Commitments would be an appropriate way to address its competition concerns.

### The CMA's Guidance

- 6.2 Pursuant to section 31A of the Act, for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.
- 6.3 In order to accept commitments, the CMA must consider that the commitments offered will address the competition concerns the CMA has identified and the CMA must consider, in the exercise of its discretion, that it is appropriate to accept commitments in the case in question.<sup>19</sup>
- 6.4 The Procedural Guidance states that the CMA is likely to consider it appropriate to accept binding commitments only in cases where (i) the competition concerns are readily identifiable; (ii) the competition concerns are addressed by the commitments offered; and (iii) the proposed commitments are capable of being implemented effectively and, if necessary, within a short period of time.<sup>20</sup>
- 6.5 The Procedural Guidance further states that the CMA will not accept commitments where compliance with them and their effectiveness would be difficult to discern and/or where the CMA considers that not to complete its investigation and make a decision would undermine deterrence.<sup>21</sup>

### The CMA's assessment

- 6.6 The CMA has assessed the Proposed Commitments against the criteria referred to in paragraphs 6.3 to 6.5 above and sets out its provisional conclusions below.

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<sup>19</sup> [Procedural Guidance](#), paragraphs 10.15 – 10.25.

<sup>20</sup> [Procedural Guidance](#), paragraph 10.18.

<sup>21</sup> [Procedural Guidance](#), paragraph 10.20.

## **Whether the competition concerns are readily identifiable**

- 6.7 The CMA provisionally considers that the competition concerns are readily identifiable. Those competition concerns are set out in Chapter 4 of this Notice.

## **Whether the Proposed Commitments address the CMA's competition concerns**

- 6.8 The CMA sets out below its provisional assessment of whether the Proposed Commitments address each of its competition concerns.

### **(a) Access to and use of Non-Public Seller Data**

- 6.9 The CMA provisionally considers that the Proposed Commitments, and in particular the Proposed Commitments set out in paragraphs 5.2 to 5.3 above, address the CMA's competition concern regarding Amazon's access to and use of Non-Public Seller Data (as set out in paragraphs 4.2 to 4.7 above).
- 6.10 The Proposed Commitments will ensure that Amazon Retail does not use Non-Public Seller Data when it makes business decisions in competition with third-party sellers. This restriction applies to the use of such data by Amazon Retail employees as well as by any systems, algorithms or tools that make automated decisions for Amazon Retail in competition with third-party sellers.

### **(b) Biases in the Featured Offer Selection Process**

- 6.11 The CMA provisionally considers that the Proposed Commitments, and in particular the Proposed Commitments set out in paragraph 5.4 above, address the CMA's competition concern regarding potential biases or discrimination in the Featured Offer Selection Process (as set out in paragraphs 4.8 to 4.12 above).
- 6.12 The Proposed Commitments will ensure that Amazon does not set or apply the conditions and criteria (including all applicable parameters and weightings) involved in the Featured Offer Selection Process in a way that unfairly favours Amazon Retail and/or FBA Sellers.

### **(c) SFP Carrier rates and terms**

- 6.13 The CMA provisionally considers that the Proposed Commitments, and in particular the Proposed Commitments set out in paragraph 5.5 above, address the CMA's competition concern regarding third-party sellers that use carriers other than Amazon's fulfilment services or Royal Mail being unable to independently negotiate terms and rates for Prime delivery services with those carriers (as set out in paragraphs 4.13 to 4.15 above).

6.14 The Proposed Commitments will ensure that SFP Sellers may independently negotiate terms and rates with SFP Carriers that wish to do so, rather than being required to use the terms and rates that have been agreed by Amazon with those carriers.

**Whether the Proposed Commitments are capable of being implemented effectively and, if necessary, within a short period of time**

6.15 Amazon can implement the data-related Proposed Commitments by introducing policies and internal access auditing and monitoring mechanisms in relation to Non-Public Seller Data and by controlling the flow of such data to ensure it is not used in systems, algorithms and tools used by Amazon Retail.

6.16 Amazon can implement the Featured Offer-related Proposed Commitments by controlling how the FME and FMA (and any other processes involved in the selection of the Featured Offer) operate and are applied, including by setting and assessing the conditions and criteria on which they are based.

6.17 Amazon can implement the SFP Carrier-related Proposed Commitments by enabling interested SFP Carriers to connect with Amazon's systems and by allowing such carriers to use independently negotiated rates with SFP Sellers in respect of Prime offers.

6.18 Amazon has agreed to implement the Proposed Commitments within six months of being formally notified of the CMA's commitments decision.

6.19 As such, the CMA is satisfied that the Proposed Commitments are capable of being implemented effectively and within a short period of time.

**Whether compliance with the Proposed Commitments and their effectiveness would be difficult to discern**

6.20 The CMA provisionally considers that the monitoring and reporting processes and activities that will be implemented and undertaken pursuant to paragraphs 15 to 36 of the Proposed Commitments mean that Amazon's compliance with the Proposed Commitments and their effectiveness will not be difficult to discern.

6.21 In this respect, Amazon's compliance with the Proposed Commitments will be closely monitored. In particular:

- (a) the CMA will ensure that an appropriate Monitoring Trustee (and technical expert), with the requisite skills, expertise and capacity is appointed to monitor Amazon's compliance with the Proposed Commitments and to report to the CMA;



- (b) Amazon will be required to provide the Monitoring Trustee with all co-operation, assistance, and information that is necessary to monitor compliance, including access to any of Amazon's IT infrastructure including algorithms, databases, servers, internal systems and tools, processes, programs, services, platforms, operating systems, hardware, software, as well as books, records, documents, management, technical or other personnel, facilities, sites, technical and all other information insofar as this is necessary for the Monitoring Trustee to fulfil its duties under the Proposed Commitments;
- (c) the CMA will engage with the Monitoring Trustee and Amazon throughout the duration of the Proposed Commitments regarding the monitoring of compliance; and
- (d) the Proposed Commitments include a complaints mechanism for the reporting of any seller or carrier concerns.

6.22 In addition, Amazon will be required to report to the Monitoring Trustee:

- (a) changes to the ranking and selection processes of the FME and the FMA, as well as to any other conditions and criteria, to the extent such changes may impact Amazon's compliance with the Proposed Commitments;
- (b) any addition or removal of a general ledger category (ie Amazon's product classification that groups products in categories) from the list of general ledger categories set out in Annex 1 to the Proposed Commitments;
- (c) Amazon's decisions to make seller data available to sellers, including the types of data, level of aggregation and modalities of data sharing;
- (d) any information, other than information in relation to rates, required by Amazon to support the use of independently negotiated rates between SFP Carriers and SFP Sellers;
- (e) the fraud and abuse factors considered by the FME; and
- (f) any breach of the Proposed Commitments within seven calendar days of the date on which Amazon becomes aware of a breach, including an explanation of the circumstances in which the breach arose and the steps that Amazon is taking to remedy the breach.

6.23 Further, the CMA notes that:

- (a) Amazon must ensure that, in addition to being non-discriminatory, the conditions and criteria that comprise the Featured Offer Selection Process are 'objectively verifiable'; it will therefore be incumbent on

Amazon to ensure that the Monitoring Trustee (and the CMA) can fully and properly assess those conditions and criteria; and

- (b) should Amazon decline any request for information made by the Monitoring Trustee, the CMA may require Amazon to produce specified documents and/or information which it considers relates to any matter relevant to the exercise of its powers set out in Chapter III of the Act and Amazon shall comply with any such requests.

### **Whether acceptance of the Proposed Commitments would undermine deterrence**

- 6.24 The CMA provisionally considers that acceptance of the Proposed Commitments would not undermine deterrence. The CMA considers that its Investigation and any decision to accept binding commitments should deter Amazon from engaging in similar conduct. The fact that Amazon has offered the CMA commitments early in the Investigation is consistent with this view.
- 6.25 More generally, the CMA considers that its Investigation and any decision to accept binding commitments should help to indicate to undertakings how the CMA will assess similar conduct.
- 6.26 Acceptance of the Proposed Commitments would not preclude the CMA from taking further enforcement action in relation to other suspected breaches of competition law. Nor are the Proposed Commitments intended to restrict the ability of the CMA to use powers under new legislation in the future. The Proposed Commitments include provisions that state that they will fall away in the event the CMA imposes obligations on Amazon pursuant to the proposed Digital Markets Competition and Consumers Act that the CMA considers would address, whether by the same or different means, the competition concerns addressed by the Proposed Commitments.<sup>22</sup>

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<sup>22</sup> Proposed Commitments, paragraphs 10 – 13.

## 7. The CMA's intentions and invitation to comment

- 7.1 For the reasons set out above, the CMA provisionally considers the Proposed Commitments set out in the Annex to this Notice address the CMA's competition concerns (set out in Chapter 4 of this Notice). Therefore, subject to consultation responses, the CMA proposes to accept the Proposed Commitments pursuant to section 31A of the Act.

### Invitation to comment

- 7.2 Any person wishing to comment on the Proposed Commitments should submit written representations to the email address given below by **5pm on Friday, 1 September 2023**.

**Email:** [amazonmarketplaceinvestigation@cma.gov.uk](mailto:amazonmarketplaceinvestigation@cma.gov.uk) with the subject title 'Case 51184 – Response to Amazon Proposed Commitments'.

### Confidentiality

- 7.3 The CMA does not intend to publish the responses to this Notice with any commitments decision or notice of its intention to accept any modified commitments. However, the information contained in the responses may be used or summarised on an anonymous basis in such documents.
- 7.4 If the CMA decides not to accept the Proposed Commitments and is considering disclosing information provided to it in response to this Notice (such as in or with a statement of objections), the CMA will revert to the provider of that information to obtain representations on confidentiality. The CMA will then consider those representations before deciding whether the information should be disclosed under Part 9 of the Enterprise Act 2002.

## **Annex: The Proposed Commitments**

The Proposed Commitments are appended on the pages below.

## Commitments Proposal to the CMA

1. On 5 July 2022, the CMA commenced an investigation, Case 51184, under section 25 of the Competition Act 1998 (“**Act**”) in relation to suspected behaviour pertaining to Amazon’s use of “Non-public Seller Data”, the selection of the Featured Offer, and access to the Prime label. Amazon has offered the following voluntary commitments (the “**Commitments**”) in accordance with section 31A of the Act on the basis that such Commitments would result in the CMA closing the investigation.
2. Amazon’s offer of Commitments does not constitute an admission of wrongdoing. Nothing in these Commitments may be construed as implying that Amazon agrees with the competition concerns expressed by the CMA in its investigation, including in any Commitments Decision, including any preliminary views on suspected dominance or suspected conduct.
3. Consistent with sections 31A and 31B of the Act, and subject to section 31B(4) of the Act, the Commitments have been offered on the understanding that if the CMA accepts the Commitments in accordance with section 31A(2) of the Act, it will not continue the investigation, or make any decision within the meaning of section 31(2) of the Act, and will instead close the proceedings opened on 5 July 2022 in Case 51184.
4. The Commitments are intended to fully address the CMA’s competition concerns, in particular by seeking to ensure that the conditions and criteria that Amazon uses for the purposes of the selection and display of the offers in the Offer Display do not, by reason of discriminatory treatment, lead to a competitive disadvantage for Sellers, irrespective of whether they use Amazon’s fulfilment services or their own.
5. In addition, the Commitments would seek to ensure that Amazon’s first-party retail activities refrain from using non-publicly available data generated or provided by Sellers in the context of their use of Amazon’s marketplace services when making decisions in competition with those Sellers in the Amazon UK Store.
6. The Commitments are also intended to ensure that Sellers that use approved carriers other than Amazon to fulfil Prime-eligible Offers are able to negotiate terms and rates for delivery of those offers independently of Amazon.
7. These Commitments are without prejudice to Amazon’s position should the CMA or any other party conduct proceedings or commence any other legal action against Amazon in a matter covered by these Commitments.

## I. DEFINITIONS

**“Act”** means the Competition Act 1998.

**“Amazon Fulfilment Network” or “AFN”** means Amazon’s own logistics network, where Amazon is responsible for the fulfillment of orders (storing, packing, shipping and handling returns, refunds, and customer complaints).

**“Amazon”** means the entities operating the Amazon UK Store, including Amazon.com, Inc., Amazon UK Services Ltd, Amazon UK Services Ltd, Amazon Europe Core SARL, Amazon Services Europe SARL, and Amazon EU SARL, and its successors and assigns, its connected undertakings, subsidiaries, divisions, and groups.

**“Amazon Retail”** means Amazon’s activity of offering and selling products within the Amazon UK Store where Amazon is the seller of record.

**“Amazon Retail Employees”** means Amazon employees that actively participate in making decisions for Retail Operations in competition with Sellers. Amazon Retail Employees include Category Leads, Vendor Managers, Brand Specialists, Vendor Recruitment teams, and In Stock managers, including future equivalent roles.

**“Amazon Retail Systems”** means any systems, algorithms, or tools that make automated decisions for Retail Operations in competition with Sellers.

**“Amazon UK Store”** means the online store where both Amazon and Sellers make Offers available for purchase to consumers, currently available at [www.amazon.co.uk](http://www.amazon.co.uk).

**“Ancillary Services”** are services offered by Amazon to Sellers together with or in support of the marketplace services, including payment and fulfilment services when directly related to the Sellers’ marketplace activities.

**“ASIN”** means Amazon Standard Identification Number, an alphanumeric code used to identify products in the Amazon catalogue.

**“Carriers”** means the logistics providers meeting the relevant conditions and criteria to fulfil Prime-eligible Offers.

**“Category of products, service, or feature”** means an identifiable group of products (*e.g.*, heavy & bulky products), a service providing a distinct experience to customers (*e.g.*, grocery shopping experience, delivery type), a specific feature of or location in the Store (*e.g.*, a Sellers’ storefront), or similar.

**“CMA”** means the Competition and Markets Authority.

**“Commitment Decision”** means a formal decision by the CMA under section 31A of the Act to accept Commitments, such that section 31B of the Act applies.

**“Effective Date”** means the date upon which Amazon receives formal notification of a Commitment Decision by which the CMA makes the Commitments binding on Amazon.

**“Experiment”** means the action or process of trying out for a limited period of time new methods and new approaches prior to release of that change to production.

**“Featured Merchant Algorithm” or “FMA”** means the automated decision-making system (independent of its name or title) applied to Amazon Retail and Seller Offers that qualify for potential Featured Offer inclusion and used to determine which Offer will be displayed as the Featured Offer in the Offer Display.

**“Featured Merchant Eligibility” or “FME”** means the automated decision-making system (independent of its name or title) that determines whether a Seller qualifies for potential selection as the Featured Offer.

**“Featured Offer”** means the Offer that the FMA selects to feature and display as the Offer in the Offer Display (formerly “Buy Box”) on the product detail page.

**“FBA”** means the Fulfilled by Amazon service that provides Sellers with the option to rely on the AFN for storage, packing, delivery, returns, refunds, and customer support.

**“Filters”** means the automated decision-making systems ingested by the FMA that determine whether an Offer qualifies for potential selection as the Featured Offer, including but not limited to the Select Competitor-Featured Offer Disqualification, Atypical Pricing-Featured Offer Disqualification, and equivalents or successors.

**“General Ledger Category” or “GL”** means Amazon’s product classification that groups products in categories for the Amazon UK Store, as set out in Annex 1 to these Commitments. The Monitoring Trustee shall be informed within 14 calendar days of any addition or removal of a general ledger from the list of general ledgers set out in Annex 1.

**“Genuine Sellers”** for the purposes of the definition of “Non-public” data, means Sellers not suspended, active for at least 90 days since launch on the Amazon UK Store, and with a Professional Seller Account used for the purpose of making Offers in the Amazon UK Store, that have sold at least 40 items in the past calendar month in a General Ledger Category for which they will receive data. Amazon may, in agreement with the CMA, amend the definition of Genuine Sellers as necessary to address misuse of Seller Data.

**“Glance Views”** means the number of visits to a product detail page where an Offer is presented to the customer.

**“GMS”** means Gross Merchandise Sales, a measure of sales value in the Amazon UK Store.

**“Implementation Period”** means a period of six months from the Effective Date.

**“Interested Carrier”** means any Carrier who seeks to use independently negotiated rates and commercial terms and conditions with Sellers in respect of Prime-eligible Offers.

**“Merchant”** means Amazon Retail or any Seller.

**“Merchant Fulfilment Network” or “MFN”** means the network of fulfilment solutions providers that Sellers use outside of the AFN to fulfil orders themselves.

**“Non-public”** means data not made available to Sellers by Amazon or otherwise available through published sources (including the Amazon UK Store). Seller Data is considered public if it is, as an exception to Amazon’s obligations under the commitment set out in Paragraph 1 and in compliance with UK competition rules, made available as part of Amazon’s provision of marketplace services to Genuine Sellers in an equivalent manner to the Seller Data that Amazon Retail uses (*e.g.*, in an equivalent level of aggregation), free of charge, and in a format that can be immediately and effectively accessed and used by the Genuine Sellers – or by third party service providers processing such data at the request of and on behalf of a specific Genuine Seller - for the legitimate purpose of making Offers in the Amazon UK Store or offers in the Genuine Seller’s own online retail shop(s). The Monitoring Trustee shall be informed within 14 calendar days of Amazon’s decision to make such Seller Data available to Genuine Sellers, including the types of data, the level of aggregation of the shared data, and the modalities of data sharing.

**“Offer”** means an offer for a product available for purchase from a Seller or Amazon Retail within the Amazon UK Store and shipped to customers through traditional carrier and logistics services.

**“Offer Display”** means the part of the Amazon UK Store standard product detail page that includes the Featured Offer. The Offer Display was previously known as the “Buy Box”.

**“OPS”** means Order Product Sales, a measure of sales value in the Amazon UK Store.

**“Retail Operations in competition with Sellers”** means the following decisions and decisional processes (whether automated or manual), related to the sale of goods to customers, where Amazon is the seller of record:

1. Retail Operations decisions to identify and add Amazon Retail Offers;
2. Retail Operations decisions to identify Vendors and negotiate purchase prices and terms;
3. Retail Operations decisions to start and stop purchasing ASINs;
4. Retail Operations decisions to stock, predict, and plan inventories of ASINs (not including Amazon’s inventory movement decisions within the Amazon Fulfilment Network); or
5. Retail Operations decisions to set the prices of ASINs.

For the avoidance of doubt, nothing in these Commitments shall prohibit the use of Seller Data to continue operating the Amazon UK Store and improving the Amazon UK Store’s overall performance and sales, including the operation and features of the Amazon UK Store (*e.g.*, product search, marketing, preventing fraud and abuse, running Amazon’s fulfilment services, and customer support services); monitoring the performance of the Amazon UK Store as a whole using data aggregated at the level of General Ledger Category or above; assisting brands in managing their activities across the Amazon UK Store; and assessing activity in the Amazon UK Store to inform actions to improve the Amazon UK Store’s overall performance and sales, as long as none of these decisional processes disadvantage Sellers as compared to Amazon Retail.

**“Seller”** means third-party sellers admitted to sell approved products for purchase within the Amazon UK Store using Amazon’s marketplace services.



**"Seller Central"** means the portal for Sellers that enables them to manage their listings and sales in the Amazon Store.

**"Seller Data"** means data provided by Sellers or derived through Sellers' use of Amazon's marketplace services and Ancillary Services relating to Sellers' Offers and transactions in the Amazon UK Store, namely data relating to prices, costs, suppliers, shipments, sales, OPS, GMS, or any other sales value or revenue metric, product availabilities, inventories, performance (such as cancellation rates, refunds, activated guarantees, or any other types of concessions), delivery times and related performance, or data relating to consumers' views on Sellers' Offers (Glance Views).

Seller Data includes aggregated, individual, anonymized, and personal data, whether in raw form or processed. For the avoidance of doubt, Seller Data does not include any data generated from a customer's interaction with the Amazon UK Store that is not derived from a Seller Offer or commercial transaction with a Seller.

**"Vendors"** means suppliers from whom Amazon purchases products for resale in the Amazon UK Store.

## **II. COMMITMENTS**

### ***Restriction on use of non-public Seller Data for Retail Operations in competition with Sellers***

1. As of the end of the Implementation Period, in offering goods for sale in the Amazon UK Store, Amazon Retail Systems and Amazon Retail Employees will not use any Non-public Seller Data (including when combined with non-Seller data) for the purposes of Retail Operations in competition with Sellers.
2. As of the end of the Implementation Period, Amazon shall, in agreement with the CMA, implement policies and regular and proportionate internal access auditing and monitoring through technical and/or manual mechanisms, designed to ensure compliance with the commitment under Paragraph 1.

### ***Application of objectively verifiable, non-discriminatory conditions and criteria in determining the Featured Offer where there is more than one Offer on an ASIN***

3. As of the end of the Implementation Period, where there is more than one Offer on an ASIN, if a Featured Offer is displayed, Amazon will apply objectively verifiable, non-discriminatory conditions and criteria for the purposes of determining which Offer, whether from Amazon Retail or Sellers (including Sellers using FBA), will be displayed as the Featured Offer. These conditions and criteria will include any parameters and weightings such that the conditions and criteria can and will be applied equally to both Amazon Retail and Sellers. These conditions and criteria will include, but will not be limited to, those applied by existing selection mechanisms such as FME and FMA, including the Filters. These conditions and criteria will apply independently of the Seller's choice of carrier(s). If the process for selecting the Featured Offer does not apply or applies differently to a specific Category of products, service, or feature, or program, such processes will apply equally to eligible Offers from all Sellers and Amazon Retail.
4. Notwithstanding Paragraph 3, with respect to the FME, Amazon may use factors that are objectively justified in order to protect consumers from the risk of Seller fraud and abuse when

deciding whether a Seller qualifies for participation in the Featured Offer. Such factors will not apply to Amazon Retail. The Monitoring Trustee shall be informed of the full list of these fraud and abuse factors before the end of the Implementation Period, and any changes shall be notified to the Monitoring Trustee in line with Paragraph 31.

5. As of the end of the Implementation Period, Amazon will not use Prime-eligibility and Prime labelling as relevant criteria for the selection of the Featured Offer.
6. At the latest two months after the Effective Date, Amazon will inform Sellers in an adequate and sufficiently prominent and durable manner that it will use non-discriminatory conditions and criteria for the selection of the Featured Offer, and will not use Prime-eligibility or Prime labelling as relevant criteria.

***Sellers' freedom to negotiate carrier terms when using MFN***

7. As of the end of the Implementation Period, Amazon will:
  - (a) make reasonable means available to enable Interested Carriers to connect with Amazon's systems in a manner that allows Amazon to obtain the information in relation to rates necessary to support independently negotiated rates (based on independent commercial terms and conditions) being used between Sellers and Interested Carriers (to the extent that such commercial terms and conditions do not undermine the ability of the Interested Carrier to continue to meet the relevant conditions and criteria to fulfil Prime-eligible Offers);
  - (b) allow any Interested Carrier who connects with Amazon's systems in the manner described in Paragraph 7 (a) to use independently negotiated rates (based on independent commercial terms and conditions) with Sellers in respect of Prime-eligible Offers;
  - (c) inform Sellers, in an adequate and sufficiently prominent manner through Amazon UK Store's Seller Central (or equivalent service) for the duration of these commitments, of the option to independently negotiate with Interested Carriers who have completed the relevant integration in respect of their Prime-eligible offers; and
  - (d) ensure that information in relation to rates obtained from Carriers pursuant to the information mechanisms in Paragraph 7 (a) will not be (i) used for the purpose of setting rates for Amazon fulfilment operations in competition with Carriers, or (ii) used in relation to commercial negotiations concerning rates for fulfilment services (including delivery) between Amazon and providers of such services, including the Carriers.
8. If Amazon requires any information other than information in relation to rates for the purpose of supporting independently negotiated rates (based on independent commercial terms and conditions) between Sellers and Interested Carriers (as referred to in Paragraph 7(a)) Amazon shall submit a list of such information to the Monitoring Trustee. The Monitoring Trustee shall verify that the information sought is necessary. Amazon will update the Monitoring Trustee on an ongoing basis regarding any changes in that list.

### III. SCOPE AND DURATION

9. These Commitments apply to the Amazon UK Store. These Commitments comprise the entire extent of Amazon's Commitments to the CMA with respect to Case 51184.
10. These commitments will cease if and to the extent that the CMA imposes obligations on Amazon pursuant to the proposed Digital Markets Competition and Consumers Act that the CMA considers would address, whether by the same or different means, the competition concerns addressed by these commitments (the "**Relevant Obligations**").
11. If, and to the extent that the CMA imposes Relevant Obligations, the date on which these commitments, or specific obligations therein, terminate under Paragraph 10 shall be the date of the entry into force and effect of the Relevant Obligations.
12. The CMA will publish notice of the termination of these commitments, or specific obligations therein, pursuant to Paragraph 10 above, including:
  - (a) the date of such termination; and
  - (b) any obligations on Amazon in these commitments that continue to have effect.
13. Subject to Paragraphs 10 and 11 above, and to any earlier variation or release pursuant to s.31A(4) of the Act, these commitments shall remain in force until 20 June 2028.

### IV. NON-CIRCUMVENTION

14. Amazon shall not circumvent or attempt to circumvent these Commitments either directly or indirectly by any act or omission.

### V. COMPLAINT MECHANISM

15. Sellers and carriers suspecting non-compliance with these Commitments may submit a written complaint to the Monitoring Trustee, setting out the relevant facts and attaching the relevant supporting evidence and documentation. Before the end of the Implementation Period, Amazon, together with the Monitoring Trustee, will make available in an adequate and sufficiently prominent and durable manner the postal and digital contact details for any such submission.

### VI. MONITORING PROCESS

16. At the latest four months from the Effective Date, Amazon shall appoint a monitoring trustee (the "**Monitoring Trustee**") to monitor Amazon's compliance with these Commitments, for the duration of these Commitments (as set out at Paragraphs 9 to 13 above). The Monitoring Trustee shall be independent of Amazon (and any other undertaking affiliated with Amazon). The Monitoring Trustee will be remunerated by Amazon in a way that does not influence or impede the independent and effective fulfilment of its mandate. The Monitoring Trustee should possess the qualifications, experience, and competence necessary to carry out its mandate, including via the technical expert appointed pursuant to Paragraph 17 below. The Monitoring Trustee shall neither have nor become exposed to a conflict of interest. In particular, the Monitoring Trustee (including all of its employees) shall not provide services to, or become an employee of, Amazon or one of Amazon's competitors neither during the

Monitoring Trustee's mandate nor for a period of one year following termination of the Monitoring Trustee's mandate.

17. At the expense of Amazon, the Monitoring Trustee shall appoint a technical expert and may appoint other advisors, subject to Amazon's and the CMA's approval (this approval not to be unreasonably withheld or delayed) if the Monitoring Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the mandate, provided that any fees and other expenses incurred by the Monitoring Trustee are reasonable. The technical expert or advisor shall neither have nor become exposed to a conflict of interest. In particular, the technical expert or adviser (including all of their employees) shall not provide services to, or become an employee of, Amazon or one of Amazon's competitors neither during their mandate nor for a period of one year following the termination of their mandate. Should Amazon refuse to approve the technical expert and/or advisors proposed by the Monitoring Trustee, Amazon may propose an alternative expert and/or advisor within 14 calendar days. The CMA may reject Amazon's alternative proposal and approve the appointment of the initial or another technical expert and/or advisors alone, against Amazon's objection. Only the Monitoring Trustee shall be entitled to issue instructions to the technical expert and/or advisors.
18. The Monitoring Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The CMA may, on its own initiative or at the request of the Monitoring Trustee or Amazon, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the Commitments.

#### ***Appointment of the Monitoring Trustee***

19. No later than one month after the Effective Date, Amazon shall submit to the CMA details of the Monitoring Trustee which has been approved and appointed to monitor commitments in cases COMP/AT.40462 and COMP/AT.40703. The proposal shall include:
  - (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Monitoring Trustee to fulfil its duties under these Commitments; and
  - (b) the outline of a plan which describes how the Monitoring Trustee intends to carry out its assigned tasks.
20. The CMA shall approve the same Monitoring Trustee, which has been approved and appointed to monitor commitments in cases COMP/AT.40462 and COMP/AT.40703, subject to the CMA verifying the suitability of the Monitoring Trustee and approving the terms of the proposed mandate provided under paragraph 19(a) above for monitoring compliance in the UK.
21. The CMA must give reasons in case of rejection of the approved Monitoring Trustee, and reasons supporting the need for any modifications.
22. The Monitoring Trustee shall be appointed within six weeks of the Effective Date, in accordance with the mandate approved by the CMA.

### ***New proposal(s) by Amazon***

23. If the CMA rejects the Monitoring Trustees which has been approved and appointed to monitor commitments in cases COMP/AT.40462 and COMP/AT.40703, Amazon shall submit the names of at least two more persons within one month of being informed of the rejection, providing the same information as set out in Paragraph 19 above.

### ***Monitoring Trustee nominated by the CMA***

24. If all further proposed Monitoring Trustees are rejected by the CMA, the CMA shall nominate a Monitoring Trustee, whom Amazon shall appoint, or cause to be appointed, within one month following the nomination, in accordance with a trustee mandate approved by the CMA.

### ***Replacement, discharge, and reappointment of the Monitoring Trustee***

25. If the Monitoring Trustee ceases to perform its functions under these Commitments or for any other good cause, including the exposure of the Monitoring Trustee to a conflict of interest:
  - (a) the CMA may, after hearing the Monitoring Trustee, require Amazon to replace the Monitoring Trustee; or
  - (b) Amazon, with the prior approval of the CMA, may replace the Monitoring Trustee.
26. If the Monitoring Trustee is removed, the Monitoring Trustee may be required to continue in its function until a new Monitoring Trustee is in place to whom the former Monitoring Trustee has effected a full hand-over of all relevant information. The new Monitoring Trustee shall be appointed in accordance with the procedure referred to in Paragraphs 19 to 24 above.
27. The Monitoring Trustee shall cease to act as Monitoring Trustee only upon the expiration of these Commitments or after the CMA has discharged it from its duties, whichever the earlier.

### ***Duties and obligations of the Monitoring Trustee, technical experts and advisors***

28. The Monitoring Trustee shall:
  - (a) monitor the performance of the Commitments by Amazon;
  - (b) assess the technical means and format through which Amazon provides the information that is provided to the Monitoring Trustee for review;
  - (c) propose in its first report to the CMA a detailed work plan describing how it intends to monitor compliance with the Commitments;
  - (d) provide to the CMA, sending Amazon a non-confidential copy at the same time, a written report on Amazon's compliance with these Commitments on a semi-annual basis starting from the Effective Date so that the CMA can assess whether Amazon is in compliance with these Commitments. These reports should also cover an overview of the complaints received under the complaint mechanism referred to in Paragraph 15;

- (e) propose to Amazon such measures as the Monitoring Trustee considers necessary to ensure Amazon's compliance with the Commitments;
- (f) promptly report, without waiting for the semi-annual reporting, in writing to the CMA, sending Amazon a non-confidential copy at the same time, if it concludes on reasonable grounds that Amazon is failing to comply with the Commitments; and
- (g) reply to clarifying questions from the CMA regarding any report provided to the CMA pursuant to Paragraphs 28(c), 28(d) or 28(f).

29. The Monitoring Trustee, as well as any technical expert or advisor appointed pursuant to Paragraph 17, shall not:

- (a) participate in decisions relating to technical, product design, or any other changes to Amazon's business or negotiations with Sellers relating to the selection process of the Featured Offer;
- (b) have any decision-making power or powers of investigation of the kind vested in the CMA pursuant to the Act;
- (c) undertake any work not covered by its mandate; or
- (d) disclose any confidential information to any person, undertaking, or other body other than the CMA. Any confidential information obtained by the Monitoring Trustee in performance of the duties and obligations specified in these Commitments shall be kept in the strictest confidence and shall be used solely for the purpose of performing its duties and obligations specified in the Commitments. The Monitoring Trustee shall ensure that adequate safeguards are established and adhered to in collecting, taking delivery of, tracking the dissemination of, monitoring the use of, protecting against the disclosure of, and determining the safe disposal of confidential information. These safeguards shall be reviewed by Amazon within the time limit set by the Monitoring Trustee. Within this time limit, Amazon can make requests to improve the safeguards, which the Monitoring Trustee shall take into account to ensure the adequate level of protection of confidential information. These safeguards must be effective to protect the confidential information, but shall not be such as to prevent the Monitoring Trustee from effectively fulfilling its duties and obligations specified in these Commitments. In case of disagreement, the CMA will take a decision as regards the necessary safeguards. The Monitoring Trustee shall not make any public statements relating to the performance of its functions in relation with these Commitments, or the confidential information it has obtained in the context of the performance of its functions in relation with these Commitments. The Monitoring Trustee shall sign confidentiality undertakings addressed to the CMA warranting its knowledge of and compliance with its duties and obligations specified in these Commitments. The Monitoring Trustee shall abide by the obligations of non-disclosure imposed by section 241(2A) of the Enterprise Act 2002 with regard to any information acquired from the CMA or in its performance of its functions in relation to these Commitments, even after the term of its mandate. Upon expiration of the Monitoring Trustee's mandate and provided there are no pending issues regarding Amazon's compliance with the Commitments, any confidential information held by the Monitoring Trustee

(or any of its employees) shall be destroyed and confirmed to Amazon in writing within 14 calendar days.

***Duties and obligations of Amazon***

30. Amazon shall provide and shall cause any contract employees to provide the Monitoring Trustee with all co-operation, assistance, and information that is necessary to monitor Amazon's compliance with its obligations under these Commitments. On the basis of a process which shall be agreed by Amazon and the Monitoring Trustee to avoid disproportionate business disruption, the Monitoring Trustee shall only have access to any of Amazon's IT infrastructure including algorithms, databases, servers, internal systems and tools, processes, programs, services, platforms, operating systems, hardware, software, as well as books, records, documents, management, technical or other personnel, facilities, sites, technical and all other information insofar as this is necessary for fulfilling its duties under the Commitments. In case of disagreement, the CMA will take a decision as regards the process within 14 calendar days. The CMA may require Amazon to produce to it a specified document or to provide it with specified information which it considers relates to any matter relevant to the exercise of its powers set out in Chapter III of the Act should Amazon decline requests for information made by the Monitoring Trustee. Amazon shall comply with any such requests.
31. Amazon shall notify the Monitoring Trustee prior of any changes to the ranking and selection process of the FME and the FMA, as well as to any other conditions and criteria, to the extent such changes may impact Amazon's compliance with the Commitments. Such requirement does not apply to any Experiment testing changes in these areas. This notice requirement does not constitute an approval requirement.
32. To the extent the Monitoring Trustee has follow-up questions on any such changes, Amazon will respond to these questions within a reasonable timeframe.
33. Amazon agrees that it will share and maintain such information, as may be reasonably required, with the Monitoring Trustee for provision to the CMA, provided such sharing of information is necessary to monitor Amazon's compliance with its obligations under these Commitments.
34. Amazon agrees that the CMA may share confidential information proprietary to Amazon with the Monitoring Trustee, provided such sharing of information is necessary to monitor Amazon's compliance with its obligations under these Commitments.
35. Should Amazon become aware of any breach of any provision of the Commitments, Amazon will: (a) as soon as possible after becoming aware of any such breach, take all actions that are reasonably required to remedy the breach and to comply with the Commitments; and (b) inform the Monitoring Trustee, within 7 calendar days of the date on which Amazon became aware of the breach, about the breach, including providing an explanation of the circumstances in which the breach arose and the steps Amazon is taking to remedy the breach.
36. To the extent that the CMA reasonably concludes that Amazon has failed to comply with these Commitments, Amazon will promptly take reasonable steps, in consultation with the CMA, to ensure compliance with the Commitments.

**Annex 1 – List of General Ledger Categories that include at least one Offer in the Amazon UK Store**

3d_Designs_And_Manufacturing_Services
3d_designs_and_print_on_demand
amazon_digital_devices
amazon_digital_devices_accessories
apparel
art
art_craft_supplies
authority_non_buyable
automotive
aws_devices
baby_product
batteries
beauty
biss
beauty_in_luxury_stores
books
camera
coins_collectibles
consumables_physical_gift_cards
designer_apparel
drugstore
dvd
electronics
entertainment_collectibles
fresh_ambient
fresh_perishable
fresh_prepared
fresh_produce
furniture
game
gift
gift_card
grocery
guild
HPC
home
home_entertainment
home_improvement
jewelry
kitchen
lawn_and_garden
luxury_fashion
luggage
luxury_beauty
magazine
major_appliances
media
mixed
music



musical_instruments
office_product
outdoors
paper_catalog
pc
personal_care_appliances
pet_products
photo
protected_collection
sdp_misc
shoes
softlines_private_label
sports
sports_memorabilia
target_gift_card
tires
tools
toy
travel_store
vehicle
video
video_games
video_game_hardware
watches
wine
wireless
wireless_accessory