

**Anticipated
acquisition by
Amazon of a minority
shareholding and
certain rights in
Deliveroo**

Penalty Notice under section 110 of the
Enterprise Act 2002

Addressed to: Amazon.com Inc

Notified: 26 August 2020

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The Competition and Markets Authority has excluded from the published version of this notice information which it considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].

Website: www.gov.uk/cma

Contents

Page

Notice of penalties pursuant to section 112 of the Enterprise Act 2002	4
Structure of this document	5
A. Executive summary	5
Failures to comply with section 109 Notices	5
No reasonable excuse	7
Decision to impose a penalty	8
B. Factual Background.....	9
The Parties and the Inquiry	9
Amazon's approach to the CMA's information-gathering	10
The December Notice	12
The January Notice	15
The March Notice.....	22
C. Legal assessment.....	24
Relevant legislation	24
Statutory requirements.....	24
Without reasonable excuse.....	29
D. Appropriateness of imposing penalties at the levels proposed	33
Appropriateness of imposing each penalty	33
Appropriateness of the amounts of the penalties imposed	36
Penalty One (the December Notice)	36
Penalty Two (the January and March Notices)	37
Amazon's size and financial resources	39

Notice of penalties pursuant to section 112 of the Enterprise Act 2002

1. The Competition and Markets Authority (**CMA**) gives notice under [section 110](#) and [section 112](#) of the Enterprise Act 2002 (**the Act**) of the following:
 - (a) On 3 August 2020, the CMA decided to impose penalties on Amazon.com, Inc (**Amazon**) under [section 110](#) of the Act because it failed, without reasonable excuse, to comply with the requirements imposed on it by notices served on it under [section 109](#) of the Act on 27 December 2019 (the **December Notice**), 31 January 2020 (the **January Notice**) and 6 March 2020 (the **March Notice**) (together **the Notices**)¹ by the relevant deadlines;
 - (b) The penalties are fixed amounts of £25,000 for the breach of the December Notice (**Penalty One**) and, separately, £30,000 for the breaches of the January Notice, together with the breach of the March Notice (**Penalty Two**) (together **the Penalties**). The CMA has exercised its discretion to enforce against all of these breaches in a single penalty notice;
 - (c) Amazon is required to pay each of Penalty One and Penalty Two in single payments, by cheque or bank transfer, to an account specified to Amazon by the CMA, by close of banking business on the date which is 28 days from the date of service of this notice on Amazon;
 - (d) Amazon may pay the Penalties earlier than the date by which they are required to be paid;
 - (e) Under [section 114](#) of the Act, Amazon has the right to apply to the Competition Appeal Tribunal (**CAT**) against any decision the CMA reaches in response to an application under [section 112\(3\)](#) of the Act, within the period of 28 days starting with the day on which Amazon is notified of the CMA's decision;
 - (f) Under [section 114](#) of the Act, Amazon has the right to apply to the CAT within the period of 28 days starting with the day on which this notice is served on Amazon in relation to:
 - (i) The imposition or nature of the Penalties;

¹ The terms 'section 109 notice' and 'information notice' will be used throughout this penalty notice to describe notices served under [section 109](#) of the Act.

- (ii) The amount of the Penalties; or
 - (iii) The date by which the Penalties are required to be paid;
- (g) Where a penalty, or any portion of such penalty, has not been paid by the date on which it is required to be paid and there is no pending appeal under [section 114](#) of the Act, the CMA may recover the penalty and any interest which has not been paid; in England and Wales and Northern Ireland, such penalty and interest may be recovered as a civil debt due to the CMA.

Structure of this document

2. This document is structured as follows:
- (a) section A sets out an executive summary of this notice;
 - (b) section B sets out the factual background to this notice;
 - (c) section C sets out the legal assessment and considers the statutory requirements for imposing a penalty under [section 110](#) of the Act and sets out the reasons for the CMA's finding that Amazon has failed to comply with the Notices without reasonable excuse; and
 - (d) section D sets out the CMA's reasons for finding that fixed penalties of **£25,000 (Penalty One)** and **£30,000 (Penalty Two)** are appropriate and proportionate in this case.

A. Executive summary

Failures to comply with section 109 Notices

3. On 27 December 2019, the CMA referred the anticipated acquisition by Amazon.com NV Investment Holdings LLC, a wholly-owned subsidiary of Amazon.com, Inc (as above, **Amazon**) of a 16% minority shareholding and certain rights in Roofoods Ltd (**Deliveroo**) (the **Transaction**) (and together the **Parties**) for an in-depth investigation and report by a group of independent panel members (the **Inquiry Group**) (**phase 2** of the Inquiry). The Inquiry Group issued its final decision on the Transaction on 4 August 2020.
4. During phase 2 of the Inquiry, in line with its usual practice, the CMA used its statutory powers under [section 109](#) of the Act to issue a number of notices requiring Amazon to produce certain documents and information relevant to the Inquiry. The CMA finds that Amazon failed to produce documents and

information responsive to the requirements of three of these notices – as above, the Notices – by the relevant deadlines, and therefore failed to comply with requirements of the Notices. A total of 189 documents were provided between a few days and more than two months late, and only after follow-up by the CMA.

5. In particular:

(a) **December Notice:** Question 8 of the December Notice required Amazon to provide business strategy and planning documents for business units involved with the supply of online restaurant platforms and/or online groceries in the UK. It also required production of data or other documents feeding into or underpinning the strategy/business plan documents. Amazon did not produce its [REDACTED] documents by the deadline, or disclose the existence of these documents in its response, but rather produced 12 [REDACTED] documents between five weeks and more than two months after the deadline, and only in response to a further three [section 109](#) notices.

(b) **January Notice:** Amazon failed to comply with the requirements of three questions in the January Notice by the relevant deadlines. In particular:

(i) Question 2 required Amazon to produce documents that discussed the rationale for the creation and development of Amazon Restaurants. Amazon produced four responsive documents but failed to produce appendices to two of those documents even though the existence of the appendices was readily apparent on the face of the documents.

(ii) Question 28 required Amazon to provide any internal documents that assessed how consumer demand for groceries is affected by price, delivery speed or range of products offered. Amazon failed to provide 31 responsive documents by the deadline.

(iii) Question 9 required Amazon to produce all emails responsive to a set of search terms that were sent or received by one of its senior executives ([REDACTED], VP F3) who had responsibility for both Amazon's online convenience grocery business and its online restaurant platforms business. Amazon failed to provide 142 responsive documents by the deadline.

Amazon provided the missing documents between three days and seven weeks after the deadlines and only after the CMA had queried with Amazon whether its responses were complete, including during its main party hearing with Amazon.

- (c) **March Notice:** Question 5 of the March Notice required Amazon to produce certain specific documents connected to the closure of Amazon's US Restaurants business. In its response to the March Notice, Amazon advised the CMA that it had not been able to identify any responsive documents. Amazon provided two documents which were responsive to Question 5 of the March Notice (one of which was also responsive to Question 9 of the January Notice) approximately three weeks after the deadline, and only after repeated follow-up by the CMA, including during the main party hearing with Amazon.
6. This late production of documents denoted a pattern of errors in Amazon's approach to compliance with [section 109](#) notices throughout the Inquiry. This had a significant adverse impact on the conduct of the Inquiry, requiring the CMA to expend significant time and public resources in verifying the completeness of Amazon's responses. While the CMA considers that Amazon ultimately provided complete responses to the Notices, Amazon's behaviour risked the CMA taking decisions on the basis of incomplete evidence.

No reasonable excuse

7. The CMA finds that Amazon had no reasonable excuse for its failure to comply with the Notices for the purpose of [section 110\(1\)](#) of the Act. In particular:
- (a) Amazon submitted that the fact that the documents in question related to [redacted] businesses and were no longer readily accessible constituted a reasonable excuse for its failure properly to respond to Question 2 of the January Notice. The CMA disagrees. These were not exceptional or unforeseeable issues outside Amazon's control and parties cannot be excused from compliance with information notices by the ways in which they have chosen to store relevant documents. To the contrary, it is reasonable to expect Amazon to have taken steps to identify and deal with any issues that may arise in searching for older documents. In addition, Amazon ought to have carried out proper quality assurance of its production to ensure that all relevant documents and annexes were provided by the deadline.
- (b) Amazon has argued that the documents produced late in response to Question 28 of the January Notice were not responsive to that question. The CMA disagrees with that assessment and considers that the documents clearly contained information assessing how consumer demand for groceries is affected by factors such as price, speed of delivery and product range.

(c) Amazon submitted that the fact that one of the documents provided late in response to Question 9 of the January Notice and Question 5 of the March Notice had been obtained only after searching an [redacted] assistant's email files constituted a reasonable excuse for its failure to comply with these Notices. The CMA considers that it is reasonable to expect the addressee of a [section 109](#) notice to consider the location of potentially responsive documents within its IT environment (eg within an assistant's email files or on back-up storage systems). The CMA also considers that it is reasonable to expect Amazon to have investigated this prior to responding to the January Notice. Instead, Amazon investigated only after clear deficiencies in its initial response were identified by the CMA. The CMA does not agree that the searches of additional custodians (including the [redacted] assistant) which generated the documents provided after the deadline involved 'extraordinary' effort, such as to constitute a reasonable excuse for the initial failure to apply.

8. The CMA considers that Amazon's errors demonstrate a failure to exercise appropriate care in responding to the CMA's information notices and were not caused by events beyond the control of Amazon, or the result of any significant and genuinely unforeseeable or unusual event.²

Decision to impose a penalty

9. The CMA finds that it is appropriate and proportionate to impose two separate penalties to reflect the distinct fact patterns involved in the breaches underpinning each penalty. The breaches reveal a pattern of behaviour by Amazon indicative of a failure to adopt an adequate approach in responding to the CMA's information notices (both in terms of determining an appropriate search methodology and undertaking appropriate quality control of the documents produced), which adversely affected the conduct of the Inquiry. The CMA also considers that the imposition of penalties is necessary in the interests of general deterrence.
10. The CMA finds that the following penalties would be appropriate and proportionate:
- (a) A penalty of **£25,000** for the failure to comply with the December Notice without reasonable excuse (as above, **Penalty One**).

² See [Administrative penalties: Statement of Policy on the CMA's Approach \(CMA4\)](#) (the **Guidance**), paragraph 4.4.

(b) A penalty of **£30,000**, the maximum possible amount,³ for the failures to comply with the January Notice and the March Notice without reasonable excuse (as above, **Penalty Two**).

11. In determining these penalties, the CMA has had regard to the adverse effect which the failures to comply had on the Inquiry, in particular, the extent to which Amazon's failures led to divergence of CMA resources away from the substantive merger assessment. The CMA also took into account the nature and gravity of the failures, including the importance of the documents produced and the fact that many of the failures would have been evident from a cursory review by Amazon of the documents produced. In relation to Penalty Two, the CMA had regard to Amazon's continued failure to comply, including that it informed the CMA that no further responsive documents existed yet subsequently provided key responsive documents after the issue was raised at the main party hearing.

B. Factual Background

The Parties and the Inquiry

12. Amazon is one of the world's largest companies with a market capitalisation of c.\$1.15 trillion. In 2019, Amazon had over \$280 billion in net sales and over \$14 billion in operating income. The UK is Amazon's third largest market in terms of net sales (behind the US and Germany) with approximately 6% of net sales generated from the UK (approximately \$17.5 billion in 2019).
13. Amazon's activities include operating as an online retailer and third-party marketplace provider. Amazon previously provided an online restaurant platform in the UK – Amazon Restaurants – and currently provides online convenience grocery services in the UK.
14. Deliveroo, which is based in the UK, is primarily active in online restaurant delivery. As well as restaurant delivery, Deliveroo offers online convenience groceries.
15. Pursuant to agreements dated 16 May 2019, Amazon agreed to acquire a minority shareholding and certain rights in Deliveroo.
16. The CMA's mergers intelligence function identified the Transaction as warranting an investigation and the CMA put in place an Initial Enforcement

³ The CMA may impose such administrative penalty as it considers appropriate, subject to the statutory maximum specified by order of the Secretary of State. £30,000 is the current maximum specified by the Competition and Markets Authority (Penalties) Order 2014 for a penalty in a fixed amount.

Order on 24 June 2019.⁴ The CMA subsequently proceeded to review the Transaction under the merger control provisions of the Act. On 27 December 2019, the CMA referred the Transaction for in-depth phase 2 investigation.⁵ On 24 June 2020, the CMA provisionally cleared the Transaction on the basis of revised provisional findings.⁶ On 4 August 2020, the CMA issued its final decision clearing the Transaction.⁷

17. Under [section 109](#) of the Act, the CMA has the power to issue a notice requiring a person to provide documents and information for the purpose of assisting the CMA in carrying out any functions in connection with a matter that has been the subject of a reference under [section 33](#) of the Act.
18. On 27 December 2019, the same day as the CMA referred the Transaction to phase 2, the CMA issued the December Notice to gather initial information and evidence to inform its substantive analysis in phase 2.
19. The CMA issued further information notices, including the January Notice (the so-called Market Questionnaire) and the March Notice.
20. On 7 May 2020, the CMA informed Amazon that it was considering imposing one or more penalties under [section 110](#) of the Act (the **Minded-To Letter**). Having carefully considered Amazon's response dated 13 May 2020 to the Minded-To Letter (the **Response Letter**), the CMA issued a provisional penalty decision to Amazon on 23 July 2020 (the **Provisional Penalty Decision**). Amazon submitted representations on the Provisional Penalty Decision on 30 May 2020 (the **Representations**). Following careful consideration of the Representations, the Inquiry Group decided to impose the Penalties on Amazon in this case.

Amazon's approach to the CMA's information-gathering

21. This penalty notice concerns three specific [section 109](#) notices (as above, the Notices) in relation to which Amazon failed to produce certain materials that were responsive to certain requirements of the Notices by the relevant deadlines. The CMA notes that concerns about Amazon's approach to producing information and documents were raised with Amazon repeatedly throughout the course of the Inquiry (including prior to the issue of the Notices that form the basis for this penalty notice). While the CMA has exercised its discretion not to prioritise for enforcement every incomplete or late response to an information notice, the CMA considers that this factual context is

⁴ See [Initial Enforcement Order](#).

⁵ See [Terms of reference](#).

⁶ See [Revised Provisional Findings](#).

⁷ See [Final Report](#) and associated [press release](#).

nevertheless relevant to the CMA's assessment of Amazon's responses to the Notices because it indicates that these issues are part of a broader pattern of conduct by Amazon indicative of a failure to adopt an appropriate approach to responding to the CMA's information notices.

22. In addition to the breaches identified above, the CMA had a number of other concerns with respect to Amazon's compliance with the requirements of [section 109](#) notices during the Inquiry.
23. During the CMA's phase 1 review of the Transaction, the CMA raised concerns with Amazon's advisors⁸ about the completeness of Amazon's responses to three [section 109](#) notices, including with respect to one of the notices, the failure to provide relevant appendices. In each case, the CMA found that certain responsive documents were missing from Amazon's responses to these information requests.⁹ Amazon was therefore on notice both that the CMA had concerns about its compliance and that full compliance included providing appendices to relevant documents.
24. There were also issues with the timeliness and completeness of other responses submitted by Amazon during the CMA's phase 2 review of the Transaction. These included the responses to Questions 46, 47 and 48 of the January Notice. It was only after the CMA advised Amazon's advisors that its response to these questions appeared to be materially incomplete that Amazon submitted the missing material.¹⁰
25. In addition, the commencement of the CMA's formal review of this Transaction was substantially delayed as a result of incorrect information provided by Amazon. In August 2019, Amazon's advisors told the CMA that certain custodians included in a draft document request were not relevant to the Transaction or to the questions the CMA was asking. One of these custodians was [REDACTED] (VP, Corporate Development). The CMA excluded these custodians from the document request based on this information. The CMA

⁸ This penalty notice will refer both to Amazon and to its legal advisors, Covington & Burling LLP, through which Amazon communicated with the CMA during the Inquiry. Amazon confirmed in the Parties' Merger Notice dated 14 October 2019 that it had authorised Covington & Burling LLP to act on its behalf for the purposes of the Inquiry.

⁹ Email from CMA to Amazon's advisors on 27 September 2019 regarding the completeness of its responses to [section 109](#) notices issued on 17 July 2019, 30 August 2019 and 19 September 2019. In the email on 27 September 2019, the CMA emphasised to Amazon that 'compliance by parties with the CMA's information gathering powers is a vital part of the effective operation of the UK merger control regime'.

¹⁰ The deadline for responding to Question 46 was 10 February 2020. Amazon initially provided an incomplete index to its response and did not provide an index containing all of the fields required by the January Notice until 18 February 2020. The deadline for responding to Questions 47 and 48 was also 10 February 2020. Amazon's initial response to these questions was incomplete because it did not provide the details required about the forums in which certain Amazon executives discussed and made decisions about their business areas. After the CMA followed-up with Amazon about its incomplete response to these questions via email on 13 February 2020 and during a call on 14 February 2020, Amazon submitted a complete response on 19 February 2020.

subsequently determined that [X] had significant involvement in the Transaction and was, in fact, one of the key Amazon employees involved in the Transaction. As a result, the CMA had to send a further document request, close to two months after the initial discussion about the scope of the request had taken place with Amazon's advisors, resulting in a significant delay to the start of its phase 1 review.¹¹

26. Each [section 109](#) notice in which the CMA required Amazon to produce internal documents also required Amazon to provide a methodology explaining how it had identified the relevant internal documents. Search methodologies assist the CMA in assessing the completeness of a response. Amazon failed on several occasions to provide the CMA with the required search methodologies.¹² The failure to provide these methodologies was a breach of the requirements of certain information notices. These failures were particularly problematic in a context where there were multiple issues with the completeness of the underlying responses to those notices as the CMA relies on methodologies to assist it in assessing the completeness of responses.
27. Whilst the CMA has not prioritised the additional suspected failures to comply referred to above for enforcement, it considers that they, and the other conduct noted above, are relevant context for the decision to impose the Penalties which is the subject of this notice.

The December Notice

28. Question 8 of the December Notice required Amazon to:

'Please provide any strategy plans, business plans and other documents relevant to Amazon strategy produced in the last three years, including the latest version (and any updates) showing the strategy for the next few years, at the level of the business unit(s) most closely involved with the supply of online food platforms and/or online groceries (including convenience groceries) in the UK that have not already been provided to the CMA. In responding, also include any data or other documents feeding

¹¹ In the Representations, Amazon stated that it had not characterised [X] as not relevant to the Transaction. On the basis of contemporaneous notes of the relevant call, the CMA does not agree with Amazon's account of its discussions with the CMA on this matter.

¹² For example, Amazon did not provide the required search methodology when it responded to the December Notice. In a letter to the Parties dated 17 January 2020, the CMA raised concerns over both Parties' responses to the December Notice, including its concern about the lack of a search methodology. Amazon also did not provide the required search methodology when it responded to the January Notice. The CMA raised this issue with Amazon by email on 19 February 2020. Although Amazon produced a search methodology together with the response to the March Notice, it did not provide the specific methodology that supported its response to Question 5.

into or underpinning the strategy/business plan documents themselves (for example, estimates, forecasts etc).’ (emphasis added)

29. In its response on the deadline of 7 January 2020, Amazon referred to a list of documents provided to the CMA during phase 1 of the Inquiry. The documents included progress updates and business plan ([REDACTED]) documents for business units including Amazon Prime Now,¹³ AmazonFresh,¹⁴ Amazon Restaurants¹⁵ and Ultra-Fast Groceries (**UFG**). [REDACTED] documents are generally prepared on an annual basis ([REDACTED]).¹⁶ Amazon also provided two documents which it stated had been prepared since phase 1 of the Inquiry, namely the [REDACTED]¹⁷ and the [REDACTED].¹⁸ Amazon did not at that time provide any further information or documents in response to Question 8.
30. In response to an unrelated question in a subsequent notice (the January Notice)¹⁹ Amazon provided certain long-range planning documents ([REDACTED]) for Amazon Restaurants (Annexes MQ.3.3 and MQ3.4). The CMA had not previously received these documents or other [REDACTED] documents, and no such documents had been provided in response to Question 8 of the December Notice.
31. The CMA identified the [REDACTED] documents during its review of Amazon’s response to the January Notice and contacted Amazon’s advisors on 20 February 2020 to ask about these documents noting that:

‘[i]n reviewing Amazon’s response to Question 3 of the MQ, we noticed that we have received an [REDACTED] or long-term planning document, which appears to be a strategic planning document covering a [REDACTED]. The case team would like to understand whether Amazon regularly produces such documents, and whether there

¹³ Prime Now is part of Amazon’s online groceries offering: Prime Now is a service available to customers of Amazon’s most significant consumer subscription service – Amazon Prime – and allows ultra-fast delivery on a variety of items, including food.

¹⁴ AmazonFresh is part of Amazon’s online groceries offering. Amazon Prime customers in London can access AmazonFresh for grocery delivery by paying an additional monthly subscription.

¹⁵ Amazon Restaurants is an online food platform. Amazon previously offered restaurant food delivery in both the UK and the US through Amazon Restaurants. It launched in the UK in September 2016. Amazon decided to stop operating Amazon Restaurants in the UK in [REDACTED] and exited the market in November 2018.

¹⁶ Some Amazon business areas produce a [REDACTED].

¹⁷ This document, Annex Q.8.1, included [REDACTED].

¹⁸ Annex Q.8.2.

¹⁹ Amazon’s response to Question 3 of the January Notice submitted on 17 February 2020. Question 3 of the January Notice required Amazon to ‘Provide all Internal Documents that assessed the Net Present Value of Amazon Restaurants produced (a) prior to the launch (or intended launch) of this proposition in any country; and (b) during the course of operating Amazon Restaurants, or after its closure, in any country’.

are [REDACTED] (or similar documents) that would be relevant to the questions asked by the CMA'.²⁰

32. Following receipt of the CMA's email of 20 February 2020, in an email from Amazon's advisors on 24 February 2020 Amazon explained that:

'[REDACTED]'. (emphasis added)²¹

33. Therefore, by Amazon's own description, [REDACTED] are, at the least, documents that feed into or underpin the [REDACTED] business strategy documents and on that basis were documents responsive to Question 8 of the December Notice. The CMA considers that [REDACTED] are also responsive to Question 8 of the December Notice by virtue of being strategy and business plans in their own right. Amazon's description of the [REDACTED] documents as inputs into the [REDACTED] process is consistent with the content of the [REDACTED] and [REDACTED] documents that have been produced by Amazon to the CMA.

34. Following further statutory requests and follow-up queries by the CMA about the [REDACTED], Amazon provided a number of additional documents which the CMA considers were responsive to the December Notice. In particular, the CMA considers that documents listed at (a) to (c) below were all documents prepared in the three years preceding the December Notice which set out strategy for the business units most closely involved in the supply of online food platforms (Amazon Restaurants) and/or online groceries (Prime Now, AmazonFresh and F3²²) in the UK. These documents are strategy plans which also feed into or underpin the [REDACTED] documents that set out the annual strategy for the business units most closely involved in these areas. In total, 12 documents that were responsive to Question 8 of the December Notice were not provided by the deadline:

- (a) Two [REDACTED] documents provided on 17 February 2020 in response to **Question 8 of the January Notice**, over five weeks after the deadline for responding to the December Notice.²³ These documents were described as a '[REDACTED]' and contained narrative and financial forecasts for Amazon Restaurants between [REDACTED] and [REDACTED] (Annexes MQ.3.3 and MQ.3.4).
- (b) Seven [REDACTED] documents concerning Amazon Restaurants, Prime Now, AmazonFresh, F3 and [REDACTED], provided on 27 February 2020 in response to

²⁰ Email from the CMA to Amazon's advisors dated 20 February 2020.

²¹ Email from Amazon's advisors to the CMA dated 24 February 2020.

²² F3 is a business area of Amazon which focuses on developing Amazon's online grocery offering including the [REDACTED]. F3 stands for 'fresh food fast'. [REDACTED].

²³ Question 3 of the January Notice did not specifically require the production of [REDACTED] material.

Question 1 of the section 109 notice dated 21 February 2020,²⁴ over seven weeks after the deadline to respond to the December Notice.²⁵

(c) Three [REDACTED] documents concerning Amazon Restaurants and F3, provided on 10 March 2020 in response to **Question 1 of the section 109 notice dated 7 March 2020**,²⁶ two months after the deadline to respond to the December Notice.²⁷

35. Amazon offered no explanation at the time for its failure to provide the material described above in response to the December Notice. Nor did Amazon offer an explanation for the delay between the CMA first bringing the deficiency to its attention on 20 February 2020 and the submission of responsive documents on 27 February 2020 and 7 March 2020.

The January Notice

36. The CMA served Amazon with the January Notice on 31 January 2020. It had previously provided Amazon with a draft notice, inviting comments. In preparing the January Notice, the CMA took into account comments provided by Amazon and discussed the draft notice with Amazon's advisors.

Question 2

37. Question 2 of the January Notice required Amazon to provide by 17 February 2020 all 'Internal Documents' that discussed the rationale for the creation and development of Amazon Restaurants. The January Notice specified that 'Internal Documents' included all 'family documents'. Consistent with its published guidance,²⁸ the CMA expects 'family documents' to include annexes (also referred to as appendices) to documents.

38. The CMA had previously reminded Amazon of the importance of including appendices in order to provide a complete response to an information request or [section 109](#) notice. In September 2019, during the phase 1 review of the Transaction, the CMA contacted Amazon to express concern about Amazon's compliance with information notices noting 'we have serious concerns with

²⁴ Question 1 of the [section 109](#) notice dated 21 February 2020 read: 'In response to Q3 Amazon provided a [REDACTED] review for Amazon Restaurants. (Annex MQ.3.3). Please confirm whether any other [REDACTED] exist for any Amazon business areas engaged in food, groceries or ultra-fast delivery'.

²⁵ Specifically: [REDACTED].

²⁶ This question required the production of all [REDACTED] documents prepared for any Amazon business areas engaged in food, groceries or ultra-fast delivery. It expressly required the production of both narrative and financial [REDACTED] documents which had not already been provided to the CMA. The CMA noted that for certain business areas and years it had to date received either narrative or financial [REDACTED] material, but not both.

²⁷ Specifically: [REDACTED].

²⁸ See [Guidance on requests for internal documents in merger investigations \(CMA100\)](#), paragraph 23.

Amazon's compliance with a number of [section 109](#) notices issued during this investigation'. That communication specifically referenced a failure to produce relevant appendices in response to a [section 109](#) notice issued on 19 September 2019.²⁹

39. In its response to Question 2 of the January Notice, submitted on 17 February 2020, Amazon provided four documents that had not been previously submitted to the CMA, and noted that it had already provided other responsive documents in response to previous information requests.
40. Of the four documents that were provided, two had appendices missing ([REDACTED] and [REDACTED]). The existence of the missing appendices was apparent on the face of the documents.³⁰ These appendices were not included in the response, despite the appendices comprising a substantial part of the content of the documents.³¹ The case team received no explanation as to why Amazon failed to identify the missing appendices when it checked the completeness of its document production.
41. The CMA first contacted Amazon to raise concerns about the completeness of its response to the January Notice on 18 February 2020. The CMA specifically discussed the documents that appeared to be missing from the response to Question 2 during a follow-up call on the morning of 19 February 2020 and repeated those concerns in an email sent later on 19 February 2020. In that email, the CMA noted that the case team had recommended that the Inquiry Group consider using its power to 'stop the clock' under [section 39\(4\)](#) of the Act, and that the Inquiry Group was inclined to accept that recommendation. Prior to doing so, the Inquiry Group had requested that Amazon confirm when the deficiencies in its response would be rectified. The day after receiving this email, 20 February 2020, Amazon provided the missing appendices, which it submitted as revised versions of Annexes MQ.2.2 and MQ.2.3.
42. Amazon offered no explanation at the time for its failure to produce these responsive documents by the deadline of 17 February 2020.

²⁹ The CMA also reminded Amazon on other occasions during phase 1 that appendices to responsive documents must be submitted in order to provide complete responses to [section 109](#) notices. For example, an email sent by the CMA to Amazon's advisors on 27 September 2019.

³⁰ For example, [REDACTED].

³¹ [REDACTED].

Question 28

43. Question 28 of the January Notice required Amazon to provide by 17 February 2020 all 'Internal Documents'³² produced by or for Amazon in the past three years about how consumer demand for groceries in the UK or US is affected by price, delivery speed or range of products offered.³³ The question covered a broad range of possible material about consumer demand for groceries, including documents recording cases where Amazon made changes to its groceries offering and tracked how consumer demand changed as a result ([REDACTED]).³⁴
44. Amazon did not provide any [REDACTED] material or material assessing changes made by competitors in its response to Question 28, submitted on 17 February 2020. Instead, Amazon provided a narrative response referring to one [REDACTED] submitted during the phase 1 of the Inquiry (which assessed the [REDACTED]),³⁵ and stated that it had no other material responsive to Question 28:
- '[REDACTED]'.³⁶
45. On 19 February 2020, the CMA spoke to Amazon's advisors about some of its concerns about the completeness of Amazon's response to the January Notice. The CMA also wrote to Amazon's advisors setting out concerns in writing. The CMA explained that 'the CMA case team has identified issues with Amazon's response to the [January Notice] and considers that this response is materially incomplete'. With respect to Question 28, the CMA stated in its email:

'[t]his question requested Internal Documents assessing how different factors affect consumer demand in groceries "including any market research ... and any reporting or measuring of changes in consumer demand in response to changes in the

³² Internal Documents were defined in the January Notice as: 'documents in any form, including, but not limited, to presentations, reports, Word documents, pdfs, Excel files, internal analyses, documents stored on proprietary systems, internal and external emails and all family documents (including email attachments), but excludes information stored on social media accounts like Twitter or Facebook, chats, instant messages, text messages and messaging applications etc. Where various iterations of the same internal document were created, the final version of the internal document should be provided where possible'.

³³ Specifically, the CMA required Amazon to '[p]rovide all Internal Documents (excluding emails) produced by or for Amazon in the past three years which assess how consumer demand for groceries in the UK or US is affected by price (price of the groceries and/or delivery fee), delivery speed or range of products offered, including any market research and discussion of such research and any reporting or measuring of changes in consumer demand in response to changes in the groceries offer of Amazon or competitors. If key discussions of such research took place over email, provide those emails'. (emphasis added)

³⁴ Amazon explained to the CMA during the site visit that Amazon does not [REDACTED]. Amazon's advisors had made the same point to the CMA during a meeting held on 14 January 2020 to discuss what data and materials the Parties had available, in order to assist the CMA in scoping its information requests. Question 28 was therefore drafted to capture instances of such '[REDACTED]'.

³⁵ Annex Q.9.e. in response to the [section 109](#) notice of 30 October 2019.

³⁶ Extract of a narrative response submitted by Amazon on 17 February 2020.

groceries offer of Amazon or competitors”. Amazon has responded that the only relevant document is a [REDACTED] provided to the CMA during P1. As discussed on our call this morning, Amazon has previously explained to the CMA that it [REDACTED], and the CMA has identified examples of [REDACTED] that would be responsive to this question that are [REDACTED].³⁷

46. Amazon’s advisors responded to the CMA on 20 February 2020 stating that (a) [REDACTED]; (b) it had provided certain documents regarding [REDACTED] in response to Question 30 of the January Notice;³⁸ and (c) it would confirm whether there were any additional Internal Documents addressing [REDACTED], which it proposed to submit by 24 February 2020.³⁹
47. The CMA noted in its response to the email from Amazon’s advisors that Amazon was proposing to submit any responsive materials a week after the deadline. The CMA noted that having access to the requested information was essential to its ability to conduct an efficient review and that the provision of partial and incomplete responses was incompatible with the Parties’ stated desire that the Inquiry be completed expeditiously.⁴⁰
48. On 24 February 2020, one week after the deadline for responding to Question 28, Amazon provided a supplementary response to Questions 28 and 30 that included 31 additional documents responsive to those questions. Amazon described the supplementary response as ‘[REDACTED]’.⁴¹
49. The further responsive documents were [REDACTED] and [REDACTED] produced during the quarters in which certain changes were introduced and which considered the [REDACTED].⁴²
50. The relevant changes included [REDACTED]. For example, one of the documents provided – Annex 1⁴³ – contained references to a [REDACTED]. As a further example, Annex 11 contained analysis of how [REDACTED].

³⁷ Email from the CMA to Amazon’s advisors on 19 February 2020.

³⁸ In Question 30, the CMA required Amazon to ‘[p]rovide details of any experiments, trials or other exercises undertaken by or for Amazon in the last three years with the objective of improving Amazon’s understanding of consumer reaction to changes to the selection of products, delivery options, cost of delivery and other material changes, in respect of its UK or US fresh online grocery services. You may exclude exercises where the changes made were purely presentational (eg to font size etc)’.

³⁹ Email from Amazon’s advisors to the CMA on 20 February 2020.

⁴⁰ Email from the CMA to Amazon’s advisors on 20 February 2020. The CMA also noted that ‘responding parties are in a much better position than the CMA to know whether their responses are complete and it is an inefficient use of the case team’s time to need to repeatedly check responses and follow-up to request responsive documents that obviously exist but have not been provided’.

⁴¹ Email from Amazon’s advisors to the CMA on 24 February 2020.

⁴² Amazon’s supplementary response to Questions 28 and 30 of the January Notice, dated 24 February 2020.

⁴³ [REDACTED].

51. Amazon did not at the time explain why it failed to provide all responsive documents by the relevant deadline.

Question 9

52. Question 9 of the January Notice required Amazon to provide by 10 February 2020 all emails sent or received in the last two years by [REDACTED], an Amazon senior executive and key custodian, which included any of a specified list of terms.⁴⁴
53. On 10 February 2020, Amazon provided 157 documents, many of which were calendar appointments for meetings.
54. The CMA raised concerns about the completeness of Amazon's response during a call with Amazon's advisors on 14 February 2020. The CMA noted that, on its face, the production appeared to be incomplete: it included calendar invitations for various meetings for which the CMA was aware (based on other evidence already on the CMA's file) there were associated documents, or where the calendar invitation indicated that associated materials would be distributed to the attendees, but the associated documents were not produced. Amazon, through its advisors, agreed on 14 February 2020 to investigate this point and to update the CMA. On the same call, Amazon's advisors confirmed that the documents produced on 10 February 2020 had not been de-duplicated.⁴⁵
55. The CMA received no update from Amazon or its advisors between 14 February 2020 and 18 February 2020. On the evening of 18 February 2020, the CMA contacted Amazon's advisors to arrange a call to discuss concerns the CMA had about the completeness of Amazon's responses to the January Notice. That call was scheduled for 19 February 2020.
56. During the call on 19 February 2020, Amazon's advisors told the CMA that Amazon had identified issues with the production of documents in response to Question 9 of the January Notice and that it was re-running that production. The CMA confirmed the contents of this discussion in an email to Amazon's advisors later on 19 February 2020.⁴⁶

⁴⁴ The full list of terms was as follows: (a) [REDACTED]; (b) ANY OF: 'restaurant delivery', 'restaurants', 'hot food', 'takeaway', 'takeout' along with ANY OF: 'Prime', 'PN', '[REDACTED]', 'grocer', 'last mile'.

⁴⁵ ie the failure to include certain documents that the CMA had previously seen was not a result of these documents being duplicates of documents produced in response to a different search at an earlier point in the case.

⁴⁶ Email from the CMA to Amazon's advisors on 19 February 2020. The CMA stated: 'Amazon agreed on 14 February 2020 to investigate this point and to update the CMA. We did not receive an update prior to the call we arranged this morning to discuss other completeness issues. We understand following that call that Amazon has identified issues with this production and is re-running it'.

57. On 24 February 2020, Amazon provided a further 142 documents that were responsive to Question 9 of the January Notice, together with an index of the documents provided. Amazon explained that since its response on 10 February 2020 and its discussions with the CMA on 14 February 2020 and 19 February 2020, it had investigated [REDACTED] approach to email retention and discovered that [REDACTED]. Amazon added that '[w]e have confirmed that no copy exists of [REDACTED]' and explained that it had obtained the further responsive documents provided by searching the accounts of certain custodians other than [REDACTED] who were also copied on the relevant email chains. In a note provided to the CMA on 24 February 2020, Amazon stated that it had 'provided all emails sent or received in the last two years by [REDACTED]'.
58. As explained in further detail below, between 24 February 2020 and 30 March 2020, the CMA followed up repeatedly with Amazon about material involving [REDACTED] (and other executives) that had not been produced to the CMA, but that appeared to be referenced in other documents that were produced to the CMA. This included sending the March Notice (discussed in further detail below), which requested specific information about the decision to [REDACTED], a decision which involved [REDACTED]. The CMA had anticipated that Question 9 of the January Notice would produce documents relating to this issue. Amazon on several occasions responded to the CMA confirming that there was no such material.
59. In parallel with these discussions about Amazon's production of relevant documents, the CMA was in discussions with Amazon's advisors about attendance at the main party hearing. [REDACTED] was initially included in the list of Amazon attendees but, on 18 March 2020, Amazon's advisors told the CMA that [REDACTED] would no longer attend the hearing, scheduled for the afternoon of 31 March 2020, as [REDACTED].⁴⁷ The CMA repeatedly expressed its concerns about Amazon's decision not to have [REDACTED] attend the hearing.⁴⁸ The CMA noted to Amazon's advisors that the internal documents reviewed by the CMA suggested that the [REDACTED], and the CMA was concerned that none of the hearing attendees would be able to discuss this decision in detail. The CMA made clear its view of the importance of this decision, and evidence relating to this decision, in its discussion with Amazon's advisors about the main party hearing.
60. During the main party hearing on 31 March 2020, the Inquiry Group highlighted concerns that the case team and Inquiry Group had in relation to

⁴⁷ Email from Amazon's advisors to the CMA on 18 March 2020.

⁴⁸ These communications included a call on 25 March 2020 in which the CMA expressed these concerns to Amazon's advisors. These concerns were re-iterated in an email of 27 March 2020.

the availability of documentation in general and in relation to the [X] in particular. The CMA highlighted that it had reviewed documents that suggested that Amazon did have additional documents related to this decision. The Amazon executives at the meeting agreed to undertake a further review.⁴⁹

61. It was only after this hearing, on 2 April 2020, that Amazon provided the CMA with a document which the CMA considers was responsive to Question 9 of the January Notice (and to Question 5 of the March Notice).
62. This document was an email chain involving Amazon senior executives including the CEO and [X] and ending on 2 April 2019 [X] (the **Relevant Email Chain**). The email chain began with a detailed email from [X]. This email included an assessment of the [X].⁵⁰
63. The Relevant Email Chain also included an email from Amazon senior executive [X].⁵¹
64. The email from [X].
65. The Relevant Email Chain was clearly responsive to Question 9 of the January Notice: it included emails sent and received by [X] in the two years prior to the January Notice and also contained several of the search terms referred to in Question 9 of the January Notice.⁵² Furthermore, the CMA had sent Amazon working papers in March 2020, which included initial analysis about the online restaurant platforms market and the possibility of Amazon re-entry into the online restaurants market in the UK. As such, the CMA considers that Amazon would have been aware that the content of the Relevant Email Chain was highly relevant the CMA's assessment of the Transaction.
66. Amazon stated that it had obtained the Relevant Email Chain by asking [X] assistants to search their own files, and that [X] assistant had filed the document in their own inbox in a folder labelled 'personal'. Amazon has provided no explanation as to why it was not previously aware that at least certain of [X] emails were stored on their assistant's [X] and why these emails had not previously been searched. Furthermore, Amazon has provided no explanation as to why it failed to follow-up on the apparent gaps in its

⁴⁹ Transcript of Amazon main party hearing, page 35, lines 24-25, page 83, line 15, and page 84, line 2 (references are to the version of the transcript sent to Amazon's advisors on 6 April 2020).

⁵⁰ Email entitled [X].

⁵¹ The email from [X].

⁵² eg 'Doordash' and 'restaurants' along with 'Prime'.

original document production to the CMA independently, or even following the multiple earlier communications from the CMA about these apparent gaps.

The March Notice

67. As noted in relation to the CMA's analysis of Amazon's response to Question 9 of the January Notice, as set out above, the CMA considers that the Relevant Email Chain was also responsive to the March Notice. Amazon failed to provide it, and a further responsive document, by the relevant deadline of 12 March 2020 and instead provided both documents on 2 April 2020 after receiving multiple follow-up queries from the CMA.
68. Question 5(a) of the March Notice noted that an earlier response from Amazon stated that its [REDACTED].⁵³ Question 5(a) required Amazon to provide all 'Internal Documents'⁵⁴ relating to the '[REDACTED]'⁵⁵.
69. Question 5(b) of the March Notice noted that an Amazon email previously provided to the CMA referred to [REDACTED].⁵⁶ Question 5(b) required Amazon to provide all 'Internal Documents' relating to [REDACTED].⁵⁷
70. On 12 March 2020, in response to Questions 5(a) and 5(b) of the March Notice, Amazon told the CMA it had not been able to identify any responsive documents and confirmed that, to the best of its knowledge, there were no Internal Documents (beyond the email it had previously provided to the CMA) relating to [REDACTED].
71. As noted in paragraph 58 above, the CMA followed-up with Amazon throughout March 2020 about its concerns that Amazon's response was incomplete. In an email to Amazon's advisors on 30 March 2020, the CMA noted that in an email chain provided to the CMA,⁵⁸ Amazon senior executive [REDACTED]. The CMA noted that the email chain referenced in that internal document appeared to be responsive to the March Notice and that the CMA was concerned, therefore, that Amazon's response to the March Notice was incomplete. The CMA asked Amazon to produce the referenced email chain by 30 March 2020 and to confirm on 31 March 2020 whether there were any other relevant documents not included in its response to the March Notice.

⁵³ Annex MQ.6.2, provided by Amazon in response to Question 6 of the January Notice. The top of the document contained a statement that its distribution was limited to the following individuals: [REDACTED].

⁵⁴ 'Internal Documents' was defined in the March Notice as including documents in any form. This included, amongst other things, internal and external emails and email attachments.

⁵⁵ At that point, the F3 ('fresh food fast') business area [REDACTED].

⁵⁶ Amazon Internal Document [REDACTED].

⁵⁷ Question 5(b) noted that [REDACTED] had been referred to in an Amazon internal email already provided to the CMA (email reference [REDACTED]).

⁵⁸ Amazon internal document [REDACTED].

The CMA also asked Amazon to explain why the email chain referenced in an Amazon internal document,⁵⁹ and any other relevant missing documents, had not been provided to the CMA in response to the March Notice.

72. Amazon did not provide the requested document on 30 March 2020. In an email response on 30 March 2020, Amazon indicated that it was working to obtain any other relevant emails.
73. As described above, it was only on 2 April 2020, after the matter was raised during the main party hearing on 31 March 2020, that Amazon produced the Relevant Email Chain to the CMA.
74. The Relevant Email Chain included an email from [REDACTED].⁶⁰ The CMA understands that [REDACTED]. The Relevant Email Chain therefore related both to the [REDACTED] (as referred to in Question 5(a)), and to [REDACTED] (as referred to in Question 5(b)).
75. On 2 April 2020, Amazon also produced a calendar appointment for a meeting called '[REDACTED]' (the **Relevant Calendar Appointment**). The invitees for that meeting included [REDACTED]. The calendar appointment stated that the purpose of the meeting was '[REDACTED]'. The CMA understands that this email discussion was the discussion about the [REDACTED]. The Relevant Calendar Appointment therefore related to [REDACTED] (as referred to in Question 5(b)).
76. Amazon's search methodology for the March Notice, which it provided on 12 March 2020, provided a limited list of custodians⁶¹ whose documents had been reviewed in the course of preparing its response to Questions 5(a) and 5(b). Amazon did not specify what search terms had been used, or otherwise describe in detail the approach it had taken to the identification of responsive documents.
77. As above, Amazon's stated reason for providing the Relevant Email Chain and the Relevant Calendar Appointment on 2 April 2020 was that it had recently asked [REDACTED] assistants to search their own files, and [REDACTED] assistant had found these documents in their inbox.
78. The CMA considers that the Relevant Email Chain was responsive to Questions 5(a) and 5(b) of the March Notice, that the Relevant Calendar Appointment was responsive to Question 5(b) of the March Notice, and that

⁵⁹ Amazon Internal Document [REDACTED].

⁶⁰ Email from [REDACTED].

⁶¹ [REDACTED]. For Question 5(a), [REDACTED] files had also been searched. Amazon did not explain why it considered it appropriate to search only these custodians' accounts.

Amazon failed to provide these documents by the relevant deadline of 12 March 2020.

C. Legal assessment

Relevant legislation

79. [Section 110\(1\)](#) of the Act provides that where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under [section 109](#) of the Act, it may impose a penalty of such amount as it considers appropriate (in accordance with [section 111](#) of the Act).
80. The CMA concludes that the statutory requirements for imposing a penalty under [section 110](#) of the Act are met in relation to both Penalty One and Penalty Two, and that the imposition of each penalty is appropriate and proportionate in this case.

Statutory requirements

81. The CMA finds that Amazon is a person within the meaning of [section 109](#) and [section 110](#) of the Act and [Schedule 1](#) of the Interpretation Act 1978 and has failed to comply with requirements of notices issued under [section 109](#) of the Act, as set out below:
- (a) Question 8 of the December Notice required Amazon to produce certain strategy and business plans (and data or documents feeding into or underpinning them)⁶² by the deadline of 7 January 2020. As detailed at paragraphs 28 to 35 above, Amazon provided 12 responsive documents – [redacted] – between five weeks and two months late: two responsive documents on 17 February 2020 (in response to Question 3 of the January Notice); seven responsive documents on 27 February 2020 (in response to the [section 109](#) notice dated 21 February 2020); and three responsive documents on 10 March 2020 in response to Question 1 of the [section 109](#) notice dated 7 March 2020.
- (b) The January Notice required Amazon to produce:

⁶² The question required the production of strategy and business plans produced within the last three years showing strategy for the next few years at the level of business units most closely involved with online food platforms and online convenience groceries in the UK, and any data or documents underpinning those documents.

- (i) all Internal Documents discussing the rationale for the creation and development of Amazon Restaurants, including annexes (Question 2);
- (ii) emails sent and received by Amazon Senior Executive [X] in the previous two years which contained any of a specified list of terms (Question 9); and
- (iii) certain internal documents about how consumer demand for groceries is affected by price, delivery speed or range of products offered (Question 28)⁶³

by the deadlines of 10 February 2020 and 17 February 2020, as detailed at paragraphs 36 to 66 above. Amazon provided two documents responsive to Question 2, 143 documents responsive to Question 9, and 31 documents responsive to Question 28 between three days and seven weeks after the relevant deadlines.

- (c) Question 5 of the March Notice required Amazon to provide all Internal Documents relating to the '[X]' referred to in a named document (about the [X]) (Question 5(a)) and all Internal Documents relating to Amazon senior executive [X] (Question 5(b)) by the deadline of 10 March 2020. As detailed at paragraphs 67 to 78 above, Amazon provided two documents – the Relevant Email Chain and the Relevant Calendar Appointment – responsive to Question 5(a) and 5(b) and Question 5 (b), respectively, on 2 April 2020.

82. [Section 110](#) of the Act enables the CMA to impose a penalty for failure to comply without reasonable excuse with any requirement of a notice issued pursuant to [section 109](#). While the CMA could therefore impose a penalty for each failure to comply without reasonable excuse with a requirement of a notice identified in this penalty notice, the CMA has the discretion to consolidate breaches where appropriate and proposes, in this case, to impose two penalties. In particular, where the consequences on the Inquiry of the failures to comply with Question 9 of the January Notice and Question 5 of the March Notice were closely correlated, the CMA has exercised its discretion to issue a single penalty for the breaches of the January and March Notices.

Amazon's submissions on failure to comply

83. In the Representations, Amazon stated that it had engaged constructively and proactively with the CMA with respect to the Transaction, that it had made

⁶³ Including any market research, discussion of such research and any reporting or measuring of changes.

'significant efforts' to respond to the 'multiple and voluminous' data requests received, and that it provided the CMA with a total of around 6,000 documents.

84. The CMA does not accept Amazon's description of its conduct throughout the Inquiry.
85. First, while Amazon did respond promptly and in full to certain information requests, the CMA considers that Amazon did not engage 'constructively' and 'proactively' with significant portions of the CMA's evidence gathering process. In particular, the failures to provide full responses to information notices by the relevant deadlines, the failure to proactively identify clear issues with responses and the need for repeated follow-ups by the CMA in order to obtain missing material are wholly inconsistent with Amazon's position that it engaged constructively.
86. Second, obtaining information from merging parties is essential for the CMA to conduct its inquiries, and such information is often critical to the CMA's evidence base. The information requests and notices issued during this Inquiry were neither unusual in number, nor unduly extensive, particularly in the context of a relatively complex Inquiry. Furthermore, had the CMA received full responses from Amazon to its initial questions, the overall number of data requests would have been lower. The CMA considers that Amazon had sufficient resources to comply with the CMA's information requests and notices in full.
87. Finally, the CMA considers that Amazon's attempt to contextualise its breaches by reference to an overall production of 6,000 documents is misleading. The volume of documents produced was not particularly large for a phase 2 merger investigation. Furthermore, the omitted documents accounted for a material proportion of the documents that were ultimately responsive to each of the questions at issue.
88. In the Response Letter, Amazon stated that it had not failed to comply with the requirements of the December Notice because the [REDACTED] material provided after the deadline was not responsive to Question 8 as [REDACTED] are '[REDACTED]' which are drawn up in preparation for Amazon's [REDACTED]. Where Amazon provided [REDACTED] material in response to later information requests, Amazon stated that this was only because the CMA had specifically requested such material. Amazon reiterated these points in the Representations and stated that many of the [REDACTED] were '[REDACTED]' which included a reference to the date of the update, and that this is evidence that they were [REDACTED] documents (and therefore not responsive to Question 8).

89. The CMA does not accept Amazon's submission that it complied with Question 8.
- (a) Nothing on the face of the [redacted] material, including the dates, the inclusion of financial information or the fact some of them may have been [redacted] documents, suggests that they were '[redacted]' documents. The CMA's view remains that Amazon has not provided any evidence to support its submission that these were [redacted] documents.
- (b) Each document provides information about Amazon's strategy at a particular point in time in relation to the matters covered by Question 8, and the clear wording of Question 8 (which requested 'any strategy plans, business plans and other documents relevant to Amazon strategy produced in the last three years') was not limited to annual plans, such as [redacted], nor to plans which were marked as formally representing the views of senior management.
- (c) Furthermore, these appear to be the only documents setting out Amazon's long-range plans: the [redacted] documents are [redacted] documents, whereas the [redacted] seem typically to cover [redacted] time periods.
90. The CMA considers that the [redacted] documents were responsive plans in their own right. Even if they were not, and Amazon's explanation that these were preparatory documents were correct, the [redacted] material would be responsive to Question 8, which also requested 'any data or other documents feeding into or underpinning the strategy/business plan documents themselves'.
91. In the Representations, Amazon acknowledged that Question 8 was broad but submitted that it had proposed to the CMA that it could comply with Question 8 by providing an updated set of the type of documents it had provided earlier in the Inquiry (eg [redacted]), and that the CMA did not object to this. The CMA does not agree with Amazon's account of this discussion. However, even if it had been the case, it is ultimately a party's responsibility to ensure that relevant material is produced in response to a document request. The CMA may engage with merging parties on whether their proposed approach to a document request is sensible and practical. The CMA will not, however, be able to pre-emptively give assurances that no breach of the [section 109](#) notice would occur in the event that relevant material later comes to light which parties could and should have provided.⁶⁴
92. Amazon also submitted that it had not failed to comply with the requirements of Question 28 of the January Notice because the documents it provided after

⁶⁴ See [Guidance on requests for internal documents in merger investigations \(CMA100\)](#), paragraph 28.

the deadline were not responsive to Question 28 but rather were produced by Amazon following a specific request from the CMA during a call on 19 February 2020 during which the CMA 'indicated that it would like to see any documents assessing changes in customer behaviour, even if those assessments were part of documents concerning ordinary periodic reporting, rather than in documents relating to testing'. In the Representations, Amazon added that these documents contained only passing references to [REDACTED], and that the majority were therefore not responsive to Question 28.

93. The CMA does not accept Amazon's submission. As set out above, during the call on 19 February 2020, the CMA explained its concerns that Amazon's response was incomplete and reiterated the importance of complying with Question 28. Rather than issuing a new information request, the CMA explained to Amazon's advisors why it considered a full response to Question 28 remained outstanding. Amazon's response on 24 February 2020 does not suggest that it had interpreted statements made by the CMA on the call as a new or revised information request: it described its response as a supplementary response to Question 28 (and Question 30) and provided documents which, by implication, it considered responsive to those questions.
94. Amazon did not at any time suggest that those documents were not responsive to Question 28. To the contrary, when supplying the additional documents, Amazon stated that they '[REDACTED]'. By its own admission, therefore, these documents fall squarely within Question 28's request for documents recording 'any reporting or measuring of changes in consumer demand in response to changes in the groceries offer of Amazon or competitors'. Contrary to Amazon's submissions in the Representations, therefore, Question 9 was not limited to documents recording 'tests' or 'experiments'.
95. In relation to Question 5 of the March Notice, Amazon submitted in the Response Letter that the Relevant Calendar Appointment was not responsive to either Question 5(a) or 5(b) as it provides no indication that it related to [REDACTED].
96. The CMA does not accept Amazon's submission. The Relevant Calendar Appointment was entitled '[REDACTED]' and the purpose of the meeting was described on the face of the Relevant Calendar Appointment as being '[REDACTED]'. The invitees included [REDACTED]. The timing of the meeting ([REDACTED]) was shortly after the Relevant Email Chain. The contemporaneous nature of the Relevant Calendar Appointment, together with its title, stated purpose and the invitees, therefore make it clear that [REDACTED]. The Relevant Calendar appointment was therefore responsive to Question 5(b) of the March Notice.

97. For the reasons set out above, the CMA has decided that Amazon failed to comply with requirements of the Notices.⁶⁵

Without reasonable excuse

98. [Section 110](#) of the Act provides that penalties can be imposed if a failure to comply is ‘without reasonable excuse’. The CAT has found that this is ‘an objective test as to whether the excuse put forward [...] was reasonable’.⁶⁶
99. Administrative Penalties: Statement of Policy on the CMA’s Approach (CMA4) (the **Guidance**)⁶⁷ provides:

‘The circumstances that constitute a reasonable excuse are not fixed and the CMA will consider whether any reasons for failure to comply amount to a reasonable excuse on a case-by-case basis. However, the CMA will consider whether a significant and genuinely unforeseeable or unusual event and/or an event beyond [a person’s] control has caused the failure and the failure would not otherwise have taken place’.

Amazon’s submissions on reasonable excuse

100. Amazon submitted in the Response Letter and the Representations that it had a reasonable excuse for failing to comply with Questions 2 and 9 of the January Notice and Question 5 of the March Notice.
101. In relation to Question 2 of the January Notice, Amazon stated it was carrying out [REDACTED]. Amazon also stated that it had raised this ‘[REDACTED]’ with the CMA during two meetings in early January 2020.
102. The CMA does not accept Amazon’s submission that it had a reasonable excuse for failing to comply with Question 2. It is Amazon’s responsibility to ensure that it adopts an appropriate search methodology for each requirement of an information notice. This includes taking into account the nature of material likely to be responsive and ensuring sufficient resources are dedicated to finding and producing responsive material by the deadline, including any available legacy material which may be less readily accessible. The difficulties Amazon describes were not unforeseeable; indeed, as

⁶⁵ On the facts of this case, where the cause of the failure to comply with Question 9 of the January Notice and Question 5 of the March Notice and the consequences of these failures on the Inquiry were closely correlated, the CMA has exercised its discretion not to impose a separate penalty for Amazon’s non-compliance with the March Notice, and instead to impose a single penalty (Penalty Two) for the failures to comply with the March Notice together with the January Notice.

⁶⁶ [Electro Rent Corporation v CMA](#) [2019] CAT 4 (**Electro Rent**), paragraph 69.

⁶⁷ See the [Guidance](#) at paragraph 4.4.

Amazon itself stated, it had anticipated these difficulties in meetings with the CMA in early January 2020, several weeks before responding to the January Notice. Furthermore, the January Notice was provided to Amazon in draft on 27 January 2020 and Amazon's written comments did not suggest there would be difficulties in meeting the deadlines as a result of the age of the documents. The addressee of a statutory information request cannot be excused from full compliance with an information notice because of the way it has chosen to store its internal material. The CMA notes that, despite the fact that the existence of the relevant annexes was readily apparent from a cursory review of the documents in question, Amazon did not draw its initial failure to provide them to the CMA's attention. Moreover, as noted above, Amazon was ultimately able to provide the annexes quickly following prompting by the CMA.

103. The CMA considers that proper compliance with information notices includes reviewing the materials provided and confirming they are complete. Amazon ought readily to have been able to identify the existence of the annexes and to retrieve, check and produce them within the relevant deadline.
104. In relation to Question 9 of the January Notice, Amazon stated in the Response Letter and the Representations that:
 - (a) It had promptly advised the CMA that its e-discovery provider might have encountered issues in conducting its search of [redacted] emails and would re-image [redacted] laptop. It noted that, following that re-imaging, no additional responsive emails were produced;
 - (b) Amazon had no reason to consider that the initial document production of 157 emails indicated that there was an issue with the production;
 - (c) Amazon conducted searches of additional custodians and, on 24 February 2020, within three working days of Amazon advising the CMA that Amazon's e-discovery provider may have encountered challenges with the original search, it provided a total of 142 additional documents; and
 - (d) Amazon was ultimately able to provide the Relevant Email Chain only after 'an extraordinary manual search effort' by [redacted]. The Relevant Email Chain had been deleted from [redacted] own files [redacted], and Amazon did not expect [redacted] to have access to emails which were not accessible to the executives themselves.
105. The CMA does not accept Amazon's arguments. In particular, the CMA notes that Amazon informed the CMA that there may have been technical issues with the production of [redacted] documents only after the CMA had raised concerns

about the completeness of its response. The CMA therefore considers that these difficulties cannot be considered to have been proactively identified by Amazon. The CMA further notes that the index of the documents produced would have shown that many of the 157 documents provided in Amazon's initial response were calendar invites rather than emails, which should have put Amazon on notice that its response was highly likely to be incomplete, and suggests that Amazon did not carry out even cursory checks of the material being produced.

106. The CMA does not consider that the fact that no additional documents were produced following reimaging of the laptop provides a reasonable excuse for its failure to comply.
107. The January Notice required production of all emails sent and received by [REDACTED] containing certain keywords over a period of time. Amazon elected to comply with this request by conducting through a third-party provider what it describes as an 'industry standard' search of [REDACTED] email files. However, on 24 February 2020 (two weeks after the deadline), Amazon advised the CMA that it had determined that [REDACTED] and suggested that this explained the relatively small production arising from its search of [REDACTED] emails.
108. The CMA considers that proper compliance with an information notice requires parties to consider carefully the information being requested, and to determine what search methodology is likely to be required in order to produce a complete response. The CMA expects parties to adopt an appropriate search methodology and apply it thoroughly in identifying responsive documents. It is ultimately a party's responsibility to ensure that it produces all relevant material when responding to an information notice.⁶⁸ Conducting a search of a single individual's email files will not necessarily be sufficient to provide a complete response, and Question 9 was not limited to such a search. Amazon could reasonably be expected to have spoken to a key custodian of Amazon internal documents like [REDACTED], an Amazon senior executive in whom the CMA had signalled its interest as a likely source of relevant evidence on several occasions, during the Inquiry (and in any event prior to responding to the January Notice)⁶⁹ about their approach to email retention. If Amazon had taken this basic step, it would have known before the deadline that conducting a search of [REDACTED] emails alone would result in an incomplete response to Question 9 and it would have been able to scope its search more appropriately (for example, by including additional custodians). The fact that the limited searches of additional custodians that Amazon

⁶⁸ See [Guidance on requests for internal documents in merger investigations \(CMA100\)](#), paragraphs 23 and 28.

⁶⁹ As noted above, the January Notice was provided to Amazon in draft on 27 January 2020. Amazon's written comments on that draft did not raise concerns with respect to compliance with Question 9.

carried out after the CMA raised concerns with the initial response produced 142 additional documents within three working days demonstrates that Amazon would reasonably have been able to adapt its search strategy prior to the deadline had it turned its mind to the issue.

109. Finally, the CMA does not consider that the steps taken by [X] to search for relevant documents were 'extraordinary', or that this provides a reasonable excuse for the late provision of the Relevant Email Chain. As noted above, the CMA considers that Amazon ought to have identified that [X] approach to email retention would have meant a custodial search of their emails would have provided an inadequate response to Question 9. As such, it would have been reasonable to expect Amazon to have taken steps to understand [X] approach to email management – including the involvement of their [X] – prior to the deadline, which would have led it to identify and produce the Relevant Email Chain at an earlier stage.
110. In relation to Question 5 of the March Notice, Amazon again submitted in its Response Letter that carrying out a custodial search of [X] email files, together with those of certain lawyers⁷⁰ was adequate, and that obtaining the Relevant Email Chain required it to undertake 'an extraordinary manual search'.
111. The CMA accepts that [X] was a relevant custodian in this context but, for the reasons set out above, the CMA considers that Amazon ought to have taken steps to understand [X] approach to document retention and the involvement of [X] in their email management at an earlier stage. Doing so would have enabled it to provide the Relevant Email Chain by both the deadline for response to Question 9 of the January Notice and by the deadline for response to Question 5 of the March Notice (if it did not obviate the need for this question altogether).
112. The CMA therefore finds that none of the submissions made by Amazon constitute a reasonable excuse for its failures to comply with the Notices.

⁷⁰ The CMA also notes that Amazon has not explained the rationale for including these custodians and not other individuals named in the documents referred to in the question.

D. Appropriateness of imposing penalties at the levels proposed

Appropriateness of imposing each penalty

113. In the Response Letter, Amazon stated that it made 'significant efforts' to comply with the CMA's information notices during the Inquiry and that any penalty is therefore unwarranted.
114. Having had regard to its statutory duties and the Guidance and having considered all relevant facts and submissions by Amazon, the CMA finds that the imposition of both Penalty One and Penalty Two is appropriate. In reaching this view, the CMA has considered the adverse impact of the underlying failures on the Inquiry, the significant and flagrant nature of the failures and the presence of an element of recidivism. The CMA's view is that the imposition of the Penalties is also necessary in the interest of general deterrence.⁷¹

Adverse impact on the Inquiry

115. **Penalty One:** Amazon's failure to comply with the December Notice led to a material diversion of CMA resources as it required the case team to expend considerable time and effort making clarificatory follow-up requests, leading to a risk that the Inquiry would be delayed. By providing responsive material in a piecemeal fashion, and only in response to follow-up requests, Amazon further hampered the progress of the Inquiry and created a risk that the Inquiry would proceed without relevant information.
116. **Penalty Two:** while Amazon may have remedied its failure to comply with Question 2 of the January Notice promptly, Amazon's failures to comply with the January and March Notices together led to a material diversion of case team resources. Amazon's failure to conduct appropriate quality control of its document productions shifted that burden to the CMA's case team, who were obliged to spend considerable time and effort following-up responses that were plainly incomplete. As noted above at paragraph 41, the CMA considered exercising its powers to 'stop the clock' in relation to Amazon's failures to comply with the January Notice, reflecting the seriousness of the cumulative impact of these failures on the progress of the Inquiry. The CMA's decision not to 'stop the clock' in this case, principally because Amazon appeared to have complied after the CMA informed it the Inquiry Group were

⁷¹ The CMA considers that it is of utmost importance to the CMA's ability to conduct effective investigations that parties have due regard to the requirements imposed on them by, among other things, [section 109](#) of the Act. The imposition of the Penalties is critical to achieve deterrence; to underscore the seriousness of any failure to comply with a [section 109](#) notice, without a reasonable excuse.

considering this possibility, does not detract from the CMA resources required to follow up those responses. Moreover, the availability of additional documents that were responsive to Question 9 of the January Notice and Question 5 of the March Notice became clear only after this issue was pursued at the main party hearing.

The failures were significant and flagrant

117. **Penalty One:** The [X] material was plainly responsive to Question 8 of the December Notice and, as such, failure to provide it was a flagrant breach of the Notice. Moreover, it was significant, as it contained important evidence, relevant to the CMA's analysis of the counterfactual and competitive effects.
118. **Penalty Two:** each of Amazon's failures to comply with the January and March Notices were flagrant, serious or both. In particular:
- (a) Amazon had previously been warned about the need to provide annexes or appendices to documents. Failure to do so represented a flagrant breach of Question 2 of the January Notice, particularly where it should have been readily apparent to Amazon that these annexes existed. Moreover, the annexes represented a substantial part of the total documents.
 - (b) Amazon's failure to take reasonable steps to scope its searches and adopt an appropriate search methodology in responding to Question 9 of the January Notice and Question 5 of the March Notice, together with its late provision of clearly responsive documents, mean that its failure to provide complete responses by the deadlines was flagrant and serious, particularly insofar as these questions requested provision of important strategy documents from or involving key custodians. This was compounded by Amazon's apparent failure to carry out even cursory checks of the material produced in response to Question 9, which would have revealed that the production was highly likely to be incomplete.

Element of recidivism

119. The Guidance notes that the CMA may be more likely to impose a penalty where the party in question has previously failed to comply with an information request or CMA decision, whether in the current investigation or previously (that is, there is an element of 'recidivism').⁷² While the breaches of Questions 46, 47 and 48 of the January Notice and the other compliance issues during phases 1 and 2 of the Inquiry identified above have not been

⁷² See the [Guidance](#), paragraph 4.2.

the subject of a formal finding of failure to comply with information notices, the CMA nevertheless considers that they demonstrate a pattern of errors by Amazon and a failure to adopt an appropriate approach to responding to the CMA's information notices. While the CMA has exercised its discretion not to prioritise the imposition of penalties beyond Penalty One and Penalty Two, the CMA considers that the fact that the matters to which this decision relate were not isolated incidents of non-compliance is relevant to its view that it is appropriate to impose penalties in this case.

Amazon representations on the appropriateness of penalties in this case

120. In its Representations, Amazon stated that the failures underlying Penalty One were not significant. In support of this view, Amazon referred to the presence of a single reference by the CMA to [redacted] material in the Revised Provisional Findings. Amazon also suggested that a document would need to be highly relevant to the CMA's Inquiry for any failure to provide it to be significant, and that the failure to produce a relatively small volume of 12 documents cannot reasonably be considered to be significant. Amazon made similar submissions in the Representations in relation to Questions 2 and 28 of the January Notice.
121. The CMA disagrees with Amazon's position. The CMA's view is that the [redacted] material contained important information about Amazon's future strategy and plans. The fact that a document is not referred to in published findings does not necessarily imply that it was not important to the Inquiry. For example, information which is not referred to in published findings may have been valuable in informing the CMA's understanding of the Parties' businesses, the relevant market (including consumer demand) or the appropriate theories of harm. It could also have prompted further lines of inquiry leading to material referred to in published findings.
122. Further, while the CMA will consider the volume of documents which a party has failed to produce, both in absolute terms and as a proportion of the overall production, this is only one amongst a range of factors which the CMA takes into account in determining the appropriateness of a penalty. In relation to Penalty Two, the CMA notes that Amazon failed to provide by the relevant deadlines a significant number – 189 – of responsive documents.

Conclusion – appropriateness of penalties in this case

123. Overall, the CMA considers it reasonable and proportionate to impose two penalties in this case. This reflects the fact that the breach of the December Notice and the breaches of the January Notice together with the March Notice were distinct: their subject matter and Amazon's reasons for non-compliance

differ. At the same time, the CMA considers it appropriate to exercise its discretion to impose a single penalty in respect of the breaches of the January and March Notice, which are more closely related in subject matter.

124. The imposition of these two penalties is also proportionate: it reflects the scale of Amazon's non-compliance and the adverse impact these breaches had on the Inquiry, as well as the need for effective deterrence and the financial resources available to Amazon.

Appropriateness of the amounts of the penalties imposed

125. Consistent with its statutory duties and the [Guidance](#), the CMA has assessed all relevant circumstances to determine an appropriate level of penalty for each of Penalty One and Penalty Two.
126. The CMA's position is consistent with the [Guidance](#), which provides that the CMA will decide whether to impose an administrative penalty, and at what amount, on a case-by-case basis, having regard to the [Guidance](#) and taking into account all relevant circumstances.
127. Listed below are the factors which the CMA considered particularly relevant in determining the level of each of Penalty One and Penalty Two, noting the existence of some overlap with those factors that were relevant in the decision to impose fines.⁷³

Penalty One (the December Notice)

128. **Adverse effects on the case:** As above, Amazon's failure to provide a complete response by the deadline of the December Notice and its incremental production of the [REDACTED] material over the following two months had an adverse impact on the Inquiry. It necessitated two follow-up information notices (dated 21 February 2020 and 7 March 2020) and further correspondence from the CMA. This follow-up work diverted case team resource away from the substantive merger assessment at increased public expense.
129. **Nature and gravity of the failure:** The [REDACTED] material contained business and strategy planning information and forecasts [REDACTED]. [REDACTED] material feeds into the [REDACTED] produced by Amazon business units. The [REDACTED] material was therefore important information and highly relevant to the CMA's investigation. Its late provision risked the CMA taking decisions on the basis of an incomplete

⁷³ In accordance with paragraph 4.11 of the [Guidance](#), the assessment of the level of the penalty may include the factors referred to in section A (factors influencing decision to impose a penalty) and section B (factors affecting the type of penalty imposed) of chapter 4 of the [Guidance](#).

understanding of Amazon's plans, for example, its incentives in pursuing the Transaction and its future strategy in relation to online convenience groceries and online restaurant platforms, the two markets which were the focus of the Inquiry. The [REDACTED] material was relevant to both the counterfactual that should be used for the analysis of the Transaction and the competitive analysis, amongst other matters. The [REDACTED] documents were clearly responsive to the December Notice as [REDACTED] in their own right and material feeding into other such [REDACTED] (eg [REDACTED]) as specifically requested by Question 8. The failure to provide such material was therefore a flagrant error.

130. **Pattern of errors in compliance:** As described in 'Amazon's approach to the CMA's information-gathering', including at paragraph 23 above, Amazon's behaviour in responding to information notices during phase 1 prompted the case team to warn Amazon about the consequences of non-compliance with information notices and to emphasise the importance of compliance with the CMA's information-gathering powers for the effective operation of the UK merger control regime. Moreover, Amazon's failure properly to respond to the December Notice and its subsequent incremental provision of responsive documents was part of a broader pattern of errors it demonstrated in responding to requirements of information notices, including during phase 2 of the Inquiry, as described at paragraph 24 above.
131. For example, the December Notice required Amazon to produce an index of documents and a detailed description of the methodology used to identify and produce the documents and information responsive to each question. Amazon failed to provide a search methodology at all. This meant that the CMA had no meaningful basis on which to assess the completeness of Amazon's response, and therefore made it difficult for the CMA to ascertain whether Amazon had complied with the December Notice. While the CMA decided to exercise its discretion not to prioritise this breach of the December Notice for enforcement, it considers this and the other compliance issues identified in this decision to be relevant factors for the purposes of setting the amount of the fine for Penalty One.

Penalty Two (the January and March Notices)

132. **Adverse effects on the case:** each of Amazon's breaches in relation to the January and March Notices either individually or cumulatively had an adverse impact on the CMA's investigation. The CMA spent a significant amount of time reviewing Amazon's responses and following-up incomplete responses. In relation to Question 9 and Question 5, the CMA had to follow-up on several occasions, including during its main party hearing with Amazon. This was inefficient and diverted case team and Inquiry Group resource away from the substantive merger assessment at increased public expense. While the CMA

considers that Amazon ultimately provided complete information, Amazon's breaches also risked the CMA's assessment being based on incomplete information. The case team was also sufficiently concerned about the impact of Amazon's non-compliance on the statutory timetable that it recommended to the Inquiry Group that it consider stopping the clock. The Inquiry Group subsequently decided to require Amazon to provide compliance statements for all future information notice responses.

133. **Nature and gravity of the failure:** As noted above, the CMA considers that Amazon's failures to comply with the January and March Notices were, either individually or cumulatively, serious and flagrant. Amazon failed to take appropriate steps to ensure compliance, including by conducting quality control of the documents it produced (which would have revealed that certain responses were incomplete) or by adopting an appropriate approach to scoping the searches it proposed to carry out. In the case of Question 2, the importance of providing annexes had previously been explained to Amazon, through its advisors, and it still failed to provide responsive annexes. In the case of Question 9 of the January Notice and Question 5 of the March Notice, the evidence was central to the CMA's assessment of Amazon's potential re-entry, and of Amazon's view of [REDACTED]. The email indicated that, contrary to Amazon's stated position [REDACTED]. This evidence also clarified the proximity in time of the decisions to close the Amazon Restaurants business and to invest in Deliveroo, which were taken [REDACTED]. Amazon's failure to adopt an appropriate approach to compliance in relation to the January and March Notices underscores the flagrant nature of its failures to comply.
134. These failures to comply also led to delays in providing a significant number of documents that were highly relevant to the Inquiry, including for the CMA's understanding of changes in customer demand for online convenience groceries and, in particular, of [REDACTED], including its incentives in entering into the Transaction. This evidence was central to the CMA's assessment of the prospect of Amazon re-entry into that market.
135. **Continued failure to comply:** As described above, the CMA expressed its concerns about Amazon's failure to comply with Question 9 of the January Notice several times. It followed up with an additional information notice – the March Notice – and correspondence, asking Amazon to provide documents produced by [REDACTED] with a particular focus on material pertaining to the [REDACTED]. On several occasions when responding to these requests, Amazon stated that there was no such material. It was only after the matter was specifically raised with Amazon executives attending the main party hearing by the Inquiry Group that the Relevant Email Chain and Relevant Calendar Appointment were provided on 2 April 2020, nearly two months after the 10 February 2020 deadline for compliance with Question 9 of the January Notice, and nearly

three weeks after the 12 March 2020 deadline for compliance with Question 5 of the March Notice. As noted above, not only does this conduct constitute a persistent failure to comply with the January and March Notices, it is consistent with the CMA's view that Amazon failed to take an appropriate approach to compliance with the certain of the CMA's information notices. The CMA does not consider that the steps Amazon took to locate these documents were exceptional, or that it should have required intervention by the Inquiry Group for Amazon to take them.

136. **Pattern of errors in compliance:** Amazon's breaches of the January and March Notices followed its breaches of the December Notice. As above, the CMA had also warned Amazon during phase 1 about non-compliance with information notices. There were also several prima facie breaches of the January Notice (of Questions 46, 47 and 48) which the CMA exercised its discretion not to prioritise for enforcement but which nevertheless demonstrate a pattern of errors by Amazon, and a failure to adopt an adequate approach in responding to information notices, which the CMA considers are relevant to the level of Penalty Two.

Amazon's size and financial resources

137. Consistent with the [Guidance](#), the CMA has also had regard in relation to both Penalty One and Penalty Two to certain of the financial indicators relating to the financial resources available to Amazon:⁷⁴
- (a) Profit after tax: \$11,588 million (net income);
 - (b) Net assets: \$62,060 million; and
 - (c) Turnover: \$280,522 million (net sales).
138. These indicators show that Amazon has significant resources available in respect of the imposition of a penalty of £25,000 for Penalty One and £30,000 for Penalty Two in this case.
139. Having regard to Amazon's size and financial position, the CMA considers that it is appropriate to impose penalties at the specified levels for Penalty One and Penalty Two.

Stuart McIntosh
Chair of the Inquiry Group
26 August 2020

⁷⁴ These financial indicators derive from Amazon's 2019 [Annual Report](#).