

**Decision to accept binding
commitments under the
Competition Act 1998 from
Amazon in relation to conduct
on its UK online marketplace**

Case number 51184

3 November 2023



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Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [⌘]. Some numbers have been replaced by a range. These are shown in square brackets.

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1. Introduction and summary

- 1.1 In this decision (the '**Decision**') made under section 31A of the Competition Act 1998 (the '**Act**'), the Competition and Markets Authority (the '**CMA**') accepts the commitments offered by entities operating Amazon's UK online marketplace (the '**UK Amazon Marketplace**'), including Amazon.com, Inc., Amazon UK Services Ltd, Amazon Europe Core SARL, Amazon Services Europe SARL, and Amazon EU SARL, and its successors and assigns, its connected undertakings, subsidiaries, divisions, and groups ('**Amazon**'), as set out in the Annex to this decision (the '**Commitments**').
- 1.2 The Commitments were offered by Amazon to address the competition concerns identified by the CMA; namely that from at least January 2021 Amazon has engaged in conduct that may have abused, and/or continues to abuse, its dominant position in the market for the supply of e-commerce marketplace services to third-party sellers to reach customers in the UK. In brief, the CMA's competition concerns (which are set out in more detail in Chapter 4 of this Decision) are that:
- (a) Amazon uses data relating to, and/or derived from, the commercial activities of third-party sellers to inform business decisions by its retail arm ('**Amazon Retail**') when competing against those sellers on the UK Amazon Marketplace;
 - (b) Amazon sets and applies the conditions and criteria for selecting the 'Featured Offer'¹ on product pages in a discriminatory manner, such that Amazon Retail and sellers that use Amazon's fulfilment services are unfairly advantaged over other sellers; and
 - (c) third-party sellers that use carriers other than Amazon's fulfilment services or Royal Mail are unable to independently negotiate terms and rates for Prime delivery services with those carriers and must instead use the terms and rates that have been agreed by Amazon with those carriers.
- 1.3 The Commitments will ensure that:
- (a) Amazon will not use non-public data provided by third-party sellers to Amazon or derived through their use of Amazon's marketplace services (or related services) for the purposes of its own retail operations that are in competition with third-party sellers. Specifically,

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

Amazon must not use such data to inform decisions to identify and add Amazon Retail offers; identify vendors or negotiate prices and terms; make decisions to start and stop purchasing products; inform inventory planning for products; or inform pricing decisions (the '**Seller Data Commitments**').

- (b) Amazon will apply objectively verifiable, non-discriminatory conditions and criteria to determine which offer (either from Amazon Retail or third-party sellers) will become the Featured Offer and will not use Prime-eligibility or Prime labelling as relevant criteria for selecting the Featured Offer (the '**Buy Box Commitments**').
- (c) Amazon will allow the use of independently negotiated rates between carriers and sellers in respect of Prime-eligible offers, provided the carrier has connected with Amazon's systems in the appropriate manner. Amazon will make reasonable means available to enable Interested Carriers² to connect with Amazon's systems, and will not use any information obtained for the purposes of Amazon's own fulfilment operations or commercial negotiations regarding fulfilment services (the '**SFP Rates Commitments**').

1.4 This Decision follows a public consultation on proposed commitments offered by Amazon (the '**Proposed Commitments**'). On 26 July 2023, the CMA gave notice, under paragraph 2 of Schedule 6A to the Act, that it intended to accept the Proposed Commitments offered by Amazon and invited views from persons likely to be affected (the '**Consultation**').

1.5 Further to the CMA's consideration of views submitted to it during the Consultation, the CMA sought from Amazon minor edits to the Proposed Commitments, so as to (i) ensure the consistent application of a safeguard protecting against a potential risk arising from the operation of the Commitments, and (ii) clarify the drafting in one paragraph of the Proposed Commitments. To address these issues, Amazon offered revised commitments pursuant to which the restrictions on Amazon's use of rate-related information that may be provided to it by carriers pursuant to the SFP Rates Commitments would cover not only rate but also non-rate-related information.³ Amazon also revised the Proposed Commitments to (i) expressly state that Amazon will only require information from Interested Carriers that is necessary for the purpose of supporting independently negotiated rates, whereas this obligation was ambiguous under the Proposed Commitments, and (ii) clarify that the monitoring trustee shall verify that the

² 'Interested Carrier' is defined in the Commitments to mean '*any Carrier who seeks to use independently negotiated rates and commercial terms and conditions with Sellers in respect of Prime-eligible Offers*'.

³ See paragraphs 6.51 to 6.53 of this Decision.

information sought '*does not go beyond*' what is necessary. The revisions do not change the way in which the Commitments address the competition concerns identified by the CMA; rather, they are ancillary provisions intended to help to protect carrier information provided to Amazon under the Commitments.

- 1.6 For the reasons set out in this Decision, the CMA, having fully assessed in the round the evidence and responses to the Consultation against the factors set out in the CMA's Guidance on its investigation procedures under the Act (the '**Procedural Guidance**'),⁴ has concluded that it is appropriate to accept the Commitments (as amended) to address the competition concerns it has identified. As a result of accepting the Commitments, the CMA has discontinued its investigation (the '**Investigation**') with no decision made as to whether or not Amazon infringed the prohibition in section 18(1) of the Act (the '**Chapter II prohibition**').⁵ The offer of the Commitments by Amazon does not constitute an admission of any infringement by Amazon.
- 1.7 Acceptance of the Commitments does not prevent the CMA from taking any action in relation to competition concerns which are not addressed by the Commitments. Moreover, acceptance of the Commitments does not prevent the CMA from continuing its Investigation, making an infringement decision, or giving a direction in circumstances where the CMA has reasonable grounds for:
- (a) believing that there has been a material change of circumstances since the Commitments were accepted;
 - (b) suspecting that a person has failed to adhere to one or more of the terms of the Commitments; or
 - (c) suspecting that information which led the CMA to accept the Commitments was incomplete, false or misleading in a material particular.⁶
- 1.8 If a person from whom the CMA has accepted commitments fails, without reasonable excuse, to adhere to the commitments, the CMA may apply to the

⁴ [Guidance on the CMA's investigation procedures in Competition Act 1998 \(CMA8, 31 January 2022\)](#), paragraphs 10.15 – 10.25. Section 31A of the Act provides that, for the purposes of addressing the competition concerns it has identified, the CMA may accept, from such person or persons concerned as it considers appropriate, commitments to take such action (or refrain from such action) as it considers appropriate. The Procedural Guidance describes the circumstances in which the CMA is likely to consider it appropriate to accept binding commitments and the process by which parties to an investigation may offer commitments to the CMA.

⁵ Section 18(1) of the Act prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market if it may affect trade within the United Kingdom, or any part(s) of the United Kingdom, unless any of the excluded cases pursuant to section 19 of the Act apply. For these purposes, a dominant position means a dominant position within the United Kingdom or any part(s) of the United Kingdom.

⁶ Section 31B(4) of the Act.

court for an order requiring, among other matters, the default to be made good.⁷

1.9 The CMA expects to assume responsibilities to regulate certain firms' conduct in relation to specific digital activities under the proposed new regime for digital markets set out in the Digital Markets, Competition and Consumers Bill, introduced before Parliament in April 2023. Under the proposed new regime, the CMA may introduce requirements governing a digital activity carried out by an undertaking if the undertaking is designated as having Strategic Market Status in relation to that digital activity. Any decision to designate firms with Strategic Market Status will be taken based on a detailed assessment applying the test set out in the final legislation. If the CMA decides to designate Amazon as having Strategic Market Status in relation to any digital activity (or activities) and imposes requirements under the new regime, those requirements may apply alongside the Commitments, or – where they overlap and render the Commitments unnecessary in whole or part – may result in the Commitments being varied or terminated in whole or in part.

1.10 The remainder of this Decision is structured as follows:

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

⁷ Section 31E of the Act.

2. The CMA's investigation

The Investigation

- 2.1 On 5 July 2022, the CMA launched the Investigation, having established there were reasonable grounds for suspecting that the Chapter II prohibition of the Act had been infringed.⁸
- 2.2 During the Investigation, the CMA undertook various investigative steps to gather evidence from Amazon and other third parties. These steps included sending formal notices requiring the production of documents and provision of information under section 26 of the Act, as well as obtaining further information through calls and other correspondence.

The commitments offered and consultation process

- 2.3 After the launch of the Investigation, Amazon indicated an intention to offer commitments to address the CMA's competition concerns. Accordingly, and in line with the Procedural Guidance, the CMA proceeded to discuss with Amazon the scope of any commitments which the CMA considered would be necessary to address the concerns it had identified.
- 2.4 On 7 July 2023, Amazon offered to provide binding commitments to the CMA to address the CMA's competition concerns.
- 2.5 On 26 July 2023, the CMA issued a Notice of intention to accept commitments (the '**NIAC**'),⁹ setting out its provisional view that the Commitments would address its competition concerns, and inviting interested third parties to give their views before the CMA would decide whether to accept the Commitments.
- 2.6 The Consultation ran for 27 working days and closed on 1 September 2023. The responses to the Consultation and the CMA's consideration of them are summarised in Chapter 6 of this Decision.
- 2.7 On 27 October 2023, Amazon offered revised commitments that clarify the drafting of one paragraph and ensure the consistent application (across all types of information) of a safeguard protecting against a potential risk arising from the disclosure of information under the Commitments. The revised commitments expanded the restrictions (set out in paragraph 7(d) of the

⁸ Similar conduct in the EEA has been investigated by the European Commission (Case AT.40462 Amazon Marketplace; Case AT.40703 Amazon Buy Box) and Italy's competition authority, the Autorità Garante della Concorrenza e del Mercato (AGCM), (Case A528). The European Commission has issued a decision to accept commitments in its cases: see Summary of Commission Decision C(2022)9442, 20 December 2022. The AGCM has issued an infringement decision in its case: AGCM's decision A528, 30 November 2021.

⁹ [Notice of intention to accept commitments \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

Proposed Commitments) on Amazon's use of rate-related information obtained from carriers pursuant to the information mechanisms in paragraph 7(a) of the Proposed Commitments to cover non-rate information obtained from carriers pursuant to paragraph 8 of the Proposed Commitments. In addition, the revised commitments have (i) made clearer, by including an express obligation, that Amazon will only require information from Interested Carriers that is necessary for the purpose of supporting independently negotiated rates, and (ii) clarified that the monitoring trustee shall verify that the information sought '*does not go beyond*' what is necessary. The Commitments are described in Chapter 5 of this Decision and are set out in full in the Annex to this Decision.

- 2.8 The CMA has given full consideration to all the relevant material in its possession, and considers that, for the reasons set out in Chapter 6 of this Decision, it is appropriate to accept commitments to address its competition concerns. The CMA has therefore decided to accept the Commitments (as amended). Accordingly, the CMA has closed its Investigation with no decision made on whether or not the Act has been infringed.

3. Background

The party and services under investigation

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

The relevant market

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

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

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

Amazon's position on the relevant market

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

Amazon's conduct in the relevant market

Use of third-party seller data

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

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

Selection of the Featured Offer

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

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

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

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

Amazon Prime

- 3.21 Amazon Prime ('**Prime**') is an optional, paid subscription programme available to consumers. Prime subscribers pay a monthly or annual fee in exchange for a broad range of services, for example fast and reliable delivery on a wide range of Prime products at no additional cost, free returns, support from Amazon's customer service, and access to digital content.
- 3.22 Amazon gives sellers the option to fulfil their offers under the terms and branding of its Prime programme, which enables them to have a Prime label displayed alongside their offers on the UK Amazon Marketplace. The Prime label conveys to Prime subscribers that they will incur no additional shipping charges if they buy the product and that the order will be delivered quickly (for example, the next day).
- 3.23 The CMA considers that being able to list their offers with a Prime label is important to sellers because Prime subscribers are likely to consider such offers due to the benefits described in paragraph 3.22 above. This is particularly important to sellers because the number of Prime subscribers in the UK is substantial and growing, having increased from [5 – 10] million people in 2018 to [15 – 20] million people in 2021.¹³ Further, Prime subscribers are responsible for the vast majority of sales on the UK Amazon Marketplace (over 80% of the total value of sales in 2021).
- 3.24 To sell under the Prime programme, third-party sellers on the UK Amazon Marketplace must either use Amazon's FBA services or qualify for 'Seller Fulfilled Prime' ('**SFP**'). Under both options, a third-party seller and its offer must meet certain Prime eligibility criteria.

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

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

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

4. The CMA's competition concerns

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

Amazon Retail's use of Non-public Seller Data to compete against third-party sellers

4.2 Amazon Retail is able to access and use data relating to, and/or derived from, the commercial activities of third-party sellers, which Amazon obtains through its operation of the UK Amazon Marketplace (and related services it provides to third-party sellers, including FBA services). Such data is referred to in this Decision as '**Seller Data**'.

4.3 Certain types of Seller Data (referred to as '**Non-public Seller Data**') are not publicly available and cannot be replicated by third-party sellers in an equivalent manner to Amazon.¹⁵

4.4 The CMA suspects that Amazon Retail's access to Non-public Seller Data, including via tools and automated systems that utilise such data, gives it an advantage over third-party sellers that operate in competition with Amazon Retail on the UK Amazon Marketplace, as those sellers do not have access to such data.¹⁶

4.5 The CMA is concerned that Amazon Retail may be able to use Non-public Seller Data to inform various business decisions when competing on the UK Amazon Marketplace. These may include decisions relating to identifying and adding Amazon Retail offers; identifying vendors and negotiating purchase prices and terms; starting and stopping purchasing products; stocking, predicting, and planning inventories of products; and setting product prices.

4.6 The CMA's concerns are reflected in complaints that the CMA has received from third-party sellers. These have referred to Amazon's ability to use Non-public Seller Data to:

- (a) monitor the success of products introduced by third-party sellers, with the intention of entering successful product markets as a retailer;

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

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

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

Biases in the Featured Offer selection process

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

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

SFP Carrier rates and terms

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

5. The Commitments

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

The Seller Data Commitments

5.2 Amazon has committed not to use non-public¹⁷ data provided by third-party sellers or derived through third-party sellers' use of Amazon marketplace services (or related services, such as payment and fulfilment services), for decisions and decisional processes relating to retail operations by Amazon Retail that are in competition with third-party sellers.

5.3 The data to which this applies includes aggregated, individual, anonymised and personal data, whether in raw form or processed.

The Buy Box Commitments

5.4 Amazon has committed that it:

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

The SFP Rates Commitments

5.5 Amazon has committed to allow the use of independently negotiated rates between SFP Carriers and SFP Sellers in respect of Prime-eligible offers, as long as the SFP Carrier has connected with Amazon's systems in the appropriate manner, so that rates can be displayed to sellers when they buy shipping labels through their Amazon seller account. Amazon will make reasonable means available to enable interested SFP Carriers to connect with Amazon's systems and will not use any information obtained for the purposes

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

of Amazon's own fulfilment operations or commercial negotiations regarding fulfilment services.

Duration

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

Compliance, monitoring and reporting

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

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

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

5.11 The Commitments provide that Amazon shall:

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

- (e) take all actions reasonably required to remedy any breach of the Commitments and to ensure compliance with them, and inform the Monitoring Trustee about a breach within seven calendar days of becoming aware of it.
- 5.12 The CMA may, on its own initiative or at the request of the Monitoring Trustee or Amazon, give any orders or instructions to the Monitoring Trustee in order to ensure compliance with the Commitments.
- 5.13 The Commitments also provide for a complaints mechanism that allows third-party sellers and carriers that suspect non-compliance with the Commitments to submit a written complaint to the Monitoring Trustee. Postal and digital contact details for the submission of written complaints to the Monitoring Trustee will be made available to sellers, in an adequate and sufficiently prominent and durable manner, by Amazon before the end of the Implementation Period.

6. The CMA's assessment of the Commitments and the Consultation responses

- 6.1 This chapter sets out the CMA's assessment of the Commitments against the criteria set out in its Procedural Guidance and the reasons why, having taken careful account of all the information available, including all of the views the CMA received in response to the Consultation, the CMA considers it appropriate to accept the Commitments.
- 6.2 The CMA received written submissions from 18 third parties in response to the Consultation.¹⁹ The views received by the CMA are summarised in the relevant parts of this chapter below.
- 6.3 In addition to the views summarised in the relevant parts of this chapter, a number of respondents gave views that did not relate to the Proposed Commitments²⁰ which were the subject of the Consultation.²¹ Given that the CMA considered such views not to be relevant to the matters on which it consulted, the CMA has not taken those views into account in its assessment of whether to accept the Commitments. The information that respondents provided in relation to such matters will be treated as information of potential value to work that the CMA is currently doing or may undertake in the future. The CMA makes decisions regarding which work it will undertake using its published prioritisation principles.²²

Commitments in Competition Act cases

- 6.4 Pursuant to section 31A of the Act, for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) concerned as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.
- 6.5 Commitments are a means of resolving investigations more quickly and efficiently. In summary, the CMA accepts binding promises from one or more

¹⁹ Where two or more individuals or organisations submitted a joint response to the Consultation, these have been counted as a single party within this figure.

²⁰ For simplicity, in this section, we refer to the 'Proposed Commitments' as the 'Commitments' where the relevant provisions being referred to are the same in both the Proposed Commitments and the Commitments.

²¹ All 18 respondents ([REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]) made representations that did not relate to the Proposed Commitments which were the subject of the Consultation. This included two respondents ([REDACTED] and [REDACTED]) that provided comments on the CMA's decision to deprioritise certain Prime-related aspects of its investigation (see [NIAC](#), paragraphs 2.8 – 2.9). While the CMA's decision to deprioritise those aspects of the Investigation was summarised within the NIAC, the CMA did not seek views on that decision within the Consultation. The CMA has not, therefore, taken such representations into account in our assessment of whether to accept the Commitments. The CMA has nevertheless considered the comments made and remains of the view that it is not an administrative priority for the CMA to further investigate those matters at the present time.

²² [Prioritisation principles for the CMA \(publishing.service.gov.uk\)](https://publishing.service.gov.uk).

parties under investigation in relation to their future conduct so as to address the competition concerns identified by the CMA. The Competition Appeal Tribunal has noted that *‘[t]he CMA’s power to accept binding commitments is intended to allow it to resolve cases more quickly and efficiently by avoiding the need for a full investigation, thereby enabling the CMA to use its limited resources for a broader range of enforcement purposes’*.²³

- 6.6 The CMA cannot require parties to an investigation to offer commitments or to offer particular commitments. It is solely for each party to an investigation to determine what, if any, commitments they are willing to offer the CMA. The CMA then assesses whether any commitments offered should or should not be accepted. In order to accept commitments, the CMA must consider that the commitments offered will address the competition concerns the CMA has identified and the CMA must consider, in the exercise of its discretion, that it is appropriate to accept commitments in the case in question.²⁴
- 6.7 The CMA has a broad discretion in determining which cases are suitable for commitments and whether the commitments offered should be accepted.²⁵ The Competition Appeal Tribunal has acknowledged that, in the exercise of the competition authority’s judgement when accepting commitments, it is legitimate for the competition authority to ‘strike a balance’ in terms of the appropriate level of intervention in a case, provided that in doing so, it takes proper account of material points drawn to its attention and avoids obvious error.²⁶

The Procedural Guidance

- 6.8 In order to accept commitments, the CMA must consider that the commitments offered will address the competition concerns the CMA has identified and the CMA must consider, in the exercise of its discretion, that it is appropriate to accept commitments in the case in question.²⁷
- 6.9 The Procedural Guidance states that the CMA is likely to consider it appropriate to accept binding commitments only in cases where (i) the competition concerns are readily identifiable; (ii) the competition concerns are addressed by the commitments offered; and (iii) the commitments are capable of being implemented effectively and, if necessary, within a short period of time.²⁸

²³ Skyscanner Limited v Competition and Markets Authority [2014] CAT 16, at [21].

²⁴ See paragraphs 10.15 – 10.20 of the Procedural Guidance.

²⁵ See paragraphs 10.17 – 10.21 of the Procedural Guidance.

²⁶ Skyscanner Limited v Competition and Markets Authority [2014] CAT 16, at [130] and [132].

²⁷ [Procedural Guidance](#), paragraphs 10.15 – 10.25.

²⁸ [Procedural Guidance](#), paragraph 10.18.

6.10 The Procedural Guidance further states that the CMA will not accept commitments where compliance with them and their effectiveness would be difficult to discern and/or where the CMA considers that not to complete its investigation and make a decision would undermine deterrence.²⁹

The CMA's assessment

6.11 The CMA has assessed the Commitments against the criteria referred to in paragraphs 6.9 to 6.10 above and sets out its conclusions below.

The competition concerns are readily identifiable

6.12 The CMA considers, having taken into account all relevant evidence including views received in response to the Consultation, that the competition concerns, which are set out in Chapter 4 of this Decision, are readily identifiable.

6.13 In this respect, a number of respondents to the Consultation raised concerns about Amazon's conduct which were the same or similar to those identified in the CMA's competition concerns as set out in the NIAC and in Chapter 4 of this Decision.³⁰ The CMA considers that such views support the CMA's view that the competition concerns are readily identifiable. No respondents to the Consultation raised concerns regarding whether the CMA's competition concerns were readily identifiable.

The Commitments address the CMA's competition concerns

6.14 The CMA's assessments, taking into account the views received in response to the Consultation, of whether the Commitments address each of its competition concerns, and of the appropriateness of the duration of the Commitments, are set out below.

Access to and use of Non-public Seller Data

6.15 The CMA considers that the Commitments, and in particular the Commitments set out in paragraphs 5.2 to 5.3 above, address the CMA's competition concern regarding Amazon Retail's use of Non-public Seller Data (as set out in paragraphs 4.2 to 4.7 above).

6.16 The Commitments will ensure that Amazon Retail does not use Non-public Seller Data when it makes business decisions in competition with third-party sellers. This restriction applies to the use of such data by Amazon Retail

²⁹ [Procedural Guidance](#), paragraph 10.20.

³⁰ Responses to the Consultation from [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

employees as well as by any systems, algorithms or tools that make automated decisions for Amazon Retail in competition with third-party sellers.

- 6.17 In reaching the view that the Commitments will address the CMA's competition concern regarding Amazon Retail's use of Non-public Seller Data, the CMA has carefully considered the views received in response to the Consultation. Those views, in so far as they relate to this aspect of the Commitments, and the CMA's assessment of them are summarised below.
- 6.18 One respondent to the Consultation raised concerns that the CMA has not defined Non-public Seller Data sufficiently clearly or provided examples of such data.³¹ The respondent also suggested that the scope of 'Non-public Seller Data', as defined in the Commitments, may not cover all of the types of data that the CMA appears to be concerned about.
- 6.19 The CMA considers that the definitions of Non-public Seller Data in the Commitments are clear and that they cover all relevant information that the CMA is concerned about. The definitions cover all non-public data provided by third-party sellers and derived through third-party sellers' use of Amazon's marketplace services and related services.
- 6.20 One respondent stated that what was meant by 'use' of Non-public Seller Data in the Commitments was not defined and may have many potential definitions.³²
- 6.21 The CMA considers that what is meant by 'use' of data does not need to be defined in the Commitments as it can, and should, be interpreted according to the ordinary meaning of the word which includes viewing or evaluating the data (where this is carried out for the purposes of 'Retail Operations in competition with Sellers', which is a defined term which sets out the specific purposes for which Non-public Seller Data cannot be used).
- 6.22 One respondent stated that the list of purposes for which Amazon Retail would not be able to use Non-public Seller Data is narrow and does not, for example, include marketing decisions.³³ The respondent also stated that the exception allowing Amazon to use Seller Data to improve the overall performance and sales of the UK Amazon Marketplace is vague and could be easily abused.³⁴
- 6.23 The CMA does not consider that these views warrant modification of the Commitments. The Commitments provide that Amazon Retail must not use

³¹ Response to the Consultation from [REDACTED].

³² Response to the Consultation from [REDACTED].

³³ Response to the Consultation from [REDACTED].

³⁴ Response to the Consultation from [REDACTED].

Non-public Seller Data for certain specified decisions and decisional processes. The list of decisions and decisional processes is based on specific competition concerns identified by the CMA during the course of its investigation and so it is not necessary to include other decisions, including marketing decisions, to address the competition concerns as identified by the CMA.

- 6.24 The CMA does not agree that the exception to which the respondent referred could be easily abused. This is because: (i) the exception does not apply to Amazon Retail as it is not responsible for operating the UK Amazon Marketplace; and (ii) the Commitments specifically provide that any use of Seller Data under the exception must not disadvantage sellers as compared to Amazon Retail. We also note that the Monitoring Trustee will monitor Amazon's compliance with the Commitments and the Commitments set out ways in which Amazon will be required to assist it in doing so.
- 6.25 Two responses to the consultation claimed that Amazon would benefit disproportionately, compared to third-party sellers, from data that it shares with sellers, as Amazon: (i) has access to better data processing and analytics resources than its competitors; and (ii) would be able to decide whether to make Seller Data 'public' based on its own interests.³⁵
- 6.26 These concerns are distinct from the competition concern that the CMA has investigated – which is that Amazon may use data derived from third-party sellers, which do not have access to that data, to gain an advantage over those sellers as a retailer – and which the Seller Data Commitments are intended to address. As such, these submissions do not give the CMA reason to consider that its competition concern with respect to Amazon's use of seller data will not be addressed by the Seller Data Commitments.
- 6.27 In addition, the Commitments provide for the possibility of sellers outsourcing the processing and analysis of data to third parties that have the necessary tools and expertise.³⁶
- 6.28 The CMA does not consider that it is clear that Amazon's ability to determine which data is made public is likely to harm competition given that, further to the Seller Data Commitments, Amazon Retail will no longer have access to data which other sellers do not. If evidence of such harm were to arise, for

³⁵ Responses to the Consultation from [redacted] and [redacted].

³⁶ The definition of 'Non-public' in the Commitments provides that data shared with sellers will only be 'public' if it is made available '*in a format that can be immediately and effectively accessed and used by the Genuine Sellers—or by third party service providers processing such data at the request of and on behalf of a specific Genuine Seller*'.

example further to the monitoring of the commitments by the Monitoring Trustee and the CMA, then the CMA could consider whether to take action.

- 6.29 One respondent expressed concern that Amazon Retail would be able to use UK Seller Data in marketplaces outside the UK.³⁷ However, the CMA's competition concerns in this Investigation relate to Amazon's conduct in relation to the UK Amazon Marketplace and the CMA does not therefore consider that it is necessary for the Commitments to cover non-UK marketplaces in order to address the CMA's competition concerns.
- 6.30 One respondent recommended that Amazon be required to amend the Seller Data Commitments to provide that Amazon Retail Systems and Amazon Retail Employees will not share any Non-public Seller Data with any Amazon employee working in the Amazon Fulfilment Network ('AFN').³⁸ However, the CMA's competition concerns do not relate to the sharing of information between Amazon Retail and the AFN and the CMA does not therefore consider that it is necessary for the Commitments to be amended, as suggested, in order to address the CMA's competition concerns.

Biases in the Featured Offer Selection Process

- 6.31 The CMA considers that the Commitments, and in particular the Commitments set out in paragraph 5.4 above, address the CMA's competition concern regarding potential biases or discrimination in the Featured Offer Selection Process (as set out in paragraphs 4.8 to 4.12 above).
- 6.32 The Commitments will ensure that Amazon does not set or apply the conditions and criteria (including all applicable parameters and weightings) involved in the Featured Offer Selection Process in a way that unfairly favours Amazon Retail and/or FBA Sellers.
- 6.33 In reaching the view that the Commitments will address the CMA's competition concern regarding potential biases or discrimination in the Featured Offer Selection Process, the CMA has carefully considered the views received in response to the Consultation. Those views, in so far as they relate to this aspect of the Commitments, and the CMA's assessment of them are summarised below.
- 6.34 Several respondents to the Consultation made submissions referring to alleged biases and/or discrimination within the Featured Offer Selection Process that the CMA considers will be addressed by the Commitments.

³⁷ Response to the Consultation from [REDACTED].

³⁸ Response to the Consultation from [REDACTED].

6.35 Some respondents to the Consultation raised concerns regarding the way in which Amazon could, in their view, continue to set conditions and criteria for the Featured Offer Selection Process that discriminate in favour of offers from Amazon Retail and FBA Sellers in spite of the Commitments. In particular:

- (a) Two responses set out concerns that Amazon could make changes to the conditions and criteria for the selection of the Featured Offer that indirectly or subtly benefit Prime-eligible offers, offers from Amazon Retail and/or FBA Sellers.³⁹ One respondent submitted that Amazon would not be prohibited from using factors that are effectively proxies for Prime-eligibility and noted that Amazon could use criteria such as delivery speed and proximity of the customer to a seller.⁴⁰ Another response suggested that Amazon could include delivery reviews as a relevant criterion for the Featured Offer.⁴¹ The response noted that this would unfairly benefit offers from Amazon Retail and FBA Sellers as Amazon deletes negative delivery reviews for orders fulfilled by Amazon.
- (b) One response stated that the Buy Box Commitments leave scope for Amazon to design seemingly objective criteria that favour Amazon's own products by playing to its strengths.⁴²
- (c) One respondent recommended that Amazon be required to modify the Buy Box Commitments to include provisions that prevent it from changing the conditions and criteria for the Featured Offer Selection Process in a way that discriminates in favour of using the AFN without objective justification.⁴³

6.36 These submissions do not change the CMA's view that the Commitments will address the Buy Box-related competition concerns. This is because, under the Commitments, Amazon will not be able to use conditions and criteria in the Featured Offer Selection Process that are applied or assessed differently between sellers, and the Commitments as drafted explicitly prohibit the use of discriminatory criteria. This includes any conditions or criteria that are based on estimated metrics or values or that are unfairly (directly or indirectly) skewed in favour of Amazon Retail and/or FBA Sellers. Conditions and criteria may be unfairly skewed if they rely on underlying data which has been unduly weighted towards certain sellers as a result of the way in which that data has

³⁹ Responses to the Consultation from [REDACTED] and [REDACTED].

⁴⁰ Response to the Consultation from [REDACTED].

⁴¹ Response to the Consultation from [REDACTED].

⁴² Response to the Consultation from [REDACTED].

⁴³ Response to the Consultation from [REDACTED].

been collected or its content determined (regardless of whether this is the result of an official policy).

- 6.37 The Commitments will not allow Amazon to use conditions or criteria that are effectively proxies for Prime eligibility, as such conditions and criteria must be non-discriminatory, and the Commitments include provisions that prohibit direct or indirect circumvention. The CMA notes that parameters such as delivery speed are not necessarily proxies for Prime eligibility provided that all sellers are able to fairly compete on these factors, regardless of whether their offers are Prime-eligible or not.
- 6.38 Conditions and criteria that play to Amazon's strengths are not inherently anti-competitive. The CMA's competition concerns relate to conditions and criteria in the Featured Offer Selection Process which discriminate in favour of certain sellers. To the extent that some sellers might have a competitive advantage that is not the result of a 'discriminatory' treatment, it would fall outside the scope of our competition concern.
- 6.39 The CMA considers that the suggested modification to prevent Amazon from changing the conditions and criteria for the Featured Offer Selection Process in a way that discriminates in favour of sellers using the AFN is unnecessary as the Commitments, as drafted, will prevent this.
- 6.40 One respondent told the CMA that it is not possible to know if the Buy Box Commitments would be effective, as they are too vague, and recommended a further consultation on the details of the proposed conditions and criteria.⁴⁴
- 6.41 The CMA does not agree that the Buy Box Commitments should prescribe more specific conditions and criteria within the Featured Offer Selection Process. The CMA considers it appropriate to accept principle-based commitments so as to retain flexibility while ensuring, through careful and close monitoring of compliance, that the CMA's competition concerns will be addressed. This approach will ensure that Amazon's ability to develop and change the conditions and criteria over time, including to ensure that the Featured Offer meets the needs of as many customers as possible, is not unduly restricted. The CMA considers that the detailed monitoring provisions set out in the Commitments will allow the CMA and the Monitoring Trustee to ascertain the effectiveness of Amazon's compliance with the Buy Box Commitments.

⁴⁴ Response to the Consultation from [redacted].

- 6.42 One response raised concerns that the Commitments would allow Amazon to exclude sellers from the Featured Offer on the basis of fraud and abuse factors that do not apply to Amazon Retail.⁴⁵
- 6.43 The CMA notes that the Commitments specifically provide that these fraud and abuse factors must be ‘objectively justified’ and that they are notified to the Monitoring Trustee. This is to ensure that they are not abused by Amazon in the manner that the respondent is concerned about. In addition, if Amazon were to use the fraud and abuse factors to unfairly exclude sellers from the Featured Offer, this would breach the non-circumvention provisions in the Commitments.
- 6.44 Some responses called for parity with the Buy Box commitments accepted by the European Commission. One respondent stated that the Commitments relating to the conditions and criteria for the Featured Offer should be the same as those in the EC commitments.⁴⁶ Two responses questioned why Amazon has not offered to introduce a Second Displayed Offer (‘SDO’)⁴⁷ in the Commitments, as it did in the EC commitments.⁴⁸
- 6.45 The CMA notes that the Buy Box Commitments are substantively the same as equivalent provisions in the EC commitments, except that Amazon also committed to introduce an SDO in the EC commitments.
- 6.46 Having considered the matter carefully, the CMA considers, for the reasons set out in this Decision, that the Buy Box Commitments will fully address the CMA’s competition concerns regarding the Featured Offer Selection Process. In assessing whether this was the case, the CMA considered whether the introduction of an SDO, in addition to the Buy Box Commitments, may be necessary, for example to reduce any negative impact on competition and consumers in the event of imperfect compliance with the Buy Box Commitments. However, as set out in this Decision, the CMA considers that it will be possible for the CMA and Monitoring Trustee to discern the effectiveness of, and Amazon’s compliance with, the Buy Box Commitments. As such, the CMA does not consider that the additional introduction of an SDO is necessary to address the CMA’s competition concerns regarding the Featured Offer Selection Process.

⁴⁵ Response to the Consultation from [REDACTED].

⁴⁶ Response to the Consultation from [REDACTED].

⁴⁷ See paragraphs 7 – 13 of the commitments accepted by the European Commission in cases AT.40462 and AT.40703.

⁴⁸ Responses to the Consultation from [REDACTED] and [REDACTED].

SFP Carrier rates and terms

- 6.47 The CMA considers that the Commitments, and in particular the Commitments set out in paragraph 5.5 above, address the CMA's competition concern regarding third-party sellers that use carriers other than Amazon's fulfilment services or Royal Mail being unable to independently negotiate terms and rates for Prime delivery services with those carriers (as set out in paragraphs 4.13 to 4.15 above).
- 6.48 The Commitments will ensure that SFP Sellers may independently negotiate terms and rates with SFP Carriers that wish to do so, rather than being required to use the terms and rates that have been agreed by Amazon with those carriers.
- 6.49 In reaching the view that the Commitments will address the CMA's competition concern regarding third-party sellers that use carriers other than Amazon's fulfilment services or Royal Mail being unable to independently negotiate terms and rates for Prime delivery services with those carriers, the CMA has carefully considered the views received in response to the Consultation. Those views, in so far as they relate to this aspect of the Commitments, and the CMA's assessment of them are summarised below.
- 6.50 One respondent to the Consultation expressed concerns regarding the information to be shared by carriers with Amazon under the SFP Rates Commitments and submitted that:⁴⁹
- (a) Amazon should be required to explain and justify what information is reasonably necessary to connect with its systems in the appropriate manner.
 - (b) Information to be shared by carriers with Amazon should be limited to that which is strictly necessary, and a list of such information should be submitted to the Monitoring Trustee well in advance of the end of the Implementation Period. The Monitoring Trustee should then verify that the information sought is proportionate.
 - (c) The restriction on Amazon using rate information obtained from SFP Carriers for the purposes of its own rate setting or commercial negotiations regarding fulfilment services should be broader, such that it covers any information about the terms agreed with SFP Carriers or their performance. The Commitments should provide that this

⁴⁹ Response to the Consultation from [REDACTED].

information is not shared with or used for running the AFN, including in relation to managing relationships with AFN carriers.

6.51 In respect of the points summarised at paragraphs 6.50(a) and (b) above:

- (a) The Commitments specify that SFP Carriers will need to provide Amazon with '*information in relation to rates necessary to support independently negotiated rates*'. To the extent that Amazon needs any other information for the purposes of supporting independently negotiated rates, it would be required to submit an up-to-date list of such information to the Monitoring Trustee, which shall then verify whether that information is necessary.⁵⁰ The CMA considers that the provision of particular information by Interested Carriers will either be necessary for the purpose of supporting independently negotiated rates or it will be unnecessary and that there is no separate category of information that would be 'reasonably necessary' or 'strictly necessary'.
- (b) The CMA does not consider that it is necessary for Amazon to be required to notify the Monitoring Trustee of information (other than information in relation to rates) well in advance of the Implementation Period. This is because Amazon does not currently expect that it is likely to be necessary for Interested Carriers to provide information besides rate-related information to enable Amazon to support independently negotiated rates. Nevertheless, to allow flexibility in case this position changes, paragraph 8 of the Commitments permits Amazon to request additional information provided that the Monitoring Trustee verifies that such information is necessary. The CMA considers that the Monitoring Trustee will be able to undertake a swift assessment of necessity at any time throughout the duration of the Commitments. In addition, timing for determining what information is necessary to support independently negotiated rates will be dictated by when carriers elect to offer such rates. There is no requirement that they do so before the end of the Implementation Period.

6.52 In light of the submission summarised in paragraph 6.50(c) above, the CMA considered that it was appropriate for the restrictions (set out in paragraph 7(d) of the Proposed Commitments) on Amazon's use of rate-related information obtained from carriers pursuant to the information mechanisms in paragraph 7(a) of the Proposed Commitments to also cover non-rate-related

⁵⁰ Commitments, paragraph 8.

information obtained from carriers pursuant to paragraph 8 of the Proposed Commitments.

- 6.53 As such, the CMA sought Amazon's agreement to make amendments to the Proposed Commitments to expand the restrictions in this way. Amazon has subsequently included revised wording within the Commitments which provides that it will ensure that information obtained from carriers pursuant to the information mechanism in paragraph 8 of the Commitments will not be used: (i) for Amazon fulfilment operations in competition with carriers; or (ii) in relation to commercial negotiations for fulfilment services (including delivery) between Amazon and providers of such services, including the carriers. These changes are reflected in paragraph 7(d) of the Commitments.
- 6.54 The restrictions in paragraph 7(d) are ancillary provisions to help protect carrier information provided to Amazon under the Commitments and the revisions described above do not change the way in which the Commitments will address the competition concerns identified by the CMA.
- 6.55 One respondent to the Consultation questioned how the Monitoring Trustee will be able to determine what constitutes '*reasonable means available to enable Interested Carriers to connect with Amazon's systems*' and suggested that Amazon commit to making more resource available to support sellers when there are connection issues.⁵¹
- 6.56 The CMA does not consider that it would be possible to specify in the Commitments how exactly SFP Carriers will be able to connect with Amazon's systems, as different requirements may apply across carriers. In addition, requirements may change following initial trials and ordinary modifications to both Amazon's and carriers' systems. It is also important to ensure that the requirement on Amazon to provide access to its systems is not unduly burdensome. In view of these considerations, the CMA believes that the 'reasonable' standard included in the Commitments is appropriate. This standard has often been used in contractual agreements and is capable of being interpreted in the light of relevant legal precedent.
- 6.57 One respondent to the Consultation stated that the Commitments should oblige Amazon to inform Sellers '*in a durable manner*' of the option to independently negotiate with Interested Carriers.⁵² The CMA does not consider that this amendment is necessary, as the Commitments already provide that Amazon must inform sellers of the option to independently

⁵¹ Response to the Consultation from [REDACTED].

⁵² Response to the Consultation from [REDACTED].

negotiate with Interested Carriers for the duration of the Commitments and in an adequate and sufficiently prominent manner.⁵³

- 6.58 One respondent to the Consultation suggested that Amazon's Valid Tracking Rate ('VTR') system will undermine Amazon's commitment to allow sellers to use independently negotiated rates.⁵⁴ The respondent stated that, under the VTR system, sellers are penalised if they do not buy shipping through Amazon; for example, seller accounts and listings can be restricted or banned. However, Amazon has confirmed to the CMA that SFP sellers can purchase labels through Buy Shipping, thereby benefitting from a 100% VTR metric, even if they choose to independently negotiate their rates with carriers.⁵⁵ Amazon's VTR policy will not, therefore, undermine the operation of the SFP Rates Commitments.
- 6.59 One respondent reported a concern that when using a specified SFP Carrier, SFP sellers are required to choose a service for Prime orders which is more expensive than the carrier's normal services despite the latter achieving the same delivery timelines as Amazon.⁵⁶ The Commitments will allow sellers to independently negotiate rates with SFP Carriers where both the seller and the SFP Carrier wish to do so. However, the CMA has not investigated the prices charged by SFP Carriers and the Commitments are not therefore intended to address such prices.

Duration

- 6.60 Two respondents to the Consultation raised concerns regarding the duration of the Commitments. In particular:
- (a) One respondent stated that the duration of the Commitments is too short and that the Commitments should be made permanent.⁵⁷
 - (b) One respondent told the CMA that the duration of the Commitments should cater for a situation where the regime under the Digital Markets, Competition and Consumer Bill does not cover the same concerns.⁵⁸ The respondent recommended that the Commitments should last for seven years on the basis that the EC commitments, which do not overlap with obligations under the Digital Markets Act, have a seven-year duration.

⁵³ The Commitments, paragraph 7(c).

⁵⁴ Response to the Consultation from [REDACTED].

⁵⁵ [REDACTED].

⁵⁶ Response to the Consultation from [REDACTED].

⁵⁷ Response to the Consultation from [REDACTED].

⁵⁸ Response to the Consultation from [REDACTED].

- (c) One respondent claimed that the approach of setting a specific end-date for the Commitments risks Amazon benefitting from any delays in the CMA's case.⁵⁹

6.61 Having considered these submissions, the CMA considers that the duration of the Commitments is appropriate given that:

- (a) the duration of the Commitments is sufficient to ensure that third-party sellers, and customers, will benefit from the changes they bring about;
- (b) the market may change significantly in coming years and accepting commitments that apply on a permanent basis would risk them becoming outdated or obsolete;⁶⁰
- (c) if competition concerns remain once the Commitments have expired, the CMA would be able to open a new case under the Act (or other relevant powers that may apply⁶¹) to investigate such concerns;
- (d) the CMA would have extended the duration of the Commitments in the event of a material delay to its case; and
- (e) the CMA's case is separate and distinct from the EC's cases and concerns the UK market, so there is no obvious reason for the duration of the Commitments to be the same as the duration of the commitments accepted by the EC.

The Commitments are capable of being implemented effectively and, if necessary, within a short period of time

6.62 For the reasons set out below, the CMA is satisfied that the Commitments are capable of being implemented effectively and within a short period of time.

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

6.64 Amazon can implement the Buy Box Commitments by controlling how the FME and FMA (and any other processes involved in the selection of the

⁵⁹ Response to the Consultation from [redacted].

⁶⁰ While the CMA has a power, under s31(A) of the Act, to release a party from commitments where it has reasonable grounds for believing that the competition concerns no longer arise, this would require detailed consideration of the market conditions and entail the expenditure of potentially significant CMA resources which could otherwise be employed on other CMA work.

⁶¹ For example, any powers under the proposed Digital Markets Competition and Consumers Act. See paragraphs 1.9 and 5.7 – 5.8 of this Decision for further details.

Featured Offer) operate and are applied, including by setting and assessing the conditions and criteria on which they are based.

- 6.65 Amazon can implement the SFP Rates Commitments by enabling interested SFP Carriers to connect with Amazon's systems and by allowing such carriers to use independently negotiated rates with SFP Sellers in respect of Prime offers.
- 6.66 Amazon has agreed to implement the Commitments within six months of being formally notified of the CMA's commitments decision (that is, from the date of this Decision).
- 6.67 One respondent to the Consultation queried whether Amazon would need six months to implement the Commitments given that it has implemented the EC commitments which are similar.⁶² The CMA considers that a six-month Implementation Period is appropriate so as to give sufficient time not only to Amazon to put in place all the technical and contractual mechanisms required to implement the Commitments in the UK but also to enable the CMA to ensure that these mechanisms, and in particular those relating to the monitoring of compliance, meet the requirements outlined in the Commitments. This is because the EC commitments concern different Amazon Marketplaces in different jurisdictions, and the CMA will need to conduct its own independent assessment of the proposals for implementation and monitoring.

Compliance with the Commitments and their effectiveness would not be difficult to discern

- 6.68 The CMA considers that the monitoring and reporting processes and activities that will be implemented and undertaken pursuant to paragraphs 15 to 36 of the Commitments mean that Amazon's compliance with the Commitments and their effectiveness will not be difficult to discern.
- 6.69 Amazon's compliance with the Commitments will be closely monitored. In particular:
- (a) the CMA will ensure that an appropriate Monitoring Trustee (and technical expert), with the requisite skills, expertise and capacity is appointed to monitor Amazon's compliance with the Commitments and to report to the CMA;
 - (b) Amazon will be required to provide the Monitoring Trustee with all co-operation, assistance, and information that is necessary to monitor

⁶² Response to the Consultation from [redacted].

compliance, including access to any of Amazon's IT infrastructure including algorithms, databases, servers, internal systems and tools, processes, programs, services, platforms, operating systems, hardware, software, as well as books, records, documents, management, technical or other personnel, facilities, sites, technical and all other information insofar as this is necessary for the Monitoring Trustee to fulfil its duties under the Commitments;

- (c) the CMA will engage with the Monitoring Trustee and Amazon throughout the duration of the Commitments regarding the monitoring of compliance; and
- (d) the Commitments include a complaints mechanism for the reporting of any seller or carrier concerns.

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

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

6.71 Further, the CMA notes that:

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

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

6.72 In reaching the view that Amazon's compliance with the Commitments and the effectiveness of the Commitments would not be difficult to discern, the CMA has carefully considered the views received in response to the Consultation. Those views, in so far as they relate to this aspect of the Commitments, and the CMA's assessment of them are summarised below.

6.73 Several respondents to the Consultation raised concerns regarding the difficulties associated with monitoring compliance with the Seller Data Commitments. In particular:

- (a) Four respondents claimed that it will be difficult or impossible to prove what Amazon has done or is doing with data in its control.⁶³
- (b) One respondent stated that the Seller Data Commitments are not realistic or believable given that Amazon continuously misuses Seller Data and is not responsive to requests to remove links to counterfeit products.⁶⁴
- (c) One respondent complained that the Consultation is vague on what processes are envisaged to ensure compliance and so it is not possible to comment on whether they are sufficient.⁶⁵ The respondent requested a further consultation on the policies that will be implemented (further to paragraph 2 of the Commitments), so that stakeholders can comment on them. The respondent also noted that it would be unsatisfactory for policies to be developed after the Commitments have been approved, as the CMA will find itself in a weak bargaining position and stakeholders will be shut out of the process.

6.74 The CMA considers that the monitoring provisions in the Commitments will ensure that effective monitoring processes will be established during the Implementation Period and carried out, and refined as appropriate, throughout the duration of the Commitments. In particular, paragraph 2 of the Commitments requires Amazon, under the direction and supervision of the CMA, to implement policies and regular and proportionate internal access

⁶³ Responses to the Consultation from [redacted], [redacted], [redacted] and [redacted].

⁶⁴ Response to the Consultation from [redacted].

⁶⁵ Response to the Consultation from [redacted].

auditing and monitoring designed to ensure compliance with the Seller Data Commitments. The concern that Amazon should not be left to police its own conduct is addressed by the CMA's monitoring activities in line with its legal obligations under the Act and the provisions within the Commitments that require the appointment of an independent Monitoring Trustee which will support the CMA in that task by overseeing Amazon's compliance activities.

- 6.75 The CMA considers it appropriate that the Commitments do not specify the content of the policies that will apply in relation to compliance with the Seller Data Commitments as such policies should be devised, under the supervision of the CMA during the implementation period, once the Monitoring Trustee has access to Amazon's systems and has provided an assessment to the CMA of what is necessary to ensure compliance.
- 6.76 Two respondents raised concerns regarding the difficulty of monitoring compliance with the Buy Box Commitments and recommended that there is greater transparency around the algorithms involved in the Featured Offer Selection Process.⁶⁶ One respondent also stated that Amazon would be responsible for identifying which changes to the Featured Offer Selection Process to notify to the Monitoring Trustee, which could enable it to steer the process in its favour.⁶⁷
- 6.77 As set out at paragraphs 6. to 6., the CMA considers that the Commitments ensure that the CMA, with the assistance of the Monitoring Trustee, will have sufficient tools to be able to effectively monitor, test and verify compliance with the Buy Box Commitments. In particular, paragraph 30 of the Commitments provides that Amazon will provide the Monitoring Trustee with access to all information, systems and personnel that is necessary to monitor Amazon's compliance with its obligations under the Commitments.
- 6.78 One respondent to the Consultation raised concerns that the Monitoring Trustee would not be sufficiently independent of Amazon.⁶⁸ In particular, the respondent:
- (a) Expressed concerns that Amazon would have too much power over the Monitoring Trustee and excessive discretion in deciding the information to which the Monitoring Trustee will have access.
 - (b) Requested that the conflict-of-interest provisions for the Monitoring Trustee be strengthened. The submission recommended that the time for which the Monitoring Trustee and any technical expert (and their

⁶⁶ Responses to the Consultation from [redacted] and [redacted].

⁶⁷ Response to the Consultation from [redacted].

⁶⁸ Response to the Consultation from [redacted].

employees) must not be employed by Amazon following their monitoring activities should be extended from one year to five years.

- 6.79 The CMA does not agree with these concerns. The CMA will thoroughly vet the Monitoring Trustee, including to ensure its independence, before appointing it. If the Monitoring Trustee were to be exposed to a conflict of interest or failed to perform its duties properly, it could be dismissed by the CMA and replaced under paragraph 25 of the Commitments.
- 6.80 The CMA also considers that the Commitments contain sufficient safeguards to ensure that the Monitoring Trustee will act independently, including provisions which require that:
- (a) the Monitoring Trustee is remunerated by Amazon in a way that does not influence or impede the independent and effective fulfilment of its mandate;⁶⁹ and
 - (b) the Monitoring Trustee and any technical expert (including all of their employees) will not provide services to, or become an employee of, Amazon or one of Amazon's competitors for a period of one year following termination of their mandates.⁷⁰
- 6.81 The respondent which argued for an extension of the time period for which the Monitoring Trustee and any technical expert must not be subsequently employed by Amazon has not provided reasons in support of its argument and no other respondent raised concerns on this matter. The CMA remains of the view that a one-year period is appropriate and will strike the right balance between mitigating the risk of a conflict of interest arising and not discouraging strong monitoring trustee candidates. Therefore, the CMA does not agree that this provision should be extended.
- 6.82 The CMA does not agree that Amazon would have excessive discretion in deciding the information to which the Monitoring Trustee has access. Under the Commitments, Amazon will be required to provide the Monitoring Trustee with all co-operation, assistance, and information that is necessary to monitor Amazon's compliance. In addition, Amazon will be required to provide the CMA with any information should it decline requests for information made by the Monitoring Trustee.⁷¹
- 6.83 Several respondents to the Consultation suggested that the Commitments should include provisions that allow sellers to easily raise concerns about

⁶⁹ Paragraphs 16 and 17 of the Commitments.

⁷⁰ Paragraphs 16 and 17 of the Commitments.

⁷¹ Paragraph 30 of the Commitments.

Amazon's compliance with the Commitments and that ensure that seller complaints are properly investigated. In particular:

- (a) One respondent stated that Amazon could only be held to account by an independent body being established to which sellers could complain and have their cases reviewed impartially.⁷²
- (b) One respondent welcomed the introduction of the complaints mechanism set out in the Commitments but proposed that the mechanism should be clearly communicated to sellers via email and Seller Central and that the link should be easily accessible at all times. The respondent also stated that sellers using the complaints mechanism should be guaranteed an answer within a specific timeframe and the Monitoring Trustee should be empowered to thoroughly investigate each complaint.⁷³
- (c) One respondent stated that there should be a disputes mechanism for aggrieved sellers and that there should be a quick and efficient compensation process available.⁷⁴ The respondent also suggested that there should be an obligation on Amazon and the Monitoring Trustee to consult with sellers at regular intervals and to take due account of their views.

- 6.84 The CMA considers that the complaints mechanism in the Commitments provides sellers with an appropriate means of raising concerns regarding Amazon's compliance with the Commitments. In this respect, the Monitoring Trustee is an independent party that will investigate complaints to the extent necessary to determine Amazon's compliance with the Commitments and it will be required to report to the CMA on the complaints received.⁷⁵
- 6.85 Amazon has agreed to make the postal and digital contact details for the complaints mechanism available in '*an adequate and sufficiently prominent and durable manner*' and the Monitoring Trustee will ensure that this is done in an appropriate way.⁷⁶ The CMA considers that this addresses concerns regarding communication of the complaints mechanism.
- 6.86 The CMA considers that the additional proposals to: (i) require the Monitoring Trustee to investigate within a specific timeframe and thoroughly investigate every complaint; and (ii) require Amazon and the Monitoring Trustee to consult with sellers, are unnecessary given that the purpose of the complaints

⁷² Response to the Consultation from [REDACTED].

⁷³ Response to the Consultation from [REDACTED].

⁷⁴ Response to the Consultation from [REDACTED].

⁷⁵ Paragraph 28(d) of the Commitments.

⁷⁶ Paragraph 15 of the Commitments.

mechanism is to help identify and remedy any potential non-compliance with the Commitments by Amazon rather than to resolve any individual seller complaints.

- 6.87 One respondent stated that the Commitments should require Amazon to provide sellers with the reasons why they are deemed ineligible, further to the FME process, to have their offers selected as the Featured Offer.⁷⁷ Two respondents stated that the Commitments should include a mechanism that allows sellers to challenge the outcome of the FME.⁷⁸
- 6.88 The CMA does not agree that Amazon should be required to provide sellers with reasons for why they are not eligible under the FME process. A seller's ineligibility for selection as the Featured Offer takes account of the risk of fraud or abuse on the part of the seller. It is not necessary for sellers to be informed of the specific reason(s) why they are not eligible for selection as the Featured Offer in order to ensure that there is no discrimination within the process.
- 6.89 Sellers will be able to contact the Monitoring Trustee under the complaints mechanism provided for in the Commitments if they suspect that Amazon has breached the commitment to use objectively verifiable and non-discriminatory conditions and criteria for the FME process. The Monitoring Trustee will have the ability to require, where appropriate, Amazon to provide relevant information for it to understand why certain sellers may not be eligible (and will report to the CMA any concern about possible non-compliance, enabling the CMA to consider whether to take action). Further, if Amazon were required to provide specific reasons for ineligibility this could help dishonest and high-risk sellers to game the process, thereby exposing customers to greater risk of fraud and abuse.
- 6.90 One respondent submitted that Amazon and the Monitoring Trustee should collect and publish periodic data showing outcomes, such as the proportion of Buy Boxes won by Amazon or FBA Sellers.⁷⁹ The CMA considers that, while there may be benefits to measuring certain outcomes as part of the processes for monitoring Amazon's compliance with the Commitments, the publication of any such information would not further assist the CMA or the Monitoring Trustee in discerning Amazon's compliance with the Commitments and such publication is not therefore necessary.
- 6.91 Several responses recommended organisational or structural separation between parts of Amazon's business to address concerns regarding the ability

⁷⁷ Response to the Consultation from [REDACTED].

⁷⁸ Response to the Consultation from [REDACTED] and [REDACTED].

⁷⁹ Response to the Consultation from [REDACTED].

of the CMA and Monitoring Trustee to monitor compliance with the Commitments. In particular:

- (a) Two respondents noted that behavioural remedies are likely to be ineffective given the many ways in which Amazon is capable of benefiting its own downstream operations.⁸⁰
- (b) Two responses recommended organisational separation between Amazon's platform business and its retail business.⁸¹ This would, for example, entail each business being run separately on a day-to-day basis, staff being financially incentivised according to the sales on their side of the business, Amazon making clear which part of its business customers are engaging with, and information barriers being put in place.
- (c) Five respondents suggested that a structural remedy (such as separating Amazon Retail from the rest of Amazon's marketplace business) may be necessary either currently or in circumstances where other remedies are found to be insufficient.⁸²

6.92 For the reasons set out in this Decision, the CMA considers that the CMA's competition concerns in this Investigation can be addressed, and compliance with them effectively monitored, through the proposed behavioural commitments, such that structural remedies of the type suggested by some respondents are not necessary to address the CMA's competition concerns.

Acceptance of the Commitments would not undermine deterrence

6.93 The CMA considers that acceptance of the Commitments would not undermine deterrence. The CMA considers that its Investigation and any decision to accept binding commitments should deter Amazon from engaging in similar conduct. The fact that Amazon has offered the CMA commitments early in the Investigation is consistent with this view.

6.94 More generally, the CMA considers that its Investigation and any decision to accept binding commitments should help to indicate to undertakings how the CMA will assess similar conduct.

6.95 Acceptance of the Commitments would not preclude the CMA from taking further enforcement action in relation to other suspected breaches of competition law. Nor are the Commitments intended to restrict the ability of the CMA to use powers under new legislation in the future. The Commitments

⁸⁰ Responses to the Consultation from [REDACTED] and [REDACTED].

⁸¹ Responses to the Consultation from [REDACTED] and [REDACTED].

⁸² Responses to the Consultation from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

include provisions that state that they will fall away in the event that the CMA imposes obligations on Amazon pursuant to the proposed Digital Markets Competition and Consumers Act that the CMA considers would address, whether by the same or different means, the competition concerns addressed by the Commitments.⁸³

- 6.96 In reaching the view that acceptance of the Commitments would not undermine deterrence, the CMA has carefully considered the views received in response to the Consultation. Those views, in so far as they relate to the question of whether acceptance of the Commitments would undermine deterrence, and the CMA's assessment of them are summarised below.
- 6.97 One respondent to the Consultation recommended pursuing the Investigation to its conclusion and contended that accepting the Commitments would not be an effective deterrent, as the CMA has only been offered the Commitments following investigations (and actual or threatened fines) in Italy, the EU and US, and that Amazon has not changed its conduct following other, previous investigations.⁸⁴
- 6.98 A potential adverse impact on deterrence is inherent to the acceptance of commitments in any case under the Act, but any such impact should be balanced against the substantial benefits of securing early resolution of the Investigation. It should also be noted that the Commitments accepted by the CMA under section 31A of the Act will be legally binding and that the CMA may apply for a court order if Amazon should fail, without reasonable excuse, to adhere to the Commitments⁸⁵ or continue the Investigation if it has reasonable grounds for suspecting that Amazon has failed to adhere to one or more of the terms of the Commitments.⁸⁶ The CMA further considers that the Commitments will amount to a significant deterrent given the resources that Amazon will need to commit to implementation and monitoring of the Commitments.
- 6.99 Another respondent called for a legally binding decision that includes compensation for the misuse of Seller Data.⁸⁷ However, the CMA has not made a finding that Amazon has misused Seller Data and does not have a power to require Amazon to pay compensation to third parties; nor would the CMA have such a power if it were to reach an infringement decision under the Act in relation to Amazon's use of Seller Data.

⁸³ Paragraphs 10 – 13 of the Commitments.

⁸⁴ Response to the Consultation from [redacted].

⁸⁵ Section 31E of the Act.

⁸⁶ Section 31B(4)(b) of the Act,

⁸⁷ Response to the Consultation from [redacted].

7. The CMA's decision

7.1 For the reasons set out in this Decision, the CMA has concluded that the Commitments set out in the Annex to this Decision address the CMA's competition concerns (set out in Chapter 4 of this Decision) and that it is appropriate to accept the Commitments for the purposes of addressing those competition concerns. Accordingly:

- (a) the CMA has decided to accept the Commitments (as amended) by means of this Decision; and
- (b) the CMA will discontinue its investigation with effect from the date of this Decision.

Signed

[✂]

Ann Pope

Senior Responsible Officer and Senior Director, Antitrust

For and on behalf of the Competition and Markets Authority

Date: 3 November 2023

Annex: The Commitments

Commitments Proposal to the CMA

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

I. DEFINITIONS

“Act” means the Competition Act 1998.

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

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

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

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

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

“Amazon UK Store” means the online store where both Amazon and Sellers make Offers available for purchase to consumers, currently available at www.amazon.co.uk.

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

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

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

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

“CMA” means the Competition and Markets Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Merchant” means Amazon Retail or any Seller.

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

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

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

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

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

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

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

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

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

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

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

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

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

II. COMMITMENTS

Restriction on use of Non-public Seller Data for Retail Operations in competition with Sellers

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

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

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

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

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

Sellers' freedom to negotiate carrier terms when using MFN

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

III. SCOPE AND DURATION

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

IV. NON-CIRCUMVENTION

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

V. COMPLAINT MECHANISM

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

VI. MONITORING PROCESS

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

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

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

Appointment of the Monitoring Trustee

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

New proposal(s) by Amazon

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

Monitoring Trustee nominated by the CMA

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

Replacement, discharge, and reappointment of the Monitoring Trustee

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

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

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

- (e) propose to Amazon such measures as the Monitoring Trustee considers necessary to ensure Amazon's compliance with the Commitments;
 - (f) promptly report, without waiting for the semi-annual reporting, in writing to the CMA, sending Amazon a non-confidential copy at the same time, if it concludes on reasonable grounds that Amazon is failing to comply with the Commitments; and
 - (g) reply to clarifying questions from the CMA regarding any report provided to the CMA pursuant to Paragraphs 28(c), 28(d) or 28(f).
29. The Monitoring Trustee, as well as any technical expert or advisor appointed pursuant to Paragraph 17, shall not:
- (a) participate in decisions relating to technical, product design, or any other changes to Amazon's business or negotiations with Sellers relating to the selection process of the Featured Offer;
 - (b) have any decision-making power or powers of investigation of the kind vested in the CMA pursuant to the Act;
 - (c) undertake any work not covered by its mandate; or
 - (d) disclose any confidential information to any person, undertaking, or other body other than the CMA. Any confidential information obtained by the Monitoring Trustee in performance of the duties and obligations specified in these Commitments shall be kept in the strictest confidence and shall be used solely for the purpose of performing its duties and obligations specified in the Commitments. The Monitoring Trustee shall ensure that adequate safeguards are established and adhered to in collecting, taking delivery of, tracking the dissemination of, monitoring the use of, protecting against the disclosure of, and determining the safe disposal of confidential information. These safeguards shall be reviewed by Amazon within the time limit set by the Monitoring Trustee. Within this time limit, Amazon can make requests to improve the safeguards, which the Monitoring Trustee shall take into account to ensure the adequate level of protection of confidential information. These safeguards must be effective to protect the confidential information, but shall not be such as to prevent the Monitoring Trustee from effectively fulfilling its duties and obligations specified in these Commitments. In case of disagreement, the CMA will take a decision as regards the necessary safeguards. The Monitoring Trustee shall not make any public statements relating to the performance of its functions in relation with these Commitments, or the confidential information it has obtained in the context of the performance of its functions in relation with these Commitments. The Monitoring Trustee shall sign confidentiality undertakings addressed to the CMA warranting its knowledge of and compliance with its duties and obligations specified in these Commitments. The Monitoring Trustee shall abide by the obligations of non-disclosure imposed by section 241(2A) of the Enterprise Act 2002 with regard to any information acquired from the CMA or in its performance of its functions in relation to these Commitments, even after the term of its mandate. Upon expiration of the Monitoring Trustee's mandate and provided there are no pending issues regarding Amazon's compliance with the Commitments, any confidential information held by the Monitoring Trustee

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

Duties and obligations of Amazon

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

36. To the extent that the CMA reasonably concludes that Amazon has failed to comply with these Commitments, Amazon will promptly take reasonable steps, in consultation with the CMA, to ensure compliance with the Commitments.

David Zapolsky
Senior Vice President, General Counsel, and Secretary
Date: October 30, 2023

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

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

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