



IN THE COMPETITION
APPEAL TRIBUNAL

Case No: 1568/7/7/22

BETWEEN:

JULIE HUNTER

Proposed Class Representative

and

- (1) AMAZON.COM, INC.**
- (2) AMAZON EUROPE CORE S.À.R.L.**
- (3) AMAZON SERVICES EUROPE S.À.R.L.**
- (4) AMAZON EU S.À.R.L.**

Proposed Defendants

AND BETWEEN:

Case No: 1595/7/7/23

ROBERT HAMMOND

Proposed Class Representative

and

Proposed Defendants

- (1) AMAZON.COM, INC.**
- (2) AMAZON EU S.A.R.L**
- (3) AMAZON SERVICES EUROPE S.A.R.L.**
- (4) AMAZON EU MEDIA S.A.R.L.**
- (5) AMAZON EUROPE CORE S.A.R.L.**
- (6) AMAZON UK SERVICES Ltd**

CONFIDENTIALITY RING ORDER

UPON the Proposed Class Representatives and the Proposed Defendants (the **Parties**) to the above-named proceedings (the **Proceedings**) having agreed that documents containing confidential information be subject to the confidentiality terms contained in this Order (the **Confidentiality Terms**)

AND UPON the Parties agreeing that this Confidentiality Ring is, as between the two Proposed Class Representatives, only for the purpose of the carriage hearing directed by the Tribunal on 28 June 2023 (including any appeals) and, as between the Proposed Defendants and the Proposed Class Representatives, for the purposes of both the carriage hearing (including any appeals) and the application for a collective proceedings order (including any appeals)

AND HAVING REGARD TO the Tribunal's powers under the Competition Appeal Tribunal (the **Tribunal**) Rules 2015 (the **CAT Rules**) (and in particular Rules 53(2)(h), 101 and 102)

AND UPON the Parties having agreed to the terms of this Order.

IT IS ORDERED BY CONSENT THAT:

1. DEFINITIONS

1.1 For the purpose of these Confidentiality Terms:

1.1.1 Confidential Information means:

- (a) information which has been so designated or otherwise identified by a Disclosing Party for the purposes of this Order, and which is not Excluded Information;
- (b) documents such as:
 - (i) working documents created by the receiving Party or its advisers or experts;
 - (ii) *inter-partes* correspondence;
 - (iii) documents filed at the Tribunal, such as pleadings, witness evidence, expert reports, skeleton arguments, applications and draft orders; and
 - (iv) transcripts prepared by a third party service provider,which contain, reproduce, or reflect the content of the documents/information provided under paragraph 1.1.1(a); but
- (c) the following documents/information will not be Confidential Information:

- (i) redacted versions of the documents described at paragraph 1.1.1(b) if they have been redacted so that they no longer contain or refer to the content of the documents/information provided under paragraph 1.1.1(a); and
- (ii) documents that use Confidential Information (for example, to provide an aggregation of Confidential Information) but which (a) do not reveal the content of Confidential Information and (b) do not enable the content of Confidential Information to be revealed.

1.1.2 **Disclosing Party** means the Party that disclosed a document or information in the Proceedings.

1.1.3 **Excluded Information** means:

- (a) information which becomes generally available to the public (other than as a result of a breach of this Order);
- (b) information that was lawfully in the possession of a Party before the information was disclosed to it pursuant to this Order;
- (c) information the Parties agree in writing is not confidential;
- (d) information that is the subject of an Order of the Court that it is not to be treated as Confidential Information for the purposes of this Order; or
- (e) information that is available to a Party because it appears in a version of a document which has been disclosed in these proceedings, which version has not been designated as constituting or containing Confidential Information, save where the absence of such designation was the result of obvious mistake.

1.1.4 **Guide** means the Tribunal's 2015 Guide to Proceedings.

1.1.5 **Party** means the Proposed Class Representatives or the Proposed Defendants.

1.1.6 **Permitted Persons** means:

- (a) those persons listed in Annex A (as amended from time to time pursuant to these Confidentiality Terms and/or by the Tribunal) that have provided a copy of their signed undertakings to all Party(ies) and the Tribunal in the form set out in Annex B;
- (b) necessary secretarial, business services or other support personnel, including for the avoidance of doubt internal providers of eDisclosure or litigation support services (not including trainee solicitors or paralegals), IT, reprographics staff and clerks, acting under the supervision and/or instructions of the persons identified at paragraph 1.1.5(a) for the purpose of the Proceedings, provided that such personnel have been informed of the confidential nature of the Confidential Information;

- (c) the Tribunal and its personnel (and any appeal Court of competent jurisdiction and its personnel); and
- (d) any external eDisclosure or litigation support provider engaged by any Party for the purpose of the Proceedings to provide eDisclosure or similar services in support of those persons identified at paragraph 1.1.5(a) above, who may have access to the Confidential Information as a necessary consequence of the provision of the said services and whose identity is notified to the other Parties in writing at least two (2) working days in advance of the Confidential Information being provided to them, provided that such providers have been informed of the confidential nature of the Confidential Information and the terms of Annex B.

1.1.7 **Proposed Class Representatives** means Julie Hunter or Robert Hammond.

1.1.8 **Proposed Defendants** means Amazon.com, Inc., Amazon Europe Core S.À.R.L., Amazon Services Europe S.À.R.L. Amazon EU S.À.R.L., Amazon EU Media S.À.R.L. and Amazon UK Services Ltd.

1.1.9 **Tribunal** means the Competition Appeal Tribunal.

2. **CONFIDENTIAL INFORMATION**

- 2.1 Confidential Information provided in the context of the Proceedings is to be provided or made available solely to the Permitted Persons, to be held by them on the terms set out in Annex B of these Confidentiality Terms, subject to the following paragraphs of these Confidentiality Terms.
- 2.2 In accordance with paragraph 7.35 of the Guide, confidential information is: (i) information the disclosure of which would be contrary to the public interest; (ii) commercial information, the disclosure of which could significantly harm the legitimate business interests of the person(s) or undertaking(s) to which it relates; and/or (iii) information relating to the private affairs of an individual, the disclosure of which could significantly harm that individual's interests.
- 2.3 A Party may identify or designate a document or any part thereof as being "Confidential Information" only if it contains confidential information within the meaning of paragraph 2.2 above.

3. **DESIGNATION OF CONFIDENTIAL INFORMATION**

- 3.1 Any document containing Confidential Information shall be designated as such by the Party that introduces the document into the Proceedings. The following procedures shall apply:
 - 3.1.1 the Disclosing Party must notify the receiving Party in writing that it is disclosing a document containing Confidential Information, identify the part or parts of the document claimed to be Confidential Information, and state the basis on which the identified information is claimed to be Confidential Information;

- 3.1.2 at the same time that the Disclosing Party discloses the document containing Confidential Information, an appropriately redacted non-confidential version of the document must be provided;
 - 3.1.3 a designation of 'not confidential' means that the document does not contain Confidential Information. For the avoidance of doubt, in the event of a designation of not confidential, Rule 102 continues to apply (to the extent it would otherwise have applied);
 - 3.1.4 failure to provide a designation for a document at the time the document is disclosed means the document shall be deemed not to contain Confidential Information;
 - 3.1.5 a Party may alter the designation of a document/information to correct an incorrect designation by notice in writing to the receiving Party; and
 - 3.1.6 the designation of any information in a document as Confidential Information by a Party may be challenged in accordance with paragraph 4 of these Confidentiality Terms.
- 3.2 Each Party shall be responsible for labelling and highlighting any Confidential Information in documents disclosed by them in the following ways:
- 3.2.1 Any bundle index will state which documents contain Confidential Information and identify the Party to which the Confidential Information relates.
 - 3.2.2 The specific text in a document that is Confidential Information will be highlighted or otherwise clearly marked (without obscuring the content of the document).
- 3.3 Each Party wishing to refer to Confidential Information shall indicate to the Tribunal that the document contains Confidential Information prior to disclosing the Confidential Information. Following such an indication to the Tribunal, the parties agree that Rule 99 shall apply.
4. **CHALLENGE TO CONFIDENTIAL DESIGNATION**
- 4.1 The designation of information in a document as Confidential Information by a Party may be challenged in accordance with the terms below:
- 4.1.1 If a Party wishes to challenge the designation of information in a document as Confidential Information, that Party shall write to the Disclosing Party specifying:
 - (a) the relevant document/information concerned;
 - (b) the designation the requesting Party considers to be appropriate; and
 - (c) why it is reasonable and necessary for the designation of the document/information to be altered.

- 4.1.2 In the event that a challenge is made, the Disclosing Party may consent in writing to alter the designation of any documents(s)/information, such consent not to be unreasonably withheld. Any response shall be given as soon as reasonably possible and in any event within seven (7) working days of receipt of the written request referred to in paragraph 4.1.1.
- 4.1.3 If the Party challenging confidentiality wishes to maintain its challenge following receipt of the Disclosing Party's response pursuant to paragraph 4.1.2, it may apply to the Tribunal for determination of whether or not the document (or parts of it) qualifies as Confidential Information. Prior written notice of that application must be given to the other Party. Save for where there are exceptional reasons that justify a hearing, applications under this paragraph 4.1.3 are to be dealt with on paper. For the avoidance of doubt, the confidentiality designation of the document(s) in question shall remain at their initial designation until the Tribunal makes its determination.
- 4.2 The deadlines in this paragraph 4 may be extended by agreement between the Parties. Consent to a request for an extension shall not be unreasonably withheld.
- 5. DISCLOSURE AND INSPECTION OF CONFIDENTIAL INFORMATION**
- 5.1 Disclosure and inspection of any document containing Confidential Information shall be restricted to the Permitted Persons on the basis that:
- 5.1.1 the recipient Permitted Person holds the Confidential Information on the terms set out in Annex B;
- 5.1.2 any such Confidential Information will be treated by the Permitted Person as confidential and will be used solely for the purpose of the proper conduct of the Proceedings; and
- 5.1.3 no such Permitted Person will, save as expressly provided for by the Confidentiality Terms, discuss, disclose, copy, reproduce or distribute any Confidential Information.
- 5.2 Provided it is for the purpose of the proper conduct of the Proceedings, nothing in these Confidentiality Terms shall prohibit any Permitted Person from:
- 5.2.1 making notes or copies of, or preparing reports, submissions or other documents concerning, containing or reflecting any Confidential Information (which notes, copies, reports, submissions or other documents would themselves be Confidential Information); and
- 5.2.2 disclosing any Confidential Information to any other person who is a Permitted Person provided that no Confidential Information shall be directly or indirectly disclosed beyond Permitted Persons.
- 5.3 During any hearing in the Proceedings, each Party wishing to refer to Confidential Information shall be responsible for indicating to the Tribunal that the document contains Confidential Information.

- 5.4 In the event of any disclosure of Confidential Information other than as authorised by these Confidentiality Terms (including any unintentional or inadvertent disclosure):
- 5.4.1 solicitors representing the improperly disclosing Party shall immediately notify the improper recipient(s) and the solicitors for the Party which provided the Confidential Information;
 - 5.4.2 the improperly disclosing Party shall use all reasonable endeavours to further prevent unauthorised disclosure including retrieving all copies of the Confidential Information from the improper recipient(s); and
 - 5.4.3 the improperly disclosing Party shall use all reasonable endeavours to secure the agreement of the improper recipient(s) not to further disseminate the Confidential Information in any form.
- 5.5 Nothing in these Confidentiality Terms shall prevent or prohibit a receiving Party from disclosing Confidential Information to a person who is not a Permitted Person and/or referring to such documents or information in open Tribunal insofar as any such disclosure has been authorised in writing by the Disclosing Party, and/or taking any action which is required by applicable law or by a court of competent jurisdiction. In these circumstances, a receiving Party may produce such Confidential Information but shall take all reasonable measures to ensure the Confidential Information is treated in accordance with these Confidentiality Terms.
- 6. ADDITION OR REMOVAL OF PERMITTED PERSONS**
- 6.1 A Party seeking to designate an additional person as a Permitted Person must:
- 6.1.1 seek permission in writing from the other Party(ies) for the additional person to be designated as a Permitted Person; and
 - 6.1.2 provide details of that person's name, role, and an explanation of why their designation as a Permitted Person is reasonable and necessary.
- 6.2 Each Party, other than the requesting Party, shall confirm within five (5) clear working days of receipt of the written request referred to in paragraph 6.1 whether they consent to the additional person being designated as a Permitted Person. Such consent shall not be unreasonably withheld.
- 6.3 If a Party does not consent under paragraph 6.2 to the person being designated a Permitted Person, then that Party must provide written reasons for why permission is refused within five (5) clear working days of receipt of the written request referred to in paragraph 6.1.
- 6.4 If express consent under paragraph 6.2 is given by the Party receiving the request, or no Party raises an objection in accordance with paragraph 6.3 above within five (5) clear working days of receipt of the written request, the additional person shall be required to sign the undertakings at Annex B and provide a copy of the signed undertakings to the Party(ies) and the Tribunal. They will then be designated as a Permitted Person.

- 6.5 If there are any disputes which cannot be resolved by the Parties, the Party seeking to include the additional person may apply to the Tribunal, provided written notice of such application is given to the other Party. The additional person will become a Permitted Person if the Tribunal so orders.
- 6.6 If a Party wishes to remove a person as a Permitted Person, that Party shall notify the other Party. The Party must also comply with paragraph 7 (subject to paragraphs 7.2 and 7.3) by requiring the person to be removed to immediately destroy (insofar as technologically feasible) or make inaccessible all Confidential Information in their possession. For the avoidance of doubt, a Party may only remove a Permitted Person from their own Party.
- 6.7 Annex A reflects the current list of individuals who are Permitted Persons and who have signed the Annex B Undertakings and provided a copy to all Party(ies) and the Tribunal in accordance with this paragraph.
- 6.8 The Party(ies) shall keep Annex A updated, and shall provide it to the Tribunal on its request. For the avoidance of doubt, there is no requirement to amend this Order when updating the Permitted Persons listed in Annex A.

7. COPIES OF CONFIDENTIAL INFORMATION

- 7.1 The production of further copies of the Confidential Information shall be strictly limited to those required by the Permitted Persons to whom they are disclosed.
- 7.2 Subject to the exceptions in paragraph 7.3 below, each Party and Permitted Person must destroy copies of all documents containing Confidential Information provided pursuant to these Confidentiality Terms (in both hard and soft copy) (insofar as technologically feasible) or make them inaccessible at the conclusion of the Proceedings, or when that Party or Permitted Person ceases to be involved in the Proceedings. At such time, that Party shall notify its Permitted Persons that they must destroy (insofar as technologically feasible) or make inaccessible all Confidential Information in their possession. Each Party shall notify the other Party within a reasonable time that the Confidential Information has been destroyed (insofar as technologically feasible) or made inaccessible (as appropriate).
- 7.3 The obligation in paragraph 7.2 above is subject to the following exceptions:
- 7.3.1 paragraph 7.2 does not apply to solicitors' or counsel's notes subject to continued compliance with all other Confidentiality Terms;
- 7.3.2 paragraph 7.2 does not create an obligation to search for transitory or deeply stored soft copies of Confidential Information which may exist but which cannot be recovered without special measures, provided that such documents and/or information will be promptly deleted in the event of the restoration of such copies;
- 7.3.3 paragraph 7.2 does not apply to Party's copies of pleadings, evidence, skeleton arguments, transcripts, applications, draft orders, correspondence referred to at trial or in a hearing or submitted in the Proceedings as well as lawyer work product referring to Confidential Information, subject to continued compliance

with the terms of this Order in respect of the Confidential Information contained within such documents; and

7.3.4 paragraph 7.2 does not apply to a Party in respect of the Confidential Information it provided.

8. NOTICES

8.1 Any notice, consent or objection to be given under or in connection with these Confidentiality Terms (each **Notice** for the purposes of this paragraph) shall be in writing.

8.2 Service of a Notice must be effected by email.

8.3 Notices shall be addressed as follows:

8.3.1 Notices for the Proposed Class Representative shall be marked for the attention of Hausfeld & Co LLP and sent to:

Email addresses: akadri@hausfeld.com
lhannah@hausfeld.com
jamior@hausfeld.com
mzymler@hausfeld.com
enyman@hausfeld.com
hunterhausfeldclaim@hausfeld.com

Reference: LH/AK/500434

8.3.2 Notices for the Hammond Proposed Class Representative shall be marked for the attention of Hagens Berman EMEA LLP and Charles Lyndon Limited and sent to:

steve@hbsslaw.co.uk
sergeip@hbsslaw.co.uk
rodger@charleslyndon.com
eleanor.leedham@charleslyndon.com
amr.el.sawaf@charleslyndon.com
athena@charleslyndon.com

8.3.3 Notices for the Proposed Defendants shall be marked for the attention of Herbert Smith Freehills LLP and sent to:

Email addresses: Gregg.Rowan@hsf.com
Stephen.Wisking@hsf.com
Kim.Dietzel@hsf.com
AmazonBuyBoxCPO@hsf.com

Reference: 2825/4168/9100/10610/31055110

9. GENERAL PROVISIONS

- 9.1 The Confidentiality Terms are intended to apply unless or until superseded by a subsequent order of the Tribunal.
- 9.2 In respect of Confidential Information, subject to any order of the Tribunal, the obligations contained in the undertakings provided pursuant to this Order and Rule 102 of the CAT Rules shall continue to apply following termination of the Proceedings, and each of the Parties shall continue to treat Confidential Information in accordance with this Order unless the other Party consents or until they have confirmed to the other Party that all Confidential Information held by it or on its behalf has been destroyed.
- 9.3 In the event of any anticipated or actual breach of these Confidentiality Terms, any Party may seek to enforce the Confidentiality Terms.
- 9.4 These Confidentiality Terms and any Undertakings given in relation to them are governed by and shall be construed in accordance with English law and each Party hereby irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales.
- 9.5 Nothing in these Confidentiality Terms or the Annexes to these Terms shall prevent or prohibit any Permitted Persons (as may be extended from time to time) from acting in other proceedings, subject to the ongoing compliance with this Order, the undertakings given pursuant to it, Rule 102 of the CAT Rules, and any applicable professional obligations.
- 9.6 There shall be liberty to apply, if appropriate.
- 9.7 Costs in the case.

Sir Marcus Smith

President of the Competition Appeal Tribunal

Made: 2 August 2023

Drawn: 2 August 2023

ANNEX A

The Hunter Proposed Class Representative's Permitted Persons

The Proposed Class Representative

Julie Hunter

Counsel (Brick Court Chambers)

Marie Demetriou KC

Robert O'Donoghue KC

Sarah Love

Solicitors (Hausfeld & Co. LLP)

Aqeel Kadri

Lesley Hannah

Jonathan Amior

Michael Zymler

Edward Nyman

Lisa Mildt

Colum Tremayne

Myrto Damaskou

External economists (Berkeley Research Group (UK) Ltd.)

Edmond Lee

Mark Bosley

Greg Harman

The Hammond Proposed Class Representative's Permitted Persons

The Proposed Class Representative

Robert Hammond

Counsel

Philip Moser KC

Ben Rayment

Solicitors (Hagens Berman EMEA LLP and Charles Lyndon Limited)

Steve Berman

Barbara Mahoney

Sergei Purewal

Rodger Burnett

Eleanor Leedham

Robert Wilson

Amr El Sawaf
Brendan O'Neill

External economists

Chris Pike
Max Theiler
Rahul Muralidharan

Proposed Defendants' Permitted Persons

Officers, Directors & Employees

[TBC]

In-House Counsel

Rahima Laird
Markus Burckhardt
Chris Meyers
Joanna Jungowski
Aurea Baccon
Anna Cooper
Barbara Scarafia
Alexis Collins
Nate Sutton

Counsel

Jon Turner KC
Conall Patton KC
Benjamin Williams KC
Ciar McAndrew

Solicitors (Herbert Smith Freehills LLP)

Stephen Wisking
Kim Dietzel
Gregg Rowan
Daniel May
Joe Moorcroft-Moran
Aleksander Kudlicki
Benjamin Lyon
Zoe Adeniyi
Joel Stanley

External economists

[TBC]

ANNEX B

In respect of any Confidential Information disclosed pursuant to this Order, each Permitted Person undertakes that they will comply with the following requirements to the extent applicable. The defined terms in this Order are used in this Annex.

I, [insert name], of [firm, company, or establishment] being [legal or other title] and regulated so far as my professional conduct is concerned [by regulatory body, if any] undertake to the Tribunal as follows:

1. I have read a copy of this Order and understand the implications of this Order, the provisions of the Confidentiality Terms, and the giving of these undertakings.
2. I will treat all Confidential Information made available to me for the purpose of the Proceedings as confidential and will use any such Confidential Information only for the purpose of the proper conduct of the Proceedings. My obligations in these undertakings shall apply equally to any documents or information which incorporate Confidential Information (or part thereof) or any information contained therein, as defined in paragraph 1.1.1 of the Confidentiality Terms.
3. Except as expressly contemplated by the Confidentiality Terms, I will not use, disclose, discuss, copy, reproduce or distribute any such Confidential Information to persons who are not Permitted Persons or authorise, enable or assist any person to do so.
4. Upon ceasing to be a Permitted Person, I will immediately destroy (insofar as technologically feasible) or make inaccessible all Confidential Information in my possession, in accordance with paragraphs 6.6 and 7.2-7.3 of the Confidentiality Terms.
5. I have read Rule 31.22 of the Civil Procedure Rules and Rules 101 and 102 of the Competition Appeal Tribunal Rules 2015 and am aware of and will comply with the obligations imposed by those Rules.
6. I will take all such steps as may be necessary or expedient on my part to comply with any request made under or pursuant to the Confidentiality Terms.
7. I will otherwise comply with the Confidentiality Terms and/or, as the case may be, take all steps within my power to ensure that the Confidentiality Terms are complied with, including by not disclosing Confidential Information to persons other than relevant Permitted Persons, or assisting or enabling any person to do so.
8. The documents containing any Confidential Information will remain in my custody or the custody of another Permitted Person at all times and will be held in a manner appropriate to the circumstances so as to prevent unauthorised access.
9. The production of further copies by me of the documents containing Confidential Information shall be limited to that reasonably required for the use of the Permitted Persons for the purposes of the Proceedings only and shall be held in accordance with these undertakings.
10. I will continue to comply with these undertakings after the conclusion of the Proceedings, in respect of any Confidential Information that I do not destroy and continue to hold.

11. Nothing in these undertakings shall prevent or prohibit the owner of the Confidential Information from taking any action in relation to that information, which they would otherwise be entitled to take.
12. Nothing in these undertakings shall prevent or prohibit me from taking any action that is permitted in this Order, or has been authorised in writing by the relevant Disclosing Party, or that I am required to take by applicable law or by a court of competent jurisdiction.

Signed:

Name:

Date: