



Amazon CPO claim takes aim at Buy Box 'abuse' in parallel with European regulators

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- Neutral factors should be applied in selecting what offers make it into the Buy Box, lawyer says
- Standalone claim may develop into follow-on action if CMA issues decision
- CMA, EC probes to gather information about operation of Amazon's algorithms

A new collective claim against Amazon alleging abuse of dominance over the operation of its Buy Box aims to net damages on behalf of consumers and comes as European regulators continue probing the tech giant, the team bringing the claim have told this news service.

In October proposed class representative (PCR) Julie Hunter announced the filing of an application before the Competition Appeal Tribunal (CAT) for a collective proceedings order (CPO) against the tech giant.

Hunter is a consumer rights advocate who previously worked at Which? and is now chair of the volunteer-led Consumer & Public Interest Network. The claim is led by Lesley Hannah, partner at Hausfeld.

"We think that the Buy Box is biased and does not always represent the cheaper deal for consumers," Julie Hunter said. Factors such as the website design and the prominence of the Buy Box combine to make sure that consumers opt for the product and offer that benefits Amazon directly, she added.

The claim aims to compensate consumers affected by the tech giant's practices, Hunter said, and to compel Amazon to obey competition law. "This is money in Amazon's coffers that could still be in consumers' pockets," she said.

Lesley Hannah noted the Competition and Markets Authority's (CMA) probe, announced in July, over practices in the UK Marketplace as well as the European Commission's (EC) formal investigation into Amazon practices regarding Buy Box and Prime.

"There are concerns about what is going on there and how things are getting into the [Buy] Box. This type of self-preferencing is potentially an abuse of dominance and matches the CMA investigation but also the European Commission investigation, looking at it from a broader perspective," the lawyer said.

Hannah said that the CMA and EC probes are "very significant regulatory investigations" and observed that the agencies will be exercising their evidence-gathering powers. "From Amazon, very probably, they will already know information that we don't about

ION PROPRIETARY

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Companies

Amazon.Com, Inc.

Agencies

UK Competition Appeal Tribunal (CAT)

There are no files associated with this Intelligence

the design of Amazon's algorithm and how it chooses what offers are featured on their pages," she said.

Hannah said that the UK collective claim is currently standalone but will "probably become follow-on in due course" if the CMA probe leads to a decision. "Those two [i.e. CMA and EC] investigations strengthen our case in a way, as we know there are concerns by the regulators who are guarding competition law," she said.

The claim is funded by LCM and currently estimates netting up to GBP 900m for class members. Hannah said that the claim's litigation plan anticipates that proof of purchase data over the last six years can be obtained from Amazon itself.

The proposed class representative will have to persuade the CAT that factors including, but not limited to, price used by Amazon to select what offers go into the Buy Box constitute an abuse of dominance, the lawyer said. This will also include what the PCR alleges is Amazon's special responsibility as a dominant undertaking, under the chapter II prohibition.

This is then followed by the court's consideration of what would have happened to prices in the counterfactual world, she added, which will require evidence from economic experts.

"We think that if there were neutral factors applied in Amazon's algorithms in selecting products for the Buy Box, or a different design, then consumers would have saved money and would also have had other benefits," Hannah said.

"We think that it is the case, based on testing, that the Buy Box doesn't necessarily offer the cheapest offer, or offers that are advantageous in terms, like a higher-rated product, or a seller with better terms and conditions," Hannah added.

"If we can show, which we think that we can, that there would have been cheaper price offers available, then that will be part of the measure of damages," she said.

The claim is about consumer choice, Julie Hunter said, and that consumers should be able to make "informed decisions" when purchasing from Amazon. "What I'd like to see, moving forward, is Amazon obeying the law and treating consumers fairly," she said.

The proposed class representative has instructed Marie Demetriou KC, Robert O'Donoghue KC and Sarah Love, all of Brick Court Chambers, as counsel. Updates on the claim will be published on its official website.

An Amazon spokesperson said: "This claim is without merit and we're confident that will become clear through the legal process. Amazon has always focused on supporting the 85,000 businesses that sell their products on our UK store, and more than half of all physical product sales on our UK store are from independent selling partners. We always work to feature offers that provide customers with low prices and fast delivery."

by Aicha Marhfour in London

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