

October 31, 2018

Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

**Re: Competition and Consumer Protection in the 21st Century Hearings --
Comments on Topic #3: The Identification and Analysis of Collusive,
Exclusionary, and Predatory Conduct by Digital and Technology-Based
Platform Businesses**

Docket ID 2018-0088-0004

Advocates for Independent Business (AIB) is a coalition of 11 national trade associations that collectively represent tens of thousands of independent businesses across the country. Together, our member businesses employ hundreds of thousands of people, serve millions of consumers, and are an important part of the economic vitality of their communities and regions.

We're writing to voice our concern that Amazon's growing market power is restraining the ability of our members to do business online, and to communicate steps we feel the Federal Trade Commission (FTC) should take to ensure an open market and promote competition. We respectfully urge the FTC to use its authority under Section 5 of the FTC Act to establish standards that define and prohibit "unfair methods of competition" in the operation of e-commerce platforms.

In a comment letter submitted as part of these hearings, Federal Trade Commissioner Rohit Chopra notes that Congress endowed the FTC with participatory rulemaking authority in order to address the deficiencies in antitrust law that arise when the law is developed exclusively through adjudication of individual court cases.¹ Commissioner Chopra describes how the agency should use rulemaking to make antitrust policy more predictable and effective, and more responsive to evolving business practices and market

¹ Chopra, R. Comment of Federal Trade Commissioner Rohit Chopra. September 6, 2018. Federal Trade Commission. Available online at: https://www.ftc.gov/system/files/documents/public_statements/1408196/chopra_-_comment_to_hearing_1_9-6-18.pdf.

trends. He notes that rulemaking is especially important in “areas where private litigation is unlikely to discipline anticompetitive conduct.”²

We believe e-commerce platforms represent an area in which such rulemaking is needed and warranted. As an initial step, we encourage the FTC to undertake a study of the e-commerce industry, drawing on its authority under Section 6(b) to collect confidential business information and data about this sector, in order to gain a view into the otherwise opaque practices that platform operators employ that may affect competition.

Such a study would necessarily focus significantly on Amazon, which captured about half of online spending in the U.S. last year.³ Because a majority of online shopping searches now begin on Amazon,⁴ the company increasingly controls market access for its competitors. Many of our members, like other retailers and manufacturers, feel compelled to become third-party sellers on Amazon’s platform. Otherwise, they lose access to more than half of the market. “The challenge [Amazon] presents to our presence online [is that] over 50% of all searches start on Amazon,” explained one of our member businesses in a survey we conducted last year. Another of our members in the same survey said that “we feel that we have no other choice than to be active in the marketplace program as many customers now seem to search Amazon first (or only).”

This presents an inherent conflict of interest. Amazon provides essential market access to firms while also competing against them. A significant body of research and reporting has documented how Amazon exploits this dependence and the data it gathers from sellers to exclude them as competitors, including

² *Ibid*, at 10.

³ Lunden, I. Amazon’s share of the US e-commerce market is now 49%, or 5% of all retail spend. *TechCrunch*. July 13, 2018. Available online at: <https://techcrunch.com/2018/07/13/amazons-share-of-the-us-e-commerce-market-is-now-49-or-5-of-all-retail-spend>.

⁴ Soper, S. Google Narrows Search Gap With Amazon, Retailers Left in Dust. *Bloomberg Business*. December 20, 2017. Available online at: <https://www.bloomberg.com/news/articles/2017-12-20/google-narrows-search-gap-with-amazon-retailers-left-in-dust>.

by privileging its own products in search results and the “buy box,”^{5,6,7} blocking sellers from offering certain products, and arbitrarily suspending sellers’ accounts;⁸ expanding into new product categories with a built-in advantage gained from monitoring sellers’ product offerings and transactions;⁹ and otherwise fortifying its market dominance.¹⁰

Amazon’s significant data advantages and network effects create barriers for other platforms to emerge. This lack of competition has allowed Amazon to abruptly and unilaterally change its terms and fees for third-party sellers. Amazon raised the fees for its warehousing and delivery services by as much as 14 percent this year for standard-sized items, in addition to similar increases in 2017.¹¹ As one of our members reported, the company’s pricing terms mean “all the profit would shift from the local dealer to Amazon.”

In addition, sellers have reported abrupt suspensions of their accounts without explanation.¹² One of our members reported last year that “after we’d been on Amazon for about 4 years, Amazon closed our Marketplace account. Out of the blue, no warning. We just woke up to an email that said our account had been closed for “violations”. There was no one at Amazon who would answer emails, pleas, questions, phone calls, or requests for more info. At the time Amazon closed our account, we had more than 10,000 individual listings and over 98%

⁵ Shapiro, N. NEWS RELEASE: Upstream Commerce Retail Intelligence Research Finds Amazon Muscles In On Its Own Vendors’ Best Sellers. *Upstream Commerce*. Available online at: <http://upstreamcommerce.com/blog/2014/10/28/amazon-muscles-marketplace-vendors-sellers>.

⁶ Angwin, J. Amazon Says It Puts Customers First. But Its Pricing Algorithm Doesn’t. *ProPublica*. September 20, 2016. Available online at: <https://www.propublica.org/article/amazon-says-it-puts-customers-first-but-its-pricing-algorithm-doesnt>.

⁷ Capitol Forum. Amazon: By Prioritizing its Own Fashion Label Brands in Product Placement on its Increasingly Dominant Platform, Amazon Risks Antitrust Enforcement by a Trump Administration. *Capitol Forum*. December 13, 2016. *Capitol Forum*. <https://thecapitolforum.com/wp-content/uploads/2016/07/Amazon-2016.12.13.pdf>.

⁸ Levy, R. Amazon sellers say they were unfairly suspended before Prime Day, and now have two bad choices. *CNBC*. July 17, 2018. Available online at: <http://upstreamcommerce.com/blog/2014/10/28/amazon-muscles-marketplace-vendors-sellers>.

⁹ Soper, S. Got a Hot Seller on Amazon? Prepare for E-Tailer to Make One Too. *Bloomberg*. April 20, 2016. Available online at: <https://www.bloomberg.com/news/articles/2016-04-20/got-a-hot-seller-on-amazon-prepare-for-e-tailer-to-make-one-too>.

¹⁰ Zhu, F. Competing with Complementors: An Empirical Look at Amazon.com. *Strategic Management Journal*. October 2019. Available online at: https://www.hbs.edu/faculty/Publication%20Files/amazon_2018-06-05_4a83c515-af0c-4366-9fba-8fb059d0b4f6.pdf.

¹¹ *Ibid*.

¹² Soper, S. Amazon Angers Mom-And-Pop Sellers With “Arbitrary” Suspensions. *Bloomberg*. August 26, 2016. Available online at: <https://www.bloomberg.com/news/articles/2016-08-26/amazon-angers-mom-and-pop-sellers-with-arbitrary-suspensions>

positive feedback from our customers.” Because there are no viable competing platforms for sellers to turn to, they are forced to accept Amazon’s decisions.

Amazon has also used its position to compel suppliers to accept terms that reduce competition from other retailers, including our members. For example, Amazon has used the threat of not removing counterfeits from its platform to coerce brands, such as Birkenstock and Nike, to sell their full product lines to Amazon.¹³ Many brands prefer to reserve their full selection for specialty brick-and-mortar retail stores that provide the brands with additional marketing support and customer service (such as shoe fittings and in-store marketing). By coercing brands to forego compensating these stores, through exclusive access to niche products, Amazon is free-riding on specialty stores, including our members, and reducing competition from them.

E-commerce is a pivotal, fast-growing sector. It’s the future of much of the consumer goods industry, from groceries to toys. Allowing this sector to be dominated by a single company that uses its position to expand its own market dominance at the expense of competition has and will have significant negative consequences for product development, innovation, and consumers.

A growing number of antitrust enforcers, policymakers, and industry experts are recognizing these concerns. A few weeks ago, European Union Competition Commissioner Margrethe Vestager announced a probe of Amazon, saying: “The question here is about the data, because if you as Amazon get the data from the smaller merchants that you host — which can be of course completely legitimate because you can improve your service to these smaller merchants — well, do you then also use this data to do your own calculations? What is the new big thing, what is it that people want, what kind of offers do they like to receive, what makes them buy things.”¹⁴ Senator Elizabeth Warren recently called for Amazon’s retail and platform operations to be separated. “You’ve got to pick one business or the other,” she said. “If you’re getting a huge competitive advantage from being a platform provider because of all this information you’ve been scraping, then we no longer have competition going on.”¹⁵

¹³ Levy, A. Birkenstock quits Amazon in US after counterfeit surge. *CNBC*. July 20, 2016. Available online at: <https://www.cnbc.com/2016/07/20/birkenstock-quits-amazon-in-us-after-counterfeit-surge.html>.

¹⁴ Hamilton, I. The EU is now going after Amazon after slapping Google and Apple with giant fines. *Business Insider*. September 19, 2018. Available online at: <https://www.businessinsider.com/amazon-investigated-by-eu-commissioner-margrethe-vestager-2018-9>.

¹⁵ Edmondson, C. Elizabeth Warren on Big Banks and the Democratic Party: 5 Takeaways. September 14, 2018. Available online at: <https://www.nytimes.com/2018/09/14/us/politics/elizabeth-warren-times-talks.html>.

We hope that the FTC will use its authority to undertake a study of the e-commerce industry in order to bring more data and information to light. Given the power that Amazon has to block market access and otherwise impede competition in online commerce, we believe that e-commerce platforms represent an area in which FTC rulemaking under Section 5 is needed to protect and promote competition in this critical sector of the economy.

Thank you for the opportunity to submit comments.

Sincerely,

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