



May 15, 2020

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable David N. Cicilline
Chairman
Subcommittee on Antitrust, Commercial,
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Ken Buck
Subcommittee on Antitrust, Commercial,
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Pramila Jayapal
Subcommittee on Antitrust, Commercial,
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable F. James Sensenbrenner
Ranking Member
Subcommittee on Antitrust, Commercial,
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Joe Neguse
Vice-Chair
Subcommittee on Antitrust, Commercial,
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Matt Gaetz
Subcommittee on Antitrust, Commercial,
and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairmen Nadler and Cicilline, Ranking Member Sensenbrenner, Vice-Chair Neguse, and Representatives Jayapal, Buck, and Gaetz:

We appreciate the opportunity to address the issues raised in your May 1, 2020 letter related to the Committee's investigation into competition in digital markets. We remain fully committed to cooperating with your investigation, and we welcome continued dialogue with the Committee on any issue. This includes Amazon's policy regarding seller data, about which we have provided significant information in writing, in testimony, and in conversations with staff.

As we have emphasized throughout our engagement with the Committee, we compete every day within the fiercely competitive retail environment to provide our customers with better service, more selection, and lower prices. To compete effectively, our focus has always been—and absolutely remains—on customers, and our corporate philosophy is firmly rooted in working backwards from what customers want. As part of our commitment to serving customers, like other retailers, we make use of data to improve the customer experience in our stores. For example, we are constantly seeking to innovate to make the shopping experience easier and more convenient, and store data and trends help

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us to improve the customer experience. As you know, such use of store data is the norm across the diverse and competitive retail landscape, where large retailers like Walmart, Target, Walgreens, Kroger, and Costco use store data to develop and sell private brands. It is also important to note that retail—perhaps more so than any other industry—is extraordinarily transparent. The full range of competing products and their prices are fully visible and apparent to all, and top-selling products are easily identified in our store and almost any other retail location. Amazon’s store makes all of this information readily available, including detailed lists of best-selling items by category so that anyone can see for themselves what is selling well and what is not. As a result, among the myriad data publicly available, anyone looking to identify top selling items can easily do so.

Because Amazon is privileged to have third-party sellers who now account for the great majority of sales of physical goods in Amazon’s store, we determined years ago to take additional steps to give sellers comfort regarding their individual data. It was purely for that reason that we went beyond any legal requirement—and beyond the protections in place at any other store we are aware of—to begin to implement internal policies to restrict the use of non-public data specific to one particular selling partner to compete directly with sellers. We did this because we thought it was the right thing to do for our selling partners, who are also critical customers of Amazon—we wanted to go the extra mile to protect the trust of third parties selling in our stores. This policy, known internally at Amazon as our Seller Data Protection Policy, prohibits the use of nonpublic, seller-specific data to compete against our selling partners. As with any other employee policy at Amazon, we take the policy seriously, we train extensively on it, leadership reinforces that training, we audit for compliance, we examine allegations of breaches of the policy, and we iterate and improve based on what we learn. We do all of this solely in order to promote and enhance third party sellers’ trust in Amazon, trust that we know is essential to our business.

We have endeavored in all of our engagements to date to provide the Committee with a clear and complete understanding of the use of data in Amazon’s store, including seller data. As you know, in response to the Committee’s requests covering more than 40 different topics, we have made 15 separate productions of over 200,000 pages of internal documents, and we continue to prepare productions for the Committee. These productions have included highly confidential, business-sensitive documents. Throughout this process, Amazon has been in regular contact with Committee staff, holding weekly calls and submitting weekly email status reports to the Committee. We disagree strongly with any suggestion that we have attempted to mislead the Committee or not been cooperative with the investigation.

In particular, on the issue of our use of data, the Committee asked in July 2019 whether Amazon uses “any of the data (including aggregate data on specific product categories) it collects on Marketplace transactions to inform its private label strategy?” We responded clearly: “Yes, while we prohibit in our private label strategy the use of data related specifically to individual sellers, like other retailers we use aggregated store data (e.g., total sales) and customer shopping behavior (e.g., search volume) to identify categories and products with high customer demand over a given time period.”¹ In response to the Committee’s written questions for the record last fall, we elaborated that the policy prohibits

¹ *Antitrust Investigation of the Rise and Use of Market Power Online and the Adequacy of Existing Antitrust Laws and Current Enforcement Levels: Hearing Before the Subcomm. on Antitrust, Commercial, and Administrative Law of the H. Comm. on the Judiciary*, 116th Cong. (2019) (letter from D. Zepolsky to the Honorable David N. Cicilline), available at <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/07.26.19%20-%20amazon%20response.pdf>.

“Amazon’s private brand products business from using individual sellers’ data to decide which products to launch” and that the business is prohibited from using such data “to make sourcing, pricing, or inventory decisions for its private brand products.”² Our testimony at the Subcommittee’s July 16, 2019 hearing about our company policy reaffirmed our policy and is consistent with the written record. As even the former employee quoted in the Wall Street Journal made clear, our seller data protection policy is well known to our employees, and using individual seller data to aid the private label business would be a clear violation of that policy.³

Your letter states that you are particularly interested in allegations made in that Wall Street Journal article. That article confirms that any employee alleged to have accessed non-public data of an individual seller would have done so only with full knowledge that doing so would violate the policy. The article also conflates broader product pricing and top-seller data readily available to all and the individual seller data our policy protects. Even in that light, however, we too were deeply troubled to learn of the claims that employees intentionally violated our policy. We are investigating those claims thoroughly now, and we look forward to sharing the results of that investigation with you.

We also fully appreciate your interest in hearing from Amazon leaders regarding these issues and any other issue material to your investigation into competition in digital markets, including at any future hearing. In particular, while our teams remain heads down around the clock focused on protecting the health and safety of our employees while continuing to serve customers during the global pandemic, we remain prepared to make the appropriate Amazon executive available to the Committee to address these important issues. We are also working hard to close out on the results of our investigation, and we will reach out to your staff to discuss the most effective way to share those results with you.

Thank you again for the opportunity to discuss these issues directly. We look forward to continuing to work constructively with you and your staff on these and the other important questions that are the subject of your investigation.

Sincerely,



Brian Huseman
Vice President, Public Policy

² *Id.* (Amazon Responses to Questions for the Record following the July 16, 2019, Hearing of the Subcommittee on Antitrust, Commercial, and Administrative Law, Committee on the Judiciary, Entitled “Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship”), available at <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf> (see responses to Questions 21, 31, 33, and 67).

³ Dana Mattioli, *Amazon Scooped Up Data From Its Own Sellers to Launch Competing Products*, WALL ST. J. (Apr. 23, 2020), <https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015>.