



July 22, 2020

Honorable David N. Cicilline
Chairman
Subcommittee on Antitrust, Commercial
and Administrative Law
U.S. House of Representatives
Washington, DC 20515

Honorable F. James Sensenbrenner
Ranking Member
Subcommittee on Antitrust, Commercial
and Administrative Law
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Cicilline and Ranking Member Sensenbrenner:

On behalf of the National Association of Wholesaler-Distributors (NAW), we write to urge you to delve deeply into Amazon's monopolistic mistreatment of its third-party sellers when its CEO Jeff Bezos testifies before your Subcommittee on Monday, July 27th.

NAW is the "national voice of wholesale distribution," an association comprised of employers of all sizes, and national, regional, state and local line-of-trade associations spanning the \$6 trillion wholesale distribution industry that employs more than 5.9 million workers in the United States. Approximately 35,000 enterprises with places of business in all 50 states and the District of Columbia are affiliated with NAW.

Amazon's exploitative conduct in Business-to-Business (B2B) commerce mirrors the playbook it has executed in the Business-to-Consumer (B2C) marketplace. Unchecked, Amazon's dominance threatens to cripple the highly competitive B2B system which exists in our country. Wholesaler-distributors – most of them small and medium size businesses – will quite literally be driven out of existence, leaving customers with fewer alternatives and less choice.

Amazon Business (the company's B2B unit) has taken the B2B marketplace, in which NAW members operate, by force. Analysts expect Amazon Business to surpass \$50 billion in sales by 2023. In 2019, analysts report that gross sales at Amazon's B2B marketplace grew by 60% year-over-year – *more than triple Amazon's overall growth rate*, including B2C and Amazon Web Services. At this rate, Amazon's B2B is projected to surpass the size of the core B2C segment. Over 200,000 independent sellers and over 2 million customers are already captive to this increasingly dominant B2B platform.

Robust competition is the bulwark of this nation's free market economy, but Amazon Business is anything but competitive. Amazon Business is repeating its anticompetitive tactics already used by Amazon to dominate the B2C marketplace. Like its B2C business, Amazon plays "both sides" of B2B by selling its own products in direct competition against third-party sellers who sell on Amazon's B2B marketplace.

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Amazon's B2B marketplace is rigged. It operates to extract and drive customers away from independent third-party sellers to Amazon Business through a series of anticompetitive practices. Our members' concerns are that Amazon:

- Misuses third-party seller data. Amazon collects massive amounts of competitively sensitive data from third-party sellers, including product information and transaction data around prices, terms and customer identities. Amazon uses this competitive intel to launch its own competing private label products to undercut NAW members. Congressional testimony and media reports have separately shown that Amazon has used its position to appropriate and misuse supplier information and transactional data to favor Amazon's own products.
 - As one of our members told us, *"We decided to sell a very limited line on Amazon business early on to test the waters. My feelings were then, and continued to be, that we were paying Amazon to collect competitive information (12% of a sale at that time). When sales of any item reached critical mass, all Amazon had to do is go to a manufacturer with the data, demand a price based on purchases amalgamated from national sales data and take the business from the very distributors that provided the data."*
 - Another one of our members stated, *"I worked in Hong Kong with US brands who used factories in Asia. It was common knowledge that Amazon would use sales records from our sales to create competitive products and undercut our pricing structure."*
- Abuses its position and access to competitive intel to steer customers—through promotion, advertising, or other preferential treatment—to Amazon Business' own private-label products over the products offered by third-party sellers on its site.
 - Another member said, *"Amazon allows anyone to advertise brands that they have no authorization to sell those products and they use trademarks and copy pictures of models with prices to sell them. The sellers are unauthorized and cause many problems with our marketing plans."*
 - Another member shared, *"Amazon allowed the distributor to sell the product for about a year, then went out and replicated the product and began selling their own branded product, terminating the distributor. Multimillion-dollar product swap where Amazon became the winner and the distributor was left empty handed."*

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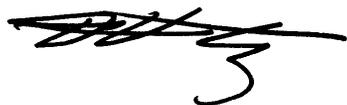
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- Manipulates its search algorithms to steer customers towards Amazon Business' own products and products that earn Amazon higher profits.
 - Another member told us, *"I'm glad someone is finally helping third-party sellers to make a stand. Amazon has been gouging us for years and everyday it is a battle with them to try and keep our products listed. I have 24 items that Amazon removed the listings for and I tried for 3 months to get them reactivated. Amazon is now selling the items and took all our images and descriptions and of course they are selling it cheaper than we were because they own all the shipping carriers and don't have to pay the costs of shipping that all of us small businesses do."*
 - Another member shared, *"Amazon not only uses their price advantage (because of fee they charged sellers) but would use the sales history of third party sellers to then bring in the same products and buy large quantity's to get better pricing while at the same time not having to pay themselves a fee. Totally wipes out third party sellers because you can't compete against that."*

Amazon's conduct harms third-party sellers and consumers. The current regulatory regime has failed to protect the competitive process from Amazon's exclusionary and unfair practices in the B2C industry. It's no surprise that Amazon clearly now has B2B in its same sights. It is imperative that the Subcommittee moves to restore competition to Amazon's marketplace in both B2B and B2C. Small businesses that depend upon Amazon for access to their markets, including many of our members, fear retribution by Amazon if they speak up. They are relying upon you and your colleagues to curb Amazon's stranglehold on them.

Sincerely,



Dirk Van Dongen
President & CEO



Blake Adami
Vice President-Government Relations

cc: All Members of the House Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law