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Congress of the United States
House of Representatives
Washington, DC 20515

July 23, 2019

CHAIR, DEMOCRATIC POLICY AND
COMMUNICATIONS COMMITTEE

COMMITTEE ON THE JUDICIARY

CHAIRMAN, SUBCOMMITTEE ON
ANTITRUST, COMMERCIAL
AND ADMINISTRATIVE LAW

SUBCOMMITTEE ON CRIME, TERRORISM
AND HOMELAND SECURITY

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SUBCOMMITTEE ON
EUROPE, EURASIA, ENERGY, AND
THE ENVIRONMENT

SUBCOMMITTEE ON MIDDLE EAST,
NORTH AFRICA, AND INTERNATIONAL
TERRORISM

SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS

David Zapolsky
General Counsel, Amazon
410 Terry Avenue North
Seattle, WA 98109

Dear Mr. Zapolsky,

I write in regard to the oversight hearing held last week by the House Subcommittee on Antitrust, Commercial and Administrative Law as part of its broader investigation into competition issues in digital markets.¹ Nate Sutton, associate general counsel at Amazon, testified on behalf of your company.

Although I appreciate Amazon's participation in the hearing, I was troubled by Mr. Sutton's responses to questions by Members of the Subcommittee. In several instances, Mr. Sutton responded to questions from Members of the Subcommittee by offering either ancillary information or partial and selective responses. In one instance, his answer has been contested by a former Amazon employee, raising questions about the veracity of his responses under oath.²

In light of these concerns, I have attached several of the questions that Mr. Sutton did not fully answer during the hearing. This request is an opportunity for your company to supplement his responses; it does not relieve Amazon from complying with any Questions for the Record or additional requests for information.

Thank you for your prompt attention to this request.

Sincerely,

David N. Cicilline
Chairman
Subcommittee on Antitrust, Commercial
and Administrative Law
Committee on the Judiciary

¹ *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. (2019).

² See generally *infra* note 3.

Please fill out and return this form to the Subcommittee no later than July 26, 2019. While you are free to attach additional materials, if a question asks you to check the appropriate box, please do so where indicated.

1. Does Amazon use *any* of the data (including aggregate data on specific product categories) it collects on Marketplace transactions to inform its private label strategy?³

Yes

No

2. Is it true that the *only* information about Marketplace sales that Amazon uses to inform any decisions about its private label strategy is information that Amazon makes publicly available about the sales rank of each product?⁴

Yes

No

3. If a product on Amazon is being sold at the same price both by Amazon and by a Marketplace seller who is enrolled in Fulfillment by Amazon, then Amazon's algorithm does not in any way favor the Amazon product when assigning the Buy Box. Is this statement true?⁵

Yes

No

³ *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. 44-45 (2019) (unofficial transcript on file with Majority Staff for the Subcomm. on Antitrust, Commercial and Admin. Law) [hereinafter "Hearing Transcript"] (Mr. Sutton responding to Ms. Jayapal's question inquiring whether Amazon devotes any resources to identifying the most popular brands and products sold on Amazon by stating, "With respect to data such as you identified, we do not use any seller data for -- to compete with them. Last year was our smallest year of acquisitions, and we've only had one multibillion dollar acquisition and that was Whole Foods."); *id.* at 50-53 (Mr. Sutton responding to Mr. Cicilline's question inquiring whether Amazon uses seller data to promote Amazon products by stating, "We use data to serve our customers. And to clarify my question, we don't use individual seller data to directly compete with them."); *but cf. Amazon: Former Employee Challenges Executives' Denial About Company's Use of Sellers' Data*, THE CAPITOL FORUM (July 18, 2019) ("I used to pull sellers' data to look at what the best products were when I was there," said the former employee, who used to work in product management.").

⁴ Hearing Transcript at 44 (Mr. Sutton responding to Ms. Jayapal's question inquiring whether Amazon tracks the popularity of products on its platform to inform its private label strategy by stating, "That data on popularity of products like much retail data is actually public data. For each of our products you can see where it's ranked. You can see how popular it is.").

⁵ *Id.* at 52 (Mr. Sutton responding to Mr. Cicilline's question inquiring whether Amazon favors Amazon-branded products by stating, "[W]e apply the same criteria whether you're a third-party seller or Amazon").

4. If a product on Amazon is being sold at the same price both by a Marketplace seller who is enrolled in Fulfillment by Amazon (FBA) and by a Marketplace seller who is not enrolled in FBA, then Amazon's algorithm does not in any way favor the FBA-eligible product when assigning the Buy Box. Is this statement true?⁶

Yes

No

5. What percentage of the U.S. online retail market does Amazon capture?⁷ _____

If the precise percentage is unknown, please check the box that represents Amazon's best estimate:

1-10%

11-20%

21-30%

31-40%

41-50%

51-60%

61-70%

71-80%

81-90%

91-100%

6. What percentage of the U.S. market for cloud computing services does Amazon Web Services capture?⁸ _____

If the precise percentage is unknown, please check the box that represents Amazon's best estimate:

1-10%

11-20%

21-30%

31-40%

41-50%

51-60%

61-70%

71-80%

81-90%

91-100%

⁶ *Id.* at 73 (Mr. Sutton responding to Ms. McBath's question inquiring whether Amazon privileges FBA sellers by stating, "We apply the same -- we do not favor sell -- products that use FBA over others.").

⁷ *Id.* at 57-58 (Mr. Sutton responding to Mr. Steube's question inquiring about Amazon's share of U.S. online retail sales by stating "Online is not a separate market assist on another channel... With respect to online, Amazon is one of the leading retailers, there are many other retailers including Walmart and every other major retailer who has a large online presence, as well as just online players such as E-Bay.").

⁸ *Id.* at 59-60 (Mr. Sutton responding to Mr. Steube's question inquiring about Amazon's share of U.S. cloud computing by stating, "With respect to Enterprises the vast majority of that space is still operating on premise servers and cloud is a new and developing space. We are one of the innovators so we are a leader, but competition primarily exists with long-standing on premise IT competitors.").

7. What year did Amazon enter the cloud computing market?⁹ _____

8. Is the "Gazelle Project" still active at Amazon?¹⁰

Yes

No

9. Please specify the exact number of Amazon employees that are dedicated to understanding and responding to the concerns of Marketplace sellers, including concerns relating to account suspensions.¹¹ _____

If the precise number is unknown, please check the box that represents Amazon's best estimate:

Under 1,000

Between 2,001-3,000

Between 4,001-5,000

Between 6,001-7,000

Between 8,001-9,000

More than 10,000

Between 1,000-2,000

Between 3,001-4,000

Between 5,001-6,000

Between 7,001-8,000

Between 9,001-10,000

⁹ *Id.* at 60 (Mr. Sutton responding to Mr. Steube's question inquiring what year Amazon entered cloud computing by stating, "A number of years ago. I don't remember the exact year.").

¹⁰ *Id.* at 84 (Mr. Sutton responding to Mr. Cicilline's question inquiring whether the Gazelle Project is still active at Amazon by stating "I'm not familiar with that project."). *See also* BRAD STONE, *THE EVERYTHING STORE: JEFF BEZOS AND THE AGE OF AMAZON* 243-44 (2013) ("[Bezos] asked Blake to exact better terms from the smallest publishers, who would go out of business if it weren't for the steady sales of their back catalogs on Amazon. Within the books group, the resulting program was dubbed the Gazelle Project because Bezos suggested to Blake in a meeting that Amazon should approach these small publishers the way a cheetah would pursue a sickly gazelle. As part of the Gazelle Project, Blake's group categorized publishers in terms of their dependency on Amazon and then opened negotiations with the most vulnerable companies.").

¹¹ *Id.* at 74 (Mr. Sutton responding to Ms. McBath's question inquiring how many employees at Amazon are dedicated to addressing Marketplace sellers' concerns about account suspensions by stating, "We have thousands of employees dedicated to helping and address concerns from third party sellers.").

10. Please identify the specific steps that a Marketplace seller would take to reach an Amazon employee.¹²
11. What specific avenues of recourse are available for Marketplace sellers whose accounts are suspended by Amazon?¹³

¹² *Id.*

¹³ *Id.* at 75 (Mr. Sutton responding to Ms. McBath's question inquiring how Amazon would respond to sellers who say they have no way of reaching an Amazon employee and asking Amazon to identify what forms of recourse are available to sellers by stating, "We provide a variety of ways for them to reach out...I don't know the full way[s]... I would be happy to follow up and provide the full examples and details of that for you as well."); *id.* at 95 (Mr. Sutton responding to Mr. Raskin's question inquiring about any processes available for businesses to seek recourse for discrimination by stating, "With respect to small- and medium-size sellers that sell through our store, we have many processes in place. We have a seller central that provides a lot of tools and services for them and lots of opportunities to communicate with Amazon if they have any concerns."). *But cf.* Josh Dzieza, *Prime and Punishment*, THE VERGE (Dec. 19, 2018), <https://www.theverge.com/2018/12/19/18140799/amazon-marketplace-scams-seller-court-appeal-reinstatement> ("The Performance team, which handles suspensions, has no phone number; there's no one to ask for clarification. The only way to interact with them is by filing an appeal, and when it's rejected, sellers often have no idea why. Sellers can call another Amazon department, Seller Support, but those workers can't provide information about the Performance team and can offer only generic advice about what the seller might have done wrong.").

cc:

The Honorable Doug Collins, Ranking Member, Committee on the
Judiciary

The Honorable James F. Sensenbrenner, Jr., Ranking Member,
Subcommittee on Antitrust, Commercial and Administrative Law,
Committee on the Judiciary

