

U.S. House of Representatives

Committee on the Judiciary

Washington, DC 20515-6216
One Hundred Sixteenth Congress

May 1, 2020

Mr. Jeff Bezos
CEO
Amazon.com, Inc.
410 Terry Avenue N.
Seattle, WA 98109

Dear Mr. Bezos:

On April 23, the *Wall Street Journal* reported that Amazon employees used sensitive business information from third-party sellers on its platform to develop competing products.¹ The report was based on interviews with over 20 former or current Amazon employees and the company's internal documents. If these allegations are true, then Amazon exploited its role as the largest online marketplace in the U.S. to appropriate the sensitive commercial data of individual marketplace sellers and then used that data to compete directly with those sellers.

Amazon has responded to this report by describing the Amazon employees' conduct as a violation of its formal policy against the use of non-public, individual seller data.² The report, however, details that Amazon employees described pulling competitors' data as "'standard operating procedure' when making products such as electronics, suitcases, sporting goods or other lines."³ Other employees noted that Amazon's rules against this conduct "weren't uniformly enforced," and that "using such data was a common practice that was discussed openly in meetings."⁴ When access to this data was restricted, "managers would sometimes ask an Amazon business analyst to create reports featuring the information," referred to as "going

¹ 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?>

² @AmazonPolicy, TWITTER (Apr. 24, 2020), https://twitter.com/amazon_policy/status/1253769684425625601?s=12.

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?>

⁴ *Id.*

over the fence.”⁵ Employees also noted that management set highly aggressive targets for Amazon’s private label business, raising questions about whether executives implicitly encouraged or approved of this conduct even if it violated formal company policy.⁶

The *Wall Street Journal* report is bolstered by other investigative journalism,⁷ as well as preliminary findings of the European Commission, which has opened an antitrust investigation into Amazon for similar conduct.⁸ As the European Commission stated last year, “Amazon appears to use competitively sensitive information—about marketplace sellers, their products and transactions on the marketplace.”⁹

If true, these allegations contradict previous testimony and written responses that Amazon submitted to the Committee. For example, at our hearing on July 16, 2019, Representative Pramila Jayapal asked about Amazon’s use of third-party seller data, and Nate Sutton, Amazon’s Associate General Counsel, responded that “we do not use any seller data to compete with them.”¹⁰ Additionally, in response to a follow-up question from Subcommittee Chairman David Cicilline, Mr. Sutton testified, “[W]e do not use their individual data when we’re making decisions to launch private brands.”¹¹ Amazon has also submitted numerous written responses to the same effect to the Committee.¹²

⁵ *Id.*

⁶ *Id.* (“Former executives said they were told frequently by management that Amazon brands should make up more than 10% of retail sales by 2022. Managers of different private-label product categories have been told to create \$1 billion businesses for their segments, they said.”).

⁷ *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.”).

⁸ European Commission, *Antitrust: Commission opens investigation into possible anti-competitive conduct of Amazon* (July 17, 2019), https://ec.europa.eu/commission/presscorner/detail/en/IP_19_4291

⁹ *Id.*

¹⁰ *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), at 44-45

¹¹ *Id.* at 50-53.

¹² Responding to a request for clarification from Chairman Cicilline, Amazon’s general counsel, David Zapolsky, stated in a July 26 letter, “[W]e prohibit in our private label strategy the use of data related specifically to individual sellers.” See Response of David Zapolsky to Chairman Cicilline (July 26, 2019), <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/07.26.19%20-%20amazon%20response.pdf>. A few months later, in the company’s October 11 response to questions for the record, Amazon reiterated this point, stating that it “prohibits Amazon’s private brand products business from using individual sellers’ data to decide which products to launch, and Amazon prohibits the use of individual sellers’ data to make sourcing, pricing, or inventory decisions for its private brand products.” Amazon repeated this or a similar representation in its October 11 response when answering no less than four separate questions on the topic. See Responses of Amazon to Chairman Cicilline’s Questions for the Record (Oct. 11, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf>.

If the reporting in the *Wall Street Journal* article is accurate, then statements Amazon made to the Committee about the company's business practices appear to be misleading, and possibly criminally false¹³ or perjurious.¹⁴

As you know, the Committee is investigating Amazon's role in the digital marketplace. Last September we requested documents and communications related to Amazon's relationship with sellers, including Amazon's use of third-party sellers' data. Notwithstanding the Committee's regular communication with Amazon's outside counsel on this matter, Amazon has not made an adequate production in response to this request, and—seven months after the original request—significant gaps remain.

In light of our ongoing investigation, recent public reporting, and Amazon's prior testimony before the Committee, we expect you, as Chief Executive Officer of Amazon, to testify before the Committee. It is vital to the Committee, as part of its critical work investigating and understanding competition issues in the digital market, that Amazon respond to these and other critical questions concerning competition issues in digital markets. Although we expect that you will testify on a voluntary basis, we reserve the right to resort to compulsory process if necessary.

Thank you for your prompt attention to this request.

Sincerely,



Jerrold Nadler
Chairman
Committee on the Judiciary



F. James Sensenbrenner
Ranking Member
Subcommittee on Antitrust, Commercial and
Administrative Law



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



Ken Buck
Subcommittee on Antitrust, Commercial and
Administrative Law

¹³ 18 U.S.C. § 1001.

¹⁴ 18 U.S.C. § 1621.



Joe Neguse
Vice-Chair
Subcommittee on Antitrust, Commercial
and Administrative Law



Matt Gaetz
Subcommittee on Antitrust, Commercial and
Administrative Law



Pramila Jayapal
Subcommittee on Antitrust, Commercial
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