

**BEFORE THE FEDERAL TRADE COMMISSION
Washington, D.C. 20580**

Petition for the Investigation of Amazon.com, Inc.

SUBMITTED BY

**THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
COMMUNICATIONS WORKERS OF AMERICA,
UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION,
SERVICE EMPLOYEES INTERNATIONAL UNION, and
CHANGE TO WIN**

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I. Introduction

The International Brotherhood of Teamsters, the Communications Workers of America, the United Food and Commercial Workers International Union, Service Employees International Union, and Change to Win submit this Petition requesting that the Federal Trade Commission initiate an investigation of Amazon.com, Inc., pursuant to the agency's powers under Section 6(b) of the Federal Trade Commission Act. Amazon's multiple roles as marketplace, retailer, and logistics and cloud computing provider enable and incentivize its anti-competitive practices, and the company's dominance allows it to squeeze profit from and reduce choice among workers, consumers, merchants, and competitors. The legality of Amazon's practices, the scope of its power, and the adequacy of existing regulation have prompted investigations by regulators around the world, but in many instances the company has responded to these investigations insufficiently or refused to respond entirely. As a result, many of Amazon's most concerning practices remain opaque.

Petitioners call on the FTC to launch an investigation of Amazon's anti-competitive behavior. Specifically, we believe the Commission should examine whether:

1. Amazon is maintaining direct and indirect control over the prices of goods on its ecommerce and cloud computing platforms;
2. Amazon is tying favorable search rankings to its own profit and the purchase of unrelated Amazon services;
3. Amazon is engaging in price discrimination against users of competing platforms;
4. Amazon is using data obtained as a platform to its competitive advantage as a retailer and provider of cloud computing software; and
5. Amazon is depressing wages in local labor markets and/or throughout its fissured workforce.

Amazon is unique, not only in its current size and growth trajectory, but in the breadth of its interests across markets and its expansion into all levels of the supply chain. The company demands urgent inquiry, best achieved through the Federal Trade Commission's unique authority and expertise.

II. Petitioners

The petitioning parties ("Petitioners") include the country's major labor unions, representing a combined 5.3 million working people across all industries and sectors of the economy. Founded in 1903, the International Brotherhood of Teamsters represents 1.4 million hardworking men and women throughout the United States, Canada and Puerto Rico. The Communications Workers of America represents working people in telecommunications, customer service, media, airlines, health care, public service and education, manufacturing, and other industries. The United Food and Commercial Workers International Union is the largest private sector union in the United States, representing 1.3 million professionals and their families in grocery stores, meatpacking, food processing, retail shops and other industries. Service Employees International Union unites 2 million diverse members working in the healthcare industry, in the public sector, and in property services in the United States, Canada, and

Puerto Rico. Change to Win, a democratic federation of labor unions, has along with its affiliates engaged the Federal Trade Commission on a number of issues, including fair competition in the franchise industry and pharmacy benefit manager sector, toward the goal of eliminating anticompetitive and abusive business practices that harm both workers and consumers.¹

Petitioners urge competition authorities like the Federal Trade Commission (“FTC”) to protect workers from the unbridled market power of increasingly large and concentrated employers. Petitioners also believe that competition authorities should level the playing field for all those who come into contact with concentrated markets, particularly the small- and medium-sized businesses that supply goods and services on the platforms that have come to dominate our economy.

III. Section 6(b) of the FTC Act

Section 6 of the Federal Trade Commission Act distinguishes the FTC “from most other antitrust or consumer protection agencies in the world,”² and provides the Commission with a uniquely powerful tool for gathering non-public information that can inform its enforcement mission. Section 6(a) grants the Commission general powers “[t]o gather and compile information” about nearly any business that affects commerce. Section 6(b), however, is more specific and more powerful; it empowers the Commission “[t]o require, by general or special orders, persons, partnerships, and corporations...to file with the Commission in such form as the Commission may prescribe annual or special, or both annual and special, reports or answers in writing to specific questions...”³

Pursuant to Section 6(b), the FTC has the power to compel the subject or subjects of a study to provide information, and allows the Commission to obtain answers to specific questions where such information would not be available through subpoena because no documents exist that contain the desired information.⁴ Section 6(f), in turn, authorizes the Commission, subject to applicable confidentiality constraints, to “make public from time to time” portions of the information that it obtains, where disclosure would serve the public interest.⁵

In the last 20 years, the FTC has used Section 6(b) to study issues including generic drug entry,⁶ gasoline pricing manipulation after Hurricane Katrina,⁷ the mobile device industry’s security update practices,⁸ class action settlements,⁹ the credit card industry’s data security auditing,¹⁰ the data broker industry’s collection and use of consumer data,¹¹ the privacy practices of broadband providers,¹² and, most recently, small acquisitions by large technology firms.¹³ As with those areas of inquiry, the rapid growth and consolidation of ecommerce, cloud computing, and related markets urgently demand analytically rigorous assessment. As Amazon expands to touch on and dominate an increasing share of Americans’ lives, the FTC should order Amazon to provide the Commission with the data necessary to understand and develop policy responses to Amazon’s immense and growing influence.

IV. The FTC Should Investigate the Impact of Amazon’s Business Practices on Potential Competitors, Existing Competitors, Manufacturers, Sellers, Consumers, and Workers.

Amazon was founded in 1994 with the idea that it would take advantage of the rapid growth of the World Wide Web by becoming the digital “everything store.” Now, it has the third-highest market value of any publicly-traded firm in the world.¹⁴ Amazon’s business interests have multiplied since its founding, and it is the dominant player in domestic and global ecommerce and in cloud computing. In both markets, Amazon serves as a platform and acts as a market participant.

Ecommerce retail currently comprises 11 percent of the retail market in the U.S. and is growing more than three times as fast as retail as a whole.¹⁵ Based on figures Amazon released in 2019, 38 percent of online U.S. retail spending—up from only 23 percent two years earlier¹⁶—and 4 percent of all U.S. retail sales took place on Amazon’s platform in 2018.¹⁷ More than half of all U.S. online shopping product searches begin on Amazon.com, a business-to-consumer ecommerce platform, which means that Amazon is controlling consumers’ purchase options.¹⁸

Cloud computing, too, is growing rapidly. The Amazon Web Services (“AWS”) segment of Amazon’s business holds 32 percent of the cloud computing market, greater than the share held by AWS’s three largest competitors combined.¹⁹ Amazon has replicated its role as a platform in cloud computing, where it hosts the AWS Marketplace, a curated digital catalog through which third-party vendors sell software, data, and other products to AWS customers.²⁰ In both of its Marketplaces and in adjacent markets, Amazon sets the rules.

A. The FTC Should Investigate Whether Amazon Abuses its Dominance in Ecommerce

1. Amazon Controls Prices on its Ecommerce Platform through Most-Favored-Nation-Type Restrictions

Along with Amazon, millions of third parties sell goods on the company’s business-to-consumer ecommerce platform. These third parties sell goods on Amazon’s “Marketplace,” and compete on the platform with Amazon in its capacity as a first-party retailer. As an ecommerce platform, Amazon has no meaningful competition. Amazon had \$227 billion in ecommerce gross merchandise volume in 2019, representing sales by Amazon and third-party sellers on Amazon’s platform; eBay, the next largest platform by ecommerce sales, had only \$95 billion,²¹ and the third-largest domestic platform, operated by Walmart, was expected to have approximately \$28 billion.²² In 2019, the three companies were expected to represent, respectively, 38, 6, and 5 percent of the domestic ecommerce retail market.²³

Amazon cannot directly set prices of goods when it is acting solely as a platform and not as a retailer, but it nonetheless promotes itself as the lowest-price purveyor of the hundreds of millions of products for sale on its platform, regardless of retailer. Amazon circumvents its lack of direct control over third-party prices by imposing anti-competitive price controls that compel third-party sellers to

refrain from offering goods for sale for a lower price on competitor platforms. This has the effect of increasing prices for consumers and reinforcing Amazon's dominance in retail.

Specifically, what Amazon calls its "fair pricing" policy means that the algorithm determining search results on its platform disfavors products that are sold for less anywhere else, and that the company may delist the products from sale entirely.²⁴ Under the fair pricing policy, no product that is sold for less outside of Amazon's platform will win the coveted "Buy Box," an aspect of Amazon's functionality that allows a consumer to automatically purchase an item after a search with one click, without considering alternative offers. According to one seller, losing the Buy Box means a 40 to 50 percent drop in sales in a single day.²⁵ Even more harmfully, the listing for the disfavored product may no longer give a consumer the option to "add [the product] to cart" at all, instead directing the consumer to "see all buying options," all of which are from other sellers.²⁶ According to the policy, Amazon can even terminate "selling privileges" for the seller altogether, cutting off access to over a third of the domestic ecommerce market for a seller who offers consumers a lower price elsewhere.²⁷ Even when Amazon takes less drastic measures, when the company places products at a point in search results where consumers are less likely or unable to locate and purchase them, it punishes the products' sellers if they do not raise their prices on competitor platforms if they also want to make sales on Amazon.²⁸

Research has shown that although these price parity policies can appear initially "benign," because they "guarantee that the consumer will benefit from the lowest price on a good or service when using the platform," the policies in fact "allow platforms to collect substantial merchant fees from sellers who need them to reach their unique consumers."²⁹ Price parity policies like Amazon's "lead to higher platform fees, drive up retail prices, and discourage entry by firms with lower-cost business models."³⁰ Platform fees are the primary feature through which platforms compete, but potential challengers to Amazon cannot effectively recruit sellers by charging lower fees, because those lower fees cannot translate into lower prices, giving customers no reason to make the switch away from Amazon.

Amazon adopted its fair pricing policy only recently, after it claimed to have abandoned a policy with a different name but an identical impact amid scrutiny from European and domestic regulators. Historically, Amazon imposed explicit "most-favored nation" ("MFN") provisions in its contracts with third-party Marketplace sellers, which barred the sellers from offering their products for sale for less elsewhere.³¹ Amazon maintained these MFN provisions in contracts with European sellers until 2013, and in contracts with United States sellers until 2019.

Understandably, MFN provisions, in the context of platforms like Amazon, have raised concern under competition laws. In 2012, both the United Kingdom and Germany initiated proceedings against Amazon for its use of an MFN provision in seller contracts. The German competition authority, applying both German and European competition law, found that:

[T]he Marketplace [seller agreement, specifically the MFN] constitutes a horizontal trade cooperation between Amazon and third-party sellers that has as its object and effect various restrictions of competition. The price parity clause is a hardcore restriction which

is not indispensable for Marketplace efficiencies and does not allow consumers a fair share of the resulting benefit.³²

Amazon's MFN provision, the German agency found, "result[ed] in safeguarding Amazon's large own-account share of sales as a competitor and the extensive reach of amazon.de, which cannot be attacked by competing platforms."³³

Amazon removed the MFN provision from its contracts with European sellers in 2013, prompting European agencies to withdraw their formal proceedings, but Amazon maintained the provision in contracts with U.S. sellers for another six years. It removed the MFN clause from those contracts only after United States Senator Blumenthal (D-Conn) wrote to the FTC and the Department of Justice expressing "deep concerns" that the provision might "raise prices for consumers both in the short term and in the long run," and might "work to block the emergence of more efficient online marketplaces..."³⁴

In the face of Germany's adverse finding, the U.K. investigation, and criticism from a U.S. lawmaker, Amazon sought to appear as though it had abandoned its MFN provision in agreements with all Marketplace sellers by replacing it with the fair pricing policy.³⁵ However, this fair pricing policy—which Amazon continues to enforce against U.S. sellers³⁶—is a thinly-veiled MFN restriction, and causes the same anti-competitive harm as the explicit MFN provision, preserving Amazon's dominance and undercutting would-be competitors by preventing them from competing on price. In Petitioners' view, the fair pricing policy is simply an MFN clause under a different name. Amazon's market power allows it now to accomplish *de facto* what it had previously accomplished *de jure*.

2. Amazon Appears to Tie Favorable Search Rankings to its Own Profit and the Purchase of Unrelated Amazon Services

Although over a third of all domestic ecommerce sales take place on Amazon, not every product has an equal chance at selling. The vast majority of Amazon's millions of sales are of products displayed prominently in search results; one study estimated that more than 80 percent of sales on Amazon are of products ranked first in search results, and another found that two-thirds of consumers do not even look at any products listed after the first page of search results.³⁷ Given Amazon's dominance in ecommerce, one journalist who studied search result data called advantageous display of a product on Amazon's pages an "oft-decisive advantage" for the merchant offering that product for sale.³⁸

Amazon refuses to disclose the algorithm that determines search rankings and Buy Box placement, but evidence suggests that Amazon exploits its power over product display to induce adoption of paid services other than Marketplace listing fees and to indirectly enforce policies that have already raised antitrust concerns.³⁹ The opacity of Amazon's algorithm may mean that it benefits Amazon's own products at the expense of Marketplace products sold by third parties, who must pay for premium services for the chance of being displayed in as advantageous a manner as that of Amazon's own products. One group of researchers attempted to reverse-engineer the Amazon search algorithm and identified seven features that accurately predicted which product would earn the all-powerful Buy Box.⁴⁰ Two of the potentially determinative factors the researchers identified were (i) whether Amazon was the retailer of the product, and (ii) whether the product was sold using Amazon's logistics service,

Fulfillment by Amazon (“FBA”).⁴¹ Both of these factors directly benefit Amazon by virtue of its dual roles as marketplace and market participant.

a. Tying Favorable Search Rankings to the Purchase of Amazon Services

Amazon is using its dominance as a retail platform to give its vertical interests, like FBA, preferential treatment. One of the ways that Amazon leverages its dominance in one market to achieve dominance in an adjacent market is through the imposition of implicit tying arrangements on third-party sellers and vendors. Tying arrangements, in which one product is sold on the condition that the purchaser buys a different product, are either *per se* unlawful or analyzed under the rule of reason, based on their anti-competitive effects, and may violate both the Sherman and Clayton Acts.⁴² Unlawful tying provisions are characterized by “the seller’s exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want or would have bought elsewhere on different terms.”⁴³ This has the effect of excluding competing sellers of the tied product. In this context, Amazon’s competitors are not only the third-party sellers with whom Amazon competes as a retailer, but also the shippers and logistics providers who offer services to those third-party sellers. All of these entities serve as “intra-platform competitors.”⁴⁴

On a platform like Amazon’s, tying arrangements can reduce competition by disincentivizing switching from Amazon products to those offered by intra-platform competitors.⁴⁵ Even if a competing product were free, users would likely not adopt it when the costs associated with its adoption on the platform outweigh the utility of the product. In this case, a third-party seller will pay a premium for Amazon’s shipping and logistics services, because using the services of an Amazon competitor—even if they were free—would come with a price too great to bear: demotion in search rankings.

The third-party seller’s fears of paying this price would not be speculative. Amazon admits that it favors products whose sellers pay for the company’s shipping and logistics service.⁴⁶ Paying for FBA makes a third-party seller’s items eligible for free expedited shipping to members of Amazon’s Prime program. Prime members—who are the most affluent ecommerce shoppers⁴⁷—see Prime-eligible products first in search results, meaning that those customers with the most money to spend are highly likely to buy products from which Amazon directly profits, either as a retailer or logistics provider. A 2016 analysis found that FBA products and products sold by Amazon itself represented 94 percent of the listings that won the Buy Box without being the least expensive option.⁴⁸ Beyond the Buy Box, when ranking products by cost, Amazon includes shipping price in the total cost of third-party items, but omits it in the total cost of Amazon first-party items and products sold by third parties paying Amazon for FBA service, even for consumers who would not benefit from free shipping through their Prime memberships.⁴⁹ This policy artificially inflates the rank of those products and conceals their true cost.

These practices tie favorable display on Amazon to purchase of the FBA service, and undermine outside logistics services competing for third-party sellers’ business. Amazon argues that it favors FBA products because it can guarantee that they will “land on the doorstep quickly,” but Amazon does not currently grant the same treatment to products that may arrive quickly but are shipped with one- or two-day delivery services from Amazon’s competitors.⁵⁰ In 2015, Amazon began offering “Seller Fulfilled Prime,” a program that the company claimed would allow sellers to “be part of the Prime program and ship their own orders at Prime speed directly,” without paying for FBA.⁵¹ One participant in Seller

Fulfilled Prime reported that complying with the program was “brutal”; when Amazon implemented a one-day Prime shipping standard, it became almost “impossible to continue.”⁵² Then, as of March 2019—four years after Amazon introduced the program—enrollment in Seller Fulfilled Prime was closed.⁵³ Favorable display and Prime-eligible designation are now unavailable to new third-party sellers who wish to fulfill their own orders by patronizing Amazon competitors offering fulfillment services.⁵⁴

Amazon has even prevented those sellers who did qualify for Seller Fulfilled Prime while the program was open from patronizing Amazon’s competitors. During the 2019 holiday shopping season, for example, Amazon banned Fed Ex as a shipper for Seller Fulfilled Prime, illustrating its power over both the sellers and Amazon’s logistics competitors. A news report quoted a third-party seller consultant explaining the effects of the ban: “Some sellers exclusively use FedEx for Seller Fulfilled Prime...because they have negotiated good freight rates or have daily pickups....Not being able to use FedEx for SFP shipments will cause sellers who negotiated good FedEx ground rates to incur higher costs....”⁵⁵

Earlier, Amazon had banned sellers participating in Seller Fulfilled Prime from using U.S. Postal Service shipping unless the seller purchased the postage directly from Amazon.⁵⁶ This allowed Amazon to engage in “postal arbitrage,” charging the sellers market rates while only paying USPS the lower bulk rate Amazon had negotiated.⁵⁷ Amazon took a small profit on the arbitrage but according to a different consultant, sellers believed the company had a greater purpose: the policy constituted “a tooth and nail effort to drive the merchant into an FBA relationship” by making it “so difficult for the merchant to do business outside of the [Amazon] ecosystem that it would effectively let Amazon manage all of its fulfillment and delivery.”⁵⁸

Amazon has demonstrated its power in the logistics market by disfavoring competitors, limiting options for sellers, and allegedly driving up prices for consumers.⁵⁹ Now, the only way that third-party sellers not already enrolled in Seller Fulfilled Prime can obtain favorable search rankings for “land[ing] on the doorstep quickly” is if they also pay FBA fees. Evidence shows that third-party sellers have responded to Amazon’s apparent tie and flocked to FBA. Almost two-thirds of Marketplace third-party sellers use FBA, and Amazon reported that the number of active sellers using FBA grew more than 70 percent in 2016.⁶⁰ Experts estimate that about 75 percent of Amazon’s \$43.7 billion in third-party seller fees represent fees charged for logistics services.⁶¹

By imposing this type of tying arrangement, Amazon is using its market power “to force a purchaser to do something that he would not do in a competitive market.”⁶² Amazon’s tying can hamstring sellers, who effectively have no option but to choose Amazon even if there are preferable competing services. The tying arrangement also harms competition in the markets for products that might complement Amazon’s ecommerce platform, because other firms cannot offer the advantageous platform placement that Amazon can and therefore cannot effectively compete with it.

b. Using Profit as a Factor in Favorable Search Rankings

Recent reports indicate that Amazon is not only tying favorable search rankings to services from which it profits, but that it is considering profit margin directly as an independent factor in search results themselves. Amazon engineers and former executives, speaking on the condition of anonymity, have reported that Amazon has incorporated profitability into the algorithm that determines search

rankings.⁶³ Former Amazon employees who worked on that project told journalists that they had opposed the change to the algorithm; one said “[t]he search engine should look for relevant items, not for more profitable ones.”⁶⁴

Amazon reportedly proceeded with the change despite this pushback.⁶⁵ This shift resulted in a search function that no longer directs consumers to the best or even cheapest products in response to their searches. Instead, Amazon prominently displays products that offer the company higher profit or higher profit margins—whether because the products belong to Amazon’s many private labels, belong to brands of which Amazon is the exclusive retailer, or are otherwise lucrative—than alternative products that also match the search query. The company presents these products to consumers in apparently objective search results. In so doing, Amazon uses its role as a platform to undermine the millions of third-party sellers who serve as its retail competitors but who do not patronize its unrelated fulfillment or advertising services.

Amazon’s self-preferential treatment has become increasingly well-documented over time. In 2016, journalists who looked “at 250 frequently purchased products over several weeks” discovered that the Buy Box was awarded to Amazon’s “own products and those of companies that pay for its services... even when there were substantially cheaper offers available from others.”⁶⁶ By 2018, Amazon had changed the default search sorting option to “featured,” which indicates higher rankings for favored products like those identified by the journalists in 2016, and eliminated the option for consumers to sort by the more objective “relevance” metric, which had been the default sorting option for years.⁶⁷

In 2019, media outlets reported that before an Amazon user could purchase a product that competed with one offered by an Amazon private or exclusive label, Amazon pushed the consumer to consider or even affirmatively reject a competing Amazon product. On Amazon’s mobile app, a pop-up advertisement appeared, obscuring the competing non-Amazon product and “forcing customers to either click through to the lower-cost Amazon products or dismiss them before continuing to shop.”⁶⁸ One third-party seller of nutritional supplements that were targeted by the pop-up ads called them “sneaky,” but said that selling on the platform required “having a stomach of steel and taking whatever they throw at us.” Amazon had been the source of \$10 million of that third-party’s sales in the previous year, representing 85 percent of its entire business.⁶⁹

Several months later, Amazon deployed a similar tactic on its web-based platform. There, an advertisement prompted consumers to consider competing Amazon private label products “at exactly the moment the customer is ready to buy” a non-Amazon product.⁷⁰ In a Washington Post study, no products belonging to non-Amazon brands received the same prompts, even if they were competing with the primary product and sold for less. Amazon’s practices of redirection are an abuse of its platform power, disadvantaging the third-party sellers who depend on Amazon for a chance at over a third of all ecommerce sales, and stifling competition by interfering with consumer access to what may be the objectively best products for them.

3. Amazon Charges Users of Competing Platforms More for Fulfillment Services than it Charges Users of its Own Platform

Amazon also uses improper tactics to compete against eBay and other platforms by disfavoring sellers who use Amazon delivery services to facilitate sales made on non-Amazon platforms. Amazon offers FBA not only to third-party Marketplace sellers, but to any seller who needs its storage, logistics, and delivery functions. In that context, these services are branded as Multi-Channel Fulfillment (“MCF”). However, Amazon charges sellers more for fulfillment services when they are used for an order placed on a competing website instead of on Amazon.com.

Amazon ostensibly competes with traditional logistics providers for third-party seller customers, but not with lower prices. A third party will pay between \$0.48 and \$2.40 to store its products with Amazon, but only \$0.19 to store them with Fed Ex.⁷¹ Despite this apparently uncompetitive pricing, FBA has grown significantly. A freight industry journal explained how the growth of the Amazon Prime program has fueled Amazon’s fulfillment service: “FBA is expensive but retailers are forced to use it to reach buyers...Customers pay for Amazon Prime, and no longer want to pay retailers to ship products to their homes. As a result, FBA, whatever the cost, becomes inevitable as the only really viable way to sell to Prime subscribers.”⁷²

That cost can be significant. A third-party seller will pay 150 percent more to use Amazon fulfillment to sell a t-shirt on eBay’s platform than it would if it were selling on Amazon, for example.⁷³ After reports surfaced about its price discrimination, Amazon removed the FBA price comparison from its page promoting MCF, where it publishes fees charged to sellers on competing platforms, but it has not changed the underlying cost structure. As of February 2020, Amazon charges sellers \$3.81 to fulfill an order for a t-shirt when the order is placed on Amazon, and \$5.90 to fulfill an order for a t-shirt when the order is placed on a competing platform like eBay.⁷⁴ Amazon’s vertical expansion into the general logistics market, beyond simply providing complementary services for its own third-party sellers, has created a conflict of interest which incentivizes the company to discriminate against competitor platforms.

The terms of Amazon’s contracts with third-party sellers also have the potential to undercut potential logistics competitors. Recently, eBay announced plans to offer its own fulfillment services beginning in 2020, using discounts negotiated with logistics providers.⁷⁵ If Amazon enforces its rules for sellers as they are currently written, however, it will prohibit sellers on its platform from using eBay’s fulfillment services. Amazon’s rules bar sellers from “divert[ing] Amazon customers to another website,” and from using any “external packaging, or other information identifying a third-party drop shipper.”⁷⁶ Amazon even tells sellers to “avoid...[i]ncluding website URLs in product feeds, business name, or other company information that might refer customers to your website or a third-party website.”⁷⁷ If Amazon responds in the same way to eBay-branded packaging and bans it, it would exacerbate the impact of its tying arrangement and—because of its command of the market for third-party sellers—damage eBay’s ability to compete as a provider of logistics services for Amazon’s millions of third-party sellers.

4. Amazon May Use Data Obtained as an Ecommerce Platform to its Competitive Advantage as a Retailer of Consumer Goods

Amazon also uses its access to data on all Marketplace sales to benefit itself as a platform and as a Marketplace retailer. Amazon sells products through more than a hundred different private-label brands, and is the exclusive retailer of more than 600 other brands.⁷⁸ Repeated anecdotal accounts, reported widely in the media, suggest that Amazon has used its access to third-party seller data to inform its internal product development and manipulated search results to increase private-label and other high-profit margin sales.⁷⁹ Amazon's private-label products are "designed to be more profitable than competing items,"⁸⁰ because the products can capitalize for free on marketing by name brands. Amazon can also use its access to data about successful products by choosing to source those products directly from their manufacturers, cutting third-party sellers out of profitable retail spaces and disincentivizing innovation by profit-squeezed manufacturers.

Researchers have found examples suggesting that Amazon's entry as a first-party seller, whether through its private labels or direct-sourcing, is informed by data obtained from third-party sellers.⁸¹ Third-party sellers are Amazon's "complementors;" complementors build their businesses on platforms and sell their products or services to platform users.⁸² They complement Amazon's platform by making it more valuable to users and therefore, to Amazon. In the aggregate, complementors are essential to Amazon's ecosystem—even at its enormous size, Amazon is practically unable to retail each of the hundreds of millions of products sold on the Marketplace.⁸³ Complementors also assume the risk of carrying niche and fad products in their inventory, and can introduce new products based on particular insight that Amazon lacks. Complementors attract customers that Amazon might not. Amazon's Marketplace is, for this reason, one of the most valuable components of Amazon.⁸⁴ However, any given *individual* complementor is disposable; once the complementor introduces new products or otherwise contributes to Amazon's growth, Amazon will continue to benefit from the business of the customers whom the complementor attracted to its platform even if Amazon drives that complementor out of business.

Recently, in the first large-scale empirical study of the competitive pressures complementors experience on the Amazon Marketplace, researchers quantified the anti-competitive effects of Amazon's data exploitation.⁸⁵ Beginning in 2013, they identified thousands of products offered by third-party sellers, and later checked whether Amazon had chosen to offer the same products as a first-party seller. Over a ten-month period, Amazon entered 3 percent of its third-party sellers' "product spaces," and did so when products had "higher sales and better reviews and...do not use Amazon's fulfillment service," meaning that damaging the seller's business would not have an adverse impact on Amazon's fulfillment revenue.⁸⁶ The researchers found that Amazon's entry was neither random nor independently informed by conditions outside the Marketplace.⁸⁷

Amazon begins selling products even when there is healthy competition between third-party sellers in the preexisting market. Amazon, of course, does not need to play by the same rules that would apply in a competitive market. Amazon can outmaneuver the competition by, for example, "presenting itself as the default seller even when the same product is offered at a lower cost...with a comparable shipping speed by third-party sellers with high ratings."⁸⁸ As a consequence of Amazon's entry, third-

party sellers are more likely to withdraw from selling the products Amazon has mimicked. In contrast to competition among third-party sellers, which did not decrease entry into the market, “competing with Amazon on its website under its rules” made third-party sellers more likely than other sellers to withdraw from the Marketplace, limiting consumer choice and further cementing Amazon’s dominance.⁸⁹

The researchers who documented Amazon’s strategy of entering profitable product markets proposed certain tactics that third-party sellers can employ to blunt Amazon’s anti-competitive force, but these tactics are forestalled by the one-sided contract terms Amazon imposes on the sellers. The researchers suggest, for example, that third-party sellers “can initiate impediments to...procurement by platform owners” by “concealing supplier information, [or] seeking exclusive contracts with manufactures as sole suppliers.”⁹⁰

Neither of those tactics will help third-party sellers on Amazon’s platform facing competition from Amazon. The company maintains a policy applicable to brands acting as third-party sellers that provides that if Amazon “choose[s] to source [a brand’s] products” directly, then “the [b]rand may not also sell those products as a seller in the Amazon store,” and Amazon will become the only retailer of the product on its platform.⁹¹ As of late 2018, Amazon expanded this policy to prohibit brands’ “agents, licensees, and other representatives selling on their behalf” from offering the brands’ products in the Amazon Marketplace if Amazon decides to source and retail them directly.⁹² This allows Amazon to maintain near-total control over products it identifies as popular and high-profit. When Amazon uses this control to set a product’s price below those of other retailers, it eliminates other retailers as competitors for the product’s sales. In the process, it reinforces the brand’s reliance on Amazon as a platform and retailer, and Amazon’s control over the brand.

A former Amazon product manager confirmed the researchers’ findings, explaining that “not only can Amazon track what shoppers are buying; it can also tell what merchandise they’re searching for but can’t find,” and then, she said, “Amazon can just make it themselves.”⁹³ Even when shoppers can find what they are looking for, however, Amazon may have already appropriated the product’s concept and design and started retailing a competing item. “All Amazon had to do was pick the best one and copy it,” the manager said.⁹⁴ In one example, Amazon introduced a laptop stand that was indistinguishable from the very popular stand that a third-party seller, Rain Design, had been selling on the Marketplace for ten years. The primary distinction between the two products was price: the Amazon Basics-branded stand was \$19, compared to Rain’s \$43 stand.⁹⁵

More recently, Amazon began selling wool sneakers that “bear a striking resemblance” to popular gray-and-white sneakers made by the brand Allbirds, which is carbon neutral and uses wool that “ethically and sustainably farmed.”⁹⁶ Amazon’s version of the shoes costs \$35, compared to the Allbirds price of \$95, and makes no claim to being sustainably manufactured. In 2018, Amazon had captured 55 percent of all online shoe sales,⁹⁷ and Allbirds’ CEO emphasized that Amazon’s market share made its version more of a threat than other “knockoffs.” Nonetheless, he said that the company was unlikely to sue Amazon because Allbirds was “a company of about 500 people total,” and he suspected that “Amazon has more than double that in just lawyers.”⁹⁸ In October 2018, Allbirds’ valuation was \$1.4

billion.⁹⁹ Amazon's power is such that it can effectively silence even one of Silicon Valley's highly-valued "unicorns."¹⁰⁰

B. The FTC Should Investigate Whether Amazon Abuses its Dominance in Cloud Computing

Amazon's cloud computing business is fourteen years old, and its AWS Marketplace has existed only since 2012. In 2016, CEO Jeff Bezos celebrated the fact that "AWS is bigger than Amazon.com was at 10 years old, growing at a faster rate, and – most noteworthy in my view – the pace of innovation continues to accelerate."¹⁰¹ Similarly to Amazon's ecommerce Marketplace, the company operates an AWS Marketplace on which third-party sellers can retail software, data, and related products for use on the AWS cloud. As of January 8, 2020, there were 7,240 products on the AWS Marketplace from approximately 1,659 third-party AWS sellers.¹⁰² Sellers on the AWS Marketplace may be either independent software vendors that develop their own software and services, or authorized software resellers.

Amazon's cloud computing business has grown using some of the same anti-competitive tactics that make the company so dominant in ecommerce. As Amazon continues to expand into logistics, grocery, and other markets, it will have more opportunities to leverage its dominant market position into dominance in unrelated markets using the anti-competitive tactics it has deployed in ecommerce and cloud computing.

1. Amazon Controls Prices on its Cloud Computing Software Platform through Most-Favored-Nation Restrictions

AWS requires sellers to agree to a most-favored-nation clause, which expressly bars them from selling their products at lower prices on competing platforms or on the seller's own website.¹⁰³ This is the same requirement that Amazon abandoned in its contracts with third-party ecommerce sellers after the U.K. and Germany concluded that the presence of such a clause in the contracts "constitute[d] a horizontal trade cooperation...that has as its object and effect various restrictions of competition."¹⁰⁴ The German competition authority found that the provision was a hardcore restriction of competition that lacked redeeming consumer benefits. The same analysis is applicable here.

Because Amazon is dominant in cloud computing and because its AWS Marketplace is likely the single-largest platform for purveyors of software, data, and related services to market their products, the AWS MFN provision warrants scrutiny. MFNs violate the Sherman Act when they unreasonably restrain trade and reinforce dominance.¹⁰⁵ The AWS MFN provision appears to deny competing platforms and even the developers themselves the opportunity to offer lower prices to smaller sets of consumers than those purchasing the software products on the AWS Marketplace. While it may make financial sense to offer discounts to the small number of users on a new sales platform, it might be ruinous to do so to thousands of customers on the AWS Marketplace.¹⁰⁶ The MFN provision therefore prevents would-be rivals to the AWS Marketplace from becoming "competitive constraints," whether by offering better prices for buyers or more favorable terms for sellers.¹⁰⁷ With this contract term, Amazon deters entry into the software platform market by potential competitors and reinforces AWS's dominance with no apparent redeeming benefit for consumers.¹⁰⁸

2. Amazon, as a Cloud Computing Software Retailer, Has the Power to Manipulate Search Rankings on its Cloud Computing Software Platform to Harm its Competitors

Amazon appears to exploit its dual roles as retailer of consumer goods and platform in its ecommerce business. A similar strategy appears in its cloud computing business, where it plays dual roles as retailer of software and as platform. Much of the software offered through the AWS Marketplace is open source, meaning that it can be freely accessed, used, changed and shared by anyone. AWS has been accused of competing with AWS Marketplace sellers by creating AWS software that imitates their products. The most obvious and egregious examples of this behavior include cases when AWS has taken open source projects and repackaged them as proprietary AWS services. This practice of “strip mining”—stripping code without contributing to the open source product¹⁰⁹—does not violate the licensing terms of the open source software and therefore likely does not violate competition law.¹¹⁰

However, once Amazon has become a competitor to an open source product, it has the power to disfavor the open source product in search results for AWS Marketplace products, introducing friction to the purchasing process and inducing customers to select products from Amazon or other competitors to the open source product.¹¹¹ This is analogous to the self-preferencing power that Amazon uses to its benefit on its ecommerce platform. One inexplicable search result may illustrate this power. In 2019, Amazon launched “Amazon DocumentDB (with MongoDB compatibility).” The program is supposed to be an alternative to MongoDB Atlas, document management software released under an open source license. DocumentDB does not use the original open source code developed by MongoDB, but it emulates MongoDB’s operation and allows code written for MongoDB to work on DocumentDB.

AWS does not act as a first party on its AWS Marketplace because customers must purchase AWS services through a dedicated interface, so a search for “MongoDB” does not return an Amazon product as the first result. However, it does not return a MongoDB product as the first result, either. Instead, MongoDB’s product is displayed second in the search results, after a version of its products packaged by an unrelated competitor named Bitnami.¹¹² Moreover, the number of reviews, which can serve as a proxy for sales volume and product popularity—both of which would be legitimate and unsurprising factors in search result rankings—suggests that the product sold by MongoDB is more popular than Bitnami’s package, which has no reviews at all. MongoDB’s search results raise questions about what inputs Amazon weighs most heavily in its AWS Marketplace search algorithm, given that “MongoDB” is both in the name of the product and the name of seller.

In the absence of disclosure from Amazon, the integrity of its AWS Marketplace search results is as questionable as the integrity of its retail Marketplace search results, which reports indicate are informed by profit. In the AWS Marketplace, Amazon may be relying on search algorithm inputs that indirectly benefit AWS by disadvantaging its competitors, enabled by the company’s dual role as platform and retailer.

C. The FTC Should Investigate Whether Amazon Depresses Wages by Locating in Concentrated Labor Markets & Squeezing its Fissured Work Force

Amazon’s business practices have significant, often negative impacts on labor markets, both for Amazon’s direct employees and for employees of its economically-dependent contractors. At the same time as the company consolidates control over competition, it consolidates control over local labor

markets. Amazon has the power to assert this control as a direct employer of hundreds of thousands of low-wage workers, and by indirectly setting a ceiling on earnings of independent contractors and contractor employees that allow Amazon to make good on its promises of rapid delivery.

1. Amazon Indirectly Sets Wages for its Fissured Workforce

Amazon is already one of the world's biggest logistics companies, with offerings like trucking and ocean freight that go beyond its FBA service.¹¹³ In the case of outbound shipping, or last-mile delivery, Amazon has significantly lessened its dependence on large delivery companies and the U.S. Postal Service by developing its own vertically-integrated logistics network. Amazon's network is the second largest in the private sector, but much of its operations are conducted by small businesses and nominal independent contractors whose viability depends on maintaining Amazon as a customer.¹¹⁴

Amazon actively encourages its employees to quit their jobs and assume roles as independent contractors. Amazon induces small delivery businesses and individuals to act as independent contractors through firm initiatives such as the "Amazon Flex"¹¹⁵ and "Delivery Service Partner" programs.¹¹⁶ The company boasts that, through the Delivery Service Partner incentive, it has created at least 200 new Amazon-affiliated delivery firms in the past year.¹¹⁷ These approximately 800 small, independent contractors are now responsible for around 48 percent of Amazon's last mile deliveries.¹¹⁸

By virtue of its size and power as a buyer of delivery services, Amazon can impose monopsonistic restraints on the treatment of workers within its supply chain while, at the same time, avoiding legal responsibility for their fair treatment. As one investigation notes, Amazon's model allows it to "shed[] costs and liability...By contracting instead with third-party companies, which in turn employ drivers, Amazon divorces itself from the people delivering its packages."¹¹⁹ It effects this fissuring at the same time as it exerts near-total control over the way in which its deliveries are made. This includes dictating what contractor employees wear, what they drive, and how many packages they are compelled to deliver, all for a flat fee to the contractor.¹²⁰

Smaller providers, such as those whom Amazon induces to enter the market, are more likely to be economically dependent on Amazon than are larger delivery companies; research suggests that many are in fact reliant on Amazon for 100 percent of their business.¹²¹ This economic dependency increases the likelihood that providers will submit to Amazon's prices and other terms. Amazon sets fixed fees for small delivery providers. Pursuant to one contract, Amazon paid small delivery providers \$279.50 per day for a route in San Francisco.¹²² This figure covers the costs of overhead including the delivery vehicle, insurance, and the driver's wages. If Amazon expected contractor drivers to deliver 250 packages, as has been reported, it was paying them a little over a dollar per package.¹²³

Amazon's fragmentation of its supply chain erects a façade: the company appears to set route fees, not wages. In reality, however, these fees are tantamount to wages. Fixed overhead costs mean that the labor costs of an economically-dependent provider will be the most vulnerable to suppression given Amazon's terms. Amazon can, furthermore, exert significant influence over these fixed costs, and by extension the resulting amount left over from its route fees for wages. In many cases, for example, Amazon generates revenue for itself by leasing vehicles from its own inventory to independent contractors.¹²⁴

As with its third-party seller complementors in ecommerce, Amazon shifts risk to and extracts fees from these small delivery providers who, in the aggregate, are indispensable to the company's logistics operation but whose individual survival is irrelevant to it. Amazon divests itself of legal responsibility for its indirect workforce's wages and working conditions while imposing stringent operating requirements on small providers that have a major impact on labor costs. Providers often have no choice but to accept Amazon's terms and their wage implications in order to hold onto a slice of the delivery activities that Amazon's dominant market share generates.

2. Amazon May Depress Wages in Concentrated Labor Markets

Amazon's expansion has also been fueled by workers it employs directly. Amazon's size as an employer has, like its other activities, grown at an historic rate. In 2016, Amazon became the U.S. company to reach a global workforce of 300,000 most quickly.¹²⁵ This figure, which does not account for its subcontracted workforce and contractor employees, represents an average annual employment growth rate of approximately 30 percent during Amazon's first 20 years of operation.¹²⁶ Amazon has since undertaken further recruitment drives and acquisitions to the extent that, as of 2019, it is one of the largest employers in the U.S. with a direct workforce of approximately 400,000.¹²⁷

Excluding seasonal workers, Amazon directly employs 22 percent of the entire national labor market in private warehousing and storage.¹²⁸ Amazon's dominance in this labor market is even more overwhelming in many localities. Change to Win conducted a short survey of locations where Amazon directly employs a significant percentage of workers in the warehousing and storage industry and, based on evidence from the Bureau of Labor Statistics and other publicly-available sources, identified a number of local labor markets where average wages in the industry fell after Amazon's arrival.

For example, with approximately 17,500 directly employed full-time workers across multiple warehouses, Amazon is New Jersey's fifth largest employer.¹²⁹ The company opened its largest New Jersey fulfillment center in Mercer County in June 2014. This site currently employs an estimated 3,500 workers.¹³⁰ Petitioners estimate that excluding seasonal workers, Amazon's share of the state and Mercer County labor markets for warehousing and storage is 30 percent¹³¹ and 51 percent,¹³² respectively. Mercer County's annual salary and weekly earnings averages in warehousing and storage have both fallen by 18 percent since the year of Amazon's arrival.¹³³ A \$45,699 average annual salary for warehouse work in 2014 had fallen to \$37,546 by 2018. This was not part of a pre-existing trend. Prior to Amazon's penetration of this local labor market, wages in warehousing and storage had risen for three consecutive years at both the county and state levels.¹³⁴

Amazon is also one of the largest direct employers in Lexington County, South Carolina¹³⁵ and the county's largest source of warehousing and storage employment.¹³⁶ In 2017, the year of the most recently available local data, Petitioners estimate that Amazon's share of the county labor market for warehousing and storage was 55 percent.¹³⁷ After Amazon opened a fulfillment center in Lexington County in October 2011, the annual salary and weekly earnings averages for warehousing and storage work in the county both fell by 21 percent.¹³⁸

The story is the same in Chesterfield County, Virginia.¹³⁹ Petitioners estimate that in 2018, Amazon's share of warehousing and storage employment in Virginia's labor market was approximately

37 percent,¹⁴⁰ while its share of Chesterfield County’s warehousing and storage employment was approximately 48 percent.¹⁴¹ Since Amazon opened a fulfillment center in Chesterfield County in October 2012, the annual salary and weekly earnings averages for warehousing and storage work in the county have fallen by 21 percent—just as they did in Lexington County.¹⁴²

Petitioners believe that Amazon’s establishment of warehouses in concentrated labor markets where it can easily drive down wages for warehousing and storage labor is not an accident, but is rather by design. Amazon leases more of its warehouses from Prologis, a corporate real estate developer, than from any other landlord.¹⁴³ Prologis assists clients like Amazon with locating their warehouses strategically, not only in a manner that is most efficient for logistics operations, but in a manner that allows them to take advantage of vulnerable workers and weak local economies. For instance, one Prologis site selection document identifies a high unemployment rate and low local median income as being the “labor advantages” of one site’s location outside of Atlanta, where Amazon also has a warehouse.¹⁴⁴ In another Prologis document, the “labor advantages” for a second area where Amazon has a facility are presented as a “combination of low wages...in a non-union environment.”¹⁴⁵

These site selection preferences raise the prospect that when Amazon does act as a direct employer, it may knowingly distance its warehouses from tighter local labor markets with higher wage expectations and place them instead in looser labor markets where workers are more likely to accept suppressed pay rates because of a paucity of options. This strategy would allow Amazon to depress wages and exploit workers, particularly ones who lack union representation, and it compels serious examination of the anti-competitive nature of Amazon’s employment practices.

V. As Amazon Grows, Questions Accumulate

In the twenty-five years of Amazon’s existence, many domestic and foreign investigations into the company’s anticompetitive practices have opened and closed without apparent effect on its path to consolidation and dominance of ecommerce, cloud computing, and beyond. Despite the efforts of authorities representing the United States, Austria, Germany, Great Britain, India, Italy, Japan, Spain, and the European Commission to police Amazon, regulators continue to struggle to understand the company’s business practices and their effect on competition. In August 2019, for example, United States Senators Blumenthal (D-Conn) and Menendez (D-NJ) asked Amazon to explain how it designates certain products as “Amazon’s choice,” which leads to a 30 percent increase in sales. Amazon offered an unsatisfying response, which Senator Menendez said “left [him] with more questions than answers...”¹⁴⁶

The House of Representatives is also probing how Amazon competes. In June and July 2019, the House Subcommittee on Antitrust, Commercial, and Administrative Law held oversight hearings as part of a broader investigation into competition in digital markets. Amazon associate general counsel Nate Sutton testified on Amazon’s behalf. Committee Chair David Cicilline (D-RI) did not find Sutton’s answers satisfactory, and wrote to Amazon after the hearing, explaining that he was “troubled by Mr. Sutton’s responses to questions by Members of the Subcommittee. In several instances, Mr. Sutton responded... by offering either ancillary information or partial and selective responses.”¹⁴⁷ Amazon replied to Cicilline in writing, but continued its attorney’s pattern of nonresponsive answers. In response to the

Subcommittee’s query about the number of “Prime members in the United States,” for example, Amazon offered only that “Prime has over 100 million paid members worldwide.”¹⁴⁸

Petitioners support the FTC’s own reported effort to obtain voluntary third-party cooperation in an initial inquiry into Amazon, but we do not believe it is sufficient.¹⁴⁹ Given the speed at which Amazon continues to amass market power and the company’s persistent disregard for the inquiries of the legislative branch, we submit that a more forceful inquiry is urgently needed. In the absence of compelled disclosures, antitrust regulators will continue piecing together narratives of anticompetitive conduct like those briefed herein without gaining enough traction and contemporaneous understanding of Amazon’s operations to determine whether it is suppressing competition unlawfully, or to regulate it preemptively. It is imperative that the FTC call on Amazon to answer the charge that it is using exclusionary conduct to the detriment of workers, consumers, merchants, and competition itself.

Respectfully submitted,

International Brotherhood of Teamsters

Communications Workers of America

United Food and Commercial Workers International
Union

Service Employees International Union

Change to Win

February 27, 2020

¹ See, e.g., Change to Win, Comments regarding Proposed Consent Order in the Matter of CVS Caremark Corp., FTC File No. 072 3119 (Mar. 19, 2009), https://www.ftc.gov/sites/default/files/documents/public_comments/cvs-caremark-corporation-file-no.0723119-540386-00001/540386-00001.pdf, and Service Employees Int'l Union, Petition for Investigation of the Franchise Industry (May 2015), https://www.americanbar.org/content/dam/aba/publications/franchise_lawyer/ftc-req-for-investigation_final-may-19-2015.pdf.

² *The Federal Trade Commission at 100: Into Our 2nd Century - The Continuing Pursuit of Better Practices*, FTC at xiii, (2009), available at https://www.ftc.gov/sites/default/files/documents/public_statements/federal-trade-commission-100-our-second-century/ftc100rpt.pdf.

³ 15 U.S.C. § 46(b).

⁴ *Id.* at § 46(a).

⁵ *Id.* § 46(f).

⁶ *Generic Drug Entry Prior to Patent Expiration*, FTC (2002), available at https://www.ftc.gov/sites/default/files/documents/reports/generic-drug-entry-prior-patent-expiration-ftc-study/genericdrugstudy_0.pdf.

⁷ *Investigation of Gasoline Price Manipulation and Post-Katrina Gasoline Price Increases*, FTC (2006), available at <http://www.ftc.gov/reports/060518PublicGasolinePricesInvestigationReportFinal.pdf>.

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¹¹ *Data Brokers: A Call for Transparency & Accountability*, FTC (2014), available at <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>.

¹² Press Release: FTC Seeks to Examine the Privacy Practices of Broadband Providers, FTC (Mar. 26, 2019), available at <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-seeks-examine-privacy-practices-broadband-providers>.

¹³ Press Release: FTC to Examine Past Acquisitions by Large Technology Companies, FTC (Feb. 11, 2020), available at <https://www.ftc.gov/news-events/press-releases/2020/02/ftc-examine-past-acquisitions-large-technology-companies>.

¹⁴ *Global Top 100 Companies by Market Capitalisation*, PWC (2019), available at <https://www.pwc.com/gx/en/audit-services/publications/assets/global-top-100-companies-2019.pdf>.

¹⁵ *Quarterly Retail E-Commerce Sales 3rd Quarter 2019*, U.S. BUREAU OF THE CENSUS, Release No. CB19-170 (Nov. 19, 2019), available at https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf; *Quarterly Retail E-Commerce Sales 2nd Quarter 2019*, U.S. BUREAU OF THE CENSUS, Release No. CB19-117 (Aug. 19, 2019), available at https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

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²² Walmart does not disaggregate this figure from its total sales. See *Digital Investments Pay Off for Walmart in Ecommerce Race*, EMARKETER (Feb. 14, 2019), available at <https://www.emarketer.com/content/digital-investments-pay-off-for-walmart-in-ecommerce-race>.

²³ Eric Jhonsa, *Walmart's E-Commerce Gains Don't Necessarily Spell Pain for Amazon*, THE STREET (May 16, 2019), available at <https://realmoney.thestreet.com/investing/technology/walmart-ecommerce-gains-amazon-14963027>.

²⁴ Amazon Marketplace Fair Pricing Policy, available at <https://sellercentral.amazon.com/gp/help/external/G5TUVJKZHUVMN77V> (last accessed Jan. 31, 2020). Also see Seller Forums Comments to “Amazon’s New ‘Fair Pricing’ Policy is Raising Prices, and Amazon is Happy with It,” AMAZON (Dec. 2018), available at <https://sellercentral.amazon.com/forums/t/amazons-new-fair-pricing-policy-is-raising-prices-and-amazon-is-happy-with-it/433064>. One third-party seller who posted in the forums wrote, “I would dearly love to see this story picked up by the AP and some major stations. It is price fixing and has nothing to do with fair pricing.” *Id.*, Comment of mjelsi (Dec. 2018).

²⁵ Guadalupe Gonzalez, *Phantom Buy Buttons, Performance Dings: The Scariest Things That Amazon Sellers Say Keep Them Up at Night*, INC. (Oct. 25, 2018), available at <https://www.inc.com/guadalupe-gonzalez/what-keeps-amazon-sellers-up-at-night-third-quarter-results.html>.

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²⁷ Amazon Marketplace Fair Pricing Policy, *supra* note 24; Seller Forums Comments to “Amazon may suspend over pricing now,” AMAZON (Jan. 2018), available at <https://sellercentral.amazon.com/forums/t/amazon-may-suspend-over-pricing-now/352796> (last accessed February 2, 2020).

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³³ *Id.* at 3.

³⁴ Letter from the Hon. Richard Blumenthal, U.S. Senate, to Joseph Simons, Chairman, FTC (Dec. 18, 2018), available at <https://www.blumenthal.senate.gov/imo/media/doc/12.19.18%20-%20FTC%20-%20Price%20Parity.pdf>.

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- ³⁵ Guadalupe Gonzalez, *You're No Longer Required to Sell Products for Less on Amazon. The Problem? If You Don't, You've Got Another Penalty Coming*, INC. (Mar. 13, 2019), available at <https://www.inc.com/guadalupe-gonzalez/amazon-removes-price-parity-not-fair-price-rule-third-party-sellers-antitrust-violations.html>. Amazon retains the right to amend its seller agreements at any time with little or no notice. It did this, for example, when it inserted mandatory arbitration clauses into all of its seller agreements, depriving those sellers of the right to petition in public court for redress of antitrust violations, among others. Amazon was involved in 163 arbitration agreements with its third-party sellers from 2014 to 2019, fewer than 30 cases per year for 2.5 million sellers. Amazon Responses to Cicilline Questions, *supra* note 25.
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⁶³ *Amazon Changed Search Algorithm*, *supra* note 37.

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¹⁰⁴ Case Report: Amazon Removes Price Parity Obligation, *supra* note 32.

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- ¹⁴⁹ Written Testimony of Rohit Chopra, Commissioner, FTC, *Online Platforms & Market Power, Part 3: The Role of Data and Privacy in Competition: Hearing Before the Subcomm. on Antitrust, Commercial & Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. at 5 (2019), available at <https://docs.house.gov/meetings/JU/JU05/20191018/110098/HHRG-116-JU05-Wstate-ChopraR-20191018.pdf>.

Petitioners

Founded in 1903, the **International Brotherhood of Teamsters** represents 1.4 million hardworking men and women throughout the United States, Canada and Puerto Rico. Visit www.teamster.org for more information. Follow us on Twitter @Teamsters and “like” us on Facebook at www.facebook.com/teamsters.

The **Communications Workers of America** represents working people in telecommunications, customer service, media, airlines, health care, public service and education, manufacturing, and other industries.

The **United Food and Commercial Workers International Union** is the largest private sector union in the United States, representing 1.3 million professionals and their families in grocery stores, meatpacking, food processing, retail shops and other industries. Our members serve our communities in all 50 states, Canada and Puerto Rico. Learn more about the UFCW at www.ufcw.org.

Service Employees International Union unites 2 million diverse members in the United States, Canada, and Puerto Rico. SEIU members working in the healthcare industry, in the public sector, and in property services believe in the power of joining together on the job to win higher wages and benefits and to create better communities while fighting for a more just society and an economy that works for all, not just corporations and the wealthy.

Change to Win is a democratic federation of labor unions representing over 4 million working people in the United States and Canada across a wide range of industries, including retail, manufacturing, healthcare, public service, banking and transportation. Change to Win and its union affiliates have engaged the Federal Trade Commission on a number of issues, including fair competition in the franchise industry and the pharmacy benefit manager sector, toward its goal of eliminating anticompetitive and abusive business practices that harm both workers and consumers.