

ONE HUNDRED SEVENTEENTH CONGRESS

Congress of the United States  
House of Representatives

COMMITTEE ON THE JUDICIARY

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March 9, 2022

The Honorable Merrick B. Garland  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Garland,

We write to alert the Department of Justice to potentially criminal conduct by Amazon and certain of its executives.

Last Congress, the U.S. House of Representatives' Committee on the Judiciary (Committee) conducted an extensive investigation into competition in digital markets. During that investigation, and in follow-up inquiries, Amazon engaged in a pattern and practice of misleading conduct that suggests it was "acting with an improper purpose" "to influence, obstruct, or impede" the Committee's investigation and inquiries.<sup>1</sup>

In its first appearance before the Committee during the investigation, Amazon lied through a senior executive's sworn testimony that Amazon did not use *any* of the troves of data it had collected on its third-party sellers to compete with them. But credible investigative reporting showed otherwise. For instance, *The Wall Street Journal* reported that, although Amazon "has long asserted, including to Congress, that when it makes and sells its own products, it doesn't use information it collects from the site's individual third-party sellers," "interviews with more than 20 former employees of Amazon's private-label business and documents reviewed by *The Wall Street Journal* reveal that employees did just that."<sup>2</sup> The Committee's investigation uncovered similar evidence from former Amazon employees, as well as current and former sellers.

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<sup>1</sup> 18 U.S.C. §§ 1505, 1515(b).

<sup>2</sup> 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>.

Throughout the course of the Committee’s investigation, Amazon attempted to cover up its lie by offering ever-shifting explanations of what it called its “Seller Data Protection Policy.” Among other things, in written statements to the Committee, Amazon made a distinction between the “individual” seller data that Amazon supposedly protected and the “aggregated” seller data that its private-label business could use. Yet Amazon’s representations were misleading. Reports revealed not only that the claimed distinction was meaningless for certain products, but also that Amazon employees regularly violated the policy—and senior officials knew it. On October 13, 2021, for example, *Reuters* published its findings “based on internal Amazon documents that provide a rare, unvarnished look, in the company’s own words, into business practices that it has denied for years.”<sup>3</sup>

A similar story unfolded for Amazon’s representations about manipulation of consumers’ search results. The same senior Amazon official testified that Amazon’s search algorithms did not preference its private-label products over third-party sellers’ products. But again, credible investigative reporting showed otherwise. On October 14, 2021, *The Markup* reported that, although “Amazon told Congress in 2019 that its search results do not take into account whether a product is an Amazon-owned brand,” *The Markup*’s investigation revealed that “Amazon places products from its house brands and products exclusive to the site ahead of those from competitors.”<sup>4</sup> In response to Committee inquiries, Amazon responded only that it “occasionally surface[s] promotions for its own products” with labels such as “featured from our brands.”<sup>5</sup> It failed to respond specifically to *The Markup*’s claim that, in the grid that customers would view as containing organic search results, Amazon regularly listed its own products ahead of other products with higher customer ratings and more sales.

After Amazon was caught in a lie and repeated misrepresentations, it stonewalled the Committee’s efforts to uncover the truth. The Committee gave Amazon a final opportunity to provide evidence either correcting the record or corroborating the representations it had made to the Committee under oath and in written statements. Instead of taking advantage of this opportunity to provide clarity, however, Amazon offered conclusory denials of adverse facts. In a November 1, 2021 communication to the Committee, a senior Amazon official dismissed the reports as inaccurate, attributing them to “key misunderstandings and speculation.”<sup>6</sup> And in three subsequent meetings with Committee staff, outside counsel from a different law firm from the one that had been representing Amazon in communications with the Committee reported that Amazon had performed multiple internal investigations—the most recent of which was led by a

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<sup>3</sup> Aditya Kalra & Steve Stecklow, *Amazon Copied Products and Rigged Search Results to Promote Its Own Brands, Documents Show*, REUTERS (Oct. 13, 2021), <https://www.reuters.com/investigates/special-report/amazon-india-rigging/>.

<sup>4</sup> Adrienne Jeffries & Leon Yin, *Amazon Puts Its Own “Brands” First Above Better-Rated Products*, THE MARKUP (Oct. 14, 2021), <https://themarkup.org/amazons-advantage/2021/10/14/amazon-puts-its-own-brands-first-above-better-rated-products>.

<sup>5</sup> Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 6 (Nov. 1, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_nov\\_01\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_nov_01_2021.pdf).

<sup>6</sup> *Id.* at 1.

*different*, third law firm. According to counsel, Amazon’s investigations had uncovered no evidence that its employees regularly and intentionally misused third-party seller data. Counsel further insisted that Amazon’s algorithms did not list Amazon products first in consumer search results. When the Committee asked for the business records that proved these claims, however, Amazon refused to provide them. Following these meetings, Amazon’s outside counsel from its original law firm reiterated in a letter to the Committee that Amazon would not provide any “documents relating to” its most recent internal investigation.<sup>7</sup>

Without producing any evidence to the contrary, Amazon has left standing what appear to be false and misleading statements to the Committee. It has refused to turn over business documents or communications that would either corroborate its claims or correct the record. And it appears to have done so to conceal the truth about its use of third-party sellers’ data to advantage its private-label business and its preferencing of private-label products in search results—subjects of the Committee’s investigation. As a result, we have no choice but to refer this matter to the Department of Justice to investigate whether Amazon and its executives obstructed Congress in violation of applicable federal law.

### **A. Obstruction of Congress**

As you are aware, “[w]hoever corruptly . . . influences, obstructs, or impedes or endeavors to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had by either House, or any committee of either House,” commits a federal crime.<sup>8</sup> The elements of the crime of obstruction of Congress are: “(1) that there was [a congressional inquiry or investigation]; (2) that the defendant was aware of that proceeding; and (3) that the defendant intentionally endeavored corruptly to influence, obstruct or impede the pending proceeding.”<sup>9</sup> “Corruptly” in this context means “acting with an improper purpose, personally or by influencing another, including making a false or misleading statement, or withholding, concealing, altering, or destroying a document or other information.”<sup>10</sup>

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<sup>7</sup> Letter from Covington & Burling LLP, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 5 (Dec. 17, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_lanny\\_breuer\\_to\\_committee\\_dec\\_17\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_lanny_breuer_to_committee_dec_17_2021.pdf).

<sup>8</sup> 18 U.S.C. § 1505.

<sup>9</sup> *United States v. Warshak*, 631 F.3d 266, 325 (6th Cir. 2010) (quotation marks omitted) (quoting *United States v. Bhagat*, 436 F.3d 1140, 1147 (9th Cir. 2006)).

<sup>10</sup> 18 U.S.C. § 1515(b); see generally *United States v. Safavian*, 528 F.3d 957, 968 (D.C. Cir. 2008) (distinguishing 18 U.S.C. § 1505 from 18 U.S.C. § 1001 by explaining that “[e]ven a literally true statement may be misleading and so, unlike § 1001(a)(1), literal truth may not be a complete defense to obstruction”).

## **B. Amazon’s Knowing Participation in the Committee’s Digital-Markets Investigation and Subsequent Inquiries**

On June 3, 2019, the House Judiciary Committee announced a bipartisan investigation into competition in digital markets, led by the Subcommittee on Antitrust, Commercial, and Administrative Law (Subcommittee).<sup>11</sup> The purposes of the investigation were to: (1) document competition problems in digital markets; (2) examine whether dominant firms are engaging in anticompetitive conduct; and (3) assess whether existing antitrust laws, competition policies, and current enforcement levels are adequate to address these issues. The Committee initiated the investigation in response to broad-ranging investigative reporting, and activity by policymakers and enforcers, that raised serious concerns about the platforms’ incentives and ability to harm the competitive process.

The Committee’s investigation included inquiry into the business practices of Amazon, the dominant marketplace in the United States for online shopping.<sup>12</sup> One area of interest was (and remains) Amazon’s dual role as both the operator of a dominant online marketplace and a competitor in that marketplace. As marketplace operator, Amazon has access to enormous amounts of data on both its consumer-customers and its third-party sellers—such as which products customers are searching for, viewing, and buying, and at what prices. As marketplace competitor, Amazon also sells and advertises its own private-label products. Amazon’s dual role creates an inherent conflict of interest—and gives Amazon the incentive and ability to use its position as marketplace operator unfairly to its advantage as a marketplace seller. Accordingly, the Committee examined whether Amazon uses third-party seller data to develop and market its own products to compete with third-party sellers on its marketplace and whether Amazon advantages its own products over other sellers’ products in search results.<sup>13</sup>

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<sup>11</sup> Press Release, H. Comm. on the Judiciary, House Judiciary Committee Launches Bipartisan Investigation into Competition in Digital Markets (June 3, 2019), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=2051>.

<sup>12</sup> STAFF OF SUBCOMM. ON ANTITRUST, COM., & ADMIN. L. OF THE H. COMM. ON THE JUDICIARY, 116TH CONG., INVESTIGATION OF COMPETITION IN DIGITAL MARKETS, MAJORITY STAFF REPORT AND RECOMMENDATIONS 255 (2020) [hereinafter DIGITAL MARKETS REPORT].

<sup>13</sup> See *id.* at 16, 274-87.

Amazon, through its executives, participated in the investigation through sworn testimony<sup>14</sup> and written submissions.<sup>15</sup> Amazon’s testimony and correspondence repeatedly demonstrated its knowledge of the investigation and the goals of the Committee.<sup>16</sup>

### **C. Amazon’s Efforts to Influence, Obstruct, or Impede the Committee’s Investigation Corruptly**

The Committee’s interactions with Amazon over the course of the past two-and-a-half years have followed an unfortunately consistent pattern. Amazon provides testimony, written

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<sup>14</sup> *Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple, Facebook, and Google: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 116th Cong. 11-12, 101-03, 109-11, 113-18, 122-25, 130-33, 138-40, 145-46, 148, 153, 156, 160-61, 164-66 (2020) [hereinafter CEO Hearing] (testimony of Jeffrey P. Bezos, CEO, Amazon.com, Inc.), <https://www.govinfo.gov/content/pkg/CHRG-116hhrg41317/pdf/CHRG-116hhrg41317.pdf>; *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 116th Cong. 5-6, 23-24, 38-44, 46-47, 49-51, 64, 66-67, 70-71 (2019) [hereinafter Innovation and Entrepreneurship Hearing] (testimony of Nate Sutton, Assoc. Gen. Couns., Competition, Amazon.com, Inc.), <https://www.govinfo.gov/content/pkg/CHRG-116hhrg39901/pdf/CHRG-116hhrg39901.pdf>.

<sup>15</sup> *E.g.*, Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. (Nov. 1, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_nov\\_01\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_nov_01_2021.pdf); Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, Hon. Jim Jordan, Ranking Member, H. Comm. on the Judiciary, Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, & Hon. F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary (Oct. 4, 2020), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_oct\\_04\\_2020.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_oct_04_2020.pdf); CEO Hearing at 280-334 (responses to Questions for the Record of Amazon.com, Inc. (Sept. 4, 2020), <https://docs.house.gov/meetings/JU/JU05/20200729/110883/HHRG-116-JU05-20200729-QFR052.pdf>); Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. (May 15, 2020), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_may\\_15\\_2020.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_may_15_2020.pdf); Innovation and Entrepreneurship Hearing at 497-565 (responses to Questions for the Record of Amazon.com, Inc. (Oct. 11, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf>); Letter from David Zapolsky, Gen. Couns., Amazon.com, Inc., to Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary (July 26, 2019), <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/07.26.19%20-%20amazon%20response.pdf>.

<sup>16</sup> *See, e.g.*, Letter from Covington & Burling LLP, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 1 (Dec. 17, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_lanny\\_breuer\\_to\\_committee\\_dec\\_17\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_lanny_breuer_to_committee_dec_17_2021.pdf) (“Amazon has sought to cooperate with the Committee throughout its investigation, and this letter continues to carry that endeavor forward.”); Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 3 (May 15, 2020), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_may\\_15\\_2020.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_may_15_2020.pdf) (“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.”); Submission from Amazon.com, Inc., to H. Comm. on the Judiciary 1 (Oct. 14, 2019), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_robert\\_kelner\\_to\\_committee\\_oct\\_14\\_2019.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_robert_kelner_to_committee_oct_14_2019.pdf) (“On behalf of our client, Amazon.com, Inc., this letter is an initial response to your September 13, 2019 letter to Amazon regarding the Committee’s investigation into competition in digital markets. Amazon appreciates the opportunity to respond and is committed to cooperating with your inquiry.”).

statements, or other correspondence that denies the competitive use of third-party seller data or the preferencing of its own products in search results; credible investigative reporting quotes current or former Amazon employees or sellers who contradict those representations; and the Committee asks Amazon to reconcile the discrepancy with supporting evidence—which Amazon does not offer. Under these circumstances, Amazon and its executives appear to have been “acting with an improper purpose” “to influence, obstruct, or impede . . . the due and proper exercise of the power of inquiry under which any inquiry or investigation is being had.”<sup>17</sup>

## **1. Amazon’s Competitive Use of Third-Party Seller Data**

### **a. Amazon’s Initial Testimony and Subsequent Contrary Reporting**

The problem began with Amazon’s initial testimony to the Committee. On July 16, 2019, Amazon represented, through the sworn testimony of its Associate General Counsel for Competition, Nate Sutton,<sup>18</sup> that “we do not use any seller data for—to compete with them [i.e., third-party sellers].”<sup>19</sup> Mr. Sutton offered this statement in response to a question from Representative Pramila Jayapal (D-WA), who had asked whether Amazon “devote[s] any resources to identifying the most popular brands and products sold using the Amazon interface,” such as “track[ing] the most popular non-Amazon brands that are sold in houseware divisions or the brand of size 14 pants that sold most often or any other product like that.”<sup>20</sup> Representative Jayapal noted her concern that, “essentially you have this massive trove of data, right, people that are buying products on your platform, and so you’re able to see which are the ones that are doing really, really well, like that size 14 pant or that houseware that’s being sold.”<sup>21</sup> She asked again: “Do you track that and then do you create products that directly compete with those most popular brands that are out there?”<sup>22</sup> Mr. Sutton responded that “data on popularity of products like much retail data is actually public data,” but “[w]e do not use any of that specific seller data in creating our own private brand products.”<sup>23</sup>

Mr. Sutton testified similarly in response to questions from Subcommittee Chairman David N. Cicilline (D-RI). Chairman Cicilline followed up on Representative Jayapal’s line of questioning: “You said we do not use seller data to compete with other sellers online. You do collect enormous data about what products are popular, what’s selling, where they’re selling.

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<sup>17</sup> 18 U.S.C. §§ 1505, 1515(b).

<sup>18</sup> Innovation and Entrepreneurship Hearing at 5-6 (administration of oath); *see also* Truth in Testimony Disclosure Form of Nate Sutton, Assoc. Gen. Couns., Competition, Amazon.com, Inc. 2 (July 14, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-TTF-SuttonN-20190716.pdf> (acknowledging that “[k]nowingly providing material false information to this committee/subcommittee, or knowingly concealing material information from this committee/subcommittee, is a crime (18 U.S.C. § 1001)”).

<sup>19</sup> Innovation and Entrepreneurship Hearing at 38.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

You're saying you don't use that in any way to promote Amazon products?"<sup>24</sup> Chairman Cicilline further noted "I remind you, sir, you're under oath."<sup>25</sup> Mr. Sutton answered, again, that "we don't use individual seller data to directly compete with them [i.e., third-party sellers]."<sup>26</sup> Later, Mr. Sutton reiterated, "we do not use their [i.e., third-party sellers'] individual data when we're making decisions to launch private brands."<sup>27</sup>

Two days after Mr. Sutton's sworn testimony before the Committee, on July 18, 2019, *The Capitol Forum* quoted a former Amazon employee who contradicted aspects of Mr. Sutton's testimony.<sup>28</sup> Contrary to Mr. Sutton's representation that Amazon did not use "any" third-party seller data to compete with those sellers, the former employee said that Amazon "routinely tracked the popularity of independent sellers' products sold through its website."<sup>29</sup> "I used to pull sellers' data to look at what the best products were when I was there," said the former employee, who worked in product management. "That was my job."<sup>30</sup>

As for Mr. Sutton's testimony that Amazon did not use "individual" seller data for competitive purposes, *The Capitol Forum* quoted the former Amazon employee as saying that "[t]he wording of what these executives say is chosen very carefully."<sup>31</sup> According to that employee, "Amazon may not use individual sellers' data, but they do examine aggregate seller data collected from multiple competing retailers."<sup>32</sup>

#### **b. Amazon's Responses to the Committee's Requests for Clarification and More Contrary Reporting**

Despite the reporting that called into question the truthfulness of Mr. Sutton's testimony, Amazon did not volunteer any clarifying explanation to the Committee. Instead, five days after *The Capitol Forum* posted its article, on July 23, 2019, Subcommittee Chairman Cicilline sent a letter to Amazon's General Counsel, David Zapolsky, citing the article and noting that Mr. Sutton's testimony "has been contested by a former Amazon employee, raising questions about the veracity of his [i.e., Mr. Sutton's] responses under oath."<sup>33</sup> In addition, Chairman Cicilline

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<sup>24</sup> *Id.* at 41.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 42.

<sup>28</sup> *Amazon: Former Employee Challenges Executive's Denial About Company's Use of Independent Sellers' Data*, THE CAPITOL FORUM (July 18, 2019).

<sup>29</sup> *Id.* at 1.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* at 2.

<sup>32</sup> *Id.*

<sup>33</sup> Letter from Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, to David Zapolsky, Gen. Couns., Amazon.com, Inc. 1 (July 23, 2019), [https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/7.22.19%20letter%20to%20amazon%20\(dnc\).pdf](https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/7.22.19%20letter%20to%20amazon%20(dnc).pdf).

wrote, Mr. Sutton had responded to questions “by offering either ancillary information or partial and selective responses.”<sup>34</sup> Chairman Cicilline thus requested clarification on, among other things, Amazon’s competitive use of third-party seller data as “an opportunity for your company to supplement his [i.e., Mr. Sutton’s] responses.”<sup>35</sup>

Mr. Zapolsky responded on behalf of Amazon on July 26, 2019.<sup>36</sup> He conceded that, contrary to Mr. Sutton’s sworn testimony, Amazon does in fact “use aggregated store data (e.g., total sales) and customer shopping behavior (e.g., search volume)” as “inputs to Amazon’s private label strategy.”<sup>37</sup> In addition, Mr. Zapolsky wrote, “[w]e also use data that we make publicly available, including sales rank, product attributes, and customer ratings.”<sup>38</sup> On the other hand, Mr. Zapolsky contended, “we prohibit in our private label strategy the use of data related specifically to individual sellers.”<sup>39</sup> According to him, if a “product is only offered by a single seller, . . . we do not use that data.”<sup>40</sup> Mr. Zapolsky offered no further explanation of the substance of Amazon’s policy on third-party seller data, the extent to which compliance with the policy was monitored and enforced, or the distinction Amazon was drawing between “aggregate” and “individual” seller data.

Amazon provided modest additional information in its October 11, 2019 response to Subcommittee Chairman Cicilline’s post-hearing Questions for the Record for the hearing witness, Mr. Sutton. Through its outside counsel “[o]n behalf of our client, Amazon.com, Inc.,” rather than Mr. Sutton,<sup>41</sup> Amazon represented that aggregated seller data is meaningfully distinct from individual seller data: “‘Aggregated data’ is data that is aggregated across all third party sellers and Amazon’s first party sales and is therefore not specific to an individual seller. It includes data such as aggregate sales reports at a product category level.”<sup>42</sup> Amazon also represented that the distinction made a meaningful difference in Amazon’s business practices: “Amazon prohibits Amazon’s private brand products business from using individual sellers’ data

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Letter from David Zapolsky, Gen. Couns., Amazon.com, Inc., to Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary (July 26, 2019), <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/07.26.19%20-%20amazon%20response.pdf>.

<sup>37</sup> *Id.* at 2.

<sup>38</sup> *Id.* at 3.

<sup>39</sup> *Id.* at 2.

<sup>40</sup> *Id.* at 3.

<sup>41</sup> See Letter from Covington & Burling LLP, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, & Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary (Oct. 11, 2019), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_robert\\_kelner\\_to\\_committee\\_oct\\_11\\_2019.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_robert_kelner_to_committee_oct_11_2019.pdf).

<sup>42</sup> Innovation and Entrepreneurship Hearing at 501 (responses to Questions for the Record of Amazon.com, Inc., at 5 (Oct. 11, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf>).

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."<sup>43</sup>

On April 23, 2020, *The Wall Street Journal* reported that, although Amazon "has long asserted, including to Congress, that when it makes and sells its own products, it doesn't use information it collects from the site's individual third-party sellers," "interviews with more than 20 former employees of Amazon's private-label business and documents reviewed by *The Wall Street Journal* reveal that employees did just that."<sup>44</sup> "Such information can help Amazon decide how to price an item, which features to copy or whether to enter a product segment based on its earning potential, according to people familiar with the practice, including a current employee and some former employees who participated in it."<sup>45</sup>

The article referenced Amazon's policy prohibiting its private-label business from using individual third-party seller data but explained that "former employees and a current one said those rules weren't uniformly enforced. Employees found ways around them, according to some former employees, who said using such data was a common practice that was discussed openly in meetings they attended."<sup>46</sup> Indeed, "[p]ulling data on competitors, even individual sellers, was 'standard operating procedure' when making products such as electronics, suitcases, sporting goods or other lines."<sup>47</sup> "In one instance, Amazon employees accessed documents and data about a bestselling car-trunk organizer sold by a third-party vendor. The information included total sales, how much the vendor paid Amazon for marketing and shipping, and how much Amazon made on each sale. Amazon's private-label arm later introduced its own car-trunk organizers."<sup>48</sup> In another instance, an "Amazon private-label employee pulled a year's worth of [third-party seller] Upper Echelon data when researching development of an Amazon-branded seat cushion," and then "AmazonBasics launched its own version."<sup>49</sup>

The article also explained how the distinction that Amazon's policy drew between aggregate and individual data was meaningless for certain products. It provided an example where one company's product accounted for 99.95% of total sales in the car-trunk organizer product category.<sup>50</sup> Because the company's sales were not 100% of that category, however, Amazon considered that data aggregate rather than individual.<sup>51</sup> As another example, the article

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<sup>43</sup> *Id.* at 503 (responses at 7).

<sup>44</sup> 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>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

explained, if there is only one original seller of a product, but Amazon resells returned or damaged versions of that item through its Amazon Warehouse Deals program, Amazon considers sales data for that product to be aggregate.<sup>52</sup>

**c. Amazon’s Responses to Another Round of Requests for Clarification and Amazon’s Additional Testimony, Followed by the Committee’s Uncovering of More Contrary Facts**

Yet again, despite reporting that called into question the truthfulness of Mr. Sutton’s testimony as well as Amazon’s subsequent correspondence with the Committee, Amazon did not volunteer any clarifying explanation to the Committee. Eight days after *The Wall Street Journal* published its article, on May 1, 2020, the Committee sent a letter to Amazon’s then-CEO, Jeffrey Bezos.<sup>53</sup> The letter noted that *The Wall Street Journal* article “rais[es] questions about whether executives implicitly encouraged or approved of” private-label employees’ use of individual seller data “even if it violated formal company policy.”<sup>54</sup> And, the letter warned, “[i]f 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 false or perjurious.”<sup>55</sup>

Brian Huseman, Amazon’s Vice President for Public Policy, responded to the Committee’s letter on May 15, 2020.<sup>56</sup> Mr. Huseman’s letter covered much the same ground as had Amazon’s prior communications with the Committee. In response to the Committee’s concerns over the efficacy of Amazon’s policy against competitive use of individual third-party seller data—what Amazon calls the “Seller Data Protection Policy”—Mr. Huseman responded that “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.”<sup>57</sup> Mr. Huseman acknowledged that *The Wall Street Journal* article included “claims that employees intentionally violated our policy” and stated that “[w]e are investigating those claims thoroughly now, and we look forward to sharing the results of that investigation with you.”<sup>58</sup> He further opined, in advance of the results of that investigation, that

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<sup>52</sup> *Id.*

<sup>53</sup> Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. to Jeff Bezos, CEO, Amazon.com, Inc. (May 1, 2020), [https://judiciary.house.gov/uploadedfiles/2020-05-01\\_letter\\_to\\_amazon\\_ceo\\_bezos.pdf?utm\\_campaign=2719-519](https://judiciary.house.gov/uploadedfiles/2020-05-01_letter_to_amazon_ceo_bezos.pdf?utm_campaign=2719-519).

<sup>54</sup> *Id.* at 2.

<sup>55</sup> *Id.* at 3 (footnotes omitted).

<sup>56</sup> Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. (May 15, 2020), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_may\\_15\\_2020.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_may_15_2020.pdf).

<sup>57</sup> *Id.* at 2.

<sup>58</sup> *Id.* at 3.

the article “conflates broader product pricing and top-seller data readily available to all and the individual seller data our policy protects.”<sup>59</sup>

Over two months later, on July 29, 2020, Mr. Bezos testified before the Committee under oath about Amazon’s Seller Data Protection Policy.<sup>60</sup> Representative Jayapal asked, “does Amazon ever access and use third-party seller data when making business decisions?”<sup>61</sup> Mr. Bezos responded: “I can’t answer that question yes or no. What I can tell you is we have a policy against using seller-specific data to aid our private label business, but I can’t guarantee you that that policy has never been violated.”<sup>62</sup> Mr. Bezos stated to Representative Jayapal that he was “familiar with” *The Wall Street Journal*’s reporting of violations of the policy and said that “we continue to look into that very carefully. I’m not yet satisfied that we’ve gotten to the bottom of it, and we’re going to keep looking at it.”<sup>63</sup>

During the same hearing, Representative Kelly Armstrong (R-ND) asked Mr. Bezos: “[A]m I correct in my understanding that Amazon is conducting an internal investigation on the use of third-party data?”<sup>64</sup> Mr. Bezos responded: “Yes.”<sup>65</sup> Representative Armstrong then asked: “Will you commit to informing this committee on the outcome of that investigation, including on the exact circumstances of when Amazon is allowed to view and/or use aggregate data?”<sup>66</sup> And Mr. Bezos answered: “Yes. Yes, we will do that.”<sup>67</sup>

Amazon submitted responses to the Committee’s post-hearing Questions for the Record for Mr. Bezos on September 4, 2020<sup>68</sup>—over four months after *The Wall Street Journal* article’s publication. Multiple Committee members sought specific information about Amazon’s compliance with its Seller Data Protection Policy, but Amazon’s answers were largely incomplete and non-responsive. In answering Subcommittee Chairman Cicilline’s question, “[w]hen and how did you first become aware of any incidents involving Amazon employees accessing third-party seller data,” and what “actions . . . Amazon has taken to respond to these incidents,” Amazon limited its response to two of the incidents already identified in *The Wall*

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<sup>59</sup> *Id.*

<sup>60</sup> CEO Hearing at 11 (administration of oath); *see also* Truth in Testimony Disclosure Form of Jeffrey P. Bezos, CEO, Amazon.com, Inc. 2 (July 27, 2020), <https://docs.house.gov/meetings/JU/JU05/20200729/110883/HHRG-116-JU05-TTF-BezosJ-20200729.pdf> (acknowledging that “[k]nowingly providing material false information to this committee/subcommittee, or knowingly concealing material information from this committee/subcommittee, is a crime (18 U.S.C. § 1001)”).

<sup>61</sup> CEO Hearing at 101.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 132.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> CEO Hearing at 280-334 (responses to Questions for the Record of Amazon.com, Inc. (Sept. 4, 2020), <https://docs.house.gov/meetings/JU/JU05/20200729/110883/HHRG-116-JU05-20200729-QFR052.pdf>).

*Street Journal* article.<sup>69</sup> Amazon asserted that it had learned of those incidents from the article and, in any event, “[t]he *Journal*’s reporting conflates product-pricing and top-seller data—both of which are publicly displayed in Amazon’s store—with the individual seller data protected by Amazon’s Seller Data Protection Policy.”<sup>70</sup> Amazon did not provide the requested information about any other incidents where employees accessed third-party seller data.

In his Questions for the Record, Representative Ken Buck (R-CO) noted that “Amazon is conducting an investigation into the use of third-party company data to launch its own products” and asked Mr. Bezos to “please list each alleged incident of misuse or Amazon policy violation and your conclusion as to whether Amazon’s internal policies were violated.”<sup>71</sup> Amazon did not provide any such list but responded generally that “Amazon trains employees on the policy and regularly audits its systems and processes for compliance,” and that “Amazon takes appropriate action in response to any policy violations.”<sup>72</sup>

On October 4, 2020, Mr. Huseman sent the Committee a three-page letter on behalf of Amazon informing the Committee that “Amazon’s investigation into the *Wall Street Journal*’s allegations that Amazon employees violated the Seller Data Protection Policy is complete, and we are satisfied that the results confirm, as with all our policies, the seriousness with which we take this policy.”<sup>73</sup> Mr. Huseman devoted barely two paragraphs to the investigation—and of those paragraphs, a single sentence to Amazon’s relevant findings.<sup>74</sup> According to Mr. Huseman, “Amazon’s records of past data queries related to the two products cited in the *Wall Street Journal* report show that a single former employee pulled and analyzed only aggregate data for both products in compliance with the Seller Data Protection Policy.”<sup>75</sup> Mr. Huseman did not explain what constituted “Amazon’s records of past data queries” or provide those records to the Committee for inspection. He also did not offer specific responses to any other of the allegations in *The Wall Street Journal* article, such as those describing widespread violations of Amazon’s Seller Data Protection Policy or those describing examples where the policy would not protect individual seller data. Instead, Mr. Huseman stated generally that the article inaccurately “appears to use the generic word ‘data’ to mean both single-seller or aggregate data” and offered extraneous information that two of the affected third-party sellers identified in the article “have

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<sup>69</sup> *Id.* at 280 (responses at 1).

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 295 (responses at 16).

<sup>72</sup> *Id.*

<sup>73</sup> Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, Hon. Jim Jordan, Ranking Member, H. Comm. on the Judiciary, Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, & Hon. F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary 1 (Oct. 4, 2020), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_oct\\_04\\_2020.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_oct_04_2020.pdf).

<sup>74</sup> *See id.* at 2.

<sup>75</sup> *Id.*

continued to succeed in Amazon’s store.”<sup>76</sup> Mr. Huseman neither acknowledged nor explained, however, his departure from his May 15, 2020 criticism of the article—that the problem instead was that the article supposedly had conflated public single-seller data with non-public single-seller data.<sup>77</sup>

Even if Amazon had “satisfied” itself that Amazon employees took the Seller Data Protection Policy seriously, other sources told a different story. The Committee heard repeated concerns during its investigation that Amazon leverages its access to third-party sellers’ data to identify and replicate popular and profitable products from among the hundreds of millions of listings on its marketplace.<sup>78</sup> Several interviews with former Amazon employees, as well as current and former sellers, were consistent with the public reporting about Amazon’s misuse of seller data.<sup>79</sup> For example, in a submission to the Subcommittee, a former employee said:

In 2010, I started working on the Amazon marketplace team . . . . It was widely known that many (10+) of my peers were running very successful [third-party] accounts, where they were pulling private data on Amazon seller activity, so they could figure out market opportunity, etc. Totally not legitimate, but no one monitored or seemed to care.<sup>80</sup>

Referring to accessibility of third-party seller data, the same individual told Subcommittee staff, “[i]t’s a candy shop, everyone can have access to anything they want,” and added, “[t]here’s a rule, but there’s nobody enforcing or spot-checking. They just say, don’t help yourself to the data[;] . . . it was ‘wink wink,’ don’t access.”<sup>81</sup>

Additional investigative reporting confirmed that Amazon’s private-label employees regularly violated its Seller Data Protection Policy. According to an article published by *Politico* on April 30, 2021, “[a]n internal audit seen by POLITICO warned Amazon’s senior leadership in 2015 that 4,700 of its workforce working on its own sales had unauthorized access to sensitive third-party seller data on the platform—even identifying one case in which an employee used the

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<sup>76</sup> *Id.*

<sup>77</sup> Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 3 (May 15, 2020), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_may\\_15\\_2020.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_may_15_2020.pdf) (the article “conflates broader product pricing and top-seller data readily available to all and the individual seller data our policy protects”).

<sup>78</sup> DIGITAL MARKETS REPORT at 274-82.

<sup>79</sup> *Id.*; see *id.* at 278 n.1728 (describing a member’s experience in which Amazon allowed a distributor to sell a product for about a year, “then went out and replicated the product and began selling their own branded product, terminating the distributor . . . Amazon became the winner and the distributor was left empty handed” (quoting Submission from Nat’l Ass’n of Wholesaler-Distributors, to H. Comm. on the Judiciary (July 22, 2020) (on file with Comm.))).

<sup>80</sup> *Id.* at 278-79 (brackets in original) (quoting Submission from Source 91, to H. Comm. on the Judiciary (Sept. 16, 2020) (on file with Comm.)).

<sup>81</sup> *Id.* at 279.

access to improve sales.”<sup>82</sup> “Amazon bigwigs including Jeff Wilke, the company’s number two until he left in March this year, and current General Counsel David Zapolsky knew that insufficiently robust access restrictions meant scores of insiders could inappropriately access seller-specific data.”<sup>83</sup> Although “Amazon middle management acknowledged and set out a plan to remedy the problems raised in the report,” a “former information security insider called the follow-up ‘murky’ and said problems related to the digital tool used to access accounts lasted at least until 2018.”<sup>84</sup>

On October 13, 2021, *Reuters* reported similarly that Amazon “ran a systematic campaign of creating knockoffs and manipulating search results to boost its own product lines in India, one of the company’s largest growth markets.”<sup>85</sup> This report was based on a review of “thousands of pages of internal Amazon documents,” “including emails, strategy papers and business plans.”<sup>86</sup> According to *Reuters*, these internal documents showed a pattern of Amazon “exploiting proprietary data from individual sellers to launch competing products and manipulating search results to increase sales of the company’s own goods.”<sup>87</sup>

## 2. Amazon’s Preferencing of Its Own Products in Search Results

Amazon’s representations to the Committee concerning its methodology for displaying search results to consumers also appear to have been misleading. During the Committee’s July 16, 2019 hearing, Subcommittee Chairman Cicilline noted that Amazon had the ability to “manipulate algorithms on its platform and favor its own product.”<sup>88</sup> Mr. Sutton testified in response that “[o]ur algorithms, such as the buy box, is [sic] aimed to predict what customers want to buy . . . [a]nd we apply the same criteria whether you’re a third-party seller or Amazon to that because we want customers to make the right purchase regardless of whether it’s a seller or Amazon.”<sup>89</sup> Chairman Cicilline then asked: “So you’re telling us, sir, under oath that Amazon does not use any of that data collected with respect to what is selling, where it’s selling, what products to inform the decisions you make or to change algorithms to direct people to Amazon products and prioritize Amazon and deprioritize competitors?”<sup>90</sup> Mr. Sutton responded: “The

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<sup>82</sup> Simon Van Dorpe & Vincent Manancourt, *Amazon Knew Seller Data Was Used to Boost Company Sales*, POLITICO (Apr. 30, 2021), <https://www.politico.eu/article/amazon-seller-data-company-sales/>.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> Aditya Kalra & Steve Stecklow, *Amazon Copied Products and Rigged Search Results to Promote Its Own Brands, Documents Show*, REUTERS (Oct. 13, 2021), <https://www.reuters.com/investigates/special-report/amazon-india-rigging/>.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Innovation and Entrepreneurship Hearing at 41.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

algorithms are optimized to predict what customers want to buy regardless of the seller. We provide the same criteria.”<sup>91</sup>

Amazon confirmed that it did not preference its own products in search results in its October 11, 2019 responses to Subcommittee Chairman Cicilline’s post-hearing Questions for the Record. Chairman Cicilline asked Mr. Sutton to “[p]lease identify all factors that Amazon’s algorithm considers when listing and ranking product search results and explain why each is considered.”<sup>92</sup> Through its outside counsel, Amazon responded that it “designs its shopping and discovery experience to feature the items customers will want to purchase, regardless of whether they are offered by Amazon or one of its selling partners.”<sup>93</sup> It further stated that “Amazon considers many factors when choosing the shopping results featured for customers, including, for example, customer actions (such as how frequently an item was purchased), information about the item (such as title, price, and description), and availability.”<sup>94</sup> Amazon’s answer omitted any mention of its display of sponsored results from third-party sellers or its own private-label brands within search results. Instead, Amazon referenced such listings only when responding to questions specifically about paid listings or private-brand advertising.<sup>95</sup> Amazon stated that “sponsored listings” might appear “in the first page of shopping results on mobile” and “on the first page of shopping results on desktop.”<sup>96</sup> But it did not otherwise explain how sponsored listings related to or differed from search results.

Two investigative reports published within a day of each other contained allegations that contradicted Amazon’s representations to the Committee. In an October 13, 2021 article referenced previously, *Reuters* reported that it had reviewed internal Amazon documents that “show for the first time that, at least in India, manipulating search results to favor Amazon’s own products, as well as copying other sellers’ goods, were part of a formal, clandestine strategy at Amazon—and that high-level executives were told about it.”<sup>97</sup> Among other things, Amazon

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<sup>91</sup> *Id.*

<sup>92</sup> Innovation and Entrepreneurship Hearing (Questions for the Record from Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, to Nate Sutton, Assoc. Gen. Couns., Competition, Amazon.com, Inc., at 1, <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-QFR005.pdf> (question 6)).

<sup>93</sup> *Id.* at 498 (responses to Questions for the Record of Amazon.com, Inc., at 2 (Oct. 11, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf>); *see also id.* at 499 (responses at 3) (“Amazon’s algorithms do not take into account the factors described in a, b, and c above when ranking shopping results”—factor c being “[w]hether a product is private label sold by Amazon”).

<sup>94</sup> *Id.* at 498 (responses at 2).

<sup>95</sup> *See id.* at 509-12 (responses at 13-16) (responding to questions 42-47, 51); *see generally id.* at 500 (responses at 4) (in response to question about how Amazon treats its private-label products differently from third-party products: “Amazon highlights its private brands in promotions and marketing in the Amazon store when Amazon thinks they will be of interest to customers”).

<sup>96</sup> *Id.* at 509 (responses at 13); *accord id.* at 512 (responses at 16) (“Sponsored Products and Sponsored Brands . . . appear in the Amazon store’s shopping results pages and promote products sold in the Amazon store”).

<sup>97</sup> Aditya Kalra & Steve Stecklow, *Amazon Copied Products and Rigged Search Results to Promote Its Own Brands, Documents Show*, REUTERS (Oct. 13, 2021), <https://www.reuters.com/investigates/special-report/amazon-india-rigging/>.

“used a technique called ‘search seeding’ to boost the rankings of its AmazonBasics and Solimo brand goods, according to [an internal] 2016 private-brand report.”<sup>98</sup>

Likewise, on October 14, 2021, *The Markup* reported that, contrary to Amazon’s representations, “Amazon places products from its house brands and products exclusive to the site ahead of those from competitors.”<sup>99</sup> *The Markup*’s analysis of Amazon search results for 3,492 popular products revealed that Amazon “gave its brands the top spot . . . above competitors that had both better ratings and more reviews than the Amazon brand or exclusive product.”<sup>100</sup> Investigators discovered that “knowing only whether a product was an Amazon brand or exclusive could predict in seven out of every 10 cases whether Amazon would place it first in search results. These listings are not visibly marked as ‘sponsored’ and they are part of a grid that Amazon identifies as ‘search results’ in the site’s source code.”<sup>101</sup> *The Markup* additionally explained how this practice advantaged Amazon and disadvantaged third-party sellers: “By giving its brands top billing, Amazon is giving itself a significant leg up in sales. The first three items on the search results page get 64 percent of clicks, according to one ex-Amazon-employee-turned-consultant.”<sup>102</sup>

### **3. The Committee Offers Amazon a Final Opportunity to Provide Evidence Substantiating Its Contested Claims, but Amazon Fails to Do So**

Following the third round of investigative reporting that contradicted Amazon’s representations to the Committee about its use of third-party seller data, and the additional reporting that contradicted Amazon’s representations about self-preferencing in search results, the Committee sent a letter to Amazon’s CEO, Andy Jassy.<sup>103</sup> The October 18, 2021 letter stated: “At best, this reporting confirms that Amazon’s representatives misled the Committee. At worst, it demonstrates that they may have lied to Congress in possible violation of federal criminal law.”<sup>104</sup> “In light of the serious nature of this matter, we are providing you with a final opportunity to provide exculpatory evidence to corroborate the prior testimony and statements on behalf of Amazon to the Committee.”<sup>105</sup> Among other things, the Committee requested sworn

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<sup>98</sup> *Id.*

<sup>99</sup> Adrienne Jeffries & Leon Yin, *Amazon Puts Its Own “Brands” First Above Better-Rated Products*, THE MARKUP (Oct. 14, 2021), <https://themarkup.org/amazons-advantage/2021/10/14/amazon-puts-its-own-brands-first-above-better-rated-products>.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, Hon. Pramila Jayapal, Vice Chair, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, Hon. Ken Buck, Ranking Member, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, & Hon. Matt Gaetz, Member, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, to Andy Jassy, CEO, Amazon.com, Inc. (Oct. 18, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_-\\_amazon\\_misrepresentations\\_-\\_10.18.21.pdf](https://judiciary.house.gov/uploadedfiles/letter_-_amazon_misrepresentations_-_10.18.21.pdf).

<sup>104</sup> *Id.* at 1.

<sup>105</sup> *Id.*

responses clarifying “how Amazon uses non-public individual seller data to develop and market its own line of products” and “how Amazon advantages its own products over products from other sellers in its search rankings”; “[a]ll documents referred to in the *Reuters* report”; and other supporting business records and communications.<sup>106</sup>

Instead, the Committee received a short and unsworn letter on November 1, 2021 from Mr. Huseman that did not provide any new information.<sup>107</sup> Mr. Huseman again merely claimed that the cited “articles appear to repeat key misunderstandings and speculation, and in the process come to inaccurate conclusions.”<sup>108</sup> He summarized Amazon’s testimony before, and correspondence with, the Committee.<sup>109</sup> He described Amazon’s May 15, 2020 letter responding to *The Wall Street Journal* article as having “detailed the fundamental errors in the article’s reporting”<sup>110</sup> and repeated the assertion in Amazon’s October 4, 2020 letter that “electronic records of data queries related to the two products cited in the article confirmed that—in compliance with the Seller Data Protection Policy—a single former employee pulled and analyzed only aggregate data for both products.”<sup>111</sup> Mr. Huseman again did not explain or provide Amazon’s “electronic records of data queries.”

With respect to the *Reuters* article, Mr. Huseman wrote that “we are looking into the allegations,” which “will take time.”<sup>112</sup> Nonetheless, Mr. Huseman apparently was able to conclude that, in the article, “Reuters does not distinguish between aggregate seller data—which is used by many retailers and is consistent with our Seller Data Protection Policy—and non-public seller-specific data that might implicate the policy.”<sup>113</sup> Moreover, to the extent the article discussed Amazon’s use of “‘reference’ or ‘benchmark’ brands” in deciding on “a private brand product’s design, product characteristics, quality characteristics, and price point,” Mr. Huseman described this practice as “common” in retail.<sup>114</sup> He did not, however, reconcile Amazon’s “common” use of data for a product potentially sold by one seller with Mr. Sutton’s sworn testimony that Amazon did not use individual third-party seller data in its private-label business.

In response to *The Markup* article, Mr. Huseman asserted that the reporting “conflates the routine product marketing many retailers engage in with the distinct results Amazon provides

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<sup>106</sup> *Id.* at 5.

<sup>107</sup> Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. (Nov. 1, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_nov\\_01\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_nov_01_2021.pdf).

<sup>108</sup> *Id.* at 1.

<sup>109</sup> *Id.* at 2-5.

<sup>110</sup> *Id.* at 3.

<sup>111</sup> *Id.* at 4.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

customers in response to shopping queries.”<sup>115</sup> He claimed that Amazon had made this distinction clear to the Committee in its October 11, 2019 responses to Subcommittee Chairman Cicilline’s Questions for the Record where, according to Mr. Huseman, Amazon had “clarified the difference between organic shopping results provided in response to customer queries, paid advertisements, sponsored listings, and other marketing and promotional services.”<sup>116</sup> Those responses, however, never used the phrase “organic shopping results” nor even the word “organic.” In fact, they described Amazon’s “Sponsored Products and Sponsored Brands” as listings that would “appear *in* the Amazon store’s shopping results pages”—as opposed to something separate and distinct.<sup>117</sup> In any event, Mr. Huseman conceded that “Amazon might occasionally surface promotions for its own products that are clearly labeled ‘featured from our brands,’ ‘recommended for you from our brands,’ or ‘top rated from our brands.’”<sup>118</sup> He offered no response, however, to *The Markup* article’s allegation that Amazon listed its own products first “in the search results grid” itself through “source code [that] identified [those products] as ‘sponsored’—though that label isn’t shown to the public.”<sup>119</sup>

In addition to Mr. Huseman’s letter, Amazon made available for interview a partner from Wachtell, Lipton, Rosen & Katz—one of its outside counsel involved in Amazon’s examination of employee compliance with its Seller Data Protection Policy—and different from the law firm that was otherwise handling Amazon’s communications with the Committee, Covington & Burling LLP.<sup>120</sup> Over the course of three interviews with Committee staff, counsel from Wachtell explained at a high level how Amazon had conducted its investigation into employee compliance with its Seller Data Protection Policy: Amazon had searched for any complaints of, or email chatter about, violations of the policy. Counsel claimed that Amazon did not find any bad actors had intentionally violated the policy—with perhaps one unexplained exception.

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<sup>115</sup> *Id.* at 5.

<sup>116</sup> *Id. But cf.* Cat Zakrzewski & Jay Greene, *Amazon’s Search Results Full of Ads That May Be ‘Unlawfully Deceiving’ Consumers, Complaint to FTC Claims*, WASH. POST (Dec. 8, 2021), <https://www.washingtonpost.com/technology/2021/12/08/amazon-search-results-ftc-complaint/> (“Amazon doesn’t distinguish well enough between paid ads and organic search results, something that could trick consumers, according to a new complaint filed with the Federal Trade Commission on Wednesday.”).

<sup>117</sup> Innovation and Entrepreneurship Hearing at 512 (responses to Questions for the Record of Amazon.com, Inc., at 16 (Oct. 11, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf>) (emphasis added); *accord id.* at 509 (responses at 13) (“sponsored listings” might appear “in the first page of shopping results on mobile” and “on the first page of shopping results on desktop”).

<sup>118</sup> Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 6 (Nov. 1, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_nov\\_01\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_nov_01_2021.pdf).

<sup>119</sup> Adrienne Jeffries & Leon Yin, *Amazon Puts Its Own “Brands” First Above Better-Rated Products*, THE MARKUP (Oct. 14, 2021), <https://themarkup.org/amazons-advantage/2021/10/14/amazon-puts-its-own-brands-first-above-better-rated-products>; *see also id.* (explaining that the investigation “only analyzed products in that [search results] grid, ignoring modules that are strictly for advertising”).

<sup>120</sup> Interview with Wachtell, Lipton, Rosen & Katz, on behalf of Amazon.com, Inc., in Washington, D.C. (Nov. 10, 2021); Interview with Wachtell, Lipton, Rosen & Katz, on behalf of Amazon.com, Inc., in Washington, D.C. (Nov. 18, 2021); Interview with Wachtell, Lipton, Rosen & Katz, on behalf of Amazon.com, Inc., in Washington, D.C. (Dec. 8, 2021).

Counsel stated that Amazon found no pattern of misconduct—although there were “inadvertent technical violations” of the policy. And counsel represented that Amazon’s controls to ensure compliance with its policy have worked all along—although they were completely overhauled in November 2020, a few months after *The Wall Street Journal* article was published.

Counsel had little information to offer concerning Amazon’s search algorithms or displays and mainly restated the few conclusory points that Mr. Huseman had made in his letter. Counsel noted that Amazon had not investigated the allegations in *The Markup* article as extensively as those in *The Wall Street Journal* article. But Counsel represented that Amazon was “adamant” that its search algorithms were indifferent to whether a particular product is sold by Amazon—although counsel did not offer any documents to corroborate this claim.

Following questioning from Committee staff, counsel revealed that yet another law firm, K&L Gates, had led Amazon’s internal investigation into the allegations in *The Wall Street Journal* article and produced a written report. Counsel also confirmed the reports that Amazon had conducted more internal audits of employees’ compliance with Amazon’s policies on competitive use of third-party seller data than previously disclosed to the Committee. But counsel claimed that the audits had revealed no compliance problems. As for the allegations in the *Reuters* article, counsel represented that Amazon was continuing to investigate the matter, but it had been unable to locate the documents specifically identified in the article.

Committee staff asked counsel to provide business records and communications that would support Amazon’s claims that its employees complied with the Seller Data Protection Policy. Counsel stated that Amazon was not waiving its attorney-client or attorney-work-product privilege and therefore would not provide any documents substantiating its claims. It would not provide K&L Gates’s report concerning the allegations in *The Wall Street Journal* article. It would not provide its prior audits or internal investigations, even in redacted form. And it would not provide the business records or communications reviewed during its audits or investigations.

Committee staff therefore requested to interview the attorney(s) at K&L Gates who led Amazon’s internal investigation of *The Wall Street Journal*’s allegations. In addition, staff requested a privilege log of the documents related to the Seller Data Protection Policy—including those referenced in the cited articles—that Amazon is withholding from the Committee on privilege grounds. Amazon has provided neither.

Amazon instead provided a short letter from its outside counsel at Covington on December 17, 2021 that summarizes Amazon’s communications with the Committee.<sup>121</sup> Much of the letter quantifies the number of pages of documents and letters that Amazon has provided. The letter labels Amazon’s responses to Committee inquiries as “comprehensive,” “clarifying,” and “detailed,” but ignores that Amazon never offered information directly responsive to the relevant inquiries.<sup>122</sup> As just one example: Although, as Amazon elsewhere represented, it maintains

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<sup>121</sup> Letter from Covington & Burling LLP, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. (Dec. 17, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_lanny\\_breuer\\_to\\_committee\\_dec\\_17\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_lanny_breuer_to_committee_dec_17_2021.pdf).

<sup>122</sup> *Id.* at 1, 2, 3, 5.

“electronic records of data queries” by its employees,<sup>123</sup> Amazon never gave the Committee those records or the requested documentation of specific instances where employees violated the Seller Data Protection Policy (or otherwise used individual seller data to advantage Amazon’s private-label business). Rather, Amazon filled the pages of its responses to the Committee with repeated recitations of how its policy was supposed to work in theory.<sup>124</sup> But such a description—no matter how comprehensive or detailed—does not respond to Committee members’ requests that Amazon identify each instance where an employee violated that policy. Amazon’s withholding of that information deprived the Committee of the opportunity to assess for itself what Amazon’s records revealed about the efficacy of its policy in practice and the accuracy of its representations to the Committee.

Moreover, even in this most recent letter, Amazon is still changing its story. Amazon’s counsel writes that “the use of ‘benchmark’ or ‘reference’ products to inform the development of Private Brands products—*if true*—would conform to the practices of other retailers.”<sup>125</sup> Amazon included no such qualifier in its November 1, 2021 letter to the Committee, where it explained that “creating private brands that are similar or even identical to existing brands is a common retail practice.”<sup>126</sup> Although Amazon initially denied the practice through Mr. Sutton’s testimony, it later conceded that its private-label business uses public individual seller data, “including sales rank, *product attributes*, and customer ratings.”<sup>127</sup> Amazon’s effort to walk back

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<sup>123</sup> Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 4 (Nov. 1, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_nov\\_01\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_nov_01_2021.pdf); accord Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, Hon. Jim Jordan, Ranking Member, H. Comm. on the Judiciary, Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, & Hon. F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary 2 (Oct. 4, 2020), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_oct\\_04\\_2020.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_oct_04_2020.pdf) (referring to “Amazon’s records of past data queries”).

<sup>124</sup> See Letter from Covington & Burling LLP, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 2, 3-4 (Dec. 17, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_lanny\\_breuer\\_to\\_committee\\_dec\\_17\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_lanny_breuer_to_committee_dec_17_2021.pdf) (summarizing Amazon’s descriptions of its policy in various communications to the Committee).

<sup>125</sup> *Id.* at 5 (emphasis added).

<sup>126</sup> Letter from Brian Huseman, Vice President, Pub. Pol’y, Amazon.com, Inc., to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 4 (Nov. 1, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_brian\\_huseman\\_to\\_committee\\_nov\\_01\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_nov_01_2021.pdf).

<sup>127</sup> Letter from David Zapolsky, Gen. Couns., Amazon.com, Inc., to Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary 3 (July 26, 2019), <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/07.26.19%20-%20amazon%20response.pdf> (emphasis added); see also Innovation and Entrepreneurship Hearing at 501, 502 (responses to Questions for the Record of Amazon.com, Inc., at 5, 6 (Oct. 11, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-20190716-SD038.pdf>) (stating that Amazon uses public individual seller data “to inform its private brand strategy”—for instance, when determining the “[p]ricing of Amazon’s private brand products,” Amazon considers factors such as “the price of similar, popular products offered in Amazon’s store”).

these representations is a continuation of the same pattern of obfuscation that Amazon has displayed repeatedly in its communications with the Committee.

#### **4. The Circumstances Strongly Suggest that Amazon and Its Executives Were Acting with an Improper Purpose**

Amazon was caught in a lie after Mr. Sutton testified that Amazon did not use *any* third-party seller data to advantage its private-label business. Its subsequent efforts to clarify the applicable policy—by distinguishing “aggregate” seller data, which the private-label business could use, from “individual” seller data, which the private-label business could not use—proved to be misleading for products for which that distinction was meaningless. And when multiple, credible reports offered specific evidence that Amazon employees regularly violated the Seller Data Protection Policy, and senior officials knew about this practice, Amazon offered little more than a declaration that it was “satisfied” that Amazon takes its policy seriously.

What Amazon does not appear to take seriously is its obligation to provide truthful and complete responses to Committee inquiries. Its testimony and written statements concerning its use of third-party seller data and its search algorithms appear to have been inaccurate and misleading, and it has withheld material information without valid justification.

The primary justification that Amazon offers for its withholding of material business records and communications—attorney-client and attorney-work-product privilege—is invalid on its face. The common-law rules governing non-constitutional privileges applicable to proceedings in U.S. courts<sup>128</sup> are not binding on Congress, where “[e]ach House may determine the Rules of its Proceedings.”<sup>129</sup> As the Committee informed Amazon at least as early as September 2019, consistent with longstanding practice, the Committee “does not recognize[] any purported non-disclosure privileges associated with the common law including, but not limited to . . . the attorney-client privilege, and attorney work product protections.”<sup>130</sup>

Even were Congress bound by the rules of common-law privilege, moreover, those rules would not justify Amazon’s withholding of information here. First, Amazon has made only blanket assertions of privilege in refusing to turn over evidence corroborating its claims of employee compliance with the Seller Data Protection Policy. But “a ‘blanket assertion of the privilege does not suffice.’”<sup>131</sup> Second, Amazon has declined to turn over company documents and records that attorneys reviewed as part of its internal audits and investigations. In its

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<sup>128</sup> See FED. R. EVID. 101(a), 501.

<sup>129</sup> U.S. CONST. art. I, § 5, cl. 2.

<sup>130</sup> Letter from Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, Hon. Doug Collins, Ranking Member, H. Comm. on the Judiciary, Hon. David N. Cicilline, Chairman, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, & Hon. F. James Sensenbrenner, Ranking Member, Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary, to Jeff Bezos, CEO, Amazon.com, Inc. 10 (Sept. 13, 2019), <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/amazon%20rfi%20-%20signed.pdf>.

<sup>131</sup> *In re LeFande*, 919 F.3d 554, 563 (D.C. Cir. 2019) (brackets removed; citation omitted); *accord, e.g., In re Grand Jury Subpoena (Mr. S.)*, 662 F.3d 65, 71 (1st Cir. 2011) (citing cases).

December 17, 2021 letter, for example, Amazon explained its refusal by describing documents merely “relating to the investigation” that K&L Gates led in 2020 as “protected by the attorney-client privilege and attorney work product doctrine.”<sup>132</sup> But the mere fact that an attorney has reviewed a document or record does not shield it from production. Privilege does not protect either the “underlying facts and data possessed by [Amazon] and its employees” or “pre-existing business documents.”<sup>133</sup> Third and finally, Amazon asserts attorney-work-product privilege over *all* post-2015 work product created as part of any attorney-led internal investigations of Amazon’s compliance with its Seller Data Protection Policy. But the attorney-work-product privilege attaches only to “documents and tangible things that are prepared in anticipation of litigation or for trial.”<sup>134</sup> Amazon has failed to establish the requisite connection between its attorneys’ work product and specific litigation.

Amazon additionally justifies its refusal to turn over its internal audits and investigations by quoting a July 17, 2020 letter that it sent to the Committee during the last Congress.<sup>135</sup> In that July 2020 letter, Amazon wrote: “Consistent with our agreement with your staff in connection with the Committee’s upcoming hearing to discuss this topic, and notwithstanding any outstanding Committee requests, this is Amazon’s final production of documents and the Committee does not expect any further production to be made.”<sup>136</sup> Amazon now characterizes this letter as memorializing an agreement that, in exchange for the testimony of Mr. Bezos, “Amazon would not produce, and the Committee did not expect to receive, the audits or investigation records.”<sup>137</sup> Amazon overstates its case. During the summer of 2020, the Committee merely recognized, as stated in the Chairs’ forward to the Digital Markets Report, that “insufficient time exist[ed] to pursue these additional materials during [the 116th] Congress.”<sup>138</sup> Critically, however, “the Committee expressly reserve[d] the right to invoke other available options, including compulsory process, to obtain the requested information in the future.”<sup>139</sup> Amazon’s July 2020 letter in no way excuses any misrepresentations to the Committee or any refusals to provide material information. During the last Congress as well as during this Congress—when new investigative reporting raised additional questions about the

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<sup>132</sup> Letter from Covington & Burling LLP, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 5 (Dec. 17, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_lanny\\_breuer\\_to\\_committee\\_dec\\_17\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_lanny_breuer_to_committee_dec_17_2021.pdf).

<sup>133</sup> *Fed. Trade Comm’n v. Boehringer Ingelheim Pharms., Inc.*, 892 F.3d 1264, 1268 (D.C. Cir. 2018).

<sup>134</sup> FED. R. CIV. P. 26(b)(3)(A).

<sup>135</sup> See Letter from Covington & Burling LLP, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 2-3 (Dec. 17, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_lanny\\_breuer\\_to\\_committee\\_dec\\_17\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_lanny_breuer_to_committee_dec_17_2021.pdf).

<sup>136</sup> Submission from Amazon.com, Inc., to H. Comm. on the Judiciary 1 (July 17, 2020), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_robert\\_kelner\\_to\\_committee\\_july\\_17\\_2020.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_robert_kelner_to_committee_july_17_2020.pdf).

<sup>137</sup> Letter from Covington & Burling LLP, to Hon. Jerrold Nadler, Chairman, H. Comm. on the Judiciary, et al. 3 (Dec. 17, 2021), [https://judiciary.house.gov/uploadedfiles/letter\\_from\\_lanny\\_breuer\\_to\\_committee\\_dec\\_17\\_2021.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_lanny_breuer_to_committee_dec_17_2021.pdf).

<sup>138</sup> DIGITAL MARKETS REPORT at 9.

<sup>139</sup> *Id.*

veracity of Amazon’s representations—Amazon was obligated to respond to Committee inquiries accurately and completely.

In sum, Amazon has declined multiple opportunities to demonstrate with credible evidence that it made accurate and complete representations to the Committee during the Committee’s digital-markets investigation. The Committee’s findings and credible investigative reports suggest that Amazon’s representations were misleading and incomplete. And Amazon’s failure to correct or corroborate those representations suggests that Amazon and its executives have acted intentionally to improperly influence, obstruct, or impede the Committee’s investigation and inquiries.<sup>140</sup>

#### **D. Referral**

Courts have long recognized that “[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it.”<sup>141</sup> The Committee spent 16 months exercising this fundamental truth-seeking function to uncover facts about competitive conditions in digital markets, and Committee members have since proposed legislation to correct the problems uncovered by that investigation.<sup>142</sup> Yet throughout this process, Amazon repeatedly endeavored to thwart the Committee’s efforts to uncover the truth about Amazon’s business practices. For this, it must be held accountable. We therefore refer this matter to the Department to investigate whether Amazon or its executives obstructed Congress or violated other applicable federal laws.

Thank you for your attention to this important matter.

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<sup>140</sup> *Cf.*, e.g., *United States v. Rainey*, 757 F.3d 234, 248 (5th Cir. 2014) (concluding that an indictment adequately charged obstruction of a House investigation under 18 U.S.C. § 1505 when it alleged, in effect, that a former BP executive knew of an ongoing House subcommittee investigation into the *Deepwater Horizon* drilling-rig explosion and understated the severity of the resulting oil spill in his written responses to a subcommittee’s inquiries); *United States v. Warshak*, 631 F.3d 266, 325-26 (6th Cir. 2010) (affirming conviction for obstruction of a Federal Trade Commission investigation under 18 U.S.C. § 1505 where the defendant moved personal assets into a trust shortly before financial disclosures were due to the Commission); *United States v. Blackwell*, 459 F.3d 739, 761-62 (6th Cir. 2006) (affirming conviction for obstruction of a Securities Exchange Commission investigation under 18 U.S.C. § 1505 where the defendant agreed to “obscure” his relationship with certain investors, and to submit contact lists from which those investors had been deleted, when responding to Commission inquiries).

<sup>141</sup> *Maloney v. Murphy*, 984 F.3d 50, 55 (D.C. Cir. 2020) (alteration in original) (quoting *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927)).

<sup>142</sup> *See* The American Innovation and Choice Online Act, H.R. 3816, 117th Cong. § 2(b)(3), (7) (2021) (prohibiting dominant platforms from favoring their own products or services in search results or using non-public data to offer competing products or services); The Ending Platform Monopolies Act, H.R. 3825, 117th Cong. § 2 (2021) (prohibiting a dominant platform from operating as an intermediary and offering competing products or services with other businesses).

Sincerely,



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Jerrold Nadler  
Chair  
Committee on the Judiciary



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



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Ken Buck  
Ranking Member  
Subcommittee on Antitrust, Commercial,  
and Administrative Law



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Pramila Jayapal  
Vice Chair  
Subcommittee on Antitrust, Commercial, and  
Administrative Law



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Matt Gaetz  
Member  
Subcommittee on Antitrust, Commercial,  
and Administrative Law