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April 28, 2020

William P. Barr
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Barr:

I write to ask you to open a criminal antitrust investigation of Amazon. Recent reports suggest that Amazon has engaged in predatory and exclusionary data practices to build and maintain a monopoly. These practices are alarming for America's small businesses even under ordinary circumstances. But at a time when most small retail businesses must rely on Amazon because of coronavirus-related shutdowns, predatory data practices threaten these businesses' very existence.

Antitrust law imposes criminal penalties on companies that try to acquire or maintain monopoly power. Amazon's data practices, as reported by the *Wall Street Journal*,¹ appear to meet that description. Amazon abuses its position as an online platform and collects detailed data about merchandise so Amazon can create copycat products under an Amazon brand. Internal documents and the testimony of more than 20 former Amazon employees support this finding.

The kind of data Amazon can access poses a much greater threat to competition than the data accessible to ordinary retail stores. Brick-and-mortar stores collect data, such as how often third-party products are purchased, when they are purchased, and whether they are purchased in combination with other products. But online retailers like Amazon can collect so much more data. They can track how long a person's attention lingers on a product, which features attract a person's attention, which images a person views and for how long, and what reviews a person reads. Amazon's capacity for data collection is like a brick-and-mortar retailer attaching a camera to every customer's forehead.

Amazon appears to recognize that using this data to develop its own merchandise is problematic. Indeed, Amazon insists it has adopted policies prohibiting this conduct. Yet Amazon's own employees and documents suggest that what Amazon says in its policies and what Amazon does in practice are two different things.

¹ <https://www.wsj.com/articles/amazon-scooped-up-data-from-its-own-sellers-to-launch-competing-products-11587650015>

Even if Amazon's statements are true, they are hardly reassuring. Amazon does not deny that it uses precise, intrusive data to create its own merchandise. It simply claims that the data it uses is aggregate instead of "seller-specific." But when it comes to anticompetitive data practices, this distinction makes little, if any, difference. The *Wall Street Journal* reports that Amazon used data to make a copycat product even when 99.95% of the original product came from a single seller. Amazon's aggregate data technically covered two sellers, but it was functionally seller-specific. In any event, aggregate data can still enable Amazon to create or solidify monopoly power. Using aggregate data just means that, when Amazon uses data to create copycat products, it harms multiple small businesses instead of just one.

Abusing one's position as a marketplace platform to create copycat products always is bad, but it is especially concerning now. Thousands of small businesses have been forced to suspend in-store retail and instead rely on Amazon because of shutdowns related to the coronavirus pandemic. Amazon's reported data practices are an existential threat that may prevent these businesses from ever recovering.

The European Union already has opened an investigation into reports that Amazon uses data anticompetitively to target third-party sellers. In the light of the enormous evidence already gathered, I ask that you look into this issue and open a criminal antitrust investigation of Amazon.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Josh Hawley". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Josh Hawley
United States Senator