Amazon has a Marketplace problem



Massive tech companies may have been the focus of this week's antitrust hearing, but one of the most arresting speeches came from a much smaller outfit.

Partway through the hearing, Rep. Lucy McBath (D-GA) played testimony from a third-party textbook seller on Amazon, who believed the company had started blocking their store as it grew more successful. At the time of the testimony, they hadn't been able to sell a book for ten months, and despite hundreds of messages to Amazon, they couldn't get an answer as to why.

"I'm concerned this is a pattern of behavior," McBath told Bezos. "What do you have to say to the small businesses that are talking to Congress because you simply aren't listening to them?"

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"I do not think that's systematically what's going on," Bezos said. "Third-party sellers in aggregate are doing extremely

well on Amazon."

All of Amazon's worst moments at this week's hearing somehow circled back to Marketplace, Amazon's platform for letting third-party sellers list goods on Amazon.com. McBath's bookseller was the most sympathetic voice, but there were also concerns of less scrupulous Marketplace sellers smuggling counterfeit products onto Amazon's store. The hearing also resurrected long-standing accusations that Amazon uses hints from Marketplace to copy successful products and launch competitors. (In a *Wall Street Journal* report earlier this year, Amazon employees reported spying on sales figures for a popular car trunk organizer, then deciding to launch a near-identical Amazon-branded competitor based on the success of the product.) None of the problems are new, but this is the first time they've seemed like a real threat to the company, as antitrust crusaders look for cracks in Amazon's imposing architecture. Increasingly, Marketplace seems to be the weak point they're looking for.

If the new focus on Marketplace is surprising to users, it's because the platform is so easy to miss. For years, roughly half of Amazon's sales have come from third-party sellers (according to analyst estimates), but the company works hard to make the difference difficult to spot. If you're just browsing products, it can be hard to tell where Amazon inventory ends and third-party sellers begin.

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In January, Congress' antitrust team got a stark illustration of how powerful Marketplace can be in Amazon's direct-sales business. At a House Judiciary hearing in Colorado, PopSockets CEO David Barnett laid out a series of alarming interactions with Amazon, which saw the company pressuring him to lower prices and threatening to sell back excess inventory at cost. Barnett told lawmakers that Amazon threatened to source competing products from third-party sellers if PopSockets left

the platform, essentially using the specter of Marketplace to scare partners into submission. Any time Amazon wanted, it could swap out Barnett's PopSockets for cheap replicas sourced from Marketplace, cutting him out of a huge volume of sales.

At the same time, the direct sales platform can be turned against Marketplace sellers. Because Amazon handles fulfillment services for Marketplace sellers, the company knows how much they're selling, how much stock they have, and whether their product is striking a chord with consumers. For years, sellers have worried that Amazon is spotting hot products on Marketplace and launching competitors, even as the company insists it won't look at seller-specific data. But the recent *Journal* investigation found evidence of the company doing just that — and at the hearing, Jeff Bezos seemed unable to account for it.

"We have a policy against using seller-specific data," Bezos told the panel, "but I can't guarantee you that policy has never been violated."

Antitrust crusaders have been making this case against Amazon for a very long time. In 2017, antitrust scholar Lina Khan laid out this platform case against Amazon in the pivotal law review article "Amazon's Antitrust Paradox."

"By making itself indispensable to e-commerce, Amazon enjoys receiving business from its rivals, even as it competes with them," Khan wrote. "Moreover, Amazon gleans information from these competitors as a service provider that it may use to gain a further advantage over them as rivals—enabling it to further entrench its dominant position."

"Amazon enjoys receiving business from its rivals, even as it competes with them"

It's roughly the same complaint that PopSockets is leveling: Amazon has become both necessary infrastructure for product sellers and a potential competitor. Khan now works as counsel

for the Judiciary Committee's antitrust branch and played a pivotal role in arranging this week's proceedings.

In a classical antitrust context, the remedy is simple: split up the companies. If a company is in the railroad business, it can't take over companies that rely on the railroad to move goods; it just wouldn't be competitive. Activists have struggled to apply that logic to Amazon's web services architecture or private label products (supermarkets have store brands all the time) — but the case against Marketplace is much clearer. It's unusual for a store of Amazon's size to host a third-party marketplace, and as the bookseller and PopSocket stories indicate, there are real conflicts of interest that come along with it. Why not just get rid of it?

It's hard to imagine Apple without the App Store, or how Google products survive without an ad network to fund them — but imagining Amazon without Marketplace is easy. It's always been a strange presence on the site itself, relegated to sidebars and shaded boxes. When Amazon tells its own story, it focuses on direct sales, Prime, and Kindle. There's never been a compelling story about how Marketplace fits into that, and it's not clear users would miss it if it were gone. The biggest blow would be to Amazon's reputation as the Everything Store — the sense that, no matter what you want, searching on Amazon will bring up some version of it. But as regulators try to pare Amazon down into something less immense, that could be exactly what's required.

In any antitrust action, it's hard to say how much of a company's success is rightfully won and how much comes from unfair monopoly advantages. But with Amazon, it's particularly difficult, as so many of the alleged advantages of Marketplace happen outside of public view. Could Amazon maintain low prices without threatening small shops or hosting sellers hawking counterfeits? Could the company steer its private label business without snooping on Marketplace sellers? Speaking to Congress, Bezos made the case that those

advantages are a minimal part of the company’s strategy — but the harder he fights to keep Marketplace open, the harder that will be to believe.

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