



Dirk Van Dongen
President

October 17, 2019

Bruce Hoffman, Esquire
Director, Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Dear Mr. Hoffman:

On behalf of the National Association of Wholesaler-Distributors (NAW), I write to ask the Federal Trade Commission to review the General Services Administration's (GSA) plan to establish a marketplace platform for federal agencies to purchase commercial-off-the-shelf (COTS) products. GSA's path will choke competitive choice for federal agencies and portends serious competitive harm across commercial markets.

GSA's solution will deny government customers the benefits of competition. NAW members' hard experience with Amazon ultimately results in fewer choices available to purchasers. Amazon has used its position to appropriate and misuse supplier information and transactional data to favor Amazon products. This undermines the foundation of a truly competitive market and is not addressed by GSA. With the Commission's core mission to promote competition, we believe GSA would benefit from your expertise.

NAW is the "national voice of wholesale distribution," an association comprised of employers of all sizes, and national, regional, state and local line-of-trade associations spanning the \$6.1 trillion wholesale distribution industry that employs more than 5.9 million workers in the United States. Approximately 35,000 enterprises with places of business in all 50 states and the District of Columbia are affiliated with NAW.

Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (PL 115-91), the so-called "Amazon Amendment," establishes a framework to use commercial e-Commerce portals across the government to acquire COTS products outside of the rules normally governing federal procurement. Section 846 charges GSA with establishing and managing the e-Commerce Portal program.

As introduced, Section 846 could be met by only one existing commercial marketplace provider. Instead, as a result of analysis and debate, Congress directed GSA to go beyond a single marketplace and include multiple commercial e-commerce portal providers in pilot tests to validate their appropriateness as procurement vehicles before final implementation. Even though GSA identified

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three credible e-commerce purchasing channels, GSA's *Request for Proposal (RFP)*, 47QSCC20R0001, Commercial e-Marketplace Acquisition (October 1, 2019), confines its pilot test to only one model, that of the e-marketplace portal, the Amazon platform. All other e-commerce models have been excluded.

GSA should be fostering maximum competition at this stage of Section 846's implementation. We request that the Bureau of Competition review the GSA e-commerce procurement to date and encourage discussion with GSA representatives to emphasize the importance of ensuring that alternative e-commerce models have a meaningful opportunity to compete. Competition among e-commerce models will force vendors to provide government customers better choices, prices and service. Your input at this critical stage of the procurement will help the GSA avoid an anticompetitive outcome and maintain the vibrancy of competition and innovation for government customers and the larger U.S. economy.

The way federal agencies acquire COTS products is fundamentally changed by Section 846. Particularly by excluding other e-commerce models from the pilot program, there is a lack of choice and competition. There is a legitimate question whether the anticipated savings the Amazon Amendment might produce are a result of e-Commerce purchasing or because the purchases can be made without regard to government procurement protections. From a competitive premise, GSA's singular embrace of the e-Marketplace model is to the detriment of federal customers as to choice as it forecloses access to the thousands of businesses, both small and large, that currently are competing in the federal marketplace.

GSA will permit the e-Marketplace platform provider to play multiple roles. First, the provider may own, operate and manage a platform made up of third-party sellers who are chosen by the provider and who will pay a fee to the provider. Second, as well as listing the third-parties' products, the platform provider can also list its own products on the platform.

Under GSA's RFP, Amazon and perhaps one other entity, will be the gatekeeper to sell COTS to federal agencies. In choosing and charging suppliers who can use the channel, Amazon's powerful position in supply chain infrastructure, fulfillment, shipment, transportation, delivery and tracking presents a multitude of options for it to pursue its own interests at the expense of other suppliers and ultimately the federal purchaser.

Platform provider's control over data is not addressed by GSA. While the provider must agree not to use information, including government owned data, related to a third-party supplier or the transaction, the provider, as a web-based company, has access to its own historic data across markets as to specific suppliers, but also ongoing information of what purchasers are searching for and what they do not buy. GSA does not address whether the platform provider is precluded from information it ordinarily tracks and compiles daily. NAW member experience as to Amazon use of supplier information confirms this concern. The platform provider's ability to favor its products over the platform competitors is real.

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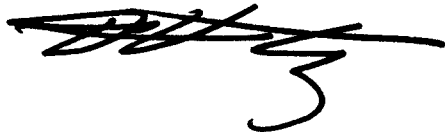
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Instead of an environment where varied e-commerce platforms compete, GSA chooses the model where one or two will dominate and control who can sell to the federal government. GSA delivers an enormous and unfair advantage benefitting Amazon. It has chosen an initial winner and provides this winner with a three-year head start. The single-model locks out competing solutions; it “back-benches” competitors while GSA’s choice is embedded and matures. The result will be diminished competition, choice and innovation to the government that will ripple across all markets.

For these reasons, the National Association of Wholesaler-Distributors urges the FTC to conduct a thorough inquiry into GSA’s proposed e-Marketplace platform and Amazon practices and processes.

Please call upon us if we can assist the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dirk Van Dongen', with a stylized flourish at the end.

Dirk Van Dongen
President

*cc: Ian R. Conner, Deputy Director, Bureau of Competition
Patricia Galvan, Assistant Director, Technology Task Force*