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Vice President-Government Relations

February 10, 2021

Honorable Gary Peters, Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Honorable Rob Portman, Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Peters and Ranking Member Portman:

On behalf of the National Association of Wholesaler-Distributors (NAW), I write to ask the Committee to exercise its oversight scrutiny to address the General Services Administration's (GSA) marketplace platform implementation of Section 846 of the National Defense Authorization Act for Fiscal Year 2018 (2018 NDAA).

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 \$5.7 trillion wholesale distribution industry that employs more than 5.6 million workers in the United States – in the middle of the current pandemic. Approximately 35,000 enterprises with places of business in all 50 states and the District of Columbia are affiliated with NAW.

Under Section 846 of the 2018 NDAA, the so-called "Amazon Amendment," GSA is to establish and manage a pilot program using commercial e-Commerce marketplace platforms to purchase commercial off-the-shelf (COTS) products outside the rules governing federal procurement. Section 846, as originally introduced, could be met by only one commercial marketplace provider, Amazon. 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 prior to final implementation.

Although GSA identified three credible e-commerce purchasing channels, its June 2020 award tests only one model, the Amazon platform. All other e-commerce models are excluded. GSA's award to 3 vendors, the most prominent being Amazon, ignores the explicit Congressional direction to test several e-commerce platforms. GSA's selection of Amazon as the gatekeeper reduces competition for the federal customer and forecloses access to the federal market.

Since its award, GSA has released no meaningful information addressing the progress and challenges of its pilot marketplace. Amazon's inability to protect the federal purchaser from counterfeit and illicit products presents significant risk but does not appear addressed by GSA's requirements beyond that it is a vendor responsibility. Nor is there any indication that the obligations associated with Section 889 of the National Defense Authorization Act for 2019 as to Chinese manufactured telecommunications equipment are being fulfilled.

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS

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GSA embraces a model where Amazon dominates and controls who can sell and what can be sold to the federal government. GSA delivered an enormous and unfair advantage benefitting Amazon. It has chosen an initial winner that will have a head start of at least three years. The Amazon single-model locks out competing solutions; it “back-benches” competitors while it is embedded and matures.

GSA’s failure to examine Amazon’s exploitative conduct in Business-to-Business (B2B) commerce is emphasized by the recent House Judiciary Staff Committee Report describing Amazon’s role as both a platform manager and supplier and the detrimental effect on competition, opportunity and quality. The Staff Report presents with clarity Amazon’s access to, and use to its own benefit of, third-party supplier transactional data, its inability to effectively manage counterfeit and gray markets products and severe deficiencies and lack of accountability throughout its supply chain.

Investigation of Competition in Digital Markets, Majority Staff Report and Recommendations, Subcommittee on Antitrust, Commercial and Administrative Law, Committee on the Judiciary, House of Representatives, pages 237-339 (October 2020)

https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf

NAW urges the Committee to pursue a close examination of GSA’s implementation of Section 846 and that it direct GSA to change course to ensure that alternative e-commerce models have meaningful opportunity to compete. A fundamental question remains unexamined; specifically, whether the anticipated savings the Amazon marketplace platform might produce are a result of e-Commerce purchasing or because the purchases can be made without regard to government procurement protections. GSA’s path indicates no examination of this question; in fact, it embraces raising the Amazon platform purchasing authority to \$25,000 from \$10,000.

Thank you for the Committee’s consideration. Please call upon us if we can assist the Committee’s review.

Sincerely,



Blake Adami
Vice President-Government Relations

cc: Members of the Committee on Homeland Security and Governmental Affairs, U.S. Senate