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AMAZON: COMBATTING ANTITRUST LITIGATIONS[1]

Arpita Agnihotri and Saurabh Bhattacharya wrote this case solely to provide material for class discussion. The authors do not intend to illustrate either effective or ineffective handling of a managerial situation. The authors may have disguised certain names and other identifying information to protect confidentiality.

On July 29, 2020, Jeffrey P. Bezos, founder and chief executive officer (CEO) of Amazon.com, Inc., (Amazon) testified before a United States (US) House Judiciary Subcommittee on Antitrust, Commercial, and Administrative Law (the Committee).[2] The Committee, which consisted of US Congress members, was investigating Amazon for antitrust violations.[3] Although US antitrust enforcers favoured companies that treated consumers well and kept their prices low (which Amazon did),[4] Amazon's size and market valuation of US$1.5 trillion (on July 29, 2020),[5] and Bezos' wealth, resulted in an intensification of the scrutiny to which the e-retailer was subjected.[6] Amazon was accused of exploiting its market power over sellers on both Amazon Marketplace and the Amazon Web Services (AWS) Marketplace (see Exhibit 1). It was also accused of using sellers' data for launching private-label brands.[7] The US Congress was expected to pass new laws that set a new, stricter monopoly threshold.[8] US politicians had recommended splitting Amazon up to reduce the chances of its anti-competitive practices.[9] Attorney Jonathan Osborne said that Amazon had to decide "whether it wants to break off from AWS to keep control over the way it operates and not wait for the government to step in and tell Amazon what it has to do."[10] During his testimony, Bezos admitted that although Amazon had a strict policy against using sellers' data, the fact that a violation of that policy had occurred could not be denied. In July 2020, as the US Congress members were investigating Amazon's anti-competitive behaviour and again looking into antitrust policies that emphasized predatory pricing rather than market dominance, Bezos faced several challenges. Should he proactively split the company to avoid antitrust actions against Amazon owing to its market dominance? What could Bezos do to manage antitrust issues against Amazon?

BACKGROUND

Amazon followed a low-cost business strategy, prioritizing growth over profits.[11] In a 2019 survey conducted by The Retail Feedback Group, Amazon was the preferred marketplace retailer for US consumers (see Exhibit 2). In 2020, Amazon was expected to account for 4 per cent of all retail sales in the US and 1 per cent of the $25 billion global market. In 2019, online retail represented 10 per cent of the entire US retail market, with brick-and-mortar accounting for 90 per cent of sales.[12] However, in the same year, in the $5.5 trillion US retail sector, Amazon had a 6 per cent market share, whereas Walmart Inc. (Walmart) was the market leader, with a 9 per cent market share.[13]

Amazon operated under three segments: North America, International, and AWS (see Exhibits 3A and 3B). In 2019, the company employed 840,000 workers worldwide, including more than 590,000 in the US.[14] In 2019, Amazon's net revenue was $280.5 billion and had a net income of $11.6 billion[15] (see Exhibit 4). In July 2020, Amazon's stocks were trading above $3,000, owing to increased online retail due to the coronavirus (COVID-19) pandemic. There was also a possibility of Bezos becoming the world's first trillionaire, in 2020.[16]

Apart from Amazon Marketplace, AWS Marketplace and Fulfillment by Amazon (FBA) were also part of the company. As Amazon's business grew, its shipping costs also increased, and the e-retailer decided to rely less on third-party logistics companies, such as United Parcel Service (UPS), and integrated vertically to have its own logistics centre, FBA.[17] By 2019, 26 per cent of Amazon's shipments were handled by FBA.[18] The company also offered private-label retail brands and entertainment services (Prime Video, Kindle, and Audible).[19] Further, Amazon converted its backend technology data centre to cloud computing through AWS, where it stored data and spent millions of dollars on servers and software.[20] It sold cloud computing services both to the outside world and to its other businesses.[21]

Bezos also owned businesses other than Amazon. Through a private company, Nash Holdings Inc., Bezos acquired *The Washington Post* in 2013. He was also the founder of Blue Origin LLC, an aerospace company. In addition, Bezos ventured into health care through Amazon and had investments in Twitter Inc., Uber Technologies Inc., Airbnb Inc., Stack Overflow, and Business Insider Inc.[22]

ACCUSATIONS AGAINST AMAZON

During Bezos' congressional hearing in July 2020, Committee members raised several questions to Bezos related to Amazon's market power, its ability to exploit sellers on Amazon's Marketplace, its access to and usage of third-party data, and other issues; these concerns had been raised by various sources since 2019.[23]

Market Dominance

Barry Lynn, director of the non-profit think tank Open Markets Institute, said that Amazon held a monopoly over the book market in the US, as well as other product categories, such as toys and electronics. According to Lynn, "a lot of publishers and authors are terrified of speaking out about Amazon's monopoly."[24] Patrick Spence, CEO of Sonos, accused Amazon of using its success in one industry (e.g., online commerce) to dominate in another industry (e.g., voice-controlled speakers).[25] Accusing Amazon of predatory pricing, Spence said that the company was able to sell its Echo Dot—a hands-free, voice-controlled device with a small built-in speaker—at artificially low prices, because the company was earning profits through its other businesses.[26] In particular, Amazon could recoup profits from AWS that contributed 52 per cent to Amazon's operating income[27] and use those profits to drive the prices of products down on Amazon.com.

Amazon also launched its private-label brand, Amazon Basics, offering products ranging from electronic equipment to clothing, that were relatively cheaper than those offered by competitors. Experts believed that the low prices of Amazon Basics branded products were possible because the company could reroute cash flow from more profitable divisions, such as AWS.[28] These low prices resulted in the squeezing of third-party sellers that were selling their products on Amazon.com. Lina Khan, a legal policy director with the Open Markets Institute, said, "Sellers are in this 'frenemy' position where they're very dependent on these companies but also competing with them."[29] Spence also mentioned that once competitors were wiped out due to Amazon's predatory pricing, the prices of Amazon products would increase.[30]

Seller Exploitation

Most consumers at Amazon bought items through the "Buy Box" section (the white box on the right-hand side of the desired product page on Amazon.com).[31] Amazon selected the highest-ranked seller in the "Buy Box" unless there were multiple high-ranked sellers, in which case they rotated on top in the "Buy Box" column.[32] A study suggested that more than 80 per cent of Amazon sales happened through products that were ranked first in search results, and another study suggested that two-thirds of consumers did not look beyond the first page of search results while selecting a brand to buy.[33] To be listed at the top, sellers needed to pay for premium services. Amazon had also implemented a "fair pricing" policy, according to which its search algorithm disfavoured products that sellers sold for less anywhere else (e.g., on Walmart's website), and Amazon also had the power to delist such products from its website.[34]

Another allegation against Amazon was a criterion that it used to list a seller as a "preferred seller" if the product was sold using FBA. The company did this to promote its logistics business.[35] In the congressional hearing, Bezos agreed that Amazon's algorithm accounted for the criterion.[36] However, Bezos also mentioned that while FBA allowed merchants to store and ship the order, sellers' customer service was taken care of through Amazon, though the sellers had to pay for FBA storage.[37]

Some Amazon sellers complained that Amazon's market share in the US online marketplace increased to approximately 40 per cent by 2020, and this was seven times more than the next competitor. Small sellers did not have the option of other viable online alternatives, so Amazon squeezed and harmed them.[38] According to a *Business Insider* article, competition from Amazon was a concern for 38 per cent of Amazon's third-party sellers, and 60 per cent of the third-party sellers had received 61 per cent or more of their total sales from Amazon's platform in 2019.[39] Moreover, some third-party sellers tricked Amazon to appear popular on its site by repeatedly searching and clicking on the links of the products they had to offer, to boost their products on Amazon Marketplace. This happened because the Amazon algorithm ranked popular products using "Search" as one of the criteria.[40]

By 2019, Amazon was offering approximately158,000 private brand products, across 45 brands.[41] Tom Forte, an analyst with D.A. Davidson & Co., said that a key question was, "Does Amazon see that there's a lot of this product selling on our platform, [and decide] now I'm going to create the Amazon private-label version of it?"[42]

AWS Marketplace

In the AWS Marketplace, third-party sellers could retail software, data, and related products for use on the AWS Cloud (see Exhibit 5). By January 2020, there were 7,240 products on the AWS Marketplace from approximately 1,659 third-party sellers.[43] The marketplace acted both as a retailer and a platform for software. Software offered through the AWS Marketplace was open source, meaning the software programs could be freely accessed, used, changed, and shared by anyone. However, Amazon began to compete with software sellers by creating AWS software programs that were imitated versions of sellers' software. These imitated versions of software were sold as proprietary AWS services, a practice referred to as *strip mining*.[44] Subsequently, Amazon's algorithm disfavoured open-source software in the search results, inducing customers to select Amazon-developed software over that of competitors.[45] Given the size of Amazon, smaller companies were forced to put their applications onto the AWS Marketplace to reach their target market. Stacy Mitchell, co-director at the Institute for Local Self-Reliance, a non-profit organization, said, "This means that Amazon can do whatever it wants without repercussion—and therein lies the problem of competition."[46]