

**STATEMENT FOR THE RECORD**  
**ON BEHALF OF THE**  
**RESPONSIBLE ONLINE COMMERCE COALITION (ROCC)**  
**BEFORE THE**  
**SUBCOMMITTEE ON ANTITRUST, COMPETITION POLICY,**  
**AND CONSUMER RIGHTS**  
**COMMITTEE ON THE JUDICIARY**  
**UNITED STATES SENATE**  
**AT A HEARING ENTITLED**  
**“DEREGULATION & COMPETITION: REDUCING REGULATORY BURDENS TO**  
**UNLOCK INNOVATION AND SPUR NEW ENTRY”**

**JUNE 24, 2025**



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The Responsible Online Commerce Coalition (ROCC) applauds the Subcommittee’s efforts to promote competition throughout the U.S. economy, including through today’s oversight hearing. ROCC is a non-profit association that represents small businesses that rely on Amazon and other online commerce platforms to reach their customers. The Coalition is committed to ensuring a level playing field in online commerce so that businesses offering the best products and greatest value can thrive.

We appreciate the opportunity to submit a Statement for the Record and share our views on legal barriers to competition. We urge the Subcommittee to focus on three key aspects of this issue during the hearing:

- **First, robust antitrust enforcement is essential to maintaining open, competitive markets—and serves as a powerful deregulatory tool in its own right.**
- **Second, without competition, dominant firms act as private regulators, imposing unfair terms and excluding potential rivals without transparency or accountability.**
- **Finally, other legal barriers to competition—such as forced arbitration—prevent small businesses from pursuing legitimate antitrust claims in court, undermining the competitive process.**

Vigorous antitrust enforcement is the backbone of open and competitive markets. The antitrust laws have long been recognized as an effort to “avoid detailed government regulation of business by keeping competition in control of prices.”<sup>1</sup> As FTC Commissioner Mark Meador recently observed, “antitrust is actually a deregulatory tool.”<sup>2</sup> Assistant Attorney General Slater

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<sup>1</sup> The Hon. Robert H. Jackson, *Should the Antitrust Laws Be Revised?*, 71 U.S. L. REV. 575 (1937), [https://www.roberthjackson.org/wp-content/uploads/2015/01/Should\\_the\\_Antitrust\\_Laws\\_Be\\_Revised\\_.pdf](https://www.roberthjackson.org/wp-content/uploads/2015/01/Should_the_Antitrust_Laws_Be_Revised_.pdf).

<sup>2</sup> The Hon. Mark Meador, Commissioner, Fed. Trade Comm’n, Antitrust Myth Busting: Remarks at the Second Annual Antitrust Conference at the George Washington University presented by the GW Competition & Innovation Lab (May 5, 2025), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/meador-antitrust-myth-busting-remarks-5.5.25.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/meador-antitrust-myth-busting-remarks-5.5.25.pdf)

has likewise noted that aggressive enforcement also creates “a bulwark against market power that often leads to regulatory intervention.”<sup>3</sup>

In the absence of competition, firms with market power have the power to exclude rivals, setting market conditions, and extract concessions that would not be possible in a vibrant, competitive marketplace.<sup>4</sup> This is particularly concerning in digital markets, which are characterized by strong network effects, switching costs, and other dynamics that create barriers to entry and lead to dominant firms “winning” the market.<sup>5</sup>

As a result, dominant firms in these markets act as private regulators, dictating the terms of business in ways that are inherently anticompetitive and economically harmful. David Heinemeier Hansson, the co-founder of the software company Basecamp, testified that this immense power gives dominant online platforms the ability “to bully, extort, or, should they please, even destroy our business—unless we accept their often onerous, exploitive, and ever-changing terms and conditions.”<sup>6</sup> Small companies, he noted, have “no real agency” because they must “accept that these companies can and do alter the deal, any deal, however they please.”<sup>7</sup>

In the context of online commerce, hundreds of thousands of businesses are at the whim of Amazon’s ability to steer shoppers to certain products and sellers, often without advance notice or explanation, in ways that directly affect their revenue. The dominant platforms’ power derives, in large part, from their ability to use and manipulate algorithms in ways that can have a critical impact on sellers and users that rely on the platform, as well as the fear this immense power engenders. A single, arbitrary tweak to Amazon’s algorithm could cause significant financial harm to dependent businesses with no avenues for recourse or accountability.

There is often little recourse for small businesses that are excluded from the market without justification or explanation. For example, online sellers have complained that Amazon

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(“Vigorously enforcing the antitrust laws to promote and protect competitive markets, if successful, helps us to avoid the very sorts of distorted or broken markets that invite intrusive government regulation.”).

<sup>3</sup> The Hon. Abigail Slater, *The Conservative Roots of America First Antitrust Enforcement: Remarks at the University of Notre Dame Law School* (Apr. 28, 2025), <https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-notre>.

<sup>4</sup> See Howard A. Shelanski, *The Case for Rebalancing Antitrust and Regulation*, 109 MICH. L. REV. 683, 727 (2011) (“Leaving a market with a dominant player and emerging entrants to its own competitive devices might work in some settings, but in others it will allow the dominant firm to maintain its market position and exclude rivals.”).

<sup>5</sup> Staff of H. Comm. on the Judiciary, *Investigation of Competition in Digital Markets*, 117th Cong. (Comm. Print 2022), <https://www.govinfo.gov/content/pkg/CPRT-117HPRT47832/pdf/CPRT-117HPRT47832.pdf>; Randy Stutz, *Antitrust, Dominant Firms, and Public Policy Problems*, American Antitrust Institute 8 (June 28, 2021), <https://www.antitrustinstitute.org/wp-content/uploads/2021/06/AAI-Knight-Paper-1-FINAL.pdf>.

<sup>6</sup> *Online Platforms and Market Power, Part 5: Competitors in the Digital Economy: Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 116th Cong. (2019) (statement of David Heinemeier Hansson, Co-founder, Basecamp).

<sup>7</sup> *Id.*

has flooded the market with counterfeit or knockoff products that compete alongside theirs.<sup>8</sup> Our Coalition also includes sellers who have been wrongfully excluded from the marketplace after Amazon falsely labeled their products in violation of its seller agreement. Rather than promptly investigating and resolving these errors, Amazon often did nothing for several months while sellers lose sales and are forced to pay storage fees as their inventory sits unsold in Amazon’s warehouses. Simply put, there is no process, transparency, or accountability—just higher costs and substantial losses.

In a truly competitive market, businesses would not tolerate this kind of unaccountable and opaque private regulation—but small businesses and online sellers are powerless in the face of Amazon’s monopoly power. As a CEO of an online seller testified, it is because of “the power asymmetry, of course, that companies tolerate this. They have to tolerate it.”<sup>9</sup> Another online seller explained that “you simply can’t survive in e-commerce without access to Amazon’s marketplace,” forcing small businesses to agree to terms they had “no ability to negotiate.”<sup>10</sup>

Online sellers face yet another legal barrier to competition when they try to hold Amazon and other dominant firms accountable: forced arbitration. Buried in the fine print of Amazon’s Business Seller Agreement, this clause prevents online sellers from bringing legitimate antitrust claims in court. It also prevents them from joining together to share the cost of litigation, making it prohibitively expensive for individual sellers to seek accountability in court. As one seller noted, this waiver “effectively insulates Amazon from ever having to face justice.”<sup>11</sup>

This problem exists in other markets as well. As the Committee to Support the Antitrust Laws (COSAL) recently noted, the Federal Arbitration Act has been distorted by the judiciary such that “dominant firms may evade antitrust scrutiny by imposing arbitration requirements on less powerful business partners.”<sup>12</sup> This process is widespread, secretive, inefficient, leaving “businesses without any recourse to collectively challenge anticompetitive behavior by dominant firms.”<sup>13</sup>

In response to these concerns, ROCC encourages the Subcommittee to explore ways to ensure that small businesses have transparency, accountability, and meaningful recourse when dealing with dominant platforms. While we strongly support the ongoing antitrust litigation by state and federal enforcers, those cases will take years to resolve—leaving small businesses to

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<sup>8</sup> *Id.* (statement of David Barnett, CEO, PopSockets).

<sup>9</sup> *Id.*

<sup>10</sup> Justice Restored: Ending Forced Arbitration and Protecting Fundamental Rights: *Hearing Before the Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 117th Cong. (2021) (statement of Jacob Weiss, President, OJCommerce LLC), <https://www.congress.gov/117/meeting/house/111171/witnesses/HHRG-117-JU05-Wstate-WeissJ-20210211.pdf>.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> Committee to Support the Antitrust Laws (COSAL), Comments on Reducing Anticompetitive Regulatory Barriers 10 (May 27, 2025), <https://www.regulations.gov/comment/ATR-2025-0001-0326>.

<sup>13</sup> *Id.*

endure monopolistic abuses in the meantime. The FTC's case against Amazon, for example, is not scheduled for trial until February 2027.

Congress can help unlock innovation and economic growth by establishing fundamental rights for online sellers to engage with dominant platforms on fair and competitive terms. In addition to examining the harms of private regulation by dominant firms, ROCC encourages the Subcommittee to examine and address other legal barriers to competition, like forced arbitration clauses and class waivers. Eliminating these barriers will give small businesses a fair shot to compete, grow, and ensure that we have an open and competitive economy

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Thank you for the opportunity to provide our views on today's hearing. ROCC stands ready to work with the Subcommittee to promote competition to the benefit of small businesses online and across the economy.