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Congress of the United States
House of Representatives
Washington, DC 20515

CO-CHAIR, DEMOCRATIC POLICY AND
COMMUNICATIONS COMMITTEE

COMMITTEE ON THE JUDICIARY

RANKING MEMBER, SUBCOMMITTEE ON
REGULATORY REFORM, COMMERCIAL
AND ANTITRUST LAW

SUBCOMMITTEE ON
IMMIGRATION AND BORDER SECURITY

COMMITTEE ON FOREIGN AFFAIRS

SUBCOMMITTEE ON
EUROPE, EURASIA, AND EMERGING THREATS

SUBCOMMITTEE ON MIDDLE EAST
AND NORTH AFRICA

July 13, 2017

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
2309 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Tom Marino
Chairman
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
Committee on the Judiciary
410 Cannon House Office Building
Washington, DC 20515

Dear Chairman Goodlatte and Subcommittee Chairman Marino:

I write to request that the Subcommittee on Regulatory Reform, Commercial and Antitrust Law hold an oversight hearing on Amazon's proposed acquisition of Whole Foods Market. Promoting competition is fundamental to ensuring that our system of free enterprise is sustainable, fair, and works for everyone. Without taking a position on the legality of the transaction under the antitrust laws, Amazon's proposed acquisition of Whole Foods raises important questions concerning competition policy, such as how the transaction will affect the future of retail grocery stores, whether platform dominance impedes innovation, and if the antitrust laws are working effectively to ensure economic opportunity, choice, and low prices for American families. While several leading antitrust scholars have expressed doubt that the transaction will result in higher prices for consumers, it nevertheless occurs amidst waves of consolidation in recent decades that have decreased wages and resulted in gross inequality in the workplace. In light of these questions, I respectfully urge that the Subcommittee hold a hearing on this proposed acquisition to carefully consider whether it will harm consumers, workers, and small businesses in our communities. It is essential that Americans have meaningful choice about the products we buy, the businesses we support, and where and how we work.

I have heard concerns that the combination of Amazon's competitive advantages in terms of size, consumer reach, and ability to absorb losses may discourage innovation and entrance into emerging markets, such as grocery and food delivery. Amazon accounts for "more than half of online food orders through its Fresh, Prime and Prime Now services."¹ Because of this existing footprint, the announcement of the proposed transaction has already affected this market. For example, in the grocery delivery market, another prominent food company's value was reduced

¹ Heather Haddon & Julie Jargon, *Amazon's Whole Foods Deal Adds Pressure on Grocery Services to Deliver*, WALL STREET JOURNAL (June 29, 2017), <https://www.wsj.com/articles/amazons-whole-foods-deal-adds-pressure-on-grocery-services-to-deliver-1498728601>.

by a third following the announcement of the transaction, which *Business Insider* pointed to as “the latest example of Amazon imposing its will on an industry, erasing billions of dollars of competitors’ market value in the process.”² The announcement of the transaction had a similar effect on the traditional retail grocery market,³ suggesting that Amazon’s proposed acquisition of Whole Foods may also threaten traditional retail grocers as “[d]ominant players like Walmart, Kroger, Costco and Target now have to look over their shoulders at the Amazon train coming down the tracks.”⁴

Some have also raised concerns that the transaction will also increase Amazon’s online dominance, enabling it to prioritize its products and services over competitors. Amazon uses its e-commerce platform, which reaches nearly half of American online shoppers, “to spot new products to sell, test sales of potential new goods, and exert more control over pricing.”⁵ Expanding its retail footprint through this transaction may increase the risks of self-dealing and preferential treatment of its goods on this platform.⁶ According to a report by ProPublica Amazon’s pricing algorithm favors Amazon and its sellers by favoring “its own products ahead of better deals offered by others it charges for services.”⁷ Acquiring additional sources of consumer data through this transaction may increase the risk of self-dealing or enable Amazon to leverage its platform over other businesses.⁸ As Gene Kimmelman, the President of Public Knowledge, recently observed, questions of platform dominance should be taken seriously to ensure that “no company uses its market power to foreclose competition, or to leverage its success in one market to gain an unfair advantage in another.”⁹

On the other hand, several leading antitrust law scholars have suggested that the transaction appears unlikely to injure competition or consumers. Professor Herbert Hovenkamp, commonly referred as the dean of American antitrust law, has stated that he is not concerned by the

² Joe Ciolli, *Blue Apron got Amazon’d before it even became a public company*, BUSINESS INSIDER (June 29, 2017), <http://www.businessinsider.com/blue-apron-ipo-public-company-amazon-stock-price-2017-6>; Alex Barinka, *Blue Apron Slashes IPO Value as Amazon-Whole Foods Spooks Market*, BLOOMBERG TECHNOLOGY (June 28, 2017), <https://www.bloomberg.com/news/articles/2017-06-28/blue-apron-aspires-to-amazon-com-like-valuation-in-u-s-ipo>.

³ Matt Egan, *Grocery stocks are getting clobbered after Amazon-Whole Foods deal*, CNNMONEY (June 17, 2017), <http://money.cnn.com/2017/06/16/investing/walmart-target-stocks-plunge-whole-foods-amazon/index.html>.

⁴ ASSOCIATED PRESS, *Shoppers May See Big Changes After Amazon Buys Whole Foods*, N.Y. TIMES (June 17, 2017), <https://www.nytimes.com/aponline/2017/06/17/us/ap-us-amazon-whole-foods.html>.

⁵ Greg Bensinger, *Competing with Amazon on Amazon*, WALL STREET JOURNAL (June 27, 2012), <https://www.wsj.com/articles/SB10001424052702304441404577482902055882264>.

⁶ See Julia Angwin & Surya Mattu, *Amazon Says It Puts Customers First. But Its Pricing Algorithm Doesn’t*, PROPUBLICA (Sept. 20, 2016), <https://www.propublica.org/article/amazon-says-it-puts-customers-first-but-its-pricing-algorithm-doesnt>.

⁷ *Id.*

⁸ Lina M. Khan, *Amazon Bites Off Even More Monopoly Power*, N.Y. TIMES (June 21, 2017), <https://www.nytimes.com/2017/06/21/opinion/amazon-whole-foods-jeff-bezos.html>.

⁹ Shiva Stella, *Public Knowledge Responds to European Commission Google Search Fine*, PUBLIC KNOWLEDGE (June 27, 2017), <https://www.publicknowledge.org/press-release/public-knowledge-responds-to-european-commission-google-search-fine>.

transaction.¹⁰ Professor Eleanor Fox of the New York University School of Law has expressed similar doubt that it will result in “an increase in market power and higher prices to the consumer.”¹¹

Nevertheless, this transaction occurs during a long period of economic concentration that has already caused a decline in workers’ wages and mobility, essentially allowing a small number of monopolists to hoard the “fruit of economic growth.”¹² Mounting economic research indicates that decades of consolidation has empowered a small number of firms to pay lower wages to employees precisely because these businesses “have an incentive to employ fewer workers at a lower wage than they would in a competitive labor market.”¹³

In this vein, some have expressed concerns that the proposed acquisition will result in additional consolidation in the retail sector, erode American jobs through increased automation, and threaten local communities through diminished economic opportunity for hardworking Americans.¹⁴ Following the announcement of the acquisition, Whole Foods CEO John Mackey informed employees that “we’re gonna see a lot of technology” within Whole Foods stores and “you’re gonna see Whole Foods Market evolve in leaps and bounds.”¹⁵ There is speculation that the outcome of the transaction could be a conversion of more than 460 Whole Foods Stores into distribution hubs and pickup centers for online ordering.¹⁶ And while some have suggested that this evolution may occur in the warehouse and distribution level, according to reports, “Amazon sees automation as a key strategic advantage in its overall grocery strategy,”¹⁷ potentially imperiling the economic prosperity of the workforce in these locations. As Marc Perrone, the president of the United Food and Commercial Workers International Union, notes, “Just as Walmart’s big-box model destroyed small businesses when it spread across the country, Amazon’s automation model, if widely adopted, potentially poses a huge threat to America’s 16-million-strong service and retail workforce.”¹⁸ While online retail will and should continue to

¹⁰ Jacob Pramuk, *Trump likely won't thwart old foe Jeff Bezos' latest move*, CNBC (June 19, 2017), <http://www.cnbc.com/2017/06/19/amazon-whole-foods-trump-administration-likely-wont-block-deal.html>.

¹¹ *Id.*

¹² THE ECONOMIST, *Too Much of a Good Thing*, (Mar. 26, 2016), <http://www.economist.com/news/briefing/21695385-profits-are-too-high-america-needs-giant-dose-competition-too-much-good-thing>.

¹³ *Id.* at 2; Jason Furman, *Beyond Antitrust: The Role of Competition Policy in Promoting Inclusive Growth*, 6--7 (Sept. 16, 2016).

¹⁴ See, e.g., Stacy Mitchell, *Amazon Stifles Competition*, USA TODAY (June 27, 2017), <https://www.usatoday.com/story/opinion/2017/06/27/amazon-stifles-competition-editorials-debates/103237918/>.

¹⁵ Spencer Soper & Alex Sherman, *Amazon Robots Poised to Revamp How Whole Foods Runs Warehouses*, BLOOMBERG (June 26, 2017), <https://www.bloomberg.com/news/articles/2017-06-26/amazon-robots-poised-to-revamp-how-whole-foods-runs-warehouses>

¹⁶ Anick Jesdanun, *Shoppers May See Big Changes After Amazon Buys Whole Foods*, CIO (June 19, 2017), http://www.cio-today.com/article/index.php?story_id=13000ATDB9MQ.

¹⁷ *Id.*

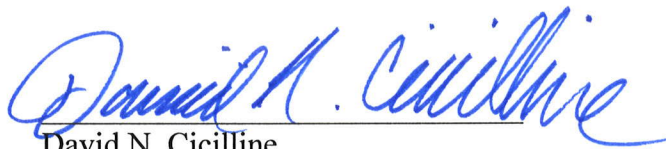
¹⁸ Marc Perrone, *The real losers from the Amazon-Whole Foods merger*, CNN (June 29, 2017), <http://www.cnn.com/2017/06/29/opinions/amazon-whole-foods-perrone-opinion/index.html>.

grow, we need to better understand the impact of this transaction on small businesses and retailers in our local communities.

Although the role of employment and inequality in antitrust enforcement has declined in recent decades,¹⁹ the Subcommittee should have an active oversight role in determining whether this trend serves the public interest, is faithful to the legislative intent of the antitrust laws, or whether additional enforcement is warranted to reverse the harmful effects of consolidation on workers and labor inequality.²⁰ As Diana Moss, president of the American Antitrust Institute, notes, “Antitrust has the tools to address labor and inequality problems. But it can and should do more.”²¹

I appreciate your consideration of this request and I look forward to working with you on this matter.

Sincerely,



David N. Cicilline
Ranking Member
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law
Committee on the Judiciary

cc: The Honorable John Conyers, Jr., Ranking Member, Committee on the Judiciary

¹⁹ FEDERAL TRADE COMM’N & DEP’T OF JUSTICE, DOES COMPETITION CREATE OR KILL JOBS, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (2015), <https://www.justice.gov/atr/file/813036/download>.

²⁰ See Richard M. Steuer, *Jobs and Antitrust*, ANTITRUST, Summer 2009, at 98, https://www.ftc.gov/sites/default/files/documents/public_comments/horizontal-merger-guidelines-review-project-545095-00047/545095-00047.pdf.

²¹ Diana Moss, *Antitrust and Inequality: What Antitrust Can and Should Do to Protect Workers*, AAI INSTITUTE (Apr. 25, 2017), <http://www.antitrustinstitute.org/content/antitrust-and-inequality-what-antitrust-can-and-should-do-protect-workers>; but see FEDERAL TRADE COMM’N & DEP’T OF JUSTICE, DOES COMPETITION CREATE OR KILL JOBS, ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (2015), <https://www.justice.gov/atr/file/813036/download>.