

Big Tech Goes on Trial, Part 2: Will the Federal Trade Commission Break Up Amazon?

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On September 26, the Federal Trade Commission (FTC) and seventeen states filed a combined lawsuit alleging that Amazon has committed anti-competitive actions that have inflated prices, harmed third party sellers, and damaged others' ability to compete. The success of a lawsuit like this one could have widespread implications for Big Tech and e-commerce, though similar lawsuits have been mostly futile in the past.

The Suit Against Amazon

Amazon's marketplace platform, which accounts for 60% of the company's sales, is the main target of the lawsuit. The FTC alleges that Amazon's practices force third-party sellers who use the platform to purchase additional services from them. When all fees are combined, sellers pay nearly 50% of their revenue to Amazon, the cost of which gets passed onto customers.

One of the practices under question is Amazon's search ads, which feature Amazon ad purchasers prominently over products that organically earned a top spot in the customer's search. The FTC alleges that increased search ads have made sellers feel that the only way for their product to ever be seen by customers is to purchase advertisements. This practice, the FTC claims, also causes shoppers to be forced to wade through irrelevant results and more expensive products.

Another practice addressed in the suit is Amazon's 'buy box.' When there are multiple sellers of the same product, and a customer presses 'add to cart' or 'buy now,' only one seller fulfills that order. The remaining sellers are relegated to a section hidden underneath in smaller text called the 'other sellers' section. To meet Amazon's standards of being the seller on the 'buy box,' sellers must meet certain conditions— most of which require handing over more money to Amazon.

Amazon's 'fair pricing' agreements are also addressed in the suit. These agreements say sellers cannot offer their products for 'significantly' less in other stores, or they risk search result suppression or even having their sales stopped. The FTC claims that Amazon sets an artificially high price point using these agreements, since sellers incorporate their high Amazon fees into their pricing, and forces sellers to maintain that price point across platforms. This, according to the FTC, causes competitors to be unable to compete by offering lower prices on the same products.

An almost entirely redacted section of the lawsuit addresses an Amazon algorithm called "Project Nessie." Wall Street Journal, who claims to have seen the unredacted complaint, reports that it was designed to raise Amazon prices as much as possible and see if competitors matched. Additionally, the FTC alleges that by bundling so many disparate services together, from shipping, to streaming, Amazon is deliberately attempting to lock consumers in and prevent them from using competitors' services, since they're already paying for something that gives them so many unrelated services.

Amazon's Case

Amazon naturally disagrees with the allegations in the suit, claiming that its practices overall allow consumers to pay lower prices, and small businesses to flourish on its marketplace. Amazon stated it would re-open seller fulfilled Prime status, which would allow sellers to avoid using 'Fulfilled by Amazon' and still have a chance to retain their Prime status. This would give sellers a better shot at the 'buy box' privilege. The company also claims that it uses its 'fair pricing' agreements to protect consumers from predatory pricing, and that sellers set their own prices, albeit with tools and education from Amazon to help them offer competitive prices. As for the bundling, Amazon believes that customers want all the provided services, and by providing more and better ones, they are not violating antitrust law.

Whether or not Amazon or the FTC will emerge victorious remains to be seen. Antitrust cases are notoriously difficult to win in the United States, and this one is not different, particularly against this popular and widely known company. Should the FTC win the suit, they may be awarded penalties including but not limited to structural relief, which could mean breaking the company up. However, should Amazon win, there could be political consequences to the Biden administration for pursuing action against Amazon, which some say is popular enough to cause that kind of backlash. Regardless, the suit is likely to take several years to fully play out, contingent first on the suit not being dismissed or dropped before it reaches trial. Alongside other suits against Big Tech playing out on similar timelines, this one will set the tone for how companies like Google, Meta, and Amazon are allowed to operate in the United States in the coming years.

For more information, see the full article [here](#).