



The Daily Dish

FTC v. Amazon

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As was widely anticipated, the Federal Trade Commission (FTC) has joined with 17 state attorneys general to file an antitrust suit against Amazon. AAF's Jeffrey Westling has a nice [exposition](#) of the key issues in the case. What follows is the [tl;dr](#) version.

There are three main issues. The first is whether Amazon really has monopoly power, which hinges on how one thinks about the market in which it competes. The FTC wants to argue that Amazon competes only against “online superstores” (and the services provided to sellers by such online superstores), in which case Amazon is clearly a dominant presence. As Westling puts it: “If the FTC’s understanding of the relevant market is accurate, Amazon could be said to control over 60 percent of the market, and barriers to entry such as economies of scale, network effects, reputational barriers, and shopper switching costs could allow Amazon to exert monopoly power in that market.” Alternatively, one could argue that Amazon competes broadly with brick-and-mortar retailers, specialty online platforms, and others. If so, Amazon has only a [37.6 percent market share in online retail](#) and [3.5 percent of all retail sales](#), hardly the footprint of a dominant firm.

The second issue has to do with the Amazon “Buy Box,” a segment of the website that features the top-ranked products. To be eligible for the Buy Box, the product must generally have the lowest price. The FTC argues Amazon prevents suppliers from offering lower prices elsewhere, punishing violations by eliminating eligibility for the Buy Box and, thus, broadly raises prices on consumers. Amazon will argue that it is offering a consumer benefit – the lowest prices anywhere and, because of the scale, the most products being offered at those prices.

The final issue relates to Amazon’s Fulfillment services (packaging, shipping, storage, etc.), and how Amazon’s marketplace prioritizes those sellers who utilize Fulfillment by Amazon. The FTC will argue that denying rival online marketplace services and superstores the ability to gain the scale needed to compete with Amazon is anticompetitive. But, as Westling notes, there is another way to read the data: “Indeed, those sellers who don’t use Fulfillment by Amazon lose out on Prime’s benefits such as free two-day shipping, and consumers and sellers who use Fulfillment by Amazon benefit because Amazon offers this service to better compete with other online retail options. In fact, the costs Amazon charges to sellers could be lower than the cost to acquire all the different components of fulfillment (packaging, storage, shipping, etc.) separately.”

As with the FTC’s other high-profile [antitrust case underway against Google](#), the basic facts are not in great dispute. But whether these data are the product of anticompetitive exclusionary tactics or a pro-consumer business strategy is the key decision the court must make.