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THE HONORABLE JOHN H. CHUN

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

FEDERAL TRADE COMMISSION,
STATE OF NEW YORK,
STATE OF CONNECTICUT,
STATE OF NEW HAMPSHIRE,
STATE OF OKLAHOMA,
STATE OF OREGON,
COMMONWEALTH OF PENNSYLVANIA,
STATE OF DELAWARE,
STATE OF MAINE,
STATE OF MARYLAND,
COMMONWEALTH OF MASSACHUSETTS,
STATE OF MICHIGAN,
STATE OF MINNESOTA,
STATE OF NEVADA,
STATE OF NEW JERSEY,
STATE OF NEW MEXICO,

CASE NO.: 2:23-cv-01495-JHC

**SECOND AMENDED
COMPLAINT**

1 COMMONWEALTH OF PUERTO RICO,

2 STATE OF RHODE ISLAND,

3 STATE OF VERMONT,

4 and

5 STATE OF WISCONSIN,

6 Plaintiffs,

7 v.

8 AMAZON.COM, INC., a corporation,

9 Defendant.

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1 Plaintiffs Federal Trade Commission (“FTC”) and the states and territories of New York,
2 Connecticut, New Hampshire, Oklahoma, Oregon, Pennsylvania, Delaware, Maine, Maryland,
3 Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Puerto Rico, Rhode
4 Island, Vermont, and Wisconsin, by and through their respective Attorneys General (together,
5 the “State Plaintiffs,” and collectively with the FTC, “Plaintiffs”), petition this Court pursuant to
6 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b); 15 U.S.C.
7 § 26; and applicable state laws for equitable relief against Defendant Amazon.com, Inc.
8 (“Amazon”) to undo and prevent its unfair methods of competition in violation of Section 5(a) of
9 the FTC Act, 15 U.S.C. § 45(a); Section 2 of the Sherman Act, 15 U.S.C. § 2; and state
10 competition and consumer protection laws.

11 **I. NATURE OF THE CASE**

12 1. The early days of online trade were bursting with possibility. Competition
13 flourished. A newly connected nation saw a wide-open frontier where anyone with a good idea
14 would have a fair shot at success.

15 2. Today, however, this wide-open frontier has been enclosed. A single company,
16 Amazon, has seized control over much of the online retail economy.

17 3. Amazon is a monopolist. It exploits its monopolies in ways that enrich Amazon
18 but harm its customers: both the tens of millions of American households who regularly shop on
19 Amazon’s online superstore and the hundreds of thousands of businesses who rely on Amazon to
20 reach them.

21 4. For example, Amazon has hiked so steeply the fees it charges sellers that it now
22 reportedly takes close to *half* of every dollar from the typical seller that uses Amazon’s
23 fulfillment service. Amazon recognizes that sellers find “that it has become more difficult over
24 time to be profitable on Amazon” due to Amazon’s “increasing fees and costs.” But as one seller

1 explains, “we have nowhere else to go and Amazon knows it.” Amazon has also quietly and
2 deliberately raised prices for shoppers through a covert operation called “Project Nessie.”
3 Explicitly intended to inflate the prices that shoppers pay, Amazon’s Project Nessie has already
4 extracted over a billion dollars from American households.

5 5. In addition to overcharging its customers, Amazon is degrading the services it
6 provides them. Amazon’s online storefront once prioritized relevant, organic search results.
7 Following directions from its founder and then-CEO Jeff Bezos, Amazon shifted gears so that it
8 now litters its storefront with pay-to-play advertisements. Amazon executives internally
9 acknowledge this creates “harm to consumers” by making it “almost impossible for high quality,
10 helpful organic content to win over barely relevant sponsored content.” This practice, too, harms
11 both sellers and shoppers alike. Most sellers must now pay for advertising to reach Amazon’s
12 massive base of online shoppers, while shoppers consequently face less relevant search results
13 and are steered toward more expensive products. Notably, Amazon has increased not only the
14 number of advertisements it shows, but also the number of irrelevant junk ads, internally called
15 “defects.” Mr. Bezos instructed his executives to “[a]ccept more defects” because Amazon can
16 extract billions of dollars through increased advertising despite worsening its services for
17 customers.

18 6. In a competitive world, Amazon’s decision to raise prices and degrade services
19 would create an opening for rivals and potential rivals to attract business, gain momentum, and
20 grow. But Amazon has engaged in an unlawful monopolistic strategy to close off that
21 possibility.

22 7. This case is about the illegal course of exclusionary conduct Amazon deploys to
23 block competition, stunt rivals’ growth, and cement its dominance. The elements of this strategy
24

1 are mutually reinforcing. Amazon uses a set of anti-discounting tactics to prevent rivals from
2 growing by offering lower prices, and it uses coercive tactics involving its order fulfillment
3 service to prevent rivals from gaining the scale they need to meaningfully compete. Amazon
4 deploys this interconnected strategy to block off every major avenue of competition—including
5 price, product selection, quality, and innovation—in the relevant markets for online superstores
6 and online marketplace services.

7 8. Amazon’s course of conduct has unlawfully entrenched its monopoly position in
8 both relevant markets. According to an industry source, Amazon now captures more sales than
9 the next fifteen largest U.S. online retail firms combined. Yet Amazon has violated the law not
10 by being big, but by how it uses its scale and scope to stifle competition.

11 9. A critical mass of customers is key to powering what Amazon calls its
12 “flywheel.” By providing sellers access to significant shopper traffic, Amazon is able to attract
13 more sellers onto its platform. Those sellers’ selection and variety of products, in turn, attract
14 additional shoppers. More shoppers yield more customer-generated product ratings, reviews,
15 and valuable consumer data for Amazon to use. All of this enables Amazon to benefit from the
16 accelerated growth and momentum that network effects and scale economies can fuel.

17 10. The biggest threat to Amazon’s monopoly power would be for a rival to attract its
18 own critical mass of dedicated customers. Competitors able to build a sizable base of either
19 shoppers or sellers could spin up their own “flywheels,” overcome barriers to entry and
20 expansion, and achieve the scale needed to compete effectively in the relevant markets. As Mr.
21 Bezos once wrote, “[o]nline selling (relative to traditional retailing) is a scale business
22 characterized by high fixed costs and relatively low variable costs. This makes it difficult to be a
23 medium-sized e-commerce company,” and it is “difficult . . . for single-category e-commerce
24

1 companies to achieve the scale necessary to succeed.” In order to “build an important and
2 lasting company . . . online in e-commerce,” Mr. Bezos explained, “you have to have a scale
3 business,” because “[t]his kind of business isn’t going to work in small volumes.”

4 11. Having gained its own critical mass of both shoppers and sellers, Amazon set out
5 to deny both current and would-be rivals the ability to do the same.

6 12. Amazon uses its vast power, size, and control over multiple business units to
7 implement an interrelated and exclusionary course of conduct. Each element of this overarching
8 strategy aims at the same goal: to keep rivals from gaining the scale needed to compete
9 effectively against Amazon. And each element amplifies the force of the rest, in a self-
10 reinforcing cycle of dominance and harm.

11 13. One set of tactics stifles the ability of rivals to attract shoppers by offering lower
12 prices. Amazon deploys a sophisticated surveillance network of web crawlers that constantly
13 monitor the internet, searching for discounts that might threaten Amazon’s empire. When
14 Amazon detects elsewhere online a product that is cheaper than a seller’s offer for the same
15 product on Amazon, Amazon punishes that seller. It does so to prevent rivals from gaining
16 business by offering shoppers or sellers lower prices.

17 14. Originally, Amazon imposed explicit contractual requirements barring all sellers
18 from offering their goods for lower prices anywhere else. After European regulators began
19 investigating, Amazon got rid of these requirements in Europe. After a U.S. senator called for
20 antitrust scrutiny, Amazon did the same in the United States in 2019.

21 15. Amazon recognized that dropping an explicit contractual requirement while
22 continuing to use other anti-discounting tactics would appear “not only trivial but a trick and an
23 attempt to garner goodwill with policymakers amid increasing competition concerns.”

1 16. But Amazon has done just that. It continues to use—and add—other anti-
2 discounting tactics to discipline sellers who offer lower-priced goods elsewhere. The sanctions
3 Amazon levies on sellers vary. For example, Amazon knocks these sellers out of the all-
4 important “Buy Box,” the display from which a shopper can “Add to Cart” or “Buy Now” an
5 Amazon-selected offer for a product. Nearly 98% of Amazon sales are made through the Buy
6 Box and, as Amazon internally recognizes, eliminating a seller from the Buy Box causes that
7 seller’s sales to “tank.” Another form of punishment is to bury discounting sellers so far down in
8 Amazon’s search results that they become effectively invisible. Still another is to erase a
9 product’s price from public view, even if the offer is the best deal available on Amazon. For
10 especially important sellers, Amazon keeps in place a targeted version of the contractual
11 requirement it supposedly stopped using in 2019. If caught offering lower prices elsewhere
12 online, these sellers face the ultimate threat: not just banishment from the Buy Box, but total
13 exile from Amazon’s Marketplace. As Amazon internally admits, these tactics have a “punitive
14 aspect,” and many sellers “live in constant fear” of them.

15 17. Moreover, Amazon’s one-two punch of seller punishments and high seller fees
16 often forces sellers to use their inflated Amazon prices as a price floor everywhere else. As a
17 result, Amazon’s conduct causes online shoppers to face artificially higher prices even when
18 shopping somewhere other than Amazon. Amazon’s punitive regime distorts basic market
19 signals: one of the ways sellers respond to Amazon’s fee hikes is by increasing their own prices
20 off Amazon. An executive from another online retailer sums up this perverse dynamic:
21 Amazon’s anti-discounting conduct “forc[es sellers] to raise prices on other platforms where
22 their cost base is potentially lower.” Amazon’s illegal tactics mean that when Amazon raises its
23 fees, others—competitors, sellers, and shoppers—suffer the harms.

1 18. Amazon’s tactics suppress rival online superstores’ ability to compete for
 2 shoppers by offering lower prices, thereby depriving American households of more affordable
 3 options. Amazon’s conduct also suppresses rival online marketplace service providers’ ability to
 4 compete for sellers by offering lower fees because sellers cannot pass along those savings to
 5 shoppers in the form of lower product prices.

6 19. These various anti-discounting tactics constrain sellers operating on Amazon’s
 7 third-party business unit, through which sellers set their own product prices. But Amazon also
 8 operates an enormous first-party arm, which accounted for 40% of its overall unit sales in the
 9 second quarter of 2023, as shown in Figure 1. Using its direct control over these prices, Amazon
 10 created another anti-discounting tool to weaponize its first-party arm in its campaign against
 11 competition.



18 *Figure 1. Source: Amazon Q2 2023 Earnings Call.*

19 20. Amazon has implemented an algorithm for the express purpose of deterring other
 20 online stores from offering lower prices. This algorithm was conceived by Amazon’s former
 21 CEO of its Worldwide Consumer business, Jeff Wilke. According to Mr. Wilke, Amazon
 22 deploys this algorithm to avoid a “perfectly competitive market” in which participants lower
 23 their prices to a competitive level. Rather than trying to compete, Amazon uses a “game theory
 24

1 approach,” never making the first move and instead disciplining rivals by rapidly copying others’
2 moves to the penny, both up and down. The goal is to ensure that rivals’ price cuts and discounts
3 do not translate to greater scale, only lower margins. Ultimately, this conduct is meant to deter
4 rivals from attempting to compete on price altogether—competition that could bring lower prices
5 to tens of millions of American households. As a result of this conduct, Amazon predicted,
6 “prices will go up.” Mr. Wilke believes that Amazon’s prediction has borne out and the
7 algorithm has worked just as he envisioned: suppressing price competition by disciplining rival
8 retailers who dare to discount.

9 21. Amazon’s various anti-discounting tactics upend the normal give-and-take
10 process of competition. Even rivals that offer lower-cost marketplace services struggle to attract
11 sellers and watch as sellers hike prices on their storefronts due to fear of Amazon’s penalties.
12 Many sellers raise their prices off Amazon to avoid punishment. Others never try discounting in
13 the first place; fear of retribution by Amazon drives them to preemptively set higher prices
14 everywhere. Still others simply stop—or never start—selling anywhere other than Amazon to
15 avoid any possibility of Amazon’s sanctions.

16 22. By taming price cutters into price followers, Amazon freezes price competition
17 and deprives American shoppers of lower prices.

18 23. Alongside these anti-discounting tactics, Amazon also goes a step further and
19 hikes prices directly and outright. Amazon created a secret algorithm internally codenamed
20 “Project Nessie” to identify specific products for which it predicts other online stores will follow
21 Amazon’s price increases. When activated, this algorithm raises prices for those products and,
22 when other stores follow suit, keeps the now-higher price in place. Amazon has deemed Project
23 Nessie “an incredible success”: it has generated more than \$1 billion in excess profit for
24

1 Amazon. Aware of the public fallout it risks, Amazon has turned Project Nessie off during
2 periods of heightened outside scrutiny and then back on when it thinks that no one is watching.

3 24. Amazon deploys yet another tactic as part of its monopolistic course of conduct.
4 Amazon conditions sellers' ability to be "Prime eligible" on their use of Amazon's order
5 fulfillment service. As with Amazon's anti-discounting tactics, this coercive conduct forecloses
6 Amazon's rivals from drawing a critical mass of sellers or shoppers—thereby depriving them of
7 the scale needed to compete effectively online.

8 25. Amazon makes Prime eligibility critical for sellers to fully reach Amazon's
9 enormous base of shoppers. In 2021, more than █% of all units sold on Amazon in the United
10 States were Prime eligible.

11 26. Prime eligibility is critical for sellers in part because of the enormous reach of
12 Amazon's Prime subscription program. According to public reports, Mr. Bezos told Amazon
13 executives that Prime was created in 2005 to "draw a moat around [Amazon's] best customers."
14 Prime now blankets more than █% of all U.S. households, with its reach extending as far as
15 █% in some zip codes.

16 27. Amazon requires sellers who want their products to be Prime eligible to use
17 Amazon's fulfillment service, Fulfillment by Amazon ("FBA"), even though many sellers would
18 rather use an alternative fulfillment method to store and package customer orders.

19 28. Many sellers would also prefer to "multihome," simultaneously offering their
20 goods across multiple online sales channels. Multihoming can be an especially critical
21 mechanism of competition in online markets, enabling rivals to overcome the barriers to entry
22 and expansion that scale economies and network effects can create. Multihoming is one way that
23 sellers can reduce their dependence on a single sales channel.

1 29. Sellers could multihome more cheaply and easily by using an independent
2 fulfillment provider—a provider not tied to any one marketplace—to fulfill orders across
3 multiple marketplaces. Permitting independent fulfillment providers to compete for any order—
4 on or off Amazon—would enable them to gain scale and lower their costs to sellers. That, in
5 turn, would make independent providers even more attractive to sellers seeking a single,
6 universal provider. All of this would make it easier for sellers to offer items across a variety of
7 outlets, fostering competition and reducing sellers’ dependence on Amazon.

8 30. But by coercively conditioning access to an enormous base of shoppers on sellers’
9 use of FBA, Amazon forecloses that world.

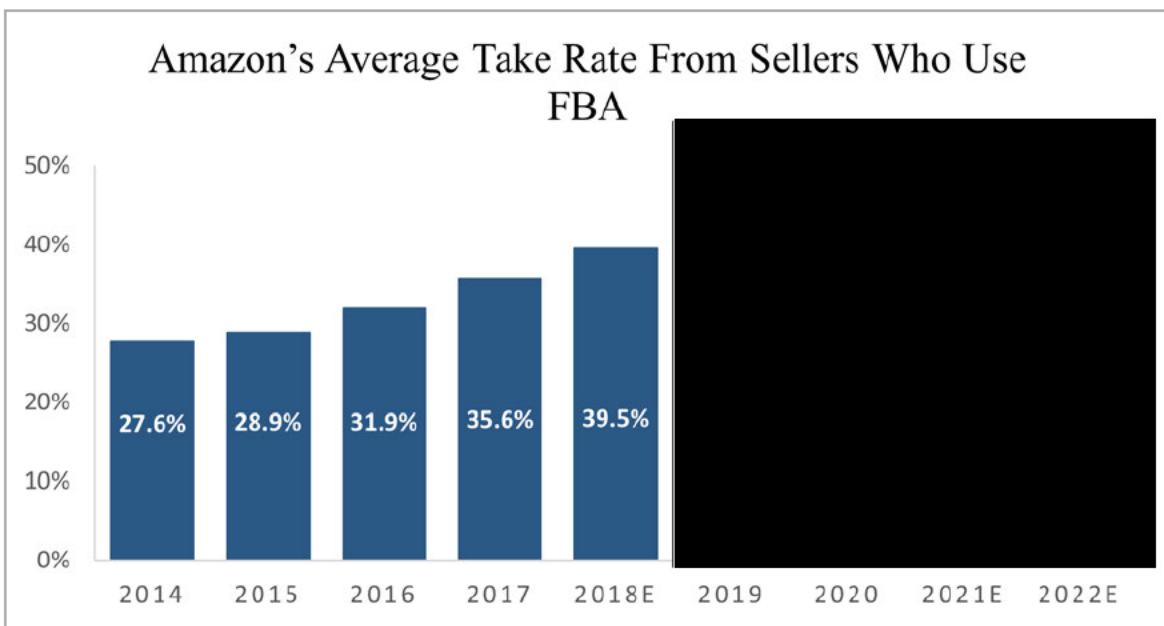
10 31. Amazon caught a glimpse of this alternative universe when it temporarily relaxed
11 its coercive conduct. As Amazon recognized, this decision was immediately popular with both
12 shoppers and sellers. But internally, Amazon soon realized that its move could enable greater
13 multihoming, facilitating competition that would threaten Amazon’s monopoly power. An
14 Amazon executive explained to his colleagues that he had an “‘oh crap’ moment” when he
15 realized that this was “‘fundamentally weakening [Amazon’s] competitive advantage in the
16 U.S. . . . as sellers are now incited to run their own warehouses and enable other marketplaces
17 with inventory that in FBA would only be available to our customers.’”

18 32. To combat this competitive threat, Amazon resumed its coercive fulfillment
19 conduct: today, virtually all sellers must use Amazon’s proprietary FBA service to fully reach
20 Amazon’s enormous base of U.S. shoppers.

21 33. Each element of Amazon’s monopolistic strategy works to keep its rivals and
22 potential rivals from growing, gaining momentum, and achieving the scale necessary to
23 meaningfully compete against Amazon. The cumulative impact of Amazon’s unlawful conduct
24

1 is greater than the harm caused by any particular element. Each aspect of Amazon’s strategy
 2 amplifies the exclusionary effects of the others, further insulating Amazon from meaningful
 3 competition and further widening the gulf between Amazon and everyone else.

4 34. Together, this self-reinforcing course of conduct blocks every important avenue
 5 of competition. With its monopoly power cemented, Amazon is now extracting monopoly
 6 profits without denting—and instead while growing—its monopoly power. Amazon has
 7 consistently hiked the prices it charges sellers, as shown in Figure 2.



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17 *Figure 2. Source: Amazon Internal Documents.*

18 35. Amazon’s price hikes in the form of pay-to-play advertisements have been
 19 enormously lucrative, leading its revenues from U.S. ad sales to skyrocket from \$1 billion in
 20 2015 to [Redacted] billion in 2021. Amazon took in [Redacted] billion in revenue from U.S. Marketplace
 21 seller fees in 2021 alone. Strikingly, these seller fees now account for over [Redacted] % of Amazon’s
 22 total profits. Sellers pay. Shoppers get lower-quality search results for higher-priced products.
 23 Only Amazon wins.

1 36. In a market free from anticompetitive restraints, Amazon’s choice to exploit its
2 monopoly power would create openings for rivals to enter, grow, and meaningfully compete.
3 Rival online marketplaces could draw sellers by offering them lower fees or better terms, and
4 sellers could pass along those lower costs to American shoppers in the form of lower prices.
5 Rival online superstores, meanwhile, could draw shoppers by offering better prices, greater
6 selection, or a superior shopping experience. But Amazon’s illegal course of conduct shields
7 Amazon from the competitive checks it would face in a free enterprise system.

8 37. Amazon’s illegal monopolistic strategy is paying off for Amazon, but at great cost
9 to tens of millions of American households and hundreds of thousands of sellers.

10 38. Left unchecked, Amazon will continue its illegal course of conduct to maintain its
11 monopoly power. That conduct will include—but will not necessarily be limited to—the
12 schemes it uses today. As Mr. Bezos has said, “on matters of vision we are stubborn and
13 relentless,” but “[o]n the details, we at Amazon are always flexible.”

14 39. Plaintiffs bring this lawsuit despite Amazon’s extensive efforts to impede the
15 government’s investigation and hide information about its internal operations. Amazon
16 executives systematically and intentionally deleted internal communications using the
17 “disappearing message” feature of the Signal messaging app. Amazon prejudicially destroyed
18 more than two years’ worth of such communications—from June 2019 to at least early 2022—
19 despite Plaintiffs’ instructing Amazon not to do so.

20 40. Plaintiffs now ask this Court to put an end to Amazon’s illegal course of conduct,
21 pry loose Amazon’s monopolistic control, deny Amazon the fruits of its unlawful practices, and
22 restore the lost promise of competition.

1 **II. JURISDICTION AND VENUE**

2 41. This Court has subject matter jurisdiction over this action pursuant to Section 5(a)
3 of the FTC Act, 15 U.S.C. § 45(a), 15 U.S.C. § 26, 28 U.S.C. §§ 1331, 1337(a), and 1345, and
4 supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). This Court’s exercise of
5 supplemental jurisdiction over State Plaintiffs’ state law claims will avoid unnecessary
6 duplication and multiplicity of actions and will promote the interests of judicial economy,
7 convenience, and fairness.

8 42. This Court has personal jurisdiction over Amazon because Amazon has the
9 requisite constitutional contacts with the United States of America pursuant to 15 U.S.C. § 53(b).
10 This Court also has personal jurisdiction over Amazon because it maintains its corporate
11 headquarters in Washington, does business in Washington, and has engaged in the illegal
12 conduct alleged herein in Washington, including by making corporate decisions challenged in
13 this matter from its corporate headquarters in Washington.

14 43. Amazon’s general business practices, and the unfair methods of competition
15 alleged herein, are activities “in or affecting commerce” within the meaning of Section 5 of the
16 FTC Act, 15 U.S.C. § 45.

17 44. Amazon is, and at all relevant times has been, a corporation, as the term
18 “corporation” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

19 45. Venue in this district is proper under 15 U.S.C. § 22, 28 U.S.C. § 1391(b), (c),
20 and (d), and 15 U.S.C. § 53(b). Amazon is found, resides, transacts business, and has agents in
21 this state and district, and a portion of the affected commerce described herein has been carried
22 out in this state and district.

1 **III. THE PARTIES**

2 46. Plaintiff FTC is an administrative agency of the United States Government
3 established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41, *et seq.*, with its
4 principal offices in the District of Columbia. The FTC is vested with authority and responsibility
5 for enforcing, among other laws, Section 5 of the FTC Act, 15 U.S.C. § 45, and is authorized
6 under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), to initiate court proceedings to enjoin
7 violations of any law the FTC enforces. This case is proper under Section 13(b) of the FTC Act,
8 15 U.S.C. § 53(b), because the FTC has reason to believe that Amazon is violating, or is about to
9 violate, Section 5 of the FTC Act, making it appropriate, efficient, and suitable to file this action
10 in federal court with State Plaintiffs to seek the requested relief.

11 47. Plaintiff State of New York is a sovereign state. The Attorney General of the
12 State of New York is the chief legal officer for the state and brings this action on behalf of the
13 people of the State of New York to protect the state, its general economy, and its residents from
14 Amazon's unlawful business practices. The Attorney General has the authority under federal
15 and state law, including Section 16 of the Clayton Act and New York Executive Law § 63(12),
16 to pursue injunctive and other equitable relief to prevent and remedy the harms caused by
17 anticompetitive conduct.

18 48. Plaintiff State of Connecticut is a sovereign state. The Attorney General of the
19 State of Connecticut is the chief legal officer for the state and brings this action on behalf of the
20 people of the State of Connecticut to protect the state, its general economy, and its residents from
21 Amazon's unlawful business practices. The Attorney General has the authority under federal
22 and state law, including Section 16 of the Clayton Act and the Connecticut Antitrust Act, Conn.
23 Gen. Stat. § 35-24 *et seq.*, and the Attorney General, acting at the request of the Commissioner of
24 Consumer Protection, has the authority under the Connecticut Unfair Trade Practices Act, Conn.

1 Gen. Stat. § 42-110b *et seq.*, to pursue injunctive and other equitable relief to prevent and
2 remedy the harms caused by anticompetitive conduct.

3 49. Plaintiff Commonwealth of Pennsylvania is a sovereign state. The Attorney
4 General of the Commonwealth of Pennsylvania is the chief legal officer for the state and brings
5 this action in the name and on behalf of the people of the Commonwealth of Pennsylvania to
6 protect the Commonwealth, its general economy, its residents, and consumers from Amazon’s
7 unlawful business practices. The Attorney General has authority under state and federal law,
8 including Section 16 of the Clayton Act, the Pennsylvania Unfair Trade Practices and Consumer
9 Protection Law, 73 P.S. §§ 201-4 and 201-4.1, and the Commonwealth Attorneys Act, 71 P.S. §
10 732-204(c), to pursue injunctive and other equitable relief to prevent and remedy the harms
11 caused by anticompetitive conduct and unfair and deceptive acts and practices.

12 50. Plaintiff State of Delaware is a sovereign state. The Attorney General of the State
13 of Delaware is the chief legal officer for the state and brings this action in the name and on
14 behalf of the people of the State of Delaware to protect the state, its general economy, and its
15 residents from Amazon’s unlawful business practices. The Attorney General has authority under
16 federal and state law, including Section 16 of the Clayton Act and Del. Code Ann. Tit. 6, § 2105,
17 to pursue injunctive and other equitable relief to prevent and remedy the harms caused by
18 anticompetitive conduct.

19 51. Plaintiff State of Maine is a sovereign state. The Attorney General of the State of
20 Maine is the chief legal officer for the state and brings this action in the name and on behalf of
21 the people of the State of Maine to protect the state, its general economy, and its residents from
22 Amazon’s unlawful business practices. The Attorney General has authority under state and
23 federal law, including Section 16 of the Clayton Act and the Maine Monopolies and Profiteering
24

1 Law, 10 M.R.S.A. § 1104, to pursue injunctive and other equitable relief to prevent and remedy
2 the harms caused by anticompetitive conduct.

3 52. Plaintiff State of Maryland is a sovereign state. The Attorney General of the State
4 of Maryland is the chief legal officer for the state and brings this action in the name and on
5 behalf of the people of the State of Maryland to protect the state, its general economy, and its
6 residents from Amazon’s unlawful business practices. The Attorney General has authority under
7 state and federal law, including Section 16 of the Clayton Act and Maryland Commercial Code
8 Ann. § 11-201 *et seq.*, to pursue injunctive and other equitable relief to prevent and remedy the
9 harms caused by anticompetitive conduct.

10 53. Plaintiff Commonwealth of Massachusetts is a sovereign state. The Attorney
11 General of the Commonwealth of Massachusetts is the chief legal officer for the state and brings
12 this action on behalf of the people of the Commonwealth of Massachusetts to protect the state, its
13 general economy, and its residents from Amazon’s unlawful business practices. The Attorney
14 General has the authority under federal law, including Section 16 of the Clayton Act, to pursue
15 injunctive and other equitable relief to prevent and remedy the harms caused by anticompetitive
16 conduct.

17 54. Plaintiff State of Michigan is a sovereign state. The Attorney General of the State
18 of Michigan is the chief legal officer for the state and brings this action on behalf of the people
19 of the State of Michigan to protect the state, its general economy, and its residents from
20 Defendants’ unlawful business practices. The Attorney General has the authority under federal
21 and state law, including Section 16 of the Clayton Act and the Michigan Antitrust Reform Act,
22 MCL 445.771 *et seq.*, to pursue injunctive and other equitable relief to prevent and remedy the
23 harms caused by anticompetitive conduct.

1 55. Plaintiff State of Minnesota is a sovereign state. The Attorney General of the
2 State of Minnesota is the chief legal officer for the state and brings this action on behalf of the
3 people of the State of Minnesota to protect the state, its general economy, and its residents from
4 Amazon's unlawful business practices. The Attorney General has the authority under federal
5 and state law, including Section 16 of the Clayton Act and Minnesota Statute 8.31, to pursue
6 injunctive and other equitable relief to prevent and remedy the harms caused by anticompetitive
7 conduct.

8 56. Plaintiff State of Nevada is a sovereign state. The Attorney General of the State
9 of Nevada is the chief legal officer for the state, and the Consumer Advocate is vested with the
10 authority to enforce Nevada's antitrust laws. The Attorney General, by and through the
11 Consumer Advocate, brings this action on behalf of the people of the State of Nevada to protect
12 the state, its general economy, and its residents from Amazon's unlawful business practices. The
13 Nevada Attorney General and the Consumer Advocate have the authority under federal and state
14 law, including Section 16 of the Clayton Act, and Nev. Rev. Stat. §§ 228.380 and 598A.160, to
15 pursue injunctive and other equitable relief to prevent and remedy the harms caused by
16 anticompetitive conduct.

17 57. Plaintiff State of New Hampshire is a sovereign state, acting through the Office of
18 the Attorney General, Consumer Protection and Antitrust Bureau to enforce state and federal
19 laws designed to protect free and open markets for the benefit of consumers. The Attorney
20 General brings this action on behalf of the State of New Hampshire to protect the state, its
21 general economy, and its consumers from Amazon's unlawful business practices. The Attorney
22 General has the authority under state and federal law, including Section 16 of the Clayton Act
23 and New Hampshire Combinations and Monopolies Act, N.H. Rev. Stat. Ann. ch. 356 *et seq.*, to
24

1 pursue injunctive and other equitable relief to prevent and remedy the harms caused by the
2 anticompetitive conduct.

3 58. Plaintiff State of New Jersey is a sovereign state. The Attorney General of the
4 State of New Jersey is the chief legal officer for the state and brings this action in the name and
5 on behalf of the people of the State of New Jersey to protect the state, its general economy, and
6 its residents from Amazon’s unlawful business practices. The Attorney General has authority
7 under state and federal law, including Section 16 of the Clayton Act, the New Jersey Antitrust
8 Act, New Jersey Statutes Annotated (“N.J.S.A.”) § 56:9-1 to -19 (“NJ ATA”), and the New
9 Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1 to -227 (“NJ CFA”), to pursue injunctive and
10 other equitable relief to prevent and remedy the harms caused by anticompetitive conduct and
11 unfair and deceptive acts and practices. The Director of the New Jersey Division of Consumer
12 Affairs is charged with the responsibility of administering the NJ CFA on behalf of the Attorney
13 General. N.J.S.A. 52:17B-120; N.J.S.A. 52:17B-124. The Attorney General brings this action
14 for relief pursuant to his authority under the NJ ATA, specifically N.J.S.A. 56:9-6, 56:9-10(a),
15 56:9-12(b) and the NJ CFA, specifically N.J.S.A. 56:8-8, 56:8-11, and 56:8-19.

16 59. Plaintiff State of New Mexico is a sovereign state. The Attorney General of the
17 State of New Mexico is the chief legal officer for the state and brings this action on behalf of the
18 people of the State of New Mexico to protect the state, its general economy, and its residents
19 from Amazon’s unlawful business practices. The Attorney General has the authority under
20 federal and state law, including Section 16 of the Clayton Act and Section 10 of the New Mexico
21 Antitrust Act, to pursue injunctive and other equitable relief to prevent and remedy the harms
22 caused by anticompetitive conduct.

1 60. Plaintiff State of Oklahoma is a sovereign state. The Attorney General of the
2 State of Oklahoma is the chief legal officer of the state and brings this action in the name and on
3 behalf of the people of the State of Oklahoma to protect the state, its general economy, and its
4 residents from Amazon’s unlawful business practices. The Attorney General has authority under
5 state and federal law, including Section 16 of the Clayton Act and the Oklahoma Antitrust
6 Reform Act, 15 79 O.S. §§ 201, *et seq.*, to pursue injunctive and other equitable relief to prevent
7 and remedy the harms caused by anticompetitive conduct.

8 61. Plaintiff State of Oregon is a sovereign state. The Attorney General of the State
9 of Oregon is the chief legal officer for the state and brings this action on behalf of the people of
10 the State of Oregon to protect the state, its general economy, and its residents from Amazon’s
11 unlawful business practices. The Attorney General has the authority under federal and state law
12 including Section 16 of the Clayton Act and the Oregon Antitrust Law, Oregon Revised Statutes
13 (“ORS”) 646.705 to ORS 646.836, to pursue injunctive and other equitable relief to prevent and
14 remedy the harms caused by anticompetitive conduct.

15 62. Plaintiff Commonwealth of Puerto Rico is a sovereign territory. The Attorney
16 General of the Commonwealth of Puerto Rico is the chief legal officer for the territory and
17 brings this action on behalf of the people of the Commonwealth of Puerto Rico to protect the
18 territory, its general economy, and its residents from Amazon’s unlawful business practices. The
19 Attorney General has the authority under federal and territorial law, including Section 16 of the
20 Clayton Act and the Puerto Rico Monopolies and Restraint of Trade Act, P.R. Laws Ann. tit.10
21 §§ 257 *et seq.*, to pursue injunctive and other equitable relief to prevent and remedy the harms
22 caused by anticompetitive conduct.

1 63. Plaintiff State of Rhode Island is a sovereign state. The Attorney General of the
2 State of Rhode Island is the chief legal officer for Rhode Island and brings this action on behalf
3 of the people of the State of Rhode Island to protect Rhode Islanders from Amazon’s unlawful
4 business practices. The Attorney General has the authority under federal and state law, including
5 Section 16 of the Clayton Act and Rhode Island General Laws § 6–13.1–1 *et seq.*, to pursue all
6 available types of relief to prevent and remedy the harms caused by anticompetitive conduct.

7 64. Plaintiff State of Vermont is a sovereign state. The Attorney General of the State
8 of Vermont is the chief legal officer for the state and brings this action on behalf of the people of
9 the State of Vermont to protect the state, its general economy, and its residents from Amazon’s
10 unlawful business practices. The Attorney General has the authority under federal and state law,
11 including Section 16 of the Clayton Act and the Vermont Consumer Protection Act, 9 V.S.A.
12 § 2458 *et seq.*, to pursue injunctive and other equitable relief to prevent and remedy the harms
13 caused by anticompetitive conduct.

14 65. Plaintiff State of Wisconsin is a sovereign state. The Attorney General of the
15 State of Wisconsin is the chief legal officer for the state and brings this action on behalf of the
16 people of the State of Wisconsin to protect the state, its general economy, and its residents from
17 Amazon’s unlawful business practices. The Attorney General has the authority under federal
18 and state law, including Section 16 of the Clayton Act and Wis. Stat. § 133.03, to pursue
19 injunctive and other equitable relief to prevent and remedy the harms caused by anticompetitive
20 conduct.

21 66. Defendant Amazon is a multinational online retail and technology company that
22 conducts business throughout the United States. Amazon is headquartered in Seattle,
23 Washington, with its principal place of business at 410 Terry Avenue North, Seattle, Washington
24

1 98109, and is organized and existing under the laws of Delaware. Unless otherwise specified,
2 “Amazon” refers to Amazon.com, Inc., and all corporate predecessors, subsidiaries, successors,
3 and affiliates.

4 **IV. AMAZON’S OPERATIONS**

5 67. Amazon is one of the largest companies in the world, ranked among the five
6 largest publicly traded companies by both market capitalization and revenue. Amazon’s
7 business spans vast portions of the American economy, extending from its core of online retail
8 into media, cloud computing, brick-and-mortar grocery stores, an array of logistics and
9 operational services, and more. It has expanded in part through an acquisition spree, buying up
10 more than 100 companies in sectors spanning entertainment, grocery, and healthcare. Its reach
11 ranges from selling socks and making movies to running a pharmacy and operating datacenters
12 that house exabytes of data.

13 68. The key aspects of Amazon’s operations relevant to this Complaint are its:
14 (1) first-party Retail and third-party Marketplace business units; (2) public-facing online
15 superstore; (3) advertising services; (4) Prime subscription program; and (5) fulfillment service.

16 **A. Amazon’s First-Party Retail And Third-Party Marketplace Business Units**

17 69. Amazon began as an online bookstore in 1994 and rapidly expanded into new
18 product categories: first DVDs and CDs, then electronics and toys, and then nearly everything.
19 In 2020, Amazon sold almost 92 million unique products across virtually every conceivable
20 category to U.S. consumers.

21 70. Amazon originally sold goods to shoppers by purchasing items wholesale and
22 reselling them on its website. Amazon calls its wholesale suppliers “vendors.” Today, Amazon
23 continues to sell a wide range of products through this type of vendor-retailer relationship, from
24 laundry detergent to sports equipment.

1 71. Amazon also sells its own private label goods. These range from devices like
2 Amazon’s Kindle e-reader or Ring doorbell, to consumer products like batteries sold under the
3 “Amazon Basics” label, to products without any clear Amazon affiliation, such as dietary
4 supplements sold under the “Revly” label.

5 72. These two components, vendor-retailer and private label, make up Amazon’s
6 first-party retail business unit, which Amazon refers to collectively as Amazon “Retail.”

7 73. Amazon also runs what it calls its “Marketplace,” where other companies can sell
8 products directly to shoppers through its online store. Amazon calls third-party companies that
9 sell on Amazon “sellers,” and refers to sales by sellers as “Marketplace” sales.

10 74. Amazon charges sellers four primary fees to sell on its Marketplace. First,
11 Amazon requires sellers to pay a selling fee, which can be a monthly fee or a fee for each item
12 sold. Second, Amazon charges all sellers a commission or “referral fee” based on the price of
13 each item sold on Amazon. Third, Amazon charges sellers for the use of Amazon’s fulfillment
14 and delivery services. Fourth, Amazon charges sellers for advertising services. While Amazon
15 also charges sellers other fees, these four types constitute over █% of the revenue Amazon takes
16 in from sellers. As a practical matter, most sellers must pay these four fees to make a significant
17 volume of sales on Amazon.

18 75. Amazon estimated that in 2022, it would take █% of all sales revenue earned
19 by sellers who use its fulfillment service.

20 76. The Marketplace accelerated Amazon’s growth by allowing it to exponentially
21 expand the selection of products on Amazon without having to carry the risks of unsold
22 inventory. Sellers, who range from small businesses that offer a single product to multinational
23
24

1 firms that sell thousands of products, ultimately bear that risk. As of the first quarter of 2021,
2 there were over 560,000 active sellers on Amazon’s U.S. Marketplace.

3 77. Amazon touts to its investors that sellers on the Marketplace are “a key
4 contributor to the selection offered” to Amazon shoppers. Sellers offer a huge variety of items
5 for sale, from laptop computers to harnesses for walking pet chickens, complete with bowtie. In
6 2020, sellers offered more than 80% of the unique items available for sale on Amazon. Sellers’
7 products make up a growing majority of Amazon unit sales—60% in the second quarter of 2023,
8 up from 55% in 2021.

9 78. Amazon’s online superstore unites its Retail and Marketplace arms, with products
10 intermixed and presented to the public simultaneously and side-by-side. To a shopper browsing
11 on Amazon, there are no obvious differences between the types of listings, nor is there a way to
12 regularly shop for products sold only by Amazon Retail or Amazon Marketplace.

13 79. Amazon has achieved unprecedented scale. In 2021, goods worth more than [REDACTED]
14 billion were sold through Amazon’s U.S. online store. That amount is larger than the 2021 gross
15 domestic product of 145 countries.

16 80. Amazon achieved this astonishing scale in part by combining its Retail and
17 Marketplace arms. Amazon’s product selection includes popular and frequently purchased items
18 and a “long tail” made up of an immense variety of less-frequently purchased products. Products
19 offered by sellers on Amazon’s Marketplace contribute substantially to that “long tail.” More
20 generally, Amazon’s sellers dramatically increase Amazon’s product selection, which draws
21 more shoppers to Amazon, which, in turn, attracts more sellers.

81. Sellers have also made the Marketplace enormously profitable for Amazon. Amazon’s internal documents show that profits from its U.S. Marketplace totaled more than billion in 2021—nearly % of its total reported net income for that year.

B. Amazon’s Online Superstore

82. Shoppers typically reach Amazon using an internet browser or a dedicated Amazon shopping application (“mobile app”) on an internet-connected device. Each month in the United States, 126 million people visit Amazon on a mobile device, and more than 42 million people access Amazon on a desktop computer.

83. There are more than a billion different products available for sale on Amazon. To navigate this billion-plus product catalog, Amazon offers a search bar. When shoppers enter a search, Amazon’s systems generate a “Search Results Page” that displays product listings interspersed with advertisements (discussed in more detail in the next section). Product listings on the Search Results Page typically show a name, picture, price, star rating, shipping speed estimate, and Prime status (or lack thereof) for each item, as shown in Figures 3a (desktop) and 3b (mobile).

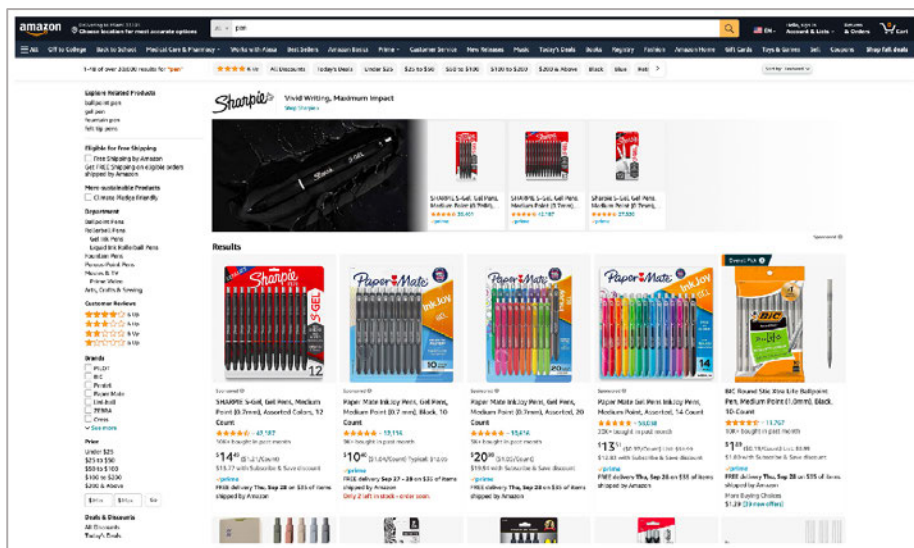


Figure 3a. Amazon Search Results Page, Desktop Browser.

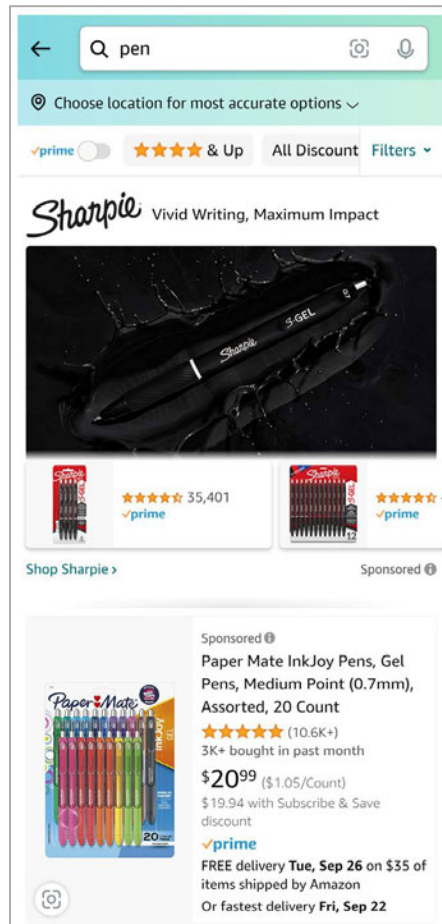


Figure 3b. Amazon Search Results Page, Mobile App.

84. If shoppers want to learn more about or purchase an item displayed on the Search Results Page, they must click the product listing, which brings them to the “Detail Page” for that item. An item’s Detail Page typically includes a detailed product description, additional pictures, product dimensions or specifications, and customer-generated ratings and reviews.

85. Importantly, the Detail Page usually includes a “Buy Box.” The Buy Box displays a single offer for that specific item, as shown in Figures 4a (desktop) and 4b (mobile). Shoppers can use the Buy Box to add the displayed item into their online shopping cart (“Add to Cart”) or buy the item immediately (“Buy Now”).

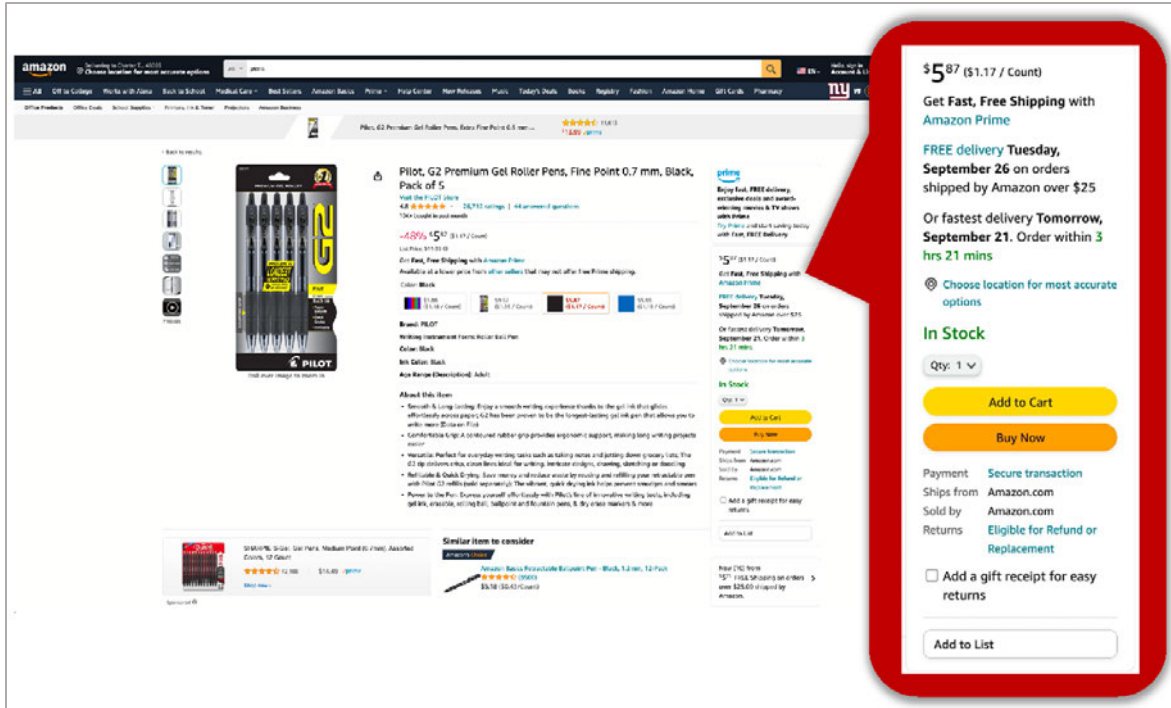


Figure 4a. Product Detail Page with Buy Box Enlarged in Red, Desktop Browser.

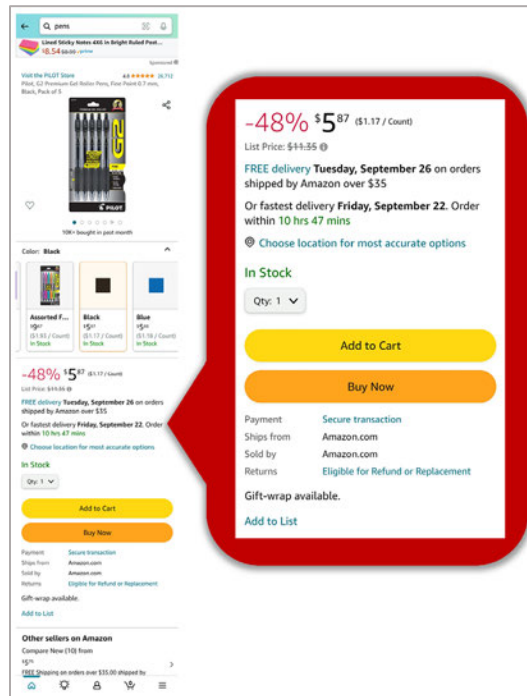


Figure 4b. Product Detail Page with Buy Box Enlarged in Red, Mobile App.

86. An item may be offered by more than one seller on Amazon. When there are multiple offers for a single item, Amazon uses the “Featured Merchant Algorithm” to choose one

offer to display in the Buy Box. Amazon calls this displayed offer the “Featured Offer.” Being chosen as the Featured Offer is commonly known as “winning” the Buy Box.

87. Nearly 98% of all purchases on Amazon are made using the “Add to Cart” and “Buy Now” buttons in the Buy Box. As a result, winning the Buy Box is essential to making sales on Amazon.

88. Amazon deliberately steers shoppers away from offers that are not featured in the Buy Box. If a shopper using a computer wants to see an offer from a seller that is not featured in the Buy Box, the shopper must either click a link that identifies only the number of additional offers, which takes the shopper to the “All Offer Display,” as shown in Figure 5a, or scroll down the page to see “Other Sellers on Amazon,” which includes a list of additional sellers Amazon has selected. Shoppers using Amazon’s mobile app must click on a link labeled “Other Sellers on Amazon” to access the All Offer Display, which opens another page that displays multiple offers, as shown in Figure 5b.

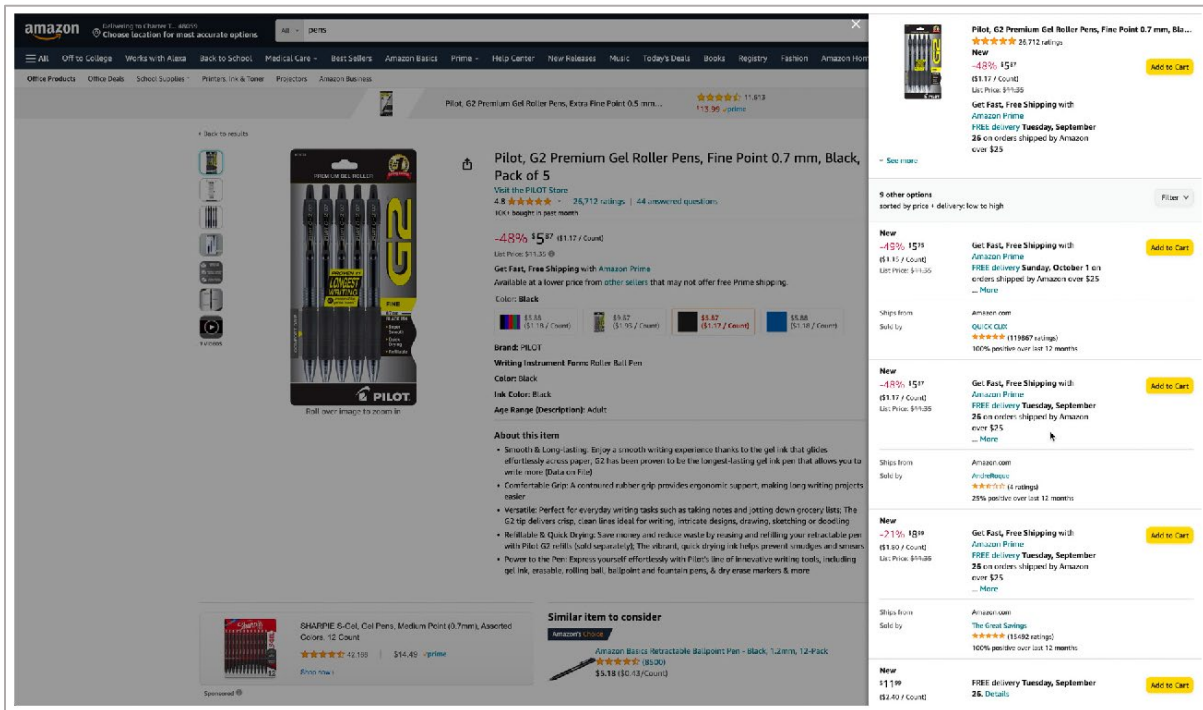


Figure 5a. All Offer Display, Desktop Browser.

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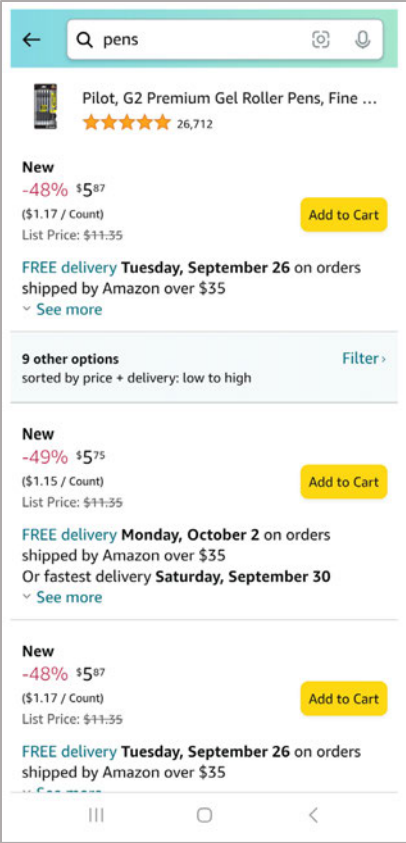


Figure 5b. All Offer Display After Clicking “Other Sellers On Amazon,” Mobile App.

89. Amazon makes it similarly difficult for shoppers to make a purchase when Amazon has removed the Buy Box from an item’s Detail Page. Amazon’s page layout prevents shoppers from adding to a shopping cart or buying any offers directly from the Detail Page, as shown in Figure 6a.

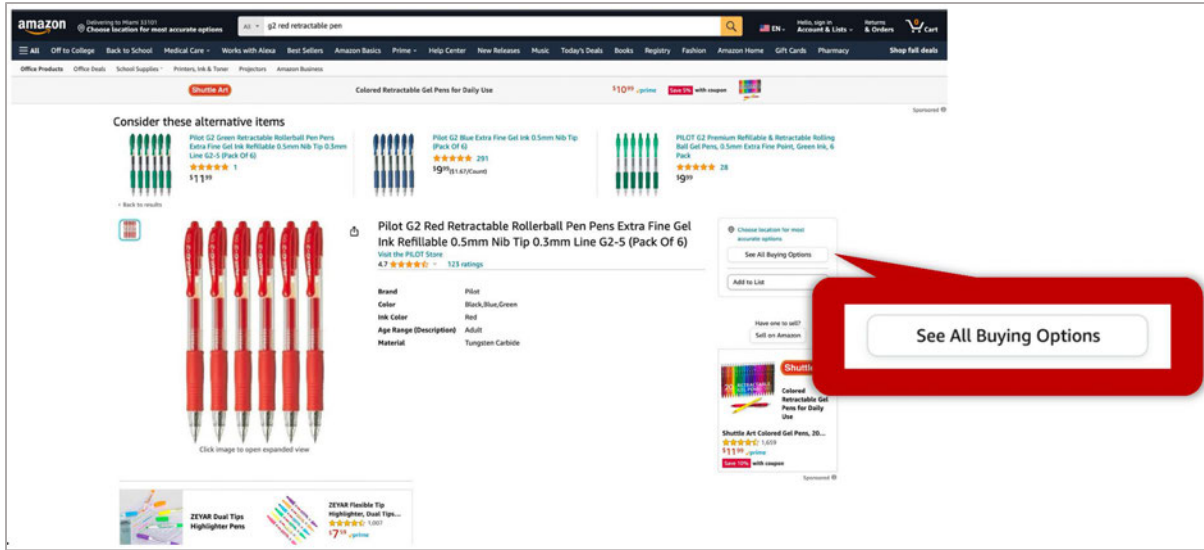


Figure 6a. Detail Page Without Buy Box with “See All Buying Options” Link Enlarged in Red, Desktop Browser.

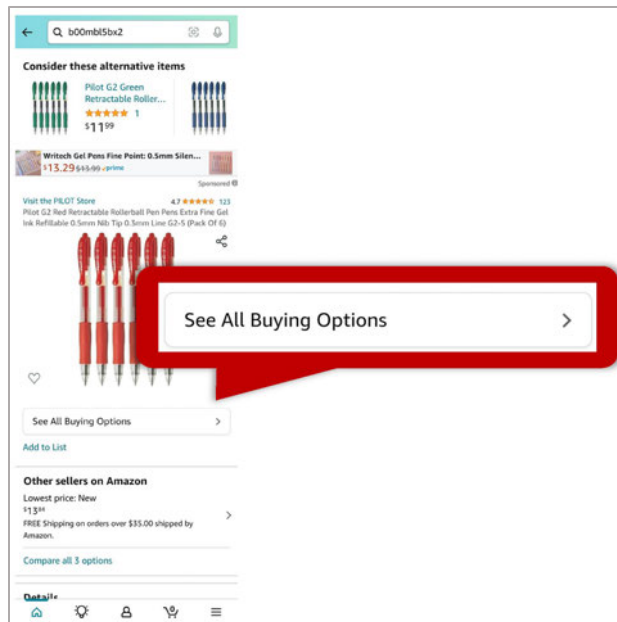


Figure 6b. Detail Page Without Buy Box with “See All Buying Options” Link Enlarged in Red, Mobile App.

90. If there is no Buy Box for an item, then shoppers must navigate to the “All Offer Display” by clicking on a link labeled “See All Buying Options,” shown in Figures 6a (desktop) and 6b (mobile), above.

1 91. Fewer than 3% of purchases on Amazon are made from offers outside the Buy
2 Box.

3 **C. Amazon’s Advertising Services**

4 92. In 2014, Amazon sought to “unleash monetization of Amazon web pages,
5 devices, and mobile apps” by extracting additional revenue through advertising on the Search
6 Results Page. Amazon saw “a big opportunity” for advertisements “designed to blend into the
7 shopping experience and look like merchandising.” Accordingly, Amazon deployed Search
8 Results Page advertising “to extract the true value of Selling on Amazon.” Amazon also
9 transitioned its advertising business from a direct sales model to an auction model where sellers
10 bid against other sellers for advertisement placement. Amazon was determined to grow “these
11 programs to significant size” by increasing “the number of advertising placements and supply of
12 impressions . . . on the Consumer website.”

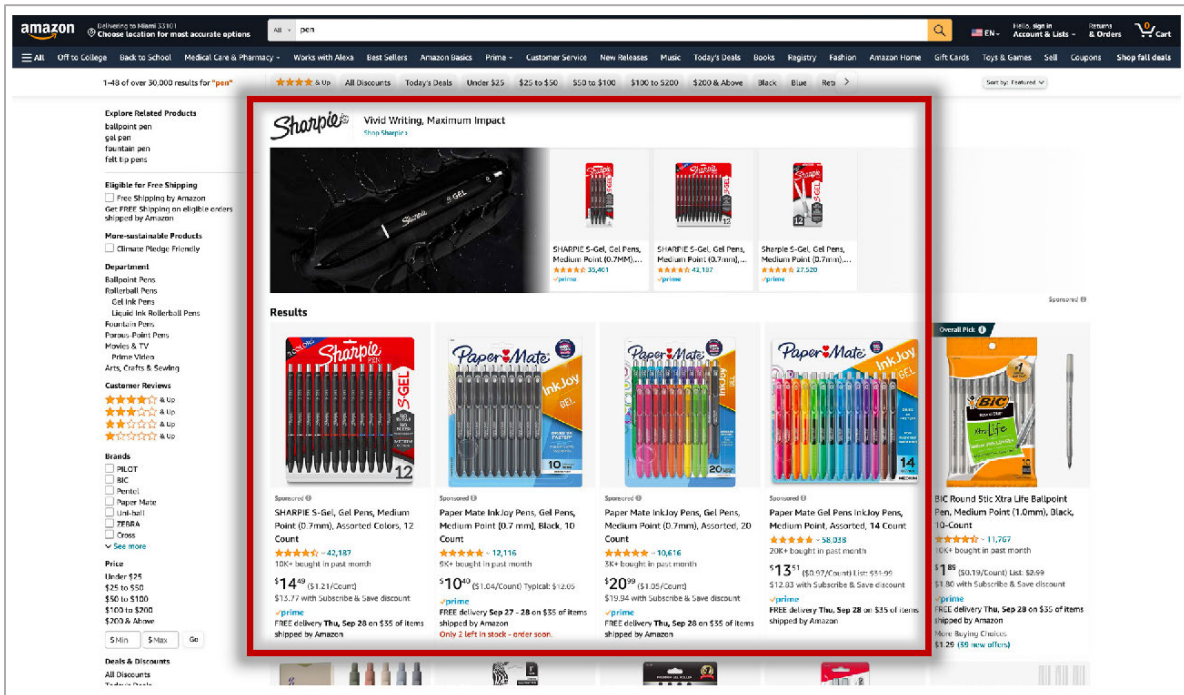
13 93. In 2021, Amazon recorded advertising profits of more than [REDACTED] billion in the
14 United States.

15 94. Each month, advertisements on Amazon reach 96% of all Americans between the
16 ages of 25 and 54.

17 95. Amazon’s most lucrative advertisements are shown in connection with specific
18 customer search queries that lead to Search Results Pages. Historically, Amazon’s Search
19 Results Pages displayed mostly organic search results—the results most directly responsive to
20 the search query.

21 96. Today, however, Amazon’s Search Results Pages are cluttered with
22 advertisements. The two most prominent types of advertisements on Amazon’s Search Results
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1 Pages are “Sponsored Brand” advertisements, which appear above search results, and
 2 “Sponsored Product” advertisements, which appear within search results, as shown in Figure 7.



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13 *Figure 7. Search Results Page with Sponsored Brand and Sponsored Product Advertisements*
 14 *Highlighted in Red, Desktop Browser.*

15 97. These advertisements typically occupy the most desirable space on the Search
 16 Results Page and are the most profitable for Amazon. Since 70% of Amazon shoppers do not
 17 click past the first Search Results Page, they often see more Sponsored Brand and Sponsored
 18 Product advertisements than organic search results.

19 98. At the same time, Amazon typically buries organic search results beneath
 20 advertisements, making them harder to find and less likely to be clicked. In Figure 8a (desktop),
 21 no organic search results appear in the first row. The first four results are “Sponsored”
 22 advertisements, and the fifth is another non-organic result known as a “recommendation widget.”

1 In Figure 8b (mobile), the top two results are “Sponsored” advertisements, and the third is a
2 recommendation widget.



11 *Figure 8a. First Row of Search Results with Sponsored Product Advertisements Highlighted in*
12 *Red, Desktop Browser.*

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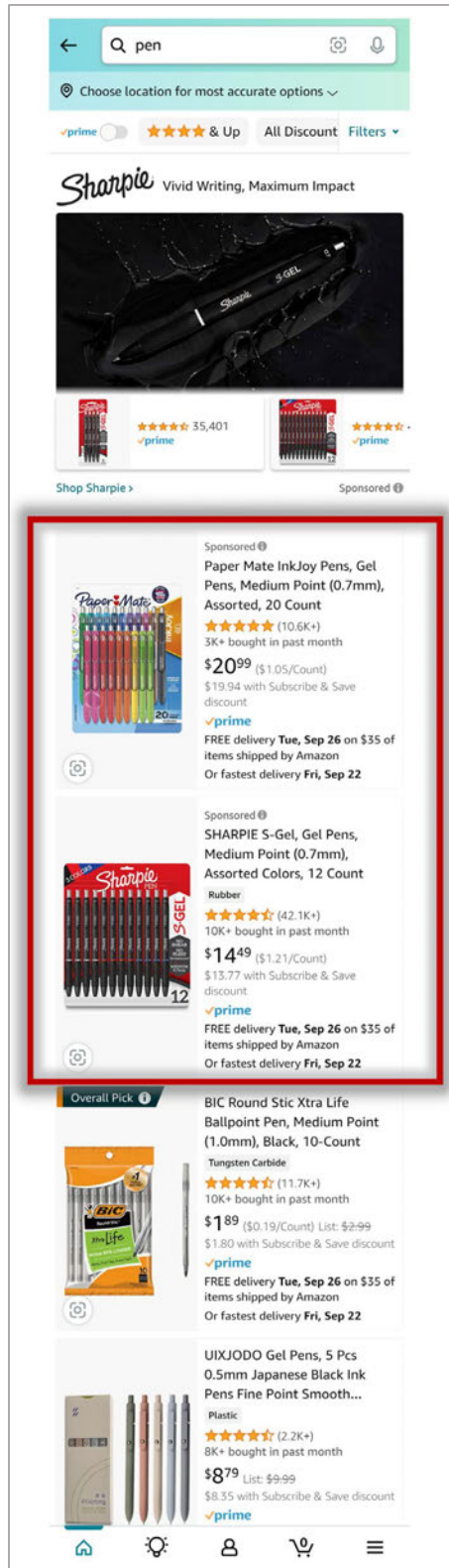
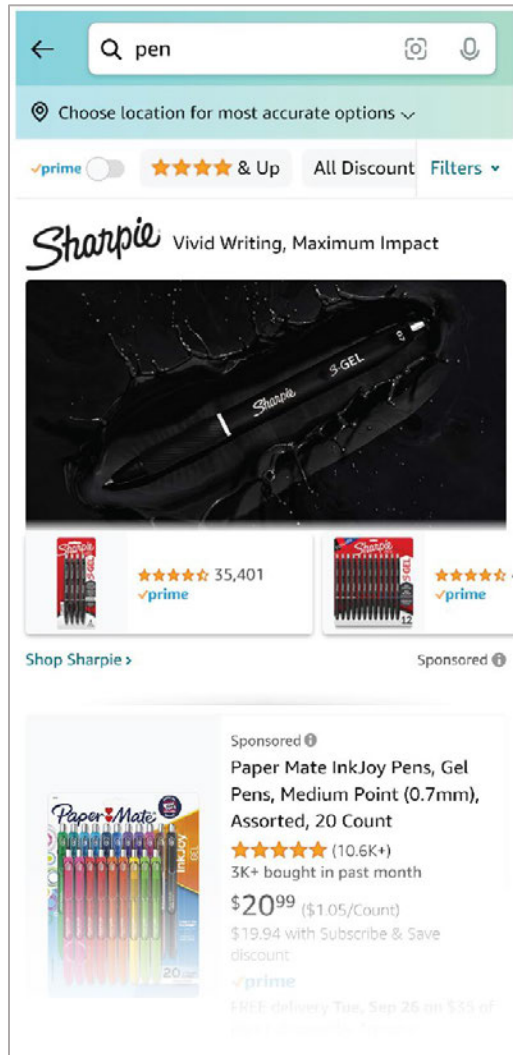


Figure 8b. Search Results Page with Sponsored Product Advertisements Highlighted in Red, Mobile App.

1 99. For shoppers on mobile devices, Sponsored Brand and Sponsored Product
 2 advertisements are often the only results visible without scrolling, as shown in Figure 8c.



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18 *Figure 8c. Search Results Page Showing Visible Screen, Mobile App.*

19 **D. Amazon Prime**

20 100. Amazon runs a subscription program called Amazon Prime. Amazon launched
 21 Prime in 2005 as a shipping subscription. For an annual fee of \$79, subscribers bought unlimited
 22 shipping on eligible items, at no per-order cost to shoppers. Amazon today continues to include
 23
 24

1 a shipping service as part of Prime, with an unlimited two-day shipping promise on eligible items
2 at no per-order cost.

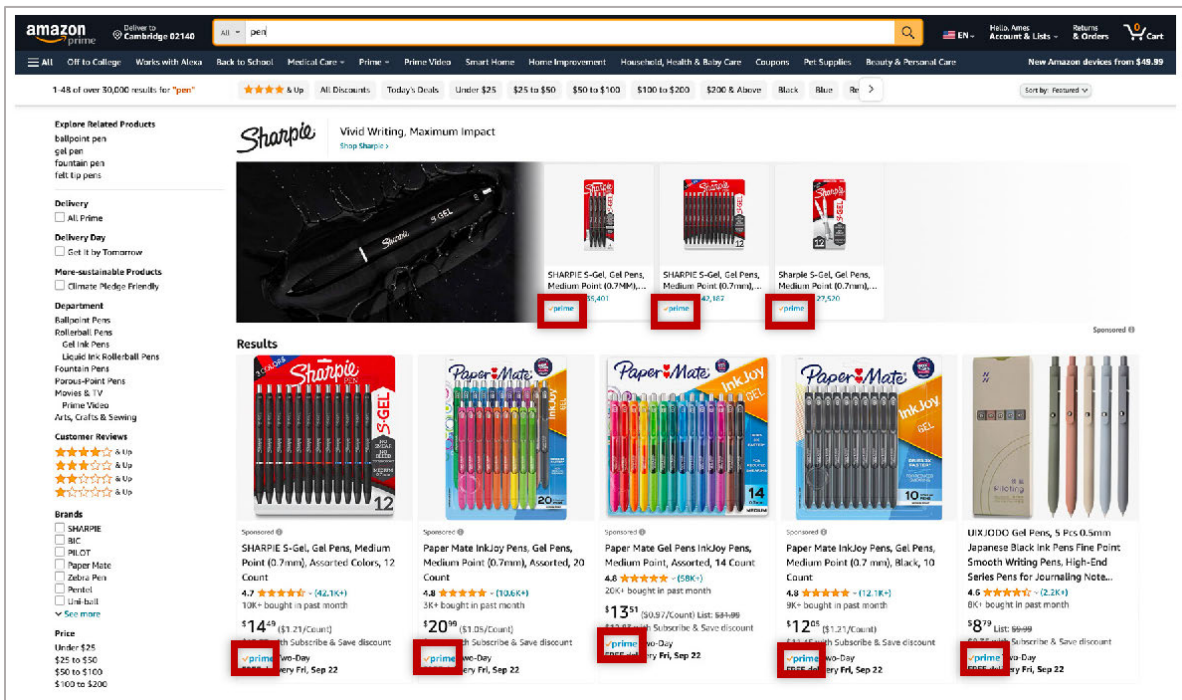
3 101. Over time, Amazon has expanded Prime from a shipping program to a
4 subscription that is, in Amazon’s internal assessment, “prohibitively expensive, if not
5 impossible, for competitors to replicate.” It includes a broad combination of products and
6 services, including many that are unrelated to online retail shopping, such as: (1) Prime Video, a
7 video-on-demand and streaming service; (2) Amazon Music Prime, an ad-free music streaming
8 service; (3) Prime Gaming, a video gaming service that includes downloadable games, exclusive
9 in-game content, and channel subscriptions and badges on Twitch, a livestreaming service
10 Amazon acquired for nearly \$1 billion in 2014; and (4) RxPass, which provides access to a list of
11 eligible prescription medications, including shipping, for a flat \$5 per month fee. Prime
12 subscribers also receive access to exclusive online shopping discounts and promotions such as
13 “Prime Day,” a highly publicized annual promotion with exclusive deals for Prime subscribers.

14 102. Amazon has increased the subscription fee for Prime from the original \$79 to
15 nearly double that price, at \$139 per year, with a monthly subscription priced at \$14.99.

16 103. Amazon charges a Prime subscription fee primarily to “create ‘skin in the game’
17 for [Prime] members.” As Amazon puts it, “Prime isn’t free; we believe the membership fee
18 drives engagement.” The Prime subscription fee makes subscribers feel as though they must
19 make the subscription fee worth it by making more purchases on Amazon. A former Amazon
20 employee who was involved in the development of Prime explained that Prime pricing “was
21 never really about the seventy-nine dollars. It was really about changing people’s mentality so
22 they wouldn’t shop anywhere else.”

1 104. According to Amazon’s internal analyses, when a customer joins Prime, “there is
 2 a causal and substantial increase to a customer’s annual spend with Amazon—buying more
 3 frequently and across a broader set of categories.” Accordingly, the average Prime subscriber
 4 spends █████ times more each year on Amazon than the average non-Prime Amazon shopper.
 5 Conversely, consumers who are not Prime subscribers are more likely to shop at other online
 6 retailers. Amazon’s rivals’ analyses also show a corresponding drop in spending on their stores
 7 when shoppers become Prime subscribers.

8 105. As shown in Figures 9a (desktop) and 9b (mobile), Amazon displays a “Prime
 9 Badge” to show Prime subscribers which items are eligible for the prepaid unlimited shipping
 10 included in the Prime subscription.



21 Figure 9a. Search Results Page with Prime Badges Highlighted in Red, Desktop Browser.

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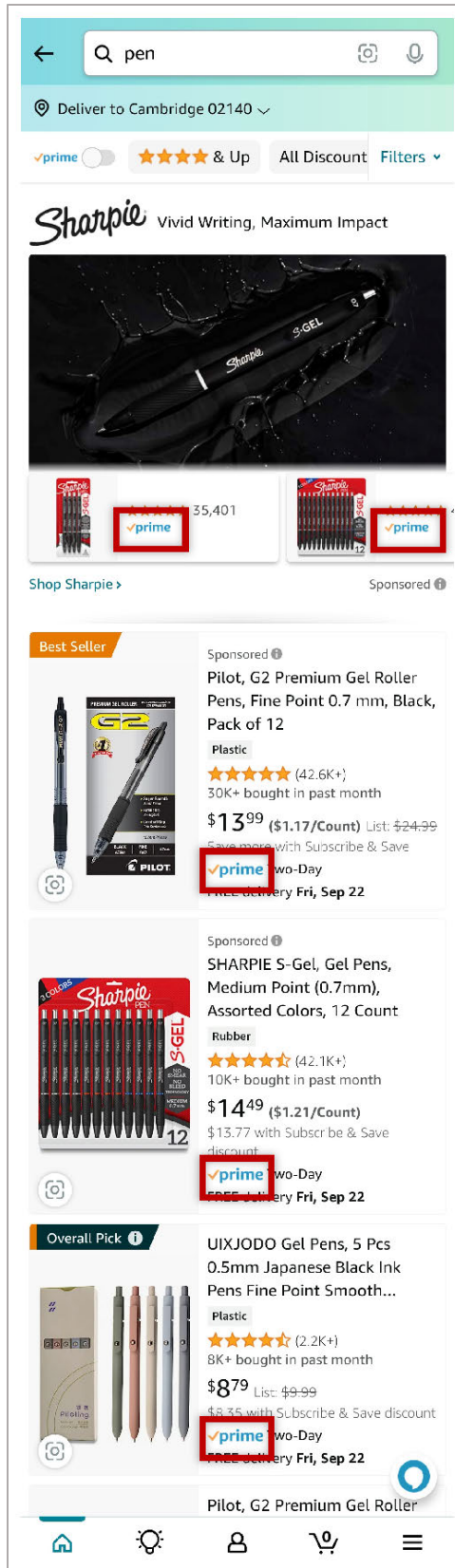
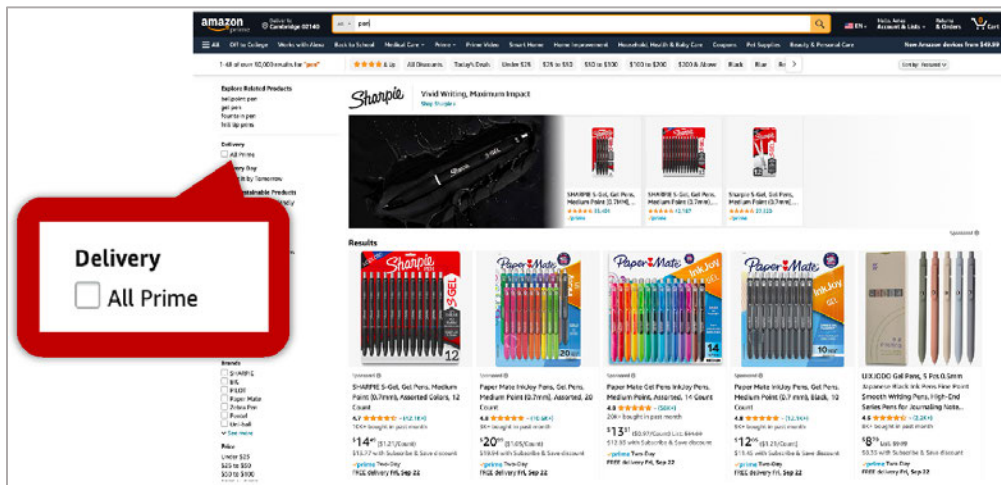
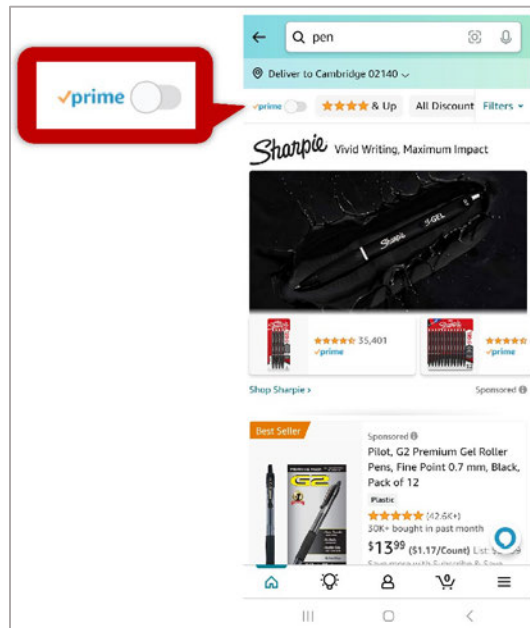


Figure 9b. Search Results Page with Prime Badges Highlighted in Red, Mobile App.

1 106. Amazon’s interfaces let Prime subscribers filter their searches to display only
 2 Prime-eligible offers. On the top left-hand side of Amazon’s desktop webpage and mobile app,
 3 Amazon displays a “Prime” filter. Once a shopper selects the filter, only Prime-eligible offers
 4 appear in search results, as shown in Figures 10a (desktop) and 10b (mobile).



12 *Figure 10a. Search Results Page with Prime Filter Enlarged in Red, Desktop Browser.*



22 *Figure 10b. Search Results Page with Prime Filter Enlarged in Red, Mobile App.*

1 107. For Amazon, signing up and maintaining as many Prime subscribers as possible is
2 a top priority. In service of this goal, Amazon has even knowingly tricked shoppers into signing
3 up for Prime and actively thwarted their efforts to cancel their subscriptions. Amazon internally
4 admits to using “misleading designs” for its user interfaces “to mislead or trick users to make
5 them do something they didn’t want to do, like signing up for a recurring bill, favoring
6 shareholder value over user value.” At multiple points, Amazon considered changing flaws in its
7 signup process that led to what it knew were “mistaken signups,” but chose not to correct those
8 issues and instead continued to trick more users into signing up for Prime. In addition to its
9 “misleading” signup process, Amazon constructed a cancellation process so lengthy, arduous,
10 and complex that it was internally codenamed the “Iliad Flow,” after Homer’s 15,693-line epic
11 poem.

12 108. As of late 2021, nearly [REDACTED] million people in the United States—[REDACTED] % of U.S.
13 households—were enrolled in Prime. In some zip codes, more than [REDACTED] % of households have a
14 Prime subscriber. Amazon’s U.S. Prime subscriber base is larger than the populations of [REDACTED]
15 countries. Amazon projects that by 2024, [REDACTED] % of all U.S. households will include at least one
16 Prime subscriber, and that Prime enrollment will be more common than paid television and
17 almost as widespread as home internet access.

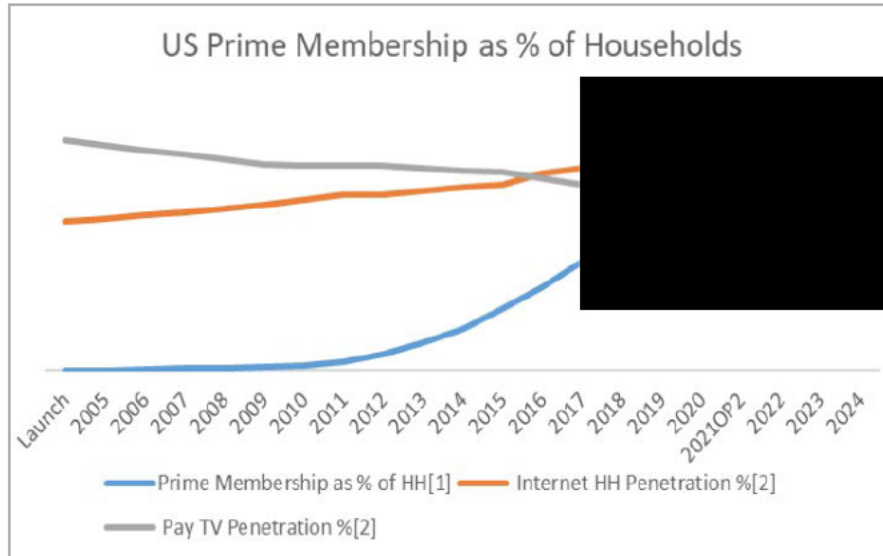


Figure 11. Source: Amazon Internal Documents.

109. In 2021, Prime subscriber purchases accounted for more than █% of the purchases by dollar amount on Amazon’s U.S. online superstore. And in 2021 alone, U.S. customers paid Amazon more than █ billion in Prime subscription fees.

E. Fulfillment By Amazon

110. Amazon sells fulfillment services and facilitates delivery under the name “Fulfillment by Amazon,” which is commonly abbreviated to “FBA.” Sellers can use FBA to fulfill orders made on Amazon.

111. “Fulfillment” refers to the process of preparing items for shipping to “fulfill” online orders. Fulfillment involves storing, picking (retrieving from storage), packaging, and preparing items purchased from online retail stores for delivery. Fulfillment operations generally occur within a specialized warehouse called a “fulfillment center.”

112. For most online sellers, fulfillment is a significant business cost.

113. Delivery is a related but distinct service. “Delivery” refers to the specific process of transporting a package from a fulfillment center to a customer’s chosen address. One

1 company may fulfill an order, then transfer the package to a different company for delivery. For
2 example, a fulfillment provider may hand a package off to a parcel carrier like the U.S. Postal
3 Service, FedEx, or UPS, to complete delivery.

4 114. Amazon both fulfills and delivers products purchased on its online superstore. In
5 2021, Amazon fulfilled nearly 92% of all orders made on Amazon across both its Marketplace
6 and Retail business units. Amazon delivers products itself or contracts with a third-party
7 delivery company to do so. Amazon has estimated that it now makes more deliveries in the
8 United States than any other company.

9 115. When online shoppers buy an item, they also expect fulfillment and delivery of
10 that item.

11 116. When a seller uses FBA, Amazon charges the seller for storing their items and
12 charges the seller a fee based on the dimensions and weight of the product when it is purchased.

13 117. Amazon has increased the fulfillment fees it charges to sellers by approximately
14 30% in just two years, from 2020 to 2022.

15 118. As explained in Part VI.B, below, sellers have little choice but to use FBA. In
16 2020, more than ██████ sellers used FBA to fulfill more than 5.5 billion orders in the United
17 States.

18 **V. AMAZON POSSESSES MONOPOLY POWER IN TWO RELEVANT MARKETS**

19 119. Structural and direct evidence show that Amazon has monopoly power in two
20 markets: (1) the online superstore market and (2) the market for online marketplace services
21 (together, the “relevant markets”).

22 120. The structural evidence of monopoly power in both markets includes Amazon’s
23 dominant market shares and the presence of significant barriers to entry, including powerful
24

1 network effects and strong economies of scale. These markets and their individual barriers to
2 entry are discussed further in Parts V.A and V.B, below.

3 121. Feedback loops between the two relevant markets further demonstrate the critical
4 importance of scale and network effects in these markets. While the markets for online
5 superstores and online marketplace services are distinct, an online superstore may operate an
6 online marketplace and offer associated online marketplace services to sellers. As a result, the
7 relationship and feedback loops between the two relevant markets can create powerful barriers to
8 entry in both markets. Amazon offers an illustration of this dynamic: Amazon's base of
9 shoppers in the online superstore market attracts sellers to buy services from Amazon in the
10 online marketplace services market. Amazon in turn relies on those sellers to increase the
11 breadth and depth of goods offered on Amazon's online superstore, which further draws
12 shoppers to Amazon. In addition, Amazon imposes restrictions on how shoppers can purchase
13 its Prime subscription program to artificially increase barriers to entry in the online superstore
14 and online marketplace services markets. These scale and network effects reinforce Amazon's
15 monopoly power in both relevant markets, as explained in Part V.C, below.

16 122. Direct evidence also demonstrates Amazon's monopoly power. Amazon has
17 continually exercised its monopoly power and degraded the customer experience by showing
18 irrelevant advertisements over more relevant results and by steering shoppers toward its own—
19 often inferior—products. Amazon worsens quality and hikes prices for both shoppers and
20 sellers, all without denting—and while in fact expanding—its dominance. This and other direct
21 evidence of Amazon's monopoly power are discussed further in Part V.D, below.

22 **A. Amazon Has Durable Monopoly Power In The Online Superstore Market**

23 123. Amazon has durable monopoly power in the online superstore market.
24

1 **1. The U.S. online superstore market is a relevant market**

2 124. The online superstore market is a relevant product market. Online superstores
3 compete to build long-term relationships with consumers across multiple purchases of a variety
4 of items. Online superstores do so by offering a distinct set of features that reduce time and
5 effort for shoppers online, thereby encouraging shoppers to return to those online superstores for
6 a broad swath of goods. Because of these and other features, brick-and-mortar stores and online
7 stores with a more limited selection are not reasonably interchangeable with online superstores
8 for the same purposes and are thus properly excluded from the online superstore market.

9 125. The relevant geographic market is the United States.

10 **a. Online superstores offer shoppers a unique set of features**

11 126. An online superstore offers an extensive breadth and depth of product selection
12 accessible through an online storefront. “Breadth” refers to product offerings across multiple
13 categories, such as sporting goods, kitchen goods, apparel, and consumer electronics. “Depth”
14 refers to product selection within a given product category, such as a range of different brands of
15 a product with different price points, levels of quality, sizes, and colors.

16 127. Consumers incur shopping costs beyond the prices paid for purchased items. For
17 example, when considering a purchase, shoppers must determine which stores carry specific
18 items. Shoppers then often conduct research, including learning about the items’ prices and
19 features, reading consumer reviews, and comparing similar items. Shoppers value stores that
20 reduce search costs and the ability to discover new items that they may not have been initially
21 searching for while shopping. Many consumers also value shopping for different types of goods
22 at a single store to reduce overall shopping costs.

1 128. Online superstores provide shoppers a unique offering: 24/7 access to a broad and
2 deep product selection accompanied by a distinct set of features that meaningfully reduce the
3 time and effort shoppers expend online. These features include tools to help shoppers quickly
4 search for and identify their desired items, compare different items, and purchase and receive
5 items, all from a single website or app. Online superstores provide these features to develop
6 long-term relationships with shoppers, entice shoppers to buy more products during a single
7 shopping trip, and encourage them to come back again.

8 129. Several characteristics distinguish online superstores from other forms of retail,
9 including brick-and-mortar stores and online stores with comparatively limited selection.

10 130. First, online superstores offer a single destination for shoppers to browse a large
11 and diverse selection of goods from multiple brands across a wide range of categories, reducing
12 consumers' shopping costs and encouraging customers to make an online superstore a preferred
13 destination for a variety of shopping needs.

14 131. By offering a broad selection, online superstores reduce the shopping costs of
15 visiting multiple stores for goods spanning multiple categories. By offering a deep selection
16 within any given category, online superstores decrease the shopping costs of visiting multiple
17 category-specific or brand-specific stores to identify the best options.

18 132. The breadth and depth of selection available at online superstores encourages
19 shoppers to return to and shop at those stores more regularly. Shopping regularly at the same
20 online superstore leads to reduced shopping costs by increasing shoppers' familiarity with an
21 online superstore's format, features, offerings, and customer service process. Repeated use of an
22 online superstore can also provide confidence about its reputation and quality. Increased
23 familiarity, a positive reputation, and perceived high quality all make it more likely that a
24

1 shopper will choose an online superstore as a preferred destination for purchasing retail goods
2 online.

3 133. Industry participants, including Amazon, have long recognized an online
4 superstore’s unique ability to leverage a broad and deep selection of goods to compete for repeat
5 customers. For example, Mr. Bezos explained in his 1999 letter to Amazon shareholders that
6 “[e]ach new product and service we offer makes us more relevant to a wider group of customers
7 and can increase the frequency with which they visit our store. . . . The more frequently
8 customers visit our store, the less time, energy, and marketing investment is required to get them
9 to come back again.”

10 134. Second, online superstores are not limited to traditional operating hours that
11 constrain brick-and-mortar retailers. Instead, online superstores offer a quick, on-demand
12 shopping experience at all times of the day or night. Online superstores allow shoppers to
13 browse and buy across a wide variety of goods 24 hours a day, 7 days a week, 365 days a year.
14 Shoppers can also pause and resume their shopping session on an online superstore at any time.

15 135. Third, shoppers can make purchases on online superstores anywhere they have
16 internet access, through a website or an app on a desktop, tablet, or smart phone.

17 136. Fourth, online superstores offer sophisticated filtering and discovery tools,
18 allowing shoppers to browse and sift through the store’s entire catalog quickly and efficiently.

19 137. Online superstores also have access to data on items consumers have previously
20 searched for and purchased. Online superstores may use this data to offer repeat visitors tailored
21 and personalized shopping experiences that can, for example, include recommendations for
22 future purchases based on past search or purchase behavior.

1 138. Fifth, online superstores offer research tools, including detailed information on a
2 given item and a large volume of authentic, customer-generated ratings and reviews. Online
3 superstores give shoppers a single point of access to these research tools, including text
4 descriptions, photos, videos, and user reviews. The product detail pages available on online
5 superstores often include far more information than physical packaging can accommodate. For
6 example, a product detail page can include links to user guides and product documentation that
7 would otherwise only be accessible inside of a product’s packaging.

8 139. Sixth, online superstores provide shoppers a familiar and convenient checkout
9 experience. Online superstores reduce shopping costs by allowing customers to store personal
10 information like payment details, home addresses, passwords, and other sensitive information.
11 For example, Mr. Bezos testified that when a consumer can avoid “typ[ing] in . . . payment
12 credentials” like their “address and credit card number . . . every single time” they make a
13 purchase, “you tend to get more repeat business from customers.”

14 140. Seventh, online superstores offer shoppers a convenient and consolidated post-
15 purchase experience. Shoppers who buy multiple items from an online superstore can often
16 schedule them to be delivered together, limiting the need to keep track of multiple delivery times
17 and decreasing packaging. Mr. Bezos testified that shoppers “don’t like to receive . . . ten
18 packages when they can receive one package with ten things in it.”

19 141. This combination of features distinguishes online superstores from brick-and-
20 mortar stores and from other online stores with comparatively limited selection. Even though
21 such stores may price certain items comparably with online superstores, shoppers do not
22 seriously consider those stores as reasonable alternatives to online superstores for a significant
23 portion of their shopping needs. Online superstores differentiate themselves by offering a
24

1 particular shopping experience to the sizeable group of consumers who view that experience as
2 distinct and prefer to shop at online superstores.

3 ***b. Online superstores are not reasonably interchangeable with***
4 ***brick-and-mortar stores***

5 142. Online superstores are distinct from, and not reasonably interchangeable with,
6 brick-and-mortar stores. From start to finish, online superstores provide a vastly different
7 shopping experience from physical stores.

8 143. Unlike online superstores, brick-and-mortar stores require shoppers to travel to a
9 specific location. As Mr. Bezos noted in his 2020 letter to Amazon shareholders, “[r]esearch
10 suggests the typical physical store trip takes about an hour” and requires “driving, parking,
11 searching store aisles, waiting in the checkout line, finding your car, and driving home.” Mr.
12 Bezos contrasted this experience with shopping on Amazon, where more than a quarter of all
13 purchases are completed “in three minutes or less,” and half of all purchases take less than
14 fifteen minutes.

15 144. Brick-and-mortar stores can display only items that fit on the store’s limited
16 physical shelf space, while online superstores can offer a practically unlimited number of items
17 for sale. As Amazon’s then-Vice President of Physical Stores explained in 2018, “whenever you
18 are working offline, you can’t have the endless aisle that you have online, and so when you’re
19 working offline you really have to curate.”

20 145. Amazon recognizes that its unlimited shelf space appeals to shoppers and
21 distinguishes its online store from brick-and-mortar stores. As Amazon has reminded its
22 shareholders every year since 1998, “[w]e brought [shoppers] much more selection than was
23
24

1 possible in a physical store . . . and presented it in a useful, easy-to-search, and easy-to-browse
 2 format in a store open 365 days a year, 24 hours a day.”

3 146. Amazon internally contrasts the benefits of the depth of selection available in its
 4 online superstore with the “clear gaps” in selection at physical stores. As shown in Figure 12
 5 below, an Amazon presentation emphasized that searching for a “Thermal Water Bottle” on
 6 Amazon generated 40 responsive items across a variety of brands, features, and sizes on the first
 7 page of search results. A “typical department store aisle,” however, may display “at most” only
 8 “10 of these products in the store.”



21 *Figure 12. Amazon Slide Comparing Online Search Results to Brick-and-Mortar Shelf Space.*

22 *Source: Amazon Internal Documents.*

1 147. Brick-and-mortar stores also cannot tailor or personalize a consumer’s shopping
2 experience in the same way an online superstore can. Physical stores have the same layout for
3 any shopper browsing their selection at any given time.

4 148. The process of searching and shopping for items at brick-and-mortar stores is
5 much different than the process of searching and shopping on an online superstore. Shoppers on
6 online superstores can use sophisticated digital filtering and search tools to browse and select
7 items, instead of physically traveling up and down aisles or asking a store employee for help.
8 Online superstore shoppers can make purchases without waiting in physical checkout lanes. And
9 online superstore purchases typically ship to the shopper’s address. On the other hand, shoppers
10 can see products in person before buying at brick-and-mortar stores and can typically take
11 purchased items home immediately. As Amazon’s then-Vice President of Physical Stores
12 explained in a 2018 interview, “another thing you can do in offline retail that you can’t do online
13 is customers can come in and touch the products themselves . . . try those products first person,
14 get a feel for them, [and] talk to an associate.”

15 149. Online and brick-and-mortar stores also involve distinct operations. Because
16 different expertise is required to manage an online store, companies that operate both typically
17 run them through separate divisions. For example, a Walmart executive testified that managing
18 inventory and shelf space, a necessity at brick-and-mortar stores, is a different skill set than
19 managing web traffic for an online store. Amazon’s CEO, Andy Jassy, has publicly emphasized
20 that “[t]he things you think about in physical retail” from an operational perspective, like
21 “lighting,” “parking,” and “physical merchandising,” are “radically different things than you
22 think about in an online retail environment where technology is really driving the entire
23 experience.”

1 c. ***Online superstores are not reasonably interchangeable with***
2 ***other online stores that lack breadth and depth of product***
3 ***selection***

4 150. Online superstores are also distinct from, and not reasonably interchangeable
5 with, online stores with limited product selection, including online stores that offer products
6 primarily from a single brand. Whether considered individually or collectively, online stores
7 with limited selection are not reasonable substitutes to become a shopper’s preferred destination
8 for their online purchases for a broad swath of retail goods. Shopping at numerous limited-
9 selection online stores increases shopping costs, both for individual shopping needs and in
10 aggregate across a customer’s total purchases. Consumers’ overall shopping costs would
11 increase dramatically if they tried to replace online superstores with shopping at multiple
12 limited-selection online stores.

13 151. Some consumers may prefer to shop at limited-selection online stores for certain
14 items. For example, a consumer may turn to such an online store because it specializes in unique
15 or niche goods not available on an online superstore, because the shopper has particular brand
16 loyalty, because the shopper finds the online store particularly trustworthy and reliable (because,
17 for example, it screens for counterfeit goods or fake reviews), or because the non-superstore
18 offers specialized or expert knowledge about the items it sells.

19 152. Limited-selection online stores do not provide an experience that is reasonably
20 interchangeable with an online superstore because, individually and collectively, they cannot
21 effectively compete to become a shopper’s preferred destination for online purchases given the
22 increased shopping costs associated with shopping at online stores that lack the breadth and
23 depth of online superstores.

1 153. Online stores with a limited product selection lack breadth. A shopper who must
2 visit multiple online stores to compile a set of desired goods across different product categories
3 faces higher shopping costs than a shopper who can search for and complete those cross-category
4 purchases at a single online superstore.

5 154. RainOrShineGolf.com—a retailer of indoor golf simulator equipment—is an
6 illustrative example of an online store that lacks the breadth of an online superstore. Golf
7 simulator equipment such as golf ball launch monitors, mats, nets for hitting balls, and software
8 to analyze performance collectively allow a customer to practice golf indoors. While Rain or
9 Shine Golf and Amazon both sell indoor golf simulator equipment, they offer consumers
10 different shopping experiences and a vastly different overall product due to the difference
11 between the breadth of product selection at each online store. Shoppers may choose Rain or
12 Shine Golf for occasional category-specific purchases, but due to its limited breadth it could not
13 become a consumer’s preferred destination for a broad swath of other online purchases.

14 155. Unlike limited-selection online stores, an online superstore offers a single
15 destination for a shopper to browse, buy, and return to for repeat purchases of a much wider
16 array of goods. On an online superstore like Amazon, shopping for a golf simulator may also
17 yield cross-category suggestions for accessories like golf gloves, golf clubs, or golf bag push
18 carts. Moreover, if the need arises or mood strikes, a consumer shopping on an online superstore
19 like Amazon could resupply the correct size of kitchen trash bags they previously purchased and
20 add a new board game that the online superstore recommends based on their prior shopping
21 behavior, all during a single shopping session. By contrast, a consumer who uses Rain or Shine
22 Golf to buy a golf simulator but would also like to make a set of additional purchases would need
23 to visit and do business with numerous other online stores. Those visits would incur the added
24

1 shopping costs of finding those additional items, completing the various purchase processes with
2 different logins and credentials (if the shopper can remember them), and arranging for multiple
3 deliveries.

4 156. Many online stores that lack breadth of product selection also lack depth,
5 especially online stores that primarily or exclusively feature their own brands. A shopper forced
6 to visit multiple online stores to find the specific item that matches their needs faces higher
7 shopping costs than a shopper who can compare across a depth of options for that item on an
8 online superstore.

9 157. Tumi.com is another illustrative example. Shoppers can purchase a range of
10 luggage, backpacks, and bags at Tumi.com, but the items sold at Tumi.com are primarily Tumi's
11 own brand, limiting the depth of options for any particular item. By contrast, a shopper looking
12 for luggage on an online superstore like Amazon can browse across options from a wide variety
13 of brands that may include Tumi as well as other brands. The shopper can peruse these options
14 by filtering across features like brand, price point, size, and colors without incurring the
15 additional search costs present in visiting all of the online stores operated by each brand.

16 158. Furthermore, the breadth and depth of product selection on online superstores
17 increases access to valuable cross-category consumer data. This data amplifies the ability of
18 online superstores to provide shoppers with tailored and personalized shopping experiences. As
19 an online superstore, for example, Amazon recognizes in internal documents that
20 “[p]ersonalization is a competitive advantage.” This advantage is driven both by Amazon's
21 access to extensive customer data and its “breadth of content that can be scoped for a particular
22 interest, personalized, and targeted to the right customer.”
23
24

1 159. These additional capabilities of online superstores influence consumers’ shopping
2 behavior. Amazon attributed sales of more than █████ billion on its online store to its
3 personalization systems and technology in the first nine months of 2021.

4 160. Because limited-selection online stores do not have the same breadth and depth of
5 selection offered by online superstores, they have access to less consumer data across categories
6 and cannot replicate the personalization features of online superstores, reducing the ability of
7 limited-selection online stores to compete with online superstores.

8 161. Online superstores treat rival online superstores differently than limited-selection
9 stores. For example, Amazon does not allow other online superstores like Walmart.com to sell
10 through Amazon. Yet Amazon encourages hundreds of thousands of sellers—including well-
11 known brands that sell through their own online stores or limited-selection online stores—to do
12 so. When asked why Amazon treats Walmart.com differently, Mr. Bezos testified, “It’s just
13 different because of the scale and [be]cause of the competitive situation and so on. It’s just not
14 similar.”

15 *d. The online perishable grocery category is properly excluded from*
16 *the online superstore market*

17 162. Online purchases of perishable grocery products are not part of the online
18 superstore market. Perishable groceries are foods that cannot be safely stored at room
19 temperature, including fresh fruits and vegetables, raw meat, and frozen items. Though some
20 online superstores may also offer online purchases of perishable grocery products, this distinct
21 business line is not part of the relevant market and is excluded from the market share numbers in
22 Part V.A.2, below.

1 163. Consumers' experiences when shopping online for perishable groceries differ
2 from their experiences purchasing other retail goods. For example, consumers shopping for
3 online perishable grocery products typically must select a specific time for the perishable grocery
4 products to be delivered, which often also requires the customer to be present at the time of
5 delivery to be able to promptly store those items. Both Walmart.com's and Amazon's online
6 perishable grocery businesses require shoppers to choose a delivery window or "time slot."
7 Neither Walmart.com nor Amazon typically require shoppers to choose time slots when
8 purchasing other products online.

9 164. The process for packaging and delivering perishable groceries to shoppers who
10 ordered them online also differs from non-perishable grocery orders. Perishable groceries
11 require special handling, often including refrigeration or freezing, as well as quick and careful
12 delivery to avoid damage or rot. As such, perishable grocery delivery requires specialized
13 storage facilities with refrigeration systems that serve a smaller geographic footprint.

14 165. Competition for online perishable grocery sales is also different from competition
15 between online superstores. Competition for online perishable grocery sales is generally more
16 localized, whereas online superstore competition is nationwide. This difference is because
17 grocery quality and shelf life are seasonal and regional. For example, perishable fruit may be
18 available only during certain times and in certain regions. As a result, Amazon generally sets
19 regional prices for perishable grocery items, whereas items Amazon sells through its online
20 superstore usually have a single, nationwide price.

21 *e. The relevant geographic market is the United States*

22 166. The United States is the relevant geographic market for the online superstore
23 market. Online superstores that serve consumers shopping for items to be delivered within the
24

1 United States generally do not compete for those consumers with online superstores that
2 primarily serve consumers shopping for items to be delivered outside of the United States.
3 Consumers shopping online for items to be delivered within the United States generally make
4 purchases from market participants' U.S. businesses and U.S.-facing online stores. For example,
5 Amazon operates an online storefront for shoppers in the United States (Amazon.com) separately
6 from its storefront for shoppers in the United Kingdom (Amazon.co.uk). The difference is not
7 just in their URLs; rather, despite being in the same language, they offer different products, at
8 different prices, under different shipping terms, and present unique search results and
9 advertisements.

10 167. Online superstores that primarily serve shoppers seeking delivery outside the
11 United States are not reasonable substitutes for shoppers seeking delivery within the United
12 States because they offer a shopping experience tailored to those other countries, with different
13 currencies, prices, customs and border control conditions, and shipping terms. In the ordinary
14 course of business, industry participants identify competitors for U.S. shoppers separately from
15 competitors that serve shoppers seeking items to be delivered to other countries.

16 2. Amazon has a dominant share of the online superstore market

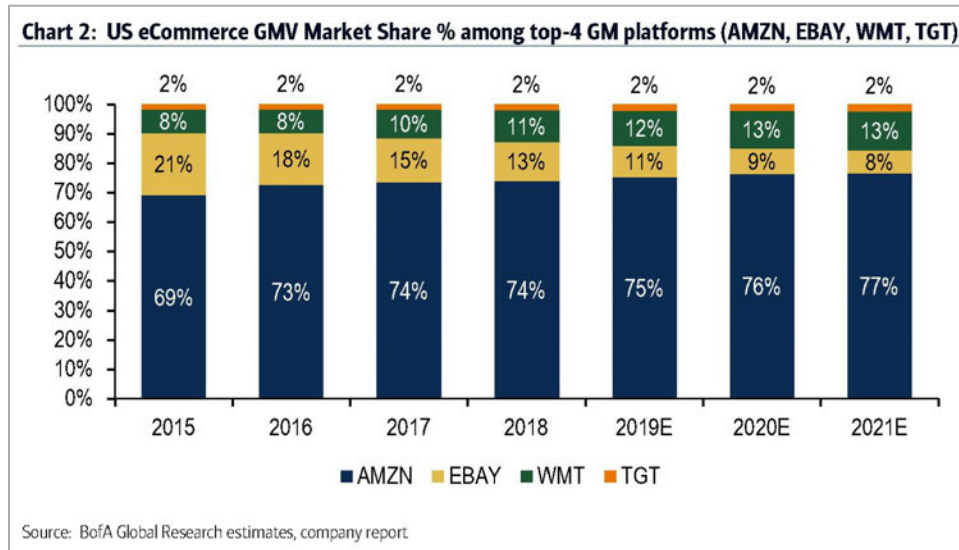
17 168. Amazon maintains a dominant market share when compared to other online
18 superstores. Documents and data, both from Amazon and industry analysts, confirm that
19 Amazon's share of the overall value of goods sold by online superstores is well above 60%—and
20 rising.

21 169. Amazon's market share, when considered in conjunction with other
22 characteristics of the online superstore market including its significant barriers to entry (*see* Parts
23 V.A.3 and V.C, below), demonstrates Amazon's monopoly power.

1 170. Gross Merchandise Value (“GMV”) measures the total sales value of goods sold
 2 to customers during a given time period and is commonly used to track the market share of
 3 online stores. Other financial indicators, such as revenue or net sales, may factor in commission
 4 fees or discounts that can vary both within a single store and across different stores. GMV does
 5 not. Accordingly, a calculation of Amazon’s GMV captures the total value of goods sold
 6 through both its Retail and Marketplace arms. Third-party reports, including those utilized by
 7 Amazon, regularly use GMV to compare Amazon to other firms.

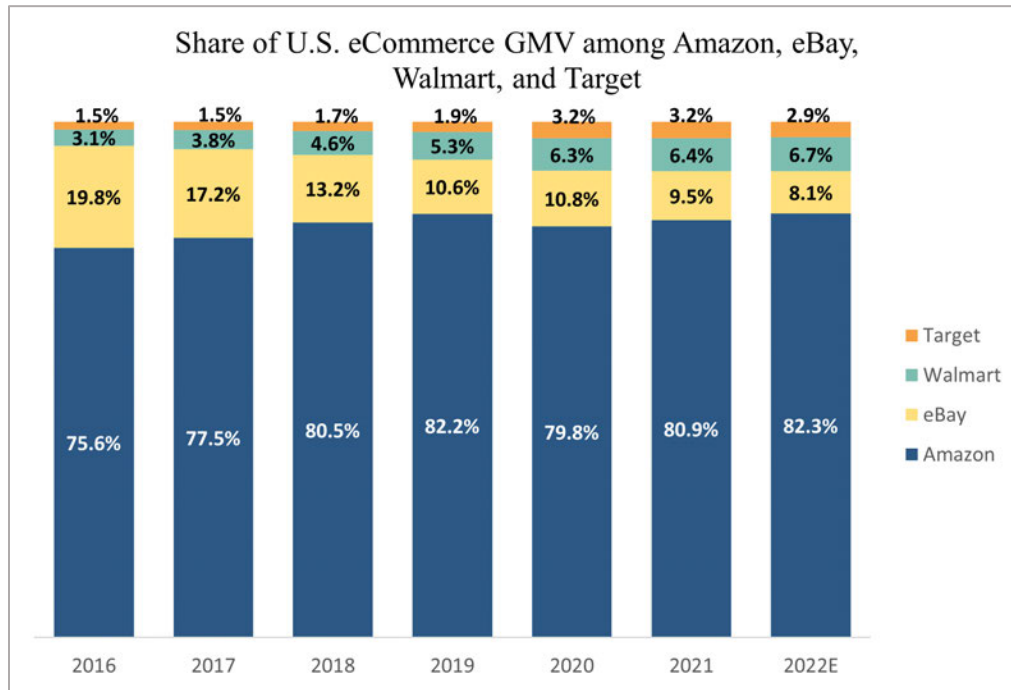
8 171. When measured by GMV, Amazon’s business vastly overshadows that of all
 9 other online stores in the United States.

10 172. Industry analysts and industry participants often track Amazon’s U.S. online store
 11 by reference to Walmart, Target, and eBay. According to third-party reports that assess market
 12 share across these “top-4 general merchandise platforms,” Amazon has maintained an estimated
 13 market share of more than 69% of GMV since 2015, with that share growing over time.



22 *Figure 13. Bank of America Global Research.*

1 173. Other commercially available data, including recently reported statistics from
 2 eMarketer Insider Intelligence, a widely cited industry market research firm, confirms Amazon’s
 3 sustained dominance across this same set of companies, with an estimated market share of more
 4 than 82% of GMV in 2022.



15 *Figure 14. Source: eMarketer Insider Intelligence (percentages rounded).*

16 174. Amazon internally maintains a list of “Super Image Competitors” (SICs), which,
 17 while not necessarily an appropriate measure of online superstores, nonetheless confirms
 18 Amazon’s dominance. Amazon defines SICs to be competitors that [REDACTED]

19 [REDACTED]

20 [REDACTED] As of December 2021, Amazon designated [REDACTED] as SICs. Amazon’s list
 21 of SICs includes stores that may lack the breadth and/or depth of selection necessary to qualify
 22 as online superstores. Yet even using Amazon’s list of SICs, Amazon had a 72.5% market share
 23 based on U.S. GMV among this set of online stores in 2021.

1 175. Amazon also calculates “Net Promoter Scores” for itself and companies Amazon
2 identifies as “key competitors.” Net Promoter Score is a metric that measures the willingness of
3 customers to recommend a company’s products or services to others. This metric is based on
4 how consumers rate stores on various attributes including the “ease of ordering,” the “overall
5 selection of products available,” the “ability to find what you wanted quickly,” the “quality of
6 product recommendation based on your preferences,” and the “usefulness of customer reviews to
7 make a purchase decision.” Amazon uses Net Promoter Scores and changes in those scores as a
8 “mechanism to monitor the competitive landscape.” In 2021, Amazon calculated and tracked
9 Net Promoter Scores for [REDACTED] online stores (including Amazon’s [REDACTED]
10 [REDACTED] available on Amazon.

11 176. Amazon considers only [REDACTED] “key competitors” across more than
12 [REDACTED] of the [REDACTED]
13 [REDACTED] Other companies identified in these studies do not carry the breadth and/or depth of
14 selection necessary to qualify as online superstores. For example, [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 177. While the full list of companies tracked by Amazon for Net Promoter Scores is
18 overinclusive, Amazon still had a 60.8% share based on U.S. eCommerce GMV (excluding
19 online perishable grocery sales) among this set of online stores in 2021.

20 **3. Amazon’s dominant position in the online superstore market is**
21 **protected by significant barriers to entry**

22 178. Significant barriers limit entry into the online superstore market including scale
23 economies and network effects, reputational barriers, and shopper switching costs. Feedback
24

1 loops between online superstores and the online marketplace services market also contribute to a
2 unique barrier to entry, as discussed in Part V.C, below.

3 179. Scale is a critical factor for success in the online superstore market. Amazon
4 itself has touted its scale as a key differentiator from medium-sized or single-category online
5 stores. Mr. Bezos wrote that “[o]nline selling (relative to traditional retailing) is a scale business
6 characterized by high fixed costs and relatively low variable costs. This makes it difficult to be a
7 medium-sized e-commerce company,” and “difficult . . . for single-category e-commerce
8 companies to achieve the scale necessary to succeed.” According to Mr. Bezos, “build[ing] an
9 important and lasting company . . . in e-commerce” simply “isn’t going to work in small
10 volumes.” Economies of scale are a barrier to entry in this market that new firms must overcome
11 in order to enter and compete.

12 180. The online superstore market is also characterized by network effects, where the
13 value of the service increases as more people use it. Network effects are not intrinsically
14 harmful, but they can present barriers to entry and to competition, reinforcing market power and
15 insulating incumbents.

16 181. One aspect of the importance of scale and related network effects in the online
17 superstore market stems from user-generated reviews. For example, as Amazon’s shopper base
18 has grown, so too has the number of product ratings and reviews available on its store, a
19 feedback loop that further draws in new shoppers by enabling them to quickly learn more about
20 unfamiliar products or sellers. In other words, by leaving helpful ratings and reviews, Amazon’s
21 shoppers themselves provide immense value to future Amazon shoppers. Amazon benefits from
22 this self-reinforcing dynamic, which would be difficult and expensive for new entrants to
23 reproduce.

1 182. Another source of network effects in the online superstore market is access to
2 valuable shopper data, which allows online superstores to tailor and personalize shopping
3 experiences. For example, Amazon records information about the items a shopper searches for,
4 views, places in their cart, and pays for, and the mechanism the shopper uses to pay. This type
5 of data allows an online superstore to streamline a shopping experience and target specific
6 products to certain customers. As with other network effects, the more scale an online superstore
7 gains, the more powerful this effect becomes. Prospective entrants would have to acquire a
8 sufficient shopper base to obtain enough data to offer this level of personalization.

9 183. The online superstore market also exhibits reputational barriers to entry.
10 Reputational barriers to entry arise when entrants need to establish trust among customers to
11 compete meaningfully against incumbents. Because online superstores allow and encourage
12 repeat purchasing, they are able to develop positive reputations with shoppers that a prospective
13 entrant starting from scratch would need to cultivate.

14 184. Switching costs also are a barrier to entry in the online superstore market.
15 Mr. Bezos recognized this dynamic and its implications in a speech in 1998, stating that
16 “switching costs long-term . . . should actually be higher in the online world than in the physical
17 world” because “[i]n the online world, businesses have the opportunity to develop very deep
18 relationships with customers, both through accepting preferences of customers and then
19 observing their purchase behavior over time, so that you can get that individualized knowledge
20 of the customer and use that individualized knowledge of the customer to accelerate their
21 discovery process.” For example, Amazon retains shoppers’ payment, shipping, and order
22 history information. Switching to a new online superstore would require reentering payment and
23 shipping information and forgoing the benefits of viewing past order history. Shoppers also
24

1 develop routines while shopping at online superstores that can be difficult to break, particularly
2 given the additional costs of gaining familiarity with the format, features, and policies of a
3 different store.

4 185. Finally, as described in detail below in Part VI, Amazon engages in an illegal
5 course of conduct that raises barriers to entry and competition, making it artificially and
6 substantially more costly and time-consuming for would-be competitors to enter the online
7 superstore market.

8 **B. Amazon Has Durable Monopoly Power In The Online Marketplace Services**
9 **Market**

10 186. Amazon has durable monopoly power in the online marketplace services market.

11 187. Online marketplace services include: (a) access to a significant base of shoppers
12 in the United States who use the online marketplace to find and buy goods; (b) an interface for
13 consumer search that allows sellers' products to be discovered and purchased without shoppers
14 needing to leave the online marketplace; (c) the ability for sellers to set the prices for their goods
15 on the online marketplace; (d) the ability for sellers to create and maintain product detail pages
16 with product information and specifications on the online marketplace; and (e) the ability for
17 sellers to display to potential shoppers on the online marketplace an array of customer-generated
18 ratings and reviews.

19 **1. Online marketplace services is a relevant market**

20 188. Online marketplace services is a relevant product market. Online marketplaces
21 offer sellers a distinct set of services. Chief among these services is access to an established
22 online U.S. customer base. Purchasing online marketplace services is not reasonably
23 interchangeable with selling as a vendor to either an online or a brick-and-mortar retail store.

1 Nor are online marketplace services reasonably interchangeable with the offerings of online
2 software-as-a-service providers. Some providers of online marketplace services also offer
3 fulfillment services, which sellers can purchase in addition to online marketplace services.

4 189. The relevant geographic market for online marketplace services, which provide
5 sellers access to U.S. shoppers, is worldwide.

6 *a. Online marketplace services offer sellers a unique set of features*

7 190. Online marketplace services encompass a suite of services that facilitate sellers
8 making online sales to U.S. shoppers without having to directly operate an online store. The
9 sellers who typically purchase online marketplace services are businesses seeking to sell goods
10 directly to U.S. shoppers by relying on the marketplace to attract shoppers rather than attracting
11 shoppers solely on their own. These sellers use online marketplace services so that U.S.
12 shoppers can find and buy the sellers' offered items.

13 191. Access to a large customer base is the most important characteristic of an online
14 marketplace. Amazon advertises to prospective sellers that its marketplace allows them "to
15 reach the hundreds of millions of customers who visit Amazon to shop," which can "[r]educer the
16 time, effort, and money [they] spend on customer acquisition." Similarly, Walmart advertises
17 that its marketplace gives sellers access to "a built-in audience of frequent shoppers and loyal
18 customers" and tells sellers that "[y]ou bring great products. We bring millions of customers."
19 eBay tells sellers that "millions of buyers are waiting."

20 192. Industry participants recognize online marketplace services as a distinct retail
21 product. Many industry observers track online marketplaces separately from other types of
22 online commerce.

1 ***b. Online marketplace services are not reasonably interchangeable***
2 ***with selling as a vendor***

3 193. Selling products as a vendor to a retail store, whether online or offline, who then
4 sells to shoppers is not reasonably interchangeable with buying online marketplace services.

5 194. Selling products as a vendor to a retailer involves a pricing and transaction
6 structure different from buying online marketplace services. A vendor generally sells goods to a
7 retailer for a wholesale price. The retailer takes legal title to the goods and can sell them to
8 shoppers. Online marketplace services providers price their services differently, typically
9 including a percentage-based commission fee. The seller retains legal title to the goods and sells
10 those goods directly to shoppers on the online marketplace.

11 195. A vendor typically sells goods in batches to retailers, such as in a wholesale
12 relationship. A seller operating through an online marketplace, by contrast, typically sells goods
13 one at a time to online shoppers.

14 196. Vendor arrangements also exhibit different features and characteristics from
15 online marketplace services. A vendor usually gives up the ability to set the price offered to
16 shoppers, and the retailer typically sets the shopper-facing prices. But sellers who buy online
17 marketplace services retain the ability to set and adjust prices to shoppers. Many merchants
18 prefer purchasing online marketplace services to vending to a retailer so that they can retain the
19 ability to set their own prices to final customers.

20 197. Selling as a vendor often requires the vendor to give physical control of its goods
21 to the retailer. That reduces the vendor's ability to decide which goods to offer and when to
22 make goods available. Unlike the retailer model, an online marketplace services provider allows
23 sellers to maintain control over which of its goods will be offered at what times.

1 198. Selling as a vendor also limits the seller’s access to retail sales data, which is
2 usually controlled by the retailer. Some providers of online marketplace services, including
3 Amazon, provide customer-level sales and shopping data to sellers but not vendors.

4 199. Industry participants recognize that these are important distinguishing
5 characteristics. For example, Walmart tells sellers that using its marketplace allows them to
6 “[r]emain in control of your business.”

7 ***c. Online marketplace services are not reasonably interchangeable***
8 ***with services sold by SaaS providers***

9 200. Software-as-a-service (“SaaS”) providers, including Shopify and BigCommerce,
10 sell software that enables sellers to create and maintain their own direct-to-consumer online
11 stores. Sellers use this software to build and customize their own eCommerce websites. These
12 SaaS providers’ services are not reasonably interchangeable with online marketplace services.

13 201. SaaS providers, unlike online marketplace service providers, do not provide
14 access to an established U.S. customer base. Rather, merchants that use SaaS providers to
15 establish direct-to-consumer online stores must invest in marketing and promotion to attract U.S.
16 shoppers to their online stores. As Mr. Jassy explained in a 2022 interview, “small and medium
17 sized” sellers use Amazon not because of the “eCommerce software” Amazon provides but
18 “because they get access to a few hundred million customers.”

19 202. Another difference is that SaaS providers allow their customers to exercise
20 control over branding and marketing in ways marketplaces do not. For instance, SaaS providers
21 typically enable merchants to customize the look of their website and grant them access to all
22 consumer analytics, while allowing merchants to reach out to shoppers directly with sales
23 promotions and new releases.

1 *d. Online marketplace services are not reasonably interchangeable*
2 *with services that primarily provide access to non-U.S. shoppers*

3 203. Sellers who want to reach U.S. shoppers generally only consider online
4 marketplaces that already possess a significant U.S. customer base and facilitate sales to U.S.
5 shoppers through U.S.-specific marketplaces. Online marketplace service providers typically
6 operate distinct websites focused on customer bases by different geographies; these websites list
7 prices in the local currency and operate differently to ensure compliance with local law.

8 204. Online marketplaces set different fees across their various geography-specific
9 websites.

10 *e. The relevant geographic market for online marketplace services*
11 *for sales to U.S. shoppers is worldwide*

12 205. Online marketplace services, which provide sellers access to U.S. shoppers, are
13 procured by sellers worldwide. Online marketplace services providers supply such services for
14 sales to U.S. shoppers from anywhere in the world.

15 **2. Amazon has a dominant share of the online marketplace services**
16 **market**

17 206. Amazon has a durable and dominant share of the online marketplace services
18 market. According to commercially available data sources and as illustrated in Figure 15, below,
19 Amazon has maintained a market share of greater than 66% of marketplace sales, as measured by
20 GMV, across all tracked marketplaces since at least 2018, and that share grew to more than 71%
21 by 2022.

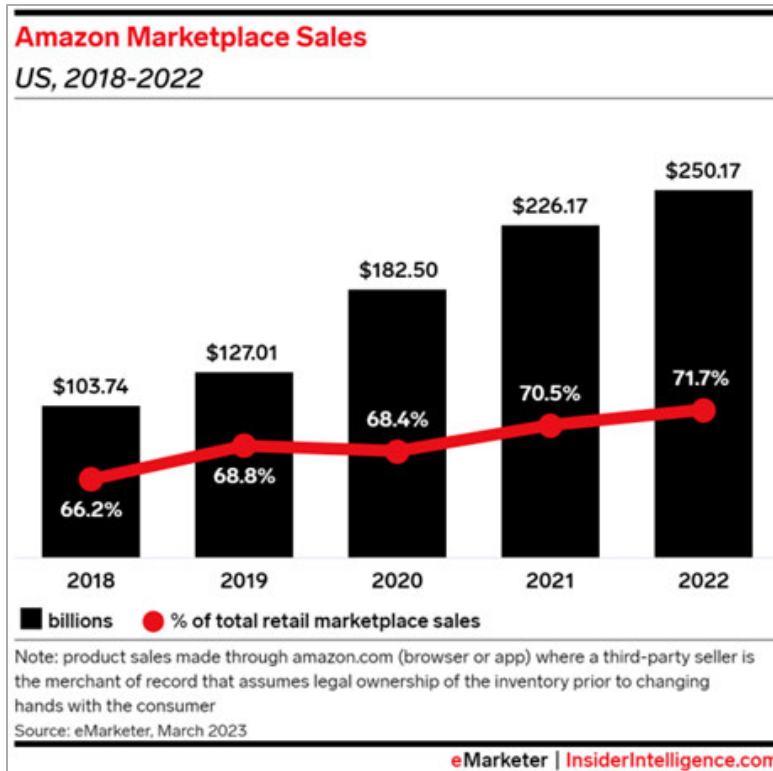
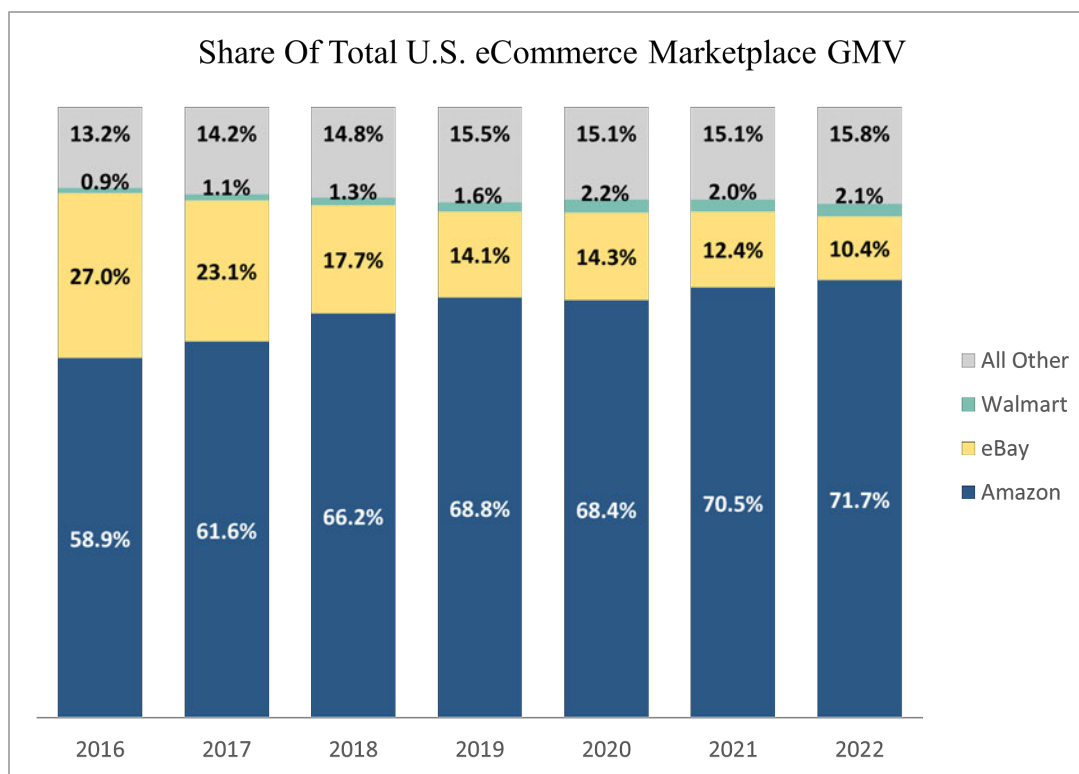


Figure 15. Source: eMarketer Insider Intelligence.

207. In 2021, sales by sellers on Amazon’s online U.S. Marketplace accounted for an estimated \$226 billion in GMV, more than five times the estimated amount sold by sellers on eBay’s online U.S. marketplace and more than thirty-four times the estimated amount sold by sellers on Walmart’s online U.S. marketplace. Amazon’s market share across all tracked retail marketplaces dominates—and is continuing to outgrow—that of eBay and Walmart, as shown in Figure 16 below.



13 *Figure 16. Source: eMarketer Insider Intelligence.*

14 **3. Amazon's dominant position in the online marketplace services market is protected by significant barriers to entry**

15 208. The online marketplace services market exhibits significant barriers to entry,
16 including, for example, scale economies, switching costs, and network effects. Network effects
17 between the online marketplace services and online superstore markets also present a unique
18 barrier, as discussed in Part V.C, below. Moreover, Amazon's illegal course of conduct has
19 made entry artificially and significantly more difficult than it would otherwise be, as discussed in
20 Part VI, below.

21 209. The market for online marketplace services is also characterized by network
22 effects. For example, as an online marketplace serves more sellers, it can collect, analyze, and
23 offer robust aggregated sales data to its sellers, who can use the data to inform their business
24

1 decisions. A marketplace’s increased ability to offer useful sales data to sellers helps it attract
2 more sellers, which allows the marketplace to collect more data, and so on.

3 210. As an online marketplace gains sellers, it also becomes more appealing to sellers
4 who offer products that are complements to the products already offered on the marketplace. For
5 example, a seller of cell phone cases may be more interested in selling on a marketplace on
6 which cell phones are also sold.

7 **C. Feedback Loops Between The Relevant Markets Further Amplify The**
8 **Cumulative Impact Of Scale And Related Network Effects**

9 211. The ability to gain scale is a critical factor in determining who can successfully
10 compete in both relevant markets. The feedback loop between these two relevant markets
11 further amplifies the importance of scale and network effects in these markets, making it more
12 difficult for rivals and potential rivals to enter and compete effectively against incumbents in the
13 relevant markets.

14 212. Online superstores that also offer online marketplace services operate in both
15 relevant markets and benefit from scale and network effects that flow between—and reinforce
16 market power across—those markets. Though an online superstore does not necessarily need to
17 operate a marketplace, network effects between the two markets create an additional barrier to
18 entry for companies attempting to enter and compete in either market. For online superstores
19 with marketplaces, increasing scale in one market can make it easier to grow in the other, and a
20 denial of scale in one market can make it harder to grow in the other. By amplifying the
21 importance of scale in both markets, these network effects can intensify the harmful impact of
22 conduct that unlawfully deprives rivals of scale, widening the gulf between firms that can and
23 cannot effectively compete.

213. To attract shoppers, an online superstore needs to offer a wide breadth and depth of product selection. Online superstores that operate marketplaces can increase their breadth and depth of product selection by offering products sold by third-party sellers.

214. Similarly, sellers prefer marketplaces where many potential customers already shop. By reaching a larger customer base, sellers can increase sales.

215. Prospective entrants to both relevant markets face a chicken-and-egg problem: they need to attract enough sellers to offer sufficient product selection to attract shoppers, but they simultaneously also need to generate enough shopper traffic to attract those sellers. As Walmart explained, “many 3rd party sellers” are needed “to enable broad assortment” and meet “customer assortment expectations,” which “attracts more sellers” to the marketplace, in an ongoing cycle. This continuous loop creates a barrier to entry in both markets and accelerates the growth of firms that can overcome it.

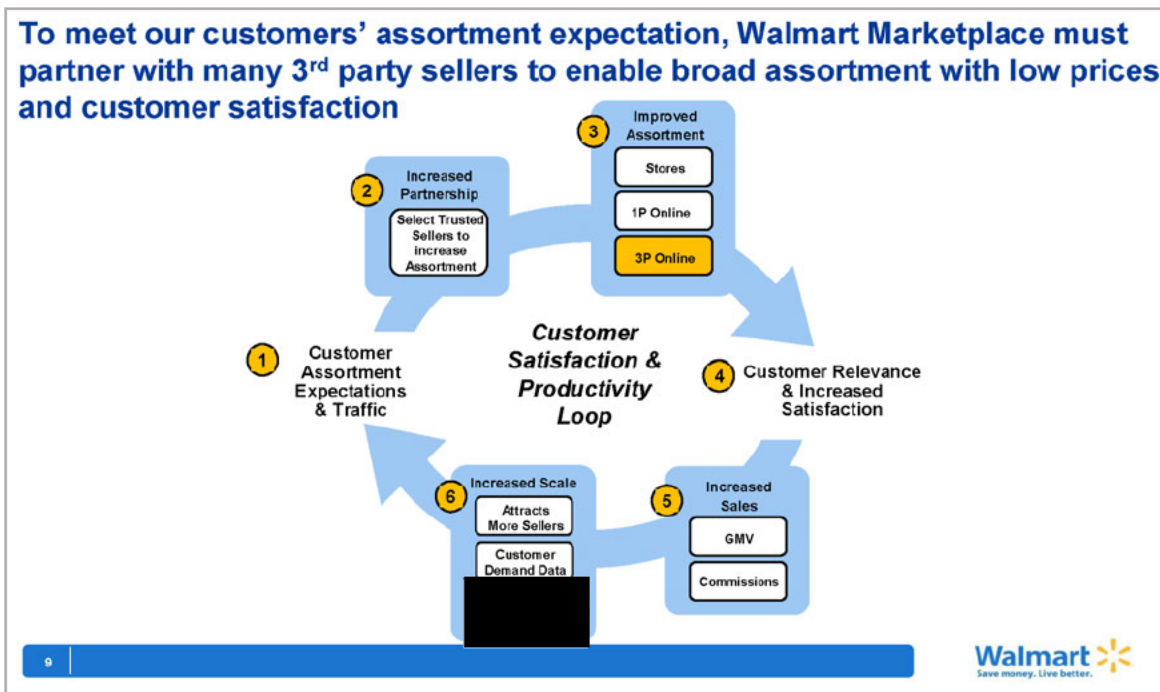


Figure 17. Example of the “Chicken-and-Egg” Barrier to Entry.

Source: Walmart Internal Documents.

1 216. Amazon leverages these network effects. At any given time, Amazon offers more
2 than a billion different items for purchase on its online superstore. Sellers who buy marketplace
3 services from Amazon provide much of the product selection that helps Amazon attract and keep
4 its shoppers. As more shoppers turn to Amazon for its product selection, more sellers use its
5 platform to gain access to its ever-expanding consumer base, which attracts more shoppers, and
6 so on.

7 217. Amazon recognizes this feedback loop. An internal Amazon strategy document
8 states that “[t]he core value that Amazon provides to Sellers is access to a large number of
9 Customers.” And Mr. Bezos testified that “third-party sellers increase selection for customers,
10 and customers care deeply about selection.” Amazon publicly states that its “wide selection is
11 made possible through independent sellers.”

12 218. The interplay between Amazon’s shoppers and sellers increases barriers to new
13 entry and expansion in both relevant markets and limits existing rivals’ ability to compete. In
14 this way, scale builds on itself, and is cumulative and self-reinforcing.

15 219. This feedback loop spins Amazon’s “flywheel.” Amazon publicly touts its
16 flywheel as a “virtuous cycle.” But internally, Amazon focuses on creating “flywheel moat[s]”
17 to bolster its dominance and on depriving rivals of the scale they would need to fully compete
18 and challenge Amazon’s dominance.

19 220. For example, Amazon strategically restricts how shoppers can purchase the
20 various services included in its Prime subscription, artificially increasing barriers to entry in the
21 online superstore and online marketplace services markets. Amazon has internally considered
22 offering Prime services separately but instead chooses to weld them together to suppress rivals’
23 and potential rivals’ ability to gain scale. Amazon fuses together a wide assortment of unrelated
24

1 services ranging from streaming video, music, and gaming to prescription drugs and more to the
2 unlimited shipping service included in Prime—and through it, to Amazon’s monopoly online
3 superstore.

4 221. Amazon does not let shoppers subscribe only to the unlimited shipping
5 component of Prime.

6 222. And while Amazon technically offers Prime Video on a standalone basis, Amazon
7 successfully uses dark patterns and other manipulative design techniques to thwart most shoppers
8 from actually being able to sign up for it.

9 223. Amazon’s restrictive strategy of offering Prime services only on an all-or-nothing
10 basis means that shoppers who want any of those services must effectively buy all of them and
11 maintain a full Prime subscription. Amazon estimates that approximately [REDACTED] million subscribers
12 only subscribe to Prime because of Prime Video or other non-shipping services. Once those
13 shoppers become Prime subscribers, however, they concentrate their online retail spending on
14 Amazon and away from other online superstores, limiting other superstores’ ability to build a
15 large customer base.

16 224. Amazon’s restrictive all-or-nothing Prime strategy artificially heightens entry
17 barriers because rivals and potential rivals cannot compete for shoppers—including the [REDACTED]
18 million Prime subscribers described above—solely on the merits of their online superstores or
19 marketplace services. Instead, they must enter multiple unrelated industries to attract Prime
20 subscribers away from Amazon or incur substantially increased costs to convince Prime
21 subscribers to sign up for a second shipping subscription or otherwise pay for shipping a second
22 time. This substantial expense significantly constrains the number of firms who have any
23 meaningful chance to compete against Amazon and raises the costs of any that even try. This
24

1 tactic blocks lower-priced rivals from competing head-to-head with Amazon to attract many
2 shoppers. Even firms that have introduced comparable subscription services at a fraction of the
3 price have struggled to make serious inroads. Amazon’s restrictive strategy artificially heightens
4 barriers to entry, such that an equally or even a more efficient or innovative rival would be
5 unable to fully compete by offering a better online superstore or better online marketplace
6 services.

7 225. Amazon internally acknowledges that many consumers would prefer the freedom
8 to pick and choose among the services it has combined into Prime—and that allowing shoppers
9 to do so would let Amazon offer these services to American shoppers “more competitively at a
10 lower price point.”

11 226. But Amazon also recognizes that “decoupl[ing] Prime” would “break[] the
12 existing flywheel” and therefore risk loosening Amazon’s grip over both shoppers and sellers.
13 So, Amazon deliberately restricts how shoppers can access various components of Prime, despite
14 knowing that offering additional choices for consumers would lead to more competition and
15 better prices.

16 227. This current restrictive structure of Prime reflects a deliberate strategy by Amazon
17 to artificially increase barriers to entry and competition. As one former Amazon executive
18 explained in recalling Amazon’s motivation for adding non-shipping services to Prime, “[a]ny
19 competitor might launch a Prime shipping clone, or they could potentially build a new Netflix-
20 type service, but it was unlikely that any one of them would be able to do both.”

21 228. In 2021, Amazon considered and rejected a proposal to “decouple” Prime. This
22 proposal would have increased consumer choice by creating a “Prime Shopping” subscription
23 that would have included unlimited shipping and other shopping-related services and a separate
24

1 “Prime Entertainment” subscription that would have included Prime Video and other purely
2 digital products. But Amazon feared that offering consumers more options would “make it
3 easier for customers to substitute components of a bundle outside Amazon, (e.g., Netflix +
4 [Prime] Shopping only or [Prime] Entertainment + [Walmart+]),” and would “break[] the
5 existing flywheel (digital → shopping engagement → GMS [sales]).” As Mr. Bezos put it
6 publicly, Amazon “monetize[s] [Prime Video] content in an unusual way When we win a
7 Golden Globe, it helps us sell more shoes.” Offering “decouple[d]” Prime options to shoppers
8 would undermine that avenue of monetization, force Amazon to compete on the merits of its
9 various services and, according to Amazon, would “make it easier for customers to
10 substitute . . . outside Amazon.” To date, Amazon has forgone that option—it has not
11 “decouple[d]” Prime, instead choosing to limit consumer choice and maintain artificially
12 heightened barriers to entry.

13 229. Amazon has also pursued a set of anticompetitive tactics—discussed further in
14 Section VI, below—to unlawfully deny its rivals access to both shoppers and sellers, artificially
15 stunting their growth by starving them of the feedback loops across the relevant markets that
16 would benefit shoppers and sellers alike.

17 **D. Direct Evidence Further Demonstrates Amazon’s Monopoly Power**

18 230. Direct evidence demonstrates that Amazon has monopoly power. Amazon’s
19 ability to profitably do the following without losing sufficient business to change its behavior
20 illustrates its monopoly power: (a) degrade the quality of its shopper-facing search results and
21 increase the number of irrelevant advertisements and advertisements for more expensive items
22 shown to shoppers; (b) degrade the quality of the shopping experience on Amazon by replacing
23 helpful organic search results with biased “widgets” that direct shoppers to purchase Amazon’s
24 private label products; and (c) raise the prices it charges sellers to access the full suite of

1 Amazon’s marketplace seller services and fulfillment services. In addition, Amazon’s unlawful
2 conduct is further direct evidence confirming Amazon’s monopoly power in both markets.

3 **1. Amazon has profitably degraded the quality of its search results by**
4 **cluttering organic search results with expensive, irrelevant**
5 **advertisements**

6 231. Amazon fully launched its advertising business after Amazon’s founder and then-
7 CEO, Mr. Bezos, told Amazon’s senior executives “to go big, very big” on advertisements in late
8 2014. Two years later, Mr. Bezos directly ordered his advertising team to continue to increase
9 the number of advertisements on Amazon by allowing more irrelevant advertisements, because
10 the revenue generated by advertisements eclipsed the revenue lost by degrading consumers’
11 shopping experience.

12 232. Following those commands, Amazon dramatically ramped up the number of
13 advertisements it shows shoppers. For example, by 2017, Amazon had transformed its most
14 valuable virtual real estate—the top of its search results page—into one giant advertisement.
15 And, in the course of one year, Amazon more than doubled the percentage of instances where a
16 desktop query would return an advertisement at the top of the search results page and more than
17 quintupled the percentage of advertisements shown there in response to mobile search queries.

18 233. In theory, relevant advertisements can be useful to shoppers in some instances.
19 Importantly, Amazon has not only increased the total number of advertisements, but also the
20 number of “defect” advertisements shown to shoppers. Defects are advertisements which either
21 are not relevant at all or only tangentially relevant to the users’ query. At a key meeting, Mr.
22 Bezos directed his executives to “[a]ccept more defects” as a way to increase the total number of
23 advertisements shown and drive up Amazon’s advertising profits.

1 234. Amazon employees followed Mr. Bezos’s instructions. Amazon’s experiments
2 showed that even when its advertisement defect rates increased by █%, advertising revenue still
3 increased Amazon’s overall profits by █ million. Amazon ultimately revised its ad auction to
4 incorporate the “cost of defect” in order to make the most money from its ad auctions. With
5 advertisements being so profitable to Amazon even at higher defect rates, senior Amazon
6 executives agreed, “we’d be crazy not to” increase the number of advertisements shown to
7 shoppers.

8 235. Although Amazon considered placing “guardrails” on advertisements to protect
9 the customer experience, it consistently rejected such ideas. Senior Amazon executives gave
10 “clear guidance” that “advertising should not be constrained by additional guardrails . . .
11 like . . . search relevance.” Maximizing advertising profit at all costs “has effectively become
12 ‘law’ even if it has many flaws,” according to one senior Amazon executive. When Amazon’s
13 advertising team was given control of a tool that could determine how many search page slots
14 were allocated to advertisements, the same executive observed that with the advertising team
15 now responsible for measuring the allocation of advertisements between organic and sponsored
16 content, there was “a risk of the fox . . . guarding the henhouse.” But it was too late to stop. The
17 executive concluded Amazon was already “in a situation where the hens are out of the house
18 anyways,” given Amazon’s control over advertising placement. Another senior Amazon
19 executive reportedly compared Amazon’s advertising and search divisions to the parable of the
20 scorpion and the frog: it was in the advertising division’s nature as the proverbial “scorpion” to
21 poison organic search results.

22 236. Another Amazon executive collected and circulated examples showing the extent
23 to which displaying advertisements over organic search results worsened the shopper experience.
24

1 Many results are plainly not what the customer searched for, such as when “a LA Lakers t-shirt
2 ad show[ed] up in a search for ‘Seahawks t-shirt.’” Other results are simply bizarre, like “Buck
3 urine showing up in the first Sponsored Products slot for ‘water bottles.’”

4 237. By flooding its search results page with paid advertisements, Amazon also steers
5 shoppers towards higher-priced products. In a 2018 internal study, a team of Amazon’s
6 economists found that the “median price for [Sponsored Products] search results is █% higher
7 than the median price of the neighboring organic content,” and “█% of [Sponsored Products]
8 Search results have higher prices than the adjacent organic result, and for █% of impressions,
9 the [Sponsored Products] price is at least twice that of the organic result.” In that study,
10 Amazon’s economists recognized that its increased advertising makes it more difficult for
11 customers to avoid higher prices because “as the share of site real estate devoted to sponsored
12 content grows, it becomes harder for customers to undo price effects” by navigating to lower cost
13 product listings. Amazon’s economists also found that as advertising grew, “the price difference
14 translates into a material impact on overall site ASP [average sales price].”

15 238. As one Amazon executive explained, sellers who purchase advertising “have to
16 pay per click for preferred Search and Detail Page placement in addition to the fixed commission
17 Amazon charges per sale.” In other words, Amazon’s proliferation of pay-to-play
18 advertisements increases the costs that sellers must bear to reach shoppers. And as the same
19 Amazon executive explained further, “[t]his extra cost is likely to be passed down to the
20 customer and result in higher prices for customers.” Moreover, because Amazon’s anti-
21 discounting conduct punishes sellers who offer lower prices at rival online stores with lower
22 fees, many sellers set their price on Amazon—high fees and all—as the price floor across the
23 internet.

1 239. Amazon’s business development team explained in an internal study that
2 imposing higher advertising loads on shoppers not only drives up the price shoppers pay, but also
3 “decreases purchase rates and increases search abandonment.” According to public reports,
4 Amazon engineers found that “[w]hen sponsored ads were prominently displayed, there was a
5 small, statistically detectable short-term decline in the number of customers who ended up
6 making a purchase.” But these qualitative harms, the team concluded, “are vastly outweighed in
7 the short term by ad revenue.” While fewer shoppers were finding what they wanted,
8 advertisements were making more money—“[a] lot of it.”

9 240. Amazon’s economic team responsible for analyzing the impact of advertising
10 acknowledged in a business review that the “introduction of advertising on Amazon is a
11 challenge for the consumer business since we trade off profitability against lost transactional
12 revenue.” But this tradeoff is profitable for Amazon because the increased advertising revenue
13 outweighs the sales it loses from worsening the relevance and quality of search results. Despite
14 degrading shoppers’ experiences, Amazon continues to have double digit growth in overall sales,
15 not losing meaningful numbers of shoppers to rivals.

16 241. Amazon’s quality degradation has been wildly profitable. In 2015, Amazon
17 earned \$1 billion in revenue from advertising in the United States. By 2021, that number had
18 increased to more than [REDACTED] billion, leading to over [REDACTED] billion in profits in the United States
19 alone.

20 242. Amazon’s ability to profitably worsen its service for customers is a hallmark of
21 monopoly power.

1 **2. Amazon degrades its search quality by stacking the deck against**
2 **third-party competitors of Amazon’s private label products**

3 243. Amazon further degrades the quality of its search results by burying organic
4 content under recommendation widgets, such as the “expert recommendation” widget, which
5 display Amazon’s private label products over other products sold on Amazon.

6 244. A recommendation widget is a discrete portion of Amazon’s website or mobile
7 app that lets customers scroll through a set of recommended products. Previously, such widgets
8 were limited to displays like an area on a product’s Detail Page indicating what “customers also
9 bought,” or an area suggesting shoppers may want to replenish items they had previously
10 purchased, like paper towels. Amazon now uses recommendation widgets that often promote
11 Amazon’s own private label products.

12 245. Amazon manipulates those recommendation widgets so that sellers cannot
13 compete on equal footing against Amazon’s private label products. Instead, Amazon
14 purposefully suppresses information about competing products to give its own private label
15 products an artificial boost.

16 246. One way Amazon stacked the deck in its favor was through its “expert
17 recommendation” widget. This widget originally showed what other websites, such as the *New*
18 *York Times Wirecutter*, recommended as the best product. But after Amazon acquired Ring, a
19 video doorbell company, Amazon employees responsible for Ring complained that the expert
20 recommendation widget was recommending other sellers’ doorbells instead of Amazon’s Ring
21 doorbells. The Ring employees pressed for preferential treatment.

22 247. The then-head of Amazon Search strongly pushed back, writing to colleagues that
23 he was “very sensitive to anything that appears to stack the deck in our favor.” He advocated
24

1 that Amazon instead build good products that would earn the expert recommendation on the
2 merits. A colleague agreed, observing that the incident “feels like one battle in the war for
3 Amazon[’s] soul.”

4 248. Amazon’s search organization lost that battle. Amazon went on to blacklist
5 specific “competitive products” from its expert recommendation widget, concealing them from
6 consumers. Amazon also decided that if Amazon sold one of its own “product[s] within a given
7 search query category,” Amazon would display the “expert recommendation” widget only if the
8 recommendation included Amazon’s product. Under this policy, for example, Amazon “would
9 not show an expert recommendation for ‘tablets’ that does not include Kindle,” an Amazon
10 private label product. Rather than competing to secure recommendations based on quality,
11 Amazon intentionally warped its own algorithms to hide helpful, objective, expert reviews from
12 its shoppers. One Amazon executive reportedly said that “[f]or a lot of people on the team, it
13 was not an Amazonian thing to do,” explaining that “[j]ust putting our badges on those products
14 when we didn’t necessarily earn them seemed a little bit against the customer, as well as anti-
15 competitive.”

16 249. A third-party seller noticed that Amazon was giving preferential treatment to its
17 own products and complained to Amazon about the effect on the customer experience. The
18 seller wrote that it “appears Amazon brands and 1P offerings are given priority placement” and
19 concluded that “Amazon customers are likely to be served product listings from Amazon/1P
20 brands or sellers who spend the most money on advertising[,] NOT necessarily the products that
21 are in the shoppers[’] best interest.”

22 250. In competitive markets, the possibility of losing business to rivals would tend to
23 pressure a company to create more value for its customers, shoppers and sellers alike. But
24

1 Amazon’s unchecked dominance allows it to degrade its service without ceding—and indeed
2 while expanding—its business. The fact that Amazon’s degradation of its search results through
3 biased widgets did not cause Amazon to lose sufficient business or to change its behavior further
4 demonstrates its monopoly power.

5 **3. Amazon increases prices to sellers without losing meaningful business**

6 251. Amazon’s monopoly power also allows it to charge higher prices and provide
7 lower quality services to sellers. As explained in Part IV, above, Amazon charges sellers selling
8 fees, referral fees, fulfillment fees, and advertising fees. The total price Amazon charges a seller
9 has skyrocketed without a correspondingly large loss of business.

10 252. Before Amazon decided to prioritize advertisements as a way to generate revenue,
11 sellers were able to access prominent and valuable search page placement by paying just
12 Amazon’s referral and sales fees. Now, advertised products on Amazon are 46 times more likely
13 to be clicked on when compared with products that are not advertised. Advertisements are now
14 no longer a discretionary purchase but instead a necessary cost of doing business. Therefore,
15 sellers must not only pay Amazon’s referral fee but must also now pay for advertising in order to
16 reach shoppers.

17 253. Amazon has also hiked average fulfillment fees to sellers, which jumped
18 approximately 30% between 2020 and 2022. Amazon has made these fees, too, a prerequisite to
19 being a successful seller on Amazon. As described in Part VI.B below, Amazon effectively
20 forces sellers to purchase its fulfillment services to access the full reach of Amazon’s
21 marketplace services that Prime eligibility unlocks.

22 254. By effectively requiring sellers to pay for search placements through advertising
23 and for Prime’s shipping costs through FBA, Amazon has dramatically increased the percentage
24

1 cut it takes out of seller revenues, also known as Amazon’s “take rate.” Amazon’s average take
2 rate for sellers who use FBA increased from 27.6% in 2014 to a projected ██████% in 2022 for
3 essentially the same services. Amazon now takes nearly one out of every two dollars of sales
4 from sellers who use its fulfillment services, many of whom are small businesses with already
5 thin margins. By comparison, Amazon’s take rate is higher than its rivals. The fact that such
6 low-margin sellers remain on Amazon even as Amazon takes an ever-greater cut of their
7 revenues shows Amazon’s monopoly power.

8 255. Sellers note that because they depend on Amazon, they effectively have no choice
9 but to submit to Amazon’s growing demands. As a third-party seller put it in a complaint to
10 Amazon: “Amazon is the most expensive place I do business.” The seller continued, stating that
11 Amazon’s prices have “resulted in . . . slim-to-nonexistent margins” and “higher consumer prices
12 for our items.” According to a public article, another seller stated that “[f]or some products, we
13 realized that we need to pay for ads but we’ll never profit at our current prices.” As a result, that
14 seller had to raise prices to pay for advertising on Amazon.

15 256. Amazon also recognizes that sellers believe “that it has become more difficult
16 over time to be profitable on Amazon.” A survey from 2021 found that less than 10% of sellers
17 were “satisfied” with “[c]ost and profitability on Amazon.” One of the only ways left for sellers
18 to eke out a profit is to raise the prices paid by shoppers. A seller succinctly explained this
19 dynamic:

20 Amazon charges are very high. Amazon takes a % of the product price . . . and
21 also storage fees, and [P]rime delivery fees, and if you want to sell anything you
22 need to spend money in ads, so in the end, [A]mazon takes 50% of the cost of the
23 product, and our profit margins are down to 0. . . . We need to raise the price in
24 all our products sold on Amazon just to be able to make some profits.

25 257. Amazon has hiked its fees even as it has failed to adequately protect sellers’
26 commercially sensitive data, exposing this data to theft and appropriation. Internally, Amazon

1 recognized that it gave employees access to a “very powerful tool that provide[d] users with the
2 ability to indiscriminately search for any seller account, view and edit data without the seller’s
3 consent, and create risk for customers, sellers, and Amazon.” Employees also recognized that
4 Amazon “lack[s] sufficient logging, monitoring, and alerting of unauthorized access” to seller
5 data, and that “the lack of technical control and coverage for all uses of seller data causes risk to
6 Amazon.” When faced with scrutiny and criticism over these practices, Amazon has touted its
7 “seller data policy,” but Amazon still has not implemented adequate technical controls to enforce
8 that policy.

9 258. Many sellers have unfavorable views of Amazon but continue to use Amazon
10 because there are no viable alternatives. Indeed, seller forums on Amazon are rife with
11 complaints about issues ranging from abrupt and arbitrary account suspensions to sellers having
12 their inventory unexpectedly seized with no recourse. One seller explained that they could not
13 leave Amazon because “[w]e have nowhere else to go and Amazon knows it.” According to an
14 internal Amazon study, Amazon’s sellers live “in constant fear” of Amazon arbitrarily
15 interfering with their ability to sell on Amazon, which “put[s] their businesses and livelihoods at
16 risk.” Amazon’s ability to profitably hike fees while maintaining its iron grip over sellers is
17 further evidence of its monopoly power.

18 **VI. AMAZON IS ENGAGED IN A COURSE OF CONDUCT THAT ILLEGALLY**
19 **MAINTAINS ITS MONOPOLIES IN BOTH RELEVANT MARKETS**

20 259. Amazon illegally maintains its monopolies through an interrelated course of
21 conduct that blocks competition. First, Amazon deploys a series of anticompetitive practices that
22 suppress price competition and push prices higher across much of the internet by creating an
23 artificial price floor and penalizing sellers that offer lower prices off Amazon. Second, Amazon
24

1 coerces sellers into using its fulfillment service to obtain Prime eligibility and successfully sell
2 on Amazon. Each of these tactics—independently and collectively—prevents Amazon’s rivals
3 from gaining scale and maintains Amazon’s monopolies.

4 260. Amazon first ensures that no other online rival can gain scale through offering
5 prices lower than those listed on Amazon. Amazon accomplishes this anticompetitive goal
6 through an interwoven set of algorithmic and contractual tactics, all of which rely on Amazon’s
7 massive web-crawling apparatus that constantly tracks online prices. Amazon’s anti-discounting
8 punishments tame price cutters into price followers, effectively halting real price competition.
9 This conduct imposes costs on shoppers and sellers alike. Shoppers pay inflated prices on and
10 off Amazon, as sellers must effectively submit to Amazon’s high fees by raising prices even on
11 non-Amazon sites. Rivals no longer compete to offer sellers lower fees, since Amazon’s anti-
12 discounting conduct prevents sellers from passing those savings on to shoppers.

13 261. For sellers, Amazon conditions access to Prime eligibility on sellers’ use of
14 Amazon’s proprietary fulfillment service, FBA. Amazon’s coercion makes it more difficult and
15 more expensive for sellers to sell on other marketplaces, which in turn makes it more difficult for
16 rivals to attract sellers and compete with Amazon on product selection. The result is a feedback
17 loop that continues to inhibit the growth of rivals and starve them of scale while maintaining and
18 expanding Amazon’s dominant positions.

19 262. Each element of Amazon’s course of conduct mutually reinforces its monopolies
20 in both relevant markets. For example, Amazon’s anti-discounting scheme stifles price
21 competition. That same scheme also reinforces the exclusionary effects of Amazon’s use of
22 Prime eligibility to force sellers to use FBA, by making it even less profitable for sellers to sell
23
24

1 on other marketplaces. This feedback loop fuels a flywheel of anticompetitive harm, amplifying
2 the aggregate effects and further widening the gulf between Amazon and everyone else.

3 263. Because Amazon suppresses meaningful competition on price and product
4 selection, shoppers lack viable alternatives, further forcing sellers to submit to Amazon’s
5 exclusionary tactics to reach those customers, and further allowing Amazon to accelerate and
6 expand its dominance. Together, Amazon’s conduct blocks off competition, shopper traffic, and
7 seller business in the interrelated relevant markets.

8 **A. Amazon Maintains Its Monopolies In Both Relevant Markets Through**
9 **Exclusionary Anti-Discounting Conduct That Stifles Price Competition**

10 264. A core Amazon strategy is to limit one of the most fundamental avenues of
11 competition: price competition. Amazon understands the importance of maintaining the
12 *perception* among shoppers that it has the lowest prices. But in reality, Amazon relentlessly
13 stifles actual price competition by punishing sellers who offer lower prices anywhere other than
14 Amazon and disciplining rivals that undercut Amazon’s prices.

15 265. Amazon uses a variety of tactics to execute its anti-discounting strategy. At the
16 foundation is Amazon’s sprawling price-surveillance group, the Competitive Monitoring Team,
17 which constantly crawls the internet for prices. Using this price-surveillance team, Amazon
18 punishes third-party Marketplace sellers who offer lower prices on other online stores. Amazon
19 imposes additional contractual obligations suppressing price competition on its most important
20 sellers, backed up by the threat of even stronger penalties—including total banishment from
21 Amazon’s Marketplace. Amazon also deters rivals from even attempting to compete with
22 Amazon’s first-party Retail business on price by ensuring that rivals’ price cuts do not result in
23 greater scale, only lower margins.

1 266. Combined, Amazon’s conduct quashes one of the most direct ways to compete
2 with Amazon in both relevant markets: by offering lower prices. In an open, competitive
3 environment, rival online superstores could attract more business by offering shoppers lower
4 prices, and rival online marketplaces could attract sellers by charging them lower fees, allowing
5 sellers to pass those savings on to shoppers via lower prices. Amazon suppresses this price
6 competition by wielding its monopoly power to prevent sellers and retailers from offering lower
7 prices off Amazon.

8 267. Without the ability to attract shoppers or sellers through lower prices, rivals are
9 unable to gain a critical mass of either shoppers or sellers despite needing both to compete
10 against Amazon. Further, by punishing sellers when there are lower prices off Amazon and
11 disciplining rivals that try to compete on price, Amazon teaches shoppers not to look for lower
12 prices off Amazon. Less comparison shopping again hinders rivals from gaining a larger
13 consumer base. Amazon’s anti-discounting strategy therefore denies rivals the ability to gain
14 scale, cements Amazon’s dominance in both relevant markets, and ultimately keeps prices higher
15 than they would be in a competitive market.

16 **1. Amazon engages in price surveillance to support its anti-discounting**
17 **scheme**

18 268. The foundation of Amazon’s anti-discounting scheme is an extensive price-
19 tracking operation housed within its “Competitive Monitoring Team.” This team, staffed with

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 269. Amazon’s Competitive Monitoring Team [REDACTED]

2 [REDACTED]
3 [REDACTED] Amazon
4 has estimated that for thousands of the most popular products on Amazon it can detect any price
5 change virtually anywhere on the internet within hours.

6 270. Amazon uses this surveillance apparatus to detect whether sellers or vendors “are
7 stepping out on us” by offering lower prices on other websites. Amazon’s CEO of Worldwide
8 Stores explained that policing sellers to prevent them from discounting elsewhere, so Amazon
9 can maintain a reputation for having low prices, is “a dirty job, but we need to do it.”

10 **2. Amazon maintains its monopolies by punishing third-party sellers**
11 **when Amazon detects lower prices on other online stores**

12 271. Using its vast surveillance network, Amazon systematically punishes sellers when
13 Amazon detects a lower price on other online stores. Amazon does this in two ways. One way
14 Amazon punishes sellers is by disqualifying a seller’s offer from appearing in the Buy Box when
15 Amazon finds a lower price on another online store for an item being sold by a seller on
16 Amazon. For many sellers, losing the Buy Box—and even the ability to qualify for the Buy
17 Box—is an existential threat to their business. Amazon has amassed and maintains a huge
18 shopper base, making Amazon a vital sales channel for many sellers. The second way Amazon
19 punishes sellers is by imposing contractual obligations on certain important sellers, backed up
20 with the threat of even stronger penalties, including total banishment from Amazon’s
21 Marketplace.

1 272. As a result of Amazon’s threats and punishments, even rival platforms that charge
2 sellers less than Amazon for marketplace services would not be able to draw shoppers through
3 lower prices.

4 273. Amazon not only suppresses the ability of sellers and retailers to offer lower
5 prices elsewhere, but its conduct effectively *elevates* prices even off Amazon. Because Amazon
6 has steadily hiked the fees it charges sellers while also prohibiting them from discounting on
7 other websites, sellers must often use their inflated Amazon prices as an artificial price floor
8 everywhere. As a result, Amazon’s conduct causes online shoppers to face artificially higher
9 prices even when shopping somewhere other than Amazon.

10 *a. Amazon penalizes sellers when Amazon finds lower prices off*
11 *Amazon*

12 274. Amazon’s anti-discounting strategy has taken several forms. Amazon originally
13 included a clause in its Business Solutions Agreement—a contract every seller must agree to—
14 that explicitly prohibited sellers from offering lower prices elsewhere. From at least as early as
15 2011 until March 2019, this contract required each seller to “maintain [price] parity” between
16 Amazon and other online sales channels. This meant that a seller could not offer lower prices on
17 other online stores without breaching their Amazon contract, even when their selling costs were
18 lower on those stores.

19 275. After European competition authorities launched multiple investigations into
20 Amazon’s price parity clauses, Amazon dropped this requirement in Europe in August 2013.

21 276. In December 2018, U.S. Senator Richard Blumenthal sent public letters to the
22 Federal Trade Commission and the U.S. Department of Justice expressing “deep[] concern[] that
23 the price parity provisions in Amazon’s contracts with third-party sellers could stifle market
24

1 competition and artificially inflate prices on consumer goods.” Three months later, Amazon
2 quietly stopped its practice of applying this particular contractual price parity provision to all
3 sellers.

4 277. Despite making this particular change, Amazon never abandoned its strategy of
5 preventing sellers from offering lower prices elsewhere. Instead, Amazon increased the scope
6 and effectiveness of an internal mechanism called “Select Competitor – Featured Offer
7 Disqualification,” or “SC-FOD.”

8 278. An internal Amazon document written weeks after Amazon dropped its
9 contractual price parity requirement acknowledged that Amazon intended to use SC-FOD to
10 enforce its “expectations and policies,” which “ha[d] not changed.” Whether done contractually
11 or algorithmically, Amazon requires sellers to keep prices off Amazon as high or higher than
12 prices on Amazon. Amazon uses SC-FOD to enforce this policy even as it recognized internally
13 that its replacement of a contractual price parity term with an expansion of SC-FOD would
14 appear to be “not only trivial but a trick and an attempt to garner goodwill with policymakers
15 amid increasing competition concerns.”

16 279. SC-FOD is an Amazon algorithm that disqualifies a seller’s offer from winning
17 the Buy Box if Amazon detects a price that is lower—even by a penny—for that product on any
18 online store that Amazon designates as a “Select Competitor.” If Amazon disqualifies every
19 offer for a given product from winning the Buy Box, Amazon removes the Buy Box itself from
20 the product’s Detail Page.

21 280. When evaluating prices at another online store, SC-FOD [REDACTED]
22 [REDACTED] For example, if a seller’s Amazon price is [REDACTED] and
23 Amazon detects the same product being sold at another online store [REDACTED]
24

1 [REDACTED] Amazon would still [REDACTED]
2 [REDACTED] To avoid retribution from Amazon, the seller would have to
3 [REDACTED] making the total off-Amazon price
4 (\$12) more expensive than the total Amazon price.

5 281. When Amazon disqualifies a seller’s offer from the Buy Box, it tells the seller
6 that Amazon detected a lower price elsewhere and informs the seller what that price is. Amazon
7 does not, however, tell the seller where it found the lower price. Amazon deliberately withholds
8 the source of the lower price to foster the impression that a lower price anywhere online will tank
9 a product’s Amazon sales, chilling discounting far and wide.

10 282. At one time, Amazon designated only the very largest online stores as “Select
11 Competitors” for purposes of SC-FOD. After dropping the price parity clause from its Business
12 Solutions Agreement, Amazon exponentially expanded its classification of “Select Competitors.”
13 Amazon now designates [REDACTED]
14 [REDACTED] as “Select Competitors.” According
15 to a senior Amazon executive, Amazon expanded this designation to make “the punitive aspect”
16 of SC-FOD “more effective.”

17 283. Today, Amazon tells sellers that they will be punished if Amazon detects a lower
18 price on any other online store. In 2022, for example, Amazon explained to thousands of sellers
19 that a “pre-requisite” to “win[ning] the ‘Buy Box’” is to ensure that lower prices are never
20 available off Amazon.

21 284. In addition to expanding SC-FOD’s scope, Amazon has intentionally made it
22 difficult for shoppers to find and purchase items that do not have a Buy Box, further amplifying
23 the “punitive aspect” of SC-FOD disqualification.

24

1 285. Today, Amazon carries out the “dirty job” of ensuring that no seller “step[s] out”
2 on Amazon by wielding a suite of penalties to bury products without a Buy Box, including:

- 3 (a) demoting them in search results;
4 (b) hiding their prices on the Search Results Page;
5 (c) excluding them from Sponsored Products advertisements; and
6 (d) prohibiting them from appearing in certain recommendation widgets.

7 286. Amazon’s penalties are highly effective at preventing sales of product listings
8 targeted by SC-FOD. Amazon itself recognizes that removing a seller from the Buy Box causes
9 their sales to “tank.” Offers outside of the Buy Box comprise less than 3% of all purchases on
10 Amazon.

11 287. Amazon’s penalties effectively deter sellers from offering prices elsewhere that
12 are lower than their prices on Amazon, even where their costs are lower through other online
13 sales channels. That in turn limits the ability of other online superstores to offer prices lower
14 than those on Amazon, hindering the growth of would-be rivals and denying them the scale
15 necessary to compete.

16 ***b. Amazon continues to contractually prohibit its most important***
17 ***sellers from discounting elsewhere***

18 288. Amazon places additional limits on certain sellers’ ability to sell products at lower
19 prices on other online stores. These restrictions are embedded in the “Amazon’s Standards for
20 Brands” (“ASB”) program.

21 289. Amazon applies ASB to brands, brand licensees, and brand representatives that
22 use Amazon’s Marketplace (“ASB sellers”), regardless of whether their brand is a long-
23
24

1 established household name or an upstart few people would recognize. Amazon can, at its own
2 election, designate a seller as an ASB seller even if the seller objects.

3 290. ASB sellers are an especially important type of seller to Amazon for two reasons.
4 First, ASB sellers constitute a large and fast-growing segment of total third-party seller sales.
5 Sales from ASB sellers have grown significantly faster than overall Amazon Marketplace sales
6 for years. In 2021, 55% of Amazon Marketplace sales were by ASB sellers, and Amazon
7 projected they would sell more than \$151 billion of products on Amazon in 2022.

8 291. Second, because of their close relationship with the brands they sell, ASB sellers
9 have more influence over brand prices and selection across channels than “resellers,” which lack
10 such a relationship. As a founding member of the team responsible for ASB explained, ASB
11 sellers are subject to special rules because they have more control over sourcing and inventory
12 than resellers.

13 292. Amazon implemented ASB in September 2018 through an amendment to the
14 Business Solutions Agreement. All sellers, including ASB sellers, must agree to Amazon’s
15 Business Solutions Agreement in order to sell on Amazon’s Marketplace. The ASB restrictions
16 are therefore binding contractual obligations that Amazon imposes on ASB sellers.

17 293. Through ASB, Amazon contractually requires ASB sellers to ensure that their
18 products’ prices on other online stores are as high or higher than their prices on Amazon at least
19 95% of the time.

20 294. Amazon also imposes strict contractual requirements on ASB sellers related to
21 product selection, in-stock rates, and Prime eligibility. The selection requirement compels ASB
22 sellers to sell most of their selection on Amazon; the in-stock requirement compels ASB sellers
23 to have nearly all of their inventory in-stock and ready for sale to Amazon customers; and the
24

1 Prime eligibility requirement compels ASB sellers to use Amazon’s fulfillment service for the
2 vast majority of their products.

3 295. These requirements limit ASB sellers from offering products anywhere but
4 Amazon. They do so by restricting ASB sellers from pursuing differentiated sales strategies that
5 are tailored to the strengths and weaknesses of a given online channel. Rival online superstores
6 or marketplaces are disincentivized from competing against Amazon by offering ASB sellers
7 better terms in exchange for lower prices or exclusive selection. In addition, the in-stock and
8 Prime requirements exacerbate Amazon’s coercive fulfillment practices, discussed in Part VI.B,
9 below, which raise sellers’ costs to sell on multiple online stores. These ASB conditions
10 therefore substantially enhance Amazon’s monopoly power in both markets.

11 296. Amazon threatens an ASB seller’s “privileges”—including the “privilege” to
12 “operate as a seller in the Amazon store altogether”—if the ASB seller violates any part of ASB.
13 In other words, Amazon threatens not just to kick ASB sellers’ offers out of the Buy Box but to
14 boot them out of Amazon’s Marketplace altogether if they offer lower prices or a different
15 selection of products on other online stores, if they fail to meet certain inventory in-stock levels,
16 or if they do not ensure that most of their products are Prime eligible.

17 297. In addition to revoking some ASB sellers’ selling privileges in full by shutting
18 down their seller accounts, Amazon also places limits on which products or brands sellers are
19 allowed to sell. Between October 2019 and February 2022, under the guise of ASB policy
20 enforcement, Amazon placed more than [REDACTED] such restrictions on ASB seller accounts (an
21 average of more than [REDACTED] penalties per day for more than [REDACTED] years).

22 298. ASB’s origins demonstrate that one of its primary purposes is to ensure that ASB
23 sellers do not offer lower prices off Amazon. The development of ASB can be traced directly to
24

1 Amazon’s now-CEO of Worldwide Stores reaching a “boiling point” because “well-known
2 brands” were using “other marketplaces” and “competitor sites” to sell products “at significantly
3 lower prices than on Amazon.”

4 299. The intent underlying this policy is further evidenced by the messages Amazon
5 sent to certain ASB sellers when it penalized them for violating ASB restrictions. Amazon told
6 those punished ASB sellers that they were being sanctioned because “customers considering
7 your products could have easily found your products cheaper at another major retailer, and may
8 have chosen to shop elsewhere.” In that same message, Amazon offered to restore the ASB
9 sellers’ privileges if the ASB sellers met the ASB requirement that their off-Amazon prices were
10 as high as their on-Amazon prices at least 95% of the time. In response to a newspaper article
11 reporting that some sellers complied with ASB by raising prices off Amazon, Amazon changed
12 the language in their messages to sellers, but not the 95% price parity requirement.

13 300. As ASB sellers have told Amazon, ASB has the effect of keeping prices higher
14 than they would be otherwise.

15 301. In 2019, Amazon punished an ASB seller because another online retailer with
16 which the ASB seller had a vendor relationship set a price for the ASB seller’s product that was
17 lower than the seller’s price on Amazon. After Amazon contacted the ASB seller, the seller told
18 Amazon that they would act within days to “fix the prices at the other Retailers” by directing
19 their “wholesale team” to make sure that all their online prices were at least as high as their
20 Amazon prices.

21 302. In late 2021, another ASB seller told a top-level Amazon executive that ASB is a
22 “Brand Killer.” The ASB seller explained that “[t]he ASB Team is trying to dictate the prices at
23
24

1 which we sell inventory. . . . This may, in turn, cause us to raise prices in other sales channels in
2 order to keep Amazon offers. . . . This is a lose-lose situation for all parties involved.”

3 303. Amazon observed in a late 2021 internal program assessment that ASB
4 punishments create a “strong incentive” for ASB sellers to ensure that their products are not
5 priced lower elsewhere.

6 304. The Amazon team responsible for ASB has also implemented a different program
7 modeled on ASB called “Customer Experience Ambassadors” (“CXA”). While ASB imposes
8 stringent price, selection, stock, and logistics requirements, CXA imposes even stricter
9 requirements, including a 98% price parity requirement, on the approximately [REDACTED]
10 largest Amazon sellers by sales volume. Amazon targets these “top Sellers” because it knows
11 that they “have an outsized impact on [c]ustomers’ shopping experience.” Each of these sellers
12 has at least [REDACTED] million in annual sales on Amazon, and they collectively sold more than [REDACTED]
13 billion worth of products from June 2020 through June 2021. Like ASB, CXA is neither
14 “optional nor negotiable” for the sellers on which Amazon imposes it.

15 305. CXA, too, is motivated by Amazon’s fear of competition. Amazon is concerned
16 that some of its largest sellers could “[g]et [t]oo [b]ig” and use their size to “divert traffic away
17 from Amazon, either by providing competing fulfillment capabilities and [P]rime like benefits
18 through their own store, or by selling to a competitor with these capabilities.”

19 306. ASB—and its sister program, CXA—are thus additional elements working across
20 Amazon’s business in tandem with Amazon’s other strategies that punish off-Amazon
21 discounting, stifle competition, impede the growth of potential competitors, hike prices, and
22 degrade quality for consumers in the relevant markets.

1 c. *Amazon’s anti-discounting strategy prevents rivals and sellers*
2 *from offering lower prices and deprives rivals of scale necessary*
3 *to compete*

4 307. By suppressing competition in the online superstore and marketplace services
5 markets, Amazon’s anti-discounting strategy artificially inflates prices. Shoppers and sellers pay
6 more, and Amazon reaps the benefits.

7 308. Amazon’s one-two punch of high fees and seller threats forces sellers to use their
8 inflated Amazon prices as a price floor everywhere else they sell online. As a result of
9 Amazon’s conduct, shoppers often have no choice but to pay *at least* the price in Amazon’s Buy
10 Box even when they buy online somewhere other than Amazon.

11 309. Sellers generally price their goods to at least cover their costs, including fees
12 charged by online marketplace services providers (such as those discussed in Part IV, above).
13 Thus, the seller’s shopper-facing price depends on the amount of fees charged by different
14 marketplaces.

15 310. As discussed in Part V.D.3, above, the cost of doing business is higher on
16 Amazon than on other marketplaces—and Amazon has steadily hiked the fees it charges sellers,
17 almost doubling them over 9 years for sellers in FBA.

18 311. Because Amazon has steeply raised its fees, sellers need to charge higher prices
19 on Amazon than they would on a less-costly marketplace to make the same per-unit profit.
20 Amazon’s high fees should present other online superstores with an opportunity that would make
21 shoppers, sellers, and themselves better off: if those superstores can offer sellers lower fees,
22 sellers could offer shoppers lower prices while making the same or a higher profit margin, which
23 should cause shoppers and sellers alike to flock to the less-costly online store.

1 312. Amazon has destroyed this competitive dynamic by algorithmically forcing
2 sellers to ensure that their prices off Amazon are no lower than their prices on Amazon,
3 regardless of the relative costs. Similar anticompetitive effects flow from ASB, which
4 contractually prevents brands from offering lower prices elsewhere online even when it would be
5 profitable for them to do so, including on their own websites.

6 313. Amazon internally recognizes that any seller dependent on Amazon “would not
7 have an incentive to lower prices in one of its [less important] outlet[s]/channel[s] because the
8 financial impact would be multiplied” across sales they also make on Amazon. To avoid any
9 risk of jeopardizing their Amazon sales, some sellers limit the selection of products they sell on
10 other online channels—or forgo selling on other online channels altogether.

11 314. Although Amazon tells sellers they can regain Buy Box eligibility by lowering
12 their Amazon price, the sky-high fees Amazon charges sellers often put this option out of reach
13 unless sellers are willing to sell at a loss. For instance, one seller told Amazon that because of
14 the high prices Amazon charges for its marketplace and fulfillment services, the seller would
15 lose \$1.70 on every item they sold on Amazon if they lowered their price to the one Amazon
16 required for the seller to regain Buy Box eligibility. Sellers have also complained to Amazon
17 “that [Buy Box disqualification] encourages Sellers to raise their prices on competitor websites.”

18 315. One Amazon seller adopted a go-forward policy to make “absolutely sure that our
19 products are not priced lower on Walmart than they are on Amazon” after losing the Buy Box
20 and receiving a pricing notification from Amazon.

21 316. Another seller “increased the price [of a product] to a really high number” on a
22 rival marketplace because Amazon “threaten[ed] to take [sellers] off [Amazon’s] Marketplace” if
23 the seller’s prices on the other marketplace were lower than their Amazon prices.

1 317. Amazon understands that its anti-discounting strategy generally does not have the
2 effect of lowering prices on Amazon because sellers must pay the high fees charged by Amazon.
3 A 2017 Amazon internal memo observed that Buy Box disqualification “has not led Sellers to
4 lower their prices” and “has not motivated Sellers to reduce prices.” A 2018 analysis reached the
5 same conclusion, noting that Amazon has increased seller costs to the point that “it has become
6 more difficult over time [for sellers] to be profitable on Amazon.” As discussed in Part V.D.3,
7 above, the fees Amazon charges sellers have ballooned in the years since these analyses were
8 completed.

9 318. The primary and intended effect of Amazon’s anti-discounting strategy is that
10 sellers do not offer lower prices off Amazon even if other online marketplaces offer sellers lower
11 costs.

12 319. This effect is intensified for sellers subject to ASB. While Amazon’s algorithmic
13 anti-discounting punishment focuses on individual products, Amazon’s enforcement of ASB
14 threatens an ASB seller’s ability to sell anything at all as a third-party seller on Amazon’s
15 Marketplace. ASB’s threatened contractual punishments could therefore effectively cut off a
16 huge channel for sellers. In that way, ASB is broader in scope than any particular instance of
17 Amazon’s algorithmic third-party punishment, making it even more likely that Amazon’s
18 punitive program deeply chills discounting by ASB sellers off Amazon.

19 320. The swiftness and severity of Amazon’s punishments has prompted some sellers
20 to stop doing business with other online marketplaces and online stores. As one supplier told
21 another online retailer, Amazon’s Buy Box suppression strategy left the supplier with limited
22 options, including having to “move up our price on [your site]” or “stop selling our best selling
23
24

1 styles to [you].” The force and fear of Amazon’s tactics are so strong that actual punishment is
2 often not necessary. The threat alone can be enough.

3 321. For example, as one seller that sells across multiple online stores explained, he is
4 reluctant to sell his company’s products on other websites because he does not know whether the
5 other store will “price things in a way that will cause our products to be suppressed on Amazon.”
6 Amazon’s anti-discounting punishments also limit the extent to which sellers sell on other online
7 marketplaces, where sellers can control the final prices offered to customers. The same seller
8 stated that the need to ensure that he offers the same prices across all marketplaces “makes it
9 more difficult . . . to sell in multiple places.” To avoid the risk that Amazon’s punishments will
10 cause a seller’s sales on Amazon to disappear, some sellers either limit which products they sell
11 on other online stores, stop selling elsewhere altogether, or never start in the first place.

12 322. Amazon’s anti-discounting conduct reverberates throughout both relevant markets
13 because of Amazon’s dominance in each market. For example, [REDACTED] runs a program
14 offering sellers discounted marketplace services to incentivize them to set lower prices on
15 [REDACTED] marketplace. However, sellers have told [REDACTED] that it is not possible to provide
16 discounts to customers on [REDACTED] because the sellers can only match Amazon in terms of
17 pricing.

18 323. Instead of taking advantage of [REDACTED] lower costs to offer better deals to
19 shoppers, some sellers asked [REDACTED] to help them ensure that their prices on [REDACTED] were
20 never lower than prices on Amazon. [REDACTED] developed software that provides sellers options,
21 including the option of matching their price set on [REDACTED] to the price on Amazon, which
22 according to [REDACTED] avoids the “risk that . . . their price end[s] up lower on [REDACTED]
23 inadvertently.” The relatively few sellers who offer their goods on both Amazon and
24

1 [REDACTED] can use the program to ensure that [REDACTED] marketplace prices are not lower
2 than prices on Amazon.

3 324. The power and reach of Amazon’s punitive scheme are so significant that its
4 [REDACTED] rival created a program that helped sellers ensure that they were abiding by Amazon’s
5 anti-discounting rules—even though these rules undermine the rival’s ability to compete with
6 Amazon. This is not a healthy, competitive market.

7 325. As an industry executive concisely summed up the pernicious and pervasive
8 effects of Amazon’s conduct:

9 The seller is losing sales because they’re missing the discoverability of that item
10 or the featuring of that item in the promotion. We’re missing on delivering value
11 to customers because we could otherwise be offering customers a lower price on
12 that product, which we’re unable to do . . . and it’s a loss to the customer because
13 they[] end up paying more for an item than they otherwise could have.

14 326. In total, Amazon’s anti-discounting conduct helps maintain Amazon’s
15 monopolies by stifling competition in both relevant markets, denying scale to rivals, harming
16 sellers, and depriving shoppers of lower prices.

17 **3. Amazon maintains its monopolies by suppressing price competition**
18 **with its first-party anti-discounting algorithm**

19 327. For Retail products that Amazon prices and sells itself, Amazon deploys a similar
20 anti-discounting program that it implements through another pricing algorithm. While the exact
21 mechanism differs from the mechanisms Amazon uses to punish sellers, the means, motive, and
22 effects are all the same. Amazon uses its extensive surveillance network to block price
23 competition by detecting and deterring discounting, artificially inflating prices on and off
24 Amazon, and depriving rivals of the ability to gain scale by offering lower prices.

1 *a. Amazon’s first-party anti-discounting algorithm is designed to*
2 *discipline rivals from lowering their prices*

3 328. Amazon designed and implemented a first-party anti-discounting algorithm to
4 deter other online stores from offering lower prices than those of Amazon’s Retail products.
5 Amazon recognizes the importance of maintaining the *perception* that it has lower prices than
6 competitors. Behind closed doors, however, Amazon executives actively discourage setting
7 prices lower than those of rivals, which Amazon deems “heretical.”

8 329. Amazon’s former CEO of Worldwide Consumer, Mr. Wilke, conceived of an
9 algorithm to solve Amazon’s ostensible dilemma when it came to the prices of Amazon’s first-
10 party Retail unit’s products. As he explained, this anti-discounting algorithm enables Amazon to
11 avoid a “perfectly competitive market” in which rivals continually lower their prices, benefiting
12 shoppers but competing away profits.

13 330. Instead, Mr. Wilke explained, Amazon uses a “game theory approach” where
14 Amazon will “never move first” when it comes to lowering prices. If Amazon detects a price
15 change in either direction by a monitored online store or marketplace seller, Amazon will copy
16 that change in price to the penny. The net effect, Mr. Wilke predicted, is that “prices will go up.”

17 331. When using its first-party anti-discounting algorithm, Amazon disciplines rivals
18 by immediately copying—but never undercutting—prices. If and when the lowest price by a
19 monitored online store or marketplace seller increases (or the product goes out of stock),
20 Amazon automatically increases its Retail price to copy the new lowest price, whether that is a
21 higher price offered by the same online store or marketplace seller it had been copying or a price
22 offered on a different website. If Amazon detects a “lowest price” drop, Amazon automatically
23 copies that move. And if the “lowest price” increases, Amazon automatically copies again
24

1 without even considering whether it could earn more business by continuing to offer shoppers
2 the lower price.

3 332. In effect, Amazon deters rivals from even attempting to compete with Amazon's
4 first-party Retail business on price because rivals quickly learn that their price cuts do not result
5 in greater market share or scale, only lower margins.

6 333. In an open and competitive market, rivals can compete to attract business by
7 offering lower prices to shoppers. Instead, Amazon has committed to its first-party anti-
8 discounting pricing strategy because that strategy deters rivals from price competition and
9 prevents rivals from drawing business and gaining market share. Amazon's algorithmic process
10 unfolds over and over to discipline rivals who dare to lower their prices, conveying to them that
11 they will not gain business through competing on price. As a result, Amazon has successfully
12 taught its rivals that lower prices are unlikely to result in increased sales—the opposite of what
13 should happen in a well-functioning market.

14 334. By relentlessly disciplining rivals, Amazon forecloses the give and take that is
15 typical in a competitive market and limits rivals' ability to gain customers by undercutting
16 Amazon's prices. The result is that rivals' growth is stunted, and shopper prices are pushed
17 higher than they would be in a world without Amazon's anti-discounting scheme. According to
18 Mr. Wilke, Amazon's first-party anti-discounting algorithm has “work[ed]” just as he envisioned
19 it would.

20 ***b. Amazon's first-party anti-discounting algorithm has stopped***
21 ***other online stores from competing through offering lower prices***

22 335. Though the different elements of Amazon's anti-discounting strategy often work
23 in tandem to stifle competition (as discussed in Part VI.A.4, below), Amazon's first-party anti-
24

1 discounting algorithm has, on its own, deterred other online stores from competing through
2 lower prices.

3 336. For example, Amazon’s first-party anti-discounting scheme successfully deterred
4 price competition in 2017 when Walmart introduced a “pickup discount” program. Walmart
5 offered discounts to online shoppers who were willing to pick up orders at Walmart stores
6 instead of having them delivered. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 337. Amazon concluded that its first-party anti-discounting strategy ultimately helped
11 induce Walmart to stop competing on price through its pickup discount program. In an internal
12 planning and strategy document, Amazon determined that its first-party anti-discounting
13 algorithm created a “financial disincentive for Walmart” and would likely deter Walmart from
14 “expand[ing] the [pickup discount] program further.”

15 338. In response to Amazon’s anti-discounting conduct, [REDACTED]
16 [REDACTED]
17 [REDACTED] Amazon estimated that Walmart ultimately
18 discounted hundreds of thousands fewer products than it had initially planned.

19 339. At one point in 2019, after enduring years of Amazon’s algorithmic disciplining,
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 **4. Amazon combines its various anti-discounting programs to maximize**
5 **their collective anticompetitive effect**

6 340. Amazon uses all of its various anti-discounting programs—and the combined
7 power of its Marketplace and Retail arms—to limit price competition and comparison shopping
8 for the hundreds of billions of dollars in goods sold annually in the relevant markets. This
9 suppression of price competition and comparison shopping also artificially contributes to
10 converting more shoppers into Prime subscribers.

11 341. Amazon’s seller-disciplining tactics and first-party anti-discounting algorithm are
12 each powerful on their own (as explained in Parts VI.A.2.c and VI.A.3.b, respectively), but the
13 whole of their combined anticompetitive impact is significantly greater than the sum of their
14 individual effects.

15 342. In 2016, Amazon used various elements of its anti-discounting strategy to
16 hamstring Jet.com (“Jet”), a new online superstore that planned to compete against Amazon by
17 offering shoppers and sellers lower prices. Amazon feared that Jet could provide shoppers
18 “prices up to 10-15% lower than Amazon” by not collecting commissions from sellers, which
19 would allow those sellers to then “pass all the savings onto customers.” Amazon predicted that
20 Jet’s business model could allow Jet to consistently beat Amazon on price. In Amazon’s
21 estimation “the biggest risk” posed by Jet’s entry was the competitive pressure Amazon would
22 face to lower its seller fees.

1 343. Amazon responded to Jet’s launch by activating the combined might of its
2 Marketplace and Retail businesses. With respect to the Marketplace business, Amazon removed
3 sellers’ offers from the Buy Box if shoppers could find the same products at lower prices on
4 Jet.com. On the Retail front, Amazon deployed its first-party anti-discounting algorithm against
5 Jet’s most popular products.

6 344. The combined force of Amazon’s anti-discounting schemes worked. Less than
7 three months after Jet launched, Jet was forced to “revise[] [its] price leadership strategy to
8 ‘simply match the lowest price elsewhere on the [w]eb instead of trying to beat it,’” and
9 increased its prices. Despite raising over half a billion dollars in funding, Jet was acquired by
10 Walmart only a year after it launched and ceased operations as an independent competitor.
11 Walmart shut Jet down in 2020.

12 345. More recently, Amazon used the same combination of its anti-discounting
13 strategies to target Zulily, a potential entrant to the online superstore market specializing in
14 homeware, children’s products, and women’s clothing. Until recently, Zulily’s primary strategy
15 was to offer shoppers deep discounts on various products during limited time “flash sales.”
16 Zulily endeavored to offer the “lowest price online” during those sales. This meant beating
17 Amazon’s prices.

18 346. In late 2019, Zulily rolled out a “Best Price Promise” initiative that displayed its
19 lower price alongside the higher prices of identical products on Amazon or Walmart.com. This
20 is a classic form of price competition that should flourish in a competitive market.

21 347. To Amazon, this price competition was intolerable—and so it set out to destroy it.
22 Zulily’s online store was originally not popular enough for [REDACTED]
23 [REDACTED] in the normal course of business. In 2019, for example, Amazon’s
24

1 estimated U.S. sales volume was approximately 100 times greater than Zulily's. However,
2 Amazon [REDACTED] and specifically aimed its surveillance apparatus and anti-
3 discounting algorithms at Zulily. Amazon dedicated [REDACTED] members of its Competitive Monitoring
4 Team to monitoring Zulily.com.

5 348. Amazon activated its Marketplace arm against Zulily by punishing sellers. Its
6 seller punishments quickly stopped many Zulily suppliers that were also Amazon sellers from
7 offering lower prices on Zulily. Zulily's suppliers told Zulily that they lost the Buy Box on
8 Amazon because of Zulily's discounted prices, and that they could not afford to lose their
9 Amazon sales. A supplier of infant care products, for example, told Zulily that Amazon had
10 responded to Zulily's "Best Price Promise" by removing the Buy Box on nearly 2,000 of the
11 supplier's products, drastically reducing the supplier's sales on Amazon. Because they could not
12 afford the retaliation meted out by Amazon's anti-discounting scheme, several suppliers stopped
13 selling to Zulily altogether.

14 349. Amazon also swung its Retail business into action, applying its first-party anti-
15 discounting algorithm to attack Zulily's attempts to compete with Amazon. Zulily tried to
16 respond by further reducing its prices, but Amazon rapidly copied Zulily's prices with
17 predictable consequences: "continuous price spirals" that resulted in Zulily dropping the
18 products from its online store.

19 350. After Amazon began using the combined force of its Marketplace and Retail anti-
20 discounting strategies against Zulily, Amazon observed a "consistent drop" in shopper visits to
21 Zulily. Despite dwindling shopper visits to a website that was already not popular enough by
22 Amazon's usual standards to be a target of Amazon's anti-discounting conduct, Amazon's Vice
23
24

1 President of Pricing told his team to “keep going . . . [e]ven though their traffic is trending
2 down.”

3 351. Facing the full brunt of Amazon’s anti-discounting conduct, Zulily could not
4 sustain its low-price campaign against a giant sitting on monopoly profits. After a few months,
5 Zulily abandoned its “Best Price Promise” initiative and took down all Amazon price-
6 comparison information from its website.

7 352. In sum, Amazon’s monopolistic anti-discounting conduct blocks critical avenues
8 of competition in both relevant markets through its anti-discounting practices. Amazon’s
9 conduct denies rivals scale, stifles innovation, deadens price competition, reduces output, and
10 deprives the American public of lower prices.

11 **B. Amazon Maintains Its Monopolies In Both Relevant Markets By Coercing**
12 **Sellers To Use Amazon’s Fulfillment Service**

13 353. Amazon maintains its monopolies in both relevant markets by coercing sellers to
14 use FBA, thereby denying rival online marketplace services providers and superstores the ability
15 to gain the scale needed to compete meaningfully against Amazon in both relevant markets.

16 354. Prime eligibility is a basic prerequisite for sellers to fully access Amazon’s
17 substantial base of shoppers, making it a critical aspect of the marketplace services Amazon
18 offers to sellers. When a seller’s product is Prime eligible, it receives the Prime badge. For
19 sellers, this designation boosts their chance of winning the Buy Box and making significant
20 sales, while sellers who forgo Prime eligibility effectively disappear from Amazon’s storefront.
21 For shoppers that are Prime subscribers, the Prime badge denotes that a purchase of the product
22 will not include additional shipping and handling costs, often making these products more
23 attractive.

1 355. Amazon exploits sellers' demand for access to Prime eligibility by generally
2 conditioning that access on use of Amazon's proprietary fulfillment service, FBA, even though
3 other fulfillment options could provide comparable or better service.

4 356. Sellers who use FBA must relinquish physical control over their products and
5 place them in Amazon's fulfillment centers, which principally can be used to serve only Amazon
6 customers. As a result, a seller who wants to sell both to Amazon and non-Amazon customers
7 must maintain a separate supply of inventory dedicated exclusively to non-Amazon customers
8 and engage a separate fulfillment provider to serve those non-Amazon customers.

9 357. Absent Amazon's restrictions, many sellers would prefer to use an independent
10 fulfillment provider that would allow them to more easily fulfill orders placed on both Amazon
11 and non-Amazon marketplaces. That, in turn, would increase the ability of rival online
12 marketplace services providers to compete for sellers' business and increase the ability of rival
13 online superstores with marketplaces to compete by offering greater product selection to
14 shoppers. Conditioning a product's Prime eligibility on its seller's use of FBA maintains
15 Amazon's monopoly in both relevant markets in two main ways. First, it raises the cost of
16 multihoming, forcing sellers who sell through more than one online superstore to bear the
17 increased costs of using multiple fulfillment providers. Second, it forecloses independent
18 fulfillment providers from competing to fulfill Prime orders on Amazon, depriving those
19 independent providers of an important source of business and scale needed to build out an
20 efficient fulfillment network. Because fewer sellers can cost-effectively multihome, rivals and
21 potential rivals to Amazon are deprived of product selection.

1 358. In the relevant online superstore and online marketplace services markets where
2 scale and network effects insulate incumbents from competition, the effects of Amazon’s
3 conduct continuously compound as it diminishes sellers’ incentive and ability to multihome.

4 359. Amazon’s conduct constrains its rivals’ ability to compete, harming shoppers and
5 competition in both relevant markets and entrenching Amazon’s monopoly. By making it more
6 expensive for sellers to sell the same product on multiple online superstores and marketplaces,
7 Amazon artificially limits rivals’ ability to gain sufficient growth, momentum, and scale to draw
8 a critical mass of shoppers and meaningfully compete.

9 **1. Sellers who forgo Prime eligibility effectively disappear from**
10 **Amazon’s storefront**

11 360. In 2021, over ■ million U.S. consumers, or approximately ■% of U.S.
12 households, subscribed to Amazon Prime. Prime subscribers account for an overwhelming share
13 of all purchases on Amazon—more than ■% of all purchases by dollar value in 2021. Prime
14 subscribers also disproportionately purchase Prime-eligible offers. For example, more than ■%
15 of the items U.S. Prime subscribers purchased in the third quarter of 2021 were Prime eligible.
16 In the first quarter of 2021, U.S. Prime subscribers bought nearly ■ Prime-eligible products
17 for every one non-Prime-eligible product they purchased.

18 361. For many sellers, having Prime-eligible products is a prerequisite to making
19 significant sales on Amazon. The Prime designation makes sellers’ products more
20 discoverable—and therefore likely to be purchased—even by shoppers who are not Prime
21 subscribers. Prime eligibility is critical to win the Buy Box: Amazon acknowledges that the
22 Featured Merchant Algorithm that determines which offer will win the Buy Box gives
23
24

1 “preference to Prime-eligible offers” and increases the odds that orders from sellers who use
2 FBA will be featured.

3 362. Overall, Prime eligibility alone regularly triples a seller’s sales on Amazon.
4 Meanwhile, sellers who forgo Prime eligibility effectively disappear from Amazon’s storefront.
5 Amazon relegates non-Prime-eligible products to a near-invisible, second-rate version of
6 Amazon’s Marketplace. Without Prime eligibility, a seller’s offer will get fewer impressions in
7 search queries, be filtered out of searches by many Prime subscribers, have a lower sales
8 conversion rate, and be less likely to win the Buy Box. Ready access to online shoppers is a
9 critical aspect of online marketplace services, but Amazon effectively conditions access to a
10 substantial portion of its shoppers on sellers also buying FBA services.

11 **2. Amazon requires sellers to use FBA to obtain Prime eligibility**

12 363. Amazon requires sellers to use FBA for their products to obtain Prime eligibility,
13 even though many sellers would prefer to use an alternative fulfillment method. As the former
14 head of FBA put it, “[s]ellers may not have wanted to buy fulfillment [from Amazon]” but they
15 did so in order to “buy increased sales” that come with Prime eligibility.

16 364. Mr. Bezos explained in his 2014 letter to Amazon shareholders that “FBA is so
17 important because it is glue that inextricably links Marketplace and Prime. Thanks to FBA,
18 Marketplace and Prime are no longer two things. . . . Their economics . . . are now happily and
19 deeply intertwined.”

20 365. One internal Amazon study found that sellers who gained Prime eligibility by
21 using FBA increased their chances of winning the Buy Box by █% compared to sellers using a
22 non-Amazon fulfillment service. According to another internal study, Amazon’s conditioning
23 Prime eligibility on the use of FBA means that sellers who forgo Prime eligibility and FBA incur
24

1 a sales “penalty” that is “equivalent to a ■% markup compared with FBA offers.” In other
2 words, a seller who does not use FBA experiences a drop in sales equivalent to the seller
3 increasing its prices by ■%.

4 **3. By forcing sellers to use FBA for their products to be Prime eligible,**
5 **Amazon raises sellers’ costs of selling on multiple marketplaces,**
6 **stifling competition in both relevant markets**

7 366. By tying Prime eligibility to FBA, Amazon restricts sellers’ choices about which
8 fulfillment provider they use, stifling multihoming and thus harming competition in both the
9 online marketplace services and online superstore markets. Many sellers would prefer to use a
10 single fulfillment network for all their online orders, on and off Amazon. Indeed, as Amazon’s
11 Vice President of Worldwide Selling Partner Services reportedly recognized recently, “[a] seller
12 doesn’t want to have two sets of supply-chain services, one that’s for Amazon and one that’s for
13 someone else.” By forcing sellers to use FBA for their products to be Prime eligible, Amazon
14 functionally forecloses that option for sellers.

15 367. Without Amazon’s coercion, sellers could more easily offer their products to
16 shoppers via multiple outlets, including other online superstores and marketplaces. They could
17 also use a single fulfillment provider of their choice and pass associated savings on to their
18 customers across all online sales channels, including Amazon. Amazon’s rivals, in turn, could
19 gain scale by attracting new sellers to their marketplaces and offering new selection to shoppers.
20 Amazon fears that world, and so it uses Prime eligibility to foreclose it from coming to pass.

21 368. Amazon’s conduct blocks competition for sellers and the ability of online
22 superstores to gain those sellers’ product selection in two interrelated ways. First, Amazon
23 forces sellers who want to make Prime-eligible offers on Amazon and to sell through other sales
24

1 channels to use two duplicative fulfillment operations instead of saving costs by consolidating
2 inventory with a single fulfillment provider. Second, Amazon forecloses a significant volume of
3 orders from independent fulfillment providers by making FBA effectively the only fulfillment
4 option available for Prime-eligible orders. By essentially forcing sellers to use FBA, Amazon
5 deprives independent fulfillment companies of an important source of scale that is necessary to
6 develop efficient fulfillment networks. Sellers are less likely to commit inventory to independent
7 fulfillment providers that do not have the scale to efficiently serve their needs, and without cost
8 effective and efficient fulfillment operations, sellers are less likely to sell across multiple online
9 marketplaces. Thus, Amazon's tying of Prime eligibility to FBA usage raises the cost of
10 multihoming, making it harder and more expensive for sellers to sell on alternative online
11 marketplaces and more difficult for online superstores to attract sellers and expand their product
12 selection.

13 369. These twin mechanisms harm competition in the online retail fulfillment services
14 market while also stifling competition in both relevant markets. They do so by raising the costs
15 Amazon sellers must incur to do business with other online superstores and online marketplace
16 services providers. Some sellers cope by simply not selling anywhere other than Amazon.
17 Others are pressured to pass on higher costs in the form of higher prices, slower shipping speeds,
18 or both. As a result, by tying Prime eligibility to FBA, Amazon reduces product selection
19 available to Amazon's rivals, thereby degrading quality for shoppers and raising sellers' costs,
20 which can lead to price increases for shoppers.

1 *a. Amazon raises sellers' costs by forcing them to split their*
2 *inventory to sell across multiple sales channels*

3 370. Because Amazon forces sellers to use FBA to receive Prime eligibility, sellers
4 who do not want to sell solely through Amazon must split their physical inventory by putting
5 inventory for Amazon orders into FBA and inventory for non-Amazon orders in a different
6 fulfillment network, such as one operated by an independent fulfillment provider.

7 371. Splitting inventory among multiple fulfillment networks raises the costs for sellers
8 to offer products for sale through multiple sales channels by, among other things:

- 9 (a) increasing the total amount of inventory a seller must keep available to avoid
10 running out of stock on both Amazon and other channels of distribution;
- 11 (b) increasing labor and transportation costs when sellers need to shift inventory
12 to ensure adequate supply across different sales channels;
- 13 (c) increasing the number of facilities a seller uses to ensure they are close enough
14 to shoppers for quick, efficient delivery;
- 15 (d) increasing administrative costs associated with managing duplicative
16 inventory and fulfillment operations;
- 17 (e) reducing sellers' leverage to negotiate fulfillment discounts by preventing
18 them from aggregating their total sales volumes with a single fulfillment
19 provider; and
- 20 (f) reducing sellers' leverage to negotiate last-mile delivery discounts by
21 preventing them from aggregating all their sales volumes with a single
22 shipping provider.
- 23
- 24

1 372. For these reasons, many sellers would prefer to commit all of their inventory to a
2 single independent fulfillment provider of sufficient scale to facilitate sales across Amazon and
3 non-Amazon sales channels.

4 373. Amazon recognizes that many sellers benefit from aggregating all of their
5 inventory with a single fulfillment provider. Doing so reduces the amount of inventory sellers
6 need to carry and decreases the costs of managing inventory across channels and logistics
7 providers.

8 374. For some sellers on Amazon, the higher costs associated with using multiple
9 fulfillment providers make it unprofitable to sell on other online sales channels at all. By
10 foreclosing these sellers from using a single independent fulfillment provider, Amazon
11 effectively forces these sellers to sell exclusively on Amazon.

12 375. For sellers who do offer their products across multiple online sales channels,
13 Amazon's tying Prime eligibility to FBA imposes unnecessary and additional costs that can lead
14 to higher product prices, reduced seller profitability, and fewer sales. This, in turn, reduces
15 sellers' incentives to offer their products and invest resources into selling on multiple online
16 superstores by purchasing services from multiple online marketplaces.

17 376. Because most sellers must sell Prime-eligible products on Amazon to be
18 successful, tying Prime eligibility to FBA increases sellers' costs by forcing them to use multiple
19 fulfillment providers to sell off Amazon. Amazon's conduct hinders other online marketplaces'
20 ability to attract sellers and impedes online superstores' ability to offer enough product selection
21 to compete meaningfully with Amazon. This conduct also artificially contributes to converting
22 more shoppers into Prime subscribers.

1 382. Demand for online retail fulfillment services is separate from demand for online
2 marketplace services. Sellers often choose to purchase these services separately. And online
3 retail fulfillment services are frequently provided by distinct suppliers.

4 383. Providers of online retail fulfillment services must have fulfillment facilities in
5 the United States to timely and reliably serve U.S.-based shoppers. Online retail fulfillment
6 services providers that do not have U.S. fulfillment facilities generally are not substitutable for
7 U.S. online retail fulfillment providers.

8 384. Amazon, through FBA, is by far the largest U.S. supplier of online retail
9 fulfillment services. In 2020, Amazon fulfilled orders for over 5.5 billion items using more than
10 200 U.S. fulfillment centers.

11 385. As the sheer size of Amazon’s fulfillment operations suggests, the online retail
12 fulfillment services market benefits from economies of scale. Online retail fulfillment service
13 providers can ship products faster and cheaper when they can place products closer to the end-
14 consumer by having a large network of fulfillment centers. These speed and cost savings may be
15 shared with shoppers via faster deliveries and cheaper products.

16 386. Amazon recognizes that scale is necessary to build an efficient online retail
17 fulfillment network. Amazon measured the progress of its fulfillment operations against its goal
18 of achieving “fulfillment scale” by tracking “key scaling metrics,” including the number and size
19 of its fulfillment centers.

20 387. Independent fulfillment providers, too, benefit from large fulfillment volumes that
21 can help them scale and reduce costs. But by tying Prime eligibility to FBA use, Amazon
22 effectively removes the opportunity for online fulfillment providers to compete for Prime order
23 volumes—locking in those volumes for FBA alone.

1 388. This foreclosure denies independent fulfillment providers an important source of
2 scale that may contribute to their growth, allow them to take advantage of volume-based cost
3 savings, and help them build the infrastructure necessary to efficiently fulfill orders for products
4 sold online.

5 389. Unlike Amazon’s FBA, independent fulfillment providers are agnostic about the
6 channel from which sales originate. These independent logistics firms let sellers offer products
7 seamlessly across multiple marketplaces and online superstores.

8 390. In contrast to independent fulfillment providers, Amazon’s FBA service only
9 fulfills orders placed on Amazon’s Marketplace. Sellers cannot use FBA to fulfill orders off
10 Amazon. To fulfill orders off Amazon, sellers can pay an additional fee for a separate Amazon
11 fulfillment service. But unlike independent fulfillment providers, this Amazon fulfillment
12 service does not provide custom packaging, standard integration with non-Amazon platforms, or
13 visibility into the separate but complementary delivery process.

14 391. In a competitive world, the growth of independent fulfillment providers could
15 erode Amazon’s monopoly power in the relevant markets. Successful independent fulfillment
16 providers could foster competition among marketplaces by breaking down the barrier to
17 efficiently selling across marketplaces. That, in turn, could open up rival online superstores’ and
18 online marketplace services providers’ ability to attract sellers’ business and product selection.

19 392. Amazon’s former head of Global Fulfillment Services internally voiced his fear
20 that independent fulfillment providers have the potential to “create a compelling value
21 proposition for Marketplaces like Walmart and beyond.” Another executive told his Amazon
22 colleagues that he had an “‘oh crap’ moment” and realized that allowing sellers to receive Prime
23 eligibility without using FBA was “fundamentally weakening [Amazon’s] competitive
24

1 advantage, . . . as sellers are now incented to run their own warehouses and enable other
2 marketplaces with inventory that in FBA would only be available to our customers.”

3 393. Following conversations with sellers, other Amazon executives confirmed that if
4 Amazon did not require FBA for Prime eligibility, many sellers would use independent
5 fulfillment providers to “fulfill on whichever platform gives [the seller] an order.” Amazon’s
6 former head of Global Fulfillment Services admitted in response that the prospect of independent
7 fulfillment providers increasing competition “keeps me up at night.”

8 394. Prime-eligible fulfillment volumes are significant. In 2020, FBA fulfilled more
9 than 5.5 billion units, which, if shipped individually, would account for nearly 17 boxes for
10 every person in the United States. Conditioning Prime eligibility on FBA enrollment has locked
11 in massive volumes of shipments exclusively to Amazon, allowing it to scale its fulfillment
12 network into the behemoth it is today.

13 395. Independent fulfillment providers’ operations remain far smaller than FBA.
14 These providers fulfill orders for only a few thousand, and often only a few hundred, sellers.
15 Had independent fulfillment providers been able to compete for Amazon order volumes, they
16 could have won significant business from Amazon’s third-party sellers.

17 396. Amazon ensures that independent fulfillment providers will stay artificially small
18 by requiring that sellers who want Prime-eligible products use FBA for fulfillment. As a result,
19 Amazon makes some providers’ services comparatively more expensive because they are unable
20 to take full advantage of the economies of scale. Amazon locks in the scale for itself through
21 tying Prime eligibility to use of FBA, and sellers have fewer choices for fulfillment providers.

1 c. *Amazon unlawfully maintains its monopolies by conditioning*
2 *Prime eligibility on sellers' use of FBA*

3 397. Through these twin mechanisms—(1) raising the costs for sellers of using
4 multiple sales channels and (2) artificially stunting the growth of independent fulfillment
5 providers—Amazon maintains its monopolies in the online superstore and online marketplace
6 services markets by denying rivals the ability to gain the scale needed to compete meaningfully
7 against Amazon.

8 398. By raising sellers' costs to use multiple sales channels, Amazon limits rival online
9 superstores' and online marketplace services providers' ability to attract sellers, artificially
10 stunting the growth of those rivals. Some sellers on Amazon that might otherwise also sell off
11 Amazon choose not to due to the associated logistics and administrative costs, while other sellers
12 offer only certain products to other online stores. Sellers must effectively accept Amazon's
13 burdensome terms, and Amazon's rivals are thus deprived of the opportunity to meaningfully
14 compete for sellers. By tying a product's Prime eligibility to the seller's use of FBA for that
15 product, Amazon suppresses competition for sellers' product selection and for online shoppers.

16 **4. Amazon's use of Seller Fulfilled Prime underscores the harms to**
17 **competition caused by Amazon's conditioning Prime eligibility on use**
18 **of FBA**

19 399. Amazon's fear of a world in which unrestricted seller choice leads to increased
20 competition is grounded in experience. For a period of time, Amazon temporarily allowed
21 sellers to use their own fulfillment solution for Prime-eligible orders. When Amazon realized it
22 had lowered a barrier to competition, it quickly reversed course.

1 400. In 2015, Amazon briefly experimented with allowing a small subset of sellers to
2 fulfill Prime-eligible orders without using FBA. That year, Amazon launched a program it later
3 called Seller Fulfilled Prime (“SFP”), which was designed to bring new Prime-eligible selection
4 to Amazon shoppers, increasing sales and further driving Amazon’s accelerated growth. SFP let
5 sellers make Prime-eligible offers without purchasing FBA services. Though SFP was popular
6 with sellers, Amazon shuttered SFP enrollment in 2019 when Amazon executives recognized
7 that SFP was fostering competition and could lessen Amazon’s stranglehold on its monopolies.

8 401. From SFP’s launch, Amazon required sellers to meet certain standards to enroll in
9 SFP and receive Prime eligibility. Specifically, sellers had to “meet a high bar for shipping
10 speed and consistency” comparable to the shipping speeds Amazon promises Prime subscribers.

11 402. SFP was an immediate hit among sellers. In the program’s first full year, Amazon
12 onboarded more than 3,200 sellers. At its peak, approximately 15,000 sellers had enrolled in
13 SFP. Yet even these enrollment numbers understate seller demand for SFP, because Amazon
14 never opened the program to all potentially eligible sellers.

15 403. Sellers enrolled in SFP met their promised “delivery estimate” requirement set by
16 Amazon more than 95% of the time in 2018. At times, these sellers outperformed FBA-fulfilled
17 orders on this metric.

18 404. Mr. Bezos highlighted SFP in his 2015 letter to shareholders, explaining that
19 Amazon had “invited sellers . . . to be part of the Prime program and ship their own orders at
20 Prime speed directly.” Mr. Bezos described SFP as a win-win for sellers and shoppers, writing,
21 “[t]hose [enrolled] sellers have already seen a significant bump in sales, and the program has led
22 to hundreds of thousands of additional items that are available to Prime customers via free two-
23 day or next-day shipping.” Though SFP was benefitting at least some shoppers and sellers,

1 internally certain Amazon executives feared SFP was “[s]trategically risky” because it could
2 “seriously imper[i]l FBA.” Amazon executives worried that because SFP “does not really have a
3 moat,” it could “enable competitors to ship fast.” These executives were concerned that SFP was
4 an independent fulfillment provider “enabler” that could help independent fulfillment providers
5 “get to scale,” which could then benefit “other retailers.”

6 405. Amazon turned against SFP in early 2019, when it learned that independent
7 fulfillment providers were advertising their ability to help sellers obtain Prime eligibility for
8 products sold on Amazon and fulfilled through SFP. Amazon’s CEO of Worldwide Operations
9 wrote that he was “losing [his] mind” after learning that UPS was advertising that its online retail
10 fulfillment service could fulfill Prime-eligible orders. In that same email chain, two high-level
11 Amazon executives agreed that Amazon should consider shutting down SFP in the United States.

12 406. A few months later, in a meeting titled “3PL impact mitigation,” referring to the
13 industry term for independent fulfillment service providers, Amazon formally decided to stop
14 new enrollment in SFP. Amazon knew closing SFP would harm its shoppers by reducing the
15 number of Prime-eligible offers available to Prime subscribers and slow overall shipping speeds
16 for products sold on Amazon. But Amazon decided to prioritize excluding rivals and foreclosing
17 competition, even if it came at a cost to Amazon’s customers.

18 407. Some Amazon employees had suggested re-opening the program by creating an
19 alternative “badge” for offers eligible for Prime through SFP. Those employees recommended
20 “*not to Sunset the SFP Program* as both Customers and Sellers will lose the Prime benefits on
21 115 [million] unique items that are offered today with faster speeds to our Prime customers.”
22 Amazon’s then-CEO of Worldwide Consumer, Mr. Wilke, vetoed the idea. Amazon wanted to
23 minimize any potential backlash from SFP sellers, so in 2019 Amazon let sellers already in SFP
24

1 remain while blocking all new enrollment. Critically, Amazon communicated to those sellers
2 who were already in SFP that it expected them to fulfill orders themselves, rather than using
3 independent fulfillment providers. Most remaining SFP sellers have since left or been
4 disqualified from the program.

5 408. Some sellers who still participate in SFP report frustrations with Amazon's
6 administration of the program, including concerns that Amazon holds SFP sellers to stricter
7 delivery benchmarks than FBA. And despite Amazon's promise that SFP products will receive
8 the Prime badge, Amazon does not consistently display the Prime badge on SFP products.
9 Amazon's search filter that allows shoppers to view only Prime-eligible products suppresses
10 Prime offers fulfilled through SFP.

11 409. Sellers continue to want Prime eligibility uncoupled from the coerced purchase of
12 FBA services. An SFP waitlist maintained by Amazon quickly ballooned to more than 8,000
13 sellers just six weeks after Amazon stopped letting new sellers enroll. As of June 2022, there
14 were over [REDACTED] sellers on the SFP waitlist.

15 410. Conditioning Prime eligibility on FBA usage—and thus preventing sellers from
16 using independent fulfillment providers—is not necessary to ensure Prime subscribers receive
17 quality shipping. Amazon's internal analyses showed that sellers using independent fulfillment
18 services met Amazon's stringent SFP standards more often than sellers fulfilling orders
19 themselves. For example, in the last quarter before Amazon suspended enrollment, SFP sellers
20 using independent fulfillment providers satisfied Amazon's delivery requirement 98.4% of the
21 time (compared to 96% for all SFP sellers) and satisfied Amazon's shipping requirement 99.8%
22 of the time (compared to 96.8% for all SFP sellers). Had Amazon genuinely cared about
23
24

1 improving shipping speeds, it would have *encouraged* SFP sellers to use independent fulfillment
2 providers instead of shuttering SFP to deliberately impede those providers' growth.

3 411. Amazon recently announced plans to reopen SFP enrollment. According to
4 Amazon, to enroll in the program, sellers would need to meet rigorous pre-qualification criteria
5 to enroll in a 30-day SFP trial, after which Amazon will determine whether they may participate
6 in SFP. Amazon's communications about upcoming changes to the SFP program continue to
7 indicate that sellers would need to fulfill Prime orders themselves, without using independent
8 fulfillment providers. As of this filing, SFP enrollment remains closed.

9 **C. Amazon's Anticompetitive Tactics Work Together To Amplify Their Overall**
10 **Exclusionary Effect**

11 412. The cumulative impact of Amazon's unlawful conduct is greater than the sum of
12 its parts.

13 413. While each anticompetitive tactic independently violates the antitrust laws, all
14 work together in mutually reinforcing ways to stifle even an equally or more efficient
15 competitor's ability to respond to any one of them. As a result, the interrelated nature of
16 Amazon's overall course of conduct amplifies the exclusionary effects of each individual aspect,
17 further entrenching Amazon's monopoly power in and across both relevant markets.

18 414. Both relevant markets exhibit network effects and scale economies that render
19 gaining scale and competitive momentum especially critical. Yet each element of Amazon's
20 course of conduct works together to artificially limit rivals' ability to grow, gather momentum,
21 and gain sufficient scale to meaningfully compete against Amazon. Consequently, in these
22 relevant markets, the combined exclusionary effect of Amazon's conduct is especially pernicious
23 and acute.

1 415. The various elements of Amazon’s anti-discounting conduct—algorithmically
2 punishing sellers for offering lower prices elsewhere, contractually restraining ASB sellers, and
3 systematically disciplining rivals via its first-party anti-discounting algorithm—work together to
4 suppress competition in both relevant markets, thereby preventing even an equally or more
5 efficient rival from attracting a critical mass of either shoppers or sellers.

6 416. Amazon’s requirement that sellers use FBA to obtain Prime eligibility for their
7 products amplifies those effects. By further limiting sellers’ alternatives to Amazon, Amazon’s
8 coercive fulfillment conduct intensifies the exclusionary effect of its anti-discounting conduct.
9 In a world where rivals and potential rivals were not artificially prevented from gaining the scale
10 needed to meaningfully compete against Amazon, Amazon’s seller punishments would pose less
11 of a threat to sellers’ survival. But Amazon’s coercive FBA conduct works in tandem with its
12 anti-discounting conduct to foreclose that world. The resulting lack of comparable alternatives
13 to Amazon intensifies the severity of Amazon’s anti-discounting punishments, giving those
14 punishments—and even the threat of those punishments—greater force.

15 417. Amazon’s anti-discounting conduct, in turn, amplifies the exclusionary effects of
16 tying Prime eligibility to sellers’ use of FBA. Amazon’s FBA conduct alone prevents sellers
17 from using alternatives to FBA to fulfill Prime-eligible orders *on* Amazon and lowers the
18 attractiveness of selling *off* Amazon because it raises sellers’ costs, which are often passed on to
19 shoppers. Amazon’s anti-discounting conduct further reduces the appeal of selling off Amazon
20 by threatening sellers with the risk of losing their Amazon sales if Amazon detects a lower price
21 elsewhere and suppressing the effectiveness of marketplaces’ attempts to compete on price by
22 lowering their fees to sellers. As a result, sellers are further deterred from bringing additional
23 selection to rival marketplaces, prices for products on rival marketplaces are higher, and
24

1 independent fulfillment providers are artificially stunted. Collectively, this impedes an equally
2 or more efficient rival from being able to meaningfully compete with Amazon.

3 **VII. AMAZON HAS MANIPULATED OTHER ONLINE STORES' PRICING**
4 **ALGORITHMS INTO INCREASING PRICES**

5 418. From 2015 to 2019, Amazon deployed a secretive scheme that induced other
6 online stores to raise their prices and allowed Amazon to extract additional profits from
7 shoppers. Amazon codenamed this price-raising tool "Project Nessie." Amazon used Project
8 Nessie to extract more than a billion dollars directly from Americans' pocketbooks.

9 419. Project Nessie is an algorithm whose sole purpose is to raise prices for shoppers.
10 Aware that this scheme belies its public claim that it "seek[s] to be Earth's most customer-centric
11 company," Amazon repeatedly paused Project Nessie when it grew concerned that the public
12 might detect the higher prices Project Nessie produced. When that scrutiny receded, Amazon
13 turned Project Nessie back on to continue raising prices for shoppers.

14 420. While Project Nessie is currently paused, Amazon could turn it back on at any
15 time. Indeed, Amazon has repeatedly considered turning it back on—and there are no obstacles
16 preventing Amazon from doing so.

17 **A. Project Nessie Induced Other Online Stores To Raise Their Prices,**
18 **Generating Enormous Profits For Amazon**

19 421. In the early 2010s, Amazon began testing whether other online stores' pricing
20 algorithms were following the prices set by Amazon's first-party Retail arm, where Amazon
21 directly controls prices. These early experiments showed that "in many cases competitors match
22 us at the higher price." Amazon realized that it could increase its prices while reducing the risk
23 of shoppers finding a lower price off Amazon if Amazon focused its price increases on products
24

1 sold by competitors that were matching Amazon's prices. Armed with the knowledge that others
2 would likely follow its price hikes, Amazon could charge shoppers higher prices while
3 minimizing the chance that shoppers would catch on.

4 422. Amazon used these findings to create Project Nessie, an algorithmic tool designed
5 to raise prices on and off Amazon. Project Nessie predicted the likelihood that the online store
6 or stores offering the lowest price for a given product would follow an Amazon price increase.
7 Armed with these predictions, Amazon Retail deviated from its normal price-disciplining
8 strategy (discussed in Part VI.A.3, above), and increased products' prices when those price hikes
9 were most likely to be followed. After Amazon successfully induced the other online store to
10 raise its price, Amazon continued to sell the product at the now-inflated price. Amazon deployed
11 Project Nessie beginning in 2014 to set prices across many thousands of products in its online
12 superstore sold by Amazon's Retail arm.

13 423. There was often a time lag between Amazon raising its price and the targeted
14 online stores following Amazon's prices upwards. As a result, Project Nessie sometimes caused
15 Amazon to temporarily have higher prices than at least one other online store. Amazon
16 nonetheless decided that this risk was a worthwhile tradeoff if other online stores followed
17 Amazon's price increases at least 20% of the time.

18 424. To minimize the risk of consumer backlash, Amazon limited and rotated the
19 products subject to Project Nessie at any given time. Despite this, Project Nessie had a
20 significant impact. For example, in 2018, Amazon used Project Nessie to set prices that were
21 viewed by shoppers more than 400 million times. In April 2018 alone, Amazon used Project
22 Nessie to set prices for more than 8 million items purchased by customers that collectively cost
23 almost \$194 million.

1 425. Project Nessie generated enormous profits for Amazon even though its higher
2 prices caused Amazon's unit sales to decrease. In 2015, for example, Project Nessie's higher
3 prices reduced Amazon's gross sales revenue while increasing Amazon's profits on those
4 reduced sales by an extra \$363 million. In 2018, Amazon estimated that Project Nessie
5 increased Amazon's yearly profits by \$334 million, including nearly \$57 million in additional
6 profit from selling higher-priced books and at least \$10 million in additional profit in each of
7 twelve other product categories. According to Amazon's calculations, from 2016 through 2018,
8 Nessie generated over \$1 billion in additional profit for Amazon.

9 426. Amazon used Project Nessie to increase prices on products that Amazon had
10 already been selling at a profit. The sole purpose of Project Nessie was to further hike consumer
11 prices by manipulating other online stores into raising their prices.

12 427. The additional profit Amazon attributed to Project Nessie is money that Amazon
13 shoppers would have kept in their pockets if not for Amazon's use of Project Nessie. And since
14 this figure does not account for the excess amounts that shoppers paid at other online stores
15 because of Project Nessie, the overall amount that American shoppers have overpaid is likely far
16 higher.

17 **B. Amazon Has Repeatedly Turned Project Nessie On And Off, And Amazon**
18 **Can Turn It Back On Today**

19 428. Amazon typically ran Project Nessie 24 hours a day, 7 days a week, with two
20 exceptions: the holiday shopping season and Prime Day. Amazon paused Project Nessie during
21 these periods because "of increased media focus and customer traffic."

22 429. After the public's focus turned elsewhere, Amazon turned Project Nessie back on
23 and ran it more widely to make up for the pause. For example, in January 2017, Amazon ran
24

1 Project Nessie on twice as many products as it had before the 2016 holiday season to “recapture
2 the lost [profit] opportunity” from having temporarily paused Project Nessie during the holidays.

3 430. Amazon turned Project Nessie “on” and “off” at least eight times between 2015
4 and 2019.

5 431. Amazon also broadened Project Nessie’s parameters in other situations to boost
6 profits even further. For example, in 2017, Amazon broadened its use of Project Nessie to help
7 close a projected \$450 million shortfall in operating profits—just because it could.

8 432. Amazon paused Project Nessie in 2019 only when regulatory scrutiny, including
9 the Federal Trade Commission’s initiation of the investigation that led to this Complaint, caused
10 Amazon to superficially change or conceal many of its practices.

11 433. Though Amazon claims that Project Nessie is currently paused, Amazon
12 considered running experiments in 2020 and 2021 to improve Project Nessie’s effectiveness with
13 an eye towards turning it back on. These discussions picked up steam in late 2021 and early
14 2022 as inflation threatened to dent Amazon’s profitability. In January 2022, the CEO of
15 Worldwide Amazon Stores, Doug Herrington, asked about turning on “[o]ur old friend Nessie,
16 perhaps with some new targeting logic” to juice profits for Amazon’s Retail arm.

17 434. There are no technical barriers to Amazon resurrecting—or even expanding—its
18 use of Project Nessie, just as it repeatedly has in the past. Amazon could readily reverse the
19 current pause and begin using Nessie again at any time to hike prices for consumers and
20 undermine competition.

21 **VIII. AMAZON’S CONDUCT HARMS COMPETITION AND CONSUMERS**

22 435. Amazon’s unfair and monopolistic conduct has broken the competitive process.
23 Amazon’s anticompetitive conduct closes off each major avenue of competition—including
24

1 price, product selection, quality, and innovation—in both relevant markets. Amazon’s
2 monopolistic conduct also harms consumers in both markets, shoppers and sellers alike, by
3 depriving them of the benefits of open, fair competition and allowing Amazon to exploit its
4 monopoly power without facing the competitive checks of a free enterprise system.

5 436. The presence of scale economies and network effects in both relevant markets
6 means that a firm must be able to gain scale in order to compete effectively. But Amazon has
7 artificially suppressed rivals’ ability to attract business, gain momentum, and grow.

8 437. Amazon’s conduct interrupts, impedes, and distorts the normal give-and-take of a
9 healthy market by blocking off every major avenue of competition—including price, product
10 selection, quality, and innovation—that rivals and potential rivals would ordinarily use to
11 compete on the merits for shoppers’ and sellers’ business in the relevant markets for online
12 superstores and online marketplace services.

13 438. For example, Amazon’s anti-discounting conduct leverages both its first-party
14 Retail and its third-party Marketplace business units to suppress competition. Amazon’s first-
15 party anti-discounting algorithm disciplines rivals from undercutting Amazon’s prices, and
16 Amazon punishes third-party sellers for offering lower prices on other platforms. Without the
17 ability to attract either shoppers or sellers through lower prices, rivals are unable to gain a critical
18 mass of customers and meaningfully compete against Amazon. At the same time, Amazon’s
19 coercive fulfillment conduct both artificially stunts the growth of independent fulfillment
20 providers and artificially raises the costs that sellers face when seeking to multihome. This limits
21 seller multihoming and thereby suppresses Amazon’s rivals’ ability to compete for sellers by
22 offering better terms and for shoppers by offering additional product selection.

1 439. Together, Amazon’s exclusionary course of conduct works to suppress
2 competition in both relevant markets, foreclosing even an innovative, high-quality rival or
3 potential rival from competing on the merits.

4 440. Amazon’s conduct also harms consumers in both relevant markets. For example,
5 Amazon’s conduct has artificially inflated prices for both shoppers and sellers, degraded the
6 quality of online superstores for shoppers and of online marketplace services for sellers, reduced
7 output in both relevant markets, hindered shoppers from comparison-shopping for the best deals,
8 suppressed the flow of useful price and quality information to shoppers, stifled sellers’ ability to
9 gain additional business by offering lower prices, restricted sellers’ freedom to choose to
10 multihome across their preferred sales channels, reduced consumer choice for both shoppers and
11 sellers by yielding a less diverse set of competitive options, and stripped consumers in both
12 relevant markets of the benefits of innovation.

13 441. Amazon’s anticompetitive conduct is not reasonably necessary to achieve any
14 cognizable procompetitive benefits. The anticompetitive harm from those practices outweighs
15 any procompetitive benefits, and Amazon could reasonably achieve any procompetitive goals
16 through less restrictive alternatives.

17 442. Amazon’s unlawful conduct has caused cumulative and compounding harm over
18 time. Through its years-long course of illegal conduct, Amazon has deeply entrenched its
19 monopolies in both relevant markets and further widened the gulf between Amazon and
20 everyone else. Particularly given the importance of scale economies and network effects in these
21 markets, Amazon’s conduct has yielded a distorted and stunted competitive landscape.

1 443. Left unchecked, Amazon will continue to harm competition and maintain its
2 monopoly power over the online superstore market and the market for online marketplace
3 services, causing myriad and widespread harms to shoppers, sellers, and the public—and
4 depriving Americans of the benefits of fair and free competition.

5 **IX. VIOLATIONS ALLEGED**

6 **COUNT I**

7 **MONOPOLY MAINTENANCE OF THE ONLINE SUPERSTORE MARKET**

8 **(15 U.S.C. § 45(a))**

9 444. Plaintiff FTC re-alleges and incorporates by reference the allegations in
10 paragraphs 1- 443 above.

11 445. At all relevant times, Amazon has had monopoly power in the online superstore
12 market in the United States.

13 446. Amazon has willfully maintained its monopoly power through its course of
14 anticompetitive and exclusionary conduct, including Amazon’s anti-discounting practices, which
15 stifle price competition and tend to create an artificial price floor, and Amazon’s practice of
16 coercing sellers who want their products to be Prime eligible into using Fulfillment by Amazon,
17 which makes it more difficult and more expensive for rivals to offer increased product selection.

18 447. Although each of these acts is anticompetitive in its own right, these interrelated
19 and independent actions have had a cumulative and synergistic effect that has harmed
20 competition and the competitive process.

21 448. There is no valid procompetitive justification for Amazon’s anticompetitive and
22 exclusionary conduct in the online superstore market.

1 449. Amazon's anticompetitive and exclusionary conduct constitutes unlawful
2 monopoly maintenance, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
3 Section 2 of the Sherman Act, 15 U.S.C. § 2.

4 **COUNT II**

5 **MONOPOLY MAINTENANCE OF THE**
6 **ONLINE MARKETPLACE SERVICES MARKET**

7 **(15 U.S.C. § 45(a))**

8 450. Plaintiff FTC re-alleges and incorporates by reference the allegations in
9 paragraphs 1-449 above.

10 451. At all relevant times, Amazon has had monopoly power in the worldwide market
11 for online marketplace services for U.S. customers.

12 452. Amazon has willfully maintained its monopoly power through its course of
13 anticompetitive and exclusionary conduct, including Amazon's anti-discounting practices, which
14 stifle price competition and tend to create an artificial price floor, and Amazon's practice of
15 coercing sellers who want their products to be Prime eligible into using Fulfillment by Amazon,
16 which makes it more difficult and more expensive for rivals to offer increased product selection.

17 453. Although each of these acts is anticompetitive in its own right, these interrelated
18 and independent actions have had a cumulative and synergistic effect that has harmed
19 competition and the competitive process.

20 454. There is no valid procompetitive justification for Amazon's anticompetitive and
21 exclusionary conduct in the online marketplace services market.

1 455. Amazon’s anticompetitive and exclusionary conduct constitutes unlawful
2 monopoly maintenance, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and
3 Section 2 of the Sherman Act, 15 U.S.C. § 2.

4 **COUNT III**

5 **UNFAIR METHOD OF COMPETITION**

6 **(15 U.S.C. § 45(a))**

7 456. Plaintiff FTC re-alleges and incorporates by reference the allegations in
8 paragraphs 1-455 above.

9 457. Amazon’s course of conduct—including Amazon’s anti-discounting practices,
10 which stifle price competition and tend to create an artificial price floor, and Amazon’s practice
11 of coercing sellers who want their products to be Prime eligible into using Fulfillment by
12 Amazon, which makes it more difficult and more expensive for rivals to offer increased product
13 selection—is anticompetitive and exclusionary, and constitutes an unfair method of competition
14 in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

15 458. There is no valid and cognizable justification for Amazon’s anticompetitive and
16 exclusionary conduct.

17 **COUNT IV**

18 **UNFAIR METHOD OF COMPETITION**

19 **(15 U.S.C. § 45(a))**

20 459. Plaintiff FTC re-alleges and incorporates by reference the allegations in
21 paragraphs 1-458 above.

1 460. Amazon has engaged in an unfair method of competition, called Project Nessie,
2 that raised prices by manipulating other online stores' pricing algorithms into matching
3 Amazon's increases in the prices offered to shoppers.

4 461. Amazon designed and used its Project Nessie pricing system for the sole purpose
5 of manipulating other online stores into increasing their prices.

6 462. Amazon's Project Nessie pricing system was successful in accomplishing this
7 goal.

8 463. Amazon retains the ability to use its Project Nessie pricing system to increase the
9 prices offered by other online stores.

10 464. Amazon's use of its Project Nessie pricing system is an unfair method of
11 competition in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

12 465. There is no valid and cognizable justification for Amazon's use of Project Nessie.

13 **COUNT V**

14 **MONOPOLY MAINTENANCE OF THE ONLINE SUPERSTORE MARKET**

15 **(15 U.S.C. § 2)**

16 466. State Plaintiffs re-allege and incorporate by reference the allegations in
17 paragraphs 1-465 above.

18 467. At all relevant times, Amazon has had monopoly power in the online superstore
19 market in the United States.

20 468. Amazon has willfully maintained its monopoly power through its course of
21 anticompetitive and exclusionary conduct, including Amazon's anti-discounting practices, which
22 stifle price competition and tend to create an artificial price floor, and Amazon's practice of
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1 coercing sellers who want their products to be Prime eligible into using Fulfillment by Amazon,
2 which makes it more difficult and more expensive for rivals to offer increased product selection.

3 469. Although each of these acts is anticompetitive in its own right, these interrelated
4 and independent actions have had a cumulative and synergistic effect that has harmed
5 competition and the competitive process.

6 470. Amazon's conduct has harmed and continues to harm competition, and Plaintiff
7 States have therefore suffered and continue to suffer harm to their general economies and to their
8 residents.

9 471. There is no valid procompetitive justification for Amazon's anticompetitive and
10 exclusionary conduct in the online superstore market.

11 472. Amazon's anticompetitive and exclusionary conduct constitutes unlawful
12 monopoly maintenance, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

13 **COUNT VI**

14 **MONOPOLY MAINTENANCE OF THE**
15 **ONLINE MARKETPLACE SERVICES MARKET**

16 **(15 U.S.C. § 2)**

17 473. State Plaintiffs re-allege and incorporate by reference the allegations in
18 paragraphs 1-472 above.

19 474. At all relevant times, Amazon has had monopoly power in the worldwide market
20 for online marketplace services for U.S. customers.

21 475. Amazon has willfully maintained its monopoly power through its course of
22 anticompetitive and exclusionary conduct, including Amazon's anti-discounting practices, which
23 stifle price competition and tend to create an artificial price floor, and Amazon's practice of
24

1 coercing sellers who want their products to be Prime eligible into using Fulfillment by Amazon,
2 which makes it more difficult and more expensive for rivals to offer increased product selection.

3 476. Although each of these acts is anticompetitive in its own right, these interrelated
4 and independent actions have had a cumulative and synergistic effect that has harmed
5 competition and the competitive process.

6 477. Amazon's conduct has harmed and continues to harm competition, and Plaintiff
7 States have therefore suffered and continue to suffer harm to their general economies and to their
8 residents.

9 478. There is no valid procompetitive justification for Amazon's anticompetitive and
10 exclusionary conduct in the online marketplace services market.

11 479. Amazon's anticompetitive and exclusionary conduct constitutes unlawful
12 monopoly maintenance, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

13 **COUNT VII**

14 **VIOLATIONS OF CONNECTICUT STATE LAW**

15 480. The State of Connecticut repeats and re-alleges and incorporates by reference
16 each and every preceding paragraph and allegation of this Complaint as if fully set forth herein.

17 481. Amazon's actions alleged in the Complaint violate the Connecticut Antitrust Act
18 ("CAA"), General Statutes § 35-24 *et seq.*

19 482. Amazon's actions alleged in the Complaint constitute monopolization of a part of
20 trade or commerce within the state in violation of Conn. Gen. Stat. § 35-27.

21 483. The State of Connecticut seeks all remedies available under CAA, including,
22 without limitation, the following:

23 (a) Injunctive and other equitable relief, pursuant to Conn. Gen. Stat. § 35-34;
24

1 (b) Costs and attorney’s fees, pursuant to Conn. Gen. Stat. § 35-34; and

2 (c) Other remedies as the Court may deem appropriate under the facts and
3 circumstances of the case.

4 484. Amazon’s actions as alleged herein also constitute unfair methods of competition
5 and/or unfair or deceptive acts or practices in trade or commerce in violation of the Connecticut
6 Unfair Trade Practices Act (“CUTPA”), Conn. Gen. Stat. § 42-110b *et seq.*

7 485. The State of Connecticut seeks all remedies available under CUTPA, including,
8 without limitation, the following:

9 (a) Disgorgement, pursuant to Conn. Gen. Stat. § 42-110m;

10 (b) Injunctive and other equitable relief, pursuant to Conn. Gen. Stat. § 42-110m;

11 (c) Costs and attorney’s fees, pursuant to Conn. Gen. Stat. § 42-110m; and

12 (d) Other remedies as the Court may deem appropriate under the facts and
13 circumstances of the case.

14 **COUNT VIII**

15 **VIOLATIONS OF MAINE STATE LAW**

16 486. Plaintiff State of Maine repeats and re-alleges and incorporates by reference each
17 and every preceding paragraph and allegation of this Complaint as if fully set forth herein.

18 487. The aforementioned acts of Amazon violate Section 1102 of the Maine
19 Monopolies and Profiteering Law, 10 M.R.S.A. § 1102.

20 488. Further, the State of Maine seeks and is entitled to injunctive relief, costs of suit,
21 including necessary and reasonable investigative costs, reasonable experts’ fees and reasonable
22 attorney fees under 10 M.R.S.A. § 1104.

COUNT IX

VIOLATIONS OF MARYLAND STATE LAW

1
2
3 489. Plaintiff State of Maryland repeats and re-alleges and incorporates by reference
4 each and every preceding paragraph and allegation of this Complaint as if fully set forth herein,
5 further implicating economic activity within Maryland as a result of Amazon’s unlawful
6 conduct.

7 490. During the relevant period, Amazon engaged in regular, continuous and
8 substantial intrastate commerce, in Maryland, including making sales, soliciting customers and
9 sellers, delivering goods, and maintaining physical locations within the State.

10 491. In the operation of its business, Amazon engaged in numerous commercial
11 practices that violate the Maryland Antitrust Act, MD Commercial Law Code, Ann. § 11-201 *et*
12 *seq.*, including monopolizing or attempting to monopolize trade or commerce in the online
13 superstore market and the market for online marketplace services within the State of Maryland.

14 492. The aforementioned acts of Amazon violate the Maryland Antitrust Act, MD
15 Commercial Law Code, Ann. § *et seq.*, which states more pertinently:

16 (a) A person may not: . . . [m]onopolize, attempt to monopolize, or combine or
17 conspire with one or more other persons to monopolize any part of the trade or
18 commerce within the State, for the purpose of excluding competition or of
19 controlling, fixing, or maintaining prices in trade or commerce.

20 *Id.* § 11-204(a)(2).

21 493. Amazon’s conduct has resulted in harms to Marylanders within the State, in
22 violation of the Maryland Antitrust Act.

1 494. Section 11-209(a)(3) provides that the Court may exercise all equitable powers
2 necessary to remove the effects of any violation, including injunction, restitution, and divestiture.
3 Plaintiff State of Maryland is entitled to costs and reasonable attorney's fees. MD Commercial
4 Law Code, Ann. § 11-209(b)(3).

5 **COUNT X**

6 **VIOLATIONS OF MICHIGAN STATE LAW**

7 495. Plaintiff State of Michigan repeats and re-alleges and incorporates by reference
8 each and every paragraph and allegation of the Complaint as if fully set forth herein.

9 496. The acts alleged in the Complaint violate the Michigan Antitrust Reform Act,
10 Mich. Comp. Laws § 445.771, *et seq.*

11 497. The acts alleged in the Complaint constitute the establishment, maintenance, or
12 use of a monopoly, or an attempt to establish a monopoly, of trade or commerce in a relevant
13 market by Amazon, for the purpose of excluding or limiting competition or controlling, fixing, or
14 maintaining prices, pursuant to Mich. Comp. Laws § 445.773.

15 498. Michigan seeks equitable and injunctive relief as authorized by Mich. Comp.
16 Laws § 445.777, including, without limitation, the following:

- 17 (a) Injunctive or other equitable relief;
- 18 (b) Costs and fees incurred by Michigan in this suit; and
- 19 (c) Other remedies as the Court finds necessary to redress and prevent recurrence
20 of each of Amazon's violations.

21 **COUNT XI**

22 **VIOLATIONS OF THE NEVADA UNFAIR TRADE PRACTICES ACT**

1 499. Plaintiff State of Nevada repeats and re-alleges and incorporates by reference
2 each and every preceding paragraph and allegation of this Complaint as if fully set forth herein.

3 500. As repeatedly alleged *supra*, Amazon's monopolistic and anticompetitive conduct
4 produced, and continues to produce, harm to businesses and consumers across the Plaintiff
5 States, including in Nevada. Accordingly, the aforementioned acts and practices by Amazon
6 were, and continue to be, prohibited acts under the Nevada Unfair Trade Practices Act, as
7 provided in Nev. Rev. Stat. § 598A.060.

8 501. To remedy Amazon's violations of the Nevada Unfair Trade Practices Act,
9 Plaintiff State of Nevada seeks the following relief:

10 (a) Injunctive relief to permanently prevent and restrain Amazon's monopolistic
11 and anticompetitive conduct, pursuant Nev. Rev. Stat. § 598A.070(c)(1);

12 (b) Equitable relief, and specifically disgorgement, pursuant to Nev. Rev. Stat.
13 § 598A.070(c)(4); and

14 (c) Any other equitable relief the Court considers appropriate and has the
15 discretion to award pursuant to Nev. Rev. Stat. § 598A.090(4).

16 **COUNT XII**

17 **VIOLATION OF THE NEW JERSEY ANTITRUST ACT**

18 **(MONOPOLY MAINTENANCE)**

19 502. Plaintiff State of New Jersey repeats and realleges and incorporates by reference
20 each and every preceding paragraph and allegation of this Complaint as if fully set forth herein.

21 503. The New Jersey Antitrust Act, N.J.S.A. 56:9-4(a), states:

22 It shall be unlawful for any person to monopolize, or attempt to monopolize, or to
23 combine or conspire with any person or persons, to monopolize trade or
24 commerce in any relevant market within this State.

1 504. In the operation of its business, Amazon engaged in numerous commercial
2 practices that violate the New Jersey Antitrust Act, N.J.S.A. 56:9-1 to -19, including
3 monopolizing or attempting to monopolize trade or commerce in the online superstore market
4 and the market for online marketplace services within the State of New Jersey, in violation of
5 N.J.S.A. 56:9-4.

6 505. Each violation of the New Jersey Antitrust Act by Amazon constitutes a separate
7 unlawful practice and violation, under N.J.S.A. 56:9-16.

8 506. Plaintiff State of New Jersey seeks all remedies available under the New Jersey
9 Antitrust Act, N.J.S.A. 56:9-1 to -19, including, without limitation, the following:

- 10 (a) Injunctive and other equitable relief, pursuant to N.J.S.A. 56:9-7 and N.J.S.A.
11 56:9-10(a);
12 (b) Costs and attorney's fees, pursuant to N.J.S.A. 56:9-12; and
13 (c) Other remedies as the Court may deem appropriate and the interests of justice
14 may require.

15 **COUNT XIII**

16 **VIOLATION OF THE NEW JERSEY CONSUMER FRAUD ACT ("CFA")**
17 **(COMMERCIAL PRACTICES IN VIOLATION OF STATE AND FEDERAL LAW)**

18 507. Plaintiff State of New Jersey repeats and realleges and incorporates by reference
19 each and every preceding paragraph and allegation of this Complaint as if fully set forth herein.

20 508. The CFA, N.J.S.A. 56:8-4(b), states:

21 In an action brought by the Attorney General, any commercial practice that
22 violates State or federal law is conclusively presumed to be an unlawful practice
23 under [N.J.S.A. 56:8-2]
24

1 509. In the operation of its business, Amazon engaged in numerous commercial
2 practices that violate the New Jersey Antitrust Act, including, but not limited to, N.J.S.A. 56:9-4,
3 monopolizing, or attempting to monopolize a part of trade or commerce within the state.

4 510. In the operation of its business, Amazon engaged in monopolization, or attempted
5 monopolization of a part of trade or commerce, in violation of Section 2 of the Sherman Act, 15
6 U.S.C. § 2.

7 511. Each violation of New Jersey and/or federal law by Amazon, on or after August 5,
8 2022, constitutes a separate unlawful practice and violation of the CFA, N.J.S.A. 56:8-2, under
9 N.J.S.A. 56:8-4(b).

10 512. Plaintiff State of New Jersey seeks all remedies available under the CFA, N.J.S.A.
11 56:8-1 to -229, including, without limitation, the following:

12 (a) Disgorgement of all profits Amazon derived as a result of the conduct alleged
13 herein, pursuant to N.J.S.A. 56:8-8;

14 (b) Injunctive and other equitable relief, pursuant to N.J.S.A. 56:8-8;

15 (c) Costs and attorney's fees, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19;

16 and

17 (d) Other remedies as the Court may deem appropriate and the interests of justice
18 may require.

19 **COUNT XIV**

20 **VIOLATION OF THE NEW JERSEY CFA BY DEFENDANT**

21 **(UNCONSCIONABLE COMMERCIAL PRACTICES BY DEFENDANT)**

22 513. Plaintiff State of New Jersey repeats and realleges and incorporates by reference
23 each and every preceding paragraph and allegation of this Complaint as if fully set forth herein.
24

1 514. The CFA, N.J.S.A. 56:8-2, prohibits:

2 The act, use or employment by any person of any commercial practice that is
3 unconscionable or abusive, deception, fraud, false pretense, false promise,
4 misrepresentation, or the knowing concealment, suppression, or omission of any
5 material fact with intent that others rely upon such concealment, suppression, or
6 omission, in connection with the sale or advertisement of any merchandise or real
estate, or with the subsequent performance of such person as aforesaid, whether or
not any person has in fact been misled, deceived or damaged thereby, is declared
to be an unlawful practice

7 515. The CFA defines “sale” as including “any sale, rental or distribution, offer for
8 sale, rental or distribution or attempt directly or indirectly to sell, rent or distribute”

9 N.J.S.A. 56:8-1(e).

10 516. The CFA defines “merchandise” as “any objects, wares, goods, commodities,
11 services or anything offered, directly or indirectly to the public for sale.” N.J.S.A. 56:8-1(c).

12 517. The acts alleged in the Complaint occurred in connection with consumer
13 transactions in the State of New Jersey within the meaning of N.J.S.A. 56:8-2.

14 518. At all relevant times, Amazon has engaged in the advertisement, offer for sale,
15 and sale of merchandise within the meaning of N.J.S.A. 56:8-1(c).

16 519. In the operation of its business, Amazon engaged in unconscionable commercial
17 practices that harmed consumers on and off Amazon’s platform by, among other things,
18 deploying a secretive scheme to increase profits while taking steps to conceal the scheme in
19 order to minimize the risk of consumer and regulatory backlash.

20 520. In the operation of its businesses, Amazon engaged in unconscionable
21 commercial practices in violation of N.J.S.A. 56:8-2, including, but not limited to, the following:

- 22 (a) Covertly and deliberately manipulating prices on its platform by using a secret
23 tool called “Project Nessie,” through which Amazon was able to engineer
24 prices that shoppers pay to optimize its profits, while also concealing the

1 existence of the tool and the inflated pricing, turning it off during periods of
2 heightened outside scrutiny and “increased media focus and customer traffic”
3 to avoid detection and then back on when Amazon thought no one was
4 watching.

5 (b) Using Project Nessie to hike consumer prices overall by manipulating other
6 online stores into raising their prices, thereby keeping prices artificially
7 inflated across the spectrum.

8 521. Forcing sellers, through Amazon’s seller punishment tactics and high seller fees,
9 to use Amazon’s inflated prices as a price floor everywhere else in the marketplace, resulting in
10 online shoppers facing artificially higher prices even when shopping somewhere other than
11 Amazon.

12 522. Amazon’s conduct is unconscionable as defined under the Consumer Fraud Act’s
13 prohibition of such practices. Each instance of an unconscionable commercial practice
14 constitutes a separate violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-2.

15 523. Plaintiff State of New Jersey seeks all remedies available under the CFA, N.J.S.A.
16 56:8-1 to –229, including, without limitation, the following:

- 17 (a) Injunctive and other equitable relief, pursuant to N.J.S.A. 56:8-8;
- 18 (b) Disgorgement of all profits Amazon derived as a result of the conduct alleged
19 herein, pursuant to N.J.S.A. 56:8-8;
- 20 (c) Costs and attorney’s fees, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19;
- 21 and
- 22 (d) Other remedies as the Court may deem appropriate and the interests of justice
23 may require.
- 24

COUNT XV

VIOLATION OF THE NEW JERSEY CFA BY DEFENDANT

(KNOWING CONCEALMENT BY DEFENDANT)

524. Plaintiff State of New Jersey repeats and realleges and incorporates by reference each and every preceding paragraph and allegation of this Complaint as if fully set forth herein.

525. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any commercial practice that is unconscionable or abusive, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

526. The CFA defines “sale” as including “any sale, rental or distribution, offer for sale, rental or distribution or attempt directly or indirectly to sell, rent or distribute” N.J.S.A. 56:8-1(e).

527. The CFA defines “merchandise” as “any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale.” N.J.S.A. 56:8-1(c).

528. The acts alleged in the Complaint occurred in connection with consumer transactions in the State of New Jersey within the meaning of N.J.S.A. 56:8-2.

529. At all relevant times, Amazon has engaged in the advertisement, offer for sale, and sale of merchandise within the meaning of N.J.S.A. 56:8-1(c).

530. In the operation of its business, Amazon knowingly concealed from consumers that it deployed a secretive tool that manipulated prices on and off Amazon’s platform and altered the consumer experience on its platform.

1 531. Amazon engaged in knowing concealment or suppression of material facts in
2 violation of N.J.S.A. 56:8-2, including, but not limited to, the following:

3 (a) Omitting or concealing material facts about its business operation, including
4 the covert and deliberate manipulation of prices for shoppers by using a secret
5 tool called “Project Nessie,” through which Amazon was able to engineer the
6 prices that shoppers pay to optimize its profits, while also concealing the
7 existence of the tool and the inflated pricing, turning it off during periods of
8 heightened outside scrutiny and “increased media focus and customer traffic”
9 to avoid detection and then back on when Amazon thought that no one is
10 watching.

11 (b) Omitting or concealing material facts regarding its use of Project Nessie to
12 hike consumer prices overall by manipulating other online stores into raising
13 prices, thereby keeping prices artificially inflated across the spectrum.

14 532. Amazon’s conduct constitutes the knowing concealment or suppression of
15 material facts, as defined under the Consumer Fraud Act’s prohibition of such practices. Each
16 instance of the knowing concealment, suppression, or omission of any material fact constitutes a
17 separate violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-2.

18 533. Plaintiff State of New Jersey seeks all remedies available under the CFA, N.J.S.A.
19 56:8-1 to -229, including, without limitation, the following:

20 (a) Injunctive and other equitable relief, pursuant to N.J.S.A. 56:8-8;

21 (b) Disgorgement of all profits Amazon derived as a result of the conduct alleged
22 herein, pursuant to N.J.S.A. 56:8-8;

1 (c) Costs and attorney’s fees, pursuant to N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19;
2 and

3 (d) Other remedies as the Court may deem appropriate and the interests of justice
4 may require.

5 **COUNT XVI**

6 **VIOLATIONS OF NEW YORK STATE LAW**

7 534. Plaintiff State of New York repeats and re-alleges and incorporates by reference
8 each and every paragraph and allegation of this Complaint as if fully set forth herein.

9 535. Amazon’s aforementioned acts and practices alleged in the Complaint violate
10 Section 63(12) of New York’s Executive Law, in that Amazon engaged in repeated and/or
11 persistent illegal acts—violations of Section 2 of the Sherman Act and Section 5 of the FTC
12 Act—in the carrying on, conducting, or transaction of business within the meaning and intent of
13 Executive Law Section 63(12).

14 **COUNT XVII**

15 **VIOLATIONS OF OKLAHOMA STATE LAW**

16 536. Plaintiff State of Oklahoma repeats and re-alleges and incorporates by reference
17 each and every preceding paragraph and allegation of this Complaint as if fully set forth herein.

18 537. Amazon was at all times relevant hereto engaged in trade and commerce within
19 the State of Oklahoma.

20 538. The acts alleged in the Complaint constitute violations of the Oklahoma Antitrust
21 Reform Act, 79 O.S. §§ 201, *et seq.*

1 (a) The acts alleged in the Complaint constitute unlawful monopolization of a
2 part of trade or commerce in a relevant market within the State of Oklahoma
3 pursuant to 79 O.S. § 203.

4 539. Plaintiff State of Oklahoma seeks relief under the Oklahoma Antitrust Reform
5 Act, 79 O.S. §§ 201, *et seq.*, including, without limitation, the following:

- 6 (a) Injunctive and other equitable relief pursuant to 79 O.S. § 205;
7 (b) Disgorgement and restitution pursuant to 79 O.S. § 205;
8 (c) Costs and attorney’s fees pursuant to 79 O.S. § 205; and
9 (d) Other remedies as the Court may deem appropriate under the facts and
10 circumstances of the case.

11 540. The acts alleged in the Complaint also constitute violations of the Oklahoma
12 Consumer Protection Act, 15 O.S. §§ 751, *et seq.*

- 13 (a) Amazon is a person within the meaning of 15 O.S. § 752;
14 (b) The acts alleged in the Complaint occurred in connection with consumer
15 transactions within the meaning of 15 O.S. § 752; and
16 (c) The acts alleged in the Complaint constitute unfair or deceptive trade
17 practices, within the meaning of 15 O.S. § 752, and were committed in
18 violation of 15 O.S. § 753.

19 541. Plaintiff State of Oklahoma seeks relief under the Oklahoma Consumer
20 Protection Act, 15 O.S. §§ 751, *et seq.*, including, without limitation, the following:

- 21 (a) Injunctive and other equitable relief pursuant to 15 O.S. § 756.1;
22 (b) Disgorgement and restitution pursuant to 79 O.S. § 756.1;
23 (c) Costs and attorney’s fees pursuant to 15 O.S. § 761.1; and
24

1 (d) Other remedies as the Court may deem appropriate under the facts and
2 circumstances of the case.

3 **COUNT XVIII**

4 **VIOLATIONS OF OREGON STATE LAW**

5 542. Plaintiff State of Oregon, acting by and through its Attorney General, Ellen
6 Rosenblum (the “State of Oregon”), repeats and re-alleges and incorporates by reference each
7 and every preceding paragraph and allegation of this Complaint as if fully set forth herein.

8 543. The acts alleged in the Complaint also constitute violations of the Oregon
9 Antitrust Law, Oregon Revised Statutes (“ORS”) 646.705 to ORS 646.836. These violations had
10 impacts within the State of Oregon and substantially affected the people of Oregon.

11 544. The State of Oregon appears in its sovereign or quasi-sovereign capacities and
12 under its statutory, common law, and equitable powers pursuant to Section 4 of the Sherman Act,
13 15 U.S.C. § 4, Section 16 of the Clayton Act, 15 U.S.C. § 26, and the Oregon Antitrust Law
14 including ORS 646.760 and ORS 646.770. The State of Oregon seeks equitable and injunctive
15 relief under federal law and the Oregon Antitrust Law, including, without limitation, the
16 following:

17 (a) Equitable relief pursuant to federal law including Section 4 of the Sherman
18 Act, 15 U.S.C. § 4, and pursuant to state law including ORS 646.770;

19 (b) Injunctive relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26,
20 ORS 646.760, and ORS 646.770;

21 (c) The cost of suit, including expert witness fees, costs of investigation, and
22 attorney’s fees, pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26,
23 ORS 646.760, and ORS 646.770; and
24

1 (d) Other remedies as the Court may deem appropriate under the facts and
2 circumstances of the case.

3 **COUNT XIX**

4 **VIOLATIONS OF PENNSYLVANIA STATE LAW**

5 **A. Pennsylvania’s Unfair Trade Practices And Consumer Protection Law**

6 545. Plaintiff Commonwealth of Pennsylvania repeats and re-alleges and incorporates
7 by reference each and every paragraph and allegation of this Complaint as if fully set forth
8 herein.

9 546. Amazon has violated Pennsylvania’s Unfair Trade Practices and Consumer
10 Protection Law (“PUTPCPL”).

11 547. Amazon is a “person” within the meaning of 73 P.S. § 201-2(2) of the PUTPCPL.

12 548. Amazon’s lines of business ranging from online retail, media, cloud computing,
13 grocery stores, advertising and logistics and operational services are offered to consumers
14 through their substantial online presence as well as physical locations in the case of grocery
15 stores. By engaging in the conduct more fully described herein with respect to these products
16 and services, Amazon is engaging in trade or commerce that has directly or indirectly affected
17 the people of this Commonwealth within the meaning of 73 P.S. § 201-2(3) of the PUTPCPL.

18 549. The Pennsylvania Attorney General has reason to believe that Amazon is using or
19 is about to use any method, act or practice in violation of 73 P.S. § 201-3 and it is in the public
20 interest to prevent and restrain the use of such methods, acts or practices under 73 P.S. § 201-4.

21 **Specific Unfair and Deceptive Conduct by Amazon**

22 550. Plaintiff Commonwealth of Pennsylvania specifically incorporates by reference
23 paragraphs 268-270, 418, 419, 421, 428-31, 432 of this Complaint.

1 551. Amazon has engaged in unfair methods of competition and unfair or deceptive
2 acts or practices by using its Project Nessie to raise prices by manipulating other online stores'
3 pricing algorithms into matching Amazon's price increases in the prices offered to consumers.

4 552. Amazon designed and used Project Nessie for the sole purpose of manipulating
5 other online stores into increasing their prices.

6 553. Amazon's Project Nessie was successful in manipulating other online stores into
7 increasing their prices.

8 554. Amazon's manipulated artificial price increases misrepresented the fair market
9 value for those goods and services.

10 555. Recognizing the potential fallout that the market manipulation purpose of Project
11 Nessie, if revealed, would have on consumers, Amazon turned Project Nessie on and off to avoid
12 regulatory scrutiny and consumers from catching on.

13 556. Amazon continues to have the ability to use Project Nessie to manipulate other
14 online stores into increasing their prices.

15 557. While concealing the artificial price increases through Project Nessie, Amazon
16 also unfairly and deceptively represented in 2015 that "Amazon.com consistently works toward
17 maintaining competitive prices on everything we carry and will match the price of other retailers
18 for some items. Amazon.com will price match eligible purchases of televisions and cell phones
19 with select other retailers, including those who sell their items on our website. For all other
20 items, Amazon.com doesn't offer price matching."

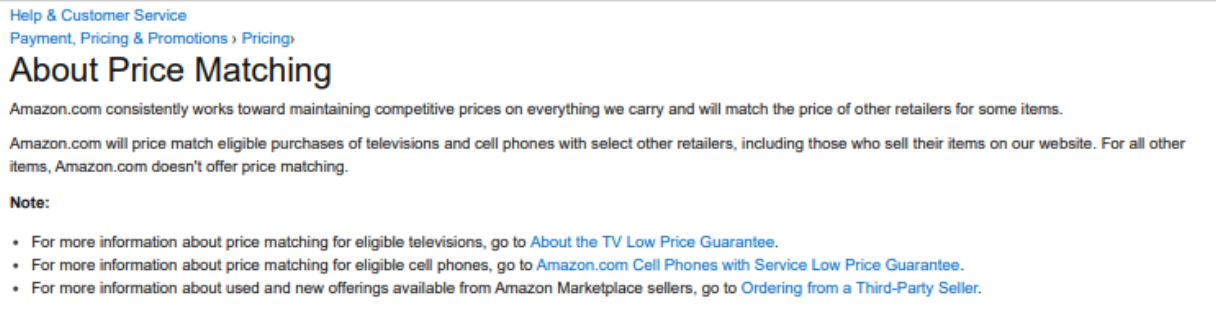


Figure 18. Amazon Price Matching Policy from 2015

Source: <https://web.archive.org/web/20150227044712/http://www.amazon.com/gp/help/customer/display.html?nodeId=201133150> (last visited October 16, 2024).

558. While concealing the artificial price increases through Project Nessie, Amazon also unfairly and deceptively represented in 2017 that “Amazon.com consistently works toward maintaining competitive prices on everything we carry. Amazon.com doesn’t offer price matching.”

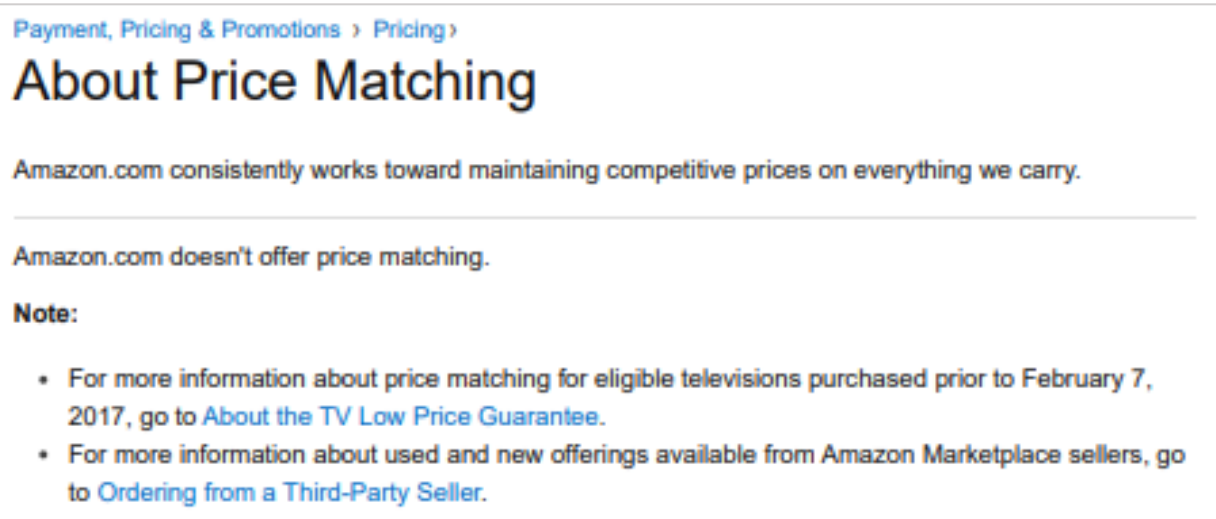


Figure 19: Amazon’s Price Matching Policy from 2017

Source: <https://web.archive.org/web/20170303201921/https://www.amazon.com/gp/help/customer/display.html?nodeId=201133150> (last visited October 16, 2024).

1 559. While having concealed its artificial price increases through Project Nessie
2 between 2015 and 2019, Amazon currently represents that “We strive to maintain low and
3 competitive prices on everything we carry. We constantly compare Amazon’s prices to our
4 competitors’ prices to make sure that our prices are as low or lower than all relevant competitors.
5 As a result, we don’t offer price matching.”

6
7 [Payment, Pricing and Promotions](#) › [Payment Methods](#) ›

8 Price Matching

9 We strive to maintain low and competitive prices on everything we carry.

10 We constantly compare Amazon's prices to our competitors' prices to make sure that our prices
11 are as low or lower than all relevant competitors. As a result, we don't offer price matching.

12 For more information about our pricing, go to [Payments, Pricing and Promotions](#).

13 *Figure 20: Amazon’s Price Matching Policy from 2024*

14 Source: [https://www.amazon.com/gp/help/customer/display.html?nodeId=G9EAYKPV5YYDB](https://www.amazon.com/gp/help/customer/display.html?nodeId=G9EAYKPV5YYDB8P7#:~:text=We%20strive%20to%20maintain%20low,lower%20than%20all%20relevant%20co)
15 [8P7#:~:text=We%20strive%20to%20maintain%20low,lower%20than%20all%20relevant%20co](https://www.amazon.com/gp/help/customer/display.html?nodeId=G9EAYKPV5YYDB8P7#:~:text=We%20strive%20to%20maintain%20low,lower%20than%20all%20relevant%20co)
16 [mpetitors](https://www.amazon.com/gp/help/customer/display.html?nodeId=G9EAYKPV5YYDB8P7#:~:text=We%20strive%20to%20maintain%20low,lower%20than%20all%20relevant%20co) (last visited October 16, 2024).

17 560. Amazon deploys what it calls a “Competitive Monitoring Team” to surveil prices.

18 561. Because Amazon actually surveils prices “constantly” or “consistently,” these
19 statements are not hyperbole or exaggeration.

20 562. Amazon “constantly” or “consistently” monitors prices and intends for consumers
21 to rely upon these statements as part of its policy to not match prices.

1 563. These statements from 2015 to 2019 created an impression and, in turn, an
2 expectation by consumers that Amazon guaranteed low or competitive prices while Amazon
3 manipulated higher pricing behind the curtain through the use of Project Nessie.

4 564. Because Amazon may turn on Project Nessie again and because Amazon
5 maintains a similar statement today, the unfair or deceptive conduct may recur in the future.

6 **1. Unfair methods of competition and unfair acts or practices under**
7 **PUTPCPL**

8 565. Plaintiff Commonwealth of Pennsylvania repeats and re-alleges and incorporates
9 by reference each and every paragraph and allegation of the Complaint as if fully set forth
10 herein.

11 566. Regardless of the nature or quality of Amazon's aforementioned acts or practices
12 on the competitive process or competition, Amazon's conduct has been otherwise unfair or
13 unconscionable because they offend public policy as established by statutes, the common law, or
14 otherwise, are immoral, unethical, oppressive, unscrupulous, or substantially injurious to
15 consumers.

16 567. As part of its course of conduct in violating another statute *in pari materia* with
17 the PUTPCPL, Amazon has failed to disclose, made misleading statements or representations as
18 to the characteristics and benefits of goods and services in that:

- 19 (a) A characteristic of every commodity in Pennsylvania's economy is its price,
20 which is represented by every seller to every buyer that the product being sold
21 is being sold at a legal, competitive, and a fair market price free of any
22 manipulation;

- 1 (b) At no point did Amazon reveal that the prices associated with the goods and
2 services at issue herein were not legal, competitive or at fair market prices free
3 of any manipulation;
- 4 (c) At no point did Amazon disclose that the prices associated with the at-issue
5 goods and services were generated by Project Nessie;
- 6 (d) Amazon turned Project Nessie on and off to avoid detection by consumers;
- 7 (e) Amazon used Project Nessie to increase consumer prices overall by
8 manipulating other online stores into raising their prices, thereby keeping
9 prices artificially inflated across the spectrum; and
- 10 (f) In furtherance of Project Nessie scheme, Amazon falsely represented that it
11 constantly compared pricing to ensure that their prices were competitive or
12 were as low or lower than their relevant competitors while Amazon artificially
13 raised prices through Project Nessie and manipulated market prices.

14 568. As part of its course of conduct in violating another statute *in pari materia* with
15 the PUTPCPL, Amazon has otherwise engaged in conduct with the capacity or tendency to
16 deceive in that:

- 17 (a) Amazon has explicitly or implicitly made false representations that its
18 constant monitoring of prices has the benefit and characteristic of lowering the
19 prices of the at-issue goods and services; and
- 20 (b) Amazon concealed, suppressed and omitted material facts relating to Project
21 Nessie and its market manipulation that its published prices of the at-issue
22 goods and services were higher despite its false representations of keeping
23 prices low.
- 24

1 569. Amazon's unfair conduct has resulted in consumers being substantially injured by
2 paying more for products than they otherwise would have in a free and open market and free of
3 manipulation.

4 570. Amazon's unscrupulous conduct has resulted in the impairment of choice for
5 consumers and the competitive process has had the following effects: (1) competition in the
6 online superstore market has been restrained, suppressed and eliminated throughout
7 Pennsylvania; (2) online superstore market prices have been raised, maintained and stabilized at
8 artificially-high levels throughout Pennsylvania; (3) consumers have been deprived of free and
9 open markets free of manipulation; and (4) consumers have paid supra-competitive, artificially
10 inflated prices for online superstore products.

11 571. Amazon's impairment of choice and the competitive process have caused
12 consumers to suffer and to continue to suffer loss of money by means of Amazon's use or
13 employment of unfair methods of competition and/or unfair acts or practices as set forth above.

14 572. Amazon's conduct more fully described herein is unlawful pursuant to 73 P.S.
15 § 201-3.

16 573. Amazon violated the PUTPCPL:

17 (a) Each time the Amazon failed to disclose or made false or misleading
18 statements of fact as to the characteristics and benefits of the prices for the at-
19 issue goods and services through its manipulation of prices using Project
20 Nessie; and

21 (b) Each time any consumer paid an unfairly, deceptively or unconscionably
22 inflated price for any of the at-issue goods services due to Amazon's using
23 Project Nessie.
24

1 574. The aforesaid methods, acts or practices constitute unfair methods of competition
2 and/or unfair acts or practices within their meaning under Section 2(4) of the PUTPCPL,
3 including, but not limited to:

- 4 (a) “Representing that goods or services have sponsorship, approval,
5 characteristics, ingredients, uses, benefits or quantities that they do not have or
6 that a person has a sponsorship, approval, status, affiliation or connection that
7 he does not have” in violation of 73 P.S. § 201-2(4)(v); and
8 (b) “Engaging in any other fraudulent or deceptive conduct which creates a
9 likelihood of confusion or of misunderstanding” in violation of 73 P.S. § 201-
10 2(4)(xxi).

11 575. Under Pennsylvania jurisprudence, for laws to be liberally construed such as the
12 PUTPCPL, the enumeration in an operative definition should not be considered exhaustive. The
13 PUTPCPL covers all unfair or deceptive acts or practices.

14 576. The above-described conduct has created the likelihood of confusion and
15 misunderstanding and exploited unfair advantage of consumers seeking to exercise a meaningful
16 choice in markets expected to be free of impairment to the competitive process and free of
17 manipulation and thus constitutes an unfair method of competition through one or more of the
18 following:

- 19 (a) Violating Section 5 of the Federal Trade Commission Act, 15 U.S.C § 45(a);
20 and/or
21 (b) Engaging in any conduct which causes substantial injury to consumers and is
22 otherwise unscrupulous.

1 577. The above-described conduct substantially injured and was otherwise
2 unscrupulous to consumers.

3 578. The Commonwealth seeks entry of a permanent injunction restraining Amazon's
4 unlawful conduct and mandating corrective measures pursuant to 73 P.S. § 201-4.

5 579. The Commonwealth also requests that the Court direct Amazon to disgorge to the
6 Commonwealth on behalf of all victims the ill-gotten gains acquired from their inflated pricing
7 during the period of time Amazon's unlawful conduct took place, pursuant to 73 P.S. § 201-4.1,
8 and to pay to the Commonwealth for the costs of its investigation and prosecution of this action,
9 pursuant to 72 P.S. § 1602-U, as well as any other equitable and other relief deemed necessary or
10 proper.

11 **1. Deceptive acts or practices under PUTPCPL**

12 580. Plaintiff Commonwealth of Pennsylvania repeats and re-alleges and incorporates
13 by reference each and every paragraph and allegation of the Complaint as if fully set forth
14 herein.

15 581. Amazon deceptively misrepresented to consumers that Amazon's pricing in the
16 online superstore market was competitive, fair and free of any manipulation.

17 582. Amazon deceptively concealed from, or otherwise misled, consumers as to the
18 actual characteristics of the marketplace being other than competitive, fair and free of any
19 manipulation.

20 583. Regardless of the nature or quality of Amazon's aforementioned acts or practices
21 on the competitive process or competition, Amazon's conduct has had the tendency or capacity
22 to deceive.

1 584. Amazon has failed to disclose, explicitly or implicitly made misleading
2 statements or representations as to the characteristics and benefits of goods and services in that:

- 3 (a) A characteristic of every commodity in Pennsylvania’s economy is its price,
4 which is represented by every seller to every buyer that the product being sold
5 is being sold at a legal, competitive, and fair price free of any manipulation;
6 (b) At no point did Amazon reveal that the prices associated with the goods and
7 services at issue herein were not legal, competitive, fair or free of any
8 manipulation;
9 (c) At no point did Amazon disclose that the prices associated with the at-issue
10 goods and services were generated by Project Nessie;
11 (d) Amazon turned Project Nessie on and off to avoid detection by consumers;
12 (e) Amazon used Project Nessie to increase consumer prices overall by
13 manipulating other online stores into raising their prices, thereby keeping
14 prices artificially inflated across the spectrum; and
15 (f) In furtherance of Project Nessie scheme, Amazon falsely represented that it
16 constantly or consistently compared pricing to ensure that their prices were
17 competitive or were as low or lower than their relevant competitors while
18 Amazon artificially raised prices through Project Nessie and manipulated
19 market prices.

20 585. Amazon has otherwise engaged in conduct with the capacity or tendency to
21 deceive in that:

1 (a) Amazon has made false representations that its constant monitoring of prices
2 has the benefit and characteristic of lowering the prices of the at-issue goods
3 and services;

4 (b) Amazon concealed, suppressed and omitted material facts relating to Project
5 Nessie and its market manipulation that its published prices of the at-issue
6 goods and services were higher despite its false representations of keeping
7 prices low.

8 586. Amazon's deceptive conduct has resulted in consumers being substantially
9 injured by paying more for products than they otherwise would have in a free, open, fair, and
10 competitive market free of any manipulation.

11 587. Amazon's deceptive misrepresentations and failure to disclose material facts have
12 had the following effects: (1) competition in the online superstore market has been restrained,
13 suppressed and eliminated throughout Pennsylvania; (2) prices for products in the online
14 superstore market have been raised, maintained and stabilized at artificially-high levels
15 throughout Pennsylvania; (3) consumers have been deprived of free and open markets free of
16 manipulation; and (4) consumers have paid supra-competitive, artificially inflated prices for
17 products in the online superstore market.

18 588. Amazon's impairment of choice and the competitive process has caused
19 consumers to suffer and to continue to suffer loss of money by means of Amazon's use or
20 employment of unfair methods of competition and/or unfair acts or practices as set forth above.

21 589. Amazon's conduct more fully described herein is unlawful pursuant to 73 P.S.
22 § 201-3.

23 590. Amazon violated the PUTPCPL:
24

1 (a) Each time Amazon failed to disclose or made false or misleading statements
2 of fact as to the characteristics and benefits of the prices for the at-issue goods
3 and services through its manipulation of prices using Project Nessie;

4 (b) Each time any consumer paid an unfairly, deceptively or unconscionably
5 inflated price for any of the at-issue goods services due to Amazon's using
6 Project Nessie.

7 591. The aforesaid methods, acts or practices constitute deceptive acts or practices
8 within their meaning under Section 2 (4) of the PUTPCPL, including, but not limited to:

9 (a) "Representing that goods or services have sponsorship, approval,
10 characteristics, ingredients, uses, benefits or quantities that they do not have or
11 that a person has a sponsorship, approval, status, affiliation or connection that
12 he does not have" in violation of 73 P.S. § 201-2(4)(v); and

13 (b) "Engaging in any other fraudulent or deceptive conduct which creates a
14 likelihood of confusion or of misunderstanding" in violation of 73 P.S. § 201-
15 2(4)(xxi).

16 592. Under Pennsylvania jurisprudence, for laws to be liberally construed such as the
17 PUTPCPL, the enumeration in an operative definition should not be considered exhaustive. The
18 PUTPCPL covers all unfair or deceptive acts or practices.

19 593. The above-described conduct has created the likelihood of confusion and
20 misunderstanding and exploited the deception and lack of disclosure as to the actual
21 characteristics of the marketplace to consumers seeking to exercise a meaningful choice in
22 markets expected to be free, open, fair, competitive and free of manipulation, and thus
23 constitutes a deceptive act or practice.

1 594. The Commonwealth seeks entry of a permanent injunction restraining Amazon's
2 unlawful conduct and mandating corrective measures pursuant to 73 P.S. § 201-4.

3 595. The Commonwealth also requests that the Court direct Amazon to disgorge to the
4 Commonwealth on behalf of all victims the ill-gotten gains acquired from their inflated pricing
5 during the period of time Amazon's unlawful conduct took place, pursuant to 73 P.S. § 201-4.1,
6 and to pay to the Commonwealth for the costs of its investigation and prosecution of this action,
7 pursuant to 72 P.S. § 1602-U, as well as any other equitable and other relief deemed necessary or
8 proper.

9 **COUNT XX**

10 **VIOLATIONS OF RHODE ISLAND LAW**

11 596. Plaintiff State of Rhode Island repeats and re-alleges and incorporates by
12 reference each and every preceding paragraph and allegation in the Complaint as if fully set forth
13 herein.

14 597. Amazon's actions as alleged herein violate the Rhode Island Antitrust Act, R.I.
15 Gen. Laws § 6-36-1, *et seq.*

16 598. Plaintiff State of Rhode Island seeks all remedies available under the Rhode
17 Island Antitrust Act, R.I. Gen. Laws §§ 6-36-10, 6-36-11 and 6-36-12 and seeks relief, including
18 but not limited to injunctive relief, equitable monetary relief, fees, costs, and such other relief as
19 this Court deems just and equitable.

20 599. Amazon's actions as alleged herein constitute unfair methods of competition and
21 unfair or deceptive acts or practices as defined in the Rhode Island Deceptive Trade Practices
22 Act, R.I. Gen. Laws § 6-13.3-1, *et seq.*

- 1 2. that Amazon’s conduct violates Section 2 of the Sherman Act, 15 U.S.C. § 2;
- 2 3. that Amazon’s conduct violates the Connecticut Antitrust Act, General Statutes
- 3 § 35-24 *et seq.*, and the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat.
- 4 § 42-110b *et seq.*;
- 5 4. that Amazon’s conduct violates Section 1102 of the Maine Monopolies and
- 6 Profiteering Law, 10 M.R.S.A. § 1102;
- 7 5. that Amazon’s conduct violates the Maryland Antitrust Act, Maryland
- 8 Commercial Law Code Ann. § 11-201 *et seq.*;
- 9 6. that Amazon’s conduct violates the Michigan Antitrust Reform Act, Mich. Comp.
- 10 Laws § 445.771 *et seq.*;
- 11 7. that Amazon’s conduct violates the Nevada Unfair Trade Practices Act, Nev. Rev.
- 12 Stat. § 598A.060;
- 13 8. that Amazon’s conduct violates N.J.S.A. 56:8-1 to –227, and N.J.S.A. 56:9-1 to –
- 14 19;
- 15 9. that Amazon’s conduct violates New York Executive Law § 63(12);
- 16 10. that Amazon’s conduct violates the Oklahoma Antitrust Reform Act, 79 O.S.
- 17 §§ 201, *et seq.*, and the Oklahoma Consumer Protection Act, 15 O.S. §§ 751, *et*
- 18 *seq.*;
- 19 11. that Amazon’s conduct violates the Oregon Antitrust Law, Oregon Revised
- 20 Statutes 646.705 to 646.836;
- 21 12. that Amazon’s conduct violates the Pennsylvania Unfair Trade Practices and
- 22 Consumer Protection Law, 73 P.S. § 201-3;
- 23
- 24

- 1 13. that Amazon’s conduct violates the Rhode Island Antitrust Act, R.I. Gen. Laws
- 2 § 6-36-1, *et seq.*;
- 3 14. that Amazon’s conduct violates Wis. Stat. § 133.03 *et seq.*;
- 4 15. that Amazon is permanently enjoined from engaging in its unlawful conduct;
- 5 16. that Amazon is permanently enjoined from engaging in similar or related conduct,
- 6 or any conduct with the same or similar purpose and effect;
- 7 17. any preliminary or permanent equitable relief, including but not limited to
- 8 structural relief, necessary to redress and prevent recurrence of Amazon’s
- 9 violations of the law, as alleged herein;
- 10 18. any preliminary or permanent equitable relief, including but not limited to
- 11 structural relief, necessary to restore fair competition and remedy the harm to
- 12 competition caused by Amazon’s violations of the law;
- 13 19. that the Court grant Plaintiff States equitable monetary relief pursuant to all
- 14 applicable law;
- 15 20. that the Court grant Plaintiff States the costs of suit, including all available fees
- 16 and costs; and
- 17 21. that the Court grant any additional relief the Court finds just and proper.

1 Dated: October 31, 2024

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