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12 **THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 STATE OF ARIZONA, *ex rel.*, KRISTIN K.  
15 MAYES, Attorney General,

16 Plaintiff,

17 vs.

18 AMAZON.COM, INC., a Delaware  
19 corporation,

20 Defendant.

Case No.

**COMPLAINT**

**JURY TRIAL DEMANDED**

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1 Plaintiff, the State of Arizona, brings this action against the above-named Defendant  
2 (“Amazon”) and alleges as follows:

3 **I. INTRODUCTION**

4 1. The State brings this public enforcement action to protect Arizona consumers  
5 from Defendant’s unfair and deceptive acts and practices in the operation of its Buy Box  
6 algorithm, and to protect Arizona consumers from Defendant’s anticompetitive price parity  
7 policies.

8 2. Amazon operates the largest online retail marketplace in the United States:  
9 Amazon Marketplace. It counts millions of Arizona consumers among its customers.

10 3. Amazon sells goods as a first-party retailer, but it also operates its website as a  
11 marketplace where third-party sellers can pay fees to list their goods alongside, and in  
12 competition with, Amazon’s own first-party retail listings.

13 4. Amazon claims to be a “customer-centric” company that works to offer the  
14 lowest prices to its customers, but in reality, Amazon employs multiple schemes that keep its  
15 profits—and consumer prices—high.

16 5. First, Amazon violates the Arizona Consumer Fraud Act by using a biased  
17 algorithm to determine which offers shoppers will see, and therefore which sellers they will  
18 buy from, when they search for items on Amazon.

19 6. When more than one seller on Amazon’s marketplace offers the same item for  
20 sale, an Amazon algorithm selects just one seller’s offer to appear in the “Buy Box” of a given  
21 product page. The Buy Box contains “Buy Now” and “Add to Cart” buttons that allow  
22 consumers to purchase the item in question. As described in more detail in this complaint,  
23 Amazon designs its product pages to obscure the fact that other offers for the same item are  
24 available on Amazon, and as a result, nearly 98% of purchases on Amazon are made via the  
25 Buy Box.



1 Amazon’s marketplace. Before 2019, the United States BSA contained a “Price Parity” clause  
2 that expressly prohibited sellers from offering their goods on other sites for lower prices than  
3 they were listed on Amazon.

4 11. This provision drew justified regulatory scrutiny, so Amazon quietly eliminated  
5 the express Price Parity clause from the BSA in March 2019. But Amazon didn’t actually  
6 change its stance on price parity. Instead, it relied on other provisions of the BSA to prevent  
7 third-party sellers from competing with Amazon on price, *and* to prevent competing  
8 marketplaces from taking advantage of their lower fees.

9 12. Specifically, Amazon began interpreting its “Brand Standards,” a so-called “Fair  
10 Pricing” Policy, and a “Seller Code of Conduct” to make it a “violation” for a third-party seller  
11 to sell an item off Amazon for less than it sells the same item on Amazon. This is true even  
12 though Amazon charges the highest fees in the industry. (Approximately 27% of every dollar  
13 a consumer spends on Amazon goes to Amazon rather than the seller.) In other words, if an  
14 Arizona business owner sells a sweater on Amazon for \$50, Amazon deems it a “violation” of  
15 the BSA for the business owner to sell the same sweater on her own website for \$45—even  
16 though she is not paying fees to sell via her own site.

17 13. As described below, Amazon aggressively polices so-called “violations” of its  
18 price parity policies. It uses automated computer software to scan the Internet for goods being  
19 offered on other websites for lower prices than they are listed on Amazon. Sellers are alerted  
20 of pricing “violations” within minutes. And Amazon imposes penalties on offending sellers,  
21 including stripping offers of their Amazon Prime shipping eligibility (which leads to lower  
22 sales), preventing offers from appearing in the Buy Box (which virtually eliminates sales), and  
23 even shutting down seller accounts entirely.

24 14. Regulators have found that Amazon enjoys tremendous market power in the  
25 market for online retail marketplaces, and because of this, third-party sellers have no choice  
26

1 but to comply with Amazon’s price parity policies. They therefore charge as much for their  
2 goods *off* Amazon as they charge for their goods *on* Amazon, where Amazon’s supra-  
3 competitive fees are baked into prices.

4 15. Amazon’s price parity policies thus restrain competition in two ways. First, they  
5 prevent third-party sellers from competing with Amazon on price by offering their goods for  
6 lower prices off Amazon. This protects Amazon from competition in its capacity as a first-  
7 party retailer. Second, price parity prevents other online marketplaces from competing with  
8 Amazon by offering marketplace services for lower fees. Other marketplaces have no incentive  
9 to offer lower fees when they know that third-party sellers will have to list their goods for just  
10 as much on Walmart or eBay as they do on Amazon. This protects Amazon from competition  
11 in its capacity as an online retail marketplace provider. Amazon thus ensures its dominance  
12 among online retail marketplaces while keeping prices for Arizona consumers artificially high.

13 16. The State brings this public enforcement action under Arizona’s consumer  
14 protection and antitrust statutes, alleging that Amazon’s biased Buy Box algorithm violates the  
15 Consumer Fraud Act, and its monopoly of the online retail marketplaces market and  
16 anticompetitive price parity policies violate Arizona’s Uniform State Antitrust Act. The State  
17 seeks an injunction requiring Amazon to stop its deceptive and anticompetitive practices,  
18 restitution, disgorgement, and civil penalties to the full extent authorized by Arizona law.

## 19 II. PARTIES

### 20 A. Plaintiff

21 17. Plaintiff is the State of Arizona, *ex rel.* Kristin K. Mayes, Attorney General (the  
22 “State”). Attorney General Mayes is acting pursuant to her authority under A.R.S. § 41-  
23 193(A)(2), A.R.S. § 44-1528 (Attorney General may seek relief under the Arizona Consumer  
24 Fraud Act), and A.R.S. § 44-1407 (Attorney General may seek relief under the Arizona  
25 Uniform State Antitrust Act).

1 18. Plaintiff seeks relief for the harm suffered by Arizona consumers because of  
2 Defendant’s unfair and deceptive Buy Box algorithm and its anticompetitive price parity  
3 policies.

4 **B. Defendant**

5 19. Amazon is an online retail giant with its principal headquarters in Seattle,  
6 Washington. Amazon sells its own goods directly to retail customers in Arizona via its online  
7 retail marketplace. Amazon also sells third-party sellers’ goods in its online marketplace,  
8 including goods sold by Arizona businesses.

9 20. Amazon has intentionally exploited markets in Arizona since at least 2010.<sup>2</sup>  
10 Today, through its wholly-owned subsidiary Amazon.com Services LLC,<sup>3</sup> Amazon has  
11 corporate offices in Phoenix and Tempe, and it operates 17 “fulfillment and sortation centers”  
12 and 13 “delivery stations” in Arizona.<sup>4</sup> Those facilities employ at least 33,000 Arizona  
13 residents,<sup>5</sup> and they dispatch Amazon orders to millions of Arizona customers.<sup>6</sup> Amazon also  
14 ships an enormous volume of goods to Arizonans from Arizona and other states on a daily  
15 basis. Arizona residents spend on average \$91.55 per month on Amazon, i.e., \$1,098 per year.<sup>7</sup>

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17 <sup>2</sup> *Amazon Announces Plans to Create 550 New Jobs at Phoenix Tech Hub*, AMAZON PRESS  
18 CENTER (Dec. 21, 2021) [https://press.aboutamazon.com/2021/12/amazon-announces-plans-to-  
create-550-new-jobs-at-phoenix-tech-hub](https://press.aboutamazon.com/2021/12/amazon-announces-plans-to-create-550-new-jobs-at-phoenix-tech-hub).

19 <sup>3</sup> Amazon.com, Inc. Form 10-K (Feb. 2, 2024), [https://d18rn0p25nwr6d.cloudfront.net/  
CIK-0001018724/c7c14359-36fa-40c3-b3ca-5bf7f3fa0b96.pdf](https://d18rn0p25nwr6d.cloudfront.net/CIK-0001018724/c7c14359-36fa-40c3-b3ca-5bf7f3fa0b96.pdf).

20 <sup>4</sup> *Amazon Announces Plans to Create 550 New Jobs at Phoenix Tech Hub*, *supra* note 2;  
21 *see also* Maritza Dominquez, *Amazon to Bring More Than 800 Jobs at New 1.2 Million-  
Square-Foot Facility In Mesa*, ARIZONA REPUBLIC (June 9, 2023), [https://  
www.azcentral.com/story/news/local/mesa/2023/06/09/new-amazon-facility-mesa-more-than-  
800-jobs-available/70303320007/](https://www.azcentral.com/story/news/local/mesa/2023/06/09/new-amazon-facility-mesa-more-than-800-jobs-available/70303320007/).

22 <sup>5</sup> *Amazon to Bring More Than 800 Jobs at New 1.2 Million-Square-Foot Facility In Mesa*,  
23 *supra* note 4.

24 <sup>6</sup> *About Phoenix Area, The Valley of the Sun*, Amazon Jobs, [https://jobs-us-  
west.amazon.com/en/locations/phoenix-area-az](https://jobs-us-west.amazon.com/en/locations/phoenix-area-az).

25 <sup>7</sup> *Uncovering America’s Amazon Addiction, State by State [2023]*,  
26 <https://upgradedpoints.com/news/uncovering-americas-amazon-addiction-state-by-state/>.



1 21. Amazon’s website is interactive, and it solicits the creation of profiles and  
2 product reviews by consumers, including Arizona consumers. Amazon’s website contains  
3 “state-specific required disclosures” directed at Arizona consumers,<sup>8</sup> and it alerts Amazon  
4 Business customers that Amazon Business is subject to taxes in Arizona.<sup>9</sup> Amazon maintains  
5 Amazon Business accounts with public entities in Arizona, including Arizona universities.<sup>10</sup>  
6 Additionally, Amazon partners with more than 37,500 independent authors and small- and  
7 medium-sized businesses in Arizona to sell books and other products on Amazon  
8 Marketplace.<sup>11</sup> Arizona third-party sellers generate an estimated \$134 million revenue per  
9 year.<sup>12</sup>

### 10 III. JURISDICTION AND VENUE

11 22. Jurisdiction is appropriate in this Court pursuant to A.R.S. § 12-123. The amount  
12 in controversy exceeds the jurisdictional minimum.

13 23. This Complaint is filed, and these proceedings are instituted under, the provisions  
14 of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521, *et seq.*, and Arizona’s Uniform State  
15 Antitrust Act, A.R.S. § 44-1401, *et seq.*

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20 <sup>8</sup> *Arizona – State-Specific Required Disclosures*, AMAZON.COM CUSTOMER SERVICE,  
21 [https://www.amazon.com/gp/help/customer/display.html?ref=hp\\_ab\\_link\\_n\\_qa\\_ir\\_GCX9C2DZ9FKPTDDQ&nodeId=GCX9C2DZ9FKPTDDQ&qid=1707253784744&sr=13-2-ac](https://www.amazon.com/gp/help/customer/display.html?ref=hp_ab_link_n_qa_ir_GCX9C2DZ9FKPTDDQ&nodeId=GCX9C2DZ9FKPTDDQ&qid=1707253784744&sr=13-2-ac).

22 <sup>9</sup> *Tax Payable on Business Prime*, AMAZON.COM CUSTOMER SERVICE,  
23 [amazon.com/gp/help/customer/display.html?nodeId=GUQ448K7JN2CQCST](https://www.amazon.com/gp/help/customer/display.html?nodeId=GUQ448K7JN2CQCST).

24 <sup>10</sup> *Amazon Business Added to Arizona BuyWays*, UNIVERSITY OF ARIZONA (Nov. 6, 2023),  
25 <https://financialservices.arizona.edu/news/purchasing/2023/11/06>; *see also Sunrise*, ARIZONA STATE UNIVERSITY, <https://cfo.asu.edu/purchasing-sunrise>.

26 <sup>11</sup> *Amazon Announces Plans to Create 550 New Jobs at Phoenix Tech Hub*, *supra* note 2.

27 <sup>12</sup> [What States Fully Embrace Amazon?](https://www.smartsout.com/reports/what-states-fully-embrace-amazon), <https://www.smartsout.com/reports/what-states-fully-embrace-amazon>.

1           24. Authority for the Attorney General to commence this action for injunctions,  
2 damages, disgorgement, civil penalties, costs and attorneys' fees, and such other relief as the  
3 Court deems proper, is conferred by, *inter alia*, A.R.S. §§ 44-1407, 44-1528, and 44-1534.

4           25. This Court has personal jurisdiction over Amazon. Amazon transacts business  
5 within Arizona, maintains substantial contacts in Arizona, and committed violations of Arizona  
6 statutes. This action arises out of and relates to Amazon's contacts with this forum.

7           26. The violations alleged herein are in connection with the sale or advertisement of  
8 merchandise, and Defendants do business in Maricopa County and elsewhere throughout the  
9 State of Arizona.

10          27. Amazon's unfair and deceptive acts and practices regarding its Buy Box  
11 algorithm have been directed at, and have had the foreseeable and intended effect of, harming  
12 consumers residing in, located in, or doing business in Arizona. At-issue transactions occurred  
13 in the State of Arizona and/or involved Arizona residents.

14          28. Amazon's anticompetitive enforcement of price parity provisions have been  
15 directed at, and have had the foreseeable and intended effect of, harming consumers residing  
16 in, located in, or doing business in Arizona. At-issue transactions occurred in the State of  
17 Arizona and/or involved Arizona residents.

18          29. Amazon has purposefully availed itself of the privilege of doing business within  
19 Arizona, and it has derived substantial financial gain from doing so. Amazon has corporate  
20 offices and operates storage and distribution facilities in Arizona, and it transacts business with  
21 millions of consumers in Arizona and tens of thousands of Arizona sellers via its online  
22 marketplace.

23          30. In short, Amazon has systematically served the Arizona market and has harmed  
24 consumers in Arizona such that there is a strong relationship among Amazon, this forum, and  
25 the litigation.

1 31. Venue is appropriate pursuant to A.R.S. § 12-401(17) because Maricopa County  
2 is the seat of the State government.

3 **IV. FACTUAL ALLEGATIONS**

4 32. Amazon is one of the largest companies in the world, ranked among the five  
5 largest publicly traded companies by both market capitalization and revenue. Amazon's  
6 business encompasses broad swaths of the American economy, from online retail to media,  
7 cloud computing, grocery stores, logistics, operational services, and more.

8 33. The key aspects of Amazon's operations relevant to this Complaint are its online  
9 retail marketplace and its fulfillment service.

10 **A. Amazon's Business**

11 **1. Amazon's Online Retail Marketplace**

12 34. Amazon began selling books online in 1994 and quickly expanded into new  
13 product categories: first computer games and music, then electronics and toys, and then nearly  
14 everything.<sup>13</sup> In 2020, Amazon sold almost 92 million unique products across virtually every  
15 conceivable category to U.S. consumers.<sup>14</sup>

16 35. Amazon originally sold goods to shoppers by purchasing items wholesale and  
17 reselling them on its website. Amazon calls its wholesale suppliers "vendors." Today, Amazon  
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21 <sup>13</sup> Christopher McFadden, *A Very Brief History of Amazon, the Everything Store*,  
INTERESTING ENGINEERING (Mar. 17, 2023), <https://interestingengineering.com/culture/a-very-brief-history-of-amazon-the-everything-store>.

22  
23 <sup>14</sup> *Federal Trade Commission v. Amazon.com, Inc.*, Case No. 2:23-cv-01495 (W.D. Wash.  
24 Nov. 2, 2023), Complaint ("FTC Complaint") at 19. The FTC and 17 states filed an antitrust  
25 complaint against Amazon in the Western District of Washington in September 2023. The  
26 FTC's complaint was filed after an extensive investigation of Amazon's practices. *Id.* at 11,  
122; *see also* "Amazon Faces Landmark Monopoly Lawsuit by FTC," REUTERS (Sept. 27,  
2023), [https://www.reuters.com/technology/us-sues-amazoncom-breaking-antitrust-law-harm-  
ing-consumers-2023-09-26/](https://www.reuters.com/technology/us-sues-amazoncom-breaking-antitrust-law-harming-consumers-2023-09-26/) (stating that FTC filed antitrust complaint against Amazon after a  
four-year investigation).

1 continues to sell a wide range of products through this type of vendor-retailer relationship, from  
2 laundry detergent to sports equipment.

3 36. Amazon also sells its own private label goods. These range from devices like  
4 Amazon’s Kindle e-reader to consumer products like batteries sold under the “Amazon Basics”  
5 label.

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

8 38. Amazon Retail sells on Amazon Marketplace, where other retailers can also sell  
9 products directly to shoppers through Amazon’s online retail platform. Amazon calls third-  
10 party companies that sell on Amazon “sellers,” and refers to sales by sellers as “Marketplace”  
11 sales.

12 39. Amazon charges sellers four primary fees to sell on its Marketplace. First,  
13 Amazon requires sellers to pay a selling fee, which can be a monthly fee or a fee for each item  
14 sold. Second, Amazon charges all sellers a commission or “referral fee” based on the price of  
15 each item sold on Amazon. Third, Amazon charges sellers for the use of Amazon’s fulfillment  
16 and delivery services. Fourth, Amazon charges sellers for advertising services. Most sellers  
17 must pay these four fees to make a significant volume of sales on Amazon.<sup>15</sup>

18 40. Amazon’s revenue from the fees it charges sellers, including FBA, has increased  
19 dramatically over time.<sup>16</sup>

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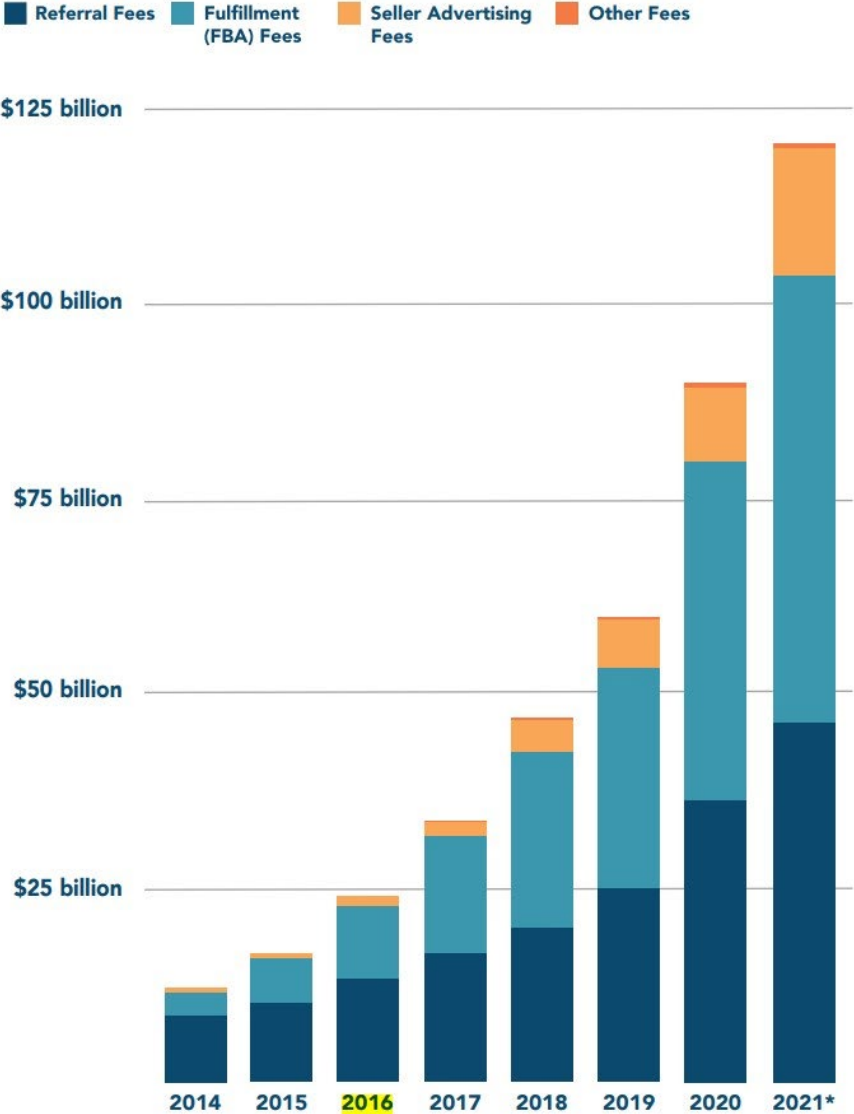
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<sup>15</sup> *Id.*

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<sup>16</sup> Stacy Mitchell, *Amazon’s Toll Road*, INSTITUTE OF LOCAL SELF-RELIANCE (Dec. 2021)  
27 (“Amazon’s Toll Road”) at 10, <https://ilsr.org/amazons-toll-road/>.

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### Amazon's Seller Fee Revenue by Category



\* Projected for the full year

Notes: These are estimates based on ILSR's analysis of data in Amazon's 10-K filings, data from eMarketer, and Amazon's rate cards for various seller fees.

1           41. As of 2021, there were over 560,000 active sellers on Amazon’s U.S.  
2 Marketplace.<sup>17</sup>

3           42. Sellers offer a huge variety of items for sale, from smartwatches to cat DNA test  
4 kits. In 2020, sellers offered more than 80% of the unique items available for sale on Amazon.  
5 Sellers’ products make up a growing majority of Amazon unit sales—60% in the second quarter  
6 of 2023, up from 55% in 2021.<sup>18</sup>

7           43. Amazon Retail presents its own products to the public simultaneously and  
8 intermixed with those of its third-party sellers on Amazon Marketplace. To a shopper browsing  
9 on Amazon Marketplace, there are no obvious differences between the types of listings, nor is  
10 there a way to regularly shop for products sold only by Amazon Retail or Amazon’s third-party  
11 sellers.

12           44. Shoppers typically reach Amazon using an internet browser or a dedicated  
13 Amazon shopping application (“mobile app”) on an internet-connected device. Each month in  
14 the United States, 126 million people visit Amazon on a mobile device, and more than 42  
15 million people access Amazon on a desktop computer.<sup>19</sup>

16           45. There are more than a billion different products available for sale on Amazon.<sup>20</sup>  
17 To navigate this billion-plus product catalog, Amazon offers a search bar. When shoppers enter  
18 a search, Amazon’s systems generate a “Search Results Page” that displays product listings  
19 interspersed with advertisements. Product listings on the Search Results Page typically show a  
20 name, picture, price, star rating, shipping speed estimate, and Prime status (or lack thereof) for  
21 each item.

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24 \_\_\_\_\_  
<sup>17</sup> FTC Complaint at 20.

<sup>18</sup> *Id.* at 19.

<sup>19</sup> *Id.* at 21.

<sup>20</sup> *Id.*

1           46. If shoppers want to learn more about or purchase an item displayed on the Search  
2 Results Page, they must click the product listing, which brings them to the “Detail Page” for  
3 that item. An item’s Detail Page typically includes a detailed product description, additional  
4 pictures, product dimensions or specifications, and customer-generated ratings and reviews.  
5 Importantly, the Detail Page usually includes a “Buy Box” (discussed in more detail below).

6           **2. Amazon’s “Fulfillment by Amazon” Service**

7           47. Amazon sells logistics services under the name “Fulfillment by Amazon,” which  
8 is commonly abbreviated to “FBA.” Sellers can use FBA to fulfill orders made on Amazon.

9           48. “Fulfillment” refers to the process of preparing items for shipping to “fulfill”  
10 online orders. Fulfillment involves storing, picking (retrieving from storage), packaging, and  
11 preparing items purchased from online retail stores for delivery.<sup>21</sup> Fulfillment operations  
12 generally occur within a specialized warehouse called a “fulfillment center,” such as the  
13 seventeen fulfillment centers Amazon operates in Arizona.

14           49. According to the FTC’s investigation of Amazon, the company provides logistics  
15 services for nearly 92% of all orders made on Amazon across both its Marketplace and Retail  
16 business units.<sup>22</sup> When Amazon first launched FBA in 2006, only a small fraction of sellers  
17 signed up for it.<sup>23</sup> When Amazon introduced Prime in 2011, that number began to increase  
18 substantially. By 2016, 56% of the top 10,000 sellers on Amazon Marketplace were using FBA  
19 and by 2020, that number increased to 84%.<sup>24</sup>

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24           <sup>21</sup> *Id.* at 38.

25           <sup>22</sup> *Id.*

26           <sup>23</sup> Amazon’s Toll Road, *supra* note 16 at 12.

27           <sup>24</sup> *Id.*





1 54. More than 160 million Americans are Amazon Prime members.<sup>28</sup> As a result,  
2 whether a seller’s offer for a given item is eligible for Prime shipping can determine whether  
3 that offer is visible in search results for millions of shoppers.

4 **4. The Buy Box**

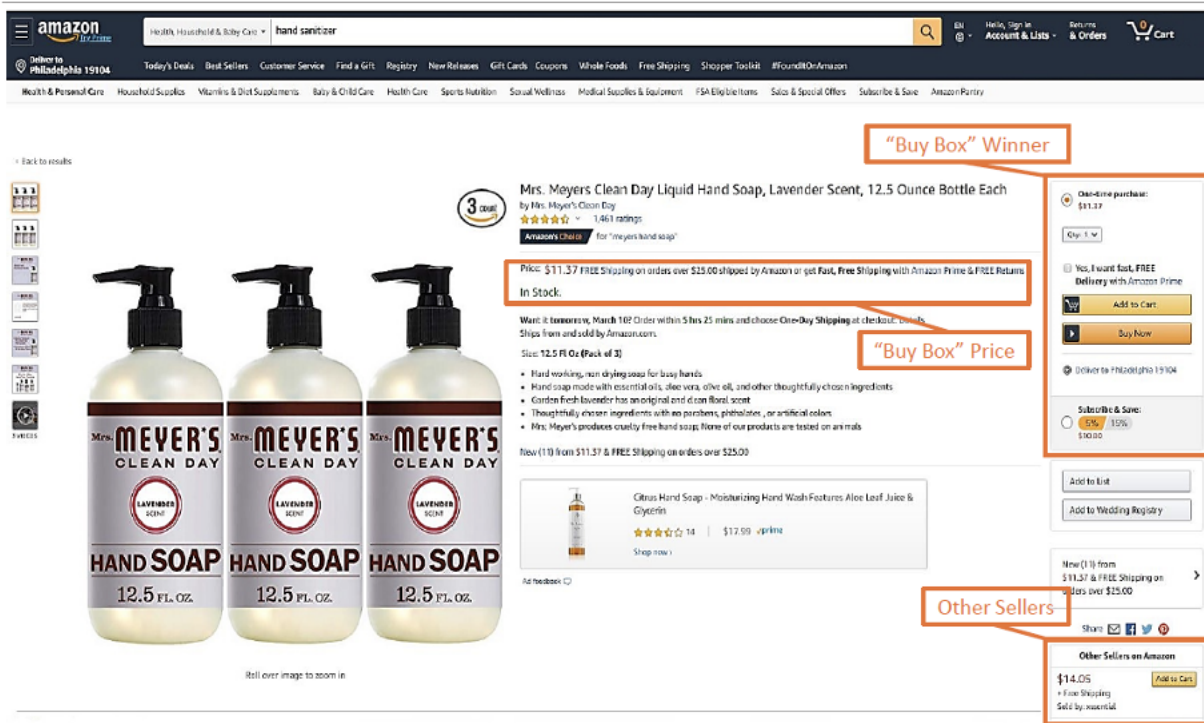
5 55. As explained above, an item’s Detail Page often contains a “Buy Box.”

6 56. An item may be offered by more than one seller on Amazon. When there are  
7 multiple offers for a single item, Amazon uses what it calls the “Featured Merchant Algorithm”  
8 to choose one offer to display in the Buy Box. Amazon calls this displayed offer the “Featured  
9 Offer.” Being chosen as the Featured Offer is commonly known as “winning” the Buy Box.<sup>29</sup>

10 57. The Buy Box displays a single offer for a specific item, as shown below.  
11 Shoppers can use the Buy Box to add the displayed item into their online shopping cart (“Add  
12 to Cart”) or buy the item immediately (“Buy Now”):  
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23 <sup>28</sup> D. Coppola, *Number of Amazon Prime Users in the United States from 2017 to 2022 with*  
24 *a Forecast for 2023 and 2024*, STATISTA, (July 11, 2023), <https://www.statista.com/statistics/504687/number-of-amazon-prime-subscription-households-usa/>.

25 <sup>29</sup> Because what Amazon calls the “Featured Merchant Algorithm” determines which offer  
26 appears in the Buy Box for a given item, this Complaint refers to the Featured Merchant  
Algorithm as the “Buy Box algorithm.”



58. Nearly 98% of all purchases on Amazon are made using the “Add to Cart” and “Buy Now” buttons in the Buy Box.<sup>30</sup> As a result, winning the Buy Box is essential to making sales on Amazon.

59. 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,” 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.

<sup>30</sup> FTC Complaint at 25.

1           60. Amazon makes it similarly difficult for shoppers to make a purchase when  
2 Amazon has removed the Buy Box from an item’s Detail Page. Amazon’s page layout prevents  
3 shoppers from adding to a shopping cart or buying any offers directly from the Detail Page. If  
4 there is no Buy Box for an item, then shoppers must navigate to the “All Offer Display” by  
5 clicking on a link labeled “See All Buying Options.”

6           61. Fewer than 3% of purchases on Amazon are made from offers outside the Buy  
7 Box.<sup>31</sup>

8 **B. Amazon’s Biased Buy Box Algorithm Causes Consumers to Overpay While**  
9 **Rewarding Sellers for Paying Fees to Amazon**

10          62. Amazon claims to be “customer-centric” company<sup>32</sup> that consistently provides  
11 low prices to its many customers.

12          63. The home page of Amazon’s online marketplace tells consumers they can save  
13 on a myriad of different “deals.” For example, on December 11, 2023, Amazon’s home page  
14 advertised “Holiday Deals,” “Today’s Deals,” “deals in sports & outdoors,” “gift card deals,”  
15 and offers to “save” on refurbished cameras and other “like-new devices.”

16          64. Amazon knows that when selecting among multiple offers for the same item,  
17 consumers will usually choose the lowest-priced offer among those with the desired terms, e.g.,  
18 delivery time. Amazon acknowledges in public statements that “[l]ow prices matter to  
19 customers.”<sup>33</sup> It boasts that “[f]rom the beginning, Amazon has obsessed over offering  
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21  
22 <sup>31</sup> *Id.* at 28.

23 <sup>32</sup> D. Slater, *Leading and Innovating with Leadership Principles*, AWS EXECUTIVE  
24 INSIGHTS, (last accessed Dec. 14, 2023), <https://aws.amazon.com/executive-insights/content/leading-and-innovating-with-leadership-principles/>.

25 <sup>33</sup> *Amazon’s Approach to Providing Customers Low Prices Every Day*, AMAZON NEWS  
26 (Nov. 30, 2023), <https://www.aboutamazon.com/news/retail/amazon-pricing#:~:text=We%20strive%20to%20offer%20Earth's,and%20keep%20them%20coming%20back.>

1 customers low prices across our wide selection of products,”<sup>34</sup> and that it “work[s] hard to keep  
2 prices low across our store.”<sup>35</sup>

3 65. Amazon asserts that “[b]y having third-party sellers in our store,” Amazon  
4 “increase[s] selection and price competition for customers.”<sup>36</sup> It promises that its “customers  
5 can trust that they will find low, competitive prices” on Amazon.<sup>37</sup>

6 66. Amazon has also asserted that it “works hard every day to offer low prices and  
7 fast delivery across our wide selection of products, whether it’s the holiday season or a regular  
8 shopping day.” Amazon purports to offer “the lowest online prices among leading retailers”  
9 and that it will “never stop working to make Amazon the place that customers think of for low  
10 prices.”<sup>38</sup>

11 67. Regarding Amazon’s decision to open up its platform to other retailers and to  
12 offer “a single detail page for both Amazon retail and third-party items,” Jeff Bezos wrote in a  
13 2005 letter to shareholders: “[O]ur judgment was simple. . . . If a third party could offer a better  
14 price or better availability on a particular item, then we wanted our customer to get easy access  
15 to that offer.”<sup>39</sup>

16 68. Amazon customers reasonably believe that the Buy Box—which presents the  
17 only way for a customer to “Buy Now” or “Add to Cart” for a given item—features the lowest-  
18 price offer for that item.

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21 <sup>34</sup> *Id.*

22 <sup>35</sup> *Id.*

23 <sup>36</sup> *Id.*

24 <sup>37</sup> *Id.*

25 <sup>38</sup> *Amazon Is the Lowest-Priced U.S. Retailer for the Seventh Year in a Row, According to*  
26 *Profitero Study*, AMAZON NEWS (Nov. 15, 2023), [https://www.aboutamazon.com/news/retail/  
amazon-low-prices-2023](https://www.aboutamazon.com/news/retail/amazon-low-prices-2023).

27 <sup>39</sup> Jeff Bezos, Letter to Amazon Shareholders, [https://www.sec.gov/Archives/edgar/  
data/1018724/000119312506084815/dex991.htm](https://www.sec.gov/Archives/edgar/data/1018724/000119312506084815/dex991.htm).

1           69. But that isn't true. Since at least 2016, Amazon's Buy Box algorithm has been  
2 rigged in favor of offers for which Amazon fulfills and delivers the product, either because  
3 Amazon itself is the seller, or the seller is a third party that participates in FBA.<sup>40</sup> The result is  
4 that the Buy Box frequently features offers that are more expensive than other offers for the  
5 *same product* on Amazon Marketplace.<sup>41</sup>

6           70. According to a 2021 report by the Italian Competition Authorities, when a  
7 consumer searches for an item on Amazon Marketplace, the Buy Box algorithm applies seven  
8 filters to determine which product offers are responsive.<sup>42</sup> It then applies five additional factors  
9 to evaluate which of the responsive offers should win the Buy Box.<sup>43</sup> Two of the five factors  
10 bias the algorithm in favor of FBA offers.

11           71. One such factor is whether the offer qualifies for Amazon Prime.<sup>44</sup> FBA offers  
12 automatically qualify for Amazon Prime. It is far less common for non-FBA sellers to have  
13 offers that qualify for Prime, and Amazon holds non-FBA sellers to a higher standard when  
14 determining whether they qualify for Prime. According to a report by the United States House  
15 Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the  
16 Judiciary, third-party sellers need a Prime Badge to "maintain a favorable search result position,  
17 to reach Amazon's more than 112 million Prime members, and to win the Buy Box."<sup>45</sup>

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19           <sup>40</sup> Final Decision by the Autorità Garante della Concorrenza e del Mercato, dated Nov. 30,  
20 2021 ("AGCM decision"), ¶ 876, available (in Italian) [https://www.agcm.it/dotcmsdoc/  
allegati-news/A528\\_chiusura%20istruttoria.pdf](https://www.agcm.it/dotcmsdoc/allegati-news/A528_chiusura%20istruttoria.pdf).

21           <sup>41</sup> COMMISSION DECISION of 20.12.2022 relating to a proceeding under Article 102 of  
22 the Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA  
Agreement Cases AT.40462 – Amazon Marketplace and AT.40703 – Amazon Buy Box, ¶ 235  
[https://ec.europa.eu/competition/antitrust/cases1/202310/AT\\_40703\\_8990760\\_1533\\_5.pdf](https://ec.europa.eu/competition/antitrust/cases1/202310/AT_40703_8990760_1533_5.pdf).

23           <sup>42</sup> AGCM Decision ¶¶ 259-60.

24           <sup>43</sup> *Id.* ¶ 261.

25           <sup>44</sup> *Id.* ¶ 261-62.

26           <sup>45</sup> SUBCOMMITTEE ON ANTITRUST, COMMERCIAL, AND ADMINISTRATIVE LAW OF THE  
27 COMMITTEE ON THE JUDICIARY, 116<sup>th</sup> CONG., INVESTIGATION OF COMPETITION IN DIGITAL  
MARKETS, MAJORITY STAFF REPORT AND RECOMMENDATIONS ("House Report") at 288

1 Purchasing “FBA is functionally the only way for sellers to get the Prime Badge for their  
2 product listings.”<sup>46</sup>

3 72. The second factor that is biased in favor of FBA offers is the seller performance  
4 rating. This factor is supposed to incorporate data based on the seller’s consumer reviews and  
5 late deliveries over the preceding 12 months.<sup>47</sup> But the Buy Box algorithm does not apply this  
6 metric to offers where the seller participates in FBA. Instead, it assigns such offers the  
7 maximum value, simply by virtue of being FBA offers.<sup>48</sup>

8 73. The result of the Buy Box algorithm’s biased factors is that offers routinely “win”  
9 the Buy Box, even though they are more expensive than other offers in the Marketplace for the  
10 same product, because their sellers participate in FBA—and pay Amazon the requisite FBA  
11 fees.

12 74. Despite presenting the Buy Box winner as the offer consumers would prefer if  
13 they viewed all the available options,<sup>49</sup> Amazon’s Buy Box algorithm deceptively preferences  
14 offers from Amazon itself and third parties that participate in FBA, even when there are lower  
15 prices on otherwise identical offers from sellers that don’t use FBA. Its own records reflect that  
16 rather than serving the interests of consumers, it is Amazon’s increased profits from FBA that  
17 are the relevant factor in awarding the Buy Box to those sellers.<sup>50</sup>

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19  
20 (2020), [https://democrats-judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf](https://democrats-judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf).

21 <sup>46</sup> *Id.* at 287.

22 <sup>47</sup> AGCM Decision ¶ 266.

23 <sup>48</sup> *Id.*

24 <sup>49</sup> House Report at 249; *see also Amazon’s Approach to Providing Customers Low Prices*  
25 *Every Day*, AMAZON NEWS (Nov. 30, 2023), <https://www.aboutamazon.com/news/retail/amazon-pricing#:~:text=We%20strive%20to%20offer%20Earth's,and%20keep%20them%20coming%20back.>

26 <sup>50</sup> House Report at 288–89.

1           75. Knowing how important and valuable winning the Buy Box is to third-party  
2 retailers, Amazon further ensures use of FBA and strict compliance with price parity provisions  
3 with open threats to “suppress” the Buy Box outright. If no retailer “qualifies” for the Buy Box  
4 for a particular product, Amazon eliminates the Buy Box entirely, meaning a consumer cannot  
5 simply click the “Buy Now” or “Add to Cart” buttons to add the items to the shopping cart.  
6 Even if the retailer’s product is still available and only requires a few extra clicks to purchase,  
7 in reality those extra steps result in a dramatic decrease in sales, and the decrease in sales creates  
8 a negative feedback loop or death spiral by decreasing the retailer’s ranking in search results.

9           76. Arizona consumers rely on Amazon’s unfair and deceptive acts and practices  
10 regarding the Buy Box algorithm every time they make purchases using the Buy Box buttons  
11 (either “Buy Now” or “Add to Cart”). When they use Buy Box buttons to purchase FBA items  
12 that are available for lower prices from other sellers on Amazon, they overpay, while Amazon  
13 lines its pockets—not only with referral fees, but with the fees it charges sellers for FBA.

14           77. For example, the same toy construction set might be sold on Amazon’s  
15 marketplace by two sellers: one that uses FBA and one that fulfills and ships its own orders. If  
16 the seller using FBA sells the toy for \$55, and the seller that doesn’t use FBA sells the toy for  
17 \$51, the Buy Box algorithm will favor the FBA offer, and the more expensive offer will “win”  
18 the Buy Box. Thus, if a consumer searches Amazon for “toy construction set” and clicks on the  
19 item’s Detail Page, the buttons that allow the consumer to “Buy Now” or “Add to Cart” will  
20 display the \$55 offer—not because that offer is better for the consumer, but because that offer  
21 generates the most fees for Amazon.

1 **C. Amazon Has Monopoly Power in the Market for Online Retail Marketplaces,**  
2 **Which It Uses to Prevent Competition and Increase Consumer Prices.**

3 **1. Amazon’s Business Service Agreement Imposes Price Parity Requirements**  
4 **on Third-Party Sellers.**

5 78. Amazon requires every third-party seller that wants to sell goods on Amazon’s  
6 marketplace to agree to Amazon’s Business Solutions Agreement (BSA). Each third-party  
7 seller must “agree[] to the terms of the [BSA] and the policies incorporated in that  
8 agreement.”<sup>51</sup>

9 79. Since at least 2009, the BSA in North America contained a “Price Parity Clause”  
10 that expressly prohibited third-party sellers from listing goods on other online retail  
11 platforms—whether marketplaces or single-merchant websites—at prices lower than their  
12 Amazon list prices.<sup>52</sup> This provision required third-party sellers to “maintain parity between  
13 the products you offer through Your Sales Channels and the products you list on any Amazon  
14 Site by ensuring” that “the purchase price and every other term of offer or sale” was “at least  
15 as favorable to Amazon Site users as” to users of the merchant’s own website and any other  
16 online marketplaces where they offered the product for sale.<sup>53</sup>

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19 <sup>51</sup> Declaration of Ella Irwin, Director of Marketplace Abuse at Amazon (July 13, 2018) at ¶ 4,  
20 *Kangaroo Mfg., Inc. v. Amazon.com*, No. 17-cv-1806SPL (D. Ariz.), Dkt. No. 75. Amazon also  
21 has a limited number of stand-alone agreements with certain third-party sellers, who are not  
22 subject to the Standard Business Agreement. For example, Amazon has a separate agreement  
23 with certain publishers to sell their eBooks directly to customers on Amazon’s marketplace.  
24 See Laura Owen, *Macmillan, too, Returns to Agency Pricing with Amazon*, GIGAOM (Dec. 18,  
25 2014), <https://news.yahoo.com/macmillan-too-returns-agency-pricing-164653346.html>.  
26 Amazon’s anticompetitive agreements with these eBooks publishers are the subject of a  
27 separate class action. See *Fremgen v. Amazon.com, Inc.*, No. 1:21-cv-351-GHW-DCF  
(S.D.N.Y. filed Jan. 14, 2021).

<sup>52</sup> *Difederico et al. v. Amazon.com, Inc., et al.* 2022 FC 1256 (Canadian federal court),  
Affidavit of Mike Strauch, sworn March 11, 2022, ¶ 22; see also ¶ 1 (identifying Mr. Strauch  
as “Director” of “amazon.com.ca.”).

<sup>53</sup> *California v. Amazon.com, Inc.*, S.F. Superior Ct. No. CGC-22-601826 (Sept. 14, 2022),  
Complaint at 42 (“California Complaint”). The California Attorney General filed an antitrust  
case against Amazon in September 2023. Its complaint is based on “internal files of Amazon



1           80. Third-party sellers understood the Price Parity Clause as “a prohibition on listing  
2 products off Amazon for a lower price than the price posted on Amazon,” and they accordingly  
3 “refrained from selling their products for less off Amazon because they had agreed not to do  
4 so in their BSA with Amazon.”<sup>54</sup>

5           81. The BSA’s express Price Parity Clause drew scrutiny by European regulators.  
6 Officials in the U.K. and Germany concurrently launched investigations into the  
7 anticompetitive effects of Amazon’s Price Parity Clause. The German authority ultimately  
8 concluded that Amazon’s price parity policies had anticompetitive effects stemming from  
9 restraints on competition between both (1) Amazon and third-party sellers listing goods on  
10 Amazon’s marketplace, and (2) Amazon and other online retail marketplaces.

11           82. Specifically, the German authority “found that the [Amazon] Marketplace  
12 constitutes a horizontal trade cooperation between Amazon and third-party sellers that has as  
13 its object and effect various restrictions of competition” and that the “horizontal price-fixing”  
14 agreement “resulted in significant price increases in e-commerce.”<sup>55</sup>

15           83. In late 2013, because of proceedings by German and U.K. antitrust regulators,  
16 Amazon voluntarily “abandoned its price parity clauses on an EU-wide basis.”<sup>56</sup> Despite the  
17 recognition by multiple regulators of the anticompetitive nature of Amazon’s Price Parity  
18 Clause, Amazon continued to enforce that clause in the United States for six more years, until  
19  
20

21 \_\_\_\_\_  
22 and the [Attorney General] Office’s independent investigation of data, documents, and  
witnesses.” *Id.* at 7.

23 <sup>54</sup> *Id.* at 43.

24 <sup>55</sup> *Amazon Removes Price Parity Obligation for Retailers on Its Marketplace Platform*,  
BUNDESKARTELLAMT (Federal Cartel Office of Germany), at 2–3 (Dec. 9, 2013) (“BKartA  
25 Decision”), [http://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2013/B6-46-12.pdf%3F\\_\\_blob%3DpublicationFile%26v%3D2](http://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2013/B6-46-12.pdf%3F__blob%3DpublicationFile%26v%3D2).

26 <sup>56</sup> *Id.* at 3.

1 March 2019. Then, under threat of an investigation by the Federal Trade Commission (FTC),  
2 Amazon finally removed the Price Parity Clause from the BSA in the United States.<sup>57</sup>

3 84. But Amazon didn't change—or stop enforcing—its expectation that third-party  
4 sellers would keep prices on other marketplaces as high as prices for the same item on Amazon.

5 85. The BSA still contains a provision titled “Standards for Brands Selling in the  
6 Amazon Store.” The Brands Standards provision requires sellers to “maintain [Amazon’s]  
7 standards for customer experience,” including “price competitiveness.” The Brand Standards  
8 provision warns that if a seller is “unable to maintain our standards for customer experience,”  
9 it “might lose certain privileges associated with operating as a seller in the Amazon store,” such  
10 as “having your offers featured on product detail pages,” or “lose the opportunity to operate as  
11 a seller in the Amazon store altogether.”<sup>58</sup>

12 86. In other words, the Standards for Brands purports to promote “price  
13 competitiveness,” but it actually informs sellers that if their products are available for lower  
14 prices on other marketplaces, they could lose the Buy Box or be booted off Amazon’s platform  
15 entirely.

16 87. Similarly, the BSA still contains what Amazon euphemistically calls a “Fair  
17 Pricing” Policy. The “Fair Pricing” Policy states that if a third-party seller engages in pricing  
18 practices “that harm[] customer trust,” Amazon may impose sanctions.<sup>59</sup> According to the “Fair  
19 Pricing” Policy, a third-party seller commits a “pricing practice that harms customer trust” if  
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22 <sup>57</sup> See, e.g., Greg Magana, *Amazon is ending its restrictive pricing practice*, BUSINESS  
23 INSIDER (Mar. 13, 2019), <https://www.businessinsider.com/amazon-ends-restrictive-pricing-parity-2019-3>.

24 <sup>58</sup> California Complaint at 44.

25 <sup>59</sup> Amazon Seller Central, *Amazon Marketplace Fair Pricing Policy*, [https://sellercentral.amazon.com/gp/help/external/G5TUVJKZHUVMN77V?language=en\\_US&ref=efph\\_G5TUVJKZHUVMN77V\\_cont\\_521](https://sellercentral.amazon.com/gp/help/external/G5TUVJKZHUVMN77V?language=en_US&ref=efph_G5TUVJKZHUVMN77V_cont_521).

1 that seller lists goods on a competing online retail platform at prices that are below its Amazon  
2 list prices.<sup>60</sup>

3 88. The BSA also contains a “Seller Code of Conduct” in which sellers agree to “act  
4 fairly.” Amazon communicates to sellers that by agreeing to “act fairly,” they agree to advertise  
5 the same prices *off* Amazon that they offer on Amazon’s marketplace. For example, in a  
6 November 2021 “clarification” to the Seller Code of Conduct, Amazon told sellers, “[w]e  
7 welcome and encourage coupons, discounts, deals, and other tools to lower prices for  
8 customers,” but “only when those incentives are part of the product offer made in our store.”<sup>61</sup>  
9 It added that “we welcome sellers advertising the same pricing and discounts off-Amazon as  
10 they offer in our store.”<sup>62</sup>

11 89. In August 2022, Amazon updated the BSA to add a provision “which allows  
12 Amazon to suspend or terminate your account or this Agreement immediately if your Account  
13 Health Rating” falls below Amazon’s “published thresholds for deactivation.”<sup>63</sup> Sellers’  
14 Account Health Ratings are based on their compliance with, *inter alia*, the Brands Standards,  
15 the “Fair Pricing” Policy, and the Seller Code of Conduct—all of which expressly or implicitly  
16 require sellers to keep prices off Amazon as high as prices for the same items on Amazon.<sup>64</sup>

17 90. Ultimately, even though Amazon has dropped the express Price Parity clause  
18 from the BSA, it still maintains “Standards for Brands,” a “Fair Pricing” Policy, and a “Seller  
19 Code of Conduct” that function as *de facto* price parity policies.  
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22 <sup>60</sup> *Id.* (stating that “[s]etting a price on a product or service [on Amazon] that is significantly  
23 higher than recent prices offered on *or off* Amazon” violates the “Fair Pricing” Policy).

24 <sup>61</sup> California Complaint at 47.

25 <sup>62</sup> *Id.*

26 <sup>63</sup> *Id.* at 48.

27 <sup>64</sup> *Id.*

1           91. Amazon regularly and aggressively enforces these *de facto* price parity policies.  
2 Amazon systematically monitors the prices listed by third-party sellers on other online retail  
3 platforms, using computer software to scan prices on other platforms and ensure that sellers are  
4 not listing their goods at lower prices elsewhere. Amazon’s “automated system continually  
5 checks and informs the seller within 15 minutes if a violation has occurred.”<sup>65</sup> If Amazon finds  
6 a “violation” of its *de facto* price parity policies, the third-party seller will receive a policy  
7 warning in its “central account.”<sup>66</sup>

8           92. A major e-commerce consultant describes Amazon’s practices as follows:  
9 Amazon “track[s] the prices of all products sold on Amazon and compare[s] them with other  
10 marketplaces. *If Amazon sees your product priced lower on another website, they will*  
11 *penalize you.*” According to the consultant, “pricing practices that harm customer trust”  
12 includes “Setting a price on a product or service that is higher than recent prices offered on or  
13 off Amazon.”<sup>67</sup>

14           93. Amazon’s sanctions for a third-party seller daring to offer consumers lower  
15 prices elsewhere include making the seller’s product ineligible for the Buy Box, suspending  
16 Amazon Prime shipping eligibility for the seller’s goods, and terminating or suspending the  
17 seller’s ability to sell any goods whatsoever on Amazon’s marketplace.<sup>68</sup> Amazon uses these  
18 sanctions “as a way to penalize sellers that offer products at a lower price on competing sites.”<sup>69</sup>  
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21           <sup>65</sup> Rupert Heather, *The Little-Known Amazon Pricing Rule that Would Burn Your Business*,  
22 XSELLCO, <https://www.xsellco.com/resources/amazon-pricing-rule-burn-business/> (last visited  
23 July 13, 2021).

24           <sup>66</sup> *Id.*

25           <sup>67</sup> Ryan Faist, *How Pricing Strategy Helps You Win the Amazon Buy Box*, CHANNEL KEY  
26 (Feb. 9, 2022), <https://channelkey.com/amazon-inventory-and-orders/how-pricing-strategy-helps-you-win-the-amazon-buy-box/> (emphasis added).

27           <sup>68</sup> *Id.*

<sup>69</sup> House Report at 296.

1           94. The elimination of the Buy Box button from a third-party seller’s listing is  
2 devastating to the seller’s business because nearly 98% of all purchases on Amazon are made  
3 using the “Add to Cart” and “Buy Now” buttons in the Buy Box.<sup>70</sup> In fact, most buyers  
4 searching for a product on Amazon’s marketplace will only see a third-party seller’s product if  
5 it appears in the Buy Box. By stripping third-party sellers that violate its price parity policies  
6 of the ability to win the Buy Box, Amazon virtually guarantees that they won’t be able to sell  
7 their merchandise.<sup>71</sup>

8           95. For example, retailer David Simnick reports that Amazon strips his listings of the  
9 Buy Box if the goods are sold elsewhere for even \$1 less than on Amazon. His sales plunge as  
10 much as 40 or 50 percent in a single day when his listings lose the Buy Box. He is able to  
11 reclaim the Buy Box only if he changes product pricing so that he is no longer offering a lower  
12 price on online retail platforms other than on Amazon.<sup>72</sup>

13           96. Similarly, suspending Prime shipping for a seller’s good can quickly tank sales.  
14 Molson Hart, whose company Viahart sells toys online, says that 98% of its sales come from  
15 Amazon’s marketplace; marketplaces like eBay and Walmart account for less than 2% of his  
16 company’s revenue.<sup>73</sup> Amazon uses its pricing parity policies to punish Viahart when it lists  
17 lower prices on other marketplaces: “If we sell our products for less on channels outside  
18  
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20 <sup>70</sup> FTC Complaint at 25.

21 <sup>71</sup> Spencer Soper, *Amazon Squeezes Sellers That Offer Better Prices on Walmart*,  
22 BLOOMBERG (Aug. 5, 2019) <https://www.bloomberg.com/news/articles/2019-08-05/amazon-is-squeezing-sellers-that-offer-better-prices-on-walmart>.

23 <sup>72</sup> Guadalupe Gonzalez, *You’re No Longer Required to Sell Products for Less on Amazon.*  
24 *The Problem? If You Don’t, You’ve Got Another Penalty Coming*, INC. (Mar. 13, 2019)  
<https://www.inc.com/guadalupe-gonzalez/amazon-removes-price-parity-not-fair-price-rule-third-party-sellers-antitrust-violations.html>.

25 <sup>73</sup> Molson Hart, *How Amazon’s Business Practices Harm American Consumers: Why*  
26 *Amazon Needs a Competitor and Why Walmart Ain’t It*, MEDIUM (July 18, 2019),  
<https://medium.com/swlh/amazon-needs-a-competitor-and-walmart-aint-it-5997977b77b2>.

1 Amazon and Amazon detects this, our products will not appear as prominently in search and,  
2 if you do find them, they will lose their prime check mark and with that, their sales.”<sup>74</sup>

3 97. The suspension of a third-party seller’s account has “dire consequences for the  
4 seller” and was cited by the Congressional Investigation as an “egregious example[]” of  
5 Amazon’s bullying of third-party sellers.<sup>75</sup> Jarvin Karnani, who has been selling on Amazon’s  
6 marketplace for two years, told the FTC, “[I]f Amazon suspends you, it’s like a death knell . .  
7 . [W]hen Amazon shuts you off, they sit on your money for 90 days and there’s nothing you  
8 can do.”<sup>76</sup>

## 9 2. The Relevant Market is Online Retail Marketplaces.

10 98. The relevant marking for assessing the effect of Amazon’s pricing parity policies  
11 on competition is the market for online retail marketplaces.

12 99. The online retail marketplaces market is composed of online platforms that  
13 enable consumers to buy retail goods listed by multiple independent sellers. It does not include  
14 brick-and-mortar stores (like a brick-and-mortar Target store) or single-merchant online stores  
15 (like Apple’s online store).

16 100. Market participants—including Amazon itself, retailers, and consumers—  
17 recognize a distinct market for online retail marketplaces.

18 101. Led primarily by Amazon, online retail marketplaces have become the digital  
19 equivalent of shopping malls, which enable consumers to shop seamlessly for a wide range of  
20 goods and services from their homes, smart phones, and a variety of internet-enabled devices.  
21 And they can do so without limitations based on their individual geographic markets, the time  
22

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23 <sup>74</sup> *Id.*

24 <sup>75</sup> House Report at 270, 296.

25 <sup>76</sup> Spencer Soper & Ben Brody. *Amazon Probed by U.S. Antitrust Officials Over*  
26 *Marketplace*, BLOOMBERG (Sept. 11, 2019), [https://www.spokesman.com/stories/2019/sep/  
11/amazon-probed-by-us-antitrust-officials-over-marke/](https://www.spokesman.com/stories/2019/sep/11/amazon-probed-by-us-antitrust-officials-over-marke/).

1 of day, or the day of the week. Online shopping also minimizes the risk that a product is out of  
2 stock because online retailers typically store larger volumes of goods and stock a more diverse  
3 inventory than physical stores.

4 102. In addition to avoiding the need to travel to a physical location, online retail  
5 marketplaces such as Amazon’s offer other significant conveniences when compared to  
6 conventional brick-and-mortar retailers. Once a consumer creates an account with an online  
7 retail platform, the platform stores a host of details such as payment information, delivery  
8 addresses, and past purchases. This information allows consumers to order or re-order items  
9 with minimal transaction costs, sometimes with a single click. And through a customer’s  
10 repeated engagement with the platform, the platform acquires a wealth of consumer data,  
11 allowing it to individualize its product sorting and display goods that are most relevant to the  
12 individual customer.

13 103. For all of the above reasons, brick-and-mortar retail locations are not reasonably  
14 interchangeable with online retail platforms. That is, there is little cross-elasticity of demand  
15 between the use of online retail marketplaces and the use of brick-and-mortar stores.

16 104. A hypothetical monopolist in the online retail marketplace market could  
17 profitably impose a small but significant and non-transitory increase in price or other worsening  
18 of terms (“SSNIPT”). (For example, a 5% increase in Amazon’s commission would increase  
19 Amazon’s already high average referral fee from 15% to 15.75%.) In light of the numerous  
20 distinctions described above, a SSNIPT would not cause a sufficient number of third-party  
21 sellers to delist their products from the monopolist platform, would not cause a sufficient  
22 number of consumers to make their purchases elsewhere, and ultimately would not cause a  
23 sufficient number of transactions to switch to brick-and-mortar stores so as to render the  
24 SSNIPT unprofitable for the hypothetical monopolist.

1           105. Tellingly, Amazon’s Price Parity Provision dictated what third-party sellers  
2 could do only on other *online* retail platforms; it did not apply to physical retail sites.

3           106. Similarly, single-merchant online stores are not reasonably interchangeable with  
4 online retail marketplaces.<sup>77</sup> Because single-merchant online stores do not offer the breadth  
5 and diversity of goods that can be offered by an online retail marketplace, any consumer who  
6 switched from purchasing from an online retail marketplace in response to a SSNIPT would  
7 (a) be unable to obtain the same variety of merchandise and (b) face dramatically higher  
8 transaction costs as a result of having to identify, search product lists, and manage accounts  
9 and transactions at dozens if not hundreds of different online stores.

10           107. There is accordingly little cross-elasticity of demand between the use of online  
11 retail marketplaces and the use of single-merchant online stores. A hypothetical monopolist in  
12 the online retail marketplace market could profitably impose a SSNIPT in the form of an  
13 increased commission. Because single-merchant online stores are not open to multiple sellers  
14 and these sellers must continue to use online retail marketplaces to reach their customers, the  
15 third-party sellers could not (and therefore would not) switch away from the market in response  
16 to a SSNIPT. And because of the significant differences to consumers between the two  
17 platforms, a SSNIPT would not cause consumers to make a sufficient number of purchases  
18 away from online retail marketplaces to render the SSNIPT unprofitable to the hypothetical  
19 monopolist.

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24 <sup>77</sup> Competition with single-merchant online stores might be asymmetric: even if prices on  
25 those sites are constrained by prices on online retail platforms, prices on online retail platforms  
26 still may not be constrained by prices on single-merchant online sites. That is the case, for  
example, when prices at individual bakeries are constrained by prices at supermarkets, but the  
bakeries’ prices do not constrain supermarket prices, because individual bakeries lack the  
supermarkets’ scope of products.



1           **3. Amazon Has Monopoly Power in the Online Retail Marketplace Market.**

2           108. In 2019, the United States House of Representatives’ subcommittee on antitrust  
3 conducted an extensive investigation of Amazon’s pricing policies governing third-party  
4 sellers. The resulting House Report concluded that Amazon is the “dominant marketplace in  
5 the United States for online shopping” and “has significant and durable market power in the  
6 U.S. online retail market.”<sup>78</sup> Both indirect and direct evidence demonstrate Amazon’s market  
7 power in the online retail marketplace market.

8           109. Aided by its anticompetitive conduct, Amazon had increased its market share in  
9 the online retail marketplace market to “65% to 70% of all U.S. online marketplace sales” as  
10 of 2020.<sup>79</sup>

11           110. Those increases have largely been driven by third-party sales, which account for  
12 the majority of sales on Amazon’s marketplace.<sup>80</sup>

13           111. Amazon’s market power is reinforced by several features that allow the company  
14 to exert even greater control than is indicated by its platform’s already dominant share of online  
15 marketplace sales. In particular, Amazon’s platform creates strong network effects and high  
16 barriers to entry, is tied with Amazon’s fulfillment services (which further increase barriers to  
17 entry), and is aided by a massive data advantage.

18           112. Leading economists have observed that “[d]igital platforms combine economies  
19 of scale, low marginal costs, economies of scope through data and an installed base of users,  
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23           <sup>78</sup> House Report at 15.

24           <sup>79</sup> *Id.* at 255.

25           <sup>80</sup> Lauren Thomas & Courtney Reagan, *Watch Out, Retailers. This Is Just How Big Amazon*  
26 *Is Becoming*, CNBC (July 13, 2018), <https://www.cnbc.com/2018/07/12/amazon-to-take-almost-50-percent-of-us-e-commerce-market-by-years-end.html>.

1 network effects, multi-sidedness, and sometimes a global reach.”<sup>81</sup> The combination of these  
2 attributes “tend[s] to generate concentrated markets, or market structures containing few  
3 firms,” and, “[w]ith the addition of inertial (or ‘sticky’) consumers these markets feature high  
4 entry barriers which make it difficult for new firms to enter the market to create competition.”<sup>82</sup>

5 113. Moreover, “large technology firms” like Amazon “can maintain market power in  
6 part because it is not easy for users to switch away from the incumbent’s technology.”<sup>83</sup> For  
7 example, a third-party seller who has received hundreds of reviews and ratings on Amazon’s  
8 marketplace cannot easily download and migrate this data to one of Amazon’s competitors but,  
9 instead, would have to start from scratch on a new platform.<sup>84</sup> These switching costs are  
10 sufficiently high that the online retail marketplace market exhibits “lock-in” effects: Buyers  
11 and sellers stick with Amazon even though they may prefer one of Amazon’s rivals.<sup>85</sup>

12 114. Even more significantly, Amazon benefits from powerful network effects  
13 because Amazon’s large customer base of hundreds of millions of regular customers, including  
14 over 160 million Prime users, makes Amazon’s platform valuable—and, in fact,  
15 indispensable—for most third-party sellers. Likewise, Amazon’s ability to attract an  
16 unparalleled variety of third-party sellers helps lock in customers, who cannot find the breadth  
17 of options available on Amazon’s marketplace on any other platform.

18 115. These network effects create a significant barrier to entry. A nascent online retail  
19 platform with only a small number of customers will not be able to attract a large number of  
20 third-party sellers. And a platform that hosts only a small number of third-party sellers will not  
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22 <sup>81</sup> Testimony of Fiona M. Scott Morton, Ph.D., House Judiciary Committee (Mar. 7, 2019),  
23 <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-Wstate-ScottMortonF-20190716.pdf>.

24 <sup>82</sup> *Id.*

25 <sup>83</sup> House Report at 41.

26 <sup>84</sup> *Id.* at 42.

27 <sup>85</sup> *Id.* at 41–42.

1 be able to attract a large number of customers. Of course, this effect is even more powerful  
2 because Amazon uses its pricing parity policies to block other platforms from competing with  
3 it by offering lower platform fees.

4 116. Extensive direct evidence confirms Amazon’s monopoly power in the market for  
5 online retail marketplaces. In light of the volume of sales that takes place on Amazon’s  
6 marketplace, third-party sellers consistently report that market realities “force [them] to be on  
7 Amazon” and that they “don’t have a choice but to sell through Amazon.”<sup>86</sup> For example,  
8 Molson Hart, who lists toys on Amazon, reports: “Were we to be suspended from selling on  
9 Amazon.com, it would probably take 3 – 6 months before we’d be bankrupt. We are not alone.  
10 This is typical for small to medium sized businesses which sell online today. In fact, most  
11 companies like our own, would probably go bust even faster.”<sup>87</sup>

12 117. Amazon has been able to exercise its market power to extract a higher percentage  
13 of every transaction on its marketplace than other platforms, while still retaining and growing  
14 its market share. Between 2015 and 2018, Amazon’s revenue from third-party-sale fees grew  
15 from \$16 billion to \$43 billion, outpacing both the overall growth of Amazon’s retail sales, and  
16 the growth of sales made by third-party sellers on the Amazon platform.<sup>88</sup> And yet, “[a]n  
17 internal Amazon document suggests the company can increase fees to third-party sellers  
18 without concern for them switching to another marketplace. The document notes that the  
19 amount of ‘seller attrition as a result of [2018] fee increases’ for its Fulfillment by Amazon  
20 program was ‘[n]othing significant.’”<sup>89</sup>

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24 <sup>86</sup> *Id.* at 87, 270.

25 <sup>87</sup> Hart, *supra* note 73.

26 <sup>88</sup> *Id.*

27 <sup>89</sup> House Report at 274.

1           118. Individuals and small businesses who depend on Amazon for their livelihoods  
2 report that Amazon “has raised seller fees significantly over the past decade.”<sup>90</sup>As of 2020,  
3 Amazon collected an average of 30% of each third-party sale on the platform, up from 19% in  
4 2015. That percentage includes fulfillment and shipping fees,<sup>91</sup> but it does not include the  
5 money sellers pay to place ads on Amazon, “a business that Wall Street considers as valuable  
6 as Nike.”<sup>92</sup>

7           119. Amazon’s ability to unilaterally restrict output is also evidence of its market  
8 power. For example, given the high likelihood that only the offer that wins the Buy Box will  
9 make the sale, withholding that right from an otherwise viable candidate as a sanction for  
10 violating Amazon’s pricing parity policies can be expected to limit consumers’ choices and  
11 reduce output. Furthermore, Amazon’s ability to enforce its *de facto* pricing parity policies,  
12 and thereby to impose Amazon list prices across all online retail platforms, is itself direct  
13 evidence of Amazon’s market power. A platform without market power could not credibly  
14 enforce such restrictions against the will of third-party sellers, which could simply threaten to  
15 delist from Amazon when asked to bring prices into line.

16           120. Finally, Amazon’s size is direct evidence of its market power. Amazon’s market  
17 capitalization is currently \$1.76 trillion.<sup>93</sup> By that measure, Amazon is the world’s fifth-biggest  
18 company, setting fees against small businesses and individual consumers.

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23           <sup>90</sup> *Id.*

24           <sup>91</sup> *Id.*

25           <sup>92</sup> Karen Weise, *Prime Power: How Amazon Squeezes the Businesses Behind Its Store*, NYT  
(Dec. 19, 2019), <https://www.nytimes.com/2019/12/19/technology/amazon-sellers.html>.

26           <sup>93</sup> *Amazon.com, Inc. (AMZN)*, STOCK ANALYSIS (accessed Feb. 5, 2024) <https://stockanalysis.com/stocks/amzn/market-cap/>.

1           **4. The Price Parity Provisions of the BSA Harm Competition Among**  
2           **Marketplace Sellers and Between Marketplaces and Increase Consumer**  
3           **Prices**

4           121. Amazon’s monopoly power in the market for online retail marketplaces did not  
5 develop because Amazon has the best product or the best prices. Amazon has monopoly power  
6 because it intentionally built and maintained that power, and it uses a variety of strategies—  
7 including price parity—to smother competition.

8           122. Amazon’s price parity requirements have two major anticompetitive effects.

9           123. *First*, Amazon’s price parity policies expressly or implicitly prohibit third-party  
10 sellers from lowering their prices anywhere on the internet.<sup>94</sup> Amazon thereby insulates itself  
11 from horizontal price competition for the goods it sells as a retailer on its marketplace, allowing  
12 it to maintain supra-competitive prices for its goods. As the German authority found in its  
13 investigation of Amazon’s marketplace, the point of Amazon’s price parity requirement is to  
14 safeguard its significant market share of retail sales as a first-party seller against competition  
15 by third parties.<sup>95</sup>

16           124. But for Amazon’s price parity policies, third-party merchants would list their  
17 goods at lower prices on other platforms that charged lower (or no) fees.<sup>96</sup> In the face of this  
18 price competition, Amazon would either lose market share or have to lower prices for its own  
19 goods to compete with the lower-priced, third-party goods.  
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22 \_\_\_\_\_  
23 <sup>94</sup> In its 2013 report on Amazon’s marketplace rules in Germany, BKartA determined that  
24 Amazon’s price parity clause was a “hardcore restriction” on the third-party sellers’  
25 competition “in all product categories” sold in Amazon’s marketplace. A “poll of 2,500 online  
26 retailers” conducted by BKartA further demonstrated that the price parity clause caused  
27 “significant price increases in e-commerce.” BKartA Decision at 3.

<sup>95</sup> *Id.*

<sup>96</sup> Hart, *supra* note 73.

1           125. *Second*, the price parity policies prevent fee-based competition from other online  
2 retail marketplaces (like eBay or Walmart.com), allowing Amazon to continue to charge supra-  
3 competitive fees for the use of its marketplace.

4           126. That is because third-party sellers incorporate fees into their list prices. Normally,  
5 competing marketplaces would have an incentive to lower fees so that third-party sellers would  
6 post lower list prices and thereby attract more customers. But Amazon's price parity policies  
7 prohibit lower list prices on competing marketplaces and therefore eliminate that essential price  
8 competition. Competing marketplaces cannot expand to attract more business—and new  
9 marketplaces cannot enter the market to compete—by lowering fees and prices. This is  
10 consistent with the German authority's findings: It concluded that Amazon's Price Parity  
11 Clause had a direct anticompetitive "effect on [competing] Internet marketplace operators."<sup>97</sup>  
12 The "major competitive parameter—the fees for platform services—[was] neutralised by the  
13 price parity clause, since more favourable fees [could] not be translated into more favourable  
14 prices for final customers."<sup>98</sup> Amazon's Price Parity Clause therefore created a "barrier[] to  
15 market entry for new competitors and hinder[ed] the expansion of existing competitors in the  
16 [online retail marketplace] market," preventing competing marketplaces "from establishing a  
17 greater reach."<sup>99</sup>

18           127. For example, Walmart, Amazon's closest direct competitor, charges referral fees  
19 similar to Amazon's across the same product categories. In a normal competitive market, a  
20 seller can increase its sales by reducing its prices. But Walmart cannot gain sales from Amazon  
21 by charging lower fees than Amazon because third-party sellers cannot offer lower prices on  
22 Walmart's marketplace even if Walmart costs the sellers less than Amazon. Because Walmart  
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<sup>97</sup> BKartA Decision at 3.

25 <sup>98</sup> *Id.*

26 <sup>99</sup> *Id.*

1 cannot grow by charging lower fees, it has no reason to do so and instead simply mimics  
 2 Amazon’s high fees. This synchronization of referral fees between Amazon and Walmart  
 3 suggests that the higher-price structure imposed by Amazon has spread to competing online  
 4 marketplaces:

Item Category	Amazon	Walmart
Men’s athletic shoes (Shoes)	15% < \$75.00, 18% > \$75.00	15%
Kitchen and Dining	15%	15%
Home Improvement Tools	15%, 12% for base equipment	15%
Apparel and Accessories	17%	15%
Electronics	8%	8%
Beauty Products	8% < \$10.00, 15% > \$10.00	15%
Books	15%	15%
Furniture & Décor	15% < \$200.00, 10% > \$200.00	15%
Grocery & Gourmet Food	8% < \$15.00, 15% > \$15.00	15%
Personal Computers	6%	6%
Camera and Photos	8%	8%
Automotive & Powersports	12%	12%
Baby Products	8% < \$10.00, 15% > \$10.00	15%
Jewelry and Watches	20% < \$250.00, 5% > \$250.00	20%
Toys and Games	15%	15%
Everything Else	15%	15%

19 128. Amazon’s price parity policies act both as a restraint on the prices of third-party-  
 20 seller goods to protect the supra-competitive prices of Amazon’s retail goods, and also as a  
 21 restraint on the fees of competing marketplaces to protect the supra-competitive fees of  
 22 Amazon’s own marketplace.

23 129. Amazon’s price parity policies therefore cause Amazon customers—including  
 24 millions of consumers in Arizona—to pay more for goods purchased on its marketplace than  
 25 they would pay in a competitive market. Amazon’s conduct has resulted in supra-competitive  
 26

1 prices for all goods offered on Amazon’s marketplace: those of third-party sellers and those of  
2 Amazon. These supra-competitive prices could not be maintained in the absence of Amazon’s  
3 anticompetitive price parity policies.

4 130. Arizona consumers make millions of purchases from Amazon every year.

5 131. As a result of Amazon’s anticompetitive price parity policies, Arizona consumers  
6 were forced to pay more for those purchases than they would have if Amazon had permitted its  
7 third-party sellers to compete on price outside Amazon’s marketplace. Amazon therefore  
8 caused Arizona consumers to suffer overcharge damages.

9 132. Because Amazon continues to enforce its anticompetitive price parity policies,  
10 Arizona consumers are reasonably likely to incur future overcharges when they make future  
11 purchases on Amazon’s marketplace.

12 **V. CLAIMS FOR RELIEF**

13 **COUNT I**

14 **ARIZONA CONSUMER FRAUD ACT**

15 **A.R.S. §§ 44-1521 - 1534**

16 133. Plaintiff re-alleges and incorporates by reference all preceding and succeeding  
17 factual allegations.

18 134. Arizona’s Consumer Fraud Act broadly prohibits the “act, use or employment by  
19 any person of any deception, deceptive or unfair act or practice, fraud, false pretense, false  
20 promise, misrepresentation, or concealment, suppression or omission of any material fact with  
21 intent that others rely on such concealment, suppression or omission, in connection with the  
22 sale or advertisement of any merchandise whether or not any person has in fact been misled,  
23 deceived or damaged thereby” as “unlawful practices.” A.R.S. § 44-1522(A).

24 135. Amazon is a “person” within the meaning of, and subject to, the provisions of the  
25 Consumer Fraud Act, A.R.S. § 44-1521(6).  
26



1 136. The items Amazon sells via its Marketplace are objects or goods and thus  
2 constitute “merchandise” under the Consumer Fraud Act. A.R.S. § 44-1521(5).

3 137. Because Amazon’s unlawful and deceptive practices, as described herein,  
4 occurred in the context of its efforts to sell merchandise for consideration, those practices were  
5 committed “in connection with the sale or advertisement” of that merchandise. A.R.S. § 44-  
6 1521 (1), (7).

7 138. The Arizona Attorney General is authorized by statute to enforce the Consumer  
8 Fraud Act whenever the Attorney General “has reasonable cause to believe that a person has  
9 engaged in, is engaging in or is about to engage in any” practice which violates the Consumer  
10 Fraud Act. A.R.S. § 44-1524. The Attorney General may seek injunctive relief, restitution, and  
11 disgorgement. A.R.S. § 44-1528(A)(1)-(3).

12 139. The Attorney General may also recover a civil penalty of not more than \$10,000  
13 per violation, if the violation was willful. A.R.S. § 44-1531(A). A willful violation “occurs  
14 when the party committing the violation knew or should have known that his conduct was of  
15 the nature prohibited” by the Act. *Id.* at (B).

16 140. The Attorney General is further “entitled to recover costs, which in the discretion  
17 of the court may include a sum representing reasonable attorney’s fees for the services  
18 rendered, for the use of the state.” A.R.S. § 44-1534.

19 141. These remedies are cumulative and “in addition to all other causes of action,  
20 remedies and penalties available” to the State. A.R.S. § 44-1533(A).

21 142. Amazon’s deceptive acts and practices, as described throughout this Complaint,  
22 constitute unlawful practices prohibited by the Consumer Fraud Act.

23 143. Amazon’s conduct was unfair or deceptive within the meaning of the Act in that  
24 Amazon portrayed itself as a cost-conscious retailer that was dedicated to providing consumers  
25 with the best prices, but its Buy Box algorithm is biased in favor of offers that are fulfilled by  
26

1 Amazon, even when those offers are more expensive than other offers for the same product on  
2 Amazon's marketplace.

3 144. Amazon's unfair and deceptive acts and practices concerning the Buy Box  
4 algorithm were made for the purpose of inducing reliance by consumers, who made purchases  
5 from sellers that participated in the FBA program (and therefore paid Amazon higher fees)  
6 rather than from sellers who were offering the same products for lower prices.

7 145. Amazon's deceptive conduct concerning the Buy Box algorithm was directed at  
8 and affected consumers in Arizona through Amazon's operation of Amazon Marketplace and  
9 the Buy Box function.

10 146. Amazon's selection of higher-priced offers for the Buy Box—despite the  
11 availability of lower-priced but otherwise equal or better offers from non-FBA sellers—was  
12 inherently and materially deceptive to Arizona consumers because, as Amazon acknowledges,  
13 consumers care about low prices. Consumers will ordinarily choose the best-priced offer for a  
14 given item, and consumers reasonably believed that the Buy Box displayed the best-priced  
15 offers for a given item in Amazon's marketplace.

16 147. Amazon's unfair and deceptive conduct regarding its Buy Box algorithm directly  
17 damaged Arizona consumers by causing them to overpay for items that were available for lower  
18 prices from other sellers in Amazon's marketplace.

19 148. As a direct and proximate result of the unfair and deceptive acts and practices  
20 described herein, Amazon has received, and will continue to receive, income, profits, and other  
21 benefits, which it would not have received if it had not engaged in violations of the Arizona  
22 Consumer Fraud Act.

23 149. The State seeks all legal and equitable relief as allowed by law, including, *inter*  
24 *alia*, injunctive relief for Defendants' violations of the Arizona Consumer Fraud Act, as  
25  
26

1 authorized under § 44-1528(A). Specifically, the State seeks an injunction requiring Amazon  
2 to cease the unfair and deceptive acts and practices described herein.

3 150. The Attorney General has reason to believe, based on the facts alleged herein,  
4 that Amazon’s unfair and deceptive acts and practices have violated, and will continue to  
5 violate, the Arizona Consumer Fraud Act, absent the grant of an injunction.

6 151. Unless restrained by this Court, Amazon will likely continue to engage in the acts  
7 and practices that are unfair and likely to deceive the public with respect to the Buy Box  
8 algorithm, in violation of the Arizona Consumer Fraud Act.

9 152. Amazon’s unlawful practices—its deceptive favoring of higher-priced first-party  
10 and FBA offers—were carried out with the intent that consumers would rely upon its Buy Box  
11 recommendation in connection with the sale or advertisement of merchandise.

12 153. While engaging in the unlawful practices alleged in this Complaint, Amazon has  
13 at all times acted “willfully” as defined by A.R.S. § 44-1531: Amazon knew or should have  
14 known that its conduct was of the nature prohibited by the Arizona Consumer Fraud Act. This  
15 Court, therefore, should impose on Defendants an appropriate civil penalty for each violation  
16 of the Arizona Consumer Fraud Act.

17 154. The acts and practices alleged herein present a continuing harm and affect the  
18 public interest.

19 155. Accordingly, Plaintiff seeks legal and equitable relief as allowed by law,  
20 including, *inter alia*, disgorgement, injunctive relief, attorneys’ fees and costs of investigation  
21 and prosecution of this action, all appropriate civil penalties and fees, and any other relief to  
22 which Plaintiff may be entitled.

23 156. Restitution is appropriate to “[r]estore to any person in interest any moneys . . .  
24 which may have been acquired” by Defendants’ unlawful practices, which here includes the  
25  
26

1 amounts that Arizona consumers overpaid for goods purchased from Amazon as a result of the  
2 deceptive Buy Box algorithm. A.R.S. § 44-1528(A)(2); A.R.S. § 44-1531.02(B).

3 157. Disgorgement of “any profits, gain, gross receipts or other benefit obtained” by  
4 unlawful practices should be “paid to the state for deposition in the consumer remediation  
5 subaccount of the consumer restitution and remediation revolving fund established by  
6 A.R.S. § 44-1531.02.” A.R.S. § 44-1528(A)(3). Disgorgement here should include Amazon’s  
7 excess profits that it received from selling merchandise to Arizona consumers at inflated prices  
8 via the biased Buy Box algorithm.

9 **COUNT II**  
10 **ARIZONA UNIFORM STATE ANTITRUST ACT**  
11 **A.R.S. §§ 44-1401 - 1416**

12 158. Plaintiff re-alleges and incorporates by reference all preceding and succeeding  
13 factual allegations.

14 159. Amazon’s unlawful practices, as described herein, constitute antitrust violations  
15 pursuant to A.R.S. §§ 44-1401 *et seq.*

16 160. Specifically, Amazon’s pricing parity policies constitute a contract, combination  
17 or conspiracy in restraint of trade, in violation of A.R.S. § 44-1402.

18 161. Amazon has also attempted to establish and in fact has established a monopoly  
19 in the market for online retail marketplaces, and it has used that monopoly to exclude  
20 competition and maintain supra-competitive prices, in violation of A.R.S. § 44-1403.

21 162. Amazon’s monopoly in the online retail marketplace market and its pricing parity  
22 policies harm competition between Amazon and other retailers in the provision of goods to  
23 consumers.

24 163. Amazon’s monopoly in the online retail marketplace market and its pricing parity  
25 policies harm competition between Amazon and other online retail marketplaces in the  
26 provision of marketplace services to retailers of goods.

1 164. Amazon’s successful efforts to restrict competition keep prices at a supra-  
2 competitive level for Arizona consumers, both because Amazon prevents third-party retailers  
3 from competing with it on price in its capacity as a retailer, and because it prevents other online  
4 retail marketplaces from competing with Amazon as a marketplace by charging lower fees.  
5 This keeps prices high across online retail marketplaces—including Amazon—and harms the  
6 millions of Arizona consumers who make purchases on Amazon Marketplace.

7 165. Plaintiff seeks relief, including but not limited to injunctive relief, civil penalties,  
8 other equitable relief (including but not limited to disgorgement), fees and costs, and such other  
9 relief as this Court deems just and equitable.

10 166. Accordingly, Plaintiff seeks all legal and equitable relief as allowed by law,  
11 including, *inter alia*, disgorgement, injunctive relief, attorneys’ fees and costs of investigation  
12 and prosecution of this action, all appropriate civil penalties and fees, and any other relief to  
13 which Plaintiff may be entitled. A.R.S. § 44-1407.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, the State respectfully requests the Court to enter Judgment against  
16 Defendant and:

17 A. Adjudge and decree that Defendants’ actions constitute unreasonable and  
18 unlawful restraints of trade in violation of the Arizona’s Uniform State Antitrust Act, A.R.S.  
19 §§ 44-1401 *et seq.*, and were unlawful under the Arizona Consumer Fraud Act;

20 B. Enjoin and restrain Defendant, its affiliates, assignees, subsidiaries, successors,  
21 and transferees, and their officers, directors, partners, agents and employees, and all other  
22 persons acting or claiming to act on Defendant’s behalf or in concert with it, from continuing  
23 to engage in any unfair and deceptive conduct and from adopting in the future any practice,  
24 plan, program, or device having a similar purpose or effect to the unfair and deceptive actions  
25 set forth above;  
26

1 C. Enjoin and restrain Defendant, its affiliates, assignees, subsidiaries, successors,  
2 and transferees, and their officers, directors, partners, agents and employees, and all other  
3 persons acting or claiming to act on Defendant's behalf or in concert with it, from continuing  
4 to engage in any anticompetitive conduct and from adopting in the future any practice, plan,  
5 program, or device having a similar purpose or effect to the anticompetitive actions set forth  
6 above;

7 D. Award to Plaintiff any other equitable relief as the Court finds appropriate to  
8 redress Defendants' violations of the laws specified above and to restore competitive conditions  
9 in the markets affected by Defendants' unlawful conduct and deprive Defendants of any  
10 advantages from their unlawful acts;

11 E. Award to Plaintiff appropriate civil penalties, as provided by statute, of "up to  
12 \$10,000" for "each willful violation" of the Arizona Consumer Fraud Act and up to "one  
13 hundred fifty thousand dollars for each violation" of the Uniform State Antitrust Act;

14 F. Award to Plaintiff statutory or equitable disgorgement, restitution, and any other  
15 equitable relief for the benefit of Arizona consumers as appropriate under the Consumer Fraud  
16 Act and Uniform State Antitrust Act;

17 G. Award pre-judgment and post-judgment interest on such monetary relief;

18 H. Award to the State of Arizona its costs, including reasonable attorneys' fees; and

19 I. Order any additional relief that this Court deems just and proper.  
20

21 **JURY TRIAL DEMANDED**

22 Plaintiff hereby demands a jury trial on all issues so triable.  
23  
24  
25  
26

1 Dated: May 15, 2024

Respectfully submitted,

2 /s/ Laura Dilweg

3 **KRISTIN K. MAYES**

4 **ATTORNEY GENERAL**

(Firm State Bar No. 14000)

5 Laura Dilweg (SBN 036066)

6 Mitchell Allee (SBN 031815)

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