

# Q&A: Why Amazon's online marketplace drew FTC scrutiny

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Amazon.com Inc. and Lina Khan have a fraught history. Khan made her name as a law student in 2017 with an article in The Yale Law Journal that made an example of Amazon to argue for a broad re-imagining of U.S. antitrust law. Now she's the chair of the U.S. Federal Trade Commission, which has already sanctioned Amazon for privacy lapses and is expected to sue the company for antitrust violations this week, after a multiyear investigation.

Amazon's place in the U.S. economy has only grown since Khan's article was published, especially after so much consumer spending moved online during the COVID-19 pandemic. But much of U.S. [antitrust law](#) is more than a century old, written for a very different economy, making the FTC's case an important test of whether Khan's interpretation of the law will hold up in court.

## **1. What business practices is the FTC investigating?**

The investigation, which began in 2019 during the administration of President Donald Trump, has focused on Amazon's online marketplace, which features Amazon's own products as well as items from third-party merchants who pay Amazon a commission for each sale, according to internal documents and people familiar with the probe. Some merchants have complained that Amazon's marketplace illegally gives preferential treatment to those that are willing to use Amazon's logistics service.

The FTC is also expected to argue that Amazon's Prime subscription service is anticompetitive, because the perks and convenience that goes with it has the effect of "locking in" consumers and keeping them from patronizing competitors, and that Amazon punishes merchants that post lower prices elsewhere by reducing their visibility.

## **2. What does Amazon say to all that?**

Amazon says that retail is a [competitive market](#) and that it competes with businesses both online and off. The company says it seeks to offer customers the best shopping experience, including the lowest prices. In response to a similar antitrust lawsuit by California's attorney general, Amazon said consumers can still see higher-priced offers, but the company does not highlight them.

### **3. Who are the third-party sellers on Amazon's marketplace?**

In addition to selling products directly, Amazon also acts as a kind of consignment store, offering third-party sellers a way to reach Amazon customers. This business mix makes Amazon a competitor as well as a [business partner](#), and some independent merchants have alleged that Amazon uses its gatekeeper role to disadvantage competing merchants and even use its proprietary consumer data to manufacture competing products.

### **4. What is Amazon's market share?**

That depends on how you define the market, which will be an important question for the FTC's antitrust lawyers to answer in their complaint. The FTC is expected to argue that Amazon's marketplace is the most used website for buying a range of products and that it illegally ties access to its marketplace with use of its logistics service, which raises prices for consumers.

Amazon accounts for 37.6% of all online retail in the U.S. but only 3.5% of total U.S. retail including online and offline businesses, according to Insider Intelligence. Amazon is six times bigger than its nearest online competitor, Walmart.com.

## **5. What other cases does the FTC have against Amazon?**

The others are consumer protection cases. In May, Amazon paid \$25 million to settle the agency's complaint that Amazon's Alexa-powered speakers illegally collected information about children under the age of 13 without parental consent. The company also paid \$5.8 million to settle a case alleging that it didn't take steps to protect the privacy of users of its Ring video doorbell. One month later, the FTC again sued Amazon in a consumer protection case, alleging the company duped consumers into signing up for Prime membership and deliberately made it hard to cancel. Amazon denies the allegations, and that suit is still unresolved. The FTC is separately investigating Amazon's proposed \$1.65 billion acquisition of iRobot Corp., maker of the Roomba automated vacuum cleaner, but the agency hasn't filed a complaint in that case.

## **6. What other businesses does Amazon have?**

In addition to the e-commerce site, fulfillment services, Prime video and music streaming, Amazon is also one of the world's biggest providers of cloud computing via Amazon Web Services. Amazon also bought Whole Foods, making it a player in the grocery business.

## **7. What's the significance of this case for antitrust law and for Lina Khan?**

President Joe Biden's decision to appoint Khan to lead the FTC was celebrated by antitrust advocates who want the U.S. to return to the trust-busting of the early 20th century. This new school of legal thinking, beyond merely decrying industry consolidation, has raised specific complaints about the power that a handful of U.S. companies has over

the tech industry.

In addition to her famous law school article, Khan worked on a House subcommittee investigating the issue, culminating in a report released in 2020 that helped inform a series of tech-focused antitrust bills that got traction in both chambers of Congress but failed to become law. Given this history, Amazon has called on Khan to recuse herself from the FTC's investigation of the company, but two judges have ruled that there are no problems with Khan's participation in cases filed in federal court.

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