

# Federal Trade Commission, Amazon spar over antitrust lawsuit that could 'alter' the company

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In the months since the Federal Trade Commission sued Amazon over allegations of anti-competitive and monopolistic behavior, the two

parties have debated the schedule, the scope and the rationale of the case itself.

Amazon asked a [federal judge](#) in Seattle to dismiss the case in December, arguing the business practices in question have lowered prices for consumers and are common across the retail industry. Amazon described the FTC's lawsuit as an "attack" and an "effort to hobble one of America's most consumer-focused businesses."

The FTC responded Tuesday, asking U.S. District Judge John Chun to allow the case to proceed. Taken together, Amazon's conduct creates a self-reinforcing monopoly that edges out competitors and raises prices across the Internet, the FTC argued.

The case against Amazon is "a straightforward story of illegal conduct," attorneys for the agency wrote Tuesday. "It lays out how Amazon is a monopolist ... enriching itself while harming its customers."

Acknowledging the immense impact the lawsuit could have if the FTC prevails, attorneys for Amazon wrote that the agency is seeking "structural relief that could fundamentally alter Amazon's business."

It's still not entirely clear what changes the FTC seeks, and it may take years for the case to resolve.

While Amazon says the FTC's proposed schedule doesn't provide enough time for the "excessive" amount of information the agency has requested it provide, the FTC says the case must "move forward as quickly as possible," attorneys wrote in a joint status report filed in December. "Every day that passes is another day of harm inflicted on shoppers, sellers and competition."

The two parties are also deadlocked over how many company insiders

Amazon must make available for deposition. The company has asked to limit the FTC to deposing only 10 Amazon witnesses, while the FTC is seeking to talk to over 100 people.

## A 'price floor'

After a years-long investigation, the FTC sued Amazon in September, alleging the company used anticompetitive practices to keep its competitors from getting a foothold in the digital retail space.

Amazon accounted for nearly 38% of the U.S. e-commerce market as of June 2022, making it the country's leading [online retailer](#), according to Insider Intelligence. Walmart followed behind, with 6.3% market share, while Apple came in third, with 3.9%.

In the sweeping complaint, the FTC accused Amazon of replacing organic search results with paid advertisements, roping sellers into paying steep fees to use Amazon's advertising and fulfillment services, and penalizing vendors if they offered lower prices elsewhere on the Internet.

"Each element of Amazon's monopolistic strategy works to keep its rivals and potential rivals from growing, gaining momentum and achieving the scale necessary to meaningfully compete against Amazon," attorneys for the FTC wrote in the complaint. Together, those elements amplify one another, the FTC continued, "further widening the gulf between Amazon and everyone else."

Attorneys general from 17 states signed on to the lawsuit at the time it was filed. Washington was not among the states that joined.

When the lawsuit was originally filed, Washington state Attorney General Bob Ferguson said his office was reviewing the complaint and

"keeping all options open, including future litigation."

In the most recent court status report, both Amazon and the FTC left open the possibility that more states could join the lawsuit in coming months.

In a 31-page motion filed in December, Amazon asked Judge Chun to dismiss the case entirely. Amazon contended its [business practices](#) are "pro-competitive" and pointed to an earlier court ruling that, Amazon says, applies here: That ruling determined "antitrust law does not seek to punish economic behavior that benefits consumers."

"Amazon competes every minute of every day with thousands of online and brick-and-mortar retailers," attorneys representing the company wrote. "To meet that competition, Amazon has relentlessly innovated, delivering previously unimagined benefits for consumers and pushing competitors to do likewise, all to make every penny of a consumer's purchase count for more."

For example, the FTC alleges Amazon punished sellers who offered products at a lower price elsewhere by excluding them from the "Buy Box." That yellow box enables customers to purchase an item right away and is crucial to a seller's success on the platform, the FTC said. In order to avoid any repercussions and ensure access to the Buy Box, sellers raised prices across the Internet, the FTC alleged in its original lawsuit.

Amazon disputed that claim in its motion to dismiss. It uses the Buy Box to feature only competitively priced offers, a common retail practice that benefits consumers, Amazon wrote.

In its original complaint against Amazon, the FTC said the company internally admits these tactics have a "punitive aspect" and sellers "live in constant fear of them."

On Tuesday, the FTC reiterated those claims, alleging "the price on Amazon—which often includes Amazon's bloated fees—effectively becomes the price floor market-wide."

In another element of its sweeping lawsuit, the FTC accused Amazon of "quietly and deliberately" raising prices for shoppers using an algorithm internally called Project Nessie.

That algorithm predicted the likelihood that another online store that was currently offering a lower price on an item would match Amazon's raised price. Amazon estimated it extracted \$1 billion from American households using the algorithm, according to the FTC's complaint.

In its motion to dismiss, Amazon said the claims related to Nessie were not relevant because it only used the algorithm for limited products and stopped using it in 2019.

But, the FTC said in its original complaint and again Tuesday, Amazon executives have considered turning the algorithm back on.

## **Fear of retaliation**

As the case progresses, the FTC has asked Amazon to provide an "organized list, schematic or diagram" to show how and where the company stores its information—including emails, voice mails and instant messages.

The agency previously accused Amazon executives of destroying two years of communications that the FTC had requested as part of its years-long investigation into the company. Amazon has said those accusations are "baseless."

The FTC will also collect information from third-party sellers about

their experiences working with Amazon and their assessment of Amazon's conduct on competition, as well as vendors' business plans and commercial agreements.

In [court documents](#), the FTC has alleged sellers who are working with the agency are concerned about retaliation from the ecommerce giant.

"Third parties reasonably fear that Amazon will use this information for business purposes or to stifle sellers who speak out again[st] Amazon," attorneys for the FTC wrote.

The FTC asked a judge Monday to grant additional protections to sellers by preventing Amazon's in-house counsel from viewing testimony unless Amazon is able to show a specific reason for needing to do so. In the FTC's proposal, Amazon's outside counsel would still have access to the testimony but it would implement a two-tier confidentiality system to limit the material that is shared.

Amazon, in response, argued the FTC's plan is "inequitable and unreasonable."

The company has designated four Amazon-employed attorneys to participate in this case and those four people are not involved in making business decisions or negotiations with sellers, Amazon said. Any separation would prevent Amazon's legal team from fully understanding all available evidence and coordinating its response to multiple ongoing lawsuits involving similar allegations, it continued.

The same issue came up in related litigation in California, following a lawsuit from the state attorney general accusing Amazon of stifling competition and increasing prices for consumers.

In that case, an attorney for Amazon told the court that some of

Amazon's competitors had expressed concerns about disclosing information to Amazon's in-house counsel because it could adversely affect their business relationships with Amazon, according to a transcript from an October hearing. The company's attorneys agreed to restrict access to some information in those proceedings.

"They are competitors of Amazon, and their concern is that this litigation would bring about the very thing that the plaintiff says it's trying to avoid, which is a reduction in competition," said Carl Metz, an attorney with Williams and Connolly representing Amazon, according to in the transcript.

In the years-long investigation leading up to the FTC's lawsuit, the agency sought documents from 130 current and former Amazon employees over a four-year period, [attorneys](#) for Amazon wrote in the December report. Amazon employed a team of over 300 "document reviewers" working full-time over the course of a year to complete the request.

That investigation resulted in more than 100 terabytes of information, Amazon said, or the equivalent of 50 million pages—which would fill 2,000 boxes.

Amazon and the FTC meet Thursday with Judge John Chun in Seattle to set a schedule for the discovery process. Amazon expects depositions to begin by June.

The FTC has asked the court to set a deadline for parties to be trial ready in May 2026, but Amazon has asked for it to begin that December, according to court documents.

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