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

CHRISTOPHER BROWN, SCOTT
GRAEBER, LAURA LOES, LETICIA
SHAW, and DAVID ATWOOD, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

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1 Plaintiffs allege the following upon personal knowledge as to themselves and their own
2 acts, and as to all other matters upon information and belief, based upon the investigation made
3 by and through their attorneys:

4 I. INTRODUCTION

5 1. In *Leegin Creative Leather Products v. PSKS, Inc.*, the Supreme Court warned that
6 that “the potential anticompetitive consequences of vertical price restraints must not be ignored or
7 underestimated.”¹ The Court emphasized that there is a significant “likelihood that the restraint
8 facilitates” anticompetitive purposes when a dominant retailer is “the impetus for a vertical price
9 restraint[.]” In particular, the Court warned that a dominant retailer could pressure a manufacturer
10 into adopting minimum retail prices and “if the manufacturer believes it needs access to the
11 retailer’s distribution network,” it “might consider it has little choice but to accommodate the
12 retailer’s demands for vertical price restraints.”²³ In that situation, “the manufacturer does not
13 establish the practice to stimulate services or to promote its brand”—procompetitive purposes—
14 but rather to give an “inefficient retailer[] higher profits,” while “[r]etailers with better distribution
15 systems and lower cost structures would be prevented from charging lower prices.”⁴

16 2. These concerns are precisely encapsulated by Amazon’s anticompetitive minimum
17 margin agreements (MMAs) with its suppliers, which Amazon uses to prevent other online
18 retailers from offering the same product Amazon sells at a lower price. They violate Section 1 of
19 the Sherman Act’s prohibition against price-fixing by setting a *de facto* minimum retail price for
20 the products under agreement. By restraining competition from Amazon’s online retail rivals, these
21 agreements injure consumers by artificially raising online retail prices for thousands of retail
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25 ¹ 551 U.S. 877, 893 (2007).

26 ² *Id.* at 893-94.

27 ³ *Id.* at 897-98.

28 ⁴ *Id.* at 893.

1 brands that Amazon sells. This conduct is a naked restraint under the Sherman Act and a *per se*
2 violation of the Cartwright Act (California) and the Maryland Antitrust Act.⁵

3 3. Under the MMAs, Amazon suppliers guarantee both that Amazon will be able to
4 price the supplier's product competitively against other online competition at least 95% of the time
5 *and* that Amazon will receive a minimum margin on each sale regardless of the actual price that
6 Amazon sells the product at retail.⁶ Amazon enforces this agreement by requiring its suppliers to
7 compensate it monthly for any lost margins necessitated by lowering its retail price to match a
8 competitor.⁷

9 4. To illustrate how the MMAs work, a supplier may agree, for example, to sell its
10 product at a wholesale price of \$5 per unit and that it will compensate Amazon if it receives less
11 than \$4 over its marginal cost. If Amazon sells at least 95% of the supplier's product for \$9 or
12 more, the supplier owes Amazon no money. But if, in this example, Amazon lowers its price to \$8
13 to match a competitor's price that month, then the supplier will owe Amazon \$1 for every product
14 sold at \$8 beyond the 5% threshold.

15 5. So instead of Amazon risking its own profit margins to compete with its retail rivals
16 on price, Amazon contractually shifts that risk to its suppliers. This shift ensures that Amazon's
17 suppliers adopt a *de facto* minimum retail price (or floor price) for their products market-wide.
18 That floor price is the combined sum of the supplier's wholesale price and its minimum margin
19 guarantee, in the previous example \$9 (\$5+\$4). By requiring suppliers to compensate Amazon
20 whenever their products sell below the agreed floor price, the MMA agreements fix prices by
21 penalizing suppliers unless they suppress competitive pricing from Amazon's rivals.

22 6. MMAs add to the suppliers' cost of doing business and are implemented to
23 accommodate Amazon, not as a means of promoting the suppliers' products or fostering price

24 ⁵ *Frame-Wilson v. Amazon.com, Inc.*, 2022 U.S. Dist. LEXIS 44109, at *35-36 (W.D. Wash. Mar. 11, 2022)
25 (holding that price-fixing under California and Maryland's antitrust statutes is a *per se* violation whether the scheme
is horizontal (between competitors) or vertical (between entities at different levels of the distribution chain)).

26 ⁶ Boyd Evert, *The squeeze continues for retail suppliers*, <https://talkbusiness.net/2017/10/the-squeeze-continues-for-retail-suppliers/>; Lesley Hensell, *Amazon Sellers Are Losing Control of Pricing Due to "Standards for Brands, Webretailer*, Nov 08, 2021, <https://www.webretailer.com/b/amazon-standards-for-brands/>.

27 ⁷ *Id.*

1 competition in the marketplace. In a competitive market, suppliers would benefit by rotating price
 2 promotions with different retailers to ensure a broad range of distribution options.⁸ In his chart,
 3 reprinted below, Martin Heubel, former senior Amazon category manager, illustrates how
 4 providing margin support to Amazon is ineffective for suppliers and causes higher consumer
 5 prices:⁹



7. Heubel explains that even if a supplier is profitable at the account level, Amazon will still hold that supplier to task if any individual product is unprofitable; “the result is invariably Amazon asking them to renegotiate costs and provide margin support, and if a supplier refuses it almost always takes punitive action.”¹⁰ A supplier that refuses Amazon’s demand for “back-

⁸ Martin Heubel, *How to Design a Profitable Amazon Vendor Portfolio Strategy* (May 20, 2022), <https://consulterce.com/amazon-portfolio-strategy/>.

⁹ Ian Quinn, *Will GSCOP stop the CRAP Amazon suppliers face?*, *the Grocer* (Feb. 19, 2022), <https://www.thegrocer.co.uk/online/will-gscop-stop-the-crap-amazon-suppliers-face/664641.article>.

¹⁰ Martin Heubel, *What is Amazon CRaP? Definition, Causes and Solutions for Brands*, (Jan. 1, 2022), <https://consulterce.com/amazon-crap/>.

1 margin funding,” will find its product delisted, no longer on order, or suppressed from most
2 consumer searches.¹¹

3 8. Former Amazon senior executive, Andrea Leigh, confirms that Amazon threatens
4 to terminate the relationship with its suppliers if it does not receive its margin guarantee:

5 Amazon reports vendor profitability numbers back to vendors,
6 requesting to be compensated when their item-level profits aren't
7 hitting targets. They receive this funding in the form of margin
8 guarantees and other subsidies. If Amazon can't get subsidies for
9 these products, . . . Amazon may stop ordering.^[12]

10 9. Gordon Christiansen, digital marketing consultant, concludes: “Through these
11 policies Amazon is making it clear that *they hold suppliers responsible for managing pricing*
12 *across the internet.*”¹³ Christiansen explains that “Amazon has done a great job convincing
13 consumers that they are the cheapest,” when, “in reality Amazon is a price follower rather than a
14 price leader.”¹⁴ So “Amazon is constantly monitoring their own site, across all their platforms, and
15 scraping the entire web to find competitive pricing and . . . when a ‘rogue’ trader offers highly
16 discounted pricing on a product,” Amazon follows the price cut and then “asks the supplier of that
17 product to pay Amazon for lost margin or they suppress the item meaning it won't turn up most
18 searches.”¹⁵ By forcing its suppliers to pay for its lost margins, Amazon's MMAs ensure that its
19 suppliers put an end to “rogue” discounting.¹⁶

20 10. Another marketing consultant echoes that thought:

21 They [Amazon employees] literally spider the web and other major
22 retailers to ensure they are basically the lowest. [If you, the brand,
23 d]on't like the price they are selling at? Tough luck says Amazon.
24 Amazon will then direct you to other sites like Target and Walmart
25 and tell you to tell them to raise their price before they raise Amazon

26 ¹¹ Quinn; see also *What is Amazon CRaP? Definition, Causes and Solutions for Brands*; Gordon Christiansen,
27 *Is Amazon A Price Leader?*, <https://thinkhighlands.com/ecommerce/is-amazon-a-price-leader/>.

28 ¹² Andrea K. Leigh, “Free Shipping” Online: *The Truth About Who Pays It*, February 18, 2020,
<https://andreakeighconsulting.com/free-shipping-online-the-truth-about-who-pays-it/>. See also
<https://andreakeighconsulting.com/about/>. (stating that Ms. Leigh launched Amazon's CRaP program, which is one
means Amazon uses to impose MMAs).

¹³ *Is Amazon A Price Leader* (emphasis added).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

1 back up. This is one of the bigger pain points with brands as it
2 disrupts their retailer relationships.^{17]}

3 11. In a competitive market, online retailers would compete for consumer loyalty by
4 offering the best price. But Amazon's MMAs restrain that head-to-head competition. Because
5 Amazon can match its retail rivals' prices without risking its own loss of revenue, it reduces
6 "[r]etailers' incentives to undercut Amazon's prices at the retail level in order to improve their
7 market position."¹⁸ When Amazon's stacked the deck, discounting is futile.

8 12. Equally, in a competitive market, suppliers would choose retailers that provide the
9 best and most efficient means of marketing their goods. MMAs are anticompetitive because they
10 disrupt suppliers' relationships with other retailers and force suppliers to incur unnecessary costs
11 that they would otherwise avoid by distributing through more efficient retailers. Leigh reports that
12 by shifting "the burden of price matching" to its suppliers, Amazon has transformed itself from
13 manufacturers' "least expensive channel to their most expensive – by a long shot."¹⁹ Suppliers
14 already shoulder virtually all costs and risks associated with Amazon's distribution of their
15 products. They pay Amazon for shipping and handling of their products and absorb any losses
16 associated with the loss or damage to their products.²⁰ What is more, the "payment terms" Amazon
17 has with its suppliers "extend beyond the amount of time necessary to collect proceeds from [its]
18 consumer customers."²¹ It is not uncommon for suppliers to wait 90 days to be paid, although 60
19 days is the most common term.²² So, while big box retailers, like Walmart, Target, and Costco are

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21 ¹⁷ Danny DeMichele, *Selling to Amazon or selling through Amazon? Vendor And Seller Central*,
<https://dannymichele.com/selling-amazon-selling-amazon-vendor-seller-central/>.

22 ¹⁸ European Commission, Directorate General for Competition, Case AT.40153 *EBook MFNs and related
matters (Amazon)*, https://ec.europa.eu/competition/antitrust/cases/dec_docs/40153/40153_4392_3.pdf ("*EBook
MFNs and related matters (Amazon)*"), ¶ 148.

23 ¹⁹ *Supra* "Free Shipping" Online: The Truth About Who Pays It.

24 ²⁰ *Amazon sellers: first-party relationship versus third-party relationship* (Dec. 3, 2019),
<https://www.gs1uk.org/insights/news/amazon-sellers-first-party-relationship-versus-third-party-relationship>.

25 ²¹ *Suppliers Are Funding Amazon's Future*, Marketplace Pulse (Oct. 30, 2020),
<https://w.marketplacepulse.com/articles/suppliers-are-funding-amazons-future>.

26 ²² *Amazon sellers: first-party relationship versus third-party relationship* (Dec. 3, 2019),
<https://www.gs1uk.org/insights/news/amazon-sellers-first-party-relationship-versus-third-party-relationship>; Carina
27 McLeod, *Amazon Vendor Contract Negotiations: What You Need to Know*,
<https://www.ecomengine.com/blog/vendor-contract-negotiations>.

1 lucky if they can sell products to their customers within a couple weeks after paying their suppliers,
2 Amazon pays its suppliers months *after* it sold their products, which “allows Amazon to borrow
3 from its suppliers to finance its operations, interest-free.”²³ It costs suppliers less to distribute the
4 bulk of their products through other retailers, but the MMAs penalize suppliers who do so. Just as
5 the Supreme Court had forewarned, Amazon’s MMAs give an inefficient, dominant retailer higher
6 profits, while preventing other online retailers with lower cost distribution systems to charge lower
7 prices.

8 13. Amazon’s enforcement of MMAs also constitutes an abuse of monopoly power
9 under the Sherman Act, Section 2. Monopoly power is the power to control prices or exclude
10 competition.²⁴ Through anticompetitive MMAs implemented since at least October 2017, Amazon
11 has acquired or maintained the power to control online prices for the millions of products it resells
12 online.²⁵ This lock on online retail prices not only harms competition from other online retailers,
13 but it also harms competition from other online retail marketplaces, like eBay, for whom—much
14 like the retailers—discounting of goods sold on its platform is a largely futile act because any price
15 eBay offers, Amazon will be able to match or undercut—without losing any revenue. For the same
16 reason, MMAs deter potential new online retail marketplace competitors from entering the market
17 because they likewise cannot rely on price competition to gain a foothold in the market.²⁶ This loss
18 of competition ultimately harms consumers, who pay uncompetitive prices.

19 14. Amazon’s MMAs have also reduced competition among online marketplaces.
20 Whereas eBay was once the largest online retail marketplace, MMAs are likely a substantial factor
21 contributing to eBay’s market share losses over the last several years. Sales on Amazon’s online
22

23 ²³ *Supra Suppliers Are Funding Amazon’s Future.*

24 ²⁴ *United States v. E. I. Du Pont de Nemours & Co.*, 351 U.S. 377, 378 (1956).

25 ²⁵ *Supra The squeeze continues for retail suppliers.*

26 ²⁶ See *Amazon Removes Price Parity Obligation for Retailers on Its Marketplace Platform*,
BUNDESKARTELLAMT (Federal Cartel Office of Germany), at 2 (Dec. 9, 2013) (“BKartA Decision”) at 3,
27 [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) (discussed below) (German competition authorities found that
28 Amazon’s analogous provision prohibiting third-party sellers from selling at lower prices on competing
marketplaces was a price-fixing violation and created unfair barriers to competing online marketplace operators).

1 retail marketplace (“Amazon Marketplace”) now make up as much as 90% of all online
 2 marketplace sales in the United States and account for over 50% of all online retail sales revenue
 3 in the United States.²⁷ By comparison, Amazon’s two closest competitors in online marketplaces,
 4 Walmart and eBay, are only peripheral players in the Online Retail Marketplace Market and
 5 account for only 7.1% and 4.3%, respectively, of online retail sales revenue.²⁸

6 15. Amazon operates Amazon Marketplace as a two-sided platform, where it is also the
 7 largest retailer. Beginning in 1999, Amazon opened its online retail platform to other businesses
 8 (“third-party sellers”), where they can register and list their goods for sale. Amazon Marketplace
 9 presents itself “as a single integrated platform that makes no” significant “distinction between
 10 Amazon’s own retail business and the Marketplace business.”²⁹ The “products offered by third-
 11 party sellers are presented on the same pages as those sold by Amazon itself, in competition with
 12 each other.”³⁰

13 16. Amazon’s third-party sellers vastly expand the product offering on its marketplace
 14 by adding around 340 million products to Amazon’s own considerable catalogue of retail goods.³¹
 15 No other retailer or retail marketplace can match Amazon Marketplace’s ability to provide
 16 products for virtually every imaginable search.³² In Amazon’s own words, “allowing third parties
 17 to offer products side-by-side” with Amazon’s own catalog of about 12 million products, makes
 18 Amazon “more attractive to customers,” which draws “even more sellers” to Amazon Marketplace
 19 and adds to Amazon’s “economies of scale[.]”³³

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 21 ²⁷ BKartA Decision at 255; *Amazon Marketplace is 25% of US E-commerce*, Marketplace Pulse (Feb. 1, 2022),
<https://www.marketplacepulse.com/articles/amazon-marketplace-is-25-of-us-e-commerce> (observing that third-party
 22 sellers on Amazon Marketplace alone account for 25% of ecommerce).

23 ²⁸ Blake Drosch, *Amazon dominates US ecommerce, though its market share varies by category*, eMarketer
 (Apr. 27, 2021), [https://www.emarketer.com/content/amazon-dominates-us-ecommerce-though-its-market-share-](https://www.emarketer.com/content/amazon-dominates-us-ecommerce-though-its-market-share-varies-by-category)
 24 [varies-by-category](https://www.emarketer.com/content/amazon-dominates-us-ecommerce-though-its-market-share-varies-by-category).

25 ²⁹ BKartA Decision at 2.

26 ³⁰ Autorità Garante Della Concorrenza e del Mercato, Dec. 9, 2021 Final report (“AGCM Report”), ¶ 133.

27 ³¹ *15 Amazon Statistics You Need to Know in 2022*, <https://www.repricerexpress.com/amazon-statistics/>.

28 ³² *Minimum Viable Amazon*, Marketplace Pulse (Jan 21, 2021),
<https://www.marketplacepulse.com/articles/minimum-viable-amazon>.

³³ Amazon 2014 Annual Report, EX-99.1 (sec.gov),
<https://www.sec.gov/Archives/edgar/data/1018724/000119312515144741/d895323dex991.htm>.

1 17. As recognized by the House subcommittee on antitrust, Amazon has evolved,
 2 through its marketplace business, into the unofficial “gatekeeper for ecommerce” in the United
 3 States.³⁴ Amazon also has more than 2.4 million active third-party sellers which is about *24 times*
 4 the 100,000 third-party sellers that Walmart hosts and *8,000 times* the 300 third-party sellers on
 5 Target’s marketplace.³⁵ Amazon Marketplace grants third-party sellers access to Amazon’s Prime
 6 members who are 96% more likely to buy goods from Amazon Marketplace³⁶ and spend on
 7 average \$1,968 per year on Amazon Marketplace.³⁷

8 18. Manufacturers and suppliers of consumer goods can no longer afford to ignore
 9 Amazon Marketplace, and it is not uncommon for a brand manufacturer to sell more than half of
 10 its products through Amazon.³⁸ James Thomson, Ph.D., a partner at Amazon management and
 11 consulting firm BuyBox Experts explains: “When it comes to Amazon, you’re dealing with a large,
 12 open marketplace and a massive customer audience. Having a presence there not only means
 13 you’re better able to manage an important piece of a smart omni-channel sales strategy, but also
 14 that you can have more control over how your brand is represented there ... because if you don’t
 15 list your products on Amazon, someone else probably will.”³⁹

18 ³⁴ SUBCOMMITTEE ON ANTITRUST, COMMERCIAL, AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE
 19 JUDICIARY, 116th CONG., INVESTIGATION OF COMPETITION IN DIGITAL MARKETS, MAJORITY STAFF REPORT AND
 20 RECOMMENDATIONS (“House Report”) 256 (2020), [https://www.competitionpolicyinternational.com/wp-](https://www.competitionpolicyinternational.com/wp-content/uploads/2020/10/investigation_of_competition_in_digital_markets_majority_staff_report_and_recommendations.pdf)
 21 [content/uploads/2020/10/investigation_of_competition_in_digital_markets_majority_staff_report_and_recommenda-](https://www.competitionpolicyinternational.com/wp-content/uploads/2020/10/investigation_of_competition_in_digital_markets_majority_staff_report_and_recommendations.pdf)
 22 [tions.pdf](https://www.competitionpolicyinternational.com/wp-content/uploads/2020/10/investigation_of_competition_in_digital_markets_majority_staff_report_and_recommendations.pdf).

23 ³⁵ Walmart Surpasses 100,000 Marketplace Sellers, Marketplace Pulse (Jul. 13, 2021), [https://www.marketplace](https://www.marketplacepulse.com/articles/walmart-surpasses-100000-marketplace-sellers)
 24 [pulse.com/articles/walmart-surpasses-100000-marketplace-sellers](https://www.marketplacepulse.com/articles/walmart-surpasses-100000-marketplace-sellers); *Target’s Marketplace Still Tiny Two Years Later,*
 25 *Marketplace Pulse* (Feb. 23, 2021), [https://www.marketplacepulse.com/articles/targets-marketplace-still-tiny-two-](https://www.marketplacepulse.com/articles/targets-marketplace-still-tiny-two-years-later)
 26 [years-later](https://www.marketplacepulse.com/articles/targets-marketplace-still-tiny-two-years-later).

27 ³⁶ Kiri Masters, *What’s Driving Amazon’s \$10 Billion Advertising Business*, Forbes (July 26, 2019),
 28 [https://www.forbes.com/sites/kirimasters/2019/03/20/study-89-of-consumers-are-more-likely-to-buy-products-from-](https://www.forbes.com/sites/kirimasters/2019/03/20/study-89-of-consumers-are-more-likely-to-buy-products-from-amazon-than-other-e-commerce-sites/?sh=2dd0b61a4af1)
 29 [amazon-than-other-e-commerce-sites/?sh=2dd0b61a4af1](https://www.forbes.com/sites/kirimasters/2019/03/20/study-89-of-consumers-are-more-likely-to-buy-products-from-amazon-than-other-e-commerce-sites/?sh=2dd0b61a4af1) (last visited Feb. 23, 2022).

30 ³⁷ Marc Bain, *Prime has never been more important to Amazon*, Quartz (May 3, 2021), [https://qz.com/2004369/](https://qz.com/2004369/the-pandemic-made-prime-even-more-valuable-to-amazon/)
 31 [the-pandemic-made-prime-even-more-valuable-to-amazon/](https://qz.com/2004369/the-pandemic-made-prime-even-more-valuable-to-amazon/) (last visited Feb. 23, 2022).

32 ³⁸ *Supra The Truth About Who Pays for “Free Shipping” Online*; see also As Amazon’s dominance grows,
 33 suppliers are forced to play by its rules, cncb.com (Dec. 21, 2017) (“At least 21 public companies have disclosed
 34 they are generating 10 percent or more of their revenue through Amazon.”), [https://www.cncb.com/2017/12/21/as-](https://www.cncb.com/2017/12/21/as-amazons-dominance-grows-suppliers-are-forced-to-play-by-its-rules.html)
 35 [amazons-dominance-grows-suppliers-are-forced-to-play-by-its-rules.html](https://www.cncb.com/2017/12/21/as-amazons-dominance-grows-suppliers-are-forced-to-play-by-its-rules.html).

36 ³⁹ ModernRetail, *The Retailer’s Guide to Amazon* (2019), pdf, [https://www.modernretail.co/wp-](https://www.modernretail.co/wp-content/uploads/2019/07/modernretail_report_2019_updated-1.pdf)
 37 [content/uploads/2019/07/modernretail_report_2019_updated-1.pdf](https://www.modernretail.co/wp-content/uploads/2019/07/modernretail_report_2019_updated-1.pdf).

1 19. The House subcommittee on antitrust found that Amazon “uses its dominant
2 position in e-commerce as leverage” to impose anticompetitive agreements “to ensure that none
3 of its suppliers or third-party sellers can collaborate with an existing or potential competitor to
4 make lower-priced or innovative product offerings available to consumers.”⁴⁰

5 20. Amazon’s MMA is one example of the types of anticompetitive agreements that
6 Amazon uses to prevent other online retailers from offering the same product Amazon sells at a
7 lower price. David Barnett, Founder and CEO of Amazon supplier PopSockets, testified before
8 the House subcommittee that Amazon imposed minimum margin guarantees on his company’s
9 products, and that in his experience Amazon suppliers generally concede to its practice of
10 “demanding funding whenever [Amazon] elects to lower prices to the consumer.”⁴¹ This is
11 consistent with an industry report on October 1, 2017, stating: “Amazon.com asks suppliers to sign
12 a ‘Guaranteed Minimum Margin Agreement.’ The agreement requires a monthly true-up between
13 actual margin and what was guaranteed, so long as it is in Amazon’s favor.”⁴²

14 21. Courts and regulators have found that similar contractual provisions that raise
15 consumer prices by immunizing the retailer from competition from other retailers are
16 anticompetitive. In *United States v. Apple*, the court found that a series of contracts between a
17 retailer and its suppliers “destroyed” competition because it “removed the ability of retailers to set
18 the prices of their e-books and compete with each other on price, relieved Apple of the need to
19 compete on price,” and increased consumer prices.⁴³ The European Commission investigated
20 Amazon in 2015-2017 and found that Amazon replicated the same anticompetitive agreements
21 used in the *Apple* conspiracy and that such action constituted an abuse of its monopoly power.⁴⁴

22
23 ⁴⁰ House Report at 295.

24 ⁴¹ Questions for the Record from the Honorable David N. Cicilline, Chairman, Subcommittee on Antitrust,
25 Commercial and Administrative Law of the Committee on the Judiciary, Questions for David Barnett, Founder and
26 CEO, PopSockets, [https://docs.house.gov/meetings/JU/JU05/20200117/110386/HHRG-116-JU05-20200117-
27 QFR007.pdf](https://docs.house.gov/meetings/JU/JU05/20200117/110386/HHRG-116-JU05-20200117-QFR007.pdf).

28 ⁴² Boyd Evert, *The squeeze continues for retail suppliers*, TB&P (Oct. 1, 2017),
<https://talkbusiness.net/2017/10/the-squeeze-continues-for-retail-suppliers/>.

⁴³ *United States v. Apple Inc.*, 952 F. Supp. 2d 638, 694. (S.D.N.Y. 2013), *affirmed* 791 F.3d 290 (2d Cir. 2015).

⁴⁴ *E-book MFNs and related matters (Amazon)*.

1 The German competition agency, Bundestkartellamt (“BKartA”), found that Amazon harmed
2 competition in the online retail marketplaces market when it sought to enforce similar provisions
3 that penalized Amazon’s third-party sellers who sold their goods on another online platform at a
4 price lower than on Amazon Marketplace.⁴⁵

5 22. The loss of competition in the Online Retail Marketplace Market represents higher
6 prices and the loss of quality and innovation that a competitive market fosters. Existing
7 marketplaces cannot expand by competing on price and new marketplaces cannot enter the market
8 to compete on price.

9 23. Plaintiffs assert price-fixing and monopolizing claims against Amazon on behalf of
10 themselves and other consumers who bought goods from Amazon that are subject to Amazon’s
11 MMAs. See below Sec. VII (defining classes).

12 II. JURISDICTION

13 24. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and
14 1337(a) and 15 U.S.C. §§ 15(a) and 26 because this Action arises under federal antitrust laws,
15 including 15 U.S.C. §§ 1 and 2, as invoked herein.

16 25. Additionally, this Court has subject matter jurisdiction pursuant to the Class Action
17 Fairness Act of 2005, 28 U.S.C. § 1332(d) because at least one Class member is of diverse
18 citizenship from Amazon, there are more than 100 Class members nationwide, and the aggregated
19 amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

20 26. Plaintiffs are residents of California and Maryland who purchased goods from
21 Amazon. Amazon’s conduct as discussed further herein harmed and injured Plaintiffs financially.

22 27. This Court has personal jurisdiction over Amazon because Amazon is
23 headquartered in Washington State and has registered with the Washington Secretary of State.

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⁴⁵ BKartA Decision.

III. VENUE

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2 28. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) because Amazon's principal
3 place of business is in this judicial district, and a substantial part of the events giving rise to the
4 claims occurred in this judicial district.

IV. PARTIES

A. Plaintiffs

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7 29. Plaintiff Christopher Brown is a resident of California. He has been a Prime
8 Member for more than ten years and regularly shops from Amazon and other sellers in the relevant
9 markets (as defined below, Secs. C-E) that are controlled by Amazon and restrained by its
10 anticompetitive conduct. In the last several years, Plaintiff Brown has spent, on average,
11 \$26,000.00 annually on Amazon Marketplace, including on goods that Amazon sells as a first-
12 party seller. Since 2018, Plaintiff Brown has purchased hundreds of goods directly from Amazon
13 as a first-party seller on Amazon Marketplace, including Adidas, Bosch, Carhartt, and Hanes
14 products. Many of these goods he purchased at supracompetitive prices directly caused by
15 Amazon's price fixing agreement with its suppliers and its monopolizing conduct. Plaintiff Brown
16 has been injured and will continue to be injured by paying more for online retail goods than he
17 would have paid or would pay in the future in the absence of Defendant's unlawful acts, as alleged
18 in this Complaint.

19 30. Plaintiff Scott Graeber is a resident of California. He has been a Prime Member
20 since February 17, 2014, and regularly shops from Amazon and other sellers in the relevant
21 markets that are controlled by Amazon and restrained by its anticompetitive conduct. In the last
22 several years, Plaintiff Graeber has spent, on average, approximately \$11,000.00 annually on
23 Amazon Marketplace, including on goods that Amazon sells as a first-party seller. Since 2018,
24 Plaintiff Graeber has purchased hundreds of goods directly from Amazon as a first-party seller on
25 Amazon Marketplace, including Bosch products. Many of these goods he purchased at
26 supracompetitive prices directly caused by Amazon's price fixing agreement with its suppliers and
27 its monopolizing conduct. Plaintiff Graeber has been injured and will continue to be injured by
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1 paying more for online retail goods than he would have paid or would pay in the future in the
2 absence of Defendant's unlawful acts, as alleged in this Complaint.

3 31. Plaintiff Laura Loes is a resident of California. Through an account she shares with
4 her husband, Plaintiff Loes has been Prime Member since December 30, 2015. Ms. Loes regularly
5 shops from Amazon and other sellers in the relevant markets that are controlled by Amazon and
6 restrained by its anticompetitive conduct. In the last several years, Plaintiff Loes, together with her
7 husband, has spent on average about \$7,000.00 annually on Amazon Marketplace, where they
8 purchased hundreds of goods directly from Amazon as a first-party seller. Many of these goods
9 they purchased at supracompetitive prices directly caused by Amazon's price fixing agreement
10 with its suppliers and its monopolizing conduct. Plaintiff Loes has been injured and will continue
11 to be injured by paying more for online retail goods than she would have paid or would pay in the
12 future in the absence of Defendant's unlawful acts, as alleged in this Complaint.

13 32. Plaintiff Leticia Shaw is a resident of California. Through an account she shared
14 with her husband, Plaintiff Shaw has been a Prime Member Since 2018. She regularly shops from
15 Amazon and other sellers in the relevant markets that are controlled by Amazon and restrained by
16 its anticompetitive conduct. In the last several years, Plaintiff Shaw, together with her husband,
17 has spent on average about \$2,000.00 annually on Amazon Marketplace, where they purchased
18 hundreds of goods directly from Amazon as a first-party seller, including Adidas and D'Addario
19 products. Many of these goods she purchased at supracompetitive prices directly caused by
20 Amazon's price fixing agreement with its suppliers and its monopolizing conduct. Plaintiff Shaw
21 has been injured and will continue to be injured by paying more for online retail goods than she
22 would have paid or would pay in the future in the absence of Defendant's unlawful acts, as alleged
23 in this Complaint.

24 33. Plaintiff David Atwood is a resident of Maryland. He has been a Prime Member
25 since 2017, and regularly shops from Amazon and other sellers in the relevant markets that are
26 controlled by Amazon and restrained by its anticompetitive conduct. In the last several years,
27 Plaintiff Atwood has spent, on average, approximately \$4,500.00 annually on Amazon
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1 Marketplace including on goods that Amazon sells as a first-party seller. Since 2018, Plaintiff
 2 Atwood has purchased hundreds of goods directly from Amazon as a first-party seller on Amazon
 3 Marketplace including Hanes, Oral-B, and Tide products. Many of these goods he purchased at
 4 supracompetitive prices directly caused by Amazon’s price fixing agreement with its suppliers and
 5 its monopolizing conduct. Plaintiff Atwood has been injured and will continue to be injured by
 6 paying more for online retail goods than he would have paid or would pay in the future in the
 7 absence of Defendant’s unlawful acts, as alleged in this Complaint.

8 **B. Defendant Amazon**

9 34. Amazon is the largest retailer in the United States and operates Amazon
 10 Marketplace, the largest electronic commerce (“e-commerce”) marketplace in the world.

11 **V. STATEMENT OF FACTS**

12 **A. MMAs reduce online retail competition and raise consumer prices.**

13 35. Former Amazon employees and other industry participants confirm that Amazon
 14 requires suppliers to compensate Amazon whenever it lowers its retail price to match the price of
 15 a competitor, so that suppliers are compelled to implement vertical price restraints. *See supra*, Sec.
 16 I.

17 36. Because of Amazon’s dominance as an online retail platform, suppliers have little
 18 choice but to accommodate Amazon’s demands for vertical price restraints.

19 37. If suppliers want to exclude their products from MMAs, they could potentially sell
 20 them exclusively with Amazon. The catch? While most retailers would “love product exclusives”
 21 because they “offer a differentiation point for stores and can draw shoppers loyal to a particular
 22 brand or type of product,”⁴⁶ Amazon *charges extra* if its supplier offers an exclusive distribution
 23 on Amazon.⁴⁷ Amazon requires payment of a 5% flat fee calculated on the net receipts of the
 24

25 _____
 26 ⁴⁶ Jeff Wells, What makes a product right for a retail exclusive? | Grocery Dive (Apr. 17, 2017),
<https://www.grocerydive.com/news/grocery--what-makes-a-product-right-for-a-retail-exclusive/535215/>.

27 ⁴⁷ Martin Heubel, *Exclusive Products on Amazon: The Complete Guide for Vendors*, (Jun. 7, 2022),
<https://consulterce.com/amazon-exclusives/>.

1 supplier—and not just for the supplier’s exclusive product but across all its product sales to
2 Amazon, including any non-exclusive items.⁴⁸

3 38. In theory, a manufacturer also could avoid the MMA by selling to Amazon’s
4 customer base as a third-party seller, but Amazon refuses to give this option to major national
5 brands that distribute their products through other major retailers.⁴⁹ In 2016, Sebastian
6 Gunningham, then senior vice president of Amazon Marketplace, explained that “there are x,000
7 suppliers around the world that do not get this choice I am talking about the apple, nikes and
8 p&g, etc We don’t want to open that door, [the] relationship has to be reseller.”⁵⁰ Amazon’s
9 Standards for Brands Selling in the Amazon Store formally adopted this policy by proclaiming
10 that Amazon “may choose to source products from some Brands for sale by Amazon only.”⁵¹ A
11 former Amazon employee confirmed to the House Committee on antitrust “that it was not
12 uncommon for Amazon to use its brand standards policy to shut down a brand’s third-party seller
13 account and force brands into an exclusive wholesaler relationship.”⁵²

14 39. Although ostensibly geared to lower retail prices, Amazon’s MMAs achieve the
15 opposite by eradicating online competition. MMA penalties coerce Amazon’s suppliers to raise
16 wholesale prices to Amazon’s retail competitors or otherwise restrict them from offering lower
17 retail prices than Amazon. This harms retail competition and hurts Plaintiffs and other consumers
18 who purchase online at uncompetitive prices.

19 40. The European Commission previously found that similar provisions employed by
20 Amazon in its contracts with eBooks suppliers violated competition laws. In 2017, the European
21 Commission found that Amazon abused its dominance in the market for German and English-
22 language eBooks by requiring Amazon suppliers to guarantee that no other retailer would sell their

23 ⁴⁸ *Id.*

24 ⁴⁹ *Big National Brands As Amazon Sellers*, (Feb. 10, 2020), <https://www.leanedgemarketing.com/blog/big-brands-that-are-amazon-sellers>.

25 ⁵⁰ House Report at 259 (alliteration in the original) (quoting AMAZON-HJC-00190108 (June 6, 2016),
available <https://judiciary.house.gov/uploadedfiles/00190108.pdf>).

26 ⁵¹ Garrett Bluhm, *SFBsitAS Policy Reveals Amazon’s Vendor Singularity Program, Pattern*, May 29, 2019,
<https://pattern.com/blog/sfb-sitas-policy-reveals-amazons-vendor-singularity-program/>.

27 ⁵² House Report at 259.

1 eBooks at a lower price than on Amazon Marketplace and to compensate Amazon by providing
2 the same or better terms as any of its competitors.⁵³

3 41. The Commission found that employing these contractual provisions was an abuse
4 of Amazon's dominance in that market. It found that the "Retail Price Parity Provisions," which
5 guaranteed that no eBook would be sold at a lower price than on Amazon Marketplace, were
6 "capable of deterring, or likely to deter, the expansion or entry of competing E-book Retailers,
7 thereby strengthening Amazon's dominant position" in the eBooks market and were "capable of
8 allowing, or are likely to allow, Amazon to reduce competition between E-book Retailers," which
9 "could ultimately lead to higher e-book retail prices."⁵⁴ The Commission found that retailers had
10 little incentive to lower their prices to consumers because suppliers were required to offer Amazon
11 the same terms to match those prices or promotions.⁵⁵ In response to the Commissions' findings,
12 Amazon agreed not to enforce these price parity clauses in the European markets for five years.⁵⁶

13 42. Critically, the Commission's opinion did not rest solely on explicit parity
14 provisions. It found, for example, that Amazon's contracts with the five largest e-book publishers
15 required them to notify Amazon if other retailers sold their e-books at a lower price than Amazon.⁵⁷
16 The Commission also found that Amazon threatened punitive measures, if these publishers did not
17 agree to discount their price to Amazon to allow it to match the competitor's price.⁵⁸ The
18 Commission found that the requirement of notifying Amazon if these publishers offered better
19 terms to other retailers combined with the credible threat of punishment by Amazon if the publisher
20 did not offer Amazon the same terms, had the same anticompetitive function and effect as express
21 price parity provisions found in Amazon's agreements with the smaller publishers.⁵⁹ Likewise,
22 under the MMAs, suppliers face significant financial penalties and potential disruption in the

23 ⁵³ *EBook MFNs and related matters (Amazon)*.

24 ⁵⁴ *Id.* ¶¶ 116-17.

25 ⁵⁵ *Id.* ¶¶ 127-29, 147-48.

26 ⁵⁶ *Id.* ¶ 159.

27 ⁵⁷ *Id.* ¶¶ 33, 137

28 ⁵⁸ *Id.* ¶¶ 138-42.

⁵⁹ *Id.* ¶¶ 139-44.

1 distribution of their products unless they enforce vertical price restraints with other retailers.
 2 Amazon’s demands for margin guarantees can therefore be understood as an implicit demand for
 3 vertical price restraints, or as one commentator aptly put it: “Through these policies Amazon is
 4 making it clear that they hold suppliers responsible for managing pricing *across the internet*.”⁶⁰

5 43. Previously, in 2013, the German competition authority, das Bundeskartellamt
 6 (“BKartA”), investigated price parity clauses on Amazon Marketplace, which analogous to
 7 Amazon’s MMAs with its suppliers, penalized Amazon’s third-party sellers if they sold their goods
 8 on another online platform at a price lower than on Amazon Marketplace.⁶¹ A “poll of 2,500 online
 9 retailers” conducted by BKartA found that Amazon’s price parity clause “resulted in significant
 10 price increases in e-commerce.”⁶² BKartA also found that by preventing competition between
 11 online marketplaces generated by “more favourable prices for final customers,” Amazon’s price
 12 parity clauses served “as barriers to market entry” for new “internet marketplace operators” and
 13 hindered “the expansion of existing competitors[.]”⁶³ In response to these findings, Amazon
 14 voluntarily “abandoned its price parity clauses” with its third-party sellers “on an EU-wide
 15 basis.”⁶⁴

16 **B. Amazon’s MMAs reduce competition on Amazon Marketplace.**

17 44. Amazon’s dominance not only increases online prices, it also reduces consumer
 18 choices and prevents more innovative online shopping marketplaces from competing in the United
 19 States. “The concept of shopping Amazon built - a search bar with infinite selection - doesn’t have
 20 the excitement and inspiration of some of the more modern e-commerce models, especially those
 21 in China.”⁶⁵ For instance, both Amazon and Alibaba use machine learning to recognize patterns in
 22 shopping behavior, but whereas Amazon generally limits its suggestions to items similar to the

23 ⁶⁰ *Supra Is Amazon A Price Leader?* (emphasis added).

24 ⁶¹ BKartA decision.

25 ⁶² *Id.*

26 ⁶³ *Id.* at 3.

27 ⁶⁴ *Id.* at 3.

28 ⁶⁵ *Minimum Viable Amazon*, Marketplace Pulse (Jan. 21, 2021),
<https://www.marketplacepulse.com/articles/minimum-viable-amazon>.

1 ones the customer previously bought or things that other customers, searching for the same item,
2 also bought, Alibaba provides a much more extensive and innovative list of suggestions.⁶⁶

3 45. But Amazon Marketplace does not need to be innovative or a price leader to attract
4 customers. By manipulating online prices through MMAs, Amazon and its suppliers create barriers
5 to competition with other existing or potential online marketplace operators that cannot rely on
6 price competition to gain a share of the Online Retail Marketplace Market. Because Amazon is the
7 seller of record for about 12 million products, systemic use of its MMAs would have a massive
8 impact on online retail prices across every category of good.

9 46. In a competitive market, free of margin guarantees, we would expect far more
10 competition and lower prices in the Online Retail Marketplace. Indeed, Amazon Marketplace itself
11 would look very different. Suppliers would sell their products to Amazon and its third-party sellers
12 at comparable rates, leaving them free to compete on price. And Amazon's chances of winning the
13 Buy Box for those products would directly correlate with having the lowest price for them on
14 Amazon Marketplace.

15 47. An analysis of sales data on Amazon Marketplace during the class period of 2,000
16 top-selling products—a small but illustrative set of products—is indicative of significant and wide-
17 spread effects. This analysis considers the historical prices for sales by Amazon, historical prices
18 of third-party sellers, and the historical percentage of days that Amazon won the Buy Box each
19 month for the period of September 2017 through December 2020. The Buy Box, pictured below,⁶⁷
20 is the white box on the right-hand side of the Amazon product detail page used for customers to
21 purchase items in their cart; it accounts for over 83% of all sales on Amazon Marketplace.⁶⁸

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25 ⁶⁶ Dashveenjit Kaur, Techwire Asia (Jan. 28, 2021), *China vs. US e-commerce – How they're very different*,
<https://techwireasia.com/2021/01/china-vs-us-e-commerce-how-theyre-very-different/>.

26 ⁶⁷ Image reproduced from <https://www.thesellingguys.com/how-to-win-the-amazon-buy-box-ultimate-guide/>.

27 ⁶⁸ Feeadvisor, *What Is the Amazon Buy Box and How to Win the Buy Box in 2022?*,
<https://feedvisor.com/university/amazon-buy-box/>.

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The screenshot shows an Amazon product page for a Samsung Galaxy J7 Pro. Key elements and annotations are as follows:

- Product Title:** Samsung Galaxy J7 Pro (32GB) J730G/DS - 5.5" Full HD Dual SIM Unlocked Phone with Finger I 4G LTE (Pink)
- Price:** Buy new: \$255.99
- Quantity:** Qty: 1
- Buttons:** Add to Cart
- Other Options:** Buy used: \$223.11
- Other Sellers on Amazon:**
 - \$255.89 & FREE Shipping on eligible orders. Sold by: Gotham's Cells
 - \$255.99 & FREE Shipping on eligible orders. Sold by: BDSJ Tech Inc
 - Used & new (11) from \$223.11 & FREE shipping.
- Annotations:**
 - Buy Box:** Points to the \$255.99 price.
 - Buy Box Seller:** Points to the seller 'Mobiles International LLC'.
 - Other Sellers:** Points to the 'Other Sellers on Amazon' section.
 - Listing Page:** Points to the overall product page.

48. The Buy-Box winner for any given product may vary from day to day and represents, at the time of the consumer’s search, Amazon’s estimation of the most competitive price offered by a high-performance seller with available stock.⁶⁹

49. Contrary to these expectations, distinct patterns emerge across multiple product categories with a persistency that is unlikely to occur without brand price manipulation, such as through Amazon’s MMAs:

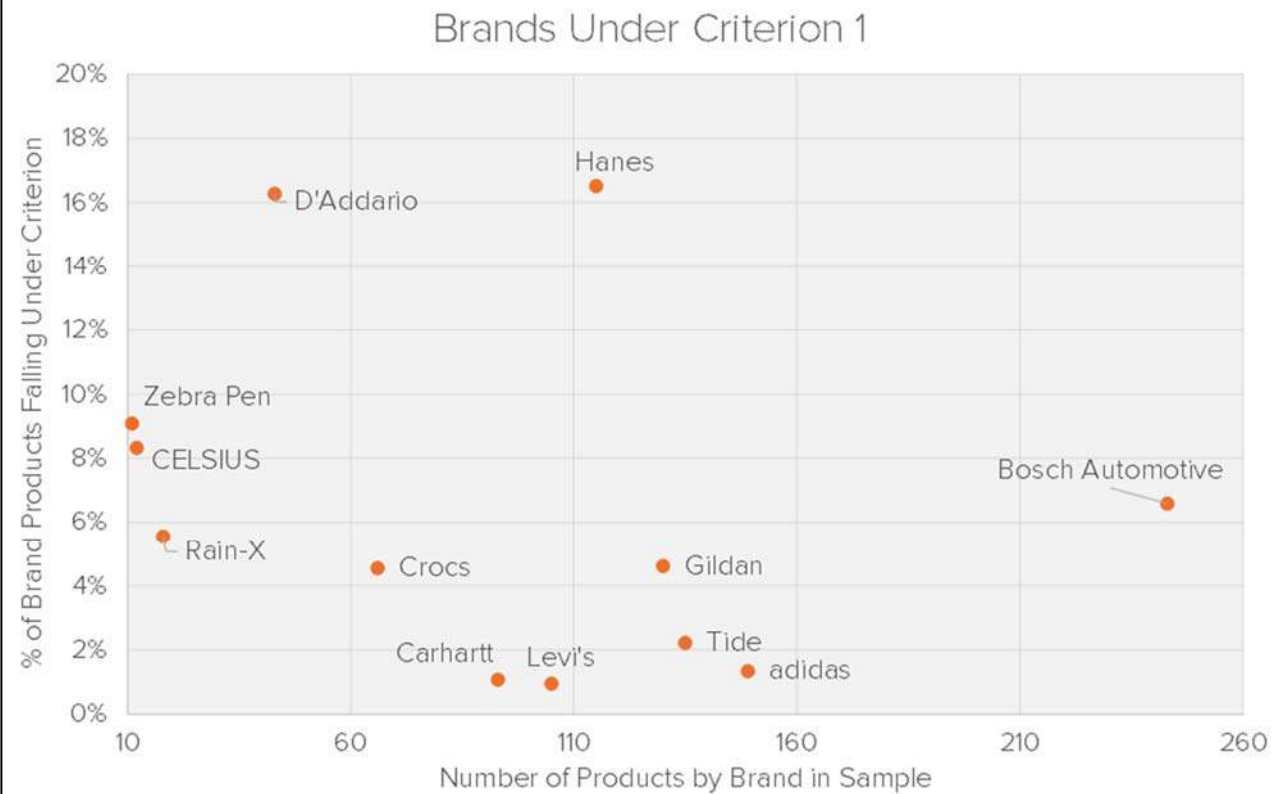
- a. Amazon increased its chances of winning the Buy Box despite increasing its own prices for the brand’s products, and in those instances where third-party sellers’ prices increased, they increased faster than Amazon’s price (criteria 1 and 2, illustrated below);
- b. Amazon maintained its chances of winning the Buy Box, despite increasing its price for the brand’s products (criterion 3, illustrated below);
- c. Amazon increased its chances of winning the Buy Box, despite holding its price steady for the brand’s products (criterion 4); and

⁶⁹ *Id.*

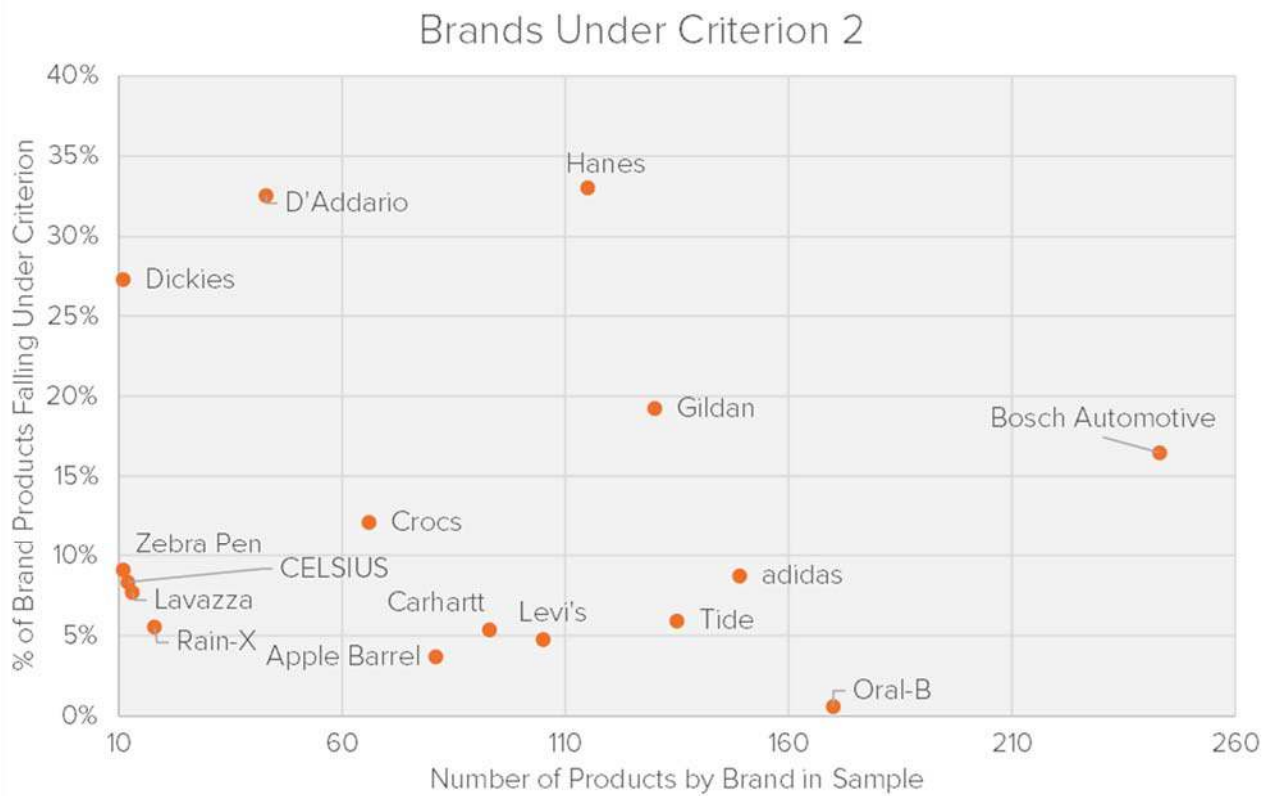
1 d. Amazon maintained its chances of winning the Buy Box, while holding its price
2 steady for the brand’s products, and despite increases in third-party sellers’ prices
3 for the same products (criterion 5, illustrated below).

4 The following charts illustrate these effects on 2,000 best-selling products.
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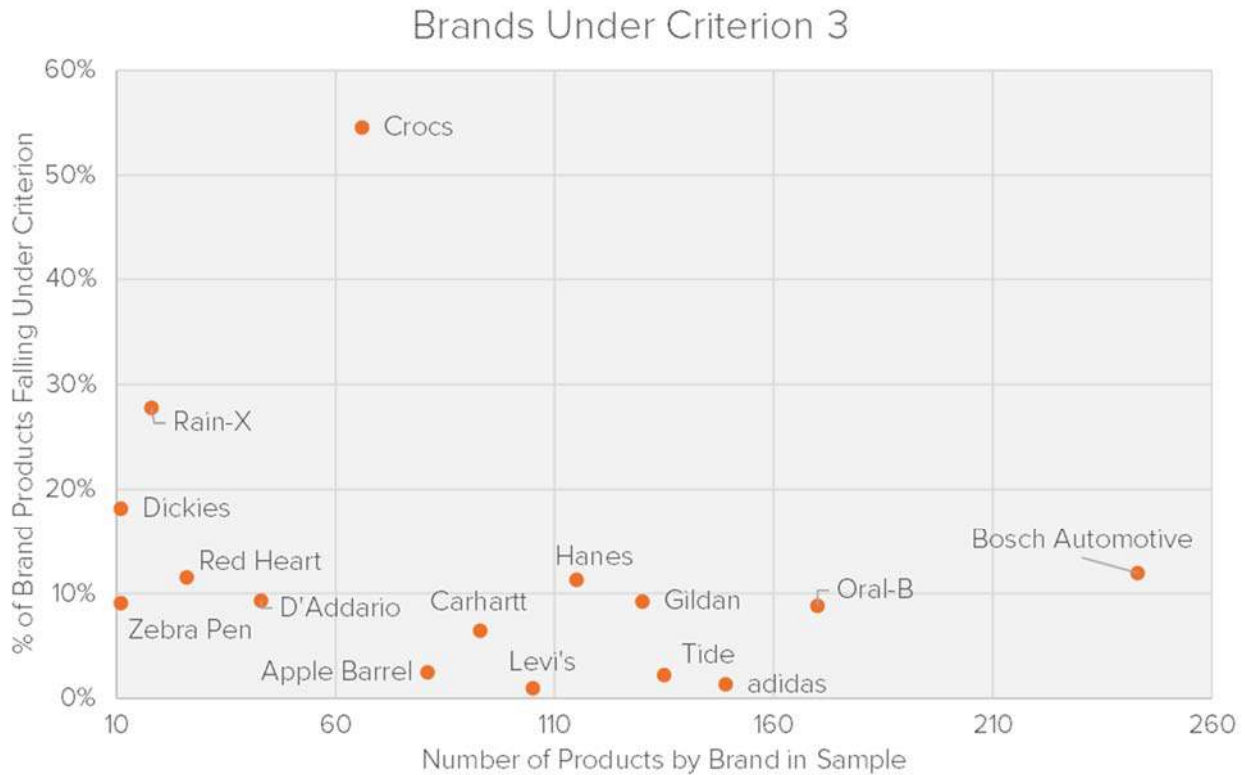
1
 2 50. Criterion 1: Amazon wins the Buy Box with greater frequency even as its price
 3 increases, and third-party sellers' prices increase faster. The analysis of major-selling brands from
 4 September 2017 through December 2020, shows for example, that despite increasing its prices,
 5 Amazon's chances of winning the Buy Box increased for about 7% of roughly 250 Bosch
 6 Automotive products sold on Amazon Marketplace, for about 16% of roughly 115 Hanes products
 7 sold on Amazon Marketplace, and about 5% of the roughly 65 Croc products sold on Amazon
 8 Marketplace. For each of the products included in this chart, third-party sellers' prices increased
 9 faster than Amazon's, suggesting that the MMAs had the likely anticompetitive effect of protecting
 10 Amazon from competition from its third-party sellers:



51. Criterion 2: Amazon wins the Buy Box with greater frequency even as its price increases along with the prices of its third-party sellers. The analysis shows that in the same 39-month period, even when third-party sellers prices did not increase more quickly than Amazon, Amazon’s percentage of Buy-Box wins increased despite its price increase for almost 35% of the roughly 115 Hanes products, over 15% of the roughly 250 Bosch Automotive products, and nearly 20% of roughly 130 Gildan apparel products. This ability to marginalize third-party sellers despite increasing prices is a likely anticompetitive effect of Amazon’s MMAs:

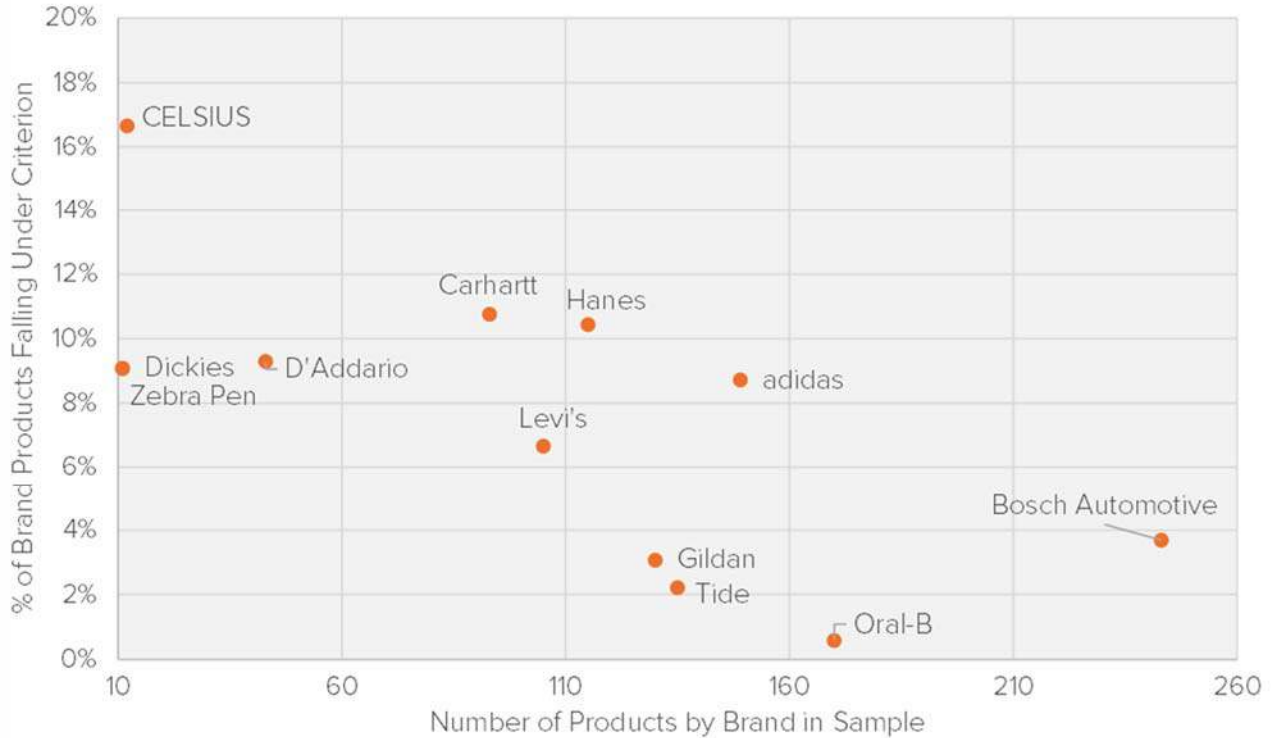


52. Criterion 3: Despite Amazon’s prices increasing over time, Amazon maintains the same frequency of winning the Buy Box. The analysis of the same 39-month period shows, for example, that Amazon maintained its share of Buy-Box wins for about 55% of the roughly 65 Crocs products despite increasing its prices. This is also the case for about 10% of: roughly 75 Carhartt products, roughly 115 Hanes products, roughly 130 Gildan products, roughly 170 Oral-B products and roughly 250 Bosch Automotive products. This ability to marginalize third-party sellers despite increasing prices is a likely anticompetitive effect of Amazon’s MMAs:



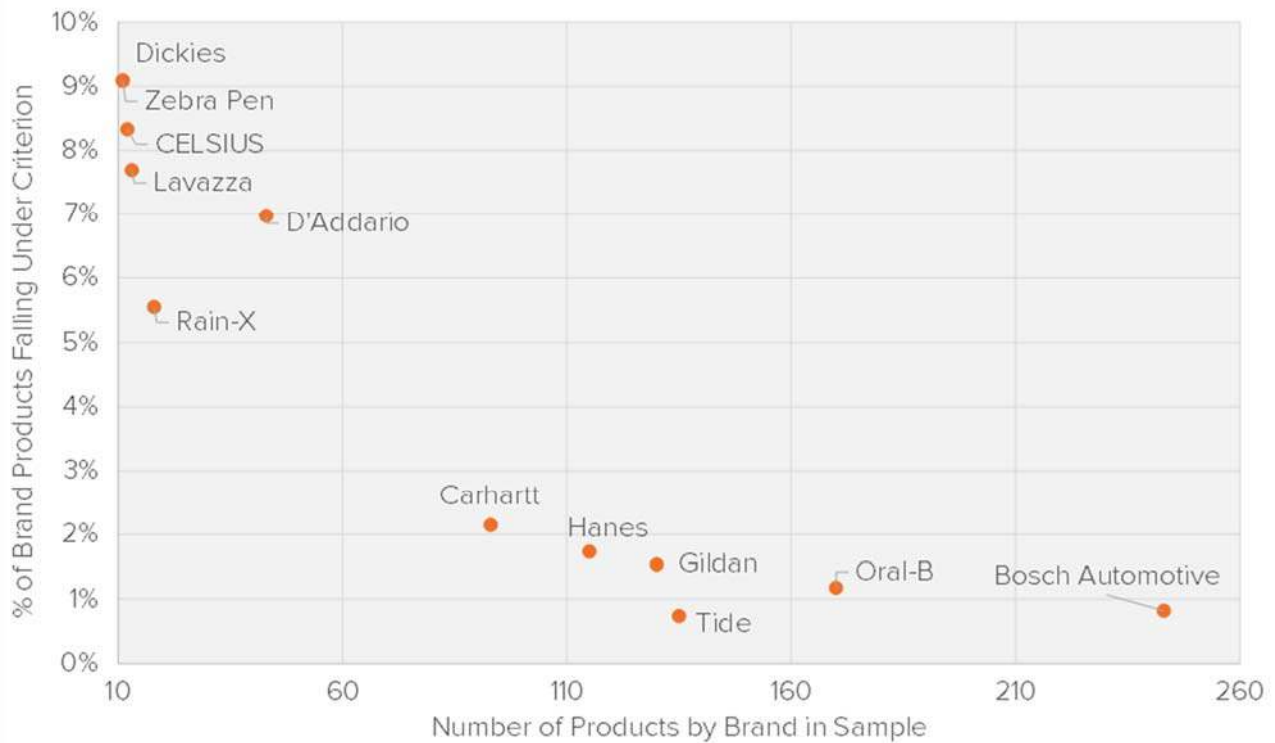
53. Criterion 4: Amazon’s prices remain steady, yet Amazon wins the Buy Box with greater frequency. The analysis shows over the same 39-month period, for example, that Amazon was able to increase the frequency of its Buy-Box wins without reducing its prices for about 10% of roughly 75 Carhartt products and roughly 115 Hanes products. This ability to marginalize third-party sellers without lowering its own prices is a likely anticompetitive effect of Amazon’s MMAs:

Brands Under Criterion 4

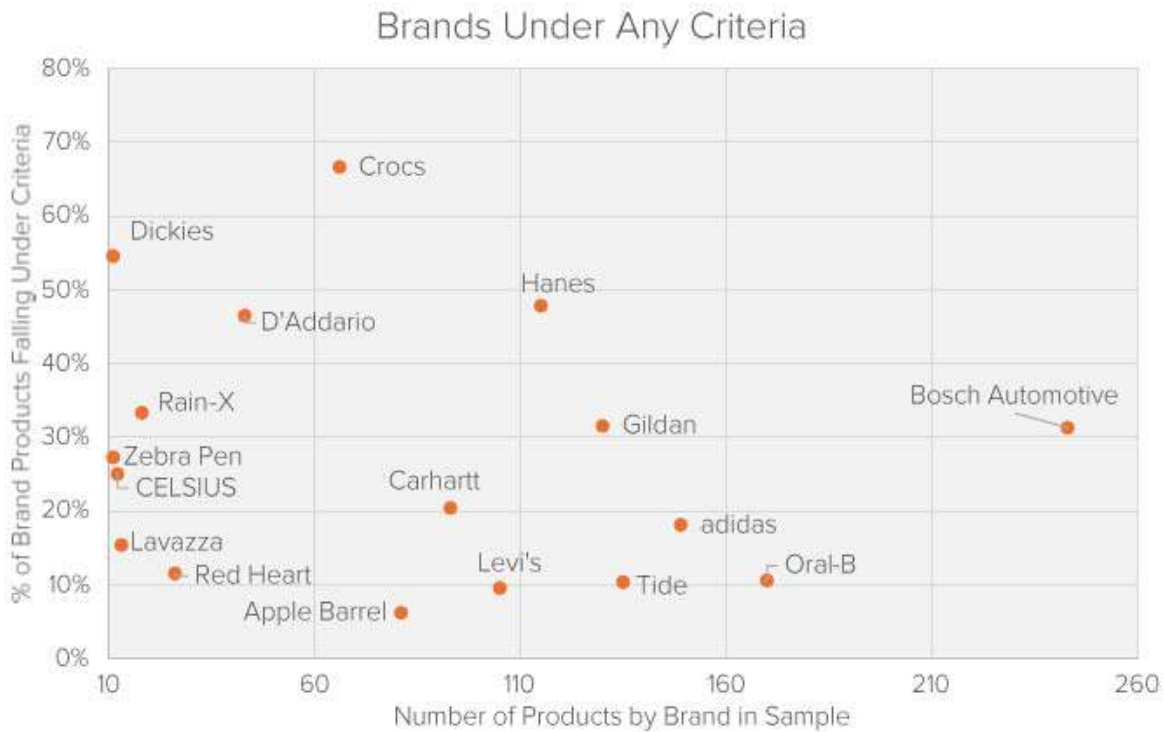


1 54. Criterion 5: While third-party prices increase over time, Amazon wins the Buy Box
 2 with the same frequency while maintaining the same price. The analysis over the same 39-month
 3 period shows, for example, that Amazon can maintain its price and percentage of Buy-Box wins,
 4 while third-party sellers are forced to increase their prices for a small percentage of the roughly 75
 5 Carhartt products, the roughly 115 Hanes products, and the roughly 175 Oral-B products. This
 6 ability to sell at the same prices, while other sellers were forced to raise their prices, is a likely
 7 anticompetitive effect of Amazon’s MMAs:

8 Brands Under Criterion 5



55. All Criteria. Collectively, all five criteria over the same 39-month period show likely anticompetitive impacts on between 65% and 30% of all Crocs, Dickies, D’Addario, Hanes, Rain-X, Gildan, and Bosch Automotive products sold on Amazon Marketplace:



C. The two-sided Online Retail Marketplace Market is the relevant market to assess the anticompetitive impact of Amazon’s MMAs.

56. Amazon owes its dominance as an online retailer, including the economic power it holds over its suppliers, to the dominance of its online retail marketplace, where the vast majority of U.S. online consumers shop. *See infra*, Sec. E. According to the House subcommittee on antitrust, Amazon Marketplace’s “market power is at its height in its dealings” with many of its suppliers.⁷⁰ Documents reviewed by the Subcommittee “make clear that Amazon has monopoly power” over “many of its suppliers.”⁷¹ David Barnett, CEO of Amazon supplier, PopSockets, testified that “most brands cannot afford to leave Amazon” and “have no choice but to endure

⁷⁰ House Report at 255.

⁷¹ *Id.* at 257.

1 tactics that would be rejected out of hand in any ordinary relationship whereby the two parties
 2 enter into the relationship by preference rather than necessity.”⁷² According to a 2017 survey
 3 conducted by Luzern eCommerce solutions, roughly half of respondents worldwide stock their
 4 entire product range on Amazon.⁷³ Over 40% of respondents in the U.S. and Canada count on
 5 Amazon for at least 21% of their online revenue.⁷⁴ The majority of U.S. and Canadian companies
 6 (61%) directly supply Amazon, while the remaining 39% sell through a third-party seller on
 7 Amazon Marketplace.⁷⁵ No respondents declined to sell on Amazon Marketplace.⁷⁶

8 57. The Online Retail Marketplaces Market, comprised of online platforms that allow
 9 consumers to purchase retail products listed by multiple independent sellers without having to
 10 leave the platform,⁷⁷ is therefore the relevant market by which to assess the competitive harm
 11 caused by Amazon’s MMAs.

12 58. The Italian competition authority, Autorità Garante della Concorrenza e del
 13 Mercato (“AGCM”) recently fined Amazon \$1.3 billion for its use of a biased algorithm that
 14 suppressed offers from disfavored third-party sellers that chose not to enroll in Amazon’s logistics
 15 service, Fulfilled by Amazon.⁷⁸ For purposes of its enforcement action, the AGCM defined the
 16 relevant market as the market for intermediation services on online marketplaces.⁷⁹

17 59. This market has the same features as Plaintiffs’ Online Retail Marketplace Market.
 18 An online “marketplace,” as distinguished from a retailer’s proprietary website, “allows consumers
 19 to access the offer of goods of one or more product categories by a plurality of sellers and the latter
 20 to offer their products online to an often very large audience of consumers.”⁸⁰ An intermediation

21 ⁷² *Id.*

22 ⁷³ *Are Brands Too Dependent On Amazon For Their eCommerce Strategy?* (wbresearch.com),
 23 <https://b2bonlineeu.wbresearch.com/blog/are-brands-too-dependent-on-amazon-for-their-ecommerce-strategy>.

24 ⁷⁴ *Id.*

25 ⁷⁵ *Id.*

26 ⁷⁶ *Id.*

27 ⁷⁷ AGCM Report ¶¶ 38-46.

28 ⁷⁸ *Id.* ¶ 883.

⁷⁹ *Id.* ¶¶ 508-21.

⁸⁰ *Id.* ¶ 38.

1 service, as used by the AGCM and alleged here by Plaintiffs, refers to the business of a two-sided
 2 platform that brings together consumers and merchants and can resolve transactions without
 3 redirecting them elsewhere.⁸¹ In economic theory, a two-sided platform is characterized by the
 4 presence of network effects: its usefulness for one set of users (in this case, consumers) increases
 5 as the number of complementary users (third-party sellers) increases.⁸² Suppliers benefit by
 6 distributing on this marketplace because of the unrivaled size of its customer base and their
 7 willingness to buy goods there. As described below (Sec. E.1), online retail marketplaces are
 8 characterized by their network effects.

9 60. The Online Retail Marketplace Market necessarily excludes the following retail
 10 sales:

- 11 a. Offline sales because “the physical channel for the sale of products to end
 12 consumers is not considered replaceable with online sales” or “intermediation
 13 services offered by marketplaces” in “e-commerce”;⁸³
- 14 b. Sales on proprietary online sites managed directly by retailers because of the
 15 “significant differences” from “the perspective of the retailer” between “the
 16 exercise of the online sales activity through a platform and the construction and
 17 management of a website owned with ecommerce functionality”;⁸⁴
- 18 c. Sales on social media or a price comparison service because the sales
 19 transactions are not realized on the original platform, but rather require the
 20 consumer to be redirected “to sellers’ websites or to marketplaces”;⁸⁵ and
- 21 d. Sales on specialized marketplace platforms that offer a selection of products in a
 22 limited category because they only serve “the needs of consumers looking for a
 23

24 ⁸¹ *Id.* ¶¶ 38-46.

25 ⁸² *Id.* ¶ 41.

26 ⁸³ *Id.* ¶ 522

27 ⁸⁴ *Id.* ¶ 532

28 ⁸⁵ *Id.* ¶ 565

1 specific product and a targeted purchase” and attract only a small fraction of the
2 third-party sellers that sell on broader “horizontal markets,” like Amazon’s.⁸⁶

3 **1. The Online Retail Marketplace Market does not include brick-and-mortar**
4 **retailers.**

5 61. The AGCM’s distinction, which Plaintiffs also assert, between online retail
6 marketplaces and physical retail stores is consistent with multiple U.S. authorities that recognize
7 the Online Retail Sales Market as separate and distinct from the physical, brick-and-mortar retail
8 sales market. The FTC has concluded that “a relevant market may be divided by channel of sale
9 resulting in separate markets for brick-and-mortar sales and online sales.”⁸⁷ The House Report
10 found, based on extensive industry interviews and economic analysis, that the Online Retail Sales
11 Market was a distinct market and that Amazon controlled over 50% of it.⁸⁸ And the U.S.
12 Department of Commerce has acknowledged—again, based on industry research—the distinction
13 between online retail sales and physical retail sales, tracking online retail sales as a separate
14 category.⁸⁹

15 62. The fact that many prominent retailers routinely offer different prices in their
16 physical locations from those offered online supports the conclusion that online sales represent a
17 distinct market. According to the FTC/DOJ horizontal merger guidelines, differential pricing is a
18 good indicator of the existence of a price-discrimination market. A price-discrimination market,
19 in turn, is a relevant marker of market boundaries; it represents the market in which a hypothetical
20 monopolist would have the ability and incentive to apply a SSNIP to the good because it knows
21 that only an insignificant number of customers will switch to another seller. Because retailers
22 typically price goods sold in-store at a higher price than online, the market already demonstrates

23
24 ⁸⁶ *Id.* ¶¶ 81, 84.

25 ⁸⁷ House Report at 255 (quoting Complaint at 4, *In the Matter of Edgewell Personal Care Co. & Harry’s Inc.*,
No. 9390 (FTC Feb. 2, 2020)).

26 ⁸⁸ *Id.*

27 ⁸⁹ *See, e.g.*, U.S. DEP’T OF COM., ECON. & STAT. ADMIN., NEW INSIGHTS ON RETAIL E-COMMERCE (2017),
<https://www.commerce.gov/sites/default/files/migrated/reports/new-insights-retail-e-commerce.pdf> (collecting data
28 on ecommerce sales since 1998).

1 that in-store retail prices are not constrained by online retail prices, and this indicates online retail
2 prices are also not constrained by in-store retail prices.

3 63. Economists agree that the “[i]nternet represents a fundamentally different
4 environment for retailing from traditional retailing.”⁹⁰ An online channel has distinct
5 characteristics from a physical channel.⁹¹ Yale economist Fiona Scott Morton notes that “[d]igital
6 platforms combine economies of scale, low marginal costs, economies of scope through data and
7 an installed base of users, network effects, multi-sidedness, and sometimes a global reach.”⁹² The
8 combination of these attributes “tend to generate concentrated markets, or market structures
9 containing few firms,” and, “with the addition of inertial (or ‘sticky’) consumers these markets
10 feature high entry barriers which make it difficult for new firms to enter the market to create
11 competition.”⁹³

12 64. Physical retail sales are *not* suitable alternatives in this market because sales on the
13 Online Retail Marketplace Market, or online generally, have distinctive characteristics: they are
14 not limited by geography, time of day, or day of week; they offer exponentially larger volumes
15 and diversity of inventory compared to physical stores; and they offer consumers additional
16 services not offered in physical stores, such as saving consumers’ payment history and past
17 purchases or using data to individualize product offerings.

18 65. Online retail sites allow consumers to use internet-enabled devices to shop for a
19 wide range of goods without limitations based on geographic markets, the time of day, or the day
20 of the week. Consumers also benefit from using online retail platforms because online shopping
21 reduces the risk that a product will be out of stock as online retailers often store a larger and more
22 diverse volume of goods than brick-and-mortar stores. Additionally, once consumers create an
23 account with an online retail platform, the platform provides the consumer with the benefit of

24 _____
25 ⁹⁰ Forsythe, S.M., & Shi, B., *Consumer Patronage and Risk Perceptions in Internet Shopping*, 56 J. BUS. RSCH. 867, 874 (2003).

26 ⁹¹ Katawetawaraks, C. & Wang, C. H., *Online Shopper Behavior: Influences of Online Shopping Decision*, 1 ASIAN J. BUS. RSCH. 66 (2011).

27 ⁹² *Supra* Morton.

28 ⁹³ *Id.*

1 storing consumer information including, for example, payment methods and delivery addresses.
2 Online retail platforms also store a consumer's payment history, allowing a consumer to re-order
3 past items instantly and with little transaction costs.

4 66. And from the retailer's perspective, compared to the physical channel, online
5 marketplaces allow the seller to: (i) reach a wider audience, serve a greater number of geographic
6 markets (at least within national borders) without time limitations (24/7); (ii) generally, to reduce
7 transaction costs, those of market intelligence, for the collection of information on consumers, on
8 new trends and new opportunities, as well as the costs of research and negotiation; (iii) shorten the
9 supply chain, reducing, for example, the degree of outsourcing of the product distribution activity;
10 and (iv) provide the consumer with a broader and more user-friendly set of information than is
11 possible in a physical store, including the opinions of other consumers and, in some cases, expert
12 reviews.⁹⁴

13 67. Online retail sites acquire a multitude of consumer data as a result of the repeated
14 engagement of their consumers and use this data to ensure that consumers receive individualized
15 product listing aimed at displaying the most relevant products to the particular consumer. Online
16 retail platforms' ability to acquire a multitude of consumer data differentiates online retail
17 platforms from brick-and-mortar stores. As FTC Chair Lina Khan explained:

18 [T]he types of consumer behavior that internet firms can access—
19 how long you hover your mouse on a particular item, how many
20 days an item sits in your (electronic) shopping basket before you
21 purchase it, or the fashion blogs you visit before looking for those
22 same items through a search engine—is uncharted ground. The
23 degree to which a firm can tailor and personalize an online shopping
24 experience is different in kind from the methods available to a brick-
25 and-mortar store—precisely because the type of behavior that online
26 firms can track is far more detailed and nuanced. And unlike brick-
27 and-mortar stores—where everyone at least *sees* a common price
28 (even if they go on to receive discounts)—internet retail enables
firms to entirely personalize consumer experiences, which
eliminates any collective baseline from which to gauge price
increase or decreases.^[95]

26 ⁹⁴ AGCM Report ¶ 523.

27 ⁹⁵ Lina M. Khan, *Amazon's Antitrust Paradox*, 126 Yale L.J. 710, 764 (2017), https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyeh.pdf (last visited Feb. 23, 2022).

1 68. These reasons lead to a simple conclusion: There is little cross-elasticity of demand
2 between the use of online retail sites and the use of brick-and-mortar stores.

3 **2. The Online Retail Marketplace Market does not include single-merchant**
4 **e-commerce sites.**

5 69. Unlike single-merchant stores, online retail marketplaces are two-sided platforms
6 that connect consumers to third-party sellers and through them offer a broader variety of goods
7 than single-merchant stores can. Because “[o]nly other two-sided platforms can compete with a
8 two-sided platform for transactions,” Plaintiffs properly exclude single-merchant stores from this
9 market.⁹⁶

10 70. Single-merchant online stores are not reasonably interchangeable with online
11 marketplaces because the intermediation services provided by an online platform permit a retailer
12 to immediately reach a large number of consumers, quickly and with extremely limited set-up
13 costs, making the marketplace an immediately usable solution for accessing e-commerce.⁹⁷ An
14 online marketplace allows a merchant to take advantage of a much wider audience of consumers
15 than the merchant could otherwise reach individually through its own website.⁹⁸ The visibility the
16 merchant obtains through an online marketplace platform is far superior to what the individual
17 retailer could obtain on its individual website because marketplaces have the ability to: (a) invest
18 significant resources in advertising and promotional campaigns; (b) carry out the “profiling” of
19 consumers and create targeted advertising thanks to the availability of an enormous amount of
20 data; and (c) develop a prominent presence on search engines.⁹⁹ These possibilities are completely
21 closed not only to small sellers but to most established brands.¹⁰⁰

22 71. A retailer survey conducted by Raymond James Research found that 62% of
23 respondents believe that participation in an online retail marketplace increases the retailer’s

24 _____
25 ⁹⁶ *Ohio v. Am. Express*, 138 S. Ct. 2274, 2287 (2018).

26 ⁹⁷ AGCM Report ¶ 533.

27 ⁹⁸ *Id.* ¶ 534

28 ⁹⁹ *Id.* ¶ 536.

¹⁰⁰ *Id.*

1 visibility in comparison to its own website, and 44% of respondents see marketplaces as the
2 “starting point” for consumers to search for a product.¹⁰¹

3 72. From the merchant’s perspective, single-merchant online stores are not
4 interchangeable with online marketplaces both because they are not open to multiple sellers and
5 because the merchants that operate single-merchant online stores typically continue to use online
6 retail marketplaces to reach their customers.¹⁰² A hypothetical monopolist issuing a SSNIP also
7 would not cause third-party sellers to resort to single-merchant online stores. In fact, testimony of
8 third-party sellers and their representatives confirm that a monopolist charging a SSNIP increase
9 would not cause third-party sellers to leave Amazon Marketplace. As Stacy Mitchell, the Co-
10 Director of the Institute for Local Self-Reliance explained to the House subcommittee on antitrust,
11 “[a]s [one independent retailer] moved online, so too did the company” but after sales began to
12 decline because consumers “were no longer starting their online shopping on a search engine” but
13 were “going straight to Amazon” the retailer decided to join Amazon after concluding that “[i]f
14 the customer is on Amazon, as a small business you have to say, *‘That is where I have to go. . .*
15 *.Otherwise, we are going to close our doors.’*”¹⁰³ The House subcommittee also found that
16 numerous third-party sellers reached the conclusion that “they cannot turn to alternative
17 marketplaces, *regardless of how much Amazon may increase their costs of doing business* or
18 how badly they are treated.”¹⁰⁴

19 73. Consumers likewise benefit more from marketplaces than single-merchant sites
20 because the marketplace serves as a place of aggregation of various offers belonging to different
21 product categories. The variety of choice and the pervasiveness of the offers attract a very high
22 number of consumers.¹⁰⁵ Consumers who opt not to use online marketplaces in favor of single-
23 merchant online stores face a lack of variety of merchandise and dramatically higher transaction

24 ¹⁰¹ *Id.* ¶ 541.

25 ¹⁰² *Id.* ¶ 544.

26 ¹⁰³ House Report at 256–57 (emphasis added).

27 ¹⁰⁴ House Report at 257 (emphasis added).

28 ¹⁰⁵ *Id.* ¶ 534.

1 costs as a result of having to identify, search product lists, and manage accounts and transactions
2 at countless online stores.

3 74. Consumers also derive confidence from the level of security recognized in the
4 online marketplace in comparison to the variable experiences with single-merchant sites. Their
5 confidence depends on factors like the reliability of payment services, the security of delivery
6 times, prompt and efficient customer care in handling complaints and returns, etc. The investments
7 required for the development of these services are extremely significant and accessible only to
8 large operators.¹⁰⁶ For all these reasons, single-merchant online stores are not reasonable
9 substitutes for online marketplaces, and a hypothetical monopolist issuing a SSNIP also would not
10 cause a significant number of consumers to resort to single-merchant online stores.

11 **3. Social media, comparison shopping sites, and promotional sites are not**
12 **interchangeable with online retail marketplaces.**

13 75. The European Commission, in its investigation of Google Search (Shopping),
14 found that price comparator sites and search engines (such as Google Shopping) belong to a
15 relevant market distinct from that of e-platforms (such as Amazon and eBay).¹⁰⁷

16 76. In its 2013 report and investigation of Amazon Marketplace, the German antitrust
17 authority, BKartA, considered the impact of Amazon’s pricing policies in the “national market for
18 B2C online platform services for the sale of a general product range which does not include auction
19 platforms, price comparison engines or online advertising.”¹⁰⁸

20 77. Although like marketplaces, comparison sites allow consumers to compare the
21 online offers of the same good from multiple sellers, these sites do not allow sales transactions on
22 the platform and, consequently, they do not offer any of the additional services that complement
23 the marketplace offerings to consumers and sellers.¹⁰⁹ They also serve a different commercial
24 function for the online merchant. Comparator sites charges the merchant each time a user arrives

25 ¹⁰⁶ *Id.* ¶ 538.

26 ¹⁰⁷ European Competition Commission, Case AT.39740 *Google Search (Shopping)*, §216,
https://ec.europa.eu/competition/antitrust/cases/dec_docs/39740/39740_14996_3.pdf.

27 ¹⁰⁸ BKartA Decision at 3.

28 ¹⁰⁹ AGCM Report ¶¶ 566-67.

1 at the e-commerce site through the comparator, whether the contact translates into a purchase or
2 not. On the other hand, the marketplaces provide for commissions to be paid by the sellers
3 calculated as a percentage of the value of the transactions carried out on the platform.¹¹⁰

4 78. Like price comparators, offers from online sellers available through social media
5 also lack the online retail marketplace's ability to conduct the sales transaction directly on the
6 platform.¹¹¹ And sites that principally offer promotions, like Groupon, do not offer a viable
7 alternative to the marketplace for third-party sellers because they only offer space for promotional
8 sales for a short and defined period of time and because merchants selling unfamiliar brands
9 typically do not benefit from such promotions.¹¹²

10 79. In consideration of the extremely different business models social media, price
11 comparators, and promotional sites rely on as opposed to the online marketplace model, it would
12 require substantial investments and changes to their respective business organizations before they
13 could extend the same benefits to third party sellers or consumers as online marketplaces currently
14 offer.¹¹³

15 **4. Online marketplaces with limited categories of goods are not reasonably**
16 **interchangeable with broad-based online marketplaces.**

17 80. Specialized online marketplaces, *e.g.*, clothing or electronics, provide reasonable
18 substitutes at most for a subset of online merchants that market goods falling within the specialized
19 marketplaces' product categories.¹¹⁴

20 81. From the consumers' perspective, the large number of product categories on broad-
21 based marketplaces make them attractive for multiple and diversified purchases, even on the same
22 purchase occasion. On the other hand, specialized marketplaces only satisfy the needs of the
23 consumer who is looking for a specific product within the category covered.¹¹⁵ It follows that

24 ¹¹⁰ *Id.*

25 ¹¹¹ *Id.* ¶ 569.

26 ¹¹² *Id.* ¶ 570.

27 ¹¹³ *Id.* ¶ 571.

28 ¹¹⁴ *Id.* ¶ 575.

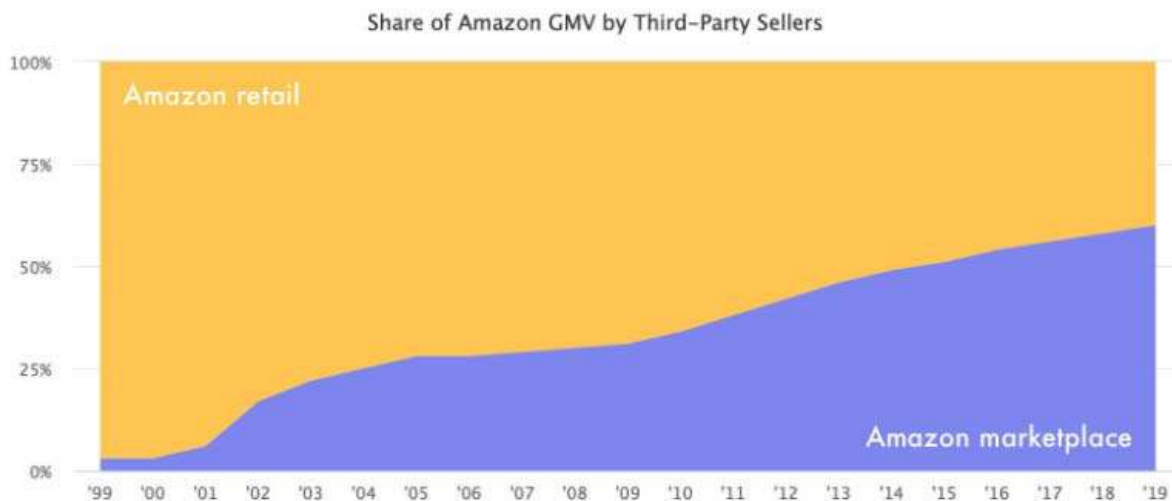
¹¹⁵ *Id.* ¶ 576.

1 specialized marketplaces serve a different purpose, making them complementary and not
 2 alternative to an online retail marketplace from the consumer's perspective.¹¹⁶ The same is true for
 3 third-party sellers, only a small percentage of whom sell on specialized marketplaces.¹¹⁷

4 **D. Amazon's MMAs harm both sides of the Online Retail Marketplace Market and**
 5 **create barriers to competition from other online retail marketplaces.**

6 82. Amazon harms both third-party sellers and consumers alike through its MMAs.
 7 MMAs harm third-party sellers because they cannot compete on price with Amazon and lose sales
 8 opportunities that would otherwise be available to them in a competitive market. MMAs harm
 9 consumers because they overpay for products inflated by Amazon's MMAs.

10 83. In theory, Amazon's third-party sellers should provide significant competition to
 11 Amazon's own retail sales. From 1999 to the present, third-party sellers' sales have grown from
 12 3% to 56% of the sales on Amazon Marketplace:¹¹⁸



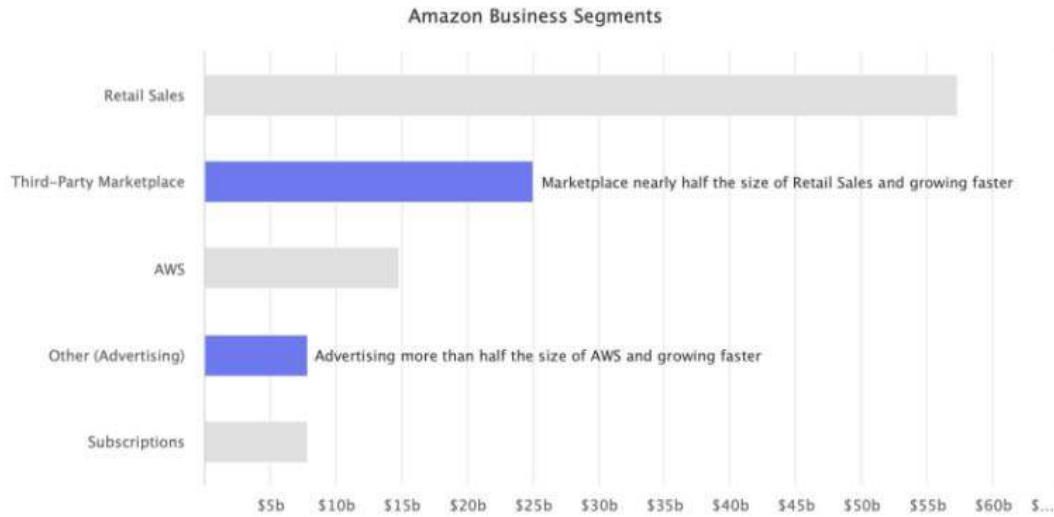
14 84. But Amazon's first-party retail sales remain its largest source of revenue¹¹⁹:

15 ¹¹⁶ *Id.*

16 ¹¹⁷ *Id.* ¶ 579.

17 ¹¹⁸ Chart reprinted from: *Amazon GMV in 2019*, Marketplace Pulse (Feb. 4, 2019),
 18 <https://www.marketplacepulse.com/articles/amazon-gmv-in-2019>; Amazon Percent of Units by Marketplace Sellers
 19 2004-2021, Marketplace Pulse, [https://www.marketplacepulse.com/stats/amazon/amazon-percent-of-units-by-](https://www.marketplacepulse.com/stats/amazon/amazon-percent-of-units-by-marketplace-sellers-1)
 20 [marketplace-sellers-1](https://www.marketplacepulse.com/stats/amazon/amazon-percent-of-units-by-marketplace-sellers-1).

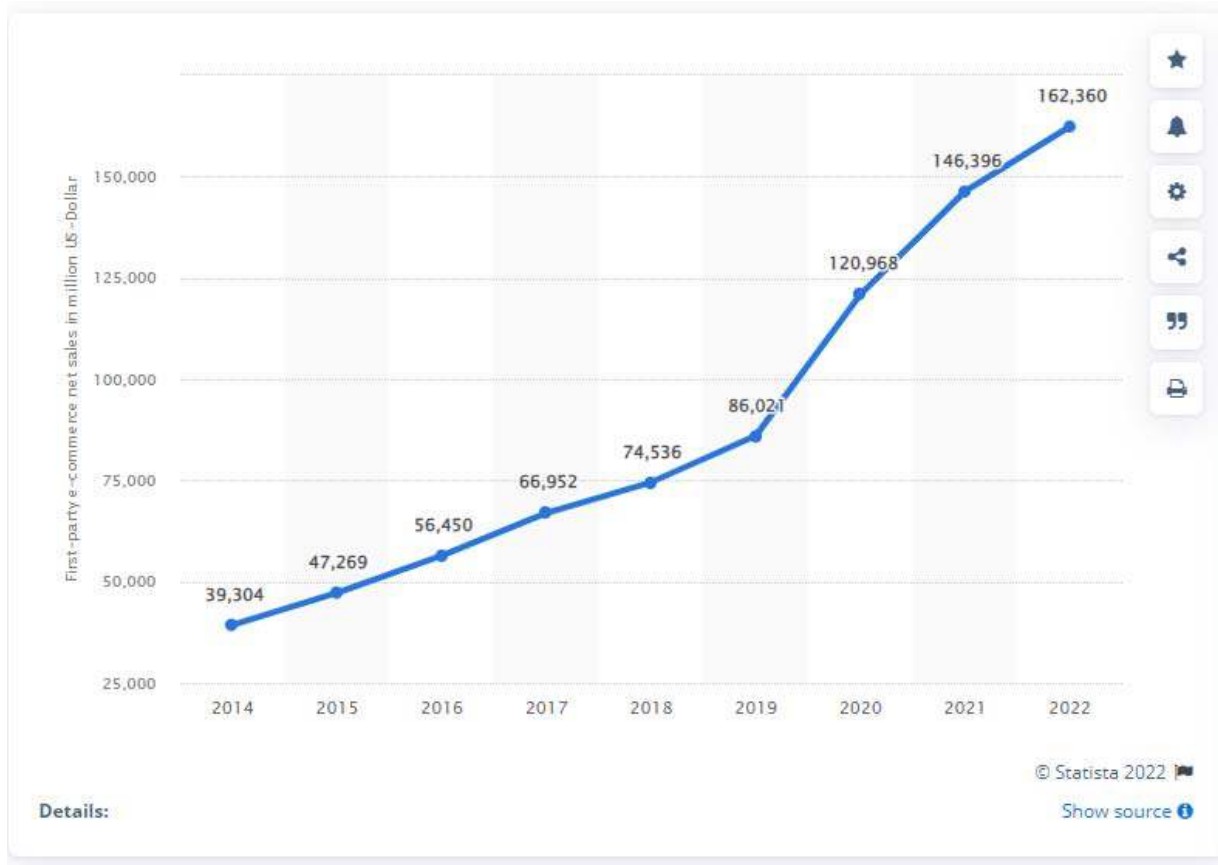
21 ¹¹⁹ Chart reprinted from: *Minimum Viable Amazon*, Marketplace Pulse (Jan 21, 2021),
 22 <https://www.marketplacepulse.com/articles/minimum-viable-amazon>.



10 85. Despite the growth of the third-party sellers' sales on Amazon Marketplace, they
11 have not significantly threatened Amazon's own retail business. Many third-party sellers gain
12 traction on Amazon, not by selling the same established brands that Amazon sells, but by finding
13 a unique source, establishing exclusive rights to sell on Amazon, or selling goods other sellers
14 cannot source.¹²⁰ Amazon does not face price competition from its third-party sellers in the sale of
15 its suppliers' goods because its MMAs allow Amazon to match any price without losing any
16 revenue. The effect of MMAs is clear: Amazon's first-party net sales have enjoyed a steady growth
17 since the advent of Amazon Marketplace, including an average 20% increase each year since
18 2014¹²¹;

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26 ¹²⁰ *The Disappearing Amazon Resellers*, Marketplace Pulse (Jan. 26, 2021),
<https://www.marketplacepulse.com/articles/the-disappearing-amazon-resellers>.

27 ¹²¹ Lukas Peters, amazon.com: E-Commerce net sales from 2014 to 2022, Statista (Sep 24, 2021),
<https://www.statista.com/forecasts/1218313/amazon-revenue-development-ecommercedb>.



86. And by cutting out price competition from other online retailers and online retail marketplaces by the same device, Amazon's MMAs also deter new internet marketplace operators from entering the market and existing competitors from expanding their share.¹²² In a competitive market, these competitors could reduce prices on the platform to attract more consumers and third-party sellers, but Amazon's MMAs defeats these efforts.

E. Amazon dominates the Online Retail Marketplace Market.

87. Amazon's anticompetitive conduct has allowed it to maintain or increase its market share of the Online Retail Marketplace Market, which is estimated to be as high as 90% of all U.S. online marketplace sales.¹²³

88. For many U.S. consumers online shopping is virtually synonymous with Amazon. Before making a purchase, 82% of consumers check prices from Amazon, 79% check Amazon's

¹²² See BKartA Decision at 3.

¹²³ *Supra Amazon Marketplace is 25% of US E-commerce.*

1 reviews, and 74% of US consumers go directly to Amazon when they are ready to purchase a
2 specific product.¹²⁴

3 **1. Online retail marketplaces, like Amazon Marketplace, have powerful**
4 **network effects.**

5 89. Online retail marketplaces like Amazon Marketplace benefit from powerful
6 network effects. “Network effect” refers to any situation in which the value of a product, service,
7 or platform depends on the number of buyers, sellers, or users who use that product, service, or
8 platform.¹²⁵ Indirect network effects occur when the benefit of the platform increases for one user
9 group (e.g., third-party sellers) when more people join from the other group of users (e.g.,
10 consumers).

11 90. Amazon Marketplace is the prototypical example of indirect network effects.
12 Amazon’ consumer base of hundreds of millions of customers makes it indispensable to third-
13 party sellers, and its 2.4 million active third-party sellers help to secure its customers’ loyalty, who
14 cannot find the breadth of products that Amazon’s marketplace offers anywhere else.

15 91. As a first-party retailer, Amazon sells 12 million products on its marketplace—not
16 including books, media, wine, and services.¹²⁶ Amazon Marketplace, inclusive of third-party
17 sellers’ product offerings, expands to about 350 million products.¹²⁷

18 92. Amazon relies primarily on its logistics service (FBA) to bind third-party sellers to
19 Amazon Marketplace and Prime membership to bind consumers.¹²⁸ Currently, over 90% of
20 Amazon sellers use FBA; most use it exclusively.¹²⁹ Using FBA makes it more expensive for third-
21

22 ¹²⁴ The 2019 Amazon Consumer Behavior Report, <https://fv.feedvisor.com/rs/656-BMZ-780/images/Feedvisor-Consumer-Survey-2019.pdf> at 14-15.

23 ¹²⁵ Tim Stobierski, *What are network effects?*, Harvard Business School Online (Nov. 12, 2020), <https://online.hbs.edu/blog/post/what-are-network-effects> (last visited Feb. 23, 2022).

24 ¹²⁶ *How many products does Amazon carry?*, Retail TouchPoints, <https://www.retailtouchpoints.com/resources/how-many-products-does-amazon-carry> (last visited Feb. 23, 2022).

25 ¹²⁷ 15 Amazon Statistics You Need to Know in 2022, repricerexpress.com, <https://www.repricerexpress.com/amazon-statistics/>.

26 ¹²⁸ AGCM Report ¶ 733.

27 ¹²⁹ Dave Hamrick, *Amazon FBA vs FBM: Which is Better? 2021 Comparison Guide*, junglescout.com (Jan. 4, 2021), <https://www.junglescout.com/blog/amazon-fba-vs-fbm/>.

1 party sellers to expand to other marketplaces, especially since competing channels do not want
2 their customers to receive boxes with Amazon branding.¹³⁰

3 93. In a letter to shareholders, Jeff Bezos described how Amazon’s FBA-Prime-
4 Marketplace strategy works: “Every time a seller joins FBA, Prime members get more Prime
5 eligible selection. The value of membership goes up. This is powerful for our flywheel. FBA
6 completes the circle: Marketplace pumps energy into Prime, and Prime pumps energy into
7 Marketplace.”¹³¹ In other words, Amazon itself extols the network effects of its unique
8 marketplace business model: the more FBA sellers, the more Prime products, to the advantage of
9 Prime users and, therefore, the more Prime users, the more Prime Product Purchases, to the
10 advantage of FBA sellers, which in turn generate more FBA Sellers, etc.¹³²

11 94. As one top seller explained: “It doesn’t seem appealing to me to add an enormous
12 burden of having another inventory somewhere other than Amazon just to be able to sell 10% more
13 than we currently sell on Amazon.”¹³³ Amazon’s stronghold is therefore built on the army of third-
14 party sellers with inventory stored in FBA, and what’s keeping the merchants on Amazon are the
15 hundreds of millions of customers, lured both by Amazon’s infinite shelf space and the below-cost
16 shipping available through Amazon’s Prime membership.¹³⁴

17 95. Amazon’s strong network effects when tied with its order fulfillment services and
18 massive data advantage only further allows Amazon to exercise its market power. As Dr. Fiona
19 Scott Morton, a Yale economist, explained to the House subcommittee on antitrust, “[d]igital
20 platforms combine economies of scale, low marginal costs, economies of scope through data and
21 an installed base of users, network effects, multi-sidedness, and sometimes a global reach” and
22 when combined these attributes “tend to generate concentrated markets, or market structures
23

24 ¹³⁰ *Castle Amazon*, Market Pulse (Nov.14, 2018), <https://www.marketplacepulse.com/articles/castle-amazon>.

25 ¹³¹ Amazon 2014 Annual Report, EX-99.1 (sec.gov),
<https://www.sec.gov/Archives/edgar/data/1018724/000119312515144741/d895323dex991.htm>.

26 ¹³² AGCM Report ¶ 733.

27 ¹³³ *Supra Castle Amazon*.

28 ¹³⁴ *Id.*

1 containing few firms,” and, “[w]ith the addition of inertial (or ‘sticky’) consumers these markets
2 feature high entry barriers which make it difficult for new firms to enter the market to create
3 competition.”¹³⁵

4 96. The House subcommittee on antitrust itself recognized that “large technology
5 firms” like Amazon “maintain market power in part because it is not easy for users to switch away
6 from the incumbent’s technology.”¹³⁶ For example, a third-party merchant cannot easily download
7 and migrate its ratings and reviews from Amazon Marketplace and would instead have to start
8 without ratings and reviews on a new platform.¹³⁷ The difficulty users face with switching away
9 from Amazon’s technology causes both consumers and third-party sellers to stick with Amazon
10 even though they may prefer an Amazon rival.¹³⁸

11 97. Amazon further strengthens its market power by compiling a massive set of
12 consumer data based on its retail customers’ shopping information—including how long a
13 consumer browses a product.¹³⁹ An Amazon former employee revealed that the internal data that
14 the online retail giant compiles is more sophisticated and unrivaled by similar data in the public
15 domain or collected by third-party tools.¹⁴⁰ Amazon’s extravagant data collection efforts have
16 helped Amazon grow into an online retail juggernaut by allowing it to determine how consumers
17 spend their money.¹⁴¹

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20 ¹³⁵ Testimony of Fiona M. Scott Morton, Ph.D., House Judiciary Committee (Mar. 7, 2019), <https://docs.house.gov/meetings/JU/JU05/20190716/109793/HHRG-116-JU05-Wstate-ScottMortonF-20190716.pdf> (last visited Feb. 23, 2022).

21 ¹³⁶ House Report at 41.

22 ¹³⁷ *Id.* at 42.

23 ¹³⁸ *Id.* at 41-42.

24 ¹³⁹ See *Amazon.com Privacy Notice*, AMAZON.COM, https://www.amazon.com/gp/help/customer/display.html?nodeId=201909010#GUID-1B2BDAD4-7ACF-4D7A-8608-CBA6EA897FD3__SECTION_87C837F9CCD84769B4AE2BEB14AF4F01 (last visited Feb. 23, 2022).

25 ¹⁴⁰ Krystal Hu, *Revealed: How Amazon Uses Third-Party Seller Data to Build a Private Label Juggernaut*,
26 YAHOO FINANCE (Sept. 27, 2019), <https://www.yahoo.com/lifestyle/amazon-uses-thirdparty-sellers-data-to-build-private-labels-145813238.html> (last visited Feb. 23, 2022).

27 ¹⁴¹ Jennifer Wills, *7 Ways Amazon Uses Big Data to Stalk You* (AMZN), INVESTOPEDIA (Oct. 20, 2018),
28 <https://www.investopedia.com/articles/personal-finance/070215/how-buying-amazoncom-works.asp> (last visited Feb. 23, 2022).

1 **2. Amazon does not face any serious competitive threat to its dominance in the**
 2 **Online Retail Marketplace Market.**

3 98. Amazon's size alone is direct evidence of its market power. Amazon's market
 4 capitalization is currently \$1.151 trillion.¹⁴² By that measure, Amazon is the world's fifth-biggest
 5 company. Big box stores do not pose a credible threat to Amazon Marketplace. While they may
 6 have a significant number of visitors to their website, they cannot compete with the broad catalogue
 7 of goods available on online retail marketplaces or the marketplaces' ability to deliver to their
 8 customers.¹⁴³ Because "most marketplaces launched by retailers" do not invest in the infrastructure
 9 necessary to resolve those issues, they "fail to generate significant sales volume."¹⁴⁴ For example,
 10 Best Buy launched its marketplace in the U.S. in 2011, only to shut it down five years later because
 11 of "customer confusion over marketplace purchases."¹⁴⁵ Jeff Shelman, Best Buy spokesperson,
 12 explained that its customers were frustrated by Best Buy's "inability to offer in-store pickup for
 13 items offered for sale by third-party sellers" or allow its customers to return those "items to Best
 14 Buy's retail stores."¹⁴⁶

15 99. Other Big Tech companies have failed to challenge Amazon's dominance. After
 16 attracting fewer than 8,000 sellers even with promise of eliminating seller commissions,¹⁴⁷ Google
 17 exited the online marketplace market last year.¹⁴⁸

18 100. Nor does the specialized ecommerce platform, Shopify, pose a risk to Amazon
 19 Marketplace's dominance. As recently confirmed by CEO Tobi Lütke, Shopify has no current
 20 intention of competing with Amazon in the Online Retail Marketplaces Market.¹⁴⁹ Nor is there a

21 ¹⁴² <https://companiesmarketcap.com/amazon/marketcap/> (last visited June. 28, 2022).

22 ¹⁴³ *Retailers Do Not Need Marketplaces*, Marketplace Pulse (Nov. 14, 2018),
 23 <https://www.marketplacepulse.com/articles/retailers-do-not-need-marketplaces>.

24 ¹⁴⁴ *Id.*

25 ¹⁴⁵ *Id.*

26 ¹⁴⁶ *Id.*

27 ¹⁴⁷ *Google Shopping Is Not Attracting Sellers Despite 0% Fees*, Marketplace Pulse (Sep. 30, 2020),
 28 <https://www.marketplacepulse.com/articles/google-shopping-is-not-attracting-sellers-despite-0-fees>.

¹⁴⁸ *Google Promised a Marketplace but Then Gave Up-*, Marketplace Pulse (Aug. 19, 2021),
<https://www.marketplacepulse.com/articles/google-promised-a-marketplace-but-then-gave-up>.

¹⁴⁹ *Shopify Won't Build a Marketplace*, Marketplace Pulse (Apr. 6, 2021); Lucy Carney, *Shopify vs Amazon: Which Platform Should You Use?* (February 23, 2022), <https://www.websitebuilderexpert.com/ecommerce-website->

1 realistic chance that it would do so in the near future. Shopify’s business model differs significantly
 2 from Amazon. Amazon Marketplace benefits from the indirect network effects of having the
 3 largest consumer base and the largest product and seller offering. In comparison, Ben Thompson
 4 at Stratechery explains, online retailers “are Shopify’s reason to exist,” but they “are not a point of
 5 leverage for Shopify to build a consumer brand[.]”¹⁵⁰ Shopify helps retailers build their own online
 6 store, but it does not help them reach online customers, and conversely Shopify’s consumer-facing
 7 app does not even allow consumers to search for products across Shopify stores.¹⁵¹

8 101. Sally Hubbard, former New York Assistant Attorney General and current Director
 9 of Enforcement Strategy at the Open Markets Institute, observes, consumers “benefit from robust
 10 competition, open markets, and a de-concentrated economy,” where “the best rise to the top
 11 because of merit, not because powerful gatekeepers control who gets to succeed.”¹⁵²

12 102. In China, for example, where Amazon withdrew from the market because of the
 13 fierce competition it faced, consumers have many innovative options for online shopping.¹⁵³ Most
 14 Chinese sites offer next-day shipping, which Amazon Marketplace struggles to provide.¹⁵⁴
 15 Payment for Chinese e-commerce is also commonly held in an escrow and then released once the
 16 delivery occurs, eliminating many disputes related to shipping.¹⁵⁵ Online sites in China provide
 17 shoppers extensive product suggestions based on machine learning, allow consumers to skip time-
 18 consuming credit card transactions by using mobile payment, and permit consumers to avoid the
 19 chaos of China’s equivalent of Black Friday by paying a security deposit to reserve products at the

20
 21 [builders/comparisons/shopify-vs-amazon/https://www.marketplacepulse.com/articles/shopify-wont-build-a-marketplace.](https://www.marketplacepulse.com/articles/shopify-wont-build-a-marketplace)

22 ¹⁵⁰ *Id.*

23 ¹⁵¹ *Shopify’s Almost-Marketplace Called Shop*, Marketplace Pulse (Apr. 29, 2020),
[https://www.marketplacepulse.com/articles/shopifys-almost-marketplace-called-shop.](https://www.marketplacepulse.com/articles/shopifys-almost-marketplace-called-shop)

24 ¹⁵² *Amazon Is a Monopoly, an Interview With Sally Hubbard* - Marketplace Pulse (Aug. 6, 2019),
[https://www.marketplacepulse.com/articles/amazon-is-a-monopoly-an-interview-with-sally-hubbard.](https://www.marketplacepulse.com/articles/amazon-is-a-monopoly-an-interview-with-sally-hubbard)

25 ¹⁵³ Arjun Kharpa, *Amazon is shutting down its China marketplace business. Here’s why it has struggled*. CNBC
 (Apr. 19, 2019), <https://www.cnbc.com/2019/04/18/amazon-china-marketplace-closing-down-heres-why.html>.

26 ¹⁵⁴ *The Real Difference Between China and US E-Commerce*, Enleaf, <https://enleaf.com/the-real-difference-between-china-and-us-e-commerce/>.

27 ¹⁵⁵ *Id.*

1 sales price weeks before the sale occurs.¹⁵⁶ And built-in online chat forums allow consumers to
2 bargain with online sellers.¹⁵⁷

3 103. In a competitive market, U.S. consumers would likely benefit from similar
4 innovations. But facing no serious competition in the Online Retail Marketplace Market, Amazon
5 does not innovate: “The feedback Amazon gathered over the years is that it doesn’t need to do
6 more than it already does,” and instead it “spends most of its resource” on fortifying its monopoly
7 power.¹⁵⁸ This includes Amazon’s enforcement of MFNs to prevent price competition with the
8 products it sells as part of its first-party retail sales.

9 **F. Amazon alternatively dominates the Online Retail Market or submarkets for
10 specific product categories sold online.**

11 104. The House Report found that the Online Retail Sales Market is a distinct market
12 and that Amazon dominates it. *See supra* Sec. C.1. This represents an alternative market, in the
13 event the Online Retail Marketplaces Market is not found to be the relevant market in which to
14 assess the impact of Amazon’s MMAs.

15 105. As a further alternative, Amazon has minimally obtained monopoly power in the
16 product category submarkets with U.S. online retail markets, where its market share exceeds 50%.
17 For example, in 2018, tracking the number of online purchases across 100 million devices from
18 500 different e-commerce retailers and marketplaces, market analyst, Jumpshot, found that
19 Amazon Marketplace had a 97% share of online battery purchases, 94% share of online kitchen
20 and dining product purchases, a 93% share of online home improvement tool purchases, a 92%
21 share of online golf-related product purchases and a 91% share of online skin care product
22 purchases.¹⁵⁹

23
24 ¹⁵⁶ *Supra* Kaur.

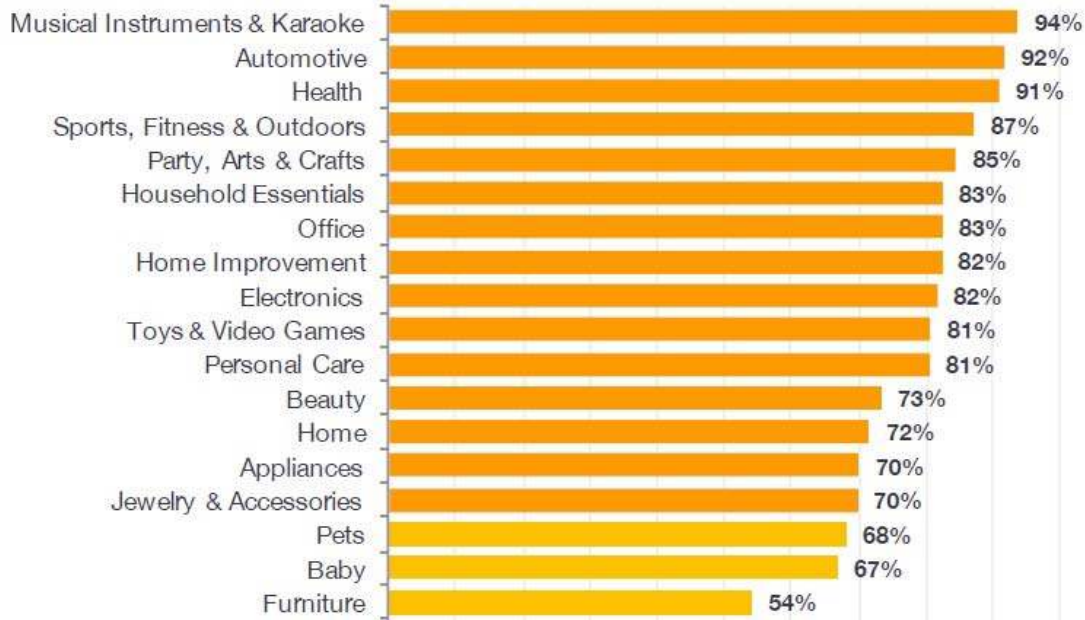
25 ¹⁵⁷ *Supra* *The Real Difference Between China and US E-Commerce*.

26 ¹⁵⁸ *Supra* *Minimum Viable Amazon*.

27 ¹⁵⁹ Amy Gresenhues, *Amazon Owns More Than 90% Market Share Across 5 Different Product Categories*
28 *[Report]*, Marketing Land (May 31, 2018), <https://martech.org/amazon-owns-more-than-90-market-share-across-5-different-product-categories-report/>.

1 106. In a 2019 report, Jumpshot found that Amazon Marketplace had over 50% market
 2 share in 18 categories:¹⁶⁰

3 **Amazon Market Share by Top-Level Category**



15
 16 **VI. INTERSTATE TRADE AND COMMERCE**

17 107. Amazon’s activities as alleged in this complaint were within the flow of, and
 18 substantially affected, interstate commerce. Amazon sells goods online across, and without regard
 19 to, state lines.

20 **VII. CLASS ACTION ALLEGATIONS**

21 108. Plaintiffs bring this action on behalf of themselves, and as a class action under the
 22 Federal Rules of Civil Procedure (“Rules”), specifically Rules 23(a) and (b)(3), seeking damages
 23 pursuant to antitrust laws (*see infra* Causes of Action) on behalf of the members of the following
 24 Classes:

25 **National Class:** All persons who, on or after July 13, 2018,
 26 purchased goods from Amazon subject to its minimum margin
 agreements.

27 ¹⁶⁰ 2019 Jumpshot report, Losers Brands and Retailers Who Couldn’t Make It Happen in 2018 at 21.

1 **State Classes**¹⁶¹: All persons who, on or after July 13, 2018,
2 purchased in [state] goods from Amazon subject to its minimum
3 margin agreements.

4 109. Excluded from the Class are Amazon and its officers, directors, management,
5 employees, subsidiaries, or affiliates. Also excluded from the Class are the district judge or
6 magistrate judge to whom this case is assigned, as well as those judges' immediate family
7 members, judicial officers and their personnel, and all governmental entities. Further excluded
8 from the class are individuals who are already pursuing antitrust claims based on Amazon's SBA
9 program on their individual behalf in arbitration before the American Arbitration Association.

10 110. The identities of all Class members are readily identifiable from information and
11 records maintained by Amazon.

12 111. **Numerosity:** Members of the Class are so numerous that joinder is impracticable.
13 Plaintiffs believe that there are more than a hundred million members of the Class, geographically
14 dispersed throughout the United States, such that joinder of all class members is impracticable.

15 112. **Typicality:** Plaintiffs' claims are typical of the claims of the other Class members.
16 The factual and legal bases of Amazon's liability are the same and resulted in injury to Plaintiffs
17 and all other members of the proposed Class.

18 113. **Adequate representation:** Plaintiffs will represent and protect the interests of the
19 proposed Class both fairly and adequately. They have retained counsel competent and experienced
20 in complex class-action litigation. Plaintiffs have no interests that are antagonistic to those of the
21 proposed Class, and their interests do not conflict with the interests of the proposed Class members
22 they seek to represent.

23 114. **Commonality:** Questions of law and fact common to the members of the Class
24 predominate over questions that may affect only individual Class members because Amazon has
25 acted on grounds generally applicable to the Class and because Class members share a common
26 injury. Thus, determining damages with respect to the Class as a whole is appropriate. The
27 common applicability of the relevant facts to claims of Plaintiffs and the proposed Class are

28

¹⁶¹ Plaintiffs assert State Classes on behalf of California and Maryland purchasers.

1 inherent in Amazon's wrongful conduct because the overcharge injuries incurred by Plaintiffs and
2 each member of the proposed Class arose from the same anticompetitive conduct alleged herein.

3 115. There are common questions of law and fact specific to the Class that predominate
4 over any questions affecting individual members, including:

- 5 a. Whether Amazon's MMAs with its suppliers unreasonably restrain trade in the
6 relevant markets in violation of section 1 of the Sherman Act;
- 7 b. Whether Amazon unlawfully acquired or maintained its monopoly in the relevant
8 market, including by way of the contractual terms, policies, practices, mandates, and
9 restraints described herein;
- 10 c. Whether competition in the relevant market has been restrained and harmed by
11 Amazon's monopolization of this market;
- 12 d. Whether Amazon's MMAs violate California and Maryland's antitrust laws;
- 13 e. Whether consumers and Class members have been damaged by Amazon's conduct;
- 14 f. The amount of any damages; and
- 15 g. The scope of any injunctive relief.

16 116. **Predominance and superiority:** This proposed class action is appropriate for
17 certification. Class proceedings on behalf of the Class members are superior to all other available
18 methods for the fair and efficient adjudication of this controversy, given that joinder of all members
19 is impracticable. Resolution of the Class members' claims through the class action device will
20 present fewer management difficulties, and it will provide the benefit of a single adjudication,
21 economies of scale, and comprehensive supervision by this Court.

22 VIII. ANTITRUST INJURY AND STANDING

23 117. During the Class Period, Plaintiffs and Class members directly purchased from
24 Amazon goods that it sells as a first-party seller. Because of Defendant's anticompetitive conduct,
25 Plaintiffs and Class members were forced to pay more for those purchases than they would have
26 if Amazon had not unreasonably restrained competition in the price of products subject to its
27 MMAs with its suppliers. Defendant therefore has caused Plaintiffs and Class members to suffer
28 overcharge damages. Plaintiffs and Class members have standing therefore as direct purchasers of
goods inflated by Amazon's anticompetitive agreements. Because Defendant continues to restrain

1 trade and exploit its market dominance through its enforcement of anticompetitive MMAs,
2 Plaintiffs and Class members are reasonably likely to incur future overcharges when they make
3 additional purchases from Amazon of products subject to its MMAs. Both the actual harm and the
4 threat of future harm are cognizable antitrust injuries directly caused by Defendant's violations of
5 federal antitrust laws, including its anticompetitive agreement with its suppliers, and its
6 monopolization of the relevant markets, as alleged herein.

7 IX. CAUSES OF ACTION

8 FIRST CAUSE OF ACTION 9 VIOLATION OF 15 U.S.C. § 1 (ON BEHALF OF NATIONAL CLASS)

10 118. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

11 119. Plaintiffs bring this federal law claim on their own behalf and on behalf of each
12 member of the proposed nationwide Class described above.

13 120. Amazon and its suppliers entered into MMAs, whereby the suppliers contractually
14 guarantee that Amazon receives a minimum margin on the sale of the products they supply to
15 Amazon for resale on Amazon Marketplace.

16 121. The MMAs are unreasonable restraints on trade because they penalize the suppliers
17 if other, more efficient retailers can sell the same products at a lower price. The purpose and effect
18 of these agreements is to create an illegal price floor.

19 122. Amazon is liable for the creation, maintenance, and enforcement of its agreements
20 with its suppliers under a "quick look" or rule-of-reason standard.

21 123. For purposes of Plaintiffs and Class members' quick-look or rule-of-reason claims,
22 the relevant geographic market is the United States. The relevant product market is the Online
23 Retail Marketplace Market or the alternative markets defined above. *See supra* Secs. C-F.

24 124. Amazon's MMAs with its suppliers have an open and obvious adverse effect on
25 competition in the Online Retail Marketplace Market. Amazon is the gatekeeper for ecommerce
26 in the United States and as much as 90% of all online marketplace sales occur on Amazon
27 Marketplace. Amazon holds at least a 50% share of the alternative product markets. Amazon's
28

1 MMAs insulate it from competition from other online retailers by ensuring that no other online
2 retailer can sell the goods supplied to Amazon at a lower price.

3 125. A straightforward application of fundamental economic principles shows that the
4 arrangements in question would have an anticompetitive effect on customers and the relevant
5 market.

6 126. Amazon and its suppliers did not act unilaterally or independently when entering
7 into the MMAs. The MMAs substantially, unreasonably, and unduly restrained trade in the
8 relevant markets, and harmed Plaintiffs and the Class thereby.

9 127. Amazon's MMAs have no legitimate, pro-competitive business justification or any
10 justification that outweighs its harmful effect. Even if there were some conceivable justification,
11 the MMAs are broader than necessary to achieve such a purpose.

12 128. Plaintiffs and members of the Class were injured in their business or property by
13 paying higher prices for purchases on Amazon Marketplace than they would have paid in the
14 absence of Amazon's unlawful conduct. They are entitled to overcharge damages as alleged in this
15 Complaint.

16 **SECOND CAUSE OF ACTION**
17 **VIOLATION OF 15 U.S.C. § 2**
18 **(ON BEHALF OF NATIONAL CLASS)**

19 129. Plaintiffs repeat and re-make every allegation above as if set forth herein in full.

20 130. Plaintiffs bring this federal law claim on their own behalf and on behalf of each
21 member of the proposed nationwide Class described above.

22 131. Defendant obtained monopoly power in the relevant markets, *see supra* Secs. C-F,
23 as demonstrated by its power to set the price of goods sold in the relevant markets and Defendant's
24 dominant market shares.

25 132. Amazon has gained and maintains monopoly power in the applicable markets by
26 improper and unlawful means.

27 133. Defendant has willfully acquired or maintained its monopoly power in the
28 applicable markets in part through its enforcement of its MMAs. These agreements with Amazon's

1 suppliers establish a price floor based on Amazon’s price listings on its marketplace. By requiring
2 its suppliers to apply a price floor on all other online retail platforms, Defendant has largely
3 immunized its retail business from competitive pricing in the relevant markets and caused goods
4 sold on Amazon Marketplace to be listed at supra-competitive prices.

5 134. Plaintiffs and the Class members have been injured and will continue to be injured
6 in their businesses and property by paying more for goods on Amazon Marketplace than they
7 would have paid or would pay in the future in the absence of Defendant’s unlawful acts. They are
8 entitled to overcharge damages and an injunction that terminates the ongoing violations alleged in
9 this Complaint.

10 **THIRD CAUSE OF ACTION**
11 **VIOLATION OF CALIFORNIA’S CARTWRIGHT ACT,**
12 **CAL. BUS. & PROF. CODE § 16700, ET SEQ.**
13 **(PER SE VIOLATION ON BEHALF OF THE CALIFORNIA CLASS)**

14 135. California Plaintiffs repeat and re-make every allegation above as if set forth herein
15 in full.

16 136. California Plaintiffs bring this California law claim on their own behalf and on
17 behalf of each member of the proposed California Class described above.

18 137. California Plaintiffs have standing under the Cartwright Act as direct purchasers of
19 goods that Amazon sells to them at prices inflated by its anticompetitive MMAs.

20 138. The California Business & Professions Code generally governs conduct of
21 corporate entities. The Cartwright Act, Cal. Bus. & Prof. Code §§ 16700-16770, governs antitrust
22 violations in California.

23 139. California policy is that “vigorous representation and protection of consumer
24 interests are essential to the fair and efficient functioning of a free enterprise market economy,”
25 including by fostering competition in the marketplace. Cal. Bus. & Prof. Code § 301.

26 140. A trust in California is any combination intended for various purposes, including,
27 but not limited to, creating or carrying out restrictions in trade or commerce, increasing the price
28

1 of merchandise, or preventing competition in the market for a commodity. Cal. Bus. & Prof. Code
2 § 16720.

3 141. Through its MMAs, Defendant entered into an illegal trust with its suppliers. These
4 agreements establish a floor price based on the sum of the supplier's wholesale price to Amazon
5 along with the minimum margin it guarantees to Amazon with each sale. By agreeing that its
6 suppliers will pay Amazon if Amazon's competitors price below this floor, Amazon has ensured
7 that its suppliers will enforce a minimum resale price to prevent Amazon's competitors from
8 offering a lower price than Amazon. This restraint of competition caused Plaintiff and class
9 members to overpay for goods subject to MMAs.

10 142. Every trust to restrain trade in California is *per se* unlawful except as provided by
11 the Code. *Id.* at § 16726. No exceptions apply to Defendant's conduct.

12 143. Although California Plaintiffs do not believe it is necessary to prove market impact,
13 to the extent it is necessary, the relevant markets for purposes of this claim are the markets defined
14 in this complaint, *see supra* Secs. C-F, where Amazon dominates.

15 144. California Plaintiffs and Class members have been injured and will continue to be
16 injured in their businesses and property by paying more for goods subject to Amazon's MMAs
17 than they would have paid or would pay in the future in the absence of Defendant's unlawful acts.
18 They are entitled to overcharge damages and an injunction that terminates the ongoing violations
19 alleged in this Complaint.

20 **FOURTH CAUSE OF ACTION**
21 **VIOLATION OF MD. CODE ANN., COM. LAW § 11-201, ET SEQ.**
22 **(PER SE VIOLATION ON BEHALF OF THE MARYLAND CLASS)**

23 145. Maryland Plaintiff repeats and re-make every allegation above as if set forth herein
24 in full.

25 146. Maryland Plaintiff brings this Maryland Antitrust Act claim on his own behalf and
26 on behalf of each member of the proposed statewide Class of Maryland direct purchasers, as
27 described above.
28

1 147. Maryland Plaintiff has standing under the Maryland Antitrust Act as a direct
2 purchaser of the goods that Amazon sells to him at a price inflated by its anticompetitive MMAs.

3 148. The Maryland Antitrust Act, MD. Code Ann., Com. Law § 11-201, *et seq.*, governs
4 antitrust violations in Maryland. It prohibits, inter alia, any contract, combination, or conspiracy
5 with one or more other persons that unreasonably restrains trade or commerce. *See* §11-204.

6 149. Under the Maryland Antitrust Act, a “contract, combination, or conspiracy that
7 establishes a minimum price below which a retailer, wholesaler, or distributor may not sell a
8 commodity” is a *per se* violation of Maryland antitrust law. § 11-204(b).

9 150. Although Maryland Plaintiff does not believe it is necessary to prove market
10 impact, to the extent it is necessary, the relevant markets for purposes of this claim are the markets
11 defined in this complaint, *see supra* Secs. C-F, where Amazon dominates.

12 151. Through its MMAs, Defendant entered into an illegal agreement with its suppliers
13 to establish a floor price based on the sum of the supplier’s wholesale price to Amazon along with
14 the minimum margin it guarantees to Amazon with each sale. By agreeing that its suppliers will
15 pay Amazon if Amazon’s competitors price below this floor, Amazon has ensured that its suppliers
16 will enforce a minimum resale price to prevent Amazon’s competitors from offering a lower price
17 than Amazon. This restraint of competition caused Plaintiff and class members to overpay for
18 goods subject to MMAs.

19 152. Defendant has engaged in a contract, combination, or conspiracy with its co-
20 conspirator suppliers that establishes a minimum price below which a retailer may not sell a
21 commodity in violation of § 11-204(b).

22 153. Maryland Plaintiff and Class members have been injured and will continue to be
23 injured in their businesses and property by paying more for goods subject to Amazon’s MMAs
24 than they would have paid or would pay in the future in the absence of Defendant’s unlawful acts.
25 They are entitled to overcharge damages and an injunction that terminates the ongoing violations
26 alleged in this Complaint.

JURY TRIAL DEMANDED

154. Plaintiffs hereby demand a trial by jury of all the claims asserted in this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Amazon as follows:

A. The Court determine that this action may be maintained as a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class Representative and their counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class, once certified;

B. Adjudication that the acts alleged herein constitute unlawful restraints of trade in violation of the Sherman Act, 15 U.S.C. § 1;

C. Actual damages, treble damages, and such other relief as provided by the statutes cited herein;

D. Pre-judgment and post-judgment interest on such monetary relief;

F. The costs of bringing this suit, including reasonable attorneys' fees; and

G. All other relief to which Plaintiffs and members of the Class may be entitled at law or in equity.

DATED this 13th day of July, 2022

Respectfully submitted,

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