

## **FACT-CHECKING THE FTC'S COMPLAINT ABOUT AMAZON**

This week, the FTC announced its long-awaited case against Amazon. The case comes after years of speculation about how the FTC will need to invent radical new approaches to antitrust to attack one of the nation's [most popular businesses](#). **Research shows the FTC's theories will have real and dire consequences for consumers and small businesses.**

The FTC and Chair Lina Khan are putting forward a number of myths to support their case, here are the facts:

### **SELLERS**

**Chair Khan's Claim:** “Amazon takes close to \$1 out of every \$2 from sellers that use its platform.”

**FACTS:** The [baseline cost for third-party sellers](#) to sell products to Amazon's millions of customers on its marketplace is a referral fee between 8% to 15%. The referral fee varies depending on the product. Sellers choose to use other services provided by Amazon because of the services' great value, and the services help sellers meet their needs of operating a business.

[Research](#) shows selling on a marketplace provides over \$145 billion in [free benefits](#) to U.S. small businesses each year.

If a small business wants to sell a product, offline or online, it first needs to attract customers and then get its product to those customers, which every small business owner knows costs money. The small business might have its own physical store and pay overhead for rent and sales staff or sell wholesale to a major retailer, like Walmart. If a seller uses Amazon's marketplace, they can customize which services they use to cater to their specific customer needs.

Just two of the myriad services Amazon provides sellers demonstrate the enormous value the retailer provides:

- **Advertising:**

- Amazon offers advertising services to help companies build their brands and reach new customers. There are [no upfront fees](#), and small businesses can start small and only pay when a customer clicks on their ads.
- Small businesses using Amazon Ads [attributed 30% of their sales](#) to the ads. They choose to use Amazon's ads because they work.

- **Fulfillment by Amazon:**

- Sellers choose to use Amazon's logistics service because they need to get their products to customers, and it is great value. Shipping with FBA [costs 30% less](#) per unit than standard shipping options offered by major U.S. carriers. FBA is [70% cheaper](#) than 2 day shipping options of competing services.
- Amazon has [invested over \\$100 billion](#) in FBA to ensure independent sellers have a reliable fulfillment option that is scalable to meet different sellers' needs.
- This optional service takes care of packing and shipping orders, customer service, and returns. And it ensures sellers are eligible to make “Prime” badged offers. Sellers can also use FBA to

[fulfill orders](#) placed from their own websites and other marketplaces, which gives sellers the option of offering their customers speedy shipping options without additional overhead.

- **What sellers are saying:**

- [Evans Richards, owner of reVend in Reidsville, NC](#): “Every seller wants lower fees, but the value sellers get for the fees paid to Amazon is incredible, and it is more than any other marketplace.”
- [Nadia Liu Spellman, founder and CEO of Dumpling Daughter](#): “I was sending sauce all over the country, and I thought, why can't we use Amazon as a way to get in touch with our customers? We started looking into packaging, and we realized shipping is expensive. FBA makes it so easy because we pack up the sauce [in bulk] and we just [send it to Amazon]. Anyone can do it.”
- [Jason Hince of Big Crazy Buffalo](#): “If you're gonna spend \$1 advertising, you do it with Amazon because that's where the consumers are.”
- [Andrew Tjernlund of Tjernlund Services](#): “Amazon sellers can be really successful without using FBA or Prime. I've fulfilled my own orders and done millions of dollars worth of sales.”
- [Rob Gilfeather, founder and CEO of Fuel for Fire](#): “We started fulfilling through FBA, and that's when our sales quadrupled. FBA enables us to focus on product development, customer service, and sales, and other channels.”
- [Melissa Dillashaw, senior global manager of Fellow](#): “I think FBA allows us to really focus on growth ... and merchandising the product so that it's approachable to the customer, and we can really tell the brand story, instead of spending all of our time shipping product across the country.”

### PROTECTING COMPETITORS INSTEAD OF PRESERVING COMPETITION

[Chair Khan's Claim](#): “This lawsuit is fundamentally about protecting free and fair competition,” and in [paragraph six](#) of the complaint, “create[ing] an opening for rivals and potential rivals to attract business, gain momentum, and grow.”

**FACTS: The FTC's lawsuit makes clear that it will only help the biggest retailers in the country. It will not help small businesses.**

- [CCIA President Matt Schruers](#): “The FTC's desire to artificially designate Amazon as a monopoly by manufacturing an illusory 'market' where it only competes with Walmart and Target undermines its entire case, as those competitors – and others who could achieve that scale – are the only companies that could benefit from the FTC's suit.”
- [CCIA President Matt Schruers](#): “Given that the FTC defines Amazon's rivals as 'superstores' that have enormous scale, even if its case were to help prospective rivals, those rivals would need to necessarily be the next biggest retailers in order to compete in the 'market' that the FTC has chosen. Query whether Costco, Kroger, Home Depot, Lowes, CVS, or Walgreens — all retailers with over \$100 billion in revenue — need the FTC's help to achieve the “scale” necessary to rival online superstores.”
- [CCIA President Matt Schruers](#): “The FTC also gives a nod to wanting to help America's largest logistics companies — FedEx and UPS — achieve more 'scale.' It notes that Amazon incentivizing sellers to use its own logistics service to deliver Prime offers in two days nationwide deprives other

logistics companies of a 'source of scale that is necessary to develop efficient fulfillment networks' (see FTC complaint para 366)."

### **AMAZON'S PRICING**

**Chair Khan's Claim:** "Amazon has an anti-discounting policy that basically punishes sellers who sell on other retail platforms at a lower price."

**FACTS:** Amazon's own [pricing policy](#) is designed to induce competitive prices. Amazon states publicly on its price policy page that prohibited pricing practices include setting a price on a product or service that is significantly higher than recent prices offered on or off Amazon.

Amazon would rather a customer purchase a single product at a discounted price from another retailer than have them overpay on Amazon and [risk the customer losing trust](#) in Amazon's prices over the long term.

- [Amazon Marketplace Fair Pricing Policy](#): "Sellers are responsible for setting their own prices on Amazon stores ... Pricing practices that harm customer trust include, but are not limited to: Setting a price on a product or service that is significantly higher than recent prices offered on or off Amazon."
- The FTC's remedy could force Amazon to show uncompetitive prices, resulting in customers paying more on Amazon.com.

### **SELLER FULFILLED PRIME (SFP) PROGRAM:**

**Chair Khan's Claim:** "Sellers were effectively meeting the same standards that that FBA does."

**FACTS:** This statement is false – very few sellers were able to meet FBA standards for Prime deliveries. Prime members expect that the products they buy with the Prime badge will arrive on time.

Amazon has innovated relentlessly to improve offerings to sellers, including expanding options for fulfilling orders that qualify for the Prime two-day shipping guarantee:

- In 2016, Amazon launched a program called "Seller Fulfilled Prime" (SFP), which allowed sellers to store their own products and pack their own orders, with delivery managed by carriers like the USPS, [FedEx](#), or [UPS](#).
- In 2019, Amazon paused enrollments due to issues with performance (see [question 107](#)).
- In late 2020, [Amazon](#) announced a change to Seller Fulfilled Prime because **"fewer than 16% of SFP orders in the US met the Prime Two-Day delivery promise customers expect**, in large part because many sellers do not operate on weekends."
- In early 2021, this change went into effect. Per [Feedvisor](#), this change was to lift the standards of SFP to be closer to FBA's standards "SFP sellers in the U.S. will be required to support Saturday pick-up and delivery, and make Prime-eligible products available for delivery nationwide. Amazon is implementing these updates to ensure that all products touting the Prime badge actually meet the one- and two-day delivery promises, providing Prime members with a consistent, positive shopping experience."
- In 2022, [Amazon](#) said about this program: "We've tried allowing our selling partners to use other logistics providers to get Prime-eligible products to customers; unfortunately, these providers were not

able to consistently deliver in the timeframes Prime customers have come to expect (meeting our “delivery promise” is something we measure and monitor extremely closely).”

**SEE HERE FOR MORE SPRINGBOARD CONTENT ON THE FTC'S CASE**

- [ICYMI: FTC Chair Lina Khan struggles to answer tough questions on the agency's case against Amazon](#)
- [Primer: FTC Prepares to Break Up Amazon, Harming Consumers and Small Businesses](#)
- [The FTC's case against Amazon has several issues, here are just five](#)
- [Primer: Retail Is Competitive, Diverse, And Always Changing](#)