

A threat to Amazon and a test of the FTC: is this big tech's antitrust reckoning?

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The Federal Trade Commission and attorneys general from 17 states have accused Amazon in a major antitrust lawsuit of illegally shutting out competition to become one of the world's most powerful companies. The landmark case presents a significant threat to Amazon's dominance in the online retail industry, and is a major test of antitrust law and the FTC's power. At the core of the case is whether Amazon used its immense power in the online retail industry to illegally disadvantage rivals, leveraging tactics that punished sellers for offering lower prices elsewhere while coercing businesses into paying fees to use its fulfillment services. The FTC is seeking a permanent injunction to prohibit many of Amazon's business practices. "The complaint sets forth detailed allegations noting how Amazon is now exploiting its monopoly power to enrich itself while raising prices and degrading service for the tens of millions of American families who shop on its platform and the hundreds of thousands of businesses that rely on Amazon to reach them," Lina Khan, the FTC chair, said in a statement. Amazon has denied the allegations, with Amazon's general counsel David Zapolsky stating that the company's practices have benefited consumers, spurred competition and led to innovation in retail. Amazon is accused of illegally monopolizing online retail. In the complaint, the FTC repeatedly presents Amazon as a company that is willfully stifling competition while restricting consumer choice in order to maintain its monopoly. "In a competitive world, Amazon's decision to raise prices and degrade services would create an opening for rivals and potential rivals to attract business, gain momentum and grow. But Amazon has engaged in an unlawful monopolistic strategy to close off that possibility," the complaint states. The FTC and states allege Amazon imposes anti-discounting measures that prohibit merchants who sell products on Amazon from offering lower prices elsewhere; strong-arms third-party sellers to use its expensive fulfillment services; requires merchants to use the company's delivery and fulfillment system in order to qualify for its popular Prime subscription service; and prioritizes the company's in-house line of products over others. Amazon issued a lengthy response to the suit, written by Zapolsky, its general counsel, which alleges the FTC had a "fundamental misunderstanding of retail" and rejects any coercion in making sellers or consumers buy its products. The FTC is not seeking to break up the company, but instead is asking for a permanent injunction from a federal court that would "prohibit Amazon from engaging in its unlawful conduct and pry loose Amazon's monopolistic control to restore competition". Big tech faces an antitrust reckoning The suit against Amazon is part of a spate of attempts at regulating big tech, which have included congressional hearings, state attorneys general lawsuits and marquee trials of major companies such as Google. The FTC and the US justice department started investigations into Google, Facebook, Apple and Amazon during the Trump administration. Since then, the justice department has sued Google twice, with one case now the subject of a high-profile trial. The FTC sued Facebook during the Trump

administration, and Biden's FTC has pressed forward with the lawsuit. An FTC request to block Microsoft's acquisition of Call of Duty maker Activision Blizzard was rejected. Under Khan, the FTC has taken a more aggressive stance against the power of big tech and intensified the broader government push to loosen the grip a few top companies have over industries such as online retail and internet search engines. Khan gained attention as a law student in 2017 after writing a much-cited Yale Law Journal paper arguing that Amazon was a predatory monopoly. Critics of big tech's monopoly over various industries have long called for regulators to take a stronger stance. As the FTC's suit against Amazon loomed, a coalition of authors and booksellers issued an open letter last month with an antitrust thinktank urging the government to take action over its impact on the publishing industry. "Today the free exchange of ideas is impeded and warped by opaque algorithms and sales practices controlled by Amazon and premised on which publisher and/or author is willing and able to pay the highest extortionary tax to get their books promoted on Amazon's website," the letter stated. Several tech reform organizations on Tuesday praised the suit against Amazon as a positive move toward enforcing antitrust regulations and breaking up tech monopolies. "For far too long, Amazon has manipulated the online marketplace to position itself as the world's largest digital retailer, and in the process, they jacked up prices, stole competitors' products, and gate-kept consumers from better products," Sacha Haworth, the executive director of the non-profit Tech Oversight Project, said in a statement. But it remains to be seen how Khan and the FTC's spate of antitrust lawsuits and attempts at increased regulation will fare, with an uneven record so far. Amazon agreed to pay \$25m to settle allegations from the DoJ and FTC that it violated child privacy protections by failing to delete children's data, including voice recordings. But the FTC has also faced several losses in court this year while trying to take on big tech, including attempts to block mergers and acquisitions by Meta and Microsoft. The case against Amazon is expected to take years.