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AMAZON: A MONOPOLIST THAT UNDERS SELLS ITS COMPETITORS?

Abstract: The Federal Trade Commission's antitrust case against Amazon alleges, among other counts, that the company has illegally monopolized its markets in violation of Section 2 of the Sherman Act and engaged in unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act. In particular, the FTC claims Amazon is raising prices for consumers, charging excessive fees to third-party sellers on its platform, and degrading the quality of its service by permitting third-party sellers to advertise. As Amazon is America's favorite online retailer, the Commission's accusations warrant attention. Using publicly available data, I test the veracity of the FTC's claims. In conflict with the Commission's complaint, I show Amazon charges lower prices than its rivals and its third-party seller fees and advertising practices are typical for online marketplaces.

I. Background

Late last year, the Federal Trade Commission ("FTC"), joined by seventeen state Attorneys General, filed an antitrust suit against Amazon.¹ The FTC's legal theory, rooted in Section 2 of the Sherman Act² and Section 5(a) of the FTC Act,³ is that Amazon is illegally attempting to monopolize the "Online Superstore Market" and the "Online Marketplace Services Market" and is using its alleged monopoly power to engage in "unfair methods of competition." To support its claim, the FTC levies several charges against Amazon, including: (1) Amazon has "quietly and

¹ *Federal Trade Commission et al. v. Amazon.com, Inc.*, Case No.: 2:23-cv-01495-JHC, United States District Court, Western District of Washington (filed September 26, 2023) (hereinafter "FTC Complaint") (available at: https://www.ftc.gov/system/files/ftc_gov/pdf/1910134amazonecommercecomplaintrevisedredactions.pdf).

² 15 U.S.C. § 2.

³ 15 U.S.C. § 45(a)

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deliberately raised prices for shoppers” and is “overcharging its customers”⁴; (2) Amazon “has hiked [] steeply the fees it charges sellers”⁵; and (3) advertising by third-party sellers on the platform “degrade[s] the services it provides” to consumers.⁶ In concert, the FTC asserts Amazon’s actions cause harm by “inflating prices and degrading quality for both shoppers and sellers.”⁷

Amazon is America’s favorite online retailer.⁸ If the FTC’s case is successful, then Amazon’s relationship with customers may be materially affected, for good or bad. Thus, the veracity of the FTC’s claims warrants attention.

It is straightforward to reject the FTC’s claim about the use of advertising. The online marketplaces of Walmart, Target, eBay, Etsy, among others, permit third-parties to advertise on their platforms (which the FTC claims is “degrading” service to consumers⁹), so advertising appears to be an typical feature of large, online marketplaces and not unique to Amazon or related to market share.¹⁰ Advertising is also common, if not ubiquitous, in brick-and-mortar stores, including slotting at grocery stores, which research concludes has a “procompetitive

⁴ *Id.* at ¶ 2, 23.

⁵ *Id.* at ¶ 4 (emphasis in original).

⁶ *Id.* at ¶ 5.

⁷ Plaintiffs’ Opposition to Amazon’s Motion to Dismiss, Case No.: 2:23-cv-01495-JHC (filed February 6, 2024) at p. 5 (available at: https://www.ftc.gov/system/files/ftc_gov/pdf/01492024.02.06Plaintiffs%27oppositionto127MtntoDismiss.pdf).

⁸ *Top 10 Online Stores in the United States: Revenue Development, Market Growth & CAGR*, *ecommercedb.com* (February 2, 2024) (available at: <https://ecommercedb.com/insights/top-10-online-stores-in-the-united-states/2530>).

⁹ FTC Complaint, *supra* n. 1 at ¶ 5.

¹⁰ *How to Advertise on Walmart Marketplace*, WebFX (last visited February 9, 2024) (available at: <https://www.webfx.com/marketplaces/learn/how-to-advertise-walmart-marketplace>); J. Beddome, *The Comprehensive Guide to Target.Com Advertising 2023*, SEARCHNUTURE (April 12, 2023) (available at: <https://www.searchnuture.com/blog/the-comprehensive-guide-to-target-com-advertising-2023>); *eBay Advertising: Running Click-Worthy Ads That Boost Sales*, BIGCOMMERCE (last visited February 9, 2024) (available at: <https://www.bigcommerce.com/articles/omnichannel-retail/ebay-advertising>); *How to Set Up and Manage an Etsy Ads Campaign*, Etsy Help Center (last visited February 9, 2024) (available at: <https://help.etsy.com/hc/en-us/articles/360033701174-How-to-Set-Up-and-Manage-an-Etsy-Ads-Campaign?segment=selling>); *Unlock the Potential in Every Interaction*, BESTBUYADS (last visited February 9, 2024) (available at: <https://www.bestbuyads.com>).

business justification” and is likely to be “an efficient contract.”¹¹ Scarce space requires some sort of allocation, and price is a reasonable allocation mechanism.¹²

As for the FTC’s other claims regarding consumer prices and third-party seller fees, this BULLETIN provides empirical evidence on the prices of Amazon and other large online retailers (Walmart and Target) to determine whether Amazon is “overcharging its consumers.” Neither Walmart nor Target are third-party sellers on Amazon’s website, and thus their prices are independent of Amazon’s third-party seller practices that are a focus of the FTC’s Complaint.¹³ This analysis finds that Amazon is not overcharging its consumers. Amazon’s prices are, on average, about 3.5% lower than these two rivals, a small but statistically significant difference. These results are comparable to other price comparisons between Amazon and its rivals, though the differences found here are more conservative.¹⁴

Next, I compare the third-party seller fees of Amazon and Walmart for a variety of products. Such fees include a sales commission and “picking and packing your orders, shipping and handling, customer service, and product returns.”¹⁵ Despite a few unique attributes motivated by the business plans of the two retailers, the fee structures are highly comparable and the fee-to-price ratio between the two retailers are nearly equal and statistically so. The evidence does not support the FTC’s claim that Amazon is charging unreasonable third-party fees.

Viewed as a low-price retailer, Amazon’s remarkable success presumably reflects its low prices, among other considerations such as an outstanding reputation, Amazon Prime, excellent customer service, easy returns, fast and reliable shipping, and its early entry into online retailing. Despite its advantages, Amazon’s consumer prices and its fees to third-party sellers are consistent

¹¹ B. Klein and J. Wright, *The Economics of Slotting Contracts*, 50 JOURNAL OF LAW & ECONOMICS 421 (August 2007); see also *El Aguila Food Products, Inc. v. Gruma Corp.*, 301 F. Supp. 2d 612, 623 (S.D. Tex. 2003), *aff’d* *El Aguila Food Prods. V. Gruma Corp.*, 131 Fed. Appx. 450, 2005 U.S. App. LEXIS 8944 (5th Cir. Tex., May 17, 2005) (noting that a slotting agreement can be “beneficial” both for a retailer and for retailer’s customers. A slotting agreement is beneficial to the retailer as it allows the seller “to better compete with other retailers” and such an agreement is beneficial to a retailer’s customers “because a portion of the benefit goes to the costs of goods sold which allows [the retailer] to offer lower prices to [its] customers.” Moreover, competition “effectively forces [the retailer] to pass through much of the benefit of the [slotting] agreement to its customers by offering lower prices.”).

¹² When allocating scarce radio spectrum, for instance, the government uses auctions.

¹³ In its Reply to Amazon’s Motion to Dismiss, the FTC asserts that the prices of its third-party sellers may be higher on other sites, not that unaffiliated firms like Target and Walmart have higher prices. Plaintiffs’ Opposition to Amazon’s Motion to Dismiss, *supra* n. 7 at p. 2 (“Amazon’s anti-discounting tactics suppress price competition and inflate prices across much of the internet by penalizing sellers that offer lower prices off Amazon.”).

¹⁴ See, e.g., *Price Wars: 2023, U.S. Edition*, Profitero (November 2023) (available at: <https://www.profitero.com/report/price-wars-us-2023>).

¹⁵ *Amazon FBA: Fulfillment Services for Your eCommerce Business*, Amazon (last visited February 9, 2024) (available at: <https://sell.amazon.com/fulfillment-by-amazon>).

with other online marketplaces with smaller market shares. In all, the primary claims levied against Amazon in the FTC's Complaint are unsupported by the data and Amazon's conduct is consistent with the routine business practices of online marketplaces. The case against Amazon, therefore, appears to be motivated by a "big is bad" mindset rather than consumer harm, which is consistent with the Neo-Brandeisian thinking of the current leadership at the nation's antitrust authorities.¹⁶

II. Data

Price data for thousands of products sold on Amazon, Target, and Walmart are obtained from Polar Data (a division of Saturn Data, LLC).¹⁷ All prices are those for the retailer and not third-party sellers (a "P1" price), thus avoiding data from third-party sellers. Data collection involves scraping prices for a very large number of products weekly from each retailer's website and then matching them between firms, using information such as the product Stock Keeping Unit ("SKU"), which is a unique product identifier, and product descriptions.¹⁸ These weekly data span April 2023 through January 2024, including 43 weeks of prices for the Walmart-Amazon pair and 42 weeks for the Target-Amazon pair. For Walmart, about 40% of the products are available online only, and about 30% are so for Target.¹⁹

Products fall into product categories (e.g., Beauty, Furniture, Personal Care).²⁰ I keep in the sample only departments with a minimum of 100 unique products (excluding 0.7% of products). For presentation purposes, I aggregate a few product classes due to their highly similar character, and, in some cases, aggregate product classes into an existing yet broader one (e.g., joining Food

¹⁶ A. Fiebig and D. Gerber, *The Causes and Consequences of the Neo-Brandeisian Antitrust Movement in the United States*, 19 ZEITSCHRIFT FÜR WETTBEWERBSRECHT 460-86 (2021); H.J. Hovenkamp, *Is Antitrust's Consumer Welfare Principle Imperiled?*, 45 JOURNAL OF CORPORATION LAW 101 (2018); C.S. Wilson and A.S. Cella, *Deconstructing the Worldview of the Neo-Brandeisians Through Marxism and Critical Legal Studies*, 29 GEORGE MASON LAW REVIEW (2022); L. Khan, *The New Brandeis Movement: America's Antimonopoly Debate*, 9 JOURNAL OF EUROPEAN COMPETITION LAW & PRACTICE 131-2 (2018); T. Wu, *The Utah Statement: Reviving Antimonopoly Traditions for the Era of Big Tech*, MEDIUM (November 18, 2019) (available at: <https://onezero.medium.com/the-utah-statement-reviving-antimonopoly-traditions-for-the-era-of-big-tech-e6be198012d7>); L.J. Spiwak, *A Change in Direction for the Federal Trade Commission?*, 22 FEDERALIST SOCIETY REVIEW 304 (2021); L.J. Spiwak, *Pushing the Bounds of Judicial Deference: Some Thoughts on the FTC's New Unfair Methods of Competition Policy Statement*, 18 JOURNAL OF LAW, ECONOMICS AND POLICY 339 (2023).

¹⁷ Company websites are www.polar-data.com; <https://www.saturndatacloud.com>. Sample data is provided at: <https://aws.amazon.com/marketplace/pp/prodview-ugrflimnfwog>.

¹⁸ S. Rankin, *SKU Numbers Explained: How Retailers Can Use Them to Track Inventory and Sales*, Lightspeed (October 24, 2022) (available at: <https://www.lightspeedhq.com/blog/sku-numbers/#:~:text=SKUs%20are%20also%20completely%20unique,about%20the%20merchandise%20you%20carry>).

¹⁹ These statistics are based on a sample of 100 products for each.

²⁰ These data include a "department" and "category" indicator, where the category indicator includes more groups. The department grouping is used in the analysis.

and Groceries; Toys and Video Games in the existing Toys & Video Games group). In the final sample, there are 24,930 unique products grouped into twelve product classes. The Walmart-Amazon group has 15,080 unique products and the Target-Amazon group has 10,879.

A limitation of these data is that the prices are nominal and not full prices. Most importantly, the price data exclude shipping costs. Amazon Prime customers receive free shipping and easy returns. About 65% of Amazon's customers are Prime members, and about 84% of Amazon's third-party sellers offer Prime shipping.²¹ Walmart's Walmart+ service also offers free shipping for members, but its subscriber base is smaller than Amazon Prime and free shipping excludes most third-party sales.²² The expectation is that the price differences estimated here are, if anything, conservative, as shipping costs often represent a large share of the full price of online purchases.

To evaluate Amazon's third-party fees, which include referral fees (a sales commission) and fulfillment fees (including storage, packaging, and shipping), I select a random sample of 200 products from the Amazon-Walmart pair for prices measured in the last week of January-2024, resulting in products of varied sizes, weights, and classes. The data collection process begins with the product-identifier ASIN from Amazon with which fulfillment and referral fees are calculated.²³ These product attributes, including the current Amazon price, are then used to calculate Walmart's fees, so that all relevant product characteristics held constant between the two firms (including price).²⁴

Notably, the product sample is not linked to sales, so the measured fees do not represent the average third-party fees received for the two firms, but the goal of this analysis is simply to compare fees for the same set of products. The package sizes and weights, and well as the product prices and product class, vary widely, so the sample of fees provide a meaningful comparison. Also, not all third-party sellers use fulfillment services, yet to compare fees this analysis restricts attention to sellers that do so. It is reasonable to expect some fee differences as Amazon's fulfillment service is the industry gold standard, offering third-party sellers an array of valuable services and the "Prime" logo with its fast, reliable shipping services.²⁵ Given some unique

²¹ Data available at: <https://www.statista.com/statistics/1242240/amazon-marketplace-share-of-sellers-offering-prime-shipping>.

²² A description of Walmart+ is available at: <https://www.walmart.com/plus?q=walmart+>.

²³ Calculator available at: <https://sellercentral.amazon.com>. Product size and weight information is obtained at: <https://www.profitguru.com/calculator/fba>. It is assumed that the seller has a professional account (it sells more than 40 items per month, thus avoiding a \$0.99 charge per item).

²⁴ Calculators available at: <https://marketplace.walmart.com/walmart-fulfillment-services-pricing>; <https://www.omniprofitcalculator.com/walmart-fee-calculator>.

²⁵ K. Lamb, *Dropshipping vs Amazon FBA: How to Choose for Your Business*, PATTERN (May 21, 2021) (available at: <https://pattern.com/blog/dropshipping-vs-amazon-fba>).

attributes of the fulfillment fees – Walmart adds a \$1 fee to any product less than \$10 and Amazon charges higher fees for oddly shaped packages – it is not necessarily the case that the third-party seller fees will be identical. Nonetheless, the fee-to-price ratios are comparable and statistically equal.

III. Consumer Price Differences

The data include prices for thousands of products with varying absolute price levels. A meaningful index of price may be constructed by included product fixed effects, thereby centering the price data: for example, a 10% price difference between televisions is more significant than a 10% difference in the prices of floor wax. Since prices vary over time, a fixed effect for the week of data collection is also included in the regression. The two-way fixed effects regression is,

$$\ln(P_{ijt}) = \omega WMT_{ijt} + \gamma TGT_{ijt} + \mu_i + \lambda_t + \varepsilon_{ijt} \quad (1)$$

where P_{ijt} is the price for product i by firm j in time t , WMT_{ijt} is a dichotomous indicator for Walmart, TGT_{ijt} is a dichotomous indicator for Target, μ_i is a fixed effect for each product, λ_t is a fixed effect for the week the prices were observed, and ε_{ijt} is the econometric disturbance term. Standard errors are clustered at the product level. A positive ω or τ coefficient shows Walmart or Target have higher prices than Amazon (and vice versa). Since the dependent variable is in natural log form, the average percentage difference in prices between Walmart and Amazon is $\exp(\omega) - 1$ (and similarly for Target-Amazon). Since the magnitude of percentage price difference depends on the price, a second model is estimated that is weighted by price.

Table 1 summarizes the results. The sample includes 883,116 observed prices over 24,930 unique products over all weeks in the sample. The mean price for products in the sample is approximately \$77. In both models, the ω and γ coefficients are positive and statistically different from zero at the 1% level. Over this period, Walmart's prices are 3.2% higher and Target's prices are 3.6% higher than Amazon's prices for the unweighted regression. Weighting the regression by price, the differences are 4% and 7.9%, both larger than the unweighted results.

Table 1. Regression Results		
Variable	Coef (t-stat)	Coef (t-stat)
Walmart: ω	0.0314*** (30.59)	0.0396*** (19.15)
Target: γ	0.0352*** (24.73)	0.0758*** (15.23)
Weighted	No	Yes
Obs.	883,116	883,116
Products	24,930	24,930
F-Stat	756.3***	283.4***
Stat. Sig. *** 1% , ** 5% , * 10%		

While the FTC asserts that “Amazon is a monopoly,” it is a peculiar one in that Amazon’s offers lower prices than do its rivals. These results refute the FTC’s claim that Amazon is overcharging consumers through various means. Amazon, in fact, offers lower prices to shoppers than do large online retailers viewed as offering low prices to consumers.

A. Product Price Distribution

The results presented above measure mean price differences across a variety of products. It seems unlikely that Amazon has lower prices for all products even within a product class, so here the distribution of price differences by product for each pair is calculated as,

$$\Delta P_f = P_f / P_A - 1, \quad (2)$$

where P_A is Amazon’s price and P_f is the price of either Walmart or Target. Summary statistics of ΔP_f are provided in Table 2.

Table 2. Price Difference Distribution		
	Walmart	Target
Amazon Price Lower	31.2%	47.1%
Amazon Price Higher	13.1%	15.2%
Equal Prices	55.6%	37.7%
Products	15,080	10,879
Obs.	250,695	214,783

Relative to Walmart, over 43 weeks and for 15,080 products, Amazon’s prices are lower 31.2% of the time, higher 13.1% of the time, and equal 55.6% of the time. When Amazon’s prices are lower,

the percentage price difference is 20.8% and when higher the difference is 14.7%. Comparing Amazon's prices to Target's prices, over 42 weeks and for 10,879 products, Amazon's prices are lower 47.1% of the time, higher 15.2% of the time, and equal 37.7% of the time. When Amazon's prices are lower, the percentage price difference is 16.1% and when higher the difference is 16.9%, so the price differences are nearly symmetric. Amazon's prices are lower for more products than they are higher with a ratio of nearly 3-to-1. Equal prices are common. There is no evidence to suggest that Amazon is "overcharging its customers" as the FTC claims.

B. Price by Department

Price differences among the retailers may vary by product type. The brick-and-mortar providers may, for instance, offer lower prices for groceries, or lower prices for bulkier items that are expensive to ship but could be picked up in the store. Changing Equation (1) allows for the estimation of mean price differences by product group,

$$\ln(P_{ijt}) = \Omega WMT_{ijt} \cdot DEPT_{ijt} + \Gamma TGT_{ijt} \cdot DEPT_{ijt} + \mu_i + \lambda_t + \varepsilon_{ijt} \quad (3)$$

where Ω and Γ are vectors of coefficients representing each product group. Table 3 summarizes the results, where the reported values measure percentage differences (rather than coefficients).

Table 3. Price Difference by Department

Department	Walmart	Target
Auto & Tires	0.025***	...
Baby	0.032***	0.027***
Clothing, Shoes & Accessories	0.037***	0.088***
Electronics	0.069***	0.103***
Grocery	-0.072***	-0.054***
Home Improvement	0.048***	...
Home, Furniture & Appliances	0.018***	0.058***
Patio & Garden	0.043***	...
Personal Care	0.010***	0.056***
Pharmacy, Health & Wellness	0.022***	...
Sports & Outdoors	0.037***	0.057***
Toys & Video Games	0.058***	...
Stat. Sig. *** 1% , ** 5% , * 10%		

Apart from Groceries, for which Amazon has a 2% market share by some measures, Amazon's prices are lower in all departments, and all differences are statistically significant.²⁶ For the most part, the percentage price differences for Walmart are comparable in size across product classes, with a few exceptions. Walmart's prices for groceries are about 7.2% lower than Amazon's and Target's about 5.4% less. Relatively sizeable differences are observed for Electronics (for both retailers) and Target has relatively higher prices for Clothing, Shoes, and Accessories. Walmart has relatively small but positive price differences for Home, Furniture, and Appliances and Personal Care products.

C. Other Price Comparisons

Using methods comparable to the price data used here, Profitero's annual *Price Wars* reports compare prices among several large online retailers including Amazon, Walmart, Target, Home Depot, Lowe's, Best Buy, Chewy, CVS, Dick's Sporting Goods, GameStop, GNIC, Macy's, Koh's, Petco, PetSmart, Nordstrom, Ulta, Walgreens and Wayfair.²⁷ The series of reports compares same-day online prices for around 15,000 identical products in multiple categories across several leading retailers. Profitero collects data on the more popular Amazon products as determined by sales rank.

²⁶ T. Lee, *Amazon Dominating the Grocery Market? Not Happening*, THE STREET (March 15, 2023).

²⁷ Reports available at: <https://www.profitero.com/resources/reports>.

Table 4. Profitero Amazon Price Comparisons (Multiple Retailers)

	2021	2022	2023
Appliances	15%	12%	12%
Baby	4%	5%	8%
Beauty	26%	23%	26%
Electronics	13%	12%	8%
Fashion	16%	16%	19%
Food & Beverage	11%	11%	11%
Health & Personal Care	21%	21%	26%
Home Furniture	22%	25%	25%
Household Supplies	9%	12%	11%
Pet	5%	4%	7%
Sports & Outdoors	8%	8%	7%
Tools & Home Improvement	9%	7%	8%
Toys & Games	11%	11%	9%
Video Games	15%	17%	12%
Vitamins & Supplements	24%	21%	29%

Source: Profitero *Price Wars* Reports, Multiple Years.

Table 4 provides summary statistics by product class for the years 2021 through 2023. These data include the average price difference between these retailers and Amazon, with positive values indicating Amazon's prices are lower. Information in the reports (but not here) indicates that within the product classes Amazon either has the lowest price or in a few cases is tied for the lowest price. These mean price differences are larger than those reported above, but these data include far more retailers and focuses on the most popular selling items on Amazon.

Table 5. Profitero Amazon Price Comparisons (Walmart and Target)

	2021		2022		2023	
	Walmart	Target	Walmart	Target	Walmart	Target
Appliances	2%	8%	5%	15%	4%	8%
Baby	3%	6%	4%	7%	3%	14%
Beauty	1%	26%	3%	12%	2%	26%
Electronics	9%	10%	9%	12%	7%	8%
Fashion	5%	12%	12%	11%	7%	10%
Food & Beverage	1%	19%	2%	17%	3%	24%
Health & Personal Care	2%	19%	2%	14%	4%	25%
Home Furniture	1%	26%	2%	30%	3%	10%
Household Supplies	3%	10%	5%	13%	3%	16%
Pet	3%	12%	5%	11%	6%	17%
Sports & Outdoors	2%	15%	5%	20%	3%	8%
Tools & Home Improvement	4%	11%	9%	7%	5%	7%
Toys & Games	4%	8%	3%	6%	2%	4%
Video Games	13%	17%	19%	19%	10%	13%
Vitamins & Supplements	5%	22%	2%	17%	4%	27%

Source: Profitero *Price Wars* Reports, Multiple Years.

Table 5 summarizes the Profitero price comparison of Amazon's prices to Walmart and Target. Again, Amazon's prices are lower, on average, than either Walmart or Target. The price differences are larger than those presented in Table 3 (meaning Amazon charges even lower prices according to the Profitero analysis), but the conclusion is the same. Amazon charges lower prices for the same products in contradiction to the FTC's claims.

IV. Third-Party Seller Fees

There are two general types of third-party seller fees: (1) referral fees; and (2) fulfillment fees.²⁸ Referral fees, typically a percentage of the sales price (approximately 8% to 15%), are a commission paid by third-party sellers to the online marketplace. Fulfillment fees are paid by third-party sellers to cover the costs associated with the physical delivery of the product to the customer. To compare third-party seller fees, I collected data on third-party seller fees for 200 products of varying sizes, weights, classes, and prices. There are 400 observations in the sample (200 products, 2 firms). Pricing to third-party sellers can be complex, as the prices, volumes,

²⁸ What are Amazon's Seller Fees?, WIX eCommerce (February 13, 2024) (available at: <https://www.wix.com/blog/ecommerce/2022/07/amazon-seller-fees>).

weights, package sizes, and so forth, vary. Amazon's and Walmart's fee structures differ in some unique ways, such as Walmart charging an additional \$1 fulfillment fee for products priced lower than \$10 and a \$0.50 up charge on fulfillment for apparel (which has a relatively high return rate), and Amazon appears to discourage oddly shaped package—presumably to economize on transportation logistics—with higher fees.

Referral Fees are based on prices and product class and are thus most easily compared. Table 6 summarizes the Referral Fees of Amazon and Walmart. As the table shows, referral fees between the two firms are nearly identical, even though Amazon likely offers a more attractive marketplace option for sellers and could thus, have had higher fees for that reason alone.²⁹ For this sample of products, Amazon's average referral fee is 13.3% and Walmart's is 13.4%, a statistically insignificant difference of 0.0019 ($t = 0.52$). Amazon's referral fees are thus consistent with another large online marketplace (Walmart).

²⁹ Data obtained at (last visited February 2, 2024): <https://marketplace.walmart.com/referral-fees>; <https://www.repricer.com/blog/amazon-seller-fees>.

Table 6. Referral Fees

Category	Amazon	Walmart
Baby Products, Electronics Accessories, Grocery and Gourmet Food	8%- 15%	8% - 15%
Books, DVD, Furniture and Décor, Home and Garden, Kitchen, Music Software and Computer/Video Games, Toys and Games, Video and DVD, Sports (excluding collectibles), Luggage and Travel Accessories, Unlisted Types	15%	15%
Camera and Photo, Cell Phone Devices, Consumer Electronics, Video Game Consoles	8%	8%
Major Appliances	8%- 15%	8%
Musical Instruments	15%	12%
Office Products, Outdoors	15%	8%- 15%
Personal Computers	6%	6%
Tools and Home Improvement	12% - 15%	12% - 15%
Automotive and Powersports	10% - 12%	12%
Beauty, Health and Personal Care	15%	8%- 15%
Clothing and Accessories	17%	5% - 15%
Industrial and Scientific	12%	12%
Jewelry	5%- 20%	5%- 20%
Shoes, Handbags, and Sunglasses	15%- 18%	15%
Watches	3% - 16%	3% - 16%

The variable of primary interest is the ratio of all fees to the sales price ($F2P$), matching the statistic used in the FTC's Complaint. Naturally, shipping fees represent a larger share of the price for lower-priced items, and these fees may exceed the sales price (especially when shipping is free). The range of fees to prices is 0.094 to 6.05 on a range of prices of \$1 to \$605.38, with the fee share generally falling as prices increase. Table 7 summarizes the averages fees for Walmart and Amazon (including shipping costs) across the deciles of price.

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Table 7. Fees and Prices

Decile	Price	Fees/Price	Obs.
1	4.62	1.36	40
2	8.44	0.62	40
3	12.00	0.53	40
4	15.26	0.47	40
5	20.72	0.48	40
6	28.97	0.42	40
7	38.85	0.35	40
8	53.76	0.33	40
9	107.02	0.29	40
10	299.22	0.25	40
	58.88	0.51	400

For this set of products, the mean fee-to-price ratio is 0.51 for a mean price of \$58.88, but the ratio falls to about 33% or less at a price of about \$50. Amazon's mean fee-to-price ratio is 0.513 and Walmart's is 0.508, a negligible difference of 0.0055 (about 1%). The null hypothesis that the fee-to-price ratio between the two firms is equal cannot be rejected ($t = -0.12$ ignoring product fixed effects and -0.40 including them), though equal fees are not necessarily expected given differences in the fee structures that attempt to change behavior or product offerings through fees. Across this set of products, the fees are essentially identical, even though Amazon's fulfillment service is, by most accounts, the industry gold standard, which might justify higher fees. The FTC's assertion that Amazon is overcharging third-party sellers is empirically unsupported. Amazon's fees are comparable to a consequential rival online retailer.

V. Conclusion

The FTC's case against Amazon asserts that the company's conduct is "inflating prices and degrading quality for both shoppers and sellers."³⁰ Yet, these claims are unsupported by this analysis. Amazon's prices are, on average, lower than other large online retailers. Also, the FTC's claim that Amazon is charging excessive fees to third-party sellers appears untrue. Amazon's third-party seller fees are consistent with other online marketplaces. As for "degrading" the consumer experience by allowing third-party sellers to advertise on Amazon's website, the practice is commonplace if not ubiquitous for retail. As such, it is unclear what harm the FTC's

³⁰ Plaintiffs' Opposition to Amazon's Motion to Dismiss, *supra* n. 7 at p. 5.

case against Amazon seeks to remedy.³¹ With no cognizable harm to consumers or third-party sellers, maybe the case against Amazon falls into the “big is bad” category, which is consistent with the current Neo-Brandeisian thinking of leadership at the nation’s antitrust authorities.³² Under modern antitrust case-law and in economics, big is not necessarily bad, and the absence of harm to consumers and third-party sellers presents a challenge for the FTC’s case.

³¹ C.f., R.H. Bork Jr., *Internal Emails Show FTC’s Lina Khan Is Trying To Win By Losing*, The Hill (March 3, 2024) (available at: <https://thehill.com/opinion/finance/4490640-internal-ftc-emails-show-ftcs-khan-is-actually-trying-to-win-by-losing>).

³² See *supra* n. 16 and citations therein.