



Amazon Seeks Dismissal of DC's Antitrust

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The attorney general of Washington, DC, has failed to plead a legitimate antitrust claim against Amazon because the pricing policies the district challenges encourage sellers to offer lower prices, the company has argued.

In a [motion](#) filed last week, Amazon urged a local DC court to dismiss the district's allegations that the online retailer violated DC antitrust laws by requiring third-party sellers to set an illegal price floor and maintain minimum profit margins when selling platforms on its marketplace.

According to press reports, the Federal Trade Commission and various state attorneys general are investigating Amazon's business practices for potential antitrust violations, but DC attorney general Karl Racine was the first out of the gate.

Racine's office [filed](#) a lawsuit in May accusing Amazon of illegally including most-favoured-nation clauses in contracts with sellers to prevent them from offering lower prices on competing platforms.

Amazon [ditched](#) its "Parity with Your Sales Channels" section of its contracts with third-party sellers in the US back in 2019, but Racine's office says the platform has replaced it with an almost identical policy.

In September, Racine's team amended its complaint to add claims related to an Amazon policy that allegedly requires wholesalers to guarantee a minimum profit margin. The DC attorney general says that the policy punishes wholesalers by requiring them to pay the difference between the set profit margin and the price at which the item was sold if a transaction results in fewer profits than agreed upon.

Amazon asked Judge Hiram Puig-Lugo of the Superior Court of the District of Columbia to dismiss the lawsuit last week.

"Each form of conduct described in the AC [amended complaint] is entirely lawful, common throughout the retail industry, and has the same objective: lower retail prices for products sold on Amazon's store," wrote counsel to Amazon at Paul Weiss Rifkind Wharton & Garrison.

Amazon said its abandoned parity provision discouraged sellers from engaging in price-gouging on its website and that a ruling finding otherwise would call into question any retail policy seeking to ensure that the goods in its store are priced competitively. Amazon said the district has mislabelled the parity provision as a most-favoured-nation clause. The provision only prohibits sellers from charging "significantly higher" prices on other platforms and allows sellers to offer better prices or terms on their own websites, the company asserted.

"The policy mirrors the District's law, as well as that of various states, which prohibits significantly higher prices or price gouging," Amazon said.

Meanwhile, the district's challenge to Amazon's pricing margin agreements seeks to have the company raise consumer prices and pay wholesalers more to avoid antitrust scrutiny, the company argued

The district's allegations are nonsensical because Amazon's suppliers do not have the market power required to maintain anticompetitive prices, Amazon said, adding that a wholesaler would have to withstand competition from rivals offering lower rates to keep prices high.

“Absent collusion or individual market power, neither of which is alleged, the inevitable result would be that the supplier would lose sales to other, competing suppliers, who could easily undercut its prices,” Amazon wrote.

Additionally, Amazon said that the DC attorney general failed to define a relevant antitrust market. The platform said the enforcer’s claims of harm to “online marketplaces” improperly excludes competition from retail stores.

The complaint also includes an almost unlimited number of products, Amazon said. It is not possible that all of these goods are interchangeable.

John Briody, a principal at McKool Smith, said he thinks the court will probably reject Amazon’s motion to dismiss the case.

Amazon argues that its business practices align with much of the retail industry, but that ignores the significant scale and size of the platform, Briody said.

“A monopolist doesn’t get to do what everyone else gets to do,” Briody said. “That’s not how the law really works.”

It would be an entirely different question if one small vendor or a startup engaged in the same conduct, he added.

Briody also said the covid-19 pandemic may have bolstered the district’s alleged market definition by further distinguishing consumers’ preferences for shopping online versus at a brick-and-mortar store.