

## [Transcript] Behind the Money / FTC versus Amazon

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When Lena Kahn became the chair  
of the U.S. Federal Trade Commission in 2021,  
there was a lot of hype around how she would regulate  
big tech companies like Amazon.

She's been tracking Amazon for a long time,  
and when she was appointed to this role,  
it perhaps set off alarm bells in particular tech companies' minds  
and analysts that track these companies  
because clearly this is a focus  
both company and sector for her.

She spent a lot of time going through the Amazon kind of  
business model and trying to understand  
whether and how it might fall foul of antitrust laws.

That's the FT's Camilla Hodson.

She reports on Amazon and e-commerce.

Camilla says one of the reasons  
why Kahn knew so much about Amazon  
was because Kahn wrote this really buzzy paper  
about the company when she was a law student.

The 2017 paper really got a lot of traction,  
and she basically said in that

there are lots of monopolization risks  
associated with Amazon's business,  
particularly the retail business.

Now, in Kahn's time as the head of the FTC,  
she has taken some swings at big tech,  
but they haven't quite gone her way.

The FTC has kind of had a string of losses,  
and they talk a big game about wanting to take on big tech  
and the bad things they alleged that  
these sorts of huge companies are getting away with,  
but they haven't really had much success  
in the last few years.

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But recently, Kahn and the FTC are back at it, and this time, they're scrutinizing the very company that helped raise her profile, Amazon.

This is kind of maybe a career-defining moment for Lena Kahn or something that people had been anticipating, and it's going to be a big test moment, I think it's fair to say.

The FTC, along with 17 state attorneys general, recently filed a lawsuit against the company.

It's basically saying Amazon has grown to be this enormous giant of retail and more than just retail, and it means that it can get away with whatever it wants in the name of growing the business, making more money, and that that is not necessarily a good thing for consumers or for competitors, even though the kind of Amazon mattress to be the best place for consumers to shop.

So even though Amazon may seem like the most convenient platform at times, with its free two-day shipping and endless other perks like movies and music, the Federal Trade Commission is making a case that the company's monopoly on so many different sectors is actually harmful for sellers, consumers, and competition.

I'm Topher Forhaz, in for Miquela Tindera.

Today on Behind the Money, does the FTC have a case against Amazon, and what could that mean for the e-commerce giant's future?

Canola Hudson, thanks for joining us on the show.

Thanks for having me.

So Amazon was sued in late September by the Federal Trade Commission in 17 states.

What does that suit allege?

Basically, it's a pretty sweeping lawsuit and it says that Amazon is the best place in the world to shop.

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Amazon is the best place in the world

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It's a very sweeping lawsuit

and it says that Amazon is this online superstore

and that the way that it operates

with the FTC says is essentially a monopoly

has the result of overcharging consumers,

hurting competitors, exploiting the sellers

that sell on its marketplace

in an effort to kind of, well,

make money, maintain its monopoly,

and its market share.

And that all of these things that it does together

are bad for consumers and bad for competitors.

the FTC have. Yeah, I think this is a point worth making. The lawsuit, the filing that we have is very long, but also a large portion of it is redacted. So we don't really know how strong the case is. I don't think at this point, it's really hard to know how strong the evidence is that they have, because there are just huge chunks of, I mean, whole pages that are blacked out. So we can't see what's in there and how detailed the allegations are and how many, you know, witnesses or incriminating emails or whatever it might be that they have.

Now, a big part of this lawsuit focuses on third-party sellers, and they make up about 60% of Amazon's business. What does the lawsuit say about them?

So it's a complicated picture, like anything with Amazon. One of the kind of striking things the lawsuit says is that in some cases, Amazon is taking one out of every \$2 that a seller takes from shoppers. And that's in fees. It might be fees for delivery services, you know, getting something the next day via Prime. It might be for advertising fees, which basically mean that your product gets listed higher up in the search rankings. And sellers say those fees in aggregate have got higher over time and that proportion-wise sellers are paying more and more of the money that they get in fees to Amazon. Okay. And so the FTC is also alleging that customers are being harmed.

How so? So one of the things that the lawsuit talks about is this idea that the fees that third-party sellers have to pay ultimately increases the price of their products. And so consumers are paying more for those things that they're buying. So is the root of the problem just these third-party seller fees? Is that why they're saying customers are getting overcharged?

Yeah. I mean, there are other nuances and the FTC would say any harm to competition in the end hurts consumers because you end up with, whether it's higher prices or a worse selection of products

or just a worse service overall, consumers lose out when competition is stifled. So I guess it's not just the price aspect, but it is partly the price aspect.

So do we have an understanding then of, you know, if they were to have to lower these fees, how would that impact the business? Do we have any sense of what that would do to Amazon?

I guess this is like a million-dollar question in a way. The way that Amazon reports out its numbers is quite limited and it doesn't kind of itemize every segment of the business and say

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revenues and profits for all of those areas. It's basically an enormous machine. It does so many different things. There's the logistics and delivery service. There's the cloud services business. There's Prime Video. There are just countless other things. And it's just not clear from their numbers at least what the profit centers are. And it's difficult to know how they kind of work together. And if you were to remove one, what would happen to the overall picture?

It's kind of interesting just from somebody who has been watching this on the sidelines as a consumer

and you see Amazon sort of going to all these different places and businesses. And then a lawsuit like this kind of puts it into a clear picture of why you would do such a thing and what the goal would be to have a movie business and a TV show business and have this logistics center and the cloud services. And for me, it kind of shows how all these things fit together to Amazon's advantage. Right. It kind of looks counter-intuitive at first. Some of the spaces that they've gone into things that don't look like on the face of it, they're related to a retail business.

And the Prime Video example is a good one because that's part of the reason that people have a Prime subscription, they want to watch Prime Video. But having a Prime subscription also in general means that you buy more stuff on Amazon and you buy it more frequently. And then that, you know, the more people that are doing that, the better it is for the logistics network.

So when you take a step back, you can see how all these things feed into each other and feed into the overall kind of machine. So what does Amazon said in response to the FTC suit?

They say this is entirely unfair, that the FTC has mischaracterized the business.

They say the regulator doesn't understand the business in general and the specifics of how the e-commerce sector works. They've said that they'll fight the lawsuit. And the other kind of interesting thing they said actually is that although they think the FTC is wildly mischaracterized things, they said that some of the things that the regulator talks about are things that they do it's just that those are not bad or illegal things. So for example, not promoting products that are priced at certain prices. They say, yeah, we don't promote things that are priced uncompetitively because we don't think consumers want to buy things that prices we don't think are good.

And why shouldn't we do that? There's nothing wrong with doing that. It's good for consumers and it's good for our business because then people find the things they actually want to buy

at prices they want to pay. And similarly, they said, yes, we do try and match

prices if they're lower on other websites. We'll try and match that low price so that

that's what consumers pay on Amazon. But what's wrong with that basically is what they would say this is good for consumers and it's good for us. So it's kind of like the blue and gold dress

in a way. Some of these things like the FTC looks at some of these practices and says

the way you're doing this is illegal and really harmful and Amazon is saying in specific cases,

yeah, we do XYZ but there's really nothing wrong with that. It's not illegal and it's not bad for

anyone. That's the blue and gold dress that was like an internet meme where some people said it

was gold, some people said it was blue. I don't even know how you could see it would wear the

other like what it depended on. But yeah, it's different shades of the argument. That's in

some specific cases, right? That's not in all. Yeah, no, that's not the whole that's only in

specific cases and and like top level Amazon is saying this is entirely unfair and wrong.

But there are just these kind of interesting nuances where there are individual examples of

things that Amazon does that it says are fine and the FTC says it's part of this bigger picture of

kind of unfair, monopolistic practice, essentially. So what exactly does the FTC want at the end of

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the

day? Yes, that is a good question. So when Lena Khan was asked about what she wanted and specifically

whether she wanted Amazon to be broken up on the day that they filed the case, she didn't address that directly. This is kind of the existential potential outcome that people have speculated about. Is that where this case ends that Amazon gets split into different companies? The FTC has not talked about that. They've just said they're seeking an order to permanently stop Amazon from engaging in allegedly illegal conduct. And it's not entirely clear what that might look like.

So what's going to happen next? What are the next steps? It's a bit of a waiting game because this case will go in two stages. The first stage will be the FTC being able to prove in the court of law that Amazon has behaved illegally and is engaged in harmful monopolistic conduct.

Then there'll be a second stage, which is about what to do. I think from what legal experts have said, it seems like it's pretty unlikely that the end result is that Amazon is splintered apart into lots of different companies. It's not something that has happened very often.

It's also something that is kind of a last resort type option. And so you could have other much more kind of nuanced measures like, I don't know, Amazon has to stop this particular thing or also the way that it does XYZ. And it can still remain as a whole thing, but it just needs to tweak certain things. That seems to be what people think is a more likely outcome if the regulator wins. And that in itself is a big question. Will they win? How strong is this case?

And can they convince the judge in a case that this company that consumers often love and think is cheap and convenient and great actually isn't great for consumers? It's kind of a hard mindset shift. Yeah, I was sort of wondering that about that. I mean, we've been talking about Amazon as this thing that has built itself with different components over time into this

very efficient, reliable, affordable, I think from a consumer point of view, operation. And if the FTC comes in and starts asking them to change different pieces of it, could that have an effect on the consumer in a negative way?

Yeah, well, I think it's a great question. And I think it's difficult at this point to know, obviously, it's kind of speculating at this point. But yes, and some analysts have said, if the FTC gets what it wants, actually, maybe this isn't so good for the consumer.

Perhaps it could be good for other groups like other competitors, maybe, but maybe it's not good for consumers. Because if you kind of break apart or hamper in some way, all of these individual

arms that Amazon has, the logistics stuff, the prime machine, the virtual cycle of Amazon.

Yeah, exactly. The virtual cycle of Amazon. If you disrupt that, does that actually make things worse for consumers? And by worse, I guess I mean, more expensive or less efficient, slower, whatever it might be. Some analysts say, yeah, that probably will happen because Amazon has built this machine with the kind of end goal of lowest price, most convenient for the consumer. And if you disrupt that, maybe that goal gets kind of more difficult as well.

The FTC obviously would say no, the way that this is built has gone too far. And it means Amazon has too much power. And it's using that power negatively to hurt both consumers and competitors. And it's kind of the maintenance of that monopoly and that market power that is actually now hurting various different groups. So Lina Khan, there was a lot of buzz around her when she entered the administration as being this person who would take on big tech.

Where does this lawsuit fit in Lina Khan's efforts to regulate the space?

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Yeah, the FTC is looking at Metta, previously Facebook, also Microsoft. And the DOJ is also, there's an ongoing case against Google. So Amazon is by far not the only company in the cross hairs here. And I guess, I mean, I think antitrust has become this weapon in the toolbox, I guess, partly because there's a divided US Congress. And so even though on both sides of the house, there are lawmakers who are kind of worried about big tech, interested in curbing the power that big tech has, that kind of hasn't resulted in big powerful new laws or much at all really. And so now the regulator is kind of an avenue for in theory curbing the power of these companies. Whether it's successful is really another question. This is not a new argument that's being made either by the FTC or by regulators globally, but also it's important for the US, I guess, the administration and the regulator itself to show that it can win this following basically not much of a success in similar cases recently.

Yeah, I mean, it's hard to tell right now, right? There's so many parts of this we don't know, but it is an interesting question of how much of a case do they think they have and would they bring it if they didn't think they had a case? Yeah, and it's been in the works for some time, like, you know, years, Amazon and the FTC have been talking about this for years. And presumably, both sides have at times, I mean, I'm just speculating here, but you would guess in a lengthy discussion like this, Amazon doesn't want to be sued. The FTC would like to show that it's made a big impression and it's got what it wanted and that's great for everyone, whether that's in a lawsuit or whether that's in a less aggressive format. So I guess, I don't know, it's hard to read the tea leaves on this in that probably Amazon, if Amazon felt really terrified, maybe it would have settled before this point. Then again, maybe they just think this is a hard case for the FTC to win.

We think that their evidence isn't strong enough. So we'll see when court type thing. All right, we'll talk to you when we see them in court.

Camille Hudson, thanks for coming on the show. Yeah, thank you.

Thanks for listening. If you want to read more from the FT on what we talked about during this week's episode, the articles are linked in our show notes and they're free to read right now.

Behind the Money was hosted by me, Topher Forhez.

Sophia Ahmed is our producer. Sound Design and Mixing by Sam Giavinko.

Cheryl Brumley is the global head of audio. See you next week.

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