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# AG Ferguson investigation shuts down Amazon price-fixing program nationwide

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## FOR IMMEDIATE RELEASE:

Jan 26 2022

*Amazon will pay \$2.25 million, stop its “Sold by Amazon” third-party seller program*

**SEATTLE** — Attorney General Bob Ferguson today announced that, as a result of his office’s price-fixing investigation, Amazon will shut down the “Sold by Amazon” program nationwide.

The Attorney General’s Office simultaneously filed a lawsuit ([https://agportal-s3bucket.s3.amazonaws.com/0001\\_%20Stamped%20Amazon%20Complaint.pdf](https://agportal-s3bucket.s3.amazonaws.com/0001_%20Stamped%20Amazon%20Complaint.pdf)) and a legally binding resolution (<https://agportal-s3bucket.s3.amazonaws.com/CONSENT%20DECREE%20FILED%20w%20Appendix%20A%20and%20B.pdf>) in King County Superior Court. As part of the legally enforceable consent decree, Amazon must stop the “Sold by Amazon” program nationwide and provide the Attorney General’s Office with annual updates on its compliance with antitrust laws. In addition, Amazon will pay \$2.25 million to the Attorney General’s Office, which will be used to support the Attorney General’s antitrust enforcement, which does not receive general fund support.

The “Sold by Amazon” program allowed the online retailer to agree on price with third-party sellers, rather than compete with them. Ferguson’s lawsuit asserted that the program violated antitrust laws. Amazon unreasonably restrained competition in order to maximize its own profits off third-party sales. This conduct constituted unlawful price-fixing.

Amazon offered the “Sold by Amazon” program from 2018 through 2020 on an invitation-only basis. It invited several hundred third-party sellers with whom it had previously competed for online consumer sales on its online marketplace and other e-commerce platforms.

“Consumers lose when corporate giants like Amazon fix prices to increase their profits,” Ferguson said. “Today’s action promotes product innovation and consumer choice, and makes the market more competitive for sellers in Washington state and across the country.”

There are about 2.3 million third-party sellers on Amazon worldwide, according to information from a 2018 Amazon letter to its shareholders. Over the last two decades, Amazon’s sales of its own branded products grew from \$1.6 billion in 1999 to \$117 billion in 2018. Over that same period, third-party sales grew exponentially from \$100 million in 1999 to \$160 billion in 2018. Third-party sales account for over half the sales on Amazon.

Washington state ranks among the top 10 states in the nation with the fastest growing rate of third-party sellers on its online marketplace.

### The “Sold by Amazon” program restrained price competition

Amazon targeted a small fraction of the millions of third-party sellers on its platform to join the “Sold by Amazon” program. Amazon kept the program small as an experiment then slowly began to request more sellers join as it evolved.

Ferguson asserted Amazon enticed sellers into the “Sold by Amazon” program by guaranteeing that they would receive at least an agreed upon minimum payment for sales of their consumer goods in exchange for their agreement to stop competing with Amazon for the pricing of their products. Consequently, if sales exceeded the negotiated minimum payment, Amazon and its competitors split the surplus proceeds amongst themselves. For example, if a seller and Amazon agreed to a \$20 minimum payment and the item sold for \$25, the seller would receive the \$20 minimum price and share the \$5 additional profit with Amazon, in addition to any fees.

The “Sold by Amazon” program resulted in prices for some products increasing when Amazon programmed its pricing algorithm to match the prices that certain external retailers offer to online consumers.

As a result, when prices increased, some sellers experienced a marked decline in the sales and resulting profits from products enrolled in the program. Faced with price increases, online customers sometimes opted to buy Amazon’s own branded products — particularly its private label products. This resulted in Amazon maximizing its own profits regardless of whether consumers paid a higher price for sales of products enrolled in the “Sold by Amazon” program or settled for buying the same or similar product offered through Amazon.

Prices for the vast majority of the remaining products enrolled in the “Sold by Amazon” program stabilized at artificially high levels. This is because Amazon programmed its pricing algorithm to maintain the seller’s pre-enrollment price as the price floor. This meant participating sellers had limited, if any, ability to lower the price of their products without withdrawing the product’s enrollment in the Sold by Amazon program.

For example, while sellers were once able to offer price discounts on their products, Amazon subsequently prevented many sellers from continuing to offer discounts. Sellers then bore the risk of having their products not sell in a timely manner, or at all, while still paying Amazon for things like storage fees of their enrolled products. Many sellers remained stuck with an artificially high price for their products while Amazon was able to maximize its own profits.

Assistant Attorneys General Amy Hanson, Rahul Rao, Christina Black, Jonathan Mark, and Eric Newman, economist Ryne Rohla, paralegal Tracy Jacoby and legal assistant Grace Summers are handling the case for the Antitrust Division.

Ferguson’s Antitrust Division is responsible for enforcing the antitrust provisions of Washington’s Unfair Business Practices-Consumer Protection Act. The division investigates and litigates complaints of anticompetitive conduct and reviews potentially anticompetitive mergers. The division also brings actions in federal court under the federal antitrust laws. It receives no general fund support and funds its own actions through recoveries made in other cases.

## Previous Amazon antitrust cases

Amazon has faced allegations of anticompetitive conduct before.

In 2013, Amazon abandoned its most-favored nation price parity contract provision across the European Union after British and German government antitrust enforcement officers initiated an investigation into their purpose and effect. Amazon continued using its price parity provision in the US until spring 2019, after scrutiny of it began mounting in 2018.

In November 2020, the European Union filed the first-ever antitrust lawsuit ([https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_2077](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077)) against Amazon. Investigators determined Amazon used data it collected from third-party sellers on its marketplace to determine what products to launch and how to price them.

Lawsuits have also been filed across the nation since Amazon abandoned its price parity provision in the United States.

In January 2021, several consumers filed a price-fixing lawsuit (<https://www.hbsslaw.com/sites/default/files/case-downloads/amazon-ebooks-price-fixing/01.14.21-complaint.pdf>) against Amazon in U.S. District Court for the Southern District of New York. The consumers assert Amazon colluded with major publishing firms to drive up the price of e-books. The lawsuit asserts Amazon used anticompetitive contracts to drive up the cost of e-books.

In May 2021, District of Columbia Attorney General Karl Racine filed a lawsuit against Amazon (<https://oag.dc.gov/release/ag-racine-files-antitrust-lawsuit-against-amazon>) for fixing its online retail prices through contract provisions and policies its third-party sellers sign. The provisions and policies, known as “most favored nation” agreements, prevented third-party sellers that offer products on Amazon from offering their products at lower prices or on better terms on any other online platform, including their own websites.

## Ferguson’s other investigations into Amazon products

In November 2021, Amazon paid \$2.5 million (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-amazon-will-pay-25-million-over-illegal-sales-regulated-pesticides>) for selling highly regulated pesticides on its online platform without a license and without collecting information about their use as required by law. Amazon also sold these regulated pesticides on its site without verifying the licenses of Restricted Use Pesticide purchasers or collecting other legally required information, like the intended use of the pesticide.

Amazon failed to inform Washingtonians on the product pages, checkout pages or anywhere else that these regulated agricultural and industrial-use pesticides were different from regular home and garden products. Amazon’s conduct created the impression that anyone could lawfully buy and use the pesticides without restriction.

Because of Amazon’s actions, there was no record of how or where the dangerous pesticides were used. As a result of Ferguson’s investigation, Amazon suspended all sales of these pesticides on its site.

In May 2019, Ferguson announced the results of an investigation (<https://www.atg.wa.gov/news/news-releases/ag-ferguson-amazon-must-remove-toxic-school-supplies-kid-s-jewelry-marketplace>) that showed individuals in Washington and across the country made at least 15,188 purchases of products with illegal levels of lead and cadmium from Amazon. Amazon provided more than \$200,000 in refunds to consumers and \$700,000 to the Attorney General’s Office for future environmental protection efforts.

Amazon also entered into a nationwide legally binding agreement to block the sale of children’s school supplies and jewelry on its website without lab reports and other proof from the sellers that the products are not toxic.

For information about filing a complaint against Amazon or any other antitrust or consumer protection issue in Washington state, visit <https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx> (<https://fortress.wa.gov/atg/formhandler/ago/AntitrustComplaint.aspx>).

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*The Office of the Attorney General is the chief legal office for the state of Washington with attorneys and staff in 27 divisions across the state providing legal services to roughly 200 state agencies, boards and commissions. Visit [www.atg.wa.gov](http://www.atg.wa.gov) (<http://www.atg.wa.gov>) to learn more.*

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