



Abbott Lipsky Jr.
Acting Director
Bureau of Competition
Room CC-5422
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580

July 6, 2017

Via email

Andrew C. Finch
Acting Assistant Attorney General
Antitrust Division
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

**Re: Block Amazon's purchase of Whole Foods until
online retailer ends deceptive pricing policy**

Via email

Dear Mr. Lipsky and Mr. Finch,

I am writing on behalf of Consumer Watchdog, a national nonprofit, nonpartisan public interest group, to call on you to block Amazon's proposed \$14 billion purchase of Whole Foods Inc. until the online retailing giant formally consents to halt its deceptive pricing practices that falsely lead consumers to believe they are getting deals with discounted prices.

Simply put, Amazon frequently displays a reference price which is used as a basis for comparison to the current sale price, implying the buyer is saving money. Our research shows that these reference prices often have no basis in reality. Amazon is not competing on the basis of price in a way that would benefit consumers. Rather, it is competing deceptively by claiming a discount from an entirely bogus price.

Amazon must not be allowed to expand these deceptive practices to a whole new pool of unsuspecting customers. We call on you to block the proposed purchase of Whole Foods until Amazon formally consents to stop its deceptive, unfair and anticompetitive pricing.

Here is a detailed look at what our two studies found:

In March, Consumer Watchdog issued a report¹ based on an extensive research analysis of Amazon's website and a comparison with prices easily available elsewhere. Amazon's scam worked like this: Many items Amazon was selling gave the selling price as well as a reference price

¹ <http://www.consumerwatchdog.org/resources/ltrbecerr032017.pdf>

– a higher price with a line through it, sometimes described as a “list” price or “was” price. This reference price created the impression that the consumer was getting a deal because the selling price was substantially lower than the one with the line through it.

The catch, our in-depth analysis found, is that the product is actually widely available from many other outlets at prices much lower than the crossed-out reference price. The “straw man” reference price was much higher than the price actually charged in the marketplace, and in many cases, it was a completely fictitious price, charged by no one. In January, Canadian regulators fined Amazon \$1 million for misleading use of list prices.²

A study by Consumer Watchdog earlier this year found that a majority of Amazon’s list prices were higher than the prevailing market price, no matter what definition was used. When you corrected those list prices, Amazon’s claimed “savings” often disappeared.³

Amazon disputed our findings, saying it had eliminated list prices when it believed “it isn’t relevant to our customers.” The company added that, in those cases, it had “introduced a ‘Was’ price to provide customers with an alternative reference price when we don’t display List Price.”⁴ Consumer Watchdog decided to study Amazon’s current pricing policies and has concluded that, even with this new approach, the online retailer continues to deceive consumers by falsely leading them to believe they are getting larger discounts than is actually the case.

Our new follow-on study⁵ of 1,000 products on Amazon.com was conducted in June 2017 to determine if Amazon’s new practice was less deceptive. We found that Amazon’s historical reference prices were at least as deceptive as the list prices they replaced.

Consumer Watchdog’s new study found that:

- Amazon displayed reference prices on 46 percent of the products surveyed—a sharp increase from a similar sample taken in February. They now employ several different kinds of reference price, including “was” prices, “sale” prices and before-sale prices, or simply prices with a line through them (“strikethrough prices”). The evidence suggests they are experimenting with alternatives to the debunked list price that continue to deceive consumers.
- 61 percent of all reference prices were higher than any observed price charged by Amazon in the recent past 90 days. At the same time, 38 percent of all reference prices were higher than any price charged by Amazon in observed history. In other words, in nearly four in ten cases, Amazon *never* appeared to charge the previous price from which it claimed to be discounting. The “price” was entirely fictitious.

² <https://www.recode.net/2017/1/11/14243250/amazon-canada-fine-list-prices-misleading-pricing>

³ https://consumermediallc.files.wordpress.com/2017/03/atp_pricing_2-0.pdf

⁴ <http://time.com/money/4707814/consumer-watchdog-amazon-list-prices-bogus/>

⁵ <http://www.consumerwatchdog.org/resources/historicalpricesfinal070617.pdf>

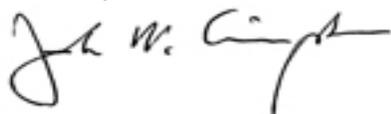
- Amazon inflated its reference prices by a significant amount. On average, they exceeded the maximum observed historical price of the product by 70 percent.
- More than 62 percent of Amazon’s “was” prices exceeded the maximum price observed within the previous 90 days. More than 27 percent of “was” prices were higher than any price charged by Amazon in all observed history.
- Before-sale prices were the most misleading type of reference price employed. Amazon’s reference price on sale items exceeded the maximum price observed within the preceding 90 days an astonishing 97 percent of the time. 84 percent of Amazon’s reference prices on sale items were higher than any previous Amazon price for the item in observed history.
- By contrast, strikethrough prices were found to be highly reliable. All prices with just a line through them (and no words suggesting what they referenced) corresponded to actual prices charged by Amazon in the recent past. This suggests that Amazon can accurately represent prior prices if it wishes.
- Overall, Consumer Watchdog’s findings suggest that Amazon continues to flout Federal Trade Commission regulations on deceptive pricing, as well as laws in California and other U.S. states where it does business.

Antitrust law holds that companies are supposed to compete on the basis of price and quality. Amazon will undoubtedly claim that is exactly what it has done and therefore that the proposed \$14 billion acquisition of Whole Foods should be submitted only to pro forma scrutiny and quickly approved.

However, as Consumer Watchdog’s in-depth research demonstrates, Amazon has persistently engaged in unfair and deceptive practices that violate Section 5 of the Federal Trade Commission Act, as well as laws protecting consumers in several states where it does business.

We call on you to protect Whole Foods’ brick-and-mortar customers by blocking Amazon’s acquisition of the supermarket company until it makes a legally-binding commitment to halt its deceptive and illegal use of reference prices to deceive American consumers. Given its pattern of behavior in this case, we also urge you to mandate a formal and extended monitoring system to ensure it complies.

Sincerely,



John M. Simpson

Privacy Project Director

Enclosure: “Appendix: Amazon’s Deceptive Pricing”

Appendix: Amazon's Deceptive Pricing

acer
Acer Aspire ES 15, 15.6" HD, Intel Core i3-6100U, 4GB DDR3L, 1TB HDD, Windows 10 Home, ES1-572-31KW
 ★★★★★ 284 customer reviews | 249 answered questions
 List Price: ~~\$349.99~~
 Price: **\$299.99 & FREE Shipping, Details**
 You Save: \$20.00 (6%)
In Stock.
 Want it tomorrow, June 22? Order within 3 hrs 3 mins and choose One-Day Shipping at checkout. Details

Amazon displayed a List Price on most of its products until 2016, when it came under scrutiny for deceptive pricing practices

PORTER-CABLE
PORTER-CABLE PCE141 7 Amp CSR Single Speed Hammer Drill
 ★★★★★ 114 customer reviews | 25 answered questions
 Was: ~~\$64.99~~
 Price: **\$49.98 & FREE Shipping, Details**
 You Save: \$15.01 (23%)
Only 9 left in stock - order soon.
 Want it tomorrow, June 22? Order within 21 hrs 47 mins and choose One-Day Shipping at checkout. Details
 Ships from and sold by Amazon.com. Gift-wrap available.
 Style: **PCE141**

PC70THD	PCE141
\$62.44	\$49.98

"Was" prices now appear on nearly 10% of products with a reference price. 62% were higher than any price charged by the retailer in the past three months

Aberg Best
Aberg Best 18 mega pixels HD Digital Camera - Digital video camera - Students cameras - Students Camcorder - Handheld Sized Digital Camcorder Indoor Outdoor for Adult /Seniors / Kids (black)
 ★★★★★ 8 customer reviews | 7 answered questions
 Price: ~~\$79.00~~
 Sale: **\$39.00 & FREE Shipping, Details**
 You Save: \$40.00 (51%)
In Stock.
 Want it tomorrow, June 22? Order within 21 hrs 45 mins and choose One-Day Shipping at checkout. Details
 Sold by ABERG BEST and Fulfilled by Amazon. Gift-wrap available.

"Sale" prices now appear on 21% of products with a reference price. 97% of those were higher than any price charged by Amazon in the past three months

Luvs Ultra Leakguards Newborn Diapers Size 1, 252 Count
 ★★★★★ 211 customer reviews | 10 answered questions
 Price: ~~\$28.01~~ (\$0.11 / Count) \$29.40 Save \$1.47 (5%)
Extra \$2.00 Off Coupon on first delivery. Details
 Join Prime and save 20% compliments of Amazon Family Details
In Stock. Ships from and sold by Amazon.com.
 Subscribe & Save **5%**
 \$28.01 (\$0.11 / Count) Join Prime and save 20% compliments of Amazon Family. Learn more
 Buy new:
 \$29.40 (\$0.12 / Count)
 Buy open box:
 \$24.88 (\$0.10 / Count)
 Qty: 1 Deliver every: 1 month (Most common)
 Subscribe now

Control group? "Strikethrough" prices without any description, used in 30 percent of reference prices, were accurate in 100% of cases studied.