Amazon's New Consumer Deception

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A new survey of Amazon’s prices shows the retailer routinely uses inflated and fictitious previous prices to give consumers the misleading impression they’re getting a bargain.

Inflated “previous” prices are the latest tactic Amazon has employed to induce customers to believe they’re getting big discounts at its store. Amazon’s deceptive pricing has also become newly relevant amid its $13.7 billion bid to take over Whole Foods Markets, the centerpiece of its push into the grocery business.

The company has long argued that antitrust enforcers should not worry about its growing dominance across many sectors of the economy because it is a boon for consumers and lowers prices. However, its misleading pricing practices suggest otherwise, and are coming under closer scrutiny as it plans to introduce those into a growing number of bricks-and-mortar stores.

Amazon’s newest deceptive practice appears to have been introduced as regulators and consumer lawsuits closed-in on its previous questionable practices. For years, Amazon displayed a “list price” next to its own price to highlight the supposed discounts on offer. However, the retailer quietly moved to eliminate list prices after criticism that they were deceptive and failed to reflect the actual, prevailing market price as required by law.¹

In January 2017, Canadian regulators fined Amazon $1 million for its misleading use of list prices.² A March 2017 study published by Consumer Watchdog also found widespread use of inflated list prices by Amazon in the U.S.³ Amazon rejected those findings, saying it had eliminated list prices when it believed they weren’t “relevant to our customers.” In those cases, the company said it had “introduced a ‘Was’ price to provide customers with an alternative reference price when we don’t display List Price.”⁴

This follow-on study of 1,000 products on Amazon.com was conducted in June 2017 to determine if Amazon’s new practice was less deceptive than its prior ones. It found that Amazon’s historical references prices were at least as deceptive as the list prices they replaced—and by some measures, more so.

In particular, the study found that:

- Amazon displayed reference prices on 46 percent of the products surveyed—a sharp increase from a similar sample taken just months before. They now employ several

² [https://www.recode.net/2017/1/11/14243250/amazon-canada-fine-list-prices-misleading-pricing](https://www.recode.net/2017/1/11/14243250/amazon-canada-fine-list-prices-misleading-pricing)
³ [http://www.consumerwatchdog.org/resources/atp_pricing_2.0.pdf](http://www.consumerwatchdog.org/resources/atp_pricing_2.0.pdf)
different kinds of reference price, including “was” prices, “sale” prices, or simply prices with a line through them (“strikethrough prices”).

- 61 percent of all reference prices were higher than any observed price charged by Amazon in the recent past (defined as 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. It was entirely fictitious.

- 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, the 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.

Conclusion

Amazon has displayed a consistent pattern of behavior over its pricing strategies: It changes the most egregiously deceptive only when regulators and consumer lawsuits are closing in. Once the threat has passed, Amazon then creates a new reference pricing mechanism that is equally deceptive to consumers, to avoid losing sales.

Antitrust enforcers should investigate Amazon’s opaque pricing strategies as part of their review of its proposed acquisition of Whole Foods Markets. Amazon’s shifting practices, as well as its explanations for how it arrives at its reference prices—suggests that regulators cannot take the company’s assurances at face value or allow it to police itself. Antitrust enforcers must tackle Amazon’s current pattern of harm to consumers before allowing it to expand its grip over their everyday lives by purchasing more retailers. As a precondition for allowing its merger, regulators must require that Amazon to make a legally-binding commitment to halt its deceptive practices and establish a rigorous monitoring system to ensure it complies.
List Price Study

In our March 2017 report, we tested Amazon’s claim that its “List Prices” represented the prevailing market price by comparing it to competitors’ prices on Nextag.com. We found reference prices on 28.6 percent of products sold on Amazon, and at least 40 percent of those reference prices exceeded any definition of the prevailing market price.

Historical Pricing Study

Amazon then claimed it had replaced list prices with previous prices where they were not “relevant to our customers.” So this study examined Amazon’s crossed-out reference prices to Amazon’s historical sale price data listed on Tracktor.com, to determine if the company’s previous prices are any more accurate. We found that Amazon displayed some type of reference price on 46 percent of the products surveyed. The accuracy varied by the type of reference price, suggesting it is experimenting with how accurate it can afford to be. More than 62 percent of “Was” prices and 97 percent of pre-sale prices appeared to be higher than any price charged by Amazon in the previous 90 days. “Strikethrough” prices, on the other hand – reference prices that are crossed out but not accompanied by explanatory text – appeared to accurately reflect the product’s historical price on Amazon in all cases.
For years, Amazon displayed “list prices” on nearly all its products. Those were usually crossed out and the discount was expressed as a percentage “saved.” According to the Federal Trade Commission and laws in many states, however, list prices must reflect the actual, prevailing price at which the product is being sold in the market.

Amazon came under criticism for advertising list prices that were far higher than anything on offer at rival retailers. In 2016—amid a series of lawsuits against rival retailers for similar practices—Amazon quietly eliminated most list prices on its site.5

That didn’t last long. Our March 2017 survey of 4,000 products on Amazon.com showed that a quarter of them employed some kind of reference price. Of those, more than half were greater than the prevailing market price.6

Amazon rejected the study’s findings as misleading, without specifying any objections. It added that it had recently introduced historical price as an alternative reference price when list prices weren’t “relevant to our customers.” It stated:

“Manufacturers, vendors and sellers provide list prices, but our customers care about how the price they are paying compares to other retailers. We validate list prices against actual prices recently found across Amazon and other retailers, and we eliminate List Price when we believe it isn’t relevant to our customers. Using recent price history of the product on Amazon we’ve also introduced a ‘Was’ price to provide customers with an alternative reference price when we don’t display List Price.”7

In this follow-up study, we examined the historical reference prices introduced by Amazon and found that they were no less deceptive than the list prices they replaced.

Amazon states that “was” prices are “determined using recent price history of the product on Amazon.com.”8 However, an analysis of 1,000 products on its site found that more than six in ten reference prices on its site were higher than any observed price charged by Amazon in the past 90 days.

Of the reference prices in the sample, nearly four in ten were higher than the highest observed Amazon price for the product. In other words, they appeared to advertise a price at which the product had never sold on Amazon, or at least for long enough for the price to have been recorded by any of the price-tracking engines.

The FTC states that former prices must refer to “the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time.”9 Both

5 https://www.nytimes.com/2016/03/06/technology/its-discounted-but-is-it-a-deal-how-list-prices-lost-their-meaning.html?_r=0
6 https://consumermediallc.files.wordpress.com/2017/03/atp_pricing_2-0.pdf
7 https://consumerist.com/2017/03/20/report-claims-amazons-list-prices-mislead-shoppers-about-discounts/
9 https://www.law.cornell.edu/cfr/text/16/233.1
“was prices” and pre-sale prices are considered former prices governed by this regulation.\(^{10}\) The 
FTC goes on to clarify that prices at which the item was never sold, prices not used in the normal 
course of business, prices at which the item was offered only briefly, and prices from the remote 
past are all “fictitious” and not permissible under the law.

Some states have gone beyond the federal regulations to set specific guidelines for reference 
prices. A former price must refer to the actual price at which a product was sold within the past 
90 days in California, for the past 30 days in Oregon, and for the past 28 days in New Jersey.\(^{11}\)


**Analysis**

We constructed a database of Amazon products, their current sale and reference prices, and their historical sale prices to determine whether the retailer’s reference prices represent the actual price at which each product was recently sold.

Using an automated browser, we searched the popular price tracking site Tracktor\(^\text{12}\) for 35 common household products, listed in Appendix A. Our browser clicked on each item on the first five pages of results, and gathered all historical prices and the dates on which they were reported for each item. The browser then clicked the link on Tracktor to go to the Amazon.com page for each product, and gathered current pricing information from Amazon. We then used keywords to categorize Amazon’s price, represent list prices, was prices, before-sale prices, and uncategorized strikethrough prices.

This approach is limited by available data. The length of time over which Tracktor provides pricing data and the length of time between data points varies by product. For one product in our sample, Tracktor reported 1,454 data points spanning 901 days. For others, Tracktor reported only three or four data points over a period of months.

To help assess the reliability of this data, we report an error term in Appendix B. The error term is a function of the number of data points and the number of days between observations, with lower values representing more reliable estimates. Items with many data points and a relatively short average lag between each are considered more reliable than those with fewer data points and larger gaps between them.

It is worth noting that one category—strikethrough prices not preceded by a word like “was” or “sale”—showed no manipulation; they were correct in 100% of cases examined. This suggests that the previous price listed by Amazon was not simply missed by Tracktor. It also suggests that Amazon can list the correct historical price if it wishes—it simply chooses not to in a substantial number of cases.

\(^\text{12}\) https://thetracktor.com/
Results

Of 1,005 Amazon products in our dataset, nearly half (462) had some sort of crossed-out price meant to highlight the savings to Amazon shoppers. We refer to the crossed-out prices generically as “reference prices.”

Of these, Amazon designated 182 reference prices as the “list price,” 44 as the “was” price, and 99 as the before-sale price. The remaining 137 crossed-out prices in our sample were not accompanied by any additional language indicating their source or what they were meant to represent. We refer to these simply as “strikethrough” prices.

Reference Price Accuracy, Full Price History

<table>
<thead>
<tr>
<th></th>
<th>Reference price ≤ Maximum observed price</th>
<th>Reference price &gt; Maximum observed Price (Fictitious)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>List</td>
<td>101</td>
<td>81</td>
<td>182</td>
</tr>
<tr>
<td>Was</td>
<td>32</td>
<td>12</td>
<td>44</td>
</tr>
<tr>
<td>Sale</td>
<td>16</td>
<td>83</td>
<td>99</td>
</tr>
<tr>
<td>Strikethrough</td>
<td>137</td>
<td>0</td>
<td>137</td>
</tr>
<tr>
<td>Total</td>
<td>286</td>
<td>176</td>
<td>462</td>
</tr>
</tbody>
</table>

Of the 462 products with any kind reference price, 38 percent had a reference price that exceeded the maximum observed price charged by Amazon in the past. In other words, nearly four in ten of Amazon’s “list,” “was,” or pre-sale prices appeared to be entirely fictitious. Among these apparently fictitious reference prices, Amazon’s reference price exceeded the highest observed sale price by an average of 70 percent, or $17.34.

However, both the FTC guidelines and Amazon’s own description of its practices state that the retailer must have charged a previous price in the “recent past”—not just at any time in history. The proportion of previous prices listed by Amazon that were not charged by the retailer in the past 90 days (California’s definition of “recent past”) was far higher. (See page 10 for a fuller discussion of Recent Prices.)
“Was prices,” which Amazon claims are derived from the recent price history of the product on Amazon.com, were fictitious more than a quarter (27 percent) of the time. On average, these apparently fictitious “was” prices exceeded the maximum observed historical price by an average of 51 percent, or $6.09.

However, even that may understate the impact of Amazon’s misleading previous prices. On some occasions, it appears that Amazon raised the price of an item for a very short period of time before dropping it again to the regularly-offered “sale” price. This, too, is deemed to be deceptive by the FTC.

The FTC states that former prices must reflect the sale price “for a reasonably substantial period of time,” and that retailers who inflate prices for only a few days in order to offer a bargain are acting in bad faith.13

For example, Amazon advertised a “was” price of $17.78 on a box of printer paper that it sold for $9.29. Price history from CamelCamelCamel, a similar service to Tracktor, showed that Amazon almost consistently offered the paper for about $9 over the past year—except for four

13 https://www.law.cornell.edu/cfr/text/16/233.1
periods of just one or two days when the retailer raised the price above $17, before promptly dropping it again.

Amazon doubled the price of Hammermill paper for four short spikes before returning it to its regular price. It then represented that the customer would save 48% off its previous price.

**ii) Sale Prices**

Amazon’s before-sale prices are even more deceptive: 83 percent of crossed-out prices on sale items exceeded the maximum observed price charged for the product. On average, these apparently fictitious before-sale prices exceeded the maximum observed historical price by 105 percent.
Example 1: Amazon advertised a before-sale price of $149 on a messenger bag that it sold for $22. Amazon never appears to have charged anything close to the claimed previous price. The reference price was more than six times as high as the maximum observed sale price over the available price history ($26).

Example 2: Amazon advertised a reference price of $749 on a Canon digital camera and accessory bundle that it offered for a “sale price” of $549. However, Tracktor reported that the highest price that Amazon charged for the product in 400 days for which it collected pricing data was $679. Amazon hadn’t charged more than $600 for the camera and accessory bundle since July 2016.
iii) **Strikethrough prices**

Crossed-out prices not accompanied by text indicating whether they represent a “list,” “was,” or before-sale price (we refer to these as “strikethrough prices”) appear to be the only reference prices that accurately reflect the product’s pricing history. These bona fide reference prices could be a sign that Amazon is experimenting to see if it can come into compliance with laws and regulations without adversely affecting its sales.

Amazon often employs experimental pricing to gain insight into consumer behavior. These unspecified reference prices may represent a treatment in Amazon’s latest pricing experiment. They also suggest that Amazon is able to faithfully represent previous prices—if it wishes to do so.

**Recent History**

FTC regulations state that a price may still be considered fictitious if it “was not used in the recent past but at some remote period in the past, without making disclosure of that fact.” State regulations define the recent past as 28 to 90 days.

In our sample, the proportion of fictitious reference prices rose to 61 percent when the historical price dataset was restricted to the 90 days prior to the date on which Amazon’s current price was observed. That proportion would rise further in states, such as Oregon and New Jersey, that specify shorter time frames in their consumer protection statutes.

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15 [https://www.law.cornell.edu/cfr/text/16/233.1](https://www.law.cornell.edu/cfr/text/16/233.1)

More than 62 percent of Amazon’s “was” prices exceeded the maximum price observed within the previous 90 days. On average, these apparently fictitious reference prices were 21 percent above the highest observed price.

Amazon’s reference prices on sale items exceeded the maximum price observed within the preceding 90 days an astonishing 97 percent of the time. On average, these before-sale prices were more than 110 percent, or $23.65, above the highest observed price within the preceding three months.

Example 4: Amazon advertised the before-sale price on a pack of LED light bulbs as nearly $100. By comparison, Amazon’s “sale” price for the light bulbs of $14.99 represented an amazing bargain—an $85 saving, if Amazon was to be believed.

In reality, Amazon didn’t charge more than $14.99 at any point in the previous 90 days, historical pricing data show.
Use of Reference Prices Rising Again

Amazon appears to be increasing its use of reference prices on its site since last year, when it quietly eliminated many list prices. Close to half of the products surveyed for this study had some kind of reference price, compared to just a quarter of products in a similar sample collected earlier in 2017. At the same time, Amazon has diversified the types of reference prices it displays.

Of the products displaying some kind of reference price in this latest study, around 39 percent displayed a list price, 10 percent showed a “was” price, 21 percent had a “sale” price and 30 percent had a strikethrough price with no other description.

Amazon’s shifting approach to these prices suggests that the firm is seeking to reconcile increasing legal and public scrutiny with its continuing need to represent itself to consumers as a bargain retailer. The result is a shifting landscape that can prove hard for consumers and regulators to keep up with.

However, the result is the same: Amazon’s customers are being deceived into thinking they are getting a bargain, when in most cases they are not.
Appendix A

Product keywords searched on tracktor.com:

- Cameras
- Diapers
- Shoes
- Drill
- Paper Towels
- Bed Sheets
- Laptop
- Soccer Balls
- Vitamins
- Toy Cars
- Refrigerator
- Surge Protector
- Lego Sets
- Hand Lotion
- Light Bulbs
- Nail Polish
- Sunblock
- Socks
- Headphones
- Printer Paper
- Baby Strollers
- Suitcases
- Dog Food
- Detergent
- Water Bottles
- Barbecue Grill
- Le Creuset
Appendix B

You may download this appendix, an extensive spreadsheet of price comparisons, here: www.consumerwatchdog.org/resources/was_price_appendix.xls