THE STEPPING STONE TO MONOPOLY

How Amazon used the bookselling industry as the foundation to its unchecked monopoly.

INTRODUCTION: CALCULATED DESTRUCTION

> *"Amazon has completely shaken up the publishing industry, and impacted virtually every aspect of it, from book pricing to retail discounts and the creation of the book self-publishing platform. It has put financial and other pressures on many publishers by extracting somewhat harsh, one-sided terms, which it is able to do because it controls such a large portion of book retail."*
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> *—Mary Rasenberger, Executive Director, Authors Guild (2022)*

In viewing the history of Amazon, many economists often refer to Amazon's role in the bookselling and publishing world as one of "creative destruction". The following report will show how Amazon's impact on these markets is one of calculated destruction. Amazon is certainly creative; it has used its creativity not for the betterment of the market, but for its own gain at the expense of the market, and to flout laws and find new ways to stifle competition.

While this brief will focus on how Amazon's anticompetitive practices have negatively impacted the bookselling and publishing industries (henceforth referred to as the bookselling market), it is important to note that Amazon's power to do so is predicated on its enormous overall size. Throughout its history, Amazon fed off the bookselling market to fuel its expansion in a parasitic manner. It continues to do so to this day.

For those perhaps unsympathetic to the plight of independent bookstores or publishers, ignore Amazon's monopolization of the bookselling market at your own risk. The bookselling market was the first to feel the impact of Amazon's anticompetitive practices. The warning signs of Amazon's destructive power and burgeoning growth were all but ignored. Then, larger corporate retailers soon felt the impact, and after that, reports of Amazon's destruction in other markets began circulating — from the toy industry, to the third-party marketplace, to the logistics industry.

Amazon's impact on the bookselling industry is not occurring in a vacuum. While Amazon makes it very difficult for economists and statisticians to calculate its market in book sales — the breakdown of Amazon's media sales was long ago removed from Amazon's financials — some believe it is as high as 60 percent for print books, 90 percent for e-books, and nearly 65 percent for audio books (though an article by Cory Doctorow, published in *Publishers Weekly*, estimated that Amazon's Audible commands 90 percent of the digital audio book market). By most legal standards, this constitutes a monopoly.

In this report, we will discuss the tactics that Amazon used to become a bookselling monopoly. Let this serve as a cautionary tale for every market Amazon has entered or is about to enter. Amazon uses anticompetitive tactics in each market to grow and then reach into a new market. It used the bookselling market as its stepping stone, then took over general retail, and in the present day is growing exponentially in markets such as web services, grocery, the health industry, and logistics.

Until lawmakers or regulators act, Amazon will continue to grow at the expense of jobs, the economy, and the overall welfare of communities throughout the country.

BIRTH OF A MONOPOLY

> *"For the book industry, Amazon is now the water that we swim in. You can't escape it. There are multiple ways that an independent bookstore is forced to not only interact with Amazon, but support them — books made into shows streaming on Prime Video are printed with Amazon stickers on the cover; technology that a small business needs runs on Amazon Web Services; books by self-published authors are published by Amazon's CreateSpace; and more. Amazon now has 15 publishing imprints, and publisher terms and policies are at best influenced by — at worst, defined by Amazon. This is the epitome of a monopoly with all of its inherent dangers. And it is a particular danger to the book industry. Imagine a future when one large corporation determines what is published and what you have access to read. We are getting perilously close to that future. The time to act is now."*
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> *—Allison K Hill, CEO, American Booksellers Association*

Amazon was founded in 1994 as an online bookstore; it is with no surprise that the bookselling market was to feel the impact of Amazon's anticompetitive conduct. In the late 1990s, the company began the practice of refusing to collect and remit sales taxes on sales in the 45 states that collect sales tax, despite having a physical presence in those states via online sales agents, which Amazon dubbed "online affiliates". The strategy was a simple but effective one: to entice shoppers onto Amazon's website with the lure of duty-free shopping. Remember, this was at a time when customers still had deep reservations about using a credit card to buy products online. By enticing shoppers with tax-free shopping, Amazon gave potential customers an offer they couldn't refuse.

There was a problem with this strategy, one that Amazon hoped state and federal lawmakers would ignore (and for quite some time, they did): It was illegal. Because of its extensive network of online affiliates acting as sales agents, Amazon had nexus in each state, which required the collection and remittance of sales tax. This business practice of flouting sales tax laws was something that local, independent bookstores could not get away with — not without facing severe penalties.

Amazon knew that. When called out for not collecting sales tax, the online giant claimed that it would simply be too difficult to collect and remit sales taxes in the many tax jurisdictions throughout the country. This was simply untrue, and even Amazon ultimately had to admit it.

In February 2006, at a U.S. House of Representatives Small Business Subcommittee on Regulatory Reform and Oversight hearing, Amazon acknowledged that collecting sales tax on online purchases was well within the industry's capabilities..

Yet Amazon continued to obfuscate the issue. It insisted its online affiliates were not sales agents but advertisers — knowing that while hiring sales agents would give the company nexus in a state, advertisers would not constitute nexus under law at the time. It also used the relative newness of e-commerce to convince some legislators that new laws would be needed, and that the old nexus laws, written in the 1960s, simply could not apply to this new technology.

Of course, there was nothing new about a company hiring sales agents to sell its products. The only thing new was the technology these salespeople were using. At the time, the American Booksellers Association — which was leading the fight to force companies like Amazon to collect and remit sales tax — argued that sales tax laws were very clear: Sales agents constitute nexus. ABA stressed that no one could argue that anyone hired by a company who earned a commission for each sale was anything but a sales person.

A number of lawmakers in New York State agreed with ABA. Instead of enforcing laws already on the books, they took a middle of the road approach, and sought to clarify sales tax laws.

Working against Amazon at this time was the failing fiscal landscape in states across the country. By 2007, just prior to the Great Recession, states started to experience significant budget shortfalls, and, as the market began its collapse, these shortfalls took on a very sudden urgency. Lawmakers soon realized that a piece of the shortfall was due in part to a significant loss of sales tax revenue due to online shopping — namely, Amazon.

In 2008, New York State became the first to clarify its sales tax law, requiring companies like Amazon to collect and remit sales tax on purchases made by New York residents. In just six months, the state recouped $46 million in sales tax revenue, and in the following year, recouped $70 million.

Seeing the revenue boon, other states proceeded to clarify sales tax laws, but it was a slow process. Not every state was as quick to pass sales tax law clarifications.

In 2009, CCH Group released a report, *The Impact of the Loss of State Sales and Use Tax Revenue on Businesses and Consumers*, which reported that "of the forty-five states that have a broad-based sales tax, 42 of them had declines during the second quarter of 2009, and 14 of those states had double digit declines" in sales and use tax revenue. Ultimately, faced with the harsh reality of declining revenue, states began clarifying sales tax laws. By 2014, Amazon was collecting state sales tax on all orders.

As states began passing sales tax fairness laws, South Dakota's sales tax fairness law was challenged in court by retailer Wayfair and other groups, a challenge that Amazon supported as a member of the Performance Marketing Association. But in 2018, the US Supreme Court in *Wayfair vs. South Dakota*, upheld these nexus laws and today, Amazon collects both state and local sales taxes.

While the *Wayfair* decision should have been a huge victory for independent booksellers, it was a case of too little, too late. Amazon's blueprint to lure in customers had, for all intents and purposes, done its job. It is very likely Amazon knew that one day it would have to collect and remit sales tax, but the online giant's business strategy banked on it taking long enough to allow its bookselling business to grow exponentially, and take advantage of predatory pricing to expand and grow in new markets.

Though it started as a bookstore, Amazon wasn't really after book buyers. Selling books "duty free" was a means to an end. The margins on books just weren't large enough to satisfy Amazon's lofty goals. (Even if Amazon sold books at listed retail price, which it did not.) Amazon wanted to use books as a stepping stone to bigger things. The plan was to go after Walmart and other large "everything" stores. And if Amazon bled the book industry dry in the process? Collateral damage.

Of course, Amazon uses other anticompetitive strategies: Predatory pricing, and using market dominance to force acquisitions of small companies.

PRICE PREDATION

> *"Amazon…is able to price its books incredibly low, pushing out bookstores across the country. Amazon has a huge negative impact on my bookstore and its sales…The profit margin on books is low and booksellers can barely afford to give any discounts, let alone on new release titles. Amazon controls the book market. It is absurd and, in my opinion, illegal."*
>
> *—Mariam Roskam, Mountain Shire Books & Gifts, Winter Park, Colorado*

By the mid-2000s, ABA's Advocacy division began receiving regular complaints that Amazon was pricing books at below cost. (Unlike other retail items, books have the price on the cover, so determining if a book is being sold at below 40 percent[1] is simple.) It was part of the same strategy to lure customers to its website: sell consumers with higher-ticket and more profitable items.

"They have built, with the cooperation of publishers, the perfect bookselling mousetrap for consumers who know what they want to buy," said Beth Ineson, Executive Director of the New England Independent Booksellers Association, which represents over 200 independent bookstores in the New England region. "As a result, traditional book retail has had to fight for that consumer's business on fundamentally unequal footing."

The strategy, while good for Amazon, was not good for local communities and their residents as Amazon preyed on consumers' never-ending quest for the lowest prices. "My bookstore is so affected by the prices of the books on Amazon," said Susan Hinkle of Page After Page Bookstore in Elizabeth City, North Carolina. "Most times they are at or below my cost as a wholesaler of books. My loyal customers really try to keep purchasing from us, but as their costs rise, I know they look and see how they can continue to support us, and some have told me they split their purchases between the two. Then you have the customers who come in and look it up on their phone, and say, 'No thanks, I'd like to support you, but I can get it so cheap from Amazon.' So, it has really affected us. I used to have three employees, busy, and now I have me. So as an indie business, I can no longer support my community by having employees."

[1] Forty percent is commonly believed to be the traditional discount that publishers provide bookstores.

Larry Law, Executive Director for the Great Lakes Independent Booksellers Association, which represents over 200 independent bookstores in the northern Midwest, stressed that Amazon's predatory pricing tactics have devalued the cost of books. "They have proliferated the expectation that new titles should be sold below cost and devalued the cost of book production," he reported. "For years, Amazon used undercutting and selling below cost to steal consumers away from bookstores to the point where most publisher sales are through Amazon. This monopoly Amazon holds gives them complete power in their publisher contracts."

"As an independent small bookstore, Amazon has undercut our prices in such a way that we cannot compete," said Brandon Whittemore of On the Side Books in Bradford, Pennsylvania, who then pointed out that Amazon's size provided it with another advantage not afforded brick-and-mortar retailers during the pandemic. "Furthermore, our doors were shuttered from March 2020 to March 2022 due to COVID. All the while, Amazon kept selling books."

Dylan Conmy of Prairie Fox Books in Ottawa, Illinois, echoed Whittemore, and stressed his bookstore managed to survive the pandemic only by "working endlessly because we love what we do. But as we work our fingers to the bone, and still find ways to support our community schools and libraries, throw events at no cost to our patrons, and have giveaways that our customers have always appreciated, Amazon never skipped a beat."

"Amazon continued to sell things to customers at a price that was at cost to us," Conmy reported. "Prices we cannot compete with if we want to keep our doors open and our lights on."

And then there is the preferential treatment from distributors, Conmy noted.[2] "We find that our distributor tends to have popular items on backorder quite quickly, while Amazon not only has an endless supply, but is selling them cheaper any way," he explained. Conmy pointed out that his store is the only bookstore in the entire county, so competition should not be an issue in his given marketplace — but with Amazon's ubiquitous presence, it is. "We still have to compete with Amazon…We had someone looking at cookbooks in the store, then checking the prices on Amazon to see if they could get it cheaper. Customers have come in to take photos of our inventory, using us to window shop so they can look the books up later to purchase for cheaper. We barely make payroll, and we are fighting to keep up with new releases, while Amazon is drowning in 'monopoly' money."

Mary Rasenberger, CEO of the Authors Guild, reported that book price deflation and authors' incomes from books has been the Authors Guild's biggest issue with Amazon. "For years, Amazon used what's called a 'loss leader' strategy to take over the market, which meant that it took a loss on the sales but kept prices lower than its competitors. Consequently, other retailers also had to lower prices."

[2] One of the key responsibilities of a book distributor, as the name implies, is distributing a book and getting as many retailers as possible to carry a book either online or in a brick-and-mortar bookstore. One of the largest book distributors is Ingram.

Moreover, Amazon forced publishers to give steep discounts, cutting into expected profits, Rasenberger continued. “Publishers have no choice but to accede to its demands, and in doing so, [publishers] increasingly looked to recover their losses from their contracts with others.”

“Several people have called to check the price on a book and then heard the listed price, which is printed on the book, even with a discount or a donation to a charity attached, and still chosen to go where they can get greater than my generous employee discount rate: Amazon,” reported Katelyn Larson of Ballast Book Company in Bremerton, Washington. “When they sell books for less than I pay for them to the publisher, the author loses money, the publisher loses money, and no one profits except Amazon. The consumer can get more books, maybe, but for how long?”

It is important to note here that books are not the only item that most independent bookstores sell. Most bookstores carry ancillary items, from toys to T-shirts to candy, and so on. These products are not exempt from Amazon’s anti-competitive tactics, either. An independent bookstore owner in Columbus, Ohio, reported that Amazon also sold games below cost to lure in consumers.

“Recently, a customer saw a board game in our window and entered the store to inquire about it,” said Riley McMaster of Prologue Bookshop in Columbus, Ohio. “She asked for the price and I let her know that it was, in fact, 20 percent off (due to a small printing defect in one of the game pieces), that the price with us would be approximately $45, which is $10 off. She looked confidently at me and said, ‘I saw it on Amazon for $40.’” McMaster explained to the customer that Amazon takes a loss on many of its sales, while Prologue Bookshop needs a “small profit margin” to stay in business. The customer ended up leaving without purchasing anything at the store.

“This is not the first interaction that went like this,” McMaster continued. “We sell our merchandise at the publishers suggested prices, but customers become confused by Amazon’s pricing tactics — where it seems customers assume we are not the ones with the reasonable price. We understand that customers want to be smart with their money, but these kinds of interactions create friction, confusion, and awkwardness with customers. Amazon is not transparent that they price their items ridiculously low and make little -to nothing in profit.”

Amazon used predatory pricing tactics in the bookselling market to expand its size in other markets, and the result was that communities and states began feeling the impact. Sadly, the only beneficiary of Amazon’s growth was Amazon itself.

MONOPOLY TO MONOPSONY

> *“No publisher can avoid distributing through Amazon and, for [all] intents and purposes, Amazon dictates the economic terms, with publishers paying more for Amazon’s services each year and receiving less in return.”*
>
> *—Association of American Publishers (AAP), in a 2019 comment to the Federal Trade Commission.*

It would be disingenuous not to consider the possibility that Amazon is not selling below its own cost, even though it is selling below the traditional 40 percent discount in all of these aforementioned incidents. As Rasenberger noted previously, it could be a combination of using some books as loss leaders and benefiting from deep discounts with other titles. It is worth noting that Amazon does benefit from the data it collects from book customers, so it may deem predatory pricing to be well worth the cost in the long run. Without subpoena power used to investigate this possibility, it has left everyone to simply speculate.

Even if Amazon were receiving larger discounts than its competitors, that is a problem unto itself, and that is how its growth has provided it with monopsony power — which is a monopoly but when big buyers, not big sellers, dominate the market. And it is not surprising that monopoly power would lead to monopsony power.

A January 2023 article from the *Washington Monthly* noted: "When many sellers compete for the business of just a few big buyers, that gives the big buyers the power to coerce the sellers into giving them discounts and other concessions none of their smaller competitors can get."

While many expect these discounts to be a boon to consumers, the *Monthly* argues, "It's a notion that's supposed to bring everyday low prices for everyone. But in practice it has proved to have the opposite effect, creating more markets in which those with the least power pay the most, while those with the most pay the least."

In an American Antitrust Institute report from 2006, the author noted at the time that Walmart's "scale and strategy give it the ability to exercise unprecedented influence over a supply chain that it entirely dominates." Today, Amazon has supplanted Walmart in every way, including its influence over the supply chain. One could even argue that regulators' failure to act with Walmart some 16 years ago led to this moment today with Amazon.

One outcome of monopsony power is what economist Paul W. Dodson calls the "waterbed effect," the *Monthly* article noted. As suppliers attempt to recoup the revenue they lose through price concessions to power buyers, they may well feel compelled to charge weaker buyers even more. This is especially likely if the suppliers have previously been unable to meet the margins demanded of them by investors and now have no other way to meet their profit targets or cover their fixed costs. Lower prices for players on one side of the waterbed thus can lead to even higher prices for those on the other, putting them at an even greater competitive disadvantage.

AAI's 2006 report served as a stark warning that, for the most part, was ignored by lawmakers and regulators. "Antitrust grew up in an age characterized by consolidating manufacturers and horizontal cartels," the report states. "During the last thirty years or so, while service industries such as the retail trades came to equal and perhaps displace manufacturing as the driving force in the American economy, U.S. antitrust theory and practice became more and more enamored of anti-cartel enforcement, reducing its concern about single-firm conduct and ignoring almost completely the power-related problems that arise in vertical relationships. Rather than disappearing, these problems have in fact grown dramatically."

In the 2015 paper, *Reforming the Robinson-Patman Act to Serve Consumers and Control Powerful Buyers* by John B. Kirkwood, the author notes: “It is likely, for example, that Walmart, the world’s largest retailer, and Amazon, the country’s largest bookseller, have obtained preferential prices and promotional benefits from their suppliers. Yet no one has brought a successful Robinson-Patman action against these major buyers.” And while Kirkwood did not believe at the time that Amazon’s buying power had done consumers any harm (it is worth noting here that he is not an expert in the bookselling market), he nonetheless stressed, “There are many ways in which the exertion of buyer power could harm consumers, and as these buyers grow those consequences become more probable.”

The 2017 Oxford Business Law Blog article, “The E-Scraper and E-Monopsony,” spells out the problem with a monopsony in the bookselling and publishing market in great detail.

Giving a general description of an e-monopsony that eerily sounds like Amazon, the authors write:

> ***“In a competitive market, publishers can play bookstores off each other to secure a fair price for their and their writers’ work. The dominant book buyer, on the other hand, depresses the price it pays publishers for the books. It effectively transfers wealth from the publishers and authors to itself. It gets worse for authors who rely on the e-monopsony to publish and distribute their e-books. They must concede to even more onerous demands, such as the e-monopsony paying the author by the actual number of pages that you and I read of that e-book.”***
>
> ***“Not only is this tracking creepy, it reflects the e-monopsony’s power both upstream and downstream. The e-monopsony depresses the price it pays authors below competitive levels. But these price reductions do not necessarily benefit us, the final customer. We pay for the entire e-book; the authors’ royalties are slashed if they can’t hold our attention until the last page; and the e-monopsony pockets the extra profits. Its anti-competitive tactics, instead of promoting economic growth and welfare, can reduce employment, reduce quality, hinder innovation.”***

ACQUISITIONS

Flouting sales tax laws and using predatory pricing helped Amazon grow exponentially bigger. This provided the company with the size to expand even further by acquiring small companies, and that growth allowed it to acquire even bigger companies. One key Amazon acquisition in the bookselling market was Audible.

Amazon acquired Audible in 2008, some 11 years after the company was founded. Today, Audible is around 65 percent of the revenue in the audiobook space, though some industry insiders estimate it's closer to 80 percent. In 2021, audiobook sales were $1.6B (Audio Publishers Association's Sales Survey conducted by InterQ), a 25 percent increase — the tenth straight year of double-digit growth for audio.

Audible Exclusive began with the Audiobook Creation Exchange (ACX). ACX is a marketplace launched by Audible in 2011 that connects narrators, authors, agents, publishers, and rights-holders to create audiobooks. According to a blog post by Mark Pearson, who owns Libro.fm, a competitor of Audible, "The decision to make an audiobook Exclusive is made by authors, publishers, and agents — it depends on who is granted the audio rights to a book."

Pearson noted that these parties choose ACX because it promises higher royalties to creators if they opt for Exclusive distribution. "If a creator wants to distribute their audiobook to other audiobook platforms or libraries, they will earn 15 percent to 20 percent less of retail sales from ACX. The ACX system rewards exclusivity, so it's easy to see why authors and publishers spring for this opportunity — but even then, there has been speculation that exclusive creators are being paid less than the promised royalties," Pearson reported.

As its name implies, Audible Exclusive limits access to the title through libraries, schools, or independent bookstores. "By limiting distribution, Amazon aids in making books, perspectives, and information inaccessible to certain communities and users," Pearson pointed out. Audiobooks such as Margaret Atwood's *The Handmaid's Tale* are part of a collection of over 40,000 titles which Amazon's Audible refuses to sell to libraries or through independent bookstores.

According to the Advocacy group Fight for the Future, "aggressive restriction of circulation for 40,000 Audible Exclusives is only the tip of the audiobook iceberg for Amazon, which uses its market power to impose embargoes of 90 days to 12 months on new audiobook releases, even through vendors that are not owned by Amazon. These embargoes [impede] the ability of libraries to provide new audiobooks to low income and disabled people, and force independent bookstores to miss out on sales during the most marketable moments of a book's existence."

There is another, perhaps even bigger issue at stake: Digital Rights Management coupled with Audible's market share in the bookselling market. Adding DRM to audiobooks published by Audible locks the listener into using an Audible platform. Cory Doctorow laid out why this is a problem:

> *"Today, Audible dominates the audiobook market. In some verticals, their market-share is over 90 percent! And Audible will not let authors or publishers opt out of DRM. If you want to publish an audiobook with Audible, you must let them add their DRM to it. That means that every time one of your readers buys one of your books, they're locking themselves further into Audible. If you sell a million bucks' worth of audiobooks on Audible, that's a million bucks your readers have to forfeit to follow you to a rival platform."*

It also creates a barrier to entry for would-be entrepreneurs. According to American Booksellers Association CEO Allison Hill, entrepreneurs, investors, and even publishers fear that Audible Exclusives make it impossible for any audio platform to truly compete with Audible. Evidence of that reality is that Google and Apple have hardly made a dent and, other than Libro.fm, there have been no other entrants in this market.

"Amazon basically sets the prices on audiobooks for most publishers. In other words, Amazon pays publishers (and therefore authors) whatever they decide to pay them. A publisher can say its list price is $30 and Amazon will put it on the site for $20 — and pay publishers royalties based on that lower price," Hill reported. Any competing audio company would be paying much more and would need to pass that expense on to its customers.

"In the years since the Amazon acquisition, Audible has become the 800-pound gorilla of audiobooks," Doctorow summed up. "They have done all kinds of underhanded things — like buying up the first couple books in a series and releasing them as Audible-only recordings, then refusing to record the rest of the series, orphaning it."

Audible is the only digital audiobook channel Amazon will allow, Doctorow stressed, "so anyone who searches Amazon for a book will only see the Audible audio edition. It's also the exclusive audio partner for Apple's iTunes/Apple Books channel, which is the only iOS audiobook store that doesn't have to pay Apple a 30 percent commission on all its sales, so it's the only audiobook store that lets you actually buy new audiobooks."

Amazon's acquisitions have resulted in tentacles that are so numerous and ubiquitous that most people don't even know when they are using Amazon. Alexander Schneider of A Novel Idea, a bookstore in Philadelphia, reported, "We've also received many special orders for titles that are only available via Amazon. An example of this is CreateSpace authors. Folks think they're supporting small and indie by ordering CreateSpace titles, but they're ignorant of its connection to Amazon. We love supporting indie authors, but also believe in supporting true indie publishers and indie booksellers, like ourselves."

MONOPOLY HAS ITS PRIVILEGES

> *"Amazon tilted the playing field and a lot of stores right off, while others clung on until they could figure out the new rules. Twenty-five years later, the rules... are still evolving."*
>
> *—Brian Juenemann, Executive Director/Marketing, Pacific Northwest Booksellers Association*

Amazon's clout has great advantages, of course. For example, it allows Amazon to get away with flouting the publisher's on-sale date in ways that no other bookstore could. Published books, most especially new titles by bestselling authors, come with strict on-sale dates, which all bookstores are required to follow. Amazon, however, often ignores this provision, knowing that publishers cannot reach the market without it.

“Booksellers often have the book before the strict on-sale date and abide by that date to sell or release the title in questions,” noted Kristin Rasmussen, Executive Director of the California Independent Booksellers Association, which represents over 240 independent bookstores. Rasmussen believes that “the ‘strict on-sale’ does not seem to apply to Amazon and that’s incredibly frustrating for our bookstores. It’s yet another example of an uneven playing field. The fines and censure around these ‘mistakes’ made by Amazon should be substantial enough to hurt, as they would if handed down to an indie bookstore.”

Bryan Loar of Cover to Cover Books for Young Readers in Columbus, Ohio, said one example of this occurred in regards to a book that was published abroad before it was released in the U.S. by a separate U.S. publisher. “The U.S. publisher set a strict on sale date for the U.S. release,” Loar reported. “In our case, Amazon was able to acquire and sell the foreign edition in the U.S. four months before the strict on-sale date of the U.S. edition. We cannot compete with this practice. Customers who visited Amazon’s website saw the title was available within a day or two using Amazon Prime. Amazon did not clearly state that the book was the foreign edition, and customers were confused why we were unable to obtain the book.”

Then there are the tax breaks and subsidies; even before the last of the 45 states required Amazon to collect and remit sales taxes, the giant was already onto a new strategy to acquire tax breaks and subsidies from communities across the country. Due to its exponential growth and size, Amazon began shopping locations for warehouses and good deals, knowing it could exchange tax breaks for the promise — the *promise* — of jobs, and little else.

By this time, Amazon was already a monopoly in the bookselling market and a burgeoning monopoly in the overall retail sector. It was large enough that even states that had recently experienced budget shortfalls jumped to offer Amazon tax breaks and subsidies just to open warehouses in their communities. In essence, lawmakers were funneling taxpayer dollars to Amazon for the “honor” of having Amazon opening a facility in their states. To add insult to injury, booksellers’ tax dollars were used to pay their biggest competitor to help in its quest to run them out of business.

And were Amazon warehouses really a benefit to the community?

The answer to that is a resounding “No.”

While Amazon received substantial subsidies and tax breaks from states and municipalities for opening warehouses on the premise that these warehouses will create thousands of jobs (to the tune of $6.1 billion and counting), the national results showed the opposite came to pass.

In 2022, Civic Economics released the study, *Unfulfilled: Amazon and the American Retail Landscape*, which showed that in 2021, Amazon sales resulted in the displacement of 136,000 retail shops — that’s a 353 percent (not a misprint) increase in the number of shops displaced between 2014 and 2021. During that same year, Amazon sales meant 1.7 million retail workers were displaced, in addition to 70,000 distribution workers. Between 2017 and 2021, the number of displaced retail workers grew from 659,058 to 1.8 million, according to the Civic Economics study.

And in a 2016 report, *Amazon's Stranglehold: How the Company's Tightening Grip on the Economy Is Stifling Competition, Eroding Jobs, and Threatening Communities*, authors Stacy Mitchell and Olivia LaVecchia of the Institute for Local Self-Reliance reported that, inside its distribution facilities, Amazon's labor model "resembles labor's distant past more than a promising future, with many workers performing grueling and under-paid jobs, getting trapped in precarious temporary positions, or doing on-demand assignments that are paid by the piece."

The authors noted that "Amazon has eliminated about 149,000 more jobs in retail than it has created in its warehouses, and the pace of layoffs is accelerating as Amazon grows. Many jobs are at risk: the retail sector currently accounts for about 1 in every 8 jobs, and unlike Amazon jobs, these jobs are distributed across virtually every town and neighborhood."

Amazon's growth in the bookselling market and its subsequent growth into myriad other markets gave it another advantage as well — the power to bully, which it has done unapologetically in the bookselling market. Size also allows Amazon the privilege of punishing or retaliating against publishers without consequences normally seen in a free market.

For example, in a well-publicized battle over e-book terms with Hachette, Amazon.com delayed fulfillment of customer orders for many popular books in order to get the terms it wanted from the company. While Hachette continued to ship titles to Amazon, the online retailer nonetheless delayed shipments of Hachette titles to consumers and restocked Hachette titles slowly. Shipping times for Hachette books were listed as upwards of two to three weeks, while the norm for most publishers was about two days. In another instance, in 2010, Amazon pulled Macmillan titles during an e-book pricing dispute between Amazon and the publisher.

Large publishers weren't the only entities to suffer from Amazon's tactics. Around the time that the Hachette dispute was making news, the indie publisher Press 53 complained that Amazon was making it difficult for consumers to buy their books because it wanted to push readers to buy e-books, far more profitable to the online retailer.

As noted in a 2012 post on Reddit, Kevin Morgan Watson, a publisher at Press 53, reported: "I struggled to understand why so many of our titles at Press 53 began showing up on Amazon last October as 'Temporarily out of stock' or 'Usually ships within 1 to 3 weeks,' even though our printer, Lightning Source, Inc., can print and ship any of our books ordered from Amazon within 24 hours. I now understand that Amazon's mission is to push readers to purchase e-books. Print books no longer fit their business model. As the Amazon letter said, 'With an e-book, there's no printing, no over-printing, no need to forecast, no returns, no lost sales due to out of stock, no warehousing costs, no transportation costs…'"

Watson surmised that the battle with Hachette was about "Amazon using its position as an industry giant to sway readers toward e-books, a medium that is more profitable to Amazon. It's about Amazon flexing its muscles to prove dominance over 'a big US publisher and part of a $10 billion media conglomerate' to fall in line with Amazon's vision or suffer the consequences. And since Press 53 e-books are priced lower than our print books, Amazon is passive-aggressively nudging our readers toward the e-book by listing our print books as out of stock."

Watson concluded: "Hachette should be free to set e-book prices that are in line with their own goals, not Amazon's. And Amazon is free to leave the print book market to other booksellers and focus on the more lucrative e-book market, should they choose to follow their own advice."

Amazon's behavior eventually attracted the attention of the U.S. House Judiciary Antitrust Subcommittee, which investigated alleged anticompetitive behavior of Amazon, as well as Apple, Facebook, and Google. The result was a 400-page House Judiciary Antitrust Subcommittee report published in October 2020 that detailed the many ways Big Tech used its size to push competitors and customers around. In detailing Amazon's "asymmetric power dynamic" with book publishers, the subcommittee reported:

> *According to one publisher, "Amazon has used retaliation…to coerce publishers to accept contractual terms that impose substantial penalties for promoting competition" with Amazon's rivals. The publisher added that the platform's retaliatory conduct shows "Amazon's ability and willingness to leverage its market power to prevent publishers from working effectively with rival e-book retailers and, thereby, maintain and enhance its dominance in e-book distribution.' Amazon's retaliatory tactics against publishers include removing the 'buy' button, which blocks a customer's ability to purchase a publisher's current titles; and removing the 'pre-order' button, which eliminates the ability for a consumer to pre-order a publisher's forthcoming titles. Another form of retaliation that Amazon reportedly engaged in was showing publishers' titles as out of stock or with delayed shipping times. According to credible reports, Amazon used these tactics in its public battle with Hachette Book Group in 2014 over e-book pricing, and has used them or threatened to use them in more recent negotiations. Publishers, authors, and booksellers have "significant fear" because of Amazon's dominance.*
>
> *Amazon can treat sellers in this manner because it knows that sellers have no other realistic alternatives to the platform.*

The Authors Guild's Mary Rasenberger stressed: "Because few publishers can survive without Amazon, it is able to dictate the economic terms of its relationships. We understand that publishers who sell on Amazon pay more each year for Amazon's distribution and advertising services, but receive less in return. It also employs non-transparent data algorithms and recommendation engines to steer consumers toward its own products, or even toward infringing products without disclosing to consumers that it is doing so. It has required suppliers to agree to most-favored nation provisions that stifle the emergence and growth of competitive alternatives in the book distribution marketplace. And it manipulates suppliers and rivals by tying the purchase of distribution services as a practical matter to the purchase of its advertising services."

These examples show Amazon's ability and willingness to exploit its power to force publishers to adopt terms and policies favorable to Amazon. While these tactics inhibit free trade in the bookselling market, it additionally raises concerns for readers' ability to access books as Amazon established its monopoly.

And while Amazon proponents love to argue that the online giant has spurred innovation, the opposite of this is true. In innumerable ways, Amazon's size and the brazen manner in which it uses its power has almost certainly squelched entrepreneurs from entering the bookselling market — and other markets, as we will outline.

Perhaps the biggest question to come out of Amazon's decades-long monopoly in the bookselling market is why regulators have done nothing to correct it, or even investigate it. The hands-off approach has directly led to Amazon's growth and monopolization of other markets.

TAKE OVER OTHER MARKETS

Today, Amazon's reward for its anti-competitive behavior in the bookselling market is its ability to secure greater dominance in the many markets in which it operates — and destroy any company which dares to compete with the monolithic corporation.

In the aforementioned Judiciary report, the Antitrust Subcommittee wrote:

> *The rise of market power online has also materially weakened innovation and entrepreneurship in the U.S. economy. Some venture capitalists, for example, report that there is an innovation 'kill zone' that insulates dominant platforms from competitive pressure simply because investors do not view new entrants as worthwhile investments. Other investors have said that they avoid funding entrepreneurs and other companies that compete directly or indirectly with dominant firms in the digital economy. In an interview with Subcommittee staff, a prominent venture capital investor explained that due to these factors, there is a strong economic incentive for other firms to avoid head on competition with dominant firms.*

While this white paper focuses on the bookselling market, it does so to detail how Amazon's unchecked business practices in one market opened the door to its anticompetitive behavior in a growing number of other markets outside of bookselling and publishing.

In referencing Amazon's aggressive strong-arming and then acquisition of diapers retailer Quidsi in 2010, FTC Chair Lina M. Khan, who at the time was a fellow at Columbia Law School, warned that "Amazon's history with Quidsi has sent a clear message to potential competitors — namely that, unless upstarts have deep pockets that allow them to bleed money in a head-to-head fight with

Amazon, it may not be worth entering the market."

Khan continued, "Even as Amazon has raised the price of the Amazon Mom program, no newcomers have recently sought to challenge it in this sector, supporting the idea that intimidation may also serve as a practical barrier."[3] While Khan was talking about a different retail market, her words could have just as easily applied to the bookselling market, where Amazon perfected this tactic.

The threat of competing with Amazon can push start-ups to avoid certain industries entirely, reported CNBC.com. One unnamed venture capital investor in the cloud market told lawmakers:

> ***I think of Amazon as the sun. It is useful but also dangerous. If you're far enough away you can bask. If you get too close, you'll get incinerated. So, you have to be far enough from Amazon and be doing something that they wouldn't do. If you're a net consumer of Amazon's infrastructure, like Uber, then you're okay. As long as Amazon doesn't want to get into ridesharing. But it's hard to predict what Amazon wants to get into. If they were going to stop at retail and computing, you're safe. But you can't know.***

We would argue that Amazon is not the sun at all, but a black hole into which innovation and fair market practices go to die. History already shows that Amazon did not stop at retail and computing. Market after market succumbs to Amazon's inexorable gravitational pull.

Amazon has been able to get away with these tactics for a number of reasons. For one, it enjoys popularity among consumers (though we've seen this popularity start to wane somewhat) who like receiving items quickly and who also incorrectly believe they are getting the lower prices on items.[4]

Amazon's growth in size and its bottom line allowed it to hire some of the best lobbyists in the business to develop relationships with lawmakers at all levels of government, as part of its strategy to curry favors in the halls of congress. In 2011, Amazon spent $2.22 million dollars on lobbying, but by 2021, this had increased to $19.32 million dollars spent on lobbying during the calendar year, as reported by Statista.

[3] Lina M. Khan, "Amazon's Antitrust Paradox," Yale Law Journal 126, no. 3 (January 2017), January 2017, accessed April 30, 2019, https://www.yalelawjournal.org/note/amazons-antitrust-paradox.

[4] As we've noted in previous white papers, there's evidence that Amazon is using its huge trove of data about customers' buying habits to raise prices. It's also started blocking access to certain products, charging higher prices, and delaying shipping times for customers who decline to join its *Amazon Prime* program. Research has shown that Amazon shows itself to consumers as the default seller even when third-party sellers' products are offered at a lower cost. About 75 percent of the time, Amazon placed its own products and those of companies that pay for its Fulfillment by Amazon [FBA] services in [the buybox] position even when there were substantially cheaper offers available from others.

Amazon's size and growth makes it an easy sell to politicians seeking a good photo op during campaign season. As noted previously, local lawmakers began offering Amazon subsidies and tax breaks to open warehouses in their districts, in part because it looked good when it was time for re-election. This culminated in Amazon's well-publicized search for its second headquarters where state and local officials jumped over themselves to offer Amazon taxpayer-funded capital in their attempt to lure HQ2 to their community.

The elephant in the room is that there is little motivation for many lawmakers and agencies to go after Amazon's anticompetitive practices if they believe they benefit from their business relationships with Amazon. This is perhaps the most insidious consequence of Amazon's growth and domination across so many different markets.

THE SOLUTION

The most obvious solution is for regulatory agencies to actually enforce current antitrust laws, which they have currently failed to do. Amazon's abuse of buying power and its use of predatory pricing certainly constitutes a violation of antitrust laws.

Certainly, we do not know if Amazon is actually selling books at below cost or if the company is garnering a much larger discount on books than other bookstores or online companies. Books are particular in that the retail price is printed on the cover, so determining if a book is selling below the traditional 40 percent discount is a matter of calculating some simple math. There is no question that Amazon has sold, and continues to sell, books at below the 40 percent discount mark. But this does not answer the question as to whether Amazon is getting an over-40 percent discount on books. If that is indeed the case, it begs the question as to what, exactly, Amazon has done to garner such a large discount.

Not surprisingly, publishers will not divulge this information. As noted previously, regulators would only get that data using subpoena power. And it is this exact data that regulators should be seeking, but they seem either uninterested or dismissive in finding out this information.

Meanwhile, we are told larger retailers' ability to deep discount items is a net benefit to consumers, even though, as noted earlier in this paper, this results in increased prices in more markets. Even if some prices were lower, each consumer is first and foremost a citizen, and Amazon's dominance has resulted in empty storefronts, fewer jobs, and a depletion in tax revenue in communities across the country. Consumers buying from Amazon may not make the connection, but they certainly experience it: Every time they drive or walk past a shuttered retail store, or through a barren Main Street.

In the holiday classic *It's a Wonderful Life*, the protagonist experiences an alternate reality where a greedy, controlling banker has destroyed a beautiful town. Where there was once Main Street, there are gin joints and organized crime; where there were once beautiful tree-lined streets and nice homes, there are decrepit, cheaply made, tiny cottages called Pottersville. In our current reality, communities are facing a very real Bezosville, where vibrant Main Streets filled with shoppers are replaced with deserted streets and stark, ugly Amazon warehouses; where workers, unable to find better job offerings

with locally owned businesses, suffer horrible working conditions.
"Most Americans, despite the gains in productivity, have experienced stagnant wages," write Ariel Ezrachi and Maurice Stucke in the aforementioned Oxford Business Law Blog article, "The E-Scraper and E-Monopsony." Ezrachi and Stucke report, "The Council of Economic Advisers identifies monopsony, rising concentration, and monopoly pricing as hindering the U.S. economy."

The authors note that concerns go beyond "our pocketbook" and can actually threaten democratic ideals. "The super-platforms are now an indispensable distribution channel for the news and books we read, the entertainment we watch, and the music we listen [to]. The super-platforms — in directing our views of the world — can influence the marketplace of ideas and our elections."

This has to change. It is unconscionable that a behemoth such as Amazon can wreak such havoc on communities across the country. So, what is the solution?

We will look at four possibilities, none of which are mutually exclusive:

- Use Subpoena Power and Investigate Amazon
- Clarifying the Robinson-Patman Act
- Pass Legislation to Reign in Monopoly and Monopsony Power
- Break up Amazon

Use Subpoena Power to Investigate Amazon. The very first place to start, of course, would be to investigate Amazon for violating antitrust laws currently on the books. In this paper, we discussed predatory pricing and price discrimination. These led to questions, such as what is Amazon paying publishers for books? We can make assumptions based on our knowledge of the industry, but they are no more than educated guesses. There is also a question as to Amazon's share of the bookselling and publishing markets. Despite being a public company, Amazon has failed to honor its shareholders with what its share of the market is in the bookselling industry (or any other market, for that matter).

But the information is out there. Unfortunately, at the present time, this data is kept confidential. Publishers are afraid to provide this data for fear of retaliation at the hands of Amazon. (Which should be indication enough that Amazon abuses its market dominance, and that regulators should seek this data anyway they can.) We believe that core to any investigation into Amazon should include issuing subpoenas to the appropriate parties to demand this data and answer these important questions.

Clarifying the Robinson-Patman Act. One solution is updating, clarifying, and funding strong enforcement of the Robinson-Patman Act. Many antitrust experts have different solutions on how to "fix" RPA, with each having various solutions, but the main crux is that this is a policy discussion that is long past due. Price discrimination and predatory pricing are significant threats to free market competition and have been ignored for far too long under the auspices of consumer welfare.
In his brief, *Reforming the Robinson-Patman Act*, John B. Kirkwood explains that the Act should be reformed to make it an effective tool for combatting buyer-driven discrimination that threatens competition and consumers.

> *"If a powerful buyer like Amazon does extract discriminatory concessions that are likely to harm consumers, the antitrust laws ought to have a remedy. But the Sherman Act and the FTC Act may not provide it. While these statutes are written broadly enough to reach anticompetitive buyer-driven price discrimination, they have never been used to stop it. To the contrary, several courts have declared that price discrimination furthers the purpose of the Sherman Act. If the R-P Act were repealed, therefore, neither the Sherman Act nor the FTC Act may plug the gap. Of course, Congress could close the gap by amending one of these laws, but if Congress is going to legislate in this area, the simplest and most straightforward approach would be to revise the existing anti-discrimination provisions of the Robinson-Patman Act."*

The *Washington Monthly* reported,

> *"Concerned with the way the abuse of monopsony power could suppress fair competition and foster corporate concentration, President Franklin D. Roosevelt signed landmark legislation in 1936, known as the Robinson-Patman Act, that made this kind of business practice illegal. And for many decades afterward, the law was a key pillar of America's political economy, helping to sustain the broad prosperity of the mid-20th century. But in what has turned out to be a colossal policy mistake, politicians in both parties decided to stop enforcing the act after the 1970s."*

One suggested reform for the Robinson-Patman Act comes from Kirkwood, who stresses, "If the government or a private plaintiff shows that discrimination induced by a powerful buyer is likely to injure competition, neither defense should stand in the way of an injunction."

Kirkwood contends that this change "would ensure that there is an effective remedy if a powerful buyer like Amazon or Walmart does extract concessions that reduce rather than promote competition. Concern with Amazon's power remains high. It is the dominant retailer of books in the United States, with a share of e-book sales approaching monopoly levels [5], and many commentators believe that it already has too much power. In addition, numerous authors fear that its demands will deprive publishers and authors of the revenues they need to maintain a rich supply of new books. There is ample reason, in short, to develop a workable, efficient, and beneficial remedy for buyer power."

Strengthening, or enforcing, existing antitrust law will do well to ensure another Amazon-type monopoly won't happen in the future. But there is still the issue of Amazon's current monopoly.

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[5] Kirkwood's paper was written in 2015. Today, Amazon's share of the e-book is 90 percent according to the Connecticut Attorney General. By even the most stringent standards, this represents a monopoly.

Pass Legislation to Reign In Monopoly and Monopsony Power. Over the past several years, lawmakers in both the U.S. House of Representatives and Senate have introduced legislation that aims to stop the anticompetitive practices of companies such as Amazon. Representative Pramila Jayapal introduced the Ending Platform Monopolies Act, which passed the House Judiciary Committee in June 2021 but did not go any further. The bill would have prevented monopolistic practices by Big Tech companies and rein in their anticompetitive behavior. The bipartisan Ending Platform Monopolies Act looked to protect small businesses by leveling the playing field, restoring fairness and competition, and allowing innovation to thrive.

In the Senate, in 2022, Senator Klobuchar was the lead sponsor of the American Innovation and Choice Online Act (AICOA). AICOA would protect competition by prohibiting gatekeeper platforms from self-preferencing their own products and services at the expense of smaller online businesses, or making businesses buy other services as a condition of getting good search ranking or placement on their platforms. The bill also provides government enforcers — including the Department of Justice (DOJ), Federal Trade Commission (FTC), and state attorneys general (AGs) — tools to deter violations and hold dominant platforms accountable when they cross the line into illegal behavior. The American Booksellers Association believes this bill is crucial to reign in the anticompetitive behavior of online platforms. Klobuchar reintroduced the bill in June of 2023.

Break Up Amazon. In ABA's previous white paper, *American Monopoly: Amazon's Anti-Competitive Behavior is in Violation of Antitrust Laws*, published in November 2020, ABA argues that Amazon must be broken up. The organization explained:

> ***When Amazon's behavior is taken as a whole, it is clear that Amazon is unlawfully restraining trade, is engaging in exclusionary, anti-competitive pricing schemes, and is using both its horizontal and vertical integration to create barriers to entry, increase Amazon's market power, and unfairly manipulate marketplaces. Amazon has used exclusionary, anti-competitive pricing schemes to gain market power and illegally monopolize the e-commerce retail market, specifically, the first-party online retail market, the third-party e-commerce marketplace market, the web services market, and the third-party logistics services market.***

Amazon should be broken up into at least four autonomous companies: retail, e-commerce marketplace platform, web services, and logistics. Additionally, given how Amazon uses systemic below-cost pricing on books in particular, Amazon's retail operations should be divided into book retail and other retail.

It is important to note that ABA is not the only organization calling for the break up of Amazon. In its issue brief, *How Amazon Exploits and Undermines Small Businesses, and Why Breaking It Up Would Revive American Entrepreneurship*, published in June 2021, the Institute for Local Self-Reliance echoed ABA's sentiments and concluded that Amazon should be broken up along its major lines of business.

ILSR points out that Amazon "derives much of its power to bully and exploit independent businesses from its integration across business lines and the fact that it plays multiple roles in markets. This allows it to leverage its dominance in one area to gain an advantage in others: It uses its power as an online marketplace to grow its logistics business, force concessions from suppliers to its retail division, and appropriate seller data to inform development of its own products."

And the House Judiciary Committee report concluded that Big Tech should be broken up along business lines, as well.

ILSR's brief stressed: "By separating Amazon's third-party marketplace from its retail division, and spinning off its cloud services and other major divisions into stand-alone companies, policymakers could remove the incentive and ability for Amazon to exploit its gatekeeper status to favor its own interests and harm competition."

Conclusion

For well over a decade now, regulators and lawmakers have heard reports of Amazon's anticompetitive behavior. Much of its abusive tactics in the bookselling, publishing, and other industries have been verified and widely publicized — yet to this day, Amazon continues to flaunt antitrust laws and do as it pleases. And, as it amasses its power, as it grows more ubiquitous, it becomes easier for Amazon to bully whatever company it works with. And no one will stand up for fear of retaliation and losing the sales channel.

The time has come for this to change and for regulators to stand up to Amazon, and stand up for a competitive market.