



To: Interested Parties
From: Free & Fair Markets Initiative
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RE: FTC Hearing #5: Competition and Consumer Protection in the 21st Century

INTRODUCTION

The Federal Trade Commission this week will hold its fifth hearing on Competition and Consumer Protection in the 21st Century, with a focus on vertical mergers and the consumer welfare standard in U.S. antitrust law. [At issue](#) will be whether antitrust agencies should publish Vertical Merger Guidelines and whether the consumer welfare standard is appropriate for evaluating compliance with antitrust laws.

In answering these two critical questions, Amazon is a case study worthy of attention.

Amazon is an example of a major technology company using its massive amounts of consumer data to pursue an aggressive acquisition strategy – aimed at stifling competition, limiting consumer choice and gaining a foothold in various industries, including:

- Healthcare
- Groceries
- Home security

Over the past five years alone, Google, Facebook and Amazon collectively [acquired 187 companies](#) – in some cases direct competitors and in other cases, leading startups in industries they have plans to enter. This is an unprecedented threat to consumer choice.

During the Federal Trade Commission’s hearing this week, panelists should consider the consequences of acquisitions made by Amazon in recent months as a harbinger for understanding what constitutes anticompetitive practices in the 21st century economy.

I. PillPack

Pharmaceutical Industry Market Value Decline After Amazon Announced It Would Acquire Pill Pack; Consumer Privacy and Drug Pricing Concerns Loom

In June 2018, Amazon announced plans to acquire online pharmacy PillPack for a reported [\\$753 billion](#) in cash, causing ten large pharmaceutical companies to [lose](#) \$23.5 billion in market cap (while Amazon [gained](#) \$19.6 billion). The market value of CVS, Walgreens Boots Alliance and Rite Aid [plummeted](#) by 9.2%, 9.4% and 13% respectively, while Amazon's rose 2%.

According to several [complaints](#) submitted to the Better Business Bureau, PillPack has historically employed a bait-and-switch tactic by offering low drug prices and then suddenly raising costs months later. In one instance, a consumer complained PillPack raised the cost of certain medications by [around 70%](#) just months after the consumer signed up for the company's service.

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Access To Sensitive Consumer Data:

- PillPack is [required by law](#) to protect consumer privacy and consumer data pursuant to HIPAA. An important concern is if Amazon plans to [leverage](#) this confidential information to benefit its other businesses.
- In January 2018, Amazon announced it was [teaming up](#) with JP Morgan Chase and Berkshire Hathaway to create an independent health care company for their U.S. employees. An unanswered question is how this unlikely partnership came together and if the corporate giants' combined access to data about how consumers make choices played a role.

II. Whole Foods

In June 2017, Amazon bought Whole Foods Market for [\\$13.4 billion dollars](#) in [its largest deal](#) ever. The acquisition prompted and continues to raise concerns about its impact on the grocery industry.

Through its purchase of Whole Foods, Amazon increased its [access to consumer data](#) and significantly expanded its physical retail holdings. With this acquisition, Amazon became the [fifth largest grocery retailer](#). In August 2017, stocks of other major food retailers dropped substantially – between Kroger, Target, Costco, Supervalu and Sprouts Farmers Market, shares dropped and erased about [\\$11.6 billion in market value](#) in a single day.

More broadly, Amazon's acquisition of Whole Foods continues to raise concerns about Amazon's use of technology to "[vertically integrate nearly the entire process of consumption](#)." With its entrance into the grocery industry, Amazon further limits its customers' exposure to the products and services of other companies.

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Limited Competition:

- Amazon has limited competition by buying up major companies such as Whole Foods. The impact on small-scale suppliers and competitors has yet to be fully examined.
- Amazon's acquisition strategy reflects a new approach to growth among tech companies. This strategy raises important questions about the need for new guidelines on horizontal and vertical mergers that factor in the dynamics of the digital economy.

III. Ring

Amazon bought video doorbell start-up Ring for just over [\\$900 million](#) in 2018. Its second biggest acquisition, the Ring purchase all but solidifies Amazon's takeover of the smart home category. As a result, home security companies posted losses, United Technologies discussed a [potential breakup](#) and ADT, with whom Ring was embroiled in a lawsuit, reported a [surprise loss](#) in quarterly earnings in the second quarter.

The purchase was part of a sweep of home security and smart home tech activity. Amazon acquired [Blink](#) in December 2017, a home security camera system with a unique energy saving chip the company wanted to leverage. Amazon also launched Key, the smart lock that lets delivery people inside homes.

The push into dominating smart home tech raises concerns about the [boundaries of technology](#) and the speed with which a takeover is happening. The company has taken on an [aggressive expansion](#) for years, spending more than [\\$2 billion on acquisitions](#) in the first half of 2018.

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Predatory Pricing and Industry-Funded Studies Redefine Anticompetitive Practice

- Amazon is known for cutting prices, sustaining losses and engaging in [predatory pricing](#). After buying Ring, Amazon cut the cost of the product down to approximately [\\$100](#) from \$179. It is critical to take a close look at Amazon's pricing practices.
- In a recent amicus curiae brief to the Supreme Court, the ability for courts to monitor and address anticompetitive practices – such as Amazon's market dominance – has been limited by re-defining a key benchmark for anticompetitive practice. The definition change was brought about by a panel that “relied on a small number of [industry-funded studies](#) that are fundamentally at odds with scholarship by leading antitrust thinkers.”