

eBay Inc (“eBay”) hereby submits these comments to the Department of Commerce’s (“Department”) *Global Free Flow of Information on the Internet* Notice of Inquiry (“NOI”). eBay appreciates the opportunity to provide our thoughts and feedback on issues as important as encouraging the freedom to access information and promoting continued innovation on the Internet.

Founded in 1995 in San Jose, Calif., eBay Inc. (NASDAQ:EBAY) connects millions of buyers and sellers globally on a daily basis through eBay, the world's largest online marketplace, and PayPal, which enables individuals and businesses to securely, easily and quickly send and receive online payments. Currently, eBay operates trading platforms in 23 countries around the world and has over 93 million active users globally. We also reach millions through specialized marketplaces such as StubHub, the world's largest ticket marketplace, and eBay classifieds sites, which together have a presence in more than 1,000 cities around the world.

Most relevant to the matter before the Department is that for the past 15 years, eBay has consistently been a platform that has empowered consumers and millions of small business retailers and entrepreneurs across the globe. eBay is dedicated to connecting consumers with small business retailers and entrepreneurs that can provide the opportunity to purchase quality products and services at competitive prices from the convenience of their homes.

eBay believes that open ecommerce and unfettered access to global trade over the Internet empowers consumers and promotes economic development, in particular among small businesses and entrepreneurs that use the Internet to reach a global audience. Over the past decade, the Internet has been a critical technological tool that has forever changed the way we live, think, communicate, conduct business, and even shop. The Internet is not only the product of innovation, but it is a tool for innovation itself and it has empowered consumers and small entrepreneurs from all corners of the globe to connect in a way that was impossible before the World Wide Web.

Due to the importance of the Internet and the ecommerce market to our everyday lives, eBay strongly believes that consumer and small business empowerment should be a driving principle as the United States government, and in particular the Internet Policy Task Force, continues to develop its Internet policy not only at home but abroad.

eCommerce Empowers Consumers

The Internet and the rise of ecommerce have greatly benefited consumers in the United States and around the world by offering new opportunities and tremendous value and choice. An integrated global ecommerce market has provided consumers a greater choice of products and

services, lower prices, increased purchasing power, more information, and far greater convenience. Ecommerce and cross border trade have made existing markets more robust and even created some markets that never existed before. According to an Internet Shopping Survey released by the United Kingdom's Office of Fair Trading, ecommerce marketplaces "offer virtually unrestricted choices in products for consumers and increase competition."¹ Better prices and more choice empower consumers---this is the pro-consumer reality and promise of ecommerce.

As any consumer knows, it can sometimes be a challenge to find certain products at reasonable prices, especially if the consumer is living in a remote geographical location. However, according to a study released by eBay, an open global ecommerce platform has "expanded consumer choice both in range and depth of offerings" and can be "sourced from anywhere in the world."² In fact, the European Commission recently looked at 100 popular products and found that in 10 Member States, these products could not be purchased online domestically. In fact, more than 25 percent of the 100 products studied were unavailable online domestically in all Member States, except in the United Kingdom and Germany.³ Fortunately, the Internet has provided consumers the opportunity to connect to retailers and entrepreneurs all over the globe, overcoming the limitations of traditional retail models and geographical constraints.

Furthermore, in today's current economic climate, consumers are constantly looking for ways to save money and the ecommerce platform has consistently provided the opportunity to locate quality goods and services at lower prices. In the United States, a recent study by the Allen Group showed that open ecommerce on eBay's site alone resulted in new products selling for almost 10 percent less than those offered by brick and mortar retailers in 2007, which translated into approximately \$1.76 billion in direct savings for American consumers and a total of almost \$5 billion in increased economic activity.⁴

eBay strongly believes that every consumer, no matter where they reside, has the fundamental right to purchase any legal product or service at a fair and reasonable price, whether that be a new pair of sneakers or a bottle of fine perfume. An open global ecommerce market promotes and protects the ability of consumers across the globe to enjoy this right. A more open ecommerce market results in more competition and transparency, which ultimately leads to greater consumer empowerment.

¹ United Kingdom Office of Fair Trading: Internet Shopping Survey. June 2007, p. 135.

² eBay: Empowering Consumers by Promoting Access to the 21st Century Market. June 2008, p. 8.

³ European Commission: Cross-Border Business to Consumer e-Commerce in the EU. 2009, pg. 5.

⁴ Allen Consulting Group and Economists Incorporated: The Economic Impact of eBay in the United States. January 2009, p. 37 and 48.

eCommerce Empowers Small Business Entrepreneurs

Consumers are not the only ones to benefit from an open global ecommerce market. Over the past 15 years, the Internet has enabled millions of small business retailers and entrepreneurs across the world to engage in global commerce. Through these new opportunities, small business leaders and entrepreneurs have been able to grow their businesses, create new jobs, and contribute more effectively to their country's economy.

The global ecommerce market has been a very effective platform for small business retailers for a number of different reasons. In particular, the Internet has opened up new opportunities for small businesses by significantly lowering the barriers to enter into a global market. It is very expensive to establish and maintain a new brick-and-mortar store in today's economy. However, the ecommerce platform has enabled small businesses to quickly and cost-effectively create an online store and scale up with few of the costs or limitations associated with establishing a brick-and-mortar shop. In addition, many established small brick-and-mortar retailers have also taken advantage of the ecommerce market and have been able to survive on Main Street by selling a percentage of their inventory online.

In light of the low barriers to entry, we have also found that a number of the individuals that start a small online business on our site have experienced difficult personal circumstances. In a study recently commissioned by eBay, we found that 26% of the small business retailers in that country set up their business on eBay after being unemployed; 14% have physical disabilities; and 49% do not have a diploma higher than high school.

The Internet also allows small business entrepreneurs to reach consumers across the globe with little difficulty or cost, which greatly expands their business opportunities. In fact, 25% of all of the business on eBay today comes from cross border trade and we predict cross border trade will continue to become a greater share of the business that occurs over our marketplace in the future.

Furthermore, the Internet has also been a critical tool to the developing world and emerging markets. When local communities are connected to the Internet, it creates a unique opportunity for small entrepreneurs and women to engage in global commerce without needing to move to either an urban location or emigrate to a more developed country. The Internet is empowering these individuals as well as protecting their local communities and culture. Ecommerce is a powerful force promoting private sector entrepreneurship across the globe.

In today's current economic environment, it is imperative that the U.S. Government strive to protect our small businesses and entrepreneurs and encourage their growth and sustainability not only at home, but abroad. In fact, small businesses are extremely important to the United States' path towards economic recovery. Small businesses are the lifeblood of America and according to a recent study released by the U.S. Small Business Administration; small businesses created

70% of the new jobs in the U.S. over the past decade and are responsible for half of all jobs in the private sector.

Small online retailers and entrepreneurs are helping to play a critical role in restoring our nation's economy and creating jobs. For example, eBay's highest rated U.S.-based sellers, those who provide the best overall experience to customers, increased their year-over-year same store sales by almost 14% in the second quarter of 2009, which was a significant achievement in a tough economy when many businesses were either laying off employees or closing their doors. Small online retailers and entrepreneurs have become an integral part of our nation's economy.

Protecting and Promoting an Open Global Ecommerce Market

The Internet has become a fundamental building block for consumer empowerment and for small businesses and entrepreneurs across the nation and around the world to compete and thrive. Therefore, it is critical that the United States, through the Internet Policy Task Force, work to ensure that not only our domestic but international policies create an environment that encourages the continued growth of an open global ecommerce market.

The goal of policymakers around the world, led by the United States, should be to benefit consumers to the greatest extent possible, while promoting job creation and economic opportunities. There should be a particular focus on small businesses and entrepreneurs, who face the risk of having their livelihoods harmed or even destroyed by overreaching government regulation of the open exchange of goods and information by foreign and domestic regimes. Large commercial entities also seek to regulate open ecommerce around the world to the detriment of small businesses and entrepreneurs. eBay believes that ending commercial practices that are aimed at restricting and controlling ecommerce should be cornerstones of U.S. Internet policy both domestically and globally. Some of the anti-consumer and anti-small business strategies that have been adopted by manufacturers in an effort to resist the increased competition that ecommerce has brought to the retail market include: (1) restricting licensed distributors from selling their products online at favorable prices; (2) prohibiting their distributors from selling certain products online or on specific online platforms; (3) imposing requirements on websites as a condition for reselling goods online; (4) requiring products to be sold at or above a pre-determined minimum price; (5) demanding that websites also have a brick-and-mortar store; and (6) promoting, defending or enforcing trademark exhaustion policies that restrict the cross-border sale of authentic goods.

Unfair selective distribution practices in the United States and abroad are seriously hindering the continued growth of an open global ecommerce market and the small businesses and entrepreneurs that rely on the ecommerce platform to compete in the retail market. In fact, according to a study recently conducted by Chadwick Martin Bailey, at least 60% of small to medium sized U.S. retailers have experienced at least one of the restrictions mentioned above

and a quarter of these businesses report that price setting in particular is a practice that has increased in the past two years.

Without proper government guidance or intervention, these unfair and anti-competitive strategies will continue to be adopted by large manufactures and restrict the ability of online retailers and entrepreneurs to sell their goods and services at competitive prices to consumers.

Conclusion

eBay thanks the Department for its commitment to encouraging the global free flow of information and for the opportunity to provide comments on the importance of an open global ecommerce market, which we believe will assist the United States in making a strong economic recovery. Open ecommerce represents one of the most tangible and visible benefits of the Internet to individuals around the world, whether they are using the Internet as consumers, small business leaders, entrepreneurs, or all three. eBay looks forward to working with the Department in the months and years ahead on the various policies at home and abroad that have the potential to encourage consumer empowerment, promote the growth of small online businesses and entrepreneurs, and ultimately create an environment for job growth and economic development.