

**Statement of Jeff Jordan
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eBay Inc.
At the Federal Trade Commission's Workshop on
"Possible Anticompetitive Efforts to
Restrict Competition on the Internet"**

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My name is Jeff Jordan, and I am Senior Vice President & General Manager of eBay Inc.'s U.S. Operations. Thank you for inviting eBay to participate in this workshop on the potential negative effects that state regulations can have on the Internet and e-commerce. We are concerned that states are adopting regulations that benefit local merchants and discriminate against Internet companies. Such regulations do not protect consumers, but penalize them. They hobble electronic commerce, instead of unleashing its full potential to deliver speed, efficiency and convenience to the buyers and sellers of the 21st Century.

Accordingly, we applaud the fact that the Federal Trade Commission is holding this workshop to shine a spotlight on this serious problem. This is a very positive step toward eventually ending unfair and discriminatory state laws and regulations that deny consumers the full benefits of e-commerce.

I. eBay, e-Commerce and the State and Local Response

eBay is the world's first and largest online trading community. Founded in September 1995 by Pierre Omidyar, eBay brings together people and companies from around the world in an online venue where they can buy and sell just about anything.

Pierre's vision in creating eBay was to design the ultimate, efficient marketplace. Today, with over 50 million registered users worldwide and over 10 million items for sale daily, the eBay community is fulfilling that vision. Whether selling through a bidding process or fixed-price format, sellers on eBay must charge prices that are competitive not just with other eBay sellers, but also with offline and online retailers. Similarly, retailers in the traditional "brick-and-mortar" world can no longer base their prices merely on local market conditions – they must now consider the price that consumers will pay on eBay and other e-commerce sites.

Such price competition is great for consumers, but troubling to entrenched offline merchants who have been able to set inflated prices for years without repercussion. E-commerce forces them to face an unpleasant prospect -- competition. In order to prevent or "manage" this competition, these merchants have successfully encouraged their allies in state and local government to erect two related types of serious obstacles to e-commerce:

- (1) applying laws crafted for brick and mortar companies before the rise of the Internet in an inappropriate and detrimental way to Internet businesses; and
- (2) drafting laws and regulations that benefit home-state brick and mortar merchants by discriminating against Internet companies.

Proponents justify these new, inappropriate and often discriminatory barriers with spurious claims that e-commerce may harm consumers. Far too often, though, these

obstacles to e-commerce simply penalize those they claim to protect and instead help home-state merchants protect their "turf." These merchants fear that the Internet will place them at a disadvantage, and so they seek to tilt the playing field in their favor.

II. State Auction Laws

One major obstacle to e-commerce is that laws crafted before the Internet for brick and mortar businesses are being applied to Internet businesses in an inappropriate way that often makes no sense. A clear example of this is state attempts to regulate eBay as an auctioneer or auction house. While eBay itself is neither, some of the listings on our site are often referred to as "auctions" because we provide an online venue for consumers to bid on products or services. As a result, some state regulators want to interpret state auction laws as including eBay and other online marketplaces that involve bidding. Their efforts are completely misguided. Our business has little in common with an offline auctioneer or auction house. eBay doesn't take possession of any items listed, provide appraisals of merchandise, collect big commissions from buyers, or do many of the other things that are common practice in traditional auctions. Regulating eBay under traditional state auction laws is like trying to put a dog collar on a fish; it just does not fit and it is not going to work.

We are also very concerned about the potential negative impact of this trend on the millions of eBay sellers. Some of our sellers are casual participants in e-commerce who use eBay to sell the treasures of their garage or attic; but a growing number are small, hard-working entrepreneurs, for whom the most efficient and cost-effective way to sell products or services is through an online marketplace like eBay. Forcing these millions of sellers to be licensed as auctioneers or auction houses,

perhaps in a number of different states, would accomplish nothing other than to exclude them totally from this dynamic electronic marketplace. While putting eBay sellers out of business by treating them as “auctioneers” might benefit entrenched offline competitors, it would hurt consumers, e-commerce and, indeed, the economy generally.

III. New State and Local Regulations

In addition to trying to make eBay and its participants fit inappropriately into traditional auction laws, brick and mortar merchants continue to push for new laws and regulations at the state and local level to hobble their new Internet competition and protect their position as the sole distributor of any particular good or service. This kind of onerous discrimination is prevalent in any number of markets in which the Internet offers a new and less costly alternative to traditional distribution. Last year, for example, some state legislators in Minnesota promoted a bill that would have stopped everyone except state-licensed auto dealers from selling used automobiles on the Internet. In Oklahoma, the state has limited the sale of caskets online, unless you happen to be a licensed funeral home.

Today, inconsistent and ambiguous state regulations make it very difficult or totally impossible to sell many categories of goods and services on eBay, or on the Internet generally. Event tickets, travel packages, packaged seeds and antique slot machines are just a few examples. In each case, proliferating state regulations demand time-consuming and cumbersome efforts by eBay and other e-commerce businesses to achieve compliance, none of which benefits consumers. In fact, these state laws and regulations have the effect of penalizing consumers by limiting their access to goods

and services and thereby increasing the prices they must pay – all for the sake of protecting less efficient business models.

The scope of goods and services available for sale on eBay alone is almost limitless -- sellers from around the world currently offer over 10 million items for sale on the site, in over 18,000 separate categories. The range is staggering: from BMWs to bulldozers, from antique furniture to hi-tech computers, from the oldest 78s to the most recent DVDs. Every single one of these sales could potentially be subject to regulation by one or more of the 50 states, or even by a county or municipality. If left unchecked, this growing thicket of state and local regulation could strangle the efficient online marketplace that eBay's community has created.

We at eBay are still committed to doing our best to determine which state laws apply to listings on our site because we know that it is critical to create a safe and legal marketplace for our users. While this is a constant struggle for eBay, it is completely beyond the resources of smaller e-commerce businesses like eBay's merchants and casual sellers. They cannot possibly analyze and develop compliance strategies for laws in the hundreds of jurisdictions where their potential customers reside. Compliance with the myriad, often inconsistent state and local laws could become an insurmountable barrier to entry for would-be participants in the electronic marketplace of the new Millennium

IV. Conclusion

For these reasons, you can see why eBay is concerned about the prospect of states treating Internet companies differently than offline competitors or regulating them inappropriately. The fact is, unfair and sometimes discriminatory laws

and regulations will only end up negating the benefits of e-commerce and forcing consumers to bear the brunt of higher prices and slower service in the offline world. This must not be allowed to happen. Working with the Federal Trade Commission, the states, and the federal government, we can reach a solution and achieve our founder's vision: a competitive nation-wide marketplace that puts the well being of the consumer first. We applaud the Commission's decision to hold this workshop, and look forward to working with you in the future on this very important issue.