



Director, Digital Competition Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: digitalcompetition@treasury.gov.au

Dear Director,

Re: Digital Platforms: Government consultation on ACCC's regulatory reform recommendations - Consultation Paper

eBay Australia welcomes the opportunity to respond to the *Digital Platforms: Government consultation on ACCC's regulatory reform recommendations - Consultation Paper* ("the Paper").

eBay has actively engaged with the Digital Platforms Branch as it has examined a range of issues throughout its digital platforms services inquiry, most relevantly the ACCC's 2021/22 examination of online marketplaces. It is appropriate that the Treasury now consider recommendations for regulatory reform that have emerged from these Inquiries.

As our submission will outline, it is clear that the emergence of digital platforms have delivered significant benefits to Australian consumers and businesses. We accept however that the dynamic changes that have emerged in the wake of many platforms means Australia's regulatory and policy framework requires updating.

Despite this acknowledgement, assessment of the costs and benefits of any proposed policy approach needs to be robust. Digital platforms represent a wide range of dynamic business models. As a result of this diversity, platforms can present different potential harms to consumers as well as different solutions to address them. This diversity should be reflected in regulation that is principles based and enables platforms to leverage their unique abilities to address harm.

Similarly, as the Australian economy continues to digitise, the identified consumer harms that have emerged within digital platforms are increasingly apparent across the wider economy. Viewing consumer harm through the prism of digital platforms only may see protections that should be afforded in all interactions with business only provided to consumers when they engage with a digital platform. This may lead to confusion for consumers on their rights and

avenues to redress and entrench poor consumer experiences in the provision of services not captured under regulation. Where appropriate, eBay supports measures targeted at an economy wide level.

eBay, as a founding member of the Digital Industry Group Inc (DIGI) notes and supports DIGI's submission to this consultation. We especially acknowledge the concerns raised by DIGI in respect of the conflation of consumer harms (eg scams) and consumer protections (relating to privacy) under the ACCC review. While it is appropriate the ACCC considered these matters, with the longstanding Privacy Act review progressing we believe consumer protection issues relating to privacy and recommendations for reform in this area are best addressed under that existing process and regulatory regime rather than within this review. As DIGI has outlined, digital platforms face a broad suite of regulation and it's essential that these regimes are sensibly aligned and consistent.

We have responded to key issues of interest below.

About eBay Australia

For more than 25 years, eBay has enabled commerce and economic opportunity for individuals, entrepreneurs, businesses and organisations of all sizes. Globally, there are more than 1.7-billion listings on eBay sites and 135-million active consumers.

Operating in Australia for more than 20 years, eBay is one of Australia's largest online marketplace with almost 11 million Australians visiting ebay.com.au every month.

Our role as a marketplace is to facilitate a safe and trusted way for businesses and consumers to transact with confidence. While responsibility for listing on our platform remains with the individual or business that originally listed the item, we support sellers and consumers with a range of services, guarantees and feedback opportunities to ensure transactions can be undertaken safely.

To help protect consumers, the focus of our resources at eBay are on addressing scam and other harmful behaviour at scale. We look to prevent consumers being harmed in the first instance through the development of filters and blocks of listings in breach of our policies¹. Where we receive reports of users that are behaving inappropriately, we take action on their account up to and including suspension.

As we noted at the opening of our submission, it's important to recognise the varied business models that platforms can present. eBay is a pure third party online marketplace, meaning eBay does not sell any items appearing on our marketplace. The ACCC has expressed public concern with the potential for conflicts of interests arising from hybrid online marketplaces:

¹ <https://www.ebay.com.au/help/policies/prohibited-restricted-items/prohibited-restricted-items?id=4207>

We are particularly concerned about so-called hybrid marketplaces, which sell their own products in competition with third-party sellers that use their platform. Hybrid marketplaces, like other vertically-integrated digital platforms, face conflicts of interest and may act in ways that advantage their own products with potentially adverse effects for third-party sellers and consumers.²

In considering the regulatory proposals put forward by the ACCC, we encourage the Treasury to similarly acknowledge the potential risks and harms that hybrid marketplaces present.

Measures to Address Scams

While we acknowledge the need to address the issues of scams, the ACCC's proposed "notice and action" mechanism and the circumstances where platforms are required to take action needs further clarification.

The ACCC recommended that these measures include:

- a notice-and-action mechanism;
- verification of certain business users;
- additional verification of advertisers of financial services and products;
- improved review verification disclosures; and
- public reporting on mitigation efforts.

The ACCC has also indicated that:

a notice-and-action mechanism allowing users to report a scam or harmful app, and requiring the platform receiving this report to act in response, communicate its actions, share information with relevant agencies, and offer redress, as appropriate

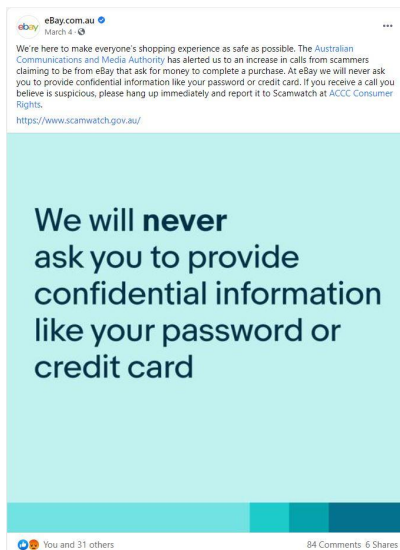
The recommendation appears to suggest that platforms be required to receive and take action in respect of any scam reported to it.

As a well known and trusted brand, unfortunately bad actors look to leverage consumers' trust in eBay as a means to facilitate email and phone scams (off our marketplace)³. Already, consumers can report any suspicious phone calls or emails they have received claiming to be from eBay⁴ and we use this information to work collaboratively with authorities (including Scamwatch). eBay also looks to engage with our community of users through our various social media channels to ensure people stay safe when buying online. An example is set out below:

² <https://www.accc.gov.au/media-release/concerning-issues-for-consumers-and-sellers-on-online-marketplaces>

³ <https://www.acma.gov.au/articles/2021-03/scam-alert-acma-warns-ebay-scam-phone-calls>

⁴ <https://www.ebay.com.au/help/account/protecting-account/recognising-phishing-phone-calls-emails?id=4195&st=3&pos=1&query=Recognising%20phishing%20phone%20calls%20and%20emails&intent=scams&luenceai=luenceai&dclid=HELP1107>



While eBay has mechanisms to protect users (such as the eBay Money back Guarantee⁵), these protections, understandably, are only offered for transactions that occur on our marketplace.

Although we already provide means for consumers to report on scams (whether on or off platform) and this information is shared with relevant authorities (e.g. Scamwatch), the proposal to act in response to all such reports would place a significant resource burden on platforms without benefit to addressing the scam behaviour.

It's critical, when a consumer is a victim of a scam, that they act quickly and engage with their financial institution to see whether payment to the scammer can be blocked. Focussing consumers on the platform whose brand may have been leveraged to build trust in the scam may ultimately stop this action from occurring. In addition, raising consumer expectations that a platform may offer redress for a scam (in circumstances where the platform played no role) seems manifestly unfair.

We note the Australian Communications and Media Authority (ACMA) has been tasked to investigate the potential for an SMS Sender ID register to address scams purportedly sent from Government agencies⁶. eBay would welcome that this investigation consider how SMS scams leveraging leading brands can also be blocked.

Beyond this, a wider consideration should be given to scam behaviour. One that considers scams more holistically and recognises the role financial institutions, consumer education and platforms can play in addressing their prevalence.

⁵ <https://pages.ebay.com.au/ebay-money-back-guarantee/>

⁶ <https://www.itnews.com.au/news/gov-wants-telcos-to-block-sms-impersonation-590806>

Consumer harms related to the online ticket reselling market for live events

We note Treasury has sought views on whether a more expansive list of consumer harms may be appropriately considered as part of this review, in particular harms relating to the online ticket reselling market for live events.

As the Treasury would be aware, over recent years a number of states and territories have implemented regulatory controls on the resale of tickets to live events. In addition the *Competition and Consumer (Australian Consumer Law—Electronic Ticket Resale Service) Information Standard 2022* (Cth) (the Standard) introduced requirements for parties reselling a ticket online to include specific information when doing so.

As a marketplace which does allow the listing of tickets for resale, we understand and appreciate these obligations and the consumer harms they are attempting to address. Our Events Tickets Policy⁷ states clearly the requirements for sellers listing tickets for resale on eBay. The policy makes clear that sellers must ensure they comply with all applicable laws and regulations when reselling tickets.

We are however concerned with the inconsistent nature of these regulations. eBay supports and encourages better alignment in these rules. Doing so will enable platforms to better identify and remove tickets that may be in breach of resale rules.

While it is not an automatic system to restrict at the listing level, we note that we have greater capacity to deploy sweeps for tickets in breach of resale laws under Victoria's *Major Events Act 2009*. That legislation allows the responsible Minister to nominate and declare major events which resale controls will be applied. Tickets to Victorian declared events are not allowed to be sold under eBay's events ticket policy. In discussion with the Department of Jobs Precincts and Regions we regularly set up sweeps to remove listings in breach in advance of these events.

We encourage consideration through the Consumer Affairs Forum for other states and territories to consider similar measures.

Independent External Ombudsman Scheme

The ACCC has proposed that in conjunction with new requirements for internal dispute resolution for designated platforms a new independent external ombudsman service for digital platforms be established.

While we are not opposed to exploring this proposal further, as ombudsman services are generally developed at an industry or economy wide level, the practical complexity of narrowing an ombudsman service to a group of unrelated platforms should be acknowledged.

⁷ <https://www.ebay.com.au/help/policies/prohibited-restricted-items/event-tickets-policy?id=4309>

As an example, many of the issues faced by consumers on what may be designated as an online marketplace platform may be faced by consumers when utilising other e-commerce marketplaces (for example lost items or items being delivered not as described). With many well known Australian retailers establishing online marketplaces alongside their existing e-commerce offering, it would create confusion for consumers that certain avenues for redress are available in respect of some online marketplaces but not all.

In addition, eBay notes that we have already established a Seller Support Playbook for the Australian Small Business and Family Enterprise Ombudsman as well as a number of state based small business commissioners. The Playbook provides these services with information regarding our dispute processes as well as provides a dedicated escalation route to raise complaints on behalf of small business.

We further note that if such a scheme were established a rationalisation of current ombudsmen and other consumer support services which platforms and consumers need to engage should be undertaken.

We would encourage the Treasury to consider this recommendation in more detail with a view to better understand and appreciate the complexities of its implementation.

Development of Industry Codes

We note the proposal from the ACCC for the development of a range of Industry Codes to be developed and targeted to address specific behaviours of Designated Digital Platforms.

For the reasons outlined above, we believe such codes should be developed at a service level to ensure they are reflective of the specific issues relevant to individual platform services and not platforms at large. As we stated at the outset we support principle based regulation that allows sufficient flexibility for platforms to respond to requirements reflective of relative risk of harm and business model. We support these codes being voluntary.

We thank you again for the opportunity to raise these matters. If the Treasury wishes to discuss these matters further, please feel free to contact the writer via laitken@ebay.com or +61 423 356 092.

Yours sincerely,



Luke Aitken

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