

January 25, 2024

Robert Bigler
CEO
TCGplayer, Inc.
440 S Warren St
Syracuse, NY 13202

Jamie Iannone
CEO
eBay Inc.
2025 Hamilton Avenue
San Jose, CA 95125

SENT VIA E-MAIL AND CERTIFIED MAIL

Re: Concerns with eBay-TCGplayer's Abuse of Monopoly Power Over Sellers and Monopsony Power Over Workers

Dear Mr. Bigler and Mr. Iannone,

We write to you as a group of sellers with serious concerns about eBay-TCGplayer's abuse of monopoly power over sellers, abuse of monopsony power over workers, and anticompetitive conduct to maintain its position as the dominant online trading card marketplace.

We are also troubled by the unchecked consolidation that has occurred in the trading card marketplace industry through a series of transactions, which started with ChannelFireball's acquisition of BinderPOS, the leading software for trading card inventory management. Shortly after, TCGplayer acquired ChannelFireball, and then—just a month later—eBay acquired TCGplayer. We suspect that this series of acquisitions, whether considered individually or together, may have been illegal. At a minimum, it has contributed to TCGplayer being the only option for many online sellers of trading cards.

As of today, TCGplayer is exploiting its market power over sellers and workers. We call on you, as the Chief Executive Officers of eBay and TCGplayer, respectively, to take immediate action to halt this harmful and possibly illegal conduct by reinstating seller accounts that appear to have been terminated in retaliation for expressing public support for workers or criticism of TCGplayer; establishing a clear policy against retaliatory treatment of sellers; ceasing to impede sellers' use of alternative platforms; bargaining in good faith with the TCGunion; and committing to be responsive to legitimate and well-founded seller concerns in order to help our business (and yours) thrive.

Mergers to Monopoly: Series of Acquisitions that led to eBay-TCGplayer Becoming a Monopoly

TCGplayer started eliminating competitors and making key industry tools exclusive to its own marketplace when it acquired ChannelFireball in July 2022.¹ Prior to the merger, ChannelFireball operated a marketplace that competed with TCGplayer and, two years earlier, it acquired BinderPOS, the market leader in trading card inventory management software. Multiple members of our group view TCGplayer's shutdown of the ChannelFireball Marketplace and absorbing of ChannelFireball's content arm into TCGplayer's own content services as a "killer acquisition." BinderPOS had marketed itself as a tool that would enable multi-platform synchronization and sales across multiple online retailers, increasing options in the industry for consumers and sellers alike. However, after TCGplayer took control of BinderPOS, talk of plans to make the software compatible with other marketplaces ceased. Today, in our experience, BinderPOS syncs exclusively with TCGplayer and no other online trading card platform. At this point, we, as sellers, had fewer options but could still turn to eBay as an alternative.

But then, just one month later, in August 2022, eBay acquired TCGplayer, causing further consolidation and less choice for sellers and consumers.² In fact, eBay itself stated that the acquisition of TCGplayer offered a way for it to "maintain its position as a desirable platform for trading card sellers," acknowledging the importance of combining with a key competitor. In less than two years, this series of potentially illegal acquisitions resulted in a hyper-consolidated online trading card game marketplace industry.

eBay-TCGplayer's Potentially Illegal Efforts to Maintain its Monopoly Power

Once eBay acquired TCGplayer, rolling it up into a single dominant entity, it appears that TCGplayer has continued to take actions that may amount to an illegal maintenance of monopoly power in violation of Section 2 of the Sherman Act.

For example, this past March, TCGplayer shut down the accounts of nearly 50 sellers, including members of our group. Initially, this was done suddenly and without any explanation, but later the company said that it was a response to sellers using a tool to sync their inventory with Card Trader, a much smaller but growing platform. TCGplayer claimed that the use of the tool violated its terms and conditions, but according to our sources the tool Card Trader made available to sellers was purposefully designed not to be intrusive or burdensome on TCGplayer's systems; nor did it access any of TCGplayer's proprietary information. Despite this, TCGplayer sent a cease-and-desist letter to Card Trader causing it to shut down access to its multi-homing tool.

In addition, TCGplayer does not allow BinderPOS to work with other platforms and, although it used to, the company no longer makes its API publicly available.³ These tactics block

¹ *TCGplayer to Acquire ChannelFireball and BinderPOS*, PRNewswire (Jul. 11, 2022), <https://www.prnewswire.com/news-releases/tcgplayer-to-acquire-channelfireball-and-binderpos-301583431.html>.

² Aisha Malik, *eBay is Acquiring Trading Card Marketplace TCGplayer for up to \$295M*, TechCrunch (Aug. 22, 2022), <https://techcrunch.com/2022/08/22/ebay-acquiring-trading-card-marketplace-tcgplayer-295m/>.

³ *TCGplayer Developer Page*, <https://developer.tcgplayer.com/> (last visited Dec. 1, 2023).

sellers from synchronizing their inventories across platforms, which forces sellers to use TCGplayer exclusively and erects insurmountable barriers to entry for any would-be competitors.

Harm to eBay-TCGplayer Sellers and Consumers

TCGplayer's abuse of monopoly power harms individuals and small business owners, including the undersigned, who sell and buy trading cards online. With no real alternatives, sellers and consumers are stuck with a degraded platform. Sellers in our group are often ignored when requesting that TCGplayer consider reasonable bug fixes and updates. Consumers are also missing out on the benefits of a competitive marketplace. For example, before it acquired ChannelFireball, TCGplayer offered discounts of up to 15% off purchases on a weekly basis. These discounts coincided with ChannelFireball entering the market, suggesting that TCGplayer offered them to prevent its customers from buying on the new platform, thereby blocking a new entrant from gaining a foothold. After TCGplayer acquired ChannelFireball, these discounts have become much fewer and farther between.

Additionally, TCGplayer has exercised its monopoly power through arbitrary suspensions, bans, and deactivations of seller accounts, often without any explanation, including those of several members of our group. This has led to a chilling effect on sellers' ability to exercise free speech to discuss potential alternatives to TCGplayer, such as Card Trader, or their support of TCGplayer workers and the TCGunion. The fear of sudden and severe retaliation has even dissuaded some sellers from expressing any discontent with the state of the platform in general. In one case, a seller in our group had their account instantly deleted on a Friday night, without any warning or apology, due to a tweet that was taken out of context and misunderstood. This caused the seller significant burden to get his account restored and lost sales. TCGplayer can act in this way as a direct result of the monopoly it has and actively maintains in the online trading card game marketplace industry.

Harm to eBay-TCGplayer Workers

Sellers have frequently expressed support for the TCGunion members who make their business on the platform possible. eBay-TCGplayer has engaged in a nearly year-long campaign to suppress its employees' rights to join a union and bargain with their employer. eBay-TCGplayer refused to recognize the union after the employees won their union election and continues to employ the union-busting law firm of Littler Mendelson to hinder the employees' ability to engage in substantive collective bargaining with the company.

Conclusion

We urge eBay and TCGplayer to take the concerns outlined in this letter seriously and immediately take the following actions to remedy some of the company's misconduct:

- **Respect for Free Speech:** Reinstate all seller accounts that were terminated in response to a seller's exercise of free speech, including instances where TCGplayer shut down accounts in response to the account holder's public expression of concerns about how the company treats its workers or support for the TCGunion.

- **Freedom from Retaliation:** Inform sellers that the company will not penalize or retaliate against sellers for exercising free speech or selling on other platforms; and that TCGplayer expressly permits the utilization of tools that comply with current TCGplayer terms and conditions to sell on other platforms.
- **Bargain in Good Faith with TCGunion:** End eBay’s relationship with union-busting law firm Littler Mendelson and commit to bargain fairly with TCGunion and reach an agreement in a timely manner.
- **Fair Treatment of Sellers:** Stop taking its sellers for granted and ensure that sellers have access to fair pricing, high quality services, up-to-date technology and tools, timely responses to requests for assistance, and due process before taking adverse action with respect to any seller account.

We ask that eBay-TCGplayer contact us within two weeks to arrange a meeting to discuss implementation of these commonsense remedies. You can contact us through Amanda Lewis, of Cuneo Gilbert & LaDuca, LLP, via email at alewis@cuneolaw.com. If the company is not willing to be responsive to our concerns, we are prepared to take additional steps to seek assistance from elected officials and the relevant competition enforcement agencies. In a climate closely attuned to the ongoing mistreatment of workers and abuse of monopoly power by dominant digital marketplaces,⁴ we stand ready to ask our representatives and regulatory agencies to intervene on behalf of sellers, consumers, and workers.

Thank you for your attention to this matter.

Sincerely,

Alanson Seybold
Winchester, IN

Chase Michael Fisher – PlayMaker Haven
Harrodsburg, KY

Douglas (DJ) Johnson – Card Garden
Syracuse, NY

Harry Colyer
Cincinnati, OH

⁴ See, e.g., Haleluva Hadero, *Amazon Sued by FTC and 17 States Over Allegations it Inflates Online Prices and Overcharges Sellers*, AP News (Sept. 26, 2023), <https://apnews.com/article/amazon-ftc-lawsuit-antitrust-1b91bf8026cc3edf81e817cf8596c4bf>; Annie Palmer, *Amazon Faces Senate Probe Over Warehouse Safety*, CNBC (June 20, 2023), <https://www.cnbc.com/2023/06/20/amazon-faces-senate-probe-over-warehouse-safety.html>.

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CC: The Board of Directors of eBay Inc.