

# **Response to Request for Information for Public Comments on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies**

**Federal Trade Commission and U.S. Department of Justice Antitrust Division**

**Docket No. FTC-2024-0028**

*Submitted August 29, 2024*

## **I. Introduction**

We are a group of trading card game merchants who do business online. We write in response to the Federal Trade Commission (FTC) and Department of Justice (DOJ) joint Request for Information (RFI) for Public Comments on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies. In our comments, we share our experience and concerns with eBay/TCGplayer, the dominant online trading card marketplace. eBay/TCGplayer's aggressive roll-up of this industry over the past two years has resulted in a substantial loss of competition and led to the platform obtaining monopoly power over online sellers of trading cards. As set forth below, this roll-up strategy by eBay/TCGplayer has caused significant harm to competition and anticompetitive effects for sellers and consumers, alike.

## **II. Mergers to Monopoly: Series of Acquisitions that Led to eBay/TCGplayer Becoming the Dominant Online Marketplace for Trading Card Games**

Over the past two years, eBay/TCGplayer has consolidated the online trading card marketplace through a series of acquisitions. The platform has used these acquisitions, both horizontal and vertical, to expand and entrench its market power.

The roll-up strategy began in July 2022, when TCGplayer acquired ChannelFireball. With that acquisition TCGplayer started down the road of eliminating competitors and blocking competitors' access to key industry tools. Prior to the merger, ChannelFireball operated a marketplace that competed with TCGplayer. And, two years earlier, in 2020, ChannelFireball completed a merger with BinderPOS, the market leader in trading card inventory management software. Multiple members of our group view TCGplayer's acquisition and subsequent shutdown of the ChannelFireball Marketplace, including the absorption of ChannelFireball's content arm into TCGplayer's own content services, as a "killer acquisition." eBay/TCGplayer's acquisition of BinderPOS, in particular, enabled the company to gain control over, and deny access for rivals, to a critical input—the BinderPOS inventory management system. At this point, we, as sellers, had fewer options but could still turn to eBay as an alternative.

In August 2022, just one month after TCGplayer acquired ChannelFireball, eBay announced its acquisition of TCGplayer, which it completed two months later, causing further consolidation and less choice for sellers and consumers. In fact, eBay itself acknowledged the importance of acquiring its key competitor, stating that the TCGplayer acquisition allowed it to "maintain its position as a desirable platform for trading card sellers."<sup>1</sup> In less than two years, this series of competition-killing mergers resulted in a hyper-consolidated market for online trading card marketplaces.

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<sup>1</sup> 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/>.

More recently, in April 2024, eBay continued its strategy of merging with competitors by acquiring Goldin, a leading U.S.-based auction site for high-value sports trading cards and memorabilia, from Goldin's parent company Collectors.<sup>2</sup> With the acquisition of Goldin, eBay eliminated one of its key competitors in the online auction marketplace for sports trading cards and memorabilia.

### **III. Harm to Competition, eBay-TCGplayer Sellers, Consumers, and Workers**

eBay/TCGplayer's dominance enables it to charge excessive fees and engage in other conduct that may otherwise disqualify the platform as one that buyers and sellers would choose over a suitable alternative. The platform has angered buyers and sellers by ignoring (and at times retaliating against) their complaints about platform updates, platform rules, and workers' rights. In addition, eBay/TCGplayer has been overcharging sellers by charging them unfair, deceptive, and excessive fees.<sup>3</sup> On this last point, sellers have no choice but to pay the large and unreasonable junk fees that eBay/TCGplayer demand, as they cannot vote with their feet. eBay/TCGplayer is the one and only online marketplace option for U.S. sellers. Because sellers operate on thin margins, sellers must pass on the higher cost of selling to consumers. As such, eBay/TCGplayer's abuse of monopoly power over sellers artificially and unfairly inflates costs for consumers as well.

Following eBay's acquisition of TCGplayer, it appears that the combined eBay/TCGplayer has continued to take actions that further expand and entrench its monopoly power, which may amount to illegal maintenance of monopoly power in violation of Section 2 of the Sherman Act and Section 5 of the FTC Act.<sup>4</sup> For example, TCGplayer does not allow BinderPOS to work with other platforms and, although it used to, the company no longer makes its API publicly available. eBay/TCGplayer's exclusionary conduct with respect to BinderPOS provides further evidence that eBay's acquisition of TCGplayer was anticompetitive. The platform's control over a critical input (the BinderPOS inventory management tool) has enabled it to block entry from would-be competitors. Before TCGplayer acquired it, BinderPOS had marketed itself as a tool that would enable multi-platform synchronization and sales across multiple online retailers, increasing options for consumers and sellers alike. After TCGplayer took control of BinderPOS, however, 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. The company's exclusionary conduct blocks 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.

Furthermore, with little to no incentive to compete for sellers' business, the platform has failed to ensure fair pricing, high quality services, up-to-date technology and tools, timely

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<sup>2</sup> Liz Morton, *eBay Acquires Goldin From Collectors, Sells eBay Vault to PSA*, Value Added Resource (Apr. 10, 2024), <https://www.valueaddedresource.net/ebay-acquires-goldin-auctions-sells-ebay-vault-to-psa/>.

<sup>3</sup> See Anon., Comment Letter on Trade Regulation Rule on Unfair or Deceptive Fees (Feb. 7, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3273> (providing comprehensive description of eBay/TCGplayer's unfair and deceptive fees).

<sup>4</sup> See Petition for FTC to Investigate eBay/TCGplayer for Anticompetitive Mergers and Alleged Unfair and Deceptive Practices and Unfair Methods of Competition in Violation of Section 5 of the FTC Act (May 23, 2024), [theroccoalition.com/rocc-member-and-other-sellers-file-ftc-petition-to-investigate-ebay-tcgplayer-for-seller-junk-fees-and-abuse-of-monopoly-power/](https://theroccoalition.com/rocc-member-and-other-sellers-file-ftc-petition-to-investigate-ebay-tcgplayer-for-seller-junk-fees-and-abuse-of-monopoly-power/).

responses to requests for assistance, and due process before taking adverse action with respect to seller accounts. For example, in March 2023, TCGplayer shut down the accounts of nearly 50 sellers, including members of our group. The company took this action suddenly and without any explanation. Only later did the company explain 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 tool's use 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.<sup>5</sup>

In early 2024, eBay/TCGplayer clearly demonstrated the extent to which this monopoly takes the business of third-party sellers for granted, safe in their knowledge that sellers have no other viable options. In January 2024, a group of sellers sent a letter directly to the CEOs of eBay and TCGplayer outlining significant concerns, asking for a meeting, and requesting remedial action.<sup>6</sup> The company's response was largely dismissive and non-responsive. Notably, the petition associated with the January seller letter continues to gain support among members of the TCGplayer community.<sup>7</sup>

eBay/TCGplayer's roll up strategy also contributes to its ability to treat its workers unfairly with no apparent fear of consequences, such as workers leaving to find a better job elsewhere. eBay-TCGplayer has engaged in a nearly two-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. Many of TCGplayer's workers have a specialized skill set that is uniquely suited to jobs in the trading card game industry and an affinity for the industry. With fewer independent market participants, workers have fewer employers to whom they can shop their labor. Similar to how eBay/TCGplayer abuses its market power over sellers, less competition contributes to the platform's ability to take its workers for granted.

#### **IV. Conclusion**

As explained above, eBay/TCGplayer has engaged in a roll-up strategy to corner the online trading card marketplace industry. Applying the FTC and DOJ 2023 Joint Merger Guidelines (the "Guidelines") to eBay/TCGplayer's serial acquisition strategy indicates that this

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<sup>5</sup> Interview with Card Trader (Nov. 15, 2023).

<sup>6</sup> TCGplayer Seller Letter, [https://cwa-union.org/sites/default/files/2024-02/seller\\_letter\\_to\\_tcgplayer\\_final.1.25.24.pdf](https://cwa-union.org/sites/default/files/2024-02/seller_letter_to_tcgplayer_final.1.25.24.pdf); Rebekah Valentine, *Group of Card Sellers Accuses eBay of Retaliation Over Their Support of TCGplayer Union*, IGN (Mar. 20, 2024), <https://www.ign.com/articles/group-of-card-sellers-accuses-ebay-of-retaliation-over-their-support-of-tcgplayer-union>.

<sup>7</sup> Tell eBay and TCGPlayer: Stop Abusing Monopoly Power and Treat Sellers Fairly, Action Network, [https://actionnetwork.org/petitions/tell-ebay-and-tcgplayer-treat-sellers-fairly?clear\\_id=true](https://actionnetwork.org/petitions/tell-ebay-and-tcgplayer-treat-sellers-fairly?clear_id=true) (last visited Aug. 22, 2024).

conduct may violate Section 7 of the Clayton Act.<sup>8</sup> The Guidelines make clear that “[w]here one or both of the merging parties has engaged in a pattern or strategy of pursuing consolidation through acquisition, the Agencies will examine the impact of the cumulative strategy under any of the other Guidelines to determine if that strategy may substantially lessen competition or tend to create a monopoly.”<sup>9</sup> We believe that eBay/TCGplayer’s roll-up meets this criterion. As such, we urge the FTC to investigate eBay/TCGplayer’s roll-up scheme and other potential violations of antitrust law.

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<sup>8</sup> DEP’T OF JUSTICE & FED. TRADE COMM’N 2023 MERGER GUIDELINES (2023), <https://www.ftc.gov/reports/merger-guidelines-2023>.

<sup>9</sup> *Id.*