

May 20, 2024

Chair Lina Khan  
Commissioner Kelly Slaughter  
Commissioner Alvaro Bedoya  
Commissioner Melissa Holyoak  
Commissioner Andrew N. Ferguson  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: 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**

Dear Chair Khan and Commissioners Slaughter, Bedoya, Holyoak, and Ferguson:

We, the undersigned TCGplayer sellers, respectfully request that the U.S. Federal Trade Commission commence an investigation of eBay/TCGplayer for conduct that we believe violates Section 5 of the Federal Trade Commission Act. We have serious concerns about eBay/TCGplayer's apparently deceptive and anticompetitive conduct, which the company has deployed to build and maintain its monopoly. Today, there is no question that eBay/TCGplayer is the dominant online trading card game marketplace in the U.S. Furthermore, eBay/TCGplayer continues to abuse its monopoly power over third-party sellers by imposing unfair and deceptive fees, as well as engaging in unfair and deceptive practices. Specifically, we have reason to believe that:

- eBay/TCGplayer has engaged in a roll-up of the online trading card game marketplace industry through a series of acquisitions, making it a monopolist in this space.
- To protect its monopoly, eBay/TCGplayer has retaliated against sellers for using software that would enable them to sell on rival marketplaces; and, through a merger, acquired exclusive control over another key inventory management tool.
- eBay/TCGplayer overcharges sellers and consumers through unfair and deceptive "junk fees."
- eBay/TCGplayer engages in an unfair method of competition as well as unfair and deceptive conduct by competing directly with sellers without adequate disclosure that (i) they are doing so; and (ii) that they are doing so with unfair advantages.

We, along with other concerned TCGplayer sellers, have previously raised concerns

with eBay/TCGplayer’s treatment of sellers (and workers) to no avail. In January 2024, a group of sellers sent a letter directly to the CEOs of eBay and TCGplayer outlining some of our concerns, asking for a meeting, and requesting remedial action.<sup>1</sup> The company’s response was largely dismissive and non-responsive.<sup>2</sup> Notably, the petition associated with the January seller letter continues to gain support among members of the TCGplayer community, with over 40 signatures to date.<sup>3</sup> In February, we provided our input in response to the FTC’s Notice of Proposed Rulemaking on Unfair or Deceptive Fees.<sup>4</sup> That submission described the “junk fees” outlined in this petition and urged the agency to ensure that its final rule explicitly prohibits eBay/TCGplayer and other dominant platforms from abusive fee practices that cause harm to third-party sellers and consumers. To date, we have not seen any relief or change in eBay/TCGplayer’s conduct. In fact, recent reporting by investigative journalist Liz Morton indicates that the platform has engaged in additional unfair and deceptive practices.<sup>5</sup>

In light of President Biden’s recently announced interagency Strike Force on Unfair and Illegal Pricing, co-chaired by the FTC and the U.S. Department of Justice, as well as the FTC’s authority to enforce Section 5 of the FTC Act, we now call on the FTC to open an investigation into eBay/TCGplayer’s problematic and potentially illegal conduct.

Thank you for your consideration and please do not hesitate to contact Amanda Lewis ([alewis@cuneolaw.com](mailto:alewis@cuneolaw.com)) at Cuneo Gilbert & LaDuca, LLP, who is filing this petition on behalf of the undersigned group of TCGplayer sellers, with any follow-up questions.

## **I. 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 game marketplace through a series of acquisitions. eBay/TCGplayer used these acquisitions, both horizontal and vertical, to grow and lock in its near-complete power over the market.

TCGplayer started eliminating competitors and making key industry tools exclusive to its own marketplace when it acquired ChannelFireball in July 2022. Prior to the merger,

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<sup>1</sup> See Appendix A: 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>2</sup> See Appendix B: eBay/TCGplayer Response to Seller Letter.

<sup>3</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 May 9, 2024).

<sup>4</sup> Comment on Proposed Trade Regulation Rule on Unfair or Deceptive Fees (Feb. 8, 2024), <https://www.regulations.gov/comment/FTC-2023-0064-3273>.

<sup>5</sup> Liz Morton, *eBay Sets Up Shop Using TCGPlayer to Hide Conflict of Interest While Competing With Sellers On the Platform*, Value Added Resource (Apr. 12, 2024), <https://www.valueaddedresource.net/ebay-tcgplayer-competes-with-sellers/>.

ChannelFireball operated a marketplace that competed with TCGplayer. 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.” 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 acquired TCGplayer, 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>6</sup> In less than two years, this series of potentially illegal acquisitions resulted in a hyper-consolidated online trading card game marketplace industry.

Just last month, in April 2024, eBay acquired Goldin, a leading U.S.-based auction site for high-value sports trading cards and memorabilia from Goldin’s parent company Collectors.<sup>7</sup> With the acquisition of Goldin, eBay/TCGplayer eliminated a competitor of eBay’s in the online auction marketplace for sports trading cards and memorabilia.

## **II. eBay/TCGplayer’s Potentially Illegal Efforts to Maintain its Monopoly Power**

Following eBay’s acquisition of TCGplayer, completing its roll-up strategy, it appears that TCGplayer has continued to take actions that may amount to illegal maintenance of monopoly power in violation of Section 2 of the Sherman Act.

For example, in March 2023, 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 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.

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. eBay/TCGplayer’s exclusionary conduct with respect to BinderPOS provides further evidence that eBay’s acquisition of TCGplayer was

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<sup>6</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/>.

<sup>7</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/>.

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.

### **III. eBay/TCGplayer Engages in Conduct that May Violate Section 5 of the FTC Act's Prohibition on Unfair and Deceptive Practices and Unfair Methods of Competition**

#### **A. eBay/TCGplayer Seller Fees Are Unfair and Deceptive**

eBay/TCGplayer's dominance enables it to extract "junk fees" from sellers. As outlined in the eBay/TCGplayer Marketplace Fee Chart,<sup>8</sup> eBay/TCGplayer charges a series of fees, dependent on a given seller's "seller type," including the "Marketplace Commission Fee," "Pro Fee," "Direct Shipping Replacement Cost," "Sync Fee," and "Domestic [Credit Card]/Paypal Processing Fee." The platform applies two of these fees in an egregiously unfair and deceptive manner, doubling up on pass-through charges to extract additional profits (sometimes tripling, quadrupling, or more).

eBay/TCGplayer uses one of its most popular features to do this. Using the "Cart Optimizer," buyers are given the option to add multiple (anywhere from 1 to over 2,500) cards to their cart and use the tool to select the best combination of sources/sellers to buy from to suit the shopper's goals. This means that a buyer may place one order of multiple cards, portions of which often come from different sellers' inventories. The method used by eBay/TCGplayer to apply these fees is a misrepresentation of the nature and purpose of these fees.

#### **i. eBay/TCGplayer Overcharges Sellers for PayPal/Credit Card Processing Fees**

As can be seen in the Fee Chart, eBay/TCGplayer represents that the "Domestic CC/Paypal Processing Fee" is applied uniformly to all seller types at a level of "2.5% + \$0.30" of the total amount. If a buyer uses a credit card or PayPal account to pay for the order instead of a debit card, all fees are inclusive of "item amount + shipping cost + taxes." In a scenario such as the one outlined above, in which a buyer places an order involving multiple sellers, only one transaction happens between the buyer and eBay/TCGplayer and, therefore, eBay/TCGplayer is charged (at most) a one-time processing fee for that order. However, the "pass-through" for this processing fee is currently charged separately to each seller, rather than split among the sellers involved in the order. In the case of the "2.5%" part of this fee, this

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<sup>8</sup> See Appendix C: TCGplayer Marketplace Fee Chart ("Fee Chart"), <https://help.tcgplayer.com/hc/en-us/articles/201357836-TCGplayer-Fees>.

would seem to effectively split the fee among each seller, since each seller is charged the percentage of their own sale in relation to the larger order. On the other hand, the additional \$0.30 charged to each seller is an unfair and deceptive profit-earning mechanism that eBay/TCGplayer gets away with applying. Over the course of “thousands of daily transactions spanning tens of thousands of individual items,” this seemingly insignificant \$0.30 becomes a dauntingly large sum taken from eBay/TCGplayer sellers.<sup>9</sup> In turn, eBay/TCGplayer is artificially and unfairly inflating costs for consumers.

For example, it may be the case that a buyer purchases 20 cards from 5 different sellers for a price of \$40, using PayPal or a credit card. eBay/TCGplayer represents that, in this case, the platform would charge the seller a processing fee of 2.5% + \$0.30 (which amounts to \$1.30). The platform then passes that same fee through to each seller, collecting an extra \$1.50 ( $\$0.30 * 5$  sellers).<sup>10</sup> Based on those amounts, eBay/TCGplayer has now pocketed an overcharge of at least \$1.50 from simply duplicating the processing fees for this transaction as many times as the number of different sellers—in this case 5 times. If a few thousand such transactions happen per day with roughly the number of sellers outlined in this example, eBay/TCGplayer has pocketed around \$5,000 in one day alone from this deceptive tactic.

## ii. eBay/TCGplayer Overcharges Sellers for Shipping Fees

A similar tactic is used by eBay/TCGplayer in charging duplicative pass-through fees for shipping costs. As referenced in the Fee Chart, eBay/TCGplayer charges sellers for shipping replacement costs, which are based on order value and card quantity. The platform outlines their fee calculation in a separate chart titled “TCGplayer Shipping Replacement Costs” (“Shipping Costs Chart”).<sup>11</sup> As part of the “TCGplayer Direct” program, one order fulfilled by many sellers is shipped together from the TCGplayer facility. The platform initially fronts identical copies of the cards purchased from the sellers in order to quickly ship the buyer all the cards in one package. Sellers are then responsible for shipping their copies into the TCGplayer facility to replace the inventory.<sup>12</sup> This process is carried out to be more convenient for the buyer, allowing them to receive one package for the order, rather than several (one from each seller involved in the order). However, eBay/TCGplayer exploits this, charging unfair shipping costs. These fees are described as “Direct Program Fees” on sellers’ statements, further confusing the true nature and purpose of the fees.

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<sup>9</sup> See *Your Collectible’s Worth in Real-Time*, TCGplayer, <https://help.tcgplayer.com/hc/en-us/articles/213588017-TCGplayer-Market-Price> (last visited May 9, 2024).

<sup>10</sup> This is calculated assuming eBay/TCGplayer pays the 2.5% + \$0.30 and has not used its leverage, as a large marketplace with a high volume of transactions, to negotiate a lower processing fee for itself. In the likely event that eBay/TCGplayer has been given a lower processing cost, their profits from this deceptive fee practice would be even higher than estimated here.

<sup>11</sup> See Appendix D: TCGplayer Shipping Replacement Costs (“Shipping Costs Chart”), <https://mktg-assets.tcgplayer.com/web/seller/guides/TCGplayer-Direct-Shipping-Replacement-Costs.pdf>.

<sup>12</sup> It is important to also keep in mind that sellers are responsible, out of their own pocket, for the additional shipping costs involving sending their cards to reimburse the TCGplayer inventory. This is yet another added cost that TCGplayer’s policy creates for sellers that can inflate prices and squeeze sellers’ already-tight margins.

This situation is also best illustrated through the example set forth above. In the above example, the total order amount of \$40 would fall into the “Package Tier” of the Shipping Costs Chart. If each seller is the source of 4 cards, the shipping replacement costs are set to \$4.17 for each seller. On the chart itself, eBay/TCGplayer claims that normal shipping expenses (without the use of their program) would cost the sellers \$4.47-\$7.12, claiming to save the sellers between \$0.30 and \$2.95 each. However, this is far from the case. A shipment, from Washington, D.C., to Los Angeles, California, of 1-35 cards in a padded envelope would cost about \$4.36.<sup>13</sup> Meanwhile, eBay/TCGplayer only has to pay a one-time shipping fee to send the package to the buyer. Effectively, eBay/TCGplayer has now pocketed \$16.49 from duplicating shipping replacement costs instead of splitting the shipping fee among the sellers ( $\$4.17 * 5 \text{ sellers} = \$20.85 - \text{actual shipping cost of } \$4.36 = \$16.49$ ). If a few thousand such transactions happen per day, considering a charge of \$4.17 (at the extreme low end of the Shipping Costs Chart), eBay/TCGplayer has made nearly \$50,000 in one day from this deceptive tactic. Notably, eBay/TCGplayer may be making even more per transaction to the extent it is also charging buyers for shipping, which it does in some circumstances, pocketing additional fees from the buyers’ end.

## **B. eBay/TCGplayer Competes with Third-Party Sellers on its Own Platform Despite Making Public Facing Representations to the Contrary**

Despite eBay repeatedly making representations that it does not compete with sellers on its platform, newly uncovered evidence by investigative journalist Liz Morton indicates that eBay uses its ownership of TCGplayer to do exactly that.<sup>14</sup> As recently as March 2023, eBay’s Vice President of Seller Experience Xiaodi Zhang, stated, “eBay is still unique in the fact that we never compete with our sellers.”<sup>15</sup> eBay/TCGplayer did not admit to this conduct until TCGplayer had been selling on eBay for months and, even then, only published the disclosure via a TCGplayer site blog post, not on eBay itself.<sup>16</sup> Furthermore, there is nothing on the TCGplayer profile on the eBay store or listing pages that would inform consumers or sellers that TCGplayer is owned by eBay, giving the false impression that TCGplayer is just another third-party seller.<sup>17</sup> eBay even advertises on the TCGplayer seller account page with messaging that says TCGplayer is “one of eBay’s most reputable sellers” and has awarded TCGplayer the consumer-trust-enhancing “Direct from Brand” badging, even though the items being

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<sup>13</sup> Price calculated via Stamps.com using proper weight and size dimensions for the example given, via USPS Ground Advantage.

<sup>14</sup> Morton, *supra* note 5.

<sup>15</sup> Nicole Silberstein, *Ebay VP on the Platform’s Competitive Advantage: ‘We Don’t Compete With Our Sellers’*, Retail TouchPoints (Mar. 2, 2023), <https://www.retailtouchpoints.com/topics/digital-commerce/ebay-vp-on-the-platforms-competitive-advantage-we-dont-compete-with-our-sellers>; Madeline Stone, *eBay Exec Reveals a key Advantage for Sellers Choosing the Site Over Rivals Like Amazon*, Business Insider (May 26, 2019), <https://www.businessinsider.com/ebay-exec-dont-compete-with-sellers-2019-5>;

<sup>16</sup> Sam Bermudez, *FAQ: TCGplayer Selling Sealed and Serialized Cards on eBay*, TCGplayer (Apr. 8, 2024), <https://seller.tcgplayer.com/articles/faq-tcgplayer-selling-sealed-and-serialized-cards-on-ebay/>.

<sup>17</sup> *TCGplayer (Seller Profile)*, eBay, <https://www.ebay.com/str/tcgplayer> (last visited May 9, 2024).

sold are not manufactured by TCGplayer (as would normally be the case with such badging).<sup>18</sup>

It appears that eBay/TCGplayer may be following Amazon's playbook of using its control over its platform to secretly and unfairly compete with third-party sellers.<sup>19</sup> eBay/TCGplayer has access to data about consumers and competitors due to its control over eBay.com that other third-party sellers lack. We urge the FTC to investigate whether eBay's conduct in this respect is unfair and deceptive by virtue of its failure to disclose that the company now competes with third-party sellers and does so with an information advantage. Furthermore, we suspect that eBay is using its asymmetric access to information and control over its platform to self-preference and give itself an unfair advantage over other sellers, potentially in violation of Section 5's prohibition on unfair methods of competition.

#### IV. Conclusion

As described above, eBay/TCGplayer has engaged in a series of potentially anticompetitive mergers, anticompetitive conduct, unfair and deceptive practices (including extracting "junk fees" from third-party sellers), and unfair methods of competition. This conduct is harmful to TCGplayer sellers as well as consumers. For example, cost savings from the elimination of eBay/TCGplayer's excessive fees would likely be passed through to consumers.

Based on reasonable estimates pulled from TCGplayer's own fee schedules and website and the examples discussed in this petition, eBay/TCGplayer could be making somewhere around \$20 million annually as a result of the overcharge scheme alone.<sup>20</sup> These funds are extracted directly from eBay/TCGplayer sellers (and buyers) through a strategy of deceptive fee practices. This does not include additional harm to competition that occurs as a result of eBay/TCGplayer's current strategy that appears to consist of directly competing with (and undercutting) its own sellers.

In sum, we urge the FTC to open an investigation into eBay/TCGplayer into the conduct described above for the benefit of TCGplayer sellers and consumers, as well as the broader trading card game industry.

Respectfully Submitted,

Alanson Seybold – Nostalgia Dealer IN  
Winchester, IN

Douglas (DJ) Johnson – Card Garden  
Syracuse, NY

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<sup>18</sup> Morton, *supra* note 5.

<sup>19</sup> An example of how eBay/TCGplayer has directly competed with and undercut third-party sellers can be seen in Appendix E. *See* Appendix E: eBay/TCGplayer Screenshot Direct Competition with Sellers.

<sup>20</sup> The estimated figure of \$20 million annually was calculated using the estimates of daily deceptive fee extraction outlined in this petition ( $\sim\$55,000 * 365 = \sim\$20$  million).

Jason Weiss – Dancing Frog Games  
Providence, RI

Thomas Glavan – Tech Dragon Gaming  
New London, CT

William Pickles  
Whitesboro, NY

Ze’eva Chasan  
Boston, MA

TCGplayer Seller  
Harrodsburg, KY

TCGplayer Seller  
Cincinnati, OH

TCGplayer Seller  
Salisbury, NC

cc:

Henry Liu  
Director, Bureau of Competition  
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600 Pennsylvania Avenue, NW  
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Samuel Levine  
Director, Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580



**APPENDIX A:**  
**TCGplayer Seller Letter**

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> These tactics block

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

<sup>2</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/>.

<sup>3</sup> *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](mailto: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,<sup>4</sup> 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

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<sup>4</sup> 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>.

Jason Weiss – Dancing Frog Games  
Providence, RI

Level Up  
Eau Claire, WI

Thomas Glavan – Tech Dragon Gaming  
New London, CT

William Pickles  
Whitesboro, NY

Ze’eva Chasan  
Boston, MA

TCGplayer Seller  
Missouri

TCGplayer Seller  
North Carolina

TCGplayer Seller  
Michigan

TCGplayer Seller  
Tennessee

CC: The Board of Directors of eBay Inc.

**APPENDIX B:**

**e/Bay TCGplayer Response to Seller Letter**



EBAY INC.  
2025 HAMILTON AVENUE  
San Jose, California 95125

February 13, 2024

Via E-mail (alewis@cuneolaw.com)

Amanda Lewis  
Cuneo Gilbert & LaDuca, LLP  
4725 Wisconsin Ave., Suite 200  
Washington, D.C. 20016

Re: Alleged TCGplayer Unfair Practices

Dear Sellers:

We are in receipt of your letter dated January 25, 2024, alleging “serious concerns about eBay-TCGplayer’s abuse of monopoly power over sellers, abuse of monopoly power over workers, and anticompetitive conduct to maintain its position as the dominant online trading card marketplace.”

TCGplayer denies all such allegations. As a threshold matter, TCGplayer operates in a highly-competitive landscape and obtained all necessary regulatory approvals for its prior acquisitions. TCGplayer champions fairness for all users of the platform and for its workers. While TCGplayer did deactivate approximately 50 seller accounts in March 2023, it did so because certain sellers used software that infringed TCGplayer’s intellectual property, engaged in the unauthorized computer access of protected non-public TCGplayer sites, and misappropriated TCGplayer proprietary information—all in violation of federal and state law. The deactivation of the referenced accounts complied fully with the applicable user terms.

TCGplayer remains committed to reaching a collective bargaining agreement with the Communications Workers of America (CWA). In August, the NLRB dismissed our appeal seeking to clarify whether certain workers were part of the bargaining unit. We reached out to the CWA the very next day to organize bargaining dates. Since then, TCGplayer has met regularly with the CWA and continues to make progress toward a first labor contract.

eBay was founded on the principle that commerce should be accessible to all and has been recognized for its support of sellers and small businesses for over 28 years. eBay has a reputation for empowering sellers and has been recognized for this commitment for 28 years. Similarly, eBay has been recognized as a decades-long destination for employees. We constantly strive to address concerns surfaced by all members of our greater community.

Sincerely,

  
Aaron Johnson  
VP, Legal



**APPENDIX C:**

**TCGplayer Marketplace Fees Chart (“Fees  
Chart”)**

# TCGplayer Fees

When selling with TCGplayer, commission fees are applied to your transaction based on where the sale took place and which programs you are a part of. The commission and Pro fee total is capped at \$50 per product sold. Example: An order that contains 2 \$1000 cards would have a total commission and Pro fees of \$100, \$50 for each card.

Please refer to the table below for the different fee structures available.

*Note: TCGplayer charges fees based on the subtotal (item amount + shipping cost). We do not charge fees on taxes for orders paid by debit card. However, credit cards and PayPal do include taxes when determining the fee, and this amount is used to cover the added processing costs for those payment methods (item amount + shipping cost + taxes).*

## Marketplace Fees

Seller Type	Marketplace Commission Fee	Pro Fee	Direct Shipping Replacement Cost	Sync Fee	Domestic CC/Paypal Processing Fee*
Marketplace Seller (Level 1-4 Account)	10.25%	N/A	N/A	N/A	2.5% + \$.30
Marketplace Seller (Pro, Non-Direct Account)	9.25%	2.5%	N/A	N/A	2.5% + \$.30
Marketplace Seller (Crystal Commerce, BinderPOS, or Ion Sync Account*)	9.25%	N/A	N/A	Determined by Sync Provider	2.5% + \$.30
Direct Seller (Non-Pro, Non-Sync Account)	8.95%	N/A	Varies by order size	N/A	2.5% + \$.30
Direct Seller (Pro Account)	8.95%	2.5%	Varies by order size	N/A	2.5% + \$.30
Direct Seller (Crystal Commerce, BinderPOS, or Ion Sync Account*)	8.95%	N/A	Varies by order size	Determined by Sync Provider	2.5% + \$.30

**APPENDIX D:**

**TCGplayer Shipping Replacement Costs**  
**(“Shipping Costs Chart”)**



## TCGplayer Shipping Replacement Costs

Updated January 2024

Package Value	Number of Cards	Your Normal Shipping Expenses		Through TCGplayer Direct	Your Savings!	
		Low	High	Shipping Replacement Cost	Low	High
\$2.99 or less				50% (covers fees and commission)		
Envelope Tier \$3.00 to \$19.99	1 to 6	\$1.22	\$1.75	\$1.16	\$0.06	\$0.59
	7 to 15	\$1.55	\$2.11	\$1.48	\$0.07	\$0.63
	16 to 24	\$1.88	\$2.48	\$1.64	\$0.24	\$0.84

### Orders with 25 cards or more will move to the Package Tier

Package Tier \$20 to \$249.99	1 to 35	\$4.47	\$7.12	\$4.17	\$0.30	\$2.95
	36 to 55	\$4.54	\$7.16	\$4.21	\$0.33	\$2.95
	56 to 70	\$4.58	\$7.79	\$4.35	\$0.23	\$3.44
	71 to 85	\$5.03	\$7.82	\$4.49	\$0.54	\$3.33
	86 to 100	\$5.06	\$7.84	\$4.54	\$0.52	\$3.30
	101 to 115	\$5.16	\$7.90	\$4.59	\$0.57	\$3.31
	116 to 135	\$5.19	\$8.79	\$4.65	\$0.54	\$4.14
	136 to 150	\$5.89	\$8.82	\$4.98	\$0.91	\$3.84
	151 to 165	\$5.92	\$8.85	\$5.20	\$0.72	\$3.65
	166 to 185	\$5.95	\$8.89	\$5.24	\$0.71	\$3.65
	186 to 200	\$5.99	\$10.92	\$5.60	\$0.39	\$5.32
	201 to 215	\$7.40	\$11.01	\$6.32	\$1.08	\$4.69
	216 to 230	\$7.43	\$11.04	\$6.73	\$0.70	\$4.31
	231 to 245	\$7.46	\$11.07	\$6.89	\$0.57	\$4.18
	High Value Package Tier \$250 or more	246 to 500	\$8.38	\$21.41	\$7.70	\$0.68
501 to 2,500		\$9.61	\$27.78	\$8.78	\$0.83	\$19.00
2,501 and up		\$18.71	\$38.71	\$12.69	\$6.02	\$26.02
1 to 35		\$7.91	\$11.59	\$7.30	\$0.61	\$4.29
36 to 55		\$7.98	\$11.63	\$7.41	\$0.57	\$4.22
56 to 70		\$8.02	\$12.26	\$7.47	\$0.55	\$4.79
71 to 85		\$8.47	\$12.29	\$7.71	\$0.76	\$4.58
86 to 100		\$8.50	\$12.32	\$7.75	\$0.75	\$4.57
101 to 115		\$8.54	\$12.38	\$7.81	\$0.73	\$4.57
116 to 135		\$8.57	\$13.27	\$7.85	\$0.72	\$5.42
136 to 150		\$9.27	\$13.30	\$8.29	\$0.98	\$5.01
151 to 165		\$9.30	\$13.33	\$8.38	\$0.92	\$4.95
166 to 185		\$9.33	\$13.37	\$8.43	\$0.90	\$4.94
186 to 200		\$9.37	\$15.39	\$8.49	\$0.88	\$6.90
201 to 215		\$10.72	\$15.45	\$9.61	\$1.11	\$5.84
216 to 230	\$10.75	\$15.48	\$9.77	\$0.98	\$5.71	
231 to 245	\$10.78	\$15.51	\$10.17	\$0.61	\$5.34	
246 to 500	\$11.88	\$25.56	\$10.55	\$1.33	\$15.01	
501 to 2,500	\$13.11	\$31.33	\$12.14	\$0.97	\$19.19	
2,501 and up	\$22.35	\$42.86	\$16.56	\$5.79	\$26.30	

**APPENDIX E:**

**eBay/TCGplayer Screenshot Direct Competition**  
**With Sellers**

Category

All

16 results for 0083717863281

Save this search

Shipping t

Toys & Hobbies

Sealed Collectible Card Game Boxes

All Auction Buy It Now Condition Delivery Options

Sort: Best Match

Condition

New (16)

see all

Price

\$ Min to \$ Max

Available inventory



see all

Buying Format

All Listings (16)

Auction

Buy It Now (16)

Accepts Offers (8)

Item Location

Default

Within 25 mi

US Only

North America

Worldwide

Delivery Options

Free Shipping

Local Pickup within 25 mi

Show only

Free Returns

Returns Accepted

Authorized Seller

Completed Items

Sold Items

Deals & Savings

Authenticity Guarantee

see all

More filters...



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Yu-Gi-Oh! 25th Anniversary Rarity Collection Booster Box Display Sealed English

Brand New

★★★★★ 4 product ratings

\$124.75

Buy It Now

Free shipping

Free returns

113 watchers

Top Rated Plus

tci\_hobby\_store (10,050) 99.4%

Item: 186279291412

Sponsored



Yu-Gi-Oh! 25th Anniversary Rarity Collection Booster Box Display Sealed 24 Packs

Brand New

★★★★★ 4 product ratings

\$119.45

or Best Offer

Free shipping

art\_fiend (30) 100%

Item: 386902117910



NEW LISTING Konami Yu-Gi-Oh! 25th Anniversary Rarity Collection Booster Box - 24 Packs

Sealed Yugioh

Brand New

★★★★★ 4 product ratings

\$118.29

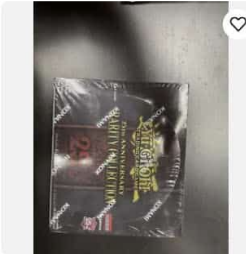
Buy It Now

Free shipping

Direct from TCGplayer

tcgplayer (207) 99.5%

Item: 145715050655



Konami Yu-Gi-Oh! 25th Anniversary Rarity Collection Booster Box - 24 Packs

Brand New

★★★★★ 4 product ratings

\$120.00

or Best Offer

+\$7.00 shipping

nasat-49 (105) 100%

Item: 375228368918



Yu-Gi-Oh! TCG: 25th Anniversary Rarity Collection Booster Box - 24 Packs

Brand New

★★★★★ 4 product ratings

\$129.99

or Best Offer

+\$6.75 shipping

thefonz9 (702) 100%

Item: 176304797740



Konami Yu-Gi-Oh! 25th Anniversary Rarity Collection Booster Box - 24 Packs

Brand New

★★★★★ 4 product ratings

\$110.39

Buy It Now

+\$7.36 shipping

from Canada

mjs.collectibles (3,320) 99.2%

Item: 326073654580