



Monday 17 November 2014

Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Via online submission

Dear Secretariat

RE: eBay RESPONSE TO COMPETITION POLICY REVIEW'S DRAFT REPORT

eBay welcomes the opportunity to provide its response to the Competition Policy Review's draft Report released on 22 September 2014 with 52 draft recommendations. eBay agrees that competition delivers consumer benefits, drives choice, efficiency and innovation and contributes to productivity growth and improved living standards for Australians. Such goals need to be assessed in the context of the major forces for change in the Australian market, which includes economic globalisation, and the digital revolution.

eBay has appreciated the opportunity to engage with the Secretariat and its expert Panel, led by Professor Ian Harper, throughout the consultation process. As the Panel is aware, eBay is one of the world's largest enablers of commerce.

As such this submission will focus on core issues of concern to our business, merchants and consumers, namely: parallel imports, resale price maintenance, third line forcing and intellectual property. eBay's policy recommendations are as follows:

- **Third line forcing** – eBay recommends that the third line forcing prohibition is removed entirely from the Competition and Consumer Act 2010 (CCA). If this policy option is not endorsed then eBay's preference is the imposition of a "substantial lessening of competition" test for third line forcing.
- **Resale Price Maintenance** – eBay recommends that the resale price maintenance prohibition remains in the CCA, but that additional expertise and resources are dedicated to (i) educating small businesses of their rights particularly with respect to suppliers unreasonably imposing restrictive trade practices on them, and (ii) increasing focus on enforcing this prohibition in online business dealings.
- **Parallel Imports** - eBay recommends that restrictions on parallel importation be removed in the interests of Australian consumers – eBay supports the permission of importation of any legitimate goods created with the authority of the copyright owner – this practice would allow free trade in legitimate goods.
- **Technology Neutrality** - eBay recommends the adoption of technology neutral regulatory frameworks for competition law and policy. eBay supports technology neutral regulations,



whereby regulation applies indiscriminately across all forms of technology in both the real and online worlds – any conduct regulated by the CCA should apply equally and fairly in the online and mobile environment as it does in the physical world.

- **Online Marketplaces** - eBay recommends that additional attention be paid to business conduct relating to online marketplaces to identify any restrictive trade practices.
- **Australian Competition and Consumer Commission (ACCC) Role** - eBay supports the ACCC continuing its role as the monitoring and enforcement agency of anti-competitive conduct, with the objective of deterring it across all business platforms.

Please do not hesitate to be in contact with this office if the Panel has any further questions or feedback in relation to the positions outlined in this submission (via email: kfoster@ebay.com).

eBay wishes the Panel all the best in its deliberations and the release of its final report in the interests of a competitive Australia.

Yours sincerely,

Kristen Foster
Director of Government & Corporate Affairs
Australia & New Zealand



ABOUT EBAY AND CONNECTED E-COMMERCE

eBay delivers one of the world's largest online marketplaces to customers via any connected device, connecting people with the things they need and love. With 149 million active buyers globally, eBay is one of the world's largest online marketplaces, where practically anyone can buy and sell practically anything. Founded in 1995, eBay connects a diverse and passionate community of individual buyers and sellers, as well as small businesses. Their collective impact on ecommerce is staggering, and more than 700 million items are listed on eBay.

Globally, the Internet has been one of the fastest-growing commercial phenomena in history. The Australian market is experiencing a similar trend in terms of increasing levels of internet access and speed. The recent trend towards the use of mobile devices, smartphones and tablets continues to drive the increase in internet usage.

In 2012 alone eBay Inc. enabled \$175billion of commerce. eBay represents enormous potential for Australia's economy, with significant economic welfare gains, by allowing frictionless trade. eBay has an increasingly vital role to play in the continued expansion of ecommerce, supported by technology, because it enables thousands of Australian businesses to grow. For example, as outlined in eBay's initial submission, our 2012 Online Business Index found that our top 2,000 sellers grew by 45 percent year-on-year, and eBay represents almost one in five (17%) of Australia's small and medium enterprises (with annual sales of AUD50,000 – AUD200,000).

The convenience of online shopping has proven to be a major attraction for many consumers. The three largest category contributors to sales are: travel, accommodation and tickets; computer hardware and software; and CDs, DVDs, books and magazines.



eBay's RESPONSE AND RECOMMENDATIONS

eBay's submission will focus on core issues as they relate to our online marketplace (eBay) platform.

The major output we would like to see is competitive neutrality and technology neutrality in any legislation or regulations that are driven out of the final report of the Competition Policy Review.

The recommendations made in eBay's submission in response to the Review's Issues Paper stand, namely:

- eBay recommends that the third line forcing prohibition is removed entirely from the Competition and Consumer Act 2010 (CCA). If this policy option is not endorsed then eBay's preference is the imposition of a "substantial lessening of competition" test for third line forcing. The latter recommendation aligns with the findings of both the Hilmer Report and Dawson Review.
- eBay recommends that the resale price maintenance prohibition remains in the CCA, but that additional expertise and resources are dedicated to (i) educating small businesses of their rights particularly with respect to suppliers unreasonably imposing restrictive trade practices on them, and (ii) increasing focus on enforcing this prohibition in online business dealings.
- eBay recommends that restrictions on parallel importation be removed in the interests of Australian consumers – eBay supports the permission of importation of any legitimate goods created with the authority of the copyright owner – this practice would allow free trade in legitimate goods.
- eBay recommends the adoption of technology neutral regulatory frameworks for competition law and policy. Such an approach would ensure that all conduct that is regulated by the CCA should be investigated and appropriate penalties enforced irrespective of whether the conduct is taking place offline, online or on a mobile device.
- eBay recommends that additional attention be paid to business conduct relating to online marketplaces to identify any restrictive trade practices.
- eBay recommends that the Panel consider increased transparency measures relating to search engine algorithm changes which unfairly disadvantage businesses with a strong online presence.
- eBay supports technology neutral regulations, whereby regulation applies indiscriminately across all forms of technology in both the real and online worlds – any conduct regulated by the CCA should apply equally and fairly in the online and mobile environment as it does in the physical world.
- eBay supports the ACCC continuing its role as the monitoring and enforcement agency of anti-competitive conduct, with the objective of deterring it across all business platforms.



'FIT FOR PURPOSE' LEGISLATION

eBay agrees with the overarching principles of Australia's *Competition Policy Review* (hereafter referred to as the "Review"), namely as outlined in the draft report that *"reinvigorating Australia's competition policy is essential to help meet the economic challenges and opportunities we face now and into the future"*.¹ eBay acknowledges that key levers of the economy, such as the digital economy, and new technologies, did not exist at the time of the Hilmer and Dawson reviews, so it is timely for a stocktake of competition policy in Australia and determine whether they remain "fit for purpose".

In analysing the Review's draft report, eBay's view is that competitive neutrality remains a focus for many stakeholders. eBay's position is that the legislative and regulatory landscape should promote effective and efficient competition, which in turn also contributes to financial stability and innovation in commerce.

eBay believes that such principles are consistent with the Panel's views on the role of competition policy, with a focus on ensuring policies are fit for purpose and as such we call out three areas relevant to our business, namely:

- make markets work in the long-term interests of consumers;
- encourage innovation, entrepreneurship and the entry of new players; and
- establish competition laws and regulations that are clear, predictable and reliable.

eBay's view is that competitive neutrality and technology neutral legislation is one way to future proof legislation as it relates to innovative sectors of the Australian economy such as commerce. At a high level, competitive neutrality and technology neutrality ensures the appropriate frameworks for innovation to flourish.

¹ Competition Policy Review Draft Report, September 2014, pp 3, www.competitionpolicyreview.gov.au



EBAY'S ROLE IN FACILITATING COMPETITION AND ENCOURAGING ENTREPRENEURSHIP

Through the power of the Internet and technology, small businesses like never before are able to reach beyond a local consumer base and access global markets. Commerce 3.0 is the term eBay Inc. uses to capture this. Technology-enabled small businesses can maintain a local presence while providing goods and services on a global scale, this is a novel and exciting story, particularly for those engaging in trade policy. Indeed technology-enabled trade is a tool by which businesses of all sizes can gain access to world markets.

eBay Inc.'s report *Commerce 3.0: Enabling Australian Export Opportunities*² showed that Australian small and medium-sized enterprises (SME's), despite their remoteness, are prolific exporters – when they leverage the Internet, and online marketplaces such as eBay. The report revealed:

- Share of exports through eBay.com.au grew from 60% cent to 79% from 2006 to 2012
- 78% percent of eBay.com.au commercial sellers export, increasing to 97% when they reach sales of AUD\$100,000
- eBay retailers in Australia employ up to 50,000 people
- eBay.com.au commercial exporters sell to an average 28 overseas countries eBay represents around one in five Australian SMEs (with sales between AUD \$50,000-AUD \$200,000), in other words a significant portion of SMEs

A more recent report released by eBay at the Asia Pacific Economic Cooperation (APEC)³, found that SMEs significantly contribute to both global and domestic economies at large. The report was focussed on cross border trade which represents 22 percent of eBay Inc.'s business. Online SMEs are active exporters. Global and cross border access to markets are at the core of a global economy and so both import and export legislative barriers are a key policy issue on which eBay has strong views.

Traditional commerce, especially exports, is dominated by a small number of very large firms, eBay Inc.'s report outlines that in most countries up to 90 percent of exports are conducted by the 5 percent of the largest exporters and most of these are long-established with a strong market presence. Internet enabled commerce via eBay and other similar platforms is largely driven by new entrepreneurs and so any legislative and regulatory frameworks emanating from the Review must be cognizant of how to encourage such start-ups to compete against traditional firms which is dominated by well established companies. Internet-enabled trade helps assist smaller players to gain a level-playing field and platform for their product. Commerce platforms such as eBay create a pro-competitive effect in the market with many newcomers using our platforms to start their business.

² 'Commerce 3.0: Enabling Australian Export Opportunities', July 2013, www.ebaymainstreet.com/sites/default/files/AU-Commerce-3-0.pdf

³ 'Enabling Growth for APEC SMEs' eBay and PayPal, November 2014



PRO-COMPETITION POLICIES THAT WOULD BENEFIT AUSTRALIA

- **Faster and simpler customs clearance** – harmonised customs clearance for APEC member economies will result in more efficient delivery times for consumers and deliver benefits for those SMEs engaged in cross border trade.
- **Ensuring the free flow of cross border data** – eBay supports the free flow of information across markets as it enables SMEs to access foreign markets with minimum barriers. Cross-border data flows have increased economic efficiency and also raise welfare and standards of living.
- **Facilitating better internet connectivity** – SMEs particularly in regional and remote areas of Australia require better access to the internet in order to compete effectively with monopoly players in the market, improved internet connectivity creates opportunities for SMEs to compete on a level playing field.
- **Technology neutral legislation** – eBay recommends the adoption of technology neutral regulatory frameworks for competition policy and law.



FORCES FOR CHANGE, THE DIGITAL REVOLUTION, ENCOURAGING INNOVATION AND ROLE OF NEW UNREGULATED ENTRANTS

The Digital Economy is developing fast and trends in the digital economy change fast. Given the convergence and the pervasiveness of the Digital Economy, the true impact of any new regulations and legislation is difficult to predict, however the principles guiding regulation of the digital economy should be ones that encourage innovation while ensuring consumer safeguards in the context of new entrants that may not be regulated at all in comparison to current participants in the system.

The Review outlines key forces for change (industrialisation, an ageing population and diffusion of digital technologies) which have emerged and which were not as evident when the Hilmer Report was handed down. The Review's draft report notes that online digital technologies were in their infancy in the early 1990s, and this included the internet. The draft report notes that: *"A heightened capacity for agility and innovation will be needed to match changing tastes and preferences with our own capacity to deliver commodities, goods and services into Asia and elsewhere in the developing world"*.⁴

The draft report also acknowledges the transformational role of new technologies and consumer response and interaction with markets as a result. The draft report states that: *"technological innovation is lowering barriers to entry across a range of markets"*.⁵ Indeed in the digital age, competition law must protect consumers but also allow for effective competition and technology neutral legislation.

The draft Report also calls out the role of information and communications technology. The technology landscape is ever evolving and so any regulations must be technology neutral. eBay provides a global internet marketplace.

While eBay acknowledges that our competition policy, laws and institutions need to be sufficiently adaptable to allow new entry to make innovative and potentially lower-cost products and services available to Australian consumers, this must be done on a level regulatory playing field.

As such, eBay recommends that for legislation and regulations to be fit for purpose, eBay supports net neutrality and opposes any policies which undermine an open and robust internet.

⁴ Competition Policy Review Draft Report, September 2014, pp 14, www.competitionpolicyreview.gov.au

⁵ Competition Policy Review Draft Report, September 2014, pp 15, www.competitionpolicyreview.gov.au



DRAFT RECOMMENDATION — COMPETITION PRINCIPLES

eBay supports an open and competitive marketplace that allows all entrants to compete equally and fairly.

Review’s Draft Recommendation⁶	eBay’s Response
<ul style="list-style-type: none">Legislative frameworks and government policies binding the public or private sectors should not restrict competition.	<ul style="list-style-type: none">eBay supports a competitive and neutral regulatory playing field.
<ul style="list-style-type: none">Governments should promote consumer choice when funding or providing goods and services and enable informed choices by consumers.	<ul style="list-style-type: none">eBay supports an open marketplace with consumer choice.
<ul style="list-style-type: none">The model for government provision of goods and services should separate funding, regulation and service provision, and should encourage a diversity of providers.	<ul style="list-style-type: none">eBay supports a diversity of providers competing on an equal and fair regulatory framework and platform.

⁶ Competition Policy Review Draft Report, September 2014, pp 25, under Draft Recommendation 1 Competition Principles, www.competitionpolicyreview.gov.au



DRAFT RECOMMENDATION – INTELLECTUAL PROPERTY REVIEW

eBay welcomes the Panel’s focus on an Intellectual Property (IP) Review as a priority area.

The draft Report notes the aforementioned rise in digital technologies and the success of the digital economy in contributing to the real economy, it rightly states that: *“disruptive technologies, especially digital technologies, are a pervasive force for change in the Australian economy. New technologies foster innovation which in turn drives growth in living standards. Access to and creation of intellectual property (IP) will become increasingly important as Australia moves further into the digital age”*.⁷

The draft report rightly acknowledges that excessive IP protection cannot only reduce the adoption of new technologies but can also stifle innovation. In eBay’s view, the Panel understands the importance of striking the right balance for Australians and that it is critical that the IP system be designed to benefit all Australians.

eBay’s view is that unnecessary regulatory burdens can stifle innovation (and therefore global trade on marketplace platforms such as eBay) and there must be an equilibrium achieved when it comes to effective technology neutral regulations.

As such eBay welcomes the draft Report’s acknowledgement that Australia’s IP rights regime is a “priority area for review”.⁸ For example, currently there are no prescribed or agreed IP principles in Australia to navigate global trade agreements such as the Trans-Pacific Partnership (TPP) and such issues could be considered in a separate independent review.

Review’s Draft Recommendation ⁹	eBay’s Response
<ul style="list-style-type: none"> The Panel recommends that an overarching review of intellectual property be undertaken by an independent body, such as the Productivity Commission. 	<ul style="list-style-type: none"> eBay supports an overarching review of Australia’s IP laws by the Productivity Commission to ensure they are applicable in the age of the digital economy. The aim should be to develop an overarching principles-based approach to IP law as opposed to more regulations and legislation.
<ul style="list-style-type: none"> The review should focus on competition policy issues in intellectual property arising from new developments in technology and markets. 	<ul style="list-style-type: none"> eBay supports this term of reference for any review of IP laws.

⁷ Competition Policy Review Draft Report, September 2014, pp 31, www.competitionpolicyreview.gov.au

⁸ Competition Policy Review Draft Report, September 2014, pp 31, www.competitionpolicyreview.gov.au

⁹ Competition Policy Review Draft Report, September 2014, pp 32, www.competitionpolicyreview.gov.au

- The review should also assess the principles and processes followed by the Australian Government when establishing negotiating mandates to incorporate intellectual property provisions in international trade agreements. Trade negotiations should be informed by an independent and transparent analysis of the costs and benefits to Australia of any proposed IP provisions. Such an analysis should be undertaken and published before negotiations are concluded.

- eBay supports cost analysis of any proposed IP provisions in trade negotiations and also recommends an industry panel is established across sectors to provide advice to Government on IP law and its interactions in international trade law. eBay supports the publication of such analysis prior to the conclusion of any negotiation.



DRAFT RECOMMENDATION – PARALLEL IMPORTS

eBay welcomes the significant policy discussion about parallel imports in the draft report.

eBay supports the Panel's view that *"the removal of parallel importation restrictions would promote competition and potentially lower prices of many consumer goods, while the concerns raised about parallel imports (such as consumer safety, counterfeit products and inadequate enforcement) could be addressed directly through regulatory and compliance frameworks and consumer education campaigns"*.¹⁰

eBay supports the draft report's recommendation that remaining restrictions on parallel imports should be removed. We argue that it is in the public interest to allow access to legitimate goods and services and removing current restrictions will serve to promote more competition in the market. We are in agreement that the removal of remaining parallel import restrictions could potentially deliver lower prices for many consumer goods and clearly generate competition on prices.

It must be noted that eBay has measures in place to remove counterfeit products, with appropriate policies in place to safeguard consumers, and we also support consumer safety. eBay works with law enforcement agencies to ensure appropriate safeguards are monitored, reported and enacted.

eBay recommends that restrictions be removed on parallel importations to allow the free flow of legitimate goods globally. The existing framework is unnecessarily complex, inconsistent and an impediment to free trade in legitimate goods. In a global digital environment removal of the current barriers to parallel importation are appropriate. For example an SME in Australia should not be prevented from selling into Australia any item that has been lawfully manufactured outside Australia.

eBay has also previously noted that our views are aligned with the views of the Australian Competition and Consumer Commission (ACCC) which has indicated its support for parallel importation as a competitive measure that is beneficial to Australian consumers as the result of reduced pricing and greater availability and consumer choice of products. The ACCC's submission dated 25 June 2014 to the Harper Review recommended that, *"Remaining restrictions on parallel imports should also be removed"*¹¹. The ACCC also outlined that it *"considers that there is no reason to justify a blanket legislative restriction on parallel imports. Rather, any distribution arrangements that require a balance to be struck between the benefits of addressing a 'free rider' problem and any detriments to competition should be subject to the general competition provisions, where authorisation is available if the arrangements can be shown to be in the public interest"*.¹² Indeed the ACCC also points to the impact of current prohibitions on parallel importation as affecting innovation when it states, *"legislation that limits so-called parallel importing can extend the application of IP rights beyond what is*

¹⁰ Competition Policy Review Draft Report, September 2014, pp 93, www.competitionpolicyreview.gov.au

¹¹ Reinvigorating Australia's Competition Policy, Australian Competition and Consumer Commission Submission, 25 June 2014, pp 17

¹² Reinvigorating Australia's Competition Policy, Australian Competition and Consumer Commission Submission, 25 June 2014, pp58

necessary to support innovation".¹³ eBay supports the views of the ACCC on parallel importation and encourages the Panel to reconsider its position on parallel importation in the interests of Australian consumers.

Review's Draft Recommendation ¹⁴	eBay's Response
<ul style="list-style-type: none"> Remaining restrictions on parallel imports should be removed unless it can be shown that: they are in the public interest; and the objectives of the restrictions can only be achieved by restricting competition. 	<ul style="list-style-type: none"> eBay supports the removal of existing restrictions on parallel importation. eBay recommends that restrictions on parallel importation be removed in the interests of Australian consumers and to access goods at competitive prices – eBay supports the permission of importation of any legitimate goods created with the authority of the copyright owner – this practice would allow free trade in legitimate goods.

¹³ Reinvigorating Australia's Competition Policy, Australian Competition and Consumer Commission Submission, 25 June 2014, pp60

¹⁴ Competition Policy Review Draft Report, September 2014, pp 32, under Draft Recommendation 9, www.competitionpolicyreview.gov.au



DRAFT RECOMMENDATION – RESALE PRICE MAINTENANCE

As outlined in our initial submission, eBay remains concerned about the widespread abuse of the prohibition on resale price maintenance from an e-commerce perspective and the ability of small businesses to maximise marketplace opportunities and effectively compete on price. For example in Canada *retail price maintenance* is also subject to a competition test, and it is then prohibited when it adversely impacts on competition. Our preference is for a prohibition on retail price maintenance.

eBay’s view remains that while the resale price maintenance prohibition should remain in the CCA additional expertise and resources should be dedicated to a). education of small business about their rights (as it pertains to suppliers unreasonably imposing restrictive trade practices on them and b) enforcing this prohibition in online business settings. We note that one of the references in the draft report refers to eBay’s position, however the Panel’s view is that there is not a sufficient case for changing the per se prohibition to a competition-based test. In terms of the aforementioned education aspects for small business, this could perhaps be done in conjunction with the Panel’s draft recommendation for the establishment of The Australian Council for Competition Policy whose role would include being an advocate and educator in competition policy.

Review’s Draft Recommendation ¹⁵	eBay’s Response
<ul style="list-style-type: none"> • The prohibition on resale price maintenance (RPM) should be retained in its current form as a per se prohibition, but the notification process should be extended to include resale price maintenance. • The prohibition should also be amended to include an exemption for RPM conduct between related bodies corporate, as is the case under sections 45 and 47. 	<ul style="list-style-type: none"> • eBay supports retail price maintenance prohibitions remaining in the CCA. • eBay recommends that the proposed Australian Council for Competition Policy could provide a suitable forum to undertake education of small businesses about retail price maintenance.

¹⁵ Competition Policy Review Draft Report, September 2014, pp 47, under Draft Recommendation 29, www.competitionpolicyreview.gov.au



DRAFT RECOMMENDATION - THIRD LINE FORCING

eBay agrees with the draft report’s general principle that the CCA should not interfere with trading conditions between buyers and sellers. In the draft report the Panel outlines that it sees no need for third-line forcing to be singled out from other forms of vertical trading conditions and prohibited per se. As outlined in eBay’s initial submission we believe third line forcing prohibitions should be removed from the CCA.

The draft Report also refers to the ACCC’s notifications which suggest that *“third line forcing is a common business practice and very infrequently has anti-competitive effects”*.¹⁶ eBay would continue to recommend that the third line forcing prohibition be removed entirely from the CCA. If this is not amended in the final Report then eBay’s preference is that we support the imposition of a *“substantial lessening of competition”* test for third line forcing (a recommendation outlined in both the Hilmer and Dawson Reports). The Hilmer Report of 1993 referred to *“relaxing the prohibition on third line forcing by requiring that it substantially lessen competition, thus bringing it into line with the Act’s treatment of other forms of exclusive dealing”*¹⁷. The Committee stated that it did not believe that *“third-line forcing is so significantly anti-competitive as to warrant treatment which differs from other forms of tying and recommends that third-line forcing be subject to a competition test and notification”*¹⁸. The Dawson Report of 2003 also singled out third line forcing and recommendation 8.3 outlined that, *“the prohibition of third line forcing should cease to be a per se prohibition and be made subject to a substantial lessening of competition test”*.¹⁹

Review’s Draft Recommendation ²⁰	eBay’s Response
<ul style="list-style-type: none"> • Third line forcing test - The provisions on ‘third-line forcing’ (subsections 47(6) and (7)) should be brought into line with the rest of section 47. Third-line forcing should only be prohibited where it has the purpose, or has or is likely to have the effect, of substantially lessening competition. 	<ul style="list-style-type: none"> • eBay recommends that the Review revisit third line forcing and its draft recommendation. • eBay recommends that the third line forcing prohibition be removed from the CCA. • If this recommendation is not given by the Panel then eBay’s preference is for the imposition of a “substantial lessening of competition” test for third line forcing. At a minimum the Panel should adopt the recommendations of the Hilmer Report of 1993 and Dawson report of 2003 as they relate to third line forcing tests.

¹⁶ Competition Policy Review Draft Report, September 2014, pp 45, www.competitionpolicyreview.gov.au

¹⁷ National Competition Policy report by the Independent Committee of Inquiry (the Hilmer Report), pp xxiii

¹⁸ National Competition Policy report by the Independent Committee of Inquiry (the Hilmer Report), pp 54.

¹⁹ Review of the Competition Provisions of the Trade Practices Act, 2003, Chapter 8 www.tpareview.treasury.gov.au/content/report/html/Chpt8.asp

²⁰ Competition Policy Review Draft Report, September 2014, under Draft Recommendation 27, pp 47, www.competitionpolicyreview.gov.au



CONCLUSION

In conclusion, to recap, eBay's final recommendations to the Panel are as follows:

- eBay recommends that the third line forcing prohibition is removed entirely from the Competition and Consumer Act 2010 (CCA). If this policy option is not endorsed then eBay's preference is the imposition of a "substantial lessening of competition" test for third line forcing. The latter recommendation aligns with the findings of both the Hilmer Report and Dawson Review.
- eBay recommends that the resale price maintenance prohibition remains in the CCA, but that additional expertise and resources are dedicated to (i) educating small businesses of their rights particularly with respect to suppliers unreasonably imposing restrictive trade practices on them, and (ii) increasing focus on enforcing this prohibition in online business dealings.
- eBay recommends that restrictions on parallel importation be removed in the interests of Australian consumers – eBay supports the permission of importation of any legitimate goods created with the authority of the copyright owner – this practice would allow free trade in legitimate goods.
- eBay recommends the adoption of technology neutral regulatory frameworks for competition law and policy. Such an approach would ensure that all conduct that is regulated by the CCA should be investigated and appropriate penalties enforced irrespective of whether the conduct is taking place offline, online or on a mobile device.
- eBay recommends that additional attention be paid to business conduct relating to online marketplaces to identify any restrictive trade practices.
- eBay recommends that the Panel consider increased transparency measures relating to search engine algorithm changes which unfairly disadvantage businesses with a strong online presence.
- eBay supports technology neutral regulations, whereby regulation applies indiscriminately across all forms of technology in both the real and online worlds – any conduct regulated by the CCA should apply equally and fairly in the online and mobile environment as it does in the physical world.
- eBay supports the ACCC continuing its role as the monitoring and enforcement agency of anti-competitive conduct, with the objective of deterring it across all business platforms.

eBay has welcomed the opportunity to contribute to this historic review of Australia's competition law.

eBay looks forward to working with the Government on the key recommendations handed down by the Panel and would welcome representation on industry taskforces that may be established to do so.

Ends