



ACCC Australian Marketplaces Review Submission

by Marketplaces Council @ Retail Global

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Who are we?

Retail Global www.retailglobal.com.au is an Australian conference and exhibition company specialising in ecommerce, multichannel, marketplaces and cross-border. The Retail Global Advisory Board comprises 3 councils, one of which is the Marketplaces Council:

<https://www.retailglobal.com/advisory-board>.

The Marketplaces Council is a volunteer panel of 9 people which includes direct representatives from eBay, Catch, TheMarket and Australia Post plus several industry sector educators and consultants who work with marketplace sellers. Our dealings with each of the marketplaces represented on the council has been excellent.

IMPORTANT NOTES:

1. This submission has been prepared **with no direct input from any marketplace** and should not be taken to reflect the views and perspectives of the marketplaces themselves. We understand each of the marketplaces named in the current inquiry are planning their own separate submissions.
2. **Amazon** was a member of the Marketplaces Council until this submission was compiled, at which time Amazon withdrew from the Marketplaces Council and repudiated any association with this submission, asserting it contained factual errors.
3. **Kogan** was a member of the Marketplaces Council at the time our submission was lodged but has since withdrawn from the council and stated that they do not support this submission.
4. **Catch** was a member of the Marketplaces Council at the time our submission was lodged but has since withdrawn from the council, stating they do not support this submission, and asserted it contains factual errors.

Key contacts for more information or questions:

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We trust the below comments will be of use in your review of Australian marketplaces.

1. Which platforms are the most significant general online retail marketplaces in Australia?

The significance of an online marketplace we believe is perhaps best measured in terms of its accessibility, patronage of consumers, and also its impact on merchants who sell on it. On this basis, the would list the below marketplaces as having a significant impact on Australian consumers and third-party sellers at the present time:

- eBay
- Catch
- Amazon
- Kogan (includes Dick Smith)
- Alibaba (AliExpress)
- MyDeal
- MySale Group (Top Buy, Deals Direct, Only Online, OzSale etc)
- The Iconic
- Myer
- Temple & Webster
- Bunnings Tradelink
- Etsy

Additionally, here are some smaller, newer and more niche marketplaces which impact Australian consumers to a lesser extent:

- Tradesquare
- Click Central
- Payday Deals
- Poshmark
- Hard To Find
- Wish
- Buy From The Bush
- DePop
- eBids
- Woolworths
- Better That
- Bike Exchange

2. What are the barriers to entry and expansion in Australia for the supply of general online retail marketplaces? How have these changed over time?

Prior to 2017 when Catch and Amazon launched as marketplaces in Australia, eBay was the only major marketplace. Several attempts had been made to launch marketplaces to compete with eBay, but since the biggest appeal for sellers to participate in a marketplace is the number of customers they can access, eBay still dominated. Amazon is a major global marketplace and was always expected to launch in Australia eventually. A competitive battle was expected between eBay and Amazon who also compete in other countries too. Amazon's own experience in Australia has demonstrated the enormous cost of competing at that level, with initial losses and then meagre profits since. What nobody anticipated was the launch of other marketplaces around the same time, notably Catch and Kogan, both of which already had loyal customers and were able to tap into that customer base with a dramatically broader product range selection courtesy of the third-party sellers they onboarded. The availability of marketplace platforms Mirakl and Marketplacer have been a reflection of growing interest in the marketplace model, and also evidence that it is commercially viable to launch one and turn a profit. A spate of smaller more niche marketplaces have spawned on the back of these platforms which have dramatically reduced the investment and effort required to launch. Examples would be www.medcart.com.au, www.clickcentral.com.au, www.tradesquare.com.au, www.zanui.com.au, www.paydaydeals.com.au and www.bikeexchange.com.au.

The technology and pricing structure offered for shipping specifically on marketplaces depends on the marketplace's model where there is substantial risk on the carrier for pricing many to many. It is a scale game that needs volume consolidation and buying best value.

Typical barriers to entry are education, sourcing stock and financial viability. Marketplaces with lower barriers to entry regarding financial viability would be eBay and Facebook, plus other newer marketplaces that are becoming popular, such as DePop. Over the past 20+ years barriers to entry for the eBay marketplace have always been very low. eBay does have new seller start-up risk management measures such as selling limits and releasing funds to sellers only once the buyer is satisfied, are fair and reasonable to weed out dodgy 'fly by night' sellers. Constantly changing to meet market demand has been necessary for the growth of the marketplace and sellers alike.

The expansion of online retail within Australia can be classed as healthy competition, however it's not just the marketplaces competing against each other. It also means more sellers across the board competing with each other, and for some marketplaces, sellers even competing with the marketplace itself. eBay is the only one of the major marketplaces that isn't also a retailer, therefore eBay needs sellers and aims to maintain good relationships with the seller community and deliver better mechanisms and solutions for sellers to thrive

3. **To what extent do general online retail marketplaces compete with the third-party sellers that are selling directly from their own online stores? To what extent do they compete with physical stores?**

Peer to peer marketplaces such as eBay, AliExpress, Facebook marketplace and Gumtree do not compete with their sellers because they don't sell or handle any goods themselves. Most other marketplaces in Australia today are each retailers in their own right and there is a genuine risk of both the marketplace and their sellers offering the same or competitive products. Of itself this is not necessarily a problem because it would tend to improve competitiveness and therefore deliver the best possible value to consumers. However there are instances where a third party seller has been selling a product very well on the marketplace, and the marketplace has then sourced either the same identical product or something closely similar, and offered it at a dramatically lower price than the seller. This is not a pleasant experience for sellers in that situation of course. In cases where a seller has been invited by the marketplace to sell those goods, and the marketplace then later competes directly with that seller, there may be a question of unfairness, and in some cases even unconscionability or acting in bad faith.

Marketplaces who are themselves retailers (ie: the majority) are competing with other retailers. There has been a dramatic increase in the number of existing long-standing and prominent retailers morphing into a marketplace themselves such as Woolworths, Myer and Bunnings, inviting selected merchants, brands, suppliers, manufacturers, dropshippers and other smaller retailers to compliment their own range of products. In the case of Bunnings, the strategy is to disallow third party sellers from listing products which are competitive with those they already stock. This approach avoids the potential conflict raised above where marketplaces might end up competing directly with their own third-party sellers. The appeal of a marketplace model for existing retailers is the endless aisle concept whereby they can extend their range of products without needing to take up physical space in their own warehousing or shelves. The appeal for third-party sellers to offer their goods on a marketplace is to access the customers that retailer attracts, and the fees reflect that value.

In the delivery space, marketplaces compete as far as their ability to secure best value shipping and return services for their online sales. The marketplaces want to buy rates for an aggregated parcel volume across all their merchants, whereas individual sellers can only access delivery rates representative of their actual volume. This also applies to other value-added services. Some marketplaces seek to monetise this to their advantage.

From an SEO and advertising budget perspective, marketplaces have a distinct advantage over sellers who manage their own online ecommerce retail stores. The bigger Marketplaces enjoy enormous authority from an SEO perspective. This means any product or category that is listed on the marketplace either by the Marketplace or a 3rd Party Seller will often rank high on search

engines quickly. Of course, marketplaces typically have much bigger online advertising budgets for Google AdWords, Facebook etc compared to individual sellers have for their own traffic and customer acquisition strategies.

4. To what extent do third-party sellers make their goods available across multiple marketplaces? Are there reasons for picking one marketplace and not the other? To what extent can sellers bypass the marketplaces to reach consumers?

It is very common for third-party sellers to be offering their goods on multiple marketplaces in Australia. Many of these sellers began as eBay sellers, and have added other marketplaces as they have become available.

So far as their technology solution/s will support it, many sellers will seek to list on as many marketplaces as they can. Most marketplaces only allow sellers in by invitation, and in so doing manage the risk of unfair competition, irrelevant categories and products for their core customer base and brand, and maintain quality standards pertaining to goods on offer and professionalism and responsiveness in way sellers service their customers. Therefore not all sellers will be able to list on all marketplaces they might wish to. Sellers will also seek to list on marketplaces that have customers who are likely to be looking for their goods on that marketplace. Listing car parts on Myer marketplace for example would be a mismatch and therefore sellers of those products would not be likely to even consider that marketplace.

Ultimately the marketplace owns the consumers. It's their website, their branding, their advertising and their support systems that are servicing their customer base. Most marketplaces recognise the value of those customers and will protect this as a vital part of their business goodwill by prohibiting third-party sellers from engaging directly outside the marketplace systems (eg: communications and structured resolution flows). The seller will of course receive the name and address (and sometimes phone number) of the customer for the purpose of fulfilment only. Email addresses are not typically shared directly with sellers, and sellers and buyers alike are required to communicate with each other via the marketplace's own messaging system. The benefit of this is that the marketplace can also adjudicate in any disputes more effectively having full visibility over all communications between the trading parties. Many third-party sellers seem to think that a transaction on a marketplace means the customer is theirs, but legally and logically this is not so. Privacy laws and the user agreement of most marketplaces prohibits communication off platform, or solicitation of trading off the marketplace. Sellers who circumvent these terms may be in direct violation of Australia's Privacy Act and Spam Act. Therefore these impositions by marketplaces seem fair and reasonable. Most marketplaces would say that the seller is paying a fee for the sale of their goods, not for ownership of the customer. The true cost of customer acquisition would

validate this as the fees for a sale on a marketplace rarely reflect the true cost of acquiring that customer, a cost the marketplace has already invested.

An increasing number of marketplace sellers are themselves launching their own stand-alone retail business through their own webstore/s and/or physical shops.

More and more sellers are looking to use multiple channels to acquire customers and they choose between channels based on the type of customer they need to acquire, and the desire to control their brand and price. More mature online sellers are now investing in their own direct channel (webstore/s) because they do not like giving up the 10-30% final value fee on each sale.

5. Are any general online retail marketplaces considered a 'must have' for Australian third-party sellers or for sellers of a particular category of goods?

The 4 most popular marketplaces of interest to third-party sellers are the 4 largest marketplaces by volume and traffic, eBay, Kogan, Catch and Amazon. Niche marketplaces such as Temple & Webster (homewares & furniture) or Bike Exchange (bicycles) will of course be attractive to sellers who have reliable supply of products in those categories.

6. To what extent do consumers use more than one marketplace? What role do subscription/loyalty schemes have in consumer choice of marketplace? What role do non-price factors, such as the level of customer service or ease of access to refunds have in consumer choice of marketplaces?

Loyalty schemes go right to the heart of one of the core attributes that makes any online retailer or marketplace business sustainable, namely trust. Without trust, many will not shop online. High trust means higher purchase values, and more purchasing frequency. Amazon's Prime offering is well known around the world, and has been well received by Australian consumers. eBay's Australian marketplace launched their own loyalty program eBay Plus to compete with Prime, offering value to buyers beyond the availability of goods or discounts. We believe that non-price factors are a major part of effective loyalty programs for marketplaces. Prime includes Prime Video for example, which is more of a direct competitor for Netflix and Stan than having anything to do with products for sale on the marketplace itself. Speed, cost and transparency of shipping is another huge contributor to marketplace loyalty. Fast delivery and free delivery offers by the marketplaces will sway some customers. Marketplaces also retain their customers' loyalty through product selection and quality standards which again underpin trust. Marketplaces also offer member only discounts and promotions which further engages and retains their interest and

patronage.

The reality is that most consumers will only bother to check a handful of websites for goods. If they visit websites directly (ie: not searching from Google), they might visit 2, 3 or even 4 marketplaces in their search, but it's not practical or worthwhile visiting every single marketplace to check for a particular product. Therefore if a customer has a generally positive experience with any marketplace, they are more likely to start their search on that marketplace in future, or at least include that marketplace in their shopping list. However the importance of Google, comparison sites and other non-marketplace search engines should not be overlooked as they can short-cut the journey for many consumers by identifying the best prices, or the sites/marketplaces that offer products they are looking for. Broader category marketplaces like eBay and Amazon are more likely to have consumers commencing their shopping journey on them directly.

Consumers are shopping best value products online and where there is a loyalty program such as Prime and free shipping this dramatically reduces one of the key barriers to buying. As marketplaces build out their range of categories and value-add services, this is done to keep the consumer on their marketplace and to increase their share of consumer wallet.

7. To what extent can consumers bypass marketplaces to buy directly from sellers?

Most marketplaces do a good job of their own branding and curated customer experience, such that the consumer is often not even consciously aware that the products they are viewing might be coming from third-party sellers. The information is there on most marketplaces if the consumer bothers to take note of it, but whether the name of the seller is sufficient for the consumer to then search for them outside the marketplace depends on the seller themselves. Many sellers are purely a marketplace model business, and either don't have a website or physical store of their own, or have put little or no effort into their branding anyway. Astute retailers who are selling on marketplaces will typically invest in a branding and acquisition strategy and although they have limited connection with marketplace customers due to the marketplace privacy and user terms, they can still find ways to provide the marketplace buyer with a taste of their brand enough to trigger interest in some customers who then may seek them out directly. This effort and the costs associated with it are often high enough that they are not done well, so it is only the very best practice retailers who find ways for marketplace consumers to reach them directly.

We do not see it as unreasonable that marketplaces restrict sellers' direct access to buyers. The marketplaces are not referral sites such as Google Shopping, Westfield (www.westfield.com.au) or comparison sites each of whom receive a fee for referral. A marketplace's investment in marketing, member services and dispute management is dramatically higher and more costly

compared to referral sites. The big marketplaces spend millions in advertising on Google alone and that investment is to acquire customers for themselves. It would make no sense to invest all that effort and money only to pass those acquired customers over to smaller third-party sellers who had no part in acquiring the consumers in the first place. Also consider that the marketplace itself takes payment from the consumer, and passes the proceeds minus their fee to the seller. This is a third-wheel participation in the transaction itself and also carries expensive and onerous legal responsibilities. Therefore the cost of customer acquisition by the marketplace is substantial and to simply handover buyer email addresses would be commercially foolish and would contribute to declining viability of marketplace. We are of the view that it is unreasonable for sellers (or the government) to view marketplaces as a customer acquisition channel for sellers who would otherwise never have the resources to acquire that many customers under their own steam. The sale of goods is the core benefit all third-party sellers are trading on marketplaces for, perhaps along with brand recognition as a secondary objective for some, but certainly not for the acquisition of customers.

eBay does allow sellers to offer in person pickup, so once the buyer has paid, sellers can then contact the buyer with their address and contact details. From our observation marketplace buyer money-back guarantees and protections mean buyers have more confidence to shop on a marketplace rather than buying directly from a seller's website where the same guarantees and protections might not exist, or might not be communicated with as much clarity and assurance.

8. What services do marketplaces provide to assist or enable sellers to sell their goods? How have these changed over time?

Most marketplaces provide a dashboard through which sellers can add new listings and manage or end existing listings. Some marketplaces also offer CSV file uploads and exports, or APIs which can be connected to the seller's own platform or systems for automated processes. Most of the efficiency in managing marketplace listings, orders and communications comes from separate integration solutions. One notable example would be Maropost Commerce Cloud (formerly Neto) www.maropost.com which has native integration to 7 of Australia largest marketplaces plus fulfilment and ecommerce capabilities to make multichannel retailing efficient and reliable. Other solutions are typically middleware such as www.channeladvisor.com.au, www.intelligentreach.com.au, www.comestri.com, www.codisto.com, www.m2epro.com, www.crescodata.com, www.channelengine.com, www.linnworks.com and www.omnivore.com.au, each of which acts to integrate an ecommerce platform such as Shopify, Adobe Commerce, BigCommerce or WooCommerce to one or more marketplaces.

We believe it's better that the marketplaces focus on their own platform and processes,

supporting buyers and sellers, and leave integrations and multichannel technological solutions to the firms that specialise in that.

9. Are there any trends in consumer behaviour or preferences, such as increased online purchasing that have or will affect general online retail marketplaces? If so, describe what they are.

The rise in demand and participation for online shopping motivated by community restrictions and lockdowns due to the covid pandemic has fuelled sales growth for all online retailers and marketplaces alike. The evidence appears to confirm that digital commerce will continue to grow. The pervasion of mobile devices means that younger digitally native consumers are increasingly interacting with their preferred brands and retailers via small screens. According to a survey commissioned by eBay recently: <https://www.ebaymainstreet.com/aupublicpolicy/news-events/lockdown-one-year>, Generation Z (18-24yrs) do 57% and Millennials (25-39yrs) do 49% of their shopping online, which is unsurprisingly higher than for older age groups.. The majority of ecommerce traffic is on mobile devices - approximately 70% and growing. Retailers and marketplaces that deliver simple, engaging and trustworthy shopping and brand experiences through a small mobile screen format and mobile apps would be expected to pick up the lion's share of sales. Developing shopping experiences that are well designed and executed can be expensive, and therefore out of reach for many smaller merchants and retailers. Marketplaces offer an incredibly attractive value proposition to these smaller merchants to be able to leverage large infrastructure and marketing investments with minimal risk, and relative low barriers to entry. On eBay.com.au alone, there are over 40,000 business sellers, offering predominantly brand new, fixed price goods (excluding casual sellers offering used goods from around the home). That's a substantial part of our national retail sector and a major contributor to the Australian economy.

Expectations around experience and service levels is making it more difficult and expensive for retailers to attract and retain consumers.

10. **Has competition, or potential competition, in the supply of general online retail marketplaces services been affected by:**
- a) acquisitions of start-up companies**
 - b) entry into the market by international businesses**
 - c) the acquisition or development of new technology**
 - d) acquisitions of companies operating in related sectors within the mobile and / or desktop device ecosystem?**
 - e) the current COVID-19 pandemic and the increase in online purchasing by consumers**
- If so, please describe how.**

Competition is strong both between marketplaces all vying for the same consumer audience, and amongst sellers within each marketplace competing with each other for consumers using that marketplace for shopping. We have not seen any evidence of a decline in competitiveness in either of these two scenarios.

What we are witnessing more recently, largely being driven by covid related restrictions and lockdown, is an awakening of physical retailers to the emergence of digital commerce as a consumer preference for convenience. It's easy to play down or ignore a digital strategy when it only represents say 10% or less of your overall sales revenue, and for a long time, physical retailers have been doing so, leaving the ecommerce space alone for entrepreneurs and marketplaces to play with nothing more than what appeared like a slow and steady organic growth. The onset of covid related restrictions has compelled many more Australian consumers to take the plunge into the online shopping experience and 'give it a shot'. Over 200,000 Australian households bought something online for the first time in 2020 alone. Perhaps older more reticent consumers were coaxed into online shopping by younger family members and acquaintances, but this online rush saw online retail as a proportion of all retail peak above 40% in Victoria during the longest 2020 lockdown, almost 400% higher than ever before.

The much anticipated launch in Australia by Amazon was initially perceived with a degree of alarm and concern by many retailers, but what was not anticipated was the resourcefulness and innovative spirit of Australian businesses and individuals who were not willing to sit back and wait to see what happened, but instead were motivated to launch endless aisle strategies within their own online businesses, which meant inviting third-party sellers, vendors, manufacturers and distributors to make their inventory available using a dropshipping model. This is essentially all a marketplace is. The explosion of marketplaces that has ensued is nothing short of astonishing. Catch, Kogan, Top Buy, Deals Direct, Only Online, MyDeal and others all began as eBay sellers, eventually launching their own webstores, and then led by Catch in 2017, began to pursue a similar endless aisle via dropshipping strategy. Considering around 80% of all Australians shop

online and 97% of them use marketplaces, it's been a very well timed strategy for those pureplay retailers who have expanded into marketplaces.

What is happening now is that other major retailers are also exploring strategies for expanding their product range through a marketplace model, and the recent announcement of Woolworths is possibly just the beginning. Major shopping centre landlords are themselves also being compelled to explore ways of encouraging and supporting their retailer tenants to embrace ecommerce. For example www.westfield.com.au/products displays tenant retailers products online and sends consumers directly to the retailer's individual webstore for purchasing online. The disruption to rent revenues, closure and collapse of some retail tenants and a sharp swing to online shopping especially amongst younger generations is something shopping centre management companies are realising they can no longer ignore, and they are already proactively exploring commercially viable monetisation strategies to help their retailer tenants expand online, including selling through existing major marketplaces.

The more participants in ecommerce, the more competition. The investments being budgeted by major retailers is substantial as they can see online as the fastest growing segment of retail. We expect to see an increasing migration into digital commerce by retailers.

In the delivery space, there is competition from entities that are buying customers at any cost vs profitable customers.

11. What is the process for getting a product listed on a general online retail marketplace? What is the process for removing a product from the marketplace? Has this process changed over time?

The process for listing on marketplaces varies according to each marketplace. Amazon and Catch are catalogue based marketplaces meaning sellers are only permitted to offer for sale products which are listed in the marketplace catalogue. Where the seller has products which are not already in the marketplace's catalogue, they are required to submit specific data about each product and images to specific requirements which is then reviewed by the marketplace and either added to the catalogue or rejected. The purpose of this catalogue approach is to avoid unnecessary duplication of the same product in search results which can tend to frustrate buyers then being presented with what sometimes can be a lot of the same product. On these two marketplaces, to stop offering a product for sale, the seller simply marks the offer inactive or deletes it, but the catalogue record created in the first place remains unchanged. Anybody who is has the same product available for sale will use the same catalogue record, and then provide nothing more than the quantity they have available and their price. The first seller to create a new catalogue records remains the 'owner' of that record, and can modify it any time. If another seller identifies

an error with the catalogue record, they may notify the marketplace, but it is the responsibility of the record 'owner' to make changes usually. Where the marketplace deems the inaccuracy to be misleading, they may either change their record themselves, or suspend all listings attached to that catalogue record, or order the record 'owner' to change it. Where inaccuracies are reported, the record 'owner' may be required to provide documentary evidence of the accuracy of the record.

Most other marketplaces accept freeform text and images from the seller which is then ingested and indexed by their own internal search algorithms. The larger and more mature marketplaces will also request a series of structured attributes to capture specific data points about each product which makes findability in search easier. These attributes are typically requested by Google also, which the marketplaces compete on for traffic. There is not usually a check for accuracy by the marketplace because sellers listing products are deemed to be complying with applicable laws and providing accurate information, the same standard demanded of anybody offering goods for sale to Australian consumers.

eBay does have a product catalogue for around 12 million products, mostly electronics, media and automotive products where the manufacturer has already provided data, attributes and at least one stock image. Where a seller provides a UPC/EAN/GTIN which is already in that catalogue, the listing will be attached to the catalogue record for all the same benefits as Catch and Amazon do it too, but the seller can still load their own images, remove the stock image if they wish, provide additional specifics/attributes, and provide their own freeform content description.

The only marketplace that has been around long enough to say whether the process for adding or removing a product on a marketplace has changed over time, is eBay. On eBay there have been some substantial changes in how products are listed with the rising penetration of mobile devices leading to a super efficient mobile app which many smaller sellers seem to prefer using to list products. More serious business sellers tend to want to list in bulk and therefore will use third-party platforms and solutions to create listings via eBay's API, and then control them from that platform instead of logging into the marketplace seller dashboard. The emergence and increasing popularity of multichannel retailing is making these third-party solutions increasingly vital.

12. How effective are the key marketplaces' current processes for reviewing and approving products? Do these processes operate to ensure low quality and products which may cause consumer harm are excluded?

As explained, only Amazon and Catch maintain a full catalogue, and eBay has a partial catalogue. When it comes to third-party sellers, the marketplaces are not physically handling the products themselves so far as creating catalogue records or creating live listings to offer the products for sale. Amazon, MySale Group and others do offer 'fulfilment by the marketplace' services which allow sellers to send their goods to a warehouse controlled by the marketplace fulfilment department, and from there all orders of those products from those sellers are picked, packed and dispatched directly to the customer. For most marketplaces it is not possible to have physical inspection of third-party seller products for listing purposes.

Catch and Amazon only go through a review of the product details by virtue of their catalogue strategy. Product information is reviewed manually by both marketplaces once an initial integrity data check has been done. Products themselves are not physically reviewed or checked because they are not in the physical possession of the marketplace staff who review the listing data. There is no way to determine whether a product is low quality by merely looking at the description, photos or attributes provided by a third-party seller. However, the catalogue based marketplaces (Amazon and Catch) will demand a range of specific attributes, and will not approve the catalogue entry until that data is provided by the seller. Sometimes, even after a product has been accepted and even listed live on Amazon or Catch, their internal systems will dig deeper as part of their indexing process to identify more attributes that are required, and this can delist the seller's offer until those data attributes are provided (eg: colour, type, application, material, size etc).

All marketplaces so far as we are aware have strict and clear policies in place which puts the onus squarely on sellers to provide accurate information and images, and to comply with all applicable laws in the countries they are making their goods available to. We believe this is an appropriate and sensible approach and don't see how any marketplace could do it differently considering they don't have physical possession of the goods.

There seems to be a lot of sellers on eBay and Amazon drop shipping very low quality products from overseas. These offshore sellers often do not appropriately or adequately disclose the true quality of their products, and often material and sizes are completely wrong. Although there are processes for returning items where the item is not as described, 'poor quality' is not one of the reasons available to buyers. Only if the item is significantly not as described, and if the seller has not described the quality, then it's difficult for the buyer to report this aspect. There is no review by marketplaces on the quality of a product, only on its condition (brand new, refurbished, used etc).

13. What processes are in place (if any) for taking action in response to consumer reviews? Are products ever removed in response to poor consumer reviews?

Product reviews are available to consumers on all of the major marketplaces. It is of course completely voluntary whether buyers leave reviews or not. A review is typically invited of the buyer via an automated email from the marketplace received after delivery. Where reviews persistently indicate that the product is flawed, faulty or otherwise not fit for purpose, or having been misrepresented, the marketplace will often remove the listing. It appears most marketplaces do take consumer safety very seriously. In some cases where a spate of bad product reviews have been received, a seller may have their entire account restricted or even suspended. In some cases this is warranted where it is clear the seller is either negligent, careless or deceptive (fortunately not very common), but we are aware of instances of where a seller entire account has been suspended because of a relatively small number of bad product reviews. A bad product review doesn't always mean the product was faulty or unsafe. It is not unusual for buyers to get angry over something unrelated to the product quality or safety, and then use a bad product review as a means to retribution. This is a sore point with many sellers who have been on the receiving end of such negative product reviews, and especially so when they have been restricted, suspended or otherwise punished by the marketplace. In most instances, the marketplace themselves has no means of determining whether a product review is honest, fair and accurate or not. Since the primary of marketplaces is to make sales, they will more often than not favour the buyer over the seller in situations of dispute. Many sellers feel this is quite unfair. Better mediation or review processes would be a positive step to deliver a fairer and more balanced approach to resolving negative product reviews which may be motivated by revenge against one seller rather than being objectively about the product itself. Reviews left for a product have an adverse impact on all sellers offering the same identical product for sale on the marketplace, so there would seem to be a need for objectivity and fair review processes.

14. To what extent do the marketplaces' terms and conditions affect the pricing of goods by sellers?

We're not aware of any scenario in which sellers would be coerced or unduly influenced in their pricing offers by marketplace terms and conditions.

However shipping charges as a component of all online shopping transactions may be influenced by the marketplace's recommendations and insights into buying preferences around shipping services, shipping rates, and free shipping (where the cost of shipping is baked into the price of the product).

We cannot think of any scenario in which a seller would be anti-competitive in their pricing as a

result of any marketplace terms & conditions.

Occasionally marketplaces may enter into agreements with individual sellers where consideration for lower fees or other benefits may be met with an assurance by the seller not to set prices that are higher than the same products on their own webstore. We believe this is fair and reasonable and is not anti-competitive.

15. What fees and charges do marketplaces charge to third-party sellers? How have these changed over time and how do these affect sellers?

There are a range of fees charged by marketplaces. Considering the marketplace has invested heavily in their own advertising and SEO strategy to acquire customers, sellers are beneficiary of an acquisition funnel that they otherwise might not be able to afford. Therefore the fees of each marketplace are intended to reflect the benefit to the seller for a sale they might not have otherwise been able to attract or afford through other channels, including their own webstore.

Marketplaces differ in what they charge and how, but fees typically may include.:

- A monthly selling account fee
- A monthly store fee (a store is not necessary to sell, so there are extra benefits for this)
- Insertion fees (increasingly these are being charged less as marketplaces compete for quality sellers and their wares)
- Promotion or advertising fees (to boost the seller's listings in search rank, merchandising or other promotions across the marketplace, and even in email campaigns to the marketplace customers. These are voluntary for sellers to opt in to, and some promotions are by invitation only)
- Commission on a sale (this is the primary source of revenue for marketplaces from the sale of goods listed by third-party sellers)
- Penalty fees (such as a surcharge on poorly performing sellers to act as a deterrent, and an incentive to improve)

16. What are the benefits of the additional services provided by marketplaces to thirdparty sellers (for example: warehousing, distribution)? To what extent are sellers able to use services other than those offered by the online retail marketplaces?

Additional services include fulfilment by the marketplace (such as Amazon FBA or Fulfillment By MySale), and also marketing services to get the seller's offers in front of more customers via email marketing, merchandising places across the marketplace website and boosted rank in the marketplace search. These services are available to any seller who wishes to use them. There are some additional benefits for using marketplace fulfilment in terms of search rank and listings being more favoured for the 'buy box' position (the default seller offer on a particular product which might be offered by many sellers).

No marketplace limits or stops their sellers from using similar services from other providers. 3PL services from www.fulfilio.com.au and others won't suit every seller's circumstances, but are very popular for sellers who have small teams or have limited space of their own. eBay prohibits its sellers from using 3PL or dropshipping services from competing marketplaces which may confuse the consumer when they receive the parcel, having purchased on one marketplace but having received a parcel in the branding of a different marketplace. This seems fair and reasonable since delivery packaging is leveraged as a branding strategy by almost all of the major retailer marketplaces.

However there are some scale and cost benefits to third party sellers using a single portal or provider for all their shipping and related services regardless of the channel, specifically larger volume discounts for shipping and return logistics. For Amazon FBA, shipping costs and offers on the marketplace are controlled by Amazon. Amazon Fulfillment by Merchant is often not as attractive to third party sellers as FBA for this and several other reasons.

17. How important is it for a product to be displayed prominently on a marketplace for the success of the product? How important is the product category or categories that a product is assigned to?

Correct categorisation is critical because it is a structured data attribute which directly influences where the product will appear across the marketplace website itself, in merchandising algorithms, and also how it is syndicated out to external search engines including Google and Bing.

Marketplaces like eBay have algorithms which detect miscategorised listings and demote them in search results because they are less relevant to what the buyer is actually searching for. An obvious example would be sellers listing mobile phone covers in a mobile phone category. It sounds clever on the surface because customers looking at mobile phones might be happy to find a cover at the same time, but this makes for a very frustrating and confusing customer experience

and the marketplaces know it, even if some sellers don't. Some marketplaces have policies against miscategorisation and are within their rights to apply penalties to sellers who persist, including restricting their account or suspending them permanently. Australian marketplaces go to great lengths to deliver an intuitive, smooth, assuring and reliable customer experience, sometimes having to take action against seller who think they've found a clever loophole with which they can hack additional sales.

It is a common perception that the majority of products on a marketplace are found through organic search, however this is not always the case. Review of numerous seller account metrics reveals that clicks direct to product listings from search may only account for around 15-40% of visits to product listings. The rest come from a variety of pathways including sitewide merchandising by the marketplace, promoted positions paid for by the seller, cross-promotion within the marketplace, Google and other external search engines, comparison sites such as www.getprice.com.au, www.myshopping.com.au, www.shopbot.com.au, email marketing campaigns by the marketplace, social media sites where buyers may have shared a listing and where marketplaces themselves are advertising. We've seen external traffic to a seller's listings as high as 40% compared to clicks direct from organic marketplace search at around 25%. The bottom line is that the marketplaces themselves are pulling every lever available to them to attract and engage consumers, and sellers are beneficiaries of all those strategies and investments.

eBay for example are very fair when it comes to their 'Best Match' search and placement of products within search. When sellers meet all of eBay's listing policy criteria and follow their published recommendations for listing title, item specifics, category and images, then a seller will find themselves well placed in search rankings. eBay also offers a Promoted Listings feature whereby sellers can opt in any listings they choose and bid an extra fee which is only charged where a buyer purchases that item after having found it through a promoted link. The seller is not charged this extra fee where a buyer found the listing via any other pathways on the marketplace. It's a very fair service available to sellers.

18. How do marketplaces determine how, and in which order, products are displayed? Which products (if any) benefit most from this? How has this changed over time?

All marketplaces use machine-learning algorithmic placement engines to rank listings by a plethora of factors, in search, merchandising and cross promotion placements. These factors include relevancy, value and popularity. Popularity is a particularly dominant factor on the basis of the common sense theory that if something has been selling well, it is likely to continue selling well in the immediate future. Therefore listings that sell well, tend to float to the top of search and merchandising rank. This makes sense because listings that convert well are generally better

presented, more informative and offer better value than others which don't convert as well. Thus the aim of sellers is to provide compelling value (product price, shipping price, speed of delivery, change of mind returns, warranties etc) and convey it in a concise, clear and reassuring way to the buyer. Naturally some sellers will do this better than others, but the competitive pressure is always there for sellers to perform at their best.

19. Are third-party sellers informed of changes made by marketplaces as to how goods are displayed? If so, are sellers provided reasonable information on the changes?

There are not usually many changes in how products are displayed. Even if there were, it wouldn't typically impact sellers directly. The algorithms that control search rank and merchandising placement are highly complex and sophisticated, and are also in most cases self-learning. Therefore they are constantly evolving and adjusting placement and sort order to maximise sales for the marketplace as a whole. Sellers are generally sales 'takers', not sales 'makers' in marketplaces.

Where there are changes to a marketplace policies or requirements that impacts sellers, they are typically notified by email and the policy changes themselves are published online. Some marketplace seller dashboards have in-situ messaging.

20. How has the methodology that marketplaces use to determine which goods to display prominently affected how sellers market their goods?

Sellers are given clear published policies, guidelines and recommendations by marketplaces, which if they follow will maximise their chances of appearing well in appropriate placements in search and across the marketplace site, plus surface in externally syndicated placements including Google and Bing search, comparison sites and social media sites such as Facebook and Instagram.

21. **What range of consumer data can be collected from the use of marketplace?**
- a) **To what extent is this data accessible to the seller, and for how long?**
- b) **To what extent is this data accessible to the marketplace or other third-party?**

Consumer data is limited to what is necessary to communicate with them and fulfil their orders. Consumers' browsing, searching or sales history is not made available to sellers, but is used in aggregate by marketplace algorithms to influence curated offers and marketing both on the marketplace website itself and via email, SMS or other communication methods the consumer has opted into.

For each and every sale of a seller's product, sellers are provided with the buyer's name and address as a minimum. Some marketplaces also share a phone number which is required by most couriers anyway. Some marketplaces provide the buyer's email address, but the larger marketplaces do go to great lengths to ensure email addresses are not accessible by sellers, so as to avoid sellers spamming illegally. On the larger marketplaces at least, communication between buyers and sellers is done via on-platform messaging. This approach is something we support because it ensures that all communications are accessible to the marketplace to better review disputes that may arise between the transacting parties. This also reduces subjectivity in reviewing disputes because there is no way to verify communications external to the platform have not been modified or faked.

Marketplaces vary in terms of how long the customer's details are visible within the seller's dashboard, but typically it's long enough to allow any dispute periods to pass. On eBay, it's 90 days. However as most larger business sellers are managing their marketplace listings and processing orders via API from within external third-party platforms, the customer data is retained indefinitely in those systems. The data is relatively inert and harmless in these seller controlled systems as the single piece of data that could be abused is usually missing, namely the email address. The chance of sellers using physical addresses to market to marketplace-acquired customers via physical mail is virtually zero. It's too costly, and too time-consuming, and with the rising participation in online shopping, customers are far less likely to respond to physical catalogues. Sellers know this and we've never heard of any instance of a marketplace seller using customer addresses to send physical mail.

However SMS marketing is on the rise, and although we have not yet come across instances of marketplace sellers sending SMS marketing messages to consumers using mobile phone numbers acquired through the data received for processing orders, it remains a very real possibility. The challenge around this is that marketplace members (both buyers and sellers) when they register

an account with any marketplace will usually opt-in to receive communications and marketing offers direct from the marketplace, but this does not confer rights on members to send marketing offers and messaging to each other. This is a sensitive area and has been abused by some sellers in the past when email addresses were made available to them. We would recommend that email addresses are never provided to marketplace sellers, unless it is an alias address which routes through the on-platform messaging system so the marketplace can control spam and maintain visibility over member to member communications which might occasionally be inappropriate or illegal.

Customer transactional details are required for taxation reporting purposes, and also to address any post-sale issues that might arise later on, such as warranty or product faults, some of which by law may extend several years due to the provisions of Australian Consumer Law.

22. For what purposes is this data collected? To what extent does analysis of this data affect future browsing and purchasing by consumers?

Consumer data is collected explicitly for the purpose of fulfilling orders (both the marketplace where they are a retailer themselves, and third-party sellers who fulfil their own orders) and communicating with those consumers (by the marketplaces themselves). Sellers can communicate with buyers on any marketplace without needing to have their personal details, simply by virtue of the messaging systems that are in place on the marketplace platform.

Consumer address and location data is used in aggregate for marketplace algorithms to better surface products which reflect regional relevancy and popularity. This is vitally important in terms of maintaining a constantly evolving and relevant customer experience, and is a secret sauce for the marketplaces in retaining customers' engagement and repeat shopping. It's the same as any self-respecting and competitive retailer would do.

23. What terms and conditions are in place between marketplaces and third-party sellers for the access of data by the marketplaces? What data are sellers required to provide marketplaces access to?

Each marketplace publishes their privacy policy and user agreement. Upon signing up to the marketplace both buyers and sellers are required to acknowledge the terms and conditions to which they will be subject, and by using the marketplace is continuing to declare their acceptance of those terms and conditions.

The data that marketplaces have access to pertaining to sellers is for the most part identical to

that collected from buyers. Additional data that will be required by the marketplace from sellers is their company or business name, ABN, bank account details (for payout of transaction proceeds).

Where the marketplace collects payments from buyers and passes the proceeds through to sellers, Australian Anti Money Laundering regulations also demand the collection of data and documents to verify the identity of the seller and may include copies of identity documents such as passport, driver's licence, Medicare card, credit card details, bank statements, utilities bills etc.

There are circumstances where the marketplace may also request specific documents from a seller to verify the authenticity of products listed by the seller, or to verify that they are not committing arbitrage, or to confirm safety or legal compliance. Such documents may include lease contracts, supplier agreements or supplier invoices, import clearance documents, safety or compliance certificates, ingredient lists, Therapeutic Goods Administration certificates, electrical or radio-frequency certifications and so on. These are relatively exceptional requests, but may influence whether a seller is suspended from a marketplace or not where there is a genuine concern around counterfeiting, arbitrage, safety or legal non-compliance etc.

There has been some concern expressed around the world over the way supplier data demanded by a marketplace could be then abused by the marketplace itself seeking to trade direct with suppliers they might otherwise not have known about. This of course would be viewed as unconscionable conduct and in bad faith against sellers who may be disadvantaged thereby. It is the aim of every business to find and secure exclusive supply, deals and rights which can give them an edge over competitors. When those competitors are dealing on a level playing field, this is just plain competition. When one party is exerting power over another (such as a marketplace demanding supplier details from a third-party seller), this is not fair competition, and undermines fair commercial dealings. Whilst existing Trade Practices laws likely prohibit this sort of abuse, we would strongly support any further measures or laws that could deliver stronger protection to Australian sellers from such abuse by any marketplace, or perhaps strong penalty measures to deter or punish marketplaces that engage in such abuse of third-party sellers.

24. To what extent do marketplaces have processes in place to resolve third-party sellers' complaints? How effective are these processes?

The processes available for accepting and addressing third-party seller complaints vary dramatically from marketplace to marketplace. Longer tenured marketplaces such as eBay have robust escalation pathways in place via their customer support inbound portals via chat, phone or email. Younger marketplaces may have less formal processes, but are typically accessible via regular support queues also.

We have heard of instances of sellers being dissatisfied with the complaint or dispute resolution pathways and options available to them, occasionally lamenting that their complaints are not being understood, or the marketplace staff they are communicating with are incompetent or don't seem eager to help. We have heard instances of sellers having funds withheld or their accounts being suspended, blocked or restricted without understanding the reason for the marketplace action against them, and then being frustrated by the inability to speak to a human or at least a person who has the authority or ability to take remedial action. It is unfortunately not uncommon for sellers to complain that the marketplace refuses to even tell them what they allegedly did wrong to trigger the restriction, penalty or suspension. Whilst we understand there are sometimes legal issues at stake which might limit what the marketplace can share with the seller, we don't believe this is fair on well-intentioned and otherwise compliant third-party sellers. Considering the marketplace's penalty actions has a direct impact on the seller's ability to pay staff, leases and other overheads, and remain solvent (along with the knock-on effects on Australian families and communities), we believe the time has come for a more formal code of practice for seller-marketplace dispute resolutions to ensure fairness and due process.

The major marketplaces have well structured dispute resolution processes and programs in place in an effort to eliminate the risk of losing an existing customer. This doesn't always translate into a fair process for sellers.

- 25. Do third-party sellers have any concerns about their relationships with the relevant online marketplaces? For example, in relation to:**
- a) terms and conditions for placing products on marketplaces**
 - b) requirements regarding regulatory compliance**
 - c) costs and fees**
 - d) tech support**
 - e) rankings and display of products**
 - f) integrity of reviews**
 - g) other**

Sellers will always have concerns about things THEY don't like. That's not to say those concerns are always justified. Trading on a marketplace is highly competitive and sellers range from 'play-by-the-rules fair-go' through to devious and mischievous minds whose desperation or ignorance leads them to sometimes butt heads with the marketplace. The latter of course need to be weeded out for the betterment of consumers and honest sellers.

From our experience, there is a relatively small number of third-party sellers who have valid

grievances against marketplaces they trade on, and they seem to centre mostly around these areas:

- Unequal treatment of sellers so far as removing products for one seller, but allowing the same products to be listed by other sellers.
- Inability to speak to a human to have a fair dialogue about issues which may seem unfair or unreasonable.
- Slow responses of marketplaces to situations which are time-critical for sellers, such as:
 - Withholding of funds
 - Processing of identity documents and information
 - Blocked, suspended or restricted accounts
 - Listings that have been removed due to counterfeit concerns or IP rights owner reports (legitimate or nefarious)
- Buyer disputes and cases against the seller which directly impact the sellers' performance rating or reputation
- Defamatory, misleading, inaccurate or revenge negative feedbacks or product reviews left by buyers

26. To what extent are marketplaces' relationships with third-party sellers affected by the marketplace acting as a seller in the same product category?

This is a very complicated issue.

Marketplaces such as eBay are not retailers themselves and therefore this does not apply to them.

Most other marketplaces are retailers themselves. Ultimately it comes down to the integrity of each marketplace as to how they manage the products that are listed on their websites. Some marketplaces such as Catch and Bunnings Tradelink (both owned by Wesfarmers) have clear strategies and policies in place which govern their product selection, both their own products and the products they accept for listing by third-party sellers. Bunnings for examples will only permit products that are complimentary to their own range, and will not allow any products that directly compete with them. This might be frustrating for some third-party sellers, but it would appear to be a smart strategy so far as delivering a fantastic customer experience through curated product selection.

Increasingly we are witnessing the evolution of long-tenured physical retailers into the digital commerce space, and then adopting an endless aisle strategy by leveraging third-party sellers (some of whom may be existing suppliers) to augment and compliment their existing product selection strategy. This seems to be a sensible and well-considered approach which should result

in well understood, competitive and intuitive range offerings for consumers familiar with those retailers. In other words, the addition of third-party or dropship products to the existing range is more likely to make sense to consumers and perceived as a logical expansion of their existing retail offerings.

Some marketplaces are less defined by category, and may expand seemingly without much apparent homogeneity, or are deliberately seeking to be a one-stop megamall for anything and everything imaginable. In this scenario, the chance of marketplace and third-party seller competing on the exact same products or at least competing on substitutable products is significantly higher. The biggest risk in this area is where a seller has already listed a particular product which is then later listed directly by the marketplace. Cannibalism of sales is to be expected in such a scenario, especially where the marketplace may have better buying power and thus be able to offer a significantly lower price to consumers.

There have been instances of marketplaces manufacturing their own branded products that compete directly with existing high-volume selling products by sellers. Whether this is in bad faith, negligent or combative is impossible to say. Each case will vary. Sometimes it will simply be bad timing.

The deeper question is whether there should be a code of practice in place, or whether marketplaces should be expected to exercise a duty of care and good faith towards sellers whom they have accepted product listings from, to ensure they are not competing unfairly through their use of buying power, sales velocity and margin data, or sourcing direct from suppliers or manufacturers to circumvent the third party seller. We have heard of stories of sellers businesses being decimated by such marketplace actions, which is especially heart-breaking when those sellers have invested so much into it, and were reasonably relying on the marketplace to act in good faith. Whilst sellers may protect themselves with the usual instruments available through IP laws such as design rights and trademarks, it's not hard to circumvent these protections through innovative design and branding. The reality is that most third party sellers are relatively small businesses who do not have the financial means to take on a large marketplace through the courts.

For those sellers who have been impacted adversely by marketplaces in this way, this will remain a contentious issue, and we would welcome further exploration of ways to bring fairness and accountability into the way such marketplaces behave. We believe marketplaces have an equal duty of care and good faith to both buyers and sellers as they are acting as a facilitator and intermediary to these trading partners. Any means by which a marketplace may exploit, or even merely appear to be exploiting a seller's hard work and intellectual property warrants consideration.

27. What information are third-party sellers required to provide to customers about the product for sale, including in relation to quality or price?

Sellers are expected to (and by use of the marketplace have agreed to through the user agreement) comply with all applicable laws and regulations pertaining to the products they offer for sale through the marketplace, their dealings with consumers and compliance with consumer guarantee provisions of Australian Consumer Law. This means all product descriptions are required to be accurate, complete, non-misleading. Only products that are legally able to be offered for sale in the country of the consumer may be listed.

Some marketplaces will display WAS and NOW prices by which buyers can ascertain a discount on offer. The same rules apply to sellers displaying discount pricing as applies to all retailers. The WAS price must be genuine and independently verifiable where it is a MSRP. Where the seller themselves is the manufacturer, an MSRP or RRP may not be legally valid where the product has never been offered at that price. An offer of a discount must be real and substantiable, meaning the comparison WAS price must be a recent prevailing price at which the product has either been selling, or at least offered for sale at for a fair time. Marketplaces are generally very aware of their own obligations around pricing and discounting, although some do a better job than others at policing seller discount pricing offers, and educating their sellers on the legal requirements.

We are aware of a common practice of a small number of sellers to artificially inflate their listed price ahead of a promotion offer in conjunction with the marketplace, or on their own account. This practice is of course illegal and the marketplaces generally go to great lengths to stop this practice with legal agreements being required for sellers to opt in to marketplace sponsored promotions. There have been some highly publicised instances in the recent past where ACCC has taken direct action against a retailer marketplace for the same behaviours. We would hope and expect that none of the Australian domiciled marketplaces would be knowingly engaging in this kind of deceptive and misleading conduct, and would also not be knowingly allowing third-party sellers to do it either. Marketplaces like eBay have programmatic detection tools in place to identify changes in pricing during a promotion which will automatically remove those third-party seller listings from the promotion. Sellers found to be engaging in misleading price manipulation are typically excluded from future promotional opportunities, and can be subjected to further restrictions or suspension if they are found to be doing it persistently even after being made aware of the applicable laws.

We propose that there is work to be done to ensure foreign marketplaces targeting Australian consumers are held to the same standard. It is unfortunately not uncommon to see deceptive

pricing behaviours on marketplaces such as [REDACTED]

Sellers on the eBay marketplace can use their item description to describe the quality of a product. It is encouraged for second hand items to be described and photographed thoroughly to set realistic and accurate customer expectations. However, many consumers simply don't read descriptions thoroughly and often claim the item is not as described when in fact it clearly is. Price is displayed clearly on all marketplaces.

28. What information do app marketplaces provide customers about the product for sale, including in relation to quality or price?

By 'app' we assume you are referring to marketplaces accessible to buyers through a mobile device app? The device through which a marketplace can be accessed by consumers should have no bearing whatsoever on compliance with Australian Consumer Law, either for the marketplace itself or third-sellers trading on that marketplaces. So far as we can tell, the information provided to consumers is no different across different devices or formats.

29. What processes are in place for consumers to rate and review products? To what extent do reviews and ratings affect consumer choice of a product?

Marketplace reviews may be for either a PRODUCT or for the SELLER themselves. The latter is intended as a peer review of how the seller treated the consumer in terms of value offer, accuracy of description and images, deliver experience and timing, addressing disputes and returns handling, communication and so on. These seller feedback reviews are sometimes used by consumers where they don't know the seller or haven't dealt with them before as a way to decide whether what the seller is offering can be trusted and relied on, and how what experience they can expect if something goes wrong.

Product reviews are increasingly relied on for all online shoppers as a social and peer proof. Because many consumers rely on these peer reviews, it is important that product reviews themselves are independent, voluntary, fair, dispassionate, objective and accurate, and most importantly must be free of bias due to reward or threat from the beneficiary of the review. Our

experience with marketplaces is that such product reviews are free from undue influence and therefore reliable, but some sellers are not so honest. It is fortunately rare, but occasionally sellers will solicit reviews in exchange for a reward such as a discount, refund or gift. This is against marketplace policies and where sellers are found to be seeking to influence reviews in this way, restriction, penalties or even suspension may occur, and we would argue are warranted. We believe sellers on marketplaces should be held to the same standards and laws as regular retailers. Anybody running a business should be expected to inform themselves of the laws, regulations and standards that apply to the industry they are operating in, and abide by them.

Some consumers use the marketplace's Feedback or Reviews system to extort sellers into giving a refund when the product they received is as described. Negative feedback can affect a seller's moral and confidence. It can also affect whether other consumers will purchase from a particular seller based on feedback percentage rates. On eBay, sellers have the ability to reply to feedback. All feedback and replies are public.

30. What is the process for consumers to return products and/or report low quality or harmful products, and what role do marketplaces play in these processes? How effective are these processes for consumers?

Marketplaces tend to favour consumers over sellers where there is a report of a fault or misrepresentation. The major marketplaces have formal returns processes in place for consumers, where both buyer and seller can communicate and come to an agreement over how to resolve the issue, whether it be a refund, repair or a replacement. Where buyer and seller cannot agree, either party can escalate the case for the marketplace to review and resolve. Sellers not resolving such disputes or complaints themselves are rightly disadvantaged through penalty points which if they accumulate over time can impact the visibility of their product listings in search and other placements across the marketplace, and can even result in the seller's account being restricted or suspended. Sellers are expected to resolve such issues with the consumer directly without needing the marketplace to weigh in, and consumers have a right to expect the same. With very few exceptions, the buyer's rights are well supported by the marketplace policies, processes and where necessary, adjudication.

There is a particular complexity however when it comes to foreign sellers offering goods for sale to Australian consumers on Australian marketplaces. Many of these sellers are not familiar with Australian consumer laws (or sometimes don't care) and tend to interpret buyer complaints and disputes for quality issues, faults or misrepresentation as annoying insects to be swatted with a flippant offer of a dollar or two refund. We believe marketplaces offering goods to Australian consumers should be held to a high standard and required to educate their offshore sellers on

Australian consumer rights, or at least have more consumer-friendly processes and policies in place to better protect Australian consumers from such frustrating and sometimes stressful experiences. We believe any marketplace offering goods for sale to Australian consumers should be held to account for the way they protect Australian consumer rights.

The process for returns on most marketplaces is very effective for the consumer. However the process for reporting low quality products is lacking. The process only seems to take into consideration fraudulent items.

31. How easy is it for consumers to seek (and receive) a repair, replacement or refund for a harmful, faulty or not-fit-for-purpose product?

Generally it is easy for customers to get and receive a repair, replacement or refund from a marketplace, whether the vendor is the marketplace themselves or a third-party seller. The only exception we've observed is where foreign marketplaces such as www.aliexpress.com and www.dhgate.com make goods available to Australian consumers which are offered and fulfilled by offshore third-party sellers. Australian marketplaces facilitating sales from offshore third-party sellers do not seem to have this issue as they are already held to account under Australian consumer law and consumer rights are well protected and serviced.

The current processes for returns on most of the major marketplaces cater for refunds only, and does not allow for replacements or repairs, both of which are rights under ACL and should be available at the discretion of the seller. This can lead to considerably inconvenience and cost for both consumer and the third party seller. The consumer often has no option but to receive a refund and then repurchase, which is convoluted and also frustrating in cases where the seller wants to offer a simple swap while paying for return postage.

32. What risks are there to consumers when making purchases on a general online retail marketplace? What measures are in place to protect consumers from the risks of scams, or harmful products, on marketplaces? What processes are in place to deter sellers from offering harmful products?

All marketplaces have clear published guidelines and policies for sellers about what is expected of them in terms of product quality, images and content describing those products, and treatment of buyers, along with the consequences of falling short. As marketplaces do not have physical possession of products that sellers are listing to be able to physically assess their quality and the accuracy of descriptions and images supplied by the seller, sellers are reasonably assumed to be

complying with all applicable laws and standards. Where the marketplace receives reports from buyers, other sellers, industry regulators, representative organisations or rights owners whose intellectual and design rights are asserted to have been infringed, the marketplaces typically act swiftly to firstly remove listings of concern so they are out of harm's way, and then to follow up quickly with notification to the seller of the issue. Depending on the severity of the issue, further penalty action may be imposed by way of restriction, withholding of funds, imposition of additional penalty fees, or even suspension.

These actions are well known and socialised by marketplace sellers, and from our observations, they do act as a good deterrent.

33. What complaints mechanisms are in place for consumers to report scams or harmful products to the marketplaces? How effective are these mechanisms?

Larger and longer tenured marketplaces have robust processes and escalation pathways in place to cater for reports of scams or harmful products, and for the most part they do act quickly to remove suspected products and listings from consumer access.

We do believe there are more steps that can be taken though by some marketplaces to be more proactive in scanning the products listed on their websites by third-party sellers, not all of whom are honest and well-intentioned. This is particularly of concern to many sellers in instances where listings of one or more sellers may be removed for safety or legal concerns, but listings of the same identical product by other sellers remains active. Not only is this understandably frustrating for those sellers who have had their listings removed, because it doesn't seem fair, but if the products are in fact potentially faulty or harmful, or suspected of being non-compliance, it means that consumers are still exposed to an unacceptable risk. We believe marketplaces need to be consistent in their treatment of listings for any product they believe to be posing a risk to consumers.

Whilst consumers are able to report sellers to the marketplace, how these cases are reviewed is unknown. The major marketplaces have policies in place that do not allow prohibited items to be sold on the marketplace, including harmful products. Certain words and phrases in a listing title get flagged when a seller attempts to list items that go against the prohibited items policy, and this prevents such items from being listed.

34. To what extent are consumers informed about data collection by third-party sellers and the marketplaces? How is this information presented to consumers?

All marketplaces publish clear user agreements and privacy policies which all members (buyers and sellers) agree to when they first register an account on the marketplace. Consumers may choose not to read them, but they are publicly available and highlighted clearly upon registration, so consumers are not likely to have any valid excuse for being ignorant of data collection policies and practices. Where marketplace policies or user agreements are amended, such amendments are typically notified to affected members (buyers and/or sellers) via email, online notices in the member's dashboard, and published online.

35. To what extent are consumers able to limit this data collection?

Consumer data collected by marketplaces is limited to their name, address, phone, email and payment source account details (such as credit/debit card details, PayPal account details, buy-now-pay-later account details such as Afterpay or Zip etc). We are not aware of any marketplaces that would require or need information beyond what is necessary to process a payment in the marketplace checkout, ensure the order is able to be fulfilled and delivered to their address, and to communicate with the consumer, or facilitate communication between buyer and sellers transacting.

36. To what extent is consumer data used by third-party sellers or marketplaces to target consumers?

Consumer data is not typically able to be exploited or used by third-party sellers to target consumers directly. A consumer's name and address is required to fulfil orders, and phone numbers are required by most couriers. Most marketplaces mask the consumer's email address with an alias, or require the seller to communicate with consumers solely via the marketplace messaging platform, this eliminating any chance of sellers receiving a consumer's email address to be able to target them with marketing messages or other unsolicited communications.

The only area of risk may be where the consumer's mobile phone number is received by the seller to meet the courier requirements, and the seller may decide to include those mobile phone numbers in SMS marketing campaigns. We are not aware of any physical or programmatic way to prevent this spamming from happening, but the existing laws and the marketplace user agreements and policies are certainly generally clear that this is not permitted.

Marketplaces that share consumers' email addresses with third-party sellers should be required to stop this practice. It should not be difficult to implement an alias email address protocol to funnel

all member (buyer and seller) communications through the marketplace messaging system.

Consumer data is used by marketplaces themselves to target consumers with curated and personalised offers, but only where those consumers have opted in to receive such marketing communications. Marketplaces found to be spamming consumers when they have not opted in should be held to account. Anonymised consumer data is used by marketplaces for reporting, performance monitoring and to influence marketing and product selection strategies. This is no different to any retailer and is fair commercial practice.

37. To what extent (if at all) is a consumer's data used in a way that affects the price offered to the consumer?

We are not aware of any marketplace manipulating prices offered to individual consumers on the basis of any data the consumer has provided.

The same as with any retailer, past transaction history may reveal shopping habits around price range preference or price sensitivity that could be used in aggregate (without needing any individual identifying information) to influence pricing strategy, discounting and promotional offers. We don't necessarily see this as anti-competitive.

eBay offers a clever function which allows sellers to make a discounted price offer to buyers who have added their listing to a watchlist. The offer is set by the seller but delivered by the marketplace to the buyer within the terms of their user agreement and only where buyers have opted in to receive marketing communications from the marketplace. This has proven to be a useful feature in helping savvy sellers sell more. It should be noted that the identity of the buyers themselves is not available to the sellers. The offer is merely made to 'watchers' in aggregate. So consumer data is well protected.