



Department of Justice

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JUSTICE DEPARTMENT REQUIRES EBAY TO END ANTICOMPETITIVE “NO POACH” HIRING AGREEMENTS

Settlement Preserves Competition for High Tech Employees

WASHINGTON — The Department of Justice announced today that it has reached a settlement with eBay Inc. that prevents the company from entering into or maintaining agreements with other companies restraining employee recruitment and hiring.

The department’s Antitrust Division filed the proposed settlement in the U.S. District Court for the Northern District of California in San Jose. If approved by the court, the settlement would resolve the department’s competitive concerns and the original lawsuit filed on Nov. 16, 2012.

In its lawsuit, the department alleged that senior executives and directors of eBay and Intuit entered into an agreement, beginning no later than 2006, that prevented each firm from recruiting employees from the other and that prohibited eBay from hiring Intuit employees that approached eBay.

In the high technology sector, employees with advanced or specialized skills are highly valued and sought after. Companies often heavily recruit and hire experienced and capable employees of other technology firms, offering significantly better job opportunities or pay. The agreement between eBay and Intuit diminished important competition between the firms to attract highly skilled technical and other employees to the detriment of affected employees who had less access to better job opportunities and higher pay.

“eBay’s agreement with Intuit served no purpose but to limit competition between the two firms for employees, distorting the labor market and causing employees to lose opportunities for better jobs and higher pay,” said Bill Baer, Assistant Attorney General in charge of the Department of Justice’s Antitrust Division. “The proposed settlement resolves the department’s antitrust concerns and ensures that eBay will not engage in similar conduct in the future.”

Previously, in denying eBay’s motion to dismiss the case, the district court found that the agreement alleged by the department, if proven, would constitute a naked horizontal market allocation agreement that was manifestly anticompetitive and lacking in any redeeming virtue, and thus could be found *per se* unlawful.

The proposed settlement would prohibit eBay from entering or maintaining anticompetitive agreements relating to employee hiring and retention for five years. It would broadly prohibit eBay from entering, maintaining or enforcing any agreement that in any way prevents any person from soliciting, cold calling, recruiting, hiring or otherwise competing for employees. eBay will also implement compliance measures tailored to these practices. Intuit is already subject to a similar consent decree, and for that reason was not a defendant in this case.

Today, the California Attorney General's Office also filed a settlement in its related case, *The People of the State of California v. eBay Inc.*, based on the same facts alleged in the department's complaint.

This case and the proposed settlement arose out of a series of Antitrust Division investigations into employee recruitment practices at a number of high tech companies. In September 2010, the Antitrust Division filed a civil antitrust lawsuit against six high tech firms—Adobe Systems Inc., Apple Inc., Google Inc., Intel Corporation, Intuit Inc. and Pixar—for antitrust violations arising from “no cold call” agreements. In December 2010, the Antitrust Division filed a civil antitrust lawsuit against Lucasfilm Ltd. alleging antitrust violations involving similar activities restraining competition for employees. In both cases, settlements were filed at the same time the lawsuits were filed resolving the department's competitive concerns. Today's proposed settlement with eBay is substantially the same as the court-approved settlements in the two prior cases.

eBay Inc. is a Delaware corporation with its principal place of business in San Jose, Calif.

The proposed settlement, along with the department's competitive impact statement, will be published in The Federal Register, as required by the Antitrust Procedures and Penalties Act. Any person may submit written comments concerning the proposed settlement within 60 days of its publication to James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street N.W., Suite 7100, Washington D.C. 20530. At the conclusion of the 60-day comment period, the court may enter the final judgment upon a finding that it serves the public interest.

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