



# Department of Justice

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THURSDAY, MAY 1, 2014  
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**REMARKS AS PREPARED FOR DELIVERY BY ASSISTANT ATTORNEY  
GENERAL BILL BAER AT THE CONFERENCE CALL REGARDING THE JUSTICE  
DEPARTMENT'S SETTLEMENT WITH EBAY INC. TO END ANTICOMPETITIVE  
"NO POACH" HIRING AGREEMENTS**

WASHINGTON, D.C.

Good afternoon, and thank you for joining us on this call to talk about the Justice Department's settlement of our lawsuit against eBay, a settlement that prohibits eBay from entering into anticompetitive agreements with other companies to restrain employee recruitment and hiring.

This is one further step towards closing an unfortunate chapter for Silicon Valley and other companies who unlawfully agreed to deny their employees the opportunity to receive competing job offers. These so-called "do not poach" or anti-solicitation agreements are per se unlawful, and the Antitrust Division takes them very seriously. As a result of investigations into recruiting-related antitrust misconduct, a number of companies – Adobe, Apple, Google, Pixar, Intuit and Lucasfilm are under a court-ordered injunction to stop these illegal practices. As a result of our action today, eBay also will be under a court-ordered injunction—after the closing of the public comment period and entry of the final judgment by the court.

What did eBay do? In our lawsuit we alleged that executives at the highest level of eBay and Intuit, including eBay's former CEO Meg Whitman and Intuit's founder and executive committee chair Scott Cook, entered into an agreement that prevented the companies from recruiting employees from each other and, for a time, prevented eBay from hiring any Intuit employees.

The behavior was blatant and egregious. And the agreements were fully documented in company electronic communications. In one email, eBay's senior vice president of HR wrote Meg Whitman complaining that while eBay was adhering to its agreement not to hire Intuit employees, "it is hard to do this when Intuit recruits our folks." Turns out that Intuit had sent a recruiting flyer to an eBay employee. Whitman forwarded that email to Scott Cook asking him to "remind your folks not to send this stuff to eBay people." Cook quickly responded with "... Meg my apologies. I'll find out how this slip up occurred again..."

The state of California filed a related case based on the same factual allegations. Both of those lawsuits are being settled today. Our settlement prevents eBay from doing this again. The

settlement announced today by Attorney General Harris provides restitution for the harm to individuals and the state's economy.

We filed our first "no poach" lawsuit back in September 2010 in which we charged six high-tech firms—Adobe, Apple, Google, Intel, Intuit and Pixar—for entering into anticompetitive agreements. We filed another lawsuit against Lucasfilm in December of that same year. We reached settlements with all of those companies at the same time we filed our lawsuits.

Those settlements required an immediate halt to the illegal conduct and instituted strong and broad prohibitions against any recurrence. And today's settlement with eBay does the same and resolves the concerns that caused us to file suit against them in November 2012.

As you know, our judicial system also offers those who have been harmed the right to seek monetary damages for any antitrust harm. Here, not long after we filed our first two lawsuits in 2010, private class action lawsuits against these same defendants were filed. Certain companies settled last year. And there are published reports that the remaining private lawsuits, covering the more than 60,000 employees who were harmed by these anticompetitive agreements, are settling as well.

These follow-on lawsuits are examples of the important roles that the federal, state and private enforcers together play in protecting U.S. consumers.

These actions by the Antitrust Division remind us all that the antitrust laws guarantee the benefits of competition to all consumers, including working men and women. The agreements we challenged here not only harmed the overall competitive process but, importantly, harmed specialized and much sought after technology employees who were prevented from getting better jobs and higher salaries. Stifling opportunities for these talented and highly-skilled individuals was bad for them and bad for innovation in high-tech industries.

Today's proposed settlement prohibits eBay from entering into or maintaining anticompetitive agreements relating to employee hiring and retention for five years.

The settlement provides broad relief that also prohibits eBay from entering into an anticompetitive agreement—in basically any way, shape or form—that prevents a person from soliciting, cold calling, recruiting, hiring or otherwise competing for employees.

And to conclude, our enforcement actions should make it abundantly clear that the antitrust laws apply to every industry, including companies that innovate and companies in the high-tech industry. These companies and the executives who run them are not above the law. And our lawsuits against eBay and others prove that point.

And with that, I'd be happy to answer any questions you might have.

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