

**Roy, Lauren**

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**From:** Blanch, Belinda on behalf of Adjudication  
**Sent:** Friday, 18 April 2008 11:57 AM  
**To:** Chisholm, Shane; Roy, Lauren  
**Subject:** FW: Spam: Response to eBay 'exclusive dealing' filing [SEC=UNCLASSIFIED]

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**ACCC Classification:** SEC=UNCLASSIFIED

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PUBLIC REGISTER**

-----Original Message-----

**From:** Marc Dergacz [mailto: ]  
**Sent:** Friday, 18 April 2008 11:46 AM  
**To:** Adjudication  
**Subject:** Spam: Response to eBay 'exclusive dealing' filing

Hello,

In response to the submission of eBay's filing for immunity, I have concerns over the argument that transaction security is a valid excuse to engage in exclusive dealing.

eBay is by far the largest online auction site in the world and as per eBay's press release, Australia is being used as a trial in it's push to force sellers and buyers to use its own Paypal system globally. In determining whether or not this move by eBay would substantially lessen competition, one would argue that even in the absence of competition, this move by eBay would rather, create substantial barriers to competition by blocking any potential rivals from developing a payment system that could potentially offer buyers and sellers lower transaction costs with similar security benefits.

Under section 4 "Market definition and public detriments - effect on competition" , eBay argues that due to the variety of markets of goods which are sold on it's website, that it is not possible to determine if the proposed conduct has any anti-competitive consequences. This is a rather naive argument as the market place that eBay operates in is online auctions which is a market in itself. Given that eBay sells items that range across a variety of market, the net market they serve must be the sum of these markets thus any potential anti-competitive behaviour is not going to have an isolated effect.

One must accept that there are many people who prefer to shop online but are not willing to pass over their bank account details or credit-card details to anybody (including any an online payment service such as Paypal) and prefer to make payments in person through their own bank. Given that Paypal stores customer's credit card and bank account details in it's database, customers are at risk of having their personal details compromised by way of a security breach (something that has happened before).

Given that eBay globally has become a household name, there is a network economy being built as more buyers attract more sellers and vice-versa. It is unlikely that a seller could move to a rival auction site and enjoy the same level of profits and market exposure. As pointed out in the filing, the contribution to GDP that eBay is able to contribute makes it even more important that consumers and sellers are able to interact with the lowest transaction cost possible. A monopolistic effect can already be seen with eBay's refusal to lower transaction costs to sellers who will be forced to receive payments via Paypal. **There would be no room to lower transaction costs as no competitors would be allowed to offer a similar payment service.**

The only real benefit that eBay has outlined is that sellers could be notified when a payment has been made and this information is integrated with the rest of eBay's system. However, a competing payment service could offer the same level of payment protection and feedback for sellers/consumers. The basis of eBay's argument is that consumers and sellers would only have to deal with the one entity which is eBay making it more convenient (rather than safer which is more a ruse). Convenience and security should never be an argument for anti-competitive practice. **Security is the** responsibility of the seller/consumer as it should be their decision on which form of legal payment method they would like to conduct business in.

I am concerned with Section 4.5 of the filing which states, "In light of the detailed analysis and conclusions contained in the NERA Report (which is not submitted as part of their filing), eBay submits that the Conduct would not be likely to have the effect of substancially lessening competition within the meaning of section 47. Alternatively, any anticompetitive effect of the Conduct is likely to be relatively minor". I argue that the benefits touted by eBay with regards to this filing are not worth the potential anticompetitive effect that this will bring.

Perhaps if eBay gave the undertaking that it would allow sales to occur on its website with other trusted payment providers, then immunity could be allowed for eBay to force sellers/consumers to use only trusted payment services which meet some arbitrary set of criteria thus reducing any barriers to competition.

In all, my argument is that immunity should not be granted as it raises a barrier for any competition in the online payment market and given that eBay has a very large global position, one needs to consider the effects such a decision will have around the world rather than in the domestic market. Any security benefits touted by eBay should bear no weight in the decision as this is purely dependant on Paypal's reputation in ensuring customer information is kept confidential. Should people feel untrusting of Paypal's business practices, they have no alternative means to transact and one should not be forced to give their personal payment details to be stored in a database if they do not wish.

Regards,

Marc Dergacz

[Redacted signature]

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