

Our Ref: DC:ACCC:EBAY
Your Ref: C2008/566

FILE No:
DOC:
WARS/PRISM:



28 April 2008

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

To Whom It May Concern,

RE: eBay International AG exclusive dealing notification N93365

We refer to the above matter and your organisations request for submissions in respect of eBay's application.

The Youth & Enterprise Legal Centre ("YELC") is a not for profit community legal centre that assists young people and people in business that are unable to afford a lawyer. Generally speaking, we assist young people in a range of debt matters and small businesses who do not have the resources to compete with larger companies, or who find themselves on the verge of insolvency.

Our centre has a keen interest in promoting fair and open competition at a retail and wholesale level and has in the past represented many clients of eBay.

From the outset we wish to make it clear that the Youth & Enterprise acknowledges the disastrous effects of fraud and the associated economic costs associated with it, however the centre does not believe that eBay's purported response is in the best interests of consumers and will have a larger detrimental effect on the community than the benefit (if any) it will provide.

It is the centre's opinion that the economic costs of fraud within the eBay community would not equal the economic costs imposed upon the community by eBay.

Initially, YELC disagrees with the presumption by eBay that by allowing eBay to implement a third line forcing of PayPal their would be a decrease in fraud to consumers within the eBay community. Whilst some benefits may be evident in the short term, the move will not decrease fraud in the longer term. Under the PayPal model, the merchant still has the burden of any loss associated with fraud and the consumer obtains no further benefit over using a credit card as under current Visa and Mastercard rules, the issuing bank will reverse any "fraudulent" transaction charged to their credit card and recover these funds from the merchant bank, when then recovers from the merchant.

To force upon the merchant a "service" of reducing the amount of fraud denies the merchant the opportunity to either wear the risk themselves or outsource the fraud prevention to other companies that may be more efficient at it than PayPal.

Even if eBay and PayPal were to reduce fraud, which is denied, this will come at two significant costs which outweigh any benefits, namely, the increased transaction cost for all eBay users through the PayPal fees and secondly the increased costs associated through the discouragement of innovation and competition within the "secure" online payment gateway marketplace.

Firstly, in addressing the costs of PayPal fees, YELC believes that third line forcing of PayPal would introduce an economic inefficiency equal to the excessive costs charged by PayPal over other competitive entrants. In this respect, eBay reports in its submissions that online credit card fraud in Australia equals \$40 million. Generally speaking, this is a cost that is directly borne by the merchant or vendor, who is "charged back" for the fraud and indirectly borne by the customer. It is important to note that under the PayPal system, this does not change, and the merchant still remains liable for any of these frauds and the consumer obtains no extra protection than what they had if purchasing with any credit card.

eBay further indicates that it expects some \$2.6 billion worth of sales within the Australian market over the next 12 months. A cursory review of the PayPal site shows a "merchant fee" for accepting a credit card to be between 1.1% and 2.4% of the transaction value (plus a 30c fee per transaction).

A request for a price from the Commonwealth Bank on providing Visa and Mastercard merchant facilities indicated that the cost would be between 0.85% and 1.4% depending on volume, while the cost of a direct deposit for a \$200 item would be about 0.1%.

Given these costs, which are at best estimates, the cost of PayPal to the consumer would be between 2.3% (with a small merchant who currently uses Direct Deposits) and 0.25% for a large merchant accepting a credit card.

Obviously only eBay has the figures for what the average fee charged by PayPal is, what the average ticket size is, and how people currently pay, however the extra cost to the consumer can be seen to be between \$6.5 million (based on 0.25% of \$2.6 billion) and \$59.8 million (based on 2.3% of \$2.6 billion), depending on the current demographics. When this is compared to the \$40 million for all online fraud across Australia, it seems apparent that the extra cost to the community of PayPal of up to \$60 million to simply possibly reduce fraud through one online website is economically inefficient and against the long term interests of consumers.

It is also worth noting that the use of PayPal does not eliminate the risk of fraud for the merchant, as they are not protected in the event of fraud under PayPal's or the current system, however this may change for all merchants (whether through PayPal or not) with the introduction of improved fraud prevention, such as through Verified by Visa and Mastercard SecureCode. If these developments are made, and merchants are locked out from using them, as they need to use PayPal, a situation could develop whereby the risk of fraud increases through the use of PayPal.

Another concern is that in effect eBay are attempting to force consumers to wear a cost of "fraud control" when in fact the consumer gets no added benefit from the extra cost and if they did perceive value in the "benefit" of paying through PayPal, the consumer could select to only bid on an auction if a merchant accepted PayPal. To force it on the merchant and indirectly the consumer denies them the choice of having this protection or not, which should be a business case decision for each merchant and consumer to make.

If a consumer wants and values the protection offered by PayPal, they will force merchants to acquire it and will not acquire from merchants who don't have it. However this would be unlikely as the consumer, when using a credit card, is covered in any event from card not present merchant fraud, through the bank's chargeback provisions and in fact, PayPal offers no extra protection to the merchant that can not be acquired elsewhere (as PayPal does not insure the merchant from fraud, only the customer).

In addition to this, the implementation of PayPal totally excludes American Express and Diners Club as payment methods to eBay auctions, even if the merchant accepts these payments, which has a negative effect on the market for payment clearing systems.

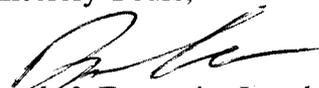
The introduction of this third line forcing also decreases the opportunity for new competitive entrants into the marketplace and reduces the benefit of any innovation these firms could bring to the market. It also could be seen to reduce the need for combating online fraud on a global scale from Visa and Mastercard, so that all merchants, regardless of who they use for their payment processing and who they use for their shopping cart benefit.

Finally, consumers should be able to purchase items from eBay without having to provide PayPal with their credit card or bank details. The consumer enters into the purchasing contract with the merchant directly. Under the eBay proposal, the only option available to the consumer to not provide details to PayPal is to accept an expensive and slow method of delivery that has significant disadvantages for both the merchant and the consumer, being Cash on Delivery, which is clearly not an acceptable arrangement.

In conclusion, the YELC would strongly oppose any third line forcing of PayPal services to eBay merchants and would encourage the ACCC to seek further information from eBay on the likely costs and benefits resulting from the third line forcing to ensure that any decision is inline with the long term interests of consumers.

If you would like to discuss this matter, please feel free to contact Mr Daniel Clarke on 02 8765 4140.

Sincerely Yours,


Youth & Enterprise Legal Centre
Per: Daniel Clarke, Centre Director & Solicitor