

Roy, Lauren

From: Blanch, Belinda on behalf of Adjudication
Sent: Friday, 18 April 2008 3:19 PM
To: Chisholm, Shane; Roy, Lauren
Subject: FW: Submission re eBay International AG Exclusive Dealing Notification N93365 [SEC=UNCLASSIFIED]
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ACCC Classification: SEC=UNCLASSIFIED

From: Eddie [mailto:] **EXCLUDED FROM PUBLIC REGISTER**
Sent: Friday, 18 April 2008 12:00 PM
To: Adjudication
Subject: Submission re eBay International AG Exclusive Dealing Notification N93365

Attention: Lauren Roy.

I wish to make the following submission regarding EBay International Exclusive Dealing Notification N93365 lodged with the ACCC on or about 11th April 2008 in which eBay Australia is seeking for exemption from provisions of the Trade Practices Act and to be permitted to force all members of eBay to pay for all transaction using their own company Paypal. The only other form of payment that is being permitted is Cash on Pickup.

EBay claim that this is for the safety of their customers, and that the perceived safety in on line trading will outweigh the detriments to users of eBay site to buy and sell products. This is an issue I will address below.

I raise the following points.

- (1) EBay claim that their service Paypal is the only safe way to make payment on line. This issue is easily disputed as there are indeed other methods that are safe for Buyers and Sellers to utilise. Some that are currently permitted to be used on eBay will no longer be permitted. Some that can be used to illustrate this are Paymate, Seller's own Merchant Card Facilities (directly - not through Paypal as is being requested), Money Orders and many others too numerous to mention.
- (2) There are many examples of the problems that both Buyers and Sellers have found when using Paypal and the promised protection is often inadequate, or take many many weeks to resolve. During this time, Paypal refuse to refund and simply hold the funds, thereby earning interest for themselves at Buyers and Sellers expense.
- (3) There are many web sites that are dedicated to horror stories regarding the use of Paypal and many people simply refuse to use this method of payment. (Examples - <http://www.paypalwarning.com> ; <http://www.paypalsucks.org/> ; <http://www.www.paypalsucks.com/> and many, many more). Despite eBay's assertion, Paypal is not the totally safe method of payment that eBay claim it to be.
- (4) Paypal state that they will in some cases withhold payment from the Seller's access for 21 days or the Buyer leaves positive feedback. The fact is that many eBay users simply do not leave feedback, so in effect Paypal will simply be locking up a third party's (Seller's)

funds for no apparent benefit to the Seller, but an obvious monetary gain for Paypal as it earns interest on those funds for the 21 day period.

(5) Paypal is not a bank, and therefore is not subject to Australian Banking Laws. As such, should Paypal fall into decline, all funds held by Paypal on behalf of Sellers would simply be utilised to pay creditors and all Sellers would be left to carry the financial burden of whatever caused Paypal to fail.

(6) Paypal sends their accounts from offshore and therefore do not issue Tax Invoices. The fees they charge can be in respect of any business trading on eBay a legitimate expense, but there is no tax Invoice issued to prove this expense.

(7) eBay state that the proposed change is in order to benefit "their customers". In fact when a seller sells an item, they are in a contract with the Buyer and they simply pay eBay a fee for having "introduced the buyer to them". The buyer cannot be in any way classed as a customer of eBay, they never pay eBay any fees and they have no contractual arrangement with eBay in any way other than to agree to the policies as described for membership of eBay. Similarly a seller is not a customer of eBay, they simply agree to use eBay as a platform to list and sell their product. Further eBay themselves state that they are not auctioneers, but merely a platform to enable Buyers and Sellers to come together to trade their goods.

(8) Enforcing all transactions through Paypal will place an unfair cost and burden on Sellers, especially if their Buyers are prepared and willing to make payments through other means which attract no extra fees to the Seller (eg, Direct Deposit). These savings can then be passed on to the Buyer. If the application is granted, one can assume there will be a marked increase in costs to Buyers as Sellers pass these increased fees on.

(9) At present eBay take a percentage of the final sale price of the item upon sale. If this proposal is granted, then Paypal will be taking a further percentage on the payment, which will have included any postage price that may apply. This is simply greed and it cannot be disguised in any manner.

(10) If a Seller cannot prove that an item has been posted to Paypal's satisfaction, Paypal simply remove funds from the Seller's account without any warning and there is no attempt made to allow the Seller to address the matter further.

(11) By allowing Buyers to demand that they pay using Paypal for items that are picked up is simply opening a door to obviously fraudulent claims. Under the proposed changes that eBay are requesting, a Buyer can purchase an item, even of considerable value, then proceed to pay for the item using Paypal. The Buyer can then attend at the Seller's place of trade and pick the item up. At a later time, but within time frames permitted for any dispute, the Buyer could then claim that the Seller has failed to deliver the item, even though it was paid for. The Buyer would have no proof at all of delivery (Paypal will not accept signed receipts or letters as proof of pick up), and Paypal without warning to the Seller will simply refund the Buyer who now has both the item and their money refunded. Obviously this is a criminal act and perhaps Police may get involved, but there is never any guarantee of restitution and in any event it may take many weeks if not months to resolve. However eBay still claim that Paypal is the safest method of payment.

(12) Many users of eBay are family Mum's and Dad's and they are not large Sellers so they will basically be unable to absorb these extra fees that will be levied when they receive payment. Further, the payment is actually placed into a Paypal account and not the Seller's bank account, so the Seller cannot access the funds immediately and have to transfer

those funds to their own bank account. If the amount is under \$150.00 there yet another fee charged, plus the time factor taken (approximately 5 to 7 days) for the funds to transfer. If payment had been received by Direct Deposit (or even Money Order) the Seller would have instant access to **THEIR** money without any extra fees to pay.

(13) The claims made in eBay's submission simply cannot be proven as any reading of the hundreds of posts on eBay's own Discussion Board show that many users have utilised Direct Deposit without any issues for many years. Suddenly eBay has decided that Direct Deposits are an unsafe method of payment. It is interesting to note that at the same time eBay state that it is safe to pay your own eBay account using Direct Deposit if you wish.

(14) It is my opinion that the proposed "benefits" which in reality only serve to increase income for Paypal (and its offside eBay as they are co-owned), simply cannot outweigh the loss to the consumer. The consumer (whom eBay claim to be their customers), will lose the essential right that we all have when living in a democratic society and that is one of freedom of choice in issues that are not circumventing any law of the land. EBay is attempting to remove that freedom of choice, although both Buyers and Sellers who use eBay have clearly supported the fact that they are not in favour of this proposed change.

(15) It is further my opinion that most users of eBay do not mind the fact that Paypal **MAY** be an option for payment, but it should never be a condition of listing that payment must be made only utilising Paypal to the exclusion of any other form of payment.

(16) EBay clearly showed its arrogance towards its members and also the ACCC and the laws that protect Australians, by initially releasing this proposal to the media, then the next day to its members due to a media leak, and finally to the ACCC. It seems that eBay consider that this matter will simply be "rubber stamped".

(17) It is my opinion that the submission made by eBay is in contravention of the Trade Practices Act, and that eBay have not shown any realistic reason for the application to be exempted from the provisions of the Trade Practices Act to be granted.

(17) The application should be denied.