

Roy, Lauren

From: Blanch, Belinda on behalf of Adjudication
Sent: Monday, 21 April 2008 11:47 AM
To: Chisholm, Shane; Roy, Lauren
Subject: FW: Submission re: eBay International AG - Notification - N93365
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From: mynewpostingid [REDACTED]
Sent: Monday, 21 April 2008 10:11 AM
To: Adjudication
Subject: Submission re: eBay International AG - Notification - N93365

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 PUBLIC REGISTER**

eBay International AG exclusive dealing notification N93365

Dear ACCC

I wish to present my most strenuous objections to the notification made by ebay international in relation to the exclusive use of paypal as a payment method on ebay.com.au

My objections are as follows.

Point 1.

Lessening of competition.

Not only will this move, if permitted lessen competition it will remove competition within the market place.

Ebay is the largest online market place in Australia. Ebay wholly owns Paypal.

The payment methods that are currently permitted are bank deposit, cheque, money order, cash on pickup, Paymate, Paypal and merchant credit accounts.

Paypal is an American company that must remain competitive on fees to attract their share of the Australian market at this stage. Already there are many Australian sellers who avoid using it due to the fees, should it be allowed to become the only accepted online payment method for ebay.com.au there will no longer be a need for paypal fees to be kept in check. Removing all other payment methods with the exclusion of cash on pick up will impact on the banks, credit unions and Paymate which currently collect transaction fees on ebay payments.

Point 2.

Lessening of competition.

Cash on pickup as an option.

This is not a real option. Ebay is used by people all across this country, paying on pickup is only feasible within a small radius, few people would travel more than a couple of kilometers to pick up a \$5 item. This is a claytons choice – the choice you have when you are not having a choice.

Point 3.

Lessening of competition.

Annexure A

Factual Background.

1.23

22/04/2008

“However, depending upon the circumstances surrounding the payment, access to these funds may be withheld for a short period for security purposes.”

1.27

“eBay will also soon implement a "holds" policy whereby, when eBay considers that a transaction on eBay is high risk for the *buyer*, it will notify PayPal that it should hold the payment for the transaction. PayPal will then exercise its discretion as to whether to hold the funds and wait until if either receives confirmation from the buyer that he or she has received the item and has no cause to raise a dispute, or 21 days have passed without the buyer having raised a dispute.”

Both of these factors will severely impact on competition and will have the effect of driving out the smaller sellers on ebay.

Paypal payments are not instantly available to the seller as bank deposits or money orders are.

Paypal payments must be withdrawn to a bank account, which Paypal advise will take 5 to 7 days.

This means that small volume or occasional sellers will not have access to the postage component of payments for a minimum of 5 days and up to 21 days in some cases. This will place those sellers at a financial/ cash flow disadvantage when compared to large volume online retailers. If the same model is implemented here as in the US where paypal holds are concerned this will impact not only on so called high risk transactions but on all low turnover sellers.

(The information on who will have payments held on ebay.com are buried in section 27 here <http://pages.ebay.com/sell/update08/rewardsfaq/#27>)

If the paypal only policy is allowed to be implemented a seller who is the subject of a paypal hold will not only have no access to funds that are rightfully theirs, they will no longer be able to trade on ebay. Many ebay sellers rely on this income to supplement their household budget and make ends meet. At least with other payment methods being permitted they would not be completely at the mercy of paypal/ebay.

Add to this the following clause in the paypal user agreement and sellers are placed in a very precarious situation with paypal as the sole payment method.

“2.2 “PayPal is not a common carrier or public utility. PayPal, at its sole discretion, reserves the right to close an account at any time for any reason, including but not limited to a violation of this Agreement, upon notice to the user and payment to the user of any unrestricted funds held in custody.”

(<https://www.paypal.com/au/cgi-bin/webscr?cmd=p/gen/ua/ua-outside>)

Point 4

No public benefit – or any likely benefit will outweigh the detriment.

To allow ebay to implement this policy will be to the detriment of the Australian Public.

Ebay have stated that you may offer cash at pickup in conjunction with paypal. Under existing ebay and paypal policies if a buyer wishes to pay via paypal you may not refuse that payment.

(http://pages.ebay.com.au/help/policies/misleading_payments.html)

When considered alongside the ‘sellers responsibilities’ section of the Paypal Buyer Complaints Policy (section 8 <https://www.paypal.com/au/cgi-bin/webscr?>

[cmd=p/gen/ua/policy_buyer_complaint-outside](https://www.paypal.com/au/cgi-bin/webscr?cmd=p/gen/ua/policy_buyer_complaint-outside)) sellers are placed in a very dangerous position. A seller accepting a paypal payment that is later disputed by the buyer is required to show proof of postage for that item – this is impossible for a pick up item. While ebay have offered choice of paypal or cash on pickup very few buyers will take the cash option. Ebay have always touted cash payments as unsafe for the buyer. The lack of buyer protection for items paid with cash is prominently displayed on all ebay item pages. This information is highlighted by ebay at every opportunity. Safe trading tips with paypal touted as the only safe payment method are prominently displayed all over the website and members receive regular emails promoting paypal as the only safe payment method. Buyers are hardly going to decide cash is now safe after years of being told it is not by ebay. Ebay maintain that it is unlikely a buyer would claim non-receipt for a pick up item but surely saying ‘it should be ok, it shouldn’t ever eventuate’ is not good enough.

Point 5

No public benefit – or any likely benefit will outweigh the detriment.

Ebay is pushing this move on the grounds of increased buyer security and safer transactions. This is preposterous! Bank deposit, cheque, merchant credit card account and money order only became unsafe for buyers on ebay due to changes to the buyer protection policy in June 2007. Until these changes ebay promoted these very same payment options as safe.

Ebay claim without paypal there is not proof the transaction has been completed, again a ridiculous claim. Prior to June 2007 ebay were able to determine whether transactions paid for by these methods were completed so why not now. The only thing that has changed is ebay's policies.

Point 6

No public benefit – or any likely benefit will outweigh the detriment.

Paypal is only safer for ebay buyers due to the buyer protection policy

This policy sets out differing levels of protection dependent on whether the transaction is for an ebay item or not. Please note that a non ebay paypal payment is only recoverable in the unlikely event there are existing funds remaining in the sellers paypal account – this makes it no safer than any other payment method. (link to source given above in point 4)

This buyer protection may be changed at any time by paypal or ebay. There is nothing to stop them from removing this protection all together once paypal is the only payment option for ebay.

Section 9

https://www.paypal.com/au/cgi-bin/webscr?cmd=p/gen/ua/policy_buyer_complaint-outside

Point 7

No public benefit – or any likely benefit will outweigh the detriment.

Annexure A

Factual Background.

1.26

“PayPal therefore offers

enhanced security benefits to sellers whom might otherwise receive payments via fraudulent means, for example, stolen credit cards or misappropriated credit card details”

This is simply untrue. Paypal does not verify credit cards to reduce fraud, in fact they put a seller at more risk of this than a merchant account does. The most common problem sellers face when accepting paypal is bank initiated chargebacks for unauthorized use. The seller has no access to the credit card details so does not even have the benefit of using a service such as merchant 911 to check if a card is stolen. The first the seller knows is the payment is reversed, sometimes months later. If paypal were serious about reducing fraud they would verify credit cards used on paypal accounts. It can be done as the Australian equivalent (Paymate) does this and refuses the transaction.

It is my belief that ebay have been slowly working towards this point for some time with the sellers registering after Jan 2007 being compelled to offer either paypal or merchant account, changes to buyer protection in June 2007, the introduction of the misleading and discouraging policy in October 2007. All of these have impacted on competition and freedom of trade on ebay.com.au. The benefits and reasoning put forward by ebay in their submission are not based on fact but on circumstances orchestrated by their policy changes over the past year and a half.

To insist on paypal being offered on all listings is one thing but to remove all choice and make it effectively the only option is another entirely.

Thank you for your time and consideration of this submission.

Carmen Lang.