

Roy, Lauren

From: Petreski, Sonya on behalf of Adjudication
Sent: Thursday, 24 April 2008 7:59 AM
To: Chisholm, Shane; Roy, Lauren
Subject: FW: eBay International AG exclusive dealing notification N93365
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From: Ken Leitch [mailto:ehcnumis@bigpond.net.au]
Sent: Wednesday, 23 April 2008 1:33 PM
To: Adjudication
Subject: eBay International AG exclusive dealing notification N93365

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April 23rd 2008

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

Re eBay International AG exclusive dealing notification N93365

Dear General Manager,

It would be a matter of distress if eBay were given the go ahead to continue and thus be able use intimidation and threats reminiscent of those exercised by trading Companies of the great colonial powers of bygone days to forcibly inflict their avaricious desires on the restless natives.

This submission is to place before you objections to the eBay proposal. In summary these are:-

1. It is a restriction on our trade.
2. The benefits claimed by eBay are incompatible with, and in some cases contrary to our experiences.
3. It involves an unwarranted price escalation of the services and safeguards currently extended for absolutely no additional benefit to anyone other than eBay through Paypal. These essential elements are already provided by the reputable vendors much cheaper than the cost of a Paypal transaction.
4. Our customers are deprived freedom of choice in the manner of how they may pay for their shopping.
5. eBay's conduct on matters relation to consumer protection and confidence is lacking when it comes to a matter of protecting their income base rather than implement protection action. I go further and accuse them of blatant hypocrisy in this area and give a wry smile when I perceive their crocodile tears in espousing safety matters.

Before elaborating I will give a thumbnail outline of our business and experience as a regular eBay user with nearly 11 years membership under the ID ehcnumis. (When we joined eBay Australia was not in existence). We are located in Brisbane and currently virtually all of our sales income is derived either directly or indirectly from eBay sales or contacts through our own website. Customer payments are received via Direct Deposit to our Bank account, AMO, Cheques, cash or Paypal. We use eBay Australia, UK and USA to list items depending on our judgement of the best market for the item. On items listed on eBay international sites our preferred payment method is Paypal. On eBay Australia our preferred payment method is by direct deposit to our Bank, AMO or cheque. We do not favour Paypal for domestic transactions but do not prevent Australian customers from using it if they so desire. We bank with one of the smaller Australian Banks with a branch structure that is very limited outside of Queensland. In consequence most payments (Queensland included) are done by internet transfer. We are a small business with an ABN and are registered for GST.

1. **Restriction on Trade.** We view eBay as an electronic National Shopping Centre wherein sellers are the tenants and pay their rent in a two tiered structure of a part for "display" or the listing fee, and the second as a portion of the amount realised only when and if an item is sold. Within this electronic centre eBay owns a pseudo banking / insurance company named Paypal. Vendors are able to open an account with Paypal and allow their customers to pay for their purchases by deposit to this account. Paypal account holders are charged a fee for the Paypal services. In our case first 9 months of this financial year this fee was +3.5% of payments received including cross currency transactions. Currently customers may also pay by other methods such as direct deposit, Cheque or AMO. All payment methods are at the volition of the Seller. Continuing with the Shopping Centre analogy we are now confronted with the situation similar to where

the landlord requires that the tenants must (one minute business proportion excepted) deposit their takings only to his Bank. For this he extracts a fee and the tenant is then free to operate with the remainder as he needs. There are no ifs or buts – the site owner is interfering in the vendors business under the duress of the eviction if he refuses to comply.

2. **“Benefits claimed by eBay”**. These are “More Safety”, “Greater Protection” and “Increased confidence” refer

<http://pages.ebay.com.au/useprotection/changes.html>

In respect of “Safety” eBay states *“In 2007 those who paid with PayPal on eBay.com.au were almost four times less likely to have a dispute over their purchase than those who paid with bank deposit.”*

Our trading experience rejects that statement. On the domestic scene the vast majority of payments to us are by direct deposit to our Bank. I cannot recall one dispute being lodged about a purchase by a customer who paid by this method. In the matter of disputes we initiate as distinct from those of customers the overwhelming reason for our action is customer tardiness in attending to payment. I cannot distinguish any significant difference in this conduct between a Direct Depositor and a Paypal payer.

In respect of “Protection” eBay states *“With PayPal Buyer Protection increasing to \$20,000 and the recently introduced PayPal Seller Protection, eBay will have unprecedented levels of protection for buyers and sellers”*.

The upper limit of Buyer Protection cover is significant only if the value of the goods shipped exceeds the maximum cover. If eBay were to supply the percentile tables of transaction values, and also claim values settled then the worth of \$20,000 cover would be readily apparent. As to the *unprecedented levels* absolutely nothing has changed. Vendors have always been able to arrange protection. It will be no doubt noted that should a transaction exceed \$20,000 Paypal will not only extract their fee for the amount but also wipe their hands of all or part of the appropriate protection.

In respect of “Confidence” eBay states *“With more safety and greater protection, we’ll see a lift in confidence. This will help strengthen the eBay marketplace, ultimately benefiting buyers, sellers and eBay.”*

With neither *more safety* nor *greater protection* assured this becomes a statement worthy of Little Jack Horner. Further, it ignores the fact that there are many web sites that are surviving and prospering without the restrictions eBay wishes to introduce. Further it brazenly ignores its inertia in dealing with shady listing practices (refer paragraph 5).

3. In respect of “Unwarranted price escalation”. The costs to receive payment direct from a customer to our Bank are: - Bank fees = zero, insurance protection 1.20% (in blocks of \$100). For a Paypal payment these costs remain but are extended by the additional Paypal Fee. In our case =+3.5% (to end of March) this financial year. The extension is necessary because of ‘proof of shipping’ required by Papal. There is thus a roughly a

- 3 fold escalation of costs rewarding eBay the sole beneficiary.
4. In respect of "Customer freedom of choice". The eBay wish means that all eBay users must open a Paypal account and use it only when paying for their eBay purchases. This is a feudal situation, and whilst others might like to imitate it one cannot imagine the public outcry if they dared to do so e.g. Department Store X saying to its customers "you can only use our Store card to buy from our Store or", or Bank Y saying "to open an account with us you must use our card when you shop at Store X".
 5. EBay and Consumer protection. That the customer should be entitled to an accurate description of goods offered for sale unseen is arguably the most important aspect of purchasing unseen goods. If they fail to meet appropriate standards they become a source of discontent and probable dispute. Any browse through eBay listings will usually reveal some listings that are of very dubious quality and described below reasonable expectation. For example, an obviously grossly over-graded coin, a picture so poor it does not reveal any detail, inappropriate use of superlatives etc. At the bottom of each listing the following hyperlink invitation to | [Report this item](#) | can be found. When an inappropriate listing is discovered if you attempt to bring it to eBay's notice by using this link it will fail. This is because dubious quality descriptions are not reportable through the hyperlink. From personal experience I can state that if other means of reporting are resorted to the result is absolutely nothing is seen to done by eBay. It appears there is a wait for a complaint/dispute to arise then attend to it. This is shutting the door when the horse has bolted instead of first ensuring the door is closed. Like many others when I now come across such a matter I now merely shrug my shoulders and move on. I have concluded that eBay frankly does not give a hoot about protection when it comes to measures that may have a potential to impinge on their revenue.

This submission is concluded with a statement of my conviction that this measure by eBay is possible only because of their dominance in this market place. It is a straight out grab for a substantial revenue increase at very minimal costs which is justified by very questionable data and reasoning. I anticipate that eBay may well ultimately justify their position in a similar manner to that they take with merchant surcharge to cover Credit Card or Paypal surcharges. On this matter they say "**Such costs should be built into the price of the item**".

(Refer <http://pages.ebay.com.au/help/policies/listing-surcharges.html>)

The information is worthless nonsense. In an Auction situation it is firstly impossible to know these costs until after the item is knocked down, and secondly eBay generates the invoice with items and costs that cannot be altered to include for example other merchant costs.

Yours sincerely

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Note: Signed hard copy posted. Also send as an email.

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