

Roy, Lauren

From: Blanch, Belinda on behalf of Adjudication
Sent: Wednesday, 30 April 2008 9:02 AM
To: Chisholm, Shane; Roy, Lauren
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From: Raymond Foo [mailto:raymond.foo@adjudication.gov.au]
Sent: Wednesday, 30 April 2008 2:20 AM
To: Adjudication
Subject: eBay International AG - Notification - N93365

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Good Evening,

Firstly, thank you for the logical structure set up for handling the issue of Exclusive Dealing and in particular, the ability to allow many of us to comment on the changes eBay has proposed.

The proposal eBay is suggesting which is to ensure that for every seller there will be a limited choice of payment options, of one which must always be PayPal is simply unfair.

I don't envy the role of the ACCC in this, however it is the best placed authority to make this decision as previous decisions show that there is a pro-competition bias in the ACCC. As a practising Finance and Treasury professional with above average exposure to issues of economic interest, it has been my experience that free and fair competition is the true enabler. It was only a few decades ago when banks were tightly regulated and the market was largely oligopolistic and that period can be largely remembered as the period of limited financing and investment choices. Deregulating and stimulating competition was the real reason for the massive changes in the financial system, and now the options for the average Australian are not only more numerous, but flexible and safe. A similar case can be argued for any industry which has been opened up to competition.

Competition has opened and expanded the Australian market place in nearly any industry one cares to mention: services, financial products, insurance, telecommunications, utilities and public services, to name a handful. There have been at least three reports which support this contention. This competition is in itself a large public benefit. In any of the industries mentioned above, can anyone suggest that since competition was allowed that prices rose faster and the choices and service was less?

It is not my intention to restate arguments on PayPal as many of the submissions here do a better job than I could hope in explaining the situation. My submission will be simpler:

1. Has the public benefit test (is the reduced competition offset by a much greater public benefit) been proven by eBay;
2. Why would we ever limit a choice to just PayPal, shouldn't we at least have the right to use very similar competitors like Paymate or QPay; Can we expect innovation from a company in a monopolistic environment?

3. The need for a true advocate to represent us.
4. We don't need to decide this in such a hurry

I submit that eBay has **not** proven to the public that it is so blessed by having PayPal that normal competitive choice is unnecessary. Instead, I see the situation where competition may not ever occur if the proposal is granted. At least two similar companies (Paymate and QPay) will be deeply affected by this, even though there is no indication that these services are worse of provide worse service. PayPal appears to believe in this instance "less information is the best." Empirical evidence shows that usually its the competitive spirit that makes services better.

I also submit that this situation is slightly different to a normal situation. Normally in developed and competitive markets we do not concern ourselves with excessive regulation as the competition is itself tends to regulate indirectly good behaviour. Given we have a dominant player in a market with few competitors, the bias should be on regulating, just like it is in industry.

We really need the ACCC to support us in promoting fair competition and possibly a deeper enforcement role. As I understand from the details on this proposal, the ACCC has been asked to decide on whether eBay should get an exclusive exemption from the Trade Practices Act. The ACCC can rule on that. The problem is that eBay with its resources could almost risk someone proceeding with legal action. What we need from the ACCC to play an even bigger advocacy role. Don't just rule yes or no: lets commit to keeping our competitive environment, which would mean not only would the ACCC refuse to allow the exclusive dealings, but importantly, it monitors eBay for competition destroying habits and regulates if required for a better outcome for sellers and buyers. Most buyers and sellers are too small to defend their rights against the eBay/Paypal monster so the advocacy role is even more important.

Finally, the timetable proposed by eBay is too short - it almost seems like they are trying to force a quick decision rather than a reasoned one. Reflect for a moment, eBay is bringing in something that affects nearly all eBayers adversely and so little time is given for an eBayer or the ACCC to investigate the merits or otherwise of the proposal. Why the obscene rush? Would a longer lead time lead to a more logical conclusion which would differ from the *fait accompli* solution eBay is trying to aggressively pursue, even to the point of setting up a timetable for implementation in May and June 2008, without waiting for the ACCC to decide? I am all in favour of the idea of using a clearing system like PayPal if it is just a choice, and a choice amongst several options like COD, Escrow, Paymate or QPay. If it turns out that a merchant clearing system really is the only way, then that option cannot only be PayPal. I don't say this because I hate PayPal, I say this because I fear what happens when competition is removed or artificially suppressed. PayPal needs competitors just like Coles needs Safeway and others to keep it honest.

I recommend that the ACCC not only deny the exclusive dealings motion, but also place an injunction on eBay to prevent it from forcing consumers to use only PayPal until at least several merchant options are offered.

Yours Sincerely

Raymond A. Foo

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