

## Roy, Lauren

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**From:** Blanch, Belinda on behalf of Adjudication  
**Sent:** Tuesday, 29 April 2008 5:41 PM  
**To:** Chisholm, Shane; Roy, Lauren  
**Subject:** FW: Exclusive dealing notice No N93365 - eBay Australia [SEC=UNCLASSIFIED]

**Categories:** SEC=UNCLASSIFIED  
**ACCC Classification:** SEC=UNCLASSIFIED

-----Original Message-----

**From:** John Mulvany [mailto:]  
**Sent:** Tuesday, 29 April 2008 12:10 PM  
**To:** Adjudication  
**Subject:** Exclusive dealing notice No N93365 - eBay Australia

**EXCLUDED FROM  
PUBLIC REGISTER**

For the attention of Isabelle Arnaud  
Acting General Manager  
Adjudication Branch

I wish to lodge a submission relative to the above Exclusive Dealing Notification, as invited by your recent email.

I request you to consider my objection to the exclusive payment process being proposed by eBay Australia, in its website, and in all communications addressed to me personally or globally via the discussion boards on the eBay website, it is claimed that the proposed exclusive use of PayPal as a payment option will increase safety and will thus encourage greater use of the eBay site. This, it is claimed, will furnish benefits to members. This is the only advantage put forward in support of the submission.

Both of these allegations are subject to challenge, as follows:

- 1) Nowhere has eBay attempted to demonstrate any lack of safety in a direct bank-to-bank transfer, for example, as is currently allowed or why the services of another on-line processor such as the Australian PayMate service is less safe than PayPal;
- 2) The proposed mandatory use of one settlement system only is restricted to Australia and, as far as I can ascertain, is not applied to any other eBay site in the world. It is clear from research into international sites that PayPal is disliked by many users and that compulsory payment in Australia via this procedure would in fact dis-franchise many buyers, discourage sellers and thereby reduce member numbers. This will act to the detriment of the site and all users. This process is already underway, and the eBay Community Boards are flooded with complaints from members who have cancelled membership due to this threat.

I submit that the proposed compulsory payment system is unlawful, as it is in breach of The Trade Practices Act, 1974. The breaches are:

- 1) The proposal is an attempt to restrict freedom of choice by both seller and buyer on the site;
- 2) The proposed action is unlawful because it is an attempt to inhibit or prevent legitimate trading by a competitor;
- 3) The implementation of the proposal will result in a diminution of competition, will drive out competitors and will result in the creation of a monopoly situation;
- 4) The proposal will result in an increase in costs for traders by denying them the right to obtain access to other and more economic settlement procedures. As examples, I point out that I have frequently used bank-to-bank- direct deposits as a buyer which are at no cost to me as the fee charged by the bank is within my monthly bank fee. In the same way the on-line BPay service which I use to pay utility and other bills is very economical and has never been shown to be inherently unsafe.

Similarly the Australian owned competitor to the US owned PayPal is PayMate.

It quotes fees as follows:

"STANDARD Account

NIL - no prepaid amount

All credit card payments charged at 2.4% Maximum AU\$5,000 in a month ECONOMY Account Monthly fee of AU\$3.30 (incl GST) pays for the first AU\$200 in credit card payments received.

Credit card payments received above AU\$200 charged at 2.2% Maximum AU\$5,000 in a month".

By contrast, the exclusive use of PayPal will incur costs as follows, the information

taken from Paypal Australia website:

\$0.00 AUD-\$5,000.00 AUD 2.4% + \$0.30 AUD

Therefore a sale of one item for \$200 on the Paymate Economy site will cost \$3.30 whereas on the PayPal site it will cost \$5.10 (\$4.80 + .30).

Moreover, the PayMate site does not discriminate between local and international sales. Where a purchase is from overseas, the PayPal charge increases to 3.4% plus 0.30, making \$7.10 (\$6.80 + .30).

For a trader selling multiple items at \$200.00, the difference of \$1.80 for a local sale or \$3.80 for an overseas sale can be a substantial burden.

Details of how PayPql costs are calculated are hidden, necessitating digging through several layers of enquiry.

Further, PayPal typically modifies the exchange rate so that an extra 3-4 basis points are added to its income. For example, when the Australian dollar was trading at 0.9359 to the US dollar, PayPal discounted the rate to 0.9005. This means that, on a \$200 settlement, about an extra \$7.00 is added to its fees. The cost of sale of the \$200.00 item mentioned earlier has now ballooned out to something like \$10.00-11.00 compared to the \$3.30 charged by the opposition. Comparative costs show a tripling. By contrast, for foreign currency trading the Australian PayMate site states:

"we use the indicative foreign currency 'sell rates' published by HSBC Bank Australia (at <http://www.hsbc.com.au/> <<http://www.hsbc.com.au/>> ) on that day to convert your foreign currency payment into AUD for settlement to your bank account overnight".

For many traders, payment by bank transfer, by bank cheque or by international remittance services such as Bidpay are desirable. Even if PayPal's assertion that these are "less safe" than Paypal could be established, should individuals be refused the right to accept a known risk in exchange for a known benefit? Is it legal that sellers and buyers should be compelled to incur extra costs to avoid a possible risk with which they are quite comfortable?

Finally, I ask you to consider the long term implications for other areas of commerce if this submission succeeds and sets a precedent. Would it automatically mean, for example, that David Jones could refuse to accept cash and demand the use of its own charge card? Could the Commonwealth Bank refuse to accept deposits including cheques from Westpac?

In these times of financial stress, we simply cannot allow this kind of exclusivity to extort unreasonable fees, and I hope that you will be able to give these matters consideration.

Thank you for your time.

John Mulvany