

To: The Australian Competition and Consumer Commission.

Re: Notification Number N93365

Proposal by Ebay to only Allow Payments through PayPal or Pay on Pick Up.

To Whom it May Concern.

It has been reported that more than 52,000 Australians derive their primary income from selling on eBay¹. I am one of those Australians. I have been trading on Ebay since January 1998, and my Ebay ID is found-in-australia. I currently sell mainly domestically on Ebay Australia (www.ebay.com.au), and worldwide (including domestically) on the American and United Kingdom Ebay sites (www.ebay.com and www.ebay.co.uk). My listings on the Australian site do not offer PayPal as a payment option, while my listings that target international sales do utilise PayPal. All of my listings are in an auction format, designed to allow competitive bidding to determine the fair market value, and I mainly sell collectables and paper ephemera, including manuals for machinery and motor vehicles.

I have serious concerns about the proposal by Ebay Australia to only allow payment on their site through PayPal, and their suggestion that “payment on pick up” is a viable alternative payment method². Firstly the restriction of trade will remove buyers who do not wish to use PayPal’s service from Ebay, reducing the competitive bidding in some areas of the market, adversely affecting the livelihoods of vendors, and secondly there are some serious consumer concerns that have not been addressed in Ebay’s notification, or the submissions so far published on the ACCC website.

Lessening of Competition

The ACCC has requested that submissions address issues relating to whether the proposed conduct will result in a substantial lessening of competition. The proposed conduct affects competition in two areas – (a) payment options, and (b) competitive bidding and sales.

Payment Options – Ebay has been supplying an online infrastructure for the conduct of auctions since 1995, and for fixed price sales since late in 2000. PayPal has been supplying an on-line payment service infrastructure since November 1999, and was acquired by Ebay in October 2002. Both entities charge fees for their respective services, and supply infrastructure to businesses that are independently owned and operated, and to private sellers and buyers. The appeal of Ebay, and one reason for its rapid domination of on-line sales both worldwide and specifically in Australia, where it is reported to hold 42.19% of the market³, has been that businesses and small traders can set their own terms and conditions that suit their specific business. The proposed conduct removes the rights of long established businesses to continue to trade on their own terms, and gives Ebay and PayPal an intrusive control of those businesses even though Ebay and PayPal only provide infrastructure, and do not

¹ <http://www.smh.com.au/news/house--home/online-shopping-goes-mainstream/2008/02/20/1203467151635.html>

² <http://www.itwire.com/content/view/full/17800/53/>

³ <http://www.smartcompany.com.au/Free-Articles/The-Briefing/20080417-RBA-to-weigh-in-on-eBay-case-at-ACCC.html>

invest in any capital outlay for stock. This dynamic shift in business principle caused by the proposed conduct, suddenly means that Ebay changes from simply being a business tool, to controlling how the business operates and enforcing that all payments are directed through a subsidiary company which takes a commission not only on the sale, but also postage, insurance and any other services taken up by the buyer.

The proposed conduct also removes all other competitors and different services in the online payment industry, and removes the rights of buyers and sellers to agree to other payment instruments such as cheque, money order, bank draft, etc. I have many buyers who prefer to pay by cheque, money order and direct bank deposit. Whilst I do not receive many, I do still receive a few cheques from North America and the United Kingdom, from buyers who do not wish to use PayPal, and one recent United Kingdom buyer who had recently had her PayPal account hijacked expressed a clear preference to pay with cheque, even for an International transaction.

In an interview with ITWire Magazine⁴ eBay Australia spokesperson Daniel Feiler claims, “We’ve never asked for PayPal to be used exclusively. People will have pay on pick-ups and PayPal as their option.” The suggestion that “pay on pick-up” is a viable alternative payment system in a country the size of Australia is disingenuous at best. Ebay is used as both a National and International Marketplace. Users in capital cities may get a small proportion of sales that are local, regional users will rarely encounter local buyers, and in the vast majority of cases pay on pick up is not a viable alternative. For most sales, Ebay Australia is indeed asking that PayPal be used exclusively.

Competitive Bidding and Sales – Auctions are reliant on competitive bidding. If some bidders are removed from the process prices will be affected adversely. While it is not known how many users will stop using Ebay Australia, it is clear that some users are not comfortable with supplying personal or financial details to any online site, and that some users do not trust PayPal specifically. This means that some users will leave the Australian Ebay site once the PayPal only policy is introduced. This will mean that some areas of the market will be affected adversely but it will not be known until the policy is enforced which areas of the market, and how much the prices will be impacted. This will be a virtual test of how Ebay will be affected, and Ebay’s CEO, John Donahoe, has already been reported⁵ as saying that if the test was successful, the company would introduce it in other countries “in months, not years.” What this rather arrogantly overlooks is that if the “test” is unsuccessful it may seriously impact on the livelihoods of more than 50,000 Australians, who have established businesses and reputations on the Ebay site.

Section 5.4 of Ebay’s notification states:

“Recent market research conducted by Nielsen Online also suggests that security is an important issue for some 94 per cent of shoppers when determining what form of online payment to use.¹⁵ The findings of the research conducted by Nielsen Online are supported by enquiries made by the Office of the Federal Privacy Commissioner.”

⁴ <http://www.itwire.com/content/view/17800/53/>

⁵ <http://www.nytimes.com/2008/04/17/technology/17ebay.html?ref=business>

What appears to be overlooked in the quoted research is those buyers who do not want to use an online payment method at all. Ebay has attracted a particularly diverse range of participants. Some have bought their computers specifically to use Ebay (myself included), and some have no desire to register their personal bank or credit card details with ANY online payment service. These people tend to pay by cheque, money order and even go to bank branches to pay a direct deposit over the counter for their purchases (I do not bank online, in spite of trading online for just over 10 years). Many of these participants will not join PayPal when other payment options are removed. They will likely look for other sites where they can buy and pay using offline methods, buy from Australian sellers using the foreign Ebay sites until they impose the same restrictions, or simply stop buying online completely. The loss of these buyers will reduce competition in some areas of the marketplace, impacting negatively on both prices and livelihoods.

When asked whether Buyers without PayPal will be able to bid on the Australian site under the proposed conduct, PayPal has confirmed that bidders can bid but have to submit their credit card details to PayPal⁶, (also addressed in section 1.15 of the Notification), but again this ignores the buyers who do not wish to place such personal financial instruments on-line.

Consumer Issues

It should firstly be made clear that both the buyer and the seller in an Ebay transaction are consumers in the case of this proposed conduct. The buyer of the goods offered on Ebay is simply a consumer who is buying a product, while the seller is the consumer of Ebay's and PayPal's services, being the sole party in the transaction that pays both companies for the services that they supply.

PayPal Seller Protection: Ebay and PayPal worldwide have been promoting "improved seller protection"⁷ as a feature of this proposal. However the fine print in the PayPal User Agreement⁸ reveals some serious implications for consumers on both sides of the transaction. The most telling section of the PayPal user agreement is section 4.2.4, which outlines the circumstances that void seller protection:

1. **4.2.4 Limitations on the Seller Protection Policy.** The Seller Protection Policy will not apply to a transaction if any of the following apply:
 - a. You combine items purchased through separate eBay transactions into a single shipment,
 - b. You accept more than one payment for a single eBay transaction,
 - c. You do not provide Proof of Shipment or respond to PayPal's other requests for information in a timely manner as specified by PayPal,
 - d. The item sold was an intangible good, quasi-cash, gift certificate, downloadable or streaming content, license for digital content, motor vehicle (including cars, motorcycles, boats, and planes) or a service,

⁶ <http://forums.ebay.com.au/thread.jspa?messageID=603028180&forumID=500000001#603028180>

⁷ [https://www.paypal.com/au/cgi-](https://www.paypal.com/au/cgi-bin/webscr?cmd=xpt/cps/securitycenter/sell/GuaranteedPaymentsMLP-outside)

[bin/webscr?cmd=xpt/cps/securitycenter/sell/GuaranteedPaymentsMLP-outside](https://www.paypal.com/au/cgi-bin/webscr?cmd=xpt/cps/securitycenter/sell/GuaranteedPaymentsMLP-outside)

⁸ *ibid* – follow the [Terms and Conditions apply](#) link on the same page.

- e. You hand deliver the item,
- f. The buyer has claimed that the item was significantly not as described (SNAD), or
- g. You have not complied with the terms of the PayPal User Agreement, any PayPal policy or any specific directions provided by PayPal.

These terms have serious implications in the following areas:

Pay-On-Pick-Up: Whilst the proposed conduct allows “pay on pick up” as an alternative payment, Ebay’s terms also state “Pay on pick up can only be offered in conjunction with PayPal.”⁹ Meanwhile Ebay Australia’s “Misleading and Discouraging Payment policy” disallows the seller to reject PayPal if it is offered on the listing¹⁰. PayPal staff have confirmed that seller protection does NOT cover pick-up-only items, but that buyer protection is applied to pick-up-only items,¹¹ and even that “written proof indicating that an item was picked up by a buyer is not accepted for a Non-Receipt claim”¹² This combination of terms leave the seller particularly vulnerable when selling a large valuable item which is available only on a “pick up only” basis. An unscrupulous buyer or scammer can pay by PayPal, pick up the item, simply claim that they never received it, and because the seller does not have “proof of shipping”, PayPal will reverse the payment to the buyer. PayPal should not be offered on Pick-Up-Only items, let alone be required to be included in the listing. PayPal have so far ignored the consumer implications of this situation.

Multiple Purchases: Another serious implication is the impost of shipping costs if a seller wishes to be covered by PayPal Seller Protection. This affects the consumers on both sides of the transaction. While Annexure E of Ebay’s notification offers evidence that prices on Ebay are allegedly 25.2% cheaper than off-line retailers, this does not take into account the implications of the “improved” PayPal seller protection in relation to multiple purchases. PayPal’s user agreement voids seller protection if “You combine items purchased through separate eBay transactions into a single shipment”. I have always offered my buyers multiple shipping discounts. As an example when I sell brochures I have a flat rate shipping of \$2.00 within Australia for any number of brochures, plus insurance if required. Thus if a buyer purchases 6 separately listed brochures for a total of \$200, the shipping will be an additional \$2.00 and \$2.70 for registration. If I wish to protect myself under the PayPal terms, the requirement is that I must ship each of the brochures in a separate parcel, and for the “Proof of Shipping” requirement, each parcel must be separately registered. Thus in the same case, if I don’t want my \$200 sale automatically reversed if a claim is made, the shipping cost will be \$4.70 per brochure, an all up cost to the buyer of \$28.20 instead of \$4.70. The additional labour and packaging materials involved in the extra requirement is also onerous. This burden is increased further on international sales where insurance is required as “Proof of Shipping” for each item separately, and

⁹ <http://pages.ebay.com.au/useprotection/changes-sell.html>

¹⁰ <http://www2.ebay.com/aw/au/200710021700582.html>

¹¹ <http://forums.ebay.com.au/thread.jspa?messageID=502779133&forumID=1001#502779133>

¹² <http://forums.ebay.com.au/thread.jspa?messageID=602770129&forumID=1008#602770129>

the minimum cost of International Postal Insurance is currently \$8.10 per parcel. PayPal has also imposed this burden onto European and United Kingdom sellers, while North American sellers are covered if they send all of the items paid for in a single PayPal transaction in one parcel.

PayPal's Australian staff justify this impost by saying "Australia Post is unable to look into a package with multiple items within it. Therefore, items need to be sent individually to ensure that Australia Post's systems track each individual item. That way PayPal can have clear evidence in the unlikely event of a claim. Otherwise, there is no evidence that all individual items were in the same package."¹³ Where buyers wish to buy multiple items from individual sellers, these requirements incur big costs on Australian consumers, and make Australian goods uncompetitive on the International Market.

Item Significantly Not As Described: Finally, a seller loses their right to PayPal Seller Protection if "The buyer has claimed that the item was significantly not as described". The user agreement has no burden of proof that the item actually is significantly not as described, nor does it require a third party appraisal, quite simply a statement claiming that the item was significantly not as described voids seller protection.

PayPal's Technical Problems

Ebay's Notification has promoted PayPal's security, and the fact that those who are considering an online payment service consider that security is an important issue. Whilst computer issues or "glitches" are a fact of online life, there is an expectation that a company promoting it's security as one of it's most salient features would have high level technicians and control glitches quickly to keep the site secure.

The Public Submission on the ACCC website by "Anonymous"¹⁴ already draws attention to a problem where PayPal, when instructed to take the funds from a user's PayPal account, is actually taking the funds from their bank account, which has not been authorised for this transaction. PayPal has described this as a "known problem" which has now been happening for at least 6 weeks. I am not convinced that PayPal taking money from a bank account when it is not authorised to, inspires the sense of security in "shoppers when determining what form of online payment to use".

Another issue for the past week, reported variously on the Ebay Australia PayPal Forum¹⁵, has been that BigPond users have not been able to access the PayPal site due to a technical glitch. While it is not known whether the problem lies with BigPond (one of Australia's larger internet service providers) or PayPal, it does beg the question of how commerce on Ebay keeps moving when buyers and sellers cannot actually access the only payment system allowed on the site.

¹³ <http://forums.ebay.com.au/thread.jspa?messageID=502727563&forumID=1001#502727563>

¹⁴

<http://www.accc.gov.au/content/trimFile.phtml?trimFileName=D08+32421.pdf&trimFileTitle=D08+32421.pdf&trimFileFromVersionId=824950>

¹⁵ <http://forums.ebay.com.au/forum.jspa?forumID=1008&anticache=1209299851289>

These types of technical issues have serious implications when they apply to a **single** payment system that proposes to control \$2.6 Billion of payments annually within Australia (representing around 0.27 per cent of Australia's Gross Domestic Product)¹⁶

The Proposed Conduct

Ebay's proposed conduct is to be introduced in two phases:

- as of 21 May 2008, all items listed for sale on eBay.com.au must offer PayPal as one of the payment methods; and
- as of 17 June 2008, all items listed for sale must only offer payment via PayPal (or credit card transactions processed by PayPal) or cash on delivery.

Whilst I have so far concentrated on the effects of the second phase of this proposal, both phases introduce significant changes to the rights of businesses and individuals trading on the site. While the first phase, introduced on the 21st of May gives wider payment options to buyers and sellers than the later phase, the combination of the requirement to offer PayPal and Ebay Australia's "Misleading and Discouraging Payment policy", still combine to force the consumer issues described previously onto the market place as whole. The "Misleading and Discouraging Payment policy" was designed to stop Australian sellers from choosing which buyers could use PayPal on a specific auction or to do anything else to discriminate against the use of PayPal (until the policy was introduced many sellers stated that PayPal was for International buyers only and refused PayPal payments from Australian buyers). Even in the first phase of the proposal, because a seller does not know whether the buyer will pay by PayPal, they must operate with an eye to the consequences of a PayPal payment. The requirement that I cannot "combine items purchased through separate eBay transactions into a single shipment" if I want to be covered by seller protection, means that I effectively can no longer offer multiple shipping discounts, or either leave myself vulnerable or with significant additional costs for postage if a multiple buyer pays through PayPal. Thus even the first phase of the proposal has a significant impact on trading on Ebay, and should not be allowed to be introduced into the marketplace until Ebay and PayPal resolve the adverse consumer issues that are created by their trading terms, and proof that the PayPal site has the technical capabilities that will stop ongoing problems from interfering with the marketplace.

Summary

Section 3.6 of Ebay's Notification points out that "the Trade Practices Commission expressed the test as follows:

The Commission thereby clearly directed to allow exclusive dealing Notification to stand unless:

- (a) it is satisfied as to the anti-competitive effect of the conduct;
- (b) it finds positively that the conduct is not justified on public benefit grounds."

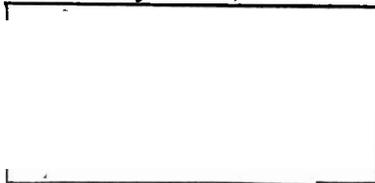
The ACCC has invited submissions on these grounds.

¹⁶ Section 5.15 (1) of Ebay's Notification to the ACCC No. N93365

I believe that the conduct outlined in Ebay's Exclusive Dealing Notification, No. N93365, does have serious anti-competitive effects, (a) specifically on those who are trading on Ebay and wish to offer a range of fair and reasonable payment options, whether online or offline methods, (b) against all online payment services other than PayPal, and (c) on the Australian online auction, shopping and classified market in general, where Ebay is reported to hold 42.19% of the total market, while it's nearest competitor holds a mere 2.12% of market share.¹⁷

I also do not believe that the conduct outlined in Ebay's Exclusive Dealing Notification, No. N93365, is justified on Public Benefits Grounds. I do not believe that PayPal offers the security for online trading that it purports to, and that the ongoing technical issues with PayPal's site hold a likelihood that the Ebay marketplace could be stalled through glitches and "known problems" interfering with access to the site and payment mechanisms. I believe that the seller and buyer protection mechanisms are faulty, and leave consumers vulnerable, as well as creating substantial additional costs in some areas of trading, both domestically and internationally.

Yours Sincerely,
Kevin Tyerman,



**EXCLUDED FROM
PUBLIC REGISTER**

Email: catalogs@natronics.com.au

¹⁷ <http://www.smartcompany.com.au/Free-Articles/The-Briefing/20080417-RBA-to-weigh-in-on-eBay-case-at-ACCC.html>