

Petreski, Sonya

From: on behalf of Adjudication

Subject: FW: Submission - eBay International AG - Notification - N93365

From: abrelaz [REDACTED]
Sent: Friday, 18 April 2008 9:55 PM
To: Adjudication
Subject: Submission - eBay International AG - Notification - N93365

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PUBLIC REGISTER**

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

Dear Sir,

I am lodging a submission for consideration in the matter of **eBay International AG - Notification - N93365**.

I am a frequent ebay trader BUT only use Paypal for international trading.

I am opposed to the proposed changes to Ebay's rules, both as a seller and as a buyer, for the following reasons

As a buyer;

Expediency.

Currently I can pay for a purchase with a direct bank deposit and I will have my purchase dispatched within 24 hours. In order to have the same turnaround with Paypal I MUST have a cash balance held in my Paypal account that exceeds the value of my purchase. So either I must tie my funds up in Paypal (earning Paypal my interest) or I must wait for a cash transfer to be completed to Paypay before I can expect my goods to be dispatched.

As a seller I am opposed to the Conduct for the simple reason that I will have to pay fees to Paypal for every sale I make in future.

As a general Ebay user I am also opposed to the changes for these additional reasons

it will now become IMPOSSIBLE for a new player to startup a "Paypal like" company and provide true competition.

As for Ebay's assertion that Paypal is safer, I have not had a problem getting Ebay's existing "Resolution Centre" process to solve any difficulties I have had in the past. All Ebay traders value their feedback rating and this alone can be used to ensure a SAFE TRADING experience. I believe that Ebay is using the "Safer" scare to lubricate this transition into a monopoly position.

On another point – people do make mistakes. What is a person to do if Paypal refuse to open an account for a person based on erroneous data. Paypal and Ebay are too close to objectively review contentious cases.

Having read the "**NOTIFICATION OF EXCLUSIVE DEALING: N93365**" on the ACCC website I wish to comment on the following items...

1 (b) Short description of business carried on by that person:

"eBay operates a website in Australia... ...eBay is not a party to the transactions that take place between buyers and sellers, does not act as a representative of either party... ...eBay

provides an online platform on which buyers can search for items, sellers can list items for sale, and members can transact”

I submit here, that Ebay are now overstepping that definition and are becoming involved in the manner by which Ebay users must complete the sale.

4. MARKET DEFINITION AND PUBLIC DETRIMENTS ■ EFFECT ON COMPETITION

4.4 (8) The NERA report (commissioned by Ebay) was unable to determine if the Conduct will be anticompetitive.

I submit here, that there is a chance that the Conduct may be anticompetitive – and caution with a determination in this matter would seem to be called for.

5. PUBLIC BENEFITS

- 5.1 I am unable to view Annexure B – as it is not included in the web copy of the Notification. It is hard to discuss item of relevance when they are concealed from the public.
- 5.2 "trust and safety" issues, including "bad buyer experiences" (BBE) can be mitigated and even eliminated with good solid education and a guiding hand by a caring partner. All Ebay traders have a partnership with Ebay and having our partner become dictatorial – without consultation – alienates us. Ebay have decided to remove our rights to choose how we operate – and instead dictate the new rules. Ebay are avoiding their responsibility to educate those of us who need help.
- 5.3 Enforced use of Paypal may help avoid a BBE, however educating and empowering the buyers and having Paypal as an optional method would still offer the same level of protection as compulsory Paypal.
People concerned about safety can still use Paypal, whereas careful, well educated buyers should be allowed a choice.
- 5.4 As above. Any buyer who is unsure of a seller should use Paypal. At the buyers' discretion faster alternatives should be permitted.
- 5.5 Security of transactions – I do not dispute the points raised here, but I need to add...
Vulnerabilities inherent to online operations.
All online corporations are susceptible to hacks and other online attacks. For example Denial Of Service attacks. An online database of names and addresses bank account and credit card details is a strong drawcard for millions of online hackers.
- Computer systems DO get hacked. Private details do get stolen.
- Should anyone cause a crash of the Paypal online system (DOS Attack) then Ebay transactions will be halted immediately.
- 5.6 Sellers benefits – I do not dispute the points raised here, but again need to re-iterate that having Paypal as an option will allow sellers to choose the level of security they desire.
- 5.7 Hard to comment on – Text remains private.
- 5.8 Hard to comment on – Text remains private.
- 5.9 Ebay blames its users for poor understanding. Ebay has a responsibility to train its users – not legislate away their right to choose. Expert users of Ebay should not be treated like children.
- 5.10 Ebay refer to "another secure online payment facility" for other transactions. Why must Ebay users be restricted to Paypal? Where's our right to choose another secure online payment facility? For that matter how can Ebay evaluate any of Paypal competitors' products for safety and security, in an unbiased manner?
- 5.11 Using phrases like "may", "would likely", "will likely" and "may also" offer nothing concrete. Any other "secure online payment facility" will offer as much incentive to new businesses trading online as Paypal will.
- 5.12 Ebay does offer many products cheaper than traditional retailers.
This point has NOTHING to do with Paypal as a compulsory payment method.
In fact, Paypal charges (over free bank transfers) will increase the cost of selling goods on Ebay and make it less competitive.

- 5.13 Ebay here suggests that forced Paypal trading will “reduce buyer migration to other retail websites” while offering no proof or evidence of this fact. I have read the comments on the Ebay forums and signed the petition, there are many who will refuse to trade on Ebay after this rule change. There will be many migrations if Ebay proceed with the Conduct.
- 5.14 Again, it is unlikely that forcing the use of Paypal will have any increased effect in the second-hand trade over and above an optional Paypal payment method.
- 5.15 Again, it is unlikely that forcing the use of Paypal will have any increased effect in the Australian economy over and above an optional Paypal payment method.
- 5.16 Again, it is unlikely that forcing the use of Paypal will have any increase in the economic activity and stimulation of competition in both online and offline retail markets over and above an optional Paypal payment method.
- 5.17 Credit card fraud both online and offline is ultimately a problem for the banks and financial institutions and their insurance companies. Cardholders are indemnified against fraud by the financial institution. It is not incumbent upon Ebay to try to curtail fraudulent activities by removing our freedom of choice.
- 5.18 This point refers to indemnifying retailers who trade through Ebay, and the Financial Institutions’ refusal to side with the retailer when a fraudulent transaction is evident. All retailers who wish to trade online should obtain Merchant Facilities and obtain the protection offered under that agreement. A retailer is a business person and should therefore take steps to indemnify themselves – not expect, or permit, others to look after them.
- 5.19 Once again all credit card users should be educated to their rights by their banking institution – it is not Ebay’s responsibility to obviate this need by ruling out our freedom of choice.
- 5.20 In some cases Paypal can reduce ‘Merchant trading’ fees, however, why should the rest of us pay higher fees via Paypal seller fees that will benefit only a some Ebay traders.

This now takes us to the conclusion.

- 6.1 (a) Ebay state “The Conduct would not be likely to have the effect of substantially lessening competition”.
I fail to see how the exclusion of **ALL** competing methods can be considered not lessening competition. Section 5.10 makes reference to “another secure online payment facility” why can’t Ebay users choose alternatives.
- (b) Having said “not likely to lessen competition” they then go on to say (paraphrased) that if this change does lessen competition – it’s still good.

I like Paypal – it’s a great tool – I use it whenever I buy/sell internationally, **but**, I do not want to use it for domestic transactions.

As an alternative

Currently all Ebay sellers can specify that a trade can be Paypal only – why not buyers too.

I SUGGEST THAT EBAY PLACE A FLAG ON EVERY ACCOUT THAT CAN BE SET BY THE ACCOUNT OWNER. THIS FLAG COULD FILTER OUT THE ITEMS TO BUY (FOR SALE) THAT DO NOT OFFER PYPAL.

New accounts could have this flag set by default – to protect the novices.

This way, if a buyer is concerned about safety, they can set the flag and then they will only see items offered by sellers who accept Paypal.

My conclusion follows here:

For Ebay users who need the added protection of Paypal then a “Paypal Only Buyers Flag” would offer all the security that the Conduct offers.

Freedom to choose is NOT dangerous. Lack of education is.

I request that the Commission err on the side of caution when deciding this matter - and allow Ebay

users to choose the option that best suits them.

As defined In 3.6

Re Coca Cola Export Corp (1 978) 4 TPR 523 at 524, the Trade Practices Commission expressed the test as follows:

"The Commission is 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."

So I answer (a) by saying

Ebay's own report The NERA report was unable to determine if the Conduct will be anticompetitive and by extrapolation they cannot say it won't. How can the removal of alternatives to Paypal not be anti-competitive.

There are two arguments I can use to address point (b)..

Firstly, 5 million Ebayers and \$2.7billion of annual trade with a seller's percentage going to Paypal/Ebay is hard to justify on public benefit grounds – this is money that will be sucked out of the Australian economy. To say nothing of the millions Paypal/Ebay will earn on interest by tying up the traders funds in a Paypal account, which could be in their savings account (or business trading account).

Secondly, a slight modification to the Ebay system and better education by Ebay CAN offer as much protection and the Conduct does without removing any of our rights to choose.

Thank you for your time in considering this submission.

Andrew Brélaz



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I speak the truth, not so much as I would, but as much as I dare; and I dare a little more as I grow older. - Michel Eyquem de Montaigne (1533 - 1592)

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