

**Roy, Lauren**

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**From:** Blanch, Belinda on behalf of Adjudication  
**Sent:** Monday, 21 April 2008 11:20 AM  
**To:** Chisholm, Shane; Roy, Lauren  
**Subject:** FW: eBay International AG - Notification - N93365 [SEC=UNCLASSIFIED]  
**Categories:** SEC=UNCLASSIFIED  
**ACCC Classification:** SEC=UNCLASSIFIED

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**From:** Damien Stone [mailto:  
**Sent:** Friday, 18 April 2008 11:11 PM  
**To:** Adjudication  
**Subject:** eBay International AG - Notification - N93365

**EXCLUDED FROM  
PUBLIC REGISTER**

Dear Sir / Madam

I wish to lodge an objection to eBay International AG - Notification - N93365 based on the grounds that the Conduct is not justified by the public benefit claimed.

In section 5 of the notification EBay claims several public "benefits" which are discussed below.

Section 5.2. The section list fraudulent use of credit card as one of the trust and safety issues. Credit card payments are not normally accepted by 'personal' sellers. Information regarding the breakdown of seller who take credit cards vs those who don't is not available. From personal experience very few sellers accept credit card payments directly and thus it appears that for the majority of buyers credit card information is not exchanged.

Buyers account details are not required to be disclosed to the seller as inferred in section 5.2 (1). Furthermore in the very data provided by EBay (figure 3.5 Neilson report) fraud and identify theft only account for 4% and 3% of the total negative experiences. The Neilson report pg 18, as provided by EBay, states "*Trust in the available online payment methods is a perceived online shopping obstacle for very few consumers*".

The sources of disputes listed in subsections 2 and 3 would not appear to be related to payment methods and mandating a specific payment method would appear to have little impact in reducing such disputes, refer to the appendix in this document.

Negative experiences related to non delivery of items makes up 17% of claims (figure 3.5 in Neilson report) with other delivery related problems making up 39%, 31% and 10% of the negative experiences. These complaints are unrelated to the payment method.

With 5 million Australian members in 2007 (EBay website), and 2/3 of the active online population (ie 6 million Australians) engaging in on line shopping (Neilson report, page 5) there does not appear to be a problem with confidence as portrayed by EBay in their notification.

Section 5.3. Based on the above facts taken from the Neilson report there appears to already be a high level of consumer trust and security and thus few 'direct and immediate benefits' are likely to be gained from EBay's mandated use of PayPal.

Section 5.5. Subsection 7 and 8 fails to list the charges (processing costs) that are applied to the disputes. Information on the average sale amount is not available, however, based on EBay's own claim of \$364 per household per year, section 5.15, (2), and assuming that this is made in more than 1 transaction (EBays website indicates 'millions of items are traded each day') the implications

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are that the average sale is potentially quite low. The net benefit of the buyer protection program is diminished and therefore does not necessarily improve the buyer confidence.

Furthermore the strict terms and conditions required to obtain a dispute resolution, and EBay's / PayPal's own claim in point (9) may further diminish the benefits to consumer confidence that are claimed.

If we use EBay's figures and the average sale is only \$384 made in 1 transaction, then the increase of protection to \$20,000 is little benefit to the average Australian household. Given the 'high value' items that are excluded from the Conduct, such as motor vehicles, boats, etc, the increase in protection is unlikely to have any benefit to the average EBay user and hence little benefit in the reduction of disputes and less benefit in the improvement of consumer trust and safety.

Section 5.6 (1) The section claims that the use of PayPal will mean that the seller is protected from false payments as they can be warned not to ship goods until payment clears. A bank transfer achieves the same result, and if the seller ships items without payment being made then they are solely accountable for any loss. Furthermore the use of credit card payments does not appear to be a highly accepted method of payment and the use of fraudulent cards would therefore be minimal.

Section 5.6 (2) The information required by PayPal in settling an 'item not received' dispute would allow the seller to resolve the dispute with the buyer and allow tracking of the package in any event. (Refer to "Buyer Complaint Policy and PayPal Buyer Protection Policy, section 8D") If a buyer / seller chooses to use a shipping method that is not traceable, then neither is covered by the protection program.

Section 5.9 Disputes arising as a result of the items listed in section 5.2 subsections (2) and (3) would not appear to be related to the payment method. Disputes arising from credit card fraud would be minimal as, based on my experience (since there is no data available), it is not a commonly offered payment method.

Section 5.10 and 5.11 are speculative and would appear to be aimed at increasing PayPal's penetration into the market. This is more reason why the exemption for Conduct should not be granted.

Section 5.12. Auctions focus on the lowest price the seller will accept, not the highest price the buyer will pay, resulting in a sales price that is lower than what a traditional sale would return. Furthermore the study used traditional offline retailers which have higher overheads and would charge a higher price accordingly. The use of EBay has the potential to drive traditional competitors out of the market which would in turn result in a shift of market power toward EBay.

Section 5.13. With the forced use of PayPal and the fees it attracts, on top of the listing fees and percentage EBay charges once an item is sold, the impact is to reduce the profit of the online sellers. This may force them out of business entirely.

Section 5.14. One only has to drive around the suburbs on Saturday morning and look at the 'garage sale' signs to realise the outlets available to unload unwanted second hand items, and then visit the local markets on Sunday morning to see alternate second hand outlets.

Section 5.15. I am no economist but GDP is given by the formula  $GDP = C+I+G+(X-M)$ , where C represents consumer spending. Whether consumers choose to spend on EBay or traditional stores would not impact GDP, only EBay's profit. An economist should verify this claim!

Section 5.16 With 5 million users, prices 25% below retail, and EBay Net revenue (worldwide) of approximately 9 billion dollars, one would assume that competition does not need further 'stimulation'. Furthermore with current inflation concerns economic activity needs dampening, not stimulating.

In referring to competition in this section EBay appears to be referring to competition in the online marketplace rather than competition in the online payment market.

Section 5.17 and 5.18, refer to previous comments regarding instances of credit card acceptance as payment methods.

Section 5.19. The same 'unaware consumers' are probably just as unaware of the strict terms and conditions related to PayPal buyer protection, some of which will immediately void the claim, for example *"If and when you are a buyer in a transaction, you agree to respond to any PayPal inquiries regarding the claim within the time specified in the inquiry. If you fail to respond to PayPal's request for more information, your claim will be cancelled and you will not receive a refund."* For these people, buyer protection may not provide additional consumer benefit as claimed.

Section 5.20 PayPal charges fees, which may be lower than merchant fees, whoever, the same merchants can use direct debit with negligible fees. The mandatory use of PayPal seems to only serve EBay's profit, rather than the merchant's.

## Conclusion

EBay's claim of the public benefits provided by the Conduct do not appear to be justified on a variety of grounds.

## Appendix 1

Section 5.2 common source of disputes.

PayPal buyer protection terms, section 6.i parts a) and b) define only two reasons for lodging a dispute with PayPal:

- 1) The seller did not deliver the promised goods, and
- 2) The item delivered by the seller is 'significantly not-as-described' in the item listing.

- 1) The buyer not receiving the goods can be attributed to the following causes,
  - a) the seller not sending the items, or
  - b) as a result of the items going missing during shipping, or
  - c) delivery to the wrong location

- a). If the seller does not send the items, then it arises from accident or a deliberate intent. In the event of an accident then the buyer and seller will resolve the dispute.

In the case of deliberate intent not to supply goods once payment has been made, then bank account details are more likely to lead to the tracking of the seller than an anonymous payment method such as Paypal, where the seller and buyer never exchange details. Knowing one can be tracked and identified when committing a fraudulent activity is more likely to deter such action than encourage it.

- b). If the item goes missing during shipping then the payment method can not possibly have any influence on this and the cause of the dispute is therefore not related to the payment method.

- c). Similarly if the items is delivered to the wrong location then the dispute results from either seller or buyer error, and is not related to the payment method.

- 2) An item may significantly not be as described for the following reasons.
  - a) Misinterpretation by the buyer
  - b) The deliberate intent of the seller to mislead
  - c) Accidental reasons

a) If the item description is misinterpreted by the buyer then the payment method will have little bearing on the dispute and certainly will not be related to the cause of the dispute.

b) If the seller's intent is to deliberately mislead then it is likely the seller will use a payment method that is harder to track and less personal. Paypal, and other methods whereby the seller does not disclose their personal details to the buyer, would provide a degree of anonymity and be less likely to discourage such practice than providing bank account information.

c) If the item was described incorrectly due to accidental reasons then the use of payment methods is irrelevant.

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