

Re: Notification of Exclusive Dealing N93365

EBay and PayPal

PUBLIC REGISTER VERSION

I would like to make a submission against eBay's notification for exemption from Section 47 of the Trade Practices Act 1974 (TPA) on the grounds that their notification does not make the case of public benefit outweighing public detriment.

1. PayPal is not any safer than other types of payment methods
2. The claimed benefits of PayPal currently exist and do not warrant exclusion of choice in payment methods. In addition, many of the benefits (mostly security) claimed to justify excluding other payment methods are in fact provided by other sources of payment methods.
3. EBay owns PayPal and therefore stands to benefit from the exclusion of other payment methods. There are other online payment services similar to PayPal which are also being excluded as payment methods.
4. PayPal is a less efficient and user friendly service than other payment methods.

PAYPAL IS NOT ANY SAFER THAN OTHER TYPES OF PAYMENT METHODS

As evidence of the security of PayPal, the notification cites "*that users must agree to the terms and conditions of PayPal's User Agreement and provide PayPal with a number of personal details which are subjected to verification by PayPal.*"¹. This system of verification falls well short of the 100 point system that is required to open a bank account in Australia. In fact, it seems that PayPal relies greatly on the security of the existing banking and credit card systems in place in Australia for their own security.

I realise that if there is any supporting data for eBay's claims of increased security it is hidden in the sections of the notification marked EXCLUDED FROM PUBLIC REGISTER. Alastair Macgibbon has been quoted in the media many times as saying "*...one is four times less likely to have a problem on eBay if one pays using PayPal than with other methods.*"² The obvious flaw in this argument is that fraudulent behaviour is somehow linked to payment method without any supporting evidence.

THE CLAIMED BENEFITS OF PAYPAL DO NOT WARRANT EXCLUSION OF OTHER PAYMENT METHODS

The benefits that PayPal claims are not exclusive to PayPal. Credit card companies also offer similar services that reverse payments in case of goods not arriving, being faulty or not being as described.

¹ Annexure A: 1.15

² <http://www.smh.com.au/news/web/ebay-probed-over-paypal/2008/04/16/1208025245331.html>

The notification disingenuously tries to infer that PayPal is safer than credit cards because *“When a cardholder claims that an online purchase was fraudulent...their financial institution generally takes them at their word and the retailer is required to submit a refund... even though they do not receive the goods back in return.”*³ when this is exactly what happens with PayPal! This is one of the “benefits” that the notification infers is exclusive to PayPal⁴ They seem to be trying to take two bites of the cherry; it is disadvantageous to sellers when offered by credit card companies but advantageous to buyers when offered by PayPal.

There is a multitude of anecdotal evidence from the eBay discussion boards <http://forums.ebay.com.au/forum.jspa?forumID=500000001> suggesting that this problem is also very much the case with PayPal. I have read examples of buyers taunting sellers when they have received their goods and a refund from PayPal. The notification does not state how PayPal would circumvent this problem in any way.

The notification refers to research⁵ which states that security is a factor for 94% of people in deciding online payment methods. Yet this same research states that only 3% of people chose “Don’t trust online payments” as a barrier to online shopping compared to 81% who chose “Want to touch / view product”⁶

Another public benefit that eBay claims is that: *“... on average, products sold on eBay are 25.2 per cent cheaper than... offline retailers.”*⁷ This statement may be true, but there is no evidence that eBay is cheaper than other online retailers. They further claim that traders of second hand items have few alternative venues to eBay and that if buyers have negative experiences they may have nowhere else to sell their goods. There a number of smaller auction sites online that will only grow as disaffected eBay users defect.

EBAY OWNS PAYPAL AND THEREFORE STANDS TO BENEFIT FROM THE EXCLUSION OF OTHER PAYMENT METHODS

There are other online payment services such as BPay and Paymate which offer the same type of service as PayPal. All the claims of increased security and better protection offered by PayPal should equally apply to these other services. In fact BPay is owned and operated by the major banks and is therefore subject to enforcement by the Banking Ombudsman which is not the case with PayPal. Until eBay bought PayPal, Paymate was their recommended online payment method. eBay have not produced any data (for public scrutiny) that shows that PayPal is a safer or more reliable method of payment than Paymate

PayPal charges sellers for using its services on a sliding scale based on the cost of the item. There is great public detriment for eBay sellers and buyers because of additional costs to sellers which inherently will mean increased prices. This is double dipping on eBay’s part, they already charge a listing fee and then take a percentage of the final value of the item and now they will take another portion.

Most of eBay’s previous growth has come from its growing customer base. It probably reached critical mass two or three years ago and since then has been looking for new ways to maintain growth. This has come about by increasing Final Value Fees and charging for things in listings which

³ Annexure A: 5.18

⁴ Annexure A: 5.6

⁵ Annexure A: 5.4

⁶ Annexure C: p.18 Figure 3.2

⁷ Annexure A: 5.12

had previously been free, such as subtitles in listings and listing designer. Now, we have this act of desperation for another grab at our money shrouded as a safety measure.

According to a number of eBay users⁸, eBay seems to be making it difficult for buyers to access sellers' bank details in an effort to convince buyers that direct deposit is a difficult system to use.

PAYPAL IS A LESS EFFICIENT AND USER FRIENDLY SERVICE THAN OTHER PAYMENT METHODS

I am more of a buyer than a seller on eBay. I recently decided to take up the option of adding PayPal as a payment method when I was selling some DVDs. I had five items to sell; four of them were paid for by direct deposit and one by PayPal using an e-cheque. The direct deposits were cleared in two days and the e-cheque took six days to clear. It was this experience and PayPal's proposal to put a 21 day hold on payment for "high risk" transactions⁹ which made me suspect that there may be other motives for implementing the PayPal only method of payment.

eBay claims that there are 5 million PayPal account holders in Australia¹⁰. If eBay is allowed to put a 21 day hold on payment that are deemed "high risk" that would seem to be a lot of money that could be invested in the short term money market. The terms of this 21 day hold seem to be very vague. Where are the criteria for what constitutes a "high risk" item and who will exercise the discretion to hold the funds? Surely, if PayPal or eBay is planning on implementing a policy of holding funds on presumably big ticket items, an independent body should oversee this.

SUMMARY

I believe that this proposal has no foundation whatsoever. It most definitely substantially lessens competition and eBay's arguments that the public benefit outweighs the public detriment is not proven on the basis of the information made publicly available.

This proposal is a profit increasing venture shrouded in the veil of security.

I respectfully request that all my private contact details be excluded from the public register apart from my name and eBay ID.

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⁸ <http://forums.ebay.com.au/thread.jspx?threadID=500080808&tstart=0&mod=1209290872282>

⁹ Annexure A: 5.5 (6)

¹⁰ Annexure A: 1.13