

To Whom It May Concern,

I wish to log a submission in reference to the applicant – eBay International AG, lodging a notification of Exclusive dealing on April 11<sup>th</sup> 2008 Notification - N93365

eBay International AG has notified the ACCC that it proposes to:

From 21 May 2008, require sellers to offer PayPal as one of their accepted payment Methods; and

From 17 June 2008, supply the services on the eBay Site to users on the following Conditions:

- Sellers may only offer to accept payment made through PayPal, Pay on Pickup or Visa/Mastercard processed by PayPal;
- All eBay transactions must be paid for using PayPal, Pay on Pickup or by Visa/Mastercard processed by PayPal, and not through the use of any other Payment method; and
- Sellers will still be permitted to have arrangements with third party providers that provide checkout facilities (commonly as part of an overall Business/inventory management facility). When a customer purchases a product from these sellers, the customer is not taken to eBay checkout – but instead redirected to a third party checkout facility. However the seller must be a PayPal member and the product must be paid for using eBay's accepted payment methods and not through the use of any other payment method.

If eBay International AG takes the planned action they will breach the Trade Practices Act, Part IV – RESTRICTIVE TRADE PRACTICES. eBay was granted immunity from same in 2005 but that related to only one item and it's delivery method (which has since been banned from eBay).

In their notification eBay International AG state:

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

*3.a. states: at the present time Approximately 5 million, being the approximate number of registered users of the eBay site.*

*3.b. ii states: nearly all registered users of the eBay site may be affected.*

By their own admission they state 5 million users may be affected by the planned action to restrict the users choice to choose how they want to pay for an item.

- To sell on eBay a seller must also be a member of PayPal.
- To purchase an item on eBay a buyer must also be a member of PayPal.

This is 'Third line Forcing' -when the supply of goods or services is conditional on the fact that the purchaser also acquires goods or services from a third party (in this case PayPal).

Annexure A

**3. THE TRADE PRACTICES ACT**

3.1 Section 47 of the Trade Practices Act 1974 (TPA) prohibits exclusive dealing if it has the purpose or has or is likely to have the effect of substantially lessening competition.

The planned action by eBay is that they will only provide their service to an individual on the condition that the individual will not use the services of a competitor of eBay (or PayPal). It will also mean eBay will refuse to provide their services to someone if that person has not agreed to not use the services of a competitor. This is indulging in exclusive dealing. In this case eBay will not allow other online payment options such as Paymate, Eway, DirectOne, etc or Direct Debit into an account with a Registered Bank or other financial Institution, Bank cheque or personal cheque nor Australia Post Money Order. This conduct is likely to have the effect of substantially lessening competition – in fact it will remove competition totally. Users will no longer be able to choose to pay via any of the above mentioned methods. The Banks alone stand to lose 79%<sup>1</sup> of 5 million users transactions (eBays stated registered users in Australia). This is not an insignificant number and it will clearly make a difference to many of the other financial institutions when eBay/PayPal is getting the fees or interest that would normally go to the banks, other financial institutions and Australia Post. eBay claim they have 276 million users worldwide and as Australia is the test case for this planned action, if successful, it will be implemented on a world wide basis<sup>6</sup> - this would definitely have a very serious impact on our banking sector.

As a seller on eBay since June 2004, even though I offer PayPal, I have found that less than 5% of my buyers choose to use this method of payment, the majority choose Direct Debit, then Australia Post Money Order. eBay's alternative payment method, 'Pay on pickup' is not a viable alternative for people living in different geographical areas.

#### **Section 4 of Annexure "A" : MARKET DEFINITION AND PUBLIC DETRIMENTS – EFFECT ON COMPETITION**

*eBay engaged NERA Economic Consulting to conduct a detailed analysis for the purposes of defining the relevant markets in which eBay and PayPal operate and assessing the potential effects on competition of the proposed implementation of the Project. In 4.3 They state: Whilst the Report speaks for itself, eBay notes in particular that NERA has found that, due to the complexities of the two-sided markets in which eBay and PayPal operate, it is not possible to form a definitive view of the likely markets in which eBay and PayPal respectively operate. 4.4 1 states: It is not possible to form a definitive view as to whether eBay possesses a substantial degree of market power, due to the difficulties inherent in defining the market in which eBay operates and determining the strength of any network effects enjoyed by eBay in that market.*

eBay does possess a substantial degree of market power. eBay is the number One online Auction provider in Australia, as stated earlier, they have 5 million users in Australia. Second to them is Oztion ([www.oztion.com.au](http://www.oztion.com.au)) who have just 250,000 users. I believe the power in the auction market that eBay has is being extended to limit competition in the payment systems market that PayPal operates in.

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<sup>1</sup> Oztion Press Release on April 24<sup>th</sup> 2008

Australia, Commonwealth of ([Press Release](#)) April 24, 2008 -- OZtion's online auction listings have grown by 22% in the last two weeks to approximately 580,000 simultaneous listings. In the same period, daily new member registrations have increased by 165% and daily new sellers registrations by 300%. OZtion's registrations are now more than a quarter of a million... Philip Druce, General Manager for OZtion commented "The fact that OZtion has seen significant growth across most metrics shows that Australians are looking for alternatives to eBay and will not be forced into only using PayPal. Our internal data shows that 79% of buyers prefer to pay by bank deposit." ...

#### **4. Public benefit claims**

- (a) *Arguments in support of notification:*  
See section 5 of Annexure "A".
- (b) *Facts and evidence relied upon in support of these claims:*  
See section 5 of Annexure "A".

#### **Section 5 of Annexure "A" :**

##### **5. PUBLIC BENEFITS**

- 5.2 *As previously noted, eBay understands that one of the two biggest reasons that eBay buyers decide not to purchase additional products on the eBay Site is "trust and safety" issues, including "bad buyer experiences". Common sources of disputes and "bad buyer experiences" include:*
- (1) *fraudulent/unauthorised use of buyer credit card and/or account details where a method of payment has been used that involves disclosure of the buyer's account or credit card details;*

The mandatory use of PayPal will not make any difference to what already happens. When a purchase is made on eBay the buyer does not provide their bank details to the seller (as stated above), it is the seller who provides bank account details. Currently the only way to accept credit card payments is to do so through PayPal.

- (2) *purchased items not being received; and*
- (3) *purchased items being significantly not as described upon delivery.*

This will not change if the only way to pay is via PayPal. The seller will still be posting the item as before and there is always a risk of (3) no matter where you make a transaction.

- 5.4 *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. The findings of the research conducted by Nielsen Online are supported by enquiries made by the Office of the Federal Privacy Commissioner."*

To be a registered PayPal user you must provide your bank account details, and/or credit card details to PayPal. The very fact that PayPal is not an Australian owned company, nor is it a bank and as such is not regulated like a bank, creates suspicion among buyers and therefore it is not trusted by buyers like a bank is trusted. eBay claims Internet banking is proven to be less safe for consumers, "You're four times less likely to have a problem on eBay if you pay with PayPal, than say, if you used internet banking."<sup>2</sup> Australian banks are very safe and trusted by the Australia community. They have secure online banking systems which enable eBay users to pay for their purchases straight away. These payments usually arrive in the sellers account by the next working day if paid before 5pm, or on the 2<sup>nd</sup> working day if paid after 5pm.

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<sup>2</sup> Andrew Ramadge, Technology Reporter, The Australian | April 10, 2008

eBay trust and safety director Alastair MacGibbon said forcing PayPal to "stand in between buyers and sellers" would reduce the likelihood of conflict and increase consumer confidence.

"eBay is no longer willing to stand aside and allow payment methods on the site that are proven to be less safe for consumers," he said.

"You're four times less likely to have a problem on eBay if you pay with PayPal than, say, if you used internet banking."

The planned action as outlined in the notification is detrimental to eBay users. If the planned action takes effect the number of registered users on eBay will change significantly as people want to choose the way they pay. They want choice. This has to be seen as having a detrimental effect on not only sellers who will lose their customers due to higher charges and postage costs (see item 7. below) but on the buyers who will be locked out of eBay if they do not want to join PayPal.

As stated above, to be a registered PayPal user you must provide your bank account details, and/or credit card details and some people do not want to do this or may not have credit cards and don't wish to obtain one. Some of the other reasons why people do not want to use PayPal and why the planned action by eBay would be detrimental to users.

1. "Trust and Safety Issues" - PayPal is not a bank and is as such is not regulated like a bank and therefore it is not trusted by buyers like a bank is trusted. According to Annexure A. 2.4 of the said notification, "Since 17 January 2007, as part of its security initiatives, eBay has required new sellers on the eBay Site to nominate that they will accept PayPal or a merchant credit card facility as a payment method for all transactions on the eBay Site, In addition, the overwhelming majority of eBay sellers already offer to accept PayPal in their listings". This proves that sellers already offer PayPal but that buyers are not taking the option to pay via PayPal - up as 79% of buyers still prefer to use Direct Debit<sup>1</sup>. It is obvious, eBay is trying to bring about compulsory use of it's own subsidiary (PayPal) to increase it's market share in online financial transactions.
2. PayPal currently charges fees for their service over and above the fees paid to eBay which if enforced would be detrimental to both sellers and buyers.

Premier and Business accounts transactions under \$5000.00 are charged at 2.4% plus a transaction fee of 30c. The Standard Rate for cross-border transactions (where buyer and seller are in different countries), regardless of currency, will be 3.4%. The fee is charged on the end price of the item plus the postage component.

For domestic accounts the fee for domestic Card Funded Payments received by Personal accounts will be 3.4% plus \$0.30 AUD. The fee for a cross-border transaction, regardless of the currency, will be 4.4% plus a fixed fee (ie AUD 30c USA 30c NZD 45c etc). The fee is charged on the end price of the item plus the postage component.

If the transaction involves a currency conversion, it will be completed at a retail foreign exchange rate determined by PayPal, which is adjusted regularly based on market conditions. This exchange rate includes a 2.5% spread above the wholesale exchange rate at which PayPal obtains foreign currency, and the spread is retained by PayPal.

3. PayPal charges \$1 to withdraw funds up to \$149.99 This is not a benefit. The majority of Banking customers do not pay a withdrawal fee.
4. The planned action by eBay will make the cost of purchasing items on eBay more expensive as sellers pass on their costs to buyers. In comparison, fees attached to buying a postal order are pretty reasonable, using Visa and Mastercard may be fee free if the cards are used wisely. Bank deposits are generally free.

5. PayPal also states it has the right to hold your funds for 21 days<sup>3</sup> which is detrimental. This means eBay can hold your funds for 21 days if the buyer doesn't leave feedback, even if they received the item within days of the sale. If someone pays via direct debit into your bank account, which is the most common form of payment, the proceeds are usually in your bank account within two business days. This is only beneficial to eBay/PayPal.
6. PayPal also states that it is safer to use PayPal as they have a User Protection Policy and can make charge backs if the item does not arrive. – Banks also have a chargeback system so this would not be of any benefit. To qualify for protection over \$400 the buyer must have previously received feedback from 50 different people that have a 98% positive rating.<sup>4</sup> There is no qualification with the banks.
7. PayPal has a seller protection policy – Under 4.2.4 of that policy it states that “the Seller Protection Policy will not apply to a transaction if the seller combines items purchased through separate eBay transactions into a single shipment”. This means if a buyer buys four items from you, you must post these four items individually to be covered under that policy. You cannot combine the postage ie four items purchased by an Australian buyer - if each item weighs 450g and you post them in the same parcel it would cost a total \$9.30. To post them separately as would be required by PayPal would cost \$5.30 plus a registered post fee of \$2.70 for each item, a total of \$32.00. This forces the buyer to pay more for postage if paying via PayPal, which is outrageous. In this case the seller, not wanting to cheat their customer and wanting to keep their customer, will most likely combine the postage and therefore not be covered by PayPal's Seller Protection Policy. The planned action would be very detrimental in this case.

Another issue (and one that eBay is well aware of) is restricted availability. If the PayPal system goes down, there are no alternative payment options other than Cash on Pickup which is not an alternative for people living in different geographical areas. Currently, if a buyer's preferred method of payment is not usable, another can be chosen. Under the new proposal, if PayPal is not available (due to maintenance, hacking, damage etc), there are no other choices.<sup>5</sup>

The current dissatisfaction by eBay users is evident, already there is a move away from eBay due to the new rules<sup>1</sup>. A perusal of an eBay discussion board set up to discuss the proposed changes shows sellers of many years experience closing their eBay and PayPal accounts and either going elsewhere or just not selling.

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<sup>3</sup> eBay notification - Annexure "A"

1.27 eBay will also soon implement a "holds" policy whereby, when eBay considers that a transaction on eBay is high risk for the *buyer*, it will notify PayPal that it should hold the payment for the transaction. PayPal will then exercise its discretion as to whether to hold the funds and wait until it either receives confirmation from the buyer that he or she has received the item and has no cause to raise a dispute, or 21 days have passed without the buyer having raised a dispute.

<sup>4</sup> 1.28 For PayPal members who purchase eligible items on eBay, PayPal offers additional buyer protection where an eligible item is not received or is "significantly not as described". Under PayPal's Buyer Protection Policy members that purchase eligible items on eBay can currently be protected for up to \$400 for any purchase (excluding certain categories, such as intangible items) or up to \$3,000 where the seller has received an eBay feedback rating from 50 unique transactions and has also achieved at least a 98 per cent positive rating for that feedback.

<sup>5</sup> Paypal was not available to many users in S.E. Queensland this past week (W/E 26<sup>th</sup> April) for those on Bigpond cable

It appears eBay is also trying to deter the smaller sellers from selling on eBay by this planned action: “CEO of eBay, Mr Donahoe states he wants eBay to operate less like an unruly flea market and more like a strip mall...” Mr. Donahoe has pushed through a series of significant changes to the auction site, many of them favoring big, reliable sellers... Mr. Donahoe says it is not the company’s intent to discriminate against small sellers. But, he said, “where large and small sellers are trying to cut corners and not provide a good buying experience, we are making less room for them in the marketplace.”<sup>6</sup>

If the planned action goes ahead the sellers of low priced items will find it no longer worthwhile to sell on eBay. Those that use eBay to ‘collect’ small items of interest such as post cards, trading cards, costume jewellery, 2<sup>nd</sup> hand clothing, household goods, knitting items, sewing items, collectables and bric-a-brac etc will no longer be able to buy on eBay, either because these items are now priced too high - having had the extra fees added to the cost, or because the sellers have closed their shops due to the high cost of fees.

I am one of many sellers who sell items in the \$1 to \$10 range. I have had 1942 transactions since 2004, of these 800 transactions were for more than one item. and of these only one negative response. Many of my customers purchase more than one item at a time. I and many like me will no longer be able to sell due to the extra fees.

An example of the fees that will be paid are as follows:

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<sup>6</sup> By BRAD STONE

Published: April 17, 2008 New York Times

SAN FRANCISCO — More changes are coming to eBay, and John Donahoe, the new boss, is girding for the repercussions. Mr. Donahoe, who has been running the company since his appointment to the top spot was announced in January, wants the company, the Internet’s largest e-commerce site, to operate less like an unruly flea market and more like a strip mall — where buyers are guaranteed to have a comfortable and predictable shopping experience...

Mr. Donahoe has pushed through a series of significant changes to the auction site, many of them favoring big, reliable sellers. And that has meant inevitable rancor in eBay’s boisterous community of smaller sellers who have made a living out of selling knickknacks from home....

Mr. Donahoe says he is focused on bringing consistency to the core marketplace business and improving the experience for buyers. Among his recent changes, eBay has revised the way that auction listings appear in search results on the site. Instead of listing auctions in the order which they end, the company is now favoring sellers with better ratings, lower shipping fees and cheaper prices...

Fees for items from \$1 to \$30 (Australian sales – does not include fees for cross border transactions).

\$	Total listing fee with 1 extra pic	Final Value Fee	Total Ebay fee	Postage (typical)	Sale price plus postage	2.4% paypal fee - Sales up to \$5k	2.4% plus 30c trans fee	Paypal % of sale price	Combined Fee total	Total % of sale price
1	1.34	0.0525	1.3925	5.3	6.3	0.1512	0.4512	45.1	<b>1.8437</b>	<b>184.4</b>
2	1.34	0.105	1.445	5.3	7.3	0.1752	0.4752	23.8	<b>1.9202</b>	<b>96.0</b>
3	1.34	0.1575	1.4975	5.3	8.3	0.1992	0.4992	16.6	<b>1.9967</b>	<b>66.6</b>
4	1.34	0.21	1.55	5.3	9.3	0.2232	0.5232	13.1	<b>2.0732</b>	<b>51.8</b>
5	1.34	0.2625	1.6025	5.3	10.3	0.2472	0.5472	10.9	<b>2.1497</b>	<b>43.0</b>
6	1.34	0.315	1.655	5.3	11.3	0.2712	0.5712	9.5	<b>2.2262</b>	<b>37.1</b>
7	1.34	0.3675	1.7075	5.3	12.3	0.2952	0.5952	8.5	<b>2.3027</b>	<b>32.9</b>
8	1.34	0.42	1.76	5.3	13.3	0.3192	0.6192	7.7	<b>2.3792</b>	<b>29.7</b>
9	1.34	0.4725	1.8125	5.3	14.3	0.3432	0.6432	7.1	<b>2.4557</b>	<b>27.3</b>
10	1.34	0.525	1.865	5.3	15.3	0.3672	0.6672	6.7	<b>2.5322</b>	<b>25.3</b>
11	1.34	0.5775	1.9175	9.3	20.3	0.4872	0.7872	7.2	<b>2.7047</b>	<b>24.6</b>
12	1.34	0.63	1.97	9.3	21.3	0.5112	0.8112	6.8	<b>2.7812</b>	<b>23.2</b>
13	1.34	0.6825	2.0225	9.3	22.3	0.5352	0.8352	6.4	<b>2.8577</b>	<b>22.0</b>
14	1.34	0.735	2.075	9.3	23.3	0.5592	0.8592	6.1	<b>2.9342</b>	<b>21.0</b>
15	1.34	0.7875	2.1275	9.3	24.3	0.5832	0.8832	5.9	<b>3.0107</b>	<b>20.1</b>
16	1.34	0.84	2.18	9.3	25.3	0.6072	0.9072	5.7	<b>3.0872</b>	<b>19.3</b>
17	1.34	0.8925	2.2325	9.3	26.3	0.6312	0.9312	5.5	<b>3.1637</b>	<b>18.6</b>
18	1.34	0.945	2.285	9.3	27.3	0.6552	0.9552	5.3	<b>3.2402</b>	<b>18.0</b>
19	1.34	0.9975	2.3375	9.3	28.3	0.6792	0.9792	5.2	<b>3.3167</b>	<b>17.5</b>
20	1.59	1.05	2.64	9.3	29.3	0.7032	1.0032	5.0	<b>3.6432</b>	<b>18.2</b>
21	1.59	1.1025	2.6925	9.3	30.3	0.7272	1.0272	4.9	<b>3.7197</b>	<b>17.7</b>
22	1.59	1.155	2.745	9.3	31.3	0.7512	1.0512	4.8	<b>3.7962</b>	<b>17.3</b>
23	1.59	1.2075	2.7975	9.3	32.3	0.7752	1.0752	4.7	<b>3.8727</b>	<b>16.8</b>
24	1.59	1.26	2.85	9.3	33.3	0.7992	1.0992	4.6	<b>3.9492</b>	<b>16.5</b>
25	1.59	1.3125	2.9025	9.3	34.3	0.8232	1.1232	4.5	<b>4.0257</b>	<b>16.1</b>
26	1.59	1.365	2.955	9.3	35.3	0.8472	1.1472	4.4	<b>4.1022</b>	<b>15.8</b>
27	1.59	1.4175	3.0075	9.3	36.3	0.8712	1.1712	4.3	<b>4.1787</b>	<b>15.5</b>
28	1.59	1.47	3.06	9.3	37.3	0.8952	1.1952	4.3	<b>4.2552</b>	<b>15.2</b>
29	1.59	1.5225	3.1125	9.3	38.3	0.9192	1.2192	4.2	<b>4.3317</b>	<b>14.9</b>
30	1.59	1.575	3.165	9.3	39.3	0.9432	1.2432	4.1	<b>4.4082</b>	<b>14.7</b>

As a buyer I find the planned action is nothing short of predatory behaviour. It will restrict my choice of payment options and in doing so diminish or dramatically reduce my choice as a consumer.

If competition to PayPal is eliminated, PayPal has no incentive to remain effective. There are currently several problems with PayPal's user agreement and several internet sites have been set up to notify the public of problems that can be or have been encountered – many claiming an inefficient dispute resolution process (accounts can be frozen for indefinite periods and money removed from accounts with no way of contesting same).

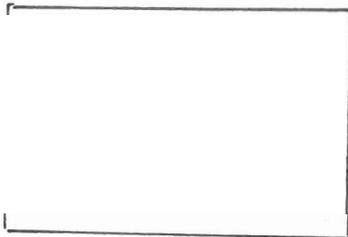
8.6 million internet users in Australia (a country that only has 17.7 million people over the age of 18) have made an online purchase<sup>7</sup>, – eBay states they have 5 million users - therefore, 58% of the 8.6 million will be affected if the planned action is allowed.

More importantly, if eBay does implement the planned action it will have a serious effect on the financial sector, there will be no competition from Australian banks and other financial institutions in regard to purchases made through eBay. It will also greatly affect Australia Post (money orders and postage losses). This in turn could result in job losses and increased fees by banks to recoup their losses.

### **Conclusion**

The planned action by eBay will have the effect of substantially lessening competition for the purposes of section 47. The detriment to the public which may be caused by a lessening of competition as a result of the implementation of the planned action would not be outweighed by the significant public benefits that would be likely to result from the action outlined in this notification.

Dale Thomas



**EXCLUDED FROM  
PUBLIC REGISTER**

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<sup>7</sup> Annexure C 1.1 The overall Australian population of adults (aged 18+) is currently estimated at near 17.7 million. Within this population, the digital media universe estimated via Nielsen Online NetView panel measurement shows [the number of Australians actively using the Internet from home or work during October 2007 at: 9.159 million. Retail monitor incidence tracking shows 66 percent of the Internet user population to have made some form of online purchase over the most recent month (shown below); while 94 percent of Internet users surveyed report having purchased online at some stage in the past. In turn, this represents over 6 million active Internet users (aged 18+) who made some form of online purchase within the last month; and slightly more than 8.6 million active Australian Internet users (aged 18+) that have *ever* made an online purchase.



Approved for Public Register

YES / NO

Approved for Internet

YES / NO

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