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Subject: eBay International AG exclusive dealing notification N93365
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Sent: Friday, 2 May 2008 5:58 PM
To: Adjudication; Adjudication; Adjudication; Adjudication; Adjudication
Cc: psug@powersellerunderground.com.au
Subject: eBay International AG exclusive dealing notification N93365

To:
The General Manager
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Australian Competition and Consumer Commission
GPO Box 3131
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From:
Ken Bradley on behalf of:
- KGB Electronics Pty Ltd as a Director
- The "powersellerunderground.com.au" as forum owner and administrator.
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Re: eBay International AG exclusive dealing notification N93365

In this submission I represent both myself as an independent registered Australian business and a group of well over 100 of eBay's most prolific sellers (Powersellers) as the forums owner and administrator of powersellerunderground.com.au

Due to past intimidation of members of the powersellerunderground by eBay and their representatives and cronies our forum is closed access however we are willing to grant access to the ACCC, subject to strict maintenance of our member's anonymity and confidentiality, so that you may see the devastating effect that allowing eBay's application would have on many Australian small businesses and Australians as individuals.

Individually and collectively we submit that:

PayPal transactions are inherently less secure than banking (direct deposit) and credit card transactions as there is no verification system in place by PayPal and the Terms and Conditions of PayPal use exclude avenues of dispute and arbitration available to consumers and merchants under those methods. Additionally the exclusion of money orders and cheques, traditional Australia forms of payment, carry with them the benefit of physical security and evidence in relation to their functions as instruments. A forged cheque or money order can be later produced as evidence to substantiate or disprove any claims ... no such capability exists with PayPal and the combined use of "Privacy Policies" from eBay and PayPal effectively prevent any access to information required to reliably and fairly settle or arbitrate on disputes. Interestingly eBay

accept PayPal, Direct Debit and Credit Card payments for eBay fees, obviously non-PayPal methods of payment are only insecure when it's convenient when used in a application for their own benefit, or ridiculous advertising.

PayPal's claims that they OFFER protection are on the face of it correct. Yes they claim to offer protection, nobody disputes that they offer it, however there is an enormous gap between the details of their claim and reality. Their attitude to dispute resolution is based on their own self-interest and determinations (in my experience and that of many others) ignore relevant facts. eBay firstly protect eBay, then the customer (but only in a circumstance where it is convenient for eBay) and then protect the seller – only as a last resort in the face of escalated legal proceeding. Their advertised “seller protection” programs do not wholly apply to Australian entities and should be separately investigated as being false and misleading.

My personal experiences with eBay are such that evidence that would normally be considered and accepted in an independent review, assessment or arbitration are rejected “out of hand” by eBay on the basis that they are “judge, jury and executioner” and you have agreed to this in their “terms and conditions”. Hardly something that Australians would view as “a fair go”.

The effect of eBay's restrictions relating to “third party checkout facilities” would restrict the normal operation of many businesses that deal with a dual market of eBay and non-eBay sales. The proposal that any third party processing MUST use PayPal exclusively will provide additional burdens on businesses that use their own or coordinated third party processors. Businesses would be required to either eliminate other payment methods from their facility or provide a separate payment avenue offering only PayPal to comply with eBay's proposal. The economic factors affecting Australian business, in particular small business, are severe enough at the moment without having an American corporate giant dictate additional burden on Australian businesses.

As an added discentive eBay/PayPal have decided to block what they call “unsafe” browsers in the future ... oh did they forget to mention that your browser needs to be able to process a type of certificate called an “EV” certificate, provided from (you guessed it) yet another eBay acquisition – Verisign. Too bad if you use a Mac. Also what about the fact that secure to eBay seems to have a totally different meaning to the rest of the world - see this link: http://en.wikipedia.org/wiki/Extended_Validation_Certificate#Vulnerability_to_Phishing In particular “There has been some concern that EV certificates, despite their improved authentication and higher cost, will not prevent phishing attacks”

The annexes provided by eBay are a perfect example of statistical manipulation. They have certainly proved that “given any set of statistics you can prove whatever you want”,

The truth seems to lie more in what is not stated in their submission as opposed to what is Stated, here are just a few samples.

- *“17 500 Australians using eBay as their primary or only source of income, while a further 35 000 Australians run a business and use eBay as a secondary sales”*

So 17500 businesses are in a position where they will be forced into using a payment method of eBay's choice. If PayPal (a company owned by eBay) decide to increase their fees or alter their terms as eBay's next step to “world domination” what do these businesses do? Pack up shop and join the “dole queues” – and there will be queues. What will the ACCC say to these businesses then? The basis of free-enterprise and “so called” democracy is our ability to choose ... eBay would take that away from us given the opportunity.

- *“eBay listings are provided from sellers at local, national and international levels, covering an extensive*

range and depth of products across a wide range of product categories and sub-categories”

What they haven't told you is that if you try to list on a US based eBay site your listing will not appear to Australians if you don't comply with their rules, even though this restriction of payment methods is questionable under US law and subject to challenge in the US courts.

- *“innovation - eBay continuously introduces new innovations in online sales, which benefit both buyers and sellers through improving the efficiency and volume of trade”*

Sales of digital goods are no longer permitted on eBay and one of their latest “innovations” is to forbid sellers from leaving negative feedback about customers who act in a fraudulent manner. How does not being able to sell a product on eBay or not being able to inform other sellers of a potentially fraudulent buyer benefit anyone (other than the fraudster). We have evidence of one occasion where a fraudulent buyer received a refund from PayPal/eBay after complaining about the transaction and subsequently sent the seller a “thank you” message gloating about how she got the item for free. eBay's new “no freedom of speech” rules prohibit the seller from warning other sellers about this fraudster, and eBay and PayPal have facilitated the fraud.

Figure 3.10 of the annexes indicates perfectly the “world domination” strategy proposed by eBay/PayPal. The most preferred method of payment is “Credit Card”. Direct deposit is preferred to PayPal by purchasers with higher monthly spend. By eliminating Credit Card and Direct Deposit options from eBay/PayPal effectively wipe out their competition. You are after all the Australian COMPETITION and CONSUMER commission. How would eliminating options promote competition and consumer benefit?

Clearly the eBay submission is not to the benefit of the public. Their submission is based on unsubstantiated claims and blatant lies in relation to customer/seller satisfaction. Try some of the following sites for examples of PayPal/eBay's practices and deception and seriously ask yourself “should we encourage inflicting this on the Australian people?”:

www.firemeg.com

www.paypalsucks.com

www.nopaypal.com

www.paypalwarning.com

We challenge the ACCC to look at the eBay forums and gauge for yourself what the public think this will do to their businesses. We do suggest however that you do it quickly before all negative comments are removed from the eBay forums (which they obviously do in pursuit of the American way of supporting freedom of speech). The hidden grief that this is causing is enormous. As an individual I know of at least 4 relationships that have been strained to almost breaking point as a direct result of this proposal. If I know that many what is the “real” social effect of this proposal? If this is not sufficient cause for denying the application it should be at least cause to delay a decision until a full and independent examination of the facts can be undertaken. Again I extend the invitation to the ACCC to, in confidence and respecting our member's privacy, view the concerns of our members at powersellerunderground.com.au. I am happy to provide certified archived copies of the information to prove that this data has not been compromised or manipulated. A look at the eBay forums to see the level of censorship and manipulation of presented data should also form part of any comprehensive review of the eBay's application.

We note that the ACCC accepts Visa, Mastercard and payment by cheque. In the event that you determine this application by eBay in their favour can we expect you to no longer accept these methods of payment and only accept PayPal in the future?

eBay have admitted that this is the first step in a global plan As Australians we have the opportunity to again be heard on the world stage by saying NO to the corporate greed and aspirations of “world domination” by yet another American company. We need to show the world that “Australians” are not just a “pushover” or “guinea pigs” to be toyed with and send this submission packing. But don’t just stop there ... after you DENY their application we implore you to investigate the practices of eBay and do the Australian people a service by exposing their true anti-competitive nature and misleading advertising.

The ACCC is there to protect the rights of Australian Consumers... you have the opportunity to prove that you are not the “toothless tiger” that the media claims you are by acting on behalf of Australian consumers and business to DENY the application from eBay.

Ken Bradley



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