

**Roy, Lauren**

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**From:** Petreski, Sonya on behalf of Adjudication  
**Sent:** Monday, 28 April 2008 10:28 AM  
**To:** Roy, Lauren; Chisholm, Shane  
**Subject:** FW: eBay International A.G. notification N93365. [SEC=UNCLASSIFIED]

**Categories:** SEC=UNCLASSIFIED  
**ACCC Classification:** SEC=UNCLASSIFIED

-----Original Message-----

**From:** Wendy Merkle [mailto:]  
**Sent:** Monday, 28 April 2008 7:41 AM  
**To:** Adjudication  
**Subject:** eBay International A.G. notification N93365.

**EXCLUDED FROM  
PUBLIC REGISTER**

Thank you for the Request for Submission. Please consider the following to be a submission from an interested party.

re: eBay International A.G. notification N93365.

Submission by an Interested Party

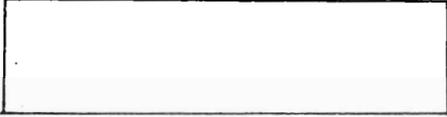
I urge the Commission to reject eBay's exclusive dealing notification. I am an American merchant who currently utilizes the eBay product. I have not utilized PayPal to accept payments for over a year. I do however use other payment processing services and continue to be a top powerseller on eBay. I am intimately familiar with eBay, PayPal, their history and policies. I respectfully present the following observations:

- 1) eBay has extraordinary power in the marketplace. Competitive alternative sources for electronic auction services are not available in the marketplace.
- 2) eBay's proposal is a third line forcing conduct. Contrary to the implications presented in their notification, all credit card processing mentioned therein would be required the use of eBay's PayPal service. Furthermore eBay's policy and PayPal's policy already allow PayPal to seize the consumer's funds in PayPal and to freeze the PayPal service and to shut down the consumer's ability to sell on eBay whenever eBay/PayPal deem that an offered alternative payment processing method (including cash) is not approved by them. eBay's proposed immunity will therefore allow eBay to force consumers to accept only PayPal regardless of any potential competitive alternative.
- 3) PayPal's User Agreement allows PayPal to "fine" consumers \$2,500 USD for every "infraction" of selling any item "that might be construed as obscene" as determined solely by PayPal or for offering for sale product not fully under the control of the consumer offering it at the time of offer (again as determined solely by PayPal), and to seize the consumer's PayPal balance for 180 days. The consumer waives the right to redress in a legal system when accepting PayPal's User Agreement. eBay's proposed Exclusive Dealing conduct will only increase the public detriment from their already anti-competitive policies.
- 4) There is little or no public benefit to exclusively using PayPal. In contrast to traditional merchant credit card processors and banking institutions, PayPal is virtually unregulated in many legal venues. Consequently many of the public protections and regulations that consumers are entitled to are not only absent with that service, but are unknown to them. Further, PayPal is known throughout the e-commerce industry as providing weak security for transactions primarily due to the prevalence of "phishing" of account information and PayPal's lax investigations. Traditional credit card processing generally utilizes the same technical security measures as PayPal and provides additional security because verification and qualification of accounts is inherently more accurate and penetrating than PayPal. I have observed that incidents of fraudulent transactions increase when PayPal is the only option.
- 5) eBay already uses PayPal to bludgeon consumers who have an unrelated dispute with

eBay, including consumer complaints and civil complaints against eBay. For example eBay has directed PayPal to seize consumer funds in PayPal accounts to enforce eBay policies. eBay also has used PayPal to force consumers to drop complaints against eBay, by overtly threatening a consumer's PayPal account in retaliation. Allowing eBay to enforce exclusive dealing with PayPal will only encourage and exacerbate this sort of misbehavior.

Best Regards,

Wendy Merkle



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