

Roy, Lauren

Subject: FW: eBay International A.G. notification N93365 [SEC=UNCLASSIFIED]

From: Kadarra Services [mailto:]
Sent: Thursday, 1 May 2008 9:07 PM
To: Roy, Lauren
Cc: Adjudication
Subject: RE: eBay International A.G. notification N93365 [SEC=UNCLASSIFIED]

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26 April 2008

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601
adjudication@accc.gov.au

Regarding EBay and PayPal Exclusive dealing Notification N93365

Dear Sir/Madam,

I wish to register my strong protest at the exclusive arrangement as proposed between EBay and PayPal as notified by email to its members, and planned to be implemented on 21st May and 17th June 2008.

I believe that the action proposed by EBay is unconscionable in only allowing buyers and sellers to make and receive payments through their wholly owned subsidiary company PayPal. This is the type of anti competitive and exclusive trading that the Trade Practices Act was set up to outlaw.

This is a restrictive trade practice that EBay is trying to implement. They are telling people that if you use our eBay service, you must use our PayPal service. Part four of the Trade Practices Act deals exactly with these types of issues, in fact Section 47 deals with Exclusive Dealings, where you link one type of service with another service. In fact the two most relevant provisions, one is where you say we require you to use our service, or the reverse position where you are not allowed to use a competitor's service. And a competitor's service could be another type of payment system, such as a system like PayPal, and there are many of those out there on the market. They may not be as well known as PayPal, but there are other systems out there. Two companies that provide such services that I can think of are Paymate and Qpay and I am sure there are others.

I believe that this would be deemed by most reasonable Australians as Third Line Forcing which is not permitted under Trade Practices Act 1974 where the supply of goods or services (EBay) is on condition that the purchaser also acquires goods and services from a third party (PayPal)

The way that EBay is promoting this is almost as if they are the provider of the goods and services

2/05/2008

for sale. They are not; they are only the platform to allow a sale to occur. As such they have no right to restrict how I decide to receive payment for my goods nor on the opposite hand to restrict me in the method that I may wish to pay for my goods that I purchase. EBay is saying that you will only be able to purchase goods (which EBay itself is not selling, it is only providing the platform to do so), then you will only be able to do so if you do if you pay through a third party (eBay's wholly owned subsidiary company). The only other alternative to pay on pickup which provides no advantage either to the sellers or buyers if they are a remote distance from each other, it actually disadvantages both buyers and sellers from the current methods open to buyers and sellers.

This disadvantages sellers in the following ways.

- Higher fees – due to having to pay fees to eBay's financial clearing house PayPal
- No choice for payment methods as exist currently
- Sellers don't want to trust our funds with PayPal - it doesn't have the strict regulations and requirements of a bank
- No security as promoted by eBay. There are thousands of people who have lodged complaints against PayPal and even taken class actions against PayPal. See <http://www.PayPalsucks.com>
- eBay is currently proposing to modify its feedback system to not allow sellers to provide anything other than positive feedback. This is just a ruse to force sellers into their PayPal scam by saying that their system provides security which anecdotally it doesn't, and you don't need to leave negative or neutral feedback. The buyer and the seller can protect themselves by looking at the feedback of the vendor/buyer, negotiating a return with the seller, leaving negative feedback, and legal options such as the small claims tribunal - we don't need the "buyer protection" that eBay is promoting as a benefit. We have got along fine without it
- More uncertainty as a seller - PayPal can freeze or remove funds from your account - they act as the judge, jury and executioner on behalf of themselves. If it is a big ticket item you can get scammed buy buyer and be hugely out of pocket - PayPal can freeze your account for months and collect interest on it - this interest is NEVER paid back to you when they find in your favour.)
- Reducing many businesses competitiveness that solely use the eBay platform by reducing the number of different payment options they can accept from their customers. This will result in an unfair advantage to "Non eBay businesses" that offer many different payment methods.

The buyers are disadvantaged by the following ways.

- No freedom of choice of payments. Most customers actually prefer to use either direct deposit which is secured by a banking system regulated in Australia and can actually provide proof of payment, cheque or money order or to be able to pay by credit card which also gives protection against goods not received.
- Paying higher prices forced upon them by sellers to cover the PayPal fees.
- As these people will not be able to use their democratic right of choice and make payment for their purchases with a payment method they are most comfortable with. As a result vendors will lose sales through no fault of their own, but from a policy forced on them by eBay.
- Most business's operating on eBay have done so for many years and now the goal posts are being moved and they will suffer as a result of an unfair and discriminatory and anticompetitive policy forced on them without consultation.
- It should also be pointed out that PayPal is not a registered bank and as such is not governed by the laws of Australia (or the USA for that matter) in respect of financial propriety. It would be anti competitive to allow one unregulated company, to hold market dominance. If PayPal goes belly up, you loose your money with no comeback.

- PayPal charge enormous fees for using their service, pay no interest on money lodged, charges an extra 2.5 basis points for currency exchanges, fees for withdraws under US\$150, and make it difficult for you if a claim needs to be made.
- 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.
- Time delays in receiving goods because of extra processing time of a third party introduced and involved in a simple transaction.

EBay counters all this by stating that they are planning on introducing a new "safety policy". This "policy" which will empower them to hold an account holders funds for 21 days before the account holder can access their money. PayPal will be able to do this at any time without providing any evidence to the account holder as to why it is being done, all PayPal will tell the account holder is that they have concerns and are freezing the funds as a precaution.

PayPal's real motives for freezing funds are very suspect to say the least when it is a known fact that and I quote "any funds PayPal holds for dispersal are automatically deposited in a corporate bank account, which earns interest", according to PayPal representative Amanda Pires. The money is kept there until it's ready for distribution. PayPal counts interest payments on those funds as one of its revenue streams. This also explains why PayPal takes an unusually long period of time (up to 10 working days) to process an eCheque (A PayPal payment funded from an account holders Australian bank account). It is unusually long because an internet banking transfer between two (2) Australian banks only takes between 12-48 hours to process. It is obvious to any rational person that PayPal is holding onto other people's money for as long as they possibly can to maximize their time to invest our money on the short term money market. PayPal is a less efficient and user friendly service than other payment methods. It is virtually impossible to find a telephone number for them and even more elusive is their actual trading address.

At least with a bank you can front up on their doorstep and demand to see a manager if there is a problem with your account. With PayPal all you get are computer generated form emails from an offshore entity with no recourse to a person or manager. This is from an unregulated pseudo bank/financial company over which the banking industry and Australian banking ombudsmen has no regulatory control.

Banks would also be excluded from operating as a funds transfer agent under the proposed EBay arrangement. The situation that EBay proposes could be likened to say Coles or Myers insisting that you can only shop in their store if you use their own credit card, a situation all reasonable Australians would find abhorrent.

With EBay proposing to only permit PayPal as a payment method, (which incidentally is owned by EBay) will severely restrict trade and only serves to line EBay's pockets through additional fees. EBay is proposing to do this under the guise of "Buyer Protection" but is in reality a commercial venture.

In fact from PayPal's own product disclosure statement the following is included and could be construed that PayPal cannot offer buyer or seller security anyway. The following is taken directly from PayPal's product disclosure statement

Risks associated with using the PayPal Service

Unauthorised transactions: There is a risk your PayPal Account may be compromised and subject to an account takeover, unauthorised transactions, or other type of fraudulent activity.

I have used EBay both as a buyer and seller for many years now and I have had no problems with any sales or purchases. In every case I have either used direct bank deposit or payment on pickup as both a buyer and a seller, both of which are methods entirely acceptable to the general populace.

I have conducted some 75 transactions on eBay and if this proposal is allowed to be introduced, I will be leaving eBay and finding an alternative site to buy and sell from as are the thousands of others who have signed on-line petitions at the following sites. If you care to read these I am sure you will quickly become aware of the depth of feeling and outrage this has caused.

<http://www.petitiononline.com/ebayau/petition.html> and

http://www.petitiononline.com/mod_perl/signed.cgi?ebayau&l

There are a lot of business's set up on EBay, and they will find that only offering one way of payment truly restricts their business freedom and enterprise, and will have a negative effect on the business's they have built up over the years. The PayPal only system is too restrictive and does not recognise that there are other legitimate secure methods of payment. I strongly feel that this proposed action by EBay will bring no benefit to the general public but in fact hinders access to goods and services through EBay and will only serve to increase costs to the consumer with increased fees. I also understand that you will also need to have a credit card to transfer funds to PayPal as well and not all people have access to a credit card, further restricting peoples access to business and goods supplied through on line auctions.

Unfortunately there are too many instances of PayPal seizing legitimate traders funds through their system and not releasing them, leaving the seller out of pocket and with no recourse to their funds. The internet abounds with forums and stories of people unwittingly caught up in this scam perpetuated by PayPal.

The ACCC needs to thoroughly investigate EBay and PayPal and the relationship between these two entities and to disallow the proposal to only allow payments through PayPal on EBay as it is anti-competitive and exclusive.

EBay and PayPal are not acting in the best interest of the Australian Public by reducing competition and not allowing market forces to determine the uptake of the PayPal payment system.

I also notice form your own ACCC website

<http://www.accc.gov.au/content/index.phtml/itemId/685403/fromItemId/622047> that EBay has had a ruling enforced upon them before in regard to GST. The ACCC is also aware of the class actions against PayPal overseas previously <http://www.accc.gov.au/content/index.phtml/itemId/785607>

Obviously these companies show a propensity towards a flagrant disregard for Australian and International laws and should be taken to task and ensure that they comply with all Australian law.

I trust that you give this matter your utmost attention and act to protect the interests of all democratic Australians.

Yours truly,



David Boxwell