

Roy, Lauren

Subject: Submission re. eBay International AG - Notification - N93365 [SEC=UNCLASSIFIED]

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From: Jon Wright [mailto:]
Sent: Friday, 2 May 2008 10:58 PM
To: Adjudication
Subject: Submission re. eBay International AG - Notification - N93365

I wish to lodge this objection to the granting of exemptions to the Trades Practices act sought by "eBay International A.G." in Notification 93365.

I believe granting permission to engage in the practice of Exclusive Dealing between Ebay and Paypal will restrict my ability as a trader to provide a service to my customers. It will restrict my customer base to those who have Paypal accounts and are willing to use the Paypal system.

As a trader (indeed a "Power Seller" in Ebay terminology), I regard the wide range of payment options I provide as part of my Competitive Advantage and do not believe it is right that Ebay should be allowed to restrict that range.

In terms of what might be within the realm of the ACCC to affect, the arrangement described in the Notification is clearly a case of third line forcing - in that my business would be required to use the services of a third party (Paypal) in order to use Ebay's services. There would seem to be grounds for revoking the notification on the basis of :

-Lessening Competition:

- Reduces my competitiveness as a seller
- Reduces competition to Paypal from other payment service providers

- The likely benefits to the public:

- None. Providing the OPTION of Paypal is advantageous to buyers, but REMOVING other valid and secure options and RESTRICTING transactions to Paypal does not.

- The likely detriment:

- Less choice for consumers in how they are able to pay for their purchases
- Higher prices as Paypal fees are passed on to customers
- Slower deliveries for customers without credit cards (waiting for e-cheques to clear)

Evidence

I have read other submissions as posted on the ACCC site and they cover the ground well. There are two points I have not seen covered elsewhere:

1. The Ebay User Agreement (Section 3.1) states

"YOU ACKNOWLEDGE AND AGREE THAT EBAY IS NOT INVOLVED IN THE ACTUAL TRANSACTION BETWEEN BUYERS AND SELLERS"

It would seem clear that the transaction, the exchange of goods or services for money, is specifically outside of Ebay's agreement with its users and proscribing alternative payment methods contradicts the contract between Ebay and its users.

2. Nielsen Online Retail Monitor, Q4 2007 (Annexure C of Ebay Notification, Page 25) states ...

" 'No sign up process' is an essential factor to around half of online consumers, with this fact hinting that payment processes which require a sign-up process (such as PayPal and Bpay) are at a distinct disadvantage for at least half of today's online shoppers."

Thus far from supporting the case for Paypal only, it implies such a move would disadvantage around half of consumers.

Conclusion

As I understand current Government policy, there is a focus on protecting small business from large companies which may seek to abuse their position of market dominance.

In my view, Ebay is doing just this in changing their terms of business to restrict payment between my customers and myself to their own Paypal service. I do not operate a retail shopfront, and am unable to offer the "Cash on Pickup" option, the only alternative to Paypal under the proposed changes.

It is highly likely (almost certain) that this measure will make my business significantly less competitive compared to those using other sites, which offer a full range of payment options as Ebay has until now. I realise that I am able to move to another site but unfortunately Ebay has dampened any competition (through good business practices up until now) and has an almost monopolistic presence, meaning there are currently no viable alternatives for my business. Although this may change in the future, my business may not survive the interim.

Thus I strongly request that the ACCC revoke Notification 93365 on the basis that it will be likely to cause substantially reduced competition and the likely benefit to the public will not outweigh the likely detriment.

Thank-you for considering this submission,

Regards, Jon Wright, Notting Hill, Victoria