



ASIC

Australian Securities & Investments Commission

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John Price
Executive Director, Regulation

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The Acting General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
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Dear Ms Arnaud

eBay International AG exclusive dealing notification N93365 — interested party consultation

We refer to your letter of 16 April 2008, calling for submissions in response to the exclusive dealing notification issued by eBay International AG (eBay). While ASIC does not wish to make comment on the competition issues raised by the notification, we do wish to draw attention to matters relevant to our role as the licensing authority for the financial services provided by PayPal Australia Pty Ltd (PayPal).

PayPal is the holder of Australian financial services (AFS) licence no. 304962, which authorises it to give general financial advice in relation to, and deal in, deposit and payment products limited to non-cash payment products within the meaning of s763D of the *Corporations Act 2001* (Corporations Act). ASIC issued this licence to PayPal on 11 January 2007.

eBay has presented a number of arguments in support of its contention that PayPal provides the most secure and effective payment product available. PayPal is one of a number of AFS licensees who are authorised to provide non-cash payment services. While we do not have exact numbers in relation how many licensees are in the business of providing payment services, 68 licensees describe themselves as 'payment product providers'. All such licensees are bound by the same licensee obligations, including requirements to:

- have adequate compliance arrangements
- have adequate resources (including financial, technological and staffing)
- have adequate risk management arrangements
- have adequate arrangements to compensate clients for any losses associated with the provision of financial services, and
- maintain compliant internal and external dispute resolution arrangements (including through membership of an external dispute resolution scheme such as the Banking and Financial Services Ombudsman Service).

However, unlike most AFS licensees that provide banking or non-cash payment services, PayPal has declined to become a signatory to the Electronic Funds Transfer Code of Conduct (EFT Code). The EFT Code is the key consumer protection code of conduct applying to the payment services industry, and covers fundamental issues concerning consumer rights, security, disclosure and resolution of mistaken or unauthorised payments.

PayPal's business involves the provision of EFT transactions in relation to EFT accounts within the meaning of Section 1 of the EFT Code, and, if it became a signatory to the Code, it would be regulated by Part A of the Code. Part A prescribes rules of conduct relating to the provision of EFT transactions, including around:

- record-keeping requirements
- liability for unauthorised transactions
- liability in cases of system or equipment malfunction
- audit-trails, and
- complaint investigation and resolution procedures.

ASIC considers that it is highly desirable that PayPal become a signatory to the EFT Code, given the large numbers of retail customers who use eBay, as it would provide an additional desirable layer of consumer protection that is not currently in place.

Please contact me if you would like any further information in relation to these matters.

Yours sincerely,

Delia Rickard
Acting Executive Director, Consumer Protection