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Payments and Business Technology
Premium Business Services

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The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601



By Email to: adjudication@accc.gov.au

Dear Sir or Madam

eBay International AG Exclusive Dealing Notification N93365

I refer to your letter of 16 April 2008 wherein you have sought comments from interested parties in relation to the above Notification. The Commonwealth Bank of Australia ("the Bank") notes that it is an interested party in this matter and appreciates the opportunity to contribute to the deliberations of the Australian Competition and Consumer Commission ("the Commission").

eBay International AG ("eBay") has advised the Commission that it intends to engage in certain activities (the "Conduct" as described in Form G of notice given by eBay dated 11 April 2008) that the Bank believes will substantially lessen competition and which cannot be justified on public benefit grounds.

For the sake of brevity, a description of the Conduct is not repeated here; but central to the Conduct is the role envisaged for PayPal Australia Pty Ltd ("PayPal") whereby eBay -

- will *require* sellers on the eBay website to offer PayPal as an available payment method (from 21 May 2008); and
- subsequently, (from 17 June 2008) eBay will *only* accept payments made via PayPal, or Visa / MasterCard processed via PayPal (subject to two exclusions for high value goods and goods collected in person from the seller, where cash or other negotiable instrument would be acceptable modes of payment).

The fact that PayPal is a subsidiary of eBay Inc is germane to this debate as is the clear commercial benefit that will accrue to PayPal as a result of this initiative.

The key change between current arrangements, and that described above, is to forbid the use of bank deposit / bank transfer as a payment method for a transaction initiated on the eBay website – a payment method that has long been available to eBay customers and which has proven efficient, safe, popular and successful.

The focus of this Submission is on the reasons behind the Bank's opinion that the Conduct is such that there are insufficient public benefit grounds upon which to justify a substantial lessening of competition. Our reasons are based on concerns around the representation of fraud related issues, payment security, costs, and customer choice. Specifically:

- eBay justifies the Conduct on the grounds of fraud reduction, participant protection, dispute management and related considerations. We contend that such claims cannot be substantiated. eBay claims that the Conduct is necessary to address the prevalence of “bad buyer experiences” (an eBay term). However, eBay then indicate that such experiences can include fraud, goods not received, “items not as described upon delivery”, poor customer service and communication, and delays in shipment. Such experiences are largely independent of method of payment, and insistence upon the use of PayPal will not address the majority of these “bad” experiences.
- eBay refer to the disclosure of a buyer's account details as a potential fraud risk. While any third party can make a direct credit payment into a specified bank account, direct debits may only be initiated by authorised Direct Debit Users who hold a valid authority to do so. Direct Debit Users may only be authorised where they meet appropriate standards of financial strength, integrity and reliability; their actions are guaranteed by their sponsor financial institution; and an efficient and safe mechanism exists to investigate claims of unauthorised debit. For these reasons, disclosure of the seller's or buyer's bank account details does not pose any significant fraud risk to either account holder, and indeed account number details are routinely disclosed on the face of every cheque.
- Furthermore, it should be noted that eBay refer to the disclosure of a buyer's account details, but in a bank transfer situation, the buyer's account details are not disclosed to the seller.
- eBay cite data from the Australian Payments Clearing Association in relation to international “Scheme” branded cards, but neglect to mention that the fraud experience in relation to cheques and debit cards is considerably lower than for charge and credit cards. (This data is publicly available.)
- eBay also claims that bank customers are unaware of credit card chargeback rights. The Bank actively informs cardholders of dispute procedures and rights, and this is a key element of the customer value proposition that we promote to our cardholders.
- Further to the above points, within the context of bank transfers, the Bank has an extremely low level of “recalled” transactions relative to the number of payments processed each month¹; in the rare cases that errors are made by customers, we have a good recovery rate. Given the low incidence of customer disputes related to direct deposit payments, we contend that PayPal is not a more secure payment method and that claims of public benefit arising from this cannot be supported. Furthermore, work is currently underway with the Australian Payments Clearing Association in relation to mistaken or disputed payments, with the clear expectation of further improvement.
- It is relevant to note also that banks have made considerable investments to ensure the continuing security of internet banking services – the most popular channel for the bank transfers / deposits that the Conduct seeks to curtail. In the case of the Bank, nearly 50% of all NetBank customers now have two factor authentication (internet banking with either token or Secure Message Services), and our plans are to have the majority of customers with this enhanced security. We offer this service to our customers at no charge; this same level of security is not available to eBay / PayPal customers.
- The Bank also provides 7x24hour support for our internet banking customers to assist them if they have any problems. We also have Australia's largest banking call centre

¹ The Bank handles in excess of 4 million NetBank transfers to third party accounts per month, on average. We handle on average, slightly in excess of 200 trace and recovery customer requests per month, or less than 0.005% of transfers.

and over 1000 branches where customers can seek to correct a disputed payment. This level of support is not afforded by eBay / PayPal.

- The Conduct described by eBay will also prevent buyers and sellers from using payment gateways not controlled by PayPal – to the clear commercial benefit of the eBay / PayPal Group at the expense of others.
- If the Conduct is permitted to continue, future entrants in the on-line payment market will be denied access to eBay transactions – further entrenching the effective PayPal monopoly and discouraging innovation and competition.
- PayPal reports 5 million registered users in Australia, and eBay acknowledges that nearly all of these users will be affected by the Conduct. This is a significant volume and we contend that public benefit cannot be proven with adverse impact of this size.
- PayPal transactions incur significantly higher costs for sellers than bank transfers – an inefficient use of resources that will result in higher prices being passed onto buyers. Thus, Bank customers as sellers on eBay will be considerably worse off financially under the Conduct, while Bank customers as buyers will likely face higher prices for the goods they are purchasing. It is relevant to note that the Bank does not charge our customers for individual "direct entry" payments (bank transfers) made through NetBank². As Australia's largest bank this means that most customers pay no fee for settling an eBay purchase under this payment method.
- Customers should be allowed choice as to which payment method to use and to deny this choice is an unwarranted restriction on activity. We submit that PayPal should compete equally with other payment alternatives. If PayPal can demonstrate a superior value proposition to eBay sellers, then sellers will naturally choose PayPal over other payment methods, but market forces should be allowed to apply.

More generally, and in addition to the specific issues identified above, the Bank is of the view that the Conduct as proposed is markedly at odds with the current sentiment in relation to payment systems. Significant reform initiatives over recent years, pioneered by the Reserve Bank of Australia, have sought to promote, inter-alia, competition, economic efficiency, and more open access arrangements. The Conduct as described contradicts these developments, and thus should not be supported by the Commission.

The Reserve Bank has also, recently (21 April 2008 – Preliminary Conclusions of the 2007/08 Review) highlighted the need for new on-line payment methods to compete with existing offerings. Given eBay's strong position in the on-line Auction market, the Conduct is likely to impede innovation in on-line payments.

Finally, it is also relevant to note that the Bank is a subscriber to the Electronic Funds Transfer Code of Conduct.³ As noted by the Australian Securities and Investment Commission⁴, the "EFT Code is an important code of practice that protects you [consumers] when using electronic funds transfers". Neither PayPal nor eBay currently subscribe to the EFT Code.

In summary, the Bank believes that the Conduct as described will substantially lessen competition and cannot be justified on public benefit grounds.

²Other fees and charges may be payable depending on individual circumstances.

³<http://fido.asic.gov.au/fido/fido.nsf/byheadline/Members+of+the+revised+Electronic+Funds+Transfer+Code+of+Conduct?openDocument>

⁴<http://fido.asic.gov.au/fido/fido.nsf/byheadline/Electronic+Funds+Transfer+%28EFT%29+Code+of+Conduct?opendocument>

The payment systems underlying bank transfers are robust, safe and efficient. Our customers have the assurance that payments will be made as directed.

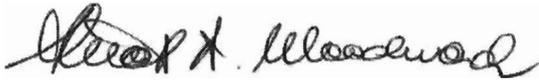
We believe it is preferable for customers (buyers and sellers) to be able to choose the most appropriate payment method, and to artificially limit such choice is unnecessarily restrictive. Forcing customers to adopt higher cost payment methods, that bring economic benefit to eBay / PayPal, is an unwarranted restriction of competition that falls short of any reasonable test of public benefit. It also contradicts current payment system reform sentiments.

The Bank is aware of submissions on this issue being lodged by other payments industry bodies of which we are a member. We support such submissions and commend them to the Commission.

Finally, we understand that this Submission will be placed on the Commission's public web site.

Thank you again for the opportunity to contribute to this debate. Please feel free to contact me should you wish to discuss any aspect of this Submission. My contact details are above.

Yours sincerely

A handwritten signature in black ink, appearing to read "Stuart Woodward". The signature is written in a cursive style with a horizontal line underneath the name.

Stuart Woodward
General Manager
Representation