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2 May 2008

Mr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear Mr Chadwick,

NOTIFICATION OF EXCLUSIVE DEALING

Thank you for the opportunity to comment on the notification of exclusive dealing that the ACCC has recently received from eBay International AG (N93365).

The Reserve Bank sees some potential issues with the proposed conduct in terms of its impact on competition in the Australian payments system. Our comments are provided in the attached submission.

Please feel free to contact Michele Bullock, Head of Payments Policy, on 02 9551 8700 should you wish to discuss this submission.

Yours sincerely,

A handwritten signature in black ink that reads "Philip Lowe". The signature is fluid and cursive, with the first name "Philip" being larger and more prominent than the last name "Lowe".

Philip Lowe
Assistant Governor (Financial System)

Encl.

SUBMISSION TO THE ACCC

EBAY AND PAYPAL

This submission is in response to the ACCC's invitation to comment on the likely effects of the proposal by eBay to mandate the use of PayPal for almost all transactions on the eBay site.

Background

The Payments System Board of the Reserve Bank has responsibility for, among other things, promoting stability, efficiency and competition in the payments system. In respect of retail payment systems, the Board's work has focused on: establishing clearer price signals to cardholders; removing restrictions on merchants that limit their choices in accepting payment instruments; improving access to payment systems; and increasing transparency in the payments system. Throughout this reform process, the Board's focus has been on the payments system as a whole, not just on the operation of individual payment systems within the overall system.

Although eBay is not a payment system, eBay's proposed action raises some issues related to competition in the Australian payments system.

The issues

The proposed conduct by eBay is to mandate the use of PayPal for almost all transactions on the eBay site. This raises three potential issues in relation to the payments system. The first is that it could limit the ability of new on-line payment systems to become established and for alternative systems to compete in the on-line payments space. The second is that it could restrict merchants' ability to negotiate lower fees. And the third is that it restricts choice for consumers.

These three issues are set out and discussed below.

(i) Competition from alternative payment systems

It is possible that the proposed conduct might limit competition between PayPal and other existing on-line payment systems, and reduce the ability of new on-line payment systems to become established. The proposed conduct means that alternative payment facilities to PayPal cannot be used on the eBay site. The Reserve Bank is not in a position to judge whether eBay holds a dominant market position. But to the extent that it does, sellers might find it difficult to move their business to another on-line auction market and, therefore, would have little choice but to accept PayPal. In these circumstances, PayPal would face little competition for a significant number of on-line payments.

Over recent years, the Reserve Bank has expressed concern about the lack of alternatives for payments over the internet.¹ On-line payments in Australia have tended

¹ See, for example, Reserve Bank of Australia (2008), *Reform of Australia's Payments System: Preliminary Conclusions of the 2007/08 Review*, April; and Reserve Bank of Australia (2006), 'Payment Systems

to be dominated by credit and scheme debit cards; unlike a number of other countries, an on-line EFTPOS-like option is not available. As a result, the Reserve Bank is particularly interested in ensuring competition is encouraged in the on-line payments space. PayPal itself has added to competition in this area but, looking forward, *mandating* exclusive use of PayPal for eBay sales may limit competition. In particular, the rule appears to encourage the growth of PayPal at the expense of other existing and emerging facilities, independent of their relative merits. This may discourage innovation and the development of new entrants in the on-line payments space more broadly because, without the ability to compete for eBay payments, the payoff from investing in on-line payment systems may be reduced.

(ii) Restrictions on merchants

A second issue is that the proposed conduct prevents sellers/merchants on the eBay site from using alternative payment services if they feel the price they are charged for accepting a transaction processed by PayPal does not reflect the value they receive. It might also limit their ability to put downwards pressure on the fees they are charged, by declining to accept PayPal payments or encouraging buyers to use an alternative payment method. This may not be a significant issue if sellers had an alternative to eBay, as they could simply choose to sell their goods through another site. But if eBay has a dominant position in the on-line auction space, sellers/merchants might find that they have little choice but to list on eBay and accept PayPal, with no power to negotiate lower fees.

A major focus of the Payments System Board over recent years has been ensuring that merchants are able to exert competitive pressure on the fees they are charged when they accept payments. One way in which these competitive pressures can be limited is by 'tying' rules. For example, the 'honour all cards' rule imposed by card schemes required merchants to accept debit card products if they also accepted credit card products. This rule forced merchants to accept a payment method they might not otherwise accept (scheme debit) at a price they might not otherwise pay. The cost of refusing to do so was high; the merchant could not accept the scheme's more valued credit cards. The Reserve Bank introduced a standard requiring this restriction be removed, providing merchants with the choice of which scheme products they accept and this has placed downward pressure on some scheme debit fees. In a similar vein to the 'honour all cards rule', the proposed eBay conduct potentially lessens competitive pressure on PayPal.

Another restriction on merchants that can limit competition is the 'no surcharge' rule. This rule prohibits merchants from charging customers extra for using a particular payment instrument and therefore removes the ability of merchants to negotiate lower fees by threatening to impose a surcharge. The Reserve Bank has required these rules to be removed in credit and charge card systems. Although not specifically the subject of this notification by eBay, the Reserve Bank understands that PayPal currently has a

no-surcharge rule in place. It is possible that, in some circumstances, this rule could also detract from the ability of merchants to exert competitive pressure on PayPal's fees.

(iii) Consumer choice

A third issue relates to the impact on consumer choice of the proposed eBay conduct. Different payment systems offer different attributes, including in relation to where they can be used, how convenient they are to use, how quickly funds are made available, and the security they offer. In a sound competitive environment, payment systems would typically be able to compete on the basis of these attributes.

eBay states that the service operated by PayPal offers some security advantages to consumers relative to other payment methods currently available for eBay transactions. In part, this derives from PayPal's relationship with eBay – including its capacity to share information about buyers and sellers – although, conceptually at least, similar arrangements might be possible with other payment providers. Nevertheless, in principle, competition and efficiency could be enhanced by allowing consumers to weigh PayPal's security attributes against those of alternative payment methods, while also considering the other attributes of each method. Should consumers value PayPal's security features highly, they will choose it over other payment methods and this may, in turn, place pressure on those other systems to improve security for similar transactions. It is possible that, in the long run, this competitive process may achieve safer payment facilities than would be the case if PayPal were the only payment option available.

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SYDNEY

2 May 2008