

**EXCLUDED FROM  
PUBLIC REGISTER**

18 March 2008

RE: eBay International AG exclusive dealing notification

Dear Sir/Madam,

As you are aware, on 10 April 2008, eBay announced that:

- as of 21 May 2008, all items listed for sale on eBay.com.au must offer PayPal as one of the payment methods; and
- as of 17 June 2008, all items listed for sale must only offer payment via PayPal (or credit card transactions processed by PayPal) or cash on delivery.

On 11 April 2008, eBay International AG (eBay) lodged an exclusive dealing notification with the ACCC in relation to the above conduct, which provides eBay with immunity under the TPA from this date.

I am strongly opposed to this eBay decision. I believe the eBay decision is anticompetitive in nature and has a significant negative impact on a large number of consumers.

I am an eBay user since 2000. Prior to this I have been a user of Yahoo on line auction site. However since eBay has purchased "sold.yahoo.com" I have been transferred to eBay. So my usage of eBay has not been entirely my free choice.

1. My understanding that eBay has justified their submission to ACCC that mandatory use of PayPal will increase public "protection" and so the public interest outweighs the reduced competition. eBay effectively admits that their action reduces the competition on the market.
2. PayPal user Agreement states "*PayPal does not have control of or liability for the products or services that are paid for with our Service. We do not guarantee the identity of any User or ensure that a buyer or a seller will complete a transaction.*" In fact PayPal gives no reasonable guarantees or any protection in regards to goods or services to its users as eBay claims. Given that all transactions will be done through PayPal from 21 May 2008 this means that no transactions will be guaranteed from this date, there will be no control over goods and services and any liability to commit transactions become really optional. The consumers will have no guarantee to know who they are buying from. Businesses who trade on eBay may withhold their identities which otherwise must appear on tax invoices such as ABN number.
3. PayPal service has been available on eBay long before May 2008. PayPal "protection" does not change in any way on 21 May 2008 or 17 June 2008. And so the eBay decision was not an introduction of any new service or modifying the existing service or adding any new protection. The decision is solely about removing other competitive options or alternative protections available to eBay users prior to 21 May 2008.
4. PayPal services are conditional and are not suitable in any cases and circumstances. While PayPal may fit to limited number of users in some limited number of conditions it is wrong for eBay to suggest that PayPal service fits best everybody in all possible circumstances.
5. PayPal is owned by eBay. If the payment must come through PayPal (an eBay division) eBay takes money from one party takes its commission and conditionally pays to another party. The two parties "buyers" and the "sellers" cannot commit a transaction directly or through other party such as an Australian bank. eBay effectively becomes a traditional goods and services retailer and/or reseller.
6. eBay states in its user agreement "... our Site [eBay] merely acts as an online venue to allow members to communicate and offer, sell, and buy just about anything, at anytime, from

*anywhere, in a variety of formats ...* ". Quite clearly the proposed change is contradictory to the user agreement because

- e-bay is directly involved in advertising as it takes the payment through PayPal for every monetary transaction involving all goods and services but it does not guarantee it "*.. will complete a transaction ..*"
  - members cannot directly commit a transaction without handling all money to e-bay and/or PayPal
  - There is no variety of formats to commit a transaction after 21 may 2008 as all transactions must go through PayPal
7. E-bay states in its user agreement "YOU ACKNOWLEDGE AND AGREE THAT EBAY IS NOT INVOLVED IN THE ACTUAL TRANSACTION BETWEEN BUYERS AND SELLERS. AS A RESULT, EBAY HAS NO CONTROL OVER THE QUALITY, SAFETY OR LEGALITY OF ITEMS OR CONTENT POSTED BY MEMBERS ON OUR SITE, THE TRUTH OR ACCURACY OF LISTINGS, THE ABILITY OF SELLERS TO SELL ITEMS OR THE ABILITY OF BUYERS TO BUY ITEMS. WE CANNOT ENSURE AND DO NOT GUARANTEE THAT A MEMBER OR BROWSER OF OUR SITE WILL ACTUALLY COMPLETE A TRANSACTION OR ACT LAWFULLY IN USING OUR SITE. " In my submission ebay will directly be involved in every financial transaction and will effectively act as a reseller through its PayPal division. Its exclusion of implied warranties cannot remain valid under the Trades Practices Act after 21 may 2008.
  8. If ebay is granted an exception by ACCC from trade practices act this means that a retailer can structure its business by such a way that it can avoid implied warranties guaranteed by the Trade Practices Act yet lawfully conduct a goods and services reseller business in Australia.
  9. PayPal is not an Australian entity and is significantly exposed to overseas financial risks. If PayPal holds all ebay users funds then a large number of Australians will be directly exposed to overseas financial risks such as recent sub prime mortgage crisis. Many Australians will have no choice over this financial exposure because the alternative financial services will no longer be available from 21 may 2008.

I believe that ebay attempts to benefit on limiting the market competition and avoiding the implied warranties guaranteed by the trades practices act. Ebay clearly acts against my interests as well as interests of a large number of Australians.

English is not my first language. I apologize for possible mistakes.

Regards,  
Alexander Popov