

Roy, Lauren

From: Petreski, Sonya on behalf of Adjudication
Sent: Monday, 28 April 2008 9:31 AM
To: Chisholm, Shane; Roy, Lauren
Subject: FW: eBay International AG - Exclusive Dealing Notification - N93365
[SEC=UNCLASSIFIED]
Categories: SEC=UNCLASSIFIED
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From: Drinking Gear [mailto:info@drinkinggear.com.au]
Sent: Monday, 28 April 2008 7:29 AM
To: Adjudication
Subject: eBay International AG - Exclusive Dealing Notification - N93365

Dear Sir/Madame

eBay International AG - Exclusive Dealing Notification - N93365

Please accept this submission in response to the above eBay notification.

I am opposed to eBay's proposal on the grounds that :

- o the proposed conduct will result in a substantial lessening of competition;
- o the public benefit that may result from the proposed conduct would not outweigh the detriment to the public caused by the lessening of competition.

I have been a very active seller on eBay for 3 years and a PayPal member for 3 years. In this period I have transacted over 7,000 times on eBay and thus I am well versed in the operation of the eBay and PayPal websites, and the terms, conditions, features and shortcomings of both services.

On eBay I market a range of products for including Bar accessories and Licensed products with an average sale price of \$24.00 My several thousand regular customers are located across Australia and Internationally, but are mostly located in rural areas as these are not well served by bricks and mortar stores selling my items.

To provide my buyers with maximum convenience and choice for the past 3 years I have offered PayPal, bank deposit and have my own merchant facility to accept Visa, MasterCard and American express as acceptable payment options on all of my eBay listings.

The eBay website has a facility where buyers can leave positive or negative feedback on their buying experience. Buyers have given me positive feedback over 4,000 times and negative feedback on no occasions. My point here is that - irrespective of the payment option used - in over 7,000 transactions the buyer was satisfied with their buying experience, namely, they received what they expected and in a timely manner. Contrary to the general statistics which eBay quotes on its website, in the media, and in its proposal to the ACCC in asserting that PayPal is safer than bank deposit, not once in over 7,000 transactions of mine has a buyer been defrauded of his/her money. My exemplary feedback profile is irrefutable proof of this and serves as a reminder to the ACCC that eBay has used and will continue to use statistics in a misleading way.

I also run my own website which I offer exactly the same options for Payment as I do on eBay. With all my transactions on eBay and my own website, 48% of my customers choose to use another payment option rather than PayPal.

28/04/2008

Turning to the specifics of eBay's proposal I am not opposed to the requirement, as of 21 May 2008, that all items listed for sale on eBay must offer PayPal as one of the payment methods. After all, I have offered this method for the past 3 years alongside other methods and I support consumer choice.

However I am very much opposed to eBay's proposal that, as of 17 June 2008, all items listed for sale must only offer payment via PayPal (or credit card transactions processed by PayPal, as I already have my own merchant with less fees) or cash on delivery.

I am opposed on the following grounds :

Substantial Lessening of Competition

My competitors are sellers with an established presence in the form of :

- o an eBay site presence,
- o other online auction websites,
- o proprietary online "store" websites, and/or
- o bricks and mortar retail stores.

By and large these competitors (eBay competitor's excluded) can and do offer a very full suite of payment methods, drawn from PayPal, PayMate, Visa, MasterCard, Amex Card, Diners Card, cash, cheque, money order, postal order, lay-by etc.

If eBay's proposal is supported and I (and other sellers like me) are forced to accept PayPal as the only payment method then I (and others) will be placed at a significant competitive disadvantage – due to being unable to transact with a very large number of existing and prospective buyers who do not want or worse still, cannot qualify, for PayPal membership (note : cash on delivery is not a viable alternative given the dispersed buyer pool).

Furthermore, sellers incur a fee (typically 2.4% of the sale price including postage cost, plus 30 cents per transaction, close to 3 times more expensive than my own Merchant facility) on all PayPal transactions. This fee is not incurred by my competitors when payment is made by cash, cheque, money order, or postal order. Thus, once again, forcing PayPal on me and on like sellers places upon us an inescapable and unjust cost burden which our competitors do not see. The ACCC would be aware that PayPal is a subsidiary company of eBay and thus there is ample scope (and every incentive), in the future, for eBay to ensure that the PayPal fees are ratcheted upwards to progressively increase our lack of competitiveness.

Public Benefit Would Not Outweigh The Detriment To The Public

eBay asserts that its proposal enhances the security for its members. Whilst one could attempt to defend this assertion, the opposite can also be proved.

There are thousands of cases documented on eBay's own Discussion Forum web pages and yet thousands of others on independent websites established for the singular purpose of members sharing their very bad experiences with PayPal payments. A very, very common complaint is from sellers who, having been paid via PayPal and having dutifully posted the item to the buyer then finds that the buyer is opportunistic, denies receiving the item and obtains a full refund of the monies from PayPal. The seller has then lost the item and the money. Furthermore, in only a minority of cases does justice ultimately prevail – the universal problem being that eBay and PayPal default to siding with the buyer and it is nigh on impossible for a seller to have his case heard, let alone receive fair treatment.

If eBay's proposal is supported and PayPal becomes the dominant payment method, to the extent that there may be less aggrieved buyers I would assert that the above scenario will occur more often and there will be more aggrieved sellers. Sellers and buyers are both members of eBay and thus I cannot see how eBay can argue enhanced security for its members. If eBay were genuinely

moved to enhance security for its members then it could and should make numerous other changes to member identity validation, category risk profiling etc., but as these do not, of themselves, generate increased income from PayPal fees it is little surprise that eBay prefers to force PayPal.

The majority of my buyers are rural based and/or young of age. Young people cannot generally qualify for a credit card and thus cannot qualify for and maintain a PayPal account with a credit card. Therefore, this age group will be denied the opportunity to purchase my products (or for that matter, all 1,000,000+ items listed after 21st June on eBay.com.au and the many millions of items worldwide should eBay's proposal proliferate globally). eBay would likely respond to this point by arguing that this age group could, alternatively, qualify for and maintain a PayPal account by funding it with a direct debit to their bank account. However, I would counter that these buyers may not have a bank account or may not be prepared to allow PayPal access to their bank account (many Australian's are strongly opposed to allowing any third party to access their bank accounts). Thus once again, this age group will be denied the opportunity to purchase on eBay.

The same can be said for older age groups who are similarly adverse to owning/using credit cards or allowing access to their bank accounts.

By contrast, younger and older age groups are very comfortable making purchases with direct deposit as my sales records and email correspondence with buyers can substantiate.

In summary, eBay's proposal will detrimentally impact a significant number of younger (and older) buyers as their inability to access PayPal as a payment method will deny them the ability to purchase on eBay. Further, forcing PayPal as the only acceptable payment method does not, of itself, enhance security for eBay members. There are many options/tools available to eBay to more successfully achieve this admirable objective and it is grossly misleading of eBay to assert that PayPal is the only and/or best means for this.

Thank you for allowing me to submit my views on eBay's proposal. The issues raised here are complex and difficult to convey in writing. Should the ACCC think it beneficial I would welcome the opportunity to meet with ACCC officers to further explain my submission and to substantiate my claims with evidence.

Please note : my eBay user name is Drinkinggeardirect, although I respectfully request that this and any other identifying information in this email be removed from any publicly available information please.

Cheers

Kevin Gebert

<http://www.drinkinggear.com.au>

[E-Mail Me](#)