

Roy, Lauren

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From: Mark Gealy [REDACTED]
Sent: Thursday, 1 May 2008 10:07 PM
To: Adjudication
Subject: N93365 (eBay/PayPal) Comments on proposed exclusive dealing

**EXCLUDED FROM
PUBLIC REGISTER**

subject: Remarks concerning Notification N93365 (eBay/PayPal)
1-May-2008

Greetings,

I am a citizen and resident of the United States. I respectfully submit these remarks as a friend of Australia, with the view that information and insight from anywhere may be helpful, and knowing you will use your good judgment about what is best for Australia and her people.

I am a small Internet merchant. I have bought and sold on eBay for some years, and have used the PayPal payment service both as a buyer and a seller. My use of the eBay and PayPal services occupies a large part of each working day.

PayPal is a unit of eBay

You are probably aware that PayPal is a wholly owned subsidiary of eBay. eBay's petition is, in effect, a petition to grant *itself* exclusive rights to handle payments for all transactions on eBay. It should not be construed that eBay wishes to appoint an independent agency for this job and PayPal just happens to be a providential choice.

PayPal is not a reliable service provider.

If you decide that eBay should appoint some exclusive payment processor for all eBay transactions, I contend that PayPal is unqualified for the appointment due to reliability problems. Let me explain.

There are certain essential tasks that a payment processor must perform spotlessly. Among these tasks is emailing a notice to the payee noting that a payment occurred, and giving the mailing address of the customer. This lets the merchant know that action is required and what the action is. PayPal is unreliable in this respect. For example, currently PayPal randomly omits the shipping address. This issue is discussed on the discussion forums at these web addresses:

<http://forums.ebay.com/db2/thread.jspa?threadID=1000689983>
<http://forums.ebay.com/db2/thread.jspa?messageID=1012852586>
<http://forums.ebay.com/db2/thread.jspa?threadID=1000689683>
<http://forums.ebay.com/db2/thread.jspa?threadID=2000558131>
<http://forums.ebay.com/db2/thread.jspa?threadID=1000691531>

Furthermore, PayPal occasionally fails to send me any notice at all of a received payment. This lapse occurs frequently enough that it is a business problem for me. I judge from postings on eBay discussion forums that the problems I've noted are widespread.

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This failure of such basic and essential service elements suggests that PayPal's computer systems are not maintained operated according to the strict requirements one expects for a financial institution.

PayPal is not service oriented

If a monopoly shall be imposed for the benefit of the public, I suggest that the appointment go to a firm with a penchant for and a track record of sterling customer service. You may readily make your own inquiries among PayPal's customers to see if they think PayPal responds to problems quickly and professionally. My own reading is that there is wide and deep dissatisfaction with PayPal's customer service. Certainly I am disappointed because replies from them are content free, and they provide no channel for communicating all information important to the resolution of disputes with payors and for the identification and prevention of fraud.

Attractive alternatives to PayPal in Australia

eBay has suggested that there is no competition in Australia for the service that PayPal provides, and that therefore there is no reason not to close the door to future competition. The premise is belied and the conclusion is a non-sequitur. Apparently online merchants and their customers in Australia have a robust experience with transferring funds to one another by direct bank to bank transfers. The method is well understood, it is inexpensive or free of cost, it is highly reliable, documented, and safe.

Personally, I am jealous of Australians because they have this banking feature, I don't and I want it! It would be, for me and my customers, a great improvement over the service which PayPal provides me. My PayPal costs are about 5% of gross sales.

It should be understood that the bank transfer mechanism is part of the ordinary banking system and it is operated by institutions which pay immense attention to doing it perfectly. It is highly reliable. Furthermore, if one institution shows itself to be even slightly imperfect in its duties, then by the nature of free commerce and of Australia's banking oversights, that imperfect institution would be received and corrected or cut out. Rapidly. This regulatory and stand-in capability would be abandoned if PayPal is granted a monopoly. PayPal's system is a proprietary one.

Australia should be pleased with the advanced banking system that it has in place and should be reluctant to abandon it for an inferior PayPal.

Buyer Protection Service and Seller Protection Service

eBay contends that PayPal's Buyer Protection and Seller Protection services are so unique and valuable to the public that they justify the costs to the public of imposing PayPal as a monopoly. Again this is a conclusion drawn from a false premise.

Firstly, any service provider is free to copy the assurance model, or to improve upon it if they wish and if their customers demand it. If assurance is something buyers and sellers want, then they should be free to make the feature election and to pay for it. Imposing a monopoly reduces the opportunities for assurance plans.

Secondly, the protection is redundant with the protections eBay already claims to provide by being on guard for fraud on the eBay web sites. eBay has a variety of mechanisms for reporting, tracking and sanctioning buyers or sellers who fail to live up to their obligations. If eBay manages fraud as well as they claim, then any auxiliary assurance offered through PayPal is of insufficient value to warrant imposition of a monopoly.

eBay vs Google Checkout and other competitors

In the United States, eBay has been working hard to expand the acceptance of its own PayPal while discouraging or banning outright the use of other forms of payment or payment services. In 2006 eBay banned the use of nearly all payment services other than PayPal. Of the few payment services now allowed, I suspect you will find that what they have in common is that they all have fees at least as great as PayPal's. Perhaps I am incorrect in this, however, you may yourself readily check the facts. The relevance of this is that eBay appears to be using its power to impose terms to establish a monopoly position for PayPal. And the justifications eBay provides should be scrutinized in light of their ulterior motive.

Let's look at how eBay has applied its criteria of "buyer safety" to Google Checkout, a payment or credit card processing service offered by Google. Google handles the banking transactions, promptly dispenses funds to the merchant's bank account, and protects the privacy and card numbers of the purchaser. As well, Google pays great attention to fraud. And Google enjoys a high reputation of integrity. eBay forbids merchants to offer Google's payment service. eBay's reason for the ban is, they say, that Google isn't sophisticated at handling money. Ahem. This is disingenuous. The more likely reason is that eBay does not want the competition. Google Checkout offers its services at about two thirds of the rate PayPal charges. And Google seems to be developing a better reputation for fraud prevention than PayPal has.

In case there is indeed no worthy competitor to PayPal

Let me suppose, for the sake of argument, that you judge Australia's banks, PayMate, Google Checkout, and all other contenders, to be helplessly incompetent. If so, then I ask "Is it better public policy to ban all future online payments systems in favor of eBay/PayPal, or to leave the field open for the development of new institutions?" My view is that it is better to leave the field open, because that makes it as easy as possible for the public to replace the incompetent when the need and opportunity arise. An open field policy also puts rapid remedies in the public hands should PayPal become, or come to be judged, incompetent. And that is because individuals can decide instantly, on their own, if PayPal has become inadequate, and take appropriate action.

Poor reputation for fraud prevention

Of the thousands of payments I have received, the only payments which failed due to fraud were ones I received via PayPal. In theory eBay and PayPal should be able to stop most fraud cold. This has not resulted. If you were to poll eBay merchants about the quality of PayPal's fraud prevention results, you would find a large number of disappointed and angry merchants.

PayPal lacks the public safeties of a bank

PayPal is careful to say that they are not a bank and not subject to banking regulations. That is the situation in the United States, though it may be different in Australia. Banking regulations are in place to protect the interests of the public when large amounts of money are at stake. And yet PayPal holds in its coffers money for millions of accounts which are not guaranteed or insured. And PayPal puts into its terms the right to enter a subscriber's bank and instantly withdraw all of the money from all of his accounts. Any other creditor would be obliged to follow due process - PayPal is not so obliged.

Merchants and their customers deserve the right to choose institutions that afford good protections for their money. And if a monopoly is to be imposed, then the monopoly service provider needs to be subject to rational limits on their behavior.

In consequence, no inhibition to fee increases

eBay/PayPal is entitled to set fees to any level they please. In the US, the PayPal fee is presently, for most merchants, \$0.30 plus 2.9% and it applies to the cost of merchandise plus shipping and packing. With a monopoly in Australia, eBay/PayPal can impose this fee on Australian merchants, and there is no reason to believe they will not. Presently many Australian merchants pay about zero for bank to bank transfers. A monopoly can further raise this fee to 4%, or 6% or whatever it wishes. Competition keeps that in check.

General principles

Let me switch my focus away from eBay and PayPal to consider general principles.

Competition is good. Compulsory patronage is bad

In commerce, competition is good. The world, and Australia, are full of smart, hardworking and honest people who are prepared to step in and do a better job if the competition lapses. Those who don't have the business are always thinking about how to earn it. And those who have the business are ever mindful of this competition and they generally work extra hard to keep competition from snatching their business away. Competition encourages people to do their best for their customers. And the customers benefit. Once you establish a monopoly, competition and its benefits end.

A frequent outcome of monopoly is incompetence and corruption. To guard against this we impose monopoly overseers and, sadly, they too are subject to incompetence and corruption.

Creating a monopoly where none is required is usually a mistake

Perhaps this view is only another way of looking at my remarks immediately above. Monopolies do not usually occur by necessity. Given their drawbacks, why create one voluntarily?

“Only I can be trusted to keep everyone’s money”

In essence, eBay is saying that only eBay can be trusted to handle and hold everyone's money. I think that, as a matter of public governance, this is the sort of statement cannot be safely regarded as credible. It is such an easy claim to make and the pecuniary rewards for doing so are temptingly grand.

Coercive effect on who can be in the marketplace.

PayPal claims the right to banish a person from the use of its service. There is a long list of legally tradable goods and services that PayPal forbids its service to be used to pay for. If granted a monopoly, then PayPal's decision to banish a person from PayPal amounts to a banishment from buying or selling on eBay. And PayPal could impose this not for any criminal wrongdoing, but for political reasons, because the list of banished goods has a great deal to do with political preference.

Choke a man's ability to buy and sell in the public marketplace and you have made him a slave.

To protect public debate

There are disturbing reports concerning eBay's behavior in this important public debate. eBay has petitioned for exclusive dealing as action best serving the public interest. eBay USA and eBay Australia offer discussion forums at their respective web sites. People have attempted to discuss this petition in those forums. And the disturbing reports are that eBay has censored and

expunged part or all of this discussion from such forums on their web sites.

My view is that when a firm asks the public for large favors while arguing that it is in the public interest to receive them, then the public that is effected has the right to discuss the matter publicly in whatever forums are available to them. If it is true that eBay has acted to stifle discussion of this petition, then that would show bad faith and an extreme disrespect for the public's interest, that same interest eBay claims to serve. If this is true, then eBay has morally disqualified its petition to you.

This may be easily investigated, and I suggest that it's important for you do so in order to protect the integrity of your public's participation in your public government.

Thank you for your attention.

Mark Gealy
Address excluded

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