

22 April 2008

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PUBLIC REGISTER**

Address Excluded

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

**eBay International exclusive dealing notification N93365
Interested Party Submission**

I am a registered eBay user and herein lodge a private submission on the above notification.

eBay International AG (eBay) gave notice under Section 93 of the Trade Practices Act (1974) to the Australian Competition and Consumer Commission (ACCC) on 11 April 2008 of intention to engage in activities covered by Section 47 of the Act.

eBay's intention is to prohibit their customers from paying for traded goods and services by payment methods other than PayPal, a payment service owned by eBay. This amounts to exclusive dealing covered by Section 47 of the Act.

ACCC is empowered to withdraw statutory protection for the notification where it considers there is likely to be lessening of competition and the public benefit will not outweigh the public detriment.

I submit that the public detriment does outweigh the public benefit because the outcome of eBay's proposal will be:

- significantly higher prices to consumers;
- reduced choice for consumers; and
- reduced competition in online payment services

ACCC must revoke statutory protection to protect the consumer.

1. Background

Ebay currently permits sellers to offer buyers one or more of the following payment methods :

- **Bank transfer** – this operates by the seller informing the purchaser of the sellers bank name, bank/state/branch code (BSB) and account number. The purchaser then instructs their bank (usually by internet banking) to transfer the sale amount plus postage to the sellers account. Note that, contrary to the impression conveyed by eBay in the notification, the purchasers' bank account details are not disclosed to sellers. Internet bank transfers are generally free to private purchasers and sellers. The most any of the major Australian banks charge for internet banking transfers is around 60c per transaction, irrespective of amount.

- **PayPal**, the operation of which is described in the notification. PayPal charges private sellers 3.4% of the payment amount plus 30c for domestic transactions. Business users pay between 1.1% and 2.4% plus 30c for domestic transactions. In addition, sellers are charged \$1.50 to have sales proceeds of less than \$150 remitted to their bank account. These PayPal charges are on top of the eBay sale commission which is payable irrespective of payment method.
- **Credit cards** – only used by business sellers who have merchant card facilities.
- **Australia Post Money Order, bank cheque or personal cheque** – well known payment methods requiring no further explanation.
- **Cash, cheque or money order on collection** – only applicable when the buyer and seller are closely located.

Sellers offer the payment methods they are comfortable with. Internet bank transfers have become a very popular payment method for private sellers and buyers located in Australia because they are quick, secure and are either free or have a very low fee. PayPal is attractive to traders who sell a large number of items or sellers targeting overseas buyers.

eBay already prohibits some competing online payment services to PayPal such as Paymate. eBay now intends to prohibit all other payment services including well established and trusted services offered by Australian banks and Australia Post.

2. Public Detriment

Section 4 of the eBay notification inadequately deals with public detriment. Key detriments to the consumer are not disclosed to ACCC. Significantly there is no information on the comparative cost to consumers of the alternate payment methods. There is no assessment of the reduction in competition. The NERA report is said to be inconclusive in this area.

Reduced competition and consumer choice

eBay enjoys a near monopoly position in online auctions with competitors such as OZtion being only a fraction of eBay's size. Sellers dissatisfied with eBay effectively have no alternative service to reach a comparative number of buyers. It is a comparable market dominance to that enjoyed by Microsoft with their Windows operating system for PCs – technically there are alternatives such as Linux but for the majority of PC consumers there is no alternative to Windows.

eBay's proposed exclusion of other payment methods will have the effect of creating a similar near monopoly for PayPal in the provision of online payment services. This is their main objective – to use their market power in online auctions to create a similar dominance in online payment services. ***Lock out of alternative payment methods removes consumer choice and creates an impregnable barrier to providers of competing online payment services to PayPal (eg Paymate).***

Increased cost to consumers

Consumers will be significantly disadvantaged by substantially higher prices for selling items on eBay. The following table compares the cost of internet bank transfers and PayPal transfers for domestic payments to private sellers.

Sale Amount	Internet bank Transfer	PayPal*	% increase
\$100	\$0.00 to \$0.60	\$3.70 #	>516%
\$250	\$0.00 to \$0.60	\$8.80	>1367%
\$500	\$0.00 to \$0.60	\$17.30	>2883%
\$1000	\$0.00 to \$0.60	\$34.30	>5716%

* Calculated at the private seller rate of 3.4% of sale price plus \$0.30.

An additional \$1.50 is charged to have sale proceeds up to \$150 remitted to sellers bank, making the total PayPal charge for a \$100 sale \$5.20.

It is clear from these examples that sellers will be severely financially disadvantaged if forced to accept only PayPal. Most affected will be private individuals who pay the highest per transaction rate. Many eBay private sellers are low income people selling surplus personal items, people who can least afford the huge increase in cost about to be imposed by eBay.

If eBay is allowed to exclude all alternative payment methods, their near monopoly position will allow them to increase PayPal charges further whenever they wish with consumers unable to switch to any cheaper alternative service.

3. Public Benefit

eBay contends that their customers will be better off overall in being compelled to make all payments by PayPal. Their supporting arguments are self made associations that are not intrinsically linked with the methods of payment. For example :

- PayPal's 'buyer protection policy' is simply an indemnity fund – a portion of the PayPal fees are used to compensate buyers defrauded by the small number of dishonest sellers. eBay could just as easily run the indemnity fund separate from PayPal, funded from the separate sales commission they charge sellers.

eBay is undertaking to increase the compensation limits on commencement of exclusive dealing – this merely amounts to them allocating a small portion of the windfall profits they will reap from siphoning between 1.1% and 3.4% from all sales. Paymate has buyer protections but is blocked by eBay, clear evidence eBay's real motive is building the business of its PayPal associate and locking in a lucrative income stream.

- Similarly fraud protection could be improved by tighter screening of eBay sellers instead of contending that only PayPal can reduce fraud.

The linking of an indemnity fund to PayPal is a tactic to drive business into PayPal. The payment methods being blocked are not the cause of the fraud.

It is worth noting eBay intends to prevent all their sellers from offering alternate payment methods to PayPal, irrespective of how long established and trustworthy

their record - even sellers with 100% buyer satisfaction rating established over thousands of sales. This is further evidence eBay's motives are really the market dominance of PayPal and greater fee income, not fraud reduction.

eBay does not provide quantification of the percentage of sales that result in disputes to justify all sellers paying the higher PayPal fees. Nor do they quantify the additional income they will derive from the PayPal fees. ACCC and the public are being asked to accept higher prices and reduction of competition based on partial and misleading information.

Examples of how eBay is misleading the ACCC :

eBay says disputes mainly arise from :

- fraudulent use of buyers account details disclosed to the seller;
- items not received; and
- items not as described

and this justifies mandating PayPal as the only allowable payment method.

The facts :

Fraudulent use of buyers account details

The only payment method that currently involves the buyer revealing account details to the seller is credit card payments. Credit card payments are only accepted by commercial sellers with card acceptance facilities. There is already consumer protection for credit card fraud through the card scheme rules. The buyer is able to notify their card issuer a transaction is fraudulent and have the amount charged back to the merchant.

eBay is prohibiting Money Orders, Bank Cheques and bank transfers, none of which involve disclosure to the seller of the buyers account details, a fact on which eBay appears to want to mislead the ACCC.

Items not received/items not as described.

These outcomes are not the result of the payment method. If a seller does not intend to send the goods, or sends inferior goods, they will do so irrespective of which method they receive payment.

Ebay attempts to justify its position by saying there is a lower rate of dispute on sales paid through PayPal compared to other payment methods. However this is largely the result of the sellers who currently accept PayPal payments being primarily well established commercial sellers with a different risk profile to other sellers. PayPal does not reduce fraud because the payment method is not the cause of fraud.

eBay contends that sellers are put at risk of identity theft by revealing details of their bank account to buyers when using the bank transfer method. The truth is the type of information revealed for bank transfers is no more than is contained on the MICR line of every cheque drawn in Australia or given in the establishment of every direct credit or debit arrangement.

4. Summary

EBay has presented ACCC with a misleading notification that omits key consumer detriment of significantly higher prices and reduced competition.

The real motives of eBay are to use their market power in online auctions to build the market dominance of PayPal in online payment services, and to extract higher prices from a captive consumer market. This is a very clear example of the type of behaviour Section 47 is intended to prohibit.

If ACCC does not revoke statutory protection :

- consumers will face significantly higher prices;
- consumers will have reduced choice; and
- competition will be reduced with alternative providers of online payment services prevented from effectively competing with PayPal

The benefits claimed by eBay do not outweigh these outcomes and therefore ACCC must revoke statutory protection.

Yours sincerely

Robert Bensley