

Roy, Lauren

Subject: Submission re eBay International AG Exclusive Dealing Notification N93365
[SEC=UNCLASSIFIED]
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ACCC Classification: SEC=UNCLASSIFIED

From: Sharon
Sent: Friday, 2 May 2008 12:08 PM
To: Adjudication
Subject: Submission re eBay International AG Exclusive Dealing Notification N93365

Please treat as a public submission.

Attention: Lauren Roy.

EBay International Exclusive Dealing Notification N93365
lodged with the ACCC on or about 11th April 2008

In accordance with a memo sent by the ACCC and received on 18th April 2008 I wish to submit the following as my own submission to the ACCC in regards to the abovementioned application by eBay International made to the ACCC on or about the 11th April 2008.

I am both a Buyer and a Seller on eBay and the decision made in respect of this application will have a definite impact on me.

In my submission I will attempt to address the following two factors which are what I believe the ACCC will be taking into consideration when reviewing this application.

“The proposed conduct will result in a substantial lessening of competition;

And

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 submit the following information as part of my submission.

In the application that has been made by eBay, in which they seek exemption from the relevant sections of the Trade Practices Act and enforce a policy that all transactions on eBay must be transacted through Paypal only, with the exception of payment by Cash on Pick Up (I will address this point further in my submission), and an exempt list of very few high value items such as Cars, Motorcycles, Aircraft, Boats, Vehicles (Caravans), Trailers, Trucks, Commercials and Real Estate.

The key dates in respect of these changes are 21st May 2008 when all listings MUST offer Paypal, and 17th June 2008 when no other options except Paypal will be permitted to be used for payment of items traded on eBay.

Comment – eBay

It is interesting to note that although the proposed changes that eBay are seeking exemption for will only (at this time) have any effect on the eBay Australia site, yet the application has been made by eBay International. Of course the inference must be that eBay is simply using the Australian market as a test case and precursor to perhaps attempting to make this a world wide condition which will apply to users of eBay no matter where they trade. In this regard the decision that may be made by the ACCC regarding this application may in fact have far reach effects.

It is eBay's assertion that the proposed changes are for the benefit of their customers and that their customers will have a greater protection if they use Paypal as a payment option.

The simple facts are:-

- 1.1 Paypal is already a payment option that can be chosen to be utilised if a Buyer wishes to do so.
- 1.2 If a Seller does not accept Paypal as a payment option, a Buyer can easily search for another item from another Seller if they wish to deal exclusively through Paypal as a payment option. Items are rarely unique on eBay.
- 1.3 A Buyer cannot be seen as a customer of eBay. The Buyer does not enter into any contractual agreement with eBay regarding the purchase of any item listed on the eBay site. Furthermore the Buyer does not pay any fees or costs to eBay, but somehow eBay are claiming that Buyers are "their" customers.
- 1.4 It has been clearly stated by eBay themselves, that they consider themselves as a platform only on which Buyers and Sellers can come together to trade goods. This is in complete contradiction to their statement that these changes are required in order to protect their customers.

Comment – Paypal

Any payments received through Paypal attract a fee, ranging from 1.1% to 2.4% plus a \$0.30 transaction fee. By far the vast majority of payments attract the higher 2.4% fee, as the lower fees do not begin until a payment is over the sum of \$5000.00.

Paypal Fees

AU \$0.00 - \$5,000	2.4% + AU \$0.30
AU \$5,000.01 - \$15,000	2.0% + AU \$0.30
AU \$15,000.01 - \$150,000	1.5% + AU \$0.30

AU > \$150,000	1.1% + AU \$0.30
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It can very easily be seen that the proposed changes must have an enormous benefit to Paypal turnover and therefore profit margins.

- 2.1 The claimed protection offered by Paypal is not guaranteed, and Paypal have the overall right to make judgement in respect of any claim that may be made.
- 2.2 I have just yesterday had to escalate to a claim, a Dispute that I had opened in respect of items not received and paid using Paypal. This is the first time I have ever had to submit any claim in respect of the promised protection that it is claimed will be in place for all users once the proposed changes are in place.

In response to my claim, I received the following e-mail from Paypal. It is unedited, with the exception of the transaction details have been removed.

"You have chosen to escalate your dispute to a Paypal claim. By ending communication with the seller, you are asking Paypal to investigate the case and decide the outcome. As part of our investigation, Paypal will review any communication you may have had in the Resolution Centre.

Thank you for contacting Paypal. We have begun our investigation of the following transaction:

(Transaction Details Removed)

We will make every effort to resolve this claim within 30 days, although we may require additional time to complete our investigation.

Our investigation will be made on a best-effort basis and Paypal cannot guarantee recovery of the funds. For more information about how Paypal investigates complaints, please review the User Agreement.

Yours sincerely,

Paypal

(Bold red italics mine)

This makes the claim by eBay that Paypal is the only way to trade safely online totally false, as Paypal themselves state that they (quote) **“cannot guarantee recovery of funds”** (unquote)

Comment

“The proposed conduct will result in a substantial lessening of competition;

- 3.1 If the changes proposed by eBay are permitted to take effect, there will be a total loss of competition as Paypal will simply be the only method that can be used to pay and they will face no competition of any other form.
- 3.2 I concur that eBay has stated that payment can be made in person at time of pick up, but this is totally unrealistic as many items are traded from one state to another and the assumption here is that Buyers and Sellers will need to reside in close proximity to each other. This of course will lessen the Buyer numbers available, so not only does eBay remove any competition against Paypal, it also removes any competition between prospective Buyers for any particular item.
- 3.3 If a buyer chooses not to use Paypal, they will therefore in future be restricted to the purchase of items that are located within a reasonable distance of their residence. That is of course assuming that a Seller is willing to give out their private address to a totally unknown person. If a Seller wishes to keep their home address private, it again lessens competition between Buyers, if they are ones who would prefer not to use Paypal, but may purchase from that Seller if they could pay for the purchase by other means.
- 3.4 Under the current payment policy, the following are permitted to be used as a means of payment by a Buyer to a Seller for items purchased through the eBay site. Paypal, Credit Cards, Debit Cards, Direct Bank Deposits, Bank to Bank transfers, Cash on Delivery (Australia Post Service), Personal Cheques, Bank Cheques, Money Orders (some exceptions), Bidpay, Paymate and a number of others. As from 21st May 2008, Sellers will still be able to accept all of these, but will have no option but to include Paypal as a payment option. As from June 17th, all payment options other than Paypal will be removed and no other options will be permitted.

- 3.5 If this was to occur, then there is a marked lessening of competition for Paypal as Sellers simply will have no alternative. There will be NO competition, (other than the totally unfeasible payment on pick up, which incidentally can also be paid using Paypal – an issue I will address further)
- 3.6 If the aim of the Trade Practices Act is to promote open and fair competition for Australian consumers, then surely closing all avenues that a consumer may choose with which to pay for their goods, with the exception of one must be seen as substantially lessening any competition.
- 3.7 As an example, Paymate is an Australian company that is very similar to Paypal (and was in fact originally owned by eBay). Paymate accepts payments on behalf of third parties and then moves those payments into the Seller's bank account. They do charge a fee for this service in a similar manner that Paypal do, and they also have in place a protection policy if items are paid using a credit card. It is simply a smokescreen to state that only Paypal, to the exclusion of all other forms of payment, is a safe way for consumers to pay their Sellers. Yet eBay are openly claiming that there is no other means for a Buyer to pay their Sellers which is in their opinion "safe".
- 3.8 There will no longer be any competition from any other form of payment that is currently available, and therefore Australian banks, Australia Post (Money Orders) and other means of money transfers (Bidpay, Paymate etc) will simply not be permitted to compete with Paypal for that market share involved in the transfer of money (payments) from one person (Buyer) to another (Seller).

Conclusion - The proposed changes will have a marked lessening of competition in respect of how any individual may choose to make their payments.

Comment

"The public benefit that may result from the proposed conduct would not outweigh the detriment to the public caused by the lessening of competition"

- 4.1 It is claimed by eBay that the benefit of the "greater protection" offered is sufficient to allow eBay to be exempted from the relevant sections of the Trade Practices Act. It is further claimed by eBay that any detriment to the consumer is minimal only.
- 4.2 The facts are that these changes if implemented by eBay have far reaching detrimental effects on a very large number of the Australian public who may be potential Buyers and Sellers on the eBay site.

- 4.3 As outlined above in 2.2, any protection is not guaranteed, so the public claims being made by eBay at present regarding protection for Buyers is not telling the full story, and eBay is simply telling enough to make it seem like the offered protection is a 100% guarantee that a Buyer will not lose their money. A reading of 2.2 above shows that is not the fact.
- 4.4 In a similar way, Sellers have no protection from those few Buyers who may choose to defraud the Seller. The protection that is offered by Paypal is heavily weighted in favour of the Buyer and an unscrupulous Buyer can very easily purchase an item, pay for it using Paypal, and then after it has been received submit a claim to Paypal stating that the item was never received. In this scenario, Paypal generally refund the Buyer and deduct the funds from the Seller's account. A Seller is required in some way to prove that the Buyer did in fact receive the item or they will lose both the item and the payment. The only way that a Seller can do that to Paypal's satisfaction is by using very expensive postage methods that are able to be tracked from Sender to Receiver. This alone will add considerably to the cost of the Postage of the item, and further add to the workload that is required of the Seller when posting the item(s), especially if they are a high volume trader.
- 4.5 It is claimed by eBay that using Paypal is safe because you do not need to share your bank details with another party, yet they fail to acknowledge the fact that in order to have a functioning Paypal account, you are required to enter all of your bank details and many other personal details. If you wish payments to be made instantly, you are also requested to place on file at Paypal any details regarding any credit card you might have. Paypal can (and do) easily draw directly from any of the Seller's accounts in order to refund a Buyer who they (Paypal) consider has made an effective claim. The Seller is not consulted and then needs to begin their own process of trying to recover any lost funds.
- 4.6 Many Australians (especially older ones) do not like putting their banking details on line and refuse to use any form of Internet Money Transfers. If they choose to purchase on eBay these people simply pay by either sending a Money Order, or going to a local branch of the relevant bank and pay the money in cash over the counter to credit the Seller's account. These proposed changes by eBay will simply deny every one of these people the right to buy any items listed on the eBay site after 17th June 2008. This is detrimental to many members of the community.
- 4.7 It is a fact that eBay is especially popular with many who do not have ready access to larger stores because they live in smaller communities. Once again, if those in these small communities choose that they do not like having to use Paypal, they will be simply prevented from any further purchases from the eBay site after 17th June 2008. This detrimental to a large number of the public.

4.8 As eBay will allow payment for items if they are directly picked up from the Seller, it is my opinion that this has been included simply so that eBay can state that they still offer a choice of payment methods. However a Seller will still be forced to accept Paypal from a Buyer if they wish to utilise that form of payment when picking an item up. What eBay (and Paypal) have failed to address, despite the fact that I have e-mailed them on a number of occasions since this proposed policy was announced on 10th April 2008, is the fact that a Buyer can very easily arrive at the Seller's place of business/residence after paying for the item using Paypal. The Buyer can then return home and submit a claim to Paypal that they did not receive the item and there is nothing that Paypal will accept as proof of delivery. Paypal will not accept a signed letter from the Buyer as proof of delivery and in this scenario the Seller will simply lose the item(s) and the payment. The only recourse the Seller has in this case is Police action. The fact that a Seller cannot deny Paypal as payment method for items that may be picked up is certainly another detrimental factor to this application.

4.9 If payment for an item is made using Money Order, Bank Deposit or Direct Debit system, then the Seller does not incur any further fees on that transaction. However any payments made through Paypal attract the percentage as outlined above and that percentage is calculated on the total amount of money paid, not just the value of the item itself, but also the postage costs that have been added. This in effect is allowing Paypal to charge a fee on what is partly an Australian government tax, as part of that postage fee is in fact GST. Despite the claim made on radio by a Paypal representative that Paypal do not charge fees on the postage amount of any transaction, the opposite is in fact true. Paypal charge a percentage on the total amount of money transferred.

4.10 Under the proposed changes, Sellers will lose any protection they might have from Paypal, if they sell a number of items to one Buyer and choose to send them all as one parcel, unless the Invoice was originally combined. As an example, if a Seller sells three items to one Buyer and the postage is \$4.00 on each and there are three separate Invoices sent, then the Seller must send them in separate packages or lose any protection. That totals a postage cost of \$12.00, of which Paypal will take their 2.4%. If the Seller send one Invoice however, and the combine postage costs of the three items together may only be \$5.20. If the Seller takes more time before arranging Invoices then it will mean a saving for the Buyer in postage costs, and also the Seller in Paypal fees, but it also increases the workload to the Seller. Again if it is a high volume Seller this can have a substantial detrimental effect.

4.11 The only perceived benefit that is logical with this submission is one that it will greatly increase the market share that Paypal has and therefore increase the underlying profits that Paypal may make as a company.

Conclusion - The proposed benefits to the public do not outweigh the detrimental effects.

Comments – General

- 5.1 As stated above it is interesting to note that the application has been submitted by eBay International notwithstanding the fact that it will only have effect on those listing (at this stage) on eBay Australia.
- 5.2 Paypal is not a bank, and as such is not subject to the laws that govern the safety of money held by them on other people's behalf. If through some bad investment or other unknown factor, Paypal was to find itself unable to meet its debts, then there is nothing that would prevent Paypal from simply using the funds they hold on behalf of its members to pay their creditors. All Paypal members could potentially be left without any access to money that is rightfully theirs.
- 5.3 Although trading in Australia, under the name of eBay Australia, eBay do not pay GST and seem exempt from the financial laws and taxation that all other companies are required to meet.
- 5.4 There is no way of contacting eBay Australia by telephone. If one attempts to call the number that is listed in the public directory, all that is received is a recorded message telling you to send eBay an e-mail. Many times these e-mails simply do not get any response, or if they do it is simply a computer generated generic reply with no means of response to ask further questions. There is the opportunity to contact eBay through their "Live Help", but assistance there is limited.
- 5.5 There is no way of contacting Paypal in Australia by telephone. If one calls the Paypal number, the call is redirected to an operator in the USA, who may have no idea of what the issue you wish to discuss is about as they do not know anything about Australia.
(Time taken for parcels to arrive from Sydney if sent from Perth for example)
- 5.6 By submitting this application eBay have now received an implied immunity from prosecution even if the ACCC was to decide against the application for exemption. This is just a means of eBay attempting to place themselves above the law by submitting their application and not giving the ACCC any great time to review the application before making any decision. In my opinion it is an attempt to bully the ACCC into a rapid decision making process by eBay in a hope that the application will be easily approved.
- 5.7 Although there has been much discussion relating to the issue of third line forcing and

if this application is in breach of the relevant section of the Trade Practices Act that prohibit third line forcing, my limited understanding of the (complex) laws surrounding this may be that in itself this application may not in fact be third line forcing because it is one company insisting that users deal with another company they own and therefore there is no third party involved. However there is a very real possibility in my mind that eBay are coercing others to defy the provisions of the Trade Practices Act by forcing them into a third line forcing scenario. If this exemption is permitted so that Paypal is the only payment option permitted and I am the director of a company who chooses to sell my company products on eBay, I cannot see how I can insist to my customers that they cannot buy my items unless they pay using Paypal. Even though I may not be receiving anything back from Paypal, in my opinion that is certainly third line forcing by me denying my customers the product unless they meet certain conditions of paying for those items with Paypal. (which in my opinion breach the Trade Practices Act) This issue alone bears much more scrutiny.

5.8 If Paypal is as safe as eBay likes to claim it is, one must question why there are so many fake e-mails around that try to obtain your details so they can use your Paypal account fraudulently. As I have both a Paypal account and a Paymate account, I can honestly state that I have received literally hundreds of e-mails purporting to be from Paypal (even before I actually had a Paypal account), but I have never received one false e-mail claiming to be from Paymate. Despite the assertions given, Paypal is not as safe as eBay would lead us to believe.

5.9 It seems that the general opinion of many hundreds of members who have posted comments on Discussion Boards on line about this issue tend to agree that they are willing to accept Paypal as a payment OPTION, but not the only payment option and the choice regarding which manner of payment any Buyer might wish to use remain as it currently is.

5.10 This is a very important application and the decision that will be made by the ACCC will in my mind have far reaching consequences for a lot of Australian businesses. With that in mind, it is imperative that the ACCC get this correct so a decision should not be rushed, but every effort should be made to have a decision (hopefully denying the application) conveyed to eBay prior to 17th June 2008.

Conclusion – The ACCC should deny this application and if the decision is reached after a date on which any changes may have been implemented, then the decision should be backdated or at least be effective immediately it is reached.

Many thanks for considering my submission.

Sharon G.