

Roy, Lauren

From: Petreski, Sonya on behalf of Adjudication
Sent: Wednesday, 23 April 2008 9:13 AM
To: Chisholm, Shane; Roy, Lauren
Subject: FW: Interested party submission regarding Notification N93365 (eBay International AG) [SEC=UNCLASSIFIED]

Categories: SEC=UNCLASSIFIED
ACCC Classification: SEC=UNCLASSIFIED

-----Original Message-----

**EXCLUDED FROM
PUBLIC REGISTER**

From: Chris Burgess [mailto:]
Sent: Tuesday, 22 April 2008 3:45 PM
To: Adjudication
Subject: Interested party submission regarding Notification N93365 (eBay International AG)

Submission regarding Notification N93365 (eBay International AG)

Dear ACCC,

I wish to lodge an objection to the application received by you from eBay (Notification N93365).

The notification requests that they be exempted from certain parts of the Trade Practices act, namely the provisions regarding "Third Line Forcing" - by requiring that all items bought and sold on eBay be paid for using "Paypal", a company sharing the same owners of eBay itself. eBay were granted partial immunity in 2005, but this related to only one method, and did not exclude competitors who were able to supply funds transfer services at a lower cost. Notification N93365 goes much further and will force users to use the more expensive and less secure Paypal service.

I am a relatively low-volume user of eBay (approximately 200 transactions over 18 months). We used to offer Paypal as a payment option, however we stopped this towards the end of 2007 due to fraud and attempted fraudulent use of the Paypal service. If their request for exemption is granted, the impact of larger volume users will be much greater than mine, so I am submitting this not only on how this will impact me as a seller, but also on how it will affect me as a buyer having to pay increased prices from large-volume sellers, as they will inevitably have to pass on their increased costs from the much higher (compared to currently acceptable methods, such as direct bank transfers) Paypal fees, and also the extra costs incurred by fraudulent use of the Paypal service.

Many high volume sellers we buy from do NOT accept Paypal and state this in their listing, so a lot of people are going to be affected if their request for exemption is granted.

There are six main reasons for our objection to this change; I will explain them separately, for clarity.

Reason 1 - The cost of the Paypal service is MUCH higher other currently allowable methods.

As an example, a second-hand laptop computer sold for \$725:

Direct deposit into our banking provider (CPS credit union) account: \$1.00 in bank fees total cost (other banks may differ slightly).

Australia Post money order: \$3.50 (money order) + \$0.50 (postage stamp):
\$4.00 total cost.

Paypal: \$0.30 (selling fee) + \$17.40 (2.4% of the \$725 selling cost):
\$17.70 total cost.

In this example, Paypal is over FIFTEEN times more expensive than our banking provider, and over FOUR times more expensive than Australia Post.

Note: For items under \$150, Paypal charge a further \$1.00 "withdrawal fee" to transfer the funds to a bank / credit union account.

It is hardly surprising that many high volume sellers do not wish to be forced into

using Paypal (eBay policy forbids sellers from passing these costs onto buyers).

Reason 2 - Compared with other financial services, the service provided by Paypal is poor.

The transfer of funds is much slower than direct transfer between banks / credit unions. Using direct bank / credit union transfers, the seller receives the payment within a day or two, but Paypal transfers take 4 days (best experience) to 21 days (worst experience) before we are able to access the funds. eBay require that (when Paypal is used as the payment method) sellers send the item when Paypal, and not the seller, receive payment from the purchaser. The seller can therefore be out of pocket for up to 3 weeks when the buyer pays with Paypal.

The Paypal payment is transferred sooner if the seller receives positive feedback from the buyer. However, providing feedback is optional; many buyers, through either inexperience or laziness, do not leave feedback at all. This is rarely an issue with experienced buyers, but it is a cause for concern when dealing with buyers new to eBay. This long delay in receiving payment penalizes sellers through no fault of their own.

Reason 3 - Fraudulent use issues:

It is relatively easy for a buyer to fraudulently obtain (steal) items from a seller when Paypal is used as a payment method.

A buyer intending to defraud a seller only has to falsely claim the item did not arrive, or was not as described, and the Paypal payment will be reversed in favour of the buyer. These buyers cannot be checked out by the sellers and blacklisted (banned from bidding on that sellers items) as they either bid a much higher than the current price in the last minute of the auction, not giving the seller time to cancel that sellers bid, or use the "buy it now" function if the seller has that option enabled. There are only two options available to sellers to prevent this - either don't accept Paypal, or prevent buyers who have less than a certain "buyer rating" (this consists of either number of transactions that buyer has made on eBay, or the percentage of positive feedbacks received from other sellers). The latter method is less than acceptable, as it prevents some legitimate buyers from purchasing that sellers goods, and it is relatively simple for a buyer intending to commit fraud to get a good "buyer rating" by first buying some very cheap items legitimately. There are sellers who sell "digital delivery" items for this purpose - a typical "item" of this type is a password to a members-only website - delivered by email (no postage costs) and "selling" for 5 or 10 cents. A fraudulent buyer, initially purchasing these items, can get a respectable "buyer rating" (for example, 25 transactions recorded with 100% positive rating) for less than five dollars, then fraudulently "purchase" a very expensive item such as a laptop computer or a plasma TV set.

The buyer then falsely claims the item did not arrive, or falsely claims the item was not as described and posted back to the seller, knowing the Paypal payment will be reversed in favour of the buyer. The legitimate seller loses the sold item and the postage cost, the fraudulent buyer gets the item for free, including delivery.

We have been caught by this activity only once, after which we decided for the reason outlined above that we would no longer accept Paypal as a payment option. Fortunately, the losses we incurred were small (less than \$100). More expensive than the loss of the item was the large amount of time spent trying in vain to convince Paypal that the buyer was fraudulent - in the end we wrote off the loss as a bad experience, and refused from that point to accept Paypal.

Paypal seemed to everything to prevent its users from contacting them. Sending email returned only automated responses, so the next thing we tried was to contact the company by telephone. I was very surprised to find that Paypal ARE NOT LISTED IN THE PHONE DIRECTORY! We then tried to find the number on the Sensis (Telstra) on-line directory (www.whitepages.com.au) - this returned a "not found" when searching for Paypal. We eventually found a number on the Paypal website; ringing this during business hours got us through to an answering machine. After 3 calls and leaving 3 messages, none of which were returned, we gave up as we had lost too much time on this already.

If we ever have difficulties with a bank, credit union, credit card provider, or Australia Post, we can contact them via their website, send an email, telephone them, or call into one of their many branches. Paypal have NONE of these options that I can use if I want to contact a human employee.

We initially thought we could overcome - at least partially (it wouldn't stop a fraudulent "not as described" claim) - by forcing buyers to use Australia Post registered mail when sending items, but when searching for a contact number for Paypal we came across a web page written by another seller who was a victim of the same "scam" who found out that this was NOT the case. The so-called "Paypal seller protection" only applies when delivery of an item can be tracked on the Internet (for example, a parcel sent by the company DHL). Australia post registered post delivery confirmations for articles sent within Australia require that the person enquiring contacts them by telephone, something the person reported that Paypal were not prepared to do. The only practical solution for us - if we wished to continue selling on eBay - was to no longer accept payments by Paypal.

Reason 4: Getting less than the correct exchange rate when using Paypal for purchases in currencies other than Australian dollars:

Quote from the Paypal website

(https://www.paypal.com/au/cgi-bin/webscr?cmd=_display-fees-outside):

"If your transaction involves a currency conversion, it will be completed at a retail foreign exchange rate determined by Paypal, which is adjusted regularly based on market conditions. This exchange rate includes a 2.5% spread above the wholesale exchange rate at which Paypal obtains foreign currency, and the spread is retained by Paypal. The specific exchange rate that applies to your multiple currency transaction will be displayed at the time of the transaction." (end of quote)

This amount retained by Paypal, as outlined above, is 250% higher than our current arrangements (Visa Australia) The current Visa charges for currency conversion are either Nil or 1%, depending on the bank that issues the card.

For comparison, the current Visa charges can be seen on their website

(http://www.visa-asia.com/ap/au/cardholders/tips/foreign_currency.shtml).

Reason 5 - Phishing (identity theft) issues with Paypal:

Paypal fraud attempts are by far the most common "Phishing" (identity theft fraud) emails we receive. We have good antivirus measures in place that detect these, but this cannot be said for less experienced Internet users ("Googling" Paypal phishing fraud returned 224,000 results on the 21/4/08). Since the 1st of January 2008, we have detected 33 "phishing" scam emails (one claimed to be the ANZ bank, one claimed to be the CBA bank, and the remaining 31 claimed to be Paypal). I've worked in the technology sector for many years, and know from personal experience that roughly 3 out of 4 computers we get for repair have either none or ineffective antivirus software. The number of inexperienced people caught out by this common scam will surely increase if they are forced to use Paypal instead of the much more secure payment methods such as Australia Post money orders and Direct bank to bank transfers. Granted, Paypal may cover these buyers, but there are going to be a lot more sellers lose out, and prices can only rise (as sellers understandably try to recoup some of their losses) as a result.

Reason 6 - Misleading information and advertising from Paypal:

An attractive graphic on the fees page of the Paypal website compares the so-called "low" Paypal fees with a much "higher" alleged cost of an un-named alternative. Next to the Paypal fees, it proclaims "Transaction fees only 1.1 - 2.4% + 0.30 AUD". This is outright misleading, as we outlined above the alternatives are much cheaper - to get the Paypal fees down to even approaching the alternatives, one would have to sell at least \$150,000.00 per month. It claims (quote) "you're never under any obligation to use Paypal". It does not mention that they are trying to change this by getting an exemption from Australian law. The page also claims "We help investigate chargebacks on your behalf". Total lack of communication with a human is far from "helpful" if problems arise with a transaction.

Summing up:

The "Third Line Forcing" provisions are part of Australian competition law for good reason - to stop a dominant market player forcing up prices by stealth by forcing its

customers to use a third party, especially a third party that the dominant player has a financial interest in. It is even more of a concern when their proposal fails to mention the real reason (increased financial return) and attempts to hide this by claiming it to be a security issue. In over 200 transactions, we have NEVER had a problem with other payment methods. Only Paypal has caused fraud / security issues for us, and we were unable to resolve it due to the inability to contact anybody from the Paypal company.

There are entire websites dedicated to problems with Paypal:

<http://www.paypalsucks.com/>

<http://www.aboutpaypal.org/>

<http://www.screw-paypal.com/>

<http://www.paypalwarning.com/>

<http://www.paypaluniversity.com/>

I have no relationships or dealings with any of these sites; they were found using a simple Google search.

Obviously I can't claim that all of the claims on these sites are correct, but after having dealt with a Paypal issue, some of the issues raised were very similar to my own experiences. One can also fairly safely assume that if the claims made on them were all slanderous and untrue, libel laws and civil damages lawsuits would enable Paypal to shut them down fairly quickly.

eBay is the dominant market player in Australia (it is at least 10 times bigger than all of its Australian competitors combined) and in our opinion should not be granted exemption from an Australian law that was put there in the first place for good reason - to prevent users from being exploited in the manner that eBay desire.

At the very least, to keep things fair for both sellers and buyers, eBay:

- Must retain the current arrangement of giving sellers the option of receiving payment by direct transfer between financial institutions such as banks and Credit unions
- Must NOT force sellers to offer Paypal as one of their acceptable payment methods

Other requirements that are not as critical as the above two points, but should also be considered are:

- No requirement to send goods until AFTER the seller has received payment in a form that can be immediately used or converted to cash
- For items under \$150, be permitted to add a surcharge (of 2.4% of the sale price, plus \$1.30 AUD) for payments made with Paypal, should they decide to accept it as a payment method.
- For items over \$150, be permitted to add a surcharge (of 2.4% of the sale price, plus \$0.30 AUD) for payments made with Paypal, should they decide to accept it as a payment method.

Many retailers - both online and real-world - pass on bank fees/charges to customers (explained at <http://www.accc.gov.au/content/index.phtml/itemId/815364>).

eBay sellers should be able to do the same, provided this is clearly stated in their listing descriptions.

Yours Sincerely,
Chris Burgess
eBay seller