

Roy, Lauren

Subject: eBay's application, exclusive dealing [SEC=UNCLASSIFIED]

Categories: SEC=UNCLASSIFIED

ACCC Classification: SEC=UNCLASSIFIED

EXCLUDED FROM

From: Alex Farrar **PUBLIC REGISTER**

Sent: Friday, 9 May 2008 1:55 PM

To: Adjudication

Subject: eBay's application, exclusive dealing

I sent a response to the ACCC's investigation into eBay's proposed amendments to its listing policy, whereby sellers would be prohibited from listing payment methods other than PayPal.

An ACCC employee contacted me, asking whether I wished my response to be regarded as an official submission into the ACCC inquiry. Unfortunately I have misplaced that email, but I would like it to be a submission, if the deadline has not yet passed.

However, I do wish to slightly amend my response to read thus:

I write in response to eBay Australia's recent application for exemption from various "exclusive dealing" provisions of the Trade Practices Act.

eBay claims that the proposed changes to the eBay sellers' terms and conditions are designed to ensure greater security for its registered users. While eBay's rationale appears to be that transactions paid for through PayPal are less likely to result in a dispute, eBay has not attempted to substantiate this claim.

eBay claims that PayPal's protection scheme benefits both sellers and buyers. I don't believe this is true. The protection scheme merely enables buyers to falsely claim that an item was not received or was not as described. In such instances PayPal places a burden on the seller to prove that the buyer's claim is false, before recovering the payment from the seller to refund the buyer. Such a scheme may be appropriate if eBay or PayPal assumed an investigatory role in such disputes, but the physical remoteness of Australian sellers from PayPal (which is based in the US) and the sheer volume of transactions on eBay prevent it from – for example – examining a product sold on eBay and determining whether it matches the description. In making PayPal the only acceptable method of payment, eBay is essentially forcing sellers to submit to this unreasonable dispute resolution process.

I have been a registered member of eBay Australia since May 2003. I have had over 380 transactions on eBay and have never had a dispute with an Australian buyer or seller, despite using direct bank deposit as the method of payment in the vast majority of these transactions. PayPal's fees, and its refund policy which favours buyers, makes it a costly and unappealing payment method for sellers.

If eBay's motives were genuinely concerned with consumer-protection, the choice of payment method would be left to the consumer. In the past, I have offered buyers the opportunity to use PayPal upon payment of a fee (of around \$2). I believed this to be reasonable, since it meant that any purchaser who wished to utilize PayPal's costly protection mechanisms could do so, at their own cost. eBay has recently prohibited this, claiming it is "circumvention" of eBay's fee structure. I would suggest that, in fact, eBay is aware that – given the choice – many purchasers would opt for other payment methods if it meant saving some money. I believe that the prohibition on passing-on the cost of PayPal to the consumer, in instances where only the purchaser can benefit from the use of PayPal, demonstrates that eBay is concerned only with making more money.

The current scheme allows buyers and sellers to negotiate payment and postage methods which are mutually agreeable. Items sold on eBay are not essential items; if a seller doesn't offer PayPal and a buyer wishes to pay using PayPal, the buyer does not have to purchase the item. Conversely, if the seller wished to provide good customer service, it would respond to the demand to make PayPal available. The current system provided a reasonable balance between security and convenience, which ultimately benefited both sellers and buyers.

In these circumstances it is clear that in taking this choice away from buys and sellers, eBay is seeking only to further its financial gain.

12/05/2008

Please let me know if you have any queries.

Kind regards

Alex Farrar