

## Roy, Lauren

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**Subject:** eBay and their restraint of trade policy limiting sellers and buyers to use of PayPal  
[SEC=UNCLASSIFIED]

**Categories:** SEC=UNCLASSIFIED  
**ACCC Classification:** SEC=UNCLASSIFIED

-----Original Message----- **EXCLUDED FROM PUBLIC REGISTER**  
**From:** Joe & Lee-Ann Scharf  
**Sent:** Wednesday, 30 April 2008 9:06 AM  
**To:** Adjudication  
**Subject:** eBay and their restraint of trade policy limiting sellers and buyers to use of PayPal

Dear ACCC,

Please find set out below my objection to eBay's forced use of Paypal for sellers and buyers.

1. Firstly some points of confusion in my contacts with Ebay to date and their non-response when asked to clarify;

1.1. eBay Australia Pty Ltd asserts that the application is being made by eBay International AG based in Switzerland and they are mandating the changes. - Can you confirm which entity is in fact making the changes, is it an Australian Pty Ltd company or a Swiss company?

1.2. eBay Australia Pty Ltd holds a registered web domain name of eBay.com.au and uses the eBay [sometimes it appears with "Australia" sometimes not] Pty Ltd name on this domain and is where I have placed ads to sell and have bought items, but eBay claims that I place ads with eBay International AG. Can you again confirm which entity is making the claim for the exemption?

1.3. eBay International AG send me an invoice for services provided in Australia, by ebay.com.au and eBay Australia Pty Ltd but do not charge any GST on the services that their Australian subsidiary provides to me.

1.4. Given the broad restraint of trade eBay propose why are there hidden items in Para 4.4 of eBay's application "the Nera Report". It is difficult enough to make a full and accurate submission without substantial (and VERY IMPORTANT) parts of eBay's submission missing from public scrutiny. Whilst I understand the need for some "commercial in confidence", in this case ALL details of their submission should be made public to ensure an open process and that the ACCC is in no way seen to be assisting eBay to circumvent Australian laws.

1.5. Based on personal correspondence with eBay, I believe eBay deliberately confuses the commonly accepted use of the word "customer". I as a seller, pay eBay fees for the use of their advertising platform, I pay a fee for listing an item, and a fee if the item sells based upon a % of the selling price. I as a seller am eBay's customer, I pay the fees and I have a contractual arrangement with eBay (whether it is eBay Australia Pty Ltd or eBay International AG I am yet to find out).

1.5.1. eBay defines its customers much more broadly and includes people who buy from me as also being their customers - however my customers do not pay fees to eBay and cannot have a contractual relationship with eBay in any particular sale.

2. My objection;

2.1 I object to being forced to use Paypal as a condition of continuing membership of eBay. Cash on delivery or collection, is as safe as it gets and I'm happy that way.

2.2. Whilst eBay may believe that Paypal is a secure method of purchasing goods via its auction site, many sellers find Paypal to be the exact opposite and it is notoriously difficult to deal with because of their appalling English and grammar, little real knowledge of trading law and financial transactions.

2.3. The following known problems with Paypal exist;

2.3.1 Paypal will refund money from a seller's account to a buyer without informing the seller.

2.3.2. Paypal will refund money from a seller's account to a buyer when the buyer makes a claim against their credit card, they NEVER inform the seller as they cannot meet the seven day time limit of disputing a credit card chargeback.

2.3.3. Paypal is considered just another merchant as far as the credit card suppliers are concerned and this is not clearly or accurately explained to users of Paypal. Paypal is subject to the conditions imposed by the credit card suppliers, but represents itself as a "payment service".

2.3.4. Paypal has unreasonably delayed refunding money to a buyer when the seller's Paypal account has a zero balance. Often leading to Paypal making an "out of time" response to a continuing claim. Source - eBay's own discussion boards. This I believe to be a deliberate trading practice.

2.3.5. Paypal is an expensive service, fees are charged for every movement of funds in and out of the seller's account, fees are charged to sellers even when fraudulent claims are made by buyers, or a buyer claims fraudulent use of their credit card. Paypal charges the account holder fees to reverse these claims even if the claim is fraudulent, and the account holder can prove the buyer has received the item.

2.3.6. Paypal Pty Ltd is an Australian registered company and holds an APRA licence, invoices for services come from Paypal Inc. an American company.

2.3.7. Paypal Inc. is an unregulated (in Australia) entity where sellers funds are held without guarantee, if the company fails with substantial debts owing to other related companies, sellers funds would be forfeit to meet those debts. I can't work out the related company structures to ascertain the safety of funds held by Paypal.

2.3.8. Complaints sent to Paypal are met with automated email responses, often the response has nothing to do with the complaint. The syntax, spelling, grammar and use of words in the responses would indicate that the emails are generated at random from countries around the world. Clearly there is little real knowledge about how Paypal Pty Ltd or Paypal Inc work and the jurisdiction for trading compliance. Surely when both persons to a trade when they are within Australia comply with Australian law.

2.3.9. Paypal Pty Ltd claims a \$5,000,000 or 5% security deposit required by APRA exists. I doubt this is genuine and if it is will be at serious risk if the parent company were to fail and make a call upon that secured asset.

2.3.10. Paypal Pty Ltd is the only Australian company listed by APRA as an approved deposit taker for internet commerce in Australia, to further broaden that monopoly position will substantially reduce the ability of any new entrants wishing to enter the market place.

2.3.11. Paypal Pty Ltd does not accept all common Australian credit cards, notably it does not accept American Express.

2.3.12. With the confusion existing as to which company is operating Paypal in Australia, security of banking and credit card information held by Paypal is not regulated by Australian privacy and confidentiality laws. The laws applying to Paypal Inc (the company that sends invoices to Paypal account holders in Australia) is not regulated in Australia. Paypal Pty Ltd does not send invoices, it just sends emails giving the false impression that account holders are dealing with an Australian Company regulated by Australian commercial and financial laws.

Joe & Lee-Ann Scharf - number excluded

Joe - number excluded

Lee-Ann - number excluded

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