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Association of Building Societies and Credit Unions

8 May 2008

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
e-mail: adjudication@accc.gov.au

Dear Sir/Madam

eBay International AG exclusive dealing notification N93365 – interested party consultation

Thank you for your 16 April 2008 invitation to *Abacus – Australian Mutuals* to make a submission on this notification. My apologies for not meeting your request to provide the submission by 2 May 2008.

Abacus – Australian Mutuals is the industry association for credit unions and mutual building societies.

Credit unions and building societies provide banking services to 4.6 million Australians and are Authorised Deposit-taking Institutions (ADIs) subject to the *Banking Act 1959* and Australian Financial Services Licensees subject to the *Corporations Act 2001* and the *Electronic Funds Transfer Code of Conduct*.

As member-owned ADIs, credit unions and mutual building societies seek to protect and promote the interests of their customers.

Credit unions and mutual building societies provide their members with access to the payments system through branches and agencies, EFTPOS and ATM networks, the Visa and MasterCard schemes, direct debits and credits, internet banking, BPAY and cheques and issue a range of payment cards including EFTPOS debit cards, scheme debit cards and credit cards.

Abacus supports and promotes competition and choice in financial services, including payment services. For more detail on Abacus and its members, see www.abacus.org.au.

eBay exclusive dealing proposal

Abacus opposes eBay's proposal to require eBay users to use its subsidiary PayPal on the following grounds:

- impact on consumer choice (buyers and sellers);
- impact on competition in payments services market;
- impact on consumer privacy

www.abacus.org.au

Consumer choice

eBay has approximately 5 million users and eBay's application to ACCC says "nearly all registered users of the eBay site may be affected" by the proposal. Annexure C to eBay's application estimates the total online shopper population in Australia to be just over 6 million.

eBay users will no longer be able to use:

- personal cheques and money orders;
- bank deposits, including internet transfers, other than through PayPal;
- credit and debit card payments, other than through PayPal; and
- online payment systems, other than PayPal.

The proposal is justified on grounds of improved trust, but Annexure C of eBay's application says trust

"is a perceived online shopping obstacle for very few consumers, with only 3 per cent listing this aspect of online purchasing as a perceived barrier – likely due to an ever increasing variety of options along with improved online security measures."

Consumers also have strong preferences about payment service features, and many do not like 'sign up process' . Annexure C says:

"'No sign up process' is an essential factor to around half of online consumers, with this fact hinting that payment processes which require a sign-up process (such as PayPal and BPAY) are at a distinct disadvantage for at least half of today's online shoppers."

The top two benefits that eBay provides to Australian consumers and businesses, as listed in Annexure E to eBay's application, are "consumer choice" and "price competition". However, eBay is seeking approval for a proposal would reduce consumer choice and reduce price competition in payment services.

Although Annexure A of eBay's application says it is not possible to form a definitive view of whether eBay possesses a substantial degree of market power, the fact eBay had decided to force users to use PayPal whether they like it or not is strong evidence that eBay has market power.

If there was a highly competitive market in the online marketplace sector, eBay would be unwilling to alienate a substantial proportion of its customer base by dictating where they obtain payment services.

Competition in payments services

eBay's proposal would unfairly advantage a particular payment service provider in an environment where the payments services market is dynamic and evolving and has been subject to a series of regulatory interventions to promote efficiency and competition.

A key element of the Reserve Bank's (RBA) payments system reforms has been the removal of restrictions on merchants that were, in the RBA's view, detrimental to efficiency and

competition. The RBA has used its powers to intervene to remove rules that prevented merchants from:

- recovering costs of specific payment products by surcharging;
- choosing which card products to accept; and
- steering customers to other forms of payment.

eBay's proposal defies the RBA's policy prescription of empowering merchants to promote payments system efficiency and competition.

Further development and evolution of the payments system to meet the needs of users is in prospect, with the RBA calling on industry to strengthen the EFTPOS system by developing alternative payment instruments for use in on-line payments.¹

eBay's proposal may have a negative impact on this prospect.

Separately from the RBA's proposals to industry, the Australian Payments Clearing Association (APCA) has issued a consultation document on the future of Australia's Low Value Payments Systems.

APCA members are:

"developing an industry-level view of future economic needs for low value payments and of the system evolution required if the industry is to meet those needs."²

eBay's proposal could discourage innovation in the market for low value payment systems.

Privacy implications

The parties involved in a transaction using eBay are:

- eBay;
 - buyer;
 - seller;
- payment services provider/s.

Under current practices, buyers and sellers do not have to share all details of a transaction with eBay. Under the exclusive dealing proposal, eBay will gain access to much more information via its subsidiary PayPal, including information about buyer, seller, price, financial institution account, and payment product or service.

Annexure A of eBay's application says that "as related bodies corporate, eBay and PayPal are in a unique position to share users' data, internal risk and dispute data, and to better monitor transactions problems in 'real time' at each point in the transaction process.."

The only choice left to online buyers and sellers unwilling to provide additional information to eBay is not to use eBay, the dominant online marketplace.

¹ *Reform of Australia's Payments System - Preliminary Conclusions of the 2007/08 Review* RBA, April 2008.

² *Low Value Payments: Challenges of Evolution* APCA, May 2008.

Conclusion

Buyers and sellers in the dominant online marketplace that is eBay should be free to choose the payment products and services that suit them best. PayPal should compete on its merits. Both PayPal and eBay are free to promote the benefits of PayPal, so let the buyers and sellers decide.

I can be contacted on 02 6232 6666 if you wish to discuss an aspect of this submission.

Yours sincerely,



LUKE LAWLER
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