

**SUBMISSION TO: THE AUSTRALIAN COMPETITION & CONSUMER
COMMISSION**
FROM: BRUCE M LINDSAY Esq, CONSUMER
**RE: NOTIFICATION OF EXCLUSIVE DEALING - EBAY
INTERNATIONAL AG REG 71, N93365**

Ladies and Gentlemen

This submission is made by me, an Australian private citizen, and member of eBay Australia since 2001.

Uncertain as I am about how the ACCC may or may not have powers to accept, refuse or modify the notification made in this instance by eBay International AG, I submit nevertheless that the intended action of eBay – to restrict the actions of buyers and sellers operating on www.ebay.com.au to one payment method, Paypal – is demonstrably acting in restraint of trade, would have severe detrimental impact on legitimate and trustworthy alternative payment schemes, and would impact negatively on the purchasing and selling options of those Australian consumers who either do not have, or choose not to have, an account with Paypal.

With respect to the Notification lodged by eBay AG, I have no wish to contest information that the facility provided by eBay AG to Australian citizens is highly profitable, and is therefore at least in part financially beneficial to the Australian nation. Even the NERA study forming a component of the Notification finds it impossible to quantify the likely positive or negative impact of the “Project” upon eBay Australia’s financial performance, or its attached likely impact on the Australian economy.

I hereby submit that

- 1 the “Project” will unreasonably exclude legitimate payment methods which I and others have used for lengthy periods of time with complete satisfaction;**

In Annexure A to its Notification, eBay AG states in 1.5 that

“At present, eBay permits buyers and sellers to complete transactions by using one of a number of payment methods, including;

- (1) cash on delivery/pick up, personal cheques or money orders;
- (2) bank deposit, including internet bank transfers;
- (3) credit or debit card payments; or
- (4) payment via an online payment system (such as Paypal) using direct debit from a bank account or an accepted credit or debit card, or in the case of Paypal, a balance in the buyer’s Paypal account if the buyer maintains one (similar systems include Paymate and BPAY. Escrow services are also currently available).

This list makes no mention of established cash transfer systems such a Giropost and Western Union, in the latter case a long-established payment scheme which eBay has

been at pains to demonise by attempting to ban members from its use. No reasons have ever been supplied for this attempted proscription, which I have however continued to use without difficulties of any kind.

This list also fails to recognise that there continue to be some parts of the world, and some buyers and sellers for whom the most convenient method of payment remains cash in a registered envelope. Once again I have used such method and have never once lost cash or item.

The entire submission pays little attention to the detriment which must have already occurred to Western Union, and which must inevitably occur to schemes like Paymate, should this "Project" be allowed to proceed.

My attempt to at one time mention Paymate as my preferred payment scheme on my eBay listings failed, when eBay cancelled all listings on the excuse that I had transgressed some obscure regulation limiting mention of payment schemes to one per listing – favouring Paypal.

I am not in a position to quantify the detrimental impact on forms of payment other than Paypal, and I draw to your attention that eBay's Notification makes no attempt to do so.

2 the "Project" would force buyers and sellers on eBay to buy and pay using only Paypal, which is a flawed system unworthy of monopoly status;

My own experience of Paypal is that it is an unreasonably dictatorial system which, on the pretence of enhanced security, is invasive, evasive and its security is a myth.

A It is invasive since it monitors computers from which transaction requests derive, and takes unilateral actions which are not necessarily in the users' best interests.

In my own case, I operated a Paypal account successfully for some time. When on holiday in England, I used Paypal to buy two books. The transaction went without a hitch, since there were (as there always had been) adequate funds to cover the transaction in my account. Upon my return to Australia, I was advised by Paypal that my account was suspended, and would remain so until I lodged attested copies of the face page of my passport, a form of photo ID, and a recent utility bill in my name. By eBay's own warnings, such supply exposed me to the risk of identity fraud, and I declined to do so until I was told why my account had been suspended.

On-line contact with Paypal yielded a succession of nonsensical computer-generated replies and advice, which merely repeated the invasive demand for extensive personal ID. Finally (and this was almost two years after losing the use of my Paypal account, during which time I found that alternative schemes worked just as well but without the angst) I contacted Paypal Australia direct, and received help from a Paypal employee. She told me that my account had been suspended because the Paypal system recognised that I had made a purchase from a computer and a country other than my own, and therefore Paypal's arcane regulations required that I once again go

through a security clearance such as I had completed upon opening my account. I would add that I had not altered by residential address, my email address or my eBay trading name, and advised Paypal as such.

She also reassured me that my ID documentation would be received by a secure fax number, and would be destroyed after verification. On that basis I faxed the required documentation to a Sydney fax number

Shortly thereafter I received an email message congratulating me on successfully establishing my identity (!), and instructing me to lodge details of the credit account which I wished to use for Paypal transactions. There was no time limit suggested in that message.

I proceeded to lodge promptly on-line the details of my Visa account, and was once again congratulated that I had restored my account. On attempting to use it however I found it was still suspended and therefore unusable.

I again contacted the lady who had been helpful, who spoke with her supervisor, and supplied a 1800 phone number on which she suggested I would be able to resolve the problem. I spoke with what sounded like an American male who did not identify himself, and with whom I spoke for some time. The outcome was that I had acted too quickly to lodge my credit card details, since Paypal's rules require that I go through an "enhanced verification" procedure, which involved Paypal making a small debit from my Visa account as a means of confirming my identity and my account – I was familiar with this procedure, having already been through it to establish my account.

To my astonishment, this person told me that the Visa card that I had used – as requested – to re-register as my payment account *could now not be used for "enhanced verification" purposes, and would I please obtain an alternative card.*

This I refused to do, and so despite the fact that I had at no times acted fraudulently, at no time had there been inadequate funds in my account to cover transactions, and that at no time had I knowingly broken any of Paypal's myriad rules and regulations, I am denied access to my Paypal account.

B It is evasive since in the huge majority of approaches to Paypal with respect to valid account queries, replies are computer-generated and fail to address other than what may be termed "standard" issues. My one approach to Paypal for compensation under their much-vaunted security protection scheme (when an item purchased using Paypal was never delivered) failed to elicit any meaningful much less helpful response, and no compensation.

C Suggestions that Paypal's security to buyers or sellers is superior to that offered by competing payment schemes is factually incorrect. May I repeat that, in my seven years of buying and (to a lesser degree) selling on eBay, I have employed

- Paymate (Australian on-line payment scheme, similar in function to Paypal, but far more user-friendly, and not laden with Paypal's plethora of rules and regulations);
- Western Union (long established US-based scheme for international money transfers);

- Bidpay (US-based on-line payment scheme, but again more user-friendly than Paypal);
- Personal cheques, Post Office money orders and cash in registered envelopes;
- Personal delivery and payment.

In *none* of these transactions – either buying or selling – has any alternative payment method failed to produce the desired item or the highest bid price.

While I accept the limitations you must place on any “evidence” produced from such sources, may I refer you to www.paypalsucks.com - which gives details of personal experiences of the ways in which Paypal has acted in other than the best interests of the consumer, and <http://www.news.com.au/technology/story/0,25642,23516566-5014108,00.html> , attached to which are a very large number of personal comments of those who have had less than ideal treatment from Paypal, and who object to the implementation of eBay’s “Project”.

It is from both these sources that information may be obtained detailing Paypal’s repeated failure to provide the “security” upon which it appears to base this Notification.

These sources also provide very many examples where efforts to recoup funds using Paypal’s much-advertised security facility have simply failed.

They also instance very many occasions when payment via Paypal has failed to recompense buyers where there has been (as described in Annexure A, item 5.2) fraudulent use of credit cards, non-receipt of purchased items, or the receipt of items other than those described.

3 The “Project” would disadvantage Australian consumers wishing to purchase items from, or sell items to, persons located in regions/countries where credit facilities are not used to the extent that they are in Australia;

My own experience tells me that, even in highly capitalised countries like Germany and France, buyers and sellers are frequently unable to complete a transaction by using credit facilities, and require payment by way of direct bank transfer or other means.

By restricting Australian buyers and sellers to use of Paypal, implementation of the “Project” means that Australian consumers are denied access to those buyers and sellers in such countries.

4 The “Project” would clearly act in contravention of Section 47 of the Trade Practices Act;

As previously detailed, alternative commercial funds transfer schemes such as Paymate, Bidpay, Western Union, Giropost and bank transfers would all be negatively impacted by being excluded from eBay transactions.

I repeat that I have used all such schemes with complete satisfaction.

5 And the “Project” would force 100% of Australian eBay consumers to abandon proven payment schemes, on an argument that fraudulent practices when using such alternative schemes are more likely to occur than by use of Paypal.

The attachment by eBay AG of the Nielsen Australian Online Retail Monitor Quarterly Edition for Quarter 4 of 2007 contains (Fig 3.5) a graph which quantifies “Negative Experiences with Online Shopping”. Please note that concerns about credit card fraud accounted for less than 5% of surveyed opinion, and identity theft even less.

Yet by implementation of the “Project”, eBay forces 100% of its stated 5-million customers in Australia to abandon other satisfactory schemes in favour of one which is demonstrably dysfunctional.

Figure 3.6 provides evidence that Paypal already accounts for a substantial percentage of transaction payments, but not appreciably more than schemes like Bpay and direct deposit – both schemes which will suffer – as will consumers’ convenience – should the Notification be allowed to succeed.

Figure 3.8 further confirms that, without access to Paypal, 64% of Australian consumers would use alternative payment schemes such as I have done.

As an Australian consumer who has both enjoyed and benefited from my eBay trading experiences, I implore the ACCC to very closely examine the impact upon consumers of the “Project” outlined in this Notification. My personal experiences of Paypal are that it functions as an unregulated bank rather than a funds transfer vehicle, and by its intrusiveness and its obscure and arcane regulations, it governs the customers’ behaviour in ways well beyond its rights as such a vehicle. I have detailed my own experience of Paypal’s non-user-friendliness, which is repeated by others of my close acquaintance. My experience of alternative payment schemes which will be denied to users of eBay Australia has been without a single hitch over seven years, but if this Notification is allowed to proceed I will be excluded from buying or selling on eBay for no valid reason other than that I have unknowingly breached a Paypal rule.

I thank you for this opportunity to lodge this submission, and I urge you to deny eBay AG the monopoly that they seek.

Yours faithfully

BRUCE M LINDSAY
1st May, 2008