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16 May 2008

Mr Darrell Channing
Adjudications Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

Via email: adjudications@accc.gov.au

Dear Mr Channing

Re: Ebay notification number N93365

Thank you for your invitation to the Consumers' Federation of Australia to participate in or provide submissions in relation to Ebay's Notification numbered N93365 relating to proposed exclusive dealing conduct relating to the Paypal product, owned by Ebay (the Notification).

About CFA

The Consumers' Federation of Australia (CFA) is a network of over 100 community based consumer organisations. CFA is managed by a volunteer Executive Committee sourced from member groups and does not employ any full-time staff. Since 1997, the CFA has not received any Federal Government funding.

The Notification is of interest to a number of our member groups and to the CFA. In the past, CFA has been in a position to make submissions on a range of issues relevant to consumers. However, despite the clear need for a consumer voice to be heard on important issues like this one, our lack of resources means that CFA does not have the capacity to make more than a brief submission.

Issues for consideration

As noted above we are only in a position to provide brief comments in relation to the Notification. As such we will confine our comments to those areas where we have particular concerns.

Competition Issues

- Ebay has on our understanding, a significant share of the on-line auction space. In this context we are concerned that the notified conduct will have the effect of:
 - Inhibiting the use of other payment products on the Ebay channel; and
 - Either significantly reducing competition in payment methods in relation to other online auctions (as consumers increasingly demand the availability of the channel they must use through the Ebay site) or increase transaction costs for consumers participating in on line auction purchases (Requiring them to utilise a range of payment methods, with the attendant costs, fees and charges, when they may prefer to use a single method that is not Paypal). We note the former effect is specifically acknowledged by Ebay in its Notification (albeit expressed as a benefit – see para 5.10)

Many of the consumer benefits claimed by Ebay as offsetting the competitive detriment caused by the conduct appear to the CFA to be the sorts of features and benefits that ought to attract consumers to the Paypal product through the natural course of competition. That is, there does not seem to be a justification for allowing the notified conduct in order to deliver the stated benefits.

Ebay's Notification cites (at para 5.12) that the growth of the Ebay site acts a competitive restraint on more traditional offline retailers. It cites a report by the Allen Consulting Group that found that on average products sold on eBay are 25.2% cheaper than products purchased from off line retailers. Whilst we do not take issue with the finding per se, we note that in certain product classes, such as tickets for example, eBay prices are generally significantly above those available in the off line environment.

Consumer Protection Issues

We are aware anecdotally that consumers have in the past expressed significant concerns regarding the Paypal product. We note for example the existence of at least two websites (www.paypalsucks.com and www.paypalwarning.com) detailing consumer concerns with the Paypal product. Whilst it is not clear that all of the information on the sites is current, these sites have been received postings as recently as today, 16 May 2008 respectively.

- The key thrust of consumer concerns appears to relate to Paypal's security measures and the manner in which they link with complaint systems. In particular, consumers report their funds being frozen, with no explanation provided and no ability have their complaint dealt with other than through an email channel. Consumer also report significant delays in complaints handling.
- These concerns are particularly serious given Ebay's claim that the enhancement of security features will be to the benefit of consumers.
- Consumer ought to have the choice to utilise a payment channel that enables them access to established complaint systems; systems that enable them to make a complaint by other methods than email and systems which are subject to recognised benchmarks – such as the Banking and Financial Services Ombudsman.

We consider that the above issues are worthy of further investigation by the Commission in the context of the notified conduct. Please do not hesitate to contact the writer on (03) 9670 5088 if you wish to discuss this matter further.

Yours sincerely,

Catriona Lowe
Chair
Consumers' Federation of Australia