

Roy, Lauren

Subject: eBay International AG exclusive dealing notification N93365,- interested party consultation [SEC=UNCLASSIFIED]
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ACCC Classification: SEC=UNCLASSIFIED

From: P J Merry [REDACTED] EXCLUDED FROM PUBLIC REGISTER
Sent: Friday, 2 May 2008 10:44 AM
To: Adjudication
Subject: eBay International AG exclusive dealing notification N93365,- interested party consultation

Dear Sir/Madam,

I request that the ACCC immediately withdraw the Exclusive Dealing Notification N93365 for Ebay in regard to the proposed "Third Line Forcing" of only Australian members to use the Paypal method of payment for goods & services transacted via Ebay sites under the guise of safer online trading.

As Ebay clear states in the Exclusive Dealing Notification N93365, the section **FACTUAL BACKGROUND, 1.3 (2)** that the Transaction is only agreed to on Ebay but is conducted between trading parties independent of Ebay. By implementing these policy changes **Ebay is inducing and coercing buyers and sellers into performing illegal acts namely in that buyers & sellers (being separate entities and therefore are not be covered by the immunity that the above mention notification affords Ebay) would be the entities breaching the Trade Practices Act by the Third Line Forcing of any items traded via Ebay.**

The proposed changes mean that my freedom to mutually arranged payment with any buyers or sellers is removed forcing me to pay more fees to Paypal on most transactions.

The effect of the proposed changes for my wife could well be the loss of her job in that the major portion of her employment duties is Ebay trading for her employer and because Paypal is not an Australian Financial Institution the audit trail of transactions is not acceptable as required for their business accounting purposes.

I do have a Paypal account and do not object to using it with Ebay transactions when agreed to mutually with the other party eg for overseas payments although I will not automatically offer it for all transactions. As reputable Ebay members (99.9%+ feedback) we would also welcome genuine safer online trading but Ebay has failed to demonstrate, both in past history or with what is proposed that this will eliminate fraudulent and unconscionable activity.

These proposed changes are restrictive in that the majority of Ebay transaction currently performed by both my wife (her work) & I are via Direct Bank Deposit (mostly internet banking). This means between 1 to 4 days and the payment is available in our bank accounts but with Paypal it could be up to 21 days plus the 2 – 3 days for Paypal to deposit it into our Australian bank accounts. In the case of my wife's employer this is unacceptable cash flow therefore adversely affecting their business.

If the ACCC permits Ebay immunity from prosecution in this proposed exclusive dealing it is permitting discrimination of Australian Ebay members in that at the moment we would be the only nation subjected to this anti competitive policy and action. It is quite likely that the EU would not allow this kind of exclusive dealing therefore the ACCC should send a strong signal that Australia will not accept this form of Multi National corporate bullying.

In arguing that using a single online payment method is safe and reliable runs counter to reports over the last few days that Paypal account holders who use Telstra Bigbond as their service provider have been locked from accessing their Paypal accounts. With IT system being susceptible to outages by either natural or malicious events having a number of alternative payment methods is obviously advantageous to both Ebay members and Ebay itself in that transaction could continue. In making Paypal the monopoly payment system will only serve to draw higher malicious and criminal acts against them eventually causing the system to be compromised and wiping out the safe & secure claimed benefits. We must accept that no one can 100% guarantee any systems will not be compromised and that diversity in these situations is in fact the preferable way to mitigate potential problems.

7/05/2008

Much of the claimed "bad buyer or seller experiences" relates to the fact Ebay has and is still failing to take responsibility itself, in that it is elusive to be contacted when problems arise and generally very poor in customer service. So failure to serve its customers should not be an excuse for immunity to carry on anti competitive conduct to maximize their profits.

Also the "Making Ebay even Safer" project is about price gouging not only forcing members to pay more fees for the supposed safety of Paypal especially if paid for with a Credit card. According to the "**User Agreement for PayPal Service**" Section 4.2.4 **Limitations on the Seller Protection Policy**. The Seller Protection Policy will not apply to a transaction if any of the following apply:

- a. You combine items purchased through separate eBay transactions into a single shipment,
- b. You accept more than one payment for a single eBay transaction

So Buyers will not be able to save money by combining postage on multiple purchases from the seller, if the seller is to be eligible for the proposed "Seller Protection Policy" So if a buyer bought 4 items from the same seller the seller would have Paypal cost of \$0.30 x 4 (\$1.20) in flag fall per transaction + the % fee (including P&H costs) on transaction value whereas with combined it would be \$0.30 x 1 (\$0.30) in flag fall per transaction + the % fee (including P&H costs). If a buyer fails to pay the correct amount the first time and has to send a makeup payment for P&H or insurance the seller will loose his "Seller Protection" so another disincentive for sellers.

Below are several areas from the Exclusive Dealing Notification N93365 that I request the ACCC to get more clarification on.

FACTUAL BACKGROUND

- .27 eBay will also soon implement a "holds" policy whereby, **when eBay considers that a transaction on eBay is high risk for the buyer**, it will notify PayPal that it should hold the payment for the transaction. **PayPal will then exercise its discretion as to whether to hold the funds** and wait until if either receives confirmation from the buyer that he or she has received the item and has no cause to raise a dispute, or 21 days have passed without the buyer having raised a dispute.

Question: How are the issues (text in bold) determined?

PUBLIC BENEFITS

- .9 eBay submits that its data indicates that the use of PayPal for the making of payments on eBay significantly reduces the probability of either buyer or seller disputes arising. **Individuals who would otherwise choose to transact on eBay using a less secure payment method than PayPal (such as direct deposit by means of internet banking)** directly benefit from the mandated use of PayPal through a reduction in the risk of being involved in a dispute, regardless of the additional benefit of buyer protection. In eBay's experience, the avoidance of such risks is a choice buyers or sellers may not otherwise make through poor understanding of the risks involved.

Question: How does Ebay/ Paypal arrive at the conclusion that Direct deposits are less secure than Paypal transaction?

Regards
Peter Merry
Contact details excluded

EXCLUDED
PUBLIC REGISTER