

We thank you for your time in considering our submission against Ebay's application (N93365).

We would first like to draw your attention to Ebay's arrogance by first making this announcement <http://www2.ebay.com/aw/au/200804.shtml#2008-04-10105658> to the Ebay community well and truly before submitting their section 93 application to your esteemed selves, and the misleading representations they have made.

Why is eBay making changes?

Ebay states: *These changes are part of our ongoing commitment to protect our members. We believe buyers will be more confident shopping on eBay if only the safest payment methods are permitted.*

Fact is: Buyers currently have a choice to deal with sellers that ONLY offer PayPal if PayPal was the safest method & that were true. If they prefer to use bank deposit/money order what makes Ebay believe that they are incapable of making Adult decisions. If WE don't feel comfortable in dealing with someone WE would not be depositing cash let alone sending PayPal funds.

Ebay states: *in 2007 on eBay.com.au those who paid with PayPal were much less likely to enter a dispute. In fact those using PayPal were almost four times less likely to have a dispute over their purchase than people who paid with bank deposit. Plus, PayPal sellers were almost half as likely to experience an unpaid item as sellers who did not accept PayPal.*

Fact is: This is a commercial decision that a seller needs to make, it makes no difference to a buyer. Sellers need to weigh up their own pros & cons in this area. How could this claim be possible though? A dispute is a dispute irrespective of payment method and the fact that there were 4 times as many disputes by other methods indicates that Ebay has counted disputes lodged by sellers for non payment by buyers (in which case PayPal is not counted as a proposed method of payment-how can it be?). Ebay have made convenient claims here that are just not fathomable in the clear light of day. It can also indicate that other chosen methods of payment clearly outweigh PayPal.

Ebay states: *The data clearly shows that PayPal is a safer way to buy and a more reliable way to sell on eBay.com.au.*

Fact is: The data shows that by Ebay implementing this, the company they own, PayPal, is going to experience significant revenue growth without direct & distinct benefit to buyers or sellers (it is actually to their detriment).

Ebay states: *Buyers and sellers don't have to share their financial details when using PayPal, which is one of the biggest fears consumers have when transacting online. PayPal eliminates this concern, making it one of the most secure ways to transact online. In fact PayPal topped the list of preferred online payment methods according to the Nielsen Consumer Report 2H 2007.*

Fact is: Both buyers & sellers have to provide financial details to PayPal. WE have never had a buyer send me financial details unless it was for a refund.

Furthermore hijacking of PayPal accounts is common place whereas hijacking of bank accounts is remote. <http://www.finextra.com/fullstory.asp?id=15666>

Nielsen Consumer Report does not state this , It was a global report & Visa topped with 60% with only 1% separating PayPal & bank deposit see page 5 of the report

<http://www2.acnielsen.com/reports/documents/GlobalOnlineShoppingReportFeb08.pdf>

PayPal's figures are also only bolstered by the fact that PayPal is the only online payment method Ebay has allowed to be integrated with the site.

Ebay states: *By addressing the main causes of disputes on eBay.com.au we will see a lift in consumer confidence. This will help strengthen the eBay community ultimately benefiting buyers and sellers, as well as eBay.*

Fact is: Payment methods are NOT the main causes of disputes, therefore no change to the status quo as disputes will occur regardless of method of payment. The only beneficiary of this will be eBay through their company PayPal.

Ebay states: *We realise that these changes are going to impact how you transact on eBay.com.au and we trust they will achieve the desired result of protecting our members and providing an even safer place to buy and sell online.*

Fact is: The decisions merely disenchant an existing base of buyers & sellers and will impact the number of buyers and sellers able to use the site. There is no clear cut evidence that the site is going to be safer however, there is significant evidence that Ebay Inc would obtain a significant windfall and simultaneously monopolise payments on the site.

In a Bloomberg report it was stated *EBay is getting more growth from overseas auctions and PayPal electronic payments, both of which have outpaced gains from U.S. auctions.* The Australian site has been in decline for the past 2 years so this plan is blatantly to bolster revenues , satisfy shareholders, and provide a vehicle for tweaking revenues in future with higher fees/charges that PayPal may implement without any other options for sellers on Ebay to turn to.

WE bring to the committee's attention to The Australian Guidelines for Electronic Commerce, released by The Treasury Department of the Australian Government; it essentially mirrors parts of the Trade Practices ACT.

<http://www.treasury.gov.au/contentitem.asp?NavId=014&ContentID=1083>

Of particular relevance, in light of Ebay Australia's recent announcement are the following:

15.1 not engage in conduct that is misleading or deceptive or is likely to mislead or deceive;

15.3 not harass or coerce consumers either when seeking to sell goods and services or when seeking to obtain payment

15.4 not engage in unconscionable conduct, including ensuring that contractual terms are reasonably necessary to protect the supplier's legitimate interests;

We are of the strong belief that Ebay Australia has failed in these particular areas by trying to make PayPal the exclusive payment option on the site.

We now turn to Ebay's submissions to the government in 2000 which the government took into consideration when formulating this guideline.

http://www.ecommerce.treasury.gov.au/bpmreview/content/_download/submissions/eBay.rtf

In that submission Ebay specifically made the following statements:

Although **payment is strictly a matter between buyers and sellers**, eBay provides a number of safe and easy-to-use payment programs for the benefit of its members.

Most buyers and sellers are honest and reliable, and **often the cause of a dispute is a simple misunderstanding or lack of communication.**

We are certain that greater devotion of **public funds to consumer awareness would be of significant benefit in educating consumers on how to trade safely**, thereby facilitating increased confidence and growth in the e-commerce sector.

These submissions are essentially contrary to Ebay's rationale & statements pertaining to the proposed changes of payment policy.

We make the following observations:

Ebay had made it clear the decision of payment is between the two direct parties even though Ebay could have suggested site control of payments.

Nowhere in Ebay's submission did it recommend exclusive use of a system such as PayPal.

Ebay stated that disputes are as a result of misunderstandings rather than a deliberate fraud which is contrary to the spin they imply in their recent announcement.

Security & safe trading online is definitely an important issue, However, If Ebay was so concerned about this aspect, why hasn't this approach been made on an international scale? Considering US transactions would be that much greater than that of Australia, at a guess 25 fold, surely it is more prudent to make the US site the propagator of this policy rather than the follower (if indeed they are to follow). We can only assume that US users would not stand for it and the Ebay Australia management has such arrogance and lack of regard towards Australians that they a) believed the matter would just slip through or they have such low regard to us as adults that b) we require their intervention to protect us from ourselves.

Ebay unequivocally states "our Site merely acts as an online venue to allow members to communicate and offer, sell, and buy just about anything, at anytime, from anywhere" in their user agreement. Surely by trying to enforce a single payment system that some sellers do not wish to extend and some buyers do not wish to use, Ebay is acting as more than just an online venue.

In an interview by "Australian IT" as recently as February 2008

<http://www.australianit.news.com.au/story/0,24897,23194803-5013037,00.html>

*Daniel Feiler, eBay Australia-New Zealand spokesman, says the number of fraud cases that result in charges being laid are only "a fraction of a percentage" of the millions of transactions eBay facilitates globally every day. **"It's a real rarity.** If it were more common, we wouldn't have 5 million members in Australia," he says.*

Whilst further going on to state : In Australia, eBay previously provided protection for bank deposit, money order and credit card transactions, but it dropped this support once the PayPal service became available locally.

"That involves protecting payment methods that are less safe than PayPal, and eBay wasn't able to really make an assessment of what was going on with those payment methods," Feiler says.

Yet! Ebay has not only commented, in less than 2 months, that they were able to ascertain that bank deposits/money orders were less secure and the cause of more disputes by buyers but also implied that use of PayPal would lessen a buyer's likelihood of dispute.

The truth of the matter comes further from Feiler when he states *"Why would we want to cover less secure payment methods?"*. Yes! That is right, Ebay is really looking after Ebay and not the interest of its' users.

Yes, WE agree that PayPal seems somewhat more secure for buyers but purely against sellers that intend to defraud (an extremely small % of transactions overall) and solely on a point by point conditional basis. However, use of PayPal is no more secure than bank deposit for reputable sellers such as ourself and literally hundreds/thousands of others on the site. PayPal is no more secure to the astute buyer that wants to pay by bank deposit or money order as they know how to deal with trusted sellers.

The issue of security only comes when inexperienced buyers deal with unscrupulous sellers (and to a lesser extent unscrupulous buyers dealing with well to do sellers) which for all intents and purposes is an extremely small proportion of all trades on Ebay.

Surely there is a common ground that Ebay could/should have considered rather than putting misleading & deceptive commentary on an important situation to hide the self serving agenda Ebay has in its' proposed change.

If Ebay is serious about improving security on the site, Ebay would undertake the process of user verification. They currently have mechanisms in place for telephone verification (which is automated) and it is just a matter of applying it to all Ebay accounts and restricting activity until a user verifies themselves. Furthermore, Ebay can implement further requirements to sell on the site which require more security checks.

How hard is it to implement a PayPal only policy for all new sellers? Not hard, it has already been semi-implemented. Then how hard is it to put criteria which then allow a seller to provide methods such as bank deposit & money order? 1 year of trading with a minimum of 200 sales? How hard is it to implement a seller verification program which entails a 100 point ID check?

The MD of Ebay Australia even made comment pertaining to these 6 years ago, more than ample time to implement.

simon.smith@ebay.com View Listings | Report 15-10-02 19:37 EST 138 of 167

"Are there any plans to strengthen the seller verification requirements?" Yes! Many of the other eBay sites have this but the solution is very specific to each country. We want to launch with something that is very good here and it is a high priority for us. High priority? WE don't think so.

Ebay USA has verification so what stops Australia? <http://pages.ebay.com/help/confidence/identity-idverify.html>

These are the real and true security measures, which WE might say, no scammer or fraudster will have the patience or inclination to go through (unlike using a stolen credit card to setup an Ebay and PayPal account in a matter of minutes). Not the deception in the guise of “safety & security” Ebay choose to use to mislead everyone over the real agenda in their announcement.

Inaccuracies of Ebay’s N93365 submission

In 1.18, the claim that PayPal oversees the entire transaction is false. If a seller does not receive payment for an Ebay purchase, the complaint process is handled online through Ebay, without PayPal’s involvement and technically without Ebay’s involvement as the process is automated.

1.31 It is a conceited attitude whereby Ebay and PayPal believe that our Judicial system in particular Dept. Of Fair Trading & ACCC are inept at protecting consumers and only they can.

2.2 There is no disclosure of a buyer’s bank details to the seller at any stage when a buyer uses bank deposit (unless it was to refund money to the buyer’s bank account). If Ebay wants to eliminate disclosure of credit card details, that is more specific and should not reflect on the bank deposit process.

2.5C The only accepted method is PayPal so why are they making it try and sound like there will be a choice?

According to the Nielsen survey submitted by Ebay, page 5 shows that there are 9 million internet users & 6 million online shoppers. In section Ebay/PayPal claim to have 5 million registered Australian users. Taking this figure to be factual, it represents 55% of all users or 80% of online shoppers. Taking this into consideration, there should be minimal issue over two willing parties agreeing with PayPal as a payment method. So the proposal essentially has minimal impact on those parties however will restrict other parties that are not willing to extend the option as well as consumers that do not wish to use that option.

The PayPal protection policy is so full of clauses and sub clauses that the average user would not be aware of and further provides PayPal with so many loopholes to distance themselves from the protection that they espouse. The increase to \$20K will only provide for a false sense of security for the average user who will assume protection means protection and in the unlikely event that they have not followed the complex maze PayPal has created, they will not be protected.

Page 18 of the Nielsen report outlines barriers to online shopping and it unequivocally states that only 3% of the consumers saw online payment methods as a barrier and further went on to state that it was due to the increasing of payment options rather than the decreasing that Ebay/PayPal proposes

Page 20 of the Nielsen report highlights that only 22% of the consumers were in agreement to feeling safe about providing credit card information online. This is a fundamental requirement of buyers & sellers wanting to use PayPal.

In July 2006, Ebay announced banning of Google checkout service shortly after its' launch. eBay's Safe Payments policy at the time stated that a payment service must have a "substantial historical track record of providing safe and reliable financial and/or banking related services.". At the time they used the underlined as an excuse to prevent entry of a competitor to PayPal and now are using smoke & mirror tactics to eliminate PayPal's main competitor (direct bank deposit). By eliminating all alternative forms of online payment, Ebay effectively and potentially will allow PayPal to charge at will for their services. By maintaining bank deposit, it ensures that PayPal remains within the realms of competitive costing for sellers to continue extending it as they can choose not to do so & only extend bank deposit if PayPal becomes too costly.

We take this point to reference a company called Billpoint, which Ebay acquired prior to their PayPal acquisition. Reports state that Ebay attempted to try and make Billpoint the exclusive payment method for the site. However, this strategy was short lived due to seller backlash and the alleged threat by a PayPal's then management to file an antitrust lawsuit against eBay for engaging in an illegal bundling strategy.

Recently a federal district court in San Jose, CA, refused to dismiss an antitrust class action complaint against eBay See In re Ebay Seller Antitrust Litigation, No. 07-1882 N.D. Cal., No. C 07-01882 JF (RS) (2008).

<http://www.antitrustlawblog.com/article-antitrust-class-action-monopolization-claims-against-ebay-will-proceed-tying-arrangement-claims-dismissed.html>

Some notable announcements made by Ebay that continue to exist in their announcement archives

*****Updated: PayPal Seller Protection now available *****

27 March 2008 | 05:14PM EST

PayPal announced in February (see the original announcement below) that Seller Protection* would soon be available for all sellers transacting on eBay with an Australian PayPal account.

We are pleased to advise today that PayPal Seller Protection is now available!

*****PayPal Australia launches*****

20 January 2005 | 01:26PM EST

We are very pleased to announce that PayPal Australia has launched its local website (www.PayPal.com.au) and service designed exclusively for users in Australia.

The launch of PayPal.com.au along with its integration onto eBay.com.au has been requested by the Community and we are excited to be able to provide this service to you.

The new PayPal website will allow Australian online buyers and sellers to securely, quickly and easily send and receive payments to nearly 64 million PayPal member accounts around the world. It will also be even easier for Australian eBay members to use PayPal when buying and selling on the local site.

PayPal introduced Australian dollar payments earlier this month and the launch of a PayPal Australia website, along with the integration of PayPal on to the eBay Australia website (www.ebay.com.au) over

the next few days, will make it even easier for Australian eBay members to use PayPal when buying or selling.

******* Direct Debit – a new payment option for sellers*******

14/02/2003 | 12:54:25 AEDST

Direct Debit is the easiest and most convenient way to make payment on your eBay account

******* Introduction of Bank Deposit details in Checkout (Bank Deposit Express)*******

05/12/2002 | 17:30:00 AEDST

Buyers, look out for seller bank account information in Checkout. Bank deposit is a quick and inexpensive way to pay for items – you can transfer funds to the seller's bank account via online banking or deposit money via a bank branch.

******* eBay Welcomes PayPal *******

08/10/2002 | 09:19:32 AEST

We are very happy to announce that eBay's acquisition of PayPal is complete. We are now working together with a common goal: to help buyers and sellers trade online.

A great many eBay buyers and sellers use PayPal to complete their transactions, and have told us that they would like to have PayPal integrated into the eBay site. Within the next few weeks, that will begin to happen on the U.S. site. In the first phase of integration you will see PayPal featured on the Sell Your Item and View Item pages on the U.S. site. Further integration will happen over the coming months. eBay Payments by Billpoint will be available in the first few months of 2003. At that time we will work closely with Billpoint users to ensure a smooth transition during the phase-out process.

It is too early to say when changes may take place on eBay Australia. We will provide more detailed information about our plans in the months ahead, and will announce any changes on the Announcement Board. Our goal is to make trading on eBay faster, safer and more convenient for buyers and sellers alike.

Stay tuned for more details about these changes over the next few weeks.

We are pleased to be able to make PayPal simpler to use on eBay as so many of you have requested. We hope these changes will help you become even more successful in the future.

Regards,
Meg

Meg Whitman
CEO

******* New Paymate Express Service *******

07/08/2002 | 17:22:16 AEST

As an eBay recommended payment service, we are pleased to announce the launch of Paymate Express. With this new service buyers do not need to register with Paymate to pay their seller via Paymate. Instead, sellers can choose to put the new Paymate Express logos in their eBay listing and buyers can simply click on the logo to be taken to the new Paymate Express Form to make an immediate payment.

Paymate Express is faster, simpler and secure and designed to be appealing to overseas buyers. Learn how to change the logos in your listings to Paymate Express. As always, Paymate processes all transactions in Australian Dollars so you do not lose on exchange rate conversions and money is deposited into the seller's Australian bank account.

From this series of announcements, the ACCC should consider the following:

1. Ebay's attitude towards other forms of payment prior to Ebay's acquisition of PayPal. There is no question regarding Ebay's consideration that Paymate was secure. For 5 years (post PayPal acquisition) other forms of payment such as direct deposit were not only seen as acceptable but were applauded as *the easiest and most convenient way to make payment on your eBay account*.
2. At no stage has Ebay indicated that the likes of direct deposit, money order, Paymate are unsafe or detrimental to a transaction between buyers and sellers until they eluded to these facts to supposedly strengthen their case over third line forcing.
3. It took Ebay 3 years to launch PayPal in Australia and, again, at no stage did Ebay attempt to encourage buyers & sellers to utilize this service over and above the other methods as a more secure service but an "easier one". It was not until Ebay found a slow acceptance of PayPal by Australians that they launched a propaganda campaign trying to deceive Australians that tried and tested payment methods such as bank deposit were unsafe in comparison.
4. A further 3 years passed before Ebay were even willing to extend any form of protection to Australian sellers. That's right! Whilst US & UK sellers enjoyed seller protection, Australian sellers were left as second class citizens, unprotected and left to their own devices. WE should add that this protection only came in a fortnight before their announcement and section 93 application.

Accepted Payments Policy (From ebay.com)

eBay wants to help ensure that the marketplace offers buyers safer online payment choices. As described in our safe buying guide, eBay strongly encourages sellers to offer payments through PayPal. PayPal is a secure and easier way to pay.

From time to time, as new payment services arise, eBay will evaluate them to determine whether they are appropriate for the marketplace. Payment services that are not permitted on eBay may, in fact, be outstanding services for consumers in other contexts. eBay's evaluation relates only to whether a particular service is appropriate for the eBay marketplace. eBay will consider the following factors, among others, in making its determination:

- Whether the payment model offers substantial financial, privacy and anti-fraud protection for buyers and sellers
- Whether the payment model raises the potential for confusion among eBay users, or involves incentives that may present fraud concerns
- Whether the payment model involves precious metals, or other non-cash (points, miles, minutes, coupons, discounts) as consideration
- Whether the payment service has a substantial historical track record of providing safe and reliable financial and/or banking related services (new services without such a track record generally cannot be promoted on eBay)
- The identity, background and other business interests of the payment service sponsor

- The license/regulatory status of the payment provider in the countries where it provides payment services

Offline payment methods generally do not offer the same level of protection or convenience as online payments. Nonetheless, they may be appropriate for certain types of transactions and sellers may use listings to offer acceptance of most valid financial instruments, including personal cheques, bank cheques, money orders or COD.

Why does eBay have this policy?

Safety and convenience are at the core of eBay's policies toward payments. This policy is designed to promote safe online shopping, and to encourage online payment methods that are safe, easy to use, reliable, and offer high levels of protection for users.

The above statement simplifies and summarises that use of Banks and Paymate are Accepted methods of payments by eBay's own evaluation criteria so there should be no valid reason not to continue allowing them.

Summary of facts presented:

Ebay has clearly been misleading and deceptive in their conduct not only to its' members but in their application to the ACCC.

The facts present themselves that Ebay's underlying agenda is not to make a more safe & secure trading environment for its' members, this is merely an unfounded and unproven attempt at justifying to Ebay users and the ACCC and to hide the true agenda of deriving revenue growth through third line forcing.

Ebay's submissions are not entirely accurate nor entirely factual as can be seen by the numerous points raised above.

Ebay had no problem in denouncing PayPal (prior to their acquisition) in favour of Billpoint & Paymate.

Ebay has failed to prove that a buyer depositing directly into a seller's bank account is any less safe than that of using PayPal. In fact, the likelihood of a bank account being hijacked or manipulated is significantly less than that of a PayPal account

Ebay has continually protected its' own interests by creating false barriers to entry of payment systems such as Google checkout and integration of other payment methods.

If Ebay's primary concern was for safety & security rather than pure revenue, Ebay could have made this application long ago and alternatively could have implemented several factors that do not require exclusion of payment methods such as bank deposit and money order.

If the ACCC allows the notification to stand, the detriment will far outweigh the benefit.

The facts have been presented to highlight there is no benefit (apart from revenue for themselves) in Ebay being allowed to succeed with third line forcing. The status quo is that buyers that choose to only pay by PayPal can deal with sellers that wish to extend it. Sellers that extend PayPal & bank deposit are already giving choice to their buyers and those sellers that do not wish to extend PayPal are not forcing

any buyer to buy from them – the buyer can choose to pay by the seller’s accepted method or to find another seller that will extend them a payment method they wish to use.

As vendors of IT products, we probably know better than Ebay what it is like to deal with consumers of technology. The fact is that most people over the age of 45 continually raise personal barriers to accepting change and simplification through technology (fear, understanding etc). Forcing PayPal onto this demographic, Ebay are going to create barriers for using the site and denying them opportunity.

We ask the ACCC to consider the 80 year old Great Grandmother sitting in front of a PC with her 8 yo Great Grandson trying to buy a game for him (he is navigating as she is a technophobe) and having to contend with the PayPal concept as opposed to sending a money order or putting money into someone’s bank account. The status quo means this lady can get a seller’s details and make payment by methods she is not only familiar with but comfortable & knowledgeable in using. However, introduce PayPal only and Ebay effectively forces this lady to go and pay retail and Ebay has presented a report to highlight the financial detriment this lady faces in doing so.

For 7 years, we have been offering IT products on Ebay and up until 1 year ago, we offered exclusively bank deposit & money order as payment methods so we had 0% paying PayPal. In the last 12 months we have also extended PayPal, predominantly to capture export business. 40% of our Ebay sales have been paid via PayPal.

When we have conducted a survey of those buyers as to why they chose PayPal, they simply referred to it’s ease for them based on their circumstances and not a single surveyed buyer mentioned safety or security in dealing with us. We have also conducted surveys as to why buyers did not choose PayPal and the overwhelming response was fear of disclosing their financial details to PayPal themselves with the next closest responses revolving around lack of knowledge/confidence in using PayPal. Our detriment is going to be 30% of our Ebay sales (Assuming half of the 60% that pay by methods other than PayPal) will abandon us due to inability to deal with us and not because of a choice we make in our business but one that Ebay wants to make. This will lead to higher prices from us to compensate for lost revenue and increased costs. We ask the ACCC how this decision would be to our or any of our buyers’ benefit if it is allowed?

In closing, we ask the ACCC to look into the future and the impact of allowing Ebay to proceed with their plan. What would stop PayPal increasing their fees & charges to 5% , to 10% etc? What would stop PayPal also forcing buyers to pay fees & charges? The answer is nothing as your choice to sell on Ebay will be to get paid by PayPal & your choice to buy on Ebay will be to pay by PayPal. The only thing to stop this from occurring is to ensure payment options such as bank deposit remain available for all members.

We ask the ACCC to not only reject the section 93 application but to take the time to review Ebay’s actions under Sections 52 , 53 & 55A.

The rest of the world is looking on with interest. The ACCC should ensure that Australian legislation is not something that a global conglomerate can try and thumb their noses at and simultaneously protect the rights to choices in legal and mutually accepted transaction methods .

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