

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601
adjudication@acc.gov.au

Dear Sir or Madam,

I am writing this submission in opposition to eBay's proposed change that forces its users use a subsidiary of eBay (PayPal) for all payments between eBay's Clients (the sellers) and their clients (the buyers)

We run a direct competitor to eBay, BidMate Australian Online Auctions (www.BidMate.com.au)

We oppose eBay's application for the following reasons.

1. Insufficient Security and user Protection.

PayPal may not be as secure as its competitors and does not offer compensation for ID theft issues.

eBay asserts that the eBay/PayPal combination is the only safe method of doing online purchases however this is an assertion only and since PayPal is not an Australian bank it is not governed by the Acts that govern the Banks.

All major Australian banks currently offer advanced security and guarantee that if you take reasonable action to secure your account, that they will reimburse any funds inappropriately removed from your account by ID thieves or other means. PayPal does not offer this feature and is extremely prone to attempted ID theft through Phishing letters. If an ID thief accesses your PayPal account without your permission and removes money, PayPal will not reimburse you.

Please attached files for copies of sample Phishing letters and see the text below. There are tens of thousands of these sent to PayPal users daily.

Fake (Phishing) PayPal letter below

Dear **PayPal** ® customer,

We recently reviewed your account, and we suspect an unauthorized transaction on your account.

Protecting your account is our primary concern. As a preventive measure we have temporary **limited** your access to sensitive information.

Paypal features. To ensure that your account is not compromised, simply hit "**Resolution Center**" to confirm your identity as member of Paypal.

- Login to your Paypal with your Paypal username and password.
- Confirm your identity as a card member of Paypal.
- Please confirm account information by clicking here Resolution Center and complete the "Steps to Remove Limitations."

*Please do not reply to this message. Mail sent to this address cannot be answered.

Copyright © 1999-2008 PayPal. All rights reserved.

Fake (Phishing) PayPal letter above

PayMate, PayPal's direct competitor in Australia has a slight functional difference that prevents funds being removed from your account. PayMate does not hold your money. It transfers funds received immediately to your account the moment it is cleared. Thus there are never substantial funds to be stolen.

We implore the Commission examine fully the so called "PayPal Buyer Protection" as the conditions of qualification and extent of coverage make it inferior to anything the banks offer.

2. Legality

By forcing users to use their own "in house" payment system EBay maybe breaching a number of Australian laws that protect consumers and vendors.

- a. **Third Line forcing** – it is clear EBay is aware of this as they have applied for an exemption to this Act. The changes soon to be instigated by EBay eliminate all competitors in the area of online payments. This is contemptuous as EBay maintains it is only a venue and that items sold on its site are a matter for the Seller (EBay's Client) and the Buyer (The sellers Client); it's even stated in EVERY AUCTION by EBay, "Seller assumes all responsibility for listing this item" The changes if instigated will control the way and means of the transactions.
- b. **Anti Competition** – By seeking a rubber stamp from Australian Authorities EBay seeks to imply Government backing for its assertion that the PayPal/EBay combination is the only safe way to transact online. This severely affects our business www.Bidmate.com.au, BidMate Online Auctions, as we are one of EBay's competitors. We assert in fact that EBay/PayPal combination is not safer than transacting on our website.

- c. **Recourse under Australian Law** – Under current conditions if a Seller (EBay’s client) and Buyer (seller’s client) make a transaction using an Australian payment method and there are issues for either party, there is recourse under Australian Law such as the Small Claims Tribunal. Transactions restricted to EBay/PayPal have no such protection as neither party is an Australian Company. While there technically may be recourse of some sort, the process would be extremely wieldy and not practical in the majority of cases as complaints need to be submitted to **“PayPal’s Customer Service Centre in Omaha, Nebraska, USA.”** PayPal may assert that complaints thus submitted are not governed by Australian Law.
- d. **Setting a legal precedent** – If a major shopping center required its merchants to accept, only, their “in house” credit card and no other payment method with the alleged reason being that it allowed them to more closely scrutinize the transaction for safety purposes. And if they imposed a rule that they could hold the vendors funds for up to 21 days, even though the client had taken the goods away and finally they forced the vendors to pay a fee for the above.

What would be the result? It is likely that this practice would be challenged under law, but initially the vendors would leave – unless the shopping center was the only large shopping center available.

It is clear the above is bordering on ridiculous and would never be allowed in Australia. If EBay is allowed to proceed then the above is possible as it will set a **legal precedent**.

Banks may require home loans to be repaid only with their credit card, Supermarket may require payment by the same method and other groups may set up schemes whereas consumers will need to purchase second services (Third Line forcing again) in order to acquire the product or service they want.

3. Spurious reasons opposing the Application by EBay.

- a. **Public Opinion** - It is clear from the number of submissions and the heavy leaning towards requests to deny EBay’s application that the public in general is opposed to the application being passed. It is noted that in the Act that public opinion should influence the outcome of any finding by the ACCC.
- b. **Freedom of choice** - While not specifically covered in the Act, Freedom of choice is enshrined in the Australian way of Life. It is clear the proposed change, limit the Freedom of choice available to Australian Vendors and Consumers.

- c. **Underhanded behavior** - Based on the strong community wide opposition to the changes proposed by eBay and their domination of the market, even if it is found that eBay will not be in breach of any Australian Law, their proposal may not be in the **"Spirit of the Law"** – Where an individual or company is not in breach of the law but their actions transgress the **"Spirit of the Law"**, authorities can and do make exceptions in these cases.

Conclusion:

Even if the Commission feels it is unable to deny eBay's application sufficient public exasperation exists to warrant, at least, additional judicial scrutiny of eBay's actions in this matter.

I am willing to assist the Commission further in any way necessary should it be required.

Regards

Ron Gully

Owner / Founder

BidMate Australian Online Auctions

www.BidMate.com.au

admin@bidmate.com.au

Ph: 0410 313115