

I heard the crowds cry, when eBay tried!

"I heard a fly buzz, When I died"

(Emily Dickenson 1852-1886)

~ * ~

ABSTRACT

eBay are exclusively dealing with the intent to third line force its membership which is akin to the 'no-steering-rule' and removing the fundamental rights to choose while attempting to use security as the key indicator when official statistics show otherwise and this submission seeks to re-level the playing field.

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BACKGROUND

I am a mother of two small daughters in Western Australia. I acknowledge that I often buy and sell on eBay International. Revenue generated is a secondary source of income and at best I would now be considered a part time seller. As a result, I acknowledge that I am a registered user of eBay with more than five (5) user identities, of which four (4) are active. As well, I am also a registered PayPal user with four (4) live PayPal accounts and I have access to local banking facilities (Bank accounts, Credit Cards) as a form of payment system I use when trading on the eBay platform.

Current and proposed eBay and PayPal conduct

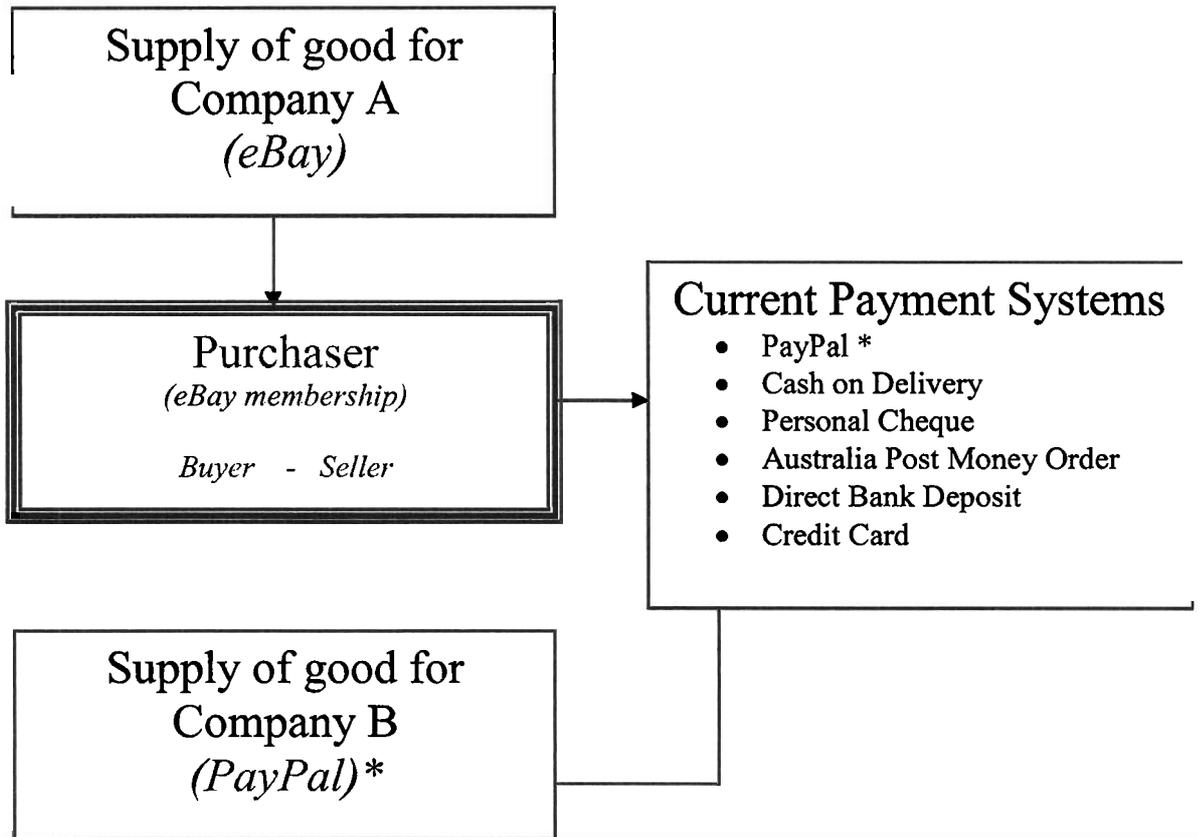
Firstly, Annexure A: section 1 to 6.1 of the eBay International AG - Notification - N93365, explains the current and proposed trading platform by which eBay in conjunction with PayPal will conduct their business operations here in Australia from 17 June, 2008.

In doing so and using figure 1 setout in the *Guide to Exclusive Dealing notifications*¹, as a benchmark, this is the basic application of eBay's relationship with its membership as well as PayPal and other payment systems which apply today.

¹ Australian Competition & Consumer Commission, Jan 2007; *Guide to exclusive dealing notifications*, p. 1 (figure 1)

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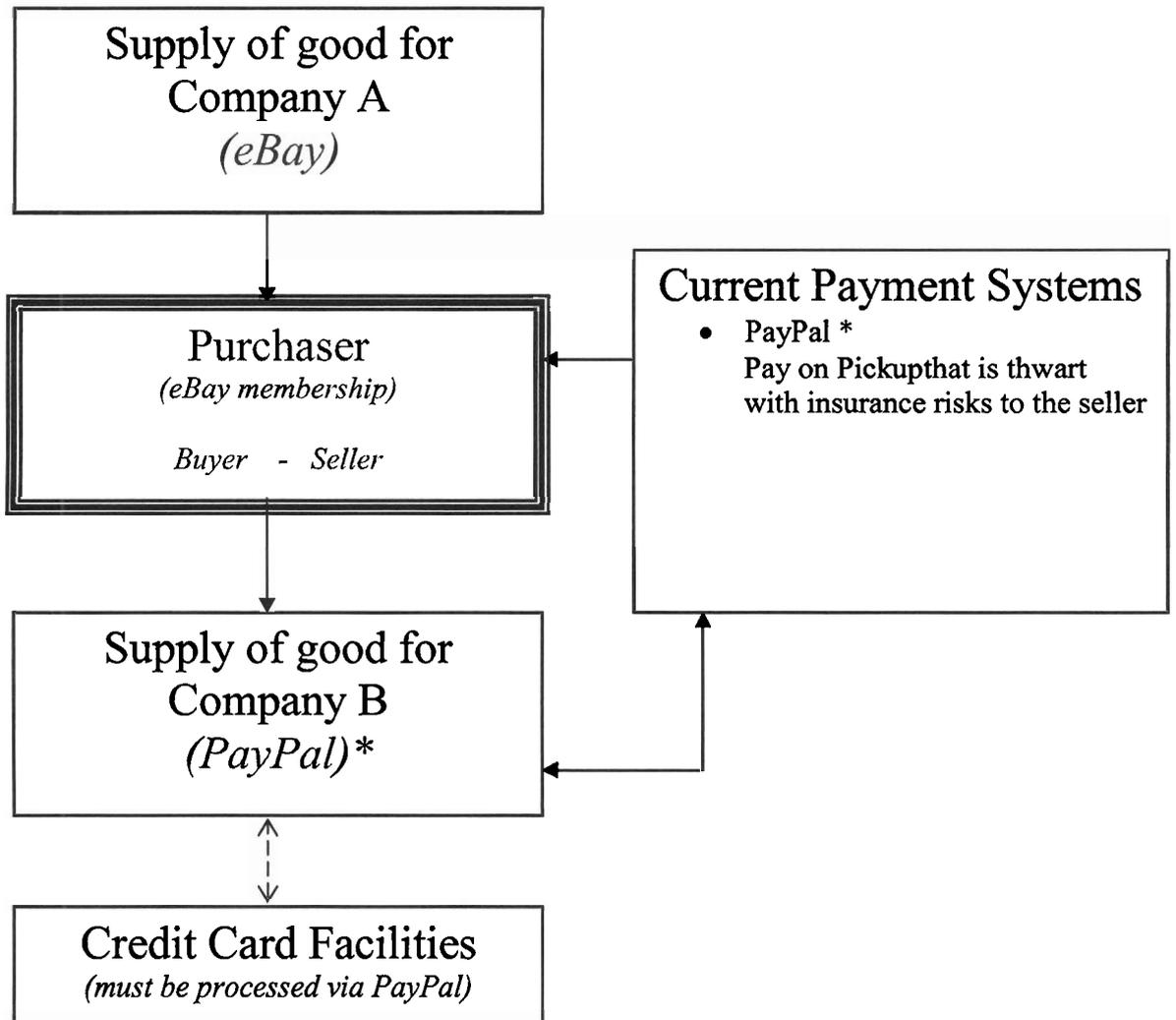
Figure 1



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Figure 2 illustrates the way in which eBay and PayPal propose to conduct their operations from 17 June, 2008

Figure 2



OUTLINE OF EFFECTS

In order to understand figures 1 and 2's dichotomy, effectively on 17 June 2008, eBay will introduce a new payment system whereby all methods of payment will be processed via PayPal or via Pay on pickup.

In this section, the centerpiece of my discursive argument effectively and continually results in third line forcing by eBay and

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is akin to lessen the competition in the same way the 'no-steering-rule' has been addressed by the Reserve Bank of Australia. Nonetheless, the payment systems introduced by eBay allows PayPal exclusive rights to act as the dominant payment system available to eBay's membership and the right to free choice will be removed from the public good of its membership. Also, eBay argue that because of 'Bad Buyer Experiences', using PayPal will increase the level of security that will encourage buyers back onto the trading platform; when indeed, Australian Bureau of statistics demonstrate a very different picture on a national scale.

Effectively eBay are trying to argue that with the introduction of this new payment system, it is likely to lessen their current internal problems regarding "Bad Buyer Experiences" by introducing PayPal as a unique and secure service and that is why the crowd of people here in Australia have begun to cry - fair go, mate.

IMPACT RESULTS

Nevertheless and using the above sections as a reference, the impact of the proposed changes by eBay and PayPal are likely to impact on the public in the following manner;

Third Line Forcing

Both figure 1 and 2 in this document sets out the way in which eBay propose to conduct business in Australia and I have illustrated eBay as company A, PayPal is company B and the buyers and sellers are the Purchasers. The proposed conduct of company A is to use company B, PayPal, as the dominant payment system used by its membership in the first part of third line forcing.

In the second part, third line forcing is *prohibited outright, meaning that a breach of the Act can be established regardless of whether the conduct has the purpose, effect or likely effect of substantially lessening competition*². In doing so, the rest of this document will focus on the impact and lessening of competition to establish third line forcing from a micro and macro perspective.

'no-steering-rule' - Reserve Bank of Australia

Currently, payment systems here in Australia are strictly controlled via the Reserve Bank of Australia. In this context, it is therefore unfounded to speculate that various banking institutions or payment systems are permitted to limit payment systems to a particular company.

² Australian Competition & Consumer Commission, Jan 2007; *Guide to exclusive dealing notifications*, p. 1

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In terms of the Reserve Bank's "no-steering-rule"³

...the no-steering rule prevented merchants that accepted American Express cards from encouraging customers to use another method of payment (equivalent rules did not exist in the MasterCard, Visa and Diners Club schemes). Again, the Bank saw this rule as inappropriately restricting competition and, after discussions, American Express agreed to remove the rule...

More importantly, the Reserve Bank of Australia effectively deemed the system not to be in the public's interest because it restricted competition.

In this context, eBay's new conduct is akin to the 'no-steering-rule' the Reserve Bank deemed not to be in the public interest. That is, eBay will prevent sellers (who are the merchants of the service) from using other payment systems (Direct Deposit, Australia Post Money Order etc.,) and only offers a lukewarm alternative for Credit Card acceptance only if this card is processed by PayPal.

In the end, the eBay's proposed conduct effectively narrows the payment system for merchants to use PayPal only. In doing so, this conduct limits the sellers and buyers the ability to use other payment systems such as, Paymate, Direct Deposits, Australia Post Money Orders etc.

Question:

I now ask the ACCC: Is eBay's conduct in the best interest of the public given the Reserve Bank have already given a clear mandate on their 'no-steering-rule' position which is akin to what eBay's proposed conduct will do to its merchant/sellers on 17 June, 2008?

Freedom of choice

Nonetheless and if it is the intention of eBay to limit the current payment systems because of internal problems with 'bad buyer experiences', the balance of economies dictate that this limitation will severely impact on the members (buyers and sellers) rights to choose which payment system is best suited for the buyers and sellers needs. Furthermore, this intention is mandated so that PayPal is the go-between the buyer and seller.

But, I asked is this right?

³ Reserve Bank Australia, 2007/08; *Reform of Australia's Payments System: Issues for the 2007/2008 Review*, section 47.

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Does this make sense?

Academically, there is a plethora of discursive argument for this issue both for and against the socio-economic and political sphere of freedom of choice. However, the basic question for the ACCC is to consider whether or not the freedom of the eBay's membership and the public in general is tarnished with the new conduct? If so, what alternatives have been offered to encourage choice? Moreover, who will benefit from the alternatives?

I argue that freedom of choice is tarnished to the eBay membership as well as the public in general because of several perspectives; that is,

One: Firstly, with every transaction made - PayPal will profit between 1.4 - 4.1% plus 30 cents per transaction and this is detrimental to the national public good if we are to understand the Allen Consulting Group's⁴ position that *eBay's contribution to the Australian economy is estimated to be \$2.6 billion annually*; that is, basic economic mathematics dictate that the profits PayPal stand to make will be in the vicinity of \$20 million annually and will certainly shift the economies of scale in an already depressed and recessed Australian marketplace. As a result, when the freedom of choice is removed, then economic detriment is therefore painful to the Australian people and this economy.

Two: eBay's alternative offer to make Credit Card payments available is not satisfactory because it makes no sense to mandate that selling members must use PayPal. In doing this, the nature of the payment system is reductive so that in order to use the Credit Card service, the sellers must use and pay PayPal for the privilege.

- And so, is this alternative detrimental?

Yes, it is because PayPal not only becomes the dominant payment system, it is the only system mandated to be used and therefore, limits the membership's freedom to make a choice.

Three: More importantly, eBay have attempted to show good faith in allowing Payment on Pickup. In a sense this payment system does not have merit to the public in general for several reasons;

- Firstly, allowing pickup to business premises comes with insurance security risks and costs to the business. In saying

⁴ The Allen Consulting Group, 5 Feb, 2008; *I got it on eBay; The economic impact of eBay in Australia*, p., 1.

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this, how many of the 5 million registered users are also registered businesses with premises and how many are the Mums and Dads of suburbia? It is therefore more likely the Mums and Dad's of suburbia do not carry hefty insurance policies to accommodate insurance against loss or damage and those sellers who offer Pay and Pickup from the seller's home, may also invite insurance problems. Currently under my home contents policy with SGIO⁵, my policy is null and void if I invite a person/buyer onto my premises and they cause damage or loss. On a macro level, it means offering Pay on Pickup will result detrimentally with higher insurance charges for the Mum's and Dad's of this nation.

And so, providing a payment system of Pay and Pickup, puts the sellers at risk with their insurance policies and therefore, a detrimental payment format, especially when this payment format is the only other form of alternative payment mandated.

- Secondly, the option of Pay on Pickup can only be achieved if the buyer and seller live in the same area. Those living in rural and remote locations are not likely to take up this option and therefore, are disadvantaged by the new proposed conduct.

Security

Throughout eBay's notification, one of their key arguments for introducing the new conduct is because of internal "bad buying experiences" in its company and therefore, have made a lack-lustre attempt in framing PayPal as a secure mechanism to reduce and eliminate this experience from their company. However, I have used the Australian Bureau of Statistics as a gauge to understand how other companies in Australia resolve their internal problems?

MEASURING WEB SELLING

In the last decade, internet security has been one of the indicators for measuring the way in which web selling businesses conduct themselves here in Australia. In terms of measuring, the ABS⁶ use several ways to gauge security via the internet and have provided this information since 1993 with an annual publication⁷ that seeks to understand such areas as;

- Characteristics of Internet and Web Use
- Internet Commerce

⁵ <http://www.sgio.com.au/policy-booklets.shtml>

⁶ Australian Bureau of Statistics

⁷ Australian Bureau of Statistics, *Business Use of Information Technology 2005-06*, Cat., No., 8129.0

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MACRO LEVEL OF WEB SELLING

Within this context and in terms of web selling businesses on the internet, statistical figures on a macro level illustrate the industry which includes Mining, Construction, Transport, Communications etc, of which Retail trade represents 120 businesses on a national level. Only 6.45% within the Retail industry have concerns regarding security for which up to 89% of these security concerns are resolved internally by the businesses.

From another perspective in terms of Australian Households with internet access and when asked for the *main reason for not using the internet to order goods or services 2006-07⁸*, 38.8% say they have security concerns. 39.9% continue to shop in person while an overwhelming 83.3% do not have a credit card, at all.

Hence, in a panoramic view of the web selling here in Australia, statistics shows that;

- The web selling industry do have security concerns
- However, 89% of businesses have sought to have matters resolved internally
- As well, 38.8% of households say they have security concerns
- In the meantime, 39.9% continue to shop in person
- Moreover, 83.3% do not have credit card facilities

To conclude, security is an issue that has come up onto the radar for the ABS. However, these figures are minimal in comparison to issues such as households preferring to shop in person and no credit card accounts and therefore, prove to be a far greater concern to the web selling industry and in particular, Retail.

MICRO LEVEL WEB SELLING

To effectively translate this information from a macro to a micro level, the impact of web selling to someone like me, who is a mother with two young daughters, is simple. It means web selling has its place in the Australian business community today and that nearly all web selling businesses make the effort to resolve any security concerns internally as illustrated by the ABS; yet eBay propose to resolve their internal problems by exclusive dealing and on a national scale, it makes no sense to use security as a key indicator

⁸ Australian Bureau of Statistics, *Household Use of Information Technology, Australia, 2006-07*, Ca., No., 8146.0

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for concern in the web selling industry because web selling figures show the highest concern is resolving ways in which to increase credit card usage, instead of using federal laws such as the Trades Practices Act to resolve internal issues such as, 'bad buyer experiences' individual companies are faced with.

Moreover, eBay's proposed conduct will ignore what the Australian community are in need of, and instead act in the reverse by not encouraging other payment systems, as well as, using laws to change what should be an internal problem because overall, fixing "bad buyer's experiences" is not a national issue.

Conclusion

Throughout this submission, I have established a discursive argument in response to eBay's proposed conduct and have concluded;

- 1 - eBay are exclusively dealing
- 2 - with the intent to third line force its membership
- 3 - which is akin to the 'no-steering-rule'
- 4 - and removing the fundamental rights to choose
- 5 - while attempting to use security as the key indicator
- 6 - when official statistics show otherwise

And more pointedly, I am grateful for the privilege to submit this document for your consideration because I am amongst the people who have heard the crowds cry, when eBay tried to change the trade map of what is really happening in this country and this submission re-levels the playing field so that a fair go is had.

With respect and regard
Mrs Beverley McGhie
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