

General Manager
Adjudication Branch
ACCC

Email: adjudication@accc.gov.au

Dear Sir/Madam,

Submission on eBay exclusive dealing notification N93365

Thank you for investigating this matter. I appreciate the opportunity to make a submission.

I am in eBay's "Power Seller" category, and I am strongly opposed to the proposed changes. I am disappointed to have to write this submission to you, because it indicates that eBay is no longer prepared to listen to its customers before making radical changes.

I have several reasons for my objection, but I will try to limit this submission to the key areas you have identified in the memo to interested parties on your website, viz:

- the effect on competition
- the likely public benefits
- any public detriment

My understanding is that you will reject eBay's proposal if you are convinced that:

1. the conduct has the purpose, effect or likely effect of substantially lessening competition, and
2. the likely benefit to the public will not outweigh the detriment

I address these issues below

1. The conduct has the purpose, effect or likely effect of substantially lessening competition

It seems to me that there are 4 areas of competition involved here, each of which is affected differently by this proposal:

A. competition between different payment methods

This seems the major area where this proposal limits competition. I'm sure you'll receive well-reasoned and documented submissions from actual competitors to PayPal. I can only offer a limited personal perspective.

It is clear that this proposal has significant impact on competing payment methods, for no benefit. Competition is important here, as there would be no impediment to PayPal increasing its fees were this proposal to be implemented.

Many of my buyers, and I, prefer other payment methods, for reasons of cost, safety and privacy. Competitive options will not be available to us under this proposal.

B. competition between online auction systems

This is an odd one, in that I believe that competition here is a **bad** thing. The interests of the community are best met, I believe, if they can find all sellers in one place and not have to search through a plethora of online auction sites. I would like to see eBay as a utility which allows me to sell items to buyers. In return, I pay fees for this service. I get to choose what parts of the service I want to use, and pay fees accordingly. It should be like the Internet itself in many ways. No one really wants a competing Internet. Clearly, there is competition between sellers who use eBay, and this is a good thing. Obviously there are issues of management which should be, as far as possible, in the interests of the community, rather than shareholders.

This proposal, to a limited extent, by encouraging sellers to move to other online auction sites, works against this.

C. competition between online and offline purchasing

eBay's proposal, in its Annexures, suggests that such competition is healthy because purchases online are generally cheaper.

The proposal, by increasing fees to buyers, will presumably, over time, increase the prices to buyers as sellers pass on these fees.

This would lessen this area of competition.

D. competition between sellers on the eBay site

At present, sellers who offer a range of payment methods have a competitive advantage over other sellers who do not. Many buyers have strong preferences of the way they are prepared to pay. Sometimes they are strongly in favour of PayPal. However, at least as often, they have a strong aversion to PayPal.

My competitive advantage will be negatively impacted by this proposal.

2. The likely benefit to the public will not outweigh the detriment

eBay claim that the benefit is that it will make transactions safer. I have no reason to believe that this is true, and it has not been my experience. eBay provide no evidence that it is true in any of the documentation I have so far read. On the other hand, I can relate the experience I had where I was paid several hundred dollars for a laptop using PayPal. The money appeared in my PayPal account and was then withdrawn two or three days later when PayPal decided that it was a fraudulent credit card that had been used. PayPal claim that goods can be sent once the money appears in a PayPal account. However this is not true. This would not happen with a bank payment.

As a seller, I would rate PayPal as one of the least safe ways to receive money and definitely the least safe place to keep money in an "account". Under some circumstances (mainly credit card payments) it can be a quick way to receive money,

but is unsafe and expensive. It is also very slow when the payment is to be taken from the buyer's bank account (**much** slower than a direct bank transfer by a buyer). Record keeping is also very complex when payments are made with PayPal.

To the best of my knowledge, PayPal is not covered by many of the laws, regulations and conventions covering financial institutions in Australia. There is no independent dispute resolution system (such as the banking ombudsman), and we must abide by the decisions of a dispute resolution system based (I think) outside Australia and, from all accounts, heavily biased against eBay sellers. There is no appeal from their decisions. I find it difficult to define this as making financial transactions safer. Interestingly, the largest public document in eBay's submission (Annexure "C") shows in Fig 3.2 that only 3% of respondents rated lack of trust of online payments as a barrier to purchase. This would indicate that even were eBay's proposal truly in order to increase safety, it would not markedly increase the public benefit. Interestingly, in an example of statistics being used to support whichever point of view is being proposed, eBay point to another part of the same document that says that 94% are concerned about security – perhaps an example of unclear definitions.

The downside ("detriment") in this proposal is the fact that all eBay transactions will now incur PayPal fees. These range from about 30% for an item that sells for \$1, through about 5.5% for a \$10 item, to about 3% for an item selling for \$100. In time, of course, these costs will be passed on to buyers by various methods such as increase in the basic prices of the goods, as well as increases in "handling and packing" fees. In the end, the result must be higher costs for items purchased on eBay. This does not take into account the fact that, in order to protect sellers from the unfair PayPal dispute resolution process, buyers will be required to pay for more expensive, tracked, postage options, such as registered post, when such is not necessary.

In summary, then, the benefits are illusory, and the detrimental effects (less protection, and higher costs) outweigh them.

General comments

There are several pointers to the fact that eBay are not introducing this for the reasons they have claimed (i.e. making transactions safer). If they wanted to do this, but not introduce unreasonable costs, they could easily do so by means which identify risky transactions such as:

- higher value transactions (say over about \$50)
- transactions from a seller with a low reputation ("feedback" score on the eBay site)

If they truly believed that this proposal was in the interests of their customers, and that most of their customers would support it because of its advantages, they would have communicated with their customers advising them of your submission process and encouraging them to make a submission supporting the proposal. To the best of my knowledge they have not done so. I do not believe they have even made this process known to their customers. Perhaps they hope that, if no one knows about it, it will just slip through.

The documentation that eBay have supplied to you, and that you have made public, seems full of statements which, while many are true, are often irrelevant to the matter

at hand. In particular, the Annexures, while voluminous, seem to contain information that is only peripherally relevant. I'm sure you will consider them carefully and analyse whether they add much to eBay's argument.

I also encourage you, if you are to reject their proposal, to do so completely. It may be tempting to suggest that the first part of their proposal (that PayPal be required on all transactions, but other methods be available) would be an acceptable compromise. In evaluating this as an proposal, I would ask you to take into account how eBay present the invoice to a buyer on behalf of a seller. If PayPal is an option, it appears first, very prominently and with encouraging words, taking up much more space on the page than other options. It is not just a button to choose with equal prominence with other options. The effect is to make it very difficult for buyers to easily choose any other option. The net effect of this "compromise" solution would be almost the same as permitting their second requirement (i.e. PayPal only).

Once again, my thanks for your willingness to address this issue, and for this opportunity to make my submission.

I request that you remove any contact information (email addresses, physical addresses, etc) before including this submission on the public register.

Regards,

Graeme Morris