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Subject: Submission opposing Ebay's exemption application (ref eBay International AG - Notification - N93365) [SEC=UNCLASSIFIED]
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From: Name excluded
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To: Adjudication
Subject: Submission opposing Ebay's exemption application (ref eBay International AG - Notification - N93365)

This submission is to oppose the exemption sought by Ebay with respect to mandating use of its Paypal payment system.

I have been a buyer and seller on Ebay for about 5 years (6% of my transactions are sales, 94% are purchases) and most of my transactions are now business transactions.

I would contend that the application for an exemption is disingenuous as safety is not the prime consideration motivating Ebay to do this as claimed. With a high proportion of Ebay's profits now coming from Paypal the primary focus is to improve margins for the company by taking an increased cut of the payment method, the cash float involved in an electronic banking operation, as well as via Ebay's cut on the auction.

The following are my responses to the claims made (in quotes by Ebay) with respect to this policy change claiming it is warranted because of "public benefits":

"1. More safety

In 2007, buyers who paid with PayPal on eBay.com.au 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 those who paid with bank deposit."

The submission made by Ebay neither states the base case risk which has a bearing on the 'harm that is being addressed' by granting this exemption (for example, does 1 in 10,000 transactions result in a dispute, what dollar value is disputed versus their total Australian turnover?), the definition of dispute (is mutual agreement of a return of goods a 'dispute?'), nor does it define the sample population (for example, people who sign up for Paypal are likely to be reasonably sophisticated ecommerce users as the process is relatively complex, and many novice Ebayers who are likely to make more mistakes in auctions are probably not members of Paypal).

The figures that are publically available cast significant doubt on Ebay's claim that Paypal is 'safer' than say direct deposit. For example:

"Previous figures provided by PayPal for fraud rates are 0.35 per cent in November 2006 and "just over 0.3 per cent" now. ..The latest Australian Payments Clearing Association statistics for payment fraud for the year to June 2007 showed cheques and debit cards were the safest forms of payment. APCA said 0.02 percent of credit card transactions were fraudulent or charge backs, as against just 0.002 per cent of debit card transactions. The number of bad cheques is negligible."

Source: http://www.thesheet.com/nl05_news_selected.php?act=2&stream=1&selkey=6469&hlc=2&hlw=

Numerous sellers also raise the issue of 'safety for whom'. There are many reported instances to be found in Ebay's discussion boards where sellers find funds locked up in Paypal and are unable to access them.

Sellers on Ebay can already nominate the payment forms they personally are willing to accept and Ebay already mandates that Paypal must be one of them AND warns purchasers choosing OTHER payment forms that Ebay does not provide purchase insurance for non-Paypal insurance.

In the light of the current availability of payment choice, if the argument from a safety perspective for using Paypal is so compelling for both buyers and sellers, then Ebay's course of action should be to merely educate them (which they have in fact been doing at every opportunity and this email contains text from an email sent by Ebay support doing just this) and those sellers and buyers can already chose to only transact through Paypal. The mere fact that most buyers and sellers do not do so (for example is Ebay willing to disclose the proportion of sellers who ONLY accept Paypal or buyers who ONLY pay through Paypal?) already shows that for the public as a whole the 'benefits' are considerably outweighed by the disadvantages.

Ebay itself accepts several different payment methods for sellers to pay their own selling fees (credit card, direct debit, Paypal, cheque and money order).

"2. More secure

Buyers and sellers don't have to share their financial details when using PayPal, which reduces the likelihood of being targeted for identity theft and is one of the biggest fears consumers have when transacting online."

This is a partial truth only. If I make a direct deposit to a seller's account via internet banking the seller cannot see my account details - all he can see is the payment reference I give him. Charges are also more transparent (Paypal for example imposes unidentified exchange rate charges on buyer and seller as well as transaction charges when the seller withdraws funds). Paypal is not a bank and therefore exposes cash left on deposit there to more risk than through the banking system, something that many sellers and buyers would be aware of. As well as this Paypal's offshore status leaves it in a grey area as regards better regulated financial providers in Australia like banks.

As a buyer I only use Paypal for non-Australian transactions and in fact around 80% of my transactions have been made by direct deposit. Direct deposit has the additional advantage from a fraud perspective that I can see exactly what the details are around the purchase for my small business when I buy something in my bank statement - rather than a charge to Paypal with no bank statement narrative.

Paypal is also regularly targeted by phishing attempts and lacks the sophistication of some of the security methods being implemented by the major Australian clearing banks, where for example, through St George you can opt to receive text messages to your mobile to verify transactions, and sophisticated software-based analysis programs monitor all accounts for non-standard transactions for most clearing banks and credit card systems.

Ebay's security rationale fails to explore other alternatives open to them which would be far less anti-competitive like seller or buyer deposit schemes, use of id points, and even fails to make sufficient reference to their Feedback scheme which in a practical sense is how most buyers such as myself choose how they will transact (you simply look at the number of transactions a seller has and their feedback rating - someone with a high number of transactions and a close to 100% satisfaction

record is very likely to be an appropriate supplier with whom you will have no problems).

"3. More confidence

By addressing disputes on eBay.com.au, we'll see a lift in confidence.

This will help grow the eBay community ultimately benefiting buyers and sellers, as well as eBay."

The feedback from the Ebay community in terms of Ebay's discussion forums and external commentary has been pretty uniformly negative as evidenced by the internal and external petitions circulating on this matter amongst the buyer and seller community, for example, this one that has 11,000 signatures as of the date of this submission:

http://www.petitiononline.com/mod_perl/signed.cgi?ebayau

A perusal of Ebay's own site discussion threads suggests that Ebay users are against it by roughly a ratio of 50 to 1, something that must give pause to the company's claim that it is doing something purely to benefit the public.

Legitimate concerns include:

- will sellers working on small value items or on thin margins no longer transact (thereby reducing competition and other market efficiency benefits of large open electronic market places) when there are flat fees for Paypal withdrawals and increased transaction costs
- sellers who deal with older or more conservative buyers such as older hobbyists often use payment methods such as cheque and are unlikely to make the transition to Paypal and may be even driven out of business. Ebay's own discussion boards contain statements from numerous sellers saying they intend to close their Ebay business if this change occurs.
- how is Ebay's Paypal service to be exposed to competitive pressure from other payment methods such as bank deposit, or Google's or Paymate's when they close access to these?

If the ACCC rules against this submission I think it is important to point out that it needs to also evaluate other related anti-competitive moves that Ebay has already made

- 1) the ACCC should investigate the withdrawal of transaction insurance on Ebay transactions that previously applied to all payment methods and is now restricted to Paypal only
- 2) the ACCC should investigate the validity of the onscreen and email claims made by Ebay to buyers that "Paypal is safer"
- 3) the ACCC should investigate Ebay's existing anti-competitive change already applied in the last year which has meant that buyers MUST offer Paypal as ONE of the existing payment methods
- 4) the ACCC should monitor on an ongoing basis the fees Ebay charges buyers and sellers as Ebay is effectively a monopoly

- if this exemption is allowed by the ACCC what sort of precedent will it set? For example why should Ebay argue as a next step that they should not allow credit card transactions? The ACCC should be sending a strong signal to parties with large internet based transaction networks that they will be held to account just as much (and preferably more) than would say, a large supermarket chain like Coles, that suddenly mandated that you couldn't pay except with their own store card. The next largest auction site in Australia, Ozton, has 250,000 members versus Ebay's 5 million. The network

affects associated with Ebay due to the size and liquidity of the marketplace it offers are almost as significant as those associated with say a vendor like Microsoft and its Windows franchise.

- there are safety concerns for buyers and sellers where one party does not want to use Paypal for one of the above reasons or other reasons (so the purchase is transacted in cash in person). In-person cash transactions carry both theft risk for the seller and personal harm risks for the buyer.

Conclusion

The public benefits arguments offered by Ebay are specious and this change is likely to lead to reduced security for buyers and sellers, poorer dispute resolution through Paypal's notorious dispute resolution process, and reduced confidence across the whole of the online auction space.

Were the ACCC to allow this exemption my view is that it would likely have the following anti-competitive impacts:

- 1) reduce the size and therefore competitiveness of the online auction market in Australia (less lower value items from sellers and higher selling costs generally, less buyers because of those who are more conservative, or like myself who don't want to use Paypal because of its disadvantages for small business)
- 2) because of reduced competition increase the payment-method related transaction costs (Paypal is less likely to be challenged by existing and yet to be launched payment methods)
- 3) encourage other online businesses to adopt similar anti-competitive measures. The ACCC has an opportunity here to send a message to companies contemplating similar moves.