

EXECUTIVE OFFICE



Australian
Competition &
Consumer
Commission

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Our Ref: C2008/566
Contact Officer: Richard Chadwick
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2 June 2008

Mr Calum Henderson
Partner
Deacons
GPO Box 3872
Sydney NSW 2001

Dear Mr Henderson

**Exclusive dealing notification N93365 lodged by eBay International AG
– draft notice**

The Australian Competition and Consumer Commission (ACCC) has decided to issue a draft notice proposing to revoke the immunity provided by exclusive dealing notification N93365 lodged by eBay International AG (eBay) on 11 April 2008.

The reasons for the ACCC's decision are provided in the enclosed draft notice.

The draft notice will also be available from the ACCC's website www.accc.gov.au by following the *Public Registers* and *Authorisations and notifications* links.

The next steps

In accordance with section 93A of the *Trade Practices Act 1974* (the Act), eBay or any interested party may request that a conference be held to discuss the draft notice. A pre-decision conference is a public meeting to which all parties that may have an interest regarding the notification are invited. Conferences are conducted informally, without the participation of legal or other professional advisers.

If your client would like the ACCC to hold a conference in relation to the draft notice, you must notify the ACCC in writing by **5pm Thursday 26 June 2008**. Please note that the Act does not allow the ACCC to extend this deadline.

Alternatively, you are also invited to make a written submission in response to the ACCC's draft notice. In providing its response to this draft notice, your client may also wish to respond to any issues raised in interested party submissions that it feels it has not already adequately addressed. Written submissions should be lodged by **5pm Thursday 3 July 2008**.

The ACCC will consider any submissions it receives, including any oral submissions made should a conference in relation to the draft notice be called, in deciding whether or not to issue a final notice revoking eBay's exclusive dealing notification.

Implementation of the notified conduct

Notification N93365 indicates that the second stage of the conduct, under which all items listed for sale must only offer payment via PayPal (or credit card transactions processed by PayPal) or Pay on Pickup, is due to commence on 17 June 2008.

As set out in the enclosed draft notice, the ACCC has formed the view that the notified conduct will have the effect or likely effect of substantially lessening competition and any public benefit associated with the conduct is not sufficient to outweigh the anticompetitive effect.

In light of the ACCC's view set out in the draft notice, and the significant concerns raised by interested parties, I request that eBay not implement the second stage of the notified conduct until the ACCC has completed its assessment of the notification. I would be grateful for a response to this issue by **5pm Friday, 13 June 2008**.

This letter will be placed on the ACCC's public register.

If you wish to discuss any aspect of this matter, please do not hesitate to contact Richard Chadwick on (02) 6243 1132.

Yours sincerely



Graeme Samuel
Chairman