

**Macrae, Tess**

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**Subject:** FW: Submission in support of ACCC draft ruling relating to Ebay notification N93365 [SEC=UNCLASSIFIED]  
**Importance:** High  
**Categories:** SEC=UNCLASSIFIED  
**ACCC Classification:** SEC=UNCLASSIFIED

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**EXCLUDED FROM  
PUBLIC REGISTER**

**From:** A Phillips [mailto:  
**Sent:** Monday, 16 June 2008 3:58 PM  
**To:** Adjudication  
**Subject:** Submission in support of ACCC draft ruling relating to Ebay notification N93365  
**Importance:** High

Dear Sir/Madam

I would like to add this submission in support of the ACCC decision to revoke the Immunity sought by ebay in relation to N93365.

The ACCC has said

*As previously mentioned, the ACCC is required to assess whether any benefit to the public that has resulted or is likely to result from the notified conduct will outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from the conduct.*

*5.176 The ACCC considers that the notified conduct is likely to generate some public benefit as a result of reducing BBEs.*

*5.177 The ACCC considers that the notified conduct has, or is likely to have, the effect of substantially lessening competition in the market in which PayPal operates. The ACCC also considers that the notified conduct is likely to result in reduced choice for consumers, higher transactions costs and reduced innovation in online payment systems.*

*5.178 Therefore, the ACCC concludes that the substantial anti-competitive detriments outweigh any public benefits resulting from the notified conduct.*

This is the CORRECT assumption of EBay's behaviour. The draft should be made final on these grounds. There is a wealth of further evidence to support the ACCC decision that has not been brought upon yet by the ACCC. A lot of this is in relation to the financial gain EBay inc would get if the "project" was allowed. I would ask the ACCC to now use this further evidence to deny the conduct.

In relation to Paypal's supposed safety above and beyond all other payment systems. I would point the ACCC in the direction of Ebays EBAY INC Form: 10-K from the US filed in late 2007. In this document, prepared by EBay, the inherent risks of Paypal and its shortcomings are pointed out quite clearly including the following

**Risk Factors That May Affect Results of Operations and Financial Condition**

The risks and uncertainties described below are not the only ones facing us. Other events that we do not currently anticipate or that we currently deem immaterial also may affect our results of operations and financial condition.

PayPal's failure to manage customer funds properly would harm its business.

...

PayPal's ability to manage and account accurately for customer funds requires a high level of internal controls. In some of the markets that PayPal serves and currencies that PayPal offers, PayPal has a limited operating history and limited management experience in managing these internal controls.

...

Changes to credit card networks or bank fees, rules, or practices could harm PayPal's business

...

For "high risk" merchants, PayPal must either prevent such merchants from using PayPal or register such merchants with credit card networks and conduct additional monitoring with respect to such merchants. PayPal has incurred fines from its credit card processor relating to PayPal's failure to detect the use of its service by "high risk" merchants.

Our business is subject to online security risks, including security breaches and identity theft.

...

Our insurance policies carry low coverage limits, which may not be adequate to reimburse us for losses caused by security breaches.

...

There are many risks associated with our international operations.

...

- difficulties in implementing and maintaining adequate internal controls;

...

Failure to deal effectively with fraudulent transactions and customer disputes would increase our loss rate and harm our business.

...

PayPal's highly automated and liquid payment service makes PayPal an attractive target for fraud.

....

In addition, PayPal's service could be subject to employee fraud or other internal security breaches, ...

...

Government inquiries may lead to charges or penalties.

...

Government regulators have received a significant number of consumer complaints about both eBay and PayPal, ...

...

System failures could harm our business.

...

We have experienced system failures from time to time, and any interruption in the

availability of our websites will reduce our current revenues and profits, could harm our future revenues and profits, and could subject us to regulatory scrutiny. Our eBay.com website has been interrupted for periods of up to 22 hours, and our PayPal website has suffered intermittent unavailability for periods as long as five days.

...

Some of our systems, including our Shopping.com and Skype websites, are not fully redundant, and our disaster recovery planning is not sufficient for all eventualities.

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Our industry is intensely competitive, and other companies or governmental agencies may allege that our behaviour is anti-competitive.

...

PayPal

The market for PayPal's product is emerging, intensely competitive, and characterized by rapid technological change. PayPal competes with existing online and offline payment methods, including, among others...

...

Some of these competitors have longer operating histories, significantly greater financial, technical, marketing, customer service and other resources, greater name recognition, or a larger base of customers in affiliated businesses than PayPal. PayPal's competitors may respond to new or emerging technologies and changes in customer requirements faster and more effectively than PayPal.

This is a very different story that EBay are trying to portray in support of this "project"

EBay are going to enormous underhand lengths to facilitate the "project" Padding listings, failing to reveal updates on the ACCC decisions to customers, censoring posts on the EBay forums, Banning sellers for having opinions and more.

EBay's latest press release shows that EBay are truly the only people who believe what they are trying to say about the "project"

I would ask the ACCC to continue to take the views of the many many hundreds, and possibly now thousands of people who are saying they do not want this conduct to be allowed.

I was a seller on EBay, and it is the choice of me and my customers how we facilitate the transaction. If Paypal was the best in the market, I would choose to use them.

I am now a buyer on EBay, I want freedom to choose my own payment method and do not need to be dictated to by EBay.

EBay, in their latest press release still defining buyers as "theirs" and do not class sellers under any category. In deciding if this notice to revoke should be made final the ACCC should take into account the views of the anonymous submission that say it is the SELLERS who are eBay's customers, and that the buyers merely use the platform. Although it is clearly both buyers AND sellers who are protesting against "the project" It is clearly the sellers who's voice should be heard in relation to "whom is eBay's customers"

To surmise, It is only VERY small proportion of sellers AND buyers who want the proposed conduct. The ACCC has ruled correctly and in any further argument by EBay, the ACCC should bear in mind ANY further evidence produced by submissions to support the draft notice.

Please add this to the public register

A Phillips