

13th June 2008

Robert Campiciano
Managing Director
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Reference; Exclusive dealings Notification N93365

Dear Sir/Madam ,

I congratulate the ACCC for arriving at the decision to issue a draft notice to revoke notification N93365

There are comments I would like to offer in response to the opportunity offered to me by the ACCC as part of the due process regarding this matter.

It is my view that eBay is manipulating the act and attempting to create a situation where they will have considerable advantage in the market place regardless of the outcome of this process called the Exclusive Dealings Notification.

It is my opinion that the Exclusive Dealings Notification process been part of the trade practices act is flawed in that it provides immunity to prosecution by providing such immunity automatically by submitting the notification.

It should be that one should apply for the exemption to the ACCC, then the ACCC would have been in a position to request submissions form interested parties, this would then stop any organization to distort the spirit of the legislation, as it is clearly the case in the eBay situation.

eBay has exploited this loophole, knowing that they would achieve in the least to make all sellers in Australia to offer PayPal as an option.

Many sellers have no option as they have based their livelihood upon the eBay platform, thus, eBay has achieved in part their aim of forcing as many sellers they can onto PayPal regardless of the outcome of their notification.

This was made possible by the manner that the Exclusive dealings Notification is implemented with in the act.

My comments on the ACCC views

ACCC View 5.33

In the absence of the immunity provided by this notification, the ACCC considers it likely that the current arrangements will continue. Under these arrangements, sellers have choice regarding which payment methods to offer when selling a product on eBay, and buyers have a choice between the options offered by the seller.

The ACCC has to note, that eBay is mandating that seller must offer PayPal in the payment choices offered to the buyer in the listed advertisement.

This is currently taking place in Australia and in the USA, where a seller is not able to list an item unless PayPal is offered.

This is confirmed by eBay Live Help Centre where they are advising that PayPal must be offered as a payment option.

It is my view, that eBay will not return to a prior arrangement where equal choice is available to both seller and buyer.

Clearly if the eBay notification is revoked by the ACCC then eBay will be in breach of the Trade Practices act as interpreted by the ACCC.

ACCC View 5.39

At this stage, the ACCC has not relied on any of the information available that might suggest that eBay is implementing the conduct for reasons other than transaction security.

There is a large body of evidence that both eBay and PayPal are not as secure as they like to state.

This evidence can be found by perusing the web, as a recent example, the recent court action in France where eBay has been successfully prosecuted for allowing counterfeit items to be sold on its web sites, if one cares to look, many more examples can be found.

It is very easy to establish an eBay account using email addresses obtained using web mail providers, where it is easy to hide the true identity of a person, for what ever purpose.

With Ozton one has to provide real proof of identity.

It is my view that eBay is not as safe as they would like us all to believe.

And that safety is been used as an argument by eBay to try and force a policy on to its customers, clearly to boost their profits.

ACCC View 5.154

Taking into account the above considerations, (5.151 to 5.154) the ACCC believes there is some public benefit to users from the notified conduct in the form of increased dispute resolution for high value transactions, to remedy cases where an item is not received or is significantly not as described.

PayPal has a poor history on resolving any dispute, I am yet to know any one that was compensated by their offered protection plan, quite the opposite there is large body of evidence that points to PayPal to be a very unsafe organization.

How can this be a benefit when the dispute resolution is only smoke and mirrors.

ACCC View 5.160

The ACCC considers that PayPal offers sellers more protection than some other methods of payment, however, PayPal is not unique in this respect as it offers similar seller protection to that provided by Paymate.

PayPal offered protection is just words, in reality they engage in charge back activity without proper consultation with the parties, they will not engage in any form of mediation or fact finding, they just shift liability to the seller.

So the offered protection is just words.

Again large body of evidence on the web that shows this to be the case.

ACCC in part acknowledges this in 5.161 how ever it is my opinion that the ACCC is understating the situation where in the case of eBay dealings the seller is always the one to suffer the result of the dispute where PayPal takes the final solution of charge back in favor of the buyer, with no appeal process available to the seller.

I hope my comments assist the commission in arriving at a proper decision.

Kind regards

Robert Campiciano

