

**EXCLUDED FROM
PUBLIC REGISTER**

From: Kye Crow [mailto:
Sent: Tuesday, 17 June 2008 8:51 PM
To: Adjudication
Subject: Ebay International A.G - Notification N93365

Dear Sir/Madam,
I have read the eBay notification and eBay's submissions to the ACCC about exclusive dealing.

I was one of hundreds of buyers and sellers that lodged their submissions against this notification as both a buyer and a seller. I have also read the whole of ACCC's draft notice of revocation and heartily agree with the ACCC.

I hereby wish to lodge my whole hearted support for the ACCC's draft notice to revoke Immunity for eBay's PayPal only Policy (Notified Conduct Parts 1. and 2.) for the following reasons :

Reduced Competition

EBay's proposed conduct would definitely decrease the on line auction competition in Australia and it definitely does not have an overall public benefit. In fact I would go so far as to say that it will have a detrimental effect noting that the BBE's are actually more with PayPal than with forms of payment methods.

Without competition eBay/PayPal would have no pressure placed on them to improve issues that currently exist in their payment system, and they would have no reason to provide a better service in future.

On line market place vs. interfering in legal contracts

In eBay's own submission and this is noted in section 5.7 "eBay describes itself as an online marketplace, noting that its three primary functions are a search tool for buyers, a listing tool for sellers and a transaction function for both buyers and sellers". Sales on ebay.com.au are in fact a contract between the SELLER and the BUYER, eBay has no function or part in this contract, apart from collecting fees from the seller, thereby generating its own income stream. eBay merely provides an online venue for Sellers and Buyers to conduct business together. eBay therefore has no right to add conditions to the sale contract between the buyer and seller by insisting that PayPal be offered as a payment method. It must be left to SELLER and BUYER to agree on method of payment. As the ACCC has so wisely pointed out in section 5.174, consumers can make the best decision on payment methods and The ACCC is of the view that consumers are in the best position to determine whether, for their particular transaction, PayPal offers the best features in terms of security, fraud protection, dispute resolution and insurance, at the price offered.

Poor Service to Paypal and eBay customers

If eBay/PayPal's true reason for this change is for customer safety then I believe we should be allowed to use other online payment systems, if we desire to do so, such as Qpay or Bpay, Paymate and any other on line payment systems that may propagate in the future. These companies all offer equal and in most cases, better security and are regulated by Australian Financial laws. These companies also have direct phone numbers and an office where you can speak directly to a consultant. PayPal has no office in Australia that I am aware of, or a direct phone number where you can actually speak to a consultant. This means poor service for all eBay customers in the event of a dispute.

I agree with section 5.127 of the ACCC draft notice where it states " Submissions suggest that many users are dissatisfied with PayPal's support systems and complain that the primary contact with PayPal is by email and often responses are slow, automated and/or do not address the query. The ACCC notes that, unlike PayPal, many banks and other online payment services offer telephone and in-person support. This is the one reason why I will not sign up to PayPal.

Debate about the facts of incidence of fraud with PayPal as against credit card fraud – Facts by eBay.

EBay cannot even give a valid reason for customer safety and public benefit based on their own facts. I note in section 5.128 "..... that eBay provides no evidence to suggest that the relative frequency of online fraud for PayPal online transactions is any less than found in general online transactions. According to 2007 APCA statistics, card fraud in Australia is 0.0167% of transactions. APCA contrasts this with a statement made by Daniel Feiler, media spokesperson for eBay, quoted in the on-line publication 'The Sheet' on 15 April 2008 saying that the incidence of fraud through PayPal now stands at 0.30% of all transactions. APCA also notes that PayPal's buyer protection is not reducing fraud but instead is reallocating the cost of fraud from buyers to sellers.

Security Risks

I note when signing up to eBay's site that there is no verification process for identity nor is there any encouragement to verify your actual identity by providing proof of address, name, phone number etc. This is completely at odds with other online auction sites that seem to take fraud seriously.

PayPal's method of reallocating the risk to the seller, there is no incentive for eBay/PayPal to actually reduce fraud on its website. As a responsible web citizen this should be considered a high priority to eliminate fraud and in fact by doing nothing eBay itself has in fact contributed to BBE's.

PayPal has continued to resist in signing up to EFT code of Conduct and if they did, they might actually start to instill some public confidence in PayPal. I note with interest that this is mentioned in section 5.129 "ASIC and the ABA recommend PayPal become a signatory to the Electronic Funds Transfers (EFT) Code of Conduct in order to increase consumer protection. Part A of the EFT Code prescribes rules relating to the provision of EFT transactions including: record keeping requirements; liability for unauthorised transactions; liability in the cases of system or equipment malfunction; audit-trails; and complaint investigation and resolution procedures."

Reduced Public Benefit from PayPal by virtue of feedback changes to eBay

I note from ACCC's draft revocation order that in section 5.151 it states "PayPal's closest competitors offer their own forms of buyer protection insurance in the case of items not received or significantly not as described. PayPal does however offer the highest level of buyer protection, with eligible buyers covered up to \$20 000 following implementation of the notified conduct."

However from eBay's own PayPal conditions - Information for Sellers about PayPal Buyer Protection at <http://pages.ebay.com.au/help/tp/paypal-protection.html> I note the following conditions apply.

"How do I know my item is eligible for PayPal Buyer Protection?"

To see if your item is eligible for PayPal Buyer Protection* look for the PayPal icon in the 'Buy safely' section of the item description page and then check the Eligibility Requirements in the PayPal Buyer Protection policy.

For your item to be eligible for up to \$3,000, you must meet all the following requirements at the time of listing:*

- You have a feedback score of 50 or more with a 98% or more positive rating. *
- You have a verified PayPal Premier or Business account.
- You offer PayPal as a payment option to prospective buyers (PayPal Buyer Protection only covers items paid for with PayPal).
- You have a PayPal account in good standing.

The item is listed on ebay.com.au."

**Underline and emphasis mine*

Unfortunately eBay has now in just the last few weeks has changed their feedback process so that neutral feedback is now counted as a negative and has prohibited sellers from leaving

any feedback apart from positive feedback, whereas the buyer is able to leave neutral or negative feedback. This means that the feedback system is now seriously flawed and weighted unfavourable in favour of the buyer thereby increasing the chances of negative feedback to the seller. This means that for a seller with previously high feedback that the will quickly slip below the 98% figure thereby PayPal is not providing any cover for buyers. This actually contradicts the argument by eBay that increased public benefit by PayPal will be obtained for buyers by the implementation of the proposed conduct. So the cover purported by eBay through their PayPal service is nowhere near as comprehensive as they have led everyone to believe. One could be cynical and say that the feedback changes have been staged so as to actually reduce the likelihood of PayPal having to cover payouts under the proposed extra public benefits.

Public reaction already started against PayPal move

In section 5.45 of the draft notice it states "eBay considers that buyers and sellers who do not wish to pay PayPal fees are able to list and purchase items through competing services. EBay notes that since it announced the implementation of the BBE Project, OZtion's membership has reportedly increased by 22% to over 250,000 members. EBay contends that this is evidence:

...to suggest that a number of sellers will choose alternative platforms in response to the implementation of the Project, providing a strong incentive for eBay to maintain a competitive offering."

On the contrary I would suggest that this is a direct response by consumers who do not wish to use PayPal and who prefer payment methods of choice, rather than being arbitrarily forced to accept sale conditions that have no right to be imposed on them by an on-line venue platform.

Increased costs to consumers

Compulsory PayPal will increase costs to Sellers which will result in higher costs being passed onto Buyers. Other payment methods such as Direct Deposit are a favoured method for both Sellers and Buyers as fees are small or Nil and in addition any issues can be easily remedied through local bank branches.

Taxation Issues

I also have issues with an Australian website (ebay.com.au) not having to contribute GST to the Australian economy, as none of the invoices issued by ebay.com.au contain any GST component which as I understand in Australia is mandatory rather than being optional. I therefore further request that this matter be referred to the Australian Taxation Office for investigation and rectification.

I therefore ask the ACCC to deny immunity to eBay for both parts of the notified conduct 2.15. eBay describes the notified conduct as below:

(1) effective on and from 21 May 2008, eBay will amend its User Agreement and alter the functionality of the eBay Site such that all sellers (including both new and existing sellers) will be required to offer PayPal as one of their accepted payment methods; and

(2) effective on and from 17 June 2008, eBay will amend its User Agreement and alter the functionality of the eBay Site such that eBay will supply the services on the eBay Site to users on the following conditions:

(a) sellers may only offer to accept payment made through PayPal, Pay on Pickup or Visa/MasterCard processed by PayPal;

(b) all eBay transactions must be paid for using PayPal, Pay on Pickup or by Visa/MasterCard processed by PayPal, and not through the use of any other payment method; and

(c) Sellers will still be permitted to have arrangements with third party providers that provide checkout facilities (commonly as part of an overall business/inventory management facility). When a customer purchases a product from these sellers, the customer is not taken to eBay checkout – but instead redirected to a third party checkout facility.

However the seller must be a PayPal member and the product must be paid for using eBay's accepted payment methods and not through the use of any other payment method.

I thank you for allowing me to lodge my support of the ACCC's Draft Notice to deny eBay Immunity. I trust that the ACCC will act in the best interests of all Australians and deny immunity to eBay from prosecution under the Trade Practices Act 1974 forthwith.

Kind Regards Kye Crow

<Address excluded>

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