

Macrae, Tess

Subject: FW: Proposed draft for EBAY Australia [SEC=UNCLASSIFIED]
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From: Danny Chen [mailto:
Sent: Tuesday, 17 June 2008 4:09 PM
To: Adjudication
Subject: Proposed draft for EBAY Australia

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Dear Sir/Madam

I have read the eBay notification and their submissions to the ACCC about exclusive dealing. I have also read many submissions against the proposed conduct and the ACCC's draft notice of revocation, along with eBay's public response to said draft notice.

I wholeheartedly agree with the ACCC's draft notice as I believe eBay's proposed conduct would severely decrease competition, to overall public detriment.

I did lodge a submission during the first round of public consultation and I certainly wish to lodge a submission in support of your draft notice at this time as well as an 'interested party'.

I have been active on eBay since may 2001 (with 1034 feedbacks, and ranked 114 on their top 1000 reviewer list) as both a buyer and seller, and have only ever paid for my own purchases, and accepted payment for sales from my buyers, via direct bank deposit, Australia Post Money Order, or Cash On Pickup (in the case of physical face-to-face handover of goods), ONLY if the item is to be sent oversea, then is paypal is accepted.

The majority of my eBay transactions during this period have involved traditionally 'small-medium' items, worth \$50-100 per transaction, and the odd \$100+ items.

In view of the not-inconsiderable monetary values involved in the above transactions, I have always chosen to avoid buying from sellers who offer Paypal as their only payment option, and have refrained from accepting Paypal as a payment option on my own sales listings. This is essentially because, contrary to statements made by eBay, I have little trust in the oft-touted 'security' of the Paypal payment method (as both a buyer and a seller), nor do I find it any more 'convenient' or 'easier' to use than the above mentioned alternative payment methods (direct bank deposit, Australia Post Money Order, Cash on Pickup).

Whilst it may be through no fault of Paypal's, for myself and many of my friends and acquaintances who use online shopping to any degree, Paypal as a payment method has come to be inextricably associated with some of the more 'disreputable' corners of the Internet and e-commerce such as 'adult', 'warez' (pirate software), and 'cheap online medication' websites, along with fraudulent and misleading eBay listings by (mostly international) sellers. It has become, in effect, an electronic version of the much-maligned 'excluded'. Therefore as a buyer, I have absolutely no confidence in eBay's ability to 'protect' any transactions I make using Paypal, as they required a validated valuer's report on the item no received, and they take fees for processing the so called protected transaction, and around 90% of the time, they still only pay out \$25 for items less than \$100, \$100 for items less than \$300, etc etc. The paypal buyer protection might cover goods up to the price of \$20,000 but I have never met or heard of anyone whom have successfully claim the full amount of their purchases + shipping, and all other associated costs, above \$300, therefore paypal can offer \$1 million buyer protection yet, still only pay out \$300 for the whole thing, thus paypal's promises are unless and empty.

As a seller, further to the above misgivings I have about Paypal from a buyer perspective, accepting this as a payment method on my own listings exposes me to a wholly unacceptable level of 'charge-back fraud' risk, with little to no recourse offered by either Paypal or eBay should this occur, and a lengthy and complicated arbitration process to contend with, should I indeed need to claim back funds and/or lost goods in the event

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of aforementioned fraud.

It is primarily for these reasons that I've avoided using Paypal as both a buyer and seller during the time I have been an eBay member, and will continue to do so. In view of these misgivings, I find it almost laughable that eBay should tout their proposed mandating of "Paypal and Cash on pick up only" listings as offering buyers and sellers in their marketplace more 'security'.

Certainly pickup is the most 'secure' payment method of all (which is why I've always been happy to accept it), but is not practical for 95% of the sellers nor buyers. In view of the concerns I've expressed above, one can see why I would strongly disagree with eBay about the supposed 'security' of Paypal.

Further, by undertaking to mandate my payment options (as both buyer and seller) to these two methods, I feel eBay is restricting my right to utilise competitive payment systems (such as BPay or direct bank transfer, Money order, and cheques.) under the Reserve Bank of Australia's Payment Systems Act and/or the Commonwealth Trade Practices Act. Whilst I certainly don't claim to be a qualified lawyer or legal practitioner, I nonetheless suspect the proposed conduct by eBay may also be a clear example of "third line forcing", and therefore in further breach of the TPA.

As of June 17th, my trial/test listing, not only put paypal as the preferred payment (which is 100% untrue), pickup address is not easily displayed on checkout, it takes about 3 more clicks from the moment paypal payment option is displayed. Other sellers have complained on the ebay's message board stating that their sales prior to the 17th June changing date, now no longer displays the seller's banking details even though the sales was completed before the change dates.

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 they 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 would appreciate you taking into account my comments in this email, and thank you for your valued consideration of the matter. Further, I strongly urge you to uphold both the letter and intent of your draft determination, to revoke immunity for eBay's PayPal only policy in your final determination on this matter, and to allow direct deposit and other alternative methods as a payment options on eBay listings for sellers who choose to accept them.

Kind regards
Danny Chen

Hotmail on your mobile. [Never miss another e-mail with](#)