

**Roy, Lauren**

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**Subject:** eBay International AG - Notification - N93365 - Our Response to ACCC Draft Notice [SEC=UNCLASSIFIED]  
**Importance:** High  
**Categories:** SEC=UNCLASSIFIED  
**ACCC Classification:** SEC=UNCLASSIFIED

**From:** Eva Glenda Foo [mailto:

**Sent:** Wednesday, 18 June 2008 12:10 AM

**To:** Adjudication

**Subject:** eBay International AG - Notification - N93365 - Our Response to ACCC Draft Notice

**Importance:** High

**EXCLUDED FROM  
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Good Afternoon,

Thank you very much for the work that you have done to date in considering this matter and giving us the opportunity to make submissions on this important issue.

My wife and I were formerly regular users of eBay (myself as a buyer and my wife as a trader buying and selling items) until the first stage of the eBay changes came into place.

We have read the draft notice ("Notice") issued by the ACCC and are in complete agreement with the findings of the ACCC and were extremely pleased with the depth of analysis and the logical conclusions that have been drawn.

We do however wish to make some comments, many which are already implied in the Notice. The most important conclusion is that we should not be allowing any conduct which will impair the development of alternative payment choices to consumers. To force the use of any system whether it be Paypal or some other method is bound to impede the development of competition and innovation which is well explained in your Notice. The market which eBay implies is not easy to define but has been well described by the ACCC by checking the characteristics both supply and demand side is growing and innovating at a good rate. This market did not exist twenty years ago. We therefore as buyers and sellers need payment systems which will innovate at a similar rate and as correctly pointed out in the Notice (Sec 5.174), this will be achieved best by consumers in the market place. The best system in terms of a number of factors including cost, safety, efficiency etc will be chosen. There is no need therefore to mandate a compulsory method such as Paypal. It is extremely important that eBay not only be required to allow the choices it currently offers, but **never** be allowed to mandate a compulsory offering of Paypal by it's sellers, **even** if sellers are allowed to offer alternative choices with it. If this were allowed many of the detriments noted in the draft listing will become reality over time.

Other comments we have are (sections of the Notice):

- 2.23 – The alternative methods mentioned are all valid possibilities. eBay specifically bans the use of Western Union or Money Gram for "security reasons" and yet there seems little difference between these methods, direct credit or cash on delivery;
- 4.1 – This is a distorted logic by eBay. It cannot define the markets it operates under, cannot therefore determine if it has possesses market power and yet attempts to imply by default that it will not limit competition;
- 4.5 – 4.8: The ACCC received a large number of submissions from a wide section of the community and nearly all of them oppose the eBay Conduct ("Conduct"). These submissions were from far and wide from simple folk such as us to more sophisticated eBay traders to a wide array of respectable organisations. It is therefore reasonable to conclude that the Conduct will affect a wide group of people and organisations in the community and the affect will be adverse;
- 5.7 – 5.16 (ACCC View on eBay's Operational Market). This is an excellent assessment and strongly supports the conclusion in the Notice to revoke eBay's immunity from prosecution for the Conduct;
- 5.26 (ACCC conclusion on PayPal). The view that the ACCC holds that it is important to focus on the intrinsic link between the operating markets of eBay and Paypal is strongly supported by us and we

believe is one of the most important findings in the Notice. It is our belief that any effort by eBay to appeal the ACCC decision will be on this point, and will revolve around attempting to argue this link is less important. Nothing in our view is further from the truth;

- 5.30 – 5.32. These are important ideas and ones we need to defend by issuing a final Notice revoking the Conduct. Whilst we cannot guarantee that by banning compulsory use of Paypal will automatically stimulate competition and innovation, we can guarantee that making it mandatory will ensure that no competition or innovation will occur. Many submissions including ours mentioned poor experiences in dealing with Paypal; competition will give us the opportunity to choose providers who give us better dealing experiences and ironically may encourage Paypal to improve to compete better;
- 5.37 – eBay's contention on Bad Buyer Experiences (BBE's) are fundamentally flawed as they assume that the responsibility for BBE's are **entirely** the fault of sellers. My wife from her experience as a seller (and her observations are in many instances supported by other submissions) believes that poor communication, inaccurate descriptions of items, inexperienced buyers (with unrealistic expectations) and fraudulent eBay/ Paypal members play major roles in BBE's. Many sellers, including my wife have high feedback scores in excess of 500 sales with > 99% positive ratings on eBay. These alone show that an overwhelmingly number of buyers actually experience an excellent buyer experience. This BBE project by eBay is therefore completely unfair as it is an impost directly on the seller and is regressive in nature as it hurts small sellers more than larger sellers (as smaller sellers have less ability to pass on costs). eBay would be better going back to the drawing board and think of a solution which would protect both buyers and sellers without unduly burdening either party. It also conveniently absolves eBay from responsibility for educating users on how to operate in online auctions. The one observation my wife and many others have **not** noticed is the one eBay proposes which is non Paypal payment methods are directly and strongly negatively correlated to BBE;
- 5.39 – We respect that the view ACCC can only consider reasons such as Transaction Security. However we should not completely ignore the "double dipping" argument. "Double dipping" is at least an effect of the conduct and a distortion in eBay's favour which eBay has not attempted to make fairer by for example, lowering listing fees so a seller was not worse off. Offering fee relief may have been one area where eBay could have supported the fallacy it had a sole and genuine desire to have transaction security;
- 5.68 – The story on the other competitors such as OZtion is not a complete story. OZtion has shown much growth in the last six months or so as members have fled eBay in protest. The important part of the story is the observation by the ACCC that eBay has a first mover advantage being the incumbent operator in the online auction market (like Telstra in the telecommunications market). We can confirm the power of the first mover advantage now we've shifted from eBay to OZtion. At eBay I was a power seller selling around \$2,000 per month, on OZtion after a month of listing I have made gross sales of \$13.75. eBay is therefore nowhere near as threatened by OZtion et al as implied. As PESA noted in it's submission (as paraphrased in 5.72) none of the other alternatives currently or even in the foreseeable future will have the traffic by Bay;
- 5.74. This is discussed above and we completely agree with the conclusion reached;
- 5.80. We strongly agree with all the ACCC conclusions on the Conduct's affect on competition;
- 5.119. We consider the statement that Paypal's arbitration through its online dispute resolution will have the effect on buyers feeling their dispute is favourably solved to be laughable. Paypal's online dispute resolution is a joke and again we see the interest of eBay/ Paypal in shifting the risk of a BBE to a seller in all cases;
- 5.127 – This is also an important point. eBay is attempting to impose a system which does not even meet the basic customer service requirement of its competitors such as telephone or personal support. If eBay were sincere it would encourage Paypal to become a signatory to the EFT Code of Conduct as highlighted by ASIC and ABA;
- 5.137 – 5.139 – BBE issues via fraudulent activities such as "Phishing" and security flaws is not addressed by any part of the Notice;
- 5.143 – If the hagiographic description of Paypal by eBay is true then why are so many eBay buyers and sellers unhappy with Paypal and why do anti-Paypal sites exist?
- 5.148 – Why won't Paypal become a signatory to the EFT Code of Conduct?
- A general issue is that eBay has already ruled out imposing this Conduct on the US market which arguably must by its sheer size suffer more BBE's than Australia. If the real purpose is security then eBay would want to roll this out worldwide at the same time so timing gaps do not become "weak" spots

We therefore heartily support the ACCC proposal to issue a notice to revoke notification N93365 immunity lodged by eBay International.

Yours truly,

Raymond and Glenda Foo  
Former eBay Users

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