

**paymate**

Sydney  
11 July 2008

Mr Tim Lear  
Acting Director, Enforcement  
Australian Competition and Consumer Commission  
GPO Box 3131  
CANBERRA ACT 2601

Dear Mr Lear:

**Sub: eBay International AG exclusive dealing notification N93365**

Paymate Pty Ltd (**Paymate**) understands that eBay International AG (**eBay**) has withdrawn the above notification N93365 (**the Notification**) lodged on 11 April, 2008 with the Australian Competition and Consumer Commission (**ACCC**).

We also note the draft Notice issued by the ACCC on 12 June, 2008 concluded 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." [5.160]

The evidence available does not support the view that PayPal is the most secure method of payment, or offers the best service for all transactions." [5.173]

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. [5.177]

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

We have been advised that eBay has amended its terms of operation so that the following conditions apply:

"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." (see paragraph 2.5 of the Notification)

Hence, it is our belief that eBay, in both Australia & New Zealand, is engaging in conduct in breach of s 47 of the *Trade Practices Act 1974* (**TPA**) because the conduct amounts to anticompetitive exclusive dealing, and that further by its representations it is also engaging in misleading and/or deceptive conduct in breach of s 52 of the TPA.

## 1 Section 47 of the TPA

It is Paymate's view that by pursuing this conduct, eBay is in breach of s 47 of the TPA because the effect, or likely effect of these arrangements will be to substantially lessen competition in the appropriate markets. Despite the assertions made by eBay that its aims are to eliminate or minimise the risks associated with using certain types of payments, nevertheless a significant purpose for eBay's actions is to eliminate or minimise the ability of companies such as Paymate and others to effectively compete in the market.

In Paymate's submission (**the submission**) dated 7 May 2008 to the ACCC in relation to the eBay exclusive dealing notification N93365, we set out the arguments which we believe reflect the major competition concerns which arose from the conduct the subject of the proposed eBay notification. Almost identical competition effects will arise as a result of the revised eBay action.

The eBay proposal significantly restricts the ability of Paymate or other payment options to be adopted because eBay:

- mandates PayPal for sellers;
- requires that sellers not express a preference for any particular method;
- promotes PayPal aggressively to buyers to imply it is the 'default' method;
- provides no or little information about alternative methods for assessment by buyers and sellers<sup>1</sup>.

In this regard, we refer to section 4.2 (page 4) of the submission. Furthermore, the detriments we outlined in section 6 (pages 17 – 19) are also highly relevant in assessing the impact of eBay's proposal on the competitive environment. The confidential assessment with respect to online payments is also relevant in assessing the likely impact of the arrangement on the Australian market. As you will appreciate, Paymate is a relatively small company and not in a position to get a detailed economic analysis of these issues.

## 2 Section 52 of the TPA

We also strongly object to the inference in eBay's publicity to the effect that its method of operations provides the kind of safety and risk free environment that would not be available by utilising other payment methods such as those offered by Paymate. This is misleading and/or deceptive in breach of s 52 of the TPA.

In this regard, we refer to section 5 and in particular to the comparative tables set out at pages 8 – 16 of the submission.

There are further contentions that we would like to bring to the attention of the ACCC in considering our letter:

- a. eBay has mandated that sellers offer PayPal as a payment option. If they do not, their listings are removed, ie they cannot sell the item on eBay. If they express a preference for another method (e.g. 'PayPal accepted but Paymate preferred') their listing can be removed, since eBay mandates sellers cannot express a preference among all payment options offered.

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<sup>1</sup> See content on Payment Methods Accepted, <http://pages.ebay.com.au/help/sell/payment-method-accepted.html>.

- b. eBay aggressively promotes PayPal throughout the site and especially in the 'end of auction' email to the buyer - the integration of PayPal (enabling a single click to initiate a payment to the seller with all details of the auction included), the prominence of PayPal that creates the impression that it is the only option for buyers and the lack of information on alternative payment options accepted by the seller.
- c. This is an unsolicited email received today from an eBay buyer (name and email address available on request with permission from the individual):

*"I have just won an auction on E/bay, paying for the item by direct deposit. trying to get to the payment area is a minefield on E/bay, at every corner Paypal is promoted as the way to pay.*

*One has to be determined to pay by another method. I eventually found the other payment methods buried away.*

*I am still not sure if E/bay will allow its members to show the Paymate link so express payment to be made.. its been said E/Bay are pulling off listing showing the paymate logo.*

*or E/bay are advising the buyers that Paypal is the only safe way to pay the other methods are not safe."*

- d. eBay does not allow sellers to pass on any fees incurred for any payment option.
- e. eBay does not prominently publish the payment alternatives accepted or relative benefits, resulting in confusion about whether Paymate is acceptable. The Accepted Payments Policy<sup>2</sup> promotes PayPal again to the detriment of other options including Paymate.
- f. eBay's content explicitly states that PayPal is the 'safest' option and media statements such as 'four times less likely to result in a dispute compared to other options, such as direct debit', without any reference to a service like Paymate that offers a comparable level of safety and security.
- g. As a result, eBay sellers cannot exercise their choice and select Paymate as a preferred alternative to PayPal.
- h. We consider eBay's conduct (notified as Part 1 under their prior notification) as a restrictive practice that is harming Paymate's business - both on eBay and via implication as a 'less safe' service, outside eBay.
- i. There is a public detriment as a result of the conduct, affecting sellers' ability to prefer any other payment option and for buyers to understand and select from those options to suit their needs (on service value, risk management and price parameters).

We believe the decision the ACCC should take is to ask eBay to immediately cease its conduct or face prosecution by the ACCC in the Federal Court. In addition, we recommend the ACCC ask eBay to:

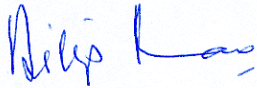
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<sup>2</sup> See eBay Accepted Payments Policy, <http://pages.ebay.com.au/help/policies/accepted-payments-policy.html>.

- make available factual information on all accepted payment methods to both buyers and sellers on an 'equal footing' basis;
- communicate the changes to policy and information on all payment methods clearly and prominently on the eBay website as well as via email communications, to at least the same extent as the Notified Conduct was communicated.

Paymate would be pleased to provide more information or meet with officers of the ACCC to discuss this matter further.

Yours sincerely,



Dilip Rao  
Managing Director

