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DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS
COMMITTEE ON COMPETITION LAW AND POLICY

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ROUNDTABLE ON ELECTRONIC COMMERCE

-- Note by the United States --

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Introduction

1. Business-to-business electronic marketplaces ("B2Bs"

potential customers. In B2Bs that set their prices through catalogs, buyers can, with a few mouse clicks, compare the prices of several vendors of a given product. In B2Bs that host reverse auctions, a buyer can invite sellers across the globe to bid against each other for its business; likewise, sellers can auction items such as used machinery in B2Bs that allow them to reach more potential buyers – and higher sales prices – than before.

8. B2Bs can also let suppliers all along the supply chain know what the buyer wants and when, reducing inventory costs and delays. The process can be even more streamlined for businesses with automated inventory systems, which may be connected to a B2B so that the buyer's internal inventory system can more seamlessly convey the buyer's needs as they arise.

9. Joint purchasing can help reduce transaction costs through scale economies in purchasing and may produce other efficiencies. For example, some participants stated that small purchasers who purchase jointly through a B2B may be able to take advantage of quantity discounts and truckload pricing.

10. At this relatively early stage of B2B marketplace development, it is important to recognize that while some B2Bs are operational and have achieved certain kinds of efficiencies, many more are in the planning stage, with the potential to realize yet more and different kinds of efficiencies. Thus it may be too early to tell whether all of the promised efficiencies of B2Bs will be achieved.

Information Exchange

11. Several participants were concerned that information-sharing agreements in the context of B2Bs could facilitate price coordination and thereby injure competition in the market for the goods and services traded on the B2B. As one panelist stated, "The Internet is ... an extremely efficient mechanism for exchange of information ... and that's only going to exacerbate the difficulties of identifying when it's collusive."[3]

12. Participants noted a variety of ways in which such information-sharing agreements through B2Bs could facilitate price coordination. They asked, for example, whether sellers in a concentrated market could agree to a practice that would let them see each other's bids in online B2B auctions, and whether that would allow them to tacitly fix prices or police cheating on a price-fixing agreement. These concerns were not limited to sellers' actions; they also questioned whether buyers could agree, through a B2B, to share information about their purchases of inputs such that each would know the other's cost structures, making it easier for them to collude on their selling prices. They likewise raised the concern that buyers could agree through a B2B to reveal to each other the input purchases they each have made, making it easier for them to police cheating on an output-fixing plan.

13. Panelists mentioned a variety of factors that would affect the analysis. For example, they noted the importance of market structure, of determining who is sharing information with whom, and of

information from board members employed by participants. They discussed whether such alternatives would adequately safeguard against competitive harm and whether they would sacrifice other efficiencies.

Joint Purchasing

15. Monopsony is "market power exercised on the buying side of the market," power that lets a buyer or buyer group "reduce the purchase price by scaling back its purchases."[4] Thus, the Horizontal Merger Guidelines provide that "[m]arket power ... encompasses the ability of a single buyer (a "monopsonist"), a coordinating group of buyers, or a single buyer that is not a monopsonist, to depress the price paid for a product to a level that is below the competitive price and thereby depress output. The exercise of market power by buyers ("monopsony power") has adverse effects comparable to those associated with the exercise of market power by sellers."[5] Under the classical theory of monopsony, a single buyer in the market reduces its purchases of a given input in order to lower the price it must pay.[6]

16. The workshop record reflects that not all B2Bs facilitate, or anticipate facilitating, joint purchasing. However, some workshop participants expressed concerns that B2B participants with a large enough market share might use the B2B to exercise monopsony power. Workshop panelists posited that the necessary coordination could be achieved expressly, through an agent, through consulting services that permit coordination of input purchases, or perhaps through tacit collusion.

17. One factor warranting consideration is whether the buying group in question accounts for a sufficient share of the buying market such that its purchases may influence the price of inputs sought. For this reason, workshop participants expressed the view that the joint purchasing of indirect inputs such as those used for maintenance, repair, or operations is generally less likely to raise concerns than joint purchasing of direct inputs.

18. Panelists emphasized that buyer groups driving prices down through monopsony power are distinct from buyer groups winning better prices through increased efficiencies, such as by enabling their suppliers to save money by selling to the group. In such cases, there may well be savings to suppliers warranting quantity discounts.

Exclusion

19. Workshop participants expressed concern about the potential for disadvantageous treatment of the competitors of the participant-owners of particular B2Bs, which could take various subtle forms short of outright access denials. As examples, participant-owners might receive rebates of fees that are unavailvant1r.9(mi (13 TD3(r d)12.9(s)]TJ Tis thavs. A12.)12.7;s. A12rds, whi)8i-s -ms

20. Workshop participants expressed concern that denying or disadvantaging competitors in their access to a B2B e-marketplace could, in certain circumstances, raise their costs or maintain them above levels that otherwise would prevail. Antitrust scrutiny might be warranted if this harmed competition, not merely competitors.

21. Workshop participants noted the need to consider carefully the extent of the disadvantage that likely would ensue from denying or limiting access to the B2B, as well as the substitutes to which the disadvantaged firms could turn to avoid or mitigate the disadvantage. In this regard, some panelists stated that any such excluded rivals could readily reach suppliers or buyers through alternative mechanisms at comparable costs; other panelists, however, suggested that strong network efficiencies in an incumbent marketplace B2B might make alternatives unsatisfactory. Workshop participants likewise had mixed views on the ease, and hence the curative power, of entry. Some argued that entry of new B2Bs would quickly provide ready alternatives for disadvantaged rivals, but others questioned the ease of entry into these markets. These are but a sampling of the factors discussed at the workshop, but they illustrate the nature of the concerns.

22. Some workshop participants asserted that some differences in treatment may be warranted to discourage free riding by non-owner participants, or as a means of ensuring access only by "qualified sellers." These participants pointed out that exclusion or other access distinctions may be reasonably necessary to achieve the pro-competitive benefits of a particular B2B.

Exclusivity

23. Finally, several panelists expressed concern that B2Bs may undermine the development of effective B2B competition by improperly requiring or persuading buyers or sellers to deal exclusively with particular B2Bs. They noted that this is an early but potentially critical stage of B2B market development, and that determinations made at the outset may shape B2B competition for years ahead. Of course, to the extent that exclusivity practices also give rise to efficiencies, they may prove on balance to be procompetitive.

and analytical literature, the Staff Report noted the pronounced advantage that network effects can give an incumbent operator, and cautioned that conduct that could contribute to achieving dominance warrants heightened scrutiny in settings with prominent network effects and switching costs.[8] Substantial network efficiencies and consumer switching costs might make it difficult for an entrant to start small, compete effectively, and grow to become a significant factor in the market.

Conclusion

27. Antitrust analysis is a highly fact-driven inquiry, and development of federal antitrust policies will be based on the facts of the matters before the antitrust enforcement agencies. One such example is the matter of the B2B venture, called Covisint, formed by five large automotive manufacturers and two information technology firms to provide services for firms in the automotive industry supply chain. Covisint was the first B2B venture that the FTC reviewed following its notification under the premerger notification provisions of the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act). On September 11, 2000, the FTC closed its investigation of whether Covisint violates Section 7 of the Clayton Act, which prohibits mergers and acquisitions that are likely to substantially lessen competition, and terminated the waiting period under the HSR Act. However, in a public statement accompanying the closing, the Commission stated that because Covisint i) was in the early stages of its development and had not yet adopted by- laws, operating rules, or terms for participant access, ii) was not yet operational, and iii) in