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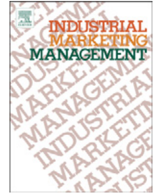

The antitrust implications of electronic business-to-business marketplaces

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ABSTRACT

Electronic marketplaces (e-marketplaces) allow networks of buyers and sellers to conduct business online and to exchange information more efficiently using Internet technology. Despite the benefits that e-marketplaces potentially afford firms, concerns have been raised that these markets may damage competition and potentially violate antitrust laws. This study considers the antitrust legislation related to e-marketplaces and examines the possible antitrust concerns that they raise. Potentially anticompetitive features of e-marketplaces are examined and guidance for firm conduct when creating or participating in an e-marketplace is offered.

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1. Introduction

Internet technology has significantly changed the ways in which firms collaborate and compete. One such development as to how firms cooperate within business-to-business markets is provided by electronic marketplaces (e-marketplaces). E-marketplaces — sometimes referred to as e-hubs, B2Bs, or online exchanges — allow networks of buyers and sellers to conduct business online and to exchange information related to the terms and conditions of trade (de Boer, Harink, & Heijboer, 2002; Varadarajan & Yadav, 2002). This study provides a discussion as to the antitrust implications of this increasingly important form of commerce.

By trading through portals such as 'SupplyOn' (an online marketplace for tier-one and two automotive suppliers) firms and industries can potentially benefit from reduced buyer/supplier search costs, improved communications between buyers and sellers and the improved flow of goods through the supply chain. During the 1990s, e-marketplaces grew rapidly from a handful of web sites in sectors such as chemicals and metals to some 750 e-marketplaces in 2000 (Brunelli, 1999; The Economist, 2000). It is estimated that in excess of 1000 e-marketplaces are currently in operation (eMarket Services, 2007), having now gained broad acceptance in most industries (Howard, Vidgen, & Powell, 2005). For example, Volkswagen Group's e-marketplace 'VWgroupsupply.com' handles 90% of their global purchasing volume, including all automotive parts, indirect materials and components amounting to US$77 billion annually more than 70% of the Group's annual revenue.

Despite the benefits of trading via e-marketplaces, concerns persist that the characteristics of some electronic marketplaces might damage competition and consequently be construed as anticompetitive (Fontenot & Hyman, 2004). Discussion of this issue is important as while several articles have adopted a legal perspective when discussing e-marketplaces (Bailey, 2001; Dajani, 2001; Horton & Schmitz, 2002; Laflamme & Biggio, 2001; Sterling, 2001), limited attention has been dedicated to comprehending the potential antitrust threats e-marketplaces pose for the industrial marketer (Fontenot & Hyman, 2004; Lichtenthal & Eliaz, 2003).

Understanding the antitrust issues that e-marketplaces pose goes beyond assisting industrial marketers' in avoiding potential legal pitfalls. Identifying what constitutes a 'competitive' exchange is increasingly important as e-marketplaces are now a common platform for many B2B transactions. Subsequently, addressing potential antitrust issues ensures a level playing field for all participants and alleviates many of the concerns of parties (such as suppliers) participating in e-marketplaces. In general, antitrust legislation is important for marketers to comprehend when new technologies afford firms greater opportunities to collaborate.

2. Business-to-business electronic marketplaces — a background

2.1. Definition of e-marketplaces

While research regarding e-marketplaces is still at a formative stage, considerable interest concerning their role in supply chain management has been generated (e.g. Deeter-Schmelz & Norman Kennedy, 2002; Dou & Chou, 2002; Eng, 2004; Garcia-Dastugue &

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Lambert, 2003; Goldsby & Eckert, 2003; Howard et al., 2005; Lancioni, Schau, & Smith, 2003; Lancioni, Smith, & Schau, 2003; Ordanini, Micelli, & Di Maria, 2004; Presutti, 2003; Skjøtt-Larsen et al., 2003; Sharma, 2002). In particular, e-marketplaces have gained widespread acceptance across numerous business-to-business markets (Eng, 2004) as a means to allow networks of buyers and sellers to conduct business online and to exchange information more efficiently (IBM, i2 & Ariba, 2000; Varadarajan & Yadav, 2002). E-marketplaces provide firms with a common platform for interactive transactions and collaboration between buyers and sellers.

E-marketplaces are usually sponsored by one or a small number of parties (referred to as 'market makers') with the sole purpose of drawing together buyers and sellers in a particular sector (Grewal, Comer, & Mehta, 2001; Klein & Quelch, 1997). For example the Web-based trading systems 'Converge' — a global marketplace for semiconductor and computer peripheral industries has 6500 trading partners in 139 countries ('www.converge.com') or 'RF Globalnet' — a marketplace for microwave subsystems and components with in excess of 3000 suppliers listed ('www.rfglobalnet.com').

Ownership structure of e-marketplaces varies and includes private ownership (e.g. 'VWgroupsupply.com' operated by the Volkswagen Group), third-party ownership through a number of non-competing/ independent firms (e.g. 'SupplyOn' operated by a number of German automotive suppliers), and consortia between competing firms sponsoring an exchange (e.g. the automotive marketplace 'Covisint' in its original guise).

2.2. Potential drawbacks to e-marketplace participation

Although firms can gain considerably from e-marketplace participation (see Eng, 2004; Skjøtt-Larsen, Kotzab, & Grieger, 2003), potential drawbacks exist. Such problems include technological compatibility, perceived risks, trust concerns, attracting market participants, legal issues as well as some initial supplier resistance. Many legacy systems (and legacy behavior) or a low level of business automation are not well matched to the technological demands of e-marketplaces (Eng, 2004; FTC, 2000). Furthermore, many managers perceive moving from an established distribution channel to an electronic market a high risk option (Kaplan & Sawhney, 2000). Within many firms trust concerns also arise if non-standard items are traded (Axelsson & Wynstra, 2002). Similarly, some firms are reluctant to enter an e-marketplace if certain other competitors do not participate (Kaplan & Sawhney, 2000). Indeed, motivations for joining exchanges differ markedly for buyers and suppliers (Barratt & Rosdahl, 2002). Some suppliers have appeared reluctant to trade via e-marketplaces harboring concerns with:

i. *Transparency* — where buyers' can identify the prices suppliers are paying allowing them to potentially force suppliers to acquiesce to lower prices;
ii. *Standardization* — information provided in a form leading buyers to seek common terms such as payment options, dates or financial terms;
iii. *Ease of comparison* — being able to identify new suppliers and consequently to bypass existing channel members;
iv. *Share capital ownership* — where there is a bias towards powerful buyers;
v. *Reverse auctions* — where the buyer sets a price and suppliers bid for it with prices typically falling during the auction, and
vi. *Forced participation* — where buying firms with large purchasing volumes are likely to force suppliers to join the network.

Based on: FTC/DOJ (2000); Jap and Mohr (2002); Hannon (2003); Min and Galle (1999); Howard et al. (2005); and Koch (2002a,b).

When e-marketplaces were first introduced many commentators considered it only a matter of time before they would be penalized for antitrust infringements (Abrams, 2000; Labaton, 2000). To date, while no e-marketplace has been subject to formal investigation by the US Federal Trade Commission or the Department of Justice these bodies have raised concerns as to the potential negative consequences e-marketplaces present for competition. Although the FTC and DOJ have given some early marketplaces such as Covisint (a major collaboration between DaimlerChrysler, Ford, and General Motors and joined later by Renault–Nissan and Peugeot–Citroen) and MyAircraft (initially a collaboration between US firms United Technologies and Honeywell International) a cautious 'green light' to operate, there is still the need for managers to be cognizant of any potential threat to the successful operation of e-marketplaces in order to be effective competitors and collaborators in e-marketplace transactions.

To date, the antitrust issues pertinent to e-marketplaces have been considered to some degree chiefly by lawyers, or else from a legal perspective (Bailey, 2001; Dajani, 2001; Horton & Schmitz, 2002; Laflamme & Biggio, 2001; Sterling, 2001). In comparison, studies dedicated to an industrial marketing audience highlighting pertinent antitrust issues related to e-marketplaces are largely absent (Fontenot & Hyman, 2004; Lichtenthal & Eliaz, 2003). Although marketers are increasingly confronted by a number of legal and regulatory challenges (Petty, 2005) a general criticism of marketing practice and theory maintains that marketers have been perceived to be reluctant to engage in policy discussions (Czinkota, 2000). The scope of government policy and law which regulates marketing activity has expanded significantly in most developed nations (Le Clair, 2000; Petty 1999, 2005). Indeed, a number of authors (Fontenot & Hyman, 2004; Gundlach & Phillips, 2002; Le Clair, Ferrell, & Ferrell, 1997) have recently identified that US antitrust law presents a significant challenge to forms of marketing.[2]

3. Antitrust concerns and e-marketplaces: generic challenges and implications for practitioners

Despite the reported benefits of e-marketplaces, concerns have been raised that they enable collaboration and potentially restrict competition between buyers and suppliers. The anticompetitive concerns of regulatory agencies toward e-marketplaces relate to two areas (FTC, 2000; FTC/DOJ, 2000). Initially, concerns arise with the characteristics of e-marketplaces including how information is shared between firms, misuses of buyer power (or monopsony) and the potential exclusion or over inclusion of firms from exchanges. Additionally, the actual market for e-marketplaces may pose questions of competitiveness. This issue is exacerbated following the consolidation of some e-marketplaces such as 'CPGMarket', 'Pantellos' and 'TradeRanger' (McBride, 2005). The dimensions of these anticompetitive concerns are now considered in turn.

3.1. Markets for goods bought and sold on e-marketplaces

3.1.1. Information sharing

The premise of the Internet is a means to exchange information more easily and at higher speeds. E-marketplaces subsequently have the capacity to facilitate increased data sharing over the Web and improve the quality of information available to both buyers and sellers. This offers clear benefits as e-marketplaces allow real-time access to information such as product availability, prices and other competitive terms. While greater information availability will likely encourage competition and benefit markets "…information-sharing agreements in the context of B2Bs [e-marketplaces] could facilitate coordination on price or other competitive terms and thereby be likely

[2] For a brief overview of antitrust laws see: 'Promoting competition, protecting consumers: a plain English guide to antitrust laws' (FTC, 2007) and 'Antitrust enforcement and the consumer' (DOJ, 2007). For a more advanced discussion, see Dajani (2001) for a B2B perspective on antitrust and Fox (1997) for a global perspective of antitrust laws.

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