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ANTITRUST COUNSELING IN THE WORLD OF B2B MARKETPLACES

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Department of Agriculture

Federal and State Perspectives on E-Marketplaces for Agricultural Commodities

B2B Issues

- FTC B2B Workshop
- FTC Staff Report
- Covisint

FEDERAL TRADE COMMISSION

FTC Workshop: Competition Policy in the World of B2B Electronic Marketplaces

June 29-30, 2000

Materials are on the FTC's website:

http://www.ftc.gov

Potential Sources of Efficiencies

- Reduction in Administrative Costs
- Reduction in Search Costs
- New Market Opportunities
- Reduced Maverick Purchasing
- Joint Purchasing
- Systems Integration
- Supply Chain Management

FTC Staff Report

Entering the 21st Century:

Competition Policy in the World of B2B Electronic Marketplaces

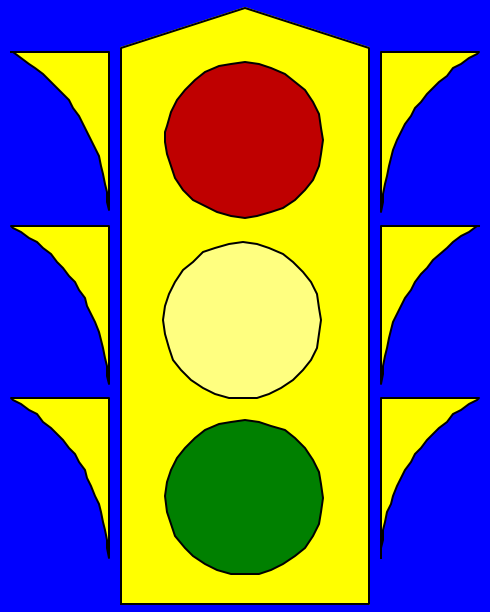
(October 2000)

Long-Standing Antitrust Principles and Evolving Technology

- B2B e-marketplaces – just like more traditional marketplaces – have the potential to raise traditional antitrust questions.
- Many B2Bs are procompetitive.
- Most antitrust issues B2Bs raise can be solved.

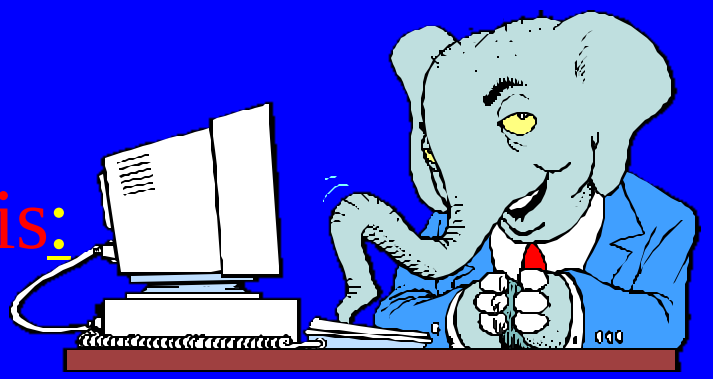
Antitrust Issues

- Proceed with caution in light of four general antitrust issues
  - Information Exchange
  - Joint Purchasing (Monopsony)
  - Exclusion
  - Exclusivity



Information Exchange

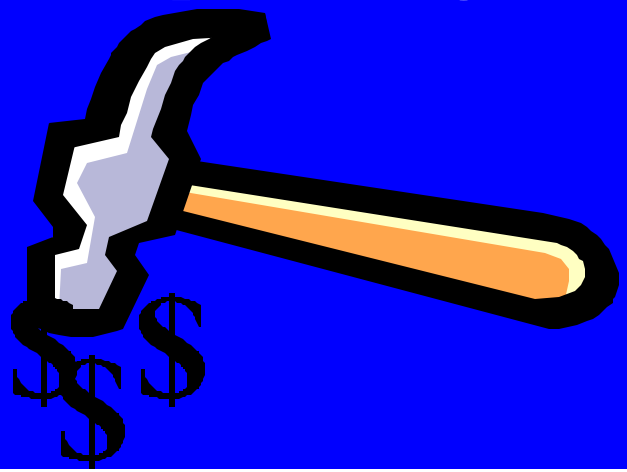
Antitrust Analysis:



- What is the market structure (*i.e.*, is it already susceptible to collusion)?
- What are the market shares of those sharing information?
- What type of information is being shared?
- How old is the information?
- How accessible is the information otherwise?

Joint Purchasing

- Monopsony is the exercise of market power by driving down the purchase price of an input by buying less of it and depressing output.
- Antitrust Analysis: Does the buying group account for a sufficient share of the buying market such that reducing its purchases would likely depress the price of the inputs bought?

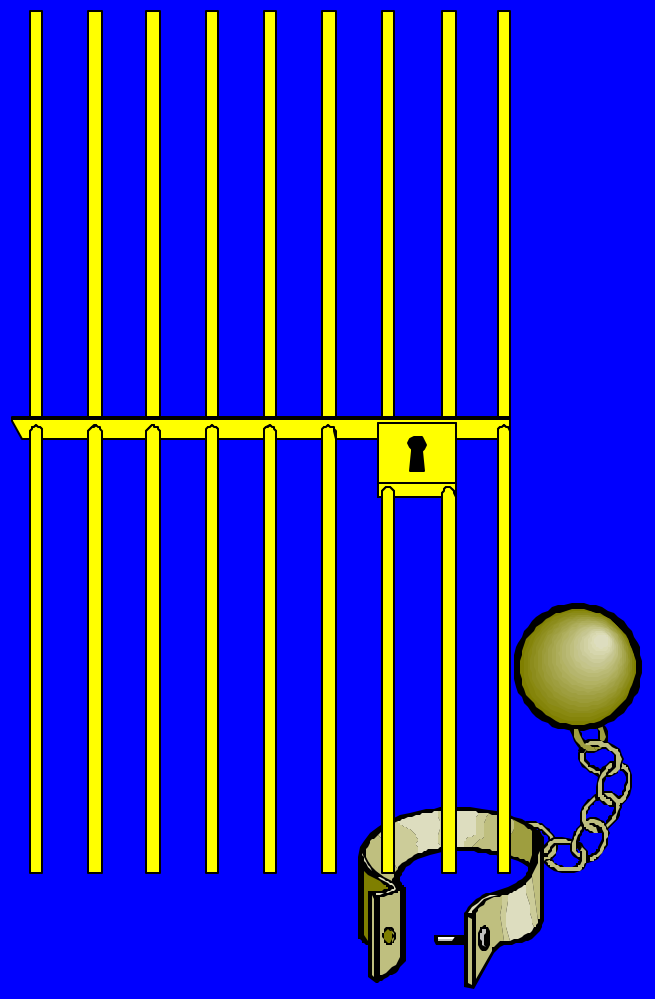


Exclusion

- Exclusionary conduct refers to restraints designed to keep outsiders out.
- Antitrust Analysis:
  - Focus on the extent of the disadvantage that rivals likely would experience if B2B access were denied or limited (the input market).
  - Examine the likely impact on competition in the market in which the excluded rivals participate (the output market).

Exclusivity

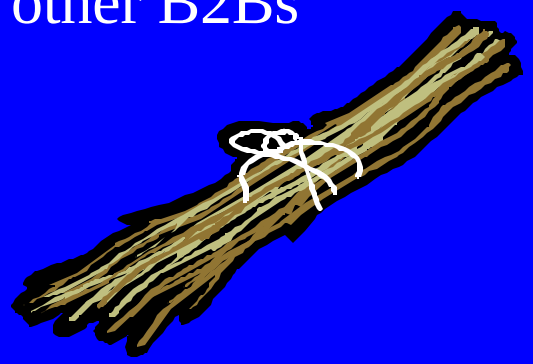
- Exclusivity refers to keeping insiders in (e.g., “you can participate only in this B2B and not any other B2B”).

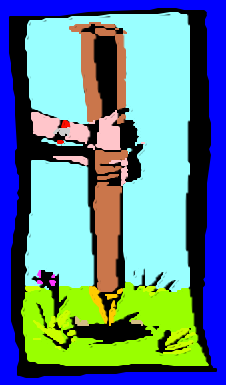


Incentives and Restrictions (Exclusivity cont'd)

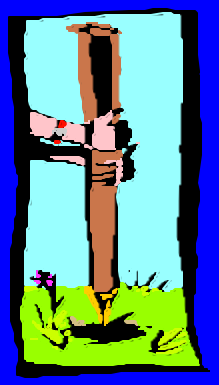
- Incentives
  - Rebates
  - Revenue-sharing
  - Profit interests

- Restrictions
  - Minimum volume commitments or percentage requirements
  - Bans on investments in other B2Bs





Exclusivity Guideposts



- Antitrust Analysis: Does the practice tie up almost all available volume rather than just competing on the merits to attract volume?
- All else being equal, competitive concerns are magnified:
  - The greater the market share of the B2B participant-owners;
  - The greater the restraints on participation outside the B2B; and
  - The less interoperability with other B2Bs.

FTC on Covisint:

- "Because Covisint is in the early stages of its development and has not yet adopted bylaws, operating rules, or terms for participant access, because it is not yet operational, and in particular because it represents such a large share of the automobile market, we cannot say that implementation of Covisint venture will not cause competitive concerns."

GM

Ford

DAIMLERCHRYSLER

NISSAN DRIVEN.

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Conclusion: An Ounce of Prevention is Worth a Pound of Cure

- B2Bs are most likely to be able to achieve their stated efficiencies and avoid antitrust risk by considering antitrust issues when developing operating rules and bylaws.

- Antitrust compliance is not a "one time thing," but rather involves follow-up during implementation and operation.