INTRODUCTION[1]

B2Bs are business-to-business electronic marketplaces that use the Internet to electronically connect businesses to each other. They have been characterized as the new business development most likely to transform how business is conducted in the twenty-first century. Largely unheard of only a few years ago, B2Bs are now estimated to handle billions of dollars in purchases,[2] and although it is difficult to gauge the reliability of such predictions, some estimate that the volume of commerce transacted through B2Bs will reach into the trillions of dollars over the next five years.[3]

Given the importance of this new business development, the Federal Trade Commission drew upon its unique mission "to study competition and work with the business community and others to detect new trends"[4] and hosted a B2B public workshop, "Competition Policy in the World of B2B Electronic Marketplaces," on June 29 and 30, 2000.[5] Organized by staff of Policy Planning with input from more than 200 sources, the workshop included 65 panelists and had an attendance of over 600 people. Participants included entrepreneurs who have been operating or forming B2Bs and antitrust practitioners, economists, and legal scholars who have been working with or studying B2Bs. Approximately 30 statements were submitted in response to the FTC's request for comments.[6]

Workshop participants characterized B2Bs as both the result of and contributing to larger trends in the economy that are already in progress, such as the advent of new technologies and the

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[1] This Report represents the views of the staff of the Federal Trade Commission; it does not necessarily reflect the Commission's views or the views of any individual Commissioner.

[2] Morgan Stanley Dean Witter (Stmt) 37. *See also* Salomon Smith Barney (Stmt) 77 (B2B stocks were worth approximately $130 billion according to the report issued in January 2000).

[3] Morgan Stanley Dean Witter (Stmt) 37 (online B2B purchases will grow to $1.4 trillion by 2002). *See also* Boeth (Stmt) 2 (Jupiter Communications predicts that "the nation's online B2B revenues will reach over $6 trillion by 2005 – a 20-fold increase in just five years"); Tarkoff 18 ("Gartner Group ... predicts that by the year 2004, there will be $7.3 trillion worth of B2B e-commerce"); Kinney (Stmt) 2 ($2.7 trillion by 2004, according to Forrester Research).

[4] *See* FTC Chairman Robert Pitofsky, "Remarks at B2B Electronic Marketplace Workshop," June 29, 2000, *available at* <www.ftc.gov/bc/b2b/b2bpitofsky.htm> (last visited October 2, 2000). *See also* Federal Trade Commission Act of 1914, 15 U.S.C. § 6(a), 15 U.S.C. § 46(a)).

[5] Materials from the workshop are available at www.ftc.gov/bc/b2b/index.htm.

[6] Workshop panelists and written submissions are listed in Appendices A and B, respectively.

increasing globalization of markets. The Internet technology that powers B2Bs is potentially transformative in that it can speed business-to-business communications into "real-time" transactions, conducted globally, with heightened accuracy and reduced waste, thus increasing the nation's productivity.

This Staff Report seeks to summarize what was learned at the workshop and to lay the foundation for understanding how to answer traditional antitrust questions in the context of new B2B technology. The hope is that this foundation will facilitate further dialogue among antitrust officials, the B2B industry, antitrust practitioners, legal scholars, consumer groups, and other experts with an aim toward developing a common understanding of the types of B2B structures, rules, and practices that, in particular circumstances, are most likely to ensure both antitrust compliance and the efficiencies that B2Bs promise.

EXECUTIVE SUMMARY

Overview of B2B Electronic Marketplaces Although treated as a group in this Staff Report, B2Bs are remarkably diverse. B2Bs serve a broad array of industries, from metals to fresh produce to hotels to chemicals to energy, with some B2Bs focusing horizontally (across various industries) and others vertically (on only one industry). Through B2Bs, participants buy and sell a wide variety of goods and services, from materials to be used in a firm's final product to things that just keep the firm running. B2Bs can be organized under a variety of ownership structures: some are founded by companies who use them; some are founded by third parties who do not plan to buy or sell through them; some are a blend of the two. Prices in B2Bs can likewise be established in various ways: by auction, catalog, a bid-ask system, or negotiation, for example. B2Bs may earn revenue from multiple sources, including transaction-related fees, membership fees, service fees, advertising and marketing fees, and sales of data and information. Market forces are continuing to sort out issues such as which, and how many, B2Bs will succeed, the extent to which potential efficiencies will be realized through B2Bs or instead through private networks, and the likely extent of interoperability among B2Bs.

Efficiencies of B2B Electronic Marketplaces B2B marketplaces have the potential to generate significant efficiencies, winning lower prices, improved quality and greater innovation for consumers. Many panelists stated that savings and increased competition through B2Bs could be substantial; indeed, one business analyst commented that, "[f]rom a very macro perspective, B2B e-commerce is simply the next generation of productivity growth for the U.S. economy."[1]

B2Bs can gain efficiencies in a variety of ways. B2Bs can reduce administrative costs, such as the time and energy a business expends to process an order and correct any mistakes in its processing. B2Bs can reduce search costs, that is, the costs buyers incur identifying suppliers and their offerings, and vice-versa. For example, B2Bs can make it easier for buyers to comparison-shop, replacing thumbing through bulky paper catalogs with quick and efficient mouseclick searching. Reduced search costs also mean that suppliers can have greater and cheaper access to more potential customers. Such reduced search costs can make new sales channels viable, creating markets for goods and services not traded before.

B2Bs can help check unmonitored corporate spending by using technology to enforce spending and other limits on in-house buyers. B2Bs can facilitate efficient joint purchasing, which may help reduce transaction and manufacturing costs and produce other cost-savings. B2Bs can be integrated with a firm's internal computer systems in order to continue reaping, and expanding upon, the benefits of the earlier computer-based systems. Enhanced efficiencies may also arise from increased collaboration facilitated by B2Bs, such as joint product design by the various firms involved in putting a product together. Finally, the heightened interaction between buyers and suppliers that B2Bs offer may facilitate supply chain management. That is, B2Bs could enable suppliers all along the supply chain, potentially reaching multiple tiers of suppliers, to learn more quickly what buyers want and when they want it, reducing forecasting that traditionally has proved inaccurate and expensive.

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[1] *See* Teagarden 100.

This is an impressive list. Although panelists noted that efficiencies may be more easily articulated than realized, the efficiencies that B2Bs may offer merit serious attention in light of their significant potential for cost savings and increased competition.

Antitrust Analysis of B2B Electronic Marketplaces B2Bs may raise a variety of antitrust issues. Workshop panelists reported, however, that the antitrust concerns that B2Bs may raise are not new and agreed that B2Bs are amenable to traditional antitrust analysis. Some panelists commented that, when antitrust concerns do arise, familiar safeguards may be sufficient to address those issues. Indeed, it appears likely that many potential concerns could be eliminated through well-crafted B2B operating rules. Consequently, the discussion that follows does not warn of insoluble problems, but rather lays the foundation for identifying and addressing circumstances that warrant antitrust scrutiny.[2]

Rather than address all potential issues, this Report focuses only on those issues that were discussed extensively at the workshop. The efficiencies and possible enhancements to competition that B2Bs can offer stem in part from their collaborative nature, but collaboration among firms also could facilitate anticompetitive conduct in two types of broadly defined markets: the markets for goods and services traded on B2Bs (or derived from those traded on B2Bs) at both the seller and the buyer levels, and the market for marketplaces themselves. In the market for goods and services, workshop panelists noted that competition may be affected by the extent to which information is shared and by whether joint purchasing or exclusionary (membership or access) practices are implemented. In the market for marketplaces, panelists suggested that exclusivity could affect the development of competition.

Competition Issues in the Market for Goods and Services: Information-Sharing Agreements The Internet allows firms to share information at an unprecedented rate. Depending on the operating rules, participants in a B2B could learn in real time, for example, the

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[2] To date, the Commission has reviewed only one B2B. *See* In re Covisint, Inc., File No. 001 0127 (Sept. 11, 2000), *closing letter to General Motors Corp., Ford Motor Co., and DaimlerChrysler AG available at* <www.ftc.gov/os/2000/09/covisintchrysler.htm> (last visited October 23, 2000). In its letter closing the investigation of whether the formation of Covisint violates Section 7 of the Clayton Act and terminating the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act, the Commission found no further action warranted at this time but stated as follows:

> 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 the Covisint venture will not cause competitive concerns.

Id.

identities of the purchaser and seller in a transaction, the quantity purchased, the date and time of the transaction, and the purchase price. B2Bs capitalizing on that power can increase efficiencies in the supply chain and facilitate prompt competitive responses in the market, but they also might injure competition by facilitating price or other anticompetitive coordination. Workshop panelists also voiced concern about whether a B2B's operating rules would permit its participant-owners – particularly those with seats on the B2B's board of directors, or places in upper management of the B2B – access to sensitive data about their rivals.

The antitrust analysis of agreements to share competitively sensitive information would ask whether they might facilitate coordination on price or other terms. The analysis would examine the structure of the market that the B2B serves, including market concentration and the market shares of those sharing the information, whether the information was shared among competitors, the kind of information being shared, and the reasons for sharing. If a market is less susceptible to collusion, information-sharing through B2Bs generally poses fewer collusion risks. All other things equal, sharing information relating to purchases of direct goods may convey competitively sensitive information about a rival's business and, consequently, is more likely to raise antitrust issues than the sharing of information relating to indirect goods. Similarly, sharing contingent or future pricing information is generally more troubling than sharing information about past transactions, and sharing competitively sensitive information that is uniquely and readily found on the B2B is generally more likely to raise concern than sharing such information that can easily be found elsewhere. Panelists identified many possible mechanisms for handling these concerns, including erecting firewalls within the B2B, segmenting catalogs, and other measures.

Joint Purchasing Several panelists voiced concern that B2Bs, through operating rules, could allow the exercise of monopsony power. Monopsony is buyer-side market power that lets a buyer or buyer group drive down the purchase price of an input by buying less of it and, therefore, depress output. The concern arises most directly when a B2B could be used by a large buying group to coordinate the reduction of their purchases in order to lower price.

Panelists stressed the importance of asking whether the buyer group accounts for a sufficient share of the buying market such that reducing its purchases would likely depress the price of the inputs bought. They also emphasized that buyer groups driving prices down through monopsony power are not to be confused with buyer groups that get better prices through increased efficiencies, such as by savings to suppliers realized in sales to the group.

Exclusionary Practices Several panelists voiced concern about the potential for exclusionary operating rules, and the possibility that some B2Bs would discriminate against, if not overtly exclude, the rivals of its owner-participants. Panelists noted that exclusionary practices (such as presenting information on the screen in a way that favors the B2B's owners or using discriminatory operating rules to leave rivals with reduced functionality or higher costs) might raise rivals' costs of doing business and limit their ability to provide effective competition in markets for the goods that they sell.

Analysis of this issue would focus first on the extent of the disadvantage that rivals likely would experience if B2B access were denied or limited, taking account of any substitutes, such as offline markets, that could be used equally well to buy or sell the goods.[3] Several panelists suggested that strong network efficiencies in an established B2B might make alternatives significantly more costly and less competitive. The analysis would also inquire whether the effects on rivals' costs could be deterred or counteracted by entry of alternative marketplaces or by counter-strategies that rivals might pursue.

Next, the analysis would examine the likely impact on competition in the markets in which the excluded firms participate. If the excluded rivals were important to maintain effective downstream competition (*e.g.*, for finished products), exclusionary conduct that significantly raised their costs may cause anticompetitive harm. The analysis would consider factors such as downstream market concentration, theories of unilateral and coordinated anticompetitive effects in the downstream markets and downstream entry, as well as any unique competitive significance of the excluded firms. Finally, if anticompetitive harm were likely, the analysis would ask whether the exclusion was reasonably necessary to achieve procompetitive benefits that likely would offset the anticompetitive harm.

Exclusivity Could Affect Competition Among Marketplaces Several panelists expressed concern that a B2B might undermine the development of competition in the market for B2Bs (and any effective substitutes) by "over inclusion" of industry members or by improperly encouraging or requiring buyers or sellers to deal with it to the exclusion of other B2Bs. The antitrust inquiry would ask whether the exclusivity practices leave available sufficient buying, selling, or other support to sustain alternative marketplaces capable of maintaining competition. Indeed, to the extent that ownership interests yield incentives that result in *de facto* exclusivity or "over inclusion," the antitrust inquiry would be structured in the same manner.

To capture business, a B2B may use a variety of incentives – such as promises of rebates, revenue-sharing, or profit interests for committing some amount of volume to the B2B – or restrictions, including rules imposing minimum volume or minimum percentage requirements, bans on investment in other B2Bs, or pressure on suppliers and buyers to urge them to trade on a particular B2B. Indeed, exclusivity practices could exacerbate potential effects from network or other scale economies that may make it difficult for an entrant to start small, attract the necessary volume, compete effectively, and grow to become a significant factor in the market.

If a B2B's overinclusiveness or exclusivity practices do not leave sufficient available support to sustain alternative B2Bs, exclusivity may cause anticompetitive harm. If harm appears likely, the analysis would ask about procompetitive benefits attributable to exclusivity.

Although inquiry into these issues is highly fact-intensive, some guideposts can be planted. All else held equal (including the ability to achieve efficiencies and innovations), competitive

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[3] "Goods" refers to services sold and purchased through B2Bs as well.

concerns are magnified (i) the greater the market share of the B2B participant-owners; (ii) the greater the restraints on participation outside the B2B; and (iii) the less the interoperability with other B2Bs. This does not mean that industry consortia B2Bs are presumptively unlawful or that minimum volume commitments cannot be imposed in many circumstances. It does suggest that high levels of industry ownership or substantial minimum purchase requirements will likely draw a closer look.

Conclusions and Themes for the Future

B2Bs differ in many respects, which is not surprising, given the enormous variety of offline business commerce that B2Bs seek to move online. Structures, operating rules, and practices that may make good business sense in one set of market circumstances may prove costly and inefficient in other business settings. In carrying out its enforcement responsibilities, the FTC and industry will likely benefit from further dialogue about the types of B2B structures, operating rules, and practices that, in particular circumstances, are most likely to ensure both antitrust compliance and the efficiencies that B2Bs promise.