

Introduction

In the era of global communication, cheap and fast transport reaching all parts of the world the Internet-based trading become one of the most dynamic and profitable markets. It brought many new technologies as well as new law challenges such as the protection of personal data, electronic signature or taxation that had to be regulated with a new approach. Because of its complexity and quick development e-commerce had to be divided into sectors basing on different criteria. One of the simplest divisions of e-commerce into sectors is the one that merges the businesses into groups according to the parties taking part in the deal: B2B (business to business), B2C (business to customer) , C2C (customer to customer), A2C (administration to customer), A2B (administration to business). B2A (business to administration). This paper however will focus only on B2B Internet trading platforms, because they are the most important to the antitrust or competition (as it is called in Europe) issues. They allow to show the basic rules of the Internet trade as well as the use and adaptation of law regulations to the virtual reality. These regulations include not only supervision of work of B2B Internet trading platforms, but also creation of new and fusions of existing ones.

The problems that were created by the arrival of B2B Internet trading platforms were recognized and later regulated by the cartel authorities and courts in the USA¹, by European Commission² as well as by the Bundeskartellamt³ and corresponding cartel authorities in other European countries. The global accessibility of the Internet-based B2B trading platforms allows platform operators to establish their businesses in countries with antitrust standards that suit their needs and thus evade the stricter regulation of others. The threat to competition which may arise from this type of “antitrust shopping” can be mastered by close coordination of national and international antitrust authorities. In Italy for example that was done by giving the EU competition law a dominant position over the country’s law. In Germany the relation between EU and German antitrust systems was regulated by the 6th and 7th revision of Act Against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen or „GWB”⁴). However the process of law standardisation that would lead to the development of worldwide principal antitrust rules has not been finished yet. There is still lots of room for improvement and much work that needs to be done in this field.

B2B Internet trading platforms: definition and division

So what are exactly the B2B Internet trading platforms? Finding the definition is not an easy task, because they have taken many different forms and it is quite possible that they will evolve to new ones in near future. For this reason I tend to search for a wide and simple definition that would cover the whole area leaving the room for future developments. The definition that I believe is suitable says that a B2B Internet trading platform means all Internet-based technical solutions that aim at facilitating the establishment of new trading relations between companies or at supporting existing relationships⁵.

From antitrust point of view it is important to recognize the level of integration of platforms. This division is very well shown in the history of B2B Internet trade that shows more and more complex structures showing up on the market. The development of B2B Internet trade can be divided into 4 phases⁶:

Phase 1 — Batch EDI

EDI (electronic data interchange) networks represented the first phase of electronic B2B e-commerce. EDI was designed to process high volumes of highly structured data. It consists of a computer to computer batch exchange over dedicated lines of normal business transactions including payments, information exchange and purchase order requests.

Operators of such proprietary, value-added networks (VANs) require all market participants to trade through their network using technically rigid, complex standards. The big disadvantage of EDI technology is very limited flexibility to changes of a dynamic marketplaces. However many EDI transactions are automatically generated based on inventory replenishment rules under long-term contracts, which makes them still a vital piece of B2B trade.

Phase 2 — Basic E-commerce

The fundamental e-commerce bases on buyer-seller relationship without an intermediary. The best example of this type of commerce is represented by company web sites, which can be

recognised as round-the-clock mini trade exhibits. In some cases, those web sites allow to enter exclusive Extranet, available to customers and registered site users only. In other cases, the sites have a direct access that allows them to retail to other businesses.

Phase 3 —Communities of Commerce

This phase is considered to begin with the start of first e-exchanges that are defined as an online service run by an independent third party, by the supplier or by the buyer where several buyers and sellers meet to buy and/or sell products and/or services. (the so-called butterfly model)



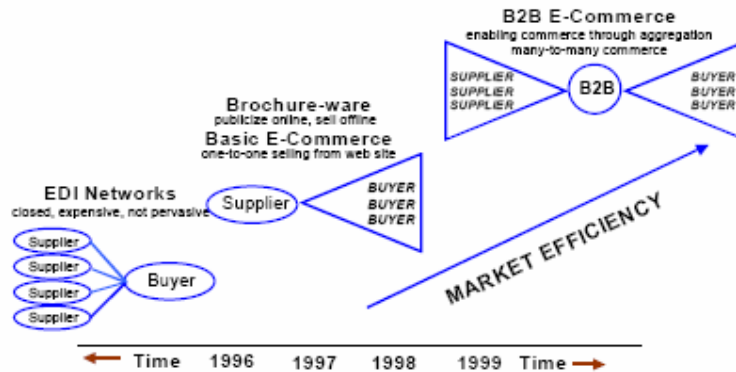
Source: Morgan Stanley Dean Witter „The B2B Internet Report: Collaborative Commerce”

Phase 3 is unfolding and represents the rise of Web destinations that bring together trading partners into a common *community*, which creates market transparency. The intersection of buyers and sellers that share related interests helps to cut the costs and serve larger percentage of those interests.

Phase 4 — Collaborative Commerce

Collaborative commerce (c-commerce) is a next stage of evolution of Communities of Commerce, because it adds support for other business processes before, during and after the order. The broad range of interactions that make the chain of commerce work can also be moved online. It can be said that C-commerce fills in the gaps around e-commerce.

A Quick Overview of the Evolution of B2B Commerce



Source: Morgan Stanley Dean Witter Internet Research.

The other important criterion of division is the purpose of operation. Using this criterion B2B Internet trading platforms are divided into 3 major groups⁷:

- 1) those focusing on completing business transactions such as auctions which are formal price finding procedures supported by the Internet trading platform or exchanges which allow to announce a concrete desire to buy or sell goods and provide mechanisms for negotiations.
- 2) those supporting integration of IT systems such as Integration platforms which allows the electronic document exchange between several parties,
- 3) and those providing just information such as pinboards which work just like exchanges with the exception of negotiations taking place outside the scope of e-marketplaces or collaboration platforms which enable the exchange of information to optimise ordering and delivery.

For the purpose of showing antitrust problems this paper will underline the usage of trade-focused platforms.

Impact and significance of B2B Internet sales

Number of existing platforms and their geographical spread out

Electronic trade over the Internet is a booming industry. The technical development of the Internet and its ever-increasing numbers of users heighten its attractiveness as a medium for

business transactions. No wonder that it brought euphoria which resulted in mass opening of B2B Internet trading platforms, which reached its peak in year 2000. Since then consolidation process has begun, which resulted in many fusions and closing down of some platforms that couldn't cope with the stronger competition. According to Barlecon Research in 2002 there were around 1060 active platforms worldwide, including 124 in Germany and 381 in whole Europe⁸. Those numbers decreased in 2003 to 889, 96 and 324 respectively⁹. Although most of the platforms are placed in the USA¹⁰, Japan¹¹ and Western Europe¹², there is also a considerable number of them in the Middle East¹³, South American countries¹⁴ and even in Africa¹⁵. Some platforms are worldwide orientated such as in automobile trade¹⁶, but there are also examples of platforms that are active on the local (only one country) or regional market¹⁷. The above given data shows the trend of consolidation of the enterprises belonging to the same commerce sector together by fusions and establishment of common platforms. On the other hand it also shows that the market is fragmented by geography that creates inefficient markets and uninformed buyers and sellers.

Use of B2B Internet Trading platforms in different industry sectors

B2B Internet trading platforms are more common in some industry sectors than in others, with ITC, transportation and logistics, food and beverages, tourism and construction being the leading sectors. According to *e-Business W@tch*¹⁸ research, around 5% of European enterprises from four largest EU Member States (Germany, France, UK and Italy) used e-marketplaces and further 3-4 % were planning to do so in the near future¹⁹. These figures are relatively low, but in some sectors such as ITC services the 7-12% were regularly trading via e-marketplaces at the same point of time and 6-9% have reported their plans to do so as well. This shows that in some sectors this kind of trading is increasingly more important with a tendency to a much faster growth than in the rest of the sectors.

The other interesting observation is that generally large enterprises are more likely to use e-marketplaces than small businesses. Around 12% of large enterprises confirm that they are using e-marketplaces for purchasing and/or selling goods and services. Only 5% of small businesses can say the same thing²⁰. This situation leads to the dangerous situation where as a result of fusions and negotiations between the large enterprises the competition rules can be violated.

Advantages of B2B Internet trading platforms

B2B Internet trading platforms offer companies significant savings on transaction costs. Compared to the costs of conventional business transactions conducted by telephone, fax or e-mail, the use of B2B Internet trading platforms can lead to savings of up to 15%²¹. Moreover, the centralization of company procurement can lead to further savings, by lowering administrative costs (improved workflow and search efficiency). Finally, lowering procurement prices by auctions and reverse auctions promises even further improvements in cost structure. This fact combined with the data presented above leads to the conclusion that B2B trade gives the most benefits to small and medium companies, because it lowers the costs of operating. It is also profitable for the customer because it gives opportunity to choose from wider range of products and makes comparing prices much easier. That makes a boost to the rise of competition that raises also the efficiency.

All the advantages of B2B Internet trading platforms were recognised by the European Commission that gave them positive opinion. It is hard to argue with such arguments as higher market transparency, lower administrative, transition and customer finding costs, better system integration and much better access to products and supplies for manufactures and customers of specialised economy sectors. All those factors lead to the offer of better products for a lower price.

Special rules for B2B trade?

On the other hand the B2B trade brings also dangers. For example the market transparency brings not only greater competition but also gives the opportunity to fix prices. It also allows competitors to join forces together to generate better profit and bringing the threat of monopolization. This situation puts cartel authorities in a difficult position to adopt classic system to the new virtual environment. The operation of B2B Internet trading platforms including simple exchange of information due to digitalisation and division of data into many catalogues by many different criteria as well as exclusionary practices concerning the access to B2B Internet trading platforms and joint purchasing can lead to violation of cartel regulations. The question arising is should there be a special cartel law for B2B internet trading platforms and other e-marketplaces?

There are positive law regulations of e-marketplaces in telecommunication law as well as in control of media concentration²² that were developed to deal with the new technical possibilities. That is why it is only a first impression that shows that traditional cartel regulations developed to tackle problems of traditional market can't be also proper for electronic marketplaces with its digital character and completely new structures. For this reason European Commission in a case vs. *Microsoft* said that Internet with its global dimension can't be regulated by the stiff regulations of other markets²³. However cartel authorities in EU, the USA and Germany have given many decisions concerning e-marketplaces using the traditional cartel regulations²⁴. That showed that cartel authorities are able to tackle given law problems using traditional cartel regulations. That resulted in an opinion given by the Federal Trade Commission in the report about B2B Internet trading platforms that said that traditional cartel law with its protection instruments is sufficient to tackle the problems connected with B2B Internet trading platforms²⁵. However it did not say that special norms are completely useless. It was pointed out that those norms have to be build with existing cartel regulations principles in mind. They also have to take into consideration not only the dangers that come with this technology but also the advantages to the whole economical system.

Information exchange

One of the basic problems in the area of B2B Internet trading platforms is the exchange of information. The high transparency of the market leads to the situation where the asymmetric information is not in place. The actual rivals and potential competitors possesses the valuable information that can be misused cartel law wise. For example the information about price structure and strategies of competitors is in B2B Internet trading platforms easily accessible and may be used by the rivals to gain a competitive advantage²⁶.

In Europe the information exchange between makers, mother companies and users of B2B Internet trading platform is not recognised in general as competition damaging. Especially if we talk about an industry where the market structure is atomistic, because transparency enhance the operation of a whole market. However the European Commission have seen the problem of information misuse.

Article 81 of EC Treaty

Article 81 of EC Treaty²⁷ prohibits restrictive agreements and concerted practices and makes them void if they have as their object or effect the prevention, restriction, or distortion of competition within the Common Market, and they affect trade between Member States. The competition relevant information is also included in this article, when the secrecy of information exchange between buyer and seller is violated. To analyse allowed exchange of competition relevant information according to Art. 81 EC Treaty for electronic marketplaces we have to examine the decisions of European Commission and court sentences concerning so called market information system. The judgements of the European Courts in the *Tractor* cases²⁸ and the *Steel Beams* cases²⁹ provide useful clarification in this respect. It shows that the exchange of information can be caught by Art 81 EC Treaty when it takes place on oligopolistic market.

B2B electronic marketplaces will raise concerns if they provide statistics on trade volumes, export and import rates of individual market participants, because they can be used to reveal the market strategy of those participants giving competitive advantage to other platform users. However when this information is given as summary statistics to all market participants no such concerns are raised. Similarly when the data given is no more sensitive, that means historical. The data is considered to be sensitive up to 12 months³⁰ For example the competition concerns are reduced to null when in auction market only the leading bid is shown without revealing the identity of the bidder.

Enforcement practice shows that B2B Internet trading platforms operators are prepared to ensure data protection and to block improper information exchanges. In order to achieve the goal technology such as firewalls is used to limit the flow of information. Antitrust agencies will in turn need to provide or acquire the technical expertise that enables them to judge whether or not these safeguards are sufficient.

The whole idea of competition is based on a principle that all market users can profit in the same way from the information available on the market. However the structural or position differences between B2B Internet trading platforms users can result in the situation where some users profit more from the competition related information than the others. This problem may exist in particular where an online marketplace is controlled by a number of market participants. These owner-participants could then receive privileged information about

transactions on the market, which would create competition problems that relate to both information sharing and discrimination.

This issue has been addressed in the *Volbroker* case³¹, the first B2B exchange cleared under Article 81. In this case, six major banks set up a joint venture offering an electronic brokerage service for trading foreign currency options. The case raised concerns regarding the access to confidential information by the parent companies. They had to give the number of assurances to European Commission that involved independence and distant geographical location of staff and management of the platform from the parent companies as well as lack of access to sensitive data to the management and boards of the parent companies and no access to information technology and communication systems of *Volbroker*. Such a separation can certainly be regarded as a necessary condition to ensure that the marketplace is operated with sufficient independence from the parents, it remains to be seen whether it is also a sufficient condition. The financial services are long used to such provisions and therefore this kind of separation might be appropriate, but in other industries or different market situation it could be not sufficient.

Information exchange between users

On the other hand there is also a problem of information exchange between B2B Internet trading platforms users. They can exchange the sensitive information or get access to it by acting as potential buyers to get sensitive data from the competitors. This kind of behaviour is prohibited in the same way as the sensitive information exchange between parent companies. For this reason the B2B Internet trading platforms are designed in such a way that the users have no access to competition relevant information of the companies that they want to make business with. This is ensured by the firewalls and different lock systems installed by the platform administrators. However the sensitive information is given away when the price finding mechanism is used. It is also impossible to keep it secret during the reverse auction³² where one seller have to know the bid of the other in order to make a better offer. That means that the price and delivery details have to be revealed giving the competition good hints about market strategies of the offering company. For this reason it is important that cartel authorities will supervise the actions of B2B Internet trading platforms users, making sure that sensitive information is given only in such extent as necessary, but on the other hand they are supposed to allow high transparency to make the market more competitive.

Also German law recognizes the problem of exchange of sensitive information in electronic marketplaces. In German cartel law the violation of competition relevant data secrecy between competing enterprises is prohibited by § 1 GWB. The decisions of the Bundeskartellamt and courts give also a wide support to the Act Against Restraints of Competition. One of the most symptomatic cases is that of *Aluminium-Halbzeug*³³. The BGH decided that renouncement of sensitive data secrecy (for example prices and discounts given) is restraining the competition itself and therefore should not be allowed. For this reason Bundeskartellamt suggested that data should be made “anonymous” by giving the range of prices and the average price so that the other enterprises are orientated on prices of the competition, but are not able to match given numbers with a concrete company.

A second problem regarding possible co-ordination in electronic markets relates to the question whether market participants can effectively bundle purchasing or selling volumes. This problem is in principle not different from normal joint purchasing that exists on the traditional market. Therefore, the discussion of these questions in the one of horizontal co-operation agreements which are regulated in Art. 81 EC Treaty. Guidelines on the applicability of Article 81 ECT to horizontal co-operation agreements propose a safe haven of 15% market share below which a purchasing or commercialisation agreement would be assumed either not to restrict competition or to fulfil the conditions for an exemption³⁴. Those regulation will also automatically apply to horizontal agreements in e-commerce. That’s why the Article 81 will not be breached by the joint purchasing in an exchange by parties whose combined market share is below 15% on both the purchasing and selling market.

The guidelines make clear that joint purchasing can be a problem for two reasons: (a) because it creates buyer power, and (b) because it can lead to co-ordination on the downstream market.

Agreements on pricing

Connected with transparency issue is potential that the mere disclosure of information will lead coordinated anticompetitive coordination. This harmful effect may be arising from two sources: (a) express agreements on the disclosure of information or (b) tactic agreement reached through strategic action in the face of enhanced information.

Express agreement among sellers or buyers on prices

Most B2B Internet trading platforms are used to conduct a transaction between individual buyer and individual seller that will negotiate the terms of contract between themselves. However some platforms allow buyers and seller to unite to gain benefits of cooperation. Especially the B2B Internet trading platforms that allow joint selling are under the scope of the antitrust authorities. The reason for it is simple. Joint purchasing is well-developed on the traditional market and if it is properly structured, than confronts virtually no serious difficulties in front of competition authorities³⁵ or courts. With the joint selling the situation is more complicated, because the line between permitted collective action and the one that violates competition rules is very unclear³⁶. The rule is that the joint action of sellers that concerns price is permitted when it is ancillary to the efficiency enhancement. As examples of such activities the creation of a new product³⁷ or sharing of a financial risk³⁸ could be given. For this reason in the situation when a B2B Internet trading platform that does nothing more, but only allows enterprises that sold the given product independently before, to use joint selling will face problems in front of competition authorities. In general any site that contemplates joint price determination should be thoroughly examined by the authorities.

Pricing of exchange services

Of course running of the B2B Internet trading platform will generate costs. Some run by the third party were established with the purpose of generating profit to the running party. For those reasons the platform will have to generate an income. Having a legal joint venture status B2B Internet trading platform is allowed to have fees for the offered services. That goes to the extent that the platform runners seek to regulate the fees charged between its participants for exchange-related activities. The border cases show the situations where pricing among platform participants were governed. One commentary also says that: “decision by a group of B2B sellers to charge higher transaction fees to raise the cost of competing sellers could be unlawful.”³⁹

Auction rules

Every auction in order to function needs to define rules by which its auctions are conducted. In the B2B Internet trading platforms it is common to limit number of variables that will be open to competitive bid during the auction. This is so called standardisation that is supposed

to make auction process more efficient. Standardisation can involve factors such as: terms of delivery, credit, risk of loss, payment method and so on. Although standardisation is the result of agreement among competing participants on the exchange, it can also rise competition issues such as in the case of *Catalano, Inc. v. Target Sales, Inc.*⁴⁰, in which the Supreme Court held that a conspiracy among competing wholesalers to standardize credit terms offered to a purchaser was per se illegal because “credit terms must be characterized as an inseparable part of the price. An agreement to terminate the practice of giving credit is thus tantamount to an agreement to eliminate discounts.”⁴¹ This case however does not involve standardisation in a good faith. The general rule in such cases is that the legality of the restraint is decided on whether it promotes or suppress competition.

Market Dominance and Foreclosure

A second set of possible competition problems relates to issues of market dominance and foreclosure. They are in particular created through the network character which is inherent in B2B electronic marketplaces. Potential problems of network dominance is present when the system is designed in such a way that the value of individual user increase with the number of users⁴². It would lead to so called tipping effect where the users are encouraged to join the dominant network, because that gives them the most benefits. This problem is vital for B2B Internet trading platforms as the benefits increase with the number of buyers and sellers linked by the same system. The another dilemma for competition policy is created by the possible prevalence of network effects in B2B Internet trading platforms. The larger network brings the better efficiency due to the better choice and maintenance cost divided into more shares. Therefore the fact that platform managers try to sign up as many buyers and sellers as they possibly can should not be considered as the competition issue itself. On the other hand, competition policy needs to acknowledge that network effects can lead to a “tipping effect” which will substantially raise barriers to entry and expansion and which could create substantial market power for the owner-operator of the largest exchange.

The tipping effect is strongly connected with the liquidity of the market. It has the biggest impact on B2B trading platforms that operate as true exchanges. In those exchanges the interaction of many buyers and sellers and the dynamic setting of marketclearing price is vital and therefore the sufficient liquidity is required to operate⁴³. Most B2B Internet trading platforms, however, do not seem to constitute exchanges in the sense of a commodity or stock

exchange, because there is no trade in standardised products in an anonymous transaction at the market price. Most B2B trading platforms are rather facilitating devices that allow individual transactions between buyers and sellers (suppliers). These transactions could take the form of an auction, a reverse auction or of a vendor catalogue. In those cases the number of buyers and sellers actively monitoring the platform that could potentially make an offer is the key success factor, rather than a volume of transactions as it is on the traditional market. In such a context any party that wanted to become network dominant will face difficulties, because it would need to base this attempt not only on tipping effect but also build other lock-in mechanisms such as exclusivity provisions that can interact with the network effects. As a result we become a barrier to entry that will create costs for the party willing to switch B2B Internet trading platform. Lock-in could also be achieved where market participants are tied into the market via proprietary supply chain management systems. Competition authorities should therefore focus on ancillary provisions and design of the market in order to make sure that owner operator do not make an attempt to enhance any existing network effects by any means.

The authorities should particularly not accept provisions that limit the user of B2B trading platform to purchase all its requirement of a certain product through an exchange. The other practice that also should not be accepted is a minimum purchase requirement expressed in percentage or absolute terms. However they should not be banned completely, because they are needed at the start-up phase of a B2B trading platform in order to ensure and boost a minimum level of liquidity. On the other hand using the basic trade theory the best situation would occur when all enterprises would be able to take part in all B2B Internet trading platforms freely. In this case however the transparency would have to be so low that B2B Internet trading platforms would be reduced to private bilateral contracting place. For this reason it can be said that the provisions are the price that is paid for the higher level of transparency.

So far, the Commissions enforcement experience with B2B electronic markets has not revealed many problems related to network effects and market dominance⁴⁴. This is due to the fact that in these cases several B2B Internet trading platforms competed heavily even in a narrowly defined market. However the phase of reduction of platforms number has been started couple of years ago. This raises the question of the appropriate regulatory response as regards access to the remaining marketplaces. Foreclosure problems will arise when some

participants would be excluded from the most efficient B2B trading platforms, because that will put them in competitive disadvantage, which is forbidden by competition law regulations. To be specific this issue could be addressed under Art. 82 EC Treaty, when that particular exchange can be considered as essential facility and has a dominant position⁴⁵. In this case the violation can go two ways: (a) the exchange can abuse its dominant position or (b) does not grant access to any companies that want to join in, unless such a refusal is objectively justified. However the European Court of Justice in the *Oscar Bronner* judgement⁴⁶ showed that its interpretation is fairly strict. It requires that access must be indispensable for the competitor to carry on its business and there is no possible substitute in existence of the facility. That simply means that the given internet exchange must not only be dominant towards other exchanges but also the proof that traditional methods of trade and distribution are no longer competitive and can not substitute to trading through the internet exchange. Disregarding this doctrine it is obvious that economic wise it is in B2B Internet trading platforms operators to create the marketplace as open as possible. It will not only bust the value of this exchange market but also will help to dismiss any allegations relating to the possible abuse of a dominant position. The open doors policy does not mean however that the operator of B2B Internet trading platform admit every interested party to a marketplace. The Commission decisions concerning a number of commodity exchanges⁴⁷ suggests that admission standards would generally seem acceptable, provided that the standards are objectively necessary and are applied on a non-discriminatory basis.

Conclusion

B2B Internet trading platforms pose so many competition issues for a simple reason that they are something new for the lawmaker and courts. However as the history of older-technology exchanges shows, those issues are manageable. New court judgements as well as a bunch of new paragraphs in existing regulations added to new way of interpreting the existing law will allow to handle them quite easily. Because exchanges offer important efficiency boost through the reduction of search costs and other transaction costs, their formation is in general always lawful. The antitrust issues normally arise from the rules of operation or other collateral restrains governing the particulars of operation of the B2B Internet trading platform – auction rules, information exchange, exchange fees, access standards, exclusivity requirements and so on.

The new problems connected with B2B Internet trading platforms derive mainly from the fact that this technology offers the means for very high transparency of competitive information. That transparency, in the form of compilation and dissemination of information, is a principal source of the exchanges' efficiency benefits. However transparency could be used not only to boost the competition, but also could be used to create oligopolistic market. That is why it is antitrust authorities duty to monitor B2B Internet trading platforms. The lawmakers confront the challenge of constructing a law frame in such a way that it is going to allow to gain efficiency benefits offered by B2B Internet trading platforms and in the same time is going to give antitrust authorities proper law tools to allow them to protect the competition from the misuse of competition boosting mechanisms.

Footnotes:

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- ¹ See FTC-Report “Entering the 21st Century: Competition Policy in the World of B2B Electronic Marketplaces”
- ² See decisions of European Commission at http://europa.eu.int/pol/comp/index_en.htm
- ³ See decisions of Bundeskartellamt at <http://www.bundeskartellamt.de/wDeutsch/entscheidungen/entscheidungen.shtml>
- ⁴ The GWB was initially enacted in 1957 (BGBl. 1957 I, 1081). Since then, it has undergone seven major revisions, the most important occurring in 1973 when the Merger Control was amended
- ⁵ see the “Final report of the Expert Group on B2B Internet trading platforms”, 7 July 2003, [<http://europa.eu.int/comm/enterprise/ict/policy/b2b/>]
- ⁶ Morgan Stanley Dean Witter „The B2B Internet Report: Collaborative Commerce” April 2000
- ⁷ see the “Final report of the Expert Group on B2B Internet trading platforms”, 7 July 2003,
- ⁸ B2B marketplace databases from Berlecon Research, checked in April 2002
- ⁹ B2B marketplace databases from Berlecon Research, checked in February 2003
- ¹⁰ For example Natural Gas Exchange <http://www.ngx.com/>, Business.com that deals with business resources or NetworkOil distributing oil products.
- ¹¹ From 176 Asian B2B Marketplaces 25 are active in Japan for example MarineNet <http://www.marine-net.com/> This and following data is from Berlecon Research databank from year 2004
- ¹² In Europe there is about 390 active B2B Marketplaces for example danisch platform scanmarket.com (<http://www.scanmarket.com/>)
- ¹³ There are 18 active B2B Marketplaces such as BusinessDubai.com (<http://www.businessdubai.com/>) or TradeArabia (<http://www.tradearabia.com/>)
- ¹⁴ *Mercado Eletrônico*, <http://www.me.com.br/>, and *Webquímica*, <http://www.webquimica.com.br/> are the two best known platforms from 49 active in South America
- ¹⁵ There are 22 active B2B Marketplaces in Africa. They are represented by such platforms as *OilEgypt*, <http://www.oilegypt.com/>, and *Mauritius eMarketplace*, <http://www.mauritius-industry.com/>.
- ¹⁶ For example RubberNetwork (<http://www.RubberNetwork.com/>)
- ¹⁷ For example scanmarket.com (<http://www.scanmarket.com/>)
- ¹⁸ <http://www.e-Business W@tch.org/>
- ¹⁹ Data from fall of 2002 and early 2003
- ²⁰ *e-Business W@tch 2003*
- ²¹ Sascha Loetz “E-Commerce Platforms Innovation and Antitrust Law” published in ZEI Report No. 9 June 2001
- ²² §§ 26 ff. Rundfunkstaatsvertrag (RStV)
- ²³ TradeMagazine Nr. 52 from 15.03.2004, page 13 „Inside” together with the case vs Microsoft.
- ²⁴ supra note 2,3.
- ²⁵ FTC-Report, Executive Summary, page 2
- ²⁶ It raises not only competition issues but also data protection problems are raised
- ²⁷ Before Treaty of Amsterdam came into force on 1 May 1999 Article 81 of EC Treaty used to be numbered as Article 85
- ²⁸ Case C-8/95/P New Holland Ford v Commission [1998] ECR I-565 and Case C-7/95/P John Deere v Commission [1998] ECR I-3111.
- ²⁹ Cases T-134/94, T-136/94, T-137/94, T-138/94, T-141/94, T-145/94, T-147/94, T-148/94, T-151/94, T-156/94 and T-157/94 (*Steel Beams*. Cases) [1999] ECR II-0347.
- ³⁰ European Court of Justice, 1998, I-3111 (3164) Rn. 92 – *John Deere*; . EG 1992 Nr. L 68/19, Rn. 50 – *UK Agricultural Tractor Registration Exchange*; Commission, IP/99/690 – *UK Agricultural Tractor Registration Exchange*
- ³¹ European Commission IP/00/896 of 31 July 2000.
- ³² Reverse Auctions – Buyers post their need for a product or service, then suppliers bid to fulfill that need. Unlike an auction, prices only move down
- ³³ BGH, WuW/E BGH 1337 (1342) – *Aluminium-Halbzeug*
- ³⁴ Guidelines on the applicability of Article 81 of the Treaty to horizontal co-operation agreements (OJ C 3, 06.01.2001, p.2).
- ³⁵ For a particularly useful survey article addressing the joint buying arrangements, see Kathryn M. Fenton, *Antitrust Counseling on Group*
- ³⁶ See, e.g., William Blumenthal, Tensions in the Law of Joint Ventures and Horizontal Conspiracies: Is Current Policy Sustainable?— Introductory Remarks,
- ³⁷ See, e.g., *Broadcast Music, Inc. v. CBS*, 441 U.S. 1 (1979).
- ³⁸ See, e.g., *Arizona v. Maricopa Cty. Med. Soc’y*, 457 U.S. 332 (1982)
- ³⁹ See Charles E. Rule et al., *B2B or Collusion?*, Legal Times, Apr. 3, 2000, at 36.

⁴⁰ 446 U.S. 643 (1980) .

⁴¹ See also *Detroit Auto Dealers Association*, 111 F.T.C. 417 (1989) (striking down agreement among car dealers to close showrooms at certain times)

⁴² M. Katz and C. Shapiro, .Network Externalities, Competition, and Compatibility. (1985)

⁴³ L. Benzoni, .La Place de Marché est-elle proconcurrentielle?. (2001)

⁴⁴ See e.g. the decisions in cases M. 1969 . UTC/Honeywell/i2/MyAircraft.com, Article 6(1)b-decision of 04.08.2000,

⁴⁵ On essential facilities in general, see C. Esteva Mosso and S. Ryan, S., .Article 82 . Abuse of a dominant position., in J. Faull and A. Nikpay, *The EC Law of Competition* (Oxford : Oxford University Press, 1999) 159-162.

⁴⁶ Case C-7/97 *Oscar Bronner GmbH & Co v Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co KG* [1998] ECR I-7791, 41.

⁴⁷ *London Sugar Futures Market* (OJ L369/25), *London Cocoa Terminal Markets Association* (OJ L369/28), *Coffee Terminal Market Association of London* (OJ L369/31).