COMPETITION AND E-COMMERCE

Statement of the Business and Industry Advisory Committee (BIAC) to the OECD to the OECD Committee on Competition Law and Policy

October 16, 2000

General

The Business and industry Advisory Committee (BIAC) to the OECD, appreciates the opportunity to submit the following comments to the OECD Committee on Competition Law Policy on issues relating to competition and electronic commerce, for discussion at the October 25, 2000 OECD CLP Roundtable on Competition and Electronic Commerce.

Transactional Issues - Exchanges

Exchanges have existed since the dawn of civilisation. They are now faster, more efficient, cost effective and more geographically dispersed. But the underlying concepts are rooted in the more efficient trade of goods and services. Today's exchanges are proliferating at a rapid pace. An exchange is simply a portal that links buyers and sellers in an online forum that often in the business-to-business (B2B) context creates an integrated supply chain. Exchanges vary in design, structure, format and size. Therefore, any discussion of these exchanges must give due regard to the specific exchange at hand. Nevertheless, BIAC will address briefly some of the common characteristics of exchanges – specifically focusing on B2B exchanges – and identify both the advantages and the challenges created by exchanges in the context of potential competition law issues.

Exchanges are being created in an attempt to reduce costs, increase efficiency, reduce production time and make business practice easier by eliminating redundancies and increasing integration and collaboration through more timely information flows. They provide a forum where products are bought and sold in volume increasing liquidity in the market, which in turn attracts more participants to the exchange. This liquidity will help buyers and sellers determine a fair price for a product or service. Moreover, it promotes real-time pricing since participants may compare prices among potential suppliers. Simply put, exchanges can promote price competition -- sellers can aggregate their demand and buyers have access to a greater supply with price transparency. All of these potential benefits reduce waste in the production cycle, which can translate into cheaper end products for businesses and consumers.

Exchanges can also increase efficiency and transparency by creating a level playing field for new supplier entrants and can lessen the entrenched advantage that long-time suppliers develop – opportunities may be more visible for potential entrants – to the extent that those advantages are not based on the quality to price ratio of the product or supporting services and reliability.

B2B exchanges allow multiple business buyers and sellers to conduct on-line purchase and sales transactions over the Internet. The benefits of exchanges are clear: B2B e-commerce promises enormous efficiencies through significant reductions in transaction costs and economies of scale, allowing companies to achieve much greater productivity. B2B exchanges are expected to cut costs for buyers and provide more customers for sellers, leading to enhanced competition and lower consumer prices. Efficiencies have likewise been found to result in significantly reduced procurement cycle times.

Application of antitrust rules to B2B exchanges arise from the possibility to compile, control and quickly disseminate competitive information. Carefully managing the vast amounts of sensitive information that can be generated and shared through B2B technology can be key to avoiding violation of antitrust rules.

Antitrust analysis of B2B e-commerce is made more challenging by the fact that there is no one model for electronic marketplaces as B2B exchanges may be established by:

(a) One company to handle the procurement of input materials and/or sale of its own products;

(b) By neutral third parties who develop proprietary platforms to serve a wide range of industries, such as **www.freemarkets.com** or;

(c) Jointly by a consortium of competitors for the purpose of purchasing or selling their products in the most efficient electronic environment. For example, **www.covisint.com** (GM, Ford and DaimlerChrysler, and other companies have joined such as Renault…), GlobalNetXchange (Sears Roebuck and Carrefour), and **www.e2open.com** (IBM, Hitachi, Nortel Networks, Seagate Technology, Solectron, Toshiba, LG Electronics and Matsushita Electric) which are owned by buyers ; and **www.orbitz.com**, (United, Northwest, Continental, Delta and American); **www.metalspectrum.com** (Kaiser Aluminum, Alcoa, Reynolds Metals, Allegheny Technologies, Vincent Metals, Atlas Ideal Metals, Thyssen), which are owned by sellers.

Moreover, B2B markets may be "vertical", which in this context means they are industry-specific, or "horizontal" in the sense that they facilitate the purchase and sale of many goods and services across industry lines.

Types of Exchanges:

There are a number of organisational models for B2B exchanges, which include those outlined below:

1. *Auction sites* are those in which buyers or sellers bid competitively to buy or sell particular products. Auctions, which may take several forms, including "traditional," where competitive bidding by multiple buyers moves the seller's prices upwards, or "reverse," where sellers bid against each other to sell products to buyers in response to requests for purchase, resulting in price deflation. These sites often serve particular industries. Examples of this type of site include: www.e-steel.com (steel), www.paperexchange.com (paper), www.worldcatch.com and www.gofish.com (fish and seafood).

2. *Catalogue sites* offer a variety of products from multiple vendors in a standardised format so that prospective buyers in different industries can easily compare the available offerings

3. *Aggregator* sites typically allow competing sellers or competing buyers to offer to sell or buy products or services at individually specified prices and, in the case of more complex products or services, allow individual buyers to negotiate specific terms of the transaction. Examples of such sites include: www.e-chemicals.com (industrial chemicals), www.medibuy.com (healthcare supplies), www.commerxplasticsnet.com (plastics), www.metalsite.com (steel and metals).

4. *Trading hubs* typically include buyers and sellers in multiple industries and thus do not necessarily focus on some well-defined set of competing sellers or competing buyers. Examples of such sites include: www.freemarkets.com, www.shop2gether.com, www.energygateway.com, www.axesoenergia.com.

5. *RFP sites* typically permit sellers and buyers to post requests for proposals, and negotiate transactions off-line. Example include: www.catex.com (insurance), www.it-radar.com (computer services), www.mondus.com (business supplies).

6. More generally classified B2B exchanges include buyer exchanges or sourcing networks, supplier marketplaces, and neutral sites or hubs.

Benefits of Exchanges

Exchanges can provide benefits to all of the participants in it, more specifically:

General Benefits:

- Speed-up production processes
- Reduce cycle time
- Reduce inventory requirements
- Reduce carrying costs
- Economies of scale

Buyer Benefits:

- Reduced transaction costs
- Identification of new suppliers -- easier to identify, qualify and measure the performance of new suppliers
- Faster time to market
- Improved market transparency

Supplier Benefits:

- Increased exposure to new buyers and sales opportunities;
- Reduced transaction costs
- Greater market intelligence
- More level playing field for all organisations, including SMEs

These benefits indicate that exchanges are improving market conditions and increasing competition and efficiency. It is important to note that many exchanges have adopted policies deliberately designed to avoid anticompetitive effects. For example exchanges may make participation open to all potential buyers and sellers, provide for anonymous trading, maintain separate purchasing departments, etc. Depending upon the exact nature and goals of any particular exchange, one or more of these policies may be appropriate both to maximise the exchange's likelihood of success, and to minimise its likelihood of having anticompetitive effects. It should also be noted that the same antitrust concerns that exist in B2B exchanges can also exist in B2C marketplaces, and thus safeguards must address the potential for anticompetitive behaviour in this context as well.

In conclusion, exchanges can promote significant market efficiencies and competition, especially where appropriate safeguards are instituted to prevent any potential anticompetitive results. Given these significant benefits, competition authorities would best serve their constituents if they wait to see how the exchanges work in practice. Exchanges are just being implemented over the Internet and should not be subject to overly burdensome review, reporting or regulation because of the possibility that an antitrust violation *may* occur. To the extent that competition authorities review such practice, they should limit their focus to the potential antitrust concerns that might be likely to arise such as market foreclosure as well as collusion, that is facilitated by price transparency or the exchange of other competitively sensitive information.

II. Infrastructure Issues: Joint Ownership of ISPs and Major Content Providers:

Vertical integration in the communications sector is continuing at a rapid pace. Recently, vertical integration between major ISPs and content providers, is raising several issues that business, governments and the competition law community as a whole are currently discussing. The most controversial issues surrounding the joint ownership of major ISPs and major content providers include:

- Whether such joint owners will make their content available exclusively to their service while limiting the availability of rival content to which subscribers are permitted access; and

- Whether such joint owners will make rival content available on their service but on less favourable or discriminatory terms (both price and non-price related) as compared to the terms on which their content is made available.

Business' views on this complex issue are still evolving. At this juncture there are currently two general views within the business community:

1. One view is that the marketplace will drive major ISP and major content providers that are jointly owned to make the appropriate decisions regarding content access and treatment of rival content and services. Advocates of this view argue that given the functioning of a vibrant marketplace, government scrutiny and mandated merger-specific government conditions on content and service access and discrimination issues are inappropriate. In fact, some merging companies have publicly stated that they will neither undertake exclusionary content arrangements nor treat content of competitors any less favourably. The merging companies have made these public statements because they believe these commitments make sound business sense and that a business strategy that depends on restricting consumer's access to content is doomed to failure in an environment where consumers demand broad choices of content. To the extent that government action is necessary to resolve issues of content and service access and discrimination, such companies argue that these issues are better addressed by generally applicable measures that will not work to the advantage or disadvantage of particular market participants or modes of communication.

2. Another view is that mergers between major ISPs and major content providers should be carefully reviewed by regulatory authorities both for potential anticompetitive effects and

potential adverse effects on freedom of speech and expression and consumer choice as a result of the creation and/or strengthening of a distribution bottleneck. Advocates of this view maintain that such joint ownership will lead to exclusionary and discriminatory conduct (both price and non-price related). The advocates of this view believe that joint ownership will exacerbate the operation of a "walled garden." The “walled garden” describes the general practice of luring consumers into an online service through the use of sticky “must-have” features and then steering them towards the content and services of the jointly owned company, to the detriment of its competitors through the use of various contractual and operational restrictions and technological tools -- leading to market foreclosure. To prevent such market foreclosure, the advocates of this view call on regulators to permit such mergers only when conditioned upon legally binding commitments that prevent exclusionary conduct and that guarantee non-discriminatory treatment of competitors.

As no consensus currently exists among the BIAC membership, we refrain at this time on making any specific recommendations concerning these joint ownership issues.

III. Other Comments

With regard to the OECD Secretariat Issues Paper, BIAC cautions melding business (B2B) and consumer (B2C) exchange issues relating to competition and e-commerce. While certain similar characterisations may exist for both B2B and B2C exchanges, they may present different issues that should be taken into consideration. Thus it is important to examine exchanges in their organisational context, after which similarities may be deduced with further analysis.

IV. Additional Issues for Discussion

1. BIAC finds the topic of competition and e-commerce to be important and timely in the context of growth and development of the Internet and its use as a platform for exchanges. BIAC strongly encourages continuation of the discussion competition and e-commerce issues in the OECD CLP. BIAC would appreciate the opportunity to contribute to the development of such an agenda within the CLP, and thanks the OECD CLP for their invitation to make comments from the start of this project.