Internet and its effects on competition

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(the views expressed in this paper correspond to the author and do not reflect necessarily the position of the European Commission)

1. Introduction

At this morning's session we have extensively discussed the positive, healthy effects that the Internet may have for the competitiveness of the industry as a whole because of efficiency gains such as lower transaction costs, information affluence and global markets access.

Now we have to look at Internet from a competition perspective. That requires, in the first place, to consider the markets in which goods and services produced or offered through the intermediary of the Internet are traded.

It is often assumed that Internet is good for competition. That is not necessarily true. For the purposes of today's presentation – Internet and its effects in competition – I propose you to examine together three key issues:

- First, what we are talking about when we refer to "Internet" markets and, if such markets exists, to what extent are they different from other markets;
- Second, if we are ready to build up a market, a business activity over the Internet, we need to consider carefully on what relies the operation of such a system and
- Third, what are the resources we need if we want to carry out an electronic commerce activity.

I will propose you, at the end, some cautious reflections about possible threats to competition that appear in view of the market developments we know of today.

But before entering into those issues, let's first agree on the basic concept that we will discuss today:

2. What is competition in Internet?

Competition is a game – the game that ultimately ensures that the supply and the demand functions for a given good or service interact in an efficient manner. This game requires a playing field and fair rules to play it. The playing field is called "market" or, more precisely, "the relevant market". It is defined for a given product or service in a well established geographical space. Competition rules, also called anti-trust principles, ensure the fair development of the game.

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These rules prohibit basically two things[2]: agreements and/or practices between competitors that distort competition (what we call collusion) and abuses of market power by a monopolist or by a group of oligopolists that enjoy a dominant position on those markets. The purpose of the prohibitions is to ensure that success or failure of a player depends exclusively in its own capacity to compete.

Competition rules do not apply in abstract. They apply always in markets that have very precise boundaries. We have to be clear about who is competing with whom, for what product or services and within which geographical area.

Now, the Internet is not a threat or a benefit for competition by itself. It is not even a market in the first place. We can consider Internet as a communication system based on a global network, the so-called World Wide Web. This system can be used in many ways and for many purposes by different people[3].

From a economic perspective, we could see it as a kind of commodity that allows companies to compete – that is, to offer, sell, buy and (sometimes) distribute goods and services – in a different way. This is what concepts such as electronic commerce or electronic business are about.

In order to be able to examine whether fair competition takes place in the markets based or related to the Internet, we would have to first carefully define which is the relevant product market and the relevant geographical market for the purposes of our examination. As more and more transactions shift to the Internet, more and more distinct relevant markets will appear in the new environment.

3. To which extent does Internet make markets different?

Now, what we have to consider is to what extent certain special characteristics, common to all those markets have to be, first, understood and, second, taken into account for the purposes of enforcing anti-trust rules.

Let me start with a statement: the use of Internet for doing business is not only about technological innovation shifting dramatically the production parameters of a given industry. Technological innovation is a constant in almost all economic sectors, including sectors with rapid technological pace. Anti-trust rules have been enforced less or more successfully in a consistent way during the last 40 years in high-tech industries.

Now, the use of Internet for doing business is still at early stage. From the limited experience we have, from the number of entrepreneurial projects we know about, and from the generally accepted short term expectations in this field the most striking features of the Internet based markets would be the following ones:

a) the Internet may transform market functions

The nature of the information system that the Internet is building up is bringing about more and more transparency about opportunities to buy and sell at both local and far-away places[4]. This feature – accomplishment of near perfect transparency conditions - may, by itself, upset the traditional markets when the Internet is introduced as a new way for trade.

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[2] see Articles 81 and 82 of the EC Treaty

[3] see « What is the Internet (and What Makes it Work) », by Robert E. Kahn and Vint Cerf, Internet Policy Institute, December 1999.

[4] See, e.g. « Réseaux de distribution et vente sur Internet », by Yann Dietrich and A. Menais, Juriscom.net, Commerce électronique, 2 juin 2000.

Furthermore, those features are at the origin of services for which a demand and a supply did not exist before the arrival of Internet. This would be the case, e.g., of the markets of services for processing the enormous information flows available though the system.

When we talk about consumer's choice, we have always in mind the end-consumers markets, but the Internet is likely to give similar advantages for consumers' at intermediary markets level. In economic terms, we could assume that Internet may potentially lead to the displacement of demand functions and to a change in the elasticity of those functions[5]. This assumption has to be, of course, proven and measured in the different sectors. But I think that we can safely agree on the fact that Internet has every chance to influence consumers' pattern behaviours[6].

b) the Internet replicates traditional markets

Perhaps one of the more striking features that Internet brings about is the existence of dual markets, that is, two parallel markets, for the trade of the same good or services, that co-exist in the same space at the same time: the Internet-based one (which we could call virtual) and the traditional one.

I have said before that for the purposes of enforcement of competition rules we have to define relevant markets. An interesting question is to what extent an Internet market can be considered as a relevant market in itself[7] or as a particular market segment of the traditional one. The position of the European Commission, reflected in a number of recent decisions (as, e.g., in the recent authorisation of a joint venture between Amadeus, a company controlled by airlines Air France, Iberia and Lufthansa which operates a computerised reservation system (CRS), and Terra, the Internet subsidiary of Telefónica[8]) is to consider that Internet leads to the creation of two segments i.e. physical and online that belong to the same market.

Even when it can be clearly established that the two segments belong to the same market, what we see in many cases is that the use of Internet allows direct contact between the producer and the consumer, making unnecessary the existence of intermediaries. Thus, in the Amadeus – Terra case referred to above, the representatives of the travel agencies sector in Spain have publicly commented on their opposition to the new services that Amadeus will make directly available to end consumers through Internet.

c) the Internet is a cheap production factor, available to all industries

I have said before that we could see Internet as a kind of commodity[9]. Perhaps it would be more precise to see it as a production factor, available to all industries, across nearly all sectors[10], at low cost and which does not seem to be scarce (we will talk later on about Internet's bottle necks). As a production factor, Internet would lead

[5] See, e.g. Aspen Institute Italia, The communication system new issues, Tables for discussion, Cernobbio, May 2000.

[6] See, e.g. « The future of customer behaviour – substitutes and new communications », European Information Technology Observatory 2000, Millennium Edition.

[7] See, e.g. David A. Balto « Emerging Antitrust Issues in Electronic Commerce », November 12, 1999

[8] See IP/00/415 « Commission clears Internet travel agency joint venture between Telefonica's Terra and Amadeus », of April 23, 2000 (http://www.cc.cec/rapid)

[9] see, e.g. Erkki Liikanen « A strong e-economy for all in Europe »

[10] See, e.g. « The Impact of the Internet on businesses », European Information Technology Observatory 2000, Millennium Edition

to efficiency gains, partly due to the features of the system by itself, partly due to a realignment of business strategies to take full advantage of those features.

It would be interesting to have a study at micro-economic level analysing and measuring the use of Internet as a production factor in a given industry[11]. I am not aware of such an study. But, again, I think that is safe to assume that Internet has also the potential to lead to a displacement and a change of the elasticity of the supply functions that we know today.

d) Investor's uncertainty is a constant in the Internet markets

Investment is a key variable for the development and/or transformation of markets. We are learning every day about new venture projects for taking advantage of Internet. There is an enormous flow of capital to support those projects, which leads us to assume that there will be big investment returns for Internet related business. But let's forgot for a moment the stock exchange and the expectations of future profits. What we know is that many Internet related business projects require heavy investment and that very few of them have reached the pay-back period.

If we look to the past ten years and consider the amount invested on Internet related business, how few of those projects – Internet sites, portals, search engines, navigators, electronic market places – have been successful enough to have wide recognition and long term financial stability[12].

If we look ten years ahead, we have to be pretty sure that our Internet project is good enough, if not for becoming one of the few selected Internet stars, at least for retaining the customer's preferences during the period of time required to recover the investment made. The increased consumer's power to which I referred above means also for companies very volatile customers bases on which to build safe investment projects.

e) Competing in Internet markets is leading to a concentration of resources

At first glance, we can consider that there are not barriers to entry[13] into the Internet related markets, that anybody with a good idea can have success. This is probably true to a certain extent – it is true that there are brilliant start-up companies. But what is certain is that there is a trend towards concentration, revealed by waves of mergers and take-overs[14]. A typical case in the EU is the strategy of the incumbent telecommunication operators[15], which have created spin-off subsidiaries that act as ISP providers, offer wide-range Portal services and are concluding strategic agreements with key actors in other sectors (e.g. banking) to expand Interned related services in those sectors.

f) Internet based products benefit (or suffer) from networks effects

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[11] see, e.g., « Development of the Internet, market structures and commercial practices : the case of the publishing sector », by Dominique Gillerot and Marc Minon, LENTIC, the 15th European Communications Policy Research Conference.

[12] See, e.g., « Internet and E-Commerce overview, market sizes and growth, market drivers and inhibitors », European Information Technology Observatory 2000, Millennium Edition.

[13] See, e.g., OFTEL/OFT study into competition barriers to e-commerce, April 2000

[14] See, e.g. « Beyond the merger and acquisition frenzy », by Y. Gassot, D. Pouillot and L. Balcom, IDATE

[15] see, e.g., « Telecommunications and Economic Competition in Europe », University of Oklahoma, February 17-19, 2000, by Dr. Herbert Ungerer, Visiting European Union Fellow.

In a traditional industry, a product losses value with use. Its depreciation is directly proportional to its degree of utilisation. With an Internet application the contrary occurs: as more and more people use it extensively, its market value increases in an exponential way. This kind of phenomena is called "a network effect"[16]. It is not exclusive to Internet. It appears, amongst others, in the telecommunications and the computer industries.

Network effects may have serious implications for fair competition: they can lead to the creation of dominant positions that can be abused. Consider, for example, the Microsoft Windows case. This operating system is so good and has such a reasonable price that it has became a quasi-standard for all PC users. The problem appears when this strong market position is used to impose unfair commercial conditions to PC or other software vendors. The problem is worsened when it is also abused as to leverage the use of Microsoft' own Internet navigator to the detriment of other competitors. This type of situations may appear with Portal applications, search engines or B2B electronic platforms.

I would say that anti-trust enforcement has to remain neutral and let market forces ensure economic efficiency by themselves. Network effects play for all market agents and can lead to easily eroded dominant positions. In the end, it is a question of consumers' choice. However, network effects have to be taken into account for the purposes of anti-trust enforcement. The key issue is that the advantage that can be obtained from those effects is not viewed as unfairly sustaining dominant positions.

g) Internet markets demand common protocols and industry-wide standards

If we talk about Internet markets, we are talking about a common language setting, a number of shared protocols and standards that allow computers, networks and applications all over the world to communicate in a smooth and safe way. Those protocols and standards evolve and require periodical updates. New applications appear – for e.g. the now emerging Internet mobile applications - that require common agreements between manufacturers. There is not a public organisation that can decide by itself about those standards. They are industry driven.

This mean a lot of companies, most of them competitors in the same markets, working together and establishing formal or de facto agreements on something that it is crucial for the development of competition on those markets.

The process of establishing common protocols and standard is a necessity. Now, a problem may arise when a limited number of players set those standards to their advantage and discriminate against third parties. Or when a company in a dominant position in a given market reinforces that position by means of those standards. For that reason, tacit or explicit agreements between competitors for setting standards have to be carefully considered for the potential anti-competitive effects they may have. Prima facie, those agreements should respect the principles of non-discrimination, transparency and fair pricing policy.

4. what does the Internet rely upon?

If we want to conduct a business over the Internet, the first question that we have to address is who controls the Internet or, alternatively, are there facilities that are essential for running the system and, if so, who controls those.

[16] See, e.g. « Network Externalities, Competition and Compatibility » by Michael Katz and Carl Shapiro, American Economic Review, n° 424, 1985.

A lot of people believe that no organisation, public or private can control Internet. It is often said that Internet success is partly due to the freedom it gives to large number of people to spontaneously co-operate, out of the control of the authorities.

This is probably true. I will not refer today to the issue of freedom on Internet. Instead, I would draw your attention to two facts, both of them related to key Internet underlying facilities. The first one is that Internet is based on telecommunications networks and that there are a number of networks – the so called core Internet – that are controlled by an extremely limited number of companies. The second is that somebody has to administer and manage the Internet system. This "somebody" plays a crucial role for the development of Internet markets.

a) Network structure of Internet

As you would recall, the Internet was conceived in the fist place as a military research project that was then taken over by the academic community in the USA. It was based on local area computer networks connected with other, more distant local network by means of telephone cable connections. Transmission of data over those networks was possible thanks to a shared "transmission control protocol", later names as "Internet Protocol" or IP. The Internet expanded by means of a devoted telecommunications network funded by the US Government. It was only 10 years ago that commercial telecommunication operators started to invest on Internet. The original Internet network was extended and soon replaced by a number of networks operated by different companies that have to be interconnected with each other.

In an oversimplified way, two types of networks were necessary: networks providing long distance transmission capacity (linking far-away regions) and networks serving local communities (short distance connections). The first ones are called Internet backbones. These backbones are crucial to reach all the local and regional Internet communities in the world, from Australia to Siberia. An Internet Service Provider in Barcelona that want to offer to its customers full Internet connectivity – that's that people here can reach other Internet's users or web-sites anywhere in the world – requires full access to the Internet backbones.

There is obviously market for Internet backbone services. And the European Commission has identified serious competition concerns in that market due to its oligopolistic nature.

Some of you would be aware of the recent intentions of two giants in the telecommunications sector – MCI Worldcom and Sprint – to merge. This would have been the biggest merger transactions of all times. The problem with this transaction is that MCI Worldcom and Sprint are two of the four companies that control strategic backbones for the function of the Internet (the other two ones are GTE and Cable & Wireless). The Commission opposed[17] the merger because it considers that the global geographical market for Internet access remains critical for European Internet service providers and it found that the MCI WorldCom / Sprint combined market share in that market would be of 50%.

Besides the fact that few companies control an essential Internet infrastructure, the architecture and design of Internet networks is also an important factor. As stated before, the Internet was developed in the USA. The development of the world wide

[17] cf. MCI WorldCom/Sprint merger procedure statement of objections by EC DG Competition, May 2000.

wed could be seen as a number of networks rings centred upon the USA. EU Member States are heavy consumers of Internet access, but the rings of networks giving that access to EU users is not centred in Europe but in the USA.

The European Commission has declared the topography and capacity of the Internet backbone infrastructure in Europe as a source of some concern. The early development of the Internet in most parts of the world was based on establishing connections between national networks and the Internet in the United States. The practical result is that the installed capacity of the Internet backbone infrastructure between each European countries and the United States has several times the bandwidth (capacity) of the connections between those countries. As a consequence, a large proportion of Trans-European Internet traffic is in fact routed via the United States. Quite apart from the economic effects of this situation, it means that many European communications, including information of commercial significance depend on a day-to-day basis on the security and reliability of these Trans-Atlantic connections.

b) Organisation and management of the Internet[18]

The organisation and management of Internet infrastructure involves several limited but essential technical co-ordination functions. These are: Internet addressing, Internet protocols and issues related to intellectual property rights.

Until very recently, all aspect of the organisation and management of the Internet were under the tutelage of the US Government. It was only at the end of 1999, that the US decided to transfer a number of functions relating to the organisation and management of the Internet to the private sector. This process has involved the establishment of a new private organisation, the Internet Corporation for Assigned Names and Numbers (ICANN).

By October 2000, ICANN should have taken responsibility for co-ordinating the management of the Domain Name System, the allocation of Internet Protocol address spaces, the co-ordination of new Internet protocol parameters and the management of the Internet's root name server system. Although the establishment of ICANN constitutes a significant progress in regard of the previous situation, the US Department of Commerce has retained a significant degree of direct authority over this organisation. Exactly how and when the US Government will divest itself of this authority remains to be seen. In that event, the question will remain as to what extent and how the necessary public policy oversight of ICANN's important functions will be exercised.

b.1 Internet Addressing

While for the facility of users, Internet names are commonly represented by textual domain names such as "coca-cola.com", the underlying addresses which are used to route data from one host computer to another are numeric. This numeric system is currently based on numbers that are 32 bits long. All Internet applications, both current and future, rely on these addresses. Almost every device or communications function related to all aspects of life and society will involve Internet addresses.

[18] see « The organisation and management of the Internet », Communication from the Commission to the Council and the European Parliament, 7 April 2000 – Com(2000)202.

The allocation of IP addresses must respect the principles of aggregation that facilitate efficient routing of IP traffic. It is critically important that IP addresses are autonomously and neutrally managed, in the interests of an open and competitive market for all present and future Internet based services.

b.2 Internet protocols

Internet protocols allow the different entities on the Internet to work together to transport data between machines and present it in the applications that the users actually see. The development of new protocols, and their appropriate software implementation is fundamental to the development of new services on the Internet and is becoming more important as the range of applications connected to the Internet increases. Internet protocols are developed mainly through the Internet Engineering Task Force (IETF), although other bodies, such as the World Wide Web Consortium are increasingly contributing to this work.

b.3 Intellectual Property Rights (IPRs)

The main IPR questions arising from domain names are currently trademark-related. A difficult Internet area is concerns the resolution of potential or actual disputes over trademarks and domain names. Domain names have been an easy target for abuses of intellectual property rights, and specifically trade marks. In principle it is possible to limit the risks of trademark infringement in Internet addresses by subjecting registrations to certain rules.

However, the principal open generic TLDs, .COM, .ORG, and .NET names are allocated on a 'first come, first (only) served' basis. During the last five years several costly court cases were required to restore rights which had been infringed, such as speculative registrations in bad faith of famous and well known trademarks. On the other hand a balance has to be sought in respect of small companies who in good faith and with justification register a name which then proves to be of interest to a larger and more powerful organisation.

Although trademark rights are increasingly secure in the context of the DNS, rights to other categories of names, including place names, names of celebrities and geographical indications may also justify a degree of protection that currently cannot be ensured. In this light, in seems crucial for the Internet community to produce guidelines for anti-cybersquatting policies.

Finally, it must be recalled that jurisdiction of the United States' Courts predominates over dispute resolution procedures.

5. What is e-commerce?

The Internet is being used in different ways in different markets for the purposes of commercial, industrial and financial transactions. There a number of generic concepts that have appeared to label those transactions, such as "electronic commerce" or "electronic business". Sometimes is difficult to find out what those concepts mean precisely[19], but it is widely accepted that e-commerce (or e-business) is about:

- The use of Internet applications (e-mails, web-sites) for reaching consumers or reaching suppliers and performing commercial orders and payment on-line.

[19] See, e.g., « Defining and measuring Electronic Commerce, a background paper », OECD, Paris, April 2000.

Delivery of the good or service acquired or sold on the Internet relies afterward on traditional distribution channels or on companies providing specialised logistic support for Internet sales. This would constitute indirect e-commerce;

- Trade of digital goods and services, that is, good and services that can be ordered, paid and distributed "computer to computer". This type of good and services include digital books, news, videos and video-games but also software applications and advertisement services. A very particular service under this category would be Internet telephony (voice over the Internet protocol). This category would constitute direct e-commerce.
- A third category, constituted of transactions of very different nature, would encompass financial transactions over Internet, including authentication and encryption services, on-line auctions, public markets tendering, etc.

One special case of electronic commerce is *electronic trading*, in which a supplier provides goods or services to a customer in return for payment. A special case of electronic trading is *electronic retailing*, where the customer is an ordinary consumer rather than another company. However, while these special cases are of considerable economic importance, they are just particular examples of the more general case of any form of business operation or transaction conducted via electronic media. Other equally valid examples include internal transactions within a single company or provision of information to an external organisation without charge.

Some modalities of e-commerce

Depending on the type of agents conducting the transactions, electronic commerce is usually sub-divided into four distinct categories:

- business-business (B2B)
- business-consumer (B2C)
- business-administration
- consumer-administration

An example in the *business-business* category would be a company that uses a network for ordering from its suppliers, receiving invoices and making payments. This category of electronic commerce has been well established for several years, particularly using Electronic Data Interchange (EDI) over private or value-added networks.

The *business-consumer* category largely equates to electronic retailing. This category has expanded greatly with the advent of the World Wide Web. There are now shopping malls all over the Internet offering all manner of consumer goods, from cakes and wine to computers and motor cars.

The *business-administration* category covers all transactions between companies and government organisations. For example, in the USA the details of forthcoming government procurements are publicised over the Internet and companies can respond electronically. Currently this category is in its infancy, but it could expand quite rapidly as governments use their own operations to promote awareness and growth of electronic commerce. In addition to public procurement, administrations may also offer the option of electronic interchange for such transactions as VAT returns and the payment of corporate taxes.

The *consumer-administration* category has not yet emerged. However, in the wake of a growth of both the *business-consumer* and *business-administration* categories, governments may extend electronic interaction to such areas as welfare payments and self-assessed tax returns.

Finally, the development of Internet applications for mobile devices (such as mobile telephone handsets with WAP protocols) would give raise to a different category of e-commerce code-named as "mCommerce".

In any case, all these concepts are in constant evolution. They can be useful for describing commercial practices over the Internet but they are often worthless to making a precise market assessment to examine the competitive effects of a given project related to the Internet. As is always the case when applying competition rules, we have to be extremely precise about what market we are talking about, who is competing with whom on that market, what are the geographical boundaries of the market, which are the goods or services at stake and to what extent there are available substitutable good and services.

What resources do we need for doing e-commerce?

Electronic commerce, in whatever manner, relies certainly on the Internet but not only on the Internet[20]. To conduct electronic transactions over the Web, a company needs the resources from the telecommunications, the computer hardware and the software industries. Those resources require another entrepreneurial resource to combine them and to build on them an adequate interface for doing e-commerce.

a) telecommunication facilities

The telecommunications sector offers transmission capacity, by means of the public switched telephony networks, which gives potentially access to all the population in a given country, or by means of other alternative networks, including mobile networks, satellite and, in some cases, cable-TV networks. These sectors can also enable high speed Internet access, by means of, e.g.. xDSL technologies. The cost of basic Internet access, including flat rates and/or cost of local phone calls, is determined in most cases by telecom operators. This cost would seem to be a key factor for Internet penetration and level of Internet usage in the residential sector.

b) Equipment

The computer hardware offers PCs and other terminals, process equipment, chips and semi-conductors devices, local storage capacity and modems, servers, mobile handsets and peripherals. It is possible than within a few years, a new generation of Internet access devices could revolution the Internet as it is known today – by means, e.g., of hybrid products between TV-sets, PCs and wireless devices. In the meantime, computer equipment is the first step we need to make for having access to Internet.

c) Software

The software sector is also crucial for the development of e-commerce. There is an increasing number of companies developing software applications for the Internet. It is not only about operating systems -such as Windows or Linux- or browsers and search engines. It is also about building up specific enterprise applications such as electronic platforms for conducting transactions in a specific economic sector or supply chains or customer care applications. The software sector also develops

[20] See, e.g. « E-commerce essentials », by Mark Norris, Steve West and Kevin Gaughun, Wiley(2000)

protocols and standards such as WAP which expand the use of Internet to mobile devices. Security tools – against viruses and hackers-, authentication and encryption services are also provided by the software sector[21]. A particularly interesting new product in this sector are the so-called "middleware" applications, that enable integration of applications and equipment working under different operating systems and/or standards.

d) e-minded entrepreneurs

The combination of resources from those three sectors is the key for enabling e-commerce services. It gives rise to a new type of market agents. Perhaps the most well known of those are the Internet Service Providers (such as Terra, Wanadoo or T-On Line), the Portals (such as AOL, Yahoo or Lycos) and companies such as Amazon, Bertelsmann or Barnes and Noble which offer their "business to consumer" products on-line or eBay that proposes auctions and transactions "consumer to consumer".

For the corporate sector, for the so-called "business to business" transactions there is a new generation of companies developing electronic marketplaces applications[22] for, say, the automotive or the pharmaceutical industries. These kinds of applications are at an early stage of development. There should be many applications, each of them addressing the particularities of different industries. In all of them, what appears to be essential is to reach a critical mass of users – buyers or sellers. Although the advantage of lower transaction costs should be an incentive for the establishment of this type of applications, for the time being (as of July 2000), there is little information about successful B2B platforms within the E.U.

Now, this is a very short presentation of what electronic commerce is about. We are not supposed today to engage in more thoughtful discussion about it. But there is something extraordinarily important which we cannot forget.

6. The outer-limits of Internet use (or abuse) for doing business

Internet may be a wonderful system for conducting commercial transactions, for buying and selling many things. We all know, however, that there are limits to what can be sold or bought in a market, independently of its "virtual" or traditional nature. There are also some other limits about how a good or service can be traded[23].

I refer here to issues such as the privacy of our data in Internet[24], consumer's rights and obligations (consumer protection)[25] over the Web, taxes on electronic commerce

[21] The software sector provides the tools, but the development of such systems is of course a market necessity, e.g. in February 2000 a number of major European and U.S. banks for the purpose of establishing a world-wide network of certification authorities of trusted electronic commerce transactions. Initially, this network will only be for business-to-business (B2B) transactions.

[22] « B2B electronic marketplaces are software systems that allow buyers and sellers of similar goods to carry out procurement activities using common, industry-wide computer systems » - see Federal Trade Commission, Public Workshop : Competition Policy in the World of B2B Electronic marketplaces – June 2000.

[23] See « Code and Other Laws of Cyberspace », by Lawrence Lessig

[24] Concerns about privacy have been identified as the « single biggest factor depressing on-line sales » - see « Protecting your privacy concerns about third-party monitoring putting a damper on e-commerce », by Simson Garfinkel, June 2000.

[25] See « Making the virtual virtuous – towards a new approach to e-Consumers », by David Byrne, European Consumer Centre, Dublin, March 2000

transactions, dispute resolution between parties trading on the Internet and prevention of cyber-crime.

Later on today you are going to discuss the legal framework currently under construction in the E.U.[26] for the purposes of conducting electronic commerce business. This framework would be based on the recently adopted Directive on e-commerce and the envisaged directives on electronic money, property rights over the Internet or data protection. All these regulations would eventually establish the limits within which competition on Internet markets will develop[27].

What is important is to realise that neither the E.U., the USA nor any other economic area in the world can unilaterally impose a framework without the previous consensus of the other areas. In the first place because the Internet is what it is, global in nature and unrestrictedly open to all users in the world. In the second place because that nature leads to extra-territorial effects – i.e. decisions adopted far away from our borders that have direct implications for our businesses and consumers that require international negotiation. Otherwise, there is a real risk that different, contradictory solutions are implemented – or attempted to be enforced - in the different regions of the world.

As of today, I would point out as the more difficult issues for such a negotiation the aspect related to the use of private data for commercial purposes on the Internet, on which the E.U. would have a more restrictive approach than the USA, or to the approach to the enforcement of tax regulations (notably the application apply the value added tax on e-commerce transactions[28]) by companies based outside the E.U. but operating in the internal market by means of the Internet.

7. Internet' threats to fair competition

For many companies, the Internet represents a business opportunity, the possibility of carrying out investment projects with high expected return rates, improving the competitive edge or for the purposes of corporate diversification strategies. For many other companies – for some economic sectors as a whole in some cases – the Internet may represent a serious threat, as the functions they perform will disappear with the development of e-commerce. This would be the case of many intermediary functions (wholesalers, retailers) for which direct Internet competition is possible.

The Internet does not only threaten intermediary functions. It is also a challenge for territorial protection agreements[29], that is, for the reseller that obtains full exclusivity for commercialising some goods in a given territory. The Internet makes it very easy to know at what prices these goods are offered in contiguous or far away territories and provides the means to obtain them from different resellers.

It is not unthinkable that those features could lead to many traditional retailers and businesses categories opposing the new forms of competition over the Internet[30].

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[26] See, amongst others « Commission promotes Safer Internet » (IP/00/620) or « Commission launches e-confidence on-line forum to promote alternative dispute resolution »

[27] An interesting issue about those limits was raised at the beginning of 2000 by Jeff Bezos' (Amazon) attempts to patent method of doing business over the Internet.

[28] See, e.g. the International Communications Round Table, Position paper on indirect taxation of global electronic commerce, December 1999

[29] See, e.g. « Réseaux de distribution et vente sur Internet » cf. Above.

[30] See, e.g . the case of Chrysler dealers opposing allocation of vehicles to an Internet sellers – the « Fair Allocation System » quoted by David A Balto in « Emerging Antitrust Issues » (cf. Above)/

A question that is often raised by companies interested in developing B2B business platforms is to what extent the information that those applications allow to businesses to share with competitors (about, e.g. prices and quantities of supplies, raw materials, etc that each of them require) may lead to unacceptable induced cartel behaviour in the affected markets. This is the type of questions that first arise when you know about join projects of big competitors such as Ford, General Motors and Chrysler to join forces[31] for the purpose of ….. "purchasing better".

Moreover, for the purposes of full exploitation of Internet business possibilities, we are witnessing a concentration of economic power – both in the form of mergers and acquisitions and in the form of strategic agreements between companies – that could well be necessary for the foundation of the so-called new economy but that could also mean that the market structures in that new economy will be controlled by a limited number of players at world-wide level. Think for example of the intended mergers between America on Line and Time Warner or Vivendi/Canal Plus and Seagram.

Finally, from a social point of view, the fist requirement to participate in a new economy based in the pervasive use of the Internet and digital technologies is to have access to the Internet and those technologies. Now it is clear that even in the industrialised countries, large parts of the population will remain outside the Internet. This could imply a social fracture which may have negative consequences for the correct performance of the economic system. Those consequences would also appear at the international level in regard to the relationships with developing countries.

8. Conclusion

I would like now to conclude by recalling something I have already said at the beginning: the Internet by itself does not represent either an incentive or a threat for fair competition. Its use for doing business demands in the first place the establishment of a framework, about what is licit and what is illicit. Once the framework is established, competition rules apply, in the same manner they apply in almost all economic sectors, and with the same purposes they have been always applied. Maybe Internet based markets are different and challenge some of the traditional notions uses for the purposes of enforcement competition rules. If that is the case, we need first to understand what is going on. We are still at a very early stage. From a competition perspective, I would say that the key issue is to remain neutral in regard of the economic dynamic and not to interfere with natural market forces – even if sometimes those forces challenge our current way of thinking.

Thank you.

[31] In February 2000, General Motors, Ford Motor Company and DaimlerChrysler announced that they are planning to form a B2B integrated supplier exchange through a single portal in Internet. According to the parties, this venture will create the world's largest virtual marketplace. This project could give the parties an enormous joint purchasing power over suppliers.