

E-Commerce & The Trade Practices Act



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RMIT CIRCIT - 11 October 2001

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Overview

- Competitive Characteristics of E-Commerce:
 - New Intermediaries (eg portals, marketplaces, peer-to-peer services)
 - New Delivery Mechanisms (eg websites, email)
 - Geographic Boundaries may Change
 - Demandside Economies of Scale
 - More information available to consumers & competitors
 - Innovation

Part IV of the TPA

- S 45 - agreements that substantially lessen competition.
- S 45A - price fixing
- s 4D - primary boycotts
- s 46 - misuse of market power
- s 47 - exclusive dealing that substantially lessens competition
- s 48 - resale price maintenance
- s 50 - mergers

Part V of the TPA

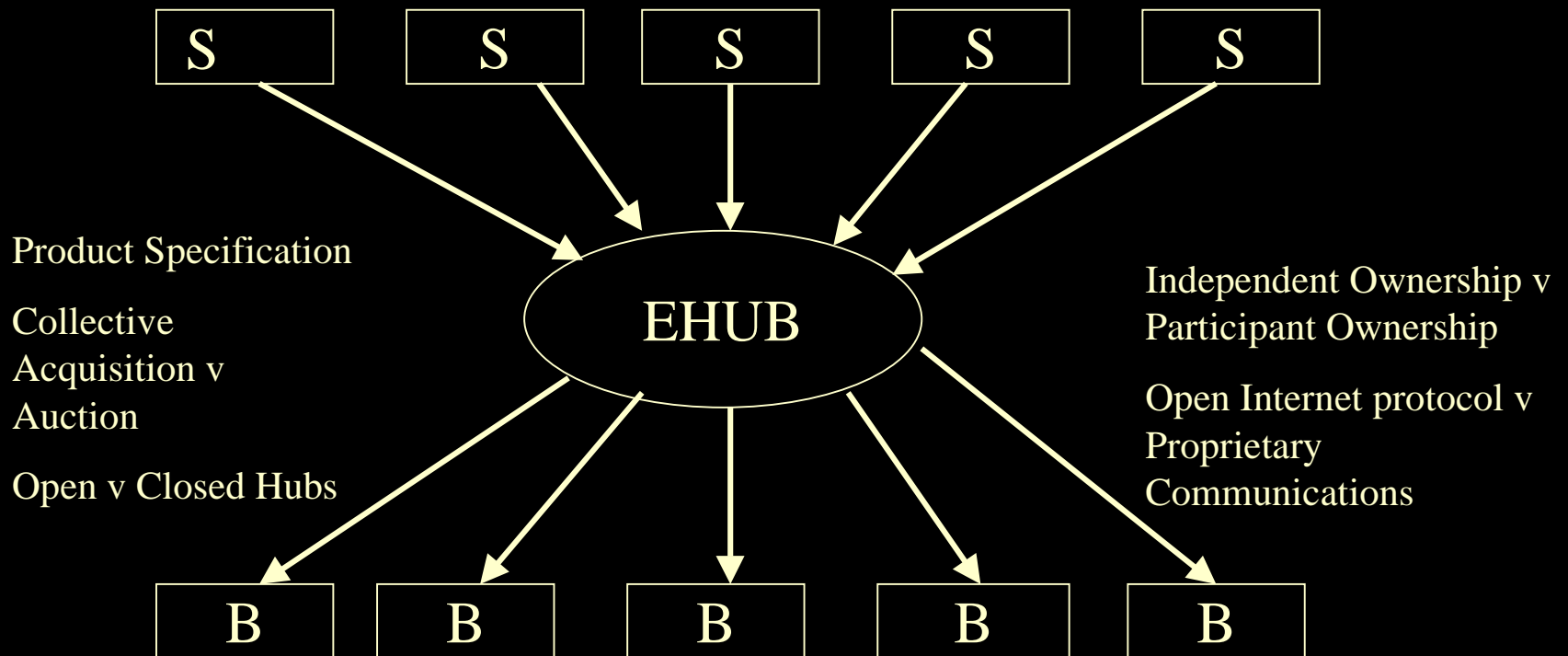
- Misleading and deceptive conduct, false or misleading representations on certain attributes of goods & services (s 52, 53).
- Pyramid selling (s 61)
- Demand payment for unsolicited goods & services (s 64)
- Implied warranties & conditions in consumer contracts (s 66 - 71)

Electronic Marketplaces

“B2B e-commerce concerns the rationalisation of business functions. It provides a company with the means to inject greater efficiency into tasks such as data collection and data management..”

National Office for the Information Economies, B2B E-Commerce, Capturing Value Online, October 2001.

Electronic Marketplace Issues



Electronic Marketplace Issues



- Efficiencies
 - Move to “paperless” transactions to reduce transaction costs in procurement
 - Connectivity with a wider range of buyers/sellers due to lower cost Internet communications
 - Value-added services eg logistics
 - Volume discounts from group buying

Electronic Marketplace Issues



- Competition Issues
 - May facilitate collusion, exchange of information or price fixing in buyers or suppliers markets
 - Collective Acquisition/monopsony power issues
 - May enable participants to discriminate against particular buyers/suppliers

Electronic Marketplace Issues

- Circumstances where issues more likely to arise when:
 - Participants are competitors with significant combined market share
 - Participants are owners
 - Involves key strategic inputs
 - Conduct rules allow anticompetitive behaviour
 - Demandside economies of scale

Electronic Marketplace Issues

- Demandside Economies of Scale:
 - Value of hubs increase with the number of participants which may result in high barriers to entry in the development of competitors
 - Functionality of a hub may also be relevant - ie success may depend on the usefulness of the hub, as well as how many buyers invest in it
 - Interoperability between marketplaces will be an important factor

Electronic Marketplace Issues

- When to Approach the ACCC?
 - ACCC open to discuss proposals on an informal basis as they develop.
 - Will need sufficient level of certainty regarding the rules of an exchange and structure of the market in order to provide a view.
 - Will assess on a case by case basis.
 - May reserve the right to continue to monitor as the nature of a ehub may change as the industry matures.

Industry Standard Collaborations

- Development of E-Commerce requires standards to provide consumers a level of certainty re issues such as privacy, security, payment systems.
- Alliances between competitors to establish such “standards” may have competitive effects, particularly if proprietary standards develop.

Industry Standard Collaborations

- If standards are not open and developed in a transparent environment this can raise issues:
 - Can owners of the standard raise rivals costs?
 - Can owners stifle development of innovative products by refusing to allow compatibility?
 - Does compatibility come at the cost of competition?

Industry Standard Collaborations



- Examples:
 - PKI Schemes such as Identrus
 - DVD Standards
 - Sun Microsystems investigation

Examples of B2Bs

- corProcure
 - 14 major Australian businesses including Coles Myer, Australia Post, Telstra, BHP develop B2B to buy their indirect goods and services.
 - Question of monitoring development to ensure that issues such as collective buying do not raise monopsony power issues.
 - At the same time, may enable suppliers to access buyers more easily and reduce transaction costs.

Examples of B2Bs

- **Zuji**
 - Venture between several airlines in the Asian region to establish a B2B to sell wholesale online ticketing services to online travel agents & sell direct to public.
 - Question of monitoring development to ensure no collusion in ticketing prices, or substantial reduction in ability of travel agents to compete against Zuji
 - At the same time, may increase ability of travel agents and consumers to access online ticketing services.

Market Analysis

- Do e-commerce outlets compete in the same markets as traditional retailers?
- Impact of e-commerce on geographic markets?
- Impact of innovation on ability to exert market power over a significant period of time?

Technical Innovation, Networks & Competition Regulators



- Do Competition Regulators over-state network effects, and understate the dynamic nature of competition in high technology markets?
- Could this actually stifle competition?

Technical Innovation, Networks & Competition Regulators

- Need to assess whether there are impediments to technical innovation.
 - Exclusivity Clauses
 - Technical Integration (eg Microsoft)
 - Exit costs
 - Complementary of other products
 - Pricing of existing products may dull incentive to innovate (eg credit card scheme issues)

Consumer Protection Issues



- Old scams in new formats
- Auction sites - fraud
- Health Claims
- New Technology scams - Page jacking
- Domain name registration services

Some Examples

World Netsafe

- ACCC took action in relation to the marketing of an ATTM card over the Internet which constituted a pyramid selling scheme and misrepresentations about the nature of the product.
- \$4M payments collected.
- Court ordered refunds, injunctions against parties carrying that or similar schemes worldwide.

Some Examples

- Purple Harmony Plates
 - Misleading claims about the health benefits of “purple harmony plates”.
 - Injunctions, refunds and corrective statements awarded.
 - Business required to have a “pop up” statement on its website that the consumer must disable before using the homepage or ordering items.

Some Examples

- Internet Porn Scam
 - ACCC assisted US FTC in 1999 to break a global Internet scam that took Internet users to pornographic sites when they tried to click onto legitimate sites. Once “page jacked”, users Internet browsers were disabled to prevent them leaving those sites.
 - FTC gained restraining orders ordering the de-registration of the domain names involved.

Jurisdictional Issues

- Applicable law for transaction?
 - Whether the website operator was resident in Australia, incorporated in Australia or carrying on a business in Australia.
- Applicable law for prosecution?
 - Location of the conduct?
- Enforcement of decisions?
 - Co-operation of other jurisdictions

Conclusion



- Lots of challenges
 - Striking balance between encouraging competitive e-commerce and intervention to stop conduct that substantially threatens competition or breaches fair trading provisions.
 - Re-visiting theories on collaborations, price transparency, and demand-side economies of scale.
 - Using new investigative techniques.