

FEDERAL REGISTER NOTICE

Public Workshop: Possible Anticompetitive Efforts to Restrict Competition on the Internet

AGENCY: Federal Trade Commission

ACTION: Notice of Public Workshop and Opportunity for Comment

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") announces a public workshop on "Possible Anticompetitive Efforts to Restrict Competition on the Internet." The workshop will focus on how certain state regulation may have anticompetitive effects, and how certain business practices may raise antitrust concerns, in the context of business-to-consumer e-commerce. The workshop will be held at and administered by the FTC.

DATES: The workshop will take place on October 8-10, 2002. The workshop will be transcribed and placed on the public record. Any interested person may submit written comments responsive to any of the topics to be addressed; such comments should be submitted no later than the last session of the workshop. Any written comments received also will be placed on the public record.

ADDRESSES: When in session, the workshop will be held at the FTC headquarters, 600 Pennsylvania Avenue, N.W., Washington, D.C. All interested parties are welcome to attend. Pre-registration is not required.

Written comments should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Submissions should be captioned "Comments regarding ecompetition." Electronic submissions may be sent by electronic mail to ecompetition@ftc.gov. Alternatively, electronic submissions may be filed on a 3-1/2 inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

FOR FURTHER INFORMATION CONTACT: Jerry Ellig, Deputy Director, Office of Policy Planning, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580; telephone (202) 326-3528; e-mail: jellig@ftc.gov. Detailed agendas for the workshop will be available on the FTC Home Page (<http://www.ftc.gov>) and through Mildred Taylor, Staff Secretary, at (202) 326-2553.

SUPPLEMENTARY INFORMATION:

Overview

In the past decade, there has been growing concern about possibly anticompetitive efforts to restrict competition on the Internet. In particular, many states have enacted regulations that have the direct effect of protecting local merchants from competition over the Internet. For example, some states require that online vendors maintain an in-state office, while other states prohibit online sales of certain products entirely. Some scholars have argued that these regulations are often simply attempts by existing industries to forestall the entry of new and innovative Internet competitors, much as in prior eras, other entrenched producers have benefitted from regulatory efforts to impede new forms of competition.

Similarly, some private companies have engaged in conduct that may raise antitrust issues. For instance, some manufacturers and dealers do not list prices for certain items online, and others do not sell certain items over the Internet altogether and urge horizontal competitors to do the same. Depending on the circumstances, some of these restrictions could be viewed as potentially anticompetitive. While much of this regulation and conduct undoubtedly has pro-competitive and pro-consumer rationales, the regulations

impose costs on consumers that, according to some estimates, may exceed \$15 billion annually.

For these reasons, a workshop on possible anticompetitive efforts to restrict competition on the Internet is timely, and will build on previous FTC-sponsored events that addressed other aspects of e-commerce.¹ In order to enhance the Commission's understanding of particular practices and regulations, the workshop will have panels to address certain specific industries, including some or all of the following: retailing, automobiles, cyber-charter schools, real estate / mortgages, health care / pharmaceuticals / telemedicine, wine sales, auctions, contact lenses, and funerals (caskets).

Each of these industries has experienced some growth in commerce via the Internet, but according to various commentators, each also may have been hampered by anticompetitive state regulation or business practices. See, e.g., Atkinson, *The Revenge of the Disintermediated* (Jan. 2001) (report of the Progressive Policy Institute); Atkinson and Wilhelm, *The Best States for E-Commerce* (Mar. 2002) (second report of the Progressive Policy Institute). In addition, these industries involve goods and services that comprise a very large portion of a consumer's budget, such as homes, cars, schools, and health care.

It is intended that each industry panel have at least one independent analyst or academic, and also have representatives from the affected industries (on both sides of the issue). Where appropriate, the panel also will include a representative from a government agency, including (where appropriate) representatives from different states. We hope that each panel will provide all sides of the issue, including the perspectives of industry, intermediaries, consumers, and regulators.

The Commission also invites comments concerning other industries, not listed above, that may raise similar issues and merit similar examination.

Issues

Below is a non-exhaustive list of issues to be addressed by the workshop. Written comments need not address all of these issues.

1. General Issues

What role does competition law and policy play in fostering or hindering e-commerce? From a practical business perspective, how does each foster or impede e-commerce? What do empirical studies show?

Does state regulation have protectionist effects, and if so how? What are the benefits of such regulation, and do the benefits outweigh the costs? What is the prevalence of such state regulation? Are some types of regulations more friendly to e-commerce?

Do businesses try to limit competition over the Internet through anticompetitive efforts, and if so how? What are the business justifications for these efforts?

2. Issues for Particular Industries

Retailing:

How and why do manufacturers limit their distributors' sales of certain products over the Internet? What are the costs to consumers? Do distributors pressure manufacturers into limiting sales over the Internet, and if so how? Are such efforts facilitated by horizontal agreements? Does such conduct raise antitrust concerns, and are there legitimate business justifications, such as concerns about free-riding, for limiting e-commerce sales?

Automobiles:

Have manufacturers been forced to limit Internet sales of automobiles, and if so how? What are the costs to consumers? Are there legitimate concerns about free-riding or differentials in bargaining power? Are there different issues concerning the sale of new and used cars? What regulations have been applied to the sale of new or used cars through online auction sites? Does state regulation have the effect of protecting dealers

from competition, to the possible detriment of consumers, or does existing state regulation provide important protection to consumers?

Cyber-Charter Schools:

How have states fostered or hindered cyber-charter schools? What are the competitive benefits of cyber-schools? Are there legitimate consumer protection concerns? Do the efforts of some school districts to limit cyber-charter schools raise any antitrust issues? What is the current status and focus of litigation, and what types of legislative solutions are possible?

Real Estate / Mortgages:

What types of state regulations limit online real estate and mortgage services? What are the costs to consumers? What is the impact of regulations requiring real estate closings or refinancings to be conducted solely by attorneys? What are the pro-consumer rationales for such regulations, and are there less restrictive means of achieving the same goals? What is the impact of Internet competition upon real estate commissions, and how are realtors responding to that competition?

Health Care / Pharmaceuticals / Telemedicine:

What types of state regulations limit online provision of health care goods and services, such as pharmaceuticals and telemedicine? What are the costs to consumers? Are these regulations directed mainly at out-of-state competitors? Are online prescriptions particularly susceptible to abuse? What are the pro-consumer rationales for regulations, and are there less restrictive means of achieving the same goals? Are reciprocity statutes an effective way to dealing with these issues?

Wine Sales:

How does the "three tier" system for distributing wine limit online sales, and are there legitimate justifications, such as temperance or taxation, for the system? What are the costs to consumers? Are there separate and measurable price and variety effects? Are there less restrictive means for achieving the same goals, and are reciprocity statutes a viable alternative? What is the status of the ongoing litigation addressing this system?

Auctions:

How have states applied their existing auctioneering regulations to online auction sites? What are the costs to consumers? Have states enacted new regulations targeted at online auctions? Do such regulations limit competition from online auctions, and if so how? Do those regulations impact large and small online auctioneers differently? To what extent are online auctions replacing traditional retail outlets, for consumer goods, automobiles (new or used), and other products? What types of state regulation can best protect consumers while still allowing competition from online auctions?

Contact Lenses:

What types of state regulations limit online sales of contact lenses? What are the costs to consumers? What are the health justifications for such regulations, and how valid are they? Are there separate issues for replacement lenses or disposable lenses? How

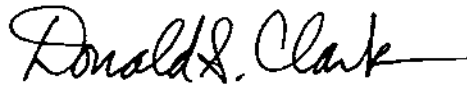
should prescription requirements be administered? Have manufacturers limited the supply of contact lenses to online vendors, and if so why?

Funerals (Caskets):

What types of state regulations limit online casket sales? What are the costs to consumers? What are the pro-consumer rationales for such regulations, particularly in light of the recent controversies? Are there less restrictive means of achieving the same goals? What is the status and focus of current litigation?

The Commission welcomes suggestions for other questions that also should be addressed. Proposed questions, identified as such, may be sent by electronic mail to ecompetition@ftc.gov.

By direction of the Commission.



Donald S. Clark
Secretary

Endnotes:

1. For more information on previous FTC-sponsored events regarding e-commerce, see <http://www.ftc.gov/opp/ecommerce/index.htm>; <http://www.ftc.gov/opa/2000/05/b2bworkshop.htm>.