

## **E-marketplaces: Challenges for Policymakers. A view by DG Enterprise of the European Commission**

by César Santos and Marianna Perogianni,  
European Commission

The European Commission has been long aware of the challenges and opportunities that the Internet, and more specifically electronic marketplaces, represent for European business and citizens. The article presents a brief history of e-marketplaces and analyses the success criteria for the rapid emergence of e-marketplaces over the last three years in practically every industrial sector. The European Commission is increasingly called upon to assess the competitive impact of e-marketplaces. Major challenges for competition concern the issue of anti-trust, e.g. market dominance via collusions or joint purchasing and selling. Possible benefits include increased market transparency and contribution to a further integration of separate geographic markets, as well as substantial efficiencies due to reduced transaction costs and improvement in inventory management. In order to make this happen, common business practices are required which will only become the norm if SMEs are also fully integrated into e-marketplaces. This raises great challenges with a view to standardisation in order to ensure interoperability and reducing the risks to investment in new technologies. Further items on the agenda of the European Commission are measures to reduce trust barriers which account for the fact that many businesses are still reluctant to participate in e-marketplaces. In this respect, the Commission has consistently advocated self-regulation, e.g. codes of conduct, guidelines to standards and certification, as a flexible, efficient and cost-effective alternative to regulation in many areas. Finally, the GoDigital initiative launched in March 2001 aiming at the specific needs of SMEs within the framework of the Commission's e-Europe initiative is presented.

### **1 Introduction to e-marketplaces**

Over the last three years we have witnessed the creation of hundreds of Internet based electronic marketplaces in practically every industrial sector. Dramatic corrections in the valuation of most Internet firms, including most of the publicly traded e-marketplaces, have taken place over the last eighteen months.

Many analysts believe that, with the unfolding of these e-marketplaces, the economy will experience a change of similar proportions to that of the industrial revolution. However, if we stick to the evidence of available data, it is far too early to conclude anything like that. Investment in IT seems to have caused indeed an increase in productivity growth in the US over the last five years. Experts do not agree however on the extent of this growth and put it anywhere between 2 % and 3 %. Productivity growth figures for this year look less inspiring (1.5 % for 2001-Q2 according to The Economist).

Traditional value chains in many industries are being transformed. Migrations of value are taking place in many sectors. New players are emerging to capture value in different parts of the value chain. Traditional players are trying to protect their businesses by leveraging their know-how of their respective industries and their customer bases.

In this context, e-marketplaces raise a number of challenges for policy-makers, which need to be addressed with adequate instruments. This article explores in some detail these challenges in the area of competition, standardisation and trust.

The European Commission has been long aware of the challenges and opportunities that the Internet, and more specifically electronic marketplaces, represents for European businesses and citizens. The work that the European Commission has done in recent years to foster a favourable climate for the adoption of electronic business can be summarised as follows:

- Liberalising telecommunications to ensure competitive pricing of communications
- Creating a European-wide clear and predictable legal framework for electronic business, mainly through the E-Commerce Directive and the Electronic Signature Directive

- Ensuring that everyone has the skills to use information and communication technologies (i.e. eLearning initiative).

### **A brief history of e-marketplaces**

In the second half of the 19<sup>th</sup> century developments in manufacturing industry and the development of comprehensive and cheap transportation networks led to fundamental changes in the structure of the economy. Mass production led to large volumes of goods being created in concentrated locations. Mass transportation enabled materials to be brought to these locations and finished products to be delivered to markets across continents. Marketing techniques had to be developed to stimulate the demand necessary to drive the creation of large volumes of products. The modern industrial economy was thus formed.

If we take some perspective, electronic marketplaces have evolved rapidly in their short life. They started in the 1980s with Electronic Data Interchange (EDI) services, primarily over Value Added Networks (VANs), which were closed, expensive to build and maintain and batch oriented. The invention of the World Wide Web in the early 90s made possible the first “brochureware” web sites, that provided information about products online, though transactions were concluded through conventional channels.

Today we understand electronic marketplaces as Internet destinations (built on a commerce platform) that bring diverse companies together to conduct electronic commerce. An electronic marketplace usually brings together buyers, suppliers and involve trade financing organisations, logistics companies, taxation authorities and regulators. E-marketplaces enable businesses to collaborate with one another in the design, development, production and distribution of final products in a supply chain. The key enabler of all these processes is the exchange of information between all trading parties.

Today’s marketplaces allow many buyers and sellers to come together. Buyers can readily access information about individual suppliers and their goods and services, sellers can advertise and promote their goods and services. Different price negotiation mechanisms are

supported, such as catalogues, forward or e-auctions or spot markets.

More sophisticated marketplaces provide procurement, supply chain management and productivity applications in ASP (Application Service Provider) mode to help companies improve performance internally as well as in interactions with business partners.

### **Consolidation phase**

Analysts often describe the current and projected wave of consolidation in the number of Internet players, and e-marketplaces in particular, as market Darwinism.

Jupiter MMXI, for example, predicts that fewer than 100 e-marketplaces will survive out of the 500 existing today in Europe. The three key success criteria for the long term are: a high volume of transactions, the backing of industry leaders, and the integration of online offerings with offline services, such as full telephone service and local customer support.

E-marketplaces can take many different forms, from company exchanges to multiple platforms, bringing other e-marketplaces together. However, in all cases the former dream of “frictionless” transactions is no longer alive. The establishment and maintenance of such e-marketplaces takes much time and an in-depth knowledge of the specific needs of the sector.

Clearly, all the “middlemen” are not dead, as predicted some years ago. On the contrary, ICT services is one of the fastest growing market segments. Technology alone will not bring together buyers and sellers.

### **Categorisation of e-marketplaces**

There are different ways to categorise e-marketplaces, from the vertical market they address to the price mechanism supported, the type of purchase (direct vs. indirect), or their nature (private or public). An interesting way of categorisation is looking at who establishes and drives the marketplace:

1. Buyer-driven e-marketplaces – established by a consortium of buyers in order to procure products from their suppliers via the Internet

2. Seller-driven e-marketplaces – established by a consortium of suppliers/sellers that are looking to sell their products online via digital platforms
3. Independent e-marketplaces – established by independent organisations, whose main motivation is to obtain revenues through operating the marketplace. These revenue streams are usually generated as a percentage of transactions, through membership or through the provision of services such as catalogue hosting or maintenance. E-marketplace technology providers (Ariba, Commerce One, Oracle) often form part of all these types of consortia.

Brokers or intermediaries in traditional economic sectors like financial services or energy have been able to leverage their knowledge of their respective markets and set up successful brokerage platforms on the Internet. Charles Schwab was a pioneer in the 80s in the introduction of telephone operated stockbroking services. Today, his Internet platform is one of the most visited and more successful financial services web sites in the world and has forced “old economy” giants like Merrill Lynch to reconsider their internet strategy. Enron Online is a semi-public marketplace operated by Enron where dozens of energy commodities and derivatives products can be traded. Its peculiarity is that Enron, as a wholesaler, always plays the role of a principal intermediary, i.e., it is always the buying or the selling side in every transaction.

### Direct and indirect materials

To understand how e-marketplaces work it is convenient to look at the types of purchases made by organisations, which can be broadly categorised as:

1. Direct goods – goods purchased as part of the production process
2. Indirect goods – products and services used in the daily operation of the organisation, mainly for Maintenance, Repair and Operations (MRO goods)

Direct goods or materials include, for example, the component parts of an automobile (lights, alternator, fuel pump) that are used directly in

production. They also include raw materials that are purchased in bulk. Direct materials are normally compounded with direct labour and overhead to make up the Cost of Goods Sold (COGS).

The volume of direct materials is proportional to the volume of final output. Direct materials purchases can be scheduled precisely and in a timely manner to meet demand, provided sufficient information about demand is available and sources of materials are secure and reliable. Early forecasts with frequent updates to maintain and increase accuracy of forecasting are essential to efficient supply. Supply Chain Management (SCM) focuses on the production and distribution of direct goods. SCM applications will typically automate the ordering of supplies based on forecasts of demand, given a certain corporate purchasing policy. Some marketplaces offer already this application to their members in ASP (Application Service Provider) mode.

Indirect goods include products and services used in the operation of an organisation. These also include capital goods and other goods that are purchased to meet specific internal needs. They represent the overhead of the business, excluding staff remuneration and related costs. Some examples of indirect goods include spare parts for machinery, office supplies, protective clothing, travel and logistics services. Demand for MRO goods is not easily forecast, and requisitioning is normally done locally to meet specific requirements. Orders are generally frequent and small in value. Purchasing costs are high in comparison with the value of the goods and expenditure is often difficult to control. Out-of-channel (“maverick”) purchases bypassing normal controls can undermine the collective negotiating power of corporations.

Purchasing departments in medium and big enterprises are therefore putting in place instruments that facilitate sensible, cost effective and controlled purchases.

Direct material procurement relationships and practices are very different from indirect or MRO procurement practices. In particular, there are variations in:

1. Procurement as a percentage of revenue
  - direct materials: 35 % to 90 % of revenues
  - indirect materials: 8 % to 30 %<sup>1</sup>

2. Procurement source
  - direct materials: fixed during design cycle, typically selected from pre-qualified suppliers
  - indirect materials: variable, usually based on cost
3. Procurement decision
  - direct materials: driven by design requirements and executed to regular planning
  - indirect materials: based on maintenance, repair or operational requirements.

## 2 Challenges for competition policy

E-marketplaces depend on co-operation and mutual trust. But, at the same time, many fears about unfair trading practices in B2B marketplaces are expressed. These concerns centre on the issue of anti-trust. The openness of the new marketplaces means that businesses can benefit from increased collaboration. But this openness also means there is much greater scope for the leaking of confidential information. Some fear that organisations with substantial purchasing power could leverage this to simply transfer benefits from one side of the value chain to the other, thereby yielding a zero-sum game.

E-marketplaces provide additional supply routes and distribution channels, which do not necessarily replace traditional economic structures. From the viewpoint of buyers and sellers they will continue to trade electronically and conventionally, the electronic option continuing to have a non majority share of trading volumes for the foreseeable future. E-marketplaces are currently a minor electronic trading option for most organisations in terms of volumes and percentages on sales and purchases compared with other offline and online options. However things can change fast. Last year, over half of the wholesale contracts for trading natural gas in the US took place in e-marketplaces (EnronOnline, Altra).

In terms of challenges for competition, the main issues that could arise in the operation of an electronic marketplace may be summarised as follows:

1. Market dominance – high market shares, either obtained through internal growth or

through non-organic growth, this is, mergers, acquisitions and joint ventures, may in the presence of “network effects“ lead to “market tipping“ and market dominance.

2. Collusion – secret agreements on purchasing and/or sales terms, conditions and prices, leading to cartels. Issues arising here would be dealt with under the Treaty provisions on restrictive agreements.
3. Exchange of information – restriction of freedom of suppliers and/or customers to participate on even terms.
4. Joint purchasing – concentration of purchase volumes on a subset of suppliers with a risk of creating buyer dominance.
5. Joint selling – concentration of sales volumes on a subset of customers with a risk of creating seller dominance.

The Commission is increasingly called upon to assess the competitive impact of e-marketplaces. These marketplaces are created in a number of different sectors, and can fall under the Merger Regulation or under the general antitrust rules (Regulation 17).

The Commission has already assessed and cleared a number of e-marketplaces in a wide variety of industries. Examples range from electronic markets for aircraft components (MyAircraft.com – UTC/Honeywell/i2) over foreign currency options (Volbroker.com – Deutsche Bank/UBS/Goldman Sachs/Citibank/JP Morgan/Natwest) to office equipment (emaro.com – Deutsche Bank/SAP).

Nevertheless, the competition assessment of e-marketplaces is still evolving. The Commission will need to analyse carefully the workings of any proposed B2B trading system and its effects on the market. This assessment will need to take account of both the possible benefits and the possible competition concerns raised by e-marketplaces.

It is widely assumed that B2B electronic markets can have important pro-competitive effects. They potentially increase market transparency and contribute to a further integration of separate geographic markets.

E-marketplaces are also expected to be a source of substantial efficiencies, as they should allow a reduction in transaction costs, search costs and an improvement of inventory management. Nevertheless, the quantification

of these benefits is currently difficult and many claims as to their size seem to be exaggerated.

### 3 Standardisation challenges

E-marketplaces bring together buyers and sellers, thus creating virtual markets. In order to make this happen, companies must work very closely together, using compatible systems and, as far as possible, common business practices.

What started years ago with EDI, needs now to be extended to Internet-based marketplaces. Only if SMEs are also fully integrated into e-marketplaces, will e-business become the norm. And only then will the potential benefits of e-business be fully reaped.

In reality, SMEs will have no other choice than to follow the big market players. As great as the fear of lock-in to specific technological solutions is the fear of being locked-out. Standards have the potential to ensure interoperability and to reduce the risks to investments in new technologies.

However, e-marketplaces set up by different, competing consortia are not always interoperable, thus rendering the uptake of e-business more difficult for companies, especially SMEs. The lack of interoperability undermines the arguments often put forward in favour of e-marketplaces, namely, openness, level playing field and reduction of entry barriers.

#### Enablement of interoperability

Interoperability is therefore crucial to e-marketplaces and standards are key. The basic principles of e-marketplace operation require seamless communication between all participants. One of the main barriers to online SCM (Supply Chain Management) solutions that is often quoted is the lack of collaborative functionality in IT systems and a lack of understanding of the impact that such collaboration will have. The traditional approach of building market share through the imposition of proprietary solutions, though successful in the IT market generally, has not so far succeeded in B2B commerce applications.

The headings under which standards making occurs may be classified as follows:

1. Physical and communication levels – transmission protocols (TCP/IP)<sup>2</sup>, file formats, message routing, security (SSL)<sup>3</sup>
2. Information levels – data formats (XML<sup>4</sup> tags and schemas), product coding (UN/SPSC)<sup>5</sup>
3. Application levels – user interface format/design, catalogue conventions, language options, etc.

Business processes themselves have not been regarded as candidates for standardisation until recently. It seems clear that the production of consensus documents on best business practices would be very helpful to reduce user confusion.

#### Suppliers' and users' interests

Although it is in the best interest of suppliers to meet user needs, there is a tendency for standards to be supplier driven without taking full account of user requirements. At an interoperability level this may be sufficient but at the user interface level more needs to be done. For instance, there are some formal measures, which can be implemented by operators with user protection in mind:

1. Privacy, for example, by encryption and conformance to data privacy legislation
2. Authentication, for example, by using digital signatures
3. Integrity, for example, through certification and providing credentials and references.

Alternatively a free market approach can be adopted in which the operator generates trust by:

1. Establishing brands that give consumers the reassurance they need to conduct business electronically
2. Fulfilling product and services orders in complete conformity with what was ordered and consistent with advertised terms and conditions
3. Effective mechanisms to deal with problems and provide customer support.

The more realistic approach may be to encourage a responsible free market in which the formal measures are adopted as warranted by supplier and customer interests.

The success of e-marketplaces will however require more than technical interoperability. Trust and confidence are also a prerequisite.

site for doing business in the digital environment where companies will frequently trade with new and unknown partners, often across national borders.

Many different trust marks and seals are currently being developed to address this problem. How is it possible to know whether the promises on paper match the reality? Here, standardisation and certification may play a useful role, not only to standardise the content of such codes of conducts but also to ensure better transparency between them.

### The standardisation process

E-marketplaces strongly depend on the availability of standardised solutions. Products have to be clearly defined and classified in order to facilitate online ordering. In most areas, the necessary standards for products are in place. The Internet will further enhance the development of the Internal Market.

However, despite improvements already made, many observers still consider the standardisation process as cumbersome, compromise-laden and slow. There is a variety of bodies who participate in the process either as formally recognised standards bodies (CEN<sup>6</sup>, CENELEC<sup>7</sup>, ETSI<sup>8</sup>, ISO<sup>9</sup>, ITU<sup>10</sup>, etc.) or open and proprietary consortia (W3C<sup>11</sup>, Rosetta-Net<sup>12</sup>, OASIS<sup>13</sup>, etc.), which produce consensus documents. Current estimates range from 200 to 300 ICT standardisation consortia open to membership of interested parties.

Having such a vast array of organisations is bound to create problems. These range from lack of interoperability of solutions, to competing proprietary solutions that cannot command enough market acceptance to achieve critical mass, to confusion amongst potential users of the technologies, who often lack the basic information on the standardisation process.

There are also concerns as to whether the existing product standards fully respond to the modern requirements of logistics, tracking, billing, etc. Also, the issue of multi-lingual electronic catalogues has not been fully addressed yet.

In general, standards should be developed in an environment:

1. That is open to all market players and involving a critical mass of the relevant market players
2. That is transparent in terms of the decision making process
3. Where results from other bodies are readily taken into account and used, and
4. Where the resulting standards are freely available without any barriers to embodiment in products.

More specifically, the following principles have emerged to guide future standards making:

- a) Consider the management and business process re-engineering issues: some observers believe that the standards making process only addresses the physical and information level and does not address sufficiently these other issues
- b) Build a standards based infrastructure that meets application requirements in that it is modular, flexible, adaptable, scalable, robust and transparent
- c) Ensure relevant standards incorporate trust-building measures in order to provide globally recognised certificates and credentials, using a wide range of optional encryption standards which are easy to implement, work reliably and are simple to use
- d) Consult more widely including representatives from all participating communities in e-marketplaces and well regarded independent advisors
- e) Subdivide the process into discrete phases with defined objectives and outputs and test the outcomes, including practical deployment, with all relevant communities
- f) Encourage consolidation to reduce overlapping, even competing, contributions from involved organisations.

The complex web of standardisation consortia, open and closed, needs to improve co-ordination and information exchange about their activities. There are some encouraging signs in the context of B2B e-commerce of a desire for a better consensus – for example the ebXML initiative<sup>14</sup> is in active discussion with similar activities (RosettaNet, etc.). CEN/ISSS<sup>15</sup> is making efforts not only to act as a European arm of such activities as ebXML, but also to help develop consensus on industry sector requirements for e-commerce.

The European Standards Organisations CEN, CENELEC and ETSI have given their full support to the eEurope Action Plan. Standardisation work in the field of electronic signatures will, for example, certainly help to implement the Electronic Signatures Directive<sup>16</sup>. This is an excellent example of an alternative regulatory approach.

#### 4 Trust challenges

The emergence of efficient e-marketplaces in Europe can give a further boost to the Internal Market, by providing more choice and increased competition. In the legal and regulatory field, important progress has been made to enhance legal certainty in e-business. The E-Commerce Directive<sup>17</sup> establishes the country of origin principle to ensure the free movement of Information Society services. Furthermore, the Directive establishes the legal validity of electronic contracts and transparency obligations for service operators and online commercial communications. The Rome Convention<sup>18</sup> stipulates free choice of law for B2B cross border transactions. The Brussels Regulation<sup>19</sup> gives the possibility to the parties to agree upon the competent court for B2B cross border disputes. The e-signatures Directive ensures a common framework for the use of e-signatures, open access to the market of e-signature related services and legal validity of e-signatures.

In general, the EU provides a good framework for B2B cross border activities. But legislation can not solve all the problems. History teaches us that culture and unwritten conventions are often more important than law to foster business and build trust. Trust and confidence are also a prerequisite for doing business in the digital environment. Trust and confidence are built more on experience and business practices rather than on laws. E-marketplaces will be mainly shaped by the market, by business services, standards and new rules of the game.

#### Trust barriers

E-marketplaces depend on successful collaboration, which itself requires trust. In closed e-marketplaces the trustworthiness of the participants is ensured by allowing access to those

buyers and sellers who are known and trusted. In open marketplaces, participants have to trust unfamiliar suppliers. Despite the potential benefits that e-marketplaces represent for business, they also represent risks. As a result, many businesses are still reluctant to participate. Key issues of concern include the following:

- How to verify the identity of buyers and sellers?
- Is confidential data sufficiently protected?
- What are the terms and conditions of the contract (e.g. terms of delivery, payment conditions)?
- Is information, relevant to the transaction and the parties, sufficiently disclosed (prices, description of products/services, quality, availability etc)?
- What are the rules for admission and participation into marketplaces? What are the rights and obligations of the participants?
- How will disputes be effectively resolved, if something goes wrong with the transaction?

E-marketplaces will need to address these questions, in order to overcome the trust barriers. They will need to ensure that the right mechanisms are in place, in order to reduce the risks and to foster and support a climate of trust.

Trust and confidence is above all an entrepreneurial challenge. Self-regulation can play an important role to enhance trust and confidence in e-marketplaces, by providing clarity and certainty on the internal regulation of the marketplace.

The Commission has consistently advocated self-regulation as a flexible, efficient and cost-effective alternative to regulation in many areas. However, the hurdles of self-regulation are high: problems of accountability, lack of transparency and lack of legal remedies to enforce a code of conduct may create problems with competition rules. In addition, nationally based self-regulatory initiatives may add barriers to cross border trade. The Commission can play an important role in encouraging self-regulation and stimulating consensus between buyers and sellers, in particular at the European level. In addition, public policy should aim at raising the credibility of self-regulation and at ensuring, if necessary through legal means, that codes of conduct are respected

Self-regulation can take many different forms, ranging from codes of conduct and guidelines to standards and certification. Such initiatives are currently being elaborated, at sectoral level, based on a consensus between buyers and sellers. For example, the *Arbeitsgemeinschaft Zulieferindustrie* has issued guidelines for effective and reliable co-operation between suppliers and buyers, for online auctions<sup>20</sup>. In addition, Orgalime (The Liaison Group of the European Mechanical, Electrical, Electronic and Metalworking Industries) has developed principles of conduct for e-commerce both in B2B and in B2C<sup>21</sup>, which are intended to be used by a wide range of sectors and branches in the engineering industry. In general, such initiatives aim at ensuring that the main requirements for fair trade, such as information, transparency and reliability, data privacy and confidentiality are respected by participants in the marketplace. By creating standards on fair business practices and a level playing field between participants, such mechanisms can provide assurance for business and attract participation in e-marketplaces.

The need to ensure trust and confidence in e-marketplaces may foster the development of trust services, such as trust seals, authentication and certification services. Trusted third parties already active in the B2C field, are currently developing trust mechanisms for B2B marketplaces, based on the development of codes of conduct and compliance monitoring (e.g. Bureau Veritas<sup>22</sup>, VeriSign<sup>23</sup>, etc.). Such schemes are potentially more effective than traditional self-regulation, as they also include enforcement mechanisms. The E-Signatures Directive provides a good framework for the development of authentication services. In addition, third party online dispute resolution services, such as mediation and arbitration, are currently emerging in the market, aiming to resolve complaints arising from cross border transactions in a quick and flexible way (e.g. Word&Bond<sup>24</sup>).

In a truly open digital economy, with a more levelled playing field, there will be little room for poor quality standards and poor customer service. In fact, openness and interoperability in the digital economy could bring about the emergence of new business ethics and more demanding quality standards.

## 5 Enterprise policy for SMEs

The question for Enterprise policy is how to help SMEs to “go digital”. The GoDigital initiative, launched in March 2001, aims at tailoring the e-Europe initiative to the specific needs of SMEs. The general aim is to help SMEs to use the Internet more and better. Of course, the actual decision to “go digital” is always a matter for companies themselves. For the vast majority, there is not even a choice – pressures from competitors, and notably from global competitors, will make it a must. Here, the key word is “entrepreneurship”. Companies must prepare themselves to participate in e-marketplaces – and to be an accepted partner in them.

Enterprise policy can only help to raise awareness and to improve access to markets. Enterprise policy can help SMEs to take the right decision and to make it easier to participate in e-marketplaces.

Firstly, policy makers need to make sure that SMEs have sufficient information to start with e-business. General awareness is good. SMEs, like everybody else, read the press. ICT vendors and consultants are also doing their jobs – IT and e-business-consultancy is one of the fastest growing sectors in Europe. The challenge for SMEs is to make changes happen – to move from general awareness to business decision.

The Commission is prepared to support regional and sectoral events which bring SMEs together to discuss the e-economy. Regions, European associations and the ICT industry are encouraged to talk to SMEs. Also the Euro-Info-Centres<sup>25</sup> play a prominent role in informing SMEs – not only through awareness campaigns but even more importantly through help desks and the provision of practical information.

Most Member States and many regions have developed their own strategies for promoting e-business. A variety of instruments have been devised, some of them highly successful (e.g. new enterprise “clusters”). Ireland is a good example of successful initiatives in that area.

Best practice needs to be publicised and shared, to benefit the greatest number. This will help creating the necessary network effects of the e-economy. Clear targets should be fixed to measure and to benchmark the results of the various programmes and experiences. Member



States have already signalled their readiness to work together with the Commission in this area.

There is also a need for more reliable data on the take-up of e-business by SMEs. Some sectors of the economy will be totally transformed by e-business, such as sectors highly dependent on information and “knowledge” (e.g. digital content, logistics, and distribution). Other sectors may be less directly affected, but they can still realise advantages in going digital.

The Commission has recently launched a Call For Tender for an ICT & e-business market watch function in order to have first hand quality data on the uptake of e-business across Europe and be able to draw relevant policy conclusions.

One of the main priorities of the GoDigital initiative is to promote a favourable business environment for e-business, in particular for SME's. The workshop organised last April by DG Enterprise on “e-marketplaces: new challenges for enterprise policy, competition and standardisation”<sup>26</sup>, has identified the trust issue as one of the main barriers for the participation of SMEs to e-marketplaces. The role of enterprise policy is to take measures to help SMEs overcome the trust barrier and to facilitate their participation in e-marketplaces.

To achieve this objective, the Commission intends to take initiatives to raise awareness among SME's of existing self-regulatory solutions for B2B e-marketplaces, in order to help them identify and better understand the rules to be followed in such e-marketplaces. In this respect, the Commission intends to support actions, such as the set up of an online information service for trust and confidence in B2B and the organisation of a workshop with SMEs and industry stakeholders to further support and promote the online service. The Euro Info Centres and Chambers of commerce will have a key role to play in the implementation of this initiative.

Furthermore, the Commission intends to take actions to promote self-regulation and stimulate further consensus among buyers and sellers on the development of general guidelines for codes of conduct. In this respect, the Commission intends to establish a group of stakeholders from various industry sectors, to analyse the trust issues and address solutions, taking into account the concerns and expecta-

tions of all stakeholders involved. These guidelines would be based on fair business practices and intended to be used by a wide range of industry sectors.

## Notes

- 1) Source: Commerce One, 2000
- 2) TCP/IP – Transport Control Protocol/Internet Protocol
- 3) SSL – Secure Socket Layer
- 4) XML – eXtensible Mark-up Language
- 5) UN/SPSC – United Nations/Standard Product Specification Code
- 6) CEN – Comité Européen de Normalisation/European Committee for Standardization.
- 7) CENELEC – Comité Européen de Normalisation Electrotechnique/European Committee for Electrotechnical Standardization.
- 8) ETSI – European Telecommunications Standards Institute.
- 9) ISO – International Organization for Standardization.
- 10) ITU – International Telecommunications Union.
- 11) W3C – World Wide Web Consortium.
- 12) RosettaNet is a non-profit consortium of more than 400 of the world's leading Information Technology (IT), Electronic Components (EC), Semiconductor Manufacturing (SM) and Solution Provider (SP) companies working to create, implement and promote open e-business process standards.
- 13) OASIS is the Organisation for the Advancement of Structured Information Standards. It is a non-profit, international consortium that creates interoperable industry specifications based on public standards such as XML and SGML, as well as others that are related to structured information processing.
- 14) ebXML is an initiative (sponsored by UN/CEFACT and OASIS) which consists of a modular suite of specifications to enable enterprises of any size and in any geographical location to conduct business over the Internet (<http://www.ebxml.org/>).
- 15) ISSS stands for Information Society Standardisation Systems and is part of CEN.
- 16) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures – Official Journal L 013, 19/01/2000, pp. 0012-0020;  
[http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31999L0093&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31999L0093&model=guichett)

- 17) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ("Directive on electronic commerce") Official Journal L 178, 17/07/2000, pp. 0001-0016;  
[http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32000L0031&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32000L0031&model=guichett)
- 18) 1980 Rome Convention on the law applicable to contractual obligations (consolidated version) Official Journal C 027, 26/01/1998, pp. 0034-0046;  
[http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=41998Y0126\(03\)&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=41998Y0126(03)&model=guichett)
- 19) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters Official Journal L 012, 16/01/2001; pp. 0001-0023;  
[http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001R0044&model=guichett](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32001R0044&model=guichett)
- 20) <http://www.argez.de/>
- 21) <http://www.orgalime.org/publi/pdf/e-commerce.pdf>
- 22) <http://www.bureauveritas.com/>
- 23) <http://www.verisign.com/>
- 24) <http://www.wordandbond.com/>
- 25) <http://europa.eu.int/ISPO/ecommerce/godigital/coordinators.html>
- 26) For papers and proceedings, see  
<http://europa.eu.int/comm/enterprise/ict/e-marketplace.htm>

## Contact

César Santos  
 Marianna Perogianni  
 European Commission  
 DG Enterprise, ICT and E-Business Department  
 Rue de la Science 15, 1049 Brussels, Belgium  
 Tel.: +322 / 295 16 70 (Santos)  
 Tel.: +322 / 295 81 93 (Perogianni)  
 Fax: +322 / 296 95 00  
 E-Mail: [Cesar.Santos@cec.eu.int](mailto:Cesar.Santos@cec.eu.int)  
 E-Mail: [Maria.Perogianni@cec.eu.int](mailto:Maria.Perogianni@cec.eu.int)  
 Internet: <http://europa.eu.int/comm/enterprise>

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## Aktuelle Entwicklungen in der E-Commerce und IT-Politik der USA

von Rufus Pichler, Morrison & Foerster LLP

Der Beitrag befasst sich mit den wichtigsten aktuellen Entwicklungen in der E-Commerce und IT-Politik der USA. Eine kohärente Politik ist von der Bush-Administration in diesen Bereichen bisher nicht vorgelegt worden. Zudem steht zur Zeit die Gesetzgebung eindeutig im Zeichen der Diskussion um die nationale Sicherheit vor dem Hintergrund der Terroranschläge auf das WTC und das Pentagon am 11. September, die für viel und kontrovers diskutierte gesetzgeberische Aktivität gesorgt hat. Beim Datenschutz wird der Kurs der Clinton-Administration, die einen stärkeren Schutz der Verbraucher durch entsprechende gesetzliche Regelungen befürwortete, voraussichtlich nicht fortgesetzt. Weitere Schwerpunkte des Beitrages bilden die Diskussionen um Steuern im Zusammenhang mit dem elektronischen Geschäftsverkehr, Verschlüsselung und Exportbeschränkungen, interaktives Glückspiel sowie der Schutz Minderjähriger. Abschließend wird kurz auf die Position der USA im Hinblick auf einige internationale Entwicklungen und immateriälgüterrechtliche Fragen eingegangen. Eine Lösung der bisher weitgehend offenen Probleme internationaler Gerichtszuständigkeit wird in naher Zukunft nicht erwartet.

## 1 Einleitung

Die derzeitige E-Commerce und IT-Politik in den USA ist vor allem durch zwei Ereignisse geprägt: den Regierungswechsel zu Beginn des Jahres und die Terroranschläge auf das World Trade Center und das Pentagon am 11. September.

Die Clinton/Gore-Regierung hat der Entwicklung des E-Commerce und des IT-Sektors große Aufmerksamkeit gewidmet. Mit dem Framework for Global Electronic Commerce<sup>1</sup> wurde eine grundlegende Agenda präsentiert, die in jährlichen Berichten der Government Working Group on Electronic Commerce<sup>2</sup> ergänzt und fortentwickelt und von der Administration insgesamt schrittweise umgesetzt wurde.