

## **Dotcom-opoly**

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**By Thomas Hazlett**

Dotcom start-ups, powerful engines of profit, will dominate the world economy. Bricks-and-mortar enterprises are helpless to resist the emerging online monopolies.

The frontispiece for a Nasdaq technology conference at the Palo Alto Hyatt, March 10 2000? A match-cover blurb for an IT correspondence college? The premise for a new Fox TV sitcom, That 90s Show?

In fact, it is the operative policy presumption of the antitrust agencies of the Bush administration. Consider these recent cases:

- In 2001 the Federal Trade Commission conducted a six-month antitrust investigation of the \$415 million purchase of HotJobs proposed by Monster.com. Last December, however, Yahoo! – a new entrant into job classifieds – offered \$436 million. The FTC determined Yahoo!/HotJobs an efficient combination, and quickly approved the merger. This cast a shadow over the agency's previous analysis, as the government-certified competitor outbid the budding monopolist. In most textbooks, market power is worth something.
- In February 2002 NetRatings' \$71 million offer for Jupiter Media Metrix was blocked by regulators. NetRatings had made an unusual decision: when the FTC challenged its merger on the grounds it would monopolise the internet audience ratings market, it undertook the expense of challenging the antitrust agency in court. To keep its takeover target alive through the litigation, it extended a \$25m loan to Jupiter. But the FTC blocked the loan. The deal unraveled, and Jupiter declared bankruptcy in April. NetRatings picked the bones, paying \$8.5 million for body parts. Jupiter sacked 430 employees. No firm lived to rival the 123-strong labour force of the NetRatings juggernaut.
- In March 2002, the antitrust division of the US Department of Justice stepped up its investigation of Orbitz, the online travel service formed by American, United, Delta, Northwest, and Continental Airlines. The investigation attempted to determine whether the airlines favoured Orbitz with seats and prices not extended to competitors. The inquiry is ongoing in September 2002, when airline shares have sunk to twenty-year lows and federal policymakers have proposed additional subsidies - above \$5bn awarded last year - to keep the carriers solvent.

Today's antitrust policy is best awarded the domain name "Confused.com". Merger regulation by the FTC and DOJ (which take turns analysing competitive implications and block deals thought to harm consumers) relies on simple rules of thumb, including the bright-line market share tests. Agency guidelines calibrate policy options according to the level of market concentration.

But what is the market, and how many rivals should it accommodate? E-commerce firms strive to "monopolise" services that did not exist five years ago and may not survive five more. Product lines are continually drawn, redrawn, and withdrawn. Motoring this fluid market definition etch-a-sketch are the slick forces of free entry and exit. According to VentureOne, 22 per cent of the venture capital funded firms launched in 1999 have already sunk (and 18 per cent of the class of 2000).

How many online grocery stores (or online ratings agencies) should the world enjoy - if any? And what harm is high concentration if entry is greased? The faintest glimmer of profits from PeaPod or Webvan sweeps capital into competitive start-ups, and announces to Wal-Mart, Safeway, and Amazon.com that a new market share offensive is at hand.

Often the government view is that virtual businesses do not compete with real ones. Monster.com is a monopoly threat only if the online world dominates the economy. That excludes the way most people find employment, and ignores that a "help wanted" post in the New York Times costs an employer a generous multiple of a similar ad online. "The FTC's staff," notes high-tech law firm Hale & Dorr, "appears to have concluded that bricks (traditional methods) do not sufficiently compete with clicks (online methods), so as to be in the same market..."

This both exalts and mocks online businesses explicitly designed to steal market share by introducing efficiencies. By crediting online enterprises with vast economic powers they do not possess, regulators neglect the most salient aspect of the dotcom bubble: it burst. To recover from the financial death spiral, markets must - and will, one way or another - restructure. Merger is the least painful way for tenuous B2Bs and B2Cs to regain viability.

Mergers can also speed technology adoption, creating the scale economies that web-based businesses - from job listing databases, to audience rating services, to travel bargainers - exploit. Alternatively, when traditional businesses launch web ventures, powerful efficiencies can be unleashed. Regulators too quick to condemn this vertical integration may stymie competitive rivalry. In a Consumers Union evaluation, Orbitz "performed well at providing lowest fares and viable flights, but it was edged out in most tests by either Expedia or Travelocity." Three additional sites (Cheap Tickets, One Travel and TravelNow) were found much less user-friendly, yet sold "deeply-discounted and non-refundable fares."

While the airlines' Orbitz website is investigated for anticompetitive behaviour, online fares appear to be plummeting relative to traditional options. "Between 24 and 78 per cent of the time," finds Consumers Union, "each of the six sites offered prices equal to or lower than those posted in the largest computer reservations system used by travel agents. That's a big change from ... October 2000, when the range was between 6 and 22 per cent."

Ironically, the FTC will itself sponsor a public forum next week to consider the ways in which traditional firms are seeking to use state regulation to squelch e-competitors.\* The Commission interest was prompted by "regulations of various states that may have the effect of protecting brick-and-mortar merchants from new internet competitors." It cites a potential annual cost of \$15 billion, consumer losses borne when competition between online and off-line suppliers - curiously irrelevant in ongoing antitrust analyses - is curtailed. One can only hope that the FTC's public forum goes well, and that the regulators listen up.

\* Public Workshop To Explore Whether State Regulation and Private Business Practices Have Anticompetitive Effects on E-Commerce October 8-10, 2002), <http://www.ftc.gov/opa/2002/07/ecom.htm>

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