Possible Anticompetitive Efforts to Restrict Competition on the Internet
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Electronic commerce is not a national but a global phenomenon. It offers people around the globe significant increases in consumer choice and competition, which have the potential to significantly lower costs -- including transaction costs -- for consumers.

Because of its interactive capabilities and convenience, the Internet has already shown its great potential to expand the selection of goods and services available to consumers and to allow speedy comparison shopping for the best price/value/convenience combination. In recent years, for example, on-line ordering through the Internet has revolutionized the way consumers purchase airline tickets. A similar phenomenon is occurring with a wide variety of goods, including autos, computers, software, wines, books, pills, and "previously owned" products and collectibles. On-line ordering generally gives consumers more choices of products and sources, resulting in more price competition. Similarly, the Internet allows consumers to find even small, obscure merchants quickly and easily, offering new choices for consumers. Moreover, the presence of such additional suppliers competing in the market injects further competition into the market, likely putting downward pressure on prices.

Many state, county and local jurisdictions, fearful that the growth of the electronic marketplace will decrease their tax revenues from traditional retail sales, are presenting the specter of decreasing services for their citizens because of budget shortfalls. Thus, many in that sector support new schemes for restricting e-commerce.

The technological and institutional changes that are occurring as the global electronic marketplace becomes more widely used are certainly substantial. Consumer Alert views these changes not as threatening but as providing new opportunities to advance consumer interests, specifically those consumers least well served in today's world. This confidence is based on the fact that Internet will reduce the cost of information as well as the cost of transactions and thus will make it possible to serve an ever greater proportion of the consumer population.

With the rise of the Internet and the exponential growth of computing power and bandwidth, consumers are utilizing the Internet more and more to purchase both goods and, increasingly, services. The majority of these transactions are made across state lines, negating the power of local merchants to create barriers to market entry through state licensing laws, local zoning rules, and local taxes. Also, the scale of a national market permits economies and integration opportunities not heretofore possible.

In the face of perceived "threats" to businesses at the local level and to protect the economic rent gained from their semi-cartelized industries, statewide industry associations are increasingly turning to state legislators or regulators to enact restrictions on their out-of-state competitors, particularly those on the Internet. Most, if not all, of these restrictions are in direct violation of the US Constitution's commerce clause which grants Congress, not the states, the power to regulate interstate commerce. The Founders enacted the clause to protect Americans from tariffs when trading with their fellow countrymen. The wisdom of the Founders is even more evident today as the instant interstate competition facilitated by the Internet has expanded consumer choice and lowered prices on a scale never known before. These productivity gains -- that redound to consumers -- are also threatened by this “balkanization” process. If consumers are to continue reaping these benefits, special-interest politics must not be allowed to prevail over free markets.

Local attempts to force certain retail establishments to have a nexus or be licensed in a state in order to do business with consumers in that state are analogous to the internet taxation issue in the sense that the restrictions represent regulatory "taxes" imposed on citizens of other states. Some state governments, together with some retailers located in those states, seek to impose an economic penalty, a “tax” on those making out-of-state purchases over the internet. This "taxation without representation" effort would have states unconstitutionally reaching across state lines to collect taxes on Internet sales from non-residents by establishing a system to track consumer purchases and automatically collect taxes for the consumer’s home state. Under the guise of leveling the playing field between brick-and-mortar retailers and "e-tailers," such proposals raise taxes across-the-board by imposing new obligations on remote-sellers and retailers of every type.

Giving states the power to collect or impose "taxes" extraterritorially through whatever means -- tax laws or regulations requiring licensing -- creates a disconnect between representative government and the people affected by a state's laws. That is, the state is exporting its authority over persons who have no elective recourse as they have no vote.

In a number of areas, e-commerce is at the cusp of changes in the products/services themselves, in the payments systems used and in the delivery of those products and services.

In much the same way in the 1930s, chain stores were viewed as a threat to locally owned stores, particularly food stores. The Great Atlantic and Pacific Tea Company, commonly known as A&P, was going to take over food markets. And both state and federal policymakers took steps to restrict their growth and that of other chains. In 1931, for example, nearly all states were debating over 100 anti-chain store bills in their legislative sessions. Later, in 1939, Wright Patman introduced his anti-chain store bill in Congress, referred to as the "Chain Store Death Sentence" bill, which was not enacted.

Today, of course, consumers have an array of food stores to choose from -- Mom and Pop stores, specialized stores, supermarket chains and discount stores -- not to mention e-commerce sites on the one hand and local farmers' markets on the other.

Consumers gain from these choices and the competition among providers. Anticompetitive state restrictions could set back some of these gains.