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FEDERAL TRADE COMMISSION

PUBLIC WORKSHOP:

COMPETITION POLICY IN THE WORLD  
OF B2B ELECTRONIC MARKETPLACES

FRIDAY, JUNE 30, 2000

VOLUME 2

Reported by:

Sally Jo Bowling, RPR

Debra L. Maheux

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## P R O C E E D I N G S

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1  
2  
3 MS. DeSANTI: Good morning. Could you  
4 please take your seats and we will start once  
5 again. Thank you all for coming. I'm Susan  
6 DeSanti, Director of Policy Planning. I have some  
7 housekeeping matters to go through first and then  
8 we will get into what looks like a very interesting  
9 day.

10 First, for all of you, ground rules, make  
11 sure you have your badge. You will need it to go  
12 and return from the cafeteria. There are more  
13 badges out there if you didn't get one when you  
14 first came in.

15 Number two, please take your personal  
16 belongings with you when you leave for lunch and  
17 when you leave for the day. Don't leave any  
18 valuables here during the breaks or lunch, there  
19 are -- there's no guarding that's being done. And  
20 even more important, and this is a special note for  
21 you all since all of your moderators and  
22 questioners were here late last night picking up  
23 all of your cups and everything that you left in  
24 the auditorium, please don't do that again today.  
25 Please take your cups and your newspapers and all

1 of that stuff with you.

2 Finally, please keep the doors closed, the  
3 air conditioning goes out when the doors are open.  
4 If the doors are closed, then we'll all be much  
5 more comfortable than we were yesterday.

6 And now a note for the panelists and  
7 moderators. There were people who it was very  
8 difficult to hear yesterday. You really have to  
9 get next to the mike and speak up so that everyone  
10 who's here can hear what you have to say. So,  
11 that's a very important point for all of the  
12 panelists and moderators to keep in mind. And once  
13 again, the ground rule from yesterday, we're asking  
14 for short answers, to the point, from everyone. We  
15 have a lot of people with very valuable things to  
16 say, and a lot of ground to cover.

17 Finally, on the more substantive level, I  
18 mentioned yesterday that we were going to keep the  
19 record open in this proceeding. We will keep it  
20 open until Friday, July 21. We want to encourage  
21 written submissions that people feel would  
22 supplement the record that's being created here.  
23 We encourage you, please, send us your cards and  
24 letters. We're very open to having as complete a  
25 record on these various issues that we've raised

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1 here as possible, and once again, the procedures  
2 for how to do that are in the press release that  
3 you can find on our website at [www.ftc.gov](http://www.ftc.gov).

4 Now, to start out the day, we have  
5 Commissioner Mozelle Thompson. I mentioned  
6 yesterday that each of the commissioners had agreed  
7 to come and share some thoughts about their -- this  
8 area. We are very pleased to have with us this  
9 morning to get us off on the right foot for this  
10 day Commissioner Mozelle Thompson.

11 (Applause.)

12 COMMISSIONER THOMPSON: Thank you, Susan.  
13 Good morning. We also forgot to tell you that be  
14 careful taking your bags out of the overhead  
15 compartments because they may have shifted during  
16 flight.

17 Well, good morning. It's good to see you  
18 all here. And welcome. I want to thank you all  
19 for being here, but also special thanks to Susan  
20 and her staff for putting together what I think is  
21 a very important and actually ground-breaking  
22 workshop on B2B marketplaces.

23 Now, at the outset, I also have to give the  
24 little caveat that I speak for myself, not for the  
25 Commission or the other commissioners. And

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1 sometimes I'm not sure I speak for myself either,  
2 but I'm going to make a few observations.

3           It comes as no secret that this is a time  
4 of great change in our economy. The impact of  
5 technology, not only within its own sector, but  
6 also in other sectors, brings great hope and  
7 promise for growth and efficiency. In fact,  
8 there's always this discussion and debate about  
9 what we're seeing is whether it's an evolution or a  
10 transformation.

11           But no matter how we characterize it, we  
12 see opportunities for positive benefits for  
13 business and consumers alike. But we also see some  
14 opportunities for behavior that can be  
15 characterized as less than desirable.

16           Now, it's no secret that we at the FTC are  
17 often referred to lately as the federal  
18 government's Internet agency, because of the  
19 substantial time and energy we have invested on how

1 there. But we have also learned that when markets  
2 are fast-moving, a certain degree of circumspection  
3 is appropriate. We've learned that these markets  
4 raise interesting and complex policy issues like  
5 data privacy, security, and cross-border  
6 jurisdiction.

7           Moreover, we have found that no one set of  
8 stakeholders, not industry, not government, and not  
9 consumers, will be able to address these issues  
10 alone. Instead, oftentimes the best policy  
11 resolutions will involve an interactive approach  
12 involving all of these groups.

13           Now, I think this workshop is a vivid  
14 example of the Commission employing these tools. I  
15 think it's also important that we all recognize  
16 that the opportunity that we have here is to  
17 present our best thinking and to trade ideas about  
18 B2B marketplaces, how they work, and the benefits  
19 they hold for businesses and consumers.

20           But we should also recognize that these  
21 opportunities can and should continue as part of an  
22 organic process, one that will allow us all to work  
23 toward what is best for America. At the same time,  
24 we should be able to take a critical look at the  
25 questions that may prevent us from reaching that

1 goal. Like anticompetitive behavior. And we  
2 should collectively think about ways we can address  
3 these concerns.

4 So, it's in that spirit that I welcome you  
5 all here today. This morning, we will hear owners  
6 and operators perspectives, future developments and  
7 public policy implications. And this afternoon, we  
8 will look more specifically at competition issues.

9 So, that puts a lot on our plate, but I  
10 think that we're all up to it. I look forward to  
11 continuing with you in this interactive dialogue.  
12 Thank you.

13 (Applause.)

14 MS. LEVINE: Well, we do have a lot on our



1 respond to a question, please just turn your table  
2 -- your name tent up like this and I'll call on  
3 you. When you first speak, I hope you'll take a  
4 moment just to introduce yourself. Not just your  
5 name, but your company as well. Can you tell us a  
6 little bit about your B2B, who your buyers and  
7 sellers are, and what exactly is bought and sold on  
8 your exchange. Try and please be concise with your  
9 comments, and at an hour, at the hour mark, I'm  
10 going to have to take a one-minute videotape break.  
11 So, we'll have a one-minute break and then resume.

12 We have with us this morning some very  
13 impressive panelists: the owners and operators of  
14 a number of B2Bs, and also three experts on B2Bs.  
15 We have Nick Heymann from Prudential, Morgan  
16 Harting from KPMG and Tim Clark from Jupiter  
17 Communications, so they can all give us their  
18 views. I guess with that let's just jump right in.

19 Let me ask about the various methods or  
20 models for ownership of B2Bs. We're lucky enough  
21 on this panel to have a variety of models  
22 represented. Rod, I wonder if we could start with  
23 you. Petrocosm's chosen a -- just to give a little  
24 background, from what I understand, and you can  
25 correct me if I'm wrong on this, but Petrocosm has

1 chosen a consortium model for its exchange. It's  
2 co-owned, at least in part, by Chevron and Texaco,  
3 and they're considering inviting in three other big  
4 buyers as well to have equity stakes in the  
5 exchange.

6 Rod, why has Petrocosm chosen this  
7 consortium model of its B2B exchange?

8 MR. GRAY: I'm, as Gail said, Rod Gray with  
9 Petrocosm, and we are a supply chain management  
10 procurement B2B service that, I think the best way  
11 to look at it is, these companies have gotten  
12 together to be the incubator for the creation of  
13 this service with the intent for it to be a  
14 neutral, independent site.

15 But because supply chain management is a  
16 significantly important area for them, a great area  
17 for efficiency improvement, to make it happen, they  
18 started the supply chain management facility or  
19 hardware/software necessary to make that happen,  
20 started over a year ago, created it and got it  
21 going on a small scale, felt that the real  
22 efficiency is getting it on a much larger scale,  
23 and getting more volume through the system. To  
24 accomplish getting more volume through the system,  
25 you have to have more participants, and in the end

1 game, it is designed to be a neutral site with  
2 active participation by both buyers and suppliers,  
3 but in the start-up phase, the buyer side is the  
4 incubator group that got it going.

5 So, that's why it started from that phase,  
6 but that's not the end game that they had in mind.

7 MS. LEVINE: We also have on our panel a  
8 very different ownership model. Robert Verloop's  
9 BuyProduce has chosen not to -- is entirely  
10 independently owned, which is to say no  
11 participants have an ownership or equity stake in  
12 that exchange. In fact, if I remember correctly,  
13 you've actually turned down participants who have  
14 sought to become equity holders in your exchange.  
15 Can you tell us why you turned them down?

16 MR. VERLOOP: Exactly right, Gail.  
17 BuyProduce.com was started about a year ago by two  
18 entrepreneurs that looked at the produce industry  
19 and noticed that there were a lot of inefficiencies  
20 in the way that produce gets to all of our plates.

21 And one of the things that's very apparent  
22 in our industry is it's very fragmented. There are  
23 over 6,000 growers of produce throughout the United  
24 States. It's a \$2 billion or \$200 billion  
25 industry. Very fragmented, as I said, not only in

1 numbers, but if you take a look at some of the  
2 sizes of the operations that exist in the industry.  
3 We have small mom and pop farmers that may be  
4 farming 20 acres to large corporate organizations.

5 And one of the things that has always been  
6 a backbone of any agricultural enterprise is  
7 relationships and trust. And we felt as we started  
8 to develop our solution, if you will, that it was  
9 very important that we maintain that trust factor  
10 and not violate the relationships that have been  
11 set up in the past.

12 So, we approached the market from a neutral  
13 standpoint so that inherent is that anyone that  
14 comes to the system, and our system is wide open,  
15 anybody can join the exchange, it had to be  
16 neutral. And as such, when investors from the  
17 industry itself expressed interest in it, we did,  
18 in fact, turn away money.

19 That's not to say in the future that we  
20 won't come up with some type of a model, but  
21 certainly here in the beginning, that is the  
22 approach, and it's been the advice from, you know,  
23 some experts in the industry that we try to  
24 maintain domain expertise, and it's also why we  
25 stick strictly with the produce area. We think

1 that this is an area that we can excel in. We have  
2 the right relationships with the -- and trust from  
3 our members and we want to keep it that way.

4 MS. LEVINE: Morgan?

5 MR. HARTING: I'm Morgan Harting from KPMG  
6 Consulting which is the leading provider of  
7 Internet integration services around the world, and  
8 I'm a manager in the strategy group of our commerce  
9 practice. And I work with senior executives from  
10 independent exchanges as well as industry leaders  
11 seeking to form exchanges, sometimes with their  
12 competitors, sometimes not.

13 And I think it's interesting, if you  
14 compare the cases of Robert's industry with Rod's  
15 industry. Agriculture being the most fragmented  
16 marketplace in the United States, with two million  
17 establishments, which is far and away the most  
18 fragmented market.

19 Oil, on the other hand, has far fewer  
20 players. And so the ownership models you find in  
21 different industries are to a certain extent a  
22 function of the degree of fragmentation in those  
23 industries. And so -- because I think you have to  
24 think about what value does the exchange bring? In  
25 a very fragmented marketplace, an independent

1 exchange can play an important role by aggregating  
2 demand across many, many suppliers and many, many  
3 buyers. And they can command an ownership stake  
4 for the value they create in doing that.

5 On the other hand, in a more concentrated  
6 industry, say oil, say the big three auto makers,  
7 the value that an exchange adds by getting these  
8 people in the room is not as great, frankly. It's  
9 just not that complicated to get three companies in  
10 the same room, it's much more complicated to get  
11 two million farmers in the same room.

12 And so, you have to look at what does each  
13 participant -- what does each owner bring to the  
14 table, and there are four fundamental contributions  
15 that owners can make in my view. One is liquidity.  
16 This would be the big buyers or sellers that bring  
17 liquidity to a marketplace. Two is functionality.  
18 Say a big technology company, like Ariba or  
19 CommerceOne, can provide the technology to enable  
20 this exchange, and they command an equity stake, in  
21 many cases.

22 These are the two key drivers of an  
23 exchange's success, and, you know, commensurate  
24 with these contributions, those participants  
25 receive equity. On the other hand, cash

1 contributions are rewarded with equity, in most  
2 cases, as are management efforts.

3 So, you see four different types of owners.  
4 Those that bring liquidity, the big buyers or  
5 sellers, those that bring functionality, the  
6 technology companies, those that bring cash, the  
7 VCs or angels, and management that work hard.

8 MS. LEVINE: Well, let's see if Morgan's  
9 ideas bear out in practice, and I suspect they  
10 will. Gina Haines, with FacilityPro has an  
11 exchange that's sort of in between these two poles.  
12 You've got an exchange, if I understand it  
13 correctly, that has buyers -- buyer participants on  
14 your exchange have equity in the exchange, but  
15 you've actually turned down sellers who want to  
16 join your exchange.

17 MS. HAINES: That's right, and good  
18 morning. I'm Gina Haines, I'm the senior vice  
19 president of FacilityPro.com as well as a  
20 cofounder. We are the business-to-business  
21 marketplace serving commercial facilities  
22 professionals and their suppliers nation-wide.  
23 We've been operational since April of 1998.

24 We actually began life as the division of a  
25 larger facility management corporation with a very

1 compelling business need to serve a nation-wide  
2 distributed workforce and client base and to meet  
3 their needs.

4 We chose the Internet as the optimal  
5 delivery vehicle for the functionality and the  
6 information that they required. We have partnered  
7 with strategic client partners as well as with  
8 equity partners, and while we are independently  
9 professionally financially backed, we haven't made  
10 equity investment available to client partners, and  
11 in fact it was toward the end of liquidity.

12 We have chosen to be basically in the  
13 middle, but we found it is difficult to create  
14 liquidity when you're playing both sides of the --  
15 speaking specifically to the -- you know, the  
16 competitive field, you know, that creates the  
17 marketplace between buyers and sellers, you  
18 obviously need both to have a successful liquid  
19 marketplace, but we've chosen to fall on the side  
20 of buyers. We do actually advocate for our buyers.

21 And I like Morgan's point about the  
22 fragmentation. I think that clearly plays a role  
23 in the ownership and the way these marketplaces  
24 come together. In our direct personal experience,  
25 you know, commencing as a captive division, if you



1 will, of a large owner, we had great success. We  
2 found traction early, we gained liquidity, and by  
3 virtue of the fact that we had the buy side, we  
4 were able to attract the sellers. And I think that  
5 actually is one of the characteristics of a  
6 successful marketplace, is active participation by  
7 both, but I do agree that it would be difficult to  
8 have equity participation on both sides.

9 MS. LEVINE: And Mark, you've got -- well,  
10 VerticalNet has a number of vertical exchanges  
11 within it, but one of them, I think  
12 paint&coatings.com, and some of the new ones that  
13 you're thinking about bringing out in the future,  
14 are going to have equity stakes held by sellers I  
15 understand. Is that right?

16 MR. WALSH: Yes. My name is Mark Walsh, I  
17 am president and CEO of VerticalNet. VerticalNet,  
18 a publicly traded company on the NASDAQ, that runs  
19 56 individual communities of commerce, industrial  
20 communities of commerce. Each is a separate web  
21 address and each aims at a specific community of  
22 buyers and suppliers and their informational and  
23 transactional needs, and our communities range from  
24 the -- with brand names like  
25 DigitalBroadcasting.com and

1 HomeHealthCareProvider.com, and SolidWaste.com, yes  
2 an amusing a web address, but if you're in the  
3 solid waste treatment industry, there's information  
4 and things to buy and sell and job leads and a  
5 career center and a chat and a forum for solid  
6 waste treating professionals. And the same is true  
7 for the other 55 vertical markets that we run.

8           And what I've found interesting is that so  
9 far virtually every comment made this morning about  
10 a model, one of our verticals mimics. To your  
11 point, Gail, one of our verticals,  
12 Paint&Coatings.com, we recently formed a joint  
13 venture with one of the major participants in the  
14 paint and coatings business, Eastman Chemical  
15 Corporation, they are our joint venture partner,  
16 and they may well invite, I think they plan to  
17 invite, other participants in the paint and  
18 coatings industry to own that specific vertical.

19           The other 55, we actually own ourselves as  
20 a neutral party, and we both make a market in  
21 auctions and traditional sales, and to the point  
22 there, the four elements, we would like to think we  
23 bring all four. We do bring liquidity, a lot of  
24 buyers attend our sites, we have great audiences of  
25 buyers and suppliers. We obviously bring money and

1 management, and we also bring technology.

2 But I would like to make one point actually  
3 in response to what I've heard so far this morning  
4 which is one of the things that has been touched on  
5 but I think can't be overstressed is the sense of  
6 community. Community. I got into the interactive  
7 services business in 1986. So, I have seen  
8 this -- I've seen this movie a lot, both in the  
9 consumer side and now the business-to-business  
10 side.

11 The sense of community, which many of us  
12 enjoy as consumer users of the interactive services  
13 business through AOL or other brands that we may  
14 participate in, the sense of community, that  
15 special interest we have as people and finding  
16 other people with that same special interest on the  
17 net and talking with them is even more distinct in  
18 the business arena.

19 Now, many of us smile when we hear the URL  
20 SolidWaste.com, but if you're in the solid waste  
21 industry and you type in that URL on your browser  
22 and you go there, it's a place that identifies with  
23 what you care about every day as a business person.

24 I recently gave a speech at the powder and  
25 bulk solids conference in Rosemont, Illinois, a

1 convention for people in powder and bulk solids  
2 processing, and I have never seen a more tightly  
3 woven community of men and women who have dealt  
4 with each other, sold to each other, with each  
5 other, competed, and that sense of community that  
6 the real world out there so enforces, and so  
7 reinforces in business behavior, we see on the  
8 Internet actually in a most rewarding fashion being  
9 echoed in how people find information, interact  
10 with each other in chats and forums and then find  
11 buyers, or suppliers, to satisfy their specific  
12 purchasing needs.

13 So, ownership structure and liquidity and  
14 vibrancy of a community is important from a  
15 technology and obviously a monetary standpoint, but  
16 that sense of "there-there," so to speak, we find  
17 every day is as important as any other feature that  
18 we're going to talk about this morning.

19 MS. LEVINE: Interesting point. There's  
20 one last ownership model that I would like to touch  
21 on before we move on, and that's the one that Roy  
22 Roberts' exchange typifies. You've got -- maybe  
23 you can respond to Gina's point actually. You've  
24 got both buyers and sellers that you're planning on  
25 inviting in to hold equity stakes.

1           MR. ROBERTS: I'm Roy Roberts and I'm  
2 chairman and chief executive officer of M-Xchange,  
3 and we love everybody. That's why we like for them  
4 to participate.

5           We are an Internet-based solution provider  
6 to global diversity, and we want to make sure that  
7 we participate in leveling the playing field. Even  
8 if you go back prior to B2B and when companies were  
9 announcing they were going to web-based  
10 procurement, it became very clear to me that there  
11 are 500 -- five million businesses in this country  
12 that are minority and women, \$300 billion worth of  
13 business, and if you look at most of the exchanges,  
14 they had left those people behind.

15           It's our intention to form the M-Xchange to  
16 make sure that we connect minority and woman  
17 companies to majority corporations across all of  
18 the vertical exchanges. We've gone out for our  
19 first round of capital, PPO, very successful, and  
20 some of the companies that we want to do business  
21 with, some of the buyers, invested in our company,

goiorone p

1 participate.

2           Clearly in our minds the people who invest  
3 in our company are people who will continue to  
4 participate. We also found that we cannot be just  
5 a pure B2B. Some of the women, some of the  
6 minority companies need more than just access, they  
7 certainly need to know how to do better business  
8 planning. They may need the ability to finance,  
9 and we've got some companies who want to come  
10 online with us to finance. We want to offer all of  
11 that.

12           We've got to make sure that they're  
13 web-enabled. Only about 16 percent of these  
14 companies are web-enabled, and if we don't make  
15 this a reality, then we are going to walk away from  
16 a significant part of America that I think is the  
17 fabric of America, so that's why we're  
18 participating.

19           MS. LEVINE: Joel?

20           MR. SIMKINS: Great. I'm Joel Simkins,  
21 vice president of EnergyLeader.com, and I suppose I  
22 should start off by thanking Gail and Bill for  
23 taking the time to understand what my company does,  
24 and now that you know, maybe you can tell my  
25 parents, because I have given up on explaining it

1 to them, but I'll warn you, you're going to have to  
2 go slow when you get to words like Internet and  
3 computer.

4           We represent a real hybrid model, and I'm  
5 going to tilt this thing up so I don't have to bend  
6 over like that. Better. We represent a real

1 businesses, nonprofits or government entities in  
2 that geographic region, including universities,  
3 hospitals, financial institutions, et cetera. The  
4 key here is our belief that the community of  
5 interest that is the backbone of the marketplace,  
6 as Mark was talking about, does not have to be an  
7 industry, it can literally be a geographic area, an  
8 actual geographic community.

9           And when you look at utility companies,  
10 universities, hospitals, some financial  
11 institutions, you're looking at organizations that  
12 have a real sense of geography. And a real  
13 interest in serving the economies of their regions.  
14 And companies that have a stake in the economic  
15 development and growth of their regions.

16           We've got a number of these hubs in the  
17 works in metropolitan areas across the country, the  
18 first one of which is going to go live in December  
19 here in the greater Washington, DC/Baltimore  
20 metropolitan area in partnership with PEPCO, your  
21 beloved electric company. And just to wrap things  
22 up, we expect the transactions initially to focus  
23 on indirect goods and services, a lot of MRO items.  
24 These are not marketplaces for the trading of  
25 energy, it's a little bit confusing, we have the



1 word energy in our name, we're working with  
2 utilities, but these are not marketplaces where you  
3 will buy your -- see electricity being bought or  
4 sold.

5           And just to tie into what Roy was saying,  
6 one of the things that drove us and one of the  
7 things that sort of makes the whole regional  
8 community of interest concept work is that we're  
9 working with a lot of large buyers who have and  
10 would like to find a better way of really  
11 implementing policies for buying from minority and  
12 protected class businesses, and one of the things  
13 that we are doing is working with our technology  
14 partner on greatly beefing up the functionality of  
15 the marketplace offer that you would otherwise get  
16 out of the box to make it much easier to identify  
17 and qualify minority and protected class business  
18 owners. And it will be really great for us if you  
19 do a good job of getting more of them web-enabled.  
20 The more buyers and sellers you can send our way,  
21 the happier we will be.

22           MR. ROBERTS: They think they are an  
23 endangered species.

24           MR. SIMKINS: We like them, they help to  
25 differentiate us and legitimize our business model.

1 So --

2 MS. LEVINE: Let's move from ownership for  
3 a second to control of B2Bs. And again, maybe Rod,  
4 if you don't mind we'll start with you again.  
5 Petrocosm has got a very interesting control or I  
6 should say board structure. You've got I think at  
7 the moment, Chevron and Texaco, your two  
8 cofounders, sit on the board with three others, and  
9 I think in the near future, the plan is to have  
10 Petrocosm [sic. should read: Chevron] and Texaco  
11 joined by three other buyers, each sitting on the  
12 board, and the five of them will be joined by four  
13 others.

14 Does that -- first of all, have I got it  
15 right, and second of all, does that -- we were  
16 hearing criticisms yesterday that a structure like  
17 that might possibly allow the participants who sit  
18 on the board to control the B2B. Is that what's  
19 going to happen?

20 MR. GRAY: Well, you're correct in that  
21 this entity was started by Chevron. Chevron teamed  
22 with Ariba and Cross Point, and so the founding  
23 board members were two from Chevron, one from  
24 Ariba, one from Cross Point and one from  
25 management.

1           Again, this was the incubator process to  
2 get this entity up and running. As Gail said, we  
3 are inviting in other founding partners as well  
4 as bringing in alliance partners. All those people  
5 will have ownership positions if they're invited  
6 to buy ownership positions, and the board seats  
7 will evolve as those ownership positions are  
8 obtained.

9           But the key is those ownership positions  
10 are there to see that the overall entity is  
11 successful, it has the capital, it has the  
12 procedures, policies and progress to be successful.  
13 The day-to-day activities of the exchange and the  
14 creation of the functionality is really delegated  
15 to management. The management was pulled together  
16 from mostly companies who are not part of those  
17 ownership companies.

18           There are two senior managers that came  
19 from Chevron out of the basically 30 top people who  
20 are making this happen, all the rest of them came  
21 from suppliers, other energy companies, from  
22 financial institutions, technology institutions,  
23 KPMG, we have some senior managers from KPMG, but  
24 what the goal was is to put together the management  
25 team that's going to create the functionality, the

1 service, and be in a position to be able to make it  
2 successful as an independent company.

3 So, the way ours has operated, and I think  
4 it's the way to do it, is the board is there to see  
5 that it's successful, and it has the resources,  
6 including management and capital, to be successful,  
7 but they don't get into the day-to-day choices of  
8 functionality choices of customers, choices of  
9 contractual structures, those types of things are  
10 the work of management.

11 MS. LEVINE: Nick, do you agree? Oh,  
12 excuse me, I've got my -- my apologies, Tim, I'm  
13 very sorry.

14 MR. CLARK: My name is Tim Clark, and I'm  
15 an analyst with Jupiter Communications. My company  
16 -- our company was acquired by Jupiter, we were  
17 originally called Net Market Makers and we had  
18 specialized specifically in following this  
19 phenomenon, industry-specific marketplaces that's  
20 come up. And I really think that probably control  
21 is exactly the right -- is one of the right  
22 discussions to be having here.

23 What you'll see is you'll hear -- the  
24 biggest phenomenon that's happened in the year 2000  
25 is what we have called these coalition markets

1 coming into the marketplace, people like Rod's and  
2 a number of the other ones we saw the other day.  
3 And they are either -- for the most part they start  
4 out as either buy side or sell side, and what has  
5 happened with the entry of these people, is that it  
6 has essentially frozen the capital markets so that  
7 start-ups, and particularly those that are sort of  
8 the neutrals in particular industries, are having  
9 much more difficult time getting funded.

10 So, it's not clear that any of the big  
11 coalition exchanges will actually be able to  
12 operate businesses because you do have in the  
13 exchanges, companies that have been competing with  
14 each other for decades and they now have to become  
15 each other's best friends.

16 But as Rod said, they're trying to migrate  
17 from being a buy side over into the neutral part.  
18 Neutral is an interesting word, as you probably  
19 heard a lot if you've been here yesterday and  
20 today, I've never heard anyone say yet that they  
21 want to be a biased exchange, an unfair exchange or  
22 something. But there certainly is, you know, this  
23 is about the power in a specific industry, and it's  
24 hard to make a generalization about what happens if  
25 a whole bunch across different segments, because it

1 depends the kind of market that works in terms of  
2 ownership, in terms of control, even in terms of  
3 whether the market model as to whether it's an  
4 auction or a catalog, depends on the way the power  
5 was distributed within that industry.

6 MR. COHEN: Let me just follow up on that.  
7 Have any of you seen incidents or experienced,  
8 discussions of problems with owners or major  
9 participants in the market designing the  
10 marketplace in a way that the functionality favors  
11 the insiders? Has that come up as an issue,  
12 differences in functionality?

13 MR. CLARK: Well, it's a little hard to  
14 tell, because most of -- the ones where you would  
15 expect that the most would be the coalition  
16 marketplaces, and most of them -- Rod's is very  
17 much farther along than most of the other ones. We  
18 really don't know how the other marketplaces are  
19 going to -- many of the other marketplaces will  
20 actually function.

21 MR. STOJKA: If I may, my name is Tim  
22 Stojka, I'm with a company called Commerx. We are  
23 probably one of the older exchanges, we've been  
24 around since 1995, we got started in the plastics  
25 industry with a system called PlasticsNet.com.

1 Today we have three industries that we participate  
2 in, plastics, metals and packaging.

3 We've gone from an ownership structure in  
4 which we were entrepreneurally funded, funded by  
5 myself and my family, we then brought in financial  
6 investors and then strategic investors from the  
7 industry. Companies like Ashland Chemical, Eastman  
8 Chemical, Huntsman, so on and so forth.

9 And what our premise is today is that  
10 ownership really doesn't matter, okay? It's not an  
11 issue of who owns the system. The real issue is  
12 what is the functionality that that system is  
13 providing, what's the value creation that's taking  
14 place, and what are the efficiencies that are being  
15 created for the participants of that system.

16 Okay, cash flow and profitability. That's  
17 what it comes down to.

18 MR. WALSH: You know, many of us remember  
19 American Airlines owning the Saber system that  
20 travel agents stared at specifically for years  
21 on end, and Saber was often accused of doing,  
22 I think, what this specific point is, which is  
23 not denying access to information, but affecting  
24 the presentation of information that would allow  
25 the transactor, the travel agent, to get the

1     job done.

2             And the joke, and it wasn't that funny I  
3     guess, that American used to say, that it wasn't  
4     their fault this their name started with A, i.e.,  
5     the alphabetical presentation of information of the  
6     travel agent to get the deal done, well, American  
7     was first because it started with A.

8             And I think in sometimes -- in some cases,  
9     we might, I believe, in our company, we tend to  
10    take a little bit of a lesson from that, which is



1 unbiased.

2           It's nobody's fault that good pricing can  
3 be made available by one participant in a  
4 marketplace, even if they are an equity owner, but  
5 it is the fault of those owners if they bias the  
6 presentation of pricing from competitors who are  
7 not owners in a way that the buyer is not  
8 empowered. And I believe one of the things the  
9 Internet does very, very well so far is empower  
10 buyers with lots of information. Some say too  
11 much.

12           So, I think the issue may well be, to your  
13 point the issue is does this affect what the buyer  
14 can do and does it affect the structure of the  
15 market. I think the issue is not going to be one  
16 of technology, it's not going to be one of  
17 ownership, per se, it's going to be one of the  
18 ubiquitiness, the availability, and the  
19 presentation and the usability of information that  
20 the buyer gets when he or she decides to do a  
21 transaction on these.

22           And I think the Internet remains a very  
23 information rich and intensive environment and the  
24 technology and presentation will be the issue, the  
25 buyer's savviness about using it.

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1           It's no mistake, and it's certainly no  
2 point to forget, that earlier on we heard comments  
3 about the lack of connectivity in many businesses  
4 throughout the U.S., the lack of cybercentralism  
5 and that many of us have, certainly older folks,  
6 my parents and even people in my generation,  
7 since I'm one of the few gray-haired folks in  
8 the Internet these days and I think that sense  
9 of cybercentralism into something that will  
10 work itself out, but the buyers must always be  
11 empowered with information. That's the bias  
12 that we care about.

13           MS. LEVINE: Nick?

14           MR. HEYMANN: My name is Nick Heymann, and  
15 my perspective on following this industry as an  
16 analyst, and head of our multi-industry industrial  
17 research efforts on the equity side at Prudential  
18 Securities, and we've certainly seen the evolution  
19 of many different structures, and on.ecu stdifferent  
20 e-hubs and virtual markets, and I guess I would  
21 certainly point to the fact that the more  
22 concentrated the industry, the more gatekeeping  
23 efforts seems to evolve on.e regards to very strong  
24 differences amongst major participants. And one

1 we've seen numerous attempts to try to unify and  
2 set up a common ground, and we've seen that that's  
3 not been very successful so far, and many parties  
4 now have just apparently broken off.

5           And I think that what will ultimately drive  
6 this is the ability to have the most intellectual  
7 content to enhance the productivity of the certain  
8 market. And that ultimately will bear out -- some  
9 folks have thought this was like the gold rush, you  
10 know, the first grub stake down would ultimately  
11 buy you to put a moat up around the draw the  
12 drawbridge up and then take, you know, all kinds of  
13 tolls to join, and I think that's fallen by the  
14 wayside.

15           A lot of folks thought ownership meant I  
16 could monetize this virtual market, which in my  
17 mind is kind of like selling rights to the park out  
18 in front of your house or apartment in the city.  
19 It's really a common space. And to serve the  
20 certain market most efficiently, it's probably not  
21 something to monetize.

22           So, I think from that when, from our  
23 perspective, we see an evolution where the  
24 customers will ultimately drive who is most  
25 influential in the market space by how much more

1     efficiently and how much greater productivity the  
2     suppliers can drive to the market.

3             MS. LEVINE:   Robert?

4             MR. VERLOOP:   You make a very good point  
5     about information, and our firm has actually  
6     struggled a little bit, with the question is are we  
7     a software company, are we a technology company,  
8     and I think more and more we're coming to the  
9     realization that, in fact, we are an information

1 again, that's why I go back to the fact that we  
2 think we are an information conduit where we help  
3 suppliers and buyers better understand the dynamics  
4 of the consumer marketplace.

5           And ultimately, you know, we hear terms  
6 such as buyer-centric or seller-centric. We  
7 actually think that we're consumer-centric. We  
8 want to help both of our buyers and sellers better  
9 understand the consumer behavior so that marketing  
10 is not a question of pushing our product through  
11 the marketplace, but allowing the consumers to help  
12 us pull that product through the marketplace.

13           As we get -- as we are in a perishable  
14 industry, that's extremely important, because once  
15 our product leaves the field, the clock is ticking.  
16 And if we don't match up very carefully to the  
17 consumer needs, then we run ourselves into trouble.

18           Part of information management is also  
19 collaborative planning, forecasting, and being able  
20 to apply an automation to things that in the past  
21 have been gut checks. It's 4th of July, I guess I  
22 better have watermelon in my store. Well, just how  
23 many watermelons do you think you need this year?

24           If you take a look at collaborative  
25 information transfer, then you really start

1 becoming -- you start to empower the Internet and  
2 the partners to be able to get the product at the  
3 right place at the right time, and as some people  
4 have said, even before that the consumer knows that  
5 they need it.

6           Again, I think, just summarizing, that it  
7 is information management, and it is something that  
8 is crucial, and it's a question of the controls  
9 that are placed on that information as to who has  
10 access to it and who gets to distribute it.

11           MR. HARTING: I think concerns that owners  
12 of exchanges will manipulate the presentation of  
13 data or prices are overblown. These are ruthlessly  
14 competitive markets. This is not a consumer  
15 marketplace where people care about branding or  
16 where location matters. Everybody is in the same  
17 location.

18           MS. LEVINE: You're talking about the  
19 ruthless competition is in the market for  
20 marketplaces, right, not the market for  
21 watermelons. Is that correct?

22           MR. HARTING: Well, for both, in the sense  
23 that -- if one marketplace were to price  
24 inefficiently because owners were manipulating  
25 those -- either the presentation of the data or

1 those prices by excluding other participants, they  
2 would be punished very, very quickly, because  
3 buyers can search, almost for free, for other  
4 venues where they can purchase those products.

5 So, the barriers to entry for either  
6 competitor exchanges are so low, and the searching  
7 costs for buyers in looking to price their  
8 watermelons on another exchange, are so low,  
9 especially once we see shopping bots moved to the  
10 B2B space, then I think, you know, these concerns  
11 that suppliers could manipulate the exchanges are  
12 probably exaggerated, if there are any.

13 MS. LEVINE: All right, I'm glad you turned  
14 up your tent, because I was about to ask a question  
15 that goes to your area. I was wondering if the  
16 exchanges are true -- you know, if you can move  
17 freely as a buyer or seller from exchange to  
18 exchange, given that you might want to stay in the  
19 exchange where most of the volume is for the  
20 network effects of it, or you might want to stay on  
21 the exchange where your community is.

22 MR. WALSH: Me?

23 MS. LEVINE: Yes.

24 MR. WALSH: Geography matters in some  
25 markets, but geography or the lack of geography can

1 be used to threaten vendors by buyers outside of  
2 their markets. It's very important to remember  
3 that as consumers when we go in a bookstore today,



1 catalog on his desk or her desk, the distributor he  
2 or she deals with, the physical availability of  
3 where his or her truck can go to get the product  
4 they need.

5 On the Internet, the empowerment of a  
6 couple of clicks of a mouse, really, I think,  
7 almost broadens the shoulders of buyers and allows  
8 them to feel, and sometimes act, much more able to  
9 negotiate aggressively, even in small-size orders  
10 with vendors that used to feel that they controlled  
11 that buyer.

12 I think information is power, information  
13 is enlightening, and an empowered and enlightened  
14 buyer almost mandates that markets remain  
15 relatively much more robust and efficient than they  
16 could have been in the past in the real world  
17 pre-Internet.

18 MR. COHEN: You know, there is a theory  
19 that information from a competitive sense can  
20 sometimes be a two-edged sword. Let's look at the  
21 other edge of that sword for a few minutes. We  
22 heard yesterday, I was involved with the panel  
23 dealing with buyers' perspectives, and the  
24 panelists there were in general quite clear that  
25 they felt that there wasn't a mechanism for one

1 buyer engaging in the electronic marketplace to  
2 learn competitively sensitive information about  
3 other buyers, it was set up in such a way that that  
4 information was protected.

5 But I would like to take it a step further  
6 now that we're on the owners' panel and ask what  
7 happens if major competing buyers are also owners  
8 of the marketplace? Does that give them access,  
9 for example, to information? For example, if --  
10 would they see what their competitor, who is now a  
11 customer, a participant in the marketplace, what  
12 they buy and at what price their deal is being  
13 arranged? Should we begin with Tim?

14 MR. CLARK: Why don't you start with  
15 somebody else, I had a different comment.

16 MR. COHEN: You're up first.

17 MR. HEYMANN: There's one site that came to  
18 my mind when you were talking about that question,  
19 and it was something called Brand-Wise.com and it  
20 was set up to basically allow customers an  
21 opportunity to compare numerous different, 8,000  
22 different appliances, and try to compare supposedly  
23 based on independent reviews. It was set up and  
24 established by Whirlpool, and if you subscribed as  
25 a supplier of appliances to this site, if your

1 product was the final one selected by the consumer,  
2 you would be given access to the data of the  
3 process the consumer went through to ultimately end  
4 up with the final product.

5 Whirlpool as the originator of the site,  
6 happened to get all the data. So, what was really  
7 sought here was the information of looking over the  
8 consumer's shoulder. Ironically, at the end, the  
9 customer was asked to give their zip code, and they  
10 were given numerous different sites over which they  
11 could have a choice to buy the product that they  
12 were selecting, and it turned out that  
13 mysteriously, this site ran out of funds after  
14 being backed by, you know, several large  
15 corporations like Sears and Whirlpool, and I think  
16 what happened was that the retailer shut the site  
17 down. And they said, look, we don't want anybody  
18 coming and evaluating our product versus everybody  
19 else's and ultimately moving someplace else, we'll  
20 have them do that on Sears' site and then they'll  
21 all buy at Sears Brand Central.

22 And so, certainly the information gleaned  
23 from the process is as valuable as ultimately maybe

1 Gina?

2 MS. LEVINE: Can I ask you a particular  
3 question, Gina? Do you mind? You're running a  
4 catalog site, right?

5 MS. HAINES: Yes.

6 MS. LEVINE: And I understand that on  
7 catalog sites, buyers can throw away those large  
8 stacks of paper catalogs they used to have that  
9 came from different vendors and they no longer have  
10 to look through each one of those catalogs to find  
11 the comparative prices for the products they want  
12 to buy. They can now look at one site in five  
13 minutes and see all the vendors and all their  
14 prices.

15 Sellers can do that, too, I assume. Does  
16 that have any effect on the price a seller charges?

17 MS. HAINES: Well, actually, again, in the  
18 FacilityPro marketplace, specifically, buyers -- it  
19 is a true business-to-business marketplace as  
20 opposed to a mirror exchange. We are not simply  
21 facilitating a transaction between a buyer and a  
22 seller, we're actually taking control of the  
23 end-to-end process, so it's a truly integrated  
24 end-to-end process. Because it is buyer-specific,  
25 our technology, and we're not a technology company,

1 but technology is a wonderful enabler for our  
2 business, it allows us to configure the views that  
3 are appropriate only to that buyer.

4 We do actually have an aggregation model  
5 where we take title to the product that's being  
6 sold. So, again, we centralize the complexity. We  
7 manage all of the manufacturer and the distribution  
8 and the third party logistics providers, all the  
9 integration with those systems, and so we do  
10 tightly control access to information.

11 For that reason, to the extent the client  
12 has chosen a fairly broad view or the universal  
13 view of the catalog, yes, the buyer would  
14 experience conceptually competing products and  
15 competing prices and be enabled to make appropriate  
16 decisions for their business.

17 To the extent they said we are  
18 brand-specific, for whatever reason, we would  
19 filter their view and they would only see what's  
20 appropriate to them.

21 MS. LEVINE: What about the sellers? Does  
22 the seller get the same view?

23 MS. HAINES: No, the sellers do not, in  
24 fact. Again, remember that we are buyer centric,  
25 we do advocate for our buyers. Now clearly to

1 develop a liquid marketplace, there have to be  
2 benefits to the suppliers, but we are highly  
3 protective of our buyers' information, and we have  
4 been approached on multiple occasions for that  
5 information. We do provide industry pertinent  
6 information in aggregate, never in specificity,  
7 except back directly to our buyer.

8 MS. LEVINE: Robert, you run a catalog  
9 that's not buyer-centric. Do your sellers see the  
10 comparison -- the comparative prices of all the  
11 other sellers in your catalog, too? Or not?

12 MR. VERLOOP: No, we're -- we are a version  
13 of a catalog system, it's actually called an active  
14 pricing model, and what happens is, is that the  
15 pricing is -- the seller can actually dictate who  
16 sees their prices, and it's specifically only  
17 buyers that can see the pricing. So, there's no  
18 competitive opportunity to see what prices your  
19 competitors may be quoting. Likewise, you also  
20 cannot see if you're a buyer what other buyers are  
21 being quoted.

22 MS. LEVINE: Let me ask about auctions,  
23 moving from catalog to the auction model. Tim, I  
24 apologize, I hadn't called on you earlier, but I'm  
25 call on you now if you don't mind.

1           MR. STOJKA: I'm still here.

2           MS. LEVINE: Can sellers on your auctions  
3 see what other sellers are bidding and can they see  
4 the other seller's identity?

5           MR. STOJKA: Well, what we found in our  
6 marketplace is that the private catalogs and  
7 private auctions are really what buyers and sellers  
8 want. I think to Mark's point earlier, I think  
9 it's all about information. And information  
10 transparency is really an issue for our suppliers.  
11 Providing information to the market in regards to  
12 the product, pricing, technical data, so on and so  
13 forth, is new, and it's a big jump for them.

14           So, what we've done is provided buyers and  
15 suppliers with private catalogs so that only that  
16 buyer can see the specific pricing that he is

1 prices, yes.

2 MS. LEVINE: Do they see each other's  
3 names?

4 MR. STOJKA: No, just prices, so they can  
5 see the bid go up and down.

6 MR. COHEN: But the marketplace itself, the  
7 owners and operators in the marketplace would have  
8 access to those names?

9 MR. STOJKA: Yes.

10 MR. COHEN: Who stands behind the anonymous  
11 names?

12 MR. STOJKA: Yes, we are the owners, so we  
13 have all that information and would be responsible  
14 for it.

15 MR. COHEN: And what would happen if the  
16 owners happened to be competing suppliers?

17 MR. STOJKA: Well, the owners, I mean the  
18 investors, in our company, we have no more than one  
19 percent ownership by any strategic investor, so  
20 that relatively small ownership stakes, and we are  
21 not bound by contract or any by-laws to provide  
22 them with all of that proprietary information. So,  
23 that information may be provided to management and  
24 the board, but it doesn't necessarily go out to the  
25 investors.



1           MS. LEVINE: Do you have a rule that says  
2 -- I guess you're saying you don't have a -- there  
3 is no rule that says you must give the information  
4 to your participant owners?

5           MR. STOJKA: Right.

6           MS. LEVINE: Do you have a rule that says  
7 the opposite, that says you can't give the  
8 information to the participant owners?

9           MR. STOJKA: We don't have a written rule  
10 or a written policy, but I think that's something  
11 that goes unsaid.

12          MS. LEVINE: Rod?

13          MR. GRAY: Well, I think you need to go  
14 down a layer and see what the contractual  
15 arrangements are with the participants on the  
16 market. We have a contractual arrangement to keep  
17 their information private to them, and it can only  
18 be disclosed to whomever they want it disclosed to.  
19 So, I mean, that's the contractual relationship  
20 between the marketplace and the participants.

21          MS. LEVINE: They can only disclose the  
22 information to those they want --

23          MR. GRAY: The person that -- the  
24 individual participant, rather it's on the buy side  
25 or the supply side, they own their own particular

1 information on the marketplace, and that's a  
2 contractual obligation between the marketplace and  
3 those participants. So, we would be violating that  
4 contractual relationship if we were to disclose it  
5 to other participants, whether they're an owner or  
6 not.

7 MS. LEVINE: What if they ask you to  
8 release that information to others on the exchange?

9 MR. GRAY: It's their information, we can  
10 release it to whomever they ask us to release it  
11 to.

12 MR. ROBERTS: Don't you have to segment  
13 investors versus board of directors? A board of  
14 directors if it's a publicly traded company has a  
15 fiduciary responsibility. If they've invested,  
16 they certainly want to see the enterprise grow, and  
17 by giving them that information you would  
18 compromise that corporation and threaten it. So, I  
19 think we ought to -- I'm going to write it in, that  
20 we will not give that to the board of directors.  
21 That they're precluded from having that  
22 information. It's not in their best interest or  
23 the best interest of the enterprise.

24 MS. LEVINE: Mark?

25 MR. WALSH: Not to make light, I think this

1 is one of the -- absolute one of the cruxes of  
2 what's happening on the net today. My brother is a  
3 doctor, and when asked about helmet laws for  
4 motorcyclists, he once said it is a self-correcting  
5 problem. And the reason I bring that up is I  
6 think, who was talking about the Sears Brand  
7 Central issue, about vendors, we're already seeing  
8 on some of our verticals, my nickname for it is  
9 revenge-of-the-vendors.com, and what I mean by that  
10 is that if there is undue or inappropriate  
11 protection or release of information by the seller  
12 or buyer, and in our verticals, the seller can  
13 choose to release his or her information in a  
14 private way to a specific buyer, in an open way to  
15 invited multiple buyers in a private chat or forum

1 much information -- the buyers share too much  
2 information and unduly hammer down the prices of  
3 the seller, that the Internet's speed, the  
4 Internet's speed, the velocity of information in  
5 response is so high on the Internet versus the real  
6 world, that these problems do self correct at a  
7 much more rapid pace, is our experience, than the  
8 types of problems that you see erupt in the real  
9 world that takes years and sometimes decades to  
10 correct.

11 So, the velocity of the Internet is  
12 something I think you can't forget when you hear  
13 about diseconomies or inequalities of information  
14 sharing, either through ownership or to directors  
15 or release of information, the ultimate value here  
16 is consumers. Whether they are buyers or  
17 suppliers, the Internet is very efficient at  
18 rewarding those who are good and penalizing those  
19 who are bad. I think we see that a lot in our  
20 marketplaces.

21 MS. LEVINE: Tim?

22 MR. CLARK: I think most of the  
23 marketplaces, particularly the coalitions, have  
24 tried to set up legal structures similar to Rod's  
25 so you have a different corporation in there as an

1 intermediary. There still remains a suspicion if  
2 it's a buyer-controlled marketplace that sellers  
3 are going to get a fair shake in that.

4 I would like to go back to a couple of  
5 things that Mark has said here about the free flow  
6 of information and price competition. Because the  
7 whole notion of these online marketplaces is that  
8 you -- is the operators of those marketplaces will  
9 tell you they want to tie in buyers, they want to  
10 make sure that the buyers stay in that location.  
11 The way that they do that is by hooking their net  
12 marketplace into the back-end systems of buyers and  
13 sellers, into their supply chain and ERP systems.  
14 And once that is done, it's very hard for a buyer  
15 to move to a different location without redoing  
16 that whole thing all over again.

17 So, yeah, there is some -- and the other

1 another, because they have to invest hundreds of  
2 thousands of dollars to do the integration.

3 MS. LEVINE: Nick?

4 MR. HEYMANN: I would just add, you know, I  
5 think the focus on price is really the first stage  
6 of how we will compete on what we're providing to  
7 the customer, you know, on an automated basis. I  
8 think that the evolution will be to move price  
9 to be a secondary consideration, and if you  
10 properly bundle seamlessly, okay, different  
11 ways to add products, software, accessories,  
12 enhancements that are related to the core product,  
13 that the customer is looking for, that in turn  
14 that enhanced functionality by itself will become  
15 the more important criteria by which the customer  
16 will ultimately end up making their purchase  
17 decision.

18 And so price that we're all worried about  
19 and who sees what and how can it be set, again, you  
20 go back to the intellectual content. Who can come  
21 up with the best way to simplify and enhance the  
22 productivity of that customer, that's the basis for  
23 which ultimately, you know, the decisions for  
24 purchase will probably be made.

25 Today, price, I still see, as something

1 that, in an archaic system, we use as manufacturers  
2 or suppliers of a service to move or cram down to  
3 the customer and then ask them to compromise what  
4 their desires are so that we can get our goal set  
5 to ship so many cases of soda or whatever it might  
6 be, even if it doesn't matter if it matches the  
7 customer's needs, and that's going to change around  
8 a lot.

9 MS. LEVINE: Roy, can I call on you, but  
10 also ask you a particular question. You were  
11 talking about how your policy would be that you're  
12 not going to let participant owners see information  
13 that is owned by the exchange. We heard yesterday  
14 some questions about whether firewalls of the type  
15 that you may have in mind really work when  
16 participants have equity stakes in the exchange.  
17 What do you think about that?

18 MR. ROBERTS: I think it can work, and I  
19 think they will work. I think some of the comments  
20 you have heard from some of the other participants  
21 are very clear about the integrity of a system  
22 and how fast that information can flow. And you  
23 can -- I think you can kill an organization before  
24 they could ever get the message, if you're not  
25 careful. I don't think many of us want to see that

1     happen.

2             I've heard a number of people talk today  
3     about -- a little bit about supply chain  
4     management.  If you ask a basic question, if you --  
5     if my wife and I were sitting in our living room  
6     and want to order a new couch, why do we have to  
7     wait six months to get that couch?  Or if I want to  
8     order a new car, why do I have to work three months  
9     or wait three months to get that car?

10            The technology is here that would suggest  
11     you don't have to wait that long.  I've spent 40  
12     years in what you might call old economy companies.  
13     I've seen most of the problems, created some of the



1 that we must get minorities and women involved  
2 right now so they understand this piece so they can  
3 dig much deeper as we go to the supply chain  
4 management, which is critical.

5 MS. LEVINE: Robert, one of your exchanges'  
6 selling points, I gather, is that you're telling --  
7 you can tell buyers and sellers who come to your  
8 exchange whether these problems exist or not, they  
9 certainly don't happen on BuyProduce, because I  
10 don't have any participant owners on my exchange.  
11 Are you finding that the buyers and sellers who  
12 come to BuyProduce say well, that's a nice selling  
13 point, but the truth is we're perfectly comfortable  
14 working on an exchange that has participant equity  
15 because we trust those firewalls?

16 MR. VERLOOP: I haven't heard that. You've  
17 got to remember that our industry is not  
18 necessarily the most technology-advanced, you know,  
19 when you talk about firewalls, they're not quite  
20 sure what that means. It's like another buzz words  
21 that's out there, it's transactional efficient,  
22 when I first came on, I thought that was a tractor  
23 part.

24 What we're finding as our exchange  
25 continues to grow, we started last October, just as

1 a reference point, we have over a thousand buyers  
2 and sellers on our system, and they run the gamut  
3 from people that are transacting on a daily basis  
4 to people that have come onto the system, tried it  
5 once, said okay, I've got it figured out, now when  
6 the buyers come in and they mandate that I use an  
7 exchange, I'm ready to go with you.

8           So, there's a variance of acceptability, if  
9 you will, to the -- or acceptance of the  
10 technology. The -- we have not found it to be a  
11 competitive advantage one way or the other when we  
12 go in and do competitive analysis with, you know,  
13 potential clients and so on. It's an issue that  
14 really just goes back to more of a trust that I  
15 alluded to earlier, building on those  
16 relationships.

17           I wanted to --

18           MS. LEVINE: Before -- I have to do  
19 something terribly unfair, I have to cut you off.  
20 We need to take a one-minute video break and we'll  
21 be back.

22           (Brief pause in the proceedings.)

23           MS. LEVINE: Let's get started again.  
24 Robert, do you want to finish your thought? Go  
25 ahead.

1           MR. VERLOOP: Yeah. The point that I was  
2 making -- this is like talking over lunch almost --

3           MS. LEVINE: That's all right.

4           MR. COHEN: Keep going.

5           MR. VERLOOP: The point that I think is  
6 really important is that of the pricing issue, you  
7 know, we negotiate today daily on pricing, and Mark  
8 made the point earlier that really what the  
9 Internet has done is make it faster. And if you're  
10 out there doing unfair pricing practices, that  
11 transparency exists today. And so it is the speed  
12 with which we can identify and correct and really  
13 call on the table.

14           And ultimately in our system, with dealing  
15 with retailers, they're pretty quick to let you  
16 know if somebody is out of line. So, I think the  
17 Internet is just an enabler to get things done  
18 quicker, and it makes for a self-correcting  
19 marketplace overnight rather than having to wait a  
20 couple of months.

21           The other thing that I wanted to point out  
22 is, you know, we get caught up so much on the  
23 buying and selling functions, and it's been alluded  
24 to earlier. I want to give you an example, though,  
25 and I made the joke about transactional

1 efficiencies. The ultimate gain that I think all  
2 of the exchanges will benefit to the buyers and  
3 sellers is that in how can we make the transactions  
4 paperless, and then how do -- what does that mean  
5 to the bottom line?

6           And I'll give you an example. In the  
7 retail industry, I had a major retailer, somebody  
8 that everybody would know here as far as their  
9 brand, say to me that 40 percent of all of their  
10 purchase orders have errors in them. That means  
11 that 40 percent of their accounting staff, their  
12 receiving staff, and their produce staff, is spent  
13 on doing nonvalue-added activities. The ability of  
14 the Internet, the ability of e-commerce, is to take  
15 a very large percent of that and just make it  
16 disappear.

17           That means that we can use our productive  
18 efforts to build our marketplaces, and really  
19 concentrate on what I said earlier, and that is  
20 start looking at the consumer, the ultimate  
21 consumer of our products, and make sure that we're  
22 doing justice for them. Rather than trying to  
23 build up prices to cover our inefficiencies within  
24 the marketing system, what we're now starting to  
25 concentrate on is how do we market.

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1           Now, in retail, there's a process called  
2 category management which analyzes a category of  
3 product trying to figure out how to best utilize  
4 the consumers. The retailers -- or meet the  
5 consumer's needs.

6           The retailers many years ago perfected this  
7 on the detergent side. We call it the consumer  
8 product good side. Produce was very slow to adapt  
9 to this, but now that we're starting to see that  
10 changing very quickly, and as a result, the  
11 consumer or the buyers are no longer buyers and the  
12 sellers are no longer sellers. We're all becoming  
13 marketers.

14           And rather than worrying about pricing and  
15 trying to correct our errors, we're focusing on the  
16 end product, which is a robust marketplace, rich  
17 with information so that we can both see suppliers,  
18 growers -- I'm sorry, suppliers, buyers, and the  
19 consumer, receive what they consider a high  
20 perception of value. And it really comes back to  
21 value, not pricing.

22           MS. LEVINE: Gina?

23           MS. HAINES: Yeah, I want to come back to  
24 both of those comments. Pricing is in my mind one  
25 link in the entire value chain. It's the most

1 tangible, it's the most measurable metric, and it's  
2 kind of really all most people in any given  
3 industry have to kind latch onto as empirical data.

4 And so one of the real challenges we've  
5 had, realize, you know, we're serving commercial  
6 facilities. There are about 61 billion square feet  
7 of commercial facilities in the United States.  
8 They cost on average six to seven bucks a year to  
9 maintain, repair and operate. Not to build;  
10 construction is whole other ball game.

11 So, that's about a \$425 billion market.  
12 It's highly fragmented, it's highly localized,  
13 perhaps regionalized, even across properties with  
14 common ownership. In many equations, facilities,  
15 and the maintenance of them, is a cost center as  
16 opposed to a profit center. And so technology has  
17 really not reached down into, you know, these  
18 realms.

19 Even the larger players who might have  
20 ERP-like systems, for finance and accounting and  
21 HR, these cost centers aren't going to qualify for  
22 that level of investment in technology, and so our  
23 B2B marketplace has extended enterprise-like  
24 functionality down into these cost centers. And  
25 the process improvement potential is enormous.

1           I read Morgan Stanley's report, sorry,  
2       guys, April 2000, their B2B report, and, you know,  
3       there's gobs of data out there to this extent, that  
4       basically a paper-based process is about \$175  
5       initiative. You know, by automating that,  
6       eliminating the errors, integrating with systems,  
7       you can bring it down according to Morgan Stanley  
8       to \$10 to \$20.

9           So, speaking specifically to back  
10       efficiencies, in our market as well we have labor  
11       efficiencies. We did a study for one of our  
12       clients that has a 1,000 person nation-wide  
  
15       professionals in the field prepared to do their  
16       job, they need supplies. Every minute we drive out  
  
18       proposition.

20       technology, to apply it to process and also work  
21       change management, and that's really the overall

1 integration into their information systems, because  
2 information does become knowledge, does provide  
3 ourselves and our clients actionable data to then  
4 go and, you know, continue to improve processes.  
5 And you guys are all collectively right, the market  
6 will vote and it is voting daily, it is kind of  
7 self-correcting.

8 MR. COHEN: Well, let's see, with all the  
9 information that you're receiving, and in many  
10 different forms, are any of you with your  
11 marketplaces considering going into sort of a  
12 consulting arrangement as to your industries, the  
13 industries covered? Yes?

14 MS. HAINES: We do.

15 MR. ROBERTS: We think that we must, and  
16 when we talk about interfacing with minority  
17 companies and certainly women-owned businesses,  
18 quite often they're the least financed or they're  
19 under financed. It's a market that's been  
20 underserved or unserved. There are only about 16  
21 percent, by any estimate that we can find or any  
22 research, that are web-enabled today, so we think  
23 we've got to help them with the planning process,  
24 building their business to be more efficient.

25 So, we must become the consultants online



1 to these companies' back end to majority  
2 corporations. So, we are go to become consultants.

3 MS. LEVINE: Rod, what about Petrocosm, are  
4 you going to have that kind of role?

5 MR. GRAY: Well, I think that you can  
6 imagine and see that there's all kinds of  
7 consulting that rolls out of this, and it's from  
8 the beginning stages, there's a key consulting role  
9 that KPMG is very active in and the other firms  
10 like that, and that is the plugging into the legacy  
11 systems and after you've done that once, there's a  
12 consulting role. There's a consulting role in the  
13 change management. I mean, this is all about  
14 changing their procedures and we now have the tool,  
15 but you still have to change the way you do things.  
16 There's a consulting role there.

17 I think that it's clear to everyone who's  
18 involved in this industry that the amount of  
19 information that is pulled together, that you look  
20 at that in the aggregate, there's all kinds of  
21 consulting roles or information management roles  
22 that you can play with the culmination of thousands  
23 and thousands of transactions that represent  
24 millions and millions of dollars, looking at that  
25 information in the aggregate, that knowledge gives

1 you the ability to make some very important  
2 conclusions, and that can be put into a consulting  
3 role as well.

4 MS. LEVINE: Will you allow -- in part of  
5 this consulting capacity, will you be letting a  
6 buyer, owner or not, just any old buyer who wants  
7 your consulting service, a buyer to learn what  
8 other buyers are purchasing, either in -- with any  
9 degree of specificity?

10 MR. GRAY: I think it has to be in the  
11 aggregate. Again, going back to our contractual  
12 relationship with our individual participants, we  
13 cannot allow anyone to see anyone else's individual  
14 data without their permission. I think that there  
15 is value in the aggregate information that's coming  
16 off of that body of data.

17 MR. STROJKA: We also do consulting in our  
18 business. When we look at our business, we look at  
19 what we do as really process re-engineering. And I  
20 think Roy talked about it earlier. It's not just  
21 matching buyer and seller, there is value in doing  
22 that, but in many of these industries, the brands  
23 are very powerful, have a lot of value, and the  
24 customers that we talk to, you know, they say look,  
25 I've got five key suppliers that I buy this product

1 from, I like them, I respect them, I trust them. I  
2 need a better and faster way to conduct my  
3 transactions with them.

4 So, we really feel it's been process  
5 engineering, it's about creating closer connections  
6 between companies, not disintermediation, it's not  
7 just price transparency, you know, allowing  
8 customers to, you know, match and find a new  
9 supplier.

10 MS. LEVINE: Tim?

11 MR. CLARK: I wanted to go back to what Rod  
12 was just saying about the aggregation of  
13 information. It's clear that as an operator of a  
14 marketplace, you have enormous amount of -- once  
15 you get to the state of being liquid, of having a  
16 lot of volume, you have enormous information about  
17 what's going on in your marketplace.

18 I want to give you two examples of people  
19 who we know are doing this, and then somehow  
20 selling or marketplaces that are doing this. The  
21 first was I met last week with this fellow who has  
22 software that is used by flower markets in Europe.  
23 They have about 150 different flower markets, and  
24 they have recently done a deal with Reuters to give  
25 them, you know, the price of each different kind of

1 flower on a daily basis so Reuters can put that  
2 stuff out on its wires.

3           The other example to talk about is a  
4 company called Instill, which is a Silicon Valley  
5 company, and it's an intermediary for the industry  
6 of chain restaurants and food services, and they  
7 sit between those restaurants and they take the  
8 orders and then they shoot them out to the right  
9 distributors. We estimate that something like half  
10 of their revenue is eventually going to come from  
11 the sales of that infond

1 the sellers own part of the data as well. And they  
2 do not collect the information except with the  
3 permission of the buyers. They pretty much have  
4 written deals to do that.

5 On the buyer's side, the other things that  
6 happens with this information is that if you're  
7 running Appleby's is a chain restaurant that's just  
8 one of their customers. They have something like  
9 400 company-owned stores, and using the -- Instill  
10 system, headquarters can know exactly who is buying  
11 what.

12 If you order Heinz catsup, an example that  
13 they use, from ten different distributors, you have  
14 ten different part numbers. So, headquarters never  
15 knows exactly how much Heinz you're really buying,  
16 and you can't aggregate that buying power. So,  
17 they take that information and they're able to  
18 aggregate it and the headquarters can then cut  
19 better deals by going to Heinz and saying here's  
20 how much we're buying, we want a volume discount.

21 The other thing they do with it is, in  
22 essence, spy upon their local franchise -- their  
23 local stores, because if they're not buying Heinz  
24 but they're buying a different brand of catsup  
25 because they happen to play golf with the guy, that

1 is known back to headquarters very simply, and they  
2 can come back through and tell their local  
3 managers, you're really supposed to be buying Heinz  
4 here.

5 MS. LEVINE: Let me ask you a question or  
6 two about the competition between exchanges. We've  
7 talked about it a little bit. Let's see if we can  
8 dive deeper into it.

9 Let me ask you, Gina, who are your  
10 competitors today, and if you can predict for us,  
11 who -- what number -- what are the -- how many B2B  
12 competitors will you have in your product market  
13 five years from now? Will there be one B2B that  
14 serves the entire product market, or will there be  
15 more than that?

16 MS. HAINES: It's a great question, and  
17 actually, anybody who reads the popular press or  
18 any trade publications is well aware of the  
19 proliferation. There are just numbers of .com and  
20 e-commerce companies entering in the B2B space, in  
21 our segment as well as other industries.

22 In our direct experience over the last  
23 several years, other B2B exchanges really aren't  
24 our competition. I mean it's not that we're so  
25 much greater or better than anybody else, it's

1 really the cultural inertia and the status quo,  
2 that's our biggest competition, quite frankly.

3           And so I think we actually see an  
4 opportunity, it's in a roundabout sort of way kind  
5 of validating to see industry consortia forming and  
6 to see other players enter the B2B space, both the  
7 technology players as well as commerce players,  
8 such as ourselves, because it indicates that there  
9 is an awareness and the companies realize that they  
10 need to be doing something, that they have a  
11 fiduciary responsibility to their shareholders and  
12 they want to drive value, you know, from a  
13 procurement perspective and wow, this is a cost  
14 center, but, you know, it's a value driver as well.

15           So, we do see a lot of entrants, new  
16 entrants, and we do have, you know, active  
17 competitors and people marketing against us, so  
18 forth and so on, but I am hard pressed to name one  
19 that would really actively be a competitor for the  
20 full range of services that FacilityPro provides.

21           MS. LEVINE: Mark?

22           MR. WALSH: I actually think, we have about  
23 200 salespeople at my company that call on tens of  
24 thousands of corporations, and in some ways I  
25 welcome more competition in each of these

1 environments, it does, to her point, validate to  
2 the midsize company out there who remains bluntly  
3 the most scared participant -- the most scared  
4 people on the planet are the business men and women  
5 at mid-size companies who feel the Internet either  
6 stands for the end of their business, or will alter  
7 their business forever.

8 I think it's important to remember that  
9 industries consolidate but there must be an  
10 industry first. In 1911 there were 50 car  
11 companies, there used to be 300 phone companies in  
12 America and then the industry consolidated.

13 I think hopefully the Internet actually  
14 will do the reverse effect. I think it will spawn  
15 more and more and more exchanges, auction sites,  
16 market makers like us, so that the -- frankly the  
17 inertia led members of traditional industries out  
18 in the real world who are sitting at their desks  
19 not prepared for change will see that this is not  
20 going to go away.

21 We're a little sick at VerticalNet of  
22 proselytizing which is what we've been doing for  
23 the last five years since we were founded. And I  
24 think it's important for the men and women out  
25 there who run companies to see the competition in



1 these specific exchanges owned by participants or  
2 not, shows them that this is not going to go away.

3 It's easy to change legacy systems, it's  
4 very hard to change legacy behavior. And legacy  
5 behavior is what American and global industries are  
6 all about. Forty percent of our traffic, by the  
7 way, is non-U.S., so we see a lot of global traffic  
8 in our verts, and I think that legacy behavior can  
9 only be changed by showing lots of vitality, lots  
10 of competition and lots of force for change.

11 MS. LEVINE: Tim, let me ask you, are you  
12 expecting to see in five years from now in each of  
13 the product markets that your three verticals are  
14 in, are you expecting to see one B2B serve that  
15 product market or many?

16 MR. STOJKA: No, we expect to see many. We  
17 see -- we continue to see a proliferation of  
18 marketplaces that have varying business models and  
19 in our industry in plastics is an example. There's  
20 a consortia that's been announced, and we think  
21 it's very positive. It's positive for the  
22 industry, it's positive for adoption, it's creating  
23 more awareness and I think we will see more and  
24 more, as Mark said, exchanges being created that  
25 have various business models.

1           The key, however, is going to be standards  
2 of communication between these various exchanges.  
3 Because in order to really serve the customer, the  
4 customer needs to be able to gain access to  
5 multiple exchanges and multiple marketplaces that  
6 are offering different types of value and different  
7 portions of information. And today, it's very  
8 nascent. There isn't a lot of interexchange  
9 communication.

10           So, I think that's really the area that we  
11 need to focus as an industry.

12           MS. LEVINE: Go ahead.

13           MR. SIMKINS: Tim pretty much took the  
14 words out of my mouth. We as a creator of regional  
15 and horizontal exchanges face competition from a  
16 multitude of verticals, almost anybody who would  
17 participate in our hub could also, in theory, be a  
18 member of a vertical, and we have every intention  
19 of keeping our users, buyers and sellers alike on  
20 the hub with the carrot rather than the stick.

21           We want it to be a place where they want to  
22 do business, because it really makes sense not just  
23 in terms of driving costs down out of their supply  
24 chain, but it really fits their strategy, and it  
25 plays an important role in the effectuation of

1 their corporate strategy, but there's a real  
2 problem if there are entities that would like to do  
3 business on our exchange because they like the way  
4 we do things, but they feel that their hands are  
5 tied by some other exchange.

6           And while I would love to believe that over  
7 time the marketplace will indeed be fairly ruthless  
8 and it will punish exchanges that use the stick or  
9 the handcuffs to keep their participants engaged,  
10 you know, in the short-term, which is, you know, we  
11 were just born in January of this year, so the  
12 short term is very important to us, we've got a lot  
13 to accomplish over the next year or so, and we are  
14 nervous about the prospect that some less  
15 enlightened marketplaces may, in fact, be using --  
16 maybe contractual provisions, call it coercion, but  
17 they may be using methods to keep their  
18 participants involved that don't give them the  
19 flexibility to go where their best economic  
20 judgment dictates that they should go to complete  
21 that transaction.

22           That's what makes us nervous. So, as long  
23 as there is -- we like the fact that there are all  
24 of these other marketplaces out there. Our model  
25 is different enough from the others that you're

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1 seeing here today that we do benefit from the  
2 validation effect. And when you're working with  
3 utilities who are the classic example of companies  
4 with cultural inertia, it really does help that  
5 they see that their colleagues are, in fact,  
6 participating in these marketplaces and moving to  
7 electronic procurement. That does help us, but if  
8 they feel that their hands are tied by virtue of  
9 having signed on to participate in another  
10 exchange, that makes us unhappy.

11 MS. LEVINE: Let's get the bird's eye view.  
12 Tim, how many exchanges do you think we're going to  
13 see in a given product market in five years from  
14 now?

15 MR. CLARK: It's going to be way more than  
16 one, which is the prevailing mythology is that  
17 there will be one dominant, but there's not going  
18 to be 100 like there is in the construction  
19 vertical right now. And the dynamic that we have  
20 going on is at the same time we have consolidation  
21 amongst exist marketplaces, we're creating other  
22 ones, and they're just springing up all over the  
23 place.

24 So, you know, the overall number may be  
25 sort of close. And you can see in other industries

1 that, you know, you may have a single really strong  
2 player with 60 percent of the marketplace and then  
3 you have some lesser players that have specialties  
4 within that particular niche.

5 And one reason that that happens is because  
6 industries are so complicated. If you look at the  
7 construction industry, which I mentioned a minute  
8 ago, they're a \$600 billion industry in the United  
9 States, incredibly fragmented, no general  
10 contractor has as much as five percent of the  
11 market.

12 It's also true that regionally, all the  
13 different -- that most of the materials in  
14 construction projects are purchased within a couple  
15 of hundred miles from where the project is, because  
16 you have to ship these dang things in. So, like  
17 what Joel does at energyLeader, there's a strong  
18 regional piece of that.

19 On the other hand, I met at the airport on  
20 the way out here to come to Washington, the leader  
21 of one of these construction marketplaces and we  
22 were just chit-chatting, and he says you see that  
23 down there, my briefcase, I have ten prospectuses  
24 from my competitors who want to be selling out to  
25 me right now. Money has gotten so tight since

1 these coalitions came in, that they can't get  
2 funding to keep themselves alive.

3 So, this is a well-funded player who has  
4 the ability to do that, and he was flying off to  
5 talk to two of his competitors.

6 MS. LEVINE: Rod?

7 MR. GRAY: Well, I'm a firm believer in  
8 that there will be a consolidation there, and we're  
9 in the phase where there's a proliferation, but  
10 then we will move into the consolidation phase, and  
11 you look in our vertical, there may be ten, 15, ten  
12 to 20 initiatives. No, I don't think there will be  
13 one initiative left in the end and I think, yes,  
14 that there will be new initiatives always coming up  
15 dealing with niche areas within our vertical, but I  
16 definitely believe there will be a consolidation.

17 And I -- the underpinning to that is in our  
18 vertical, any one company in our vertical, either  
19 on the buy side or supply side, could do this. But  
20 it's the economies of scale and bringing it into a  
21 central community, if you want to say, that really  
22 provides the information as well as the capital to  
23 do the R&D to continue the evolution of the  
24 functionality for that vertical. And so by those  
25 dynamics, I do believe there will be a

1 consolidation.

2 MS. LEVINE: And that sort of ties into  
3 something you were saying yesterday. If I've got  
4 it right, I remember that you said that it takes  
5 about \$10 billion of spend to put one of these B2Bs  
6 together, and I think there's \$250 billion of spend  
7 in your industry. Does that mean that we're going  
8 to see 25 or so B2Bs five years from now?

9 MR. GRAY: No, I don't think so. And I  
10 think that -- and again, that number is a -- the  
11 key variable you have to look at in that number is  
12 the functionality that you're trying to build to  
13 deliver. To just deliver auction or baseline  
14 catalog purchasing, it doesn't take that much  
15 spend. But if you look at the overall  
16 functionality that you want to deliver, and I think  
17 that will be demanded by our vertical, that's when  
18 you start getting into those numbers.

19 But, once you cross that hurdle, it creates  
20 more capital that can be plowed back in to create  
21 newer and better and upgrade to functionality. So,  
22 therefore, I don't think there will be 25, I think  
23 there will be much less than that.

24 MS. LEVINE: Five? More, or ten? Can you  
25 give us a ballpark?

1           MR. GRAY: Yes, she wants a number. I  
2 would say it's going to be in the five. But that  
3 doesn't count many niche players that will be  
4 coming up and going away every day as we go forward  
5 in time in the vertical.

6           MS. LEVINE: Morgan?

7           MR. HARTING: I think there are going to be  
8 two.

9           MS. LEVINE: That's what I like, a nice,  
10 firm answer.

11           MR. HARTING: And I've done various  
12 scientific research to support this, which you can  
13 find on the FTC's website, my paper  
14 Business-to-Business E-Marketplaces, A Primer.

15           Two, but it depends how you define the  
16 market. So, in -- there may be hundreds in the oil  
17 industry broadly defined, or 100, but in specific



1 categories, and also specific geographies, as Tim  
2 has pointed out, in an industry like construction  
3 where transportation costs are significant for  
4 things like cement -- in other words, cement is  
5 produced very regionally -- that's where it's going  
6 to matter. But I think when you get down to the  
7 relevant geographic marketplace, and the relevant  
8 product market, there can't be more than two.

9           Because the economy of the -- the economies  
10 of scale are very significant here. It costs a lot  
11 of money, as you guys all know, to get these things  
12 going. And to keep them going. And the economies  
13 of networks are very strong here, too. That is,  
14 the more buyers and sellers you lump together, the  
15 more efficient that marketplace is. So, if you  
16 look to the -- I mean, to think about the future of  
17 where these marketplaces are going for goods and  
18 services, look at the marketplaces for securities,  
19 and for currencies.

20           I mean, they are consolidating like mad,  
21 whether they're buying each [other], or whether  
22 they're linking up through, you know, in a virtual  
23 sense, so you can trade. I mean, look at ADRs,  
24 American Depository Receipts, they're shares in  
25 companies outside of the U.S. that are traded in

1 the United States.

2           So, you have this interoperability model  
3 that you can find in other marketplaces and I think  
4 we're moving in that direction. On the other hand,  
5 while you have economies of scale that are very  
6 strong and economies of networks that are very  
7 strong, you also have a very efficient and  
8 punishing reality of the fact that prices are  
9 transparent on the Internet, and if one -- if you  
10 observe something like a natural monopoly, because  
11 of these economies of networks evolving, if that  
12 marketplace starts abusing its power, it will be  
13 punished very quickly because these prices are so  
14 transparent, and individual suppliers can start  
15 listing prices for their goods independently, and  
16 suddenly that marketplace will lose all of its  
17 value.

18           MS. LEVINE: Mark?

19           MR. WALSH: It's fascinating to respond to  
20 your question. We bought a company called NECX.  
21 They are a bricks and mortar real company with a  
22 warehouse, forklifts and all that and they are an  
23 open or spot market maker in electronic components  
24 based in Peabody, Massachusetts.

25           The spot market for electronic components

1 is about \$7 billion domestically each year. NECX  
2 probably does about eight to nine percent of that  
3 themselves, about \$500 million in transactions, but  
4 will they physically handle the 16 Pente RAMs, et  
5 cetera, and the flash memories, EPROMs, all that.

6 They are, as they call themselves, the  
7 tallest midget at the party, i.e., it's a very  
8 vulcanized and fragmented marketplace, they happen  
9 to be the largest concentration. We purchased  
10 them, i.e., a real company, to webify a portion of  
11 their transactions.

12 The reason I go through this diatribe is to  
13 suggest that if you ask how many of these will be  
14 around in five years, one of the things that I  
15 think you'll see, not that we're necessarily always  
16 right, one of the things I think you'll see is web  
17 companies either owning, acquiring, obviously  
18 they're partnering now, but actually buying bricks  
19 and mortar operations and webifying a portion of  
20 their physical transaction operations, warehouses,  
21 et cetera, to extract costs out of a true bricks  
22 and mortar real company as opposed to web companies  
23 launching, growing, getting funded and creating new  
24 marketplaces.

25 So, I think one of the things that we

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1 haven't necessarily considered today, but is going  
2 on, is this idea of a hybrid model. It is my  
3 contention that in five years there will be no such  
4 thing as a pure Internet company. No such thing as  
5 a pure Internet company. Because in the consumer

1 they be existing or third party logistics, whether  
2 they -- the actual ownership becomes a vertical  
3 integration model or not, clearly the level of  
4 integration is what's going to drive it in the B2B  
5 space.

6 MS. LEVINE: Let me ask you our last round  
7 of questions about how B2Bs make revenue. Is it  
8 transaction fees, is it fees for services offered  
9 by third parties on your exchange, is it  
10 subscription fees, is it advertising, or is it the  
11 kind of consulting services we've already talked  
12 about? Tim?

13 MR. CLARK: Yeah, it needs to be all of the  
14 above. This is how fast things change in this  
15 industry. In February we were advising people that  
16 transaction fees was the way to go, because as your  
17 volume goes up, you get more and more transaction,  
18 you get bigger fees all the time.

19 Well, what turned out since then is the  
20 fact -- the transaction fees are actually shrinking  
21 as a percentage as you get more competition in this  
22 marketplace. If the first player is getting four  
23 percent, the second mover in that marketplace will  
24 come in at three and pretty soon you have them  
25 trickling not to zero, but towards zero.

1           So, it's really important for the  
2 marketplaces to have subscription revenue, to do  
3 these data sales that I was talking about. There's  
4 a whole bunch of other things, because -- and the  
5 transaction fees may be small, but it is absolutely  
6 necessary for the marketplaces to own the  
7 transaction because everything plays off that. If  
8 you don't -- if no one is transacting in your  
9 marketplace, even for free, then you don't get --  
10 you don't have a market.

11           MS. LEVINE: Robert, do you -- you don't  
12 charge subscription fees. Is that right?

13           MR. VERLOOP: No subscription fees, but we  
14 do a transaction fee to the supplier.

15           MS. LEVINE: And is that the sole source of  
16 revenue for your B2B?

17           MR. VERLOOP: Currently that's the major  
18 one, and Tim makes a very good point. It is all of  
19 the above, and each one of them will shift a little  
20 over time as the marketplaces mature.

21           We see considerable pushback right now from  
22 the industry, because the suppliers see it as an  
23 added value, because the entire loop of integration  
24 has not been completed because it is still in the  
25 very early stages. We think that will change very

1 quickly in the next six months to a year, we're  
2 going to see, you know, tremendous pick-up on the  
3 technology.

4 Transaction fees will become, I think, one  
5 of the big consulting companies, I'm not sure which  
6 one, because I don't want to get hit, but one of  
7 them said that transaction fees will become like  
8 email, it will be free eventually. So, then, it  
9 really is part of the question of how many  
10 marketplaces will there be, it's going to come down  
11 to the marketplace or the overall larger  
12 marketplace will decide where the value proposition  
13 is.

14 If you can bring value-added services such  
15 as integration, such as collaborative planning in,  
16 then transaction fees are not going to be the  
17 drivers, you're going to have the value-added, which  
18 attracts very high margin potentials.

19 MR. WALSH: We still make money, a portion  
20 of our revenue pie is advertising. You know, we  
21 tend to forget sometimes that one of the great  
22 media businesses of all time is trade publishing  
23 and trade shows and trade conferences. It's got  
24 the highest CPM, cost per thousand, of virtually  
25 any media business. And as proven in the consumer

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1 Internet access space by Steve Case, get the  
2 audience first and everything else takes care of  
3 itself.

4 And what we've seen in markets that we run  
5 as we attract the audience of buyers and suppliers,  
6 there are really only about 100,000 buyers and  
7 specifiers in the pollution control business  
8 domestically, for instance, and we get about 30 to  
9 60 percent of them in a given month to come  
10 multiple times to our site to get information, we  
11 sell access to those eyeballs, so if you sell the  
12 eyeballs of buyers to suppliers and vice versa,  
13 there are very robust revenue streams in  
14 advertising and promotion, along with the revenue  
15 we make on transactions, both exchange auction and  
16 regular sales, software sales, consulting and other  
17 types of fees.

18 So, I completely concur with Tim that the  
19 answer to what revenue stream will win is all of  
20 the above, because without balanced revenue  
21 streams, I think you're betting too much on one  
22 specific portion of the roulette wheel coming home.

23 MS. LEVINE: Tim, I'm going to let you have  
24 the last word.

25 MR. STOJKA: Thirty seconds, okay. Well,



1 I'm not sounding redundant, but we've been around  
2 since 1995, and having been around, we've tried a  
3 number of different things, and what we've found is  
4 that yes, depending, as Tim said, on the value  
5 proposition of the value you're providing, you'll  
6 have varying revenue streams.

7 So, today we have advertising, as Mark  
8 does. We have consulting fees, we have  
9 subscription fees and we have transaction fees. I  
10 think it's important to have all of the above, and  
11 again, it depends on how your customers want to get  
12 paid, and that depends on the value you're  
13 providing to them.

14 MS. LEVINE: Well, thank very much and  
15 thanks to all our panelists. It's been a very  
16 informative session.

17 (Applause.)

18 MS. LEVINE: We are going to break until  
19 11:00 and then we'll be back here for a panel on  
20 future developments and public policy implications.  
21 Thank you.

22 (Recess in the proceedings.)

23 MS. VALENTINE: Are we ready to sit down  
24 and get going again? Okay, thank you for taking  
25 your seats, we're going to get right under way,

1 since as you all know the discussions have been  
2 heavy and formidable on fascinating, and we will  
3 need very, very brief with our introductions.

4 I'm Debra Valentine, I'm the general  
5 counsel at the FTC, and with me is Michael  
6 Wroblewski, who is in the policy planning office  
7 and has worked ceaselessly in preparing for this  
8 workshop.

9 Starting way over on my right is Jere  
10 Glover, who is the chief counsel for advocacy at  
11 the Small Business Administration, and it is really  
12 small businesses official advocate in Washington,  
13 but has many private experiences in Internet areas.

14 Next we've got, let's see, it's not Sham  
15 Sunder next -- oh, it's Andy Whinston, okay, who is  
16 the head of everything down in Texas, I think, a  
17 director of the Center for Research in Electronic  
18 Commerce and a Professor of Information Systems,  
19 economics and computer science in Austin.

20 Then we've got Professor Shyam Sunder, the  
21 Jerome Frank professor of accounting, economics and  
22 finance at Yale University.

23 Immediately next to me is Meg  
24 Guerin-Calvert, familiar to many of you in  
25 Washington and a principal at Economists, Inc.

1           Moving to the left now, we've got Catherine  
2 Mann, who is a senior fellow at the Institute of  
3 International Economics.

4           Next down the line is David Lucking-Reiley,  
5 an assistant professor of economics at Vanderbilt  
6 University.

7           And finally, Robert Parker, who is the VP  
8 for B2E commerce strategies at AMR Research.

9           We've got a wide range of experience here,  
10 I was going to tell you how everybody had at some  
11 point gone to Yale or MIT or something, but it's  
12 just not -- look at your book, they're all very  
13 good and very smart.

14           We're also going to slightly restructure  
15 the series of questions that we have facing our  
16 panel today and try to break it down into two  
17 general areas, focusing initially on competition  
18 between and among networks and how this will be  
19 evolving in the future, and as a subset of that,  
20 what we can learn from other networks that have  
21 been in operation in the past and then move to the  
22 future developments area, our major question, which  
23 is number 7, but then subsume under that some of  
24 the issues of standard setting, innovation, whether  
25 and how uber e-marketplaces will be developing, and

1 what this means also globally for people and firms  
2 participating from outside the United States.

3 One last thing for all panelists, while we  
4 may point to someone to lead off the discussion on  
5 any particular matter, when you want to talk, you  
6 are to turn your name tag up like a flag, just like  
7 we do in international organizations, and we will  
8 call on you.

9 Ready to shoot. Okay? So, why don't we  
10 start with what has been given to us as question 4,  
11 but is looking at likely scenarios for how B2B  
12 electronic marketplaces will be competing with each  
13 other. Does this depend on the industry involved?  
14 Are there situations in which network efficiencies  
15 dictate that a single B2E marketplace will be  
16 dominating a particular industry. And I guess  
17 Professor Sunder, would you mind starting off on  
18 this and then we'll let some others, maybe Mr.  
19 Parker and others chime in.

20 The one other thing is, if -- well, no, I  
21 guess since we don't have exactly seven questions  
22 now, I was going to say before we would have  
23 literally 10.7 minutes per question, I think this  
24 way we'll let it flow and see how the dialogue  
25 develops.

1           MR. SUNDER: Thank you. In most cases,  
2 Federal Trade Commission considers a state of  
3 competition in the market for a given good or  
4 service. In this workshop, we are concerned with a  
5 state of competition in the market for markets.

6           A primary tension in this market is between  
7 the advantages and disadvantages of monopoly and  
8 competition in the market for markets. If a given  
9 commodity can be traded only in one market, as was  
10 pointed out in an earlier panel, also, all buy  
11 orders have opportunity to meet all the sell  
12 orders, assuring the buyers that they will find the  
13 best seller and assuring the sellers that they will  
14 find the best buyer.

15           Thus, if there is no competition in the  
16 market for markets, all traders will have the  
17 advantage of getting the best possible price. And  
18 given the high volume of such a market, the price  
19 is likely to be the most informative price, and  
20 therefore economically the most efficient price.

21           The advantage -- this advantage of a  
22 monopoly in the market for markets has its own  
23 cost. The absence -- in absence of competition for  
24 the order flow in such markets -- cannot expect it  
25 to be managed efficiently. Because there's little

1 pressure on those who manage such markets --  
2 monopoly markets to innovate, minimize cost or cut  
3 fat.

4 So, the transactions costs they impose on  
5 the traders in such markets will tend to be high,  
6 and they may well rise with time, rather than fall  
7 over time with technology. So, a primary policy  
8 issue for Federal Trade Commission may be to make  
9 judgments about what may be the right balance  
10 between these two forces of monopoly and  
11 competition in the market for markets and how to  
12 strike that balance.

13 And an important issue in keeping a  
14 competitive market in this markets is to examine  
15 the rules of the electronic exchanges for attempts  
16 to limit the ability of participants to move their  
17 business across markets. Again, which was pointed  
18 out this morning. I would think that FTC and the  
19 Department of Justice may well -- will be well  
20 suited to play that function in this particular  
21 market.

22 MR. WROBLEWSKI: Does it depend on the  
23 industry characteristics in terms of -- maybe --  
24 network effects, or is it to depend on whether the  
25 particular industry deals with commodity or

1 services -- in terms of striking that balance  
2 between one exchange. I think we heard earlier  
3 this morning, I think it was Morgan Harting said,  
4 that in every industry there's going to be two  
5 exchanges. And I would just like to hear the  
6 reaction of the panelists, you know, what  
7 distinguishes -- what are the distinguishing  
8 characteristics of drawing that balance? Mr.  
9 Whinston?

10 MR. WHINSTON: Let me give some examples  
11 from the financial markets arena. As we all know,  
12 NASDAQ and the New York Stock Exchange are really  
13 markets -- a market of markets, that is, there are  
14 thousands of securities that are traded over the  
15 counter.

16 So, NASDAQ is really composed of lots of  
17 markets, each market trading an asset, in this case  
18 a financial asset. Now, what you have in the  
19 financial markets is the beginnings of competition,  
20 that is NASDAQ faces competition from other  
21 newly-created electronic exchanges, and in fact,  
22 B2B in the financial markets area, or B2C,  
23 depending on who is the participant, to have  
24 Island, Archipelago, and others that are drawing  
25 away volume from NASDAQ, plus you have a company

1 such as Posit, which is a parasitic operation.  
2 That is, what Posit does is says we'll take the bid  
3 as spread on the NASDAQ and we'll give you the  
4 midpoint. So, we'll use the price formation on  
5 other exchanges to give you a less expensive  
6 transactions cost.

7 So, it's parasitic in the sense, as Shyam  
8 indicated, as more and more volume goes to Posit,  
9 the price formation process at NASDAQ is less  
10 reliable, and therefore Posit is less effective.

11 So, the reaction of these exchanges in  
12 dealing with competition is to push for changes in  
13 the copyright law. So, exchanges now want a  
14 copyright that is controlled as an asset, the  
15 prices are deformed. So, if people at Posit want  
16 to use those prices, they would have to pay a fee  
17 to NASDAQ, and then in NASDAQ's view try to  
18 rebalance that relationship.

19 So, for markets, it's important to have  
20 liquidity, either in network externalities, meaning  
21 the more in the market, the better the market will  
22 function and the more people want to join that  
23 market, but on the other hand, it leads to a  
24 monopoly situation and leads to less innovation.

25 The New York Stock Exchange being a prime



1 example of an organization which has failed to  
2 innovate in terms of still having a trading floor.

3 So, this is new area in my view in  
4 economics, that is economic theory presupposes a  
5 beneficial operation of a market that is the  
6 Volrasian market as operated on behalf of buyers  
7 and sellers, and nobody makes any money off of it,  
8 just the buyers and sellers benefit.

9 So, it's an issue that doesn't arise in  
10 economics, but arises in the real world, most  
11 recently in financial markets, and certainly will  
12 carry over to these commodity markets that have  
13 been recently created.

14 MR. WROBLEWSKI: Thank you. Bob?

15 MR. PARKER: Thank you. AMI Research  
16 tracks approximately 700 funded independent  
17 exchanges, both horizontal and vertical, as well as  
18 a number of consortia and private exchanges. And I  
19 feel that they're competing today on the basis of  
20 gaining participants, gaining liquidity.

21 Once they have that volume through the  
22 exchanges, they'll begin to compete on the basis of

1 lot more value that can be added on top of that.

2 We see the ultimate future for these sets  
3 of exchanges growing to probably close to 2,000  
4 exchanges, but consolidating to two or three in  
5 each large umbrella market. So, your classic  
6 four-digit SIC code-type market.

7 Off of that, there will be created an  
8 eco-system that will provide a lot of opportunity  
9 for smaller niche exchanges to plug into those  
10 large exchanges. For example, there's an exchange  
11 called Shipchem that specializes not just in  
12 logistics, but the challenges of shipping chemicals  
13 all over the world and all of the regulatory  
14 requirements.

15 So, while they will be a key part of many  
16 chemical exchanges, they will create their  
17 exchanges off the eco-systems created by the larger  
18 ones.

19 MR. WROBLEWSKI: Thank you. Meg?

20 MS. GUERIN-CALVERT: I would like to build  
21 on the answers and answer your question as well  
22 about industry specific. I think if we take a step  
23 back, listening to these answers and those this  
24 morning, the likely future as to whether or not in  
25 any given industry context there will be multiple

1 B2B networks really comes down to what we've heard,  
2 which is the ability and the incentive of  
3 participants in a B2B to participate in more than  
4 one B2B.

5           And I think the other feature is very much  
6 the type of B2B that's involved. Whether it is, as  
7 we've heard, the creation of a marketplace or an  
8 auction environment, whether it's for financial  
9 services or for commodities, whether it is a more  
10 vertical arrangement between manufacturers or

1 where we'll see multiple exchanges is where you  
2 continue to see proprietary networks where an  
3 individual manufacturer or purchaser continues to  
4 want to have its own vertical relationship with a  
5 host of suppliers as compared to circumstances as  
6 have been talked about where you have a tendency to  
7 have a joint venture or connection among the  
8 purchasers for arrangements.

9 In terms of practical ability to switch,  
10 again, if there are more regional characteristics.  
11 We heard this morning about the construction  
12 industry where there's going to be the incentives  
13 of certain local suppliers to be on just a given  
14 local network. But again, as in the ATM industry  
15 context, there may be some banks that choose to be  
16 in just, as in this area, in most, but those who  
17 are on the geographic fringes of this area, want to  
18 and actually belong to multiple ATM networks, hence  
19 facilitating the ability to switch volumes back and  
20 forth on those exchanges.

21 But I think the most important factor as to  
22 whether or not we'll see few, is if there are  
23 significant network externalities. And the two  
24 most important ones, I think, are on the demand  
25 side, where there are substantial gains to having

1 the maximum number of participants pooling their  
2 information and their interactions on a given B2B,  
3 or where in order to create a sufficiently liquid  
4 marketplace, you need to have one.

5 But even in those contexts, I think if we  
6 look out there we can see circumstances where  
7 nonetheless there have been competing exchanges,  
8 which may have non-overlapping membership, but may  
9 compete aggressively for the business to be listed,  
10 for example, on the New York Stock Exchange as  
11 opposed to listed on NASDAQ.

12 So, I think that also would promote more  
13 exchanges.

14 MS. VALENTINE: Over with David  
15 Lucking-Reiley.

16 MR. LUCKING-REILEY: Thank you. I've been  
17 studying online auctions for a long time by most  
18 people's standards, since about 1994, and I've been  
19 very interested in market -- different types of  
20 market mechanisms used.

21 And I think when you look at this question  
22 of how many markets are there going to be competing  
23 with each other, one thing that we don't know yet  
24 is what kinds of market mechanisms are they going  
25 to use, and I think that that is going to be an

1 important determinant of industry structure.

2           So, to give you an idea what I mean. I  
3 think implicitly a lot of people have in mind that  
4 there are going to be some kind of double auction  
5 going on with bids and asks and the market is going  
6 to clear. But it's not obvious that that is going  
7 to be the dominant mechanism in all markets.

8           And if you look at what's actually  
9 happening in B2B marketplaces right now, you'll see  
10 a lot of folks that are doing other kind -- making  
11 other kinds of mechanisms. There are what I'm  
12 going to call brokers in a broad sense, although it  
13 may not be what you traditionally think of as a  
14 broker. By a broker, I mean somebody who doesn't  
15 get involved in the price formation process, but  
16 manages to put a buyer and a seller together. And  
17 there are a couple of different ways that brokers  
18 are doing things online.

19           So, if you take a look at VerticalNet's  
20 different marketplaces from SolidWaste.com to  
21 Bakery Online, you'll see that most of what they  
22 are doing, although they have a little bit of  
23 auction functionality, most of what they are doing  
24 is a referral service that you can get access to  
25 information about a bunch of different suppliers.



1 being where all the buyers are. And this causes  
2 everybody to sort of want to aggregate towards one  
3 place. But if you just have a one-sided auction,  
4 there's less of that going on, because you only  
5 have it going in one direction.

6 And with dealers and brokers, there's also  
7 less of that incentive. So, that's the one point  
8 that I want to make, is that it's completely  
9 unclear what kind of market mechanisms are going to  
10 end up being dominant.

11 And one big difficulty in bringing  
12 business-to-business marketplaces to an auction --  
13 a double auction exchange kind of format is the  
14 difficulty of specifying the product. On financial  
15 marketplaces, it's very clear what a share of  
16 marked stock is, it's not always so clear what is  
17 being traded. Is it grade 2 polyethylene to be  
18 delivered on November 1st, or is it grade 3  
19 polyethylene to be delivered on November 15th. And



1           And although computer scientists are  
2 working hard at this problem, we still don't have  
3 great mechanisms for dealing with multi-attribute  
4 auctions.

5           So, the message that I want to leave is  
6 that the market institutions matter and we don't  
7 know yet, there are a lot of competing ideas of  
8 what kind of market institutions are going to  
9 happen.

10           I also want to interject a small  
11 advertisement, which is that my co-author, Dan  
12 Spulber and I have recently written a paper on  
13 business-to-business electronic commerce, to be  
14 published in the Journal of Economic Perspectives  
15 next year, and we're very interested in getting  
16 comments from anybody who wants to take a look at  
17 it.

18           So, I think there's a -- this is one of the  
19 points that we make in the paper, there are a lot  
20 of other points and we're really interested in  
21 getting feedback on it, so if you visit my website  
22 at Vanderbilt, you're welcome to download the paper  
23 and I'm happy to take email comments.

24           MS. VALENTINE: Let us know, too. Why  
25 don't we move to Catherine.

1           MS. MANN: I'm going to take a slightly  
2 different tact with my comments that are based on  
3 my experience with doing a lot of work in countries  
4 outside the United States, working with  
5 particularly developing countries as they search  
6 for a way to participate more actively in some of  
7 these markets.

8           And to build on, however, the points that  
9 David just made, many of these countries and the  
10 firms in these countries don't participate in any  
11 auctions now. They are attacked -- if they  
12 participate in a supply chain of a multinational  
13 firm, it is on a unitary relationship basis,  
14 possibly through EDI.

15           And therefore to the extent that they have  
16 the ability to move into any type of auction  
17 format, any type of exchange format, it is clearly  
18 superior for those firms and for the welfare of the  
19 people in those countries.

1           So, one of the issues that is relevant in  
2 the global context is that there may be exchanges  
3 -- there may be sort of two levels of exchanges.

4           One level of exchange for participants who  
5 are really at the frontier in terms of their

1 bought before singly, whether it was a good or a  
2 service, plus the location, plus the time of day.

3 And so the notion that a -- an exchange, a  
4 single exchange, could embrace all dimensions of  
5 goods, service, location and time, is certainly way  
6 off into the future. And is not something that is  
7 on the horizon now.

8 There are differences in time zones,  
9 regional exchanges, developed not only because of  
10 geographic, but also because of language, and  
11 because of time. And so that the issue is the  
12 extent to which the regional exchanges or the  
13 locational exchanges or the language exchanges are  
14 made interoperable so that the benefits of  
15 information, of price revelation, in one exchange  
16 has -- is transferred, or is communicated, or is  
17 networked with the other exchanges that exist  
18 within a market, which is either less developed, or  
19 a different language, or a different time zone.

20 And I think that's really the question that  
21 we need to consider when thinking about the, you  
22 know, the beneficial or the issue aspects of  
23 linking up exchanges.

24 MS. VALENTINE: Interesting. Why don't we  
25 circle back to Professor Sunder and then we'll move

1 to you, Jere, and pick up on the small business  
2 aspect.

3 MR. SUNDER: It seems to me that the key to  
4 addressing, Michael, your question about the number  
5 and the structure of the market for markets is the  
6 definability of the commodity that is to be traded  
7 in a marketplace. The markets are likely to evolve  
8 on the basis of what is a standardizable commodity,  
9 or to what extent the commodity that we wish to  
10 trade can be standardized sufficiently to become  
11 tradable.

12 The reason financial markets are our  
13 favorite examples why they developed first is  
14 because securities are perfectly standardized. One  
15 share of General Motors is like another share of  
16 General Motors, and same thing is true of bonds --  
17 not true of commodity futures.

18 Pork bellies, crude oil, you may define  
19 crude contract for Texas crude, sweet crude,  
20 whatever, you know, or re-contract maybe a  
21 standardized in terms of a standard commodity with  
22 detailed provisions for variations from that  
23 standardized lead into various variations.

24 Now, that is not true -- when we move into  
25 a variety of commodities and services that are

1 traded in industry, in various industries, even  
2 within an industry, some things are highly  
3 definable, standardizable and tradable. Others, as  
4 David pointed out, take many, or very large number  
5 of attributes to define what exactly you're  
6 trading.

7           And as the number of attributes goes up,  
8 the tradability of that commodity goes down. So,  
9 it may well be that these exchanges, B2B exchanges,  
10 may develop not along the lines of industry, but  
11 along what is standardizable. And so the markets  
12 may split along those lines.

13           I suspect, as was again pointed out  
14 earlier, we may well end up with perhaps two or  
15 three markets for each kind of commodity, not much  
16 more likely that we'll have 20 markets and  
17 equilibrium after everything is shaken out.

18           Take for example the pharmaceutical  
19 industry, in the drugs market, how many drugs do  
20 you have which actually compete with each other.  
21 You know, there may be large number of  
22 pharmaceutical manufacturers, but their drug for  
23 diabetes doesn't really compete with a drug for  
24 heart disease.

25           You know, for a given ailment, there may be

1     only a couple of drugs that are effectively in the  
2     marketplace, I suspect the same thing is going to  
3     happen in the B2B marketplaces, too.

4             MS. VALENTINE:   Jere, why don't you --

5             MR. GLOVER:    Sure.  I think there's a  
6     couple of things that -- basic premises that go  
7     into this.  One is technology will determine how  
8     the markets function in the future.

9             We often forget when we're spending so much  
10    time thinking about the Internet, it practically  
11    for commercial purposes didn't exist a decade ago.  
12    The changes that have occurred are only the  
13    beginning, so we'll see changes that make things  
14    happen that we don't even envision at all today.

15            Having said that, I've been involved in  
16    developing two different Internet marketplaces, one  
17    is the Angel Capital Electronic Network called  
18    Acenet, which is for Angel Investing, the other is  
19    ProNet, which is a procurement network, originally  
20    envisioned for small businesses to work with the  
21    government.  The interesting thing is the private  
22    sector has taken that now and run with it more so  
23    than we thought that the government has.

24            It's 200,000 small businesses, all  
25    registered, and what we're finding is that

1 marketplace, by providing basic information, is  
2 even working internationally, and we're finding  
3 companies begin to use that.

4           We have to recognize that there's some  
5 basic fundamental shifts, and when you're talking  
6 about commodities, and you're talking about the  
7 manufacturing sector, there's been a tremendous  
8 shift away from that to service, which is where the  
9 basic growth has been, and now we're seeing even



1 MS. GUERIN-CALVERT: I just wanted to add  
2 that I think given this exchange, one of the things  
3 that is more likely a development is we'll see the  
4 development of different kinds of B2Bs in different  
5 kinds of industries, precisely for the reasons that  
6 we've just heard, that in those areas where it's  
7 very difficult to standardize, the goal may  
8 actually be to be improving on the use of paper,  
9 phone, fax, and other means of communication to  
10 elicit information as to who is available to  
11 provide supplies.

12 So, in David's model, more of a demand to  
13 have a very efficient broker system to pool  
14 together from across the world available supply,  
15 whether it's in a more limited function of simply  
16 identifying who is available to bid on a particular  
17 contract, even on a long-term basis, versus as  
18 well, perhaps, or instead of the ability to  
19 participate in a spot auction at a given point in  
20 time.

21 So, in industries where the needs are  
22 greatest to have an efficient distribution and  
23 purchasing system, we may see B2Bs develop very  
24 extensively, even if they are not the creation of  
25 what David had referred to as a double auction

1 approach such as might be more prevalent in  
2 financial markets where it is possible to grapple  
3 with the standardization issue.

4 MS. VALENTINE: This is going to get  
5 unfair. I think we're going to take Professor  
6 Whinston and then move maybe to more future-looking  
7 developments and try to address some of our  
8 standardization issues. Unless you guys have such  
9 critical things to add to the current discussion.  
10 Otherwise I'm afraid the audience is going to miss  
11 our wisdom on another whole set of issues. Andy?

12 MR. WHINSTON: Let me make some comments in  
13 general on the B2B area. In the last few days,  
14 people have -- from the various companies,  
15 discussed B2B, and while there's a lot of talk  
16 about markets and auctions, the real value-added  
17 that these B2B companies focus on is automating the  
18 buyer/seller relationships.

19 So, what they've done is gone to the next  
20 generation of EDI, which is based on XML, and done  
21 all sorts of -- potentially all sorts of  
22 improvements in the buyer/seller relationships,  
23 including supporting auctions. And as David  
24 pointed out, in some cases, they introduce a market  
25 and the term is often -- I wouldn't say misused,

1 but used in their way, which would be a -- an  
2 indication that there's somebody interested in  
3 buying some things and here's an indication of the  
4 prices that they're willing to pay or sellers  
5 trying to sell a locomotive and here's what they're  
6 willing to sell.

7           So, it's a way of bringing information into  
8 a marketplace, but there's no suggestion that there  
9 is price discovery. So, it could be in the future  
10 that what we have are B2B companies that do this  
11 automation, and then we have people, companies that  
12 create markets of which these B2B places support  
13 the connection to, such as an E-trade, which links  
14 consumers to the marketplace, the Schwab and so  
15 forth.

16           And then the question is what are these  
17 marketplaces going to look like, and as people

1 that are similar but not the same to have inferred  
2 a value.

3 So, the marketplace then becomes very  
4 liquid on certain commodities, other commodities  
5 then are traded on the basis of that benchmark  
6 commodity, and that's very common in the bond  
7 market, in petroleum, we have the Texas crude  
8 price, but even though I'm a Texas nationalist, we  
9 don't -- we're not the only state in the world that  
10 produces crude, but it becomes a benchmark in terms  
11 of Texas and its location.

12 So, we may be able at some point in the  
13 future to separate B2B, which is hoped-for  
14 automation, with a market function which may vary  
15 from a simple listing, like a real estate listing,  
16 all the way to a more active marketplace.

17 MS. VALENTINE: Okay. The next set of  
18 questions are going to all focus on future  
19 developments, although it's sometimes hard to talk  
20 about a future where there's barely been a past and  
21 little track record to extrapolate from. What we  
22 would like to discuss here are the extent to which  
23 B2Bs will, in fact, be replacing traditional  
24 marketplaces, will they be complementing existing  
25 practices. Are we going to be seeing purchases

1 much more on a spot or short-term basis, rather  
2 than long-term contracts. There's been a little  
3 bit of touching on that. And will we possibly get  
4 the development of some sort of uber electronic  
5 marketplace, allowing all the marketplaces to  
6 communicate with each other.

7           Finally, what does all this mean in terms  
8 of implication for market structure and market  
9 concentration. We've heard sometimes that these  
10 aren't affecting market structure at all, they're  
11 just making everything more transparent. Sometimes  
12 we hear that they are entirely changing market  
13 structures, and changing traditional serial  
14 vertical markets into much more concentric  
15 horizontal networked ones.

16           Let's see, who wants to -- anyone want to  
17 start? We'll give him a chance and then you can  
18 chime in since you just ended. Robert?

19           MR. PARKER: It's probably dangerous ground  
20 for me to talk about economics given our  
21 distinguished panel, but my simple understanding of  
22 microeconomics is companies come together because  
23 the cost of performing transactions internally are  
24 less than they cost to do them externally. And  
25 what the B2B electronic markets facilitate is a

1 lowering of that cost.

2 So, we talked a lot over the last two days  
3 about lowering transaction costs, and transaction  
4 costs are finding somebody to do business with,  
5 negotiating the terms of an agreement, and then  
6 monitoring for compliance with that agreement.

7 What we have found in the past is when  
8 transaction costs get lower, it doesn't necessarily  
9 level the playing field for a lot of participants.  
10 What happens is, the existing relationships become  
11 more complex.

12 So, advanced value chain concepts like  
13 vendor managed inventory, continuous planning and  
14 replenishment, now are enabled because of the  
15 movement of information. So, I think it's very  
16 important that relationships come to the  
17 marketplace and what you'll see is off of the  
18 efficiencies, you'll see much more complex  
19 relationships and opportunities for trades between  
20 large companies to get more solidified, and perhaps  
21 lock out some of the smaller players.

22 Particularly if today their only advantage  
23 is geography or their only advantage is information  
24 arbitrage, in that they have a piece of information  
25 that's not available to the rest of the market.

1           MS. VALENTINE:  Actually, why don't we move  
2 quickly down this side and then we'll pick up with  
3 you and come back.  David?

4           MR. LUCKING-REILEY:  I want to make two  
5 points.  First, you asked about short-term versus  
6 long-term contracts, and again, I think that's  
7 likely to be, you know, spot markets versus  
8 long-term contracts.  I think that's likely again  
9 to vary by market.

10           Short-term contracts may be easier for the  
11 commodities that are easily standardized, like  
12 electricity and oil, and be harder for  
13 R&D-intensive industries such as when General  
14 Motors is trying to develop a new car and needs  
15 vendors to work with them to develop the systems  
16 that will go in it.  Those are going to have to be  
17 much more long-term contracts and are going to be  
18 hard to have spot markets for brand new items.

19           The second point that I want to make is  
20 that one future effect that we may see, if, in  
21 fact, electronic commerce is successful at reducing  
22 transaction costs the way everyone thinks it's  
23 going to, we may see a lot more outsourcing by  
24 firms, and a lot less vertical integration.

25           A favorite story that my co-author likes to

1 tell is that Ford's slogan back at the beginning of  
2 the 20th century was from mine to finished car, one  
3 organization. They were vertically integrated from  
4 the iron mines all the way through.

5 We see a lot less of that today. In fact,  
6 Ford is talking about spinning off its Vistion  
7 subsidiary that assembles systems, and that is one  
8 -- that is one possibly huge effect of lowered  
9 transaction costs.

10 The final point that I want to make is  
11 about the uber markets, and I -- the one point that  
12 I want to make here is --

13 MS. VALENTINE: I think what you call  
14 metamarketplace.

15 MR. LUCKING-REILEY: Metamarket, okay, very  
16 good.

17 MS. VALENTINE: Uber sounds too Deutsche.



1 for a long time, and one thing that's going on  
2 right now is a lawsuit by e-Bay against  
3 Bidders-Edge which is an attempt to be sort of a  
4 metamarketplace, that is they take auction sites  
5 with consumer auction listings and have a  
6 metasearch so that if you're interested in buying  
7 an Elvis plate, you can type in what you're looking  
8 for and it will search the listings not just at  
9 e-Bay, but also at Amazon Auctions and Yahoo  
10 Auctions and Box-a-lot and City Auction, and show  
11 you all of the listings.

12 Well, if this can happen, now you've taken  
13 away a lot of the network effects, the sort of  
14 economies of scale that e-Bay enjoys. Because it's  
15 no longer necessary for everybody to go to -- all  
16 the sellers to go to e-Bay to find where all the  
17 buyers are. If all the buyers are using a  
18 metasearch engine, now they could find you even if  
19 you were on Yahoo Auctions and maybe you would like  
20 to do that because they have lower fees there.

21 So, e-Bay has sued that they own the  
22 intellectual property of their auction listings,  
23 and even though they're freely available on the  
24 web, they can't be redirected. So, this is a  
25 potential point of concern, that this matter of

1 intellectual property needs to be sorted out before  
2 we know the answer to the question of how well shop  
3 bots are going to help level marketplaces.

4 MS. VALENTINE: Well, and it may be like  
5 Andy's earlier point that in terms of increased use  
6 of patents to protect these very investments.  
7 Catherine?

8 MS. MANN: I just want to, again, come back  
9 to sort of in my view, what we've been talking  
10 about here and what are critical issues for the  
11 future of B2B exchanges is can we standardize the  
12 commodity. I say no. Generally speaking, across  
13 all these markets, most of them will not be  
14 standardized commodities, because they will be a  
15 bundle of whatever it was, the tool and dye thing,  
16 and the delivery, which still matters, unless it's  
17 software, and maybe even then the delivery matters,  
18 because it will matter over what broadband network  
19 or copper line network it's going to be delivered,  
20 so the fault rate. So, we don't have standardized  
21 commodities, so it will be difficult to come up  
22 with exchanges.

23 Secondly, we don't have standardized  
24 technologies, nor standards -- standardized  
25 standards. Maybe in the United States we have

1 that, but certainly around the world, we do not.  
2 And the difficulty of coming up with interoperable  
3 standards across different governmental  
4 jurisdictions is a very major issue in terms of  
5 thinking about the network externalities that we're  
6 going to enjoy as the final consumers of these  
7 things, and then finally something that I think we  
8 haven't really addressed here is standardized  
9 buyers.

10 Buyers are very different in terms of what  
11 they want. And you have to have a standardized  
12 buyer for an exchange -- for a single exchange to  
13 develop.

14 So, I think that the model rather than --  
15 and even in the metamarket, because uber makes it  
16 sound like a pyramid, which I think is definitely  
17 not the model that you want to be thinking about  
18 here. There's no pyramid, but there's a set of  
19 revolving markets that are linked in with each  
20 other.

21 They are striated by the degree to which  
22 you can standardize the commodity, the time frame,  
23 the location. They are striated over the degree to  
24 which the technology is or is not standardized  
25 across the marketplaces and the users of the

1 marketplaces. And they are not -- they are  
2 striated across the differences in the  
3 characteristics of the buyers.

4           The countries that I have been working in,  
5 and it includes Europe and Japan, I'll do my little  
6 marketing thing here, too. I have just sent it off  
7 to the printer today, the global electronic  
8 commerce, a policy primer that will be available  
9 on July 13th from the IIE website, which goes  
10 through a number of other issues beyond this  
11 intellectual property, beyond these issues of  
12 standards to address taxes and so forth.

13           But the point is, is that there are many  
14 different characteristics of buyers, sellers and  
15 technologies in the global marketplace. And the  
16 notion that there's one exchange that can  
17 incorporate all those -- all that dimensionality is  
18 something I don't think will ever exist.

19           So, as an economist, if we're thinking  
20 about what market structure we think about as being  
21 driving this market, it's not auctions, it's not  
22 the wild ball raging auctioneer, it's very much a  
23 monopolistic competition type environment because  
24 of these very many different characteristics,  
25 effectively each demand curve is unique. And each

1 supply curve is unique.

2 It doesn't mean buyers and sellers get to  
3 meet each other and find a price, but it means that  
4 there's a lot more variation in the way the  
5 marketplace is developing than I think has been  
6 suggested so far here today.

7 MS. VALENTINE: That may be healthy, we  
8 won't all be little robots. Professor Whinston?

9 MR. WHINSTON: Okay, let me make some  
10 comments. I agree that in most commodities are not  
11 standardized, but there is a push, because of the  
12 interest in customizing to the end consumer by  
13 companies in the automobile industry, in the  
14 computer industry, to develop standards so that  
15 they can operate within these marketplaces to deal  
16 with just in time and material and all these other  
17 buzz words that has managed their supply chain more  
18 effectively so they can offer to the consumer more  
19 customizing of the product.

20 Dell was -- is reknowned for pushing this.  
21 GM and the other automobile companies want to offer  
22 to the consumer more customized cars. So, there is  
23 a push in this direction, how far it will go, you  
24 know, I don't know, but clearly, you need a common  
25 commodity, a standard commodity, to define a

1 market. Otherwise you're dealing in terms of  
2 developing the relationship, a negotiated  
3 environment. Of course these B2Bs are in effect  
4 more focused in my view in supporting negotiation.

5 Now, on the issue of bundling, which is  
6 sort of the idea of futures markets, I was talking  
7 with a natural gas B2B company in Houston, and what  
8 they do is they allow the creation of a market in  
9 the sense of this referral, people can list natural  
10 gas available, and other people will just sit and  
11 buy natural gas.

12 And I mentioned the issue of  
13 transportation, why don't you integrate into the  
14 marketplace the transportation. Because right now,  
15 they get a preliminary deal, and then people scurry  
16 around to see if they can find pipeline capacity or  
17 other capacity to deliver at a reasonable price.  
18 And if they can't, they move out of the deal.

19 So, it's a very cumbersome operation,  
20 because the market as its viewed is a market that  
21 the economists have written up in the textbooks,  
22 and this is where the B2B people go to, to find  
23 some ideas, but it's really a much more complicated  
24 market. It resembles a market that was used by the  
25 FCC in auctioning a spectral frequency, that is we

1 have complementarity.

2           And if you think of supply chain in  
3 general, if you're an automobile manufacturer, you  
4 want to go into -- you want to go in and buy a  
5 collection of products, of inputs, you want to buy  
6 tires, chassis, door, things like that, in some  
7 combination that let's you keep your factory  
8 operating.

9           So, if you go into one market and you're  
10 successful in buying lots of tires, but you can't  
11 get brakes in the other market at a price that you  
12 were hoping to, or there just isn't the available  
13 supply, then you're kind of stuck. You have what  
14 people call an exposure risk, you have an  
15 unbalanced inventory.

16           So, in my view, in terms of the future,  
17 we're going to have to look more at more  
18 complicated -- to the extent we're going to use  
19 markets, in whatever form -- more complicated  
20 market structure that supports bundling, that is  
21 people are trading not a commodity, but  
22 combinations of commodities.

23           And the other thing is, in terms of futures  
24 markets, people have mentioned we may introduce  
25 futures markets, and they may be useful in certain

1 circumstances. It should be pointed out that  
2 futures markets are, again, indications. That is,  
3 in futures for wheat, for example, nobody ever  
4 takes delivery, or maybe once in ten years where  
5 somebody makes a mistake and they suddenly end up  
6 with a lot of wheat, but it's really a market to  
7 indicate to people what are the events in terms of  
8 the consensus of market participants that would  
9 lead to, let's say, a significantly different price  
10 in wheat 90 days from now.

11 So, it tells people something about the  
12 consensus view of the world. It's an informational  
13 object that presumably makes the economy operate  
14 more efficiently. And these markets are traded,  
15 but never any delivery takes place. And we may see  
16 that in B2B, and, for example, in -- it's possible  
17 in various kinds of memory components, it may be  
18 useful for companies to see some future price  
19 indication which would impact their pricing of end  
20 products to the consumer, or would affect the  
21 producer's interest in rescheduling their



1 decentralizing supply chain, markets, prices, seems  
2 to me a very much futuristic area, and I think the  
3 B2Bs, the companies that try to survive in an  
4 uncertain stock market environment, I think that  
5 they focus, probably rightly, on automation and  
6 make probably relatively scant investments in  
7 markets, although it probably has a certain sizzle  
8 in the market -- in the financial marketplace to  
9 talk about markets, but I think it's more talk than  
10 reality.

11 MR. WROBLEWSKI: Thank you. Professor  
12 Sunder, before we turn to you, I hope you can  
13 address one question that we've been talking about,  
14 or that was actually raised in the previous panel  
15 on owners. What we've been talking about here is  
16 future developments within the industry, and I  
17 would like to, if you could, focus your comments on  
18 a possible future development within the operations  
19 of a B2B.

20 One of the concerns that we had, or one of  
21 the concerns that was raised in the previous panel,  
22 was ensuring -- it was privacy -- the notion wasling -, Ifutuðs

1 information, and I think the discussion centered on  
2 the notion of, well, it all depends on what's in  
3 the contracts -- well, if you're trying to --  
4 contracts between the suppliers and the buyers, and  
5 then the B2B itself, and that the owners and  
6 operators really don't -- that really doesn't  
7 matter.

8           If you're trying to increase or to attract  
9 new buyers and suppliers, is there a type of  
10 trust-building mechanism or auditability that can  
11 take place that would be a selling point to these  
12 exchanges so that there would be -- especially in  
13 fragmented markets, where you have a variety of  
14 buyers and sellers that you want to join in -- so  
15 you can have the liquidity to build that trust  
16 among unknown buyers and sellers doing business on  
17 an exchange.

18           MR. SUNDER: Thank you, Mike. Wonderful  
19 thing about technology is that over time, it makes  
20 itself invisible. If we take ourselves back 125  
21 years, maybe, and think of an FTC workshop -- did  
22 FTC exist at the time? Maybe not.

23           MS. VALENTINE: 1914.

24           MR. SUNDER: On B2B markets, telephone  
25 markets, after introduction of telephone -- of

1 course today we don't think that markets need to be  
2 organized by telephone technology. Telephones  
3 simply got integrated into the way we do business.

4 The same thing is -- I think is likely to  
5 happen with other new technologies, including  
6 Internet. But as you pointed out, the effect of  
7 this technology and the structure of how we do  
8 business may have to do with creating these -- use  
9 this technology to create sites or mechanisms,  
10 institutions, which will actually attract  
11 participants by building -- earning their trust.

12 By -- I find too many sites, personally,  
13 which are too clever by half, which try to fool the  
14 participants, or they're not transparent enough.  
15 They don't make clear the rules of the game. They  
16 do not respect the participants enough to encourage  
17 them to go back. I think that's a losing strategy  
18 for B2B exchanges. That's my personal view.

19 Sooner or later, the exchanges which will  
20 survive in the shake-out will be ones which earn,  
21 and deservedly so, the trust of the participants,  
22 perhaps through an audit mechanism, an operational  
23 audit mechanism.

24 With respect to audit we can talk about its  
25 scope to make sure that participants know that the

1 rules of the exchange are transparent -- they are,  
2 in fact, being implemented and being enforced --  
3 that the privacy policies of these exchanges are  
4 made explicit, not simply saying on the front line  
5 we have privacy policy and it has been audited,  
6 once you go into the details, you find a privacy  
7 policy basically says we can give the data to  
8 anybody and we don't know their privacy policies.  
9 You know, which is sort of no privacy policy.

10           And this is, of course, this kind of  
11 operation audit will have to be distinct from  
12 financial audit that we are familiar with. Perhaps  
13 the auditors will have to have access and control  
14 over the software and operations of such exchanges.  
15 We'll have to develop some kind of standards of  
16 audit so the audit will be credible to the  
17 participants.

18           I know the Institute of Internal Auditors  
19 has various types of standards, perhaps some of  
20 those standards might are beginning to develop  
21 auditing standards to develop credibility for this  
22 industry.

23           Who should be the auditor's client? Who's  
24 the master that the auditor is going to serve?  
25 Will it be the owners? Will it be the

1 participants? Will it be all of the above? And I  
2 suspect that it will have to be all of the above.  
3 Who will take account from the auditors what will  
4 be the governing and reporting mechanism for the  
5 auditors so the audit report that these B2B  
6 exchanges are actually functioning the way they are  
7 supposed to, they are protecting their rights,  
8 information, privacy, the rules of all the  
9 participants in the appropriate way. That I think  
10 is what is going to determine who is going to  
11 survive in the shake-out and who will deservedly  
12 earn the interest of the parties involved.

13 MS. VALENTINE: That's interesting in  
14 light, actually, tying also to the ability of small  
15 businesses to participate and/or international  
16 people. Should I take you first? It's sort of  
17 your turn if you want to go now. Do you want to go  
18 now and then we'll quickly get you.

19 MS. GUERIN-CALVERT: Why don't we have  
20 Catherine go first.

21 MS. VALENTINE: All right, go ahead,  
22 Catherine.

23 MS. MANN: It's like the two-handed, right  
24 -- intervention or the privacy. Well, obviously we  
25 already have a situation where there is a

1 difference of views of government on the  
2 appropriate handling of private information.

3           The EU and the U.S. do not have the same  
4 strategy for handling private information. And I  
5 think the question that drives -- you know, where  
6 that comes from, is just a very different attitude  
7 on the part of the "buyers," meaning the  
8 constituents who elect their governments, very  
9 different attitudes on what governments ought to be  
10 doing.

11           The Europeans think that the European  
12 directive on privacy is the best approach to  
13 abiding by their views on what is appropriate  
14 privacy policy. The U.S. is not there, some say  
15 it's going to get there, but it's not there yet.  
16 And actually, I'm not sure that in the United  
17 States, that if you did have a collective view of  
18 the citizenry, or firms, whichever one you want to  
19 pick, on the appropriate course of privacy, that  
20 they would choose a European approach. I'm not  
21 sure they would.

22           But nevertheless, we have -- we will -- if  
23 we have a global B2B exchange, which of course we  
24 already have that in, you know, functionally in  
25 financial information, it is now being pulled apart

1 by two alternative strategies for satisfying the  
2 objectives of the citizenry for their private  
3 information.

4 Will that become a trade barrier that then  
5 has to be negotiated? Will there be private firms  
6 who act effectively as insurance agents, which is  
7 not the model that I think is being considered now.  
8 But yet there are firms that are standing up to the  
9 plate who will serve as the "insurer" that U.S.  
10 firms abide by European privacy standards.

11 MR. WROBLEWSKI: Let me interject a  
12 question, is it the same for business privacy in  
13 terms of --

14 MS. MANN: Yes.

15 MR. WROBLEWSKI: -- what we've been talking  
16 about has been consumer privacy. Is it the same  
17 for -- I mean, sales data, cost, price, all that  
18 type of information, which is more of concern in  
19 these types of marketplaces?

20 MS. MANN: Yes. It devolves to the same  
21 set of problems. The devolution of how much  
22 information can you reveal and what you can do with  
23 it exists most strikingly, as you say, on the  
24 consumer level, but on the producer level as well.

25 MS. VALENTINE: I guess I would argue that

1 we've resolved issues at least temporarily a bit  
2 more with respect to the safe harbor, but let's go  
3 to Meg and I won't --

4 MS. GUERIN-CALVERT: I was just going to  
5 say, there are a number of questions that are on  
6 the table, and one of the things that strikes me  
7 about Michael's second to the last question with  
8 respect to how are B2Bs going to be operating and  
9 functioning is I think what we are going to see is  
10 more of an evolution in what the operating rules of  
11 various B2B structures are. To really -- you know,  
12 to the extent there is a perceived demand on the  
13 part of the participants in a given network, to  
14 have assurances about the quality of the particular  
15 bidders or suppliers, not only in terms of their  
16 overall quality to even participate and to list  
17 information, but to the extent it's a repeat market  
18 environment as to whether or not they have indeed  
19 delivered on the commitment that they made, whether  
20 it was within the marketplace or afterwards.

21 It would seem to me that the operators of  
22 the network, if they are the ultimate purchasers,  
23 have the incentive to set up a set of participating  
24 rules, which are not all that different to what  
25 list serves set up to ensure that the participants



1 are actually behaving appropriately.

2 One of the things that we haven't talked  
3 about is we've been assuming largely that all of  
4 these networks are open to everybody who logs onto  
5 the Internet. A number of them really have to go  
6 through a couple of stages, and as a result, it's  
7 easier for the entities to control quality, to  
8 expel members who are not being appropriate, while  
9 trying to balance off having the maximum number of  
10 potential suppliers available.

11 And also I think to put caveats as to  
12 whether this is simply facilitating search,  
13 allowing a possible match, but not in any way  
14 guaranteeing the quality of the outcome.

15 And I think that goes to David's point as  
16 to what's the incentive and what's going to be  
17 driving the connections among networks? My sense  
18 is that if we're looking at the supply channel  
19 ones, which are inherently aimed at trying to  
20 maximize the ability to clear markets, to do spot  
21 purchases, if possible, but not to move all the way  
22 to that, to find out about quality suppliers who  
23 may be in other countries, there may well be an  
24 incentive to link together U.S. North American  
25 networks with European, with Asian, to enhance for

1 everybody the quality of supply, and that's, again,  
2 controllable and in the incentive of the network.

3           The harder part is the issue that David  
4 mentioned, which is most of the exchanges which are  
5 more B to consumer than B2B, but some are B2B as  
6 well. Those are ones where the consumer or the  
7 business can log onto the Internet and do the  
8 search themselves. They can look among each of the  
9 proprietary networks for the best price for a given  
10 computer. And can develop software themselves at  
11 home to search among a whole variety of networks  
12 and come up with the best possible price, then  
13 click on the particular location, make the  
14 purchase.

15           So, they have taken into account that there  
16 are several marketplaces or entities that they  
17 could have purchased from, that demand for  
18 companies to develop that software for either  
19 consumers or businesses is going to exist. And I  
20 think the hardest thing is balancing off the  
21 sustainability of the individual exchanges and what  
22 they're doing in terms of property rights with  
23 facilitating the ability to search among  
24 marketplaces. Because, for example, to the extent  
25 there were two sustainable marketplaces for cement,

1 regional suppliers and somebody -- that purchaser  
2 is sitting on the border between the two, you would  
3 really like that person conveniently to be able to  
4 search between the two readily.

5 So, it is just balancing between whether we  
6 call it intellectual property issues, or other such  
7 issues, is trying to allow the benefits of what the  
8 Internet can provide, and what software search  
9 engines can provide to enhance for the purchaser  
10 the ability to search among marketplaces.

11 MS. VALENTINE: Jere Glover?

12 MR. GLOVER: I think wanting to -- I want  
13 to go back to a couple of questions that I think we  
14 need to really focus on from a competition and  
15 thereby small business point of view, because small  
16 business and competition seem to always sort of go  
17 together.

18 Small business is amazingly adept at change  
19 -- adjusting to change and making whatever  
20 marketplace and whatever circumstance work, but we  
21 run into a real challenge as some of the systems  
22 are set up and some of the markets are set up to  
23 limit who's in those marketplaces.

24 I think the traditional antitrust criteria  
25 are going to need to be continue to be enforced. I

1 think where you have a dominant market, that is in  
2 control, that we have a real problem there. And I  
3 think the technology, just because it's on the  
4 Internet, doesn't mean someone should be able to  
5 exercise monopoly power to the exclusion of  
6 competition.

7           And the real challenge for the Federal  
8 Trade Commission and the Department of Justice is  
9 going to be as the market changes so fast, as  
10 technology innovation changes so fast, to keep up  
11 with it so that whenever anyone tries to solidify  
12 their dominant position, or their dominant position  
13 becomes too powerful, that competition is brought  
14 back into the marketplace.

15           If we don't preserve competition, then the  
16 market cost, the transaction costs will go back up,  
17 and innovation will stop dead, and in an area of  
18 innovation and rapid technology change, that's  
19 here, that becomes even more important.

20           MS. VALENTINE: A competition enforcer  
21 can't disagree with that. Maybe final comments,  
22 and then we'll let people escape for lunch.  
23 Professor Whinston?

24           MR. WHINSTON: Just some final comments on  
25 the structure of B2B. Again, I see markets as

1 having these economies or network externalities so  
2 that it's important if we have multiple markets  
3 that there be open access. Either through  
4 individuals who participate in the market or  
5 through people who do arbitrage for a living.

6           At the same time, the B2B people are mainly  
7 focused in terms of whatever revenues they  
8 generate, in this automation, which in my view  
9 could be bringing a customer to this central place,  
10 be it a market, auction, some kind of referral  
11 service. Offering them various services, again,  
12 sort of thinking of the E-trade versus the Schwab  
13 or others.

14           So, you get various services as you are a  
15 customer of a certain company that takes you to

1 important, and we raise the issue of privacy, and  
2 that, of course, is a balance. There are a lot of  
3 financial traders who would love to have privacy in  
4 what they do, and some of them have gone to jail  
5 because they tried to achieve privacy in a world  
6 where the Securities Exchange felt these things  
7 should be made public.

8 So, I see a future where the B2Bs will do  
9 automation, where other companies, even let's say a  
10 NASDAQ may decide to open up a place that does this  
11 central organization of information so that buyers  
12 and sellers have useful information and can carry  
13 out efficient trades or efficient negotiations, and  
14 then we'll have to deal with these privacy  
15 disclosure issues, which I think are very critical  
16 and very strong arguments on both parts -- both  
17 points of view -- but they need to be resolved  
18 because otherwise the system will break down.

19 We can't have a U.S. B2B environment or  
20 European B2B, because that's not the idea of the  
21 Internet. We're really talking about getting rid  
22 of national boundaries, certainly from an economics  
23 point of view.

24 So, if we start limiting these things, I'm  
25 not even clear how to do it from a technology point

1 of view. But if we start limiting these  
2 environments because of differences in regulations,  
3 we run into probably an unproductive use of this  
4 Internet technology.

5 MS. VALENTINE: Okay, and I'm give one  
6 minute to each of your colleagues. Why don't we  
7 start with Robert Parker and then Shyam and then  
8 Meg.

9 MR. PARKER: Very quickly, we see -- we're  
10 projecting about \$3 trillion worth of transactions  
11 traveling through exchanges or marketplaces by  
12 2004. Some very transformative effects. The  
13 high-tech electronics industry leads the adoption  
14 rate in terms of moving information, it's been a  
15 large part of our economic growth, so it's very  
16 important. And I think the companies involved have  
17 all the right intents, however there is the  
18 potential, obviously, of abuse from that.

19 So, I would suggest that we need some good  
20 practices, some guidelines, that both industry --  
21 that industry can agree on, and preferably from  
22 industry directly. And just to close, one other  
23 note about marketplaces, 13 percent of our GDP gets  
24 consumed in regulatory compliance. So, perhaps the  
25 government should have a marketplace for regulatory

1 processing to help the economic growth as well.

2 (Applause.)

3 MR. GLOVER: You would be pleased to know  
4 that number is down to seven percent now.

5 MR PARKER: Oh, is it? Okay.

6 MS. VALENTINE: Professor Sunder?

7 MR. SUNDER: I think that the romantic idea  
8 abroad, especially on the Internet, that free  
9 market is like an uncamped meadow, where you just  
10 leave it alone, it will be just fine. It will be  
11 like a manicured lawn. Well, a meadow is not like  
12 a manicured lawn. A manicured lawn takes a lot of  
13 effort.

14 If we ask ourselves what's your best  
15 example of a free market, many people come up with  
16 the notion of the stock market. But you look at  
17 the rule book. The technicals of the rule book and  
18 the regulatory mechanism that it takes to keep that  
19 market reasonably free. Same thing is going to --  
20 is true, what is true of financial markets is also  
21 true of other markets.

22 And I hope FTC would not shy away from its  
23 limited, but appropriate role in creating Internet  
24 markets as a manicured lawn and not leave it as a  
25 wild meadow. I don't think that will be a



1 desirable state of affairs.

2 MR. WROBLEWSKI: Would you settle for an  
3 English garden?

4 (Laughter.)

5 MS. GUERIN-CALVERT: I would like to just  
6 speak as an economist. One of the things that has  
7 been wonderful listening to these proceedings, and  
8 I would like to complement the FTC staff,  
9 especially Michael and Debra, for having a range  
10 for what I think is ultimately the ultimate B2B,  
11 which is having a lot of empirical evidence and  
12 information about what is actually going on in the  
13 B2B marketplace, what are the sets of operations  
14 that are out there, what is the stage that we're  
15 at, and what are the issues that are being raised.

16 So, I think it has facilitated an  
17 extraordinary discussion, but provided what seems  
18 to me to be a very sound basis on which to evaluate  
19 the kinds of questions that have been posed.

20 MS. VALENTINE: Thanks. Catherine, did you  
21 want one last minute?

22 MS. MANN: I just wanted to add, build on  
23 the meadow analogy. As somebody who lives in the  
24 woods, I think that the -- there is a very real  
25 possibility that the economic benefits of

1 cross-border trade in global exchanges will be  
2 undermined by different governments approaching the  
3 lawn maintenance problem in different ways.

4 I think it's already happened, I think it's  
5 going to get worse, based on my experience with  
6 working with other government officials, and what  
7 we ought to be focusing on, I think, is not the  
8 regulatory aspect, but how to make the different  
9 approaches that governments take for their own  
10 objectives to work together -- be interoperable.

11 MS. VALENTINE: I think I'm not against  
12 interoperability of standards or government, so  
13 that sounds fine. I thank you all very, very much.  
14 What I think I would propose is I'm not -- I don't  
15 feel quite so sure about all this information as  
16 Meg is that we're getting. I mean, I think we've  
17 heard we are moving towards standardization, things  
18 will never be standardized, we're going to shove  
19 all the small firms out, this is the great  
20 opportunity for small firms, we're going to add  
21 value to networks, we're going to bundle things. I  
22 don't have a clue, so I would like to create a  
23 future markets in which we all bet on where we're  
24 going and you give us that information. Thank you  
25 all very much.

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1 (Applause.)

2 MR. WROBLEWSKI: We start back again at  
3 1:45 for the last panel of the workshop.

4 (Whereupon, at 12:30 p.m., a lunch recess  
5 was taken.)

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## 1 AFTERNOON SESSION

2 (1:45 p.m.)

3 MS. DeSANTI: We'll start our final session  
4 today. I know this is July 4th weekend. We've been  
5 trying to run a tight ship and run on time. We'll  
6 try to get you out of here on time as well.

7 We're very fortunate to have introducing  
8 our final session this afternoon our own  
9 Commissioner, Thomas B. Leary, someone with whom I  
10 worked a long time ago at the law firm of Hogan &  
11 Hartson in D.C.

12 Tom, please come up and share your thoughts  
13 with us.

14 COMMISSIONER LEARY: Whoa. You know, when  
15 I was asked to talk at one of these workshops,  
16 normally these are small, intimate gatherings with  
17 a table of about 15 people and about 20 people,  
18 yeah, right. Anyway, here is this large group, and  
19 it's really impressive. I'm sorry I couldn't have  
20 joined you yesterday, but I understand it went  
21 very, very well yesterday.

22 It's a great privilege for me to have the

1           I am particularly happy to be here because  
2 most of these panelists are people that I've known  
3 for years, in some cases a great many years. And  
4 some of them I haven't seen in a long time, so it's  
5 a matter of personal privilege as well.

6           I'm here to listen and learn, just like all  
7 of you. And I don't have any ideas that are set in  
8 concrete, but I do have some going in assumptions  
9 that I would like to share with you, recognizing  
10 that they are tentative.

11           I believe we are in an age of revolution,  
12 but I don't think that revolutions are unique in  
13 this century. I think we've seen many revolutions  
14 of sweeping kind in the last 100 years. I don't  
15 know whether any of you have been watching that  
16 wonderful television program called The Victorian  
17 House, and it's a story. It's a documentary about  
18 a group of people in London who are living in a  
19 house that was built around 1900 as people lived in  
20 the year 1900.

21           And you sit there, and you watch it, and it  
22 is as alien as life on another planet. It's only  
23 100 years ago, and I think as I watch it, and it  
24 seems incredibly alien to me. But my parents grew  
25 up in that era, and my childhood is a lot closer to

1 the year 1900 than it is to the year 2000, which  
2 can only mean that there were immense, dramatic  
3 changes that occurred in the beginning of the 19th  
4 Century as well as the end of the 19th Century.

5 You think about it: a hundred years ago  
6 was pre radio, pre television, pre electronic  
7 appliances, pre road transportation. All of those  
8 things had dramatic impacts on our lives, and yet  
9 the antitrust laws survived. It's always an  
10 interesting coincidence, the year 1900 is roughly  
11 halfway between the passage of the Sherman Act and  
12 the passage of the FTC Act and the Clayton Act --  
13 and those statutes have survived.

14 Over the years they have come to be  
15 interpreted in a more nuanced and sophisticated  
16 way. But those changes in interpretation, those  
17 nuances I suggest to you, have not been driven by  
18 technological change so much as by increasing  
19 economic sophistication, increasing appreciation of  
20 the way the system really works. And to me, that  
21 is one of the most dramatic changes that we've  
22 seen, particularly over the course of the last,  
23 say, 30 years.

24 That takes a little while to filter from  
25 the academic community into the world of the law

1 journals, and the world of policy makers, and the  
2 world of judges, and the world of counselors. It  
3 requires some translation to make these rather  
4 arcane mathematically difficult economic concepts  
5 accessible to the people that have to apply them.  
6 As an example of that lag time, if you will, I'm  
7 thinking about Bob Borke's treatise on antitrust  
8 law published in 1978, probably the most  
9 influential book on antitrust ever published.

10 The ideas in that book were not brand new.  
11 The ideas in that book had been kicking around in  
12 the academic community for 10, 15 years, but it  
13 wasn't until that book had been published that  
14 those ideas became accessible to the world that we  
15 deal with -- the world of lawyers, policy makers,  
16 judges, counselors and so on.

17 And it seems to me that one of the  
18 challenges that I see, perhaps a principal  
19 challenge from my point of view from where I sit,  
20 is that the economics, if you will, of the new  
21 technology -- if it's out there, if it's being  
22 written about -- is not yet being written about in  
23 a way that is accessible to people who sit in  
24 positions like mine.

25 What are we going to do? What do we do

1 right now? I think the issues in the B2B area are  
2 the same kinds of issues that we've dealt with in  
3 joint venture analysis for as long as I've been  
4 practicing law. Just a few examples, and this is  
5 not exhaustive, include the issue of market power,  
6 the size of the venture, and what the scope of the  
7 venture is.

8           If you've got a venture that arguably has  
9 some market power, that arguably may be a venture  
10 that is almost the status of a, quote, essential  
11 facility. You've got these issues of access and of  
12 due process before you kick someone out. You've  
13 got issues of ancillary restraints. These are  
14 issues we've dealt with all the time.

15           There are issues of signaling, perhaps,  
16 when you've got particularly real time transaction  
17 information. And there may be some private signals  
18 that go along with that real time information.  
19 You've got the issues of so-called spillover  
20 effects. We used to call them contamination  
21 effects when I first started practicing law.

22           To the extent your B2B venture is not just



1 monopsony issues, but I think it's something that  
2 may be increasingly important going down the road.

3           And finally, you have issues of least  
4 restrictive alternative. And I say finally because  
5 in a structured Rule of Reason analysis, typically  
6 that kind of thing comes at the very end. But as a  
7 counselor, I always thought it was most useful to  
8 address an issue like that at the very beginning --  
9 to try to ask people, "What is it that you really  
10 want to accomplish and what is the least  
11 restrictive way that you can do it?" Why?

12           Because if you're really trying to do  
13 something new, there are going to be winners, and  
14 there are going to be losers. And when there are  
15 losers in any kind of a new venture -- whatever it  
16 may be, high tech, low tech, doesn't matter -- when  
17 there are losers out there, there is a potential  
18 for litigation. Okay?

19           So B2B counseling may not be all that hard,  
20 if it suits your client's purposes to walk far away  
21 from the cliff edge. It's only when you get closer  
22 and closer, and I'm not saying -- there may be  
23 perfectly valid and good business reasons for it --  
24 but it's only if you feel the need to get closer to  
25 the cliff edge that you may have to have some of

1 this more nuanced stuff that we may not really  
2 understand.

3           Finally, I guess maybe because I have lived  
4 through a lot of promised changes, dramatic changes  
5 in life that didn't materialize, I'm agnostic on  
6 how dramatic any particular promised change is  
7 going to be.

8           You know, when I was a teenager during  
9 World War II, we were going to have -- at the end  
10 of the war, we were going to have a helicopter in  
11 every garage. Did you know that? There were  
12 pictures, articles. I mean, there was going to be  
13 no such thing as traffic congestion anymore because  
14 there was this three dimensional air space, and  
15 everybody would get into their little personal  
16 helicopters, and off they would go to Wall Street

1 analysis have survived.

2           So I sit here, as I said, not skeptical but  
3 agnostic. I don't know whether technology, quote,  
4 unquote, is going to correct any competitive  
5 abnormalities in the B2B world in a much shorter  
6 time frame than we're used to. I don't know. I  
7 don't know. Pointing in the other direction, I  
8 don't know about the so-called network effects  
9 phenomena that everybody talks about. I don't know  
10 whether there's anything really new there either.  
11 I'm agnostic about that too.

12           I need to learn more about it. My sense is  
13 that the really difficult issues going down the  
14 road may not be in the B2B area but rather in the  
15 business to consumer area, which raises myriad  
16 issues. Some of them are at the very interesting  
17 intersection of competition law and consumer  
18 protection law.

19           But having said that, I don't want  
20 everybody now to get up and leave and say, "Well,  
21 nothing important is going to happen." I don't  
22 mean to say that. All I'm saying to you is that it  
23 may turn out to be that the world that we live in,  
24 and the competitive implications of it, are more  
25 familiar than they are strange.

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1           That's all I have to say. Thanks.

2           (Applause.)

3           MS. DeSANTI: Thank you, Tom. Now, I want  
4 to introduce this final panel. This is the meta  
5 marketplace that they were talking about in panel  
6 5.

7           We've asked a lot of people here because  
8 there are a lot of valuable perspectives, but it  
9 means that we're going to have to not give  
10 everybody as much time as we would in fact like to  
11 do.

12           We are at the point now where we've laid  
13 some of the factual foundation for asking some of  
14 these competition policy questions, and joining me  
15 in asking questions at this panel will be Bill  
16 Cohen, my deputy director in Policy Planning, and  
17 also Molly Boast, who is a senior deputy director  
18 in the Bureau of Competition at the Federal Trade  
19 Commission.

20           I want to emphasize that we're going to be  
21 throwing out questions that occur to us as possible  
22 antitrust questions in this area, but once again,  
23 we are very much in a learning phase, and these  
24 questions are asked in that spirit.

25           To answer these questions, tell us what we

1 should be thinking about, we have a variety of  
2 people, antitrust lawyers, economists, who  
3 specialize in antitrust and other aspects of the  
4 economy, a representative from Consumers Union,  
5 National Association of Manufacturers. We are  
6 honored to have all of these people join us for  
7 this discussion.

8           Rather than go through and introduce  
9 everybody at the beginning, I would simply ask that  
10 when you speak, please note your name and your  
11 organization and how you are involved in these  
12 issues as a counselor or as someone who has more of  
13 a policy or academic perspective about them.

14           We believe that this group can help us in  
15 framing possibly practical solutions to addressing  
16 some of the questions that may arise, and also  
17 especially from the academic and policy  
18 perspective, focusing us on what are the important  
19 competition policy questions to keep in mind.

20           We're going to run this discussion as we've  
21 run the other ones, which is we'll throw out some  
22 questions. If you have some things you want to  
23 say, turn your tent up, and we will try to  
24 recognize as many people as possible given that we  
25 have a certain set of issues that we want to work

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1 through.

2           Once again, I just want to remind panelists  
3 to please speak into the mike. We'll all be much  
4 better off because then everybody can really hear  
5 you.

6           With that, let me introduce the first set  
7 of questions that we're going to be addressing, and  
8 I think what we will start -- in terms of starting  
9 the discussion, we would like to just keep the  
10 questions at the level of one individual B2B  
11 marketplace.

12           There has been a lot of discussion during  
13 the course of the day and a half that precedes us,  
14 competition among marketplaces and the B2B market  
15 for markets in some sense. We're going to start  
16 out with asking questions about how things may work  
17 from a competition perspective within one B2B  
18 marketplace, and after we've gone through some of  
19 those questions, then we'll move to the competition  
20 between and among marketplace questions.

21           So in the context of competition within one  
22 B2B marketplace, let's start out with the issue of  
23 collusion, more innocuously described as  
24 information sharing, what methods or particular  
25 types of information might be shared in a B2B

1 marketplace that might facilitate collusion, price  
2 signaling, price coordination? What are the  
3 situations that might raise competitive concern,  
4 and importantly, how might those competitive  
5 concerns be reduced? Are there mechanisms that  
6 might be used to protect against that, and also,  
7 are any of those mechanisms impractical or  
8 undesirable from a business perspective?

9 I just want to put out on the table that  
10 particularly from those of you who have been  
11 counseling in this area, it would be very useful to  
12 know what you found actually works from a business  
13 perspective, and what, although it might seem  
14 desirable from an antitrust perspective, actually  
15 turns out to be impractical, unworkable from a  
16 business point of view.

17 To tee up some of the questions in this  
18 area, Jonathan Baker, I would like to ask you to  
19 start. You were at the Department of Justice when  
20 they worked on a case that involved price signaling  
21 that might have relevance in the B2B context, and  
22 maybe you can help us frame some of the issues for  
23 discussion.

24 MR. BAKER: Thank you, Susan. To follow  
25 instructions first, I ought to say that I'm Jon

1 Baker, and I'm at the -- I teach antitrust at the  
2 Washington College of Law at American University,  
3 and I'm delighted to be back again at the FTC or I  
4 guess this is the virtual FTC.

5 And I suppose given your introduction, I  
6 ought to disclaim having anything to do with the  
7 Department of -- my views are not necessarily those  
8 of the Department of Justice or the Federal Trade  
9 Commission or the American University or those of  
10 my wife.

11 Let me say something about information  
12 exchange which is the point of the question. B2B  
13 exchanges seem to me to be about information  
14 exchange. That's the source of the transaction  
15 cost savings that I'm sure you've heard about in  
16 the last day and a half. You don't have to make  
17 phone calls. It's all on the screen in front of  
18 you, but of course information exchange can be the  
19 source of competitive problems as well.

20 It could be a way of negotiating  
21 agreements, for example, among sellers to raise  
22 price. It could also be a way of facilitating  
23 higher prices without negotiating agreements,  
24 without creating a Section 1 violation. For  
25 example, information exchange might be a way of



1 solving the problems that cartels face of reaching  
2 a consensus on how to raise price and reduce output  
3 or detecting and punishing deviation.

4 One way to try and distinguish between the  
5 good information exchanges and the bad is to look  
6 where the information is going, and that was the  
7 problem in the ATP case that Susan was referring  
8 to. It was a case brought by the Justice  
9 Department involving the major airlines that was  
10 settled by consent about a decade ago.

11 The sellers there, the airlines, had a way  
12 of sharing information that was largely unavailable  
13 to the buyers, the travel agents and the consuming  
14 -- and the traveling public, and according to  
15 Justice, they used that information exchange to  
16 negotiate agreements among them, agreements on  
17 price.

18 An exchange of information among sellers  
19 isn't necessarily all bad. It could be helpful to  
20 speed an adjustment to cost of demand shocks, but I  
21 think the experience in the ATP litigation suggests  
22 that if it's mainly about information sharing among  
23 rivals or more rapid information exchange among  
24 rivals than even between sellers and buyers, that  
25 should be a red flag that ought to suggest taking a

1 harder look at what's going on.

2 MS. DeSANTI: Roxann?

3 MS. HENRY: Roxann Henry with Howrey,  
4 Simon, Arnold & White. It's a private law firm, so  
5 I fall into the counseling side, but actually the  
6 question I wanted to raise was really much more of  
7 a broad policy question, and it strikes me that  
8 it's not clear that when we're talking about  
9 competition, that we actually do have a complete  
10 consensus of what we mean when we say competition.  
11 And I think your question put that very quickly to  
12 the point when you talked about collusion, and then  
13 you immediately sort of said a nicer way of talking  
14 about it is coordinated effects.

15 But there really is a very fundamental  
16 difference there between collusion and simply  
17 coordinated effects. One is taking everything that  
18 you have in front of you, whatever information  
19 there is, and making an economically rational  
20 decision based on the availability of information.  
21 The other is I think pretty clearly  
22 anti-competitive. It's per se anti-competitive.  
23 There's a full agreement that it's  
24 anti-competitive.

25 But when we're looking at coordinated

1 effects, the fact of the matter is it's a very gray  
2 item of what is competition, and what is good  
3 economic behavior that in fact is the essence of  
4 competition. If you go back even to the early 20s  
5 case law and you can see there's this fundamental  
6 issue, and it's one that has plagued antitrust for  
7 a long time where you have one side saying, Well,  
8 the inevitable result of this transparency and this  
9 information is simply going to be that prices are  
10 going to stabilize, and the other people saying,  
11 Well, that may be the inevitable effect, but is it  
12 wrong?

13 MS. BOAST: Does your analysis change if  
14 you change the model of the B2B, if it's an  
15 exchange as opposed to an auction kind of model.

16 MS. HENRY: I think you're really looking  
17 more at the transparency issue, how much  
18 information is flowing? Is it really facilitating,  
19 and obviously in the case that Jonathan was talking  
20 about, there was some inference that it was not  
21 simply facilitating an agreement, that it was part  
22 of an agreement on prices as opposed to simply  
23 facilitating economic behavior that may lead to  
24 more stabilized prices.

25 MS. DeSANTI: Tom Krattenmaker?

1           MR. KRATTENMAKER: Thanks, Susan. My  
2 experience in this area have been with counseling  
3 exchanges, counsel to four of them, so I don't have  
4 any particular academic insight or credential to  
5 offer on these, but I thought, if I might go back  
6 to Susan's questions, then I might say something  
7 about what Roxann said, just two observations.

8           One is that on the question of information  
9 exchange and the effects of it, it may depend on  
10 what kind of an exchange you're talking about and  
11 what kind of goods you're talking. For a simple  
12 example, if you're talking about an exchange that's  
13 owned by buyers and what they are doing is  
14 purchasing what the business people call indirect  
15 goods, they're buying fluorescent light bulbs for  
16 their retail stores, it's a little hard to imagine  
17 some of the scenarios that Jon talked about turning  
18 out to be the -- that is, that there's some kind of  
19 exercise of monopsony power because they observed  
20 the price at which a few of them are buying  
21 fluorescent lightbulbs.

22           So I think when we think about these issues  
23 sometimes you have to be careful what particular  
24 ownership structure you have in mind and what kind  
25 of goods you have in mind.

1           I think maybe Jon's examples may fit  
2 better, and this is not to condemn them but just to  
3 dress them up a little bit better. If it's a  
4 seller owned exchange and if you're talking about  
5 goods that are being sold by the sellers or perhaps  
6 if it's a buyers purchasing for resale.

7           The second thing that I've observed from  
8 being involved with these firms is, if I might play  
9 off what Commissioner Leary said, you can avoid a  
10 lot of this by focusing on the less restrictive  
11 alternative issue. If you just ask them, Why do  
12 you want to do this, it's often times the case  
13 they'll say they don't need to exchange the  
14 information.

15           And I know one of the things that I had  
16 learned before that I noticed was stated by a  
17 number of the suppliers at the panel yesterday is  
18 that they don't care to give each other their  
19 secrets with respect to procurement.

20           So there is -- there's an incentive here  
21 that I don't know that I was fully aware of until I  
22 actually started working on these not to disclose  
23 information, because at least in certain segments  
24 of the American economy, purchasers think that the  
25 way they compete is through better procurement

1 systems.

2           And then if I might, I may have  
3 misunderstood what Roxann was saying, but I hope I  
4 didn't, I think that again you're quite right that

1 like to jump in here to just clarify the kinds of  
2 issues that seem to be on the table with not that  
3 many people who have spoken so far. We have issues  
4 about, Well, is there any agreement? Usually  
5 there's some kind of agreement absent a monopoly  
6 that will trigger antitrust questions, and is there  
7 any role in this context outside that actual  
8 context of Section 1 which requires certain  
9 evidence to show that there's actually an  
10 agreement?

11 And another issue is, Well, if there's an t ofj Tar.:y y

1 haven't fared too well in the Courts, but in the  
2 FTC's Ethyl case and in the Justice Department's  
3 ATP case, both of them had the characteristic that  
4 companies were putting a contingent price out to be  
5 viewed by their rivals, and they had the  
6 opportunity to pull those prices back if their  
7 rivals didn't act in a certain way.

8           Now, that clearly led to strategic  
9 behavior. When you say that pattern, that's a red  
10 flag for enforcers and something to be avoided.

11           When rivals are putting prices out for  
12 basically instantaneous transactions, I think it  
13 might be very hard to imagine a very effective way  
14 to collude, so I don't think that's nearly as  
15 suspicious a situation for the antitrust agencies.

16           In practice, I think exchanges are going to  
17 be wanting to put their exchange together in a way  
18 that doesn't even raise that concern, so that if  
19 the primary value of the information flow is from  
20 not among buyers, but from buyers to sellers, a lot  
21 of exchanges will say, We will shield the  
22 information flow to our rivals, and then the  
23 antitrust agencies are going to be confronted with  
24 the situation, Do you trust a firewall.

25           And we have a lot of -- that's really not



1 unique to the Internet situation, and we have a lot  
2 of experience with firewalls, and they seem to work  
3 pretty well. So I guess in this area that I would  
4 suggest the agencies ought to be cautious about  
5 assuming collusion is workable, number 1, and also  
6 ought to be -- ought to presume that a fire wall or  
7 some equivalent mechanism is going to work to  
8 prevent collusion.

9 MS. DeSANTI: I would like to add on to  
10 this discussion a policy perspective. Jerry  
11 Jasinowski?

12 MR. JASINOWSKI: Thank you, Susan. I don't  
13 know if it's a policy perspective since I'm not the  
14 antitrust expert most of the people on this panel  
15 are, and my perspective comes as an owner since we  
16 operate exchanges at the National Association of  
17 Manufacturers, and our interest is in running it  
18 and its economic impact on the economy.

19 The point I would make and what I'm looking  
20 for is, Where are the areas where we're really  
21 going to find problems? My point is that this is  
22 not likely to be an area where we're going to find  
23 problems, that the information area in fact  
24 principally works in the opposite direction. The  
25 information is shared in order to reduce

1 transactions costs, improve productivity.

2 And I think following up with what was just  
3 said, this is an area where I think it's very  
4 difficult given the transparency to assume that  
5 collusion is very workable, so overall the  
6 information sharing is a very unlikely area for  
7 antitrust violations, and one which in addition to  
8 the other points I made basically goes back to Adam  
9 Smith and the whole drive to increase competition,  
10 and all of this is going to be increasing  
11 competition.

12 So I'm only trying to put in proportion my  
13 view that I'm skeptical that the information  
14 sharing area is one where you're going to have big  
15 examples of antitrust behavior.

16 MS. DeSANTI: Okay. Mark Cooper from  
17 Consumers Union? What is your perspective.

18 MR. COOPER: Consumer Federation of  
19 America.

20 MS. DeSANTI: Consumer Federation, excuse  
21 me.

22 MR. COOPER: I'm neither a lawyer, neither  
23 counsel nor a policy person. I like to call myself  
24 a combatant, and as a consumer advocate, I actually  
25 take a broad view and have a different set of

1     skeptical. I'm more skeptical that they won't  
2     collude.

3             And coming today, I thought I would bring a  
4     hypothetical example, which is a case that might  
5     sound familiar and suggest how this information and  
6     collusion is real easy, and it has to do with a  
7     hypothetical firm that offers airline tickets at  
8     name your own price.

9             And over the last year or so, it's turned  
10    out that acting independently, airlines have a lot  
11    of difficulty resisting tendering to that entity  
12    low value, high margin tickets. Now, how can a  
13    ticket be low value and high margin? Well, it's  
14    low value because it's unsold close to the time  
15    that the plane leaves, and once it leaves it has  
16    zero value, and it's high margin because the  
17    incremental cost of filling that seat is zero so  
18    any dollars you get for it are all profit.

19            So independently they keep throwing those  
20    tickets in there. But what happens is that while  
21    for each independent actor it's rational, as a  
22    collectivity it has this nasty side effect,  
23    twofold: One, William Shatner has convinced people  
24    they can name their own price, and so there's some  
25    price resistance on the demand side because these

1 silly people think they can actually name a lower  
2 price than they see in the newspapers, and second  
3 of all, it creates a great deal of uncertainty  
4 about how many seats are being filled at what  
5 prices.

6           They love to know how many seats are  
7 filled, and this stuff keeps popping up at the last  
8 moment in the chaotic cyberspace auction. Well,  
9 collectively what is their response? They have to  
10 try and calm down this unruly business, so what  
11 they do is they say, Let's do our own site, and  
12 once you control our own site, you have a variety  
13 of potential effects.

14           First of all, you diminish the supply to  
15 Bill so he can't make as many promises about name  
16 your own price, and of course, when you diminish  
17 his supply, you degrade his capacity to decrease  
18 price. That's a concern.

19           That's not information so much, but of  
20 course when you own your own site, depending on how  
21 you write the rules, one, you can force seats  
22 there. You don't get to participate unless you put  
23 some seats in. That would be an interesting rule.  
24 Two, you can share the information so you better  
25 know how many seats, and of course it's in a

1 different place that you can control, and three, of  
2 course, the big problem is that you formally or  
3 informally have some rules about what you do with  
4 seats you want to put on other sites.

5 So information at the core but control of  
6 that flow is a serious concern, and it seems to me  
7 that whenever firms are confronted with the chaos  
8 of the cyber auctions, they have a desire to calm  
9 it down, to

10 make it more ruly, and that can have classic  
11 anti-competitive effects.

12 MS. DeSANTI: Well, you've added a number  
13 of issues, including the issue of ownership and  
14 control that we're going to get to in a few  
15 minutes.

16 Let me go back to the antitrust counselors.  
17 Phil Proger, you've had your tent up for awhile.

18 MR. PROGER: Phil Proger, Jones Day,  
19 Washington. I was going to pass on this until  
20 Eddie's comment about the Ethyl case, and Steve  
21 Salop and I were on opposite ends of that case, but  
22 I think it illustrates a pretty fundamental point  
23 which is the advance notification in that case was  
24 a hotly debated factual issue because what the  
25 parties claimed is actually it was a practice that

1 resulted in a great amount of competition because  
2 it was during those advance notifications in this  
3 very oligopolistic industry, there were only three  
4 major players and a fourth fringe player, that most  
5 of the competition took place as people negotiated  
6 against the large powerful purchasers of petroleum  
7 companies in these deals.

8           So I think it gets back to where  
9 Commissioner Leary started and where Roxann went,  
10 and I think we have to be very careful here. One  
11 is I'm sort of skeptical that there is anything  
12 highly unusual about B2Bs, and by the way, there  
13 are a lot of different B2Bs, so you're talking  
14 about a lot of different things, but generally I  
15 think I'm skeptical that I think they're inherently  
16 problematic. I don't think they are.

17           As a matter of fact, I think to some extent  
18 that they reduce distribution costs and let smaller  
19 players into the market very quickly. They may be  
20 very, very pro competitive, but in the end we're  
21 going to have to do traditional antitrust analysis,  
22 and I think the joint venture analysis and the  
23 Collaboration Guidelines are appropriate in this  
24 framework.

25           And just to add to what Susan said, I think

1     therefore you have to know what the agreement is,  
2     and you have to know what structure -- unless it's  
3     per se.

1 issue, and once we're done with that round, then  
2 we'll move on to the next. Rick Rule?

3 MR. RULE: Thank you. I'm Rick Rule from  
4 Covington & Burling. We counsel a number of B2Bs  
5 and people who are in B2Bs. I also happen to be  
6 one of the counsel who was on the other side of the  
7 ATP Co. case, and I do think that is instructive  
8 for people putting B2Bs together.

9 Let me jut make a couple of points, largely  
10 echoing what Phil said and what Commissioner Leary  
11 said. First, and I think it's always important for  
12 us antitrust lawyers to remind ourselves, we're  
13 support. It's the business people who actually  
14 come up with the models.

15 In many cases at the formation stage, as  
16 long as the business people who are putting the  
17 exchange together are sort of told what they can do  
18 and what they can't do, I think a lot of things  
19 sort themselves out. I mean, there are some people  
20 out there who are touting exchanges as ways for  
21 people in an industry to get together, to band  
22 together and essentially to knock down the price of  
23 important inputs in their business.

24 That's obviously going to be a problem when  
25 you start out with that sort of objective, but I



1 think if people focus on those pro competitive  
2 objectives, in many ways a lot of the problems  
3 resolve themselves.

4           Second, I think what both Phil and Tom said  
5 and others is absolutely right. I mean, this is  
6 not rocket science from the standpoint of  
7 antitrust. When you think about B2B exchanges, one  
8 thing that at least comes to my mind is the Chicago  
9 Board of Trade, and of course the Chicago Board of  
10 Trade case is the classic sort of initial  
11 articulation of the Rule of Reason in antitrust  
12 Section 1 cases.

13           And again, these are classic sort of Rule  
14 of Reason analyses with a lot of the factors that  
15 we've seen in other contexts. It's just that it's  
16 a new technology being applied. You have to, to  
17 some extent, affect the analysis or have the  
18 analysis reflect that technology, but generally  
19 it's the standard rules, and it's a Rule of Reason.

20           Finally, with respect to ATP Co. I think  
21 that case is interesting. In part ATP is really  
22 more like a B2C than a B2B because there the  
23 airlines were exchanging information or putting  
24 information on fare changes to a central location  
25 so they could then be disseminated to travel agents

1 and to the public.

2 The problem there was the government felt  
3 that the rules by which that information got  
4 submitted facilitated agreements among competitors,  
5 among the airlines, facilitated the ability to  
6 signal displeasure when somebody was discounting,  
7 and also the government challenged it as an express  
8 agreement.

9 I think there were two elements in that  
10 case that the consent decree was focused on and  
11 that really created the problem for the airlines.  
12 One, a lot of the information that was exchanged  
13 that troubled the government had to do with future  
14 prices, with what airlines were going to do with  
15 fares in the future and indicating how long it  
16 would be before that future arrived.

17 And so the point that Eddie made about  
18 current transactions prices, frankly there is still  
19 an ATP Co., and that's what it does. It indicates  
20 what current existing fares are, what is available  
21 out there in the market, and that helped a lot in  
22 terms of getting the Department of Justice over the  
23 hump.

24 The other issue that was very troubling to  
25 the Department of Justice and was changed was that

1 certain of the information and the standards for  
2 sharing the information involved certain what I'll  
3 call arbitrary fields, fields that didn't have or  
4 information that didn't have much meaning to the  
5 customer out there, that really wasn't information  
6 demanded by the customer, but that created an  
7 opportunity according to the government for  
8 companies to signal one another by using that  
9 arbitrary information to say, Look, I know you're  
10 discounting over here, if you don't raise those  
11 fares over in this city or this city pair, I'm  
12 going to lower my prices in a market that's very  
13 important to you.

14 And so it was that sort of otherwise  
15 arbitrary information that the government could  
16 only understand as being signals between  
17 competitors that created a lot of the problems.

18 Once you got that sort of what I'll call  
19 arbitrary information out of the way, the  
20 government has been happy with ATP Co., that those  
21 consent decrees have been in existence for some  
22 period of time, and those precursors to B2B  
23 exchanges have been operating pretty smoothly for  
24 the last seven -- I guess five years now.

25 MS. DeSANTI: Let me add one issue to the

1 mix because we're trying to drill down a little bit  
2 as the business people have been telling us for the  
3 last day and a half. If when you're responding,  
4 you're a counselor and you've actually figured out  
5 things about how to set up firewalls that really  
6 work, it would be helpful if we could know  
7 something about what are those processes and what  
8 are the practical solutions if you see any  
9 problems.

10 Scott Perlman?

11 MR. PERLMAN: Well, a couple of things.  
12 First, to touch on something that Rick mentioned, I  
13 think it's important to recognize that the issue of  
14 information exchange is really there right off the  
15 bat long before the exchange is actually up and  
16 running. It's an issue from the first day that the  
17 parties are getting together and trying to figure  
18 out what they want to do and therefore what  
19 information, it's appropriate for them to exchange.

20 And therefore one of the first things that  
21 we've tried to do in counseling parties to  
22 exchanges is to help them define that, and as Rick  
23 was saying, that really helps to clarify the scope  
24 of what is and isn't appropriate to do.

25 If you're talking about generating

1 efficiencies by increasing communication and  
2 information exchanges up and down a particular  
3 supply chain, that obviously implicates one sort of  
4 information exchange, and therefore parties then  
5 are talking about exchanging information, for  
6 instance between suppliers or buyers, you know, you  
7 recognize it doesn't seem to fit in with their  
8 objectives.

9 I guess a second thing is there's been a  
10 number of discussions over the last couple of days  
11 with respect to ownership, and I don't want to get  
12 into the details about that now because we'll talk  
13 about it later, but just in our experience, what  
14 we've seen is, including with supply controlled  
15 exchanges, the parties are very aware of antitrust  
16 issues. They're getting antitrust counsel in at  
17 the very beginning.

18 When they bring in consultants, they're  
19 having the lawyers meet with the consultants very  
20 early on to talk about what should and shouldn't be  
21 exchanged. Many of these companies have had  
22 various encounters with the antitrust agencies over  
23 the years so that they know that what they're doing  
24 may very well end up being the subject of an  
25 investigation.

1           And I think they're also very concerned  
2    about projecting credibility in the marketplace  
3    because if they don't have that, they're not going  
4    to be able to attract the traffic that's going to  
5    be necessary to generate efficiencies.

6           MS. DeSANTI:  Joel Mitnick.

7           MR. MITNICK:  My name is Joel Mitnick from  
8    Brown & Wood in New York.  My practice with respect

1 the large companies who get assigned to this new  
2 co., this new B2B, tend frequently to be an  
3 e-commerce executive from the company, maybe even  
4 the chief e-commerce officer. That person also  
5 tends generally to be very antitrust sophisticated.

6 What they tend not to be sometimes is they  
7 tend not to have grown up in the operations or more  
8 particularly the sales of the business that they're  
9 in, that they're forming the B2B about.

10 What that means is that when you get down  
11 into the nitty-gritty of designing the actual  
12 working of the B2B, and we've seen some sites  
13 flashing up on the wall in the last couple days,  
14 most particularly I guess yesterday, when you start  
15 designing the pages where if it's an auction site,  
16 as I'm used to, you have to figure out what the  
17 rules are going to be for how the auction is going  
18 to work, what pricing information is going to be  
19 put up there, information about who the  
20 participants are.

21 These are the things that the e-commerce  
22 people tend not to be well equipped for, so they  
23 tend to rely on, sometimes even from protocol  
24 committees of, salespeople.

25 When you get a bunch of competitive,

1 competing rather, salespeople in a room to design a  
2 system about which price is going to hinge, as you  
3 might imagine, salespeople say the darndest things,  
4 so this is an area where the antitrust lawyer needs  
5 to really drill down into the nitty-gritty of how  
6 this is going to be put together.

7 And the e-commerce company, all the  
8 different joint venture partners, really need to  
9 make information available to the lawyer so that  
10 the lawyer understands the business well enough  
11 that he's not missing a lot of nuance at these  
12 meetings with salespeople.

13 But I can tell you that when you drill down  
14 to that level of the salespeople, collusion is  
15 certainly possible, and collusion is certainly  
16 likely. It does not reflect I think what the  
17 policy is at the senior level of the joint venture  
18 partners.

19 But if the company isn't attuned to this or  
20 if the lawyer isn't attuned to this, there really  
21 is the opportunity for some mischief.

22 Just a couple of other quick examples.  
23 We've talked a lot in the last two days about  
24 industries where there are B2Bs that are  
25 buyer-owned B2Bs and B2Bs that are seller-owned



1 B2Bs. There was some references this morning,  
2 Bill, I think you actually brought it up, about  
3 what happens in industries that are perhaps  
4 vertical, and that comes up a lot.

5 In the B2Bs that I've been dealing with,  
6 they are seller owned, but each of the sellers have  
7 somebody in there who's a buyer as well because  
8 they're vertically integrated, and the question  
9 comes up, if you're in an electronic system in real  
10 time bidding, sending information to a competitor  
11 wearing their customer hat, but they're also a  
12 seller on the system -- sorry, yeah, they're doing  
13 it as their customer hat, but they're also a seller

1 had situations where we've concluded firewalls just  
2 weren't workable, we've had to exclude from the  
3 system our members, the owners' members from their  
4 capacity as being buyers on the system, which works  
5 in the anomalous result that these owners are  
6 disadvantaged as buyers vis-a-vis other buyers who,  
7 unfettered, can participate on the system.

8 And I think that in certain of these  
9 situations there really isn't an antitrust problem,  
10 but I can certainly come up with an antitrust  
11 scenario that I know somebody in the government  
12 can come up with, so because of that, having been  
13 there --

14 MS. BOAST: Thank you for that credit.

15 MR. MITNICK: Because of that we have a  
16 situation where people self-censor themselves, and  
17 the B2B may actually not be fully actualizing the  
18 efficiencies that it otherwise could.

19 One last quick example that illustrates  
20 this same point, in the ones that I'm representing,  
21 price transparency by far is the driver here. It's  
22 what's drawn the customer to the system. It's an  
23 auction model.

24 The names of the bidders in real time are  
25 not shown so that you don't see exactly who the

1 different sellers are. There are five sellers at  
2 any one time, and the buyer -- the buyer doesn't  
3 actually get to know who those sellers are. It's a  
4 blind auction.

5 The customers are the ones who actually  
6 want to see the names of the sellers on the system,  
7 and we, on the selling side, have been resisting  
8 that for fear that listing all the sellers' names  
9 in a real time auction could be viewed as a  
10 signaling device.

11 Interestingly enough from the customer's  
12 perspective, they feel that when you have a few  
13 sellers, the sellers would actually rather in the  
14 anonymous system not necessarily bid the absolute  
15 lowest price on a specific bid, but rather they  
16 would prefer to hold back figuring that they're  
17 going to win on enough of the bids, and by holding  
18 back and if they believe in game theory that the  
19 other sellers may do likewise, then you may  
20 actually have a slightly higher net price than if  
21 you disclose the names, and the customers could  
22 beat up on the different sellers.

23 But again, because there's a theoretical  
24 concern that this could be misconstrued as a  
25 signaling device, there is a self censorship, and

1 at least from the customer's perspective in two  
2 different exchanges that I'm familiar with, that's  
3 leaving a lot of efficiency on the table.

4 MS. DeSANTI: Thank you. We're going to  
5 finish up with first Steve Salop from an economic  
6 perspective, and Harry First, another antitrust  
7 enforcer on the panel.

8 Steve?

9 MR. SALOP: Well, I wanted to take the  
10 pledge as well. I think B2B exchanges are  
11 inherently pro competitive. They're a great  
12 innovation, but at the same time, that doesn't mean  
13 that they can't be used in a way to exercise market  
14 power.

15 And I think the proper roll of the  
16 antitrust authority should be to try to separate  
17 the sheep from the goats, try to help the B2B  
18 structure themselves either through Joel's self  
19 censorship or through signaling business in some  
20 other way that they should try to maintain the low  
21 prices, the low costs without exercising market  
22 power.

23 I think they're particularly worrisome when  
24 the B2B is set up by a group of competitors, and  
25 Adam Smith had something to say about that as well

1 if you recall, that you have to be very careful  
2 when competitors get together.

3 I want to make two points about that. One  
4 is that it's quite clear that the rules can affect  
5 the degree of competition, and Mark Cooper gave one  
6 example of that which actually is a long history in  
7 economics, it goes back to, if you'll excuse the  
8 expression, Mark, the Coase conjecture. Ronald  
9 Coase had the Price.Com in mind in one of his  
10 seminal papers, and it's true that if you restrict  
11 the type of bids that sellers can make, that you  
12 can end up with higher prices.

13 In that respect, the results that you get  
14 by restructuring the rules can be very counter-  
15 intuitive, and I think that's going to make it a  
16 challenge for people who are counseling B2Bs and  
17 also a challenge for the FTC in evaluating them.

18 So, for example, again to go back to the  
19 Ethyl case, in the Ethyl case there were, you'll  
20 recall, most favored nation provisions, buyer  
21 protection provisions that were instituted by the  
22 sellers, but economic analysis showed that most

1 well. There's a huge literature in auction theory  
2 at this point, and that auction theory shows that  
3 by changing the rules of the auction under certain  
4 circumstances, you could end up with prices that  
5 are either higher or lower on average, and the B2Bs  
6 could set themselves up to try to exploit that.

7           The other point I want to make is that,  
8 another the counterintuitive result, once we expand  
9 beyond information exchanges, spillovers, into what  
10 Roxann called coordinated effects analysis, you can  
11 also get very counterintuitive results.

12           In particular, higher input costs paid by  
13 buyers can, under some circumstances, facilitate  
14 price increases that actually benefit the buyers,  
15 and that point is in the FTC's joint venture  
16 guidelines, and it's also in the economics  
17 literature.

18           Basically the idea is that if by raising  
19 your own input cost, you raise your costs by less  
20 than you raise your competitor's costs or if you  
21 can at the same time that you raise your cost  
22 create barriers to entry to other people coming in,  
23 then in fact the buyers can benefit from paying  
24 more rather than less.

25           Again, this is an old point, that with

1 higher cost you soften competition, and it's been  
2 alleged that this is why -- exactly what the  
3 automobile industry was doing in the 50s by paying  
4 high union wages that also raised barriers to  
5 entry, what the railroads did and to some extent  
6 what the airlines did during the regulated years.

7 So I think it's important in analyzing  
8 these B2Bs that we go beyond spillover effects in  
9 to an analysis of coordinated competitive effects  
10 with respect to the rules governing price setting  
11 in the venture.

12 MS. DeSANTI: Thank you. Harry, we would  
13 like to hear from you, and then we will take our  
14 one minute videotape break. Harry?

15 MR. FIRST: My name is Harry First. I'm  
16 head of the antitrust bureau in the New York State  
17 Attorney General's office, and I was really  
18 beginning to enjoy the discussion, particularly as  
19 Joel was explaining all the problems he's had in  
20 counseling his clients, and it reminded me that as  
21 we poke below these sort of grand issues, which are  
22 important, of economic theory, we encounter the  
23 usual thing that antitrust encounters, which is  
24 that these issues are very situation-specific.

25 And we will encounter here in a new

1 technological form opportunities to collude like  
2 we've encountered before, and one of the problems  
3 of an enforcement official is to find out exactly  
4 what all of you are in fact counseling your  
5 clients, so I love to hear these things on these  
6 panels.

7 I think this is made even harder because --  
8 and it goes back to how I think Susan originally  
9 framed the question on collusion, Is it collusion  
10 or is it information sharing, I think you said.  
11 And as we all know, information has its ambiguities  
12 and can be procompetitive or anticompetitive  
13 depending a lot on the situation in which it is  
14 exchanged.

15 The Internet is an extremely, and the web,  
16 an extremely efficient mechanism for exchange of  
17 information. I think that's the point that's come  
18 out from a lot of the speakers, and that's only  
19 going to exacerbate the difficulties of identifying  
20 when it's collusive and perhaps give new  
21 opportunities as the airlines had, thanks to the  
22 technology of the computer and databases, new  
23 opportunities for exchanging information in an  
24 anticompetitive way.

25 Finally, the question of whether we have an



1 agreement. Of course as we're looking at these  
2 sites being put together initially, you do have the  
3 joint action of the firms putting it together, so  
4 from a doctrinal point of view, I'm not sure we're  
5 going to have that much of a problem necessarily.

1 are seats available towards the front if you want  
2 to move up.

3 MR. COHEN: Okay. We're going to shift to  
4 another topic and talk for just a few minutes, talk  
5 briefly about the issue of monopsony. And just  
6 about a month ago we had another public gathering  
7 on an unrelated issue where monopsony came up, and  
8 the person sitting at the end of the table at the  
9 far right here, Rick Warren-Boulton, offered a very  
10 interesting observation. He cautioned us at that  
11 -- in that forum -- to be very careful not to  
12 confuse monopsony with buying power.

13 And I think I would like to open the  
14 discussion with Rick. Could you elaborate on that  
15 and how you see that applying in this context?

16 MR. WARREN-BOULTON: I'm Rick  
17 Warren-Boulton. I'm with MICRA, which is an  
18 economics consulting agency, and therefore my role

1 that perhaps these lower price reflect monopsony  
2 power and that's a bad thing, and so the question  
3 is, How do we distinguish between the two?

4 Both monopsony and better bargaining, if  
5 you like, or better procurement result in lower  
6 average prices, but there the similarity really  
7 ends. To an economist, of course, the big  
8 difference is the way a monopsonist reduces the  
9 prices he pays is by buying less because he drives  
10 the prices down by restricting his purchases, and  
11 you have the opposite effect if you have a better  
12 procurement or a better bargaining.

13 What you do is you buy more because you get  
14 a lower price, so that one of the first obvious  
15 differences between monopsony and better bargaining  
16 is with monopsony output goes down, and prices to  
17 consumers go up, and with better bargaining prices  
18 go down, output goes up, and prices to consumers go  
19 down.

20 There are several other effects though or  
21 differences I think which really allow you to  
22 diagnose, and maybe can then be used to decide what  
23 kind of rules you want. One of the most obvious is  
24 if it's a monopsony, then the individual members  
25 have an incentive to cheat, to buy on the outside,

1 to increase their purchases.

2 On the other hand, if what's really going  
3 on here is a group that's getting together to  
4 bargain for better prices, then they don't want to  
5 cheat. The best place to be is as part of the  
6 group, not on the outside of the group, so you have  
7 a different incentive whether you want to be inside  
8 of the group or outside of the group.

9 And as a result, if it is truly monopsony,  
10 what we would expect to see is that the group would  
11 try to enforce rules on each other to ensure that  
12 each individual member deals exclusively through  
13 the group. If what's going on is better bargaining  
14 power and lower prices, there's no need for such a  
15 rule to be imposed.

16 Indeed, I think if it's bargaining power,  
17 to the extent that there's a competition problem  
18 here or concern here, it's that the fringe might  
19 actually be excluded from joining the group by the  
20 dominant group following along more on Steve's  
21 traditional concern with exclusion.

22 So I think that what you can do is you can  
23 look at buyer controlled B2Bs and I think fairly  
24 readily diagnose whether this is the good kind or  
25 the bad kind, and I think there are also other

1 signs. For example, there are lessons out of prior  
2 work that the division has done in auctions, for  
3 example, some of you may recall the auction rings  
4 in which a group of buyers would collude to get  
5 together, have one single bidder bidding for all of  
6 them, and then after that single bidder had  
7 purchased the item, then they would have a knock  
8 out auction, a second round of auction in which  
9 they would auction it off in the second round to  
10 their members.

11 And then the profits from that second round  
12 of auction would be divided up among the member of  
13 the rings. It's a very effective way to monopsony  
14 in an auction format like many B2Bs are, and so I  
15 think if you saw that kind of thing going on in  
16 which you had the B2B buying independently and then  
17 running a secondary auction of selling to its  
18 members, taking the profits on that transaction and  
19 sharing them out, I think that bells would probably  
20 want to go off somewhere.

21 That being said, I think the point about  
22 monopsony is -- or to always keep in mind is that  
23 whereas monopoly is sort of ubiquitous, monopsony  
24 is really a bit of a rare animal. As long as  
25 demand curves slope downwards, it's worth it to be

1 a monopolist, but there aren't a lot of good  
2 situations in which monopsony power is very  
3 profitable.

4           You really have to have I think situations  
5 in which there are buyer specific -- there are sunk  
6 costs. It's not accidental that most of really  
7 good monopsony stories involve people, the athletes  
8 in particular or nurses in small towns and things  
9 like that.

10           But having said that, I think that the main  
11 problem in antitrust is monopoly rather than  
12 monopsony, I think it's possible to come up with a  
13 set of rules on buyer B2Bs which would let you  
14 solve your problem of avoiding monopsony without  
15 creating a lot of false positives, without creating  
16 much of a danger that you are in fact going to  
17 create very much harm to beneficial B2Bs.

18           MR. COHEN: Do you have rules to enunciate?

19           MR. WARREN-BOULTON: Well, I think again we

1           I think again having B2Bs which are in a  
2 sense profit centers as buyers which buy and then  
3 resell and make large profits on that I think is  
4 again a bad signal.

5           MR. COHEN: Let's try a hypothetical and  
6 see how you and some of the other panelists might  
7 react. A group of buyers gathers together, a group  
8 of large buyers, and each of them sends in their  
9 order, how much they want. They don't talk to each  
10 other. There's no coordination. They just  
11 accumulate it. They aggregate it. They get a  
12 bigger order.

13           They go to their suppliers, and by virtue  
14 of having a larger order and perhaps offering it to  
15 each supplier on an all or nothing basis, they get  
16 a better price. Is there an antitrust problem?

17           MR. WARREN-BOULTON: I think on the face of  
18 it, no.

19           MR. COHEN: Eddie?

20           MR. CORREIA: Are you saying they do that  
21 individually, each one?

22           MR. COHEN: They've each individually  
23 reached their quantities. They hand it to a  
24 central agent who adds up the totals and takes the  
25 total and goes and makes the purchase.

1           MR. WARREN-BOULTON: Can I ask a question?  
2 Are you allowed to buy separately? In other words,  
3 I'm a member of this group so I say to my B2B, I  
4 want a million units, and you bargain with the  
5 suppliers for a better price, but if I can come up  
6 with a better price on my own, am I still allowed  
7 to buy?

8           MR. COHEN: Okay, yes.

9           MR. WARREN-BOULTON: Then I don't have any  
10 problem with that.

11          MS. DeSANTI: What if the rule were  
12 otherwise though, you had to buy through the B2B?

13          MR. WARREN-BOULTON: I think that would  
14 really create a problem because you have to say,  
15 "Why do you want that rule." And the only rule  
16 that I can think of is -- because what you're  
17 really trying to do is -- is prevent me from buying  
18 on the outside.

19          MR. SALOP: Not necessarily. There might  
20 be free riding going on if they -- it's possible  
21 that they would use the effect of the auction as a  
22 signal, and then we have to pay for the resource  
23 costs of creating this buying agency, and one  
24 person can put in a small bid and then use the  
25 information to get a lower price in the future.



1 There's always a potential of free ride.

2 MR. WARREN-BOULTON: Well, in this  
3 particular context, while there's always a  
4 potential for free riding, it's hard to see it. I  
5 mean, the kinds of putting in a large order, of  
6 switching consumers that we've seen in drugs, that  
7 we've seen in office supplies, we seen in things  
8 like that, always lead to the situation in which  
9 the price that the group is going to be able to  
10 negotiate is going to be better than the price that  
11 I am going to be able to negotiate.

12 Only if the group so restricts the  
13 purchasers that there's so much excess supply left  
14 in the market sold at distress prices would I be  
15 able to go in and get a price which is lower than  
16 the group should negotiate, and that's the hallmark  
17 of monopsony.

18 MS. DeSANTI: Let's finish up with Eddie  
19 and then Bill Baer, and then we're going to broaden  
20 the discussion to some more issues. Eddie?

21 MR. CORREIA: Well, first of all, I think  
22 we ought to distinguish between true joint buying  
23 agreements where the rivals are quite open that  
24 they've agreed to buy something in bulk and  
25 situations where we're worried that there's

1 coordinated behavior that's going to have that  
2 effect.

3 In the first situation, if you have joint  
4 buying, we have this notion in antitrust  
5 enforcement that you look for market share screens,  
6 and the market share screen ought to be based on  
7 the share that that -- that these buyers represent  
8 of that particular input, not the share they  
9 represent in the entire market.

10 If that's pretty low, then you can assume  
11 that what's going on is some kind of efficiency.  
12 Now, you ought to ask them what their efficiency  
13 is, and they ought to be able to point to  
14 something, but if the market share is low, you  
15 ought to assume that's not driving down the market  
16 price. Otherwise the sellers would just ignore  
17 them and go somewhere else.

18 In the second situation where we're worried  
19 about coordinated behavior, I think again we ought  
20 to go back and remember that it's difficult to  
21 collude in the absence of some sort of express  
22 agreement. If we're signaling -- buyers are  
23 signaling each other, that's just difficult to do.

24 So there ought to be even more tolerance  
25 for that situation, and again if they're below some

1 market share that appears like to be a problem,  
2 that ought to end the inquiry essentially or create  
3 a strong presumption. I fully agree a lot of the  
4 observations you make made perfect economic sense.

5 That's a more complex kind of inquiry  
6 perhaps to go through to arrive at that for  
7 practical counseling purposes.

8 MR. WARREN-BOULTON: I agree with you. If  
9 you have a B2B where the purpose of the B2B is a  
10 bunch of people are buying office supplies and  
11 paper clips and things like this, this is really  
12 moot. The issue only really comes up when you have  
13 a small group of buyers who account for a very  
14 large share of the demand for a very specialized  
15 input where the suppliers have incurred some kind  
16 of sunk cost.

17 The supply curve has to be upward sloping.  
18 There has to be some ability to reduce price by  
19 restricting purchases, and that's fairly limited,

1 back a step up to the general, what this discussion  
2 does for me as a counselor, as I suspect many of  
3 the people in the audience are, reinforces the  
4 notion that you really have to understand why the  
5 group wants to do the B2B or the B2C, the  
6 motivation behind it.

7           Tom Leary said this at the beginning,  
8 understanding that and actually cross examining to  
9 understand really helps you give a client some  
10 sense of what the antitrust risks are. With Mark

1 has raised and others. Are there any innovation  
2 issues in this area? People have been talking  
3 about standards and creating technological  
4 standards, standards for descriptions of products.  
5 Are there any issues that are related to innovation  
6 that those raise?

7 And also, we've heard a lot over the last  
8 day and a half about joint ownership of a B2B  
9 marketplace by competitors. Rarely have we heard  
10 described B2Bs where they're only owned by  
11 competitors. There's usually other partners who  
12 are involved as well, but is there any potential  
13 for that joint ownership to create issues about  
14 their incentives to compete that need to be  
15 analyzed from an antitrust perspective?

16 And I'll open up the table to anybody one.  
17 Bert, Bert Foer?

18 MR. FOER: Bert Foer, American Antitrust  
19 Institute which puts me on the policy side. I've  
20 been interested for a long time in how the society  
21 approaches a totally new industry. I guess I got  
22 interested 25 years ago when I was at the  
23 Commission and was appointed to the National  
24 Commission on Electronic Fund Transfers.

25 That industry was pretty much where this

1 one is now at that time, and an approach that was  
2 taken, recognizing the vast variety of issues on  
3 the table, was to create a two-year study  
4 commission, Congress did that, and virtually  
5 everybody with an interest was on the Commission,  
6 somewhat like this workshop over the last two days,  
7 but with a distinction.

8           It had a time limit, and it had a  
9 continuing dialogue which is very important because  
10 what we've been able to do in two days is identify  
11 a lot of issues. But it takes a long time to have  
12 the dialogue that leads you to say which issues  
13 have priority, that is, which ones really need to  
14 be resolved at an early time so that other things  
15 can happen, and which ones can be left for the  
16 marketplace to work out or in litigation or just  
17 can't be resolved because there's no consensus.

18           I don't know whether that's an appropriate  
19 model to use for e-commerce but it's something the  
20 staff might think about as it moves towards some  
21 recommendations and reporting in this area.

22           It worked in that industry because the  
23 basic issues that had to be decided were: do you  
24 develop it in a competitive manner, or do you  
25 basically have one joint venture that runs the

1 whole things and make it a public utility? And FTC  
2 and Justice were among the leadership in saying,  
3 "Let it go a competitive route." That was a very  
4 important decision.

5 It also raised questions about, What are  
6 the minimal conditions necessary in terms of things  
7 like security and privacy and correcting mistakes,  
8 consumer protection side, and came up with ideas in  
9 a report that we turned into law. And this  
10 industry has moved forward pretty well, not a bad  
11 model, and it's something that I put before you to  
12 think about.

13 And I think I'll stop at that point.

14 MS. DeSANTI: Bert, I can always rely on  
15 you to be creative and innovative in thinking about  
16 how the FTC and the antitrust agencies should be  
17 approaching their mission.

18 I would like to move to Professor Joseph  
19 Brodley.

20 PROFESSOR BRODLEY: Boston University Law  
21 School. One method by which a B2B might hamper  
22 innovation is where either the sellers or buyers  
23 require the opposite party to standardize on their

1 innovation does not include something that would  
2 conform with their platform, so that could hamper  
3 innovation.

4 Now, standardization is one of the methods  
5 by which B2Bs gain their efficiencies, so there's a  
6 trade off there, but it could hamper innovation and  
7 if pushed too far unnecessarily, that would be a  
8 loss.

9 The other point as to joint ownership, how  
10 might that hamper competition, well, to the extent  
11 that industry or dominant factors of the industry  
12 have ownership in the exchange, then they're going  
13 to be less interested in participating in another  
14 exchange, so enough industry ownership in one  
15 exchange where they get profits could restrain the  
16 ability for other exchanges to develop.

17 MS. DeSANTI: Mark Cooper of Consumer  
18 Federation.

19 MR. COOPER: Let me quickly respond to two  
20 of the specific questions. First, the question of  
21 standardized information, et cetera. In a true B2B  
22 I wouldn't waste one penny of your resources on  
23 standardizing Bs. The Bs can hire these lawyers,  
24 and if they can't figure it out. However, B2C, I  
25 worry about the Cs because most Cs can't hire any



1 of these folks.

2 So with that respect, honestly there's no  
3 need to worry about a true B2B, the quality of  
4 information. They've got lawyers who ought to know  
5 what they're buying, and if they don't they should  
6 fire those lawyers and find another one.

7 With respect to ownership, Joel made a  
8 simple point, and it doesn't strike me. It was  
9 troubling to him, but whenever a single entity firm  
10 customer is on both sides of the transaction, it  
11 makes me nervous. It's always seemed to me to be  
12 an odd transaction when you're self dealing, and we  
13 always worry about self dealing.

14 His client discovered that they thought  
15 they thought they would run into trouble, they  
16 might have left some efficiencies on the table, but  
17 self dealing is something we worry about.

18 And so with respect to the ownership issue,  
19 a simple rule would be you can't be on both sides  
20 of any transactions. If you want to sell into it  
21 and if it's a selling arrangement, fine, if it's a  
22 buying arrangement, but the minute it becomes both,  
23 then the owners ought to be on one side or the  
24 other and not both.

25 Or then you have to start building

1 firewalls to make sure you're not using one side of  
2 information versus the other, which was a second  
3 point he pointed out about the buyers really wanted  
4 to know who the sellers are, and that's something  
5 they normally do. They usually know who they're  
6 buying from.

7           On the other hand, sellers don't always  
8 know and certainly not in private negotiations what  
9 their competitors are offering. They're not  
10 supposed to know or the buyer is supposed to  
11 control that information and maybe play a little  
12 poker and say, He offered it to me for 20 percent  
13 less than you did and you're not supposed to be  
14 able to call him up and say, Did you really offer  
15 that price.

16           So that asymmetry of information I think is  
17 important and to the buyer's advantage. In his  
18 case they're concerned because they don't know who  
19 the sellers are. You ought to avoid those  
20 conflicts from my point of view, others will not  
21 think they're conflicts, in the ownership  
22 structure.

23           MS. DeSANTI: We have five people who have  
24 signed up to speak on this issue. We'll hear from  
25 them, and then we'll broaden the floor to basically

1 have all of the issues out on the table to mix  
2 metaphors. Tom Krattenmaker.

3 MR. KRATTENMAKER: Thanks, Susan. On the  
4 question of innovation issues, I think they abound  
5 in this area because I think that's what it's all  
6 about. What you're going to see is competition  
7 among the exchanges, and perhaps if anything,  
8 that's been a theme that maybe needs to be talked  
9 about a little bit more.

10 And the competition I believe is going to  
11 come in the form of the people writing the newer,  
12 the better software, the more complicated programs,  
13 the stuff that as the suppliers talked that doesn't  
14 just do auctions but talks about supply chain  
15 management, electronic catalogs, and really allows  
16 you to do complicated and sophisticated auctions.

1 and Scott gave, I don't know that I would have a  
2 presumption against a B2B that was owned by all the  
3 firms in the industry, but what I can see from  
4 experience is if you've got at least a couple firms  
5 in the industry, you start to get some economies of  
6 scale, and you start to get some what I would call  
7 just economies of know how and information.

8 I think you're more likely to be able to  
9 come up with the right questions and maybe the

1 sides, and I think that we just don't know enough  
2 right now.

3           And I think as Harry had said before, all  
4 of these things have to be looked at on a very,  
5 very case-specific, fact-specific basis. My own  
6 intuition is that in most of these instances there  
7 are ways to build the system through architecture  
8 that makes it fair, whether we're talking about  
9 firewalls or there may be situations where fire  
10 walls aren't needed.

11           But I think this is certainly more in the  
12 nature of Rule of Reason, and I think we are way  
13 too early in this game to try to impose any kind of  
14 per se rules.

15           I had originally put my flag up though for  
16 a different reason if I may.

17           MS. DeSANTI: Go right ahead.

18           MR. MITNICK: The question was asked  
19 before, does joint ownership affect incentives to  
20 compete? I think ownership always affects  
21 incentives to compete, but incentives are not  
22 illegal. Behavior is illegal. So we need to  
23 understand the incentives, and we need to see where  
24 they lead and maybe understand even some of the  
25 warning signs.

1           Again I'm going to retreat to my own  
2           experience which is on seller exchanges where there  
3           are a few owners, and they tend to have large  
4           market shares. In situations like this, when you  
5           see people who are putting together a site to sell,  
6           one thing that is fairly obvious is that this site  
7           is probably -- if it's going to have a lot of  
8           transparency, it's going to result in lower prices.

9           It's not hard to figure out that that's not  
10          normally something that's in a seller's incentives,  
11          so you have to ask yourself, Why are sellers

1 operated a company and been business people. So  
2 they frequently don't have a clue when they're  
3 starting this what the business plan is going to  
4 be.

5 Two big differences in business plans as it  
6 relates to B2Bs, especially on the seller side, and  
7 every decision that they make, I can tell you, will  
8 flow from this fundamental distinction, which is:  
9 are they going to operate this as a for-profit  
10 center where all the profits of the venture are  
11 really going to flow to that level of the entity,  
12 or on the other hand, are they going to operate it  
13 as a utility which is going to be a low-cost  
14 platform that is never going to be teed up for an  
15 IPO, and the employees are not going to get a whole  
16 lot of stock options, and it's going to be run in a  
17 different manner?

18 If it's the former and they're doing it as  
19 a profit center and they're possibly even looking  
20 down the road for an IPO, you're probably pretty  
21 well assured just on that structure with those  
22 incentives that it's going to be very customer-  
23 driven, and you can probably stop there.

24 If it's the other way, if it's more of a  
25 utility model, this gets to I think what

1 Commissioner Leary said before, which is how close  
2 to the edge of the cliff do they want to get. The  
3 fact that you have people who own a site who may  
4 want to take that stroll does not mean that they're  
5 engaging in anything that's illegal, but that is  
6 clearly the area where I think you're going to have  
7 to look the most careful, and the government's  
8 analysis is going to have to be the most robust and  
9 sophisticated, and the private counseling is going  
10 to have to be the most sophisticated.

11 Just a couple of very quick examples of  
12 where the incentives can cause some problems or at  
13 least lead to some inquiry, and some of these have  
14 been touched on. One is from your tariff  
15 publishing, the presentation bias of the screen.  
16 Certainly that's something that is fair to look at,  
17 and again if the clients are sophisticated, they're  
18 going to know right away that that's something they  
19 simply can't do.

20 The second is the terms and conditions of  
21 how pricing is going to be done on the system,  
22 pricing of -- do the rules apply equally to the  
23 owners and the non-owners, which leads to the  
24 third, and Steve touched on this, how do the owners  
25 in a legal way deal with free riding of the



1 non-owner participants, people who maybe don't  
2 actually add that much value to the system, but  
3 they're competitors. They shouldn't be excluded,  
4 but they don't really -- they don't really add very  
5 much.

6 Is there anything you can do to make the  
7 rules different, or is that a per se area? I think  
8 some of these are not yet clear.

9 MS. DeSANTI: We're 30 minutes from the  
10 end, and we're about half-way through our agenda,  
11 and people are making very valuable contributions,  
12 none of which I want to cut off, but I just flag it  
13 for people's attention that we are 30 minutes from  
14 the end.

15 So I am going to put out on the table the  
16 issue of network effects and competition among  
17 B2Bs, open the comments to whatever of these issues  
18 you think it's most important to address, what you  
19 most want to address.

20 We'll turn to Harry First and the other  
21 people with their tents up, Professor Muris and  
22 Laura Wilkinson will can get in, so go ahead,  
23 Harry.

24 MR. FIRST: Thank you, Susan. It was the  
25 perfect lead in, exactly what I was going to say,

1 and I can respond to whichever question you ask  
2 with the same response.

3 MS. DeSANTI: What a flexible guy.

4 MR. FIRST: This is what politicians do, I  
5 think, but because before you asked about  
6 innovation and then you moved to network effects,  
7 and the point I was going to make, which really Tom  
8 made earlier, I think, is competition among  
9 marketplaces.

10 I think there are two cuts of markets that  
11 we've been talking about and sometimes move back  
12 and forth. One is just simply the products that  
13 the parties who are putting together this effort  
14 are manufacturing so we're concerned about those  
15 product market effects, and if they -- you could  
16 imagine for innovation purposes if the gun makers  
17 put together a B2B site and never include safety  
18 locks, maybe we would be concerned about some kind  
19 of input effects.

20 But the point that I think really came out  
21 certainly in this morning's discussion as you start  
22 thinking further, the real innovation that we're  
23 talking about here is the marketplace itself, and I  
24 think it's going to be quite important to make sure  
25 that we have competition among marketplaces even in

1 the same industries.

2 And I think our difficulty is not going to  
3 be so much with, will someone, will a firm be  
4 excluded from a market. Those are easier to deal  
5 with and I think may come up less frequently, and  
6 we have doctrines to deal with that like the  
7 Essential Facility Doctrine. The problem is going  
8 to be over exclusion and the extent to which in  
9 some ways one marketplace may engage in efforts  
10 which will prevent competition from other  
11 marketplaces.

12 There are lots of different ways to do the  
13 same kinds of things, to array information, to  
14 provide different services, and that's the kind of  
15 competition I think we want to encourage, and this  
16 leads me to say something about network effects,  
17 which is your second point.

18 I think we sometimes assume that because of  
19 network effects, it's sort of inexhaustible  
20 efficiencies to a single network and that we would  
21 be better off with ever larger and larger networks,  
22 and I think that that's unlikely to be true or at  
23 least on the margin, whatever additional  
24 externalities or efficiencies we might get from  
25 increasing the size of the network, we have to be

1 aware that at some point we are losing competing  
2 networks and the competing efforts that those  
3 networks may bring.

4           As much as we can think of English as a  
5 network of speakers, but we still do like French,  
6 and we want to make sure -- it might be nice if  
7 everyone spoke English in the world, but we lose  
8 something, and I think it's important and it may be  
9 particularly important in this area where concerns  
10 for security and stability may mean that we would  
11 lose a lot if we become overly dependent in any  
12 industry on a particular network.

13           So on the network effects it's a caution  
14 about getting caught up in the notion that there  
15 are inexhaustible economies of scale in terms of  
16 network effects.

17           MS. DeSANTI: Tim Muris?

18           MR. MURIS: Hi. I teach at George Mason  
19 and am of counsel to Howrey & Simon. I think the

1           And I hope what doesn't happen here is that  
2 the government -- well, I hope the government  
3 resists the temptation at all levels of like a  
4 cheap consent agreement particularly promulgated on  
5 a less restrictive alternative posture because one  
6 of the things that's going to happen here is when  
7 the government sneezes, a lot of counselors are  
8 going to get pneumonia, and you're going to have --  
9 for instance, people are looking for something.

10           Whatever first steps the government takes  
11 are going to have a profound impact, and since we  
12 don't know and since the history of regulation is  
13 full of unintended consequences, I think caution is  
14 very much in order.

15           MS. DeSANTI: Point well taken. Jerry  
16 Jasinowski.

17           MR. JASINOWSKI: I've been for some time,  
18 Susan, anxious to make the point about competition  
19 among marketplaces and having multiple  
20 marketplaces, and it's now been made several times,  
21 and I want to reinforce what has been said.

22           MS. DeSANTI: Could you lean into the mike  
23 so that we can be sure to get your comments? I'm  
24 very interested.

25           MR. JASINOWSKI: Yes, Jerry Jasinowski,

1 National Association of Manufacturers, and I was  
2 just saying that I was anxious to make the point  
3 about multiple marketplaces. There's now about a  
4 thousand by some counts and more by other counts,  
5 and since we're in the marketplace business, we see  
6 this intense exponential growth of them all the  
7 time.

8           Several people have made that point, and I  
9 would reinforce their points, but if you look at  
10 the innovation point earlier and the notion that  
11 the application of standards would in fact decrease  
12 competition, I would say someone is going to come  
13 in and provide competition.

14           Moreover, if you look at joint ownership  
15 and the notion that they have economic rents,  
16 people are going to come in and compete that away  
17 very quickly. In fact, I think because there are  
18 over a thousand already, they are growing like  
19 topsy, that this is the means by which competition  
20 is going to be greatly intensified.

21           I've heard very little this afternoon about  
22 the conventional notion in antitrust that prices  
23 are going to be raised. That doesn't happen much  
24 in the American economy as it used to. That's why  
25 we have inflation so low.

1           What we see is a great concern, which ought  
2           to make antitrust experts feel good, which is that  
3           manufacturers and others can't raise prices, and  
4           this proliferation of a lot of marketplaces is  
5           going to make it increasingly difficult to do so.

6           MS. DeSANTI: Thank you. Laura Wilkinson,  
7           let's get your views from a counseling perspective  
8           again.

9           MS. WILKINSON: Sure. From a counseling  
10          perspective, I think that many of the issues that I  
11          was going to say have already been raised, because  
12          I think when you're on such a large and  
13          distinguished panel, you get outnumbered, and many  
14          of the points you were going to make are already  
15          said.

16          But I would just like to add that I think  
17          the overview that we got from Commissioner Leary  
18          sort of put everything in perspective in that the  
19          B2B marketplaces are new, innovative ways that  
20          companies are going to be competing in the future,  
21          but it's going to bring to light many of the same  
22          issues that we found in our conventional  
23          marketplaces.

24          And the antitrust laws and the guidelines  
25          that we have in place in terms of mergers and joint

1 ventures or collaborations among competitors all  
2 take into effect for the B2B marketplaces as well  
3 so I think that as the dust settles, you'll find  
4 that the analysis remains the same, and the issues  
5 remain the same in terms of monopoly, monopsony,  
6 collusion and information exchange kinds of issues.

7 MS. DeSANTI: Thank you. Rick Rule?

8 MR. RULE: Thank you. It strikes me that  
9 what we spent the first part of the afternoon here  
10 discussing involves some of the more traditional  
11 antitrust issues that I think the law and the way  
12 enforcement policy is developed makes easier for us  
13 counselors to deal with.

14 One other point though in terms of rules  
15 within an exchange and particularly for formation  
16 that I think folks need to be concerned about  
17 before moving to the question of competition among  
18 exchanges, and it relates to that, is the extent to  
19 which the formation process becomes a forum for  
20 members of the industry to decide how they are  
21 going to approach other exchanges that have already  
22 been formed.

23 Or another way to put it and I think there  
24 is a potential danger or at least it may be  
25 perceived as a potential danger by the enforcement



1 agencies of using those formation exploratory  
2 ventures as an opportunity to preempt the formation  
3 of exchanges that might intensify competition in a  
4 way.

5           Again, I think that's something that can be  
6 dealt with by counselors, and it probably is more  
7 of a fear on the part of enforcement agencies than  
8 reality, but I think that one has to be concerned  
9 about the record there.

10           But it strikes me that the bigger problem  
11 for antitrust lawyers and enforcement agencies is  
12 going to be adapting the analysis to network  
13 effects, and what that means. Essentially network  
14 effects, which are all the rage among antitrust  
15 lawyers but have obviously been around for decades,  
16 they tend to reflect by and large efficiencies.

17           And the fact is that oftentimes an exchange  
18 is going to be more efficient if it includes a  
19 larger number of the market participants. The  
20 information is likely to become more valuable and  
21 more accurate. The market is likely to be more  
22 robust so that if you're a particular buyer or  
23 seller, you're likely to find an exchange. There's  
24 going to be less inefficiency.

25           And all of those increase as more and more

1 folks join the exchange and frankly as more  
2 exchanges interact or interconnect with one another  
3 because one of the things you see in these areas  
4 are a lot of related exchanges and the question of  
5 whether they're going to be managed by one central  
6 exchange that has subsidiaries or whether it's a  
7 number of different exchanges interconnecting.

8 But those are efficiencies, and one of the  
9 things if you think about it, one of the  
10 implications of that is that this is not a very  
11 good area for market share screens. Unlike a lot  
12 of other areas and something that a couple of  
13 people have mentioned here, market share screens  
14 often sound very good.

15 We have standards now, the favorite number  
16 of enforcement agencies is 20 percent, used to be  
17 35 percent, but whatever the number is, there is a  
18 tendency to sort of limit the participation. Well,  
19 if you believe that network effects are  
20 efficiencies, then you may be sacrificing  
21 efficiencies if you create those market share  
22 thresholds.

23 And even though agencies can say, Well,  
24 those are really safe harbors, if you're above that  
25 number it's not a problem, we just look at it more

1 closely, as a practical matter business people,  
2 being conservative as Joel has said, get a little  
3 reluctant to start sailing outside of safe harbor  
4 so I think that's something one has to look at it  
5 and has to recognize that the market does work, and  
6 it's likely to work in developing exchanges.

7           What will happen is I would predict or  
8 imagine that you'll have differentiation that if an  
9 exchange develops in an industry, there will be  
10 opportunities for others to differentiate, to  
11 create new value, to bring people for certain  
12 exchanges onto their exchange.

13           And finally, with respect to innovation, I  
14 don't think by any means this suggests that we have  
15 to worry about innovation because I think the  
16 innovations that are going to be relevant to B2B  
17 exchanges will occur across exchanges; that is, the  
18 innovation out there, the technology that's  
19 developed in one particular industry can be  
20 translated into others, and so there's going to be  
21 a lot of competition.

22           And I think that's one of the reasons you  
23 see a lot of the suppliers, if you will,  
24 infrastructure suppliers teaming up with different  
25 exchanges, and you see a lot of aggressive

1 competition between or among companies like Sun and  
2 Microsoft and IBM and Oracle all trying to bring  
3 their technology, their experience to these  
4 exchanges.

5 And I think that will continue because even  
6 though network effects are powerful and beneficial,  
7 they probably do not lead to the conclusion that  
8 there will be a single exchange.

9 MS. DeSANTI: We now have enough people  
10 with nameplates up and little enough time remaining  
11 that I'm going to apply a two-minute rule. Please  
12 keep your comments to two minutes.

13 Roxann, we'll go to you first and then  
14 Phil.

15 MS. HENRY: Let's see, with my two minutes.  
16 I think on the innovation issue everybody's really  
17 talked about a lot, one of the issues is simply the  
18 innovation between marketplaces, and there doesn't  
19 seem to be any real fears at this point, although I  
20 must say if you had heard some of the panels  
21 earlier, you heard the, quote, neutral parties and  
22 the owners, and some of those neutral parties were  
23 very, very upset about what they considered sort of  
24 anticompetitive.

25 The mere fact that the owners were involved

1 in the industry seemed to them unfair and  
2 anticompetitive because indeed it was affecting  
3 their ability to get venture capital.

4 On the other hand, again it goes to the  
5 issue of, Is that something that we really wish to  
6 get involved in, and I think not.

7 I also thought that Patrick Stewart on  
8 behalf of MetalSite gave an excellent exposition of  
9 why there is industry ownership of a site that  
10 hardly really needs to be repeated, but he also did  
11 make the point that it is a basic antitrust  
12 business. Antitrust considerations come in to  
13 play. There are guidelines for the directors.  
14 There are guidelines for when the marketing people  
15 get together.

16 These are things that are just handled in  
17 the ordinary course, and as has also been  
18 discussed, one of the key issues is, Why are you  
19 doing something and just understanding how each  
20 piece of what you're doing fits into that.

21 Another point though on the counseling is  
22 not just why you're doing it and how each piece  
23 fits in. It's also asking the question, Who will  
24 be disadvantaged and figuring out where those  
25 disadvantages lie so that you can address them very

1 explicitly and see if there are any alternatives  
2 and whether those disadvantages really need to take  
3 place.

4 MS. DeSANTI: Phil Proger?

5 MR. PROGER: Well, I just want to pick up  
6 on one point that Rick was touching on because I  
7 think he's very right when he says market share  
8 screens are difficult here. I'm not prepared to  
9 say this is like a bid model, but the market share  
10 may not tell you very much. And I think as a  
11 practical matter that real begins to tell when you  
12 start trying to deal with what I think is a very  
13 pragmatic problem of overinclusiveness and its sort  
14 of corresponding twin, exclusionary conduct.

15 How do you analyze whether you're being  
16 overinclusive, and how do you determine that now  
17 you've drawn the line and no one else can join?  
18 And it may seem like these are simple things, but  
19 you could have a situation where you're confronting  
20 that you're concerned with being too over  
21 inclusive, but yet an applicant is threatening some  
22 type of antitrust action because they've been  
23 denied access to something they feel is very  
24 essential.

25 And I think this is going to be one of the

1 areas that there is going to be some difficulty in  
2 analyzing, and I think it's going to be very  
3 fact-intensive, and it's hard, as Tim Muris said,  
4 to find the law that really applies.

5           You can look around and say, Well, in the  
6 healthcare guidelines networks -- the FTC and the  
7 Department of Justice said that even a non  
8 exclusive network above 30 percent might create a  
9 problem if it was outside the safety zone. Is that  
10 applicable? Should we be thinking about that here?  
11 And there's so little law that really deals with  
12 how you parse this out and how do you even count it  
13 as Rick talks about.

14           And I think this is going to be a very  
15 interesting area to develop and actually very  
16 crucial as you set these up.

17           MS. DeSANTI: Thank you. I think what  
18 we'll do is work from Bert, you, all the way back  
19 to, Jonathan Baker, we'll give you the last word,  
20 so let's go in order.

21           MR. FOER: Well, late in the day I want to  
22 focus again on what FTC's role might be. I think  
23 it's a good thing that you've held this workshop.  
24 I think it's important that you be involved in the  
25 shaping of whatever is going to happen, obviously

1 with a great deal of care, as is being demonstrated  
2 here, more to listen than to be active, but don't  
3 forsake an active role.

4 I think you're in the fact-finding process  
5 now. That's going to continue for awhile. You can  
6 help develop a research agenda that can be used



1 helpful for the lawyer to be able to say to the  
2 client, it's not me saying so, look at what the  
3 staff is thinking, they've said this much.

4 So I think we should be moving toward that  
5 stage of some gentle, informal feedback to the  
6 community as you all absorb what you've picked up.

7 MS. DeSANTI: Scott Perlman, I'm sorry.

8 MR. PERLMAN: That's okay. Thank you. I  
9 just wanted to talk a little bit about noncompetes  
10 and minimum purchase requirements and how those  
11 might affect competition between exchanges.

12 At one point yesterday the issue of  
13 exclusives came up, and I guess everyone on that  
14 particular panel pretty much disclaimed any  
15 intention to have any exclusives. I can tell you  
16 though that you're going to see exchanges that do  
17 have noncompetes for instance where the forming  
18 members are asked not to become members of other  
19 exchanges for some period of time.

20 The ones I've seen, they're not banned from  
21 purchasing through other exchanges. They're simply  
22 asked not to form or make equity investments in  
23 those, and it seems to me that under some  
24 circumstances, those clearly are going to be  
25 justified and may be necessary if you've got a

1 group of companies that are each being asked to  
2 contribute a significant amount of capital.

3 The other contributors may need some  
4 assurance that one of the partners isn't going to  
5 go off and start pushing or advocating for another  
6 exchange.

7 Similarly with minimum purchase  
8 requirements, the only examples I've seen of that  
9 so far are really so soft that they're very  
10 unlikely I think to have any consequence. There's  
11 no teeth to them, but I've counseled group  
12 purchasing organizations, and I can tell you that  
13 you sometimes need to have rules with respect to  
14 commitment to drive efficiencies.

15 I think Rick was saying before that in  
16 general people involved in group purchasing,  
17 legitimate group purchasing would not have  
18 incentives to cheat. Well, you do have situations  
19 sometimes where particular members will cherry pick  
20 for instance on particular contracts, and that that  
21 makes it difficult for the GPO to go back to a  
22 manufacturer and negotiate good pricing from them.

23 So there are rationales for those types of  
24 restrictions which I would argue, suggest that they  
25 should be looked at under the Rule of Reason.

1 Whether they're going to be a problem under the  
2 Rule of Reason is going to depend obviously on the  
3 particular circumstance of the industry and whether  
4 you have enough competitors outside of the exchange  
5 or other people who might form an exchange so that  
6 other exchanges can still form without that kind of  
7 participation from the people in this particular  
8 B2B.

9 MS. DeSANTI: Eddie Correia?

10 MR. CORREIA: I want to go back to a point  
11 that a couple people have made. I think these are  
12 transactions where a market share doesn't tell you

14 have to step back and think, what are rivals

17 concerned traditionally that there's a production  
18 joint venture or they're agreeing on marketing or  
19 they're agreeing on research or something like

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1 the potential for enormous efficiencies, and  
2 second, doesn't have as obvious a link with  
3 ultimate price and output decisions as other joint  
4 ventures that the antitrust analysis has  
5 traditionally thought about.

6 So whether it's a situation where a small  
7 group says, We only want the people that invested  
8 in this to participate, we don't want free riders,  
9 we're going to stop with 20 percent of the market  
10 or whether the network effects are so great that  
11 virtually the whole industry is participating,  
12 that's not going to really tell you very much about  
13 ultimate effects on price and output.

14 In the end you have to look at the way that  
15 exchange is structured to see if what they're doing  
16 is going to drive up price or drive down output by  
17 the time the consumer is really affected by that.  
18 And we may find that if it's carefully structured,  
19 consumers are going to overwhelmingly benefit  
20 because both the buyers and sellers have this  
21 incentive to squeeze out as much of the transaction  
22 costs as possible. That's good for both them.

23 MS. DeSANTI: Thank you. Mark Cooper.

24 MR. COOPER: Let me offer some specifics.  
25 I didn't ask for a per se rule actually. I just

1 said it made me a nervous, and that's a heightened  
2 scrutiny rule, if you will, and I think the agency  
3 has a set of guidelines like that. Let me suggest  
4 eight specifics.

5 One, rules about inclusion, what do you  
6 have to put in? Are there minimums? Those raise  
7 certain concerns, and there are sensitivities about  
8 that. Can you take it out, and what are the rules  
9 about taking it out? If you can't take it out and  
10 shop elsewhere, there's a concern raised. Who  
11 can't get in and why not? Is there a link between  
12 profits?

13 There's not supposed to be links between

1           MR. SALOP:  Actually I've gotten nervous,  
2           and what makes me nervous is I'm finding that I  
3           agree with Rick Rule.

4           MR. RULE:  We're both nervous now.

5           MR. SALOP:  Well, it seems to me that Rick  
6           really identified the key issue.  The government's  
7           going to do very little now.  I think the bottom  
8           line is the FTC is not going to interfere much with  
9           these B2Bs unless they do something really stupid,  
10          and so if your B2B turns out to be the poster boy,  
11          you should have fired your lawyer a long time ago  
12          because the FTC is not going to want to disturb the  
13          marketplace while these institutions are still  
14          emerging.

15          But let's roll the clock forward.  There's  
16          going to be an inevitable shake out, and the  
17          question and the rationale for that inevitable  
18          shake out is some of these exchanges are going to  
19          be doing very well.  Others are going to begin to  
20          be faltering.  There's going to be a lot of mergers  
21          proposed as I think Rick was really pointing out.

22          The rationale for those mergers are going  
23          to be what we used to call economies of scale and  
24          what we now call network effects, and the question  
25          is, What's the agency going to do then, and here's

1 the point where I disagree with Rick.

2 I think once one of these exchanges gets a  
3 monopoly in an area I think that monopoly is going  
4 to be very difficult to dislodge. And when you get  
5 to this point of merger policy, you have to be very  
6 careful and very cautious in knowing what to do.  
7 And knowing that you're going to get there, I think  
8 you need to think now about what you want to do now  
9 knowing that at some point you're going to need to  
10 deal with the mergers, and you should structure  
11 policy accordingly.

12 Now, with that in mind I thought about,  
13 Well, let's look back at history at the historical  
14 precedents, not the legal ones, the factual ones,  
15 and add maybe what you should do as an exercise is  
16 ask yourself with respect to the historical  
17 precedents, the things that look like B2Bs, what  
18 would you have done in the past if you knew how  
19 they actually -- how they were going to develop as  
20 they actually have.

21 And for that I want to give you three  
22 examples as objects for your analysis. The first  
23 is stock exchanges. They are B2Bs after all or  
24 B2Ss, buyers to sellers, and just recently there  
25 was a price fixing. Well, I mean, there are only a

1 few of them. You have to ask whether it's a  
2 natural monopoly or not, and there's been a price  
3 fixing case against the NASDAQ, a situation where  
4 they set rules to fix prices.

5 Second are credit card networks, another  
6 essentially B2B. They've been in antitrust trouble  
7 since the beginning, and right now the Department  
8 of Justice appears to be trying to undo policy that  
9 they engaged in in 1975. And the third B2B example  
10 that I've come up with is auction houses, another  
11 sort of thing that you think auction houses are a  
12 natural monopoly. They set rules. Gee, what could  
13 be wrong? There's competition, and now we find out  
14 that the two main antique auction houses have been  
15 price fixing allegedly for the last ten years.

16 So I think when you do your analysis, you  
17 should think about, Do you want to end up in a  
18 situation like these industries or end up somewhere  
19 else, and if you do want to end up somewhere else,  
20 what should you be doing along the way to keep that  
21 end game into account.

22 MS. BOAST: Steve, would you go so far as  
23 to argue that the 20 percent market share screen



1           MR. SALOP: No, I think a 20 percent rule  
2 is insane.

3           MR. RULE: He agrees with me.

4           MR. SALOP: But unlike Rick I think the  
5 screen should be somewhere below 110 percent.

6           MS. DeSANTI: We'll move to Joe Brodley.

7           PROFESSOR BRODLEY: I want to speak for a  
8 moment on -- or at least the value of competition  
9 between exchanges. There's a striking fact in the  
10 Morgan Stanley study that in a buyer-dominated hub  
11 where the buyers have market power, in a market  
12 power dominated buyer hub, the buyers get 70  
13 percent of the value. In a seller-dominated with  
14 market power hub, the sellers get 60 percent of the  
15 value.

16           That suggests that -- that means that the  
17 one that doesn't get the market power is making do  
18 with 15 or 20 percent and still participating. I  
19 suggest that may be nothing but at least suggests  
20 that it would be better if hubs were competitive to  
21 some extent.

22           Now, some of the proposals that have -- for  
23 hubs do involve groups with market power, and the  
24 question that was posed the last two days to  
25 appropriate people was, Why do you need to have a

1 group with market power, and the answer it seemed  
2 to me was not very satisfactory, which was, Well,  
3 we have to raise a great deal of money, and it's  
4 beyond the competence of one company.

5 Well, maybe, but if these are big  
6 companies, certainly -- and there's lots of value  
7 being created, you would think that they would be  
8 able to raise the money. The problem with that is  
9 that if you put all of the major players in one  
10 hub, then you're much less likely to get a second  
11 one because they're of course now invested in this.

12 So the bottom line here is that since this  
13 isn't saying anybody with power can't form a hub.  
14 It's saying that the alliance is perhaps something  
15 that should be looked at as to whether it is  
16 necessary. If it's truly necessary, that's another  
17 matter, but the answers given I didn't think were  
18 very convincing.

19 My final comment I think is simply that it  
20 seems to me that the FTC's policy should be  
21 enforcement caution, yet alertness, and a  
22 conference like this it seems to me is recognizing  
23 this. This shows alertness, but there is no  
24 enforcement action being taken.

25 MS. DeSANTI: Okay.

1 MS. BOAST: Are you sure?

2 PROFESSOR BRODLEY: No.

3 MS. DeSANTI: Tom Krattenmaker?

4 MR. KRATTENMAKER: When you announced your  
5 two-minute deadline, all I could think of was that  
6 if Vic Kramer were here, he would have sit up and  
7 pulled out his pocket watch.

8 I want to heartily second what Laura said  
9 before about this is largely the application of  
10 rules that we already know to a new and evolving  
11 area of technology and business practice, and in  
12 that respect thought I might suggest three things  
13 to the Federal Trade Commission. What can you do  
14 to help out?

15 Number 1, you can embrace the Muris  
16 corollary to the Krattenmaker rule, less  
17 restrictive alternative analysis is good for  
18 counselors, but in this area right now it's bad for  
19 government. Number 2, bouquets of balloons to you  
20 and you for the Competitor Collaboration  
21 Guidelines.

22 Again speaking as somebody not from the  
23 academic side, but as a counselor I think we all  
24 use them every day. You don't know this but  
25 yesterday hundreds of you here met a very astute

1 businessman from Amsterdam who knows those  
2 Competitor Collaboration Guidelines better than I  
3 think any law student in America does. We use them  
4 every day. They're very helpful.

5 Point number 3. Now that you've done  
6 something, there's something more you can do. This  
7 technology is -- does not respect geopolitical  
8 boundaries. What we're doing is Internet protocol  
9 technology. This spills over everywhere. I get  
10 the same question. I know everybody does every day  
11 which is, Okay, you've told me it's okay here, what  
12 about France.

13 Anything you can do to work with your  
14 counterparts in the European Union as you've been  
15 doing to try to clarify the rules and to try to  
16 harmonize the rules between here and there.  
17 Otherwise you are at risk of becoming an entry  
18 barrier. You are at risk of stopping an efficient  
19 enterprise that has to spill over borders.

20 You could be standing in the way of global  
21 markets. I think I ran out of my two minutes.

22 MS. DeSANTI: Well, you've scared us  
23 sufficiently, but thank you. Thank you for the  
24 nice comments about the Guidelines. We appreciate  
25 them.

1           MR. KRATTENMAKER: Thank you. You deserve  
2 them.

3           MS. DeSANTI: Jon?

4           MR. BAKER: I'm delighted to be bookends at  
5 this panel having started us off. I just wanted to  
6 make sure we are careful to distinguish between  
7 joint ownership of the B2B marketplaces and common  
8 membership.

9           I can understand how strong -- how shared  
10 ownership brings industry expertise to the  
11 development of these marketplaces and can be  
12 valuable, but I can also see that -- and I can also  
13 understand how you could well end up with everyone  
14 in the industry joining. If the network effects  
15 are very strong and the transaction cost savings  
16 are very large, everyone will join.

17           But that's not quite the same thing as  
18 saying everyone ought to own, and ownership raises  
19 a little bit different issues. If everyone in the

1 marketplaces.

2           And also, if the common ownership comes  
3 with governance by the industry members, that  
4 that's -- that could bring with it a method of  
5 excluding new entrants or fringe rivals,  
6 discriminate against them, again possibly being a  
7 way of creating or maintaining monopoly power among  
8 the ones who are owners.

9           So I just want to highlight the difference  
10 between common membership and common ownership and  
11 suggest that the latter raises questions that the  
12 former doesn't.

13           MS. DeSANTI: Thank you, Jonathan. I'm  
14 going to take the moderator's prerogative here and  
15 just for 90 seconds do a wrap up. And to hold you  
16 in your seats for that 90 seconds, I'll promise you  
17 what the take-away should be from the FTC  
18 perspective based on what the Commissioners have  
19 said to us so far.

20           I simply want to note that this conference  
21 came about because of the very hard work on my  
22 staff, and you've heard about some of them already.  
23 I want to especially note Bill Cohen, my deputy  
24 director who is our analytical guru, Hillary  
25 Greene, who along with Gail Levine, I think they

1 both take pride of place as world's greatest  
2 detectives and researchers and analytical  
3 researchers in the sense of finding all of the  
4 people we have on these panels, and finally Michael  
5 Wroblewski, our advocacy coordinator, who has  
6 filled every single role that is possible within  
7 this conference, analysis, substance, talking with  
8 people, tracking them down, and most of all, for  
9 all of you this is most relevant, he's the one who  
10 basically hosted this big party. He told me not to  
11 worry about the logistics, he throws great parties.  
12 I think that's been proven true. That's why the  
13 trains have run on time, so we especially thank  
14 Michael Wroblewski.

15 I also want to thank all of our panelists  
16 here and the many panelists throughout the days.  
17 And to close, I want to key off of Tim Muris's  
18 point. It's an excellent point. When the  
19 government sneezes, antitrust lawyers get a cold.  
20 I want to make sure that doesn't happen out of this  
21 workshop, and especially since we've closed with a  
22 panel which has raised the potential competition  
23 issues that do arise here.

24 The take-away here is the Federal Trade  
25 Commission -- and I think we've heard this from

1 each of the Commissioners -- the Federal Trade  
2 Commission is taking a deep breath and beginning a  
3 learning process about B2Bs, and that's what the  
4 take-away should be in this.

5 Thank you so much for your patience and  
6 thank all of our panelists as well.

7 (Applause.)

8 (Time noted: 3:52 p.m.)

9 - - - - -

10



## 1 C E R T I F I C A T I O N O F R E P O R T E R

2

3 MATTER NO.: P950101

4 CASE TITLE: B2B WORKSHOP

5 HEARING DATE: JUNE 30, 2000

6

7 We HEREBY CERTIFY that the transcript  
8 contained herein is a full and accurate transcript  
9 of the notes taken by us at the hearing on the  
10 above cause before the FEDERAL TRADE COMMISSION to  
11 the best of our knowledge and belief.

12 DATED: JULY 10, 2000

13

14 SALLY BOWLING

15

16 DEBRA L. MAHEUX

17

## 18 C E R T I F I C A T E O F P R O O F R E A D E R

19

20 I HEREBY CERTIFY that I proofread the  
21 transcript for accuracy in spelling, hyphenation,  
22 punctuation and format.

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