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questions relating to today's topic, we may not be able to address all questions that we receive live. But we will review every question that we receive, and we will make them part of the record for this rulemaking.

And now let me introduce our panelists. First is Ken Libby. Ken is an attorney in the Bureau's Compliance Division. And he has been involved in enforcing the HSR rules for over 30 years. Ken will be providing a brief over <009>JTB HR 014510 JT 3004.6450 Td06

exemption where there is a competitively-significant relationship between the acquirer and the issuer.

Now, the one thing I wanted to discuss at a little length is the exception where the acquirer has holdings in a competitor of the issuer. And that relates to the common ownership issue. As noted in the NPRM, there has been an ongoing discussion of the impact of a single entity holding small percentages of voting securities in competitors within the same industry. And that's sometimes referred to as common ownership.

The debate is not yet settled, but it has raised concerns about the competitive effect of common ownership because

exemption to cover acquisitions of voting securities of an issuer by the issuer's officers and directors?

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So as written, the exemption would not apply to acquisitions by officers and directors. And having an officer or director of the issuer is inherently a competitively-significant relationship that we think warrants the ability to review the acquisitions in advance. For example, hlrm i ils f or wtanii f

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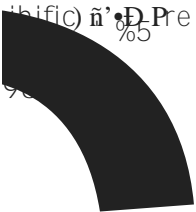
Sure. Thank you. So we have invited input on this point. And we we

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question was, why does having a vendor-vendee relationship with the issuer preclude the use of the exemption?

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So we all know that vertical relationships can be competitively significant. And as a result, the Commission has proposed that not exempting such acquisitions so that the agencies are able to review them in all e ifica



merging parties, quote, "already compare their NAICS codes in order to respond to items in the form," is typically the case only with negotiated transactions, not the types of transactions that would result in the acquiring person holding an aggregate interest of less than 10% in the issuer.

So here's the question. What would be the consequence if the acquiring person believeê 7

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bright-line tests to the greatest extent possible.

8:08: OK. Here is a question that has come in just a few minutes ago. It's a little long, so I'm going to just go ahead and read it directly. If the FTC consistently determined that none of the more than 1,800 acquisitions of 10% or less of an issuer's voting securities they examined from 2001 to 2017 presented competition concerns, presumably including scenarios where the acquirer had a 1% or greater position in a competing firm, doesn't that cut against the veracity of the common ownership literature?

5:11: Who would you like to take that one on? Should I try?
9:51:

8:08: Who would like to take it?

5:11: Well, I'll just point out-- and Ken, feel free to jump in. But I'll just point out that those enforcement statistics, of course, were generated under current rules, where there's no aggregation. And we've, I think, made it pretty clear through our discussion yesterday and in the NPRM itself that we really do believe that firms need to aggregate holdings ~~we~~ ~~themselves~~ • fine en.

don't know if you have any other follow-up comments while we wait and see if anything else came in that we are able to address on short notice. And just to remind everybody, if you do send questions and they're the kinds of questions that require a little bit more thought, we will certainly consider those questions as part of the record.

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< ! 9" 5 : Yes. And I'll just add that the sooner you can get us complex questions, the better. The more time we have to actually think them through is going to benefit everyone. So as we turn to our final presentation next week, our final Q&A on the ANPRM, would just encourage folks to get those questions to us sooner rather than later.

%! 1! 8" 98/ : Ken, anything to add?

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96= =; : No. Kate, didn't you want to say something about electronic filings?

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< ! 9" 5 : Sure. Tara, are we really good with no more questions on our exemption? May I--

%! 1! 8" 98/ : We do not have any-- yep, go ahead. We have not had any more questions come in.

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< ! 9" 5 : OK. Well, I will take this opportunity, knowing that we have a lot of folks who think about HSR right here live with us, to say that PNO is updating the instructions to the e-filing process that we've had in place since March. And we're going to be posting that on our website page very soon.

Really, the issue is under this platform that we're using, a lot of the file names that are coming in are too long for us to deal with the files efficiently. And we told you how to do it back in March. We've learned since then. We're providing some revised guidance on that piece.

And there's other aspects to it. But basically, just new guidance that we hope everyone will take a look at. And if you have any questions, of course, all you have to do is reach out.

%! 1! 8" 98/ : And I'll definitely give a shout-out to our heroic PNO team in collaboration with our tech folks at the FTC, and of course our colleagues at DOJ for being able to put together this e-filing option to keep us all safe during the pandemic. All right. Well,

