FEDERAL TRADE COMMISSION

PUBLIC WORKSHOP:

COMPETITION POLICY IN THE WORLD
OF B2B ELECTRONIC MARKETPLACES

FRIDAY, JUNE 30, 2000
VOLUME 2

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

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

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

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

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

Finally, on the more substantive level, I mentioned yesterday that we were going to keep the record open in this proceeding. We will keep it open until Friday, July 21. We want to encourage written submissions that people feel would supplement the record that's being created here. We encourage you, please, send us your cards and letters. We're very open to having as complete a record on these various issues that we've raised here as possible, and once again, the procedures for how to do that are in the press release that you can find on our website at www.ftc.gov.

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

(Applause.)

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

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

Now, at the outset, I also have to give the little caveat that I speak for myself, not for the Commission or the other commissioners. And sometimes I'm not sure I speak for myself either, but I'm going to make a few observations.

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

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

Now, it's no secret that we at the FTC are often referred to lately as the federal government's Internet agency, because of the substantial time and energy we have invested on how the Internet affects competition and consumer protection. Based on that experience, we have learned that in new markets, like those based in technology, that the fundamental principles of antitrust and consumer protection still apply.

In short, it's not really the wild west out there. But we have also learned that when markets are fast-moving, a certain degree of circumspection is appropriate. We've learned that these markets raise interesting and complex policy issues like data privacy, security, and cross-border jurisdiction.

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

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

But we should also recognize that these opportunities can and should continue as part of an organic process, one that will allow us all to work toward what is best for America. At the same time, we should be able to take a critical look at the questions that may prevent us from reaching that goal. Like anticompetitive behavior. And we should collectively think about ways we can address these concerns.

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

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

(Applause.)

MS. LEVINE: Well, we do have a lot on our plate this morning. Thank you for coming. This panel is going to address the issues of, and the perspectives of, owners and operators of B2B marketplaces. We heard a lot of interesting questions about how owners and operators handle their B2B exchanges yesterday, and I thought we would take some time this morning to address those issues.

We've got a lot of material to cover, so I think we'll try and stick to the same ground rules we used yesterday. If you have -- if you want to respond to a question, please just turn your table -- your name tent up like this and I'll call on you. When you first speak, I hope you'll take a moment just to introduce yourself. Not just your name, but your company as well. Can you tell us a little bit about your B2B, who your buyers and sellers are, and what exactly is bought and sold on your exchange. Try and please be concise with your comments, and at an hour, at the hour mark, I'm going to have to take a one-minute videotape break. So, we'll have a one-minute break and then resume.

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

Let me ask about the various methods or models for ownership of B2Bs. We're lucky enough on this panel to have a variety of models represented. Rod, I wonder if we could start with you. Petrocosm's chosen a -- just to give a little background, from what I understand, and you can correct me if I'm wrong on this, but Petrocosm has chosen a consortium model for its exchange. It's co-owned, at least in part, by Chevron and Texaco, and they're considering inviting in three other big buyers as well to have equity stakes in the exchange.

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

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

But because supply chain management is a significantly important area for them, a great area for efficiency improvement, to make it happen, they started the supply chain management facility or hardware/software necessary to make that happen, started over a year ago, created it and got it going on a small scale, felt that the real efficiency is getting it on a much larger scale, and getting more volume through the system. To accomplish getting more volume through the system, you have to have more participants, and in the end game, it is designed to be a neutral site with active participation by both buyers and suppliers, but in the start-up phase, the buyer side is the incubator group that got it going.

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

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

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

And one of the things that's very apparent in our industry is it's very fragmented. There are over 6,000 growers of produce throughout the United States. It's a $2 billion or $200 billion industry. Very fragmented, as I said, not only in numbers, but if you take a look at some of the sizes of the operations that exist in the industry. We have small mom and pop farmers that may be farming 20 acres to large corporate organizations.

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

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

That's not to say in the future that we won't come up with some type of a model, but certainly here in the beginning, that is the approach, and it's been the advice from, you know, some experts in the industry that we try to maintain domain expertise, and it's also why we stick strictly with the produce area. We think that this is an area that we can excel in. We have the right relationships with the -- and trust from our members and we want to keep it that way.

MS. LEVINE: Morgan?

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

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

Oil, on the other hand, has far fewer players. And so the ownership models you find in different industries are to a certain extent a function of the degree of fragmentation in those industries. And so -- because I think you have to think about what value does the exchange bring? In a very fragmented marketplace, an independent exchange can play an important role by aggregating demand across many, many suppliers and many, many buyers. And they can command on ownership stake for the value they create in doing that.

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

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

These are the two key drivers of an exchange's success, and, you know, commensurate with these contributions, those participants receive equity. On the other hand, cash contributions are rewarded with equity, in most cases, as are management efforts.

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

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

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

We actually began life as the division of a larger facility management corporation with a very compelling business need to serve a nation-wide distributed workforce and client base and to meet their needs.

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

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

And I like Morgan's point about the fragmentation. I think that clearly plays a role in the ownership and the way these marketplaces come together. In our direct personal experience, you know, commencing as a captive division, if you will, of a large owner, we had great success. We found traction early, we gained liquidity, and by virtue of the fact that we had the buy side, we were able to attract the sellers. And I think that actually is one of the characteristics of a successful marketplace, is active participation by both, but I do agree that it would be difficult to have equity participation on both sides.

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

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

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

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

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

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

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

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

I recently gave a speech at the powder and bulk solids conference in Rosemont, Illinois, a convention for people in powder and bulk solids processing, and I have never seen a more tightly woven community of men and women who have dealt with each other, sold to each other, with each other, competed, and that sense of community that the real world out there so enforces, and so reinforces in business behavior, we see on the Internet actually in a most rewarding fashion being echoed in how people find information, interact with each other in chats and forums and then find buyers, or suppliers, to satisfy their specific purchasing needs.

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

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

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

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

It's our intention to form the M-Xchange to make sure that we connect minority and woman companies to majority corporations across all of the vertical exchanges. We've gone out for our first round of capital, PPO, very successful, and some of the companies that we want to do business with, some of the buyers, invested in our company, and there are some of the people who want to be on the supply side who want to come in on the next round. We are not going to preclude any of that from happening, we are going to welcome them to participate.

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

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

MS. LEVINE: Joel?

MR. SIMKINS: Great. I'm Joel Simkins, vice president of EnergyLeader.com, and I suppose I should start off by thanking Gail and Bill for taking the time to understand what my company does, and now that you know, maybe you can tell my parents, because I have given up on explaining it to them, but I'll warn you, you're going to have to go slow when you get to words like Internet and computer.

We represent a real hybrid model, and I'm going to tilt this thing up so I don't have to bend over like that. Better. We represent a real hybrid ownership model, and I think what we do ties in very neatly to the last couple of points that have been made. Our company was founded earlier this year to help energy utilities stake out a place for themselves in the Internet economy, something they haven't done a terribly good job of so far.

In partnership with various utilities, energyLeader.com is creating a series of regionally-focused, rather than industry-focused, B2B marketplaces. Our marketplaces are designed as independent legal entities, majority owned by the utility and minority owned by energyLeader.com.

So, we are a thoroughly independent party owning a minority interest. The utility, the majority owner, we think in most cases, will be, but does not necessarily have to be a large buyer at the website, or at the marketplace.

Other buyers are likely to be -- other

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

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

We've got a number of these hubs in the works in metropolitan areas across the country, the first one of which is going to go live in December here in the greater Washington, DC/Baltimore metropolitan area in partnership with PEPCO, your beloved electric company. And just to wrap things up, we expect the transactions initially to focus on indirect goods and services, a lot of MRO items. These are not marketplaces for the trading of energy, it's a little bit confusing, we have the word energy in our name, we're working with utilities, but these are not marketplaces where you will buy your -- see electricity being bought or sold.

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

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

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

So --

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

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

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

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

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

There are two senior managers that came from Chevron out of the basically 30 top people who are making this happen, all the rest of them came from suppliers, other energy companies, from financial institutions, technology institutions, KPMG, we have some senior managers from KPMG, but what the goal was is to put together the management team that's going to create the functionality, the service, and be in a position to be able to make it successful as an independent company.

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

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

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

What you'll see is you'll hear -- the biggest phenomenon that's happened in the year 2000 is what we have called these coalition markets coming into the marketplace, people like Rod's and a number of the other ones we saw the other day. And they are either -- for the most part they start out as either buy side or sell side, and what has happened with the entry of these people, is that it has essentially frozen the capital markets so that start-ups, and particularly those that are sort of the neutrals in particular industries, are having much more difficult time getting funded.

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

But as Rod said, they're trying to migrate from being a buy side over into the neutral part. Neutral is an interesting word, as you probably heard a lot if you've been here yesterday and today, I've never heard anyone say yet that they want to be a biased exchange, an unfair exchange or something. But there certainly is, you know, this is about the power in a specific industry, and it's hard to make a generalization about what happens if a whole bunch across different segments, because it depends the kind of market that works in terms of ownership, in terms of control, even in terms of whether the market model as to whether it's an auction or a catalog, depends on the way the power was distributed within that industry.

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

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

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

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

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

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

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

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

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

And I think in sometimes -- in some cases, we might, I believe, in our company, we tend to take a little bit of a lesson from that, which is the denial of information to the buyer about suppliers is a far more serious stance to take than the presentation of information, and the assumption that the buyer will use it efficiently.

So, what I pay attention to, in both the consortiums that we are creating and selling ownership to participants in the industry themselves, in independent marketplaces that we run, and some of the consortiums that are being announced with ownership by participants that we would act as the platform for, is that it's an efficient presentation of information. We believe that if information is presented efficiently, ubiquitously, and in a fashion that is available to the buyer, then the marketplace is as open and unbiased.

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

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

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

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

MS. LEVINE: Nick?

MR. HEYMANN: My name is Nick Heymann, and my perspective on following this industry as an analyst, and head of our multi-industry industrial research efforts on the equity side at Prudential Securities, and we've certainly seen the evolution of many different structures, and within different e-hubs and virtual markets, and I guess I would certainly point to the fact that the more concentrated the industry, the more gatekeeping efforts seems to evolve with regards to very strong differences amongst major participants. And one would be the airline or aerospace industry where we've seen numerous attempts to try to unify and set up a common ground, and we've seen that that's not been very successful so far, and many parties now have just apparently broken off.

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

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

So, I think from that when, from our perspective, we see an evolution where the customers will ultimately drive who is most influential in the market space by how much more efficiently and how much greater productivity the suppliers can drive to the market.

MS. LEVINE: Robert?

MR. VERLOOP: You make a very good point about information, and our firm has actually struggled a little bit, with the question is are we a software company, are we a technology company, and I think more and more we're coming to the realization that, in fact, we are an information management company. So, Mark, your point is well taken.

It is a question of sharing information with both trading partners. However, I don't think that any of you are not familiar with the fact that in the retail industry, throughout the United States, and actually globally, there's been tremendous consolidation. And with that consolidation, there is a certain amount of empowerment that occurs with the buyers.

What we have found on the supplier side is a need to be better marketers. And we were -- Roy and I were talking about this earlier, that really the technology has enabled us to become better business people, and we have to be very, very careful with how we transmit information. And again, that's why I go back to the fact that we think we are an information conduit where we help suppliers and buyers better understand the dynamics of the consumer marketplace.

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

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

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

If you take a look at collaborative information transfer, then you really start becoming -- you start to empower the Internet and the partners to be able to get the product at the right place at the right time, and as some people have said, even before that the consumer knows that they need it.

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

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

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

MR. HARTING: Well, for both, in the sense that -- if one marketplace were to price inefficiently because owners were manipulating those -- either the presentation of the data or those prices by excluding other participants, they would be punished very, very quickly, because buyers can search, almost for free, for other venues where they can purchase those products.

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

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

MR. WALSH: Me?

MS. LEVINE: Yes.

MR. WALSH: Geography matters in some markets, but geography or the lack of geography can be used to threaten vendors by buyers outside of their markets. It's very important to remember that as consumers when we go in a bookstore today, we know we could often get it for less, quote unquote, on Amazon or Barnes & Noble. An omniscient buyer or empowered buyer, knowing that they could through two clicks of a mouse, find another vendor at a lower price, allows all buyers to effectively, forgive the word, threaten any given vendor with that empowerment.

Omniscient buyers or empowered buyers are accelerated by Internet access. The Internet is proving in the business-to-business sector every day that Darwin was right. It accelerates the discovery of who's bad at their business, i.e. their pricing is bad, their product sucks, they are just not available at the time the customer needed it and it accelerates the rewarding of guys that are good, men and women that are good at their business. Their product is well priced, it's available, it's correctly inventoried and processed, on your food example.

And I think it's important to remember that in the real world, out of those doors, a buyer is just geographically or physically bound by the catalog on his desk or her desk, the distributor he or she deals with, the physical availability of where his or her truck can go to get the product they need.

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

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

MR. COHEN: You know, there is a theory that information from a competitive sense can sometimes be a two-edged sword. Let's look at the other edge of that sword for a few minutes. We heard yesterday, I was involved with the panel dealing with buyers' perspectives, and the panelists there were in general quite clear that they felt that there wasn't a mechanism for one buyer engaging in the electronic marketplace to learn competitively sensitive information about other buyers, it was set up in such a way that that information was protected.

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

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

MR. COHEN: You're up first.

MR. HEYMANN: There's one site that came to my mind when you were talking about that question, and it was something called Brand-Wise.com and it was set up to basically allow customers an opportunity to compare numerous different, 8,000 different appliances, and try to compare supposedly based on independent reviews. It was set up and established by Whirlpool, and if you subscribed as a supplier of appliances to this site, if your product was the final one selected by the consumer, you would be given access to the data of the process the consumer went through to ultimately end up with the final product.

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

And so, certainly the information gleaned from the process is as valuable as ultimately maybe in some cases the actual sale of the product.

MR. COHEN: Let's come over to this end.

Gina?

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

MS. HAINES: Yes.

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

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

MS. HAINES: Well, actually, again, in the FacilityPro marketplace, specifically, buyers -- it is a true business-to-business marketplace as opposed to a mirror exchange. We are not simply facilitating a transaction between a buyer and a seller, we're actually taking control of the end-to-end process, so it's a truly integrated end-to-end process. Because it is buyer-specific, our technology, and we're not a technology company, but technology is a wonderful enabler for our business, it allows us to configure the views that are appropriate only to that buyer.

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

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

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

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

MS. HAINES: No, the sellers do not, in fact. Again, remember that we are buyer centric, we do advocate for our buyers. Now clearly to develop a liquid marketplace, there have to be benefits to the suppliers, but we are highly protective of our buyers' information, and we have been approached on multiple occasions for that information. We do provide industry pertinent information in aggregate, never in specificity, except back directly to our buyer.

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

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

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

MR. STOJKA: I'm still here.

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

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

So, what we've done is provided buyers and suppliers with private catalogs so that only that buyer can see the specific pricing that he is receiving from his suppliers, and the same thing takes place in our auctions. Our auctions are primarily private auctions. So, now the buyer can go on and see the supplier's prices that he has chosen, okay, that are specifically giving pricing to him. And vice versa in a reverse auction.

MS. LEVINE: So do the seller -- do the sellers see each other?

MR. STOJKA: The sellers see each other's prices, yes.

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

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

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

MR. STOJKA: Yes.

MR. COHEN: Who stands behind the anonymous names?

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

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

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

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

MR. STOJKA: Right.

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

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

MS. LEVINE: Rod?

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

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

MR. GRAY: The person that -- the individual participant, rather it's on the buy side or the supply side, they own their own particular information on the marketplace, and that's a contractual obligation between the marketplace and those participants. So, we would be violating that contractual relationship if we were to disclose it to other participants, whether they're an owner or not.

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

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

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

MS. LEVINE: Mark?

MR. WALSH: Not to make light, I think this is one of the -- absolute one of the cruxes of what's happening on the net today. My brother is a doctor, and when asked about helmet laws for motorcyclists, he once said it is a self-correcting problem. And the reason I bring that up is I think, who was talking about the Sears Brand Central issue, about vendors, we're already seeing on some of our verticals, my nickname for it is revenge-of-the-vendors.com, and what I mean by that is that if there is undue or inappropriate protection or release of information by the seller or buyer, and in our verticals, the seller can choose to release his or her information in a private way to a specific buyer, in an open way to invited multiple buyers in a private chat or forum or arena, that sellers can reveal -- I'm sorry, that sellers can reveal prices, rather, and buyers can reveal who they bought from and how they ended up buying to each other and it is up to those independent parties.

But what we suggest and what we're seeing, with paintandcoatings and some of the other consortiums that we're being involved with, is that if the consortium shares too much information, unduly harms the buyer, or if the seller shares too much information -- the buyers share too much information and unduly hammer down the prices of the seller, that the Internet's speed, the Internet's speed, the velocity of information in response is so high on the Internet versus the real world, that these problems do self correct at a much more rapid pace, is our experience, than the types of problems that you see erupt in the real world that takes years and sometimes decades to correct.

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

MS. LEVINE: Tim?

MR. CLARK: I think most of the marketplaces, particularly the coalitions, have tried to set up legal structures similar to Rod's so you have a different corporation in there as an intermediary. There still remains a suspicion if it's a buyer-controlled marketplace that sellers are going to get a fair shake in that.

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

So, yeah, there is some -- and the other piece of this is that most businesses are not buying exclusively on price competition. What these market -- we heard this yesterday, what these marketplaces have done is squeezed out some of the processing costs, some of the paperwork that goes around -- that goes around a purchase.

So, I -- you are probably not going to see big companies jumping from one marketplace to another, because they have to invest hundreds of thousands of dollars to do the integration.

MS. LEVINE: Nick?

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

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

Today, price, I still see, as something

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

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

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

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

The technology is here that would suggest you don't have to wait that long. I've spent 40 years in what you might call old economy companies. I've seen most of the problems, created some of the problems, but the real opportunity, the technology we're talking about, will really go to make them much more efficient at what they do. The real story there, if you want to see where the real gains are going to be made, it will not be in price, as you said, I am totally where you are, it will be in strategic procurement, it will be getting to order to delivery, and that's where you are going to take costs out of the system and make the companies much more competitive. And that's where they're going.

That's why we're concerned at M-Xchange

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

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

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

What we're finding as our exchange continues to grow, we started last October, just as a reference point, we have over a thousand buyers and sellers on our system, and they run the gamut from people that are transacting on a daily basis to people that have come onto the system, tried it once, said okay, I've got it figured out, now when the buyers come in and they mandate that I use an exchange, I'm ready to go with you.

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

I wanted to --

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

(Brief pause in the proceedings.)

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

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

MS. LEVINE: That's all right.

MR. COHEN: Keep going.

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

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

The other thing that I wanted to point out is, you know, we get caught up so much on the buying and selling functions, and it's been alluded to earlier. I want to give you an example, though, and I made the joke about transactional efficiencies. The ultimate gain that I think all of the exchanges will benefit to the buyers and sellers is that in how can we make the transactions paperless, and then how do -- what does that mean to the bottom line?

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

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

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

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

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

MS. LEVINE: Gina?

MS. HAINES: Yeah, I want to come back to both of those comments. Pricing is in my mind one link in the entire value chain. It's the most tangible, it's the most measurable metric, and it's kind of really all most people in any given industry have to kind latch onto as empirical data.

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

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

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

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

So, speaking specifically to back efficiencies, in our market as well we have labor efficiencies. We did a study for one of our clients that has a 1,000 person nation-wide distributed work force, and you've got labor efficiencies and you've got maintenance and repair professionals in the field prepared to do their job, they need supplies. Every minute we drive out of their process is a $300,000 a year value proposition.

So, it's really incumbent upon us to take technology, to apply it to process and also work change management, and that's really the overall value equation, as well as so it's front-end integration into our client's processes, it's getting the right product at the right price, okay, right at the heart of that, and it's back-end integration into their information systems, because information does become knowledge, does provide ourselves and our clients actionable data to then go and, you know, continue to improve processes. And you guys are all collectively right, the market will vote and it is voting daily, it is kind of self-correcting.

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

MS. HAINES: We do.

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

So, we must become the consultants online to these companies' back end to majority corporations. So, we are go to become consultants.

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

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

I think that it's clear to everyone who's involved in this industry that the amount of information that is pulled together, that you look at that in the aggregate, there's all kinds of consulting roles or information management roles that you can play with the culmination of thousands and thousands of transactions that represent millions and millions of dollars, looking at that information in the aggregate, that knowledge gives you the ability to make some very important conclusions, and that can be put into a consulting role as well.

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

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

MR. STROJKA: We also do consulting in our business. When we look at our business, we look at what we do as really process re-engineering. And I think Roy talked about it earlier. It's not just matching buyer and seller, there is value in doing that, but in many of these industries, the brands are very powerful, have a lot of value, and the customers that we talk to, you know, they say look, I've got five key suppliers that I buy this product from, I like them, I respect them, I trust them. I need a better and faster way to conduct my transactions with them.

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

MS. LEVINE: Tim?

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

I want to give you two examples of people who we know are doing this, and then somehow selling or marketplaces that are doing this. The first was I met last week with this fellow who has software that is used by flower markets in Europe. They have about 150 different flower markets, and they have recently done a deal with Reuters to give them, you know, the price of each different kind of flower on a daily basis so Reuters can put that stuff out on its wires.

The other example to talk about is a company called Instill, which is a Silicon Valley company, and it's an intermediary for the industry of chain restaurants and food services, and they sit between those restaurants and they take the orders and then they shoot them out to the right distributors. We estimate that something like half of their revenue is eventually going to come from the sales of that information as opposed to any kind of transactional fees that they collect. What they do with that information is two different things. The first thing is they figure out what these different buyers are buying, they package that information and they sell it back to the food manufacturers.

This is what's going on in the front lines of purchasing right now. And here's how you might change your products.

MS. LEVINE: That's in the aggregate or --

MR. CLARK: In the aggregate, it's all in the aggregate. And by the way, to yesterday's discussion, they don't think that they own the data. They think that the buyers own the data and the sellers own part of the data as well. And they do not collect the information except with the permission of the buyers. They pretty much have written deals to do that.

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

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

The other thing they do with it is, in essence, spy upon their local franchise -- their local stores, because if they're not buying Heinz but they're buying a different brand of catsup because they happen to play golf with the guy, that is known back to headquarters very simply, and they can come back through and tell their local managers, you're really supposed to be buying Heinz here.

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

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

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

In our direct experience over the last several years, other B2B exchanges really aren't our competition. I mean it's not that we're so much greater or better than anybody else, it's really the cultural inertia and the status quo, that's our biggest competition, quite frankly.

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

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

MS. LEVINE: Mark?

MR. WALSH: I actually think, we have about 200 salespeople at my company that call on tens of thousands of corporations, and in some ways I welcome more competition in each of these environments, it does, to her point, validate to the midsize company out there who remains bluntly the most scared participant -- the most scared people on the planet are the business men and women at mid-size companies who feel the Internet either stands for the end of their business, or will alter their business forever.

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

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

We're a little sick at VerticalNet of proselytizing which is what we've been doing for the last five years since we were founded. And I think it's important for the men and women out there who run companies to see the competition in these specific exchanges owned by participants or not, shows them that this is not going to go away.

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

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

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

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

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

MS. LEVINE: Go ahead.

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

We want it to be a place where they want to do business, because it really makes sense not just in terms of driving costs down out of their supply chain, but it really fits their strategy, and it plays an important role in the effectuation of their corporate strategy, but there's a real problem if there are entities that would like to do business on our exchange because they like the way we do things, but they feel that their hands are tied by some other exchange.

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

That's what makes us nervous. So, as long as there is -- we like the fact that there are all of these other marketplaces out there. Our model is different enough from the others that you're seeing here today that we do benefit from the validation effect. And when you're working with utilities who are the classic example of companies with cultural inertia, it really does help that they see that their colleagues are, in fact, participating in these marketplaces and moving to electronic procurement. That does help us, but if they feel that their hands are tied by virtue of having signed on to participate in another exchange, that makes us unhappy.

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

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

So, you know, the overall number may be sort of close. And you can see in other industries that, you know, you may have a single really strong player with 60 percent of the marketplace and then you have some lesser players that have specialties within that particular niche.

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

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

On the other hand, I met at the airport on the way out here to come to Washington, the leader of one of these construction marketplaces and we were just chit-chatting, and he says you see that down there, my briefcase, I have ten prospectuses from my competitors who want to be selling out to me right now. Money has gotten so tight since these coalitions came in, that they can't get funding to keep themselves alive.

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

MS. LEVINE: Rod?

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

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

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

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

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

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

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

MS. LEVINE: Morgan?

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

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

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

Two, but it depends how you define the market. So, in -- there may be hundreds in the oil industry broadly defined, or 100, but in specific types of products that are used as supplies for drilling, there might be one.

Just as -- or specific types of, you know, pieces of pumps at the retail level. You could have -- they're very different marketplaces, even though they're broadly defined under one industry of rubric.

But I think within specific product

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

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

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

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

MS. LEVINE: Mark?

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

The spot market for electronic components is about $7 billion domestically each year. NECX probably does about eight to nine percent of that themselves, about $500 million in transactions, but will they physically handle the 16 Pente RAMs, et cetera, and the flash memories, EPROMs, all that.

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

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

So, I think one of the things that we

haven't necessarily considered today, but is going on, is this idea of a hybrid model. It is my contention that in five years there will be no such thing as a pure Internet company. No such thing as a pure Internet company. Because in the consumer market, the Internet changed everything. In the business market, the market changes the Internet.

And I think the Internet will adopt and wrap itself around traditional business practices and enhance them and there won't be any room for a pure Internet company. It must be integrated with and genetically and DNA-level part of how traditional businesses are operating, which is why we bought NECX. It's the most educational acquisition of the 17 we've done since we went public, we see every day how real forklifts operate and real warehouses and ship real DRAM ships from buyer to supplier in a spot market.

MS. LEVINE: Gina, can I ask you to give a 30-second response, because I want to save our last five minutes for questions about revenue.

MS. HAINES: Sure, I absolutely agree with Mark. I think the maximum value creation potential is in the integration of legacy systems, legacy processes, existing distribution partners, whether they be existing or third party logistics, whether they -- the actual ownership becomes a vertical integration model or not, clearly the level of integration is what's going to drive it in the B2B space.

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

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

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

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

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

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

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

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

We see considerable pushback right now from the industry, because the suppliers see it as an added value, because the entire loop of integration has not been completed because it is still in the very early stages. We think that will change very quickly in the next six months to a year, we're going to see, you know, tremendous pick-up on the technology.

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

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

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

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

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

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

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

MR. STOJKA: Thirty seconds, okay. Well, I'm not sounding redundant, but we've been around since 1995, and having been around, we've tried a number of different things, and what we've found is that yes, depending, as Tim said, on the value proposition of the value you're providing, you'll have varying revenue streams.

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

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

(Applause.)

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

(Recess in the proceedings.)

MS. VALENTINE: Are we ready to sit down and get going again? Okay, thank you for taking your seats, we're going to get right under way, since as you all know the discussions have been heavy and formidable on fascinating, and we will need very, very brief with our introductions.

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

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

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

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

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

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

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

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

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

We're also going to slightly restructure the series of questions that we have facing our panel today and try to break it down into two general areas, focusing initially on competition between and among networks and how this will be evolving in the future, and as a subset of that, what we can learn from other networks that have been in operation in the past and then move to the future developments area, our major question, which is number 7, but then subsume under that some of the issues of standard setting, innovation, whether and how uber e-marketplaces will be developing, and what this means also globally for people and firms participating from outside the United States.

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

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

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

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

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

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

The advantage -- this advantage of a monopoly in the market for markets has its own cost. The absence -- in absence of competition for the order flow in such markets -- cannot expect it to be managed efficiently. Because there's little pressure on those who manage such markets -- monopoly markets to innovate, minimize cost or cut fat.

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

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

MR. WROBLEWSKI: Does it depend on the industry characteristics in terms of -- maybe -- network effects, or is it to depend on whether the particular industry deals with commodity or services -- in terms of striking that balance between one exchange. I think we heard earlier this morning, I think it was Morgan Harting said, that in every industry there's going to be two exchanges. And I would just like to hear the reaction of the panelists, you know, what distinguishes -- what are the distinguishing characteristics of drawing that balance? Mr. Whinston?

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

So, NASDAQ is really composed of lots of markets, each market trading an asset, in this case a financial asset. Now, what you have in the financial markets is the beginnings of competition, that is NASDAQ faces competition from other newly-created electronic exchanges, and in fact, B2B in the financial markets area, or B2C, depending on who is the participant, to have Island, Archipelago, and others that are drawing away volume from NASDAQ, plus you have a company such as Posit, which is a parasitic operation. That is, what Posit does is says we'll take the bid as spread on the NASDAQ and we'll give you the midpoint. So, we'll use the price formation on other exchanges to give you a less expensive transactions cost.

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

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

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

The New York Stock Exchange being a prime example of an organization which has failed to innovate in terms of still having a trading floor.

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

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

MR. WROBLEWSKI: Thank you. Bob?

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

Once they have that volume through the exchanges, they'll begin to compete on the basis of additional supply chain services, which I think separates them a bit from classic financial markets, because there's a lot more -- there's a lot more value that can be added on top of that.

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

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

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

MR. WROBLEWSKI: Thank you. Meg?

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

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

And I think the other feature is very much the type of B2B that's involved. Whether it is, as we've heard, the creation of a marketplace or an auction environment, whether it's for financial services or for commodities, whether it is a more vertical arrangement between manufacturers or purchasers of inputs in their downstream suppliers, or whether or not it's an entity that's really in the business of trying to create a whole new product that really only exists on the Internet in terms of facilitating distribution.

And I think in terms of looking at the issue as to under what circumstances do participants have the ability, as well as the incentive, to participate in more than one B2B exchange, we really need to look at the underlying economics of the operations which will give some insights as to whether or not the restraints that an exchange may impose are reasonable ones or raise competitive concerns.

And it strikes me that some of the areas where we'll see multiple exchanges is where you continue to see proprietary networks where an individual manufacturer or purchaser continues to want to have its own vertical relationship with a host of suppliers as compared to circumstances as have been talked about where you have a tendency to have a joint venture or connection among the purchasers for arrangements.

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

But I think the most important factor as to whether or not we'll see few, is if there are significant network externalities. And the two most important ones, I think, are on the demand side, where there are substantial gains to having the maximum number of participants pooling their information and their interactions on a given B2B, or where in order to create a sufficiently liquid marketplace, you need to have one.

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

So, I think that also would promote more exchanges.

MS. VALENTINE: Over with David Lucking-Reiley.

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

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

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

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

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

And that is a market. And that is one kind of market.

Another thing that we see are aggregations of catalogs. Again with fixed prices. And we also see things that are kind of like classified advertising, or specific items that need to be sold, and it's kind of a spot market, but there's no mechanism for moving the price around and having bids and asks, it's just a posted price, it's a take it or leave it offer.

So, in addition to brokers, we also have dealers who take title to the goods and are selling them, so they've purchased them from a bunch of different areas and are reselling them. There have been plenty of dealers over time, and it may be that that model just moves online.

We also have auctions and reverse auctions. And in the auction and reverse auction case, so let's look at -- let's look at how you might expect industry structure to go here.

Meg was just talking about network effects. And it seems like network effects are larger in a double auction environment, because what does this mean? Well, buyers are interested in being where all the sellers are, and sellers are interested in being where all the buyers are. And this causes everybody to sort of want to aggregate towards one place. But if you just have a one-sided auction, there's less of that going on, because you only have it going in one direction.

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

And one big difficulty in bringing business-to-business marketplaces to an auction -- a double auction exchange kind of format is the difficulty of specifying the product. On financial marketplaces, it's very clear what a share of marked stock is, it's not always so clear what is being traded. Is it grade 2 polyethylene to be delivered on November 1st, or is it grade 3 polyethylene to be delivered on November 15th. And when you have a proliferation of different types of products going on, it's not obvious that you're going to be able to have central clearing with bids and asks and everybody knows exactly what the product is. There may be much more complicated things going on.

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

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

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

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

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

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

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

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

One of the difficulties, however, in pursuing that strategy, for some of the firms in these countries, is that the basic institutional framework of, you know, telecommunications, financial markets and distribution and delivery, are not up to par.

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

One level of exchange for participants who are really at the frontier in terms of their technological capability, both in terms of pure technology, but also in terms of being able to understand what to do if you ever got on a website and wanted to exchanges something. And then also in terms of their ability to have the technology as a foundation.

So, that's the first issue, whether or not there are two potential levels of exchanges, and the responsibility, of course, to bring developing countries up to par is different, and it's not the responsibility of basically anybody at this table, I don't think, other than perhaps the private sector entities whose interest it is to engage their own government officials to work more actively to develop the technological foundation.

But the second point that built into what David said is that, you know, what is the product? In most of if we think about electronic commerce, there isn't a product anymore, it is a bundle. It is a bundle of what it was that we might have bought before singly, whether it was a good or a service, plus the location, plus the time of day.

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

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

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

MS. VALENTINE: Interesting. Why don't we circle back to Professor Sunder and then we'll move to you, Jere, and pick up on the small business aspect.

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

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

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

Now, that is not true -- when we move into a variety of commodities and services that are traded in industry, in various industries, even within an industry, some things are highly definable, standardizable and tradable. Others, as David pointed out, take many, or very large number of attributes to define what exactly you're trading.

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

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

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

You know, for a given ailment, there may be only a couple of drugs that are effectively in the marketplace, I suspect the same thing is going to happen in the B2B marketplaces, too.

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

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

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

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

It's 200,000 small businesses, all registered, and what we're finding is that marketplace, by providing basic information, is even working internationally, and we're finding companies begin to use that.

We have to recognize that there's some basic fundamental shifts, and when you're talking about commodities, and you're talking about the manufacturing sector, there's been a tremendous shift away from that to service, which is where the basic growth has been, and now we're seeing even shift from manufacturing and service to the new information age.

So, we're going to have a different demand system. The services and products that we're going to be providing are different from the traditional ones. And a lot of discussion so far has been about the traditional marketplaces for existing products and we're going to have newer technologies, new ideas, new services that we're not even thinking about.

What's exciting is the ability of the markets to grow and evolve as the technology drives the marketplace. So, I think we will see a lot of things we haven't envisioned happening very quickly and the technology will drive where we go.

MS. VALENTINE: Meg?

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

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

So, in industries where the needs are greatest to have an efficient distribution and purchasing system, we may see B2Bs develop very extensively, even if they are not the creation of what David had referred to as a double auction approach such as might be more prevalent in financial markets where it is possible to grapple with the standardization issue.

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

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

So, what they've done is gone to the next generation of EDI, which is based on XML, and done all sorts of -- potentially all sorts of improvements in the buyer/seller relationships, including supporting auctions. And as David pointed out, in some cases, they introduce a market and the term is often -- I wouldn't say misused, but used in their way, which would be a -- an indication that there's somebody interested in buying some things and here's an indication of the prices that they're willing to pay or sellers trying to sell a locomotive and here's what they're willing to sell.

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

And then the question is what are these marketplaces going to look like, and as people pointed out, we don't have standardized commodities, but when we look at commodity trading, which is active type trading in the U.S. with pork bellies, oil, both spot and future, we have what are called benchmark commodities, meaning that we take a certain commodity, we define it, we trade that in the marketplace, but that then provides a basis for related commodities, that is commodities that are similar but not the same to have inferred a value.

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

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

MS. VALENTINE: Okay. The next set of questions are going to all focus on future developments, although it's sometimes hard to talk about a future where there's barely been a past and little track record to extrapolate from. What we would like to discuss here are the extent to which B2Bs will, in fact, be replacing traditional marketplaces, will they be complementing existing practices. Are we going to be seeing purchases much more on a spot or short-term basis, rather than long-term contracts. There's been a little bit of touching on that. And will we possibly get the development of some sort of uber electronic marketplace, allowing all the marketplaces to communicate with each other.

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

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

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

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

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

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

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

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

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

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

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

A favorite story that my co-author likes to tell is that Ford's slogan back at the beginning of the 20th century was from mine to finished car, one organization. They were vertically integrated from the iron mines all the way through.

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

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

MS. VALENTINE: I think what you call metamarketplace.

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

MS. VALENTINE: Uber sounds too Deutsche.

MR. LUCKING-REILEY: This morning, Morgan Harting from KPMG talked about how shop bots may make it easy for multiple marketplaces to co-exist, and so there wouldn't be a need for there to be consolidation.

It's not -- there's one concern that I have that mitigates against that, which is a -- I've been following e-Bay and similar consumer auctions for a long time, and one thing that's going on right now is a lawsuit by e-Bay against Bidders-Edge which is an attempt to be sort of a metamarketplace, that is they take auction sites with consumer auction listings and have a metasearch so that if you're interested in buying an Elvis plate, you can type in what you're looking for and it will search the listings not just at e-Bay, but also at Amazon Auctions and Yahoo Auctions and Box-a-lot and City Auction, and show you all of the listings.

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

So, e-Bay has sued that they own the intellectual property of their auction listings, and even though they're freely available on the web, they can't be redirected. So, this is a potential point of concern, that this matter of intellectual property needs to be sorted out before we know the answer to the question of how well shop bots are going to help level marketplaces.

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

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

Secondly, we don't have standardized technologies, nor standards -- standardized standards. Maybe in the United States we have that, but certainly around the world, we do not. And the difficulty of coming up with interoperable standards across different governmental jurisdictions is a very major issue in terms of thinking about the network externalities that we're going to enjoy as the final consumers of these things, and then finally something that I think we haven't really addressed here is standardized buyers.

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

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

They are striated by the degree to which you can standardize the commodity, the time frame, the location. They are striated over the degree to which the technology is or is not standardized across the marketplaces and the users of the marketplaces. And they are not -- they are striated across the differences in the characteristics of the buyers.

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

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

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

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

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

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

Dell was -- is reknowned for pushing this. GM and the other automobile companies want to offer to the consumer more customized cars. So, there is a push in this direction, how far it will go, you know, I don't know, but clearly, you need a common commodity, a standard commodity, to define a market. Otherwise you're dealing in terms of developing the relationship, a negotiated environment. Of course these B2Bs are in effect more focused in my view in supporting negotiation.

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

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

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

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

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

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

And the other thing is, in terms of futures markets, people have mentioned we may introduce futures markets, and they may be useful in certain circumstances. It should be pointed out that futures markets are, again, indications. That is, in futures for wheat, for example, nobody ever takes delivery, or maybe once in ten years where somebody makes a mistake and they suddenly end up with a lot of wheat, but it's really a market to indicate to people what are the events in terms of the consensus of market participants that would lead to, let's say, a significantly different price in wheat 90 days from now.

So, it tells people something about the consensus view of the world. It's an informational object that presumably makes the economy operate more efficiently. And these markets are traded, but never any delivery takes place. And we may see that in B2B, and, for example, in -- it's possible in various kinds of memory components, it may be useful for companies to see some future price indication which would impact their pricing of end products to the consumer, or would affect the producer's interest in rescheduling their production line, to the extent that they can, to produce more of a product that has a higher future price.

So, the whole area of supply chain,

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

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

One of the concerns that we had, or one of the concerns that was raised in the previous panel, was ensuring -- it was privacy -- the notion was privacy, and are the players, are the suppliers and are the buyers playing by the rules. You know, we were talking about privacy and releasing of information, and I think the discussion centered on the notion of, well, it all depends on what's in the contracts -- well, if you're trying to -- contracts between the suppliers and the buyers, and then the B2B itself, and that the owners and operators really don't -- that really doesn't matter.

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

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

MS. VALENTINE: 1914.

MR. SUNDER: On B2B markets, telephone markets, after introduction of telephone -- of course today we don't think that markets need to be organized by telephone technology. Telephones simply got integrated into the way we do business.

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

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

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

With respect to audit we can talk about its scope to make sure that participants know that the rules of the exchange are transparent -- they are, in fact, being implemented and being enforced -- that the privacy policies of these exchanges are made explicit, not simply saying on the front line we have privacy policy and it has been audited, once you go into the details, you find a privacy policy basically says we can give the data to anybody and we don't know their privacy policies. You know, which is sort of no privacy policy.

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

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

Who should be the auditor's client? Who's the master that the auditor is going to serve? Will it be the owners? Will it be the participants? Will it be all of the above? And I suspect that it will have to be all of the above. Who will take account from the auditors what will be the governing and reporting mechanism for the auditors so the audit report that these B2B exchanges are actually functioning the way they are supposed to, they are protecting their rights, information, privacy, the rules of all the participants in the appropriate way. That I think is what is going to determine who is going to survive in the shake-out and who will deservedly earn the interest of the parties involved.

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

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

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

MS. MANN: It's like the two-handed, right -- intervention or the privacy. Well, obviously we already have a situation where there is a difference of views of government on the appropriate handling of private information.

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

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

But nevertheless, we have -- we will -- if we have a global B2B exchange, which of course we already have that in, you know, functionally in financial information, it is now being pulled apart by two alternative strategies for satisfying the objectives of the citizenry for their private information.

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

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

MS. MANN: Yes.

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

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

MS. VALENTINE: I guess I would argue that we've resolved issues at least temporarily a bit more with respect to the safe harbor, but let's go to Meg and I won't --

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

It would seem to me that the operators of the network, if they are the ultimate purchasers, have the incentive to set up a set of participating rules, which are not all that different to what list serves set up to ensure that the participants are actually behaving appropriately.

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

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

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

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

So, they have taken into account that there are several marketplaces or entities that they could have purchased from, that demand for companies to develop that software for either consumers or businesses is going to exist. And I think the hardest thing is balancing off the sustainability of the individual exchanges and what they're doing in terms of property rights with facilitating the ability to search among marketplaces. Because, for example, to the extent there were two sustainable marketplaces for cement, regional suppliers and somebody -- that purchaser is sitting on the border between the two, you would really like that person conveniently to be able to search between the two readily.

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

MS. VALENTINE: Jere Glover?

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

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

I think the traditional antitrust criteria are going to need to be continue to be enforced. I think where you have a dominant market, that is in control, that we have a real problem there. And I think the technology, just because it's on the Internet, doesn't mean someone should be able to exercise monopoly power to the exclusion of competition.

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

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

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

MR. WHINSTON: Just some final comments on the structure of B2B. Again, I see markets as having these economies or network externalities so that it's important if we have multiple markets that there be open access. Either through individuals who participate in the market or through people who do arbitrage for a living.

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

So, you get various services as you are a customer of a certain company that takes you to that location. And maybe takes you to multiple locations. But the market produces information or knowledge which in a collective sense should be made available, that is individual trades maybe are private, although in financial markets, all the trades are listed, you have a composite tape, and it's important that people see what's going on in the market, although they don't see individual names of traders.

So, information and disclosure is very

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

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

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

So, if we start limiting these things, I'm not even clear how to do it from a technology point of view. But if we start limiting these environments because of differences in regulations, we run into probably an unproductive use of this Internet technology.

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

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

So, I would suggest that we need some good practices, some guidelines, that both industry -- that industry can agree on, and preferably from industry directly. And just to close, one other note about marketplaces, 13 percent of our GDP gets consumed in regulatory compliance. So, perhaps the government should have a marketplace for regulatory processing to help the economic growth as well.

(Applause.)

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

MR PARKER: Oh, is it? Okay.

MS. VALENTINE: Professor Sunder?

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

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

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

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

(Laughter.)

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

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

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

MS. MANN: I just wanted to add, build on the meadow analogy. As somebody who lives in the woods, I think that the -- there is a very real possibility that the economic benefits of cross-border trade in global exchanges will be undermined by different governments approaching the lawn maintenance problem in different ways.

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

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

(Applause.)

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

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

AFTERNOON SESSION

(1:45 p.m.)

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

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

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

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

It's a great privilege for me to have the opportunity to kick off the final policy oriented panel, and the title of this panel is Competition Policy Implications for Electronic Marketplaces.

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

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

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

And you sit there, and you watch it, and it is as alien as life on another planet. It's only 100 years ago, and I think as I watch it, and it seems incredibly alien to me. But my parents grew up in that era, and my childhood is a lot closer to the year 1900 than it is to the year 2000, which can only mean that there were immense, dramatic changes that occurred in the beginning of the 19th Century as well as the end of the 19th Century.

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

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

That takes a little while to filter from the academic community into the world of the law journals, and the world of policy makers, and the world of judges, and the world of counselors. It requires some translation to make these rather arcane mathematically difficult economic concepts accessible to the people that have to apply them. As an example of that lag time, if you will, I'm thinking about Bob Borks's treatise on antitrust law published in 1978, probably the most influential book on antitrust ever published.

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

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

What are we going to do? What do we do

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

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

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

To the extent your B2B venture is not just like a stock exchange but actually involves some joint purchasing, you may have some monopsony issues. I don't think we know enough about monopsony issues, but I think it's something that may be increasingly important going down the road.

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

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

So B2B counseling may not be all that hard, if it suits your client's purposes to walk far away from the cliff edge. It's only when you get closer and closer, and I'm not saying -- there may be perfectly valid and good business reasons for it -- but it's only if you feel the need to get closer to the cliff edge that you may have to have some of this more nuanced stuff that we may not really understand.

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

You know, when I was a teenager during World War II, we were going to have -- at the end of the war, we were going to have a helicopter in every garage. Did you know that? There were pictures, articles. I mean, there was going to be no such thing as traffic congestion anymore because there was this three dimensional air space, and everybody would get into their little personal helicopters, and off they would go to Wall Street or wherever they were going to be. Well, that's one of those things that just never came about.

I could cite many more. I won't bore you with them, but an awful lot of things that people think are going to turn the world upside down, it turns out that they're going to not turn the world upside down. And there are an awful lot of things that have turned the world upside down. And nonetheless, our antitrust laws and basic modes of analysis have survived.

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

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

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

That's all I have to say. Thanks.

(Applause.)

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

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

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

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

To answer these questions, tell us what we should be thinking about, we have a variety of people, antitrust lawyers, economists, who specialize in antitrust and other aspects of the economy, a representative from Consumers Union, National Association of Manufacturers. We are honored to have all of these people join us for this discussion.

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

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

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

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

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

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

So in the context of competition within one B2B marketplace, let's start out with the issue of collusion, more innocuously described as information sharing, what methods or particular types of information might be shared in a B2B marketplace that might facilitate collusion, price signaling, price coordination? What are the situations that might raise competitive concern, and importantly, how might those competitive concerns be reduced? Are there mechanisms that might be used to protect against that, and also, are any of those mechanisms impractical or undesirable from a business perspective?

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

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

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

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

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

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

It could be a way of negotiating agreements, for example, among sellers to raise price. It could also be a way of facilitating higher prices without negotiating agreements, without creating a Section 1 violation. For example, information exchange might be a way of solving the problems that cartels face of reaching a consensus on how to raise price and reduce output or detecting and punishing deviation.

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

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

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

MS. DeSANTI: Roxann?

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

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

But when we're looking at coordinated

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

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

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

MS. DeSANTI: Tom Krattenmaker?

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

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

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

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

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

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

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

And then if I might, I may have misunderstood what Roxann was saying, but I hope I didn't, I think that again you're quite right that the idea that something might be condemned under the antitrust law because it's a facilitating practice that might lead to coordinated effects doesn't have an awful lot of case law out there to support it, and I think that's -- that might be an academic way of saying what you were saying.

And I think it would be fair to say that there may be an assumption in some of the questions we were given that the law does lead that way, and again if I -- I don't want to make Commissioner Leary the hero of this entire panel, but once again less restrictive alternative will usually get you there because if the FTC says, Why did you have to do that, if you ask a client, Do you need to do that for the legitimate purposes, it usually turns out that they don't need to disclose any information to each other that could be dangerous from a competition standpoint even from the sort of far-out, fancy theories about facilitating coordinated effects.

MS. DeSANTI: Yeah. I think that I would

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

And another issue is, Well, if there's an agreement, it's an agreement to do what, share what kinds of information, for what purposes? And finally the issue that the information sharing itself may be quite legitimate, and there may be a less restrictive alternative that gets you where you need to be.

With that, I would like to get some more observations from antitrust counselors, and then we'll go to Mr. Jasinowski for a broader perspective on this.

Eddie, you've had your sign up for awhile.

MR. CORREIA: A couple of points. On an actual price signaling case, and here I agree with Tom, there hasn't been many of those and they haven't fared too well in the Courts, but in the FTC's Ethyl case and in the Justice Department's ATP case, both of them had the characteristic that companies were putting a contingent price out to be viewed by their rivals, and they had the opportunity to pull those prices back if their rivals didn't act in a certain way.

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

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

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

And we have a lot of -- that's really not unique to the Internet situation, and we have a lot of experience with firewalls, and they seem to work pretty well. So I guess in this area that I would suggest the agencies ought to be cautious about assuming collusion is workable, number 1, and also ought to be -- ought to presume that a fire wall or some equivalent mechanism is going to work to prevent collusion.

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

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

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

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

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

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

MR. COOPER: Consumer Federation of America.

MS. DeSANTI: Consumer Federation, excuse me.

MR. COOPER: I'm neither a lawyer, neither counsel nor a policy person. I like to call myself a combatant, and as a consumer advocate, I actually take a broad view and have a different set of skepticisms. I'm more skeptical that they won't collude.

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

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

So independently they keep throwing those tickets in there. But what happens is that while for each independent actor it's rational, as a collectivity it has this nasty side effect, twofold: One, William Shatner has convinced people they can name their own price, and so there's some price resistance on the demand side because these silly people think they can actually name a lower price than they see in the newspapers, and second of all, it creates a great deal of uncertainty about how many seats are being filled at what prices.

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

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

That's not information so much, but of course when you own your own site, depending on how you write the rules, one, you can force seats there. You don't get to participate unless you put some seats in. That would be an interesting rule. Two, you can share the information so you better know how many seats, and of course it's in a different place that you can control, and three, of course, the big problem is that you formally or informally have some rules about what you do with seats you want to put on other sites.

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

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

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

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

MR. PROGER: Phil Proger, Jones Day, Washington. I was going to pass on this until Eddie's comment about the Ethyl case, and Steve Salop and I were on opposite ends of that case, but I think it illustrates a pretty fundamental point which is the advance notification in that case was a hotly debated factual issue because what the parties claimed is actually it was a practice that resulted in a great amount of competition because it was during those advance notifications in this very oligopolistic industry, there were only three major players and a fourth fringe player, that most of the competition took place as people negotiated against the large powerful purchasers of petroleum companies in these deals.

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

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

And just to add to what Susan said, I think therefore you have to know what the agreement is, and you have to know what structure -- unless it's per se. You shouldn't leave that out. Unless it's per se, you're going to have to know the structure of the market, and you're going to have to know who the parties are and what was the purpose and effect, and that is not unusual for antitrust lawyers, antitrust economists and academics.

That's what we do every day, and frankly that's what the business world does every day. They may use different words. They may have different intuition, but this has been our system as long as any of us have been alive, and most people have an intuitive nature about it.

So just to conclude, if you've got an agreement to publish your future pricing, all of us recognize that that's going to raise an issue, and it's going to raise an issue no matter what the structure of the market is, but other agreements on what type of information you share and how you go there are going to depend on what the B2B is, what the agreement is, and what is the effect in the marketplace, and we know how to do that I think.

MS. DeSANTI: Okay. Let's take the people who have their tents up now and conclude on that issue, and once we're done with that round, then we'll move on to the next. Rick Rule?

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

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

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

That's obviously going to be a problem when you start out with that sort of objective, but I think if people focus on those pro competitive objectives, in many ways a lot of the problems resolve themselves.

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

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

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

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

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

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

The other issue that was very troubling to the Department of Justice and was changed was that certain of the information and the standards for sharing the information involved certain what I'll call arbitrary fields, fields that didn't have or information that didn't have much meaning to the customer out there, that really wasn't information demanded by the customer, but that created an opportunity according to the government for companies to signal one another by using that arbitrary information to say, Look, I know you're discounting over here, if you don't raise those fares over in this city or this city pair, I'm going to lower my prices in a market that's very important to you.

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

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

MS. DeSANTI: Let me add one issue to the mix because we're trying to drill down a little bit as the business people have been telling us for the last day and a half. If when you're responding, you're a counselor and you've actually figured out things about how to set up firewalls that really work, it would be helpful if we could know something about what are those processes and what are the practical solutions if you see any problems.

Scott Perlman?

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

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

If you're talking about generating

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

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

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

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

MS. DeSANTI: Joel Mitnick.

MR. MITNICK: My name is Joel Mitnick from Brown & Wood in New York. My practice with respect to B2Bs has been kind of specific because I've represented a number of them. They've tended to be in businesses with many buyers, about 10 to 15 sellers, 3 to 5 of which control a large share of the industry, and not surprising they're the ones that want to form the B2B.

As Scott said, they tend to be fairly sophisticated and recognize on day one they need to address antitrust B2B issues.

The oldest one of these that I've been dealing with started in 1996, the counseling did, and they've been up and running since '98, so a lot of different issues have come up.

Just some illustrations, and I think this gets to some of the points that have been raised today. When you're dealing with very large companies that are going into B2Bs, the people from the large companies who get assigned to this new co., this new B2B, tend frequently to be an e-commerce executive from the company, maybe even the chief e-commerce officer. That person also tends generally to be very antitrust sophisticated.

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

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

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

When you get a bunch of competitive,

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

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

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

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

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

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

In the B2Bs that I've been dealing with, they are seller owned, but each of the sellers have somebody in there who's a buyer as well because they're vertically integrated, and the question comes up, if you're in an electronic system in real time bidding, sending information to a competitor wearing their customer hat, but they're also a seller on the system -- sorry, yeah, they're doing it as their customer hat, but they're also a seller on the system, is there an opportunity for having or at least theorizing that that information in real time through sophisticated computer systems can get routed around in a way that can signal prices, stabilize prices, get into a cartel?

Well, this gets into an area where because the rules of the road I think are not well set, companies, if they're getting sophisticated I think antitrust counseling and they have a conservative bent are leaning over backwards to draft either firewalls, or in situations where firewalls aren't workable, and I can't go into specifics but I've had situations where we've concluded firewalls just weren't workable, we've had to exclude from the system our members, the owners' members from their capacity as being buyers on the system, which works in the anomalous result that these owners are disadvantaged as buyers vis-a-vis other buyers who, unfettered, can participate on the system.

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

MS. BOAST: Thank you for that credit.

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

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

The names of the bidders in real time are not shown so that you don't see exactly who the different sellers are. There are five sellers at any one time, and the buyer -- the buyer doesn't actually get to know who those sellers are. It's a blind auction.

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

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

But again, because there's a theoretical concern that this could be misconstrued as a signaling device, there is a self censorship, and at least from the customer's perspective in two different exchanges that I'm familiar with, that's leaving a lot of efficiency on the table.

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

Steve?

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

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

I think they're particularly worrisome when the B2B is set up by a group of competitors, and Adam Smith had something to say about that as well if you recall, that you have to be very careful when competitors get together.

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

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

So, for example, again to go back to the Ethyl case, in the Ethyl case there were, you'll recall, most favored nation provisions, buyer protection provisions that were instituted by the sellers, but economic analysis showed that most favored nation provisions, rather than protecting buyers, actually raised the price to buyers.

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

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

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

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

Again, this is an old point, that with

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

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

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

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

And we will encounter here in a new

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

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

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

Finally, the question of whether we have an agreement. Of course as we're looking at these sites being put together initially, you do have the joint action of the firms putting it together, so from a doctrinal point of view, I'm not sure we're going to have that much of a problem necessarily. We may have sort of a problem of inferring what they're up to.

I think this goes to Tom's remark. If you can do something less restrictive, then you get a better idea that they're not up to anticompetitive things but are up to something that may be procompetitive. But on the other hand if you find competitors show up at Yankee Stadium and happen to sit next to each other, you might not infer too much, but when they build Yankee Stadium and they build the skybox and they only allow three of them in it, at that point as an enforcer you tend to become a little more concerned about what's going on.

MS. DeSANTI: Thank you, Harry. Now we'll take the one-minute videotape while they change the videotape. Then we'll start again.

(A brief recess was taken.)

MS. DeSANTI: Please take your seats. For those of you who are standing in the back, there are seats available towards the front if you want to move up.

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

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

MR. WARREN-BOULTON: I'm Rick Warren-Boulton. I'm with MICRA, which is an economics consulting agency, and therefore my role here is as a simple seeker of the truth.

I think that the concern with buyer controlled B2B seems to be that in searching for lower prices, people aren't sometimes certain whether that's a good thing or a bad thing. To the extent it's greater bargaining power, it's essentially a good thing, but the concern here is that perhaps these lower price reflect monopsony power and that's a bad thing, and so the question is, How do we distinguish between the two?

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

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

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

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

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

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

So I think that what you can do is you can look at buyer controlled B2Bs and I think fairly readily diagnose whether this is the good kind or the bad kind, and I think there are also other signs. For example, there are lessons out of prior work that the division has done in auctions, for example, some of you may recall the auction rings in which a group of buyers would collude to get together, have one single bidder bidding for all of them, and then after that single bidder had purchased the item, then they would have a knock out auction, a second round of auction in which they would auction it off in the second round to their members.

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

That being said, I think the point about monopsony is -- or to always keep in mind is that whereas monopoly is sort of ubiquitous, monopsony is really a bit of a rare animal. As long as demand curves slope downwards, it's worth it to be a monopolist, but there aren't a lot of good situations in which monopsony power is very profitable.

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

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

MR. COHEN: Do you have rules to enunciate?

MR. WARREN-BOULTON: Well, I think again we want to look at the rules that are imposed on the members in terms of participation or non-participation, other rules saying you must participate or the rules saying you cannot participate on the outside. Are we trying to exclude people or are we trying to keep them in?

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

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

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

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

MR. COHEN: Eddie?

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

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

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

MR. COHEN: Okay, yes.

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

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

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

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

There's always a potential of free ride.

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

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

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

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

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

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

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

So there ought to be even more tolerance for that situation, and again if they're below some market share that appears like to be a problem, that ought to end the inquiry essentially or create a strong presumption. I fully agree a lot of the observations you make made perfect economic sense.

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

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

The supply curve has to be upward sloping. There has to be some ability to reduce price by restricting purchases, and that's fairly limited, and a first screen obviously is that the buyers account for a very large share of the purchases of that input.

MS. DeSANTI: Bill Baer?

MR. BAER: Thanks, Susan. I'm Bill Baer with Arnold & Porter. Just to sort of take this back a step up to the general, what this discussion does for me as a counselor, as I suspect many of the people in the audience are, reinforces the notion that you really have to understand why the group wants to do the B2B or the B2C, the motivation behind it.

Tom Leary said this at the beginning, understanding that and actually cross examining to understand really helps you give a client some sense of what the antitrust risks are. With Mark Cooper's earlier example, which is a great example of something that could have seriously mixed motivation in terms of why it's been being done, understanding that and then being able to tell a client, Well, to the extent what you really are trying to do is get rid of the unruly.

You may not be able to do that. The rules we may need to recommend be imposed to minimize antitrust risk in fact would take away that benefit, so understanding motivation really as a counselor and ultimately as an enforcer I guess is really -- is the first step.

MS. DeSANTI: Let's open up the discussion and add some more issues. They go back to some of the issues that Mark Cooper has raised, that Eddie has raised and others. Are there any innovation issues in this area? People have been talking about standards and creating technological standards, standards for descriptions of products. Are there any issues that are related to innovation that those raise?

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

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

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

That industry was pretty much where this one is now at that time, and an approach that was taken, recognizing the vast variety of issues on the table, was to create a two-year study commission, Congress did that, and virtually everybody with an interest was on the Commission, somewhat like this workshop over the last two days, but with a distinction.

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

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

It worked in that industry because the basic issues that had to be decided were: do you develop it in a competitive manner, or do you basically have one joint venture that runs the whole things and make it a public utility? And FTC and Justice were among the leadership in saying, "Let it go a competitive route." That was a very important decision.

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

And I think I'll stop at that point.

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

I would like to move to Professor Joseph Brodley.

PROFESSOR BRODLEY: Boston University Law School. One method by which a B2B might hamper innovation is where either the sellers or buyers require the opposite party to standardize on their platform maybe for good reasons, but that might limit innovators who can't or don't -- whose innovation does not include something that would conform with their platform, so that could hamper innovation.

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

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

MS. DeSANTI: Mark Cooper of Consumer Federation.

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

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

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

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

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

Or then you have to start building

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

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

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

MS. DeSANTI: We have five people who have signed up to speak on this issue. We'll hear from them, and then we'll broaden the floor to basically have all of the issues out on the table to mix metaphors. Tom Krattenmaker.

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

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

On the question of joint ownership by competitors, I think that Scott and Joel and Rick, who happen just by accident to be sitting over there on the right, explained it sort of very well why we shouldn't have a kind of knee jerk reaction against it.

My experience has been that there's probably a golden mean somewhere. I don't know if -- I mean, for the reasons that Rick and Joel and Scott gave, I don't know that I would have a presumption against a B2B that was owned by all the firms in the industry, but what I can see from experience is if you've got at least a couple firms in the industry, you start to get some economies of scale, and you start to get some what I would call just economies of know how and information.

I think you're more likely to be able to come up with the right questions and maybe the right answers if you've got a couple other people that know that particular industry, so I think that joint ownership at least to some level probably has demonstrable efficiencies.

It might be that -- and what does this sound like? It sounds like merger analysis of course, unsurprisingly. I think that's probably the analogy there.

MS. DeSANTI: Joel Mitnick?

MR. MITNICK: Let me first just respond quickly to at least one of the things Mark said. Mark as a consumer advocate is uncomfortable having somebody act on both sides of the table on the same B2B. I think that we clearly do not yet have enough of an economic record to be able to have some sort of per se rule that you can't be on both sides, and I think that we just don't know enough right now.

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

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

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

MS. DeSANTI: Go right ahead.

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

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

It's not hard to figure out that that's not normally something that's in a seller's incentives, so you have to ask yourself, Why are sellers putting themselves in league with one another to own one of these sites. And the answer is I think usually that they realize that such a site is going to be inevitable, that there are tremendous efficiencies that B2Bs bring. Somebody is going to build one, and they just as soon help design the architecture for how it's going to be built.

So as an enforcer, I think what that leads you to, and I think Bill Baer said this before, it is absolutely critical that you understand the business plan of how these things are put together, and I said awhile ago, frequently you have these e-commerce officers that are putting these things together, and they sometimes have never really operated a company and been business people. So they frequently don't have a clue when they're starting this what the business plan is going to be.

Two big differences in business plans as it relates to B2Bs, especially on the seller side, and every decision that they make, I can tell you, will flow from this fundamental distinction, which is: are they going to operate this as a for-profit center where all the profits of the venture are really going to flow to that level of the entity, or on the other hand, are they going to operate it as a utility which is going to be a low-cost platform that is never going to be teed up for an IPO, and the employees are not going to get a whole lot of stock options, and it's going to be run in a different manner?

If it's the former and they're doing it as a profit center and they're possibly even looking down the road for an IPO, you're probably pretty well assured just on that structure with those incentives that it's going to be very customer-driven, and you can probably stop there.

If it's the other way, if it's more of a utility model, this gets to I think what

Commissioner Leary said before, which is how close to the edge of the cliff do they want to get. The fact that you have people who own a site who may want to take that stroll does not mean that they're engaging in anything that's illegal, but that is clearly the area where I think you're going to have to look the most careful, and the government's analysis is going to have to be the most robust and sophisticated, and the private counseling is going to have to be the most sophisticated.

Just a couple of very quick examples of where the incentives can cause some problems or at least lead to some inquiry, and some of these have been touched on. One is from your tariff publishing, the presentation bias of the screen. Certainly that's something that is fair to look at, and again if the clients are sophisticated, they're going to know right away that that's something they simply can't do.

The second is the terms and conditions of how pricing is going to be done on the system, pricing of -- do the rules apply equally to the owners and the non-owners, which leads to the third, and Steve touched on this, how do the owners in a legal way deal with free riding of the non-owner participants, people who maybe don't actually add that much value to the system, but they're competitors. They shouldn't be excluded, but they don't really -- they don't really add very much.

Is there anything you can do to make the rules different, or is that a per se area? I think some of these are not yet clear.

MS. DeSANTI: We're 30 minutes from the end, and we're about half-way through our agenda, and people are making very valuable contributions, none of which I want to cut off, but I just flag it for people's attention that we are 30 minutes from the end.

So I am going to put out on the table the issue of network effects and competition among B2Bs, open the comments to whatever of these issues you think it's most important to address, what you most want to address.

We'll turn to Harry First and the other people with their tents up, Professor Muris and Laura Wilkinson will can get in, so go ahead, Harry.

MR. FIRST: Thank you, Susan. It was the perfect lead in, exactly what I was going to say, and I can respond to whichever question you ask with the same response.

MS. DeSANTI: What a flexible guy.

MR. FIRST: This is what politicians do, I think, but because before you asked about innovation and then you moved to network effects, and the point I was going to make, which really Tom made earlier, I think, is competition among marketplaces.

I think there are two cuts of markets that we've been talking about and sometimes move back and forth. One is just simply the products that the parties who are putting together this effort are manufacturing so we're concerned about those product market effects, and if they -- you could imagine for innovation purposes if the gun makers put together a B2B site and never include safety locks, maybe we would be concerned about some kind of input effects.

But the point that I think really came out certainly in this morning's discussion as you start thinking further, the real innovation that we're talking about here is the marketplace itself, and I think it's going to be quite important to make sure that we have competition among marketplaces even in the same industries.

And I think our difficulty is not going to be so much with, will someone, will a firm be excluded from a market. Those are easier to deal with and I think may come up less frequently, and we have doctrines to deal with that like the Essential Facility Doctrine. The problem is going to be over exclusion and the extent to which in some ways one marketplace may engage in efforts which will prevent competition from other marketplaces.

There are lots of different ways to do the same kinds of things, to array information, to provide different services, and that's the kind of competition I think we want to encourage, and this leads me to say something about network effects, which is your second point.

I think we sometimes assume that because of network effects, it's sort of inexhaustible efficiencies to a single network and that we would be better off with ever larger and larger networks, and I think that that's unlikely to be true or at least on the margin, whatever additional externalities or efficiencies we might get from increasing the size of the network, we have to be aware that at some point we are losing competing networks and the competing efforts that those networks may bring.

As much as we can think of English as a network of speakers, but we still do like French, and we want to make sure -- it might be nice if everyone spoke English in the world, but we lose something, and I think it's important and it may be particularly important in this area where concerns for security and stability may mean that we would lose a lot if we become overly dependent in any industry on a particular network.

So on the network effects it's a caution about getting caught up in the notion that there are inexhaustible economies of scale in terms of network effects.

MS. DeSANTI: Tim Muris?

MR. MURIS: Hi. I teach at George Mason and am of counsel to Howrey & Simon. I think the last couple days have shown what was probably obvious in this area, that there's little law and the economics is very complex. I think Tom Krattenmaker's rule of less restrictive alternatives is an excellent one for counselors, but it would be a lousy one for the government.

And I hope what doesn't happen here is that the government -- well, I hope the government resists the temptation at all levels of like a cheap consent agreement particularly promulgated on a less restrictive alternative posture because one of the things that's going to happen here is when the government sneezes, a lot of counselors are going to get pneumonia, and you're going to have -- for instance, people are looking for something.

Whatever first steps the government takes are going to have a profound impact, and since we don't know and since the history of regulation is full of unintended consequences, I think caution is very much in order.

MS. DeSANTI: Point well taken. Jerry Jasinowski.

MR. JASINOWSKI: I've been for some time, Susan, anxious to make the point about competition among marketplaces and having multiple marketplaces, and it's now been made several times, and I want to reinforce what has been said.

MS. DeSANTI: Could you lean into the mike so that we can be sure to get your comments? I'm very interested.

MR. JASINOWSKI: Yes, Jerry Jasinowski,

National Association of Manufacturers, and I was just saying that I was anxious to make the point about multiple marketplaces. There's now about a thousand by some counts and more by other counts, and since we're in the marketplace business, we see this intense exponential growth of them all the time.

Several people have made that point, and I would reinforce their points, but if you look at the innovation point earlier and the notion that the application of standards would in fact decrease competition, I would say someone is going to come in and provide competition.

Moreover, if you look at joint ownership and the notion that they have economic rents, people are going to come in and compete that away very quickly. In fact, I think because there are over a thousand already, they are growing like topsy, that this is the means by which competition is going to be greatly intensified.

I've heard very little this afternoon about the conventional notion in antitrust that prices are going to be raised. That doesn't happen much in the American economy as it used to. That's why we have inflation so low.

What we see is a great concern, which ought to make antitrust experts feel good, which is that manufacturers and others can't raise prices, and this proliferation of a lot of marketplaces is going to make it increasingly difficult to do so.

MS. DeSANTI: Thank you. Laura Wilkinson, let's get your views from a counseling perspective again.

MS. WILKINSON: Sure. From a counseling perspective, I think that many of the issues that I was going to say have already been raised, because I think when you're on such a large and distinguished panel, you get outnumbered, and many of the points you were going to make are already said.

But I would just like to add that I think the overview that we got from Commissioner Leary sort of put everything in perspective in that the B2B marketplaces are new, innovative ways that companies are going to be competing in the future, but it's going to bring to light many of the same issues that we found in our conventional marketplaces.

And the antitrust laws and the guidelines that we have in place in terms of mergers and joint ventures or collaborations among competitors all take into effect for the B2B marketplaces as well so I think that as the dust settles, you'll find that the analysis remains the same, and the issues remain the same in terms of monopoly, monopsony, collusion and information exchange kinds of issues.

MS. DeSANTI: Thank you. Rick Rule?

MR. RULE: Thank you. It strikes me that what we spent the first part of the afternoon here discussing involves some of the more traditional antitrust issues that I think the law and the way enforcement policy is developed makes easier for us counselors to deal with.

One other point though in terms of rules within an exchange and particularly for formation that I think folks need to be concerned about before moving to the question of competition among exchanges, and it relates to that, is the extent to which the formation process becomes a forum for members of the industry to decide how they are going to approach other exchanges that have already been formed.

Or another way to put it and I think there is a potential danger or at least it may be perceived as a potential danger by the enforcement agencies of using those formation exploratory ventures as an opportunity to preempt the formation of exchanges that might intensify competition in a way.

Again, I think that's something that can be dealt with by counselors, and it probably is more of a fear on the part of enforcement agencies than reality, but I think that one has to be concerned about the record there.

But it strikes me that the bigger problem for antitrust lawyers and enforcement agencies is going to be adapting the analysis to network effects, and what that means. Essentially network effects, which are all the rage among antitrust lawyers but have obviously been around for decades, they tend to reflect by and large efficiencies.

And the fact is that oftentimes an exchange is going to be more efficient if it includes a larger number of the market participants. The information is likely to become more valuable and more accurate. The market is likely to be more robust so that if you're a particular buyer or seller, you're likely to find an exchange. There's going to be less inefficiency.

And all of those increase as more and more folks join the exchange and frankly as more exchanges interact or interconnect with one another because one of the things you see in these areas are a lot of related exchanges and the question of whether they're going to be managed by one central exchange that has subsidiaries or whether it's a number of different exchanges interconnecting.

But those are efficiencies, and one of the things if you think about it, one of the implications of that is that this is not a very good area for market share screens. Unlike a lot of other areas and something that a couple of people have mentioned here, market share screens often sound very good.

We have standards now, the favorite number of enforcement agencies is 20 percent, used to be 35 percent, but whatever the number is, there is a tendency to sort of limit the participation. Well, if you believe that network effects are efficiencies, then you may be sacrificing efficiencies if you create those market share thresholds.

And even though agencies can say, Well, those are really safe harbors, if you're above that number it's not a problem, we just look at it more closely, as a practical matter business people, being conservative as Joel has said, get a little reluctant to start sailing outside of safe harbor so I think that's something one has to look at it and has to recognize that the market does work, and it's likely to work in developing exchanges.

What will happen is I would predict or imagine that you'll have differentiation that if an exchange develops in an industry, there will be opportunities for others to differentiate, to create new value, to bring people for certain exchanges onto their exchange.

And finally, with respect to innovation, I don't think by any means this suggests that we have to worry about innovation because I think the innovations that are going to be relevant to B2B exchanges will occur across exchanges; that is, the innovation out there, the technology that's developed in one particular industry can be translated into others, and so there's going to be a lot of competition.

And I think that's one of the reasons you see a lot of the suppliers, if you will, infrastructure suppliers teaming up with different exchanges, and you see a lot of aggressive competition between or among companies like Sun and Microsoft and IBM and Oracle all trying to bring their technology, their experience to these exchanges.

And I think that will continue because even though network effects are powerful and beneficial, they probably do not lead to the conclusion that there will be a single exchange.

MS. DeSANTI: We now have enough people with nameplates up and little enough time remaining that I'm going to apply a two-minute rule. Please keep your comments to two minutes.

Roxann, we'll go to you first and then Phil.

MS. HENRY: Let's see, with my two minutes. I think on the innovation issue everybody's really talked about a lot, one of the issues is simply the innovation between marketplaces, and there doesn't seem to be any real fears at this point, although I must say if you had heard some of the panels earlier, you heard the, quote, neutral parties and the owners, and some of those neutral parties were very, very upset about what they considered sort of anticompetitive.

The mere fact that the owners were involved in the industry seemed to them unfair and anticompetitive because indeed it was affecting their ability to get venture capital.

On the other hand, again it goes to the issue of, Is that something that we really wish to get involved in, and I think not.

I also thought that Patrick Stewart on behalf of MetalSite gave an excellent exposition of why there is industry ownership of a site that hardly really needs to be repeated, but he also did make the point that it is a basic antitrust business. Antitrust considerations come in to play. There are guidelines for the directors. There are guidelines for when the marketing people get together.

These are things that are just handled in the ordinary course, and as has also been discussed, one of the key issues is, Why are you doing something and just understanding how each piece of what you're doing fits into that.

Another point though on the counseling is not just why you're doing it and how each piece fits in. It's also asking the question, Who will be disadvantaged and figuring out where those disadvantages lie so that you can address them very explicitly and see if there are any alternatives and whether those disadvantages really need to take place.

MS. DeSANTI: Phil Proger?

MR. PROGER: Well, I just want to pick up on one point that Rick was touching on because I think he's very right when he says market share screens are difficult here. I'm not prepared to say this is like a bid model, but the market share may not tell you very much. And I think as a practical matter that real begins to tell when you start trying to deal with what I think is a very pragmatic problem of overinclusiveness and its sort of corresponding twin, exclusionary conduct.

How do you analyze whether you're being overinclusive, and how do you determine that now you've drawn the line and no one else can join? And it may seem like these are simple things, but you could have a situation where you're confronting that you're concerned with being too over inclusive, but yet an applicant is threatening some type of antitrust action because they've been denied access to something they feel is very essential.

And I think this is going to be one of the areas that there is going to be some difficulty in analyzing, and I think it's going to be very fact-intensive, and it's hard, as Tim Muris said, to find the law that really applies.

You can look around and say, Well, in the healthcare guidelines networks -- the FTC and the Department of Justice said that even a non exclusive network above 30 percent might create a problem if it was outside the safety zone. Is that applicable? Should we be thinking about that here? And there's so little law that really deals with how you parse this out and how do you even count it as Rick talks about.

And I think this is going to be a very interesting area to develop and actually very crucial as you set these up.

MS. DeSANTI: Thank you. I think what we'll do is work from Bert, you, all the way back to, Jonathan Baker, we'll give you the last word, so let's go in order.

MR. FOER: Well, late in the day I want to focus again on what FTC's role might be. I think it's a good thing that you've held this workshop. I think it's important that you be involved in the shaping of whatever is going to happen, obviously with a great deal of care, as is being demonstrated here, more to listen than to be active, but don't forsake an active role.

I think you're in the fact-finding process now. That's going to continue for awhile. You can help develop a research agenda that can be used throughout the country and the world by focusing on, for instance, some of the issues that have come up here.

Whether it is going to be easy to switch from one market to another, we've had conflicting information on that, whether self-correction is unusually rapid and can be counted upon or not, and actually as you go through the transcript, you'll pick up a number of areas like that.

I think you should be bringing these things together and moving gently toward the next stage which is informal guidance as to where the staff thinks the problems are. In a general way we all know where the problems are, but I think it's useful gradually to get more specific, as experience indicates, as specific investigations may help you go further.

But even though all the lawyers here know where the general problems are, it's often very helpful for the lawyer to be able to say to the client, it's not me saying so, look at what the staff is thinking, they've said this much.

So I think we should be moving toward that stage of some gentle, informal feedback to the community as you all absorb what you've picked up.

MS. DeSANTI: Scott Perlman, I'm sorry.

MR. PERLMAN: That's okay. Thank you. I just wanted to talk a little bit about noncompetes and minimum purchase requirements and how those might affect competition between exchanges.

At one point yesterday the issue of exclusives came up, and I guess everyone on that particular panel pretty much disclaimed any intention to have any exclusives. I can tell you though that you're going to see exchanges that do have noncompetes for instance where the forming members are asked not to become members of other exchanges for some period of time.

The ones I've seen, they're not banned from purchasing through other exchanges. They're simply asked not to form or make equity investments in those, and it seems to me that under some circumstances, those clearly are going to be justified and may be necessary if you've got a group of companies that are each being asked to contribute a significant amount of capital.

The other contributors may need some assurance that one of the partners isn't going to go off and start pushing or advocating for another exchange.

Similarly with minimum purchase requirements, the only examples I've seen of that so far are really so soft that they're very unlikely I think to have any consequence. There's no teeth to them, but I've counseled group purchasing organizations, and I can tell you that you sometimes need to have rules with respect to commitment to drive efficiencies.

I think Rick was saying before that in general people involved in group purchasing, legitimate group purchasing would not have incentives to cheat. Well, you do have situations sometimes where particular members will cherry pick for instance on particular contracts, and that that makes it difficult for the GPO to go back to a manufacturer and negotiate good pricing from them.

So there are rationales for those types of restrictions which I would argue, suggest that they should be looked at under the Rule of Reason.

Whether they're going to be a problem under the Rule of Reason is going to depend obviously on the particular circumstance of the industry and whether you have enough competitors outside of the exchange or other people who might form an exchange so that other exchanges can still form without that kind of participation from the people in this particular B2B.

MS. DeSANTI: Eddie Correia?

MR. CORREIA: I want to go back to a point that a couple people have made. I think these are transactions where a market share doesn't tell you very much, and the reason for that I think is you have to step back and think, what are rivals getting together to do.

In a standard joint venture we've been concerned traditionally that there's a production joint venture or they're agreeing on marketing or they're agreeing on research or something like that, all of which is going to have an effect on ultimate price and output.

Here it's a very narrow slice of the business process that they're agreeing on. They're getting together to lower the cost of making agreements, and that itself is -- first of all has the potential for enormous efficiencies, and second, doesn't have as obvious a link with ultimate price and output decisions as other joint ventures that the antitrust analysis has traditionally thought about.

So whether it's a situation where a small group says, We only want the people that invested in this to participate, we don't want free riders, we're going to stop with 20 percent of the market or whether the network effects are so great that virtually the whole industry is participating, that's not going to really tell you very much about ultimate effects on price and output.

In the end you have to look at the way that exchange is structured to see if what they're doing is going to drive up price or drive down output by the time the consumer is really affected by that. And we may find that if it's carefully structured, consumers are going to overwhelmingly benefit because both the buyers and sellers have this incentive to squeeze out as much of the transaction costs as possible. That's good for both them.

MS. DeSANTI: Thank you. Mark Cooper.

MR. COOPER: Let me offer some specifics. I didn't ask for a per se rule actually. I just said it made me a nervous, and that's a heightened scrutiny rule, if you will, and I think the agency has a set of guidelines like that. Let me suggest eight specifics.

One, rules about inclusion, what do you have to put in? Are there minimums? Those raise certain concerns, and there are sensitivities about that. Can you take it out, and what are the rules about taking it out? If you can't take it out and shop elsewhere, there's a concern raised. Who can't get in and why not? Is there a link between profits?

There's not supposed to be links between profits. That becomes very, very problematic. Are people on both sides of the transaction? How do they use the information? Is there a boot screen bias, and finally are there enough people outside to make a market? That sounds like a market share analysis, and it's still relevant.

It's not -- these are all I suggest reasons for heightened scrutiny, and when you counsel people, they ought to know that you're going to have to explain why you have these rules which make Cooper nervous or the agency nervous.

MS. DeSANTI: Okay. Steve Salop?

MR. SALOP: Actually I've gotten nervous, and what makes me nervous is I'm finding that I agree with Rick Rule.

MR. RULE: We're both nervous now.

MR. SALOP: Well, it seems to me that Rick really identified the key issue. The government's going to do very little now. I think the bottom line is the FTC is not going to interfere much with these B2Bs unless they do something really stupid, and so if your B2B turns out to be the poster boy, you should have fired your lawyer a long time ago because the FTC is not going to want to disturb the marketplace while these institutions are still emerging.

But let's roll the clock forward. There's going to be an inevitable shake out, and the question and the rationale for that inevitable shake out is some of these exchanges are going to be doing very well. Others are going to begin to be faltering. There's going to be a lot of mergers proposed as I think Rick was really pointing out.

The rationale for those mergers are going to be what we used to call economies of scale and what we now call network effects, and the question is, What's the agency going to do then, and here's the point where I disagree with Rick.

I think once one of these exchanges gets a monopoly in an area I think that monopoly is going to be very difficult to dislodge. And when you get to this point of merger policy, you have to be very careful and very cautious in knowing what to do. And knowing that you're going to get there, I think you need to think now about what you want to do now knowing that at some point you're going to need to deal with the mergers, and you should structure policy accordingly.

Now, with that in mind I thought about, Well, let's look back at history at the historical precedents, not the legal ones, the factual ones, and add maybe what you should do as an exercise is ask yourself with respect to the historical precedents, the things that look like B2Bs, what would you have done in the past if you knew how they actually -- how they were going to develop as they actually have.

And for that I want to give you three examples as objects for your analysis. The first is stock exchanges. They are B2Bs after all or B2Ss, buyers to sellers, and just recently there was a price fixing. Well, I mean, there are only a few of them. You have to ask whether it's a natural monopoly or not, and there's been a price fixing case against the NASDAQ, a situation where they set rules to fix prices.

Second are credit card networks, another essentially B2B. They've been in antitrust trouble since the beginning, and right now the Department of Justice appears to be trying to undo policy that they engaged in in 1975. And the third B2B example that I've come up with is auction houses, another sort of thing that you think auction houses are a natural monopoly. They set rules. Gee, what could be wrong? There's competition, and now we find out that the two main antique auction houses have been price fixing allegedly for the last ten years.

So I think when you do your analysis, you should think about, Do you want to end up in a situation like these industries or end up somewhere else, and if you do want to end up somewhere else, what should you be doing along the way to keep that end game into account.

MS. BOAST: Steve, would you go so far as to argue that the 20 percent market share screen and its chilling effect is in fact appropriate because of the prospect of mergers down the road?

MR. SALOP: No, I think a 20 percent rule is insane.

MR. RULE: He agrees with me.

MR. SALOP: But unlike Rick I think the screen should be somewhere below 110 percent.

MS. DeSANTI: We'll move to Joe Brodley.

PROFESSOR BRODLEY: I want to speak for a moment on -- or at least the value of competition between exchanges. There's a striking fact in the Morgan Stanley study that in a buyer-dominated hub where the buyers have market power, in a market power dominated buyer hub, the buyers get 70 percent of the value. In a seller-dominated with market power hub, the sellers get 60 percent of the value.

That suggests that -- that means that the one that doesn't get the market power is making do with 15 or 20 percent and still participating. I suggest that may be nothing but at least suggests that it would be better if hubs were competitive to some extent.

Now, some of the proposals that have -- for hubs do involve groups with market power, and the question that was posed the last two days to appropriate people was, Why do you need to have a group with market power, and the answer it seemed to me was not very satisfactory, which was, Well, we have to raise a great deal of money, and it's beyond the competence of one company.

Well, maybe, but if these are big companies, certainly -- and there's lots of value being created, you would think that they would be able to raise the money. The problem with that is that if you put all of the major players in one hub, then you're much less likely to get a second one because they're of course now invested in this.

So the bottom line here is that since this isn't saying anybody with power can't form a hub. It's saying that the alliance is perhaps something that should be looked at as to whether it is necessary. If it's truly necessary, that's another matter, but the answers given I didn't think were very convincing.

My final comment I think is simply that it seems to me that the FTC's policy should be enforcement caution, yet alertness, and a conference like this it seems to me is recognizing this. This shows alertness, but there is no enforcement action being taken.

MS. DeSANTI: Okay.

MS. BOAST: Are you sure?

PROFESSOR BRODLEY: No.

MS. DeSANTI: Tom Krattenmaker?

MR. KRATTENMAKER: When you announced your two-minute deadline, all I could think of was that if Vic Kramer were here, he would have sit up and pulled out his pocket watch.

I want to heartily second what Laura said before about this is largely the application of rules that we already know to a new and evolving area of technology and business practice, and in that respect thought I might suggest three things to the Federal Trade Commission. What can you do to help out?

Number 1, you can embrace the Muris corollary to the Krattenmaker rule, less restrictive alternative analysis is good for counselors, but in this area right now it's bad for government. Number 2, bouquets of balloons to you and you for the Competitor Collaboration Guidelines.

Again speaking as somebody not from the academic side, but as a counselor I think we all use them every day. You don't know this but yesterday hundreds of you here met a very astute businessman from Amsterdam who knows those Competitor Collaboration Guidelines better than I think any law student in America does. We use them every day. They're very helpful.

Point number 3. Now that you've done something, there's something more you can do. This technology is -- does not respect geopolitical boundaries. What we're doing is Internet protocol technology. This spills over everywhere. I get the same question. I know everybody does every day which is, Okay, you've told me it's okay here, what about France.

Anything you can do to work with your counterparts in the European Union as you've been doing to try to clarify the rules and to try to harmonize the rules between here and there. Otherwise you are at risk of becoming an entry barrier. You are at risk of stopping an efficient enterprise that has to spill over borders.

You could be standing in the way of global markets. I think I ran out of my two minutes.

MS. DeSANTI: Well, you've scared us sufficiently, but thank you. Thank you for the nice comments about the Guidelines. We appreciate them.

MR. KRATTENMAKER: Thank you. You deserve them.

MS. DeSANTI: Jon?

MR. BAKER: I'm delighted to be bookends at this panel having started us off. I just wanted to make sure we are careful to distinguish between joint ownership of the B2B marketplaces and common membership.

I can understand how strong -- how shared ownership brings industry expertise to the development of these marketplaces and can be valuable, but I can also see that -- and I can also understand how you could well end up with everyone in the industry joining. If the network effects are very strong and the transaction cost savings are very large, everyone will join.

But that's not quite the same thing as saying everyone ought to own, and ownership raises a little bit different issues. If everyone in the industry owns the venture and shares the profits from the B2B marketplace, it could be hard for a rival venture to get going and compete away monopoly profits in the event that the first B2B marketplace were to tax transactions somehow and exercise monopoly power in the B2B marketplace of marketplaces.

And also, if the common ownership comes with governance by the industry members, that that's -- that could bring with it a method of excluding new entrants or fringe rivals, discriminate against them, again possibly being a way of creating or maintaining monopoly power among the ones who are owners.

So I just want to highlight the difference between common membership and common ownership and suggest that the latter raises questions that the former doesn't.

MS. DeSANTI: Thank you, Jonathan. I'm going to take the moderator's prerogative here and just for 90 seconds do a wrap up. And to hold you in your seats for that 90 seconds, I'll promise you what the take-away should be from the FTC perspective based on what the Commissioners have said to us so far.

I simply want to note that this conference came about because of the very hard work on my staff, and you've heard about some of them already. I want to especially note Bill Cohen, my deputy director who is our analytical guru, Hillary Greene, who along with Gail Levine, I think they both take pride of place as world's greatest detectives and researchers and analytical researchers in the sense of finding all of the people we have on these panels, and finally Michael Wroblewski, our advocacy coordinator, who has filled every single role that is possible within this conference, analysis, substance, talking with people, tracking them down, and most of all, for all of you this is most relevant, he's the one who basically hosted this big party. He told me not to worry about the logistics, he throws great parties. I think that's been proven true. That's why the trains have run on time, so we especially thank Michael Wroblewski.

I also want to thank all of our panelists here and the many panelists throughout the days. And to close, I want to key off of Tim Muris's point. It's an excellent point. When the government sneezes, antitrust lawyers get a cold. I want to make sure that doesn't happen out of this workshop, and especially since we've closed with a panel which has raised the potential competition issues that do arise here.

The take-away here is the Federal Trade Commission -- and I think we've heard this from each of the Commissioners -- the Federal Trade Commission is taking a deep breath and beginning a learning process about B2Bs, and that's what the take-away should be in this.

Thank you so much for your patience and thank all of our panelists as well.

(Applause.)

(Time noted: 3:52 p.m.)

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C E R T I F I C A T I O N   O F   R E P O R T E R

MATTER NO.: P950101
CASE TITLE: B2B WORKSHOP
HEARING DATE: JUNE 30, 2000

We HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by us at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of our knowledge and belief.

DATED: JULY 10, 2000

SALLY BOWLING

DEBRA L. MAHEUX

C E R T I F I C A T E   O F   P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

DIANE QUADE