Testimony Summary of

Jonathan Zuck

President

Association for Competitive Technology (ACT)

Before the

Federal Trade Commission

Office of Policy Planning

Public Workshop:

Possible Anticompetitive Efforts to Restrict Competition on the Internet

October 8, 2002

Washington, D.C

ACT · 1413 K Street, NW, 12th Floor · Washington, DC 20005 · (202) 331 2130
www.ACTonline.org

As President of the Association for Competitive Technology (ACT), I'm here today representing thousands of information technology businesses and professionals. ACT is a national education and advocacy group representing mostly small and mid-sized technology companies. We advocate market solutions by encouraging investment, innovation, and competition in the IT industry. ACT members include software developers, systems integrators, consulting and training firms, and e-businesses, all working to build the solutions that make eCommerce happen. ACT has actively engaged policy makers on a wide range of issues including online privacy, broadband, digital rights management, antitrust policy, and of course, eCommerce, a channel that's absolutely vital to small and medium sized businesses.

We've been closely following the work of the FTC's Office of Policy Planning in exposing and opposing barriers to eCommerce. In early 2001, we focused our own work in this area by helping to form the NetChoice coalition, along with Orbitz, eBay, eRealty, the Electronic Commerce Association, the Information Technology Association of America (ITAA), the Wine Institute, and the Electronic Retailing Association together representing many tens of thousands of IT companies. Like the FTC, we believe that eCommerce promises value and convenience to consumers, but that innovation and competition are meeting stiff resistance from old-economy middlemen and legacy regulations.

eCommerce finds itself at a crossroads as 2002 draws to a close. Apart from the notorious failures of flawed business models like Pets.com (*who thought you could ship a 50-lb bag of dog food cross-country and SAVE money?*), eCommerce is today a favored channel for connected consumers to buy goods and services. In spite of the Dot-Com shakeout and overall economic downturn, the U.S. Census Bureau reports that eCommerce retail sales are growing ten times faster than all retail sales, and new eCommerce players like eBay and Amazon are now firmly "in the black". At the same time, bricks-and-mortar businesses like Walmart and BestBuy have complemented their retail channels with successful eCommerce websites.

So, with all that progress, why is eCommerce at a crossroads today? The reason is simple, yet insidious: the forces building and maintaining these barriers are growing bolder. Traditional middlemen are growing desperate to stop consumers from moving their purchases online–especially during this slow economy. They're not shy about asking state legislatures and regulatory agencies to misapply legacy rules to eCommerce, or to enact new rules that protect local businesses by restricting online competitors. Unfortunately, state lawmakers don't always get to hear that consumers favor of letting value, choice, and convenience determine the winners and losers.

Not all middlemen, however, are looking for barriers to help them keep their place in the distribution chain. Players in the eCommerce space fall into two categories. The "unbound" are middlemen like Amazon, Expedia, and—for the time being—eBay. These firms can invest, innovate, and compete freely via the online channel. The "bound" category includes businesses whose eCommerce initiatives are restricted or threatened by barriers, such as Orbitz, eRealty, 1-800-Contacts, car manufacturers, and small wineries. The "bound" category also includes businesses and professionals who want barriers to protect them, such as Optometrists, traditional Realtors, and car dealers.

We've just concluded a report that estimates the consumer costs of barriers in just four of these "bound" commodities—cars, residential real estate, contact lenses, and airline ticketing. I should say up-front that our estimate did not include any value for the convenience and increased choices that consumers find online, as these are easy to see but not so easy to quantify. Without including the powerful benefits of increased choice and convenience, we estimate that these barriers will cost U.S. Internet users $32 billion this year alone. Over the next 5 years, these costs could exceed $200 billion. And that's just for cars, real estate, contacts, and airline tickets.

Clearly, we are at a crossroads for eCommerce. The stakes for consumers are enormous, and business innovation will be discouraged if we don't expose and oppose the kinds of barriers you'll hear about over the next 3 days.

If we're successful in eroding and preventing barriers, I think we'll see a natural trend toward more integration of eCommerce with traditional channels. When they're able to buy more via both online or offline methods, consumers will change their buying methods to suit their current need for savings, convenience, and delivery time. They'll be attracted to merchandisers who offer multiple channels, giving consumers a more convenient way to browse merchandise and make returns. Businesses will become less wary of “channel conflicts” and bolder about using both online and offline distribution, as Gateway has done and Dell Computer has recently announced.

To be sure, this evolutionary process will produce some casualties along the way. Manufacturers and middlemen alike will have to adapt to consumer preferences for multiple distribution alternatives—or perish at their own hands. Some middlemen will focus on providing value-added services, such as travel agents who earn commissions for complex vacation or business travel.

I’ll conclude my remarks with some “calls to action” to bring down barriers to eCommerce. State governments should dismantle vertical restrictions and exclusivity laws that bar direct sale to consumers. States should re-examine and rationalize outdated regulatory structures, franchise laws, and licensing systems that were designed for an entirely offline world and which actually raise constitutional issues in the Internet arena.

Congress should work to avoid a patchwork of state laws, which frequently restrict interstate commerce and make it universally more expensive to serve consumers across state lines.

Congress and the Administration might recognize that the lack of Internet IPOs means there’s no easy capital to fund tomorrow’s Amazon or eBay. It’s more likely that manufacturers and primary suppliers will make the technology investment and do the marketing to build the next generation of direct online channels for consumers. For industries with many small and disparate suppliers, they may have to combine their efforts in a joint distribution business. Yet, supplier-organized distribution channels face antitrust hurdles appropriately designed to protect consumers. Regulators have to continue to protect consumers, but should give suppliers a chance to create pro-consumer distribution channels, even if they have to work together to make it work better.

Here at the FTC, I would encourage continued advocacy against barriers when they’re debated in state capitols, courtrooms, and in the boardrooms of industry and professional associations. An additional role for the FTC would be to educate consumers about their options and responsibilities when doing business online.

As consumers become more educated about the value and convenience of eCommerce, advocacy groups like ACT and NetChoice should do a better job of organizing and galvanizing consumers to oppose barriers. Businesses like eBay, for instance, might alert their buyers and sellers when new state legislation threatens their online marketplace.

Industry and professional associations should work to apply the promise of eCommerce, not to block it. Increasingly aware consumers won't tolerate artificial barriers that limit choice and raise prices, so it's time to start embracing new and complementary distribution channels. What I'm really saying, to groups like the auctioneers association, car dealers, and travel agents, is "*Lead, follow, or get out of the way!*"