

The Revenge of the Disintermediated

How the Middleman is Fighting E-Commerce and Hurting Consumers

by Robert D. Atkinson

"The resistance which comes from interests threatened by an innovation in the productive process is not likely to die out as long as the capitalist order persists."

Joseph Schumpeter, economist

A central aspect of the e-commerce revolution is economic "disintermediation." Disintermediation can be defined as the reduction or elimination of the role of retailers, distributors, brokers, and other middlemen in transactions between the producer and the customer. In some cases, e-commerce sites such as Amazon.com, Travelocity.com, and CDNow have become new online intermediaries that substitute for "bricks and mortar" intermediaries (book stores, travel agents, and music stores). But the technology allows even Web intermediaries to be disintermediated. For example, consumers could buy books online directly from publishers who would ship the books directly from their printing plants. But even publishers and printers might be disintermediated if authors were to sell "e-books" directly to the consumer, as mystery writer Stephen King has attempted to do.¹

Notwithstanding the current shakeout in the e-commerce space, e-commerce—especially so-called "clicks and mortar," where producers sell directly to consumers—is expected to continue to grow as more and more Americans get online and show a greater propensity to conduct commerce online.² As a result, all forms of disintermediation are occurring in a wide range of industries and professions, including distributors and retailers of physical goods (e.g., wine and beer wholesalers, auto dealers, music stores); providers of transactional services (e.g., travel agents, stocks and bonds salesmen and traders, banks, real estate agents, the Postal Service, and auctioneers); and even providers of professional services (e.g., lawyers, radiologists, college professors). But it's not just bricks and mortar intermediaries who are threatened; sometimes it's online intermediaries (e.g., online travel services) who are at risk as producers (airlines) use the Net to sell directly to the consumer.

In these cases, those threatened with disintermediation are not sitting by idly; they are using all the judicial, regulatory, and legislative means at their disposal to thwart competitors who would like to use the Net to sell a product or service. For example, car dealers have succeeded in obtaining the passage of laws in 49 states to prevent auto manufacturers from selling cars online. Wine wholesalers have lobbied Congress and the states to prevent wineries from selling wine over the Net. These and many other cases of the revenge of the disintermediated represent perhaps the biggest threat to the rapid and widespread digitization of the U.S. economy. Moreover, there is every indication that in 2001 such efforts will only accelerate as more industries fight in more states, Congress, and

the courts for protectionist legislation and regulations. **PPI estimates that American consumers pay a minimum of \$15 billion more annually for goods and services as a result of such e-commerce protectionism by middlemen.**

American economic history is rife with industries buffeted by change using government to protect their markets. But it wasn't a good idea then, and it isn't a good idea now. We don't predict that all middlemen will disappear, nor do we think they should. We do, however, believe that in a free market economy consumer's choices, not vested interests colluding and using the political process, should determine how commerce is structured. As a result, policymakers should follow these principles when deciding cases brought by intermediaries:

- **Be on the side of innovation and consumer choice.**
- **Let the marketplace, not government, determine business winners and losers.**
- **Distinguish between disintermediated workers and disintermediated industries and firms, and try to assist the former.**
- **Decide policy on its merits; the disintermediated sometimes want the right thing, even if it's for the wrong reason.**

Opposition to Economic Change Is Not New

In the course of U.S. history, many industries threatened by technological change have sought government help to protect their positions. For example, as the railroads emerged in the 1850s, boat companies on the Mississippi River, allied with boat builders and even the city of St. Louis, sued a railroad company for damages after a boat crashed into a rail bridge over the Mississippi, and sought to have the bridge removed. In 1919, the Horse Association of America, a lobbying/public relations group (the group, which later changed its name to the Horse and Mule Association of America, was allied with organizations such as the Master Horseshoer National Protection Association, the National Hay Association, and the Eastern Federation of Grain Dealers³), was formed to promote the continued use of draft animals and to campaign against the introduction of the automobile and tractor. In the 1920s it vigorously campaigned to limit the use of trucks on public roads, and conducted, successfully in many places, a nationwide campaign to prohibit automobile parking on principal streets.⁴

Shortly after this, independent banks lobbied hard to ensure that the Glass-Steagall Act would include a ban on branch banking, which they rightly believed would put them at a competitive disadvantage vis-a-vis large banks. In the 1940s and '50s, the National Milk Producers' Federation secured legislation in many states prohibiting the sale of yellow margarine because it led to reduced butter sales. Consumers were forced to purchase margarine in a plastic bag that contained a spot of red dye and then knead the bag to turn

the naturally white margarine yellow. Around the same time retail druggists sought legislation to restrict chain-store pharmacy operations. During the last two decades, research into agricultural mechanization was slowed by lawsuits that challenged the use of public funds at land grant universities to develop machines that displaced small farmers and farm workers. Gas station employees have pressured states, including New Jersey and Oregon, to make self-service gas stations illegal. These are just a sampling of the many cases in our economic history of efforts to slow economic progress.

The Benefits from Technological Change and Disintermediation Far Outweigh the Costs

The current wave of disintermediation results from an information technology revolution that enables buyers and sellers to gain access to information or services directly, without the services of middlemen and sellers. Disintermediation is not just an interesting sidelight to our current economic boom—it is playing, and will continue to play, an increasingly central role in propelling economic growth. America's economic growth for the last 100 years have been powered by automation and productivity growth in two industries—agriculture and manufacturing. But these sectors have become so efficient and constitute so small a share of employment that they no longer can be the principal engine of productivity and income growth. It's the application of information technologies to the service sector (or to service processes in manufacturing) that will be the critical factor in continuing our current productivity and income growth boom.

E-commerce disintermediation promises to play a key role in boosting economic productivity. For example, of the \$17 it now costs to purchase a music CD, more than \$9.50 is accounted for by distribution, shipping, and store markup, with additional share by the manufacture of the CD itself; online, the songs could be downloaded as MP3 files (or another digital format) for almost nothing. Similarly, e-book publishers can save about \$8 per book in printing, distribution, and return costs. Selling corporate and municipal bonds directly over the Internet can eliminate most of the 2 to 5 percent commission charged by middlemen. Trading futures contracts through the Internet is at least 50 percent cheaper than through bricks and mortar exchanges like the Chicago Board of Trade. Drawing up a will or other simple contract online can be 75 to 80 percent cheaper than using a lawyer. Purchasing a ticket online is about 65 to 75 percent cheaper than using a travel agent. Purchasing term life insurance online has reduced prices by 8 to 15 percent.⁵ Linking grain producers directly with grain buyers over the Web, through sites like Cybercrop.com, cuts prices by eliminating grain dealers. Selling homes on the Internet can reduce agent commissions by over half. As these and countless other cases demonstrate, using technology to automate what are now physical or person-to-person processes can save significant amounts of money, and those savings will translate to lower costs and higher real incomes for Americans.

If the potentially disintermediated raise barriers that limit the growth of e-

commerce, the result will be reduced per capita economic growth. But there are also international competitiveness implications. Foreign nations recognize that they are lagging behind in e-commerce. The fastest way for them to leapfrog the United States is to embrace these disintermediating business models, and many are. In the United Kingdom, consumers can buy cars from automobile makers online. In France, the main futures exchange, MATIF, closed its trading floor and moved to an all-electronic, Net-based trading platform. While the normally protectionist Europeans are liberalizing e-commerce, the United States resists change as car dealers and stock traders erect barriers to new e-commerce models.

Opponents of E-Commerce Claim They Are Acting in the Public Good

E-commerce opponents are normally not so crass or politically naive as to say, "Stop these competitors from taking away our profits." Instead they claim to be acting to protect consumers. For example, wine wholesalers say that laws prohibiting wine sales on the Internet are needed to protect state tax revenues and limit underage drinking. In addition, they claim that such a law would ensure that "wine [remains] visible and available in hundreds of thousands of on and off retail premises in America."⁶ Travel agents claim that they "act as the public's representatives and help keep prices low," while providing the buying public with choice.⁷ Car dealers claim that cars are so complex that dealers are needed to protect the consumer.⁸

In most cases, these arguments are a smoke screen for the real motivation for getting government involved: to protect the status quo from competition in the marketplace. For example, praising a decision by the state of Texas to prohibit Internet car sales by anyone other than car dealers, one Texas car dealer was quoted, in a moment of unusual forthrightness, as saying, "... I hope they [Internet car dealers] never take over."⁹ The head of the Texas car dealers' association, in explaining his support of the laws restricting Internet car sales, stated that the association would always be about "the property rights of its members. Don't expect us to change that." We shouldn't expect them to change that—that's their job—but we also shouldn't expect policymakers or the judiciary to protect the economic interests of a select few in business over the economic interests of American consumers.

Policymakers sometimes take these arguments seriously because they are concerned about protecting jobs and the tax base. As a general rule, rather than focus on the economic benefits to consumers, e-commerce protectionists focus on the lost jobs. For example, Richard Sclove, of the liberal Loka Institute, warns of a "cybernetic Wal-Mart effect," as small local businesses go out of business in the face of e-commerce companies, just as they do when a Wal-Mart moves to an area.¹⁰ Advocates like Sclove appear more interested in preserving small business than ensuring that consumers benefit from lower prices and greater selection. Andrew Shapiro writes in *The Control Revolution*, "How many of us would be happy if disintermediation meant higher unemployment rates in our community? Or the closing of favorite neighborhood shops that couldn't compete with

well-financed global competitors using the Net to bypass local competition?”¹¹ But no one is forcing consumers to buy online. If they are buying online, it’s because they believe they are getting better value for their money. Protecting businesses at the expense of consumers, many of them low-income individuals, protects the wrong group. Some argue that a more digital economy would hurt the poor, who currently have less access to the Net. Yet, low-income American’s access to the Internet is growing. Moreover, by being able to save money online, low-income individuals will be more able to afford Internet service.

Many protectionists, like social commentator Jeremy Rifkin, the author of *The End of Work*, make use of the ultimate scare tactic, saying in essence, “If we don’t put a stop to all this change, there will be massive and unprecedented unemployment.” Without detailing the extensive economic studies showing that technological innovation and productivity growth do not raise unemployment, it suffices to say two things. First, it is no coincidence that at a time when unemployment is at a 25-year low, productivity is at two-decade high. High levels of efficiency may result in some job loss in the short term and at the micro level, but because they lead to lower prices and higher wages they propel economic growth at the macro level. Second, technological change is the sine qua non of higher standards of living and higher wages. If we want higher real wages for working Americans, policymakers need to protect the rights of American consumers to choose the kind of economic transactions they want, and not protect the interests of the business status quo against change.

Cases of Political Opposition

There are a large and growing number of cases in which affected interests are actively lobbying for protection against e-commerce. For example:

- In an effort to protect college professors’ jobs, the American Federation of Teachers launched a national ad campaign opposing distance higher education over the Internet, on the grounds that it is of lower quality than face-to-face education. Moreover, some states have passed laws making it illegal for an out-of-state institution to deliver distance learning to any state resident. This is just one of the more blatant examples of regulatory barriers, which exist in many states (e.g., New York, New Jersey), to serving students outside a state or engaging in partnerships between providers across state lines.
- The Texas state bar association has brought suit against companies selling software—and, by extension, Internet-based legal software—that prepares legal documents such as leases, wills, and contracts.¹²
- When Colorado attempted to put fishing and hunting licences online, owners of retail outlets that sold those licences pressured state legislators to oppose the effort.

- In spite of the fact that tape recordings provide a perfectly accurate transcript of court hearings, the National Court Reporters Association has spent \$320,000 lobbying against the use of recorders in court.¹³ And once voice recognition technology becomes viable, it's likely they will lobby against that.
- When Microsoft's HomeAdvisor.com set out to establish a real estate Web site where agents would accept lower commissions, the National Association of Realtors not only lobbied against Microsoft in its antitrust battle, but also required brokerage firms to list exclusively with their own Web site, Realtor.com.¹⁴ In a related area, at least one state, New York, has threatened to close down any Web site that sells real estate or even provides real estate information without possessing state brokerage licenses.

There are numerous other cases, which are discussed below in more detail.

Auctioneers

One of the most innovative and successful e-commerce companies is Ebay, the online auction company. Today, millions of Americans buy and sell goods on Ebay in an auction-like format. But it didn't take long for bricks and mortar auctioneers to take notice and try to make it harder for Ebay sellers to sell. The effort was led by the North Carolina Auctioneer Licensing Board, which considers people who sell on Ebay or other similar online sites auctioneers, and is seeking to require them to be licensed by the state or face misdemeanor charges and a \$2,000 fine. To become licensed, auctioneers must pass an exam that tests their knowledge of state auction laws and pay a fee of \$300 the first year, and \$150 annually. Initially the board will seek to "educate" auctioneers, but will eventually take proactive measures by monitoring auction sites and checking on auctioneers' licenses. Because of widespread adverse publicity, the board moved to defer any further licensing requirements for online auction sellers, and has referred the matter for study to the Committee on Information Technology of the North Carolina General Assembly. But other states have not been deterred. The New Hampshire board has passed similar requirements, including an examination, an annual licence fee of \$85, and a \$10,000 state bond. Noncompliance is a felony, punishable by time in prison. Tennessee's General Assembly is also considering such a measure.

Autos

There are potentially huge savings in allowing car manufacturers to sell directly to consumers. For example, if consumers could use the Net to choose the car and the components they want (as consumers do now when buying a Dell or Gateway PC), the industry could cut out millions, if not billions, of dollars in costs related to inventory and sales.¹⁵ Even when customers rely on the host of intermediary online car dealers, they can

save substantial sums. For instance, Carorder.com sells new cars through its network of partner dealers.¹⁶ Because Carorder.com does not pay the costs associated with traditional dealerships, such as rents and commissions, it estimates that consumer savings will amount to about \$500 per vehicle. One study found that the average customer using an online service to buy an auto pays approximately 2 percent less than someone buying in person from a dealer.¹⁷

Car dealers and their trade associations have fiercely resisted these new business models, and over the years have managed to get individual state legislatures to pass laws protecting their franchises. Automobile franchise laws prohibit manufacturer-owned auto dealers from selling cars in approximately 40 states.¹⁸ And direct sales of automobiles by manufacturers and online sellers without a franchise presence are prohibited in every state except Alaska. Likewise, in the past 12 months, car dealers in nine states, including Texas, have sought successfully to toughen state franchise laws, which make it virtually impossible for manufacturers to sell cars directly—such as over the Internet—rather than through locally franchised dealers. Auto dealers have succeeded in passing a host of other laws and regulations to protect themselves at the expense of consumers, including relevant market area laws that effectively prohibit new dealerships within a designated radius of an existing dealership selling the same make auto. Not only do these laws inhibit competition, they result in an enormously inefficient and high-cost distribution system.¹⁹

The National Automotive Dealers Association (NADA) claims that franchise laws are good for consumers. They protect consumer interests against unscrupulous manufacturers. Yet there is no evidence of this, particularly when the number of automobile manufacturers in the United States and current federal regulations regarding warranties and recalls appear adequate (especially if they are strengthened in the aftermath of the Firestone tire fiasco).

Texas is an example of restrictive regulation stifling Internet sales of new and used automobiles. The Ford Motor Company recently developed an online program to sell pre-owned leased cars. When a potential customer visits Fordpreowned.com and reserves a vehicle, the car is then transported from a Ford-owned warehouse to the dealership closest to the consumer. The car can then be test-driven and purchased from the dealer, who receives a commission on the sale.

But even this kind of direct selling through a dealer did not pass muster in Texas. In November 1999, local Ford dealerships selling previously leased vehicles were forced to stop because they were in violation of state franchise laws.²⁰ In a letter to a Houston Ford dealer, Carol Kent, director of the enforcement section of the Texas Department of Transportation's Motor Vehicle Division, said, "Under this program, Ford Motor Co., a motor vehicle manufacturer, is acting in the capacity of a dealer by selling and offering to sell motor vehicles directly to the retail public via the Internet. Texas law currently prohibits a manufacturer from acting in the capacity of a dealer. Accordingly, your participation in this program would make you liable for aiding and abetting this violation of the law."²¹ The result would be that Ford and Lincoln Mercury dealerships in the greater Houston area were liable for fines up to \$10,000 per violation, per day for participating in

Ford's program. After temporarily closing the Web site featuring Houston area dealers, Ford requested an injunction against TMVD's actions from a federal judge, who ultimately denied injunctive relief. Ford is currently pursuing legal remedies at the state and federal levels. However, an administrative law judge for the state of Texas recommended in November 2000 that Ford be fined \$1.7 million for selling cars online.

On top of that, brokering of cars to consumers by anyone other than a dealer is also prohibited in Texas. As a result, the state has brought suit against at least one online auto broker, requiring that Texas dealers be involved. As a result, Internet car sales companies, instead of trying to bypass dealers, and pass the savings on to customers, are having to form alliances with dealers, ultimately raising the prices at which they sell a car. For example, DriveOff.com complied with Texas law by forming an association of real-world car dealers, in which they own a 15 percent stake, with car dealers owning the rest.

However, Arizona may take the prize for having the most protectionist auto franchise laws. After active lobbying by the state's auto dealers, Arizona passed restrictive franchise laws that prohibit manufacturers from offering other auto-related services to consumers, including financing, insurance, and parts.

American consumers routinely list buying a car as one their most unpleasant consumer experiences. And yet public policy has forced consumers to interact with car dealers when they want to buy a car.

Wine and Beer Sales

Internet wine and beer sales is another battleground where intermediaries fight against vineyards and small breweries that sell directly over the Net. This year the Wine Wholesalers Association successfully lobbied Congress to pass a law (P.L.106-386) allowing states to sue in federal court out-of-state wineries that ship directly to consumers in a state that has prohibited Internet sales. The National Beer Wholesalers Association has actively lobbied for legislation to allow states to prosecute out-of-state breweries shipping beer into states that prohibit it.

In addition, 30 states—at the behest of alcohol retailers and wholesalers—do not allow wine sales over the Net, and in fact in six of them, such sales are a felony. As a result, alcoholic-beverage-control boards across the nation are cracking down on violators. In many states this even applies to delivery of wine and beer by online grocery delivery companies, such as Webvan.

Wholesalers make two arguments for prohibiting Internet wine sales: first, that consumers would avoid paying sales and excise taxes; and second, that minors would be able to gain access to wine. But there are straightforward ways to ensure the collection of taxes. For example, in 1998 New Hampshire passed a direct shipment law that requires all shippers of wine or beer into the state to pay a \$288 permit fee and an 8 percent tax on all goods shipped into the state. Any wine producer wishing to ship to a New Hampshire resident pays for the permit and collects taxes from the buyer and then remits it to the state.

With regard to underage drinking, it would be relatively straightforward to pass laws requiring that wine (or beer) shipments be signed for by someone at least 21 years of age. In fact, several shipping companies have already agreed to require recipients to present I.D. before receiving a package containing wine. For example, New Hampshire's law includes packaging and shipping restrictions specifically designed to prevent the illegal delivery of any such shipments to a minor. Moreover, some 10 states now allow intrastate, but not interstate, home delivery of alcohol, suggesting that their real motivation is not to control drinking, but to protect local industries.

Wine wholesalers also contend that they provide consumers with more choice because they buy wines from hundreds of sources, not just a few. Yet clearly online sales provide consumers with greater choice, largely because consumers could buy wine directly from small wineries that wholesalers do not carry. With only 6 percent of U.S. wineries producing 95 percent of the wine, online sales promise to bring more choice to consumers.

Music Stores

Music stores face a double whammy. On the one hand, online sellers of CDs (like CDNow.com and the recording companies themselves) are selling CDs over the Internet for less. On the other hand, as more music is sold in digital MP3 format people might buy fewer CDs, preferring instead to download music directly from the Net (witness the case of Napster).

In response to this threat, the National Association of Recording Merchandisers (NARM), which represents more than 1,000 music retailers, has sued Sony Music, arguing that Sony is undermining retail outlets by taking advantage of its unique position as a content company, CD distributor, and e-tailer to sell goods directly to consumers. They want Sony to stop inserting in their CDs fliers and hyperlinks that advertise and link to the Sony Web site that sells CDs directly, bypassing the record stores. They object to being "forced" to sell material that advertises their competitor's "store." Pamela Horovitz, president of NARM, stated, "In the case of the most recent Ricky Martin CD, for example, the retailers were never told that it has a link to a Ricky Martin Web site that allows the consumers to buy products from that site. When you go to the site it's Sony Music's store."

NARM even goes so far as to claim that Sony is "depriving consumers of the efficiencies of enhanced competition for sound recordings," even though all Sony is doing is telling buyers how to buy directly from them, often more cheaply than buying from a store.²²

This case would be laughable, if it were not for the fact that it is a serious legal challenge. CD liners have long contained information for fan clubs and catalogs where listeners could buy merchandise. The music stores didn't object until Sony got into the CD-selling business.

Online Travel

In the past, travelers wishing to purchase an airline ticket either had to call the airline or contact their travel agent. And yet, even though it costs airlines more to sell tickets through

agents, particularly compared to selling online, airlines do not charge more for tickets issued by travel agents. Delta Airlines recently floated a new policy to charge a two dollar fee for tickets not purchased online, but rapidly retracted it when travel agents loudly protested. As a result, consumers have less incentive to buy online, even though that channel is the most efficient and least expensive.

Now travel agents are once again seeking to limit the expansion of online travel services. Earlier this year the American Society of Travel Agents (ASTA) filed a complaint with the Justice Department to prevent a new online travel company, Orbitz, from launching its site. Because seed money for Orbitz came from the five largest American carriers—United, Delta, Northwest, Continental, and American—ASTA claims that Orbitz will gain market share unfairly. They argue that, because airlines will provide Orbitz with special last-minute, cheaper fares and exclusive access to preferred fares, the kind they offer on their own Web sites, Orbitz will obtain a competitive edge.

In reality, the motivation of ASTA has been to protect its members against a more efficient, lower cost alternative, no matter what companies helped launch it. Today, most consumers who wish to purchase tickets online use major online services, such as Travelocity and Expedia, which account for nearly 70 percent of the online agency market.²³

Consumers may also purchase directly from airline Web sites, such as USAir.com and UAL.com. At the airline-owned sites, consumers can receive perks such as frequent flyer miles, and can often purchase special heavily discounted “e-fares.” But because a consumer has to go to multiple airline sites to find all the possible flight combinations, sales of these tickets represent only 3 percent of online ticket sales.²⁴

Orbitz plans to change this, using a new Internet-based software search system (which they claim will result in a more complete listing of flight options than the current computer reservation system [CRS]) that will allow consumers to view flight schedules and purchase tickets from Orbitz’s 30 member airlines and 450 other airlines. They will charge airlines up to one-third less if they agree to provide Orbitz with their lowest fares, including special e-fares (airlines can also provide these fares to other travel agencies as well). With average round-trip CRS fees around \$10, this is a substantial discount for the carrier, and ultimately the consumer. In the future, Orbitz plans to purchase tickets directly from the airlines, circumventing the CRS system altogether and further reducing costs.

ASTA argues that airlines should be required to provide their lowest fares not just to Orbitz, but also to them. But this argument ignores the fact that selling through agents costs the airlines more money. With the exception of tickets purchased through the airlines’ own reservation services, consumers pay a computer reservation service (CRS) fee and a commission every time they buy a ticket. Currently, consumers pay Travelocity and Expedia a commission of 5 percent, capped at \$10. Traditional travel agent commissions are 10 percent, capped at \$50. It costs the airlines, and by extension consumers, much more to sell a ticket through a travel agent than online, and therefore if airlines were forced to share bargain fares with higher cost providers, they would likely stop providing the fares.

Airlines should be allowed to provide their lowest fares to sites like Orbitz because dealing with them does not cost the airlines as much money as dealing with a travel agent.

Orbitz should not, however, be allowed to require airlines to restrict their e-fares to Orbitz—although Orbitz has stated that it would not do that. On the other hand, if airlines collude in refusing to provide these discount fares to other parties who agree to charge the same fees and commissions as Orbitz, to not share the information with other airlines, and to display data in an unbiased way, this may be anti-competitive behavior on the part of the airlines.

The travel agents also complain that the airlines will use their ownership stake in Orbitz to collude on prices. Given that airlines already have plenty of information about each others' pricing patterns, it is not clear why a new Web site will change the situation, and this is a matter for the Department of Justice (DOJ) if they do. For example, if the Justice Department finds that Orbitz is sharing information on ticket prices, percentage of seats sold, etc., with its member airlines, the department might act to prohibit this.

This new service has the potential to benefit consumers and airlines by providing a wider range of fare options, bias-free displays, and reduced booking fees. If potential anti-competitive issues arise (including biased displays), they should be closely examined by regulators. But the development of a new online system that has the potential to cut the cost of airline ticket distribution should be embraced, not resisted.

Contact Lenses

Buying contact lenses over the Internet can provide considerable savings for consumers, not to mention often being more convenient. Unfortunately, optometrists and their professional association have worked to make it increasingly difficult for contact lens wearers to buy contacts online.

Until recently, contact lens wearers had to get their contact lenses through their local optometrists. The optometrists would examine the patients eyes, write a prescription, have the lenses made, and then dispense them to the patient at a considerable markup. However, with the advent of disposable lenses in the 1980s, contact lenses became a commodity instead of a specialty item. Thus, once a person became a successful lens wearer, frequent examinations and prescriptions became virtually unnecessary for most contact lens wearers, thus making obtaining contacts from other sources feasible.

Faced with this growing threat, the American Optometrist Association fought back. According to a legal brief filed by 33 state attorneys general against the AOA, they pressured manufacturers to distribute only to licensed optometrists and not to alternative providers, including those who sell over the Internet.²⁵ As a result, companies like 1800contacts, which, sells both over the Internet and by phone, have more difficulty obtaining lenses, and must buy their lenses from wholesalers instead of directly from manufacturers. At least one manufacturer, Ocular Sciences/American Hydron even advertises to optometrists and other eye professionals that they "have a proven method to help protect your patients from the risk of mail order eye care (Our special bar coding tracks every six pack—divert to mail order and we cut you off.)."

Because of such practices, optometrists are able to mark up lenses from the manufacturer by between one and five times the cost. As a result, most optometrists derive

a significant portion of their income from the sale of replacement lenses. One study by the *Detroit Free Press* found in a survey of 50 optometry offices that nearly all the offices required patients to purchase contact lenses from the optometrists themselves for an average price that was almost triple the best price available elsewhere.²⁶

But the optometrists' association was not content with just pressuring manufacturers. It actively encouraged and advised its members to avoid or discourage the release of contact lens prescriptions, even when the release was permitted or required by state law.

Through their associations, optometrists pressured some state legislatures to block legislation requiring optometrists and ophthalmologists to give the prescription to the patient. For example, Maine prohibits the release of the prescription for contact lenses to the consumer. The Wisconsin Optometric Association and other state optometric associations worked to prevent laws facilitating the release to consumers of prescriptions. And, worst of all, Texas law requires online companies to obtain an original hand-signed copy of the prescription before shipping contacts to its customers. Optometrists often ignore requests for the prescription, or send it slow mail instead of faxing it to a toll-free fax line, thus making it harder for consumers to order online. But while many states allow the professional to release the prescription, only 22 require it. The practice of optometry is virtually the only form of health care where the care giver actually sells the items he prescribes.

As most threatened groups do, the optometrists claim that they are only trying to protect the patients. As the suit by the attorneys general states, "The industry has hidden behind claims of health concerns requiring that individuals get their contact lenses from certain professionals, but there is no scientific basis to that claim," since the lenses sold online are identical to those sold in the optometrist's office.²⁷ (In fact, the FDA classifies a disposable contact lens as a Class II medical device, subject to the same standards as a toothbrush.) Moreover, it's not as if people can go online and get contacts without first going to an optometrist or other eye specialist. Online providers like 1800contacts do not sell an initial pair of lenses unless the person has a prescription.

The U.S. Postal Service

It's not only businesses that fight to protect their position against e-commerce competitors; it's also government. No case better highlights this than the action of the United States Postal Service (USPS). The postal service has a history of resisting challenges to its monopoly. For example, when Time-Warner entered into an agreement with the *Atlanta Journal Constitution* to deliver *Time* magazine, postal workers in Atlanta passed out leaflets encouraging residents to tell *Time* that they wanted their magazine delivered through the mail. More recently, while it's not clear that the information technology revolution (faxes, e-mail, electronic bill paying, etc.) will cause a decline in the delivery of physical mail, USPS is acting as if it will.²⁸ And rather than accept some disintermediation (there will always be some delivery of physical mail), they have tried to persuade Congress to let them enter new lines of business removed from the delivery of physical mail, and to initially use

the revenue from their monopoly on the delivery of mail to subsidize these ventures. Most recently, USPS has entered into an agreement with Check-Free, an e-commerce company, to provide electronic bill payment services, even though there are many businesses already in that marketplace.

The Postal Service has also worked against making it easier for consumers to use “e-stamps.” A number of companies sell downloadable e-stamps that eliminate the need to go to the post office and buy stamps. However, the market for them has grown more slowly than anticipated because the Postal Rate Commission, with strong urging from the USPS, refused to pass along the savings USPS realizes (by not having to print and sell stamps) to the vendors of e-stamps. As a result, users of e-stamps have to pay about 10 percent more for stamps (the cost of the stamp and the cost of the e-stamp service).²⁹ This is one of the reasons why E-stamp, one of the two vendors of e-stamps, recently went out of business. The issue is the same for postal meters as well: USPS has not allowed users of postal meters (for non-bulk mailing) to get discounts that reflect the savings in not buying stamps.

Radiologists and the Transmission of Medical Images Across State Lines

New technology is emerging that allows X-rays and other types of medical imaging to be done digitally. Because this means that medical images may now be sent out of state for review by the best radiologists, practitioners in some states have pressured legislatures to make it illegal for radiologists not licenced in the state where the image is taken to read the image and make a diagnosis. In fact, the medical profession in many states is attempting to pass laws restricting the practice of all forms of telemedicine.

They claim that they are only trying to protect the interests of patients and ensure quality care. Yet such concerns are overblown, particularly if the rules allow only doctors in the United States to read the images. All aspects of medical education, training, and certification in the United States are national in scope and licensing requirements vary only slightly between states. The profession also argues that the use of out-of-state practitioners would make it impossible for patients to sue for malpractice. But states without them can pass laws that give patients the right to sue out-of-state doctors.

Insurance and Financial Services:

Many states have laws that require financial service providers to maintain offices in the state or employ state residents. While some of these laws are legacies of an era when it was valid to assume a transaction would occur in person, others were clearly intended to relieve local companies from the pressures of out-of-state competition, much of it over the Web.

In the mortgage industry, approximately 15 states, including Arizona, California, Georgia, New Jersey, Ohio, Pennsylvania, and South Carolina, require companies that make, broker, or service residential mortgage loans to maintain some form of in-state office as a condition for licensing. Many of these laws were passed when mortgage lenders were local.

However, in many states, the bricks and mortar requirements are not merely a case of old laws needing to be brought up to date. In the past two years, a number of states, including Georgia, Kansas, Mississippi, Ohio, Texas, and Wisconsin, have adopted some form of in-state office requirement for mortgage companies. In many cases, these laws are the result of lobbying efforts by local mortgage companies intended to limit competition from lenders and brokers operating on the Internet.

Requirements for companies to maintain offices or employees in a particular state are out of sync with realities in commerce that permit accurate, convenient, and efficient communication with consumers from anywhere in the United States.

With respect to insurance sales, many states still require that a resident agent countersign policies issued by agents or insurers not domiciled in the state. Some states also have laws or other requirements that specify that a nonresident agent or producer must be accompanied by a resident producer to solicit insurance. Countersignature requirements and resident-nonresident "hand-holding" requirements restrict online insurance sales and serve to protect resident agent commissions.

Retaliating Retailers

Often the disintermediated don't rely on government to stymie their competitors; they rely on hardball commercial practices. One of the main reasons many manufacturers have been slow to sell their products over the Web, particularly at a lower price, is their fear of retaliation from the retailers they depend on for sales of their products.³⁰ In a survey of 50 consumer-goods manufacturers by Forrester Research, 66 percent indicated that conflict with retail channels was the biggest issue they faced in their online sales strategies, with only about 20 percent citing limited sales capability.³¹ In another survey of 42 retail and manufacturing companies, 74 percent of the manufacturers reported that they do not sell online due to worries about how it might affect their relationships with their retail channels.³²

Take the case of Sony Electronics, which has been relatively slow to embrace the Internet. Sony is preparing a major initiative to sell its products directly to consumers and corporate customers on the Web. If successful, the move could validate the Web as an important sales channel for consumers—possibly prodding other large manufacturers to follow suit. The shift could have huge ramifications for online and offline retailers alike. Sony already sells its personal computers on the Net, as well as some accessories for products such as video cameras, but it has been reluctant to expand its Net offerings until now, for fear of stimulating retaliation by electronics retailers.

This is not an unjustified fear. History suggests that retailers will punish manufacturers who do not play ball. For example, the Federal Trade Commission (FTC) successfully brought action against Toys R Us for threatening toy manufacturers with not carrying or promoting their toys unless they agreed to restrict the distribution of their products (e.g., providing popular toys only to Toys-R-us) at low-priced warehouse club stores.³³ In an e-commerce case, PC makers such as Compaq and NEC have found that retailers resisted their efforts to sell direct by de-emphasizing those companies' products in

their stores, resulting in a loss of sales for both companies. Levi Strauss closed its e-commerce site in 1999, mainly because of backlash from retailers. In another case, in response to an innovative car dealer in the region who sold over the Internet, a group of 25 Chrysler dealers in the Northwest established the Fair Allocation System (FAS) and threatened to refuse to sell certain Chrysler models and to limit the warranty service they would provide particular customers unless Chrysler limited the allocation of vehicles to the Internet seller.³⁴ A case brought by 33 State Attorney Generals have charged that the American Optometrist Association developed ways to discipline contact lens manufacturers who sell to alternative channels, including Web sellers.³⁵

Sony is likely to face similar action if it pursues its plans to sell directly to consumers. According to Dan Hodgson, senior vice president of merchandising for the retailer Crutchfield Electronics, "Sony would be unwise to compete against retailers on price, so Crutchfield will have to compete against it by offering better customer service." Crutchfield's Web site gets at the real issue from their perspective. It states: "It is rarely in anyone's interest for goods to be sold at the cheapest possible prices." Maybe it's not in their interest, but it sure is in the interest of American consumers. In other words, he is saying that if Sony tries to pass along the savings it enjoys from selling directly to the consumer, retailers will retaliate.³⁶

Other manufacturers of such goods as autos, perfume, clothing, golf equipment,³⁷ shoes,³⁸ makeup,³⁹ and bicycles⁴⁰ have all delayed or scrapped plans to sell online due to fear of such retailer retaliation. For example, the Escape Sailboat Company began to sell its boats directly to consumers by catalog. In response, sailboat dealers banded together and refused to sell Escape's boats. Escape capitulated and ended its direct sales efforts. In all these cases, retailers benefit, while consumers pay more.

Principles for Policymakers

In deciding these and other future cases, policymakers should consider the following principles:

1. *Be on the side of innovation.* As PPI's New Economy Task Force stated in its *Rules of the Road: Governing Principles for the New Economy*:

Innovation and change are disruptive. They displace workers; they cause firms, and even entire industries, to fail; they lead to industrial and economic restructuring in cities and sometimes even whole regions; and they upset traditional ways of doing things, making some skills obsolete. There is every reason to believe that this will be just as true, if not more so, in the New Economy. Because innovation and change are disruptive, they tend to spark strong political demands to insulate affected segments of the economy and slow down economic change. Such demands, while understandable, inherently deny opportunities to less politically powerful interests in the guise of "protecting" those with clout.

As a result, to effectively promote growth in the New Economy, government must facilitate, rather than resist, the processes of economic change and modernization as these changes create new opportunities and increased incomes for all Americans. A key lesson of American economic history is that the broad benefits of innovation and change vastly outweigh the short-term costs associated with disruption. This is particularly true in the New Economy, where innovation and change are creating more jobs than they are eliminating and are driving productivity and wage growth.

2. *The marketplace, not government, should determine business winners and losers.* If consumers choose to purchase goods or services directly from the manufacturer or provider, they should be allowed to do so. Public policy should ensure a level playing field so that consumer choice, not regulations, taxes, or other factors, determine winners and losers.

3. *Distinguish between disintermediated workers and disintermediated industries and firms, and try to assist the former.* There is no legitimate role for public policy to protect industries, firms, or entrepreneurs from competition. In a free market economy, entrepreneurs and shareholders take a risk. If their business succeeds, they are rewarded with generous profits. If it does not, they suffer losses, and ultimately may go out of business. Since public policy doesn't intervene to limit profits on the upside, it shouldn't intervene to limit losses (or closures) on the downside.

However, there is a legitimate role for public policy in helping workers who are laid off as a result of economic change. Indeed, if public policy does not help workers hit by economic change, they will increasingly resist economic changes that are good for the nation.⁴¹

4. *Decide policy on the merits; the disintermediated sometimes want the right thing, even if it's for the wrong reason.* Because not all cases of e-commerce opposition are without merit, it's important to examine each case on its merits. For example, when the recording industry filed a lawsuit to prevent the marketing of the Diamond Rio player from being sold (a device that lets individuals listen to music in digital format and also makes it easier to share pirated music files), they overstepped their bounds and the court rightly ruled against them. However, when they argue that Internet services like Napster facilitate widespread music piracy, the industry makes a compelling and reasonable case.⁴²

Likewise, while the motivation of the retail industry to support Internet sales tax collection may stem from protectionist impulses, PPI has nevertheless argued that there is no legitimate reason why all buyers, regardless of the medium through which they buy, should not be required to pay sales taxes.⁴³ Similarly, opposition to sales of drugs over the Internet without a prescription raises legitimate concerns. In all cases, policymakers have to ask themselves if the opposition is raising a public policy concern that will benefit the consumer, or the industry, and if the proposed action is fundamentally fair.

Policy Recommendations

If policymakers want to advance the digital economy and boost productivity and incomes for all Americans, they should ensure that the natural processes of economic and technological change are allowed to work and not give in to the demands and pleadings of e-commerce resisters.

1. Policymakers at all levels of government should resist protectionist pleadings and oppose actions designed to protect the status quo against e-commerce competition. Siding with the innovators against the status quo is often difficult politically, since the entrenched opponents often have more political power than new entrants and innovators. For example, the stock and futures exchanges employ tens of thousands of people and have financial resources to lobby against small, upstart competitors. As Stephen Waldman, former member of the Securities and Exchange Commission, states with regard to the securities industry, “Those market participants who are most successful under the current system often resist changes to it. Their loud voices become a force for the regulatory status quo.”⁴⁴ For these reasons, policymakers need to act in the public interest and not give in to special interest pleadings and pressures. There are numerous examples. States should repeal laws restricting car sales to dealerships and laws prohibiting wine sales on the Internet. Congress should not pass a law allowing states to prosecute wine companies selling wine or beer online. The Department of Justice should not take action against emerging e-commerce competitors like Orbitz if the airlines agree to not engage in discriminatory behavior.

2. The Bush administration should create the position of e-commerce ombudsman to identify cases of political opposition to e-commerce and serve as an advocate in government for e-commerce competitors. Currently, there is no formal advocate within the federal government for emerging e-commerce competitors. The administration should create a position whose responsibility it is to identify, analyze, and advocate for cases where opponents of e-commerce competitors are unfairly trying to use government for protectionist purposes.

3. The Federal Trade Commission and the Department of Justice should increase their efforts to prevent retailers and other businesses from colluding to retaliate against companies attempting to sell directly to consumers. The real promise of e-commerce and the large efficiencies it promises will be realized only when producers (of goods or services) can sell directly to consumers or other businesses and pass their savings back to customers. But intermediaries have attempted to collude to use market power to hinder producers from doing this. As David A. Balto, assistant director of the Office of Policy and Evaluation of the Federal Trade Commission, has stated: “When new kinds of competition emerge, one of the first things incumbents may do is to attempt to deny necessary inputs to the innovators by organizing a boycott.”⁴⁵ This is clear violation of antitrust law.

But companies also collude by collectively threatening not to carry or promote a particular producer's product or service. **As a result, both the FTC and DOJ should step up their efforts to monitor retailers to determine if they are seeking exclusive dealing arrangements or engaging in other anti-competitive practices against direct selling from the producer.** And the standard should be a strict one. If retailers communicate in any way with each other, including through their trade associations, or if the retailer has market power, to organize what are essentially horizontal boycotts, the FTC and DOJ should take an aggressive stance to investigate and, if the retailers are found guilty, prosecute such cases.

4. In contrast, the FTC and DOJ should take a more tolerant position if producers act collectively to sell goods or services online, as long as they are not colluding on price or keeping out entrants who want to provide lower prices or higher quality. One of the reasons many producers don't sell direct is because they are afraid of retailer retaliation. And, indeed, if one producer steps forward to be the first to start selling direct online, it is indeed likely to face retaliation from retailers. However, if all or most of the producers could agree to sell direct at the same time, it would be impossible for retailers to retaliate against any one.

The FTC and DOJ should make it clear that such collaborations are not a violation of federal antitrust law and are indeed competitive benefits for consumers. Because such collaborations often enhance competition, the FTC and DOJ have created several so-called "safety zones" to provide participants with a degree of certainty in those situations in which anti-competitive effects are so unlikely that the agencies presume the arrangements to be lawful. **The FTC and DOJ should develop a safety zone to make it clear that the government does not consider agreements between producers (even if they include all or virtually all of the market participants or are orchestrated by the industry trade association) to agree to independently launch direct selling efforts (whether by catalog or Internet).** Policy makers may want to require such collaborators to obtain formal permission for this type of collaboration, as competitors must do now to establish research and development consortia.

In addition, while taking a careful look at clear and compelling cases of anti-competitive behavior, government should encourage the emergence of Business-to-Business (B-to-B) marketplaces where producers are buying goods collectively through B-to-B marketplaces (e.g., chemical companies establishing an online exchange to buy supplies). There should be a presumption that collaboration among buyers is designed to get lower priced supplies, so that they can in turn pass those savings on to consumers.

5. Consider developing national licensing requirements for industries and companies that now need to be licensed in the states. In the past, states regulated a wide variety of industries and professions whose products and services generally did not cross state borders (e.g., mortgage banking, car and wine sales, practice of medicine and law, real estate brokerage, postsecondary education). The provider of the service or seller of the product was located in the state where the product or service was provided. However,

with the rise of national e-commerce businesses, subjecting such companies to 50 different state laws raises costs of doing business significantly, and in many cases verges on violating of the Commerce Clause of the Constitution.

Just as Congress passed national legislation laying out the legal framework governing the acceptance of digital signatures, it should consider passing legislation developing national frameworks governing business sectors that are now regulated at the state level. For example, most non-bank financial service providers are subject to state laws, and are not eligible for national licensing. In this case, Congress should consider developing a national standard based on best-in-class requirements that states currently impose. E-commerce financial service companies would then have only one law to follow. The Gramm-Leach-Bliley Financial Services Modernization Act (P.L. 106-102) used this model to give states four years to have a uniform licensing requirement or reciprocity for insurance, and if they don't act, the federal system of insurance regulation would be imposed. There are other areas to consider as well. For example, Congress should also consider the possibility of ensuring that doctors and other health professionals are licensed nationally, or that states develop reciprocal licensing arrangements so that doctors licensed in any state could practice in any other. With regard to contact lenses, the FTC should do what it did in 1979 for eyeglasses: simply say that prescriptions for contact lenses must be given to the consumer, who can then choose where they want the prescription filled.

To say that such federal preemption violates states' rights is a perverse abuse of the notion of states' rights. The framers of the Constitution respected the rights of states to govern internal activities, but made it clear that they could not restrict interstate commerce. While the ability of states in the New Economy to provide public services should grow vis-a-vis the federal government, their right to govern commerce should decline. There is no way to build a robust digital economy if e-commerce is governed by 50 different sets of state laws, many of them erected as a result of protectionist pressures from powerful local entrenched interests and mercantilist impulses.

Conclusion

The economic history of the United States is rife with business, labor, and professional organizations attempting to use the powers of government to protect their economic interests. As economic historian David Landis states: "Technological change is never automatic. It means the displacement of established methods, damage of vested interests, and often serious human dislocations." And during periods of rapid technological change that produce new sets of winners and losers, political opposition to economic change increases significantly.

As recently as two years ago, the Internet meant being able to send e-mail, buy books online, and find sports scores at midnight. Now the Internet and e-commerce pervade virtually all industries and many professions, and in so doing promise to bring significant increases in productivity and per capita incomes. However, as these new forms of e-business flower due to their lower cost and often higher quality, they threaten to

bypass or replace traditional intermediaries standing between producers and consumers. Not surprisingly, these intermediary businesses and professions are using their political and economic influence to try to stymie these new competitors. It is not at all clear which side will win: The threat to e-commerce from vested off-line interests is real. It is incumbent upon policymakers at all levels of government, and in all branches, to resist the pressure from the disintermediated and ensure that e-commerce competitors are allowed to compete on a level playing field and are not burdened with unfair and discriminatory rules, regulations, and laws.

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Endnotes

1. It was never likely that this experiment would work, in large part because e-book “readers” have just appeared on the market and because King was hoping people would voluntarily pay to download his work. In the future, with a “pay per download” model and the widespread adoption of e-book readers, it’s likely that this model of author-to-reader delivery could work.
2. It should come as no surprise that a large number of dot.com companies are in trouble. Much of the investment made in the last few years was focused on attempts to become a market leader, beating out all the other companies. The 1930s saw the closure of scores of automobile companies, but was the takeoff point for the explosive growth of the auto industry. There is no reason to suspect that the current situation in e-commerce is any different. Moreover, the winners in e-commerce may not be the pure play dot.coms, but instead might be the “clicks and mortar” companies that use the Net to sell directly to consumers. In this case, pure-play dot.coms might not grow significantly, but e-commerce would.
3. One would have expected the buggy whip manufacturers to also be a part of this coalition.
4. Alan L. Olmstead and Paul W. Rhode, “The Agricultural Mechanization Controversy of the Interwar Years,” *Agricultural History* 68, no. 3 (summer 1994): pp. 35-53.
5. Jeffrey R. Brown and Austin Goolsbee, “Does the Internet Make Markets More Competitive? Evidence from the Life Insurance Industry,” working paper, Harvard University, Kennedy School of Government, Cambridge, MA, June 29, 2000.
6. Statement of Douglas W. Metz, Special Counsel, Wine and Spirits Wholesalers of America, before the Special Joint Hearing of the California Senate Committee on Government Organization and Select Committee on California’s Wine Industry.
7. Elizabeth Wasserman, “Stuck in the Middle,” *Industry Standard* (March 6, 2000). Wasserman quotes Paul Ruden.
8. David Hyatt, “Franchise Laws in the Age of the Internet,” White Paper, National Automobile Dealers Association, McLean, VA, January, 2001.
9. Robert Elder and Jonathan Weil, “To Sell Cars in Texas, Online Firms Are Forced to Enter the Real World,” *The Wall Street Journal*, January 26, 2000, *Texas Journal*, p. T1.
10. Andrew Shapiro, *The Control Revolution* (New York: Public Affairs, 1999), p. 143.
11. *Ibid.*, p. 14.
12. James Johnston and Robert Atkinson, *Stopping the Regulatory Threats to the Emergence of Online Law* (Washington: Progressive Policy Institute, 2000).
13. Margaret A. Jacobs, “Stenographers Fight for their Day (Jobs) in Court,” *The Wall Street Journal*, April 30, 1999.
14. The Justice Department recently ruled that this constituted restraint of trade, and forced the association to allow the listings to appear on other Web sites.

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15. In fact, at least one car maker, General Motors, is developing a vehicle configuration that will allow customers to “build” the car or light truck they desire, selecting options, paint color, etc.
 16. Founded in January 1999, Carorder.com has plans to purchase a dealership, but has not yet done so, and coordinates its sales through its partner dealerships. Manufacturers are reluctant to approve sales of existing dealerships to this online venture.
 17. Fiona Scott Morton, Florian Zettelmeyer, and Jorge Silva Risso, “Internet Car Retailing,” working paper, School of Management, Yale University, New Haven, CT, September 2000.
 18. Solveig Singleton, “Will the Net Turn Car Dealers into Dinosaurs? State Limits on Auto Sales Online,” briefing paper, Cato Institute, Washington, DC, July 25, 2000.
 19. “Review of the Automobile Manufacturing Licensing Program,” Office of Program Policy Analysis and Government Accountability, Florida Legislature, February 29, 1996.
 20. In May 2000, Texas outlawed manufacturer ownership of dealerships, thus making manufacturer-sponsored online sales of off-lease cars impossible.
 21. In a letter dated November 5, 1999, from Carol Kent, Director of Enforcement of the Texas DMV, to River Oaks Lincoln Mercury, Inc.
 22. National Association of Recording Merchandisers Inc. vs. Sony Corporation of America and Sony Music Entertainment Inc., in the United States District Court for the District of Columbia.
 23. Online purchases of airline tickets account for an estimated 5.9 percent of all ticket sales and are expected to rise to over 11 percent by 2003. Statement of the Honorable Kenneth M. Mead, Inspector General, U.S. Department of Transportation, before the Senate Commerce Committee, July 20, 2000 , p. 2
 24. Ibid.
 25. The State Attorneys General allege that in one case, the optometrists threatened to publish in their trade journal the names of contact lenses manufacturers who did not agree to not sell to alternative channels.
 26. Alison Young, “Lenses Users Pay High Prices,” *Detroit Free Press*, December 4, 1998, <http://www.detroitfreepress.com/news/mich/qlenses4.htm>.
 27. State of California, et al against The American Optometric Association, et, al, in United States District Court, Eastern District of New York, January 17, 1997.
 28. Postmaster General William Henderson has even speculated that e-commerce could actually increase volume and revenue for the postal service, since currently it carries a large share of packages mailed by e-commerce retailers.
 29. “E-Stamp Business Goes Postal,” *Business 2.0*, November 28, 2000, p. 65.
 30. Many producers who have begun to sell over the Web promise not to cut prices so as not to anger retailers. This not only hurts consumers, but limits the growth of this more efficient mode of distributing products and services.

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31. Alorie Gilbert and Beth Bacheldor, "The Big Squeeze," *Information Week Online*, March 27, 2000, <http://www.informationweek.com/779/channel.htm>.
32. Candace Talmadge, "Retailers concerned as manufacturers sell online," *Reuters Internet*, December 31, 2000, <http://www.mercurycenter.com/svtech/news/breaking/internet/docs/7956161.htm>.
33. See also New England Juvenile Retailers' Ass'n, 119 F.T.C. 79 (1995) (consent order), in which the association attempted to pressure manufacturers of baby furniture to cease selling to discount catalogue retailers.
34. The Federal Trade Commission charged that the agreement to boycott Chrysler was a violation of Section 5 of the FTC Act and would have harmed consumers by reducing competition among automobile dealers and depriving consumers of local access to particular models and warranty work. The order settling the complaint prohibits FAS from participating in, facilitating, or threatening any boycott of, or concerted refusal to deal with, any automobile manufacturer or consumer.
35. States' Amended Complaint, January 17, 1997, p. 14.
36. The site goes on to say, in a loosely veiled threat, "If severe retail price erosion affects a limited number of manufacturers within an industry, value-adding retailers drop those product lines." <http://www.crutchfield.com/mediarelations/S-rvaZCH67dN8/NineMyths.html>.
37. <http://www.golfonline.com/news/golfweek/1999/October/internet1030.html>.
38. <http://www.bizjournals.com/milwaukee/stories/2000/02/28/story3.html>.
39. "Ding, Dong, Web Calling," *Business 2.Com*, November 28, 2000, p. 72.
40. <http://www.airborne.net/eready/janette/news.asp>.
41. Kenan Patrick Jarboe, *Making the Global Economy Work for Every Worker: An Agenda for Expanding the Winner's Circle* (Washington, DC: Progressive Policy Institute, 1999).
42. Shane Ham and Rob Atkinson, *Napster and Online Piracy* (Washington, DC: Progressive Policy Institute, 2000)
43. Rob Atkinson, *Internet Taxation: A Software Solution*, (Washington, DC: Progressive Policy Institute: 1999).
44. Steven M. H. Wallman, "Information Technology & the Securities Market: The Challenge for Regulators," *The Brookings Review* 16, no. 1 (winter 1998): pp. 26-29.
45. David A. Balto, Assistant Director, Office of Policy and Evaluation, Bureau of Competition, Federal Trade Commission, "Emerging Antitrust Issues in Electronic Commerce," (paper presented at Distribution Practices: Antitrust Counseling in the New Millennium a Antitrust Institute meeting, Columbus, Ohio, November 12, 1999). http://www.ftc.gov/speeches/other/ecommerce.htm#N_26_.