

>> Michael Jenkin: Take your seats. We're going to get started now. I trust you all had a good lunch. And thank you all for getting yourselves back in time so we could get through security. That was very good. I think most people are now through security, so we'll start. This is our afternoon session on e-Commerce regulatory frameworks. And I'm going to just now introduce Ms. Etelvina Andreu Sánchez who is the director general for consumer affairs with the Ministry of Health and Social Policy in Spain. And she will now chair the afternoon session. So I'll turn it right over to her, because we're trying to maximize our time.

>> Etelvina Andreu Sánchez: Okay, thanks a lot, Michael. First of all, let me thank the OECD and also the FTC for allowing me to moderate this session. It has been really a good opportunity for Spain to show that we are really committed with these new regulatory approaches. And so it's my pleasure to moderate this session and to have such a good group of panelists. We have seven, so we will be strict on time. I'm sure that you will have the opportunity to bring all your questions to this session and also to the breakout session. So, the regulatory framework is reverse from one place to the other. This morning, already the question arised that the differences in regulatory frameworks can make things more difficult, both to consumers and to traders. And I think we have here a different point of view from institutions to consumers and, of course, to businesses, that will explain us which are the main difficulties, challenges, and maybe solutions for these differences in approaches. First of all, I would like to ask Mr. Abbamonte to go first and outline the European general regulatory approach and the proposal on the new directive, I hope. Mr. Giuseppe Abbamonte is head of unit in the Consumer Contract and Marketing Law, Directorate-General for Health and Consumers. And now I'm not very sure about the situation, because, as you know, we have a new commission. But Mr. Abbamonte is still there and will explain some things in the new proposal. Thank you, Mr. Abbamonte.

>> Giuseppe Abbamonte: Thank you, Etelvina. And good afternoon, everybody. What is happening is that my unit is the only unit of D.G. SANCO who will move to D.G. Justice and Home Affairs. It's over -- nobody really knows, but possibly as of the 1st of February of next year. Very quickly, I don't know if Mr. Cooper is still there. Because he called for many things in the U.S. that we do have in Europe. So I will talk -- But he's not around, I'm afraid. But I will talk very -- excellent. I will talk very...

>> Male Speaker: [Inaudible]

>> Etelvina Andreu Sánchez: [Chuckles]

>> Giuseppe Abbamonte: Excellent. I will talk very, very briefly about the regulatory framework in Europe. The -- Sorry. The slide -- I need the first slide. Shall I go on the podium?

>> Etelvina Andreu Sánchez: Yes, of course. If you want, over there.

>> Giuseppe Abbamonte: Oh, well, as you wish. I can stay. So, in Europe, we have two broad categories or rules for consumer protection. There are the rules protecting the collective interests of consumer, which do not grant any individual enforceable rights to the consumers. There is something which is similar to the statement on unfairness or deception that you have in the United States. It is something which is conceptual similar to antitrust law. So, we have in Europe, for example, the laws on misleading advertising and unfair commercial practices which protect directly the interest of -- the collective economic interest of consumers, that protect indirectly the economic interest of the legitimate business, so the business play by the rules against act of unfair competitions. And eventually they protect the integrity and the efficient functioning of the market, because these rules, after all, by shielding consumers against scams and other unfair practices, preserve the confidence of the consumer in the aligned marketplace and also serve the good functioning of competition. Apart from these rules, we have the -- Well, we have rules protecting the individual -- the economic interest of the individual consumer as the weaker contractual party. So if a consumer transact with a trader, in Europe, the consumer enjoys certain rights vis-à-vis the trader. So, for example, a consumer will always have remedies or have a rise to remedies if he or she buys faulty goods or goods which do not comply with the contractual specifications. And, yes, in some things. And we also have specific rules for specific sectors, such as financial services, which are regulated separately. Next slide, please. Now, what has been so far the E.U. regulatory approach? Well, we have rules. The oldest European rules on date on consumer protection date back to the late '80s. And in many member states of the European Union -- such as Italy, for example, my country -- consumer protection is something which stems from the European Union.

So, before these European laws, there was only the civil court. There were no specific rules -- specific consumer protection rules. The characteristic of European legislation is that European laws, they set some minimum standards -- some minimum mandatory standards. What does it mean? It means that European consumers cannot waive their right under the directive. So, for example, as a European consumer, I cannot -- If a trader tells me, "Look, you have two contracts here -- one contract which contains a limitation of my liability in case, for example, a car which I'm going to hire to you is fully maintained, and the contract is cheaper," again, the consumer will not be able to waive his right and choose a cheaper contractor which contains -- which contains unfair contract terms. So the caveat emptor, when these rules are at stake, is limited. So it's considered limited. These European laws, they set minimum mandatory standards -- meaning that the member states, they set the floor of the protection. Meaning that the member states cannot go below the level of protection -- the European level of protection, but they may go beyond the level of protection. So the ceiling, if you want, is the skies. The member states can go as high as they want to, theoretically, and introduce stricter consumer protection rules to protect the consumers further in their national territories. What is the effect of this minimum -- of these minimum E.U. standards of protection? The primary effect is fragmentation. So, fragmentation and a very unpredictable regulatory environment, both for consumers and traders. So, if I am a French consumer, for example, and I decide to cross the border with Germany and buy my car in Germany, I will be subject to a different -- to a different set of rules, because the rules between Germany and France on consumer protection differ. So consumers traveling across the E.U., in seeking bargains across the E.U., may be subject to varying levels of protection across the E.U. Those who feel the effects of the fragmentation -- the negative effects of the fragmentation -- are business, and in particular, the e-tailer -- a business selling cross-border from one member state to another. And why? Because under the European laws -- certain international private law rules -- a business, for example, established in France wants to sell to a consumer in Germany, he or she will have to abide by the level of protection in Germany. So a business wishing to sell in 27 member states cross-border, so from his website, will have to abide theoretically by 27 different sets of rules. And also, in case of litigation, face -- So if the business is directing its activities towards the foreign consumer, it may face litigation before a foreign court -- the court of the consumer. What is the effect -- I have to be very economical with the time. But what is the effect of all this? So, the effect of this fragment -- of the combination or the fragmentation with international private law

rules is that consumers in small member states -- such as Malta, for example, Cyprus, but even Portugal and Greece -- may be locked out of the internal market. So may not be able to access the benefits of an integrated internal market and also benefit from the potential savings which can stem from cross-border shopping. That's why we have tabled now a new proposal which recasts -- which merges into one piece of legislation four existing directives -- the directive on unfair contract terms, the directive on sale of consumer goods and guarantees, the directive on distance contracts, and the directive on off-premises contracts -- so the door-to-door sales -- the people knocking at your door. So, these directives have been merged into one piece of European law. And this piece of European law sets much more standards. So it will, again, -- In this directive, the floor and the ceiling will be the same. And the member states will not be able to deviate from these standards -- from the standards of protection. So you will not be able to go either below or above the European level of protection. It is a proposal which is now undergoing legislative process, and it's not been adopted. So if everything goes fine, the proposal will be adopted next year or the year after, and then will have to be -- will have to be put into force by members -- will have to be enacted by the member states. What are the main consumer rights under the proposal? I will be really as short as possible, Etelvina. The main consumer rights -- Again, the possibility, the power to challenge unfair contract terms which have not been individually negotiated by the consumer. So even if the consumer has signed the contract, if the contract contains unfair contract terms, the consumer will be able to go after the trader and to challenge that term, which can be declared null and void by a judge. The consumer will always have a right to precontractual information -- so precontractual information before he decides to enter into a contract with a trader, so that he can make an informed choice. The consumer will have a right to remedy in case he buys a faulty good. The consumer will have a cooling-off period, so will have a right to terminate a distance contract during a period of 14 calendar days from the date he has received the -- he has acquired the physical possession of the good, without giving any justification to the trader. So the consumer can lift himself to say, "I don't like it, please take it back, and give me, of course, my money back." And -- Well, in a nutshell, I mean, these are the main -- many more rights, but these are the main rights under the proposal. I would like also to talk about what we do in Europe about public enforcement and redress, but I will not do it because I've already been too indulgent with the time. [Light laughter]

>> Etelvina Andreu Sánchez: Thanks a lot. Thank a lot, Mr. Abbamonte. All of us appreciate your positive approach towards the directive. Now we are going to see a different point of view. I would like to welcome Dr. Schulte-Nolke. It's like that, Hans? Great. He will make some remarks on these regulatory -- European regulatory framework. So, please, doctor.

>> Hans Schulte-Nolke: Thank you very much. I think it is important to be clear about the starting point. And it might help to outline the test case for a goods regulatory environment of -- for e-commerce. The test case must be that an e-shop can run -- can be run. Europe-wide -- continentwide -- at, least Europe-wide -- with the same set of information, with the same business strategy, including the same complaint handling strategy. That must be if you want to create an internal market, in particular, for e-commerce, the test case. If you look on reality - and Giuseppe already pointed out -- even though we have now more than 20 years' European consumer-law regulation, we are far away from the situation in the event the e-shop owners have to deal with, to comply with 27 deviating national sets of consumer-protection rules. This is not such a big problem for the very big players, because they always can set up a local branch and find out the regional consumer law. But, in particular, the smaller have problems. Therefore, something has to be done. And the core task of my presentation is to draw a little broader picture on the options, what can be done. The first option is, of course, to do nothing, which means you can put it otherwise to leave it to market forces to solve this question. This is certainly not the option that the European Union is determined to go. The next option is to continue as -- well, as it has been done until now, which means to enact these piece-by-piece directives in order to tackle one problem after another -- certain sectors or certain areas. Perhaps back to the test case. You can make a checklist of, let's say, 100 items to take into account when you want to build an e-shop which complies with the applicable law. And the directives we have until now -- some outside of Giuseppe's scope are already full harmonization directives -- solve perhaps 20 of these items. The new directive now under consideration will perhaps add 20 additional points to this list. Therefore, it has a potential to make real progress. But, nevertheless, there are still many, many points which need to be tackled, also. And, therefore, one way forward -- one option could be to enact directive after directive and thereby harmonize -- only fully harmonize, because from this perspective of an e-shop, nothing else makes sense. Fully harmonize also all the areas where the other 60 points lie. Well, this has some disadvantages. The main disadvantage is it takes away an enormous regulatory autonomy from the

member states. It's more or less -- It's a quasi-unification. It's by directive, but if you have full harmonization directive, it's a quasi -- it's a piece-by-piece quasi-unification of the applicable law necessary to comply with if you run an e-shop. This is something which is possibly not even feasible within a medium time period and perhaps also not desirable. Therefore, other options need to be looked for. Of course, one easy option seemingly is always to change the background of international private law and to go to a principle of origin, which means that the business only has to comply with its own system. But within an European environment, it is hardly imaginable that it would work, because then the national court would have to apply 27 different sets of rules. You would simply shift the burden. You would take it away from the businesses but put it on all the courts and administrations which enforce this. I don't think that this is a attractive option. Another option -- very radical -- would be real unification. Go away from directives and do away all these differences by just European legislation in the form of qualification -- real qualification. This is politically out of reach and possibly also not really desirable. Therefore, now we have to look on, let's say, the real options -- those which are attractive. I see two which perhaps can be combined. One could be a general European framework directive on consumer contract law, in particular with regards to e-commerce. "Framework directive" means a directive which sets a backbone structure for all the individual matters currently regulated. One could outsource many of the individual items regulated in the directives we have now into one directive and to have, let's say, a common starting ground for consumer legislation. And then one could try to build upon this framework directive systematically the individual directives. The directive on consumer rights now under negotiation has some elements of such framework directive. For example, definitions, common rules on withdrawal rights, common rules on information. Other parts are more closer to the former individual directives which are not fully integrated. But one can at least develop this towards this direction. But in the end, the disadvantage would remain that if you really continue this for more than 5, up to 10 and 15 years, in order to solve my 100-items list, you nevertheless would take away from the member states the autonomy to regulate consumer affairs and also to react on a regional basis quicker than perhaps Europe could do. Therefore, other options might come inside which can be combined with the framework directive. The other option which is in the air is the so-called optional instrument which is the idea of the 28th regime, if you speak from Europe, to enact a European regulation legislation which applies only if the parties to a contract opt for such regulation. A pretty famous metaphor to explain how it would work is the so-called blue button.

This is a European metaphor, but it might help to understand how it would work. You could imagine that an e-shop owner can put a European flag -- the blue flag with the 12 stars -- in his or her e-shop and write something below -- "Sale or contract under E.U. law." And if a consumer then clicks on this button, this is a valid choice of law in favor of such an optional regime. This optional regime would have the advantage that the member states could continue to run their own consumer-protection policy and could regulate at least those cases which do not have a real cross-border aspect. In the big countries like mine, 95% of cases, even in such simple things like sale of books, are purely national cases. There's no real need for European legislation. It would allow at least the big member states to maintain their own regulatory environment but at least offer where e-shop owner, and, in the end, also consumers, the European model, which could facilitate making e-commerce Europe-wide. I think a combination of the two options mentioned last should be the right way forward, or the current European directives need to be better organized, tidied up, turned into full harmonization as far as possible. But then I do not like the idea to see such directives we have on table now coming every two years, now more or less changing -- totally changing -- the national regulatory environment. Therefore, I think that this directive is a very good step forward towards at least European markets -- internal markets -- for e-commerce. But I think, after this directive, one will have at least to try, whether the optional solution finds support in the business world, in the consumer world, and among the member states. It is, let's say, the more market-oriented and more liberal option, in the end, in my view. But it's a personal opinion. Thank you very much for your attention. [Applause]

>> Etelvina Andreu Sánchez: Thanks a lot, Dr. Schulte-Nolke. It was really interesting. I'm a blue-button fanatic from now on. So, let's move from the old Europe to the New World. Let's see another approach, and that's from the FTC, our hosts -- Hugh Stevenson -- Please, Hugh -- is a deputy director in the Office of International Affairs of the United States Federal Trade Commission. Please, Hugh.

>> Hugh Stevenson: Yes, well, greetings from the New World. [Light laughter] I'd like to, in moving from the Old World to the new, now try to describe the landscape of these regulatory-framework issues from a U. S. perspective. And that landscape of issues that we are talking about here is familiar. While, obviously, over the last decade, the technology has changed dramatically,

some of these framework issues are quite similar to those that we wrestled with 10 years ago when we were negotiating the guidelines, certainly, here at the FTC, when we were working on the "Looking Ahead" project that our chairman mentioned earlier. And I think, as Andy Wyckoff mentioned earlier, there was this sense that we were wrestling with this Gordian knot which, when untied, would really unloose the bounds of commerce. We've perhaps loosened that knot a little bit, but I think we're still kind of working on that. And I think Etelvina's question earlier really hit the nail on the head. "How do we protect consumers in a multijurisdiction environment?" And there are certain themes or strategies we've used to do that. Harmonization, which we've heard about first. Second, choice of law and the related issues -- choice of forum and the like. And third, the mechanism -- which I'd like to say a little more about it -- the mechanisms for dispute resolution and for enforcement and obtaining remedies. And the U.S. landscape on several of these issues does vary from that we've heard about from the E.U. On harmonization, I would say the U.S. e-commerce framework has benefited from the U.S. commerce framework in the sense that that has been something under development for a while. Taking contract law, for example, which was mentioned, This has been a project on harmonization for, well, probably over half a decade -- the Uniform Commercial Code project, with the harmonization, to a significant degree of contract law in the United States. And while it is not entirely uniform, it is certainly something that has moved -- that started close together and has moved even closer. On contractual choice of law, the story is also different, I think, from the E.U. -- one that we just heard a little bit about. Generally, in the United States, the state -- and this is generally a matter of state law -- it permits a degree -- a greater degree -- of party autonomy in choosing the contract law to apply. In other words, it can be chosen what law -- within the United States, at least -- what law applies. And it's interesting that in the past few years, there was a proposal in the UCC to have a rule that, in general terms, moves something closer to the Rome I Regulation, and that was largely rejected by a large number of states that considered it. And it may be -- at least, domestically -- less turns on it. But there may be less difference -- at least, in contract law. Internationally, of course, the dynamic may be different, and there are various projects some of you are aware of that are looking at the issue of choice of law in an international context, as opposed to within the U.S. federal system or within the E.U. And some of this work is going on. There is a Mexico City Convention on international contract law and the issues of whether -- how that might work in consumer contexts. There are also some proposals pending at the Organization of American States. And there are a range of options here,

obviously, from full party autonomy to fully dictated results in the contract law. There is then also the further layers of other law, not just obviously contract law but public law. And that may be public law enforced by private parties, public law enforced by public parties. And there we do also have some degree of harmonization within the United States -- partly, the history of the little FTC acts following on and partly the system of federal preemption. So we have federal rules governing the entire marketplace here, which also promotes a certain degree of uniformity. So I don't think that we generally, in the United States, ask the question, "Well, does Indiana law apply, or does Idaho law, and am I, as a consumer, going to choose based on that kind of concern?" The third topic, on dispute resolution and enforcement, ends up, I think, being particularly important, because we do need to bear in mind here that we are dealing with profoundly small transactions. These are transactions for typically a couple hundred dollars, maybe a thousand, couple thousand dollars, in the case of airline tickets. So in the aggregate, the amounts can be quite large. But the individual disputes, when they're pursued individually, really don't typically merit the kind of legal costs that a dispute-resolution system often brings, and especially if you're dealing with the cost of litigation and then the cost of foreign proceedings to enforce a judgment. And this is, I think, important to remember in looking at these issues. And so in looking at dispute resolution and enforcement, we really have a spectrum. We have from the everyday disputes, with basically legitimate merchants, to the fraudulent transactions, and we have this kind of range of things. The United States currently has a proposal pending at the Organization of America States, looking at the -- let's say, the everyday end -- the ADR end. And on the consumer-fraud end, we have, in the past decade, proposed and had legislation enacted that deals with some of the international challenges we talked about in the previous panel of enforcement and cooperation with other countries in order to achieve some results for consumers -- how do consumers get some result when something goes wrong. The other thing I think is important to bear in mind, from the U.S. perspective, is the payment-system protection mechanisms -- Regulation "Z," Regulation "E." Particularly the regulations covering credit-card transactions, as a practical matter, ends up being a very important kind of protection that one has in the United States. And the -- These are among the issues that the State Department actually is looking at now in connection with some of this work in the Organization of American States. And certainly invite anyone interested to talk to me further about that. I think this practical protection point is an important one. And the final point I wanted to say is just, I think, in a way, there are three consumers we worry about. There's the consumer who has the problem and who

needs to get the problem solved. And so you need the adequate protections there. There is the consumer who is not necessarily even in the marketplace, and there's that problem of trust. And I think our Italian colleague referred to that earlier and some others. And then there are the consumers who are actually making transactions. And we want, there, for it to be as smooth and efficient as possible and not to have a large layer of cost imposed on consumers in those. Of course, these different consumers are hard to think about all at once, make them all happy, but I think that's sort of the ultimate goal. Thanks.

>> Etelvina Andreu Sánchez: Thanks a lot. [Applause] So, after these institutional approach from different agencies and also from the academia, we are going to move towards companies. We have the pleasure to have now a group of speakers that will tell us about the challenges, the solutions that they propose for this, let's say, regulatory-framework myth. I think that a lot of difficulties arise also today, and maybe they have thought in advance with some solutions. So, let's first give our best welcome to Mr. Paul Misener. He's the vice president for global public policy from Amazon.com.

>> Paul Misener: Thanks very much, Etelvina. And also thank you to the commission and to the OECD for organizing this and inviting me. I ran into a good friend, Commissioner Susan Ness, who was an outstanding commissioner of the U.S. Federal Communications Commission about a decade ago. And back in that day, when she and I would speak on consumer issues on the Internet, the first set of talking points were always describing the benefits to consumers of Internet access -- the societal benefits that would flow from an open Internet. And, fortunately, now, 10 years hence, we can sort of skip that point, because I think it's widely understood that there are broad consumer benefits to Internet access -- the competition in the delivery of goods and services that the Internet provides and so forth. But I think it should also be obvious that those benefits inure to consumers only if they do have, indeed, open access to all the content and services that are available on the Web. If, for some reason, there is any impairment to that access, then consumers suffer. And so we are -- have been for some time now arguing for the maintenance of unimpeded access of consumers to lawful content services on the Web. As you may know, Amazon has operations worldwide. We have them in North America, to be sure, but also in Europe and Asia. And so we've seen this issue from a lot of different regulatory perspectives. And I think I'll -- I hope to be

able to walk you through how it's been approached in different countries and how I think, in my humble opinion, it might be improved in all of these countries. The fundamental concern is that broadband Internet access providers -- these typically are phone company or cable companies, in some cases, local wireless or satellite companies -- have -- clearly, they have market power over access to the Internet. Consumers don't have a multitude of choices for their Internet access. They must choose among just a few, and in many cases, only one or two. And then the switching costs among them are significant. They often involve equipment changes, long-term contracts, and the like. And very, very few consumers actually have multiple connections to the Internet. They usually have but one broadband connection. And then they, as I say, only switch it very irregularly. So they have -- These network operators have this market power. Well, we don't begrudge them the fact that they have the market power. There are a lot of historical, technical regulatory reasons for that market power, and so we're not about to suggest that that's somehow necessarily their fault or particularly problematic. It only becomes a difficulty or a problem to consumers if the market power over the access is somehow extended to become market power over content and services that traditionally have been easily accessible by consumers. Although this has been primarily a U.S. issue -- and there's a very simple reason why, because the United States took some steps about seven or eight years ago to start significant deregulation of our telecommunications -- telecom infrastructure. And the results of that deregulation is that there's a need -- at least, in our view -- for some re-regulation. That's the -- That deregulation did not occur in many other geographies around the world, and so there haven't been the same sort of problems. But I'll make the point, by the time I'm done, I hope, that that ought to also be addressed, not just in North America, where there has been this deregulation. Well, what's been going on here in the States? Well, it's been -- I'd like to say that, back in the 2005-2006 time frame, there was an effort made by network operators to get explicit permission to discriminate among content at will so that they could choose essentially the winners and losers of content on the Web. And, of course, they hoped to get paid by the ultimate winners. And on some level, you can't blame them for trying, but they didn't succeed. And so the efforts in Congress to enact legislation at that time failed. Since then -- this has really been a period of about three years -- we've been in what I would call a period of *détente*. where nothing much has happened. There haven't been lots of nasty incidents by network operators. They've been on their best behavior, fearing regulation and legislation. But, likewise, we haven't seen a lot of new innovative services coming out of the network operators. And while the first is nice for consumers,

the latter is not so nice, and I think there's a way to fix this. Currently, the FCC, the sister regulatory body here in the United States, that regulates most of what communications providers do, has embarked on a rule-making proceeding -- a process by which they hope to develop rules in this particular area. Which, by the way, I haven't mentioned the name yet, but this, of course, is all about net neutrality. A lot of people view this as a zero-sum game, where either the content providers, like an Amazon.com, or the network operators, like an AT&T, either one will win and the other will lose. I think that's a bad way to look at it, primarily because that leaves consumers out of the equation, but also because I really think there's a solution that is a win-win-win, where content providers, network operators, and consumers all win. Well, so, what do I have in mind? Well, first of all, it seems very fair to us that you pay for what you use. So Amazon pays handsomely for its connections to the Internet. And that makes a lot of sense. We have a lot of traffic that comes out of our servers. And therefore, we pay our network operators a lot more than a small mom-and-pop retail operation. Likewise, on the consumer end, I think it makes perfect sense that somebody who's a 24/7 gamer, chewing up lots of bandwidth, would pay more over some period of time -- call it a month -- than would someone who sends the occasional e-mail. That's the first principal. Second is, yes, it makes sense for network operators to be able to manage their networks. This is something that you'll often hear them talk about. "We have to manage our networks." Well, there are two components to network management. One is the very bland housekeeping component, which makes sure that the packets arrive on time, as it were. The other is -- potentially, anyway -- a Trojan horse for this kind of discrimination that I talked about before, which is favoring some content for pay over content that comes from sources that aren't paying. Well, I would suggest that the government's policymakers focus their attention with network management on actual network management -- the very bland vanilla aspect of it. But then the last component of this is the discriminatory part. Is there a legitimate reason for network operators to discriminate among sources or types of content? And I would say the answer is decidedly yes. It is not what some net-neutrality proponents say, that discrimination should never be allowed. So, how do I come at this? Well, first of all, I think no one would argue with the possibility or the reasonableness of a network operator offering a private network. So if someone, like an Amazon, feels like its servers in Seattle aren't serving its customers in New York City very well, well, then, we could contract with a network provider to lay a new fiber or to light up an old fiber that would connect Seattle to New York in a way that would serve our customers -- our shared customers --

better in New York. That's done all the time. What you'll notice is that, by doing that, it had absolutely no negative effect -- in fact, some beneficial effect -- on the rest of the content floating around the Internet. There was no harm done to other content on the Internet as a result. Likewise, there's something called "edge serving." I don't know if you're familiar with this, but it basically amounts to having server farms around major metropolitan areas that store content in a way that makes it easily accessible to consumers in those areas without it having to travel through the large distances that the Internet covers. So my point is that if there's no harm either by a private network that goes around the core of the Internet or edge serving, there ought not to be any problem with discrimination within the core of the Internet, within the packet-switch network, so long as there is no harm to other content. And there's ways to do that. Well, so, North America, as I mentioned before -- and I'll wind up here -- has been the epicenter of the debate. And it's largely because we started out with a common-carrier regime, reduced it essentially to nothing, and then have a need now to re-regulate to get us back to a rational position on nondiscrimination in this sense that I've described. Elsewhere around the world, this first step hasn't been taken. But it seems to me that there actually would be some benefit to measured deregulation in this context. Where there are essentially strong common-carrier restrictions, let's scale them back a little bit and let the network operators have certainty to deploy the kinds of new services that they could if this sort of regime were available. So, we're coming at it from different perspectives, different directions. But, for example, in Canada, they were the -- they win the race to net-neutrality regulation. Just a month ago now, they adopted what is the world's first comprehensive regime for governing net neutrality. I don't think it's just for North America, though, and so I really hope that we can get to a point where there's a rational balance that is a win-win-win for content provider, network operators, and consumers. And I'll be happy to take your questions. Thank you.

>> Etelvina Andreu Sánchez: Thanks a lot, Paul. [Applause] And now it's the turn for Mr. Rich Sauer. He is the associate general counsel, legal and regulatory affairs, of Microsoft. And I'm very happy to announce that he's going to describe about the challenges associated with global computers -- global computing. This morning, someone asked us to be preventive and not reactive. You are going to talk to us about something really, really challenging. Thanks, Richard.

>> Rich Sauer: Thank you. Thank you very much. I'm pleased to be here. I'm honored to be here, actually, and I appreciate the opportunity. As Etelvina noted, I'd like to focus my remarks on cloud computing. And the relevance clearly is that, as those who follow the I.T. industry, cloud computing is a transformational technology that is sweeping the industry today. There are the -- the focus of my concerns, or my remarks today -- and it is trying to touch on the charge to sort of hit on areas that we might not have already discussed or areas that we might have missed, which is to broaden out the jurisdictional points a bit. We've talked a lot about them throughout the day, and I've been thrilled to talk about the blue button and talk about other opportunities to harmonize the rules around e-commerce with respect to jurisdiction. But I think there are some broader issue that we could talk about in the cloud context that will affect e-commerce, as well, given that this is becoming, or is looking like it will become, quite the platform for e-commerce to be transacted on the Web. I say that, but I say that with some trepidation, because I think there are some significant hurdles that we need to overcome, from a jurisdictional standpoint, to make that happen. And this is important not only for us as a cloud-services provider. Certainly, our lives are difficult, navigating the jurisdictional issues that we face every day, But from a consumer perspective, it think it will ultimately undermine the trust and the confidence that they have in the Internet if we can't take care of these issues. Just to give you some perspective on Microsoft and our role in this space, we are, in fact, investing substantial time and resources into a cloud-computing initiative. Our vision for the cloud is that it's a combination of both -- Our brand around it is Software-plus-Services or Client Plus Cloud, where we believe that there's an -- that consumers and businesses will continue to have sort of rich I.T. infrastructure on their premises and they'll supplement that with the services that are available through the cloud. We have been in this business, to be honest, for probably better than 10 years, with respect to some of the consumer services we've offered, such as Hotmail, which is one that may be known to many of you, which is a Web-based e-mail service. More recently, we've moved into the enterprise space with respect to a cloud offering around some business-productivity online services, such as Online Hosted Exchange and Online Hosted Sharepoint, which allows you to collaborate, or some unified communications opportunities, as well. And then, just last month, we announced our Windows Azure platform, which is both an operating system for the cloud and an open development platform for it, as well. So we are firmly in the space. We are anxious to go there full speed ahead. But I do want to raise a few flags that we think there's an opportunity to address that would, hopefully -- can get some of you in the room

here behind and we can make some progress. To give you sort of an example of the issue, maybe I can sort of focus in on a specific case study that we've dealt with. And not to single out our friend Mr. Abbamonte on the panel, but I'll focus on Italy. I could easily focus on any number of countries, including the United States and some of the issues we have here. In the Italian context, I think the issue stems around data retention. In our experience, we -- And I'll talk about in the Hotmail context. In the Hotmail context, we have a service that has hundreds of millions of users globally. That service, for the most part, is managed through servers that are located here in the United States, where we operate the service from those servers and store the data on those servers. Historically, we've maintained that the U.S. law applies to that data -- at least, from the standpoint of data retention and access to that data. That position, although it's been long held by us, is not universally accepted. In the Italian context, we have had the experience where the Italians have disagreed with that interpretation. Their view -- and it's not an unreasonable one -- is that we offer the service in Italy, we market it to consumers in Italy, we have Italian consumers that, in fact, use the service, so, therefore, in fact, that they have jurisdiction over the data, and, therefore, we should apply the Italian data-retention rules to the data that we store on our servers. It becomes challenging. In the U.S., there is actually no specific data-retention law that applies to Web-based e-mail services. So we therefore keep the data for 60 days on our servers here in California. And this is, in most cases, the traffic data or the I.P. addresses and logon information. And then, after that, we delete the data, which is in keeping with good privacy practices. Italy's rules are that you would retain that same data for 12 months. So when the Italians are in the midst of an investigation, and look to us to support that investigation, we often don't have a satisfactory answer for them in this context. The issues, or the ramifications of this, are actually quite significant, because the situation in Italy -- and as I say, this could be any jurisdiction -- is that the law you are violating is a criminal law. You could be charged with obstruction of justice for having not retained that data, and you could have your local G.M. or your C.E.O. subject to indictment. The challenge in this space that we have, if we were to adopt the Italian view of jurisdiction, there are a number of them. First of all, if we adopted the Italian view or jurisdiction, I suppose that means we'd have to adopt a German view of jurisdiction and the Belgian view of jurisdiction. Therefore, we'd have to retain Italian accounts for 12 months and we'd have to retain Belgian accounts for 24 months and we'd have to retain German accounts for six months and U.S. accounts for 60 days. So, from a cloud-services provider, its a nightmare to manage the sort of divergent rules. That said,

that may not evoke a tremendous amount of sympathy from you that may not worry so much about our ability to do that. I'm sure, technically, we could figure out a way to do it. But it even becomes more difficult. For instance, how do you tell who an Italian user is? Do I look at the registration data when they signed up for that account in Italy? Is that controlling? Or do I use a tool to do a reverse I.P. lookup to determine from where they've logged in to the account? And if it's within Italy, do I then retain that data for 12 months? What happens if it's a German citizen who's traveled to Italy on vacation and has logged on to their Hotmail account while they were in Italy? What do I do then? Do I treat that as a 6-month rule, or do I treat it as a 12-month rule? You know, the same if there's an Italian who travels to Germany. Or -- and this is a situation that we, indeed, face -- what about a user who has no connection to Italy, who has no registered account within Italy, is not logging on to their Hotmail account in Italy, but, in fact, is using that Hotmail account to direct some sort of criminal activity towards Italy and therefore is of interest to the Italian prosecutors? So, those are some of the issues that certainly have come up, and I've had healthy and robust discussions with our colleagues in Italy on this topic. Another issue that I don't anybody should lose sight of is the human-rights issue. And at Microsoft, we actually go to very extraordinary lengths to be very careful about where we place our data, where we build data centers. There's quite a detailed review that we look at. There are a number of factors. But, certainly, foremost among those is the rule of law and the respect for human rights of the country where we would be putting that data. And we will not go to a country with data where we're not comfortable that they haven't subscribed to international standards in the area of human rights. If I move down a path of a country where you provide the service has jurisdiction over that data, then I'm not sure what to do when that country is demanding information, even if it's information that I painstakingly maintained outside of their borders, thinking that it's outside of their jurisdiction. So it is a dangerous -- a dangerous situation if we let this go too far. We're not alone in this space. Our competitors -- Yahoo! has a fairly well-publicized case in Belgium right now, where it's slightly different facts, but where they have refused to provide data to a prosecutor in Belgium and have instead directed that prosecutor to a mutual legal-assistance treaty process. Not surprisingly, that prosecutor has deemed that to be completely inadequate, because that process is slow and cumbersome and hard to navigate. So I was encouraged this morning, and I understand it's in the regulatory context, but by the discussions around greater cooperation amongst law enforcement or enforcement agencies, because I think that is an important factor that would potentially relieve

some of the pressure that gets put on service providers when they can't make the rules work in their favor. Google has had their own issues with respect to Brazil, I know, in the past, with respect to Orkut and their social-networking site, and has had to engage in some efforts, I think, to move some infrastructure, some data down to Brazil to comply, again, with those rules. There are other - - There are a litany of issues that I can raise. And I can point to -- you know, the United States does not have a perfect record in this space in the enterprise context. The first question we get from customers overseas, when we talk about moving them to the cloud, is "Where's my data gonna be?" That's what they want to know, first and foremost. And "Is it subject to the USA Patriot Act?" And the answer, as a U.S. company and a U.S. service provider, that in most cases, in fact, it is. So it is a challenging environment across the globe. Etelvina asked us to come prepared to provide some solutions, as well. And I guess, in some ways, I have two. One is our own -- our own responsibility, which is, we need to do a better job and continue to make efforts to provide customers with more control, more choice, more flexibility with respect to their data, and that is an ongoing effort that we're engaged in and will continue to engage in. And we believe that our Software-plus-Services model gives us some advantages in that regard. But more relevant to this particular group is really a call to, as we think about the blue button, as we think about some of these other issues that are around harmonization, to make sure that the jurisdictional issues more broadly are included in those debates, you know, the convening of some sort of a multilateral framework or its equivalent that would address jurisdiction, that would bring industry, government, privacy advocates, law enforcement to the table. I don't know -- No one should -- You know, if you're a privacy advocate, you shouldn't leave this room thinking, "Oh, Microsoft is advocating for a law-enforcement solution." If you're an enforcer, you shouldn't leave this room thinking Microsoft is advocating for a privacy solution. We really -- People, we need to get at the table together to solve this problem, because it is truly untenable for a service provider. It is equally untenable for consumers, who just need to have predictability, consistency, and just to be able to know where their data is and how to control it. So, with that, I'll stop. Thank you. [Applause]

>> Etelvina Andreu Sánchez: Thanks a lot, Rich. May I suggest a stripes-and-star button for you so that Microsoft knows that U.S. law applies. [Light laughter] And now we move into Mr. David Whitaker. He is senior counsel of Wells Fargo. And he's going to talk to us about B2C and C2C transactions. Please?

>> David Whitaker: Thank you so much, and I appreciate the opportunity to be here. I admit, when I was first asked to come speak at this panel, I looked at the other members of the proposed panel and the other people speaking at this conference and said to myself, "What in Heaven's name am I doing here?" Because I actually work for an institution that largely operates inside the United States of America. But we are in the process of learning a great deal more about living in an international environment as we start to move into more international operations. And it's been a very interesting learning experience. And what I plan to do today is to give you a few thoughts, and the OECD a few thoughts, on some of what we're experiencing and encountering as we actually start to spread out, following our friends from Amazon and Microsoft out into the larger world. I did have slides prepared, and I don't know if they're up. If they are, if you might flip to the first slide. Thank you. One of the things that we're discovering very quickly, as we look at the world situation, is that there are basically two types of consumer regulation out there in the world, and they are mixed in all jurisdictions. But you can divide consumer regulation into two basic categories. The first is substantive regulation -- basically, regulation that says you must do certain things or you may not do certain things, or your contracts may -- must contain certain provisions or they may not contain certain provisions. And the second is procedural regulation -- regulation that actually permits a much wider range of activity and behavior in terms of agreement and, instead, focuses on making sure that that information is appropriately disclosed and communicated. Almost all jurisdictions use some combination of the two, but the combinations vary very widely. And the way in which the two are mixed vary not only from jurisdiction to jurisdiction but, in many cases, from service to service and product to product. So that it is necessary, particularly if you're proposing, as in a company like ours would, to offer a wide range of services across a spectrum of jurisdictions, you are looking at a situation where you have to not only appreciate that mix as it's applied by a particular legal jurisdiction to your services generally but as it may break down from service to service. This is actually an enormous undertaking -- absolutely enormous undertaking. The United States has had a tendency to focus on procedural regulation, not to the exclusion of substantive regulation, but more on procedural regulation than substantive. This has a tendency to promote innovation and variety in products and services, and it places an awful lot of responsibility, as Dr. Cooper mentioned earlier today -- certainly, implied earlier today -- a responsibility for understanding those features in terms -- on consumers. Substantive regulation

has a tendency to promote more uniformity and predictability in transactions. If you're not allowed to do certain things, or if you're required to do others, transactions become more predictable. And it places more responsibility for behavior on the merchant. The thing that we are starting to learn, as we look out into the larger world, is that one of the things you have to appreciate is the broad swath of your activities that this will impact -- advertising, disclosure, the contract-and-signature process, recordkeeping, privacy, delivery of the goods if you're delivering goods, the import duties that have to be paid on delivered goods, the export controls on the property that you are sending outside of your country, dispute resolution, enforcement. And even if you have some idea what the rules in the other jurisdictions say, because you can read them on a piece of paper, it doesn't mean that you're going to understand them, because there are also cultural and socioeconomic glosses to be placed on these rules and regulations as they're established in different jurisdictions, and there's also differences in judicial approach. And you add to all that the fact that was alluded to earlier, in some occasions, what may be a civil matter in some jurisdictions becomes a criminal matter in other jurisdictions. So all of that has to be taken into account. What does this mean? Well, can I have the second slide, please? What this means is that you have a mutually reinforcing cycle towards complexity, because you have a large number of different constituencies that are interested in their solving their particular problem or addressing their particular subset of issues, and you enter into a self-reinforcing cycle of further and deeper complexity in these regulations. And this has tended to be the historical pattern, that we see these regulations becoming more complex and becoming more difficult to comply with over time in the search for what one professor of my acquaintance calls "perfect justice" -- the notion that, in all cases, there will be, for all players in every transaction, the perfect outcome, should there be a dispute, should something go wrong. And I remember on one occasion being shown a half-page statute. And the professor who was writing the draft said, "Well, this is what the statute looks like today. Based on the recommendations we've got in the search for perfect justice, here's what it would look like tomorrow." And he put down a full piece of paper covered from top to bottom. And then he pulled that off and put down a second one. And then he pulled that off and put down a third one. And he pulled that off and put down a fourth one. He said, "This is what this same statute looks like if we take into account every recommendation that's been made by every interest group looking for an adjustment in the search for perfect justice in this regulation." The law of unintended consequences -- the most influential law in any government capital in the world and the one that's ignored the most -- provides that in

this case, what that means for us as a civilization or an international community is that we drive these transactions towards larger players, because you require a more sophisticated player in order to deal with this kind of complexity. You are necessarily starting to freeze the small players out of the marketplace as you move to this additional complexity. If I can have the third slide, please. This is just one illustration of one part of one process at my institution that has to do with recordkeeping. The implications for every jurisdiction of this process, and the impact that the laws of each jurisdiction we would operate in on this process, are myriad. And this is one small part of what we do. It's the keeping of the record from the time we start to interact with the customer till the time we make a contract with the customer and then what do we do with the record after the contract has been made. And you can see that, even for us internally, it's an extraordinarily complex recordkeeping management transaction. It is impacted in the United States by hundreds of laws and regulations -- that process you see up on the screen. Imagine that now multiplied by 50 or 60 or 70 times. The implication then is, for us, what we would advocate, what we would say to the OECD, to UNCTAD, to the international community, to the Federal Trade Commission, to our regulators -- our primary regulators, at least, at the moment -- the Office of the Comptroller of the Currency the Federal Reserve Board -- is that we should be striving to find ways, as UNCTAD suggested earlier today, to harmonize much of this as we can and to also recognize that the regulatory barriers are not simply how long do we retain a record or what do our privacy rules or what are our particular transaction contract rules for this particular sale of a particular good, but the entire panoply of regulations that affect the way we operate. And if we are required to operate in conformity, as Microsoft has already suggested here -- as Richard has suggested -- if we are required to operate as though we were functioning in 70 different jurisdictions, 70 different regimes, we have difficulty. I think I will stop there, since I either went too long or did something. [Light laughter] And thank you for the time. [Applause]

>> Etelvina Andreu Sánchez: Thanks. And talking about different regulatory systems in my country, in Spain, we have a strong quality law that will have prevented this occurring -- just two women in a 9- -- sorry, 10-people table. We should be five. But I am very happy that there is another woman, and this is Miss Anna Fielder from the consumer policy and public affairs advisers, and the steering committee members, Civil Society Information Society Advisory Council

to the OECD. And she's going to try to answer the question about what implication do you have for consumers.

>> Anna Fielder: Well, of course, and the only woman is also the consumer, you know, which is pretty typical, I would say. [Light laughter] And as the only woman and the only consumer, I want to bring -- dumb this down and bring it down to the level of the people, if I'm permitted. But I want to say "thank you," third, to the OECD and the Federal Trade Commission for inviting me here. I was, in fact, part of the initial negotiations on the guidelines when I was representing Consumers International on the working group. So it's a particular pleasure to be here on the 19th anniversary, representing this brand-new Civil Society Information Society Advisory Council to the parallel committee, ICCP. We have a place around the table, and there's a little leaflet about this out there, where you can read I represent, on the steering committee, Consumer Focus in the U.K. and Privacy International. So I'm wearing both a consumer and a data-protection hat. Anyway, so, this is about the people, as around this table, the complexity of basing what you do in the virtual world on a huge number of geographical delimitation on what is essentially, or should be, a global environment is absolutely evident. What was also pointed very clearly this morning in the panels is that actual real people do not actually know legislation and do not consider legal environments when they make decision to buy online. There are other more potent things that make them buy -- things like -- and things that prevent them shopping cross-border -- things like culture, familiarity, brand recognition, search-engine bias, and behavior of the trader. As David Mair pointed this morning, in the E.U. environment, more than 60% of the transactions that consumers wanted were refused because the trader refused to sell in their countries. So from the consumer perspective, what the law is in a particular country when they decide to buy online is completely immaterial. Even the more savvy consumers, they don't know the details of the law. They just know they have rights. And when things go wrong, they should be able to exercise these rights. So when the law becomes vitally important is when things go wrong. Therefore, in that virtually e-commerce environment, enforcement and redress mechanisms are vitally important, and they're not working and they haven't been working despite all the efforts made internationally for the last 10 years. And as Hugh Stevenson very eloquently pointed out, most of these transactions are small transactions. Therefore, consumers are not going to go to court. They are going to look for other practical solutions. So that's the very first point I want to make. The second point I want to make is about

the real gaps that exist in consumer rights in the virtual world, and they were pointed out earlier on today, one of which was that a very high proportion of purchases made by consumers online are not washing machines or handbags or clothes. They're virtual goods. They're things like software and music, combination of hardware and software, or services -- tourist services and so on. And they're exactly the two that are not covered adequately by consumer-protection legislation. There are no rights of return, there are no rights of what happens when you have faulty goods, and so on. So that's another very important issue that should be addressed. Finally, I wanted to say something about cloud computing from a consumer perspective, but I also want to offer a solution. And I think you raised your flag saying that I need to finish. I want to do a sort of follow-up on the blue button offered by Professor Hans Nolke -- Schulte-Nolke. Yes, it's a difficult name. I mean, the blue button is a sort of proposed solution for the European Union. We are in the OECD here, which includes the New World and some of the Asia Pacific countries. And of course, the world is much bigger than that, as well. So how about thinking of starting completely out of the box. Don't think geographically. Think in terms of a cloud, a virtual world. Do a sort of super-national virtual-mall environment, elements of which already exist. And you start with standards, rules, and regulations on that level that would apply to that level only. And so small retailers can come to it, big retailers can come to it. There should be a sort of redress authority there. And consumers, when they come to it, as they come to Amazon or eBay or whatever, they would know that this is the sort of virtual no-man's-land which has got its own rules and regulations, and they can shop happily cross-border there. Thank you. [Applause]

>> Etelvina Andreu Sánchez: Thank a lot. We have almost no time left. We have received a lot of questions from the Internet. I will e-mail to all of you, trying to relegate them to the most appropriate speakers. But I would like to have a question from the audience, if it is. No? So I'm going to read one, because resolution -- Yes? Please.

>> Male speaker: I was impressed with the comments regarding the diversity of types of transactions that we're talking about. Is this working?

>> Etelvina Andreu Sánchez: No.

>> Male Speaker: [Inaudible] Is this working now? Thank you. I was impressed with the diversity of the types of transactions that we're talking about. And I suppose it may be time for a reality check to see what kinds of universe we're trying to develop these rules in. Some very preliminary findings -- very preliminary -- suggest that maybe as much as 50% of the volume of what we're talking about involves transactions of \$50 to \$100. In euros, I'll let me friends translate that. But it's a very low amount. And yet, the total volume of commerce that is involved is very substantial. Now, how do you get credibility in developing a system that will efficiently, equitably respond to the needs of that high-volume, low-cost item? And it may be -- My good friend Mr. Whitaker maybe was suggesting that if we try to tailor this system to meet everybody's needs in a single compact, we're going to have a very difficult, complicated document that we're working with. But it may be that perhaps we should be thinking in terms of maybe a 2-track or a multitrack system, because the kinds of devices that responds to the needs of a \$50 transaction or \$100 transaction are obviously substantially totally different from the kinds of mechanisms that would be needed when you're getting into hundreds of millions of dollars and that kind. So perhaps, at the very beginning, defining which type of transaction we're addressing and recognizing that there may be different mechanisms that would respond to those needs might be a starting point as we build forward. I have just one other question to my colleagues and friends from the European Union here. The full harmonization approach that is involved in the directive -- what kinds of reaction are you getting to that? And I didn't quite catch the full implication of the alternatives to that, that you made some comments about, Mr. Abbamonte. Appreciate your commenting on that further.

>> Giuseppe Abbamonte: It is a complex question which requires a complex answer.

>> Etelvina Andreu Sánchez: Not the blue button. The red button has been already shown.

>> Giuseppe Abbamonte: No, but the blue button was not my idea. [Laughter] I think we've spoken a bit -- it's a bit of positive criticism -- about too many things today. It would have been best maybe to talk only about contract law, jurisdiction. I mean, we've spoken about too many things, so I got a bit distracted, as well. The situation in Europe is different from the situation in the U.S. In the U.S., the autonomy of the parties -- meaning, of the companies to choose the applicable law and the court having jurisdiction is unrestricted. So this is the situation in the U.S.

So a consumer, basically, one may argue that the laws are more similar so the state laws are more similar than in Europe, which is to be demonstrated. But a company can say the contract is subject to the law of Delaware or California, and that's it, and this choice cannot be -- at least, it is what I inferred from your speech -- cannot be contested. It cannot be challenged by the consumer. In Europe, the situation is different, because, in Europe, we have this Rome I Regulation. And I would like to hear, for example, from Amazon how they will abide by the Rome I Regulation as of January 2010, because now all the contracts concluded by Amazon in Europe are subject to the law of Luxembourg, which is the country of establishment of Luxembourg -- of Amazon. As of January 2010, you will have Rome I entering into force. And, therefore, Amazon transacting with me, I am a resident in Belgium that will have to abide by Belgium law. So how -- We believe that the only way to win this reluctance of companies to trade cross-border -- the reluctance of a German trader with someone who can rely on a very large domestic market -- to trade with a Maltese consumer or a Spanish consumer or a Portuguese consumer is to fully harmonize to set maximum standards. Otherwise, as I said before, the risk is that consumers living in peripheral small countries will be completely marginalized and excluded from the internal market. Now, the answer to your question, "What are the reactions to the full harmonization?" Very mixed. Consumer associations don't like it. They don't like it, because they think that because it is too inflexible and because it limits also the possibility for the national legislator to deviate from the European standards. Companies -- Companies like it -- like it because this will reduce considerably their compliance costs. The relationship of the member state, again, vary from one member state to another. There are those who are very much attached to the national laws. They don't want to change it. They're very attached to the level of protection. They don't want to see it changed. Others take a much more internal market -- European market -- approach and would be willing to give up on the level of protection to have more uniform rules across the E.U. Thank you.

>> Etelvina Andreu Sánchez: Thank a lot, Giuseppe. I'm very sorry, but this red button was already show to us. I just want to remember you that we have public session and that we will be pleased to discuss this with all of you there. Thanks a lot. [Applause]

>> Michael Jenkin: We'll have a 10-minute coffee break and back at 4:00 -- 4:10.