

**Vertical Integration PDP Working Group  
TRANSCRIPTION  
Monday 23 August 2010 at 19:00 UTC**

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Participants on the Call:

Contracted Parties House

Registrars Stakeholder Group

Ruslan Satarov

Jeffrey Eckhaus

Jothan Frakes

Jean-Christophe Vignes

Eric Brunner-Williams

Paul Diaz

Krista Papac

gTLD Registries Stakeholder Group

Keith Drazek

Kathy Kleiman

Non Contracted Parties House

- Commercial Stakeholders Group

Berry Cob -CBUC

Mikey O'Connor – CBUC- Co-Chair

Jon Nevett -CBUC

Scott Austin – IPC

Kristina Rosette – IPC

- Non-Commercial Stakeholder Group

Avri Doria

Individuals

Roberto Gaetano – Individual - Co-Chair

Richard Tindal

Katrin Ohlmer

ALAC/At Large

Cheryl Langdon-Orr

Alan Greenberg  
Sivasubramanian Muthusamy

Staff:  
Liz Gasster  
Margie Milam  
Gisella Gruber-White  
Mike Zupke  
Marika Konings

Apologies:  
Michele Neylon  
Sebastien Bachollet – ALAC  
Statton Hammock  
Jeff Neuman  
Ron Andruff  
Vika Mpisane  
Baudoin Schombe

Coordinator: Thank you for standing by. I need to inform all participants that today's conference call is being recorded. If you have any objections, you may disconnect at this time. And, you may begin.

Mikey O'Connor: Thanks, (Lori). Thanks Glen. We'll go through the agenda. I forgot about public comments, and so - Margie reminded me of that, so we're going to split the call into a conversation about harms, and then also start working our way through the public comments. So, that's why the agenda that's on the Adobe screen is a little bit different than the one I sent, because I just totally spaced that out.

Anything else that's on people's minds besides sort of harms and public comments that we need to get into the agenda?

No. Okay. Glen, why don't you go ahead and call the roll and we'll get started.

Glen de Saint Géry: I'll do that for you Mikey. Good morning, good afternoon, good evening everyone. This is the Vertical Integration call on Monday, August 23, and on the call we have Alan Greenberg, Richard Tindal, Kathy Kleiman, Katrin Ohlmer, Paul Diaz, Roberto Gaetano, Avri Doria, Eric Brunner-Williams,

Barry Cobb, Jon Nevett, Jeffrey Eckhaus, Keith Drasek, Jonathan Frakes, Siva - no, Siva has not joined the call yet. Cheryl Langdon-Orr, and Ruslan Sattarov.

And for staff, we have Liz Gasster, Marika Konings, Mike Zupke, Glen de Saint Géry, and Gisella Gruber-White. And have I left off anybody? And now I see Katrin Ohlmer has joined the call for the second time. Thank you Mikey. Over to you.

Mikey O'Connor: Thanks Glen. Thanks all for joining on this late summer day. The peak of the holiday season. I decided because the holiday season was in full swing, we needed a really nice discussion topic, so I posted a question to the list just before the call in the agenda just to start off our conversation about harms. Because Jonathan posted I thought a very interesting note to the list a few days ago, and Volker came back with a pretty interesting replay, and that's sort of what got me going on this question.

So, my question to the group is given that we've got these harms that we've started to list, are some of these harms things that really respond well to the solution of vertical separation? And, do some of them fall in the category of not so much?

And, I'm not sure that this'll be a useful conversation, it's just a question that popped into my head as that pair of emails went by on the list. Because you know, maybe we're using vertical integration and vertical separation to solve too many problems. And maybe what we ought to do is narrow this down to the problems that the structural stuff can actually fix, and leave the other harms for other solutions.

So, I just thought I'd throw that out as a flier to see if that triggered any conversation. And if it does great, and if not, we'll move on to a more structured review of the documents we've got, and so on and so forth.

Jeffrey, go ahead.

Jeff Eckhaus: Okay. Thanks. No, I actually - Mikey, I think it is a useful discussion, and I would want to - first, if Jonathan is on the call thank him for putting these forward, because I think it was always - you know, it's - a lot of people have come forward and have been in favor of the nodding your own TLD. So you know I know Jonathan has not, and he's using you know the Palinesque description of putting lipstick on a pig.

So you know, I wanted to sort of go through some of the issues and what it is. And, I don't know if it's - I'm actually thinking of a little different angle Mikey, of what you said of is it the right way to handle it versus - as a registrar, I'd like to give some thoughts on you know, the incidence and the frequency, and saying maybe is it necessary?

So, I'll give you what I was thinking about. Like for example, the first example here would be on the TDRPs, which are the transfer dispute resolutions, and what Jonathan has stated -- which is true -- that when registrars cannot come to agreement on a transfer dispute, we'll usually go to the registry to be the final decision maker on it.

Most of the times, I'll just tell you - I'll give you some real life experience here. Most of the times, registries will kick it back to the registrars and will not make a decision on it and you know, not wan to. But at the end of the day - I'll give you an example.

eNom, as the second largest registrar - you know, we have 11 million domains, and in that I'd say that the number of times in the past two and a half years we've had a transfer dispute in any TLD has been twice that it's gone to the - no, sorry.

Three times that it's gone to the registry, and in two years - that's you know, just figure its 11 million domains. I don't know how many transactions that is.

Only three times it has. Twice it's gone back to the registrar to make the decisions. The registry said we're not going to make a decision. And only once, and it was in .com did VeriSign make a decision.

So, I want to sort of put that out there to say hey, you know, this could be something where people could collude and it could be an issue, but let's talk about the frequency. Saying you know, in all that time in all those domains, the likelihood of you know one these issues coming up I think is very minimal.

And you know, I'm saying that's once, and especially in .com and .net, which there's tons of transfers going back and forth versus in new TLDs. We don't know how many will be out there. How many will be successful. Will be transferring between registrars.

That if - I'm saying for myself with 11 million domains, I don't know how many renewals and transfers and transactions, that this happened once. That you know, we're going to separate out and put in vertical separation just because of one incident. And you know, I'd say put it that - I don't know, I think that might be overkill. So, that's what I wanted to sort of put that into some of the examples of what are the frequency of these events that were discussed, so - to give people some perspective on that. Thanks.

Mikey O'Connor: Thanks, Jeff. Is there a good source of information for that frequency kind of data?

Jeff Eckhaus: I think only the registries would be able to tell you, because for example, we had a - not a transfer dispute, but - I won't discuss the details, but actually it was with Volker's company. And, it went back and forth between us multiple times. You know, the discussions.

And, we finally settled on it ourselves because I think we both knew, and registrars in experience know that the registries will usually punt and they don't want to make the decision. And if I was in their shoes, which one day I

hope to be, then you know I would do the same thing and kick it back to the registrars who are the ones who are disputing it and not be asked to be the judge and you know, the decision maker on it.

So, the registries would be able to tell you. I don't know if there's any registry providers you know, that are on the call now that would want to divulge how many transfer disputes they've had in the past year, where they've actually made a formal decision and moved the domain when it would - as Jonathan described it you know, and a fight or a argument -- whatever -- between two registrars. They might be the only ones that have that concrete information.

Mikey O'Connor: Thanks, Jeff. This might be one - is Michele on the call? I don't think he's on today's call, but we might be able to run this one through the IRTP gang to see if someone like (Barbara) could help us out with that.

Alan, go ahead.

Alan Greenberg: Yes. Two things. I'll address what Jeff just said, then I'll go back to my original comment. I think we have to be a little bit careful about using our experience today in a separated world to predict what happens in an integrated world.

You know without casting aspersions on any given registrar; registrars may act differently knowing that the registry is there potentially as an arbitrator, and is there to try to be even handed, than in a world where they may not be there. So, the current situation is not necessarily a predictor of the future, you know without talking about the specific (unintelligible).

Going back to your original question, I think the question is phrased somewhat incorrectly in my mind. It's not whether vertical separation is the best solution, it's is it part of a possible solution or part of the solution. There are plenty of things that we might do if we were building the domain name

system registration model over again that would be different, but we have a relatively limited scope within this PDP.

So, if we decide that there's some part of the model that's completely irrelevant to vertical integration but could solve a whole bunch of harms, that's an interesting thing for us to note, but it's outside of our scope to talk about and certainly outside of our scope to make recommendations on. So, I think we have to be a little bit careful about you know, saying can we find a better way of doing things? In a clean slate world, we may have that option. Here, we don't.

Mikey O'Connor: Yes. I didn't actually intend to phrase it that way, so - what I was really interested in was you know, as we get our list of harms shaped up, which I don't think we're done. You know, it's still that August doldrums, and you know it doesn't feel like we've quite got the list in shape. But eventually, we're going to have a pretty good list.

And you know, one of the things that Scott's paper sort of drove home for me is that structural separation or integration is usually a tactic that's used to address competitive market type harms, and not some of these sort of operational harms that are being brought in. And at the root of my question is are - is separation or integration the best tool to use to address those non-competitive market type harms?

Alan Greenberg: But the point I was making is it doesn't have to be the best to be a viable tool, given that we only have certain knobs and leavers we can twist at this point.

Mikey O'Connor: Yes. At the same time, I'm not sure it's a good idea to turn everything into a nail just because we have a hammer in our hand. And so you know, that's the - I mean, I really did intentionally frame it that way for that reason, so I understand your challenge, but I'm not sure I'm going to accept it.

Jeff Eckhaus: Mikey, it's Jeff. Can I respond to one thing? I just want to clear something up that I think maybe I didn't. Sorry.

Mikey O'Connor: Sure.

Jeff Eckhaus: And - because I saw some people wrote on the list saying, "Hey, we don't know how the actors are going to play the registrars." And I think responding to what Alan said, is that it is not the - the transfer disputes are usually brought about by a registrant. What happens is they'll say, "I didn't transfer this. The name went over - it was brought over." These are not - the number of transfer disputes are not - registrars don't bring these about.

So what I was saying, "Hey, we don't know what," - there are those saying, "We don't know how the registrars are going to act in a world of new TLDs. If they'll start transferring disputes." Transfer disputes are brought about by registrants, not by - not - the registrars don't start them with each other. It's - the action is brought about. So, I just wanted to clear that up. It's not that the registrars begin that with each other. An action is initiated by a registrant.

So, the frequency in new TLDs - and we're saying we don't know what it's going to be like in new TLDs. It's just a factor of how many more registrations there are, because it's not the registrars that bring it out. It's the registrants.

And I just want to - you know, one other comment is that - about what Alan had said. I think about we only have certain knobs and levers, and I think it's saying - like I was reading a report -- sorry -- it's just saying that, "Hey, we can't stop," you know, people are texting on the road and there were accidents, and you know we can't shut down that people can text on the road.

But you know, somebody said, "Hey, can we just shut down people driving on the road?" And yes, that's an action we could do, but we might not want to do it because it might not be the best way to - you know, to solve that particular problem. And, I'll leave it at that.



Mikey O'Connor: Thanks, Jeff. Okay. Richard, go ahead.

Richard Tindal: Yes. Thanks, Mikey. Just still on this transfer thing. I'm not quite following Jeff, your point about the registrant being the initiator. I mean, I think we all understand that. But isn't the point the neutrality of the party that's making the judgments? So, it seems to me it doesn't really matter where the thing comes from, but rather what is the neutrality and who's making a fair decision in terms of the - a judgment being made. And certainly, the registrant is not making the judgment. It's the registry, I think as Jonathan pointed out.

Jeff Eckhaus: Right. So, what I'm saying is the registrants starts a - it has a - the registrant starts the action with a transfer dispute. The actual TDRP, that is brought about by a registrar to the registry is what I'm saying. And what he's saying is it's collusion between - registries will happen to say, "Hey you know, I'll settle my TDRPs for you if you settle the TDRPs for me," is what his example was in the collusion.

And what I was saying is that happens - the TDRP that goes to a registry is once or twice a year at most. You know, I'm saying once a year at most, so I'm saying that is - is that really the harm that we're really worried about?

That if a decision is going to be made on a transfer dispute, that somehow two registries and a registrar will collude with each other to do this, that'll happen once a year. If that's the biggest harm that we're worried about from vertical integration or you know, then I think we might want to relook at it and then say - and then, that was my whole point on it (today). That's why this whole issue - I think if that's the greatest harm, then I don't think we really have much to worry about.

Richard Tindal: I hear you, but I mean I think the point though is what Alan said, is it not? That at the moment, there's not I think an environment where there's an incentive to - you know, for the registrars to act in a way that would increase

the frequency of those. I think Alan's point is in a non-mutual environment, there could be a greater incentive for the registrar to act in ways that drives up the volume and still push those decisions in their own direction.

Jeff Eckhaus: Yes. But the point - I mean for - just as a registrar, it's - what's the incentive there to do that? You know, that's the whole - that's another thing, is why would a registrant - why would you make this deal to say, "If my registrants have these transfer disputes, then I'll - you know, then I would do that," then I would collude with another person and say, "We do this. It's..."

You know, it's - part of it is what's the motivation to do it? Why would - I can't understand why somebody would do this. Like, people who say, "I can collude with another person and say, 'Hey, we're going to do this and we're going to do that,'" but you know, what's the incentive to do this? Why would anybody do it is part of the question I actually had for Jonathan. I don't know - as a registrar, I don't see the incentive to doing it.

Mikey O'Connor: Okay. Alan, it looks like you're back in the queue. Is that right?

Alan Greenberg: I am indeed.

Mikey O'Connor: All right, sir.

Alan Greenberg: If I had recognized that this was an ad hoc debate between people, I just would've chimed in, but I did put my hand up.

Mikey O'Connor: Good for you.

Alan Greenberg: I find it rather frustrating when people are talking about me and I'm not allowed to actually say what I was trying to say. I thought I made it clear when I made my intervention I was not talking specifically about transfer disputes. I was talking about we should not use the current model as a predictor of the future model in a variety of harms. The transfer disputes may or may not

change based on the dynamics in a integrated world. There are others that certainly would. And, I was trying to make a general comment, not just citing this specific case that Jeff was talking about.

Mikey O'Connor: Thanks, Alan.

And let me sort drag us out of the TDRP discussion. You know it's a good example, but you know, my question is quite a bit broader than that, and really has to do with - when we pull a lot of harms into our list, it seems to me that one of the things we need to do -- one of the things -- is categorize them you know, as to whether they're operational type harms, competitive type harms, and so on.

And again, I'm getting a little bit edgy about using essentially a mechanism that's used to address competitive issues in other ways. And so, as - you know I as usual, don't have a real strong opinion about this. It's just something that I noticed as I read some of these emails.

Because, it seems to me that Volker raises a pretty interesting point in his reply to Jonathan. And the takeaway that I got from Volker's note was - look. You know, people are going to do bad things, or could do bad things. And we may be using the wrong tool or the wrong technique to - and perhaps using a technique too broadly to address those issues.

And you know Alan, you're right. We certainly don't have within our charter the scope to redo all of the registrar, registry, registrant business process. But at the same time, I think we need to be careful not to turn everything into a nail just because we have a hammer in our hand. And you know, I think that Jonathan and Volker kicked off a really interesting thread, and I hope that others will read it carefully, think about it, chime in at the end, chime in in the middle, chime in wherever it's appropriate.

Because you know, I really think that the harms, what they are, how they're addressed is right at the heart of our mission, and if we can get that squared away, then the rest of the stuff sort of falls in place.

I think I'll wrap the conversation up with this point, unless people have other stuff to contribute. But you know, hats off to Jonathan who unfortunately is without a voice today. Hope you feel better soon, Jonathan. And also, to Volker for what I thought was a very thoughtful reply.

We don't have Margie on the call today, do we? I don't think so.

Liz Gasster: No. She's again traveling -- it's Liz. Do you need something though?

Mikey O'Connor: I was just thinking about the summary of the public comments. We sort of took a fast tour of them last time, and I wasn't sure whether we should wait until Margie's back before we tackle it again. So, that's why I was curious whether she was on the call.

Let's stay on the harms thing for a minute. There are a few other things that I'm curious about in terms of sort of where we're at with our various harms documents. How we want to move forward. What we want to do with them, et cetera. So, let's stay on this for a minute. And depending on how things go, I'm kind of inclined to wait until Margie's with us again before we tackle the public comments thing. That's going to be a pretty big substantive discussion, probably warranting a call all to itself.

So, let's do harms today and defer public comments until next time. Is Margie going to be on the call - well, next time is the Labor Day holiday in the US. That's going to be epically sparsely attended call I bet, so maybe we'll wait two weeks for that.

Meanwhile, back on harms.

Liz Gasster: Hey, Mike. It's Liz.

Mikey O'Connor: Yes. Go ahead.

Liz Gasster: If I could just suggest maybe one thing in the interim?

Mikey O'Connor: Yes.

Liz Gasster: Maybe we could do a - kind of a chart of the comments, or something - a grid to try to make it a little easier, also to go through them in more detail on - you know, if they have a couple of weeks until the next call, we could...

Mikey O'Connor: I think that'd be great. Marika's done that several times on - I think she did it on IRTP and RAP, a couple of the working groups that I've worked with her on. And that was very helpful, because then we could sort of take them one at a time, and...

Liz Gasster: Exactly. That's the model that I was thinking of. Marika's (unintelligible)...

Mikey O'Connor: Yes. I think that would be fantastic. Let's proceed that way.

Liz Gasster: Well, why don't I take that with the team as a staff action in the interim?

Mikey O'Connor: Okay.

Liz Gasster: Try to circulate something you know, well in advance of the next call so that it expedites that process when we start.

Mikey O'Connor: Yes. That'll be great. Just great.

Okay. So, back to - let's see. We've got three documents I think that are out there. There's Jeff's original harms from VI list. Then, there's the harms - no.

Yes, there's harms from VI. There's harms from separation. And then, there's Scott's framework that he put together.

I'm curious if people have reactions about the newer documents? We've spent a fair amount of time on Jeff's, but how about Anthony's and Scott's document? Any thoughts about those -- good, bad, on the mark -- that people want to discuss?

Because I think that probably what we need to do is start thinking about melding those together into a single document. Maybe the job is as simple as merging Jeff's and Anthony's, and then using Scott's framework to categorize them. But I'm a simple minded kind of guy, and maybe it's not as simple as I think.

Oh, I'm off a week on Labor Day. Thanks gang.

So yes, Liz back to you. Do you think the matrix could get done in time for next week's call, because it looks like next week isn't...

Liz Gasster: You know, let me check that. I should've looked at the calendar, but I can't believe the month is almost over.

Mikey O'Connor: Yes.

Liz Gasster: So yes. Let me check and get back to you.

Mikey O'Connor: Okay. That'd be great. Because if we could start that...

Liz Gasster: Right.

Mikey O'Connor: ...next week, that would be even better.

Liz Gasster: Yes. I agree. I agree. We'll (unintelligible). Thanks.

Mikey O'Connor: Okay. Thanks. And, thanks gang for keeping track of - Cheryl's got it right. I'm not in the best of condition today. I'm not sure I can rely on that excuse, but thanks, Cheryl.

Anyway, so...

Cheryl Langdon-Orr: We're going to (unintelligible) today, Mikey.

Mikey O'Connor: (What)?

Cheryl Langdon-Orr: It'll work for today.

Mikey O'Connor: Yes. It'll work for today. I can't pull this one very often, I'm afraid. It's summer. I'm - you know, only the mediocre function at 100% all the time. What can I say?

Let's see. So, is that approach of - the harms document sort of more or less right? That we merge Anthony's and Jeff's, and then use Scott's framework to try and put these in categories, or is there some sort of glaring hole in that logic that people can see?

Jeff, go ahead.

Jeff Eckhaus: Thanks. Yes. I won't say glaring hole, but I would say that - I've been talking to Anthony, and we have discussed - you know, we just said hey, once we get it, we should merge the documents. It makes sense.

The only thing is you know, I think that - I've read you know, Scott's document as well, and I don't think that his document - that the categories within it are - fit into the other harms documents. I think his categories are on a totally separate sort of animal, and are on a different sort of - different topic or area from the harms - from separation and harms from integration.

So, maybe I'm missing it. So if everyone reads it closer, maybe they can see that. But, I don't see how the three meld together. I think it could - I don't - I'm not saying - I'm saying we include it and we keep it, but I don't think it fits nicely into the other two lists of harms, unless somebody else maybe has read all three and sees it a different way. I'd love to hear that.

Mikey O'Connor: Well, I'm actually sort of pecking away at the same issue that I was working on at the top of the call, which is that I think some of the harms fit into the categories that Scott is describing when he summarizes US competition law. We'll have to generalize that to make sure that we're not missing something in the international competition law.

But, this is really what got me sort of started thinking about this, is that notion that Scott's list doesn't address all of the harms that we've got. And so, we either need to expand the list of categories or we need to acknowledge that some of these harms that some of these harms aren't best handled with the competition remedy. And so, I'm actually sort of using that to force the same issue that we were talking about a minute ago.

And, I think that one way to approach that is to merge the two documents, then take Scott's framework and apply it to those harms and see where the holes are. And then once we see what those holes look like, try to figure out what to do with them. Do you see - Jeff, when you look at Scott's framework, do you see any of your harms falling within what he's talking about? I mean certainly, some of the price issues?

Jeff Eckhaus: Yes. I think I'll let Scott -- I see his hand is raised. I'll let him talk. I think Barry made a good point on the chat, as you see. You know, his thought, I could sort of agree with it, but I'll sort of defer to Scott. I see his hand is raised up. Maybe he can probably speak better of his own document than I could.

Mikey O'Connor: Yes. Okay. Scott, go ahead.



Oh, you may be muted.

Scott Austin: Thanks. No, I'm not muted. I just wanted to make sure - you know, I think that the track that you're taking Mikey, in terms of distinction here - and frankly, that was one of the reasons behind the document that I created was Jeff had specifically noted after he created his list that he did not address the issue of market competition. I can't remember the exact language, but there was something that was omitted and it had to do with market and it had to do with competition. There may be some other qualifying words in there, but that's what I felt that we needed something to assess these against.

And, I think that your distinction between operational and competitive harms is a good one for two reasons. One, I think that the law that I've attempted to summarize, which is very complex, and to try to use that as a fabric against which to take some of the anecdotes or some of the comments that we've seen. Because it doesn't appear that there's any real case law that's been established, and obviously there can't be any case law yet for the new gTLDs.

But even in the context of what you've just described this morning with the transfer issues, to the best of my knowledge, there may not be any instances where some court, whether it's US or international, has addressed that kind of harm in an anti-competitive framework. If there is, then you know, those are the kinds of things that I think we could use as a basis to again, put this in context.

But, the list that I gave did include in a couple of places some specific comments that either Kathy Kleiman, or Claudio, or someone had raised that were taken off of the Web or off of the ICANN materials that they had. And, I'm trying to find the specific page. I know there was one instance that was directly taken from those comments and I had put them under the heading

that I thought dealt with that, and I think it had to do with the collaboration guidelines and the idea of what the limitations are.

(Unintelligible)...

((Crosstalk))

Mikey O'Connor: Well, we don't need to put you on the spot on that one.

Scott Austin: Well, I'm just trying to be specific, because I know this group really wants to get the specifics, and has over the course tried to get the specifics. And now when we're looking at specific operational instances, you know they're somewhat anecdotal and it - I think there are probably who are listing or people participating that are maybe reluctant to give out some of those anecdotes because they may be ways that either give them a benefit to their particular operation, whether they're a trade secret or whether they're a particular means of operating that gives them an advantage, or maybe something that they think could come back to haunt them if they did share it.

But all I was trying to do with mine was to say here are some buckets, and some of them are broad buckets like (Sherman 1) and (Sherman 2), and maybe those don't apply, but they fostered a lot of other things such as the FTC and its operational guidelines and these collaboration guidelines that are more in the new economy, but actually address eCommerce and online commerce and how people do business on the Web with a pure - pure networks and B2B, and those kinds of things. So, I was trying to bring things at least from the historic past to the present and give some examples.

And if you go to the bottom of Page 9 I think of my memo, there's a reference that says in the TLD context, the elimination of vertical separation by cross-ownership of TLD could provide a mechanism for a TLD registry's affiliated registrars to access sensitive registry data such as domain names available in other competitively sensitive information, such as the availability of expired

second level domain names, or even WHOIS lookup to determine what businesses may be considering for their next brand, trademark application, or even patent application.

I mean, I think that the issue that seems to be underneath all of this, because I've heard people talk about it in a context of, "Well, as long as you don't own the registrar that sells your own domain, then maybe that's an exception - a meaningful exception." Now, there's probably 100 ways around that, even if on the surface you don't sell your own second-level domain, or your own domain, or second levels for you new TLD. You still could - that still could be violative - or in violation of some of these other broad buckets of anti-trust law or anti-competitive laws.

But, I think what we really have is we've got an operational construct where we've got cross-ownership of not just registries and registrars, but we've also extended that a little bit because we have registry service providers on the back end of the registries, and we have resellers sort of on the front end of the registrars. And, it seems to me the thread that goes through all of this is information and the sharing of information, and the disclosure of certain information that could create an operational advantage.

And so, I think the competitive harms verses operational harms to me are distinguishable only because in the competitive harms arena, you have an actual operating arbiter - you know, the courts or regulators that have actually taken these harms and put them in the context of here's a rule, here's how it's been violated, here's the remedy. Is there a penalty, a fine, or liability and damages that's resulted. On the other hand, the operational harms seems to me are anecdotal.

I mean, they're - these things happen all the time in the business. Do they rise to the level that there should be a law in the context of there ought to be a law, or there ought to be a rule - a policy if you will, in place that prohibits

this kind of activity? And, that to me is the way that the two work together.  
And, I'll listen for responses, comments on that.

Mikey O'Connor: Thanks, Scott. Any thoughts from other folks? I mean you know, I'm sort of looking for a way to break this problem into little chunks. We've done a pretty good job with the list's activity of - and I'd take note of Siva's point, which is - I think really, all we're trying to come up with is a long list of harms. And I think part of the reason why there are two is partly because the first list was really only aimed at harms from vertical integration, and some of us including me said, "Well, what about harms that might arise from separation?"

And so, that's why it's the two lists. But, I think that it's really - the goal is let's get as big a list as we can get, and then start putting them in buckets, like Scott says. Not necessarily Scott's buckets -- we may have to invent some other buckets -- just to see if - you know, as an analysis approach, I think the worry that I have is that if we try to take it all in one huge gulp that we get stuck. So, I'm really just looking for ways to break this puzzle into smaller bites.

Jeff, go ahead.

Jeff Eckhaus: Yes. I just wanted to clear what Scott had said - he said when I was working with - I said I - in my list of harms, I didn't address any harms in my document that were due to one entity having market power. That's what I did not - that's what I said and did not address in the list of harms. So, I just wanted to clarify that.

Mikey O'Connor: Yes. It's clearly - in the framework that Scott's got, market power is a big deal. I mean, that's a big piece of...

Jeff Eckhaus: I know. That - yes. I think that's what his point was, and I think it was a great job that he focused - since I said I didn't touch that, that's what he sort of focused on and really dug into, especially with specifics to the laws on that.

Mikey O'Connor: Yes.

Roberto, go ahead.

Roberto Gaetano: I think that we are trying to do two things at the same time; whereas, I thought that it would be better if we do them sequentially. That is, we should first build the long list of harms. I'm kind of picking up also on the comment on the chart by Siva.

Whereas we are kind of getting into what type of harms, these kind of distinctions, or is that related to the market conditions, and how does it deal with competition and so on. Whereas probably, it will be better to give us another period of time to complete the list and combine all the lists, and to put just type of the harms.

And then, start discussing one by one is this happening more in a vertical integration or in a vertical separation, or is it irrelevant? It can happen in both cases with the same effect. And then, what are the things that are effecting this harm, whether it is effected by for instance having a framework for competition law that can solve this particular issue? Or you know - and then, go one by one and discuss the details.

But, I think that I would like to see first a complete list of harm irrespective to what are the conditions in which the harm will occur? And then, only later on once we have the consolidated list to go and try to classify them, and to figure also which are irrelevant for discussion by this working group? And, some might be irrelevant in the sense that they will not be elevated to whether we have vertical integration or vertical separation.

Last thing. We shouldn't forget that the reason why we came up with this was to identify whether we had in certain specific exceptions to the vertical separation rule, if we could identify these exceptions in a way that harms that

have been perceived to happen with vertical integration do not happen, or are at least of a lesser probability or for lesser consequence.

So the purpose of identifying the list of harms was not to make a discussion - an abstract discussion on harms in all circumstances, but to identify whether we could identify specific solutions that could identify specific solutions that could address those harms and make proposals for situations where the risks produced by those harms was less relevant.

Mikey O'Connor: I think you just wrote our methodology. I like that a lot. I'm fine with focusing on the list of harms for now. And maybe - well, I'll let Kathy talk, and then I've got another question for the gang. Go ahead, Kathy.

Kathy Kleiman: Can you hear me, Mikey?

Mikey O'Connor: Yes.

Kathy Kleiman: Great. I'm not going to talk about anything as sophisticated as what Roberto just said. He really focused on the big picture, and I'm going to back to the harms and just specifics of the document. Although, what Roberto said was very interesting and it makes sense.

When we go back through the - and I'm looking at Jeff's document. Thank you Jeff for putting together the summary of potential harms. One of - well, as we go back through it, I'm just going to suggest that one of the things we should do is not have a lot of - is define every term. Hopefully, more members of the public will be reading this. Registrants - I'd love to see it be as accessible as possible.

And we've been talking among ourselves for so long that there are a lot of terms of our - that we use that I think the - a lot of people won't understand. And, I think it's very, very important that we not use shorthand. That we explain the terms. That we not - that even if we use a work like tasting, that

we define what that means. If you see something, PPC value for domains, you've got to define it, even if we want to create an appendix at the end. But, better to just define it with the text.

I also see us as missing some of the harms. The order of it - Jeff, I'd love to know kind of where is the order, and whether this is competition harms? Is it at the beginning for a reason? But also, I think we need compliance harms and enforcement harms, other things that we've been talking about over time.

So, I just wanted to share that and say hello to everybody, and that I'm still catching up from vacation. Glad to be back.

Jeff Eckhaus: Mikey, can I respond? It's Jeff.

Mikey O'Connor: Sure. Go ahead.

Jeff Eckhaus: Okay. One, there's no order whatsoever. I think I wrote that in the email. Those are just - how I picked them out, there's no order of importance, alphabetical, timeline - no order whatsoever. So hopefully, nobody - please, don't read into it at all.

As for - Kathy, if you think there are compliance harms or enforcement harms that are a direct result of vertical integration, then please send them to me and I will gladly add those on to the list. That was - I'll open that call out again. The list is not closed. It's - I don't think we're ever going to close it. If somebody has specific harms - as you said, you believe there are enforcement harms or compliance harms that are missing, please send those to me and I will gladly include those on the list.

And if anybody has an idea about order, or they want it in a specific order, I will gladly do so. But as of now, there's no order on there. Thanks.

Mikey O'Connor: Thanks, Jeff. And actually that feeds into the question that I got as Roberto was sort of working through what sounds to me like a pretty neat way forward. And that is, where do we think the list is at? Do we think that we're done? Do we think we're pretty close to done? Kathy's mentioned a few. Do others have the sense that there are a few missing? Because, I'm with Roberto on this.

You know, the first order of business is to get a good comprehensive list of harms, so that then we can work our way through an analysis of that list. But, it would be - I think it's really important to get the list in pretty good shape before we start the analysis, so that we're not surprising ourselves you know, weeks down the line with a brand new harm that we hadn't put on the list before. So aside from Kathy, are there others that feel like our current list needs to be expanded?

Eric, go ahead.

Oh, I think you're on muted Eric.

Still muted.

Eric Brunner-Williams: (Sorry. Did you call me?)

Mikey O'Connor: There we go. Yes. I called you.

Eric Brunner-Williams: Oh, thanks. I didn't think that we've covered all the harms by any means. I've found them to be - that you've posted to be considerably repetitive and not address all the - the total set of harms that are things that should not be harms, whether or not anyone thinks there's a harm to them yet. For instance, if we simply assumed that everything is going to continue without (com) business model, we have the - there is the harm in not having the diversity of businesses for a business type.



So, I don't think we've expressed all the harms yet, and I - I'll just leave it at that. Thank you.

Mikey O'Connor: Thanks, Eric. You know, that's the sense that I've got, is that our list isn't complete yet. And, I know it's the summer holiday season and all, but I think we do need to figure out a way to stir ourselves to produce the rest of them for the list so that we've got a good solid foundation on which we can start our work.

And, I also thought that Kathy's idea was a good one, that we make these as clear as possible. I'm not sure that we want to define them necessarily in the text, because it could get to be very convoluted.

But maybe, heavily hyperlinked to a series of good definitions either within the document or somewhere else I think would be great so that if somebody knew what PPC was, they wouldn't need to read a big long sentence about it. But if they didn't, they would have it readily at hand. You know, sort of what the terms mean so that we aren't you know, using jargon and confusing people.

And you know, definitions is one of those ones that's come up before in our conversation. And, we have the luxury of a bit more time now to really get those definitions squared away. So, I think that that's a useful addition to our drafting effort for sure.

Kathy, is your hand up from before, or is this a new one?

I bet it was left up from before.

Anybody else feeling - well, we've got a couple of people chiming in. I think that if you feel that the harms list isn't complete, this is the time to at least sketch out the list of harms that you think are missing.

I think it's probably more important to sketch out the list than it is to get it absolutely perfect, because we can - you know once it's on the list, then we can dig into the editing of it to make it you know, really good and sharpen up the definitions. But if we're missing whole harms from the list, I think this is the time that we really need to get that captured.

I don't know. Where should we go from here? To the top of the hour almost. This a reasonable stopping point? Roberto, you got any thoughts at this point? I am discovering myself fading out just a bit here.

Roberto Gaetano: I was unmuting. No, I think that I don't have anything to add.

Mikey O'Connor: Okay. Well, let's renew our call on the list, and certainly for those of you on the call, to take a look at the two documents from Jeff and from Anthony, soon to be merged. And, let's try and really get that list completed so that then we can start refining it and making it well defined, well worded, clearer, understandable. And then, we can take a list through some subsequent steps to sort of get it into categories and relevance, and all that kind of stuff.

But, I think we'll leave the - we'll leave it at that and call it a day for today. Look forward to maybe taking a matrix view of the public comments next week, and that's it. I'm going out with a whimper. Sorry people, I'll be sharper next week, I promise.

That's all for me.

Cheryl Langdon-Orr: Thanks, Mikey.

((Crosstalk))

END