Federal Trade Commission Public Workshop
Possible Anticompetitive Efforts to Restrict Competition on the Internet

Retailing Panel
October 10, 2002

Opening Statement

Paul Misener
Vice President, Global Public Policy
Amazon.com

Good afternoon, Mr. Chairman, Commissioners, ladies, and gentlemen. My name is Paul Misener. I am Amazon.com's Vice President for Global Public Policy. Thank you very much for inviting me to testify today.

In a panel session held in this workshop on Tuesday, I suggested that the state of competition on the Internet is best evaluated by separately considering, on the one hand, online activities that are substitutes for (and naturally competitive with) offline activities and, on the other hand, online activities that are truly unique to the Internet. As I said Tuesday, I believe the principal threats to competition in these two categories of activities are, respectively, from government and industry.

To reiterate, government actions pose the greatest threat to competition for those online activities that serve as substitutes for offline activities and, conversely, private sector actions pose the greater threat to competition for online activities that are truly unique to the Internet.

Substitute Activities. Although online retailing relies on commercial activities that are truly unique to the Internet (*e.g.*, Internet access service), online retailing itself is a substitute for offline retailing, including retailing through traditional brick-and-mortar stores, mail order catalogs, and home shopping channels on cable television. Retail competition already was robust before Internet-based retailing began and, since then, it has become even more vibrant and effective. It is vibrant through its sheer numbers: There are roughly two million offline retail establishments in the United States, and thousands more on the Internet. And competition is particularly effective on the Internet, where it is effortless to move among competing retailers. Instead of having to walk across the street (or drive across town) to another store, consumers can simply and easily move among thousands of retail stores with the click of a mouse. This is especially true for rural America, where consumers no longer are beholden to a single store or, if they were lucky, to a mall of stores. Now they have access to thousands of stores.

In short, the online activities of commercial firms do not present a barrier to retail competition; indeed, they actually enhance the already robust retail competition that pre-dated Internet shopping.

Unfortunately, however, some government policies restrict retail competition. Over the past few days, this workshop has revealed several specific cases, *e.g.*, the regulation of the sale of caskets and wine. But let me now describe for you the general case in which governments are considering measures that would impair retail competition

across the board, by unfairly regulating online activities that, for all practical purposes, are identical to less-regulated or unregulated offline activities. In my view, any proposed law or regulation that treats substitute activities online differently than offline is anti-competitive, unless the proposal is limited to real differences between the Internet-based activities and those conducted offline. In other words, where there are true and relevant differences, different treatment may be warranted, but where there are no relevant differences, online and offline must – for competition's sake, if not for fundamental fairness – be treated the same.

To restate a concrete example, many state legislatures (and even some members of Congress) have considered well meaning but ill-conceived laws addressing consumer information privacy that, despite the pervasive nature of the issue, address only online activities. To date, there have been dozens of "online privacy" bills introduced, in spite of the facts that (1) consumer information is at least as much at risk offline; (2) as of yet, only a small fraction (about one or two percent) of consumer transactions are conducted online; and (3) imposing restrictions only on Internet-based commerce would have the effect of aiding bricks-and-mortar businesses at the expense of online competitors. To the extent there are true differences between online and offline privacy, they are not addressed in the proposed laws. Rather, essentially the same activities would, to the detriment of competition, be treated differently.

As I suggested Tuesday, the only sure-fire solution, it appears, is for the federal government to preempt state action either as a matter of education and policy or, as a last

resort, as a matter of law. It is no longer sufficient for federal policymakers to merely "do no harm"; they also must be vigilant against the potential anticompetitive harms caused by non-federal government actions.

Unique Activities. As for the online activities that are truly unique to the Internet, it is important to recognize that consumers rely on some, if not all of these activities to reach online shopping sites. Fortunately, government policies have tended to foster, not restrict competition within these Internet-unique activities. If anything, governments haven't done enough. This leads me to my final point: For the Internet-unique commercial activities on which consumers rely for online shopping, government needs to ensure that private actions do not impair competition, for such impairments ultimately would harm *retail* competition.

The best current example is the one I mentioned on Tuesday: broadband consumer Internet access. Although competition is robust in the current narrowband home Internet access environment, the broadband home Internet access environment may not be nearly so competitive. Accordingly, federal regulators must primarily be concerned with the ultimate consumer and citizen objective in connecting to the Internet: unfettered access to the information, services, and products offered by Web sites. If bottleneck broadband Internet platform or service providers in any way degrade or interfere with access to Web sites, the character and usefulness of the Internet will be seriously damaged. More specifically, impairing consumer access to retail Web sites will restrict retail competition.

An appropriate approach here is federal regulation. The FCC could adopt rules to proscribe this type of anticompetitive behavior or ensure competition among broadband Internet service providers. And the FTC could informally indicate that such behavior would be considered anticompetitive. Either way, competition authorities should remain vigilant to ensure the continued competitiveness of consumer Internet access and, indeed, of all Internet-unique online activities.

Conclusion. In sum, retail competition is robust, and all the more so because of Internet-based retailing. The direct threats to retail competition come from government policies in some specific areas, and generally through "online-only" policies that unjustifiably discriminate among modes of commerce. On the other hand, government policies generally have supported competition among commercial activities that are truly unique to the Internet. Some private actions, however, threaten competition in such Internet-unique activities, including broadband access, and thereby indirectly threaten retail competition. Federal policymakers can address these threats to competition by, respectively, (1) eschewing or blocking discriminatory policies and (2) ensuring competition, either through regulation or competition enforcement, among Internet-unique commercial activities.

* * * * * *