

December 12, 2008

Network Solutions, LLC submits these comments in response to ICANN's call for public comments on the CRA International (CRAI) report on "Revisiting Vertical Separation of Registries and Registrars." The CRAI report provides economic analysis and recommendations for potential policy changes regarding the structural requirements between registries and registrars. These inputs have helped form ICANN's proposals for the introduction of new gTLDs. As such, they can have a significant impact on the promotion of competition in the domain name registration market – one of ICANN's core values and a key catalyst for the new gTLD process. We applaud ICANN for engaging outside economic experts to help assess registry-registrar market dynamics and the likely implications of any changes to existing rules. We offer the following suggestions as a way forward for new gTLDs

1. Requirements between Registries and Registrars Must Ensure the Continued Promotion of Competition

We support the introduction of new gTLDs. They should promote competition by lowering costs, promoting innovation, encouraging diversity, and enhancing user choice and satisfaction. These changes to the Internet's addressing system have long been demanded by the market. Addressing these needs also will help ICANN meet its ongoing obligations to competition under its Bylaws and the Joint Project Agreement (JPA) with the U.S. Department of Commerce.

If there are to be any changes to the structural requirements between registries and registrars, a fundamental requirement should be that they not undermine competition. Several key safeguards have facilitated the competitive market's proper functioning over the years. ICANN should strive to retain and enhance market protection measures in the new gTLD process, and adhere to the following safeguards:

- There should be separation between the registry and registrar functions;
- Registries must continue to sell domain registrations through registrars;
- Registries should not discriminate among registrars;
- With a limited exception, a registrar should not sell domain services of an affiliated registry;
- Registries must provide a reasonable notification period before making any pricing changes on domain renewals; and
- ICANN should maintain existing market protections with regard to registries with market power.

These competitive safeguards should be a foundation for any new gTLD agreement. The domain registration market is constantly evolving, and ICANN should be willing to update its policies to keep pace with the market's dynamics. Such modifications, however, must be carefully crafted to avoid unintended consequences. Loosely worded proposals could lead to anti-competitive behavior.

2. ICANN Should Adopt a Threshold Exception to the Vertical Separation Requirements to Promote Competition

We generally support the CRAI recommendation that a registry and registrar may be corporate affiliates, but the registrar may not sell the domain name services of an affiliated registry. This maintains the market protection measures noted above. We see no compelling reason to bar a registry and registrar from being corporate affiliates, so long as market protection measures are in place and enforced. In fact, the market could be better served by allowing such cross ownership if it diversifies a registry's revenue base, thereby strengthening its financial position and reducing risk to its ongoing registry services operations.

We also would enhance the CRAI recommendations by permitting a gTLD registrar to sell domain services of an affiliated registry until the registry meets a certain threshold of names, such as 100,000 names. Once the threshold is met, the affiliated registrar would no longer be permitted to accept new registrations, but would just be permitted to manage its existing base. No divestiture would be necessary. Of course, the other market safeguards such as equitable access, structural separation, and notification requirements must remain in place regardless of whether the threshold amount is reached.

This type of arrangement would help a registry operator to reach a sustainable level of registrations in order to remain competitive in the market. Registrars will have limited space for new TLDs on their storefronts, and this would permit a new TLD to get a foothold into the marketplace. Once the registry reaches the threshold, however, the market protection measures would be necessary to safeguard competition. Moreover, once a registry meets the threshold, it already would have proven its market demand and registrars will be eager to sell its services. Due to the non-discrimination rules, unaffiliated registrars also would be encouraged to offer domain name services, and will be comfortable doing so knowing that the threshold requirements and other market protection measures are in place.

Of course, care should be taken in defining the threshold level. The level must not be set too low such that competition hasn't yet been established in that TLD, and must not be set so high that the protection measures do not begin when they are needed. We believe that approximately 100,000 names strikes the correct balance.

Finally, by accepting this threshold exception, ICANN also would be obviating the need of the CRAI recommendation for an exemption of "single organization TLDs," (i.e. the registry and registrants are the same). While the CRAI report reasonably discusses the example of a large corporation's application to exclusively serve its internal needs (such as providing branded e-mail service for its employees), this type of application scenario would already be covered with the threshold exemption of 100,000 names and the market safeguards noted above. A unique exemption for "single organization TLDs," therefore, would not be necessary. This would simplify the agreement and limit the possibility of introducing a new class of registries and a potential loophole that could be exploited at some point.

3. ICANN Should Retain Other Market Protection Measures

- a. Registrar and registry functions should be separate and free from discrimination.

For the sake of competition, ICANN must ensure that most market protection measures are maintained in any new registry agreements. Even if there is cross ownership, there must be a structural separation between the registry and registrar function to encourage participation in the market and guard against abusive practices. Similarly, registries should not discriminate against registrars as a level playing field is a fundamental condition of a competitive market. Finally, as agreed upon in the New TLD policy, registries should be required to sell domain names through ICANN accredited registrars. Registrars have numerous contractual obligations under the Registrar Accreditation Agreement with ICANN that need to be maintained. Such obligations, including the collection and display of WHOIS data, certain customer-related requirements, and compliance with ICANN policies, shouldn't be lost by permitting registries to sell domain name services directly.

- b. Registries with market power require additional safeguards

All existing market protection measures, including price caps, should remain if a registry has market power. Absent such protections, anti-competitive behavior would be likely to occur. As the CRAI report notes, “concerns are strongest, the stakes are highest . . . when the platform is a true bottleneck – that is, has market power.” There is substantial and reasonable cause to justify differential treatment of registries with market power regarding pricing, as well as with regard to all other market protection measures. On this we also support the CRAI report: “For registries operating under a price cap, the current regime . . . should be maintained.”

- c. All registries should be required to provide adequate notice before increasing renewal prices

For all registries – regardless of market power – ICANN should continue the requirement that gTLD registry operators provide a reasonable notice before adjusting their prices on the renewal of domain names. Maintaining the current six months' advance notice requirement for new gTLDs would help foster competition in several ways. It maintains a level playing field among registry operators as such a requirement would be consistent with similar terms for other leading gTLD registries. It also would provide consumers with an important safeguard against potentially abusive pricing practices. Should a registry operator decide to significantly raise its rates or engage in variable pricing on renewals, registrants will have six months to make an informed decision about whether to renew their domains or switch to another TLD. Promoting this kind of user choice is a key attribute of competition.

Conclusion

The gTLD registration market has changed over time, continues to evolve, and should develop in new and innovative ways with the introduction of new gTLDs. It is reasonable, therefore, to review the long-standing structural requirements that govern registry and registrar functions. We urge ICANN to adopt the recommendations contained in these comments.

Respectfully submitted,

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