



ebw

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On the choice of NAME registry operator

When GNO ceased operations as a facilities-based registry operator and became a tenant of Verisign's registry back-end it was reasonable to defer the issue of the choice of the successor operator of that registry. None of the 2000-round new gTLD registry operators were clearly viable, and both NeuStar and Afilias, as new gTLD registry operators, were operating on external revenues – the NAMPA Contract and the .ORG entitlement, respectively. Hence, when the .NAME contract was renewed in 2007 it was reasonable to pursue a stability and continuity goal rather than a competition policy goal.

The 2007 stability and continuity goal is no longer dispositive as at least three 2000-round registry back-end operators – NeuStar, Afilias and CORE, are obviously capable of executing a transition of the registry from the Verisign back-end, and as capable as the current contractor at operating the registry contract. If the scope of registry operators is extended to the 2004 round facilities-based registry operators, one or more additional operationally and contractually capable candidates may be identified. If the scope of the presumed operationally and contractually capable candidates is extended to the 2012 round facilities-based applicants, additional candidates may be identified.

The choice of failing to initiate a competitive award process for the years 2012-2017 raises the possibility of antitrust liability to the corporation. As this risk is trivially avoided through the now familiar process of competitive bid – for the .ORG and .NET re-delegations, the IANA Function contract (as a bidder), as well as other professional services the corporation purchases from third party providers – from application evaluation process design and implementation services to executive search services – the choice of risk taking is notable and worth public comment.

It is not in the public interest generally for the corporation to risk avoidable liabilities in any jurisdiction, nor does the maintenance of market share in the legacy incumbent monopoly operator meet the competition policy goals stated in the Green and White Papers. I recommend that the corporation and the current contractor enter into a 90 day, renewable, limited operations contract while a competitive bid process for the next five year contract period is pursued.

In an individual capacity,

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