**DEMAND MEDIA COMMENTS**

**ON CRAI REPORT**

The CRA Report addresses a market construct that was developed many years ago to address the .COM monopoly. Aspects of this old construct do not apply to competitive new TLDs, and in fact will harm the adoption of these TLDs.

There are four distinct issues at stake:

1. ***Should there be legal separation of registry and registrar entities?*** As ICANN contracts, policies and processes are built around the notion of separate registry and registrar entities we see no advantage in changing this requirement.
2. **Should all interested registrars be allowed access to a registry’s TLD**? Although it is unusual in other industries to mandate that a manufacturer must use certain distribution channels we understand the argument that some TLDs are a ‘public resource’. We have no problem with the idea that all interested registrars must be able to sell a given TLD
3. **Should all participating registrars be treated equitably?** Again, it is unusual to mandate how a manufacturer treats his distribution channels, but we have no problem that all registrars must be treated equitably.
4. **Should the registry be allowed to sell its own TLD to the public (i.e. should the registry be allowed to own one of the participating registrars)?** Consistent with the findings of the CRA Report we believe the answer to this is yes. We can find no economic or public policy principle that shows benefit to consumers from preventing a manufacturer selling its own product. To the contrary, we believe the objective of enhanced competition in TLDs will be harmed if TLD operators are not allowed (under equal terms) to also promote their TLD at the retail level via an accredited registrar which is owned by the registry.

Throughout the report CRA finds that registries without price controls (which will be all new registries) generally better serve efficiency and registrant interests if they are allowed to own a registrar for their TLD. We agree that registrars and registries should be allowed to own one another. The CRA report supports this view. Here are extracts from the report:

Page 2: “*While ICANN’s approach has generally supported and stimulated registrar competition, economic theory and practical experience in many other industries have shown that mandating ownership separation can sometimes hinder, rather than foster, effective market competition”*

We agree.

Page 3*: “Experience has shown that the experimentation and innovation that often result when firms are free to operate without vertical restrictions can produce significant benefits for consumers. ICANN’s policies may affect multiple aspects of registry and registrar services, including service variety, innovation, and prices of domain name registrations”*

We agree.

*“We find that there can be various, sometimes subtle, economic incentives for a registry to discriminate among registrars in a manner that harms consumers (registrants). Those incentives are especially clear and strong when a registry is operating under a binding price cap. Under those circumstances, vertical separation and equal access requirements are useful tools for limiting the possibility of such harmful discrimination. For registries not operating under a binding price cap, the arguments in favor of vertical separation and equal access requirements are less clear cut. We would recommend that ICANN take steps towards relaxing one or both of these requirements”.*

We agree.

Page 13: “*Importantly, the unsponsored registry agreements for .info, .biz, .name, and .pro (finalized in 2001 and 2002) required legal, but not ownership, separation of registry and registrar functions”.* (We agree, Also note: the report does not cite any problems that occurred with BIZ, INFO, NAME and PRO due to this cross ownership freedom)

We agree

Page 15: *“On March 1, 2001, ICANN announced that it had reached an agreement with VeriSign that did not require ownership separation for VeriSign’s registry and registrar businesses but did require “structural separation -- According to ICANN, the rationale is that ownership separation is no longer necessary or useful in promoting competition, so long as the structural separation is effective in accomplishing the basic purpose. A relevant fact in this regard is that the registry agreement that has been developed for other global TLDs requires only structural, not ownership, separation of registrar functions from registry functions. This reflects ICANN's belief that there is little if any additional competitive value under today's market circumstances in forbidding the registry operator from also being a registrar, so long as it is done is such a way so as not to discriminate against other competitive registrars.*

We agree.

Page 16: “*ICANN has received no substantial complaints about discriminatory access to the registries operated by VeriSign, and there is no indication or evidence that has come to the attention of ICANN that VeriSign has not fully and effectively erected a complete firewall that prevents any discriminatory information flow to its registrar business”.* (We agree, also note: On page 17 the report does address an FTC investigation of Network Solutions for improper use of WhoIs data but this issue is unrelated to registry activity, especially as the COM database is thin and hence does not include registrant contact information).

Page 17: Cites concerns from industry executives that registries could discriminate in favor of their own registrar but all of these concerns are based on the registry breaching its equal treatment obligations. This would be a perilous and potentially disastrous course of action for any registry as contracts can adequately cover this.

Page 25: *“5.4. Vertical Integration Could Facilitate Registry Innovation”.**Ownership separation may work to disadvantage new or narrowly focused registries by making innovation in registry services harder to implement. Large registrars that serve a TLD may effectively have “veto power” over registry proposals for new marketing strategies or applications. If the registry’s volume is too small to justify the cost to registrars of implementing the proposal, the registry may be forced to abandon it………. As a result, smaller registries may be unable to successfully differentiate their services and compete more effectively with VeriSign in ways that would potentially benefit registrants”.*

We agree.

Page 27*: “The potential benefits of vertical integration briefly identified in Section 6 offer a clear argument in favor of a relaxation of the vertical separation requirement where the competitive concerns described above are not strong and there is no price cap. We would encourage ICANN to consider a full liberalization of this requirement.”*

Again, we agree.

After the report convincingly argues why ownership separation is not desirable in new TLDs, pages 28 and 29 then make the contradictory recommendation that such liberalization should only occur for TLDs where names are not available to the public (“Single Owner TLDs’). The rationale for this contradictory recommendation appears to be *‘sweeping reform may not be feasible”* and *“reform once taken would be difficult to reverse”.*

We support the conclusion of the report – for new TLDs, registries should be allowed to own registrars, and vice versa.

We think CRA have made a strong case why cross ownership of registries and registrars should be allowed in new TLDs, as they were in many existing TLD introductions (such as .biz and .info sited in the report) in the past. We cannot think of a reason why this is *‘not feasible’* and the report makes noargument why it is not feasible. It seems to us the bulk of the report argues why it is both feasible and desirable.

As a final comment on this issue we also note that many comments opposing vertical integration, and opposing price freedom for new registries, are based wholly on concerns that similar provisions will flow to .COM and existing TLDs. These concerns come from the ‘Equitable Treatment’ clause in the COM agreement. We think these concerns are unwarranted. The clause makes clear that COM will be treated equitably *“unless justified by substantial and reasonable cause."* We think the size and tenure of .COM is more than adequate justification for non-equal treatment regarding pricing and other provisions. Therefore, for these and the other reasons stated in the report which we site above, we agree with the following conclusion of the report: *“For registries operating under a price cap, the current regime of vertical separation and equal access requirements should be maintained.”*

Richard Tindal

SVP Registry

Demand Media Inc.

[www.demandmedia.com](http://www.demandmedia.com)