



The Internet Corporation for Assigned Names and Numbers

ICANN

9 March 2012

Via email and DHL

Mr. Gerard de Graaf, Director – DG Information Society
Ms. Linsey McCallum, Acting Director – DG Competition
European Commission -- DG Competition
B-1049 Bruxelles
Belgium

Re: Vertical separation between registries and registrars

Dear Mr. de Graaf and Ms. McCallum:

Thank you for your letter of 19 January 2012, which responded to our letter of 25 October 2011 on the subject of vertical separation between Internet registries and registrars.

We very much appreciate the clarification in your letter that the EC does not oppose the removal of vertical separation as a matter of principle and that there appears to be a need to revise and relax the previous set of rules in order to foster competition at the registry level. This is entirely consistent with ICANN's approach to the subject, and it may well be that the EC and ICANN have, or will have, consistent views on these issues in all respects. Indeed, with respect to the specific potential concern addressed in your letter regarding .com, ICANN has not taken a position as to whether a removal of any restrictions with respect to this TLD is appropriate, and the registry operator has not requested the removal of the current restrictions.

Your letter requests that we provide information with respect to six separate categories. The categories, and our responses, follow:

1. Recent figures on competition at the registry level. Based on publicly available information, the latest figures show the following statistics: (i) 1,000 ICANN accredited registrars; (ii) ICANN currently has 18 registry agreements with 16 different registry operators; (iii) as of December 2011, there are 138,673,092 gTLD reported domain name registrations in gTLDs; (iv) for registrations per registrar and per registry, you can find the most current publicly available monthly reports at <http://www.icann.org/en/resources/registries/reports>.

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2. List of all currently active registries and registrars. A list of all currently active gTLD registries and registrars can be found at <http://www.icann.org/en/registrars/accredited-list.html>. In terms of your request for exhaustive information about cross-ownership between registrars and registries, ICANN does not currently have such exhaustive information. As previously explained, there has never been any cross-ownership limitations on registrars owning registries, ICANN therefore has no current basis for requiring any such information from them. This is, however, an area of discussion in the negotiations with the registrars on a new version of the Registrar Accreditation Agreement.
3. Economic assessment of the benefits of vertical integration. As we explained in our letter of 25 October 2011 (beginning on page 4), starting in 2009, ICANN has obtained extensive economic analyses from some of the world's leading competition economists on the subject of vertical integration. These economists have supported the changes that ICANN has implemented. In addition, the Board has put these issues to public comment on a number of occasions, has solicited further input from the Governmental Advisory Committee (GAC), and has obtained further input from the ICANN's Generic Names Supporting Organization (GNSO) (which was not able to reach a consensus position but the majority view clearly supported a relaxation of restrictions). The restrictions in place on the existing registries generally inhibit competition; expert analysis showed that to try to encourage a competitive environment, cross-ownership restrictions on registries should not be continued absent some evidence of a negative impact on competition. We cannot, of course, know in advance how any changes will affect the competitive landscape, but none of the economists, experts, commenters, or others have been able to identify any overall negative consequences to competition that might result from the program that ICANN has adopted. Accordingly, ICANN does not intend to obtain a new economic assessment on this subject at this time. ICANN has, of course, committed to conducting a thorough review once some new gTLDs in the current round have gone "live."
4. Rules and procedures for requests to remove cross-ownership restrictions. ICANN has been reviewing possible competitive consequences of proposed changes to existing registry agreements for many years. ICANN employs experienced competition counsel to help evaluate all aspects of such proposed changes and, where appropriate, seeks the opinion of leading economists. As with any such process, ICANN looks at such proposals on a case-by-case basis and considers a number of factors including, but not limited to: the structure of the current market; the registry operator's "share" of that

market (if a “share” is possible to calculate), the concentration of the market; whether the registry operator might have “market power”; whether the proposed change would increase the registry operator’s share or market power and, if so, by how much; whether other registry operators offer similar services, how they might respond to the proposed change, and whether those other operators would have the ability to discipline any competitive advantages that might result to the registry operator making the change. We also attempt to take into account possible efficiencies that might result from the proposed change. If, after all of these factors have been analyzed, ICANN has a significant concern that a proposed change to an existing agreement might result in material adverse effects on competition, ICANN has the authority to refer the matter to existing competition authorities for further review. We should note in this respect that there have been dozen of changes to existing registry agreements in the past several years, and ICANN has not needed to refer any of those changes to competition authorities (nor have there been any concerns expressed that ICANN should have referred a change to a competition authority but did not do so). ICANN has created a process by which existing registries may request removal of cross-ownership restrictions for new gTLDs and existing gTLD that are not their own (see <http://www.icann.org/en/resources/registries/removal-cross-ownership>). We are beginning discussions with the registries, but anticipate that this same process, subject to any necessary modifications, will guide ICANN’s assessment of whether to remove cross-ownership restrictions for existing registries as it relates to names in their own registry (again, there are no such restrictions in place for registrars). We expect to follow the same analysis as that outlined above to evaluate all registry requests for lifting of current restrictions on cross-ownership.

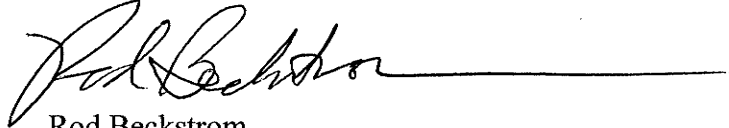
5. Impartiality of decisions on requests for removal of cross-ownership restrictions. See response to paragraph 4.
6. Compliance with alleged breaches of the Code of Conduct. ICANN has been committed to expanding its contractual compliance team in anticipation of the 2013 rollout of new TLDs, and has continued its expansion of the department to meet that commitment. ICANN has also grown the related functions and departments that support the contractual compliance function. In 2011, ICANN hired a Senior Director to head the contractual compliance department, as well as Senior Manager for Performance Measurement and Reporting. Three additional contractual compliance staff members have been engaged in 2012, and active recruitment for additional positions continues. The now 12-member team is staffed in multiple ICANN offices, with fluency in multiple languages. ICANN

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will continue to expand this function in the coming ICANN fiscal budget year. ICANN is actively engaged in enhancing the "culture of compliance" around key contractual relationships, and will be ready to begin working with the new gTLD agreements once they are in place. This includes having detailed plans in place to ensure that registries comply with all aspects of their agreements, including the new Code of Conduct.

Please let me know if you would like to discuss any of these matters further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Rod Beckstrom", followed by a long horizontal line extending to the right.

Rod Beckstrom
President and Chief Executive Officer

cc: Neelie Kroes, Vice President
European Commission

Lawrence E. Strickling, Assistant Secretary for Communications and Information and
Administrator, National Telecommunications and Information Administration
Department of Commerce

Sharis A. Pozen, Acting Assistant Attorney General, Antitrust Division
Department of Justice

Stephen Crocker, Chairman of the Board
Internet Corporation for Assigned Names and Numbers