



Vertical Integration

WT2 | 18 May 2017

Introduction

- ⦿ While the discussion today will talk about the history of Vertical Integration, the intention is not to start from scratch. At this stage, returning to a completely vertically separated environment is impractical and not intended to be the focus of our work.

Agenda

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Discussion

1. Origins of Vertical Separation

- ⊙ Whilst Network Solutions, Inc. was originally able to sell .com, .net, and .org domains directly (as both Registry and Registrar), adding competition at the retail level (i.e., registrars) was a principal embedded in ICANN's founding documents.
- ⊙ In 1999, NSI signed an agreement with ICANN to allow for equal access to all ICANN-accredited registrars
- ⊙ Further, NSI was required to establish ownership separation of its registry business and registrar business, though this was later modified to structural separation
- ⊙ *The original goal of separation (e.g., Vertical Separation) was to support competition at the retail (registrar) level.*
- ⊙ This principle was applied to each of the 2000 and 2004/05 registries (eg., .biz, .info, .museum, .name, .travel, .mobi, etc.).
- ⊙ There was an exception made for .pro (which had common ownership at the time by Register.com).

2. Status Quo in 2007

- ⦿ Recommendation 19 of the GNSO policy authorizing the new gTLD process states: "Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars."
- ⦿ The GNSO Council determined that the new gTLD policies do not provide any guidance regarding the proper approach to cross ownership and vertical integration, but instead implicitly suggest that the status quo be left in place. *Status quo at this point of time, generally speaking, meant that registries were prohibited from owning more than 15% of a registrar and that registrar cannot serve their own gTLD.* In addition, registries were required to provide non-discriminatory access to Registry Services for all registrars.
- ⦿ *Although registries were prohibited from owning more than 15% of a registrar, registrars were NOT prohibited from owning registries. With new registrars coming forward stating they were going to apply for new gTLDs, the community felt that something had to be done which applied to registries and registrars equally.*

3. Potential Concerns and Benefits of Vertical Integration

Potential Concerns	Potential Benefits
Could hamper competition at the retail level	Allows for economy of scales (can also be seen as a concern re: competition), which could be passed to consumers
Could result in inequitable access to Registry Services or data	Helpful to Single User Single Registry models or other registries with a limited registrant base
Could make compliance more complex	Registries could be their own distribution chain without having to depend on other entities alone to carry their names.
Could make domain tasting easier	
Could impact registrant choice	

4. Journey to the Current State

- ⦿ Oct 2008 - CRA Report: economic research commissioned by ICANN suggested that rules could be relaxed, but to do so in a conservative manner (e.g., allow VI for single organization TLDs, allow VI, but registrar cannot serve registry that owns it (or is owned by it))
- ⦿ Sept 2009 – GNSO Council Request for Issue Report: Staff recommended that the GNSO not initiate a PDP on vertical integration at that time and instead, wait until after the launch of new gTLDs. However, this recommendation was primarily based on timing concerns.
- ⦿ Jan 2010 – GNSO Council Initiation of PDP: Despite the staff recommendation, the GNSO Council chose to initiate a PDP. However, the Council resolved that the WG must deliver its Final Report within 16 weeks of the date of the resolution.

4. Journey to the Current State, cont.

- ⊙ Mar 2010 – Nairobi Board Resolutions: Resolved that there would be strict separation of registries also acting as registrars (and vice versa), unless the GNSO establishes policy prior to the launch the new gTLD Program; that policy would then be considered by the Board for adoption.
- ⊙ Jul 2010 – PDP WG publishes Initial Report for public comment: There was some agreement on principles (e.g., importance of compliance, need for an exception procedure in the event of strict separation, specifically an exception for single registry, single user (SRSU) TLDs.). However, no agreement on the six (6) specific proposals contained in the report.
- ⊙ Aug 2010 – PDP WG publishes updated Initial Report: Taking into account public comment, updated report published. Still no agreement on any proposal.

4. Journey to the Current State, cont.

- ⦿ Sept 2010 – Board Resolution: The Board determined that if the GNSO was unable to reach consensus on VI issues, the Board would make determinations as necessary.
- ⦿ Nov 2010 – Board Resolution: The GNSO did not reach consensus. As a result, the Board resolved that cross-ownership would be allowed (complete reversal of Nairobi resolution). However, it stipulated mitigating requirements , including the development of a registry code of conduct.
- ⦿ Nov 2010 – PDP WG publishes Interim Report: The PDP WG acknowledged consensus could not be reached. The GNSO Council terminated the PDP in Dec 2010.
- ⦿ Nov 2010 – Registry Code of Conduct first added to the AGB (version 5)

5. Registry Code of Conduct and Exceptions, cont.

- ⊙ Registry Code of Conduct added into the base agreement as Specification 9
- ⊙ Registry Operator Code of Conduct Exemption Request Process where the string cannot be “generic” and meets these requirements:
 1. *All domain name registrations in the TLD are registered to, and maintained by, Registry Operator for the exclusive use of Registry Operator or its affiliates;*
 2. *Registry Operator does not sell, distribute or transfer control or use of any registrations in the TLD to any third party that is not an affiliate of Registry Operator; and*
 3. *Application of the Code of Conduct to the TLD is not necessary to protect the public interest.*
- ⊙ Specification 13 available to Brand TLDs, which includes with it, an exemption to Specification 9.
- ⊙ Even if granted an “exemption” to Specification 9, Registries must still comply with Section 2.8 and 2.9 of the Registry Agreement with respect to Nondiscrimination and Equal Access to registrars.

5. Registry Code of Conduct and Exceptions, cont.

- ⦿ Examples of some of the most recent exemptions granted include .broadway, .office, .lds, .living, .dot, etc. See: <https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting/ccer>
- ⦿ Examples of some of the most recent Specification 13s granted included: .bauhaus, ..gmx, .sbi, etc. See: <https://newgtlds.icann.org/en/applicants/agb/base-agreement-contracting/specification-13-applications>

6. Discussion

Assumptions: Vertical Integration is now a reality despite no GNSO-developed policy on this subject.

- It's likely too late to close the door on Vertical Integration completely.
- Likewise, exemptions to the Code of Conduct in specific circumstances are warranted (eg., those contained in Spec 9 ad Spec 13).
- Therefore, the leadership team does not believe this PDP should start from scratch on these concepts, but rather work on modifications that allow the realization of the benefits of vertical integration while at the same time mitigating any concerns or issues that have arisen with vertically integrated entities.

Questions for Discussion

- ⦿ Does the Working Group agree with the assumptions in previous slide?
- ⦿ Has the Registry Code of Conduct been effective in mitigating the potential concerns about relaxing the registry/registrar separation requirements?
- ⦿ Has the Registry Code of Conduct hampered the ability of registries or registrars from taking advantage of the potential benefits from the relaxed requirements?
- ⦿ Does the Registry Code of Conduct need to be adjusted?
- ⦿ Are the mechanisms for exemptions to the Registry Code of Conduct sufficient?