

Free Trade Model – Draft proposal

Stated Objective: The Vertical Integration Working Group is engaged in defining 'restrictions' on Registry–Registrar Integration / Cross Ownership and to engage in a policy development process to recommend whether, and if so under what conditions, contracts for new gTLD registries can 'permit' vertical integration.

Implied Objective: The implied objective is primarily to ensure that Registries do not discriminate between Registrars and to ensure that various forms of registration abuses do not happen and that Registrants are not exploited.

It is assumed that restrictions on cross ownerships and / or a complex set of accompanying rules are necessary to ensure fair business practices.

- 1) It is questionable whether ICANN as an organization can impose such restrictions on the ownership and control patterns of its Registries and Registrars. A Registry must be free to go about its business and Registrar must be free to go about its own business. It is not for ICANN to stipulate conditions that restrain the survival and growth of the Registries, Registrars and back–end service providers.
- 2) The assumption that a complex set of rules result in better discipline may not be right. This approach takes ICANN closer to being a bureaucratic establishment.
- 3) The discussion on vertical integration actually distracts the attention away from the issues in vertical integration (Discrimination, Insider trading, Domain registration abuse, Domain tasting, Front–running, Predatory pricing, Account lock–ins, Transfer–out pricing, Less product variety) because the underlying issues take a back seat in all the discussion about limits on cross ownership and limits on control. Eventually rules will be established on cross ownership that would limit – on paper – cross ownership and concentration of industry control, but such superficial measures would very possibly be ineffective on the inherent and underlying problems. In other words, there could be compliance on Paper with no effect on issues such as Discrimination and Insider Trading.
- 4) Even with a 15% limit, in theory, a Registrar with a 40% share in the domain market – in theory – would be able to work within the specified limits and still increase his penetration across the domain industry to grow further, to achieve a cross–sector market share in excess of 50% or more. The Competition Mechanism within ICANN would be restraining a relatively small Registrar's cross ownership in a relatively small Registry while this theoretical Registrar with its over 50% market share would be beyond the purview of this competition oversight mechanism, due to the fact that this large Registrar has complied with the rules laid down on paper.

- 5) In India, until early 80's there were elaborate rules that regulated trade and industry. For example a company licensed to manufacture four wheeled cars, wouldn't be permitted to manufacture four wheeled mini-trucks or vans and definitely not scooters or motorcycles. The number of cars that the company can manufacture was limited to a specified number of cars per year – say 30,000 vehicles a year; there were restraints on component imports or technical collaboration. In Textile Industry rules were laid down to control production defined in maximum yardage per year and the number of spindles / weaving machines installed. If a manufacturer had to replace a few defective machines in the factory, the older machines had to be destroyed, and there were rules in place that specified the supervision under which the old machines had to be scrapped and even the specified what parts needed to be smashed. Such controls did not achieve much, we had one or two textile companies that smuggled in huge factories from overseas ! Consumers were exploited most under the era of such controls.
- 6) Cross ownership and control limits are in a sense undue interferences by ICANN in the affairs of business, would amount to establishing apparent preventive mechanisms without any real attention to the actual issues.

With this rationale it is proposed that the limits on cross ownerships are completely lifted. The focus needs to be on the list of harms and how a Registrar or Registry may be restrained in the event that it is detected that a certain Registry or Registrar is engaged in harmful practices. The measures can vary from relaxing Registrar accreditation fees and rules to increase the number of Registrars to foster better competition, issuing directives to a Registry to treat all Registrars on par, to withdrawal of accreditation of a Registrar to even directing a Registry to stop registering any more names.

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