The case for a registry owning a registrar that sells its names

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What this debate is about

- We’re debating whether a manufacturer can own one of the retail stores that sells its product to the public
- To simplify terminology let’s call registries ***‘manufacturers’*** and registrars ***‘retail stores’***
- Here’s the question being discussed --- *Can Apple, who manufacture laptop computers and who sell them through hundreds of retail stores like Staples, Amazon, Target, Buy.com, OfficeMax and Bob’s Discount Laptops, own one of those retail stores?*
- OR --- *Should Apple be forced to sell its product only through other peoples’ stores*?
- Those who think Apple should be able to own a retail store call this ‘*Vertical Integration*’ or ‘*Cross Ownership*’

What this debate is not about

No-one is arguing to change these existing provisions:

1. Legal (corporate) separation of registries and registrars
2. Guaranteed access to a registry by any registrar that wants to offer its names
3. Non-discriminatory treatment of all participating registrars

All three of these requirements are in the DAG today and should stay there

Our Position:

- We believe a registry should be allowed to own one of the registrars that sells its names -- unless that registry/registrar has 'market power' or unless the TLD is price capped
- We believe this will improve price, choice and service to consumers as well as reduce abusive activity
- We also think it will help smaller TLD registries who may have trouble attracting registrars to sell their names

How and why this will help consumers

- **PRICE**: When a manufacturer can own a retail store there is greater distribution efficiency and greater competition, both of which benefit consumers
- **INNOVATION**: Manufacturers who own a retail store are more likely to innovate new services as they have more control over the delivery of those services
- **SERVICE and SAFETY**: Manufacturers tend to be more interested in the perceived value and safety of their brand than other parties. For example Apple probably cares more about the perceived value/ safety of Apple products than Staples does

Is this a new economic model in general?

Hardly

What we're proposing is the norm in almost every other industry

Is it a new model for ICANN and the domain industry?

No. What we're proposing was explicitly in the :

- 2001 to 2009 AERO agreement
- 2001 to 2007 COOP agreement
- 2001 to 2007 NAME agreement
- 2001 to 2007 MUSEUM agreement
- 2001 to 2006 BIZ agreement
- 2001 to 2006 INFO agreement
- 2003 to 2006 ORG agreement
- 2002 till current PRO agreement

Here's what ICANN said about it in 2001.....

http://www.icann.org/en/announcements/icann-pr01mar01-1.htm

"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"

There are many examples of cross ownership in the industry

- NeuLevel registry was partially owned by Melbourne IT, who also sold .BIZ names as a registrar;
- The owner of the .PRO registry is also a registrar that sells .PRO names;
- Afilias was formed by registrars who also sold .INFO names;
- Core is a registrar that provides registrar and registry services to the .CAT and .MUSEUM TLDs;
- A registrar provides registry services to .COOP and also sells .COOP names as a registrar;
- A partnership between Afilias (a registry) and GoDaddy (a registrar) operate the .ME registry. This partnership also applied to operate the .US registry

Afilias as an example

1. Was owned by registrars who sold .INFO names
2. Launched and operated with a contract containing the following language:

   "This also shall not preclude an affiliate of Registry Operator from acting as a registrar with respect to the Registry TLD"

   (http://www.icann.org/en/tlds/agreements/unsponsored/registry-agmt-11may01.htm)
3. Is in a registry-registrar partnership to operate the .ME registry
4. Proposed to run the .US TLD under a registry-registrar partnership

Claims being made

- *‘it will result in predatory pricing……’*
- *‘there will be a misuse of data and insider trading…….’*
- *‘it will cause more abuse like tasting and front running……’*

Claim: *"Predatory pricing"*

- If a <u>priced capped</u> registry owned a registrar there <u>might</u> be incentive for that registry to harm other registrars so its own registrar could dominate the market and charge higher prices

- But with no price caps this argument collapses. A registry that is not price capped can charge what it thinks the competitive market will bear (i.e. how it thinks the market values its TLD compared to other TLDs) <u>whether or not the registry owns a registrar has no bearing on this behaviour</u>

- Let's look at .PRO as an example:
  - No price caps
  - Company that owns the registry also owns a .PRO registrar
  - No allegations of price gouging or abusive practices

Claim: *"Misuse of data and 'insider trading' "*

- What is this special information a registry owned registrar is supposed to have?
  - It's not customer contact data as that's public
  - It's not registrar add/ transfer/ renew/ delete data as that's also public
  - It's not name availability check data (if a registrar is concerned about that it can perform such checks through DNS lookups or it can conceal true activity with false checks)
  - It's not traffic data as registries only see a portion of DNS traffic
- Even if a registry did have useful data owning a registrar does not enable the registry do more harmful things with such data

Claim: *"More abusive practices"*

- There is no persuasive case why a registry owned registrar would engage in more activity such as tasting, front running, account lock-ins, or transfer-out pricing

- Why would such a registrar do this <u>more</u> than a registrar unaffiliated with the registry? Let's take front-running. A name subject to front-running is taken out of circulation for 5 days and cannot be sold by anyone. Given that the registry sets the price of that name, and gets the same price from any registrar, why would it want its own registrar to prevent other registrars from buying the name?

- If anything we believe a registrar owned by the registry is <u>less likely</u> to engage in such practices because these practices can hurt the reputation of a TLD and reduce public confidence in it. Why would a registry want to harm its own reputation?

Concluding thoughts

- Conventional economic theory believes cross ownership benefits consumers
- Historical precedent within ICANN permits cross ownership without restrictions
- It is the norm in most other industries
- Corporate separation of registry and registrar will remain in place, as will open and non-discriminatory access by registrars
- Allegations that additional abuse will occur are unsubstantiated
- Without cross ownership some registries may fail
- Market power changes this – so let's put safeguards in contracts in the event market power occurs