

United States Senate

WASHINGTON, DC 20510

August 12, 2016

The Honorable Renata B. Hesse
Acting Assistant Attorney General
Antitrust Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20230

Dear Acting Assistant Attorney General Hesse:

The National Telecommunications and Information Administration (NTIA) in the Department of Commerce (DOC) is considering whether to relinquish its oversight of the process for registering Internet domain names. As part of its oversight responsibility, the NTIA oversees the Internet Corporation for Assigned Names and Numbers (ICANN), which reviews and approves requests to register, delete, or modify top-level domain names, and Verisign, Inc. which administers the changes that ICANN approves by making the necessary additions, deletions, or modifications to the authoritative root zone file—i.e., the list of domain names and corresponding IP addresses.¹ Verisign's responsibilities in managing the authoritative root zone file are governed by Cooperative Agreement No. NCR 92-18742 with the United States Government.²

In addition to administering the authoritative root zone file, Verisign exercises exclusive control of the registry for .com domain names. Verisign's right to manage the .com registry and, in particular, the fee Verisign charges for registering .com domain names are governed by the .com Registry Agreement between Verisign and ICANN³ as well Amendment 32 to the Cooperative Agreement between NTIA and Verisign.⁴ Both the .com Registry Agreement and the Cooperative Agreement contain an important provision that limits Verisign's ability to increase prices in the .com Top Level Domain (TLD). Neither the Cooperative Agreement nor the .com Registry Agreement are scheduled to expire until November 30, 2018. Yet despite the fact that both agreements are nowhere near expiration, ICANN, Verisign, and the NTIA are working to, in effect, amend both agreements to provide a six-year extension to Verisign—to 2024—to manage the .com registry in conjunction with the proposed plan to transition domain name

¹ National Telecommunications and Information Administration. Verisign Cooperative Agreement No. NCR-9218742. Web. <<https://www.ntia.doc.gov/page/verisign-cooperative-agreement>>.

² National Telecommunications and Information Administration. Verisign Cooperative Agreement No. NCR-9218742. Web. <<https://www.ntia.doc.gov/page/verisign-cooperative-agreement>>.

³ Atallah, Akram. "Root Zone Management Transition Update: Preservation of Security, Stability and Resiliency." The Internet Corporation for Assigned Names and Numbers, 28 June 2016. Web. <<https://www.icann.org/news/blog/root-zone-management-transition-update-preservation-of-security-stability-and-resiliency>>.

⁴ National Telecommunications and Information Administration. Verisign Amendment 32 to Cooperative Agreement No. NCR-9218742. Web. <https://www.ntia.doc.gov/files/ntia/publications/amendment_32_11292012.pdf>

oversight responsibility from the NTIA to ICANN. According to the NTIA, the “root zone management aspects of the IANA functions contract [between the NTIA and ICANN] are ‘inextricably intertwined’ with the Cooperative Agreement.”⁵ The proposed amendment to the .com Registry Agreement is currently on ICANN’s website for public comment, which is set to close on August 12, 2016 and will be followed by the release of an ICANN staff report on August 26, 2016.⁶

If the .com Registry Agreement is extended to 2024 and the NTIA subsequently relinquishes its oversight of the process for registering Internet domain names, it appears that the Department of Justice (DOJ) may be prevented from having meaningful input into the prices that Verisign charges for registering a domain name within the .com domain for an extended period. We therefore write to urge the DOJ to conduct a thorough competition review of the agreement before any oversight transition is undertaken and any agreement extension is approved.

As background, Verisign has had exclusive control of the .com registry since acquiring Network Solutions on March 7, 2000 for \$21 billion.⁷ As part of this acquisition, Verisign obtained the exclusive right to control and profit from the operation of the .com registry, which Network Solutions had maintained since entering into a Cooperative Agreement with the United States Government in 1993.⁸ Because of Verisign’s exclusive control of the .com registry—a responsibility that benefitted an arrangement between ICANN and the NTIA—American businesses and consumers with an interest in registering or renewing a .com domain name have had no meaningful competitive alternatives within the .com registry marketplace.

In effect, Verisign’s government-approved control of the .com registry allows it to operate as a monopoly—a fact that has not gone unnoticed in the financial services industry and the stock market. For example, in 2013, financial research and publishing company, StreetAuthority, declared that Verisign “had a virtual monopoly on Internet domains” that gives it “unrivaled power” in “the fastest-growing industry in the world—the Internet.”⁹ Brian Katz, Chief Investment Officer of The Colony Group similarly observed in 2009 that Verisign “holds a legal monopoly on the DNS industry” that “adds to the appeal of [Verisign’s] business model” because “[v]irtually every business requires a unique web site for competitive reasons.”¹⁰ More recently, on June 29, 2016, Seeking Alpha published an analysis stating that “VeriSign’s

⁵ Atallah, Akram. “Root Zone Management Transition Update: Preservation of Security, Stability and Resiliency.” The Internet Corporation for Assigned Names and Numbers, 28 June 2016. Web. <<https://www.icann.org/news/blog/root-zone-management-transition-update-preservation-of-security-stability-and-resiliency>>.

⁶ Papac, Krista. “Public Comment on Proposed Amendment to .COM Registry Agreement.” The Internet Corporation for Assigned Names and Numbers, 30 June 2016. Web. <<https://www.icann.org/public-comments/com-amendment-2016-06-30-en>>.

⁷ VeriSign, Inc. Verisign Acquires Network Solutions to Form World’s Largest Provider of Internet Trust Services. N.p., 7 Mar. 2000. Web. <<https://investor.verisign.com/secfiling.cfm?filingid=950103-00-362&cik=>>.

⁸ National Science Foundation. Network Information Services Manger(s) for NSFNET and the NREN: INTERNIC Registration Services Cooperative Agreement No. NCR-9218743. 1 Jan. 1993. Web. <<http://archive.icann.org/en/nsi/coopagmt-01jan93.htm>>.

⁹ StreetAuthority. “Profit From A ‘Monopoly On The Internet’ With 100% Upside.” Editorial. NASDAQ.com, 6 Nov. 2013. Web. <<http://www.nasdaq.com/article/profit-from-a-monopoly-on-the-internet-with-100-upside-cm297233>>.

¹⁰ Interview. VeriSign Is Brian Katz’s Highest Conviction Holding - Here’s Why. Seeking Alpha, 29 Dec. 2009. Web. <<http://seekingalpha.com/article/180092-verisign-is-brian-katzs-highest-conviction-holding-heres-why>>.

exclusive contract with the Internet Corporation for Assigned Names and Numbers (ICANN) gives the company a significant barrier to entry for competitors”¹¹ and characterizing Verisign as a “regulated monopoly.”

To put Verisign’s unique position into perspective, the fourth quarter of 2015 closed with approximately 314 million domain name registrations across *all* TLDs.¹² The .com and .net TLDs, both exclusively operated and controlled by Verisign, accounted for approximately 139.8 million domain names in the fourth quarter of 2015. Simply put, 44.5 percent of all registrants across the entire Internet pay Verisign to secure or renew a .com or .net domain name. Verisign’s exclusive control of .com and .net allowed the company to end 2015 with cash, cash equivalents, and marketable securities of \$1.9 billion, an increase of \$491 million compared to 2014.¹³

Verisign has achieved a 61.5 percent operating margin¹⁴ despite the Government’s imposition of a mandatory price cap on registration fees. When ICANN and Verisign last negotiated the renewal of the .com registry agreement in 2012, the parties reached an agreement that not only would have extended Verisign’s exclusive control of the .com registry for six years but would have also enabled Verisign to increase the cost of registration fees by as much as seven percent per year in four out of six years of the agreement. This agreement, which, in effect, pre-authorized rate increases without any showing of justification or reasonableness, understandably raised concerns among the public that led the DOJ, along with the DOC, to initiate a competition review. This review resulted in a mandatory \$7.85 price cap until the end of the .com registry agreement in 2018.

In light of ICANN and Verisign’s history, the unique nature of the .com registration market, and its susceptibility to anti-competitive outcomes that could harm businesses and consumers, the public would be well served by continuing and active oversight. As Acting Assistant Attorney General Deborah Garza explained in a 2008 letter to the NTIA:

We also concluded that existing gTLDs likely would not become a competitive threat to .com registrations because the network effects that make .com registrations so valuable to consumers will be difficult for other TLDs to overcome. Due to a first-mover advantage and high brand awareness, .com registrations account for the overwhelming majority of gTLD registrations. As a result, when users do not know the TLD in which a domain is registered, they most often simply append ‘.com’ to a product or a company name when attempting to find the desired website. This phenomenon creates a strong preference for .com. Accordingly there will continue to be a need for Section 7.3 of the .com registry agreement [which sets price conditions for domain name registrations and registry services] to replace the discipline that market

¹¹ Better Investor Co. “Verisign: Time To Make Some Real Money.” Seeking Alpha, 29 June 2016. Web. <<http://seekingalpha.com/article/3985169-verisign-time-make-real-money>>.

¹² The Domain Name Industry Brief. Rep. no. Volume 1- Issue 13. Verisign, Apr. 2016. Web. <<http://www.verisign.com/assets/domain-name-report-april2016.pdf>>.

¹³ VeriSign, Inc. Verisign Reports Fourth Quarter and Full Year 2015 Results. N.p., 11 Feb. 2016. Web. <<https://investor.verisign.com/releasedetail.cfm?releaseid=954588>>.

¹⁴ VeriSign, Inc. Verisign Reports Fourth Quarter and Full Year 2015 Results. N.p., 11 Feb. 2016. Web. <<https://investor.verisign.com/releasedetail.cfm?releaseid=954588>>.

competition does not provide in this setting, as well as continuing DOC oversight of the .com registry under the Cooperative Agreement [between Verisign and the United States Government], which precludes VeriSign from amending or renewing the .com agreement without DOC approval.¹⁵

Given these concerns, it appears that American businesses, consumers, and all those who rely upon a .com domain for communication and commerce will be ill-served by a process that precludes the DOJ from considering the appropriateness of Verisign receiving an extension of its critical monopoly control over .com for another six years. It is especially imperative to conduct the review before the proposed transition of oversight responsibility is executed because it is unclear whether or not the Government will retain the authority to conduct such a review in 2024 if the transition is completed. A robust and formal competition review would allow the Government, policy-makers and, most importantly, the public, to assess Verisign's pricing practices since the last review and to determine whether the current price cap is artificially high as some have suggested in the past. For example, in 2012, the Internet Commerce Association suggested that Verisign's price cap be reduced to \$5.86.¹⁶

A competition review is also timely and necessary in light of Verisign's recent efforts to increase its presence in the global domain marketplace. According to reports, Verisign has used a subsidiary, Nu Dot Co LLC, to place a successful \$135 million bid to secure the exclusive right to operate the new .web registry.¹⁷ There is a strong belief within the domain name industry that Verisign's bid to secure the .web registry may have been undertaken to protect its position in the .com market from additional competition.^{18 19}

The DOJ has a responsibility to ensure that there is adequate competition in the domain registry market. We therefore respectfully request that you respond to the following questions no later than 5:00 pm on August 15, 2016:

- (1) Has the DOJ conducted a competition review of Verisign's .com Registry Agreement with ICANN to assist the NTIA in determining whether the agreement should be extended to 2024? If so, please provide a complete copy and summary of the review.
- (2) If not, will the DOJ conduct a competition review of the .com Registry Agreement before the agreement is extended and the NTIA transfers its oversight authority to ICANN? Please explain.

¹⁵ Garza, Deborah A., Acting Assistant Attorney General, Antitrust Division, Department of Justice. "Re: ICANN's Draft RFP for New GTLDs." Letter to Meredith Baker, Acting Assistant Secretary for Communications and Information, National Telecommunications and Information Administration. 3 Dec. 2008. Web. <<https://www.icann.org/en/system/files/files/baker-to-dengate-thrush-18dec08-en.pdf>>.

¹⁶ Corwin, Philip. "ICA To DOC: Slash .Com Pricing by \$2+, and Tie Future Price Hikes to CPI." Internet Commerce Association, 27 Nov. 2012. Web. <<http://www.internetcommerce.org/SlashDotComPricing/>>.

¹⁷ Murphy, Kevin. "Verisign Confirms It Did Fund \$135 Million .web Bid." Domain Incite. N.p., 1 July 2016. Web. <<http://domainincite.com/20833-verisign-confirms-it-did-fund-135-million-web-bid>>.

¹⁸ Andrew Allemann. "Why Verisign Paid \$135 Million for the .web Top Level Domain." Domain Name Wire, 29 July 2016. Web. <<http://domainnamewire.com/2016/07/29/verisign-paid-135-million-web-top-level-domain/>>.

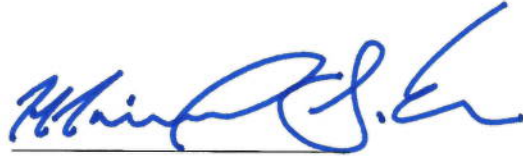
¹⁹ Berkens, Michael. "Thoughts About Verisign's \$135 Million Dollar .Web Acquisition & What It Means For Domainers." The Domains, 31 July 2016. Web. <<http://www.thedomains.com/2016/07/31/thoughts-verisigns-135-million-dollar-web-acquisition-means-domainers/>>.

Please contact Sean McLean (Senator Cruz), Andy Reuss (Senator Lee), and Ryan McCormack (Congressman Duffy) of our staffs if there are any questions regarding this request.

Sincerely,



Ted Cruz
Chairman
Subcommittee on Oversight, Agency Action,
Federal Rights and Federal Courts
Senate Committee on the Judiciary



Michael S. Lee
Chairman
Subcommittee on Antitrust, Competition Policy
and Consumer Rights
Senate Committee on the Judiciary



Sean P. Duffy
Chairman
Subcommittee on Oversight and Investigations
House Financial Services Committee