Assessing the Benefits and Costs of Expanded Cross Ownership of Registries and Registrars

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Central Question

Should expanded cross ownership of registries and registrars be authorized?
The work required for a definitive answer to this question has not been completed.
The CRA Report

The CRA Report provides useful preliminary observations.

• Identifies settings in which expanded cross ownership may be particularly problematic.
• Notes the problems of reversing expanded cross ownership once it is authorized.
• Suggests specific settings in which limited experimentation with expanded cross ownership might be considered on a trial basis.
Much Work Remains

• These preliminary observations are valuable.

• However, substantial additional study is required before a fully informed decision can be made.
Determining the Answer

• The expected benefits of expanded cross ownership should be quantified.

• The corresponding expected costs should also be quantified.

• These benefits and costs should then be compared.
The Cost-Benefit Calculation

• Only if the benefits of expanded cross ownership exceed its costs should the policy be considered further.

• The net benefits should also be compared to the corresponding net benefits of other policies that might achieve the same ends.
Potential Benefits

Increased industry competition?

• The exact nature and likely consequences of increased competition should be identified and quantified.

• Vague appeals to the general merits of competition are difficult to assess.
Potential Costs

1. Reduced industry competition, due to increased discrimination against non-affiliated registries and registrars.
Increased Discrimination

For example, an integrated registry-registrar might:

• Limit the access of a non-affiliated registrar to the most highly valued registrations; and/or

• Limit the access of non-affiliated registries to prime shelf space.
Potential Costs

2. Harm to registrants due to increased incidence of abuses such as domain name tasting and front running.

• Expanded cross ownership can render ineffective the policies (“restocking fees”) that have helped to limit domain name tasting.
Potential Costs

3. The expanded industry oversight required to limit undesirable activities.
   • Discrimination against unaffiliated registries and registrars and abuse of registrants can be difficult and costly to detect.
   • The costs of the (ongoing) oversight should be accounted for, and the efficacy of the oversight should not be assumed.
The costs of expanded cross ownership are likely to vary with the prevailing market power.

• Consequently, a thorough assessment of market power is required.

• Who will undertake this assessment, and what standards will be applied?
Measuring Market Power

1. Relevant markets must be identified.
   - This identification requires rigorous studies of the behavior and preferences of registrants.

2. The power to raise price within each of the relevant markets must be assessed.
   - Are effective rules in place to limit undue price discrimination?
   - How will these rules be enforced?
Ongoing Oversight

If the extent of permissible cross ownership is linked to prevailing market power, then:

• Relevant limits on market power must be stated clearly.

• Compliance with the stated limits must be monitored and enforced continuously.
Enforcement

1. Can national competition authorities be relied upon to limit anticompetitive behavior, given the prevailing limits on their jurisdictions?

2. Can ICANN deliver the requisite oversight and enforcement?
   - What institutional capabilities has ICANN developed in this regard?
Enforcement

When the institutional capabilities required to detect and preclude anticompetitive behavior are limited, restrictions on cross ownership can provide a practical alternative.
Conclusion

1. A comprehensive assessment of the expected benefits and costs of expanded cross ownership of registries and registrars remains to be completed.

2. This assessment is a crucial prerequisite to a fully informed decision about whether expanded cross ownership is appropriate.