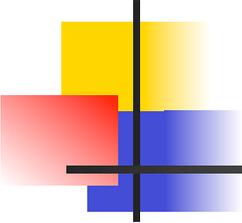


Vertical Integration Between Registries and Registrars – The Economic Pros and Cons

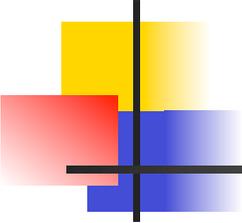
Sydney, Australia

22 June 2009



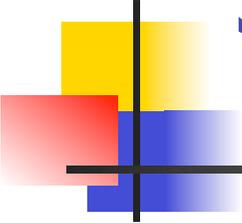
Background

- Issue debated since creation of ICANN
 - Originally generated because only one (commonly owned) commercial registry operator and registrar
 - Significant increase in competitive alternatives at registry and (especially) registrar level has not eliminated debates
 - New gTLD plans have brought issue to forefront again



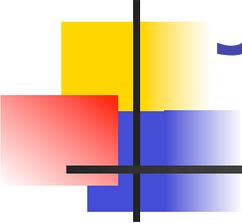
Discussion Panel

- Joe Sims – Moderator
 - Senior Antitrust Partner, Jones Day
 - Counsel to Jon Postel in creation of ICANN, and outside counsel to ICANN since its creation
- Participants
 - Steve Salop
 - Joshua Wright



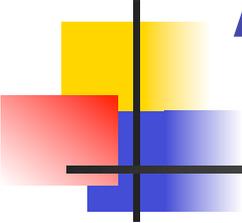
Steve Salop

- Professor of Law and Economics, Georgetown University Law Center
 - Formerly Associate Director for Special Projects and Industry Analysis, Bureau of Economics, US Federal Trade Commission
 - Formerly Economist at Civil Aeronautics Board/Federal Reserve Board
- Prolific author and speaker; relevant publications include:
 - Krattenmaker and Salop, Antitrust Analysis of Anticompetitive Exclusion: Raising Rivals' Costs to Gain Power Over Price, 96 YALE LAW JOURNAL 209 (1986)
 - Riordan and Salop, Evaluating Vertical Mergers: A Post-Chicago Approach, 63 ANTITRUST L.J. 513 (1995)
 - Salop and Romaine, Preserving Monopoly: Economist Analysis, Legal Standards, and Microsoft, 7 GEO. MASON L. REV. 617 (1999)



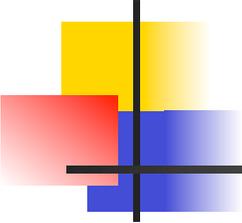
Josh Wright

- Professor, George Mason University Department of Economics
 - Assistant Professor of Law, George Mason University School of Law
 - Formerly Scholar in Residence, Bureau of Competition, Federal Trade Commission
- Author of several relevant publications on the economics of vertical contractual arrangements:
 - *Antitrust Analysis of Exclusive Dealing and Tying Arrangements* (with A. Abbott), in THE LAW AND ECONOMICS OF ANTITRUST (Keith N. Hylton ed. 2009)
 - *The Economics of Slotting Contracts* (with B. Klein), 50 JOURNAL OF LAW AND ECONOMICS 421 (2007)
 - *Slotting Contracts and Consumer Welfare*, 74(2) ANTITRUST LAW JOURNAL 439 (2007)



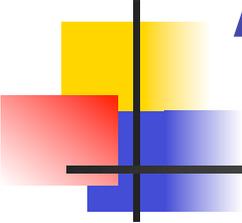
Agenda

- Presentation of vertical integration economics and law by the panel
 - Purpose is to lay an educational foundation for subsequent discussions at ICANN on this topic
 - Presentation (to best of our ability) will be objective and neutral
 - More focused on principles than ICANN specifics
- Application of these principles to ICANN-specific issues, with participation from registries and registrars
- Discussion and questions from the floor



Vertical Integration Basics

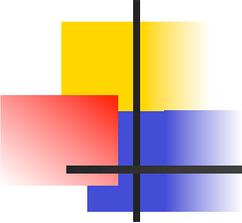
- Vertical integration can be structural, or by contract
- Vertical integration can be procompetitive or anticompetitive, depending on the facts
 - Can lead to lower prices, higher quality and better service
 - Can lead to higher prices, lower quality or less product variety, or slower innovation₇



Assessing Effects

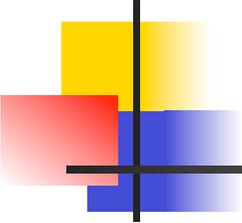
- Effects not limited to cross-ownership
 - Exclusive/preferential vertical contracts

- Complex task
 - Effects depend on numerous factors
 - Not well suited to bright lines



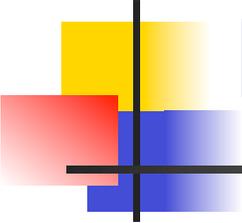
Potential Anticompetitive Effects of Vertical Integration

- Exclusion -- foreclosure/discrimination
- Evasion of price caps
- Exchange of sensitive competitive information



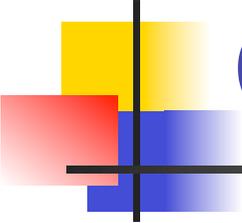
Potential Consumer Benefits from Vertical Integration

- Lower prices
- Facilitate new entry by Registries
 - Induce Registrar to provide specialized services for Registry
 - Induce Registrar to promote Registry
- Allow more scope for innovation in delivery of products/services



Conflicting Effects of Prohibition on Vertical Integration

- “Under-inclusive”
 - Vertical integration can facilitate the creation, maintenance or exercise of market power
 - Anticompetitive effects can occur, even if firms not formally integrated
- “Over-inclusive”
 - Vertical integration unlikely to raise competitive concerns in competitive markets, or markets that lack entry barriers
 - Prohibition can prevent beneficial, pro-competitive conduct, even in concentrated markets



Competition Policy: General Principles

- Good rules focus on likely effects
 - ***Facts matter!***
 - Market power
 - Intensity of competition
 - Barriers to entry
 - Price caps
 - Magnitude of benefits
 - Restrictiveness of conduct
- No easy answers
 - ***Simplistic rules ensure mistakes!***
 - Blanket prohibitions
 - Complete laissez-faire antitrust
 - ***Case-by-case analysis most accurate, but hardest to apply***
- To state the obvious
 - ***Any rules are only effective if rigorously enforced***
 - ***Changes in status quo can produce long term benefits, but also short term transition costs***