



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

**BEFORE THE
NATIONAL TELECOMMUNICATIONS
AND INFORMATION ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE
WASHINGTON, D.C.**

In the Matter of

Improvement of Technical Management of Internet Names and Addresses

Docket No. 980212036-8036-01

**Comment of the Staffs of the Bureaus of Economics and Competition
of the Federal Trade Commission(*)**

March 23, 1998

I. Introduction

The Staffs of the Bureaus of Economics and Competition of the Federal Trade Commission ("FTC Staff") welcome this opportunity to respond to the National Telecommunications and Information Administration's ("NTIA") request for comments ("*RFC*") on its proposal to privatize the Internet Domain Name System ("DNS").⁽¹⁾ Internet domain names are the familiar and descriptive names for Internet sites (e.g., "www.ftc.gov"). They link to the unique Internet Protocol ("IP") numbers (e.g., 98.37.241.30) that serve as routing addresses on the Internet. The Domain Name System translates Internet names into the IP numbers required for transmission of information across the network. Currently, the registration and propagation of "top-level domain" ("TLD") names is carried out by a single firm that is under a soon-to-expire contract with the National Science Foundation.

The NTIA now proposes that the administration of TLDs, and the registration of domain names, be provided competitively by private, for-profit entities. The NTIA also proposes that certain other technical functions (e.g., management of number addresses; coordination of the root server system; dissemination of protocol parameters for Internet addressing) be carried out cooperatively (via a new not-for-profit corporation) by parties having vested interests in the efficient operation of the system.

As explained more fully in this comment, purchasers of domain name registration services might be subject to supracompetitive prices in the future if they become "locked-in" to a particular vendor of those services. The likelihood of a significant customer investment that results in "lock-in" is a detailed factual question on which this comment cannot reach a definitive conclusion. Economic analysis suggests, however, that purchasers may be able to take steps to reduce their vulnerability to higher prices from "lock-in" effects. In addition, higher prices arising from "lock-in"

The FTC is an independent agency responsible for preventing unfair methods of competition and unfair or deceptive acts or practices.⁽²⁾ In response to requests by federal, state, and local government bodies, the staff of the FTC often analyzes regulatory or legislative proposals that may affect competition or the efficiency of the economy. In the course of this work, as well as in antitrust and consumer protection research, nonpublic investigations, hearings, and litigation, the staff applies established principles and recent developments in law and economics to the analysis of competition and consumer protection matters.

The FTC has actively applied its competition and consumer protection enforcement principles to Internet commerce. The FTC began to examine the potential for consumer protection problems on the Internet even before on-line consumer transactions became common. In the fall of 1995, for example, the FTC held public hearings to explore business and consumer issues arising from technological innovation and increasing globalization.⁽³⁾

demands and actually register the client's domain name and IP number with the chosen registry. Presumably a client could, if it wished, do some or all of these things for itself, as now appears to be the case.

B. Competitive Issues

The principal competitive issue in this proceeding centers on the *registry* issue. According to the *RFC*, some parties have expressed reservations about the desirability of a competitive registry system. These parties argue that lack of portability among registries (that is, the fact that users cannot change registries without adjusting at least part of their domain name string) could create lock-in problems and harm consumers.⁽¹³⁾ Some have reco 70.56 619.32 470.88 5neiu.t56 61 244.6

find it profitable to engage in opportunism. Given the prospects for growth in Internet commerce, this set of circumstances generally would appear unlikely.

Overall, we would conclude that while the possibility of supplier opportunism exists, the potential benefits to customers from enhanced competition -- such as possible price reductions and quality improvements -- argue in favor of the NTIA proposal. This is especially true given that the alternatives that have been proposed likely would not remedy any such problems. One possible alternative is simply maintaining the status quo (*i.e.*, a monopoly registry). Clearly, this would not address any competitive issues associated with lock-in. If lock-in is perceived as a competitive problem in a market with competitive registries, it follows *a fortiori* that it would be at least as great a problem absent such competition.

A second alternative is to allow competition among registries, but to require that registry services be provided only by not-for-profit entities. The problem here is that neither economic theory nor available empirical evidence establishes a presumption that not-for-profit entities would forbear exploiting locked-in customers, assuming that it would be profitable to do so. Theoretical analyses have yielded ambiguous predictions as to whether not-for-profit firms are less likely than their for-profit counterparts to exploit market power. Similarly, empirical tests of this proposition have yielded ambiguous outcomes; some studies claim to find that not-for-profit entities leave market power unexploited,⁽²¹⁾ while numerous others find the contrary.⁽²²⁾ At present, there is insufficient evidence to conclude that organizing registries on a not-for-profit basis would solve any problems arising from customer lock-in.

industry participants are likely to move more quickly and flexibly than would be possible for government regulators.⁽²⁴⁾

Many of the benefits of industry self-regulation can be lost if competitors use otherwise legitimate industry forums to undermine competition. When this occurs, it is usually because some party has a vested interest in a particular standard. The FTC generally is concerned when competitors use self-regulation mechanisms to inappropriately limit choices available to consumers or to forestall welfare-enhancing innovation.⁽²⁵⁾ In the context of the *RFC*, several types of conduct could raise antitrust concerns. These include discriminatory allocation of number blocks; exclusionary conduct against companies desiring to provide registry or registrar services; and adoption of technical protocols that anticompetitively disadvantage competitors of board members.

To alleviate these possibilities, the NTIA has suggested a number of safeguards designed to ensure that no single competitor or group of competitors will be able to use the proposed new corporation to impair competition. For example, to protect against “capture by a narrow group of stakeholders,” the *RFC* proposes that the new corporation’s “decision-making processes should be sound and transparent; the bases for its decisions should be recorded and made publicly available.” The corporation’s board is to contain representatives of various groups of Internet stakeholders, including regional number registries, domain name registries and registrars, the Internet technical community, and commercial and non-commercial Internet users.

Forming the proposed new corporation consistently with these guidelines should provide some protection from anticompetitive conduct. Self-regulatory decisions made pursuant to a clearly-established decision-making procedure, based on objective criteria, may be less likely to raise antitrust concerns than those that are not. As we understand the proposed structure, the decision-making process would provide opportunities for interested parties not directly represented on the new corporation’s board of directors to express their views on particular questions and to notify the corporation of issues that may warrant consideration. The informational benefits of broad-based participation in the process, coupled with the diverse composition of the corporation’s board of directors, would increase the

(12) A registry is responsible for delegating Internet addresses (such as Internet Protocol numbers and domain

(20) The incentive for vendors to hold-