



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 2016

The Honorable Ted Cruz
Chairman
Subcommittee on Oversight, Agency Action,
Federal Rights and Federal Courts
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Acting Assistant Attorney General for the Antitrust Division dated August 12, 2016, regarding a proposed agreement between the Internet Corporation for Assigned Names and Numbers (ICANN) and Verisign, Inc. The Department of Justice (the Department) appreciates having the benefit of your perspective. We are sending an identical response to the other Members who joined in your letter.

The Department's Antitrust Division (the Division) has worked with the Department of Commerce's National Telecommunications and Information Administration (NTIA) on competition issues relating to ongoing privatization and operation of the Domain Name System (DNS), including questions arising from the operations of the .com registry, and NTIA's efforts to transition the stewardship of the Internet Assigned Numbers Authority (IANA) functions to the global multi-stakeholder community. In 2012, at the time of the last renegotiation of the .com Registry Agreement between ICANN and Verisign, the Department thoroughly reviewed the proposal and consulted with NTIA before NTIA approved it. NTIA approved the agreement after Verisign agreed to forego the ability to increase the price of .com domains, which it would have had under the version of the .com Registry Agreement that was submitted for NTIA's approval, and to cap its price at \$7.85, the then-existing price for .com domains. At the same time, NTIA and Verisign also entered into Amendment 32 of the Cooperative Agreement, which independently specifies the \$7.85 cap on .com domain prices. While Verisign does have the ability to request cost-based price increases, under Amendment 32, such increases must be approved by NTIA, which may consult with the Division in its review. With the amended pricing provisions, NTIA approved the .com Registry Agreement renewal in 2012 as in the public interest.

As referenced in your letter, ICANN and Verisign are contemplating an early extension of this agreement, currently set to expire in November 2018, to November 2024. With the extension, the term of the .com Registry Agreement would coincide with the term of the Root

Zone Maintainer Services Agreement, pursuant to which Verisign will provide various root zone management services directly to ICANN after the IANA transition. Verisign and ICANN agreed to link the terms of the two agreements because portions of the root zone infrastructure are inextricably intertwined with Verisign's .com infrastructure. ICANN posted the proposed extension for public comment on its website on June 30, 2016; the public-comment period has ended, and the ICANN staff report is due on September 15, 2016. See *Public Comment on Proposed Amendment to .COM Registry Agreement* (last viewed Aug. 26, 2016), available at <https://www.icann.org/public-comments/com-amendment-2016-06-30-en>. ICANN's and Verisign's boards of directors will then consider the proposed extension. After they have acted, Verisign will submit any extension that emerges from this process for NTIA's approval.

As you may know, Verisign may not extend the .com Registry Agreement without obtaining NTIA's prior written approval. Amendment 30 of the Cooperative Agreement requires such prior approval and provides the standard for NTIA's review. In pertinent part, Amendment 30 provides: "[t]he Department [of Commerce] shall provide such written approval if it concludes that approval will serve the public interest in (a) the continued security and stability of the Internet domain name system and the operation of the .com registry. . . , and (b) the provision of Registry Services . . . offered at reasonable prices, terms, and conditions." We note that the current extension proposal contemplated by ICANN and Verisign does not change the price cap contained in the 2012 .com Registry Agreement, which will remain in effect through November 30, 2018. Nor does the current extension proposal alter the price cap in Amendment 32 of the Cooperative Agreement. Moreover, if NTIA were to approve an extension of the .com Registry Agreement, it would have the right in its sole discretion to extend the term of the Cooperative Agreement with the current price cap in place until 2024 at any time prior to November 30, 2018, the date on which the Cooperative Agreement is currently scheduled to expire. If this occurs, the \$7.85 fee cap would be extended another six years to 2024.

The Division has worked closely with NTIA on matters related to competition in the domain name space for many years. Consistent with past practices, we would expect that NTIA would continue to seek the advice of the Division on any competition issue implicated by any decision to extend the .com Registry Agreement or the Cooperative Agreement. Because of the Internet's critical role in the U.S. economy and in enabling competition, the Department has been and will continue to be vigilant in monitoring competition issues implicated by its operation and governance.

The Honorable Ted Cruz
Page Three

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter J. Kadzik for". The signature is fluid and cursive, with a small "for" written at the end.

Peter J. Kadzik
Assistant Attorney General

cc: The Honorable Christopher Coons
Ranking Member

Lawrence E. Strickling
Assistant Secretary for Communications and Information
Department of Commerce



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 2016

The Honorable Mike Lee
Chairman
Subcommittee on Antitrust, Competition
Policy and Consumer Rights
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to the Acting Assistant Attorney General for the Antitrust Division dated August 12, 2016, regarding a proposed agreement between the Internet Corporation for Assigned Names and Numbers (ICANN) and Verisign, Inc. The Department of Justice (the Department) appreciates having the benefit of your perspective. We are sending an identical response to the other Members who joined in your letter.

The Department's Antitrust Division (the Division) has worked with the Department of Commerce's National Telecommunications and Information Administration (NTIA) on competition issues relating to ongoing privatization and operation of the Domain Name System (DNS), including questions arising from the operations of the .com registry, and NTIA's efforts to transition the stewardship of the Internet Assigned Numbers Authority (IANA) functions to the global multi-stakeholder community. In 2012, at the time of the last renegotiation of the .com Registry Agreement between ICANN and Verisign, the Department thoroughly reviewed the proposal and consulted with NTIA before NTIA approved it. NTIA approved the agreement after Verisign agreed to forego the ability to increase the price of .com domains, which it would have had under the version of the .com Registry Agreement that was submitted for NTIA's approval, and to cap its price at \$7.85, the then-existing price for .com domains. At the same time, NTIA and Verisign also entered into Amendment 32 of the Cooperative Agreement, which independently specifies the \$7.85 cap on .com domain prices. While Verisign does have the ability to request cost-based price increases, under Amendment 32, such increases must be approved by NTIA, which may consult with the Division in its review. With the amended pricing provisions, NTIA approved the .com Registry Agreement renewal in 2012 as in the public interest.

As referenced in your letter, ICANN and Verisign are contemplating an early extension of this agreement, currently set to expire in November 2018, to November 2024. With the extension, the term of the .com Registry Agreement would coincide with the term of the Root


Zone Maintainer Services Agreement, pursuant to which Verisign will provide various root zone management services directly to ICANN after the IANA transition. Verisign and ICANN agreed to link the terms of the two agreements because portions of the root zone infrastructure are inextricably intertwined with Verisign's .com infrastructure. ICANN posted the proposed extension for public comment on its website on June 30, 2016; the public-comment period has ended, and the ICANN staff report is due on September 15, 2016. See *Public Comment on Proposed Amendment to .COM Registry Agreement* (last viewed Aug. 26, 2016), available at <https://www.icann.org/public-comments/com-amendment-2016-06-30-en>. ICANN's and Verisign's boards of directors will then consider the proposed extension. After they have acted, Verisign will submit any extension that emerges from this process for NTIA's approval.

As you may know, Verisign may not extend the .com Registry Agreement without obtaining NTIA's prior written approval. Amendment 30 of the Cooperative Agreement requires such prior approval and provides the standard for NTIA's review. In pertinent part, Amendment 30 provides: "[t]he Department [of Commerce] shall provide such written approval if it concludes that approval will serve the public interest in (a) the continued security and stability of the Internet domain name system and the operation of the .com registry. . . , and (b) the provision of Registry Services . . . offered at reasonable prices, terms, and conditions." We note that the current extension proposal contemplated by ICANN and Verisign does not change the price cap contained in the 2012 .com Registry Agreement, which will remain in effect through November 30, 2018. Nor does the current extension proposal alter the price cap in Amendment 32 of the Cooperative Agreement. Moreover, if NTIA were to approve an extension of the .com Registry Agreement, it would have the right in its sole discretion to extend the term of the Cooperative Agreement with the current price cap in place until 2024 at any time prior to November 30, 2018, the date on which the Cooperative Agreement is currently scheduled to expire. If this occurs, the \$7.85 fee cap would be extended another six years to 2024.

The Division has worked closely with NTIA on matters related to competition in the domain name space for many years. Consistent with past practices, we would expect that NTIA would continue to seek the advice of the Division on any competition issue implicated by any decision to extend the .com Registry Agreement or the Cooperative Agreement. Because of the Internet's critical role in the U.S. economy and in enabling competition, the Department has been and will continue to be vigilant in monitoring competition issues implicated by its operation and governance.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Peter J. Kadzik
Assistant Attorney General

cc: The Honorable Amy Klobuchar
Ranking Member

Lawrence E. Strickling
Assistant Secretary for Communications and Information
Department of Commerce



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 31, 2016

The Honorable Sean P. Duffy
Chairman
Subcommittee on Oversight and Investigations
Financial Services Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter to the Acting Assistant Attorney General for the Antitrust Division dated August 12, 2016, regarding a proposed agreement between the Internet Corporation for Assigned Names and Numbers (ICANN) and Verisign, Inc. The Department of Justice (the Department) appreciates having the benefit of your perspective. We are sending an identical response to the other Members who joined in your letter.

The Department's Antitrust Division (the Division) has worked with the Department of Commerce's National Telecommunications and Information Administration (NTIA) on competition issues relating to ongoing privatization and operation of the Domain Name System (DNS), including questions arising from the operations of the .com registry, and NTIA's efforts to transition the stewardship of the Internet Assigned Numbers Authority (IANA) functions to the global multi-stakeholder community. In 2012, at the time of the last renegotiation of the .com Registry Agreement between ICANN and Verisign, the Department thoroughly reviewed the proposal and consulted with NTIA before NTIA approved it. NTIA approved the agreement after Verisign agreed to forego the ability to increase the price of .com domains, which it would have had under the version of the .com Registry Agreement that was submitted for NTIA's approval, and to cap its price at \$7.85, the then-existing price for .com domains. At the same time, NTIA and Verisign also entered into Amendment 32 of the Cooperative Agreement, which independently specifies the \$7.85 cap on .com domain prices. While Verisign does have the ability to request cost-based price increases, under Amendment 32, such increases must be approved by NTIA, which may consult with the Division in its review. With the amended pricing provisions, NTIA approved the .com Registry Agreement renewal in 2012 as in the public interest.

As referenced in your letter, ICANN and Verisign are contemplating an early extension of this agreement, currently set to expire in November 2018, to November 2024. With the extension, the term of the .com Registry Agreement would coincide with the term of the Root

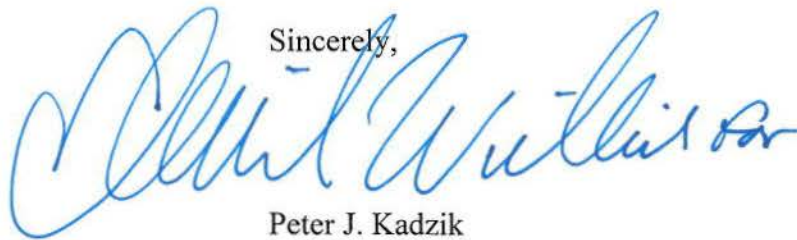
Zone Maintainer Services Agreement, pursuant to which Verisign will provide various root zone management services directly to ICANN after the IANA transition. Verisign and ICANN agreed to link the terms of the two agreements because portions of the root zone infrastructure are inextricably intertwined with Verisign's .com infrastructure. ICANN posted the proposed extension for public comment on its website on June 30, 2016; the public-comment period has ended, and the ICANN staff report is due on September 15, 2016. *See Public Comment on Proposed Amendment to .COM Registry Agreement* (last viewed Aug. 26, 2016), available at <https://www.icann.org/public-comments/com-amendment-2016-06-30-en>. ICANN's and Verisign's boards of directors will then consider the proposed extension. After they have acted, Verisign will submit any extension that emerges from this process for NTIA's approval.

As you may know, Verisign may not extend the .com Registry Agreement without obtaining NTIA's prior written approval. Amendment 30 of the Cooperative Agreement requires such prior approval and provides the standard for NTIA's review. In pertinent part, Amendment 30 provides: "[t]he Department [of Commerce] shall provide such written approval if it concludes that approval will serve the public interest in (a) the continued security and stability of the Internet domain name system and the operation of the .com registry. . . , and (b) the provision of Registry Services . . . offered at reasonable prices, terms, and conditions." We note that the current extension proposal contemplated by ICANN and Verisign does not change the price cap contained in the 2012 .com Registry Agreement, which will remain in effect through November 30, 2018. Nor does the current extension proposal alter the price cap in Amendment 32 of the Cooperative Agreement. Moreover, if NTIA were to approve an extension of the .com Registry Agreement, it would have the right in its sole discretion to extend the term of the Cooperative Agreement with the current price cap in place until 2024 at any time prior to November 30, 2018, the date on which the Cooperative Agreement is currently scheduled to expire. If this occurs, the \$7.85 fee cap would be extended another six years to 2024.

The Division has worked closely with NTIA on matters related to competition in the domain name space for many years. Consistent with past practices, we would expect that NTIA would continue to seek the advice of the Division on any competition issue implicated by any decision to extend the .com Registry Agreement or the Cooperative Agreement. Because of the Internet's critical role in the U.S. economy and in enabling competition, the Department has been and will continue to be vigilant in monitoring competition issues implicated by its operation and governance.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter J. Kadzik". The signature is fluid and cursive, with a large initial "P" and "K".

Peter J. Kadzik
Assistant Attorney General

cc: The Honorable Al Green
Ranking Member

Lawrence E. Strickling
Assistant Secretary for Communications and Information
Department of Commerce