STANDARDS (INTERNET NAMES): THE NSI CASE

Subject: Standards

Industry: Internet names, domain names

Parties: Network Solutions Inc

Source: Commission Statement IP/99/596, dated 29 July 1999

(Note. Some degree of standardisation in the Internet field, and particularly in the naming of Internet web-sites, is highly desirable; otherwise, the rapid growth of the Internet could be at best chaotic and at worst stultified. Where there is commercial standardisation, anti-trust authorities are rightly suspicious of the possible consequences for salutary commercial competition; and the Commission may be right to investigate the arrangements at present in being, as long as this is something more than an attempt by European interests to exploit the progress made largely by United States efforts so far. We hope that the Commission will curb its competitive zeal if there is any risk that it will jeopardise genuinely useful standards.)

Commission's informal inquiry

The Commission is looking into the licensing agreements between Network Solutions Inc (NSI) and test bed registrars of second-level Internet domain names in the .com, .org and .net domains. These licensing agreements are set to be temporary and to be amended and approved by the United States Department of Commerce before the end of the test bed period, which had been postponed until 16 July 1999, instead of 25 June 1999. This new anti-trust inquiry is part of an overall monitoring of on-going developments in the management of generic Top-Level Domain Names such as .com and of the Commission's efforts to guarantee the openness of the Internet. The Commission wants to ascertain whether the licensing agreements fall within the scope of Article 81(1) (formerly Article 85(1)) of the EC Treaty and of Article 53 of the European Economic Area (EEA) Agreement, which prohibit agreements restrictive of competition. Certain provisions in the agreements or related actions taken by NSI may also constitute an abuse of NSI's dominant position under Article 82 (formerly Article 85 (1)) of the EC Treaty and Article 54 of the EEA Agreement.

The Commission's Directorate-General for Competition (DG IV) has informed the US Department of Justice (US DoJ) and the US Department of Commerce (US DoC) that it has opened a procedure, expressing a number of concerns and raising questions related to the licensing agreements as well as to some recent

related developments in the Internet field. DG IV hopes that raising such questions and concerns regarding the current standard NSI-Registrar Licensing Agreement will help the US DoC in its negotiations with NSI regarding its review. The Commission has written to the Office of International Affairs within the National Telecommunications & Information Administration of the US DoC stating its awareness of the US DoC joint efforts together with ICANN (Internet Corporation for Assigned Names and Numbers) to create a competitive environment for the registration of second-level domain names in the generic Top-Level Domains and its full support of such efforts. In particular, the Commission expressed concerns related to:
- the lack of safeguards to prevent NSI registry from discriminating against competing registrars in favour of NSI registrar;
- the fact that NSI as a registrar is not subject to the conditions and obligations set out in ICANN accreditation agreements and NSI-Registrar Licensing agreements, as NSI has not been accredited by ICANN as a registrar.
However, the Commission believes that NSI should be required to obtain accreditation from ICANN and be subject at least to the same obligations as competing registrars who observe those accreditation rules. Certain requirements to enter the market, such as a performance bond of $100,000, could constitute barriers to market entry; and the domain names portability rules and NSI's related policy could act as strong deterrents for second-level domain name holders to transfer their domain name to another competing registrar.

The Commission decided to open an informal inquiry after receiving a number of informal complaints against the licensing agreements itself, against problems in the implementation of the agreements and against alleged abuses of a dominant position by NSI and will investigate these allegations in close co-operation with the US DoJ while continuing to monitor NSI's operations with a view to ensuring that European Community competition rules are respected.

Background

The Internet Domain Name System provides user-friendly names for the numbers which are difficult to remember identifying computers connected to the Internet. For commercial organisations on the Internet, the .com generic Top Level Domain (gTLD) is the most important and most widely used, in comparison with country code Top Level Domains (ccTLD) such as .be or .fr, and is increasingly valued while e-commerce is taking off. Until beginning of October 98, the gTLDs system was operated by the Internet Assigned Numbers Authority (IANA) and Network Solutions Inc (NSI), the latter under contract from the United States Government (the NSI-USG co-operative agreement), acting as a monopolistic registry and registrar of .com, .net and .org world-wide. The registry functions consist of the operation (such as administration, maintenance and up-dating) of the database into which registrants' details as well as the second-level domain details are registered. The registrar function consists of the registration in that database and allocation of second-level domain names

to registrants, as well as all related marketing, billing and other related activities.

As provided for in the US Government's White Paper, a private non-profit-making corporation called ICANN (Internet Corporation for Assigned Names and Numbers) was incorporated in the United States on 1 October 1998 to administer policy for the Internet Name and Address System and succeed to IANA in that role. The NSI-USG co-operative agreement expired at the end of September 1998, and was renewed with amendments on 7 October 1998, for a period running until 30 September 2000, by Amendment 11, which set out a first timetable for a step by step liberalisation of the registration system for gTLDs. The timetable by which the gradual liberalisation was to be implemented was amended twice, first through Amendment 12 on 12 March 1999, and further on 25 June 1999 by the US DoC. Thereafter, NSI was by 26 April 1999 to establish a test bed supporting actual registrations in .com, .net, and .org with 5 registrars to be accredited by ICANN ("Test bed Registrars") (Phase 1) by that date in accordance with ICANN's published accreditation guidelines. Phase 2 with an unlimited number of competing registrars to be accredited by ICANN (Accredited Registrars) was due to start on 16 July 1999.

That liberalisation is to be implemented in accordance with a system called the Shared Registration System ("SRS"). To implement this system and allow for competing registrars, NSI was (directly or indirectly) to develop a protocol and associated software supporting a system that permits multiple registrars to provide registration services for the registry of the existing gTLDs. The licensing by NSI to registrars of the protocol and software is the purpose of the NSI-registrar standard licensing agreement published on 21 April 1999 by the US Department of Commerce (US DoC) as an annex to Amendment 13 to the NSI-USG co-operative agreement.

On the basis of that standard Licensing agreement, NSI has entered into agreements with the five test bed registrars selected and accredited by ICANN. These licensing agreements are aimed at enabling the latter to register second-level domain names within the registry of Top-Level Domain Names managed by NSI such as .com, .org and .net. Thereby NSI licences to those companies the necessary software, application programming interfaces and protocols enabling these companies to access the NSI Shared Registry System.

The Commission has identified a certain number of clauses in that standard NSI-Registrar licensing agreement which may raise anti-competitive concerns. Under Amendment 13 to the NSI-US Government Co-operative Agreement of 21 April 1999, this standard agreement is intended for use only during the test-bed period (Phase I). Apart from the five test bed registrars, ICANN has so far approved fifty-two other companies to be accredited as registrars. These companies include a number of EEA based companies. By 9 July 1999, only two of the five test bed Registrars had started offering registration services. □