

Why Presumption of Renewal is Unsuitable for the Current Registry Market Structure

With the recent renewal of the .net legacy Top-Level-Domain (TLD), the question of the appropriate method of renewal is worth reconsidering. When we talk about presumption of renewal for registry agreements, it means that the agreement has a reasonable renewal expectancy at the end of its contractual term. According to the current base registry agreement, it shall be renewed for 10-year periods, upon expiry of the initial (and successive) term, unless the operator commits a fundamental and material breach of the operator's covenants or breach of its payment obligations to ICANN.¹

While many have objected to presumption of renewal for registry agreements, in order to understand why it shouldn't be the standard for the registry sector, I will proceed as follows:

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¹Art. 4.2, Registry Agreement <https://newgtlds.icann.org/sites/default/files/agreements/agreement-approved-09jan14-en.htm>

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1.A brief look at relevant history - the .com and .net renewals

While the .com renewal in 2005 brought up the issue of presumption of renewal briefly, to facilitate a more nuanced discussion, the Policy Development Process (PDP) for Policies for Contractual Conditions - Existing Registries was held immediately after the .com renewal (2006). Here, it will be useful to look at the concerns expressed during the .com renewal and the arguments made in the PDP.

1.1.Concerns expressed during the .com agreement

During the renewal of the .com agreement in 2005, some concerns were expressed about competition aspects and registry prices, in context of presumption of renewal. Issues raised included the lack of a substantial review process before future renewals and the ability to raise fees even in the absence of effective competition.² Some called for the deletion of the clause pertaining to presumption of renewal in the .com registry agreement, while others demanded a PDP on renewal expectancy and price caps to discuss the issue better.³

² GNSO Public Forum, ICANN meetings in Vancouver, Canada, 2005. <https://dot.berlin/files/captioning-gnso-forum-vancouver-2005.pdf>

³ GNSO Public Forum, ICANN meetings in Vancouver, Canada, 2005. <https://dot.berlin/files/captioning-gnso-forum-vancouver-2005.pdf>

1.2.Arguments for presumption of renewal made during the PDP

The NCUC (Non-Commercial Users Constituency) argued that presumption of renewal was necessary to incentivise registry operators to invest in domain names and associated infrastructure.⁴ The NCUC and the RyC⁵ (Registries Constituency) suggested that there should be no re-bid unless the operator had a history of repeated material breaches.⁶

It was argued that there would be no long-term value creation without continuity and stability of these agreements. Operators would not be able to reap the future benefits of the value, identity or community they built.⁷ Reasonable renewal expectancy, in the absence of a significant problem in performance of the contract, was in public interest; otherwise, investors' confidence would be negatively affected by the inability to recover costs.

1.3.Opposition to presumption of renewal during the PDP

Presumption of renewal was opposed strongly by some as anti-competitive.⁸ Competitive processes were viewed as beneficial; they could help improve pricing provisions, promote contributions to registry infrastructure and encourage high performance.⁹ It was argued that the lack of presumption of renewal wouldn't disincentivise operators; it would in fact do the opposite. Registry operators would be encouraged to provide high quality service during the duration of their initial contract, in order to be in a good position to win the contract again in an

⁴ 64, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gns0.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

⁵ 32, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gns0.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

⁶ Note: This resembles the current stance on renewal.

⁷ 64, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gns0.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

⁸ RC - 63, ISPCP - 65, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gns0.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

⁹ CBUC - 65, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gns0.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

auction.¹⁰ A reasonably long contractual term of around 10 years could work as an incentive, as it would allow the registry to recover costs and make a profit.¹¹

While competition risks may be minimal or non-existent with new entrants, it was acknowledged that competition concerns could arise over a medium-long term.¹² A competition review by an expert panel before the end of the contractual term could serve in situations where risks were minimal.¹³

While the PDP saw comparison of renewal standards for registry operators with those for mobile operators (among other service industries), it was pointed out that the registry sector was not nearly as capital intensive and that this comparison couldn't possibly justify presumption of renewal here.¹⁴ Further, in most service industries, at the end of any contractual term there was a presumption of competition and not of renewal.¹⁵

2. Best practices in spectrum licence renewal

¹⁰ 65, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gnso.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

¹¹ 69, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gnso.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

¹² 69, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gnso.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

¹³ 29, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gnso.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

¹⁴ 65, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gnso.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

¹⁵ 65, Council Report to the Board: Policies for Contractual Conditions - Existing Registries PDP Feb 06, 4 October 2007. <https://gnso.icann.org/en/issues/gtld-policies/council-report-to-board-PDP-feb-06-04oct07.pdf>

The reference to the telecommunications sector in the PDP warrants a look at its best practices for spectrum licence renewal.¹⁶

2.1.A case for presumption of renewal

As the telecommunications sector is capital intensive, longer terms are necessary to ensure investors' confidence and recover costs.¹⁷ On the basis of expected payback period, a minimum period of 20 years has been set by many countries as the contractual term, as it provides sufficient certainty,¹⁸ predictability and confidence for long term investments in new technology, services and networks. So, in most cases, there is reasonable renewal expectancy at the end of the initial term, and probably subsequent terms as well, unless there is a material or persistent breach.¹⁹ Often, the reason for adoption of a reasonable renewal expectancy or presumption of renewal, over an automatic or tacit renewal process, is that the latter guarantees some level of regulatory discretion to the regulator to review the operator's performance, the licensing policy, and terms and conditions of the agreement, among other things.²⁰

Presumption of renewal is strongly argued for a situation where - (i) the spectrum is likely in its highest value use, (ii) effective market competition exists, (iii) large ongoing investment is

¹⁶ *Note:* While the telecommunications sector was apparently one of the many service industries that were looked at, we will only focus on this sector here. This is because the main argument for renewal expectancy has been that the registry sector is capital intensive (much like the telecom sector).

¹⁷ 7, Best Practice in Spectrum Licence Renewals, GSMA. <https://www.gsma.com/spectrum/wp-content/uploads/2015/01/Best-Practice-in-Spectrum-Licence-Renewals.-Jan2015.pdf>

¹⁸ 25, Best Practice in Spectrum Licence Renewals, GSMA. <https://www.gsma.com/spectrum/wp-content/uploads/2015/01/Best-Practice-in-Spectrum-Licence-Renewals.-Jan2015.pdf>

¹⁹ 9, Mobile Licence Renewal - What are the Issues? What is at Stake? By Boutheina Guermazi and Isabel Neto, Global Information and Communication Technologies Department, The World Bank, June 2005.

http://webcache.googleusercontent.com/search?q=cache:ZkVqM_-76CEJ:www.ictregulationtoolkit.org/action/document/download%3Fdocument_id%3D1219+&cd=1&hl=en&ct=clnk&gl=in; http://library1.nida.ac.th/worldbankf/fulltext/wps03729.pdf; https://www.itu.int/en/ITU-D/Regional-Presence/ArabStates/Documents/events/2016/CT/Final%20Documents/Session9/Spectrum%20and%20licensing.pdf

²⁰ 6, Mobile Licence Renewal - What are the Issues? What is at Stake? By Boutheina Guermazi and Isabel Neto, Global Information and Communication Technologies Department, The World Bank, June 2005.

http://webcache.googleusercontent.com/search?q=cache:ZkVqM_-76CEJ:www.ictregulationtoolkit.org/action/document/download%3Fdocument_id%3D1219+&cd=1&hl=en&ct=clnk&gl=in; http://library1.nida.ac.th/worldbankf/fulltext/wps03729.pdf

required, and (iv) removal of spectrum would result in costly disruption and/or harm of service quality.²¹

2.2. Conditions for re-assigning/re-auctioning licences

However, the licence may be re-assigned or re-auctioned when there is: (i) change in planned use of spectrum, (ii) poor use of spectrum, (iii) breach of material licence conditions or (iv) lack of effective competition. The upcoming expiry of a licence provides an opportunity to review the market, analyse the operator's market power, and conclude whether any measures are required to promote competition.²² By not renewing spectrum licences, but re-assigning them, regulators can thus help promote competition in a situation of ineffective competition.²³

While the arguments for presumption of renewal for spectrum licences and registry agreements are almost the same, it is important to understand why presumption of renewal shouldn't be the standard for registry agreements. This is because the two sectors are significantly different in nature, as explained below.

3. Differences between registry and mobile operators

To understand whether the registry and telecommunications sector can be compared while setting renewal standards, we have looked at the infrastructure costs and profit levels of some market leaders in both sectors.²⁴

3.1. Value of infrastructure

²¹ 16, Best Practice in Spectrum Licence Renewals, GSMA. <https://www.gsma.com/spectrum/wp-content/uploads/2015/01/Best-Practice-in-Spectrum-Licence-Renewals.-Jan2015.pdf>

²² 26, Best Practice in Spectrum Licence Renewals, GSMA. <https://www.gsma.com/spectrum/wp-content/uploads/2015/01/Best-Practice-in-Spectrum-Licence-Renewals.-Jan2015.pdf>

²³ 15, Best Practice in Spectrum Licence Renewals, GSMA. <https://www.gsma.com/spectrum/wp-content/uploads/2015/01/Best-Practice-in-Spectrum-Licence-Renewals.-Jan2015.pdf>

²⁴ *Note:* This comparison is not meant to be comprehensive; it is representative, and based on reports of some of the industries' leaders. These companies are market leaders in the services they provide, which can be seen by their revenues as well as their market shares.

Let's first compare the value of sector-specific infrastructure and equipment.

3.1.1. Telecommunications Sector:

- For the year ending 31 December 2015, China Mobile's net book value of infrastructure was 485,239 million RMB (485.2 billion RMB).²⁵
- For the year ending 30 June 2016, Telstra Group's communication assets were worth \$19,429 million (\$19.4 billion).²⁶
- For the year ending 31 December 2016, Deutsch Telekom's technical equipment and machinery was valued at €33,378 million (€33.3 billion).²⁷
- For the year ending 31 December, 2016, BCE Canada's network infrastructure and equipment was worth \$18,447 million (\$18.4 billion).²⁸

3.1.2. Registry Sector:

- For the year ending 2015, Verisign's computer and equipment software was valued at \$432,463,000 (\$432.4 million).²⁹
- For the year ending 2015, CentralNIC PLC's net computer equipment was £59,000 pounds.³⁰
- For the year ending 2016, Minds + Machines Group Ltd.'s fixtures and equipment was valued at \$89,000.³¹

²⁵ Infrastructure value of telecommunications transceivers, switching centers, transmission and other network equipment. 105, China Mobile Limited Annual Report 2015.

<http://www.chinamobileltd.com/en/ir/reports/ar2015.pdf>

²⁶ Net book value. 96, Telstra Annual Report 2016. <https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf-e/FY16-Annual-Report.pdf>

²⁷ Net carrying amount. 162, Deutsche Telekom, The 2016 Financial Year.

http://www.annualreport.telekom.com/site0317/fileadmin/16_AR/PDF_EN/telekom_ar16_complete.pdf

²⁸ Net carrying amount. 135, BCE Inc. 2016 Annual Report. <http://www.bce.ca/investors/AR-2016/2016-bce-annual-report.pdf>

²⁹ 63, Verisign Annual Report 2015.

http://files.shareholder.com/downloads/VRSN/0x0x888971/B00F5486-D2F5-4C7B-89E3-4F380BC4DA6F/Verisign-2015_Annual_Report_2016_Proxy.pdf

³⁰ 50, CentralNic Group PLC Annual Report 2015. <https://www.centralnic.com/downloads/annual-report-2015.pdf>

³¹ 47, MMX.Co Annual Report 2016. http://mmx.co/wp-content/uploads/2017/06/MMX-Annual-Report-2016_08-June.pdf

We can see that telecom infrastructure is worth much, much more than registry infrastructure. As estimating the costs of these investments is difficult, the difference in value estimation between the two sectors can act as an indicator of the relative levels of infrastructure costs and investment. This means that investment by registry operators is on a much smaller scale than that by mobile operators.

3.2. Annual profits

Here, we have compared the profits of similar market leaders in both sectors.³²

3.2.1. Telecommunications sector:

- For the year ending 2015, China Mobile's profit was 108.7 billion RMB.³³
- For the year ending 30 June 2016, Telstra Group's profit was AUD 5.8 billion.³⁴
- For the year ending 31 December 2016, Deutsch Telekom's profit was €2.7 billion.³⁵

3.2.2. Registry Sector:

- For the year ending 2015, Verisign's profit was \$375.2 million.³⁶
- For the year ending 2015, CentralNic PLC's profit was £0.91 million.³⁷
- For the year ending 2015, Minds + Machines Group Ltd.'s profit was \$1.03 million.³⁸

³² *Note:* While different companies may use slightly different accounting practices, we have compared equivalents. However, even if the figures cannot be compared exactly, the broad ranges of the figures inform us about the stark difference in operating levels between the two sectors.

³³ 108,655 million RMB. 74, China Mobile Limited Annual Report 2015.

<http://www.chinamobileltd.com/en/ir/reports/ar2015.pdf>

³⁴ Profit for the year from continuing and discontinued operations - Net profit after tax. 4, Telstra Annual Report 2016. <https://www.telstra.com.au/content/dam/tcom/about-us/investors/pdf-e/FY16-Annual-Report.pdf>

³⁵ Net profit. 20, Deutsche Telekom, The 2016 Financial Year.

http://www.annualreport.telekom.com/site0317/fileadmin/16_AR/PDF_EN/telekom_ar16_complete.pdf

³⁶ Net income. 52, Verisign Annual Report 2015.

[http://files.shareholder.com/downloads/VRSN/0x0x888971/B00F5486-D2F5-4C7B-89E3-4F380BC4DA6F/Verisign-2015 Annual Report 2016 Proxy.pdf](http://files.shareholder.com/downloads/VRSN/0x0x888971/B00F5486-D2F5-4C7B-89E3-4F380BC4DA6F/Verisign-2015%20Annual%20Report%202016%20Proxy.pdf)

³⁷ 17, CentralNic Group PLC Annual Report 2015. <https://www.centralnic.com/downloads/annual-report-2015.pdf>

³⁸ \$1,032,000. 18, MMX.Co Annual Report 2016. http://mmx.co/wp-content/uploads/2017/06/MMX-Annual-Report-2016_08-June.pdf

Again, the range of profits in the telecom sector is much higher than that of the registry sector. We can also see that Verisign's equipment value and annual profit far exceed those of the other two registries. While these two indices may not be sufficient to show market dominance, they are extremely important when analysing the extent of Verisign's market dominance. The next section will help in a better understanding of Verisign's market power.

4.Lack of effective competition in the market

Even if we assume that operators in the two sectors incur similar infrastructure costs and undertake similar risks in terms of technology change, the huge imbalance in market power in the registry market would require ICANN to promote competition by employing strong measures.

4.1.Verisign's market dominance

Though Verisign lost the right to operate .org in 2002, it got extensions for .com and .net in return.³⁹ Since then, it has managed to hold on to both these highly profitable legacy TLDs, without any threat of competition. While the presence of 1226 TLDs and 538 registry operators in the market today may make one dream about effective competition, Verisign's Domain Industry Brief for 2016 reminds us of its market power and the success of both .com and .net.

- While Q4 saw 329.3 million domain names registered globally, Verisign's .com and .net accounted for 142.2 million registrations or 43.2% of global registrations (an increase of 2.4 million from 2015).⁴⁰

³⁹ <https://www.icann.org/news/icann-pr-2001-05-25-en>; <http://www.company-histories.com/VeriSign-Inc-Company-History.html>; https://www.theregister.co.uk/2001/03/01/verisign_loses_control_of_org/; https://www.theregister.co.uk/2001/03/02/fury_at_icann_verisign_over/

⁴⁰ https://www.verisign.com/en_IN/domain-names/dnib/index.xhtml#executive-summary

- With record growth and numbers, Verisign's .com saw 126.9 million registrations in Q4 (the highest for 2016), leading by a huge margin of more than 100 million.⁴¹
- .cn (ccTLD for People's Republic of China) was next with 21.1 million registrations and Verisign's .net was 5th with 15.3 million registrations.⁴²

In context of its evident market dominance, its Root Zone Management Agreement with ICANN⁴³ and the lack of competitive process in the extension/renewal of the .com and .net agreements, it is perfectly reasonable that the community is extremely concerned about the nature of Verisign's relationship with ICANN, and the competition issues at hand.

4.2.ICANN's commitment to competition

4.2.1.Under its Bylaws:

- ICANN's Core Values require it to (i) promote and sustain a competitive environment where feasible and appropriate, with the help of market mechanisms,⁴⁴ and (ii) introduce and promote competition in the registration of domain names where practicable and beneficial in public interest.⁴⁵

- According to its Bylaws, ICANN shall not single out a party for disparate treatment, unless justified by substantial and reasonable cause, such as the promotion of effective competition.⁴⁶

4.2.2.ICANN and the US Government:

⁴¹ https://www.verisign.com/en_IN/domain-names/dnib/index.xhtml#executive-summary

⁴² https://www.verisign.com/en_IN/domain-names/dnib/index.xhtml#executive-summary

⁴³ <https://www.icann.org/en/stewardship-implementation/root-zone-maintainer-agreement-rzma>;
<http://www.internetgovernance.org/2016/07/01/inextricably-intertwined-the-icann-verisign-root-zone-management-agreement/>; <https://www.icann.org/en/stewardship-implementation/root-zone-maintainer-agreement-rzma>

⁴⁴ Section 2.5, Article I: Core Values, ICANN Bylaws. <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>

⁴⁵ Section 2.6, Article I: Core Values, ICANN Bylaws. <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>

⁴⁶ Section 3, Article II : Powers, ICANN Bylaws <https://www.icann.org/resources/pages/bylaws-2012-02-25-en>

- Under the Affirmation of Commitments that ICANN entered into with the US Department of Commerce, it is required to promote competition, consumer trust and consumer choice in the DNS marketplace.⁴⁷

- A letter from the Antitrust Division of the Department of Commerce also advised ICANN to look into competition concerns, possible competitive harms caused by its own decisions, and the market power of gTLDs, instead of leaving it to competition agencies.⁴⁸

It is clear that by ignoring Verisign's market dominance, ICANN is violating its Core Values and commitments. It has to recognise that by not opening the renewal of legacy TLDs (such as .com and .net) to competitive processes, it has protected Verisign from any competition, and allowed the latter's profitability to rise along with its market share.

5. Consequences of lack of competitive renewal process

Given away for free, legacy TLDs are merely lucky historical accidents for the registries that operate them.⁴⁹ If presumption of renewal is the standard for these legacy TLDs, market giants such as Verisign will never see any competitive process for their main sources of revenue - .com and .net. These will be always be much more advantageous to operate than new gTLDs, due to users' familiarity with them. With many other viable players in the market, there is no risk of these 'original' TLDs not being bought in an auction, especially with the ever-increasing awareness of (and trust in) legacy TLDs.⁵⁰ As we can see, the current market structure works in favour of one market giant, which will continue to operate the most popular TLDs - not because it is a more suitable or efficient operator than others, but because it has always done so.

⁴⁷ 3rd para; 9.3, Affirmation of Commitments <https://www.icann.org/resources/pages/affirmation-of-commitments-2009-09-30-en>

⁴⁸ Letter from the United States Department of Commerce to ICANN.

<https://www.icann.org/en/system/files/files/strickling-to-dengate-thrush-16jun11-en.pdf>

⁴⁹ <https://cis-india.org/internet-governance/blog/comments-from-the-centre-for-internet-and-society-on-renewal-of-net-registry-agreement>

⁵⁰ <https://www.icann.org/news/announcement-2-2016-06-23-en>; <https://www.eurodns.com/blog/icann-survey-awareness-of-gtlds>

The lack of competitive processes for legacy TLDs has affected the trust that registries and the community have in ICANN's functioning. Some registries have expressed concerns regarding Verisign's market dominance as well as its intimate relationship with ICANN.⁵¹ Many community members view the entire .net renewal process as anti-competitive and against public interest.⁵²

The absence of competitive pressure can also have a negative effect on other aspects of the registry agreement, as expressed by many community members. Concerns regarding two aspects - anti-abuse and pricing provisions (extremely important for end-consumer benefit), have been mentioned below.

5.1. Anti-abuse provisions

During the proposed extension of the .com agreement,⁵³ there were concerns that the agreement did not have as many anti-abuse provisions as many other smaller registry agreements, and that it didn't propel Verisign to protect public interest.⁵⁴ It was also suggested that the agreement should incorporate contemporary anti-abuse standards in order to tackle the high number of abuse registrations.⁵⁵ Some other concerns regarding the agreement were that no substantial changes were made to its pricing provisions and rights protection mechanisms.⁵⁶

⁵¹ <https://afiliias.info/blogs/web-icanns-first-test-accountability>; 7, Plaintiff Ruby Glen, LLC's Opposition to Defendant ICANN's Motion to Dismiss First Amended Complaint. <https://www.icann.org/en/system/files/files/litigation-ruby-glen-opposition-motion-dismiss-first-amended-complaint-07nov16-en.pdf>

⁵² 3; 4; 6; 7; 8; 9, Report of Public Comment Proceeding. <https://www.icann.org/en/system/files/files/report-comments-net-renewal-13jun17-en.pdf>

⁵³ <https://www.icann.org/resources/pages/agreement-2012-12-05-en>

⁵⁴ Donuts' Comment on Proposed Amendment to .COM Registry Agreement. <https://forum.icann.org/lists/comments-com-amendment-30jun16/pdfatCdy2Lss.pdf>

⁵⁵ GNSO Intellectual Property Constituency, Comment on Proposed Extension of .com Registry Agreement. https://ipc.memberclicks.net/assets/ipc-position-papers/2016/2016_08august_12%20ipc%20comments%20.com%20agreement%20extension%208037230.pdf; 7; 8, Report of Public Comment Proceedings. <https://www.icann.org/en/system/files/files/report-comments-net-renewal-13jun17-en.pdf>

⁵⁶ <http://domainincite.com/11156-breaking-verisign-loses-right-to-increase-com-prices>

During the .net renewal, it was argued that, like many other legacy TLDs and new gTLDs, the .net agreement must also incorporate up-to-date features to help in detection, prevention and remediation of abuse registrations.⁵⁷

While both .com and .net have a high volume of abuse registrations,⁵⁸ it is true that these are relatively small percentages of their totals when compared to new TLDs with greater abuse percentages.⁵⁹ However, it should be remembered that these legacy TLDs have been around for very long and are managed by (arguably) the industry's leader. As high volume alone may not be indicative of insufficient anti-abuse standards in a registry agreement, it must be viewed in context of the concerns expressed above. Looking back, one can probably say that competitive pressure (such as an auction or a re-bid) may have helped modernise or improve anti-abuse provisions in the .com agreement.

5.1.Pricing provisions

In the public comment proceeding for the .net renewal,⁶⁰ many were of the opinion that .net should have been subject to a competitive process (such as a tender) to help lower user costs, reduce unjustified windfall profits, and reduce harms to consumers in the form of price increases.⁶¹ It was argued that there was no necessity or justification for the 10% annual increase in registry prices, especially in context of low registry operation costs and registrar prices, the .com monopoly (almost) and Verisign's profitability.⁶² It was necessary to keep accessibility and

⁵⁷ 7; 8, Report of Public Comment Proceeding. <https://www.icann.org/en/system/files/files/report-comments-net-renewal-13jun17-en.pdf>

⁵⁸ Abuse registrations - (1st) .com (377350) and (5th) .net (100425) - last updated 17 July 2017
<http://www.surbl.org/tld>

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http://www.circleid.com/posts/20160308_certain_new_gtlds_rapidly_outpacing_legacy_tlds_in_terms_of_abuse/; <http://www.knujon.com/knujon-icann-consumers-rygy-limbo-032016.pdf>

⁶⁰ 1, Report of Public Comment Proceeding. <https://www.icann.org/en/system/files/files/report-comments-net-renewal-13jun17-en.pdf>

⁶¹ 6, Report of Public Comment Proceeding. <https://www.icann.org/en/system/files/files/report-comments-net-renewal-13jun17-en.pdf>

⁶² 3; 4, Report of Public Comment Proceeding. <https://www.icann.org/en/system/files/files/report-comments-net-renewal-13jun17-en.pdf>

affordability of domain names in mind while deciding pricing provisions. CIS stated that without competitive pressure, there would be no pressure to lower user costs.⁶³

While there may be other options (other domains) for Verisign's users to switch to, when faced with increasing prices, one may say that there is no perfect substitute for the average user, given .com's popularity and the lack of equally advantageous alternatives. Verisign's profitability shows us that price increases are unnecessary at a time when registry costs are falling,⁶⁴ and that these hikes will benefit only the company, not the end-user.

6. Conclusion

As we have seen, renewal in the registry sector cannot be decided by comparing its costs and risks to the telecommunications sector. While it is useful to look at other service sectors to inform us about possible renewal practices, presumption of renewal cannot be the standard for legacy TLDs such as .com and .net, especially given Verisign's market dominance.

Many members of the community, including CIS, have objected to presumption of renewal at different points - during the .com extension, the PDP and the .net renewal. Yet, somehow, despite obvious competition concerns, ICANN has time and again allowed Verisign an advantage it shouldn't enjoy. Instead of fulfilling its commitment to promote competition, ICANN appears to be protecting Verisign from potential competition and helping secure its position as market leader, by allowing the irregular .web acquisition,⁶⁵ and the improper .com and .net renewals, among many instances of leniency.

⁶³ Note: CIS' contribution to the public comment on .net renewal can be found at <https://cis-india.org/internet-governance/blog/comments-from-the-centre-for-internet-and-society-on-renewal-of-net-registry-agreement>.

⁶⁴ https://www.theregister.co.uk/2016/07/01/verisign_retains_dotcom_cash_cow_until_2024/;

⁶⁵ <https://www.icann.org/resources/pages/ruby-glen-v-icann-2016-07-23-en>;
<http://domainnamewire.com/2017/02/09/u-s-antitrust-division-investigating-verisign-running-web/>;
https://www.theregister.co.uk/2017/02/10/doj_investigating_auction_of_dot_web/

