

June 26, 2024

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 205030

The Honorable Jonathan Kanter
Assistant Attorney General
Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 205030

Dear Attorney General Garland and Assistant Attorney General Kanter,

We write to urge you to rein in VeriSign Inc. and the Internet Corporation for Assigned Names and Numbers' (ICANN) government-designated monopoly over the .com domain. The Department of Justice ("DOJ) should do this by: 1) formally withdrawing the DOJ's 2018¹ letter to the National Telecommunications and Information Administration (NTIA) regarding VeriSign Inc. (VeriSign) and contract for the .com domain; and 2) examining the overall contract as a possible violation of the antitrust laws. With the VeriSign contract's notice of nonrenewal deadline of August 2nd fast approaching, and in light of NTIA's previous failures to challenge the VeriSign/ICANN cartel,² we are concerned NTIA may rely on erroneous, non-public guidance³ from the DOJ to refuse to restore price caps if it renews VeriSign's contract. VeriSign and ICANN function as a cartel with the approval of NTIA, and as such the DOJ must intervene to protect customers from the exploitation of the "incestuous legal triangle." We are concurrently urging NTIA to cut-off VeriSign's monopoly and open up domain management to competitive bidding.

¹ This letter is from former Assistant Attorney General for the DOJ Antitrust Division, Makan Delrahim

² Leah Nysten, "Why your website is about to get more expensive," Politico, April 9, 2022, <https://www.politico.com/news/2022/04/09/website-domain-more-expensive-00023524>.

³ Leah Nysten, "Why your website is about to get more expensive," Politico, April 9, 2022, <https://www.politico.com/news/2022/04/09/website-domain-more-expensive-00023524>.

NTIA has allowed VeriSign – along with ICANN – to abuse its monopoly by removing necessary price caps and by introducing automatic, no-bid contract renewals. VeriSign – a government-designated monopoly which runs the registration of the most popular top-level domain (TLD) “.com” – has used its market power to hike its price over 70 percent in the last two decades.⁴ The company shares its ill-gotten rent with ICANN to maintain its market power.

During the Trump Administration, NTIA asked the DOJ for its advice on “amending VeriSign’s agreement.” NTIA made this request just twenty days before the contract was set to expire, and then waited five more days before sending the DOJ a copy of the proposed amendment that was the subject of the requested advice.⁵ NTIA – after consulting with the DOJ – concluded that VeriSign could charge for domain registration, claiming that the use of social media had “created a more dynamic [domain name] marketplace” and that VeriSign needed “pricing flexibility.”⁶ This justification was wholly unfounded, as detailed in our attached letter to NTIA.⁷ The .com domain was then and today still remains the “gold standard” for websites, so the NTIA contract confers monopoly market power.⁸

While the DOJ’s correspondence with NTIA is not publicly available, NTIA was apparently satisfied that the DOJ’s response justified removing the longstanding price caps. NTIA adopted contractual terms that allowed VeriSign to potentially increase its prices “7 percent a year in four out of every six years” with no strings attached.⁹ NTIA also amended the contract to automatically renew every six years, allowing a no-bid contract to continue into perpetuity.¹⁰

Importantly, pre-Trump administrations imposed a price cap on the fees VeriSign was able to charge given that, according to the DOJ, the company “possesses significant market power.”¹¹

⁴ Andrew Allemann, “VeriSign announces .com price hike to \$10.26,” Domain Name Wire, February 8, 2024, <https://domainnamewire.com/2024/02/08/verisign-announces-com-price-hike-to-10-26/>; Leah Nysten, “Why your website is about to get more expensive,” Politico, April 9, 2022, <https://www.politico.com/news/2022/04/09/website-domain-more-expensive-00023524>.

⁵ Leah Nysten, “Why your website is about to get more expensive,” Politico, April 9, 2022, <https://www.politico.com/news/2022/04/09/website-domain-more-expensive-00023524>.

⁶ U.S. Securities and Exchange Commission, “Amendment to Financial Assistance Award,” October 26, 2018, <https://www.sec.gov/Archives/edgar/data/1014473/000101447318000042/exhibit101-amendment35.htm>.

⁷ See AELP letter to NTIA (June 27, 2024) (enclosed).

⁸ Namecheap, “Why .COM is the King of the Domain Names,” May 16, 2019, <https://www.namecheap.com/blog/kingcom-is-here/#:~:text=Instantly%20recognizable%2C%20the%20.com%20extension,domain%20shows%20you%20mean%20business>; Leah Nysten, “Why your website is about to get more expensive,” Politico, April 9, 2022, <https://www.politico.com/news/2022/04/09/website-domain-more-expensive-00023524>.

⁹ NTIA, “NTIA Statement on Amendment 35 to the Cooperative Agreement with VeriSign,” November 1, 2018, <https://www.ntia.gov/press-release/2018/ntia-statement-amendment-35-cooperative-agreement-verisign>.

¹⁰ U.S. Securities and Exchange Commission, “Amendment to Financial Assistance Award,” October 26, 2018, <https://www.sec.gov/Archives/edgar/data/1014473/000101447318000042/exhibit101-amendment35.htm>; Leah Nysten, “Why your website is about to get more expensive,” Politico, April 9, 2022, <https://www.politico.com/news/2022/04/09/website-domain-more-expensive-00023524>.

¹¹ Correspondence between NTIA and DOJ, 2008, p. 5, <https://www.icann.org/en/system/files/files/baker-to-dengate-thrush-18dec08-en.pdf>.

That is evidenced by VeriSign's financials – including billions of dollars diverted to stock buybacks rather than maintaining or improving services¹²– and the companies' ability to raise prices over 70 percent in two decades, along with the dominance of the .com domain.¹³ As such, we urge the DOJ to not only formally withdraw inter-agency guidance shared with NTIA regarding such price caps, but also to closely examine the contract between ICANN and VeriSign for possible antitrust violations.

Thank you for your attention to this matter.

Sincerely,

American Economic Liberties Project
Demand Progress Education Fund
Revolving Door Project

Enclosure: Letter to NTIA

CC: Commerce Secretary Raimondo, White House Competition Council

¹² See AELP letter to NTIA (June 27, 2024) (enclosed).

¹³ See *id.*