Case No. 07-16151

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COALITION FOR ICANN TRANSPARENCY INC.,

Plaintiff-Appellant,

v.

VERISIGN, INC.,

Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of California
Case No. 05-CV-04826
Honorable Ronald M. Whyte, Presiding

PETITION FOR REHEARING AND REHEARING EN BANC

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

OTHER AUTHORITIES

RULE 35 STATEMENT

This proceeding raises issues of exceptional importance to (i) the application of antitrust law to public oversight bodies and (ii) the preservation of competition, security and stability on the Internet. The Panel's ruling is based on fundamental errors of antitrust law that impermissibly undermine the oversight authority of the U.S. government with respect to the Internet domain name system ("DNS") and improperly expand the scope of antitrust liability.

The complaint in this action seeks to enjoin terms of contracts between the U.S. Department of Commerce ("DOC") and Internet Corporation for Assigned Names & Numbers ("ICANN"), on the one hand, and Defendant-Appellee VeriSign, Inc. ("VeriSign"), on the other. ICANN is a non-profit corporation that provides oversight and coordination of the DNS under a Memorandum of Understanding with DOC. VeriSign serves as the registry operator for the .com and .net Internet domain name registries pursuant to Registry Agreements with ICANN and a Cooperative Agreement with DOC.

The DOC expressly approved the challenged .com Registry Agreement as in the public interest, and made the terms challenged herein part of the Cooperative Agreement. These decisions by DOC were made after a comprehensive review process that considered issues of Internet competition, security and stability.

As the Panel recognized, the DNS is "essential to the operation of our sophisticated 21st century communications network." Op. 6745. In applying what the Panel characterized as "antitrust statutes drafted in the late 19th century" (*id.*) to the DNS, the Panel failed to consider the system of governmental oversight of which the challenged agreements are a critical part and disregarded settled principles of antitrust law.

The panel held that: (1) the decisions of DOC and ICANN not to require competitive bidding for successor contracts, and to relax a cap on the registration fees VeriSign may charge, can give rise to a §1 claim; and (2) private plaintiffs can state §2 monopolization claims based purely on conclusions that "predatory" conduct "coerced" the decisions of DOC and ICANN to enter into the challenged contracts.

The Panel's decision (Exhibit A hereto) is contrary to the decisions of the United States Supreme Court in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984), *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679 (1978), *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). The decision ignored *Copperweld*'s admonition that a Sherman Act §1 claim requires that the challenged restraint result from concerted action between separate economic actors, instead allowing such a claim to proceed based on a decision by an oversight body to regulate through a contract. It violated

the black letter rule of *National Society* that the Sherman Act does not require competitive bidding. And it ignored the directives in *Twombly* and *Iqbal* that claims cannot be based on the type of conclusory and implausible allegations contained in the operative complaint.

The decision creates an immediate threat to the DNS. The challenged terms help to ensure the massive investments necessary to keep the DNS running smoothly and secure from the increasing threat of cyber attack will be made. Furthermore, ICANN has proposed for inclusion these same provisions in all new registry agreements as part of its plan to expand broadly the number and types of registries that comprise the DNS.

BACKGROUND

I. PUBLIC OVERSIGHT OF THE DNS THROUGH THE CHALLENGED AGREEMENTS

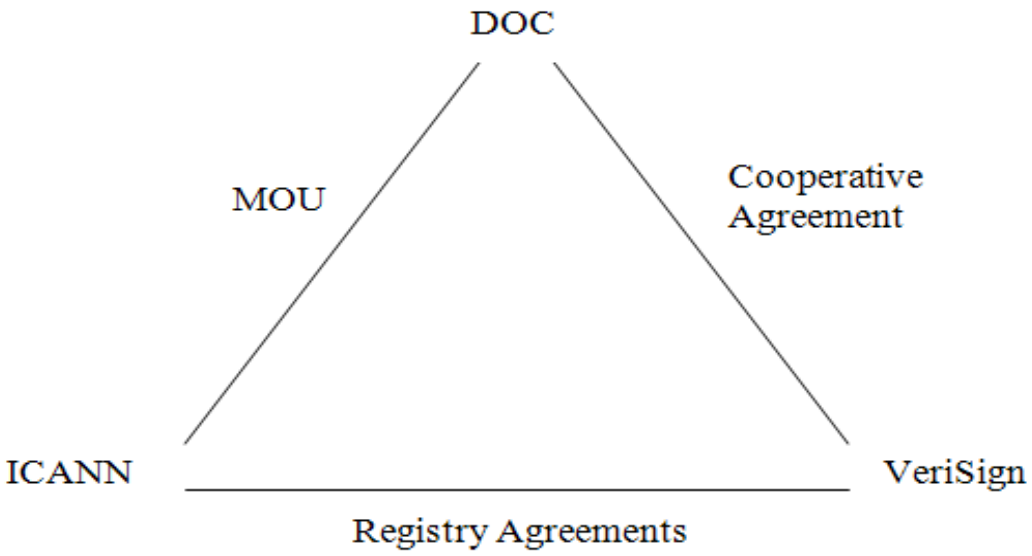
Without the DNS, the Internet would not work. The DNS "allows computers connected to the Internet to communicate with each other" (ER89) by "reliably correlat[ing] IP [internet protocol] addresses with domain names and uniquely match[ing] up both with a particular computer." Jack Goldsmith & Tim Wu, *Who Controls The Internet?: Illusions of a Borderless World* 168 (2006). It is the "global law without which there would be no Internet." *Id*.

A domain name (such as "google.com") consists of a top-level domain (".com") and a second-level domain ("google"). There are numerous top-level

domains ("TLDs"), such as .com and .gov. Each domain name must be registered with the registry operator for that TLD. For technical reasons, there can be only one registry operator for each TLD. Op. 6746.

ICANN is a "non-profit oversight body that coordinates the DNS on behalf of the [DOC]." *Id.* It is "charged by the [DOC] with selecting and entering into agreements with registry operators such as VeriSign." *Id*. at 6747-48. According to plaintiff Coalition for ICANN Transparency Inc. ("CFIT"), ICANN is a "regulator" and the "steward of the DNS." CFIT Reply Br., 1-2. ICANN is not an economic actor. It offers no products or services and does not compete in any market.

The following chart illustrates the unique set of contracts that govern the DNS:



Pursuant to the MOU with DOC, ICANN is responsible for designating registry operators for the TLDs and setting the terms of the registry contracts.

Pursuant to the Registry Agreements, ICANN contracted with VeriSign to be the registry operator for the .com and .net TLDs.

Pursuant to the Cooperative Agreement with the DOC, VeriSign is obligated to: (a) enter into the Registry Agreements with ICANN; (b) comply with the very terms of the .com Registry Agreement attacked by CFIT; and (c) secure *DOC approval for all renewals* of the .com Registry Agreement.

Under the Registry Agreements, VeriSign is responsible for maintaining the definitive database of .com and .net domain names, operating servers that direct Internet users to appropriate websites, and providing related services critical to the stable and secure functioning of the .com and .net TLDs. Entities wishing to register a .com or .net domain name must pay a registration fee. *See* SAC ¶47.

The Registry Agreements were entered into in 2006 (.com) and 2005 (.net). They are extensions of, and substantially identical to, earlier agreements between VeriSign and ICANN that were originally executed in 1999 and renewed in 2001. From 1999 to 2006, VeriSign's prices for registry services were frozen at $6. Under the 2006 .com Agreement, the cap was relaxed such that VeriSign could increase its price, but not by more than 7% in any of four years of a six year term. Op. 6749.

The 2001 registry agreement contained a "presumptive renewal" provision that was required to be in successor contracts, including the 2006 .com Agreement. Other ICANN registry agreements also include presumptive renewal provisions. Moreover, ICANN's new process to expand dramatically the number of registries contemplates registry agreements with the same presumptive renewal provision. *See* ICANN, Feb. 2009 Revised Proposed Draft New gTLD Agreement 4, *available at* http://www.icann.org/en/topics/new-gtlds/draft-agreement-clean-18feb09-en.pdf.

Presumptive renewal provisions, or extended term contracts, have long been recognized by economists and regulators as important to ensure appropriate levels of investment in infrastructure. George L. Priest, *The Origins of Utility Regulation and the "Theories of Regulation" Debate*, 36 J. L. & Econ. 289, 320 (1993). The security and stability of the .com and .net registries require such investments on an ongoing basis. *See* 2001 .com Registry Agreement, Appx. W, *available at* http://www.icann.org (discussing substantial investment in "efficiency and stability" improvements).

Pursuant to its "stewardship responsibilities" for the DNS, the DOC expressly approved the .com Agreement as "in the public interest," following a "comprehensive" nine-month review process. SER 10-13. The DOC's review "specifically examined competition and Internet security and stability issues" and

involved consultation with the Antitrust Division of the Department of Justice on competition issues and with other federal agencies "with equities in Internet security and stability." SER 5. Under the Cooperative Agreement, the DOC

> "retains oversight over any changes to the *pricing* provisions of, or *renewals* of, the new .com registry agreement. Department approval of any renewal will occur *only* if it concludes that the approval will serve the *public interest in the continued security and stability* of the Internet domain name system and the operation of the .com registry, *and the provision of registry services at reasonable pricing*, terms and conditions."

SER 3 (emphasis added). The Panel's decision ignores entirely this system of public oversight.

At bottom, this litigation was brought because a small group of competitors was dissatisfied with policy decisions made by the DOC and ICANN. Plaintiff, a purported association of so-called "back order service providers" and registrars, was formed for the sole purpose of bringing litigation against ICANN and VeriSign attacking the agreements. ER 7.[1]

[1] ICANN was dropped as a party, without explanation, in the Second Amended Complaint.

II. THE ANTITRUST CLAIMS ALLEGED BY CFIT

The Second Amended Complaint ("SAC") purports to assert claims under sections 1 and 2 of the Sherman Act. The §1 claims attack the agreements *themselves*, and the §2 claims attack VeriSign's alleged *conduct* in securing the agreements.

Section 1 bars any "contract, combination … or conspiracy" among separate economic entities that unreasonably restrains trade. *E.g.*, *Copperweld*, 467 U.S. at 768. According to CFIT, the presumptive renewal provisions and absence of fixed prices in both agreements violate §1. The renewal provisions allegedly restrain competition unlawfully because they do not provide for competitive bidding for successor agreements and competitive bidding would result in lower registration prices. The relaxation of the price cap in the .com Agreement allegedly restrains trade unlawfully because the provision permitting a 7% increase is "greater than what a fair market would otherwise bear." SAC ¶ 232.

As opposed to §1, which reaches only concerted action, §2 reaches unilateral conduct that impermissibly creates or maintains monopoly power. *Alaska Airlines, Inc. v. United Airlines, Inc.*, 948 F.2d 536, 540-41 (9th Cir. 1991). Because having a monopoly does not by itself violate the statute, a §2 claim requires a showing that the monopoly was acquired, or maintained, "by illegitimate 'predatory' practices." *Id.* at 542. To satisfy this requirement, CFIT claims that VeriSign "coerced"

ICANN into executing the agreements through "predatory" conduct consisting of threats of litigation, litigation, criticism of ICANN, and threats to withhold funding. SAC ¶¶271, 273.

CFIT also asserts as a separate §2 claim that VeriSign is attempting to monopolize a purported separate market for expiring domain names. SAC ¶296. CFIT does not allege that VeriSign currently has any share of this purported market.

III. THE PANEL OPINION

The Panel reversed the order of the district court dismissing the SAC for failure to state a claim. It held that allegations of the absence of competitive bidding for successor contracts and the relaxation of the price cap in the .com Agreement stated a §1 claim. With regard to the .net Agreement, the Panel held that "although this claim involved terms comparable to those in the .com contract," it did not state a §1 claim because "the .net contract was reached as a result of competitive bidding." Op. 6755.

The Panel upheld the §1 claim on the .com Agreement *on a basis never considered by the District Court and never briefed or argued by CFIT*. Indeed, CFIT did not so much as mention the §1 claim in the "Argument" portion of its briefs. Thus, with no notice to VeriSign, the Panel resurrected a claim that CFIT had abandoned.

With respect to CFIT's §2 claim concerning the .com Agreement, the Panel ruled that CFIT has "adequately alleged that VeriSign's improper coercion of ICANN and attempts to control ICANN's operations in its own favor violated Section 2." Op. 6759. The Panel rejected the §2 claim with respect to the .net Agreement. *Id.*

On the §2 claim concerning expiring domain names, the Panel reversed because it was "not prepared to affirm the district court's ruling that no separate market exists" (Op. 6762), but did not address VeriSign's other arguments supporting dismissal. *See* Answering Brief 33-39.

ARGUMENT

I. THE PANEL'S SECTION 1 RULING IS BASED ON FUNDAMENTAL ERRORS OF ANTITRUST LAW THAT (1) UNDERMINE THE AUTHORITY OF ICANN AND THE UNITED STATES GOVERNMENT AND (2) IMPERMISSIBLY EXPAND THE SCOPE OF §1 LIABILITY

A. The Decision By DOC And ICANN To Use A Contract To Oversee Registry Operations Cannot Create Section 1 Liability

The Panel's holding that a §1 claim can be based upon the decision to regulate through a contract expands antitrust liability and will have significant negative consequences for governmental oversight of DNS security, stability and competition.

Section 1 liability requires that the challenged anticompetitive restraint result from concerted action between separate economic entities. *Copperweld*, 467 U.S. at 768. Section 1 is concerned with the anticompetitive risks created by the "joining of *two independent sources of economic power* previously pursuing separate interests." *Id.* at 771 (emphasis added). Without such "joining," it is "not an activity that warrants §1 scrutiny." *Id.; see id.* at 769 (concerted activity under §1 "deprives the marketplace of the independent centers of decision making that competition assumes and demands"); *Levi Case Co., Inc. v. ATS Products, Inc.*, 788 F.Supp. 428, 431 (N.D. Cal. 1992) (relationship between two entities "can be a 'conspiracy' in violation of the antitrust laws only *if it deprives the marketplace of independent actors*") (emphasis added).

An agreement with an entity that is not an independent economic actor in the marketplace is not either of the two forms of concerted action that can violate §1: horizontal restraints (agreements among competitors) and vertical restraints (agreements among entities in the same chain of distribution). *See Muenster Butane, Inc. v. Stewart Co.*, 651 F.2d 292, 295 (5th Cir. 1981). An agreement involving only one economic actor and another entity that is not a separate economic interest, but rather is merely regulating or overseeing the economic actor, does not raise the anticompetitive risks created by horizontal or vertical

restraints. All of the §1 decisions cited by the Panel or CFIT involve either a horizontal or vertical restraint between two or more independent economic actors.

The Registry Agreements do not represent a "joining of two independent sources of economic power" and do not constitute either horizontal or vertical restraints. The Panel ignored ICANN's and DOC's regulatory nature and treated ICANN as though it were a private economic actor for purposes of §1. Because DNS governance is designed to serve as an "effective steward of the antitrust function" (*Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko*, 540 U.S. 398, 413 (2004)), expanding §1 liability to the terms of the Registry and Cooperative Agreements is unwarranted and will place courts in the ill-advised position of second-guessing governmental oversight decisions on matters of Internet policy.

In *Trinko*, the Supreme Court instructed that courts must take into account the regulatory environment in considering the scope of appropriate antitrust scrutiny. 540 U.S. at 411-12. *Trinko* teaches that "antitrust analysis must always be attuned to the particular structure and circumstances of the industry at issue." *Id.* at 411. "[O]ne factor of particular importance is the *existence of a regulatory structure designed to deter and remedy anticompetitive harm*. Where such a structure exists, the additional benefit to competition provided by antitrust enforcement will tend to be small, and it will be less plausible that the antitrust

laws contemplate such additional scrutiny." *Id.* at 412 (emphasis added). The Panel gave no consideration to such factors in this case.

B. The Contract Provisions In Issue Cannot Support §1 Liability

1. The Decision by ICANN and DOC Not to Require Competitive Bidding Cannot Make the Resulting Contract Provisions a §1 Violation

In holding that the decision by ICANN and DOC not to require competitive bidding for successor .com agreements states a §1 claim, the Panel attempted to create a new duty under antitrust laws: the duty to engage in competitive bidding. The Supreme Court, however, has expressly rejected the idea that the antitrust laws create such a duty. *Nat'l Soc'y*, 435 U.S. at 694 ("The Sherman Act does not require competitive bidding."). Any requirement that ICANN choose a registry operator through competitive bidding would violate the fundamental antitrust principle that "businesses are free to choose the parties with whom they will deal, as well as the prices, terms and conditions of that dealing." *Pac. Bell. Tel. Co. v. Linkline Commc'ns*, 129 S. Ct. 1109, 1118 (2009). Any belief by the Panel that competitive bidding may lead to lower registration prices is not a basis for concluding that ICANN's decision not to require competitive bidding makes the prices charged, or other actions taken pursuant to the Agreement, illegal under §1.

When a regulator, rather than a private market participant, chooses not to engage in competitive bidding, that decision must be treated with even greater

deference. *See Trinko*, 540 U.S. at 406. By imposing its judgment that competitive bidding must replace the policy decisions made by ICANN and DOC, the Panel has impermissibly reduced the public oversight role to that of mere auctioneer.

Harkins Amusement Enterprises, Inc. v. Gen. Cinema Corp., 850 F.2d 477 (9th Cir. 1988), the only case the Panel cited (Op. 6751-52) for a duty of competitive bidding, does not in fact support such a duty. *Harkins* involved a group of *competitors* agreeing not to bid against each other as part of a plan to exclude another competitor. 850 F.2d at 480-81. In this classic horizontal conspiracy, the decision not to allow competitive bidding resulted from an agreement among competitors, not the individual decision of one entity. *See United States v. Koppers Co., Inc.*, 652 F.2d 290, 294 (2d Cir. 1981) (agreements among competitors not to engage in competitive bidding violates §1). Indeed, *Harkins* made clear that "an *individual* distributor *need not* utilize competitive bidding." 850 F.2d at 487 (emphasis added). *Harkins* has no application here.

The Panel's decision also poses risks to the governmental policy objectives of security and stability for the DNS. Keeping the DNS functioning reliably and secure from attacks requires a substantial investment of capital in Internet infrastructure. The investment calculus of DOC and ICANN may be compromised if registry operators do not have a reasonable expectation of contract renewal.

Here, the presumptive renewal and pricing provisions of the .com Registry Agreement were material terms in ICANN'S and DOC's consideration of the Agreement, and DOC's approval of the Agreement as in the "public interest." SER 10-13.

2. The Decision by ICANN and DOC to Impose Price Caps Cannot Create §1 Liability

The Panel's holding that the price cap in the .com Agreement states a §1 claim because the cap allegedly "exceeds the rate competitive market conditions would produce" (Op. 6753) is wrong as a matter of settled antitrust law. The agreement could have lawfully imposed *no* limitation on registration prices, leaving those prices entirely up to VeriSign's discretion. *E.g.*, *Linkline*, 129 S. Ct. at 1118 (businesses are "free to choose the parties with whom they will deal, as well as the prices . . . of that dealing"); *Trinko*, 540 U.S. at 407 ("charging of monopoly prices . . . is not only not unlawful; it is an important element of the free-market system."). A provision *limiting* the prices VeriSign may charge cannot, *a fortiori*, violate antitrust law on the ground that it creates higher prices.

As with the competitive bidding provision, the Panel's belief that prices would be lower absent the price cap provision is simply not a basis for concluding that ICANN's decision to impose a price cap can create a §1 violation. *See supra* at 13-15. If a belief that a company's prices are "too high" could violate the Sherman Act, courts would be thrust into the role of pricing czars -- a role for

which "they are ill suited." *Trinko*, 540 U.S. at 408. This would be particularly inappropriate with respect to an industry already subject to government oversight. *See Kartell v. Blue Shield of Mass., Inc.*, 749 F.2d 922, 928 (1st Cir. 1984) (Breyer, J.) ("Courts only rarely try to supervise the price bargain directly. And, where monopoly power is regulated, the regulator, not the court, bears the burden of determining whether prices are reasonable.").

The Panel faulted the district court's ruling that high prices could not give rise to antitrust liability, saying the court improperly relied on *Alaska Airlines*. Op. 6753. *Alaska Airlines* involved a §2 claim, and according to the Panel, a §1 claim should be treated "more strictly." Op. 6754. However, it is appropriate to view VeriSign's unilateral pricing decisions as single firm economic conduct (thus appropriately judged under §2 authority) because DOC and ICANN are not economic actors and, instead, serve functions of governmental oversight. *See supra* at 4. In any event, the Panel cited to no authority, and VeriSign is aware of none, establishing that even the supposedly stricter standards of §1 can support liability simply on the basis of "high" prices set with the permission of an oversight authority. Indeed, if anything, the price cap here is *pro*-competitive. *Caribe BMW, Inc. v. BMW AG*, 19 F.3d 745, 753 (1st Cir. 1994) (Breyer, J.) ("use of a maximum resale price agreement … protects consumers from the exercise of a retailer's monopoly power.").

II. THE PANEL'S SECTION TWO RULING CONFLICTS DIRECTLY WITH THE SUPREME COURT'S TWO RECENT DECISIONS ON PLEADING REQUIREMENTS

The Supreme Court's recent decisions in *Twombly* and *Iqbal* set forth in detail what is now required to state a claim that will satisfy Rule 8. *Twombly* "retired" the *Conley v. Gibson* language that a complaint may not be dismissed "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief," and made clear that courts must carefully examine antitrust complaints at the pleading stage to ensure that meritless claims do not proceed into massive and expensive discovery. *See generally Twombly*, 550 U.S. 544. *Twombly* emphasized that legal conclusions, including those "couched as factual allegations," are not entitled to the assumption of truth, and that a complaint's factual allegations must "render plaintiff's entitlement to relief *plausible*." *Id.* at 557, 559 n. 14. *Iqbal* reinforces *Twombly* and instructs courts carefully to separate out conclusory allegations that "are not entitled to the assumption of truth" from factual allegations that are so entitled in order to determine whether the well-pleaded factual allegations alone "plausibly suggest an entitlement to relief." *Iqbal*, 129 S. Ct. at 1950.

The Panel's §2 discussion did not apply the *Twombly/Iqbal* analysis. Indeed, the opinion does not even mention either decision, or for that matter, any other decision discussing pleading requirements. Had the Panel applied the proper

analysis, it would have had to conclude that CFIT failed to state a §2 claim with respect to the .com market.

The Panel's holding that the SAC states a §2 claim is based upon its conclusions that CFIT adequately alleged that VeriSign's "predatory conduct" successfully "coerced" ICANN to grant it the 2006 .com Agreement, thereby "perpetuat[ing] VeriSign's role as exclusive regulator of the .com domain name market." Op. 6757. This holding cannot be squared with *Twombly* and *Iqbal* for two reasons.

First, the complaint contains no factual allegations making plausible the conclusion that VeriSign "coerced" ICANN into signing the 2006 .com Agreement. The complaint states that VeriSign's conduct "had the effect of coercing and/or convincing ICANN to agree to the conspiracy alleged in this Complaint." SAC ¶275. This is no less conclusory than the allegation deemed insufficient in *Twombly*, another §1 case. There, the allegation that defendants "agreed not to compete with one another" was "merely [a] legal conclusion." 540 U.S. at 565. CFIT's allegation of "coercion," like the *Twombly* allegation, is "nothing more than a formulaic recitation of the elements" of a §2 claim. *Twombly*, 550 U.S. at 555.

The notion that VeriSign obtained the .com Agreement through "coercion" also defies common sense. *Iqbal*, 129 S. Ct. at 1950 (whether complaint states a

plausible claim for relief is a "context-specific task" that requires the court "to draw on its judicial experience and common sense."). Such a conclusion can be reached only by ignoring that the United States government (which CFIT does *not* claim was coerced) *expressly approved* the .com Agreement as in the public interest after a comprehensive review process that specifically considered competition issues. SER 10-13. In these circumstances, CFIT has not "nudged" its claim of coercion "across the line from conceivable to plausible." *Iqbal*, 129 S. Ct. at 1951.

Second, the SAC does not allege *facts* plausibly establishing actionable predatory conduct. The alleged predatory conduct consisted of (1) litigation and threats of litigation, (2) lobbying "in Washington, D.C. and the European Union," (3) public criticism of ICANN, (4) threats to "withhold funding," and (5) the "promise of a financial bailout." SAC ¶¶271, 273. These allegations are impermissibly vague and conclusory, as the district court expressly held. ER 16-18. Moreover, they do not as a matter of law constitute predatory conduct within the meaning of §2. Litigation, litigation threats, government lobbying, and public criticism is all conduct protected under the *Noerr-Pennington* doctrine and cannot support an antitrust claim. *See, e.g.*, *McGuire Oil Co. v. Mapco, Inc.*, 958 F.2d 1552, 1560 (11th Cir. 1992). The remaining allegations -- the supposed threat to "withhold funding" and the "promise of a financial bailout" -- do not establish

plausible predatory acts. Unadorned allegations of an intent to pay money or not pay money may be wrongful or legitimate, depending on the circumstances. Without more, they are insufficient. *Iqbal*, 129 S. Ct. at 1949 ("Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, 'it stops short of the line between possibility and plausibility of entitlement to relief.'").

CONCLUSION

VeriSign respectfully submits that rehearing and/or rehearing en banc be granted.

Respectfully submitted,

DATE: July 2, 2009

By: s/*Ronald L. Johnston*

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I certify that the PETITION FOR REHEARING AND REHEARING EN BANC OF DEFENDANT-APPELLEE complies with the type-volume limitation of Ninth Circuit Rule 40-1(a). This brief contains 4,198 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point font, Times New Roman type style.

DATED: July 2, 2009

s/*Ronald L. Johnston*
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