



AT&T Comments and Economic Assessment Submitted in Response to ICANN's Preliminary Reports on Competition and Pricing

April 17, 2009

AT&T appreciates the opportunity to comment on the "Preliminary Report of Dennis Carlton Regarding Impact of New gTLDs on Consumer Welfare" and "Preliminary Analysis of Dennis Carlton Regarding Price Caps for New gTLD Internet Registries" ("Preliminary Reports").¹ The attached "Assessment of ICANN Preliminary Reports on Competition and Pricing" was commissioned by AT&T and prepared by Michael Kende, an economist who heads the regulation practice of Analysys Mason ("Economic Assessment"). It is supported by industry data submissions and analysis of actual domain name registrations provided by MarkMonitor. The Economic Assessment details the shortcomings of the Preliminary Reports and points to the need for completing the type of economic study originally directed by the ICANN Board and for focusing ICANN's new gTLD implementation strategy on new TLDs that will be used for unique, non-defensive registrations.

ICANN itself has recognized that the economic and consumer welfare study is an overarching threshold issue which was not adequately addressed in the initial draft Applicant Guidebook. As AT&T indicated in its recently filed comments, we agree that a thorough economic study is a threshold issue and that such a study should be completed before there is any further development of the guidebook and application process. In addition to responding to the Preliminary Reports, the attached Economic Assessment describes the type of economic study that is needed to fully assess whether, in fact, new gTLDs are likely to improve consumer welfare and enhance competition in the market for domain names.

The following is a high-level summary of the key findings and conclusions of the Economic Assessment:

- The Preliminary Consumer Welfare Report fails to consider the first-mover advantage enjoyed by .com and the extent to which this advantage is serving as a long-run barrier to entry. Indeed, the report ignores the most relevant data for answering this question – namely, the market experience of new gTLDs, such as .biz and .info. Readily available data demonstrates that .com has continued to enjoy sustained growth, while new gTLDs have experienced relatively low growth.
- In addition, the Preliminary Consumer Welfare Report assumes away the costs for brand holders of introducing new gTLDs and fails to examine the number of defensive registrations in .com itself, as well as in new gTLDs. A sampling of portfolio registration data for five multinational corporations from five different economic sectors demonstrates that the vast majority of their registrations in both .com and other gTLDs are defensive in nature. This evidence shows that new gTLDs are more likely to produce more defensive registrations or

¹ Available at <http://www.icann.org/en/topics/new-gtlds/prelim-report-consumer-welfare-04mar09-en.pdf> (last accessed April 16, 2009).



be used to take advantage of consumer confusion (e.g., cybersquatting) than to produce innovation that will improve consumer welfare.

- Likewise, the Preliminary Price Cap Report assumes away consumer confusion and intellectual property concerns in concluding that there is no need for price cap protections for new gTLDs. Once again, the facts show otherwise. This is a critical omission because defensive registrations are likely to be much less price sensitive than other registrations. Based on the sample evidence of actual portfolio registrations, the introduction of large numbers of new gTLDs can be expected to dramatically increase the number and cost of defensive registrations, thus indicating the value of maintaining price caps for both legacy and new gTLDs.
- In contrast, there is some evidence that country code TLDs (“ccTLDs”) are being used as complements for legacy TLDs and may not be substitutes for legacy gTLDs. The sample of registration data also shows that fewer defensive registrations are being filed for ccTLDs and sponsored TLDs than for gTLDs.
- In order to assess whether new gTLDs will improve consumer welfare and enhance competition in the domain market, it is essential to conduct the type of economic study that the ICANN Board directed be undertaken. The components of this economic study should include pricing practices, evidence of substitutability between TLDs, switching costs and buying practices. The Economic Assessment identifies some of the kinds of data that should be gathered from registries, registrants and other sources to complete the economic study.

The Economic Assessment supports AT&T’s position that ICANN should not proceed with further development of the guidebook and application process without first completing the detailed economic study directed by the ICANN Board. This study should be broadly constructed to examine market, pricing and consumer impact considerations, and it should be supported by comprehensive data collected from registries, registrants and other interested parties. ICANN’s analysis also should study: registration growth and patterns in all gTLDs (with separate analysis between legacy gTLDs and new gTLDs); growth in sponsored TLDs and ccTLDs; and other generally available Internet growth factors, such as the number of Internet users by country, Internet hosts and growth of Web traffic by region.

Moreover, the findings of the Economic Assessment support AT&T’s position that ICANN should focus on the introduction of TLDs that will produce unique non-defensive registration. We believe this can best be accomplished by introducing a limited number of IDNs and sponsored TLDs, as opposed to moving forward with an unlimited number of gTLDs. There is evidence to show that IDNs will be used as complements to legacy TLDs and that sponsored TLDs do not pose the same potential for infringing applications as gTLDs. And we believe there are compelling policy reasons to move forward with the introduction of IDNs, which could include fast-track ccTLD IDNs as a pilot program, once threshold security and stability concerns and other issues have been addressed by ICANN and the Internet community. The diversity and growth of the Internet will be enhanced with the introduction of IDNs, particularly in developing countries where navigation of ASCII domains is a barrier to accessibility and adoption.



AT&T looks forward to working with ICANN to further discuss and analyze the important economic and consumer welfare issues raised by the introduction of new gTLDs. We also would like to acknowledge the helpful input of a number of industry colleagues, as well as the informative data and analysis provided by MarkMonitor. We believe the Internet community will be very supportive of and responsive to ICANN undertaking a study of the market experience with TLDs in order to help guide and re-prioritize ICANN's decision making on the structure and implementation of new gTLDs.