

## **Vertical Integration Proposal**

The undersigned support the following proposal for vertical integration rules in the newTLD round. Having participated in the Vertical Integration PDP Working Group, the undersigned note the complexity of the issues concerning proposed vertical integration and underscore the good faith efforts by the participants in the PDP Working Group to deliver a consensus based proposal for consideration by the GNSO Council and, ultimately, the Board.

This proposal is designed to preserve the separation of registries and registrars which protects registrants with more robust competition and a system in which all registrars, small and large, from all regions of the world, benefit from equivalent access and non discrimination for domain name registrations. An overarching concern that informs this proposal is the prospect of gaming and the negative impact for registrants arising from the potential misuse of registry data. The proposal is intended to minimize the possibility of abuse of registry data through structural separation and to provide a framework that does not strain ICANN's enforcement resources or capabilities. Abuse of registry data will result in higher prices and unavailability of higher value domain names. Prevention of registry data abuse would be easier under this proposal than under proposals that rely on purported behavioral safeguards to prevent such abuse.

We acknowledge that the Working Group will continue to examine issues around vertical integration beyond the Brussels ICANN meeting until the mandate of the VI WG has been fully discharged.

We also take note of the levels of support the following items have garnered as reflected in the Vertical Integration Working Group proposal grid. In that spirit, the following vertical integration proposal has our full support:

### **PROPOSAL**

#### **Cross Ownership**

1. ICANN should permit cross ownership, both by a registry operator in a registrar and by a registrar in a registry operator, up to 15%. This cross ownership approach allows both registry operators and registrars to invest in domain name wholesale and retail businesses thus stimulating growth in the industry. At the same time, the 15% ownership cap avoids creating ownership positions that provide incentives for registries and registrars alike to discriminate against unaffiliated competitors.
2. ICANN should permit cross ownership, both by a registry backend service provider in a registrar and by a registrar in a registry backend service provider, up to 15%. This cross ownership approach is recommended for the reasons stated in paragraph 1 above and to create an even playing field for all actors in the market. This group does not recommend that a new contract

regime be established between ICANN and registry backend services providers. Rather, ICANN could enforce this cross ownership rule through the registry operator contract.

For these ownership caps to be meaningful and effective, rules concerning corporate control through other means and use of affiliates to subvert the ownership caps should be part of the new TLD contracts. See definitions of “Affiliate” and “Control.” Structural separation of registries and registrars, as set out above, will be easily and readily verifiable, and completely auditable. It will achieve the goal of separation of control so that registries and registrars are run separately, notwithstanding the very limited cross-ownership.

### **GNSO Recommendation 19**

Registries must use only ICANN accredited registrars in registering domain names and may not discriminate among such accredited registrars.

### **Equivalent Access and Non-Discrimination**

Equivalent access and non-discrimination principles should apply to all TLD distribution.

### **Definitions**

Affiliate shall mean a specified person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity specified.

Control (including the terms “controlling”, “controlled by” and “under common control with”) shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting or debt securities, by contract, contracts including debt and liquidity instruments or otherwise. As used in this definition, the term “control” means the possession of beneficial ownership of more than fifteen percent (15%) of the equity interests or more than fifteen (15%) of the interests entitled to vote for the election of, or serve as, the board of directors or similar managing authority of the entity.

Registry Operator is the entity that is a contracting party to the Registry Operator agreement with ICANN for the TLD in question.

Registrar is the entity that is a contracting party to the Registrar Accreditation Agreement (RAA) with ICANN that is authorized to register domain names.

Backend Registry Services Provider shall mean any entity performing any material registry services on behalf of the Registry Operator, including but not limited to shared-registrations-services, DNS, WHOIS or any other material Registry Services defined by the Registry Operator.

Registrar Reseller - restrictions on Registry Operators, Backend Registry Service Providers or their Affiliates from serving as or controlling an ICANN-accredited registrar extends to registrar resellers.

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