

## **Key-Systems Comments on the Initial Report of the VI WG**

Key-Systems welcomes the opportunity to comment on the Initial Report of the Vertical Integration Working Group (VI-WG).

As an active participant in the VI-WG and a staunch supporter of the new gTLD program, Key-Systems notes with regret that a consensus could not be reached by the WG in time for the Initial Report. Key-Systems is committed to the effort to work towards a consensus for the launch of new TLDs. We recognize that the VI-WG is unlikely to do so on the short term, but we firmly believe that the first round of applications will be the defining round for future launches and the restriction on participation of certain types of applicants will effectively shut out such applicants in subsequent rounds as well.

The current restrictions on registrars regarding their participation in the application for new gTLDs included in the Draft Applicant Guidebook place unprecedented and unnecessary barriers on competition and the ability of registrars to compete against incumbent registry service providers and registries, especially if such restrictions should be lifted at a later date. This is especially the case for applications where registrars act as registry service providers (RSPs) only, without any control or influence over the operation and management of the registry.

Key-Systems supports all proposals that maximize consumer benefits while minimizing potential harms from any entity, be it vertically integrated, cross-owned or fully separated. We strongly urge against discriminating any entity by preventing them from participating in the first round of applications based solely on levels of ownership in other entities. We instead propose to strengthen compliance enforcement and to penalize abuse in order to prevent and/or reduce the effect of potential harms.

Of the potential harms and forms of abuse proposed in the extensive discussions of the WG, none have been shown to be direct results or consequences of vertical integration (VI) or cross-ownership (CO) itself, but rather are general possibilities of abuse that could occur without VI or CO as well. Key-Systems therefore proposes the implementation of a balanced and realistic system of strong yet flexible rules and compliance controls coupled with a penalty system designed to discover and discourage any form of abuse. Contracts and policies should be crafted in a way to detect and discourage abuse, as well as to enable compliance enforcement, thereby removing any perceived need for the prohibition, instead of introducing a blanket prohibition on VI and CO for registrars, effectively allowing unintegrated registries or registrars to conduct in the same abusive fashion the prohibition is intended to prevent.

The key to successful prevention of abusive behavior by registries or registrars is not vertical separation, but the allocation of sufficient resources to implement compliance rules as well as the enforcement and prevention of said rules proactively as well as after the fact, paired with swift and effective enforcement of penalties when abuse is discovered. One important element to successful enforcement is the requirement to grant equal access to all ICANN accredited registrars, which in itself serves as a check and balancing factor against the potential for abuse. Competing registrars will be among the first to notice and point out violations or market manipulation.

Setting aside the potential for abuse, many local communities may end up not being able to effectively distribute or even apply for a local TLD without a local partner to support them with all aspects of the application process and subsequent distribution. Many smaller

communities have no local registrar and non-local registrars may be unwilling to support such a „fringe“ TLD, so allowing a local registry to set up its own ICANN accredited registrar will be the only way to effectively support and market the new TLD. Similarly, a local community should be able to entrust the technical and operative operation of a TLD to a local registrar partner if this is supported by the local community. In some cases, the local partner may even be required to make sure local interests of the community can be safeguarded.

Experience with ccTLDs show that vertical integration of registries and registrar functions can work and does not necessarily harm registrants. In fact many ccTLD registries that operate their own registrar service such as DENIC, NIC.AT and others show many added benefits for registrants, as long as equal (or even favorable) access to non-integrated registrars is provided for. Together with INDOM, EuroDNS and Blacknight, three European ICANN accredited registrars with extensive experience in ccTLDs, Key-Systems originally proposed a more open approach, attached hereto as the Open Registrar Proposal, which was regrettably not included in the last poll and therefore excluded from the initial report despite the wish to do otherwise.

The RACK+ proposal, while commendable for the firm commitment to a perceived status quo, fails by assuming all abuse and consumer harm will be prevented by only effective separation, while raising the bar to allow a number of service providers currently excluded under the DAG4 limits. It does not address any of the potential problems and instead proposes a band-aid solution to cover up potential problems. As detailed above, the risk of abuse exists with and without VI and CO. Effectively therefore, the proposal allows for abuse by its insistence of an arbitrary ownership percentage limitation as a solve-all.

The Free Trade proposal on the other hand removes the key element to effective abuse prevention and control by entirely removing the requirement of equal registrar access. While we applaud it for allowing the greatest degree of innovation and competition in the new gTLD market, the Free Trade proposal carries an increased risk of abusive behavior by relying too much on the market to regulate misconduct.

Aware of the diverse positions of the members of the working group and the resulting complicated road to a consensus, Key-Systems has as a compromise position supported JN2, a proposal that would allow some freedom and innovation. While not perfect, it contains many elements of what is necessary to enable as an example local communities or companies in applying for their TLD without discriminating overly against registrars as service providers for local communities, brand owners and independent registries.

Key-Systems agrees with the public VeriSign statement to the effect that the current model, under which multiple registrars offer registrations on equal footing, with separation of functionality and ownership, has served the community well, but that with the introduction of hundreds of new TLDs allowing a greater degree of vertical integration is important in promoting the growth of new entrants, which will in turn stimulate competition and better serve the public. Key-Systems sees the equal access requirement as a key factor in ensuring the best interests of new or existing market participants, including registrants, are maintained. The blanket restriction on registrar involvement in any new TLD application and/or operation only serves to reinforce the market position of current registry service providers and provides no benefit for the consumer against any form of abuse.

For the first round as well as all subsequent rounds, Key-Systems therefore continues to support the following basic framework:

- Allowing 100% full registry/registrar cross-ownership
- Allowing applications where registrars provide technical services for registry operators, if necessary under a separate contract with ICANN
- Allowing accredited registrars to distribute domain names in affiliated TLDs, possibly subject to limitations in general volume or market share in that TLD.
- Implementing barriers of information („chinese walls“) between registry and registrar functions
- Requiring full and effective equal access for all ICANN accredited registrars interested in implementing the TLD by integrated and cross-owned registry operators to prevent the formation of a monopolistic provider, creating checks and balances as well as clearly controllable access requirements which can be verified.
- Allowing exceptions to equal access requirements for specialized TLDs where the registry operator is also the only registrant and controls the content of each domain.
- Implementation of a strong yet flexible system of rules designed to prevent or mitigate all possibilities of abuse, without creating barriers to competition or loopholes for gaming.
- Expansion of the ICANN compliance team to enable ICANN to enforce contractual compliance, as well as to detect and penalize abusive behavior
- Implementation of a firm penalty system for violators ranging from financial penalties, over temporary suspensions of certain functions, up to the disaccreditation as registrar or registry to firmly discourage any abuse.

Key-Systems is grateful for your consideration of our comments on the Initial Report . We encourage the ICANN board and ICANN community take the necessary steps in implementing an open and fair, yet robust and safe system new gTLDs including the option of VI and CO that allows for an innovative and creative use of these new TLDs in the interest of the registrants. As the WG continues its work, we will continue working toward an acceptable consensus, and we encourage and welcome further discussions in that regard.

Sincerely,

Volker Greimann  
General Counsel  
Key-Systems GmbH