**2.2. Background on the New gTLD Implementation Activities Affecting Vertical Integration.**

The issue of revisiting vertical integration of registries arose as a result of concerns expressed by members of the ICANN Community in 2007 when it became clear that the GNSO policy recommendations on the New gTLD process were going to be unable to address the issue of the economic, business and/or legal relationships between registries and registrars in developing the implementation details for the New gTLD Program. In response to the concerns expressed by the ICANN Community, and at the request of the ICANN Community, ICANN retained the research firm CRA International who delivered a report on 23 October 2008, commonly referred to as the CRA Report[1] <#\_ftn1> , The CRA Report recommended that “ICANN…re-examine the economic case for the separation requirement, and in particular to consider whether it might be possible to relax the requirement, initially only in limited cases. Recognizing that it is difficult to pull back once regulations have been pulled back, we would encourage ICANN to move slowly, but deliberately and in consultation with the industry, towards permitting integration of registry and registrar services under many, but not all, circumstances.”[2] <#\_ftn2>

After the publication of the CRA Report, ICANN Staff initiated a series of consultations with the Community on the issue of vertical integration.   In response, Staff published a proposed model in the Draft Applicant Guidebook- Version 2 that included minimal restrictions on vertical integration in the form new gTLD registry agreement.  Because the proposal included in the Draft Applicant Guidebook-v2 solicited substantial discussion and debate among the ICANN Community, Staff revised the Draft Applicant Guidebook- v3 to remove the proposed model, and instead sought further guidance and suggestions from the Community on the appropriate model for the launch of new gTLDs.

In addition, ICANN Staff retained the services of two economists, Steven Salop and Joshua Wright, to assist in advising ICANN staff and the community on economic issues related to the effects of vertical integration between registries and registrars on registrants. A report, entitled “Registry-Registrar Separation: Vertical Integration Options” [[1]](#footnote-1) was presented to the ICANN Board of Directors at their meeting on February 4, 2010 and subsequently made available to the ICANN community on March 8, 2010.[[2]](#footnote-2) In that report, which was also presented to the VI Working Group and discussed on April 29, 2010[[3]](#footnote-3), Professors Salop and Wright explained that vertical integration and vertical contracts between registries and registrars can create both competitive harms and competitive benefits. In their opinion, the most important factor in predicting whether vertical integration is capable of generating competitive harms is the presence of market power. Professors Salop and Wright encouraged the adoption of a case-by-case approach with referral to a government competition authority for evaluation and action, if deemed necessary.

Resolution of these issues is currently being managed under Board guidance by Staff through its implementation process for the New gTLD Program.  In Nairobi, the ICANN Board adopted several resolutions related to the New gTLD Program.   One of these resolutions provided guidance to ICANN Staff on the topic of vertical integration between registrars and registries[3] <#\_ftn3> .  The Board resolution noted the GNSO’s active policy development process on the issue of Vertical Integration. The Board did not want to create an environment in which it would be difficult to later harmonize the new gTLD marketplace with the GNSO policy result, but recognized the importance of establishing a baseline approach to registry-registrar separation for the new gTLD process to move ahead.   As a result, within the context of the new gTLD process, the Board resolved that there will be strict separation of entities offering registry services and those acting as registrars.  No co-ownership will be allowed.   The Board recognized, however, that if a policy becomes available from the GNSO, and approved by the Board prior to the launch of the New gTLD program, that policy will be considered by the Board for adoption as part of the New gTLD Program.

In advance of the ICANN Brussels meeting, ICANN Staff published the Draft Applicant Guidebook Version 4 (DAGv4), which includes proposed implementation details to address the Board’s Nairobi resolutions concerning the topic of vertical integration.    Excerpts of the DAGv4 related to the topic of vertical integration between Registrars and Registries are provided in **Annex E** of this Report.

[1] <#\_ftnref>  The CRA Report is posted at <http://www.icann.org/en/topics/new-gtlds/crai-report-24oct08-en.pdf>

[2] <#\_ftnref>  Id at 29

[3] <#\_ftnref>  The Nairobi Board  resolution pertaining to the issue of vertical integration between registrars and registries in the New gTLD Program is posted at:  <http://www.icann.org/en/minutes/resolutions-12mar10-en.htm#5> <<http://www.icann.org/en/minutes/resolutions-12mar10-en.htm%235>>

1. http://www.icann.org/en/topics/new-gtlds/registry-registrar-separation-vertical-integration-options-salop-wright-28jan10-en.pdf. [↑](#footnote-ref-1)
2. See <http://blog.icann.org/2010/03/vertical-integration-options-report-available-to-community/>. [↑](#footnote-ref-2)
3. To review a transcript of the VI Working Group’s discussions with Professors Salop and Wright, please refer to <http://gnso.icann.org/meetings/transcript-vertical-integration-economists-29apr10-en.pdf>. [↑](#footnote-ref-3)