



**Comment on Supplemental
Initial Report on the
New gTLD Subsequent
Procedures Policy
Development Process
(Overarching Issues & Work
Tracks 1-4)**

Status: FINAL

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Business Constituency Submission

GNSO//CSG//BC

Background

This document is the response of the ICANN Business Constituency (BC), from the perspective of business users and registrants. As defined in our Charter, the mission of the Business Constituency is to ensure that ICANN policy positions are consistent with the development of an Internet that:

1. promotes end-user confidence because it is a safe place to conduct business
2. is competitive in the supply of registry and registrar and related services
3. is technically stable, secure and reliable.

BC Comment

On 30-Oct-2018, the Supplemental Report on the new gTLD Subsequent Procedures initial report was posted for public comment¹. This comment embodies principles that the BC believes should be adhered to by the Working Group in its further deliberations.

The Business Constituency thanks the working group for their efforts in developing this supplemental report. As was the case in the BC's earlier comments on the expansion of gTLDs, The BC welcomes the progress being made in the examination of necessary procedures for a new round of applications. The BC has previously submitted relevant comments on the initial draft report on the new gTLD Subsequent Procedures². The BC would like to add the following comments to the record.

2.1 Auctions: Mechanism of Last Resort and 2.2 Private Resolution of Contention Sets (including Private Auctions)

"Gaming" remains a problem. The Supplemental Report discusses concerns about gaming in the auction process and these concerns seem to be well founded. There is a clear need to create rules that promote applicants who actually plan to use the strings applied for, and to recognize "gamed" applications (designed specifically to seek payment from an auction process).

There did not seem to be any true consensus recommendations on how to do all of this, so we should definitely support more data/study on different scenarios

There is a real need to focus on diversity and on creating participation opportunities for underserved communities or regions. Auctions may in the end make it more difficult for developing world applicants (and other, less well-financed participants) who might have less access to capital for use in an auction setting.

And as we note below, the BC supports the Vickrey Auction method to eliminate private auctions and to replace the ICANN last-resort auctions.

¹ See ICANN public comments page at <https://www.icann.org/public-comments/new-gtld-subsequent-procedures-supp-initial-2018-10-30-en>

² See BC comment on initial report, at https://www.bizconst.org/assets/docs/positions-statements/2018/2018_09September_26%20BC%20comment%20on%20Subsequent%20Procedures%20PDP%20Initial%20Report.pdf

2.1.e.4: Some participants in the Working Group believe that auctions of last resort should be eliminated and replaced with a comparative evaluation process. Some examples include a request for proposals (RFP) process that advantages community based applicants, minority supported applicants, or other factors yet to be determined or relying on a drawing. Do you believe that a comparative evaluation process, a determinative drawing, or some other mechanism could replace auctions of last resort? Why or why not?

Auction of last resort should be eliminated, since it mostly benefits companies with deep pockets and negatively affects applicants from developing nations. Instead of auctions, there should be an inclusion of a request for proposals (RFP) process that advantages Community-based applicants, minority supported applicants, or other factors yet to be determined.

From the BC's comments submitted in September 2018:

"In the last gTLD expansion, we observed several applicants applied for multiple strings with the intention of selling or auctioning their contention position to other applicants."

In the Supplemental Report, there are several mentions of concern about these "speculative" applications. And on page 8 of the Supplemental report it addresses methods to stop speculation: The BC supports having applicants submit a sealed auction bid amount when they submit their application. The bid is unsealed only if there are multiple contenders for the same string, and where none of the contenders have obtained community Priority.

The BC recommends ICANN retain funds from contention auctions based on these sealed bids. This is how some governments auction scarce spectrum (called a Vickrey Auction). A unique TLD string is indeed a scarce resource that has clear public value. Moreover, the CCWG-Auction Proceeds is designing criteria and processes to ensure that auction proceeds fund projects that are in the public interest.

This Vickrey auction would also resolve contention sets very early in the application evaluation process. That saves contending applicants from spending years and significant sums during the contention resolution process, which was very difficult for small applicants.

2.3 Role of Application Comments

The current implementation allows for optional applicant response and only requires response when comments may impact scoring, the Working Group did not come to agreement on whether changes were needed in this regard.

The BC agrees with only requiring a response from an applicant when a comment may impact scoring. We would also advise requiring confirmation and verification of the identity of the commenter. Identity of the commenter would not need to be disclosed to the public but anonymous or false identity used in submitting comments would appear to be another way to "game the system" and could financially impact an applicant unfairly.

A longer comment period for community applications makes sense to allow for the communities impacted to become aware of the application and provide comments if appropriate

2.4 Change Requests

We agree that changes should be allowed in the application but the type of changes allowed should be spelled out in the guidebook and the impact of the changes should be categorized and appropriate action should be triggered. If a substantial change is made public comment may be necessary or if drastic changes are made to the application this may constitute gaming of the application process. The BC agrees that the 2012 Guidebook criteria for changes should be reviewed and amended if needed.

A change to the applied for string should be allowed only if the same string has not yet been applied for, and the application should be considered as a new application to be evaluated from the beginning with the appropriate cost being charged to the applicant.

2.5 Registrar Support for New gTLDs

The requirement to use an ICANN-approved registrar was mentioned as a constraint, and this is a legitimate issue as many regions (Africa especially) has few registrars. While new gTLDs might be able to use other registrars, experience shows that where the market is smaller/younger/less lucrative, new gTLDs may face a true “chicken and egg” situation (limited attention from sales channels until they are able to prove growth/limited growth without attention from sales channels. Many solutions – from permitting non-ICANN accredited channels, to expanding the number of directly allocating names from an applicant – should be considered with the goal of promoting new entrants and more competition and choice for global consumers.

The report discusses the idea of having ICANN assign a registrar to distribute TLDs that can’t otherwise convince a registrar to sell their names. (p.34). The BC would recommend a more market-oriented solution to encourage these TLD operators to setup their own Registrar to distribute their names. This kind of vertical integration is permitted for new gTLDs and is a superior private-sector solution, when compared to forcing a registrar to carry a TLD.

There may be other feasible partial solutions such as allowing registrars to pay as they register domain names without depositing funds ahead of time into a registry account but payment is not the only burden that is imposed on a registrar. Technical implementation to comply with the specs of the registry can be quite involved.

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This comment was co-drafted by Susan Kawaguchi, Vivek Goyal, Andrew Mack, and Steve DelBianco.

It was approved in accord with our Charter.