

**DETERMINATION  
OF THE BOARD ACCOUNTABILITY MECHANISMS COMMITTEE (BAMC)  
RECONSIDERATION REQUEST 14-42  
25 JANUARY 2019**

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The Requestor, the Ministry of Trade, Industry, Investment and Digital Economy of the Kingdom of Morocco, seeks reconsideration of the Geographic Names (Geo Names) Panel determination in 2014 (the First Extended Evaluation Report), that the application for .TATA (Application) included the Moroccan government’s non-objection and therefore passed the geographic names review under the Applicant Guidebook. The Requestor also challenges ICANN organization’s acceptance of that Report. Following receipt of a letter from the Requestor saying the Moroccan government *did* object to the Application, the Geo Names Panel issued an amended report (the Second Extended Evaluation Report) stating that the application did *not* provide the required evidence of government non-objection, did not pass the geographic names review, and was therefore ineligible for further review. With that, the issues raised in Request 14-42 have already been addressed and the Application is not moving forward. As a result, the Request is now moot.

**I. Brief Summary.**

Tata Sons Limited (Applicant) submitted the Application for .TATA.<sup>1</sup> Because Tata is a province of Morocco registered in the ISO 3166-2 standard, the Geo Names Panel determined that the Applicant’s applied-for string was a geographic name, thereby triggering the requirements of Section 2.2.1.4.2 of the Applicant Guidebook (Guidebook).<sup>2</sup> Section 2.2.1.4.2 requires that applied-for strings considered to be geographic names “must be accompanied by

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<sup>1</sup> See .TATA Application Details (<https://gtldresult.icann.org/applicationstatus/applicationdetails/437>).

<sup>2</sup> See .TATA Initial Evaluation Report (<http://newgtlds.icann.org/sites/default/files/ier/driuswlu8rlevoagl5ml1si9/ie-1-1720-93817-en.pdf>).

documentation of support or non-objection from the relevant governments or public authorities.”<sup>3</sup> Initially, the Geo Names Panel determined that the Application either did not provide the required documentation of support or non-objection or did not meet the criteria under Section 2.2.1.4.3 of the Guidebook.<sup>4</sup> The Geo Names Panel determined that the Application was eligible for Extended Evaluation.<sup>5</sup> During Extended Evaluation, the Applicant provided ICANN org with a letter from the Director General of the Moroccan Authority of Trademark Rights, Office of the Moroccan Industrial and Commercial Property (OMPIC) (the 5 June 2014 OMPIC letter), which did not express opposition to the Application.<sup>6</sup> Based on this document, on 18 July 2014, the Geo Names Panel determined that the Application passed the geographic names review.<sup>7</sup> As a result, the Application was deemed to have passed Extended Evaluation.<sup>8</sup>

The Moroccan government, including the author of the 5 June 2014 OMPIC letter, expressed concerns in correspondence with ICANN and in Request 14-42 that the Application “did not receive any document for non objection or support . . . from any Moroccan authority, in particular from the authority in charge of the DNS policy & regulation or from any local authority from Tata Province as Moroccan subdivision.”<sup>9</sup> In light of these concerns, ICANN org

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<sup>3</sup> Guidebook § 2.2.1.4.2.

<sup>4</sup> See .TATA Initial Evaluation Report (<http://newgtlds.icann.org/sites/default/files/ier/driuswlu8rlevoag15ml1si9/ie-1-1720-93817-en.pdf>).

<sup>5</sup> See *id.* Per the Guidebook, “[t]he Extended Evaluation period allows for an additional exchange of information between the applicant and evaluators to clarify information contained in the application. . . . If an application passes the Extended Evaluation, it can then proceed to the next relevant stage.” Guidebook § 1.1.2.8.

<sup>6</sup> See <https://www.icann.org/en/system/files/files/request-kingdom-of-morocco-redacted-09jan15-en.pdf>, Pg. 6.

<sup>7</sup> See First Extended Evaluation Report (<http://newgtlds.icann.org/sites/default/files/eeer/tle3woafroespou7oad0ufi6/ee-1-1720-93817-en.pdf>).

<sup>8</sup> See *id.*

<sup>9</sup> Request, §§ 6, 10, Pgs. 2, 4 (<https://www.icann.org/en/system/files/files/request-kingdom-of-morocco-redacted-25sep14-en.pdf>); see also <https://www.icann.org/en/system/files/correspondence/badr-to-chehade-et-al-17sep14-en.pdf>; <https://www.icann.org/en/system/files/files/request-kingdom-of-morocco-redacted-09jan15-en.pdf>; <https://www.icann.org/en/system/files/correspondence/maliki-to-atallah-09jan15-en.pdf>.

required the Application to be re-evaluated by the Geo Names Panel in accordance with Section 1.2.7 of the Guidebook.<sup>10</sup>

As part of the re-evaluation, the Geo Names Panel asked the Applicant to submit new evidence of support or non-objection from the Moroccan government for its Application.<sup>11</sup> Despite receiving numerous extensions of time to provide such documentation,<sup>12</sup> the Applicant ultimately was not able to do so.

On 13 January 2017, the Geo Names Panel issued the Second Extended Evaluation Report, concluding that “[a]fter careful consideration and extensive review of the information provided in [the] [A]pplication, including any responses to Clarification Question(s), the Evaluation Panel(s) determined that the [A]pplication did not meet the requirements specified in the Applicant Guidebook.”<sup>13</sup> The Second Extended Evaluation Report also explained that, “[t]he Geographic Names Panel has determined that . . . the required documentation of support or non-objection was either not provided or did not meet the criteria described in Section 2.2.1.4.3 of the Applicant Guidebook.”<sup>14</sup> Therefore, the Application was found “ineligible for further review.”<sup>15</sup>

The BAMC has carefully considered Request 14-42 and all relevant materials. The BAMC finds that the relief sought by the Request—cancellation of the original Extended Evaluation decision and rejection of the .TATA application—has already been effectuated by the Second Extended Evaluation Report. The BAMC notes that the current status of the Application is “Will Not Proceed.”<sup>16</sup> Because Request 14-42 seeks reconsideration of a decision that has

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<sup>10</sup> See <https://www.icann.org/en/system/files/correspondence/atallah-to-nage-02feb15-en.pdf>. See also Guidebook § 1.2.7 (“ICANN reserves the right to require a re-evaluation of the application in the event of a material change.”).

<sup>11</sup> See Attachment 1 to this Determination.

<sup>12</sup> See Attachment 2 to this Determination.

<sup>13</sup> Second Extended Evaluation Report (<https://gtdresult.icann.org/applicationstatus/applicationchangehistory/437>).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> See .TATA Application Details (<https://gtdresult.icann.org/applicationstatus/applicationdetails/437>).

since been reversed and because the relief requested has already been effectuated, the BAMC concludes that Request 14-42 is moot and reconsideration is unnecessary.

## **II. Facts.**

### **A. The Geo Names Panel Determination During Initial Evaluation.**

The Applicant did not designate its .TATA Application as one for a geographic name.<sup>17</sup> Under the Guidebook, all applications must undergo a geographic names review, regardless of whether the application is designated as one for a geographic name.<sup>18</sup> Pursuant to Guidebook Section 2.2.1.4.2, an applied-for string is a geographic name if, among other things, the string “is an exact match of a sub-national place name, such as a county, province, or state, listed in the ISO 3166-2 standard.”<sup>19</sup> Applied-for strings that qualify as geographic names under Section 2.2.1.4.2 of the Guidebook “must be accompanied by documentation of support or non-objection from the relevant governments or public authorities.”<sup>20</sup>

Tata is the name of a Moroccan sub-division/province registered in the ISO 3166-2 standard.<sup>21</sup> As such, the Geo Names Panel determined on 6 September 2013 that the Application fell within the criteria of Section 2.2.1.4.2 of the Guidebook.<sup>22</sup> The Geo Names Panel also determined that “the required documentation of support or non-objection was either not provided or it did not meet the criteria described in Section 2.2.1.4.3” of the Guidebook and determined that “[the] [A]pplication is eligible for Extended Evaluation.”<sup>23</sup>

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<sup>17</sup> See .TATA Application at Question 21(a), (<https://gtldresult.icann.org/applicationstatus/applicationdetails/437>.)

<sup>18</sup> Guidebook § 2.2.1.4.

<sup>19</sup> *Id.* at § 2.2.1.4.2.3 (emphasis omitted).

<sup>20</sup> *Id.* at § 2.2.1.4.2.

<sup>21</sup> Request, § 7, Pg. 3.

<sup>22</sup> See .TATA Initial Evaluation Report (<http://newgtlds.icann.org/sites/default/files/ier/driuswlu8rlevoagl5ml1si9/ie-1-1720-93817-en.pdf>).

<sup>23</sup> *Id.*

On 18 June 2014, the Applicant provided ICANN with the 5 June 2014 OMPIC letter, addressing the potential “registration by the company TATA SON’S of the gTLD.”<sup>24</sup> The letter indicated that the “national trademarks system” of Morocco “impose[d] no ban” on the use of geographic names, and provided information regarding dispute resolution “after registration of [a] domain name.”<sup>25</sup> The letter did not indicate any opposition by the Moroccan government to the registration of the .TATA gTLD.

On 18 July 2014, after authenticating the letter and confirming the relevance of OMPIC as a governmental authority, the Geo Names Panel issued the First Extended Evaluation Report, which “determined that [...] the documentation of support or non-opposition provided has met all relevant criteria in Section 2.2.1.4.3 of the Applicant Guidebook.”<sup>26</sup> As such, the Geo Names Panel determined that the Application passed the geographic names evaluation, and the Application was deemed to have passed Extended Evaluation.<sup>27</sup>

## **B. The Moroccan Government’s Response to the First Extended Evaluation Report.**

On 17 September 2014, ICANN org received a letter from the Requestor expressing the concerns of the Moroccan government about the results of the First Extended Evaluation Report.<sup>28</sup> On 28 September 2014, the Requestor filed Request 14-42, seeking reconsideration of the First Extended Evaluation Report and ICANN org’s acceptance of the Report. The Requestor claimed the Geo Names Panel’s determination that the Applicant provided sufficient

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<sup>24</sup> See <https://www.icann.org/en/system/files/files/request-kingdom-of-morocco-redacted-09jan15-en.pdf>, Pg. 6. The original letter was in French, see *id.* at Pg. 7, but ICANN was also provided a certified English translation, which is quoted here.

<sup>25</sup> See <https://www.icann.org/en/system/files/files/request-kingdom-of-morocco-redacted-09jan15-en.pdf>, Pg. 6.

<sup>26</sup> See First Extended Evaluation Report (<http://newgtlds.icann.org/sites/default/files/ee/1-1720-93817-en.pdf>); see also Guidebook § 1.1.2.8.

<sup>27</sup> See First Extended Evaluation Report (<http://newgtlds.icann.org/sites/default/files/ee/1-1720-93817-en.pdf>).

<sup>28</sup> See <https://www.icann.org/en/system/files/correspondence/badr-to-chehade-et-al-17sep14-en.pdf>.

evidence of non-objection to the Application violated applicable policies or procedures because the Application “did not receive any document for non objection or support . . . from any Moroccan authority, in particular from the authority in charge of the DNS policy & regulation or from any local authority from Tata Province as Moroccan subdivision.”<sup>29</sup>

**C. Post-Request Correspondence and the Geo Names Panel’s Re-Evaluation of the Application.**

Upon receiving the Request, ICANN org noted that the Requestor appeared to be unaware of the 5 June 2014 OMPIC letter, which the Geo Names Panel had identified as a non-objection letter.<sup>30</sup> ICANN org thus provided that letter to the Requestor, and invited the Requestor to respond if that letter did not resolve the Moroccan government’s concerns.<sup>31</sup>

In response, the Requestor explained that the 5 June 2014 OMPIC letter “cannot be consider[ed] as a formal non-objection letter of the Moroccan government”<sup>32</sup> because under Moroccan law, “OMPIC is not the competent authority in charge of providing the non-objection document.”<sup>33</sup> Instead, the Requestor noted, it is the only entity authorized to provide such a letter.<sup>34</sup> Additionally, the Requestor attached its correspondence with OMPIC, in which OMPIC explained that the 5 June 2014 letter was not intended to be a non-objection letter.<sup>35</sup> As OMPIC explained, the 5 June 2014 letter was intended in part to explain that requests for non-objection letters “should be addressed to the relevant services.”<sup>36</sup>

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<sup>29</sup> Request, §§ 6, 10, Pgs. 2, 4.

<sup>30</sup> See <https://www.icann.org/en/system/files/correspondence/badr-to-atallah-09jan15-en.pdf>, at Pgs. 9-10.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at Pg. 1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> <https://www.icann.org/en/system/files/correspondence/badr-to-atallah-09jan15-en.pdf>, at Pg. 4.

<sup>36</sup> *Id.*

OMPIC also sent ICANN org a letter on 9 January 2015, clarifying that “a no objection was not the purpose of [its 5 June 2014] letter.”<sup>37</sup> Instead, the letter was intended to clarify that trademark law would not bar registration of a geographic name as a trademark, and that domain names disputes were governed by a specific provision of Moroccan law.<sup>38</sup>

On 13 January 2015, the Applicant responded to the issues raised in Request 14-42.<sup>39</sup> In support of its position that the 5 June 2014 letter satisfied the non-objection letter requirement, the Applicant attached a letter from its “legal representative and lawyer . . . in Morocco.”<sup>40</sup> The lawyer’s letter concluded that the 5 June 2014 letter was sufficient because “OMPIC is a public authority,” “the application addressed to the OMPIC [by the Applicant] is clearly stated,” and “the answer of the OMPIC . . . does not express any objection.”<sup>41</sup>

In light of the information received from the Requestor and OMPIC, ICANN org informed the Applicant that the Application would need to be re-evaluated by the Geo Names Panel in accordance with Section 1.2.7 of the Guidebook.<sup>42</sup> As part of the re-evaluation, the Geo Names Panel reviewed the letters submitted by the Moroccan government and requested further documentation of support or non-objection from the Applicant.<sup>43</sup> The Applicant sought and was granted several extensions of the deadline to provide further documentation.<sup>44</sup> Ultimately, the Applicant was not able to provide the required documentation.

Accordingly, the Second Extended Evaluation Report concluded that “the required documentation of support or non-objection was either not provided or did not meet the criteria

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<sup>37</sup> <https://www.icann.org/en/system/files/correspondence/maliki-to-atallah-09jan15-en.pdf>.

<sup>38</sup> *Id.*

<sup>39</sup> <https://www.icann.org/en/system/files/files/request-tatasons-to-icann-redacted-13jan15-en.pdf>.

<sup>40</sup> *Id.* at 2.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> See <https://www.icann.org/en/system/files/correspondence/atallah-to-nage-02feb15-en.pdf>.

<sup>43</sup> See Attachment 1 to this Determination.

<sup>44</sup> See Attachment 2 to this Determination.

described in Section 2.2.1.4.3 of the Applicant Guidebook.”<sup>45</sup> Therefore, the Application was found “ineligible for further review.”<sup>46</sup> Accordingly, the Application status was changed to “Will Not Proceed.”<sup>47</sup>

#### **D. Relief Requested.**

The Requestor asks that the “decision [finding that .TATA passed Extended Evaluation] should be cancelled and the request for application for Tata should be rejected.”<sup>48</sup>

### **III. Issues.**

The issues are as follows:

1. Whether all of the issues raised in Request 14-42 have been addressed and the Request is therefore moot; and
2. If not moot, whether the Geo Names Panel violated any policy or procedure in its determination that the Applicant submitted sufficient evidence of non-opposition from the Moroccan government to meet the Guidebook’s requirements in the First Extended Evaluation Report.

### **IV. The Relevant Standards for Evaluating Reconsideration Requests.**

Article IV, Section 2.1 and 2.2 of ICANN’s Bylaws<sup>49</sup> provide in relevant part that any entity “may submit a request for reconsideration or review of an ICANN action or inaction (‘Reconsideration Request’) to the extent” that it has been “adversely affected by”:

- (a) one or more staff actions or inactions that contradict established ICANN policy(ies);  
or
- (b) one or more actions or inactions of the ICANN Board that have been taken or refused

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<sup>45</sup> See Second Extended Evaluation Report (<https://gtldresult.icann.org/applicationstatus/applicationchangehistory/437>).

<sup>46</sup> *Id.*

<sup>47</sup> See .TATA Application Details (<https://gtldresult.icann.org/applicationstatus/applicationdetails/437>).

<sup>48</sup> Request, § 9, Pg. 4.

<sup>49</sup> The BAMC has considered Request 14-42 under the 30 July 2014 version of the Bylaws (the version in effect when the Requestor submitted Request 14-42).

to be taken without consideration of material information, except where the party submitting the request could have submitted, but did not submit, the information for the Board's consideration at the time of action or refusal to act; or

(c) one or more actions or inactions of the ICANN Board that are taken as a result of the Board's reliance on false or inaccurate material information.<sup>50</sup>

Because the Request seeks reconsideration of staff action, only Subsection (a) is relevant to this Request.

Dismissal of a request for reconsideration of ICANN org action or inaction is appropriate if the BAMC concludes, or if the Board agrees to the extent the BAMC deems that further consideration is necessary, that the requesting party has not satisfied the reconsideration criteria set forth in the Bylaws. ICANN has previously determined that the reconsideration process can properly be invoked for challenges to determinations rendered by panels formed by third party service providers, such as the Geo Names Panel, where it can be stated that a panel failed to follow the established policies or procedures in reaching its determination, or that staff failed to follow its policies or procedures in accepting that determination.<sup>51</sup> In the context of the New gTLD Program, the reconsideration process does not call for the BAMC to perform a substantive review of extended evaluation reports. Accordingly, the BAMC is not to evaluate the Geo Names Panel's substantive conclusion that 4 June 2015 letter met the requirements under Section 2.2.1.4.2 of the Guidebook in the First Extended Evaluation Report.

## **V. Analysis and Rationale.**

### **A. Because All of the Issues Raised in Request 14-42 Have Been Addressed and the Requestor has Received the Relief Requested, Request 14-42 is Moot.**

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<sup>50</sup> 2014 Bylaws, Art. IV, § 2.2.

<sup>51</sup> See <http://www.icann.org/en/groups/board/governance/reconsideration/recommendation-booking-01aug13-en.doc>, BGC Recommendation on Reconsideration Request 13-5.

The Requestor asked ICANN org to cancel the Geo Names Panel’s First Extended Evaluation Report and to reject the Application.<sup>52</sup> As detailed in the foregoing Facts section, this is precisely what has occurred. The First Extended Evaluation Report was supplanted by the Second Extended Evaluation Report.<sup>53</sup> In the Second Extended Evaluation Report, the Geo Names Panel concluded that the Applicant had not provided the required documentation of support or non-objection and therefore that the Application was “ineligible for further review.”<sup>54</sup> Because of that result, the .TATA Application will not proceed to further processing, and its application status has been changed to “Will Not Proceed” on the new gTLD microsite.<sup>55</sup>

Per the Requestor, the adverse effect to the Moroccan government from the First Extended Evaluation Report would be “mitigate[d]” by the relief it sought.<sup>56</sup> Because any effect from the First Extended Evaluation Report has now been mitigated and the result sought by the Request has been achieved, the Request is moot and reconsideration is unnecessary.

**B. Because the Second Extended Evaluation Report Supplanted the First Extended Evaluation Report, the Issues Raised in the Request Have Been Addressed.**

Request 14-42 challenges whether the Geo Names Panel followed established policies and procedures in issuing the First Extended Evaluation Report and whether ICANN org violated any established procedures in accepting that Report. However, as explained above, the result sought by Requestor—cancellation of the First Extended Evaluation Report and rejection of the .TATA Application—has already been achieved by the issuance of the Second Extended Evaluation Report, which nullified the First Extended Evaluation Report. The BAMC therefore

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<sup>52</sup> Request, § 9, Pg. 4.

<sup>53</sup> <https://gtdresult.icann.org/applicationstatus/applicationchangehistory/437>.

<sup>54</sup> See Second Extended Evaluation Report (<https://gtdresult.icann.org/applicationstatus/applicationchangehistory/437>.)

<sup>55</sup> See .TATA Application Details (<https://gtdresult.icann.org/applicationstatus/applicationdetails/437>).

<sup>56</sup> Request, § 10, Pg. 5.

concludes that it is unnecessary to evaluate the merits of the Requestor's claims regarding the First Extended Evaluation Report.

**VI. Determination.**

The BAMC has considered Request 14-42, and, based on the foregoing, concludes that Request 14-42 is moot because the relief requested by the Requestor has already been effectuated. In accordance with Section 2.3(f) of Article IV of the relevant Bylaws, the BAMC concludes that this determination is final and that no further consideration by the Board is warranted.

In terms of timing of the BAMC's Determination, we note that Section 2.16 of Article IV of the applicable Bylaws provides that the BAMC shall make a final determination or recommendation with respect to a reconsideration request within thirty days following receipt of the request, unless impractical. To satisfy the thirty-day deadline, the BAMC would have to have acted by October 28, 2014. Due to the events described above relating to the issuance of Second Extended Evaluation Report, including the numerous requests by the Applicant for extensions of time to provide supporting documentation, and due other scheduling issues, the first practicable opportunity that the BAMC has had to consider Request 14-42 is 25 January 2019.