

Staff Report of Public Comment Proceeding

Phase II Assessment of the Competitive Effects Associated with the New gTLD Program

Publication Date: 21 December 2016

Prepared By: Eleeza Agopian/ICANN and Analysis Group

Public Comment Proceeding

Open Date:	11 October 2016
Close Date:	5 December 2016
Staff Report	21 December 2016
Due Date:	

Important Information Links

Announcement
Public Comment Proceeding
View Comments Submitted

Staff Contact: Eleeza Agopian

Email: eleeza.agopian@icann.org

Section I: General Overview and Next Steps

The Phase II Assessment was published to provide the community with data to compare changes in the marketplace over the course of one year, since the publication of the [Phase I study](#) in September 2015. ICANN commissioned the study, which was conducted by Analysis Group, to inform the Competition, Consumer Trust and Consumer Choice Review Team's (CCT-RT) analysis of the New gTLD Program. Since the study's publication, the CCT-RT has begun its analysis of the New gTLD Program's impact on competition in the domain name marketplace and has utilized the study's findings in its analysis. Comments received on this study will be shared with both Analysis Group and the CCT-RT. The CCT-RT will consider public comments on the study's findings as it reaches its own findings and recommendations regarding the New gTLD Program's impact on competition in the domain name marketplace.

Section II: Contributors

At the time this report was prepared, a total of seven (7) community submissions had been posted to the forum. The contributors, both individuals and organizations/groups, are listed below in chronological order by posting date with initials noted. To the extent that quotations are used in the foregoing narrative (Section III), such citations will reference the contributor's initials.

Organizations and Groups:

Name	Submitted by	Initials
AFnic	Marianne Georgelin	AFNIC
Registries Stakeholder Group	Stéphane Van Gelder	RySG
Internet Service Providers and Connectivity Providers	Chantelle Doerksen	ISPCP
Domain Mondo	John Poole	DM
Business Constituency	Steve DelBianco	BC
Intellectual Property Constituency	Greg Shatan	IPC
At-Large Advisory Committee	Heidi Ullrich, Silvia Vivanco, Ariel Liang, Gisella Gruber, Nathalie Peregrine, Terri Agnew and Yeşim Nazlar	ALAC

Individuals:

Name	Affiliation (if provided)	Initials

Section III: Summary of Comments

General Disclaimer: This section intends to summarize broadly and comprehensively the comments submitted to this public comment proceeding but does not address every specific position stated by each contributor. The preparer recommends that readers interested in specific aspects of any of the summarized comments, or the full context of others, refer directly to the specific contributions at the link referenced above (View Comments Submitted).

ICANN's Summary

ICANN received seven comments in response to the Phase II Assessment of the Competitive Effects Associated with the New gTLD Program. Within the comments received, there were a number of recurring and overarching themes related to the issues covered in the Phase II Assessment.

While IPC, ISPCP and BC expressed that the Phase II Report provides a more well-rounded examination of the developing market, BC and RySG noted that it is still relatively early to draw conclusions in the marketplace as new gTLDs are still being introduced regularly. As noted previously in the comments submitted for the Phase I Report, several commentators agreed with the Phase II Assessment that it is not possible to conclusively determine the impact of new gTLDs on domain name marketplace competitiveness due to insufficient transaction-level data.

To facilitate a more thorough analysis of new gTLDs and domain name marketplace competition, AFNIC recommends data sharing via an Open Data approach, while BC suggests the inclusion of additional data points from registries and registrars. According to BC, "this would allow for important analyses, such as a price comparison of similar second-level domains across legacy and new gTLDs." Furthermore, BC recommends the inclusion of data on price changes for legacy gTLDs, but this analysis should exclude "price changes for .COM and .NET, as prices for these domains have been capped for several years; these price caps have likely kept .COM and .NET prices from rising to levels whereupon new gTLD entry would have placed downward pressure on prices for domains in legacy gTLDs COM and NET."

In regard to ccTLDs, IPC and BC expressed that future analyses should adequately factor in ccTLDs to represent a complete picture of the entire marketplace as well as a follow up analysis on the impact of regional gTLDs on marketplace competitiveness. While RySG noted that ccTLDs are not included in the Phase II Assessment, RySG expressed that this limitation should be clearly indicated in the report as "only footnotes 5 and 11 clarify that legacy TLDs exclude ccTLDs and showing ccTLDs in Figure 1 gives the impression that ccTLDs are taken into account."

Furthermore, BC and IPC recommended including additional usage details on new gTLDs in order to understand how registrants use their registered domain names and whether these registrations are for speculative, defensive or active purposes. Relatedly, the BC also recommended that future studies include "a separate analysis that excludes parked domains in order to better understand the marketplace effects of active domains and to establish whether the prevalence of parked domains are a feature of the new gTLDs or are simply a carry-over from the legacy period by obtaining statistics on legacy parking levels."

In addition, BC also suggested that future analysis should "comprehensively describe the methodology for analyzing pricing dynamics" as well as "clear and explicit inclusion of any add-on fees by registrars and registries that may not be captured by existing metrics" and should "capture additional registration

fees such as Premium Fees and Early Access Program fees and present these in separate tables for more detailed analysis.” According to BC, “this will allow for a more in-depth comparison of certain one-time fees versus ongoing registration prices in the new gTLD program.” Lastly, BC sees value in “including information on switching costs, which could be assessed by asking legacy gTLD and ccTLD registrants about the importance of switching costs to their decision to switch/not switch and, if possible, the identification and quantification of such costs.”

Along the same lines, IPC recommended, “that future data should include registration metrics and should contemplate the interaction of New gTLDs, legacy gTLDs, and ccTLDs, but not in isolation.” The IPC also urged “future research into realistic marketplace effects and practices, such as domain name parking and rates of UDRP (gTLD) or UDRP-like mechanisms (ccTLDs, where applicable) complaint per TLD, in order to ensure that ICANN’s analysis is one that is comprehensive.”

In regard to the report’s pricing analysis, RySG suggested that “aside from the limited availability of both retail and wholesale pricing data the study should also acknowledge that these two data points fail to capture all of the dynamics that impact end users, registrars and registries.” Furthermore, RySG explained that “the wholesale pricing analysis fails to account for ways that wholesale pricing can be offset for channel distribution partners by using volume based tiers, rebates or registry funded shared marketing. In addition, over-reliance on pricing and registration volume to measure competitive impact overwhelms consideration of other potentially useful metrics, such as usage (which is admittedly difficult to determine).”

Furthermore, RySG requested more clarity on the tables included in the Phase II Assessment. In particular, the RySG pointed out that “the use of the word ‘All’, for example for the values reported in the columns ‘Share of All Registrations’ in Table 2 and ‘Shares of Registrations, All TLDs, Phase I and II’ in Table 2A, creates the impression that the denominator in the share calculations is the entire universe of registrations. It is not clear from the table alone whether a sample of gTLDs is used and not all gTLDs; whether the universe of registrations that is being used to compute shares is worldwide or limited; that ccTLDs are excluded from the calculations; whether the universe of registrations includes all TLDs or just those that are open without restrictions.”

Lastly, RySG cautioned “defining subgroups or market segments where direct competition could be expected and be conscious, for example, of the fact that some TLDs have more restrictive registration policies than others, or the fact that non-English and IDN TLDs may be more, or less, meaningful for users, depending on the language(s) that is (are) frequently used in their region.” DM agreed with the comments submitted by RySG and expressed that in order to avoid misunderstandings, the market place for domain names should be clearly defined in the report. Similarly, AFNIC suggested, “the concept of competition shall be defined precisely.”

While IPC understands that “defining the edges of a market is difficult, the community would benefit from additional reasoned rationale for the grouping choices of new and legacy gTLDs made in the Phase II Report.” According to IPC, “such an exercise may also enable the community to identify additional commonalities and differences between TLDs that could be helpful in developing new and innovative metrics to measure competition.”

ISPCP emphasized a number of points in response to the Phase II Assessment. In regard to the adoption of new gTLDs, ISPCP explained that “perhaps the emergence of such a huge quantity of new strings caused an effect of superabundance which conspired against the individual initial success of many of them.” Furthermore, ISPCP pointed out that “there is significant impact of registrars not offering new gTLDs, i.e., four registrars account for >50% of all registrations and those cherry-pick which new TLDs they will offer - these four companies also have most of the resellers of TLDs.”

Concerning the practice of “gaming” for domainers, ISPCP stated that “they discontinued the practice of avidly buying all attractive names that became available for resale purposes, and some invested

instead in registry concessions. A second round may augment this practice.” ISPCP also expressed that “a new secondary market is developing with gTLDs themselves (not the names)” and suggested that the analysis related to “imbalance in the market share that the existing registries hold, would improve the analysis if competition between existing players was separated from an analysis of new market players; and, the GNSO should do an analysis of trends identified in the report to see if there are impacts on policy matters.”

AFNIC provided a number of suggestions for future studies on the competitive effects of the New gTLD Program. AFNIC recommended that additional studies should take into account a revenue analysis being that “business models have significantly increased with the introduction of new gTLDs.” For the same reason, AFNIC suggested “to deepen the analysis relying on the segmentation of new TLD by including a comparison of two TLDs targeting the same customers – a point taken by the authors – but we can not be very conclusive when considering the whole corpus of available gTLDs. This segmentation would also provide clues to understand the pricing strategies and their good or bad results, in the short term or in the long range.” Furthermore, AFNIC advised that future analysis should take into account “extraordinary events which may affect the data” in order to avoid biased conclusions, such as “the two Chinese registrations waves observed during the Autumn of 2015 and the Spring of 2016.”

In addition, AFNIC expressed that the number of registrars may not be relevant when assessing competition since “registrars are not uniformly active on every TLD” and suggested that future analyses should not only include the trends in terms of “stocks” of domain names, but also “the Net Growth and the New Registrations provided by the ICANN monthly reports. An increase in stock shall be cross-checked in the long run to make sure that it reflects an actual increase in the demand.” Lastly, AFNIC recommended using “concentration indexes such as the HHI (Herfindahl-Hirschmann Index) to measure the level of competition.” AFNIC also calculated the HHI Index of stocks of domain names during the period covered by the Phase II Assessment and concluded, “that the increase in competition on the global scale is actually induced by a growing competition between New TLDs and Legacy TLDs.”

IPC expressed that even though the Phase II Report “concludes that there are indications of increased competition in the domain name marketplace as a result of the New gTLD Program, particularly in this arena, rights holders bear many of the costs after domain registration fees are paid, such as those associated with enforcement against infringing registrations by third parties. A wide array of factors will offer insight into (or skew) economic evaluations regarding the competitive impacts of the New gTLD program.” To facilitate a more comprehensive picture of competition in the domain name marketplace, IPC urged that future evaluations of DNS competitiveness “incorporate these wide-ranging costs into their methodologies and analyses.”

ALAC submitted a comment listing their suggested metrics for consumer trust and choice, which they proposed at the time gTLDs were introduced, and these could be used in assessing the introduction of new gTLDs. ALAC expressed that “in relation to the metric on end user complaints, there are significant differences between incidents and their impact reported by ICANN compared to other reputable independent agents.” Thus, ALAC “awaits the testing of the expanded DNS marketplace against metrics for consumer trust and choice.” While ALAC acknowledged that “there has been some expansion in registry numbers and new market entrants, only 15% of the new domains have the characteristics of primary registration.” Based on the Phase II Assessment, ALAC concluded that “there is little evidence of benefit to end users with the introduction of new gTLDs. And from an industry, there is no clear evidence of lower prices or more choice.” Thus, according to ALAC, “the outcomes of Assessment are, at best, equivocal.”

Lastly, several commentators, such as IPC and RySG noted that ICANN should continue to assess the competitive effects of the New gTLD Program. According to IPC, ICANN should particularly “explore data that may present the potential of skewing or distorting evaluations regarding the

competitive impacts of the New gTLD program.”

Section IV: Analysis of Comments

General Disclaimer: This section intends to provide an analysis and evaluation of the comments submitted along with explanations regarding the basis for any recommendations provided within the analysis.

Analysis Group’s Analysis of Comments

We appreciate and agree with many of the comments noted above and will address and discuss these comments below. We also appreciate the suggestions for future work, although we remind readers that while a number of the analyses suggested may provide interesting insight into the domain name marketplace, it is difficult to obtain much of the data that would be required for such analyses. We discuss these limitations in greater detail below.

1. Suggestions for Clearer Definitions of Competition and Metrics Used in the Report

There were several suggestions to clarify the purpose, methodology, and results of the report. The intention of the report is to analyze the extent to which traditional economic metrics of competition have changed in the domain name marketplace since the beginning of the New gTLD Program. In general, marketplace competition occurs as the result competition among suppliers producing similar or identical products. In this study, we evaluated competition between registrars and registries, respectively, as suppliers of domain name registrations. The metrics that we have incorporated in the report are limited to dimensions of competition traditionally discussed in economic theory for which there was available data. The report is not intended to evaluate the welfare consequences of changes in competition (e.g., changes in the number of active websites available to Internet users).

RySG suggested that we more clearly articulate that ccTLDs have not been analyzed in this report. Although we attempted to collect information from ccTLD registries, we did not have a sufficient response rate to be able to analyze ccTLD prices. We also lacked registration volume data for ccTLDs, as they do not report monthly registration activity to ICANN. We include ccTLDs in Figure 1 because ccTLDs are an important part of the domain name space, and we therefore included them in our analyses when we had sufficient data. Our summary of collected data (Tables 1A and 1B) indicate that we do not have pricing information for ccTLDs and therefore are unable to include them in our price analyses. It was also suggested that we provide clarity for the meaning of “all registrations” in some of our analyses of registration volumes (e.g., in Table 2A). “All registrations” refers to the combination of legacy and new gTLD registrations.

2. Suggestions for Additional Analyses

BC and IPC suggested that we incorporate analyses of how registered domains are used, and several readers suggested future analyses of parking activity. Although we agree that it may be interesting to analyze the ways in which registrants use registered domains (including parking), we remind readers that this report is intended to assess the competitive effects of the New gTLD Program on the marketplace for domain names (i.e., we attempt to measure how the forces that effect price and non-price dimensions of goods offered by suppliers, such as the domain names and registration offerings of registries and registrars, have changed since the beginning of the New gTLD Program). As such, it is our view that the intended use of domain registrations likely does not fall within the scope of this report, and if it did, such an analysis would require a large survey of registrant intent: data that would be very difficult to collect in a representative manner. One should note that for the purposes of this study, registration activity is market activity, and thus we do not believe that domains registered with a certain intended use should be excluded from the analyses.

It was also suggested that we pursue an analysis of second-level domain pricing across legacy and new gTLDs. We concur that such an analysis would provide greater insight into how registrars price domains and how such pricing has changed over time. Although we requested information about

second-level domain pricing from registrars, we did not receive responses from a large enough sample of registrars to conduct a meaningful analysis.

3. Suggestions for Future Analyses

As mentioned above, this report focuses on the effects of the New gTLD Program on competition in the domain name marketplace as observed through effects on the competitive choices of suppliers (e.g., registries and registrars). The report does not measure the welfare impacts of competition on end users in the domain name space. However, several readers made useful suggestions for future analyses that could analyze the effects of competition on end users, such as how specific aspects of the New gTLD Program relate to parking activity, domain name disputes, and additional measures of consumer trust and choice. We remind readers that the pursuit of such analyses will depend on the development of quantifiable metrics and available data related to parking activity, domain usage, and consumer intent and opinions.

It was also suggested that future analyses could focus on more detailed measures of prices, such as registration fees (e.g., Premium Fees, Early Access Program fees) and other registration metrics related to the interaction between new gTLDs, legacy gTLDs, and ccTLDs. We agree that there are additional dimensions to prices, such as registration fees, that can help to provide a picture of competition. We again caution that, based on our experience in requesting pricing data from registries and registrars, these data can be difficult to obtain in sufficient quantities to perform meaningful analyses.

Lastly, it was suggested that future analyses incorporate the Herfindahl-Hirschman Index (HHI), a traditional metric for market concentration. However, calculating HHIs is generally only undertaken after one has already defined both the geographic and product markets. Given the lack of data provided to Analysis Group (in particular, detailed transaction-level of domain name sales), it was not possible to define the geographic and product markets, and thus it was not meaningful to calculate HHIs. We note that the Competition, Consumer Trust, and Consumer Choice (CCT) Review Team is conducting some competition analyses itself, including the calculation of HHIs for various hypothetical markets using legacy and new gTLD market shares (calculated by Analysis Group under the direction of the CCT Review Team). Those calculations are available here, but we note that that the CCT Review Team was also not able to define the relevant geographic and product markets:

[https://community.icann.org/display/CCT/Background+Materials?preview=/56135378/63151853/Basic%20Registry%20Market%20Structure%20Calculations%20\(Project%202\)%20-%209.7.2016.xlsx](https://community.icann.org/display/CCT/Background+Materials?preview=/56135378/63151853/Basic%20Registry%20Market%20Structure%20Calculations%20(Project%202)%20-%209.7.2016.xlsx). The CCT Review Team is also conducting an analysis of parked domains in gTLDs.