CCT Recommendation 2: Collect wholesale pricing for legacy gTLDs.

CCT priority: Low

CCT directed to: ICANN organization.

CCT Rationale: The lack of data from legacy gTLDs and transactional data will continue to hinder future CCT Review Teams’ efforts to analyze competition between registries in the domain marketplace. In particular, the review team was unable to determine whether wholesale prices charged by legacy gTLDs had declined as a result of increased competition due to the introduction of new gTLDs.

CCT Details: ICANN could work with an appropriate contractor and registry operators to acquire wholesale price information from both legacy and new gTLD registries on a regular basis, including at least a sample of transactional data. Transactional data is essential to allow analysis of the cost of similar strings across TLDs, and to understand the role of promotional pricing by registries. Due to the sensitive nature of this data, ICANN should provide strong assurances that the data would be treated on a confidential basis, including collecting the data under a nondisclosure agreement. In the event that ICANN is unable to establish a voluntary framework for sharing this information, this may require amendment to the Base Registry Agreement for legacy gTLDs.

CCT Success measures: The ability for a third-party economic study to establish a meaningful understanding of (1) wholesale pricing in legacy gTLDs; (2) the role of promotional pricing in the marketplace; and (3) the value of individual second-level labels across various TLDs.

CCT Recommendation 3: Collect transactional pricing for the gTLD marketplace.

CCT priority: Medium

CCT directed to: ICANN organization.

CCT Rationale: The lack of transactional data will continue to hinder future CCT Review Teams’ efforts to analyze competition between registries in the domain marketplace. Although ICANN was able to obtain base wholesale prices from registries, individual domain transactions are often sold at either a significant discount as part of promotional campaigns, or at a significantly higher price than the baseline price for certain premium domains. For some TLDs, the review team believes that a large fraction (even a substantial majority) of domains were sold at discounted prices. Therefore, any pricing analysis based solely on the base wholesale price is unlikely to correctly capture the competitive dynamics in the marketplace.

CCT Details: ICANN or an outside contractor should attempt to acquire at least some samples of wholesale price information from registries on a regular basis and provide necessary assurances that the data would be treated on a confidential basis. The data could
then be used for analytic purposes by the ICANN organization and by others that execute non-disclosure agreements.

**CCT Success measures:** The availability of relevant data for use by the ICANN organization, contractors, and the ICANN community for its work in evaluating competition in the DNS marketplace.

**CCT Recommendation 4: Collect retail pricing for the domain marketplace.**

**CCT priority:** Low

**CCT directed to:** ICANN organization.

**CCT Rationale:** The lack of retail data will continue to hinder future CCT Review Teams’ efforts to analyze competition between registries and TLDs in the domain marketplace. One of the anticipated benefits of increased competition from the introduction of new gTLDs would be lower prices for registrants of domain names. Prices charged by registrars to registrants are the best indicator of this potential consumer benefit. In addition, retail prices offered to the public will generally be accessible through registrars’ public websites and will not require additional disclosures to ICANN by contracted parties. (Note that some registrars, such as those providing corporate/brand protection services, do not publish their prices and therefore would not be represented in a survey of publicly available prices.)

**CCT Details:** ICANN does not currently make use of retail price data that can be obtained directly from public sources such as https://tld-list.com/ and https://namestat.org. We recommend that ICANN develop the capability to analyze these data on an ongoing basis. Alternatively, an amendment to the Registrar Accreditation Agreement would ensure the availability of this data with all due diligence to protect competitive information.

**CCT Recommendation 5: Collect secondary market data.**

**CCT priority:** High

**CCT directed to:** ICANN organization

**CCT Rationale:** The presence of price caps in certain TLDs hinders efforts to comprehensively analyze competitive effects. The true market price may very well be above the caps. Accordingly, the secondary market is the best place to see price movement.

**CCT Details:** ICANN should engage with the secondary market community to better understand pricing trends. Ideally, ICANN would be able to obtain long-term transactional data that would allow it to evaluate whether the price of similar domain names was increase or decreasing over time, and whether there was any relationship to the introduction of new gTLDs. Given that it may be difficult to obtain such data, aggregated data that show per-TLD trends or overall trends in market pricing that take into consideration the introduction of new gTLDs would still be an improvement over the current limited data on pricing dynamics in legacy gTLDs.

**CCT Success measures:** The availability of relevant data for use by the ICANN organization, contractors, and the ICANN community for its work in evaluating competition in the DNS space.

**Assessment:**
On 1 March 2019, the ICANN Board addressed CCT Recommendations 2-5 collectively, due to questions raised about the value of the data and directed ICANN organization (ICANN org), through engagement of a third party, to conduct an analysis to identify what types of data would be relevant in examining the potential impacts on competition and, whether that data is available, and how it could be collected [...], noting that it would inform its decision on next steps and whether this recommendation can be adopted to move into costing discussion phase of implementation.

In its action on the CCT Final Report, the Board noted that during the public comment period on the CCT final report, the Registries Stakeholder Group (RySG) expressed the following concerns: 1) "price information is generally business sensitive"; 2) it is not clear who will have access to such data once collected, who will "arbitrate access to the data, and to what extent"; 3) "not only should ICANN not involve itself with pricing studies, using parties' contracts with ICANN as a mechanism to force its production is terribly inappropriate".

The 1 March 2019 Board rationale stated that: Requiring ICANN to collect pricing related data has previously been flagged for the CCT-RT as an issue that raises questions. First, it is not clear that ICANN's contracts with registries and registrars allow ICANN to compel pricing related data. Second, the challenges in collecting the types of pricing data requested have been flagged by contracted parties. Third, the suggestion that pricing is a proxy for competition is not well supported and raises a concern that ICANN will be asked to take a role in pricing of domain name registrations, which is beyond ICANN's remit and is more akin to a regulatory role. Fourth, placing ICANN into the role of collecting and maintaining this data itself raises competition and antitrust concerns, as it could facilitate access to or sharing of sensitivity pricing information among competitors. Taken together, along with the limited competition-related value inherent in this information, the collection of pricing data raises significant legal and organizational concerns that impose significant risk on ICANN with very little probatory value. For all these reasons, the Board questions whether the data that is requested will provide insight into the increase in competition of the marketplace, and therefore puts these recommendations in a pending status. That being said, the Board notes the CCT-RT's concerns with respect to insufficiency of data and recognizes the need for additional data points for subsequent CCT review teams. The Board therefore directs ICANN org to engage an expert to decide what data should be collected in order to provide meaningful information about competition in the DNS market to aid future CCT review teams in their work.

As directed, ICANN commissioned a study to identify what types of information are probative to assess the competition within the DNS market. The study explains that evaluation of competition within a market entails assessing whether consumer welfare and other efficiencies have increased. Price, including the different types of pricing data as requested by the CCT, does not demonstrate these benefits. While lower prices could be one measure of benefit, offering innovation or a better product (while not necessary at a lower price) is another key element of measuring consumer benefit and competitive impact.

The study discusses that some innovations within the New Generic Top-Level Domains (gTLD) introduced after the 2012 New gTLD round, provide enhanced safeguards to consumers, such as those associated with special use Top Level Domains (TLDs) such as .bank, providing heightened registration requirements within those TLDs. Innovations such as Internationalized Domain Names (IDNs) at the top and second level, whether in gTLDs or country code Top-Level Domains (ccTLDs), allow consumers within localized geographies the benefits of using TLDs in their own script.

The study goes on to discuss that price itself is a useful element of measuring consumer welfare only where innovation is not present. But where there is differentiation between the offerings, such as two TLDs offering different features and use cases to consumers
evaluating the pricing as between the two as the way to measure consumer welfare and the impact on competition may lead to incorrect conclusions.

The study evaluates what other factors in addition to price could be measures of consumer benefit in the DNS market, including measurements of quantity of registrations, data on switching between TLDs, data on profitability of registry operators, and documentation of TLD innovation. Notably, the study does not take into account whether ICANN already has access to the data, or, if not, how ICANN might obtain access to the data.

As expressed within the Board’s rationale in its original action on the CCT Final Report, there still exists significant risk and concern with ICANN collecting the pricing data as called for within Recommendations 2, 3, 4, and 5. Contracts with gTLD Registry Operators and accredited Registrars do not provide ICANN with the ability to collect the requested pricing data. Further, ICANN does not have access to pricing data related to ccTLDs, either through ccTLD managers or the registrars through which they might choose to offer registrations. ICANN also does not have access to secondary market data on sales of domain names, which are not governed by ICANN agreements. Even if ICANN were to have access to such pricing data, the risks of collection and maintenance of such data within ICANN raise questions about the propriety of ICANN becoming a clearinghouse for pricing-related data, and the potential for ICANN to be used as a source for competitors to access sensitive pricing data on their competitors. The Board acknowledges that the CCT Review Team suggests that ICANN could outsource the compilation and storage of pricing related data to a third party, however that still creates a clearinghouse of pricing data under ICANN’s control and does not mitigate the Board’s concerns.

Though these concerns remain, the study provides substantial information on the types of non-pricing data elements that might support an evaluation of competition in the DNS market. The Board notes that the ICANN organization has already started an evaluation of the data points identified, in order to assess if the data is available to ICANN, could be made available through contracts, or may be available through third-party data sources. Through this, ICANN has the opportunity to collect and maintain data that could meet the CCT Review Team’s goal “to have access to data for use in evaluating competition within future reviews,” beyond pricing.

The Board rejects CCT Recommendations 2, 3, 4, 5 and directs ICANN org to continue to evaluate and supplement existing metrics with additional data elements such as those identified within the study that would be indicative of competition and consumer welfare, as available and feasible.