

## Final Report on the new gTLD Subsequent Procedures PDP

Christopher Wilkinson, in his personal capacity  
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### *DISSENTING*

<<*The Corporation shall operate in a manner consistent with these Articles and its Bylaws for the benefit of the Internet community as a whole, .....through open and transparent processes that enable competition and open entry in Internet-related markets. ....>>*

Thus the Articles of Incorporation of ICANN mandate, among other benefits, enabling 'competition' and 'open entry'. In submitting this dissenting opinion, I express my disappointment and concern that this PDP has failed in fulfilling these fundamental objectives, and this in several respects.

First, it will be recalled that when ICANN was initiated in 1998, a large part of its initial tasks was to implement the structural separation of NSI's Registry/Registrar businesses and organize the creation and delegation of additional Top Level Domains. Accordingly, enabling competition and open entry has been in the original DNA of the ICANN organisation and community. The PDP missed out on several opportunities to fulfill these basic objectives.

Secondly, the ICANN community has developed out of all recognition during the past twenty years, most notably through the 2016 Transition from US NTIA oversight and the creation of the multi-stakeholder empowered community. The structure and membership of the PDP did not reflect these underlying developments. On the contrary, in terms of the subject matter, I found that an early decision had been taken by GNSO to maintain – as a default – the 2012 AGB, which in its turn had been substantially influenced by a 2007 G\_NSO 'policy'. Both of which manifested significant shortcomings. Thus, regrettably, the scope for correcting and improving on those antecedents was seriously limited by the composition of the PDP membership itself, deriving in large measure from their longstanding GNSO membership and desire to maintain the *status quo* to their advantage.

Thirdly, the responsibility for promoting 'open entry' has not been appropriately fulfilled. Although it is quite normal for the policies, practices and experience of incumbent operators to influence regulatory processes, it is also incumbent on the governing authority, in this case ICANN, to implement effective safeguards in facilitating competition and open access. In general, it is inappropriate for the terms and conditions for new entrants to be determined by incumbent operators. But that is largely what happened in this PDP, and ICANN did not take tangible steps to create a more balanced situation. For which several options might have been considered, but would doubtless not found favour among the majority membership of the PDP.

Fourthly, several aspects of the 2012 AGB which have been maintained unchanged have had serious anti-competitive effects. Notably policies permitting vertical integration between Registrars and Registries, and accepting applications for portfolios of TLDs. These have resulted in the emergence of a few very large Registry+Registrar complexes and growing concentration in the DNS markets aggravated by mergers and acquisitions among incumbent operators.

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These shortcomings have been known for some time, and it is regrettable that this PDP has proved to have been unwilling to do anything about them. Indeed, it would appear that the business model, of at least some of the PDP members actually depends on maintaining the present situation,

From this perspective I refrain from agreeing or disagreeing to the many specific Recommendations in the PDP's report. I consider that the above over-arching issues should be resolved first. Furthermore, whatever ICANN decides to do about the next round, the present PDP Report should not be used again until the problems relating to 'competition and open entry' have been resolved.

N.B. I am submitting a separate Dissenting Opinion concerning Geographical Names (Annex H).