

GNSO/GAC Facilitated Dialogue on Closed Generics

19 April 2023 Meeting Notes

During this meeting, Closed Generic (CG) Dialogue Participants continued their review of Section III: “Applying for a Closed Generic gTLD” of the Preliminary Framework for Closed Generic gTLDs v2 document to confirm group agreement with the elements of the CG framework under discussion.

Participants also discussed upcoming face-to-face sessions scheduled to take place at ICANN77 being open to observers and whether the group agrees to make publicly available a high level version of the meeting notes, without attributing names to thoughts and discussions. Initial reactions were positive to move forward, and participants were asked to use the mailing list to express any disagreement with this path forward.

Participants discussed the following:

- The facilitator noted that the clean document which includes the agreed framework elements could potentially include areas of divergence as well, i.e. items which the group was unable to agree upon.
- Pertaining to demonstrating the requirement of representativeness or of non anti-competitive behavior, participants discussed compromise language compiled by support staff. This language incorporates comments and discussions held by participants on the mailing list, attempting to provide clearer definitions of “non anti-competitive behavior” and the principles of competitive neutrality, non-discrimination and transparency..
- Participants discussed potential definitions of anti-competitive behavior and competitive neutrality, as well as related principles. Further discussion was agreed to take place on this subject.
- Some participants expressed concerns about the proposed updated language only reflecting the minimum requirements expressed by participants on the list regarding anti-competitive behavior and competitive neutrality, noting this needs to go beyond the concept that a registry has to comply with national anti-monopoly or competition laws.
- This concept of going beyond the anti-monopoly or competition law was expressed as a red line for multiple participants to be able to stand behind the framework.
- Some participants expressed confusion about how restraints of trade that prohibit third parties from supplying or offering to supply goods or services, or otherwise monopolistically controlling, limiting or restricting the supply of goods and services is applicable in the context of closed generic gTLDs.
- On competitive neutrality participants discussed where this concept should be placed within the framework, and whether this would be something to be evaluated. If so, some participants raised red flags noting disagreement on evaluators potentially evaluating anti-competitive behavior. Some participants noted this would violate the group’s goal about producing a framework that is objective and predictable.

Participants generally came to agreement on the following:

- On the framework:
 - Further work is needed on the proposed language of “non anti-competitive behavior”, and participants agreed to provide core needs or behaviors to be prevented on the mailing list.
 - Participants affirmed willingness to find compromise language, while retaining but clarifying the concepts around competitive neutrality, non-discrimination and misuse.
- “Housekeeping” and administrative matters:
 - The two working sessions planned for ICANN77 should be open for observers to attend.
 - Participants to consider making publicly available a high level version of the notes from the calls, without attributing names to thoughts or discussions, to note key points raised, and show the history of discussions for transparency purposes.
 - Participants are encouraged to share any concerns about this on the mailing list.

ACTION ITEMS:

- Staff to refine the text on “non anti-competitive behavior” to reflect the updates and clarifications provided on the call and the need to retain but clarify the concepts around competitive neutrality, non-discrimination and misuse.
- Participants to continue discussions on the mailing list.