

GNSO/GAC Facilitated Dialogue on Closed Generics

24 April 2023 Meeting Notes

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

The moderator asked participants to note whether each framework element represents a “red line” for them or a notable concern. A “red line” indicates that the participant believes the framework element must be included, or excluded, in order for them to stand behind the final framework. A “notable concern” indicates that the participant does not disagree with the framework element itself, but does have concerns about the phrasing of the text, its placement in the framework, its implementability, etcetera. Participants also noted whether some framework elements were duplicative of broadly-agreed elements already discussed, and should therefore be removed. Participant responses to this exercise were recorded by staff in a Participant Red Lines Table document, which participants will review and add their response rationale to following the call.

Participants discussed the following:

- The temperature of the room was taken for the “non anti-competitive behavior” text proposed by staff, which was based on input from the group’s previous call and discussions on the mailing list. Participants discussed a concern of enforceability and whether this would be addressed by a subsequent working group.
- One framework element addressing how “representativeness” may be demonstrated was considered by some participants to be unnecessary and duplicative of an earlier framework element, while other participants indicated this element as a red line for them and must be included in the framework.
- Participants discussed whether an applicant must show that significantly “interested parties,” including competitors, have been consulted and engaged for input prior to submission of the application. Some participants noted that this element must be included in order to support the final framework, while other participants noted that it must be excluded from the framework.
- Several participants indicated the framework must include the requirement that an applicant explain why it is necessary to operate the gTLD as a closed generic gTLD in order to serve the public interest goal(s). Some participants indicated this requirement should be excluded, or be changed to “useful” or “best served” rather than “necessary”.
- Participants expressed concerns with the current definition of “affiliates” in the Base gTLD Registry Agreement as it relates to applicants for closed generic gTLDs, as well as concerns for whether an applicant’s specified affiliates would be subject to evaluation.
- Several participants indicated that the framework must include the requirement to explain what is described by the generic term for which the applicant is applying. One participant noted that this element must be excluded from the framework, while another noted that an alternative formulation of this element must be included.

- Several participants indicated that the framework must include an applicant's demonstration of how they will engage in self-policing and self-regulation efforts to govern compliance throughout the term of the registry agreement. Some participants expressed disagreement and concerns that this element is duplicative of what is already asked of applicants in the standard gTLD application.

Participants generally came to agreement on the following:

- The staff-proposed compromise language pertaining to “non anti-competitive behavior” is acceptable to the group for inclusion in the framework.
- While some concerns were noted, participants generally agreed that the framework must include the requirement that an applicant identify the intended beneficiaries and sector(s) of the public that will benefit from the closed generic gTLD. The group also broadly agreed that the few elements expanding on this requirement are duplicative of earlier agreed elements, and are therefore unnecessary to include again in the framework.
- While some concerns were noted, participants generally agreed to remove the applicant's requirement of specifying what other legal entities will be entitled to second-level domains in the closed generic gTLD due to their affiliation or association with the applicant, including as affiliates of the applicant as defined in Section 2.9(c) of the Base gTLD Registry Agreement.

ACTION ITEMS:

- Participants to review the Participant Red Lines Table document and provide rationale for their noted red lines and concerns.
- Staff to update the clean Closed Generics Framework v3 document with additional broadly-agreed framework elements based on the group's discussion.