GNSO/GAC Facilitated Dialogue on Closed Generics
10 May 2023 Meeting Notes

Closed Generic (CG) Dialogue Participants continued their review of the Preliminary Framework for Closed Generic gTLDs v2 document to confirm group agreement with the framework elements relating to contracting and post-delegation activities. Participants continued to note their "red lines" and concerns for each preliminary framework element, which were recorded to the Participant Red Lines Table document with relevant rationale provided during discussion.

Participants discussed the following:
- Whether to add additional meetings to the group's schedule in order to finish developing its framework and deliver it to the community by 31 May, 2023.

- Whether specific requirements pertaining to closed generic gTLDs could be added to Specification 11 of the base gTLD Registry Agreement. Some participants believe that this determination should not be stipulated by this group or within this framework.

- Whether the applicant must begin operating its closed generic gTLD in the intended manner within a set time frame. Some participants expressed concern that this requirement runs contrary to approved recommendations from the New gTLD Subsequent Procedures (SubPro) PDP Final Report. Participants discussed whether it is possible or even necessary to contradict SubPro recommendations in order to progress a workable solution for handling closed generic gTLDs.

- Whether as part of a post-delegation review, the registry operator should be permitted to explain how its approach toward its operation of the gTLD has evolved over time. Few participants expressed support for including this element in the framework, instead citing various concerns that it is obvious, not agreed, or could be considered policy-making.

- Whether evaluators must take all aspects of the application into account when determining whether and to what extent the proposed closed generic TLD serves a broader public interest. Several participants believed this was duplicative or contradictory of earlier-agreed framework elements.

- Whether evaluators should balance anti-competition concerns against the exclusive nature of a closed generic gTLD. Participants were largely split on this topic, some stating that it must be included in the framework while others stated it must not be included. One concern was that this "balance" would turn otherwise objective criteria into a subjective decision. Another concern was that this would be best handled during the post-delegation review rather than during the evaluation phase.

- Whether staff's textual revision based on the group's previous call sufficiently meets the needs of all participants regarding an objective and/or subjective evaluation process. Participants expressed concerns about the example text provided, suggesting that this be rephrased and revisited. Participants further discussed what constitutes "objective" or "subjective" evaluation processes.

Participants generally came to agreement on the following:

- The group broadly agreed that the commitments made by a closed generic gTLD applicant during the Application and Evaluation phases of a closed generic gTLD application must be enforceable by ICANN.
- The base gTLD Registry Agreement (RA) should apply to closed generic gTLDs. The group also broadly agreed that the RA can be supplemented by an additional Specification documenting the unique terms, conditions, commitments and obligations specific to closed generic gTLDs. In this regard, Specification 13 may be useful as a guide.
- There must be a periodic post-delegation review of a closed generic gTLD.
- The post-delegation review must reflect the commitments that the applicant made in its application.
- The credentials and credibility of the applicant should be assessed in the evaluation, in order to give reasonable confidence that they can and will fulfill their commitments. Some participants noted a concern for how to objectively measure credibility.

ACTION ITEMS:
- Participants to review the Participant Red Lines Table document and provide rationale for their noted red lines and concerns.
- Participants to review the materials shared on the mailing list in order to prepare for the next meeting regarding new gTLD application Objections, Comments, and Challenges.
- Staff to update the Closed Generics Framework v3 document with additional broadly-agreed framework elements based on the group's discussion.