

GNSO/GAC Facilitated Dialogue on Closed Generics

22 May 2023 Meeting Notes

During this meeting, Closed Generic (CG) Dialogue Participants discussed and found compromise on several “red line” issues of importance from their Remaining Red Lines document.

Participants discussed the following:

- Participants discussed whether CG applicants should be required to consult and engage significantly “interested parties”, including competitors, for input prior to the submission of their applications. Some participants believed this requirement should apply to all CG applicants, while others believed it should not be a requirement at all. As a compromise, participants agreed this requirement would only apply to applicants who choose to pursue the “representativeness” track, demonstrating how they represent a significant part of the businesses in the industry or group related to the closed generic term.
- The group discussed whether an applicant’s public interest goal(s) and threat-mitigating actions must be more compelling than their identified threats and risks.
- Participants expressed concerns that “threats and risks” is vague and should pertain specifically to competition. Disagreement was noted about applicants having to self-identify threats and risks, as well as concerns about the predictability of determining whether criteria is “more compelling” than others. Additionally, some participants noted that this should be determined post-delegation rather than during the evaluation phase. As a compromise, the framework element text was revised and found broad agreement.
- Participants next discussed whether the CG evaluation must be performed by a panel consisting of suitably-qualified individuals. Participants considered providing more detail regarding the composition of the panel and what expertise may be needed, but the group decided that the current recommendation remains appropriate for a framework.
- Participants discussed whether CG applicants must explain why operating their gTLD in a closed manner, as opposed to an open manner, better serves their identified public interest goal(s). The group considered the newly proposed text as an alternative to previously-contested text, which asked applicants to demonstrate why their CG gTLD is “necessary” to serve their public interest goal(s).
- Lastly, the group discussed whether CG applicants must identify relevant sectors of the public that may be disadvantaged by their delegation of a CG gTLD. Some participants expressed concern that applicants would choose not to answer this difficult question, or would do so disingenuously. Other participants supported this requirement, arguing that applicants should need to present their case why the CG gTLD is not problematic, and evaluators should be enabled to consider both threats and mitigating factors. It was proposed that disadvantages could be identified from public comments rather than in the application, however some participants maintain that this should be application criteria.

Participants generally came to agreement on the following:

- Participants generally agreed that for closed generic gTLD applicants that choose the “representativeness” track, their application must show that significantly “interested parties,” including competitors, have been consulted and engaged for input.
- Evaluators should bear in mind the exclusive nature of a closed generic gTLD when considering anti-competition concerns.
- Evaluators should review the threats and risks to competition as well as the proposed mitigating actions and public interest goal(s) of the closed generic gTLD.
- The evaluation of closed generic gTLD applications must be performed by a panel consisting of suitably-qualified individuals.
- In their application, applicants must explain why operating the gTLD in a closed manner, as opposed to an open manner, better serves the identified public interest goal(s).
- The facilitated dialogue group agreed to maintain their current goal of finishing their draft framework on May 24.

ACTION ITEMS:

- Participants to review the Closed Generics Framework v3 document and add comments for how to address any notable concerns with the framework elements.
- Participants to add comments to the Remaining Red Lines document identifying possible solutions to outstanding issues of importance.
- Staff to update the Closed Generics Framework v3 document with additional broadly-agreed framework elements based on the group’s discussion.