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## AT-LARGE ADVISORY COMMITTEE

### At-Large Advisory Committee (ALAC) Advice to the ICANN Board on New gTLD Contention Resolution

In her 3 June 2024 [Blog](#), the ICANN Board Chair reiterated that “the Board is not inclined to sanction a repeat of the 2012 process when private resolutions were encouraged in the Applicant Guidebook.”

The ALAC strongly supports this statement by the ICANN Board Chair.

The ALAC agrees with the National Economic Research Associates (NERA) which said in its [report](#) of 17 May 2024 that attempting to eliminate private auctions or comparable monetary resolutions while allowing legitimate post-application “joint ventures” would be difficult or impossible, and its conclusion that a ban on private resolutions would have to include all forms, including joint ventures. While also noting the lack of such post-application joint ventures being formed to as a means to resolve contention sets in the 2012 round, the ALAC now reiterates and expands upon its previous advice.

The ALAC advises the ICANN Board to ban all forms of post-application private resolution of contention sets, including joint-ventures regardless of claims as good-faith joint ventures, with possible one exception - where there are community-based applications in direct contention with one another and two or more of them prevail in a Community Priority Evaluation (CPE), then ICANN may postpone the auction for a limited period of time to allow such parties to reach a settlement before proceeding to auction involving only them (as currently provided for in section 4.2.2 of the 2012 Application Guidebook).

Furthermore, the ALAC advises the ICANN Board to adjust the ICANN Auction of Last Resort to an auction process methodology comparable to a [Vickrey Auction](#) (sealed-bid second-price auction) requiring each gTLD string application to be accompanied by an auction bid at the time the application is submitted, and prior to any indication of possible contention sets being formed.

Firstly, requiring an applicant to submit an accompanying auction bid with its application - and if more than one application, a bid with each of its applications - helps the applicant demonstrate the bona fide intention of operating a TLD that it affirmatively attests to.

Secondly, Vickrey auctions mitigate, if not eliminate, any ability to abuse or game the application process since bids are submitted prior to knowing if there are any competitors and who they may be.

Thirdly, ICANN may be able to capitalize on opportunities to reduce application evaluation costs, for both ICANN org and applicants, in cases where there are multiple contenders for the same string, by strategically positioning the ICANN Auction as a process of elimination earlier in the evaluation cycle, rather than as a contention set resolution mechanism of last resort, thereby foregoing the need for evaluation processes which can reasonably be avoided. However, this consideration must not displace the option for Community Priority Evaluation (CPE) by Community-based TLD applicants that opts for the CPE in an attempt to prevail out of a contention set.

In other words, the ALAC supports the overall intention of the Subsequent Procedures PDP Recommendation 35.4 which the GNSO Council chose not to submit to the ICANN Board for adoption, EXCEPT FOR (a) the provision allowing participation in various forms of private resolution; (b) the allowance for applicants whose applications are caught or are added to any contention sets that are expanded as a result of other application procedures to submit a fresh bid; and (c) the provision that ICANN Auctions must only take place after all the other evaluation procedures, and objections are completed.

The ALAC would be pleased to enter into further dialogue with the Board on any of these issues.

## **Ratification Record**

On 12 June 2024, the ALAC and GAC discussed the issue of contention resolution during its [joint session](#) at ICANN80 in Kigali, Rwanda. On 18 June 2024, members of the At-Large Community, including Alan Greenberg, Justine Chew, and Jonathan Zuck, drafted Advice concerning contention resolution for ALAC consideration to submit to the ICANN Board.

On 18 June 2024, the ALAC Chair, Jonathan Zuck, requested that the Advice be ratified via consensus call by the ALAC before submission to the ICANN Board. The consensus call period was opened on 18 June 2024 and closed on 21 June 2024. No objections were received during the consensus call period. The ALAC members who participated in the consensus call are (alphabetical order by first name): Aziz Hilali, Bill Jouris, Bukola Oronti, Claire Craig, Eduardo Diaz, Joanna Kulesza, Jonathan Zuck, Justine Chew, Lilian Ivette De Luque, Marcelo Rodriguez, Pari Esfandiari, Raihanath Gbadamassi, Satish Babu, Shah Zahidur Rahman, and Tommi Karttaavi.

The At-Large Advisory Committee (ALAC) appreciates the opportunity to provide Advice on the issue of contention resolution.