



CC2 Discussion: Vertical Integration

WT2 | 21 November 2017

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3. Appointment of Co-Chair

Action Item: Appointment of Co-Chair

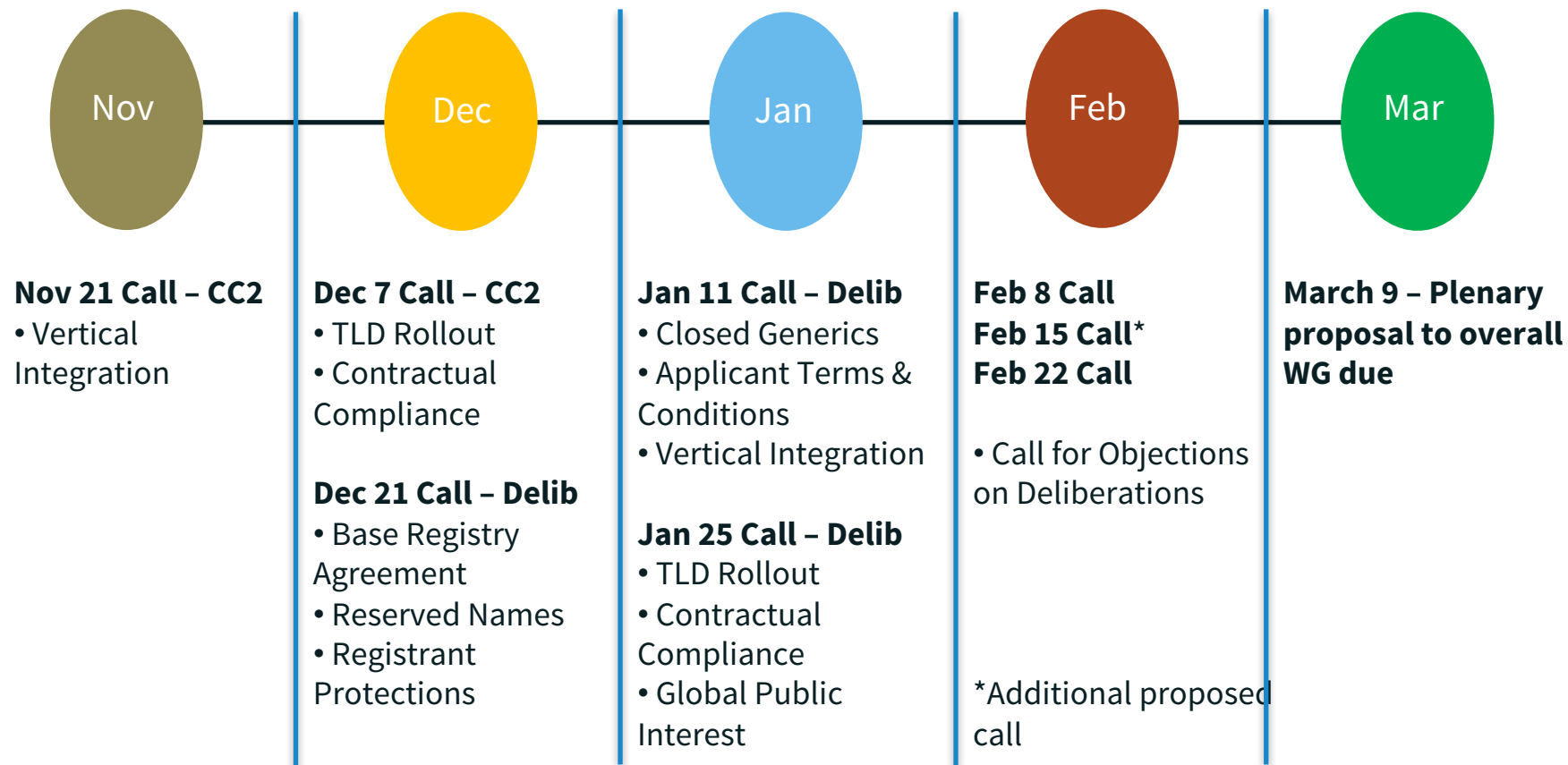
Background: Previous Co-Chair, Phil Buckingham , stepped down and an open position for co-chair was available. Nominations and volunteers for a new Co-Chair were accepted from Oct 31 to Nov 10. We had 1 volunteer, Sophia Feng.

Recommendation: After discussion with Sophia and her experience, the leadership team recommends that Sophia be appointed as Co-Chair during Nov 21 WT2 call.

SOI: <https://community.icann.org/display/gnsosoi/Shuo+Feng+SOI>

4. Schedule

More detailed schedule will be shared on a different sheet. Please confirm if the schedule is realistic and if not suggest adjustments where necessary.



5. Discussion Recap: Where are we at now?

Recap: We had two previous calls on Vertical Integration where we introduced the history of how a switch from Registry & Registrar Separation to Vertical Integration occurred. We looked at initially proposed potential benefits and harms of VI. We reviewed the mechanisms introduced to detour abusive activity in the form of the Code of Conduct and Section 2.9 of the Registry Agreement. Exceptions to Code of Conduct in Spec 13 and exempt Registries were noted.

Goal: Our goal is to not reverse VI because this it is now a standard. However, we are seeking to explore whether the mechanisms introduced have fulfilled there purpose or if additional mechanisms are required.

Discussions: Through our discussions several questions were raised and we requested data from ICANN Compliance. We reviewed that data and found it to be more data was necessary. We resolved that further questions need to be asked.

5. Discussion Recap: Additional Questions

Highlights of Data Request: ICANN Compliance provided some of the following data to us for our review.

- VI complaints deal with a Registry Agreement Section 2.9 and Code of Conduct, as well as RAA Section 3.21.
- VI related complaints have been limited to Registry Operators.
- ICANN has processed less than 10 complaints dealing with 2.9 and Code of Conduct.

Proposed Additional Questions: Data is lacking and in our last call the following were proposed.

1. How many registry operators are vertically integrated?
2. Of that number, how many operate multiple TLDs?
3. How many complaints were there against ROs (overall - regardless of whether due to vertical integration)?
4. Of the complaints referenced in the 1.b answer, how many ROs were those 10 complaints against? *(Does this include complaints dealing with 2.9 of RA?)*
5. How many of those ROs own more than one TLD or multiple TLDs?
6. How many of those ROs were required to perform some kind of remediation regardless if they were found to be in breach or not?

Please provide suggestions on questions. Next task is to send these to Compliance.

6. CC2 Comments

Goal of CC2 Comment Review: Reviewing CC2 is our second pass through the WT2 topics. The goal of this is to review the feedback provided and discuss this input and the material of the topic in the WT2. Further questions may be made to commentators for clarification.

6. CC2 Questions: 2.6.1

2.6.1 - The Working Group has not yet deliberated the issues of Registrar Non-discrimination or Registry/Registrar Separation (also known as Vertical Integration). However, now that we have several years of operations of vertically integrated registries and registrars, what issues, if any, have you noticed with vertically integrated Registries?

6. CC2 Questions: 2.6.1 Comments

Nominet, BRG, and RySG stated that they did not identify any issues.

Sample excerpt:

“. . . Given the diversity of members within the RySG, there is not one single view on the question of vertical integration of registries and registrars. Some RySG members favour vertical integration and would support removal of the restrictions on operation of those vertically-integrated businesses. Other RySG members favour the retention of those restrictions. **We are not aware of any specific disadvantages or issues arising out of the operation of vertically integrated registries and registrars,** however see the response to 2.6.3 below.” -- RySG

6. CC2 Questions: 2.6.2

2.6.2 - Specification 13 grants an exception to the Registry Code of Conduct (i.e., Specification 9 in the Registry Agreement) and specifically from the vertical integration restrictions. In addition, Registry Operators may seek an exemption from the Code of Conduct if the TLD string is not a generic term and if it meets three (3) other specified criteria set forth in Specification 9 of the Registry Agreement. Are there any other circumstances where exemptions to the Code of Conduct should be granted?

6. CC2 Questions: 2.6.2 Comments

Nominet, Afiliast, RySG, BRG, and Valideus did not identify any other circumstances where exemptions should be granted.

Sample excerpt:

“The RySG does **support the existing exceptions** to the Code of Conduct provided for under Specification 13 and under Specification 9 paragraph 6. We have **not identified any other specific circumstances where an exemption to the Code of Conduct should be granted.** . . .” – RySG, BRG, Valideus

BC supported exemptions where the RO can demonstrate that the term comprising the TLD string directly corresponds to a product name of the Registry Operator.

“The BC would support granting an exemption to the Code of Conduct in a situation where the Registry Operator can demonstrate that the term comprising the TLD string directly corresponds to a product name of the Registry Operator. The Registry Operator should additionally be able to affirm that all uses of the TLD will be in connection with such product, that all domain name registrations in the TLD will be registered to Registry Operator for its exclusive use, and application of the Registry Operator Code of Conduct to the TLD is not necessary to protect the public interest.” -- BC

6. CC2 Questions: 2.6.2 Comments

RySG, BRG, Valideus supported greater flexibility for registry operators wishing to seek an exemption and stated that existing process of obtaining an exemption to the Code of Conduct results in some ambiguity under the Registry Agreement.

On the assumption that the Code of Conduct is retained, however, the **RySG would support greater flexibility for registry operators wishing to seek an exemption.** It would be reasonable for a registry operator who is able to demonstrate that the application of the Code of Conduct to its TLD is not necessary to protect the public interest, in other circumstances to those set out in Spec 9 para 6, to be granted such an exemption. The RySG would also like to highlight that the **existing process of obtaining an exemption to the Code of Conduct results in some ambiguity under the Registry Agreement, since the registry operator is still bound by section 2.9:**“Subject to the requirements of Specification 11, Registry Operator must provide non-discriminatory access to Registry Services to all ICANN accredited registrars that enter into and are in compliance with the registry-registrar agreement for the TLD”. **Since, under the current model, all exemptions must be for single-registrant models wherein the registry (as registrant) may still chose its registrar, we do not believe this language should apply to Specification 9 exempt TLDs, regardless of whether they additionally qualify for Specification 13.”** – RySG, BRG, Valideus

6. CC2 Questions: 2.6.3

2.6.3 - Some have argued that although we allow Registries to serve as both as a registry and as a registrar, the rules contained within section 2.9 of the Registry Agreement and in the Code of Conduct prohibit the integrated registry/registrar from achieving the economic efficiencies of such integration by not allowing a registry to discriminate in favor of its own registrar. Do those arguments have merit? If yes, what can be done to address those claimed inefficiencies? If not, please explain. What safeguards might be required?

6. CC2 Questions: 2.6.3 Comments

Nominet supported allowing full integration for .brand registries.

“New gTLD .BRAND registries where there are no non-group customers exist should be allowed full integration. We make no comment on open TLD vertical integration.”
– Nominet

Jannik Skou supported allowing full integration for .brand registries and any “single registrant” TLD.

“.BRANDs (spec 13) and any “single registrant” TLD (Exemption of Code of Conduct) should be allowed to register without using a registrar. Otherwise keep “Vertical Separation”(It is tedious for some, but still is a good reminder/regulator for non-discrimination of registrars).” -- Jannik Skou

6. CC2 Questions: 2.6.3 Comments

RySG and BRG suggested that the PDP examine whether there remains any consumer protection benefit to limiting registry-direct sales.

Excerpt:

The PDP should carefully review the underlying reasons for separation. With so many new TLD operators in the space, the **PDP should examine whether there remains any consumer protection benefit to limiting registry-direct sales.** While the operational models of some registry operators will certainly benefit from using registrars (and where this is the case there may remain benefits for the consumer in ensuring equal treatment amongst those registrars), **this requirement may be actually hindering innovation and the development of new services for other registry operators, thereby reducing the benefit for consumers. . .”** -- RySG, BRG

6. CC2 Questions: 2.6.3 Comments

Google encouraged the PDP to examine whether to permit closed TLDs to self-allocate all domain names and recommended extending carve outs granted to .brands to other TLDs that qualify for a Code of Conduct exemption.

“The Working Group should consider whether to **permit closed TLDs to self-allocate all domain names given that those domains will be self-registered, not sold.** In any case, **carve outs granted to .brands should be extended to TLDs that qualify for an exemption to the Registry Operator Code of Conduct since these TLDs also have a single registrant.** Likewise, while registry and registrar separation restrictions were developed to promote competition in the marketplace, they may impede new entrants to the marketplace from competing effectively with legacy players. Google takes the requirements associated with cross-ownership of a registry and registrar seriously and, accordingly, **has experienced inefficiencies and additional cost on account of some of the separation requirements.** These restrictions would likely have harsher effects on smaller businesses trying to enter the domain name marketplace.” -- Google

6. CC2 Questions: 2.6.3 Comments

INTA stated that it does not support dispensing with the code of conduct requirements altogether, but there may be justification for permitting registries to seek an exemption to the Specification 9 code of conduct on a case by case basis.

Excerpt:

“. . . Whether brand owners wish to register names defensively or for live use, therefore, **dispensing with the obligations on registries to allow equal, nondiscriminatory access by all registrars would present a potential risk to brand owners of being unable to acquire names through their trusted registrar. INTA does not therefore support dispensing with the code of conduct requirements altogether.** Nevertheless, not all registry business models in future are likely to follow the “.com model” of an open registry, selling domains to all-comers without restriction, and so there **may be justification for permitting registries to seek an exemption to the Specification 9 code of conduct on a case by case basis,** even in circumstances not currently covered by section 6 of Specification 9, where this would not serve to unfairly discriminate against brand owners.” – INTA

6. CC2 Questions: 2.6.3 Comments

ALAC supported retaining the non-discrimination rule.

“The ALAC **supports the retention of non-discrimination rule** even if causes inefficiencies.” -- ALAC

John Poole opposed vertical integration.

“**Registry operators should not be allowed to operate registrars.** There’s already been abuse. Registrars can, and should be, a check on Registry operator malfeasance. Vertical integration negates that, and there are many other reasons vertical integration should be disallowed.” – John Poole