

2012-10-18 - Approval of Revised Process for Handling Requests for Removal of Cross-Ownership Restrictions on Operators of Existing gTLDs

- **Category:** gTLDs
- **Topic:** Requests for Removal of Cross-Ownership Restrictions on Operators of Existing gTLDs
- **Board meeting date:** 18 October 2012
- **Resolution number:** 2012.10.18.01
- **URL for Board minutes/resolution:** <http://www.icann.org/en/groups/board/documents/resolutions-18oct12-en.htm#1.a>
- **Status:** Completed

Summary

Board approves the proposed Revised Process for Handling Requests for Removal of Cross-Ownership Restrictions on Operators of Existing gTLDs.

Text

Whereas, on 20 June 2011, the Board approved the Process for Handling Request for Removal of Cross-Ownership Restrictions of Existing gTLDs.

Whereas, when the Process for Handling Request for Removal of Cross-Ownership Restrictions of Existing gTLDs was approved in June 2011, it deferred application of it to existing registry operators with respect to seeking removal of cross-ownership restrictions as to their own registries, in order to provide time to discuss the process with competition authorities.

Whereas, ICANN has undertaken discussions with, and explained the proposed revised process to, competition authorities that had expressed interest and ICANN has received no further inquiries from those authorities.

Resolved (2012.10.18.01), the Proposed Revised Process for Handling Request for Removal of Cross-Ownership Restrictions of Existing gTLDs, as posted on 16 May 2012, is approved as revised.

Implementation Actions

- None

Rationale

On 20 June 2011, the Board adopted resolution 2011.06.20.01, that included approval of a process that ICANN developed "for handling requests for removal of cross-ownership restrictions on operators of existing gTLDs who want to participate in the new gTLD program" The resolution did note however, that "consideration of modification of existing agreements to allow cross-ownership with respect to the operation of existing gTLDs is deferred pending further discussions including with competition authorities."

Delaying the ability for registry operators to request removal of restrictions on cross-ownership for their own registries was to provide time for discussions with the competition authorities that had expressed interest in this issue. On 14 June 2011, the United States Department of Justice Antitrust Division sent a letter to the U.S. Department of Commerce on the subject of cross-ownership. Thereafter, in October 2011, ICANN's counsel spoke to the supervising lawyer at the Antitrust Division, who confirmed that there is no active Antitrust Division investigation with respect to the cross-ownership issues at this time. In light of this representation, there have been no other communications with the Antitrust Division, and none are planned.

The other competition authority that expressed interest is the European Commission (EC). Immediately before the Singapore meeting, on 17 June 2011, the EC sent ICANN a "non-paper" expressing some concerns regarding the removal of cross-ownership restrictions. Following the Board's approval of the New gTLD Program, ICANN's counsel sent a note to the EC offering to meet to discuss the "non-paper," and the issues identified in the Board's 20 June 2011 resolution. In response, the EC requested that ICANN respond to the "non-paper" in writing. On 25 October 2011, ICANN provided the EC with a comprehensive response to the "non-paper" and again requested a meeting to discuss these matters.

On 19 January 2012, the EC responded to ICANN's 25 October 2011 letter. The EC's letter stated, "we do not oppose the removal of vertical separation as a matter of principle." The letter continues, however, that the EC is "currently not convinced that the full removal of vertical separation for generic Top-Level Domains, particularly for existing ones such as .COM, is the most appropriate solution from a competition point of view." The EC then requested that ICANN furnish the EC with responses to questions seeking additional information.

A comprehensive response to the EC's 19 January 2012 letter was delivered to the EC on 9 March 2012, responding in detail to each of the questions posed by the EC. In the letter ICANN again offered to meet with the EC. In Costa Rica, an ICANN representative discussed the matter with the EU GAC Representative who asked for two things: (i) a bullet-point description of the Process; and (ii) assurance that the time limits placed on ICANN to act are in no way meant to limit the EC's authority to act at any time. ICANN provided the requested information and has heard no further comments from the EC, either as part of the Public Comment Forum or otherwise.

Accordingly, it appears that there is no longer any reason against extending the approved process to existing registry operators for their own TLDs.

This action will be an advantage for the ICANN community, as it will provide the opportunity for treating all registry operators equally with respect to cross-ownership restrictions. This action will not have any fiscal impact on ICANN and will have no impact on the security, stability and resiliency of the domain name system.

This decision is a Board-level Organizational Administrative Function – public comment sought.

Other Related Resolutions

- Resolutions 2011.06.20.01, 2011.06.20.02, 2011.06.20.03, approving the New gTLD Program, are available at: <http://www.icann.org/en/groups/board/documents/resolutions-20jun11-en.htm#1>
- Other resolutions TBD

Additional Information

- The Proposed Revised Process for Handling Request for Removal of Cross-Ownership Restrictions of Existing gTLDs is available at: <http://www.icann.org/en/resources/registries/proposed-removal-cross-ownership-16may12-en>
- Public comments regarding the Proposed Revised Process for Handling Request for Removal of Cross-Ownership Restrictions of Existing gTLDs is available at: <http://www.icann.org/en/news/public-comment/revised-cross-ownership-restrictions-16may12-en.htm>
- The 14 June 2011 letter regarding cross-ownership sent by the United States Department of Justice Antitrust Division to the U.S. Department of Commerce is available at: <http://www.icann.org/en/correspondence/strickling-to-dengate-thrush-16jun11-en.pdf>
- The 17 June 2011 letter from the European Commission regarding its concerns over the removal of cross-ownership restrictions is available at: <http://www.icann.org/en/correspondence/eu-to-icann-17jun11-en.pdf>
- ICANN's 25 October 2011 letter responding to the EC is available at: <http://www.icann.org/en/correspondence/beckstrom-to-kroes-25oct11-en.pdf>
- The EC's 19 January 2012 letter responding to ICANN is available at: <http://www.icann.org/en/news/correspondence/de-graaf-mccallum-to-beckstrom-crocker-19jan12-en>
- ICANN's 9 March 2012 letter responding to the EC is available at: <http://www.icann.org/en/news/correspondence/beckstrom-to-de-graaf-mccallum-09mar12-en>
- The resolution does not address funding for the items identified therein.

Explanatory text does not modify or override Resolutions. See [Board Resolutions Page](#) for more information.

Note: The "Add Comment" box below is for sharing information about implementation of this resolution. Off-topic comments will be removed.