



REVIEW OF .AU DOMAIN NAME INDUSTRY INDUSTRY COMPETITION ADVISORY PANEL ISSUES PAPER, JUNE 2008

Jo,

Please find below AusRegistry's* response to the Review of the .au Domain Name Industry – Industry Competition Advisory Panel Issues Paper, June 2008. We thank you for the opportunity to respond.

Kind regards,

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CEO
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**AusRegistry is the current Registry Operator and wholesale provider for all commercial.au domain names including .com.au and .net.au and the non-commercial domain names .gov.au and .edu.au.*

The method of Registry Operator selection/appointment post 2010

Issues for consideration

6.6 The Panel notes that whilst competition at the registry level is achieved in theory via periodic re-tendering of the registry licence, experience to date is that the incumbent operator has a clear infrastructure advantage. This is due mainly to the significant capital costs for a new entrant in meeting auDA's registry technical specification. There are also transition costs for the rest of the industry in switching to another registry operator.

AusRegistry entered the marketplace as a new Registry Operator in 2002 and was therefore responsible for investing a significant amount of capital into new infrastructure and building the Registry System to (and exceeding) auDA's Registry Technical Specifications. It was the expectation of auDA, at the time, that the new Registry Operator was financially sound and was capable of investing significant funds into building a world's best practice Registry System.

Infrastructure is not a once off cost. The Registry invested considerable funds into the Registry System largely as a commitment from the previous RFT. Since 2002, AusRegistry has implemented numerous major technical upgrades, including a complete update and refresh of the Registry System (hardware and software) in 2007. AusRegistry has always felt compelled to maintain a best of breed solution.

AusRegistry agrees that there are significant transition costs for the rest of the industry in changing to another Registry Operator.

6.7 Now that the incumbent registry operator has won two successive tenders, there is some difficulty to achieve real competition in future tenders. The Panel has been considering whether the model should be changed or modified to ensure that competition objectives at the registry level continue to be met.



Should a future RFT be deemed necessary, it would offer any organisation the opportunity to be competitive from a technical (infrastructure, software, hardware, SLAs), pricing, product offering, marketing, industry support and philanthropic ventures perspective. All these points are taken into consideration by AusRegistry when responding to a RFT.

The requirements and the evaluative criteria in a RFT are shaped to attract the most capable and appropriate candidate. Criteria set within the RFT, for instance maintaining local infrastructure within Australia, is not intended to be a barrier to entry. It ensures the security of systems and protection of critical infrastructure. Such criteria are best practice and performed throughout the world.

Option 1: Abandon the competitive registry model and make auDA the registry operator

6.8 The Panel's view is that such a change would represent a seismic shift in the way the .au domain operates, and does not appear to be justified given the steady growth rates and reducing prices of .au domain names since 2002. It would also undermine the fundamental principle of separation of policy and operations. The Panel notes that auDA would need to raise extra revenue from the industry (eg. By increasing its domain name fee) in order to build its own registry. In addition, major changes would need to be made to auDA's corporate structure and constitution to allow it to operate a registry.

AusRegistry firmly support the Panel's views with respect to this point in that this does not appear to be justified.

A separation of services, Regulator and Registry, is globally acknowledged as best practice. auDA are not technical experts and therefore would have to go to lengthy measures to expand their organisation to include a technical division. As such, the cost for auDA to build and run a Registry would prove significant.

Importantly, there would be little incentive to provide upgrades/improvements or best practice at the Registry level if the Registry was maintained by the Regulator. Similarly, there would be no repercussions if performance levels or various service levels were not maintained.

In addition, a complete industry re-education process would be required for the general public which would be at a significant cost to the Industry.

Any increase in costs would have a direct negative impact on the pricing of .au domain names.

6.9 A possible "half-way house" scenario may be for auDA to own the registry infrastructure but outsource operational management to another entity, thereby maintaining at least some degree of regulatory independence. However, this would also be a major change to the industry which does not appear to be warranted. The Panel also notes that there are often practical and legal problems that arise in the separation of ownership and operation, in relation to who is responsible for implementing upgrades and improvements, and who owns any associated intellectual property.



Again, AusRegistry firmly support the Panel's response with respect to this point.

We believe the 'half-way house' scenario is a further blurring of roles and provides even less clarity on who is responsible for SLAs and technical upgrades in addition to the points made above.

Option 2: Retain the competitive registry model and implement modifications to make the tender process more competitive and/or more cost-effective

6.10 There is general agreement among Panel members that the present arrangement of periodic competitive tenders for registry operation should remain, but that there is a need to investigate means to make the process both more cost effective and potentially more open to competing bids.

6.11 The current registry licence period was set at four years to give the registry operator sufficient time to implement its business model and achieve a reasonable return on investment, whilst at the same time keeping pressure on the registry operator to respond to market developments and maintain competitive performance levels. The Panel notes that a longer licence period (eg. 6-8 years) may serve to encourage greater competition during the tendering process, by giving prospective new entrants more time to recover their start-up costs.

AusRegistry agrees that an extended licence period may incentivise competition. It offers an immediate value proposition. Tenderers would be more likely to invest in the initial RFT, set up and development costs, knowing that if successful, their investment would be more viable over a longer term.

Also, extending the term will ensure that Registrars and the Industry as a whole are impacted at less regular intervals should a reassignment of the Registry take place. This would have the outcome of keeping costs to the industry down and reduce the possibility of confusion in the marketplace.

6.12 On the other hand, a longer licence period might act as a disincentive to the registry operator to invest in new technologies and keep up with international best practice, resulting in registry lethargy and reduced service levels to .au customers. The Panel notes however, that despite the steady reduction in .au pricing, the registry operator still makes healthy profits and that in itself provides an incentive for it to remain in good standing with auDA and the industry by maintaining high service standards.

AusRegistry believes that a longer licence period can only be an incentive for Registry Operators.

The Registry Operator is governed by the requirements and criteria set within the tender document and contractual agreement. All aspects of these are decided upon by auDA. It would be up to the Regulator to ensure that the contractual requirements stipulated only the highest of service levels and that any reduced standards in Registry Services would be dealt with appropriately.



Whilst the revenue generated from the sale of domains is indeed an incentive to maintain the highest of service standards, AusRegistry are also aware of their responsibility in maintaining critical infrastructure and the company's reputation in doing so.

6.13 Given that the start-up capital costs constitute the most significant barrier for prospective new entrants, it has been suggested that one way to level the playing field might be to charge the incumbent the same amount as it would cost a new operator to build a registry. Alternatively, auDA could waive the "sign-on" fee for a new operator.

AusRegistry does not believe charging the incumbent the same amount as it would cost a new operator to build a registry or waiving the "sign-on" fee for a new operator are practical solutions in lowering the barrier of entry for new entrants.

Deciding the cost to charge the incumbent would be fraught with issues. What would this start-up capital cost be based on? A world class Registry System based on IBM servers, Oracle and Cisco routers etc or a basic Registry and database model based on freeware?

Charging the incumbent the same amount to set up a new Registry system is unreasonable (and we are unsure how this assists new entrants). The current Registry Operator has already invested in an initial Registry build and several major technical infrastructure upgrades including the implementation of a new Registry system in the last Registry term. There seems to be an assumption from the Panel that only an initial set up fee is required. As we have indicated throughout our response, this simply is not the case.

The incumbent has to invest substantial funds into each Registry term. Technical infrastructure has a limited lifecycle and needs to be fully replaced in line with best practice. When maintaining certain SLAs, equipment must be replaced and updated and development of software must be carried out.

It seems illogical to provide a disincentive to the incumbent who is maintaining continuous high SLAs and service standards.

Waiving the 'sign on' fee whilst it may not adversely affect auDA's budget, does not seem like the best way to encourage competition, a leading Registry Operator would not find this to be a major incentive, and it would not influence their choice to bid or not to bid.

6.14 The Panel has also given some consideration to ways in which the tender process itself could be made more cost-effective. For example, auDA could offer an extended licence to the incumbent, subject to negotiation on pricing and other key terms; if negotiation failed, then auDA could move to conduct an RFT. Whilst this may avoid the need to expend resources on a full RFT, it would also have the effect of further entrenching the incumbent.

AusRegistry believe that the process as prescribed above may be a practical way forward.

Besides an initial cost saving, the ability to negotiate the Registry contract would allow auDA to have direct input into the resulting term and parameters within the contract.



auDA and the incumbent would have the opportunity to discuss the outcomes of the past term, outline expectations for the following term (or extension period) and negotiate terms of the next contract such as pricing, new technical requirements and service levels.

Extending the contract also removes any risk of a new Registry Operator jeopardising the current security and stability of the system. There would be no interruption to service; it removes the cost of transition, reduces confusion for the Industry and internet users and there would be no added cost for Registrars. In addition, Registrars and Registrants alike would retain a system and service they are familiar with.

Given the current environment and pricing, engaging directly in an RFT may actually have the result of increased Registry domain fees as Registry providers compete on SLA's and other technical criteria as was witnessed in the original tender process whereby AusRegistry did not offer the cheapest pricing but was extremely competitive in other areas.

There are also many examples of precedents, especially in the Governmental arena, where the extension of a license without an RFT process is prudent if certain criteria are met. An example of this is found in the Commonwealth Government Procurement Guidelines:

Commonwealth Procurement Guidelines

4. The Principle of Value for Money

4.1 Value for money is the core principle underpinning Australian Government procurement. In a procurement process this principle requires a comparative analysis of all relevant costs and benefits of each proposal throughout the whole procurement cycle (whole-of-life costing).

4.2 Value for money is enhanced in Government procurement by:

- encouraging competition by ensuring non-discrimination in procurement and using competitive procurement processes;*
- promoting the use of resources in an efficient, effective and ethical manner; and*
- making decisions in an accountable and transparent manner.*

4.3 In order to be in the best position to determine value for money when conducting a procurement process, request documentation needs to specify logical, clearly articulated, comprehensive and relevant conditions for participation and evaluation criteria which will enable the proper identification, assessment and comparison of the costs and benefits of all submissions on a fair and common basis over the whole procurement cycle.

4.4 Cost is not the only determining factor in assessing value for money. Rather, when assessing alternative procurement processes or solutions, a whole-of-life assessment would include consideration of factors such as:

- the maturity of the market for the property or service sought;*
- the performance history of each prospective supplier;*

- *the relative risk of each proposal;*
- *the flexibility to adapt to possible change over the lifecycle of the property or service;*
- *financial considerations including all relevant direct and indirect benefits and costs over the whole procurement cycle;*
- *the anticipated price that could be obtained, or cost that may be incurred, at the point of disposal; and*
- *the evaluation of contract options (for example, contract extension options).*

4.5 Additionally, FMA regulation 9(1)(a) requires officials to ensure that a procurement complies with other Government policies that interact with the procurement. Officials may refer to the Finance publication *Guidance on Complying with Legislation and Government Policy in Procurement* for further assistance on policies that interact with procurement.¹

6.15 Another approach may be for auDA to set registry prices and service levels, and seek tenders accordingly. This may help to deliver better value, because it enables auDA to take a proactive role in setting prices and service levels rather than being restricted to those put forward by tenderers.

AusRegistry do not support auDA setting Registry prices. Setting prices may prove to be a barrier of entry for prospective new entrants.

Setting up Registry infrastructure, developing software, running and operating a Registry business and maintaining service levels is a cost borne by the Registry Operator. These costs are not fully known to the Regulator. If auDA were to set domain prices, and the prices were too low, the lack of revenue may limit a Registry Operator from fulfilling their obligations or providing additional services, perhaps it may even encourage the Registry Operator to take shortcuts. It would be sensible as well as advantageous to negotiate price rather than set a price.

A low price point, and therefore low revenue opportunity for a potential registry operator may also limit the interest of any parties in participating in the tender process.

In terms of setting service levels it is usual for auDA to set minimum service levels in a tender situation. AusRegistry has far exceeded minimum service levels in both tender responses.

The Accreditation and Regulation of Registrars

6.21 Currently, there is no restriction on a foreign company (ie. one that is not located or registered in Australia) becoming an accredited registrar. Concerns have been raised that foreign registrars may be unfamiliar with Australian laws and market practices, and their lack of local presence and time zone differences may pose customer service problems. The Panel also

¹ This excerpt is taken from the Department of Finance and Deregulation website: <http://www.finance.gov.au/procurement/>



notes that non-Australian registrars do not have to charge their customers GST, which creates the perception that they are cheaper than Australian registrars.³ It has been argued that only Australian entities should be allowed to apply for registrar accreditation, which would be consistent with policy rules that allow only Australian entities to register .au domain names.

AusRegistry do not believe foreign Registrars should be excluded from entering the Australian market. The Internet is a global industry and therefore the understanding of local laws is not paramount.

However, it is important to level the playing field and ensure that GST applies to all Registrars.

6.22 In the gTLDs, many registrars hold more than one ICANN accreditation (eg. US-based company Enom holds over 60 registrar accreditations), the main purpose being to maximise their connections to the registry and increase their chances of picking up domain names as they drop. Some are “private” registrars, which register domain names only for themselves and their associates, and do not offer service to the general public.

The Panel notes that these new registrar business models have started to appear in the Australian market; of the total 27 auDA accredited registrars, four entities hold more than one registrar accreditation, including one entity which owns four registrars.

AusRegistry believes that it is not within scope of this Panel to question the business models of Registrars.

AusRegistry also believes that the market will dictate what the appropriate number of accreditations per Registrar is. .au is still a young market with only 27 Registrars. It is difficult to make any generalisations about how multiple accreditations will affect the market at this early stage. In addition, Registrars have multiple accreditations for a myriad of reasons and business models, not just to maximise connections.

It is important to note that, at this point in time, multiple accreditations do not technically impact the Registry. The Registry can dynamically manipulate and limit the number of Registrar connections to the Registry System.

This may be a good point to evaluate at the next panel discussion, once the market has grown significantly.

Registrar Fees:

6.25 Panel members have raised the following arguments in relation to registrar fees:

- Many other types of fees are indexed, why shouldn't registrar fees be treated the same way? On the other hand, the registry and auDA domain name fees have been steadily decreasing over time, so why should registrar fees be different?
- A significant increase in registrar fees may discourage the practice of holding multiple accreditations to maximise connections to the registry, but it may also act as a barrier to natural market consolidation.
- Reducing registrar fees may lead to a large increase in the number of applications, causing resourcing and regulatory problems for auDA. Reducing registrar fees may set the barrier to



entry too low and result in reduced quality of service to customers and possible risks to the technical operation of the .au DNS.

AusRegistry does not believe an increase in fees would deter Registrars from taking multiple accreditations.

A slight reduction in fees may be warranted although it may not be enough to encourage more accreditations given there are other 'barriers to entry' such as the requirement that applicants must have 6 months experience as a reseller and that AusRegistry requires an initial \$10,000 deposit in their Registrar account.

Registrar Services:

6.28 The Panel is considering whether it may be necessary to mandate that registrars must send domain name renewal notices to registrants, as opposed to relying on a "best commercial endeavours" approach, on the basis that consumers have a reasonable expectation to receive a renewal notice. However, concerns have been raised about the increased cost and liability for registrars, especially where the domain name was registered through a reseller.

AusRegistry provide all Registrars with 28, 21, 14, 7 day domain expiry reminders. However, sending renewal notices is ultimately a Registrar's choice. If they lose a customer because they have failed to remind them to renew a domain name then ultimately that is a direct result of a Registrar's business practice. Registrars are free to run their business as they choose.

Registrar Penalties:

6.31 The Panel is considering whether there is a need to introduce a more formalised system of penalising registrars who breach the Registrar Agreement, to address the lack of transparency and certainty for industry and consumers generally in understanding how particular types of complaints are handled and the type of penalty that may be imposed.

AusRegistry believe that auDA should not be burdened with handling Registrar demerit points. In essence there are a negligible number of complaints made against Registrars so an approach such as this seems overly bureaucratic.

Demerit points may be a viable practice when the number of Registrars grows substantially.

In Summary:

AusRegistry fully supports a review process of the Competition Model for the Australian Domain Name Industry.

AusRegistry have provided a stable and secure Registry System, operated within Australia, since July 2002. The Registry software and architecture is amongst the most advanced in the world. Domain Name pricing, due to several Registry price reductions, is now on par with, and soon to be less than, the price of registering a .com domain name. Our performance levels have consistently exceeded SLAs requirements.



Our technical infrastructure has recently been upgraded using the latest technologies. Security and monitoring are of paramount importance and the stability of the Registry System has been evident by the “uptime” statistics. AusRegistry have invested heavily into promoting the .au domain through extensive marketing, Registrar programs and PR campaigns and have contributed to several charities by donating the profits of the .org.au and .asn.au domain.

AusRegistry consider ourselves to be a highly competitive Registry Operator.

We are extremely mindful of our responsibilities and position of managing critical infrastructure. We consider it important to give back to the industry and dedicate much time contributing to panel discussions, presenting on Registry matters and participating in technical committees. We are a proud Australian company and well placed in the international market via our international Registry Services business.

In that respect we are well aware of the requirements and attributes of a Best Practice Registry. AusRegistry are ever mindful of our competition in the international arena, using them to set a benchmark that we must operate by and exceed on a daily basis. We provide our customers with the most current product offerings, the latest technologies and are aware of any changes in the industry landscape.

AusRegistry’s staff are highly skilled professionals who receive extensive training to ensure they provide the most effective level of service. We work closely with the Regulator to maintain a greater understanding of the industry as a whole and to ensure we provide a superior service to our stakeholders.

AusRegistry works diligently to maintain a close relationship with its Registrars and to ensure their satisfaction with the Registry remains high. We employ a dedicated Registrar Liaison who works daily with Registrars, conduct yearly Registrar Conferences and site visits and provide monthly newsletters to ensure communication is maintained. It is important to note that AusRegistry received 16 letters of support from Registrars (out of a possible 22) to retain the Registry Licence during the last RFT.