

Dear Panel,

Please find below Melbourne IT's response to the 2008 Industry Competition Advisory Panel –Draft Recommendations.

Regards,
Kartic Srinivasan
Product Manager
Melbourne IT Ltd

**Draft Recommendation 1:
The Panel recommends that the competitive registry model should be retained with a license term of either 6 or 8 years.**

Melbourne IT believes the current registry model is working well. Any significant changes will only incur more costs to the Australian community / registrants. Melbourne IT thus supports the recommendation to retain the competitive registry model.

At the same time Melbourne IT recognises that the operation of the .au registry is a monopoly function, and that this function should be put out for periodic tender. Melbourne IT thus supports the proposal to retain the competitive registry model.

Melbourne IT supports the suggestion for a longer licence period as an incentive to encourage competition during the tendering process. Melbourne IT recommends a period of 6 years, and also recommends that auDA get some professional advice on operating tendering processes (not just legal advice) on how to get the best outcome.

**Draft Recommendation 2:
The Panel recommends that auDA renegotiate the current registry licence to extend the term by either 2 or 4 years subject to agreement being reached on a pricing model and the inclusion of all items that auDA would require in a new 6 or 8 year licence.**

As per Melbourne IT's previous submission, Melbourne IT favours a tender instead of a negotiation process to ensure that the process is more open and transparent.

If this recommendation is accepted, then Melbourne IT recommends that the renegotiation seeks to strengthen the security and stability of the .au system – especially with respect to implementing mechanisms to protect the DNS infrastructure from a denial-of-service attack and improving



security around the DNS queries, as well as stronger security protections for individual domain name records for critical names. Melbourne IT also recommends appropriate solutions be put in place to avoid the current slamming process for detecting and obtaining recently deleted names, which leads to an inefficient allocation of resources as well as inequitable use of multiple registry connections. The length of an extension needs to be considered in the context of the extent of investment committed to improving the infrastructure. A period of 2 years would be appropriate if there are no significant investments required in hardware and software, whereas a 4 year period would be appropriate if there is a clear investment program with measurable outcomes (preferably via external tests) that would take more than the revenue from the first two years to cover the costs.

**Draft Recommendation 3:
The Panel recommends that if auDA and AusRegistry cannot reach an agreement the registry licence should be tendered for a new 6 or 8 year term commencing in July 2010.**

As per Melbourne IT's previous submission, Melbourne IT favours a tender process to ensure that the process is more open and transparent. Melbourne IT recommends a period of 6 years, and also recommends that auDA get some professional advice on operating tendering processes (not just legal advice) on how to get the best outcome.

auDA should also reserve the right not to accept any of the proposals put forward by the participants in a tender process, and also be able to subsequently negotiate with the existing registry operator with respect to pricing (especially if there is an increase over the current pricing model) and key terms.

With respect to any tender process, Melbourne IT would prefer to see stronger standards for reliability and security as described above, rather than any drop in service quality. On the whole Melbourne IT is satisfied with the performance of the current registry operator, but every day there are more methods being developed to exploit vulnerabilities in the DNS as the value of the Internet to the economy increases, and these need to continue to be addressed going forward.

**Draft Recommendation 4:
The Panel recommends that auDA should require all overseas accredited registrars to register with ASIC to trade in Australia.**

Melbourne IT supports this recommendation that overseas accredited registrars must register with ASIC to trade in Australia. Melbourne IT believes that it is important that overseas accredited registrars also abide by the same GST rules as local registrars. If this is not established by registering with ASIC, Melbourne IT also recommends that overseas accredited registrars explicitly



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register for GST, and that as part of the accreditation process that auDA verifies that the registrars are registered for GST.

Melbourne IT believes that as domain names are only sold to Australian entities, that the registrar should also have a local presence with a registered office, and have staff located in Australia that can be held personally accountable as directors or officers of the company for the activities of the registrar. Melbourne IT has no issue with an Australian registrar being foreign owned as is presently the case with at least one registrar today. This local presence requirement is consistent with the provisions of the registry operator agreement (Section 9.1/9.2 - <http://www.auda.org.au/pdf/auda-rft2005-part7.pdf>). Also ccTLDs that have local presence rules for their registrants also apply this to registrars. For example .ca – Canada <http://www.cira.ca/en/documents/2007/PRP-rar-agreementv1.7.1.pdf>, and also Japan (.jp). By contrast ccTLDs with no local presence rules for registrants – such as .co.uk and .co.nz also apply that same principle to their registrars.

There have been cases already in the Australian market where a company has been taken to court under the trade practices act, and the court has made rulings with respect to the directors of the company as well as the company. This is often necessary, as new companies can be easily formed to get around any ruling that apply to a previous company. These rulings will only be effective where the directors of the company are based in Australia.

Draft Recommendation 5:

The Panel recommends that auDA should work with the registrar community to develop a policy to ensure fair and equitable access to the registry so that the ownership of a number of registrar accreditations does not create an unfair market advantage.

Melbourne IT supports this recommendation.

As per Melbourne IT's previous submission, multiple accreditations are being used to get around the principle that all registrars regardless of size should have the same bandwidth capacity into the registry. The commercial driver for the use of multiple accreditations has been to get unfair access to recently deleted domain names. Melbourne IT would be keen to work with auDA to come up with a more transparent and equitable allocation model for recently deleted names, based on international experience.

Draft Recommendation 6:

The Panel recommends no changes to the structure of the application and annual fees for registrar accreditation.

Melbourne IT supports this recommendation.



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Draft Recommendation 7:

The Panel recommends that auDA work with the registrar community to compile a list of registrar functions that would be subject to regulation by auDA.

Melbourne IT supports this recommendation, and also recognizes that any changes in this area need to respect the principle that resellers can manage direct communications with their customers.

Draft Recommendation 8:

The Panel recommends that subject to the introduction of an independent appeals process, auDA should develop with the registrar community a formalised system of penalties for breaches by registrars.

Melbourne IT supports this recommendation.