

Ms Jo Lim
Chief Policy Officer
Australian Domain Administration Limited
GPO Box 1545P
MELBOURNE VICTORIA 3001

Dear Ms Lim

SETEL Submission: Response to auDA Second Public Report on Competition Model for the .au Domain Space

This Submission responds to auDA's public invitation for comment on the *Second Report for Public Consultation: Recommended Competition Model for the .au Domain Space*, auDA Competition Model Policy Advisory Panel, May 2001.

SETEL is an independent national consumer organisation representing and advancing the interests of small business telecommunications and electronic commerce consumers in national fora. SETEL's members are mainly industry, trade, commerce and professional associations servicing Australia's small business sector. SETEL's membership includes 56 associations (see Attachment A), which collectively represent around 500,000 Australian small businesses. More detailed information about SETEL is at <<http://www.setel.com.au/>>.

Australia's 950,000 small businesses are major consumers of telecommunications, e-commerce and electronic addressing services and stand to benefit significantly from the competitive provision of .au domain names services and licences.

The policies and models that emerge from the current auDA review processes should serve the long-term interests of Australian small business, as the largest group of consumers of domain names and related electronic addresses.

This submission was written by Ian Johnston, SETEL Policy Consultant and Member of auDA's Names Policy Advisory Panel and Competition Model Advisory Panel, with contributions from Ewan Brown, SETEL's Executive Director. The views in this submission are those of the writers and not necessarily those of SETEL member associations. However, these views are based on an understanding of the business needs of Australian small businesses, as conveyed by SETEL member associations over many years.

SETEL informed its members of auDA's invitation to comment on the abovementioned Paper and encouraged member Associations to respond direct to auDA. SETEL will continue to encourage member Associations to join auDA, participate in auDA Panels and contribute to the development of policy and self-regulation.

SETEL, as Australia's largest and most representative small business consumer organisation, looks forward to working with auDA with the objective of ensuring that industry self-regulation is effective and successful. SETEL has an ongoing interest in consumer code development, implementation and review, and looks forward to contributing to the code process (subject to resource availability).

This submission can be treated as public information and published on the auDA website.

Yours sincerely

Ewan Brown
Executive Director
Small Enterprise Telecommunications Centre Limited

15 June 2001

SETEL Submission: Response to auDA's Second Report for Public Consultation: Recommended Competition Model for the .au Domain Space [1]

Introduction

SETEL appreciates the significant progress that has been made by the Competition Model Advisory Panel since its last report and believes that the proposed model that has been developed to date is relatively robust and an adequate basis for the introduction of competition.

However, the critical question is what improvements can and should be made to the model in the relatively short time remaining for the Panel to finalise its report and submit it to the auDA Board by the 30 June 2001.

The introduction of effective competition is but a means to achieving the objective set out in the Panel's Terms of Reference:

auDA's objective is to develop the .au namespace in the interests of domain name users and the industry. A key component in delivering this objective is the implementation of competition in the provision of domain name services, to deliver the best result for quality of service, user choice and lowest cost.

Accordingly, the interests of Australian small business, as the largest group of consumers of domain names and related electronic addresses, should be served. For Australian small business quality of service, choice and lowest cost are paramount.

The competition model should place relatively greater weight on the interests of Australian small business and other domain name users, by contrast with the interests of industry registries, registrars and resellers. The industry exists to serve the interests of domain name users.

The following comments by SETEL are offered with the purpose of facilitating improvement in the competition model. Minor comments and editorial points will be provided separately by SETEL's representative on the Panel.

Comments

Recommendation 4.2 – Policy authority and accountability mechanisms

In SETEL's experience, as a consumer advocate for Australian small business over the last decade in the telecommunications industry, accountability mechanisms of regulatory bodies are developed in the light of experience. SETEL acknowledges that self-regulatory schemes need time and opportunity to evolve and rectify problems as they arise.

auDA will need to be sensitive and responsive to its stakeholders, notably consumers, consumer organisations and government, on consumer issues. In this regard transparency is an essential feature.

As consumers cannot guard against specific industry problems that they do not know exist, transparency is an important mechanism to ensure credibility and accountability. An industry culture of openness

and transparency in dealing with consumer issues is an essential pre-condition to effective self-regulation. Failure or indications of failure of self-regulation will inevitably lead to government intervention.

SETEL, as Australia's largest and most representative small business consumer organisation, looks forward to working with auDA with the objective of ensuring that industry self-regulation is effective and successful.

Recommendation 4.3 Registry

SETEL notes that the submission by Connect West Pty Ltd [2], registry for the asn.au domain, makes a compelling argument for varying the proposed competition model. This submission raises fundamental issues relating to the operation of the registries and registrars, in particular, what their functions are and how they relate to each other and to auDA. It questions some important assumptions in the competition model report.

SETEL's initial comments on these and other issues follow:

- **Competition model issue**

Panel report states: 4.3.3 The Panel favours a single registry operator in recognition of the current dominance of the com.au 2LD in the Australian marketplace (ie. there are more than 200,000 domain names under management in com.au, while the other 2LDs each have less than 20,000 domain names). This makes it unlikely that there would be sufficient scale of business to support multiple registry operators at high service levels."

Connect West states: However, it may be that some party wishes to provide a tender only for one of the smaller 2LD's and offers to provide superior and personal service levels.

SETEL comments: SETEL is of the view that the option of a tender for only one registry should not be excluded from consideration in the proposed tender process. It seems inappropriate for the Panel to presume to know the needs of consumers of asn.au registry services and what prospective registrars might offer.

- **Registry function issue**

Connect West states: The registry is a technical function, which

should be outsourced by auDA using a tender process, in precisely the same fashion as AUNIC has been outsourced.

SETEL comments: SETEL finds this approach attractive. The costs, benefits and risks of this approach need to be considered against the proposed approach set out in the Second Report. The proposed approach seems to unnecessarily limit contestability in the tender process. SETEL is concerned that a number of existing registry operators may be put out of business by the tender process, leaving no commercial viable backup operators, and prospective future competitors.

- **Independent entity issue - policy application**

Connect West states: The key opposition to the plan outlined ... will be that policy control should be at the registry. This assertion should be wholeheartedly rejected. It makes the registry "fat", moving the larger cost of applying for a domain name into the only non-contestable part of the equation.

SETEL comments: Policy control must ultimately reside with auDA, as agreed by the Panel. However, policy / rule administration may be devolved to registries, registrars and / or an independent party. An independent party is mentioned as an option in the Report (4.3.11). Whoever performs this function will be ultimately accountable to auDA.

SETEL understands that there are significant economies and other major benefits arising from policy / rule administration being undertaken by a single entity. These other benefits relate to fair, equitable and consistent application of policy / rules relating to eligibility and allocation of domain name licences. It is important that this function is conducted, and seen to be conducted, in an efficient, economical, transparent, fair, equitable and consistent manner. The function will be subject to intense public scrutiny.

Accordingly, SETEL would prefer to see an *independent* entity perform this function. This is particularly the case if a registry operator has a commercial interest in a registrar. An independent entity would need to be adequately funded.

- **Monopoly provision of registry services**

SETEL has questioned the need for monopoly provision of registry services. SETEL notes the following explanation from RFC 2826, IAB Technical Comment on the Unique DNS Root, May 2000:

1.2. Coordination of Updates: Both the design and implementations of the DNS protocol are heavily based on the assumption that there is a single owner or maintainer for every domain, and that any set of resources records associated with a domain is modified in a single-copy serializable fashion.

In view of this and other reasons, SETEL accepts that there must be a *single* owner or maintainer for every domain. There must be a monopoly supplier of registry services in each domain.

The issue then is what model best serves the interests of domain name users. Registry services may be provided by a variety of entities in a variety of ways. SETEL has some concerns with the following proposal:

4.3.3 The Panel favours a single registry operator in recognition of the current dominance of the com.au 2LD in the Australian marketplace (ie. there are more than 200,000 domain names under management in com.au, while the other 2LDs each have less than 20,000 domain names).

In view of Connect West's comments and the objective of the competition model, it is SETEL's view that the interests of domain name users will be best served by an open, competitive tender process that tests the market for the provision of "value for money" domain name services across a number of domains. There is a balance to be found between quality of service and lowest cost.

In SETEL's view it is not prudent for the Panel to be proposing the tendering of registry services for a bundle 2LDs (com.au, net.au, org.au and asn.au) ahead of an open, competitive and potentially more flexible tender process.

Users or user representatives of each 2LD need to specify their requirements, including quality of service, for inclusion in tender documents. The tendering process can then identify a range of tenders that are compliant with the specified requirements for each 2LD and then recommend for selection by the auDA Board which

compliant tender(s) represent best value for money for each 2LD or combination of 2LDs.

- **Registry ownership and control - industry**

SETEL has raised the question of an industry owned and operated entity to provide the registry services. The Australian telecommunications industry's *Industry Number Management Service Pty Ltd (INMS)* cited as an example.

In most European countries the DNS is operated as a shared registry system on a cost recovery base with ISPs under contracts and without government involvement. The entry barriers for market parties to participate in the organisation overseeing the DNS are quite low. For example, the foundation that manages the shared registry for the Netherlands counted 679 participants on 1 May 2000 [3]

An industry owned entity, operating the registry in an efficient, fair, equitable, low cost and collaborative manner, is model that should not be ruled out. In SETEL's view there is clearly scope to include the option of an industry owned and operated model in the report to the auDA Board.

- **Registry ownership and control - foreign**

SETEL has raised the question of whether it would be appropriate for foreign interests have a substantial shareholding in or control of the entity operating a DNS registry - an important element of Australia's national information infrastructure.

In the light of responses, SETEL concluded that if this consideration arose, it would be prudent for a foreign tenderer to consult with the Foreign Investment Review Board and seek to obtain any necessary Federal Government approval under foreign investment policy.

- **Clear and effective separation of registry and registrar business operations**

Recommendation 4.3 provides: ... A registry operator may not also operate as a registrar unless there is a clear and effective separation of the two business operations.

In SETEL's view, accounting separation is necessary, but not sufficient. Separate legal entities, with appropriate monopoly accountability

mechanisms in the registry operator's constituent documents and licence, are necessary. Effective control, or being in a position to exercise effective control, of a registry operator by one registrar is an issue. Shared control by industry participant is preferred by SETEL.

Recommendation 4.4 Registrars

SETEL notes these recommendations.

Recommendation 4.5 Resellers

SETEL notes these recommendations.

Recommendation 4.6 Registrants

- **"Free" auDA Membership**

SETEL notes that the Panel recommends all registrants will be entitled to become members of auDA upon licensing a domain name, without additional charge (4.6). However, the Panel recommends that the cost of auDA membership be rolled into the levy to be imposed on domain name registrations and renewals (4.6.3). These recommendations create an ambiguity and require clarification.

SETEL is concerned that small businesses opting-out of membership of auDA will be expected to meet the cost of membership of others through the levy. This cost might quite be substantial if all members were to receive the full benefits of current financial membership.

SETEL is concerned about the complexity of the processes and costly changes to auDA's constitution and other constituent documents in order to implement the "free" membership recommendation. SETEL would be concerned if auDA Board and Management efforts were directed to issues relating to this task, at the expense of implementation of the competition model and new name policy, both of which will require massive efforts by auDA which is clearly under-resourced at this point in time.

- **Code of Practice**

SETEL supports the following recommendations of the Panel, subject to one qualification:

4.4.7 The Panel also *recommends* that registrars and consumer representatives develop an industry code of practice, using a model such as the Australian Communications Industry Forum, to set standards for consumer protection covering such matters as minimum levels of disclosure, handling of registration fees paid in advance, transfer of registrants between registrars, handling of disputes between registrars and registrants and credit management. This code of practice should be approved by auDA, with adherence to be imposed as a licence condition for all registrars.

4.4.8 To ensure the introduction of consumer safeguards occurs concurrently with the introduction of competition, the Panel *recommends* that such safeguards be incorporated into auDA's initial registrar licence agreements. This would remove the need for auDA to establish immediately a forum for the development of industry codes, and would also allow time for new entrants to gain industry experience.

SETEL is satisfied with the Consumer Safeguards paper at Attachment D of the Report.

- **Concern Code Development - Timing**

SETEL as concerns about the statement in 4.4.8: "This would remove the need for auDA to establish *immediately* a forum for the development of industry codes ...".

It should be noted that consumer code development in the telecommunications industry has taken almost four years. The issues and problems relating to the domain name services industry are no less complex and will probably require considerable effort.

It is important to note that consumer code development in the telecommunications industry has led to a need for service providers to redevelop systems. Similarly, consumer code development may well impact on system development of registries, registrars and auDA. Accordingly, there is benefit in identifying likely impacts at the earliest possible date to avoid unnecessary additional costs.

In SETEL's view the code development process should commence at an early date. SETEL would like to see in the Panel report recommend to auDA to the commencement of planning of a code development process as early as possible in 2001. SETEL recommends that auDA convene a Panel or Working Group at an early date to commence the

planning task. SETEL looks forward to contributing to code processes (subject to resource availability).

- **Complaints handling**

In SETEL's view, an essential element of the domain name policy and service environment is an effective and robust complaints handling mechanism.

The importance of a 'one stop shop' approach to complaints handling from a consumers' perspective has been an important consideration in Federal, State and Territory Government policy for some years.

SETEL is concerned that a multiple complaints handling environment is being developed by auDA. Such environments can be inefficient, burdensome and frequently frustrating for consumers, particularly for small businesses pressed for time and resources.

SETEL notes that the Telecommunications Industry Ombudsman dispute scheme has provided a free and timely forum for the redress of consumer complaints, in contrast to costly and time consuming action in courts or consumer tribunals. This is a model well worth considering.

Customer complaint and dispute resolution procedures and mechanisms should be accessible, independent, fair, accountable, efficient and effective.

- **ACCC and effective operation of codes**

SETEL has noted, and recommends for auDA's consideration, the key criteria for effective operation of codes of conduct set down in the Australian Competition and Consumer Commission's Submission to the Commonwealth Government's Task Force on Industry Self-Regulation.

Codes of conduct that have adopted these criteria have been relatively more successful in gaining fair trading outcomes. The key criteria for the effective operation of industry codes of conduct:

- addressing consumer concerns, particularly common consumer complaints;
- consumer / industry / regulatory consultation;
- transparency and industry wide coverage;

- complaints handling and compliance mechanisms;
- consumer and industry awareness / publicity about the code;
- regular monitoring and review of code provision;
- competitive implications: codes should avoid being written in such a way that they have a negative impact on competition; and
- performance indicators should be developed and implemented as a means of measuring the effectiveness of the code's operation.

Recommendation 4.7 Funding Model for auDA

The Panel has provided guidance to auDA on an appropriate funding model, but there is considerable work to be done to develop and implement this model.

Recommendation 5. Implementation Strategy

SETEL supports the implementation strategy outlined in 5.2 and presented in more detail in Attachment C.

The complexity and resource intensiveness of implementation within the timeframe envisaged should not be under-estimated. SETEL recommends that Panel members and auDA Management review the proposed process set out in Attachment C of the Report, which was prepared by SETEL, with contributions from MelbourneIT.

Endnotes

- [1] <<http://www.auda.org.au/panel/competition/papers/publicreport2.html>>
(Accessed 14 June 2001)
 - [2] <<http://www.auda.org.au/panel/competition/submissions/malone.html>>
(Accessed 14 June 2001)
 - [3] Rood, Hendrik *What's in a name, what's in a number: some characteristics of identifiers in electronic networks*, Elsevier Science, Telecommunications Policy 24 (2000) 533-552
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Attachment A - SETEL Members

Associations

Association of Consulting Engineers, Australia
Australian Chamber of Commerce and Industry
Australian Industry Defence Network
Australian Council of Professions
ACT & Region Chamber of Commerce and Industry
Australian Hotels Association
Australian Petroleum Agents and Distributors Association
Australian Private Hospitals Association
Business Enterprise Centres Australia
Bus and Coach Association of NSW
Australian Retailers Association
Australian Society of Certified Practising Accountants
Chamber of Commerce and Industry (Western Australia)
Chamber of Commerce and Industry (WA) - South East Metropolitan Region
Council of Small Business Organisations of Australia Ltd
Electrical Contractors Association of WA
Employers' Federation of NSW
Franchise Council of Australia
Fremantle Chamber of Commerce
Furnishing Industry Association of Australia (NSW) Ltd
Hotel and Motel Accommodation Association
Housing Industry Association
Institute of Chartered Accountants in Australia
Institution of Engineers, Australia
Jewellers Association of Australia
Kwinana Chamber of Commerce
Licensed Clubs' Association of Victoria Incorporated
Master Builders Australia
Master Plumbers' & Mechanical Services Association of Australia
Motor Trades Association of Australia
National Electrical Contractors Association, NSW
National Rural Health Alliance
National Electrical and Communications Association
National Farmers' Federation
National Institute of Accountants
Northern Territory Chamber of Commerce and Industry

Pharmacy Guild of Australia
Printing Industries Association of Australia
Queensland Chamber of Commerce and Industry
Queensland Retail Traders & Shopkeepers Association
Real Estate Institute of Australia Ltd
Real Estate Institute of Tasmania
Restaurant and Catering Industry Association of Australia
Retail Confectionary and Mixed Business Association Incorporated
Rockhampton Chamber of Commerce
Small Enterprise Association of Australia and New Zealand
South Australian Employers' Chamber of Commerce & Industry
Incorporated
Southern Districts Business Association
State Chamber of Commerce (NSW)
Tasmanian Chamber of Commerce and Industry Ltd
Timber Merchants Association (Victoria)
Tourism Council of Australia
Tractor & Machinery Association of Australia
The Victorian Automobile Chamber of Commerce
Victorian Employers' Chamber of Commerce and Industry
Western Australian Utilities, Electrotechnology & Printing Industry
Training Council

Member companies and other organisations

AIPC Pty Ltd
Aquaspace Data
Australian Business Limited
Beda Ventures Pty Ltd
Business in the Community Limited
Butterworth Association Services
Cavill and Company Pty Ltd
Derby Enterprises
Roberts Real Estate, Eastern Shore
Solterbeck Jackson Marketing
Tasmanian Electronic Commerce Centre Pty Ltd
The Muecke Group
VME Systems
Woolcunda Proprieties