

**Recommended Competition Model
for the .au Domain Space**

Response by Momentous Australia to

**auDA Competition Model Advisory Panel
Public Consultation Report of May 2001**

**Momentous Australia
PO Box 513
Curtin ACT 2605**

:: Executive Summary ::

Momentous Australia commends the Competition Policy Panel for a proposal that is consistent with auDA's charter and seeks to ensure that Australians have access to high quality low cost domain name services.

The Panel's overall recommendations are endorsed.

Achievement of auDA's charter requires:

- an emphasis on service quality
- a recognition that competition relates to service delivery, rather than between 2LDs or between registries and registrars
- encouragement of innovation and global best practice, which meet the needs of users and are consistent with the stability of the .au space
- adequate funding of auDA
- investment in the development and maintenance of registry services as a potentially robust business rather than a not-for-profit responsibility
- development of policy on a considered basis, since decisions about competition are inextricably entwined with those about dispute resolution and name policy
- community awareness and support of the competition regime

Response to Recommended Competition Model for the .au Domain Space

Momentous Australia commends the Panel for a proposal that is conducive to:

- significantly lower costs for corporate and individual consumers of domain registration services
- the provision of value-added services that reflect the expectations of those consumers
- development of a dynamic domain services industry to facilitate access to the internet, in particular as a ubiquitous business tool
- enhanced transparency, consistency and ease of access in administration of the .au domain regime, a prerequisite for support by the internet industries, investors, regulators and the wider community
- positioning of Australia as a real participant in the global information economy, aspiring to best practice in the delivery of services and in an administrative framework that addresses user demand for quality services without eroding the stability of the DNS.

The following paragraphs address the Competition Panel's report as a whole. Particular aspects of the report will be affected by decisions regarding the Dispute Resolution Working Group *Proposed .au Dispute Resolution Policy & Rules* and the Name Policy Advisory Panel *New Second Level Domains In The Australian DNS* papers of May 2001, on which Momentous Australia has provided separate comments.

A further response to the Competition Panel's report will be provided as decision-making progresses.

.au Regime

The report's characterisation of the .au regime is consistent with auDA's charter, with the broader national competition policy and legislation framework, and operational practicalities.

In essence, it emphasises:

- the role of auDA as an administrative body that develops a national policy for the .au space, that identifies and clearly articulates standards for the provision of domain registration services, and that actively monitors compliance with those standards (underpinned by certification of industry participants) but does not operate registry/registrar services
- the provision, whether on a commercial or not-for-profit basis, of registry and registrar services by independent bodies that operate within auDA's policy framework. Those services include alternative dispute resolution mechanisms

- an industry code of practice that is consistent with auDA's policy objectives, reflects international best practice and is informed by commercial experience
- the importance of recognising potential concerns by stakeholders that include trade practices bodies, investors in the provision of domain registration services, commercial and individual consumers, and public advocacy bodies

Consistent with the federal legislation, auDA should have exclusive authority for setting domain name policy for the .au space. Delegation of authority for particular 2LDs such as 'edu.au' falls within that responsibility.

Momentous Australia welcomes key features of the proposed regime:

- recognition that the internet increasingly has the same importance for businesses, other organisation and individuals as the telephone
- emphasis on consumer choice and access to enhanced, lower-cost services without eroding the robustness of the .au space
- auDA's establishment of minimum technical standards, data protocols, security and service level requirements
- certification by auDA to address concerns about stability and service delivery
- the separation of policy setting/compliance activity from operational provision of domain registration services, including dispute resolution
- the separation of registry and registrar functions (noting that an entity might service both functions if the services were distinct and potential concerns about market advantage or stability were addressed)
- responsibility by registrars for the activity of their agents

The shape of competition

In considering proposals from the Competition Policy Panel and the Name Policy Panel it is important to recognise that competition concerns the provision of services that meet the needs of users.

Competition does not equal a choice of 2LDs. Competition is not measured by the number of separate 'stovepipes' or by a proliferation of registries and registrars that offer indifferent service. Ultimately auDA will be judged through its encouragement of a domain name industry characterised by service providers that

- deliver high-quality, low-cost services
- are commercially successful
- represent best practice in terms of dealings with customers, maintenance of systems and innovation
- satisfy rigorous accreditation requirements

- actively participate in the self-regulatory regime
- ensure the .au space is perceived as more attractive than other ccTLDs.

The number of industry participants is less important than the quality of service delivery and the vigour with which they compete.

That emphasis on service means that auDA should be hesitant in adopting policies that would inhibit competition. Competition is intertwined with decisions about compliance mechanisms, costs, community participation, standards and opening up of the .au space.

Commercial Basis

auDA should also be hesitant about claims that particular services, such as registry, can or should be delivered on a volunteer or 'charity' basis.

The robustness of the .au space requires appropriate investment in order to ensure stability and to facilitate or reflect innovation. In particular, service providers should be encouraged to acquire or develop world best practice solutions to the technical demands of a growing industry

Industry Code

The report suggests establishment of an industry code of practice for registrars and their agents, covering issues such as transfer of registrants, service standards and complaints-handling. Like the mechanism described by the Dispute Resolution Working Group that code is an integral part of the regime and should be based on the code used by ICANN accredited registrars.

The report's suggestion reflects the Commonwealth government's recognition that industry self-regulation underpinned by national legislation and oversight by trade practices bodies is in the national interest. Use of the 'ICANN code' will facilitate development of the .au code prior to the introduction of competition (so that potential market entrants are not disadvantaged) and provide a point of reference once competition is underway.

The Dispute Resolution Working Group has necessarily concentrated on disagreements between registrars and registrants. It is however conceivable that there will be disagreements among market participants. A consistent, equitable and transparent framework for addressing such disputes is a key aspect of the regime. It is one measure of auDA's effectiveness.

Registry Services

A true measure of competition (and of auDA's effectiveness) is the availability of services for consumer, not a headcount of registrars and registry service providers.

In its May 2001 exploration of existing and additional 2LDs the Name Policy Panel recommends that auDA should adopt a competition model that allows multiple registries (eg a separate registry for specific 2LDs), with the organisation maintaining a central register that draws on each database and forms a key element of a disaster recovery plan to protect the .au space.

The Competition Panel recommends that registries would be operated by a certified service provider rather than by auDA. Provision of registry services for open 2LDs would be contestable through a periodic competitive tender process administered by auDA, with closed 2LDs providing a minimum set of registry services under delegation from auDA. A registry operator would provide an authoritative nameserver, create zone files and maintain public WHOIS information for the specific 2LD(s). A particular entity might handle two or more registries.

Those recommendations are endorsed.

Action by auDA to establish minimum technical standards, data protocols, security and service level requirements regarding the provision of registry services is a key feature of the introduction of competition. It is imperative that

- achievement of those standards is actively monitored.
- registrars are able to enter and update records in the registry
- a registry operator is not permitted to establish an exclusive relationship with a particular registrar (with exceptions regarding particular closed 2LDs)
- a registry operator is not permitted to concurrently act as a registrar unless there is an effective separation of the two functions
- auDA emphasises operational excellence (ie business practice and technical support) rather than a narrow and prescriptive policy.

Separation of registry and registrar functions reflects recognition that different skills are required and that competition is more likely to be effective when relationships are untied. That recognition is consistent with experience in the telecommunications sector and in the operation of some major overseas registries.

Registrar Services

Contestable provision of registrar services on the basis of an effective accreditation process and underpinned by the proposed industry code is welcomed. Opening up of the .au space will minimize defensive registration by businesses and other organisations. It will also facilitate the delivery of services. Development of 'stovepipes' will not deliver the benefits of competition or result in a vibrant domain services industry.

Momentous Australia notes the Panel's identification of key features of that process and the expectation that auDA would establish minimum conditions

for registrar activity, in particular to ensure personal data protection and other consumer safeguards. That is particularly important in addressing potential concerns of market participants and bodies such as the Australian Competition & Consumer Commission and Federal Privacy Commissioner, along with the public at large.

Registrar responsibility for compliance with auDA policy by an agent (reseller) is endorsed, as is independent certification regarding non-objective policy, inclusion of minimum consumer safeguards in reseller agreements and disclosure of relationships between agents and registrars.

auDA membership

The recommendation that registrants would be entitled to become members of auDA upon licensing a domain name, without additional charge, is welcomed.

The recommendation is consistent with Canadian and New Zealand practice. It will serve to underpin community support for auDA's administration of the .au space.

Funding

The transition from a closed to an open market presents auDA with a significant challenge.

Previous submissions regarding Panel proposals have noted the importance of auDA access to financial and technical resources. The organisation has drawn on advice from its Board, the Panels, members and third parties. However, if it is to articulate and actively ensure the implementation of policies and standards it must

- be appropriately resourced
- act in accord with clear priorities
- ensure that its use of resources is consistent and transparent.

The proposal to charge fees for registry and registrar licences, sufficient to meet the cost of managing compliance with technical requirements and consumer safeguards, is supported. The emphasis on regular budget reviews, with public access to that information, is also welcome. The report notes that there may be scope for other revenue mechanisms.

Specific features of fees for registrar accreditation, complaints-handling and other services, whether on a cost-recovery basis or otherwise, would be most appropriately explored in conjunction with development of the industry code of practice. However, we assume that costs will be equitably distributed across industry participants on the basis of volume.

Implementation

The report's emphasis on a transparent, rigorous and practical implementation strategy is particularly important. Those characteristics are prerequisites for

- enhancing the stability and integrity of the .au domain space
- encouraging investment by potential service providers
- addressing the concerns of bodies such as the Australian Competition & Consumer Commission and individuals who have expressed interest in the role/procedures of auDA and ICANN
- facilitating understanding by the media, by consumers of registration services and the wider community

The overall structure sketched in the report is endorsed on the expectation that particular aspects will be affected by decision-making regarding proposals from the Working Group and two Panels, along with consultation with market participants.

It is important that auDA anticipate potential concerns among all stakeholders regarding stability, sound commercial practice and equity. It should ensure that its certification of service providers is rigorous and that testing of all elements prior to the introduction of competition is satisfactory. Community awareness is a significant feature of the implementation strategy.

Stability

In acknowledging the report's emphasis on stability of the .au space it is important not to restrict innovations that meet the needs of Australian users and are consistent with global best practice. That encompasses practical arrangements regarding systemic issues such as relations between registrars, agents and registrants. It also encompasses mechanisms to ensure DNS data integrity. Competitive tendering for registry and other services has the potential to provide world class services and concerns about 'legacy' issues must be critically evaluated.

Questions of stability will be affected by decision-making regarding proposals in the Name Policy *2LD* report and will thus be addressed in future.

Momentous Australia

Momentous Australia is owned by an Ottawa-based internet services group that operates in Canada and intends to participate in the Australian market.

Contact

Queries about this document should be directed to

Liz Williams
Director of International Affairs

Momentous Australia
PO Box 513
Curtin ACT 2605

ph 02 6122 8300
fax 02 6122 8399
mob 0414 26 9000