

Proposed Competition Model for the .au Domain Space

Response by Momentous Australia to auDA Public Consultation Report of February 2001

executive summary

Momentous Australia commends work by the auDA Competition Policy Advisory Panel in identifying two models for competition in .au domain name services.

auDA will ultimately be judged by its success in introducing competition for the provision of domain name services within the .au space. It has a strong mandate from government, industry, investors and consumers for an enhanced regime that reduces costs and handling-time while increasing quality and minimising disputes. There is a clear expectation that in the immediate future auDA, in line with its policy development and administrative responsibilities, will open the market to new entrants.

To optimise market performance the single registry multiple registrar model should be adopted. In essence, competition should be between registrars – all those meeting tests of capability – rather than between databases.

As far as possible all processing activity should be automated. This will serve to reduce costs and delays, while increasing the intelligibility of processes and minimising the inconsistencies attributable to human decision-making.

Momentous endorses recommendations by the Panel regarding escrow, accreditation, responsibility for resellers and other aspects of registrar activity.

It strongly emphasises the need for pre-implementation testing of technical operations and customer service.

Momentous also emphasises the importance of a coherent and effective dispute resolution process, in line with the UDRP and underpinned by user education, in place when competition commences.

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Introduction

Momentous Australia commends the Names Policy Advisory Panel's examination of models for competition in .au domain name services and the Panel's consideration of a range of views during the consultation process.

Implementation of a competition regime on schedule later this year will meet the expectations of Australian organisations, individuals and investors and, with the strong support of government, will underpin efforts to position Australia as a leading regional player in the networked economy.

This document -

- offers a response to the Panel's report as a whole
- addresses specific issues, in particular choice of a single registry, competing registrars and integrated dispute resolution arrangements

- notes auDA's mandate from government and the community
- highlights the importance of moving forward expeditiously in a competitive international environment

The mandate

The Panel's report recognises the significance of the development of the domain name industry - and more broadly for Australia's online sector - of open competition.

That recognition includes the role of auDA in developing and administering a coherent and forward-looking policy that is consistent with international 'best practice' and which also takes account the idiosyncrasies of the Australian market. It also clearly differentiates between registry, registrar and reseller activity.

It reflects an awareness of overseas developments and demand by business, government, individuals and investors for a regime that is -

- transparent to market players
- intelligible to consumers
- consistent in its application of policy
- cost-effective to encourage competition
- technically stable
- functional and intuitive to use

auDA has a strong mandate for enhancement of the existing .au regime to reflect the emergence of the Internet as an integral part of Australian business and consumer markets. Historical arrangements for management of the .au space are no longer appropriate. auDA's charter from government, explicitly reaffirmed in Senator Alston's letter to the chair in December 2000 (and reflected in statements from the Australian Competition & Consumer Commission) commits auDA to introduce competition in 2001. The benefits of that competition are identified in the Panel's report and are generally accepted.

That report reflects substantial consultation with all stakeholders over a period of months. The enhanced regime will encourage investment and address consumer requirements for quality and timeliness of service, while significantly reducing costs (one factor in the migration of potential domain owners to more hospitable regimes).

Implementation of competition, in conjunction with enhanced domain name rules and dispute resolution mechanisms, should not be delayed. Deferral will undermine the regime's legitimacy while further disadvantaging both potential participants and the wider community.

Market Opportunity

In giving effect to its mandate auDA must meet community expectations of a progressive competition policy that -

- is transparent, intelligible and consistent, thus securing the commitment of all stakeholders
- ensures quality control and consumer confidence through an appropriate entry barrier but does not privilege particular players or discourage innovation
- is self-funded, in particular so that industry bodies such as auDA and a TIO-style dispute resolution entity are equipped to meet their responsibilities
- compares favourably with Australia's competitors in global markets
- encourages investment across a spectrum of domain name industries

- does not require government intervention or ongoing systemic revision.

Those expectations have been apparent in public consultation prior to release of the Panel's report. They are evident in statements by stakeholders and in the behaviour of organisations and individuals going online.

As noted in separate comments on the Names Policy report, growth of the domain name industry - and more broadly the online sector - is a key measure of auDA's success in self-regulation of the Australian domain space. Implicit measures of auDA's effectiveness are

- the number of businesses participating in the industry
- the number of registrations in line with international benchmarks about domains for organisations and individuals

Enhanced Regime

Momentous commends the Panel for its responsiveness to the wide range of input during the consultation process. It supports the overall report and endorses proposal 4.3.A.

Comments on specific issues are as follows.

Registry and Registrars

A single registry best addresses the Australian environment. International best practice models demonstrate that there is little justification for multiple registries. Stability, functionality and reduced cost are best achieved through a single entity; competition necessarily centres on activity by registrars rather than between underlying databases.

The registry should hold the minimum information required for operation, with most information being held by the registrars. It might thus be maintained by auDA or delegated to another body on a competitive tender basis.

Momentous concurs with the recommendation that the same entity should not operate as a registrar and registry. However, businesses should not be prohibited from providing registry and registrar services **if** separate vehicles are used and potential concerns are addressed. An example is the relationship between VeriSign and ICANN, extension of which is currently under negotiation. The issue is not co-ownership. Instead, the issue is the scope for inappropriate transfer of customer data, access to customers, bundling of services and other potentially anti-competitive activity to occur within a vertically integrated business. That scope has been recognised, for example, in regulation of Telstra and can be effectively addressed through provisions in codes of practice and legislation. We should not arbitrarily exclude businesses of proven capability that would meet auDA's fundamental objectives through good service.

Competition between registrars will give effect to auDA's charter. There should be no limit to the number of registrars. All bodies, as proposed by the Report, must satisfy capability requirements (including escrow and technical accreditation) and be responsible in the first instance for compliance checking.

Processes

Momentous strongly emphasises the automation of processes. Apart from cost-savings and reduced handling time (of concern with some 2LDs), this will increase the intelligibility and transparency of the allocation process, thereby engendering community support and minimising disputes. It will also minimise inconsistent interpretation and problems in data handling, a primary basis of disputes.

Stringent accreditation of all registrars should include a 'test-bed' phase that allows potential industry entrants to test technical systems and customer service. This is essential to build stakeholder confidence in the regime and to justify investment by industry participants.

In particular, the test-bed phase will give potential consumers the opportunity to examine competing operators and services with minimal risk, thus building consumer confidence and minimizing inappropriate disputes.

Code of Conduct

It is axiomatic that participants within the industry

- adhere to a registrars' code of conduct
- be responsible for compliance costs
- take responsibility for resellers.

It is consistent with the notion that those engaged in domain name services regulate the business.

Work needs to be done with market participants to ensure that the principles of industry self-regulation apply in practice. Incentives for increased demand by organisations and individuals through competition will occur in conjunction with changes to the name policy; registrars will thus be required to make decisions regarding domain names.

Resellers and Registrants

Momentous endorses the Reports comments regarding resellers and registrants.

Resourcing

Adequate funding of auDA and any disputes resolution body (see below) must be provided by industry participants. Failure to do so will replicate the difficulties experienced by ICANN where budgetary problems have distracted ICANN from delivering on its mandate.

It is imperative that potential registrars contribute transition funding to permit auDA's establishment of the enhanced regulatory regime. Under-resourcing of auDA through a failure to provide adequate funding will mean that it is a pseud-regulator, with consequent lack of support by government and industry and a failure to secure the commitment of the wider community. The latter is essential if the new regime is to be viable.

Dispute Resolution

Implementation of effective dispute resolution arrangements in conjunction with introduction of competition is a prerequisite for auDA's success. It must be underpinned by community education, a responsibility for auDA and registrars. It is integral, rather than peripheral. Development of arrangements (or their introduction) after the commencement of competition among registrars will -

- increase confusion among those seeking domain names
- undermine confidence in the effectiveness of the regime
- discourage investment in registration services and more broadly in online activity.

Those arrangements should reflect the UDRP. They should be transparent and inexpensive, minimising recourse to the courts.

Conclusion

auDA has sought community comment about the administration of the au domain space. That comment has included participation in the Advisory Panels, responses to the Panel reports and contributions to auDA's DNS discussion list.

auDA has a strong mandate from government, the internet industry, investors and the wider community for implementation of a progressive competition policy based on that consultation. It should now move forward to implement an enhanced regime that meets the needs of its stakeholders and positions Australia as a leading player in the networked economy. This should happen over the ensuing months with auDA meeting its October 1 deadlines.

In December last year, following election of the auDA Board and appointment of its Chief Executive, the Commonwealth Minister for Communications, Information Technology & the Arts, Senator Alston, formally endorsed auDA as delegate for administration of the .au domain space. That endorsement is consistent with statements by the Australian Competition & Consumer Commission and reflects amendments to federal legislation. The government's expectation that competition will be introduced in the immediate future is clearly shared by Australia's online industries, by investors and by members of the public.

There is no convincing rationale for delayed implementation of competition or restrictions that privilege particular participants across the full range of elements to successfully facilitate competition.

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