

24 September, 2004

David Thompson  
Chair  
Registry Competition Review Panel

Dear David

**Submission to Registry Competition Review Panel on behalf of auDA Board**

The Board of auDA has read the Panel's First Consultation Report (the report) and commends the Panel on its work to date.

The Board has asked me to prepare this submission the purpose of which is to raise with the Panel some questions and seek clarification regarding Section 10 of the report 'New 2LD Addition Process'.

In section 10.1 the Panel acknowledges that difficulties have occurred in adding new 2LDs (the difficulties). Section 5.7 of the report summarises the difficulties as:

- a) the unlikelihood of a new 2LD being a stand alone commercially attractive proposition;
- b) multiple registry licence terms running out of phase;
- c) no opportunity to maximise economic efficiency by bundling new 2LDs with existing ones;
- d) auDA being required to fund and resource registry tender processes on a rolling basis.

The Panel goes on to say in 10.1 that it has considered ways of overcoming the difficulties by adopting a more efficient process. Section 10.2 lists 6 possible options for dealing with new 2LD additions. It seems that the Panel has considered whether these options deal with the difficulties and has expressed a preference for option 6 (an EOI process).

The Board has some questions about the proposed EOI process and possible outcomes, and requests clarification from the Panel on the following matters:

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1. How is the EOI process to be conducted?

The suggestion is that auDA would conduct an EOI that would be a 'relatively light weight process' involving 'limited advertising'.

The Panel has not specified whether the EOI process should be conducted by auDA staff and/or Board, or whether it should be conducted by an independent party.

If the Panel's intention is that the EOI process should be conducted by auDA staff and/or Board, then the Board requests that the Panel clarify how staff or Board will decide such things as the EOI evaluation criteria, the extent of advertising and whether responses are compliant or non-compliant. Given the likely sensitivities in the community, the Board is concerned about the perceptions and probity issues that might arise and wonders whether this is a level of responsibility that staff or the Board should be taking in a non-commercial organisation such as auDA. This is especially relevant in a situation where a new 2LD is awarded to the incumbent registry as a result of the EOI process; how would auDA protect itself against allegations of bias and the like?

These problems would be resolved (or at least minimised) if auDA were to set up an independent EOI committee with technical, financial, legal and probity advisors. However, the Board notes that from a cost and administrative perspective, this would be the equivalent to running a tender process.

2. Possible outcomes of the EOI process.

The Board also has some questions about the possible results of an EOI as described in Diagram 10A of the report:

Result 2 – One compliant response from the incumbent. In this instance, the 2LD would end up with the incumbent. Does the Panel believe that it would be acceptable for the incumbent to run the new 2LD until the subsequent periodic tender (ie. up to 8 years) given that its licence for the existing 2LDs is due to expire at the next periodic tender (ie. up to 4 years)? The Board notes that this would result in a single registry with registry licences expiring for different 2LDs at different times.

Result 3 – One compliant response from a new operator. In this instance the result would be that the new operator gets the registry. This would mean that auDA has introduced a new registry to .au without the registry operator having to go through the open and transparent tender process, be assessed by an independent tender committee involving technical, financial, legal and probity assessments and so on. Further, it seems that the terms of the licence will need to be negotiated by auDA staff rather than being mandated as they are in a tender process. The Board notes that this outcome would be inconsistent with the Panel's recommendation to retain periodic tendering for existing 2LDs and requests that the Panel address this point.

3. How does the EOI process solve the difficulties identified in para 5.7?

As stated above, para 5.7 of the report lists the difficulties any suggested solution needs to solve. The Board requests that Panel address the following questions regarding the difficulties:

a) Commerciality: If the winner under the EOI is NOT the incumbent then how is the difficulty of the unlikelihood of the new 2LD being a stand alone commercially attractive proposition affected or solved by this option?

b) Economic efficiency: If the winner under the EOI is NOT the incumbent then how is economic efficiency maximised since the result is that the new 2LD cannot be bundled with existing ones?

c) Funding and resourcing tender process on a rolling basis: The tender process conducted by auDA in 2001 cost approximately \$310,000. While some of the tender costs are not likely to be repeated (eg. drafting registry licence agreement from scratch), nonetheless a significant proportion of the costs will be. The Board further notes that a tender process for one 2LD is unlikely to be significantly less expensive than a tender process for five 2LDs. If there is more than 1 compliant response to the EOI how does this option solve the issue of auDA being required to fund and resource registry tender processes on a rolling basis?

#### 4. General matters.

There are some other general matters that the Board would like the Panel to take into account during its deliberations:

Timing: One of the difficulties raised is having registry licences running out of phase. If a new 2LD were awarded (by whatever process) to a new operator this would result in the licence terms running out of phase if the term of the new 2LD registry licence were 4 years. To overcome this problem the Panel suggests that auDA would have to either grant the licence only until the next periodic tender or grant the licence for a longer period until the subsequent periodic tender. There are 2 issues that arise which the Board would like the Panel to address:

a) A short licence term creates cost recovery problems for the bidder and has a detrimental effect on any commercial attractiveness of the stand alone 2LD. What should be the minimum period prior to the periodic tender within which auDA could launch a new 2LD?

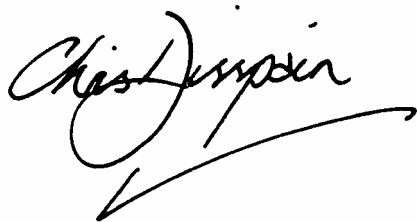
b) A longer licence period could be up to 8 years. Does this have any effect on the general principle of a 4 year registry licence term for the bulk of 2LDs?

Competition: The Panel appears to believe that competition is best achieved by allowing interested parties to bid for individual 2LDs on an ad hoc basis. The Board requests the Panel to consider the competitive benefits of combining all 2LDs together on a regular basis and allowing the interested parties to bid for whatever combination of 2LDs they wish.

Offering new 2LD to incumbent or obligating incumbent to operate new 2LD: The Panel appears not to favour this approach to the issue but has not provided reasons why. The Board notes that this option would appear to address most of the difficulties outlined in para 5.7 of the report, and therefore requests the Panel to examine this option in more detail.

The Board looks forward to the Panel's next report.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Chris Disspain', with a long, sweeping underline stroke extending to the right.

Chris Disspain  
CEO - auDA