

Submission on DNCL independent review

I make this submission in a professional capacity as an independent consultant in the domain name industry. However, from my previous role as CEO of the .nz I cannot be considered independent. For full disclosure I also note that I was one of those interviewed for this review and that I am a board director for Public Interest Registry, which manages .org.

While my views are drawn from the body of the report, my comments below follow the layout of Appendix 1, the summary of findings and recommendations.

Promoting the public interest

1. I agree with the finding in regard to DNCL's position on the public interest and its ability to self-regulate being generally sound.
2. I find recommendation 1 oddly worded and while I agree with the intent that DNCL measure itself against other and strive to be the best by that measurement, I do not see "view itself more as a competitor" as the right way of expressing that. I also note the absence of any formal framework for assessing how well DNCL is doing in this regard and recommend that it should work within the industry to help define such a framework.
3. I agree strongly with recommendation 2 that potential conflicts between commercial and public interest objectives need to be identified and addressed. I note that many years ago DNCL were asked by InternetNZ Council to incorporate a 'market impact' section into all of their policy decisions so as to ensure that any commercial considerations were exposed to scrutiny.

Exit and voice

4. I agree with all of the findings but rather than recommend that DNCL "explore" as in "The DNCL commence a process to explore the utility of a comprehensive information disclosure regime to drive better performance across registrars in the .nz space." I would like to see the DNCL just do it.
5. The recommendation to "promote a robust information disclosure regime that provides information on the relative performance of TLDs, thereby lifting overall performance in the domain name market" is particularly welcome and fits well with a number of initiatives in the global industry.
6. DNCL has previously struggled with a view from some, that data about registrars as recommended here is private and so cannot be disclosed. I've always considered that a misguided view, but if progress is to be made then that view needs to be comprehensively addressed at the outset of an information disclosure regime.

Concentration thresholds

7. I agree with recommendation 6 (to rescind the current market concentration policies) because I agree that the specifics and the implementation decision not to include common ownership, do not work towards the defined intent. However, for the alternative of leaving it all to the Commerce Commission to work then significant data must be collected and made public, which must be done by DNCL as the only party that can do so. Given that, my agreement with recommendation 6 is dependent on recommendation 7 being implemented.

The very worst outcome would be for no policy and no data, leaving just about everybody entirely clueless.

8. I am frustrated to see an assertion by the reviewer that “Today, competition and choice appear to operate strongly at nearly all levels of the domain name market”, without any data being presented to back that up and, to the best of knowledge, insufficient data being available to anyone to verify that assertion. At a minimum data should be made available on market concentration using a recognised methodology such as HHI and also on retail pricing, and that then analysed on an ongoing basis to see if there are any issues. As the reviewer notes “the Commerce Commission does not apply a bright line test for market concentration, but instead uses it as a screening device to identify those markets and circumstances most worthy of investigation”. Such screening is not possible without data.
9. There remains the very serious issue of the potential impact of failure of a single registrar (or group) with a large market share. While the concentration policy may not be the best way to address that, it was at least a partial firewall. There are examples in the .nz market of registrar failure and so this is not an esoteric risk, but one that should be actively mitigated.

Enforcement

10. I agree with the following finding: “The level of disagreement between stakeholders on the appropriate role of the DNCL in reducing internet related harm is in itself a threat to performance, confidence and reputation in the .nz space. It must be dealt with.”.
11. I do not agree that the picture regarding data is quite so dire. While the picture is incomplete, data from the NZ CERT and Netsafe provide a good rough outline of the scale of the problem. Furthermore, the registry collects significant data relating to individual domain name abuse. All that is required is for these datasets to be used to drive enforcement policy, in a transparent manner and included in the information disclosure regime.
12. With the one caveat above, I agree with the recommendations in full. However, it is unlikely that DNCL could join the ICANN Public Safety Working Group as that is restricted to governments and accredited law enforcement agencies.

Fees and charges

13. I agree with the findings. Nothing to see here.

Restructuring

14. I don't think the restructuring has any relevance here. The same issues would have been identified in this report had the restructuring not happened and, if anything, these issues are now much easier to address with the narrower role of DNCL.

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5th June 2019