
ICANN Transcription
GNSO New gTLD Subsequent Procedures Working Group
Thursday, 20 July 2020 at 15:00 UTC

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JULIE BISLAND:

Right. Well, good morning, good afternoon, and good evening. Welcome to the new gTLD Subsequent Procedures Working Group call on Monday the 20th of July, 2020. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room.

I would like to remind all participants to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise.

As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. With this, I will turn it over to Jeff Neuman. You can begin, Jeff.

JEFFREY NEUMAN:

Thank you very much, Julie. Welcome, everyone, to another week. Hopefully, everyone is doing well and had a good weekend. Okay. So, today we have a few topics on our list.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

We're going to start, hopefully, with an update from George to see how that group is doing on coming up with something on closed generics on a model, and then we'll go into private resolutions.

So, we'll continue the conversation from last time, although, hopefully, not as long as last time. So, hopefully we can get through that, at least to something, and then start on completing the predictability framework. Is there anything anyone else wants to add under any other business? Okay. I'm not seeing anything. Let me ask if anyone has got any statements of interest? Changes? Sorry. Some modifications?

Okay. Not seeing any. Let me see. I saw George earlier. I know he had video. Or not, either way. George, do you have an update for us?

GEORGE SADOWSKY:

I do, Jeff. There are four points I'd like to make. First of all, the group, consisting of four people, is about 95% done with the document that we'd like to inject into the group's discussions, and we expect that we'll have it in people's mailboxes, if you're in the United States, tomorrow morning when you wake up, assuming you don't wake up really early. We'll have it in your mailboxes.

Second point is, recall that we started this effort because of an apparent divergence between two poles – people who said, "There shouldn't be any closed generics, you can't even find one, a public interest generic, that matches the test," and other people saying, "Yes, you should be able to make up a possibility of closed generics in whatever we come up with at the end."

So, the group was attempting to find a middle ground between those two. I think the group, which consisted of people who said closed generics are not possible, has moved much toward the center and said, "We can't think of any now but we need to make room in case there is a need. The model has to contain a way of dealing with them," and we've moved much more toward the center of that discussion. And so, we hope that other people will do the same.

The third thing is that what we're presenting is both a concept, a fairly general concept, and some goals that we think closed generics should meet, and a lot of detail. And it's going to be really easy for people who understand this business well to nitpick the detail, because there is a fair amount of it.

What we would really like is a concentration on the ideas and answering the question of, is this a reasonable way to proceed in order to make progress on this point and settle it? At least settle it to the point where it should be a part of the presentation to the entire ICANN community for public comment.

And the fourth point I'd like to make is that I want to make an apology to the people who wanted to join us and help, but we decided this really had to be a group of people who had already looked into the problem, who were likeminded to the point where we could present a concept, as opposed to bringing in people, and who had already written about and discussed this, the various ideas in this proposal, rather than introducing other people who wanted to help to write the document.

And we felt that, if you bring in people who don't have the same sense of what the proposal should contain, then what you're doing is you're really taking the discussion of the group and moving it into the small working group, and we didn't want to do that.

We wanted to come out with something that could be put together relatively quickly, with all of the problems that that entails, but that was at least coherent enough for discussion. And I think we have done that, pretty much. It's going to be up tomorrow, and then anybody who is in the group, anybody who has access to the proposal, can say what they want about it and, we hope, contribute to its improvement. Thanks. That's all I have, Jeff.

JEFFREY NEUMAN:

Okay. Thanks, George. Let me see if there are any questions. I see Donna had asked who the four people were, and Greg has responded: George, Alan Greenberg, Kathy Kleiman, and Greg. Donna ... Oh, sorry.

Then Paul said, "George, I understand what you're saying, but when voices are excluded in the process ..." And then he says, "Looking forward to seeing the work product. The question will be, is this proposal better than the status quo, whatever that is?" Okay. So, George, do you want to respond to that?

GEORGE SADOWSKY:

Well, Paul, I think when you exclude ... Nobody is excluding any voices from this group, I don't think. It's just getting an idea together, and putting it forward, and making it coherent is going to take some discussion. It requires that you believe in the goal, that you're

aligned with the goal, and that you don't need to be brought up to speed or anything like that. We've just got to get it out quickly.

I don't think that your concern would have been nearly as great had we just said, "Well, we can get it out for you tomorrow." A week is not a long time, given the fact that this working group has been at work for, how many? Two, three, however many years. Maybe we should have just kept quiet about it and then presented the document tomorrow anyway. I'm not sure it matters. I understand your concern. I don't think we have violated the spirit of the working group.

JEFFREY NEUMAN:

Yep. Thank you, George. I see a comment of support from Taylor, and Rubens says, "The status quo of not knowing the status quo is not good," as a little tongue-twister, there. I agree with Rubens's sentiment, as well. Okay. So, thank you, George. Anyone else with questions for George? Okay. Well, George, we look forward to seeing it tomorrow, and then we can make some comments at that point. Okay.

GEORGE SADOWSKY:

Thank you.

JEFFREY NEUMAN:

All right. Let's move on. Thanks, George. Okay. Let's move on, then, to the private resolution of contention sets, and take stock of where we think we are. So, last week, Thursday, we discussed this hybrid-five model-type thing, which basically combines the former

hybrid, two-plus, with what was number four, and then added some transparency measures, and then went over that on Thursday, and then asked ... We took some questions.

And so then, we asked everyone to go away for a couple of days, think about it, let's see if you have any questions. And the only conversation I saw started on this, on e-mail, started with Jim.

There were some responses, obviously, to Jim. I think there were responses. There were a lot of notes on other subjects, as well, including the category one stuff, which we'll come back to later, or not in this call but at a later time.

So, on this, Jim, I don't mean to put you on the spot, but are you in a place, maybe, where you can spend two minutes just going over your comment on added measures, your basic summary, that you think it needs some more protections in it? Go ahead, Jim.

JIM PRENDERGAST:

Yeah. Thanks, Jeff. Good morning, everyone, or good afternoon/evening. So, yeah. So, I sent around an e-mail Saturday morning, early my time, essentially having ... I appreciate the effort that went into pulling this document together. But when you really focus in on what the board concerns are—and I've included the language in the e-mail for folks to refer to it—it's two things.

One is applications being submitted to engage in private auctions with no intent on running a TLD. We've spent a lot of time, energy, and effort discussing that topic. But there is a second concern that the board has enumerated, and it doesn't seem like we've spent enough time discussing it because the proposal as drafted just

doesn't address it at all, and that is the purpose of applying to finance other applications.

So, I still believe ... As I mentioned, I was asked not to rehash old arguments, and I didn't. I don't think the bona fide recommendations put forth by Paul go far enough. ICANN is overseeing this program. It has a responsibility to ensure that it is conducted in a manner that reflects positively on ICANN and the community as a whole.

As Rubens and others have pointed out, we really didn't know what we didn't know in 2012, but we certainly do know it now. As others have pointed out, you can bet that if private auctions are on the table, as they were constructed in 2012, there will be a rush of people who apply just to try and profit from that.

So, my suggestion builds upon what is in proposal five for the first concern, by ensuring that ICANN oversees the auctions directly, that they're not conducted by a private auction provider. But also, during our discussions on the call on Thursday, Paul had raised some questions regarding my suggestion about competition authority. I think Alexander also did, on the list.

So, what I did is I went and took the language that is currently in place, that all current registry operators and future registry operators will have to comply with, from the RSEP policy and, essentially, recreated that. That could be used by ICANN to refer any contention sets, whether that be auction or other creative resolutions, to competition authorities if they deem that there is a competition issue that is raised.

It would not be mandatory. It would still give ... My sense is that if you put all of the protections in place with what I have addressed on top of compromise five, that type of referral would be unlikely. But we still need to give ICANN the safety [vow] if they do, in fact, come across something that does give them concern.

So, that's sort of the summary on board concern one. The second concern is on the gaming for purposes of financing other applications. Maybe I missed it, but I didn't see anything in compromise five that addressed this concern.

We are not doing a service to the board or the community if we don't address this. This is something that a lot of the community is concerned about, and that is the rolling of the funds from one auction to another to disadvantage single or under-funded applicants in auctions down the road.

So, my solution to that is that all of the bids would be submitted at the same time, regardless of whether it's a private or an auction of last resort. And that, I think, would go a long way in addressing that one particular problem, as far as rolling funds from one to another. So, sorry for going on a little long but it's all laid out pretty clearly in the e-mail for folks, if they haven't read it yet. So, thanks.

JEFFREY NEUMAN:

Yeah. Thanks, Jim. So, I'd like to take that—and I note Donna has got her hand up—one piece at a time, if we could. I'll go to Donna, but then I'll try to separate this out into the different components so that we can have a discussion. But Donna, go ahead.

DONNA AUSTIN: Thanks, Jeff. This goes to Jim's second part about the gaming. It's just a question and the discussion I'd like to have. What's the distinction between gaming, in terms of rolling through the money to another application, and a strategy?

So, I'd just like to have that conversation because I understand that you lose some options so that you can roll the ... You may not have deliberately lost that auction in order to roll money into another one. But I'd just like to understand if there is a distinction between gaming and a strategy. Thanks. So, it would go to the second part of the conversation, Jeff. Thanks.

JEFFREY NEUMAN: Okay. Thanks, Donna. Let me start ... Just hold onto that thought on the gaming. Let me just start with the competition authority language. That's actually up on the screen, if you are looking at the screen at this point. Yeah, where the cursor is at the moment.

So, the language that Jim had put in there, as he said, was taken from what's already in RSEP requests. So, Registry Services Evaluation Panel requests. So, these are additional services to when a registry wants to propose to do something like registry lock, or ConsoliDate is a service that Verisign offers where they synchronize each of the expiration dates.

So, when a registry has a new service, they basically fill out the form, which includes a bunch of different questions on the service itself, and then ICANN—and this is in the contract itself, the Registry Agreement—if they find that there is any significant competition issues, they can refer that issue to appropriate governmental

competition authority or authorities, and the language Jim has there is what's in the agreement. And I think, Jim, it's pretty much word-for-word. I don't think he changed anything there.

So, let's take that component. Does anyone object to including anything like this in the discussion on whether it's an auction or any other form of private resolution, a JV, or anything else? Elaine supports. Let me go to Christopher.

CHRISTOPHER WILKINSON: Good afternoon, everybody. I have a reservation about this text because of its lack of symmetry, globally. I seriously have doubts whether there are competition authorities outside the United States who think that they have a direct jurisdiction over an ICANN auction.

It's also disappointing, from a non-U.S. point of view, because when we agreed to the creation of ICANN as such it was, inter alia, on the basis of ICANN being far more proactive than this text would suggest in dealing with competition issues.

I know some of you disagree, and some of you wouldn't like it if ICANN did fulfill its original role as regulating competition, but I have two reservations along those lines: the lack of symmetry internationally and the failure to insist that ICANN itself should step up to the plate and deal with competition issues of this scale as they arise. Thank you.

JEFFREY NEUMAN: Okay. Thanks, Christopher. Paul is next in the queue. Go ahead, Paul.

PAUL MCGRADY: Thanks, Jeff. I put this comment in the chat. You're calling for us to support this, but I don't know what "XX" is. Is it three calendar days? Is it 300? Is it 3,000? Hard to get behind the idea that we have to sit around waiting for the justice department to care about this stuff. So, can we at least put that down and figure out what "XX" means, and then try again on the ... Does this make sense? Because I think that's pivotal. Thanks.

JEFFREY NEUMAN: So, okay. Thanks. Jim's asking, Paul, what your suggestion is.

PAUL MCGRADY: My suggestion is that the person who suggested this come up with a suggestion. Yeah. Thanks.

JEFFREY NEUMAN: Okay. Thanks, Paul. Why not, just for discussion purposes, let's equate something like this with ... In the corporate world, we do something called HSR, which is Hart, Scott ... Who is the third name?

Anyway, there are three people that created some legislation in the U.S., and I know the first two are Hart and Scott. The last one starts with an R. It's called an HSR review, and that waiting period, I believe, is 30 days. So, why don't we just put something like 30 days

in as a placeholder? Rodino, thanks. Awesome. Okay. So, Paul, does that change anything? So, now we have 30 days in there.

PAUL MCGRADY: Yeah. I mean, so—

JEFFREY NEUMAN: [cross talk] that the ... Sorry. Hold on. That's from the date that this would be if it's submitted by ICANN to that authority. Go ahead, Paul. Sorry.

PAUL MCGRADY: So, yeah. So, it's 30 days from the date that ICANN submitted it. When will ICANN need to submit it? Immediately after a contention set resolution? By the way, guys, this could all, equally, apply to the auction of last resort, too, right? I mean, it just depends on who the winners are. And so, we just need to tack on the timeframes.

Something is happening to the screen. I don't know if that's me or ICANN. But when does ICANN have to refer it, and how long do we have to wait? 30 days does not seem irrational. I don't like the idea of big government, and introducing government into this, and asking them to stick their nose into things. Sometimes governments do that. But 30 days is not a crazy number. When does ICANN need to submit it? And then, we'll have our full timeframe. Thanks.

JEFFREY NEUMAN: Yeah. So, Paul, I think it's ... And I see there are people in the queue, so what I would say is it's probably going to depend on the

type of private resolution, right? If it's an auction result, you're going to know that pretty much right away. If it's a joint venture or some other vehicle, then that's got to go out for public comment for a period of time.

So, it's hard to answer that with one answer as to how long ICANN will take to evaluate. It also depends on, if someone submits a change, that it's now a new entity that's applying. They would also have to evaluate the new entity from all the standard application evaluation terms. [They'll not] have to do a new background check, things like that.

So, it's not going to be a one-size-fits-all kind of answer, but it's perhaps easier to distinguish between auction results and other forms of private resolution. So, let me go to ... And Jim says, "Language on-screen is within five days of ICANN making its determination." Yes.

So, it's 30 days given to the competition authority to see if it wants to intervene, and, what Jim has said, it's ICANN within five days of making its decision on the form of private resolution can then refer it. So, sorry, Donna is in the queue, then Greg. Donna, go ahead.

DONNA AUSTIN:

Thanks, Jeff. I'd just like to better understand what a "significant competition" issue might be, because I'm absolutely clueless.

JEFFREY NEUMAN: Okay. Thanks, Donna. Jim, do you want to address that question? I know you're in the queue, anyway, but do you want to address Donna's question?

JIM PRENDERGAST: Yeah, sure. Donna, I basically copied word-for-word the language that is currently in place that all registry providers have to abide by. So, I hear your question, but this is something that we're already doing with those registry operators when it comes to the RSEP process.

JEFFREY NEUMAN: Yeah. Thanks, Jim. Donna, do you want to add to that, or add to your comment?

DONNA AUSTIN: Jeff, I still think we need to understand what it means in this context. I understand it's there for RSEP and it's there for a specific purpose, but what kind of competition issues are we talking about in terms of a private resolution? Is it the same? Is it not? Because until I understand that, I'm going to have trouble supporting this. Thanks.

JEFFREY NEUMAN: Okay. Thanks, Donna. I suppose we could, during the comment period, ask ICANN how it interprets that for purposes of RSEP, maybe, to give us a better understanding of how they view it currently. That's always something we can do. Let me go to Greg, and then Christopher and Paul. So, Greg, go ahead.

GREG SHATAN:

Thanks. I think it would be helpful to ask ICANN if they have ever actually applied this in the sense that they've ever submitted this a competition authority. And I also agree with Donna that we need to independently know what it is we're saying, rather than just parroting some words and putting them into whatever context this is.

I have to confess that I probably spent the first 15 years of my career practicing antitrust law, and often called, in the UK, "competition law." I probably filed over 150 Hart-Scott-Rodinos, which are not really relevant to this, in any case.

I think what this is setting up is utterly unworkable, and impracticable. First off, "competition issue" could be anything from a bid-rigging, or a horizontal price-fixing issue, or collusion issue, to, potentially, a market concentration issue, which would require a Hart-Scott-Rodino filing.

Department of Justice and Federal Trade Commission, which have concurrent authority over this, don't generally issue advisory opinions. And if they do, they're under fairly specified circumstances.

The 30-day number that was picked, there, is either way too short or, possibly, way too long. Essentially, it's arbitrary and not based on fact, and there is no applicability for me to [inaudible] to this, which, in any case, requires the preparation of a very long form, which takes a number of days to fill out and is submitted by the parties to a transaction.

So, I think what this is is more or less a word salad, at least based on its relationship to actual fact, based on my experience with antitrust matters. So, I can't support this unless it actually means something, and right now ... And is meaningful.

If we don't know what competition issue is that we're trying to address, and whether it's actually an issue that would go to competition authorities or is even really a competition issue, and how they would deal with it, and how they would deal with it both outside the U.S. and inside the U.S., then, basically, this is meaningless. Worse than meaningless, because it purports to have meaning. Sorry. Thanks.

JEFFREY NEUMAN: Okay. I see Christopher in the queue.

CHRISTOPHER WILKINSON: Here we go. As I've said, I'm not comfortable with this text, for the reasons that I have already indicated. I don't want to see a GNSO text which gives ICANN an escape card of not to take responsibility for competition issues itself. That, in itself, sort of strengthens my reservations about this particular text.

I'm not sure that I join Greg to the point of opposing it completely, or not wishing to rewrite it. But I think, until we accept that it is ICANN's job to make sure that these things don't happen, we will have problems with this text, especially with non-U.S. competition authorities.

From an economic point of view, one could theorize about some aspects of this problem that we're discussing, which would not exist if there was perfect competition between the applicants and the registrars, which there is not. But that's an economic theory talking, nothing to do with the negotiation for this text, so I'll leave it at that. Thank you.

JEFFREY NEUMAN: Okay. Thanks, Christopher. Greg, is that an old hand? I think it is, but I don't want to assume, here.

GREG SHATAN: Jeff, quickly, I think there are also problems with the "might" and the "shall," if we ever get to this. The idea that ICANN has no discretion whether or not to refer it to a competition authority, and at the same time that it's triggered by a "might raise significant competition issues," it seems like too low a trigger and too high a requirement. But in any case, I don't think we get there because I don't think this is viable. Thanks.

JEFFREY NEUMAN: Okay. Paul, go ahead.

PAUL MCGRADY: Thanks. So, a couple of things. One, I agree with Christopher that ICANN broke away from the government and, when it tends to act like a government or bring the government back into the plan, I'm

not sure why it broke away from the government, but that's more theoretical.

Secondly, we're not really being asked to agree as to whether or not ICANN can refer something to a competition authority. ICANN can do that all day, it doesn't need a working group to give it permission. What we're really being asked to do is to consent to the timelines – the 30-day waiting period.

I tried to get better understanding of the timeline on the front-end, but now that I read it, I don't think I need it. It says, "In the event ICANN reasonably determines during any resolution of a contention set." So, once the contention set is resolved, the timeframe to reasonably determine is over, and then it's got five days.

So, it looks like it's 35 days from the middle of something being resolved. I don't really know how that works at all, but it's a short timeframe. But more importantly, I kind of wonder how we're going to get behind this if we don't understand some basic definitions. Donna has raised the issue of what is a significant competition issue in this context.

And to the extent that people don't agree with my reading of the "35 days maximum," if we don't understand the timeframes, that's going to be hard to get behind, too. So, again, can you get behind it?

I don't know that there is much to get behind, here, other than consenting to the timeframes, because ICANN can already do this as a matter of law. This working group can't stop ICANN from referring something out to competition authority if it wants to.

So, it's just the timeframe. So, we need to baton down those hatches and we do need to ask the question about what's a significant competition issue, and just referring this to the RSEP, which is analogous but not directly applicable, or telling us to ask the board their opinion when they are not here participating. I don't think that's going to cut it. I think we do need to dig into it. It's an important concept. Thanks.

JEFFREY NEUMAN:

Okay. Thanks. Yeah. Thanks, Paul. So, where I've seen this provision, it certainly has this type of thing. In the Registry Agreements today, it basically says that, essentially, cases of vertical integration, ICANN has the right to refer contracts, documents, transactions, or other arrangements to relevant competition authorities in the event ICANN determines that such contract-related documents, transactions, or other arrangements might raise significant competition issues under applicable law.

So, this is under 2.9 of the Registry Agreement. So, there is already a notion of referral of things to competition authorities. I also think—and I'm trying to look, here—in the .sucks agreement there may be some other provision in there, because I think there were some concerns over .sucks, and I think there is something else in there about referring things to competition authorities, and it might be pricing. Sorry. I'm just looking at my own notes, here. Anyway. So, let me go to Jim, and then Anne.

JIM PRENDERGAST: Yeah. Thanks, Jeff. So, picking up on something Paul said, ICANN, I guess, does have the right to refer this at any time that they want. I mean, wouldn't we want to make future applicants aware of that so that they are in the know about ICANN's ability to do that? And that's simply what I'm trying to do here, make applicants aware that, if ICANN deems that something is not right with how a contention set is resolved, they have the right, but not the obligation, to refer to a competition authority.

I think we're being asked for predicting the future on what something may look like. I'll give you a hypothetical, because that's all we can do. A dominant online retailer pairs with a dominant search engine provider to form a JV to operate an unnamed string that could cause competition concerns.

If the auctions are conducted with ICANN oversight, there should be no issues with the auctions, as Greg laid out; bid-rigging it, etc. I think having the ICANN oversight, there, is sufficient to deter that type of activity. But we don't know what creative means of resolution people will come up with. The only thing we know is that this is a very, very creative community. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Jim. Anne, you're next.

ANNE AIKMAN-SCALESE: Yeah. Thanks, Jeff. I admit to not being super well-versed on this topic. And so, I have a question about timeframes. It seems to me, from the discussion, that what folks are worried about is that there is a timeframe between winning a contention set and actually

signing the contract that delegates the string. And those who might express concern of anti-competitive or whatever from various jurisdictions, that's a greater body than just ICANN itself.

And I think it might be important to capture some timeframe that's a sort of quiet period after string contention resolution, call it 30 days, and to see if there are any competition authorities that raise concerns during those 30 days, and they aren't necessarily raised by ICANN.

Maybe they can be, based on ICANN's existing powers already, but it seems to me the important thing is having a period between string contention win and string delegation. And maybe Greg can comment on how long that period might be. Gee whiz. I haven't worked in [Robinson] [inaudible] since the '80s. Now, it's not even there anymore, I don't think. But I feel like the important thing here is you don't delegate a string before that period of risk passes.

JEFFREY NEUMAN:

Thanks, Anne. I think there are lots of things in there without putting another quiet period in that would give ample time if a competition authority wanted to come in. So, I did find the one case that I think ICANN referred something to competition authorities, and it referred the .com agreement in 2017.

So, they said they wrote for a potential competition issue and this was ... Oh, sorry. This was not the .com agreement. This was for the auction of o.com. Verisign had submitted an RSEP request, and then a whole bunch of things in the RSEP request, like donating the money, or whatever it was.

And so, that was, I think, the only time where ICANN referred that to the competition authority. And I believe the competition authorities either affirmatively wrote back that there were no issues, or just declined to say it's taking the case. I can't remember. We'll have to check that out. So, it has been done before.

So, I think, given the fact that it has been done before, ICANN does have the right to do it anyway. And I think the argument is ... Jim says, "Well, why don't we just make it transparent?" So, there's a lot of discussion on the list, and I'm not sure where we are at the moment on this. Let me ask the question. I know there is a lot of discussion thinking it's meaningless. Some people are saying it's for predictability.

I guess, let me ask it this way: do people object to including it? I see that some people think it's meaningless. Others don't think it's meaningless. Let me ask: is there objection to putting something like this in there?

Paul is saying, "I object without knowing what the timeframes are." But Paul, I'm not sure which timeframes you don't know at this point, whether they actually have anything to do with the new process. Because any time someone proposes a private resolution, especially with the introduction of a joint venture, there is no time limit on ICANN for evaluating that. So, I don't know. Paul, go ahead.

PAUL MCGRADY:

Thanks. So, we sort of stumbled on one of the real problems of going outside what the board has asked for us to do in its letter. It did not raise issues of joint ventures. It did not raise issues of private

settlement agreements of somebody is top-level squatting and a brand owner pays them some money to go away.

Those are not the kinds of issues that the board cared about. They should have mentioned them if they did. And so, yeah, our over-reaching, there, is snarling this thing up, 100%. So, maybe we should consider not over-reaching in those areas.

Secondly, I don't think it's hard to baton down the hatches, here. How many days from the time that ICANN is informed of a private resolution does that application have to sit? And we could say, if we had 30 days in for the other people, the competition authorities in whatever countries it is referred to have 30 days to respond back and say, "Don't do it."

I mean, we're handing governments, with that process, a super-duper special right, but they already have it, and ICANN can refer it, I guess. And if competition authorities tell ICANN not to do something, then ICANN can take on legal advice about that and make their own decision.

But the bottom line is, without knowing how long it takes to refer it out, it's an endless, open timeframe. "Well, the new joint venture has to go through this, and has to go through that," and all this other stuff.

Well, really? I mean, ICANN, if there is a huge competition issue, they can't spot that on day one? We have to wait years, and years, and years, and not know? And then, after all the other stuff happens, then ICANN gets a final bite of the apple, and then we wait 30 more days?

It's unworkable without a timeframe, because the only thing that we have been asked to agree to, here, is the timeframe. Everything else, ICANN's ability to refer something to a competition authority, they have a right to as a matter of law.

And if Jim wants to put in a notice that says, "Warning, ICANN operates an environment where their law is including the anti-competition authorities, and ICANN can write to competition authorities," but that's just stating what the law is, and I don't see any harm in that. But if we're being asked to agree to timeframes, then we have to know what those are. We can't just agree out of the blue. Thanks.

JEFFREY NEUMAN:

Okay. Thanks, Paul. Anne is saying, "@Paul, so what's a reasonable timeframe?" I think Paul said 30 days, but 30 days from the date of being notified of the outcome of the resolution. But Paul, go ahead. Sorry. I don't want to put words in your mouth.

PAUL MCGRADY:

Yeah. And the short answer is that I don't know. So, 30 days from the time that ICANN refers it may be very reasonable, but if ICANN has five years to refer it, that's not reasonable.

So, there is no front-end timeframe on that, primarily because we've overstepped and have included JVs, and private settlements, and all kinds of other stuff in here. A private auction resolution is, "Here are the parties. Here is the money."

ICANN, if it had 15 days to ponder and then another 30 days for the government to respond ... I don't know. That seems pretty harmless. But that's not what we're talking about, and everybody keeps asking me, "What's the reasonable timeframe?"

I don't know what the reasonable timeframe is for a proposal that I didn't make, that I don't think is necessary. Whoever proposed this needs to come up with the timeframes. And I appreciate everybody asking in chat to fill in the blanks, but I don't know. It's not my proposal. Thanks.

JEFFREY NEUMAN:

Okay. So, what I'm hearing is ... Jim, how about instead of this referral time, we just put in a general notice that, any outcome of private resolution, ICANN may, in its full discretion, refer that outcome to a competition authority, just as a general notice, as opposed to a formal procedure? Since, I think, Paul had said it's a right of ICANN to do anyway, what if we just make it a general notice? Anne, go ahead. Anne, you're in the queue.

ANNE AIKMAN-SCALESE: Yeah. Thanks, Jeff. I think Paul just made a very constructive suggestion. What he said was, "Hey, if ICANN has 15 days to look at it after it is awarded ..." This is what I think he said.

So, it's awarded, and then ICANN has 15 days to look at it for anti-competitive issues, and then the regulatory authority, wherever it is, anywhere in the world, has another 30 days.

Then you're talking about a period of 45 days. Maybe when you say "awarded," what you're saying is ICANN says "we intend to award." "You won string contention. We intend to award. Give us 15 days." 15 days pass. All is well. Move on after 15 days.

JEFFREY NEUMAN: So, what I'm suggesting is a little different, which is we're not giving any amount of days. ICANN always has the right to refer things to a competition authority. So, we just make it a general notice that says that ICANN may refer any contention set result through a private resolution to a competition authority at [a total] discretion. No timeframes. No time limits. Nothing about putting it on hold, just that.

ANNE AIKMAN-SCALESE: The problem with that, Jeff, if I may come back very quickly, is you're not really appointing a time period before delegation actually occurs, and I'm suggesting that there is this ...

JEFFREY NEUMAN: I guess what I'm saying, Anne, is that there are plenty of other steps that have to be taken before the contract is even signed, much less delegation. So, even when there is an outcome of private resolution ... So, let's say, if it's a joint venture, they have to go through comment periods, etc., and potentially reevaluations. If it's an auction, they still have to go through contracting and everything else. So, I think there is, naturally, time in there without putting another formal time period in there.

ANNE AIKMAN-SCALESE: Well, I was actually referring to delegation as contracting. Maybe I have that totally wrong.

JEFFREY NEUMAN: Yeah. No. They're different steps. You have a contract signing, then you have a bunch of things that occur between contract signing and delegation.

ANNE AIKMAN-SCALESE: Well, [to be awfully aware of this], ICANN, for example, find a contract with a winner and then referred it to a competition authority. That's just kind of backward. I just don't think contracts should be signed until we pass those periods.

JEFFREY NEUMAN: Yeah. No. I'm not saying we're tying it to anything. All I'm saying is there is a general notice that says ICANN may, at its own discretion, refer any outcome of private resolution to a competition authority. That's it. [inaudible] could do it anyway. It has been acknowledged that they could do it anyway. We're not saying, if there is a time period, anything goes on hold.

We're not saying any other process goes on hold. But there is, naturally, time between ICANN being told something is being resolved and then signing a contract, even in their own processes.

I think it was at least 30, if not more, days where ICANN would have to go and get certain contact information, generate the contract

form, have the applicant or the registry look at the form, and then sign it, so there is just a natural timeframe, anyway. I just don't think we need to do anything but have a general notice.

ANNE AIKMAN-SCALESE: Yeah. The only difference between what you're talking about and what I'm talking about is that you're saying, "Hey, there is plenty of time for this to happen before contract signing." What I'm saying is contract signing shouldn't happen until this quick look at possible anti-competitive [threat] happens. Those are two different things. We're saying two different choices. You're saying, "Hey, there is plenty of time," and I'm saying contracts should not be signed until this quick-look happens.

JEFFREY NEUMAN: Okay. Yeah. I'm trying to find a middle ground between Paul and some others arguing that there shouldn't be a timeframe ... Although, now I see that they are saying there should be a timeframe. I'm trying to find some middle ground, here, and I think the middle ground is just putting the general notice in of ICANN's right that it has, anyway. But go ahead, Paul.

PAUL MCGRADY: Thanks. I'm not sure that I ever said that there shouldn't be a timeframe. I just think it has to be knowable. And if we can't really, in this group, understand what the timeframe would be, if it could be years and years from the end of the private auction or when a .brand is forced to disclose how much it is prepared to pay, other

people who want to squat in the next round on other brand names and other crazy disclosures like that, then that doesn't work.

Open timeframes don't work. If we can get to a tight timeframe then, yeah. The notice is, I guess, I people want the notice, fine, too. We're just telling people what already exists by operation of the law. But what I can't get behind is just some unknowable timeframe. So, I'm not sure that I'm completely against timeframes. I just have to know what they are. And if we can't know, then let's not have them, and let's just do the notice. Thanks.

JEFFREY NEUMAN:

Fine. All right. Here is my next suggestion: 30 days from the date of publication of the result of the private resolution, period. Because we're requiring that everything be published, anyway. So, 30 days from then. Can we get some agreement, here? Can we get people moving? Trying to meet people in the middle.

Yes. 30 days for ICANN to refer. I'm seeing people. Elaine says she's good with it. Anne is good. Any objections? Trying to find some ... Paul, I think if it's referred to a competition authority ... I don't know. I mean, at that point, we [don't have] the 30 days for [both sign]. 30 days for [both], and we'll put that out for comment. Susan.

SUSAN PAYNE:

Yeah. Sorry. I'm sorry. I'm a bit confused. I think we all agree that, if something were referred to the competition authority, they'll take however long they take. So, putting some 30 days ... And what? If you don't hear back from them in 30 days, you're good to go?

I mean, surely that's irrelevant, surely, once it has been referred. Isn't when you refer to them relevant? But after that, it has gone completely out of anyone's hands. Surely, then, the application has to stay on hold until the competition authority does something.

JEFFREY NEUMAN:

So, in the U.S., there is a notion of sending things to a competition authority. A competition authority, just because you send something to them, it doesn't mean they have to do anything.

It's kind of akin to a merger or acquisition, above a certain threshold you send it to the Department of Justice under this HSR, and if the Department of Justice doesn't respond it's deemed you can go forward with the merger or acquisition.

It doesn't mean that the Department of Justice may not come back later, and it reserves its rights. But it basically is this 30-day quiet or waiting period. So, I think we're kind of following that approach. Obviously, if the competition authority steps in and says, "Wait a minute, we have an issue. We need time," well, then that's a different story. Yeah.

Susan's saying, "I'm assuming it's referred to in the U.S.?" Yeah. But again, I don't think there is anything that forces any competition authority around the world to take it. So, it doesn't really matter who it's referred to. Okay. So, now I'm seeing 30 days is meaningless, or silence after 30 days. Again, try to meet me halfway, here. We'll have to figure out something. I'm fine with it being a general notice provision without a timeframe. Donna, go ahead.

DONNA AUSTIN: Sorry, Jeff. I put this question in chat a while ago when you asked whether I could agree, or whether we could agree, with the stated timeline. Have we agreed on the first part of this, or are we just stuck on the timeline now? Because I'm not prepared to give on the timeline if that means we've agreed to the paragraph above. So, I'm a bit confused.

JEFFREY NEUMAN: I'm trying to get us agreement on concepts before we look at the exact language. I think the concept, here, is either one of two things. Either a general notice that just goes to applicants that says that ICANN, at any point, may refer the outcome of any private resolution to a competition authority, without saying anything about timeframe. That's one option.

And the other option is giving a formal timeframe for ICANN to raise the issue, send it to a competition authority, and then take action if they don't hear back from the competition authority. So, I think some people are saying notices are fine. Others are not. So, I'm looking for something, here. Susan, go ahead.

SUSAN PAYNE: Thanks. So, if we all agree that ICANN can refer anything to the competition authorities at any point, in relation to any application ... And I think that's what Paul said earlier, and other people seem to be in agreement with that.

And Jim's response to that was, "Well, we should make applicants aware that this could happen." If that's genuinely the case, then shouldn't the place where we're making this general notice just be

right at the beginning, and it goes, “Any application could be referred by ICANN to the competition authorities,” and we don’t have to get into it in terms of resolution in this context.

Because I’m still quite troubled by the fact that, suddenly, the moment you try and resolve a dispute in order to go forward with your application, you’re suddenly under this massive scrutiny, whereas, seemingly, we don’t care a damn is the original applicant, who doesn’t happen to be in a contention set, could be the most anti-competitive application in the world, but none of us care about that.

I mean, this seems all wrong to me, and it’s fixing a problem ... It’s not even fixing the problem that Jim says he’s fixing, and he has acknowledged that in the chat. He’s supposed to be fixing the board’s concern with people making money from losing auctions, and this is fixing a totally different problem that we have never ... Well, until now, I don’t think any of us knew we had a problem with.

JEFFREY NEUMAN:

Okay. Thanks, Susan. So, there is a suggestion, then, if I understand Susan, that we make it just a general warning about any application. Rubens has put in some language. So, it’s basically any applicant/application, including but not limited to contention set resolutions, can be referred to a competition authority. So, a general notice about any applicant, application, or resolution. And a bunch of hands went up so, Ken, go ahead.

KEN STUBBS:

Yeah. Jeff, one thing. First of all, I feel pretty comfortable with Susan's argument. I think it makes a lot of sense. One thing that always bothers me is the fact that we don't seem to put any real pressure on ICANN to meet a deadline, here, within the specified time period. I don't like the idea of submitting an application that just says, "ICANN can just willy-nilly do this or do that without any notice."

There is not even a requirement for justification. They just feel like doing it, and they may be doing it just to take themselves off the hook. That's what bothers me the most, and that is they don't like being in the middle on anything, so they kick the can down the road.

And I wish we had some way in some of these processes to put a certain amount of pressure on ICANN so that, if they deem the necessity for doing something, they have so many days to be able to do this once they feel the necessity arises.

And I honestly believe that that should be a notice to the applicant, "At this point in time, there may appear to be a necessity," giving them a heads up. Because the one problem we've seen is this innocuous pushing a can down the road while the poor applicant suffers, seriously, financial harm what has been something that wasn't something significant to begin with. Thanks, Jeff.

JEFFREY NEUMAN:

Yeah. Thanks, Ken. I think, in this case, ICANN has got the right to do it, anyway, and they have the promotion of competition in their bylaws. So, I think if we make it a general notice to all applicants about their application, or the outcome of any contention resolution

may be referred to a competition authority, or something like that; very general. I think that's the current proposal. Anne, go ahead.

ANNE AIKMAN-SCALESE: Given that there is this general ability, and that actually gets triggered the minute an application comes in, I think that, for an applicant's point of view, the issue of string contention, which triggers kind of a new timeframe ...

For example, if a joint venture is formed, I should think applicants would be extremely happy about the idea of specifying a limited time period after string contention is resolved, rather than keeping it open that, "Hey, ICANN can object whenever they want to."

The scenario that says, A, ICANN can object half a year beyond when you win the string contention is a risk you're not controlling. I can't understand while an applicant wouldn't want to control that risk and say ICANN has 30 days [inaudible] string contention period.

After you determine a winner, ICANN has 30 days, and you've got yourself a better deal. And where I would say, if you go with the 30 days and the 30s days ... The 30 days for ICANN after the winner is determined, and 30 days after submission to the competition authority. If there is silence, move ahead. Go on.

JEFFREY NEUMAN: So, what we're limiting, here—

ANNE AIKMAN-SCALESE: You're limiting risk.

JEFFREY NEUMAN: I understand that, but I guess it's a legal right for ICANN to do at any point in time, and now we're going to ask ICANN to limit itself. Look, I think it seems like most people on the list can accept the proposal that just doesn't have anything about timeframes.

It's just a general notice. Everything else is governed by the timeframes that are already in the guidebook, so I'm hoping that we can get no objections to that proposal. But Jim is the original author of the original proposal so, Jim, go ahead.

JIM PRENDERGAST: Yeah. Thanks, Jeff. So, if I'm reading the text that it looks like Emily has in the comment box to the right, "a proposed alternative," yeah, I'm fine with the notice. But I think it needs to be that ICANN refer any outcome of any contention resolution to a competition authority. It's not just limited to private resolutions.

And to address something that Susan called me out on earlier, the reason for this is that, in the 2012 round, the guidebook specifically banned joint ventures. So, we don't have, obviously, any evidence of problems from joint ventures in the 2012 round. This is looking forward and saying, could problems arise from the formation of joint ventures? Absolutely. So, that's why you need to have this governing all types of contention resolution, not just auctions. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Jim. So, I think the agreement was to, basically, not just have it for contention resolution, but it's, basically, they may refer any application and/or the outcome of contention resolution. So, I think it's more general to any of those situations. So, I think that's the current proposal. So, Jim, would that be okay, I guess? Well, that includes your point. That would include any contention set. Paul, go ahead, and I see some other discussion on there. Paul, go ahead.

PAUL MCGRADY: Thanks. Yeah. So, I think that the general notice about timelines makes sense. I think that if we're going to do a general notice, we should say, if people want to put in contention set, that could be a reason why. How a registry is operating could be a reason why. I think if it's going to be a general notice, let's make it general. I know there are people who don't like private resolutions or whatever, but if it's going to be general, let's make it general.

And then, secondly, I just wanted to point out that Jim said that there were no JVs in the last round, but we are talking about all kinds of heavy-weight mechanisms around them.

So again, we have all of these heavy-weight mechanisms for a non-problem. I think that we should, at least, have a round with joint ventures in them, and see if we develop any problems before we try to fix the problem that actually could not have happened in the last round because it didn't exist. But that, I think, may be a later topic. Thanks.

JEFFREY NEUMAN: Yeah. Thanks, Paul. And just to draw everyone's attention to ... The board actually talked about gaming in general, and then referred to the specific example of private auction. So, they have a general concern.

And so, I wouldn't say it's fair to say that if the board has a concern with JVs, they should have said something. I think they have a concern of gaming in general and private resolution in general, and then they referred to private auctions specifically.

So, look, this will all go out for comment and I'm sure that, if there are still concerns, they will let us know. Sorry. Jim, is that a new hand? No. Okay. So, let's go to the second point of Jim's. I think this is an even harder one to get consensus on. But the second point was on whether we should do ... Let's see. I wrote this down as ... "Field bids all at the same time" is the second point.

So, Jim, in his proposal, and how he explained it a little bit earlier, was one of the concerns that the board specifically said they were concerned about was using the money from one auction to finance another, and therefore putting it all at the same time would, to the extent possible, certainly eliminate that ability, or at least mitigate the ability to use the winnings of one auction to fund another.

So, on this proposal, any thoughts on this one? And by the way, for those that just ... Sorry. The one other thing was that it would be bids submitted at the same time, not opened at the same time, because of, obviously, applications will proceed to the final resolution at different points. So, I think it's just being submitted at the same time. Elaine's asking if we can put that on the screen, so if we can find Jim's e-mail? Paul, go ahead.

PAUL MCGRADY: Thanks. So, this is just another heavy-weight mechanism that I don't see how it solves anything. What we're really doing is this proposal, basically, is another attempt at getting rid of private auctions, because if ICANN is ... We're essentially suggesting that everybody have an auction of last resort, and the only thing that changes in the mechanism is who gets the money.

Then what we're doing is we're just having an auction of last resort, like Jim wanted, and private auctions really go away. There's a reason what it's called "private," and everybody was pushing for transparency. I recommended transparency provisions. And now that the transparency mechanisms have been put out there and conceded, now we're back to wanting to take away private auctions again.

So, it's not just that ICANN support it. This is the same old stuff we've been talking about for four years, and here it is again. This is the third or fourth time that it has shown up in the last two or three weeks. I don't know why we keep talking about this. It's a non-starter. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Paul. Jim, go ahead.

JIM PRENDERGAST: Yeah. Thanks, Jeff. The reason we're talking about is pretty clear. The board has asked for two things. We've talked the first one to death, but nothing in proposal five addresses the concerns that the

board has raised about financing of other applications from people applying for multiple strings.

So, in an effort to try and improve this proposal, that is why what I have focused on ... If people have other suggestions on how we can meet the concerns and mitigate the concerns of the board on this, I'm happy to hear it, but I haven't heard any other concrete proposals yet. So, if folks have other ideas, hey, let's hear it. Let's see what you come up with. Thanks.

JEFFREY NEUMAN:

So I think, on this one ... Sorry. Susan, go ahead.

SUSAN PAYNE:

Thanks. So, we've ended up spending a huge amount of time talking about Jim's additions. And obviously, arguably, we haven't finished doing that yet. But it seems to me we've never actually ... Or at least, we initially had this proposal five introduced to us on the last call, and we did have a little bit of discussion.

But the idea was it was just going to be introduced to us and we would discuss it further. And so, now, we seem to be spending an awful lot of time talking about even more complexity being added to proposal five, rather than considering proposal five itself which, in itself, already is incredibly complex.

And to my mind, it's really unrealistic. If you think about this from the point of view of a commercial entity, this whole thing is so wholeheartedly unattractive that if ICANN genuinely wants businesses, including brand owners and others, to participate in this

program in the future, none of this is going to encourage that. And that may be fine. Maybe ICANN doesn't want any future applicants. But in which case, I do wonder what we're all doing here and have been doing for the last four years.

I don't know. I'm not sure whether we have the ICANN Board's liaisons on here. And obviously, it's not a board's decision. But ultimately, we're creating a process that's so complex that no one will ever have any interest in being a party to it, and that goes for before we started adding extra bits on from Jim's proposal.

JEFFREY NEUMAN:

Yeah. Thanks, Susan. So, I think the issue here is that ... I've been kind of looking around for other similarly situated types of things and, in most other allocation of resources, it's an auction. That's it. There is no such thing as private resolution.

So, by adding the concept of private resolution in, that's what's complicating all of this. It's not the notion of ... We can make it really simple and just say everything goes to an auction of last resort, and that would be the most simple solution, and that's what most governments do when they allocate resources, and we can certainly do that.

The reason this is so complex is that we're adding in the notion of private resolution, or at least dealing with the notion of private resolution which was introduced in the last round. And so, that's what's making this so complicated.

I'm not saying I'm against private resolution at all. I'm just saying that, if we're introducing that and we're trying to follow what the

board is asking us to try and do, then yes, it's going to be complicated. But we have to deal with it.

So, if we want private resolution to remain, it is going to be complicated. If we don't, we can make it a lot easier. But I think, because we're allowing private resolution to remain, there are going to be some complications. I think it's just inevitable. Alexander, then Paul.

ALEXANDER SCHUBERT: Yeah. Hi. I don't think that's very complicated. It looks complicated for us because we ran through several turns and corners to arrive at the solution, but someone who is looking at this from a fresh start finds it incredible/simple.

Actually, it's so much more simple than we had it before. You provide a few bids early on, and then the contention set can choose whether they want to disagree with the money within the contention set or whether it should go to ICANN. And that's actually decided by one entity, the one who is blocking the private resolution and wants to go to the ICANN auction of last resort.

And essentially, for all participants, it's just the same like 2012: either all participants agree on OCTO proceeds are shared with the participants, or at least one is blocking it and all the money goes to auction. There is no difference at all.

The only one difference we have is everyone has to submit their bid early on, [an SSU] bid, and that's exactly what we want because it prevents the gaming and it mitigates the risks that the board saw. Thank you.

JEFFREY NEUMAN: Yeah. Thanks, Alexander. So, I see a bunch of people in the queue. My own assessment—and people can disagree with me—is that we're not going to get agreement on that second concern of having ... And Paul, I'll get to you in a second.

We're not going to get to agreement on the fact that all sealed bids need to be submitted at the exact same time. We're going to have to talk about proposal five and see where it fits in. I think at the end of the day the third component was ICANN oversee all private resolutions.

I don't see that one gets consensus from this group, at least from past conversations, though I might be wrong, and people can tell me if I'm wrong. But I do think we should go through some of the rest of proposal five. And the reason, Susan, that I was focusing on Jim's is because he's the one who put comments in on e-mail so that we could discuss it. But happy to discuss other elements, as well. Paul, go ahead.

PAUL MCGRADY: Thanks. So, yeah. I just wanted to push back a little bit on Jim's theory that nothing has been discussed in terms of dealing with his concern about using funds for private auctions.

That's the second part of the guardrails, which is that you're not submitting the application solely for the purpose of being a loser in an application. If we go beyond that then really, now, we're in really unique territory where you can submit an application with a bona fide and [rendered] registry.

The other guy wants it more. You lose. You get paid off but you intended to run it. You had business plans. You were a good-faith applicant. But now ICANN, a private sector actor, can tell you what you can and can't do with your money. I don't know why in the world we would want to introduce this kind of mission creep into ICANN at all.

Now, anybody coming near them, ICANN can control their bank account. I mean, that's just a bridge too far. So, we need to do what the actual board concerns were, and we deal with Jim's second concern by having the second guardrail, which is, "Yeah, you can't submit an application solely for the purpose of being a happy loser on it."

I think we have already covered this territory. And I agree with you, Jeff. I don't think we're going to get to an agreement to even more heavy-weight mechanisms at this late hour. Thank you.

JEFFREY NEUMAN:

Yeah. Thanks, Paul. And certainly, we will get comments on this during the comment period. So, Christa is in the queue, then Anne. I'd like to see if we can—I know we're getting toward the end—focus on model five. Christa, and then Anne.

CHRISTA TAYLOR:

Hi. I kind of agree with ... There are three threads going, there. Susan's point on we need to make this achievable for applicants, and Jeff's on the timing of it, is difficult to do. We probably won't reach agreement on it.

But just from the perspective of applicants, having all bids at one time with multiple applications would put them at a disadvantage. There is a huge amount of work to come up with a bid value for each of those TLDs.

And then, to run all the different unique combinations if you had more than, say, two or three applications in a contention set would be an enormous amount of work. And each auction is somewhat unpredictable.

So, how someone like Donuts could, in the last round, with over 150 contention sets, run all the different scenarios with a limited timeframe and have some kind of meaningful values, and then figure out how to maximize their limited financial option funds and not be put at a disadvantage, I don't know. How would we do it?

But then, going back to Jim's point in is there another way, I think we need to return to that. Is there another way to do it? Is it something as simple as delaying the payment until afterward, or is there something else? And I think we need to kind of go down that avenue to come up with some other alternatives. Thanks.

JEFFREY NEUMAN:

Yeah. Thanks, Christa. Totally understand your point about commercial entities and portfolio players, but at the end of the day, we need to make a decision. Are we designing this for portfolio players, or are we designing it for single applicants, or are we trying to design it for something in between? I think we need to make a choice. Again, that's not me judging, but some solutions we come

up with are going to favor one type of model and not favor another. Anne, and then Paul.

ANNE AIKMAN-SCALESE: Yeah. Thanks, Jeff. This has just been a really good, deep discussion. It certainly helps me to understand the considerations on both sides more. When I hear all these considerations being raised and people having strong views either way ...

And I'd like to point out that sealed bids that are simultaneous have been discussed for a long time. That's not a new thing. It was never rejected. It's not like it was first brought up last week. It was even discussed in the long call with a guy that came as our guest speaker on auctions.

My bottom-line point is that are alternatives, here, that the SubPro Working Group needs public comment on, and these things should be put out as alternatives, that we're not going to be able to decide on this call to eliminate them. The amount of discussions going on about it is indicative of the need for public comment. Thanks.

JEFFREY NEUMAN: Yeah. So, we're obviously going to have public comment, but I usually ... For this, I strongly prefer us putting forth as much of the solution to give the public something to comment on, as opposed to just choices. So, I think—

ANNE AIKMAN-SCALESE: But Jeff – Jeff, no. The public should be commenting on choices. We're much more aware of the choices and how to describe them, and the public is ... We shouldn't be eliminating the choices in this particular issue before the public comments on it. We should be telling them what the choices are and having them comment.

JEFFREY NEUMAN: Yeah. But remember, the feedback we got on the last one is when we gave choices, and we did give a lot of different choice for auction. So, this is not the first time we're putting this out for comment with choices.

But remember, the number one complaint we had was that everyone wanted to reserve their right to comment based on the actual model or actually things chosen from the group. And people said, "We don't think this satisfies the public comment."

I know the RPM did options as well, so maybe some of that complaint has gone away. But in all possible ... If we can lean toward a solution, even if, at the end of the day, we end up going with another because the public comment says we chose the wrong one, that's an okay outcome, too.

So, anyway, we are running out of time here. So, I would like everyone to review model five, put comments on the way we have it here. Remember that most of this has been discussed. This is just elements that are put together from what we think is, for the most part, agreed upon. We're falling behind, now, which is just going to delay the draft final report.

Look, I'd like everyone to comment on this from a view that this is a compromise based on everything, and although, technically, this hasn't been put out for the "can't live with" comments, I'd really like you to take the approach of not what's ideal, or not what you would want as being ideal, but can you live with these elements? Understanding that everyone is not happy with certain elements of this.

And I'd like to get away from the discussion of what is the problem here, because there are some that don't believe there's a problem, there are a lot that believe that there is a problem, and we're never going to convince each other of those.

So, let's look at this model and say, "Does this address the concerns that have been expressed, or some of them at least?" Cheryl says, "Let's look for some compromise, people." Yeah. We really want to get all three of these last items resolved this week so that we can come out with a draft final report.

And I think this issue, the closed generics issue ... And I think we're almost there on the predictability model, so please also look at the predictability model, the specifics.

I think we're already agreed in the different categories and what happens with those categories, but there are very specific questions in the end of that section that I'd like everyone to think about the answers for, and I'll probably start a discussion on the e-mail list. But let's see what we can do to compromise on all of these elements. We're almost there and we need to get over the hump.

So, the next call is Thursday, July 23rd, 03:00. So, that'll be Wednesday night for some of us. So, please be there, and let's get this done. Thanks, everyone.

JULIE HEDLUND: Thanks, Jeff. Thanks, everyone, for joining. You can disconnect your lines. Have a good rest of your day.

[END OF TRANSCRIPTION]