



International Chamber of Commerce

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International Centre for Expertise • Centre international d'expertise

Explanatory Note regarding the financial aspects of cases administered by the International Centre for Expertise of the International Chamber of Commerce pursuant to the new gTLD dispute resolution procedure

Introduction

Aware of the fact that some parties and counsel involved in dispute resolution proceedings (“Proceedings”) pursuant to the New gTLD Dispute Resolution Procedure (Attachment to Module 3 of the ICANN Applicant Guidebook) (“Procedure”) administered by the International Centre for Expertise (“Centre”) of the International Chamber of Commerce (“ICC”) have requested additional information about the Centre’s practice with regard to all financial aspects of the pending Proceedings, the Centre has decided to issue this Explanatory Note.

This Explanatory Note does not modify the provisions of the Procedure and especially those of the ICC Rules for Expertise (“Rules”) related to the financial aspects of Proceedings. It aims at explaining and further clarifying how the said provisions are applied by the Centre pursuant to the Procedure and the Rules.

A. Applicable Rules

- Article 14 of the Procedure provides that every Dispute Resolution Service Provider (“DRSP”) shall determine the costs for the proceedings administered under the Procedure in accordance with the applicable DRSP rules. For the Centre, the applicable rules are the Rules. The Rules, including their Appendix III, were made available online well before the closing of the Objection Filing period as defined by ICANN.

B. Filing Fee

- Article 8(c) of the Procedure provides that the Objector shall pay a filing fee when submitting an Objection.
- Article 11(f) of the Procedure provides that the Applicant shall pay a filing fee when submitting its Response.
- The Filing Fee pursuant to the Procedure is the non-refundable amount mentioned in Article 14(1) of the Rules.

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- Article 1(1) of Appendix III to the Rules provides that this non-refundable amount for cases filed pursuant to the Procedure is € 5 000. Article 1(2) and 1(3) of Appendix III to the Rules set out that the non-refundable amount has to be paid by the Objector when filing the Objection and by the Applicant when filing the Response.

C. Estimated Costs

- Article 14(b) of the Procedure provides that within ten days of constituting the Panel, the DRSP shall estimate the total Costs of the proceeding (“Estimated Costs”) and invite the Objector and the Applicant to each pay the Estimated Costs in full.
- The Estimated Costs consist of the Centre’s estimation of the Panel’s fees and expenses, as well as the administrative expenses of the Centre.
- The Estimated Costs do not constitute the final costs of the proceeding.

The Centre takes into consideration the following factors when determining the Estimated Costs:

- Pursuant to Article 3(1) of Appendix III to the Rules, the Expert’s hourly rate is fixed at € 450, unless decided otherwise by the Centre after consultation with the Expert and the parties.
- Accordingly, when estimating an Expert’s fees, the Centre estimates the number of hours it expects each Expert to take in the matter and multiplies the number of estimated hours by € 450.
- When estimating the hours each Expert will spend on the case, the Centre takes into consideration whether the Panel consists of one or three Experts, as well as the size of the documentation provided by the parties, including the number and size of annexes submitted together with the Objection and the Response respectively, and all other relevant information.
- The Centre further bases its estimation of the number of hours an Expert needs in proceedings of an average complexity on a number of factors including the time to:
 - study all documents provided, including the Objection and Response and all annexes;
 - make himself/herself acquainted with all rules, documents and guidelines referred to in the Objection, Response and the annexes;
 - study additional submissions by the parties, if any;
 - respond to the correspondence of the parties;
 - take and draft procedural decisions, including but not limited to requests for additional submissions, requests for a stay of the proceeding, requests for time extensions, requests for a hearing, requests for non-publication of the decision;
 - draft the Expert Determination;

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- discuss the conduct of the proceeding with the other members of the Expert Panel and deliberate a draft decision with the other members of the Panel, as the case may be;
 - incorporate into the text of the Expert Determination the Centre’s comments, if any, after the scrutiny of the draft Expert Determination;
 - submit the final Expert Determination to the Centre.
- When making an estimate of the Panel’s fees, the Centre does not take into consideration
 - whether a case is consolidated;
 - whether the Panel will also decide on cases related to the same or to similar strings, or involving the same parties;
 - the content of the Objection or Response;
 - the content of the annexes submitted with the Objection and Response respectively;
 - the subject matter of the specific case.

The Centre does not take the above factors into account when estimating the Panel’s fee, since at this early stage of the proceeding the potential cost-saving effects of such consolidation cannot yet be estimated by the Centre.

- Further, the Centre does not assume that hearings will be held in cases. Accordingly, should an Expert Panel decide that a hearing shall be held, the Centre is likely to have to readjust the Estimated Costs.
- For the Estimated Costs, the Centre further takes into consideration
 - € 12 000 as administrative expenses for one member Panels;
 - € 17 000 as administrative expenses for three member Panels;
 - a lump sum of € 2 000 per Expert for potential expenses.

D. Final Costs

- The final costs (“Final Costs”) of the proceedings will only be determined by the Centre once the Panel has rendered its final Expert Determination and each member has provided the Centre with the amount of hours spent on the matter and their expenses.
- The Final Cost will include the Panel’s fees and expenses and ICC’s administrative expenses.
- The Expert’s final fees shall be fixed pursuant to Article 3(1) of Appendix III to the Rules on the basis of the time “*reasonably spent by the expert on the proceedings*”.
- The Expert’s “*reasonable expenses*” shall be reimbursed pursuant to Article 3(2) of Appendix III to the Rules and the “*Note on Personal and Expert Panel’s Expenses for Proceedings Related to the New gTLD Dispute Resolution*” (“Expenses Note”) submitted by the Centre to each Expert with the transfer of the file. A copy of the Expenses Note is added to this document as Annex 1.

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The Centre does not expect Expert Panels to incur significant expenses unless a hearing is held in a specific case.

- ICC's administrative expenses are determined depending on the amount of work performed in the specific case, in particular with regard to the number of communications, requests for replacements, requests for reconsideration of decisions, decisions on consolidations and additional submissions.
- If the Final Costs are lower than the Estimated Costs, the Centre will reimburse the overpayments to each party.
- The Centre does not expect the Estimated Costs to equal the Final Costs in all proceedings. Rather, the Centre expects that in some cases, the Final Costs will be lower than the Estimated Costs, while in other cases in the course of the proceedings; an additional reconsideration of the Estimated Costs may be warranted.

E. Partial Payments and Reconsideration of Estimated Costs

- If requested to do so by one of the parties, the Centre may grant the parties the possibility to pay only a specific percentage of the estimated Costs prior to the transfer of the file to the Panel. In these cases the Centre will reconsider the estimated Costs within 30 days upon transfer of the file to the Panel and, as the case may be, invite the outstanding share of the estimated Costs or an adjusted additional payment.

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Annex I: Expenses Note