On behalf of the **Swiss Federal Office of Communications** I would like to thank you for the opportunity to take part in this consensus call and offer the following positions regarding recommendations we are **not** in a position to support as they stand:

**Regarding the SPIRT**

We are still not fully convinced of the value-added of this additional layer of process and complexity. Specifically regarding the new **Implementation Guidance 2.3.** we consider that the GAC should be involved in any dialogue concerning how its Advice to the Board should be handled.

**Regarding translations of the AGB**

We are of the view that translations of the AGB in all other UN languages should be available for the whole period of 4 months prior to the launch, and at most 4 weeks after the English version is published, considering the essential importance of the AGB and the fact that in UN settings 4 weeks is a standard maximum for translations of official documents. Hence **Recommendation 12.9.** and **Implementation Guidance 12.10.** should be amended.

**Regarding the Applicant Support Program**

We disagree with the **lack of a recommendation** by which the Applicant Support Program should **include coverage of ongoing registry fees**. We are of the opinion that Applicant Support Program should consider the reduction or elimination of the ongoing ICANN registry fees, at least in part, to expand financial support available to eligible applicants.

**Regarding closed generics**

We are somewhat dismayed that the SubPro WG didn’t come to an agreement on this issue and note with **regret that the substantive inputs** included in the GAC Consensus input from September 29th 2020 **were apparently not considered in detail**.

**Regarding the role of GAC Consensus Advice**

We reaffirm our disagreement with **Implementation Guidance 30.2** concerning the timing of GAC Consensus Advice on future categories of TLDs and particular applications, oriented to discentivizing any such Advice being submitted after the finalization and publication of the next Applicant Guidebook.

Regarding **Recommendation 30.4**, we consider that the Bylaws changes from 2016 did not introduce any modification to the section on GAC Advice which would require a change of the language included in Section 3.1 of the 2012 Applicant Guidebook which states that GAC Consensus Advice “will create a strong presumption for the ICANN Board that the application should not be approved”. This language was part of a delicate compromise during the 2012 round preparations and **should therefore be maintained**. The possibility of maintaining a dialogue with the concerned applicant is not hampered by this language, considering that recommendation 30.7 of the WG establishes ways and means to conduct such a dialogue even in the case of GAC Consensus Advice objecting to an application.

Regarding **Recommendation 30.6**, we do not object to the PDP WG notion that a GAC Early Warning should be explained, however we wish to note that applications may not always be remedied in the opinion of the Government issuing the GAC Early Warning. Therefore, we **propose updated language to Recommendation 30.6 noting** “*how the applicant may potentially address the GAC member’s concerns* ***to the extent feasible***”. We note that this proposal was already made but is not discussed in the final report.

**Regarding community based applications**

We broadly support the intention to improve the rules applicable to community based applications, but **expressly reserve our opinion on the specific changes made on these subject-matter applications**, and therefore do not wish that it might be construed as support until a time where we may have been able to conduct an in-depth analysis of these recommendations in order to assess whether enough has been made to overcome the significant and unnecessary hurdles to CBAs existing under the 2012 framework.

**Regarding RVCs/PICs, and their enforcement**

We refer to previous GAC ICANN66 Communique Advice to the ICANN Board, whereby “the GAC advises the Board not to proceed with a new round of gTLDs until after the complete implementation of the recommendations in the Competition, Consumer Trust and Consumer Choice Review that were identified as "prerequisites" or as "high priority".”

Furthermore, we reiterate our **concerns regarding the absence of policy recommendations on DNS Abuse Mitigation in the Subpro PDP WG Final Report**, and note that the WG deems that such future effort should be holistic and must apply to both existing and new gTLDs (and potentially ccTLDs). On this point, we expect swift action from the GNSO Council in triggering such holistic effort, in order that the conditionality expressed in the GAC ICANN 66 Communique is met. In addition, **reference to ccTLD’s in Recommendation 9.15 should be deleted** as they do not fall under ICANN’s competence but operate under national legislation. Hence, **we cannot support Recommendation 9.15.** as it stands.

We recognize that the PDP WG has taken into account GAC Beijing Advice, by affirming that the framework established by the New gTLD Program Committee (NGPC) to apply additional Safeguards to certain new gTLD strings that were deemed applicable to highly sensitive or regulated industries, creating 10 safeguards of various levels to be implemented among a set of 4 groups. In this context, we would like to point out that the figure of the Registry Voluntary Commitments (RVCs) should not be used in any way to downplay the pressing need to introduce new mandatory PICs to combat abuse and to set safeguards for strings in highly sensitive or regulated sectors, as well as the pressing need to **provide a clear compliance, enforcement and sanctions process in relation to PICs and to RVCs as required by Affirmation 41.1**.

Consistent with the GAC Montreal Communiqué, we believe that voluntary and mandatory PICs must be enforceable and that this goal should be achieved with **clearly expressed contractual obligations and consequences for failure to meet these obligations**. Improved clarity for PICs in terms of obligations and consequences will aid ICANN’s contractual compliance program in its enforcement of these provisions that safeguard the public interest. We also recall persistent GAC concerns regarding both the weak implementation of PICs applicable to gTLDs in highly-regulated sectors and the lack of clarity and effectiveness of the mechanism to enforce disputes (the Public Interest Commitments Dispute Resolution Process or PICDRP).

**Regarding contractual compliance (Recommendation 41.2.)**

We are strongly convinced, as outlined in Affirmation 41.1, that a clear compliance and sanctions process must be set out in the base contract. We believe, however, that the **current existing contractual compliance, enforcement and sanctions processes should be concretely strengthened**, in particular by the introduction of financial penalties for non-compliance. The measure proposed by the **recommendation 41.2** to publish more detailed data **is, in our view, insufficient to ensure clear compliance** as required by the Affirmation 41.1.

**Regarding mechanisms of last resort (Recommendation 35 etc.)**

While we acknowledges that, in an attempt to reduce potential gaming, the PDP WG recommendations include the need for applications to be submitted with a “bona fide” intention to operate a TLD, we recommended further discussion on how this intention will be ensured and implemented and **note that punitive measures for non compliance or submission of a bona fide intention continue to be missing**.

We express concerns on whether the bona fide intention and Contention Resolution Transparency Requirements sufficiently answer the ICANN Board concerns relative to the permission of private resolutions (including auctions) as a mechanism to resolve string contention.

Regarding Auctions of Last resort, we are of the opinion that they **should not be used in contentions between commercial and non-commercial applications** and that **private auctions should be more strongly disincentivized**.

Furthermore, we insist in recommending reconsidering in depth the process of drawing lots as a solution for resolving string contention.

Biel, 8. January 2021

Jorge Cancio

Swiss GAC Rep and SubPro WG Member