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To whom it may concern:

**RE: RESPONSE TO CAA'S DRAFT GUIDANCE ON ORC PROTOCOLS AND DISPUTE RESOLUTION**

We have reviewed the CAA's H7 Final Determination and we are extremely dissatisfied with the outcome and decision which will be damaging and detrimental to our business. We understand that we cannot appeal this decision but we note that Heathrow Airport Limited and the airlines have appealed the H7 decision to the Competition and Markets Authority (CMA). We look forward to reviewing the lack of CAA regulation of Other Regulated Charges (ORCs) at the CMA.

**Context underpinning Other Regulated Charges (ORCs)**

Padox owns two hotels at Heathrow Airport. We believe that the CAA has not shown sufficient interest in ORCs and the CAA's H7 proposals have not addressed the lack of regulation of these charges resulting in unfair and uncompetitive charges being levied on ORC users.

Padox own & operate the Hilton Garden Inn London Heathrow Airport at Hatton Cross. The electricity & waste water utilities for this property are supplied by Heathrow Airport Limited and regulated under the ORC framework. The inclusion of 'Fixed Costs' and differential pricing between airlines & non-airlines will add approximately £18m per year of additional costs into these charges which HAL will recover from the ORC users such as ourselves, making our energy pricing 2-3 times higher than other hotels who can procure energy on the open market. We supported HAL's proposal that these fixed costs should be borne by the airlines as part of the passenger charge, but we also believe that there is a lack of oversight & regulation of these charges by the CAA regardless of where they are applied. As such we are now pursuing the route of seeking third party access (TPA) to the Heathrow electricity system as under this solution the investigation and regulation of the costs for TPA will fall to Ofgem, rather than the CAA.

Padox also own the Hilton Terminal 4 where we took the step of physically bypassing the Heathrow electricity system to establish a new supply from the National Grid. We are now also considering similar action for the Hilton Garden Inn.

If the CAA was properly regulating ORCs, then such action would not be necessary.

**Principles for development of a new protocol**

We agree with the airlines submission that there should be involvement in the tendering process.

We would have expected that the principles would have included the need to demonstrate that charges were cost-related. We have repeatedly asked HAL to explain how the charges of £18m in fixed costs have been calculated however they cannot provide any explanation for this other than it been an annuity charge for the value of energy infrastructure on their Fixed Asset Register, however as their Fixed Asset Register is not available to us we have no way of verifying these charges, and we believe they are applied unfairly and are not genuine cost related charges.

#### Collaboration

The consultation says that the protocols are to be developed by HAL and airlines and / or non airline ORC users. It must be made clear that the development of the protocols has to include non-airlines, including hotels on the perimeter of the airport who are affected by the ORC framework.

#### Consultation

We agree that HAL must be made to ensure that consultation is effective.

#### Governance

The CAA needs to ensure that all users are involved in the governance procedure. This means non airlines, including hotels, as well as airlines.

#### Transparency

Requiring “reasonable transparency” is too vague. We see no reason why HAL’s costs should not be fully transparent. We note that the airlines want to have a degree of oversight of tendering of contracts. We agree. It is disappointing that the CAA has ignored this proposal from the airlines.

We also believe there should be transparency of the Fixed Asset Register and annuity charges if these costs are to be passed on to ORC users

#### Equivalence

We agree that the services should include compensation when not properly delivered.

#### Independent assurance

We agree with periodic reviews. These should be independent of HAL and involve airlines and non-airlines, including hotels, in setting out the terms of reference.

#### ORC dispute mechanism

There is little to disagree over the dispute mechanism in the CAA’s proposals.

#### Dispute resolution should be independent of both parties

We agree with this this proposal. We do not believe the CAA should be that independent party.

#### Guidance

We agree that the dispute resolution decision maker should be able to issue guidance.

#### Evidence based decisions

We agree that the decision maker should be able to request and rely on evidence. The CAA should ensure that information gathering powers are available since we expect the most information will be required from HAL.

Accessible, transparent and proportionate process

We agree.

Refusal to hear disputes

We do not agree with this proposal. If parties wish to raise a dispute, then it should be heard.

Transparent outcomes

We agree. Consideration will need to be given to confidentiality of parties information.

Timely, efficient and effective resolution.

We agree and this is one reason why we do not support the CAA being the decision maker.

**Next steps**

The consultation switches between airlines and ORC users. The CAA must clarify that ORC governance must include non airlines, including hotels and all other ORC users.

Yours Sincerely,



Richard Lee  
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