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Dear Vint,

As you know, the public consultation period leading up to your decision on the renewal of the .aero TLD has recently closed. That consultation was an important part of your role in deciding on the exercise of a renewal of the .aero TLD.

This letter addresses a number of issues. First, and most importantly, it confirms that it is SITA SC's (SITA) intention to renew the sponsorship agreement.

Secondly, the letter sets out our understanding of the basis under which the Board must consider any renewal proposal.

Thirdly, it addresses the issues raised in the public consultation period.

(i) SITA intentions regarding the .aero TLD

As noted above, this letter reconfirms for the Board, SITA's intention to apply for a renewal of the .aero TLD agreement between ICANN and SITA dated 17 December 2001 (the Sponsorship Agreement). Renewal must be completed by 17 December 2006. As set out in our letter to the CEO of ICANN of the 16th of December 2005, SITA and its members are of the view that the .aero TLD has added value to the aviation community. When the developments and products under development come to fruition, it is the view of SITA that it will continue to add value and to grow in value in the coming years. That will be of value to aviation and to the internet community.

You will recall that SITA was granted sponsorship of the .aero TLD as part of an initial seven new TLDs granted by ICANN. The purpose of the grant was in part as a test of the concept of sponsored, limited membership TLDs where substantial parts of policy development is delegated to the community served by the sponsored TLD. In the case of .aero this community is the aviation community. While I cannot speak for any other TLDs, in the case of .aero, I can advise that the concept has merit, and should be continued.

(ii) The legal basis of the renewal application

As ICANN makes clear on its website, the test of renewal of the .aero TLD set out in the Sponsorship Agreement. The Sponsorship Agreement is clear. There is a presumption of renewal of the Sponsorship Agreement in favour of SITA unless there are real concerns about the manner in which SITA is managing the sponsorship of the TLD.

ICANN's website properly indicates that only concerns or issues that raise a *substantial* question about the continued sponsorship by SITA of .aero for the aviation community, as well as the global internet community will trigger more intensive debate on whether that presumption of renewal requires further investigation and questioning. This reflects the language in the Sponsorship Agreement.

The website sets this out as follows:

In the event that ICANN does receive one or more objections to renewal deemed by ICANN to raise a substantial question about whether the Sponsor's continued sponsorship would be in the best interest of the Sponsored TLD Community and the global Internet community, a staff evaluation and additional public comment period will follow as described in Sections 5.2.3 and 5.2.4 of the Agreements.

Consequently, it is appropriate to review the comments made in the public consultation period to assess whether or not a substantial question arises.

It should be noted that if no substantial questions arise, SITA is entitled to the benefit of the presumption of renewal set out in the Sponsorship Agreement (in clause 5.2.2).

(iii) Analysis of the issues raised in the public consultation period

The public consultation period raised four material submissions. Of these four, one was in fact in favour of the SITA sponsorship of the .aero domain; two were generally in support, but questioned a particular provision that SITA seeks (the right to market domain names directly) and one raised perceived concerns regarding the neutrality of the governance of the domain.

The two submissions raising concerns regarding the application by SITA to have the right to distribute names directly are thoughtful and deserve comment here. Whilst in general terms SITA accepts the structure established by ICANN whereby names are distributed by neutral registrars, accredited by ICANN, the reality of the extremely small, extremely specialised nature of the .aero domain make it necessary to consider individual solutions in this case.

As SITA sets out in its renewal letter, the total number of names registered remains very small. At the same time, the uses to which certain names, or entire parts of the name space, will be put will be very important to the aviation community. The registrar community, which has had limited experience of serving the aviation community (with a business model of a mass market, first come first served philosophy) is not in a position to develop services targeted to the specific needs of the aviation community, at least not without substantial investment and education. It is necessary, as part of making .aero the most innovative and aviation responsive and sensitive name space that it possibly can, that SITA be able to distribute names directly in particular circumstances. Over time, it is possible that the work that SITA does in developing the name space will serve as a platform for registrars to build on and to find commercial models that work.

SITA, should it be able to distribute names, will not in any way prohibit or impede the rights that registrars currently have. Registrars will be treated in no way different to the way in which they are now treated. Competitive forces will continue to be allowed to operate. Furthermore, given that SITA is not the registry operator, concerns expressed at the time of

the signing of the Sponsorship Agreement that SITA would be involved at all levels of the process are no longer founded.

It is also telling that neither of the registrars that objected to the application is currently distributing .aero names. It is also relevant to note that none of the registrars that currently distribute .aero names have objected in any way to the extension of the Sponsorship Agreement or the application by SITA to secure the ability to distribute names directly.

The final objection to the renewal of the Sponsorship Agreement was from a travel writer published predominately on the internet, almost always on his own site. His submission makes three specific allegations against SITA in support of a call to not renew the Sponsorship Agreement:

- That SITA is in material breach of the Sponsorship Agreement
- That it is not representative of the majority of the community
- That it made materially false statements in its renewal application

These are serious allegations, set out in detail in the submission and each deserves full and detailed response. Whilst the allegations are serious, it is important to note at the outset that they are not backed up by facts or particular incidents. It is difficult to respond in detail to such unsubstantiated claims.

Looking at each in turn:

A. Material Breach

The Sponsorship Agreement sets out a range of obligations on SITA as Sponsor (clause 4.2). The aim of these obligations is to be sure that practices and procedures, as well as policy development is reasonably open to the members of the community (in the case of .aero - the aviation community). This includes a process whereby community members can be represented and heard. In addition, Attachment 23 sets out an obligation to provide information to members of the community on decisions and policies.

The full text of the relevant articles of the Sponsorship Agreement is set out below:

4.2. General Obligations of Sponsor.

During the Term of this Agreement, Sponsor shall, in developing or enforcing standards, policies, procedures, or practices within the scope of its delegated authority with respect to the Sponsored TLD:

- 4.2.1. publish such standards, policies, procedures, and practices so they are available to members of the Sponsored TLD Community;
- 4.2.2. conduct its policy-development activities in manner that reasonably provides opportunities for members of the Sponsored TLD Community to discuss and participate in the development of such standards, policies, procedures, or practices;
- 4.2.3. maintain the representativeness of its policy-development and implementation process by establishing procedures that facilitate participation by a broad cross-section of the Sponsored TLD Community;
- 4.2.4. ensure, through published procedures, adequate opportunities for members of the Sponsored TLD Community to submit their views on and objections to the establishment or revision of standards, policies, procedures, and practices or the manner in which standards, policies, procedures, and practices are enforced;

Attachment 23

2. Open Forum for Communication

Sponsor will operate a web site located at www.information.aero to provide clear information to

prospective registrants about registration procedures. In addition, Sponsor will post on its web site, information about its procedures and policies as well as Sponsor's meeting minutes and decisions so that any interested person or entity will be aware of, and have an opportunity to respond to, Sponsor's actions and understand how to participate in the sTLD. See also Subsection 4.2.1.

The allegation of a material breach is that in organising the governance structure that .aero has organised, the Dot Aero Council, it is not discharging these obligations. With respect, the allegation misses a very fundamental point about the Dot Aero Council and its agreed working methods, all clearly set out in Domain Management Policy published on our web site and publicly discussed with ICANN before the Sponsorship Agreement was signed.

The Dot Aero Council is made up of delegates of established, generally accepted representative associations and aviation bodies. Each of the members of the Dot Aero Council is selected on the basis that it is a body representative of the particular sector it works for and that it is generally accepted as such in the aviation community. The Dot Aero Council is made up of existing, operative, respected bodies that have represented their sector of the aviation community for many years. They have established internal procedures and mechanisms for ensuring that they adequately represent their respective members.

It was thought at the time, and continues to be thought, that given some of the potential conflicts and overlaps that might arise, .aero would be better served by having delegates of particular aviation sectors, nominated by that sector's representative body, rather than by individuals who may have particular views to push, but no appointing body to report to, representing their sector in debates regarding the entire aviation community as a whole. In resolving issues such as the allocation of three letter designator codes (as used by the airlines) and three letter locator codes (used by airports) the wisdom of that position has been vindicated.

Apparently, the use of established generally accepted industry bodies and sectoral associations is not acceptable to the writer of this submission. To this writer, they are not representative. It is not for the .aero, a new TLD created for an existing community, to dictate appropriate methods of managing the business of each of the sectors or groups making up the aviation community. On the other hand, .aero spent considerable time ensuring that it had approached the most representative and authoritative body for each sector. Each member of the community is therefore, as far as is practicable, represented by their sector's representative association. It is simply not true that there is no representation.

What the submission might unwittingly be saying is that the particular section of the aviation community which includes the writer of the submission cannot of itself find a way to represent itself on a body with a mandate such as .aero discharges. Or, perhaps, that there is a representative body which for some reason is not acceptable to the writer. It would be unreasonable to hold .aero accountable for this. SITA and the Dot Aero Council has to rely on the processes and procedures of established representative body. If there is such a body, it has not made itself, or its interest in the matters at hand, known to SITA. Given that if it in fact exists, and has a direct interest in these issues, and was in a position to represent its sector of the aviation community in this area, it is hard to accept that it has not made its interest known. Again, if this is the case, it is hardly the fault of SITA, or .aero, or the Dot Aero Council.

Nor is it the role of .aero to dictate how each of these groups then distribute the work done at the Dot Aero Council within their organisations and communities. In the case of the overlapping three letter designator and locator codes referred to above, issues of considerable commercial and political concern to particular members of each community were at play. It is for the representative associations and bodies to determine the best ways to ensure that decisions are disseminated within their sector. What would appear to be very clear is that

there was considerable consultation and discussion within the communities. That is how members of the community get involved. Many of these individual members did get directly involved, and a good, workable solution, acceptable to all parties, was found.

There is also an allegation that this work takes place in secret and that the two most important decisions to be made, the selection of a new registry operator, and an amendment to the Sponsorship Agreement happened 'in secret'. I assume that the submission is not making any comment on the merit of the underlying decisions, but on the procedure used.

The change in registry operators was foreshadowed in the original negotiations and is a contractual obligation in the Sponsorship Agreement (on which the writer of this submission also commented). It was never a secret. If the submission is seeking a right of veto over particular commercial terms of the agreement entered into then .aero suggests that his complaint is not for this forum. As to the amendment of the Sponsorship Agreement, presumably, this is a reference to the proposal to allow for direct distribution of names. This would be the very issue that two submissions concerned in this process. It is hard to see how this can be so secret.

If alternatively, this is a reference to the pre-activation of airline code domain names, again, this is hardly a secret. It is referred to in the original application SITA made, it was discussed at open forum at various ICANN Board meetings, and it has been consistently a feature of the management of .aero.

B. Non-representative

The second allegation is that .aero and the Dot Aero Council is not representative of the aviation community. This is an allegation made without facts or proof of any sort whatsoever. It is also wrong.

Perhaps the point that the submission misses is the considerable overlap in the community. Airlines employ pilots, almost always members of a union, many of whom then fly as sport pilots as a hobby; many air traffic controllers do pilot training as part of their training; airports employ members of unions, and indeed aviation writers, as do airlines. When the overlaps are taken out, it is not sustainable to assert that the community is not represented.

The second element in this head of claim is that SITA in appointing one person to represent any other interests or aviation community members cannot discharge that role. Apart from being defamatory of the particular people SITA has asked to discharge this role, two substantive things should be noted. First, that person represents the interests of other parts of the community until such time as such an appropriate body is identified. That body is then included in the Dot Aero Council in its own right. Secondly, at no time in the history of the Dot Aero Council has an individual member of a community group approached the representative with a particular concern.

It should also be noted for the record that the Dot Aero Council in fact welcomes approaches from representative bodies of particular aviation sectors. No such body that has approached the Dot Aero Council for membership has been refused admission.

The facts also do not support the allegation that the writer of the submission asserts. The .aero TLD is restricted in the Sponsorship Agreement to people, entities and government agencies which provide for and support the efficient, safe, and secure transport of people and cargo by air; or facilitate or perform the necessary transactions to transport people and cargo by air. In one case, for example, it was agreed that writers of internet sites with some relevance to aviation (even if arguably they were more of relevance to the travel industry and thus the .travel community) could be considered to be aviation writers and thus members of

the community. Thus it would appear that .aero has agreed to include the very profession the writer of this submission belongs to and from which claims is not dealt with inclusively.

C. Misrepresentations in the renewal application

This third leg of complaint is that in making the renewal application of 16 December 2005, referred to above, SITA failed to mention these apparent faults in its governance of .aero. SITA does not deviate from its original renewal application and rejects this claim, which is no more than a re-heating of the other two claims above, out of hand. The facts, as set out above, do not sustain this claim at all.

The Dot Aero Council in fact stands by the SITA renewal application in its entirety. It is a document that is realistic about the challenges that SITA faced in making .aero a part of the aviation community, and the work that lies ahead in making it increasingly central to the work that needs to be done.

(iv) Conclusion

In conclusion, neither SITA nor the Dot Aero Council believes that any of the issues raised present substantial questions about the governance of .aero or the operations of .aero. Consequently, SITA is entitled to the benefit of the presumption of renewal of its Sponsorship Agreement.

If you have any questions about this issue, or wish to discuss any part of it further, please do not hesitate to contact Ms Marie Zitkova on +41-22-747 6385.

Yours sincerely



Fabiano Chies
SITA SC
Chairman
Dot Aero Council