Mr Cherine Chalaby
Chair of the New gTLD Committee
ICANN

Cc:
Dr. Steve Crocker
Chairman of the Board

Mr. Fadi Chehadé
President & CEO

Ms. Christine Willet
Vice-President of gTLD operations

Mr. Eddy Hartog
Head of UNIT
DG Connect
European Commission

Brussels, 2 May 2014

Dear Mr. Chalaby,

RE: Concerns about Community Priority Evaluation

HOTREC represents the hotel, restaurant and café industry at European level. It counts 1.8 million businesses, with 91% of them being micro enterprises employing less than 10 people. The micro and small enterprises (having less than 50 employees) in the hospitality industry representing 99% of businesses make up some 64% of value added. The industry provides some 10 million jobs in the EU alone. HOTREC brings together 42 National Associations representing the interest of the industry in 27 different European countries. Europe is the largest tourism destination in the world with a market share of more than 50, representing some 503 million international arrivals. People are spending over 1.5 billion nights in hotels and similar establishments in the EU28.

We are writing today in response to the Community Priority Evaluation (CPE) results that were posted on 14 March 2014. We are concerned about two issues: That ICANN and the Economist Intelligence Unit (EIU) have not acted in an appropriately open and transparent manner with regard to these proceedings, and secondly, that ICANN and the EIU have not acted in accordance with the Applicant Guidebook or the supplemental guidance provided on the CPE process.

As stated in the CPE Guidelines published 27 September 2013, "The evaluation process will respect the principles of fairness, transparency, avoiding potential conflicts of interest, and non-discrimination." Further, "**EIU evaluators are selected based on their knowledge of** specific countries, regions and/or **Industries** as they pertain to Applications." Given that ICANN did not publish any information about the evaluators, it is not possible for us to know whether the evaluators chosen to conduct the CPE have the necessary knowledge of the .hotel community as they pertained to the respective application.

- This is not only contradictory to the rules set in the Guidebook and the supplemental briefing of EIU, but also inconsistent with the other New gTLD Dispute Resolution Procedures.
- We are concerned that the evaluators currently working on the .hotel application might not be selected based on the defined criteria. In any case, we, as the single body representing the hotel community from 27 European countries, have not been contacted by the EIU so far.

As noted in the CPE FAQ published on 27 September 2013, applicants may be asked Clarifying Questions (CQs). "The CPE Panel may, but is not obligated to request additional information from applicants if the Panel feels that additional information is required to evaluate the application." This is consistent with ICANN's approach to Clarifying Questions (CQs) during the Initial Evaluation process, as presented in its 1 March 2013, FAQ on CQs, applicants "Received CQs because the Initial Evaluation panel(s) did not have **sufficient information to award a passing score**. CQs are issued once the evaluation panels have completed an initial evaluation of your application and have found that additional information is needed before a passing score can be given."

It is not transparent which documents and resources EIU uses for the evaluation. It is assumed that an EIU evaluator may not have all information at hand when conducting a CPE. Due the history of community-based applications within ICANN it is assumed that EIU experts may have difficulties to understand and put in context some of the information applicants outlined in their application. We therefore urge ICANN to brief the EIU on the following:

- The EIU experts should use the opportunity (as written in the AGB) to interact with the applicants and their supporters.
- Interaction with the applicant will help to check if all documents are on the table, and all application materials, comments, support-letters, public information, policies, objection results are taken into account.
- The information may not only derive from question #20 in the application but also from other texts and attachments of the application, including CQs.
- Also, other sources including websites shall be considered.

ICANN and the EIU have not acted in accordance with the Applicant Guidebook or the supplemental guidance provided on the CPE process.

- Based on the four published CPE results it seems that experts decide mechanistically and in doubt decide against a community. It seems that if an expert determines 1,5 points for a criterion, he would then award 1 point instead of 2. This is in our opinion against basic legal standards that argue "in dubio pro reo". For instance: In Criterion 3 "Enforcement" the Appeal mechanism has the same weight as the Enforcement mechanism itself. Or if there is not a "clear and straightforward membership" the applicants have lost all points instead of one. The clear GNSO recommendation (which is part of the broader context evaluators may not be aware of) is that "the term "community" should be "interpreted broadly and will include, for example, an economic sector" which might not have such an exact membership definition.
- Wrong interpretation by EIU of "Delineation" and "Extension". Both were described in the AGB as follows: "With respect to "Delineation" and "Extension," it should be noted that a community can consist of legal entities (for example, an association of suppliers of a particular service), of individuals (for example, a language community) or of a logical alliance of communities (for example, an international federation of national communities of a similar nature)" whereas the reasoning of previous CPEs the EIU clearly considered only membership as in clubs as a valid criterion.

Furthermore, on 27 March 2014 the ICANN Governmental Advisory Committee (GAC) issued in its ICANN Singapore meeting communiqué on page 4 the following binding advice:

3. Community Applications
The GAC reiterates its advice from the Beijing and Durban Communiqués regarding preferential treatment for all applications which have demonstrable community support.
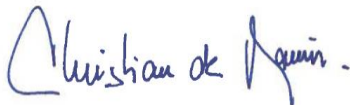*1. The GAC advises*
a. ICANN to continue to protect the public interest and improve outcomes for communities, and to work with the applicants in an open and transparent manner in an effort to assist those communities.

This advice is binding to all parties concerned, including ICANN, EIU and applicants.

Finally, we would like to make you aware of the policy clarification posted by HOTEL Top-Level-Domain S.à.r.l. on April 29 (Comment ID c5wsf7ov), which in our view is an important element to ensure its accountability to the global hotel community.

Yours sincerely,

Christian de Barrin,

CEO of HOTREC