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Dear Kamilla

Response to CMA Regulatory Appeal Rules and Guidance (Energy, Water, Airports and Air Traffic Services) Consultation dated 12 July 2022

As we noted in our response to the CMA's open letter dated 7 December 2021, the integrity and effectiveness of the regulatory appeals regime is of paramount importance to the UK economy. We are grateful to the CMA, therefore, for inviting us to respond to its Regulatory Appeal Rules and Guidance (Energy, Water, Airports and Air Traffic Services) Consultation dated 12 July 2022.

Our responses to the consultation questions are set out below.

1 Do you agree with our proposed approach of having regard to proposed amendments to the energy licence modification appeals rules in making amendments to the airport licence appeals rules and guidance, and in the draft rules and guidance that we are proposing for our new water and air traffic services appeal regimes?

1.1 We agree that there is merit in aligning the rules and guidance applicable to the energy, airports, air traffic services and water (ex. price controls) licence appeal regimes. In addition to helping to improve understanding of the regimes among would-be appellants and third parties (and thereby the accessibility of those regimes), aligning the rules and guidance across the various regimes might also be expected to:

1.1.1 result in greater scope for read across between the regimes from a procedural standpoint;

1.1.2 as a result, lead to greater consistency and predictability for those participating in appeals; and

1.1.3 in the longer term, result in time and cost savings.

1.2 With that said, it is obviously important that efforts to align the relevant rules and guidance take into consideration the different nature of the relevant sectors and the circumstances in which appeals are expected to be brought in each case. Appeals in sectors where decisions tend to

affect a large number of licensees may pose greater logistical challenges to those in sectors where the number of licensees affected by decisions tends to be smaller. Similarly, price control appeals are likely to necessitate consideration of a broader range of issues than appeals relating to other licence modification decisions that are narrower in scope. The differences in the statutory frameworks underpinning the different appeal regimes will also need to be taken into account, noting the differences in terms of approach to (for example) the standing of interveners under the Gas Act 1986, Electricity Act 1989, Water Industry Act 1991, Transport Act 2000 and Civil Aviation Act 2012.

2 Do you have any comments on the draft amendments to the energy and airport licence appeal rules and guidance?

2.1 We are broadly supportive of the CMA's proposed changes to the energy and airport licence appeal rules and guidance, subject to the observations/comments set out below.

Pre- appeal stage

2.2 While we understand the rationale for the CMA's proposal that licensees should provide some form of advanced notice to the CMA if they expect to lodge an appeal, we would be concerned if licensees were expected to provide any more detail than is currently envisaged in the proposed guidance. As noted in our response to the CMA's open letter, in the run up to lodging appeals, licensees typically find themselves under significant pressure from a time, resource and governance perspective. If licensees were expected to provide further detail, it could have a significant impact on their ability to properly prepare their appeals. In a similar vein, we consider it important that any communication between a licensee and the CMA as regards the issues on which it expects to appeal should remain confidential, and that the licensee in question should not be precluded from appealing on grounds that are not flagged in advance or penalised if they do not appeal on grounds that they initially indicate that they might appeal on. This is currently reflected in the proposed guidance.[1,2] Should these protections be eroded, it would put licensees in a very difficult position and risk undermining the integrity of the appeal regimes and licensees' rights of defence.

2.3 As regards the CMA's proposal that licensees should reach out to the relevant authority with respect to manifest / calculation -type errors ahead of any appeal with a view to resolving the same,[3,4] we similarly see the merit in this (and note that in practice this would inevitably be in all parties' interests). With that said, given the aforementioned pressures from a timing, resources and governance perspective, the guidance ought, in our view, to recognise that this may not always be possible. Further, in the interests of reciprocity and good administration, the guidance should make it clear that where such errors are raised, the authority concerned will be expected to work with licensees to resolve them promptly and in good faith.

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1 Proposed Energy Licence Modification Appeal Guidance, paragraphs 3.10-3.11

2 Proposed Airport Licence Condition Appeal Guidance, paragraphs 3.13-3.14

3 Proposed Energy Licence Modification Appeal Guidance, paragraph 3.13

4 Proposed Airport Licence Condition Appeal Guidance, paragraphs 3.16

Process for serving of documents

2.4 We welcome the CMA's proposal to require the submission of documents by electronic means and stipulate that hard copies should only be submitted where these have been specifically requested.[5,6]

2.5 As regards the CMA's indication that it will continue to explore different platforms for the electronic submission of documents,[7] as explained in our response to the CMA's open letter, the secure file transfer service used by the CMA for the PR19, RIIO-T2 and RIIO-GD2 appeals was not very user-friendly. We would, therefore, strongly encourage the CMA to use an alternative platform for future appeals. During the course of the RIIO-GD2 appeals, we note, certain parties used Intralinks VIA to share documents with GEMA. We have also used Intralinks VIA to share documents with regulators on other matters. HM Courts and Tribunals Service, meanwhile, operates a Microsoft SharePoint -based platform which can be used to submit documents to certain courts and tribunals.

Procedures for hearing multiple linked appeals

2.6 We are supportive of the CMA's desire to provide greater clarity around the procedure for hearing multiple linked appeals. With that said, we believe that the CMA may wish to go further than the proposed rules and guidance currently envisage. In particular, we consider that it would be beneficial if the CMA were to clarify:

(i) its position as to the submission of joint appeals (i.e. where multiple licensees collaborate and submit a single notice of appeal);

(ii) in the case of the energy appeals regime, its approach to joining appeals under the Gas Act 1986 with appeals under the Electricity Act 1989 (and vice versa);

(iii) its approach to panel composition (including the maximum number of individuals that might form the panel appointed to preside over a given appeal and the possible appointment of multiple panels in the case of linked appeals), noting that these points were initially considered in the RIIO-T2 and RIIO-GD2 appeals;

(iv) its approach to the allocation of responsibility for different grounds of appeal to different panel members and/or support staff; and

(v) its position with respect to the attendance of panel members at hearings, teach-ins and site visits.

2.7 Setting out the CMA's general position/approach with respect to these matters would help licensees to better understand the likely format and structure of future appeals, as well as reduce the scope for disagreement relating to the handling of appeals once they are underway.

Management by the CMA of the submission of evidence

2.8 While we welcome the CMA's efforts to introduce more prescriptive rules and guidance around the submission of evidence, there are a number of ways in which the proposed rules and

[5] Proposed Energy Licence Modification Appeal Rules, paragraphs 22.2-22.4

[6] Proposed Airport Licence Condition Appeal Rules, paragraphs 22.2-22.4

[7] Main consultation document, paragraph 2.13

guidance would, in our view, benefit from further refinement. We make the following observations in this regard:

(a) Requirement for licensees to provide a bundle of supporting documentation at the same time as their main written submission

2.9 The proposed rules state that a licensee wishing to appeal a decision must submit a notice of appeal comprising (a) a main written submission; and (b) an appended bundle of supporting documentation – including:

(i) a copy of the decision being appealed;

(ii) any evidence on which the licensee wishes to rely in the form of witness statements and expert reports; and

(iii) any documents (or extracts of documents) to which the licensee believes the CMA should have regard in determining the appeal.[8,9]

The rules further state that both must be sent to the CMA within 20 working days beginning with the first working day after the decision is published (in the case of the energy appeals regime)[10] or 6 weeks beginning with the day on which the relevant notice is published (in the case of the airport appeals regime)[11] while the guidance states that these deadlines cannot be extended.[12,13]

2.10 Neither the Gas Act 1986 or Electricity Act 1989 (in the case of the energy appeals regime) nor the Civil Aviation Act 2012 (in the case of the airport appeals regime), however, stipulate that an appellant's main written submission must be accompanied by a bundle of supporting documents. Nor do they suggest that, if such a bundle is provided, it must be lodged at the same time as an appellant's main written submission and/or that any deadline for its submission cannot be extended by the CMA.

2.11 With this in mind, we would suggest that the proposed rules for both regimes are amended to provide that:

(i) a licensee's main written submission must be submitted 20 working days beginning with the first working day after the decision is published (in the case of the energy appeals regime) or 6 weeks beginning with the day on which the relevant notice is published (in the case of the airport appeals regime); and

(ii) a licensee's main written submission ought to be accompanied by a bundle of supporting documents submitted at the same time as the main written submission, subject to any direction by the CMA granting an extension of time or otherwise dispensing with this requirement.

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8 Proposed Energy Licence Modification Appeal Rules, paragraph 5.2

9 Proposed Airport Licence Condition Appeal Rules, paragraph 5.2

10 Proposed Energy Licence Modification Appeal Rules, paragraph 5.1

11 Proposed Airport Licence Condition Appeal Rules, paragraph 5.1

12 Proposed Energy Licence Modification Appeal Guidance, paragraph 4.5

13 Proposed Airport Licence Condition Appeal Guidance, paragraph 4.4

2.12 If the CMA were to make these amendments, consequential amendments would be required to:

(i) paragraphs 3.24 and 4.5 of the proposed guidance with respect to the energy appeals regime; and

(ii) paragraphs 3.33 and 4.4 of the proposed guidance with respect to the airport appeals regime.

2.13 For the avoidance of doubt, if the CMA were to make these amendments, we would expect licensees to continue to provide bundles of supporting materials at the same time as they submit their main written submissions in the vast majority of cases. It would, however, afford the CMA the flexibility to dispense with this requirement and/or allow licensees additional time to submit their bundles should it consider it appropriate to do so in the circumstances (for example where technical difficulties mean that a licensee may require a short amount of additional time to finalise its bundle of supporting documents).[14]

(b) Implication that a licensee's notice of appeal and application for suspension must be in the form of separate documents (energy appeals regime only)

2.14 Paragraph 7.2 of the proposed rules with respect to the energy appeals regime appears to envisage that, where a licensee applies for the suspension of a decision, that application will take the form of a separate written submission and bundle submitted alongside the corresponding notice of appeal. The same provision, however, also requires an application for suspension to include "*the information required to be included in the notice of appeal under Rule 5.2*".

2.15 The volume of information required to be included in a notice of appeal under paragraph 5.2 of the proposed rules is such that imposing these requirements simultaneously risks making the process of applying for the suspension of a decision unnecessarily cumbersome. Accordingly, we would propose that paragraph 7.2 of the proposed rules with respect to the energy appeals regime is amended to either:

(i) permit licensees to include applications for the suspension of decisions within their notices of appeal without having to submit a separate written submission; or

(ii) delete the reference to applications for suspension being required to include "*the information required to be included in the notice of appeal under Rule 5.2*".

2.16 Should the CMA be minded to retain the current drafting of paragraph 7.2, it might alternatively look to address this by the inclusion of clarificatory provisions in the proposed guidance.

(c) Form of evidence

2.17 We are supportive of the CMA's decision to delete the provision from the energy appeal rules requiring that all written evidence be in the form of a witness statement, and state in the rules

[14] The CMA might also wish to make corresponding amendments: (i) in the case of the energy appeals regime, to Section 7 (*Application for suspension of decision*), Section 9 (*The Authority's response*) and Section 10 (*Interveners*) of the proposed rules; and (ii) in the case of the airport appeals regime, to Section 8 (*Interveners*), Section 9 (*Application for suspension of decision*) and Section 11 (*The CAA's response*) of the proposed rules.

applicable to both regimes that written evidence may, instead, take the form of an expert report[15,16] and/or other documents (or extracts of documents) to which the party in question believes the CMA should have regard.[17,18] With that said, it might be beneficial if the CMA were to include clarification in the guidance around:

(i) the circumstances in which the CMA would expect to receive evidence in the form of a witness statement or expert report, as opposed to documents that have not been verified by a statement of truth; and

(ii) the circumstances in which the CMA would expect to be provided with extracts of documents as opposed to full versions (noting that the current rules applicable to the energy and airport appeal regimes – which came into force in 2017 and 2014 respectively – do not raise the possibility of parties being able to provide extracts of documents).

2.18 We also note for completeness that paragraph 14.2(f) of the proposed energy appeal rules appears to be repetitive of paragraphs 14.2(d)-(e). The same applies to paragraph 12.2(f) and paragraphs 12.2(d)-(e) of the proposed airport appeal rules.

(d) Statements of truth

2.19 We welcome the CMA's clarifications with respect to the circumstances in which documents must be verified by a statement of truth. With that said, we think it would be helpful if the CMA were to specify the exact wording to be used. We note that the Gas Act 1986,[19] Electricity Act 1989[20] and Civil Aviation Act 2012[21] all indicate that it should be sufficient for the signatory concerned to include a declaration in the form:

"*I believe the facts stated in this [document] to be true*".

With that said, in the RIIO-T2 and RIIO-GD2 appeals, the parties adopted a variety of different approaches.

2.20 We would also query whether the form of statement of truth required for expert reports should be different to that required for parties' main written submissions and witness statements. Under the Civil Procedure Rules ("**CPR**"), for example, experts must sign a statement of truth which includes the following:

"*I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.*"[22]

[15] Proposed Energy Licence Modification Appeal Rules, paragraphs 5.2(b)(ii), 7.2(b)(ii), 9.3(b)(i) and 10.5(b)(i)

[16] Proposed Airport Licence Condition Appeal Rules, paragraphs 5.2(b)(ii), 8.3(b)(i), 9.2(b)(ii) and 11.2(b)(i)

[17] Proposed Energy Licence Modification Appeal Rules, paragraphs 5.2(b)(iii), 7.2(b)(iii), 9.3(b)(ii) and 10.5(b)(ii)

[18] Proposed Airport Licence Condition Appeal Rules, paragraphs 5.2(b)(iii), 8.3(b)(ii), 9.2(b)(iii) and 11.2(b)(ii)

[19] Gas Act 1986, Schedule 4A, paragraph 13(1)

[20] Electricity Act 1989, Schedule 5A, paragraph 13(1)

[21] Civil Aviation Act 2012, Schedule 2, paragraph 35(1)

[22] See CPR Practice Direction 35, paragraph 3.3

In our view, the nature of expert evidence (including not least the fact that such evidence tends to deal with matters of opinion as opposed to simply matters of fact) is such that it would make sense for expert reports to be verified by a different form of statement of truth.

(e) Provision of exhibits to witness statements and expert reports

2.21 Paragraph 4.39 of the proposed guidance with respect to the energy appeals regime, and paragraph 4.37 of the proposed guidance with respect to the airport appeals regime, include guidelines on the provision of exhibits to witness statements and expert reports, suggesting that:

> "*Documents used in conjunction with a witness statement or expert report should be verified and identified by the witness or expert and placed in an exhibit separate from the witness statement or expert report. The location of the document in the exhibit should be set out in the witness statement or expert report*."

2.22 In proceedings before the High Court, parties are increasingly being encouraged to move away from exhibiting documents to witness statements.[23] We would query, therefore, whether parties to energy and airport licence appeals might instead be required to collate all documents referred to across their written submissions, witness statements and expert reports in a single location, allocate reference numbers to those documents, and then insert the relevant cross references into those written submissions, witness statements and expert reports as appropriate. Where multiple submissions, witness statements and expert reports refer to the same source documents, this should help cut down on duplication, thereby saving time and costs.

(f) Requirement for licensees and interveners to explain the relevance of any evidence or other documents that they submit

2.23 We welcome the CMA's proposal to require licensees and interveners to explain the relevance of any evidence or other documents that they submit.[24,25] We note, however, that the proposed rules do not impose a corresponding requirement on the authority whose decision is being appealed (this is only addressed more generally in the proposed guidance)[26,27]. In the RIIO-T2 and RIIO-GD2 appeals GEMA submitted a very significant volume of evidence that did not significantly advance the debate at hand. If licensees and interveners are to be required to explain the relevance of any evidence or other documents that they submit, then the relevant authority should be required to do the same. We would propose that the current wording is amended to address this.

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[23] See Appendix to CPR Practice Direction 57AC (Statement of Best Practice in relation to Trial Witness Statements), paragraph 3.4

[24] Proposed Energy Licence Modification Appeal Rules, paragraphs 5.2(a)(iv) and 10.5(a)(iv)

[25] Proposed Airport Licence Condition Appeal Rules, paragraph 5.2(a)(iv)

[26] Proposed Energy Licence Modification Appeal Guidance, paragraph 4.28

[27] Proposed Airport Licence Condition Appeal Guidance, paragraph 4.26

2.24 In a similar vein, we would propose that an authority making responsive submissions in the context of an energy licence appeal should be required to identify any matters relied on therein to which it was unable to have regard when making its initial decision, noting that licensees lodging energy licence appeals are subject to such an obligation.[28]

(g) Further requirements with respect to evidence

2.25 More generally, it might be beneficial for the CMA to provide guidance around repetition across documents. We note that there was a tendency in the RIIO-T2 and RIIO-GD2 appeals for parties' written submissions to be repetitive of supporting witness statements and expert reports (leading to duplication and the CMA being burdened with unnecessary volumes of documentation). Submissions could have been made more concise by parties setting out their arguments at a higher level and then cross-referring to their supporting witness statements and reports for any relevant points of detail. Assuming the CMA would be in favour of parties adopting this approach, then it might want to consider providing guidance to this effect.

Interveners

2.26 We are broadly supportive of the CMA's proposals with respect to interveners and have no comments regarding these at the present time.

Role and number of hearings at different stages of the appeal

2.27 We are broadly supportive of the CMA's proposals with respect to the role and conduct of hearings. In particular, we welcome the CMA's clarification that hearings might be held virtually or on a hybrid basis,[29,30] and that the CMA may seek to narrow the issues and points in dispute during the course of an appeal by holding management conferences and hearings, or by sharing working papers with the parties.[31,32]

2.28 With that said, we believe it would be helpful if the CMA were to:

(i) provide further guidance regarding the circumstances in which it might request parties to arrange site visits and/or teach-ins, as opposed to attending regular hearings and/or provide additional information by way of RFI responses (noting the differing levels of preparation required); and

(ii) amend the rules with respect to cross-examination at oral hearings to make it clear that both factual and expert witnesses can be cross examined.[33,34]

Cost process

2.29 We do not take issue with the addition of the potential "*chilling effect*" on the relevant authority to the list of factors to be considered when making any *inter partes* costs award under the

[28] Proposed Energy Licence Modification Appeal Rules, paragraphs 5.2(a)(v)

[29] Proposed Energy Licence Modification Appeal Guidance, paragraph 4.42

[30] Proposed Airport Licence Condition Appeal Guidance, paragraph 4.40

[31] Proposed Energy Licence Modification Appeal Guidance, paragraph 3.6

[32] Proposed Airport Licence Condition Appeal Guidance, paragraph 3.9

[33] Proposed Energy Licence Modification Appeal Rules, paragraphs 14.2(g) and 16.3(b)

[34] Proposed Airport Licence Condition Appeal Rules, paragraphs 12.2(g) and 14.3(b)

rules. We are concerned, however, by some of the other changes that the CMA is proposing to make. In particular:

(i) We strongly oppose the deletion from the proposed energy appeals guidance of the statement that the CMA will normally order an unsuccessful party to pay the costs of the successful party to the appeal. We would note that in the consultation documents that preceded the implementation of the energy licence appeals framework – namely the Department of Energy and Climate Change documents "Implem*entation of the EU Third Package: Consultation on licence modification appeals*" (September 2010) and "*Implementation of the EU Third Internal Energy Package: Government Response*" (January 2011) – the government gave a strong indication that it expected *inter partes* costs awards under the energy appeals regime to follow the "*loser pays*" principle.[35]

(ii) We also oppose the reference in the proposed guidance to "*the principles as set out in BT v Ofcom*" being relevant to the determination of any costs award. [36,37] As the CMA is well aware, while the Supreme Court in *CMA v Flynn*[38] expressed support for aspects of the Court of Appeal's approach in *BT v Ofcom,* it was more equivocal with respect to other aspects of the case. In particular, it made it clear that the final sentence of paragraph 83 of the Court of Appeal's judgment ought to be disregarded, or at least not interpreted in the manner that the CMA has, to date, contended that it should be.[39] With this in mind, referring to the CMA giving consideration to "*the principles as set out in BT v Ofcom*" without further explanation is liable to lead to confusion. This confusion might be mitigated to a point by the proposed guidance instead referring to "*the principles set out in BT v Ofcom, as restated by the Supreme Court in paragraph 155 of its judgment in CMA v Flynn*".

2.30 Finally, for completeness, we would propose that paragraph 20.5 of the proposed energy appeal rules and paragraph 19.5 of the proposed airport appeal rules are amended to note that the CMA will, when determining whether or not to make an *inter partes* costs order, take into account:

(i) whether or not a party has complied with the rules, the guidance and/or any directions given by the CMA during the course of the appeal; and

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[35] See Implementation of the EU Third Package: Consultation on licence modification appeals, paragraph 2.29, which stated that "*Appeals will involve costs for the appeal body, these costs will need to be recovered. They will also involve costs for the Regulator and any other party to the proceedings. In order not to deter appeals with a reasonable chance of success, or regulatory decisions unlikely to attract a successful appeal, it should be possible for the 'winner's' costs to be paid by the 'loser': this is common practice. […] The Government is minded to provide the appeal body with the discretion to award costs on either side of an appeal. The appeal body should be able to make decisions on the costs of the parties, and its own economic cost. It should have discretion to apply the 'loser pays' principle or to require both parties to pay costs, as appropriate.*" See also Implementation of the EU Third Internal Energy Package: Government Response, paragraph 2.39, which states that "*Respondents were concerned that the cost of the appeal may restrict access to the process, particularly for smaller companies. The Competition Commission would have to make an order to recover its costs. If the company is successful in its appeal, the Competition Commission would order Ofgem to pay its costs. In relation to the costs of other parties, we are intending that the Competition Commission should have discretion to award these costs and that in doing so it should be able to take into account the reasonableness of the costs incurred in all the circumstances.*"

[36] *British Telecommunications plc v Office of Communications* [2018] EWCA Civ 2542

[37] Proposed Energy Licence Modification Appeal Guidance, paragraph 6.4

[38] *Competition and Markets Authority v Flynn Pharma Ltd and another* [2022] UKSC 14

[39] See paragraph 103 of the Supreme Court's decision in *Flynn*

(ii) whether a party has been consistent in its arguments or has sought to change its case / rely on further, unsolicited submissions.

The inclusion of the latter, we note, would dovetail with the CMA's efforts to discourage parties from making unsolicited submissions.[40,41]

Provisional determination

2.31 We are supportive of the revision of the proposed rules and guidance to make it clear that the CMA will decide whether or not to issue a provisional determination depending on the circumstances of the case. With that said, we agree with the CMA's assessment that there may be more value in issuing a provisional determination in price control cases,[42] and on the whole we would expect the CMA to continue to issue provisional determinations in such cases.

2.32 We are also supportive of the CMA's proposal to revise the rules to state that where appeals or parts of appeals are being considered together, it may elect to make a single provisional determination in relation to two or more appeals (either in part or in their entirety). Where such appeals relate to price controls, we would typically expect the CMA to publish a detailed provisional determination covering all aspects of the appeal (noting the complex and high value nature of price control appeals). With that said, we acknowledge that there may be circumstances where it is appropriate to adopt a different approach.

2.33 Please note that in circumstances where the CMA considers that it would not be appropriate to issue a provisional determination, we would expect the CMA to provide the parties with reasons. We would suggest that the proposed guidance is updated to reflect this.

Other changes

2.34 In terms of the other changes that have been proposed, we are supportive of the CMA's suggestion that parties seek to provide an agreed glossary and chronology.[43,44] With that said, it is important to keep in mind that agreeing the form and content of such documents in an adversarial context can be challenging, and there is no guarantee that it will be possible to produce glossaries and chronologies that all parties agree with.

3 Do you have any comments on the new draft rules and guidance for water appeals (other than for periodic price reviews) and air traffic services?

3.1 Our observations and comments with respect to the energy and airport licence appeal rules and guidance set out in paragraphs 2.2 to 2.34 above apply *mutatis mutandis* with respect to the draft rules and guidance for water appeals (ex. price controls) and air traffic services. We

[40] Proposed Energy Licence Modification Appeal Rules, paragraph 14.5, and Proposed Energy Licence Modification Appeal Guidance, paragraph 4.24

[41] Proposed Airport Licence Condition Appeal Rules, paragraph 12.5, and Proposed Airport Licence Condition Appeal Guidance, paragraph 4.22

[42] Proposed Energy Licence Modification Appeal Guidance, paragraph 5.1

[43] Proposed Energy Licence Modification Appeal Guidance, paragraphs 4.26-4.27

[44] Proposed Airport Licence Condition Appeal Guidance, paragraphs 4.24-4.25

have no further observations or comments with respect to the draft rules and guidance for water appeals (ex. price controls) and air traffic services at the present time.

3.2 With the above said, we repeat our observations at paragraph 1.2 above regarding the need to take into consideration the different nature of the sectors with which the regimes are concerned and the circumstances in which appeals are expected to be brought in each case. In the case of the water sector, for example, the larger number of licensees may mean that a different approach to the management of licence modification appeals is required compared to other sectors.

Next steps

We trust that the above responses are of assistance to you. Should you wish to discuss any of the above in further detail, please let us know.

Yours sincerely

Linklaters LLP