



Dispute Party – MTR Corporation (Crossrail) Limited

Timetable Dispute: HAL/TTP002

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

- (a) MTR Corporation (Crossrail) Limited whose Registered Office is at Providence House, Providence Place, London, N1 0NT ("**MTR**") ("the Claimant"); and
- (b) Heathrow Airport Limited whose Registered Office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW ("**HAL**") ("the Defendant").
- (c) Heathrow Express Operating Company Limited whose Registered Office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW ("**HEOC**")
- (d) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("**NR**")

2 THE CLAIMANT'S' RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D5.1 of the HAL Network Code.

3 CONTENTS OF REFERENCE

This Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (d) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

4.1 This dispute relates to the allocation of capacity on HAL infrastructure for both the December 2020 and May 2021 Working Timetables.

This dispute arises over the decision by HAL not to honour MTR Firm Rights (as described in D1.1.11 of the HAL Network Code) to Heathrow Terminal 5 and reflected in Table 2.1 of Schedule 5 of the Track Access Contract between MTR and HAL;

When failing to honour the MTR Firm Rights, HAL has not demonstrated how they have applied the Decision Criteria documented in D4.6.2 of the HAL Network Code.

and

HAL has not properly considered the MTR request for additional Firm Rights to Heathrow Terminal 5 for both the December 2020 and May 2021 timetables.

4.2 December 2020 Timetable

In accordance with D2.4.4 the HAL Network Code, MTR submitted their Access Proposal for the December 2020 timetable at the Priority Date on 6 March 2020, which consisted of a four trains per hour service in each direction, 7-days a week, between Heathrow Airport Junction and Heathrow Terminal 4 station via Heathrow Terminals 1-3 (CTA) station.

On 23 April 2020, HAL wrote to MTR asking us to divert our services to Heathrow Terminal 5 station (via Heathrow Terminals 1-3) due to the closure of Heathrow Terminal 4 and the Terminal 4 station as a result of the Covid-19 pandemic.

MTR diverted its services to Heathrow Terminal 5 station from Saturday 9 May 2020.

MTR submitted a revised Access Proposal on 4 September 2020 date to amend the Working Timetable from December 2020, by diverting our services from Heathrow Terminal 4 to Heathrow Terminal 5, as requested by HAL in their letter of the 23 April 2020. Whilst the revised Access Proposal was submitted after D-26, MTR expected HAL to progress this proposal in accordance with D4.2.2. of the HAL Network Code, as HAL requested that MTR divert to Terminal 5 in their letter of the 23 April 2020 and were aware that MTR was planning to increase their service to four trains per hour between Paddington and Heathrow in the near future.

Also noting that Heathrow Express were only operating two trains per hour between Paddington and Heathrow Terminal 5 and there was uncertainty around their future plans.

In addition, MTR wrote formally to HAL on 18 September 2020 requesting Firm Rights for an additional two trains per hour in each direction to and from Heathrow Terminal 5 (from December 2020), in order to provide MTR with Firm Rights for four trains per hour to and from Terminal 5.

May 2021 Timetable

HAL advised MTR that they expected Heathrow Airport Terminal 4 to reopen in June 2020 based on airline passenger forecasts, noting that previous airline passenger forecasts fell short of expectations due to the ongoing Covid-19 pandemic.

In accordance with D2.4.4 the HAL Network Code, MTR submitted their Access Proposal for the May 2021 timetable at the Priority Date on 9 October 2020, which consisted of a four trains per hour service in each direction, 7-days a week, between Heathrow Airport Junction and Heathrow Terminal 5 station via Heathrow Terminals 1-3 (CTA) station, exercising MTR Firm Rights for two trains per hour in each direction to and from Heathrow Terminal 5.

MTR made the decision to submit an Access Proposal for four trains per hour in each direction to and from Heathrow Terminal 5 due to the ongoing uncertainty concerning the reopening of Terminal 4, and in order to provide stakeholders, funders and our passengers with certainty until such time as a firm date is available for the reopening of Terminal 4.

As noted above, MTR wrote formally to HAL on 18 September 2020 requesting Firm Rights for an additional two trains per hour in each direction to and from Heathrow Terminal 5 (from December 2020), in order to provide MTR with Firm Rights for four trains per hour to and from Terminal 5.

HAL responded to confirm that they would ask Network Rail to undertake a Capacity Study before responding to the MTR request for Firm Rights for an additional two trains per hour in each direction to and from Heathrow Terminal 5. MTR is awaiting a formal update from HAL following completion of a Capacity Study.

On 16 October 2020, Network Rail wrote to MTR in response to the May 2021 New Working Timetable Priority Date Notification Statement, advising MTR that *'the Heathrow Terminal 5 changes are at this stage not accepted into the timetable'* based

on verbal guidance from HAL (pending written confirmation from HAL) and requesting that MTR submit a revised Access Proposal by 23 October 2020 to divert services to Terminal 4.

On 21 October 2020, HAL wrote to MTR requesting that MTR operate all services to Heathrow Terminals 1-3 (CTA) station from December 2020 (running as Empty Coaching Stock to and from the closed station at Heathrow Terminal 4 to reverse) and to Terminal 4 as soon as this station reopens in June 2021.

HAL also requested details of the arrangements that MTR would make for detraining passengers at Heathrow Terminals 1-3 (CTA) station (in relation to the December 2020 timetable) and requesting that MTR provides suitable connections between services to Terminal 4 and Terminal 5 (i.e. with Heathrow Express services) from May 2021.

MTR responded to HAL on the 23 October 2021 expressing disappointment at their decision.

4.4 The following documents are provided in support of the above comments:-

- The MTR Priority Date Statement for the December 2020 timetable dated 6 March 2020;
- The letter from HAL to MTR dated 23 April 2020, asking MTR to divert services to Heathrow Terminal 5 station;
- The letter from MTR to HAL dated 18 September 2020 requesting Firm Rights for an additional two trains per hour in each direction to and from Heathrow Terminal 5;
- The revised MTR Access Proposal for the December 2020 timetable submitted on 4 September 2020.
- The MTR Priority Date Statement for the May 2021 timetable dated 9 October 2020;
- The letter from Network Rail MTR dated 16 October 2020 in response to the May 2021 New Working Timetable Priority Date Notification Statement;
- The letter from HAL to MTR dated 21 October 2020, requesting that MTR operate all services to Heathrow Terminals 1-3 (CTA) station from December 2020 and to terminal 4 from May 2021;

- The letter from MTR to HAL dated 23 October 2020, which was in response to their letter dated 21 October 2020.
- The current HAL Network Code dated 2017 (downloaded from the HAL website);
- An extract from the MTR Track Access Contract with HAL (Schedule 5, Table 2.1).

5 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE

5.1 HAL asked MTR to divert their services to Heathrow Terminal 5 on 23 April 2020, which MTR complied with from 9 May 2020.

At this time MTR were operating two trains per hour to Heathrow Terminal 4 in each direction (plus a shuttle service between Heathrow Terminals 1-3 (CTA) and Terminal 4 every half an hour), pending the introduction of the Class 345 rolling stock and introduction of the full four trains per hour service between Paddington and Heathrow Terminal 4 in each direction.

From 9 May 2020 MTR operated two trains per hour in each direction between Paddington and Heathrow Terminal 5, with the expectation that this would increase to four trains per hour in each direction once that the Class 345 rolling stock was fully available.

Heathrow Express reduced their service to two trains per hour in each direction between Paddington and Heathrow Terminal 5 from the usual four trains per hour.

MTR had by this point submitted their Access Proposal for the December 2020 timetable (on 6 March 2020) for four trains per hour in each direction between Paddington and Heathrow Terminal 4, which was before the full impact of the Covid-19 pandemic was understood, including the closure of Heathrow Terminal 4..

There was some uncertainty about the future frequency of the Heathrow Express service, but in order to comply with the HAL request of 23 April 2020, MTR submitted a revised Access Proposal on 4 September 2020 to divert services to Heathrow Terminal 5 from December 2020, utilising existing Firm Rights for two trains per hour in each direction to Terminal 5. In addition, MTR wrote to HAL on 18 September 2020 requesting Firm Rights for an additional two trains per hour in each direction to Terminal 5, to enable MTR to secure Firm Rights for all services diverted from Terminal 4 to Terminal 5.

MTR submitted their Access Proposal for the May 2021 timetable (on 9 October 2020) for services to and from Heathrow Terminal 5, due to the ongoing uncertainty concerning the reopening of Terminal 4 and in response to the HAL request of 23 April 2020.

HAL responded on 21 October 2020 requesting that MTR operate all services to Heathrow Terminals 1-3 (CTA) from December 2020 and to Terminal 4 from June 2021. This response failed to acknowledge the two Firm Rights held by MTR to Heathrow Terminal 5, the MTR request dated 18 September 2020 for an additional two Firm Rights to Heathrow Terminal 5, or demonstrate that they had followed the process in D.4.2.2 in making their decision. As noted above, whilst the Access Proposal was submitted after D-26, MTR expected HAL to progress this proposal in accordance with D4.2.2. of the HAL Network Code, as HAL requested that MTR diverted to Terminal 5 in their letter of the 23 April 2020

HAL did not explain why they had decided not to honour the existing Firm Rights held by MTR to Terminal 5 or demonstrate that they were following the due process for considering the MTR request for additional Firm Rights to Terminal 5.

MTR understand that Heathrow Express has aspirations to reintroduce their full service of four trains per hour in each direction between Paddington and Heathrow Terminal 5 from December 2020, although it is unclear why Heathrow Express has made this decision given the low passenger numbers.

In order to maintain suitable turnaround times, the Heathrow Express service requires the use of either two platforms at Heathrow or two platforms at Paddington. We understand that should the Heathrow Express timetable utilise two platforms at Heathrow Terminal 5 for their longer turnaround times, there is no platform capacity available for MTR services.

If Heathrow Express utilise two platforms at Paddington for their longer turnaround times, then only one platform is required at Heathrow Terminal 5 for their four trains per hour service, releasing the second platform for use by MTR for a minimum of two trains per hour (although MTR has requested Firm Rights for four trains per hour).

Platform capacity at Paddington is constrained due to the enhanced GWR service (following the completion of electrification works) and MTR services continuing to utilise the main line station due to the delay to the Crossrail Programme. We understand that in the short term GWR may not be operating their full electrification timetable. However, we have not seen any analysis to confirm whether Heathrow Express can utilise one or two platforms at Paddington.

- 5.2 In relation to the above, HAL failed to demonstrate how they had applied the Decision Criteria in D4.6.1 and 4.6.2 in a *'non-discriminatory, efficient and economical manner in the overall interest of current and prospective users'* when allocating capacity to Heathrow Terminal 5 for both the December 2020 and May 2021 timetable. HAL appear to have allocated all capacity to Terminal 5 to Heathrow Express (who run non-stop from Paddington to Heathrow) at the

expense of MTR, who provide a valuable connecting service serving all stations between Paddington and Heathrow. MTR undertook passenger counts at Heathrow on the 26 and 27 October 2020, which indicated that passenger numbers are split evenly between MTR and Heathrow Express services (both operators were running two trains per hour in each direction to Terminal 5). See Appendix 10.

MTR believe that the following Decision Criteria are particularly relevant to this dispute:-

- The spread of services reflects demand (HAL allocating all capacity at Terminal 5 to Heathrow Express at the expense of MTR stopping services);
- Maintaining and improving train service performance (in particular the performance impact of asking MTR to terminate four trains per hour at Terminals 1-3 (CTA));
- That journey times are as short at reasonably possible (MTR passengers to and from Terminal 5 will have to change at Heathrow Terminals 1-3 (CTA) under the HAL proposal, extending journey times);
- Maintaining and Improving an integrated system of transport for passengers (MTR suggest that operating both MTR and Heathrow Express services to Terminal 5 offers passengers a choice between the premium non-stop service provided by Heathrow Express and the MTR stopping service which reflects a more typical TfL / National Rail pricing structure – see Appendix 11). In addition, the direct MTR service between local stations and Heathrow Terminal 5 (including passengers interchanging at Hayes & Harlington with services to / from the Reading direction) provides a valuable service for passengers and airport staff, assisting with the modal shift from road to rail ;
- Enabling operators of trains to utilise their assets efficiently.

In addition, HAL failed to explain in their response of 21 October 2020 how they expect the timetable to operate at Heathrow Terminals 1-3 (CTA) from December 2020, the practical arrangements associated with terminating services at Terminals 1-3 (CTA) or that they have considered the performance or safety implications (especially in light of COVID-19) of terminating up to four MTR services per hour at Terminals 1-3. HAL has instead suggested that MTR make the necessary arrangements for detraining passengers at Heathrow Terminals 1-3 (CTA).

HAL has also suggested, in their letter of 21 October 2020, that MTR make suitable arrangements for provide connecting services from May 2021, which we believe is a HAL

responsibility, although MTR is willing to help and engage in any discussions with HAL and Heathrow Express if required.

In addition to the points above, MTR considers that HAL is abusing its dominance by limiting markets to the detriment of consumers, in particular by refusing to grant MTR access to Terminal 5, which is necessary for MTR to offer consumers rail services from London to Heathrow Airport. HAL is also abusing its dominance by discriminating against MTR (and favouring HEX), thereby placing MTR at a competitive disadvantage.

6 DECISION SOUGHT FROM THE PANEL

- 6.1 For the December 2020 Timetable, MTR would like the panel to direct HAL to honour the existing MTR Firm Rights (of two trains per hour in each direction to and from Heathrow Terminal 5) and grant its request for Firm Rights for an additional two trains per hour in each direction to and from Heathrow Terminal 5;
- 6.2 Or; should this not be possible, direct HAL to demonstrate that they have applied D4.6.1 and D4.6.2 (Decision Criteria) appropriately in making their capacity decisions for the December 2020 timetable.
- 6.3 For the May 2021 Timetable, MTR would like the panel to direct HAL to honour the existing MTR Firm Rights (of two trains per hour in each direction to and from Heathrow Terminal 5). and grant its request for Firm Rights for an additional two trains per hour in each direction to and from Heathrow Terminal 5;
- 6.4 Or; should this not be possible, direct HAL to demonstrate that they have applied D4.6.1 and D4.6.2 (Decision Criteria) appropriately in making their capacity decisions for the May 2021 timetable.

7 APPENDICES

The Claimant confirms that it has complied with Access Dispute Resolution Rule H21.

8 SIGNATURE

For and on behalf of *MTR Corporation (Crossrail) Limited*

Signed



Print Name

Jonathan James

Position

Head of Contract Management

APPENDICES

- Appendix 1 - The MTR Priority Date Statement for the December 2020 timetable dated 6 March 2020;
- Appendix 2 - The letter from HAL to MTR dated 23 April 2020, asking MTR to divert services to Heathrow Terminal 5 station;
- Appendix 3 - The letter from MTR to HAL dated 18 September 2020 requesting Firm Rights for an additional two trains per hour in each direction to and from Heathrow Terminal 5;
- Appendix 4 - The revised MTR Access Proposal for the December 2020 timetable submitted on 4 September 2020;
- Appendix 5 - The MTR Priority Date Statement for the May 2021 timetable dated 9 October 2020;
- Appendix 6 - The letter from Network Rail MTR dated 16 October 2020 in response to the May 2021 New Working Timetable Priority Date Notification Statement;
- Appendix 7 - The letter from HAL to MTR dated 21 October 2020, requesting that MTR operate all services to Heathrow Terminals 1-3 (CTA) station from December 2020 and to terminal 4 from May 2021;
- Appendix 8 - The current HAL Network Code dated 2017 (downloaded from the HAL website);
- Appendix 9 - An extract from the MTR Track Access Contract with HAL (Schedule 5, Table 2.1).
- Appendix 10 - MTR Passenger Counts
- Appendix 11 – Heathrow Airport Fares
- Appendix 12 – The letter from MTR to HAL dated 23 October 2020.